

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

LAWRENCE DANIEL MONTEKIO,

Respondent.

CASE NO.: **SC10-1291**

TFB NO.: 2010-10,901(12C)OSC

CASE NO.: **SC10-1506**

TFB NOS.: 2009-10,681(12C)

2009-10,786(12C)

2009-11,537(12C)

2010-10,434(12C)

2010-10,738(12C)

REPORT OF THE REFEREE

I. **SUMMARY OF PROCEEDINGS:**

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On July 30, 2010, The Florida Bar filed a Complaint against Respondent which was assigned Supreme Court Case No. SC10-1506. On July 12, 2010, The Florida Bar filed an Amended Petition for Contempt and Order to Show Cause against Respondent which was assigned Supreme Court Case No. SC10-1291. On March 10, 2011, a final hearing was held on both of these matters. All of the aforementioned pleadings, responses thereto, exhibits received in evidence 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 and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary of Case:

With respect to SC10-1506, I adopt as my findings of fact the stipulated facts as set forth in the Stipulated Facts and Admissions as follows:

COUNT I - TFB File No. 2009-10,681(12C): Respondent was appointed by the Office of Regional Counsel to represent Norberto Rivera, Jr., in a criminal matter involving a charge of second degree murder. Respondent contends that Mr. Rivera had numerous counsel appointed to him prior to Respondent's appointment. Respondent's visits with Mr. Rivera at the jail were infrequent and while Respondent may have communicated with Mr. Rivera's family, he did not adequately communicate directly with Mr. Rivera regarding the status of his case. New counsel was assigned to Mr. Rivera's case prior to trial, which Respondent contends was due to a change in the caseload of the Office of Regional Counsel.

Rule 4-1.1 requires an attorney to provide competent representation to a client, which requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Rule 4-1.3 requires an attorney to act with reasonable diligence and promptness in representing a client. Respondent did not act with reasonable diligence and lacked thoroughness and preparation in handling Mr. Rivera's case.

Rule 4-1.4 requires an attorney to keep the client reasonably informed about the status of the matter and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Respondent did not keep Mr. Rivera reasonably informed about the case status and adequately communicate with him to the extent necessary to permit Mr. Rivera to make informed decisions regarding his case.

Respondent was sent an inquiry letter by bar counsel on or about December 15, 2008 at his official Bar address advising him of Mr. Rivera's complaint, followed by a second inquiry letter on or about January 13, 2009, and then followed by a third inquiry letter on or about February 17, 2009. Rule 4-8.4(g) states that a lawyer shall not fail to respond in writing, within 15 days of the date of the initial written investigative inquiry by bar counsel, to any official inquiry by bar counsel when bar counsel is conducting an investigation into the lawyers conduct. Respondent failed to respond in writing to bar counsel's initial inquiry as required by Rule 4-8.4(g).

Respondent did meet with the assigned investigating member of the grievance committee; however, he did not bring his file on Mr. Rivera. Respondent was served with a subpoena duces tecum regarding Mr. Rivera's complaint requesting his response to the subpoena no later than June 30, 2009. Respondent failed to respond by June 30, 2009. Respondent contends that Mr. Rivera's file remained with the Office of Regional Counsel making it difficult for him to produce the file as requested. Respondent later did meet with the assigned investigating member of the grievance committee again and did produce what documents he had in his possession pertaining to Mr. Rivera's case. Rule 4-8.1(b) states that a lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority. Respondent failed to timely comply with a subpoena duces tecum served on him in this disciplinary action.

COUNT II - TFB File No. 2009-10,786(12C): On or about January 7, 2009, The Florida Bar received an inquiry/complaint from Michael B. Brooks, a former criminal client that Respondent was appointed to represent through the Office of Regional Counsel. Respondent was sent an inquiry letter by bar counsel on or about January 12, 2009 at his official Bar address advising him of Mr. Brooks' complaint, followed by a second inquiry letter on or about February 17, 2009. Rule 4-8.4(g) states that a lawyer shall not fail to respond in writing, within 15 days of the date of the initial written investigative inquiry by bar counsel, to any official inquiry by bar counsel when bar counsel is conducting an investigation into the lawyers conduct. Respondent failed to respond in writing to bar counsel's initial inquiry as required by Rule 4-8.4(g).

Respondent did meet with the assigned investigating member of the grievance committee; however, Respondent did not bring his file on Mr. Brooks. Respondent was served with a subpoena duces tecum regarding Mr. Brooks' complaint requesting his response to the subpoena no later than June 30, 2009. Respondent failed to respond by June 30, 2009. Respondent contends that Mr. Brooks' file remained with the Office of Regional Counsel making it difficult for him to produce the file as requested. Respondent later did meet with the assigned investigating member of the grievance committee again and did produce what documents he had in his possession pertaining to Mr. Brooks' case. Rule 4-8.1(b) states that a lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority. Respondent failed to timely comply with a subpoena duces tecum served on him in this disciplinary action.

COUNT III - TFB File No. 2009-11,537(12C): The Bar received an Attorney Trust Account Overdraft Report from Bank of America dated May 27, 2009 from Respondent's trust account reporting a check in the amount of \$1,096.65 was presented to the bank on May 22, 2009 from Respondent's trust account, causing an overdraft.

Respondent was sent an inquiry letter by bar counsel on or about June 10, 2009 at his official Bar address advising him of the overdraft, followed by a second inquiry letter on or about July 15, 2009. Rule 4-8.4(g) states that a lawyer shall not fail to respond in writing, within 15 days of the date of the initial written investigative inquiry by bar counsel, to any official inquiry by bar counsel when bar counsel is conducting an investigation into the lawyers conduct. Respondent failed to respond in writing to bar counsel's initial inquiry as required by Rule 4-8.4(g).

Respondent did meet with the Bar's auditor on or about September 22, 2009 in response to a subpoena duces tecum. Respondent did produce bank statements and canceled checks for his trust account. However, Respondent failed to produce reconciliations, comparisons, and listings as required by Rule 5-1.2.

The overdraft was a result of Respondent's payment of his office rent with a trust account check. Respondent had no client funds in his trust account during this period of time.

COUNT IV - TFB File No. 2010-10,434(12C): Respondent was appointed by the Office of Regional Counsel to represent Debra Wallace in a criminal matter involving a charge of aggravated battery. Respondent contends that he did prepare for Ms. Wallace's trial. However, Respondent admits that he may not have adequately communicated and prepared Ms. Wallace and her witnesses to testify at the trial.

Rule 4-1.3 requires an attorney to act with reasonable diligence and promptness in representing a client. Respondent did not act with reasonable diligence in handling Ms. Wallace's case.

Respondent was sent an inquiry letter by bar counsel on or about October 9, 2009 at his official Bar address advising him of Ms. Wallace's complaint, followed by a second inquiry letter on or about November 12, 2009, and then a copy of the inquiry was hand delivered to Respondent on December 24, 2009. Respondent did meet with the assigned investigating member of the grievance committee on May 21, 2010 in response to a subpoena duces tecum regarding Ms. Wallace's complaint and did produce what documents he had in his possession pertaining to Ms. Wallace's case. Respondent contends that Ms. Wallace's file remained with the Office of Regional Counsel making it difficult for him to produce the file as requested. Respondent submitted a written response to the initial inquiry thereafter on or about June 3, 2010. Rule 4-8.4(g) states that a lawyer shall not fail to respond in writing, within 15 days of the date of the initial written investigative inquiry by bar counsel, to any official inquiry by bar counsel when bar counsel is conducting an investigation into the lawyers conduct. Respondent failed to timely respond in writing to bar counsel's initial inquiry as required by Rule 4-8.4(g).

COUNT V - TFB File No. 2010-10,738(12C): On or about November 12, 2009, The Florida Bar received an inquiry/complaint from Darrell E. Rogers, a former criminal client that he was appointed to represent through the Office of Regional Counsel. Respondent was sent an inquiry letter by bar counsel on or about December 16, 2009 at his official Bar address advising him of Mr. Rogers' complaint, followed by a second inquiry letter on or about January 26, 2010, both of which were returned undeliverable. Respondent was copied on the referral letter to the grievance committee chair dated February 17, 2010, and he was furnished a Notice of Assignment of Investigating Member and/or Panel dated March 31, 2010 to his record bar address and home address, which copies to the home address were not

returned undelivered. Respondent did meet with the assigned investigating member of the grievance committee on May 21, 2010 in response to a subpoena duces tecum regarding Mr. Rogers' complaint and did produce what documents he had in his possession pertaining to Mr. Rogers' case. Respondent contends that Mr. Rogers' file remained with the Office of Regional Counsel making it difficult for him to produce the file as requested. Respondent submitted a written response to the initial inquiry thereafter on or about June 1, 2010. Rule 4-8.4(g) states that a lawyer shall not fail to respond in writing, within 15 days of the date of the initial written investigative inquiry by bar counsel, to any official inquiry by bar counsel when bar counsel is conducting an investigation into the lawyers conduct. Respondent failed to timely respond in writing to bar counsel's initial inquiry as required by Rule 4-8.4(g).

With respect to SC10-1291, my findings of fact are as follows:

The Supreme Court Order dated July 2, 2009 stated Respondent was suspended from the practice of law for one year, effective thirty (30) days from the date of the order so Respondent can close out his practice and protect the interest of existing clients. Further, the order indicated that Respondent is directed to comply with all other terms and conditions of the Report of Referee adopted by the order. Respondent testified that he read only the conclusion stated in the order and the report of referee adopted thereby, and failed to read the content of the order or report of referee for which terms he was to abide by. In September 2009, while suspended, Respondent consulted with and accepted a retainer of \$3,500.00 from Stanley and Frances Roche to represent their son, David Roche, in a criminal matter. Respondent admitted that he gave the Roches the impression he would be the attorney representing their son. Respondent filed no pleadings on his client's behalf and mishandled the case which led to his client's arrest for failing to appear at a hearing. Respondent expressed he had intended for other attorneys to handle his client's case; however, other attorneys became involved at Respondent's request only after the client was arrested. Respondent testified that he used the retainer received from the Roches to pay off other clients. Respondent admitted that he knew taking the Roches' retainer was wrong, indicating that he made a conscious decision to take the retainer. Respondent reimbursed the Roches the \$3,500.00 retainer after the initiation of the contempt case. I find clear and convincing evidence that Respondent accepted new business and engaged in the practice of law while suspended in violation of the Supreme Court Order.

The winding down of Respondent's practice did not take place within the required thirty days outlined within the Supreme Court Order as indicated through Mr. Bailey's testimony that he continued to take over cases for the Respondent after the thirty day period has lapsed. I find clear and convincing evidence that Respondent failed to close out his practice within thirty days of the Supreme Court Order dated July 2, 2009, in violation of said Order.

Respondent testified that he relied on and assumed other people, such as Mr. Bailey, provided notice to his clients of his suspension, despite his obligation to directly do so. I find clear and convincing evidence that Respondent failed to notify his clients of his suspension and failed to furnish The Florida Bar with a sworn affidavit confirming Respondent's notification to clients of his suspension as required under Rule 3-5.1(g) of the Rules Regulating The Florida Bar, in violation of the Supreme Court Order.

III. RECOMMENDATIONS AS TO GUILT:

With respect to SC10-1506, I recommend that the admissions set forth in the Stipulated Facts and Admissions be accepted and Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

COUNT I - TFB File No. 2009-10,681(12C): **Rule 4-1.1** (Competence); **Rule 4-1.3** (Diligence); **Rule 4-1.4** (Communication); **Rule 4-8.1(b)** (Failure to respond to a lawful demand for information from a disciplinary authority) and **Rule 4-8.4(g)** (Failure to respond, in writing, to any official inquiry by bar counsel in connection with investigation into the lawyer's conduct).

COUNT II - TFB File No. 2009-10,786(12C): **Rule 4-8.1(b)** (Failure to respond to a lawful demand for information from a disciplinary authority); and **Rule 4-8.4(g)** (Failure to respond, in writing, to any official inquiry by bar counsel in connection with investigation into the lawyer's conduct).

COUNT III - TFB File No. 2009-11,537(12C): **Rule 5-1.2(b)** (Minimum Trust Accounting Records); **Rule 5 – 1.2(c)** (Minimum Trust Accounting Procedures); **Rule 5–1.2(d)** (Record Retention) and **Rule 4-8.4(g)** (Failure to respond, in writing, to any official inquiry by bar counsel in connection with investigation into the lawyer's conduct).

COUNT IV - TFB File No. 2010-10,434(12C): **Rule 4-1.3** (Diligence); and **Rule 4-8.4(g)** (failure to respond, in writing, to any official inquiry by bar counsel in connection with investigation into the lawyer's conduct).

COUNT V - TFB File No. 2010-10,738(12C): **Rule 4-8.4(g)** (failure to respond, in writing, to any official inquiry by bar counsel in connection with investigation into the lawyer's conduct).

With respect to SC10-1291, I recommend that Respondent be found guilty of contempt for accepting new business and engaging in the practice of law while suspended, for failing to close out his practice within thirty days of the Supreme Court Order dated July 2, 2009, and for failing to notify his clients of his suspension and to furnish The Florida Bar with a sworn affidavit confirming Respondent's notification to clients of his suspension as required under Rule 3-5.1(g) of the Rules Regulating The Florida Bar.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS:

I considered the following Standards prior to recommending discipline:

4.4 Lack of Diligence - 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 - 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.

8.0 Prior Discipline Orders – 8.1 Disbarment is appropriate when a lawyer: (a) intentionally violates the terms of a prior disciplinary order and such violation causes injury to a client, the public, the legal system, or the profession; or (b) has been suspended for the same or similar misconduct, and intentionally engages in further similar acts of misconduct.

V. CASE LAW:

I considered the following case law prior to recommending discipline:

***Florida Bar v. Pellegrini*, 714 So.2d 448 (Fla. 1998):** A bar disciplinary action must serve three purposes: (1) the judgment must be fair to society, it must be fair to the attorney and it must be severe enough to deter other attorneys from similar conduct. Citing *Florida Bar v. Lawless*, 640 So.2d 1098, 1100 (Fla. 1994).

***Florida Bar v. Bern*, 425 So.2d 526 (Fla. 1982):** Cumulative misconduct of a similar nature should warrant an even more severe discipline than might dissimilar conduct.

***The Florida Bar v. D'Ambrosio*, 25 So.3d 1209 (Fla. 2010):** D'Ambrosio was suspended for one year for failing to give notice of his prior 91-day suspension to his clients, the courts and some opposing counsel. During the course of his suspension, D'Ambrosio corresponded with attorneys and used his legal assistant to assist a client to proceed pro se in an out of state legal proceeding, thereby engaging in the practice of law while suspended. D'Ambrosio was also found guilty of multiple rule violations for permitting and/or assisting his client to file a false pleading in an out of state court, using D'Ambrosio's address on the pleadings. The Court held that disbarment was appropriate, taking into consideration D'Ambrosio's contempt, disciplinary history and cumulative misconduct. The Court reiterated that it does not hesitate to disbar attorneys who continue to engage in the practice of law while suspended.

VI. PERSONAL HISTORY, PAST DISCIPLINARY RECORD:

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

A. Personal History of Respondent:

Age: 51

Date admitted to the Bar: July 3, 1990

Respondent is not certified in any area of practice.

B. Aggravating Factors:

9.22(a) Prior Discipline: By Order of the Florida Supreme Court dated July 2, 2009, in Case No. SC08-2015, Respondent was suspended from the practice of law for one year, resulting from Respondent's neglect of client matters, inadequate communication, lack of candor toward the tribunal, excessive attorney fees, and failure to respond to the four disciplinary inquiries at issue.

9.22(b) dishonest or selfish motive.

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.

C. I find no Mitigating Factors applicable.

VII. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Based upon my findings of fact, standard for imposing lawyer sanctions and the applicable case law, disbarment is presumed to be the appropriate sanction. I find no mitigation to render such a sanction unfair or inappropriate. Therefore, I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. Disbarment; and

B. Payment of The Florida Bar's costs in these proceedings.

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

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

1. Administrative costs pursuant to Rule 3-7.6(q)(1)(I):\$ 1,250.00
2. Investigator Expenses\$ 419.70
3. Bar Counsel Expenses:..... 124.12
4. Court Reporting Services: 370.50
- TOTAL:\$ 2,667.72

It is recommended that such costs in the total sum of **\$2,667.72** be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this _____ day of _____, 2011.

Michael McHugh, Circuit Judge/Referee
Lee County Justice Center
1700 Monroe St., 4th Floor
Ft. Myers, Florida 33901

Copies furnished To:

Lisa Buzzetti Hurley, Bar Counsel, The Florida Bar, 4200 George J. Bean Pkwy., Ste. 2580, Tampa, Florida 33607;

Lawrence Daniel Montekio, Respondent, at his record Bar address of 46 North Washington Boulevard, Suite 750, Sarasota, Florida 34236-5932;

Lawrence Daniel Montekio, Respondent, at his at his last known address of 2126 7th Street, Sarasota, Florida 34236-5932; and

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