

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.
2020-00,106(4D); 2020-00,165(4D);
2020-00,459(4D); 2020-00,506(4D);
2021-00,039(4D)

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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, 01/05/2021 08:29:28 AM, Clerk, Supreme Court

COUNT I – TFB # 2020-00,106 - JOEL CARMONA-RODRIGUEZ

4. 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.

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

6. The case was tried before a jury in September 2018. Mr. Carmona-Rodriguez was found guilty by jury verdict on two felony counts and found guilty by jury verdict on lesser included offenses on four other charges.

7. On October 18, 2018, Mr. Carmona-Rodriguez was sentenced to 30 years imprisonment followed by probation, with multiple concurrent terms of imprisonment and probation on other charges.

8. Mr. Carmona-Rodriguez asked respondent to appeal the conviction. Respondent agreed to do so. Respondent, however, failed to file the Notice of Appeal.

9. The Office of the Public Defender was appointed to represent Mr. Carmona-Rodriguez for purposes of appeal, but a copy of the order was never transmitted to their office by respondent.

10. 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, and designation to the court reporter as required by Rule 9.140(d), Fla. R. App. P.

11. Respondent did not file the required Notice of Appeal or the other required documents, nor did he advise the Public Defender that they had been appointed to represent Mr. Carmona-Rodriguez for appellate purposes.

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

13. On December 20, 2018, the First District Court of Appeal issued an Order to Show Cause why the appeal should not be dismissed as untimely.

14. 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, for respondent to file a proper Petition for Belated Appeal.

15. The appeal was ultimately dismissed by the First District Court of Appeal on the grounds it was untimely, but with leave for respondent to file a proper Petition for Belated Appeal.

16. The Public Defender repeatedly communicated with respondent regarding his duty to file a proper Petition for Belated Appeal. They also provided respondent with a sample petition to follow.

17. On March 1, 2019, respondent filed the Petition for Belated Appeal; however, respondent incorrectly filed the petition in the trial court.

18. 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 District Court of Appeal but were told that could not be done.

19. The Public Defender had further email and phone communications with respondent informing him that the petition must be filed in the First District Court of Appeal.

20. On April 23, 2019, respondent filed a Petition for Belated Appeal in the District Court; however, the petition was not signed or notarized.

21. The First District Court of Appeal issued an order to show cause to respondent requiring him to sign the petition and file an amended petition by May 13, 2019, and another order on April 29, 2019 requiring him to file a docketing statement.

22. The appellate division of the Public Defender's Office continued to communicate with respondent insisting that he correct the deficiencies.

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

24. On June 18, 2019, the First District Court of Appeal ultimately dismissed the Petition for Belated Appeal.

25. 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 – WILLIE RILEY

26. 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.

27. 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.

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

29. Respondent claimed to have contacted American Heritage Insurance/Allstate executives during 2016, although there are no billing records or correspondence to support his contention.

30. On August 12, 2016, Pipkin sent respondent \$750.00 for drafting and sending a letter to Kurt Valentine and Donna Walker at Allstate.

31. In January 2017, Wiley and Pipkin travelled from Los Angeles to Jacksonville to meet with respondent.

32. Although, respondent told Riley and Pipkin that he had arranged a meeting with Kurt Valentine at American Heritage, upon arrival at American Heritage, it became apparent that no meeting had been scheduled.

33. In an impromptu meeting held with Mr. Valentine, respondent was not prepared and failed to contribute to the discussions, seeming not to know the facts of the case. Riley and Pipkin proceeded without assistance of counsel, to fend for themselves, while respondent stood on the sidelines with nothing to offer.

34. 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.

35. Unbeknownst to Riley or Pipkin, Mr. Fortune had already passed on the case with respondent as co-counsel, although he had agreed to meet with the “referral client” (Riley and Pipkin).

36. Riley and Pipkin’s next trip to Jacksonville was June 13, 2017.

37. On June 14, 2017, respondent arranged to have Riley and Pipkin meet him at a Starbucks. When respondent arrived, he brought a “legal associate” with him who he introduced as Raj Gupta (“Gupta”).

38. Respondent told Riley and Pipkin that Gupta was an expert negotiator/strategist with a powerful resume, and experience litigating with corporations and large companies.

39. Respondent also said Gupta had helped many clients win high profile cases in California and was recently relocated to Florida.

40. Gupta is not an attorney.

41. Riley and Pipkin met with respondent and Gupta again, talked on the phone several times and were told by respondent to scan all the documents in the suitcase and send the files to respondent’s office to have Gupta review.

42. Pipkin had previously provided copies of the files to the Fortune firm, which were picked up by respondent after the January meeting, making respondent’s request redundant.

43. Riley and Pipkin both expressed concerns about the Statute of Limitations, but respondent and Gupta informed them they had 5 years to file.

44. In June 2017, Riley and Pipkin agreed to continue to work with respondent and asked for a new fee agreement.

45. On June 26, 2017, Gupta claims to have sent a new agreement to review; however, no new agreement was ever signed.

46. Throughout the summer Riley and Pipkin asked for a financial accounting of the funds they had sent.

47. On July 24, 2017, Pipkin sent \$7,200.00 made payable to Gupta and Associates and on July 26, 2017, Pipkin sent \$7,200.00 to Gupta and Associates for Riley. They were told these funds were for court document preparation and research.

48. Gupta told Riley and Pipkin that respondent “requested the checks be put in [Gupta’s] name as [respondent] is in court every day this month and it’s difficult to do banking”, and that respondent “asked to send the check in my name as I am paying our associates as he is working on another case.”

49. Riley and Pipkin repeatedly requested a copy of the filed complaint, but nothing was forthcoming.

50. Riley and Pipkin also repeatedly asked why respondent was not communicating with them, but only Gupta was responding.

51. Respondent had, effectively, turned the case over to Gupta with no supervision.

52. On or about September 16, 2017, in response to Riley's repeated requests for an accounting, Gupta sent Riley and Pipkin an invoice for \$5,100.00 that included 17 hours of meetings and phone calls at a rate of \$300.00 per hour.

53. The only signed fee agreement provided for a rate of \$200.00 per hour.

54. When questioned about Gupta preparing the invoice, respondent stated in an email that he authorized the breakdown that was sent regarding time spent and work done.

55. On or about October 7, 2017, respondent sent Pipkin an invoice for \$7,500.00 to write a letter to American Heritage Life Insurance Company and file and serve the complaint in state court.

56. Respondent had previously billed Pipkin for drafting and sending a letter to Allstate, the parent company of American Heritage.

57. Although, it was Riley and Pipkin's understanding that the complaint had been filed in July 2017, on October 31, 2017, Riley paid \$7,500.00 directly to Gupta's Bank of America account.

58. On October 31, 2017, Pipkin received another \$7,500.00 invoice stating, "retainer for pre-trial services."

59. Riley and Pipkin started to panic when, after paying money, they had received no copies of the filed complaint or reports previously requested.

60. After a lengthy conversation on the phone with respondent on November 2, 2017, Riley was assured everything was done, and that respondent and Gupta were getting copies of all the documents to send.

61. On November 3, 2017, Pipkin spoke with Gupta and was told all paperwork was prepared and submitted.

62. Gupta explained there were additional fees involved to cover the filing of the complaint, as well as researching the multiple files that Pipkin had prepared. He claimed it had taken more hours than anticipated and that was the reason for requesting an additional \$7,500.00.

63. On or about November 5, 2017, Riley and Pipkin sent a demand letter for the return of all sums paid to respondent's firm. This was after Riley and Pipkin discovered that respondent's "litigation expert," Raj Gupta, was a conman and convicted felon.

64. When no response was received, on or about August 7, 2019, Riley and Pipkin, through counsel, sent a demand letter to respondent in an effort to amicably resolve this matter, but again, never received a response.

65. 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; 4-3.2 Expediting Litigation; 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; and 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

COUNT III – TFB # 2020-00,459 – THE FLORIDA BAR

66. 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.

67. 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 for appellate purposes.

68. On January 17, 2020, the court also directed Appellant to e-file a completed docketing statement within 10 days. Appellant failed to comply with either order.

69. 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. Neither Appellant nor respondent responded to the court's show cause order or paid the filing fee.

70. The court subsequently, on April 1, 2020, relieved respondent of any further responsibility as counsel for Appellant in this case and relinquished

jurisdiction to the lower tribunal to appoint counsel in order to preserve Appellant's appellate rights.

71. 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.

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

73. The court order of April 27, 2020 stated that "[respondent's] disregard for the rules and orders of this Court have placed Appellant's direct criminal appeal in jeopardy. Accordingly, the Clerk of the Court is directed to provide a copy of this order to The Florida Bar to consider disciplinary proceedings."

74. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-1.1 Client-Lawyer Relationship; Competence; 4-1.3 Diligence; 4-1.2(a) Lawyer to Abide by Client's Decisions; 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 – ANNIE GUERIN

75. 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.

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

77. Respondent filed a Notice of Appearance on March 16, 2020, then did nothing until he filed a Motion for Continuance on May 6, 2020.

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

79. 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.

80. There has been no movement on the case since May 6, 2020, other than Mr. Kennedy’s inquiry. Respondent’s Motion for Continuance has not been noticed, heard or granted.

81. Mr. Kennedy was released from custody on September 15, 2020.

82. Respondent has refused to refund Ms. Guerin’s money.

83. 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. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.; 4-3.2 Expediting Litigation.

COUNT V – TFB # 2021-00,039 – MICHAEL EARL THOMAS

84. 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.

85. Although respondent claims he was initially hired to represent Mr. Thomas on 3.800 motions (Motion for a Corrected or Illegal Sentence), he has not been able to present a fee agreement that shows the agreed scope of representation.

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

87. On August 16, 2018, respondent called Mr. Thomas and told him that he would adopt his motions and have them filed by September 1, 2018.

88. On December 13, 2018, respondent filed the motions; however, instead of adopting them, as he had told Mr. Thomas, he filed them *pro se*.

89. On May 20, 2019, Mr. Thomas received an order directing the State Attorney to file responses to the *pro se* motions.

90. Mr. Thomas and his family repeatedly attempted to contact respondent regarding the motions being filed *pro se*, but they received no response.

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

92. Since Mr. Thomas had no contact with respondent, on November 18, 2019, he petitioned the court to appoint him counsel. The court appointed Sissy Adams-Jones.

93. Ms. Adams-Jones contacted respondent after speaking with Mr. Thomas.

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

95. On February 28, 2020, respondent visited Mr. Thomas and agreed to return 1/3 of the fee paid by Mr. Thomas' mother. Respondent has returned \$1,200.00.

96. On or about May 3, 2020, Mr. Thomas gave respondent two (2) new motions, which respondent said he would file by June 1, 2020.

97. Respondent failed to do so.

98. Since Mr. Thomas filed a bar complaint against respondent, respondent has informed Glenda Thomas that he will no longer represent Mr. Thomas.

99. Respondent refused to forward Mr. Thomas' trial and sentencing transcripts and his motions to Mr. Thomas' new counsel.

100. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-1.2 Scope of Representation: (a) Lawyer to Abide by Client's Decisions; 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.

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 Nah-Deh E W Simmons, at newsi2179@gmail.com; and that a copy has been furnished by United States Mail via certified mail No. 7017 3380 0000 1082 7751, return receipt requested to Nah-Deh E W Simmons, whose record bar address is PO Box 41083, Jacksonville, FL 32203-1083 and via email to James Keith Fisher, Bar Counsel, jfisher@floridabar.org, on this 5th day of January, 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.