

JAN 27 2020

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Supreme Court Case No. SC19-1786

Complainant,

v.

Jose Angel Toledo,

Respondent.

The Florida Bar File Nos.

2020-10,006 (13F) (HES)

2020-10,015 (13F); 2020-10,019 (13F);

2020-10,029 (13F); 2020-10,034 (13F);

2020-10,059 (13F); 2020-10,067 (13F);

2020-10,071 (13F); 2020-10,083 (13F);

2020-10,128 (13F); 2020-10,141 (13F);

2020-10,142 (13F); 2020-10,169 (13F);

2020-10,171 (13F); 2020-10,172 (13F);

2020-10,173 (13F); 2020-10,174 (13F);

2020-10,181 (13F); 2020-10,183 (13F);

2020-10,184 (13F); 2020-10,186 (13F);

2020-10,199 (13F); 2020-10,203 (13F);

2020-10,210 (13F); 2020-10,218 (13F);

2020-10,221 (13F); 2020-10,224 (13F);

2020-10,225 (13F); 2020-10,246 (13F);

2020-10,247 (13F); 2020-10,248 (13F).

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 October 18, 2019, The Florida Bar filed a Petition for Emergency Suspension ("Petition") against respondent. On October 23, 2019, the Supreme

Court of Florida granted the Petition, suspended respondent, and duly appointed the undersigned as referee to review the matter. Respondent failed to respond to the Petition, and on November 27, 2019, the bar filed a motion for default. A hearing was held on the motion for default on December 17, 2019 and respondent failed to appear or otherwise provide a response to the Petition. The referee granted the bar's motion for default on December 17, 2019, deeming the factual allegations of the petition admitted and finding respondent guilty of all the rule violations alleged in the Petition. On January 13, 2020, a sanctions hearing was held. Respondent failed to appear at the sanctions hearing. At the sanctions hearing, the bar entered three exhibits into evidence. Respondent was properly noticed for all proceedings in this matter.

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.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Lindsey Margaret Guinand, Esq.

For Respondent: *Pro Se*

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 Case. Respondent is currently the subject of over thirty (30) bar disciplinary matters, filed by clients and at least one medical provider. The bar's investigation of these matters indicated respondent has abandoned his law practice without notice to his clients and without taking reasonable steps to protect their interests. The respondent ceased all communication with his clients and has failed to distribute settlement funds to clients or third parties. Respondent has failed to respond to any of the client complaints as required by the Rules Regulating The Florida Bar.

On at least four occasions, the bar's investigator stopped by respondent's law office during business hours, and each time respondent's office was closed. Also, an attorney retained by several of respondent's clients attempted to contact respondent on numerous occasions to obtain copies of their client files. The attorney has also made several trips to respondent's law office since July 2019 during normal business hours, yet each time the lights were off and the door was locked.

On August 22, 2019, respondent's office landlord filed a complaint for eviction and was granted a writ of possession on September 25, 2019. On October 3, 2019, the bar's investigator was present when the writ of possession was served by the Hillsborough County Sheriff and respondent's law office was returned to the landlord's possession. On the same date, the bar's investigator gained access to the inside of the law office and observed nine filing cabinets and six credenzas containing client files, several of which were the files of the clients who filed complaints with the bar. Respondent has abandoned his practice and his clients and has failed to take reasonable steps to communicate with his clients in order to ensure the clients' interests are protected.

Furthermore, to date, respondent has failed to communicate and respond to his clients, The Florida Bar, and The Supreme Court of Florida.

III. RECOMMENDATIONS AS TO GUILT.

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

1. **Rule 4-1.3** (Diligence);
2. **Rule 4-1.4** (Communication);
3. **Rule 4-1.16** (Declining or Terminating Representation);
4. **Rule 4-8.4(a)** (Misconduct- a lawyer shall not violate the Rules of Professional Conduct);

5. **Rule 4-8.4(d)** (Misconduct- a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice);
6. **Rule 4-8.4(g)** (Misconduct - a lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or disciplinary agency);
and
7. **Rule 5-1.1(e)** (Trust Accounts-notice of receipt of trust funds; delivery; accounting).

I further recommend respondent be ordered to eliminate all indicia of respondent's status as an attorney on social media, telephone listings, stationery, checks, business cards office signs or any other indicia of respondent's status as an attorney, whatsoever. Respondent should no longer hold himself out as a licensed attorney.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.1 Failure to Preserve Client's Property

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

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 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

4.61 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.

5.1 Failure to Maintain Personal Integrity

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.

7.0 Violations of Other Duties Owed as a Professional

7.1 Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

9.2 Aggravation

- (a) Prior Discipline offenses
- (b) Dishonest or Selfish Motive
- (c) Patter of Misconduct
- (d) Multiple Offenses
- (i) Substantial Experience in the Practice of Law

9.3 Mitigation

I received the mitigating factors and determined that no evidence was presented by respondent or was found in the record to establish mitigation. Thus, I find none apply.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In *Florida Bar v. Bartlett*, 509 So. 2d 287, 289 (Fla. 1987), the Court stated “a lawyer’s willful refusal to participate at all in the disciplinary process when he is accused of misconduct calls into serious question the lawyer’s fitness for the practice of law.”

In *The Florida Bar v. Lehman*, 417 So. 2d 648 (Fla. 1982), the Court found disbarment to be the appropriate sanction for a lawyer who abandoned his practice and left approximately 450 pending client matters. The attorney had been retained and paid by clients to prepare wills or prepare title insurance policies, but the attorney failed to perform these services or refund the clients’ money. The clients suffered serious injury, including one client whose statutes of limitations expired.

In *The Florida Bar v. Friedman*, 511 So.2d 986 (Fla. 1987), an attorney was disbarred for neglecting legal matters and abandoning his law practice. In addition, Friedman failed to respond to the bar’s complaint and to the bar’s request for admissions. The attorney also failed to attend the final hearing. The referee stated in his report: “Respondent’s abandonment of his law practice evidenced a total disregard for the most fundamental obligations a lawyer owes to his clients.”

In *The Florida Bar v. Horowitz*, 697 So.2d 78 (Fla. 1997), an attorney was disbarred for neglecting clients and failing to respond to the bar. The Court found that the attorney engaged in a pattern of neglect that caused significant actual and potential harm to his clients, and disbarment was appropriate despite evidence

presented in mitigation of the attorney's clinical depression. The referee found the following aggravating factors: prior disciplinary history of a public reprimand, an admonishment, and a suspension; a pattern of misconduct; multiple offenses in which the acknowledgment of wrongdoing was very late and did not seem sincere; and substantial experience in the practice of law. In recommending disbarment, the referee stated in his report: "It is imperative that a clear and unmistakable message be sent that callous disregard for clients, The Florida Bar, and the attorney disciplinary process are serious infractions which may not be committed with impunity."

In *The Florida Bar v. Davis*, 149 So.3d 1121 (Fla. 2014), an attorney was disbarred for neglecting a client matter by accepting a fee and then failing to perform services for which she was paid. The attorney failed to participate in the disciplinary proceedings and a default was entered against her after notices of the proceedings were provided to the attorney's record bar address. The Court found several aggravating factors, including prior disciplinary history of a public reprimand for neglecting client cases, a pattern of misconduct, multiple offenses, vulnerability of victim, and substantial experience in the practice of law.

In *Florida Bar v. Alvarez*, 177 So. 3d 1272 (Fla. 2015) (unpublished table decision), Alvarez was disbarred for failing to remit trust funds to medical providers in a client's personal injury case and failing to satisfy the outstanding

Medicaid liens, resulting in the funds being held in trust for years. Alvarez also failed to participate in the formal disciplinary proceedings, resulting in the entry of a default against him by the referee. In mitigation, Alvarez did not have a prior disciplinary history, and suffered from emotional problems. In aggravation, he had substantial experience in the practice of law. Like Alvarez, respondent failed to deliver settlement funds for their intended purpose and caused client harm, and he has substantial experience in the practice of law.

In Florida *Bar v. Brener*, SC18-1944, the Court permanently disbarred Brener after Brener abandoned his practice and clients. Brener further failed to participate in the disciplinary proceedings.

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. Permanent disbarment; and
- B. Payment of The Florida Bar's costs in these proceedings, as outlined in its Motion to Assess Costs.

Respondent has forfeited, permanently, his privilege to practice law in the state of Florida by abandoning his practice and failing to participate in these proceedings. There has been an overwhelming finding of this court that the un rebutted evidence is clear, indisputable, repeated, and voluminous. Respondent,

for whatever independent reason for doing so, has abandoned his privilege to practice law. He has provided no explanation and has made no attempts to redress the harm to his clients. Instead, without any notice or warning, he abandoned his clients and his practice. The record of each client that this court has reviewed clearly and unequivocally established this. He also took all money out of his client trust account(s) and absconded with it, and that was not his money to take. *See The Florida Bar's Sanctions Exhibit 1.* Respondent was given appropriate notice and was given the opportunity to appear and respond beyond what was legally required, and yet respondent abandoned his duties to his clients, The Florida Bar, and the citizens of this state. This court finds clearly, unequivocally, and overwhelmingly that respondent violated The Rules Regulating The Florida Bar and permanent disbarment is the only appropriate sanction in this case.

It is important to have consistency in the state when it comes to which disciplinary actions are appropriate. The court finds that disciplinary case law also clearly supports, and it could be easily said mandates, that the appropriate sanction against respondent is permanent disbarment. If there ever was a case where the evidence was so overwhelming, and that the ultimate sanction is the only appropriate sanction, this is the case.

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: 46

Date admitted to the Bar: November 29, 1999

Prior Disciplinary Record:

On December 24, 2019, the Court issued an order granting the bar's petition for contempt and order to show cause, holding respondent in contempt for failing to file a response to the petition, and immediately suspended him until he fully responds in writing to the official bar inquiry and until further order of the Court.

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	\$797.10
Copy Costs	\$11.00
Court Reporters' Fees	\$243.00
Bar Counsel Costs	\$23.00
Administrative Fee	\$1,250.00

TOTAL	\$2,324.10
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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 24 day of January, 2020.



Jack Helinger, Referee
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