

IN THE SUPREME COURT OF FLORIDA

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)

_____/

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 June 15, 2018, The Florida Bar filed its Complaint against Respondent. Thereafter, the parties agreed to resolve this matter and have submitted an executed Consent Judgment for the court's consideration. The court has now had a chance to review the Consent Judgment and hereby ratifies it as the basis for this Report. All items properly filed including pleadings, recorded testimony (if transcribed), 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, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

Narrative Summary of Case. Based on the parties' consent judgment, I find:

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).

III. RECOMMENDATIONS AS TO GUILT.

Based on the parties' consent judgment, I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

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

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**

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**

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).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

4.4 LACK OF DILIGENCE

4.42 Suspension is appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

7.0 VIOLATIONS OF OTHER DUTIES OWED AS A PROFESSIONAL

7.2 Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

8.0 PRIOR DISCIPLINE ORDERS

8.2 Suspension is appropriate when a lawyer has been publicly reprimanded for the same or similar conduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

9.0 AGGRAVATION

- (a) prior disciplinary offenses; provided that after 7 or more years in which no disciplinary sanction has been imposed, a finding of minor misconduct shall not be considered as an aggravating factor;
- (c) a pattern of misconduct;

(d) multiple offenses;

(i) substantial experience in the practice of law; considered the following

Standards prior to recommending discipline:

V. CASE LAW

I considered the following case law prior to recommending discipline:

Fla. Bar v. Marcellus, ___ So. 2d ____ (Fla. July 19, 2018), 2018 WL 3614046. “This Court has long held that ‘cumulative misconduct of a similar nature warrants an even more severe discipline than might dissimilar conduct.’”

Fla. Bar v. Van Dorn Fullerton, SC18-551, 2018 WL 3635031, (Fla. July 26, 2018). Ninety-day suspension for failure to prosecute a case for more than six years. After multiple notices from the court, the case was dismissed with prejudice and opposing counsel was awarded approximately \$121,000 in attorney’s fees. While the case was pending, respondent moved to California and then to Colorado. Respondent admitted all the facts and simply had no excuses.

Fla. Bar v. Greene, SC16-1900, 2017 WL 3301515 (Fla. August 3, 2017). Ninety-day suspension and three-year period of probation to include FLA, Inc., DDCCS, and restitution for neglect in six separate matters. Respondent failed to adequately communicate with her clients and failed to diligently pursue their legal matters. Respondent was having personal difficulties, and she moved her law office without properly informing her clients. Respondent failed to respond to the

bar's formal complaint, and the referee granted a default and held a final hearing only as to sanction, aggravation, and mitigation. Respondent appeared for the sanction hearing, and she presented significant mitigation. Respondent had already received a public reprimand, following an order to show cause, for failing to timely respond to underlying bar inquiries.

Fla. Bar v. Heaton, SC15-2328 (Fla. 2016). Ninety-one-day suspension for attorney who was paid \$450 retainer to provide an opinion letter and thereafter failed to communicate with the client despite numerous requests by the client for information and to produce the requested opinion letter. Additionally, respondent failed to respond in writing to multiple written inquiries during the investigation of this matter. The attorney did not participate in the disciplinary proceeding

Fla. Bar v. Veith, SC17-290 (Fla. 2017). One-year suspension - in four separate cases, the attorney failed to adequately communicate with her clients. In one case, the attorney failed to diligently handle her client's post-judgment child support modification. The attorney also failed to respond to the bar in one instance.

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. 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 \$2,500.00 and to Kathleen Kelley in the amount of \$2,500.00 and to Limon Guo in the amount of \$2,500.00 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.

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: 44

Date admitted to the Bar: June 18, 2003

Prior Discipline: Respondent was admonished for minor misconduct by Grievance Committee report dated January 4, 2017, in three combined cases all alleging neglect.

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

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

Investigative Costs	\$272.19
Bar Counsel Costs	\$228.74
Administrative Fee	\$1,250.00
TOTAL	\$1,750.93

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 26th day of November, 2018.

/S/ DAVID A. CROMARTIE
Honorable David A. Cromartie
County Court Judge and Referee
Volusia County Courthouse Annex
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Daytona Beach, FL 32114

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