

IN THE SUPREME COURT OF FLORIDA

FILED

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Case No.'s 62,951

63,652

65,143

THE FLORIDA BAR,
Complainant,

v.

JOHN L. JAMES,
Respondent.

ANSWER BRIEF OF THE FLORIDA BAR

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STATEMENT OF THE FACTS

The Bar will adopt the same format as used by the Respondent in his brief. Since there is some disagreement as to facts set forth by the Respondent, the Bar will set forth its own statement of facts for each of the cited cases.

STATEMENT OF THE CASE

The Bar will adopt the same format as used by the Respondent in his brief and will set forth a statement of the case under each individual case number.

ARGUMENTS

The Florida Bar v. John L. James

Supreme Court Case No. 62,951

STATEMENT OF CASE

This matter originated from a complaint filed by opposing counsel in a child custody matter handled by Respondent.

Upon a finding of probable cause by the Second Judicial Circuit Grievance Committee, a formal complaint was filed against the Respondent alleging violations of the following disciplinary rules: DR 1-102(A)(4); DR 5-107(B); and DR 7-101(A)(3) of the Code of Professional Responsibility.

On December 17, 1984, a formal hearing was held by the Referee appointed by the Court, Circuit Judge W. L. Bailey. On January 31, 1985, the Referee entered his report recommending Respondent be found guilty of having violated the cited disciplinary rules. The report also recommended that Respondent be suspended for a period of four months with the requirement of proof of rehabilitation prior to readmission.

STATEMENT OF FACTS

In 1981, Respondent undertook the representation of Mr. Donald Foulke in a modification action concerning the custody of a minor child.

Under the original divorce decree, Mr. Foulke and his ex-wife had received joint custody of their children, with Mr. Foulke keeping the son and Mrs. Foulke keeping the daughter (T-5).

Respondent filed a petition to seek a modification of the original custody decree so that Mr. Foulke would receive exclusive custody of both children. Mrs. Foulke retained Mr. Michael Rome as counsel and filed a counter-petition seeking permanent and exclusive custody of both children (T-83).

A temporary custody hearing was held before Circuit Court Judge Hall where both parties were represented by counsel (T-6). Judge Hall ordered a home study done by the Department of Health and Rehabilitative Services before a final disposition (T-6).

Prior to a final hearing in this matter, Mr. Foulke notified Respondent that he and Mrs. Foulke had decided that he should receive exclusive and permanent custody of both children.

Mr. and Mrs. Foulke appeared together at Respondent's office and cited the details of their agreement. Upon drafting the agreement, Respondent set up a hearing before Judge Hall without notifying counsel for Mrs. Foulke.

Respondent stated he was told by his client that Mrs. Foulke had fired her attorney. The final hearing was set without Respondent making any effort to verify if Mr. Rome was still counsel of record for Mrs. Foulke (T-87, 88).

Mrs. Foulke had signed a waiver of appearance and was not in attendance when the stipulated agreement prepared by Respondent was presented to Judge Hall. Judge Hall subsequently entered an order prepared by Respondent giving exclusive custody of the children to Mr. Foulke.

After the entry of the custody order, Mrs. Foulke, through her attorney, filed a motion to set aside the final judgment which was granted by Judge Hall.

At all times after drafting the settlement agreement for the Foulkes, Respondent remained counsel of record for Mr. Foulke and only withdrew after Mr. Rome filed his motion to set aside the final judgment.

ARGUMENT

As set forth in the report of the Referee, it has been recommended that Respondent be found guilty of

having violated the following Disciplinary Rules of the Code of Professional Responsibility: DR 1-102(A)(4), DR 5-107(B); and DR 7-101(A)(3).

As set forth in article XI, Rule 11.09(3)(c), Integration Rule of The Florida Bar, the burden is upon the Respondent herein to demonstrate that a report of a referee is erroneous, unlawful, or unjustified.

In the instant matter, Respondent has chosen to attack the arguments contained in a memorandum of law submitted by the Bar to the Referee in support of discipline sought in the consolidated cases against Respondent.

A review of the report by the Referee shows that the basic findings of fact by the Referee supported the allegations set forth in the complaint and that such allegations as proven supported a finding that Respondent violated the disciplinary rules cited within the complaint.

Nowhere within the Report of the Referee is there mention that the arguments of the Bar are adopted as being conclusive or that the arguments are adopted as specifically being those of the Referee.

The Bar will take the position herein that Respondent is attacking the correctness of the report of the Referee, and the Bar will demonstrate that Respondent has failed

to meet his burden of proving the Referee's report as being erroneous.

The Referee found that the allegations of the complaint had been proven, and Respondent takes no exception to these findings.

The Referee's findings of fact should not be overturned unless wholly lacking in evidentiary support or clearly erroneous. The Florida Bar v. Carter, 410 So.2d 920, (Fla. 1982). Since Respondent has not objected to the factual basis of the complaint or shown the report to be erroneous as to these findings, the allegations of fact should be upheld by this Court.

The remaining argument appears to be that the Referee was erroneous in recommending that Respondent be found guilty of violating the aforementioned disciplinary rules.

The Referee has recommended that Respondent be found guilty of violating DR 1-102(A)(2) that provides that a lawyer shall not circumvent a disciplinary rule through actions of another.

Disciplinary Rule 7-104(A)(1) prohibits a lawyer from communicating or causing another to communicate on the subject of representation where the opposing party is represented by a lawyer without consent or authorization to do so by law.

In the instant matter, it is nowhere disputed that Respondent was not aware that Mrs. Foulke was represented by counsel.

It is clear that Respondent could not contact Mrs. Foulke regarding settlement of the custody dispute without consent of her attorney. Respondent defends his actions herein on the grounds that his client, Mr. Foulke, told him his wife had fired her attorney and did not want any of the settlement to go through her attorney, Michael Rome.

While Respondent argues that his action of preparing the settlement agreement was not a communication with the wife, the same set of circumstances has been held a communication by Florida's Second District Court of Appeal in Hanley v. Hanley, 426 So.2d 1030 (Fla. 2d DCA, 1983). In Hanley, a dissolution proceeding, the wife communicated with her lawyer that her husband had discharged his attorney and that she wanted a property settlement drafted for the husband's signature. Citing DR 7-104(A)(1), the Court in Hanley held the wife's attorney should have at least confirmed the discharge of the husband's attorney and the purpose of this was that the husband could have been properly advised as to the wisdom of such action.

In the instant matter, if Respondent had sought to confirm the discharge of Mrs. Foulke's attorney, he would have had the opportunity to counsel Mrs. Foulke on the wisdom of waiving her rights to custody of the children.

Since it is clear that Respondent could not communicate directly with Mrs. Foulke, it would be violative of Rule 1-102(A)(2) for him to accomplish the same through his client, Mr. Foulke.

While Respondent argues several factors as requiring consideration as to his having violated DR 7-104(A)(1), none can be seen to excuse or negate his conduct. The fact that Respondent had been informed of the wife's having discharged her attorney cannot be considered under the holding in Hanley, supra. As long as Mrs. Foulke was represented and no final judgment was entered, she remained an adverse party no matter how it appeared to Respondent. The interpretation of the term "communicate" within DR 7-104(A)(1) as set forth in Hanley, supra, would appear to be more appropriate than to rely upon a definition within Webster's dictionary as to a generic meaning of the word.

Since Respondent did not confirm the discharge of Mrs. Foulke's attorney, he also could not have received permission to contact her regarding signing the stipulation. This is clearly violative of DR 7-110(B), Code of Professional Responsibility. The Florida Bar v. LeFave, 409 So.2d 1025 (Fla. 1982).

Under the provisions of DR 1-102(A)(5), Respondent is charged with engaging in conduct which is prejudicial to the administration of justice. In Lambdin v. State, 9 So.2d 192 (Fla. 1942), this Court addressed the lawyer's responsibility toward the administration of justice. In Lambdin, this Court stated that the administration of justice and the practice of law are interchangeable. This Court further held that to a lawyer's profession, the administration of justice contemplates an awareness that every breach of professional conduct reflects on the Bar as a class, that he will keep sacred his fidelity to his brethren and that in the conduct of his profession, he will do nothing that will reproach the administration of justice. Supra, p. 193.

By Respondent's inaction in failing to notice the final hearing properly under the rules of civil procedure and confirming Mrs. Foulke's alleged discharge of her counsel, his conduct can be seen as prejudicial to administration of justice or the practice of law. While Respondent's actions took on the immediate nature of requiring additional work by the judiciary, the lasting effect was a prejudicial reflection upon the Bar as a class.

DR 1-102(A)(6) provides that a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law. In failing to abide by the

rules of civil procedure in noticing the hearing where a party is represented and failing to withdraw as attorney of record in a timely fashion, Respondent has shown that his fitness to practice law is called into question when taken in conjunction with the totality of his behavior in this handling of this matter.

As to rules DR 7-106(C) (5) and (7), Respondent cites no authority that by not addressing such matters in an argument, such matters are abandoned. The Bar would cite common courtesy to contact opposing counsel prior to settlement and Respondent's intentional failure to provide notice of the final hearing to Mrs. Foulke's attorney under Florida Rules of Civil Procedure.

Under the provisions of DR 7-110(B), a lawyer in an adversary proceeding shall not communicate or cause another to communicate as to the merits of the cause with a judge before whom the proceeding is pending. While Respondent argues that once an agreement is reached, the nature of an adversary proceeding is changed. Such a proceeding in its simplest terms is defined as one having opposing parties. Black's Law Dictionary, p. 72. As to communicating as to the merits, Respondent allowed Mr. Foulke to communicate to Judge Hall that the central question of the petition had been resolved.

While Respondent would argue his misconduct was unintentional, negligent or inadvertent, it does not excuse his actions. Such arguments fall short of meeting his burden of proving the recommendations of the Referee were erroneous or unjustified. Therefore, the recommendations as to Case No. 63,652 should be affirmed and adopted.

The Florida Bar v. John L. James

Supreme Court Case No. 63,652

STATEMENT OF THE CASE

After a finding of probable cause by the Second Judicial Circuit Grievance Committee on a complaint filed by Lester Chester, The Florida Bar filed its formal complaint on December 10, 1982.

On December 17, 1984, a formal hearing was held before Circuit Judge W. L. Bailey, Referee. Judge Bailey's referee report found that Respondent had violated DR 1-102(A) (4), DR 5-107(B) and DR 7-101(A) (3), Code of Professional Responsibility. Judge Bailey entered a joint recommendation of four months suspension with proof of rehabilitation.

Respondent timely filed for review and has submitted his brief.

STATEMENT OF FACTS

In March 1980, Mr. James founded a corporation for a client, Jack Hampton, called Consumer Credit Collections and was initially listed as an officer and incorporator. The purpose of the business was a collection agency specializing in bad or worthless checks.

The substance of the contract with its customers was that the client would receive face value for their checks if collected, and the agency would receive service charges, costs and attorney fees if collected (T-34).

Mr. Hampton acknowledged that the initial theory of recovery on the large volume of small debts was based on the recovery of punitive damages asserted in litigation. Any such damages recovered were to belong to the agency (T-27).

Mr. James was paid either by the function or by the hour and was to receive a percent of any recovery made (T-18). Mr. James was previously Mr. Hampton's attorney, and it was contemplated that he would receive all referrals from Mr. Hampton's agency. This arrangement did in fact come into existence with Mr. James receiving all local referrals until he terminated his association with Hampton's agency.

On April 2, 1980, Mr. Hampton paid a visit to the Inland Tharpe Service Station and solicited its proprietor, Lester Chester, for business. Mr. James was with Hampton on this occasion but took no part in the solicitation (T-16).

Mr. Chester entered into the standard employment contract with the agency which authorized the agency to retain counsel if litigation to collect a debt was deemed necessary (T-17).

On this day, the agency was given a substantial number of checks to handle. Later this same day, Hampton and James paid a visit to request filing fees and a garnishment bond from Mr. Chester, which was refused. In spite of Chester's refusal, Mr. Hampton instructed James to commence litigation on the debt against one Lee Ward. Mr. Chester was not told of this action.

The suit against Mr. Ward on behalf of the Chesters asked for the value of the check plus ten times that amount in punitive damages. As a result of this action, Mr. Lee Ward sought to countersue the Chesters for \$4,500. After discovering this, the Chesters directed James to cease all efforts on behalf of Inland Service. Without consulting the Chesters, Mr. James voluntarily dismissed the Ward suit which resulted in an award of attorney fees against the agency for \$500. This was acknowledged by Mr. Hampton.

After being notified of the termination of the Chesters' relationship with the agency, Mr. James sent a billing to the Chesters for \$675 for legal fees for work done on accounts referred by the agency. Mr. James claims these are legitimate billings on a quantum meruit theory.

It was also shown that while the collection agency paid for the resulting attorney fee award against the Chesters in the Ward case, subsequent collections by the agency were used to offset this amount (T-74).

Mr. James also stated that he never discussed the issue of punitive damage recovery with the Chesters or that if such damages were recovered that the agency would retain the damages.

ARGUMENT

In the report of the Referee, it was found that the factual allegations contained within the complaint were proven except for paragraphs eight and thirteen. The Bar would point out to the Court that under request number 14 in its requests for admissions, the allegations to paragraph eight were admitted by the Respondent.

The Referee also recommended that the Respondent be found guilty of violating the following disciplinary rules: DR 1-102(A)(4), DR 5-107(B), and DR 7-101(A)(3), Code of Professional Responsibility.

Respondent argues that the Referee was in error when he recommended that Respondent be found guilty of violating disciplinary rule DR 1-102(A)(4). The basis of his argument is this Court's finding in The Florida Bar v. Pettie, 424 So.2d 734 (Fla. 1982). Citing this case, Respondent argues that DR 1-102(A)(4) prohibits lying, cheating, defrauding; untrustworthiness; lack of integrity. In Pettie, this Court was only addressing the provision with DR 1-102(A)(4) dealing with dishonest conduct as opposed to misrepresentation.

It is clear that Respondent's reliance upon Pettie is erroneous.

The Respondent was hired by the owner of Consumer Credit Collections under the authority of the Chesters' contract with the agency. As part of this contract, the Chesters were informed they would receive face value for their bad checks with the agency making its profits from service charges and fees.

Upon filing the suit in the name of the Chesters against an individual who had issued them a bad check, Respondent sought punitive damages in the suit in an amount ten (10) times the face value of the check. This was done without the Chesters' knowledge. Respondent also attempted to personally collect \$675 from the Chesters for legal work done at the direction of Consumer Credit when such a representation had never been made. Such activity by Respondent is clearly violative of DR 1-102(A)(4).

Under the provisions of DR 5-107(B), a lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services.

In Respondent's association with Consumer Credit and Mr. Hampton, it is clear that he did not exercise complete independent control over the cases of the agency clients once they were referred to him. Respondent admits that

Hampton had the authority to decide that he was not going to proceed with a case (T-57). Mr. Hampton, when questioned about his control over a client's file, responded that the Respondent "represented me. I told him what I wanted accomplished and what was accomplished" (TR-25, 26).

In the matter involving the Chesters, it becomes even clearer how much control Mr. Hampton exercised over Respondent. When Mr. Chester would not pay filing and bond fees, Respondent commenced to file litigation under Hampton's direction without noticing the Chesters.

Under the provisions of DR 7-101(A)(3), a lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship. By filing the Chesters' case at the insistence of Hampton and later having to voluntarily dismiss the case, the Chesters were assessed attorney fees in the amount of \$500 for the defendant.

Since Respondent has failed to meet his burden of showing that the Referee's report is erroneous, the recommendations should be affirmed and adopted.

The Florida Bar v. John L. James

Supreme Court Case No. 65,143

COUNT I

STATEMENT OF CASE

Upon a finding of probable cause by the Second Judicial Circuit Grievance Committee, the Bar filed a two-count complaint against the Respondent on April 6, 1984.

On December 17, 1984, a formal hearing was held before Circuit Judge W. L. Bailey, Referee. On January 31, 1985, Judge Bailey filed his referee's report with a recommendation that Respondent be found guilty of the following violations in Case No. 65,143: DR 3-101(A); DR 3-102(A); DR 3-103; DR 1-102(A) (5); DR 1-102(A) (6); and DR 7-101(A) (3), Code of Professional Responsibility.

After a timely filing for review, Respondent has brought this matter to its present posture.

FACTS OF THE CASE

Included within this specific complaint are numerous general allegations regarding the collection agency, Consumer Credit Collection, operated by Jack Hampton and its

relationship to and with John James, the Respondent herein.

Consumer Credit Collection was created as a corporation for profit with its primary concern being the collection of bad debts. The incorporating documents were prepared by Mr. James and indicated or listed Mr. James as one of the original shareholders and incorporators. The managing officer of the agency was Jack Hampton.

After the incorporation, Mr. James was hired to serve as the agency's attorney and was the only attorney to whom agency cases were referred to at this time. Mr. James set up a law office in the same building as the agency and shared a common reception area. The receptionist was provided by the landlord, and each tenant was responsible for a prorated share of her monthly salary. The agency and James had separate phone numbers.

While employed by the agency, James was paid according to time accountings submitted to Hampton on a monthly basis. Hampton would pay out James' office expenses each month and would give him a net salary on a monthly basis. As part of this accounting procedure, all monies recovered by James in litigation were paid over to Hampton for accounting. Hampton also kept all records of cash received, even when litigation was in progress.

Mr. James would make a preliminary perusal of all debt instruments at the time of receipt to screen for potential

problems. After this screening, any litigation was at the direction of Hampton. There was no firm or established policy of contacting each client before filing suit on their behalf.

After litigation was in process, there still remained only one central file which was kept by Hampton. Hampton had free access to James' litigation files at his pleasure. Hampton also made periodic reviews of the litigation files and suggested legal action when he felt it was necessary.

Mr. Hampton would regularly accept calls directed to Mr. James' office on cases pending in litigation and confer with clients and debtors. At no time did Mr. Hampton regularly and consistently identify himself as a nonlawyer, and Mr. James never made this a requirement of Hampton when answering calls to James' office.

In addition to managing the accounts of the agency and James, Mr. Hampton was responsible for cash receipts, preparation of and filing of satisfactions of judgments.

At the direction of Mr. Hampton, Mr. James filed a suit in behalf of the agency's client, William Henry, Inc., against a Furman Derrick on a bad credit transaction of \$128.10. On March 13, 1981, Mr. Derrick made a partial settlement by paying \$75.10 by check to James with a promise to pay the remaining balance by April 1, 1981.

After receiving the initial payment from Derrick, James obtained a default and final judgment against Derrick on

March 26, 1981. On April 1, 1981, Derrick remitted the \$53 balance to James but was told that this was only a partial payment because there was now a \$25 charge for attorney fees. When this charge was disputed, either James or Hampton told Derrick they would not issue a satisfaction until the \$25 was paid. After paying the \$25, Derrick received a satisfaction from James. The satisfaction was given to the agency for filing.

After receiving his satisfaction, Derrick was later served with interrogatories in aid of execution. Upon calling James' office, he spoke to a male individual who assured him that he could ignore the interrogatories and tear them up. The only male office employees involved with the agency were James and Hampton.

On May 15, 1981, Derrick received a Motion to Compel Answers to Interrogatories from Mr. James. In response to this pleading, Derrick visited James' office the next day where he spoke to Mr. Hampton. Mr. Hampton reviewed Derrick's file and told him he need not appear in court on James' motion and everything would be handled properly. Subsequently, Derrick received an order compelling him to answer the interrogatories and assessing \$50 in attorney fees.

Again, Derrick called James' office and was given to Hampton who again assured Derrick there was no need to

appear in court. As a result of his nonappearance, James obtained an arrest warrant for Derrick for contempt. On this occasion, Mr. Derrick called James' office and talked to Mr. James who assured Derrick everything would be straightened out.

As a result of the agency and James' actions, Derrick was forced to retain counsel to represent him on the contempt violation. It was later determined that the satisfaction had never been filed, and James had merely assumed that Hampton's staff would perform this function.

ARGUMENT

Respondent is charged herein with violating DR 3-101(A) which provides that a lawyer shall not aid a nonlawyer in the unauthorized practice of law.

Within the case of The Florida Bar v. Town, 174 So.2d 395 (Fla. 1965), the unauthorized practice of law is defined as the giving of advice and counsel to another in legal matters if the advice affects important rights of another under the law and if reasonable protection of rights and property of those advised requires legal skill and knowledge of the law greater than that possessed by an average citizen.

In the instant matter, it was clearly shown that in the circumstances surrounding the situation with Furman

Derrick, Mr. Hampton was clearly engaged in the unauthorized practice of law. Mr. Hampton was interpreting certain legal documents and was advising Mr. Derrick as to what type of behavior was required of him.

Under the everyday operations of the collection agency operated by Mr. Hampton, Respondent allowed Mr. Hampton, a nonlawyer, free access to his office facilities, allowed Mr. Hampton to intercede on his behalf by answering telephone calls in his office and failed to have Mr. Hampton identify himself at such times as a nonlawyer.

An attorney may hire nonlawyer personnel to perform delegated functions under direct supervision but may not permit such employees to counsel clients or engage in the unauthorized practice of law. In such situations, the attorney must assure compliance with the Code of Professional Responsibility and must not allow employees to communicate with the public without first disclosing their nonlawyer status, 4 Fla. Jur. 2d §36, p. 199.

While Mr. Hampton was not per se an employee of Respondent, the same principles should apply, and his failure to assure that Mr. Hampton did not engage in such prohibited conduct is violative of DR 3-101(A).

Disciplinary Rule 3-102(A) prohibits a lawyer from sharing fees with a nonlawyer. At the hearing, Mr. Hampton testified that if Respondent was successful in litigating

an account of the collection agency, the proceeds were given to Mr. Hampton. If attorneys fees were awarded, they were credited toward what was owed Respondent and any overage was kept by Mr. Hampton (T-19, 20). Hampton further stated that he kept all the fees and kept the records as such came in.

While there was shown no one specific instance of sharing fees with the agency, it has been shown that Respondent was paid according to time accountings and that all proceeds, including attorney fees, were given directly to the collection agency. Respondent was then paid on a monthly basis according to records of the agency.

Under the provisions of DR 3-102(A), a lawyer is prohibited from sharing legal fees with a nonlawyer. In the general allegations proven herein, it was shown that all collections resulting from litigation, whether attorney fees, costs or damages, were given to Hampton for accounting. Mr. James then would receive his monthly salary from these monies deposited with Hampton. While there was no direct evidence presented that Mr. Hampton received any specific attorney fees from any one case, Hampton was able to use these fees at least for a month, and there were no safeguards

that would assure James of recovering all attorney fees forwarded to Hampton.

Disciplinary Rule 3-103 prohibits a lawyer from forming a partnership with a nonlawyer when the partnership business is the practice of law.

The incorporation of Consumer Credit Collections created a quasipartnership between Mr. James and Mr. Hampton. In March of 1980, Mr. James incorporated the collection agency with Mr. Hampton for the collection of dishonored checks. Mr. James was listed as one of the original incorporators and shareholders while Mr. Hampton served as the agency's managing officer. The primary purpose of the agency was to collect bad debts.

Mr. Hampton, acting as the corporation's agent, solicited business from clients to collect dishonored checks. The agency's clients signed a contract which allowed the agency to collect bad checks and to seek legal advice if needed. They would receive the face value of the check while the agency would receive attorney fees, costs and punitive damages.

Mr. James' primary role was litigation collections. After the creation of the agency, Mr. Hampton hired Mr. James to serve as the agency's attorney. He referred all work pertaining to legal matters in the collection of dishonored checks to Mr. James. The agency was a feeder system for Mr. James.

The organization and the operation of the agency violated the disciplinary rules. The agency was actually a quasipartnership between an attorney and a nonattorney. The relationship lacked many of the elements of a partnership. Case law reveals that the courts should look to whether the acts and conduct of the parties indicate an intent to carry on as co-owners of a business for profit. Their intent to form a quasipartnership is evidenced by the office arrangement of Mr. James and Mr. Hampton, the structural organization of the agency and the business goals of the two men.

The office arrangement was more than a convenience between two businessmen. Mr. James occupied a separate office from the agency in the same building. The agency shared a common area and a receptionist with Mr. James which was provided by the building owner. The two had separate phone numbers. Yet the offices were close enough that Mr. Hampton could answer calls to Mr. James as he did in the Derrick case. Mr. Hampton paid the bills. He had unlimited access to the files in Mr. James' custody. The physical surrounding of the two businessmen's workplace allowed the close cooperation between Mr. James and Mr. Hampton which was essential to the effective operation of the agency.

The intent of the two to form a business relationship can be seen in the structural organization of the agency. Mr. Hampton referred all agency cases exclusively to Mr. James. He maintained all files and relayed them to the attorney as legal work was needed. The agency paid Mr. James based on a time accounting submitted to Hampton and also paid him a net salary on a monthly basis.

Mr. James created for himself a feeder system with the agency. Hampton sent all of the agency's legal business to the "conveniently" located attorney. The agency may have retained all profits, but Mr. James obviously benefited from the business referred to him. His part in the partnership was the referred cases rather than just profits. He directly benefited from Mr. Hampton's soliciation.

The business goals of the agency indicate an intent to form a partnership relationship also. One of the fundamental tests for determination of the existence of a partnership relation is the existence of a community of interest for business purposes. The goal of the agency was to make a profit from collecting punitive damages through bad debt litigation. The agency had to sue in order to make a profit. Both men's interests were to make money through the awarding of punitive damages. The arrangement violated DR 3-103 which forbids an attorney to form a partnership with a nonlawyer if any of the activities of the partnership

consist of the practice of law. The driving force behind the agency was punitive damages collected from litigation.

While the business nature of Mr. Hampton's collection agency was the collection of bad debts, its concept of profitability was based upon the need to collect punitive damages on small claims (T-27). To make this concept functional, the agency had to seek litigation in order to ask for such damages. In this manner, an integral part of the agency's business was the practice of litigation law in debt matters. Knowing of this concept from the inception of the concept, Mr. James allowed himself to be part of a business scheme which derived a major portion of its profits from representing clientele in court actions. The intricate involvement of Hampton in both the agency's affairs and litigation in James' office on agency matters clearly shows a quasipartnership relationship that was beneficial to James and Hampton.

In the case of The Florida Bar v. Consolidated Business and Legal Forms, Inc., 386 So.2d 797 (Fla. 1980), this Court recognizes the inherent danger of the intervention of laypersons in the attorney-client relationships. This danger is clearly realized in the instant case where the workings of a nonlawyer and Respondent were so interlocked that while Respondent argues there was no proven partnership, the facts show that the profit motive for both parties was united through the collection agency.

COUNT II

STATEMENT OF THE CASE

This case was heard in conjunction with Count I and follows the same history.

STATEMENT OF FACTS

Respondent has admitted those factual allegations contained in paragraphs 48 through 66 of Count II of the instant complaint.

The overview of these facts are that Respondent sued the maker of a bad check and scheduled a pretrial hearing. Prior to the hearing, the defendant negotiated a settlement of the case and made a partial payment.

Respondent proceeded to take a default against the defendant and later obtained a final judgment based on the default.

The defendant sought legal counsel upon learning of Respondent's actions. Subsequently, a motion was filed to set aside the final judgment obtained by Respondent.

At the hearing on the above-referenced motion, Respondent proceeded to interrupt the attorney's opening argument repeatedly, requiring Judge McClamma to admonish Respondent. During the defendant's testimony, Respondent

openly accused the witness of lying and argued the facts with her during her attorney's examination.

During the proceedings, Respondent would not sit down and required the court to admonish him a second time to sit down. During his disruptive behavior, Respondent used profanity in expressing his displeasure.

Judge McClamma was so displeased by the actions of Respondent that he excused Respondent from the courtroom. Upon refusing to leave and to cease his disruptive behavior, Respondent required Judge McClamma to order a bailiff to escort Respondent from the courtroom.

Subsequent to the hearing, Judge McClamma issued an order disposing of the issues presented at the hearing, setting aside the default and final judgment and dismissing the complaint with prejudice.

ARGUMENT

In the complaint, Mr. James is alleged to have violated DR 1-102(A)(5) which charges that a lawyer shall not engage in conduct which is prejudicial to the administration of justice. Mr. James' conduct toward Mr. Smith and his client, Sonya Poppell, during the course of the proceedings before Judge McClamma prevented the orderly disposition of the matter and required the court to take drastic measures to assure the proceedings continued in an orderly manner.

DR 1-102(A) (6) provides that a lawyer shall not engage in conduct which adversely reflects on his ability to practice law. In the instant matter, Mr. James became agitated by the proceedings where he injected his personal feelings into an adversary posture which compromised his ability to represent his client's best interests. This behavior continued despite numerous objections by Mr. Smith and repeated warnings or instructions by the court. The conduct of Mr. James resulted in his being rejected forcefully from the proceedings which caused his client's case to proceed without representation.

Mr. James' actions demonstrate a lack of his ability to separate personal feelings from his client's interests to such an extent that not only those interests are damaged but so are those of the legal profession. Since this violation strikes at the cornerstone of the legal system's effectiveness, it can only reflect directly on Mr. James' ability to practice law.

DR 7-101(A) (3) provides that a lawyer shall not engage in conduct which prejudices or damages a client in the course of the professional relationship. In conducting himself in a manner of such total disregard for the rules of court and procedure that the conduct results in a dismissal of a client's claim, any attorney guilty of such actions is clearly in violation of this disciplinary rule. As shown

in the complaint, Mr. James' conduct resulted in not only having the default and final judgment against Ms. Poppell vacated and set aside, but the judge also dismissed the cause of action with prejudice thereby foreclosing any future action on such cause by Mr. James' client.

Respondent has argued that his actions should not be taken as being the causation of the court setting aside the default and judgment. By having himself excluded from the courtroom, he cannot speculate why these results occurred. His actions allowed his client's cause to be abandoned. The fact that the cause of action was dismissed with prejudice shows an accurate barometer as to the reason the judge acted the way he did. For whatever reason, Respondent's actions precluded any furtherance of his clients cause in the future to collect on his bad debt.

Respondent would ask the Court to excuse his behavior as the result of a loss of temper. It is clear from the admitted facts that what Respondent perceives as a loss of temper is a direct reflection on his ability to practice law in accordance with the concepts of law and the rules of conduct and procedure. The provisions of DR 1-102(A) (5) and DR 1-102(A) (6) clearly do not require forethought or intention. These rules are prohibitive and declare certain conduct that a lawyer shall not engage in while practicing. Respondent is charged with knowledge of the disciplinary

rules and what conduct is considered violative of the rules. It is clear that if after three admonitions from a court that the Respondent could not appreciate his position, then his fitness to practice law should be questioned.

DISCIPLINE

Based upon the admissions and testimonial evidence produced at the hearing, The Florida Bar would assert that sufficient basis has been established to support a finding of guilt on the charges addressed herein and that a recommendation for discipline be forwarded to the Supreme Court.

The Florida Bar would recommend that an appropriate disciplinary penalty be a suspension from the practice of law for a period exceeding three months with a probationary period upon readmission to the Bar. In addition, the Bar would recommend that before readmission, Mr. James be required to show proof of rehabilitation through having attended an ethics seminary or having to pass the ethics section of the Florida Bar Exam.

The Bar's recommendation is grounded upon past discipline that has been entered in cases similar in nature to the violations committed by Mr. James.

In the case of The Florida Bar v. Shapiro, 413 So.2d 1184 (Fla. 1982), the Court suspended an attorney for three months where an attorney communicated an offer of settlement to a party known to be represented by counsel. [DR 7-104(A)(1)].

Under the case of The Florida Bar v. Jones, 403 So.2d 1340 (Fla. 1981), the Court held that a six-month suspension was warranted for conduct prejudicial to the administration of

justice and for conduct that adversely reflects on his fitness to practice law. [DR 1-102(A) (5); DR 1-102(A) (6)].

In the matter of The Florida Bar v. Provost, 323 So.2d 578 (Fla. 1975), the Court found that violation of DR 7-104(A) (1), damaging a client during the course of the professional relationship, merited a three-year suspension and proof of rehabilitation. This case involved more than one claim of damaging a client.

For aiding a nonlawyer in the unauthorized practice of law, the Court has previously punished the violation with a public reprimand and three years probation. The Florida Bar v. Swidler, 159 So.2d 865 (Fla. 1964).

For conduct involving dishonesty, fraud and deceit, the Court has upheld a three-month suspension in the matter of The Florida Bar v. Litman, 417 So.2d 948 (Fla. 1982). While this case dealt with a trust account violation, it can be argued to apply in the instant matter since Mr. James' misrepresentations dealt with causes of actions (punitive damages) which were property rights of his clients.

The generally prescribed penalty for the remainder of Mr. James' charges have been either private or public reprimands with some length of probation.

In the instant case, the Bar would argue that while a reprimand may have been appropriate for an isolated, single violation, the cumulative nature of Mr. James' violations

would in itself negate any plea for such discipline in the instant cases.

Mr. James has repeatedly chosen to ignore those rules of discipline which would clearly prohibit his actions and chose instead to apply some tenuous interpretation to other rules that in his mind justified the course of action he had already chosen to take. For this and the case law set forth above, the Bar feels that its recommendation is appropriate and justified in these matters.

Respondent has argued that the length of time required to bring these matters to a final hearing as mitigation. In recommending the four-month suspension, the Referee specifically cited this factor as having been taken into consideration in making his recommendation.

Respondent has engaged in conduct on three separate occasions that resulted in his being investigated by the Bar and requiring a hearing before a grievance committee. On each occasion, it has been shown that Respondent acted out of an interest that was in his benefit rather than what was required of his client's interest or that of the judicial system.

It is this repetitive showing of self interest that removes Respondent from the specter of reprimands and requires the period of suspension recommended by the Referee herein.

Respondent has also argued that the allegations of dishonesty, fraud and deceit were not proven and should

not be considered in disciplining Respondent. The facts are clear that in the matter involving the Chesters, Respondent filed suit at the request of Jack Hampton when he knew the Chesters were not willing to pay expenses, sought punitive damages without consulting with his clients and sought fees for this matter without a contractual basis with the Chesters. Such action demonstrates a total disregard for the rules of conduct and the interests of his client.


Respondent has also argued that his actions should be excused due to his having being newly admitted to the Bar at the time. Such continuing disregard of the rules of conduct and damage to the interest of his clients cannot be excused under such an excuse.

Respondent has also attempted to mitigate the severity of the discipline by inclusion of an affidavit attached to his review brief. Such affidavit is improper since it is outside the record of the hearing and was not considered by the Referee.

CONCLUSION

The Respondent has failed to show that the findings and recommendations made by the Referee were clearly erroneous, unlawful or unjustified; therefore, the Respondent should be found guilty of the cited Disciplinary Rules and should be suspended from the practice of law for four months and at the end of said suspension, be reinstated only upon proof of rehabilitation. Costs should be assessed against Respondent.

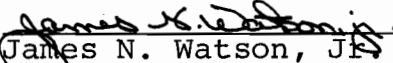
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer Brief of The Florida Bar has been furnished by U.S. Mail to John L. James, Respondent, at Post Office Box 854, Havana, Florida 32333, on this 8th day of July 1985.


James N. Watson, Jr.