

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. SC-

v.

The Florida Bar File
No. 2020-00,23(1A)

DAVID LUTHER WOODWARD,
Respondent.

_____ /

COMPLAINT

The Florida Bar, complainant, files this Complaint against David Luther Woodward, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was, at all times mentioned herein, a member of The Florida Bar admitted on November 10, 1969, and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent resided and practiced law in Escambia County, Florida, at all times material to this complaint.

3. The First Judicial Circuit Grievance Committee "A" found probable cause to file this complaint pursuant to R. Regulating Fla. Bar 3-7.4, and this complaint has been approved by the presiding member of that committee.

RECEIVED, 12/18/2020 08:09:52 AM, Clerk, Supreme Court

4. On or about November 18, 2019, the Rev. Dr. Barbara Simmons (“Dr. Simmons”), a retired pastor from Massachusetts, filed a Florida Bar complaint against respondent for failing to pursue a legal case initially filed by her and her six siblings.

5. In 2016, Dr. Simmons’ mother died and left her home in Pensacola, Florida, in equal shares to her 8 children. The names of all the children were in her will and on the deeds.

6. Dwayne Simmons, one of the siblings, refused to move out of the house after residing rent-free for 3 years in his mother’s home.

7. The remainder of the siblings, including Dr. Simmons, filed a petition for partition *pro se* on May 25, 2018, because they wanted their brother out of the house so they could sell it.

8. The court case proceeded until March 28, 2019, when, at a court hearing, the judge suggested that the plaintiffs needed a lawyer because he could not give them legal advice.

9. On that date, the court set the final hearing date for trial on July 18, 2019.

10. Dr. Simmons and her siblings decided to hire respondent to represent them on their petition for partition and paid him an initial retainer of \$750.00 on April 10, 2019, and an additional \$500.00 on August 7, 2019.

11. Respondent had no written fee agreement with Dr. Simmons or her siblings.

12. On April 9, 2019, respondent filed a notice of appearance in the petition for partition and motion to amend complaint which was granted by the court on May 8, 2019.

13. The court held a hearing on June 21, 2019, granting respondent's motion for case management conference and to reschedule trial, setting a new trial date for September 25, 2019.

14. Respondent failed to notify his clients of the new trial date.

15. After their initial consultation, respondent failed to reply to the clients' phone calls or inquiries about their legal case.

16. On September 25, 2019, neither respondent nor any of his clients appeared at the final trial.

17. The judge's judicial assistant called respondent to find out his whereabouts and inquired if he was going to appear at the trial.

18. Respondent represented to the judicial assistant that he intentionally did not appear because opposing counsel would not comply with discovery requests or the order for mediation.

19. On that same date, the circuit court judge issued an Order to Show Cause ("OSC"), returnable September 27, 2019, requiring respondent to "show

cause why the case should not be dismissed without prejudice and why he should not be assessed for reasonable attorney's fees incurred by defense counsel as a sanction for failing to appear at trial" and ordering respondent to furnish a copy of the OSC to his clients.

20. Respondent failed to respond to the circuit court's OSC and did not provide his clients with a copy of the OSC as required by the court order.

21. On October 4, 2019, the circuit court judge issued a second OSC ("OSC 2") returnable October 11, 2019, giving respondent a final opportunity to appear in court and explain his failure to appear at trial, why attorney's fees should not be imposed as a sanction, and required respondent to provide a copy to his clients.

22. Respondent did not provide any written response to the court as to OSC-2, did not notify his clients of OSC-2 but advised that he would explain his position orally to the court.

23. On October 10, 2019, the court allowed respondent to appear in person so he could explain orally to the court the reasons for his nonappearance at the final trial and his noncompliance with the court's two Orders to Show Cause

24. At the OSC hearing, when asked by the court about his failure to appear at the final trial, respondent represented to the court that he missed the final trial date because he did not properly calendar the date.

25. When questioned by the court if he had provided the two Orders to Show Cause to his clients, he avoided the question stating as an excuse that, even if he did not notify his clients, the Clerk would send them to the clients because they were originally *pro se*, which the court viewed as inaccurate.

26. On October 11, 2019, after considering respondent's conflicting responses, the court found:

Mr. Woodward's comment that this case is ripe for summary judgment is off point. It does not explain his willful failure to appear at trial. It does not explain his failure to respond with the first order to show cause. It does not explain his failure to comply with either order to show cause to alert his clients that his decision not to participate in the trial might result in the case being dismissed. And while this Court has concern regarding the impact of the Plaintiffs based on the actions or inactions of their counsel, this Court is attuned to the speedy, just and inexpensive disposition of actions and the expense as it relates to the Defendant and his counsel.

27. Consequently, the court issued an Order Dismissing Without Prejudice the plaintiffs' case, granting the defendant's motion to dismiss and defendant's attorney fees pending the filing of an affidavit by defendant's counsel, and had the Order Dismissing Without Prejudice along with the two prior Orders to Show Cause sent to the plaintiffs.

28. Dr. Simmons and her siblings then hired another attorney who needed to refile the petition for partition and begin the case over again.

29. On November 15, 2019, The Florida Bar sent respondent a 15-day letter that respondent failed to answer.

30. On January 8, 2020, The Florida Bar sent a reminder letter to respondent to answer Ms. Simmons' complaint via his record bar email address and a letter to 2 addresses.

31. Respondent sent an email advising that he was very busy but would respond.

32. On April 8, 2020, respondent's case was referred to the grievance committee and a Notice of Assignment of Investigating Member was sent to respondent giving him 10 days to contact the Investigating Member.

33. When respondent failed to reply to the Notice of Assignment of Investigating Member, the Investigating Member made attempts to reach respondent, but to no avail.

34. In June 2020, the investigating member received a telephone call from respondent for the first time.

35. On July 11, 2020, respondent filed a written reply to The Florida Bar for the first time.

36. Respondent failed to diligently and promptly represent his clients after the June 21, 2019, court hearing on his motions.

37. Respondent failed to communicate with his clients after the initial consultation, failed to keep them informed on the status of their legal case, and failed to notify them of hearings, the final trial date and the court's orders to show cause.

38. Respondent charged a clearly excessive fee because he failed to provide the legal services for which he was hired by the clients.

39. Respondent failed to protect his clients' interests by returning his unearned fees.

40. Respondent failed to expedite the clients' litigation by not showing up for the final hearing and making excuses after the fact for his failure to appear on the final trial date. He also failed to file appropriate motions to obtain discovery and notify the court about mediation.

41. Respondent knowingly failed to respond to two orders to show cause issued by the circuit court judge in his clients' case and failed to notify his clients of one OSC in noncompliance with the court's order.

42. Respondent's conduct is prejudicial to the administration of justice by delaying the clients' case and requiring them to hire another attorney.

43. Respondent repeatedly failed to respond to The Florida Bar despite numerous attempts by The Florida Bar to get him to reply to their inquiries.

44. By way of the foregoing, respondent has violated the following Rules Regulating the Florida Bar, namely, 4-1.3(Diligence), 4-1.4(Communication), 4-1.5(Fees for Legal Services), 4-1.16(d) (Protect Client's Interests), 4-3.2 (Expedite Litigation), 4-3.4(c) (Knowingly disobey an obligation under the rules of a tribunal), 4-8.4(d)(Conduct Prejudicial to the Administration of Justice) and 4-8.4(g)(Failure to Respond to The Florida Bar).

WHEREFORE, The Florida Bar respectfully requests that respondent be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



Olivia Paiva Klein, Bar Counsel
The Florida Bar
Tallahassee Branch Office
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5845
Florida Bar No. 970247
oklein@floridabar.org



Patricia Ann Toro Savitz, Staff Counsel
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5839
Florida Bar No. 559547
psavitz@floridabar.org

CERTIFICATE OF SERVICE

I certify that this document has been furnished via the E-filing Portal to The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, to Respondent, David Luther Woodward, at dlw@woodlaw.pro; that a copy has been furnished by United States Mail via certified mail No. 7017 3380 0000 1082 7713 return receipt requested to David Luther Woodward, whose record bar address is 1415 Lemhurst Road/PO Box 4475, Pensacola, FL 32507-0475 and to Bar Counsel, Olivia Paiva Klein, The Florida Bar, at oklein@floridabar.org on this 18th day of December, 2020.



Patricia Ann Toro Savitz
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY
EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is Olivia Paiva Klein, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Tallahassee Branch Office, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, (850) 561-5845 and oklein@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, Patricia Ann Toro Savitz, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, at psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

R. REGULATING FLA. BAR 3-7.6(h)(2) PROVIDES THAT A
RESPONDENT SHALL ANSWER A COMPLAINT.