IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant

v.

BRINLY S. CARTER,

Respondent.
_____/

CONFIDENTIAL

Case No. 66,126
(TBF No. 07C84C82)

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 July 22, 1985, August 20, 1985, October 11, 1985, November 11, 1985 and March 7, 1986. 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: David G. McGunegle and Jan K. Wichrowski
For The Respondent: William A. Greenberg

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

1. Respondent, Brinly S. Carter, is and at all times material was a member of The Florida Bar subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida. He resided in and practiced law in Volusia County, Florida.

2. In February, 1979, Respondent was retained by John Hans Beck who was the personal representative of the Estate of Robert Tauber in what became case no. 79-268-02-F(s) in the Seventh Judicial Circuit in Volusia

County. Mr. Beck resided part of the year in Illinois and part in Florida. The estate, which was complex and spawned considerable litigation, was handled out of respondent's office.

3. In early 1984, Mr. Beck wrote two letters dated February 20, 1984 and March 5, 1984 requesting the respondent furnish him with a detailed accounting of the expenses incurred by respondent's office and a copy of the statement which previously had been furnished to the Internal Revenue Service. At that time, most of the matters of the estate had been settled. Although Mr. Beck received no response to his written request, throughout the administration of the estate, Mr. Beck had access to respondent's office on a recurring basis and to the records regarding the estate.

4. Mr. Beck visited respondent's law office on March 13, 1984 and obtained a statement of fees and expenses dated January 12, 1984 which had been prepared by respondent's paralegal, Helen Wall. See Exhibit One. The exhibit cited attorney's fees of $70,000 which had been previously awarded by the Court and expenses of $27,159.93. The expenses included copying costs, mileage, bookkeeping, postage, long distance charges and anticipated closing costs. Mr. Beck thought the expenses were too high, but was provided with no further actual documentation for the expenses at that time or later. Although it is disputed whether Mr. Beck was advised that the expenses listed on the statement were estimates, it is apparent on their face that several of the items were estimates. For example, 50,000 total copies were estimated at .25¢ each, or $12,500 and postage was listed as $5,000.

The statement was prepared by respondent's paralegal through the available records within the office. This referee specifically finds that as of 1984, the respondent's office personnel were not maintaining any adequate records relative to the expenses of this estate or other estates being handled by respondent's office whether as personal representative or as attorney. At one point, the respondent advised Ms. Wall that something would have to be done regarding the record keeping of the Tauber Estate. However, nothing was done to either redevelop the records or to institute better record keeping for at least

this estate. (Transcript, October 11, 1985, pages 45-46). I do note respondent asserted the inadequate record keeping in general has been corrected with new staff. (Transcript, November 11, 1985, pages 5-7).

Respondent relegated the record keeping within his office to his non-attorney staff and exercised no meaningful supervision over the adequacy of the record keeping. As a result, the respondent could not submit a reasonably accurate statement of expenses on the Tauber Estate to his client for matters handled by his office other than his standard bookkeeping charge based on the number of months the estate was opened, and perhaps the mileage estimate and closing costs. As the attorney, respondent is charged with the responsibility of seeing that reasonably accurate records of expenses for clients are maintained so that a proper accounting can be rendered at the appropriate time. This was simply not done in this estate. It is no less important to maintain reasonably accurate records of estate expenditures where the attorney is representing the personal representative and handling the estate than it is to maintain accurate records of cost monies being expended on behalf of any other client.

In face of the allegations of misconduct and the proof of such allegations by Mr. Beck it is important to note that the estate is still active and that the respondent is still attorney of record and that Mr. Beck and the respondent still enjoy an attorney/client relationship.

III. Recommendations as to whether or not the Respondent should be found guilty. I recommend that the respondent be found guilty, and specifically he be found guilty of violating Disciplinary Rule 3-104(A) for failing to properly supervise non-lawyer personnel in the record keeping of estates, 3-104(C) for failing to insure non-lawyer personnel comply with the applicable provisions of the Code of Professional Responsibility, and 3-104(D) for failing to examine and be responsible for all work delegated to non-lawyer personnel with respect to the estate records. I recommend the respondent be found not guilty of violating Article XI, Rule 11.02(3)(a) of The Florida Bar Integration Rule for

engaging in conduct contrary to honesty, justice or good morals and be found not guilty of violating the following Disciplinary Rules 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation and 1-102(A)(6) for engaging in conduct adversely reflecting on his fitness to practice law.

IV. Recommendations as to Disciplinary Measures to be Applied. I recommend that the respondent be suspended from the practice of law for a period of three months and thereafter until he shall prove his rehabilitation as provided in Rule 11.10(4). This is not the first time respondent has been the subject of a disciplinary proceeding. He was publicly reprimanded in The Florida Bar v. Carter, 410 So.2d 920 (Fla. 1982) which issued on February 25, 1982 and flowed from litigation over family assets. On March 17, 1983, he was again publicly reprimanded in The Florida Bar v. Carter, 429 So.2d 3 (Fla. 1983) partly for failing to keep complete records of personal property of an infirm elderly client which was being auctioned off in a private garage sale prior to the client's death. Another part of that opinion concerned his failure to pay the sum of $64.52 to each of four heirs for several months despite several requests. Without a doubt, discipline is cumulative. See e.g. Article XI, rule 11.06(9)(a)(4) and The Florida Bar v. Bern, 425 So.2d 526, 528 (Fla. 1982). Subsequent or cumulative misconduct calls for sterner discipline than does an isolated incident.

The question is whether the cumulative discipline principle applies to this estate proceeding which began in 1979 and where the problems and complaint to The Florida Bar were filed in 1984. Although much of the estate expenditures were incurred prior to Mr. Carter's first public reprimand on February 25, 1982, he was on notice from that time. He was clearly on notice as of the issuance of the second reprimand on March 17, 1983 which partly involved inadequate record keeping of client's property. This referee concludes that the cumulative principal does apply in this case although it is mitigated to the extent of those expenditures and expenses incurred prior to the issuance of the first reprimand in early 1982.

I would recommend a public reprimand if this were the only instance of misconduct charged. It is apparent that the prior reprimands have not served to teach this respondent of the importance to operate according to the Code of Professional Responsibility and the Integration Rule. In my opinion, only a suspension requiring proof of rehabilitation prior to reinstatement will achieve this goal. The recommended suspension takes into account the mitigating element mentioned above in this lengthy and complex estate which is ongoing. I also note in mitigation respondent's actions did not cause his client to lose money directly. Otherwise, the recommended suspension period would have been longer given the similar nature of misconduct here as in part of the second reprimand. The recommended suspension also meets the purposes of discipline set forth in The Florida Bar v. Lord, 433 So.2d 983, 986 (Fla. 1983). It is fair to society as it will protect it from future unethical conduct by respondent and it will not deny it the services of an otherwise qualified attorney. It is sufficient to punish this breach of ethics and to encourage reformation and rehabilitation. Finally, it will serve as a deterrent those members of the Bar who can not or will not follow the dictates of the Integration Rule and Code of Professional Responsibility.

V. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 11.096(9)(a)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 47

Date Admitted to the Florida Bar: 6/7/63

Prior Disciplinary Measures and Disciplinary Measures Imposed Therein: The Florida Bar v. Carter, 410 So.2d 920 (Fla. 1982) - Public reprimand for dissimilar misconduct; The Florida Bar v. Carter, 429 So.2d 3 (Fla. 1983) - Public reprimand for similar misconduct in part.

Other personal data: The respondent is married with minor dependents.

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 Hrng., 8/29/84	$ 245.00
3.	Bar Counsel Travel Expenses	$ 15.00
4.	Staff Investigator Travel Expenses	$ 30.00
5.	Miscellaneous Costs	$ 68.48

B. Referee Level Costs

1.	Administrative Costs	$ 150.00
2.	Transcripts of Referee Hrng. held 10/11/85	$ 310.00
	1/13/86	$ 158.10
	3/16/86	$ 102.10
3.	Witness Costs	$ 492.84
4.	Bar Counsel Travel Expenses	$ 29.84
5.	Telephone Charges	$ 18.07
6.	Staff Investigator Travel Expenses	$ 139.86
	TOTAL	$1,910.64

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 11 day of May, 1986.

The Hon. Dominick J. Salfi, Referee

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