62,660

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

ROBERT W. BOWLES, JR.,

Respondent.

_____/

CONFIDENTIAL

CASE NO. 62,660

09A82C15
09A82C40
09A82C45
09A82C47
09A82C54



REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of The Florida Bar hearings were held on November 21, 1983 and on May 2, 1984. Exhibits, all of which are forwarded to the Supreme Court of Florida with this report, constitute the record in the case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: John B. Root, Jr.

For The Respondent: Laurence J. Pino

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, pertinent portions of which are commented upon below, I find:

As to Count I

The Florida Bar did not prove the allegations contained in Count I by clear and convincing evidence, therefore, I make no specific findings of fact as to Count I.

As to Count II

On or about January 5, 1982, Mrs. Audrey L. Johnson retained the respondent to obtain a dissolution of marriage. He was selected because of his newspaper advertisement which advertised divorces for $75 plus costs. There was no indication that additional fees were necessary. She thought that fee was for the entire legal task that she desired.

However, the contract of employment provided for a total fee of $400 and costs of $106, which included child custody, restraining order, name change and something called "Temp. Matters." She paid $300 at that time in part payment of fee and costs. The contract also contained a provision that fees were earned when paid and were nonrefundable.

Mrs. Johnson changed her mind in regard to the divorce and notified respondent's office of that fact by telephone early on the morning of January 6, 1982 and asked for a refund of her money. She was told that she would receive a refund. (Transcript, pp. 69-70). No work had been done on the divorce by respondent.

Mrs. Johnson found it necessary to call respondent's office several times before she finally received a check in the amount of $56 as a refund.

There was no dissolution of marriage complaint filed in this case, no sheriff's service was made to any party although Mrs. Johnson, under the terms of the contract, had provided $53 in costs for a filing fee, $3 for a copy of a final judgment document and sheriff's service fee of $50. No accounting was made to her for the other portion of her $300 partial payment.

The respondent attorney did advertise in a daily newspaper that he would obtain a divorce for clients for $75 without elaboration as to whether this fee was for a contested or uncontested divorce, and whether there was such other factors as child custody or property agreements. Such advertising was false, misleading and deceptive in violation of Disciplinary Rule 2-101(A).

Such an advertisement also constitutes a material misrepresentation of fact to the public which creates an unjustified expectation that any person can retain the respondent and obtain a divorce for $75 regardless of whether or not the divorce was contested, or whether there were child support or custody problems and whether or not there were property division problems and omits a material fact necessary to make the advertisement not misleading, all in violation of Disciplinary Rule 2-101(B)(1), (2) and (3).

The use by the respondent of an employment contract providing that fees are earned when paid and are nonrefundable does not insulate the respondent from charges that a fee is clearly excessive when little or no work is accomplished on behalf of the client. Such a clause constitutes an agreement for a clearly excessive fee under the circumstances in this case, in violation of Disciplinary Rule 2-106(A).

By failing to properly account to his client for her funds including fees and costs and by failing to deliver the fees to which Mrs. Johnson was properly entitled promptly, respondent violated Disciplinary Rule 9-102(B)(3) and (4).

By failing to account for and return funds rightfully belonging to Mrs. Johnson which were or should have been held in trust for costs of the sheriff's service and unused fees the respondent has violated Integration Rule 11.02(4).

As to Count III

On or about September 23, 1981, Mrs. Judith W. Shipke, now Mrs. Judith Reed, retained the respondent to obtain an uncontested dissolution of marriage including a child custody agreement.

She paid respondent the sum of $340 for his services and the contract of employment specified it was to be an "uncontested expedited divorce." Mrs. Reed thought that meant that the divorce was to be obtained promptly. She informed the respondent that she wanted to have the dissolution before the end of the calendar year for tax reasons.

The petition for dissolution and child custody affidavit and financial affidavits of both parties were not filed until November 23, 1981, two months after respondent was paid for an "expedited dissolution." A property settlement agreement was not filed until December 10, 1981. A final hearing in the matter was scheduled for December 22, 1981.

When Mrs. Reed and her witness arrived at the courthouse in Lake County for her hearing, the respondent was not present and the Special Master who was to hear the case had not been properly notified of the hearing. No hearing was held that day and the respondent never appeared.

Another hearing was scheduled for December 29, 1981. Mrs. Reed and her witness again arrived at the courthouse for the

hearing. Again the respondent did not appear. Without notice to his client, he sent a substitute counsel.

Unfortunately, the hearing could not be held because respondent had failed to cause an answer and waiver to be filed on behalf of Mrs. Reed's husband even though a properly signed one was timely returned to him on behalf of the husband. The husband was not represented by a counsel.

As a consequence, no divorce was obtained by Mrs. Reed prior to the end of the calendar year 1981 as she had expressly instructed respondent to do. When the respondent billed her for another $175 and sought payment before proceeding with the divorce, Mrs. Reed went on to obtain a divorce herself without the assistance of the respondent or any other attorney.

The attorney/client employment contract in this case contained a provision that respondent guaranteed that his work "is legally correct" and that he would refund all fees paid him if the divorce failed to become final because of any errors in his work.

In view of the above findings of fact, the respondent neglected Mrs. Reed's case in violation of DR 6-101(A)(3).

The respondent failed to seek the lawful objective of his client to a complete dissolution of marriage prior to the end of the calendar year, thereby violating DR 7-101(A).

He failed to carry out a contract of employment entered into with his client to obtain a dissolution of marriage thereby violating DR 7-101(A)(2).

He damaged his client by failing to assist her in a dissolution of marriage prior to the end of her tax year as he was paid to do in violation of 7-101(A)(3).

As to Count IV

Mrs. Bertha Kipp employed the respondent on or about October 29, 1981, to prepare deeds transferring ownership of certain real property from herself and her son, Stan H. Kipp, as joint tenants, to her daughter, Jean Marie Barron.

Mrs. Kipp paid respondent a fee of $70 which included $15 for consultation, $20 for the deeds, and $35 for transferring title to a house trailer located on the lot.

The deeds were improperly prepared. The warranty deed granted the property to Mrs. Kipp's daughter and her husband, instead of her daughter alone. It recited that the grantor was Bertha Kipp and that the grantees were "Jean Marie Barron (her daughter) and Antonio Barron (her son-in-law)," an improper and incompetent way of designating the grantees, failed to cite any consideration, failed to indicate Mrs. Kipp's marital status and provided a notarization form for Jean Marie Barron and Antonio Barron, the grantees, acknowledging that they had executed the deed. The quit claim deed prepared for Stan Kipp's signature was also drafted to grant the property to Mrs. Kipp's daughter and her husband. It was to be executed in a foreign state. There were no instructions for proper execution and it recites his residence incorrectly as Orange County, Florida.

It was Mrs. Kipp's intention to put the property in the name of her daughter so that it could be later sold for Mrs.

Kipp's benefit. (Bar Exhibit 5). It was not considered a gift to the daughter and her daughter's husband, and there was no intent that her husband should benefit in any way. In preparing a deed putting real property of Mrs. Kipp in the name of her daughter and her daughter's husband as tenants by the entirety under these circumstances, the respondent was jeopardizing his client's desires that the property be sold for her benefit. If Mrs. Kipp's daughter were to die before the property was sold, the daughter's husband, as a tenant by the entirety, would automatically become the owner of the property without any legal obligation to Mrs. Kipp to restore the property to her or to sell it for her benefit. This was not the desire of Mrs. Kipp as clearly expressed to respondent on October 29, 1981. Respondent's notes on that interview, Bar Exhibit 5, clearly show his intent to convey the property to Mr. and Mrs. Barron, contrary to Mrs. Kipp's best interests.

Respondent failed to act competently in advising his client in the preparation of his client's deeds in violation of DR 6-101(A)(1).

Respondent handled a legal matter for his client without preparation adequate to the circumstances in violation of DR 6-101(A)(2).

The respondent testified that he failed to review the deeds before they were given to Mrs. Kipp to take elsewhere for execution. (Transcript, P. 206). He neglected the legal matter entrusted to him by his client and subsequently failed to return Mrs. Kipp's fee, in violation of DR 6-101 (A)(3).

As to Count V

On or about January 12, 1981, Mrs. Sandra LeMand, now Mrs. Sandra Meredith, retained respondent to obtain an uncontested dissolution of marriage, joint custody of her children with her husband, and an uncontested property settlement with certain terms pre-agreed upon between herself and her husband.

Mrs. Meredith specifically selected the respondent's law firm for this service because of a newspaper advertisement in which divorces were advertised for $55 plus costs.

Instead of the advertised fee of $55 the total fee quoted Mrs. Meredith was $145 plus $45.50 costs. This included $75 for a property settlement, an initial consultation fee of $15, which was not explained in the advertisement, and a filing fee of $45.50.

On March 5, 1981, Mrs. Meredith discovered that none of the paperwork had been accomplished. Subsequently, when Mrs. Meredith received the petition for dissolution and an answer and waiver for her husband's signature the documents had not been prepared in accordance with her instructions to respondent and were unacceptable to her. She sent the documents back unsigned. Later a new petition and answer and waiver were sent to her.

When Mrs. Meredith received a rough draft, with blanks to be filled in, of a property settlement agreement, she discovered that the terms were not in accordance with her instructions. She filled in the blanks and made other changes to conform

the agreement with her instructions and returned it to respondent.

Later, despite repeated promises to complete the paperwork promptly, it was not until July 30, 1981, six and one-half months after respondent had been retained, that the paperwork was received.

Subsequently, respondent billed Mrs. Meredith for an additional $220 for changes to the property settlement agreement which were only necessitated because respondent did not implement the specific instructions concerning the agreement given to him by Mrs. Meredith when he was first retained.

Mrs. Meredith then fired the respondent and refused to pay additional fees. Mrs. Meredith then went on and completed the dissolution of marriage herself without an attorney.

Respondent did not participate in the trial nor did he refund any of the fee for obtaining a divorce which had been paid.

The respondent in this count advertised in a false, misleading and deceptive manner that he would obtain a divorce for $55 plus costs, while knowing that in addition to that fee, there was an additional fee of $15 for the first consultation and that if custody or property agreements were necessary to the case that additional fees would be charged for the service. This violates DR 2-101(A).

In failing to state a material fact necessary to make the statement, in the light of all circumstances, not misleading,

to wit: that there would be an additional fee for the initial consultation and additional fees for child custody or property agreements, respondent has violated DR 2-101(B)(2).

Respondent created an unjustified expectation that a divorce could be obtained for a fee of $55 plus costs when there would usually be concomitant services for additional fees necessary such as for property settlement agreements and child support agreements. This violates DR 2-101(B)(3).

By advertising a fee for his service without disclosing such relevant variables and considerations that the advertisement would not reasonably be misunderstood or deceptive respondent herein has violated DR 2-101(B)(6)(c).

Respondent neglected his client's dissolution case, taking an unreasonable time to complete her case and failing to prepare properly and completely the property settlement agreements, the guidelines for which had been supplied him. This violates DR 6-101(A)(3).

The respondent failed to carry out a contract of employment which he entered into with his client by unreasonable delays and failure to abide by her instructions and desires in regard to the property settlement and failure to obtain the divorce promptly. This violates DR 7-101(A)(2).

III. Recommendations as to whether or not the Respondent should be found guilty: As to each count of the complaint I make the following recommendations as to guilt or innocence:

As to Count I

I recommend that the respondent be found not guilty of violating the Disciplinary Rules with which he was charged.

As to Count II

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and Disciplinary Rules of the Code of Professional Responsibility of The Florida Bar, to wit: Rule 11.02(4) of the Integration Rule of The Florida Bar; Disciplinary Rules 2-101(A), 2-101(B)(1), 2-101(B)(2), 2-101(B)(3), 2-106(A) and 9-102(B)(3) and 9-102(B)(4).

As to Count III

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility of The Florida Bar, to wit: Disciplinary Rules 6-101(A)(3); DR 7-101(A)(1); DR 7-101(A)(2) and DR 7-101(A)(3).

As to Count IV

I recommend that respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility of The Florida Bar, to wit: Disciplinary Rules 6-101(A)(1); 6-101(A)(2); and 6-101(A)(3).

As to Count V

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following

Disciplinary Rules of the Code of Professional Responsibility of The Florida Bar, to wit: Disciplinary Rules 2-101(A); DR 2-101(B)(2); DR 2-101(B)(3); DR 2-101(B)(6)(c); DR 6-101(A)(3); and DR 7-101(A)(2).

IV. Recommendation as to Disciplinary measures to be applied: As a result of my recommended findings of guilt described above, I recommend that the respondent be suspended from the practice of law for a period of eight months and thereafter until he shall prove his rehabilitation as provided in Rule 11.10(4); further, I recommend that he be ordered to pay the costs of these proceedings as detailed below; and in addition, I recommend that the respondent be ordered to make restitution by refunding all fees and unexpended expense money paid by complainants, Mrs. Judith W. Shipke, now known as Mrs. Judith Reed, in the amount of $293.00, and Mrs. Bertha Kipp, in the amount of $70.00.

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:

Age: 41
Date Admitted to Bar: June 10, 1968
Prior disciplinary convictions and disciplinary measures imposed therein:

a. On July 6, 1978, respondent received two private reprimands, as follows: (1) for an incident which arose in September, 1974 for representing both parties in connection with the sale of a business and improperly relinquishing to the seller's new attorney stock held in escrow.

(2) For an incident which arose in October, 1974, involving neglect of a client's legal affairs and then providing his client with an improperly pre-dated letter in an attempt to rectify the neglect.

Other personal data: I have thoroughly considered the deposition of Dr. Donald E. Mayfield which was admitted into evidence during the discipline hearing on this case on May 2, 1984 as a respondent exhibit. The deposition relates the course of respondent's health since 1980.

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

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| A. | Grievance Committee Level Costs | |
| 1. | Administrative costs | $ 150.00 |
| 2. | Transcript of grievance committee hrg. held 4/12/82 | 324.40 |
| B. | Referee Level Costs | |
| 1. | Administrative Costs | 150.00 |
| 2. | Transcript of referee hrg. held 3/19/84 | 710.35 |
| 3. | Transcript of telephone conference hrg. held 11/17/83 | 30.55 |
| 4. | Transcript of discipline hrg. held 5/2/84 | 190.00 |
| 5. | Bar Counsel's travel expenses for referee hrg. 5/2/84 | 20.39 |
| 6. | Copy of deposition of Dr. Mayfield held 5/1/84 | 67.20 |
| C. | Miscellaneous Costs | |
| 1. | Staff Investigator's expenses | 1,525.44 |
| | TOTAL ITEMIZED COSTS | $3,168.73 |

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 thirty 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 30th day of ~~June~~ JULY, 1984.

Ernest C. Aulls, Jr.,
Circuit Judge,
Referee

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