

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
JOHN A. TOMASINO
DEC 17 2014

CLERK, SUPREME COURT
BY _____

THE FLORIDA BAR,

Complainant,

v.

Supreme Court Case
No. SC14-1281

The Florida Bar File
No. 2014-00,711 (2B)

BENJAMIN SCOTT ANDERSON,

Respondent.

_____ /

REPORT OF REFEREE

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 2, 2014, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. The Bar's Motion for Summary Judgment was heard and granted on October 16, 2014. On November 24, 2014, a final sanction hearing was held in this matter. Aside from appearing for the telephonic case management conference, respondent has failed to participate in these proceedings. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee

constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

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.

1. Narrative Summary Of Case. In addition to membership in The Florida Bar, Respondent is a member of the Georgia Bar, subject to the jurisdiction of the Supreme Court of the State of Georgia. This is a reciprocal discipline action, based on a Final Order from the Supreme Court of Georgia, dated February 24, 2014, which imposed a one year suspension with conditions, including providing a report from a licensed therapist or physician that Respondent has maintained compliance with his treatment plan regarding his addiction and that restitution has been made to his clients.

The following allegations and rules provide the basis for respondent's guilty plea and for the discipline to be imposed in this matter:

On or about July 5, 2012, Artem Lorens hired Respondent to represent him in an appeal of a medical board exam score. Respondent received a flat fee of \$500. On or about July 17, 2012, Lorens filed a grievance against Respondent

with the Georgia State Bar. Respondent agreed to refund Lorens' entire fee, and ultimately did so on or about August 29, 2013.

On or around January 2012, Margaret Williams, Ph.D., hired Respondent to represent her regarding an appeal of a Medicaid audit related to services Dr. Williams had provided as a nurse practitioner. Respondent was paid a flat fee of \$3,000, with the agreement that an additional fee would be required if the matter proceeded to an administrative hearing.

Respondent performed substantial work on the matter, including preparation and filing of a detailed Request for Administrative Review and the eventual negotiation of a resolution with the Department of Community Health which was acceptable to Dr. Williams. Respondent, however, failed to follow through to finalize the agreement and was not responsive to repeated attempts by both Dr. Williams and opposing counsel to contact him. Despite Respondent's failure to finalize the agreement, opposing counsel honored the agreement with Dr. Williams. Dr. Williams demanded a full refund of the \$3,000 fee and agreed to refrain from filing a grievance in return. When Respondent failed to refund Dr. Williams' fee, she filed a bar grievance. This matter is pending before the State Bar's Fee Arbitration Program.

In or around October 2011, Maria Santana, Ph.D., hired Respondent to assist her in petitioning for licensure as a psychologist in Florida. Respondent received

an advance fee of \$2,000 to be billed against hourly at the rate of \$275 per hour. After reviewing Dr. Santana's file, researching the statutes, regulations and procedures and communicating with the Florida agency, Respondent informed Dr. Santana that waivers were rarely granted. Respondent did no further work on Dr. Santana's case. Respondent has agreed to return \$1,175 of Dr. Santana's advance fee, and has begun making payments to her.

III. RECOMMENDATIONS AS TO GUILT

By operation of Rule 3-4.6, Rules Regulating The Florida Bar, the Final Order from the Supreme Court of Georgia shall be considered as conclusive proof of such misconduct in this disciplinary proceeding, therefore, I recommend that Respondent be found guilty of violating the following Georgia Rules of Professional Conduct: 1.3 (Diligence); 1.4 (Communication); 1.16 (Declining or Terminating Representation); and 9.2 (Restrictions on Filing Disciplinary Complaints).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

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.

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. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Whitney, 132 So.3d 1095 (Fla. 2013), the attorney received a one year suspension for failing to act with reasonable diligence, failing to keep his client informed of the status of representation, failing to communicate with his client, failing to protect his client's interests upon termination of representation and misconduct before the court during a legal malpractice action initiated by his former client.

The Florida Bar v. Polk, 126 So.3d 240 (Fla. 2013), Supreme Court held that ninety-day suspension (including substance abuse evaluation) from the practice of law was appropriate for failing to communicate for nearly 2 years with the client and failing to return documents after numerous requests.

The Florida Bar v. Cimbler, 840 So.2d 955 (Fla. 2002), the attorney received a one year suspension for engaging in a long term pattern of multiple client neglect and failing to withdraw from representation when his mental or physical condition impaired his ability to represent his clients.

TFB v. Jones, 543 So.2d 751 (Fla. 1989), the referee specifically noted respondent's total lack of cooperation with The Florida Bar during the proceedings. Respondent failed to appear either in person or by counsel at his grievance committee hearing, despite the fact that he had personal knowledge as to when the hearing was scheduled. He further failed to appear either in person or by counsel at his final hearing before the referee, despite having had notice by certified mail. The referee felt this was the same callous disregard for the proceedings of The Florida Bar as he had shown toward his client's legal matter in this case. Jones received a 91-day suspension.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

- A. 1 year suspension and
- B. Payment of The Florida Bar's costs in these proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

Personal History of Respondent:

Age: 33

Date admitted to the Bar: October 3, 2006

Aggravating Factors: 9.22

(c) a pattern of misconduct;

(d) multiple offenses;

(e) bad faith obstruction of the disciplinary proceeding by

intentionally failing to comply with rules or orders of the disciplinary agency and

(g) refusal to acknowledge wrongful nature of conduct.

Mitigating Factors:

None were submitted by respondent.

Prior Discipline: None in Florida.

Respondent was provided notice of all hearings in this matter but chose not to participate. I am concerned that respondent appears to have no interest in his membership to The Florida Bar. He failed to submit mitigation in this matter. He further failed to provide any indication that he completed his treatment in Georgia. I was inclined to recommend a heavier sanction, however, since respondent must show rehabilitation and be successfully readmitted in Georgia before being readmitted in Florida, I recommended a one year suspension.

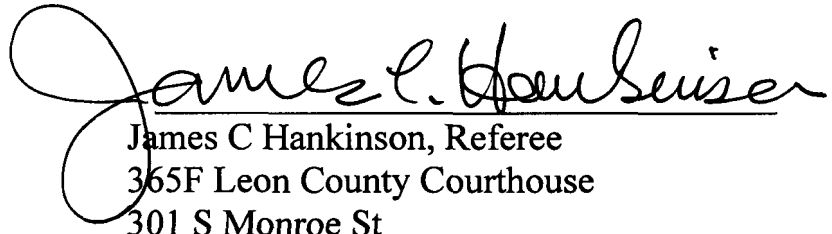
VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Investigative Costs	\$25.00
Administrative Fee	\$1,250.00
Court Reporter Fees	\$75.00
TOTAL	\$1,350.00

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 11th day of December, 2014.


James C Hankinson, Referee
365F Leon County Courthouse
301 S Monroe St
Tallahassee, FL 323011861

Original To:

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies to:

Benjamin Scott Anderson, 21950 W Q Rd, Elkhorn, NE 68022-3231,
benjamin.anderson13@gmail.com

Allison Carden Sackett, Tallahassee Branch Office, 651 East Jefferson Street,
Tallahassee, Florida 32399-2300, asackett@flabar.org

Staff Counsel, The Florida Bar, at aquintel@flabar.org