

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.

MAY 31 2022

Received, Clerk, Supreme Court

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, Joseph Wimbert Gibson Jr., and files this Conditional Guilty Plea pursuant to Rule 3-7.9 of the Rules Regulating The Florida Bar.

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent is currently the subject of a disciplinary proceeding which has been assigned Supreme Court Case No. SC21-1716; The Florida Bar File No. 2019-70,300 (11M); and is presently pending before the Honorable Alan Fine, Referee.
3. The following allegations and rules provide the basis for respondent's guilty plea and for the discipline to be imposed in this matter.

Respondent admits the following facts are true and accurate and stipulates to the following:

a. Cyril Poitier retained respondent on March 27, 2018, in connection with two related real estate lawsuits where he had agreed to sell two properties to a single buyer. The buyer sued the client in each case for specific performance.

b. After having met with respondent, Mr. Poitier paid respondent \$4000.00 for his services the following day.

c. Respondent entered a Notice of Appearance on March 30, 2018 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 than 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.

d. 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.

e. On or about June 14, 2018, Mr. Poitier retained attorney Robert Bissonnette to represent him in the matter. Mr. Bissonnette 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. Bissonnette 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. Bissonnette 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.

f. On June 21, 2018, Mr. Bissonnette sent follow up correspondence reiterating the demand for the return of the retainer by June 25, 2018. On June 22, 2018, Mr. Bissonnette 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 Bissonnette and Bissonnette's office confirmed receipt. Bissonnette'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.

g. 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.

h. As it went, respondent, who maintains he was terminated without cause, refunded the entire retainer less one hour of work, or \$3,500.00 of the \$4,000.00, but did so sometime later.

i. With regard to Florida Bar File No. 2019-70,300, respondent admits that he violated the following 4-1.5 (Fees and Costs for Legal Services) by not being more proactive in effecting a refund of the retainer sooner than he did.

4. Respondent is acting freely and voluntarily in this matter, and tenders this Plea without fear or threat of coercion. Respondent is represented in this matter.

5. The disciplinary measures to be imposed upon respondent are as follows:

- a. Public reprimand by publication.
 - b. Payment of disciplinary costs.
6. Respondent offers the following factors in mitigation:
- a. Respondent always believed he had protected Mr. Poitier's legal interests in the litigation;
 - b. Respondent reimbursed Mr. Poitier almost the entire amount of the retainer less one hour of work to rectify the situation between him and his former client;
 - c. Respondent expresses sincere remorse over his handling of the return of the retainer. He should have been more proactive and just sent the client what he thought was fair, instead of waiting for the client to respond to his prebill;
 - d. 3.3(b)(2) Absence of a dishonest or selfish motive;
 - e. 3.3(b)(4) timely good faith effort to make restitution and to rectify the consequences of misconduct;
 - f. 3.3(b)(5) Full and free disclosure to the bar and cooperative attitude toward the proceedings;
 - g. 3.3(b)(11) Imposition of other penalties and sanctions;
and
 - h. 3.3(b)(12) Remorse.

7. In light of respondent's existing six-month suspension, he requests that any court order entered approving this consent judgment become effective immediately upon its entry.

8. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.

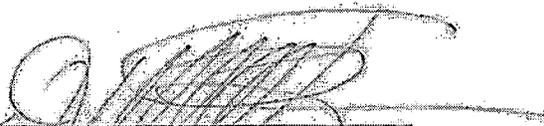
9. If this plea is not finally approved by the referee and the Supreme Court of Florida, then it shall be of no effect and may not be used by the parties in any way.

10. If this plea is approved, then respondent agrees to pay all reasonable costs associated with this case pursuant to Rule 3-7.6(q) in the amount of \$1,250.00. These costs are due within 30 days of the court order. Respondent agrees that if the costs are not paid within 30 days of this court's order becoming final, Respondent shall pay interest on any unpaid costs at the statutory rate. Respondent further agrees not to attempt to discharge the obligation for payment of the Bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to Rule 1-3.6 if the cost judgment is not satisfied within 30 days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

11. Respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding may reflect adversely on any reinstatement proceedings or any other bar disciplinary matter in which Respondent is involved.

12. This Conditional Guilty Plea for Consent Judgment fully complies with all requirements of the Rules Regulating The Florida Bar.

Dated this 20 day of April, 2022.


Joseph Winbert Gibson Jr.
Respondent
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Dated this 20 day of April, 2022.



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Dated this 20 day of April, 2022.



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