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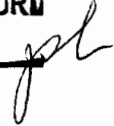
IN THE SUPREME COURT OF FLORIDA

MAY 24 1985

(BEFORE A REFEREE)

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk



THE FLORIDA BAR,

CASE NO. 65,650

Complainant,

(07B84C04 - Vicky Lindley)

vs.

(07B84C08 - Mr. and Mrs. Price)

(07B84C13 - Dede Sharples)

ALAN B. FIELDS, JR.,

Respondent.

INITIAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

An eighteen (18) year member of the Florida Bar with no disciplinary convictions seeks review of a Report of a Referee recommending excessive and unreasonable punishment which are but questionably violations of the Code of Professional Responsibility.

Accompanying this brief as Appendix are copies of the following:

1. Amended Complaint
2. Answer to Amended Complaint
3. Respondent's Recommended Report
4. Florida Bar Staff Counsel's Recommended Report
5. Report and Recommendation of the Referee

The Appendix shall be referred to by the letter "A" and the page wherein the reference is located. (Example A-14)

The Florida Bar shall be referred to herein as "The Bar".

The Respondent shall be referred to herein by his family name, "Fields".

The complaining witnesses shall be referred to by their family names.

No index to the record having been prepared, no reference shall be made to the record nor transcript.

STATEMENT OF THE CASE AND OF THE FACTS

The Bar brought an amended complaint against Fields principally alleging violations of the "catch-all" violation of the Fla. Bar Code Prof. Resp., D.R. 1-102(A)(6) by "engaging in any other conduct that adversely reflects on his fitness to practice law", for suing clients and for charging interest upon open accounts. (A 1-22)

Fields admitted some facts, denied others, and affirmatively alleged numerous issues including the Federal Truth in Lending Act 15 U.S.C. 1601; 12 C.F.R. 226 et seq.: that the complaining witnesses were guilty of a theft of professional services as prohibited by Ch. 812.012 Fla. Stats.; that he had complied with the Fla. Bar Code Prof. Resp. seminars and opinions of the Ethics Committee of the Florida Bar. (A 23-39)

In defense Fields alleged that the Florida Bar through its publications and seminars encourages its members to act in a business-like manner and even to sue clients to collect accrued fees.

The Referee required Staff Counsel to respond to requests for admissions which admissions were apparently ignored by the Referee in making his report and recommendations.

Upon receipt of recommendations from Staff Counsel (A 49-64) and counsel for Fields (A 40-48) the Referee filed his report and recommended findings of (A 65-80):

(A 65-80)

COUNT I

Guilty of violation of Fla. Bar Code Prof. Resp., DR 1-102(A) (6)

Not Guilty of violation of Fla. Bar Integr. Rule, Art. XI, Rule 11.02

COUNT II

Not Guilty of Fla. Bar Integr. Rule, Art. XI, Rule 6, 11.02(4)

COUNT III

Guilty of violation of Fla. Bar Code Prof. Resp., DR 1-102(A) (6)

Guilty of violation of Fla. Bar Code Prof. Resp., DR 2-106(A)

Guilty of violation of Fla. Bar Code Prof. Resp., DR 2-106(B)

Guilty of violation of Fla. Bar Code Prof. Resp., DR 3-104

Not Guilty of Fla. Bar Integr. Rule, Art. XI, Rule 11.02(3) (6)

COUNT IV

Guilty of violation of Fla. Bar Code Prof. Resp., DR 1-102(A) (6)

And recommended a public reprimand pursuant to Fla. Bar Integr. Rule, Art. XI, Rule 11.10(3) and assessment of costs of \$2,064.49 on April 15, 1985.

The Florida Bar Board of Governors met on May 19, 1985, and this petition has been timely filed.

SUMMARY OF ARGUMENT

A public reprimand is generally reserved for members of the Florida Bar who intentionally violate its disciplinary rules and injure the public.

There were no findings of the Referee that Fields intentionally violated any rule of discipline nor of law or that any member of the public was damaged.

There are no published guidelines by this Court nor the Florida Bar in order to inform Fields or other members of the Bar that suing clients is prohibited and to punish Fields for doing so amounts to an unconstitutional deprivation of constitutional rights and liberties.

Fields respectfully urges that the findings of fact set forth in (A 40-48) are proper as shown by the evidence before the Referee.

DISAGREEMENT WITH FINDINGS OF FACT

The Respondent respectfully disagrees with the findings of fact as set forth herein in Paragraphs as numbered in the Referee's Report and Recommendations:

PARAGRAPH 2

There was no testimony or evidence that Mrs. Lindley "was advised that typically the Court would order the ex-husband to pay the attorney's fees".

PARAGRAPH 3

There was no evidence that Fields caused any delay -- the Court set a date for hearing which date was not delayed due to a change of proposed Order from "Rule" to "Order" to Show Cause.

The evidence was overwhelming that Mrs. Lindley contacted the opposing attorney and they arranged an agreement prior to her contacting her substitute attorney, Mr. Sibrey.

PARAGRAPH 11

There was no evidence of "numerous requests" to Fields. Upon receipt of one request he volunteered to provide copies for \$.25 per page and to provide originals upon execution of a security agreement.

PARAGRAPH 14

There was no evidence that Fields informed Mrs. Sharples "the Court normally would make her ex-husband pay her attorney's fees".

PARAGRAPH 16

The "appeal" was not set aside due to any act of Fields, but was a reflection of the Superior Court's opinion of the lower Court's mental capacities.

PARAGRAPH 19

The findings of fact as to motions and discovery are erroneous. The Respondent sought proper discovery and admissions as provided by the rules of this Court, and Bar Staff Counsel refused to properly respond thereto.

PARAGRAPH 20

Denied. Mrs. Sharples viewed numerous statements with the stated finance charges and, although she did see Fields upon occasion she at no time indicated a displeasure or non-agreement to him.

PARAGRAPH 22

Admitted. The suits were filed upon advice of accountant. There is no evidence that the Respondent filed suits either prior to or before the "housekeeping" measure or that the suits were not necessary to prevent a fraud upon Fields.

PARAGRAPH 23

Denied. Ethics opinion 73-14 does not set forth the criteria suggested by the Referee and recommended by Staff Counsel. To support and allow such a finding would be an unconstitutional violation of due process.

ARGUMENT

A professional license is a valuable property right and a person's name and sacred honor should not be besmirched without a compelling reason and proper purpose.

The people of the State of Florida have established in their Constitution, the rights to be "rewarded for industry and acquire, possess and protect property, Fla. Const., Art. I, § 1, yet the Florida Bar seeks to punish Fields for unintentional acts founded upon standards adopted after the fact which constitute and ex post facto law which impairs the obligations of contract between the complaining parties and Respondent as prohibited by the U. S. Const., Art. I, § 10; Fla. Const., Art. I § 10.

For the Bar to attempt to govern fees of its members, to punish its members who fail to comport to its standards adopted after the fact constitutes and unlawful restraint of trade as prohibited by 15 U. S. C. 1 et seq. and Chapter 542.15 et. seq. Fla. Stats. (1984).

Fla. Bar Integr. Rule By-Laws, Art. X § 1 expressly states:

§ 1 Professional Conduct. In construing the code of Professional Responsibility as provided by Article X of the Integration Rule, members of the Florida Bar shall be guided by the opinions of the committee on Professional Ethics of the Florida Bar.

and Fields clearly sought to conform to said opinions.

Fla. Bar. Integr. Rule, Art. II § 11 states that:

the primary purpose of discipline of attorneys is the protection of the public and the administration of justice as well as protection of the legal profession through the discipline of members of the Bar.

yet the Recommendations of the Referee do nothing for the general public nor do they grant relief to the complaining parties. The

sole effect is to cast a shroud upon a person's reputation.

In disciplinary cases, it is important to look at the offense and the circumstances surrounding it. But it also is important to consider the character of Fields and the likelihood of further disciplinary violations.

There was no evidence before the Referee that any disputes with the witnesses or litigation was ongoing or a matter which had not been previously corrected.

Any restriction of constitutional rights must be narrowly drawn to express only the legitimate State interest at stake, The Florida Bar v. Brumbaugh, 355 So. 2d 1186 (1978), and the spirit of the Constitution is as obligatory as the written word. Plonte v. Smathers, 372 So. 2d 933 (1979). Members of the Florida Bar are entitled to rely upon published opinions and unintentional matters should not subject an attorney to the loss of his good name unless there is a legitimate reason to do so.

The authority of The Florida Supreme Court in supervising those who render legal advice carries with it the responsibility to perform this task in a way responsive to the needs and desires of our citizens.

Fields has had fee disputes with clients, but has not at any time been overbearing nor has he sought creditor relief in excess of what an attorney is obligated to do on behalf of a creditor client.

This Court, on May 20, 1985 announced specific guidelines to guide the bench and The Bar in accordance with The Fla. Bar Code Prof. Resp. Florida Patient's Compensation Fund v. Rowe, _____ So. 2d _____, Case No. 64,459 (Fla. May 2, 1985).

In each instance as to Mrs. Lindley, Mr. and Mrs. Price and Mrs. Sharples, the issues of a reasonable attorney's fee were raised and determined before the Court which entered judgment against the complaining parties who then sought extra-judicial relief through the disciplinary system.

Should this Court or The Bar wish to establish specific criteria as to the matters an attorney should consider prior to instituting litigation against a client it should do so by Amendment to Fla. Bar Code Prof. Resp. EC 2 - 23 or by a decision of this Court similar to Rowe, supra, without imposing a permanent stigma upon an innocent member of The Bar.

CONCLUSION

The Referee's Report is contrary to the weight of the evidence and the recommended punishment is excessively harsh for unintentional conduct based upon unpublished standards.

The Respondent should be found not guilty or at best, the maximum discipline administered should be limited to a private reprimand.


CERTIFICATION

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U. S. MAIL to: DAVID G. MCGUNEGLE, Esquire, Bar Counsel, The Florida Bar, 605 East Robinson Street, Suite 610, Orlando, Florida 32801; JOHN T. BERRY, Esquire, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301, this 23 day of May, 1985.

Respectfully submitted,

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