

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

WILLIAM T. FUSSELL,

Respondent.

CASE NO. 60,642
(TFB NO. 13A80H33)
13A80H05)
13A80H78)

FILED
SID J. WHITE
DEC 21 1983
CLERK, SUPREME COURT
By
Chief Deputy Clerk

REPORT OF REFEREE

1. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the article XI of the Integration Rule of The Florida Bar. The enclosed pleadings, orders, transcripts and exhibits are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar	<u>Steve Rushing</u>
	<u>Diane V. Lutes</u>
For The Respondent	<u>Terrence Moore</u>

- II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged: After considering all the pleadings and evidence before me, I find:

COUNT I

13A80H33
Ronald Harper

1. That on or about February 27, 1979, respondent was retained by Mr. Ronald J. Harper for \$5,000.00 to file a Motion for Post Conviction Relief, which respondent failed to file until September 3, 1980.

2. At a 13A Grievance Committee hearing on January 15, 1980, which was held pursuant to a letter Mr. Harper sent to The Florida Bar in June, 1979, complaining of the lack of action by respondent. Respondent told the committee that he intended to fulfill his obligation to represent Mr. Harper in a timely and competent manner.

3. Even after his appearance before the committee, respondent failed to file any Motion for Post Conviction Relief, and on August 16, 1980, Mr. Harper wrote respondent dismissing him as his attorney in the Post Conviction proceeding.

4. Only after having been dismissed as Mr. Harper's attorney, on September 3, 1980, did respondent file the Motion for Post Conviction Relief for Mr. Harper.

COUNT II

13A80H05
Johnny C. Newman

1. On or about December 1977, respondent agreed to represent Johnny C. Newman in a criminal case No. 78-3217 in the Circuit Court for Hillsborough County.

2. During the course of this representation, respondent learned that Mr. Newman had cooperated with the Tampa Police Department by supplying information to them.

3. Respondent, without the consent of his client, divulged the fact that Mr. Newman had supplied confidential information to the Tampa Police Department to Kathleen K. Mast, a former girlfriend of Mr. Newman's brother.

COUNT III

13A80H05
Johnny Newman

1. That on or about September 1, 1978, respondent assured Mr. Newman that he would file a Motion for Reduction of Sentence.

2. After no action from respondent, Mr. Newman filed a pro se Motion for Reduction of Sentence on January 2, 1979, which was denied.

3. After respondent had taken no action on filing the Motion for Reduction of Sentence, Mr. Newman filed another pro se Motion to Vacate and Set Aside the Judgment on or about May 29, 1979 which was denied.

4. On or about June 26, 1979, Mr. Newman initiated a complaint with The Florida Bar against respondent for his lack of action in the matters.

5. After respondent had taken no substantial action in the case, Mr. Newman dismissed respondent from the case on September 20, 1979.

6. No Motion for Reduction of Mr. Newman's sentence was ever filed by respondent.

COUNT IV

13A80H78
Amanda Morales

This count was not supported by the pleadings or the evidence, and is therefore dismissed.

III. Recommendation as to whether or not the Respondent should be found guilty: I recommend that the respondent be found guilty and specifically that he be found guilty of the following violations of the Code of Professional Responsibility:

COUNT I

1. DR 1-102(A)(6)
2. DR 6-101(A)(3)
3. DR 7-101(A)(2)

COUNT II

1. DR 4-101(B)(1)

COUNT III

1. DR 1-102(A)(4)
2. DR 6-101(A)(3)
3. DR 7-101(A)(2)

IV. Recommendation as to Disciplinary Measures to be Applied:
I recommend that the respondent be suspended for two (2) years from the practice of law.

V. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 11.06(9)(a)(4), I considered the following personal history and prior disciplinary record of the respondent to wit:

- (1) Date admitted to Bar: 1950
- (2) Prior Discipline: The Florida Bar v. Fussell, 189 So.2d 881 (Fla.1966). Respondent received a six-month suspension and was ordered to pay costs for making a knowingly false statement in an application for a home improvement loan which resulted in a felony conviction. The Florida Bar v. Fussell, Case No. 13-73-25. A private reprimand was administered in 1974 for neglect of a legal matter. The Florida Bar v. Fussell, Case No. 13A78003. Respondent received a private reprimand in 1979 for influencing a client to invest in an enterprise in which the respondent had an interest. The Florida Bar v. Fussell, 390 So.2d 69 (Fla. 1980). Respondent received a public reprimand for being several months late in returning unearned fees to a former client.
- (3) Mitigation: The wide spread of the violations over the years, respondent's health problems, respondent's testimony at the hearing as to his character and years of service.

VI. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar:

Cost certified by Bar Counsel as expended by The Florida Bar (See attached Amended Statement of Costs). \$ 1,281.33

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the 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 20 day of December, 1983.



HONORABLE ALLEN C. ANDERSON
Referee

Copies furnished to:
Terrence Moore, Respondent's Counsel
Steve Rushing, Branch Staff Counsel
Stanley A. Spring, Staff Counsel
John F. Harkness, Jr., Executive Director