

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
JOHN A. TOMASINO
DEC 29 2014
CLERK, SUPREME COURT
BY _____

THE FLORIDA BAR,

Petitioner,

Supreme Court Case

No. SC13-2094

TFB File No. 2014-10,398(6B)(OSC)

v.

RONALD LAMONT HARDIN,

Respondent.

Supreme Court Case

No. SC14-1350

TFB File Nos. 2013-10,784(6B)(HES)

2014-10,280(6B)(HES)

2014-10,616(6B)(HES)

_____/

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 November 4, 2013, The Florida Bar filed a Petition for Contempt and Order to Show Cause in Supreme Court Case No. SC13-2094/TFB File No. 2014-10,398(6B)(OSC), as Respondent failed to respond to official Bar inquiries. On October 8, 2014, the Honorable Chet A. Tharpe was appointed as Referee to preside over the contempt of court action brought by The Florida Bar.

On July 11, 2014, The Florida Bar filed a Petition for Emergency Suspension in Supreme Court Case No. SC14-1350/TFB File Nos. 2013-

10,784(6B)(HES), 2014-10,280(6B)(HES), and 2014-10,616(6B)(HES) with the Supreme Court of Florida. On August 24, 2014, Respondent filed with the Supreme Court of Florida a Motion for Rehearing, Request for Documents, and Request for Court Hearing on Motion for Rehearing, which was denied. On September 24, 2014, the Court suspended Respondent from the practice of law until further order of the Court. On October 1, 2014, the Honorable Chet A. Tharpe was also appointed as Referee to preside in the emergency suspension cases.

On October 14, 2014, Respondent filed with the Supreme Court of Florida Defendant's Motion for Rehearing and to Voluntarily Inactivate License Until Medically Cleared and Evaluated. On October 27, 2014, the Referee denied the motion.

Pursuant to Rule 3-5.2, Rules Regulating The Florida Bar, a Petition for Emergency Suspension shall constitute a formal complaint. Respondent had twenty (20) days after docketing by the Supreme Court of Florida of its order granting the Bar's Petition for Emergency Suspension in which to file an answer and any affirmative defenses to the Bar's petition. Respondent failed to file an answer and any affirmative defenses specifically directed toward the allegations alleged in The Florida Bar's Petition for Emergency Suspension.

On November 12, 2014, a case management conference was held in the above-listed matters. At that time, The Florida Bar filed a motion to consolidate Respondent's disciplinary matters, which was granted. Respondent failed to appear for the case management conference. On November 17, 2014, The Florida Bar filed a Motion for Default in Supreme Court Case No. SC14-1350/TFB File Nos. 2013-10,784(6B)(HES), 2014-10,280(6B)(HES), and 2014-10,616(6B)(HES), which was granted. As a result of the default, Respondent was found guilty of violating Rule 4-1.3 (Diligence), Rule 4-1.4 (Communication), Rule 4-1.15 (Safekeeping Property), Rule 4-8.4 (Misconduct)(c)(g), Rule 5-1.1 (Trust Accounts) and Rule 5-1.2 (Trust Accounting Records and Procedures) of the Rules Regulating The Florida Bar as alleged in The Florida Bar's Petition for Emergency Suspension.

A Final hearing along with a Sanctions hearing was held in the above-listed matters on December 2, 2014. Respondent failed to appear for the Final/Sanctions hearing. The Florida Bar entered into evidence The Florida Bar's Exhibit 1, Composite A-J and The Florida Bar's Exhibit 2, Composite A-B, which are included as part of the record. "TFB Exh." will refer to exhibits presented by The Florida Bar.

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.

Narrative Summary of the Order to Show Cause

Based on the evidence presented at the Final hearing, in SC13-2094/TFB File No. 2014-10,398(6B)(OSC), on or about January 29, 2013, the Bar received a complaint by Elvida Masson against Respondent. On February 27, 2013, the Bar sent Respondent a letter to his official Bar address requiring a written response to Ms. Masson's complaint. On March 13, 2013, Respondent received an extension to respond to the complaint. On or about March 23, 2013, Respondent faxed his response to the Bar. (TFB Exh. 1-A).

On March 26, 2013, Bar counsel sent Respondent a letter asking him to specifically address Ms. Masson's claim that he converted her settlement proceeds for his own use; and to send a copy of Ms. Masson's closing statement along with his trust account records. (TFB Exh. 1-B). On or about April 6, 2013, Respondent faxed in his response which failed to address Ms. Masson's claim of conversion, and failed to send a copy of Ms. Masson's closing statement along with his trust account records. (TFB Exh. 1-C).

On April 24, 2013, Bar counsel sent Respondent another letter asking him to respond to the complaint and to provide a copy of the records previously requested. (TFB Exh.1-D).

On June 20, 2013, the Bar sent a letter to Respondent informing him that this matter was being forwarded to the Sixth Judicial Grievance Committee "B" for further investigation and disposition. On August 20, 2013, the Bar sent Respondent a Live Hearing Notice which required his attendance, and also required him to provide any and all trust account records from July 1, 2012 to present. (TFB Exh. 1-E). On August 19, 2013, the Chair of the grievance committee issued a subpoena duces tecum to Respondent requiring him to bring his trust account records to the Live Hearing. (TFB Exh. 1-F). On August 23, 2013, Respondent was personally served with the subpoena decus tecum. (TFB Exh. 1-G). On September 10, 2013, the Chair of the grievance committee issued an amended subpoena duces tecum to Respondent which reflected the time Respondent was to appear for the Live Hearing scheduled for September 19, 2013 at 1:15 p.m. (TFB Exh. 1-H). On September 10, 2013, the amended subpoena decus tecum and Notice of Live Hearing were served on Anton Lee, Respondent's paralegal, who was authorized to accept service for Respondent. (TFB Exh. 1-I).

On September 19, 2013, Respondent called Bar counsel and represented that he could not provide his trust account records because he had a house fire and was

in the hospital due to smoke inhalation. Respondent failed to appear for the Live Hearing noticed for September 19, 2013. Respondent was given notice that on October 17, 2013, the Sixth Judicial Circuit Grievance Committee "B" would hold a hearing on the Request for Issuance of Notice of Non-Compliance and Finding of Contempt. On October 16, 2013, Respondent sent an email response to the Request for Issuance of Notice of Non-Compliance and Finding of Contempt. (TFB Exh. 1-J).

On October 17, 2013, the Sixth Judicial Circuit Grievance Committee "B" found Respondent to be in contempt and requested that The Florida Bar file a Petition for Contempt and Order to Show Cause with the Supreme Court of Florida. The Petition was subsequently filed on November 4, 2013. On December 9, 2013, Respondent filed with the Supreme Court of Florida "Respondent's Response to Order to Show Cause Why Complainant's Petition for Contempt Should Not Be Granted." (TFB Exh. 2-A). Respondent also filed "Respondent Correspondence to Court", in which he asked the Court to be allowed to supplement his response at a later date. (TFB Exh. 2-B). On May 21, 2014, the Supreme Court of Florida issued an Order allowing Respondent to and including June 11, 2014 to supplement his response. Respondent has not supplemented his response.

As a result, I find that Respondent has failed to show good cause why he should not be held in contempt for failure to timely respond. Additionally, I find that "Respondent's Response to Order to Show Cause Why Complainant's Petition for Contempt Should Not Be Granted" does not refute the allegations in The Florida Bar's Petition for Contempt. As of this date, Respondent has failed to respond to the aforementioned official Bar inquiries.

Narrative Summary of the Emergency Suspension

Based on the Default, in SC14-1350/TFB File No. 2013-10,784(6B)(HES), Respondent represented Elvida Masson's family in a personal injury case. Respondent received three settlement checks totaling \$13,198.23 from Allstate Insurance Company. Respondent called Mrs. Masson's husband and informed him that the case had settled and requested authorization to deposit the settlement checks. Respondent never sent the Masson family proceeds from the settlement checks. After multiple unanswered phone calls and emails to Respondent, Respondent called Mrs. Masson's husband and told him that he used the funds to care for his sick mother. The Masson family was entitled to at least \$8,803.22 from the settlement checks and they did not receive any disbursements from Respondent. Lastly, Respondent failed to respond to supplemental letters from the Bar including requests for trust account records.

Based on the Default, in SC14-1350/TFB File No. 2014-10,280(6B)(HES), Respondent represented Frances Votrian's husband in a personal injury case. Respondent received a \$10,000.00 check in settlement proceeds on their behalf. Respondent never made any disbursements to the Votrians' from the settlement monies. Respondent failed to keep the Votrians' updated on their case and failed to provide an accounting of the proceeds received on their behalf. Absent evidence of any payments made to third parties or costs payable to Respondent, the Votrians' were entitled to at least \$6,666.67 from the \$10,000.00 check. The Votrians' did not receive any disbursements from Respondent.

Based on the Default, in SC14-1350/TFB File No. 2014-10,616(6B)(HES), Respondent represented Yasmeen Gay's daughter in a personal injury case. Respondent settled the daughter's case for \$16,660.00. Ms. Gay's daughter received a cashier's check for \$5,000.00. Respondent refused to provide an accounting of the proceeds he received. The \$16,660.00 in settlement funds received were not deposited into Respondent's trust account and the \$5,000.00 that was given to Ms. Gay was not disbursed from Respondent's trust account. Absent evidence of any payments made to third parties or costs payable to Respondent, Ms. Gay would have been entitled to an additional \$6,112.22 from the settlement funds. Lastly, Respondent failed to keep Ms. Gay updated on her case and would

not respond to requests for information and whether medical bills were paid.

Respondent has misappropriated client's funds totaling over \$21,000.00.

III. RECOMMENDATIONS AS TO GUILT

For the foregoing reasons, the Referee recommends, as to SC13-2094/TFB File No. 2014-10,398(6B)(OSC), that Respondent be found guilty of contempt.

As to SC14-1350/TFB File Nos. 2013-10,784(6B)(HES), 2014-10,280(6B)(HES), and 2014-10,616(6B)(HES), the Referee has already entered an order finding Respondent guilty of violating the following Rules Regulating The Florida Bar:

- a) Rule 4-1.3 (Diligence);
- b) Rule 4-1.4 (Communication);
- c) Rule 4-1.15 (Safekeeping Property);
- d) Rule 4-8.4 (Misconduct)(c)(g);
- e) Rule 5-1.1 (Trust Accounts); and
- f) Rule 5-1.2 (Trust Accounting Records and Procedures)

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

Standard 3.0 Factors

Standard 3.0 directs the Referee to consider four general factors in evaluating an attorney's misconduct: "(1) the duty violated; (2) the lawyer's mental state; (3) the

potential or actual injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating circumstances.” In addition to Standard 3.0, I find the following Standards to apply:

Standard 4.1 Failure to Preserve the Client's Property

Standard 4.11 Disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury.

Standard 4.4 Lack of Diligence

Standard 4.41 Disbarment is appropriate when: (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 potentially serious injury to a client.

Standard 4.6 Lack of Candor

Standard 4.61 Disbarment is appropriate when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another regardless of injury or potential injury to the client.

Standard 5.1 Failure to Maintain Personal Integrity

Standard 5.11 Disbarment is appropriate when: (f) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Standard 9.22 Aggravating Factors

- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses; and
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.

Standard 9.32 Mitigating Factors

Respondent has failed to participate in the disciplinary proceeding and proffer proof of mitigation.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Valentine-Miller, 974 So. 2d 333 (Fla. 2008),

Respondent neglected numerous clients, failed to adequately communicate with her clients, failed to account for trust funds, misrepresented the status of clients' cases, failed to return client files when she abandoned her practice, and failed to maintain trust accounting records. Furthermore, due to poor record-keeping, Respondent was unable to account for client trust funds. The Court found that Respondent intentionally misappropriated client funds and abandoned her entire practice. The Court stated that: "[t]here is never a valid reason for taking client

funds held in trust or for completely abandoning clients." *Id* at 338. The Respondent was disbarred.

The Florida Bar v. Spear, 887 So. 2d 1242 (Fla. 2004), after a real estate deal did not close, the client's \$85,000 was wired into Respondent's trust account. The client's funds were placed into Respondent's operating account, and within five days Respondent transferred \$75,000 from the account for unknown reasons. Respondent obtained a loan from another client to repay the \$85,000. Respondent failed to provide trust account records to the Bar identifying the funds. Respondent did not participate in the disciplinary proceeding. The Court held that the Respondent should be disbarred. The Court noted that in those cases where the Court imposed a sanction other than disbarment for misappropriation of client funds, there were exceptional circumstances that mitigated the attorneys' culpability and the attorneys offered an explanation for their conduct. See, e.g., *The Florida Bar v. Tauler*, 775 So.2d 944 (Fla. 2000); *The Florida Bar v. Corces*, 639 So.2d 604 (Fla. 1994); *The Florida Bar v. Schiller*, 537 So.2d 922 (Fla. 1989); *The Florida Bar v. Greenfield*, 517 So.2d 16 (Fla. 1987).

The Florida Bar v. Benchimol, 681 So.2d 663 (Fla. 1996), the Court stated that "the misappropriation of client funds is at the top of the hierarchy of offenses for which lawyers may be disciplined. Disbarment is the presumptive sanction for attorneys who misappropriate client funds." *Id.* at 666. The Court

found no basis to deviate from the presumptive sanction of disbarment in this case, and conditioned Respondent's readmission upon full restitution to his clients.

The Florida Bar v. Herzig, 110 So.3d 442 (Fla. 2013), by order dated February 5, 2013 (no published opinion), Respondent was disbarred for neglecting and abandoning multiple client matters, failing to provide an accounting of funds, failing to respond to Bar investigative inquiries, and failing to participate in the disciplinary proceedings. Respondent had no prior discipline.

The Florida Bar v. Patterson, 77 So.3d 1256 (Fla. 2011), by order dated December 22, 2011 (no published opinion), Respondent was disbarred for failing to act with reasonable diligence, making misrepresentations to the client, failing to respond to Bar investigative inquiries, and failing to participate in the disciplinary proceedings.

The Florida Bar v. Springer, 873 So.2d 317 (Fla. 2004), disbarment was the appropriate sanction for Respondent's multiple acts of misconduct which included failure to provide competent representation, failure to act with reasonable diligence, failure to keep the client reasonably informed, and misrepresentation as to the status of the clients' matter.

VI. 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, to wit:

Age: 40 years old

Date admitted to the Bar: 1/6/2010

Prior Disciplinary History: None

VII. 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. Disbarment.

B. Payment of the disciplinary costs.

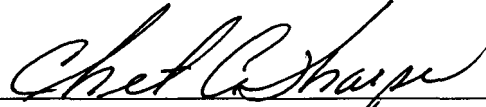
VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar: See attached Statement of Costs, which comprised Exhibit A to the Bar's Motion to Assess Costs. Said Statement of Costs is hereby incorporated by reference, and is found to be reasonable.

TOTAL COSTS: \$3,333.90

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.

Respectfully submitted on this 22ND day of December, 2014.



The Honorable Chet Allen Tharpe,
Circuit Court Judge/Referee

Original To:

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