

FILED

SID J. WHITE

AUG 6 1984

CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

ROBERT M. SEGAL,
Respondent.

Case Nos. 64,526

64,338

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of The Florida Bar, a hearing was held on July 13, 1984. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to the Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: John B. Root, Jr.

For the Respondent: He failed to appear either personally or by counsel.

Upon motion of The Florida Bar, Case No. 64,338 and 64,526 were consolidated for trial on May 31, 1984.

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

That the respondent, Robert M. Segal, is a member of The Florida Bar subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

As to Count I

1. The respondent was retained to represent Eddie R. Johnson and Eric H. Johnson in a damage claim resulting from the destruction of their place of business by fire. He was retained on or about April 7, 1981. The Johnsons did not give respondent a deposit on costs but agreed that the fee would be a percentage of the recovery and that the Johnsons would be responsible for costs.

2. Subsequently, the respondent met with the Johnsons on several occasions during which he received relevant documents pertaining to the Johnsons' loss.

3. Around February or March, 1982, Eric Johnson delivered to the respondent a videotape of the fire.

4. Since that time Eric Johnson has had no direct contact with the respondent.

5. Eddie Johnson and his wife, Barbara Johnson, made numerous attempts to contact the respondent after the delivery of the videotape. They both telephoned the office of the respondent and went to his office personally and were unable to see him or to discuss the matter with him.

6. The destruction of the family business resulted in significant income tax ramifications for the Johnsons and it was determined that certain of the records previously furnished to the respondent were necessary for the preparation of the corporate income tax. The Johnsons were unable to communicate with the respondent, therefore they had their accountant attempt to communicate with the respondent for the purpose of obtaining the necessary documentation.

7. The respondent did not respond to a letter sent by the accountant nor did he respond to telephone calls from the accountant.

8. The Johnsons have not been informed by the respondent whether he made any claim on their behalf. However, they have no knowledge of any such claim being filed.

9. Eddie Johnson retained an attorney in October, 1982, to try to contact the respondent. The attorney wrote letters to the respondent on at least two occasions but received no response to either.

10. The Johnsons did not retain another attorney to prosecute their damage claim because the respondent maintained possession of the necessary documentation and other evidence.

11. Despite attempts over a period of more than a year by the Johnsons, by their accountant, and by their attorney, the Johnsons were totally unable to learn of the status of their claim or to have the respondent respond to their needs in any way, notwithstanding the fact that he agreed to represent them in their claim.

As to Count II

12. In an attempt to retrieve the documents and videotape belonging to the Johnsons from the possession of the respondent, the Chairman of the Ninth Judicial Circuit Grievance Committee "C" signed a subpoena duces tecum and caused it to be personally served on the respondent on April 6, 1983.

13. The subpoena duces tecum required the respondent to bring to the offices of the Chairman of that committee

all of the files including all correspondence, bills and other documents or objects in his possession relating to the destruction of the Johnsons' business. The time of delivery of these files was designated as April 18, 1983, at 10:30 a.m.

14. After rescheduling the time required to produce the documents several times, at the request of the respondent, the appointed time of production was finally set for April 25, 1983. The respondent failed to appear or produce the documents or files pursuant to the subpoena duces tecum.

15. Subsequently, the respondent was informed by mail that if he did not comply with the subpoena duces tecum by May 6, 1983, that The Florida Bar would apply to the Supreme Court of Florida for an order to show cause. The respondent did not comply with the subpoena duces tecum and on May 27, 1983, The Florida Bar filed a petition for an order to show cause against the respondent in the Supreme Court of Florida.

16. On July 13, 1983, the Supreme Court of Florida ordered the respondent to show cause within 15 days from the date of service of the order on the respondent as to why he should not be held in contempt of the Supreme Court of Florida. The order to show cause was personally served on the respondent on July 20, 1983.

17. The respondent failed to respond to the order to show cause and on September 28, 1983, the Supreme Court of Florida found the respondent in contempt of that court and suspended him from the practice of law until further order of the Court.

As to Count III

18. Respondent was retained by Steve Metheny, Vice President of Signs, Inc. of Florida to represent his company in opposition to a proposed county ordinance which was being considered by the Orange County Commission. The proposed ordinance would ban the use of portable trailer signs in the unincorporated areas of Orange County. Respondent was retained in October, 1982.

19. The Commission passed the ordinance which was to become effective in October, 1983.

20. On or about February 28, 1983, a newly elected County Commission passed interim regulations intended to control and minimize the use of portable trailer signs prior to the ban effective date in October, 1983. The interim regulations were to become effective on April 1, 1983.

21. The respondent was employed by Signs, Inc. of Florida to institute action immediately to obtain a declaratory judgment and an injunction against the enforcement of both the interim regulations and the permanent ban.

22. On March 1, 1983, respondent was paid a retainer of \$2,500 by Signs, Inc. of Florida for the purpose of proceeding with the suit.

23. Between March 1, 1983, and March 24, 1983, repeated efforts were made to contact respondent in order to obtain information concerning the progress of the suit. Because Mr. Metheny was unable to contact the respondent or to receive other response from him Mr. Metheny requested

corporate counsel, Mr. Joseph A. Fawal, to contact the respondent.

24. After repeated efforts to contact respondent met with failure, on March 24, 1983, Mr. Fawal flew to Orlando from Alabama to consult with the respondent on the progress and strategy of the case.

25. At this time Mr. Fawal was informed by the respondent that a lawsuit had not been filed. Respondent, however, agreed to file suit in Federal District Court no later than Friday, March 25, 1983.

26. Respondent thereafter informed Mr. Fawal that the suit had been filed and a hearing was set for March 29, 1983.

27. On March 28, 1983, both Mr. Metheny and Mr. Fawal journeyed to Orlando from Alabama to assist the respondent with final preparations for the March 29 hearing. After arrival in Orlando and throughout the balance of March 28, 1983, they were unable to contact the respondent. They were advised that he was out of the office.

28. On the morning of Tuesday, March 29, 1983, Mr. Metheny and Mr. Fawal were informed by the respondent's office that no lawsuit had been filed and therefore no hearing was scheduled for that day.

29. Respondent was fired and a new attorney was employed to proceed with the protection of the interests of Signs, Inc. of Florida.

30. Respondent has failed to return any portion of the \$2,500 paid to him as a retainer or to reimburse Mr. Metheny and Mr. Fawal for any of the additional expenses to which they were put because of his derelictions.

31. The matter was of great financial interest and importance to Signs, Inc. of Florida because the interim regulations and the new ordinance would have resulted in serious financial damage to the business of Signs, Inc. of Florida.

As to Count IV

32. Gilbert S. Sussman, an out-of-state attorney, referred a certified copy of a Maryland judgment to the respondent on April 22, 1981. Sussman requested that respondent obtain a Florida judgment against the defendant. The judgment was for the sum of \$3,412.45 and provided for attorneys' fees of an additional \$750.00. Sussman desired to collect that judgment. Respondent acknowledged and accepted the referral on April 29, 1981.

33. Almost a year later, on April 13, 1982, a Florida judgment was entered in the same amounts, following a summary judgment hearing before a Seminole County Judge.

34. Later, respondent scheduled depositions in aid of execution of the judgment debtors for June 25, 1982. The respondent never informed Mr. Sussman of the results of the depositions. On August 19, 1982, October 8, 1982, and again on October 26, 1982, Mr. Sussman wrote respondent requesting a status report on the case. He received no response to any of these letters. Then on November 15, 1982, Mr. Sussman

mailed respondent a letter certified mail, return receipt requested, requesting a status report. The receipt was returned to Mr. Sussman showing that the letter was received in respondent's office, but he never responded to the request for information. On January 19, 1983, a second certified letter was sent to the respondent and again the receipt was signed and returned to Mr. Sussman's office. However, no response was forthcoming from the respondent.

35. On May 11, 1983, Mr. Sussman again wrote respondent giving him two weeks to respond to the letter. No response was made.

36. In addition to the letters detailed above, Mr. Sussman placed many telephone calls to the respondent's office, none of which were returned.

37. No attempt at collection of the Florida judgment was made by respondent in behalf of Mr. Sussman's clients.

III. Recommendations as to whether or not the Respondent should be found guilty: As to each count of the complaint I make the following recommendations as to guilt or innocence:

As to Count I

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit:

- a. DR 1-102(A)(5) for engaging in conduct prejudicial to the administration of justice.
- b. DR 1-102(A)(6) for engaging in conduct which adversely reflects on respondent's fitness to practice law.
- c. DR 6-101(A)(3) for neglecting a legal matter entrusted to him by a client.
- d. DR 7-101(A)(2) by failing to carry out a contract of employment entered into with a client for professional services.

As to Count II

I recommend that respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit:

- a. DR 1-102(A)(5) for conduct prejudicial to the administration of justice; and
- b. DR 1-102(A)(6) for conduct which adversely reflects on respondent's fitness to practice law.

As to Count III

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit:

- a. DR 1-102(A)(4) for conduct involving dishonesty, fraud, deceit and misrepresentation;
- b. DR 1-102(A)(6) for conduct which adversely reflects on respondent's fitness to practice law by falsely representing to his client that a suit had been filed on his behalf;
- c. DR 6-101(A)(3) for neglecting a legal matter entrusted to respondent by a client;
- d. DR 7-101(A)(2) for failing to carry out a contract of employment entered into with a client; and
- e. DR 9-102(B)(4) for failing to promptly pay to his client as requested by him funds in the possession of the respondent which the client is entitled to receive.

As to Count I of Complaint No. 64,526 (09C83C79)

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit:

- a. DR 6-101(A)(3) by neglecting a legal matter entrusted to him by a client.

IV. Recommendation as to Disciplinary Measures to be applied:

I recommend that the respondent be disbarred from the practice of law in Florida, that he be ordered to reimburse to Signs,

Inc. of Florida the \$2,500.00 retainer which he accepted to represent the corporation, and that he pay all costs of these disciplinary proceedings.

I make this recommendation in view of the matters contained in the two formal complaints which were heard by me on July 13, 1984. I have also considered the previous record of this respondent, as follows: (a) on December 1, 1983, the Supreme Court of Florida suspended the respondent from the practice of law for a period of twelve months and thereafter until rehabilitation and restitution are proved (Case No. 63,272); and (b) the respondent was held in contempt of the Supreme Court of Florida on September 28, 1983 (Case No. 63,838) and suspended until further order of the Supreme Court for failure to appear in response to a subpoena duces tecum served upon him by The Florida Bar on April 6, 1983. It is particularly noted that respondent ignored the Supreme Court's order to show cause issued on July 13, 1983 and served on the respondent on July 20, 1983.

It is further noted that the respondent herein has evinced a continuing pattern of indifference and neglect in his own defense in that he failed to appear at the referee hearing of these consolidated cases on July 13, 1984, although sufficient notice of the same was given to him, and that he failed to appear at the grievance committee hearings in the matters under consideration.

I have been unable to find any factors in mitigation of the offenses charged in these consolidated cases and in view of the nature and the number of the offenses charged herein,

together with the previous record, I feel that a disbarment of the respondent together with a reimbursement of the retainer paid to respondent by Signs, Inc. of Florida, and payment of costs is an appropriate discipline to be carried out in this case.

V. Personal History and Past Disciplinary Record: After making my recommendations of guilt and prior to recommending discipline to be accorded respondent pursuant to Rule 11.06(9)(a)(4) I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 39 (Born 1945)
Date admitted to Bar: January 10, 1972
Prior Disciplinary Convictions and Measures
Imposed therein: As discussed in Section IV
above.
Other Personal Data: None.

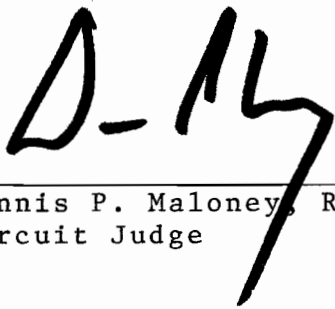
VI. Statement of Costs and Manner in Which Costs Should be Taxed: I find the following costs were reasonably incurred by The Florida Bar.

A. Grievance Committee Level Costs	
1. Administrative Costs	\$ 150.00
2. Transcript of Grievance Committee hrg. held 5/24/83 (09C83C38 and 09C83C79)	125.00
3. Transcript of Grievance Committee hrg. held 9/27/83 (09C83C79)	50.75
B. Referee Level Costs	
1. Administrative Costs	150.00
2. Transcript of Referee hearing held 7/13/84 (all cases)	80.50
3. Bar Counsel's travel expenses	41.60
C. Miscellaneous Costs	
1. Staff Investigator's expenses	<u>281.34</u>
TOTAL ITEMIZED COSTS:	\$ 879.19

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent and that interest at the statutory rate shall accrue

and be payable beginning thirty days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

DATED this 2nd day of August, 1984.



Dennis P. Maloney, Referee
Circuit Judge

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