

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

DARYL BOBBY FENTON,

Respondent.

Supreme Court Case
No. SC24-1048

The Florida Bar File
Nos. 2024-70,257(11I)
2024-70,394(11I)

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 16, 2024, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. On October 31, 2024, 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

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:

Respondent was ineligible to practice law during the period of November 15, 2023 to November 27, 2023 due to being delinquent on his Continuing Legal Education (CLE) requirements. On November 21, 2023, respondent filed a notice of appearance in the matter of *The State of Florida v. James William Kelly III*. On November 22, 2023, respondent filed a petition for reinstatement with The Florida Bar (“the bar”), wherein he stated that he did not practice law in Florida or render advice on matters of law during the period of his delinquency. Respondent did not respond to multiple requests from the bar to explain the discrepancy in his petition for reinstatement with the filing of his notice of appearance.

Thereafter, in a second matter, on December 2, 2023, respondent filed a notice of appearance, written plea of not guilty, demand for discovery, and demand for trial by jury in the matter of *The State of Florida v. Ricardo Chardonnette*. The matter was set for trial by The Honorable Judge Robin Faber for January 17, 2024.

On January 17, 2024, the defendant Ricardo Chardonnette (“Mr. Chardonnette”) appeared without respondent. Mr. Chardonnette stated that he had no contact with respondent, who was not answering his phone calls. Judge Faber called the phone number on respondent’s pleadings, as well as a separate number listed on his bar member profile. Judge Faber was unable to reach respondent. As a result of respondent’s absence, Judge Faber reset the matter for January 24, 2024. Judge Faber then emailed respondent, advising him of the new trial date, as well as letting him know that he expected him to be present at that time. Respondent did not respond to Judge Faber’s email, and did not appear at the reset trial date. As a result, Judge Faber discharged respondent, appointed the public defender to Mr. Chardonnette’s case, and referred the matter to The Florida Bar.

During the course of the bar’s investigation, it was discovered that respondent listed a misleading address as his record bar address. The address was that of an Irish pub where respondent was not authorized to receive mail. The bar’s staff investigator also attempted to physically locate respondent. While the investigator located a potential residential address for respondent, it was discovered that respondent had been evicted shortly

prior to the investigator's arrival at said address (see footnote 2 of The Florida Bar's Motion for Default and Order Deeming Matters Admitted).

Throughout the instant disciplinary proceeding, respondent failed to answer any of the bar's inquiries regarding the aforementioned conduct. Further, respondent did not appear at the final hearing on October 31, 2024, despite having been properly noticed multiple times.

III. RECOMMENDATIONS AS TO GUILT.

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

As to Count I, Rules 1-3.3 (Official Bar Name and Contact Information), 1-3.6 (Delinquent Members), 4-8.4(c) (Misconduct involving Dishonesty, Fraud, Deceit or Misrepresentation), and 4-8.4(g) (Misconduct involving Failure to Respond).

As to Count II, Rules 4-1.1 (Competence), 4-1.3 (Diligence), 4-1.4 (Communication), and 4-8.4(g) (Misconduct involving Failure to Respond).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.4 Lack of Diligence

- (a) Disbarment is appropriate when a lawyer causes serious or potentially serious injury to a client and:
 - (1) abandons the lawyer's practice;
 - (2) knowingly fails to perform services for a client; or
 - (3) engages in a pattern of neglect with respect to client matters

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

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 or potentially serious injury to a party.

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

- (a) 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:

In *The Florida Bar v. Davis*, 149 So.3d 1121 (Fla. 2014), disbarment was warranted where the attorney knowingly failed to perform services for the client after charging a \$5,000 retainer fee, and failed to answer the bar complaint or participate in the disciplinary proceedings. The facts are very similar here, as respondent failed to perform services for his client after appearing as his private criminal defense attorney. As in *Davis*, respondent failed to answer the bar complaint or otherwise participate in the disciplinary proceedings.

In *Davis*, the referee found in aggravation: a pattern of misconduct, multiple offenses, that there was a vulnerable victim, and that respondent had substantial experience in the field of law. Aggravators of pattern of misconduct and multiple offenses are also present here, along with dishonest or selfish motive and bad faith obstruction of the disciplinary proceeding.

The referee noted that Davis' conduct demonstrated a "continuing ... pattern of neglect". Similarly, respondent here established a pattern where he failed to show for both criminal trial dates, ignored the judge's communications to appear, and failed to participate in the disciplinary proceeding.

In *The Florida Bar v. Ribowsky-Cruz*, 529 So.2d 1100 (Fla. 2006), disbarment was the appropriate sanction where the attorney agreed to represent the client, accepted payment and failed to provide services, and abandoned her client without notice and without refunding the fees. Similarly, respondent in the instant matter appeared as his client's private criminal defense attorney and failed to provide services, abandoning his client without notice and without taking any steps to allow his client to contact him.

In *The Florida Bar v. Montgomery*, 412 So.2d 346 (Fla. 1982), disbarment was the appropriate sanction for the neglect of specific legal matters entrusted to attorney and the abandonment of his law practice without giving notice to his clients. Montgomery and respondent here both defaulted by failing to respond to the bar's complaint. In aggravation, the referee considered Montgomery's failure to cooperate with the bar, his failure to appear at the final hearing, his failure to take adequate measures

to protect his clients' interests upon abandonment of his law practice, and his failure to pay his Florida Bar dues for a period of 3 years.

Similarly, respondent here has failed to cooperate with the bar, failed to appear at his final hearing, failed to take adequate measures to protect his clients' interests upon abandonment of his law practice, and has been delinquent in his membership requirements since June of this year, as evidenced by an affidavit from The Florida Bar's Membership Records (Exhibit 2).

In *The Florida Bar v. Adler*, 126 So.3d 244, 247 (Fla. 2013), the Florida Supreme Court noted that "this Court has moved towards stronger sanctions for attorney misconduct." Similarly, in *The Florida Bar v. Parrish*, 241 So.3d 66 (Fla. 2018), the Court stated that "in more recent years the Court has imposed even more severe discipline for unethical and unprofessional conduct than in the past."

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. Disbarment; and
- B. Payment of The Florida Bar's costs in these proceedings.

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, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(2)(D), I considered the following:

Personal History of Respondent:

Age: 33

Date admitted to the Bar: April 14, 2020

Prior Discipline: None

Aggravating Factors:

3.2(b)(2) dishonest or selfish motive

Respondent's actions in filing a notice of appearance in a legal matter when he was aware of his ineligibility to practice law supports a finding of a dishonest or selfish motive. Respondent also knowingly provided a misleading address on his bar profile, at an address he was not authorized to receive mail.

3.2(b)(3) pattern of misconduct

Respondent's personnel file from the Miami-Dade Public Defender's Office (Exhibit 1) demonstrates a pattern of neglect with respect to client matters. Not only did respondent neglect his client in the underlying criminal case, but respondent was also put on a performance improvement plan for lack of diligence regarding his cases at the Miami Public Defender's Office. The personnel file further indicates that respondent resigned without properly giving notice to the Public Defender's Office, leaving his former clients in an unfavorable position.

3.2(b)(4) multiple offenses

In the instant case, respondent violated seven different Rules Regulating the Florida Bar, in a two count complaint.

3.2(b)(5) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency

Respondent has failed to respond to the bar's inquiries, and has chosen not to participate in these proceedings. Respondent has further thwarted the investigation of this matter by using a misleading address where no one could reach him.

Mitigating Factors:

3.3(b)(1) absence of a prior disciplinary record


3.3(b)(6) inexperience in the field of law

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

The Florida Bar, having been successful in this matter, shall be awarded their necessary taxable costs of this proceeding and shall submit their statement of costs, as well as a motion to assess costs against respondent.

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 8th day of November, 2024.



Honorable Stacy D. Glick, Referee

Filed with the Clerk of the Supreme Court of Florida via the Florida Courts E-Filing Portal

Conformed Copies served via the Portal to:

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