

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

EUGENE KEITH POLK,

Respondent.

Supreme Court Case
No. SC18-1107

The Florida Bar File
No. 2017-00,328 (1A)

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to R. Regulating Fla. Bar 3-7.6, the following proceedings occurred:

On July 10, 2018, The Florida Bar filed its Complaint against Respondent. On that same day, the Court acknowledged the new case and entered an Order to have a referee appointed in the Fourteenth Judicial Circuit to hear the case. The Chief Judge of the Fourteenth Circuit appointed a Referee who filed a Certificate by Referee on July 16, 2018. On August 8, 2018, Respondent filed a Motion to Extend Time for Filing Response to Complaint that was granted by the Referee on August 9, 2018. Respondent filed his Answer to The Florida Bar's Complaint on

September 12, 2018. On September 26, 2018, a Notice of Case Management Conference was issued setting a date of October 25, 2018. Due to Hurricane Michael that struck the Panhandle on October 10, 2018, the telephonic case management conference was rescheduled until December 18, 2018. At that time, the Referee set a Final Hearing for March 4, 2019. On December 19, 2018, the parties filed an Agreed Motion for Extension of Time to File the Report of Referee that was granted by the Court extending the Referee's Report date until April 26, 2019.

On February 27, 2019, the parties entered into a consent judgment, and the final hearing on March 4, 2019, was cancelled. All of the aforementioned pleadings, responses thereto, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

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

B. Narrative Summary Of Case. Based on the consent judgment, I find the following facts:

A. On June 24, 2015, Respondent was appointed by the Escambia County Circuit Court to serve as appellate counsel for Deontrez Levon Kitt("Kitt"). The court order required Respondent to file a notice of appearance with the First District Court of Appeal ("1st DCA") within 10 days, to certify that he had contacted the assistant state attorney on the case, to contact the previous defense counsel on the case, and to be fully aware of all filing dates in the case.

B. On August 14, 2015, the 1st DCA issued an order to show cause to Respondent as to why the appeal should not be dismissed for failure to file a timely initial brief.

C. On September 29, 2015, having received no response from Respondent, the 1st DCA dismissed Kitt's appeal.

D. On November 2, 2016, Kitt filed in the Escambia County Circuit Court a pro se Motion to the Court to Disclose Order by First District Court of Name of Substitute Counsel and Status on Above Mentioned Case, Date of Order June 16, 2015.

E. On March 15, 2017, the circuit court entered an Order on Kitt's motion, stating that, although Kitt was "arguably entitled to a belated appeal," the jurisdiction lay with the 1st DCA, and not the circuit court.

F. On March 31, 2017, Kitt filed a pro se Petition for Belated Appeal in the 1st DCA, based on Respondent's ineffective assistance of counsel on his appeal, and requested the Florida Supreme Court to review the dismissal of his case by the 1st DCA on September 29, 2015.

G. Although Kitt's petition for belated appeal was initially dismissed for failure to file an appendix, Kitt filed a Motion for Clarification on July 18, 2017. The 1st DCA granted the motion to clarify as a motion for reinstatement of Kitt's appeal. Further, the 1st DCA treated Kitt's petition for belated appeal as a petition for ineffective assistance of appellate counsel.

H. On July 25, 2017, proceedings in the Florida Supreme Court were stayed pending disposition of the motion for clarification in the 1st DCA.

I. On December 27, 2017, the 1st DCA relinquished jurisdiction to the trial court to appoint new counsel and ordered the initial brief to be filed within 30 days of the order.

J. On November 16, 2016, Kitt filed a complaint with The Florida Bar, stating that Respondent had failed to communicate with him on his appellate matter.

K. Respondent failed to file a Notice of Appearance in the 1st DCA and did not comply with the appellate court's deadlines.

L. Respondent failed to respond to the Florida Bar's inquiry letter dated January 17, 2017, and to a reminder letter dated March 21, 2017.

M. In an email dated April 24, 2017, Respondent advised The Florida Bar that he had set a date with his client to resolve their issues.

N. After meeting with Kitt, in a letter date May 4, 2017, to his client, Respondent promised to keep things "timely", to file a "motion for relief" within a few days, and to do whatever was necessary to bring Kitt's appeal back on track.

O. Relying on the promises made to him by Respondent, Kitt contacted the Florida Bar and withdrew his complaint.

P. On May 10, 2017, The Florida Bar closed Kitt's case.

Q. On July 24, 2017, Kitt wrote to The Florida Bar to reopen his complaint against Respondent who had failed to take any action on Kitt's appeal. Respondent intended to bring Kitt's case back on track, but by that time had started to close down his legal practice and seek a new career in aviation.

R. Respondent failed to timely respond to the Florida Bar's inquiry letter dated August 1, 2017.

S. Respondent sent a letter dated September 22, 2017, to The Florida Bar admitting that he regretted to properly represent his client.

T. Respondent advised that he has closed his legal practice and is in the process of training for a commercial pilot's license.

U. The client was not prejudiced because the 1st DCA reinstated his appeal, an appellate attorney was appointed to his case, and, in November 2018, the lower court's decision was affirmed per curiam in his criminal case.

III. RECOMMENDATIONS AS TO GUILT

Based on the consent judgment, I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar, namely: 3-4.3(Misconduct and Minor Misconduct), 4-1.2 (Scope of Representation), 4-1.3(Diligence), 4-1.4(Communication), 4-3.2 (Expedite Litigation), 4-3.4(c) (Knowingly disobey rules of a tribunal), 4-8.4(d) (Conduct Prejudicial to the Administration of Justice), and 4-8.4(g) (Failure to respond to The Florida Bar).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

Based on the consent judgment, I considered the following mitigation prior to recommending discipline under Section 9.32 of the Florida Standards for

Imposing Lawyer Sanctions:

(b) absence of a dishonest or selfish motive-Respondent was appointed by the circuit court to represent the client.

(c) personal or emotional problems—Respondent had personal problems and financial difficulties that required him to make a career change. The stress of running his legal practice caused him to close his legal practice in 2017.

(e) full and free disclosure to disciplinary board and cooperative attitude towards proceedings.

(g) character and reputation---Respondent spent a total of almost 30 years in the Marine Corps, including 17 years of active duty.

(h) physical or mental impairment—Respondent was only beginning his rehabilitation program recommended by the Court at the outset of this case in 2015.

(j) interim rehabilitation—from 2014 through 2017, Respondent was pursuing and completed the rehabilitation program recommended in his first disciplinary case. He is still attending 2 AA programs.

(l) remorse-Respondent stated in a letter to the Bar that he regretted having failed his client on the appeal.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

Based on the consent judgment, I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

- A. A one-year suspension pursuant to R. Regulating Fla. Bar 3-5.1(e).
- B. Payment of taxable costs in the amount of \$1,397.74 to the Florida Bar.

VI. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following personal history of Respondent, to wit:

Age: 58

Date admitted to the Bar: April 21, 1994

Prior Discipline:

TFB v. Polk, 126 So.3d 240(Fla. 2013)—SC11-2500

TFB #2010- 01,113(1A)- 90-day suspension plus 3 years probation per Court Order dated November 14, 2013.

TFB v. Polk, SC14-2149- TFB #2011-00,054 (1A)

consent judgment with 90-day suspension to run concurrent with 2010-01,113(1A) per Court Order dated April 2, 2015.

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

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

Bar Counsel Costs	\$147.74
Administrative Fee	\$1,250.00

TOTAL	\$1,397.74
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It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, Respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 4TH day of MARCH, 2019.

/s/ Lucas N. Taylor
Judge Lucas N. Taylor
Referee
Holmes County Courthouse
201 N. Oklahoma Street
Bonifay, FL 32425-2293

Original To:

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