

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

KELLY ANNE MCCABE,

Respondent.

Supreme Court Case No.  
SC20-620

The Florida Bar File Nos.  
2018-10,131 (6A)  
2019-10,301 (6A)  
2019-10,532 (6A)

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**CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT**

COMES NOW, the undersigned respondent, Kelly Anne McCabe, and files this Conditional Guilty Plea pursuant to Rule 3-7.9 of the Rules Regulating The Florida Bar.

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent is acting freely and voluntarily in this matter, and tenders this Plea without fear or threat of coercion. Respondent is not represented in this matter and is acting pro se.

3. As to The Florida Bar File Nos. 2018-10,131(6A), 2019-10,301(6A), and 2019-10,532(6A), there has been a finding of probable cause by the grievance committee.

4. The disciplinary measures to be imposed upon respondent are as follows:
- A. 1-year suspension from the practice of law.
  - B. As a condition of reinstatement, respondent shall complete an evaluation with Florida Lawyers Assistance, Inc. (FLA, Inc.) to establish her fitness to resume the practice of law.
  - C. Respondent shall pay the bar's costs incurred in this matter.
5. Respondent acknowledges that, unless waived or modified by the Court on motion of respondent, the court order will contain a provision that prohibits respondent from accepting new business from the date of the order or opinion and shall provide that the suspension is effective 30 days from the date of the order or opinion so that respondent may close out the practice of law and protect the interest of existing clients.
6. Respondent agrees to eliminate all indicia of respondent's status as an attorney on social media, telephone listings, stationery, checks, business cards office signs or any other indicia of respondent's status as an attorney, whatsoever. Respondent will no longer hold herself out as a licensed attorney.
7. The following allegations and rules provide the basis for respondent's guilty plea and for the discipline to be imposed in this matter:

The Florida Bar File No. 2018-10,131 (6A): Danardrick Chance retained respondent on a contingency fee basis to file suit against the City of Saint Petersburg after being shot in the leg on or about March 8, 2013, by an officer of the St. Petersburg Police Department. After Mr. Chance complained to respondent that no action had been taken and no suit had been filed, respondent filed a complaint against The City of Saint Petersburg and the police officer who shot Mr. Chance in Pinellas County, Case Mo. 17-001379-CI, on March 3, 2017, five days before the four year statute of limitations expired. Respondent never served the complaint on the defendants or took any other action in furtherance of the case. Respondent failed to attach the pre-requisite Notice of Intent to the Complaint or otherwise file a copy of the Notice of Intent to the City of St. Petersburg. The City of St. Petersburg has no record of receiving a Notice of Intent. Respondent failed to keep Mr. Chance informed of the status so that he could make informed decisions concerning his case. Mr. Chance retained new counsel in or around March 2018. Mr. Chance's new counsel has had difficulty obtaining responses from respondent necessary to protect the interests of Mr. Chance regarding the litigation.

By reason of the foregoing, respondent violated the following Rules Regulating The Florida Bar: Rule 4-1.1 (Competence); Rule 4-1.3 (Diligence); and Rule 4-1.4 (Communication).

The Florida Bar File No. 2019-10,301 (6A): Carey Gass retained respondent to handle a personal injury action resulting from an automobile accident which occurred on or about May 22, 2012. Respondent represented to Mr. Gass that she would be filing a complaint in June 2015 on his behalf and the case would be proceeding to mediation and conducting discovery. Respondent relayed that a settlement offer was being negotiated but no proof of such was ever provided to Mr. Gass. Mr. Gass learned that respondent did not file his complaint and no action was being taken to move his case forward. Respondent finally filed a complaint on behalf of Mr. Gass on or about May 22, 2016, in Manatee County, Case No. 2016-CA-002380, right before the statute of limitations expired. Thereafter, respondent failed to serve the defendants or take any other action in furtherance of the case. The defendants retained counsel and filed a Motion to Dismiss Case and Incorporated Memorandum of Law in August 2017, which was set for hearing and re-set several times with the last date for hearing being set for February 7, 2018. Respondent took no action in furtherance of the case and failed to keep Mr. Gass informed of the status so that he could make informed decisions concerning his case. Mr. Gass retained new counsel who entered an appearance in the litigation on or around January 19, 2018. On February 7, 2018, a hearing was held, and the trial

court granted Defendants' Motion to Dismiss Case and Incorporated Memorandum of Law finding there was insufficient evidence of excusable neglect by respondent. Mr. Gass' new counsel filed a Motion to Amend Complaint, and a Motion for Reconsideration and Incorporated Memorandum of Law, and an Affidavit of respondent. Respondent admitted in her affidavit that she failed to perfect service and claimed this was due to excusable neglect and inexperience. On June 18, 2018, the trial court denied Plaintiff's Motion to Amend Complaint and Motion for Reconsideration and found there was no evidence of good cause or excusable neglect and the statute of limitations had expired. The trial court entered an Order on Defendant's Motion for Entry of Final Judgment on June 18, 2018, finding no entitlement to relief for Mr. Gass, and reserving jurisdiction to determine entitlement to costs on behalf of the defendants.

On November 5, 2018, The Florida Bar received the initial complaint of Mr. Gass against respondent. On November 7, 2018, The Florida Bar sent respondent correspondence requesting a response to the complaint due by November 26, 2018. Respondent failed to respond to the correspondence dated November 7, 2018. On January 15, 2019, The Florida Bar sent respondent follow up correspondence requesting a response to the complaint due by January 25, 2019. On February 6, 2019, respondent sent an email attaching correspondence dated January 20, 2019, enclosing her response to the complaint dated December 5, 2018, claimed to have been previously sent to The Florida Bar. The Florida Bar had no record of receipt of the December 5, 2018, response prior to February 6, 2019.

By reason of the foregoing, respondent violated the following Rules Regulating The Florida Bar: Rule 4-1.1 (Competence); Rule 4-1.3 (Diligence); and Rule 4-1.4 (Communication); and Rule 4-8.4(g) (Misconduct – failure to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency).

The Florida Bar File No. 2019-10,301 (6A): On January 30, 2019, The Florida Bar received a complaint from David Lee Jones against respondent regarding her representation of him in a criminal and post-conviction matter. On March 6, 2019, The Florida Bar sent respondent correspondence requesting a response to the complaint due by March 22, 2019. Respondent failed to respond to the correspondence dated March 6, 2019. The matter was referred to a grievance committee, and Investigating Member was assigned, and a Notice of Live Hearing was served to respondent on October 24, 2019, for her appearance before the committee on November 7, 2019. After service of the Notice of Live hearing, respondent did respond and communicate with the Investigating Member in response to the complaint of Mr. Jones. On November 6, 2019, respondent sent an

email to the Investigating Member attaching her response to the complaint dated March 10, 2019, claimed to have been previously sent to The Florida Bar. The Florida Bar had no record of receipt of the March 10, 2019, response prior to November 6, 2019, email to the Investigating Member.

By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: Rule 4-8.4(g) (Misconduct – failure to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency).

8. The following aggravating factors are applicable:

Prior disciplinary offenses (The Florida Bar v. McCabe, SC16-1416, 2016 WL 4586102 (Fla. September 1, 2016): Respondent received a public reprimand for failure to maintain proper trust account records, failure to comply with appellate procedures and timely respond to appellate court orders in several appellate cases, and failure to timely respond to official bar inquiries; and The Florida Bar v. McCabe, SC18-1551, 2018 WL 6263207 (Fla. November 29, 2018): Respondent was held in contempt and received a public reprimand for failing to timely respond to official bar inquiries); a pattern of misconduct; and multiple offenses.

9. The following mitigating factors are applicable: personal or emotional problems (respondent was under a significant amount of emotional distress during this time due to ongoing family issues. She voluntarily completed an evaluation through Florida Lawyers Assistance, Inc., and a rehabilitation contract was recommended); and remorse.

10. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.

11. If this plea is not finally approved by the referee and the Supreme Court of Florida, then it shall be of no effect and may not be used by the parties in any way.

12. If this plea is approved, then respondent agrees to pay all reasonable costs associated with this case pursuant to Rule 3-7.6(q) in the amount of \$1,345.00. These costs are due within 30 days of the court order. Respondent agrees that if the costs are not paid within 30 days of this court's order becoming final, respondent shall pay interest on any unpaid costs at the statutory rate. Respondent further agrees not to attempt to discharge the obligation for payment of the Bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to Rule 1-3.6 if the cost judgment is not satisfied within 30 days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

13. Respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement, and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding or restitution may reflect adversely on any reinstatement proceedings or any other bar disciplinary matter in which respondent is involved.

14. If this plea is approved, and restitution is owed, if the person to whom restitution is owed cannot be located after a diligent search, respondent shall execute an affidavit of diligent search and provide same to The Florida Bar and shall pay the full amount of the restitution to the Clients' Security Fund of The Florida Bar within 30 days of the date of the affidavit of diligent search.

15. This Conditional Guilty Plea for Consent Judgment fully complies with all requirements of the Rules Regulating The Florida Bar.

Dated: \_\_\_\_\_

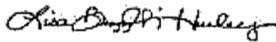
9/23/2020



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Dated: \_\_\_\_\_

September 14, 2020



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