

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

BARRY ROBERT GAINSBURG,

Respondent.

Supreme Court Case
No. SC17-1414

The Florida Bar File Nos.
2013-51,260(17A)
2016-50,462(17A)
2017-50,491(17A)

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 Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On July 28, 2017, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

i. 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.

ii. Narrative Summary Of Case.

1. As to The Florida Bar Nos. 2013-51,260(17A) and 2016-50,462(17A), a formal Complaint has been filed with the Supreme Court of Florida in Case No. SC17-1414, pending before the Honorable Judge Theodore Booras.

2. As to The Florida Bar File No. 2017-50,491(17A), probable cause has been found by the grievance committee but no formal Complaint has yet been filed. The Respondent agrees that the Referee appointed in Case No. SC17-1414 may determine whether to accept this consent judgment.

3. The conduct referenced in each of the files results from Respondent's personal behavior either in e-mails, Court filings, Court documents, texts, internet postings or telephone calls. The communications are replete with threats to file lawsuits and Bar grievances, personal insults, and compulsive actions such as multiple texts in a short period of time.

4. The common thread throughout all disciplinary files was Respondent's belief that he was being wronged by an employer, a corporation, the Court, and The Florida Bar. Respondent expressed this position in an irrational manner by attempting to use the Court system to "punish" those he felt had wronged him.

5. Respondent filed multiple frivolous law suits in multiple jurisdictions against his former employer and its attorneys, claiming falsely and for monetary gain, that he was an employee of the company and seeking frivolous relief from the trial court, prompting the trial court to issue sanctions against Respondent. Respondent further used the legal system to divulge certain confidential client information regarding his former client corporation and proceeded to send the civil complaint to the media in the former client's respective market. After filing suit, Respondent engaged in unethical litigation tactics including filing excessive notices of depositions and motions to disqualify judges and copying the Judicial Qualifications Commission after receiving unfavorable rulings, communicating directly with former client knowing client was represented by counsel, sending threats to report opposing counsels to the Bar, purchasing former client's corporate shares to influence the litigation, and failing to adhere to the trial court's directives to abstain from posting information concerning the

litigation or individuals involved in the litigation on social media.

Respondent attempted unsuccessfully and unethically to discharge the sanctions in bankruptcy by incorporating the name of the client corporation in an attempt to block the corporation from setting forth defenses.

III. RECOMMENDATIONS AS TO GUILT

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

By the conduct set forth above, Respondent violated Rules Regulating The Florida Bar 3-4.2 [Violation of Rules of Professional Conduct as adopted by the rules governing The Florida Bar is cause for discipline.]; 3-4.3 [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.]; 4-1.6(a) [Revealing confidential information.]; 4-1.8(b) [Using confidential information to the detriment of the client.]; 4-1.9(b) [Using confidential information to the disadvantage of a former client.]; 4-1.9(c) [Revealing confidential information of a former client.]; 4-3.1 [F frivolous proceedings.]; 4-3.3(a)(1) [Misrepresentations to a tribunal.]; 4-3.4(c) [Disobeying a Court

order.]; 4-3.4(d) [Frivolous discovery requests.]; 4-3.4(h) [Threatening disciplinary charges.]; 4-4.2(a) [Communicate with person represented by counsel.]; 4-4.4(a) [Embarrass, delay, or burden a third person.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct.]; and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice.].

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.22 Suspension is appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

6.12 Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action.

6.22 Suspension is appropriate when a lawyer knowingly violates a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

7.2 Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Ratiner, 46 So. 2d 35 (Fla. 2010), 60-day suspension and public reprimand appropriate for attorney who had a violent outburst and no prior discipline, but had no remorse or acknowledgment of any behavioral changes needed to be made.

The Florida Bar v. Adams, 641 So. 2d 399 (Fla. 1994), 90-day suspension appropriate for attorney's baseless charges of criminal and unethical conduct against opposing counsel in letter and in court.

The Florida Bar v. Martocci, 791 So. 2d 1074 (Fla. 2001), public reprimand and two-year probation appropriate for attorney's misconduct in making unethical, disparaging, and profane remarks to belittle and humiliate both opposing party and counsel in divorce proceedings.

The Florida Bar v. Gwynn, 94 So. 3d 425 (Fla. 2012), 91-day suspension was warranted for attorney who committed 15 separate rule violations, including making false statements, conduct involving dishonesty, deceit, and misrepresentation, making frivolous claims, using means with no other purpose but

to delay or harass, failing to provide competent representation, failing to reasonably expedite litigation, conduct prejudicial to the administration of justice, and bankruptcy judge found that attorney made numerous allegations of wrongdoing and dishonesty against opposing counsel with no basis in fact for doing so.

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. 90-day suspension;
- B. 3-year probation with the following conditions:
 - i. Respondent contacted Florida Lawyers Assistance, Inc. (hereinafter "FLA") during the pendency of this proceeding and was thoroughly evaluated by FLA. FLA has recommended a 3-year clinical contract based upon the evaluation. Respondent agrees that he shall abide by all recommendations made by FLA, including, but not limited to entering into a clinical rehabilitation contract, performing all recommended testing, attending all recommended treatment and therapy, and abstaining from all consumption of drugs and/or alcohol as recommended by FLA.

Respondent will pay FLA a registration fee of \$250.00 and a probation monitoring fee of \$100.00 a month to The Florida Bar's Headquarters office. All monthly fees must be remitted no later than the end of each respective month in which the monitoring fee is due. All fees must be paid to the Bar's Headquarters office in Tallahassee. Failure to pay shall be deemed cause to revoke probation;

- ii. Respondent shall write sincere and heartfelt letters of apology to the following individuals:

Robert Reese Pires
Steven Siegel
Patrick Vo
David Shiner, Esq.
Paul Lopez, Esq.
Stephanie Vellios, Esq.
Joseph Santoro, Esq.
Tanya Reed, Esq.
David Ackerman, Esq.
Honorable Carol-Lisa Phillips

- iii. Said letters shall be delivered either by certified mail or e-mail within sixty (60) days of issuance of the Supreme Court Order in this case. Copies of each letter and proof of delivery shall be provided to The Florida Bar; and

- C. Payment of The Florida Bar's costs.

VII. 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: 50

Date admitted to the Bar: December 22, 1993

Prior Discipline: None

Mitigating Factors:

- a) Respondent was suffering from serious mental, physical and emotional issues during the period that the misconduct took place.
- b) Respondent is remorseful for his conduct in these matters and is utterly embarrassed by his actions.
- c) Respondent now recognizes that his misconduct was not remotely consistent with the ethical and professional standards expected of a member of The Florida Bar.
- d) Respondent sincerely values his status as a Florida attorney and apologizes vis-a-vis this consent judgment to anyone he has offended.

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 Costs	\$1,250.00
Bar Counsel Travel Costs	\$165.90

Court Reporter Costs	\$1,183.00
Investigative Costs	\$157.72
TOTAL	\$2,756.62

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 7 day of December, 2017.



Honorable Theodore Booras, Referee
 Palm Beach County Courthouse
 205 N. Dixie Hwy.
 West Palm Beach, FL 33401

Original To:

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

Conformed Copies to:

Andrew Mark Teschner, Counsel for Respondent, 864 Spring Cir., Apt. 203, Deerfield Beach, FL 33441-8158, amteschner@aol.com

Linda Ivelisse Gonzalez, Bar Counsel, Ft. Lauderdale Branch Office, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, FL 33323, lgonzalez@flabar.org and dmacha@flabar.org

Staff Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, FL 33323, aquintel@flabar.org