

**IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)**

**THE FLORIDA BAR,**

**Supreme Court Case No. SC21-21**

**Complainant,**

**The Florida Bar File Nos.**

**v.**

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

**NAH-DEH E W SIMMONS,**

**Respondent.**

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**ANSWER**

**Count I – Joel Carmona Rodriguez**

1. Admitted.
2. Denied. Respondent practices in Duval and other counties. He has an office in Duval County. Where he resides is not relevant.
3. Without Knowledge.
4. Admitted, but while the assigned assistant public defender did some pre-trial work significant work remained to be completed and was completed by Respondent.
5. Admitted.
6. Admitted.
7. Admitted.

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8. Admit that Mr. Rodriguez-Carmona wanted to appeal his case, however, the Circuit Court Judge James H. Daniel appointed the Public Defender at the sentencing in open court and Respondent believed that he was relieved of the need to take any further action and that the Public Defender's Office would handle the appeal. At the conclusion of the October 18, 2018 sentencing hearing Judge Daniel stated: "So at this point in time, I'm going to go ahead and appoint the public defender to represent you on the appeal." Denied that he agreed to file the appeal. Admitted that he did not file a Notice of Appeal.

9. Admit that the Public Defender was appointed to represent Mr. Carmona Rodriguez on appeal and that Respondent did not forward a copy of the order. Respondent was not given a copy of that order. Furthermore, there is no requirement for Respondent to forward a copy to the Public Defender. Respondent assumed that the clerk and the court would provide a copy to the Public Defender.

10. Admit that Florida Rule of Appellate Procedure 9.140(d) generally places certain appellate obligations on trial counsel, however denied that Respondent had those obligations based upon the court's appointment of the Public Defender for appeal. Respondent did not ask to withdraw or to

have the Public Defender appointed. The court did it sua sponte without motion or request.

11. Admitted that Respondent did not file the standard pleadings starting a criminal appeal or advise the public defender that they had been appointed on the appeal. Denied that he was required to do so.

12. Admitted.

13. Admitted that the Court entered an Order to Show Cause as to why the appeal should not be dismissed as untimely. The Order was not served on Respondent.

14. Without knowledge of what the Public Defender's knew or acted upon other than what has been filed in court.

15. Admitted that appeal was dismissed with leave for Mr. Rodriguez-Carmona, not Respondent, to file a Motion for Belated Appeal.

16. Denied. An Assistant Public Defender sent an e-mail to Respondent on January 23, 2019 stating that if Mr. Rodriguez-Carmona desired an appeal after sentencing but there was some miscommunication, either Respondent OR Mr. Rodriguez-Carmona could file a motion for belated appeal. She offered to provide Respondent a template and asked if Respondent remembered whether Mr. Rodriguez-Carmona wanted to appeal his sentence. Respondent replied to that e-mail within five minutes

that the PD had been appointed in court at sentencing and there must have been a miscommunication. Ms. Webb again asked if the Defendant wanted an appeal. Again, within five minutes, Respondent responded that “He wanted an appeal.” The Assistant Public Defender responded the next morning that they would respond to the order and send him a template for a belated appeal and he responded, Send me one, please.” There was nothing preventing the Public Defender’s Office from preparing and filing the motion for belated appeal for Defendant to sign. Indeed, that is what was ultimately done.

17. Admitted.

18. Without Knowledge

19. Admitted that Respondent received e-mails from the Public Defender’s Office relating to the belated appeal on March 26, 2019 and April 10, 2019. Respondent does not recall any phone conversations but there may have been.

20. Admitted.

21. Admitted that an Order to Show Cause was issued on April 29, 2019 requiring that an amended signed and sworn petition for belated appeal be filed. Denied that the court entered another order April 29, 2019 requiring

the filing of an electronic docketing statement. That order was entered on May 20, 2019.

22. Denied. Too vague to admit.

23. Admitted.

24. Admitted. However, the court granted a subsequent petition for belated appeal filed by the Public Defenders's Office, giving Mr. Rodriguez-Carmona his day in court.

25. Denied as a conclusion of law.

### **Count II – Riley and Pipkin**

26. Admitted.

27. Admitted.

28. Admitted.

29. Denied.

30. Denied.

31. Admitted.

32. Denied.

33. Denied.

34. Admitted.

35. Denied.

36. Denied.
37. Admitted that Respondent met with Riley and Pipkin at Starbucks and that Gupta was present. Denied that Gupta was a “legal associate.”
38. Denied.
39. Denied.
40. Admitted.
41. Denied.
42. Denied.
43. Denied.
44. Admitted.
45. Without knowledge of Gupta’s claims. Admit that no new agreement was signed.
46. Denied.
47. Denied.
48. Without knowledge of conversations that Respondent was not a party to.
49. Denied.
50. Denied.
51. Denied.

52. Admitted that the accounting was sent and that there were unintentional errors.
53. Admitted.
54. Admitted.
55. Denied.
56. Denied.
57. Without knowledge of any transactions between Riley & Pipkin with Gupta.
58. Denied.
59. Without knowledge of Riley and Pipkin's state of mind.
60. Denied.
61. Without knowledge of conversations that Respondent was not a party to.
62. Without knowledge of conversations that Respondent was not a party to.
63. Admitted that a demand letter was received. Without knowledge of Riley and Pipkin's state of mind.
64. Admitted.
65. Denied as a conclusion of law.

### **Count III - Mincey**

- 66. Admitted.
- 67. Admitted.
- 68. Admitted.
- 69. Admitted.
- 70. Admitted.
- 71. Admitted.
- 72. Admitted that Respondent did not answer the Orders to Show Cause.
- 73. Admitted.
- 74. Denied as a conclusion of law.

### **Count IV – Guerin and Kennedy**

- 75. Admitted.
- 76. Admitted.
- 77. Denied.
- 78. Admitted that is what Ms. Guerin stated in her complaint.
- 79. Admitted that the court docket reflects that someone filed a Notice of Inquiry on July 30, 2020. Without knowledge as to who filed it or what it says.
- 80. Denied.



81. Admitted.

82. Admit that no refunds have been made to Ms. Guerin.

83. Denied as a conclusion of law.

### **Count V - Thomas**

84. Admitted that Respondent was hired by Glenda Thomas on May 9, 2018 to represent her son in multiple cases. Denied that he was hired solely for 3.850 motions and hearings. Mr. Thomas had won his appeal and was awaiting resentencing. Resentencing was held on June 27, 2018.

85. Denied.

86. Admitted that Thomas sent Respondent motions and transcripts.

Without knowledge as to the precise date of mailing.

87. Denied.

88. Denied.

89. Admitted.

90. Denied.

91. Admitted.

92. Without knowledge as to Mr. Thomas's thinking. Denied that Respondent had no contact with Mr. Thomas. Admitted that a motion was filed and the Court ultimately appointed Sissy Adams-Jones, Esq.

93. Admitted.
94. Admitted.
95. Denied.
96. Denied.
97. Denied.
98. Denied.
99. Admitted that Respondent did not file the two new 3.850 motions but denied that he had any obligations to do so.
100. Denied as a conclusion of law.

Respectfully submitted,

*/s/ Edward Iturralde*

Edward Iturralde  
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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was sent by e-mail to James Fisher, Bar Counsel, and Patricia Ann Toro Savitz, Staff Counsel to on this 12th Day of February, 2021.

## **CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing is in 14 point Arial font and double spaced in accordance with requirements.

*/s/Edward Iturralde*

Edward Iturralde