

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

CHRISTOPHER M. CHESTNUT,

Respondent.

Supreme Court Case Nos.
SC16-797 and SC16-1480

The Florida Bar File Nos.
2015-00,161(4B), 2015-00,505(4C),
2015-00,565(4D), 2016-00,047(4C),
2016-00,193(4A), 2016-00,229(4B),
2016-00,473(4B), 2016-00,517(4D)

PRELIMINARY REPORT OF REFEREE

SUPREME COURT CASE NO. SC16-797

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 May 6, 2016, in SC16-797, The Florida Bar filed its Complaint against Respondent who answered on June 27, 2016. Thereafter the Court held its first status conference on July 8, 2016. On August 16, 2016, The Florida Bar filed a second Complaint in SC16-1480. Respondent answered SC16-1480 on September 6, 2016. Pursuant to Respondent's motion to consolidate and without objection, on

September 26, 2016, SC16-797 and SC16-1480 were consolidated into one eight-count case and scheduled for trial during the two-week period commencing December 12, 2016. On that date, the final hearing in all of the above-noted cases began. The trial continued for one week until Friday, December 16, 2016.

The Court ordered the parties to submit their closing arguments in writing. The initial due date was extended until February 27, 2017. The parties were also directed to submit draft reports of referee by that same date. In the event a sanction hearing were required, the Court ultimately reserved March 27, 2017, to allow sufficient time for preparation of the final report of referee which is due on or before May 15, 2017. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence, and the Final Report of Referee constitute the record in this case and will be forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

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.

Narrative Summary Of Case. Mr. Chestnut is the owner of The Chestnut Law Firm, LLC. He is licensed to practice law only in Florida.

COUNT I: TFB FILE NO. 2015-00,161(4B)
LAKAY SMITH

On July 28, 2012, Charles Smith was killed in an apartment complex in Woodbine, Georgia. After his death, his Mother, LaKay Smith, contacted The Chestnut Law Firm for representation in a wrongful death action. An investigator for The Chestnut Law Firm visited Mrs. Smith in her home.

On July 31, 2012, Mrs. Smith executed a Statement of Client's Rights and a Fee Contract granting The Chestnut Law Firm the authority to represent her wrongful death claim. That Contract was signed by Christopher Chestnut on behalf of The Chestnut Law Firm, LLC, on August 7, 2012. Mr. Chestnut is not licensed to practice law in Georgia.

Over the next two years, multiple representatives of the firm had responsibility for the file. A review of the Respondent's Answer to The Bar Complaint and the testimony reflects that the firm remained active gathering information and investigating the claim. There was criminal prosecution of the defendants who killed Charles Smith which hampered the firm's ability to obtain information necessary to file suit.

Mr. Chestnut had limited involvement with this case until March 2014. Attorney Reneau in the Atlanta office, determined from his review of the law and facts that the firm should not pursue the case. After discussing this with Mr.

Chestnut, Mr. Chestnut testified that this prompted him to look into the case. Mr. Chestnut determined that the current system which the firm used to decline representation, often times generated complaints from clients because they received a one page letter that they construed as callous. As a result, Mr. Chestnut forwarded a correspondence to Mr. Reneau on March 31, 2014, directing him to prepare a Memorandum for the file and the client relating to the legal and factual reasons why the firm was declining representation.

Mr. Chestnut identifies himself as the CEO of the law firm and was assuming supervisory responsibility at that time.

Notwithstanding Mr. Chestnut's instruction, the memo was not timely prepared. Mr. Chestnut's Paralegal, Mr. Harrison, sent him a case memo on May 7, 2014, questioning "are we offing this case" noting that the Statute of Limitation runs on July 27, 2014.

On May 27, 2014, Mr. Harrison, sent an email to Messrs. Chestnut and Reneau stating "We are dangerously close to the SOL in this matter. One of you needs to make a call to the numbers below to shut this matter down." On June 11, 2014, Mr. Reneau contacted Mrs. Smith by telephone. She was specifically advised in detail of the firm's reasons for not proceeding with the filing of suit. After Mr. Reneua had spoken to Mrs. Smith on June 11, 2014, he sent Mr. Chestnut an email stating:

“Chris, it is imperative that you give Mike Glover a call and you guys give [Ms. Smith] a call today. If Glover is not available, then you definitely still have to give her a call today...Once Chris calls Ms. Smith today the necessary steps should be taken to close this file.”

On that same date, Mrs. Smith called the law firm and advised that she would be seeking the assistance of alternate counsel. Mrs. Smith corresponded with the firm on July 10, 2014, and expressed her dissatisfaction with the handling of her case. She made repeated efforts thereafter to obtain her file. She asked her Niece, Leavie Thomas, for assistance. Ms. Thomas contacted the firm several times in efforts to obtain the file without success. On July 21, 2014, Mr. Harrison replied to Ms. Thomas’s inquiry stating “Your attorney is Attorney Chestnut. I am his paralegal.” He further emailed her “Mr. Chestnut handles his own emails.... Your request for files or copies should be directed to Mr. Chestnut.”

On August 13, 2014, Attorney John M. Phillips who had been contacted by Mrs. Smith regarding representation faxed a letter to all of the offices of The Chestnut Law Firm requesting a copy of the file. One copy of that letter indicated that this was a “Second Request”.

On August 13, 2014, Mr. Chestnut sent a case note to his paralegal:

“Bill,

Lets have someone prepare this file for me to review before sending out.

Thanks.”

Not until April 2, 2015, months after the Statute of Limitations expired did The Chestnut Law Firm send a Formal Letter advising Mrs. Smith that they were declining representation. Based on the foregoing, the Respondent has violated the following rules regulating The Florida Bar:

4-1.4(a)-(Communication);

4-5.1-(Supervising Lawyers); and

4-8.4(a)-(Violate or attempt to violate the Rules of Professional Conduct).

COUNT II: TFB FILE NO: 2015-00,505(4C)
EMANUEL BAKER, SR.

On July 2, 2012, Emanuel Baker, Sr. was involved in a catastrophic work-related accident in Alachua County, Florida, which left him a quadriplegic with brain damage. On July 23, 2012, while Mr. Baker was in intensive care at Shands Hospital, Mrs. Baker and her Son, Tyrone Baker, met with the Respondent, Christopher Chestnut. The Respondent agreed to represent The Baker's and presented Mrs. Baker and Tyrone Baker with a Contingency Fee Agreement. After some discussion, the Respondent crossed-out the 33 and a third (33 1/3%) fee and replaced it with a 28% fee regardless of the amount recovered. Mrs. Baker executed the Agreement on behalf of her Husband with no apparent authority to do so. When the Fee Contract was negotiated, the Respondent made no effort to visit or converse with Mr. Baker and confirm his competency to make legal decisions on his own or to designate others to make decisions on his behalf.

Mr. Baker was transferred to The Shepherd Center, a rehabilitative facility in Georgia. Mrs. Baker spent the majority of her time at the center with her husband. On September 1, 2012, the Respondent sent his authorized non-attorney agent to see Mrs. Baker while she was at The Shepherd's Center with various documents for her signature. One of the documents that Mrs. Baker was directed to sign was a new Contingency Fee Contract entitled "Authority to Represent", which now provided for a 40% contingency fee regardless of the fee recovered. Mr. Baker did not have the capacity to authorize his Wife to sign these documents on his behalf. Paragraph 3 of the Contingency Fee Contract provided as follows:

"The undersigned clients understand that the percentages set forth in Paragraph 1(a) through (e) above exceed the standard amounts established by the Rules Regulating the Florida Bar. However, the undersigned clients are unable to obtain representation in this case from the attorneys of his/her choice, namely THE CHESTNUT FIRM, because of the limitations set forth in the Rules Regulating The Florida Bar. Therefore, after having been advised of his/her rights, the undersigned clients agree to the terms of this contract in order to obtain counsel of his/her choosing."

The Baker's were never informed of the limitations on contingency fee contracts established by the Rules Regulating The Florida Bar. The Chestnut Law Firm was previously retained to represent them, therefore, the statements in this new Fee Contract that they were unable to obtain representation was false. Mrs. Baker was also directed to sign a "Consent of Petitioner", alleging that The Baker's "...have a

full and complete understanding of their rights as specified in the Statement of Client's Rights which has been previously signed."

In addition, no explanation was given to Mr. or Mrs. Baker regarding what Mrs. Baker was signing, the consequences of her executing the documents or any rights that she was waiving on her husband's behalf.

The Respondent's employee did not provide Mr. or Mrs. Baker with copies of the documents which she signed. Mrs. Baker did not possess a valid Power of Attorney allowing her to consent to the representation of her husband.

On October 5, 2012, Mr. Chestnut filed suit on behalf of The Baker's against the parties' responsible for Mr. Baker's injuries in Alachua County Circuit Court. On October 26, 2012, the case was removed to the U.S. District Court for the Northern District of Florida.

On March 16, 2013, Mr. Chestnut directed his Associate, Attorney Yozgat, to appear before Alachua County Circuit Judge Hulslander for a Petition for Order Approving Attorney's Fee Contract. That Petition stated among other things that The Baker's "have a full and complete understanding of their rights", that they "completely understand the terms of the Contingency Fee Contract", that they "executed a document under oath entitled Consent of Petitioners", and that they request the Court approve the 40% Contingency Fee. All of those statements were false.

Judge Hulslander met with the Associate and questioned his jurisdiction to rule on the Petition because the case had been removed to Federal Court. The Judge requested that Mr. Chestnut or a member of his firm return with the clients so that he could be assured that they were, in fact, aware of and in agreement with the Petition.

Mr. Chestnut then directed his Associate to take the Petition before a Judge in Duval County and attempt to have it approved there. The case style on the Petition was changed from Alachua County to Duval County. The Associate Attorney testified in his deposition that he felt that attempt was unethical and declined to approach a Duval County Judge for approval.

Mr. Chestnut knew, or should have known, that in accordance with Rule 4-1.5(f)(4)(b)(ii)

“...the client may petition the court...for approval of any fee contract between the client and an attorney of the client’s choosing. The application for authorization shall be given if the court determines the client has a complete understanding of the client’s rights and the terms of the proposed contract. The application for authorization of such a contract can be filed as a separate proceeding before suit or simultaneously with the filing of a complaint.”

At no time was this explained to The Baker’s and no Petition was ever executed by The Baker’s.

The Federal case settled for \$8,000,000.00 in June 2013. Mr. Chestnut subsequently went to The Baker’s home to induce Mr. Baker to sign the settlement

cheek and also attempted to have him execute a Settlement Memorandum which allocated a flat 40% fee and costs in excess of \$400,000.00.

The Baker's objected to the 40% fee and excessive costs. Mr. Chestnut returned to the home several times in efforts to have them sign the Settlement Memorandum and they refused. Mr. and Mrs. Baker hired alternate counsel.

On August 12, 2013, The Baker's filed a lawsuit against Mr. Chestnut in Alachua County.

On August 19, 2013, Mr. Chestnut filed a Petition for Approval of Attorney's Fee Contract in the lawsuit filed against him by The Baker's claiming that the consent of the Petitioner was "intelligently, intentionally, and voluntarily executed by Mrs. Baker in the conscious and coherent presence of Mr. Baker..." Based on that statement, Mr. Chestnut requested that the Court approve the 40% fee although he also admitted that The Baker's "will likely claim that they did not have a complete understanding of their rights..."

On August 21, 2013, in the original state Court case, *Baker v. Osmos*, the Respondent filed the Plaintiff's Motion to Re-open the Case only to hear the Petition for Approval of Attorney's Fee Contract along with his Petition for Approval asking the Court to uphold the terms of the authority to represent an award to the Respondent of 40% of the \$8,000,000.00 settlement. That Motion

was denied on November 15, 2013. The settlement proceeds were placed in a restricted account.

The August 12, 2013, lawsuit The Baker's filed against Mr. Chestnut was amended and an abbreviated summary of the relief sought is as follows:

COUNT I-DECLARATORY RELIEF. The Plaintiffs were seeking a determination the Fee Contracts executed by The Baker's were void and unenforceable for various reasons;

COUNT II-MALPRACTICE (Breach of Fiduciary Duty). The Plaintiffs' were seeking damages because the Defendants' had a duty to deal with The Baker's with the utmost degree of honesty, loyalty, and fidelity (fiduciary duty), and the Defendants' breached this fiduciary duty during their representation of The Baker's;

COUNT III-EXPLOITATION OF A DISABLED ADULT. Contending that Mr. Baker is a disabled adult and that the Defendants' exploited him for which monetary damages are recoverable pursuant to certain specified statutes.;

COUNT IV-DISCLOSURE OF MEDIATION COMMUNICATIONS. Alleging that the Defendants' violated Florida Statute Section 44.406 by disclosing confidential communications made during Mediation;

COUNT V-CIVIL THEFT. Alleging that the Defendants knowingly endeavored to obtain or use significant portions of The Baker's settlement

proceeds for presumed, clearly excessive and unauthorized attorney's fees with the intent to permanently deprive The Baker's of the use, benefit, and possession of those funds.

The Respondent filed an Answer and Counter-Claim. On October 21, 2014, the Trial Judge entered an Order granting the Plaintiffs' Second Motion for Summary Judgment on Count II of the Counter-Claim for breach of Contract and for Partial Summary Judgment on Count I of Plaintiffs' Verified Amended Complaint For Lack Of Consideration. That Order found that the 40% attorney's fee Contract dated September 1, 2012, was void for lack of consideration and unenforceable. On October 21, 2014, the Trial Judge also entered an Order granting, in part, Plaintiffs' Motion for Partial Summary Judgment declaring Contracts void, finding that the fee portion of the Contingency Fee Agreement dated July 23, 2012, for a contingency fee of 28% is "void as against public policy because it violates Rule 4-1.5 of The Rules regulating The Florida Bar".

In the Baker vs. Chestnut case the jury reached a verdict on December 9, 2014. The jury found that the Defendants' breached their fiduciary duty to The Baker's, committed civil theft, and exploited The Baker's. A portion of The Verdict Form is as follows:

2. "Do you find from the greater weight of the evidence that the Defendant, Christopher Chestnut, or any other attorney working for The Chestnut Firm, breached a fiduciary duty to the Plaintiffs,

Emanuel and Jessie Baker, in procuring representation of the Bakers under the September 1, 2012, Authority to Represent?"

As to Christopher Chestnut:

Yes ☒ No ☐

As to any other attorney with the Chestnut Firm:

Yes ☒ No ☐

3. "Do you find that the Defendant, Christopher Chestnut, or the Defendant, The Chestnut Firm, LLC committed any breach of fiduciary duty to the Plaintiffs, Emanuel and Jessie Baker other than those inquired about in Question #1 and #2 above, which was the legal cause of damages to the Bakers."

As to Christopher Chestnut:

Yes ☒ No ☐

As to the Chestnut Firm:

Yes ☒ No ☐

4. "If you answered YES to any part of Question #3, what is the amount of damages sustained by the Bakers?"

\$322,250.00

5. "Do you find from clear and convincing evidence that the Defendant, Christopher Chestnut, or any other employee of The Chestnut Firm committed civil theft to the Plaintiffs, Emanuel and Jessie Baker, which was the legal cause of damages sustained by them?"

As to Christopher Chestnut:

Yes ☒ No ☐

As to any other employee of The Chestnut Firm:

Yes √ No _____

6. "If you answered YES to any part of question 5, what is the amount of damages sustained by the Bakers?"

\$15,010.33.

7. "Do you find from clear and convincing evidence that Defendant, Christopher Chestnut, or any other employee of The Chestnut Firm, committed exploitation of Plaintiff, Emanuel Baker?"

As to Christopher Chestnut:

Yes √ No _____

As to any other employee of The Chestnut Firm:

Yes √ No _____

8. "If the answer is Yes to any part of Question #7, what is the amount of damages sustained by the Plaintiff, Emanuel Baker, and not already accounted for in your answer to question #6?

\$18,750.00

The jury ruled in favor of the Defendants on their claim for quantum meruit for service provided and costs incurred. On February 17, 2015, the parties signed a Settlement Agreement which resulted in the Respondent receiving less than the jury award.

By virtue of the foregoing, the Respondent has violated the following Rules Regulating The Florida Bar:

- 4-1.5(a)(Excessive fee);
- 4-1.5(d)(Enforceability of contracts);
- 4-1.5(e)(Duty to communicate);
- 4-1.5(f)(Contingent fees);
- 4-3.3(Candor);
- 4-5.1(Supervising lawyers);
- 4-5.3(Supervising non-lawyers);
- 4-8.4(a)(Violate or attempt to violate the Rules of Professional Conduct);
- 4-8.4(c)(Dishonesty, fraud, deceit, or misrepresentation).

COUNT III: TFB FILE NO. 2015-00,565(4D)
JOHNNY WINTHROP POWELL

Mr. Chestnut advertised via the Internet that one of his practice areas was “hazing injury claims.” He advertised that his firm handles hazing claims across the country. Johnny Winthrop Powell was a student at Stevenson University pledging to a fraternity, Kappa Alpha Psi, at Coppin State University. Mr. Powell’s hazing injuries occurred in February 2013. Both Mr. Powell’s Aunt and his Mother spoke with Mr. Chestnut regarding representation for the hazing injuries that Mr. Powell suffered. In March 2013, Mr. Powell executed a Retainer Agreement which was subsequently returned to the Respondent.

Mr. Powell and/or his Mother made various inquiries of the firm for the next year. He did not receive regular updates concerning the status of his case.

The case notes reflected that the Respondent was kept informed of the status of the case and his advice was sought from firm representatives.

On April 19, 2013, Attorney Yozgat sent a comprehensive memorandum to Mr. Chestnut regarding the case summary. On March 25, 2014, Mr. Chestnut was provided a case note regarding a client telephone call wherein Ms. Powell requested a case update. In response to a June 9, 2014, telephone message from the client concerning a status update, a case note was forwarded to Mr. Chestnut requesting that he please review and advise concerning the hazing case. On December 31, 2014, Mr. Chestnut was contacted by Jamie Agnew requesting Mr. Chestnut's input. On January 16, 2015, a message was delivered to Mr. Chestnut indicating that Mr. Powell had again called and requested a return call. The records reflect that Mr. Chestnut did not respond to a majority of these requests for assistance.

On January 21, 2015, Mr. Powell fired Mr. Chestnut because no lawsuit had been filed. At that time, Mr. Powell spoke with Attorney Jamie Agnew requesting a copy of the Tort Claim that The Chestnut Firm had filed with the Maryland Treasurer. Ms. Agnew told Mr. Powell that she had never heard of that term. Mr. Powell subsequently contacted the firm requesting a copy of his Contract and file.

He was emailed the Contingency Fee Agreement, the Statement of Client's Rights and Client Authorization for Release of Information which had been signed by Mr. Powell in March 2013.

At no time did Mr. Chestnut or any firm member inform Mr. Powell that the firm had failed to comply with the Maryland Tort Claims Act which requires written notice to be served to the State Treasurer or its designees within one (1) year of the alleged injury. As a result of firm's failure to comply with the Maryland Tort Claims Act, Mr. Powell's claims against the State of Maryland and Coppin State University were barred. Mr. Chestnut testified that he did not file any case against Mr. Powell's attackers. Neither Mr. Chestnut nor any member of his firm was licensed to practice law in Maryland.

Mr. Powell subsequently hired Jimmy Bell, Esquire. Mr. Bell emailed Ms. Agnew on February 3, 2015, requesting a copy of Mr. Powell's file. Ms. Agnew responded that there were no records to turn over to him because no insurance or medical records were ever received. On February 9, 2015, Mr. Bell sent a letter to Mr. Chestnut, at his personal email address, and to The Chestnut Law Firm. Mr. Chestnut failed to respond. Mr. Bell filed two (2) lawsuits, one on behalf of Mr. Powell against the fraternity and the second against Mr. Chestnut for legal malpractice seeking damages in excess of \$2,000,000.00. Mr. Chestnut's insurance carrier settled the malpractice case at Mediation and that case was

dismissed. By virtue of the following, the Respondent has violated the following Rules Regulating The Florida Bar:

4-1.1(Competence);

4-1.3(Diligence);

4-1.4(a) and (b)(Communication);

4-5.1(Supervising lawyers); and

4-8.4(a) (Violate or attempt to violate the Rules of Professional Conduct).

COUNT IV: TFB FILE NO.: 2016-00,047(4C)
ANDREW LEVY

Andrew Levy was an insurance agent who previously had business dealings with The Chestnut Law Firm in that capacity. Mr. Levy made a police report contending that there was a theft of personal property from a dwelling that he rented. His insurance company denied a portion of that claim.

The Chestnut Law Firm's records indicate that their file was opened April 23, 2013. Mr. Levy met with Mr. Chestnut in the office regarding his insurance claim. Mr. Chestnut assured Mr. Levy that the firm would handle his representation. Mr. Chestnut introduced Mr. Levy to an associate in the Gainesville office to handle the claim. According to the case notes, a meeting occurred with the client on May 8, 2013, in the Gainesville office. The attorney's notes further reflect that he was unsure if there was an actual Fee Contract which had been signed by Mr. Levy and was uncertain as to the type of Contract needed

to move forward. Mr. Levy contacted the firm numerous times to inquire as to the action being taken and was unsuccessful in obtaining any response.

In March 2014, responsibility for the case was transferred to the Atlanta office because the Gainesville office closed. On March 29, 2014, a case note entry by Mr. Harrison, a Paralegal, with the firm, concludes after speaking with the adjuster and reviewing the police/incident report that the insurance company's denial of Mr. Levy's claim was for good cause and that there was "no viable claim for litigation".

Mr. Levy next contacted the firm in February 2015. He was advised at that time that Mr. Harrison had left the firm and a new paralegal would be assigned. On April 25, 2015, the Office Manager contacted Mr. Chestnut asking how Mr. Chestnut wanted the matter to be handled. Mr. Chestnut responded several days later that the firm should immediately withdraw. Action was taken to immediately notify Mr. Levy that the firm would not proceed with representation.

Mr. Levy subsequently settled the claim with his insurance carrier.

By reason of the foregoing, the Respondent has violated the following Rules Regulating The Florida Bar:

4-5.1(Supervising lawyers); and

4-8.4(a) (Misconduct).

COUNT V: TFB FILE NO: 2016-00,193(4A)
DR. JOHN T. HOEHN

Dayna McGregor hired The Chestnut Law Firm to represent her after an automobile accident. She was referred by the Respondent's firm to Dr. John T. Hoehn, Chiropractic Physician, for treatment. Dr. Hoehn had accepted previous referrals from The Chestnut Law Firm. On March 7, 2012, Mr. Chestnut executed a "Letter of Protection-Authorization for Payment" on The Chestnut Law Firm letterhead and had it faxed to Dr. Hoehn's office on March 12, 2012. On March 23, 2012, Ms. McGregor signed a Letter of Protection on behalf of Affordable Chiropractic assigning any rights and benefits she would receive by virtue of the accident to the physician's office. Dr. Hoehn provided chiropractic treatment to Ms. McGregor.

On September 26, 2013, a representative of The Chestnut Law Firm, Attorney Mates, corresponded with Affordable Chiropractic acknowledging that the remaining balance due to the doctor's office was \$3,652.00. He requested that the physician accept \$1,500.00 in full settlement. In response, on September 30, 2013, Dr. Hoehn's office indicated that they would require a copy of the Settlement Statement to accept such a large reduction to the billing. On November 1, 2013, Mr. Chestnut, on behalf of The Chestnut Law Firm, forwarded a letter to the physician's office indicating that an auditor was conducting a review of the financial statements as of October 31, 2013, and requested that the doctor's

office confirm the liability owed to his office as of October 31, 2013. In response, the doctor signed and returned the letter on December 12, 2013, indicating a balance due of \$4,075.00 and again requested a Settlement Statement to support any reduction. There was no response from the Respondent or a firm representative.

In early 2015, Dr. Hoehn's office received a check from The Chestnut Law Firm for \$423.00 with an indication of "payment in full." On May 29, 2015, Dr. Hoehn's office communicated with The Chestnut Law Firm informing them of the remaining balance due. On June 8, 2015, Dr. Hoehn's office sent a letter to Mr. Chestnut detailing the total charges and informing him pursuant to the Letter of Protection that the full balance was due and that Dr. Hoehn had not agreed to accept anything less. Dr. Hoehn received a response from Attorney Jamie Agnew, one of the firm's associate attorneys, indicating that she would provide a copy of the Settlement Statement. The Settlement Statement was not provided at that time. Dr. Hoehn's office returned the \$423.00 check to Mr. Chestnut on July 10, 2015.

Ms. McGregor initially signed a Letter of Protection for Affordable Chiropractic specifically authorizing the Respondent's office to withhold from any settlement the funds necessary to satisfy Dr. Hoehn's bill. Despite receiving several correspondences from Dr. Hoehn's office confirming the amount due, the February 12, 2015, Settlement Statement which Ms. McGregor signed not only

lists the incorrect amount due Dr. Hoehn's office but also that a reduction has been authorized. Dr. Hoehn relied on the Respondent's Letter of Protection when he accepted Ms. McGregor's as a patient and provided her with professional services. Although The Chestnut Law Firm made various efforts to settle the dispute with Dr. Hoehn, he has not been paid the services rendered. By reason of the foregoing, the Respondent has violated the following Rules Regulating The Florida Bar:

4-8.4(a)(Misconduct);

5-1.1(e)(Notice of receipt of trust funds, delivery, accounting); and

5-1.1(f)(Disputed ownership of trust funds).

COUNT VI: TFB FILE NO. 2016-00, 229(4B)
KASHARA TAYLOR

On January 18, 2011, Antonio Lamar Gordon, Jr. was murdered. On January 25, 2011, Mr. Gordon's Mother, Kashara Taylor, met with Attorney Chestnut and hired him to pursue a wrongful death suit.

Mrs. Taylor received various correspondences from the law firm between July 14, 2011, and August 29, 2013. Multiple employees of The Chestnut Law Firm worked on Mrs. Taylor's case; however, they remained in contact with her.

She also understood that she was free to contact the firm at any time regarding representation and the status of her case.

Mr. Chestnut filed a Complaint in Marion County Circuit Court on January 4, 2013. Mrs. Taylor was informed via letter dated July 29, 2013, from a legal assistant at the Respondent's firm that a Defendant, the bowling alley, had filed for bankruptcy and an automatic bankruptcy stay had been granted. The Chestnut Law Firm engaged the services of a bankruptcy attorney. Mrs. Taylor received a letter on August 29, 2013, advising her that the attorney primarily handling her case left The Chestnut Law Firm and that the case would remain with the firm unless she instructed the firm otherwise. She remained with the law firm as a client.

Subsequent to filing the civil suit based on additional investigation, the Respondent's law firm determined that it was not feasible to proceed with representation. Mrs. Taylor received a letter dated May 1, 2015, advising her that the firm had decided not to pursue her case. The bankruptcy stay was lifted on approximately August 26, 2015. Mrs. Taylor was encouraged to obtain another attorney to represent her. She was unsuccessful in securing alternate representation. Based on the foregoing, the Respondent has not violated the Rules Regulating The Florida Bar referenced in this Count of the Complaint.

SUPREME COURT CASE NO. SC16-1480

COUNT VII: TFB FILE NO. 2016-00,473(4B)
ANTHONY DEMETRIUS JORDAN

On February 6, 2014, Deidre Spear, was killed in an automobile accident in Georgia. On February 7, 2014, while Ms. Berry was at Gregory Levett Funeral Home making arrangements for her daughter's funeral, a funeral home representative referred her to the Respondent. Ms. Berry met with Mr. Chestnut and signed a Retainer Agreement. She was provided a copy of the same in a letter dated February 10, 2014, confirming the firm's retention. On February 14, 2014, Anthony Jordan met with representatives of the firm and also signed a Fee Contract. Soon thereafter, he notified the firm that he did not desire their representation. He was informed that the documentation that he signed would be destroyed. Mr. Chestnut did not sign that Fee Contract.

On February 18, 2014, the Gregory B. Levett and Son Funeral Home faxed to Attorney Chestnut a copy of Deidre Spear's funeral bill. On February 24, 2014, Ms. Berry executed an advance funding agreement with Universal Funds. The contract included an Authorization for Attorney to Pay Universal Funds and an Acknowledgment of Authorization allowing the loan to be repaid from the settlement proceeds. The Authorization is signed by Ms. Berry and the Acknowledgment is signed by Mr. Chestnut.

Mr. Chestnut referred Ms. Berry to a Georgia probate attorney. On March 3, 2014, Ms. Barry, filed a Petition for Letters of Administration in the Estate of Deidre Spear with the Probate Court, Fulton County. That Court issued Letters of Administration to Ms. Berry and appointed her Administrator of the Estate on March 26, 2014.

On March 19, 2014, Ms. Berry filed a Petition for Temporary Letters of Guardianship. On April 15, 2014, the Probate Court entered an Order appointing Ms. Berry as the temporary guardian of A.J. In various pleadings which Ms. Berry filed, she alleged that Mr. Jordan's address was unknown to her.

The wrongful death claim was settled prior to filing suit. On May 28, 2014, Ms. Berry filed a Petition for Letters of Conservatorship of Minor in the Probate Court requesting that she be appointed A.J.'s conservator based on his entitlement to settlement proceeds from the wrongful death of his mother. Ms. Berry's petition again alleges that the "address for the Putative Father is unknown to the Petitioner." On June 4, 2014, the Court appointed Ms. Berry as conservator of A.J.'s proceeds.

On June 26, 2014, Ms. Berry filed in the Probate Court a Petition to Compromise Doubtful Claim of Minor or Adult Ward. The Probate Court issued its Final Order on October 30, 2014, and specifically found:

"Mr. Chestnut, although not a Member of the State Bar of Georgia, was practicing law in the State of Georgia and knew, or should have known, that

Ramona Berry was never going to be individually entitled to any proceeds from the wrongful death of Deidre Spear, that Ramona Berry was never going to be a beneficiary of the Estate of Deidre Spear because Ms. Spear died intestate and her only heir was her minor son, and Ramona Berry was not the Personal Representative of the Estate of Deidre Spear on either February 24, 2014 or February 25, 2014. The contract with Universal Funds was negotiated between Universal Funds and [respondent]. Ramona Berry never defrauded, misrepresented, or deceived anyone; she never received any money and was not entitled to receive any money from the wrongful death of her daughter in any of the capacities listed on the contract of February 24, 2014 or February 25, 2014. The contract negotiated between Universal Funds and [respondent] with a \$3,050 origination/processing fee and a 35.40% APR was unconscionable under the circumstances even if Ms. Berry had authority under any of the listed capacities, which she did not.” TFB Ex. T (pp.112-14).

The Probate Court also found that

a portion of the \$100,000 policy limits should be set aside for the benefit of the Estate of Deidre Spear. Accordingly, \$20,693 shall be allowed for the Estate of Deidre Spear for burial expenses, attorneys fees and expenses of administration, and the remainder of the \$100,000 policy limits shall be allowed for the Estate of Anthony Demetrius Jordan, Jr. for the wrongful death of his mother. Therefore, the Court approves the settlement of the minor’s claim for the wrongful death of his mother as follows:

a. Expenses:

- (i) Attorney’s fees (Chestnut Firm) attributable to minor \$28,160.00
- (ii) Expenses of litigation \$139.97
- (iii) Ms. Bates’ attorney fee (Probate) attributable to minor \$1,488.00
- (iv) Total of Expenses \$29,787.97
- b. Case to conservatorship \$49,519.03
- c. Gross Settlement \$79,519.03
- d. Net Settlement \$49,519.03 TBB Ex T (pp. 112-14)

On January 20, 2015, Ms. Berry executed State Farm's release acknowledging receipt of \$79,307 as Conservator and \$20,693 as Administrator of Deidre Spear's Estate.

Based on previous filings of Mr. Jordan, on July 24, 2014, the Superior Court, Family Division, awarded Mr. Jordan sole custody of A.J. On or about May 17, 2016, Mr. Jordan filed a Petition for Removal of Conservator and for an Accounting stating that Ms. Berry has been appointed Conservator and Guardian based on her repeated incorrect misrepresentations to the court that she was unaware of his address and existence. Mr. Jordan further stated in his Petition that the identity of A.J. paternal grandmother, Angela Jordan (his mother), had been completely concealed from the probate court, despite the fact that Ms. Berry and Ms. Jordan had cooperated extensively in the care of A.J.

On March 2, 2016, The Florida Bar received Mr. Jordan's initial Complaint. Mr. Jordan has not otherwise participated in the proceedings. There was conflicting evidence concerning the validity of the assertions made in his Affidavit.

There was no evidence the Respondent reviewed or otherwise participated in the preparation of the documents presented to the Probate Court nor did he have knowledge that the pleadings filed on behalf of Ms. Berry concealed the address of Mr. Jordan. Based on the foregoing the Respondent has violated the following Rules Regulating the Florida Bar:

4-5.5(a)(Unlicensed Practice of Law);

4-8.4(a)(Violate or attempt to violate the Rules of Professional Conduct);

and

4-1.8(a)(Conflict of interest; prohibited and other transactions).

The Respondent has failed to follow the guidance provided by the Florida Ethics Opinion 00-3[“An attorney may provide a client with information about companies that offer non-recourse advance funding and other financial assistance in exchange for an interest in the proceeds of the client’s case if it is in the client’s interest. The attorney may provide factual information about the case to the funding company with the informed consent of the client. Although the attorney may honor the client’s valid written assignment of a portion of the recovery to the funding company, the attorney may not issue a Letter of Protection to the funding company.”] Mr. Chestnut actions in signing the Letter of Protection is contrary to this Ethics Opinion, thereby creating a conflict with his own client and a prohibited business transaction.

COUNT VIII-TFB FILE NO.: 2015-00,517(4D)
TONI WASHINGTON

Ms. Toni Washington is the mother of Ms. Marcilyn Hestle who is the mother of Ty’Qaurius Moultrie. Ms. Washington represents her daughter due to her daughter’s disability.

On July 15, 2011, Ty'Quarius Moultrie, Mrs. Washington's minor grandson, was killed by stray bullets in the apartment that he lived in with his mother. Several days later an individual came to Mrs. Washington's home seeking to speak with her and solicit her to hire The Chestnut Law Firm. She did not speak to that individual, but advised her children to have the individual return on another day. The following Monday, a different individual came to Mrs. Washington's home making similar claims that the Respondent wanted to represent her. Mrs. Washington identified this man as Mr. Alfonso. Mr. Alfonso provided Mrs. Washington with Mr. Chestnut's Contract for representation which she signed. Mr. Alfonso remained in contact with Mrs. Washington and her family until the funeral. After the funeral, he left without notifying Mrs. Washington.

On August 31, 2011, Mrs. Washington signed an agreement with Golden Pear Funding for a \$5,000.00 advance against any settlement proceeds. This loan company was referred to her by Mr. Chestnut. Mr. Chestnut executed the Attorney's Certification on September 1, 2011, confirming that he had explained the agreement to Mrs. Washington. The initial loan amount was \$5,000.00 with an eventual payment due to Golden Pear Funding of \$35,931.00.

Mrs. Washington's efforts to obtain information regarding the status of the case were unsuccessful as she contacted the firm numerous times over the next several years. In 2014, she was contacted by an unknown individual from the

Respondent's law firm with a settlement offer of \$10,000.00 which she declined to accept.

On June 4, 2014, Mrs. Washington signed a Petition for Administration to be appointed the Personal Representative of her grandson's estate. That Petition named her daughter and Tyrone Moultrie as the natural parents of her grandson.

The case was mediated on April 9, 2015, and settled for \$600,000.00. Mrs. Washington was presented with several settlement memorandums. None of the Settlement Memorandums which Mrs. Washington reviewed included a distribution to Ms. Hestle and Mr. Moultrie.

On July 3, 2015, Mrs. Washington, as Personal Representative of the Estate and her daughter, signed a Settlement and Confidentiality Agreement and full release of all claims settling the action for the mediated sum. That Settlement Agreement provided in part that the funds would be payable to "Toni Washington, as Personal Representative of the Estate of Ty'Quarius Moultrie and The Chestnut Firm, LLC. and the Estate's beneficiary: Marcilyn Hestle and Tyrone Moultrie." Although Mrs. Washington objected to Mr. Moultrie receiving any of these funds, she was fully aware before she signed these documents that he would receive a portion of the proceeds. Mrs. Washington was represented by a probate attorney and recalled various discussions with that attorney concerning the necessity to split any recovery with Tyrone Moultrie. She acknowledged that this was a difficult

time for the family losing a child and that some of her recollection was not completely clear concerning those discussions.

The settlement specifically withheld \$10,000.00 for a Medicaid lien claim. After the settlement in June 2015, Mrs Washington investigated this claim. She determined that there was no claim against the Estate and thereafter contacted The Chestnut Law Firm. She was successful in having a check delivered to her in the amount of \$10,000.00 in October 2015. Her Bar Complaint was filed subsequent to receipt of those funds. Based on the foregoing, the Respondent has violated the following Rules Regulating The Florida Bar:

- 4-1.4(a) and (b)(Communication);
- 4-1.5(a)(Illegal prohibited, or clearly excessive fees);
- 4-7.18(a)(Direct contact with prospective clients); and
- 4-8.4(a)(Violate or attempt to violate the Rules of Professional Conduct.

Dated this 17th day of March, 2017.



Honorable Curtis Judson Neal
Circuit Court Judge and Referee
20 N. Main St., Rm 310
Brooksville, FL 34601

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