

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JOSEPH RONALD DENMAN,

Respondent.

Supreme Court Case
No. 250426

The Florida Bar File
No. 2023-10,119(13D)

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

I. **SUMMARY OF PROCEEDINGS**

The undersigned was appointed as referee under R. Regulating Fla. Bar 3-7.6 to preside over the proceedings in this case.

On March 27, 2025, The Florida Bar (the bar) filed its complaint against respondent in these proceedings. The Supreme Court of Florida entered an order on April 1, 2025, designating the Chief Judge of the Sixth Judicial Circuit of Florida to appoint a referee in this case. The Honorable Shawn Crane appointed the undersigned to serve as the referee.

Throughout these proceedings, the bar was represented by bar counsel Catherine Bonhomme Toledo and Michelle Lopes Robertson. Respondent was represented by Scott Kevork Tozian.

All of the pleadings, responses, exhibits received in evidence, and this report constitute the record in this case and are filed with the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during these proceedings was, a member of The Florida Bar, subject to the jurisdiction and Rules Regulating The Florida Bar adopted by the Supreme Court of Florida.

B. Narrative Summary of Case.

a. Respondent entered into an attorney-client relationship with his client, Karilyn Montanti ("Karilyn"), despite a valid court order adjudicating her incapacitated and rendering her incapable of exercising, inter alia, the right to contract and the right to sue and defend lawsuits.

b. On April 18, 2006, Karilyn executed a health care surrogate and a durable power of attorney naming Christine Montanti ("Christine"), her daughter, as the agent. On December 13, 2007, Christine declined this durable power of attorney, thereby appointing Simone Politakis ("Simone").

c. On September 4, 2018, Christine, in case PRC18-4278 in Broward County, Florida, filed a Petition for Appointment of Limited Guardian seeking that she be appointed limited guardian of Karilyn. On the same day, Christine also filed a Petition to Determine Incapacity in case MHC18-2696 in Broward County, Florida requesting that an examination be made as to the mental and physical condition of Karilyn.

d. In both petitions, Christine alleged that Karilyn was incapable of exercising many rights including, in relevant part, the right to contract and the right to sue and defend lawsuits.

e. The Honorable Charles M. Greene was appointed to preside over both cases. On September 6, 2018, the court entered an order in case MHC18-2696 appointing an attorney to represent Karilyn.

f. On February 20, 2019, the court entered an order in case PRC18-4278 to compel the parties to mediation. In a Mediated Settlement Agreement entered into by Simone and Christine, dated April 3, 2019, it was agreed that the original durable power of attorney and original health care surrogate dated April 18, 2006, would remain in full force and effect. The Settlement Agreement

was approved by court order dated July 9, 2019, in case PRC18-4278, and the court retained jurisdiction to enforce the terms of the settlement agreement. The attorney for Karilyn, Joshua H. Rosenberg, was included in the distribution of the court's order.

g. On July 10, 2019, after a hearing in which Christine, Christine's attorney, Karilyn's court appointed attorney, Karilyn's care manager, Simone, and Simone's attorneys were all present, the court entered a Sua Sponte Order on Role of Court Appointed Attorney and Care Manager appointing Joshua Rosenberg as the attorney ad litem in Case PRC18-4278.

h. On October 13, 2020, in case number PRC18-4278, Karilyn was adjudicated incapacitated based upon the Agreed Order Determining Incapacity. Judge Greene's order states in part:

"[Karilyn Montanti] executed a Health Care Surrogate and a Durable Power of Attorney on April 18, 2006, naming Simone Politakis as the agent. These documents shall act as a lesser restrictive alternative to guardianship by the terms of the Settlement Agreement executed by the parties on April 3, 2019. Other than those rights set forth in Florida Statutes, Section 744.3215(1), which are expressly reserved to [Karilyn Montanti], and

the right to vote, [Karilyn Montanti] is not capable of exercising any other rights.”

i. The incapacity order clearly specified that Karilyn was incapable of exercising, inter alia, the right to contract and the right to sue and defend lawsuits.

j. In the spring of 2021, Christine retained respondent to evaluate the Agreed Order Determining Incapacity based on concerns Christine expressed to respondent. Respondent filed a notice of appearance in PRC18-4278 on March 24, 2021 and the MHC case on April 23, 2021. Respondent filed an initial Motion to Vacate Agreed Order Determining Capacity on June 9, 2021 in PRC18-4278, raising due process arguments made by Christine arguing that Karilyn was not given the opportunity to be present or heard, based on respondent’s review of the record.

k. Respondent submits that his review of the record indicated that Karilyn’s attorney ad litem may not have ensured that Karilyn received procedural safeguards under the applicable statutes.

l. On September 1, 2021, Judge Greene entered a Sua Sponte Order of Dismissal in MHC18-2696 and PRC18-4278,

which dismissed the entire proceedings as related to all matters.

Judge Greene did not address the merit of respondent's motion to vacate.

m. The order was unclear regarding particular elements of the care and needs of Karilyn, but stated that:

“Simone Politakis and Christine Montanti shall continue to be subject to and bound by the terms of their Settlement Agreement. The preneed documents executed by Karilyn Montanti, including her April 18, 2006 Power of Attorney and Health Care Surrogate, remain in full force and effect.”

n. Judge Greene further held that “these matters [were] simply outside the scope of the Court’s jurisdiction” and “declin[ed] to exercise any further jurisdiction with regards to the enforcement of the Settlement Agreement.”

o. The Sua Sponte Order of Dismissal also discharged Joshua Rosenberg, Esquire as Karilyn’s attorney ad litem.

p. On September 4, 2021, respondent and Karilyn entered into a retainer agreement that was signed by Karilyn. On September 10, 2021, Karilyn also executed a waiver of conflict between her and her daughter, Christine.

q. Respondent prepared a new health care surrogate, a new durable power of attorney, and a revocation of the original health care surrogate and original durable power of attorney for Karilyn. On or about September 11, 2021, Karilyn executed a new health care surrogate, a new durable power of attorney, and a revocation of the original health care surrogate and original durable power of attorney.

r. Respondent arranged for Karilyn's evaluation by medical practitioners with specialized training to provide opinions related to her capacity. The reports received by respondent reflect evaluation dates of September 21, 2021 and September 24, 2021.

s. Respondent met with Karilyn approximately six times in person. On November 30, 2021, December 31, 2021, and April 30, 2022, respondent sent invoices addressed to Karilyn charging her a total of approximately \$38,991.00 for his representation. Respondent did not ultimately seek payment for this.

t. After considering the opinion of one of the medical providers that examined Karilyn, received on September 21, 2021, that same day respondent wrote a letter to Simone and her attorney in the guardianship proceedings stating:

“Please be advised that I represent Karilyn Montanti. Attached please find the Revocation of Designation of Advance Health Care Directive and Revocation of Durable Power of Attorney for Simone Politakis. Also, attached please find the Durable Power of Attorney and Designation of Health Care Surrogate for Christine Montanti. In accordance with Florida law, please provide an accounting of your activities as Power of Attorney. Please also assist with the transfer of alimony and Social Security benefits to an account that we designate...”

u. On September 21, 2021, Christine, without consulting Simone and without her approval, used the new unauthorized health care surrogate and new power of attorney documents created by respondent to move Karilyn from her home at Wickshire Tamarac and take her an hour away to another assisted living facility, Capstone at Royal Palm. Simone never retained respondent to provide any legal services for or on behalf of Karilyn.

v. Simone filed an Emergency Motion alleging Christine improperly removed Karilyn from her residence in violation of the Settlement Agreement. Judge Greene entered an Interim Order Upon Emergency Motion on September 22, 2021, that stated:

“Christine Montanti may have violated the Settlement Agreement dated April 3, 2019, and approved and adopted by the Court on July 9, 2019, by allegedly removing her mother Karilyn Montanti, from her residence at Wikshire ALF. However, as a guardianship has never been established herein and only a Settlement Agreement was reached within the related incapacity proceeding, the Court has no jurisdiction to proceed any further than is noted herein with regards to the Emergency Motion.”

- w. The trial court did not make any findings related to the executed revocations, and did not impose sanctions.
- x. On October 29, 2021, respondent filed a Motion to Vacate Agreed Order Determining Incapacity for Karilyn in cases MHC18-2696 and PRC18-4278. On November 10, 2021, in cases PRC18-4278 and MHC18-2696, the court, finding that an evidentiary hearing was unnecessary given the record evidence, denied the motion concluding that “[t]he Agreed Order Determining Incapacity entered on October 13, 2020 remains in full force and effect.”
- y. Specifically, the court stated:

“...because of her current and ongoing incapacity determination, the Court finds that there is no ability for Karilyn Montanti to retain or hire counsel (contract) or pursue the instant Motion to Vacate Agreed Order Determining Incapacity. In particular, Karilyn

Montanti does not have the legal capacity to retain/hire Christine Montanti's counsel, [respondent]. As a result, the Motion to Vacate Agreed Order Determining Incapacity is a nullity. (emphasis in the original)... [Respondent] has continually represented Christine Montanti since his initial appearance of March 24, 2021. Despite his recent appearance filed on November 1, 2021, on behalf of Karilyn Montanti, [respondent] has not ceased or attempted to withdraw from the representation of Christine Montanti. The instant Motion to Vacate filed on behalf of Karilyn Montanti is that which [respondent] previously unsuccessful advocated for on behalf of his client Christine Montanti..."

z. The court's order also noted:

"The Court gives little weight to the opinions contained within Exhibit A – Dr. DeLuca and Exhibit B – Dr. Philiias. Each opinion within the reports is contradicted by the facts herein (as noted above regarding the history of Karilyn Montanti), and the medical and psychiatric opinions and reports contained within the court files and the response to this Court's Orders (as noted supra at II. e. 4)."

aa. Respondent petitioned the Fourth District Court of Appeal ("DCA") for review of the Agreed Order Determining Incapacity. On July 9, 2021, the DCA denied respondent's petition with prejudice stating the petition failed to show irreparable harm and was untimely for certiorari review.

bb. On October 4, 2022, the DCA entered an order dismissing respondent's consolidated appeals, upholding the trial court's finding that respondent had no legal authority to represent Karilyn. The DCA also stated respondent raised frivolous arguments on appeal. Respondent was cautioned, "any further frivolous filings or attempts to unlawfully represent [Karilyn Montanti] may result in sanctions and referral to the Florida Bar."

III. RECOMMENDATIONS AS TO GUILT

I recommend that respondent be found guilty of violating the following Rules Regulating The Florida Bar: **Rule 3-4.3**(Misconduct and Minor Misconduct); **Rule 4-1.5(a)**(Illegal, Prohibited, or Clearly Excessive Fees and Costs); **Rule 4-1.7(a)**(Conflict of Interest; Current Clients – Representing Adverse Interests); **Rule 4-1.7(b)**(Conflict of Interest; Current Clients- Informed Consent); **Rule 4-1.7(c)**(Conflict of Interest; Current Clients – Explanation to Clients); **Rule 4-3.1**(Meritorious Claims and Contentions); **Rule 4-8.4(a)**(Misconduct); and **Rule 4-8.4(d)** (Misconduct).

IV. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Before recommending discipline under R. Regulating Fla. Bar 3-7.6(m)(2)(D), I considered the following personal history of respondent:

Age: 61

Date admitted to the bar: September 21, 1990

Prior Discipline: In The Florida Bar File No. 2015-10,641(13D), by Court order dated November 10, 2016, respondent was suspended from the practice of law for 30 days for misconduct involving a conflict of interest related to a business transaction with a client.

V. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Florida Standards for Imposing Lawyer Sanctions before recommending discipline:

Standard 4.3. Failure to Avoid Conflicts of Interest

(b) Suspension. 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.

Standard 6.2. Abuse of the Legal Process

(b) Suspension. 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.

3.2(b) Aggravation

The undersigned referee finds the following aggravating factors:

- (1) Prior disciplinary offense;

- (4) Multiple offenses;
- (8) Vulnerability of victim;
- (9) Substantial experience in the practice of law.

3.3 Mitigation

The undersigned referee finds the following mitigating factors:

- (2) Absence of a dishonest or selfish motive;
- (5) Full and free disclosure to the bar;
- (12) Remorse.

VI. CASE LAW

I considered the following case law before recommending discipline:

In The Florida Bar v. Perry, 2023 WL 2170171 (Fla. Feb. 23, 2023) - By Court order dated February 23, 2023, respondent was suspended for 60 days and required to attend Ethics School. Respondent's law practice primarily consists of advising mobile homeowner associations on issues of governance and representing the homeowners' associations of mobile home parks in lawsuits against the owners and operators of the mobile home parks. While representing multiple homeowners' associations, respondent filed frivolous lawsuits; violated the confidentiality provisions of the Florida Mediation Act; and paid attorneys' fee amounts in federal court out of his own pocket. Respondent's conduct created conflicts of interest

with his clients. Respondent's prior public reprimand was remote in time, and he presented additional mitigation. Rules violated: 4-1.7(a); 4-1.7(b); 4-1.8(e); 4-3.1; and 4-8.4(d).

In The Florida Bar v. Cosnow, 797 So.2d 1255 (Fla. 2001), the Court imposed a 60-day suspension followed by one year of probation for an attorney who created a conflict of interest and provided incompetent representation. Cosnow represented the grandmother of a child in three separate legal matters: paternity and guardianship proceedings for the child, a wrongful death claim for the father of the child, as well as the probate proceedings for the father. After the proceedings began, the grandmother informed Cosnow to cease and desist from performing any legal representation in all matters concerning herself and the child. A few days later, Cosnow filed a motion in the paternity action on behalf of the child's biological mother. Cosnow knew or should have known that the biological mother's interests would be directly adverse to the interests of his former client, the child's grandmother. Rules violated 4-1.1 and 4-1.7(a).

In The Florida Bar v. Webb, 2017 WL 5897819 (Fla. Nov. 30, 2017) – The Court imposed a 60-day suspension pursuant to a Conditional Guilty Plea for Consent Judgment for engaging in a business transaction with clients in which they had a conflict of interest. The attorney represented a

married couple in various legal matters over the years. The attorney/client agreement prepared by the attorney purported to give a lien interest in all of the clients' real property, including homestead property. The agreement was executed by the husband but not the wife. Thereafter, the attorney prepared and executed a security agreement purporting to create a lien in the clients' real property which he recorded in the public records. Neither of the clients executed the purported lien document. The attorney did not advise the clients in writing to seek the advice of independent counsel prior to entering into the attorney/client agreement and/or the security agreement. The clients fell behind on payment of their attorney's fees. At the time, the attorney represented the husband in foreclosing a mortgage against one of the properties. Upon the client obtaining certificate of title to property, the bank, holding a superior position, sought to foreclose against the property. At that point, the attorney withdrew from representing the husband and intervened with a third-party claim seeking to foreclose the attorney's purported lien. The attorney foreclosed his purported lien against the husband subject to the first mortgage. The attorney obtained a deficiency judgment against his client in which he gave no credit to the client for the value of the property and claimed recovery for the outstanding balance of the first mortgage and past due taxes. The attorney later sold

the property. The attorney asserted that the clients still owed him money after the sale. Therefore, the attorney continued pursuit of his purported lien against two other properties owned by the clients, one of which appeared to be their homestead, without disclosing to any of the courts his prior foreclosure against their first property. In seeking judgments against the other two properties, the attorney gave no credit for any value of first property. The attorney then defended against the banks' foreclosures on the two other properties in furtherance of collection on his purported lien. In aggravation, the attorney was an experienced practitioner. In mitigation, he had no prior disciplinary history, fully cooperated with the bar, was remorseful, had a good reputation, and believed he had a good faith legal basis to pursue his security agreement. In addition, the attorney agreed to cease any existing efforts to foreclose liens against the homestead property of any client and was placed on a one-year period of probation conditioned on Ethics School, completion of an office procedures and record-keeping analysis by DDCS and payment of costs. Rules alleged 4-1.7(conflict of Interest; Current clients); 4-1.8 (Conflict of Interest; Prohibited and Other Transaction) and 4-3.1(Meritorious Claims and Contentions.)

VII. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED

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

a. Suspension from the practice of law for **sixty (60) days** effective 30 days from the date of the Supreme Court of Florida's order approving the consent judgment so that respondent can close out respondent's practice and protect the interests of existing clients.

i. On entry of the Court's order, respondent must immediately:

1. accept no new clients from the date of the order;
2. initiate no litigation on behalf of clients from the date of the order; and
3. provide a copy of the suspension order to all courts, tribunals, or adjudicative agencies before which respondent is counsel of record; all state, federal, or administrative bars of which respondent is a member; all clients; all co-counsel; and all opposing counsel, as required by Rule 3-5.1(h);

ii. Within thirty (30) days from the date of the Court's order, respondent must:

1. cease all practice of law in Florida;
2. cease holding respondent out as a Florida Bar member or lawyer and eliminate all indicia of respondent's status as a Florida Bar member or lawyer on websites, social media, telephone listings, stationery, checks, business cards, office signs,

email address, and any other indicia of respondent's status as a Florida Bar member or lawyer;

3. wind down all pending matters;
 4. cease withdrawing or disbursing any money from any trust account or other financial institution account holding funds of clients or third parties in respondent's possession in connection with legal representation;
 5. not transfer any ownership of any real or personal property purchased in whole or in part with funds of clients or third parties in connection with legal representation; and
 6. provide the bar's headquarters office in Tallahassee with an affidavit listing all of the following that respondent notified of the suspension order: all courts, tribunals, or adjudicative agencies of which respondent is a member; all state, federal, or administrative bars of which respondent is a member; all clients; all co-counsel; and all opposing counsel.
- b. Respondent must fully comply with Rule Regulating The Florida Bar 3-5.1(h).
- c. Respondent must also fully comply with Rule Regulating The Florida Bar 3-6.1, if applicable.
- d. Respondent must attend the Professionalism Workshop, in person, where scheduled by the bar within six (6) months of the order approving this consent judgment and pay associated fees totaling \$750.00 before attendance.
- e. Respondent must pay the bar's disciplinary cost.

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
Court Reporters' Fees	\$390.00
Investigative Costs	\$43.50
TOTAL	\$1,683.50

I recommend that the above costs be charged to respondent and that interest accrue at the statutory rate. If respondent does not satisfy the cost judgment within 30 days of the judgment becoming final, respondent will be delinquent and ineligible to practice law under R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 2 day of December, 2025.



Hon. Brian Edward Gnage, Referee
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Filed with the Supreme Court of Florida via the Florida Courts E-Filing Portal with copies served via the Portal to:

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