

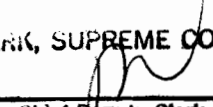
IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED

SID J. WHITE

JAN 18 1985

CLERK, SUPREME COURT

By 
Chief Deputy Clerk

THE FLORIDA BAR)
Complainant,) CONFIDENTIAL
v.) Supreme Court Case No. 63,635
GEORGE CLARK SMITH,) TFB Case No. 11K81M02
Respondent.)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

1. On or about May 5, 1983, The Florida Bar filed a formal Complaint against George Clark Smith, Respondent, alleging violation of Disciplinary Rule 6-101(A)(3) of the Code of Professional Responsibility.

2. On or about May 16, 1983, the undersigned Circuit Judge was appointed Referee by order of the Chief Justice of the Supreme Court of Florida.

3. On or about September 1, 1983, The Florida Bar served Respondent with its original Request for Admissions. Again, on or about October 11, 1983, The Florida Bar re-served Respondent with its Second Request for Admissions.

4. On or about November 10, 1983, Respondent replied to The Florida Bar's Requests for Admissions, wherein he admitted to all material allegations, save that sole portion of the Complaint wherein The Florida Bar averred and concluded that Respondent had neglected a legal matter entrusted to him.

5. On or about February 8, 1984, Respondent executed a Conditional Guilty Plea for Consent Judgment for Public Reprimand. Subsequent thereto, the Board of Governors of The Florida Bar considered Respondent's Conditional Guilty Plea and recommended that it be approved by both the undersigned Referee and the Supreme Court of Florida.

6. The following attorneys have entered appearances as Counsel for the parties:

On behalf of The Florida Bar: Robert D. Rosenbloom
Bar Counsel
The Florida Bar
Suite 211
Rivergate Plaza
444 Brickell Avenue
Miami, FL 33131
(305) 377-4445

On behalf of Respondent: George Clark Smith
Respondent - Pro Se
636 N.E. 68th Street
Miami, FL 33138
(305) 758-2261

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH RESPONDENT IS CHARGED:

IN GENERAL

7. That Respondent, George Clark Smith, 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.

8. That at all times material to the hearing of this cause, both The Florida Bar and Respondent have been afforded ample opportunity to file responses, to be heard on the merits, and to offer any and all evidence material and relevant to this cause.

AS TO THE PLEA

9. That, as noted above, Respondent has tendered a Conditional Guilty Plea for Consent Judgment in exchange for

the imposition of a public reprimand in the cause sub
judice.

10. That incident to the tendering of this Conditional Guilty Plea for Consent Judgment, Respondent acknowledges:

- A. That he has been afforded the opportunity to seek the competent assistance of counsel.
- B. That the Conditional Guilty Plea is tendered freely, voluntarily, and without fear or threat of coercion.
- C. That he has been afforded all procedural and substantive due process guarantees regarding these disciplinary proceedings, and that for the purpose of tendering his Conditional Guilty Plea for Consent Judgment for Public Reprimand, Respondent waives any objections relative to the denial of same.
- D. That should the Conditional Guilty Plea be approved by both the Board of Governors of The Florida Bar and the Supreme Court of Florida, Respondent agrees to pay costs in the amount of SIX HUNDRED THIRTY-ONE DOLLARS AND TWENTY-FIVE CENTS (\$631.25) within thirty (30) days of the Supreme Court's Final Order approving same.
- E. That should the Supreme Court of Florida approve this Conditional Guilty Plea, Respondent hereby agrees and acknowledges that same will not be the subject of future modification.
- F. That the Supreme Court of Florida may publish such facts and violations relating to this Conditional Guilty Plea in any Order it may issue approving same.

AS TO THE COMPLAINT

11. That by virtue of tendering his Conditional Guilty Plea for Consent Judgment for Public Reprimand, Respondent has admitted to all material allegations, averments, and issues contained in the formal Complaint filed by The Florida Bar.

12. That during or about 1980 and 1981, Respondent represented a civil litigant who was asserting a claim, as an heir, against a then-pending estate.

13. That although Respondent filed a lawsuit on behalf of his client, same was dismissed (with leave to amend) by the Court.

14. That subsequent thereto, the Respondent timely filed an Amended Complaint on behalf of his client; again, the Court dismissed the Amended Complaint (with leave to re-amend).

15. That subsequent thereto, Respondent timely filed a Re-Amended Complaint. Defendants filed a Motion to Dismiss the Re-Amended Complaint and the matter was set for hearing.

16. That Respondent failed to attend the scheduled hearing on the defendants' Motion to Dismiss the Re-Amended Complaint. Subsequently, the Court granted the defendants' Motion to Dismiss; however, the Court granted Respondent 10 days in which to again re-amend the complaint.

17. That subsequent thereto, Respondent timely filed a Second Re-Amended Complaint; the defendants filed another Motion to Dismiss and the matter was set for hearing.

18. That Respondent failed to attend the scheduled hearing on the defendants' Motion to Dismiss the Second Re-Amended Complaint.

19. That subsequent thereto, the Court entered an Order of Dismissal With Prejudice, thereby effectively dismissing the Plaintiff's lawsuit; said Order citing as a basis for the dismissal Respondent's failure to state a cause of action and Respondent's failure to appear before the Court at the last two hearings.

20. That subsequent thereto, Respondent filed a Motion for Re-Hearing on the Order of Dismissal; as a basis for his Motion, Respondent averred that his failure to attend the earlier hearings resulted from his having suffered a viral infection. The Court was not persuaded by this argument, and an Order Denying Respondent's Motion was entered.

21. That notwithstanding Respondent's contention and assertion that he telephoned the presiding Judge's chambers prior to the aforementioned hearings for the purpose of requesting continuances, no such continuances were granted. Further, the Court file fails to reference any such telephonic communications with the Court.

22. That Respondent has admitted and recognizes that his failure to properly request of the Court that it continue the above-discussed hearings does not reflect favorably upon either himself or the profession. Further, Respondent has acknowledged that his non-appearance before the Court at the scheduled hearings served as one of the basis upon which the Court dismissed the civil lawsuit with prejudice. Notwithstanding Respondent's stated inability to meet the requisite burden of proof regarding the prosecution of the civil lawsuit, Respondent now recognizes that the more appropriate and prudent procedure would have required him to file for a voluntary dismissal of the civil action. Respondent admits that his failure in this regard did not foster the best interests of his client, nor did it promote an appreciation and concern for those matters pertaining to judicial economy.

III. RECOMMENDATIONS AS TO WHETHER OR NOT RESPONDENT SHOULD BE FOUND GUILTY:

23. The undersigned Referee recommends that Respondent be found guilty of violating Disciplinary Rule 1-101(A)(3), to wit: neglect of a legal matter entrusted to him.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

24. The undersigned Referee, having carefully considered all facts and circumstances material to this disciplinary proceeding, recommends that the Supreme Court of Florida finally approve Respondent's Conditional Guilty Plea for Consent Judgment for Public Reprimand, said reprimand

to be administered by publication of an Order by the Supreme Court in the Southern Reporter.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

25. After entering findings of guilt as enumerated in Section III, above, and prior to entering the recommendation for discipline as contained in Section IV, above, the undersigned Referee has considered the following personal history and prior disciplinary record of Respondent to wit:

Age: 65

Dated Admitted to The Florida Bar: March 4, 1949

Prior Disciplinary Convictions: The Florida Bar v. George Clark Smith, 392 So.2d 1 (Fla. 1980), in which action the Supreme Court of Florida approved Respondent's Conditional Guilty Plea for Consent Judgment for Public Reprimand for his failure, over a 15 month period, to take action in a personal injury case.

Other Personal Data: Respondent has been a member of The Florida Bar for more than of 35 years. The undersigned Referee notes that with the exception of the above-referred disciplinary action, Respondent has not been the subject of other disciplinary sanctions.

VI. MITIGATION:

26. The undersigned Referee notes that Respondent has averred, by way of defense and mitigation, that his non-appearance at the scheduled Court hearings resulted from his suffering a viral infection. However, the undersigned Referee further notes that Respondent was unable to substantiate his averments in this regard. Further, the Referee recognizes that Respondent is a sole practitioner engaged in a general practice. As such, certain unique demands are placed upon him. However, this does not excuse Respondent's failure to properly request continuances in pending litigation, nor does it excuse Respondent's failure to recognize those matters central to judicial economy and the orderly administration of justice.


VII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

27. The undersigned Referee finds that the following costs were reasonably incurred by The Florida Bar, and agreed to by Respondent, to wit:

Administrative Costs at Grievance Committee Level Pursuant to article XI, Rule 11.06(9)(a)(5) of the Integration Rule of The Florida Bar.....	<u>\$150.00</u>
Administrative Costs at Referee Level Pursuant to article XI, Rule 11.06(9)(a)(5) of the Integration Rule of The Florida Bar.....	<u>\$150.00</u>
Investigative Costs.....	<u>\$185.00</u>
Court Reporter Costs, hearing before the Grievance Committee.....	<u>\$146.25</u>
TOTAL ITEMIZED COSTS:	\$631.25

28. It is further recommended that interest at the rate of 12% per annum be assessed against Respondent should all costs not be paid within thirty (30) days of any final Order of the Supreme Court of Florida.

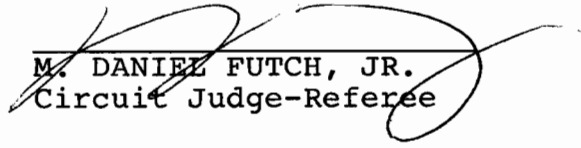
Dated this 11th day of January, 1985


M. DANIEL FUTCH, JR.
Circuit Judge-Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original Report of Referee and the Record in this matter have been forwarded to the Clerk of the Supreme Court, and that true and correct copies of the Report of Referee have been provided to Robert D. Rosenbloom, Esq., Bar Counsel, The Florida Bar, Rivergate Plaza, Suite 211, 444 Brickell Avenue, Miami, FL 33131 and

George Clark Smith, Esq., Respondent, 636 N.E. 68th Street,
Miami, FL 33138, this 11^k day of January, 1985.


M. DANIEL FUTCH, JR.
Circuit Judge-Referee