

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

v.

Case No. SC11-1264  
TFB Case No. 2010-31,173(19A)

JOHN KEVIN GRIFFIN,  
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 June 22, 2011, The Florida Bar filed its Complaint against Respondent. 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.

## COUNT I

1. A. Leon C. Inmon hired respondent in December 2004 to represent him in a pending civil suit for injuries Mr. Inmon sustained when his plane crashed while performing crop dusting services. Mr. Inmon signed a contingency fee agreement with respondent at that time.

2. During his representation of Mr. Inman, respondent repeatedly failed to respond to numerous discovery requests in a timely manner, and repeatedly failed to timely depose necessary witnesses.

3. In December 2005, Mr. Inmon entered into a new fee arrangement with respondent for a flat fee and made a \$25,000 payment towards that fee. Eventually, the fee agreement was changed back to a contingency fee.

4. Respondent failed to comply with the court's orders on numerous occasions during his representation of Mr. Inmon. The court advised respondent that it was going to set new deadlines in the case which could result in court's dismissal of Mr. Inmon's case absent respondent's compliance.

5. In or around the first week of June 2009, Mr. Inmon agreed to accept a settlement offer of \$200,000.00 to settle the case against one of the defendants.

6. During a hearing on November 24, 2009, respondent reiterated his previous explanations for his ongoing failure to timely comply with the court's orders entered since the September 11, 2009 hearing. The court found respondent's excuses not to be credible and orally advised it was dismissing Mr. Inmon's case and that it was granting the defendant's motion for summary judgment against Mr. Inmon.

7. Respondent informed Mr. Inmon of the dismissal after the conclusion of the hearing on November 24, 2009. This was the first time respondent made Mr. Inmon aware of his dilatory actions in the case.

8. On December 4, 2009, respondent moved for rehearing of the court's oral order and argued that Mr. Inmon should not be punished for respondent's neglect and admitted that Mr. Inmon had not been aware of respondent's inaction in the case. On December 14, 2009, the court denied respondent's motion for rehearing.

9. On or about January 14, 2010, Mr. Inmon terminated respondent's services and hired new counsel to represent him in the matter. Mr. Inmon has filed an appeal of the court's order.

## COUNT II

10. Respondent maintained an attorney trust account at Bank of America (hereinafter referred to as the "trust account") at all times material.

11. Respondent failed to maintain a client ledger card for his client, Mr. Inmon.

13. Respondent failed to maintain a trust account journal, failed to perform monthly reconciliations, and failed to perform comparisons as required by the Rules Regulating The Florida Bar.

14. Respondent failed to maintain all cancelled checks and deposit slips for his trust account for the period 2004 through 2009.

15. On or about July 7, 2009, respondent deposited Mr. Inmon's \$200,000.00 settlement check into respondent's trust account.

16. Between July 9, 2009 and December 21, 2009, respondent disbursed the settlements funds to himself for fees and to Mr. Inmon.

17. Respondent failed to prepare a closing statement for Mr. Inmon until April 9, 2010.

18. Respondent failed to sign the closing statement nor did he have Mr. Inmon sign the settlement statement.

19. Respondent's closing statement failed to reflect a credit for the \$25,000 flat fee he received from Mr. Inmon.

### **III. RECOMMENDATIONS AS TO GUILT**

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

#### **COUNT I**

A. 4-1.1 A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

B. 4-1.2(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, and as required by rule 4-1.4, shall reasonably consult with the client as to the means by which they are to be pursued.

C. 4-1.3 A lawyer shall act with reasonable diligence and promptness in representing a client.

D. 4-1.4(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

E. 4-1.4(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

F. 4-3.2 A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

G. 4-3.4(c) A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

H. 4-8.4(d) A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice. COUNT II

I. 4-1.5(0(5) As to contingent fees: In the event there is a recovery, upon the conclusion of the representation, the lawyer shall prepare a closing statement reflecting an itemization of all costs and expenses, together with the amount of fee received by each participating lawyer or law firm. A copy of the closing statement shall be executed by all participating lawyers, as well as the client, and each shall receive a copy. Each participating lawyer shall retain a copy of the written fee contract and closing statement for 6 years after execution of the closing statement. Any contingent fee contract and closing statement shall be available for inspection at reasonable times by the client, by any other person upon judicial order, or by the appropriate disciplinary agency.

J. 5-1.1(a) A lawyer shall hold in trust separate from the lawyer's own property, funds and property of clients or third persons that are in the lawyers possession in connection with a representation.

K. 5-1.1(e) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and,

upon request by the client or third person, shall promptly render a full accounting regarding such property.

L. 5-1.2(b) The following are the minimum trust accounting records that shall be maintained. These records may be maintained in their original format or stored in digital media as long as the copies include all data contained in the original documents and may be produced when required. (1) A separate bank or savings and loan association account or accounts in the name of the lawyer or law firm and clearly labeled and designated as a "trust account." (2) Original or clearly legible copies of deposit slips if the copies include all data on the originals and, in the case of currency or coin, an additional cash receipts book, clearly identifying: (A) the date and source of all trust funds received; and (B) the client or matter for which the funds were received. (3) Original canceled checks or clearly legible copies of original canceled checks, all of which must be numbered consecutively, if the copies include all endorsements and all other data and tracking information. (4) Other documentary support for all disbursements and transfers from the trust account. (5) A separate cash receipts and disbursements journal, including columns for receipts, disbursements, transfers, and the account balance, and containing at least: (A) the identification of the client or matter for which the funds were received, disbursed, or transferred; (B) the date on which all trust funds were received, disbursed, or transferred; (C) the check number for all disbursements; and (D) the reason for which all trust funds were received, disbursed, or transferred. (6) A separate file or ledger with an individual card or for each client or matter, showing all individual receipts, disbursements, or transfers and any unexpended balance, and containing: (A) the identification of the client or matter for which trust funds were received, disbursed, or transferred; (B) the date on which all trust funds were received, disbursed, or transferred; (C) the check number for all disbursements; and (D) the reason for which all trust funds were

received, disbursed, or transferred. (7) All bank or savings and loan association statements for all trust accounts.

M. 5-1.2(c) The minimum trust accounting procedures that shall be followed by all members of The Florida Bar (when a choice of laws analysis indicates that the laws of Florida apply) who receive or disburse trust money or property are as follows: (1) The lawyer shall cause to be made monthly: (A) reconciliations of all trust bank or savings and loan association accounts, disclosing the balance per bank, deposits in transit, outstanding checks identified by date and check number, and any other items necessary to reconcile the balance per bank with the balance per the checkbook and the cash receipts and disbursements journal; and (B) a comparison between the total of the reconciled balances of all trust accounts and the total of the trust ledger cards or pages, together with specific descriptions of any differences between the 2 totals and reasons therefore. (2) At least annually, the lawyer shall prepare a detailed listing identifying the balance of the unexpended trust money held for each client or matter. (3) The above reconciliations, comparisons, and listings shall be retained for at least 6 years. (4) The lawyer or law firm shall authorize, at the time the account is opened, and request any bank or savings and loan association where the lawyer is a signatory on a trust account to notify Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, in the event the account is overdrawn or any trust check is dishonored or returned due to insufficient funds or uncollected funds, absent bank error. (5) The lawyer shall file with The Florida Bar between June 1 and August 15 of each year a trust accounting certificate showing compliance with these rules on a form approved by the board of governors.

#### IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:



#### 4.1 Failure to Preserve the Client's Property

4.12 Suspension is appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

#### 4.4 Lack of Diligence

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.

#### 4.5 Lack of Competence

4.52 Suspension is appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

#### 6.2 Abuse of the Legal Process

6.22 Suspension is appropriate when a lawyer knows that he or she is violating 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. 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.

#### 9.22 Aggravating Factors

(c) pattern of misconduct;

(d) multiple offenses;

(h) vulnerability of victim; and

(i) substantial experience in the practice of law.

### 9.32 Mitigating Factors

- (c) personal or emotional problems;
- (1) remorse; and
- (m) remoteness of prior offenses.

## V. CASE LAW

I considered the following case law prior to recommending discipline:

*The Florida Bar v. Fortunato*, 788 So. 2d 201 (Fla. 2001) — 90 day suspension for engaging in multiple instances of neglect resulting in appeals being dismissed and in the appellate court sanctioning the attorney. In aggravation, the attorney's testimony at the final hearing in the bar's disciplinary case was evasive and misleading, she had a prior disciplinary history and engaged in a pattern of misconduct. In mitigation, she had a good reputation, was remorseful, there was no dishonest or selfish motive in the underlying misconduct, and she had personal or emotional problems at the time the misconduct occurred.

*The Florida Bar v. Nesmith*, 707 So. 2d 331 (Fla. 1998) — 30 day suspension for neglect of a criminal appeal resulting in an order to show cause to which the attorney failed to respond. The appellate court dismissed the appeal as a result. The attorney originally was representing the client in one criminal case pending at trial level and one pending at appellate level. The attorney and client had a disagreement resulting in the client filing a bar grievance against the attorney. Thereafter, the attorney moved to withdraw from the case pending at trial level but did not move to withdraw from the appellate case. The trial court granted his motion to withdraw and the attorney filed a motion for extension of time to file the initial brief in the appellate case, which the appellate court granted. The attorney then filed a second motion for extension of time to file the initial brief which the appellate court granted with the caveat that no more extensions would be granted. Only then did the attorney move to withdraw from the case. The appellate court

denied his motion and he filed a third motion for extension of time to file the brief. The court issued an order to show cause why the appeal should not be dismissed for failure to file the initial brief. The attorney failed to respond and, as a result, the client's appeal was dismissed. In aggravation, the attorney had a prior disciplinary history. In mitigation, his overall handling of the case was adequate and the fee he charged the client was minimal compared to the amount of work he performed.

*The Florida Bar v. Lecznar*, 690 So. 2d 1284 (Fla. 1997) — 90 day suspension for neglect and misrepresentations to the client. The attorney represented a client in a claim for permanent personal injuries suffered in two separate car accidents. Although he was aware the client had uninsured motorist coverage, he neglected to name the client's insurer as a party defendant in either case and neglected to negotiate a settlement with the client's insurer on the uninsured motorist claims. Both law suits were dismissed for failure to prosecute after the statute of limitations ran with respect to adding the client's insurer as a party defendant. The attorney repeatedly led the client to believe the cases were progressing when in fact they were not. In aggravation, the attorney had a prior disciplinary history and the client was prejudiced by loss of her claims. In mitigation, there was no dishonest or selfish motive but rather a failure to properly manage his case load after he lost office staff during a time he was participating in a high volume legal services plan. He fully cooperated with the bar and admitted his actions. The attorney had a good reputation and took steps to correct his office management problems.

#### VI. 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. Ninety day suspension with automatic reinstatement.

B. Respondent shall attend Trust accounting workshop within one year of the order of the Supreme Court of Florida accepting this Consent Judgment for Conditional Guilty Plea.

C. Respondent shall pay \$25,000.00 to Leon C. Inmon as restitution on or before December 1, 2014.

VII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), considered the following personal history of Respondent, to wit:

Age: 57

Date admitted to the Bar: June 26, 1990

Prior Discipline: *The Florida Bar v. Griffin*, No. SCO1-189 (Fla. Aug. 16, 2001) - Respondent received an admonishment for neglect of an appeal. Respondent also was ordered to refund the fee paid by the client.

VIII. 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	1,250.00
Court Reporters Fees	\$512.90
Bar Counsel Travel	\$209.13
Investigative Costs and Expenses	\$789.30
Photocopying Costs	\$25.50

TOTAL	\$2,786.83
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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 thirty days of said judgment becoming final, Respondent shall be deemed

delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 11 day of April 2017

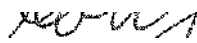
  
Honorable Thomas D. Hall  
Referee

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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, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were furnished by regular U.S. Mail to Respondent, John Kevin Griffin, whose record bar address is Post Office Box 4450, Fort Pierce, Florida 34948-4450; Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300 and Ms. Sheila Marie Tuma, Bar Counsel, The Florida Bar, Orlando Branch Office, The Gateway Center, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050 on this



\_\_\_\_\_ day of (96,1-Atr

,2011.

)Honorab~l Pete Altman .Mllry

A handwritten signature in black ink, appearing to read "Pete Altman", with a large, stylized initial "P" and a checkmark-like flourish at the end.