

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

THEODORE MARK
COOPERSTEIN,

Respondent.

Supreme Court Case
No. SC24-0607

The Florida Bar File
No. 2023-00,005(2B)

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 April 25, 2024, The Florida Bar filed its reciprocal complaint. On May 14, 2024, respondent filed his answer.

On July 19, 2024, the parties entered into a consent judgement, fully resolving the matter. 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. In addition to membership in The Florida Bar, respondent was a member of the Mississippi Bar, subject to the jurisdiction of Supreme Court of Mississippi.

B. Narrative Summary Of Case. This is a reciprocal discipline action, based on the Mississippi Supreme Court Opinion and Judgment, dated August 1, 2023. The Mississippi Opinion and Judgment imposed a private reprimand. This order was based on the United States District Court for the Southern District of Mississippi Order, dated July 7, 2022.

The District Court sanctioned respondent for making false statements to the court in three separate matters and imposed a monetary penalty of \$6,000.00 to be paid as respondent's personal support of the Mississippi Bar's James O. Dukes Professionalism Program. Respondent has satisfied the sanctions imposed by the District Court. Respondent has satisfied the sanctions imposed by the District Court. The reprimand was based on the following conduct:

A. The Department of Justice Office of Professional Responsibility ("OPR") initiated an investigation into allegations of professional

misconduct that arose out of three court hearings in different federal criminal matters before U.S. District Judge Carlton W. Reeves during which respondent, in response to direct questions from the court, stated or indicated that he was vaccinated against COVID-19.

- B. On June 22, 2021, in the matter of United States v. Miranda-Alcantar, when asked by the court if he was vaccinated, respondent nodded in the affirmative. The court accepted respondent's nod as an affirmation of his vaccination status.
- C. On June 29, 2021, in United States v. Bell, respondent was again asked by the court if he was vaccinated. Respondent answered in the affirmative.
- D. On July 8, 2021, during the sentencing in United States v. Escobar-Castro, respondent was again asked by the court if he was vaccinated. Respondent answered in the affirmative. These representations were false.
- E. On October 6, 2021, during the sentencing in United States v. Bell, when asked by the court if he was vaccinated, respondent stated that he was not vaccinated.

- F. On October 27, 2021, the court issued three substantially identical show cause orders requiring that "[w]ithin 21 days, [Cooperstein] shall show cause and explain why he should not be sanctioned for making one or more misrepresentations to the Court" regarding his vaccination status.
- G. On April 1, 2022, the court held a hearing regarding its Orders to Show Cause. The court subsequently filed an Order on July 7, 2022, sanctioning respondent for his "serial misrepresentations" to the court and imposing a \$6,000 sanction to be paid as respondent's personal support of the Mississippi Bar's James O. Dukes Professionalism Program. Respondent has satisfied the sanctions imposed by the District Court.
- H. Based on the results of its investigation, OPR concluded that respondent engaged in professional misconduct and violated Mississippi Rules of Professional Conduct 3.3(a)(1) and 8.4(c) when he intentionally and repeatedly misrepresented his vaccination status to the court in response to the court's questions.

III. RECOMMENDATIONS AS TO GUILT

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

The Mississippi Supreme Court Opinion and Judgment found respondent to have violated Mississippi Rules of Professional Conduct 3.3(a)(1) (a lawyer shall not knowingly make a false statement of material fact or law to a tribunal) and 8.4(c) (engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

By operation of Rule 3-4.6(a), Rules Regulating the Florida Bar, I find that the Order of the Supreme Court of Mississippi serves as conclusive proof of such misconduct in this disciplinary proceeding.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

5.1 Failure to Maintain Personal Integrity

Public reprimand is appropriate when a lawyer engages in conduct involving dishonesty, fraud, deceit, or misrepresentation that is not included elsewhere in this subdivision and that adversely reflects on the lawyer's fitness to practice law.

6.1 False Statements, fraud, and misrepresentation

Public reprimand is appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Mogil, 763 So.2d 303 (Fla. 2000). A foreign jurisdiction's adjudication of guilt is conclusive proof of guilt of the attorney misconduct charged; the burden then rests with the attorney to

demonstrate why the foreign judgment is not valid or why Florida should not accept it and impose sanctions based thereon.

The Florida Bar v. Hagendorf, 921 So.2d 611 (Fla. 2006). Even when attorney disciplinary proceedings are premised upon an adjudication of guilt in another state, the state Supreme Court is free to impose a more severe punishment than the punishment imposed by the sister state.

The Florida Bar v. Curtis Barryl Lee, SC2024-0101 [2023-30,518(10A)] – By Court orders dated February 1, 2024, the court publicly reprimanded respondent and directed him to attend Ethics School. On or about March 3, 2023, a Senior District Judge for the U.S. District Court in the Middle District of Florida, entered an order to show cause against respondent for failing to comply with Federal Rule of Civil Procedure 11(b). The court entered an order stating that respondent failed to be reasonably diligent when making representations to the court that were not supported by the evidence in the record regarding a motion for a new trial. Respondent was sanctioned by receiving a written admonishment which was posted on the website of the Middle District of Florida. Rule: 4-8.4(d).

The Florida Bar v. Melissa A. Giasi, SC21-1637 (Fla. May 26, 2022) [TFB # 2020-10,425 (6D)] – The Court approved a Report of Referee recommending acceptance of a Conditional Guilty Plea for Consent Judgment for a public reprimand and completion of Ethics School. In two instances, respondent made erroneous statements to the courts in connection with her representation of a client. Upon becoming aware that these two statements were erroneous, respondent made a timely, good faith effort to correct any misimpressions or misunderstandings from her statements made to the court. In aggravation, respondent engaged in multiple offenses and had substantial experience in the practice of law. In mitigation, respondent had no prior disciplinary history, had no dishonest or selfish motive, made a timely good faith effort to rectify the consequences of the misconduct, fully cooperated with the bar, had a good character or reputation, underwent interim rehabilitation (respondent voluntarily wrote a letter of apology to one of the trial judges), suffered the imposition of other penalties or sanctions and was remorseful. Respondent also was required to write a letter of apology to the second trial judge. Rules: 3-4.3; 4-3.3(a); and 4-8.4(d).

The Florida Bar v. Curtis Lee Allen, SC20-1470 [2018-10,591(13C), etc.] – By Court order dated February 4, 2021, the Court approved the consent judgment and publicly reprimanded Allen and required him to attend professionalism workshop. In one case, respondent became unprofessional in his questioning of the witness who he believed was repeatedly lying. In another case, the trial court entered an order stating it had to intervene and set case management directives for both respondent and opposing counsel due to their engaging in unprofessional behavior toward each other during the course of the litigation. In a third matter, the trial court entered an order finding that respondent engaged in unprofessional and aggressive behavior. Rules violated: 4-3.4(c), 4-4.4(a), 4-4.4(b), and 4-8.4(d).

The Florida Bar v. Richard Duane Cserep, SC17-1834 – By court order dated March 22, 2018, the Court publicly reprimanded respondent. In 2016, Respondent was court-appointed to two rights Appeals. In those two appeals, the First DCA issued orders sanctioning respondent for his failure to comply with the First DCA's orders and appellate rules of court.

The Florida Bar v. Christopher John Shipley, SC15-1315 - By Court order dated December 31, 2015, respondent received a public reprimand and was required to attend Ethics School. Respondent represented a debtor in a Chapter 7 bankruptcy where the court issued an order sanctioning him for filing several amendments to the client's schedules and statement of financial affairs without the client's review and signature using an altered Declaration Under Penalty of Perjury for Electronic Filing (DEF). The court struck the fraudulent amendments, entered an order to show cause, and appointed a Special Master to physically review respondent's client files. The investigation showed that respondent routinely had clients sign blank Declaration Under Penalty of Perjury forms. In every instance, with the sole exception of the client at issue, approved the petitions, schedules and/or amendments prior to these documents being filed even though the clients did not physically sign any forms, but the DEF. Respondent had no intent to deceive the court and fully complied with the sanctions imposed on him by the bankruptcy court. Respondent had no prior discipline.

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. Public reprimand by publication;

B. Professionalism Workshop - Respondent shall attend Professionalism Workshop, in person, where scheduled by the bar, within six months of acceptance of this consent judgment and shall pay the required \$750.00 fee; and

C. Payment of the Bar's costs.

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: 61

Date admitted to the Bar: November 24, 2012

Prior Discipline: None in Florida

3.2 Aggravation

(2) dishonest or selfish motive; *respondent made misrepresentations to the court in Mississippi in three different proceedings; and*

(9) substantial experience in the practice of law; *respondent has been licensed in the state of Florida since 2012.*

3.3 Mitigation

(1) absence of a prior disciplinary record; *respondent has no prior discipline in the state of Florida or in any other jurisdiction other than for the same conduct in this case;*

(5) full and free disclosure to the bar or cooperative attitude toward the proceedings; *respondent has been cooperative with the Bar throughout the proceedings; respondent ultimately advised the Court that he was not vaccinated.*

(7) character and reputation; *Respondent enjoys an outstanding character and reputation in the legal and community at large, as well as the military community.*

(11) imposition of other penalties or sanctions; *Respondent lost his job as an Assistant United States Attorney and was sanctioned to pay a monetary penalty of \$6,000 as Respondent's personal support of the Mississippi Bar's James O. Dukes Professionalism Program. Respondent also received reciprocal sanctions for the same conduct in other states where he held bar licenses in addition to Mississippi: New York, New Hampshire, and the District of Columbia, as previously indicated. The misrepresentations did not involve factual matters related to any cases or clients, but rather involved his personal health decisions and status.; and*

(12) remorse; *Respondent has expressed remorse in this proceeding, including his public in-court apology to Judge Reeves and his colleagues in the United States Attorney's Office.*

Other Mitigation

Respondent served for over 30 years in the United States Army Reserve. He entered his Army service as an enlisted cadet in 1981 and was commissioned in 1983 as 2d Lieutenant. Respondent served most of military career in support of Special Operations forces and 20 years on parachute jump status. In March 2023, Respondent received his formal retirement orders, retiring with rank of Lieutenant Colonel. Respondent has a 70% VA disability rating and received numerous military awards and commendations for his military service.

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 Costs	\$1,250.00
Investigative Costs	\$29.40

TOTAL	\$1, 279.40
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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 22nd day of July, 2024.

/s/ Ronald W. Flury
Hon. Ronald Wallace Flury, Referee
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