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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

v.
MARIE SUSAN HOTALING,
Respondent.

CASE NOS. 63,050 and
65,818

(The Florida Bar Case
Nos. 17C83F32, 17C83F39
and 17C83F33)

_____ /

BRIEF OF THE FLORIDA BAR

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PREFACE

The Complainant, The Florida Bar, will be referred to as The Florida Bar. The Respondent, Marie Susan Hotaling, will be referred to as the Respondent.

STATEMENT OF THE CASE

Case No. 63,050

In Case No. 63,050, a formal complaint was filed on January 11, 1983 by The Florida Bar against the Respondent, Marie Susan Hotaling, charging the Respondent with violations of Disciplinary Rules 6-101(A)(2) and (3); and 7-101(A)(2) and (3) of the Code of Professional Responsibility of The Florida Bar.

The Honorable Thomas E. Scott, Circuit Judge, was appointed referee on January 18, 1983. On June 12, 1984, Judge Scott was terminated as referee. On June 12, 1984, the Honorable Sidney B. Shapiro, Circuit Judge, was appointed referee. A pre-trial conference was held on July 13, 1984. The final hearing was held on September 14, 1984. A hearing as to discipline to be recommended was held on November 16, 1984 along with a hearing as to discipline in Case No. 65,818.

Case No. 65,818

In Case No. 65,818, a two count formal complaint was filed on August 31, 1984, by The Florida Bar against the Respondent, Marie Susan Hotaling, charging the Respondent with violations of Disciplinary Rules 1-102(A)(1),(4) and (6); 3-104(C); 6-101(A)(1),(2) and (3); 7-101(A)(1),(2) and (3); and 9-102(B)(4) of the Code of Professional Responsibility of The Florida Bar.

The Honorable Sidney B. Shapiro was appointed referee in this cause on September 5, 1984.

On September 13, 1984, The Florida Bar mailed its Request for Admissions.

At the September 14, 1984 final hearing in Case No. 63,050, this cause was scheduled for final hearing on November 16, 1984.

On October 25, 1984, The Florida Bar mailed its Motion For Judgment On The Pleadings. A hearing was held on said Motion on November 9, 1984. On November 9, 1984, Judge Shapiro ruled that the matters set forth in The Florida Bar's Request For Admissions were deemed admitted but that the Respondent would be able to present a defense at the scheduled November 16, 1984 hearing.

On November 13, 1984, Judge Shapiro issued his written Order stating that the matters set forth in The Florida Bar's Request For Admissions were deemed admitted.

On November 16, 1984, the final hearing in this cause was held. The Respondent failed to appear at this hearing.

On December 5, 1984, Judge Shapiro forwarded his Report of Referee in Case Nos. 63,050 and 65,818, wherein he recommended that the Respondent be found guilty of all charges in Case Nos. 63,050 and 65,818. Judge Shapiro further recommended that the Respondent be suspended from the practice of law for a period of eighteen (18) months. In addition, Respondent was required to take all portions of The Florida Bar Examination as a condition precedent to reinstatement and be placed on probation for a period of eighteen (18) months upon reinstatement to the practice of law.

The Florida Bar, pursuant to this Court's order dated March 1, 1985, files its brief directed to the suitability of the requirement recommended by the referee that the Respondent take and pass the Florida Bar Examination as a condition precedent to reinstatement.

ISSUE PRESENTED FOR REVIEW

WHETHER THE RESPONDENT SHOULD BE REQUIRED TO TAKE
AND PASS THE FLORIDA BAR EXAMINATION AS A CONDITION
PRECEDENT TO REINSTATEMENT?

SUMMARY OF THE ARGUMENT

The discipline imposed by the Referee requiring the taking and passing of the Florida Bar examination as a condition precedent to reinstatement is appropriate under the circumstances of these cases. The Respondent has evidenced a lack of knowledge in the subject matters in which she attempts to represent her clients. Due to the cumulative nature of the Respondent's misconduct, primarily involving the same and similar pattern of misconduct, specifically neglect and incompetence, this condition to reinstatement is appropriate. By requiring the successful completion of the Florida Bar Examination, the Court will be safeguarding against the possibility of harm to future clients who will seek the Respondent's services.

STATEMENT OF THE FACTS

As to Case No. 63,050 (17C83F33)

The Respondent was hired by one Elizabeth Dodson concerning a claim by Ms. Dodson against Fort Lauderdale Lincoln-Mercury Company. On or about May 12, 1982, the Respondent cause to be filed a Complaint in the cause styled, Elizabeth Dodson, Plaintiff vs. Fort Lauderdale Lincoln-Mercury Company, Defendant, Case No. 82-09861 CW, In the Circuit Court of the Seventeenth Judicial Circuit In and For Broward County, Florida. On or about June 11, 1982, Counsel for Fort Lauderdale Lincoln-Mercury, filed a Motion to Dismiss the complaint in said cause. On or about July 7, 1982, an Order was issued dismissing the complaint and giving Plaintiff, Elizabeth Dodson, thirty (30) days to amend the Complaint in Broward County Circuit Court Case No. 82-09861 CW. Respondent, as Counsel for Ms. Dodson, failed to prepare or file an amended complaint. Further, Respondent failed to advise her client of the pendency of the Motion to Dismiss and Order dismissing the cause. (See Report of Referee, pp 3-4).

Mrs. Dodson testified she never heard from Respondent after she signed the court complaint. Her telephone calls to the Respondent were neither answered nor returned (See testimony of Mrs. Dodson, pages 9-20, September 14, 1984 transcript).

As to Case No. 65,818 (17C83F39, Count I)

Respondent was retained by David Alpren to seek a pardon of his conviction for criminal drug charges in Ohio. Due to Respondent's inability to meet with Mr. Alpren at his scheduled appointment, she advised him to leave a copy of his conviction with Respondent's secretary for copying. After two (2) weeks had passed, Mr. Alpren requested that Respondent's office return his documents to him and he advised that he no longer desired Respondent's services. The documents were not mailed to him until approximately three (3) months later. (See Report of Referee, pages 4-5).

As to Case No. 65,818 (17C83F32, Count II)

On or about November 17, 1981, Respondent signed a stipulation for substitution of counsel in which she would replace Arthur M. Wolff as the attorney for Mary Murphy concerning Mrs. Murphy's case against Patty J. and Thomas R. Schneider. Respondent was to appear for oral argument at the appellate level as former counsel had already filed a brief in the cause. When the Respondent appeared at the oral argument regarding the Schneider matter, she was unprepared for her presentation and did not have any notes with her.

Respondent failed to adequately represent Mrs. Murphy at the oral argument. Previous to the oral argument, Respondent told Mrs. Murphy that she could handle the appellate matter. At the oral argument, Respondent informed Mrs. Murphy that this was her first oral argument. Mrs.

Murphy lost her case on appeal. The Respondent failed to file a Motion for Rehearing. Respondent's former counsel, Arthur M. Wolff, had urged the Respondent to file a Motion for Rehearing in this cause. (See Report of Referee, pp 6-7).

On or about November 17, 1981, Respondent signed a Stipulation for Substitution of Counsel in which she would replace Arthur Wolff as the attorney for Mrs. Murphy in her appeal regarding one Joseph Gaulin. The Respondent did not appear on January 13, 1982 for the scheduled oral argument and did not file a written waiver of oral argument with the Court. The case was affirmed in favor of Joseph Gaulin. The Respondent never advised Mrs. Murphy as to the status of her case concerning Mr. Gaulin and failed to inform her that the Gaulin case was over and that the bond monies had been released to Mr. Gaulin. After the case had been concluded, Respondent misrepresented the status of her case to Mrs. Murphy. The Respondent failed to respond to Mrs. Murphy's telephone calls, letters and messages, when Mrs. Murphy attempted to inquire about her case. (Report of Referee pp 7-9).

On March 29, 1984, the Respondent received a Public Reprimand and was placed on probation for a period of two (2) years in Case No. 62,782. The Respondent is presently on probation (Report of Referee, page 11).

ARGUMENT

RESPONDENT SHOULD BE REQUIRED TO TAKE AND
PASS THE FLORIDA BAR EXAMINATION AS A CON-
DITION PRECEDENT TO REINSTATEMENT.

The Florida Bar adopts the Referee's position that successful completion of the Florida Bar Examination as a condition precedent to reinstatement is warranted under the facts of these cases.

As noted by the Honorable Sidney B. Shapiro, Referee, the Respondent's actions demonstrate her lack of knowledge in the substantive field of law. "Ms. Hotaling's actions in the various cases before me leaves much to be desired and evidences a lack of knowledge in the subject matter in which she attempts to represent people." (See page 11 of Report of Referee Sidney B. Shapiro, dated December 5, 1984).

The Respondent has consistently misrepresented her clients as a result of her lack of knowledge of the substantive areas of law. By failing to recognize the procedural ramifications involved in litigation, the Respondent has foreclosed certain avenues of relief available to her clients. The Respondent has repeatedly failed to file the necessary pleadings in order to preserve her clients' rights. The Respondent failed to file a Motion for Rehearing in the Murphy complaint, even upon urgings by Mrs. Murphy's former counsel.

The Respondent's knowledge of substantive law is even more suspect. As noted by the Honorable Thomas E. Scott, Referee in Case No. 62,782, the Respondent undertakes legal

matters and fails to know the applicable law.

In my viewpoint, Miss Hotaling undertook a personal injury case and other legal matters and failed to know the law, and in that regard, I believe she failed to know tort law, P.I.P. law, especially liens and processing liens and the Statute of Frauds. For example, Respondent never had a written guarantee from the client in this case. Respondent appears to fail to know anything about charging liens and quantum meruit in general. (See paragraph 14, of p. 3 of Judge Scott's Report of Referee, dated May 2, 1983, attached hereto as Appendix 1).

The purpose of a bar examination is to test one's minimal competency to practice law. The Florida Bar, In Re Barket. 424 So.2d 751,752 (Fla. 1982). Thus, this Court has not been reluctant to impose, as a condition to reinstatement, the successful completion of the Florida Bar Examination.

In suspension cases, this Court has not been hesitant to order a finding of rehabilitation and successful completion of all parts of the Florida Bar Examination as conditions precedent to reinstatement. In The Florida Bar v. Routh, 414 So.2d 1023 (Fla. 1982), the Respondent was convicted of aggravated assault and battery and found guilty of filing a false affidavit in a judicial proceeding. The Respondent was suspended for three years and was ordered to successfully complete all three parts of the Florida Bar Examination.

In The Florida Bar v. McKee, 389 So.2d 1002 (Fla. 1980), this Court approved a Conditional Guilty Plea to

charges of neglect and failing to carry out a contract of employment, Disciplinary Rules 6-101(A)(3) and 7-101(A)(2). This Court ordered a two-year suspension and as a condition to reinstatement, this Court ordered the passing of The Florida Bar Examination.

The length of the suspension from the practice of law has not been a decisive factor in ordering such a condition to reinstatement. In The Florida Bar v. Glick, 397 So.2d 1140 (1981), this Court ordered a three month and one day suspension and the successful completion of the bar examination as a condition to reinstatement. In Glick, the Respondent neglected a legal matter and handled a matter which he knew he was not competent to handle. Glick had previous discipline imposed for similar misconduct.

Similarly, the instant Respondent has exhibited a disregard for her clients' cases and evidenced a lack of competency to practice law as in Glick. The Respondent's previous and cumulative misconduct involving the same pattern of misbehavior can not be ignored. The Respondent was previously publicly reprimanded and placed on a two year period of bar supervised probation in March of 1984. See The Florida Bar v. Hotaling, 454 So.2d 555 (Fla. 1984).

Moreover, the same types of misconduct for which the Respondent was initially placed on probation are involved in the case at bar. The Court must deal more severely with an attorney who exhibits cumulative misconduct. The Florida Bar v. Vernell, 374 So.2d 473 (Fla. 1979).

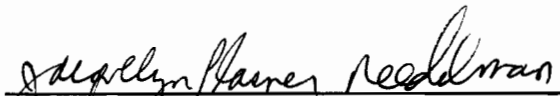
The most compelling reason for this Court to approve the condition of reinstatement upon completion of the Florida Bar examination is the prevention of harm to future clients who will seek the Respondent's services. The Respondent's clients have been damaged or prejudiced as a result of her actions. The Respondent should be required to take and pass the Florida Bar Examination to demonstrate her competence to practice law and knowledge of the Code of Professional Responsibility. In Case Nos. 62,782, 63,050 and 65,818, the Respondent has demonstrated incompetence and lack of knowledge in the various subject matters in which she has represented these various clients. By requiring the Respondent to prove her competence to practice law, this Court will be safeguarding the interests of future clients who seek the Respondent's services.

CONCLUSION

The requirement of successful completion of the Florida Bar Examination as a condition precedent to reinstatement is appropriate and necessary in this cause. The Respondent has evidenced a pattern of incompetence to practice law by reason of her lack of knowledge of the law in various subject matters.

The Florida Bar respectfully requests this Honorable Court to uphold the Referee's recommendation that the Respondent take and pass the entire Florida Bar Examination as a condition precedent to reinstatement after her suspension from the practice of law for a period of eighteen months and thereafter until rehabilitation is proven.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief of The Florida Bar has been furnished to Marie Susan Hotaling, Respondent, at her official record Bar address of 1519 Northeast Fourth Avenue, Fort Lauderdale, FL 33304, by regular U.S. Mail, on this 19th day of March, 1985.


JACQUELYN PLASNER NEEDELMAN