

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

LARRY ELLIOT KLAYMAN,

Respondent.

Supreme Court Case
No. SC11-247

The Florida Bar File
No. 2011-70,621(11A)

CONSENT JUDGMENT

Larry Elliot Klayman, Respondent, having been fully advised of his procedural rights under the Rules Regulating The Florida Bar, hereby tenders this Consent Judgment pursuant to Rule 3-7.9(b), Rules of Discipline, and says:

1. Respondent, Larry Elliot Klayman, is and was at all times hereinafter mentioned, a member of The Florida Bar and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. Respondent is currently the subject of a grievance file, which has been assigned The Florida Bar File No. 2011-70,621(11A).

3. Respondent admits that the following facts are true and accurate and stipulates:

A. On or about November 11, 2007, Natalia Humm ("Humm")

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filed a grievance against Respondent alleging that he had had failed to provide services in her criminal case after she paid him a \$25,000 retainer.

B. The parties ultimately agreed to submit this matter to The Florida Bar Grievance Mediation Program, and a Mediation Agreement was signed on February 3, 2009. According to the terms of the Mediation Agreement, Respondent agreed to pay Humm \$5,000 within ninety (90) days from the date of the Agreement.

C. On or about June 3, 2009, Jonathan I. Rotstein ("Rotstein"), the attorney who represented Humm in the mediation, sent a letter to The Florida Bar indicating that Respondent had failed to comply with the terms of the Mediation Agreement and further indicating that he did not think Respondent had "any intentions of honoring same."

D. On or about June 11, 2009, The Florida Bar forwarded Rotstein's letter to Respondent, requesting his response within seven (7) days from the date of The Bar's letter.

E. In response to The Florida Bar, Respondent indicated that he was facing a very difficult financial situation, but that he had every intention of honoring his agreement with Humm. Respondent further indicated that he would be able to pay the outstanding amount by September 30, 2009.

F. Respondent did not provide his payment by September 30,

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2009, and therefore, on or about October 22, 2009, The Florida Bar sent him a follow-up letter advising him that failure to comply with the terms of the Mediation Agreement was a violation of Rule 14-5.1(b) of the Rules Regulating The Florida Bar and giving him a final deadline of November 20, 2009 to comply.

G. Respondent again did not to comply with the Mediation Agreement, and therefore, on December 4, 2009, The Florida Bar sent him a letter advising him that a new file had been opened on the basis of his failure to comply with the terms of the Mediation Agreement, which would be considered by the grievance committee.

H. Immediately prior to the grievance committee's meeting, Respondent submitted a response where he indicated that he had been unable to comply with the Mediation Agreement for financial reasons and that he was actually in the process of filing for bankruptcy. Nevertheless, Respondent advised that he still intended to honor the Agreement.

I. Prior to making its final determination, the grievance committee requested that Respondent provide specific evidence of his financial situation, in affidavit form. Respondent provided a supplemental response, which included the financial information requested. In addition, Respondent enclosed a check in the amount of \$1,000, payable to Humm, and made a promise to continue making

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good faith payments of at least \$500 per month until the entire \$5,000 was paid in full.

J. Based on Respondent's payment of \$1,000, the financial information provided, and his assurances that he would continue making monthly good faith payments to Humm, the grievance committee ultimately determined that the matter should be closed with a finding of no probable cause and a letter of advice to Respondent.

K. Respondent made two additional payment of \$500 each, but did not make any additional payments at that time because of his claimed continued financial distress.

L. Rotstein sent letters to The Florida Bar on May 12, August 18, and December 14, 2010 requesting its assistance in obtaining the outstanding payments from Respondent. The Florida Bar forwarded those letters to Respondent, who initially responded and promised to continue making payments.

M. Respondent's next communication with The Bar was on August 23, 2010, when he indicated that he had been in a serious auto accident and that he continued to suffer financial distress, but promised that he would be sending an additional payment to Humm. Respondent moved during the interim period and he claims that he did not timely receive certain correspondence from The Bar, which

ultimately led to a probable cause finding and the filing of a formal complaint with the Florida Supreme Court.

N. On or about March 9, 2011, after a formal complaint had been filed with the Florida Supreme Court in this matter, and after he received the correspondence referenced in paragraph M above, Respondent contacted The Bar to advise that he would accept the offer to reach a resolution of this matter. Respondent further advised that he was now in a position to make the outstanding payment in the amount of \$3,000 to Humm, and he immediately made such payment, in full satisfaction of his outstanding obligation under the Mediation Agreement.

4. Respondent admits that by reason of the foregoing facts, he has violated Rules 3-4.3 (misconduct and minor misconduct), 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct), 4-8.4(g) (failure to respond to The Florida Bar), and 14-5.1(b) (effect of respondent's failure to attend or comply with mediation) of the Rules Regulating The Florida Bar.

5. Pursuant to Rule 3-7.9(b) of the Rules Regulating The Florida Bar, Respondent hereby tenders a Consent Judgment wherein Respondent agrees to the following discipline:

A. Public Reprimand, to be administered by publication.

6. Respondent submits that the following factors apply in mitigation:

- 9.32(a) (absence of prior disciplinary record) – Respondent has been continuously a member of The Florida Bar in good standing for nearly thirty-five (35) years.
- 9.32(c) (personal or emotional problems) – Respondent maintains that since the time the Mediation Agreement was entered into he has sustained significant financial distress, which prevented him from making timely payments to Humm and from providing timely responses to The Florida Bar. Respondent further maintains that he agreed to submit Humm’s claim to mediation and agreed to the terms of the Mediation Agreement simply to save valuable time and resources for all concerned. Respondent had agreed to represent Humm in a criminal proceeding, but she subsequently decided to retain new counsel when the case was transferred from Miami to Orlando federal court. Respondent maintains that Humm was never entitled to any refund and further asserts that Humm’s subsequent counsel admitted as much in an e-mail he sent to Respondent, where he stated, “[i]t is unlikely that (you) would want to refund a cent so please provide me with an explanation so that I may pass it along to Ms. Humm.” Respondent also maintains that Humm had similarly asked her prior counsel for a refund and even requested that Respondent sue him, which Respondent refused to do. Respondent thus claims a pattern in Humm’s

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behavior toward counsel. Nevertheless, in an effort to promptly resolve the claim and to save valuable time and resources, Respondent ultimately agreed to the terms of the Mediation Agreement, as the mediator had urged.

With respect to his failure to provide timely responses to The Bar, Respondent submits that he did not timely receive correspondence from The Bar, as his address had changed and he inadvertently did not immediately change the address with The Florida Bar. As a result, Respondent claims he did not timely receive notice that the Grievance Committee had made a probable cause finding or that a formal complaint had been filed in this matter, and consequently, that he did not have a timely opportunity to argue against the probable cause finding or to resolve this matter prior to a formal complaint being filed. Respondent acknowledges that he should have provided his new address to The Bar, but inadvertently forgot to do so in time for the referenced correspondence to arrive timely.

- 9.32(g) (character or reputation) – Respondent has been a respected member of The Bar for nearly thirty-five (35) years.
- 9.32(l) (remorse) – Respondent is remorseful for his delay in satisfying the terms of the Mediation Agreement, which ultimately led to the filing of a formal complaint in this matter. Moreover, Respondent has now fully satisfied

his outstanding obligation to Humm and made such payment without conditioning it on any consent judgment.

7. Respondent agrees to pay all costs reasonably incurred by The Florida Bar in the investigation of the aforesaid matter within thirty (30) days of the entry of the Supreme Court's final order, plus interest at the prevailing statutory rate to accrue on all costs not paid within said time, unless time for payment is extended by the Board of Governors.

8. Respondent agrees that the costs indicated below have been incurred.

Administrative fee	
Rule 3-7.6(o)(1)(I)	\$ <u>1,250.00</u>
TOTAL:	\$ 1,250.00

9. Respondent agrees that he will not attempt to discharge the restitution to the client, nor the obligation for the payment of the Bar's costs in any future proceedings, including but not limited to, a Petition for Bankruptcy.

10. Respondent recognizes that the disciplinary sanction to be imposed will ultimately be determined by the Supreme Court of Florida which will not be bound to follow the recommendation of The Florida Bar, the Board of Governors, or the Referee in these proceedings.

11. Respondent agrees that this Consent Judgment and every factual admission contained herein, and specifically the admissions set forth in paragraph three (3) shall have full force and effect regardless of any subsequent

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recommendation or action taken with respect to the terms of discipline offered by Respondent pursuant to this Consent Judgment.

12. Respondent agrees that in the event that the terms of discipline offered herein are not approved by the Board of Governors of The Florida Bar (or their designee), the Referee, then this matter shall proceed accordingly in the ordinary course.

13. Respondent acknowledges that this document is tendered freely, voluntarily and without fear, threat or coercion.

DATED this 14th day of July, 2011.



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Respondent

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