

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

v.

DOUGLAS JAMES BARNARD,  
Respondent.

Supreme Court Case  
No. SC21-308

The Florida Bar File Nos.  
2020-10,479 (6D)  
2020-10,480 (6D)

**REPORT OF REFEREE**

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:

The Florida Bar filed a two-count complaint against respondent on March 2, 2021, in this proceeding. The complaint was served on respondent by certified U.S. mail, return receipt requested, to respondent's official bar address and last-known address, and to his official email address and last-known email address. The Rules Regulating The Florida Bar provide that mailing a copy of the complaint by certified U.S. mail to the last known address of the respondent, according to the records of The Florida Bar, shall be deemed effective notice, and such service meets the due process requirement of providing reasonable notice. See R. Regulating Fla. Bar 3-7.11(b) and (c).

Respondent failed to answer the bar's complaint; and on April 28, 2021, the bar filed its Motion for Default. By order dated July 30, 2021, the undersigned referee granted The Florida Bar's Motion for Default. Accordingly, the factual allegations in The Florida Bar's complaint were deemed admitted, and the default provided the undersigned referee with

Received, Clerk, Supreme Court

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competent, substantial evidence upon which to base the referee findings. See *Florida Bar v. Porter*, 684 So. 2d 810, 813 (Fla. 1996).

A sanction hearing was held on August 26, 2021. All parties were in attendance. Respondent testified on his own behalf. No other witnesses were called. The Florida Bar entered two (2) exhibits into evidence and respondent did not enter any exhibits. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence, and the report of referee 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 facts, as deemed admitted, and found by the undersigned to be competent, substantial evidence are as follows:

### COUNT I: Florida Bar File No. 2020-10,479 (6D)

In or about October 2019, respondent charged and collected \$500.00 to represent a client, Nicolaas Deleary. Respondent was hired to seek early termination of the client's probation in two Hillsborough County Circuit Court criminal cases: 17-CF-10175 and 17-CM-14430. Respondent failed to file the required paperwork or appear in court for the client. Respondent failed to perform the services for which he was hired. On October 30, 2019, respondent became ineligible to practice law due to a continuing legal education (CLE) delinquency. Respondent was notified by The Florida Bar by certified letter dated October 30, 2019, of the suspension of his license to practice due to being CLER delinquent.

In November 2019, the client was arrested on new charges. As the client's probation had not been terminated in the prior matter(s), the client was also charged with violating his probation in 17-CF-10175. Respondent charged and collected an additional \$1,500.00 to represent the client in the new matter, Hillsborough County Circuit Court case 19-CF-15456. When respondent charged and collected the additional \$1,500.00 on or about

November 6 and 7, 2019, and agreed to represent the client, he was ineligible to practice law. On November 6, 2019, respondent appeared in court for the client's first appearance and the client was held without bond on the probation violation. When respondent appeared in court on the client's behalf on November 6, 2019, he was ineligible to practice law. An arraignment was scheduled on the new charges and when the client's agent asked respondent if he would appear, respondent advised her that he would not as he was only representing the client on the violation of probation charge. Respondent did not clearly explain his scope of representation with the client's agent or the client when he was retained. Respondent charged and collected an additional \$1,500.00 for the representation. When respondent charged and collected the additional \$1,500.00 for legal services on or about November 13, 2019, he was ineligible to practice law.

Thereafter, respondent failed to reasonably communicate with the client. Upon information and belief, an assistant public defender was counsel of record for the client, communicated with the client, and was unaware that the client had a private attorney. Respondent sent the client's agent a contract for representation of the client after he received the full \$3,500.00. Respondent's contract indicated respondent would handle both cases, but the court record indicates he only appeared on behalf of the client for the probation violation. When respondent sent the client's agent the contract for representation, he was ineligible to practice law. Respondent entered into a contract for the representation of the client after he was ineligible to practice law. Respondent has been CLE delinquent and ineligible to practice law since October 30, 2019. Respondent represented the client in court and performed legal services for the client when he was ineligible to practice law.

On January 30, 2020, respondent was sent a letter by regular U.S. Mail to respondent's record bar address, advising of a complaint in this case and that a response was due by February 14, 2020. Respondent failed to respond to The Florida Bar as requested in the letter of January 30, 2020. On February 21, 2020, respondent was sent another letter, by certified U.S. Mail and regular U.S. Mail to respondent's record bar address, and by electronic mail to respondent's record bar email address, advising of a complaint in this case and that a response was due by March 3, 2020. Respondent failed to respond to The Florida Bar as requested in the letter of February 21, 2020. On March 9, 2020, and March 10, 2020,

bar counsel communicated with respondent by phone at bar counsel's request. Respondent indicated to bar counsel that he had received the bar's letters and requested an extension to respond until March 16, 2020, which was granted. Bar counsel followed up the phone call with respondent on March 9, 2020, with an email stating that his response to this matter was originally due on February 14, 2020. Respondent failed to respond to the bar by March 16, 2020, and on March 17, 2020, bar counsel sent an email to respondent regarding his overdue response in this matter. Respondent failed to respond to the bar's March 17, 2020, email. On September 1, 2020, this matter was referred to the Sixth Judicial Circuit Grievance Committee 6D. On September 1, 2020, respondent was given notice that an investigating member on the grievance committee was appointed to this matter and that respondent must contact the investigating member within ten (10) days. Respondent failed to contact the grievance committee's investigating member.

COUNT II: Florida Bar File No. 2020-10,480 (6D)

Respondent failed to complete his continuing legal education (CLE) requirements. Respondent was notified by The Florida Bar by certified letter dated October 30, 2019, of the suspension of his license to practice due to being CLER delinquent. Respondent also acknowledged that the Sheriff's Office informed him of the suspension of his bar license on December 14, 2019. Respondent has been CLE delinquent and ineligible to practice law since October 30, 2019. Thereafter, upon information and belief, respondent engaged in the practice of law while ineligible in multiple cases, including but not limited to the cases listed below:

In case no. 19-MM-021538, Lee County, respondent filed defendant's motion to reinstate bond on behalf of a client on or about January 14, 2020.

In case no. 18-007621-CI, Pinellas County, respondent appeared at a hearing on behalf of a client on or about November 21, 2019.

In case no. 19-CT-504819, Lee County, respondent filed a notice of appearance, plea of not guilty, and discovery demand on behalf of a client on or about December 16, 2019. Respondent also filed defendant's motion to reinstate bond on or about December 18, 2019.

In case no. 19-006688-CI, Pinellas County, respondent filed a limited notice of appearance and motion to dismiss on behalf of a client on or about November 17, 2019.

In case no. 19-DR-000693, Sarasota County, respondent appeared in court on behalf of a client on or about January 29, 2020.

In case no. 19-DR-14184, Hillsborough County, respondent filed a notice of filing answer, counter petition, and parenting plan on behalf of a client on or about December 9, 2019. Respondent also appeared in court on behalf of the client on or about December 17, 2019.

In case no. 19-CT-010296, Hillsborough County, respondent appeared in court on behalf of the client on or about December 4, 2019, and January 28, 2020.

In case no. 19-CM-008216, Hillsborough County, respondent appeared in court on behalf of the client on or about December 12, 2019, and February 24, 2020.

In case no. 19-CF-015761, Hillsborough County, respondent filed a notice of appearance and plea of not guilty on January 7, 2020.

In case nos. 18-CT-000389; 18-CT-000390; 18-CT-000391; 18-TR-002280; 18-TR-002294; 18-TR-002295, Hillsborough County, respondent appeared in court on behalf of a client on or about December 4, 2019 and January 28, 2020.

In case no. 19-CF-014459, Hillsborough County, respondent filed a notice of appearance and plea of not guilty on behalf of a client on or about January 16, 2020 in open court. Respondent also appeared in court for the client on or about January 16, 2020 and February 12, 2020.

In case no. 19-CF-006470, Hillsborough County, respondent appeared in court on behalf of a client on or about December 18, 2019, and respondent signed a pre-trial diversion agreement on the same date. Respondent also appeared in court on or about January 08, 2020.



In case no. 19-CF-010138, Hillsborough County, respondent appeared in court on behalf of a client on or about December 16, 2019 and January 28, 2020.

In case no. 19-CF-011422, Hillsborough County, respondent appeared in court on behalf of a court on or about December 16, 2019.

On January 30, 2020, respondent was sent a letter by electronic mail to respondent's record bar email address, advising of a complaint in this case and that a response was due by February 14, 2020. Respondent failed to respond to The Florida Bar as requested in the letter of January 30, 2020. On February 21, 2020, respondent was sent another letter, by certified U.S. Mail and regular U.S. Mail to respondent's record bar address, and by electronic mail to respondent's record bar email address, advising of a complaint in this case and that a response was due by March 3, 2020. Respondent failed to respond to The Florida Bar as requested in the letter of February 21, 2020. On March 9, 2020, and March 10, 2020, bar counsel communicated with respondent by phone at bar counsel's request. Respondent indicated to bar counsel that he had received the bar's letters and requested an extension to respond until March 16, 2020, which was granted. Bar counsel followed up the phone call with respondent on March 9, 2020, with an email stating that his response to this matter was originally due on February 14, 2020. Respondent failed to respond to the bar by March 16, 2020, and on March 17, 2020, bar counsel sent an email to respondent regarding his overdue response in this matter. Respondent failed to respond to the bar's March 17, 2020, email.

On April 8, 2020, this matter was referred to the Sixth Judicial Circuit Grievance Committee 6D. On April 15, 2020, respondent was given notice that an investigating member on the grievance committee was appointed to this matter and that respondent must contact the investigating member within ten (10) days. Respondent failed to contact the grievance committee's investigating member.

Respondent is suspended for his failure to respond to an official bar inquiry in this matter. In case no. SC20-688, the Florida Supreme Court entered an order dated July 10, 2020, suspending respondent until he has fully responded in writing to the official Bar inquiry, and until further order of the Court.

Thereafter, upon information and belief, respondent failed to comply with Rule 3-5.1(h), requiring respondent to immediately furnish a copy of the order to all clients with matters pending; all opposing counsel; all courts; and/or all state, federal, or administrative bars of which respondent is a member. Additionally, respondent failed to furnish bar counsel with a sworn affidavit listing the names and addresses of all persons and entities that had been furnished a copy of the order.

### III. RECOMMENDATIONS AS TO GUILT.

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

Count I: Rule 1-3.6 (Delinquent Members), Rule 4-1.2 (Objectives and Scope of Representation), Rule 4-1.3 (Diligence), Rule 4-1.4 (Communication), Rule 4-1.5 (Fees and Costs for Legal Services); Rule 4-5.5(a) (Unlicensed Practice of Law); Rule 4-8.4(d) (Misconduct: A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice); and Rule 4-8.4(g) (Misconduct: A lawyer shall not fail to respond in writing to any official inquiry by bar counsel or a disciplinary agency).

Count II: Rule 1-3.6 (Delinquent Members); Rule 3-5.1(h) (Notice to Clients); Rule 4-5.5(a) (Unlicensed Practice of Law); Rule 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 Rule 4-8.4(g) (A lawyer shall not fail to respond in writing to any official inquiry by bar counsel or a disciplinary agency).

### IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

Standard 4.4(a), Lack of Diligence, states that, "Disbarment is appropriate when a lawyer causes serious or potentially serious injury to a client and: (1) abandons the lawyer's practice; (2) knowingly fails to perform services for a client; or (3) engages in a pattern of neglect with respect to client matters."

Standard 7.1(a), Violations of Other Duties Owed as a Professional, states that, "Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another and causes serious or potentially serious injury to a client, the public, or the legal system."

Respondent neglected his above-mentioned client's matter and failed to pursue their legal objectives. Firstly, respondent charged and collected \$500.00 to represent Mr. Deleary. Respondent was hired to seek early termination of the client's probation in two Hillsborough County Circuit Court criminal cases. Respondent failed to file the required paperwork or appear in court for the client. In November 2019, the client was arrested on new charges. As the client's probation had not been terminated in the prior matter(s), the client was also charged with violating his probation. Respondent's failure to provide services to the client caused serious or potentially serious injury to a client.

Secondly, respondent's contract with Mr. Deleary indicated respondent would handle both of the client's cases, but the court record indicates respondent only appeared on behalf of the client for the probation violation. This is a second example of how respondent failed to perform services for this client. As respondent knowingly failed to perform the services for which he was hired, and respondent's conduct caused serious or potentially serious injury to a client, respondent should be disbarred.

Respondent also collected legal fees and performed legal services in multiple clients' matters after receiving notice that he was ineligible to practice law due to CLE delinquency. Respondent intentionally engaged in the unlicensed practice of law, which is a violation of a duty owed as a professional, with the intent to obtain a benefit for respondent and caused serious or potentially serious injury to a client, the public, or the legal system. Additionally, respondent has failed to file any responsive pleading in this proceeding, and failed to comply with Rule 3-5.1(h) following the Florida Supreme Court's July 10, 2020, Order suspending him in case no. SC20-688. Thus, the applicable Standards support the bar's recommended sanction of disbarment for respondent's misconduct.

#### V. CASE LAW

I considered the following case law prior to recommending discipline:



The Florida Supreme Court has stated that “a lawyer’s willful refusal to participate at all in the disciplinary process when he is accused of misconduct calls into serious question the lawyer’s fitness for the practice of law.” *Florida Bar v. Bartlett*, 509 So. 2d 287, 289 (Fla. 1987). As stated above, respondent failed to file any responsive pleading in the proceeding before the undersigned. Further, respondent had a professional obligation to his clients to diligently represent his clients’ interests, keep the clients informed about their matters, perform the services he was hired and compensated to do, and to inform his clients of his ineligibility to practice law while delinquent.

In *Florida Bar v. Davis*, 149 So. 3d 1121 (Fla. 2014), Davis was disbarred for knowingly failing to perform services for a client after charging the client a \$5,000 retainer fee. At the time of disbarment, Davis was already serving a suspension. Davis also failed to answer The Florida Bar’s complaint, or otherwise participate in the formal disciplinary proceeding, which resulted in a default entered against her. The Court cited the above-referenced *Bartlett* decision in supporting the sanction of disbarment against Davis. *Davis*, 149 So. 3d at 1125.

In *Florida Bar v. Chuilli*, 2019 WL 479243, (Fla. February 7, 2019) (Unpublished disposition), Chuilli was disbarred for continuing to represent his client in a civil matter after he became delinquent in his CLE requirements and ineligible to practice law in Florida. Chuilli continued to represent his client but ceased communicating with her. Thereafter, the client notified the court that Chuilli was ineligible to practice law and requested a trial date. Chuilli failed to respond to his client’s requests and failed to return her documents. Chuilli also failed to participate in the disciplinary proceedings.

In *Florida Bar v. Amador*, 2019 WL 5457848 (Fla. Oct. 24, 2019) (Unpublished Disposition), Amador was immediately disbarred due to Amador’s existing indefinite suspension for failing to respond to an Order to Show Cause in contempt proceedings arising out of her failure to respond to bar inquiries regarding a grievance. Amador was delinquent in membership fees, disciplinary costs, and continuing legal education requirements. Amador accepted legal fees to represent clients in bankruptcy proceedings and thereafter failed to communicate with the clients or to provide any significant services. Additionally, Amador failed to

respond to the bar's investigative inquiries and did not participate at any time during the disciplinary proceedings.

In *Florida Bar v. Stewart*, 2016 WL 3450475, (Fla. June 23, 2016) (Unpublished Disposition), Stewart was disbarred for practicing law while dues delinquent, neglecting a real estate matter, failing to communicate with his client, failing to respond to the bar's inquiries, failing to safeguard trust funds, and abandoning his law practice without notice to his clients. A default was entered against Stewart.

In *Florida Bar v. Faughnan*, 2021 WL 3087874 (Fla. July 22, 2021) (Unpublished Disposition), Faughnan was immediately disbarred for failing to comply with Rule 3-5.1(h) by not notifying her clients, opposing counsel, and tribunals of her suspension and not providing the bar, within 30 days of her suspension, with a sworn affidavit listing the names and addresses of all persons and entities that were furnished a copy of the suspension order. Faughnan failed to respond to the Court's Order to Show Cause.

Like the cases cited above, respondent neglected his professional and legal obligations as a member of the Florida Bar and to his clients, which exposed his clients to serious or potentially serious injury. Respondent's egregious misconduct of collecting legal fees and performing legal services in multiple clients' matters after receiving notice that he was ineligible to practice law due to CLE delinquency also caused serious or potentially serious injury to the legal system. Therefore, based on the cited case law, respondent's conduct is deserving of disbarment.

Case law provided by respondent -TBD

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. Disbarment.
- B. Payment of The Florida Bar's costs in these proceedings.

Respondent will eliminate all indicia of respondent's status as an attorney on social media, telephone listings, stationery, checks, business cards office signs or any other indicia of respondent's status as an attorney, whatsoever. Respondent will not hold himself out as a licensed attorney.

## VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

Personal History of Respondent:

Age: 56

Date admitted to the Bar: March 26, 1992

Aggravating Factors:

I find that the following aggravating factors apply:

3.2(b)(1) (prior disciplinary offenses): Respondent was held in contempt and suspended until he fully responded in writing to the official bar inquiry in Florida Supreme Court No. SC20-688; Florida Bar File No. 2020-10,480 (6D). The Florida Supreme Court's Order dated July 10, 2020, required respondent to immediately furnish a copy of the order to all clients with matters pending, all opposing counsel, all courts, and/or all state, federal, or administrative bars of which respondent is a member, and to furnish bar counsel with a sworn affidavit listing the names and addresses of all persons and entities that had been furnished a copy of the order pursuant to Rule 3-5.1(h). Respondent has failed to comply with that Rule and remains suspended for his failure to respond to an official bar inquiry.

3.2(b)(4) (multiple offenses): Respondent engaged in misconduct in multiple matters that caused harm or potential harm to his clients.

3.2(b)(5) (bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency): Respondent failed to respond to bar counsel and the grievance committee during their investigation. Also, once formal proceedings were initiated, respondent failed to submit an answer to the bar's complaint.

3.2(b)(9) (substantial experience in the practice of law): Respondent was admitted to the practice of law on March 26, 1992.

Mitigating Factors:

I find that the following mitigating factor applies:

3.3(b)(8) (physical or mental disability or impairment or substance-related disorder).

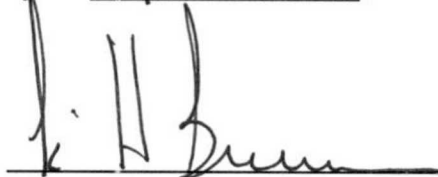
VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the costs set forth in The Florida Bar's Motion to Assess Costs and Statement of Costs filed in this cause were reasonably incurred and were not unnecessary, excessive, or improperly authenticated.

Investigative Costs	\$79.75
Court Reporters' Fees	\$515.00
Administrative Fee	\$1,250.00
<b>TOTAL</b>	<b>\$1,844.75</b>

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 8<sup>th</sup> day of September, 2021.

  
\_\_\_\_\_  
Honorable Kim Hernandez Brennan, Referee

Original To:

**Honorable John A. Tomasino**, Clerk of the Supreme Court of Florida;  
Supreme Court Building; 500 South Duval Street, Tallahassee, Florida,  
32399-1927

Conformed Copies to:

**Douglas James Barnard, Respondent**, 11199 69<sup>th</sup> Street N., Largo, Florida 33773; [dougb@barnardlawgroup.com](mailto:dougb@barnardlawgroup.com), [djbarnardfla@gmail.com](mailto:djbarnardfla@gmail.com)

**Katrina S. Brown, Bar Counsel**, The Florida Bar, Tampa Branch Office, 2002 N. Lois Avenue, Suite 300, Tampa, Florida 33607, [kschaffhouser@floridabar.org](mailto:kschaffhouser@floridabar.org), [nstanley@floridabar.org](mailto:nstanley@floridabar.org), [tampaoffice@floridabar.org](mailto:tampaoffice@floridabar.org)

**Patricia Ann Toro Savitz, Staff Counsel**, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-6584, [psavitz@floridabar.org](mailto:psavitz@floridabar.org)