

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED

SID J. WHITE

JUL 5 1984

CLERK, SUPREME COURT

By 
Chief Deputy Clerk

THE FLORIDA BAR,
Complainant,

CONFIDENTIAL

v.

Case No. 64,812

GARY A. POE,
Respondent.

(05A82C49 - Josephine Worcester)
(05A83C59 - Mr. & Mrs. Miller)
(05A83C61 - Charles E. Strange, Jr.)
(05A83C78 - Andrew Fields)
(05A83C79 - James E. Lindell)

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, hearings were held on March 20, 1984 and June 11, 1984. The pleadings, notices, motions, orders, transcripts and exhibits all of which are forwarded to the Supreme Court of Florida along with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: David G. McGunegle

For the Respondent: L. Edward McClellan, Jr.

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: Respondent submitted a conditional guilty plea in exchange for a stipulated discipline which was approved by the Board of Governors of The Florida Bar and which I hereinafter adopt. Accordingly, I find that:

1. The respondent is, and at all times material, was, a member of The Florida Bar and subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida. He

practices law in Inverness, Citrus County, Florida.

As to Count I

2. Respondent represented Josephine M. Worcester with respect to rental property she owned in Citrus County beginning in 1981. Mrs. Worcester resides in another state. In August, the respondent began collecting the rent which occurred on a somewhat sporadic basis through mid-May, 1982. Respondent did not always properly account for the receipts of the monthly rent and thus was unable to provide an accurate accounting to his client. Total rent for the year should have been approximately \$3,300 whereas his deposits received totalled \$1,450.

3. In mid-June, 1982, the respondent advised his clients payments made including the security deposit of \$150 totalled \$1,600 and indicated she was owed a balance of a little over \$1,100. Her records indicated she had been paid \$1,325. Additional correspondence did not adequately resolve the apparent discrepancy nor provide her with an adequate accounting. Respondent furnished a new accounting in February, 1983, which showed he had over disbursed from the trust account \$150. The grievance committee later requested a certified public accountant's report which report contained only an unaudited statement of the deposits totalling \$1,450.

4. Respondent's handling of the rent was plainly inadequate and his recordkeeping was insufficient to accurately account for all deposits received or to provide his client with an accurate account of moneys disbursed.

5. A review of respondent's trust account indicated he was not in substantial minimum compliance with the trust

accounting rules. He was not completing nor maintaining the quarterly trust account reconciliations. Checks drawn on the three accounts he maintained during the period of review often did not reflect the matter to which they related. The checkstubs often did not reflect the date the checks were issued to the payee. The balance was not reflected on any of the stubs on two now closed trust accounts. Bank slips did not always identify the client. As of the end of August, 1982, the internal records did not match the bank records and respondent indicated he maintained some \$6,000 of his own money in the account to preclude overdrafts. Respondent also certified during the years in question on his dues statement that he had read the rules and was in substantial minimum compliance.

As to Count II I find:

6. Mr. and Mrs. Ralph Miller contacted the respondent by telephone on or about September 1, 1982, to handle a bankruptcy action. They were residing in West Virginia at the time. The respondent agreed to handle the bankruptcy for \$500 in two payments and to start immediately. The money was paid in approximately a month's period. They also furnished the respondent with all the information he requested during the original telephone call.

7. During the next several weeks into December, 1982, Mrs. Miller engaged in several unsuccessful telephone calls to respondent. They also had traveled to Citrus County in October and spoke to the respondent at that time. He advised them that matters were taken care of and he would be in touch.

8. On December 2, 1982, they received various papers in the mail from the respondent which they were to sign and

return which they did the same day. They then requested a West Virginia attorney to contact the respondent regarding progress. His letter went unanswered. In late December the respondent called Mrs. Miller, and twice early in the year. In early January, 1983, Mrs. Miller called the respondent who requested the same information he had originally requested and been provided in September. Respondent also advised the Millers during this period that a friend of his had other business at the bankruptcy court and would be able to deliver the papers personally. He also indicated they would have a claim with numbers within one week.

9. On January 24, 1983, Mrs. Miller called the bankruptcy court in Jacksonville and was advised nothing had been filed. When respondent was contacted, he advised that his friend had been detailed to take the papers to the court but that his friend was considered to be somewhat "flaky" and he would sometimes be unavailable for a few days. The Bar complaint was thereafter filed. In July, the respondent refunded \$500 to his clients along with an additional check for \$75.11 to reimburse them for the cost of their long distance calls.

As to Count III I find:

10. Respondent was called in late January, 1983, from Charles E. Strange who was living in Incline Village, Nevada relative to a problem with a former partner with whom he had an apparent oral partnership. Mr. Strange had invested a substantial sum of moneys to his detriment and wished respondent to attempt collection of the funds or sue his former partner.

11. Respondent accepted the representation and was sent \$500 as a retainer. Mr. Strange then forwarded pursuant to respondent's instructions copies of cancelled checks which were in fact the only documentation. Mr. Strange called the respondent on several occasions relative to the case progress. In early March he was advised that the former partner had been served on March 1, 1983. Respondent further advised his client he had mailed him copies of the papers. Having received no papers, Mr. Strange sent his wife to Florida and she contacted the respondent's office on March 9, 1983, at approximately 10:00 in the morning. She was told she could not see him at that time. She and her mother-in-law went back to respondent's office around noon and saw the respondent who indicated he would meet with Mrs. Strange around 5:00 p.m. with the papers. He indicated he had misplaced the papers but also advised her the papers had been served.

12. In fact, the complaint was filed on March 9, 1983, at 11:36 a.m. The summons along with the return of service is dated March 17, 1983, showing a return of service on March 23, 1983. Respondent twice misadvised his client and/or wife as to the status of his case.

As to Count IV I find:

13. In late September, 1982, Andrew Fields consulted with the respondent relative to a trespass problem. Thomas Crowe, a mobile home mover from Tampa, had made physical preparations to move Mr. Fields' mobile home in Citrus County due to a mistaken belief the trailer had been sold. Mr. Fields wanted respondent to write a demand letter for damages to Mr. Crowe and paid him \$35. If suit was necessary Mr. Fields contemplated handling it himself. Respondent

indicates he advised Mr. Crowe to seek Tampa counsel.

14. Throughout the next several months Mr. Fields avers he called respondent's office several times and visited it twice while in Inverness all without success in seeing or hearing from the respondent. In May, 1983, Mr. Fields called respondent's office and left a message indicating if he did not get a copy of the letter he would complain to The Florida Bar. Respondent never wrote a letter for Mr. Fields. He failed to establish a file although he kept his notes which were given to him at the interview. When he got the complaint letter, the respondent responded with a letter dated July 26, 1983, which referenced a separate trespassing matter and had nothing to do with Mr. Fields' problem.

As to Count V I find:

15. James E. Lindell, an attorney in Minnesota, telephoned the respondent in January, 1982, and requested he enforce a Minnesota judgment in behalf of his client. Respondent agreed. Mr. Lindell then sent a letter at the end of January along with a check for \$150 as a partial fee and costs. Mr. Lindell wrote the respondent in March and April advising of changes in the debtor's status and asked for progress reports. Respondent replied by letter dated April 20, 1982, stating the judgment against the debtor should be achieved soon and he still hadn't received the initial \$150 which was re-forwarded within a few days.

16. After not hearing from the respondent for several months, Mr. Lindell telephoned his office three times in November without speaking to the respondent. He then sent a letter dated November 24, 1982 requesting an update on the

case. Respondent telephoned Mr. Lindell on December 21, 1982, apologized for his lack of contact and indicated he thought he had gotten a judgment entered against the debtor in Citrus County and may have also filed it in Clearwater where the debtor had moved according to Mr. Lindell's earlier correspondence.

17. Having not heard from the respondent again for several weeks Mr. Lindell called his office twice in February, 1983, which calls were not returned. Mr. Lindell then telephoned the Clerk of the Court of Citrus County and was advised no judgment had been entered nor was any court action pending against the judgment debtor in Citrus County. Mr. Lindell then wrote and asked the respondent for an explanation which was not forthcoming prior to Mr. Lindell's complaint to The Florida Bar in June, 1983. Respondent then called and apologized explaining he had asked a friend to accomplish the work and failed to follow-up to see if it had been done. He thereafter returned the \$150. Respondent not only neglected to carry out the matter entrusted to him but also misrepresented the status of the case when queried by Mr. Lindell.

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 the respondent be found guilty of violating the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 6-101(A)(2) for handling a matter with inadequate preparation and 9-102(B)(3) for

failing to maintain complete records for all funds and other properties of clients and to render appropriate accounts upon request. I also recommend he be found guilty of violating the following rules of Article XI of The Florida Bar's Integration Rule: 11.02(4) for improper handling of trust funds and 11.02(4)(c) and the corresponding Bylaw for improper trust account recordkeeping.

As to Count II

I recommend the respondent be found guilty of violating Disciplinary Rule 6-101(A)(3) for neglecting a legal matter entrusted to him.

As to Count III

I recommend the respondent be found guilty of violating Disciplinary Rule 1-102(A)(4) for engaging in conduct involving misrepresentation and Article XI, Rule 11.02(3)(a) for conduct contrary to honesty, justice or good morals.

As to Count IV

I recommend the respondent be found guilty of violating Disciplinary Rule 6-101(A)(3) for neglecting a legal matter entrusted to him.

As to Count V

I recommend the respondent be found guilty of violating Article XI, Rule 11.02(3)(a) for conduct contrary to honesty, justice or good morals and the following Disciplinary Rules: 1-102(A)(4) for engaging in conduct involving misrepresentation, 6-101(A)(3) for neglecting a legal matter entrusted to him, 7-101(A)(1) for intentionally failing to seek the lawful objectives of his client and 7-101(A)(2) for intentionally failing to carry out a contract of employment.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the respondent receive a public reprimand pursuant to Article XI, Rule 11.10(3) by personal appearance before the Board of Governors of The Florida Bar and be placed on two years' probation with quarterly caseload reports to be submitted to the Court and The Florida Bar and payment of costs.

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

Age: 29
Date admitted to Bar: October 23, 1980
Prior disciplinary convictions and disciplinary measures imposed therein: Not applicable.
Other personal data: The respondent is married.
These matters took place when he was just setting up his practice as a sole practitioner.

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 - grievance committee hrg. held 3/31/83	\$	150.00
2. Transcript of grievance committee hrg. held 3/31/83		76.50
3. Administrative Costs - grievance committee hrg. held 6/8/83		150.00
4. Transcript of grievance committee hrg. held 6/8/83		24.25
5. Bar Counsel's travel expenses		24.07
6. Court reporter's travel expenses		8.53
B. Referee Level Costs		
1. Administrative Costs		150.00
2. Transcript of Referee hearing held 6/11/84		54.25

C. Miscellaneous Costs	
1. Telephone charges	17.36
2. Staff Investigator's expenses	<u>366.37</u>
TOTAL ITEMIZED COSTS:	\$1,021.33

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 28th day of June, 1984.


FREDERICK PFEIFFER,
Referee

Copies to:

David G. McGunegle,
Bar Counsel
The Florida Bar
880 North Orange Avenue
Suite 102
Orlando, Florida 32801

L. Edward McClellan, Jr.
Counsel for Respondent
Post Office Box 549
Ocala, Florida 32678

John T. Berry,
Staff Counsel
The Florida Bar
Tallahassee, Florida 32301