

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

DENISE A. GUNN,
Respondent.

Supreme Court Case
No. SC23-1428

The Florida Bar File Nos.
2022-10,464 (20B)
2023-10,598 (20B)

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 October 16, 2023, The Florida Bar filed its complaint against respondent in these proceedings. Respondent failed to respond to the bar's complaint, and the bar filed a Motion for Default on November 9, 2023. On December 12, 2023, the referee held a case management conference and hearing on the bar's Motion for Default. The Florida Bar was represented at the hearing by Kimberly Walbolt and Courtney Thomas, Bar Counsel, but respondent failed to attend the hearing. By order dated December 13, 2023, the undersigned granted the bar's Motion for Default. On January 31,

2024, the referee held a sanctions hearing. The bar was represented at the sanctions hearing by Lindsey Guinand and Courtney Thomas, Bar Counsel, but respondent failed to attend the hearing. Respondent was properly noticed for all hearings held in this matter.

All items properly filed including pleadings, recorded testimony (if transcribed), exhibits 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

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.

Narrative Summary Of Case.

A. *Count I, Complaint of Trevor Stanislaus, TFB File No. 2022-10,464(20B):* Respondent was retained by Trevor Stanislaus for a family law matter in May 2021. Mr. Stanislaus signed a retainer agreement and paid \$1,500 toward the \$4,000.00 flat fee for the representation. Throughout May and June 2021, Mr. Stanislaus contacted respondent by phone for status updates, but respondent failed to answer or return his calls. On July 4, 2021, Mr. Stanislaus contacted respondent requesting his signed retainer agreement or to

cancel his contract and receive a refund if respondent was unable to assist him. On July 7, 2021, respondent contacted Mr. Stanislaus stating she was working on his petition and had mailed him his signed contract. After not receiving the fully executed contract or a draft of his petition, Mr. Stanislaus left more unanswered messages for respondent asking for a refund, but on August 17, 2021, respondent texted him stating his petition was ready. Thereafter, respondent did cease communication with Mr. Stanislaus and failed to take any action on his behalf. Respondent failed to respond to the bar's inquiries concerning this matter, and the Supreme Court of Florida indefinitely suspended respondent until she fully responds to the bar's inquiries by Order dated July 19, 2023.

B. *Count II, Complaint of Xavier Gressett, TFB File No. 2023-10,598(20B)*: Xavier Gressett retained respondent in October 2021 to represent him in a family law matter. Mr. Gressett signed a retainer agreement for a flat fee of \$3,500.00 and began making payments toward the fee. On November 1, 2021, respondent filed a notice of appearance in Mr. Gressett's case, and on January 5, 2022, respondent attended a hearing in Mr. Gressett's matter. In or around April 2022, Mr. Gressett completed all payments toward the

\$3,500.00 flat fee. Thereafter, Mr. Gressett was unable to communicate with respondent, and respondent took no further action on his behalf, yet she failed to withdraw from his case. Respondent failed to respond to the bar's inquiries concerning this matter.

III. RECOMMENDATIONS AS TO GUILT.

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

As to Count I, Rule 4-1.3 (Diligence); Rule 4-1.4 (Communication); and Rule 4-8.4(g) (Failure to respond to an official bar inquiry).

As to Count II, Rule 4-1.3 (Diligence); Rule 4-1.4 (Communication); Rule 4-1.16 (Declining or Terminating Representation); Rule 4-3.2 (Expediting Litigation); and Rule 4-8.4(g) (Failure to respond to an official bar inquiry).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.4 Lack of Diligence

(a) Disbarment is appropriate when a lawyer causes serious or potentially serious injury to a client and: (1) abandons the lawyer's practice; (2) knowingly fails to perform services for a client; or (3) engages in a pattern of neglect with respect to client matters.

3.2 Aggravation

I considered the following factors in aggravation to justify an increase in the level of appropriate discipline for respondent's misconduct:

3.2(b)(1) (prior disciplinary offenses): by Court order dated July 19, 2023, in Case No. SC23-0727, respondent was indefinitely suspended from the practice of law until she fully responds in writing to the bar's official inquiries concerning Mr. Stanislaus' matter, and I considered that to date respondent has taken no action to answer the bar's inquiries or rectify her existing suspension;

3.2(b)(3) (pattern of misconduct): respondent abandoned her representation of at least the two clients identified by the bar's complaint and failed to provide them with diligent legal services;

3.2(b)(4) (multiple offenses): respondent committed violations of five Rules Regulating The Florida Bar across at least the two client matters identified by the bar's complaint;

3.2(b)(5) (bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency): I considered that respondent failed to respond to either bar counsel or the grievance committee during their investigation of these two client grievances. Further, I find that respondent failed to submit an answer to the bar's complaint and failed to participate in these disciplinary proceedings; and

3.2(b)(9) (substantial experience in the practice of law): respondent has been licensed to practice law since 1997.

3.3 Mitigation

I find there are no applicable mitigating factors.

V. CASE LAW

I considered the following case law prior to recommending discipline:

Initially, I considered *Florida Bar v. Rosenberg*, 169 So. 3d 1155, 1162 (Fla. 2015) which states the Court has moved towards stronger sanctions for attorney misconduct.

With respect to respondent's specific misconduct, I considered the following cases: *Florida Bar v. Davis*, 149 So. 3d 1121 (Fla. 2014) - Davis was disbarred for knowingly failing to perform services for a client after charging the client a \$5,000 retainer fee. At the time of disbarment, Davis was already serving a suspension. Davis also failed to answer the bar's complaint or otherwise participate in the disciplinary proceeding, which resulted in a default being entered against her.

Florida Bar v. Locy, 151 So. 3d 1229 (Fla. 2014) (unpublished table decision) - Locy was disbarred for failing to competently and diligently represent a client in a civil case, failing to provide adequate communication to the client, and ultimately abandoning his law practice. Locy also failed to respond to various bar inquires and failed to answer the bar's complaint or otherwise participate in the formal disciplinary proceeding, which resulted in a default being entered against him.

Florida Bar v. Preece, 2016 WL 4506836 (Fla. Aug. 25, 2016) - Preece was disbarred for neglecting a dissolution of marriage matter, and ultimately abandoning the client. At the time of the disbarment, Preece was

already serving a suspension for failure to respond to the bar. Preece also failed to respond to various bar inquiries and failed to answer the bar's complaint or otherwise participate in the formal disciplinary proceeding, which resulted in a default being entered against her.

Florida Bar v. Freeman, 2021 WL 217636 (Fla. January 21, 2021) - Freeman was disbarred for her neglect of a client matter and failure to participate in the disciplinary proceedings. Freeman was hired to assist in a probate matter, but after filing a petition for administration along with the death certificate and will, she failed to take any further action on the file and failed to communicate with the client. Freeman abandoned the representation and relocated to Pennsylvania without withdrawing from the representation or notifying the client. Freeman failed to respond to the bar, failed to participate in the disciplinary proceeding, and failed to update her official bar contact information. At the time of the disbarment, Freeman was suspended due to her failure to respond to official bar inquiries.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

A. Disbarment to be effective immediately due to respondent's existing suspension in Supreme Court Case No. SC23-0727;

B. Payment of The Florida Bar's costs in these proceedings; and

C. Respondent will eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards office signs or any other indicia of respondent's status as an attorney, whatsoever.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

Personal History of Respondent:

Age: 52

Date admitted to the Bar: February 24, 1997

Prior Discipline: by Court order dated July 19, 2023, in Case No. SC23-0727, respondent was indefinitely suspended from the practice of law until she fully responds in writing to the bar's official inquiries.

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 Fee	\$1,250.00
Investigative Costs	\$113.40
Court Reporters' Fees	\$190.00
TOTAL	\$1,553.40

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 28th day of February, 2024.

/s/ D. Ryan Felix
Judge D. Ryan Felix, Referee

Copies to:

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927; via the E-filing Portal

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