

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. SC20-1595

v.

The Florida Bar File
No. 2020-00,033(2B)

ROBERT JOHN FOY,
Respondent.

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REPORT OF REFEREE

I. **SUMMARY OF PROCEEDINGS**

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

On November 3, 2020, The Florida Bar filed its Complaint against Robert John Foy (“Respondent”). On December 30, 2020, a case management hearing was held via Zoom videoconference. The Respondent failed to appear and the referee proceeded to set a final hearing. On January 26, 2021, a final hearing was held in this matter via Zoom videoconference. Alan Anthony Pascal appeared for the Complainant, The Florida Bar; The Respondent failed to appear. The Florida Bar submitted its trial exhibits A through D, which were admitted into evidence. All items properly filed, including pleadings, recorded testimony (if transcribed),

Received, Clerk, Supreme Court

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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 the Florida Bar's investigation, was a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

In addition to membership in The Florida Bar, Respondent is a member of the Tennessee State Bar, and otherwise subject to the jurisdiction of the Supreme Court of Tennessee.

Narrative Summary Of Case. This is a reciprocal discipline action, based on the Petition for Discipline, dated November 7, 2019, and the Order of Enforcement dated, August 17, 2020, which imposed against Respondent a suspension from the practice of law for a period of 7 years, with 5 years served as an active suspension, and the remainder served on probation.

Respondent's Tennessee suspension was based on the following conduct:

A. On or about September 16, 2015, Respondent agreed to represent Jo Nelson in a personal injury case which resulted from a car accident.

B. Upon information and belief, Ms. Nelson's case was settled on or about February 9, 2018, for \$40,000.00.

C. On or about March 14, 2018, Respondent deposited the settlement check into his trust account.

D. Respondent knowingly and intentionally did not send the appropriate portion of the settlement funds to the Centers for Medicare and Medicaid Services.

E. Respondent knowingly and intentionally did not send the appropriate portion of the settlement funds to Ms. Nelson's chiropractor's office to settle her chiropractor's bill until Ms. Nelson filed a disciplinary complaint against Respondent.

F. Respondent did not provide any settlement funds to Ms. Nelson until the disciplinary complaint was made.

G. Respondent's bank records reveal that after he deposited Ms. Nelson's \$40,000.00 settlement check into his trust account, on March 14, 2018, the balance of Respondent's trust account fell to \$5,960.16 on April 18, 2019.

H. Respondent transferred \$17,500.00 from his trust account to his operating account between the months of March and April 2018.

I. On or about April 11, 2018, Respondent sent a check in the amount of \$56,304.00 to another client as a final distribution of an estate.

J. Respondent's trust account, thereafter, remained below \$18,000.00 until December 21, 2018.

K. On or about May 17, 2019, Respondent submitted a copy of what he purported to be his trust account monthly statements from “March 2018 to present” to the Tennessee Disciplinary Board.

L. The trust account monthly statements provided by Respondent were for the months of March 2018 through and including April 2019.

M. The trust account documents provided by Respondent indicated that Ms. Nelson’s funds at issue remained, and were maintained, in his trust account for the duration of March 2018 until April 2019.

N. On or about June 3, 2019, Tennessee disciplinary counsel subpoenaed Respondent’s trust account records from Franklin Synergy Bank.

O. In response to the issued subpoena, Respondent’s bank produced an entirely different set of bank records in relation to Respondent’s trust account.

P. The bank records submitted by Respondent to the Board were not accurate and were altered.

Q. Respondent knowingly, and with intent to deceive the Board, altered the bank records he provided to the Board.

R. Respondent knowingly and intentionally provided false documents to the Board in connection with a disciplinary matter.

S. Respondent violated the following Tennessee Rules of Professional Conduct: 1.15 (Safekeeping Property and Funds), 3.4 (Fairness to the Opposing

Party and Counsel), 4.1 (Truthfulness and Candor in Statements to Others), 8.4(a) (Misconduct), and 8.4(c) (Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation).

III. RECOMMENDATIONS AS TO GUILT.

I recommend that by operation of R. Regulating Fla. Bar 3-4.6, the Petition for Discipline and the Order of Enforcement from the Supreme Court of Tennessee shall be considered as conclusive proof of guilt in this disciplinary proceeding.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.1 Failure to Preserve the Client's Confidences

(a) Disbarment. Disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury.

4.6 Lack of Candor

(a) Disbarment. Disbarment is appropriate when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another regardless of injury or potential injury to the client.

5.1 Failure to Maintain Personal Integrity

(a)(6) Disbarment. Disbarment is appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Mirk, 64 So.3d 1180 (Fla. 2011) - the attorney was disbarred for engaging in misconduct involving the misuse or misappropriation of client funds.

The Florida Bar v. Brownstein, 953 So.2d 502 (Fla. 2007) - the attorney was disbarred for five years for misappropriation of funds, though attorney had been suffering from clinical depression; attorney did not seek medical or psychological care until after the Bar's disciplinary investigation began, and still did not undertake to provide the Bar with subpoenaed records, cooperate with the Bar in reconstructing records, or rectify his wrongful acts of failing to pay his secretary's withholding taxes and payroll taxes or his own back taxes

The Florida Bar v. Spear, 887 So.2d 1242 (Fla. 2004) - the attorney was disbarred for converting client funds, despite mitigating circumstances. Attorney transferred \$75,000 of client's funds from his trust account and obtained a loan from another client in order to repay client. In cases in which Supreme Court imposed a sanction other than disbarment for misappropriation of client funds, there were exceptional circumstances that mitigated attorney's culpability, and attorney participated in disciplinary proceeding and offered an explanation for his conduct.

The Florida Bar v. Travis, 765 So.2d 689 (Fla. 2000) - the presumption of disbarment for misusing client funds is exceptionally weighty when the attorney's

misuse is intentional, rather than a result of neglect or inadvertence. An attorney's prior good works and lack of disciplinary history do not prevent disbarment for stealing from a client by taking trust account funds.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that be disciplined by:

- A. Disbarment.
- B. Payment of The Florida Bar's costs in these proceedings.

Respondent will 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 himself out as a licensed attorney.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 40

Date admitted to the Bar: September 22, 2006

Aggravating Factors:

Prior Discipline: None.

3.2(b)(2) dishonest or selfish motive;

3.2(b)(3) a pattern of misconduct;

3.2(b)(4) multiple offenses;

3.2(b)(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; and

3.2(b)(9) substantial experience in the practice of law.

Mitigating Factors:

None presented.

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

I find the following costs were reasonably incurred by The Florida Bar:

Administrative Fee	\$1,250.00
Court Reporter Fees	80.00
Investigative Costs	77.00
TOTAL	\$1,407.00

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 12th day of March, 2021.

/s/ Anthony B. Miller
Anthony B. Miller, Referee
Circuit Judge
301 S. Monroe Street, Suite 330
Tallahassee, FL 32301-1861

Original to:

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