

**IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)**

**THE FLORIDA BAR,  
Complainant,**

**CASE NO: SC09-2057  
TFB No. 2008-10,927(13C)**

v

**TIMONTY ALLEN PATRICK,  
Respondent.**

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**REPORT OF REFEREE  
Discipline Hearing**

On April 27, 2010, the undersigned issued Report of Referee reference the above-styled matter. The undersigned re-adopts said Report of Referee and incorporates it herein.

On May 4, 2010 a Discipline Hearing was conducted. Representing the Florida Bar were Troy Matthew Lovell and Lisa Buzzetti Hurley. The Respondent, Timothy Allen Patrick, was present and represented by David A. Maney and Lee S. Damsker. Personal historical facts regarding the Respondent were stipulated to. Florida Bar Exhibits 1(a), 1(b), 2(a), 2(b), and 2(c), were admitted into evidence and considered. One witness was called on behalf of the Respondent, to-wit: Bradley Souders, Esquire. Closing argument was made by both sides. Standards for imposing lawyer sanctions were reviewed. Both sides submitted case law. All of the above has been reviewed and considered by the undersigned. The Discipline Hearing was duly recorded.

Based upon the testimony and evidence presented on March 25, 2010 and May 4, 2010 the undersigned makes the following findings and recommendations:

**V. Recommendations as to Discipline.**

a. Respondent shall be suspended from the practice of law for a period of one year. On completion of this period of suspension, Respondent must petition for reinstatement

and must prove rehabilitation. Respondent shall successfully complete an ethics course and pass the ethics portion of the Bar Examination.

c. Respondent shall pay the Bar's costs in the amount of \$3,873.15 within thirty days from the date of the Supreme Court Order of Discipline herein. Interest shall accrue at 6% per annum if not paid within thirty days.

## **VI. Personal History and Past Disciplinary Record.**

Prior to recommending discipline, the undersigned considered the following:

### **A. Personal History of Respondent:**

Age of Respondent: 44

Dated Admitted to Bar: January 26, 1993

Respondent is not certified in any area of practice

Prior Disciplinary Convictions and Disciplinary Measures Imposed Therein: See Bar Exhibits 2(a), 2(b), and 2(c) regarding finding of minor misconduct and sanctions related thereto in the Florida Bar, Complainant versus Timothy Allan Patrick, Respondent, TFB No: 2000-11,782(13C); See Admonishment of Public Reprimand, Restitution, and Payment of Costs in Florida Bar Exhibit 1(a) and 1(b), the Florida Bar versus Timothy Allan Patrick, case number SC06-178, issued on March 8, 2007

## **VII. Standards for Imposing Lawyer Sanctions and Case Law Considered.**

### **C. FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS**

#### **3.0 GENERALLY**

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

(a) the duty violated;

This Court re-adopts its findings in the Report of Referee dated April 27, 2010. Respondent placed his own interest above his client's interest in attempting to recover attorney's fees and costs.

(b) the lawyer's mental state;

There is no evidence regarding any impairment in the Respondent's mental state. His actions herein were knowing and intentional.

(c) the potential of actual injury caused by the lawyer's misconduct;

The Respondent's conduct caused significant financial injury to his client, Dr. Craig Newman. The Respondent's actions caused Newman to be held liable in an approximate amount of \$200,000.00. Newman settled his loss for approximately one-third of this amount.

(d) the existence of aggravating or mitigating factors.

## **9.2 AGGRAVATION**

See Below

**9.21** Definition. Aggravation or aggravating circumstances are any considerations of factors that may justify an increase in the degree of discipline to be imposed.

**9.22** Factors which may be considered in aggravation. Aggravating Factors include:

(a) prior disciplinary offenses; provided that after 7 or more years in which no disciplinary sanction has been imposed, a finding of minor misconduct shall not be

considered as an aggravating factor;

The Court finds that this aggravating factor is applicable based upon the two prior disciplinary offenses of the Respondent. See Florida Bar exhibits 1(a), 1(b), 2(a), 2(b), and 2(c).

The Court specifically notes the facts and circumstances found in the Report of Referee dated February 21, 2007, found in Bar exhibit 1(b). See the findings regarding the Respondent's representation of Mrs. Whitney and Dr. Tran. The Court finds that the actions of the Respondent therein are of a similar nature to the facts herein to be highly relevant and significant. The actions of the Respondent therein in his attempts to obtain attorneys fees regarding representation of PIP claims were similar in nature to the Respondent's actions in his representation of Newman in these PIP claims.

**(b)** dishonest or selfish motive;

The Respondent displayed selfish motives herein by placing his desire to collect attorney's fees and costs above the interests of his client and to the detriment of his client.

No other aggravating factors apply.

### **9.3 MITIGATION**

**9.31** Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

**9.32** Factors which may be considered in mitigation. Mitigating factors include:

The Respondent raises three potential mitigating circumstances:

(g) character or reputation;

Bradley D. Souders, Esquire testified on behalf of Respondent at the Discipline Hearing. Mr. Souders has an extensive history of representing people and healthcare providers regarding PIP claims. He is very familiar with the Respondent. He clearly expressed his opinion regarding the good character and reputation of the Respondent. It is clear from the testimony of Mr. Souders that the Respondent does enjoy a reputation as a very experienced and competent attorney in the area of PIP claims. The Court finds that this mitigating circumstance applies.

The Respondent additionally presented a mitigating circumstance that the nature of this type of practice puts undue emphasis on claims for attorney's fees and costs. Problems develop as a result of the statutory schemes involving PIP claims. While there may be some validity to some of the arguments regarding PIP claim litigation, the undersigned does not find that this is a mitigating circumstance. Ethical standards are not to be relaxed in difficult areas of practice.

(m) remoteness of prior offenses;

The Respondent presents to the Court the possible mitigating circumstance of the remoteness of prior offenses and the date of the primary violation herein. These dates are significant in determining the applicability of this mitigating circumstance.

The acts led to the minor misconduct in Bar Exhibit 2(a), 2(b), and 2(c) incurred in 1999. Disciplinary proceedings occurred in 2001 and were completed in February 2002.

The acts supporting the violations found in Florida Bar Exhibits 1(a) and 1(b) apparently occurred on or about 2004. The Report of Referee therein was issued February 21, 2007. The Florida Supreme Court issued its decision on March 8, 2007. Respondent received a public reprimand administered by the Board of Governors of the Florida Bar shortly thereafter.

The original acts of the Respondent's violations herein occurred in approximately 2004. If Respondent's wrongful acts had ceased at that time there would be a valid argument for the applicability of this mitigating factor. The record herein supports that the Respondent's wrongful actions herein continues at least through May, 2007, August, 2007, and September, 2007. See Florida Bar Exhibit List, Exhibits 5, 6, and 7. These are checks paid by the Respondent's law office to the law office of Second Appellate Attorney, David Caldevilla. The Respondent's

actions regarding continuation of his agreement to indemnify Newman and the Respondent's improper paying of fees to David Caldevilla months after his public reprimand make this alleged mitigating factor inapplicable.

### **4.3 FAILURE TO AVOID CONFLICTS OF INTEREST**

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conflicts of interest:

**4.32** Suspension is appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

### **7.0 VIOLATIONS OF OTHER DUTIES OWED AS A PROFESSIONAL**

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unlicensed practice of law, improper withdrawal from representation, or failure to report professional misconduct.

**7.2** 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.

The undersigned has reviewed the following cases cited by the Florida Bar: *The Florida Bar v Abagis*, 318 So2d 395; *The Florida Bar v Neely*, 372 So2d 89; *The Florida Bar v Rotstein*, 835 So2d 241; and *The Florida Bar v Dawson*, 111 So2d 427.

The undersigned has reviewed cases cited by the Respondent: *The Florida Bar v Morse*; 587 So2d 1121 (2001); *The Florida Bar v Varner*, 780 So2d 1 (Fla.

2001); *The Florida Bar v Carricarte*, 733 So2d 975 (Fla. 1999); *The Florida Bar v Brown*, 790 So2d 1081 (Fla. 2001); *The Florida Bar v Pipkins*, 708 So2d 953 (Fla. 1998); *The Florida Bar v Frank Thomas, II*, 698 So2d 530 (Fla. 1997); *The Florida Bar v Corbin*, 701 So2d 334 (Fla. 1997); *The Florida Bar v Roberts* 789 So2d 284 (Fla. 2001); and 14 Fla.L. Weekly Supp. 500b.

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

I find the following costs were reasonably incurred by the Florida Bar.

1. Administrative costs pursuant to Rule 3-7.6(q)(1)(I):.....	\$1,250.00
2. Staff Investigator Expenses:.....	46.55
3. Bar Counsel Expenses:.....	79.10
4. Court Reporting Services:.....	\$2,497.50
	. TOTAL: \$3,873.15

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010

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JACK HELINGER  
Referee  
Pinellas County Courthouse  
315 Court Street, Room 487  
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Copies provided to:

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