IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

TERRENCE E. ROSENBERG,

Respondent

Supreme Court Case No. 62,710
Florida Bar Case Nos. IIE8II05
and IIE8IM75

RESPONDENT'S REPLY BRIEF

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STATEMENT OF THE FACTS

Respondent takes issue with the statement of facts submitted by the Complainant, as to certain statements contained therein. The Complainant begins by referring to Exhibits 12, 14, 15, 17, 18 to show that the respondent took more than ten months to respond to the client's inquiries. This is inaccurate on its face, since Exhbits 12, 14, 15 are all letters from the respondent to his client, and do not involve any (10) months gap of time. If the complainant is referring to committee exhibits 12, 14, 15, 17, 18 then the gap is still only some 3 1/2 months, not over (10) months as the complainant would suggest.

The second erroneous reference is that the respondent caused a delay when the client lost the interrogatories that the respondent had sent it. The complainant refers to Exhibits 20, 26, 27, and 29 which can only be committee exhibit numbers. Exhibit 20 is a letter from the client asking for a status report, with noreference to the interrogatories. Exhibit 21, which the complainant omits reference to, is a letter from the respondent to the client from the respondent. Exhibit 26 is a letter asking for an additional set of interrogatories, Exhibit 27 makes no reference to the interrogatories, and Exhibit 29 is a letter from the client's new Washingto D.C. attorney asking about the interrogator has a penned in notation, "not so" where the question of the interrogatories comes up. The complai.nantmits Exhibits 21, 23, 24, 25, which are all letters to the client, from the respondent. The envelope which is attached to Exhibit 29, clearly shows that it was not received by the respondent, since it was sent to an incorrect address. It is interesting to note, as well, that the complainant fails to mention the notation from the office of the client which is attached to Exhibit 29, which clearly shows that the client had the interrogatories, and in March 1977, promised "I said I'd try to get him the interrogatories next week." On June 26, 1978, one and one-half years later, the answers were transmitted to the respondent, even though the notation , in the president of the client's own script said that they would be sent one week from sometime in March 1977. Exhibit 34 is another request from the respondent, on March 20, 1978 for the completed interrogatories. The case may have been dismissed for failure to provide the answers to the interrogatories rather than the non-resident cost bond

ARGUMENT

THE Complainant refers to the case fof Florida Bar v. Wagner, 212 So 770, 772(1968) to support its position. This case was a situation where an attorney did not misappropriate clients moneys, but failed to pay certain bills for the client that he held funds for payment of. The Supreme Court ruled that the respondent in that case should not be suspended, but only should have been reprimanded and should only pay 1/2 of the costs. In the Florida Bar v. Lancaster, 448 So 2d 1019(1984), the Supreme Court dealt with an attorney who had lied to the State attorney, told a witness to testified in a manner inconsistent with the whole truth, and pleaded nolo contendere. In Florida Bar v. Vernell, 374 So 2d 473(1978), the Florida Bar had prosecuted an attorney for cumulative misconduct, which the Supreme Court held was deserving of a more severe penalty that the referee had recommended. In the case of Florida Bar v. Stillman, 401 So 2d 1306(1981), the Florida Bar prosecuted an attorney who had been convicted of grand larceny. In the Florida Bar v. Hirsch, 359 So 2d 856 (1978) the Court was dealing with an attorney who had accepted payment and continued to practice law, after he had been suspended from the practice of law. Each of these cases involves a far more serious type of misconduct, and does not involve a record such as in the instant case, where at the very least the client had been negligent isin assisting his attorney, the respondent,to prepare the client's case, and his own failure to provide the necessary documentation, at the very least, was a strong mitigation factor in the respondent's guilt, if not a totally exculpatory act. The instant fact pattern, and the factors pointed out in this response to the complainant's brief, as well as the earlier papers filed by the respondent in this case, show that the referee had made some clearly erroneous conclusions. THE CASEs support the position that this honourable Court has the ultimate power and responsibility to both confirm or reject the referee's findings of guilt, and his recommended punishment.

The complainant refers to correspondence with the client, but fails to mention that the client had noted in March 1977 that he would eget the copies of the interrogatories answers out next week, in an obvious reference to a telephone call. The complainant totally avoids this conflicting point, and it is clear that the respondent and the client had some telephone communications, which makes the correspondence exhibits not outcome determinative of all communications between the client and the respondent. The complainant refers to the client's letter of July 20, 1977 asking for an extra set of the interrogatories, but omits the client's records mentioned above. There was a question as to whether the items in 36-42 from the client were ever received by the respondent. Proof of telephonic communication was submitted and entered into evidence at the grievance committeemeeting.

It is clear that the minimum housing violations that the respondent was convicted of do not affect his fitness to practice law. They all arose from the same event, the issue was heated and political and has yet to be resolved. It is very clear that the respondent would not have gone to the appellate lengths that he has gone to and continues to go to, if he had not sincerely believed in his innocence. The respondent was never convicted of any minimum housing violations before or after that case. It is not a valid position to say that this is any type of conduct that could be labeld' conduct that could be labeled as cumulative, since it arose from the same event.

The complainant states that the respondent did not learn from his prior private and public reprimand. The private reprimand dealt with the failure of the respondent to keep proper trust account records of his own money, basically, with no shortages, no moral turpitude, no expenditure of clients funds, miappropriation or the like. The public reprimand dealt with facts that were essentially admitted where the respondent failed to send copies of pleadings to counsel after he had filed a notice of appearance and nothing more and refused to plead to the case, and where the respondent had filed multiple appeals in a matter, which clearly did not delay the precedures in the lower Court. In no instance was there any case of moral turpitude, nor any instance of failure to properly represent a client, in fact, the only assertion that could have been made would have been overzealousness.

in fourteen years the respondent has never been sanctioned for any client-related misconduct, and the only sanctions that have been imposed deal with technical violations. The present case deals with a neglect of a client matter, but there are extenuating circumstances which either negate any neglect or mitigate any neglect on the part of the respondent. The minimum housing violations were assessed on the respondent for a building that he did not own and are unique in many ways, which has resulted in the lengthy appeal process which has consumed five years so far, and continues while the sentence is stayed by the United States SDistrict Court. The backround of the respondent does not portray an attorney who is remiss in his representation of his clients interests or who is guilty of any moral turpitude, dishonesting, cheating or misconduct of that nature.

CONCLUSION:

The respondent has not been guilty of acts which constitute neglect of a legal matter nor conduct which affects his fitness to practice law, but, at worst his conduct did not warrant the penalty sought to be imposed by the referee. He has never before or after been accused of neglect of a legal matter, never done an act which could have been considered moral turpitude, and never before or after been convicted of any minimum housing violations. Accordingly, the sanction suggested is excessive and an abuse of discretion on the party of the referee, and would serve no valid purpose.

I HEREBY CERTIFY that a true copy of the foreg ng was sent buby U.S. Mail on this 22 day of April, 1985, to the Floridr Bar, 444 Brickell Ave, Miami, Florida.

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