

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

Case No. SC11-1459

[TFB File Nos. 2010-31,486(09A);  
2010-31,620(09A);  
2011-30,287(09A);  
2011-30,641(09A)]

Case No. SC12-177

[TFB File No. 2011-30,328 (09A)]

LARRY HERBERT COLLETON,

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 July 27, 2011, The Florida Bar filed its Complaint against respondent in Case No. SC11-1459. On January 27, 2012, The Florida Bar filed its Complaint against respondent in Case No. SC12-177. These matters were consolidated pursuant to court order dated February 21, 2012. 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.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - Patricia Ann Toro Savitz  
For The Respondent - Joseph Morrell

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: After considering all the pleadings and evidence this referee finds pursuant to the Conditional Guilty Plea for Consent Judgment that the facts of the Consent Judgment are admitted. The Conditional Guilty Plea for Consent Judgment is attached hereto and incorporated herein.

1. As to TFB Case No. 2010-31,486(09A) – Bernardina Ceballo hired respondent in or around the spring of 2009 and paid respondent \$2,500.00 in legal fees to handle her civil lien matter involving property in Polk County, Florida. Respondent did not diligently pursue the matter and a final order of forfeiture regarding her property had been entered on June 11, 2009.

2. During the representation, respondent did not maintain communication with Ms. Ceballo regarding the status of her matter as well as the viability of her claim, despite her repeated requests for information. Respondent failed to timely respond in writing to Ms. Ceballo's inquiry/complaint filed with The Florida Bar, despite his obligations to do so.

3. As to TFB Case No. 2010-31,620(09A) – In July 2008 and November 2008, Ryan Hunley hired respondent to handle two separate civil matters on his behalf. At the time respondent was retained, due to Mr. Hunley's incarceration, he provided authorization and contact information for his father for the purposes of communication and case updates. Thereafter, respondent did not diligently pursue Mr. Hunley's civil matters.

4. Respondent had a brief visit with Mr. Hunley in or around February 2010. Thereafter, respondent did not communicate with Mr. Hunley or his father, despite their repeated requests for case information. Respondent failed to timely respond in writing to Mr. Hunley's inquiry/complaint filed with The Florida Bar, despite his obligations to do so.

5. As to TFB Case No. 2011-30,287(09A) – In March 2008, Anna Childs hired respondent to handle her personal injury matter. After the initial consultation with Ms. Childs, respondent took no further action to pursue her claim. Respondent did not respond to the requests for case information from Ms. Childs. Respondent failed to timely respond in writing to Ms. Childs' inquiry/complaint filed with The Florida Bar, despite his obligations to do so.

6. As to TFB Case No. 2011-30,641(09A) – Angela Davidson hired respondent in or around September 2010 to handle her dissolution matter. Respondent did not file any pleadings and/or motions on Ms. Davidson's behalf.

In addition, respondent did not maintain clear and adequate communication with Ms. Davidson. On or about January 6, 2011, respondent refunded Ms. Davidson's fee in the amount of \$500.00, pursuant to her request.

7. As to TFB Case No. 2011-30,328(09A) – Between July 2004 and July 2010, respondent represented Terry Butler in several cases and completed extensive legal work. These included federal criminal and civil matters, a federal criminal grand jury investigation, a federal appeal, two domestic violence injunction hearings, and a felony criminal case, involving hearings, mediation, a jury trial, and appellate work.

8. In July 2005, respondent received \$125,000.00 as a non-refundable legal fee and costs for his representation in a federal criminal investigation regarding Mr. Butler's on-line pharmacy business. According to the signed fee agreement, \$50,000.00 from the total funds received from Mr. Butler was to be deposited into respondent's trust account for services performed on his behalf.

9. Respondent initially deposited the funds into his operating account. Respondent did not make the subsequent deposit of the funds into his trust account. During the six years of his representation, while respondent was actively handling Mr. Butler's pending federal criminal investigation as well as the numerous other cases, he applied the funds to the legal fees incurred.

10. At no time did respondent did not seek additional legal fees from Mr. Butler, and none were paid to respondent. However, respondent did not clearly communicate the nature or basis of his subsequent legal fees with Mr. Butler and did not have him sign any additional fee agreements. Respondent did not provide Mr. Butler with any billing statements and did not respond to Mr. Butler's requests for an accounting of the funds paid to him.

11. In or around June 2011, Mr. Butler hired counsel to pursue reimbursement of the funds paid to respondent. Mr. Butler obtained a default judgment in the civil matter filed against respondent. On February 28, 2012 the court entered a final judgment of \$150,000.00 against respondent, which included treble damages.

12. Based on Mr. Butler's inquiry/complaint regarding the legal fees and costs paid to respondent, The Florida Bar initiated a compliance audit of respondent's trust account. Respondent did not maintain all required trust account records as set forth in The Rules Regulating The Florida Bar. Respondent did not consistently perform monthly reconciliations and comparisons of his trust account. Respondent's trust account was not in substantial compliance.

### III. RECOMMENDATIONS AS TO GUILT

Pursuant to the Conditional Guilty Plea for Consent Judgment, as to each count of the complaint this referee finds the respondent guilty as admitted of

violations of the following Rules Regulating The Florida Bar: 4-1.3 [Diligence]; 4-1.4(a), (b) [Communication]; 4-8.4(g) [Misconduct]; 5-1.1(b), (e) [Trust Accounts]; and, 5-1.2(b), (c) [Trust Accounting Records and Procedures].

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

Pursuant to the Conditional Guilty Plea for Consent Judgment, this referee makes the following recommendations as to the disciplinary measures to be applied:

A. Suspension from the practice of law for six months requiring proof of rehabilitation. Prior to filing his petition for reinstatement respondent shall obtain a recommendation from Florida Lawyer's Assistance, Inc. that he is fit to resume the practice of law.

B. Payment of the disciplinary costs which currently total \$4,712.40.

V. STANDARDS FOR IMPOSING LAWYER SANCTIONS

This referee 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.

#### 9.22 Aggravating Factors

- (a) prior disciplinary offenses;
- (c) a pattern of misconduct;
- (d) multiple offenses; and,
- (i) substantial experience in the practice of law.

#### 9.32 Mitigating Factors

- (c) personal or emotional problems;
- (h) physical or mental disability or impairment.

### VI. CASE LAW

This referee considered the following case law prior to recommending discipline:

1. In The Florida Bar v. Walton, 952 So.2d 510 (Fla. 2006), an attorney was suspended for 91 days for misconduct which included failing to act with reasonable diligence and promptness regarding the receipt of payment on his

clients' judgment and for failing to record the satisfaction of judgment after a shortage was rectified. Walton had been previously disciplined three times.

2. The Florida Bar v. Maier, 784 So.2d 411 (Fla. 2001) - Sixty day suspension and three year period of probation for failing to act with diligence in pursuing a client's application for alien labor certification, failing to keep the client reasonably informed about the status of that matter, and for failing to timely respond to inquiries made by the Bar. The attorney had previously received two admonishments and a thirty day suspension, and the Court determined that a public reprimand was not sufficient discipline in light of the fact that the attorney's violations involved the same type of misconduct that were the subject of her prior disciplinary actions.

3. In The Florida Bar v. Cimbley, 840 So.2d 955 (Fla. 2002), an attorney received a one year suspension for failing to record a warranty deed and pay real estate taxes out of funds held in his trust account upon the sale of a client's real property, for failing to appear at a hearing, for failing to promptly make restitution to a client, for failing to notify clients that they were to appear for a deposition, for failing to maintain his Florida Bar address or public phone number, and for making deliberate efforts to make himself unavailable and difficult to contact. The referee found significant mitigation, but the Court determined a rehabilitative suspension was appropriate light of the seriousness of acts of neglect,

cumulative nature of the misconduct, and the attorney's previous disciplinary history. The misconduct involved 3 clients and occurred over an extended period, and the attorney had previously received a 90 day suspension followed by a 3 year probationary period for client neglect arising from similar emotional problems and mental health impairments.

4. The Florida Bar v. Barbone, 679 So. 2d 1179 (Fla. 1996) - Six month suspension for failing to properly maintain his trust account resulting in significant shortages. He also failed to produce all of the required records. In aggravation, he had a prior disciplinary history for similar misconduct.

5. In The Florida Bar v. Herman, 8 So. 3d 1100, 1108 (Fla. 2009), quoting The Florida Bar v. Rotstein, 835 So. 2d 241, 246 (Fla. 2003), the court stated “this Court ‘has moved towards stronger sanctions for attorney misconduct’ in recent years.”

## VII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

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

Age: 54

Date admitted to the bar: April 3, 1989

Prior Discipline:

1. By court order dated April 14, 2005, respondent received a ten day suspension for neglecting the cases of two separate clients and for failing to timely respond to inquiries from the bar.

2. By court order dated December 21, 2000, respondent received a public reprimand for neglecting a client's criminal appeal.

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

This referee finds the following costs were reasonably incurred by The Florida Bar:

Investigative Costs	\$1,277.3
Copy Costs	\$364.7
Administrative Fee	\$1,250.0
Court Reporters' Fees	<u>\$1,820.3</u>
<b>TOTAL</b>	<b>\$4,712.40</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 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.

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ROBERT LEE PEGG  
Referee

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

Patricia Ann Toro Savitz, The Florida Bar, 1000 Legion Place, Suite 1625,  
Orlando, Florida 32801-5200;

Joseph Morrell, Counsel for Respondent, 1310 W. Colonial Drive, Suite 28,  
Orlando, Florida 32804-7154;

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

this \_\_\_ day of \_\_\_\_\_, 2012.

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Judicial Assistant/Deputy Clerk