

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

TODD PATRICK SCHOLL,
Respondent.

Supreme Court Case
No. SC21-279

The Florida Bar File
No. 2021-30,038(10B)

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 February 23, 2021, The Florida Bar filed its Complaint against respondent 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**

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 December 20, 2019, approximately four-months after his admission to The Florida Bar, respondent was arrested in Seminole County, Florida and charged with first-time Driving Under the Influence (DUI) and Refusal to Give Breath, Urine, or Blood Test, both misdemeanors.

2. Respondent indicated to the arresting officer that he had two beers earlier in the evening as well as Robitussin cough drops but did not believe that he was impaired.

3. Respondent failed some of the field sobriety tests and the arresting officer noted the strong smell of alcohol on respondent's breath. After his arrest, respondent refused to take a breath test to measure his blood alcohol content.

4. On or about July 15, 2020, respondent pled no contest to the DUI charge, a misdemeanor, to conclude the matter.

5. According to respondent, he chose to enter a plea due to the

delays in processing criminal cases caused by the pandemic.

6. The State declined to prosecute the charge involving respondent's refusal to submit to a breath test.

7. Respondent was sentenced to a one-year period of probation with conditions, fines, and costs.

8. Thereafter, respondent was terminated from his employment at a law firm and was unemployed for over four months.

9. During his period of unemployment, respondent performed community service and voluntarily began attending Alcoholics Anonymous (AA).

10. Respondent voluntarily submitted to an evaluation by an evaluator approved by Florida Lawyers Assistance, Inc. In September 2020, based upon the evaluator's testing, respondent scored in the low probability of Substance Abuse Disorder. No further treatment was recommended.

III. RECOMMENDATIONS AS TO GUILT

Pursuant to the consent judgment, I recommend that respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3-4.3 (Misconduct and Minor Misconduct); 3-4.4 (Criminal Misconduct); and,

4-8.4(b) A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

700 Violations of Other Duties Owed as a Professional

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

7.1(c) Public reprimand is appropriate when a lawyer negligently 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.

3.2(b) Aggravating Factors

None.

3.3(b) Mitigating Factors

- (1) absence of a prior disciplinary record;
- (5) full and free disclosure to the bar or cooperative attitude toward the proceedings;
- (11) imposition of other penalties or sanctions; and,

(12) remorse.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Ellzey, 2020 WL 857392 (Fla. Feb. 20, 2020)

(Unpublished Disposition), pursuant to a consent judgment, respondent received a public reprimand and a three-year period of probation with FLA, Inc. Respondent was arrested for DUI and refusal to submit to testing. He was charged with felony driving under the influence of alcohol, third offense within ten years. Respondent pled guilty to misdemeanor DUI and misdemeanor refusal to submit to testing and was adjudicated guilty of both charges. Respondent completed the terms of his criminal probation. He did not have a prior discipline history.

The Florida Bar v. Richards, 2018 WL 4293367 (Fla. Aug. 30, 2018)

(Unpublished Disposition), pursuant to a consent judgment, respondent received a public reprimand and an evaluation by FLA, Inc. In March 2018, respondent was arrested for Driving Under the Influence and Resisting an Officer Without Violence. Respondent later entered pleas of no contest and was adjudicated guilty of both first-degree misdemeanors.

Respondent also disclosed a prior arrest for Driving Under the Influence,

Refusal to Submit to Breathalyzer, which occurred in 2015. The 2015 case resulted in a conviction for Reckless Driving. After respondent reported the 2015 case to the bar, she was evaluated by FLA, Inc. The evaluation found that no further treatment was warranted. As a result, the bar closed the 2015 case with a letter of advice.

The Florida Bar v. Wysong, 2017 WL 2376421 (Fla. June 1, 2017) (Unpublished Disposition), pursuant to a consent judgment, respondent received a public reprimand and probation with FLA, Inc. Respondent was arrested and charged with DUI second offense (misdemeanor), possession of drug paraphernalia (misdemeanor), and possession of cocaine (felony). Respondent was involved in a traffic crash wherein witnesses claimed respondent ran a red light, and she appeared to be under the influence of drugs and/or alcohol. Respondent refused a field sobriety test. Upon arrival at booking, a small baggie of what tested positive as cocaine was found in the seat of the police car where respondent had been seated. Less than 72 hours after the arrest, respondent completed a urine and hair follicle drug test at her own expense, and the results were negative for cocaine, amphetamines, opiates, PCP, or cannabinoids. The charges of possession of drug paraphernalia and possession of cocaine were nolle

crossed. Respondent pled and was adjudicated guilty of reckless driving. Respondent had a prior adjudication of guilt for leaving the scene of an accident with damage to a vehicle or other property in 2014. Respondent also had a prior adjudication of guilt for DUI in 2010. Respondent failed to notify the bar of the adjudications of guilt. Respondent sought rehabilitation after her last adjudication of guilt and was undergoing mental health treatment. She had no prior discipline.

The Florida Bar v. Trescott, 168 So. 3d 230 (Fla. 2015) (Table Citation) (Unpublished Disposition), the Court approved a consent judgment for a public reprimand. Trescott was arrested and charged with possession of drug paraphernalia and DUI. She pled no contest to the possession of paraphernalia charge and to the reduced offense of reckless driving. Adjudication was withheld, and she was sentenced to probation. FLA, Inc. was not ordered because she took affirmative steps towards rehabilitation by engaging in counseling sessions through the Phoenix Group and was continuing her rehabilitative treatment through a psychiatrist and family therapist. Trescott had no prior discipline.

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. Public reprimand to be administered by publication; and,
- B. Payment of the disciplinary 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: 44

Date admitted to the bar: August 1, 2019

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:

Investigative Costs	\$364.00
Administrative Fee	\$1,250.00

TOTAL	\$1,614.00
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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 13th day of May, 2021.

A handwritten signature in blue ink, appearing to read "Kathleen H Roberts", with a long horizontal flourish extending to the right.

Kathleen Hill Roberts, Referee

Original To:

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

Conformed Copies to:

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