

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Petitioner,

v.

JOHN DANEIL ELLIS, JR.,  
Respondent.

Supreme Court Case  
No. SC19-384

The Florida Bar File  
No. 2019-30,222 (19A) (OSC)

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**REPORT OF REFEREE**

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 March 11, 2019, The Florida Bar filed its Petition for Contempt and Order to Show Cause against respondent. On March 11, 2019, the Supreme Court of Florida issued its order to show cause why respondent should not be found in contempt for violating its two orders of suspension by continuing to engage in the practice of law. Respondent filed a response on March 26, 2019 and the bar filed its reply on April 3, 2019, and an amended reply on April 5, 2019. The undersigned was appointed as Referee in this matter on July 16, 2019. The final hearing was held in this matter on December 4, 2019. A sanction hearing was held

on January 6, 2020. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are 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.

1. By Supreme Court Order, entered in Case Number SC15-1085, dated September 14, 2016, the Supreme Court of Florida suspended respondent from the practice of law for three years, effective thirty days from the date of the order. The effective date of respondent's suspension was October 14, 2016.

2. By Supreme Court Order, entered in Case Number SC17-1826, dated October 26, 2017, the Supreme Court of Florida suspended respondent from the practice of law for three years, *nunc pro tunc* to October 14, 2016. The effective date of respondent's suspension was October 14, 2016. At the time of this order, respondent was also serving the suspension ordered in Case Number SC15-1085.

3. Respondent has not petitioned for reinstatement to the practice of law and remains suspended in Case Numbers SC15-1085 and SC17-1826.

4. During all times material, respondent was not employed in any capacity by an attorney licensed to practice law in Florida.

5. In or around August 2018, Horace Knight, a resident of Maryland, contacted respondent seeking his assistance in preparing the necessary documents to probate his mother's estate through summary administration in Florida.

6. Mr. Knight expressed to respondent his frustration with the probate process. Mr. Knight explained that the documents he submitted to the probate court had been repeatedly rejected.

7. Although suspended from the practice of law, respondent agreed to review the documents Mr. Knight had prepared and asked Mr. Knight to send the documents to him.

8. Although respondent advised Mr. Knight that he was not currently practicing law, respondent did not specifically advise Mr. Knight that he was suspended from the practice of law. Respondent's statement to Mr. Knight was insufficient to cause Mr. Knight not to request legal assistance from respondent and was insufficient to cause Mr. Knight not to rely on respondent's legal expertise and assistance.

9. By email dated August 24, 2018, Mr. Knight sent respondent copies of documents that he previously filed with the probate court *pro se* and the

probate court's order dated August 15, 2018 denying Mr. Knight's petition for disposition of property without administration and granting him twenty days to convert the matter to a summary administration case.

10. Respondent prepared a Petition for Summary Administration, Notice to Creditors, and a Formal Notice to the Agency for Health for Mr. Knight. The Notice to Creditors contained the case number for another, unrelated probate. None of the documents indicated they had been prepared by respondent or anyone other than Mr. Knight.

11. Respondent did not prepare any of the documents under the supervision of an attorney licensed to practice law in Florida.

12. Respondent sent the documents to Mr. Knight by email on August 27, 2018 and the body of the email requested Mr. Knight to call respondent upon receipt of the documents.

13. Although respondent testified on direct examination at the final hearing that he had no further communication with Mr. Knight after he sent the email on August 27, 2018 forwarding the prepared documents, on cross-examination respondent admitted that he did not know if he gave Mr. Knight instructions for mailing one of the documents. Respondent's testimony on cross examination was inconsistent with his testimony on direct.

14. According to Mr. Knight, respondent advised him to sign and date the Petition for Summary Administration and send it by certified mail to the probate court. Respondent also advised Mr. Knight to sign and date the Formal Notice to the Agency for Health located in Tallahassee, Florida and send it by certified mail. Respondent further advised Mr. Knight to contact the Clerk for the Circuit Court after twenty days to check on the status of the Petition for Summary Administration.

15. Mr. Knight filed the documents prepared by respondent with the probate court on September 5, 2018.

16. Respondent did not advise Mr. Knight to seek the advice of an attorney licensed in the State of Florida prior to filing the documents with the probate court.

17. The record is clear that respondent went beyond simply following instructions on a form and filling in blanks on a court-approved form.

18. Respondent's conduct as set forth above constitutes the unauthorized practice of law and violates this Court's orders in SC15-1085 and SC17-1826.

### III. RECOMMENDATIONS AS TO GUILT.

I recommend that respondent be found guilty of contempt of the Order of the Supreme Court of Florida dated September 14, 2016 in case number SC15-1085

suspending him for three years and of the Order of the Supreme Court of Florida dated October 26, 2017 in case number SC17-1826 suspending him for three years, *nunc pro tunc* to October 14, 2016.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

Under Standard 5.1, Failure to Maintain Personal Integrity, Standard 5.11(f) calls for disbarment when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice Respondent failed to advise Mr. Knight of his suspension and that he was unable to practice law.

Under Standard 6.1, False Statements, Fraud, And Misrepresentation, Standard 6.11(b) calls for disbarment when a lawyer improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding. Respondent was dishonest with the probate court by causing Mr. Knight's paperwork to be submitted and failing to advise the court that Mr. Knight relied on respondent to draft his legal pleadings.

Under Standard 8.0, Prior Disciplinary Orders, Standard 8.1 calls for disbarment when a lawyer intentionally violates the terms of a prior disciplinary order and such violation causes injury to a client, the public, the legal system, or

the profession. Respondent did not set out to violate a court order. He intended to help a fraternity brother. However, respondent has a higher duty of loyalty to the Rules Regulating The Florida Bar and the Supreme Court of Florida that grants him the privilege to practice law. Respondent engaged in the practice of law during his suspension and is harmful to our system of justice.

#### V. CASE LAW

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Bauman, 558 So. 2d 994 (Fla. 1990), Bauman was held in contempt and disbarred for engaging in at least five distinct acts of practicing law while suspended. The Court held that Bauman was not likely to be rehabilitated because he willfully, deliberately, and continuously refused to abide by an order of the Court. Like Bauman, respondent disregarded his higher duty of loyalty to the profession and violated the Court's orders of suspension.

In The Florida Bar v. Greene, 589 So. 2d 281 (Fla. 1991), the Court adopted the referee's findings that Greene engaged in the practice of law during his suspension even though Greene did not charge a fee for his services and the client was a close friend. The Court, however, rejected the referee's recommended discipline of a suspension because Greene had a long history of disciplinary violations. The Court stated that disbarment was warranted as Greene disregarded lesser forms of discipline imposed by the Court and continued to practice law

during his suspension. Similar to Greene, respondent has had a lengthy disciplinary history of over twenty years including a three-year suspension in 1996, a public reprimand in 2003, a sixty-day suspension in 2005, a three-year suspension in 2016 and a three-year suspension in 2017.

In The Florida Bar v. Brown, 635 So 2d 13, 14 (Fla. 1994), the Court stated that a “[c]lear violation of any order or disciplinary status that denies an attorney license to practice law generally is punishable by disbarment, absent strong extenuating factors.” While respondent derives satisfaction for helping others, this is not a strong extenuating factor to overcome the presumption of disbarment.

In The Florida Bar v. Lobasz, 64 So. 3d 1167 (Fla. 2011), Lobasz was found in contempt and disbarred for appearing at an immigration hearing on behalf of a client during his three-year period of suspension. The Court found that even though Lobasz was not compensated for the cases, voluntary services of a suspended lawyer can constitute the practice of law.

In The Florida Bar v. Lister, 662 So. 2d 1241 (Fla. 1995), the Court found that Lister engaged in the unlicensed practice of law for improperly creating and using a power of attorney in an attempt to represent another in legal matters, for representing that he was an attorney, and for failing to clarify that he was not licensed practice law in Florida. The Court enjoined Lister from holding himself out in a manner that the public would rely upon his legal advice, advising any



person as to possible legal remedies, preparing legal documents for others, accepting legal fees and appearing in court on behalf of others.

In The Florida Bar v. Golden, 563 So. 2d 81 (Fla. 1990), Golden was suspended for one year for agreeing to represent a client in two traffic matters and for filing two pleadings that the client signed pro se. Golden had a prior ninety-day suspension, a prior ten-day suspension and a prior public reprimand. While the facts in the Golden case may be similar, I find it significant that respondent is currently serving three-year suspensions for misconduct in two different cases.

In The Florida Bar v. Walkden, 950 So. 2d 407 (Fla. 2007), Walkden engaged in repeated acts of the practice of law while suspended and the Court found him in contempt and ordered his immediate disbarment from the practice of law. The Court stated that Walkden failed to provide any justification for his actions nor provide the existence of any strong extenuating factors to overcome the presumption of disbarment.

In The Florida Bar v. Bitterman, 33 So. 3d 686 (Fla. 2010), the Court disbarred Bitterman for violating the Court's order of suspension by holding herself out as an attorney and misrepresenting her status as an attorney to obtain entry to the jail. Disbarment is proper when a suspended or disbarred attorney is held in contempt for engaging in the practice of law during the period of suspension or disbarment.

In The Florida Bar v. Adler, 126 So. 3d 244, 247 (Fla. 2013), the Court has moved towards stronger sanctions for attorney misconduct in recent years.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that be disciplined by:

A. Disbarment effective immediately as respondent is currently suspended.

B. Payment of The Florida Bar's costs in these proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 60

Date admitted to the Bar: September 20, 1990

Aggravating Factors: 9.22

9.22(a) Prior Discipline:

1. In The Florida Bar v. Ellis, 658 So. 2d 993 (Fla. 1995), respondent was emergency suspended by Florida Supreme Court Order dated June 15, 1995 for engaging in a pattern of criminal misconduct in misappropriating funds due to the firm

as payment for fees while employed as an associate with the law firm of Jacobs & Goodman, P.A.

2. In The Florida Bar v. Ellis, 675 So. 2d 122 (Fla. 1996), respondent received a three-year suspension by Florida Supreme Court Order dated April 25, 1996, pursuant to a Conditional Guilty Plea for Consent Judgment, for the same misconduct that resulted in the emergency suspension ordered in 658 So. 2d 993 (Fla. 1995). Respondent was also ordered to make restitution to his former law firm. In The Florida Bar re: Ellis, 727 So. 2d 912 (Fla. 1998), respondent was reinstated to the practice of law on December 30, 1998 by the Supreme Court of Florida.

3. In The Florida Bar v. Ellis, 848 So. 2d 1156 (Fla. 2003), respondent was publicly reprimanded by the Supreme Court of Florida in an order dated June 12, 2003, pursuant to a Conditional Guilty Plea for Consent Judgment, for failing to exercise independent judgment on behalf of a client. Respondent drafted a will for a client naming her neighbor caretakers as sole beneficiaries without being aware that she had a prior will naming relatives as beneficiaries. After the

client's passing, he represented the caretakers and filed a document with the court incorrectly stating that the decedent had no next of kin or known relatives. The evidence revealed later established that the caretakers were aware of the existence of the decedent's relatives.

4. In The Florida Bar v. Ellis, 908 So. 2d 1058 (Fla. 2005), respondent was suspended for sixty-days with a one-year period of probation by Supreme Court Order dated July 7, 2005, pursuant to a Conditional Guilty Plea for Consent Judgment. Respondent failed to diligently handle a personal injury claim for a client against a retail store resulting in the expiration of the statute of limitations. Further, respondent did not adequately communicate with his client as to the status of her case despite her requests for case information and failed to timely respond to the insurer's requests for information. During his probation, respondent was required to undergo a LOMAS review and implement all suggested office management procedures.

5. In The Florida Bar v. Ellis, No. SC15-1085 (Fla. Sept. 14, 2016), respondent received a three-year suspension for making a material misrepresentation to a court. Respondent

appeared at a pretrial conference on behalf of a client where he advised the judge that he did not have in his possession a signed written waiver of appearance at the pre-trial conference for the client. The judge granted him a short continuance to return later in the day. Approximately one hour later, respondent returned with a waiver bearing what purported to be the client's signature. Respondent specifically advised the judge that he had the client meet him at his office. However, respondent had not met with his client and the client denied signing the document. The referee found there was no clear and convincing evidence respondent forged his client's signature. However, the referee did find that respondent tendered to the court a forged document and that respondent misrepresented to the court that he had met his client at his office to obtain her signature.

6. In The Florida Bar v. Ellis, No. SC17-1826 (Fla. October. 26, 2017) (unreported disposition), respondent was suspended for three years for failing to communicate with his client and failing to file a lawsuit on behalf of the client before the statute of limitations had expired.

Mitigating Factors: 9.32

9.32(e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings

Respondent is extremely collegial, cooperative and fully participated in these proceedings.

9.32(g) Character or Reputation

Several witnesses testified that the respondent has a positive reputation for helping others in his church and his community.

9.32(l) Remorse

Respondent has shown remorse throughout these proceedings.

9.32(b) Lack of Intent

Although counsel for respondent asked this referee to find the absence of conscious intent to violate the Supreme Court of Florida orders. I cannot do so. Respondent is loyal in his service to others which is a positive attribute. However, his conduct reflects a conscious decision such that his commitment to the rules of professional responsibility is inferior to his commitment to be of service.

**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	\$1,250.00
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Investigative Costs	\$359.62
Court Reporters' Fees	\$830.47

TOTAL	\$2,440.09
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It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 9th day of January, 2020.



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Ellen S. Masters, Referee

Original To:

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

Conformed Copies to:

Ralph Armstead, Counsel for Respondent, 511 West South Street, Suite 210, Orlando, Florida 32805-2761, [ralph@ralpharmsteadlaw.com](mailto:ralph@ralpharmsteadlaw.com),

Carrie Constance Lee, Bar Counsel, The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050, [clee@floridabar.org](mailto:clee@floridabar.org); and

Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, [psavitz@floridabar.org](mailto:psavitz@floridabar.org).