

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

NAH-DEH E. W. SIMMONS,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File Nos.
2021-00,208(4D); 2021-00,443(4D);
2021-00,460(4D)

_____ /

COMPLAINT

The Florida Bar, complainant, files this Complaint against Nah-Deh E. W. Simmons, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was at all times mentioned herein a member of The Florida Bar admitted on May 21, 2007 and is subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent resided and practiced law in Duval County, Florida, at all times material.
3. The Fourth Judicial Circuit Grievance Committee "D" found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

RECEIVED, 12/29/2021 10:29:21 AM, Clerk, Supreme Court

COUNT I – TFB# 2021-00,208(4D) – ANTONIO JOINER

4. On August 8, 2017, Anthony Fowler (“Mr. Fowler”) hired respondent to represent his son Antonio Joiner (“Mr. Joiner”) in a post-conviction relief case. Mr. Fowler signed an agreement of representation agreeing to a non-refundable fee \$3,000.00 and a \$500.00 cost deposit.

5. The agreement for representation refers only to a criminal felony and does not explain what respondent was agreeing to do.

6. There were no filings, or any other actions, in Mr. Joiner’s case from December 2017 to April 2020.

7. Respondent did no meaningful work on Mr. Joiner’s case and failed to communicate with either Mr. Fowler or his client, Mr. Joiner.

8. Ultimately, the statute of limitations ran for Mr. Joiner to file a 3.850 motion.

9. On or about February 22, 2019, respondent claimed that he informed the Fowlers verbally that based on his research and the information provided by Mr. Joiner a meritorious motion could not be filed.

10. Mr. Joiner also alleges a lack of communication by respondent to himself and his parents.

11. In his response to the grievance committee subpoena for his entire file on Mr. Joiner, respondent failed to produce any correspondence

to his client, Mr. Joiner, or the Fowlers, including any written explanation why he determined that there was no legal or factual basis for a post-conviction motion or an appeal.

12. In response to the grievance committee subpoena, respondent provided two off-point cases he claimed that he reviewed, some handwritten notes and the documents relating to the bar complaint.

13. To date, respondent has failed to produce any evidence or other documentation that he performed any work for Mr. Joiner.

14. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-1.1 Competence; 4-1.2(a) Lawyer to Abide by Client's Decisions; 4-1.3 Diligence; 4-1.4 Communication; and Rule 4-1.5(a) Illegal, Prohibited, or Clearly Excessive Fees and Costs.

COUNT II – TFB# 2021-00,443(4D) – THE FLORIDA BAR

15. Respondent represented Juanita Wedgeworth on a misdemeanor charge in Duval County. The case is identified as 2019-MM-20988.

16. Due to Covid-19 (The Pandemic) there were a limited number of jury panels that were shared among several judges/divisions in Duval County.

17. Judge Mitchell's assistant sent an email to all the attorneys on the docket, prior to the scheduled court date, asking the attorneys to advise him if they were ready to go to trial or needed a continuance or were resolving the matters.

18. Judge Mitchell's assistant included The State of Florida vs. Wedgeworth, Duval County Case No. 2019-MM-20988 in the email to respondent.

19. Every lawyer responded to the judge's inquiry except respondent.

20. The judge's assistant sent a second email to respondent later in the week. Again, respondent failed to respond to the judge's inquiries.

21. The judge asked the prosecutor if she had spoken to respondent and she said respondent had not returned her phone calls.

22. Neither the judge, his assistant, nor the prosecutor heard anything from respondent until the morning of jury selection.

23. On Monday morning, March 29, 2021, respondent appeared and announced he was ready for trial.

24. The judge set the case for trial after admonishing respondent for all his previous failures to communicate with the court, and failure to appear.

25. On March 30, 2021, the case was tried, and respondent's client, Ms. Wedgeworth, was found guilty.

26. The judge did not immediately remand respondent's client into custody, but allowed Ms. Wedgeworth to remain out of custody and on bond pending sentencing to be held on April 16, 2021 at 10:00 a.m.

27. At the time, Ms. Wedgeworth was pregnant.

28. On April 16, 2021, the victim was present in court.

29. On April 16, 2021, respondent and his client failed to appear.

30. The judge then issued a *capias* warrant for Ms. Wedgeworth, knowing that she was in the later stages of her pregnancy.

31. At 11:30 a.m., after the victim had been waiting for approximately 1.5 hours, the judge had his assistant call respondent to find out why he and his client were not in court as required.

32. Respondent told the judge's assistant that his client was pregnant, and she was having some issues.

33. The assistant inquired into what issues and respondent told her there was a miscommunication. The judge's assistant instructed respondent to get on the ZOOM hearing immediately.

34. Respondent got on ZOOM, without his client, shortly after noon.

35. Respondent told the judge that his client was having some issues.

36. The judge again admonished respondent about having not shown up five (5) times in this case alone and ended the hearing.

37. On April 18, 2021, respondent filed a motion to recall the warrant.

38. On April 21, 2021, the judge denied the motion.

39. On April 29, 2021, respondent filed an amended motion.

40. In the motion, respondent stated “[his client] had some complications with pregnancy since the last court hearing and was in and out of hospital for care.”

41. Respondent further stated that “[he] was later informed that [his client] was in between insurance companies for medical care because of her employment at Amazon and not working during pregnancy”, although he also stated in the motion that his client was “employed”.

42. Finally, respondent stated that “[his client] recently informed counsel she was recently she was [sic] seen for pregnancy complications and put on bed rest because of ongoing complications with pregnancy.”

43. On April 30, 2021, a forfeiture hearing was held.

44. At the hearing the judge again admonished respondent for his failure to appear at the previous hearings.

45. The judge further questioned respondent's assertions in his motion that his client was "in and out" of the hospital and was on bed rest prior to her delivery when the note provided by her doctor clearly stated she would be on bedrest after her delivery.

46. The court also questioned respondent's client, who admitted that she had not been in the hospital, was not on bedrest and that she was actually at home on April 16, 2021.

47. The court recalled the *capias* warrant and struck the forfeiture, stating that it was only because of respondent's client's pregnancy, and re-set the sentencing hearing for June 21, 2021 in person, after the birth of the child.

48. On June 21, 2021, respondent's client was sentenced to 45 days in jail and 12 months' probation.

49. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-1.1; 4-1.3 Diligence; Competence; 4-1.4 Communication; 4-3.3(a)(1) A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the

tribunal by the lawyer; 4-3.3(a) A lawyer shall not knowingly offer evidence that the lawyer knows to be false; and 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; 4-8.4(d) A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice.

COUNT III – TFB# 2021-00,460(4D) – THE FLORIDA BAR

50. As with the above count, due to Covid-19 there were a limited number of jury panels that were shared among several judges/divisions.

51. In this case, on Thursday, April 29, 2021, Judge Lanigan had an informal pre-trial conference for three cases that were ready for trial. She set the meeting via ZOOM for 3:00 p.m. This was done informally without a record.

52. The judge's assistant sent an email to all the lawyers who needed to attend the informal pre-trial conference.

53. Respondent confirmed the meeting for Thursday, April 29, 2021 at 3:00 p.m.

54. On April 29, 2021, when the judge finished with the other cases on the docket however, respondent still failed to appear.

55. At approximately 3:10 p.m. that day, the judge had her assistant call respondent. He did not answer.

56. The judge then called respondent while on her ZOOM meeting. She asked him what was going on and why he was not on her ZOOM.

57. Respondent advised that he had just gotten out of another judge's ZOOM hearing (Judge Mitchell) and he was getting ready to log on.

58. Assistant State Attorney Clare Kelly told Judge Lanigan that respondent was not just on with Judge Mitchell because she was on with him and respondent had finished about 2:00 p.m. or 2:10 p.m.

59. According to Judge Lanigan, this was not the first time respondent had to be prompted to attend a ZOOM hearing in this case.

60. In mid-April respondent had filed a Motion in Limine regarding the chain of custody of evidence collected by the victim.

61. The motion was argued at the hearing on Friday, April 30, 2021.

62. The judge explained to respondent that chain of custody does not apply to non-law enforcement officers.

63. Assistant State Attorney David Johnston had to explain that the way to handle the motion was to have an evidentiary hearing.

64. Nonetheless, the judge decided to pick the jury on Tuesday morning, May 4, 2021, have the evidentiary hearing Tuesday afternoon and have the trial Wednesday, May 5, 2021.

65. Respondent agreed.

66. Assistant State Attorney Johnston asked respondent if he had the witnesses subpoenaed.

67. According to the judge, respondent closed his eyes, looked down and did not respond.

68. The judge asked him again if he had the witnesses subpoenaed and he mumbled something to the effect that he did.

69. The state asked him again directly if he sent the subpoenas to the State's witnesses and he stated he was working on that.

70. On Monday morning, May 3, 2021, the case was set for a final pre-trial. Respondent's client and the Assistant State Attorney were present on ZOOM.

71. Respondent was late.

72. Once respondent appeared, Assistant State Attorney Johnston explained that one of the detectives was not available for the May 4, 2021 hearing.

73. The judge noted that just a few days prior to the April 29, 2021 meeting, respondent filed a Motion to Dismiss based on statements that the victim had made in depositions taken in 2018 and March 2021.

74. Assistant State Attorney Johnston raised the issue in the April 29, 2021 hearing. Assistant State Attorney Johnston questioned technical issues regarding the motion, explaining there were different ways the motion had to be handled, depending on what type of motion it actually was.

75. Respondent was unable to answer the questions stating that he was not really sure. He said he would amend the motion that night.

76. Assistant State Attorney Johnston asked respondent if he could just tell her what it would be, and he said he thought it would be a “B motion but he could also file it as a C motion”.

77. Respondent sent the amended motion to Assistant State Attorney Johnston around 11:30 p.m. that night and the only thing he changed was adding the letter “B”. The certificate of service still showed it being served earlier in April.

78. Respondent’s decision to file the Motion to Dismiss at this time was clearly incompetent.

79. The Assistant State Attorney said the witnesses could be available for trial, but they again discussed the five (5) day notice and not being able to be served in time.

80. The judge explained to respondent that his failure to timely subpoena the witnesses would cause them to reschedule the trial. This meant that they had taken the jury panel from another judge and had wasted the court's time.

81. Further, they had already scheduled jury panels for the next trial week and the way the priority of the cases was structured is that they would now have to move the trials for the next week, taking away those trials because older cases have priority. Since this case was an older case, every time it was moved, it had priority.

82. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-1.1 Competence; 4-1.3 Diligence; 4-1.4 Communication; 4-3.3(a)(1) A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; 4-3.3(a) A lawyer shall not knowingly offer evidence that the lawyer knows to be false; 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice;

WHEREFORE, The Florida Bar prays respondent will be

appropriately disciplined in accordance with the provisions of the Rules
Regulating The Florida Bar as amended.



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CERTIFICATE OF SERVICE

I certify that this document has been e-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Edward Iturralde, respondent's counsel, at ed@iturraldelaw.com; and that a copy has been furnished by United States Mail via certified mail No. 7017 3380 0000 1082 8147, return receipt requested to Edward Iturralde, whose record bar address is 2910 Kerry Forest Pkwy D4204, Tallahassee, FL 32309-6892 and via email to James Keith Fisher, Bar Counsel, jfisher@floridabar.org, on this 29th day of December, 2021.



Patricia Ann Toro Savitz
Staff Counsel

NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS

PLEASE TAKE NOTICE that the trial counsel in this matter is James Keith Fisher, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Tallahassee Branch Office, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, (850) 561-5845 and jfisher@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES REGULATING THE FLORIDA BAR,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.