

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

VALERIE KAYE DOWNING,

Respondent.

Supreme Court Case  
No. SC21-856

The Florida Bar File  
No. 2019-10,190 (20B)

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**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:

On June 8, 2021, the Florida Bar filed its complaint against Respondent in these proceedings. The complaint was served by U.S. certified mail, return receipt requested, to Respondent's record bar address and her last known address. Respondent failed to answer the Bar's complaint. The Supreme Court of Florida entered an Order dated June 8, 2021, designating the Chief Judge of the Twelfth Judicial Circuit of Florida to appoint a referee to hear this case. Thereafter, on June 10, 2021, the

Honorable Kimberly Bonner, Chief Judge, appointed the undersigned to serve as the referee.

On July 7, 2021, the Bar filed its motion for default. On July 14, 2021, the court held a duly noticed case management conference and hearing on the motion for default via Zoom. Kimberly Walbolt, bar counsel, appeared on behalf of the Bar and Respondent failed to appear. On July 15, 2021, the referee entered an order granting the Bar's motion for default, deeming all factual allegations admitted and providing the referee with competent, substantial evidence upon which to base the referee's findings.

On August 27, 2021, a final hearing to determine the appropriate sanction was held via Zoom. Kimberly Walbolt, bar counsel, appeared at the sanctions hearing and Respondent failed to appear. 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 by virtue of the referee's July 15, 2021, order of default in this case are as follows: Respondent was retained by William Clark and his two sons (collectively the "Clients") for representation in an eviction matter beginning in 2016. On May 24, 2016, a complaint for eviction was filed against the Clients in Collier County Case No. 16-CC-720, and on June 7, 2016, Respondent filed a notice of appearance in the case on the Clients' behalf. On June 9, 2016, the court entered a final default judgment for eviction and a writ of possession was issued the next day. On June 10, 2016, Respondent filed an answer and affirmative defenses, and on June 15, 2016, Respondent filed a motion to set aside default, which was granted by order dated July 22, 2016.

On January 6, 2017, 210 days after filing the Clients' answer and affirmative defenses, Respondent filed a five-count counterclaim which for the first time raised various tort claims that were not presented in the Clients' answer. Respondent failed to diligently file the Clients' counterclaim. In October 2017, the case was transferred to circuit court in Collier County Case No. 17-CA-1772. On March 7, 2018, the opposing party filed a motion to dismiss the counterclaim, alleging that because the counterclaim was compulsory pursuant to Fla. R. Civ. P. 1.170, it should be

dismissed for failure to raise it with the answer. By order dated May 1, 2018, the counterclaim was dismissed with prejudice, and by order dated June 25, 2018, the court ordered Respondent and the Clients to pay the opposing party's attorney's fees of \$6,065.00 in equal shares.

Between April 2018 and August 2018, the Clients attempted to contact Respondent several times by telephone and email to determine the status of their case. On April 30, 2018, Respondent sent an email to Mr. Clark's son Nathan Clark, but she thereafter ceased communication with the Clients. Respondent failed to clearly communicate the status of their case to the Clients and failed to advise them of the opposing party's attorney's fees award. After the issuance of the attorney's fee award, Nathan Clark's bank account was frozen for the entirety of the \$6,065.00 amount ordered instead of the one-half share attributable to the Clients. The Clients had to correspond directly with opposing counsel to fix this error due to Respondent's failure to communicate with the Clients. Respondent's failure to respond to the Clients' reasonable requests for information resulted in actual prejudice to the Clients. Respondent failed to adequately protect the Clients' interests upon termination of the representation.

On August 21, 2018, Mr. Clark filed a complaint against Respondent with the Florida Bar. On September 24, 2018, the Florida Bar sent Respondent a letter requiring a response to Mr. Clark's grievance by October 10, 2018 and Respondent failed to respond. On November 5, 2018, the Bar sent Respondent another letter requesting a response by November 16, 2018 and Respondent failed to respond. On December 11, 2018, the Bar sent Respondent another letter requesting a response within ten days. On December 21, 2018, Respondent requested an extension of time to respond to the inquiry. The request was granted, and the Respondent was given until January 4, 2019, to respond. Respondent failed to respond to the Bar's inquiry by the extended deadline of January 4, 2019. On January 24, 2019, the Bar sent Respondent another letter requesting a response within ten days and Respondent failed to respond.

On or about March 26, 2019, Respondent sent a letter to the Bar, stating that, at the time of the filing of the complaint, she was no longer practicing law, did not maintain an office and did not have access to her electronic records. On April 26, 2019, the Bar sent a letter to Respondent requesting additional information. Respondent failed to respond. On March 20, 2020, Respondent was sent a letter advising this matter was being assigned to a member of the grievance committee for investigation.

Respondent failed to respond to the Investigating Member's requests for an interview and has provided no further responses to this grievance since her March 26, 2019, letter to the Bar.

### III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rule 3-4.3 (Misconduct and Minor Misconduct); Rule 4-1.1 (Competence); Rule 4-1.3 (Diligence); Rule 4-1.4 (Communication); Rule 4-1.16(d) (Declining or Terminating Representation – Protection of Client's Interest); Rule 4-3.1 (Meritorious Claims and Contentions); 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 – failure to respond in writing to an official bar inquiry).

### IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

Again, a sanctions hearing was held on August 27, 2021. I considered the following Standards prior to recommending discipline:

4.4 Lack of Diligence: (a) Disbarment. 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.

4.5 Lack of Competence: (a) Disbarment. Disbarment is appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures and causes injury or potential injury to a client.

Aggravating Factors:

3.2(b)(4) (multiple offenses): Respondent committed violations of several of the Rules Regulating the Florida Bar;

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 either bar counsel or the grievance committee during their investigation. Once formal disciplinary proceedings were initiated, Respondent did not participate, failed to submit an answer to the bar's complaint, and failed to appear before the referee in this proceeding; and

3.2(b)(9) (substantial experience in the practice of law): Respondent was admitted to practice in 2004.

Mitigating Factors:

3.3(b)(1) (absence of a prior disciplinary record).

V. CASE LAW/AUTHORITY

I considered the following case law and other authority prior to recommending discipline:

*The Florida Bar v. Davis*, 149 So. 3d 1121 (Fla. 2014).

*The Florida Bar v. Locy*, 151 So. 3d 1229 (Fla. 2014).

*The Florida Bar v. Preece*, No. SC16-332, 2016 WL 4506836 (Fla. Aug. 25, 2016).

*The Florida Bar v. Freeman*, SC20-892, 2021 WL 217636 (Fla. January 21, 2021).

*Florida Bar v. Lord*, 433 So. 2d 983, 986 (Fla. 1983).

*Florida Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015)

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

- A. Disbarment;
- B. Payment of the Florida Bar's costs in these proceedings; and
- C. 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 no longer hold herself out as a licensed attorney in Florida.

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: 48

Date admitted to the Bar: November 29, 2004



Prior Discipline: Respondent has no prior disciplinary history.

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

I find the following costs were reasonably incurred by The Florida Bar:

Investigative Costs	\$195.00
Court Reporters' Fees	\$190.00
Administrative Fee	\$1,250.00
<b>TOTAL</b>	<b>\$1,635.00</b>

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent thirty 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 \_\_\_\_\_ day of \_\_\_\_\_, 2021.

ORIGINAL SIGNED

SEP 17 2021

MELISSA GOULD  
COUNTY JUDGE

\_\_\_\_\_  
Melissa Ann Gould, Referee

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