

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

KELLY ANNE MCCABE,

Respondent.

Supreme Court Case No.
SC-

The Florida Bar File Nos.
2018-10,131 (6A)
2019-10,301 (6A)
2019-10,532 (6A)

COMPLAINT

The Florida Bar, Complainant, files this Complaint against Kelly Anne McCabe, 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 September 14, 2004, and is subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent practiced law in Pinellas County, Florida, at all times material.
3. The Sixth Judicial Circuit Grievance Committee A found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

COUNT I: TFB FILE NO. 2018-10,131 (6A)

4. Paragraphs 1 through 3 are re-alleged and incorporated herein by reference.

5. Danardrick Chance retained respondent on a contingency fee basis to file suit against the City of Saint Petersburg after being shot in the leg on or about March 8, 2013, by an officer of the St. Petersburg Police Department.

6. After Mr. Chance complained to respondent that no action had been taken and no suit had been filed, respondent filed a complaint against The City of Saint Petersburg and the police officer who shot Mr. Chance in Pinellas County, Case No. 17-001379-CI, on March 3, 2017, five days before the four year statute of limitations expired.

7. Respondent never served the complaint on the defendants or took any other action in furtherance of the case.

8. Respondent failed to attach the pre-requisite Notice of Intent to the Complaint or otherwise file a copy of the Notice of Intent to the City of St. Petersburg.

9. The City of St. Petersburg has no record of receiving a Notice of Intent.

10. Respondent failed to keep Mr. Chance informed of the status so that he could make informed decisions concerning his case.

11. Mr. Chance retained new counsel in or around March 2018.

12. Mr. Chance's new counsel had difficulty obtaining responses from respondent necessary to protect the interests of Mr. Chance regarding the litigation.

13. Respondent was not diligent in performance of the services for which he had been retained.

14. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: **Rule 4-1.1** (Competence); **Rule 4-1.3** (Diligence); and **Rule 4-1.4** (Communication).

COUNT II: TFB FILE 2019-10,301 (6A)

15. Paragraphs 1 through 3 are re-alleged and incorporated herein by reference.

16. Carey Gass retained respondent to handle a personal injury action resulting from an automobile accident which occurred on or about May 22, 2012.

17. Respondent represented to Mr. Gass that she would be filing a complaint in June 2015 on his behalf and the case would be proceeding to mediation and conducting discovery.

18. Respondent relayed that a settlement offer was being negotiated but no proof of such was ever provided to Mr. Gass.

19. Mr. Gass learned that respondent did not file his complaint and no action was being taken to move his case forward.

20. Respondent finally filed a complaint on behalf of Mr. Gass on or about May 22, 2016, in Manatee County, Case No. 2016-CA-002380, right before the statute of limitations expired.

21. Thereafter, respondent failed to serve the defendants or take any other action in furtherance of the case.

22. The defendants retained counsel and filed a Motion to Dismiss Case and Incorporated Memorandum of Law in August 2017, which was set for hearing and re-set several times with the last date for hearing being set for February 7, 2018.

23. Respondent took no action in furtherance of the case.

24. Respondent failed to keep Mr. Gass informed of the status so that he could make informed decisions concerning his case.

25. Mr. Gass retained new counsel who entered an appearance in the litigation on or around January 19, 2018.

26. On February 7, 2018, a hearing was held, and the trial court granted Defendants' Motion to Dismiss Case and Incorporated Memorandum of Law finding there was insufficient evidence of excusable neglect by respondent.

27. Mr. Gass' new counsel filed a Motion to Amend Complaint, and a Motion for Reconsideration and Incorporated Memorandum of Law, and an Affidavit of respondent.

28. Respondent admitted in her affidavit that she failed to perfect service and claimed this was due to excusable neglect and inexperience.

29. On June 18, 2018, the trial court denied Plaintiff's Motion to Amend Complaint and Motion for Reconsideration and found there was no evidence of good cause or excusable neglect and the statute of limitations had expired.

30. The trial court entered an Order on Defendant's Motion for Entry of Final Judgment on June 18, 2018, finding no entitlement to relief for Mr. Gass, and reserving jurisdiction to determine entitlement to costs on behalf of the defendants.

31. On November 5, 2018, The Florida Bar received the initial complaint of Mr. Gass against respondent.

32. On November 7, 2018, The Florida Bar sent respondent correspondence requesting a response to the complaint due by November 26, 2018.

33. Respondent failed to respond to the correspondence dated November 7, 2018.

34. On January 15, 2019, The Florida Bar sent respondent follow up correspondence requesting a response to the complaint due by January 25, 2019.

35. On February 6, 2019, respondent sent an email attaching correspondence dated January 20, 2019, enclosing her response to the complaint dated December 5, 2018, claimed to have been previously sent to The Florida Bar.

36. The Florida Bar had no record of receipt of the December 5, 2018, response prior to February 6, 2019.

37. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: **Rule 4-1.1** (Competence); **Rule 4-1.3** (Diligence); and **Rule 4-1.4** (Communication); and **Rule 4-8.4(g)** (Misconduct – failure to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency).

COUNT III: TFB FILE 2019-10,532 (6A)

38. Paragraphs 1 through 3 are re-alleged and incorporated herein by reference.

39. On January 30, 2019, The Florida Bar received a complaint from David Lee Jones against respondent regarding her representation of him in a criminal and post-conviction matter.

40. On March 6, 2019, The Florida Bar sent respondent correspondence requesting a response to the complaint due by March 22, 2019.

41. Respondent failed to respond to the correspondence dated March 6, 2019.

42. The matter was referred to a grievance committee, and Investigating Member was assigned, and a Notice of Live Hearing was served to respondent on October 24, 2019, for her appearance before the committee on November 7, 2019.

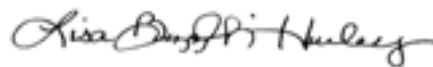
43. After service of the Notice of Live hearing, respondent did respond and communicate with the Investigating Member in response to the complaint of Mr. Jones.

44. On November 6, 2019, respondent sent an email to the Investigating Member attaching her response to the complaint dated March 10, 2019, claimed to have been previously sent to The Florida Bar.

45. The Florida Bar had no record of receipt of the March 10, 2019, response prior to November 6, 2019, email to the Investigating Member.

46. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: **Rule 4-8.4(g)** (Misconduct – failure to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency).

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



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CERTIFICATE OF SERVICE

I certify that this document has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Kelly Anne McCabe, Respondent, at adoylemccabe@gmail.com, and by United States Mail via certified mail No. 7017 3380 0000 1082 8772, return receipt requested, to her record bar address of 535 Central Ave., Ste. 435, St. Petersburg, FL 33701-3703; and a copy has been provided via email to Lisa Buzzetti Hurley, Bar Counsel, at lhurley@floridabar.org; on this 30th day of April, 2020.



Patricia Ann Toro Savitz
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY
EMAIL ADDRESSES**

PLEASE TAKE NOTICE that the trial counsel in this matter is Lisa Buzzetti Hurley, Bar Counsel, whose address, telephone number and primary and secondary email addresses are The Florida Bar, Tampa Branch Office, 2002 N. Lois Ave., Suite 300, Tampa, Florida 33607-2386, (813) 875-9821, Primary: lhurley@floridabar.org, Secondary: nstanley@floridabar.org, tampaoffice@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, Patricia Ann Toro Savitz, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, 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.