

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JOEL LEE SHERMAN,

Respondent.

CASE NO. SC08-1233
TFB NO. 2007-11,333 (13F)
2008-10,041 (13F)
2007-10,866 (13F)
2008-10,364 (13F)
2008-10,426 (13F)
2008-10,543 (13F)

CASE NO. SC08-2051
TFB NO. 2007-11,365 (13F)
2008-10,667 (13F)
2008-10,606 (13F)
2008-10,675 (13F)
2008-10,778 (13F)
2008-10,919 (13F)
2008-11,286 (13F)

CASE NO.
TFB NO. 2009-10,075 (13F)
2009-10,123 (13F)
2009-10,272 (13F)
2009-10,427 (13F)

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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 Conditional Plea for Consent Judgment was signed on February 24, 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: Jodi Anderson Thompson

For The Respondent: Barry William Rigby

II. Findings of Fact as to Each Item of Misconduct With Which the Respondent Is Charged: After considering all the pleadings and evidence before me, I adopt as my findings those facts set forth in the Conditional Guilty Plea for Consent Judgment as follows:

SC08-1233

As to Count I

TFB File No. 2007-11,333 (13F): Respondent represented Syeda S. Jalali-Mogul in a dissolution matter. Subsequently, Respondent was retained to represent Ms. Jalali-Mogul in two post judgment matters concerning the preparation and submission of a Qualified Domestic Relations Order (“QDRO”) application, and the correction of errors in the final judgment. Respondent filed the motion to modify the final judgment in December 2005, which was granted in February 2006. Respondent failed to file any paperwork regarding the QDRO matter. Ms. Jalali-Mogul attempted to contact Respondent on several occasions, but Respondent failed to timely respond to Ms. Jalali-Mogul’s requests for information. In May 2006, Respondent acknowledged to Ms. Jalali-Mogul that the QDRO paperwork and amended final judgment had not been completed; however, Respondent assured her it would be completed as expeditiously as possible. In November 2006, Respondent filed pleadings regarding the QDRO matter. Between November 2006 and March 2007, Respondent had little or no communication with Ms. Jalali-Mogul regarding the status of her case. In April 2007, Respondent forwarded Ms. Jalali-Mogul a copy of the QDRO order and letter to her ex-husband’s company.

As to Count II

TFB File No. 2008-10,041 (13F): Respondent employed Justin Lighty from June 1, 2006 through November 13, 2006 at his law firm. Respondent also employed Jessica Soto at his firm from September 26, 2006 through November 4, 2006. Respondent owed Mr. Lighty and Ms. Soto past-due wages for worked performed at Respondent’s law firm. Respondent issued a check to Ms. Soto as compensation for her services, but it was dishonored due to insufficient funds. Subsequently, Respondent failed to honor

the check. Mr. Lighty and Ms. Soto filed a civil suit against Respondent for unpaid wages and knowingly issuing a check for insufficient funds. Judgment was granted against Respondent. The Florida Bar sent several letters to Respondent which required a written response pursuant to the Rules Regulating The Florida Bar. Respondent received one or more of the letters, but failed to respond.

As to Count III

TFB File No. 2007-10,866 (13F): In May 2005, Respondent consulted with Gary Wanek regarding a defamation matter. In June 2005, Mr. Wanek paid \$2,500 by check for attorney's fees. In October 2005, Mr. Wanek paid an additional \$8,000 by check, which was cashed by Respondent. Between October 2005 and June 2006, Respondent and Mr. Wanek had several conversations regarding whether or not to proceed with a defamation action. In October 2006, Respondent asked Mr. Wanek whether he wished to proceed with the case. Respondent offered a refund of \$4,476 to Mr. Wanek if he did not wish to proceed. Respondent's offer did not include the \$2,500 payment in June 2005. In October 2006, Mr. Wanek advised Respondent that he did not wish to proceed with the case; however, Mr. Wanek requested a refund of \$6,976 based on a total payment of \$10,500. Respondent failed to return to any portion of the fee to Mr. Wanek. In his response to Mr. Wanek's bar complaint, Respondent alleged that the fees were nonrefundable.

As to Count IV

TFB File No. 2008-10,364 (13F): In November 2006, Respondent was hired to represent James Easterly regarding a civil matter. Mr. Easterly paid \$9,250 to Respondent as a retainer fee. Respondent prepared a demand letter and mailed it to the opposing party. In May 2007, Mr. Easterly terminated Respondent's services. Mr. Easterly asked Respondent to forward his file to his new counsel, and to refund the unused portion of the retainer. Respondent forwarded the file to the new legal counsel, however, he failed to communicate with Mr. Easterly or return the unused portion of the retainer. In June 2007, Respondent sent Mr. Easterly an e-mail advising him that the final billing statement would be sent within approximately one week. Respondent did not have any further communication with Mr. Easterly. Mr. Easterly contacted The Florida Bar for assistance with contacting Respondent. The Bar contacted Respondent and he advised that he would send Mr. Easterly a refund and a statement by July 27, 2007. In September 2007, Mr. Easterly filed an Inquiry/Complaint with The Florida Bar as a result of Respondent's failure to pay. The Florida Bar sent several letters to

Respondent which required a written response pursuant to the Rules Regulating The Florida Bar. Respondent received one or more of the letters, but failed to respond.

As to Count V

TFB File No. 2008-10,426 (13F): In January 2007, Respondent was retained by Richard Lawrence regarding a child support matter. For approximately three months Mr. Lawrence continuously attempted to contact Respondent, but Respondent failed to respond. In late April 2007, Respondent finally contacted Mr. Lawrence. Respondent told Mr. Lawrence he would contact him again the following day, but failed to do so. Mr. Richard contacted The Florida Bar for assistance with contacting Respondent. In July 2007 and September 2007, Respondent contacted Mr. Lawrence and provided excuses for his lack of communication. In October 2007, Mr. Lawrence filed an Inquiry/Complaint with The Florida Bar. The Florida Bar sent several letters to Respondent which required a written response pursuant to the Rules Regulating the Florida Bar.

As to Count VI

TFB File No. 2008-10,543 (13F): In 2006, Respondent was retained to represent John O'Shea regarding a contractual dispute. Mr. O'Shea paid Respondent an undisclosed amount. Respondent failed to communicate with Mr. O'Shea about the status of his case for over a year. Mr. O'Shea attempted to contact Respondent on several occasions. Respondent failed to timely respond. After Mr. O'Shea threatened to contact The Florida Bar, Respondent sent Mr. O'Shea correspondence, which provided excuses as to his lack of communication. Respondent failed to keep Mr. O'Shea reasonably informed about the status of his case. In August 2007, Mr. O'Shea contacted The Florida Bar to get assistance with contacting Respondent. In October 2007, Mr. O'Shea filed an Inquiry/Complaint with The Florida Bar. The Florida Bar sent several letters to Respondent which required a written response pursuant to the Rules Regulating The Florida Bar. Respondent received one or more of the letters, but failed to respond.

SC08-2051

As to Count I

TFB File No. 2007-11,365 (13F): Respondent was retained by Mark Davie to represent him in a civil matter. Mr. Davie paid a \$10,000 retainer fee to Respondent. In December 2006, Respondent filed a civil complaint on behalf of Mr. Davie. In February 2007, one of the defendants filed a motion to dismiss.

In March 2007 and April 2007, Mr. Davie attempted to communicate with Respondent regarding the status of his case. Once, Respondent told Mr. Davie that he would contact him the following week, but Respondent failed to do so. Respondent also failed to notify Mr. Davie when he relocated his office. In April 2007, Mr. Davie filed an Inquiry/ Complaint with The Florida Bar. Subsequently, Respondent contacted Mr. Davie and advised him of his intent to withdraw as counsel; however, Respondent failed to file a motion to withdraw, or otherwise communicate with Mr. Davie. Respondent also failed to advise Mr. Davie of the court's hearing schedule for the motion to dismiss his case against one of the defendants. Respondent failed to respond to the motion or appear for the hearing. In January 2008, the court dismissed Mr. Davie's case against one of the defendants for lack of prosecution. In March 2008, the court dismissed Mr. Davie's case against the remaining defendants due to lack of prosecution. Respondent failed to return any of the unearned and unused fee. Respondent did not perform substantial work to entitle him to retain the entire fee.

As to Count II

TFB File No. 2008-10,667 (13F): In December 2007, Habil and Stephanie Nar filed an Inquiry/Complaint with The Florida Bar. The Bar sent several letters to Respondent which required a written response pursuant to the Rules Regulating the Florida Bar. Respondent received one or more of the letters, but failed to respond.

As to Count III

TFB File No. 2008-10,606 (13F): In June 2007, Respondent was retained by Lisa Bogaars to represent her in an immigration matter. Ms. Bogaars paid \$2000 to Respondent as a retainer fee. Respondent advised Ms. Bogaars that he would review the case and contact her with a course of action. Subsequently, Respondent failed to communicate with Ms. Bogaars regarding her case. In August 2007, Ms. Bogaars retained other counsel to handle the immigration matter. In late August 2007, Ms. Bogaars notified Respondent by letter that she had retained other counsel and requested a refund of the \$2,000. Respondent sent a brief reply to Ms. Bogaars, advising that he would contact her by the following Monday; however, Respondent failed to call. In September 2007, Respondent emailed Ms. Bogaars and advised that he would refund the \$2,000 fee. In October 2007, Ms. Bogaars sent an email to Respondent inquiring about the refund. Respondent failed respond or refund return any of the unearned and unused fee to Ms. Bogaars. Respondent did not perform substantial work to entitle him to retain the fee. In November 2007, Ms. Bogaars filed an Inquiry/Complaint with

The Florida Bar. The Bar sent several letters to Respondent which required a written response. Respondent received one or more of the letters but failed to respond.

As to Count IV

TFB File No. 2008-10,675 (13F): In May 2006, Respondent was retained by Ron Calderoni to file a defamation action. Respondent charged and collected a \$15,000 fee for the representation. The defendant filed a Motion to Dismiss which was set for hearing in December 2006. In November 2006, Respondent rescheduled the hearing for January 2007. The January hearing was later cancelled and Respondent failed to communicate the cancellation or an explanation to Mr. Calderoni regarding the change. Beginning in January 2007 and continuing through August 2007, Mr. Calderoni attempted to contact Respondent regarding the status of his case. Respondent failed to respond to Mr. Calderoni's request for information. Mr. Calderoni attempted to visit Respondent's office and discovered that Respondent's office had been moved and/or closed. Respondent failed to notify Mr. Calderoni that he would be relocating his office. In August 2007, Mr. Calderoni received an email from Respondent with an update on the case. In reply, Mr. Calderoni asked whether Respondent was going to continue working on the case and, if not, asked Respondent to deduct expenses and refund the remainder of the retainer. Respondent failed to respond to Mr. Calderoni. In October 2007, Mr. Calderoni emailed Respondent requesting a return of his fee and a bill documenting the time spent on his case. Respondent failed to respond Mr. Calderoni. Respondent failed to provide billing documentation to Mr. Calderoni. Respondent failed to keep Mr. Calderoni reasonably informed about the status of his case. Respondent failed to exercise reasonable diligence and promptness in representing a client. Respondent charged and collected an illegal, prohibited, or clearly excessive fee. In December 2007, Mr. Calderoni filed an Inquiry/Complaint with The Florida Bar. The Florida Bar sent several letters to Respondent which required a written response pursuant to the Rules Regulating the Florida Bar. Respondent received one or more of the letters but failed to respond.

As to Count V

TFB File No. 2008-10,778 (13F): In January 2007, Respondent was retained by William and Mary Whittington to handle a child custody matter. The Whittingtons paid \$1,500 to Respondent as a retainer fee. Respondent filed some pleadings with the court and advised the Whittingtons that a hearing would be held around March 2007. Beginning in or about March 2007, Mrs. Whittington attempted to contact Respondent by phone and in person regarding the status of their case. Respondent failed to respond

to Mrs. Whittington's phone calls and when she went to Respondent's office it was closed. Respondent failed to inform the Whittingtons that he was relocating his office. Respondent failed to keep Mr. and Mrs. Whittington reasonably informed about the status of their case. Respondent failed to exercise reasonable diligence and promptness in representing a client. Respondent failed to return any of the unearned and unused fee. Respondent did not perform substantial work to entitle him to retain the fee. In January 2008, Mr. and Mrs. Whittington filed an Inquiry/Complaint with The Florida Bar. The Bar sent several letters to Respondent which required written responses pursuant to the Rules Regulating the Florida Bar. Respondent received one or more of the letters, but failed to respond.

As to Count VI

TFB File No. 2008-10,919 (13F): Respondent was retained by Dr. Keith Tang to represent him regarding title transfer of inherited property. Dr. Tang paid \$5,000 to Respondent as a retainer fee. Dr. Tang provided Respondent with several documents applicable to the title transfer. Dr. Tang resides in another country, but gave Responder authorization to discuss the case with Dr. Tang's brother-in-law. Throughout the representation Dr. Tang attempted to contact Respondent regarding the status of his case, but Respondent failed to respond. As a result, Dr. Tang asked his financial advisor, Thomas Wright, who resides and works near Tampa, to check on the status of his case. Mr. Wright attempted to contact Respondent regarding the status of Dr. Tang's case, but Respondent failed to respond or to contact Dr. Tang or Dr. Tang's brother-in-law. Subsequently, Mr. Wright terminated Respondent and requested the return of Dr. Tang's documents and a refund of the \$5,000 fee. Respondent failed to respond to Mr. Wright, or to contact Dr. Tang or his brother-in-law. Dr. Tang hired another attorney, John Parvin, to handle this matter, and notified Respondent. In January 2008, Respondent's assistant sent a fax to Mr. Parvin indicating that Respondent had received Mr. Parvin's messages and would contact him the following day, however, Respondent failed to call. In January 2008, Mr. Parvin sent a letter to Respondent requesting Dr. Tang's documents and a refund of the retainer fee. In January and February 2008, Mr. Parvin attempted to contact Respondent to retrieve Dr. Tang's documents. Respondent failed or refused to reply to Mr. Parvin or to return Dr. Tang's documents. In February 2008, Mr. Wright, on behalf of Dr. Tang, filed an Inquiry/Complaint with The Florida Bar. The Florida Bar sent several letters to Respondent which required a written response pursuant to the Rules Regulating the Florida Bar. Respondent received one or more of the letters, but failed to respond.

As to Count VII

TFB File No. 2007-11,286 (13F): In November 2007, Respondent attended a deposition. At the conclusion of the deposition, Respondent ordered a copy of the deposition transcript from the court reporter, Fernandez and Associates. A few weeks later, the transcript was sent to Respondent along with an invoice for services in the amount of \$163.60. Respondent failed to submit payment for the transcript. Suzanne Fernandez attempted to contact Respondent by phone and by mail to resolve the outstanding bill. Respondent failed or refused to respond to Ms. Fernandez's attempts to contact him. In April 2008, Ms. Fernandez filed an Inquiry/Complaint with The Florida Bar. The Bar sent several letters to Respondent which required a written response pursuant to the Rules Regulating the Florida Bar. Respondent received one or more of the letters, but failed to respond.

As to TFB File No. 2009-10,075(13F)

In July 2008, Elbert and Joyce Johnson filed an Inquiry/Complaint with The Florida Bar. The Bar sent several letters to Respondent which required a written response pursuant to the Rules Regulating the Florida Bar. Respondent received one or more of the letters, but failed to respond.

As to TFB File No. 2009-10,123 (13F)

In July 2008, Tonya Lovette filed an Inquiry/Complaint with The Florida Bar. The Bar sent several letters to Respondent which required a written response pursuant to the Rules Regulating the Florida Bar. Respondent received one or more of the letters, but failed to respond.

As to TFB File No. 2009-10,272 (13F)

In March 2007, Respondent was retained by Dennis Dallape to handle a probate and guardianship matter. Respondent and Mr. Dallape signed a fee agreement for the representation and Mr. Dallape paid Respondent \$25,000. In December 2007, Respondent sent Mr. Dallape another fee agreement for the same matter, which was subsequently signed by both parties. Respondent charged and collected an additional \$1,500 retainer. From May through August 2008, Mr. Dallape attempted to contact Respondent by phone, however Respondent's phone was disconnected. In August 2008, Mr. Dallape filed an Inquiry/Complaint with The Florida Bar. The Bar sent several letters to Respondent which required a written response pursuant to the Rules Regulating the Florida Bar. Respondent received one or more of the letters, but failed to respond.

As to TFB File No. 2009-10,427 (13F)

In March 2008, Respondent was hired to represent Salvatore Cappello regarding a traffic violation. Mr. Cappello paid a fee for the representation. Respondent filed a Notice of Appearance, but failed to do any other work on Mr. Cappello's case. Mr. Cappello attempted to reach Respondent on several occasions regarding the status of his case; however, Respondent failed or refused to respond to Mr. Cappello's requests for information. As a result of Respondent's lack of activity in the case, Mr. Cappello was fined for his failure to appear in court and his license was suspended. Mr. Cappello later paid \$518.00 to the Lake County Clerk of Court to cure the fines and suspension. In October 2008, Mr. Cappello filed an Inquiry/Complaint with The Florida Bar. The Bar sent several letters to Respondent which required a written response pursuant to the Rules Regulating the Florida Bar. Respondent received one or more of the letters, but failed to respond.

III. Recommendations as to Whether or Not the Respondent should Be Found Guilty: As to the Complaints, and pursuant to the Conditional Guilty Plea for Consent Judgment, I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

SC08-1233

As to Count I

Rule 4-1.4 (Communication) and 4-1.3(Diligence);

As to Count II

Rule 3-4.3 (The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline); and 4-8.4(g) (Failure to respond in writing to an official Bar inquiry);

As to Count III

Rule 4-1.5 (Illegal, prohibited, or clearly excessive fee);

As to Count IV

Rule 4-1.3(Diligence); 4-1.4(Communication); and 4-8.4(g) (Failure to respond in writing to an official Bar inquiry);

As to Count V

Rule 4-1.4(Communication) and 4-8.4(g) (Failure to respond in writing to an official Bar inquiry);

As to Count VI

Rule 4-1.4 (Communication); and 4-8.4(g) (Failure to respond in writing to an official Bar inquiry);

SC08-2051

As to Count I

Rule 4-1.3 (Diligence); 4-1.4 (Communication); and 4-1.5 (Illegal, Prohibited, or Clearly Excessive Fees and Costs);

As to Count II

Rule 4-8.4(g) (Failure to respond in writing to an official Bar inquiry);

As to Count III

Rule 4-1.1 (Competence); 4-1.16(d) (Failure to refund unearned fees); and 4-8.4(g) (Failure to respond in writing to an official Bar inquiry);

As to Count IV

Rule 4-1.3 (Diligence); 4-1.4 (Communication); 4-1.5 (Illegal, Prohibited, or Clearly Excessive Fees and Costs); and 4-8.4(g) (Failure to respond in writing to an official Bar inquiry);

As to Count V

Rule 4-1.3 (Diligence); 4-1.4 (Communication); 4-1.16(d) (Failure to refund unearned fees); and 4-8.4(g) (Failure to respond in writing to an official Bar inquiry);

As to Count VI

Rule 4-1.3 (Diligence); 4-1.4 (Communication); 4-1.5 (Illegal, Prohibited, or Clearly Excessive Fees and Costs); and 4-8.4(g) (Failure to respond in writing to an official Bar inquiry);

As to Count VII

Rule 3-4.3 (The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline); and 4-8.4(g) (Failure to respond in writing to an official Bar inquiry);

As to TFB File No. 2009-10,075(13F)
Rule 4-8.4(g) (Failure to respond in writing to an official Bar inquiry);

As to TFB File No. 2009-10,123 (13F)
Rule 4-8.4(g) (Failure to respond in writing to an official Bar inquiry);

As to TFB File No. 2009-10,272 (13F)
Rule 3-4.3 (Misconduct and Minor Misconduct); 4-1.3 (Diligence); 4-1.4 (Communication); 4-1.5(a)(Illegal, prohibited, or clearly excessive fees and costs); and 4-8.4(g) (Failure to respond in writing to an official Bar inquiry); and

As to TFB File No. 2009-10,427 (13F)
Rule 3-4.3 (Misconduct and Minor Misconduct); 4-1.3 (Diligence); 4-1.4 (Communication); 4-1.5(a) (Illegal, prohibited, or clearly excessive fees and costs); and 4-8.4(g) (Failure to respond in writing to an official Bar inquiry).

IV. Recommendation as to Disciplinary Measures to Be Applied:

ONE (1) YEAR SUSPENSION

V. 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)(l), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Year of Birth: June 4, 1969

Date Admitted to Bar: May 5, 2003

Prior Disciplinary convictions and Disciplinary

Measures Imposed Therein: none

The referee notes that the Respondent is not certified in any area of practice.

Aggravating Factors:

9.22 Aggravating factors include:

(c) a pattern of misconduct;

(d) multiple offenses;

(e) bad faith obstruction of the disciplinary; proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; and

(j) indifference to making restitution

Mitigating Factors:

9.32 Mitigating factors include:

- (a) absence of prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (f) inexperience in the practice of law; and
- (h) physical or mental disability or impairment.

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 Rule 3-7.6(q)(1)(I)	\$1,250.00
Bar Counsel Costs	150.93
Court Reporter Costs	1,291.74
Miscellaneous Costs	<u>141.06</u>
TOTAL:	<u>\$2,833.73</u>

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses, together with the foregoing itemized costs, 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 _____ day of April, 2009.

The Honorable Jack Day, Referee

Copies:

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