

**IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)**

**THE FLORIDA BAR,**  
  
**Complainant,**

**Supreme Court Case  
Nos. SC09-1846  
SC09-1889**

v.

**DWAYNE BISFORD JOHNSON, SR.**  
  
**Respondent.**

**The Florida Bar File  
Nos. 2008-51,401(02B)  
2009-50,191(15A)  
2009-50,892(15A)**

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**REPORT OF REFEREE**

**I. SUMMARY OF PROCEEDINGS:**

The Florida Bar filed its complaint in Supreme Court Case No. SC09-1846 in the Supreme Court of Florida on October 1, 2009. Thereafter, The Florida Bar filed a second complaint, on October 9, 2009, bearing Supreme Court Case No. SC09-1889. Since respondent failed to answer the bar's complaints as mandated by R. Regulating Fla. Bar 3-7.6(h)(2), the bar filed The Florida Bar's Motion for Default Judgment. Such motion was granted by this court on December 10, 2009. Thereafter, the cases were consolidated for purposes of trial by order dated December 21, 2009. A final hearing in the cause was held on December 21, 2009. Despite having received notice of the final hearing, respondent failed to appear. The pleadings and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

During the course of these proceedings, respondent failed to appear and The Florida Bar was represented by Alan Anthony Pascal on both Supreme Court Cases.

## II. **FINDINGS OF FACT:**

A. Jurisdictional Statement: Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, and subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary:

### **Supreme Court Case No. SC09-1889:**

1. Respondent became delinquent in his continuing legal education requirements on or about January 31, 2008.

2. On or about March 3, 2009, respondent petitioned to have his CLE delinquency removed. Respondent's petition was granted on March 5, 2009.

3. Respondent became delinquent in his Basic Skills Course Requirements on or about February 2008.

4. On or about March 12, 2009, respondent petitioned to have his Basic Skills Course Requirement delinquency removed. Respondent's petition for removal of delinquency was granted and he was conditionally reinstated March 13, 2009.

5. Finally, respondent became delinquent in the payment of his membership fees in or about October 2008.

6. On or about February 24, 2009, respondent petitioned to have his dues delinquency removed. On March 9, 2009, respondent's petition was granted and his dues delinquency was removed.

7. Therefore, due to these multiple delinquencies, respondent was ineligible to practice law in Florida from January 31, 2008 through March 13, 2009.

8. As a delinquent member, respondent was prohibited from engaging in the active practice of law in Florida during this period of ineligibility.

### **COUNT I**

The Florida Bar File No. 2009-50,191(15A) (SC09-1889)

9. Despite his ineligibility to practice law, respondent represented Marva Robinson in a personal injury case.

10. In or about July 2008, respondent sent a demand letter and offer of settlement to State Farm Insurance on behalf of Marva Robinson.

11. In such letter, respondent called Robinson "our client" and made a settlement offer to State Farm.

12. Further, respondent's letterhead read "Dwayne Johnson Law Firm" and the letter was signed by respondent over the signature block Dwayne B.

Johnson, Sr., Esq., FL Bar No. 133884, For the Firm. A copy of the letter was attached to the complaint as Exhibit A.

13. By sending the letter to State Farm and making a settlement offer, respondent held himself out as an attorney and engaged in the active practice of law in Florida during his period of ineligibility.

## **COUNT II**

The Florida Bar File No. 2009-50,191(15A) (SC09-1889)

14. A complaint was filed against respondent with The Florida Bar on or about July 30, 2008.

15. On August 13, 2008, The Florida Bar's Attorney Consumer Assistance Program (ACAP) sent a letter to respondent requesting his response to the complaint.

16. Respondent failed to respond.

17. On September 8, 2008, ACAP sent a second letter to respondent mandating his response.

18. Respondent again failed to respond and the file was transferred to the Fort Lauderdale Office of The Florida Bar for further action.

19. On October 6, 2008, bar counsel sent respondent a letter again requesting his response.

20. Again, respondent did not respond.

21. On February 12, 2009, bar counsel sent respondent a notice of hearing.

22. Such notice was sent both regular mail and certified mail, return receipt requested.

23. While the copy sent regular mail was not returned and is assumed received, the copy sent certified mail was returned to The Florida Bar unclaimed.

24. On March 24, 2009, a second notice of hearing was sent to respondent, this time including The Florida Bar File No. 2009-50,892(15A) as well as The Florida Bar File No. 2009-50,191(15A).

25. Such notice was sent both regular mail and certified mail, return receipt requested.

26. While the copy sent regular mail was not returned and is assumed received, the copy sent certified mail was returned to The Florida Bar unclaimed.

### **COUNT III**

The Florida Bar File No. 2009-50,892(15A) (SC09-1889)

27. Despite respondent's ineligibility to practice law, respondent appeared in a non-jury trial to represent his client in the case styled State v. Janet Jarrett, Case No. 2007-CF-004040AMB, in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida on or about December 3, 2008.

28. Respondent engaged in the active practice of law by representing Janet Jarrett before the court in a non-jury trial.

29. Respondent again engaged in the active practice of law on February 9, 2009.

30. On that date, respondent filed a Notice of Appearance and a Motion for Bond Reduction in the case styled State v. Anderson, Case No. 2008-CF-017848, in the Fifteenth Judicial Circuit in and for Palm Beach County Florida. Copies of the pleadings were attached to the complaint as Composite Exhibit B.

31. Both the Notice and Motion are signed by respondent over the signature block D. Bisford Johnson, Sr., Esq., FOR THE FIRM.

32. On February 10, 2009, respondent appeared in court before the Honorable Amy L. Smith and argued his Motion for Bond Reduction.

33. Respondent failed to inform Judge Smith or opposing counsel that he was ineligible to engage in the active practice of law in Florida.

34. Based on the argument of counsel, the court reduced the defendant's bond and reset the motion for February 11, 2009.

35. When respondent appeared on February 11, 2009, opposing counsel informed respondent of his ineligibility to practice law.

36. Respondent acknowledged that he was aware of his ineligibility to practice law.

## COUNT IV

The Florida Bar File No. 2009-50,191(15A) (SC09-1889)

37. A complaint was filed against respondent with The Florida Bar in or about January 2009.

38. On January 30, 2009, The Florida Bar's Attorney Consumer Assistance Program (ACAP) sent a letter to respondent requesting his response to the initial complaint.

39. Respondent failed to respond.

### Supreme Court Case No. SC09-1846:

40. On or about January 5, 2007, Respondent approached Willie Harris (hereinafter "Mr. Harris") and offered to represent him on a personal injury matter resulting from Mr. Harris being hit by a car while in his wheelchair.

41. On January 5, 2007, respondent and Mr. Harris executed an Authority to Represent and Contingency Fee Agreement and a Statement of Client's Rights.

42. Although the parties signed a Contingency Fee Agreement, Mr. Harris paid respondent a \$500 retainer.

43. On February 12, 2007, respondent forwarded a copy of a complaint to Mr. Harris.

44. Respondent failed to file the complaint with the court and allowed Mr. Harris to believe his suit was proceeding forward.

45. On March 5, 2007, respondent sent Mr. Harris a copy of a demand letter to AIG Personal Lines Claims, although the insurance company was not listed as a defendant on the complaint.

46. On June 21, 2007, respondent went to Mr. Harris' house and asked for additional money. Mr. Harris refused.

47. Respondent informed Mr. Harris that he had received 2 checks in settlement of his case, totaling \$25,000, but he had left them at his office.

48. At no time had respondent consulted with Mr. Harris with regard to settlement, nor had Mr. Harris agreed to a settlement amount.

49. No checks were ever received by Mr. Harris from respondent. In fact, no settlement monies were paid to respondent.

50. Following the June 21, 2007 visit, respondent ceased all contact with Mr. Harris. When Mr. Harris filed this complaint, respondent had not communicated with Mr. Harris for approximately nine months.

51. Respondent has not responded to The Florida Bar.

**III. RECOMMENDATION AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY:**

My recommendation as to guilt is as follows:

**Supreme Court Case No. SC09-1889:**

A. Count I: By the conduct set forth above, respondent violated R. Regulating Fla. Bar **1-3.4(a)** [Any member who is suspended by reason of failure

to complete continuing legal education requirements shall be deemed a delinquent member. A delinquent member shall not engage in the practice of law in this state and shall not be entitled to any privileges and benefits accorded to members of The Florida Bar in good standing.]; **1-3.6** [Any person now or hereafter licensed to practice law in Florida who fails to pay membership fees, fails to comply with continuing legal education or basic skills course requirements, or is delinquent in the payment of costs assessed or restitution imposed in diversion cases or disciplinary proceedings brought under these Rules Regulating The Florida Bar shall be deemed a delinquent member. While occupying the status of a delinquent member, no person shall engage in the practice of law in Florida nor be entitled to any privileges and benefits accorded to members of The Florida Bar in good standing.]; **3-4.2** [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; and **4-5.5(a)** [A lawyer shall not practice law in a jurisdiction other than the lawyer's home state, in violation of the regulation of the legal profession in that jurisdiction, or in violation of the regulation of the legal profession in the lawyer's home state or assist another in doing so.].

B. Count II: By the conduct set forth above, respondent violated R. Regulating Fla. Bar **1-3.3** [Each member of The Florida Bar shall designate an official bar name, mailing address, and business telephone number. If the address

given is not the physical location or street address of the principal place of employment, then such information shall also be given. Each member shall promptly notify the executive director of any changes in any information required by this rule.]; **4-8.4(g)(1)** [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors.]; and **4-8.4(g)(2)** [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors.].

C. Count III: By the conduct set forth above, respondent violated R. Regulating Fla. Bar **1-3.4(a)** [Any member who is suspended by reason of failure to complete continuing legal education requirements shall be deemed a delinquent member. A delinquent member shall not engage in the practice of law in this state and shall not be entitled to any privileges and benefits accorded to members of The Florida Bar in good standing.]; **1-3.6** [Any person now or hereafter licensed to

practice law in Florida who fails to pay membership fees, fails to comply with continuing legal education or basic skills course requirements, or is delinquent in the payment of costs assessed or restitution imposed in diversion cases or disciplinary proceedings brought under these Rules Regulating The Florida Bar shall be deemed a delinquent member. While occupying the status of a delinquent member, no person shall engage in the practice of law in Florida nor be entitled to any privileges and benefits accorded to members of The Florida Bar in good standing.]; **3-4.2** [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; and **4-5.5(a)** [A lawyer shall not practice law in a jurisdiction other than the lawyer's home state, in violation of the regulation of the legal profession in that jurisdiction, or in violation of the regulation of the legal profession in the lawyer's home state or assist another in doing so.].

D. Count IV: By the conduct set forth above, respondent violated R. Regulating Fla. Bar **4-8.4(g)(1)** [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors.].

**Supreme Court Case No. SC09-1846:**

E. By reason of the foregoing, respondent violated R. Regulating Fla. Bar **4-1.3** [A lawyer shall act with reasonable diligence and promptness in representing a client.]; **4-1.4(a)** [A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.]; **4-1.4(b)** [A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.]; **4-1.5(a)(2)** [An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly excessive when (2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a non-client party, or any court, as to either entitlement to, or amount of, the fee.];

**4-7.4(a)** [Except as provided in subdivision (b) of this rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. A lawyer shall not permit employees or agents of the lawyer to solicit in the lawyer's behalf. A lawyer shall not enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this rule. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes (i) any written form of communication directed to a specific recipient and not meeting the requirements of subdivision (b) of this rule, and (ii) any electronic mail communication directed to a specific recipient and not meeting the requirements of subdivision (c) of rule 4-7.6.]; **4-8.4(c)** [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation...]; and **4-8.4(g)(1)** [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors.].

**IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:**

I recommend that respondent receive a 91-day rehabilitative suspension. As a condition precedent to respondent's reinstatement to the active practice of law, respondent shall pay restitution in the amount of \$500 to his client, Mr. Willie Harris. Respondent shall also be ordered to pay the costs in this matter.

I have based my recommendation upon my review of the applicable case law and the applicable Florida Standards For Imposing Lawyer Sanctions.

I believe that that a 91-day rehabilitative suspension, restitution in the amount of \$500, and payment of The Florida Bar's costs in this matter meet the Court's criteria for an appropriate sanction: it is sufficient to protect the public from unethical conduct, it has a deterrent effect, and it is still fair to respondent. The Florida Bar v. Pahules, 233 So.2d 130,132 (Fla. 1972).

**V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:**

I considered the following personal history and prior disciplinary record of respondent, to wit:

A. Personal History of Respondent:

Age: 47

Date Admitted to the Bar: April 14, 1998

B. Aggravating Factors: 9.22

(b) dishonest or selfish motive;

(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;

(i) substantial experience in the practice of law.

C. Mitigating Factors: 9.32

(a) lack of a prior disciplinary record.

D. Prior Discipline: None

**VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:**

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

A. Grievance Committee Level Costs:		
1. Court Reporting Costs	\$	-0-
2. Bar Counsel Travel Costs	\$	-0-
B. Referee Level Costs:		
1. Court Reporting Costs	\$	100.00
2. Bar Counsel Travel Costs	\$	-0-
C. Administrative:		\$ 1,250.00
D. Miscellaneous Costs:		
1. Investigators Expenses	\$	525.65
2. Witness Fees	\$	-0-
3. Copy Costs	\$	-0-
4. Auditor Costs	\$	-0-
TOTAL ITEMIZED COSTS:		<u>\$ 1,875.65</u>

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.

Dated this 23rd day of February, 2010.

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CHERYL J. ALEMÁN, Referee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular U.S. mail to the following: STAFF COUNSEL, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; and ALAN ANTHONY PASCAL, Bar Counsel, The Florida Bar, Lakeview Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323; and DWAYNE BISFORD JOHNSON, respondent, at his record bar address of 733 Cypress Drive, Apt. A., Lake Park, Florida 33403 on this 2nd day of March, 2010.

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Miranda Roberts, Judicial Assistant for:  
CHERYL J. ALEMÁN, Referee