

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. SC23-0774

v.

The Florida Bar File
No. 2018-50,334(15A)

GUILLERMO JOSE FARINAS,
Respondent.

NOV 14 2023

Received, Clerk, Supreme Court

REPORT OF REFEREE

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 26, 2023, The Florida Bar filed its Complaint against respondent in Case No. SC23-0774. On May 31, 2023, the Chief Judge of the Seventeenth Judicial Circuit of Florida appointed the undersigned to serve as the referee in these proceedings. Respondent failed to answer the bar's complaint as mandated by R. Regulating Fla. Bar 3-7.6(h)(2), and on July 31, 2023, the bar filed The Florida Bar's Motion for Default. Attached to the bar's motion for default was an email showing respondent had actual

knowledge of the complaint. By order on August 7, 2023, the undersigned referee granted the bar's motion for default.

The undersigned scheduled two pre-trial conferences which were held via zoom video conference on July 6, 2023 and July 12, 2023. Prior to both scheduled pretrial conferences, the undersigned's office attempted to coordinate the hearings and sent a notice of hearing with the time, date, and zoom information to the parties by email and certified mail.¹ At the July 6, 2023 pretrial conference, bar counsel appeared, however, respondent did not appear and the matter was reset to July 12, 2023. A pretrial conference was held on July 12, 2023 and bar counsel appeared, but respondent was not present.² The undersigned scheduled a case management hearing for August 7, 2023 and the undersigned's office sent a notice of hearing with the time, date, and zoom information to the parties by email. A case management conference was held on August 7, 2023, via zoom at which bar counsel appeared, but respondent did not appear.

¹ The undersigned attempted to coordinate a pre-trial conference with both parties by emailing both sides requesting their contact information on June 2, 2023 and June 5, 2023. On June 7, 2023, the respondent confirmed his service email address. Then on June 13, 2023, June 14, 2023 and June 15, 2023 the undersigned again emailed the parties requesting their dates of availability to schedule the pre-trial conference. Instead of responding with availability, the respondent emailed back discussing the merits of the case, his physical ailments and questioning the court's authority to set this hearing. On June 16, 2023, after numerous attempts to coordinate the hearing with the respondent, the undersigned scheduled the hearing for July 6, 2023 and notified the parties via email and certified mail.

² On June 18, 2023, after setting the hearing for July 6, 2023, the undersigned referee's judicial assistant received an email from respondent which stated respondent's law office would be temporarily closed effective from June 18, 2023 through July 9, 2023. At that time, the undersigned's judicial assistant responded via email that the respondent must file a motion if he is seeking a continuance of the hearing. The respondent failed to respond to this email and did not file a motion to continue.

On August 7, 2023, the undersigned referee's office sent notice to the parties by email that the sanction hearing was set for September 27, 2023.³ Respondent did not appear at the sanction hearing, but bar counsel was present. Prior to the start of the sanction hearing, the undersigned referee directed the court deputy to check the hallway outside of the courtroom for respondent. However, after there was no response, the sanction hearing was held.

All items properly filed, including pleadings, exhibits in evidence and the report of referee, constitute the record in this case and are forwarded to the Supreme Court of Florida. A court reporter was present at all proceedings however transcripts were not ordered.

Guillermo Farinas, respondent, pro se.

Bar Counsel – Joi L. Pearsall.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent was at all times mentioned during this investigation, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida. Respondent was admitted to The Florida Bar on April 10, 1979.

³ On September 26, 2023, the undersigned referee's judicial assistant sent notice to the parties by email as a reminder that the sanction hearing in this case was set for September 27, 2023.

Narrative Summary of Case. By virtue of the default, the following allegations of the bar's complaint are deemed admitted.

1. On or about September 20, 2016, respondent, as the attorney for the plaintiff in the case styled *In Re: The Matter of Joseph Manzano, plaintiff v. Linda D'Alessandro*, defendant, filed a Complaint for Equitable Relief from Agreed Final Order Modifying Temporary Custody by Extended Family Member on the Basis of Extrinsic Fraud and the Lack of Personal Jurisdiction, in the Fifteenth Judicial Circuit Court of Palm Beach County, Florida which was assigned Case No. 50-2016-DR-009529-XXXX-MB, (hereinafter referred to as the "Palm Beach case").

2. In the September 20, 2016 filing in the Palm Beach case, respondent alleged that the complaint sought relief from an *Agreed Final Order Modifying Temporary Custody by Extended Family Member* that was issued on January 20, 2012 in the Seventeenth Judicial Circuit of Broward County, Florida, Case No. FMCE12-00471, *D'Alessandro v. Manzano, et al.* on the basis of extrinsic fraud and lack of personal jurisdiction.

3. Prior to respondent filing the September 20, 2016 complaint in the Palm Beach case, multiple motions and/or petitions were filed on behalf of respondent's client in the Seventeenth Judicial Circuit seeking relief from the aforementioned January 20, 2012 order, however, these motions/petitions were denied in each instance.

4. On November 2, 2016, an Order of Dismissal was entered in the Palm Beach case.

5. In the November 2, 2016 Order of Dismissal, the court in the Palm Beach case dismissed the petition with prejudice and stated that:

- “The Petition seeks to have this Court grant relief from an order entered in the Seventeenth Judicial Circuit.”

- “The Petition seeks to have this Court grant relief from an Order entered more than one year ago based upon alleged fraud.”

- “The Petition seeks relief pursuant to rule 12.540 which bars actions for fraud after the passage of one year.”

6. Respondent, in his capacity as attorney for the plaintiff in the Palm Beach case, filed a notice of appeal, in the Fourth District Court of Appeal regarding the aforementioned November 2, 2016 order, and it was assigned Case No. 4D16-3951.

7. On August 3, 2017, the Fourth District Court of Appeal entered an order affirming the November 2, 2016 order of dismissal. On the same date, the Fourth District Court of Appeal issued an order to show cause directing Manzano and respondent to show cause in writing “why the Court should not impose any and all sanctions . . . for the prosecution of a frivolous appeal.”

8. On November 1, 2017, the Fourth District Court of Appeal issued its opinion and sanctioned Manzano and respondent, awarding attorney's fees and costs to the opposing party. In its opinion, the court stated,

We find the appeal to be completely without merit. Asserting fraud on the court, the Appellant [Manzano] sought relief from an order entered more than four years before he filed his complaint. . . . Clearly, he did not seek relief from the order within the time required by Rule 1.540(b). . . . The Appellant has had multiple opportunities to raise the issues presented in his complaint to the Broward Circuit Court and, in fact, has done so. His attempt at filing a new lawsuit in a different circuit, after those prior attempts were rejected and while other new attempts still remain pending in the Broward Circuit Court, is completely devoid of merit. . . . [T]he Court awards the appellee its appellate attorney's fees and costs as sanction against the Appellant and his counsel, Guillermo J. Farinas, Jr., for the filing of a frivolous appeal.

III. RECOMMENDATIONS AS TO GUILT

I recommend respondent be found guilty of violating the following Rules Regulating The Florida Bar: 4-1.1 (competence); 4-3.1 (meritorious claims and contentions); 4-8.4(a) (violate or attempt to violate the Rules of Professional Conduct); and 4-8.4(d) (conduct prejudicial to the administration of justice).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

6.2 Abuse of the Legal Process

6.2(b) Suspension is appropriate when a lawyer knowingly violates a court order or rule and causes injury or potential injury to a client or a party or causes interference or potential interference with a legal proceeding.

V. CASE LAW

I considered the case law listed below, prior to recommending discipline:

The Florida Bar v. Richardson, 591 So. 2d 908 (Fla. 1991). The Court imposed a 60-day suspension against a lawyer who filed a frivolous federal suit. The referee found the lawyer guilty of violating Rule 4-3.1 of the R. Regulating Fla. Bar and found the lawsuit was clearly unwarranted on the grounds of judicial immunity, res judicata, and lack of federal jurisdiction over the proceedings.

The Florida Bar v. Committe, 916 So. 2d 741 (Fla. 2005). The Court imposed a 90-day suspension against a lawyer who filed two frivolous lawsuits, failed to comply with proper discovery requests and failed to attend a deposition where he was scheduled to be deposed. The referee found the lawyer had no reasonable grounds for failing to appear at the

deposition and that his filing of two federal suits was an abuse of the legal process.

The Florida Bar v. Gwynn, 94 So. 3d 425 (Fla. 2012). The Court imposed a 91-day suspension against a lawyer, who failed to expedite litigation, failed to competently represent her client, and filed many frivolous motions in a bankruptcy case. The referee found the lawyer guilty of fifteen separate rule violations.

The Florida Bar v. Davis, 149 So. 3d 1121 (Fla. 2014). The Court approved the referee's recommendation of disbarment after the referee found the lawyer guilty of violating Rules 4-1.3, 4-1.4(a)(3), and 4-1.4(a)(4) of the R. Regulating Fla. Bar. The Court found that after the referee entered an order granting the bar's motion for default judgment, the allegations in the bar's complaint were deemed admitted and the lawyer's lack of participation in the proceedings before the referee posed serious questions about the lawyer's fitness to practice law.

The Florida Bar v. Rosenberg, 169 So. 2d 1155 (Fla. 2015). The Court has moved towards imposing increased sanctions when an attorney exhibits unethical and unprofessional conduct.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

- A. 91-day suspension; and
- B. Payment of bar's discipline costs.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(2)(D), I considered the following personal history of respondent, to wit:

Age: 70

Date admitted to the Bar: April 10, 1979.

Prior Discipline: Respondent received a public reprimand in 1981, 1990, 1991, and 1992.

3.2(b) Aggravating Factor(s):

- (1) prior disciplinary offenses; and
- (9) substantial experience in the practice of law.

3.3(b) Mitigating Factor(s):

- (11) imposition of other penalties or sanctions; and
- (13) remoteness of prior offenses.

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 Costs	\$1,250.00
Court Reporter Fees	\$ 845.00
Investigative Costs	\$ 127.00
TOTAL	\$2,222.00

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and 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 31 day of October, 2023.


Honorable Jennifer Wigand Hilal, Referee

Original To:

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Conformed Copies to:

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