

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.
ROBERT J. WARD,
Respondent.

CONFIDENTIAL

Case No. 62,738
(TFB #06A82HF3)

and

Case No. 64,339
(TFB #06C83H70)

REC.
11-21-84
(Signature)

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, the following proceedings occurred: On March 12, 1984, respondent tendered and signed a Conditional Guilty Plea for Consent Judgment in exchange for the agreement of The Florida Bar to recommend that respondent be disciplined by a ninety (90) day suspension, plus one year probation with quarterly reports, and payment of costs. On August 2, 1984, a hearing was held before me as to discipline. The Complaints, the Conditional Guilty Plea and The Bar's recommendation as to discipline, all of which are forwarded to the Supreme Court of Florida with this report, constitute the record in this case.
- 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: The facts are as set forth in the Complaints filed by The Florida Bar. Respondent admitted to each count of these complaints through a guilty plea which can be found in the record. The body of the complaints filed by The Florida Bar are as follows:

06A82HF3

1. Respondent is, and all times hereinafter mentioned was, a member of The Florida Bar subject to jurisdiction and disciplinary rules of the Supreme Court of Florida.
2. In June, 1981, respondent was hired by Margie Graham, personal representative of the estate of her son, Harold Bruce Graham, who died May 11, 1981, to serve as attorney for the estate.
3. Despite the requests from Ms. Graham, respondent, as attorney for the estate's assets (as required by Chapter S. 733.604 Florida Statute), causing Ms. Graham to travel to Florida from Kentucky in order to appear in Pinellas County Probate Court on September 28, 1981. This appearance was necessary in order to prevent the estate from being fined for failure to file an inventory of assets.
4. As a result of his neglect in this matter, respondent has caused the estate unnecessary rental expenses in keeping a mobile home belonging to the deceased in a mobile home park while the inventory of assets was being prepared and filed.
5. On September 28, 1981, the day of the hearing in Pinellas County Probate Court, respondent finally did file the inventory of the estate's assets.

6. Respondent subsequently admitted to Ms. Graham that he had unnecessarily delayed in settling the estate; that his lack of action had caused additional expenses to the estate; and that he would reimburse the estate at least \$400.00 which he felt was the dollar amount which his delay had cost the estate. To date, respondent has failed to reimburse any of the \$400.00 to the estate, which he promised he would do.

7. Effective March 15, 1982, Ms. Graham was forced to hire a new attorney, since respondent had still not completed her son's estate.

8. By reason of the foregoing, respondent has violated Florida Bar Code of Professional Responsibility, Disciplinary Rules 1-102(A)(1) (violating a Disciplinary Rule); DR 6-101(A)(3) (neglecting a legal matter); and DR 7-101(A)(3) (prejudice or damage his client during the course of the professional relationship).

06C83H70

COUNT I

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

2. On or about April, 1981, Horace C. Mecomber retained respondent to bring suit against F. and M. Auto Services. Respondent filed a complaint in 1981 in Pinellas County but did nothing further on the case.

3. Mr. Mecomber spoke with respondent on numerous occasions. Each time, respondent informed his client that he was working on the case.

4. On February 7, 1983, the judge in this case filed a Notice of Intent to Dismiss for Failure to Prosecute. Respondent still did nothing. On March 7, 1983, an Order of Dismissal was entered by the Court. (Exhibit A)

5. Respondent did not pursue the case, did nothing even after the Notice of Intent to Dismiss was filed and did not communicate with his client about the case.

6. By reason of the foregoing, respondent has violated the Florida Bar Code of Professional Responsibility, Disciplinary Rule 1-102(A)(1) (violation of a disciplinary rule); DR 1-102(A)(6) (conduct which adversely reflects upon fitness to practice law); DR 6-101(A)(3) (neglect of a legal matter); and DR 7-101(A)(2) (failure to carry out a contract of employment).

COUNT II

7. Complainant realleges the matters set forth in Paragraph one, above.

8. In 1981, Mr. Mecomber hired respondent to incorporate Jo-Mac Enterprises, Incorporated. Mr. Mecomber paid respondent \$600.00 for his services.

9. Despite several attempts to contact respondent about the status of the incorporation, respondent failed to communicate with his client and failed to provide him with any corporate documents.

10. On or about July, 1982, Mr. Mecomber had his new attorney, Irwin N. Sperling, contact respondent regarding the corporate kit and papers. Respondent was able to locate only the kit, but not the articles of incorporation or any other documents.

11. On August 5, 1982, Mr. Sperling wrote to respondent requesting the Jo-Mac Enterprises, Incorporated corporate papers. As a result of this letter and a personal visit to respondent's office, Mr. Sperling was successful in obtaining the corporate seal and incomplete standard corporation book; however, Mr. Sperling received no articles of incorporation, by-laws, corporate charter, or other pertinent papers from respondent.

12. By reason of the foregoing, respondent has violated the Florida Bar Code of Professional Responsibility, Disciplinary Rule 1-102(A)(1) (violation of a disciplinary rule); DR 1-102(A)(6) (conduct which adversely reflects on fitness to practice law); DR 6-101(A)(3) (neglect of a legal matter); DR 7-101(A)(2) (failure to carry out a contract of employment); and DR 9-102(B)(4) (failure to deliver clients' property as requested).

COUNT III

13. Complainant realleges the matters set forth in Paragraph one, above.

14. On or about September, 1981, respondent represented Mr. Mecomber in a matter involving custody and back child support. The case was settled and a stipulation was entered modifying Mr. Mecomber's final dissolution of marriage.

15. Respondent failed to provide his client with a copy of the stipulation.

16. Mr. Mecomber was never informed as to the terms of the stipulated agreement. He learned of them only through the efforts of his new attorney who obtained a copy from the court file.

17. By reason of the foregoing, respondent has violated Florida Bar Code of Professional Responsibility, Disciplinary Rule 1-102(A)(1) (violation of a disciplinary rule), and DR 6-101(A)(3) (neglect of a legal matter).

III. Recommendations 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: That Robert J. Ward has violated Disciplinary Rules 1-102(A)(1) (violating a disciplinary rule); DR 1-102(A)(6) (conduct which adversely reflects upon fitness to practice law); DR 6-101(A)(3) (neglect of a legal matter); DR 7-101(A)(2) (failure to carry out a contract of employment); DR 7-101(A)(3) (prejudice or damage his client during the course of the professional relationship); and DR 9-102(B)(4) (failure to deliver clients' property as requested).

IV. Recommendations as to Disciplinary Measure to be Applied: I recommend that respondent be suspended from the practice of law for a period of ninety (90) days, plus one year probation with quarterly reports, and payment of costs.

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

- (1) Age: 58
- (2) Date of Admission: 1977
- (3) Partnership
- (4) No specialities or designations
- (5) Respondent had severe personal problems at the time of the subject matter of these complaints and has no other complaints presently pending against him.
- (6) Respondent failed to respond to Bar correspondence or pleadings until File No. 06C83H70 was set for hearing.

VI. Statement of Costs and Manner in Which Costs Should be Taxed:

Case No. ~~62,738~~ (TFB #06A82HF3)

Grievance Committee Level

Administrative Costs	\$150.00
Court Reporter	56.50
Witness Costs for Hearing	179.90

Referee Level

Administrative Costs	150.00
Court Reporter (8/2/84 Hearing)	30.00

Total \$566.40

Case No. 64,339 (TFB #06C83H70)

Grievance Committee Level

Administrative Costs	\$150.00
Investigative Costs	81.40
Court Reporter	121.20

Referee Level

Administrative Costs	150.00
Court Reporter (see 8/2/84 above)	

Total \$502.60

Total Costs for 62,738 and 64,339 \$1,069.00

It is apparent that other costs have been 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 (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 16th day of October, 1984.


JUDGE L. R. HOFFSTETLER, Jr.
Referee

Copies furnished to:

- ✓ Robert J. Ward, Respondent
- ✓ Diane Victor Kuenzel, Bar Counsel
- ✓ John T. Berry, Staff Counsel, Tallahassee

10-16-84
S. Dawson