

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No.

Vs.

The Florida Bar File Nos.
No.

ATTORNEY DOE,
Respondent.

_____ /

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings according to Rule 3-7.6 of the Rules Regulating The Florida Bar, the following proceedings occurred.

On January 1, 2023, The Florida Bar filed its Complaint against Respondent Attorney Doe. The Supreme Court of Florida entered an order on January 5, 2023, designating the Chief Judge of the Twentieth Judicial Circuit of Florida to appoint a referee in this case. On January 7, 2023, the Honorable Jane Roe, Chief

Judge of the Twentieth Judicial Circuit of Florida appointed the undersigned to serve as the referee.

Throughout these proceedings, The Florida Bar was represented by Bar Counsel Smith. Respondent was represented by Respondent's Counsel Jones. A final hearing was held on March 15 and 16, 2023. At the final hearing, the Bar called Client Doe to testify; Respondent testified on his own behalf. A separate sanctions hearing was held on April 15, 2023.

All items properly filed including pleadings and responses, recorded testimony (if transcribed), exhibits received 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 the Case.

Count I

Client Doe testified that he retained Respondent on September 1, 2022, to represent him in a criminal case alleging that Client Doe had stolen one can of tuna from the Sack-O-Suds convenience store. The case was charged as a third-degree felony as Client Doe had been convicted twice in the last three years for petit theft. At the time he was retained, Respondent was an associate with the law firm of Smith & Jones, P.A. Client Doe paid Respondent a non-refundable fee of \$5,000.00 for the representation.

Respondent timely filed a Notice of Appearance, Waiver of Appearance at Arraignment, Entry of Plea of Not Guilty, Demand for Jury Trial, and Demand for Discovery on September 8, 2022. The trial court set the matter for a status conference on Friday, September 30, 2022. The notice of status conference required Client Doe to personally appear at the conference. The Respondent's office was provided notice of the status conference by U.S. mail and e-mail at service@kblpa.com.

Client Doe testified that he was not provided a copy of the notice of status conference, and that Respondent did not inform him of the conference or the requirement that he personally appear. I find his testimony credible. Neither Client Doe, nor Respondent,

appeared for the status conference on September 30. As a result, the trial court issued a bench warrant for Client Doe on September 30, 2022. Client Doe was arrested on the bench warrant late Friday, October 14, 2022, and was not released from custody until Sunday, October 16, 2022.

Respondent acknowledged that his law office did receive notice of the status conference, as well as notice that a bench warrant had been issued. Respondent testified that he took steps to have the bench warrant lifted. However, I find that his testimony in this regard is not credible. Respondent did not offer any evidence to support his claim. I find that Respondent never sought leave of court to have the warrant lifted.

Shortly after being released from jail, Client Doe called Respondent to discuss the arrest. During that phone call, Client Doe testified that Respondent apologized profusely and blamed a secretary at his law practice. Respondent also testified at the final hearing that there was a secretary at Kenner, Black, & Ledeen, P.A. who was in charge of reviewing all notices of hearings that came into the office and placing them on the assigned lawyer's daily

schedule. Client Doe terminated Respondent's representation and hired Perry Mason, who successfully resolved the case.

Count II

After Client Doe fired Respondent, he made the following post on social media: "You should never hire, my cousin, Lawyer Doe, as your lawyer as he is a drunk and misses court hearings."

Respondent, believing he had been defamed, responded on the same social media platform on several occasions. His remarks included the following statement: "My former client is a kleptomaniac and should have been convicted." Respondent also made several postings to the Client Doe for Dog Catcher Facebook account which included the following: "Client Doe is a crook and is not fit for elective office. Do not vote for him!"

III. RECOMMENDATIONS AS TO VIOLATIONS OF THE RULES REGULATING THE FLORIDA BAR

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

In Count I:

Rule 4-1.3 (A lawyer shall act with reasonable diligence and promptness in representing a client). Respondent was served notice

of a status conference in the trial court, which required Client Doe to personally appear. However, Respondent did not timely review the notice or notify his client, resulting in his client's failure to appear at the status conference, and ultimately the client's arrest. Moreover, Respondent did not seek leave of court to have the bench warrant lifted, leaving his client in custody from Friday, October 14, 2022, to Sunday, October 16, 2022. I find that Respondent's failure to timely notify his client of a required status conference, and his failure to act quickly on behalf of the client following the client's arrest, constitutes a violation of Bar Rule 4-1.3.

Rule 4-1.4(a)(3) (A lawyer shall keep the client reasonably informed about the status of the matter). Respondent was properly served with notice of the status conference but failed to provide such notice to his client. I find that Respondent's conduct is a violation of Bar Rule 4-1.4(a)(3).

Rule 4-5.3 (b) & (c) (Responsibilities Regarding Nonlawyer Assistants). Respondent testified that a secretary at Kenner, Black, & Ledeen, P.A. was responsible for reviewing any notice of hearing that came into the office and placing any such hearing on the assigned lawyer's daily schedule. Nonetheless, Respondent is

required under the Bar Rules to make reasonable efforts to ensure that his office's practices are in compliance with his professional obligations, including staying up to date on deadlines in pending cases. I find that Respondent's failure to closely supervise his secretary is a violation of Bar Rule 4-5.3(b) and (c).

Rule 4-8.4(d) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice). I find that Respondent's failure to act with diligence in a client's pending criminal case, resulting in the client's arrest, was prejudicial to the administration of justice in violation of Bar Rule 4-8.4(d).

In Count II:

Rule 3-4.3 (The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise). After Respondent's representation of Client Doe was terminated, he made statements on social media that were against his former client's interests and were solely intended to embarrass or humiliate him. I find that such conduct is contrary to justice, in violation of Bar Rule 3-4.3.

Rule 4-4.4(a) (In representing a client, a lawyer may not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person). I find that Respondent's statements about Client Doe's guilt of a criminal charge were solely intended to embarrass or humiliate Client Doe, and to harm his campaign for Dog Catcher. I find that Respondent's statements constitute a violation of Bar Rule 4-4.4(a).

Rule 4-8.4(d) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice). I find that Respondent's comments on social media to embarrass or harm his former client were prejudicial to the administration of justice, in violation of Bar Rule 4-8.4(d).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards for Imposing Lawyer Sanctions prior to recommending discipline:

- A. Standard 4.4(c): Public reprimand is appropriate when a lawyer is negligent, does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.
- B. Standard 7.1(b): 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.

I find the following aggravating factors pursuant to Standard 3.2(b):

- A. Respondent committed multiple offenses

I also find the following mitigating factors, pursuant to Standard 3.3(b):

- A. Respondent has no prior disciplinary record
- B. Respondent did not act with a dishonest or selfish motive
- C. Respondent was cooperative with the Bar throughout these proceedings
- D. Respondent is inexperienced in the practice of law

V. CASE LAW

I considered the following case law prior to recommending discipline:

- A. *Florida Bar v. Adams*, 123 So. 3d 456 (Fla. 2022). The Respondent in *Adams*, like the Respondent here, failed to keep a client informed of court dates, and failed to meet filing deadlines, in violation of Bar Rules 4-1.3 and 4-1.4. The Court imposed a public reprimand.
- B. *Florida Bar v. Baker*, 78 So. 3d 910 (Fla. 2021). The Respondent in *Baker* engaged in a campaign on social media to attack his former client and made numerous false or embarrassing statements about the client, resulting in harm to the client's business. The Court imposed a 91-day suspension.

- C. *Florida Bar v. Carter*, 11 So. 3d 1213 (Fla. 2020). The Respondent in *Carter* neglected client cases, resulting in several cases being dismissed. Unlike here, Carter also engaged in both faith obstruction throughout the disciplinary process, and refused to comply with the Bar's subpoenas and requests for documents. The Court imposed a 91-day suspension.

VI. RECOMMENDATION AS TO DISCIPLINE

I recommend that respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

- A. Suspension from the practice of law for 10 days.
- B. Completion of The Florida Bar's Ethics School within 6 months of the date of the Supreme Court's order; and
- C. Payment of The Florida Bar's costs in these proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline, I considered the following:

Personal History of Respondent:

Age: 35

Date Admitted to the Bar: October 1, 2018

Prior Discipline: None

VIII. COSTS

I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs	\$1,250
Bar Counsel Costs:	\$500
Copy Costs	\$250

TOTAL COSTS DUE **\$2,000**

I recommend that all costs and expenses delineated above be charged to Respondent, and that interest at the statutory rate shall accrue and be payable beginning 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: _____

/s/ [Signature]

[Referee]

Original To:

Clerk of the Supreme Court of Florida

Copies to: