

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. SC20-1639

v.

The Florida Bar File
Nos. 2019-50,660(17J);
2020-50,691(17J); and
2021-50,033(17J)

TIMMY W. COX, SR.,
Respondent.

Received, Clerk, Supreme Court

JUL - 6 2021

REPORT OF 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 November 10, 2020, The Florida Bar filed its Complaint against Respondent in The Florida Bar File No. 2019-50,660(17J). Respondent failed to file an Answer to the Complaint. On December 7, 2020, The Florida Bar filed its Motion for Default. I issued my Order on The Florida Bar's Motion for Default on January 5, 2021, granting the default and found respondent guilty of the rules alleged in the Bar's Complaint. The parties have presented to me a Conditional Guilty plea for Consent Judgment encompassing the above file number as well as The Florida Bar File Nos.

2020-50,691(17J) and 2021-50,033(17J). The consent judgment has been approved by The Florida Bar Board of Governor's Designated Reviewer. After due deliberation, I have determined to recommend that respondent's Conditional Guilty Plea for Consent Judgment be approved for the reasons set forth herein. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, and this Report constitute the record in this case and are 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.

As to The Florida Bar File No. 2019-50,660(17J):

A. On or about February 20, 2019, respondent represented Mark Metellus in a criminal trial before the Honorable Sherwood Bauer, in the Circuit Court of the Nineteenth Judicial Circuit, in and for Martin County, Florida, Case No. 4317CF000259A.

B. During the course of the trial, a sidebar was held between Judge Bauer, respondent, co-counsel for the defense, and the assistant state attorney.

C. During such sidebar, respondent conducted himself in a disrespectful manner toward Judge Bauer, exhibiting a lack of respect and decorum.

D. Respondent accused Judge Bauer of lacking impartiality.

E. Respondent then moved for a mistrial.

F. During a hearing regarding respondent's motion for mistrial (which was ultimately denied), respondent interrupted the judge over 20 times and continually spoke over the judge.

G. At one point, respondent interrupted the court by stating, "First of all, I am entitled to a record, you may not want me to have a record, but you have been speaking for 93 seconds, I have been counting."

H. When Judge Bauer advised respondent that he was being rude, respondent stated "You're being rude to my client."

I. Respondent's conduct evinced disregard for the dignity and sanctity of the judicial system in general and Judge Bauer in particular.

J. Respondent's conduct was disruptive of the proceedings and prejudicial to the orderly administration of justice.

As to The Florida Bar Case No. 2020-50,691(17J):

K. Respondent represented a client in an adoption case and filed a Verified Petition to Appoint Emergency Custody of Surrendered Child and Preliminary Approval of Placement of the Surrendered Infant in the Prospective Home.

L. The trial court denied the petition with prejudice as it was legally insufficient on its face.

M. Respondent demonstrated incompetence and lack of decorum during a hearing in that matter.

N. In a different case, *State of Florida v. Andrew Covert*, respondent failed to appear at a properly noticed hearing. An Order to Show Cause and an Amended Order to Show Cause (Due to Sheriff's Office Failure to Timely Serve) was issued by Judge Roby.

O. Respondent, in a letter to the court, stated he was in Georgia at the time of the hearing due to a meeting with another client and as a result of falling ill, remained in Georgia.

P. Respondent was allowed to withdraw from the case.

As to The Florida Bar File No. 2021-50,033(17J):

Q. Respondent represented a client in an adoption case (the same adoption case referred to in The Florida Bar File No. 2020-50,691(17J)).

R. Respondent failed to properly handle the adoption case and failed to properly prepare certain necessary documents.

S. Specifically, the court found that respondent did not advise the mother that the document she was signing irrevocably surrendered her parental rights to her child. The mother thought she was only signing papers for the child to go home with respondent's client.

T. Neither respondent nor anyone else conducted a pre-consent interview of the mother or gave advance notice regarding her execution of the consent. Furthermore, the mother was never advised of her right to have an independent witness and the consent was not executed in the presence of two witnesses.

III. RECOMMENDATIONS AS TO GUILT

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

As to The Florida Bar File No. 2019-50,660(17J): By the conduct set forth above, respondent violated R. Regulating Fla. Bar 3-4.3 [Misconduct and Minor Misconduct.]; 4-3.5(a) [A lawyer shall not seek to influence a judge, juror, prospective juror, or other decision maker except as permitted by law or the rules of court.]; 4-3.5(c) [A lawyer shall not engage in conduct intended to disrupt a tribunal.]; 4-8.2(a) [A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct.]; and 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.].

As to The Florida Bar File No. 2020-50,691(17J): By the conduct set forth above, respondent violated R. Regulating Fla. Bar 3-4.3 [Misconduct and Minor Misconduct.]; 4-1.1 [Competence.]; 4-3.5(c) [A lawyer shall not engage in conduct intended to disrupt a tribunal.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct.]; and 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.].

As to The Florida Bar File No. 2021-50,033(17J): By the conduct set forth above, respondent violated R. Regulating Fla. Bar 3-4.3 [Misconduct and Minor Misconduct.]; 4-1.1 [Competence.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct.]; and 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.].

Respondent will 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 will no longer hold himself out as a licensed attorney.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.5 Lack of Competence

(b) Suspension is appropriate when a lawyer engages in an area of practice in which the lawyer knowingly lacks competence and causes injury or potential injury to a client.

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

(b) 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. Troy Donahue Harris, No. SC19-1894 (Fla. May 21, 2020) [TFB #2018-70,484(11B)] – Unconditional Guilty Plea for Consent Judgment for a sixty-day suspension for neglect, inadequate communication and incompetent representation of a client. Respondent was retained to aid a client in various immigration matters, Respondent failed to communicate adequately with the client, failed to stay apprised of the status of the clients I-130 petition, and failed to remind the client of his required appearance at the final hearing before an immigration judge. The client failed to appear, and respondent was unable to get the matter reset. Th client was ordered removed *in absentia*. In mitigation respondent returned the fees to his client, expressed remorse, and provided the client new counsel with an executed affidavit acknowledging respondent's role in the client being placed in removal proceedings.

The Florida Bar v. Morgan, 938 So. 2d 496 (Fla. 2006) 91-day suspension. Respondent engaged in inappropriate courtroom behavior.

He was disruptive and rude to the presiding judge both in front of the jury and after the jury had been excused. Respondent's behavior was prejudicial to the orderly administration of justice.

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. 4-month suspension, requiring proof of rehabilitation before reinstatement.

B. Respondent shall attend and pay the costs of attending The Florida Bar's Ethics School and The Florida Bar's Professionalism Workshop within 6 months of the Supreme Court order accepting this consent judgment.

C. Respondent has contacted Florida Lawyers Assistance, Inc. (FLA, Inc.), has been evaluated, and a rehabilitation contract has not been recommended. No mental health or substance abuse diagnosis were made by FLA, Inc, however, respondent suffered physical injuries during his service in the US military.

D. Respondent shall pay The Florida Bar's costs in this matter.

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:

Age: 52

Date admitted to the Bar: December 1, 2014

Prior Discipline: None

Mitigating Factors: 3.3(b)

(1) Respondent has been a member of The Florida Bar since December 1, 2014 and has no prior disciplinary history.

(2) Respondent had no selfish or dishonest motive in these matters.

(5) Respondent has made full and free disclosure to the bar and has had a cooperative attitude toward these proceedings.

(6) Respondent is inexperienced in the practice of law.

(8) Respondent suffers from a physical and/or mental disability or impairment.

(12) Respondent is remorseful for his conduct in these matters.

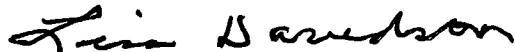
VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

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

Administrative Costs	\$1,250.00
TOTAL	\$1,250.00

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 30 day of June, 2021.



Lisa Davidson, Referee
Circuit Judge 18TH Judicial
2825 Judge Fran Jamieson Way
Viera, FL 329408006

Original To:

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