

IN THE SUPREME COURT OF FLORIDA  
(Before Referee)

THE FLORIDA BAR,

Complainant,

v.

B. GARNETT PAGE,

Respondent.

**FILED**

J. WHITE

MAY 8 1985

SUPREME COURT  
Chief Deputy Clerk

CONFIDENTIAL

Case No. 62,816  
(TFB No. 13C82H22)

REPORT OF REFEREE

- I. 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, a hearing was held on March 28, 1985. 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 Steve Rushing

For The Respondent No Appearance

- 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:

1. That the Florida Bar made diligent effort to give notice to respondent of the final hearing and sanction hearing by sending certified letters to both respondent's official Bar address, and his last known address, and by the unsuccessful efforts of Staff Investigator Martin S. Egan of The Florida Bar to locate respondent, as evidenced by the returned certified letters and Mr. Egan's affidavit of diligent search received in evidence.

2. That pursuant to the arrest of Mr. Henry Joseph Sears in Hillsborough County, Circuit Criminal Case Nos. 79-2205, 79-1191, and 79-2057, Mr. Sears hired respondent to represent him in the criminal matters.

3. That Mr. Sears paid respondent \$11,000.00 in fees between June and October, 1979 for his representation in the criminal matters.

4. Although previous trial counsel, Mr. Tropp, filed a demand for Discovery and Motion for Bill of Particulars on May 22, 1979, respondent never filed any Motion to Compel Discovery or a Statement of Particulars, although discovery was not provided until June 26, 1980 and a bill of particulars was never provided by the State.

5. The only motions filed by respondent were those designated "Motion for Orders," which were not filed until Friday, August 8, 1980, three (3) days before the start of the trial on Monday.

6. After Mr. Sears was convicted and adjudicated guilty of two (2) counts of forgery and sentenced to five (5) years, respondent never filed any post trial motions; except for his oral Motion to Withdraw, which precluded respondent from arguing sufficiency of the evidence on appeal.

7. The Public Defender's Office was appointed to represent Mr. Sears, and John Jenkins, Assistant Public Defender, filed a Motion to Vacate and Set Aside Sear's sentence in October, 1980 alleging ineffective assistance of counsel.

8. After a hearing on November 6, 1980 on a Motion for a New Trial, the Honorable J. Rogers Padgett, Circuit Judge, set aside the sentence and granted a new trial on the basis of respondent's ineffective assistance of counsel.

9. Subsequently, Assistant Public Defender, John N. Jenkins, filed a C-4 Motion to Dismiss which was granted and all charges against Mr. Sears were 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:

DR 1-101(A)(2)(handling a legal matter without adequate preparation under the circumstances);

DR 1-101(A)(3)(neglecting a legal matter entrusted to him); and

DR 7-101(A)(1)(failure to seek lawful objectives of his client through reasonably available means permitted by law).

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the respondent be disbarred from the practice of law, that the respondent not be readmitted until he has shown rehabilitation, compliance with the Order to Show Cause referenced in The Florida Bar v. B. Garnett Page, 19 So.2d 332 (Fla 1982), and successful completion of the Bar exam, and that the respondent pay the costs of these proceedings.

V. Personal History and Past Disciplinary Record: After finding of guilt and prior to recommending discipline 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: 57

(2) Date Admitted to Bar: September 3, 1957

(3) Prior Discipline: The Florida Bar v. B. Garnett Page, 381 So.2d 1357 (Fla. 1980):

Respondent received a public reprimand and a three-year period of probation with requirement to file with the

Staff Counsel of The Florida Bar and the Clerk of the Supreme Court reports of his activities as an attorney for conduct involving failure to take action on a foreclosure matter, failure to return attorney's fees, failure to institute action concerning client's claim against prior employer and union, and failure to return fee received for costs of filing suit in Federal Court which was never filed; The Florida Bar v. Page, 419 So.2d 332 (Fla 1982): Respondent received a three-year suspension for failure to represent client in a criminal matter after agreeing to do so and accepting a fee. Additionally, the Florida Supreme Court noted that respondent had been suspended from the practice of law on May 5, 1981 for failure to comply with the conditions of his probation in The Florida Bar v. Page, *supra*. The Court ordered respondent under a continuous suspension until such time as he demonstrated compliance with the terms of his probation and imposed the three-year suspension to run consecutively to the continuing suspension.

(4) Mitigating Factors: None.

VI. Statement of Costs and Manner in which Costs Should Be Taxed: I find the following costs were reasonably incurred by The Florida Bar.

A. Grievance Committee Level Costs

1. Administrative Costs	\$ 150.00
2. Court Reporter Costs	15.75

B. Referee Level Costs

1. Administrative Costs	150.00
2. Court Reporter appearance for final hearing on February 16, 1984	37.50
Transcript - 51 pages at \$2.40 for original	122.40
Copy - 51 pages at \$.70 per page	35.70
77 Exhibits at \$.45 each	34.65
Court Reporter's parking fee	1.75
Postage	1.22
3. Court Reporter costs for sanctions hearing on March 28, 1985	85.20
4. Bar Investigator Expenses	<u>92.75</u>

TOTAL AMOUNT DUE: \$ 726.92

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 3<sup>rd</sup> day of May, 1985.

  
 HONORABLE HARRY W. FOGLE  
 Referee

Copies furnished to:  
 Garnett B. Page, Respondent  
 Steve Rushing, Branch Staff Counsel  
 John T. Berry, Staff Counsel

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STATEMENT OF COSTS

1.	Grievance Committee Level	
a.	Administrative costs at the Grievance Committee level, Florida Bar Integration Rule, article XI, Rule 11.06(9)(a)	\$ 150.00
b.	Court Reporter appearance at Grievance Committee hearing on February 11, 1982, and transcript (7 pages at \$2.25 per page)	15.75
2.	Referee Level	
a.	Administrative costs at the Referee level, Florida Bar Integration Rule, article XI, Rule 11.06(9)(a)	150.00
b.	Court Reporter appearance for final hearing on February 16, 1984	37.50
	Transcript - 51 pages at \$2.40 for original	122.40
	Copy - 51 pages at \$.70 per page	35.70
	77 Exhibits at \$.45 each	34.65
	Court Reporter's parking fee	1.75
	Postage	1.22
c.	Court Reporter costs for sanctions hearing on March 28, 1985	85.20
3.	Bar Investigator Expenses	
a.	35 miles at \$.25 per mile	8.75
b.	6 hours at \$14.00 per hour	84.00
	TOTAL AMOUNT DUE TO DATE	<u>\$ 726.92</u>

The above costs were incurred at the Grievance Committee and at the Referee Level by The Florida Bar in the above-referenced matter.

Respectfully submitted,



STEVE RUSHING  
Branch Staff Counsel  
The Florida Bar  
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Tampa, Florida 33607  
(813) 875-9821

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Regular Mail to B. GARNETT PAGE, Respondent, at his record Bar address, 11404 North 56th Street, Temple Terrace, Florida 33617; on this 9<sup>th</sup> day of April, 1985.

  
STEVE RUSHING