

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JOSEPH PATRICK GAETA,

Respondent.

Supreme Court Case
No. SC18-1387

The Florida Bar File
No. 2018-10,326 (20C)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

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

On August 20, 2018, The Florida Bar filed its Complaint against Respondent in these proceedings. The undersigned was duly appointed as Referee on August 23, 2018. Respondent's answer was due on or before September 11, 2018, but not later than September 17, 2018, to include the five (5) additional days for mailing and weekends. Respondent failed to file an answer or any other responsive pleading by the deadline. On October 12, 2018, a telephonic case management conference was held. Respondent failed to appear for the telephonic case management conference, which was properly noticed. On December 13, 2018, The Florida Bar filed its Motion for Default. On December 17, 2018, the undersigned granted The Florida Bar's Motion for Default and deemed all the factual allegations as admitted and found Respondent guilty of the Rules charged by The Florida Bar. The undersigned directed the parties submit memorandum as to sanctions by January 10, 2019. The Florida Bar filed its Memorandum as to Sanctions on December 31, 2018. Any pleadings, responses thereto, notices, motions, orders, transcripts, exhibits, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Chardean Mavis Hill, Esq.

For Respondent: *Pro Se*

II. FINDINGS OF FACT

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

B. Narrative Summary of Case. I made the following findings of fact:

On May 8, 2014, Gladys D. Vanderbeck retained Respondent for representation in a personal injury matter on a contingency fee basis. On August 20, 2014, Respondent sent a letter to Ms. Vanderbeck providing a status of her matter. Thereafter and continuing until July 7, 2016, Ms. Vanderbeck sent Respondent multiple letters and emails, and left several messages seeking the status of her matter. Respondent failed to respond to Ms. Vanderbeck's letters, emails, and messages. In January 2017, Respondent finally spoke to Ms. Vanderbeck and advised her that she would hear something by the end of February 2017. Respondent failed to contact Ms. Vanderbeck by the end of February 2017. Ms. Vanderbeck left three additional messages for Respondent inquiring about her matter. Respondent failed to return Ms. Vanderbeck's messages. On March 16, 2017, Ms. Vanderbeck sent an email to Respondent regarding an issue in her matter and requested a response. On March 17, 2017, Respondent responded to Ms. Vanderbeck's email wherein he stated that he was working on resolving an issue in her matter and would call her as soon as he had an update. Respondent failed to subsequently communicate with Ms. Vanderbeck. Between June 5, 2017, and November 1, 2017, Ms. Vanderbeck continued to send several emails and letters, and left several messages for Respondent, seeking the status of her matter. Respondent failed to respond to Ms. Vanderbeck's letters, emails, and messages. Respondent failed to adequately communicate with Ms. Vanderbeck throughout the representation, and continually failed to comply with her requests for information. Respondent had never initiated litigation on Ms. Vanderbeck's behalf. Respondent failed to act with diligence and abandoned his representation of Ms. Vanderbeck.

On November 26, 2017, Ms. Vanderbeck filed a grievance against Respondent with The Florida Bar. The Florida Bar sent letters dated December 6,

2017, and January 24, 2018, to Respondent requiring his written response to Ms. Vanderbeck's grievance. Respondent, however, failed to respond to The Florida Bar's official inquiries in this matter.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

Rule 4-1.3 (Diligence); Rule 4-1.4 (Communication); and Rule 4-8.4(g) (Misconduct - a lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or disciplinary agency).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.4 Lack of Diligence

4.41 Disbarment is appropriate when: (b) a lawyer knowingly fails to perform services for a client or causes serious or potentially serious injury to a client; or (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

9.22 Aggravating Factors:

(a) prior disciplinary offenses – Pursuant to Order dated December 27, 2018, in Case No. SC18-940, the Supreme Court of Florida disbarred Respondent for similar misconduct involving neglect of several client matters wherein he failed to complete legal services for multiple clients and caused the statute of limitations to expire in at least 14 client matters, abandonment of his practice, and failure to participate in the disciplinary proceeding.

(c) pattern of misconduct - Respondent has exhibited a pattern of misconduct by failing to diligently represent his clients; failing to properly communicate with his clients; and failing to properly terminate his representation of his clients.

(d) multiple offenses - Respondent engaged in multiple violations of the Rules and failed to properly represent his client or participate in the disciplinary proceeding.

(h) vulnerability of victim - Respondent's clients were vulnerable and depended on Respondent to handle their legal matters competently and diligently.

9.32 Mitigating Factors:
Not applicable.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In *Florida Bar v. Lord*, 433 So. 2d 983, 986 (Fla. 1983), The Supreme Court of Florida defined the three objectives of attorney discipline: (1) fairness to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer; (2) fairness to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation; and (3) deterrence to others who might be prone or tempted to become involved in like violations.

In *Florida Bar v. Herman*, 8 So. 3d 1100 (Fla. 2009), the Supreme Court of Florida acknowledged that it "has moved towards stronger sanctions for attorney misconduct in recent years." *Id.* at 1108 (citing to *Florida Bar v. Rotstein*, 835 So. 2d 241 (Fla. 2003)).

In *Florida Bar v. Vaughn*, 608 So. 2d 18, 21 (Fla. 1992), that Supreme Court of Florida stated that a respondent's fitness to practice law is relevant to a determination of an appropriate sanction.

In *Florida Bar v. Korones*, 752 So. 2d 586 (Fla. 2000), the Supreme Court of Florida stated, "The single most important concern of the Court in defining and regulating the practice of law is the protection of the public from incompetent, unethical, and irresponsible representation. The very nature of the practice of law requires that clients place their lives, their money, and their causes in the hands of their lawyers with a degree of blind trust that is paralleled in very few other economic relationships. Our primary purpose in the disciplinary process is to assure that the public can repose this trust with confidence. . ." *Id.* at 589 (citing to *Florida Bar v. Ward*, 599 So. 2d 650, 652 (Fla. 1992)).

In *Florida Bar v. Davis*, 149 So. 3d 1121 (Fla. 2014), the Supreme Court of Florida disbarred an attorney for neglecting a client matter, accepting a fee and failing to perform services for which he was paid, and failing to participate in the disciplinary proceeding. Davis has prior discipline of a public reprimand for

neglecting client cases. The Court cited to *Florida Bar v. Bartlett*, 509 So. 2d 287 (Fla. 1987), in reaching its basis for discipline.

In *Florida Bar v. Bartlett*, 509 So. 2d 287 (Fla. 1987), the Supreme Court of Florida disbarred an attorney who agreed to represent a client regarding a real property matter, accepted a fee, and promised to resolve the matter quickly. Thereafter, he took no action on the matter and retained the fee. Bartlett had been disciplined twice in the previous two and a half years, receiving a 30-day suspension for trust account violations, and a 15-month suspension for neglect and misrepresentation. Bartlett failed to appear in the disciplinary proceedings and did not file an appeal. The Florida Supreme Court requested the parties to submit briefs, but Bartlett failed to do so. In approving the referee's recommendation of disbarment, the Court considered Bartlett's willful refusal to participate in the disciplinary process. *Id.* at 289. The Court stated, "a lawyer's willful refusal to participate at all in the disciplinary process when he is accused of misconduct calls into serious question the lawyer's fitness for the practice of law." *Id.* at 289.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

- A. Respondent shall be disbarred.
- B. Respondent shall pay The Florida Bar's costs in this disciplinary proceeding.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m), I considered the following personal history and prior disciplinary history of Respondent, to wit:

Age: 48

Date admitted to the Bar: December 31, 2002

Prior Disciplinary Convictions and Disciplinary Measures Imposed Therein: Pursuant to Court Order dated December 27, 2018, in Case No. SC18-940, Respondent was disbarred following an emergency suspension from the practice of law.

The Referee notes that Respondent is not Florida Board Certified in any area of practice.

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

I find the costs set forth in The Florida Bar's Motion to Assess Costs and Statement of Costs filed in this cause were reasonably incurred and were not unnecessary, excessive, or improperly authenticated.


Administrative Costs pursuant to Rule 3-7.6(q) \$ 1,250.00

Court Reporter Costs \$ 100.00

TOTAL COSTS \$ 1,350.00

It is recommended that the costs itemized in The Florida Bar's Statement of Costs in the total sum of **\$1,350.00** 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. If not paid, Respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 11 day of FEB, 2019.



Honorable Lon Scott Arend, Referee

Original to: 2-13-19, JTB

Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and via electronic mail to e-file@flcourts.org

Copies provided to:

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