

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

LAUREN ELIZABETH BANNIGAN,
Respondent.

Supreme Court Case
No. SCI6-2102

The Florida Bar File
No. 2017-50,275(17D)FFC

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 November 22, 2016, The Florida Bar filed its Notice of Determination or Judgment of Guilt in these proceedings. As a result, on November 23, 2016, the Florida Supreme Court entered an Order felony suspending Respondent effective 30 days from the entry of its Order. Thereafter, Respondent filed Respondent's Notice She No Longer is Practicing and Does Not Need Thirty Days to Close Practice. The Florida Supreme Court treated same as a motion, and on December 19, 2016 granted such and ordered that the Respondent's suspension would be effective, nunc pro tunc, November 23, 2016. The parties have submitted a signed

Conditional Guilty Plea for Consent Judgment. After review of the Conditional Guilty Plea for Consent Judgment and due deliberation, I have determined to recommend that the Consent Judgment be approved for the reasons set forth herein.

During these proceedings, David B. Rothman and Jeanne T. Melendez represented Respondent. The Florida Bar was represented by Roberto Mendez, Bar Counsel, until Frances R. Brown-Lewis, Bar Counsel, was substituted as counsel.

All the aforementioned documents and this Report constitute the record and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times relevant to these proceedings 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. On October 13, 2016, the Respondent pled no contest to violating Florida Statute §817.29, Cheating, a third-degree felony in connection with a “friends and family” kickback scheme at NuMed Care LLC (NuMed), where she was employed as General Counsel. The fraud involved numerous acts

performed by several officers and employees of NuMed to defraud multiple health insurance companies in Florida and nationwide by having friends and family supply their health insurance information to obtain false prescriptions for pain creams in return for which the officers and employees were rewarded with kickback payments in the form of payroll bonuses in violation of Florida Statute §817.505, Patient Brokering.

2. In the Spring of 2015, the Respondent learned the company was committing fraud using the “friends and family” kickback scheme. She became aware the company had used her counsel and some of her research to devise and perpetrate the fraud. The Respondent confronted her superiors and told them they had to stop the scheme. Instead of leaving the company upon learning of the fraud, the Respondent, foolishly and illegally, remained at NuMed for a period of approximately five months. She submitted her letter of resignation when it became apparent NuMed would not change its practices. During the time that she remained at NuMed, the Respondent continued to conduct her day-to-day functions as General Counsel.

3. The Respondent did not directly participate in the actual carrying out of the friends and family fraud. She never solicited either a friend or a family member to provide information. Of all the individuals criminally charged,

the Respondent was the only one not paid any money directly tied to the “friends and family” kickback scheme. She was only paid her contractual salary and quarterly bonuses for work as General Counsel.

4. The Respondent agreed to and did fully cooperate with the federal government in its investigation and prosecution of the officers and employees of NuMed. She entered a plea of no lo contendere in state court and the judge withheld adjudication of guilt and placed her on probation for three (3) years. At her sentencing, the state prosecutor agreed not to oppose early termination of probation at eighteen (18) months, so long as the Respondent complied with the conditions of her criminal probation and did not violate the law.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating R. Regulating Fla. Bar 3-4.3 [The standards of professional conduct to be observed by members of the Bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an

attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 3-4.4 [Unless modified or stayed by the Supreme Court of Florida as provided elsewhere herein, a determination or judgment of guilt of a member of The Florida Bar by a court of competent jurisdiction of any crime or offense that is a felony under the laws of such jurisdiction is cause for automatic suspension from the practice of law in Florida. In addition, whether the alleged misconduct constitutes a felony or misdemeanor The Florida Bar may initiate disciplinary action regardless of whether the Respondent has been tried, acquitted, or convicted in a court for the alleged criminal offense; however, the board may, in its discretion, withhold prosecution of disciplinary proceedings pending the outcome of criminal proceedings against the Respondent. The acquittal of the Respondent in a criminal proceeding shall not necessarily be a bar to disciplinary proceedings nor shall the findings, judgment, or decree of any court in civil proceedings necessarily be binding in disciplinary proceedings.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; 4-8.4(b) [A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.]; and 4-8.4(c) [A lawyer

shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.].

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

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

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors.

5.1 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 commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation.

5.11 Disbarment is appropriate when:

- (a) a lawyer is convicted of a felony under applicable law; or
- (b) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or
- (c) a lawyer engages in the sale, distribution or importation of controlled substances; or
- (d) a lawyer engages in the intentional killing of another; or
- (e) a lawyer attempts or conspires or solicits another to commit any of the offenses listed in sections (a-d); or
- (f) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice law.

5.12 Suspension is appropriate when a lawyer knowingly engages in criminal conduct which is not included within Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

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.

V. **AGGRAVATING AND MITIGATING FACTORS**

I considered the following factors prior to recommending discipline:

9.22 Aggravating Factors:

None.

9.32 Mitigating Factors:

9.32(a) Absence of a prior disciplinary record

Respondent has no prior discipline.

9.32(c) Personal or emotional problems

At the time Respondent found out about the “friends and family” fraud scheme being conducted at NuMed, she was dealing with a very difficult and emotional situation relating to a close family member. She did not immediately leave NuMed, in part, because she wanted to be able to assist her family member to pay for medical treatment and services.

9.32(d) Timely good faith efforts to rectify consequences of misconduct

Respondent fully cooperated during the criminal investigation of NuMed and her efforts helped the government obtain convictions for the other participants of the fraudulent scheme.

9.32(e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings

Respondent self-reported her arrest and conviction to The Florida Bar and has provided information when requested.

9.32(f) Inexperience in the practice of law

Within months of graduating law school, five months before she passed the Bar exam, Respondent was hired by NuMed as “Associate In-House Counsel in Training.” It was her first professional job. She had taken only one health care related course in law school. She was promoted to “General Counsel” approximately five (5) months later, on or about April 15, 2014, when she was admitted to the Bar. She served as General Counsel for only one year when she learned about the “friends and family” scheme in the Spring of 2015. At the time, she was twenty-seven (27) years old and had been an attorney for one (1) year.

9.32(g) Character or reputation

Respondent has submitted to The Florida Bar multiple affidavits from individuals attesting to her good character and reputation. The witnesses confirm that the Respondent’s conduct that led to this case is aberrational and not indicative of her general character.

9.32(j) Interim rehabilitation

Respondent currently works for a non-profit organization that provides food, housing, healthcare, education, fresh water and emergency relief to the poor in 17 countries, and has, since entering her plea, provided approximately 20 hours of community service.

9.32(k) Imposition of other penalties or sanctions

Respondent has been sanctioned in the criminal case and has a felony criminal record.

9.32(l) Remorse

Respondent has expressed how sorry she is that she did not immediately resign from her position at NuMed and report the illegal conduct to the authorities. She did all she could to make up for her poor judgment and criminal conduct by cooperating with the federal government and accepting responsibility by pleading to the state charge.

VI. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Newby, 177 So.3d.1274(Table) Case No. SC15-1051 (Fla. 2015), three-year suspension imposed as sanction for attorney convicted of federal mail fraud and sentenced to 15-months imprisonment for assisting a client in connection with an investment fraud scheme. Although the attorney had prior discipline, including a suspension for an unrelated forgery, the Court found mitigation and approved the Referee's three-year suspension recommendation.

The Florida Bar v. Roberts, 157 So.3d.1050(Table) Case No. SC13-1753 (Fla. 2014), Referee's recommendation for imposition of reprimand as sanction was approved by the Florida Supreme Court in case where attorney, who had previously been employed by a Florida State agency and was now in private practice, listened in on a monthly conference call conducted by her prior employer and disclosed information obtained from the call to one of her clients. The attorney was charged with two third degree felonies for illegally intercepting and disclosing electronic communications. After successfully completing a Pretrial Intervention program, in which the attorney admitted to her conduct and agreed to refrain from the practice of law for 90 days, the charges were dismissed.

The Florida Bar v. Marc Levin, Case No. SC13-2089 (Fla. 2014), recommendation for 90-day suspension approved for attorney who pled no contest to third degree cocaine felony charge. Adjudication was withheld and attorney was sentenced to 18-month probation.

The Florida Bar v. Del Pino, 955 So. 2d 556 (Fla. 2007), three-year suspension imposed as sanction for attorney's misconduct in the fraudulent transfer of condominium, which transfer led to conviction for mail fraud, and preparing and signing false and fraudulent application for extension of time to file and pay her federal income taxes, which led to her conviction for tax evasion; attorney had no prior disciplinary record, had personal and emotional problems, provided full and free disclosure to disciplinary board, had a cooperative attitude toward proceedings, had good character and reputation, had participated in interim rehabilitation, and showed remorse.

The Florida Bar v. Pavlick, 504 So.2d 1231 (Fla. 1987), two-year suspension imposed on attorney who pled guilty to accessory after fact to misprision of a felony involving importation of marijuana and was sentenced to one year imprisonment.

VII. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

A. Eighteen (18) months suspension, nunc pro tunc to November 23, 2016, with proof of rehabilitation prior to reinstatement.

B. Prior to filing a Petition for Reinstatement, Respondent shall: Attend the Professionalism Workshop and The Florida Bar's Ethics School. The Professionalism Workshop and The Florida Bar's Ethics School are held at various times and in various locations throughout the state. The Florida Bar Program Administrator will contact Respondent in advance of any workshop or Ethics School being held in the area, or Respondent may contact the Florida Bar Program Administrator at (850) 561-5719 to find out the upcoming Professionalism Workshops or Ethics Schools to be held in other parts of the state. Please note that the Professionalism Workshop and Ethics School begin promptly, with late arrivals being turned away and being required to reschedule to another date. The Professionalism Workshop Fee and the Ethics School Fee together total \$1,000.00 and must be paid prior to attendance.

VIII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

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

A. Personal history of Respondent:

Age: 29-years old

Date Admitted to the Bar: April 15, 2014

Prior Discipline: None

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

I find that pursuant to Rule 3-7.6(q) of the Rules of Discipline, reasonable costs are to be awarded to The Florida Bar.

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

Investigative Costs	\$114.08
Bar Counsel Travel Expenses	\$69.83
Administrative Fee	\$1,250.00
Court Reporter Costs	\$85.00
TOTAL	\$1,518.91

It is recommended that such costs be charged to Respondent, 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 _____ day of _____, 2017.

The Honorable Thomas Hendry Barkdull III,
Referee
Palm Beach County Courthouse
205 N Dixie Highway
West Palm Beach, FL 33401-4522

Original To:

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