

SUPREME COURT OF FLORIDA

The Florida Bar v. Jean M. Picon

205 So. 3d 759 (Fla. 2016) · No. SC15-385 · Decided December 8, 2016

SUMMARY

The Supreme Court of Florida reviewed a referee’s findings that Jean M. Picon violated several Rules Regulating the Florida Bar through repeated client neglect, failures to appear, disobedience of court directives, and conduct prejudicial to the administration of justice. The court approved the findings of guilt but increased the recommended discipline from a ninety-one-day suspension to a one-year suspension, effective nunc pro tunc, and awarded the Florida Bar \$6,699.01 in costs.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Labarga, C.J.; Pariente, J.; Lewis, J.; Quince, J.; Canady, J.; Polston, J.; Perry, J.
JURISDICTION	Florida
DECIDED	December 8, 2016
DOCKET	SC15-385
DISPOSITION	other
PROCEDURAL POSTURE	Picon petitioned for review of a referee's report finding professional misconduct and recommending a ninety-one-day suspension. The Supreme Court of Florida reviewed the referee's report, findings of fact, recommendations of guilt, and recommended discipline.
STANDARD OF REVIEW	The Court does not reweigh a referee's factual findings when they are supported by competent, substantial evidence and will not substitute its judgment for that of the referee. Review of recommended discipline is broader because the Court has ultimate responsibility to impose the appropriate sanction, although it generally will not second-guess a recommendation supported by existing case law and the Florida Standards for Imposing Lawyer Sanctions.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Florida
PARTIES	Jean M. Picon v. The Florida Bar

TOPICS

appellate procedure

standard of review

preservation of error

criminal procedure

remedies

PRACTICE AREAS

attorney discipline

professional responsibility

legal ethics

appellate procedure

criminal procedure

QUESTIONS PRESENTED

1. Whether the referee's report was legally sufficient and reflected independent decision-making.
2. Whether the referee's factual findings were supported by competent, substantial evidence.
3. Whether Picon's conduct violated Rules Regulating the Florida Bar 4-1.1, 4-1.3, 4-3.4(c), and 4-8.4(d).
4. Whether Picon preserved challenges concerning the referee's consideration of her disciplinary record and the proposed report.
5. Whether a ninety-one-day suspension was an appropriate sanction or whether a more severe suspension was warranted.

HOLDINGS

1. A referee may adopt one party's proposed report, including substantially or verbatim, so long as the record demonstrates that the referee exercised independent decision-making. The referee's report need not comport with statements made during the disciplinary hearing.
2. Issues not first raised before the referee are not preserved for review by the Supreme Court.
3. When a referee's factual findings are supported by competent, substantial evidence, the Court will not reweigh the evidence or substitute its judgment for that of the referee.
4. Demonstrated neglect of key client matters, including repeated failures to attend proceedings and attend to client cases, violates the duties of competent representation and reasonable diligence and promptness.
5. A lawyer violates Rule 4-3.4(c) by knowingly disobeying an obligation imposed by a tribunal when the lawyer has actual knowledge of the court's directive or scheduled proceeding.
6. A one-year suspension was warranted rather than the referee's recommended ninety-one-day suspension because Picon committed multiple and cumulative acts of client neglect, caused substantial harm, and had an extensive prior disciplinary record.

KEY QUOTATIONS

"A referee is not precluded, however, from adopting one party's proposed report of referee if the record reflects that the referee exercised independent decision-making." (764)

"If a referee's findings of fact are supported by competent, substantial evidence in the record, this Court will not reweigh the evidence and substitute its judgment for that of the referee." (767)

"In reviewing a referee's recommended discipline, the Court's scope of review is broader than that afforded to the referee's findings of fact because, ultimately, it is the Court's responsibility to order the appropriate sanction." (770)

“However, considering the multiple acts of client neglect committed by Picon, the harm caused to her clients, and her extensive prior disciplinary record, we believe that a ninety-one-day suspension is not appropriate and that a more severe sanction is warranted.” (771)

FACTUAL BACKGROUND

As counsel of record in three criminal cases, Picon repeatedly failed to appear timely for proceedings, failed to comply with a court directive to file a pretrial motion, and failed to attend a scheduled hearing after receiving notice. Her conduct resulted in contempt sanctions, a client's five-day incarceration after issuance of a bench warrant, disruption of court proceedings, presentation of incorrect information concerning probation compliance, and a client's being permitted to proceed pro se. Picon also frequently failed to notify courts and opposing counsel of scheduling conflicts and was difficult to reach.

PROCEDURAL HISTORY

The Florida Bar filed a disciplinary complaint in February 2015 concerning Picon's conduct as counsel in three criminal cases. After a hearing, the referee found violations of four Bar Rules and recommended a ninety-one-day suspension and costs. Picon sought review, and the Supreme Court issued an order to show cause why a more severe sanction should not be imposed. The Court approved the referee's factual findings and recommendations of guilt, disapproved the recommended discipline as too lenient, and imposed a one-year suspension effective nunc pro tunc to July 30, 2016.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. The Court imposed a one-year suspension effective nunc pro tunc to July 30, 2016; required compliance with Rule Regulating the Florida Bar 3-5.1(h); prohibited acceptance of new business until reinstatement; and entered judgment for \$6,699.01 in costs.

CASES CITED

- Picon v. State, 149 So. 3d 35 (Fla. 5th DCA 2014) (table)
- Fla. Bar v. Barrett, 897 So. 2d 1269, 1273 (Fla. 2005)
- Fla. Bar v. Cramer, 678 So. 2d 1278, 1279 (Fla. 1996)
- Fla. Bar v. Miller, 863 So. 2d 231, 236 (Fla. 2003)
- Fla. Bar v. Frederick, 756 So. 2d 79, 86 (Fla. 2000)
- Fla. Bar v. Jordan, 705 So. 2d 1387, 1390 (Fla. 1998)
- Fla. Bar v. Shoureas, 913 So. 2d 554, 557-58 (Fla. 2005)
- Fla. Bar v. Centurion, 801 So. 2d 858, 860 (Fla. 2000)
- Fla. Bar v. Committe, 136 So. 3d 1111, 1115 (Fla. 2014)
- Fla. Bar v. Anderson, 538 So. 2d 852, 854 (Fla. 1989)

- Fla. Bar v. Temmer, 753 So. 2d 555, 558 (Fla. 1999)
- Fla. Bar v. Walkden, 950 So. 2d 407, 410 (Fla. 2006)
- Fla. Bar v. Cimbler, 840 So. 2d 955, 956-60 (Fla. 2002)
- Fla. Bar v. Roberts, 689 So. 2d 1049, 1051 (Fla. 1997)
- Fla. Bar v. Gass, 153 So. 3d 886, 888-93 (Fla. 2014)
- Fla. Bar v. Picon, 975 So. 2d 430 (Fla. 2008) (table)
- Fla. Bar v. Picon, 61 So. 3d 1114 (Fla. 2011) (table)
- Fla. Bar v. Picon, 129 So. 3d 1070 (Fla. 2013) (table)

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