

IN THE SUPREME COURT OF FLORIDA
(BEFORE A REFEREE)

FILED

SID J. WHITE

JUN 17 1987

CLERK, SUPREME COURT

By _____

Deputy Clerk

THE FLORIDA BAR,

CONFIDENTIAL

Complainant

Case No. 65,469
(TFB Nos. 13C83H15)
13C83H32)

vs.

WILLIAM M. HOLLAND, JR.,

Respondent

REPORT OF REFEREE AS TO COUNT I

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 Final Hearing was held. The enclosed pleadings, Orders, Transcripts and Exhibits are forwarded to The Supreme Court of Florida with this Report and constitute the Record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar Steve Rushing, Esq.

For the Respondent Richard T. Earle, Jr., Esq.

II. Findings of Fact as to Each Item of Misconduct of Which The Respondent is Charged:

The Respondent was charged in the Amended Complaint with violating the following Disciplinary Rules:

DR1-102(A)(4), Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation;

DR1-102(A)(6), Conduct That Adversely Reflects On His Fitness To Practice Law;

DR6-101(A)(1), Handling A Legal Matter Which He Knew Or Should Have Known He Was Not Competent To Handle;

DR7-101(A)(3), Prejudice Or Damage His Client During The Course Of The Professional Relationship.

In his Answer, the Respondent denied such misconduct.

As to the above enumerated alleged violations of the Disciplinary Rules, the Referee finds that there is not clear and convincing evidence of guilt.

The Respondent was also charged with violating DR2-106 (Charging A Clearly Excessive Fee). As to this charge, the Referee finds the following facts:

Respondent testified that he expended 520 hours of work in representing Mr. Wallace in the litigation here involved. No

meaningful testimony was offered so that said testimony stands unimpeached and unrefuted. The Court, therefore, finds that there is no clear and convincing evidence that the Respondent did not expend 520 hours in said matter.

The complaining witness (Mr. Wallace) testified that the Respondent agreed to represent him in the matters here involved for the total sum of \$5,000, including costs. There is no question but that the costs incurred in said representation amounted to approximately \$4,800. It is not reasonable to assume that the Respondent would have agreed to perform this work for a total of \$5,000 which would have, of necessity, included the costs. Based upon the above, there is not clear and convincing evidence that the Respondent agreed to handle the entire matter for \$5,000, including costs.

Respondent charged Mr. Wallace a total fee of approximately \$26,000. If, as The Bar contended, the litigation which Respondent handled was merely an attempt to maintain Mr. Wallace's employment which paid only \$16,000 a year, it would seem that a \$26,000 fee would be entirely disproportionate to the amount involved and the value of the services rendered even if the Respondent had prevailed, which he didn't. However, the litigation did not involve retaining Mr. Wallace's employment for \$16,000 a year; it involved securing Mr. Wallace's tenure as a Professor and, if successful, would have meant, ultimately, benefits to Mr. Wallace totalling hundreds-of-thousands-of-dollars in the future. As a result of the foregoing, I find that the fee of \$26,000 was not excessive when considered only in the light of the amount involved and the responsibility assumed by Respondent.

An hourly charge of \$50, which was the Respondent's charge based upon 520 hours, is not an excessive hourly rate and I so find.

Based upon the foregoing, I find that there is no clear and convincing evidence that Respondent violated DR2-106.

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

I recommend that Respondent is not guilty of violating any of the Disciplinary Rules charged in the Complaint.

Dated this 12 day of ^{June}~~May~~, 1987.


DAVID SETH WALKER
Referee

Copies Furnished To:

David Ristoff, Esq.
The Florida Bar

Richard T. Earle, Jr.
Attorney for Respondent

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THE FLORIDA BAR,

Complainant,

v.

WILLIAM M. HOLLAND JR.,

Respondent.

CONFIDENTIAL

Case No. 65,469
TFB Nos. 13C83H32
13C83H15

REPORT OF REFEREE
(As to Count II)

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 and Rule 3-7.5, Rules of Discipline, a final hearing was held on July 25, 1986, August 1, 1986, and January 21, 1987. The enclosed pleadings, orders, transcripts and exhibits are forwarded to the Supreme Court of Florida with this report and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: STEVE RUSHING

For The Respondent RICHARD T. EARLE, JR.

II. Findings of Fact as to Each Item of Misconduct With Which the Respondent is Charged: After considering all the pleadings and evidence before me I find the following:

COUNT II
(TFB No. 13C83H32)

That the respondent was charged with handling a legal matter which he knew or should have known he was not competent to handle; engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; engaging in conduct that adversely reflects on his fitness to practice law; charging a clearly excessive fee; and prejudicing or damaging his client during the course of the professional relationship. I find that the evidence shows as follows:

a. The evidence is not clear and convincing that respondent was not competent to handle the representation of Ms. Maciejewski in her divorce proceedings.

b. The evidence was clear and convincing that respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in that he actively misrepresented the nature and meaning of documents he directed Ms. Maciejewski to sign by failing to disclose and explain the contents of the documents and by actively concealing the true meaning of the documents he directed her to sign.

c. The evidence was clear and convincing that respondent engaged in conduct that adversely reflects on his fitness to practice law in that he took advantage of the mental confusion and physical stress being experienced by his client during the course of the dissolution of marriage proceeding.

d. The evidence was clear and convincing that the respondent charged Ms. Maciejewski a clearly excessive fee and that he purported to expend hours of labor which, were far in excess of those normally necessary for legal matters such as the Maciejewski dissolution of marriage. Further, the fee was so excessive as to be unconscionable.

e. Evidence was clear and convincing that respondent prejudiced or damaged his client during the course of the professional relationship in that without full, clear and adequate explanation and disclosure, and without a full, free and knowledgeable waiver and acceptance from his client, he took back from Ms. Maciejewski a note and mortgage which clouded the title of the very residence of his client and her children with the ever present threat of ultimate disfeasance of the residence from her.

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

COUNT II

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

DR 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation);

DR 1-102(A)(6) (engaging in any conduct that adversely reflects on his fitness to practice law);

DR 2-106 (clearly excessive fee);

DR 7-101(A)(3) (prejudice or damage his client during the course of the professional relationship).

IV. Recommendation as to Disciplinary Measures to be Applied:

COUNT II

I recommend that the respondent be suspended from the practice of law for a period of six (6) months and thereafter until he shall prove his rehabilitation. In addition, I recommend that respondent be required to pay all costs incurred in The Florida Bar proceedings.

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

(1) Age: 48 years old

(2) Date Admitted to Bar: 11/23/64

- (3) Past Disciplinary Record: TFB No. 13A76019 - Private Reprimand administered before the grievance committee; and Supreme Court Case No. 62,251 (TFB No. 13B82H12) Private Reprimand administered before the Board of Governors.
- (4) Mitigating Factors: None
- (5) Aggravating Factors: Respondent has a prior discipline record.

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

Count II
(TFB No. 13C85H32)

A.	Grievance Committee Level	\$150.00
	1. Administrative Costs	
B.	Referee Level	
	1. Administrative	150.00
	2. Court Reporters	511.50
	3. Staff Counsel Expenses	42.30
TOTAL COSTS TO DATE FOR COUNT II		<u>\$853.80</u>

VI. It is apparent that other costs might be incurred in the future if further proceedings are necessary in this matter. It is recommended that such future costs, together with the foregoing 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 12 day of June, 1987.


 THE HONORABLE DAVID SETH WALKER
 Referee

Copies furnished to:

- Richard T. Earle, Jr., Counsel for Respondent
- Bonnie L. Mahon, Assistant Staff Counsel
- John T. Berry, Staff Counsel