

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JULIA REIDY KAPUSTA,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2023-10,073 (6D)

**CONDITIONAL AGREEMENT FOR DIVERSION TO A
PRACTICE AND PROFESSIONALISM ENHANCEMENT PROGRAM**

Pursuant to rule 3-5.3(h)(1) the undersigned parties submit this conditional agreement for diversion to a practice and professionalism enhancement program.

I. RECOMMENDATION OF DIVERSION: Pursuant to Rule 3-5.3 of The Rules Regulating The Florida Bar, the undersigned agree to diversion of this matter to a practice and professionalism enhancement program under the terms and conditions stated herein. The following program is recommended: The Florida Bar's Ethics School.

II. NARRATIVE SUMMARY: On April 10, 2018, the complainant filed a complaint in Broward County, Case No. CACE18008447, to have her brother removed as trustee of their mother's trust. On February 15, 2022, the court entered Order Granting Amended Motion Summary Judgment finding that the trust was invalid because it was not executed properly which would require the estate go through probate. The complainant thought that impromptu testimony that was heard at the summary judgment hearing may be a basis for an appeal. On March 4, 2022, the complainant retained respondent to appeal the Broward County Order, for a flat fee of \$10,000.00, that included the initial brief, reply brief and oral argument. The complainant made a partial payment of \$2,500.00, which was to be the first of four equal installment payments.

On March 21, 2022, respondent filed Notice of Appeal with the 4th DCA and on April 22, 2022, filed Motion for Review. On March 24, 2022, respondent emailed the complainant inquiring if a transcript had been ordered for the summary judgment hearing. Respondent stated that "it would be important for us to have that

as part of the record." Neither the complainant, the complainant's trial counsel, nor Respondent obtained a copy of the transcript.

On May 25, 2022, the 4th District Court of Appeal entered an order denying the motion for review stating, "denied without prejudice to appellant refiling upon the trial court entering an order specifically granting, modifying, or denying the motion to stay." Neither the complainant's trial counsel nor respondent responded to the order.

On May 26, 2022, respondent filed Appellant's Motion for Extension of Time to File Initial Brief requesting a 30-day extension because she had not received the appellate record from the clerk.

On June 1, 2022, the appeal record was served to all parties in the lower court case and on June 10, 2022, the records were filed with 4th DCA. On June 27, 2022, respondent requested a second 30-day extension stating, "Appellant has been diligently working on the brief. However, due to undersigned counsel's current caseload, Appellant is unable to complete the brief in time ... " The court granted an extension until June 27, 2022.

On June 30, 2022, the complainant emailed respondent asking, "What is your recommendation for getting a stay pending appeal?" Respondent replied to the complainant's June 30, 2022, email stating: "You need an order from the trial court actually denying the motion to stay. The court ruled that the order did not actually deny it." Respondent could not file any document with the trial court since she was not counsel of record and she did not contact trial counsel regarding filing a motion for stay with the trial court; however, it was Ms. Kapusta's understanding that trial counsel received a copy of the order and would act upon it as appropriate.

On July 19, 2022, respondent requested a third extension for 7 days due to a conflict and the court granted an extension until August 3, 2022.

On July 28, and August 2, 2022, respondent called and emailed the complainant. Respondent's email advised the complainant that she had accepted a job with the United States Attorney's Office and would be unable to further handle her appeal. Respondent also stated that she did not see a good faith basis to challenge the trial court's order and the firm would provide her with a refund. The complainant did answer respondent's telephone calls or return her messages until after August 2, 2022.

On August 2, 2022, respondent filed a motion to withdraw as counsel citing irreconcilable differences.

On August 31, 2022, the court granted respondent's motion to withdraw. The order stated: (1) this appeal is stayed for thirty (30) days from the date of this order so that new counsel, if desired, may be obtained; (2) this stay will be automatically lifted if substitute counsel files a notice of appearance prior to the end of the 30 day abatement period; (3) if no counsel has filed a notice of appearance within thirty (30) days, all filings shall be sent to appellant at the address appearing below; (4) if substitute counsel does not appear within thirty (30) days from the date of this order, appellant is advised that the case will move forward after the abatement period and compliance with the Florida Rules of Appellate Procedure and the rules of this court is required. Failure to comply with the rules may result in dismissal or other sanctions.

Respondent's law firm refunded the complainant's entire payment of \$2,500.00, less the court's filing fee. The complainant's appeal was preserved. The complainant filed her initial brief pro se, but secured counsel for her reply brief. The reply brief was filed on August 14, 2023, and the case is now under consideration by the 4th DCA. She also filed a second motion to stay, which the 4th DCA denied on the merits. The complainant obtained a copy of the transcript of the summary judgment hearing, which she included in her supplemental record. The complainant did not suffer any prejudice or loss of rights.

If this matter had gone to a final hearing, respondent would have shown the following mitigating factors under Standard 9.32:

- (a) absence of a prior disciplinary record;
- (b) absence of dishonest or selfish motive;
- (c) personal or emotional problems;
- (d) good faith effort to make restitution;
- (e) full and free disclosure to the disciplinary board and co-operative attitude;
- (f) inexperience in the practice of law;
- (g) character or reputation;
- (h) physical or mental disability or impairment; and

(i) remorse.

III. COSTS: The respondent shall pay the costs of this matter which are:

Ethics School \$750.00

Administrative Fee \$1,250.00

TOTAL \$2,000.00

Costs shall be due The Florida Bar within 30 days from acceptance of this diversion recommendation.

IV. EFFECT OF DIVERSION: Diversion to a practice and professionalism enhancement program shall close this disciplinary file without imposition of a disciplinary sanction and diversion shall not constitute a record of professional misconduct. If respondent successfully completes the diversion recommended hereunder, this disciplinary file shall remain closed.

V. EFFECT OF FAILURE TO COMPLY WITH DIVERSION

RECOMMENDATION: If respondent fails to fully comply with all requirements of this diversion, the bar may reopen its disciplinary file and conduct further proceedings under rule 3-5.3(k). Failure to complete the practice and professionalism enhancement program shall be considered a matter of aggravation when imposing a disciplinary sanction. If you do not pay the costs assessed against you within 30 days of acceptance of this diversion recommendation, you will be declared a delinquent member pursuant to rule 1-3.6 and you will become ineligible to practice law in Florida.

DATED this 24 day of October, 20 23.



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