

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Petitioner,

v.

DANIEL NEWTON BRODERSEN,
Respondent.

Supreme Court Case
No. SC22-1691

The Florida Bar File
No. 2022-30,052 (5B) (OSC)

Received, Clerk, Supreme Court

JUN 26 2023

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rules 3-7.7(g), 3-7.11(f) and 3-7.6, Rules of Discipline, the following proceedings occurred:

On December 7, 2022, The Florida Bar filed its Petition for Contempt and Order to Show Cause against respondent in these proceedings. On December 9, 2022, the Supreme Court of Florida issued its order to show cause why respondent should not be held in contempt of the Court or other discipline imposed for the reasons set forth in The Florida Bar's Petition. Respondent filed his Response to Order to Show Cause on December 27, 2022, to which the Bar filed a reply on January 6, 2022. The undersigned was appointed as Referee in this matter on February 7, 2023. On April 24,

2023, a final hearing and sanction 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 was a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida pursuant to the terms of the April 13, 2017 order of the Supreme Court of Florida in In Re: Petition for Disciplinary Revocation of Daniel Newton Brodersen, Case No. SC17-206, accepting his Petition for Disciplinary Revocation with Leave to Apply for Readmission.

Narrative Summary Of Case.

1. By order of the Supreme Court of Florida dated April 13, 2017, in In Re: Petition for Disciplinary Revocation of Daniel Newton Brodersen, Case No. SC17-206, respondent's petition for disciplinary revocation with leave to seek readmission after five years was granted, effective thirty (30) days from the date of the order. Respondent was ordered to accept no new business from the date of the order until he was readmitted.

2. Respondent became ineligible to practice law in Florida on or about May 13, 2017.

3. Respondent has not obtained readmission to The Florida Bar.

4. William Howell, Jr., a nonlawyer, owned Orlando Ventures and several other affiliated businesses that were involved in timeshare divestment. Between approximately 2017 and 2018, Roderic Boling, a nonlawyer, worked with Howell and his timeshare divestment businesses.

5. Howell's businesses solicited timeshare owners to hire his businesses to divest their timeshare interests.

6. Howell also purchased timeshare divestment cases from other timeshare exit companies, acquiring those contracts without the clients' knowledge or consent.

7. Howell employed nonlawyer "case managers" who were responsible for nearly all communication with the timeshare clients and who engaged in negotiations with timeshare resorts, timeshare development companies and/or timeshare companies to obtain releases for clients of ongoing obligations owed pursuant to contracts or agreements.

8. Between approximately July or August 2017 and approximately late 2018 or early 2019, respondent was employed by Orlando Ventures. At the time of his initial employment by Orlando Ventures, respondent worked at the office location in Lake Mary, Florida, in the same building as

The Resilient Group Inc., often referred to as Resilient Group PMA, a corporation in which Boling served as the President of Trustees.

9. Boling exercised considerable control over the operations of Orlando Ventures, and he supervised respondent during his employment with Orlando Ventures in Lake Mary.

10. At all times material, Best Defense Law provided legal services to Orlando Ventures and to Resilient Group PMA. Boling acted as a liaison between Orlando Ventures and Best Defense Law and coordinated the interaction between Resilient Group PMA members and Best Defense Law.

11. Between approximately late summer 2019 through early 2020, respondent was re-hired by Orlando Ventures and worked at its Orlando office location. Respondent's job duties were the same as those during his previous employment at the Lake Mary office.

ORLANDO VENTURES

12. In his sworn statement, respondent described his job with Orlando Ventures as "...exclusively just legal help with the - - [Howell's] in-house legal help with the timeshare stuff, having no contact whatsoever with the timeshare clients" and "...to help [Orlando Ventures] in-house with the legal issues...I was helping them with legal issues that arose on a day-to-day basis with their company."

13. Respondent routinely drafted letters, for Howell's signature, that were in response to letters received from timeshare resorts/companies concerning negotiation efforts by Orlando Ventures' various business entities. The letters respondent authored, but that Howell signed, were responsive to issues raised by the timeshare resorts/companies with respect to negotiation efforts to obtain exits or releases from the contracts between the timeshare owners and the resorts or companies that held the contracts.

14. Respondent testified during his sworn statement that he did not "...consider it to be legal work, 'cause there were never any court proceedings or anything like that." Respondent further testified "I didn't think I was engaging in the delivery of any legal services except perhaps to the company I worked for, just giving them legal consultation."

15. Respondent considered himself to be a "nonattorney legal consultant and paralegal" with Orlando Ventures and his contact was with the resorts or timeshare developers and the Orlando Ventures case managers. The case managers sought respondent's advice regarding legal aspects of their cases. In particular, respondent gave advice with respect to whether the timeshare owners had deeded interests versus interests through points that could be used at various resorts. Respondent

explained to the case managers his understanding of the law as it related to what they needed to do in order to negotiate for releases of the Orlando Ventures' clients' ongoing contractual obligations.

16. During his sworn statement, respondent agreed that one of the aspects of what a lawyer does is give legal advice, and he admitted to providing in-house legal services.

17. Respondent further testified that “[a]ll I was doing was giving – giving advice on day-to-day legal issues that arose in the company.”

RESILIENT GROUP PMA

18. Between approximately January 2018 and late 2018, respondent served as a trustee of Resilient Group, PMA. During respondent's tenure as trustee of Resilient Group, PMA, he continued to be employed and paid by Orlando Ventures.

19. Resilient Group was a private member association that focused on defending foreclosure cases by claiming the mortgage notes were fraudulent and it purported to have a scientific process of examining notes to determine whether they were original or re-created.

20. Resilient Group offered its members *pro se* support, such as motions and legal research.

21. The website for Resilient Group referred to its experienced team of foreclosure lawyers.

22. Resilient Group accepted payments from its members for legal services and utilized Best Defense Law to provide those services. Members were not permitted to choose which attorney represented them.

23. Respondent understood that the members of Resilient Group paid all fees to Resilient Group and not directly to Best Defense Law and that Best Defense Law billed Resilient Group for its services.

24. Members paid Resilient Group an initial fee of \$1,000.00 per property and \$600.00 per month per property until the case was completed.

25. As a trustee of Resilient Group, one of respondent's main functions was to meet with prospective members, sell them on the benefits of paying a substantial sum of money to join Resilient Group in order to gain access to legal assistance in fighting their pending foreclosure cases, and execute membership agreements. Respondent explained to the members, or prospective members, the foreclosure process and what legal services the attorneys would provide. If a prospective member had a question regarding the agreement, respondent would explain the document to the prospective member.

26. Attorney Allan Campbell, who also worked with Orlando Ventures, testified that respondent drafted pleadings and suggested courses of legal action.

27. In or around February 2018, Joseph Altier met with Boling and respondent at the offices of Resilient Group to discuss Altier becoming a member of Resilient Group PMA and what the PMA could do for the foreclosure and bankruptcy issues he and his wife, Jodell Altier, were experiencing.

28. On or about February 19, 2018, respondent sent Joseph Altier a copy of the membership agreement for Resilient Group from an email address that gave the appearance of respondent being associated with Best Defense Law, bestdefense2013@gmail.com.

29. At no time was respondent employed by Best Defense Law. Respondent had no valid reason for having a Best Defense Law email address or an email address that would give the recipient the impression that respondent was affiliated with Best Defense Law.

30. In this email, respondent stated, "Remember, those PMA fees contemplate our lawyers, as well as Roddy [Boling] and I, doing a great deal of work on the bankruptcy appeal, which is not normally something

that the PMA deals with.” Respondent confirmed under oath that he wrote and sent this email.

31. Respondent testified during his sworn statement that “our lawyers” referred to Best Defense Law.

32. Joseph Altier handled the legal affairs for himself and his wife and considered respondent to be his main contact person for both Resilient Group and Best Defense Law.

33. Joseph Altier, Jodell Altier and respondent, in his capacity as trustee of Resilient Group, PMA, signed the agreement for Resilient Group in or around February 2018.

34. The signed agreement stated, “The Association does not and cannot guarantee a successful result of any litigation covered by the program and we acknowledge that we are proceeding at our own risk.”

35. Neither Joseph nor Jodell Altier made a distinction between Resilient Group and Best Defense Law and believed they were paying Resilient Group to provide them with legal services.

36. The Altiers believed the agreement that they executed with Resilient Group was for legal assistance regarding Ms. Altier’s bankruptcy appeal. Respondent testified that he believed that was his recollection as well.

37. On March 9, 2018, respondent emailed Joseph Altier a file. The attachment indicated the file name was "Altier Notice...pdf." The email address respondent used was bestdefense2013@gmail.com. The attachment was the notice of appeal filed by attorney Allan Campbell of Best Defense Law in the bankruptcy case. Campbell denied filing the document or authorizing the use of his filing credentials to file the document.

38. Respondent testified that he considered his role to be that of a conduit for transmitting information between the Resilient Group members and the attorneys of Best Defense Law.

39. Respondent and Boling also reviewed documents prepared by Best Defense Law, including pleadings. In the Altiers' case, respondent reviewed legal documents associated with their matter.

40. Respondent's conduct constitutes the unauthorized practice of law and violates this Court's order in SC17-206.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that respondent be found guilty of contempt of the order of the Supreme Court of Florida granting his Petition for Disciplinary Revocation with Leave to Apply for Readmission dated April 13, 2017.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

Standard 8.1(a) indicates that disbarment is appropriate when a lawyer 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.

The following aggravating factors are relevant in this matter:

3.2(b)(1) prior disciplinary offenses;

3.2(b)(2) dishonest or selfish motive in that respondent knew or reasonably should have known his actions constituted the practice of law;

3.2(b)(3) a pattern of misconduct in that respondent provided legal services to Orlando Ventures and to Resilient Group PMA;

3.2(b)(4) multiple offenses in that respondent provided the legal services for more than a year, and it was a part of his job description at Orlando Ventures;

3.2(b)(7) refusal to acknowledge the wrongful nature of the conduct as respondent has insisted that it was permissible for a nonlawyer to provide the legal advice and services; and

3.2(b)(9) substantial experience in the practice of law in that respondent was admitted to the Bar in 1987.

The following mitigating factor(s) are relevant in this matter:

3.3(b)(5) At all times during this Referee's dealings with the Respondent, he was cooperative and appeared to be freely disclosing information. He did not contest nor try to restate any of the assertions by Bar Counsel, merely acknowledging that he saw his actions differently and if he was wrong then he was wrong. The Respondent was emphatic that he was now in compliance with his current position and the rules being followed by both him and his new employers, however this Referee does not find that to be a mitigating factor.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Stremis, 357 So. 3d 77 (Fla. 2022), the Court rejected the referee's recommendation of a two-year suspension for gross mismanagement of his law firm in one case and a public reprimand for failure to communicate with a client in the second case and, instead, disbarred Stremis due to his cumulative misconduct. The Court declined to grant the bar's request that Stremis be permanently disbarred, stating: "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 p. 93. Stremis'

inadequate staffing and lack of sufficient office procedures resulted in client neglect, case dismissals, frustrated judges, and costly sanctions on a near weekly basis. This disciplinary proceeding focused on the firm's disastrous conduct in litigation in courts across the state, which resulted in harm to its clients, to the court system, and to the public at large. Strems also submitted false or misleading affidavits in two cases where he attempted to negotiate settlements. In a second matter, Strems represented an elderly client in a claim against the insurer for hurricane damages. Strems handled the post-suit negotiations with the insurer and entered into a settlement agreement, without the client's knowledge or consent, for a lesser amount than the client had advised Strems' associate as being acceptable. Unlike respondent, Strems had mitigating factors. Prior to his emergency suspension in the case that ultimately led to his disbarment, Strems had no prior disciplinary issues. He had a good character or reputation, underwent interim rehabilitation, and was remorseful. In aggravation, Strems had a dishonest or selfish motive, engaged in a pattern of misconduct, engaged in multiple offenses, submitted false evidence, false statements, or engaged in other deceptive practices during the disciplinary process, and had substantial experience in the practice of law.

Although Strems' misconduct did not involve contempt of a prior discipline order by engaging in the unlicensed practice of law, his misconduct did involve serious transgressions against the Rules Regulating The Florida Bar over a long period of time with wide-spread client harm. If permanent disbarment was not the appropriate sanction to impose in Strems' case, the facts present in respondent's matter also do not appear to warrant permanent disbarment. Respondent's misconduct was relatively short in time, affected only a narrow section of the public, and did not harm the judicial system. Respondent did not make any misrepresentations to the bar and was forthcoming in admitting to his actions, which he genuinely did not believe to be the impermissible unlicensed practice of law.

I also considered the bar's case law recommending permanent disbarment, all of which pre-dated the Strems' case.

In The Florida Bar v. Diorio, 157 So. 3d 1049 (Fla. 2014) (unpublished disposition), a former attorney was permanently disbarred after being found in contempt of her order of disciplinary resignation for continuing to engage in the practice of law. The Court noted that a disciplinary resignation was tantamount to disbarment. Diorio created a "consulting company" and hired another lawyer in an effort to continue representing clients in a products liability suit and in submitting related

claims to the qualified settlement fund. In addition, Diorio also asserted liens against funds distributed to the claimants for payment of legal fees. Diorio engaged in the unlicensed practice of law by having discussions and written correspondence with doctors concerning a client, having telephone conversations and written correspondence with the client, reviewing and preparing claim forms, and submitting the client's medical records, all of which were done without the supervision of the lawyer Diorio hired through her "consulting group." Diorio hired the lawyer merely to collect settlement checks, deposit them to the lawyer's trust account, and disburse them to the "consulting group" that was solely owned by Diorio. In aggravation, Diorio failed to respond to the Supreme Court of Florida's order to show cause. Conversely, respondent responded to the order to show cause and fully participated in these disciplinary proceedings.

In The Florida Bar v. Rosenthal, 20 So. 3d 850 (Fla. 2009) (unpublished disposition), a disbarred attorney was found in contempt for engaging in the unlicensed practice of law and was permanently disbarred. Prior to his disbarment, Rosenthal had created a mortgage company for which he was the initial officer/director, the incorporator, and the registered agent. After his disbarment, he was "employed" by the mortgage company where he assisted a client in obtaining a loan modification, where he

prepared and filed, on the client's behalf, an answer to the pending foreclosure action. Upon being contacted by opposing counsel in the foreclosure case, the client advised that Rosenthal was her attorney. Opposing counsel contacted Rosenthal at the number provided, which was for the mortgage company. She was advised by the assistant that Rosenthal was an attorney and that he was not disbarred, despite the fact that opposing counsel, in checking Rosenthal's membership status with The Florida Bar, had learned otherwise. Upon speaking with opposing counsel, Rosenthal denied telling the client he was an attorney and claimed he merely was assisting her in working out an agreement with her lender. Rosenthal's claim was refuted by the client and by employees at the mortgage company who repeatedly referred to him as an attorney. In aggravation, Rosenthal failed to respond to the Court's order to show cause. Such aggravation is not present in respondent's case.

In The Florida Bar v. Winter, 549 So. 2d 188 (Fla. 1989), Winter, who had been allowed to permanently resign in lieu of discipline, engaged in twenty-one instances of the unauthorized practice of law in indirect criminal contempt of the order of permanent resignation. As a result, Winter was found to be in indirect criminal contempt, but the Court declined to impose a jail sentence. Instead, the Court permanently disbarred Winter, noting

that he no longer would be permitted to represent that he had resigned from the bar and that he could be subject to a fine or imprisonment upon further violation of the Court's order.

In The Florida Bar v. Neely, 675 So. 2d 592 (Fla. 1996), a disbarred attorney was permanently disbarred after engaging in the unlicensed practice of law. Neely accepted a fee for preparing a malpractice claim on behalf of a client. He also filed a civil suit on behalf of a corporation and represented the corporation for nearly two months. Neely was required to make full restitution to the client who paid him a fee. In aggravation, Neely had an extensive disciplinary history leading up to his disbarment. Similarly, respondent does have a disciplinary history and the facts underlying his disciplinary revocation concerned misappropriation of client funds.

In The Florida Bar v. Birdsong, 177 So. 3d 1272 (Fla. 2015) (unpublished disposition), Birdsong was employed during his suspension by a law firm as a paralegal. Birdsong routinely met with clients and potential clients of the firm, without a supervising attorney being present, and signed fee agreements on behalf of the firm. Birdsong admitted in his Disbarment on Consent that his actions, if proven, constituted a violation of R. Regulating Fla. Bar 3-6.1(d), Direct Client Contact.

In The Florida Bar v. Morsch, 2018 WL 2382796 (Fla. 2018) (unpublished disposition), an attorney, who had been disbarred for misappropriation, was found to have engaged in the practice of law by utilizing powers of attorney to represent a married couple in negotiating their insurance claims and “[trying] to settle” their insurance claims for personal injuries sustained in an automobile accident. As a result, Morsch was permanently disbarred.

In The Florida Bar v. Forrester, 916 So. 2d 647 (Fla. 2005), Forrester hired an associate shortly before the commencement date of her sixty-day suspension to handle pending client matters. The associate was an inexperienced recent law school graduate. During the associate’s employment, Forrester reviewed the associate’s legal work and, in one client matter, spoke directly to the client telephonically. Although the rules permitted Forrester to work as a law clerk, investigator, or paralegal while suspended, such employment contemplated supervision by an attorney who was a member in good standing with the bar. In fact, Forrester was not the person being supervised. Forrester was the supervisor of her inexperienced associate. Forrester’s work was not limited to work of a preparatory nature that would enable the associate to carry a given matter to conclusion through his own examination, approval or additional effort.

In The Florida Bar v. Beach, 675 So. 2d 106 (Fla. 1996), the Supreme Court of Florida considered a situation where the attorney permitted a nonlawyer to act as a conduit for legal advice to a client the attorney never met and found that the nonlawyer's actions constituted the unlicensed practice of law. The nonlawyer, similar to respondent, was not an employee of the attorney. The Court found:

Beach improperly allowed Mr. King [the nonlawyer] to act as his conduit for giving legal advice by obtaining and relaying, without supervision, case-specific information to persons whom Beach never actually met or consulted. Cf. Florida Bar v. Brumbaugh, 355 So. 2d 1186, 1194 (Fla.1978) (holding that non-lawyer proprietor of 'secretarial service' overstepped bounds and engaged in unauthorized practice of law by advising clients of various legal remedies available to them, recommending appropriate legal forms to file and assisting in preparation and filing of forms). Consequently, we find the referee's conclusions, that *Beach (1) assisted Mr. King in the unauthorized practice of law in violation of rule 4-5.5 and (2) shared a legal fee with a nonlawyer in violation of rule 4-5.4, to be supported by the record in this case.*" (Emphasis added).

Similar to Mr. King, respondent acted as the conduit for legal services between the members of Resilient Group PMA and Best Defense Law.

In The Florida Bar v. McAtee, 674 So. 2d 734 (Fla. 1996), an attorney was found to have engaged in the practice of law in violation of the order suspending him from the practice of law by representing clients before the Social Security Administration during his suspension. Counsel for the Social Security Administration testified at the final hearing that a suspended attorney could not practice before that agency. McAtee argued that he was not aware his conduct was impermissible because nonlawyers were allowed to appear before the agency.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that respondent be found guilty of contempt and that he be disciplined by:

- A. Ten-year disbarment.
- 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: 62

Date admitted to the Bar: June 25, 1987

Prior Discipline:

In The Florida Bar v. Brodersen, 24 So. 3d 560 (Fla. 2009) (Table of cases), respondent was suspended for one year from the practice of law for conduct involving misrepresentation and false statements made regarding a client's case and during the bar's initial investigation of the matter.

In The Florida Bar re Brodersen, 65 So. 3d 516 (Fla. 2011), respondent was reinstated to the practice of law, subject to a three-year period of probation requiring him to enter into a new rehabilitation contract with Florida Lawyers Assistance, Inc.

In In re Petition for Disciplinary Revocation of Brodersen, 2017 WL 1366136 (Fla. April 13, 2017) (unpublished disposition), respondent's Petition for Disciplinary Revocation with Leave to Apply for Readmission was granted. An audit of respondent's trust account by the Bar revealed a shortage ranging from \$6,154.65 to \$34,631.22 in respondent's trust account during the audit period of one year. Respondent improperly commingled trust funds with his personal funds, made at least one disbursement from the trust account to himself without

documentation to support his entitlement to the funds, failed to maintain the minimum required trust accounting records, and failed to account for client funds that he deposited into his personal checking and business operating accounts. The Bar's investigation also determined that respondent employed a former lawyer, whose disciplinary revocation had been granted by the Supreme Court of Florida, as an independent contractor and failed to provide notice to the Bar or quarterly reports pursuant to Rule 3-6.1. Respondent blamed this employee for the theft of client trust funds but did not report the matter to the Bar or law enforcement. Respondent did take steps to reimburse the shortages.

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	\$999.20
Investigative Costs	\$6.00
Administrative Fee	\$1,250.00
Bar Counsel Costs	\$414.19

TOTAL	\$2,669.39
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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 26th day of June, 2023.



Kathleen H. Roberts, Referee

Original To:

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

Conformed Copies to:

Daniel Newton Brodersen, Respondent, 480 N. Orange Avenue, Apt. 511, Orlando, Florida 32801, at brodersend@gmail.com

Laura N. Gryb, Bar Counsel, The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Florida 3281-1050, lgryb@floridabar.org; orlandooffice@floridabar.org; dsullivan@floridabar.org

Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399, at psavitz@floridabar.org