

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CONFIDENTIAL

THE FLORIDA BAR,
Complainant,
v.
HORACE A. KNOWLTON,
Respondent.

CASE NOS. 64,866
65,144
66,749
TFB #13B83H38
13B83H46
13B83136

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the article XI of the Integration Rule of The Florida Bar, hearings were held on January 21, 1986 and May 13, 1986. The enclosed pleadings, orders, transcripts and exhibits, 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 Diane Victor Kuenzel
For the Respondent Donald A. Smith, Jr.

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:

1. Case No. 13B83H46 (S.Ct. 65,144) (Tagliarini Case):

The Court finds that it was respondent's responsibility to notify the attorney of record for Mrs. Tagliarini, Mr. Ronald Cotterill, of the scheduled conferenced with Judge Spicola.

Obviously, since Mr. Moore was directly involved in the proceedings, having been the prior attorney who attended the hearing from which the order in question originated, he was appropriately present at that time. However, Mr. Cotterill, as record attorney of Mrs. Tagliarini, was entitled to notice. Respondent failed to give him notice.

There is nothing in the testimony that indicates that notice was excused by the Court or anyone else; therefore, the referee finds that it was respondent's obligation to give notice. Respondent's conference with Judge Spicola constituted an ex parte communication to the Court out of the presence of the attorney for Mrs. Tagliarini. Therefore, the Court finds that there is a violation of the Code of Professional Responsibility to that extent. The Court further finds that failure to give notice, which required further proceedings subsequently, was prejudicial to the administration of justice and an ex parte communication to the Court.

2. Case Number 13B83H38 (S.Ct. 64,866) (Smith Case):

COUNT I

Although the referee finds that the agreement by respondent with regard to the traffic citation was to make a telephone call to the Court, I find from the evidence that respondent's office failed to notify Gary Smith that a withholding of adjudication was not possible. It was respondent's obligation to communicate or to see that his office personnel communicated that information to Mr. Smith.

COUNT II

The referee finds that respondent failed to answer the Amended Complaint which he was obligated to answer. Additionally, he failed to answer or otherwise respond to a number of telephone calls and inquiries placed to respondent's office by Gary Smith.

3. Case Number 13B83136 (S.Ct. 66,749) (Thomas Case):

The referee finds that Mr. Thomas, by his own testimony, indicated that he thought it was a good idea to have respondent represent all of the defendants in the hope that Thomas could control the others and control the situation.

This was a common attack on the statute itself, which respondent was successful in having declared unconstitutional in the Circuit Court, which apparently was eventually reversed on appeal. At that point, the Court finds there was no actual conflict. There also existed the possibility of a potential conflict. Any conflict that did occur in this case, occurred after the entry of the plea by Mr. Womack, at which time, Mr. Thomas was also scheduled to enter a plea, but failed to appear.

Upon learning that Mr. Thomas had a change of heart and would not plead to anything, respondent then withdrew from his representation.

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty:

Case No. 13B83H46 (S.Ct. 65,144) (Tagliarini Case):

I recommend that the respondent be found guilty of the following violations of the Code of Professional Responsibility: That Horace A. Knowlton, III has violated Disciplinary Rule 1-102(A)(5) (conduct prejudicial to the administration of justice) and DR 7-110(B) (communicating with a judge without notice to opposing counsel).

Case No. 13B83H38 (S. Ct. 64,866) (Smith Case)

I recommend that the respondent be found guilty of the following violations of the Code of Professional Responsibility:

COUNT I

That Horace A. Knowlton, III has violated Disciplinary Rule 6-101(A)(3) (neglect of a legal matter entrusted to him) and DR 7-101(A)(2) (failure to carry out a contract of employment entered into with a client).

I find respondent not guilty of DR 1-102(A)(1); DR 6-101(A)(2); DR 7-101(A)(1); and DR 7-101(A)(3) as they are not applicable to the facts in this case.

COUNT II

That Horace A. Knowlton, III has violated Disciplinary Rule 6-101(A) (3) (neglect of a legal matter entrusted to him) and DR 7-101(A) (2) (failure to carry out a contract of employment entered into with a client).

I find respondent not guilty of DR 1-102(A) (1); DR 6-101(A) (2); DR 7-101(A) (1); and DR 7-101(A) (3) as they are not applicable to the facts in this case.

As to Counts I and II, the Court further recommends that respondent reimburse Mr. Smith the \$150.00 fee, within thirty (30) days of the final order in these proceedings.

3. Case Number 13B83136 (S.Ct. 66,749) (Thomas Case):

The Court is not satisfied by clear and convincing evidence that there was a violation of the Code of Professional Responsibility in this case and, therefore, finds respondent not guilty of Disciplinary Rules 1-102(A) (1) (violation of a disciplinary rule); DR 2-110(B) (2) (continuing employment when the attorney knows it will result in the violation of a disciplinary rule); DR 5-105(A) (accepting employment where the interests of another client may impair the independent professional judgment of the lawyers); and DR 5-105(B) (continuing employment of multiple clients when his independent professional judgment will or is likely to be adversely affected).

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the respondent receive a Public Reprimand with appearance before the Board of Governors. I further recommend that respondent reimburse Mr. Gary Smith in the amount of \$150.00 and pay the costs of these proceedings in Case Number 13B83H46 (65,144) and Case Number 13B83H38 (64,866).

V. Personal History and Past Disciplinary Record:

After finding of guilt 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:

- (1) Age: 44
- (2) Date Admitted to Bar: 1968
- (3) Respondent has no prior disciplinary record.

VI. Statement of Costs and Manner in which Costs Should Be Taxed: I find the following costs were reasonable incurred by The Florida Bar.

Case Number 13B83H46 (S. Ct. 65,144)

| | |
|---------------------------|-----------|
| Grievance Committee Level | |
| Administrative Costs | \$ 150.00 |
| Court Reporter (4/7/83) | 188.24 |
| Court Reporter (5/5/83) | 64.22 |
| Copy Costs-Court File | 48.00 |
| Investigative Costs | 274.80 |

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|--|-------------------|
| Referee Level | |
| Administrative Costs | \$ 150.00 |
| Court Reporter (7/11/85) | 30.00 |
| Court Reporter (5/13/86) | 283.23 |
| (33 1/3 of total transcript \$849.70) | |
| Bar Counsel Expenses | 10.40 |
| TOTAL | <u>\$1,198.89</u> |

Case Number 13B83H38 (S. Ct. 64,866)

| | |
|---------------------------|-----------|
| Grievance Committee Level | |
| Administrative Costs | \$ 150.00 |
| Court Reporter | 235.80 |
| Investigative Costs | 27.40 |

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| Referee Level | |
| Administrative Costs | \$ 150.00 |
| Court Reporter (5/13/86) | 283.23 |
| (33 1/3 of total transcript \$849.70) | |
| TOTAL | <u>\$ 846.43</u> |

TOTAL TO BE PAID BY RESPONDENT \$2,045.32

Case Number 13B83136 (S. Ct. 67,749)

| | |
|---------------------------|-----------|
| Grievance Committee Level | |
| Administrative Costs | \$ 150.00 |
| Court Reporter | 297.50 |
| Investigative Costs | 431.40 |

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|-----------------------------|-----------|
| Referee Level | |
| Administrative Costs | \$ 150.00 |
| Court Reporter | |
| (Hearing 1/21/86) | 30.00 |
| (Hearing 5/13/86) | 283.23 |
| Deposition (Kenneth Thomas) | 76.62 |
| Bar Counsel Costs | 11.80 |

TOTAL TO BE PAID BY BAR \$1,430.55

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 (30) 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 29th day of July, 1986.


 PHILIP A. FEDERICO
 Referee

Copies furnished to:

Donald Aubrey Smith, Jr., Counsel for Respondent
 Diane Victor Kuenzel, Bar Counsel
 John T. Berry, Staff Counsel