

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

Case No. SC12-524  
TFB File No. 2011-11,227 (06A)  
2011-11,229 (06A)  
2012-10,003 (06A)  
2012-10,112 (06A)  
2012-10,288 (06A)  
2012-10,631 (06A)  
2012-10,766 (06A)  
2012-10,785 (06A)  
2012-10,812 (06A)  
2012-10,880 (06A)

v.

RANDALL SHANAFELT,  
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 19, 2012, the Florida Bar filed a complaint pursuant to Rule 3-3.2(b), Rules Regulating The Florida Bar and the Order of Emergency Suspension, issued January 20, 2012, in Supreme Court Case No. SC12-46 (Florida Bar File No. 2012-10,663(6A) (HES)). All items properly filed, including pleadings,

recorded testimony, exhibits in evidence and the report of referee constitute the record in this case and are being 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. TFB File No. 2011-11,227(6A); TFB File No. 2011-11,229(6A); and TFB File No. 2012-10,112(6A):**

On or about May 3, 2010, Tommie Clarke, Jamie Daniels and Detrick Clarke retained the Shanafelt Law Firm for representation against their employer Cargo Transportation Services. Respondent requested \$10,500 for his legal representation in the matter. Detrick Clarke and Jamie Daniels provided \$3,500 each to Respondent for representation. However, Tommie Clarke only paid Respondent \$1,200 and was placed on a payment plan for the remainder of the fee. Respondent advised Tommie Clarke and his co-workers to provide their employer with a whistleblower letter. The complainants followed Respondent's advice and submitted the letter to Cargo Transportation.

On or about May 5, 2010, the complainants were terminated from Cargo Transportation. Respondent informed the complainants that they would now have a

civil cause of action based on their termination and he would file the necessary paperwork. Respondent failed to maintain contact with the complainants after their termination from Cargo Transportation and he ceased working on their case. Later, the complainants learned that Respondent had never filed any lawsuit on their behalf despite his statements to the contrary.

**2. TFB File No. 2012-10,003(6A):**

On March 22, 2011, Tron Armstrong retained Respondent to represent him and his company, Auja Inc. in a civil proceeding. Mr. Armstrong provided Respondent with a check in the amount of \$2,000 for legal representation. Shortly after retaining Respondent for representation, Mr. Armstrong received a motion for default from opposing counsel claiming that he had failed to respond to the complaint. Mr. Armstrong spoke to Respondent and he informed Mr. Armstrong that an agreement had been reached with opposing counsel to withdraw the motion for default.

Approximately two (2) weeks after Respondent informed Mr. Armstrong that an agreement had been reached, the court granted the motion for default. Mr. Armstrong responded by retaining new counsel and terminating Respondent's representation.

### **3. TFB File No. 2012-10,288(6A):**

On September 10, 2011, Respondent was arrested by the Hillsborough County Sheriff's Office for domestic violence, battery on a law enforcement officer, and obstructing or opposing an officer with violence. On September 19, 2011, the Office of the State Attorney in and for the Thirteenth Judicial Circuit, Hillsborough County, Florida, filed a three-count information charging the defendant with domestic violence (first degree misdemeanor), battery on a law enforcement officer (third degree felony), and obstructing or opposing an officer with violence (third degree felony). Respondent failed to notify the Florida Bar of the initiation of felony criminal charges as required by Rule 3-7.2(c) of the Rules Regulating the Florida Bar. On January 11, 2012, Respondent entered into a pre-trial intervention program and his criminal case was closed.

### **4. TFB File No. 2012-10,631(6A):**

In October 2009, Patricia Cunningham met with Respondent to discuss his possible representation of her in a civil matter. During the course of the meeting, the parties agreed upon a strategy of bringing two separate cases. First, Respondent would file suit against Hudson Food and once that case generated money, Respondent agreed to file suit against Tree of Life. In December 2009, Ms. Cunningham officially retained Respondent for \$25,000. Despite the agreement between Respondent and Ms. Cunningham, Respondent filed suit against both

defendants jointly in October 2010. Respondent failed to keep Ms. Cunningham reasonably informed of the status of the case and failed to communicate with opposing counsel.

On October 12, 2011, United States Magistrate Judge Joel B. Toomey, sanctioned Respondent in the amount of \$250 for not filing motions on time with the court and for failure to communicate with opposing counsel. Respondent misrepresented to Ms. Cunningham that all of the attorneys involved in the case were sanctioned. Additionally, Respondent failed to provide an accounting for the \$25,000 retainer to Ms. Cunningham and failed to reimburse the money.

**5. TFB File No. 2012-10,766(6A):**

In January 2009, Daniel Rodriguez was terminated by his employer. Mr. Rodriguez met with Respondent to determine if he has a cause of action with the Equal Employment Opportunity Commission. Respondent informed Mr. Rodriguez that the representation would require a \$10,000 retainer. Mr. Rodriguez paid Respondent the \$10,000 retainer in late 2009 or early 2010. In June 2010, Mr. Rodriguez inquired about the status of his case. Respondent informed him that the case was moving slowly and that he was \$1,000 over his retainer. Mr. Rodriguez demanded a written billing statement from Respondent showing how the original accounting to Mr. Rodriguez.

**3. TFB File No. 2012-10,288(6A):**  
\$10,000 retainer was depleted. Respondent failed to provide an accurate

Cunningham officially retained Respondent for \$25,000. Despite the agreement between Respondent and Ms. Cunningham, Respondent filed suit against both

On March 6, 2009, Kimberly Philipson filed a complaint with the EEOC. On March 16, 2009, Ms. Philipson met Respondent for an initial consultation pertaining to her case. Respondent informed Ms. Philipson that he would represent her for a \$7,500 retainer fee. Ms. Philipson retained Respondent for \$7,500. After being retained, Respondent failed to communicate with Ms. Philipson on a consistent basis. Ms. Philipson was unable to communicate with Respondent about her case despite multiple attempts due to Respondent abandoning his practice.

**7. TFB File No. 2012-10,812(6A):**

On August 10, 2011, Robyn Kantelis paid Respondent \$4,500 for representation in an EEOC case. Between August 2011 and October 2011, Ms. Kantelis attempted to communicate with Respondent. Respondent failed to return phone calls or emails during this time and was never present in the office when Ms. Kantelis attempted to locate him. Respondent failed to show that he performed any work on Ms. Kantelis' case and Respondent failed to reimburse Ms. Kantelis the \$4,500.

**8. TFB File No. 2012-10,880(6A):**

In December 2009, John Alleyne met with Respondent to discuss possible representation in an EEOC case. On February 12, 2010, Mr. Alleyne retained accounting to Mr. Rodriguez.

**6. TFB File No. 2012-10,785(6A):**

for the representation. Respondent filed a complaint with the EEOC on or about July 17, 2010. On March 23, 2011, Mr. Alleyne received notice from the EEOC that his case had been dismissed due to an untimely filing of his petition by Respondent. Mr. Alleyne successfully appealed the EEOC ruling and was permitted to bring a cause of action against his former employers. Respondent failed to assist Mr. Alleyne during the appeal process. Furthermore, Respondent closed Mr. Alleyne's case without communicating with him. Respondent failed to refund the \$12,500 to Mr. Alleyne.

**III. RECOMMENDATIONS AS TO GUILT**

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rule 4-1.3 (Diligence); Rule 4-1.4 (Communication); Rule 4-1.5 (Fees and Costs for Legal Services); Rule 4-8.4(c) (Conduct involving dishonesty, fraud, deceit, or misrepresentation); Rule 4-1.16(a)(2) (Declining or terminating representation); Rule 5-1.1 (Trust Accounts); and, Rule 5-1.2 (Trust Accounting Records and Procedures).

**IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS**

I considered the following Standards prior to recommending discipline:

**4.1 FAILURE TO PRESERVE THE CLIENT'S PROPERTY**

4.11 Disbarment is appropriate when a lawyer intentionally or knowingly converts Respondent for representation in the case. Mr. Alleyne paid Respondent \$12,500



client property regardless of injury or potential injury.

### **4.3 FAILURE TO AVOID CONFLICTS OF INTEREST**

4.32 Suspension is appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

### **4.4 LACK OF DILIGENCE**

4.41 Disbarment is appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

### **4.6 LACK OF CANDOR**

4.62 Suspension is appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

### **5.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY**

5.12 Suspension is appropriate when a lawyer knowingly engages in criminal conduct which is not included within Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

### **6.1 FALSE STATEMENTS, FRAUD, AND MISREPRESENTATION**

6.11 Disbarment is appropriate when a lawyer:

(b) improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

## **6.2 ABUSE OF THE LEGAL PROCESS**

6.22 Suspension is appropriate when a lawyer knowingly violates 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.

## **V. CASELAW**

I considered the following case law prior to recommending discipline:

*Florida Bar v. Rosen*, 495 So.2d 180 (Fla.1986): The Court held that serious drug addiction can mitigate misconduct. Rosen was convicted on federal felony charges of knowingly and intentionally possessing cocaine with intent to distribute. He received a three-year disciplinary suspension rather than disbarment. The Court found in part that, Rosen voluntarily ceased practicing law when he recognized the depth of his addiction. Additionally, the Court stated: "To his credit, [Rosen]

quietly wound up his law practice towards the end of 1981, when he no longer felt able to adequately protect the best interests of his clients." Finally, the Court found that Rosen overcame his addiction and no longer engaged in drug use.

Accordingly, a three-year suspension was warranted.

Here, Respondent's abuse of alcohol and controlled substances caused him to abandon his practice and neglect numerous clients. Generally, the Court has held that conduct similar to Respondent's warrants disbarment. However, in *Rosen* the Court held that serious addiction issues coupled with rehabilitation could warrant a three-year suspension, if the attorney lacked the ability to practice law due to their addiction.

The undersigned finds that, Respondent could not function as an attorney due to his substance abuse issues. Respondent's addiction caused him to abandon his practice and neglect numerous clients. Although Respondent did not voluntarily close his practice like Rosen, his substance abuse issues prohibited him from effectively representing clients. Also, similar to Rosen, Respondent has entered into a rehabilitation program and has his substance abuse issues under control.

**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 three-year suspension with a condition that Respondent enter into a contract with Florida Lawyers Assistance (F.L.A.) and comply with their recommendations, and reimburse the Client Security Fund, if the Fund disburses money to his former clients. Additionally, prior to filing a petition for reinstatement, and as a condition of reinstatement, Respondent shall provide a statement from a Florida Lawyers Assistance (F.L.A.) approved physician, psychiatrist, or licensed mental health counselor attesting that Respondent is competent to practice law. Respondent hereby consents to open communication between the Bar and all therapists and physicians and expressly waives any and all applicable patient/therapist privileges for the purpose of providing the Bar with evidence that he is competent to practice law.

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:

A. Personal History of Respondent:

Age: 46

Date admitted to the Bar: June 26, 1995

Prior Discipline: None.

B. Aggravating Factors:

9.22(c) a pattern of misconduct;

9.22(d) multiple offenses; and

9.22(i) substantial experience in the practice of law.

C. Mitigating Factors:

9.32(a) absence of a prior disciplinary record;

9.32(b) absence of a dishonest or selfish motive;

9.32(c) personal or emotional problems;

9.32(j) interim rehabilitation; and

9.32(1) remorse.

**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 Expenses:	\$ 8.60
Court Reporter:	\$ 85.00
Investigative Costs:	\$ 55.39
<b>Total amount due:</b>	<b>\$1,398.99</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.

Dated this 17 day of June, 2012.



Honorable Gregory Paul Holder  
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, and that copies were furnished by regular U.S. Mail to **Respondent, Randall Shanafelt**, whose record bar address is The Shanafelt Law Firm PA, 803 Turner Street, Clearwater, FL 33756-5633; and a courtesy copy to **Ms. Sharon Wey**, who is accepting mail for Respondent, at 4331 34th Avenue North, St. Petersburg, FL 33713-1140; **Kenneth Lawrence Marvin, Staff Counsel**, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300 and Mr. **Leonard Evans Clark, Bar Counsel**, The Florida Bar, Tampa Branch Office, 420Q George J. Bean Parkway, Suite 2580, Tampa, Florida 33607-1496 on this 17 day of June, 2012.

Honorable Gregory Paul Holder  
Referee