

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

WALKER J. SMITH, IV,

Respondent.

Supreme Court Case
No. SC24-1049

The Florida Bar File
No. 2024-30,159 (18A)

_____/

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On July 16, 2024, The Florida Bar filed its Complaint against respondent in these proceedings. During these proceedings, the bar was represented by Bar Counsel Alexis Leigh Lombard and Co-Bar Counsel Daniel James Quinn. The respondent was represented by Barry William Rigby.

On December 4 and December 5, 2024, a final hearing was held in this matter. The bar tendered Exhibits 1-4 into evidence and all were admitted, and respondent tendered and admitted into evidence exhibits A

through I. The bar called respondent to testify. Respondent testified on his own behalf and called Giancarlo Rivera to testify virtually. In the sanction phase, the bar presented no additional evidence, and presented argument and case law, along with the Standards for Imposing Lawyer Sanctions including Aggravation and Mitigation. Respondent presented himself.

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.

While he was working for a law firm as an associate, respondent improperly executed a contingency fee contract in a workers' compensation case. Respondent backdated the contract to match the date the client executed it, then directed his nonlawyer assistant to notarize the document despite not having witnessed its execution nor was the client/signor present. The backdated and notarized fee contract was filed with the court.

On or about April 22, 2021, Jaime Cruz Abeja hired Pardy and Rodriguez, P.A. to represent him in a workers' compensation claim.

Abeja met with a firm investigator, who was an independent contractor, at Abeja's home and spoke telephonically to a lawyer with the law firm, who explained the contingency fee contract to him.

Abeja executed a document titled Retainer and Contingency Fee Agreement, Power of Attorney and Trust Agreement (hereinafter referred to as the "Fee Agreement") on April 22, 2021. The Fee Agreement included sections to be completed by a Notary Public. Abeja also signed a document titled "Waiver of Attorney Fee Limitation for Representation Under Section 440.34, Florida Statutes" (hereinafter referred to as the "Waiver") to which there was testimony that the waiver was required to be notarized.

When the executed Fee Agreement and Waiver were returned to the law firm, the associate lawyer assigned to the case inadvertently failed to execute the documents on behalf of the law firm.

At the time the Fee Agreement and Waiver were executed by the client, respondent was not yet admitted to the practice of law in Florida and was not employed by Pardy and Rodriguez, P.A.

Respondent worked for the firm in a non-lawyer capacity upon completion of law school. Following respondent's admission to The Florida

Bar on September 23, 2021, respondent began working as an associate lawyer with the firm and eventually was assigned to represent Abeja in his workers' compensation claim.

Although various associates worked on Abeja's case, Eduardo Rodriguez, a partner in the law firm and respondent's direct supervising lawyer, was named as counsel of record.

While preparing settlement documents for Abeja's case, respondent discovered the Fee Agreement and Waiver had not been executed by the law firm. Respondent then executed the documents on behalf of the firm and backdated them to April 22, 2021, not realizing this date was prior to his admission to the practice of law.

Respondent brought the documents, along with several others for other clients, to his nonlawyer assistant, who was a Notary Public, to notarize the Fee Agreement and Waiver. The notary did not witness the execution of the documents nor was there evidence presented to indicate that the client was present at the time of the notarizations. Additionally, a Florida notary license is only for a period of four years, therefore it is not possible that the notary could have been valid in 2021 because the stamp applied to the document indicated a 2026 license expiration date.

Respondent, who was also a Florida Notary Public, should have known or reasonably should have known that it was improper for him to direct his assistant to notarize a document when she had not witnessed its execution. However, respondent testified that he merely acted in accordance with the law firm's routine procedures.

Further, respondent testified that there was no legal requirement that the fee contract in a workers' compensation case be notarized and no harm to the client resulted from the improper notarization and backdating of the fee contract.

There was no evidence presented that the client was provided with a copy of the executed contingency fee contract as required after respondent executed it and had it notarized.

On August 22, 2023, after the settlement was reached in Abeja's case, respondent prepared a joint Motion for Approval of Attorney's Fees and Allocation of Child Support Arrearage for Settlements Under Section 440.20(11)(C)(D) & (E), Florida Statutes (hereinafter referred to as the "Joint Motion"), and attached to it the improperly notarized and backdated Fee Agreement and Waiver.

Also included with the Joint Motion was an Affidavit in Support of Attorney's Fees in Excess of Statutory Guideline that was executed by

respondent and Rodriguez and an Initial Petition and Affidavit for Attorney's Fees.

The Joint Motion was signed by respondent, Abeja, and opposing counsel and filed with the court.

The trial court reviewed the documents, which included the backdated Fee Agreement and Waiver, and found there were discrepancies in dates and the documents called into question whether respondent had been permitted by the firm to engage in the unlicensed practice of law.

The trial court found that, based on the date the Fee Agreement allegedly was executed by respondent, it had been signed improperly by a nonlawyer because respondent was not admitted to the practice of law in Florida until several months later. The trial court determined that the Fee Agreement dated and notarized on April 22, 2021 was executed by a non-attorney, thus rendering it void pursuant to R. Regulating Fla. Bar 4-1.5(f)(2).

The trial court entered an Order Denying Motion for Approval [of Attorney's Fees] on September 6, 2023, finding that, because the retainer agreement was void, there could be no valid waiver.

Thereafter, respondent and Rodriguez executed an Amended Petition that was filed with the court waiving all claims for attorneys' fees in the matter in order to assure the client received his compensation benefits without further delay.

During the intervening time, respondent has left the employ of the law firm and is now a sole practitioner.

I find that respondent's actions, while negligent, were not done with intent to mislead the court or the client. Respondent's lack of experience as a lawyer resulted in his using poor judgment with respect to not seeking the advice of his supervising lawyer or other, more experienced counsel, with respect to handling the unexecuted fee contract situation that was not of his making. Respondent's direction to his nonlawyer staff to notarize the fee contract and waiver was in keeping with the law firm's procedures that were in place prior to his employment as an associate lawyer.

I find this was an isolated incident and a careless error. Respondent expressed remorse for his conduct and took remedial measures, both within the case at issue and thereafter. Respondent testified that he has implemented procedures in his practice to avoid having this situation occur again. Because there was no evidence that the client did not agree to this contract, and the client ultimately received more money because

respondent and his supervising lawyer waived their fee due to the issues, I find there was no harm to the client.

III. RECOMMENDATIONS AS TO GUILT.

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

(a) 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.

(b) 4-1.5(f)(2) (2019) Every lawyer who accepts a retainer or enters into an agreement, express or implied, for compensation for services rendered or to be rendered in any action, claim, or proceeding whereby the lawyer's compensation is to be dependent or contingent in whole or in part

upon the successful prosecution or settlement thereof shall do so only where such fee arrangement is reduced to a written contract, signed by the client, and by a lawyer for the lawyer or for the law firm representing the client. No lawyer or firm may participate in the fee without the consent of the client in writing. Each participating lawyer or law firm shall sign the contract with the client and shall agree to assume joint legal responsibility to the client for the performance of the services in question as if each were partners of the other lawyer or law firm involved. The client shall be furnished with a copy of the signed contract and any subsequent notices or consents. All provisions of this rule shall apply to such fee contracts.

(c) 4-3.3(a)(4) A lawyer shall not knowingly offer evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(f) 4-5.3(c) Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active

involvement of the lawyer, the lawyer must review and be responsible for the work product of the paralegals or legal assistants.

(g) 4-8.4(a) A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

(j) 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.

Based on the testimony and evidence presented at the final hearing, I find respondent not guilty of violating the following Rules Regulating The Florida Bar alleged in the bar's Complaint: 4-3.3(a)(1); 4-8.4(b); and 4-8.4(c). These rules require intent, which I find respondent lacked. Respondent's actions were negligent and the result of his inexperience and the procedures in place at the law firm that associate lawyers in the workers' compensation department were taught to follow.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards before recommending discipline:

5.1 Failure to Maintain Personal Integrity

5.1(c) Public reprimand is appropriate when a lawyer engages in conduct involving dishonesty, fraud, deceit, or misrepresentation that is not included elsewhere in this subdivision and that adversely reflects on the lawyer's fitness to practice law.

6.1 False Statements, Fraud, and Misrepresentation

6.1(c) Public reprimand is appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld.

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

7.1(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.

I find the following aggravating factors under Standard 3.2(b):

None.

I also find the following mitigating factors under Standard 3.3(b):

(1) absence of a prior disciplinary record;

(4) timely good faith effort to make restitution or to rectify the consequences of the misconduct;

(5) full and free disclosure to the bar or cooperative attitude toward the proceedings;

(6) inexperience in the practice of law; and

(12) remorse.

V. CASE LAW

I considered the following case law before recommending discipline:

In The Florida Bar v. Farinas, 608 So. 2d 22 (Fla. 1992), a lawyer received a public reprimand for directing a Notary Public to illegally notarize a document. Farinas represented a married couple in a civil law suit where the couple answered interrogatories propounded by the opposing party. The couple signed their names to the answers but failed to have them notarized. Because the couple lived out of state, Farinas asked a notary to notarize the signatures despite the fact the clients were not present before the notary when they signed the document. Farinas testified at the final hearing that he recognized his clients' signatures as being authentic and did not realize the requirement that they be present before the notary at the time they affixed their signatures or that they acknowledge to and before the notary their execution of the document. The Court found that Farinas

solicited the improper and illegal conduct of the Notary Public in violation of the Rules Regulating the Florida Bar. Although the bar sought a 60-day suspension, the Court found that, under the circumstances, a public reprimand was appropriate.

In The Florida Bar v. Day, 520 So. 2d 581 (Fla. 1988), a lawyer was publicly reprimanded for notarizing numerous affidavits without the signatories being present before her in violation of Florida law. Day was involved in a legal services company at the time.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that respondent be found guilty of misconduct justifying disciplinary measures and he be disciplined by:

- A. Public reprimand administered by [publication in the *Southern Reporter* / in person by referee].
- B. Completion of Ethics School within six months of the date of the order approving this Report of Referee.
- C. Completion of 50 hours of Pro Bono service [with participation with an approved Legal Aid Program or without] within [one year] from the date of the order approving this Report of Referee.

D. Completion of a notary class within [six months] of the date of the order approving this Report of Referee. However, respondent must decline certification as a Notary Public.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Before recommending discipline pursuant to Rule 3-7.6(m)(2)(D), I considered the following:

Personal History of Respondent:

Age: 30

Date admitted to the Bar: September 9, 2021

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

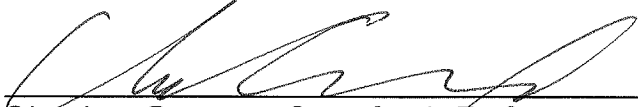
Bar:

Administrative Fee	\$1,250.00
Bar Counsel Costs	\$1,052.80
Court Reporters Fees	\$1,571.80
TOTAL	\$3,874.60

I recommend that the above costs be charged to respondent and that interest at the statutory rate will accrue. The respondent will 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 15th day of January, 2025.


Charles Grooms Crawford, Referee

Filed with the Supreme Court of Florida via the Florida Courts E-Filing Portal with copies served via the Portal to:

Alexis Leigh Lombard, Bar Counsel, The Florida Bar, at
alombard@floridabar.org, orlandooffice@floridabar.org,
Lismith@floridabar.org;

Daniel James Quinn, Bar Counsel, The Florida Bar, at
dquinn@floridabar.org

Barry William Rigby, Counsel for Respondent, at
barryrigbylaw@gmail.com;

Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, at
psavitz@floridabar.org.