IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

CRYSTAL LYNN TURNER SEBAGO,

Respondent.

_____/

Supreme Court Case No. SC18-1961

The Florida Bar File No. 2018-10,114 (6D)

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 November 27, 2018, The Florida Bar filed its Complaint against Respondent in these proceedings. On April 22, 2019, the Referee conducted a hearing and took the sworn testimony of the Respondent, pursuant to Rule Regulating the Florida Bar 3-7.6(o)(2), prior to accepting the Conditional Guilty Plea for Consent Judgment. All of the aforementioned pleadings, responses thereto, notices, motions, orders, transcripts, exhibits, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Katrina S. Brown, Esq.
Sheila M. Tuma, Esq.

For Respondent: Burke George Lopez, Esq.

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.

The facts as set forth in the Conditional Guilty Plea for Consent Judgment are deemed admitted and adopted as my findings of fact as stated below:

During Respondent's employment with the Puzzanghera Law Offices, Respondent represented the plaintiff, Kristin Hill (f/k/a Kristin N. Taylor) in *Hill v. Jordan, et al.*, in a civil suit for negligence regarding an automobile accident. During the week of February 13, 2017, the *Hill v. Jordan* case proceeded to a second jury trial on the issue of the plaintiff's damages, and Respondent and Mr. Puzzanghera again represented the plaintiff at the second trial. During the trial, Respondent made some errors in introducing evidence and testimony. She realizes she was very stressed during the trial and may have misunderstood the judge's directives. One issue involved Respondent attempting to put in evidence of multiple medical providers' records regarding the treatment of her client. She normally did not need to have a records custodian testify as a witness as that requirement is almost always waived by the parties. In this case, that requirement was not waived. Respondent overlooked this issue and it was brought to her attention before the trial commenced in front of the jury when she attempted to introduce a binder of documents containing medical records of multiple providers into evidence. The court deemed the records inadmissible due to the improper custodial authentication and in accordance with a prior pretrial order which stated that the parties had not agreed to a waiver of records custodian. Thereafter, Respondent's office began contacting the medical providers' offices to have a records custodian appear at the trial to testify.

Respondent then called the plaintiff's first witness, Dr. Zak, who brought his medical file that contained his treatment records and also an identical or nearly identical binder of documents containing medical records from other providers with him to trial. Respondent asked Dr. Zak questions regarding being the records custodian for his records, including the binder of medical records from other providers. Dr. Zak testified that the records were part of his file for treatment of

the plaintiff and that he was the records custodian for his office. Respondent believed that the records were admissible. The Judge allowed the records into evidence after several arguments by defense counsel that Dr. Zak could not properly authenticate the documents in the binder.

At the end of the trial, but before the evidence went back to the jury for deliberation, Respondent voluntarily removed various documents from the binder before the Court and all parties. Respondent maintains that she removed documents for which a records custodian, other than Dr. Zak, did not testify in an attempt to resolve defense counsel's stated objections regarding the binder. Respondent stated that she believed Dr. Zak could authenticate the documents as he had reviewed them prior to the trial and testified that he relied on them in treatment of the plaintiff. In the Order Granting Defendants' Motion for New Trial, dated August 8, 2017, the court found that it abused its discretion when it permitted the binder to be admitted into evidence as Dr. Zak did not testify that he had the requisite knowledge to testify as to how the medical records from other medical entities were made or maintained.

Additionally, prior to the commencement of the jury trial, the court orally pronounced that no mention should be made regarding the plaintiff's alleged inability to work or find employment as the plaintiff was not pursuing a wage loss claim or future earnings claim. During the examination at the jury trial of another physician, Dr. Linde, the witness stated in response to a question by Respondent that the plaintiff could not work and defense counsel objected. Respondent believed her line of questioning was in accordance with the court's order and has stated that she did not have any intention to violate the order. Respondent maintains that the court found it was admissible for Dr. Linde to testify why the plaintiff was working at his office in exchange for treatment, and she did not anticipate Dr. Linde's response to her question regarding this arrangement would go beyond the scope of admissible testimony. At a sidebar regarding the defense's objection, the court stated that she was going to strike that portion of the testimony, and, "We're not going to –we can't say it to the jury, move on, so I I'll let you handle it." Thereafter, in front of the jury, Respondent instructed the witness that they were not allowed to discuss work and defense counsel again objected. At a subsequent sidebar, Respondent stated that she was "freaked out" that he was going to do it again. Respondent has stated she relied on the Judge's directive that she was going to let Respondent handle it and did not intend to violate the court's instructions. Respondent recognizes in hindsight that it was not the best practice to

instruct the witness in the manner she did. Respondent's instruction to the witness brought up the issue again in front of the jury. Thereafter, the court had to give a curative instruction to the jury. Dr. Linde provided an affidavit in this Bar matter stating that Respondent did not elicit the improper testimony, he had discussed the parameters of his testimony with her prior to trial, that he had never testified before and did not know his testimony would cause the problems that it did.

In a third instance and during the examination at the jury trial of Dr. Zak, Respondent asked one question regarding the plaintiff's lack of health insurance. Respondent maintains that no pretrial order was entered that precluded her from addressing the plaintiffs lack of health insurance, and she believed the case law supported her inquiry into this area. In the Order Granting Defendant's Motion for New Trial, the court found that the statements concerning lack of insurance and the plaintiff's financial status were not harmless error.

Upon the conclusion of the trial, the jury returned a verdict in favor of the plaintiff. The defendants filed a motion for mistrial. The court entered an order granting the defendants' motion for a new trial and found that it had erred in allowing the above-mentioned evidence introduced by Respondent. After the second jury trial, Respondent withdrew as counsel for the plaintiff, which was approved by court order. Respondent has since ceased her association with Puzzanghera Law Offices. The *Hill v. Jordan* case has been settled.

III. HEARING PURSUANT TO RULE 3-7.6(o)(2).

The Referee conducted a hearing and took the sworn testimony of the Respondent prior to accepting the Conditional Guilty Plea for Consent Judgment pursuant to Rule Regulating The Florida Bar 3-7.6(o)(2). Specifically, at said hearing, the Referee accepted the Respondent's admissions under oath on the record in open court as to violating the following Rules Regulating The Florida Bar: 4-3.4(c); 4-8.4(a); and 4-8.4(d)(the transcript of the hearing conducted on April 22, 2019, is included as part of the record of this proceeding).

Thus, the Referee exercised his independent discretion in all aspects as to whether to accept or reject the Conditional Guilty Plea for Consent Judgment as well as the form and content of this Report of Referee.

IV. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: **Rule 4-3.4(c)** (Fairness to Opposing Party and Counsel: A lawyer must not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists); **Rule 4-8.4(a)** (Misconduct: 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); and **Rule 4-8.4(d)** (Misconduct: A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice).

V. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards in support of the disciplinary measures to be applied:

6.2 Abuse of the Legal Process.

6.22 Suspension is appropriate when a lawyer knowingly violates a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

3.0 Generally.

The Referee considered all relevant factors including, but not limited to, the factors set forth in Standard 3.0 as to: (a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (4) the existence of aggravating and mitigating factors.

In aggravation, Respondent has a prior disciplinary history [Fla. Stds. Imposing Law. Sancs. 9.22(a)]; and her actions at the two jury trials are indicative of a pattern of misconduct [Fla. Stds. Imposing Law. Sancs. 9.22(c)].

In mitigation, Respondent had an absence of a dishonest or selfish motive [Fla. Stds. Imposing Law. Sancs. 9.32(b)]; and Respondent has personal or emotional problems [Fla. Stds. Imposing Law. Sancs. 9.32(c)], Respondent was under a lot of stress while employed at the Puzzanghera Law Offices and had a

demanding case load. Respondent has agreed to be evaluated by Florida Lawyers' Assistance, Inc., and to comply with any and all recommendations made following such evaluation. Additionally, Respondent is remorseful [Fla. Stds. Imposing Law. Sancs. 9.32(l)]; and made full and free disclosure to the disciplinary board [Fla. Stds. Imposing Law. Sancs. 9.32(e)].

VI. CASE LAW.

I considered the following case law in support of the disciplinary measures to be applied:

Florida Bar v. Committe, 916 So. 2d 741 (Fla. 2005) (90-day suspension): The Florida Supreme Court found that Committe's conduct in abusing the legal process by filing frivolous federal lawsuits, in knowingly failing to comply with a legally proper discovery request, and in knowingly failing to appear at a scheduled deposition warranted a 90-day suspension. Committe was found guilty of violating Rules 4-3.1; 4-3.4(c, d); and 4-8.4(a, d). In aggravation, the Referee found that Committe engaged in a pattern of misconduct, committed multiple offenses, and had substantial experience in the practice of law. In mitigation, the Referee found that Committe had no prior disciplinary record, made a full disclosure, and was cooperative in the disciplinary proceedings.

Florida Bar v. Tobkin, 944 So. 2d 219 (Fla. 2006) (91-day suspension): The Florida Supreme Court suspended an attorney for 91-days for the attorney's conduct in connection with two medical malpractice cases in which he represented the plaintiffs. Tobkin was found to have intentionally violated the court's discovery orders, filed a sham proceeding, and created a disturbance at cancer center when he met there with defense counsel concerning his client's X-rays, which resulted in the center's security personnel being summoned. Tobkin was found guilty of violating numerous rules of professional conduct (Rules 4-3.1; 4-3.4(a, c, d); and 4-8.4(d)), including rules prohibiting attorneys from engaging in conduct prejudicial to the administration of justice, and from knowingly disobeying an obligation under rules of a tribunal. Tobkin continued to believe his conduct was nothing more than zealous advocacy and he blamed his problems on the trial court, defense counsel, The Florida Bar, and the grievance committee.

VII. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED.

In accepting the Conditional Guilty Plea for Consent Judgment, and the agreed-upon disciplinary measure of a 90-day suspension, the Referee considered the totality of the circumstances of the case including the allegations in the Bar's Complaint, the factual bases for the guilty plea and discipline set forth in the consent judgment, and the Referee's review of excerpts of transcripts of the underlying jury trial proceeding wherein the Respondent noted to the trial judge, on several occasions, a stated desire to not violate any prior rulings of the court or to commit any wrongful conduct or to do anything that would lead to disciplinary proceedings. Under the totality of the circumstances, the Referee would not find it appropriate to recommend imposition of a suspension in excess of 90 days.

Pursuant to the Conditional Guilty Plea for Consent Judgment, I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that she be disciplined by:

a. Respondent shall receive a ninety (90) day suspension.

b. Respondent shall undergo an evaluation with Florida Lawyers Assistance, Inc. within 30 days of the Court's order accepting this consent judgment. Respondent shall follow all recommendations by Florida Lawyers Assistance, Inc. Respondent agrees to be placed on probation for the period of the FLA contract, if one is recommended, but such probationary period shall not exceed five years. Respondent will pay a Florida Lawyers Assistance, Inc., registration fee of $250.00 and a probation monitoring fee of $100.00 a month to The Florida Bar's headquarters office. All monthly monitoring fees must be remitted no later than the end of each respective month in which the monitoring fee is due. All fees must be paid to the bar's headquarters office in Tallahassee. Failure to pay shall be deemed cause to revoke probation.

c. Payment of The Florida Bar's costs as noted below.

VIII. 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: 39.

Date admitted to the Bar: October 5, 2007.

Prior Discipline: Pursuant to Order dated June 23, 2016, in SC15-2190, the Court approved a report of referee suspending Respondent for 20 days and requiring her attendance at Ethics School and Professionalism Workshop for misconduct in four separate matters. The misconduct involved Respondent's failure to obey a court order, which led to the entry of an order of civil contempt in one matter; unprofessional behavior during a deposition in the second matter; filing a pleading containing incorrect statements that was later amended, and failing to participate in an arbitration in the third matter; and failing to appear at a pre-trial conference and missing discovery deadlines in the fourth matter. Respondent successfully completed the prior disciplinary sanction.

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

I find the costs set forth in The Florida Bar's Motion to Assess Costs and Statement of Costs filed in this cause were reasonably incurred and were not unnecessary, excessive, or improperly authenticated. The Referee considered, but recommends the denial of, certain stated objections submitted by the Respondent as to these costs.

Administrative Fee pursuant to Rule 3-7.6(q)(1)(I)	$1,250.00
Court Reporters' Fees	$6,190.41
Bar Counsel Costs	$143.83
Investigative Costs	$188.50
Copy Costs	$842.85
TOTAL	$8,615.59

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 9th day of May 2019, at Plant City, Hillsborough County, Florida.

ORIGINAL SIGNED
CONFORMED COPY
MAY 09 2019
RICHARD A. WEIS
CIRCUIT JUDGE

Honorable Richard Arlen Weis, Referee

Original To:

Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399-1927, and via electronic mail to e-file@flcourts.org

Conformed Copies to:

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