

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

THOMAS KLEMENS ALMQUIST,

Respondent.

Supreme Court Case No.
SC18-1656

The Florida Bar File Nos.
2014-00,241(8B), 2014-00,819(8B)

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 October 1, 2018, The Florida Bar filed its Complaint against Respondent in these proceedings. On November 30, 2018, the Referee granted The Florida Bar's Motion for Default. The parties have reached a Consent Judgment. 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

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.

1. On May 22, 2015, respondent accepted a diversion to FLA, Inc. for a mental health evaluation and a three-year contract. After an evaluation, a 1-year contract was recommended by FLA and sent to respondent on April 27, 2016.

2. Respondent signed the contract on June 7, 2016.

3. On June 26, 2017, FLA, Inc. notified the Bar that respondent was not in compliance with his FLA, Inc. contract and that they were now recommending a 3-year contract based on his history of noncompliance.

4. A new 3-year contract was sent to respondent on July 13, 2017. Respondent failed to return the contract and ceased contact with FLA, Inc.

5. On November 29, 2017, respondent's file was re-opened and remanded back to the grievance committee based on respondent's failure to comply with the conditions of his diversion.

6. On May 1, 2018, the Eighth Judicial Circuit Grievance Committee recommended that respondent receive an admonishment for

minor misconduct; however, the Designated Reviewer rejected the minor misconduct, sending the case before the Disciplinary Review Committee, who found probable cause, resulting in this complaint.

COUNT I – KATELYN N. SMITH – TFB# 2014-00,241(8B)

7. Katelyn N. Smith (Ms. Smith) hired respondent in June 2013 to represent her in a divorce and to file a writ of replevin regarding her vehicle.

8. Ms. Smith and respondent met at his office, where she executed “paperwork” and was told respondent would “get right on it.”

9. According to Ms. Smith, respondent failed to provide her with a copy of the paperwork.

10. A check was issued to respondent for \$1,000 on June 13, 2013; however, delivery was delayed since the address provided by respondent is also the address belonging to a Chinese restaurant.

11. Upon arrival of the check on June 20, 2013, it was immediately cashed by respondent.

12. After a few weeks passed with no progress, Ms. Smith requested that respondent file a Chapter 7 bankruptcy before the divorce.

13. Respondent agreed to file the bankruptcy for \$800 and told Ms. Smith that he would use the other \$200 toward court costs.

14. Over the next several weeks, respondent canceled 3 appointments with Ms. Smith, including one where she had driven to Gainesville, an hour from her home.

15. At this point, Ms. Smith began texting respondent instead of calling him, so she would have a record of their communication.

16. Respondent would ignore her for weeks and eventually respond that he was having personal problems at the moment and requested a meeting to discuss a time frame that would work for both of them.

17. Ms. Smith requested a refund of her \$1,000, only to be informed by respondent that he had already spent it and would pay her back when he could.

18. According to Ms. Smith, she spoke with respondent on September 26, 2013, and he told her that if she contacted the bar, he would not be able to refund her money, but if she didn't contact the bar, he would try to pay her back by the end of the year.

19. Ms. Smith filed a complaint with the bar on October 7, 2013.

20. On November 15, 2013, an ACAP attorney contacted respondent, who emailed back stating he would respond "ASAP."

21. Respondent failed to respond until May 20, 2014, when he sent a letter to the Grievance Committee, basically claiming that he did no work

for Ms. Smith because she had not signed a new fee agreement when her focus changed from divorce to bankruptcy.

22. Respondent emailed bar counsel on July 8, 2014, claiming he had sent a reimbursement to Ms. Smith.

COUNT II – KEVIN MITCHELL – TFB# 2014-00,819(8B)

23. On July 9, 2013, respondent filed a notice of appeal on behalf of Kevin Mitchell.

24. For the next nine months Mr. Mitchell attempted to communicate with respondent, requesting copies of the brief and other filings in his case, to no avail.

25. According to respondent, he had been communicating with a relative of Mr. Mitchell, Twanda Williams, and was of the opinion that Ms. Williams was acting as an intermediary with Mr. Mitchell. He claims to have provided Mr. Mitchell with all requested documents.

26. Mr. Mitchell's appeal was ultimately denied.

27. Additionally, respondent currently owes \$1,750 in monitoring fee arrearages to The Florida Bar.

28. Respondent has repeatedly agreed to provide updated mental health status reports but has failed to do so.

29. Respondent is currently not eligible to practice law and has been fees delinquent since November 17, 2017.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3-4.3 Misconduct and Minor Misconduct; 4-1.1 Competence; 4-1.3 Diligence; 4-1.4(a) Informing Client of Status of Representation; 4-1.4(b) Explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; 4-3.2 Expediting Litigation; 4-8.4(a) Violate or attempt to violate the Rules of Professional Conduct; and 4-8.4(g) Fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.4 LACK OF DILIGENCE

4.42 Suspension is appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.5 LACK OF COMPETENCE

4.52 Suspension is appropriate when a lawyer engages in an area of practice in which the lawyer knowingly lacks competence and causes injury or potential injury to a client.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Polk, 126 So.3d 240 (Fla. 2013) Ninety-day suspension from the practice of law was the appropriate sanction to impose on attorney for his representation of a client in his postconviction proceedings, including attorney's failure to communicate for nearly two years with the client or to return documents to the client despite numerous requests by the client, as well as attorney's misrepresentation to referee in connection with his disciplinary proceedings.

The Florida Bar v. Roberts, 770 So.2d 1207 (Fla. 2000) An attorney's consideration of his or her client's interests and communication with client at reasonable times in response to client's inquiries are a vital and necessary part of the attorney-client relationship. In this case, the attorney failed to keep the client reasonably informed of the status of representation and failed to explain matters to the client to the extent reasonably necessary to permit the client to make an informed decision. By failing to explain the matter to the client to the extent reasonably necessary to permit the client to make an informed decision warranted a 91-day suspension from the practice of law.

The Florida Bar v. Witt, 626 So. 2d 1358 (Fla. 1993), In attorney disciplinary proceeding, the Supreme Court held that continuing pattern of inaction in client representation warranted a 91-day suspension from the practice of law with requirement for reinstatement that rehabilitation be proved, including passing of ethics portion of bar examination.

The Florida Bar v. Scott F. Sawtelle, Case No. SC16-189 – By order dated February 25, 2016, the Court approved the consent judgment and suspended Sawtelle for 91 days. Respondent engaged in a pattern of misconduct in which he failed to adequately communicate with his criminal law clients, neglected their legal matters, and failed to timely respond to the bar.

The Florida Bar v. R. Shant Norgigian, SC18-883– By court order dated November 8, 2018, the court suspended respondent for 91 days effective immediately as respondent is currently suspended and placed him on probation for one year. Respondent was retained and paid a legal fee to file an action to recover unpaid rent in November 2015. Respondent failed to file the legal action or to return telephone calls and respond to emails from the client. Also, respondent was

retained to handle a personal injury matter but failed to advance the matter or provide the client with updates for two years. Respondent advised his client that he had personal issues related to the death of his mother, but then subsequently again failed to respond to emails or telephone calls from the client. Respondent also failed to timely respond to the written inquiries of The Florida Bar into the matters.

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:

91-day suspension;

Payment of The Florida Bar's Costs; and

Payment of respondent's past-due monitoring fees in the amount of \$1750.00 prior to petitioning the Florida Supreme Court for reinstatement.

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: 43

Date admitted to the Bar: April 16, 2010

Prior Discipline: None

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 Fee
Bar Counsel Costs

\$1,250.00
\$221.66

TOTAL \$1,471.66

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 22 day of March 2019.



Kristie M. Ruppe, Referee
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3.22.19