

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. SC21-1323

v.

The Florida Bar File
No. 2020-10,416 (6E)

JORGE HENRIQUE ANGULO,
Respondent.

FEB 25 2022

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 September 21, 2021, The Florida Bar filed its Complaint against Respondent in these proceedings. On October 11, 2021, respondent filed his answer and motion to dismiss two of the rule violations alleged in the complaint. A case management conference was held on November 9, 2021, at which time a final hearing was set for February 2, 2022, and a sanctions hearing for February 17, 2022. Respondent's motion to dismiss was denied by order dated December 14, 2021. The parties submitted a Joint Motion to Continue Final Hearing on January 27, 2022, which was

granted by order dated January 28, 2022. The parties submitted a Conditional Guilty Plea for Consent Judgment on February 11, 2022. 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.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Kimberly Walbolt, Esq., and Lindsey Guinand, Esq.

For the respondent: Jodi A. Thompson, Esq.

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. Respondent represented the defendant in a criminal matter in Pinellas County. The defendant was on probation for other charges in Marion County when he was arrested for the charges in Pinellas County. On October 21, 2018, respondent moved for a speedy trial in the Pinellas County case because he believed the defendant had a strong defense. The trial was set for November 27, 2018.

On November 19, 2018, the defendant was sentenced to probation in the Marion County case. Based on that result, respondent and the defendant wished to continue the November 27, 2018, trial, which was only a week away, to allow more time to attempt to settle the case. Respondent contacted the state attorney's office, and the state agreed to a continuance of the trial. Respondent contacted the court's judicial assistant to schedule a hearing on a motion to continue the trial, but the judge did not have any hearing time available prior to trial, due to the Thanksgiving holiday. As a result, respondent planned to waive speedy trial and to request a continuance on the morning of trial.

On November 27, 2018, respondent and the defendant appeared for trial and respondent requested the continuance. After hearing argument, the judge agreed to continue the trial but then did not have another date available due to his impending retirement in January. The court denied respondent's motion to continue the trial and advised the respondent that he could proceed to trial or the defendant could enter an open plea and return at a later date for sentencing at which time he could argue for a downward departure of the recommended sentence.

During a 45-minute break, respondent explained the court's ruling to the defendant. The defendant feared going to jail because he was a

confidential informant to law enforcement. Respondent genuinely believed the defendant would receive a downward departure at sentencing of probation to run concurrently with the Marion County probation. As a result, the respondent told the defendant he guaranteed the outcome of probation if the defendant entered an open plea. The defendant advised respondent that he did not wish to proceed with the trial and wished to enter a plea. Respondent explained to the defendant to say during the plea colloquy that he had not been promised or guaranteed anything in exchange for his plea. On November 27, 2018, the defendant entered an open plea of guilty based on respondent's advice. During the plea colloquy, the defendant asserted he had not received any promises or guarantees in connection with his plea. Respondent failed to stop the defendant from knowingly misstating the truth regarding the guarantee respondent made about the downward departure.

At the sentencing hearing on December 5, 2018, the court denied the defendant's request for a downward departure and he was sentenced to 33.3 months in prison. Respondent immediately advised his client to file a pro se motion to withdraw plea and a motion for post-conviction relief based on ineffective assistance of counsel. Respondent also arranged for a colleague to represent the defendant in the matter, pro bono. At the

evidentiary hearing on the defendant's motions, respondent admitted he had instructed the defendant to lie to the court about the guarantee he made regarding the downward departure in sentencing.

III. RECOMMENDATIONS AS TO GUILT

Pursuant to the parties' Conditional Guilty Plea for Consent Judgment, I recommend that respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rule 4-1.1 (Competence); Rule 4-1.2(d)(Objectives and Scope of Representation-Criminal or Fraudulent Conduct); Rule 4-3.3 (Candor Toward the Tribunal); Rule 4-3.4 (Fairness to Opposing Party and Counsel); Rule 4-4.1 (Truthfulness in Statements to others); Rule 4-8.4(a) (Misconduct – a lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through an act of another); Rule 4-8.4(c) (Misconduct – a lawyer shall not engage in conduct involving dishonestly, fraud, deceit, or misrepresentation); and 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).

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.

(c) Public reprimand is appropriate when a lawyer causes injury or potential injury to a client and: (2) is negligent in determining whether the lawyer is competent to handle a legal matter.

4.6 Lack of Candor

(b) Suspension is appropriate when a lawyer knowingly deceives a client and causes injury or potential injury to the client.

(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.

5.1 Failure to Maintain Personal Integrity

(b) Suspension is appropriate when a lawyer knowingly engages in... other conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

6.1 False Statements, Fraud, and Misrepresentation

(b) Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld and takes no remedial action.

6.2 Abuse of the Legal Process

(b) Suspension is appropriate when a lawyer knowingly violates a court order or rule and causes injury or potential injury to a client or a party or causes interference or potential interference with a legal proceeding.

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 to, potential injury to a client, the public, or the legal system.

V. FINDINGS ON MITIGATING AND AGGRAVATING FACTORS

I considered the documents included in respondent's Notice of Filing dated February 1, 2022, and make the following findings regarding mitigation and aggravation:

Respondent has no prior disciplinary history with The Florida Bar and did not have a dishonest or selfish motive. Respondent genuinely believed that the defendant would receive a downward departure and be sentenced to probation when he gave his advice.

I took into consideration that respondent suffered from personal or emotional problems and a physical or mental disability or impairment at the time the conduct at issue occurred. Respondent was involved in a contentious custody battle when he and his children were in a serious car accident occurring just months prior to the client's plea at issue. Respondent suffered a concussion and lingering neurological issues including difficulty concentrating, feeling mentally foggy, short-term memory problems, feeling slowed down, fatigue, trouble multitasking, and aphasia as a result of the car accident, and the accident exacerbated his custody issues with his former spouse. I reviewed the medical records documenting respondent's condition at the time the misconduct occurred, and the records are unrebutted.

Additionally, respondent made a timely good faith effort to rectify the consequences of his misconduct by promptly advising his client to file a pro se motion to set aside his plea and for ineffective assistance of counsel. Respondent also found successor counsel to diligently represent the defendant pro bono. After the hearing on the defendant's motion to vacate his plea, the defendant immediately entered a new plea deal for a 13-month sentence and received credit for the 13 months he had served, and he was released from custody shortly thereafter. I reviewed a letter from respondent's client stating that he holds no grudges against respondent and has acknowledged that he would not have known he could file a motion for ineffective assistance of counsel without respondent advising him of the same.

Respondent also cooperated with the bar in its investigation and was forthcoming to both the bar and the trial court about this incident. I reviewed letters from three of respondent's colleagues in the legal community evidencing of respondent's good character and reputation. Respondent has a long history of involvement with religious and community organizations. Lastly, the conduct in question occurred three years ago, and respondent has taken responsibility for his actions, demonstrated interim rehabilitation, and is remorseful for his misconduct.

In consideration of the above, I find the following mitigating factors are applicable under Standard 3.3(b) justifying a reduction in the degree of discipline:

3.3(b) Mitigation

- (1) absence of a prior disciplinary record;
- (2) absence of a dishonest or selfish motive;
- (3) personal or emotional problems;
- (4) timely good faith effort to make restitution or to rectify the consequences of the misconduct;
- (5) full and free disclosure to the bar or cooperative attitude toward the proceedings;
- (7) character or reputation;
- (8) physical or mental disability or impairment or substance related disorder;
- (10) interim rehabilitation; and
- (12) remorse

In reviewing Standard 3.2(b), I find that there are two aggravating factors that are applicable to the instant matter, which are:

3.2(b) Aggravation

- (4) multiple offenses (respondent's conduct violated several rules); and
- (9) substantial experience in the practice of law (respondent has been admitted to practice since 1999).

However, I find that these two factors do not justify an increase in the degree of discipline because they are far outweighed by the mitigation presented. Further, though respondent's conduct violated several of the

Rules Regulating The Florida Bar, the violations all stemmed from a single instance of misconduct.

VI. CASE LAW

I considered the following case law prior to recommending discipline:

In *Florida Bar v. Dunne*, 2020 WL 257785 (Fla. January 16, 2020), the Court approved a consent judgment for a one-year suspension for an attorney that made false statements to the court regarding being in possession of jail house phone calls. The attorney turned over the evidence well before trial and there was time to cure the prejudice resulting from the violation. The attorney had significant mitigation, no prior discipline, excellent reputation, and remorse.

In *Florida Bar v. Russell-Love*, 135 So. 3d 1034 (Fla. 2014), the Court imposed a 91-day suspension for an attorney who made misrepresentations on immigration forms submitted to USCIS. The referee specifically found that the attorney acted deliberately and knowingly in order to expedite the immigration filing on her client's behalf, and her actions caused her client harm. In mitigation, the referee found an absence of a prior disciplinary record, inexperience in the practice of law, good character or reputation, and remorse. The referee also found that, absent this isolated incident, Russell-Love was someone of high integrity.

In *Florida Bar v. Cox*, 794 So.2d 1278 (Fla. 2001), a one-year suspension was warranted for a prosecutor who assisted a witness to make misrepresentations during her testimony to the court during a criminal proceeding. The misrepresentation resulted in the proceedings being dismissed with prejudice. In aggravation, Cox had substantial experience in the practice of law. In mitigation Cox has no prior disciplinary record, lacked a selfish or dishonest motive, made full and free disclosure during the bar proceedings, received the imposition of other sanctions, had a good reputation, and was remorseful.

VII. 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. A six-month suspension from the practice of law; and
- B. Payment of the disciplinary costs.

Respondent will eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards office signs or any other indicia of respondent's status as an attorney, whatsoever.

VIII. 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: 55

Date admitted to the Bar: July 30, 1999

Prior Discipline: None

Respondent is not Board Certified in any area of practice.

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

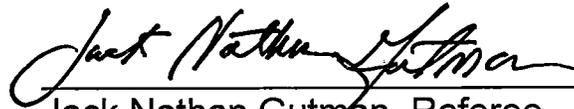
I find the following costs were reasonably incurred by The Florida

Bar:

Administrative Costs	\$1,250.00
Court Reporters' Fees	\$513.00
Investigative Costs	\$29.00
TOTAL	\$1,792.00

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 16th day of February, 2022.



Jack Nathan Gutman, Referee

Original To:

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

Conformed Copies to:

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