

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC06-235

v.

TFB File Nos. 2004-00,892(1A),
2004-01,084(1A), 2004-01,093(1A),

MALDRICK ELAINE BRIGHT

2004-01,108(1A), 2004-01,138(1A),

2004-01,169(1A), 2004-01,410(1A),

Respondent.

2004-01,418(1A), 2005-00,118(1A).

REPORT OF REFEREE

I. **SUMMARY OF PROCEEDINGS**

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to R. Regulating Fla. Bar 3-7.6, the following proceedings occurred:

The Florida Bar filed its nine-count complaint on February 7, 2006. The Complaint was sent to Respondent's record Bar address and was returned marked "address unknown." A telephonic case management conference was noticed for March 27, 2006, at which Respondent failed to appear. On March 30, 2006, The Florida Bar filed a Motion to Enlarge Admissions at which Respondent appeared via telephone. The Motion to Enlarge Admissions was granted on April 11, 2006. The Florida Bar served Respondent with its Request for Admissions on April 13, 2006. Respondent failed to serve an Answer admitting, denying or objecting to the Complaint or Request for Admissions.

On June 21, 2006, The Florida Bar filed a Motion for Default and for Summary Judgment. On June 27, 2006, Respondent filed untimely answers to the Complaint and Request for Admissions. On July 19, 2006, The Florida Bar filed a Motion to Strike Respondent's Answers to the Complaint and Request for Admissions. A hearing was scheduled on July 26, 2006, on all pending motions. The referee permitted Respondent to file a subsequent written response to the Motions which she did in a Memorandum of Law dated August 7, 2006. The Florida Bar replied to the Memorandum on August 11, 2006. On September 12, 2006, the referee granted The Florida Bar's Motion to Strike, for Default and for Summary Judgment. The Florida Bar filed a Motion to Withdraw Order and Motion to Set Final Penalty Hearing Date on October 10, 2006. After a motion hearing on October 18, 2006, the referee granted the motions on October 31, 2006. Respondent appeared by telephone at the final penalty hearing scheduled on December 13, 2006.

All of the aforementioned pleadings, responses thereto, exhibits, affidavits and this Report 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 of the Supreme Court of Florida and the Rules Regulating The Florida Bar.

B. Narrative Summary Of Case.

I would make the following findings of fact:

As to TFB File No. 2004-01,138(1A)
(Allen Walker)

1. Respondent was hired to represent Allen Walker in a personal injury suit relating to an automobile accident.
2. Respondent failed to provide to Mr. Walker a contingency fee agreement, and a Statement of Clients' Rights in his personal injury case
3. Respondent contacted Mr. Walker's insurance company on April 4, 2003, to inquire about his PIP coverage.
4. Respondent failed to communicate with Mr. Walker keeping him informed on the status of the settlement negotiations, and discussing the terms of the insurance settlement with him before agreeing to settle the case.
5. On October 29, 2003, Respondent was placed on emergency suspension by the Florida Supreme Court for misappropriation of client trust funds; her suspension was effective 30 days from the date of the Emergency Suspension Order, i.e., on November 29, 2003.
6. Respondent failed to communicate to Mr. Walker that she was suspended and could not represent him after November 29, 2003.
7. Beginning in November 2003, Respondent began to transfer client case files to another attorney, Debra Cooper, who had agreed to substitute as counsel on Respondent's legal cases.

8. After her suspension date, Respondent was hired to perform paralegal duties for Ms. Cooper's law firm until on or about February 4, 2004.

9. Respondent did not advise Ms. Cooper that she continued to represent Mr. Walker in his personal injury case.

10. Respondent continued to represent Mr. Walker and to have direct contact with her client after her suspension from The Florida Bar.

11. The insurance company issued a settlement check for \$125,000 on January 23, 2004, payable to Mr. Walker and Respondent.

12. Despite her suspension from the practice of law in Florida, Respondent and her paralegal, Carol Rich, met with Mr. Walker, his sister, and his mother at a bank in Pensacola on January 30, 2004.

13. Respondent drafted a "Settlement Statement" for Mr. Walker, dated January 30, 2004, specifically writing in by hand that the "Bright Law Office will be responsible for paying bills" that were listed as medical expenses and liens on the settlement statement. See Exhibit A to Complaint.

14. On January 30, 2004, Mr. Walker signed the Settlement Statement and his sister signed it as a witness, with the understanding that his medical bills would be paid by Respondent out of her \$25,000 fee.

15. At the same meeting with Respondent, Mr. Walker signed a release for Allstate Insurance that was notarized by Respondent's paralegal, Carol Rich. See Exhibit B to Complaint.

16. To date, Respondent has failed to pay any of Mr. Walker's medical bills listed on the Settlement Statement as she had agreed.

17. Respondent knew, or should have known, that as an attorney suspended from The Florida Bar she could have no direct contact with any client, and could not continue to practice law in Florida.

18. Respondent knew, or should have known, that the meeting with her client to sign the Settlement Statement, the Release, and the insurance check on January 30, 2004, was a violation of the Florida Supreme Court's Order of emergency suspension effective November 29, 2003.

19. Respondent knew, or should have known, that her written agreement to pay Mr. Walker's medical bills out of her attorney's fees of \$25,000, was a misrepresentation that was dishonest and deceitful. The sole purpose was to induce her client to sign the Settlement Statement, the Release, and the settlement check on January 30, 2004, so that she could immediately obtain the balance of the settlement proceeds as her attorney fees in his case.

20. Respondent took an excessive and illegal fee from Mr. Walker. According to the Settlement Statement, she was entitled to keep \$10,888.00 net after payment of the medical bills, but instead, she appropriated the entire \$25,000 attorney fee to her own benefit and use.

21. Respondent failed to reply to the inquiry letter dated August 9, 2004, from the investigating member of the grievance committee requesting a copy of her

signed contract and the Settlement Statement that she had with Mr. Walker.

As to TFB File No. 2004-01,169(1A)
(Leitha Mae Craig)

22. Respondent was hired by Mozelle Hannah, the daughter of Leitha Mae Craig, to file a petition for dissolution of Mrs. Craig's marriage to her stepfather, Robert Craig.

23. Mr. and Mrs. Craig were married on May 23, 1990, and, both before and after their marriage, had jointly accumulated several rental properties as well as a private residence.

24. In January 1998, Mrs. Craig had a very serious, debilitating stroke that left her bedridden using a feeding tube. Her condition required permanent nursing home care.

25. On or about November 1999, Mr. Craig had his wife moved from a Pensacola nursing home facility to the Santa Rosa Health and Rehabilitation Center, because this location was closer to their home, and he could visit her more often.

26. On December 1, 2001, Mrs. Craig's treating physician filed a letter with the Santa Rosa Center stating that Mrs. Craig lacked the ability to give informed consent and make medical decisions regarding her care.

27. In a follow-up letter, dated August 10, 2003, her treating physician summarized Mrs. Craig's medical condition as follows:

Mrs. Craig has suffered a stroke with complete hemiparesis and is largely bedridden requiring tube feedings. Her communication

is limited to only occasional head nodding and answering questions in one-word responses during moments of lucidity and awareness.

28. Respondent filed a petition for dissolution on behalf of her client, Mrs. Craig, with the Santa Rosa Circuit Court on April 14, 2003, alleging numerous false and misleading facts to the court.

29. Respondent admits that the petition for dissolution was signed by Mrs. Craig, while her daughter, Ms. Hannah, held her hand.

30. Respondent admits that she was present along with two legal assistants at the signing of the petition, and when she questioned Mrs. Craig as to whether she wanted a divorce, Mrs. Craig nodded her head.

31. Respondent also prepared a draft of a power of attorney for Ms. Hannah, under which Ms. Hannah claimed she had the right to institute a divorce action on behalf of her mother.

32. Respondent stated that “someone at the nursing home” found Mrs. Craig “competent enough for her to sign it and then it was notarized.” Respondent never verified whether her client was competent to sign a power of attorney, and was not present when the power of attorney was executed.

33. Respondent never produced an executed copy of a power of attorney for The Florida Bar or the court.

34. The petition for dissolution of marriage was false and misleading because it alleged, *inter alia*:

A. That the parties had separated in January 1998, and had continued to live separate and apart with no mention of Mrs. Craig's stroke and her required permanent nursing home care.

B. That the marriage was "irretrievably broken" when in fact Mr. Craig visited his wife almost daily in the nursing home, and wrote in his responsive pleadings that neither he nor his wife wanted a divorce.

C. That the wife required all types of permanent and temporary alimony because "she was unable to support herself through her economic endeavors at that time." Mrs. Craig's financial affidavit indicated that she received \$1,020 in Social Security benefits, and had no expenses. All of her medical expenses were being paid by Medicaid, and her husband made the mortgage payments on their jointly-held property.

D. That the wife should have exclusive use and ownership of the marital residence and a vehicle belonging to both parties, despite the fact that she was 81-years old, permanently disabled in a nursing home, and unable to drive.

35. On October 29, 2003, Respondent was placed on emergency suspension by the Florida Supreme Court for misappropriation of client trust funds; her suspension was effective 30 days from the date of the Emergency Suspension Order, i.e., on November 29, 2003.

36. Beginning in November 2003, Respondent began to transfer client case files to another attorney, Debra Cooper, who had agreed to substitute as counsel on

Respondent's legal cases.

37. After her suspension date, Respondent was hired to perform paralegal duties for Ms. Cooper's law firm until on or about February 4, 2004.

38. On January 20, 2004, Ms. Cooper signed a Notice of Hearing setting the final dissolution hearing for March 30, 2004, assuming that the Notice of Substitution of Counsel had been finalized by Respondent and the file had been sent to her office.

39. Respondent, however, failed to file any motion with the court withdrawing as counsel of record, and continued to represent Mrs. Craig.

40. On March 29, 2004, Respondent wrote a memo to the court advising that both parties had a Marital Settlement Agreement, and that Mrs. Craig would not appear, but Mr. Craig would present at the final hearing on March 30, 2004.

41. On that same date, Respondent faxed from her legal office in Milton, Florida, the Marital Settlement Agreement and a proposed Final Judgment of Dissolution to the court for filing, prior to the final hearing.

42. When Judge Boles' judicial assistant questioned Respondent's ability to file any legal pleadings due to her suspension from The Florida Bar, Respondent sent her paralegal assistant, Carol Rich, to the judge's office to file the Marital Settlement Agreement and the proposed Final Judgment of Dissolution with the court prior to the final hearing.

43. The court called Ms. Cooper who had signed the notice of hearing, and asked her to appear in court the next day for the final hearing.

44. In reviewing the file, when Ms. Cooper compared Mrs. Craig's signature on the petition for dissolution and the Marital Settlement Agreement, she immediately notified The Florida Bar that Mrs. Craig's signature on the Marital Settlement Agreement appeared to be a forgery.

45. Upon investigation, it was discovered that the Marital Settlement Agreement had allegedly been signed by Mrs. Craig on March 22, 2004, and notarized by Carol Rich, Respondent's legal assistant. See Exhibit C to Complaint.

46. On the morning of March 30, 2004, The Florida Bar's staff investigator obtained a copy of Mrs. Craig's signature, witnessed by the Nursing Home Administrator, and established clearly that the handwriting was different. See Exhibit D to Complaint.

47. The staff investigator also obtained a statement from the Nursing Home Administrator stating that the nursing home log for March 22, 2004, showed no visits to Mrs. Craig from any relatives, Carol Rich or Respondent on that date. See Exhibit E to Complaint.

48. On March 26, 2004, Mr. Craig filed a Motion for Continuance alleging that neither he nor his wife wanted a divorce and that the legal pleadings were being filed on her behalf by family members who had personal motives to influence his wife to divorce him. See Exhibit F to Complaint.

49. In light of the evidence indicating that Mrs. Craig was not mentally competent, and that her signature on the Marital Settlement Agreement appeared

forged, the court appointed Ms. Cooper to represent Mrs. Craig, and to report back her findings.

50. Respondent knew, or should have known, that her actions would lead to false and misleading statements to the court.

51. Respondent knew, or should have known, that Mrs. Craig's signature on the Marital Settlement Agreement was a forgery before she presented it to the court.

52. Respondent knew, or should have know, that she was prohibited from the practice of law after her suspension date, and that her actions in continuing to represent Mrs. Craig were a violation of the Court's suspension Order.

53. Respondent failed to protect her client's interests by filing a false and misleading petition for dissolution and a forged marital settlement agreement with the court.

54. Respondent failed to protect her client's interests by not timely and properly withdrawing from the dissolution action when she was suspended from the practice of law.

55. Respondent knew, or should have known, that her client, Mrs. Craig, did not want a divorce and was not competent to sign legal documents.

56. Respondent knew, or should have known, that her actions were unlawful, contrary to honesty and justice, and her conduct was prejudicial to the administration of justice.

57. Respondent knew, or should have known, that filing the petition for

dissolution was frivolous and nonmeritorious because it was filed for the purpose of advancing Ms. Hannah's, not her client's, best interests.

58. Respondent knew, or should have known, that the Marital Settlement Agreement was an essential document to the dissolution case, and she knew, or should have known, that it was willfully and unlawfully altered, thereby fabricating evidence in a legal case by submitting a document to the court with her client's forged signature.

59. Respondent knew, or should have known, that her allegations in the petition were false and misleading statements of material fact.

60. Respondent knew, or should have known, that having her paralegal notarize the marital settlement agreement with a forged signature, and sending her paralegal to file forged documents with the court when she was suspended, was contrary to the Rules Regulating The Florida Bar, in particular, the rule regarding the supervision of nonlawyer assistants.

61. Respondent knew, or should have known, that continuing to represent Mrs. Craig and filing documents after her suspension from The Florida Bar was engaging in the unlicensed practice of law.

62. Respondent knew, or should have known, that she was engaging in a criminal activity when she faxed the Marital Settlement Agreement with the forged signature to the court, and then instructed her paralegal assistant to personally deliver the agreement to the court.

As to TFB File No. 2004-01,108(1A)

(Sheila Woldemariam)

63. Respondent was hired by Sheila Woldemariam to represent her in a post judgment dispute over custody in Seminole County, Sanford, Florida.

64. Respondent failed to diligently represent her client and to expedite her client's legal case.

65. On October 29, 2003, Respondent was placed on emergency suspension by the Florida Supreme Court for misappropriation of client trust funds; her suspension was effective 30 days from the date of the Emergency Suspension Order, i.e., on November 29, 2003.

66. Respondent failed to communicate to Ms. Woldemariam that she was suspended, and could not represent her in her legal case after November 29, 2003.

67. Beginning in November 2003, Respondent began to transfer client case files to another attorney, Debra Cooper, who had agreed to substitute as counsel on Respondent's legal cases.

68. After her suspension date, Respondent was hired to perform paralegal duties for Ms. Cooper's law firm until on or about February 4, 2004.

69. On November 28, 2003, Respondent signed a substitution of counsel in Ms. Woldemariam's case that was never signed by the client.

70. As of February 23, 2004, Respondent had failed to deliver the Woldemariam file to Ms. Cooper for her review.

71. Unbeknownst to Ms. Cooper, Respondent continued to practice law after

her suspension in November 2003 in violation of the Florida Supreme Court Order dated October 29, 2003.

72. On or about February 5, 2004, Respondent mailed to her client an Order Continuing Trial Date setting her custody dispute for March 22, 2004, in Sanford, Florida.

73. On February 26, 2004, Respondent filed with the court a Motion to Withdraw as Counsel of Record in Ms. Woldemariam's case, stating that she had been "temporarily suspended from the practice of law in Florida" and that she had tried to notify her client "but has been unsuccessful." The Certificate of Service alleged that Ms. Woldemariam had been sent a copy of the Motion to Withdraw by facsimile, U.S. Mail, and hand delivery.

74. On March 2, 2004, the circuit court entered an Order Granting Substitution of Counsel by Ms. Cooper.

75. The Motion to Withdraw and the Order Granting Substitution of Counsel were both filed by Respondent in Seminole County Circuit Court, Sanford, Florida on March 8, 2004.

76. Respondent continued to represent Ms. Woldemariam and had direct contact with her client even after her emergency suspension from The Florida Bar.

77. On March 12, 2004, Respondent mailed a copy of a Stipulated Motion to Withdraw to Ms. Woldemariam for her signature.

78. Ms. Woldemariam refused to sign it because the Motion alleged that the

grounds for Respondent's withdrawal from the case were inability "to effectively communicate and thus irreconcilable differences."

79. Respondent also alleged in the Motion that, because of the inability to communicate, she could not continue to represent her client who had failed to pay attorney fees and costs pursuant to her contract.

80. Nowhere in the Motion did Respondent advise the client that the reason she could not represent her was the fact that Respondent had been placed on emergency suspension from the practice of law in Florida as of November 29, 2003.

81. Shortly before her final hearing, Ms. Woldemariam discovered from a third party at the beginning of March 2004, that Respondent was suspended from The Florida Bar.

82. On March 18, 2004, the court relieved Ms. Cooper as counsel of record in Ms. Woldemariam's legal case, leaving the client with no legal representation for her hearing on March 22, 2004.

83. Respondent failed to protect her client's interests by abandoning Mrs. Woldemariam's case without timely notice to her client immediately before her final hearing.

84. Respondent violated the Supreme Court Order and engaged in the unlicensed practice of law by continuing to represent Mrs. Woldemariam after being suspended from the practice of law in Florida.

As to TFB File No. 2004-00,892(1A)
(Lilia Howard)

85. On October 19, 2001, Lilia Howard hired Respondent to represent her in a petition for dissolution of marriage, and over the course of the dissolution case paid Respondent approximately \$4,350.00 in attorney's fees.

86. On September 17, 2002, a Final Judgment of Dissolution of Marriage was entered by the court.

87. In the Final Judgment, the court ordered the former husband to pay all reasonable attorney's fees and costs incurred by Ms. Howard during the dissolution proceedings which amounted to approximately \$5,000. The court specifically stated that if the parties could not agree on an amount:

the Wife's counsel shall file a motion for the Court to establish attorney's fees and costs. The stipulation or motion shall be filed within 30 days of the entry of the Final Judgment. If neither a stipulation is submitted nor a motion filed within thirty days *the Court will not reserve jurisdiction to it past the thirty day period provided herein.* [Italics added]

88. Respondent failed to timely file any stipulation or motion for attorney's fees and costs with the court on behalf of her client by October 17, 2002.

89. Respondent failed to competently and diligently pursue her client's case, thereby prejudicing Ms. Howard's ability to collect a reimbursement from her former spouse for attorney's fees and costs pursuant to the court order.

90. By failing to expedite the filing of a stipulation or motion for attorney's fees and costs, Respondent failed to protect Ms. Howard's legal rights.

91. On January 6, 2003, Ms. Howard terminated Respondent's legal representation, and an Order Granting Substitution of Counsel was entered on January 21, 2003.

As to TFB File No. 2004-01,410(1A)
(Dolores Harris)

92. Respondent was hired by Dolores Harris in June 2003 to represent her in a personal injury suit.

93. Respondent's initial consultation with Ms. Harris was via telephone, during which Respondent inquired about how Ms. Harris was injured and advised Ms. Harris of what doctor to contact to treat her injury.

94. On July 30, 2003, Respondent sent a letter to the defendant's insurance carrier requesting information on insurance coverage.

95. Respondent sent a demand letter for \$50,000 to the insurance carrier on October 28, 2003.

96. On October 29, 2003, Respondent was placed on emergency suspension by the Florida Supreme Court for misappropriation of client trust funds; her suspension was effective 30 days from the date of the Emergency Suspension Order, i.e., on November 29, 2003.

97. Respondent failed to communicate to Ms. Harris that she was suspended, and could not represent her after November 29, 2003.

98. After the initial telephone consultation in June 2003, Respondent failed to

communicate with Ms. Harris, who placed numerous telephone calls to Respondent inquiring about the status of her case.

99. Respondent settled Ms. Harris' personal injury case for \$2,500 with the insurance carrier without notifying her client of the insurance carrier's settlement offer, and without the consent of her client.

100. Respondent met with her client on December 3, 2003, at her law office in Milton, Florida, and presented to Ms. Harris a check for \$2,500 from the insurance carrier, which Ms. Harris refused to accept because it would not cover her medical bills.

101. At the same time, Ms. Harris refused to sign any settlement agreement or release, and hired another attorney to complete her legal representation on the personal injury case.

102. Respondent failed to communicate with her client and to keep her apprised of the status of her case.

103. Respondent failed to reply to The Florida Bar's inquiry letter, dated June 25, 2004, that was sent to her record Bar address of P.O. Box 3513, Milton, Florida.

As to TFB File No.2004-01,084(1A)
(George and Elizabeth Wetherbee)

104. On September 24, 2003, George and Elizabeth Wetherbee hired Respondent for \$750 to seek visitation with their granddaughter who had been placed in foster care by Department of Children and Families.

105. For almost nine months, the Wetherbees had not seen their granddaughter

and had been attending hearings on the termination of parental rights, but had no legal counsel to address their request for visitation to the court.

106. The Wetherbees wanted Respondent to take immediate action to obtain visitation with their granddaughter.

107. Shortly thereafter, Respondent appeared in court but was not prepared to present the Wetherbees' case because she had filed no motion, and failed to learn the case status had progressed far past the initial stages for termination of parental rights.

108. On November 3, 2003, Respondent filed a Petition for Grandparents Visitation with the court, and set a Notice of Hearing on December 18, 2003.

109. On October 29, 2003, Respondent was placed on emergency suspension by the Florida Supreme Court for misappropriation of client trust funds; her suspension was effective 30 days from the date of the Emergency Suspension Order, i.e., on November 29, 2003.

110. Respondent failed to communicate to the Wetherbees that she was suspended, and could not appear or represent them after November 29, 2003.

111. Instead, Respondent informed the Wetherbees that because she had a heavy caseload, another attorney would be helping her and would represent them at the visitation hearing.

112. The Wetherbees later learned of Respondent's suspension from a third party and from checking The Florida Bar's website.

113. When Mrs. Wetherbee called and spoke to Respondent about the

suspension, she was advised by Respondent that it would not affect their legal case.

114. Another attorney appeared for the Wetherbees on December 18, 2003, but the court could not decide the visitation petition because Respondent had failed to properly notify all the parties.

115. Respondent failed to diligently pursue her clients' case.

116. Respondent failed to properly communicate with her clients to keep them informed of her suspension and the status of their case.

117. Respondent did not protect her client's interests by failing to give reasonable notice to the Wetherbees of her emergency suspension from The Florida Bar, and by failing to refund any advance fee payment that was not earned.

As to TFB File No. 2004-01,418(1A)
(Angelo Palmer)

118. Respondent was hired by Angelo Palmer to represent him on a variety of criminal charges in December 2002, up through the final disposition of his cases.

119. The court entered an order on July 30, 2003, adjudging Mr. Palmer incompetent to proceed and committing him to the Department of Children and Families program for mentally retarded defendants.

120. After this date, Respondent failed to take any further action on Mr. Palmer's case.

121. On October 29, 2003, Respondent was placed on emergency suspension by the Florida Supreme Court for misappropriation of client trust funds; her suspension

was effective 30 days from the date of the Emergency Suspension Order, i.e., on November 29, 2003.

122. Respondent failed to communicate to Mr. Palmer that she was suspended, and could not appear or represent him after November 29, 2003.

123. Respondent failed to withdraw from his case, or to communicate to the court that she could no longer represent Mr. Palmer.

124. Respondent failed to protect her client's interests by abandoning her legal representation of Mr. Palmer's case without any prior notice to her client, and by failing to withdraw or to provide substitute counsel to cover her client's case, in the event that Mr. Palmer was declared competent to proceed.

125. Respondent did not protect her client's interests by failing to give reasonable notice to Mr. Palmer of her emergency suspension from The Florida Bar, and by failing to refund any advance fee payment that was not earned.

126. Mr. Palmer was returned to appear before the court on February 27, 2004, and was found competent to proceed.

127. Respondent failed to appear or to notify the court of her suspension and inability to represent Mr. Palmer on his criminal charges.

128. Respondent knew, or should have known, that Mr. Palmer would have no legal representation at his court appearance on February 27, 2004, and the court would need to appoint a public defender to Mr. Palmer's case.

129. Respondent failed to respond to The Florida Bar's inquiry letters dated

June 15, 2004, and July 2, 2004, sent to her record Bar address of P.O. Box 3513, Milton, Florida 32572.

As to TFB File No. 2004-01,093(1A)
(Charles Thompson)

130. On August 8, 2003, Respondent was hired by Charles Thompson for \$2,500 to represent him in a civil lawsuit for breach of contract.

131. Respondent failed to diligently represent Mr. Thompson by not promptly filing his civil lawsuit.

132. Respondent failed to respond to Mr. Thompson's telephone calls on numerous occasions, and failed to communicate with him on the status of his case.

133. On October 29, 2003, Respondent was placed on emergency suspension by the Florida Supreme Court for misappropriation of client trust funds; her suspension was effective 30 days from the date of the Emergency Suspension Order, i.e., on November 29, 2003.

134. Respondent failed to communicate to Mr. Thompson that she was suspended, and could not represent him after November 29, 2003.

135. Respondent did not protect her client's interests by failing to give reasonable notice to Mr. Thompson of her suspension, and by failing to refund any advance fee payment that was not earned.

As to TFB File No. 2005-00,118(1A)
(Dean C. Wilson)

136. Respondent was hired by Dean C. Wilson to take the deposition of his co-

defendant, Wesley Briggs, and based on his sworn testimony, to file a Motion for Post Conviction Relief.

137. On or about June 2001, on behalf of Mr. Wilson, his parents and sister contacted Respondent to investigate Mr. Wilson's case based on letters by co-defendant Briggs to his uncle, Edward Durbin. In the letters, Briggs recanted his testimony that implicated Mr. Wilson in the murder for which he was previously convicted and sentenced to life in prison.

138. On July 3, 2001, Respondent wrote to Mr. Wilson's parents advising them that she would need \$7,500 to investigate their son's case.

139. On December 17, 2001, Mr. Wilson's parents and sister met with Respondent for an initial consultation fee of \$75.00, and paid her \$3,000 of the \$5,000 flat fee she requested to undertake their son's criminal case.

140. Respondent failed to competently and diligently represent her client in his criminal case.

141. Respondent failed to take Briggs' deposition, one of the primary reasons for which she was retained.

142. Instead of taking Briggs' deposition, on March 13, 2002, Respondent sent a Notice of Taking Recorded Statement to Mr. Durbin, Briggs' uncle, to appear on March 14, 2002, to have a sworn statement recorded by a court reporter.

143. Respondent failed to review the original criminal file in Mr. Wilson's case, to review the witness trial testimony, or to obtain the appellate and post conviction

record before preparing a motion for post conviction relief.

144. On September 26, 2002, Respondent filed with the Washington County Circuit Court, Chipley, Florida, a two-page Motion for Post Conviction Relief on behalf of Mr. Wilson pursuant to R. Fla. Crim. P. 3.850(b)(1) relying solely on the letters from Briggs to Durbin, and Durbin's sworn statement.

145. On December 4, 2002, Respondent entered into a "Contract for Legal Services" signed by Mr. Wilson, whereby she agreed to take all legal steps to represent the client's interests in his criminal case.

146. The "Contract for Legal Services," signed by Respondent and Mr. Wilson, provided for a \$5,000 retainer, and a bonus fee of \$50,000 to be paid within 15 days if Mr. Wilson was released from prison.

147. The "Contract for Legal Services" also stated that Mr. Wilson would pay Respondent 20% of any book, movie, television appearances, DVD, or video about her client's life story.

148. Respondent drafted, negotiated and signed a prohibited "Contract for Legal Services" that would give her a percentage of literary and/or media rights relating to the representation before the conclusion of the case for which she was hired.

149. By her actions, Respondent also entered into a prohibited arrangement for a contingency fee in a criminal case through the "Contract for Legal Services."

150. Further, Respondent entered into an agreement for, charged and collected a clearly excessive fee of \$4,500 because the record does not show that she performed

legal services worth that amount of money.

151. After September 22, 2003, Respondent failed to communicate with her client on any matter pertaining to his legal case, and to expedite his litigation.

152. On October 29, 2003, Respondent was placed on emergency suspension by the Florida Supreme Court for misappropriation of client trust funds; her suspension was effective 30 days from the date of the Emergency Suspension Order, i.e., on November 29, 2003.

153. Respondent failed to communicate to Mr. Wilson that she was suspended, and could not represent him after November 29, 2003.

154. Respondent did not protect her client's interests by failing to give reasonable notice to Mr. Wilson of her suspension from The Florida Bar, and by failing to refund any advance fee payment that was not earned.

155. Respondent deceived Mr. Wilson and his parents into thinking that he had a legal basis for a Motion for Post Conviction Relief on "newly discovered evidence" grounds in order to obtain a legal fee.

156. On or about August 2004, Mr. Wilson learned that Respondent was suspended from The Florida Bar and filed a Bar complaint.

157. Since he did not have the funds to hire another attorney, Mr. Wilson filed a *pro se* motion to appoint counsel and for leave to conduct discovery on March 22, 2005, that was denied by the court along with the Motion for Post Conviction Relief on June 9, 2005.

158. Respondent's conduct in Mr. Wilson's case is prejudicial to the administration of justice.

159. Respondent failed to reply to The Florida Bar's inquiry letter, dated August 6, 2004, that was sent to her record Bar address of P.O. Box 3513, Milton, Florida.

III. RECOMMENDATIONS AS TO GUILT.

In all of the above cases, I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar, to wit:

As to TFB File No. 2004-01,138(1A): **3-4.3**(Misconduct), **3-6.1**(Direct Contact with Client), **4-1.4**(Communication), **4-1.5**(Fees for Legal Services), **4-3.4(c)**(Violation of Court Order), **4-8.4(c)**(Misrepresentation), **4-8.4(g)(2)**(Failure to respond to the grievance committee).

As to TFB File No. 2004-01,169(1A): **3-4.3**(Misconduct), **4-1.16(d)**(Protect Client Interests), **4-3.1**(Meritorious Claims and Contentions), **4-3.3**(Candor Towards Tribunal), **4-3.4**(Fairness to Opposing Party and Counsel), **4-4.1**(Truthfulness in Statements to Others), **4-5.3**(Responsibilities Regarding Non-Lawyer Assistants), **4-5.5**(Unlicensed Practice of Law), **4-8.4(a)**(Violate Bar Rules), **4-8.4(b)**(Engage in Criminal Activity), **4-8.4(c)**(Fraud, Deceit, Misrepresentation), and **4-8.4(d)** (Conduct Prejudicial to the Administration of Justice).

As to TFB File No. 2004-01,108(1A): **3-6.1**(Direct Contact With Client), **4-1.3** (Diligence), **4-1.4**(Communication), **4-1.16(d)**(Protection of Client's Interests), **4-3.2** (Failure to Expedite Litigation), **4-3.4(c)**(Violation of Court Order), **4-5.5**

(Unlicensed Practice of Law).

As to TFB File No. 2004-00,892(1A): 4-1.1(Competence), 4-1.3(Diligence), 4-1.16(d) (Protect Client Interests), and 4-3.2(Expedite Litigation).

As to TFB File No. 2004-01,410(1A): 4-1.4(Communication), and 4-8.4(g) (Failure to respond to The Florida Bar).

As to TFB File No. 2004-01,084(1A): 4-1.3(Diligence), 4-1.4(Communication) 4-1.16(d) (Failure to Protect Clients Interests).

As to TFB File No. 2004-01,418(1A): 4-1.3(Diligence), 4-1.4(Communication) 4-1.16(d) (Failure to Protect Clients Interests), 4-8.4(g)(Failure to Respond to The Florida Bar).

As to TFB File No. 2004-01,093(1A): 4-1.3(Diligence), 4-1.4(Communication) 4-1.16(d) (Failure to Protect Clients Interests).

As to TFB File No. 2005-00,118(1A): 4-1.1 (Competence), 4-1.3 (Diligence), 4-1.4 (Communication), 4-1.5(a) (Illegal, Prohibited or Clearly Excessive Fees), 4-1. 5(f) (Contingent Fees), 4-1.8 (Conflict of Interest-Prohibited Transactions), 4-1.16(d) (Protection of Client's Interests), 4-3.2(Expedite Litigation), 4-8.4(c) (Fraud, Deceit, Misrepresentation), 4-8.4(d) (Conduct Prejudicial to the Administration of Justice), and 4-8.4(g)(Failure to Respond to The Florida Bar).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that she be disciplined as follows for all of the above rule

violations:

A. Disbarment pursuant to R. Regulating Fla. Bar 3-5.1(f). In reaching this recommended discipline, I took into consideration the Florida Standards for Imposing Lawyer Sanctions, namely, 4.41(Lack of Diligence), 4.61 (Lack of Candor), 5.11(f)(Failure to Maintain Personal Integrity), 6.11(False Statements, Fraud, and Misrepresentation), 6.21(Violation of a Court Order), 7.1(Violation of Other Duties Owed as a Professional), and 8.1(a)(Violation of Prior Disciplinary Orders). Respondent's repetitive misconduct in violating the Florida Supreme Court's Order of Emergency Suspension, in deceiving her clients by failing to notify them of her suspension, and the abrogation of her clients' legal rights resulting from her inability to competently and diligently represent them, warrants disbarment. Compounding the circumstances of this case are aggravating factors including prior discipline for similar rule violations, a dishonest and selfish motive for Respondent to continue to practice law and collect fees after she was emergency suspended, having direct contact with clients after her suspension, presenting forged documents to the court, and misleading clients to believe that she was still a practicing attorney. A clear pattern of misconduct and multiple offenses is demonstrated by 53 rule violations in nine separate client complaints. Many of Respondent's clients were victimized by loss of legal rights, and were vulnerable because of advanced age, incarceration, or lack of understanding of the judicial process. Her clients relied and trusted Respondent to represent them and guide them through the legal process which she failed to do. Respondent had enough experience in the practice of law

to understand how she was acting to the detriment of her clients and to her own personal advantage and benefit. Respondent demonstrated by her actions that she was indifferent to making any restitution to clients who should have been refunded unearned fees, or recompensed for her failure to diligently represent them in their legal cases.

At the penalty hearing, Respondent mentioned she was remorseful, and tried to point the blame at her substitute counsel, but her testimony was not convincing.

The case law appears to support disbarment for attorneys who demonstrate a pattern of misconduct and a history of discipline involving multiple rule violations. See The Florida Bar v. Cox, 718 So. 2d 788(Fla. 1998)(attorney's misconduct with prior discipline for 27 rule violations in four cases including dishonesty and misrepresentation warranted disbarment. Id. at 794). In The Florida Bar v. Springer, 873 So. 2d 317(Fla. 2004),where attorney had committed multiple offenses involving lack of competence, diligence and communication with clients, as well as demonstrated a pattern of misconduct, the referee held that "multiple incidents of incompetent action followed by lies, then more lies to cover up the deceit, demonstrated 'a defect, if not an absolute absence, of honesty, integrity, and ethical judgment'." Id. at 320. Although the referee found co-operation and remorse as mitigating factors, he concluded that it did not "rise to the level of a valid basis to outweigh the harm of Respondent's actions" and recommended disbarment. Some of the rule violations in this case are also similar to prior disciplinary offenses for which Respondent previously received an emergency suspension and a three-year suspension. See The Florida Bar v. Knowles,

572 So. 2d 1373(Fla. 1991)(“repeated instances of similar misconduct should be treated cumulatively so that a lawyer’s disciplinary history can be considered as grounds for more serious punishment.” Id. at 1375).

Respondent was on emergency suspension per Order of the Florida Supreme Court when she engaged in multiple instances of having direct contact with clients, and continued to mislead her clients, the court, and the public into believing that she was engaged in the practice of law. See The Florida Bar v. McAtee, 674 So. 2d 734(Fla. 1996)(attorney was disbarred for continuing to practice law while under a 2-year suspension.); see also The Florida Bar v. Forrester, 916 So. 2d 647(Fla. 2005)(attorney with substantial prior disciplinary history was disbarred for knowingly and intentionally violating a suspension order by engaging in the practice of law while under suspension.); The Florida Bar v. Brown, 635 So. 2d 13(Fla. 1994)(attorney held in contempt for practicing law while disciplinarily resigned was disbarred).

B. Respondent will pay restitution pursuant to R. Regulating Fla. Bar 3-5.1(i) as follows:

(1) In TFB File No. 2004-01,138(1A), I find that Respondent promised to pay certain medical bills for her client, Allen Walker, out of the amount she received for attorney fees pursuant to a written Settlement Agreement. Respondent took a clearly excessive fee because she failed to abide by the written Settlement Agreement with her client. Mr. Walker testified that as of the date of the hearing, almost two years after the Settlement Agreement was signed, the following medical providers were

not paid. Within one year after the Supreme Court issues its final order, Respondent will pay \$4,955.00 plus any interest or other late fees due on the medical bill to: The Neurological Group, 1717 N.E. Street, Suite 422, Pensacola, Florida 32501-6333, noting on her check: Account # 66278 on behalf of Allen Walker. Within one year after the Supreme Court issues its final order, Respondent will also pay \$8,107.00 plus any accrued interest or other late fees to Baptist Hospital, P.O. Box 17106, Pensacola, Florida 32522-7106, noting on her check: Account # 22854-6223 on behalf of Allen Walker.

(2) In TFB File No. 2005-00,118(1A), I find that Respondent charged an attorney's fee of \$4,500 to her client, Dean Wilson, the majority of which was paid by his parents, Donald and June C. Wilson. I find that the \$4,500 fee charged by Respondent was clearly excessive. Based on the testimony of The Florida Bar's expert witness, I find that a reasonable fee in light of Respondent's lack of competence and diligence in pursuing Mr. Wilson's postconviction relief motion, is \$1,500. Within six months after the Supreme Court issues its final order, Respondent will pay \$3,000.00 in restitution to Donald and June C. Wilson, P.O. Box 772, Dixon, Missouri, 65459.

(3) Respondent will notify and provide proof of payment to the parties listed in part B(1) and B(2) above to Headquarters Division of The Florida Bar upon payment of the above restitution.

C. Respondent will pay The Florida Bar's taxable costs in the amount of \$4,169.79 in these proceedings for all of the above-captioned cases.

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

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

A. Personal History of Respondent:

Age: 48 years old

Date admitted to the Bar: March 20, 1997

Prior Discipline:

*3- year Suspension by court order dated October 14, 2004, in TFB File Nos. 2002-00,931(01A), 2003-00,499(1A), 2003-00,653(1A), 2004-00,112(1A).

*Suspended on an Emergency Basis by court order dated October 29, 2003, in TFB File No. 2004-00,354(01A)

*Admonishment by court order dated April 13, 2000, in TFB File No. 1999-00,610(01A).

B. Aggravating Factors:

- (a) prior disciplinary offense
- (b) dishonest or selfish motive
- (c) pattern of misconduct
- (d) multiple offenses
- (h) vulnerability of victims
- (i) substantial experience in the practice of law
- (j) indifference to making restitution

C. Mitigating Factors: None

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

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

Administrative Costs pursuant to	
R. Regulating Fla. Bar 3-7.6(q)(1)(I)	\$ 1250.00
Bar Counsel Expenses	599.35

Witness Expenses	657.85
Court Reporter Fees	342.05
Investigative Costs	1278.14
Copying Costs	<u>42.40</u>

TOTAL \$4,169.79

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 30 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 _____ day of _____, 200_.

 JUDGE MICHAEL J. HAUVERSBURK
 REFEREE
 Bay County Courthouse
 300 East 4th Street
 Panama City, Florida 32401

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 32301, and that copies were mailed by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida, 32399-2300; OLIVIA PAIVA KLEIN, Bar Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida, 32399-2300; and MALDRICK ELAINE BRIGHT, at her record Bar address P.O. Box 841181, Pearland, TX 77584, on this _____ day of _____, 200_.

JUDGE MICHAEL J. HAUVERSBURK
REFEREE