

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

MARK E. A. BAKAY,
Respondent.

Supreme Court Case
No. SC21-779

The Florida Bar File
No. 2020-30,127 (7B)

The Florida Bar File
No. 2021-30,562 (7B)

Received, Clerk, Supreme Court

SEP 15 2021

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned respondent, Mark E. A. Bakay, 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 not represented in this matter.

3. As to SC21-779, Florida Bar File No. 2020-30,127 (7B), there has been a finding of probable cause by the Seventh Judicial Circuit Grievance Committee "B."

4. As to Florida Bar File No. 2021-30,562 (7B), respondent waives a finding of probable cause.

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

A. One-year period of suspension from the practice of law requiring proof of rehabilitation prior to reinstatement.

A. Two-year period of probation upon reinstatement.

B. Terminate the one-year probation that respondent is currently serving in The Florida Bar File No. 2020-30,373(7B).

C. Payment of the bar's disciplinary costs.

6. 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.

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

CASE NUMBER SC21-779

THE FLORIDA BAR FILE NO. 2020-30,127 (07B)

A. While representing Terrell Williams-Bey in a landlord-tenant matter, respondent accompanied Mr. Williams-Bey to an automobile dealership on June 8, 2019, for the purpose of purchasing an automobile for I Care, LLC, a business owned by Mr. Williams-Bey. Respondent accompanied Mr. Williams-Bey to the dealership as both an attorney and a friend.

B. Mr. Williams-Bey conveyed to respondent that he had a case with another attorney in which he had received settlement funds and was awaiting receipt of the settlement proceeds. This was also conveyed to the dealership representative.

C. The dealership representative, Mr. Williams-Bey and respondent agreed that a check from respondent's law office operating account in the amount of the purchase price of the vehicle would be held by the dealership for at least one week until Mr. Williams-Bey received the settlement proceeds and would then provide a personal check as a substitute. If the substitute check was not produced, then respondent's check could be cashed. Respondent did not intend for the check to be cashed and was only to be used as a placeholder.

D. On June 24, 2019, after no funds were received from Mr. Williams-Bey, the dealership presented respondent's operating account check to the bank which was not honored due to insufficient funds.

E. The dealership later learned that the automobile subsequently was sold to CarMax by I Care, LLC. The dealership did not receive any funds from this transaction. Respondent had no knowledge of the sale of the automobile to CarMax.

F. Thereafter, the dealership filed a civil lawsuit against respondent for the unpaid check and sought damages for the worthless check, fraud, fraud in the inducement and negligent misrepresentation.

G. The circuit court required the parties to exchange witness lists and a schedule of all exhibits, meet ten business days prior to the pretrial conference, and provide a joint pretrial statement. Respondent failed to comply with this court order and in response, the dealership filed a motion for sanctions which was granted by the court.

H. The circuit court, with the consent of respondent, granted the dealership's motion for summary judgment and entered an order for damages. The court found that the dealership was entitled to summary judgment for Count I for a worthless check, Count II for a worthless check that respondent failed to pay after it was returned unpaid, Count III and IV

for fraud and fraudulent inducement for untruthfully, implicitly, and expressly representing to the dealership that his law office account check would be paid and based upon that representation the dealership sold the vehicle to Mr. Williams-Bey, and Count V for negligent false representation. Respondent was ordered to pay damages in the amount of \$218,102.52.

I. By reason of the foregoing, respondent admits his misconduct violated the following Rules Regulating The Florida Bar:

i. 3-4.3 The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all-inclusive nor is the failure to specify any particular act of misconduct be construed as tolerance of the act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or a misdemeanor.

ii. 4-3.4(c) A lawyer must not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

iii. 4-3.4(d) A lawyer must not, in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party.

iv. 4-4.1(a) In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

v. 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.

vi. 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.

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J. The bar received a notice of insufficient funds from Chase Bank regarding respondent's law office trust account on March 1, 2021. When respondent's credit card servicing company made its regular automatic debit in the amount of \$11.14 in February 2021, respondent's trust account contained insufficient funds to honor the obligation. The bar's preliminary audit of respondent's trust account records for July 1, 2020 to March 31, 2021, revealed that respondent placed credit card deposits of earned fees into his trust account and issued checks for bills to Century Link constituting commingled funds. No client funds existed in the trust account at the time of the overdraft and therefore, no clients were harmed.

K. By reason of the foregoing, respondent admits his misconduct violated the following Rules Regulating The Florida Bar: 5-1.1(a)(1) A lawyer must hold in trust, separate from the lawyer's own

property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, must be kept in a separate federally insured bank, credit union, or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account except: (A) A lawyer may maintain funds belonging to the lawyer in the lawyer's trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account; and (B) A lawyer may deposit the lawyer's own funds into trust to replenish a shortage in the lawyer's trust account. Any deposits by the lawyer to cover trust account shortages must be no more than the amount of the trust account shortage, but may be less than the amount of the shortage. The lawyer must notify the bar's lawyer regulation department immediately of the shortage in the lawyer's trust account, the cause of the shortage, and the amount of the replenishment of the trust account by the lawyer.

8. In mitigation, respondent has personal or emotional problems [Florida Standards for Imposing Lawyer Sanctions 3.3(b)(3)]; he has cooperated in the disciplinary proceedings [Florida Standards for Imposing

Lawyer Sanctions 3.3(b)(5)]; suffered the imposition of other penalties or sanctions as a result of the damages in the civil case [3.3(b)(11)] and, he has expressed remorse for his misconduct [3.3(b)(12)]. In aggravation, his conduct involved in multiple offenses [3.2(b)(4)]; and, respondent has substantial experience in the practice of law, admitted in 2004 [3.2(b)(9)]. Respondent has a prior discipline of a grievance committee admonishment; however, this is neither aggravating nor mitigating as the conduct in this case occurred prior to the discipline imposed by the committee.

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

10. 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.

11. Respondent agrees to 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 no longer hold him / her self out as a licensed attorney.


12. 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 \$2,352.20. 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.

13. 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.

14. This Conditional Guilty Plea for Consent Judgment fully complies with all requirements of the Rules Regulating The Florida Bar.

Dated this ____ day of _____, 2021.



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Dated this 26 day of July, 2021.

Dated this 1st day of September, 2021.


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