

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

Supreme Court Case  
No. SC22-638

v.

The Florida Bar File Nos.  
2021-10,517 (13B)  
2022-10,131 (13B)  
2022-10,213 (13B)

MARK ROBERT MOON,  
Respondent.

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**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 11, 2022, The Florida Bar filed its Complaint against Respondent. This disciplinary proceeding was stayed between June and November 2022 due to The Florida Bar's discovery of respondent's active military duty status, but the proceedings resumed after a properly noticed hearing on the bar's Motion to Lift Stay of Proceedings on November 8, 2022. Respondent failed to answer the bar's complaint, and on December 2, 2022, the bar filed its Motion for Default. On December 15, 2022, respondent failed to appear at the properly noticed case management

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conference and hearing on the motion for default. By order dated December 19, 2022, the referee granted the bar's Motion for Default.

By order dated December 19, 2022, the referee directed the bar to file its memorandum of law stating its position as to the appropriate discipline for respondent's misconduct and ordered respondent to file a written response to the bar's memorandum or request a hearing on sanctions within ten (10) days of the bar's filing of its memorandum. The Florida Bar filed its Memorandum of Law as to Discipline on January 17, 2023. Respondent failed to file any written response to the bar's memorandum or request a hearing on sanctions within the ordered ten (10) day period, and the undersigned made his recommendation without further hearing based on the bar's memorandum pursuant to procedure defined in the December 19, 2022 order. 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. A summary of the facts as deemed admitted by the Order on The Florida Bar's Motion for Default dated December 19, 2022, is as follows:

A. Count I, Complaint of Kelly Kaina, TFB File No. 2021-10,517(13B):

Beginning in 2013, respondent represented Kelly Kaina in a family law matter. Respondent and Ms. Kaina communicated a few times in 2020, and their last phone conference was on October 1, 2020. Thereafter, respondent failed to adequately respond to Ms. Kaina, despite her repeated attempts to contact respondent. On January 6, 2021, Ms. Kaina emailed respondent's assistant and received a reply to contact respondent directly. The same day, respondent emailed Ms. Kaina stating he would call her; however, this email was the last communication Ms. Kaina received from respondent.

On January 20, 2021, Ms. Kaina requested a refund of the \$3,971.25 credit listed on the last billing statement she received from respondent. Respondent failed to respond to Ms. Kaina's refund request and failed to return any unused portion of the funds held on her behalf. Respondent failed to diligently pursue Ms. Kaina's claims and she retained new counsel, but respondent failed to deliver her case file or a signed stipulation for substitution of counsel.

Respondent failed to respond to the bar's inquiries concerning this matter, and the Supreme Court of Florida indefinitely suspended respondent until he fully responds to the bar's inquiries by Order dated November 9, 2021.

B. Count II, Complaint of Andrew Nowell, TFB File No. 2022-10,131(13B): Andrew Nowell retained respondent in October 2020 to represent him in a family law matter. Mr. Nowell signed a retainer agreement and paid respondent \$3,500.00 as a retainer, plus \$420.00 for costs. On December 4, 2020, respondent had a conversation with Mr. Nowell, but that was his last communication with Mr. Nowell. Between February and April 2021, Mr. Nowell sent respondent numerous emails and phone messages requesting information on his case, but respondent failed to respond and failed to complete any work on his behalf. On April 21, 2021, Mr. Nowell terminated the representation and requested a refund of his remaining retainer. Respondent failed to respond to Mr. Nowell's request for a refund and failed to return any unused portion of the retainer, and by doing so, respondent charged and collected an excessive fee. Respondent failed to respond to the bar's inquiries concerning this matter.

C. Count III, Complaint of The Florida Bar, TFB File No. 2022-10,213(13B): Respondent represented Tammy Cerniglia in a family law matter. On August 17, 2018, respondent filed a petition for dissolution of marriage on Ms. Cerniglia's behalf, and the parties thereafter entered into a settlement agreement. The trial judge set the matter for a case management conference and/or dismissal hearing on July 29, 2021, but respondent failed to appear. The trial judge set another case management conference on October 20, 2021, but respondent again failed to appear. In advance of the October 20, 2021, case management conference, Ms. Cerniglia filed a pleading with the court stating she had been unable to reach respondent. Respondent failed to diligently represent Ms. Cerniglia and failed to adequately communicate with her. Respondent disobeyed an obligation under the rules of the tribunal by failing to appear at the two court-ordered case management conferences, and his actions were prejudicial to the administration of justice. Respondent failed to respond to the bar's inquiries concerning this matter.

III. RECOMMENDATIONS AS TO GUILT.

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

As to Count I, Complaint of Kelly Kaina, TFB File No. 2021-

10,517(13B): Rule 4-1.2 (Objectives and Scope of Representation); Rule 4-1.3 (Diligence); Rule 4-1.4 (Communication); Rule 4-1.15 (Safekeeping Property); Rule 4-1.16(d) (Declining or Terminating Representation); Rule 4-3.2 (Expediting Litigation); Rule 4-8.4(g) (Failure to respond to an official bar inquiry); and Rule 5-1.1 (Trust Accounts).

As to Count II, Complaint of Andrew Nowell, TFB File No. 2022-

10,131(13B): Rule 4-1.3 (Diligence); Rule 4-1.4 (Communication); Rule 4-1.5 (Fees and Costs for Legal Services); Rule 4-1.15 (Safekeeping Property); Rule 4-8.4(d) (Conduct prejudicial to the administration of justice); Rule 4-8.4(g) (Failure to respond to an official bar inquiry); and Rule 5-1.1 (Trust Accounts).

As to Count III, Complaint of The Florida Bar, TFB File No. 2022-

10,213(13B): Rule 4-1.3 (Diligence); Rule 4-1.4 (Communication); Rule 4-3.4(c) (Fairness to Opposing Party and Counsel – knowingly disobey an obligation under the rules of a tribunal); Rule 4-8.4(d) (Conduct prejudicial to the administration of justice); and Rule 4-8.4(g) (Failure to respond to an official bar inquiry).

#### IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.4 Lack of Diligence: (a) Disbarment. Disbarment is appropriate when a lawyer causes serious or potentially serious injury to a client and: (1) abandons the lawyer's practice; (2) knowingly fails to perform services for a client; or (3) engages in a pattern of neglect with respect to client matters.

I reviewed Standard 3.2 and found the following factors in aggravation:

3.2(b)(1) (prior disciplinary offenses): by Court order dated November 9, 2021, in Case No. SC21-1286, respondent was indefinitely suspended from the practice of law until he fully responded to the bar's official inquiries concerning Ms. Kaina's matter. I note that respondent has taken no steps towards responding to the bar's inquiries or lifting his suspension.

3.2(b)(2) (pattern of misconduct): respondent abandoned his representation of at least the three clients referenced in the bar's complaint and failed to provide them with diligent legal services.

3.2(b)(4) (multiple offenses): respondent committed violations of several Rules Regulating The Florida Bar across at least three separate client matters.

3.2(b)(5) (bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency): respondent failed to respond to either bar counsel or the grievance committee during their investigation of these matters. Respondent also failed to promptly update his record mailing address, and the bar expended additional resources to locate respondent to provide him an opportunity to respond to his client's grievances. Once formal disciplinary proceedings were initiated, respondent failed to submit an answer to the bar's complaint and failed to meaningfully participate.

3.2(b)(9) (substantial experience in the practice of law): respondent has been licensed to practice law since 2007.

I reviewed Standard 3.3 and found no applicable mitigating factors.

V. CASE LAW

I considered the following case law prior to recommending discipline:

*Florida Bar v. Lord*, 433 So. 2d 983, 986 (Fla. 1983) for the Court's definition of the three objectives of attorney discipline.

*Florida Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015) (citing to *Florida Bar v. Rotstein*, 835 So. 2d 241, 246 (Fla. 2002)) for the proposition that the Court has moved towards stronger sanctions for attorney misconduct.

*Florida Bar v. Bartlett*, 509 So. 2d 287, 289 (Fla. 1987) for the proposition that the Court has stated that "a lawyer's willful refusal to participate at all in the disciplinary process when he is accused of misconduct calls into serious question the lawyer's fitness for the practice of law."

I further considered the following cases where attorneys were disbarred for similar misconduct:

*Florida Bar v. Davis*, 149 So. 3d 1121 (Fla. 2014)

*Florida Bar v. Locy*, 151 So. 3d 1229 (Fla. 2014) (unpublished table decision)

*Florida Bar v. Preece*, 2016 WL 4506836 (Fla. Aug. 25, 2016)



*Florida Bar v. Freeman*, 2021 WL 217636 (Fla. January 21, 2021)

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

A. Disbarment; and

B. Payment of The Florida Bar's costs in these proceedings.

C. Further, 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.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 44

Date admitted to the bar: December 14, 2007

Prior Discipline: by Court order dated November 9, 2021, in Case No. SC21-1286, respondent was indefinitely suspended from the practice of law until he fully responded to the bar's official inquiries.

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida

Bar:

|                       |            |
|-----------------------|------------|
| Investigative Costs   | \$413.00   |
| Court Reporters' Fees | \$210.00   |
| Bar Counsel Costs     | \$51.25    |
| Administrative Fee    | \$1,250.00 |
| TOTAL                 | \$1,924.25 |

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 2<sup>d</sup> day of March, 2023.

  
Honorable Steve Berlin, Referee

Original To:

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