

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. SC24-150

v.

The Florida Bar File
No. 2023-30,593 (10A)

MICHAEL J. CORTES,
Respondent.

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 January 31, 2024, 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 client hired respondent to represent him in a pending post-dissolution of marriage case. Respondent made a misrepresentation to opposing counsel, advised the client not to appear for a deposition resulting in the client being sanctioned, and attempted to settle a malpractice claim made by the client by insisting the client agree to waive his right to file a grievance with The Florida Bar.

2. On or about December 10, 2019, respondent had a telephonic initial consultation with a long-time friend who had been *pro se* in a pending post-dissolution of marriage case concerning allegations that the client was in contempt of the Marital Settlement Agreement, Parenting Plan and Confidential Agreement Regarding Sale of Marital Home.

3. The client did not formally retain respondent until December 12, 2019, when he paid the retainer of \$5,000.00.

4. The client previously had agreed to attend a deposition on December 16, 2019, and settlement negotiations reached an impasse. As a result, the client decided to hire counsel.

5. The client advised respondent of the deposition during the telephone call. The client advised respondent that his deposition was scheduled for December 16, 2019, but had been falsely advised by the client that the deposition had been unilaterally set.

6. Respondent was aware at the time of the initial consultation that he would not be able to attend the deposition on December 16, 2019, due to a scheduling conflict.

7. On the morning of Friday, December 13, 2019, at approximately 9:41 a.m., respondent advised the client by email that he was trying to get the deposition rescheduled and, absent that, he would file a motion for protective order. Respondent further advised his client: "Either way, do not plan on going to the depo on Monday."

8. Respondent's office immediately contacted opposing counsel by email in an attempt to reschedule the deposition.

9. When respondent did not receive a response from opposing counsel, he filed his Motion for Protective Order on December 13, 2019, at 2:35 p.m. Respondent did not set the motion for hearing.

10. At 2:54 p.m., opposing counsel emailed respondent and advised that respondent's client had selected the date for the deposition and that it was not unilaterally set. Opposing counsel offered to move the

deposition to accommodate respondent's schedule if it was set during the same week.

11. That same day, at 3:00 p.m., respondent emailed opposing counsel and falsely stated that he was not aware of the deposition at the time the client retained him for legal services. Respondent was aware that opposing counsel relied on his false statement made to her in this email.

12. Although opposing counsel indicated her willingness to reschedule the deposition, she would do so only if it was rescheduled for later in that same week.

13. Respondent advised opposing counsel that his client was out of town on business and thus unavailable for the entire week. Opposing counsel responded, making it clear to respondent that she was not agreeing to reschedule the deposition absent respondent being able to provide her with reasonable dates and times for later in the same week as December 16, 2019.

14. Respondent emailed opposing counsel, stating:
"Understood. However, we won't be there so you may wish to cancel the court reporter to avoid the unnecessary expense."

15. Opposing counsel made it clear to respondent in her response on December 13, 2019 that the deposition would proceed as scheduled and if respondent's client failed to appear, she would "...file the appropriate papers and seek fees and costs."

16. Respondent emailed his client on December 13, 2019, stating: "FYI, below is the chain of emails with [opposing counsel]. They'll move forward with the deposition without us. Oh well."

17. Opposing counsel filed the Former Wife's Response in Opposition to Former Husband's Motion for Protective Order. Attached to the motion was the email correspondence between opposing counsel and respondent's client, during the time he was *pro se*, demonstrating the coordination of the client's deposition that ultimately was set for December 16, 2019.

18. Because respondent's client failed to appear for his deposition on December 16, 2019, opposing counsel filed a motion seeking to hold respondent's client in contempt.

19. On January 6, 2020, the court held a hearing on the motion for contempt. Opposing counsel advised the court that respondent's client was not diligent in hiring counsel and willfully failed to appear for his deposition.

20. On the record, the court stated that respondent's client hired respondent one business day before the deposition and discussed the email in which respondent advised opposing counsel that he was not aware of the deposition at the time he was hired. The court further stated that respondent did not have any fault in this regard.

21. During the proceedings, respondent failed to advise the court that he made a false statement to opposing counsel in that he was aware of the deposition, and he instructed his client not to appear for the deposition.

22. Respondent also prevented his client from testifying during the contempt proceedings when he attempted to inform the court that respondent directed him not to attend the deposition. Respondent explained that he was attempting to protect attorney-client privileged information.

23. On January 7, 2020, the day after the hearing, respondent advised his client that he needed to terminate the representation. The client agreed to consent to respondent's withdrawal on the condition that respondent fully refund the fee paid.

24. On January 15, 2020, the client emailed respondent that he was terminating respondent's services.

25. On January 16, 2020, respondent emailed his client "settlement" terms: (1) refund of the \$5,000.00 in respondent's law office trust account and waiver of the remaining fees owed; (2) if the client chose to file a grievance or complaint or gave the firm bad reviews on social media, all fees owed would be due and payable immediately, including any associated with collection actions.

26. On January 22, 2020, the court entered an order finding respondent's client in contempt and awarded entitlement to sanctions plus the \$100.00 court reporter's fee.

27. On the same day, in an email exchange with the client, respondent reiterated his prior offer to settle a possible malpractice suit with the client and attempted to have the client waive the right to file a grievance with The Florida Bar in exchange for a refund. Respondent failed to advise the client to seek independent counsel prior to entering into the agreement. The client agreed to the settlement offer.

28. Thereafter, the client filed a small claims lawsuit against respondent alleging that respondent breached his fiduciary duty by advising him to not attend his deposition, which resulted in the client being sanctioned and required to pay \$7,655.25 plus costs.

29. In his Answer to the civil suit, respondent pled the affirmative defense of accord and satisfaction based on the January 22, 2020, settlement agreement and pled the affirmative defense of unclean hands based on the client having been held in contempt.

30. On or about April 24, 2023, the court in the small claims case set aside the prior settlement agreement and entered a final judgment on behalf of the plaintiff/client. In the order, the court found that respondent admitted to making false statements to opposing counsel and that he failed to correct those same false statements in front of the court in the post-dissolution of marriage case.

31. In response to The Florida Bar's investigative inquiry, respondent stated that he believed that it was better for his client to be held in contempt for failing to appear for his deposition than risk opening a line of questioning into what he and his client had discussed during the initial consultation, namely that the client misrepresented to him that the deposition had been unilaterally set.

32. According to respondent, it was common for this particular opposing counsel to unilaterally set depositions in cases where the opposing party was *pro se*, and therefore, respondent did not find his client's claim to be suspect.

33. Respondent further stated that he also was concerned that revealing his client's initial misrepresentation to him would cause the court to view the client as not being credible and would jeopardize the client's position with respect to the motion for contempt for having allegedly violated the terms of the final judgment of dissolution of marriage, which could have been a more costly and serious outcome for the client.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 4-1.1 (Competence); 4-1.3 (Diligence); 4-1.8(a) (Conflict of Interest; Prohibited and Other Transactions; Business Transactions With or Acquiring Interest Adverse to Client); 4-3.3(a)(1) (Candor Toward the Tribunal; False Evidence; Duty to Disclose); 4-3.4(a) (Fairness to Opposing Party and Counsel); 4-3.4(d) (Fairness to Opposing Party and Counsel); 4-8.4(c) (Misconduct); and 4-8.4(d) (Misconduct).

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.

6.1 False Statements, Fraud, and Misrepresentation

(b) Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld and takes no remedial action.

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

(b) Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Segal, 2023 WL 5127380 (Fla. Aug. 10, 2023), the Court approved a conditional guilty plea for consent judgment for a one-year suspension. In three different matters, Segal engaged in misconduct including conflict of interests with his clients and evasive and misleading statements made to the courts. Segal's conduct involved deceit and was prejudicial to the administration of justice. In mitigation, Segal had no prior

disciplinary history, had no dishonest or selfish motive and had a good character or reputation. In aggravation, Segal engaged in a pattern of misconduct, engaged in multiple offenses and had substantial experience in the practice of law.

In The Florida Bar v. Angulo, 2022 WL 804077 (Fla. March 17, 2022), the Court imposed a six-month suspension for instructing a criminal defendant to lie to the court during the client's sentencing hearing about Angulo's guarantee to the client that he would receive a downward departure in sentencing. Angulo's client had asked if his trial date could be continued to allow more time for settlement negotiations. On the trial date, Angulo requested a continuance; however, the court was unable to reschedule the trial to a later date, and his motion to continue was denied. Angulo advised the client he could proceed with the trial or enter an open plea with a sentencing hearing to be held at a later date. Angulo guaranteed the client that, if he entered an open plea, he would receive a downward departure in sentencing and be sentenced to probation to run concurrently with another period of probation in a separate matter. Angulo instructed the client to say, during the plea colloquy, that he had not been promised or guaranteed anything in exchange for his plea. The client entered an open plea of guilty based on Angulo's guarantee. During the

plea colloquy, the client asserted he had not received any promises or guarantees in connection with his plea. Angulo failed to stop the client from knowingly misstating the truth regarding the guarantee Angulo had made about the downward departure. At the sentencing hearing, despite Angulo's guarantee to the client, the client's request for a downward departure was denied and he was sentenced to 33.3 months in prison. Angulo had no prior discipline and he presented significant mitigation, including absence of a dishonest or selfish motive, personal or emotional problems, he made a timely good faith effort to make restitution or to rectify the consequences of the misconduct, he was suffering from a physical or mental disability or and he was remorseful.

In The Florida Bar v. Paul, 2020 WL 4530652 (Fla. Aug. 6, 2020), the Court approved a consent judgment for a one-year suspension. Paul previously was employed by the Stopa Law Firm (Stopa was permanently disbarred in September 2019). During the course of his employment with this firm, Paul represented a client and/or several of the client's business entities. The client served as the registered agent for a number of limited liability companies which were in the business of buying real estate and would often be involved in foreclosure litigation. During the course of his representation, Paul filed numerous motions to quash service of process,

challenging the validity of the plaintiff's attempts to serve his client. It was apparent by the sheer number of service returns that Paul's client was evading service. At no time did Paul independently investigate to determine the validity of service or if his client was evading service. Paul's client never executed any document in Paul's presence and Paul took no steps to verify the authenticity of his client's signature. Paul's action caused significant delay in the litigation unjustly. Paul had no prior discipline.

In The Florida Bar v. Dupee, 160 So.3d 838 (Fla. 2015), a one-year suspension was appropriate for Dupee's conduct in dissolution proceedings by knowingly filing the wife's inaccurate financial statement, deliberately withholding financial documents during discovery, knowingly allowing the wife to present false testimony during her deposition without taking remedial action, and failing to notify the husband's counsel that the wife had possession of a coin collection that was in dispute.

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. Six-month suspension from the practice of law.

B. Payment of the disciplinary costs.

During the period of suspension, 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 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: 50

Date admitted to the bar: September 28, 2004

Prior Discipline: None

3.2(b) Aggravation

- (2) dishonest or selfish motive;
- (3) a pattern of misconduct;
- (9) substantial experience in the practice of law.

3.3(b) Mitigation

- (1) absence of a prior disciplinary record;
- (3) personal or emotional problems;
- (5) full and free disclosure to the bar or cooperative attitude toward the proceedings;

(11) imposition of other penalties or sanctions; and

(12) remorse.

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

I find the following costs were reasonably incurred by The Florida

Bar:

Court Reporters' Fees	\$344.00
Administrative Fee	\$1,250.00
TOTAL	\$1,594.00

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 11th day of July, 2024.

/s/ Thomas R. Eineman
Honorable Thomas R. Eineman
Referee

Electronic Copy Filed with the Supreme Court of Florida.

Conformed Copies by Email to:

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