Filing # 239087557 E-Filed 01/08/2026 02:48:45 PM

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

DAVID WILLIAM DAVICH,

Respondent.

______________________________________/

Supreme Court Case
No. SC2024-1363

The Florida Bar File
No. 2023-30,375(18B)

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

I. SUMMARY OF PROCEEDINGS

The undersigned was appointed as referee under R. Regulating Fla. Bar 3-7.6 to preside over the proceedings in this case.

On September 18, 2024, The Florida Bar (the bar) filed its complaint against respondent in these proceedings. The Supreme Court of Florida entered an order on September 23, 2024, designating the Chief Judge of the Thirteenth Judicial Circuit of Florida to appoint a referee in this case. The Honorable Christopher C. Sabella appointed the undersigned to serve as the referee.

Throughout these proceedings, the bar was represented by Bar Counsel Alexis Lombard. Respondent was represented A. Brian Phillips and Scott K. Tozian.

All of the pleadings, responses, exhibits received in evidence, and this report constitute the record in this case and are filed with the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during these proceedings was, a member of The Florida Bar, subject to the jurisdiction and Rules Regulating The Florida Bar adopted by the Supreme Court of Florida.

B. Narrative Summary Of Case.

(a) This matter relates to respondent's conflict of interest between two clients and the charging of an excessive fee.

(b) A roofing contractor, Walsh Roofing Services of Tampa Bay, LLC ("Walsh Roofing"), inspected Carmen Imfeld's roof and claimed that it needed to be repaired due to storm damage. Ms. Imfeld's insurer, National Specialty Insurance Company ("NSIC"), denied her claim.

(c) Walsh Roofing recommended that Ms. Imfeld hire Cohen Law Group to represent her in her claim against the insurer.

(d) On or about June 16, 2020, Ms. Imfeld retained Cohen Law Group to represent her against NSIC for the denial of her claim for a roof repair due to alleged storm damage. Respondent was assigned to handle her case on behalf of the firm. Respondent also represented Ms. Imfeld's trust for which she was trustee, Shark Revocable Trust.

(e) At the time of retainer, neither respondent nor any member of his firm notified Ms. Imfeld that Walsh Roofing was a long-time client or alerted her to any possible conflict of interest. Neither did Ms. Imfeld provide a waiver of conflict after informed consent at that time. However, Ms. Imfeld later signed a conflict waiver as described below.

(f) At the time respondent was retained, Ms. Imfeld did not have a contract with Walsh Roofing to make any repairs to her roof.

(g) Ms. Imfeld signed a fee agreement with Cohen Law Group on June 16, 2020, that provided for a 15% contingency fee "or statutory attorney fees, whichever is greater." This was the only reference to statutory attorney's fees in the agreement; there was no indication what statute was being referenced and no explanation as to how a statutory attorney's fee would be calculated.

(h) No lawyer signed the contingency fee agreement on behalf of respondent's law firm.

(i) Respondent testified in a December 13, 2023, sworn statement that he and Cohen Law Group had represented Walsh Roofing in many cases since at least 2017, and while Ms. Imfeld was a client. Although those matters involved similar legal issues to those raised in the instant matter, they were factually unrelated to Ms. Imfeld and her property.

(j) On June 19, 2020, respondent's law firm emailed a "Letter of Protection, Consent to Discuss, Notice of Prior and/or Current Representation and Waiver" to Ms. Imfeld, which she signed and returned, and which Thomas Walsh (owner of Walsh Roofing) also later signed.

(k) This "Letter of Protection" stated that Ms. Imfeld agreed to respondent "protecting" the contractor's bill rendered in connection to the claim. The document authorized respondent to discuss the bills, invoices and estimates with the contractor.

(l) The "Letter of Protection" also provided notice that "Cohen Law Group may have previously represented or may currently represent the contractor in unrelated matters" and that the law firm was obligated to inform Ms. Imfeld of any potential conflicts that may exist between Ms. Imfeld and Walsh Roofing in this matter. The document stated that Ms. Imfeld and Walsh Roofing agreed to waive any conflicts of interest arising out of this matter.

(m) Respondent, in reliance on his perception of Ms. Imfeld's level of sophistication, did not explain this document, nor the potential for a conflict of interest between Ms. Imfeld and Walsh Roofing. Nor did Ms. Imfeld ask any questions, express any misunderstanding, or raise any issue with the same in writing prior to July 2021.

(n) Thereafter, respondent filed suit against NSIC on behalf of Ms. Imfeld.

(o) On April 29, 2021, respondent confirmed in an email with the lawyer for NSIC that the case had settled for $49,000.00 and directed the lawyer for NSIC to send the check payable to his firm's trust account.

(p) The lawyer for NSIC filed a notice of settlement in the civil case on April 30, 2021.

(q) NSIC sent a $49,000.00 check to respondent, made payable to Cohen Law Group's trust account with additional payees.

(r) On May 12, 2021, respondent directed the NSIC lawyer to reissue the $49,000.00 check and make it payable only to Cohen Law Group's trust account or, in the alternative, to issue two checks, one in the amount of $38,000.00 made out to "Carmen Imfeld and Shark Revocable Trust and Freedom Mortgage Company and Walsh Roofing Services of Tampa Bay, LLC" and a second check in the amount of $11,000.00 made payable to "Cohen Law Group."

(s) NSIC sent the two checks to respondent in the amounts and with the payees as respondent had requested.

(t) On May 18, 2021, after Ms. Imfeld asked if there was an offer on her case, respondent replied by email, "Yes, following our conversation on April 27, 2021 you advised that I had authority to resolve the case for an amount that Walsh Roofing would accept to do the roof replacement and necessary interior work and where you would only be responsible 'out-of-pocket' for the deductible. As such, after much back and forth, the insurance company made an offer of $38,000.00 to 'You and Walsh Roofing.' Walsh Roofing confirmed they would be able to complete the project for $40,500.00 ($38,000.00 + $2,500.00). Based on our conversation from April 27, 2021, that offer was accepted, and we are awaiting final paperwork from the insurance company. Please note that I have cc'ed Thomas Walsh from Walsh Roofing on this email. Additionally, the insurance company will pay the attorney fees and costs of $11,000.00 directly to Cohen Law Group."

(u) On June 28, 2021, Ms. Imfeld signed a release and a closing statement. The closing statement indicated a $49,000.00 settlement, with $11,000.00 in "attorney's fees and costs" and a balance of $38,000.00 net to client, payable to "Carmen Imfeld and Shark Revocable Trust and Freedom Mortgage Company and Walsh Roofing Services of Tampa Bay, LLC."

(v) The attorney's fees and cost amount of $11,000.00 was not itemized or explained in the closing statement nor did it indicate that the contingency fee percentage was not being used to calculate the fee amount.

(w) When Ms. Imfeld realized the $11,000.00 amount was more than 15%, she asked respondent to provide her with an itemized breakdown of the attorney's fees and costs.

(x) Respondent did not provide Ms. Imfeld with the requested itemized breakdown, nor did he explain to her how he arrived at $11,000.00 for the attorney's fees and costs.

(y) During his sworn statement on December 13, 2023, respondent testified that the $11,000.00 was a statutory attorney's fee and, based on the terms of the contract, he was entitled to more than the 15% contingency fee.

(z) After she received an emailed image of the $38,000.00 check in July 2021, Ms. Imfeld emailed respondent and asked, "Why is the check made out to three parties (four, if you include the trust)? I feel that including the roofing contractor puts me at a disadvantage. Can I get a check that only has my name, or the trust, and my mortgage lender?"

(aa) Respondent did not explain why Walsh Roofing was included on the check and did not attempt to remove Walsh Roofing as a payee. As a result, Ms. Imfeld was unable to properly negotiate the check without Walsh Roofing's cooperation. However, as described in paragraph “dd” below, respondent did later respond to this inquiry in March 2022.

(bb) Ms. Imfeld signed an installation contract with Walsh Roofing for $38,000.00 on or about October 12, 2021. Ms. Imfeld later decided to proceed with another contractor for the repairs.

(cc) Walsh Roofing, however, refused to properly endorse the $38,000.00 settlement check and, as a result, Ms. Imfeld could not negotiate it and access the funds, thus delaying her ability to move forward with repairs.

(dd) In March 2022, Ms. Imfeld again asked respondent to have the check reissued to her without Walsh Roofing as a co-payee. On March 30, 2022, respondent replied by email, “I have reached out to Walsh Roofing and asked them if they were agreeable to having the check for $38,000.00 reissued without Walsh Roofing as a payee. They responded no and provided the attached documentation” (one of which was the installation contract).

(ee) Respondent advised Ms. Imfeld that he could not ask the insurance company to reissue the check without Walsh Roofing as a co-payee because he believed he had a duty to protect any interest in the settlement proceeds.

(ff) Respondent has acknowledged that he never received any bills or invoices from Walsh Roofing in this case and he did not know if Walsh Roofing had performed any work for Ms. Imfeld.

(gg) Ms. Imfeld stated that Walsh Roofing never performed any work on her roof

(ii) Ms. Imfeld directly contacted NSIC and explained that she had fired Cohen Law Group, was not using Walsh Roofing to repair her roof, and she requested a check with Walsh Roofing removed as a payee. In May 2022, NSIC sent her a check for $38,000.00 without Walsh Roofing as a payee and she was able to move forward with the repairs to her roof.

(jj) In 2023, Cohen Law Group refunded $3,850.00 to Ms. Imfeld, representing the difference between $11,000.00 and the 15% contingency fee.

III. <u>RECOMMENDATIONS AS TO GUILT</u>

I recommend that respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3-4.3; 4-1.2(a); 4-1.4(a); 4-1.4(b); 4-

1.5(a); 4-1.5(f)(1) (2019); 4-1.5(f)(2) (2019); 4-1.5(f)(5) (2019); 4-1.7(a); and 4-1.7(b).

IV. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Before recommending discipline under R. Regulating Fla. Bar 3-7.6(m)(2)(D), I considered the following personal history of respondent:

Age: 40

Date admitted to the Bar: September 19, 2011

Prior Discipline: None

V. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Florida Standards for Imposing Lawyer Sanctions before recommending discipline:

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

(b) Suspension is appropriate when a lawyer knowingly 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:

3.2(b)(9) substantial experience in the practice of law.

I find the following mitigating factors:

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

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

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

3.3(b)(12) remorse.

Respondent has been fully cooperative with the grievance committee and bar during the proceedings. He has taken responsibility for his actions in this matter. Respondent is working in cooperation with the managing partners of his firm to review and modify the fee agreement for compliance with the applicable rules, statutes and case law. These efforts serve to clarify to potential future clients the nature and basis of the representation, attorney fees, and any preexisting relationships with other clients and vendors and to ensure compliance with the Rules. The bar suggested that respondent seek guidance concerning the language of the fee agreement and respondent understands that any edits or modifications should be reviewed by a counsel of his choosing.

VI. CASE LAW

I considered the following case law before recommending discipline:

The Florida Bar v. Veliz, 2024 WL 2857908 (Fla. June 6, 2024) (Unpublished Disposition) – The Supreme Court of Florida approved a

Conditional Guilty Plea for Consent Judgment for a ten-day suspension. Veliz prepared a will and other estate planning documents for a long-time family friend. The will impermissibly named Veliz’s mother and sister as beneficiaries and named his mother as the Personal Representative for the estate. Veliz failed to recognize that he was prohibited from creating a will for a non-related client naming his relatives as beneficiaries. After the death of the long-time family friend, Veliz’s law partner was hired by Veliz’s mother to represent her in probating the estate. Veliz’s mother was paid her personal representative's fee despite Veliz’s failure to comply with the statute in effect at the time regarding the disclosure of compensation for the personal representative. Ultimately, Veliz’s mother and sister were removed as beneficiaries and his mother refunded her personal representative fee to the estate.

<u>The Florida Bar v. Saldamando</u>, 2022 WL 963799 (Fla. March 31, 2022) (Unpublished Disposition) - The Supreme Court of Florida disapproved the report of referee, in part, finding that Saldamando violated rules 4-1.2 and 4-1.7. The Court also disapproved the referee's recommendation of a public reprimand, and instead, imposed a 91-day suspension. For 5 years, Saldamando, a salaried associate with Strems Law Firm (SLF), represented a married couple in a claim against their

insurance carrier. The public adjustor the couple initially hired to assist with their insurance claim referred them to SLF and to another firm. Saldamando did not adequately involve the clients in the settlement process and did not apprise them of the total settlement amount ($157,500) or the amount that he intended to take as the firm's fee ($92,500), which was substantially higher than the amount the clients would receive as their settlement ($65,000). Saldamando also refused to provide the clients with any invoice or substantiation of the fees claimed by the firm. Despite Saldamando withdrawing as counsel before settling the case, SLF still took $30,000 from the final settlement obtained by new counsel for its fees and costs. In mitigation, Saldamando had no prior disciplinary history.

The Florida Bar v. Kavanaugh, 915 So. 2d 89 (Fla. 2005) - The Supreme Court of Florida publicly reprimanded Kavanaugh for taking an excessive fee. The Court further directed Kavanaugh to make restitution to the client. Kavanaugh represented a client in an effort to cancel an automobile lease agreement and recover from the automobile dealership the client's vehicle he had traded in for the new car. After the initial effort failed, Kavanaugh and the client entered into a contingency fee agreement and Kavanaugh filed suit against the dealership for deceptive and unfair trade practices. The parties settled prior to trial for $44,868.06, entitling Kavanaugh to a fee of 40% of the recovery. However, Kavanaugh withheld a fee of 53% of the proceeds and had his client sign a copy of the closing statement which showed the retention of the 53% which amounted to $23,780.07. When the client discovered that the fee exceeded the terms of the contingency fee contract, he filed a grievance with the bar. Kavanaugh argued the settlement reached in the client's case was the equivalent to court ordered attorney's fees. In aggravation, Kavanaugh had a dishonest or selfish motive, refused to acknowledge the wrongful nature of his conduct, the client was vulnerable, Kavanaugh had substantial experience in the practice of law and was Board Certified in Civil Trial, and he was indifferent to making restitution. In mitigation, Kavanaugh had no prior disciplinary history, and the client received an excellent result due to Kavanaugh's handling of the case.

In reviewing this matter, the undersigned also considered the current status of the law related to some of the issues raised herein and the conflict of interest as presented here is unlikely to happen again in the future.

VII. <u>RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED</u>

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

a. Suspension from the practice of law for 90 days, effective 30 days from the date of the Supreme Court of Florida's order approving the consent judgment so that respondent can close out respondent's practice and protect the interests of existing clients.

   i. On entry of the Court's order, respondent must immediately:

      1. accept no new clients from the date of the order;

      2. initiate no litigation on behalf of clients from the date of the order; and

      3. provide a copy of the suspension order to all courts, tribunals, or adjudicative agencies before which respondent is counsel of record; all state, federal, or administrative bars of which the respondent is a member; all clients; all co-counsel; and all opposing counsel, as required by Rule 3-5.1(h);

   ii. Within 30 days from the date of the Court's order, respondent must:

      1. cease all practice of law in Florida;

      2. cease holding respondent out as a Florida Bar member or lawyer and eliminate all indicia of respondent's status as a Florida Bar member or lawyer on websites, social media, telephone listings, stationery, checks, business cards, office signs, email address, and any other indicia of respondent's status as a Florida Bar member or lawyer;

      3. wind down all pending matters;

      4. cease withdrawing or disbursing any money from any trust account or other financial institution

account holding funds of clients or third parties in respondent's possession in connection with legal representation;

5. not transfer any ownership of any real or personal property purchased in whole or in part with funds of clients or third parties in connection with legal representation; and

6. provide the bar's headquarters office in Tallahassee with an affidavit listing all of the following that respondent notified of the suspension order: all courts, tribunals, or adjudicative agencies of which respondent is a member; all state, federal, or administrative bars of which respondent is a member; all clients; all co-counsel; and all opposing counsel.

b. Respondent must fully comply with Rule Regulating The Florida Bar 3-5.1(h).

c. Respondent must also fully comply with Rule Regulating The Florida Bar 3-6.1, if applicable.

d. Respondent must attend the Ethics School and Professionalism Workshop in person, where scheduled by the bar within 6 months of the order approving this consent judgment and pay associated fees totaling $1,000.00 before attendance.

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 Cost	$199.55
Copy Costs	$563.10
Court Reporters Fees	$1,350.25
Investigative Costs	$292.81

TOTAL	$3,655.71

I recommend that the above costs be charged to respondent and that interest accrue at the statutory rate. If respondent does not satisfy the cost judgment within 30 days of the judgment becoming final, respondent will be delinquent and ineligible to practice law under R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this __8th_____ day of __January_______, 2026.

/s/ Leslie K Schultz-Kin
Leslie K Schultz-Kin
Referee

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

Brian Phillips, Counsel for Respondent, brian.phillips@phillips-law-firm.com

Scott Kevork Tozian, Co-Counsel for Respondent, stozian@smithtozian.com , mrenke@smithtozian.com

Alexis Leigh Lombard, Bar Counsel, alombard@floridabar.org

Jill Marie Hampton, Co-Bar Counsel, jhampton@floridabar.org

Patricia Ann Toro Savitz, Staff Counsel, psavitz@floridabar.org