

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
  
Complainant,

v.

STUART CARL HOFFMAN,

Supreme Court Case  
No. SC15-1591

The Florida Bar File Nos.  
2014-50,524(15D);  
2014-50,797(15D);  
2015-50,104(15D).

Respondent.

CLERK, SUPREME COURT  
BY

**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 August 28, 2015, The Florida Bar filed its Complaint against respondent. The undersigned was appointed Referee on September 17, 2015. Respondent did not appear at the Case Management Conference held on October 8, 2015, and failed to file an answer to the Bar's Complaint as required by Rule 37.6(h)(2) of the Rules Regulating The Florida Bar. An Order granting the Bar's Motion for Default Judgment was entered on October 8, 2015. On November 10, 2015, a final hearing was held in this matter on the issue of the appropriate recommended

FILED  
JOHN A. TOMASINO  
DEC 21 2015

disciplinary sanctions to be imposed, for which respondent did not appear. 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. During the proceedings, The Florida Bar was represented by Michael David Soifer, Bar Counsel. Respondent did not participate.

## **II. FINDINGS OF FACT:**

### **Jurisdictional Statement.**

1. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, admitted on January 18, 1990, and is subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

Narrative Summary Of Case. Pursuant to the Order on Motion For Default Judgment entered on October 8, 2015, all the allegations contained in the Complaint were deemed admitted as follows:

### **AS TO ALL COUNTS**

2. Respondent is currently suspended. In two matters unrelated to the instant case, the Bar filed Petitions for Contempt for respondent's failure to respond to official Bar inquiries. In SC12-1912, the Court held respondent in contempt and suspended him by order dated July 16, 2013. In SC13-292, the Court again held respondent in contempt and suspended him by Order dated August 7,

2013. In a third matter, SC13-2420, the Bar filed a Petition for Contempt for respondent's failure to comply with Rule Regulating The Florida Bar 3-5.1(h) following the aforesaid suspensions. By Order dated July 25, 2014, this Court held respondent in contempt and suspended him for ninety-one days. At the time the Bar filed the Complaint in the instant matter, there was another Petition for Contempt pending at the Court in Case No. SC15-1082. On September 10, 2015, The Supreme Court of Florida issued an Order holding respondent in contempt and suspending him for one year.

3. Upon investigation, the Bar has learned that in or about August 2013, respondent vacated his office space located at his record Bar address, 1075 Broken Sound Parkway NW, Suite 102, Boca Raton, Florida 33487. The Bar has become aware of two other possible address locations for respondent: 2519 N. Ocean Blvd., #202, Boca Raton, Florida 33431 (hereafter "Ocean Blvd. address"); and P.O. Box 1842, Boca Raton, Florida 33429 (hereafter "P.O. Box address"). Respondent has been unresponsive to mail sent to all of these locations.

4. The Fifteenth Judicial Circuit Grievance Committee "D" 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.

## **COUNT I**

### **The Florida Bar File No. 2014-50,524(15D)**

5. Respondent was hired by Marilyn McKenzie to help her through the process of having her mother-in-law obtain Medicaid benefits.
6. McKenzie paid respondent \$6,500.00 for his services.
7. After accepting the case and his fee, respondent took little or no significant action.
8. McKenzie made numerous attempts to contact respondent to ascertain the status of her case.
9. Respondent failed to respond.
10. Respondent has abandoned his law practice, leaving his clients unrepresented and vulnerable.
11. Respondent failed to take any steps to the extent reasonably practicable to protect his client's interest.
12. By the conduct set forth above, respondent violated R. Regulating Fla. Bar 4-1.1 [A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.]; 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; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.]; 4-1.5(a) [An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar.]; 4-1.16(a)(1) [Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or law.]; 4-1.16(d) [Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.]; 4-8.4(a) [A lawyer shall not violate or

attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.]; 48.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

## **COUNT II**

### **The Florida Bar File No. 2014-50,524(15D)**

13. Marilyn McKenzie filed a complaint against respondent with The Florida Bar in or about October 2013.

14. On or about November 15, 2013, The Florida Bar sent respondent an official inquiry to his record Bar address requesting his response to McKenzie's complaint. Such response was due on or before December 2, 2013.

15. Respondent failed to respond.

16. On or about April 3, 2014, The Florida Bar sent a second letter concerning the inquiry to the Ocean Blvd. address.

17. Respondent again failed to respond.

18. On or about February 10, 2015, The Florida Bar sent a Notice of Grievance Committee Review by certified mail, return receipt requested, to respondent at his record Bar address, the Ocean Blvd. address, and the P.O. Box address.

19. The Notice sent to the Ocean Blvd. address was received as evidenced by the signed green card receipt.

20. Respondent failed to respond.

21. By the conduct set forth above, respondent violated R. Regulating Fla. Bar 4-8.4(g)(1) & (g)(2) [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made: (1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or

board of governors; (2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors.].

### **COUNT III**

#### **The Florida Bar File No. 2014-50,797(15D)**

22. Debra Caran hired respondent in or about May 2011 to act as the eldercare attorney for her aging parents.

23. Respondent accepted a \$7,500.00 fee for his services.

24. After accepting the case and his fee, respondent failed to perform many of the services that were subject to his retainer agreement.

25. Respondent failed to keep Ms. Caran adequately informed as to the status of the case.

26. When Ms. Caran last attempted to contact respondent about her matter, respondent's voice mail was full. Ms. Caran discovered respondent is suspended. She was required to hire another attorney and wants her files to be returned.

27. Respondent has abandoned his law practice, leaving his client unrepresented and vulnerable.

28. Respondent failed to take any steps to the extent reasonably practicable to protect his client's interest.



29. By the conduct set forth above, respondent violated R. Regulating Fla. Bar 4-1.1 [A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.]; 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; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.]; 4-1.5(a) [An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar.]; 4-1.16(a)(1) [Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:(1) the representation will result in violation of the Rules of Professional

Conduct or law.]; 4-1.16(d) [Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

#### **COUNT IV**

##### **The Florida Bar File No. 2014-50,797(15D)**

30. Debra Caran filed a complaint against respondent with The Florida Bar in or about January 2014.

31. On or about January 28, 2014, The Florida Bar sent respondent an official inquiry to respondent's record Bar address requesting his response to Caran's complaint. Such response was due on or before February 12, 2014.

32. Respondent failed to respond.

33. On or about March 18, 2014, The Florida Bar sent a second letter relating to the official inquiry to the Ocean Blvd. address.

34. Respondent again failed to respond.

35. On or about February 10, 2015, The Florida Bar sent a Notice of Grievance Committee Review by certified mail, return receipt requested, to respondent at his record Bar address, the Ocean Blvd. address, and the P.O. Box address.

36. The Notice sent to the Ocean Blvd. address was received as evidenced by the signed green card receipt.

37. Respondent failed to respond.

38. By the conduct set forth above, respondent violated R. Regulating Fla. Bar and 4-8.4(g)(1) & (g)(2) [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made: (1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or

board of governors; (2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors.].

### **COUNT V**

#### **The Florida Bar File No. 2015-50,104(15D)**

39. Respondent was hired to deal with Medicaid eligibility issues for Natalie Hecht's mother.

40. Every year, the family would submit certain documents to respondent's office and respondent would file the Medicaid application.

41. In or about May 2014, Natalie Hecht contacted respondent's office to inquire about what documents were needed.

42. Hecht received no response.

43. Hecht then called respondent's office and left a voice mail message that was not returned.

44. After doing independent research, Ms. Hecht discovered that respondent had been suspended from The Florida Bar.

45. Respondent never informed Hecht of his suspension.

46. Respondent has abandoned his law practice, leaving his client unrepresented and vulnerable.

47. Respondent failed to take any steps to the extent reasonably practicable to protect his client's interest.

48. By the conduct set forth above, respondent violated R. Regulating Fla. Bar 4-1.1 [A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.]; 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;(4) promptly comply with reasonable requests for information; and(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.]; 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.]; 4-1.16(a)(1) [Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or law.]; 4-1.16(d) [Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's

interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.].

## **COUNT VI**

### **The Florida Bar File No. 2015-50,104(15D)**

49. Natalie Hecht filed a complaint against respondent with The Florida Bar in or about July 2014.

50. On or about November 21, 2014, The Florida Bar sent respondent an official inquiry to his record Bar address, the Ocean Blvd address, and the P.O.

Box address, requesting his response to Ms. Hecht's complaint. Such response was due on or before December 8, 2014.

51. Respondent failed to respond.

52. On or about January 8, 2015, The Florida Bar sent a second letter concerning the official inquiry to respondent's record Bar address, the Ocean Blvd address, and the P.O. Box address.

53. Respondent again failed to respond.

54. On or about February 10, 2015, The Florida Bar sent a Notice of Grievance Committee Review by certified mail, return receipt requested, to respondent at his record Bar address, the Ocean Blvd address, and the P.O. Box address.

55. The Notice sent to the Ocean Blvd address was received as evidenced by the signed green card receipt.

56. Respondent failed to respond.

57. By the conduct set forth above, respondent violated R. Regulating Fla. Bar 4-8.4(g)(1) & (g)(2) [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made: (1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or

board of governors; (2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors.].

### **III. RECOMMENDATIONS AS TO GUILT:**

Pursuant to the Order on Motion For Default Judgment, I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

As to Count I: Rules 4-1.1; 4-1.3; 4-1.4(a); 4-1.5(a); 4-1.16(a)(1); 4-1.16(d); 4-8.4(a); 4-8.4(c); and 4-8.4(d);

As to Count II: Rules 4-8.4(g)(1) and 4-8.4(g)(2);

As to Count III: Rules 4-1.1; 4-1.3; 4-1.4(a); 4-1.5(a); 4-1.16(a)(1); 4-1.16(d); 4-8.4(a); and 4-8.4(d);

As to Count IV: Rules 4-8.4(g)(1) and 4-8.4(g)(2);

As to Count V: Rules 4-1.1; 4-1.3; 4-1.4(a); 4-1.4(b); 4-1.16(a)(1); 4-1.16(d); 4-8.4(a); and 4-8.4(d); and

As to Count VI: Rules 4-8.4(g)(1) and 4-8.4(g)(2).

### **IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS:**

I considered the following Standards prior to recommending discipline:

**Standard 4.41** provides that 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.

The evidence is clear and convincing that respondent has abandoned his practice, and that all three subsections to Standard 4.41 are applicable.

#### V. CASE LAW:

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Smith, 512 So.2d 832 (Fla. 1987), the attorney was disbarred for abandoning his practice, and as in the instant case where respondent committed a total of 31 rule violations, there were numerous instances of total nonfeasance to client matters. The Supreme Court of Florida states at p. 833:

A lawyer's abandonment of his practice, without taking steps needed for an orderly withdrawal from representation, results in wholesale neglect of legal business entrusted by clients and exposes clients to the possibility of irreparable harm. The referee correctly found that respondent's conduct violated numerous provisions of the Rules Regulating The Florida Bar. This kind of misconduct warrants disbarment. The Florida Bar v. Friedman, 511 So.2d 986 (Fla.1987); The Florida Bar v. Montgomery, 412 So.2d 346 (Fla.1982). We therefore approve the referee's report.

In The Florida Bar v. Montgomery, 412 So. 2d 346 (Fla. 1982), the attorney was disbarred for abandoning his law practice without giving notice to clients. See also The Florida Bar v. Blunt, 564 So. 2d 129 (Fla. 1990); The Florida Bar v.

Ribowsky-Cruz, 529 So. 2d 1100 (Fla. 1988); The Florida Bar v. Murray, 489 So. 2d 30 (Fla. 1986); and The Florida Bar v. DeMarco, 601 So. 2d 1197 (Fla. 1992), wherein the respective attorneys abandoned their practices and disbarment was ordered.

Further, respondent has refused to participate in the instant disciplinary proceedings, which “calls into serious question, the lawyer’s fitness for the practice of law.” The Florida Bar v. Bartlett, 509 So. 2d 287, 289 (Fla. 1987); See also The Florida Bar v. Davis, 149 So. 3d 1121, 1125 (Fla. 2014).

The Supreme Court of Florida set forth the purposes of attorney discipline in The Florida Bar v. Pahules, 233 So. 2d 130,132 (Fla. 1970); attorney discipline must protect the public from unethical conduct and have a deterrent effect while still being fair to respondents. After a consideration of all the appropriate factors, I recommend disbarment and payment of the Bar’s costs as the appropriate disciplinary sanction in this case.

VI. **RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BEAPPLIED:**

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

- A. Disbarment;
- 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: 51

Date admitted to the Bar: January 18, 1990

Prior Discipline:

A. In Case No. SC12-1912; The Florida Bar File No. 201251,781(15D)OSC, respondent was suspended until further order of the Court, effective August 15, 2013, by Order of the Supreme Court of Florida dated July 16, 2013;

B. In Case No. SC13-292; The Florida Bar File No. 201350,831(15D)OSC, respondent was again suspended until further of the Court effective immediately, by Order of the Supreme Court of Florida dated August 7, 2013;

C. In Case No. SC13-2420; The Florida Bar File No. 201490,088(OSC), respondent received a ninety-one day suspension, effective immediately, by Order of the Supreme Court of Florida dated July 25, 2014;

D. In Case No. SC15-1082; The Florida Bar File No. 201590,113(OSC), respondent received a one year suspension, effective immediately, by Order of the Supreme Court of Florida dated September 10, 2015.

**VIII. Aggravation and Mitigation:**

**Standard 9.2; Aggravating Factors:**

- a. Prior disciplinary offenses;
- b. Dishonest or selfish motive;
- 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;
- h. Vulnerability of victim;
- i. Substantial experience in the practice of law.

**Standard 9.3 Mitigating Factors:**

None

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

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

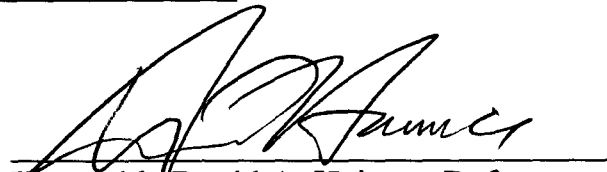
Administrative Fee:	\$1,250.00
Court Reporter Fees:	100.00
Bar Counsel Costs:	64.87
Investigative Costs:	170.02

TOTAL

\$1,584.89

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 14<sup>th</sup> day of December, 2015.

  
Honorable David A. Haimes, Referee

Original To:

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

Conformed Copies to:

Stuart Carl Hoffman, Respondent, at his record Bar address of 1075 Broken Sound Pkwy, N.W., Suite 102, Boca Raton, Florida 33487; to P.O. Box 1842, Boca Raton, Florida 33429; to 2519 N. Ocean Blvd., #202, Boca Raton, Florida 33431; and to his record Bar e-mail address of stuart@thefloridaelderlawyer.com and eatsurf@mac.com

Michael David Soifer, Bar Counsel, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323, msoifer@flabar.org and lmgarcia@flabar.org

Staff Counsel, The Florida Bar, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323, aquintel@flabar.org