

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. SC21-1716

v.

The Florida Bar File
No. 2019-70,300 (11M)

JOSEPH WIMBERT GIBSON JR.,
Respondent.

Received, Clerk, Supreme Court

MAY 31 2022

**REPORT OF REFEREE ACCEPTING CONDITIONAL
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 December 15, 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, albeit suspended pursuant to Supreme Court order dated January 21, 2021, and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. Narrative Summary Of Case. On March 27, 2018, Cyril Poitier retained respondent in connection with two related real estate lawsuits in which he agreed to sell two properties to a single buyer. Eventually, in each case, the buyer sued Mr. Poitier for specific performance.

Mr. Poitier met with respondent the next day and paid him \$4000.00 for his services. Following that meeting respondent entered a Notice of Appearance and proceeded to defend the cases, primarily by buying time to develop legal defenses because the client only provided his dissatisfaction with his own broker rather than any dissatisfaction with the buyer as his defense. Ultimately, the best defense respondent was able to muster to date was that a condition precedent to litigation – mandatory mediation – was not undertaken.

After meeting with the client initially, respondent set up another meeting with the client and a colleague to try to draw out additional defenses from the client. Respondent set up a third meeting with the client

for the end of May, 2018, but the client canceled the day before it was to occur and advised he was seeking new counsel and discharging respondent.

C. On or about June 14, 2018, Mr. Poitier retained attorney Robert Bissonette to represent him in the matter. Mr. Bissonette wrote an e-mail to respondent advising him of the new representation and requesting a refund of the unused portion of the retainer. That letter provided respondent with 10 days to respond. However, on the 8th day, Mr. Bissonette followed up with a second email. Respondent did not reply to the emails initially because he was in trial. Notably, although he announced he was taking over the matter, Mr. Bissonette neither filed a notice of appearance nor did he prepare a substitution of counsel until almost a month later. Instead, he tried to work the out a settlement with the buyer behind the scenes without notifying respondent. On June 21, 2018, Mr. Bissonette sent follow up correspondence reiterating the demand for the return of the retainer by June 25, 2018. On June 22, 2018, Mr. Bissonette received an email from respondent's office acknowledging the correspondence and stating that a response would be provided by June 27, 2018. On June 29, 2018, respondent's office supplied a copy of the fee statement to Bissonette and Bissonette's office confirmed receipt. Bissonette's response to the fee

statement was to ask for the written retainer before he would agree to an amount of refund on behalf of the client, but through oversight one was not executed by respondent or the client. Thereafter, respondent sent an unfinalized prebill to the client asking if he agreed to it, as a way of resolving the refund issue. After not receiving a response from the client to his prebill, or from Mr. Bissonnette to the fee statement, respondent undertook no further action to make a partial refund, which he had calculated to be around \$1,600. Instead, he waited for a response from the client to the prebill. As it went, respondent refunded the entire retainer less one hour of work, or \$3,500.00 of the \$4,000.00, but did so sometime later.

III. RECOMMENDATIONS AS TO GUILT

I recommend that respondent be found guilty of violating Rule 4-1.5 (Fees and Costs for Legal Services) of the Rules Regulating The Florida Bar.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

700 VIOLATIONS OF OTHER DUTIES OWED AS A
PROFESSIONAL

7.1 Deceptive Conduct or Statements and Unreasonable or Improper

Fees

7.1(c) Public reprimand is appropriate when a lawyer negligently 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 legal system.

I find this standard to be applicable in the instant case, based on the admissions tendered in respondent's Conditional Guilty Plea for Consent Judgment.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In the *The Florida Bar v. Kavanaugh*, 915 So. 2d 89 (2005), the court noted that a public reprimand was appropriate where there was a single instance of charging an excessive or improper fee.

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:

- Public reprimand by publication.
- Payment of disciplinary 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: 66 years old

Date admitted to the Bar: June 28, 1982

Prior Discipline:

- Respondent tendered a consent judgment and received a public reprimand administered by the Board of Governors by Order of the Supreme Court dated August 30, 2007 in Supreme Court Case Nos. SC06-526 and SC06-2407, The Florida Bar File Nos. 2004-70,889 (11M) and 2004-71,449 (11M). Additionally, respondent was put on probation for six months and ordered to complete fifteen hours of practice and professionalism enhancement programs for violating the following Rules Regulating The Florida Bar: 4-1.1 (Competence); 4-1.3 (Diligence); and 4-8.4(g) (A lawyer shall not fail to respond in writing to any official inquiry by bar counsel or disciplinary agency).
- Respondent was suspended for six months by Order of the Supreme Court dated January 21, 2021, in Supreme Court Case No. SC19-792, The Florida Bar File No. 2018-70, 369 (11M) and 2018-70, 372 (11M). Respondent was found guilty of violating the following Rules

Regulating The Florida Bar: 4-1.1 (Competence); 4-1.3 (Diligence); and 4-1.4 (Communication).

Aggravating Factors: I find the following aggravating factors apply: 3.2(b)(1) (Prior Disciplinary Offenses) and 3.2(b)(9) (Substantial Experience in the Practice of Law).

Mitigating Factors: I find the following mitigating factors apply: 3.3(b)(2) (Absence of a dishonest or selfish motive); 3.3(b)(4) (timely good faith effort to make restitution and to rectify the consequences of misconduct); 3.3(b)(5) (Full and free disclosure to the bar and cooperative attitude toward the proceedings); 3.3(b)(11) (Imposition of other penalties and sanctions); and 3.3(b)(12) (Remorse).

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

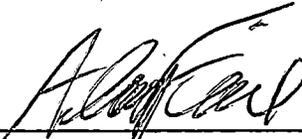
I find the following costs were reasonably incurred by The Florida Bar:

Administrative costs [Rule 3-7.6(q)(1)(I).....	\$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 11 day of May, 2022.



Honorable Alan S. Fine, Referee
Dade County Courthouse
73 W. Flagler Street; Chambers 414
Miami, FL 33130

Original To:

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