IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

REGINALD LUSTER,

Respondent.

_______________________________/

Supreme Court Case
No. SC22-459

The Florida Bar File
No. 2022-00,401(4D)OSC



# 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 April 6, 2022, The Florida Bar filed a Petition for Contempt and Order to Show Cause against Respondent. On May 15-16, 2023, a final hearing was held in this matter. 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

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. By order dated November 19, 2020, effective December 21, 2020, Respondent was suspended from the practice of law for 91 days in Supreme Court Case Number SC20-930. Respondent has not been reinstated to the practice of law since his suspension. About a year before that suspension, on December 3, 2019, Respondent accepted the representation of Zackary Genus for injuries he sustained in a motor vehicle accident on November 20, 2019. Zackary Genus was a minor at the time of the initial representation and, as a result, the Retainer Agreement (TFB Exh. 4) was signed by Zackary Genus' parents, Dwight and Dara Genus. Respondent notified the insurer for the tortfeasor, Mercury Insurance Company, of his representation of Zackary Genus by letter on December 9, 2019. (TFB Exh. 6)

The Suspension order required Respondent to "fully comply with Rule Regulating the Florida Bar 3-5.1(h)," which, in turn, required Respondent to immediately furnish a copy of the suspension order on his current clients. On

December 18, 2020, Respondent submitted a signed affidavit to The Florida Bar pursuant to Rule 3-5.1(h), which identifies clients to whom he furnished a copy of the suspension order. (TFB Exh. 2) Respondent's client Zachary Genus was not identified in the affidavit, nor were his parents, Dara and Dwight Genus. They all testified that Respondent never advised them that he was suspended from the practice of law while negotiating a settlement of Zachary's claim. They testified that they did not know what was happening in Zachary's case. Their calls to the Respondent went unanswered. At one point, they were told that Respondent had suffered a heart attack and was in the hospital. In addition, Dara Genus described how Respondent had approached them at their family restaurant and requested that they sign a false affidavit stating that Respondent had informed them of his suspension. Dara Genus further testified that they didn't want Respondent to lose his license to practice so they agreed to sign an affidavit with two deceptive statements removed. Respondent did remove the false statements but then added the deceptive statements back in, only slightly reworded. Her attempts to contact Respondent to have the affidavit revised further went unanswered. The court finds that Zachary, Dara, and Dwight Genus all gave credible testimony, which was substantially corroborated with record evidence.

On that same date (December 18, 2020), Respondent sent a signed demand letter on behalf of Zachary Genus to Jennifer Simmons, a claims supervisor with Mercury Insurance Company. (TFB Exh.1 and 6). The letter was sent on the letterhead of Respondent's law practice, was signed by Respondent and referenced "My Client: Zackary S. Genus". In that letter Respondent demanded that the insurance company settle Zackary Genus' injury claim for $35,000.00. For reasons unknown, that letter was not received by Mercury Insurance until February 9, 2021 (about six weeks into the suspension). (TFB Exh. 6) The Affidavit of Jennifer Simmons (TFB Exh. 6) and her testimony at the hearing established that she responded by phone and by letter to the Respondent's demand package on February 11, 2021 by offering $5,000 in full settlement. On February 12, 2021, Respondent called Ms. Simmons and continued their negotiation of the claim. Respondent reduced his demand to $17,500 and, in exchange, Mercury Insurance increased their offer to $6,000. In response, Respondent reduced the demand to $9,900, and both sides agreed to settle the claim for $8,000. Respondent requested that the settlement draft be made payable to his law firm "f/b/o" his client, Zackary S. Genus. Later that same day, she mailed an unsigned release and a settlement draft for $8,000.00 to "Reginald Luster, P.A. f/b/o Zachary Genus" to complete the settlement just as Respondent had instructed. Respondent deposited the settlement draft into his firm's general account on February 18, 2021.

Ms. Simmons testified that she negotiated directly with Respondent. However, on March 12, 2021 she was contacted by Joshua Woolsey, an attorney specializing in personal injury matters. Mr. Woolsey advised her that Respondent had been suspended from the practice of law and the client did not know about the settlement of his claim. Ms. Simmons received a letter from Mr. Wooley dated that same day, confirming his representation of Zackary Genus.

Confused and concerned that she had not received the signed General Release back from Respondent, Ms. Simmons called Respondent for an explanation. Respondent told her that Respondent and his assistant had tried several times to contact the client to sign the release but they had not made contact. A few days later, on March 16, 2021, Ms. Simmons received an email from Respondent stating that "my legal assistant scheduled two appointments with Mr. Genus to sign the release and to disburse the settlement proceeds which were deposited upon receipt. Mr. Genus did not show up for these two appointments."

The Referee also heard the testimony of Joshua Woolsey, Esq. Mr. Woolsey specializes in handling personal injury and insurance claims. He received a call from a colleague regarding Mr. Genus. Mr. Genus approached the colleague at church expressing some concern and confusion regarding Respondent's handling of his auto accident claim. Mr. Woolsey talked with the young man and attempted to determine the status of the claim. Mr. Woolsey called Ms. Simmons at Mercury Insurance and was told that the claim had been settled with Respondent. Woolsey confirmed his representation of Genus by letter to Simmons. Mr. Woolsey then attempted to contact Respondent without success. Mr. Woolsey then called the Florida Bar to ascertain the Respondent's status and ability to disburse Genus' settlement proceeds. Shortly thereafter, Respondent called Mr. Woolsey back and confirmed that Respondent had settled Genus' claim and accepted the settlement draft. Respondent needed Genus to come in and sign the release.

On May 3, 2021, Ms. Simmons received the signed Release from Mr. Woolsey along with a copy of a check for $8,000 from Respondent's Law Firm General Account to Mr. Woolsey's trust account. The Mercury Insurance settlement draft was deposited in the Law Firm's general account and disburse by Respondent to Mr. Woolsey's Trust Account.

The Referee accepts Ms. Simmons' testimony corroborated completely by her claim notes and correspondence relating to her negotiations with Respondent to settle the Genus claim. (TFB Ex. 7) The court finds that Ms. Simmons was credible, and her testimony establishes that Respondent actively and repeatedly negotiated the settlement of his client's insurance claim while suspended. Ms. Simmons further testified that at no point did Respondent disclose that he was suspended from the practice of law.

According to the Bar auditor's testimony and supporting documentation, Respondent deposited the check in an operating account (not his trust account) on February 18, 2021. On February 22, 2021, Respondent then purchased a cashier's check of $5,063.33 for Zachary Genus as payee. Presumably, Respondent intended to retain the balance of the $8,000.00 as a fee.

When Respondent contacted Zachary Genus to arrange for him to sign the release and deliver the check, Zachary's mother, Dara Genus, became suspicious due to the long inactivity in the case and the apparent closure of his office. She soon learned from an attorney acquaintance that Respondent was suspended. At that point, the Genuses retained attorney Joshua Woolsey, who ultimately obtained the full $8,000.00 from Respondent and consummated the settlement on behalf of Zachary.

The court also received the testimony of Katrina Bynes regarding a similar incident. She testified regarding a bar grievance she filed against Respondent, her first cousin, regarding a similar matter. Ms. Bynes testified that her father Joseph passed away in an auto accident in early June 2022. Respondent attended her father's funeral. Ms. Bynes sought Respondent's guidance—but not legal representation—regarding how to proceed with various insurance matters involving her father. No retainer agreement was ever signed between Respondent and Ms. Bynes or the estate of her late father. At no time did Respondent advise Ms. Bynes that he had been suspended.

Despite the suspension and lack of a retainer agreement, Respondent negotiated with Mr. Bynes's auto carrier, Allstate, as the attorney for the estate. The Bar introduced a demand letter from Respondent to Allstate dated July 25, 2022. (TFB Ex. 9). The letter is printed on the letterhead of Respondent's law practice and identifies him as "Attorney at Law." The letter also expressly identifies the estate as Respondent's client. Respondent's letter demands that Allstate pay $50,000.00 to Respondent's client.

Unbeknownst to Ms. Bynes, Allstate made four payments to Respondent on behalf of the father's estate. Those payments totaled $80,377.89. (TFB Exs. 8, 10). Ms. Bynes inquired of the Respondent numerous times regarding his progress with various insurance carriers, including Allstate, but Respondent never advised her that he had negotiated for and received the insurance payments. The undersigned finds Ms. Bynes's testimony credible, and corroborated by documentary evidence.

The Bar also offered the testimony of auditor Matthew Herdecker, CPA. Mr. Herdeker had been tasked with reviewing certain financial records that were subpoenaed from Wells-Fargo. From the period of Respondent's suspension until February 28, 2022, Mr. Herdecker identified a total of 24 deposited settlement drafts (other than the Zachary Genus check) in the law firm general, non-trust account. (TFB Ex. 14). These checks virtually all indicated payment to Respondent or his trust account for the benefit of some other individual, presumably the Respondent's clients. A large majority of these individuals were not identified in Respondent's 3-5.1(h) affidavit.

Respondent raised argument that these checks were actually payments from insurance companies to satisfy his charging liens. That argument appears to conflict with the express terms of the checks themselves, and there is no evidence of any such liens in the record. Moreover, depositing client funds in a general account would be improper.

Furthermore, it appears that Respondent took active measures to conceal the deposit of settlement checks to his accounts. In April 2022, on

The Bar's motion to compel, Respondent produced his Wells Fargo bank statements from February, 2021 to April, 2021. (TFB Ex. 15). These bank statements identify numerous transfers from Radiant Lands Corp.—a business owned by Respondent. When the true statements were later produced by Wells-Fargo pursuant to subpoena, the corresponding statements showed that these transfers from Radiant Lands Corp. were in fact deposits of settlement checks, or insurance proceeds, not involving Radiant at all. Respondent had altered the statement to conceal the source of the deposits.

The undersigned finds there is clear and convincing evidence to conclude that Respondent was practicing law during his suspension with respect to the Genus and Bynes matters, willfully and intentionally violating the Supreme Court Order dated November 19, 2020. In both cases, Respondent made written demands on insurers, negotiated settlements on behalf of his purported clients and accepted negotiated settlements, all while being suspended. The Bar auditor's evidence further supports this finding; Respondent received up to two dozen additional settlement checks within the first 13 months of his suspension.

Permanent disbarment is warranted only where an attorney's conduct indicates he or she engages in a persistent course of unrepentant and egregious misconduct and is beyond redemption. *See, e.g., Fla Bar. v. Norkin*, 183 So. 3d 1018 (Fla. 2015); *Fla. Bar v. Behm*, 41 So. 3d 136 (Fla. 2010). Respondent's misconduct, including manufacturing fraudulent bank records provided to the Florida Bar, clearly indicates that the Respondent has engaged in a persistent and deliberate course of misconduct.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 4-1.2 (Scope of Representation); 4-1.5 (Fees); 4-1.15 (Safekeeping Property); 4-1.16 (Declining or Terminating Representation); and 4-8.4(d) (conduct in connection with the practice of law that is prejudicial to the administration of justice).

I do not find that Respondent's office sign is in violation of the Supreme Court's Order dated November 19, 2020.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.1 Failure to Preserve the Client's Property

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

4.6 Lack of Candor

(a) 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

(a) Disbarment is appropriate when a lawyer: (6) engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

6.1 False Statements, Fraud, and Misrepresentation

(a) Disbarment is appropriate when a lawyer: (1) with the intent to deceive the court, knowingly makes a false statement or submits a false document; or (2) improperly withholds material information and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

6.2 Abuse of the Legal Process

(a) Disbarment is appropriate when a lawyer causes serious or potentially serious interference with a legal proceeding or knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another and causes serious injury or potentially serious injury to a party.

8.1 Violation of Court Order or Engaging in Subsequent Same or Similar Misconduct

(a) Disbarment is appropriate when a lawyer: (1) intentionally violates the terms of a prior disciplinary order and the violation causes injury to a client, the public, the legal system, or the profession; or (2) has been suspended for the same or similar misconduct and intentionally engages in further similar acts of misconduct.

## V. CASE LAW

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Norkin. 183 So. 3d 1018 (Fla. 2015), the Supreme Court held that permanent disbarment was warranted for a suspended attorney who violated the suspension notification rule, and continued to practice law after the effective date of his suspension. Further, attorney's unrepentant attitude and his continued and contemptuous conduct was demeaning to the Court, the Court's processes, and the profession of attorneys as a whole. Attorney's misconduct cannot and will not be tolerated as it sullies the dignity of judicial proceedings and debases the constitutional republic we serve. The attorney, as argued by the Bar, was not amenable to rehabilitation and deserving of permanent disbarment.

In The Florida Bar v. Forrester, 916 So. 2d 647 (Fla. 2005), the Supreme Court held that disbarment was the appropriate sanction for violating the rules and for intentionally violating the order of suspension. The standard of proof in contempt proceedings against the attorney was clear and convincing evidence that the attorney intentionally violated the suspension order by engaging in the practice of law while suspended.

In The Florida Bar v. Neiman, 816 So. 2d 587 (Fla. 2002), the Supreme Court held that settlement of claims on behalf of third parties by a non-attorney constituted the unlicensed practice of law.

In The Florida Bar v. Walkden, 950 So. 2d 407 (Fla. 2007), the Supreme Court's consideration of the attorney's earlier acts of misconduct for which the attorney had already been sanctioned did not present a double jeopardy issue and disbarment for 5 years was the appropriate sanction for the attorney's contemptuous conduct of continuing to practice law after he had been suspended.

In The Florida Bar v. D'Ambrosio, 25 So. 3d 1209 (Fla. 2009), the Supreme Court held that the attorney's conduct constituted the practice of law while suspended and was in contempt of the Supreme Court's prior suspension order; that the attorney's unauthorized conduct in assisting a party in the filing of an action in another state constituted misconduct; and disbarment was the warranted sanction.

In The Florida Bar v. Lobasz, 64 So. 3d 1167 (Fla. 2011), the Supreme Court held that an attorney's "clear violation of any order or disciplinary status that denies an attorney the license to practice law generally is punishable by disbarment, absent strong extenuating circumstances."

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BEAPPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he 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: 59
Date admitted to the Bar: May 11, 1988

3.2 Aggravating Factors:

(1) prior disciplinary offenses – Respondent received a 91-day suspension by Supreme Court order dated November 19, 2020;

(2) dishonest or selfish motive – Respondent attempted to take a fee from the Genus matter, and dishonestly tried to conceal his receipt of settlement funds from both Ms. Bynes and The Bar;

(3) a pattern of misconduct – the record shows a pattern of the continued practice of law following Respondent's suspension;

(4) multiple offenses – Respondent acted as an attorney in both the Genus and Bynes matters, and The Bar's auditor provided clear evidence of other settlements and improper use of non-trust fund accounts;

(5) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency – Respondent provided false and manipulated bank statements to The Bar during the pendency of these proceedings;

(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process – Respondent provided false and manipulated bank statements to The Bar during the pendency of these proceedings;

(7) refusal to acknowledge the wrongful nature of the conduct. Specifically, Respondent claimed that Genus and Bynes were not clients because they had not signed retainer agreements. Yet, he represented them as clients, pursued claims on their behalf and, even, disbursed money to them. It was Respondent's obligation to prepare and execute the necessary forms. His failure to do so does not excuse his improper actions;

(8) vulnerability of the victims – Zachary Genus was a minor client who was not advised of Respondent's suspension, and Ms. Bynes was a grieving individual who never even retained Respondent; and

(9) substantial experience in the practice of law.

3.3 Mitigating Factors:

(7) character or reputation – Respondent presented credible and persuasive character witnesses who testified to his good character. The undersigned considered the testimony of Noel G. Lawrence, Ronnie S. Carter, Henry M. Coxe, III, Tad Delegal, III, and Michael Freed.

These witnesses testified regarding Respondent's reputation and character as a member of the Bar and his efforts at rehabilitation. Noel Lawrence is an attorney at law admitted to practice in 1990. He described Respondent as a close colleague and mentor and "one of the stellar attorneys in town on civil issues." Respondent's efforts at rehabilitation included providing meals at the Clara White Mission and Farm Share. Mr. Lawrence identified Respondent as one of the key leaders of the local Bar Association, devoting himself to community and bar service.

Ronnie Carter testified that she became an Assistant U.S. Attorney in the civil division in Jacksonville, in September, 1992. Respondent was her mentor on civil cases. She described Respondent as possessing "unimpeachable character and good standing" in the legal community. She further described Respondent's service on the Jacksonville Bar Association Board of Governors and, eventually, serving as a transformational President.

Henry M. ("Hank") Coxe, III has been a member of the Bar since 1973. He worked actively on Bar and community events with Respondent while Respondent was part of the Board of Directors of the Jacksonville Bar Association and during the period in which Respondent served as its President. Mr. Coxe described Respondent as possessing unimpeachable character and being honest and trustworthy.

Thomas A. Delegal, III and Michael Freed also testified regarding their dealings with the Respondent on Bar and community activities. They both dealt with Respondent for many years and knew Respondent to have a good reputation in the legal community. He was an active and engaged Bar leader and was known to have expertise and corresponding financial success in his practice.

The testimony, exhibits and affidavits filed by or on behalf of Respondent show unquestionably that Respondent was an inspirational leader in his local Bar Association. Starting as an Assistant U.S. Attorney, to working for a prestigious local law firm, to starting his own successful personal injury law firm, Respondent was deeply involved in the Bar and his community while serving his clients. His conduct in question in these proceedings stands in stark contrast to his community spirit and mentoring roles described by the witnesses from Respondent's past. His failure to follow the simple mandates of the Supreme Court's Order and abide by his suspension from the practice of law are as troubling as they are unexplainable.

The Florida Bar seeks permanent disbarment for Respondent's unrepentant and egregious conduct, beyond redemption. Although the undersigned has determined that Respondent deliberately violated the Orders of the Supreme Court and continued to practice law despite his suspension, Respondent's conduct when viewed in the context of his devoted service to the legal community, demonstrates elements of redemption. Accordingly, the undersigned recommends disbarment but not permanent disbarment, based on the Court's standards for that ultimate sanction.

## 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 | | 3,054.50 |
| Audit Costs | | 4,573.66 |
| Witness Costs | | 993.73 |
| Referee Travel Costs | | 222.70 |
| Bar Counsel Costs | | 1,815.94 |
| Investigative Costs | | 1,833.68 |
| | TOTAL | $13,744.21 |

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 5th day of June, 2023.

Terence R. Perkins, Referee
Kim C. Hammond Justice Center
1769 E. Moody Blvd.
Bunnell, FL 32110-6355

Original to:

Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927

Conformed Copies to:

Reginald Luster, Respondent, rluster@rlusterlaw.com
Alan Anthony Pascal, Bar Counsel, apascal@floridabar.org
John Derek Womack, Bar Counsel, jwomack@floridabar.org
Patricia Ann Toro Savitz, Staff Counsel, psavitz@floridabar.org