Filing # 199329472 E-Filed 05/29/2024 07:28:24 AM

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

DAVID W. VELIZ,

Respondent.

_____/

Supreme Court Case
No. SC23-1705

The Florida Bar File
No. 2023-30,408 (9C)

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

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 December 8, 2023, The Florida Bar filed its Complaint against respondent in these proceedings. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. 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.

B. Narrative Summary of Case.

1. A longtime family friend of respondent's mother hired respondent to draft estate planning documents that named respondent's sister as a beneficiary and his mother as a beneficiary and as personal representative for the estate. Respondent also was hired to act as a real estate agent to sell the client's single-family home.

2. Respondent's law partner was retained to handle the probate of the client's estate and respondent's mother was paid her personal representative's fee despite respondent's failure to comply with the statute in effect at the time regarding the disclosure of compensation for the personal representative.

3. At all times material, respondent and attorney Norberto Sergio Katz operated a law firm known as Veliz and Katz Law where respondent was the managing partner.

4. Respondent's practice consisted primarily of family law matters and some probate work. Respondent also was a licensed real estate agent at all times material.

5. In or around 2018, Blanca Kokot, a longtime close friend of respondent's mother, consulted with respondent regarding her estate planning and her desire to sell her single-family home and move into an assisted living facility due to her advanced age of about 93 and the fact that she lived alone in her home.

6. Ms. Kokot advised respondent she intended to hire him as her real estate agent to sell her home once she was able to move into the assisted living facility. Because the assisted living facility Ms. Kokot intended to move to was under construction, she was not yet in a position to act on the plan she discussed with respondent.

7. In 2019, Ms. Kokot returned to respondent's office for the purpose of proceeding with the previously discussed estate plan.

8. Respondent had prepared the Last Will and Testament for Ms. Kokot, naming respondent's mother and sister as beneficiaries and named his mother as personal representative for the estate.

9. At the time she consulted with respondent and executed her will, Ms. Kokot had no close living family members, had known respondent and his family for a number of years and was a longtime close friend of respondent's mother but was in no manner related to either respondent or his family.

10. Prior to the execution of Blanca Kokot's will, respondent did not obtain Blanca Kokot's written informed consent for the appointment of respondent's mother, Gladys Veliz, as personal representative of her estate.

11. In 2021, Ms. Kokot contacted respondent and advised that she wanted to make some changes to her will. Respondent drafted the revised will for Ms. Kokot that also named respondent's mother and sister as beneficiaries and named his mother as personal representative for the estate. Ms. Kokot executed her revised will on June 30, 2021.

12. Respondent again did not advise Ms. Kokot to seek the advice of independent counsel regarding the beneficiaries nor did he obtain written informed consent as required under Rule 4-1.8 and the amended Florida Statute § 733.617(8) (2020).

13. In or around the fall of 2021, Ms. Kokot hired respondent to list her home for sale in preparation for her move into the assisted living facility. Respondent presented Ms. Kokot with the standard real estate listing agreement and associated documents, which she completed. The agreement provided that respondent's real estate commission was the standard 3% to 3.5%.

14. Respondent did not advise Ms. Kokot to seek the advice of independent counsel prior to executing the listing agreement document with the real estate company with which respondent was affiliated as a real estate agent. Respondent acted as a real estate agent for other clients of his law firm over the years. Ms. Kokot's home was under contract to be sold at the time of her death on or about November 20, 2021.

15. Thereafter, respondent's mother, who was named as the personal representative in the will, hired respondent's law partner, Norberto Sergio Katz, to file the petition for administration of Ms. Kokot's will which occurred on or about December 1, 2021.

16. The probate court appointed respondent's mother as the personal representative. In her capacity as personal representative of

the estate, respondent's mother executed the deed conveying Ms. Kokot's home and respondent received payment of the standard real estate agent commission for the sale.

17. During the probate of the estate, several of the named beneficiaries retained counsel and notified Mr. Katz that they believed some of the beneficiaries were family members of respondent, whom they learned had drafted Ms. Kokot's will. These beneficiaries, who were distant relatives of Ms. Kokot, were concerned about the appearance of impropriety due to respondent's inclusion of his family members in Ms. Kokot's will.

18. Thereafter, respondent's mother and sister were removed as beneficiaries based on Mr. Katz's recommendation. Because the appointment of respondent's mother as personal representative was not contested by any of the remaining beneficiaries, she remained as the personal representative for the estate.

19. Regarding Ms. Kokot's revised 2021 will, respondent's mother was not entitled to compensation as personal representative for the estate because respondent failed to comply with the requirements of Florida Statute §733.617(8) (2020), which required a

written disclosure and signature of the testator as to compensation for the personal representative.

20. Despite this fact, respondent's mother was paid $19,241.43 for her services as the Personal Representative for the estate.

21. Respondent's mother returned the personal representative fee to the estate and those funds were then disbursed to the beneficiaries.

22. Respondent advised that he was unaware regarding the amendment in 2020 of Florida Statute §733.617(8) and unaware that he was prohibited from creating a will for a non-related client naming his relatives as beneficiaries.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3-4.3 (Misconduct and Minor Misconduct); 4-1.1 (Competence); 4-1.7(a)(b) (Conflict of Interest; Current Clients) and 4-1.8 (Conflict of Interest; Prohibited and Other Transactions).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.3 Failure to Avoid Conflicts of Interest

(b) Suspension is appropriate when a lawyer knows of a conflict of interest, does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

(c) Public reprimand is appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests or whether the representation will adversely affect another client and causes injury or potential injury to a client.

4.5 Lack of Comptence

(b) Suspension is appropriate when a lawyer engages in an area of practice in which the lawyer knowingly lacks competence and causes injury or potential injury to a client.

(c) Public reprimand is appropriate when a lawyer causes injury or potential injury to a client and demonstrates failure to understand relevant legal doctrines or procedures.

3.2(b) Aggravating Factors

(9) substantial experience in the practice of law.

3.3(b) Mitigating Factors

(1) absence of a prior disciplinary record;

(2) absence of a dishonest or selfish motive;

(5) full and free disclosure to the bar or cooperative attitude toward the proceedings;

(7) character or reputation; and

(12) remorse.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Schwebel, 157 So.3d 1050 (Fla. 2014), a lawyer received a 10-day suspension for preparing a will where he named himself as co-residual beneficiary and personal representative. Schwebel was not related to the testator and had a long-term friendship with both the testatrix and her deceased husband. The request to name Schwebel as beneficiary came from the decedent without any coercion, prompting, or other suggestion on the part of the Schwebel. He was unaware of the prohibition of naming himself as a beneficiary when he drafted the will, and this was an

isolated incident. Both Schwebel and the co-residual beneficiary received approximately $17,000 from the estate. Upon learning of the bar's complaint, Schwebel refunded $12,000 by crediting his $11,000 fee as personal representative to the estate and by repayment of $1,000. He ultimately remitted the remaining $5,000 in restitution to the estate prior to the final hearing in the matter. Schwebel had a prior admonishment by the grievance committee.

In The Florida Bar v. Agee, 59 So. 3d 109 (Fla. March 22, 2011), pursuant to a consent judgment, Agee, a 68-year-old lawyer who was admitted to practice in Florida in 1966, agreed to a 90-day suspension and attendance at Ethics School. Agee and the decedent, Dr. Herbert G. Birck, had been friendly for 50 years. In April 2007, Agee drafted a will for Birck where substantial gifts were bequeathed to Agee and his wife. Thereafter, due to illness, Alzheimer's disease, Birck became isolated from respondent by a caregiver and neighbors. Thereafter, Birck executed a new will which had no bequest to Agee or his wife. Agee sought to set aside the new will. The action was denied by the court. Agee indicated he was unaware of the prohibition to draft a will with a bequest to the lawyer drafting the will. Agee indicated that this was an isolated incident.

In The Florida Bar v. Anderson, 638 So. 2d 29 (Fla. 1994), a lawyer was suspended for 90 days for having drafted various testamentary instruments for a client over a period of years naming himself or his wife as beneficiary. The lawyer did not intend to provide a benefit to either himself or his wife. Instead, he intended to shield the bequest from the creditors of the intended beneficiary. The Supreme Court found that the lawyer appeared honest, remorseful, and apologetic concerning the complaint, and had no prior disciplinary record in his twenty-seven years of practice. In considering the matter, the Supreme Court of Florida considered that a 90-day suspension was appropriate in light of the lawyer's lack of intent to benefit under the instruments he drafted and the fact that he was attempting to give effect to the testator's intent.

In The Florida Bar v. Miller, 555 So. 2d 854 (Fla. 1990), a lawyer received a public reprimand for drafting a will for a client, under which the lawyer was a contingent beneficiary, without at least advising the client to confer with another lawyer. The wife died first, and when the client died a year later, Miller inherited $200,000. He had no prior discipline in nearly 40 years of practice.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

A. Ten-day period of suspension with automatic reinstatement to the practice of law.

B. Payment of the bar's disciplinary costs.

If this recommendation is approved, respondent will, during the period of suspension, 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 AND PAST DISCIPLINARY RECORD

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

Age: 59

Date admitted to the Bar: May 1, 1990.

Prior Discipline: None.

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	$106.57
Court Reporters' Fees	$323.00
Administrative Fee	$1,250.00
TOTAL	$1,679.57

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, Respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 20th day of May, 2024.

Honorable Curt Jacobus, Referee

Electronic Copy Filed with the Supreme Court of Florida.

Conformed Copies by Email to:

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