

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

HERBERT ERVING WALKER, III,

Respondent.

Supreme Court Case
No. SC18-1950

The Florida Bar File Nos.
2017-70,382(11H)
2017-70,511(11H)

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 November 26, 2019, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. The matter was referred to the Eleventh Judicial Circuit Court for appointment of a referee and I was appointed on December 4, 2018.

Thereafter, Respondent submitted an Unconditional Guilty Plea for Consent Judgment ("Consent Judgment") which provided for a ninety-one (91) day suspension and payment of the Bar's costs. On April 15, 2019, this referee issued

her Report of Referee accepting the Consent Judgment as agreed to by The Florida Bar and the Respondent.

On July 11, 2019, the Court issued an order directing Respondent to show cause why the recommended ninety-one-day rehabilitative suspension should not be disapproved and a more severe sanction, up to and including disbarment, should not be imposed. On September 12, 2019, Respondent filed his Response. The Florida Bar filed its Reply on September 26, 2019. On November 14, 2019, the Court referred this matter back to this referee, the Court having specifically disapproved the Report of Referee and Consent Judgment providing for a 91-day suspension.

A hearing on discipline was held on January 22, 2019 (the "Hearing"). The following attorneys appeared as counsel for the parties:

On behalf of The Florida Bar:

Tonya Avery, Bar Counsel
The Florida Bar
444 Brickell Avenue, Suite M-100
Miami, Florida 33131
Tel: (305) 377-4445

On behalf of the Respondent:

Richard Baron, Esquire
169 E. Flagler Street, Suite 700
Miami, Florida 33131-1203
Tel: (305) 577-4626

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.

In the Consent Judgment, Respondent admitted the following facts:

1. In or around October, 2008, and at all relevant times, Respondent represented criminal defendant, Arthur Wallace, who was charged with accessory after the fact, a second-degree felony, for allegedly driving co-defendant Parley Paskett out of state to avoid prosecution.

2. Mr. Paskett was charged with first degree murder. Paskett appeared pro se until he retained attorneys Andrew Rier and Jonathan Jordan to represent him on November 19, 2013.

3. The Honorable Yvonne Colodny was the presiding judge in the criminal proceedings.

4. While in custody at the Turner Gilford Knight Correctional Facility, Mr. Paskett contacted Respondent via telephone to inquire whether Respondent had scheduled a meeting with the prosecutor in Mr. Paskett's case. That conversation took place on or about November 19, 2013.

5. Prior to Mr. Paskett's plea, Respondent continued to visit Mr. Paskett at the correctional facility and asked Mr. Paskett for money.

6. Following Mr. Paskett's plea, Judge Colodny continued to preside over Mr. Wallace's case which included reviewing the November 19, 2013 transcript, in addition to other transcripts wherein Mr. Paskett suggested that Respondent was acting on his behalf.

7. Consequently, on or about January 10, 2017, Judge Colodny held a hearing to express her concerns regarding same. She informed Respondent of her intent to forward this matter to The Florida Bar. Prior to doing so, however, she gave Respondent an opportunity to explain the nature of his phone call with Mr. Paskett. Respondent did not provide one.

8. Judge Colodny then referred this matter to The Florida Bar on or about January 25, 2017. That same day, Mr. Wallace terminated Respondent's services, and, he too, filed a grievance with The Florida Bar on or about March 21, 2017.

9. In addition to the incidences described above, Respondent informed Mr. Wallace that he needed five new suits because Respondent wanted to "look good" for the jury in Mr. Wallace's upcoming trial. The two of them then went to Aventura Mall where Mr. Wallace purchased approximately \$5,000.00 in suits and monogrammed shirts for Respondent.

10. Respondent accepted a substantial gift from his client who was neither a relative nor close personal friend.

11. Despite Respondent's knowledge that Mr. Paskett was represented by counsel, he continued to communicate with Paskett and accepted money on Paskett's behalf.

12. Additionally, as criminally charged co-defendants, both Walker's and Paskett's positions were directly adverse under the Rule Regulating The Florida Bar 4-1.7.

13. Respondent admits that by reason of the conduct set forth above, Respondent has violated Rule 4-1.7 (Conflict of Interest, Current Client); Rule 4-1.8(c) (Gifts to Lawyer or Lawyer's Family); and Rule 4.4.2 (Communicating with Persons Represented by Counsel) of the Rules Regulating The Florida Bar.

At the Hearing on discipline, the testimony by the Respondent was uncontroverted by the Florida Bar. Walker testified to the following facts relevant to discipline, mitigation and explanation at the Hearing (consistent with his Response to Show Cause Order and Request for Hearing on Discipline submitted to the Court):

1. The Respondent received his law school education at Georgetown University.

2. The Respondent testified to his past experience as a prosecutor (District

Attorney) in New York, New Jersey and the Miami-Dade County, Florida State Attorney's Office.

3. Mr. Walker testified that while at the Miami-Dade State Attorney's Office, he was the Assistant State Attorney Felony Division Chief from May, 2005 to December, 2007 and supervised a team of assistant state attorneys and prosecuted numerous high-profile cases during his tenure there.

Mr. Walker also testified that he taught trial litigation throughout the State of Florida as a faculty member on behalf of the Florida Prosecuting Attorney's Association and was a frequent instructor/guest lecturer at various police academies and colleges. Mr. Walker testified that he routinely lectured students and law enforcement regarding trial litigation at Miami Dade College and the City of Miami Police Department Police Academy. Additionally, Mr. Walker testified that he traveled throughout the United States as a hiring committee recruiter for the Miami-Dade State Attorney's office and served as a Homicide Division Chief.

Walker's Representation of Arthur Wallace

4. Mr. Walker testified that in 2008, he left the Miami-Dade State Attorney's Office and formed his own solo law practice.

5. Mr. Walker testified that in September of 2008 he was called by Roderick Vereen, a lawyer in Miami and was told that Vereen represented Mr.

Wallace's wife and wanted Mr. Walker to represent Arthur Wallace for charges related to a homicide. At that time, Mr. Walker was sharing office space with Mr. Vereen.

6. Mr. Wallace was charged with being an accessory after the fact of a murder committed by Parley Paskett ("Mr. Paskett"). Mr. Paskett was arrested in 2006 and was at that time held in the Dade County Jail and was representing himself.

7. Mr. Walker testified that shortly after he began representing Mr. Wallace and the first time he appeared in court on this case, Mr. Paskett, who was in custody and in the jury box in the courtroom and who was representing himself pro se after being granted permission to do so by the trial judge, called him over to talk to him.

Mr. Walker testified that Mr. Paskett told him that Mr. Wallace and his wife, co-defendant Shykyna Thomas were completely innocent and that Mr. Paskett would do whatever he needed to do to exonerate Mr. Wallace and his wife. Mr. Wallace was present in the courtroom for this conversation between Mr. Walker and Mr. Paskett and Mr. Walker immediately explained to Mr. Wallace that Paskett intended to exonerate both Wallace and his wife no matter what it took to do so. Mr. Wallace was very pleased to hear this.

8. Mr. Walker testified that he told Mr. Wallace that he would communicate with Mr. Paskett and get a statement from Mr. Paskett to assist in Mr. Wallace's defense.

9. Approximately a week later, when Mr. Walker was at the office, Mr. Paskett called from the jail to talk to Mr. Vereen and as Mr. Vereen was not present at the office, the secretary put the call through to Mr. Walker.

10. Mr. Walker testified that this was the first of many dozens of conversations that he had with Mr. Paskett regarding his case. Most were telephonic as well as several in-court conversations with Mr. Paskett in the presence of Mr. Wallace during the pendency of the case on court dates while Mr. Paskett was representing himself pro se. All telephone conversations were initiated by Mr. Paskett to Mr. Walker. These communications lasted from 2008 to 2013 until the time that Mr. Paskett retained counsel.

11. Mr. Walker testified that during those years, Mr. Paskett asked him on numerous occasions to do work or assist him in his defense in some manner. Mr. Walker testified that it never occurred to him that he should not have assisted him with these matters as Mr. Paskett advised Mr. Walker on numerous occasions that he was not guilty and that his defense was completely consistent with the defense Mr. Walker was litigating for Mr. Wallace. The defenses in Mr. Walker's view were joint and concurrent. Mr. Wallace was aware and supportive of Respondent's

assisting Mr. Paskett in Paskett's defense as it was mutually beneficial to the defense of Mr. Wallace and his co-defendant wife.

12. Mr. Walker testified that Mr. Paskett, who was representing himself and jailed, needed help getting paperwork to his court-appointed investigator and asked Mr. Walker to help with that, as well as reviewing numerous legal documents and work, all of which Mr. Walker provided.

13. Mr. Walker testified that Mr. Wallace was always aware that Mr. Walker was assisting Mr. Paskett because Mr. Wallace knew that Mr. Paskett kept promising a statement exculpating Mr. Wallace and his wife. Mr. Walker testified that Mr. Wallace frequently pressured Mr. Walker verbally, in person and via telephone, from 2008 through 2017 to stay in touch with Mr. Paskett as much as possible to ensure that Mr. Paskett, a long-time family friend of Mr. Wallace and his co-defendant wife Shykyna Thomas, would follow through on Paskett's promise to help Mr. Walker exonerate Mr. Wallace and his wife Shykyna at trial.

14. Mr. Walker testified that he believed in good faith that he was not violating any ethical duties to his client as at all times Mr. Walker believed his contact with Mr. Paskett was assisting his defense of Mr. Wallace and that not only was Mr. Walker not ethically prohibited from such contact but that Mr. Walker was ethically required to explore fully and cement Mr. Paskett exoneration of Mr. Wallace as he so often had promised.

15. Mr. Walker testified that he was repeatedly advised by both his client, Mr. Wallace, and Mr. Paskett that Mr. Wallace was completely unaware of the fact that Mr. Paskett was involved in any criminal activity prior to his transporting him.

16. Mr. Walker testified that during his involvement in representing Mr. Wallace from 2008 to approximately 2013, Mr. Paskett gave Mr. Walker five different written sworn statements exonerating Mr. Wallace.

17. Mr. Walker testified that additionally, Mr. Paskett made numerous voluntary statements under oath "on the record" in the courtroom during pre-trial status conferences exonerating Mr. Wallace and Wallace's co-defendant wife. Mr. Walker testified that these statements were recorded by the court reporter and noted by Mr. Walker for possible future use at trial. Further, such statements were made in the presence of the trial judge and prosecutor as well as Mr. Wallace and his wife, who were out on bond and present in the courtroom for these hearings.

The Gift from Mr. Paskett's Mother to Mr. Walker

18. Mr. Walker testified that during those years, Mr. Paskett requested that Mr. Walker do work for him which would assist his case and which Mr. Walker was happy to do because Mr. Walker viewed it as part of what Mr. Walker needed to do to defend Mr. Wallace effectively.

Mr. Walker testified that Mr. Walker viewed Mr. Paskett as the primary

defense to the charges brought against Mr. Wallace and most certainly the primary witness.

19. Mr. Walker testified that the work Mr. Walker did for Mr. Paskett included reviewing his legal work, delivering documents to the investigator, and discussing strategy and motions to suppress. Mr. Walker testified that these discussions included Mr. Walker speaking to the prosecutor who approached Mr. Walker to inquire what plea Mr. Walker, a former career prosecutor and supervising attorney at the Miami-Dade State Attorney's Office, thought would be reasonable to resolve Mr. Paskett's two first-degree murder charges.

20. Mr. Walker testified that between all the phone calls and other work product and time spent on Mr. Paskett's matters, he spent in excess of 100 hours solely on Mr. Paskett's legal issues and matters.

21. Mr. Walker testified that Mr. Paskett was aware of the work Mr. Walker did for him and was appreciative of those efforts.

22. Mr. Walker testified that in his mind as the defenses were completely consistent, Mr. Walker did not realize that there was an ethical problem in accepting a gift from Mr. Paskett's mother during Christmas of 2013 when Mr. Paskett was still representing himself.

23. Mr. Walker testified that Mr. Walker accepted a gift of \$1,000.00 (or

possibly \$2,000.00) and two-bathroom plug-in “night lights” from Mr. Paskett’s mother. This gift was given to Mr. Walker when Ms. Paskett invited Mr. Walker to her home for Christmas dinner. Mr. Walker attended this Christmas dinner at the insistence of Mr. Wallace and with his full approval.

24. Mr. Walker testified that he is very remorseful for any ethical breach and that he intends to redouble his service to his church and the community to assure the Court that Mr. Walker can be fully rehabilitated and return as a better member of the Florida Bar.

The Purchase of the Suits

25. Mr. Walker testified that during the course of his representation of Mr. Wallace as the set trial date drew near, that Mr. Wallace insisted that he wanted Mr. Walker to wear a new suit for every day of an anticipated two-week trial. Mr. Wallace offered to buy the suits for Mr. Walker and insisted upon buying the suits for Mr. Walker.

26. Mr. Walker testified that he and Mr. Wallace went shopping together and that including neck ties and pocket square accessories, the entire cost of the suits and accessories was \$2,881.79. A copy of the receipt is attached as Exhibit B to Respondent’s Response to the Supreme Court’s Order to Show Cause.

Findings and Conclusions of Law:

This referee accepts the facts as set forth in the Consent Judgment. Moreover, I find that any suggestion by Respondent that he did not read the Consent Judgment because he was shocked and terrified at the time is highly unlikely, considering Respondent is a highly-educated, trained attorney, as well as a former career prosecutor who knew or should have known the significance of executing the Consent Judgment. Further, prior to entering into the Consent Judgment, Respondent ably drafted and submitted to the Florida Bar a Mitigation Memorandum of Respondent.

This referee notes Walker's testimony at the Hearing on discipline that he was instrumentally involved in negotiating a plea deal to a lesser charge with the Assistant State Attorney, on behalf of his client's criminal co-defendant, Mr. Paskett. (Hearing TR at p. 190, lines 5-10 and p. 184, lines 18-20). That plea deal, however, contemplated that Paskett, the co-defendant, if called upon, would testify against Respondent's own client. (Hearing, The Florida Bar Exhibit 2, pp. 11, 15, and 20). Per the co-defendant, Paskett's plea colloquy, Paskett proffered to the court his involvement as well as Respondent's client's involvement in the underlying criminal matter. (Hearing, The Florida Bar Exhibit 1, pp. 32-34).

Additionally, Respondent accepted money from the co-defendant, Paskett's mother for legal services rendered to the co-defendant. (Hearing TR at p. 130,

lines 13-19, 22; p. 131, lines 1-10; Hearing The Florida Bar Exhibit 3 unnumbered pp. 12-14, Mitigation Memorandum of Respondent). Respondent does not recall whether he mentioned the money to Wallace. (Hearing TR at p. 132, lines 12-18).

With regard to this payment, I also note that there were several inconsistencies in Respondent's testimony on this point throughout the disciplinary process. In his written response to The Florida Bar dated January 16, 2019, Respondent stated that this payment was a gift. (Hearing The Florida Bar Exhibit 3 at unnumbered pp. 12-14, Mitigation Memorandum of Respondent). In the Consent Judgment, Respondent admitted that the payment was for legal fees. Then, in his subsequent response to the Order to Show Cause, Respondent informed the Florida Supreme Court that the payment was for legal services rendered and that Paskett had referred to it as a "Christmas present". (Respondent's Response to Show Cause Order and Request for Hearing on Discipline at pp. 9-10). At the Hearing on discipline, Respondent also testified that the payment was a gift, not fees. (Hearing TR at 204, line 25-p. 205, line 20.) In addition, Respondent denied requesting payments for his legal services provided to the co-defendant despite his testimony that he had performed \$20,000 to \$40,000 worth of legal work on Mr. Paskett's behalf. (Hearing TR at p. 205, lines 21-24; Hearing TR at p. 133 lines 17-19; Hearing TR at p. 205, lines 16-24).

The telephonic exchange of November 19, 2013 refutes Respondent's testimony that the payment was a gift:

Parley Paskett: And listen Rier's office already did the Notice of Appearance, ain't he?

Mr. Walker: He did?

Parley Paskett: Yes. He did...

Mr. Walker: So, you retained him for the case, so Ted is out, the, but-

Parley Paskett: Well, Ted is going to still standby. He's going to be playing in the background scene...

Mr. Walker: Yes, did you retain him, did you pay him yet?

Parley Paskett: Yes, he's paid in full.

Mr. Walker: Okay, all right.

Parley Paskett: Don't worry. I ain't forgot about you. There's enough to go around.

Mr. Walker: Okay, because you can through a little my way, you understand?

Parley Paskett: I know that, I got you.

Mr. Walker: I did work for you.

Parley Paskett: Listen, I know. I know. I got you man you are finessing the situation, and I definitely recognize it and appreciate it.

Mr. Walker: Okay.

Parley Paskett: All right.

Mr. Walker: Okay, don't' forget.

(Hearing The Florida Bar Exhibit 1, p. 5 at line 25, p. 6 at lines 1-15; Hearing TR at p. 100, lines 6-14).

Accordingly, I find that the exchange above is compelling evidence that the payment received by Respondent from the co-defendant's mother was a payment for legal services rendered.

Whether characterized as a gift or payment for legal services provided to Paskett, it is undisputed in the record that Wallace was not aware that Walker had

either provided legal services to Paskett or accepted any gifts or payment from or on behalf of Paskett. The record is also devoid of any written waiver or consent signed by Wallace waiving a conflict for any work done by Walker for Paskett.

With regard to Rule 4-1.8(c) (Gifts to Clients), in the Consent Judgment, Respondent admitted that he accepted five new suits from his client because he wanted to “look good” for the jury. Nevertheless, in his subsequent Response to the Order to Show Cause, he informed the Florida Supreme Court that these suits were part of his fees for legal services performed on behalf on his client. (Respondent’s Response to Show Cause Order and Request for Hearing on Discipline at p. 10). Thereafter, at the Hearing on discipline, Respondent stated that it was his client’s idea for Respondent to wear a new suit to court each day. (Hearing TR at p. 133, lines 1-25; Hearing TR at p. 134, lines 1-25; Hearing TR at p. 135, lines 1-25; Hearing TR at p. 136, lines 1-25; Hearing TR at p. 138, lines 1-10). Respondent never once mentioned that these suits were part of any sort of fee arrangement at the Hearing.

While Walker testified that in good faith he believed that his contacts with Paskett were intended to benefit his client, Wallace and were done with Wallace’s approval, his contention is belied by Wallace’s response to the news at the January 9, 2017 hearing before Judge Colodny that Walker had done work for Paskett. Wallace responded regarding the conflict issue that he wished to speak to

private counsel. (Hearing, The Florida Bar Exhibit 1, p. 7, line 18- p.8, line 23) .

Wallace also filed a bar grievance against Walker.

With regard to whether Respondent informed his client that he had received payment from the co-defendant's mother, it is apparent from the record evidence that Respondent did not share this information with his client, Wallace. (Hearing TR at p. 132, lines 7-24; Hearing The Florida Bar Exhibit 3 at unnumbered pp. 12-13). Nevertheless, he testified at the Hearing that he did not know whether he informed his client of this payment and that if he did not mention it, it was because it was irrelevant since Wallace had told him "to make sure that Paskett and his mom were going to be on our side." (Hearing TR at p. 132, lines 21-24). Accordingly, this referee finds that Respondent violated his duty of loyalty and independent judgment to his client. Because these two elements are essential to an attorney's relationship to his or her client, a lawyer's loyalty is impaired when a lawyer represents clients whose interests are inherently adverse in this regard.

III. STATEMENT AS TO GUILT

The Florida Supreme Court has already accepted Respondent's factual stipulation and plea of guilty to the following rule violations: Rule 4-1.7 (Conflict of Interest, Current Client); Rule 4-1.8 (c)(Gifts to Lawyer or Lawyer's Family); and Rule 4-4.2 (Communicating with Persons Represented by Counsel) of the Rules Regulating The Florida Bar.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.32 Failure to Avoid Conflicts of Interest:

Suspension is appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict and causes injury or potential injury to a client.

6.32 Improper Communications with Individuals in the Legal System:

Suspension is appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.

7.2 Violations of Other Duties Owed as a Professional:

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

Prior to recommending discipline, I considered the following case law submitted by the Florida Bar for purposes of the Hearing on discipline:

- *The Florida Bar v. Adler*, 126 So.3d 244 (Fla.2013), wherein it is indicated that the Court has moved towards stronger sanctions for attorney misconduct. Id. at 47 (citing *The Florida Bar v. Rotstein*, 835 So.2d 241(Fla. 2002). See also, *The Florida Bar v. Peterson*, 248 So.3d 1069, 1081 (Fla. 2018) and *The Florida Bar v. Rosenberg*, 169 So.3d 1155, 1162 (Fla. 2015). *Adler* involved violations premised on conduct determined to be deliberately deceptive.
- *The Florida Bar v. Mastrilli*, 614 So.2d 1081(Fla. 1993): the respondent received a six-month suspension for representing both a passenger and driver in the same vehicle. The respondent issued demand letters on behalf of the passenger against the insurance carrier of the driver on grounds that the latter had been negligent, resulting in injuries to the passenger totaling \$100,000. However, the insurance policy would only cover \$50,000 of any loss and denied payment. Respondent then filed a lawsuit against the driver on behalf of the passenger.
- *The Florida Bar v. Parrish*, 241 So.3d 66 (Fla. 2018): the respondent received a three-year suspension for, among other things, entering into an improper agreement with a client to pay for current and future legal fees and improperly engaging in business transactions with a client. The attorney entered into an agreement conferring a security interest in the client's Lamborghini in favor of the law firm to pay current and future legal fees.
- *The Florida Bar v. Herman*, 8So.3d 1100 (Fla. 2009): the respondent received an 18-month suspension for representing a client and simultaneously representing his own company, which was in direct competition with his client's company.

- *The Florida Bar v. Rodriguez*, 969 So.2d 150 (Fla. 2007): the respondent received a two-year suspension for representing several clients in a class action suit against a chemical company for crop damages. The attorney and his law firm then entered into a secret agreement with the opposing party for a multi-million-dollar fee- while still representing the various class action clients- that would preclude the law firm from bringing future cases against the chemical company.

The referee notes that the six-month suspension in *Mastrilli* involved violations premised on conflict of interest only. The referee finds that the facts in *Parrish*, *Herman* and *Rodriguez*, where the Court determined that counsel had entered into agreements and business transactions that were motivated by greed (which is absent here) are much more egregious than the present facts. The foregoing cases, together with the facts, mitigating factors and aggravating factors, support a suspension of greater than six months but less than an eighteen-month or two-year suspension; to wit, support the one-year suspension recommended by the Florida Bar.

AGGRAVATION AND MITIGATION: The parties previously stipulated in the Consent Judgment to, and the referee finds, that the following mitigating factors apply:

A. Mitigation:

- 9.32(a) absence of prior disciplinary record;
- 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

- 9.32(g) character and reputation; and
- 9.32(l) remorse.

B. **Aggravation:** In addition, I find the following aggravating factors apply:

- 9.22(d) multiple offenses;
- 9.22(i) substantial experience in the practice of law.

Respondent's background reflects extensive experience in the area of criminal law as a prosecutor. While Respondent has argued that he had recently opened his own solo firm and had only been a criminal defense attorney for approximately eight months at the time the communications with Paskett started, the record reflects that Respondent's communications with Paskett continued for years. Further, Respondent's experience as a prosecutor, where he would likely have offered or considered plea deals to defendants which included agreements by one defendant to testify against a co-defendant, he was or should have been aware that Paskett's interests were or could have become adverse to Wallace's at any time. In fact, he acknowledged at the Hearing that he was not concerned about Paskett "flipping" and was prepared to address that scenario through cross examination of Paskett using the several *Byrd* affidavits he had obtained from Paskett exonerating Wallace together with Paskett's statements made in open court (Hearing TR at p. 107, line 12-p.111, line 17) (a copy of one of the *Byrd* affidavits

is attached as Exhibit A to Respondent's Response to Show Cause Order and Request for Hearing on Discipline submitted to the Court).

The Bar introduced into evidence at the Hearing (The Florida Bar Exhibit 1) an excerpt from a January 9, 2017 hearing before Judge Yvonne Colodny, the trial judge presiding over the criminal case in which Respondent represented Arthur Wallace. That hearing addressed, in relevant part, the following exchange:

The Court: Now, Mr. Walker, in all candor I have not reviewed all of the transcripts, but there is an indication here that you representing Mr. Wallace, who was an open codefendant of Mr. Paskett at that time, that there were some communication that is concerning to this Court. It brings me no joy to say this, but I believe that I have to refer this to the Bar for investigation.

So, you are welcome to say something to try to give it clarification. **You are under no obligation to do so....**

(Hearing, The Florida Bar Exhibit 1 at p. 6, line 20- p.7, line 5) (emphasis added).

The hearing before the trial court continued:

The Court: Mr. Walker, is there anything you would like to place on the record?

Mr. Walker: No.

(Hearing The Florida Bar Exhibit 1 at p. 8, line 24- p. 9, line 1)

The Florida Bar requested at the Hearing on discipline that the referee make a determination that Respondent's silence in response to the trial court's opportunity for clarification is an aggravating factor. First, the referee has reviewed the Florida Standards for Imposing Lawyer Sanctions, Standard 9.22,

Factors which may be considered in aggravation, and finds that Respondent's silence does not fall under the factors enumerated because it does not involve conduct during the disciplinary proceeding or disciplinary process.

Further, even assuming *arguendo* that this referee had determined that Respondent's silence did fall under Standard 9.2 Aggravation, it is clear from the exchange between Judge Colodny and Respondent cited above that she was providing him with an opportunity to elaborate or clarify his actions, but was not requiring him to do so. As such, the referee does not find that Respondent's silence is an aggravating circumstance.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I acknowledge that Respondent has been found guilty of misconduct justifying disciplinary measures, and recommend the following discipline:

- A. One (1) year suspension; and
- B. Payment of the Bar's Disciplinary Costs.

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: 56

Date admitted to the Bar: October 04, 1999

Prior Discipline: None

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

The Florida Bar, having been successful in this matter, shall be awarded their necessary taxable costs of this proceeding and shall submit their statement of costs, as well as a motion to assess costs against Respondent.

Dated this 12th day of March, 2020.



Maria de Jesus Santovenia, Referee
Circuit Court Judge
Miami Dade Courthouse
73 West Flagler Street
Miami, Florida 33130

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