

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

*Kent*

THE FLORIDA BAR,  
  
Complainant,

CASE NOS.: SC10-637  
SC10-639  
SC10-1583

v.

TFB NOS.: 2009-10,487(13C)  
2009-10,863(13C)  
2010-10,023(13C)  
2010-11,081(13C)

KURT D. MITCHELL,  
  
Respondent.

**REPORT OF REFEREE**

I. Summary of Proceedings: The undersigned was duly appointed as Referee in these proceedings. The parties have agreed to a Conditional Guilty Plea for Consent Judgment, which I recommend that the Court accept. Any pleadings, notices, motions, orders, transcripts, and exhibits are forwarded to The Supreme Court of Florida with this report and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Lisa Buzetti Hurley

For The Respondent: *Pro Se*

Respondent participated fully in this proceeding.

II. Findings of Fact: I adopt the stipulated facts as set forth in the Conditional Plea for Consent Judgment as my findings of fact, as follows:

a. Supreme Court Case No. SC10-637, TFB No. 2009-10,487(13C): During the course of litigating a civil case, Respondent engaged in a series of email exchanges with opposing counsel that were disparaging, humiliating and discriminatory against opposing counsel. Respondent also engaged in a hostile exchange with opposing counsel during a deposition and made disparaging remarks about opposing counsel in a pleading filed with the court.

*[Handwritten signature]*

b. Supreme Court Case No. SC10-639: Count I (TFB No. 2009-10,863(13C)): Respondent became involved in a dispute with his landlord, Stanley Kosierowski and they became opposing parties in litigation. Respondent sent a number of emails to Kosierowski in which he made remarks that were disparaging, humiliating, and discriminatory against Kosierowski.

Count II (TFB No. 2010-10,023(13C)): Court reporter, Sharon Julian, filed a Bar complaint against Respondent concerning his failure to pay for a deposition transcript which she contends he ordered. Respondent denied all allegations made by Ms. Julian, thereby denying ordering the transcript; However, Ms. Julian provided evidence to the contrary. In his response to the Bar, Respondent made a false statement of material fact in connection with this disciplinary matter by denying that he had ordered the transcript.

c. Supreme Court Case No. SC10-1583, TFB No. 2010-11,081(13C): Respondent attended the deposition of his client in a civil case. Respondent engaged in a hostile confrontation with opposing counsel at the deposition which occurred in the presence of the client and the court reporter. Respondent's conduct at the deposition was unprofessional, disruptive, and intimidating to the court reporter. Respondent also made remarks on the record at a subsequent court hearing that were disparaging to opposing counsel.

II. Recommendations as to Guilt: I recommend that Respondent's Conditional Guilty Plea be accepted and Respondent be found guilty of violating:

a.) Supreme Court Case No. SC10-637, TFB No. 2009-10,487(13C): Rule 3-4.3 (commission of any act that is unlawful or contrary to honesty and justice); and Rule 4-8.4(d) (conduct in connection with the practice of law that is prejudicial to the administration of justice).

b.) Supreme Court Case No. SC10-639: Count I (TFB No. 2009-10,863(13C)): Rule 4-8.4(d) (conduct in connection with the practice of law that is prejudicial to the administration of justice). Count II (TFB No. 2010-10,023(13C)): Rule 3-4.3 (commission of any act that is unlawful or contrary to honesty and justice); and Rule 4-8.1(a) (false statement in connection with a disciplinary matter).

c.) Supreme Court Case No. SC10-1583, TFB No. 2010-11,081(13C): Rule 3-4.3 (commission of any act that is unlawful or contrary to honesty and justice); and Rule 4-8.4(d) (conduct in connection with the practice of law that is prejudicial to the administration of justice).

III. Recommendation as to Discipline: I recommend that the discipline agreed to in the Consent Judgment and set forth as follows be accepted:

a.) **10-day suspension** from the practice of law.

b.) Respondent shall attend the Florida Bar's Anger Management workshop within one year of the date of the Order approving the Report of Referee. Respondent shall pay the fee for attending the workshop in the amount of \$750.00.

IV. Personal History and Past Disciplinary Record: In recommending approval of the Consent Judgment, I considered the following personal history and prior disciplinary record of Respondent, to wit:

Year of Birth: 1974

Date Admitted to Bar: June 23, 2005

The referee notes that Respondent is not certified in any area of practice.

The following Aggravating Factors are applicable in this matter:

9.22(c) pattern of misconduct

9.22(d) multiple offenses

9.22(g) refusal to acknowledge wrongful nature of conduct

The following Mitigating Factors are applicable in this matter:

9.32(a) absence of a prior disciplinary record

V. Standards for Imposing Lawyer Sanctions and case law considered: After the finding of guilt and prior to recommending discipline pursuant to Rule 3-7.6(m)(1), I considered the following:

7.0 Violations of Other Duties Owed as a Professional - Standard 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.

*Florida Bar v. Saylor*, 721 So.2d 1152 (Fla. 1998): (public reprimand plus 6-month probation) An attorney received a public reprimand for a single incident involving sending a harassing and threatening letter to opposing counsel in a highly contested case. Saylor was found guilty of violating Rules 3-4.3 (any act contrary to honesty or justice), 4-4.4 (using means with no purpose but to embarrass, delay or burden a third person), and 4-8.4(d) (conduct prejudicial to administration of justice).

*Florida Bar v. Ratiner*, (This opinion remains subject to revision or withdrawal) 2010 WL 2517995 (Fla): (60-day suspension, public reprimand and probation) An attorney was disciplined for engaging in unprofessional behavior during a deposition. Ratiner moved around the table toward opposing counsel after counsel placed an evidence sticker on Ratiner's laptop computer, lambasted counsel, and tore up the evidence sticker and flicked it at opposing counsel. In aggravation, the referee considered other acts of misconduct during the deposition for which the respondent was not charged. Ratiner had no history of prior discipline. He was found guilty of violating Rules 3-4.3, 4-3.5, 4-4.4(a), 4-8.4(a), and 4-8.4(d).

VI. Costs: I find the costs set forth in The Florida Bar's Motion to Assess Costs filed in this cause were reasonably incurred and were not unnecessary, excessive or improperly authenticated and Respondent stipulated to the payment of such costs incurred by The Florida Bar.

It is recommended that the costs itemized in The Florida Bar's Motion to Assess Costs in the total sum of **\$1,997.99** be charged to Respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

TRUE COPY  
Original signed

SEP 01 2010

R. TIMOTHY PETERS  
CIRCUIT JUDGE

Honorable R. Timothy Peters, Referee

Copies Furnished To:

Lisa Buzzetti Hurley, Bar Counsel, The Florida Bar, 4200 George J. Bean Pkwy., Suite 2580, Tampa, Florida 33607;

Kurt D. Mitchell, Respondent, Mitchell Law Group, 186 Blaney Road, Suite D, Kittanning, PA 16201-3568; and,

Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.