

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR,)
Complainant,)
v.)
ALAN B. OPPENHEIMER)
Respondent.)

CONFIDENTIAL

Supreme Court Case
Nos. 64,277 and 65,258

FILED

SID J. WHITE

SEP 4 1984

CLERK, SUPREME COURT

By Chief Deputy Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Article XI of the Integration Rule of The Florida Bar, final hearings were held on April 5, 1984 and July 26, 1984. All of the pleadings, notices, motion, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

By Order of this Referee, dated June 8, 1984, Supreme Court Case No. 64,277 was consolidated with Supreme Court Case No. 65,258. Consequently, unless otherwise indicated, all statements contained in this report apply to these proceedings as consolidated.

The following attorneys appeared as counsel for the parties:

On Behalf of The Florida Bar: Louis Thaler
Patricia S. Etkin (4/5/84 hearing only)
Lance R. Stelzer (4/5/84 hearing only)
On Behalf of the Respondent: Stephen J. Golembe

II. GENERAL FINDINGS OF FACT:

1. That the Respondent, ALAN B. OPPENHEIMER, 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. That at all times material to these proceedings The Florida Bar has diligently attempted to contact the Respondent and to provide him with notice of all proceedings, hearings, and pleadings.

3. That the facts are as set forth in the Complaints filed by The Florida Bar.

III. SPECIFIC FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED: I have read the transcripts of the proceedings held before the grievance committee. After considering the transcripts, pleadings, testimony and evidence before me, I find:

Findings As Supreme Court Case No. 64,277

1. In 1975 Respondent represented Clair T. McElfresh (hereinafter referred to as "McElfresh") in a dissolution of marriage proceeding.

2. In conjunction with the aforementioned proceeding, custody of McElfresh's daughter, Kirsten McElfresh (hereinafter referred to as "the child"), was given to McElfresh's ex-wife.

3. Thereafter, Respondent represented McElfresh in his effort to obtain custody of the child.

4. On July 31, 1981, the circuit court issued an order granting temporary custody of the child to McElfresh (hereinafter referred to as "order").

5. On August 26, 1981, attorney Sue Herald (hereinafter referred to as "Herald") filed a Notice of Appeal of the order on behalf of appellant, McElfresh's ex-wife.

6. Respondent was attorney of record for McElfresh in the proceedings involving the appeal of the order (hereinafter referred to as "appeal", "appellate matter" or "appellate proceedings").

7. During or about October 1981, Respondent mentioned to McElfresh that an appeal had been taken.

8. Respondent represented to McElfresh that he would obtain appellate counsel on McElfresh's behalf.

9. Respondent scheduled an appointment for McElfresh to meet the appellate attorney in Respondent's office on November 16, 1981.

10. Although McElfresh appeared at Respondent's office on November 16, 1981 as scheduled, there was no appellate attorney present.

11. Respondent assured McElfresh that he should not be concerned with the appeal in that Respondent would work with the appellate attorney.

12. Respondent scheduled a second appointment for McElfresh to meet the appellate attorney in Respondent's office on December 3, 1981.

13. Although McElfresh appeared at Respondent's office on December 3, 1981 as scheduled, there was no appellate attorney present.

14. Respondent represented to McElfresh that he should not be concerned with the appeal in that Respondent was involved in lower court proceedings which would obviate the necessity for appellate proceedings.

15. McElfresh relied upon the aforementioned representations and left the handling of both the lower court and appellate proceedings with Respondent.

16. McElfresh telephoned Respondent on numerous occasions concerning the status of the aforementioned proceedings.

17. Respondent failed to return McElfresh's telephone calls.

18. On or about January 8, 1982, Sue Rose Samuels, attorney ad litem for the child, contacted McElfresh and advised him that an appellate brief had not been filed on his behalf and that he was in jeopardy of losing the right to oral argument in the appellate proceedings.

19. After considerable effort, McElfresh was successful in reaching Respondent by telephone on Sunday evening, January 10, 1982 to discuss the information concerning the appellate proceedings referenced above.

20. In the aforementioned telephone conversation, Respondent assured McElfresh that he would take care of the matter in the morning and that McElfresh should not be concerned.

21. In a telephone conversation with McElfresh on the morning of January 11, 1982, Respondent again assured McElfresh that everything was going to be taken care of.

22. Respondent failed to keep McElfresh advised as to the status of the appeal.

23. Respondent failed to file an appellate brief on behalf of McElfresh.

24. Respondent failed to obtain appellate counsel on behalf of McElfresh.

25. The only action Respondent undertook on behalf of McElfresh pertaining to the appeal was to file motions for extension of time in which to file a brief.

26. The Third District Court of Appeal heard oral argument on the appeal on January 11, 1982 at 9:00 a.m.

27. Although Respondent was sent notice of the scheduled oral argument, he failed to attend.

28. As a result of Respondent's actions, as described above, McElfresh lost the opportunity to present his position in the appellate proceedings.

29. The Third District Court of Appeal ordered a reversal of the order and directed that the child be returned to McElfresh's ex-wife.

30. By reason of the foregoing, Respondent failed to properly pursue a legal matter on behalf of a client and failed to return his client's telephone calls or keep his client properly advised as to the status of the legal matter. Such conduct adversely affected his client's interests as well as the ability of the Appellate Court to render a decision based upon a presentation of all relevant positions.

31. Respondent's representation to McElfresh concerning obtaining associate appellate counsel, as referred to in Paragraphs 8 and 11, were false.

32. Respondent's representation to McElfresh concerning Respondent's actual or intended involvement in lower court proceedings which would obviate the necessity of appellate proceedings, as referred to in Paragraph 14, was false.

33. Respondent's representations to McElfresh concerning the status of the proceeding and actions which Respondent had or

intended to undertake on his behalf in the appellate proceeding, as referred to in Paragraphs 14 and 20, were false.

34. McElfresh relied upon Respondent's representations, referenced above, and did not seek the assistance of other counsel.

35. Sue Rose Samuels (hereinafter referred to as "Samuels") was appointed attorney ad litem for the child by the trial court for the purpose of issuing a recommendation to the court concerning custody.

36. Following the filing of a Notice of Appeal of the custody order by appellant, as referred to in Paragraph 5, Samuels filed with the appellate court a motion for leave to file an amicus brief with the intention of withdrawing the motion if the briefs filed by Herald, representing the appellant, and Respondent, representing the appellee, adequately covered the subject matter.

37. Samuels contacted Respondent in October 1981 concerning the appellate brief which was due within a few days.

38. Following the aforementioned telephone call, Respondent filed a motion for an extension of time to file an appellate brief.

39. On December 2, 1981, The Third District Court of Appeal entered an order directing Respondent to file an appellate brief within 20 days or be precluded from filing a brief or presenting oral argument.

40. As of December 22, 1981, Respondent had failed to file an appellate brief.

41. On December 30, 1981, the Third District Court of Appeal entered an order setting oral argument for January 11, 1982. A copy of the order was mailed to Respondent.

42. In January 1981, Samuels contacted Respondent to inquire as to the status of his appellate brief.

43. Respondent represented to Samuels that an attorney named Randy Ferguson was handling the appellate matter.

44. Samuels thereafter contacted Randy Ferguson who denied any contact with Respondent concerning the appeal.

45. Upon learning from Randy Ferguson that he was not handling the appellate matter, Samuels attempted to contact Respondent.

46. Respondent failed to return Samuels' telephone calls.

47. On or about January 11, 1982, Samuels eventually reached Respondent by telephone.

48. During the aforementioned telephone conversation Respondent represented to Samuels that he was preparing the appellate brief and would mail it later that evening.

49. On January 12, 1982, Respondent represented to Samuels that he had filed another motion for extension of time to file an appellate brief.

50. In response to Respondent's representation, Samuels requested that Respondent send Samuels a copy of his motion for extension of time.

51. Respondent failed to forward to Samuels a copy of the aforementioned motion.

52. At the time that Respondent represented to Samuels that he had filed for an extension of time to file a brief, oral argument on the appeal had already taken place.

53. Respondent failed to file an appellate brief on behalf of McElfresh.

54. On or about September 6, 1979, Eloise Sacerio (hereinafter referred to as "Sacerio") retained Respondent to represent her in an action against Al Springer Roofing Company (hereinafter referred to as "company") for damages resulting from the negligent repair of her roof.

55. Respondent received a check in the amount of \$150 as a retainer to pursue an action against the company on behalf of Sacerio (hereinafter referred to as "action", "legal matter" or "proceedings") .

56. Respondent failed to promptly file suit against the company on behalf of Sacerio.

57. On or about February 11, 1980, the company instituted an action against Sacerio to foreclose a lien placed on her property for the services performed.

58. On or about March 12, 1980, a default was entered based upon Respondent's failure to timely file an answer.

59. On March 26, 1980, Respondent filed a Motion to Set Aside the Default based upon the unavailability of his secretary to type the Answer due to her illness.

60. On May 14, 1980, the Court set aside the default.

61. Thereafter, Respondent took little or no action to pursue the legal matter.

62. On September 19, 1980, summary judgment was granted in favor of the company which entitled the company to recover principal, interest and attorneys' fees totalling \$2,903.25.

63. The order granting summary judgment permitted the counterclaim filed by Respondent to be tried.

64. Respondent failed to pursue the counterclaim on behalf of Sacerio.

65. During October 1980, Sacerio provided Respondent with additional funds based upon Respondent's representation that such funds were necessary for him to pursue the legal matter on her behalf.

66. Thereafter, Sacerio requested that Respondent provide her with an accounting of the aforementioned funds.

67. Respondent failed to respond to Sacerio's request to provide an accounting.

68. In October 1980, Respondent advised Sacerio that he would need additional funds in order for him to pursue the action against the company, as referred to in Paragraph 65.

69. In response to Respondent's request, Sacerio gave Respondent a check for \$2,541.00.

70. Respondent failed to advise Sacerio that a judgment had been entered against her in the proceedings.

71. On or about June 18, 1981, Respondent gave Sacerio a check for \$750.00.

72. Respondent represented to Sacerio that the aforementioned check was given to her in settlement of the action against the company.

73. Respondent undertook the aforementioned actions in order to conceal from Sacerio his failure to properly pursue the legal matter on her behalf.

74. In May 1978, Sacerio retained Respondent to pursue a worker's compensation claim on her behalf (hereinafter referred to as "claim").

75. Sacerio signed papers in Respondent's office in connection with filing the claim.

76. Respondent represented to Sacerio that the claim would take approximately one (1) year to resolve.

77. Respondent failed to file a claim on behalf of Sacerio until June 14, 1979.

78. The aforementioned claim was filed approximately thirteen (13) months after Respondent was retained.

79. Other than the filing of the aforementioned claim, Respondent took little or no action on behalf of Sacerio to pursue the claim.

80. In 1982, Sacerio discharged Respondent and retained other counsel.

81. John Garrison (hereinafter referred to as "Garrison") owned commercial property located in Pompano Beach, Florida.

82. During or about the summer of 1980, Garrison leased a portion of the aforementioned property to Joann Yedlicka (hereinafter referred to as "Yedlicka") for the use and operation of a beauty salon (hereinafter referred to as "leased premises").

83. On or about July 22, 1980, there was a fire on the leased premises.

84. During or about August 1980, Garrison retained attorney William George (hereinafter referred to as "George") to collect the rent which was past due and to have Yedlicka evicted from the leased premises.

85. Respondent represented Yedlicka.

86. During or about August 1980, Respondent contacted George to request that Yedlicka's property be permitted to remain on the leased premises in return for which Respondent would ensure that the rent due and owing would be paid.

87. Respondent represented to George that all rent which was due and owing would be paid from the settlement proceeds in connection with the fire claim when received from the insurance company (hereinafter referred to as "settlement proceeds").

88. In reliance upon the aforementioned representations, Garrison permitted Yedlicka's property to remain on the leased premises with the expectation that all rent due and owing would be paid from the settlement proceeds.

89. The insurance company forwarded a check representing the settlement proceeds to Respondent.

90. Respondent failed to pay the rent due and owing from the settlement proceeds.

91. Respondent forwarded the settlement proceeds to Yedlicka.

92. In response to inquiry from George, Respondent represented that the check from the insurance company was sent directly to Yedlicka and consequently Garrison would have to seek payment of the rent due directly from Yedlicka.

93. Respondent's representation, referred to above, was false in that Respondent received the aforementioned check from the insurance company and subsequently forwarded it to Yedlicka.

94. By reason of the foregoing, Respondent induced a party to forebear from bringing an action against his client by representing to that party that he would guarantee payment of monies due from settlement proceeds, caused the funds to be disbursed in violation of his representations, and misrepresented facts concerning the disbursement of the funds.

Findings As Supreme Court Case No. 65,258

1. On October 1, 1981 Respondent was suspended from the practice of law for nonpayment of dues.

2. Respondent received annual notification from the Membership Records Department, The Florida Bar, Tallahassee Office, as to his delinquency and the necessity for him to petition the Board of Governor for reinstatement.

3. On March 4, 1983 Respondent received additional written notification from The Florida Bar, Miami Office, as to his delinquent status. The notification further advised Respondent that as a delinquent member, Respondent is not entitled to the privileges of membership in The Florida Bar and shall not practice law in this state [Emphasis added].

4. On May 31, 1983 Respondent was contacted by a Florida Bar staff investigator to confirm that he had received actual notice concerning his delinquent status. Respondent advised the staff investigator that he would contact The Florida Bar on June 1, 1983 and take whatever action was necessary to correct his status with the Florida Bar.

5. Despite receiving actual notice of his delinquent status, Respondent failed to take prompt and proper action to ensure that he was reinstated as a member of The Florida Bar.

6. Respondent has continuously engaged in the practice of law since his suspension for nonpayment of dues on October 1, 1981.

7. In the fall of 1979 Hans Wimmer (hereinafter referred to as "Wimmer") retained Respondent to represent him in a personal injury matter arising from an automobile accident (hereinafter referred to as "Wimmer's claim").

8. During or about December 1979, Respondent filed an action in Dade County Circuit Court against defendants, the allegedly negligent party and his insurance company, as well as Wimmer's insurance company (hereinafter referred to as "civil action").

9. Thereafter, Respondent took little or not action to pursue Wimmer's claim, including handling the civil action as well as the settlement of the claim.

10. In November 1982 the civil action was dismissed.

11. Between November 1981 and April 1983, attorney Melvin Asher (hereinafter referred to as "Asher") contacted Respondent on behalf of Wimmer for information pertaining to the status of Wimmer's claim.

12. Respondent failed to advise either Wimmer or Asher that the civil action had been dismissed.

13. On March 1, 1983 Respondent represented to Asher that although one of the insurance companies had offered to settle Wimmer's claim for sixty-five hundred dollars (\$6,500), Respondent expected to settle the claim for eight-thousand dollars (\$8,000) and anticipated receiving a check representing the settlement proceeds from the insurance company within ten days.

14. Wimmer was advised of the expected settlement in the amount of eight-thousand dollars (\$8,000), referenced above.

15. Respondent's representation to Asher that the matter was about to be settled and that a check would be forthcoming within ten days was false in that at the time the statements were made the civil action had been dismissed and the insurance companies had already closed their files. Accordingly there was no claim pending.

16. Respondent neither received nor forwarded any settlement proceeds to Wimmer.

17. Respondent neither notified Wimmer or Asher that settlement proceeds had not been received nor did he provide any explanation as to why the Wimmer claim was not settled.

18. On or about March 23, 1983 Asher sent Respondent a letter requesting a meeting with him to review Wimmer's file.

19. On or about April 20, 1983 Asher again wrote to Respondent requesting review of Wimmer's file.

20. Respondent failed to respond to the aforementioned requests for review of Wimmer's file.

21. Other than Respondent's misrepresentation concerning the imminent settlement of Wimmer's claim, as set forth in Paragraph 13, Respondent failed to provide Wimmer, either directly or through any other party, with information concerning the status of his claim.

22. During or about November 1980 Theresa Oboz Parrish (hereinafter referred to as "Parrish") retained Respondent to represent her in a personal injury matter arising from a motorcycle accident (hereinafter referred to "Parrish's claim").

23. On or about August 6, 1981, Respondent received ten-thousand dollars (\$10,000) from the Northland Insurance Company to settle Parrish's claim (hereinafter referred to as "settlement proceeds").

24. The settlement proceeds were to be distributed as follows:

Approximately five-thousand dollars (\$5,000) to Parrish, four-thousand dollars (\$4,000) to Respondent for attorney's fees and one-thousand dollars (\$1,000) to health care providers in payment of Parrish's medical expenses.

25. Respondent did not forward to Parrish the portion of the settlement proceeds she was entitled to receive until October 1981, approximately two months after Respondent had received these funds.

26. Respondent failed to promptly forward funds from the settlement proceeds to the health care providers in payment of Parrish's medical expenses.

27. As a result of Respondent's failure to forward payment for Parrish's medical expenses, Parrish received demands for payment from the health care providers.

28. Between October 1981 and June 1983, Parrish telephoned Respondent on numerous occasions to ascertain the status of payment of her medical expenses.

29. Respondent failed to return Parrish's telephone calls.

30. On the few occasions that Parrish was able to contact Respondent, Respondent represented to her that either the matter had been taken care of or the checks were in the mail.

31. The representations, referred to above, were false in that at the time the statements were made, Respondent had not paid Parrish's medical expenses.

32. As a result of the continuation of the demands from the health care providers for payment of her medical expenses, Parrish filed a complaint with The Florida Bar in June 1983.

33. On or about August 13, 1983, two years after receiving the settlement proceeds, Respondent forwarded payments to the health care providers for Parrish's medical expenses.

34. The payment of Parrish's medical expenses was undertaken by Respondent only after Parrish filed her complaint with The Florida Bar and The Florida Bar had contacted Respondent requesting a review of his trust account records.

35. When contacted by The Florida Bar staff investigator to arrange an inspection of his trust account records, Respondent advised the investigator that he was unable to locate his ledger cards.

36. Respondent failed to respond to subsequent requests from The Florida Bar investigator to make his trust account records available for inspection.

37. In 1974 Robert J. Flynn (hereinafter referred to as "Flynn") sold his home to Rick and Eileen Mehta (hereinafter referred to as "Mehta").

38. Pursuant to the aforementioned sale, Flynn held a mortgage on the property, the terms of which provided that Flynn was to receive periodic mortgage payments, with final payment in the amount of seventy-two thousand dollars (\$72,000) due on March 1, 1982 (hereinafter referred to as "final mortgage payment").

39. At the time of the sale, Flynn's property was subject to a lien in the amount of ten-thousand dollars (\$10,000) (hereinafter referred to as "lien") for legal services which were allegedly provided to Flynn by an attorney other than Respondent (hereinafter referred to as "attorney lienholder").

40. During or about September 1981 Flynn retained Respondent for the purpose of collecting the final mortgage payment from Mehta, settling the lien, and preparing and recording the documents necessary to provide Mehta with clear title (hereinafter referred to as "Flynn's legal matters").

41. Soon after he was retained, Respondent represented to Flynn that the attorney lienholder was willing to accept thirty-five hundred dollars (\$3,500) to settle the lien. Flynn agreed to accept the proposed settlement.

42. The representation referenced above was false in that the attorney lienholder had not agreed to accept thirty-five hundred dollars (\$3,500) to settle the lien.

43. Throughout February 1982, Mehta telephoned Respondent on numerous occasions to advise that they were ready to tender the final mortgage payment on March 1, 1984. However, Respondent failed to return Mehta's telephone calls.

44. In March 1982, Respondent advised Flynn that the lien could not be settled for less than ten-thousand dollars (\$10,000). Flynn agreed and indicated to Respondent that he wanted the legal matters resolved as soon as possible.

45. Although Mehta was ready to tender the final mortgage payment on March 1, 1982, as required by the mortgage, Respondent failed to undertake the collection of the final mortgage payment until June 2, 1982.

46. The delay in the collection of the final mortgage payment was due solely to Respondent's neglect and his failure to make appropriate arrangements to insure that the funds would be promptly collected.

47. On June 2, 1982 Respondent received from Mehta the final mortgage payment in the form of a cashier's check in the amount of seventy-two thousand dollars (\$72,000), made payable his trust account.

48. On June 14, 1982 in response to Flynn's inquiry concerning the status of transmittal of the final mortgage payment to him, Respondent represented to Flynn that he was waiting for the aforementioned cashier's check to clear his bank account.

49. Respondent's representation to Flynn, referenced above, was false or misleading in that assuming that Respondent's trust account had been properly maintained, if the aforementioned cashier's check had been promptly and properly deposited into Respondent's trust account, the funds representing the final mortgage payment should have been available for transmittal to Flynn.

50. On June 23, 1982 in response to a second inquiry from Flynn concerning the status of the transmittal of the final mortgage payment to him, Respondent represented to Flynn that he would forward a check to him the next day.

51. Respondent failed to forward a check to Flynn on June 24, 1982, as promised, and did not forward the final mortgage payment to Flynn until the middle of July.

52. Because of Respondent's delay in collecting the final mortgage payment, Flynn has lost the benefit of the use of his funds, including any interest he would have received.

53. In forwarding the final mortgage payment to Flynn, Respondent deducted eight-hundred and fifty dollars (\$850.00) for legal fees for his handling of Flynn's legal matters, referenced above.

54. Because of Respondent's inaction and in an effort to avoid even further delay, Mehta, an attorney, prepared the documents necessary to satisfy the mortgage and forwarded it to Flynn. Flynn remitted these documents to Respondent by certified mail.

55. Based upon the legal services which Respondent provided, the fees Respondent collected were clearly excessive.

56. In addition to the deduction for legal fees, referred to in Paragraph 53, Respondent deducted from the final mortgage payment monies which were allegedly due him for legal services he had performed on behalf of another client, Flynn's adult son.

57. The aforementioned deduction was improper in that Flynn did not authorize payment to Respondent for legal services Respondent rendered on behalf of Flynn's adult son.

IV. RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

On May 8, 1984, Respondent submitted a written unconditional guilty plea to The Florida Bar's Complaint in Supreme Court Case No. 65,258. At the Final Hearing on July 26, 1984, Respondent entered an unconditional guilty plea to The Florida Bar's Complaint in Supreme Court Case No. 64,277.

Based upon the unconditional guilty pleas by Respondent, I find that Respondent has admitted his guilt as to all of the violations charged in the Bar's Complaints and, specifically, that he be found guilty of violating the following disciplinary rules:

Supreme Court Case No. 64,277

1. As to Count I, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(5); 1-102(A)(6); 6-101(A)(3); 7-101(A)(1); 7-101(A)(2) and 7-101(A)(3) of the Code of Professional Responsibility.
2. As to Count II, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(4) and 1-102(A)(6) of the Code of Professional Responsibility.
3. As to Count III, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(6), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2) and 7-101(A)(3) of the Code of Professional Responsibility.
4. As to Count IV, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(4), 1-102(A)(6) and 6-102(A) of the Code of Professional Responsibility.
5. As to Count V, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(6), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2) and 7-101(A)(3) of the Code of Professional Responsibility.
6. As to Count VI, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(4) and 1-102(A)(6) of the Code of Professional Responsibility.

Supreme Court Case No. 65,258

7. As to Count I, I recommend that Respondent be found guilty of violating Disciplinary Rule 3-101(B) of the Code of Professional Responsibility and Article II, Section 2 and Article VIII, Section 2 of the Integration Rule of The Florida Bar.
8. As to Count II, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(4) and 6-101(A)(3) of the Code of Professional Responsibility.
9. As to Count III, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(4), 6-101(A)(3), 9-102(B)(3) and 9-102(B)(4) of the Code of Professional Responsibility and Rule 11.02(4) of the Integration Rule of The Florida Bar.

10. As to Count IV, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(4), 6-101(A)(3), 9-102(B)(1), 9-102(B)(3) and 9-102(B)(4) of the Code of Professional Responsibility.

11. As to Count V, I recommend that Respondent be found guilty of violating Disciplinary Rules 2-106(A) and 2-106(B) of the Code of Professional Responsibility and Rule 11.02(4) of the Integration Rule of The Florida Bar.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Respondent received a private reprimand in 1970 for unethical conduct. He is currently under suspension for non-payment of dues since October, 1981. Based upon the facts as set forth in the pleadings, the record of proceedings before the grievance committee, and the evidence presented at the Final Hearings, I recommend that Respondent be disbarred for three (3) years.

In recommending discipline, I have considered the cumulative nature of Respondent's misconduct. Respondent's misconduct has not been comprised of isolated instances. Respondent has repeatedly undertaken to act on behalf of clients or third parties, has neglected to take action and thereafter, has misrepresented the status of his action in order to hide his neglect. Respondent has repeatedly caused serious harm to his clients and to third parties where there has been no cause or justification to do so. As delineated above, Respondent has been found guilty of 37 violations of 14 different Disciplinary Rules of the Code of Professional Responsibility and four violations of the Integration Rule of The Florida Bar.

These violations not only involve neglect, misrepresentation, prejudicing clients, failure to carry out contracts of employment, intentional failure to seek lawful objectives of clients, conduct prejudicial to the administration of justice and adverse to the fitness to practice law, but also involve violation with respect to Respondent's trust account and Respondent's mishandling of trusts funds.

Respondent has exhibited a complete disregard of his responsibilities as a lawyer and officer of the court and should

be disbarred for a period of three (3) years from the practice of law in the State of Florida.

VI. STATEMENT OF COSTS AND RECOMMENDATIONS AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:

I find the following costs were reasonably incurred by the Florida Bar:

Administrative Costs [Integration Rule 11.06(9)(a)]:	
Grievance Level	\$ 900.00
Referee Level	300.00
Court Reporter:	
Grievance Committee Hearing	474.80
Final Hearing (4/5/84)	120.40
Final Hearing (7/26/84)	333.50
Service of Subpoenas:	
Witness for Final Hearing (4/5/84)	52.00
Transportation Costs:	
Bar Counsel to Key West for Final Hearing (7/4/84)	185.00
Investigative Costs	463.00

TOTAL \$ 2,828.70

It is recommended that the foregoing costs be assessed against Respondent. It is further recommended that execution issue with interest at the rate of twelve percent (12%) to accrue on all costs assessments not paid within thirty (30) days of entry of the Supreme Court's final order, unless the time for such payment is extended by the Board of Governors of The Florida Bar.

Dated this 29th day of August, 1984.


M. IGNATIUS LESTER
Referee

Copies furnished to:
Stephen J. Golembe
Louis Thaler

DATE 8/30/84
BY E. Gato