

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC06-216

v.

TFB File No. 2005-00,415(2A)
2005-00,875(2A)

LINDA GURFEIN MIKLOWITZ,

Respondent.

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AMENDED REPORT OF THE 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 February 6, 2006, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. On September 22, 2006, a final hearing was held in this matter. All items properly filed including pleadings, recorded testimony, 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

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.

COUNT I

[2005-00,415(2A) Complaint of Carrie Mitchell-Long]

Carrie Mitchell-Long (hereinafter “Client”) had previously hired another attorney to pursue settlement of a tort action against a retail establishment. The settlement efforts were unsuccessful and the first attorney, Robert Woolfork, withdrew. The action was to be for intentional infliction of emotional distress arising out of a faulty alarm system and a store manager/employee who publicly accused the Client of stealing from the store. (Transcript II, page 262, lines 23-35). The Client was a friend/acquaintance of the Respondent who had been a political supporter of the Client. Likewise the Client had supported the Respondent in her efforts to participate in an organization. In July of 2003, Client entered into some kind of agreement (the terms of which are in dispute) wherein the Respondent was to represent her in the tort claim. The Client claims it was for the specific purpose of filing suit on the tort claim. (Transcript II, page 257, lines 10-13; page 262, lines 18-22). Client and Respondent agree they entered into a verbal agreement which required Client to make three payments of \$500 each. (Transcript II, page 264, lines 10-12). Client contends that when the \$1,500 had been paid, she believed

Respondent would proceed to file suit (Transcript II, page 264, lines 12-13) and that the \$1,500 represented the cost of filing the suit, with the remainder applied to future costs. (Transcript II, page 264, lines 5-7). All payments were eventually made, (Transcript II, page 239, line 15) but Respondent never filed suit. (Transcript II, page 263, lines 16-18).

The Respondent denies the \$1500 was a cost deposit for purposes of filing suit but contends it was a “flat fee” which was to be credited toward some future contingent fee if the matter were “to go to court,” which was defined by the Respondent as “to file a lawsuit”. (Transcript II, page 210, line 23) The flat fee was designed to cover her time obtain further corroboration of the claim and to continue to pursue settlement. This the Respondent did using the Client, who did, in fact, track down and obtain three fairly significant fact witnesses and obtain two written statements that were no doubt helpful in ultimately resolving the claim.

Respondent provided no written agreement pertaining to the \$1,500, no contingency agreement, or no letter of engagement discussing her hourly rate (Transcript II, page 209, lines 4-7; page 213, lines 12-14; pages 222-223, lines 24-2) until September 1, 2005, approximately 26 months after accepting representation, when Respondent presented Client with a limited contingency fee agreement at the Grievance Committee hearing. (Transcript II, page 265, lines 22-24; page 282, lines 7-9) (See also Respondent’s Exhibit to the Hearing on Discipline, forwarded to Referee after the hearing on the merits but prior to Hearing on punishment) In short, the Respondent who would take “about one

or two contingency fee cases a year” (Transcript III, page 364, lines 6-7) did not comply with any of the provisions of Rule 4-1.5(f) pertaining to Contingent Fee Agreements pertaining to personal injury contracts.

On or about July 6, 2004, Respondent advised the Client that the agreement as she understood it was incorrect. In fact, the Respondent claimed the \$1,500 was a “flat fee” (Transcript II, page 223, line 3) and that Client would be required to pay the filing fee and costs in addition to the \$1500, before Respondent would file suit. (Transcript II, page 225, lines 22-23) Furthermore, Respondent’s new verbal agreement, which was accepted by Client’s response letter, included the Client’s belief that if the complaint was filed and was successful, the contingency fee would be 50% of the recovery, an excessive fee. (TFB Exhibit 34) Respondent has steadfastly failed to comprehend this misconduct of excessive fees as has been evidenced in her communication with the client, The Florida Bar, the Grievance Committee and at trial. (TFB Exhibit 42)(Respondent’s Exhibit 2, page 20, line 22)(Transcript II, page 265, lines 13-15; Transcript III, page 357, line 15; page 365, line 6) Her position is that the rule allows her up to 45%, so that “...then I’m off only by 5%”. (Transcript of Hearing on Discipline Page 22 Lines 14-19).

Respondent did not communicate adequately with Client, either in writing or by telephone. Respondent produced very little evidence of telephone contact, no written documents, letters, contracts or e-mails from Respondent to Client, created during representation, in evidence at trial of this matter. Though the Referee extended time to submit additional evidence after the trial, based on Respondent’s claim that she had phone

message records in her office, no such records were submitted to this Referee for consideration. (Transcript III, page 352, lines 18-20; III, page 354, lines 14-15). In fact, the Client states, “I can’t recall her [Respondent] ever calling me.” (Transcript II, page 267, line 19)

No time records, monthly statements or explanation of Respondent’s time expended were ever provided to Client, despite repeated requests and opportunities to present them. (TFB Exhibits 46)(Transcript II, page 282, lines 2-3).

Ultimately, there was little harm done to the Client in that the Respondent did help her get witness statements and the Statute of Limitations did not run. Mr. Woolfork took the case over and was able to settle it in the approximately \$6000 range. The potential for harm was great however in that the Respondent failed to cover many of the bases that should have been covered to resolve the case in her Client’s favor. See Discussion below.

COUNT II

[2005-00,875(2A) Complaint of Loretta F. Samenga]

Respondent is not licensed to practice law in New York (Transcript I, page 42, lines 11-13); neither is she licensed as a real estate agent in either Florida or New York. (Transcript I, page 42, lines 7-10)

Ms. Samenga (hereinafter “Seller”), a member of the New York Bar specializing in Workers Compensation Law, advertised the sale of two time-share weeks, a “flex” week and a “fixed” week, at The Manhattan Club in New York, New York. (Transcript I,

page 140, line 13) a downtown New York City condominium project. Respondent replied to this advertisement, negotiated the personal purchase and entered into an agreement to purchase one of the time-share weeks, the “flex” week for \$20,000. (Transcript I, pages 42 & 43, lines 17-20; Transcript I, page 140, line 20) Respondent drafted the Contract for Deed for this purchase. (TFB Exhibit 1)(Transcript I, page 43, line 1; I, page 152, line 24) Respondent voluntarily accepted the responsibility of closing this contract so she could save herself the attorney’s fees as a closing cost. (Transcript I, page 42, lines 21-23; I, page 141, line 7) Respondent never set a closing date for the contract. No money was ever placed in escrow, even when asked by Seller or when the relationship shifted to an “arm’s length transaction.” (TFB Exhibit 10)(Transcript I, page 66, lines 7-8) Some of the numerous documents required by New York law for this New York transaction were completed or produced by Respondent but the closing never occurred. (TFB Compound Exhibit 23)(Transcript I, page 65, lines 10-11) The contract did state the “flex” week was available at the date of contract, June 16, 2004. (TFB Exhibit 1) The contract did not clearly or adequately state that Respondent had permission to use the unit prior to closing, as Respondent would have this Referee believe. (Transcript I, pages 50-51; I, page 145, lines 2-4; I, pages 152-153, lines 24-1) In November 2004 Seller requested Respondent to clarify whether she would be closing on the contract. (TFB Exhibit 5) Respondent stated she would be sending up the forms and the money for the purchase.(TFB Exhibit 5)(Transcript I, pages 52-53) Neither the paperwork nor the purchase money was sent to Seller. (Transcript I, page 53, lines 14-

18)

Subsequent to drafting the contract, in December, Respondent booked the “flex” week. (Transcript I, page 60, line 1) Respondent also booked use of week 52, the “fixed” week, for which she had **no** contract. (Transcript I, page 61, lines 5-6) Respondent placed an advertisement on E-Bay to rent the unit on which she had a contract (Transcript I, page 43, line 24) and entered into an agreement with a third-party to rent the “flex” week and accepted the money for the rental. (Transcript I, page 142, lines 6-12) Respondent placed an additional advertisement (or the same advertisement reworded) on E-Bay to rent the “fixed” week 52 unit for which she did **not** have a contract (TFB Exhibit 2)(Transcript I, page 46, line 23; I, page 142, line 14) and entered into an agreement with another third-party to rent the beginning of the “fixed” week, and accepted the money for the rental. (TFB Exhibit 8)(Transcript I, page 144, lines 4-7)

Even though Respondent was well aware Seller had advertised two weeks for sale and Respondent booked both weeks with The Manhattan Club, Respondent initially misled this Referee by stating “I knew of only one week, and that was the one that I was contracted to buy” (Transcript I, page 43, line 25; page 44, line 1) and “I never even knew she had a week” (Transcript III, page 383, lines 2-3) but then concedes her E-bay Ad included the Seller’s fixed week and that she rented part of that. (Transcript I, page 46, lines 10-16) Respondent testified in the Bar’s case in chief that she had advertised the “flex” week for rent without previously booking the week. (Transcript I, page 44, line 25) Respondent later contradicted her own testimony when she cross-examined Seller by

stating:

Q: ... -- you are aware that the flex unit expired on December 26?

A: That's correct.

Q: You realize that about ten days before that you still had not used the unit?

(Transcript I, page 154, lines 20-24).

Finally, in her testimony in the at the Hearing on Discipline the Respondent finally provided the clearest look into her motivation: " I needed to rent that in order to rent the remaining days of my week, ". (Transcript of Hearing on Discipline Page 77 Line 8-78 Line15)

Seller was not advised of the booking of these time-share weeks by Respondent (TFB Exhibit 8), nor did Respondent inform her that the weeks, or part of them, had been rented to third parties. (TFB Exhibit 8)(Transcript I, page 142, line 9) Seller only found out the units had been rented when The Manhattan Club called her. (Transcript I, page 142, line 5) Seller gave permission to the renter of the second week to use the days for which he had paid. (TFB Exhibit 7) Seller was "extremely angry" when she discovered the E-Bay advertisement and contacted Respondent immediately requesting the rent money received and the purchase money for the contracted week. (TFB Exhibit 10)(Transcript I, page 143, line 2)

Seller did not receive the money for the "fixed" week rental until she had filed a complaint with The Florida Bar and she received it within the copy of Respondent's response to the Bar complaint, on April 26, 2005. (TFB Exhibit 27)(Transcript I, page

147, line 15) Seller did not receive the money for the “flex” week rental from Respondent until June 2005, several months after the Bar complaint was filed and about one year from the date the Contract for Deed was drafted. (TFB Exhibit 25)(Transcript I, page 150, line 24) It is important to note in mitigation of these delays that at the end of January 2005 the Respondent was seriously ill with an upper respiratory illness; at the same time her husband, who had already been diagnosed with bladder cancer the year before, now had some indicia of a furthering of the disease “pop out on his head”; He immediately began to decline and he died March 24th 2005. This occurred on top of three hurricanes that impacted Tallahassee - including damage to Respondent’s roof and damage to her home, the Respondent’s mother’s heart disease emergencies, the Bar complaints by the Seller and the client herein, her somewhat understandable delay in responding thereto and her overlooking a mis-mailed check to the Seller. (Transcript III, page 372, line 23; page 382, line 11)

Though Respondent represented to the Seller that she was working to get the closing papers together (TFB Exhibit 5), and Respondent did produce some of the documents required by New York City, New York State or The Manhattan Club she never closed the transaction of the sale of the time-share contract. After the Bar complaint was filed the Respondent “settled” with the seller by giving her the rent in exchange for a mutual “release”. (Respondent’s Exhibit 1(Cnt II-9))

At no point prior to her doing so did Respondent inform Seller of the advertising of the time-share units: either the “flex” week that was contracted for, or the “fixed” week

for which there had been no contract. (TFB Exhibits 7 & 8) When requested, Respondent did not promptly reimburse Seller the rental money until after Seller had filed The Florida Bar complaint. (TFB Exhibits 25 & 27) Although some delay may be excused due to family and other emergencies described in the record and identified above, had the Respondent promptly forwarded the funds as one would expect one who made a mistake of this magnitude to have done, the money would have been sent long before her family emergencies reached critical proportions.

III. DISCUSSION

This Respondent presents to the referee as a pleasant, bright, capable, mature person. She graduated in 1978 from the University of Florida Law School. In twenty-four years, she has practiced law as a government lawyer for the Attorney General's office in the tax area for about 3 years and tried cases including jury trials around the State and appeals including Federal appeals for the Florida Department of Transportation for about 7 years. In private practice she has tried two federal criminal jury trials, one civil jury trial and three state felony trials, many dissolution of marriage cases and many pleas in criminal cases. She testified without contradiction that she was lead counsel on an impressive number of trials around the State, and that the only assistance she had at those (usually DOT) trials was sometimes "an intern". (Transcript of Hearing On Discipline Pages 89-100) The Referee placed great reliance on and gave great mitigating weight to her testimony on these matters. After she entered private practice she handled employment discrimination cases and named one with which this Referee was familiar

that took eight years to resolve. She appears therefore to have the credentials the experience and the background one would expect of a seasoned attorney capable of handling significant cases and certainly the type of case the Client presented with in Count I.

Nevertheless, as an attorney she simply does not seem to understand the law that gave rise to the two complaints and to the extent observed by this Referee, she does not appear to have a grasp of the workings of the law, nor the realities of the practice of law. Throughout the process and nearly twelve-hour merits hearing or the three plus hour hearing on discipline she never deviated from her convictions that she was right and everyone else was wrong. Moreover, she failed to understand the necessity of preparation for those hearings and that this process does not keep going on and on by the presentation of more and more recently discovered materials. At the end of the hearing on discipline she wanted to continue to send more information to the Referee. (Transcript of Hearing on Discipline Page 128 Lines 2-18)

With regard to the law of contract, she, in one of these two complaints, failed to draft a contract that says what she wished it had said. She then exacerbates the problem by claiming it says what it clearly does not say. She then expends her own credibility before the Referee by making lengthy arguments that it says what it clearly does not say, specifically that title in the flex week vest upon the signing of the contract. She then fails to support her arguments with authority the Referee gave her additional time to produce. Finally, she claims detrimental reliance as a basis for believing she had equitable title to

the flex week in the contract she drafted but presented no evidence as to any reliance upon anything in this contract or this negotiation and no law upon which the Referee could determine the merits of her claim.

In the second complaint the Respondent simply failed in every way to draft or to follow the Rules requiring the contract that would have prevented the misunderstanding on either her part or the Client's part that led to the complaint.

With regard to the law of real property, the Respondent does not seem to know when title passes, nor does she recognize the dangers and perils of attempting to close a transaction to which she is a party, in a jurisdiction in which she is not qualified to do so. Without permission she advertised for rent and rented that which she did not own and was, to put it more delicately than its circumstances deserve, "less than diligent" about getting the rental proceeds to the rightful owner, about four and six months respectively, less than diligent. The Referee finds that Respondent's conduct was sufficiently less than diligent to very likely qualify her for felony conviction, were it not for some emails and other circumstances. The grand theft statute only requires "temporary deprivation" of the owner of a right or a benefit from the property of a value of more than \$10,000, but less than \$20,000, for one to be guilty of a felony of the third degree. Subsection 812.014 (2)(c) 3.F.S. 2006. The fact that E-bay and the Internet were used and the State of New York was involved adds complications beyond the scope of this report.

When it comes to the law of contingent fee agreements and the ethical considerations thereof, the respondent concedes she hardly ever uses them. She does not

appear to understand them, she cannot properly explain them to clients, she does not realize that a 50% contingent fee requires court approval, that taking a case on a “modified contingent fee basis” with a “flat fee” up front and a contingency fee to be determined later requires a writing “up front” setting out what the contingency is, i.e., that makes it a contingency fee requiring a written fee agreement. She believes that a “flat fee” of \$1500, paid in three monthly installments of \$500 each, in which the second or third installment is late being paid, and the first installment having been “used up” by her expenditure of time means she is “working for free” (Transcript II, page 214, lines 8-11) and therefore not obligated to comply with the provisions of Rules 4-1.4 and 4-1.5 Rules of Professional Responsibility, pertaining to communications with the client and accountability of time being spent on the client’s case. This is notwithstanding her inability, from lack of record keeping, to accurately account to the Client for her time spent on the case.

With respect to trial and trial practices she does not seem to realize that trial exhibits marked for identification go into the record on appeal just as the items that are received in evidence for the appellate court to review. (Transcript I, page 187, lines 1-16)

She does not seem to understand that when an insurance company refuses to pay a claim, an attorney can aggressively pursue pre-suit mediation, making a settlement video, prepare a settlement brochure, travel to the local or regional claims office to meet with the adjuster or adjuster’s claims manager, all before suit must be filed. The Respondent expended none of these efforts on behalf of the Client’s personal injury claim, nor was

suit filed, **even after the Client sent the additional cost money.** Moreover when the Respondent received Mr. Woolfork's file and discovered the Dollar General Store had a \$250,000 retention and was, in effect therefore, self-insured, for the first \$250,000 of damages, she made no effort to think about what mechanism it might take to get the company to pay the claim such as going direct to the company claims manager, seeking picketing permits, writing the company president about its training practices and defective alarm systems. Had she filed suit she could have, with a very simple set of interrogatories, found out the manufacturer of the alarm system the type of and number of problems they had with the system prior to the incident and discovered a host of possible incidents and additional facts and witnesses that would have added value to her client's claim. At the very least she could have gone to the store, and looked at the alarm, found the manufacturer's name and at least considered a claim against the (presumably) defective alarm system manufacturer.

The Respondent feels the Client's claim for intentional infliction of emotional distress is not a personal injury and she therefore is not bound by the requirement of Rule 4-1.5(f), Rules of Professional Responsibility. (Transcript II, page 224, line 22; page 225, line 2) A cause of action for intentional infliction of emotional distress is still considered personal enough to be considered a personal injury, Notarian vs. Plantation AMC Jeep, Inc., 567 So. 2d 1034 (Fla. 4th DCA 1990), citing Florida Patients' Compensation Fund v. St. Paul Fire and Marine Insurance Company, 535 So. 2d 335 (Fla. 4th DCA 1988) and is therefore covered by the provisions of Rule 4-1.5(f), Rules of Professional

Responsibility.

The Respondent, however, testified at trial referring to the Client's damages as "pain and suffering", but under questioning equated "pain and suffering" with "humiliation and embarrassment." (Transcript II page 230, line 17-page 231, line 18) There does not appear to be any instruction in the Florida Standard Jury Instruction on an element of damage for pain and suffering or for humiliation and embarrassment for the tort of Severe Emotional Distress (MI 10). There is only "mental anguish" and "aggravation or activation of disease or defect," medical expenses, lost earnings and time or capacity, and punitive damages. The Respondent did not know what damages she should be seeking on behalf of her Client. Small wonder the carrier did not settle.

In the realm of law practice, the Respondent apparently makes few, if any, records of client calls or calls returned. She has very few office practices upon which to rely to show that she does represent her clients and does keep up with her cases. (Transcript III, page 339, line 1; page 349, line 12) She drafted no demand letters of her own on behalf of this client. She apparently keeps few records of her actions on behalf of her clients. She charges an hourly rate of \$150-250 per hour, but keeps no time or hour sheets. She normally charges \$1,500 for something she thinks will take ten hours. She has "a number of \$1,500 charges for misdemeanors, simple divorces and county civil actions." (Transcript III, page 362, line 25; page 363, line 9) As the Client testified (Transcript II, page 304, lines 19-20), (and it is also the Referee's experience from representing people for 31 years) "\$1,500 is hard to come by." It is all that most people at lower and middle

socio-economic levels can muster at one time and it is a big thing for them to entrust that amount to a representative of the Florida Bar whom they see as their Problem Solver. If that problem solver will not, cannot, does not know how to, or never intended to, see the problem through to conclusion and resolve it for the client, it does the legal system - into which all members of the Bar pour their lives - a great disservice. It wastes the citizens' resources, it devalues our society, and it is more than unjust, worse than all of that, it creates more injustice. On the other hand legal practitioners like the Respondent do perform a function in our legal system, that is, to take care of the small or tedious, not large revenue producing, usually time consuming legal problems. The problem is, of course, that the public's expectations of all lawyers are high. The Client in this case came to the Respondent expecting one thing and now remembers hearing what she expected. The Respondent remembers telling the Client something else, i.e., what she remembers, but due to her abysmal lack of documentation and poor law practice habits there is no support for her memory. Everything the Respondent remembers is contraindicated by everything that happened so far in the case.

The deepest and lasting impression the Respondent made on this Referee is that she does not appear to be able to get to the end of or to bring legal matters to conclusion. She demonstrates great ability to start things, but the matters brought before me indicate a very strong resistance to seeing matters to conclusion. This is perhaps due to being ill prepared or ill disposed to doing the hard work of trial preparation or not having the ability or constitution required to absorb the sometimes hard consequences of trial and

final resolution. Yet when she got to final argument at the hearing on discipline she did an admirable job. (Transcript of Hearing on Discipline page 119 Lines 11-16) Getting her there was agonizingly difficult.

The Respondent steadfastly refused throughout the entire process to acknowledge that she could ever have given the client the impression that she was unresponsive; that she incorrectly communicated the contingent fee nature of the fee agreement; that she, not the client could have misunderstood the verbal agreement; that she could have prevented this problem for herself by having used a letter of engagement between herself and her client; she insisted that she was the equitable owner of the time share condominium; and, that she was fraudulently induced to purchase the time share by the seller by the enticement of the use of the “flex” week in December, notwithstanding her own failure close the transaction for more than six months. Nothing was ever her fault, the law was always on her side; yet despite being given several opportunities to present memoranda and cases and evidence, she presented no authorities or evidence to support any of the legal theories or arguments she presented at trial in support of her case.

This is not news to the Respondent. While the Referee was finishing his first draft of this Report it became jumbled in format. Since he was building his draft on Bar Counsel’s submitted disc he electronically forwarded it to her with the request that she fix the formatting, that his efforts to do so had failed. E-mails and a phone call ensued. Bar Counsel’s supervisor believing an *ex parte* communication had occurred and without

leave of the Referee, promptly released the draft of this Report to the Respondent after the hearing on the merits but before the hearing on Discipline. The Discipline set out below was largely in place because it had been included in Bar Counsel's draft. Both parties were subsequently repeatedly advised that it was a draft and that while it was a draft that the Respondent did have the unusual benefit of knowing the Referee's thoughts and inclinations at that time. This is an advantage most Respondents do not have. One would think that she would have used that opportunity to prepare accordingly for the Hearing on Discipline. All Respondent presented at the Hearing on Discipline was an attempt to re-argue her innocence instead of presenting helpful information that would be useful to the Referee and the Court in deciding her future. (Draft ROR and all emails appertaining thereto are docketed at item number 44 as a composite attachment; See also the Transcript of Hearing Discipline Pages 100 Line 23-101 Line 4; Pages 104 Line 7-118 Line 14)

That the Respondent just doesn't get it is disconcerting to this Referee. Her conduct in these two cases seems out of character with her unrefuted testimony of her experience and professional history. For that reason he concludes that the Respondent is either debilitated in some mental or emotional way or is extremely negligent in her practice of law and was acting nearly criminally when she rented the condominium that was not hers and compounded the problem by delaying the forwarding of the funds to the rightful

owner of both weeks. The Referee therefore makes the somewhat unusual following recommendations as to disciplinary measures.

IV RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating Rules 4-1.3 (Diligence), 4-1.4 (Communication), 4-1.5(e) (Duty to Communicate Basis or Rate of Fee or Costs to Client), 4-1.5(f) (Contingent Fees) and 4-8.4(c) (Misconduct: Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation) of the Rules of Professional Conduct of The Florida Bar.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

It is my opinion that the Respondent has serious and significant professional and mental shortfalls that preclude her providing the legal services of marketable value and that; in fact, unless she undergoes substantial rehabilitation she should not be allowed to practice law in the state of Florida.

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

- A. An immediate suspension for a minimum of one year with, as a condition precedent to reinstatement:
 - 1. She undergo, at her expense, a comprehensive psychological evaluation and comply with all therapy recommendations arising therefrom, through Florida Lawyers Assistance, Inc. (FLA, Inc.) at an MD/PhD level to

determine her current mental status, to determine if there is any emotional or mental condition (including but not limited to stress, dementia, or alzheimers) that adversely affects her ability to ethically and capably practice law; particularly with her inability to recognize ethical limits and boundaries, her resistance to seeing matters to conclusion, particularly litigation and trial, and her proclivity for attempting to handle matters beyond her level of expertise or ability. Respondent shall agree to enter into a monitored contract with FLA, Inc., the duration of which shall be determined by the recommendations of the physician, therapist and FLA, Inc. The Florida Bar must approve the physician and therapist and the Respondent must waive all confidentiality insofar as the court, the referee and Bar discipline personnel are concerned. If the physician/therapist diagnoses a recognized psychiatric or medical condition and the Respondent agrees to undergo treatment, and she otherwise demonstrates rehabilitation as required by Rule 3-7.10, Rules Regulating The Florida Bar, the Respondent should be allowed to continue to practice law under supervision, as set forth below, when the therapist/physician opine that it is safe for the Respondent's clients for her to do so.

2. Within 30 days after reinstatement she shall register for the next available session of The Florida Bar Ethics School and shall successfully complete The Florida Bar Ethics School.

3. Within 30 days after reinstatement she shall register for the next available session of The Florida Bar Professionalism Workshop and successfully complete The Florida Bar Professionalism Workshop;
 4. Within one year after reinstatement, she should undergo 30 hours of CLE training, in addition to the required CLER hours provided by Rule 6-10.3, Rules Regulating The Florida Bar, including at least two courses in mid and higher-level litigation subjects;
- B. She refunds the Client, Carrie Mitchell Long, the \$1500.00 retainer, within thirty days of the Court's entry of its order in this cause.
- C. Further the Referee recommends that once the respondent is reinstated, that it shall be while under probation for a period of no less than 3 years during which:
1. Respondent shall not represent any client without a written fee agreement signed and dated by both the client and the Respondent. The written fee agreement shall bear the date no later than the first day of representation. Respondent shall submit quarterly reports to The Florida Bar listing any such new clients and attaching thereto copies of said fee agreements.
 2. Respondent may only undertake representation of plaintiffs in tort cases if she associates co-counsel, who must be board certified in civil trial or the specialty in which the case falls, for a period of five years after the Respondent resumes the practice of law. This requirement would be

deemed satisfied if the Respondent herself becomes Board Certified within that time period. Respondent shall submit quarterly reports to The Florida Bar listing any such new matters and identifying co-counsel.

3. Within 30 days after reinstatement she shall register for review of her office organization by, and adopt any recommendations of LOMAS;

4. During said period of probation Respondent shall practices under the supervision of a mentor or retired counsel who can assist her in dealing with issues of seeing matters through to conclusion; and

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

E. If the physician/therapist cannot diagnose or if they determine that there is no recognized treatable condition that gives rise to the Respondent's behavior in this case, then it is the recommendation of the Referee that she be permanently disbarred.

F. That the Respondent be immediately (within the next 30 days) required to obtain written fee agreements with all present clients if she is permitted to continue practicing law pending the Court's action on this Report.

V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS

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

A. Personal History of Respondent:

Age: 57 years old

Date admitted to the Bar: December 6, 1978

B. Aggravating Factors:

9.22(b) dishonest or selfish motive

9.22(d) multiple offenses

9.22(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process

9.22(i) substantial experience in the practice of law

9.22(j) indifference to making restitution

C. Mitigating Factors:

9.32(a) absence of a prior disciplinary record

9.32(c) personal or emotional problems, to wit: personal illness, last illness and death of husband, heart disease and alzheimers of mother.

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

I find the following costs were reasonably incurred by The Florida Bar:

A. Grievance Committee Level

Court Reporter's Fees	\$	532.50
Photocopies		<u>159.30</u>
Subtotal	\$	691.80

B. Referee Level

Administrative Costs	\$ 1,250.00
Court Reporter's Fees	3,302.60
Referee Travel	273.19
Investigative Costs	89.10
Witness Expenses (Including Experts)	<u>3,595.56</u>
Subtotal	\$ 8,510.45
TOTAL	\$ 9,202.25

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 13th day of December, 2006.

Honorable Richard B. Davis, Referee
207 N.E. 1st Street
Room 103
Jasper, FL 32052

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; Kristin A. Godwin, Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and Linda G. Miklowitz, Respondent, at his record Bar address of P.O. Box 14922, Tallahassee, FL 32317, on this _____ day of _____, 2006.

Richard B. Davis, Referee