IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

EMILY CHRISTINE WILLIAMS,

Respondent.

Supreme Court Case
No. SC22-1778

The Florida Bar File Nos.
2021-00,374(4D); 2021-00,410(4D);
2021-00,453(4D); 2021-00,456(4D);
2021-00,518(4D); 2021-00,519(4D);
2021-00,521(4D); 2022-00,070(4D)

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AMENDED REPORT OF REFEREE ACCEPTING AMENDED 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 December 21, 2022, The Florida Bar filed its Complaint against Respondent in these proceedings. My original Report of Referee accepting a Consent Judgment for a 45-day suspension and rehabilitative terms was docketed with the Clerk's office on July 14, 2023. On September 14, 2023, the Florida Supreme Court disapproved of the proposed sanction and returned this matter to me for further proceedings. The parties have presented an Amended Consent Judgment for a 91-day rehabilitative suspension, which for the reasons set forth below I recommend as the appropriate sanction in this matter.

All 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.

AS TO ALL COUNTS

1. At all times relevant, respondent was employed as an associate at Your Jacksonville Lawyer, P.A. (hereinafter Law Firm).

2. The sole owner and partner of the Law Firm was Gordon Nicol, who has, after the events described below, had his petition for disciplinary revocation approved by the Florida Supreme Court.

3. Unfortunately, the Law Firm had difficulty retaining staff, inclusive of other associates, and respondent was assigned more cases than she could effectively manage with the minimal staff

assisting her. As such, many cases were assigned to her in various areas of the law, some of which she had no expertise in, making it difficult to represent some of clients assigned to her.

COUNT I – TFB FILE NO. 2021-00,374(4D) – SHIRLEY HOLLAND

1. In August 2019, Shirley Holland (Ms. Holland) was referred to "the Law Firm by Legal Shield, her pre-paid legal service.

2. On or about August 23, 2019, Ms. Holland hired the Law Firm and respondent was assigned to represent her in a dissolution of marriage case and executed a fee agreement.

3. Ms. Holland paid $1,500.00 to the Law Firm, in August, of the non-refundable fee of $2,500.00 fee to draft and negotiate a marital settlement agreement.

4. The fee agreement also provided for an attorney's fee of $6,500.00 plus $550.00, filing fee, in the event a petition for dissolution was filed.

5. On September 3, 2019, Ms. Holland signed a Limited Power of Attorney in favor of the Law Firm.

6. Ms. Holland, paid a total of $2,758.00 to the Law Firm for fees and costs, but did not pay the full agreed upon fee.

7. On November 11, 2019, Ms. Holland signed the Petition for Dissolution, in which she requested that her then husband pay all attorney's fees and costs.

8. On November 19, 2019, respondent filed a Limited Notice of Appearance "for the purpose of filing a Petition for Dissolution of Marriage and all associated pleadings." Respondent filed Ms. Holland's Petition for Dissolution of Marriage that day.

9. On September 18, 2020, the case was ordered to mediation and respondent's client was ordered to file her financial affidavit by September 29, 2020.

10. Respondent filed the financial affidavit on October 6, 2020.

11. There was no record activity in the case between October 6, 2020, and April 25, 2022, until Ms. Holland's new attorney filed a Notice of Appearance.

12. Respondent did not file a withdrawal of counsel in Ms. Holland's matter, but there was a substitution of counsel.

13. Ms. Holland asserts that she made numerous efforts to contact Ms. Williams to no avail. For purposes of this agreement, respondent states that there was a minimum level of communication

with the client by the respondent and her staff, but admits that said communication could have been better.

14. On or around February 5, 2021, Ms. Holland contacted The Florida Bar asking for assistance to receive a response or contact from respondent.

15. The Florida Bar, Attorney/Consumer Assistance Program (ACAP) sent Ms. Holland a letter on February 19, 2021, notifying respondent to contact her client, by March 5, 2021.

16. Respondent did not respond to The Florida Bar or contact Ms. Holland.

<u>COUNT II – TFB FILE NO. 2021-00,410(4D) – MARINA JOYNER</u>

1. In June 2019, Marina Joyner (Ms. Joyner) was referred to the Law Firm by the Employee Assistance Program through her employer.

2. Respondent was assigned to represent Ms. Joyner for her divorce proceedings.

3. Respondent filed the original petition on July 19, 2019.

4. Although Ms. Joyner requested only the sale of the marital home, and payment of the outstanding marital debt, the

original petition did not ask for partition of the home, or sole use of the home by Ms. Joyner.

5. The respondent in that matter, Christopher Joyner, (Mr. Joyner) filed an Answer and Counter-Petition on August 26, 2019.

6. Respondent did not file an Answer to the Counter-Petition.

7. There were several instances of delayed communication with Ms. Joyner by respondent. Respondent claimed that the lack of communication was due to respondent's personal problems, including her own child custody battle.

8. Ms. Joyner's original trial date was set for April 13, 2020.

9. On March 19, 2020, Ms. Joyner sent an email to respondent requesting they move forward with the trial as scheduled in April 2020.

10. Prior to the trial date, respondent told Ms. Joyner that the courts were closed due to COVID, and the hearing had to be postponed.

11. After about two months of respondent failing to respond to Ms. Joyner's inquiries, Ms. Joyner reached out to the Clerk of Courts

and was advised that the courts had never closed and were continuing to hold hearings via Zoom.

12. Ms. Joyner reached out to respondent and was told that respondent and opposing counsel had decided they did not want to appear in front of the court via Zoom and that the parties had requested a stay.

13. At no time was Ms. Joyner informed of or agreed to stay her litigation.

14. Ms. Joyner was given a pretrial date of November 3, 2020, and new trial date of November 18, 2020.

15. On July 15, 2020, Ms. Joyner attempted to contact respondent several times regarding the delay and when she was unable to reach her, she reached out to the court for help.

16. The court would not communicate with Ms. Joyner since she was represented by counsel but did advise respondent by email to communicate with her client.

17. In November, respondent and Ms. Joyner had a meeting prior to trial where Ms. Joyner claimed respondent encouraged her to delay the trial again and go back to mediation so they could attempt to settle again.

18. Ms. Joyner was dismayed at respondent's suggestion and asked if she needed to seek alternative counsel. Respondent said that she was ready for trial.

19. On November 20, 2020, at trial, Ms. Joyner learned for the first time that a counter petition was filed shortly after the original petition and respondent had failed to answer that petition.

20. Respondent's answer to the court was that she did not know she had to respond to the counter petition.

21. Ms. Joyner stated that the judge was irritated with the Zoom proceedings because no one was able to hear respondent.

22. A default judgment was entered in the matter due to lack of response to the counter petition. (This default was later vacated by new counsel.)

23. Ms. Joyner was granted a divorce, but the court bifurcated the issues on property settlement and financial issues for another trial date.

24. Despite the financial aspects of the underlying case being bifurcated for a later date, respondent advised Ms. Joyner, that because there was a default on the counter petition, Ms. Joyner would have to pay alimony in the amount of $500.00 a month as well

as all her ex-husband's attorney's fees, bringing her monthly payment to Mr. Joyner of $900.00 a month.

25. Respondent then advised Ms. Joyner that despite Ms. Joyner having sole title in the marital home, she had to sell the house at a fraction of market value, to avoid paying the $900.00 a month, despite the marriage only lasting three years.

26. At this point, Ms. Joyner reached out to alternative counsel the next day and was advised that the divorce was defaulted, but that the additional requests in the counter petition were bifurcated until the next hearing, which included alimony and the lawyer's fees.

27. On November 19, 2020, Ms. Joyner retained the services of Rebecca Zima, as new counsel.

28. On advice of counsel, Ms. Joyner reached out to respondent and asked her to cease all communication with opposing counsel, respond to the counter petition immediately, and withdraw as counsel.

29. Respondent asked Ms. Joyner several times if she was going to file a bar complaint and said she was not going to submit anything to the court if a bar complaint was going to be filed.

30. On November 30, 2020, Ms. Joyner filed "Wife's Motion for Leave to Amend Petition for Dissolution" noting some of the prejudice she had suffered due to respondent's alleged incompetence.

31. On January 13, 2021, in the responsive order to Ms. Joyner's motion, the court noted twice that "[respondent] failed to file the answer to the Counter Petition." The court also wrote that respondent was unresponsive during these proceedings, failed to appear for the schedule final pre-trial conference, and that the court had concerns regarding the competence of respondent and that Ms. Joyner was prejudiced due the failure of respondent to act in her client's best interest.

32. On December 23, 2020, Ms. Joyner and a friend went to respondent's office to pick up a reimbursement check. Respondent told Ms. Joyner that in order to receive the refund Ms. Joyner would need to sign a Hold Harmless Agreement. Ms. Joyner refused to sign the agreement and left. Respondent refused to give Ms. Joyner her reimbursement check.

COUNT III – TFB FILE NO. 2021-00,453(4D) – SANDRA MCCLURE

1. On January 20, 2021 Sandra McClure (Ms. McClure), as the personal representative of the Estate of Johnnie J. Jones, Sr., hired the Law Firm to represent her and two of her siblings in a partition case against her brother and sister. The Law Firm was paid $3,050.00 and a fee agreement was signed. The respondent was assigned to represent Ms. McClure.

2. Ms. McClure explained to respondent the need for urgency of the matter to finalized because homeowner insurance on the property was due to be paid in April 2021. Due to this urgency, Ms. McClure completed and returned all paperwork on or about January 25, 2021.

3. On March 2, 2021, respondent emailed Ms. McClure that she would finish and file her complaint that day but needed the addresses for two of Ms. McClure's siblings. The requested information was provided that day.

4. On April 5, 2021, Ms. McClure contacted the clerk of courts and was told there was no record of anything being filed on her behalf. She then called respondent's office and was told someone would call her back.

5. Later, on April 5, 2021, when Ms. McClure did not receive a call, she again called respondent's office but there was no answer.

6. On April 6, 2021, Ms. McClure requested a full refund from respondent.

7. Respondent replied that the case should have been filed on March 3, 2021 and that she would call "in a few moments." No call was received until April 8, 2021. The partition complaint was filed on March 3, 3021, but the pleading was rejected by the clerk's office on March 22, 2021. The issue raised by the clerk's office was ultimately resolved and the pleading was accepted on April 8, 2021.

8. On April 8, 2021, respondent filed the complaint; however, there were errors in the complaint, including the estimated value of the property and the names of parties involved.

9. The respondent further requested payment of attorney's fees and costs from the proceeds of the sale even though no such fees were agreed to by Ms. McClure or mentioned in the fee agreement.

10. In and around May 2021, respondent called Ms. McClure and told her that if she dropped the complaint with The Florida Bar, respondent would reimburse her attorney fees.

<u>COUNT IV – TFB FILE NO. 2021-00,456(4D) – THE FLORIDA BAR</u>

1. On December 4, 2020, respondent filed a petition on behalf of her client, petitioner, to determine incapacity in Flagler County case number 2020-GA-133.

2. The court found the petition was a "combination of barely legible and entirely illegible."

3. The petition lacked the names, relationships, and addresses of the next of kin, nor was there any discussion of possible alternatives to guardianship for the alleged incapacitated person (AIP).

4. Respondent also filed a Petition for Appointment of Plenary Guardianship on December 4, 2020, Case Number 2020-GA-134.

5. Notwithstanding the title of the petition, the body of the petition was wholly inadequate, with wrong verbiage, improper requests for relief of appointments in the matter.

6. On February 4, 2021, respondent filed proposed orders appointing an elisor and an examining committee for evaluation of the AIP. The filings were not timely.

7. On February 5, 2021, the court entered an order setting both matters in 2020-GA-133 and 2020-GA-134, for final hearing on March 25, 2021.

8. On March 25, 2021, at the time of the hearing, no reports of the examining committee, a necessary step in these proceedings, had been filed with the court. Attorney Akins, representing the AIP, advised the court that she had reached out to the examining committee member herself and discovered that respondent had not contacted any of them. Respondent had filed a motion to extend the time to comply with these steps but the court denied such request.

9. The court advised respondent that the petitions in both cases were deficient in several respects and did not contain all the information required by the Florida Probate Rules.

10. Also, respondent was advised that no credit history or criminal background check had been filed for petitioner.

11. Further, the court specifically required that respondent file a legible copy of the petition to determine incapacity in Case Number 2020-GA-133.

12. The court then granted the motion to continue previously filed by Attorney Akins and rescheduled the final hearing for April 13,

2021, to determine incapacity and appointment of guardian for the AIP in these matters.

13. Respondent failed to appear at the April 13, 2021, hearing. Petitioner advised that she had not been able to get in touch with respondent since the last hearing, and Attorney Akins advised that an email she sent to respondent bounced back as undeliverable.

14. Between the March 25, 2021, hearings and the April 13, 2021, hearings, respondent filed no documents with the court, including examining committee reports, did not amend the pleadings, and did not file a legible petition in the incapacity case.

15. The AIP's motion to dismiss was scheduled for April 26, 2021.

16. Respondent filed a response to the motion to dismiss asserting that only one of the three required examining committee members had now met with the AIP.

17. At the April 26, 2021 hearing on the motion to dismiss, respondent blamed her absence from the April 13, 2021, hearing on a scheduling error by her assistant but offered no explanation for her failure to amend the pleadings or file the additional required documents.

18. Respondent failed to ensure her client submitted credit and criminal background checks to the court, necessary for the proceedings.

19. The instant petitions to determine incapacity and to appoint a guardian continued to be facially insufficient, despite respondent being advised of their insufficiency and was afforded additional time to comply with the applicable rules and statutes.

20. The court granted the AIP's motion to dismiss; however, declined to make a finding that petitioner filed the instant petitions in bad faith, as contemplated by section 744.334(7), Florida Statutes stating that, "Petitioner should not be held accountable for the significant deficiencies in the performance of her retain [sic] counsel."

21. It is the respondent's position, that her client stopped cooperating with her, would not provide copies of the documents requested by the court and would not sign the pleadings necessary to comply with the court's requests. Respondent acknowledges, that she should have moved to withdraw from further representation but did not do so.

COUNT V – TFB FILE NO. 2021-00,518(4D) – THE FLORIDA BAR

1. On March 9, 2017, respondent was arrested in Duval County, Florida and charged with Petit Theft Retail, a first-degree misdemeanor. The item at issue was less than $100.00.

2. Respondent entered a plea of no contest, paid court costs, and adjudication was withheld.

3. On May 31, 2017, respondent was arrested in Ware County, Georgia and charged with Theft-Shoplifting, Possession of a Schedule IV Drug and Possession of a Drug not in original container (which was the respondent's anxiety medication).

4. Respondent completed a Deferred Adjudication Program including drug rehabilitation and all charges were dismissed.

5. Respondent failed to report the two arrests.

COUNT VI – TFB FILE NO. 2021-00,519(4D) – THE FLORIDA BAR

1. On November 11, 2020, Pamela O'Neal (Ms. O'Neal) hired the Law Firm to represent her in an uncontested guardianship case for her nephew. The Law Firm was paid a non-refundable flat fee of $3,500.00 plus a $600.00 cost deposit.

2. Included in the fee agreement was a paragraph which stated: "This retainer is scheduled to expire on this date: 5/10/21 or at

the conclusion of pre-trial/pre-mediation or at the conclusion of this case, whatever occurs first."

3. Initially, Ms. O'Neal's case was assigned to a different associate of the Law Firm. The associate left the firm on or around December 2020, and respondent was assigned Ms. O'Neal's case but respondent was initially unaware that she had been assigned the matter.

4. In and around January 2021 through, May, 2021, despite Ms. O'Neal's numerous attempts to talk to respondent as new counsel on the matter, Ms. O'Neal never received any communication from respondent.

5. On May 7, 2021, Ms. O'Neal terminated respondent's services via certified mail stating that, due to lack of results and basically non-existent communication she had obtained new counsel.

6. On May 18, 2021, Ms. O'Neal executed a Joint Motion to Withdraw as Counsel and sent it to respondent for her to sign and file. Ms. O'Neal timely returned the signed form to respondent that same day.

7. Respondent did not sign or file the Motion to Withdraw with the court.

8. On May 25, 2021, David L. Ferguson, Ms. O'Neal's new counsel, filed a Petition for Substitution of Counsel, citing respondent's failure to respond to her client, failure to file the substitution petition, and lack of timeliness to administer the guardianship matter.

COUNT VII – TFB FILE NO. 2021-00,521(4D) – DEBORAH ASORO-EBOSE

1. On or around October 5, 2020, Deborah Cheryl Asoro-Ebose (Ms. Asoro-Ebose) contacted the Law Firm after being referred by Legal Shield, a lawyer referral site, for representation in a Petition for Emergency Guardianship. This is the same litigation referenced in Count IV above.

2. On October 12, 2020, Ms. Asoro-Ebose signed a fee agreement with the Law Firm for $3,450.00, to "establish guardianship for client's father. Attend all associated guardianship hearings and draft all associated guardianship pleadings."

3. Ms. Asoro-Ebose's case was assigned to respondent. The majority of the communication in this file was the with the Law Firm's nonlawyer staff.

4. On December 4, 2020, a Petition to Determine Incapacity was filed in Flagler County Court and assigned Case Number 2020-

GA-133 (incapacity case). The petition was filed as a combination of barely legible and entirely illegible documents. Additionally, a Petition for Appointment of Plenary Guardianship was filed and assigned Case Number 2020-GA-134 (guardianship case).

5. From October 2020 through January 2021, Ms. Asoro-Ebose attempted to contact respondent numerous times for a status on her matter to no avail, but did have communication with her staff.

6. On or about November 30, 2020, despite numerous attempts to make contact with staff or respondent with "Your Jacksonville Lawyer" by phone calls and leaving messages, to obtain whether a hearing had been set, Ms. Asoro-Ebose received no response. Ms. Asoro-Ebose contacted Legal Shield to aid her in receiving contact from respondent. Legal Shield contacted respondent's office and in response a paralegal contacted Ms. Asoro-Ebose. They did not provide Ms. Ebose the hearing date.

7. On or around January 20, 2021, Ms. Asoro-Ebose called the clerk's office to ask about a hearing date and was informed that the county clerk contacted respondent on December 9, 2020. The clerk informed Ms. Ebose that respondent never returned the clerk's call to schedule a hearing.

8. On January 25, 2021, Ms. Asoro-Ebose contacted The Florida Bar. She was provided a RFA No. 21-8141. On January 26, 2021, an ACAP attorney wrote a letter to respondent, and she finally reached out to Ms. Ebose for the first time and provided the hearing date of March 25, 2021.

9. Ms. Asor-Ebose asserts that prior to the hearing on March 25, 2021, respondent never instructed Ms. Asoro-Ebose what time to appear on Zoom, or what to expect at the hearing. Ms. Asoro-Ebose also asserts that she had to call the county clerk to ask for the time.

10. On March 25, 2021, the presiding judge expressed his dissatisfaction to respondent that the documents were illegible, insufficient, and that respondent had not gotten a report from the Examining Committee. The judge advised respondent what was required to obtain the Examining Committee's report(s).

11. A two-week extension was granted until April 13, 2021.

12. Respondent failed to appear at the hearing, through secretarial error in not placing the hearing on her calendar. The court noted respondent had not filed documents since the last hearing, did not amend the pleadings, and did not file a legible petition in the

incapacity case. The presiding judge rescheduled the hearing for April 26, 2021.

13. On April 21, 2021, respondent called Ms. Asoro-Ebose and informed her about the status of her case.

14. Respondent told Ms. Asoro-Ebose that she had reached out to a doctor to examine her father on April 23, 2021, but she was unsuccessful getting the psychiatric nurse and the psychologist to conduct examinations before the hearing date.

15. At the April 26, 2021, hearing the presiding judge again expressed dissatisfaction with respondent not having completed the necessary tasks to move the case forward.

16. The judge asked Ms. Asoro-Ebose why she did not complete a criminal background check for the case; she explained that she was not advised to get one.

17. The judge dismissed Ms. Asoro-Ebose's petitions without prejudice due to the petitions being "...facially insufficient, despite Petitioner being afforded additional time to comply with the applicable rules and statutes." The court noted in their order that respondent had significant deficiencies in her performance as retained counsel.

18. On May 18, 2021, Ms. Asoro-Ebose contacted respondent to request a refund. Respondent did not personally provide a refund and directed Ms. Asoro-Ebose to the principals of the Law Firm as they had been paid, not the respondent.

COUNT VIII – TFB FILE NO. 2022-00,070(4D) – JUANITA WRIGHT

1. In or around March 2020, Juanita Wright (Ms. Wright) consulted with respondent to retain respondent to obtain legal custody of Ms. Wright's granddaughter who resided with her another family member.

2. During the course of the representation, Ms. Wright paid the Law Firm $5,500.00 in fees and costs.

3. Ms. Wright asserts that she experienced immediate lack of communication from respondent despite numerous attempts to reach her via phone calls and emails. Respondent denies such claim as the Law Firm's file confirms regular communication with this client.

4. After a consistent lack of responsiveness over two months, Ms. Wright and her husband traveled to respondent's office without an appointment (a practice they frequently employed). They waited for almost two hours before respondent talked with them as

the lack of an appointment had respondent attending to other clients' matters at the time.

5. Respondent told Ms. Wright that Baker County, where the grandchild lived, did things differently and that they would have to take a different approach. Respondent advised that she would call Ms. Wright soon with a court date.

6. Ms. Wright continued to call respondent's office to obtain a status on her matter and to determine when a hearing date would be set. Ms. Wright received no response from respondent.

7. During the period of representation, respondent moved offices and Ms. Wright was not informed.

8. Finally, in or around February 2021, respondent's office called Ms. Wright with a court date in June 2021.

9. The judge told the Wrights that there is a law in the state of Florida that provides grandparents have no rights related to custody of grandchildren.

10. It is the respondent's position that the client herein was not totally candid with her lawyer about prior proceedings that they had been involved in that affected the outcome of this matter.

11. Notwithstanding that the Law Firm was paid by the client and not the respondent, on August 27, 2021, respondent sent a personal check to Ms. Wright for $5,000.00 as a refund of fees paid to the Law Firm.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 4-1.1 (Competence); 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); 4-1.4(b) (Duty to Explain Matters to Client); 4-1.5(a) (Illegal, Prohibited, or Clearly Excessive Fees and Costs); and 4-3.2 (Expediting Litigation).

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:

> 4.4 Lack of Diligence
> (b) Suspension is appropriate when a lawyer causes injury or potential injury to a client and (1) knowingly fails to perform services

for a client; or (2) engages in a pattern of neglect with respect to client matters.

4.5 Lack of Competence
(b) Suspension is appropriate when a lawyer engages in an area of practice in which the lawyer knowingly lacks competence and causes injury or potential injury to a client.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Arango, 720 So.2d 248 (Fla. 1998), the attorney received a 30-day suspension for failing to act with diligence in pursuing a client's case and for submission of false or fabricated evidence during disciplinary process.

In The Florida Bar v. Nesmith, 707 So. 2d 331 (Fla. 1998), the attorney received a 30-day suspension for failure to act with reasonable diligence and promptness in representing a client.

In The Florida Bar v. Jordan, II, 682 So. 2d 547 (Fla. 1996), the attorney received a 1-month suspension for failure to keep a client informed of the status of representation, failure to act with reasonable diligence and promptness in representing a client, and failure to respond to a disciplinary agency's inquiry.

In The Florida Bar v. Michael Tyrone Harris, SC15-718, by order dated December 23, 2015, pursuant to a consent judgment, the court publicly reprimanded the attorney and placed him on probation for 2 years which included his completion of his current Florida Lawyer Assistance, Inc., contract. The attorney was incompetent and negligent in handling his client's matter resulting in a judicial default and entry of a substantial damages judgment. The client's new counsel appealed the judgment which was reversed and remanded back to the trial court. The attorney also failed to communicate with his client.

In The Florida Bar v. Kathryn Lynn Montague, SC15-1081 (no opinion), the attorney received a 30-day suspension for failing to diligently handle a client's matter, for failing to provide adequate communication to the client, and for failing to properly withdraw from the representation. The attorney was experiencing serious personal problems during the time of the misconduct, and she had no prior discipline.

In The Florida Bar v. Maier, 784 So. 2d 411 (Fla. 2001), the attorney received a 60-day suspension for failing to act with diligence in pursuing client's application for alien labor certification, failing to keep the client reasonably informed about status of that matter, and failing to timely respond to inquiries made by bar.

In The Florida Bar v. Chris R. Borgia, SC16-351, by Court order dated September 29, 2016, respondent received a 90-day suspension, a 1-year period of probation, and was ordered to pay restitution totaling approximately $6,600.00. The attorney neglected multiple client matters involving disability claims and/or appeals. The attorney also failed to communicate with his clients and failed to keep them reasonably informed of the status of their matters. While the attorney demonstrated that he completed some work, he failed to provide the complete legal service he was hired to perform in each case. The attorney did not respond to his clients' requests for refunds, requests for waiver of his statutory fees, and/or he failed to return file materials upon request. In addition, the attorney failed to timely respond to the bar's inquiries. At the time of the neglect, the attorney suffered from a serious illness which required several visits to urgent care centers and a visit to the emergency room. The attorney did not adequately communicate information regarding his illness to his clients, nor did he take any action to withdraw from their cases when he was unable to complete the services for which he was hired. In some cases, the attorney embellished the extent of his illness to his clients, when he was explaining the reason for his failure to complete a task or to respond to their calls. The attorney had no prior discipline.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I further considered the recent Court orders in The Florida Bar v. Jackson, Case No. SC21-1648, and The Florida Bar v. Hamilton, Case No SC21-1631, disciplining other associate attorneys of the same Law Firm as the one in the pending discipline case for similar misconduct as that found herein. Both of these attorneys received public reprimands and not suspensions. While respondent's pending disciplinary case encompasses ethical misconduct which is similar to that found in Jackson and Hamilton, it also includes two arrests in 2017, which resulted in a misdemeanor conviction for petit retail theft of an item valued at less than $100.00.

I am very mindful that the Florida Supreme Court found that a 45-day suspension, coupled with three years of probation, to be inappropriate on the above facts. I have been presented with the following terms in an Amended Consent Judgment:

A. A 91-day suspension from the practice of law, which suspension requires proof of rehabilitation prior to any reinstatement;

B. Respondent shall undergo a comprehensive mental health evaluation facilitated by Florida Lawyers Assistance, Inc., prior to any attempt to establish rehabilitation in a reinstatement proceeding and shall obtain FLA Inc.'s support in her reinstatement, including entering into a rehabilitation contract, if recommended by FLA, Inc.

C. Payment of the bar's disciplinary costs.

The parties hereto have in essence doubled the proposed sanction and will address the need for any rehabilitative conditions in the reinstatement proceeding that must be held in order for the Respondent to be reinstated to the practice of law. I have carefully considered the rejection of the prior Consent Judgment, the aggravating factors, the significant mitigation that is present herein[1] and the relevant case law.

In The Florida Bar v. Adorno, 60 So. 3d 1016 (Fla. 2011), the Florida Bar affirmed that the following three precepts must be considered in imposing a sanction:

> First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and, at the same time, not depriving the public of the services of a qualified attorney due to undue harshness in imposing a penalty. Second, the judgment must be fair to the respondent—sufficient to sanction a breach of ethics and, at the same time, encourage rehabilitation. Third, the judgment must be severe enough to deter others who might be prone to become involved in like violations. *Id.* at 1031 (citations omitted).

I find that the proposed Amended Consent Judgment meets the precepts as set forth in Adorno and therefore recommend that the Respondent receive a 91-day suspension from the practice of law.

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1 It has been represented to me that the Respondent, unlike the other two associates of the law firm, stayed much longer at the firm in the hope that she could help the clients that were not getting the attention they deserved. Due to continued understaffing the situation got worse not better resulting in additional grievances, despite her best efforts.

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: 47

Date admitted to the Bar: October 5, 2009

Prior Discipline: None.

3.2 Aggravation
(3) a pattern of misconduct; and
(4) multiple offenses.

3.3 Mitigation
(1) absence of a prior disciplinary record;
(2) absence of a dishonest or selfish motive;
(3) personal or emotional problems;
(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;
(7) character or reputation;
(8) physical or mental disability or impairment or substance-related disorder;
(9) unreasonable delay in the disciplinary proceedings if the respondent did not substantially contribute to the delay and the respondent demonstrates specific prejudice resulting from that delay;
(10) interim rehabilitation;
(11) imposition of other penalties or sanctions; and
(12) remorse.

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
Investigative Costs		284.47
	TOTAL	$1,534.47

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 _______ day of __________________, 2023.

NOV 2 1 2023

Raul Zambrano

Raul Antonio Zambrano, Referee
S. James Foxman Justice Center
251 N. Ridgewood Avenue
Daytona Beach, FL 32114-3275

Original to:

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

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