

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

Supreme Court Case  
No. SC22-699

v.

The Florida Bar File  
No. 2020-50,181(171)

BRIAN MCKENNA O'CONNELL,  
Respondent.

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Received, Clerk, Supreme Court

JUN 19 2023

**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 May 24, 2022, The Florida Bar filed its Complaint against Respondent in these proceedings. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, the Conditional Guilty Plea for Consent Judgment and this Report of Referee Accepting Consent Judgment 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. This matter mainly revolves around Respondent's actions concerning the Trust of a deceased client, Nancy Brown.

2. The Trust provided that the bulk of Brown's estate would be left to charity, with two small bequests to named beneficiaries. The selection of those charities was left to Respondent to decide.

3. Respondent and his support staff supervised Ms. Brown's care during several years as both her physical and mental state declined. Respondent and the firm were very devoted to Ms. Brown and enabled her to remain in her residence with care nearly until she passed. She spent a short time in hospice in a hospital at the end.

4. Soon after Ms. Brown's death in January 2014, Respondent's former law firm handled the sale of Ms. Brown's apartment, her sole asset, for a sale price of \$538,342.73.

5. Beginning in March 2014, Respondent withdrew nearly all of the funds from the account which held the assets and used those funds for a variety of personal purposes.

6. In June 2014, a paralegal in the Respondent's firm questioned the withdrawals. The partners spoke with Respondent who maintained that the terms of the Trust permitted him to borrow the funds, and it was his intention to pay the funds back.

7. Respondent failed to advise Ms. Brown to seek independent counsel to advise as to the provision in the Trust which he believed allowed him to borrow funds for his own personal use.

8. Over the next few weeks and months, Respondent paid back all of the funds with interest.

9. The firm hired an attorney whose practice concentrates in ethics to advise them. That attorney reviewed the trust document, met with the law firm and Respondent, and advised the law firm and Respondent that so long as the money was paid back neither was required or obligated to report Respondent to the Florida Bar.

10. Respondent continued as a partner in the firm for the next 4 years until he and a former associate both left the firm. Thereafter,

there was litigation between Respondent, together with the former associate, and the firm.

11. A grievance was filed in 2019 by a partner, who was unaware of the events of 2014.

12. Respondent made one of the charitable donations to an entity which was on behalf of Ms. Brown, but said it was on his own behalf. Respondent maintains that this was a mistake within his office and was later corrected when brought to his attention.

13. As to that same donation, Respondent claimed it as a deduction on his own tax return and maintained that was also in error. Respondent has since filed an amended return and all taxes due have been paid in full. All of the remaining donations made on behalf of Ms. Brown were in order.

### III. RECOMMENDATIONS AS TO GUILT

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

3-4.3 (Misconduct and Minor Misconduct.); 4-1.8(a) (Business Transactions With or Acquiring Interest Adverse to Client.); 4-8.4(a) (A

lawyer shall not violate or attempt to violate the Rules of Professional Conduct.); 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.); and 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice.).

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.

#### 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.

##### 7.1(b) Suspension

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.

Prior to recommending discipline, and pursuant to the consent judgment, I found the following in mitigation:

1. From 1981 to 2020, Respondent grew the Catholic Charities of Palm Beach County, a not-for-profit guardianship program, from under ten (10) clients to over one hundred (100) at its peak. The program provided services for incapacitated elderly individuals. Approximately 70% are indigent.

2. Respondent performed much pro bono work over forty (40) years and received 2 awards from Palm Beach County Legal Aid for performing pro bono work.

3. Respondent is the primary financial supporter of his special needs adult daughter who suffers from borderline personality disorder mixed with anxiety and depression. She requires professional counseling and housing and is unable to be employed, but for part time on a limited basis. Her condition requires Respondent to be in frequent contact with her due to triggering events which lead to suicidal ideations.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Lubbecke, 2020 WL 7400585 (Fla. Dec. 17, 2020) (Unpublished Disposition), the Court imposed a one-year suspension in a case involving conflicts of interest. Lubbecke represented a husband and wife, who had separated and who divorced during the representation, in a foreclosure defense involving their house. The agreement stated that Lubbecke would be paid half of the proceeds from the subsequent sale of the house for his legal fees in the foreclosure defense. Lubbecke did not advise the clients to seek the advice of independent counsel and the clients did not give informed consent to the essential terms of this transaction or of Lubbecke's role in the transaction. Lubbecke, who had an interest in the sale of the house, then presented the husband with a proposed contract for the sale of the house to a land trust whose registered address was Lubbecke's law office. The proposed contract did not advise the clients to seek the advice of independent counsel and the clients did not give informed consent in writing to the essential terms of the transaction or of Lubbecke's role in the transaction. Ultimately, Lubbecke did not purchase the house. While representing the

wife in the foreclosure, Lubbecke also filed a lawsuit against her to remove her name from the property pursuant to the parties' agreement in their divorce.

In The Florida Bar v. Black, 602 So. 2d 1298 (Fla. 1992), the respondent borrowed funds from a client, left the client completely unsecured in the transaction, failed to advise the client of his right to separate representation, promised to pay the client a usurious rate of interest, never informed the client of the illegality of the transaction, and used the client in an effort to obtain a personal loan. Ultimately, the client was repaid and suffered no loss, but, while these transactions were occurring, the client suffered exposure to potential damage. The referee, in aggravation, found that Black had a selfish motive, his client was vulnerable, and Black had substantial experience in the law and should have known better. In mitigation the referee noted that Black had no prior disciplinary record, made a timely good faith effort to make restitution or to rectify the consequences of his misconduct, was remorseful, made a full and free disclosure to the bar and cooperated in these proceedings, and had no intent to deprive his client of property or to deceive him. The Court suspended Black for 60 days and placed him on probation for two years.

Although I recognize that this case is old and the discipline is light, it is a closer scenario to the instant one, which has a much greater discipline.

In The Florida Bar v. Wolf, 930 So.2d 574 (Fla. 2006) that attorney was found to have negligently misappropriated funds and was suspended for two years, followed by one year of probation.

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. A one-year suspension from the practice of law.

B. Respondent will attend and complete Ethics School within 6 months of the date of the Supreme Court of Florida's order accepting this Conditional Guilty Plea for Consent Judgment and pay the \$750.00 workshop fee prior to attendance.

C. Payment of disciplinary costs in this matter.

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: 67

Date admitted to the Bar: November 10, 1980

Prior Discipline: None

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

I find the following costs were reasonably incurred by The Florida

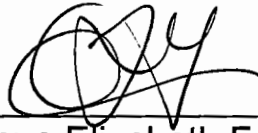
Bar:

Investigative Costs	\$165.31
Bar Counsel Travel Expenses	\$128.50
Administrative Fee	\$1,250.00
Court Reporter Costs	\$1,327.60
Witness Costs	\$13,270.00
Audit Costs	<u>\$1,085.00</u>
 TOTAL	 \$17,226.41

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 15<sup>th</sup> day of June, 2023.



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Fabienne Elizabeth Fahnestock,  
Referee  
Broward County Courthouse  
201 SE 6th Street, Room 14125  
Fort Lauderdale, FL 33301-3303

Original To:

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

Conformed Copies to:

John Preston Seiler, Counsel for Respondent, [jseiler@sszrlaw.com](mailto:jseiler@sszrlaw.com) and [lsasser@sszrlaw.com](mailto:lsasser@sszrlaw.com)

Randi Klayman Lazarus, Bar Counsel, [rlazarus@floridabar.org](mailto:rlazarus@floridabar.org) and [smiles@floridabar.org](mailto:smiles@floridabar.org)

Patricia Ann Toro Savitz, Staff Counsel, [psavitz@floridabar.org](mailto:psavitz@floridabar.org)