

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

BRETT ALLEN MEARKLE,

Respondent.

Supreme Court Case No.
SC18-971

The Florida Bar File Nos.
2017-00,569(4B), 2018-00,238(4B) and
2018-00,420(4B)

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned Respondent, Brett Allen Mearkle, 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.
3. As to all three TFB Files noted above, there have been findings of Probable Cause by the Grievance Committee.
4. The disciplinary measures to be imposed upon Respondent are as follows:

A. Respondent shall be suspended from the practice of law for 90 days.

B. Respondent is required to pay restitution to Patricia White in the amount of \$2500.00 and to Kathleen Kelley in the amount of \$2500.00 and to Limon Guo in the amount of \$2500.00 within six months of the Court's order. Respondent shall provide verifiable proof of payment to the Bar's headquarters office after each restitution payment made. Verifiable proof of payment shall consist of a copy (front and back) of the negotiated check or a copy of the check and certified return receipt.

C. Respondent will contact Florida Lawyers Assistance, Inc. (FLA, Inc.), at 800-282-8981 for an evaluation within 30 days of the order of the Supreme Court of Florida. At the end of the 60-day period, Respondent will provide the Bar's headquarters office with proof that Respondent has scheduled an evaluation. Respondent will abide by all recommendations made by FLA, Inc. including, but not limited to, entering into a rehabilitation contract. Should a rehabilitative contract result from the FLA, Inc. evaluation, Respondent agrees to be placed on probation for the period of the FLA contract, but such probationary period shall not exceed five years.

D. Respondent will pay a Florida Lawyers Assistance, Inc., registration fee of \$250.00 and a probation monitoring fee of \$100.00 a month to The Florida Bar's headquarters office. All monthly monitoring fees must be remitted no later than the end of each respective month in which the monitoring fee is due. All fees must be paid to the Bar's headquarters office in Tallahassee. Failure to pay shall be deemed cause to revoke probation.

E. Payment of the Bar's costs in this proceeding.

5. Respondent acknowledges that, unless waived or modified by the Court on Respondent's motion, the Supreme 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. The following allegations and Rules provide the basis for Respondent's guilty plea and for the discipline to be imposed in this matter:

COUNT I - TFB FILE NO. 2017-00,569(4B)
COMPLAINT OF PATRICIA WHITE

A. In or around October 2015, Patricia White hired Respondent to represent her in a Chapter 7 Bankruptcy with the intention of, among other debts, addressing her substantial student loan debt.

B. According to Ms. White, Respondent told her that he could get her student loans discharged.

C. Ms. White paid Respondent \$2,500 for the bankruptcy and was supposed to pay an additional \$1,000 per month for representation.

D. Respondent filed Ms. White's Chapter 7 Petition on October 14, 2015, however, at no point did he inform her that student loans were not dischargeable in bankruptcy.

E. Thereafter, Respondent left Ms. White a voicemail message indicating that the case was going well.

F. According to Ms. White, from December 2015, until a hearing on March 7, 2016, she was unable to contact Respondent, despite numerous attempts by text, phone and email.

G. Ms. White claimed that when she would attempt to leave a message for Respondent, his voice mailbox was full and not accepting messages.

H. On May 16, 2016, Respondent failed to appear at Ms. White's 2004 Examination despite being noticed on April 18, 2016, by the attorney for the Trustee.

I. During the 2004 Exam, both Ms. White and the Trustee's attorney tried several times each to reach Respondent without success.

J. As a result of that meeting, the Trustee negotiated a settlement with Ms. White based on her non-exempt personal property assets for the sum of \$5,000.00.

K. Although Respondent claimed that it was his understanding that Ms. White had terminated his representation before the 2004 Examination, the Motion to Terminate Counsel was not filed by Ms. White until May 23, 2016, and the Order granting the motion was not signed until July 8, 2016.

L. Respondent made no effort to withdraw from representation and was, therefore, counsel of record until July 8, 2016.

M. Other than the Petition, there is no evidence, either in the bankruptcy record or provided by Respondent, that he performed any work on behalf of Ms. White.

N. Because of Respondent's actions/inactions, Ms. White has lost her rental property, been required to pay the Trustee \$5,000, paid Respondent over \$3,000 and is still responsible for her massive student loan debts because they were not dischargeable in bankruptcy.

O. When questioned about this, Respondent was unable to provide Ms. White with any explanation about why this had happened.

P. In addition, Respondent failed to file Ms. White's new affirmation agreements for her home and cars.

Q. Respondent provided no documentation to prove he did any work on Ms. White's behalf despite several requests by the Grievance Committee Investigating Members during the investigation of this case.

R. Respondent also was unable to explain why he simply did not work out a student loan payment plan rather than file a bankruptcy.

S. Moreover, despite initially withdrawing her complaint based on Respondent's offer to continue his representation on a pro bono basis, a few months after the withdrawal, Ms. White complained again that she had lost contact with Respondent who had also failed to do any additional work on her case and repeatedly failed to show up in court for Ms. White's case.

T. By reason of the foregoing, Respondent has violated the following R. Regulating Fla. Bar: 4-1.1 (Competence), 4-1.2 (Objectives and Scope of Representation), 4-1.3 (Diligence), 4-1.4 (Communication), and 4-1.16 (Declining or Terminating Representation).

COUNT II - TFB FILE NO. 2018-00,238(4B)
COMPLAINT OF KATHLEEN KELLEY

U. In or around August 2017, Kathleen Kelley asked Respondent for referral to a tax attorney to represent her in what she described to be a "minor issue" with the IRS involving a claim for additional taxes by the IRS following her tax payment on a real estate loan.

V. Respondent assured Ms. Kelley that he could handle the matter.

W. She hired him, paid him \$2,500.00, and provided him with all her tax documents.

X. According to Ms. Kelley, Respondent told her that the closing attorney, Larry Bernard, had sent a letter to the IRS confirming the amount owed and that, since the IRS did not object, she owed nothing further.

Y. Respondent also told Ms. Kelley that Mr. Bernard had sent him a copy of that letter; however, he did not forward it to her.

Z. On August 27, 2017, Ms. Kelley received a letter from the IRS stating she owed an additional \$15,555.36.

AA. Ms. Kelley immediately texted a photo of the letter to Respondent and asked him to call her.

BB. Although she received no information of value, on August 29, 2017, Respondent texted her that she was “grouchy” and there was no need for concern.

CC. On September 20, 2017, Mrs. Wells, the IRS agent Ms. Kelley had been dealing with prior to hiring Respondent, called, offering her a payment plan.

DD. Ms. Wells told Ms. Kelley that she had never spoken to Respondent and had no idea that Ms. Kelley was represented by an attorney.

EE. Ms. Kelley attempted to call Respondent but was unable to leave a message because his voice mailbox was full, as it had been every time she had tried to call in the past.

FF. Ms. Kelley also sent several text messages but received no response.

GG. Respondent finally returned her call days later and told her that “he had taken a class on how to deal with irate clients and he learned it is best to ignore them” and that Ms. Wells must have forgotten she spoke to him.

HH. Respondent assured Ms. Kelley that he was working on the case and would copy her on all correspondence.

II. Ms. Kelley never received anything from him.

JJ. Ms. Kelley texted Respondent numerous times between the end of September and mid-November, but the response was always the same – “I’ll call you later” or “I’m working on it and will call you this afternoon.”

KK. Ms. Kelley never received a return call from Respondent.

LL. The week before she filed her Bar complaint, Ms. Kelley received a confirmation letter from the IRS regarding her payment plan.

MM. She called Ms. Wells’ supervisor, Vicki Bryant, and asked the status of her legal dispute.

NN. Ms. Bryant told Ms. Kelley that she had never had any conversation with Respondent and that there were no notes in her file to indicate that Ms. Kelley was represented by an attorney.

OO. Ms. Kelley finally resolved the issue herself by entering into a voluntary payment plan with the IRS.

PP. Ms. Kelley repeatedly texted Respondent asking for her money and paperwork back and received no response at all -- his voicemail was always full and she was unable to leave him a message.

QQ. During the Grievance Committee proceedings, the Grievance Committee Investigating Members met with Respondent twice and gave him various opportunities to provide documents.

RR. Respondent failed to provide a single document showing he performed any work for Ms. Kelley.

SS. Ultimately, the Bar's Investigator met with Respondent and retrieved from him Ms. Kelley's documents and returned them to her.

TT. By reason of the foregoing, Respondent has violated the following R. Regulating Fla. Bar: 4-1.1 (Competence), 4-1.2 (Objectives and Scope of Representation), 4-1.3 (Diligence), 4-1.4(a) & (b) (Communication), 4-1.5(a) (Fees and Costs for Legal Services), 4-1.16

(Declining or Terminating Representation), and 4-8.4(g)(Failure to Respond).

COUNT III - TFB FILE NO. 2018-00,420(4B)
COMPLAINT OF LIMON GUO

UU. On or about February 1, 2018, Limon Guo hired Respondent to represent him in a bankruptcy case and wired him \$2,500 from his home in China.

VV. According to Mr. Guo, once he paid Respondent the money, he never heard from him again.

WW. When Respondent met with the Grievance Committee Investigating Members, they told him to provide a written response to the complaint and any documentation to support what efforts he had made on the case.

XX. Respondent failed to provide a written response to the complaint or any other documentation to support his efforts.

YY. Respondent provided no acceptable explanation for his actions.

ZZ. Instead, Respondent alleged that he had been unable to communicate with his client because he was located in China.

AAA. By reason of the foregoing, Respondent has violated the following R. Regulating Fla. Bar: 4-1.1 (Competence), 4-1.2 (Objectives and Scope of Representation), 4-1.3 (Diligence), 4-1.4 (Communication), 4-1.5

(Fees and Costs for Legal Services), 4-1.16 (Declining or Terminating Representation), and 4-8.4(g)(Failure to Respond).

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

8. 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.

9. 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 \$1,750.93. These costs are due within 30 days of the Supreme Court's order. Respondent agrees that if the costs are not paid within 30 days of the 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.

10. 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.

11. 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.

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

Dated this 21st day of August 2018.

Respectfully submitted,



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Dated this 20th day of August, 2018.



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