

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

Supreme Court Case
No. SC12-16

The Florida Bar File
No. 2012-50,059(15C)

JASON STEVEN DALLEY,

Respondent.

_____ /

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 January 5, 2012, The Florida Bar filed its Complaint against Respondent in these proceedings. The parties have presented to me a Conditional Guilty Plea for Consent Judgment, which has been approved by The Florida Bar Board of Governors' designated reviewer. After due deliberation, I have determined to recommend that Respondent's Conditional Guilty Plea for Consent Judgment be approved, for the reasons set forth herein. 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.

1. Respondent was hired in or about June 2006 by Dawn Luchik to represent her in a personal injury matter.

2. After accepting Luchik's case, Respondent allowed the statute of limitations to run on her claim due to inadequate case monitoring (Respondent has advised that he has implemented a new computerized monitoring system to avoid similar recurrences).

3. By allowing the statute of limitations to run, Respondent failed to competently and diligently represent his client.

4. Furthermore, throughout the period of representation, Ms. Luchik documented many attempts to contact Respondent to ascertain the status of her case, but alleges that Respondent failed to properly communicate with her. Respondent, however, denies these allegations and states that his office did return her communications and kept her abreast of the status of her case, even if he did not do so personally each time.

III. RECOMMENDATIONS AS TO GUILT

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

A. By the conduct set forth above, Respondent violated R. Regulating Fla. Bar **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.]; **4-1.3** [A lawyer shall act with reasonable diligence and promptness in representing a client.]; **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.]; and **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.].

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

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.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Robinson, 654 So. 2d 554 (Fla. 1995) Failing to adequately communicate with client, to file notice of appeal on behalf of another client and to adequately prepare for another client's criminal trial warrants public reprimand and two-year probation, but not notification of reprimand to clients.

The Florida Bar v. Whitaker, 596 So. 2d 672 (Fla. 1993) Public reprimand, rather than admonishment, was appropriate discipline for attorney's neglect of client matter in allowing statute of limitations to run and in failing to keep client reasonably informed about status of matter.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and Respondent shall receive a public reprimand to be administered by publication and shall pay The Florida Bar's costs in this matter.

VII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

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

Age: 49

Date admitted to the Bar: October 2, 1995

Prior Discipline: Respondent received an admonishment for advertising violations in 2008.

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
Bar Counsel Travel (at Grievance Committee Level)	<u>\$ 18.15</u>
TOTAL	\$1,268.15

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 _____ day of _____, 2012.

Honorable John D. Fry
Referee

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, FL 32399-1927, and that copies were furnished by regular U.S. mail to Respondent's Counsel, Andrew Scott Berman, at 1101 Brickell Ave., Suite 1400 N, Miami, FL 33131-3105; Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300; and Michael C. Greenberg, Bar Counsel, The Florida Bar, Fort Lauderdale Branch Office, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, FL 33323 on this _____ day of _____, 2012.

Honorable John D. Fry