IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Petitioner,

v.

KATHLEEN M.P. DAVIS,

Respondent.
_____/

Supreme Court Case No. SC11-1817

The Florida Bar File No. 2011-50,150(15G)

REPORT OF REFEREE

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 September 19, 2011, The Florida Bar filed its complaint in this matter. Respondent failed to answer the bar's complaint as mandated by R. Regulating Fla. Bar 3-7.6(h)(2), and the bar filed The Florida Bar's Motion for Default Final Judgment. Attached to the bar's Motion were a series of e-mails showing that respondent had actual knowledge of the complaint. By Order dated November 7, 2011, this Referee granted the bar's Motion.

The final hearing was held on January 17, 2012. Respondent did not appear. During the course of these proceedings, the bar was represented by Ronna Friedman Young, Bar Counsel.

The pleadings, and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

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. By virtue of the default, the following allegations of the bar's complaint are deemed admitted.

1. Respondent is, and at all times mentioned in the complaint was, a member of The Florida and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. Fifteenth Judicial Circuit Grievance Committee "G", at a duly constituted meeting and by majority vote of the eligible members present, found probable cause to charge respondent with violation of the Rules Regulating The Florida Bar, as set forth herein. The presiding member of the grievance committee has reviewed and approved the instant complaint.

3. Margaret M. Weeks is the guardian of her sister, Ann Rozinski Vidas.

4. Ms. Vidas suffered from Early Onset Alzheimer's Disease and lost her job as a pharmacist. Additionally, her husband of 21 years abandoned her.

5. On or about January 10, 2007, Ms. Weeks retained respondent to file a marital dissolution for Ms. Vidas.

6. On or about January 10, 2007, Ms. Weeks gave respondent a check for $1,500.00 as partial payment of a $5,000.00 retainer.

7. In about February, 2007, Ms. Weeks paid respondent an additional $1,000.00.

8. In about July 2007, the Court in the guardianship granted approval to proceed with the marital dissolution and to pay the $5,000.00 retainer.

9. On or about August 10, 2007, Ms. Weeks and her sister met with respondent at Ms. Vidas' nursing home.

10. At that meeting, Ms. Weeks paid the remaining $2,500.00 of the retainer.

11. Thereafter, Ms. Weeks and her husband sent various e-mails to the respondent inquiring about the progress of the matter.

12. As shown by these e-mails, respondent represented at the meeting on August 10, 2007 that "the papers will be served by Thursday or Friday of next week" which would have been August 16 or August 17, 2007.

13. In response to an e-mail dated August 14, 2007, respondent represented that she "would be filing within the week, and we will certainly seek the fees related to Ann's care for the past few years."

14. On or about August 17, 2007, respondent e-mailed that she "got very tied up in court this week and am finalizing your paperwork now."

15. After receiving no paperwork, the Weeks sent various follow-up e-mails in September 2007.

16. These e-mails included, but were not limited to, an offer by Mr. Weeks on or about September 28, 2007 to pick up the paperwork as follows: "I will be glad to pick them up today. (just tell me when and where)."

17. On or about October 5, 2007, Mr. Weeks wrote that; "I really don't know what to say. Last week, you said the papers were ready. We are still waiting. Are you in a situation where you can not follow through? Let me know. We really do not deserve the run around you have been giving us."

18. On or about October 9, 2007, Mr. Weeks sent an e-mail: "It is 7:45 PM -100907 – Still NO papers."

19. On October 10, 2007, the Weeks received paperwork from respondent with numerous errors.

20. Mr. and Mrs. Weeks sent the paperwork with proposed corrections to respondent.

21. Thereafter, Mr. and Mrs. Week sent various e-mails inquiring about receiving the corrected paperwork.

22. The Weeks did not receive the corrected paperwork.

23. On November 23 2007, Ms. Weeks sent an e–mail which stated:

> I can't even imagine why you are doing this to us. We are good people who only want to do the best for my sister. You know that time is of the essence in regard to my sister's finances. We have mentioned several times she needs her divorce as soon as possible. We are so deeply disappointed! You gave us so much hope that Ann would get a good settlement. With every passing day, my sister will be that much closer to having to move out of a place she is comfortable in. Without a speedy divorce, her life will be more dismal than it already is! What happened to Ann is truly a tragedy.
>
> We are clearly being ignored. You refuse to answer our e mails or give us any explanations except to send us a bill which shows her money is quickly dwindling with very little having been done on her behalf. We will need to seek legal counseling to find out where we go from here.
>
> I agonize every day at the prospect of having to start over again. I feel the money that we worked so hard and so long to attain for Ann's divorce is being 'flittered' away. The judge will look on us with disfavor in respect to the handling of Ann's money.
>
> If you have any compassion or humanity, you will do what is right! We are undeserving of this treatment and deeply saddened that we've had no luck in fulfilling our obligations to my sister in getting her a timely divorce!

24. Respondent never filed for the divorce.

25. On or about December 9, 2007, respondent e-mailed that; "when you give me the go ahead then I will forward the papers to the process server."

26. However, on or about November 26, 2007, Ms. Vidas was served with divorce papers prepared by counsel for her husband.

27. On or about December 10, 2007, Mr. Weeks e-mailed respondent that Ann had been served, detailed the list of problems that had been encountered with respondent, and asked whether respondent wanted "to continue as our lawyer."

28. Ms. Davis made no response to this e-mail.

29. Mr. and Mrs. Weeks, faced with no attorney and the deadline for response to the divorce, filed the response themselves.

30. After filing the response, the Weeks hired new counsel and terminated respondent by e-mail dated December 16, 2007.

COUNT I
(Lack of Diligence)

31. The Florida Bar incorporates paragraphs 1 though 30 as if fully rewritten herein.

32. Respondent, having been hired on or about January 10, 2007, but having filed no divorce by the end of November 2007 under the circumstances of this case, violated Rule Regulating The Florida Bar 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.].

COUNT II
(Failure to Communicate)

33. The Florida Bar incorporates paragraphs 1 through 30 as if fully rewritten herein.

34. Given the e-mail exchanges, the failure to explain the delays in finalizing and filing the divorce, and the failure to respond to the December 10, 2007 e-mail in time for the Weeks to know whether respondent intended to answer the divorce petition, respondent violated Rule Regulating The Florida Bar 4-1.4(a)(3)[A lawyer shall:…(3) keep the client reasonably informed about the status of the matter…] and 4-4-1.4(a)(4)[A lawyer shall:…(4) promptly comply with reasonable requests for information…].

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of the following:

Count I: Rule Regulating The Florida Bar 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.].

Count II: Rule Regulating The Florida Bar 4-1.4(a)(3)[A lawyer shall:…(3) keep the client reasonably informed about the status of the matter…] and **4-1.4(a)(4)[**A lawyer shall:…(4) promptly comply with reasonable requests for information…].

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I find the following Standard 4.41(b) is applicable to this matter but quoted below are Standards 4.41 and 4.42 in their entirety:

4.41 Disbarment is appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client. [Emphasis added to 4.41(b)].

4.42 Suspension is appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

V. CASE LAW

Three precepts should be applied in determining discipline. First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and, at the same time, not depriving the public of the services of a qualified attorney due to undue harshness in imposing a penalty. Second, the judgment must be fair to the respondent—sufficient to sanction a breach of ethics and, at the same time, encourage rehabilitation. Third, the judgment must be severe enough to deter others who might be prone to become involved in like violations. T*he Florida Bar v. Adorno,* 60 So. 3d 1016, 1031 (Fla. 2011); *The Florida Bar v. Pahules,* 233 So. 2d 130, 132 (Fla. 1970).

In *The Florida Bar v. Bartlett,* 509 So. 2d 287, 289 (Fla. 1987), the Court stated that "a lawyer's willful refusal to participate at all in the disciplinary process when he is accused of misconduct calls into serious question the lawyer's fitness

for the practice of law." In *The Florida Bar v. Bartlett*, a disciplinary proceeding was brought against an attorney based on his alleged neglect of a legal matter. The Supreme Court that in the absence of any explanatory or mitigating circumstances, disbarment was appropriate for neglect of the client's case, at least when attorney had previously been suspended for similar misconduct and failed to participate in the disciplinary proceeding. *See also, The Florida Bar v. Horowitz*, 697 So. 2d 78 (Fla. 1997) where the Supreme Court disbarred Horowitz, who neglected three separate client matters and defaulted in the disciplinary case. Horowitz appeared at the final hearing and testified that he was suffering from depression but the Court found that the Referee properly determined that the claimed clinical depression failed to sufficiently mitigate the misconduct. *See also, The Florida Bar v. Ribowsky-Cruz*, 529 So. 2d 1100 (Fla. 1988) where the Supreme Court disbarred a respondent who in four instances failed to provide services and failed to participate in the disciplinary process.

Respondent's repeatedly represented to Ms. Vidas' guardian that the divorce would be filed but respondent failed to act. Eventually, Ms. Vidas' husband filed for divorce but despite being advised on the impending answer date by the guardian, respondent still failed to take any action and the guardian had to respond on her own. Following her neglect of her client, respondent failed to appear in the instant disciplinary case. Her e-mails to the bar show that she had actual

knowledge of the disciplinary case. It appears that Respondent is continuing a pattern of neglect. As discussed in the next section, Respondent was previously the subject of disciplinary proceedings before this Referee in which she was found guilty of the same rule violations, which are at issue in this case.

Had Respondent chosen to appear in the disciplinary case, this Referee might be inclined to recommend a penalty less than disbarment. For example, in *The Florida Bar v. Shoureas*, 913 So.2d 554 (Fla. 2005), the Court ordered a three year suspension for misconduct involving neglect of two separate client matters for a respondent with a significant disciplinary history but Shoureas participated in the final hearing and established several mitigating factors. Respondent's failure to appear is troubling and given the aggravating factors and the absence of any evidence of mitigation, I am recommending that disbarment is the appropriate sanction.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that the following disciplinary measures be imposed:

A. I recommend that respondent be disbarred from the practice of law with leave to apply for readmission after 5 years.

B. I further recommend that respondent pay The Florida Bar's costs in these proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD, AGGRAVATING AND MITIGATING FACTORS

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:

Age: 44

Date admitted to the Bar: November 27, 1995

B. Aggravating Factors:

9.22(a) prior disciplinary offenses; Respondent received a public reprimand with probation and conditions by Supreme Court Order dated March 25, 2010. The prior disciplinary case arose from two separate client matters. In one of the matters, respondent was found guilty of violating R. Regulating Fla. Bar 4-1.3 (also violated in the instant case), 4-1.4(a)(3) (also violated in the instant case), 4-1.4(a)(4) (also violated in the instant case) and 4-1.5(a). In the other prior matter, respondent was found guilty of violating R. Regulating Fla. Bar 4-1.3 (also violated in the instant case) and 4-1.5(a).

9.22(c) a pattern of misconduct; Respondent engaged in a pattern in the instant case of making promises that she would complete work but failed to do so. Additionally, respondent in the instant case as well as in the two prior matters exhibited a pattern of failing to act diligently.

9.22(d) multiple offenses: Respondent failed to act diligently and failed to communicate appropriately in the instant case.

9.22(h) vulnerability of victim; Respondent was retained to file a divorce on behalf of Ann Rozinski Vidas, who suffered from Early Onset Alzheimer's Disease.

9.22(i) substantial experience in the practice of law; Respondent was admitted to practice on November 27, 1995.

C. Mitigating Factors: No evidence offered as to any mitigation.

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-rule 3-7.6(q)(1)(I):	$ 1,250.00
Bar Counsel Travel Costs:	$ 48.58
TOTAL ITEMIZED COSTS:	**$ 1,298.58**

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 _____ day of _____, 2012.

_____
PAUL LAWRENCE BACKMAN
Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed by regular U.S. mail to **The Honorable Thomas D. Hall**, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; a copy sent in word format by electronic mail to ***e-file@flcourts.org***; a copy of the foregoing, mailed by certified U.S. Mail no. 7010 2780 00002 8284 4865, return receipt requested, to **Kathleen M.P. Davis,** Respondent, whose record bar address is P.O. Box 542796, Greenacres, Florida 33454-2796; and by regular U.S. mail to **Kenneth L. Marvin**, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; and to **Ronna Friedman Young**, Bar Counsel, The Florida Bar, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 on this _____ day of _____, 2012.

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PAUL LAWRENCE BACKMAN
Referee

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