

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

KATHLEEN LYNN SMADES,
Respondent.

Supreme Court Case
No. SC21-1521

The Florida Bar File
No. 2022-10,170 (6B)

Received, Clerk, Supreme Court

MAR 02 2023

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 November 4, 2021, The Florida Bar filed its Notice of Determination or Judgment of Guilt against Respondent. On that same date, the Court entered an Order suspending respondent from the practice of law effective December 4, 2021. A Hearing on Sanctions was held in this matter on February 8, 2023. Evan D. Rosen, bar counsel, appeared on behalf of The Florida Bar, and Calrie M. Marsh, appeared on behalf of respondent. 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. Respondent was arrested on April 30, 2019, for Driving Under the Influence of Alcoholic Beverages or Controlled Substances and Refusal to Submit to Testing, in Pinellas County, Florida. On June 28, 2021, respondent was adjudicated guilty of Driving Under the Influence of Alcoholic Beverages or Controlled Substances, a third-degree felony offense, and Refusal to Submit to Testing, a misdemeanor offense in the matter (*State of Florida v Kathleen Lynn Smades*, Case No. 19-04313-CF- K). Respondent failed to inform The Florida Bar of the arrest or conviction.

Respondent was arrested on April 10, 2019, for Driving Under the Influence of Alcoholic Beverages or Controlled Substances and Refusal to Submit to Testing in Pinellas County, Florida. On June 28, 2021,

respondent was adjudicated guilty for Driving Under the Influence of Alcoholic Beverages or Controlled Substances, a third-degree felony, and Refusal to Submit to Testing, a misdemeanor offense (*State of Florida v Kathleen Lynn Smades*, Case No. 19-05206-CF-K). Respondent failed to inform The Florida Bar of the arrest or conviction.

Respondent was arrested on or about May 24, 2013, for Driving Under the Influence of Alcoholic Beverages or Controlled Substances in Pinellas County, Florida. On July 16, 2014, respondent was adjudicated guilty for Driving Under the Influence of Alcoholic Beverages or Controlled Substances, a first-degree misdemeanor, in (*State of Florida v Kathleen Lynn Smades*, Case No. 13000705XEO). Respondent failed to inform The Florida Bar of the arrest or conviction.

Respondent was arrested on or about March 20, 2013, for Driving Under the Influence of Alcoholic Beverages or Controlled Substances, in Pinellas County, Florida. On July 16, 2014, respondent was adjudicated guilty for Driving Under the Influence of Alcoholic Beverages or Controlled Substances, a first-degree misdemeanor, (*State of Florida v Kathleen Lynn Smades*, Case No. 13006514XDV). Respondent failed to inform The Florida Bar of the arrest or conviction.

Respondent was arrested on or about March 19, 2013 for Driving Under the Influence of Alcoholic Beverages or Controlled Substances, in Pinellas County, Florida. On July 16, 2014, respondent was adjudicated guilty and placed on probation for 12 months for Driving Under the Influence of Alcoholic Beverages or Controlled Substances, a first-degree misdemeanor, (*State of Florida v Kathleen Lynn Smades*, Case No. 13005984XCH).

At the Hearing on Sanctions, respondent testified that she believes that at the time of the convictions she was suffering from and is presently suffering from Auto-Brewery Syndrome, and that Auto-Brewery Syndrome was the cause of intoxication or enhanced the appearance of intoxication in respondent on the aforementioned occasions. Dr. Mukesh Mehta, respondent's treating doctor for Auto-Brewery Syndrome and ABS, testified as to his treatment of respondent and that he would be "surprised" if Ms. Smades only had a handful of positive breathalyzer tests with an Auto Brewery Syndrome diagnosis. In fact, the evidence presented showed only a handful of positive reads over the course of several years.

The Referee also heard testimony and received into evidence exhibits regarding respondent's extensive history of substance abuse treatment and related screens. The referee heard testimony regarding

respondent's arrest and plea to a charge of Petit Theft after her last arrest for driving under the influence in 2019. Respondent was arrested for stealing alcohol from a gas station and pled no contest. Respondent testified that she was never diagnosed with a substance abuse disorder and does not suffer from substance abuse disorder. Based on the evidence, the Referee does not find that respondent suffers from Auto-Brewery Syndrome, but that respondent suffers from alcohol use disorder and therefore recommends the following:

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3-7.2(c) (Notice of Institution of Felony Criminal Charges); 3-7.2(e) (Notice of Self-Reporting by Members of Determination or Judgment of Guilt of All Criminal Charges); 4-8.4(b) (Misconduct, Criminal Act).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY

(b) Suspension. Suspension is appropriate when a lawyer knowingly engages in criminal conduct which is not included

elsewhere in this subdivision or other conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Kip William Kootz, SC19-758 (2020),

The Florida Bar v. Andrew Spark, SC19-1163 (2021),

The Florida Bar v. Irish, 48 So.3d 767 (Fla. 2010).

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

A. Three-year suspension from the practice of law *nunc pro tunc* December 4, 2021.

B. Two years of probation upon application for reinstatement to The Florida Bar.

C. Prior to application for reinstatement, respondent shall obtain a determination from Florida Lawyer's Assistance, Inc., that respondent is fit to practice. Respondent shall comply with any requirements of Florida Lawyer's Assistance, Inc. necessary for their determination of respondent's fitness or rehabilitation of fitness.

D. Respondent shall successfully re-take the Multistate Professional Responsibility Examination prior to application for reinstatement.

E. For the entirety of the Respondent's suspension and probation the following conditions are in effect:

1. Respondent shall abstain from alcohol.
2. Respondent shall continue treatment with Dr. Mukesh Mehta and remain medically compliant, including with any dietary restrictions.
3. Respondent shall be subjected to twice-weekly random alcohol screens through Florida Lawyer's Assistance, Inc. Respondent may utilize her currently owned breathalyzer machine for this testing if it is approved by Florida Lawyer's Assistance, Inc.

F. Any random screen reading at .035 or higher shall be a presumptive positive for alcohol consumption and bears a presumption for disbarment.

G. Respondent shall be solely responsible for all costs associated with the above programs including but not limited to: monitoring, programs, testing, breathalyzer, and/or evaluations.

H. Respondent may use her probation's random urinalysis results as satisfaction of any urinalysis testing required by Florida Lawyer's Assistance, Inc.

I. Respondent may use her Probation's AA records as satisfaction of any request by Florida Lawyer's Assistance for attendance at AA meetings provided she is attending the number of weekly meetings required by Florida Lawyer's Assistance. If Florida Lawyer's Assistance requires more than three meetings a week Respondent must supplement the Probation meetings.

J. All of the aforementioned conditions shall continue through the conclusion of respondent's probationary period.

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

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: 49

Date admitted to the Bar: October 9, 1998

Aggravating Factors:

- (1) multiple offenses; Respondent's misconduct included multiple offenses though not a pattern given the six year gap between the DUIs.
- (2) Dishonesty in not reporting the criminal filings and adjudications.

Mitigating Factors:

- (1) personal or emotional problems; Respondent was suffering from personal and/or emotional problems during the relevant period.
- (2) physical or mental disability or impairment or substance related disorder; Respondent suffers from alcohol abuse disorder.
- (3) respondent had no prior disciplinary actions.
- (4) respondent has been compliant with all of her probation conditions.
- (5) respondent has submitted to testing and treatment for alcohol disorder.

The referee also took into consideration that respondent was not engaged in the practice of law at the time the events occurred and that no client harm occurred.

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

I find the following costs were reasonably incurred by The Florida

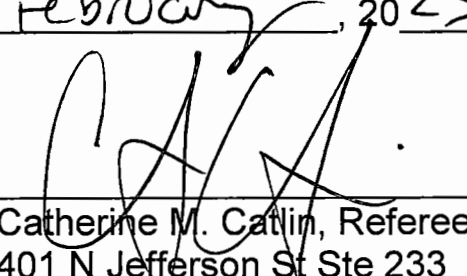
Bar:

Investigative Costs	\$326.35
Court Reporters' Fees	\$1,000.00
Administrative Fee	\$1,250.00

TOTAL	\$2,576.35
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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 24 day of February, 2023.


Catherine M. Catlin, Referee
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Original To:

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