

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

HERBERT ERVING WALKER, III.

Respondent.

Supreme Court Case
No.

The Florida Bar File Nos.
2017-70,382 (11H)
2017-70,511 (11H)

COMPLAINT

The Florida Bar, Complainant, files this Complaint against Herbert Erving Walker III, Respondent, pursuant to Chapter 3, Rules Regulating The Florida Bar and alleges the following:

1. Respondent is, and at all times mentioned in the complaint was, a member of The Florida Bar, admitted on October 4, 1999 and subject to the jurisdiction of the Supreme Court of Florida.
2. Prior to the filing of this Complaint, there has been a finding of probable cause by a grievance committee as required by Rule 3-7.3(1), Rules Regulating The Florida Bar. The presiding member of the grievance committee has approved the instant Complaint.

Complaint by the Honorable Yvonne Colodny and Arthur Wallace
The Florida Bar File Nos. 2017-70,382 (11H) and 2017-70,511 (11H)

3. In or around October, 2008, and at all relevant times, Respondent Represented criminal defendant, Arthur Wallace, who was charged with accessory after the fact, a second degree felony, for allegedly driving co-defendant Parley Paskett out of state to avoid prosecution.

4. Mr. Paskett was charged with first degree murder. Paskett appeared pro se until he retained attorneys Andrew Rier and Jonathan Jordan to represent him on November 19, 2013.

5. The Honorable Yvonne Colodny was the presiding judge in the criminal proceedings.

6. While in custody at the Turner Gilford Knight Correctional Facility, Mr. Paskett contacted Respondent via telephone to inquire whether Respondent had scheduled a meeting with the prosecutor in Mr. Paskett's case. That conversation took place on or about November 19, 2013.

7. Mr. Paskett went on to inform Respondent that he had retained Andrew Rier's office to represent him and that a Notice of Appearance had been filed on his behalf.

8. Respondent did not terminate the phone call upon learning that Mr. Paskett had retained counsel. Instead the following exchanged occurred:

MR. WALKER: Yeah. Did you retain him? Did you pay him yet?

PARLEY PASKETT: Yeah, he's paid in full.

MR. WALKER: Okay. All right.

PARLEY PASKETT: Don't worry I ain't forgot about you. There's enough to go around.

MR. WALKER: Okay. Because you can throw a little my way, you understand.

PARLEY PASKETT: I know that I got you.

MR. WALKER: I did work here.

PARLEY PASKETT: Listen, I know, I got you man. You're finessing the situation and I definitely recognize it and appreciate it.

MR. WALKER: Okay.

PARLEY PASKETT: All right.

MR. WALKER: Okay. Don't forget.

VIOLETA: If he don't got you, I get you.

(An excerpt of the November 19, 2013 transcript is attached as Exhibit "A").

9. In or around December 2013, Respondent visited Mr. Paskett at the Turner Guilford Knight Correctional Facility. Additionally, Respondent accepted a cash payment of \$2,000.00 from Mr. Paskett's mother for services rendered on her son's behalf.

10. Respondent was still representing Mr. Wallace at the time.

11. During all relevant times, Mr. Wallace was unaware that Respondent was communicating with his co-defendant or that he had accepted money from Paskett's mother.

12. Eventually, Mr. Paskett resolved his case. He entered into a plea

agreement with the Miami Dade State Attorney's office on or about January 26, 2015. Part of that agreement required him to cooperate with the State and to testify against his co-defendant Mr. Wallace.

13. Prior to Mr. Paskett's plea, Respondent continued to visit Mr. Paskett at the correctional facility and asked Mr. Paskett for money. Mr. Paskett had a telephone conversation with his mother regarding his earlier conversation with Respondent during which the following exchanged occurred:

PARLEY PASKETT: Guess what? Who? Walker came to see me yesterday.

VIOLETA PASKETT: Oh, wow.

PARLEY PASKETT: Yes, and

VIOLETA PASKETT: What is he saying?

PARLEY PASKETT: He came, I think, at 1:00 and we were there until 2:30. We talked and I was showing him everything I found and how it's going to affect—affect him and everything. He's on vacation for the next two weeks.

PARLEY PASKETT: But—but the shameless guy came to ask me for more money and I said no, I don't have more money to give you. And anyways, what I'm doing is helping him because---

VIOLETA PASKETT: It's the other way around. They should be the ones to.

PARLEY PASKETT: Exactly. They should be happy.

VIOLETA PASKETT: Anyways, he told me one thing and something else happened.

PARLEY PASKETT: Exactly. And—and I told him I have nothing to give him and—and

VIOLETA PASKETT: And—and—and—and in guarantee of what?

PARLEY PASKETT: No, no, no, but it's—no, no, no, no.

VIOLETA PASKETT: Wasn't it that he was going to work that he—

PARLEY PASKETT: I—I spoke to him very clearly and he told me that the prosecutor Warfman is in—is in—nothing. He was even telling me some things that I don't want to say over the phone, but the guy won't do any favors for—for.

VIOLETA PASKETT: But he asked for it like that, with no shame?

PARLEY PASKETT: Yes, no shame. He told me last year, you gave me two so this time it would be better if you give me two more or three more. And I looked at him with a face of like what for. It that was for you to try to talk to that guy to see if he is right and now you are telling me that. And in the end there's no reason, so why are we going to give you money if there's no reason anyways?

(An excerpt of the December 27, 2014 transcript is attached as Exhibit “B”).

14. Following Mr. Paskett's plea, Judge Colodny continued to preside over Mr. Wallace's case which included reviewing the November 19, 2013 transcript, in addition to other transcripts wherein Mr. Paskett suggested that Respondent was acting on his behalf.

15. Consequently, on or about January 10, 2017, Judge Colodny held a hearing to express her concerns regarding same. She informed Respondent of her intent to forward this matter to The Florida Bar. Prior to doing so; however, she gave Respondent an opportunity to explain the nature of his phone call with Mr. Paskett. Respondent did not provide one.

16. Judge Colodny then referred this matter to The Florida Bar on or about January 25, 2017. That same day, Mr. Wallace terminated Respondent

services, and, he too, filed a grievance with The Florida Bar on or about March 21, 2017.

17. In addition to the incidences described above, Respondent informed Mr. Wallace that he needed five new suits because Respondent wanted to “*look good*” for the jury in Mr. Wallace’s upcoming trial. The two of them then went to Aventura Mall where Mr. Wallace purchased approximately \$5,000.00 in suits and monogrammed shirts for Respondent.


18. Respondent accepted a substantial gift from his client who was neither a relative nor close personal friend.

19. Despite Respondent’s knowledge that Mr. Paskett was represented by counsel he continued to communicate with Paskett and accepted money on Paskett’s behalf.

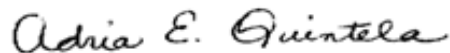
20. Additionally, as criminally charged co-defendants both Walker and Paskett’s positions were directly adverse under the Rule Regulating The Florida Bar 4-1.7.

21. By the conduct set forth above, Respondent has violated Rule 4-1.7 (Conflict of Interest, Current Client); Rule 4-1.8(c) (Gifts to Lawyer or Lawyer’s Family); and Rule 4.4.2 (Communicating with Persons Represented by Counsel) of the Rules Regulating The Florida Bar.

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



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CERTIFICATE OF SERVICE

I certify that this document has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Herbert Erving Walker, III., Respondent, at herbertewalkerii@gmail.com; using the E-filing Portal and that a copy has been furnished by United States Mail via Certified Mail Tracking No.7017 0190 0000 0892 4491, Return Receipt Requested to Herbert Erving Walker, III., Respondent, at Law Offices of Herbert Erving Walker, III., 7601 E Treasure Drive, Miami Beach, FL 33141-4391; and to Tonya L. Avery, Bar Counsel, via e-mail at tavery@floridabar.org, on this 26th day of November, 2018.

Adria E. Quintela

ADRIA E. QUINTELA
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY
EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is Tonya L. Avery, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Miami Branch Office, 444 Brickell Avenue, Rivergate Plaza, Suite M-100, Miami, Florida 33131-2404, (305) 377-4445 and tavery@floridabar.org; and Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Adria E. Quintela, Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323, aquintel@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.

1 PARLEY PASKETT: How are you doing? This is
2 Parley Paskett.

3 MR. WALKER: What's up?

4 PARLEY PASKETT: Hi. I'm just calling to see
5 when we're going to be doing the meeting? If you
6 know anything about a date of when we can sit down
7 with the prosecutor.

8 MR. WALKER: Nope. I spoke to him a couple
9 days ago, and he hasn't given me a specific date.

10 PARLEY PASKETT: Okay. Okay.

11 MR. WALKER: All right.

12 PARLEY PASKETT: Okay.

13 MR. WALKER: Hold tight and I'm sure he'll get
14 around to it before -- I mean, we got depositions set up
15 in another week, I think, again.

16 PARLEY PASKETT: And listen, Rier's office
17 already did the notice of appearance.

18 MR. WALKER: He did.

19 PARLEY PASKETT: Yeah, they did. So they're
20 willing to come and sit down and -- you know, so we
21 could all sit down and talk about it.

22 MR. WALKER: So you retained him for the case
23 so Ted is out the, right?

24 PARLEY PASKETT: Well, Ted is going to still
25 be standby. He's going to be playing in the

1 background scenes. But, yeah he's going to -- you
2 know, Rier's better.

3 MR. WALKER: Yeah. Did you retain him? Did
4 you pay him yet?

5 PARLEY PASKETT: Yeah, he's paid in full.

6 MR. WALKER: Okay. All right.

7 PARLEY PASKETT: Don't worry. I ain't forgot
8 about you. There's enough to go around.

9 MR. WALKER: Okay. Because you can throw a
10 little my way, you understand. ✓

11 PARLEY PASKETT: I know that I got you.

12 MR. WALKER: I did work here.

13 PARLEY PASKETT: Listen, I know, I got you
14 man. You're finessing the situation and I
15 definitely recognize it and appreciate it.

16 MR. WALKER: Okay.

17 PARLEY PASKETT: All right.

18 MR. WALKER: Okay. Don't forget.

19 VIOLETA: If he don't got you, I get you.

20 PARLEY PASKETT: Okay. All right. Walker.
21 So if anything, let Rod know too. Rod got Andy
22 Rier's number.

23 MR. WALKER: Yeah, but what do I need to let
24 Rod know. I see Andy like every day. ✓

25 PARLEY PASKETT: Oh, okay. Okay. Well, yeah,

1 The following translated recordings were
 2 transcribed from originating call (305) 592-0106 to
 3 destination call (954) 628-6908 by PATRICIA
 4 BAILEY-ENTIN, Court Reporter and Notary Public in and
 5 for the State of Florida at Large, in the above
 6 cause.

8 AUTOMATED VOICE: Global Tel*Link. This call
 9 may be recorded or monitored with the exception of
 10 approved legal calls.

11 I have a prepaid call from Jay Paskett an
 12 inmate at Miami-Dade County Corrections, Turner
 13 Guilford Knight Correctional Center.

14 Your account balance is \$19.98.

15 If you wish to accept this prepaid call --

16 Thank you.

17 PARLEY PASKETT: Hello, mommy.

18 VIOLETA PASKETT: How are you, my son?

19 PARLEY PASKETT: Hey, how are you?

20 VIOLETA PASKETT: Okay.

21 PARLEY PASKETT: Guess what? Who? Walker came
 22 to see me yesterday.

23 VIOLETA PASKETT: Oh, wow.

24 PARLEY PASKETT: Yes and --

25 VIOLETA PASKETT: What is he saying?

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PARLEY PASKETT: He came, I think, at 1:00 and we were there until 2:30. We talked and I was showing him everything I found and how it's going to affect -- affect him and everything.

And everything ended up -- well, I gave him all the papers. He's on vacation for the next two weeks.

And everything is marvelously good. I gave him the -- the subpoenas for -- so that Elio can pick it up from him.

VIOLETA PASKETT: Uh-huh.

PARLEY PASKETT: And -- and that's it.

VIOLETA PASKETT: Okay. What did he tell you? How does he see everything?

PARLEY PASKETT: Well, first he had to -- we were talking about it and I showed him everything I had and that really --

VIOLETA PASKETT: Uh-huh.

Okay, but aside from --
Aside from --

PARLEY PASKETT: Everything turned out good. Everything turned out good.

VIOLETA PASKETT: Aside of everything that you guys talked about, what did he tell you? How does he see things?

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PARLEY PASKETT: First he has to read all the papers that I gave him because I gave him a whole bunch of papers.

Like Mastos and Jonathan, I gave it to him. And everything is there.

And the judge is going to have to make a decision.

The evidence shows that it's not a forcible felony and that the self defense is still there and that's all.

That's all and well --

VIOLETA PASKETT: That's good.

PARLEY PASKETT: But -- but the shameless guy came to ask me for more money and I said no, I don't have more money to give you.

And anyways, what I'm doing is helping him because --

VIOLETA PASKETT: It's the other way around. They should be the ones to --

PARLEY PASKETT: Exactly. They should be happy.

VIOLETA PASKETT: Anyways, he told me one thing and something else happened.

PARLEY PASKETT: Exactly.

And -- and I told him I have nothing to give

1 him and -- and --

2 VIOLETA PASKETT: And -- and -- and -- and in
3 guarantee of what?

4 PARLEY PASKETT: No, no, no, but it's -- no,
5 no, no, no.

6 VIOLETA PASKETT: Wasn't it that he was going to
7 work that he --

8 PARLEY PASKETT: I -- I spoke to him very
9 clearly and he told me that that prosecutor Warfman
10 is in -- is in -- nothing.

11 He was even telling me some things that I don't
12 want to say over the phone, but the guy won't do any
13 favors for -- for --

14 VIOLETA PASKETT: All right. All right. All
15 right.

16 PARLEY PASKETT: So we won't --

17 VIOLETA PASKETT: But he's not doing any favors
18 because you're not guilty.

19 PARLEY PASKETT: The only person that's going
20 to make a decision is the judge.

21 And that's going to force the prosecutor to get
22 some results.

23 That's what we are --

24 VIOLETA PASKETT: Of course.

25 Of course.

1 PARLEY PASKETT: We tried nicely.

2 And now we have to go by -- by the law. Now
3 the judge will make a decision and everything is in
4 my favor but --

5 VIOLETA PASKETT: Well.

6 PARLEY PASKETT: -- I -- it's ridiculous that
7 this guy came to ask me.

8 VIOLETA PASKETT: But he asked for it like that,
9 with no shame?

10 PARLEY PASKETT: Yes, no shame.

11 He told me last year, you gave me two so this
12 time it would be better if you give me two more or
13 three more.

14 And I looked at him with a face of like what
15 for. If that was for you to try to talk to that guy
16 to see if he is right and now you are telling me
17 that.

18 And in the end there's no reason, so why are we
19 going to give you money if there's no reason
20 anyways?

21 VIOLETA PASKETT: And what did he tell you?

22 PARLEY PASKETT: And he didn't say anything
23 because I'm right. It's an insolence.

24 He has no shame what he did, what he's asking
25 for.