

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

GEORGE EDWARD OLLINGER, III,
Respondent.

Supreme Court Case
No. SC21-28

The Florida Bar File
No. 2020-30,134(18C)(CES)

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 January 11, 2021, The Florida Bar filed its Petition for Emergency Suspension against respondent. On January 19, 2021, the Supreme Court of Florida entered its order granting the bar's petition and suspending respondent until further order of the Court. The undersigned was appointed as referee on or about January 20, 2021. Respondent filed his Answer and Affirmative Defenses on January 29, 2021. On April 13, 2021, respondent filed Respondent's Motion to Terminate Emergency Suspension to be heard concurrently with the Final Hearing in this matter.

In part, respondent attacked the constitutionality of Rule 3-5.2. The Supreme Court of Florida specifically addressed the due process aspects of rule 3-5.2 in its order amending it in 1991. The Supreme Court of Florida also addressed respondent's argument in The Florida Bar. v. Tipler, 8 So. 3d 1109, 1118 (Fla. 2009). Tipler argued that the practice of law was akin to a property right and came with the same due process protections applicable to deprivation of property claims. Tipler, 8 So. 3d at 1118. Tipler compared his right to practice law to a parent's fundamental right to raise a child. The Court disagreed. Citing R. Regulating Fla. Bar 3-1.1, the Court found that a license to practice law conferred no vested right to the holder. Instead, it was a conditional privilege that was revocable for cause. Id. Rule 3-5.2 regulates the practice of law for the public's best interest. The bar has a substantial interest in ensuring the public is protected from an attorney who may be engaging in a course of conduct that could result in significant harm if not immediately addressed, such as misappropriating client funds. Therefore, Rule 3-5.2 passes the rational basis test and is constitutional. Additionally, respondent argued that the bar could not demonstrate a likelihood of prevailing on the allegations contained in its Petition for Emergency Suspension. On April 16, 2021, a final hearing was held in this matter. 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. As set forth below, the bar has demonstrated by clear and convincing evidence the allegations against respondent in its Petition for Emergency Suspension are supported by the evidence and testimony, therefore, rendering respondent's Motion to Terminate Emergency Suspension moot.

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. Claudia Rameshwar and her husband, Nandalall Rameshwar, resided in a mobile home park in Brevard County, Florida. It should be noted that Nandalall Rameshwar does not speak English as a first language and his mastery of English is poor.

2. Disputes between Ms. Rameshwar and the manager of the mobile home park allegedly resulted in Ms. Rameshwar sustaining an injury.

3. Ms. Rameshwar hired respondent to handle her personal injury claim against the mobile home park with the execution of a contingency fee contract with respondent on January 20, 2018.

4. The contract provided for costs to be paid by the client unless she was unable to do so then respondent would advance the costs and be reimbursed from any settlement.

5. After she was charged with felony aggravated assault, Ms. Rameshwar executed a fee contract with respondent, on or about February 7, 2018, to represent her in the criminal case for a flat fee of \$3,500.00.

6. On or about February 18, 2018, Ms. Rameshwar died after undergoing cardiac surgery.

7. Ms. Rameshwar's family alleged that her death arose from Ms. Rameshwar's dispute with the mobile home park.

8. On or about February 22, 2018, Mr. Rameshwar and the adult children from Ms. Rameshwar's previous marriages (hereinafter referred to as the "Rameshwars" and/or the "Rameshwar family"), hired respondent to pursue a wrongful death claim against the mobile home park and the park manager who the Rameshwars believed contributed to Ms. Rameshwar's death.

9. It should be noted that the primary contact for the family, as a group, was one of Ms. Rameshwar's adult daughters from a previous marriage. This adult daughter allegedly was a convicted felon, a fact known to respondent.

10. On March 31, 2018, the Rameshwars executed a contingency fee contract with respondent.

11. Respondent's contingency fee contract provided that respondent was being retained in connection with any and all claims the clients might have had against Sunrise Mobile Home Park L.L.C., regarding the injuries and damage they caused or any person, firm, company or corporation liable therefore, resulting from, "my being the survivor and beneficiary of Claudia Mercedes Rameshwar, deceased; tenant at the Sunrise Mobile Home Park."

12. The contract provided that respondent was entitled to the fee structure as set forth in the Rules Regulating The Florida Bar for contingency fee matters and that respondent agreed to "...advance all necessary costs in this case, if the client can not [sic] afford to do so..." and that respondent would be reimbursed "...for his costs prior to distribution of any monies in this matter."

13. Respondent also was hired to undertake additional legal services that included probating Ms. Rameshwar's estate, defending an eviction action brought by the mobile home park, and bringing an action against Ms. Rameshwar's life insurance company, Minnesota Life Insurance, for failing to pay a claim.

14. On or about May 2, 2018, the Rameshwar family executed a contingency fee contract with respondent to pursue an action against Minnesota Life Insurance. The case was removed to federal court.

15. Respondent also believed that he would be successful in establishing a cause of action against the mobile home park for engaging in predatory behavior by unfairly evicting owners of mobile homes.

16. After respondent sent up to 399 form letters to the owners of mobile homes, respondent's paralegal expended time interviewing the owners that respondent then billed to the Rameshwars.

17. On or about August 26, 2019, the bar received a complaint from Mr. Rameshwar wherein he alleged that respondent failed to timely advise the Rameshwar family of respondent's receipt, in or around June 2018, of a \$10,000.00 accidental death settlement check from GEICO General Insurance Company.

18. After the Rameshwar family terminated respondent's services and demanded an accounting of the settlement funds, respondent submitted an invoice for his services and costs despite the terms of the contingency fee contract for the wrongful death case.

19. In an email to the Rameshwar family, respondent wrote that he used the settlement funds to reimburse himself for costs in the wrongful death case.

20. The Florida Bar conducted an audit of respondent's Bank of America trust account for the period June 1, 2018 to September 30, 2020 and further reviewed the records for respondent's Bank of America operating account and another Bank of America account ending in #6467.

21. The bar's audit determined that on June 18, 2018, respondent deposited a check from GEICO General Insurance Company in the amount of \$10,000.00 into his Bank of America trust account. The check was payable to respondent's trust account, for the benefit of The Estate of Claudia Rameshwar, and the memo noted that it was for underinsured motorist coverage.

22. On June 22, 2018, respondent deposited a second check from GEICO General Insurance Company in the amount of \$5,000.00 into his Bank of America trust account. The check was payable to The Estate

of Claudia Rameshwar and the memo noted that it was for personal injury protections (PIP) and death benefits.

23. Respondent's paralegal notified the Rameshwar family of the \$10,000.00 settlement check in an email dated June 14, 2018.

24. In correspondence to the bar dated June 3, 2020, respondent noted that he could not find any written notification to the Rameshwars of the \$5,000.00 settlement check. During his sworn statement on September 14, 2020, respondent testified that he was unsure if he provided written notification to the Rameshwars of the \$5,000.00 settlement check.

25. The Statement of Client's Rights that the Rameshwar family executed on March 31, 2018 included a paragraph noting that the client had the right to approve a closing statement before the attorney disbursed any money.

26. Respondent provided the bar with an unexecuted closing statement for the GEICO settlements that reflected an attorney's fee of \$5,000.00 and the remaining proceeds of \$10,000.00 being owed to the Rameshwars.

27. Respondent testified during his sworn statement on September 14, 2020 that he never obtained a signed closing statement from the Rameshwar family.

28. On August 23, 2018, respondent transferred \$14,820.00 of the GEICO funds from his trust account to his Bank of America operating account thereby misappropriating client funds and commingling attorney and client funds in his operating account.

29. During his sworn statement on September 14, 2020, respondent testified that he was allowed to deposit the funds into his operating account because they were “collected funds” and funds to reimburse himself for costs incurred in the wrongful death case.

30. In correspondence to the bar dated July 19, 2020, respondent noted that he made the transfer to cover anticipated costs.

31. On August 23, 2018, after respondent transferred the GEICO funds from his trust account to his operating account, the ending daily bank balance in the operating account was \$17,912.30.

32. By January 28, 2019, respondent had disbursed all of the GEICO funds from his operating account. The ending daily balance in the operating account on that day was negative \$197.52.

33. From August 23, 2018 to January 28, 2019, all of the disbursements from respondent's operating account were generally for the benefit of respondent's law firm or respondent personally.

34. Respondent testified during his sworn statement on September 14, 2020 that he was the only person who made disbursements from the operating account. The bar's review of the records obtained from the bank for respondent's operating account included all signature cards for the account that reflected that respondent was the only signatory for the operating account.

35. In a letter to the bar dated July 19, 2020 and in his sworn statement on September 14, 2020, respondent falsely advised the bar that the \$15,000.00 in settlement funds remained in the operating account until July 8, 2019.

36. Respondent denied that he spent any of the GEICO funds, except for costs totaling roughly \$480.00, even when presented with bank statements for his operating account which showed the account overdrawn on January 28, 2019.

37. On September 17, 2020, three days after his first sworn statement on September 14, 2020, respondent wrote a letter to the bar in

which he noted that he maintained another trust account ending with the number 6467 where “[t]he \$15,000.00 was sitting ... the whole time.”

38. On September 22, 2020, respondent wrote another letter to the bar in which he described the 6467 account as his “alternate operating account” at Bank of America. Respondent noted that on January 4, 2019, he transferred \$15,000.00 of the GEICO funds from the operating account to the Bank of America #6467 account. Respondent described the \$15,000.00 as being part of the deposit in the Bank of America #6467 account.

39. The bar’s audit of the records obtained for the Bank of America #6467 account revealed that it was opened on January 4, 2019 and respondent was the sole signatory for the account.

40. The first transaction in the Bank of America #6467 account was the deposit of \$91,443.35 on January 4, 2019. The single item deposited was a check in the amount of \$91,443.35, dated December 19, 2018, from Supreme Title Closings, L.L.C. Escrow Account. The memo line on the check from Supreme Title Closings referenced File ID 18-11-2474.

41. The bar’s review of the public records for Brevard County, Florida, revealed that respondent sold property in Brevard County, Florida

on December 19, 2018, and the settlement company was Supreme Title Closings, LLC. The file number referenced on the recorded warranty deed was 18-11-2474.

42. The bar's audit of the Bank of America #6467 account revealed that respondent never deposited any funds from GEICO Insurance Company in connection with his representation of the Rameshwars.

43. On July 8, 2019, respondent transferred \$15,000.00 from his Bank of America operating account to his Bank of America trust account to return the Rameshwars' GEICO settlement funds. Based upon the bar's review of the operating account, the sources of funds for the transfer were Social Security payments, transfers from respondent's other bank accounts, and what appeared to be attorney's fees received from an unrelated client. The funds remained in respondent's trust account on deposit as of September 30, 2020.

44. Despite having been dismissed by the Rameshwar family as attorney for the estate of Claudia Rameshwar, respondent continued filing pleadings on behalf of the estate and attempted to have his assistant appointed as the estate's personal representative.

45. On or about November 22, 2018, respondent filed suit in Brevard County Circuit Court against Mr. Rameshwar and Ms. Rameshwar's adult daughter who had acted as the family's spokesperson, for breach of contract, listing the numerous cases in which they allegedly breached his various fee contracts (personal injury contract, felony contract, probate contract, second eviction contract, wrongful death contract, the contingency fee contract for the suit against the life insurance company, the contingency fee contract for the suit against GEICO insurance, as well as a claim of "tortious interference with a business relationship"). Respondent later amended the Complaint on or about November 21, 2019, adding Claudia Rameshwar's estate as a co-defendant.

46. In the civil case, respondent alleged "damages of One Hundred Million Dollars" against his former clients.

47. In the case respondent filed on behalf of the Rameshwar family against one of the insurers that was removed to federal court on September 25, 2018, Rameshwar v. Minnesota Life Insurance Co., case # 6:18-cv-1597-Orl-37LRH, respondent commenced filing a series of documents with the court on November 20, 2018 as counsel for the Rameshwar family stating that he no longer represented the Plaintiffs, that

a conflict had developed between himself and Plaintiffs such that they no longer were about to communicate or work together, and that respondent had advised the Plaintiffs to retain new representation. Despite these repeated statements to the court, respondent failed to file a motion seeking permission to withdraw from the representation as required by Local Rule 2.03(b). Instead, respondent sought leave to file an amended complaint to substitute the unidentified personal representative for the Estate of Claudia Rameshwar as the named plaintiff in this case.

48. The federal magistrate court set the matter for a status conference and ordered respondent to notify the Rameshwar family and to file a notice of compliance detailing the manner in which he effected the notice. When respondent failed to comply, an Order to Show Cause was issued to him. Respondent failed to respond.

49. At the status conference, the court inquired of respondent as to the reason why he failed to comply with the court's prior orders. Respondent gave conflicting explanations.

50. The federal magistrate court handling Rameshwar v. Minnesota Life Insurance Co., case # 6:18-cv-1597-Orl-37LRH, took notice of respondent's behavior in connection with the federal case and issued an

order on April 16, 2019 formally removing respondent as counsel for the plaintiffs and admonishing respondent for his misconduct.

51. In its order, the court noted that respondent's "...actions over the past five months fall far below the standard of conduct expected of attorneys who are members of the Middle District of Florida Bar."

52. Respondent did not maintain his trust account in substantial compliance with the Rules Regulating The Florida Bar, Chapter 5.

III. RECOMMENDATIONS AS TO GUILT.

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

4-1.1 A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. It is clear respondent was not competent to handle the growing number of interconnected legal matters involving the Rameshwar family. The federal magistrate court handling Rameshwar v. Minnesota Life Insurance Co., case # 6:18-cv-1597-Orl-37LRH, noted that respondent's performance fell below acceptable standards, took the extraordinary step of formally removing respondent as counsel for the

plaintiffs and admonished respondent for his misconduct. Respondent's mishandling of the Rameshwar case was not unlike his misconduct where he received a public reprimand in The Florida Bar v. Ollinger, 939 So. 2d 95 (Fla. 2006). Respondent filed suit pursuant to the American with Disabilities Act and added a claim for damages under the Florida Civil Rights Act, which was unavailable to respondent's client as a matter of law. In response to the court's order to show cause regarding this issue, respondent subsequently dismissed the claim seeking damages and acknowledged that his client had not exhausted his administrative remedies as required to file a Florida Civil Rights Act claim. Further, respondent neglected to fully comply with the requirements regarding discovery, pleadings, and notarization.

4-1.2(a) Subject to subdivisions (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, shall reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. The objectives of insurance claims was to obtain settlement for Mrs. Rameshwar's alleged injury. Respondent did not consult with his

clients regarding taking the insurance settlement funds as payment for his costs. The Rameshwar family expected to receive all of the settlement funds and respondent did not specifically consult with them about applying any portion of the funds to the costs of the other legal matters.

4-1.4(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and, (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law. Respondent did not provide Ms. Rameshwar, or her family, with an accounting of the insurance settlement funds despite requests for same. Respondent did not provide any documentary support for his paralegal's preparation and mailing of form letters sent to every resident in the mobile home park to inform the residents of respondent's intention to file a civil suit against the owners of the park. Respondent did not provide any documentation of the costs incurred by his paralegal's in-person visits to

many of the mobile home park residents in connection with gathering from them information to be used in this anticipated civil suit. The costs respondent alleged he incurred had no direct association with the accidental death PIP claims.

4-1.4(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Respondent failed to provide the Rameshwars with sufficient information to enable them to make informed decisions regarding the insurance settlements. The engagement contracts upon which respondent relied in claiming all of the insurance settlement proceeds as payment for his costs incurred in an unrelated civil case were drawn by respondent. The contracts did not grant respondent permission to misappropriate his client's accidental death and PIP proceeds to pay costs from any other anticipated case respondent handled for the client in the future. Respondent's action amounted to self-help debt collection for costs he claimed he was owed from a distinctly separate case for the same client.

4-1.5(f)(5) As to contingent fees, in the event there is a recovery, on the conclusion of the representation, the lawyer must prepare a closing statement reflecting an itemization of all costs and expenses, together with

the amount of fee received by each participating lawyer or law firm. A copy of the closing statement must be executed by all participating lawyers, as well as the client, and each must receive a copy. Each participating lawyer must retain a copy of the written fee contract and closing statement for 6 years after execution of the closing statement. Any contingent fee contract and closing statement must be available for inspection at reasonable times by the client, by any other person upon judicial order, or by the appropriate disciplinary agency. I find respondent's violation of this rule particularly egregious in light of his sixty-day suspension in The Florida Bar v. Ollinger, 489 So. 2d 726 (Fla. 1986) for engaging in essentially the same misconduct as that alleged here with respect to his failure to have a fully executed settlement statement, charging excessive fees for collecting personal injury protection (PIP) benefits by basing said fee upon a contingent fee contract, failing to document costs he deducted from client settlement proceeds to the extent that the deductions constructively constituted misapplication of client funds, and failing to maintain his trust account recordkeeping because he delegated all responsibility to his nonlawyer employee with inadequate supervision, training, or oversight.

4-1.7(a)(2) Except as provided in subdivision (b), a lawyer shall not represent a client if there is a substantial risk that the representation of 1 or

more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer. Respondent's inability to recognize the multiple conflicts of interest present in his multiple representations of the original client, her family, her estate, his attempt to have his paralegal appointed as personal representative for the original client's estate, and his lawsuit against his clients is concerning. In the federal case, the court noted its serious concerns about respondent's performance as an attorney and removed him as counsel for his clients, the plaintiffs. Respondent stated that he no longer represented the clients, yet he continued filing documents in the case. Respondent even attempted to have the individual plaintiffs removed and replaced with the estate via the personal representative. Respondent attempted to have the existing personal representative of the estate replaced by his paralegal/live-in paramour. Had respondent succeeded, he essentially would have taken control of his clients' federal case.

4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Respondent took advantage of his client and her family, all of whom were relatively unsophisticated and who relied upon respondent to protect their interests. Respondent delegated an alarming amount of responsibility to his paralegal/live-in paramour. As the

costs incurred by the paralegal's activities rose in connection with the unrelated civil suit, respondent sought to defray the expenses by misappropriating the client's accidental death and PIP proceeds to himself. The client's family and/or estate did not agree to this and respondent was unable to provide them with a coherent accounting of the funds or of the costs his paralegal allegedly incurred. Instead, respondent relied on fee contracts he created and that were executed by the client and/or her family/representatives in connection with other legal matters not directly related to the insurance claims.

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 except: (A) A lawyer may maintain funds belonging to the lawyer in the lawyer's trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account; and (B) A lawyer may deposit the lawyer's own funds

into trust to replenish a shortage in the lawyer's trust account. Any deposits by the lawyer to cover trust account shortages must be no more than the amount of the trust account shortage but may be less than the amount of the shortage. The lawyer must notify the bar's lawyer regulation department immediately of the shortage in the lawyer's trust account, the cause of the shortage, and the amount of the replenishment of the trust account by the lawyer. Respondent's misuse of the insurance settlement funds created a shortage in respondent's trust account. Respondent did replace the funds, however, because he already had expended the client funds, respondent used his personal funds to correct the shortage. This constituted commingling.

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. Misuse of client funds is one of the most serious offenses an attorney can commit. From the bar's audit and respondent's own testimony, it was clear that respondent's misuse of his client's funds was intentional, rather than grossly negligent.

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. Respondent still has not delivered the funds that the Rameshwar family is entitled to receive nor has he provided them with an accurate and meaningful accounting.

5-1.2(b) Records may be maintained in their original format or stored in digital media as long as the copies include all data contained in the original documents and may be produced when required. The following are the minimum trust accounting records that must be maintained: (1) a separate bank or savings and loan association account or accounts in the name of the lawyer or law firm and clearly labeled and designated as a "trust account"; (2) original or clearly legible copies of deposit slips if the copies include all data on the originals and, in the case of currency or coin, an additional cash receipts book, clearly identifying the date and source of all trust funds received and the client or matter for which the funds were received; (3) original canceled checks or clearly legible copies of original

canceled checks for all funds disbursed from the trust account, all of which must: (A) be numbered consecutively; (B) include all endorsements and all other data and tracking information; and, (C) clearly identify the client or case by number or name in the memo area of the check; (4) other documentary support for all disbursements and transfers from the trust account including records of all electronic transfers from client trust accounts, including: (A) the name of the person authorizing the transfer; (B) the name of the recipient; (C) confirmation from the banking institution confirming the number of the trust account from which money is withdrawn; and, (D) the date and time the transfer was completed; (5) original or clearly legible digital copies of all records regarding all wire transfers into or out of the trust account, which at a minimum must include the receiving and sending financial institutions' ABA routing numbers and names, and the receiving and sending account holder's name, address and account number. If the receiving financial institution processes through a correspondent or intermediary bank, then the records must include the ABA routing number and name for the intermediary bank. The wire transfer information must also include the name of the client or matter for which the funds were transferred or received, and the purpose of the wire transfer, (e.g., "payment on invoice 1234" or "John Doe closing"), (6) a separate

cash receipts and disbursements journal, including columns for receipts, disbursements, transfers, and the account balance, and containing at least: (A) the identification of the client or matter for which the funds were received, disbursed, or transferred; (B) the date on which all trust funds were received, disbursed, or transferred; (C) the check number for all disbursements; and, (D) the reason for which all trust funds were received, disbursed, or transferred; (7) a separate file or ledger with an individual card or page for each client or matter, showing all individual receipts, disbursements, or transfers and any unexpended balance, and containing: (A) the identification of the client or matter for which trust funds were received, disbursed, or transferred; (B) the date on which all trust funds were received, disbursed, or transferred; (C) the check number for all disbursements; and, (D) the reason for which all trust funds were received, disbursed, or transferred; and, (8) all bank or savings and loan association statements for all trust accounts. According to the bar's audit and the testimony of the bar's auditor, respondent failed to maintain the minimum required trust accounting records, something for which he was previously disciplined, early in his legal career.

5-1.2(d) The minimum trust accounting procedures that must be followed by all members of The Florida Bar (when a choice of laws analysis

indicates that the laws of Florida apply) who receive or disburse trust money or property are as follows: (1) The lawyer is required to make monthly: (A) reconciliations of all trust bank or savings and loan association accounts, disclosing the balance per bank, deposits in transit, outstanding checks identified by date and check number, and any other items necessary to reconcile the balance per bank with the balance per the checkbook and the cash receipts and disbursements journal; and, (B) a comparison between the total of the reconciled balances of all trust accounts and the total of the trust ledger cards or pages, together with specific descriptions of any differences between the two totals and reasons for these differences; (2) The lawyer is required to prepare an annual detailed list identifying the balance of the unexpended trust money held for each client or matter; (3) The above reconciliations, comparisons, and listings must be retained for at least 6 years; (4) The lawyer or law firm must authorize, at the time the account is opened, and request any bank or savings and loan association where the lawyer is a signatory on a trust account to notify Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, in the event the account is overdrawn or any trust check is dishonored or returned due to insufficient funds or uncollected funds, absent bank error; (5) The lawyer must file with The

Florida Bar between June 1 and August 15 of each year a trust accounting certificate showing compliance with these rules on a form approved by the board of governors. If the lawyer fails to file the trust accounting certificate, the lawyer will be deemed a delinquent member and ineligible to practice law. According to the bar's audit and the testimony of the bar's auditor, respondent failed to follow the minimum required trust accounting procedures. As with the recordkeeping deficiencies, respondent was previously disciplined for this misconduct early in his legal career.

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 is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury;

4.3 Failure to Avoid Conflicts of Interest

4.3(a) Disbarment is appropriate when a lawyer causes serious or potentially serious injury to the client and, without the informed consent of the affected client(s);

(1) engages in representation of a client knowing that the lawyer's interests are adverse to the clients with the intent to benefit the lawyer or another;

(2) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another; or,

(3) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another.

4.5 Lack of Competence

4.5(a) Disbarment is appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures and causes injury or potential injury to a client.

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

7.1(a) Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another and causes serious or potentially serious injury to a client, the public, or the legal system.

V. CASE LAW

I note that disbarment is the only sanction available, absent significant mitigation, for misappropriation of client funds. That mitigation is not present in this case. I considered the following case law prior to recommending discipline:

In The Florida Bar v. Fullerton, 2020 WL 4015834 (Fla. July 16, 2020) (unpublished disposition), an attorney was disbarred, effective immediately due to his existing emergency suspension, for misappropriating client funds. The attorney was hired by a company to handle the payment and distribution of American Society of Composers, Authors and Publishers (“ASCAP”) royalties on behalf of the company. From January 1, 2012 through October 31, 2019, the attorney collected and deposited these funds into his trust account. On October 31, 2019, the trust account should have held \$224,193.84 of the client’s funds, however, the account balance was \$10.27. Despite having received trust funds belonging to the client 46 times over an 84-month period, the attorney failed to report or deliver any of these funds to the client. The attorney also initially misled the client and claimed that he did not receive the funds from ASCAP because the debtor had filed for bankruptcy. Similarly, respondent’s trust account failed to contain the insurance settlement proceeds because he transferred the

funds to his operating account. Respondent then misrepresented to the bar that he did not transfer all of the settlement funds to his operating account and insisted that most of the money remained on deposit in his trust account, despite the existence of bank records to the contrary. Further, the banks records also contradicted respondent's claim that the majority of the settlement funds have remained on deposit, untouched, and remain available to remit to the clients. In fact, the records showed respondent expended the funds and then, after the bar commenced these proceedings, replaced the money with respondent's personal funds.

In The Florida Bar v. Morgado, 2019 WL 586233 (Fla. Feb. 7, 2019) (unpublished disposition), an attorney was disbarred, effective immediately, due to his existing emergency suspension. The attorney settled his clients' cases in two different matters and misappropriated the settlement proceeds. In two additional matters, the attorney failed to maintain adequate communication regarding the status of the cases and failed to provide competent or diligent representation. The attorney's neglect resulted in a dismissal with prejudice and an adverse ruling against a client. Similarly, respondent misappropriated his client's insurance settlement funds, failed to notify the client's family/representative of respondent's receipt of one settlement, then, without advising the client's family of the

potential for a conflict of interest, commenced representing them in a civil suit against an insurer, then sued his clients for damages of \$100 million dollars, represented the personal representative in the probate of the client's estate, and then continued filing documents with the court after being terminated. Further, respondent's conduct in connection with the suit filed on behalf of the clients against an insurer in federal court resulted in the Court finding it necessary to remove respondent as counsel and to admonish him for misconduct.

Respondent's inability to recognize the multiple conflicts of interest present in his multiple representations of the original client, her family, her estate, his attempt to have his paralegal appointed as personal representative for the original client's estate, and his lawsuit against his clients is concerning. In the federal case, the Court noted its serious concerns about respondent's performance as an attorney. Respondent stated that he no longer represented the clients, who were the plaintiffs, yet continued filing documents in the case. Respondent even attempted to have the individual plaintiffs removed and replaced with the estate via the personal representative, who respondent had attempted to have replaced by his paralegal.

In The Florida Bar v. Fellows, 2018 WL 6326239 (Fla. Dec. 4, 2018) (unpublished disposition), the Supreme Court of Florida disapproved the referee's recommendation of a ninety-one-day suspension and instead disbarred the attorney. The attorney engaged in a complex representation and, similar to respondent, permitted his nonlawyer employee with whom he had a professional relationship to become involved in a scheme with the attorney and the nonlawyer benefited at the expense of the client. The attorney engaged in a serious conflict of interest in a mortgage foreclosure matter, failed to properly supervise a nonlawyer, neglected a client's matter, claimed a nonrefundable fee without confirming it in writing, and engaged in dishonesty during the disciplinary proceeding. The attorney represented a client in a residential foreclosure case and engaged in a conflict of interest by permitting his girlfriend/legal assistant to live in the client's property. The record title owner was the true client, however, the original owner continued occupying the property and sub-let a portion of the home to the attorney's girlfriend/legal assistant.

The original owner paid the attorney's fees for the foreclosure defense case. The attorney began frequenting the home to visit his girlfriend/legal assistant and after the birth of their child, became a nearly permanent resident, all without the client's knowledge or consent. The

attorney's representation of the client in the client's effort to effect a short sale of the property led to the client executing documents, all of which were prepared by the attorney's girlfriend/legal assistant, that the client believed would accomplish his objective, only to discover later that he continued to be the owner of the home and had no knowledge of the individuals living therein without paying him rent. The attorney personally benefitted from his misconduct and breached his professional obligations for personal gain. In a second matter, the attorney neglected a client's legal matter and provided the bar with backdated documents in an attempt to conceal the attorney's neglect and to mislead the bar's investigation. The attorney had a prior public reprimand for neglect, engaged in multiple acts of misconduct, misled the bar during its investigation, and took advantage of a vulnerable client who was not well-educated and trusted the attorney to carry out his fiduciary duties. Similarly, respondent took advantage of his clients, one of whom did not speak English, and all of whom were particularly vulnerable. Respondent personally benefitted from taking the insurance settlement proceeds.

In The Florida Bar v. Kalogianis, 2017 WL 2291006 (Fla. May 25, 2017), an attorney was disbarred for entering into an improper investment agreement with his client who had hired him to represent her in the

administration of her trust and the sale of her mother's home, a trust asset. Similar to respondent's case, all of the client's initial consultations were with the attorney's nonlawyer employee. The client did not meet with the attorney until after the closing on the sale of her mother's home, that was handled by the attorney's title insurance company. The client had advised the attorney's nonlawyer employee that she was losing money with her mother's current financial investments through Merrill Lynch. In response, the nonlawyer advised her that the attorney invested in real estate but did not relate anything about his qualifications and experience in this area.

Thereafter, the nonlawyer discussed with the client a possible investment agreement with the attorney. Based upon her conversations with the nonlawyer, the client believed that the investment was for real estate, including "flipping" houses." The settlement statement for the sale of the client's mother's home reflected \$227,644.05 was withheld from the client as an "investment." The client eventually entered into a written investment agreement with the attorney, that was prepared by the nonlawyer employee, and was vague. The client relied upon the nonlawyer's explanation of the agreement. Although the attorney had the client sign a written waiver of conflict after the client executed the investment agreement, the client was elderly, had a limited education, and

trusted the attorney to represent her best interests. Although the attorney advised the client to seek the advice of another attorney, the client declined to do so because she believed that respondent was trustworthy. Similarly, the Rameshwar's relied upon respondent to protect their interests, although some of those interests potentially were conflicting. Respondent and his paralegal/paramour took advantage of the clients and never advised them of the potential for conflicting interests.

In Kalogianis, the language of the waiver differed from the language of the investment agreement. The waiver provided that the client was lending the attorney \$227,644.05, an amount that differed, albeit by \$644.05, from the amount disclosed in the investment agreement. The waiver revealed that the transaction was in fact a personal loan between the client and the attorney and that it was secured by mortgages on real property owned by the attorney and his nonlawyer employee. The referee found that the use of inconsistent terms added to the confusing nature of the transaction and further muddled the client's understanding of what exactly she was agreeing to do with her money. Similarly, respondent's handling of a large number of various claims on behalf of the original client and her family presented a confusing situation for the clients. This created a situation rife with potential for misunderstanding and confusion.

In Kalogianis, a few days later, the attorney sought the client's permission to loan some of the money to his nonlawyer employee, but he did not advise the client of the nonlawyer's existing financial difficulties. The nonlawyer used the funds to purchase a lot in a development owned by the attorney. The client agreed and the attorney prepared a note and mortgage in the client's favor secured by the property but failed to disclose that the attorney also held a note and mortgage from his employee secured by this same property that the attorney recorded first, giving him priority over his client's mortgage.

Over the course of the loan, the attorney made 60 payments to the client, more than half of which were at a reduced amount. The client's attempts to obtain the balloon payment from the attorney were unsuccessful and she was unable to afford to pay an attorney to pursue the matter. The client admittedly filed her bar grievance in an attempt to secure payment from the attorney. The client's intended purpose, however, had no bearing on whether or not the attorney engaged in actionable misconduct.

In Kalogianis, the referee found, and the Court agreed, that the terms of the investment agreement were not fair and reasonable. The fact that the client did not express any interest in learning the details of the

investment did not absolve the attorney's duty to fully explain the nature of the transactions to the client in a manner that she could understand. When the client stated that she trusted the attorney because he was her lawyer, he should have explained to her that, in this particular matter, he was not representing her and could not give her any advice because his own personal interests were involved. The attorney violated the letter and the spirit of the rule regarding obtaining a client's knowing waiver of a conflict of interest. Because the client's decision was not informed, her signature on the investment agreement and waiver did not constitute valid consent. The attorney also engaged in deceitful tactics to avoid repaying his client.

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note and mortgage from his employee secured by this same property that the attorney recorded first, giving him priority over his client's mortgage.

Over the course of the loan, the attorney made 60 payments to the client, more than half of which were at a reduced amount. The client's attempts to obtain the balloon payment from the attorney were unsuccessful and she was unable to afford to pay an attorney to pursue the matter. The client admittedly filed her bar grievance in an attempt to secure payment from the attorney. The Rameshwar family, understandably, did likewise in respondent's matter.

The referee found, and the Court agreed, that the terms of the investment agreement were not fair and reasonable. The fact that the client did not express any interest in learning the details of the investment did not absolve the attorney's duty to fully explain the nature of the transactions to the client in a manner that she could understand. When the client stated that she trusted the attorney because he was her lawyer, he should have explained to her that, in this particular matter, he was not representing her and could not give her any advice because his own personal interests were involved. The attorney violated the letter and the spirit of the rule regarding obtaining a client's knowing waiver of a conflict of

interest. Because the client's decision was not informed, her signature on the investment agreement and waiver did not constitute valid consent.

The attorney also engaged in deceitful tactics to avoid repaying his client. In aggravation, the client was harmed, the attorney had a dishonest or selfish motive, there was a pattern of misconduct over a period of years, there were multiple acts of misconduct, and the attorney refused to acknowledge the wrongful nature of his actions, choosing instead to shift the blame to his unsophisticated client. The attorney had substantial experience in the practice of law and made no effort to make restitution. There was no mitigation presented.

In The Florida Bar v. Rainey, 168 So. 3d 230 (Fla. 2015) (unpublished disposition), an attorney was disbarred, nunc pro tunc to the effective date of the emergency suspension. The attorney represented clients in negligence claims resulting in settlements. The attorney failed to pay all of the medical providers the amounts owed that were reflected on settlement statements. The attorney misappropriated the funds to his own use and misled the bar, the clients, and the medical providers regarding the payments. The bar's audit revealed the misappropriation and commingling of funds. Similarly, respondent misrepresented to the bar that most of Rameshwar insurance settlement proceeds remained on deposit in his

bank account, when in fact the bank records demonstrated respondent's misappropriation of those funds. Respondent replaced the funds with personal money after the bar investigation commenced.

In The Florida Bar v. Daniel, 139 So. 3d 888 (Fla. 2014) (unpublished disposition), an attorney was disbarred, effective immediately due to his existing emergency suspension, for misappropriating client funds. The attorney represented a client in successfully recovering a civil judgment and in the ensuing collection action against the defendant. The client paid the attorney a flat fee that covered all of the legal services provided. The defendant's employer made regular payments, as set forth in the garnishment order, to the attorney's trust account. The attorney, however, failed to remit all of the payments to the client. To date, respondent has not remitted to the Rameshwar family or estate the insurance settlement funds to which they are entitled.

The bar's audit in Daniel revealed that the trust account failed to contain the garnishment payments. The attorney falsely testified that he had transferred his client's funds to a safe box in his office after deciding to close the trust account. Only upon being served with a subpoena by a bar investigator did the attorney admit he did not have the client's funds. The attorney eventually remitted the funds to the client by a money order.

In a second matter, the attorney was paid a fee to represent a client in a civil matter but failed to take any action in the case thereafter and refused to refund the unearned fee. The bar's audit revealed that the attorney commingled earned fees in his trust account and used the funds to pay personal and operating expenses.

In The Florida Bar v. Mirk, 64 So. 3d 1180 (Fla. 2011), an attorney was disbarred for misappropriation of client funds. In the first matter, the attorney accepted a fee from a client but, rather than depositing it to the trust account, the attorney deposited it to his operating account, claiming it was a nonrefundable fee that was earned upon receipt. There was no written agreement providing that the fee was nonrefundable. The referee found that by failing to deposit the client's advance payment into the trust account, the attorney failed to apply trust funds for the intended purpose.

In a second matter, the attorney represented a client, and the business entities with which the client was involved, in various projects over a number of years. In one matter, the attorney successfully negotiated a resolution to a dispute the client had with his prior attorney. The attorney received settlement funds and paid the client his portion. The client, however, did not negotiate the check. Thereafter, the client and the attorney discussed plans to establish a large, multi-million dollar

“investment platform” for which the attorney would serve as corporate counsel. The attorney’s compensation agreement was not reduced to writing, resulting in a dispute. The attorney claimed he was entitled to be paid a \$40,000.00 flat fee while the client testified that the attorney was to be paid a portion of the future profits from the investment venture in the event it ultimately was successful.

The referee considered the attorney’s testimony to be lacking in credibility. After the attorney learned the client had not negotiated the settlement check, the attorney stopped payment on the check and commenced a series of transactions disbursing the investment platform venture funds, in the amount of the stale settlement check, to himself. The attorney did not advise the client of the stop payment order until months later when the client advised that he was going to cash the settlement check. The attorney advised the client he applied the settlement funds to what he claimed he was owed for legal work performed on the investment platform venture. The attorney failed to produce any invoices or billing statements to support his claim for legal fees.

The Court found the attorney’s argument that he and his client had an oral agreement for the compensation unconvincing. The attorney’s withdrawal of the settlement funds from the trust account were done

without the client's knowledge or express permission. "Once again, we emphasize to the members of the Bar that an attorney is never permitted to withdraw or otherwise use client funds held in trust except as specifically authorized under the Bar Rules. To engage in such conduct, a lawyer risks full disciplinary sanctions under the Rules Regulating the Florida Bar, including disbarment." At page 1186.

In The Florida Bar v. Bailey, 803 So. 2d 683 (Fla. 2001), an attorney was disbarred after misappropriating assets that his client intended to forfeit to the U.S. government and for attempting to further his own interests by disparaging his client in ex parte letters to the sentencing judge. The attorney represented a client on charges of drug smuggling and in a forfeiture claim. The attorney proposed a scheme whereby stock owned by the client would be sequestered and not be entirely subject to forfeiture.

Ultimately, the court determined a fee payment arrangement for the attorney's representation of the client that required that the balance of the stock that remained would be returned to the court and, from this asset, the court would entertain a motion for payment of a reasonable attorney's fee. Prior to entry of this order, the attorney had engaged in a series of transactions whereby he used the proceeds from the liquidation of the client's stock to pay his personal and business expenses. Even after the

order was entered, the attorney continued to expend funds derived from the sale of the stock in contravention of the order.

The attorney was found to have made misrepresentations to the federal court and to the bar by claiming he owned the client's stock in fee simple. Further, by expending the funds, the attorney ensured that his client had fewer assets at the time of sentencing that would be forfeited to the government. This constituted a conflict of interest as it was to the client's benefit to maximize the amount of assets he forfeited to the government in hopes of receiving a reduced sentence.

The attorney used information relating to the representation of his client to the disadvantage of the client, thus engaging in self-dealing. In a final act of disloyalty to his client, the attorney wrote impermissible *ex parte* letters to the sentencing judge disclosing privileged information and disparaging his client in an effort to defeat his client's position that the attorney had held the stock in trust for the client.

Similarly, respondent has engaged in a course of conduct where he has disparaged his clients, used information regarding the Rameshwar family internal conflict to his own advantage in attempting to remove the appointed personal representative from the Rameshwar estate and have

his paralegal/paramour appointed instead, and misappropriated the client insurance benefits to his own use.

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. Immediate disbarment. Because respondent is emergency suspended, no wind down period is necessary;
- B. Payment of The Florida Bar's costs in these proceedings; and,
- C. 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: 69

Date admitted to the Bar: November 18, 1977

Aggravating Factors:

Prior Discipline [Standard 3.2(b)(1)]: In The Florida Bar v. Ollinger, 478 So. 2d 1068 (Fla. 1985), respondent received a public reprimand, pursuant to a Conditional Guilty Plea for Consent Judgment, for misapplication of client trust funds. Respondent received personal injury settlement funds, which were deposited to his trust account. Respondent delegated to his nonlawyer employee all responsibility for maintaining the trust account records with little to no oversight by respondent. The employee made “erroneous disbursements” against the client’s trust funds.

In The Florida Bar v. Ollinger, 489 So. 2d 726 (Fla. 1986), pursuant to a Conditional Guilty Plea for Consent Judgment, respondent received a sixty-day suspension and three-year period of probation and was required to make restitution to certain clients. The matter arose from the bar’s audit of respondent’s trust account conducted after the close of respondent’s previous disciplinary proceeding. The audit determined that respondent failed to maintain his trust account in substantial minimum compliance with the Rules Regulating The Florida Bar. Additionally, respondent charged an

excessive fee in some instances for collection of personal injury protection benefits by basing said fee upon a contingent fee contract. Respondent failed to prepare and maintain some executed closing statements. Respondent's documentation of costs he deducted from client settlement proceeds was so deficient that the deductions constructively constituted client funds in possession of respondent that the clients were entitled to receive. Respondent's trust account recordkeeping deficiencies were the result of his wholesale delegation of his responsibility to his nonlawyer employee with inadequate supervision, training, or oversight.

In The Florida Bar v. Ollinger, 939 So. 2d 95 (Fla. 2006), respondent was publicly reprimanded for negligently handling a suit filed pursuant to the American with Disabilities Act by adding a claim for damages under the Florida Civil Rights Act, that was unavailable to respondent's client as a matter of law. In response to the court's order to show cause regarding this issue, respondent subsequently dismissed the claim seeking damages and acknowledged that his client had not exhausted his administrative remedies as required to file a Florida Civil

Rights Act claim. Further, respondent neglected to fully comply with the requirements regarding discovery pleadings and notarization.

Although respondent's prior discipline cases occurred more than six years ago, they involved allegations similar to those present here. The Supreme Court of Florida views cumulative misconduct more seriously than an isolated instance of misconduct, and cumulative misconduct of a similar nature warrants an even more severe discipline than dissimilar conduct. The Florida Bar v. Bosecker, 259 So. 3d 689, 699 (Fla. 2018).

3.2(b)(2) Dishonest or selfish motive. Respondent paid himself \$15,000.00, \$5,000 of which was from his client's PIP settlement, as reimbursement for costs respondent allegedly expended in connection with an anticipated civil suit to be filed on behalf of his client and similarly situated mobile home occupants in the mobile home park were respondent's client resided. The costs respondent paid himself from the PIP proceeds were unrelated to the personal injury case.

3.2(b)(4) Multiple offenses.

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

3.2(b)(10) Indifference to making restitution. Respondent refuses to acknowledge that he owes his client's estate \$15,000.00.

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

Respondent is an experienced attorney (admitted in 1977) who should be familiar with the Rules Regulating The Florida Bar and the bar's professional requirements.

Mitigating Factors:

3.3(b)(8) Physical or mental disability or impairment.

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	\$599.69
Court Reporters' Fees	\$5,024.40
Administrative Fee	\$1,250.00
Audit Costs	\$4,654.30

TOTAL	\$11,528.39
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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 11 day of May, 2021.



Gary L Sweet, Referee

Original To:

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies to:

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