

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

STEPHEN MICHAEL JONES,

Respondent.

Supreme Court Case

No. SC20-1593

TFB File Nos. 2020-30,563 (9B)

(CES); 2021-30,183 (9B)

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 November 3, 2020, The Florida Bar filed its Petition for Emergency Suspension against respondent in these proceedings. On November 9, 2020, the Court approved the bar's Petition and suspended respondent. Thereafter, respondent failed to effectively participate in this disciplinary matter. Respondent failed to file an Answer to the bar's Petition and a default was granted finding respondent guilty of the Rules Regulating The Florida Bar as alleged in the Petition.

Respondent did not participate in a scheduled November 23, 2020 case

management conference. However, he sent an email to the referee and bar counsel approximately twenty minutes prior to the case management conference and indicated that he would not be available to participate and requested that no hearings be set the first, third, or fourth weeks of December 2020. He further indicated that he would be filing responses and a motion to quash on November 25, 2020. Bar Exhibit 19. Thereafter, respondent failed to file anything further.

On January 12, 2021, a sanction hearing was held in this matter. The Florida Bar presented its argument for disbarment. Although a default was entered, the bar presented supporting evidence to show that respondent violated the rules alleged in its Petition for Emergency Suspension.

The Florida Bar presented testimony from the bar's auditor, Matthew Herdeker and complainant, Jessie J. Beardsley. The Florida Bar also entered Exhibits "1" – "21" into evidence, which had previously been provided to respondent and the referee. Respondent failed to appear at the sanction hearing on January 12, 2021, and respondent did not present any evidence or exhibits.

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.

1. Respondent abandoned his law practice and misappropriated client funds and used them for a purpose other than which they were intended.

Respondent also failed to respond to the bar's inquiries in this matter.

2. After the bar received a client's complaint alleging that respondent misappropriated funds, the bar's auditor initiated an audit of respondent's trust account at Bank of America. The bar's audit sought trust account records for the period of January 2018 to August 2020.

3. On February 20, 2020, Mr. Fleming filed his complaint against respondent. Mr. Fleming alleged that in 2018 and 2019, respondent received 11 checks totaling \$11,001.95 on Mr. Fleming's behalf. Mr. Fleming further alleged that respondent cashed those checks and then failed to remit the funds to Mr. Fleming. The funds represented garnished wages awarded to Mr. Fleming in a final judgment. Mr. Fleming also stated he had been unable to contact respondent despite numerous attempts. Bar Exhibit 1.

4. On February 27, 2020, the bar sent a letter to respondent, at his physical record bar address, directing him to respond to Mr. Fleming's complaint. Thereafter, respondent failed to respond. Bar Exhibit 2.

5. On July 6, 2020, the bar emailed a letter to respondent, at his record bar email address, again directing him to respond to the complaint. Respondent once more failed to respond. Bar Exhibit 3.

6. During the month of July 2020, a bar investigator made several attempts to contact respondent at his email address and various phone numbers, including his record bar telephone number, but the attempts were unsuccessful.

7. On August 8, 2020, the bar served a subpoena, signed by the Vice-Chair of the Ninth Judicial Circuit Grievance Committee "B," to Bank of America for bank records pertaining to respondent's known trust account. Bar Exhibit 13.

8. On August 31, 2020, Bank of America provided the records to The Florida Bar, which the bar's auditor reviewed as part of his audit. Bar Exhibits 1, 10-17.

9. Respondent opened the trust account and began using it in May 2019. Respondent was the only authorized signatory on the account. Bar Exhibits 1, 10-17.

10. The bar's auditor found that none of the 11 checks that Mr. Fleming identified in his complaint were deposited into the trust account. The Rules Regulating The Florida Bar pertaining to trust accounts required respondent to deposit those checks into his trust account. Bar Exhibits 1, 10-17.

11. Respondent has no other known trust accounts. The Florida Bar

Foundation identified the one trust account respondent held at Bank of America. Bank of America also did not locate any other bank accounts in the name of respondent's law firm. Bar Exhibits 1, 10-17.

12. In his complaint, Mr. Fleming alleged that respondent endorsed and cashed the 11 checks. Mr. Fleming included copies of the checks with his complaint. Bar Exhibits 1, 10-17.

13. The endorsements on the backs of the checks appeared to match respondent's signature on the trust account signature card provided to the bar by Bank of America. Bar Exhibits 1, 10-17.

14. On October 5, 2020, the bar received another complaint against respondent from client, Mr. Beardsley. In his complaint, Mr. Beardsley alleged that respondent received an insurance settlement on his behalf but had not paid Mr. Beardsley's medical bills. Mr. Beardsley also stated that he had not been able to reach respondent since April 2020, despite several attempts. Bar Exhibit 7.

15. The bank records for respondent's Bank of America trust account showed that the settlement check for Mr. Beardsley's \$100,000.00 settlement was deposited into the trust account on May 15, 2019. The endorsement on the back of the settlement check appeared to match respondent's signature. Bar Exhibits 7, 10-17.

16. The bar's auditor determined that the entire \$100,000.00 settlement

was depleted over the next six months in a series of cash withdrawals, a transfer to another Bank of America account, a cashier's check payable to Stephen M. Jones Law Firm PLLC, and a Venmo payment with the reference "Stephen Jones." Bar Exhibits 7, 10-17.

17. On November 15, 2019, the balance in respondent's trust account was -\$103.35. Bar Exhibits 7, 10-17.

18. There were no payments to Mr. Beardsley or to any medical providers from respondent's trust account. Bar Exhibits 7, 10-17.

19. On October 7, 2020, the bar sent an email to respondent directing him to respond to Mr. Beardsley's complaint. Respondent failed to respond. Bar Exhibit 8.

20. On October 15, 2020, the bar sent a letter to respondent via email, via certified mail, and via regular U.S. mail enclosing all relevant documents regarding his pending bar matters and requesting a response by October 22, 2020. The bar mailed the correspondence to respondent's record bar address as well as two alternate addresses. Respondent failed to respond. Bar Exhibit 9.

21. Due to respondent's non-compliance and failure to respond to bar inquiries, on September 24, 2020, The Florida Bar filed a Petition for Contempt and Order to Show Cause with the Supreme Court of Florida. In Case No. SC20-1406, the Court issued an order for respondent to show cause on or before October

13, 2020, why he should not be held in contempt or other discipline imposed for the reasons set forth in The Florida Bar's Petition. Respondent failed to respond, and on January 8, 2021, the Court issued an order suspending respondent until he has fully responded in writing to the official bar inquiries and until further order of the Court. Bar Exhibits 5, 6.

22. In addition, Bar Exhibit 21 shows that respondent improperly engaged in the practice of law while he was emergency suspended. On November 9, 2020, the Court entered an order immediately suspending respondent from the practice of law until further order of the Court. The order specified that respondent "shall not initiate any litigation on behalf of his clients." On November 10, 2020, respondent initiated Case No. 05-2020-CP-051455 by filing a Petition for Removal of Trustee in the Probate Court of the Eighteenth Judicial Circuit through the E-Portal.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that respondent be found guilty of violating the following Rules Regulating The Florida Bar as proven by clear and convincing evidence:

3-4.3 The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The

commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

4-1.15 A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts.

4-1.16(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.

4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

4-8.4(g) A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made: (1) within 15 days of the date of the initial

written investigative inquiry by bar counsel, grievance committee, or board of governors; (2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors.

5-1.1(a)(1) A lawyer must hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, must be kept in a separate federally insured bank, credit union, or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account.

5-1.1(b) Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over the property on demand is conversion.

5-1.1(e) On receiving funds or other property in which a client or third person has an interest, a lawyer must promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer must promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, on request

by the client or third person, must promptly render a full accounting regarding the property.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.1 Failure to Preserve the Client's Property

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

a client; or (3) engages in a pattern of neglect with respect to client matters.

3.2(b) Aggravating Factors

- (1) prior disciplinary offenses (emergency suspension and suspension for contempt related to the pending matter);
- (2) dishonest or selfish motive;
- (3) a pattern of misconduct;
- (5) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (10) indifference to making restitution.

3.3(b) Mitigating Factors

None presented.

It is further clear that respondent possessed intent, defined by Standard 1.2

(b) as “the conscious objective or purpose to accomplish a particular result” in this

matter.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Johnson, 132 So. 3d 32 (Fla. 2013), following an emergency suspension, an attorney was disbarred for mismanaging his trust account as well as being held in contempt of court. The Supreme Court of Florida emphasized that the misuse or misappropriation of funds held in trust was one of the most serious offenses a lawyer could commit, and that disbarment was the presumptively appropriate sanction. Johnson had no prior disciplinary history.

In The Florida Bar v. Davis, 149 So. 3d 1121 (Fla. 2014), an attorney was disbarred after failing to file an answer to the bar's complaint and failing to appear at the final hearing. It was found that Davis had actual knowledge of the proceeding. Davis had several opportunities to refute the bar's charges and to participate in the disciplinary case, but she did not do so. The Court found that there was no excuse for Davis's repeated failure to respond to the bar and the referee. There were also findings of neglect of client matters and client harm. Davis had a prior discipline history as well as additional aggravation.

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. Immediate disbarment from the practice of law (respondent is currently suspended).

B. Respondent shall pay restitution to William J. Fleming (11410 South Camden Commons Drive, Windermere, Florida 34786) in the amount of \$11,001.95, and respondent shall pay restitution to Jessie J. Beardsley (1141 Irondale Street E, Lehigh Acres, Florida 33936) in the amount of \$100,000.00 within ninety (90) days of the issuance of the final order in this case. *Pursuant to R. Regulating Fla. Bar 3-5.1(j), the respondent may be ordered to pay restitution to a complainant or other person if the disciplinary order finds that the respondent has received a clearly excessive, illegal, or prohibited fee or that the respondent has converted trust funds or property.*

C. Payment of The Florida Bar's costs in these proceedings.

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: 38

Date admitted to the Bar: March 20, 2015

Prior Discipline:

Respondent was suspended on an emergency basis by Court order dated

November 9, 2020, for the misconduct detailed in this matter.

Respondent was held in contempt and suspended by Court order dated January 8, 2021 for failing to respond to the bar's inquiries in this matter.

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 |
| Audit Costs | \$1,640.90 |
| Investigative Costs | \$413.00 |
| Court Reporters' Costs | \$185.00 |
| TOTAL | \$3,488.90 |

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent thirty (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 13th day of January, 2021.

/s/ ELLEN S. MASTERS
ELLEN S. MASTERS
Referee

Original To:

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399.

Conformed Copies To:

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