

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. SC21-1086

v.

The Florida Bar File Nos.
2019-00,409(2B); 2019-00,615(2B)

ROGER ALAN ANDREWS,
Respondent.

_____ /

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 26, 2021, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions 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,

Received, Clerk, Supreme Court

FEB - 4 2022

subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. Narrative Summary of Case

**COUNT I – TFB FILE NO. 2019-00,409 – COMPLAINT OF
MICHELLE BURT**

1. On April 25, 2011, respondent filed a notice of appearance and a petition for benefits on behalf of Michelle Burt (“Ms. Burt”) in her worker’s compensation case.

2. On May 24, 2011, a response to petition for benefits was filed and authorization was given to the treating physician for Ms. Burt to resume treatment.

3. On June 17, 2011, respondent filed a notice of voluntary dismissal of petition for benefits.

4. On November 14, 2011, respondent filed a petition for benefits for temporary partial disability benefits due to restricted duty limitations of Ms. Burt and inability of her employer to accommodate her.

5. On February 20, 2012, a mediation was held.

6. On February 29, 2012, an order approving mediation settlement agreement was entered.

7. On December 11, 2013, respondent filed a petition for benefits for payment of medical bills for treatment with the authorized provider at Tallahassee Neurological Clinic, claiming that lack of payment was preventing follow up treatment, and for attorney fees and costs.

8. On December 18, 2013, a response to petition for benefits was filed, claiming the bills will be paid when they were received on the proper form.

9. On April 23, 2014, an order dismissing petition for benefits without prejudice was filed.

10. On March 16, 2015, respondent filed a petition for benefits for authorization of a follow up appointment with Ms. Burt's physician, claiming carrier approval was required for an appointment.

11. On March 25, 2015, a response to petition for benefits was filed, stating no good faith effort was made prior to the filing of this petition, requesting that the petition be dismissed.

12. Although a mediation conference was scheduled for June 5, 2015, on May 15, 2015, respondent filed a notice of voluntary dismissal of petition for benefits.

13. According to Ms. Burt, she repeatedly asked Mr. Andrews to resolve her case via a settlement.

14. There was no activity on the case between 2015 and 2019, although respondent asserts that Ms. Burt was continuing to receive treatment during that period.

15. On March 14, 2019, respondent filed a motion to withdraw as counsel, which was granted the same day.

16. From that date, Ms. Burt proceeded pro se and negotiated directly with opposing counsel.

17. On July 23, 2019, a joint petition for lump-sum settlement was filed and August 1, 2019, a settlement order was entered.

**COUNT II – TFB FILE NO. 2019-00,615 – COMPLAINT OF
DEBRA HOUSE WASHINGTON**

18. On March 3, 2009, Debra House Washington (“Ms. House Washington”) was injured while doing court-ordered community service for the City of Quincy.

19. On February 24, 2010, Fred Pearson, Ms. House Washington’s previous attorney, wrote to her, informing her that the Florida League of Cities, the insurer for the City of Quincy, had denied her worker’s compensation claim because she was not a city employee and therefore, was not eligible for worker’s compensation

benefits through the Department of Financial Services/Division of Risk Management. He further informed her that she had until March 2, 2013, to file a claim.

20. In or around April 2012, Ms. House Washington hired respondent to represent her.

21. Ms. House Washington signed a retainer agreement on April 30, 2012, for a worker's compensation case.

22. On May 1, 2012, respondent contacted the Florida League of Cities to request payment of temporary total disability/temporary partial disability from March 3, 2009, to present and continuing, adjustment of average weekly wage/compensation rate, and payment of back due benefits. He further stated that he intended to file a petition for benefits if the benefits requested therein were not provided in a timely manner.

23. Respondent never filed a petition for benefits, or a complaint related to Ms. House Washington's claim.

24. Respondent admits that these specific objectives were not put in writing and may have caused confusion.

25. Respondent admits that he sent Ms. House Washington eight checks issued from his trust account between December 2019 and April 2020, totaling approximately \$2,225.00.

26. Based on Ms. House-Washington's receipt of funds from respondent, she believed that respondent obtained a settlement on her behalf, and that he was holding her settlement funds. Alternately, she also claimed that he was setting her case for a hearing.

27. Respondent asserted that he received no money on behalf of Ms. House Washington, and that the funds provided to Ms. House Washington was out of kindness to "help her get back on her feet." He asserted that the Washingtons continuously called him for assistance, and he felt sorry for them.

28. Respondent further stated the checks written on his trust account were from his earned fees in other cases.

29. Respondent's trust account at Regions Bank was reviewed by TFB's staff auditor for the period of February 1, 2013, through January 30, 2020. The auditor found the following violations:

30. Respondent failed to timely transfer his earned fees out of the trust account; he comingled funds; and he failed to clearly identify

a client or legal matter on some trust checks. Respondent did not always properly disburse trust funds to himself and to his clients.

31. The audit demonstrated that the respondent was not in compliance with the minimum trust accounting requirements.

III. RECOMMENDATIONS AS TO GUILT

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

In 2019-00,409(2B): 4-1.3 (Diligence); 4-1.4 (Communication); and 4-3.2 (Expediting Litigation); and

In 2019-00,615(2B): 4-1.2 (Objective and Scope of Representation), 4-1.3 (Diligence), 4-1.4 (Communication), 4-3.2 (Expediting Litigation), 5-1.1 (Trust Accounts), and 5-1.2 (Trust Accounting Records and Procedures).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.4 Lack of Diligence

(c) Public reprimand is appropriate when a lawyer is negligent, does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

4.6 Lack of Candor

(c) Public reprimand is appropriate when a lawyer negligently fails to provide a client with accurate or complete information and causes injury or potential injury to the client.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Williams-Yulee, 138 So.3d 379 (Fla. 2014) - The attorney received a public reprimand for direct solicitation of funds for her judicial campaign. Although the facts are different here, the court found that the attorney's conduct was negligent rather than intentional, was not continuous, and did not involve intentional pattern of deceit, attorney had no prior disciplinary record, lacked dishonest or selfish motive, made timely good faith effort to make restitution or to rectify consequences of her misconduct, and engaged in full and free disclosure to disciplinary board and displayed cooperative attitude toward proceedings.

The Florida Bar v. Barcus, 697 So.2d 71 (Fla. 1997) - The attorney received a public reprimand rather than a 30-day or six-month suspension, for isolated acts of negligence in failing to appear at scheduled deposition, in filing notice of appeal for sole purpose of delaying foreclosure without allegedly obtaining client's consent not to pursue it, and in failing to move for rehearing or to set aside or vacate foreclosure. The attorney had no prior disciplinary history, no evidence was presented that attorney purposefully neglected clients' case or tried to disadvantage them, and referee did not find that clients had sustained any harm.

The Florida Bar v. Glick, 693 So.2d 550 (Fla. 1997) – The attorney's failure to provide competent representation and act with reasonable promptness, failure to keep client informed about status of matter and to explain matter to client, failure to abide by client's decision regarding settlement, and dishonest conduct warranted ten-day suspension from practice of law.

The Florida Bar v. Timothy Wayne Terry, SC21-1046 [2020-30,550(09C), etc.] – By Court order dated December 20, 2021, the Court publicly reprimanded Terry and directed him to undergo a

DDCS review. In three separate family law matters, Terry failed to diligently represent and maintain adequate communication with his clients. Terry refunded his fees and attempted to mitigate his misconduct to the best of his abilities.

The Florida Bar v. Chinagozi Ikpeama, SC21-755 (Fla. June 3, 2021) [TFB # 2020-30,572 (7A)] – The Court approved a Conditional Guilty Plea for Consent Judgment for a public reprimand and completion of Trust Accounting Workshop. While representing the husband in a dissolution of marriage case, respondent received funds representing attorney’s fees and costs from the wife. Respondent failed to timely disburse funds paid by the wife for five itemized costs to his client. Additionally, respondent failed to comply with the Rules Regulating Trust Accounts. In aggravation, respondent was experienced in the practice of law. In mitigation, respondent had no prior disciplinary history, had no dishonest for selfish motive and fully cooperated with the bar’s investigation.

The Florida Bar v. LaDray Brandan Gilbert, SC19-840 – By Court order dated November 21, 2019, the court publicly reprimanded respondent and placed him on probation for one year. Respondent failed to competently and diligently represent his clients in their property easement case. After filing the complaint styled as an “Answer,” respondent filed nothing with the court until he submitted a Motion to Withdraw approximately 10 months later; he failed to add a necessary party to the complaint; he failed to attend hearings, after being properly noticed; he did not file any written responses to an Order to Show Cause, a Motion to Dismiss, or a Motion for Attorney’s Fees; and, he failed to withdraw as attorney of record by setting his Motion to Withdraw for hearing and promptly obtaining an order from the court allowing him to withdraw. Respondent failed to adequately communicate with his clients and keep them apprised of the status of their case, and he failed to notify his clients of the court hearings.

The Florida Bar v. Joseph Anthony Sorce, SC20-881 (Fla. July 2, 2020) [TFB File No. 2020-70,032(11C)] – The Court approved the consent judgment for a public reprimand. The attorney’s bank notified the bar that a trust account check was returned for insufficient funds trust account check. After a thorough review of his trust account, the bar found that Sorce commingled personal funds in the trust account

by failing to promptly disburse his fees and by depositing the proceeds of the sale of his marital home into the trust account. While he did pay personal expenses from the trust account, the bar's investigation revealed that he only used personal funds to do so. There was no evidence of malfeasance with respect to client funds and all client funds were properly accounted for and promptly remitted.

The Florida Bar v. Barnett, 2015 WL 4936706 (Jan. 30, 2015) (Unpublished Disposition), the Court approved a consent judgment for a public reprimand for technical trust account violations. Two checks drawn on the Barnett's trust account were dishonored due to a failure to timely make deposits. The bar's audit further revealed that Barnett failed to maintain all of the required minimum required trust accounting records and failed to follow all of the required trust accounting procedures. Barnett was unable to produce deposit slips, client ledgers, monthly bank reconciliations, monthly comparisons or the annual detailed listing. The bar's auditor found no clear evidence of misappropriation and determined that any shortages were the result of negligent bookkeeping and a failure to maintain all of the required trust accounting records.

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. Public Reprimand by publication;
- B. Ethics School, to be completed within 6 months of the court order approving the consent judgment; and
- C. Payment of The Florida Bar's costs.

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: 50

Date admitted to the Bar: May 5, 1997

Prior Discipline: None

Aggravating Factors 3.2:

(9) substantial experience in the practice of law.

Mitigating Factors 3.3:

(1) absence of a prior disciplinary record;

(2) absence of a dishonest or selfish motive;

(5) full and free disclosure to the bar or cooperative attitude toward the proceedings; and

(12) remorse.

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	35.00
Audit Costs	1,445.50
TOTAL	\$2,730.50

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 31st day of January, 2022.

/s/ Sara Jane Carter
Hon. Sara Jane Carter, Referee
173 NE Hernando Avenue, Suite 239
Lake City, FL 32055-4000

Original to:

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

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