

**IN THE SUPREME COURT OF FLORIDA
(Before a Referee)**

THE FLORIDA BAR,

Complainant,

Case No. SC10-1739

vs.

**TFB No.: 2009-10,911(6B)
2009-10,617(6B)
2010-10,370(6B)**

CONSTANTINE KALOGIANIS,

Respondent.

_____ /

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. The 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, Bar Counsel

For The Respondent: David Robert Ristoff, Esquire

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, pertinent portions of which are commented on below, I find pursuant to the Conditional Guilty Plea for Consent Judgment that the facts of the consent judgment are admitted. I adopt the facts as set forth in the Conditional Guilty Plea for Consent Judgment as follows:

Count I: TFB File No. 2009-10,911(6B) Complaint of L. Jane Wimpelberg-Respondent employed Miguel Perez as a non-lawyer assistant. Mr. Perez's duties at the firm included conducting client intake and consultations, meeting with clients to explain and sign fee agreements, collecting payments for fees and costs,

and forwarding information to Respondent after the consultation. On or about September 11, 2007, Ms. Wimpelberg met with Miguel Perez to retain Kalogianis & Associates to represent her. Unknown to Respondent, Mr. Perez advised Ms. Wimpelberg to use her credit cards to their limit to buy gift cards and to have a lien placed on a classic truck to protect it from bankruptcy. Mr. Perez presented a retainer agreement to Ms. Wimpelberg which had been pre-signed by Respondent. Ms. Wimpelberg gave Mr. Perez three checks during the meeting: a) Check No. 1397 payable to Kalogianis & Associates in the amount of \$2,200 for the attorney's fee; b) Check No. 1398 payable to Kalogianis & Associates in the amount of \$299 for filing fees; and c) Check No. 1399 payable to Able Towing & Auto Body in the amount of \$2,800 for "truck repair." Respondent did not meet with Ms. Wimpelberg during the September 11, 2007 meeting. Check numbers 1397 and 1398 were deposited into Respondent's firm operating account. Mr. Perez had an interest in Able Towing & Auto Body and endorsed check No. 1399 which was negotiated. During the representation, Ms. Wimpelberg contacted Respondent on several occasions to inquire about the status of the representation. Respondent did not personally respond to Ms. Wimpelberg's inquiries; instead, Mr. Perez occasionally responded and informed Ms. Wimpelberg that the case was progressing. Mr. Perez met with Ms. Wimpelberg on at least four other occasions to discuss her case without Respondent present. On or about October 14, 2008, Ms. Wimpelberg met with Miguel Perez at a travel agency operated by Mr. Perez and his wife to discuss her case. During this meeting, Ms. Wimpelberg learned that Mr. Perez no longer worked for Respondent. Respondent met with Ms. Wimpelberg for the first time on or about February 16, 2009. Respondent failed to properly supervise Mr. Perez to ensure his conduct was compatible with the Rules of Professional Conduct.

Count II: TFB File No. 2009-10,617(6B) Complaint of Fatima Estien- Respondent practiced under the firm name of Kalogianis & Associates. At all times material and relevant to this complaint, Respondent was a sole practitioner. By using the firm name of Kalogianis & Associates when Respondent was the only attorney in the firm, Respondent used a false, misleading, or deceptive firm name. In June 2008, Fatima Estien contacted Kalogianis & Associates regarding a post-judgment dissolution of marriage matter. On June 11, 2008, Ms. Estien met with Miguel Perez, for the consultation. Mr. Perez's duties at the firm included conducting client intake and consultations, meeting with clients to explain and sign fee agreements, collecting payments for fees and costs, and forwarding information to Respondent after the consultation. Mr. Perez presented a retainer agreement to Ms. Estien, which had been pre-signed by Respondent. Mr. Perez filled in the retainer agreement with the appropriate information in relation to Ms. Estien. Miguel Perez quoted Ms. Estien a non refundable fee of \$5,000.00 with \$2,500.00

due immediately and the balance to be paid later. Ms. Estien paid \$2,500.00 which was deposited into Respondent's operating account. Ms. Estien did not meet Respondent during the June 11, 2008 meeting. Respondent failed to properly supervise Miguel Perez to ensure his conduct was compatible with the Rules of Professional Conduct. From June 2008 until October 2008, Respondent failed to meet or communicate with Ms. Estien. From June 2008 until October 2008, Respondent provided minimal legal services to Ms. Estien. Ms. Estien discharged Respondent and requested a refund of her retainer. Respondent initially declined to refund the fee but offered to continue the representation. After Ms. Estien filed a complaint, Respondent refunded \$2,500 to Ms. Estien.

Count III: TFB File No. 2010-10,370(6B) Complaint of Helen M. Brozio- On December 17, 2007, Respondent was retained by Helen Brozio to represent her against [REDACTED], [REDACTED], regarding personal property taken from Mrs. Brozio's home by [REDACTED]. Respondent was paid a \$9,000.00 retainer by Mrs. Brozio for the representation. Mrs. Brozio signed the fee agreement on December 17, 2007 and Respondent signed the agreement on December 26, 2007. On January 17, 2008, Respondent filed a Notice of Appearance on behalf of Mrs. Brozio in the pending criminal matter against [REDACTED]. On January 25, 2008, Respondent attended the deposition of Mrs. Brozio, the victim in the pending criminal case. Respondent alleges he participated in the deposition in a limited capacity and provided limited legal service to Mrs. Brozio in the criminal action against [REDACTED]. Mrs. Brozio's property was recovered through the efforts of law enforcement. Once the stolen property was recovered, Respondent ceased providing services to Mrs. Brozio. Respondent did not file a civil theft action on behalf of Mrs. Brozio and one was not necessary after the stolen property was recovered. Respondent did not attempt any collection activities on behalf of Mrs. Brozio. Respondent failed to communicate with Mrs. Brozio that he was no longer representing her interests. Mrs. Brozio attempted to contact Respondent about the status of the representation several times but Respondent failed to respond to Mrs. Brozio's requests for information. Mrs. Brozio requested a refund of the fee due to Respondent's failure to perform the services he agreed to perform. By letter dated September 24, 2008, Respondent advised Mrs. Brozio that the retainer was non-refundable and that "the lawsuit had been favorably resolved." Mrs. Brozio and Respondent submitted to The Florida Bar's Grievance Mediation and Fee Arbitration Program, wherein a hearing was held on April 9, 2010 regarding a \$9,000.00 fee dispute. On or about April 16, 2010, a Fee Arbitration Award was entered. The award found that \$3,000.00 was a reasonable attorney fee for 12 hours of work and directed Respondent to refund Mrs. Brozio \$6,000.00 within ten days of the date of the award. Respondent complied with the award.

III. Recommendations as to Whether or Not the Respondent should Be Found Guilty: I adopt the Conditional Guilty Plea for Consent Judgment and recommend that Respondent be found guilty as follows:

Count I: Rule 4-1.4 (Communication); Rule 4-1.5 (Fees and Costs for Legal Services); and Rule 4-5.3 (Responsibilities Regarding Non-Lawyers Assistants).

Count II: Rule 4-1.3 (Diligence); Rule 4-1.4 (Communication); Rule 4-1.5 (Fees and Costs for Legal Services); Rule 4-5.3 (Responsibilities Regarding Non-Lawyers Assistants); and Rule 4-7.2 (Communications Concerning a Lawyer's Services).

Count III: Rule 4-1.2 (Objectives and Scope of Representation); Rule 4-1.4 (Communication); Rule 4-1.5 (Fees and Costs for Legal Services); and Rule 4-1.16 (Declining or Terminating Representation).

IV. Recommendation as to Disciplinary Measures to Be Applied:

Pursuant to the Conditional Guilty Plea for Consent Judgment, I recommend that Respondent receive the following discipline:

- a) **Public Reprimand** to be administered by the Board of Governors;
- b) **L.O.M.A.S. Review**- Respondent shall contact Law Office Management Assistance Service within **thirty (30)** days of the date of the Supreme Court's order approving the report of referee in order to schedule a LOMAS review. Respondent shall fully comply with and implement, at respondent's sole cost and expense, all recommendations made by LOMAS within **sixty (60)** days of the recommendation. LOMAS will provide the Lawyer Regulation Department of The Florida Bar with status reports.
- c) Attendance of **Ethics School**; and
- d) Payment of the Bar's **costs** in prosecuting this matter.

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:

Age: 47

Date Admitted to Bar: October 8, 1993

Prior disciplinary convictions and disciplinary measures imposed herein:
None

VI. In support of the Conditional Guilty Plea for Consent Judgment I considered the following case law and Florida Standards for Imposing Lawyer Sanctions:

Florida Bar v. Mooney, 2011 WL 1416241 (Fla. 2011) (not final until time for reh'g expired)

Standard 4.0 Violations of Duties Owed to Clients

4.43 Public reprimand is appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

Standard 7.0 Violations of Other Duties Owed as a Professional

7.3 Public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

9.22 Aggravating Factors:

- (d) multiple offenses;
- (i) substantial experience in the practice of law.

9.32 Mitigating Factors:

- (b) absence of a dishonest or selfish motive;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (g) character or reputation; and
- (l) remorse.

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

Administrative Costs

Pursuant to Rule 3-7.6(q)(1)(I).....\$1,250.00

Bar Counsel Costs

Jodi A. Thompson.....\$ 157.98

Investigative Costs

Michael B. Lunsford (6.7 hours @ \$25.00/hr.).....\$ 167.50

Court Reporter Costs

Clark Reporting.....\$ 96.75

Kimberly A. Votta, PRRP\$ 441.03

Miscellaneous Expenses

Michael A. Foster, Mediator.....\$ 562.50

Research.....\$ 16.50

TOTAL: \$2,692.26

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 May, 2011.

Robert A. Foster, Jr.
Referee

Copies:

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