

**-MAILIN THE SUPREME COURT OF FLORIDA
(Before a Referee)**

THE FLORIDA BAR,

Complainant,

v.

VEVERLY GARY-HAMILTON,

Respondent.

**Supreme Court Case
No. SC12-422**

**The Florida Bar File
No. 2012-50,046(15G)**

**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 2, 2012, The Florida Bar filed its Complaint against Respondent. The parties have presented to me an Unconditional Guilty Plea for Consent Judgment. After due deliberation, I have determined to recommend that respondent's Unconditional Guilty Plea for Consent Judgment be approved, for the reasons set forth herein.

During the course of the proceedings, The Florida Bar was represented by bar counsel, Ronna Friedman Young, and respondent appeared *pro se*.

The pleadings and other papers filed in this cause constitute the record in this case and are forwarded to the Supreme Court of Florida with an index as required by the Rules Regulating The Florida Bar.

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. Pursuant to the plea, respondent admitted the factual allegations of the bar's complaint and pled guilty to the violations charged, and I adopt those admissions as my findings. The following paragraphs constitute the allegations and violations in the bar's complaint:

1. Respondent is, and at all times mentioned in the complaint was, a member of The Florida Bar, admitted on September 21, 2006 and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent practiced law in Palm Beach County, Florida, at all times material.

3. On January 18, 2012, the Fifteenth Judicial Circuit Grievance Committee G found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

4. Respondent represented Alvin McNair in a personal injury case.

5. McNair, a resident of Georgia, had been involved in an automobile accident in Georgia on May 5, 2009.

6. McNair was first represented by an attorney in Georgia and then retained respondent, his cousin, as counsel.

7. Respondent is not licensed as an attorney in Georgia.

8. According to respondent, she advised McNair verbally that she would work to get the case settled but would not file a lawsuit on his behalf.

9. According to McNair, respondent's representation in this regard was "an outright lie."

10. Respondent did not provide any written document to her client limiting the scope of her representation.

11. Respondent did enter into a contingency fee agreement with McNair which did not limit the scope of her representation.

12. The contingency fee agreement stated in part: "The Law Firm accepts said employment and is authorized to effect a settlement or compromise, subject to client(s) approval, or to institute such legal action or actions as may be advisable in attorneys' judgment in order to enforce client's rights."

13. The contingency fee agreement also obligated McNair to pay "for the costs incurred in the investigation, negotiation, litigation, trial, appeal and settlement of any claim."

14. A true copy of the contingency fee agreement is attached hereto and incorporated herein as **Exhibit A**.

15. Respondent did not settle McNair's claim prior to the expiration of the statute of limitations nor did anyone file suit on McNair's behalf.

COUNT I

16. The Florida Bar incorporates paragraphs 1 through 15 as if fully rewritten herein.

17. In light of respondent's position that her representation was limited but without written consent of her client, respondent violated R. Regulating Fla. Bar **4-1.2(c)** [If not prohibited by law or rule, a lawyer and client may agree to limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing]. (Emphasis added).

COUNT II

18. The Florida Bar incorporates paragraphs 1 through 15 as if fully rewritten herein.

19. Respondent conveyed a \$5,000 settlement offer to McNair in February 2011.

20. McNair rejected this offer.

21. Respondent received a second settlement offer dated April 8, 2011 in the amount of \$6,500.00.

22. On June 2, 2011, respondent received a telephone call from the insurance adjuster asking if she had filed a lawsuit because the 2-year statute of limitations had expired in May 2011.

23. After speaking with the adjuster, respondent called her client and per the client's request, respondent then faxed the settlement offer to him.

24. Although respondent claimed to have verbally conveyed the \$6,500.00 offer to her client prior to the expiration of the statute of limitations, respondent did not send any correspondence to the client regarding the offer other than the June 2, 2011 fax (which was sent subsequent to the expiration of the statute of limitations).

25. Respondent did not provide her client with any correspondence explaining the effect of the expiration of the statute of limitations on his claim or any correspondence whatsoever about the statute of limitations.

26. Regardless of whether the scope of her representation was limited or not, respondent failed to explain the effect of the statute of limitations to the extent reasonably necessary to permit Mr. McNair to make informed decisions about any settlement.

27. Respondent further failed to diligently pursue settlement or advise her client to file suit prior to the expiration of the statute.

28. Respondent failed to appropriately communicate with McNair depriving him of an opportunity to make informed decisions about his case.

29. Respondent failed to reasonably consult with McNair about the means by which his claim was to be pursued and failed to keep him reasonably informed about the status of his matter.

30. By virtue of the foregoing, respondent violated R. Regulating Fla. Bar **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]; 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].

III. RECOMMENDATIONS AS TO GUILT

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

A. As to Count I: Respondent violated R. Regulating Fla. Bar **4-1.2(c)** [If not prohibited by law or rule, a lawyer and client may agree to limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing]. (Emphasis added).

B. As to Count II: Respondent violated R. Regulating Fla. Bar **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]; 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

Case law provides that a public reprimand is appropriate for isolated incidents of neglect, lapses of judgment, or technical violations of trust accounting rules without willful intent. *The Florida Bar v. Forrester*, 818 So. 2d 477, 484 (Fla. 2002); *The Florida Bar v. Price*, 569 So. 2d 1261, 1263 (Fla. 1990). In *The Florida Bar v. Whitaker*, 596 So.2d 672 (Fla. 1992), an attorney failed to file suit within the applicable statute of limitations and violated Rules 4-1.3 and 4-1.4 (which rules are charged in the instant case). The Court rejected a referee's recommendation of an admonishment with probation and instead, imposed a public reprimand with probation.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

A. Public reprimand to be administered by order of the Supreme Court of Florida; and

B. Attendance at The Florida Bar's Ethics School at the next available date after this Unconditional Guilty Plea for Consent Judgment is approved by the Supreme Court of Florida. Respondent shall pay a \$750 fee to attend Ethics School.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD, AND AGGRAVATING AND MITIGATING FACTORS

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

Age: 44

Date admitted to the Bar: September 21, 2006

Prior Discipline: None

Mitigating Factors: Pursuant to the Florida Standards for Imposing Lawyer Sanctions, respondent has no prior discipline [Standard 9.32(a)] and is remorseful [Standard 9.32(1)].

Aggravating Factors: None

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	<u>\$1,250.00</u>
TOTAL:	<u>\$1,250.00</u>

It is recommended that such costs be charged to Respondent and that if the costs are not paid within 30 days of the Court's order becoming final, then respondent shall pay interest on any unpaid costs at the statutory rate. Respondent shall be deemed delinquent and ineligible to practice law if the fee for attendance at Ethics School and costs are not satisfied within thirty days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

Dated this __3rd__ day of __May_____, 2012.

_____/s/_____
CHARLES M. GREENE, 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, Florida 32399-1927, a copy sent in word format by electronic mail to e-file@flcourts.org, and that copies were furnished by regular U.S. Mail to **Veverly Gary-Hamilton**, Respondent, whose record bar address is Law Office of Veverly Gary Hamilton, 301 Clematis Street, Suite 3000, West Palm Beach, Florida 33401-4609; **Kenneth Lawrence Marvin**, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; and to **Ronna Friedman Young**, Bar Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 on this __3rd__ day of __May_____, 2012.

_____/s/_____
CHARLES M. GREENE, Referee