

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

MATT SHIRK,
Respondent.

Supreme Court Case
No. SC21-540

The Florida Bar File
Nos. 2017-00,313 (10A) and
2017-30,587 (10A)

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 13 April 2021, The Florida Bar filed its Complaint against respondent in these proceedings. On 4 April 2022, a final hearing was held in this matter and on 8 April 2022, a hearing as to sanctions was held. 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.

II. **FINDINGS OF FACT**

Jurisdictional Statement. Respondent is, and at all times referenced 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.

A. Respondent was first elected Public Defender of the Fourth Judicial Circuit and took office in January 2009. Respondent was re-elected to a second term that began in January 2013.

B. As an attorney and elected Public Defender, respondent was subject to the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, of the Florida Statutes and the Rules Regulating The Florida Bar, at all times relevant.

C. On 2 January 2015, a letter was sent by the State Attorney of the Eighth Judicial Circuit with a copy of the Presentment of the Grand Jury to the Florida Commission on Ethics for review. On 8 June 2016, after an investigation, the Commission on Ethics found probable cause to believe respondent had violated Section 112.313(6), and Section 112.313(8) of the Florida Statutes. On 22 August 2019, respondent entered into a Joint Stipulation of Fact, Law and Recommended Order whereby respondent stipulated to have violated Section 112.313(6) and Section 112.313(8). In the stipulation, however, respondent denied that the facts indicated a

violation of the bar rules. On 18 September 2019, the Commission on Ethics reported its findings and recommendation to the Governor of the State of Florida wherein they recommended that respondent be publicly censured and reprimanded and have a civil penalty in the amount of \$6,000.00 imposed against him.

D. The three factual findings that form the grounds for the violations of Section 112.313(6) and 112.313(8) as well as the Rules Regulating The Florida Bar as follows:

- (1) Respondent hired or directed the hiring of three women contrary to the procedures, policies or qualifications, or outside the normal hiring practices. Respondent admitted in the Commission on Ethics investigation as well as in his sworn statements taken by The Florida Bar on 17 March 2017, and on 10 February 2018, that he engaged in workplace or work-related interactions with these women of a personal interest to himself by sending several personal flirtatious text messages that included “e-cards”¹ that were inappropriate and suggestive in nature. Upon Respondent’s wife learning of the text messages, Respondent admitted

¹ It was explained by Respondent during the final hearing that an “e-card” can be found on the internet and will have a picture of men and women from the 1800’s then a flirtatious or not work appropriate message.

that he then directed that these women be terminated from their employment at the Office of the Public Defender for the private benefit of himself and to save his marriage.²

- (2) Respondent violated Jacksonville City Ordinance 154.107 by serving or consuming alcoholic beverages in a city building. Respondent advised to the Commission on Ethics and also testified in the bar investigation that he kept bottles of alcoholic beverages in a decorative globe in his office in violation of the city ordinance. Respondent admitted that on one occasion he provided alcohol to two of the women referenced above during their off hours but during a period of time in which the office was open. Respondent explained that prior administrations of the Office of the Public Defender kept alcohol on the premises and respondent believed it was permissible based upon this past experience.
- (3) Respondent revealed information related to the representation of a client during an interview with a French film crew making a documentary about the client's case.

² Through Respondent's testimony it was learned that one of the three women was actually fired "for cause" but Respondent admitted he would have fired her for the sole reason of "saving his marriage" if he she was not fired "for cause."

- i. On or about 15 March 2011, C.F., a twelve-year-old child, was arrested and later indicted as an adult for murder in the first degree and for aggravated child abuse. The trial court appointed the Office of the Public Defender to represent C.F. On 15 December 2011, Respondent, as Public Defender for C.F., filed an Amended Motion to Appoint Guardian Ad Litem stating that the child is in need of a parental advisor and intermediary with his defense counsel and the court entered an order appointing Hugh Cotney as his Guardian Ad Litem (“GAL”).
- ii. On 30 January 2012, a Motion for Substitution of Counsel - upon the Direction of the GAL - was filed on behalf of C.F. The trial court granted the motion issuing an order on 3 February 2012, and substituted the law firms of Holland & Knight, Bedell, Dittmar, DeVault, Pillans & Coxe, P.A., McGuire Woods LLP, Creed & Gowdy P.A., and the Law Office of D. Gray Thomas, P.A. (“Private Defense Team”) to represent C.F.

- iii. As of 3 February 2012, the Office of the Public Defender in and for the Fourth Judicial Circuit of Florida no longer represented C.F.
- iv. On 14 August 2012, *nunc pro tunc* to 7 August 2012, the judge entered an order granting the defendant's motion to suppress statements in part and denying in part. The order discussed that the experts found C.F.'s comprehension impaired by his immature thinking, his expressive and receptive language deficits and his learning disabilities.
- v. Over a year later, on 8 February 2013, in 16-2011-CF-6222, C.F. entered a guilty plea to the lesser included offenses of manslaughter and aggravated battery and in exchange for the guilty plea, C.F. would be sentenced as a juvenile³. The judge committed C.F. to a secure facility under the supervision of the Department of Juvenile Justice ("DJJ").
- vi. On 20 February 2013, Respondent interviewed with the above-referenced French documentary film crew interested

³ C.F. received adult criminal sanctions with an extended probationary term for an interrelated sexually motivated crime which fell under a different case number. This probationary period started at the conclusion of C.F.'s juvenile sanction.

in C.F.'s case, revealing confidential communications of his former client.

vii. Respondent testified that he believed it was in the best interest of C.F. and that he had consent from his earlier communications with C.F. as his Public Defender, however the minor was unable to consent.

viii. Additionally, Respondent failed to get permission from C.F.'s GAL nor Private Defense Team at the time before Respondent disclosed the communications to the film crew.

III. RECOMMENDATIONS AS TO GUILT.

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

Oath of Admission to The Florida Bar:

I do solemnly swear: I will support the Constitution of the United States and the Constitution of the State of Florida; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval; To opposing parties and their counsel, I pledge fairness, integrity,

and civility, not only in court, but also in all written and oral communications; I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God.

3-4.2 Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.

3-4.3 The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. 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) A lawyer must not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent.

4-8.4(a) A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

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, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

I recommend that respondent be found not guilty of violating the following Rules Regulating The Florida Bar:

4-1.1 A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.2 Failure to Preserve the Client's Confidences

(b) 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.

5.2 Failure to Maintain the Public Trust

(b) Suspension is appropriate when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules and causes injury or potential injury to a party or to the integrity of the legal process.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Carter, 2019 WL 6608773 (Fla. 2019) (unpublished disposition) – The Supreme Court of Florida approved a Conditional Guilty Plea for Consent Judgment for a one-year suspension for misconduct which included engaging in a conflict of interest. Carter was employed as General Counsel for the Clerk of Court during which time the elected Clerk of Court died while in office. An interim Clerk of Court was appointed to serve until the Governor appointed a replacement. Based on Carter's legal advice, the interim clerk terminated their existing employment agreements

and authorized severance payments to herself and Carter. However, the interim clerk and Carter remained employed by the Clerk of Court and continued to receive their regular pay despite receipt of severance payouts. Ultimately, Carter repaid the full amount of the severance payment. The Governor accepted the recommendation of the Commission on Ethics and issued Executive Order 18-327 imposing a civil penalty totaling \$10,000.00 and issued a public censure and reprimand against Carter for his actions.

The Florida Bar v. Lange, 711 So. 2d 518 (Fla. 1998) – Lange received a one-year suspension for disclosing a criminal client’s attorney-client privileged information, representing a client where Lange’s independent judgment could be impaired by his own self-interests and using self-laudatory or misleading advertisements. Lange represented a client in a federal criminal case where a prior criminal client was listed as a prosecution witness. Lange filed motions with the court prior to the trial in which he disclosed confidential communications the witness had made to him years prior where the witness confessed to uncharged crimes. During a subsequent hearing, Lange again revealed the confidential information and admitted he did not have the permission of the witness to divulge the confidential information to the court. In the second matter, Lange accepted the appointment as a special public defender in a case where the jury

requested a viewing of the alleged crime scene. Lange, who did not wish to risk a situation where a retrial might occur due to a hung jury because his fee was limited to the original amount regardless of the outcome, failed to object to the jury's request and did not advise his client of the right to be present or to have the trial judge present. Lange's representation of the client was adversely affected by his own financial interests. Lange admitted under oath that he did not want to re-try the case for free and that his decision was not a tactical one. In a third matter, Lange's telephone book advertisement contained language that was self-laudatory and misleading to the public.

The Florida Bar v. Niles, 644 So. 2d 504 (Fla. 1994) – Niles received a one-year suspension for accepting compensation for arranging a client's interview by a television program that resulted in prejudice to the client and was accomplished through Niles repeated deceptions. Niles was appointed by the court as a special public defender to represent defendant, Deidre Hunt, in a highly publicized and sensationalized first-degree murder case. After entering a guilty plea to first-degree murder, for which Hunt received the death penalty, Hunt was incarcerated in a facility that prohibited media interviews with inmates within the first two to three weeks of the inmate's arrival at the facility. Thereafter, all media interviews required pre-approval

by the superintendent. Months prior to this time, Niles entered into negotiations with a national television program known as "A Current Affair" to arrange an interview with Hunt for which Niles would be paid \$5,000.00 if the interview was aired. Niles contacted the superintendent of the correctional facility and misrepresented the nature of the proposed videotaped interview with Hunt. Niles stated that he had arranged with the prosecutor and the judge to videotape Hunt at the jail regarding testimony concerning her codefendant. Niles indicated he would bring a law clerk and a cameraman to assist with the videotaping. The superintendent approved the request for what he believed to be a permissible attorney-client visit. On the date of the interview, the superintendent was not present at the facility. Niles appeared with the television crew and, because he failed to properly identify the crew as not being the approved law clerk and cameraman, Niles violated the jail's security procedures because only the minimal security required for attorney-client consultations was present during the media interview. Although Hunt had been advised previously that her statement was being taken for the court, she was not advised this was an interview for a television program until the beginning of the interview. Niles misrepresented to his client that he had not been paid for the interview but that she could expect to receive compensation. When

the interview was broadcast, it contained admissions by Hunt. Niles permitted Hunt to make these sensational admissions despite knowing Hunt's appeal was pending. Niles, as a special public defender, was compensated by order of the court but failed to advise the court of the \$5,000.00 payment he received from the television program. Niles obtained the interview of his client without her informed consent. Further, in the interview, Hunt was cast in an exploitative and negative manner. Niles revealed client information without his client's consent by obtaining Hunt's interview without her fully-informed waiver, authorization, or permission. Niles acquired a proprietary interest in his client's case by contracting with "A Current Affair" to receive a \$5,000.00 payment in return for an interview with his client. On appeal, Niles sought a public reprimand while the bar sought disbarment, after having sought the one-year suspension from the referee. In accepting the referee's disciplinary recommendation, the Court noted that Niles had no prior disciplinary history involving moral turpitude, although he did have prior discipline. The cases cited by the bar supporting disbarment concerned attorneys with prior discipline for acts involving moral turpitude and dishonesty. The Court specifically noted, however: "Our approval of the referee's recommended one-year suspension in this instance, in which the referee followed The

Florida Bar's counsel's recommendation, is not to be read as an indication that similar conduct will receive any discipline less than disbarment for respondent or any other member of The Florida Bar in any future proceedings.”

The Florida Bar v. Samaha, 557 So. 2d 1349 (Fla. 1990) – Samaha received a one-year suspension for taking of seminude photographs of female client, not needed for personal injury case, and touching of client on back and thighs. The Supreme Court of Florida stated: “Even the slightest hint of sexual coercion or intimidation directed at a client must be avoided at all costs.” The Court further stated that “[i]mproprieties that directly and intentionally harm others always are serious offenses in the eyes of this Court.”

Although Respondent’s suggestive misconduct was not directed at a client, he clearly created a hostile office environment by texting several of his employee sexually suggestive e-cards and the fact that Respondent was a duly elected official makes this type of mismanagement all the more egregious. Respondent’s managerial style and decision making again demonstrated his poor judgment which affected not only the work environment but his marriage as well.

The Florida Bar v. Horton, 332 So.3d 943 (2019) – Horton was disbarred for engaging in a pattern of misconduct over several years including intentionally misappropriating funds from his elderly clients. The Court stated that it views cumulative misconduct more seriously than an isolated instance and when there are several acts of misconduct the “sanction imposed is usually greater in aggregate than the sum of the sanctions that might be imposed for any one of them individually.”

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. One-year period of suspension.⁴
- B. Payment of The Florida Bar's costs in these proceedings.
- C. Respondent will eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards office signs or any other indicia of respondent's status as an attorney, whatsoever.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

⁴ The Florida Supreme Court rejected the Florida Bar's previous agreed upon resolution of a six month suspension and the Florida Bar argued for a two year suspension during the sentencing hearing.

Personal History of Respondent:

Age: 48

Date admitted to the Bar: April 12, 2000

Prior Discipline: None

Aggravating Factors:

3.2(b)(2) dishonest or selfish motive in that firing the female employees was done because Respondent wanted to save his marriage;

3.2(b)(4) multiple offenses; and

3.2(b)(8) vulnerability of the victim in that his client was a minor child and could not give knowing, informed consent for Respondent to be interviewed by the media. Further, the interview could not have been for the benefit of the minor child because sentencing already had occurred. The media attention was for Respondent's benefit.

Mitigating Factors:

3.3(b)(1) absence of a prior disciplinary record;

3.3(b)(5) full and free disclosure to the bar or cooperative attitude toward the proceedings in that respondent consistently

has been forthright in his testimony and fully cooperated with these disciplinary proceedings;
3.3(b)(11) imposition of other penalties or sanctions; and
3.3(b)(12) remorse.

VIII. 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	\$92.56
Court Reporters' Fees	\$3,470.25
Investigative Costs	\$1,023.00
Administrative Fee	\$1,250.00

TOTAL \$5,835.81

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 21th day of April, 2022.

s/KENNETH JAMES JANESK II
Kenneth James Janesk II, Referee

Original To:

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