

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

NAH-DEH E. W. SIMMONS,
Respondent.

Supreme Court Case
No. SC21-21

The Florida Bar File Nos.
2020-00,106(4D); 2020-00,165(4D);
2020-00,459(4D); 2020-00,506(4D);
2021-00,039(4D); 2021-00,208(4D);
2021-00,443(4D); 2021-00,460(4D)

Received, Clerk, Supreme Court

SEP 28 2022

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned respondent, Nah-Deh E. W.

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

3. As to The Florida Bar Case Nos. 2020-00,106(4D); 2020-
00,165(4D); 2020-00,459(4D); 2020-00,506(4D); 2021-00,039(4D); 2021-

00,208(4D); 2021-00,443(4D); and 2021-00,460(4D), there have been findings of Probable Cause by the Grievance Committee.

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

A. 90-day suspension and probation (probation will end upon completion of all professional enhancement programs and any recommended FLA contract);

B. Ethics School; Respondent will attend Ethics School within 6 months of the date of the Court's order accepting this consent judgment and pay the \$750.00 fee associated with the workshop;

C. Undergo an office procedures and record-keeping analysis by and under the direction of the Diversion/Discipline Consultation Service (hereinafter DDCCS) of The Florida Bar. Respondent must contact DDCCS within 30 days of the Supreme Court Order accepting this consent judgment in order to schedule a DDCCS review. Respondent must fully comply with and implement, at respondent's sole expense, all recommendations made by DDCCS within 60 days of the recommendation, which recommendations shall be in accordance with generally accepted best practices in law firm

management and administration. A final review by DDCS staff will be conducted to confirm compliance with, and implementation of, the recommendations of DDCS. DDCS may require such additional interviews or reviews as it may, in its sole discretion, deem necessary or advisable. Respondent will pay all fees and expenses of DDCS incurred or required in connection with the conduct of its analysis. The minimum fees and costs to be associated with this DDCS review shall be \$2,000.00. DDCS will provide the Lawyer Regulation Department of The Florida Bar with status reports as to the ordered analysis.

D. Florida Lawyers' Assistance, Inc. evaluation; Respondent will contact Florida Lawyers Assistance, Inc. (FLA, Inc.), at 800-282-8981 for an evaluation within thirty (30) days of the order of the Supreme court of Florida. At the end of the sixty (60) day period, respondent will provide the Bar's headquarters office with proof that respondent has scheduled an evaluation. Respondent will abide by all recommendations made by FLA, Inc. including, but not limited to, entering into a rehabilitation contract. Should a rehabilitative contract result from the FLA, Inc. evaluation, Respondent agrees to be placed

on probation for the period of the FLA contract, but such probationary period shall not exceed three years.

If a contract is recommended by FLA, Inc., respondent will pay a FLA, Inc., a one-time \$250.00 registration fee and a probation monitoring fee of \$100.00 per month directly to FLA, Inc. The Florida Bar will monitor respondent's compliance with his FLA, Inc. rehabilitation contract, including nonpayment of the monthly monitoring fees. Should respondent fail to pay FLA, Inc., respondent's failure to pay will be reported to The Florida Bar and the bar will follow up, with regards to respondent's noncompliance, up to and including holding respondent in contempt for failure to pay the monthly monitoring fees.

E. Payment of The Florida Bar's costs.

5. Respondent acknowledges that, unless waived or modified by the Court on motion of respondent, the Court order will contain a provision that prohibits respondent from accepting new business from the date of the order or opinion and shall provide that the suspension is effective 30 days from the date of the order or opinion so that respondent may close out the practice of law and protect the interest of existing clients.

6. The following allegations and rules provide the basis for respondent's guilty plea and for the discipline to be imposed in this matter:

COUNT I – TFB # 2020-00,106(4D) - JOEL CARMONA-RODRIGUEZ

A. The Office of the Public Defender for the Fourth Judicial Circuit of Florida was originally appointed to represent Joel Carmona-Rodriguez on felony charges on October 26, 2016. His case was assigned to an attorney, who handled the case during much of the pre-trial preparation.

B. On March 1, 2018, respondent filed an appearance, and the Public Defender's Office was permitted to withdraw as counsel for Mr. Carmona-Rodriguez.

C. On October 18, 2018, Mr. Carmona-Rodriguez was found guilty by a jury on two felony counts and only guilty of a lesser included misdemeanor on four other charges. After sentencing, Carmona-Rodriguez asked respondent to appeal the conviction. Respondent agreed to do so. However, he never filed the notice of appeal.

D. The Office of the Public Defender was appointed by the judge in open court to represent Mr. Carmona-Rodriguez for

purposes of appeal at the sentencing. However, no written order was prepared or filed with First District Court of Appeal (First DCA).

E. Respondent had the obligation as trial counsel to file the original Notice of Appeal, a statement of judicial acts to be reviewed, directions to the clerk, the order appointing the public defender and designation to the court reporter as required by Rule 9.140(d), Florida Rules of Appellate Procedure. However, Respondent believed he had been relieved of that duty by the trial judge's oral appointment of Public Defender.

F. On December 17, 2018, Mr. Carmona-Rodriguez filed a *pro se* Notice of Appeal.

G. On December 20, 2018, the First DCA issued an Order to Show Cause why the appeal should not be dismissed as untimely.

H. On January 24, 2019, after being notified by the court of the Order to Show Cause, the Public Defender filed a Notice of Appearance and responded to the order, requesting that the court's Order to Show Cause be dismissed and for respondent to file a proper Petition for Belated Appeal.

I. The appeal was ultimately dismissed as untimely, but with leave to file a proper Petition for Belated Appeal.

J. On March 1, 2019, respondent filed the petition; however, he incorrectly filed it in the trial court instead of the appellate court.

K. Because the Public Defender was monitoring the status of the appeal, the improper filing was noticed. They contacted the clerk's office and requested that they forward the petition to the First DCA, but were told that could not be done.

L. The Public Defender had further email and phone communications with respondent informing him that the petition must be filed in the First DCA,

M. On April 23, 2019, respondent filed the petition with the First DCA, however, the petition was not signed or notarized.

N. The First DCA subsequently issued an order to show cause to respondent requiring him to sign the petition and file an amended petition by May 13, 2019.

O. Respondent did not respond to the orders to show cause.

P. On June 18, 2019, the First DCA dismissed the Petition for Belated Appeal but subsequently granted the belated appeal filed by the Public Defender's Office.

Q. 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: (a) Informing Client of Status of Representation; (b) Duty to Explain Matters to Client; and 4-3.2 Expediting Litigation.

COUNT II – TFB # 2020-00,165(4D) – WILLIE RILEY

R. On July 25, 2015, Willie Riley (“Riley”) and Judy Pipkin (“Pipkin”) hired respondent regarding an employment litigation case involving the wrongful termination of Riley’s company, Riley Marketing Services.

S. Riley and Pipkin signed a fee agreement and agreed to a non-refundable retainer of \$1,000.00, which they paid on July 29, 2015, and an hourly rate of \$200.00.

T. On August 30, 2015, Riley and Pipkin sent an additional \$5,000.00. Respondent confirmed receipt of the additional retainer on October 20, 2015.

U. In January 2017, Riley and Pipkin traveled from Los Angeles to Jacksonville to meet with respondent.

V. On January 29, 2017, Riley and Pipkin attended a scheduled meeting with Mr. Scott Fortune, an attorney recommended as “co-counsel” by respondent. They were sent a bill from Fortune Law for \$425.00.

W. Riley and Pipkin's next trip to Jacksonville was June 13, 2017.

X. On June 14, 2017, Riley and Pipkin had a scheduled meeting with another potential co-counsel, T.A. Delegal, recommended by respondent. The next day, respondent met Riley and Pipkin at a Starbucks. When respondent arrived, he brought a "business associate" Raj Gupta ("Gupta").

Y. Riley and Pipkin met with respondent, talked on the phone several times and were asked by respondent to scan all the documents and send the files to respondent's office.

Z. Riley and Pipkin both expressed concerns about the statute of limitations, but were assured that they had 5 years to file.

AA. Pipkin alleged that she sent two checks to "Gupta and Associates" in July 2017.

BB. Respondent asserted that he was unaware of any money sent directly to Gupta and requested copies of the negotiated checks from Riley and Pipkin, which were never provided. Respondent subsequently obtained Pipkin's banking records, which do not reflect those checks were ever transacted.

CC. According to Riley and Pipkin, they repeatedly emailed respondent asking why he was not communicating with them, but only Gupta would respond. Respondent denied those allegations.

DD. According to Riley and Pipkin, they had a phone conversation with respondent on November 2, 2017 and he assured them that everything was done and copies of documents would be sent to them. Respondent denies these allegations.

EE. On or about November 5, 2017, Riley and Pipkin sent a demand letter to respondent for the return of all sums paid to his firm, in the amount \$12,000.00. However, there is no competent evidence that Riley and Pipkin paid Respondent more than \$6,000.

FF. When no response was received, on or about August 7, 2019, Riley and Pipkin, through counsel, sent a demand letter to respondent for a refunds in the amount of \$20,000.00.

GG. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-1.1 Competence; 4-1.2 Objectives and Scope of Representation; 4-1.3 Diligence; 4-1.4 Communication; 4-3.2 Expediting Litigation; 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.

COUNT III – TFB # 2020-00,459(4D) – THE FLORIDA BAR

HH. On December 5, 2019, respondent filed a Notice of Appeal in the case of *Desirea P. Mincey v. State of Florida*, Case No. 1D19-4420, on direct appeal from a judgment and sentence.

II. The court issued an order on December 12, 2019, directing Appellant to either pay the filing fee or file a certified copy of the lower tribunal's order of insolvency.

JJ. On January 17, 2020, the court also directed Appellant to e-file a completed docketing statement within 10 days. Respondent failed to comply both orders.

KK. Thereafter, on February 17, 2020, the court ordered Appellant to show cause why the appeal should not be dismissed, and respondent held personally responsible for payment of the filing fee. Respondent failed to respond to the court's show cause order or paid the filing fee.

LL. On April 1, 2020, the court relieved respondent of any further responsibility as counsel and relinquished jurisdiction to the lower tribunal to appoint counsel.

MM. In the same order, the court also directed respondent to show cause why sanctions should not be imposed against him,

including referral to The Florida Bar, for his failure to respond to the court's orders of December 12, 2019, January 17, 2020, and February 17, 2020.

NN. Respondent failed to respond to the show cause order and failed to show why sanctions should not be imposed.

OO. 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; 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.

COUNT IV – TFB # 2020-00,506(4D) – ANNIE GUERIN

PP. On March 2, 2020, Annie Guerin ("Ms. Guerin") hired respondent to represent her son, John Kennedy ("Mr. Kennedy"), in a family law matter. Mr. Kennedy was incarcerated on unrelated criminal charges at the time.

QQ. Ms. Guerin paid respondent \$2,000.00 on March 2, 2020 and \$500.00 on March 20, 2020.

RR. Respondent filed a Notice of Appearance on March 16, 2020, and a Motion for Continuance on May 6, 2020. Nothing else was filed on behalf of Mr. Kennedy.

SS. According to Ms. Guerin, her son was only contacted by respondent once by phone on or about April 28, 2020.

TT. On July 30, 2020, a Notice of Inquiry was filed with the court by Mr. Kennedy, *pro se*, requesting an update on the status of the case from the court. He made no mention of respondent.

UU. There was no movement on the case since May 6, 2020, other than Mr. Kennedy's inquiry.

VV. Respondent subsequently refunded \$1000.00 to Ms. Guerin.

WW. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-1.3 Diligence; 4-1.4 Communication: (a) Informing Client of Status of Representation; (b) Duty to Explain Matters to Client; and 4-3.2 Expediting Litigation.

COUNT V – TFB # 2021-00,039(4D) – MICHAEL EARL THOMAS

XX. On May 9, 2018, Glenda Thomas paid respondent \$4,000.00 to represent her son, Michael E. Thomas, by adopting 3.850 motions in his six cases and representing him in any subsequent evidentiary hearings.

YY. Respondent asserted that he was initially only hired to represent Mr. Thomas on 3.800 motions (Motion for a Corrected or Illegal Sentence).

ZZ. On August 8, 2018, Mr. Thomas mailed respondent his six 3.850 motions, the trial transcripts and the sentencing transcripts.

AAA. Mr. Thomas alleged that Respondent agreed to adopt and file his motions by September 1, 2018. Respondent denied these allegations.

BBB. On December 13, 2018, respondent filed the motions *pro se* for Mr. Thomas. He did not adopt them.

CCC. Mr. Thomas and his family repeatedly attempted to contact respondent regarding the motions being filed *pro se*, but they were unable to reach him.

DDD. On October 29, 2019, the court granted an evidentiary hearing in all Mr. Thomas' cases.

EEE. On November 18, 2019, Mr. Thomas filed a motion to have counsel appointed, which was granted.

FFF. On February 24, 2020, respondent finally filed Notices of Appearance in Mr. Thomas' cases.

GGG. On February 28, 2020, respondent visited Mr. Thomas and agreed to make a partial refund to his mother.

HHH. Respondent subsequently refunded \$1,300.00 to Ms. Thomas.

III. On or about May 3, 2020, Mr. Thomas gave respondent two (2) new motions.

JJJ. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-1.2(a) Objectives and Scope of Representation; 4-1.3 Diligence; 4-1.4 Communication: (a) Informing Client of Status of Representation, and (b) Duty to Explain Matters to Client; and 4-3.2 Expediting Litigation.

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

KKK. 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 a representation agreement and paid a non-refundable fee \$3,000.00 and a \$500.00 cost deposit.

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

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

NNN. Mr. Joiner asserted that respondent failed to adequately communicate with him and his family.

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

PPP. 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.

QQQ. In response to a grievance committee subpoena, respondent provided minimal evidence of any work performed on behalf of Mr. Joiner.

RRR. 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 4-1.5(a) Illegal, Prohibited, or Clearly Excessive Fees and Costs.

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

SSS. Respondent represented Juanita Wedgeworth on a misdemeanor charge in Duval County case No. 2019-MM-20988.

TTT. Due to Covid-19, there were a limited number of jury panels that were shared among several judges/divisions in Duval County.

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

VVV. Respondent was included in the email, in reference to the Wedgeworth case.

WWW. Respondent failed to respond to the judge's inquiry.

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

YYY. Neither the judge, his assistant, nor the prosecutor heard anything from respondent until he appeared for jury selection and announced he was ready for trial.

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

AAAA. On March 30, 2021, the case was tried, and respondent's client was found guilty and sentencing was scheduled for April 16, 2021 at 10:00 a.m.

BBBB. On April 16, 2021 at 9:00 a.m., respondent and his client failed to appear and the judge issued a capias warrant for Ms. Wedgeworth.

CCCC. At 11:30 a.m., the judge had his assistant call respondent to find out why he and his client were not in court as required.

DDDD. Respondent told the judge's assistant that his client was pregnant, and she was having some issues. The judge's assistant instructed respondent, per the judge, to get on the ZOOM hearing immediately.

EEEE. Respondent got on ZOOM, without his client, shortly after noon and informed the judge that his client was having medical issues.

FFFF. The judge again admonished respondent about failing to appear five times and ended the hearing.

GGGG. On April 18, 2021, respondent filed a motion to recall the warrant and on April 21, 2021, the motion was denied.

HHHH. On April 29, 2021, respondent filed an amended motion, in which he stated that “[his client] had some complications with pregnancy since the last court hearing and was in and out of hospital for care.”

IIII. Respondent further 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.”

JJJJ. On April 30, 2021, a forfeiture hearing was held wherein the judge questioned respondent’s assertions in his motion that his client was “in and out” of the hospital and on bed rest prior to her delivery, when doctor’s letter he provided stated, she would be on bedrest after her delivery.

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

LLLL. Respondent then explained there was a miscommunication between he and his client because she had mentioned going to the emergency room the night before. He apologized profusely to the court for any misunderstanding or miscommunication on his part.

MMMM. The court recalled the capias warrant and struck the forfeiture and rescheduled the sentencing hearing.

NNNN. 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 Candor to the Tribunal; 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.

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

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

PPPP. 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 hearing via ZOOM for 3:00 p.m.

QQQQ. The judge's assistant sent an email to all the lawyers who needed to attend the informal pre-trial conference. Respondent replied and confirmed the hearing time. However, on April 29, 2021, when the judge finished with the other cases on the docket, respondent had not appeared.

RRRR. The judge called respondent during the pretrial conference. Respondent advised that he had been on another judge's ZOOM hearing earlier (Judge Mitchell) and he was getting ready to log on.

SSSS. Assistant State Attorney (ASA), Clare Kelly, informed 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.

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

UUUU. In mid-April respondent filed a Motion in Limine regarding the chain of custody of evidence collected by the victim. That motion was argued at a hearing on Friday, April 30, 2021.

VVVV. The judge had to explain to respondent that chain of custody was not a ground for suppression in this case.

WWWW. The judge advised that jury selection would begin on Tuesday morning, May 4, 2021, the evidentiary hearing on the Motion in Limine would be held on Tuesday afternoon, and the trial would be on Wednesday, May 5, 2021. Respondent agreed with those dates/times.

XXXX. On Monday morning, May 3, 2021, the case was set for a final pre-trial. Respondent's client and the ASA were present. Respondent was late.

YYYY. Once respondent appeared, ASA Katelyn Johnston explained that one of the detectives was not available for the May 4, 2021 hearing. She informed the court that the witnesses could be available for trial, but they had not been given the proper five (5) day notice.

ZZZZ. The judge explained to respondent that his failure to timely subpoena the witnesses now required the trial to be rescheduled and that they had taken the jury panel from another judge and this wasted the court's time.

AAAAA. Further, the judges had already scheduled jury panels for the next trial week and would now have to reschedule

those trials because the older cases took priority due to the limited number of jury panels.

BBBBB. 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 Candor to the Tribunal; 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.

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

8. 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.

9. Respondent agrees to 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.

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 **\$2,247.38**. 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 9th day of September, 2022.



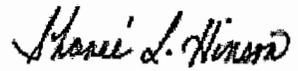
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Dated this 8th day of SEPTEMBER, 2022.



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Dated this 8th day of September, 2022.



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