

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

Case No.: SC08-2015  
TFB Nos.: 2008-10,576(12C)  
2008-10,677(12C)  
2008-10,788(12C)  
2008-11,106(12C)

v.

LAWRENCE DANIEL MONTEKIO,  
Respondent.

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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 the Rules Regulating The Florida Bar, a Sanctions Hearing was held on March 13, 2009. Any pleadings, notices, motions, orders, transcripts, and exhibits are forwarded to The Supreme Court of Florida with this report and constitute the record in this case. The following attorneys appeared as counsel for the parties:

- For The Florida Bar: Maria L. Torres
- For The Respondent: The Respondent appeared *Pro Se* at the Sanctions Hearing.

**II. Findings of Fact as to Each Item of Misconduct With Which the Respondent Is Charged:** By Order dated January 26, 2009, the Bar's Motion for Default was granted and the allegations in the Bar's complaint were deemed admitted. Therefore, the Referee makes the findings set forth below.

**A. As to Count I - TFB No. 2008-10,576(12C), Complaint of Robert Bentley:** In or about early 2007, Respondent was engaged to represent Robert Bentley in two matters – a criminal and a family law matter. Respondent was paid \$6,500.00 for these representations. Mr. Bentley is requesting that \$1,250.00 be returned to him.

- (1) Failure to Communicate: During the criminal case, Respondent promised to provide Mr. Bentley with copies of his documents, but never provided Mr. Bentley with copies of any documents pertaining to his case.
- (2) Misrepresentations to Client: Respondent advised his client that a plea deal was struck with the prosecutor for Mr. Bentley to receive credit for time served at the county jail. The Respondent had not and did not negotiate such a plea with the prosecutor.
- (3) Misrepresentations to Tribunal: During a hearing in the family law matter, Respondent informed the judge that he had certain signed documentation from Mr. Bentley, but he did not have any such documentation from his client.
- (4) Failure to Respond to Bar Complaint: Respondent failed to respond to Bar counsel's letters of November 9, 2007 and December 3, 2007, and the matter was referred to the Grievance Committee. On February 18, 2008, Bar counsel sent Respondent a Notice of Assignment of Investigating Member. Respondent failed to contact the Grievance Committee investigating member within the ten days required by The Rules Regulating The Florida Bar. On March 11, 2008, Respondent contacted the Grievance Committee in response to Mr. Bentley's complaint and admitted lack of communication with Mr. Bentley.

- (5) Failure to Respond to Subpoena for documents: On April 22, 2008, Respondent was served with a subpoena duces tecum requesting that Respondent produce “any and all documents signed by Mr. Robert Bentley” no later than April 30, 2008. Respondent failed to provide the documentation as required by the subpoena. Respondent failed to produce a signed document by Mr. Bentley pertaining to the family law matter.

**B. As to Count II - TFB No. 2008-10,677(12C), Complaint of Robert S. Mason**: Respondent represented Robert and Kathryn Mason in a custody matter. In or about June 2004, the Masons received temporary custody of their grandson through Dependency Court.

- (1) Failure to Communicate:
- (a) The Masons requested a copy of the judge’s order awarding temporary custody. The Respondent failed to provide the Masons with a copy of the judge’s order.
- (b) In or about June 2004, Respondent advised the Masons, that additional filings needed to occur in Family Court in order for them to receive permanent custody of their grandson. Respondent further advised that there would be an additional \$150.00 filing fee. The Masons paid Respondent this filing fee. Since June 2004, the Masons have repeatedly attempted to contact Respondent about the status of their case. For over three (3) years, Respondent failed to respond to the Masons’ request for documents.
- (c) On August 2, 2007, Mr. Mason sent an e-mail to Respondent regarding the events in 2004 and lack of response from Respondent. In the e-mail, Mr. Mason advised Respondent that they needed a copy of the June 2004 order as a prerequisite to registering their grandson in school. Respondent failed to respond to the August 2, 2007 e-mail.

(d) On August 13, 2007, Mr. Mason sent a certified letter to Respondent, again inquiring about the June 2004 order and requesting a refund of the \$150.00 that he paid for the additional filing fee. The certified letter sent to Respondent's address was received by Respondent, but he failed to respond to the letter. At the sentencing hearing, the Respondent indicated that while the \$150.00 filing fee had been in his trust account over the past three (3) years, that he had only recently refunded it to the Masons.

(2) Failure to Respond to Bar Complaint: Respondent failed to respond in writing to the Bar's letters of December 10, 2007 and January 10, 2008, and the matter was referred to the Grievance Committee. On February 18, 2008, Bar counsel sent Respondent a Notice of Assignment of Investigating Member. Respondent failed to contact the Grievance Committee investigating member within ten days. On March 11, 2008, Respondent contacted the Grievance Committee and admitted to lack of communication with the Masons.

C. As to Count III - TFB No. 2008-10,788(12C), Complaint of Justin Davis: In or about December 2007, Respondent represented Mr. Davis in a criminal matter. Respondent charged a \$5,000.00 retainer fee for the representation. Respondent collected \$1,000.00 from Mr. Davis' family towards the \$5,000.00 fee.

(1) Failure to Communicate: Throughout the representation, Mr. Davis and his family made several attempts to contact the Respondent regarding the status of the case. The Respondent failed to respond to Mr. Davis and/or his family's requests for such information. The Respondent also failed to meet with Mr. Davis at the county jail.

- (2) Failure to Respond to Bar Complaint: The Respondent failed to respond in writing to the Bar's letter of January 10, 2008. On February 18, 2008, Bar counsel sent the Respondent a Notice of Assignment of Investigating Member. The Respondent failed to contact the Grievance Committee investigating member within ten days. On March 14, 2008, the Respondent contacted the Grievance Committee and admitted lack of communication with Mr. Davis.

**D. As to Count IV - TFB No. 2008-11,106(12C), Complaint of Mounira Esseghir Pratley**: On or about July 20, 2007, the Respondent was retained to represent Ms. Mounira Esseghir-Pratley in a post-dissolution matter. The Respondent charged and collected \$750.00 from Ms. Esseghir-Pratley for legal fees.

- (1) Failure to Communicate: Respondent advised Ms. Esseghir-Pratley that he would serve her ex-husband with the appropriate documents and schedule mediation to resolve the matter. Respondent failed to do anything on Ms. Esseghir-Pratley's case and failed to communicate with Ms. Esseghir-Pratley.
- (2) Failure to Respond to Bar Complaint: Respondent failed to respond to Bar counsel's letter of April 1, 2008 and the matter was referred to the Grievance Committee. On April 16, 2008, Bar counsel sent respondent a Notice of Assignment of Investigating Member. Respondent failed to contact the Grievance Committee investigating member.

### **III. Recommendations as to the guilt or innocence of the Respondent:**

As to each count of the complaint, the Referee makes the recommendations as to guilt or innocence set forth below.

- A. As to Count I: The Respondent should be found guilty of violating the Rules Regulating The Florida Bar as set forth below.
- (1) **Rule 4-1.4** (Communication - **(a)** Informing Client of Status of Representation. A lawyer shall: **(1)** promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; **(2)** reasonably consult with the client about the means by which the client's objectives are to be accomplished; **(3)** keep the client reasonably informed about the status of the matter; **(4)** promptly comply with reasonable requests for information; and **(5)** consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law. **(b)** Duty to Explain Matters to Client. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.)
  - (2) **Rule 4-3.3** (Candor Toward the Tribunal- **(a)** False Evidence; Duty to Disclose. A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal.)
  - (3) **Rule 4-8.4(g)** (Misconduct - A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency.)

B. As to Count II: The Respondent should be found guilty of violating the Rules Regulating The Florida Bar as set forth below.

- (1) **Rule 4-1.3** (Diligence - A lawyer shall act with reasonable diligence and promptness in representing a client.)
- (2) **Rule 4-1.4** (Communication - **(a)** Informing Client of Status of Representation. A lawyer shall: **(1)** promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; **(2)** reasonably consult with the client about the means by which the client's objectives are to be accomplished; **(3)** keep the client reasonably informed about the status of the matter; **(4)** promptly comply with reasonable requests for information; and **(5)** consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law. **(b)** Duty to Explain Matters to Client. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.)
- (3) **Rule 4-8.4(g)** (Misconduct - A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency.)

C. As to Count III: The Respondent should be found guilty of violating the Rules Regulating The Florida Bar as set forth below.

- (1) **Rule 4-1.3** (Diligence - A lawyer shall act with reasonable diligence and promptness in representing a client.)

- (2) **Rule 4-1.4** (Communication - (a) Informing Client of Status of Representation. A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law. (b) Duty to Explain Matters to Client. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.)
- (3) **Rule 4-8.4(g)** (Misconduct - A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency.)

D. As to Count IV: The Respondent should be found guilty of violating the Rules Regulating The Florida Bar as set forth below.

- (1) **Rule 4-1.3** (Diligence - A lawyer shall act with reasonable diligence and promptness in representing a client.)
- (2) **Rule 4-1.4** (Communication - (a) Informing Client of Status of Representation. A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or

reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

**(b) Duty to Explain Matters to Client.** A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.).

- (3) **Rule 4-1.5** (Fees and Costs for Legal Services – An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost.)
- (4) **Rule 4-8.4(g)** (Misconduct - A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency.)

**IV. Disciplinary Measures Requested by the Parties:** The Attorney on behalf of the Florida Bar Association requested a one (1) year suspension of the Respondent's license to practice law in the State of Florida. The Respondent requested a period of probation.

**V. Recommendation as to Disciplinary Measures to Be Applied:** The Referee hereby recommends the Disciplinary Measures set forth below be Applied to the Respondent per Rule 3-5.1.

- A. Per Rule 3-5.1(e), a suspension of the Respondent's license to practice law in the State of Florida for a one (1) year period (365 days).
- B. Per Rule 3-5.1(c), a subsequent period of probation of two (2) years, special conditions of which should be that: (1) No bar complaints are filed against the Respondent during this time; (2) The Respondent pay fee forfeiture of \$750.00 to Ms. Mounira Esseghir-Pratley and \$1,250.00 to Mr. Robert Bentley within the first eighteen (18) months of his probation; and (3) The Respondent pay all costs as set forth below within the first 18 months of his probation, including any statutory interest assessed as recommended below.

- C. Per Rule 3-5.1, the Respondent should be directed not to accept any new business from the date of the order or opinion of the Florida Supreme Court until the end of the term of his suspension. Said suspension should be effective 30 days from the date of said order or opinion so that the Respondent may close out his practice for that period of time and protect the interests of his clients.
- D. This Referee considered the case law described below in making its recommendation.
- (1) *The Florida Bar v. Centurion*, 801 So.2d 858 (Fla. 2000).  
A one-year suspension was warranted where attorney failed to communicate with clients, failed to file all required documents, failed to act with reasonable diligence and failed to respond to inquiries from the Bar, as occurred in the case at bar.
  - (2) *The Florida Bar v. Hmielewski*, 702 So. 2d 218 (Fla. 1997).  
A three-year suspension was warranted where among other violations, the attorney made false statements to a tribunal, as occurred in the case at bar.
  - (3) *The Florida Bar v. Kassier*, 730 So.2d 1273 (Fla. 1998).  
A one-year suspension was warranted where the attorney failed to respond to a subpoena duces tecum in connection with the Bar complaint, as occurred in the case at bar.

**VI. Personal History and Past Disciplinary Record:** After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(m)(1), the information set forth below should be considered.

- A. **Respondent's personal history and prior disciplinary record:**
- (1) Year of Birth: July 9, 1959
  - (2) Date Admitted to Bar: July 3, 1990
  - (3) Prior Disciplinary convictions and Disciplinary Measures Imposed Therein: None
  - (4) The Respondent is not certified in any area of practice.

**B. Aggravating Factors:**

- (1) **9.22(c) A pattern of misconduct.** Respondent has exhibited a pattern of failing to take action when required, both with regard to his clients' legal matters and in responding to the Bar.
- (2) **9.22(d) Multiple offenses.** Respondent is guilty of multiple rule violations in four cases involving four different clients.
- (3) **9.22(e) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.** Respondent failed to respond to Bar counsel or the Grievance Committee. He failed to answer the Bar's Complaint and failed to provide the documentation as required by the subpoena duces tecum.

**C. Mitigating Factors:** 9.32(a) absence of a prior disciplinary record.

**VII. Statement of Costs and Manner in Which Costs Should Be Taxed:**

**A.** The costs set forth below totaling \$1,895.15, are hereby found to be reasonably incurred by The Florida Bar:

- (1) Administrative Costs pursuant to Rule 3-7.6(q)(1)(I) of **\$1,250.00**
- (2) Staff Investigator Expenses: Raymond B. Raleigh (4/22/08 – 5/19/08) of **\$136.98**
- (3) Assistant Staff Counsel Expenses: May 14, 2008, Maria L. Torres: (Grievance Committee Meeting) of **\$72.69**
- (4) 12<sup>th</sup> Judicial Circuit Official Court Reporters: June 5, 2008 Transcript Fee: In re: Case #2007-CF-013271 of **\$98.00**
- (5) Collier Court Reporting, Inc.: December 8, 2008 Appearance Fee: (CMC Hearing) of **\$75.00**
- (6) Assistant Staff Counsel Expenses: March 13, 2009 Travel Expenses: (133.60 miles @ .55) of **\$73.48**
- (7) Demby & Associates Court Reporting Service: March 13, 2009 Appearance Fee/Transcript of **\$189.00**

- B. It is recommended that all such costs and expenses be charged to the Respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final, unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 13<sup>th</sup> day of April, 2009.

/s/  
Honorable Elizabeth V. Krier,  
Referee

Copies furnished to:

**Maria L. Torres**, Assistant Staff Counsel, The Florida Bar, 5521 W. Spruce Street, Suite C-49, Tampa, Florida 33607-5958;

**Lawrence Daniel Montekio**, Respondent, 46 N. Washington Blvd., Suite 13, Sarasota, FL 34236-5932; and,

**Kenneth Lawrence Marvin**, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.