

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. SC23-1001

v.

The Florida Bar File
No. 2023-00,283(2A)

MARIE GERARD GAETANE
HERNANDEZ,

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 July 13, 2023, The Florida Bar filed its Complaint for Reciprocal Discipline against Respondent in these proceedings. Respondent did not to submit an answer to the complaint and did not to appear at the case management conference. The Florida Bar provided notice to Respondent at all addresses of record and also appropriately sent information to the email address of record and all other email addresses obtained. On November 16, 2023, a final hearing was held in this matter. Respondent

did not appear. 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 will be electronically filed with the Supreme Court of Florida by The Florida Bar.

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.

On May 3, 2022, respondent was suspended for one year followed by a 2-year probated suspension for failing to return unearned fees in two cases, neglecting a client's case, failing to explain a legal matter to a client, owing restitution to two clients and failing to file a response as required by the Texas Rules of Disciplinary Procedure.

During respondent's suspension, a case arose against respondent regarding Cristian Sanchez ("Sanchez"). In representing Sanchez, respondent neglected the legal matter. Respondent failed to respond to reasonable requests for information from Sanchez regarding the status of his case. Upon termination of his representation, respondent failed to return the unearned portion of the fee.

Respondent failed to inform Sanchez of her disciplinary suspension as ordered in the May 2, 2022 Judgment of Partially Probated Suspension.

Respondent owed restitution in the amount of \$5,000.00 to Heriberto Sanchez.

Respondent failed to timely furnish to the Chief Disciplinary Counsel's Office a response to Heriberto Sanchez's complaint as required by the Texas Rules of Disciplinary Procedure.

Based on foregoing findings of fact, respondent violated the following Texas Disciplinary Rules of Professional Conduct: 1.01(b)(1); 1.03(a); 1.15(d); 8.04(a)(7); and 8.04(a)(8).

III. RECOMMENDATIONS AS TO GUILT

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

By operation of Rule 3-4.6, Rules Regulating The Florida Bar, I find that the Judgment of Disbarment from the Evidentiary Panel of The State Bar of Texas shall be considered as conclusive proof of such misconduct in this disciplinary proceeding.

Respondent was found to have violated the following Texas Disciplinary Rules of Professional Conduct: 1.01(b)(1) (In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer);

1.03(a) (A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information); 1.15(d) (Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests); 8.04(a)(7) (A lawyer shall not violate any disciplinary or disability order or judgment); and 8.04(a)(8) (Fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure).

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:

4.1 Failure to Preserve the Client's Property

Disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury.

4.4 Lack of Diligence

Disbarment is appropriate when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another regardless of injury or potential injury to the client.

4.6 Lack of Candor

Disbarment is appropriate when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another regardless of injury or potential injury to the client.

5.1 Failure to Maintain Personal Integrity

Disbarment is appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

7.0 Violations of Other Duties Owed as a Professional

Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another and causes serious or potentially serious injury to a client, the public, or the legal system.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Davis, 149 So.3d 1121 (Fla. 2014) - Attorney's due process rights were not violated during attorney disciplinary proceeding where the attorney received notice of the bar association's charges, the case was scheduled for a hearing and notice of the hearing was sent to attorney, and attorney failed to participate in the disciplinary proceedings.

The Florida Bar v. Tipler, 8 So.3d 1109 (Fla. 2009) – Court held that due process is satisfied in Bar disciplinary proceedings where the attorney is served with notice of the Bar's charges and is afforded an opportunity in the disciplinary hearing to be heard and defend himself.

The Florida Bar v. Moon, SC2022-0638 – By Court order dated May 25, 2023, the Court disbarred respondent effective immediately. Respondent failed to diligently represent his clients, failed to adequately communicate and failed to refund unused portion of the fees. Respondent also failed to participate in the disciplinary proceedings.

The Florida Bar v. Shipman, SC18-40 - By Court order dated August 2, 2018, respondent was disbarred. Respondent abandoned her law practice and several pending client matters. Respondent failed to participate in the disciplinary proceedings and she was already suspended for failing to respond to the bar's inquiries.

The Florida Bar v. Renejuste, SC17-914 and SC17-1541 – By Court order dated March 15, 2018, Respondent was disbarred for engaging in multiple acts of neglect, incompetent representation, inadequate communication, failure to refund unearned fees, and closure of her law office without taking reasonable steps to protect the clients. Respondent failed to respond and defaults were granted in both cases.

The Florida Bar v. McNeeley, SC15-1350 - By Court order dated January 21, 2016, respondent was disbarred. Respondent collected a fee but failed to take any action on his client's criminal case. Respondent failed to communicate with the client and failed to refund the unearned fee. Respondent did not participate in the disciplinary proceeding, and he was already serving a one year suspension for prior misconduct.

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.

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: 39

Date admitted to the Bar: October 18, 2012.

Prior Discipline: None (in Florida).

Aggravating Factors:

(3) a pattern of misconduct;

(4) multiple offenses;

(5) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (respondent failed to participate in these disciplinary proceedings);

(9) substantial experience in the practice of law.

Mitigating Factors:

(1) absence of a prior disciplinary record.

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	\$14.70
Court Reporter Fees	\$80.00

TOTAL	\$1,344.70
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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 29th day of November, 2023.

/s/ David M. Frank

Hon. David Michael Frank, Referee
Guy A. Race Judicial Complex
13 N. Monroe St.
Quincy, FL 32351-2307

Original To:

Clerk of the Supreme Court of Florida via email to e-file@flcourts.org

Conformed Copies to:

Marie Gerard Gaetane Hernandez, Respondent, kennedy@mghlaw.org
Shaneé L. Hinson, Bar Counsel, shinson@floridabar.org
Patricia Ann Toro Savitz, Staff Counsel, psavitz@floridabar.org