

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

HEATHER MARY ANN GRAY,

Respondent.

CASE NO. SC09-1121

TFB NO. 2008-10,682(13B)

2008-10,868(13B)

2008-11,241(13B)

2008-11,324(13B)

2008-11,553(13B)

2009-10,281(13B)

2009-10,446(13B)

2009-10,636(13B)

2009-10,955(13B)

2009-10,959(13B)

2009-11,314(13B)

2009-11,342(13B)

2009-11,346(13B)

2009-11,363(13B)

2009-11,449(13B)

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, this Referee has considered the Conditional Guilty Plea for Consent Judgment. 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: Henry Lee Paul

For The Respondent: *pro se*

II. Findings of Fact as to Each Item of Misconduct With Which the Respondent Is Charged: I adopt the stipulated facts as set forth in the Conditional Guilty Plea for Consent Judgment as my findings of fact.

a. *COUNT I--TFB File No. 2008-10,868(13B), Complaint of The Florida Bar:* Respondent represented multiple clients in appellate matters before the Second District Court of Appeal. In at least 15 cases, Respondent failed to timely file initial briefs with the Second DCA. Respondent's failure to timely file briefs resulted in the Second DCA issuing a series of orders to show cause, and an order directing that Respondent not be appointed on any new cases until she completed the backlog of overdue briefs. Thereafter, Respondent failed to timely file initial briefs in at least two additional cases, resulting in further orders to show cause. At a show cause hearing, Respondent misrepresented to the court that she had contacted The Florida Bar's Law Office Management Advisory Service (LOMAS) to request assistance with time management issues in her law practice. The Second DCA sanctioned Respondent and referred the matter to The Florida Bar. Respondent failed to respond to the Bar's inquiry into the matter.

b. *COUNT II - TFB File No. 2008-11,324(13B), Complaint of Ronald W. Gilley; TFB File No. 2008-11,553(13B), Complaint of The Florida Bar:* Respondent represented Ronald Gilley regarding a post conviction matter and a subsequent appeal. Respondent filed a notice of appeal and thereafter failed to file an initial brief. Respondent failed to respond to the Fifth DCA's order to show cause and the appeal was dismissed. Respondent filed a motion to reinstate the appeal which was granted, but thereafter failed to file an initial brief. Respondent failed to respond to the Fifth DCA's order to show cause, and the appeal was dismissed. Respondent failed to keep Mr. Gilley informed regarding his case. The Fifth DCA sanctioned Respondent and referred the matter to The Florida Bar. Respondent failed to respond to the Bar's inquiries concerning Mr. Gilley's grievance and the referral from the Fifth DCA.

c. *COUNT III – TFB File No. 2008-11,241(13B), Complaint of Stephen Robinson:* Respondent was hired to represent Stephen Robinson in a post-conviction matter and was paid a fee of \$1,500. Respondent failed to file any pleadings on behalf of Robinson and failed to timely pursue the representation. Respondent failed to respond to repeated attempts by Robinson and his family to communicate with her. Respondent failed to respond to the Bar's inquiry concerning Mr. Robinson's grievance.

d. *COUNT IV – TFB File No. 2008-10,682(13B), Complaint of Ray M. Schreiner:* Respondent was hired to represent Ray Schreiner and was paid a fee of \$2,500. Respondent failed to take timely action to pursue Mr. Schreiner's legal

matters and failed to maintain communication with him. Respondent failed to respond to the Bar's inquiry concerning Mr. Schreiner's grievance.

e. *TFB File No. 2009-10,281(13B), Complaint of Harold Hess:* On April 3, 2009, the grievance committee found probable cause for violation of the Rules Regulating The Florida Bar. Respondent was hired in 2005 to represent John Hess, brother of the complainant, in a post-conviction matter. Respondent was paid a fee of \$15,000. It is alleged that Respondent failed to take timely action to pursue the matter and failed to maintain communication with the client or with Harold Hess. Respondent failed to respond to the Bar's inquiry concerning Mr. Hess's grievance.

f. *TFB File No. 2009-10,446(13B), Complaint of Robert L. Wood:* Respondent represented Mr. Wood in 2006 a post-conviction matter. It is alleged that Respondent was paid a fee of \$3,000 and thereafter failed to take timely action to pursue Mr. Wood's legal matter. It is further alleged that Respondent failed to maintain communication with Mr. Wood or his family. Respondent failed to respond to the Bar's inquiry concerning Mr. Wood's grievance.

g. *TFB File No. 2009-10,636(13B), Complaint of Angel Villanueva:* Respondent represented Mr. Villanueva in a post-conviction matter. It is alleged that Respondent filed a legally insufficient motion, ceased communicating with Mr. Villanueva, and failed to withdraw from his case.

h. *TFB File No. 2009-10,955(13B), Complaint of Shirley Walker:* Respondent represented Tarrison Walker in a post-conviction matter. The case involves allegations of lack of diligence and failure to communicate. Respondent failed to respond to the Bar's inquiry concerning Ms. Walker's grievance.

i. *TFB File No. 2009-10,959(13B), Complaint of Vernon Simmons:* Respondent represented Mr. Simmons in a post-conviction matter. The case involves allegations of lack of diligence and failure to maintain communication. Respondent failed to respond to the Bar's inquiry concerning Mr. Simmons's grievance.

j. *TFB File No. 2009-11,314(13B), Complaint of Micah Azbill:* Respondent represented Mr. Azbill in a post-conviction matter. The case involves allegations of lack of diligence and failure to maintain communication.

Respondent failed to respond to the Bar's inquiry concerning Mr. Azbill's grievance.

k. *TFB File No. 2009-11,342(13B), Complaint of Jose R. Colon:* Respondent represented Mr. Colon in a criminal appeal. Respondent charged Mr. Colon a fee of at least \$11,000. It is alleged that Respondent failed to inform Mr. Colon of the appellate court's ruling in a timely manner, and failed to provide him with copies of documents. Respondent failed to respond to the Bar's inquiry concerning Mr. Colon's grievance.

l. *TFB File No. 2009-11,346(13B), Complaint of The Florida Bar:* This case involves Respondent's failure to comply with orders of the Second DCA in an appellate matter. On April 15, 2009, the Second DCA issued an Order removing Respondent as counsel for the appellant due to her repeated refusal to comply with orders of the court.

m. *TFB File No. 2009-11,363(13B), Complaint of The Florida Bar:* This case involves Respondent's failure to comply with orders of the Second DCA in an appellate matter. On April 16, 2009, the Second DCA issued an Order removing Respondent as counsel for the appellant due to her repeated refusal to respond the court's orders.

n. *TFB File No. 2009-11,449(13B), Complaint of Raleigh Broadnax:* Respondent represented Mr. Broadnax in a post-conviction matter. It is alleged that Respondent failed to take timely action to pursue the matter and failed to communicate with the client. Respondent failed to respond to the Bar's inquiry concerning Mr. Broadnax's grievance.

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

a. *COUNT I -- TFB File No. 2008-10,682(13B), Complaint of The Florida Bar:* Rule 4-1.1 (lack of competence); Rule 4-1.3 (lack of diligence); Rule 4-3.2 (failure to expedite litigation); Rule 4-3.3 (Candor Toward the Tribunal); Rule 4.3.4(c) (knowingly disobey an obligation under the rules of a tribunal); Rule 4-8.1 (failure to respond to disciplinary authority); Rule 4-8.4(a) (violate rules of

professional conduct); Rule 4-8(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 4-8.4(g) (failure to respond to an inquiry of The Florida Bar).

b. *COUNT II - TFB File No. 2008-11,324(13B), Complaint of Ronald W. Gilley; TFB File No. 2008-11,553(13B), Complaint of The Florida Bar:* Rule 4-1.1 (lack of competence); Rule 4-1.3 (lack of diligence); Rule 4-1.4 (failure to communicate); Rule 4-3.2 (failure to expedite litigation); Rule 4-8.1 (failure to respond to disciplinary authority); Rule 4-8.4(a) (violate rules of professional conduct); and Rule 4-8.4(g) (failure to respond to an inquiry of The Florida Bar).

c. *COUNT III – TFB No. 2008-11,241(13B), Complaint of Stephen Robinson:* Rule 4-1.1 (lack of competence); Rule 4-1.3 (lack of diligence); Rule 4-1.4 (failure to communicate); Rule 4-3.2 (failure to expedite litigation); Rule 4-8.1 (failure to respond to disciplinary authority); Rule 4-8.4(a) (violate rules of professional conduct); and Rule 4-8.4(g) (failure to respond in to an inquiry of The Florida Bar).

d. *COUNT IV – TFB File No. 2008-10,682(13B), Complaint of Ray M. Schreiner:* Rule 4-1.1 (lack of competence); Rule 4-1.3 (lack of diligence); Rule 4-1.4 (failure to communicate); and Rule 4-8.4(g) (failure to respond to an inquiry by The Florida Bar).

e. *TFB File No. 2009-10,281(13B), Complaint of Harold Hess:* Rule 4-1.1 (lack of competence); Rule 4-1.3 (lack of diligence); Rule 4-1.4 (failure to communicate); Rule 4-3.2 (failure to expedite litigation); Rule 4-8.4(a) (violate rules of professional conduct); Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 4-8.4(g) (failure to respond to an inquiry of The Florida Bar).

f. *TFB File No. 2009-10,446(13B), Complaint of Robert L. Wood:* Respondent and The Florida Bar waived a finding of probable cause as to the following Rules: Rule 4-1.3 (lack of diligence); and Rule 4-1.4 (failure to communicate).

g. *TFB File No. 2009-10,636(13B), Compliant of Angel Villanueva:* Respondent and The Florida Bar waived a finding of probable cause as to the following Rules: Rule 4-1.3 (lack of diligence); Rule 4-1.4 (failure to

communicate); and Rule 4-8.4(g) (failure to respond to an inquiry by The Florida Bar).

h. *TFB File No. 2009-10,955(13B), Complaint of Shirley Walker:*
Respondent and The Florida Bar waived a finding of probable cause as to the following Rules: Rule 4-1.3 (lack of diligence); Rule 4-1.4 (failure to communicate); and Rule 4-8.4(g) (failure to respond to an inquiry by The Florida Bar).

i. *TFB File No. 2009-10,959(13B), Complaint of Vernon Simmons:*
Respondent and The Florida Bar waived probable cause as to the following Rules: Rule 4-1.3 (lack of diligence); Rule 4-1.4 (failure to communicate); and Rule 4-8.4(g) (failure to respond to an inquiry by The Florida Bar).

j. *TFB File No. 2009-11,314(13B), Complaint of Micah Azbill:*
Respondent and The Florida Bar waived probable cause as to the following Rules: Rule 4-1.3 (lack of diligence); Rule 4-1.4 (failure to communicate); and Rule 4-8.4(g) (failure to respond to an inquiry by The Florida Bar).

k. *TFB File No. 2009-11,342(13B), Complaint of Jose R. Colon:*
Respondent and The Florida Bar waived probable cause as to the following Rules: Rule 4-1.4 (failure to communicate); and Rule 4-8.4(g) (failure to respond to an inquiry by The Florida Bar).

l. *TFB File No. 2009-11,346(13B), Complaint of The Florida Bar:*
Respondent and The Florida Bar waived probable cause as to the following Rules: Rule 4-1.1 (lack of competence); Rule 4-1.3 (lack of diligence); Rule 4-3.2 (failure to expedite litigation); and Rule 4-3.4(c) (knowingly disobey an obligation under the rules of a tribunal).

m. *TFB File No. 2009-11,363(13B), Complaint of The Florida Bar:*
Respondent and The Florida Bar waived probable cause as to the following Rules: Rule 4-1.1 (lack of competence); Rule 4-1.3 (lack of diligence); Rule 4-3.2 (failure to expedite litigation); and Rule 4-3.4(c) (knowingly disobey an obligation under the rules of a tribunal).

n. *TFB File No. 2009-11,449(13B), Complaint of Raleigh Broadnax:*
Respondent and The Florida Bar waived probable cause as to the following Rules: Rule 4-1.3 (lack of diligence); Rule 4-1.4 (failure to communicate); and Rule 4-

8.4(g) (failure to respond to an inquiry by The Florida Bar).

IV. Recommendation as to Disciplinary Measures to Be Applied:

- a. A three (3) year suspension from the practice of law.
- b. Prior to filing a petition for reinstatement, and as a condition of reinstatement, Respondent shall provide a statement from an F.L.A. approved physician, psychiatrist, or licensed mental health counselor attesting that Respondent is competent to practice law. Respondent hereby consents to open communication between the Bar and all therapists and physicians and expressly waives any and all applicable patient/therapist privileges for the purpose of providing the Bar with evidence that she is competent to practice law.
- c. Respondent shall pay all costs of this proceeding.
- d. Respondent agrees to participate in fee arbitration with Ronald W. Gilley, Jr., Stephen Robinson, Ray M. Schreiner, Harold Hess, John H. Hess, Robert L. Wood, Angel Villanueva, Shirley Brown Walker, Tarrison Walker, Vernon A. Simmons, Micah Azbill, Jose R. Colon, and Raleigh Broadnax, provided that such clients request fee arbitration within twelve (12) months of the date of the final Supreme Court Order in this proceeding. Respondent agrees to be bound by any such fee arbitration decision. Payment of any award in fee arbitration shall be paid in full prior to reinstatement. Respondent understands and acknowledges that neither this Conditional Guilty Plea nor any order entered in this proceeding shall in any way affect the rights or remedies of any of the clients in any civil proceeding.

V. Personal History and Past Disciplinary Record: After the finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(m)(l), I considered the following:

Year of Birth: 1971

Date Admitted to Bar: April 26, 1996

Prior Disciplinary Convictions and Disciplinary Measures Imposed Therein:

None

The referee notes that the Respondent is certified in the following area(s) of practice: None.

Before recommending approval of the agreed disposition, this court considered the following Florida Standards for Imposing Lawyer Sanctions and case law:

4.4 Lack of Diligence

Standard 4.42 Suspension is appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

6.2 Abuse of the Legal Process

Standard 6.22 Suspension is appropriate when a lawyer knowingly violates a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

Aggravating Factors:

- 9.22(c) a pattern of misconduct;
- 9.22(d) multiple offenses;
- 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.

Mitigating Factors:

- 9.32(a) absence of a prior disciplinary record;
- 9.32(c) personal or emotional problems; and
- 9.32(h) physical or mental disability or impairment.

Florida Bar v. Shoureas, 892 So. 2d 1002 (Fla. 2004) (3-year suspension). The Bar filed a seven-count complaint against Shoureas. Shoureas was found guilty of lack of competence, lack of diligence, failure to communicate, and failure to respond to the Bar. Aggravating factors included a prior 91-day suspension, pattern of misconduct, multiple offenses, obstruction of the disciplinary process, and indifference to the proceedings and indifference to making restitution to her clients. The Court found that Shoureas agreed to represent clients, accepted fees, and then took “little or no significant action” and did not respond to the clients’ repeated inquiries. The Court also found that Shoureas lacked a dishonest or selfish motive and was inexperienced in the practice of law. The Respondent in this case does not have a prior suspension as did Shoureas, however, she engaged

in serious misconduct by committing multiple violations, including Rule 4-3.4(c) (failure to obey the order of a tribunal).

VI. Statement of Costs and Manner in Which Costs Should Be Taxed: I find the following costs were reasonably incurred by The Florida Bar:

TFB No. 2008-10,682(13B):

Administrative Costs Pursuant to Rule 3-7.6(q)(1)(I)	\$1,250.00
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TFB No. 2008-10,868(13B):

The Florida Bar Investigator Time

Larry Sprinkle (4.20 hours)	\$ 96.60
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TOTAL	<u>\$ 96.60</u>
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TFB No. 2008-11,324(13B):

The Florida Bar Investigator Time

Michael B. Lunsford (9.30 hours)	\$ 232.50
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TOTAL	<u>\$ 232.50</u>
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TFB No. 2009-10,281(13B):

1. The Florida Bar Investigator Time

Larry Sprinkle (4.10 hours)	\$ 94.30
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2. The Florida Bar Investigator Expenses (Mileage, tolls, copying)

Larry Sprinkle (04/01/09)

Appear as stand-by for potential witness

37 miles @ \$0.550 per miles	\$ 20.35
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3. Court Reporter Expense

Clark Reporting Service	
Appearance at Grievance Committee Meeting 4/03/09	\$ 225.00
Transcript of evidentiary hearing at Grievance Committee 4/03/09	\$ 595.50
SUBTOTAL	<u>\$ 820.50</u>
 TOTAL	 <u>\$ 935.15</u>
 TOTAL ITEMIZED COSTS	 <u>\$1,264.25</u>
 GRAND TOTAL	 <u>\$2,514.25</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 _____, 2009.

The Honorable James Pierce, Referee

Original to:

The Honorable James Pierce, Referee, 14250 49th Street North, Chamber 22, Clearwater, Florida 33762

Copies furnished to:

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