

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

TIMMY MCCLAIN,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2021-30,855(19B)

_____ /

COMPLAINT

The Florida Bar, complainant, files this Complaint against Timmy McClain, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was at all times mentioned herein a member of The Florida Bar, admitted on January 27, 2003, and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent practiced law in Orange County, Florida, at all times material.

3. The Nineteenth Judicial Circuit Grievance Committee "B" found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint was approved by the presiding member of that committee.

4. On August 14, 2017, respondent filed a Notice of Appearance in Geico General Insurance v. Transroyal, L.L.C., in The Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida, Case #2017-CA-6511-O, Division 33. Respondent represented the defendant, Transroyal, L.L.C.

5. On March 2, 2020, respondent filed a Motion to Withdraw but did not set the motion for hearing.

6. On July 13, 2020, Circuit Court Judge Kevin B. Weiss, Ninth Judicial Circuit, entered a Case Management Order noting that respondent's Motion to Withdraw was not set for a hearing nor had respondent filed documents obviating the need for a hearing, such as a Substitution of Counsel.

7. The court ordered respondent to schedule a hearing for the Motion to Withdraw or reaffirm his representation of the defendant, Transroyal, L.L.C.

8. When respondent failed to respond to the Case Management Order, a hearing on the Motion to Withdraw was set for January 21, 2021 by plaintiff's counsel.

9. Respondent failed to appear or file any documents pursuant to the July 13, 2020 order by Judge Weiss.

10. In or about November 2020, respondent was aware that plaintiff's counsel was attempting to set respondent's motion to withdraw for a hearing in January 2021, but the date was never placed on respondent's calendar, and respondent failed to appear for the scheduled hearing.

11. On January 21, 2021, an Order to Show Cause was filed by Circuit Court Judge Denise Kim Beamer, Ninth Judicial Circuit, directing respondent to show cause why he failed to appear for the January 21, 2021 hearing and failed to set the Motion to Withdraw for hearing.

12. Respondent responded to the subsequent bar grievance and indicated that he was unaware that Judge Weiss had directed respondent to schedule a hearing on respondent's motion to withdraw until June 18, 2021 when he was contacted by the bar's Staff Investigator.

13. Respondent further maintained that he was unaware of Judge Beamer's Order to Show Cause dated January 21, 2021 until the bar's investigator told him of the Order to Show Cause.

14. Respondent stated that he was never advised that he had missed the hearing until June 18, 2021.

15. Respondent contacted Judge Beamer's Judicial Assistant on June 21, 2021 and was instructed to comply with the Order to Show Cause.

16. Respondent filed a Response to Judge Beamer's Order to

Show Cause on June 21, 2021, approximately six months after the Order to Show Cause was issued.

17. Respondent has not communicated with his client since 2017.

18. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar:

(a) 3-4.2 Rules of Professional Conduct. Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline;

(b) 4-1.1 Competence. A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation;

(c) 4-1.3 Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client;

(d) 4-1.16(b) Declining or Terminating Representation. When Withdrawal Is Allowed. Except as stated in subdivision (c), a lawyer may withdraw from representing a client if: (1) withdrawal can be accomplished without material adverse effect on the interests of the client; (2) the client insists upon taking action that the lawyer considers repugnant, imprudent, or with which the lawyer has a

fundamental disagreement; (3) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (4) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or, (5) other good cause for withdrawal exists;

(e) 4-1.16(c) Declining or Terminating Representation.

Compliance with Order of Tribunal. A lawyer must comply with applicable law requiring notice or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation;

(f) 4-3.4(c) Fairness to Opposing Party and Counsel. A

lawyer must not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; and,

(g) 4-8.4(d) Misconduct. A lawyer shall not engage in conduct

in connection with the practice of law that is prejudicial to the administration of justice.

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that this document was E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida; with copies provided via email to Dean Fredrick Mosley, Counsel for Respondent at dfmosleylaw@gmail.com and United States Mail via certified mail No. 7017 1450 0000 7821, return receipt requested, to Dean Fredrick Mosley, Counsel for Respondent, whose record bar address is P.O. Box 2707, Orlando, Florida 32802-2707; and, via email to Kenneth H. P. Bryk, Bar Counsel, The Florida Bar, Orlando Branch Office, 1000 Legion Place, Suite 1625, Orlando, Florida, 32801-1050 kbryk@floridabar.org, on this 6th day of August 2021.



Patricia Ann Toro Savitz
Staff Counsel

NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS

PLEASE TAKE NOTICE that the trial counsel in this matter is Kenneth H. P. Bryk, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Orlando Branch Office, The Gateway Center, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050, 407-425-5424, and kbryk@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, at psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES REGULATING THE FLORIDA BAR,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.