

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JOHN DOUGLAS ANDERSON,

Respondent.

Supreme Court Case
No. SC20-1642

The Florida Bar File Nos.
2019-10,510 (13D),
2019-10,681 (13D),
2020-10,706 (13D)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as a referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules Regulating The Florida Bar, the following proceedings occurred:

On November 10, 2020, The Florida Bar filed its Complaint against Respondent. On November 17, 2020, the undersigned was appointed Referee. Respondent filed an Answer on December 30, 2020. On April 12, 2021, a Final Hearing was held. Evan Rosen, bar counsel, appeared on behalf of The Florida Bar and Respondent appeared *pro se*. At the conclusion of the Final Hearing, the Referee entered an Order of Findings of Fact and Conclusions of Law and set a sanction hearing for April 30, 2021. A sanctions hearing was held on April 30, 2021. Evan Rosen, bar

counsel, appeared on behalf of The Florida Bar and Respondent appeared *pro se*.

All items properly filed including pleadings, exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

Jurisdictional Statement: Respondent is and at all times mentioned during this investigation was a member of The Florida Bar and accordingly subject to the jurisdiction of the Supreme Court of Florida.

Narrative Summary of Case:

1) On September 24, 2018, Respondent appeared before the Honorable Margaret Taylor representing a defendant, Ricky Francis, on a misdemeanor battery charge. The court questioned Respondent as to whether he had bond factors to present on behalf of his client. Respondent replied "No." Respondent's client then informed the court that he did have bond factors for consideration and stated, "I'll have to speak for myself." Following a recess and discussion with the client, Respondent provided bond factors to the court. On January 16, 2019, at a subsequent hearing in the same matter, Respondent requested the court set the matter for a jury trial. The court questioned Respondent as to when his last jury trial was,

specifically a criminal jury trial. Respondent stated that it had occurred approximately six months prior, in Hillsborough County, before a male judge, the client's last name was Zaferias and the matter related to theft. The court then checked the records from that case which indicated that Respondent's client pled at a pretrial hearing and no trial occurred.

Respondent did not have any criminal trial or criminal jury trial experience and failed to correct his statements. Respondent's client then requested new counsel. The court passed the matter and instructed Respondent and his client to speak regarding the alleged irreconcilable differences during the break. Respondent then left the courthouse. Respondent failed to contact the court regarding the outcome of the client's request for new counsel and failed to submit an order for discharge. During the time Respondent took on this client's representation he had limited experience in the practice of criminal law. Respondent did not have and failed to obtain the knowledge required to provide competent representation.

2) In September, 2017, a Timothy Stemen hired Respondent to assist with post-conviction relief. Mr. Stemen provided Respondent with \$15,000. Respondent was entitled to \$5,000 as a non-refundable flat fee to handle Mr. Stemen's post-conviction matters. The remaining \$10,000 Respondent was to distribute according to Mr. Stemen's directions. Respondent failed to

provide a written fee agreement that memorialized the intent of the parties. Respondent failed to deposit the remaining \$10,000 into a client trust account and instead deposited the funds into his personal checking account. Of the \$10,000, Respondent was to provide \$1,800 to Mr. Stemen's ex-wife and \$6,000 to Mr. Stemen's friend. Respondent was to hold the remaining \$2,200 for Mr. Stemen. Respondent eventually disbursed the \$7,800 on Mr. Stemen's behalf as directed. Respondent paid at least one individual in cash withdrawn from his personal checking account and failed to obtain a receipt. Respondent had limited experience in the practice of criminal law at the time he undertook this representation. Respondent failed to obtain the knowledge required to provide Mr. Stemen with competent representation. On August 31, 2018, Respondent received a copy of the Order Striking Defendant's Motion for Post-Conviction Relief in the matter due to failure to meet pleading requirements. Respondent was the attorney of record and was put on notice that he had sixty days to file a facially sufficient motion or the claim would be forever barred. Respondent failed to file a facially sufficient motion despite Mr. Stemen's wishes. On April 2, 2019, Respondent filed a Petition for Mandamus with the Second District Court of Appeal. On April 9, 2019, the Petition was denied due to failure to make an express and distinct demand for

performance and failure to serve the opposing party. In February 2019, Mr. Stemen requested that Respondent deposit the remaining \$2,200 that Respondent was to be holding into his jail account. Respondent responded to Mr. Stemen that he was only able to provide \$300. From February through April 2019, Respondent disbursed \$900 of the \$2,200 to Mr. Stemen and advised him that Respondent had disbursed the remaining \$1,300 on his behalf but failed to provide Mr. Stemen with an accounting of the disbursement of funds.

3) Respondent was retained in 2014 to assist petitioners in the adoption of a minor child. According to testimony on April 12, 2021, the adoption is still pending. On November 14, 2019, Judge James Pierce entered a Notice On Petition For Order Approving Placement that outlined the documents and filings required before the matter could proceed and ordered Respondent to file an updated home study, a petition for termination of parental rights, the minor child's birth certificate, an affidavit in compliance with the Uniform Child Custody Jurisdiction and Enforcement Act, a search of the putative father registry, a birth parent interview and other materials all as required by Florida Statutes. Judge Pierce also ordered Respondent to conclude the proceedings for termination of parental rights within sixty days. Respondent failed to submit any

documents or filings required for the matter to proceed. On March 17, 2020, Respondent was ordered to show cause why he should not be held in indirect civil contempt for failure to comply with Judge Pierce's November 14, 2019, order. A hearing on the Order to Show Cause was set for May 21, 2020, at 2:30 p.m. and notice was provided to Respondent.

Respondent failed to appear at the hearing on May 21, 2020, and Judge Pierce then contacted Respondent by telephone. Respondent indicated that he thought the hearing was cancelled. Respondent indicated that he failed to comply with the November 14, 2019, order due to his client's inability to pay for an updated home study and difficulty contacting the birth mother but otherwise he had taken no steps to advance the matter. Judge Pierce found Respondent in indirect civil contempt of court. Respondent was sanctioned \$500 and fined \$100 for each day that he failed to file documents necessary for the matter to proceed. As of April 12, 2021, Respondent had failed to file any documents necessary for the matter to proceed and had failed to pay any of the sanction or fine.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 4-1.1 (Competence); 4-1.2 (a) (Objectives and Scope of Representation: Lawyer to Abide by Client's

Decisions); 4-1.3 (Diligence); 4-1.4 (a) (Communication: Informing Client of Status of Representation); 4-1.4 (b) (Communication: Duty to Explain Matters to Client); 4-1.5 (e) (Fees and Costs for Legal Services: Duty to Communicate Basis or Rate of Fee or Costs to Client and Definitions); 4-1.15 (Safekeeping Property); 4-1.16 (c) (Declining or Terminating Representation: Compliance With Order of Tribunal); 4-1.16 (d) (Declining or Terminating Representation: Protection of Client's Interest); 4-3.2 (Expediting Litigation); 4-3.3 (a) (Candor Toward the Tribunal: False Evidence; Duty to Disclose); 4-8.4 (a) (Misconduct: A lawyer shall not violate or attempt to violate the Rules of Professional Conduct); 4-8.4 (c) (Misconduct: A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); 4-8.4 (d) (Misconduct: A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice); 5-1.1 (a) (Trust Accounts: Nature of Money or Property Entrusted to Attorney); 5-1.1 (b) (Trust Accounts: Application of Trust Funds or Property to Specific Purpose); 5-1.1(e) (Trust Accounts Notice of Receipt of Trust Funds; Delivery; Accounting); 5-1.2 (b) (Trust Accounting Records and Procedures: Minimum Trust Accounting Records); 5-1.2 (d) (Trust Accounting Records and Procedures: Minimum Trust Accounting Procedures).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

The Referee considered the following Florida Standards for Imposing Lawyer Sanctions prior to recommending discipline:

4.1 Failure to Preserve the Client's Property

4.1 (b) Suspension is appropriate when a lawyer knows or should know that the lawyer is dealing improperly with client property and causes injury or potential injury to a client

4.4 Lack of Diligence

4.4 (b) Suspension is appropriate when a lawyer causes injury or potential injury to a client and:

(1) knowingly fails to perform services for a client; or

(2) engages in a pattern of neglect with respect to client matters

4.5 Lack of Competence

4.5 (b) Suspension is appropriate when a lawyer engages in an area of practice in which the lawyer knowingly lacks competence and causes injury or potential injury to a client.

3.2 Aggravation

3.2 (b) Aggravating factors:

(3) a pattern of misconduct;

(4) multiple offenses;

3.3 Mitigation

3.3 (b) Mitigating Factors:

- (1) absence of a prior disciplinary record;
- (2) absence of a dishonest or selfish motive;

V. CASE LAW

The Referee considered the following case law prior to recommending discipline:

In *The Florida Bar v. Broome*, 932 So. 2d 1036 (2006), the referee found Ms. Broome guilty of multiple violations, including 17 different Rules Regulating The Florida Bar. The referee recommended that Ms. Broome be publicly reprimanded and placed on probation for three years. The Supreme Court of Florida disapproved the referee's recommendation and imposed a one year suspension with probation upon reinstatement. Ms. Broome engaged in misconduct in multiple unrelated matters. In one matter, Ms. Broome failed to take depositions or consult with the client regarding plea offers. The referee found she failed to act with diligence, communicate with the client or abide by the client's wishes. In another matter, Ms. Broome requested the trial court extend time to file an appeal, however the trial court lacked jurisdiction. Ms. Broome then failed to respond to appellate court orders to show cause. In another matter, Ms.

Broome was found in contempt after failing to comply with a court's order and making misrepresentations to that court. In another matter, Ms. Broome requested a continuance without the client's consent and failed to consult with the client regarding his speedy trial rights. In another matter, Ms. Broome failed to timely file a motion for postconviction relief and as a result her client was time-barred from filing the motion. The referee also found Ms. Broome collected a non-refundable flat fee and failed to communicate the basis of the fee in writing.

In *The Florida Bar v. Donald Linus McBath, Jr.*, No. SC18-892 (Fla. Oct. 1, 2019), the Supreme Court of Florida approved the referee's findings of fact and recommendation as to guilt regarding Rule 4-1.1 (Competence) but disapproved the referee's finding that Mr. McBath's conduct did not violate Rules 4-1.3 (Diligence) and 4-1.4 (Communication) and found Mr. McBath guilty of these violations. The Supreme Court of Florida also disapproved the referee's recommendation of a sixty day suspension and instead ordered a one year suspension but did approve the referee's recommendation that Mr. McBath complete an ethics school and professionalism workshop. Mr. McBath was retained to represent a client in a family law matter. During the representation, Mr. McBath filed some pleadings on behalf of the client and appeared at a conference, mediation

and the first day of the final hearing. The mediation was scheduled without confirming the client's availability. Mr. McBath failed to provide the client with adequate guidance on what would occur at mediation or to prepare sufficiently for the final hearing and improperly delegated responsibilities to the client. Mr. McBath failed to review or evaluate the evidence and provided incompetent representation. There were no mitigating factors. In aggravation, Mr. McBath had an extensive disciplinary history, some of which involved similar misconduct, had refused to acknowledge the wrongful nature of his misconduct and had substantial experience in the practice of law.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

The Referee recommends that Respondent be found guilty of misconduct justifying disciplinary measures and that he be disciplined by:

- A. Six months suspension.
- B. Payment of The Florida Bar's costs in these proceedings.

The Florida Bar requested a one year suspension and payment of The Florida Bar's costs be imposed as a sanction. The Referee took into consideration the request of The Florida Bar and determined the above discipline was most appropriate.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule Regulating the Florida Bar 3-7.6(m)(1)(D), the Referee considered the following:

Personal History of Respondent:

Age: 72

Date admitted to the Bar: 10/07/2003

Prior Discipline: None

Respondent is not Board Certified by The Florida Bar in any area of practice

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED


The Referee finds the following costs were reasonably incurred by

The Florida Bar:

Investigative Costs	\$ 493.00
Administrative Fee	\$1,250.00
Court Reporters' Fees	\$1,167.00
TOTAL	\$2,910.00

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 17th day of May, 2021.


TRUE COPY
Original Signed
MAY 17 2021
George Mark Durotka, Referee

Original To:

John A. Tomasino, Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies to:

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