

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

PAUL ROGERS KENNEDY,

Respondent,

Supreme Court Case  
No. SC-

The Florida Bar

File Nos. 2011-51,481(15E)  
2011-51,454(15E), 2011-51,634(15E),  
2011-51,665(15E), 2011-51,682(15E),  
2011-51,706(15E), 2011-51,738(15E),  
2011-51,836(15E), 2011-51,884(15E),  
2011-51,885(15E), 2011-51,886(15E),  
2011-51,887(15E), 2011-51,888(15E),  
2012-50,093(15E), 2012-50,181(15E),  
2012-50,256(15E), 2012-50,258(15E),  
2012-50,262(15E), 2012-50,274(15E),  
2012-50,307(15E), 2012-50,365(15E),  
2012-50,366(15E), 2012-50,438(15E),  
2012-50,442(15E), 2012-50,450(15E),  
2012-50,451(15E), 2012-50,507(15E),  
2012-50,550(15E), 2012-50,638(15E),  
2012-50,639(15E), 2012-50,660(15E),  
2012-50,662(15E), 2012-50,701(15E),  
2012-50,714(15E), 2012-50,900(15E),  
2012-50,933(15E), 2012-51,027(15E),  
2012-51,107(15E), 2012-51,108(15E),  
2012-51,109(15E), 2012-51,110(15E),  
2012-51,155(15E), 2012-51,178(15E),  
2012-51,205(15E), 2012-51,305(15E),  
2012-51,328(15E), 2012-51,425(15E),  
2012-51,431(15E), 2012-51,474(15E),  
2012-51,649(15E), 2012-51,758(15E),  
2013-50,248(15E), 2013-50,546(15E)

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## GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned respondent, Paul Rogers Kennedy, and files this Guilty Plea pursuant to R. Regulating Fla. Bar 3-7.9(a).

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.

2. The respondent is currently the subject of the Florida Bar disciplinary matters listed above. Respondent tenders this Plea with full knowledge of all rights afforded to respondents in disciplinary proceedings by the Rules Regulating The Florida Bar.

3. The respondent is acting freely and voluntarily in this matter, and tenders this Plea without fear or threat of coercion. Respondent is not acting under duress nor is he laboring under any physical or mental infirmity which would preclude him from knowingly and intelligently executing and submitting this Plea. Respondent has chosen to represent himself throughout these proceedings.

4. Respondent acknowledges that he has been afforded all procedural and substantive due process guarantees regarding these disciplinary proceedings, and that for purposes of tendering this Guilty Plea for Consent Judgment, respondent hereby waives any objections relative to the denial of same. Further, respondent specifically waives his right to consideration by a grievance

  
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committee as provided for by Rule 3-7.4, Rules of Discipline, and hereby stipulates that probable cause for further disciplinary proceedings exists as to the files referenced above.

5. The disciplinary measures to be imposed upon the respondent are as follows:

- A. Respondent shall be suspended for a period of 18 months.
- B. Respondent shall pay The Florida Bar's costs in this matter.

6. Respondent acknowledges that, unless waived or modified by the Supreme Court on motion of the respondent, the court order accepting this Plea will contain a provision that prohibits the respondent from accepting new business from the date of the order or opinion and shall provide that the suspension is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients.

7. Respondent admits to violations of the Rules Regulating The Florida Bar as set forth herein and based on the following facts, which he admits are true and accurate.

8. Respondent was admitted to The Florida Bar on November 21, 2002. At that time, respondent was in the process of obtaining his L.L.M. in tax law from

  
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the University of Miami. Respondent graduated from the L.L.M. program in the spring of 2003.

9. In about March 2003, respondent formed Paul Rogers Kennedy, P.A. to engage in the practice of law.

10. Respondent worked for a number of law firms but beginning in May of 2005, he worked on his own, primarily out of his home in Delray Beach, Florida.

11. In early 2010, respondent attended a reception for the Dean of the University of Miami law school. At that time, respondent was interested in building a tax controversy practice. Non-lawyer Edward Cherry introduced himself to respondent and informed respondent that he was in the process of developing a lawyer referral service.

12. Over the subsequent months, respondent had a number of contacts with Edward Cherry and Cherry's associate, Larry Diodato. Cherry and Diodato were involved in the operation of The Center for Legal Justice, LLC, a for-profit lawyer referral service (hereinafter "the Center"). The Center was registered with The Florida Bar as a private lawyer referral service on or about August 16, 2009. The Center remained registered with the Bar until about December 18, 2011 when the Bar deregistered the Center, because of its improper activities.

  
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13. Although respondent was interested in building a tax controversy practice, Cherry and Diodato eventually informed respondent that they could not generate client referrals in that area and suggested that respondent accept client referrals in the area of timeshare resale fraud.

14. In July 2010, respondent and the Center entered into a Lawyer Referral Agreement. Diodato signed the agreement as the Center's manager.

15. Beginning in about September 2010, respondent began accepting referrals from the Center in the area of timeshare resale fraud. Respondent also began utilizing the services of a "center related" legal staffing company, Esquire Litigation Services (hereinafter "Esquire") to work on the referred files. Esquire was physically located in the same location as the Center and was supposed to provide all of the paralegal and legal assistant work for the files, which the Center referred to respondent.

16. When respondent first started taking cases from the Center, he had one part-time attorney working for him and a part-time paralegal. Previously, respondent worked out of his home up until October 2010 when he arranged for a formal office. Paul Rogers Kennedy, P.A. eventually grew to five lawyers in total including respondent. However, respondent was the sole shareholder and the managing attorney. Respondent was the only person authorized to sign fee agreements on behalf of the firm with respect to timeshare resale fraud matters.

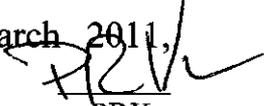
  
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Respondent also arranged for an answering service to answer his law firm telephone with a live person on a 24-hour basis and to route the call or a message to the appropriate individual. For the most part, a paralegal from Esquire would be responsible for speaking with the client.

17. The victims in the timeshare resale fraud cases generally had paid sums to various companies engaged in fraud, who claimed to have a buyer for the victims' timeshare properties. The amounts paid by the victims were often for fees which purportedly would be reimbursed at the closing of a sale of the timeshare property, but no closing ever materialized. These fees were generally paid by credit card. Respondent's approach was to contact the banks, which had issued his clients' credit cards, and request a refund or chargeback because of fraud on the part of the resale company.

18. According to respondent, he was told by both Cherry and Diodato that the Center did not solicit clients and that he was assured on numerous occasions that every potential client was an "opt-in" or "warm lead" (i.e. – a potential client who had responded to internet or radio advertising as opposed to someone who was cold-called).

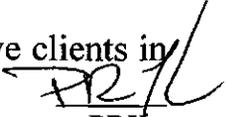
19. According to respondent, the Center referred approximately 1337 timeshare resale fraud cases to respondent and about an additional 311 cases in the area of consumer protection/consumer credit matters. In late March 2011,

  
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respondent stopped taking referrals in the area of timeshare resale fraud from the Center and on or about June 3, 2011, respondent severed his relationship with the Center and Esquire. Accordingly, respondent accepted referrals from the Center for about an eight-month period beginning in or about September 2010 and ending the beginning of June 2011. During the entire time that respondent accepted referrals from the Center, it was registered as a private lawyer referral service with the Bar.

20. Over time, respondent learned that the nonlawyers employed by the Center and Esquire had made verbal promises to clients that respondent would recover their money. Clients also complained that they had received a cold-call or been solicited by the Center.

21. Respondent recognizes that some of his referrals were obtained by the Center through prohibited solicitation in violation of the Rules Regulating The Florida Bar. Accordingly, respondent admits that he violated **Rule 4-1.5(a)** [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.] and **Rule 4-7.10(a)(1)** [A lawyer shall not accept referrals from a lawyer referral service, and it shall be a violation of these Rules Regulating The Florida Bar to do so, unless the service: (1) engages in no communication with the public and in no direct contact with prospective clients in

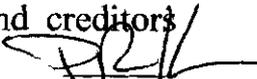
  
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a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer.].

22. Respondent further admits that he is in violation of certain Rules, listed below, concerning client communication. According to respondent, the staff at Esquire were under instructions to send copies of all documents on cases to the clients. However, numerous clients complained that they did not receive documents and that little work, if any, was ever performed on their matters. Over time, respondent learned that the clients were not kept reasonably informed about the status of the matters. Multiple clients also complained that their telephone calls to respondent's firm were not returned, and respondent recognizes that client calls in many instances were not properly returned, both before and after he severed his relationship with the Center and Esquire. Also, respondent recognizes that many clients were given verbal, unrealistic promises of a positive outcome on their cases.

23. Respondent admits that he violated **Rules 4-1.4(a)(3), (a)(4)** [A lawyer shall: (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information.] and **Rule 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.].

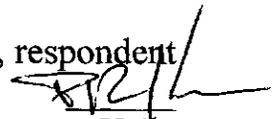
24. Further, respondent recognizes that in many instances, his office failed to promptly follow-up with either the client or with banks and creditors

  
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concerning outstanding correspondence. Respondent admits that he violated **Rule 4-1.3** [A lawyer shall act with reasonable diligence and promptness in representing a client.] and **Rule 4-5.3(c)** [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.].

25. The agreement between the Center and respondent did not detail the amount of the referral fee. Representatives of the Center and respondent met on a frequent basis, and the Center would request a specific amount due. In hindsight, respondent recognizes that the Center was charging him approximately twenty percent of the fee paid by the client. The fee paid to Esquire was approximately fifty percent of the fee paid by the client. Respondent admits that by the above payments he violated **Rule 4-5.4(a)** [A lawyer or law firm shall not share legal fees with a nonlawyer.] and **Rule 4-7.10(a)(2)** [A lawyer shall not accept referrals from a lawyer referral service, and it shall be a violation of these Rules Regulating The Florida Bar to do so, unless the service: (2) receives no fee or charge that constitutes a division or sharing of fees, unless the service is a not-for-profit service approved by The Florida Bar pursuant to chapter 8 of these rules.].

26. By the time respondent paid the Center, Esquire and his firm overhead and given a significant amount of client cancellations and chargebacks, respondent

  
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lost money. As a result, respondent had to terminate the employment of all the attorneys and paralegals working for him. Respondent cancelled the telephone answering service because he could no longer afford it. Respondent is working on his own to resolve the remaining cases.

27. Most of the files covered by this Guilty Plea for Consent Judgment result from complaints filed by timeshare resale clients who were referred to respondent by the Center. Additionally, some files are from consumer protection/consumer credit clients and one file, No. 2012-51,027(15E), stemmed from a complaint from Edward Cherry. Mr. Cherry complained, in part, that respondent did not fully compensate the Center for referrals which had been made to him.<sup>1</sup>

28. Respondent regrets having made the mistakes referenced in this plea for which he assumes full responsibility, and by this Guilty Plea for Consent Judgment apologies to his colleagues, his clients, and The Florida Bar.

29. While respondent believes that Edward Cherry and Larry Diodato used him in order to enrich themselves, respondent admits that as the attorney, he is responsible for his own mistakes and misconduct.

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<sup>1</sup>The amount of compensation due the Center and whether or not the Center or respondent breached their contractual obligations, particularly in light of the numerous client complaints concerning solicitation, are civil issues between the Center and respondent.

  
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30. With respect to prior discipline, respondent failed to timely respond to the investigative inquiries promulgated by The Florida Bar in four of the instant cases. By order dated February 2, 2012, the Supreme Court of Florida imposed a public reprimand. Other than that order, respondent has no other prior discipline. Further, respondent states that he has a general reputation among his friends and colleagues of being a good person.

31. In further mitigation of his conduct, respondent has attempted to make full and free disclosure to the Bar regarding these matters.

32. Respondent understands that this Guilty Plea for Consent Judgment must be reviewed by The Florida Bar Board of Governors and the Supreme Court of Florida who are not required to accept same.

33. Respondent understands that his statements and admissions herein shall have full force and effect regardless of any subsequent action taken by the Board of Governors and the Supreme Court of Florida.

34. Respondent shall reimburse the Clients' Security Fund if payments are made by the Fund as a result of respondent's conduct, and respondent shall make such reimbursement in full prior to any application for reinstatement.

35. If this plea is approved, then the respondent agrees to pay all reasonable costs associated with this case pursuant to R. Regulating Fla. Bar 3-7.6(q), which costs are currently in the amount of \$8,436.30 as indicated below:

  
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Administrative Costs	\$1,250.00
Court Reporter (7/16/2012 Deposition)	\$1,180.00
Court Reporter (8/21-22/2012 Deposition)	\$1,957.50
Investigative Costs	<u>\$4,048.80</u>
<b><u>TOTAL</u></b>	<b>\$8,436.30</b>

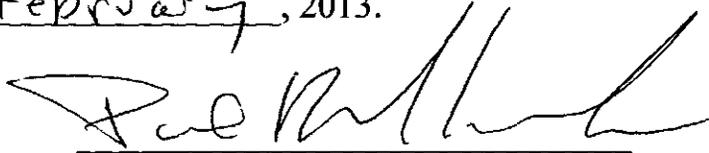
These costs are due within 30 days of the court order. Respondent agrees that if the costs are not paid within 30 days of the court's order becoming final, the respondent shall pay interest on any unpaid costs at the statutory rate. Respondent may also seek to enter into a payment plan with the approval of the Board of Governors. Respondent further agrees not to attempt to discharge the obligation for payment of the Bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to R. Regulating Fla. Bar 1-3.6 if the cost judgment is not satisfied within 30 days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

36. This Guilty Plea for Consent Judgment applies to the file numbers listed herein. However, any future complaints received regarding the Center and similar misconduct will be subsumed by this consent judgment.

37. Should the Supreme Court of Florida approve this Guilty Plea for Consent Judgment, respondent agrees and acknowledges that same shall not be the subject of future modification.

  
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Dated this 4 day of February, 2013.

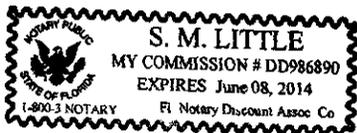


Paul Rogers Kennedy  
323 NE 6th Avenue, Suite C  
Delray Beach, FL 33483-5516  
(561) 445-4235  
Florida Bar ID No. 615226  
[paul@prkpa.com](mailto:paul@prkpa.com)

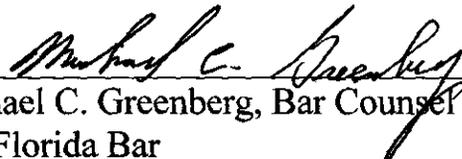
Sworn to and subscribed before me this 11<sup>th</sup> day of February, 2013.

STATE OF FLORIDA:  
COUNTY OF Palm Beach:

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of February, 2013 by Paul Rogers Kennedy, who is personally known to me and/or who has produced NA as identification, and who did/did not take an oath.

  
\_\_\_\_\_  
NOTARY PUBLIC  
State of Florida

Dated this 15<sup>th</sup> day of February, 2013.

  
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Michael C. Greenberg, Bar Counsel  
The Florida Bar  
1300 Concord Terrace, Suite 130  
Sunrise, Florida 33323  
(954) 835-0233  
Florida Bar ID No. 487678  
[mgreenberg@flabar.org](mailto:mgreenberg@flabar.org)