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JUL 29 2016

THE FLORIDA BAR
FORT LAUDERDALE OFFICE

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

BRIAN NEIL GREENSPOON,

Respondent.

Supreme Court Case
No. SC16-157

The Florida Bar File
No. 2015-50,515(17A)

_____/

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 January 26, 2016, The Florida Bar filed its Notice of Determination or Judgment of Guilt against Respondent in these proceedings. On January 27, 2016, the Florida Supreme Court entered an Order suspending the Respondent from The Florida Bar pursuant to Rule 3-7.2(f) of the Rules Regulating The Florida Bar. The suspension would be effective 30 days from the date of the Order unless the Respondent notified the Court in writing that he was no longer practicing and did not need the 30 days to protect existing clients. The matter has been referred to the

Chief Judge of the Seventeenth Judicial Circuit for the appointment of a Referee pursuant to rule 3-7.2(h). The undersigned was designated and appointed Referee on February 9, 2016. On February 26, 2016, the Respondent filed a Notice pursuant to Rule 3-5.1(h) that he was no longer practicing and that he had resigned his position as partner of Greenspoon Dougherty P.A. effective December 31, 2015. The parties have presented to me a Conditional Guilty Plea for Consent Judgment, which has been approved by The Florida Bar Board of Governors' Designated Reviewer. After due deliberation, I have determined to recommend that Respondent's Conditional Guilty Plea for Consent Judgment be approved, for the reasons set forth herein. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, and this Report 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 Case. In the case styled *State v. Brian Neil Greenspoon*, Case No. 2014CF009805AMB-2287CF10A, in the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County, Florida on or about

September 17, 2014, a criminal Information was filed against Respondent. Respondent was charged with one count of Unlawful Solicitation in violation of Florida Statutes Section 817.234(8)(b). Such charge is a 3rd degree felony under Florida Law. Respondent, on or about October 28, 2013, met with Stacy Mooney who had been involved in a motor vehicle accident on October 15, 2013. During such meeting Respondent did solicit or caused to be solicited business from a person (Stacy Mooney) involved in a motor vehicle accident by any means of communication other than advertising directed to the public for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits within 60 days after the occurrence of the motor vehicle accident, contrary to Florida Statute 817.234(8)(b). Respondent has alleged that he initially contacted Stacy Mooney as a result of a call from someone with whom he did not have a prior professional relationship and who told Respondent that he referred individuals to attorneys and medical providers; however, it is undisputed that Respondent did not offer her any monies, and Stacy Mooney never became a client of Respondent. On or about October 5, 2015, Respondent entered a plea of *nolo contendere* to one count of Unlawful Solicitation in violation of Florida Statutes Section 817.234(8)(b). Adjudication was withheld and Respondent was sentenced to 18 months probation with the ability to petition for early termination upon

completion of all conditions, and 150 hours of community service. Respondent was sentenced on January 6, 2016. The Respondent on February 4, 2016 filed a Notice of Appeal for the purpose of appealing the constitutionality of the statute to which he pled.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 4-8.4 (a) [A lawyer shall not violate the Rules Of Professional Conduct.]; and 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.].

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

5.11 Disbarment is appropriate when a lawyer is convicted of a felony under applicable 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.

13.11 Suspension is appropriate:

a) when a lawyer knowingly engages in solicitation that does not involve fraud, deceit, or misrepresentation, that involves another violation of the Rules Regulating The Florida Bar, but results in no actual injury.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Pavlick, 504 So. 2d 1231 (Fla. 1987)--citing to *State ex rel. Florida Bar v. Evans*, 94 So. 2d 730 (Fla. 1957), which involved a conviction of income tax evasion based on a plea of nolo contendere, the Court held that:

[I]n a disbarment proceeding based on conviction of a crime, the proof of conviction and an adjudication of guilt are sufficient to establish a prima facie case for disciplinary action. Due process, however, requires that the accused lawyer shall be given full opportunity to explain the circumstances and otherwise offer testimony in excuse or in mitigation of the penalty.

The Florida Bar v. Wolfe, 759 So. 2d 639 (Fla. 2000)--in-person solicitation of clients in areas where their homes had been damaged by tornadoes and offering legal services, presenting residents with prepared pamphlets and brochures, and offering residents prepared contingency fee contracts which did not comply with rules regulating the State Bar warranted one-year suspension from practice of law, followed by three-year probationary period; attorney affirmatively engaged in conduct he knew to be improper, and it was attorney's second disciplinary proceeding in the last three years. The Court cited several cases. In, *State ex rel. Florida Bar v. Dawson*, 111 So. 2d 427, 431 (Fla. 1959), this Court noted that in solicitation cases, "[t]he exact nature of the disciplinary action to be taken is a

problem which must be resolved on the basis of the factual situation presented by each particular case.” As a result, in the past the discipline imposed for improper attorney solicitation has varied from disbarment to public reprimand. See, *Florida Bar v. Weinstein*, 624 So. 2d 261 (Fla. 1993) (disbarment); *Florida Bar v. Stafford*, 542 So. 2d 1321 (Fla. 1989) (six-month suspension); *Florida Bar v. Sawyer*, 420 So. 2d 302 (Fla. 1982) (eighteen-month suspension); *Florida Bar v. Gaer*, 380 So. 2d 429 (Fla. 1980) (public reprimand); *Florida Bar v. Curry*, 211 So. 2d 169 (Fla. 1968) (six-month suspension); *Florida Bar v. Abramson*, 199 So. 2d 457 (Fla. 1967) (public reprimand); *Florida Bar v. Britton*, 181 So. 2d 161 (Fla. 1965) (three-month suspension); *State ex rel. Florida Bar v. Swidler*, 159 So. 2d 865 (Fla. 1964) (public reprimand); *State ex rel. Florida Bar v. Bielej*, 120 So. 2d 587 (Fla. 1960) (six-month suspension); *Florida Bar v. Dawson*, 111 So.2d 427 (1959) (eighteen-month suspension); and *State ex rel. Florida Bar v. Murrell*, 74 So. 2d 221 (Fla. 1954) (one-year minimum suspension).

I also considered the Court’s most recent ruling regarding lawyer solicitation, *Florida Bar v. Stillman*, SC16-905 (June 16, 2016). In *Stillman*, an individual approached the victim of an auto accident and attempted to sign the victim as a client for Respondent’s law firm. The victim did not become a client and Respondent denied having any knowledge or control over the activities in approaching the victim. Respondent indicated the individual, who approached the victim, was a “friend and former client” who was well pleased with Respondent’s services, and who often recommends him to others in the community. However, during the course of the Bar’s investigation, Respondent admitted that he has routinely accepted several referrals from this individual each month on a continuing basis. Respondent further acknowledged that he sponsors the semi-professional football team for which this individual is employed as a coach. In exchange for sponsorship, the Respondent’s firm is promoted at the stadium on banners and in announcements made over the PA system. Additionally, the firm’s name appears on the team’s jerseys. The Respondent pled guilty and the Court agreed to a Public Reprimand.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

In accordance with the Conditional Guilty Plea for Consent Judgment, I recommend that Respondent be suspended for three (3) years. The 3-year suspension shall be effective as of the date of the prior suspension due to the fact the Respondent has remained suspended and does not need 30 days from the date of the Order or Opinion to close out his practice.

There are various mitigating factors that justify a reduction in the degree of discipline to be imposed which include under Florida Standards For Imposing Lawyer Sanctions, Standard 9.32:

- a) absence of a prior disciplinary record;
- b) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- c) imposition of other penalties or sanctions;
- d) good moral character;
- e) remorse and the effect of the arrest has had on his career and his personal life; and
- f) no prior criminal record.

VII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

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

Age: 44

Date admitted to the Bar: September 26, 2003

Prior Discipline: None

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	\$1,250.00
Investigative Costs	\$230.71
TOTAL	\$1,480.71

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within 30 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.

MICHAEL G KAPLAN

Dated this _____ day of JUL 28 2016, 2016.

A TRUE COPY

Honorable Michael G. Kaplan
Referee
Broward County Courthouse
201 SE 6th Street
Fort Lauderdale, FL 33301

Original To:

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

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