

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC10-429

v.

TFB File No. 2008-00,125(2A)

MARK DAVID TUCKER,

Respondent.

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**REPORT OF THE REFEREE ACCEPTING CONSENT JUDGMENT**

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 March 8, 2010, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. Respondent, through counsel responded to the Complaint and Request for Admissions and asserted Affirmative Defenses. A status conference was held on May 10, 2010. The parties agreed to consider Respondent's affirmative defenses as a motion to dismiss the complaint. A hearing was held and argument made on May 27, 2010. An order denying Respondent's motion to dismiss was signed on June 14, 2010. Respondent ultimately signed a conditional guilty plea and stipulation to the entry of same. All necessary

documents have been filed. All of the aforementioned pleadings, responses thereto, other pleadings, 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. On or about December 15, 2006, following the death of her ex-husband, Rebecca Foster hired Respondent to represent her in connection with the filing of approximately 6 life insurance policy claims. Respondent assured Ms. Foster that he had several years experience working with life insurance companies and was very capable of handling the matter. A fee agreement was reached wherein Ms. Foster agreed to pay Respondent \$250 per hour. Between December 15, 2006 and April 11, 2007, Respondent billed Ms. Foster a total of 331.8 hours (\$82,950) which included 252.9 hours (\$63,225) for “reviewing documents” and researching “serious coverage issues”. The research and time expended were done “in preparation” of denials from the insurance providers. However, the policies were never contested by the insurance companies and were paid out in full within approximately 3 months after the claims were filed. Under the guidelines of Rule 4-1.5, the fees in this case were clearly excessive. Respondent over-billed Ms. Foster by \$72,950.

On or about April 22, 2008, a compliance audit was conducted on Respondent's trust account, covering the period from December 14, 2007, through March 31, 2008. Respondent was not in substantial compliance with The Florida Bar rules regulating trust accounts. More specifically, Respondent failed to maintain the following:

- A. A separate cash receipts and disbursements journal as required by Rule 5-1.2(b)(5);
- B. Monthly bank reconciliation for the bank statements as required by Rule 5-1.2(c)(1)(A); and
- C. Monthly comparisons between the client ledgers and reconciled bank balances had been performed as required by Rule 5-1.2(c)(1)(B).

### III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating Rules 4-1.5 (Fees and Costs for Legal Services), 4-1.15(Compliance With Trust Accounting Rules), 5-1.2(b)(5) (A Separate Cash Receipts and Disbursements Journal), 5-1.2(c)(1)(A) (Reconciliations of All Trust Bank or Savings and Loan Association Accounts), and 5-1.2(c)(1)(B) (Comparison Between the Total of the Reconciled Balances of All Trust Accounts and the Total of the Trust Ledger Cards or Pages) of the Rules Regulating The Florida Bar.

In making my decision, I considered the following case law and Standards Imposing Lawyer Sanction:

The Florida Bar v. Doltie, 606 So.2d 1158 (Fla. 1992), the Supreme Court held that one month suspension followed by one year's probation is appropriate disciplinary measure for attorney charging excessive fee.

The Florida Bar v. Moriber, 314 So.2d (Fla. 1975), an attorney shall not collect illegal or clearly excessive fee, and warrants suspension from practice for 45 days, which suspension should continue until refund of fee to client.

The Florida Bar v. Richardson, 574 So.2d 60 (Fla.1990), the Supreme Court held that attorney's charging clients clearly excessive fees warrants 91-day suspension from practice of law. (All the time a lawyer spends on a case is not necessarily amount of time for which he can properly charge his client.)

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

7.2 Suspension is appropriate when a lawyer knowingly 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.

Had this case gone to trial evidence would have been presented that Respondent is experiencing financial difficulty during this economic climate. He does however have pending matters that when resolved should provide necessary funds to complete the restitution.

#### IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

- A. 30-day suspension from the practice of law;
- B. followed by a 3 year non-reporting probationary period; and

C. restitution to Ms. Foster in the amount of \$72,950 to be completely paid within the 3 year probationary period at a minimum payment amount of \$200 per month with the first payment due 60 days following the Court's order. Copies of verifiable proof of all restitution payment should be sent simultaneously to The Florida Bar Headquarters' Office. Verifiable proof shall consist of one of the following methods: a copy of the check and certified mail number, a signed copy of the certified mail green card, or a copy of the front and back of the negotiated check.

Failure to make restitution, including any missed or late payment will result in an immediate delinquency, thus making Respondent ineligible to practice law. Upon delinquency, the restitution will become due in its entirety. Restitution will need to be satisfied in full before the delinquency will be removed. In addition, Respondent shall complete a petition for removal of delinquency and pay a \$150 reinstatement fee.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1), I considered the following personal history of Respondent, to wit:

Age: 56

Date admitted to the Bar: September 16, 1981

Prior Discipline: None.

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 to Rule 3-7.6(q)(1)(I), Rules of Discipline	\$ 1,250.00
Court Reporter Fees and Transcripts	190.00
Investigative Costs and Expenses	<u>114.75</u>
<b>TOTAL</b>	<b>\$ 1,554.75</b>

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within the 3 year probationary period at a minimum of \$50 per month, with the first payment due 60 days following the Court's order, Respondent shall be deemed delinquent and ineligible to practice law.

Dated this 5th day of November, 2010.

Original Signed By William R. Slaughter, II County Court Judge
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Honorable William R. Slaughter, II  
County Court Judge/Referee  
Suwannee County Courthouse  
200 Ohio Avenue Street  
Live Oak, FL 32060-3200

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927, and that copies were furnished by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; ALLISON CARDEN SACKETT, Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and MARK DAVID TUCKER, Respondent, c/o Respondent's counsel, Judson H. Orrick, 660 East Jefferson Street, Tallahassee, FL

32301, on this 8<sup>th</sup> day of November, 2010.

Original Signed By William R. Slaughter, II County Court Judge
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Honorable William R. Slaughter, II, Referee