

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

CONSTANCE DANIELS,
Respondent.

Supreme Court Case
No. SC21-683

The Florida Bar File
No. 2019-10,230 (13C)

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, 2021, The Florida Bar filed its complaint against respondent in these proceedings. The undersigned was duly appointed to act as referee on May 14, 2021. Respondent failed to answer the bar's complaint, and on June 8, 2021, the bar filed a Motion for Default. On June 17, 2021 the parties held a case management conference and hearing on the Motion for Default. Kimberly Walbolt, Bar Counsel, appeared for the bar, and respondent appeared pro se. The referee granted respondent an extension until July 2, 2021 to respond to the complaint. On July 2, 2021,

counsel for respondent filed a Notice of Appearance and a Motion For A Brief Extension Of Time To File An Answer. By Order dated July 2, 2021, the referee granted respondent an extension to respond until July 6, 2021. On July 6, 2021, respondent through counsel filed her Answer to Complaint. A second case management was held on July 12, 2021. Kimberly Walbolt, Bar Counsel, appeared for the bar, and Todd Messner and Constance Daniels appeared on behalf of respondent. A final hearing was set for October 18, 2021 and a sanctions hearing was set for November 1, 2021. The parties filed a Joint Motion to Continue the hearing final hearing date which was granted by order dated October 18, 2021. On October 28, 2021, the bar filed a Notice of Voluntary Dismissal Without Prejudice the alleged rule violation of Rule 4-1.5 (Fees and Costs for Legal Services), and the parties submitted a Conditional Guilty Plea for Consent Judgment. 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.

A. Narrative Summary Of Case. Respondent was hired to represent Felicia Archie in a dissolution of marriage action. On October 31, 2017, Ms. Archie made the final payment toward her \$5,000 retainer for the representation. On January 17, 2018, respondent filed a dissolution of marriage action in Hillsborough County Case No. 18-DR-850. On April 13, 2018, Case No. 18-DR-850 was consolidated with Hillsborough County Case No. 18-DR-1315, which was the husband's dissolution of marriage action.

On May 30, 2018, respondent was sent a copy of a Notice of Hearing on the Husband's Motion to Compel Mandatory Disclosure scheduled for June 6, 2018, which had not been coordinated with respondent. The Notice was provided to respondent via email seven (7) days before the hearing. Respondent did not advise Ms. Archie of the hearing and elected to attend the hearing without Ms. Archie and advise her of the results after. Respondent's understanding was the hearing would be related to discovery documents she believed had already been produced. Respondent acknowledges she should have simply told Ms. Archie about the hearing prior.

On May 31, 2018, respondent refunded Ms. Archie \$800.00 from her retainer. Respondent failed to adequately communicate the nature of the refund to Ms. Archie. During the May 31, 2018 visit, respondent and Ms. Archie did not discuss the hearing set for June 6, 2018. Respondent appeared at the hearing on June 6, 2018 and advised Ms. Archie of the results on June 22, 2018.

On August 14, 2018, respondent filed a Motion for Temporary Relief and Support. On August 21, 2018, Ms. Archie wrote a letter to the judge stating respondent had failed to adequately communicate with her. However, Ms. Archie advised the judge she did not wish for respondent to withdraw from the representation because she could not afford to hire another attorney.

On October 7, 2019, the court filed a Notice of Lack of Prosecution due to ten (10) months of no record activity in the matter and scheduled a case management conference for December 19, 2019. Respondent failed to attend the conference on Ms. Archie's behalf. The court, at the request of Ms. Archie's former husband, granted removal from dismissal docket and ordered the case to mediation. Respondent failed to take any further action on Ms. Archie's behalf after Ms. Archie advised she had filed a grievance against Respondent, erroneously believing she needed to wait

for the resolution of the bar matter. Ms. Archie has since retained new counsel.

During this proceeding before the Supreme Court and the referee, respondent admits that she failed to timely respond to the bar's formal complaint. Respondent later retained counsel who filed an answer on her behalf.

III. RECOMMENDATIONS AS TO GUILT

Pursuant to the parties' Conditional Guilty Plea for Consent Judgment, I recommend that respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rule 4-1.3 (Diligence); Rule 4-1.4 (Communication); and Rule 4-8.4(g)(Misconduct – failure to respond in writing to an official bar inquiry). The Florida Bar voluntarily dismissed without prejudice the alleged violation of Rule 4-1.5 (Fees and Costs for Legal Services).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

3.2(b) Aggravation

(9) substantial experience in the practice of law (respondent has been licensed since 1995).

3.3(b) Mitigation

- (1) absence of a prior disciplinary record;
- (2) absence of a dishonest or selfish motive;
- (3) personal or emotional problems;
- (7) character or reputation; and
- (12) remorse.

4.4 Lack of Diligence

(d) Admonishment is appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Turner, Supreme Court Case No. SC16-346 (Fla. July 14, 2016) (Unpublished Disposition), Turner received an admonishment administered in writing by the referee for neglecting two patent application matters for a client and failing to maintain adequate communication with the client. Turner admitted that due to disorganization in her office, she misplaced and overlooked communication concerning the two patents. In mitigation, Turner had no prior disciplinary history, had personal or emotional problems due to the recent death of her husband of 40 years after a long illness, and was remorseful. In aggravation, Turner was an experienced practitioner.

In The Florida Bar v. Catoe, Supreme Court Case No. SC16-2241 (Fla. June 29, 2017) (Unpublished Disposition), Catoe received an

admonishment and was required to attend Ethics School for failing to diligently pursue her client's attempt to qualify for Medicaid nursing home benefits. The client communication was to be done through the client's family, and Catoe failed to provide adequate status updates to the family. Catoe also failed to respond to multiple bar inquiries. In mitigation, Catoe did not have any prior discipline and was remorseful.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

Pursuant to the parties' Conditional Guilty Plea for Consent Judgment, I recommend that respondent be found guilty of misconduct justifying disciplinary measures, and that she be disciplined by:

A. An admonishment to be administered in writing by the referee within ten (10) days of the Court's order approving the consent judgment.

B. Attendance at Ethics School within six (6) months of the Court's order approving the consent judgment. Respondent shall be responsible for payment of the \$750.00 fee for Ethics School directly to The Florida Bar.

C. Payment of the disciplinary 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: 54

Date admitted to the bar: September 26, 1995

Prior Discipline: None

Respondent is not Board Certified in any practice area.

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 filed in this cause were reasonably incurred and were not unnecessary, excessive or improperly authenticated. I further find that respondent stipulated to the payment of such costs incurred by The Florida Bar by signing the Conditional Guilty Plea for Consent Judgment.

Respondent shall pay the fees and costs of this matter which are:

Ethics School Fee	\$750.00
Administrative Costs	\$1,250.00
Court Reporters' Fees	\$190.00
TOTAL	\$2,190.00

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 29 day of October, 2021.



Honorable Daniel Dwight Diskey,
Referee

Original To:

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

Conformed Copies to:

Todd Messner, Counsel for Respondent, 109 N Brush Street, Suite 200 Tampa, Florida 33602-4116, tmessner@smithtozian.com

Kimberly Anne Walbolt, Bar Counsel, 2002 N. Lois Ave., Suite 300 Tampa, Florida 33607-2386, kwalbolt@floridabar.org

Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, psavitz@floridabar.org