

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. SC22-637

v.

The Florida Bar File
No. 2020-00,180(2B)

JOSHUA DAVID NEALLY,
Respondent.

_____ /

AMENDED 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 May 11, 2022, 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

A. 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.

B. Narrative Summary Of Case.

On June 18, 2018, Forrest and Judith Tucker (“the Tuckers”) attended a presentation by Relief Solutions International (“RSI”) at a hotel in Baltimore, Maryland. They paid \$19,980.00 to RSI for termination of 4 time share contracts. The Tuckers were elderly and due to medical issues could no longer afford the time shares.

On June 28, 2018, respondent sent a letter of introduction to the Tuckers, enclosing a power of attorney and an engagement letter. The Tuckers signed the engagement letter on July 3, 2018.

A few days later, the Tuckers were informed that their 4 cases were actually 7 and RSI and respondent required an additional \$5,220.00, which the Tuckers paid on or about July 25, 2018.

At this point, the Tuckers had paid \$25,200.00 for termination of their 7-time share contracts.

The Tuckers sent copies of all their contracts to RSI and were told both RSI and respondent would communicate with them.

Over the next 14 months, the Tuckers’ inquiries went unanswered, except for the occasional update that “things were progressing.”

On August 9, 2018, Legacy Vacation Club, the owner of Resort World of Orlando, one of the time shares, contacted the Tuckers and told them they would only deal with them directly. The Tuckers complied, and for a payment of \$804.00, the equivalent of one year' maintenance fee, they successfully terminated their timeshare and obtained a Quit Claim Deed.

In or around July 2019, the Tuckers' son-in-law contacted a friend who was a lawyer, and gave him authorization to speak to respondent. He made 4 attempts to contact respondent, with no results.

Respondent never directly contacted the Tuckers, and ultimately no results were obtained on their behalf.

As of September 29, 2019, the filing of the Tuckers' complaint, the additional 6-time share contracts remain unresolved.

On May 20, 2020, respondent sent the Tuckers a letter, withdrawing from representation, stating: "Unfortunately, I have run out of time on trying to be the one to cross the finish line with you. Due to the Corona virus and the economic impact of this, it is clear that I have no choice but to shut down my office."

According to respondent, he was hired by RSI and paid a "per contract" fee of \$500 for time share termination contracts, which was

subsequently reduced to \$266 per contract. Respondent's contract was with RSI and he received no funds directly from the Tuckers.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 4-1.2(a) (Lawyer to Abide by Client's Decisions); 4-1.3 (Diligence); 4-1.4 (a) (Informing Client of Status of Representation); and 4-1.4(b) (A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.).

Respondent will eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards office signs or any other indicia of respondent's status as an attorney, whatsoever.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

3.2 Aggravation

(9) substantial experience in the practice of law.

3.3 Mitigation

- (1) absence of a prior disciplinary record (Respondent was admitted in 2006 and has no prior discipline.);
- (2) absence of a dishonest or selfish motive (Respondent had no ill intent and received no personal gain.);
- (5) full and free disclosure to the Bar or cooperative attitude toward the proceedings (Respondent has responded to the Bar and provided documentation when requested. Respondent has expressed a desire to resolve this matter without the necessity of a trial.); and
- (12) remorse (Respondent has acknowledged that his communication with the complainants was lacking and that his solo practice could be more efficient. He has taken steps with the Missouri Bar to achieve that.).

4.4 Lack of Diligence

- (c) Public reprimand is appropriate when a lawyer is negligent, does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

4.5 Lack of Competence

- (c) Public reprimand is appropriate when a lawyer causes injury or potential injury to a client and: (1) demonstrates failure to understand relevant legal doctrines or procedures; or (2) is negligent in determining whether the lawyer is competent to handle a legal matter.

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

- (c) Public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Timothy Wayne Terry, SC21-1046 [2020-30,550(09C), etc.] – By Court order dated December 20, 2021, the Court publicly reprimanded Terry and directed him to undergo a DDCS review. In three separate family law matters, Terry failed to diligently represent and maintain adequate communication with his clients. Terry refunded his fees and attempted to mitigate his misconduct to the best of his abilities.

The Florida Bar v. LaDray Brandan Gilbert, SC19-840 – By Court order dated November 21, 2019, the court publicly reprimanded respondent and placed him on probation for one year. Respondent failed to competently and diligently represent his clients in their property easement case. After filing the complaint styled as an “Answer,” respondent filed nothing with the court until he submitted a Motion to Withdraw approximately 10 months later; he failed to add a necessary party to the complaint; he failed to attend hearings, after being properly noticed; he did not file any written responses to an Order to Show Cause, a Motion to Dismiss, or a Motion for Attorney’s Fees; and he failed to withdraw as attorney of record by setting his Motion to Withdraw for hearing. Respondent failed to adequately communicate with his clients and keep them apprised of the status of their cases, and he failed to notify his clients of the court hearings.

The Florida Bar v. C. Byron Stout, III, SC16-199 - By Court order dated March 3, 2016, respondent received a public reprimand and Ethics School for misconduct involving his association with a loan modification company. In late 2010, respondent entered into a business relationship with Strategic Marketing Services to provide loan modification services, mostly to out of state clients. Respondent’s representation and collection of fees from out of state clients failed to fully comply with state and federal rules regulating mortgage assistance relief services. There was no evidence that respondent engaged in direct solicitation of clients.

The Florida Bar v. Frank Carrillo, SC15-1160 – By order dated December 3, 2015, the court publicly reprimanded Mr. Carrillo. In a bankruptcy matter, the clients alleged respondent failed to adequately communicate with them. Respondent failed to notify his clients of a notice of deficiency filed by the Trustee. He also failed to respond to the notice or cure it before the deadline resulting in a dismissal the bankruptcy with prejudice.

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. Public Reprimand by publication;
- B. Attendance at Ethics School within 6 months of the date of the Supreme Court of Florida's order approving this consent judgment, and payment of the \$750.00 fee associated with this program; and
- C. Payment of the Florida Bar's costs.

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: 43

Date admitted to the Bar: September 21, 2006

Prior Discipline: None

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	\$1,250.00
TOTAL:	\$1,250.00

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 8th day of September 2022.

/s/Francis J. Allman
Francis J. Allman, Referee
Leon County Courthouse
301 S. Monroe Street, Suite 365-C
Tallahassee, FL 32301-1861

Original to:

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