

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. SC20-974

v.

The Florida Bar File Nos. 2019-30,691
(9C); and 2019-30,789 (9C)

JOHN GILLESPIE,
Respondent.

DEC 14 2020

Received, Clerk, Supreme Court

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 July 10, 2020, The Florida Bar filed its Complaint against respondent in these proceedings. 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.

1. In or around April 2019, Ms. Nixon filed a bar complaint alleging that respondent acted inappropriately while representing Ms. Nixon's adult daughter in two criminal matters. Ms. Nixon hired respondent to represent her daughter and paid him approximately \$1,500.00.

2. Ms. Nixon alleged that following her daughter's release from jail, and during the representation, respondent engaged in a sexual relationship with Ms. Nixon's daughter and ultimately fathered her child.

3. Respondent was aware that Ms. Nixon's daughter had a history of abusing drugs and continued to use drugs when not incarcerated. Furthermore, during the criminal proceedings in which respondent represented Ms. Nixon's daughter, respondent alleged that his client was incompetent to proceed to trial.

4. On or about February 21, 2018, respondent filed a motion on behalf of Ms. Nixon's daughter alleging that his client was "incapable of assisting her attorney in the preparation for and trial of her case" and alleging that she "has a long history of mental illness."

5. In March 2019, while respondent remained counsel of record for Ms. Nixon's daughter in 49-2017-CF-00369, Ms. Nixon's daughter gave birth to a child and gave the child respondent's last name.

6. In his response to the bar, dated May 17, 2019, respondent admitted that Ms. Nixon's daughter gave birth to a boy and gave the newborn his last name but claimed that he was not involved in naming the child.

7. In his response to the bar, dated May 17, 2019, respondent asserted, "However, even if this child were mine and even if I had had some kind of physical contact with her daughter, that would not be a violation of the Attorney's Code of Ethics unless it had adversely affected her daughter's case." Respondent further stated "[i]f necessary, [Ms. Nixon's] daughter will provide an affidavit stating there was never a sexual relationship."

8. After respondent's initial response to the bar, a paternity test revealed that respondent is the biological father of Ms. Nixon's grandson.

9. Respondent subsequently admitted that he had sex with Ms. Nixon's daughter while he was her counsel of record in an Osceola County criminal case but maintained that the relationship in no way compromised his ability to represent the daughter.

10. During his sworn statement in the bar proceeding, respondent testified that he revealed compromising information after he began representing Ms. Nixon's daughter. Respondent stated, "I put the word out that [Ms. Nixon's daughter] was an informant in Daytona Beach, and I – and when she would walk

into a place, like a drug – some type of drug place, people would scatter like roaches. ‘Cause I put the word out that she was an informant, so nobody would deal with her.’”

11. In addition, in or around March 2019, the Department of Children and Families removed and sheltered two children, one of which was Ms. Nixon’s grandson, from respondent’s home in Osceola County, Florida.

12. After the child’s removal in March 2019, respondent continued to represent Ms. Nixon’s daughter in the Osceola County criminal matter, case number 49-2017-CF-3369, and filed a notice of appearance on behalf of Ms. Nixon’s daughter in a Brevard County misdemeanor case 05-2019-MM-41142.

13. On or about August 15, 2019, the Brevard County misdemeanor case was amended to a felony by the State Attorney’s Office, and the matter was transferred to Circuit Court and assigned case number 05-2019-CF-041142.

14. In case number 05-2019-CF-041142, on or about December 14, 2019, respondent filed a Motion for Psychiatric Examination to Determine Competence to Proceed alleging that Ms. Nixon’s daughter was incompetent to proceed to trial.

15. Respondent remained as counsel of record for Ms. Nixon’s daughter in 05-2019-CF-041142 until the trial judge granted a substitution of counsel on February 25, 2020.

16. The dependency court matter involving respondent and Ms. Nixon's daughter remains pending.

III. RECOMMENDATIONS AS TO GUILT

I recommend that respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3-4.3 [Misconduct and Minor Misconduct]; 4-1.7(a) [Conflict of Interest; Current Clients]; 4-1.8(b) [Conflict of Interest; Prohibited and Other Transactions]; 4-1.9(b), (c) [Conflict of Interest; Former Client]; 4-8.1(a) [Bar Admission and Disciplinary Matters]; and, 4-8.4(d), (i) [Misconduct].

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.3 Failure to Avoid Conflicts of Interest

4.3(b) Suspension. Suspension is appropriate when a lawyer knows of a conflict of interest, does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

7.1(b) Suspension. 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.

3.2(b) Aggravating Factors

- (3) a pattern of misconduct;
- (8) vulnerability of the victim;
- (9) substantial experience in the practice of law, respondent was admitted

in 1998.

3.3(b) Mitigating Factors

- (1) absence of a prior disciplinary record;
- (3) personal or emotional problems;
- (8) physical or mental disability or impairment or substance-related disorder.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Roberto, 59 So.3d 1101 (Fla. 2011), Roberto was suspended for one year for engaging in sexual relations with two female clients while he was representing them and for giving clients impermissible gifts by depositing funds in the clients' jail commissary accounts. He also gave one client \$250.00 to buy clothes, groceries, and other personal goods. While the referee did not find that Roberto traded legal services for sexual favors, the Court found that his conduct undoubtedly gave the appearance of impropriety.

In The Florida Bar v. Bryant, 813 So. 2d 38 (Fla. 2002), Bryant was suspended from the practice of law for one year followed by two years of probation for misconduct, which included exploiting the attorney-client relationship by trading legal services for sexual favors. Bryant had a prior discipline history.

In The Florida Bar v. Mishali, 2017 WL 2290977 (Fla. May 25, 2017) (Unpublished Disposition), pursuant to a consent judgment, Mishali received a ten-day suspension from the practice of law. Mishali had been fired from Regional Counsel's Office (RCO) for having an inappropriate relationship with a client. To support the allegations, the RCO provided to the bar photographs of Mishali kissing the client in a jail facility. Upon discovering the photographs on the work laptop, RCO had a meeting with Mishali informing her as to the reason for her termination. RCO showed respondent the photographs at this meeting and told her it was because of the inappropriate relationship that she was being terminated and that they recommended to her not to take on the client in private practice. In addition, Mishali was not forthcoming with the bar during her sworn statement.

In The Florida Bar v. MacNamara, 132 So. 3d 165 (Fla. 2013), MacNamara was suspended for 90 days for providing false statements to The Florida Bar that he filed his client's estate tax return with the IRS in a timely manner. Additionally,

in MacNamara's cover letter to the IRS, he referred to the return as a "duplicate estate tax return," which was dishonest, misleading, and designed to convey to the IRS that the estate tax return had been previously sent to the IRS. MacNamara had no prior discipline.

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. One-year suspension from the practice of law requiring proof of rehabilitation;

B. Payment of the bar's disciplinary costs.

During the period of suspension, 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.

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: 72

Date admitted to the Bar: October 23, 1998

Prior Discipline: None

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 Fee	\$1,250.00
Investigative Costs	\$1,251.30
Bar Counsel Travel Costs	\$170.66
Court Reporters' Fees	\$915.75
Transcript Costs	\$365.75

TOTAL \$3,953.46

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 11th day of December, 2020.


ELLEN S. MASTERS
Referee

Original To:

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

Conformed Copies by email to:

John Gillespie, Respondent, 252 8th Avenue, Cramerton, NC 28032-1228, gillespie@lawjg.com, and by U.S. Mail to temporary address of John Gillespie, Inmate No. 20009561, MPOD-E, P.O. Box 4970, Orlando, Florida 32802-4970;

Karen Clark Bankowitz, Bar Counsel, Orlando Branch Office, The Gateway Center, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050, kbankowitz@floridabar.org, orlandooffice@floridabar.org; and

Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, psavitz@floridabar.org.