

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

CASE NO. SC10-1288

TFB NO. 2010-10,760 (20B)

Complainant,

v.

RICHARD MARK CREEL,

Respondent.

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**REPORT OF REFEREE**

I. Summary of Proceedings: The undersigned was duly appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar. 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: Cynthia Lois Miller

For The Respondent: *Pro Se* (failed to appear)

On June 30, 2010, The Florida Bar filed a Complaint in the above matter with the Supreme Court of Florida. The Complaint was served by certified mail and regular mail to Respondent's official record bar address in Naples, Florida, and to his last known mailing address in Biloxi, Mississippi. Respondent failed to answer the Bar's Complaint, and on August 3, 2010, the Bar filed its Motion for Default. U.S. Postal Service records indicate that the Motion for Default was delivered to Respondent at the Mississippi address on August 5, 2010. By Order dated August

10, 2010, the Bar's Motion for Default was granted. A Final Hearing was set for September 17, 2010, to determine the appropriate disciplinary sanction for Respondent's misconduct. On August 18, 2008, the Bar served Respondent at his official Bar address and Mississippi address with a Notice of Hearing for the Final Hearing to be held on September 17, 2010. On September 8, 2010, the Bar served Respondent with a copy of its Memorandum of Law for Sanctions. Despite proper notice of these proceedings, Respondent has failed to appear in this matter.

All attempts to communicate with Respondent have been unsuccessful. Respondent failed to respond to Bar counsel's written inquiries concerning the grievance filed against him, failed to respond to phone calls and correspondence from the grievance committee investigating member, failed to file an Answer to the Bar's Complaint, and has failed to appear in the proceedings before the Referee.

II. Findings of Fact as to Each Item of Misconduct With Which the Respondent Is Charged: Upon entry of the default, the allegations in the Bar's complaint were deemed admitted. Therefore, I find as follows:

Respondent represented Alexandra Barrington regarding a child custody matter. After beginning the representation, Respondent ceased working on the matter and ceased communicating with his client. When the client was finally able to contact Respondent, she discovered that Respondent had relocated to Biloxi, Mississippi. Respondent agreed to handle the trial of the matter in Florida, but demanded an additional payment of \$2,250 to cover his travel expenses. Respondent accepted the additional payment of \$2,250, but failed to perform any work for the client and failed to communicate with the client. Thereafter, Respondent failed to appear for the trial of the matter. Respondent failed to respond to The Florida Bar's correspondence concerning the grievance filed against him by the client's mother. The Bar made numerous additional attempts to contact Respondent. Respondent failed to respond to the Bar.

III. Recommendations as to Whether the Respondent Should Be Found Guilty: As to each count of the Complaint, I make the following recommendations as to guilt or innocence. Pursuant to the Order of Default, I recommend

Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

Rule 4-1.3 (lack of diligence);  
Rule 4-1.4 (failure to communicate);  
Rule 4-8.4(c) (conduct involving fraud, dishonesty, deceit, or misrepresentation); and,  
Rule 4-8.4(d) (failure to respond to Bar inquiry).

IV. Recommendation as to Disciplinary Measures to Be Applied:

**Disbarment**

Respondent has demonstrated a complete unfitness for the practice of law, and a lack of respect for his clients, the profession, the disciplinary process, and this Court. Respondent abandoned his client, and has ignored The Florida Bar and this Court. He failed to conform his conduct despite a previous disciplinary sanction. In accordance with the Standards, the case law, and the aggravating factors, it is this Referee's recommendation that Respondent be disbarred.

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)(1), this Referee considered the following personal history and prior disciplinary record of Respondent, the Standards, and case law, to wit:

Year of Birth: 1962

Date Admitted to Bar: October 26, 1987

Prior Disciplinary Convictions and Disciplinary Measures Imposed Therein:

**Public Reprimand** (Supreme Court Case No. SC06-2404): By Order dated June 7, 2007, Respondent was publicly reprimanded for neglect, inadequate communication and failure to respond to the Bar in eight separate cases. In all eight cases, Respondent failed to diligently handle client matters, failed to maintain

adequate communication with clients, and failed to timely respond to the Bar's investigative inquiries. In all eight cases, Respondent was guilty of violating the following Rules Regulating The Florida Bar: 4-1.3 (failure to act with diligence), 4-1.4 (failure to communicate), and 4-8.4(g) (failure to respond to an inquiry of The Florida Bar). In the prior disciplinary proceeding, the Referee found significant mitigation, including the absence of a prior disciplinary record and numerous personal problems. The Referee found that Respondent's problems appeared to be confined to an isolated period of time and primarily resulted from his personal, health, and office situations.

Certifications: The Referee notes that Respondent is not certified in any area of practice.

In making this recommendation, I have considered the following Florida Standards for Imposing Lawyer Sanctions:

#### **4.4 Lack of Diligence**

**Standard 4.41** Disbarment is appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

#### **7.0 Violations of Other Duties Owed as a Professional**

**Standard 7.1** Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

#### **9.22 Aggravating Factors:**

**Standard 9.22(a) Prior disciplinary offenses.** Respondent was reprimanded in 2007 for similar misconduct. Respondent's current and prior discipline

demonstrates a pattern of cumulative misconduct. In the 2007 proceeding, Respondent received the benefit of significant mitigation; however, it is apparent that Respondent has failed to respond to a lesser form of discipline.

**Standard 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 Complaint and failed to appear before the Referee.

**Standard 9.22(i) Substantial experience in the practice of law.** Respondent has been a member of The Florida Bar 1987, nearly 23 years.

In addition to the foregoing, I find that Respondent's failure to appear on behalf of a client in a matter involving the client's minor child to be particularly egregious. I note that the complainant in this matter alleged that Respondent failed to appear at a trial concerning the termination of her daughter's parental rights and the potential adoption of her minor grandson. I find that Respondent's abandonment of his client had, at a minimum, the potential of causing serious injury to the client, the child, and the grandmother.

**9.32 Mitigating Factors:** None. Due to Respondent's deliberate unwillingness to participate in these proceedings, I am unable to find any mitigating factors.

Additionally, I have considered the following case law:

1. *Florida Bar v. Bartlett*, 509 So.2d 287 (Fla. 1987): Disbarment for total neglect of a client's case in the absence of any explanatory or mitigating circumstances. The responding attorney agreed to represent a client regarding a real property matter, accepted a fee, and promised to resolve the matter. Thereafter, he took no action on the matter and retained the fee. Bartlett failed to appear at all in the disciplinary proceedings. His disciplinary history consisted of a 30-day suspension and a 15-month suspension. In approving the referee's recommendation of disbarment, the Court considered Bartlett's cumulative misconduct and willful refusal to participate in the disciplinary process.

2. *Florida Bar v. Setien*, 530 So.2d 298 (Fla. 1988): Disbarment for multiple counts of neglect. In five cases, an attorney accepted representation, failed to take action, and failed to communicate with his clients. In approving the referee's recommendation of disbarment, the Court found that Setien was "a practitioner who repeatedly ignored his clients or was cavalier about their interests," and ultimately abandoned his practice without notice. Unlike the Respondent here, Setien had no record of prior discipline and he participated in the disciplinary proceedings.

3. *Florida Bar v. Bern*, 425 So.2d 526 (Fla. 1982): The Court considers a respondent's previous disciplinary history and increases the discipline where appropriate. The Court deals more harshly with cumulative misconduct than with isolated misconduct. Cumulative misconduct of a similar nature warrants an even more severe discipline.

Based on the cases discussed above, this Referee finds that the sanction of disbarment is consistent with the sanction that has been imposed in similar cases.

VI. Statement of Costs and Manner in Which Costs Should Be Taxed: I grant The Florida Bar's Motion to Tax Costs in the amount of \$1,250.00, and approve the assessment of these costs against Respondent.

Administrative Costs

Pursuant to Rule 3-7.6(q)(1)(I))	\$1,250.00
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TOTAL COSTS:	<u>\$1,250.00</u>
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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 \_\_\_\_27\_\_ day of \_\_\_\_September\_\_\_\_\_, 2010.

/s/ Paul E. Logan

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Honorable Paul E. Logan, Referee

Copies:

**Richard Mark Creel**, Respondent, 15275 Collier Blvd., Suite 201-218, Naples, FL 34119-6750;

**Richard Mark Creel**, Respondent, 310 Abbey Court, Apt. B2, Biloxi, MS 39531;

**Cynthia Lois Miller**, Assistant Bar Counsel, The Florida Bar, 4200 George J. Bean Pkwy., Suite 2580, Tampa, Florida 33607-1496; and,

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