

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. SC21-243

v.

KENNETH EDWARD WALTON II,
Respondent.

The Florida Bar File Nos.
2019-70,668 (11P)
2020-70,037 (11P)
2020-70,203 (11P)
2020-70,204 (11P)

Received, Clerk, Supreme Court

NOV 24 2021

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

I. **SUMMARY OF PROCEEDINGS**

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On February 16, 2021, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

Narrative Summary of Case. The following allegations and rules provide the basis for respondent's guilty plea and for the discipline to be imposed in this matter, which I hereby accept and adopt as the findings of fact in this cause, to wit:

COUNT I: THE FLORIDA BAR FILE NO. 2019-70,668

On or about April 2018, Salena Burgess retained respondent to represent her in two matters. Respondent was diligent at first but then neglected her matters and failed to communicate with her. Respondent acknowledged in correspondence to the bar that he should have declined representation in this matter because of ongoing issues related to his physical and mental health.

COUNT II: THE FLORIDA BAR FILE NO. 2020-70,203

On or about August 2018, respondent was retained by Dmitri Mikhailov to remove a lien on realty that was causing a \$500.00 daily fine to the property owner/client by the City of Sunny Isles Beach. Although respondent reached a reasonable agreement with the City of Sunny Isles

Beach for removal of the lien and resolution of the case, he did not communicate diligently with his client. Respondent acknowledged in correspondence to the bar that he should have declined representation in this matter because of ongoing issues related to his mental health.

COUNT III: THE FLORIDA BAR FILE NO. 2020-70,037

On or about October 2018, respondent was retained by a buyer and seller to prepare documents for the closing of a real estate transaction. Sandor Urban, a realtor, represented the sellers. Respondent made an error on the closing statement, resulting in an overpayment to the sellers of \$6,586.00, which was the amount due to Mr. Urban for his commission. While respondent evaded Mr. Urban's attempts to communicate with him regarding assistance in the recovery of his commission, respondent drafted and mailed a demand letter to the seller requesting a return of the overpayment. After filing his grievance, Mr. Urban was able to recover his commission. Additionally, respondent did not comply with technical trust account record keeping rules for the period of January 1, 2018 through February 29, 2020.

COUNT IV: THE FLORIDA BAR FILE NO. 2020-70,204

On or about June 2019, respondent was retained by Roy Collins to represent him in a foreclosure defense and possible bankruptcy

assistance. Mr. Collins paid a \$5,000.00 retainer fee, but respondent ceased to communicate with the client and only performed minimal legal work on his behalf. Respondent acknowledged in correspondence to the bar that he should have declined representation in this matter because of ongoing issues related to his mental health.

THE FLORIDA BAR FILE NO. 2021-70,224

Respondent was retained in March 2019 to file a lawsuit on behalf of Phillippe Louis. Respondent failed to communicate with Mr. Louis for roughly seven months and did not file the lawsuit. When Mr. Louis said he would seek out a new attorney, respondent promised to get to work on the matter, but ultimately never did. After Mr. Louis filed a bar grievance, respondent reached out to him and asked him to withdraw the grievance, promising to continue working on his case, but failed to do so.

III. **RECOMMENDATIONS AS TO GUILT**

I recommend that respondent be found guilty of violating the following Rules Regulating The Florida Bar:

- As to Count I, I recommend that respondent be found guilty of violating rules 4-1.3 (Diligence); (4-1.4 Communication); and 4-1.16(a) (When Lawyer Must Decline or Terminate Representation);

- As to Count II, I recommend that respondent be found guilty of violating rules 4-1.3 (Diligence); (4-1.4 Communication); and 4-1.16(a) (When Lawyer Must Decline or Terminate Representation);

- As to Count III, I recommend that respondent be found guilty of violating rules 4-4.4(a) (In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third or knowingly use methods of obtaining evidence that violate the legal rights of such a person); and 5-1.2 (Failure to maintain technical trust accounting records);

- As to Count IV, I recommend that respondent be found guilty of violating rules 4-1.4 (Communication); 4-1.5 (Fees and Costs for Legal Services); and 4-1.16(a) (When Lawyer Must Decline or Terminate Representation); and

- As to The Florida Bar File No. 2021-70,22, I recommend that respondent be found guilty of violating rules 4-1.3 (Diligence), 4-1.4 (Communication), 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, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on

account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

400 VIOLATIONS OF DUTIES OWED TO CLIENTS

4.4 Lack of Diligence

4.4(b) Suspension is appropriate when a lawyer causes injury or potential injury to a client and: (1) knowingly fails to perform services for a client; or (2) engages in a pattern of neglect with respect to client matters.

I find this standard to be applicable in the instant case, based on the admissions tendered in respondent's Unconditional Guilty Plea for Consent Judgement.

V. CASE LAW

I considered the following case law prior to recommending discipline:

a. In *The Florida Bar v. Leroy Lee*, SC20-1197, 2021 WL 834811 (2021), the Supreme Court approved a consent judgment suspending respondent for a period of six months and payment of restitution to several

of his clients. He pleaded guilty to 4-1.3 (Diligence); 4-1.4 (Communication); 4-1.5 (Fees and Costs for Legal Services); 3-4.3 (Misconduct and Minor Misconduct); and 4-3.2 (Expediting Litigation).

Respondent had a disciplinary history and offered virtually no mitigation for neglecting client matters, not communicating with his clients, and failing to work on several of the cases referenced in the complaint.

b. In *The Florida Bar v. Alexis Day-Benjamin*, SC19-2003, 2020 WL 6733172 (2020), a consent judgment for six months suspension and restitution was approved where the lawyer neglected and failed to communicate with three different clients about their legal matters. While some mitigation was offered, it did not include a documented mental health component.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

- A. 91-day suspension
- B. 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 thirty (30) 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 within 30 days of the recommendation. Once respondent enters into a rehabilitation contract with FLA, Inc. then the contract will be monitored by FLA, Inc. until such time as respondent has been reinstated or completed the contract.

C. Respondent shall pay restitution to the following former clients in the specified amounts within six months of the entry of the order of the Supreme Court of Florida:

- a. Restitution to Roy Collins in the amount of \$5,000.00; and
- b. Restitution to Philippe Louis in the amount of \$2,000.00.

VII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following personal history of Respondent, to wit:

Age: 50 years old

Date admitted to the Bar: September 29, 1999

Prior Discipline: None

Aggravating Factors: I find the following aggravating factors apply:

- 3.2(b)(3) a pattern of misconduct; and
- 3.2(b)(9) substantial experience in the practice of law

Mitigating Factors

- Restitution as provided herein;
- 3.3(b)(1) absence of a prior disciplinary record; Respondent was admitted to The Florida Bar in 1999. These grievances are limited to the time period between 2018 and 2019 and explained by the reasons set forth below;
- 3.3(b)(2) absence of selfish or dishonest motive;
- 3.3(b)(3) personal or emotional problems. Respondent has expressed great remorse over the quality of representation he provided to his clients. He admitted to the wrongdoing and in mitigation offers evidence of debilitating mental health conditions he was not able to get under control over the course of his representation. Respondent provided documentation that he has mental health conditions categorized into DSM-V. He has been open about that fact and appears to want help. Respondent stopped taking medication for his mental health conditions during the relevant time period. When the problems became apparent, he went to his doctor

who changed his medication. His symptoms worsened. He is currently under a doctor's care and taking steps toward improving his mental health. Respondent has been struggling under the weight of his mental health conditions for several years, and they only became unmanageable during 2018 and 2019.

- Respondent has already reached out to Florida Lawyers assistance and submitted his intake questionnaire for Florida Lawyer's Assistance. On or about November 9, 2021, respondent will be submitting to an evaluation with Florida Lawyer's Assistance, Inc. Respondent acknowledges that his mental health conditions are ongoing and require the care and advice of professionals who can assist in the treatment of these conditions. Respondent seeks help in an effort to modify his conduct so he never finds himself in this position again. Furthermore, respondent understands that his recovery requires his cooperation.

- 3.3(b)(4) timely good faith effort to make restitution. Respondent reimbursed the \$6,000.00 paid to him Salena Burgess by for the representation.

- 3.3(b)(5) full and free disclosure to the bar or cooperative attitude toward the proceedings.

- 3.3(b)(7) character or reputation. Respondent was appointed to The Florida Bar's Civil Rules of Procedure Committee and served for two terms, was president of the Black Lawyer's Association in Miami-Dade County, served two terms on The Florida Bar's Board of Governors Young Lawyer's Division, served on the Board of Directors of Legal Services of Greater Miami, was a Big Brother, and has been elected to a number of positions in the Miami-Dade County Bar Association, including the posts of treasurer, secretary, and vice president.
- 3.3(b)(12) remorse. Respondent has consistently expressed remorse over the treatment of his clients and parties in question from the outset of these grievances.

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida

Bar:

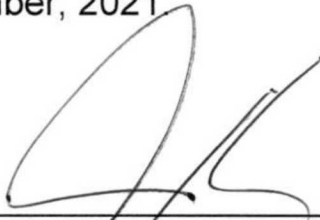
Administrative Fee [Rule 3-7.6(q)(1)]	\$1,250.00
Attendance of court reporter (motion hearing held 4/22/21)	\$90.00
Attendance of court reporter (motion hearing held 6/17/21)	\$90.00

Attendance of court reporter (motion hearing held 7/14/21)	\$90.00
Attendance of court reporter (motion hearing held 8/10/21)	\$90.00
Attendance of court reporter (motion hearing held 10/06/21)	\$90.00

TOTAL \$1,700.00

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, Respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 12th day of November, 2021



Honorable Jeffrey M. Kolokoff, Referee
Richard E. Gerstein Justice Building
1351 N.W 12th Street
Miami, Florida 33125

Original To:

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies to:

Sean Michael Ellsworth, Attorney for Respondent, sean@ellslaw.com

Rita Florez, Bar Counsel, rflorez@floridabar.org

Patricia Ann Toro Savitz, Staff Counsel, psavitz@floridabar.org