IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

ROBERT W. BOWLES, JR.,

Respondent.

CASE NOS. 66,308, 66,397, 66,886

TFB NOS. 09A83C19 09A83C21
09A83C27 09A83C46
09A83C68 09A84C23
09A84C24 09A84C29
09A84C30 09A84C74
09A84C79

AMENDED
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, a hearing was held on May 30, 1985. 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: John B. Root, Jr.

For the Respondent: Respondent neither appeared nor was represented by counsel.

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. That The Florida Bar experienced substantial difficulty in serving process upon the respondent.

2. Respondent's record Bar address at the time of filing the complaints, requests for admission and notices of hearing in these cases was: 801 N. Magnolia Avenue, Suite 107, Orlando, Florida 32803. (Bar Exhibit 1).

3. That on November 29, 1984, the Supreme Court of Florida issued an order (No. 62,660), suspending the respondent from the practice of law for a period of eight months and until he proves rehabilitation and that the effective date of this suspension was January 2, 1985. (T., pp. 16-17).

4. That sometime approximately December 13 or 14, 1984, the respondent ceased the active operation of his law office. (T., p. 27).

5. That a circuit court of the Ninth Judicial Circuit in Orlando, Florida appointed an inventory attorney in January, 1985, to inventory files, notify clients and former clients of the respondent and to take appropriate actions relating to the files. That attorney Carol E. Donahue was one of the three appointed inventory attorneys and that she lawfully entered the respondent's law office on January 26, 1985 by virtue of the order of the court and with the consent of the landlord. (T., p. 26).

6. In the process of inventorying the files Ms. Donahue noted several yellow post office forms which notified the respondent of the receipt by the post office of certified mail for the respondent. On one occasion when the respondent was present in the office at the same time Ms. Donahue was, she advised him that there were a number of such post office forms which signified that the post office was holding certified mail for the respondent. The respondent stated that he would take care of the matter. Subsequently, the forms were removed from the office. (T., pp. 30-33).

7. Subsequently, most of the furnishings were removed from the law office. The landlord retook possession and subsequently re-rented the office to another party. (T., pp. 22, 32).

8. The respondent never gave the post office any change of address or forwarding instructions for mail addressed to his law office. (T., pp. 20-21).

9. Respondent resided at 645 East Marks Street, Orlando, Florida. (T., pp. 13, 18-20, 24). Mail addressed to him at that address was delivered by the post office. Mail addressed to the law office of the respondent, however, was not delivered to the residence of the respondent. (T., pp. 18-21).

10. The Florida Bar addressed copies of the formal complaints in each of the cases here to the record Bar address of

the respondent and mailed the letters by certified mail, requesting a return receipt. (Bar Exhibits 2, 5, 8).

11. In the case of Complaint No. 66,886, The Florida Bar, in addition to mailing a certified letter to the record Bar address of the respondent, also mailed a certified copy to the respondent at his home address. (Bar Exhibit 9).

12. Without exception, all of these certified letters which would have notified the respondent of the formal charges herein considered were unclaimed by the respondent and returned to The Florida Bar. (Bar Exhibits 2, 5, 8, 9).

13. The Florida Bar prepared requests for admission in Case No. 66,308 and 66,397. In both cases the requests for admission were sent to the respondent at his record Bar address and also at his residence address by certified mail. In the case of the requests for admission in Case No. 66,308 The Florida Bar received both certified letters back, unclaimed. In the case of 66,397 The Florida Bar received back the requests for admission which was sent to the record Bar address; however, the one which was addressed to his home address was receipted for by one "P. Ramsey." Mrs. Patricia Ramsey is a resident of 645 East Marks Street. (T., pp. 18-19, Bar Exhibits 3, 4, 6, 7).

14. There were no requests for admission prepared for Case No. 66,886. (T., p. 11).

15. On March 18, 1985, Ms. Coleen Rook, a staff investigator for The Florida Bar, who had knowledge of a bankruptcy proceeding involving the respondent, attended the hearing in an attempt to serve copies of the formal complaints and requests for admissions on the respondent. The respondent failed to appear for the hearing. (Bar Exhibit 10).

16. On March 19, 1985, Ms. Rook made several attempts to serve the respondent copies of the complaints and requests for admissions at his home at 645 East Marks Street, Orlando, Florida. Although she heard activity in the house and an automobile was in the driveway, she was unsuccessful in having anyone answer the door. (Bar Exhibit 10).

17. In January, 1985, Mr. Charles R. Lee, an investigator for The Florida Bar, attempted to locate the respondent at his office and also at his home on Marks Street for the purpose of serving the formal complaints of The Florida Bar in Case Nos. 66,308 and 66,397 on the respondent. These efforts were unsuccessful. (T., pp. 16-18).

18. Later in January, 1985, Mr. Lee attempted to serve a petition for the appointment of an inventory attorney in the circuit court of the Ninth Judicial Circuit, on the respondent. He went to the residence at 645 East Marks Street, Orlando, and knocked on the front door, entered the open garage, knocked on a side door of the house, all without response. It appeared that

persons were inhabiting the house at this period of time. (T., p. 18).

19. A review of federal court records for the bankruptcy court in the U. S. District Court for the Middle District of Florida, in Orlando, revealed in bankruptcy documents filed by the respondent that his residence was, in fact, located at 645 East Marks Street, Orlando. (T., pp. 19-20).

20. A title report rendered on the premises at 645 East Marks Street, Orlando, Florida, revealed that the respondent bought the property in 1980 and is still the owner. (T., p. 24).

21. In February Mr. Lee was in the respondent's law office (record Bar address) with inventory attorney, Ms. Carol Donahue. He observed several unopened envelopes from The Florida Bar on a desk top. He also noticed more than one post office notice to the respondent advising him of the receipt of certified mail by the post office. (T., pp. 22-23).

22. Because of the difficulties in serving copies of the formal charges and requests for admissions upon the respondent, The Florida Bar obtained the services of Robert W. McKnight, a private process server, to attempt to serve the formal complaints, the requests for admissions and the second amended notice of hearing in these cases upon the respondent. (T., pp. 12-13).

23. Mr. McKnight made numerous attempts to serve those documents on the respondent at his residence. He went to the residence several times at varying times of the day and night and on different days of the week during April and May, 1985. Although it appeared on some occasions that the residence was occupied, Mr. McKnight never succeeded in having anyone come to the door or in serving the documents. He left a business card in the door and the next time he went to the premises, the card was gone. Mr. McKnight also attempted to serve the respondent on two occasions when he was scheduled to appear for certain hearings. The respondent failed to attend the hearings, thus the service was not made. (T., pp. 13-14).

24. The Florida Bar also attempted to serve the second amended notice of hearing on the respondent at his record Bar address and at his residence at 645 East Marks Street by certified mail, return receipt requested. In all cases the letters were returned to The Florida Bar unclaimed by the respondent. In addition, Mr. McKnight also attempted to serve the second amended notice of hearing on the respondent, without success. (Bar Exhibits 13 and 14; T., p. 12).

25. I find as a matter of fact that The Florida Bar made every reasonable effort to serve notice of each complaint, each requests for admissions, and each notice of hearing upon the respondent in this case in accordance with the Integration Rule, and that the actions of the respondent in failing to accept any of the documents from the post office or from the process server

or from the Bar investigators, was not the fault of The Florida Bar and may have been a calculated attempt on the part of the respondent to avoid the service of process. See Fla. Bar Integr. Rule, Article II, paragraph 6 and Article XI, Rule 11.01(2); The Florida Bar v. Kelly, 269 So.2d 362 (Fla. 1972); The Florida Bar v.Travelstead, 435 So.2d 832 (Fla. 1983).

Case No. 66,308

Count I

(09A83C19)

On September 3, 1981, Mr. and Mrs. Paul Guimarin visited respondent's office and discussed a proposed bankruptcy with the respondent over the telephone, paid him $30.00 and made an appointment for a second meeting. (T., pp. 36, 37).

On that date they met with the respondent for about twenty minutes, signed an employment contract and were given certain financial forms to be taken home, completed and returned to respondent. They paid the respondent $430.00 toward a total cost of $540.00 under the terms of the employment contract. (T., pp. 37, 38).

The Guimarins decided not to proceed with the bankruptcy. They did not return the financial statement to the respondent. (T., p. 37).

No petition in bankruptcy was filed on their behalf. The Guimarins requested a refund of money paid to the respondent and

were told to make a written request to respondent. (T., pp. 37, 38).

Subsequently, the Guimarins received a letter and check from the respondent refunding only the unused filing fees of $60.00. (T., pp. 37-39).

Mr. Guimarin contacted the respondent's office and attempted to get back more of the $430.00 paid previously. He later called the office many times and was finally informed that no more money would be refunded. (T., p. 38).

COUNT II

(09A83C21)

In late April, 1982, Mr. and Mrs. William J. Montes went to the respondent's office to inquire about filing personal bankruptcy. They viewed a videotape on the subject and later spoke with a paralegal, Holli Mickenberg, who answered questions for them concerning their legal situation. (T., pp. 40-41).

Ms. Mickenberg is not a member of The Florida Bar and she did not so inform the Montes's. They did not speak with the respondent personally at the time they paid the $100.00 and received financial documents to be filled out and returned. (T., pp. 41, 43).

At first, the Montes's thought that Ms. Mickenberg was an attorney. (T., p. 41).

Ms. Mickenberg advised the Montes's that they could transfer their car and stock options to satisfy debts owed and that they could charge on a credit card as long as it was done prior to the filing of the bankruptcy. Based on this information they transferred an automobile and certain stock options and made charges on their credit card. (T., pp. 42-43).

The financial documents were returned to respondent's office and they were reviewed with Ms. Mickenberg. The Montes's paid an additional $330.00. Around May 25, 1982, Mr. Montes brought additional information to the respondent which necessitated an amendment to the petition. He spoke with the paralegal and paid another $50.00 for the amendment. (T., pp. 43-44).

Mr. and Mrs. Montes met respondent for the first time at the meeting of creditors. At this meeting it was learned that there was a problem with the car and stock option transfers and with the credit charges made by the Montes's just prior to filing the bankruptcy. (T., pp. 45, 48).

An appointment was arranged with the respondent for the following day. The respondent, however, was not present. The respondent failed to contact Mr. Montes at any time thereafter and Mr. Montes made many unsuccessful attempts to reach the respondent. (T., pp. 46-48).

Subsequently, the Montes's checking account was frozen by the trustee in bankruptcy. Mr. Montes attempted to contact the

respondent but was unable to reach him. Mr. Montes arranged with the bankruptcy trustee himself to have the account unfrozen. (T., pp. 46-47).

Mr. Montes then retained another attorney to complete the bankruptcy. It was necessary for Mr. Montes to pay an additional fee of $400.00 for the services of the new attorney. (T., pp. 48-49).

The respondent did not refund any of the money which he had received from Mr. Montes. (T., p. 49).

CASE NO. 66,397

COUNT I

(09A83C27)

In October, 1981, Diane Helbling retained the respondent to handle a real estate matter involving a purchase of two lots from Winter Springs Mobile Home Corporation. She paid the respondent $340.00 at that time. (T., pp. 102, 103).

On February 26, 1982, Ms. Helbling signed a written contract for a $1,250.00 nonrefundable retainer fee, which was fully paid. (T., pp. 103-104).

In April, 1982, the respondent filed suit against the Winter Springs Mobile Home Corporation. (Bar Exhibits 6 and 12; T., pp. 104-105).

In June, 1982, the Winter Springs Mobile Home Corporation transferred its interests to Mohican Valley, Inc. Mohican Valley gave notice of the transfer and answered respondent's complaint on or about June 15, 1982. However, a motion of default was made by respondent and granted by the court against Winter Springs Mobile Home Corporation on June 21, 1982. (Bar Exhibits 6 and 12; T., p. 107).

A notice for trial was filed on September 10, 1982 by the respondent. The court ordered a pretrial conference for October 15, 1982, which required counsel for the parties to file pretrial statements within seven days prior to the conference. (Bar Exhibits 6 and 12).

The respondent neither filed the court ordered pretrial statement nor appeared at the pretrial conference on October 15, 1982. The court then ordered the case removed from the trial docket. (Bar Exhibits 6 and 12; T., pp. 113-114).

On October 11, 1982, Mohican Valley, Inc. withdrew its request to be made a party to the lawsuit and notice was given respondent. On October 20, 1982, a notice of hearing on the matter was filed with notice to respondent. Respondent failed to attend the hearing on October 29, 1982, and on November 16, 1982, the court granted Mohican's request to withdraw its motion to become a party. (Bar Exhibits 6 and 12).

Ms. Helbling became dissatisfied and felt that she was not being kept informed of the status of the case and she was unable to receive answers concerning the case from the respondent. (Bar Exhibit 6; T., pp. 111-116).

In mid-November, 1982, the respondent met with Ms. Helbling to explain that the opposing parties had not appeared for a deposition on September 21, 1982 and that this was responsible for the delay in her case. Respondent did not inform Ms. Helbling of the removal of her case from the court docket on October 15, 1982, or the reason therefor. (Bar Exhibit 6; T., pp. 112, 114).

Since the meeting in November, 1982, only a motion to compel discovery has been filed by respondent on behalf of his client. (Bar Exhibits 6 and 12).

Ms. Helbling never instructed the respondent to cease prosecution of the case. (Bar Exhibit 6; T., pp. 112-113).

Ms. Helbling did not know that certain court orders had been entered which were adverse to her interests because respondent failed to attend certain matters. (T., p. 114).

COUNT II

(09A83C46)

In late September, 1982, Florence LeBar contacted the respondent's office for assistance in obtaining a dissolution of

marriage. On her first visit to respondent's office she did not see the respondent. She spoke with Holli Mickenberg, respondent's paralegal assistant. She was given a financial statement to complete and return. (Bar Exhibit 6; T., pp. 50-51).

Ms. LeBar had a discussion with Ms. Mickenberg about the details of her divorce pertaining to costs, child support and title to property owned jointly with her husband. Ms. Mickenberg instructed Ms. LeBar to execute a power of attorney and have her husband do the same to facilitate any transfer of the title to a mortgaged mobile home. The papers were completed and returned to Ms. Mickenberg. (Bar Exhibit 6; T., pp. 51-53).

Ms. LeBar paid respondent $294.00 for the divorce. Later, respondent charged her another $75.00 to re-file the case, after it had been dismissed by the court because he failed to appear for the hearing. (Bar Exhibit 6; T., pp. 55-56).

At no time during their initial meeting did Ms. Mickenberg indicate that she was not an attorney or explain her actual position in respondent's office. At this time Ms. LeBar thought that Ms. Mickenberg was an attorney. (Bar Exhibit 6; T., p. 51).

It wasn't until January, 1983, that Ms. LeBar had her first contact with the respondent. (Bar Exhibit 6; T., p. 53).

A hearing on the petition for dissolution was set for November 17, 1982, but was subsequently canceled at Ms. LeBar's request because of planned surgery. (T., pp. 53-54, 58-59).

The hearing was rescheduled for December 13, 1982. The respondent failed to appear on behalf of Ms. LeBar. (Bar Exhibit 6; T., p. 54).

On December 16, 1982, the respondent received notice from Judge Muszynski that Ms. LeBar's petition for dissolution had been dismissed because of respondent's failure to appear at the December 13 hearing. (Bar Exhibit 6).

Respondent then filed a motion to reinstate the petition. A hearing on the motion was set for January 3, 1983. Ms. LeBar received notice of the hearing to be held on January 3, 1983, and appeared at the hearing, along with her witnesses for dissolution. She was not told that the hearing was only on the subject of reinstating her petition for dissolution and she was told by letter from the respondent to bring witnesses to testify on her behalf. Ms. LeBar was not aware of the previous dismissal of her petition for dissolution. The judge denied the reinstatement of the petition for dissolution. (T., pp. 53-56, 58; Bar Exhibit 6).

Ms. LeBar learned for the first time of the previous dismissal of her petition at the January 3, 1983 hearing. The respondent agreed to represent her in a new suit for no

additional fee, however, he did require that Ms. LeBar pay additional filing fees for the new petition. (T., pp. 55-56; Bar Exhibit 6).

The respondent filed another petition and a hearing before Judge Kaney was scheduled for June 9, 1983. Ms. LeBar received notice and appeared on that date with her witnesses. (T., p. 56; Bar Exhibit 6).

Respondent failed to appear and the judge, upon hearing the circumstances of the previous dismissal, arranged for another attorney to appear on her behalf. (T., pp. 56-58; Bar Exhibit 6).

A final judgment for dissolution was thereafter granted. The judge then instructed Ms. LeBar to have the respondent prepare the judgment and return the paper to the court herself for signature. Only after considerable difficulty did she get a judgment of dissolution for the judge's signature from the respondent's office. The matter was then properly signed by the judge. (T., pp. 59-60; Bar Exhibit 6).

COUNT III

(09A83C68)

In April, 1976, Gary Wilson retained the respondent to represent him in a claim against the Air Force for allegedly improperly discharging him. He paid the respondent $500.00 as a total fee for his services. (T., pp. 61-63; Bar Exhibit 6).

By approximately a year after his initial meetings with the respondent Mr. Wilson found that he could not contact the respondent. In late 1977, he complained to The Florida Bar. (T., p. 63; Bar Exhibit 6).

Soon after the complaint to The Florida Bar the respondent telephoned Mr. Wilson and arranged to meet him. It was decided that respondent would proceed with the claim. The complaint with The Florida Bar was dismissed. (T., p. 63; Bar Exhibit 6).

In January, 1978, Mr. Wilson paid respondent an additional $300.00 and during that year he contacted the respondent several times and was told that the respondent was working on his case. (T., 64-65; Bar Exhibit 6).

Mr. Wilson had no further contact with the respondent until June, 1981, even though he had repeatedly called respondent's office. (T., pp. 65-66; Bar Exhibit 6).

In June, 1981, the respondent informed Mr. Wilson that his claim had been filed in an inactive file and stored in Okeechobee County. Respondent offered to remove his file from inactive status and proceed with the matter for an additional fee of $1,500.00. Mr. Wilson did not accept this offer. (T., pp. 66-68; Bar Exhibit 6).

In 1982, Mr. Wilson went by respondent's office to obtain the return of documents pertaining to the case which he had

entrusted to the respondent. These documents included forms and records needed by Mr. Wilson to apply for a V.A. disability. Mr. Wilson also entrusted VA medical records, IRS W-2 forms and military records to the respondent. Respondent indicated that he would find these items and return them to Mr. Wilson. Wilson has never received any of these documents back. (T., pp. 67-68; Bar Exhibit 6).

Mr. Wilson's claim against the VA was disapproved. He has never received any of the $800.00 fee back. (T., pp. 67-68; Bar Exhibit 6).

COUNT IV

(09A84C29)

During the period December 1, 1977 through December 1, 1983, the respondent had two trust accounts. (T., pp. 90, 98; Bar Exhibit 6; Bar Exhibit 11).

One was with ComBank, Winter Park, Florida (which was later known as Freedom Bank), Account No. 300300-00-612 (later Freedom Account No. 0190000612). (T., p. 90; Bar Exhibit 6; Bar Exhibit 11).

The second account was opened on approximately September 22, 1983 and was at the Florida National Bank, Trust Account No. 0877757406. (T., p. 98; Bar Exhibit 6; Bar Exhibit 11).

On November 23, 1983, The Florida Bar subpoenaed from the respondent all of his records of handling client funds including all trust or escrow accounts beginning with January 1, 1981 to the date of the subpoena. (T., p. 91; Bar Exhibit 6; Bar Exhibit 11).

Subsequently, on December 1, 1983, because of problems noted in the trust account records, The Florida Bar issued another subpoena duces tecum by personal service at the respondent's office amending the first subpoena and requiring all of the same records commencing with the period December 1, 1977 to the date of the subpoena. (T., p. 91; Bar Exhibit 6; Bar Exhibit 11).

Respondent produced certain trust account records pertaining only to the ComBank/Freedom bank account. No records were produced by the respondent or his staff concerning the new account at Florida National Bank. (T., p. 91; Bar Exhibit 6; Bar Exhibit 11).

On November 28, 1983, an auditor of The Florida Bar commenced an audit on such trust account records as were furnished by the respondent pursuant to the first subpoena duces tecum. (T., p. 89; Bar Exhibit 6; Bar Exhibit 11).

Respondent's bookkeeper, Holli Mickenberg, delivered to the auditor bank statements, cancelled checks, deposit slips and cash receipts and disbursement journals for the period from January 1, 1981 through September 30, 1983 except for bank statement and

cancelled checks for August, 1983. No records were produced for transactions after September, 1983. Thus there was not full compliance with the requirements of the subpoena duces tecum. (T., p. 91; Bar Exhibit 6; Bar Exhibit 11).

There were no ledger cards or similar accountings or quarterly trust account reconciliations produced for inspection. (T., pp. 94, 100; Bar Exhibit 6; Bar Exhibit 11).

After it was learned that there were apparent shortages in the trust account, a second subpoena duces tecum was served on December 1, 1983 requiring trust account records from December 1, 1977 through the date of the second subpoena. (T., pp. 91, 94; Bar Exhibit 6; Bar Exhibit 11).

On or about December 6, 1983, Ms. Mickenberg delivered to The Florida Bar auditor cash journals for 1979 and 1980, bank statements with cancelled checks for 1979 and 1980 (except November and December, 1980), and deposit slip copies from July 20, 1979 through December 31, 1980, for the ComBank only. (T., p. 92; Bar Exhibit 6; Bar Exhibit 11).

There were no records produced by the respondent for the period from December 1, 1977 through December 31, 1978. (T., p. 92; Bar Exhibit 6; Bar Exhibit 11).

No ledger cards nor quarterly reconciliations were produced for inspection. Thus there was, again, a failure of compliance

with the requirements of a properly issued and served subpoena duces tecum. (T., p. 94; Bar Exhibit 6; Bar Exhibit 11).

It was learned through continued investigation of the trust account that a second trust account existed. The subpoenae duces tecum which were served on respondent both on November 23, 1983 and on December 1, 1983 required production of all trust account records through that date. (T., pp. 93-94; Bar Exhibit 6; Bar Exhibit 11).

The Florida National Bank trust account was opened on or about September 22, 1983, during the period covered by both subpoenae duces tecum, and no records from that account were ever produced by respondent for the auditor of The Florida Bar as required. (T., pp. 93-94; Bar Exhibit 6; Bar Exhibit 11).

On or about January 27, 1984, the Florida National Bank of Orlando produced records of that account pursuant to a Florida Bar subpoena duces tecum. (T., pp. 93-94, 98-99; Bar Exhibit 6; Bar Exhibit 11).

Because no office records of the Florida National Bank trust account were made available by the respondent, the auditor was unable to accomplish a full audit of that account. There were no client ledger cards, no quarterly reconciliations or other trust account records. (T., p. 98; Bar Exhibit 6; Bar Exhibit 11).

The auditor did determine that in the Florida National Bank trust account there were negative balances in the cases of eleven clients. The negative balance is a condition where disbursements on behalf of the client exceeded the deposit on behalf of the same client. There was one unidentifiable deposit of $43.00, there were eight unidentifiable disbursements from that account. (T., p. 99; Bar Exhibit 6; Bar Exhibit 11).

As a result of the audit by The Florida Bar of respondent's trust account the auditor determined that there were shortages in the ComBank/Freedom trust account which constituted the use of clients' trust funds for purposes other than the specific purpose for which they were entrusted to the respondent. (T., pp. 94-97; Bar Exhibit 6; Bar Exhibit 11).

On September 30, 1983, the records furnished the auditor reflected a shortage of at least $10,759.50 in the ComBank/Freedom trust account. (T., pp. 96-97; Bar Exhibit 11).

It was also determined that at different times the respondent had personal funds in the trust account in the approximate amount of $5,000.00. This sum was more than reasonably necessary to cover any bank charges and constitutes a commingling of his funds with his clients' funds. (T., p. 95; Bar Exhibit 6; Bar Exhibit 11).

Not all trust account records were preserved for six years or produced for inspection as required by the Integration Rule of

The Florida Bar, and the two subpoenae duces tecum. (T., p. 100; Bar Exhibit 6; Bar Exhibit 11).

Not all deposits and disbursements or trust funds were clearly and expressly identified as required by the Integration Rule for either trust account. (T., p. 100; Bar Exhibit 6; Bar Exhibit 11).

COUNT V

(09A84C23)

In April, 1983, respondent was retained by Sandra Faulkner to handle her uncontested divorce and child custody agreement. (T., p. 69; Bar Exhibit 6).

An initial consultation was held with respondent's paralegal assistant, Holli Mickenberg. (T., pp. 69-70; Bar Exhibit 6).

Ms. Faulkner signed an attorney/client contract and paid respondent the sum of $223.00 for these services. The contract also guaranteed to the client that the respondent's work would be legally correct. (T., p. 70; Bar Exhibit 6).

Ms. Faulkner received certain blank financial statement forms to be filled out and returned to the respondent's office. She also received similar financial documents to give to her husband and for him to return to the office. The husband's forms were properly filled out and returned to the respondent. (T., pp. 70-71; Bar Exhibit 6).

A petition for dissolution was filed about May 27, 1983. (Bar Exhibit 6).

In June, 1983, a proposed child custody agreement was sent to Ms. Faulkner by the respondent. The proposed agreement contained incorrect information as to the marriage date, name of their child and the child's birthdate, all of which was listed correctly on the information form given to the respondent by Ms. Faulkner. (T., p. 72; Bar Exhibit 6).

In July, 1983, Ms. Mickenberg, the respondent's paralegal, informed Ms. Faulkner that the corrections would be made and a new agreement ready in a few days. (T., p. 72; Bar Exhibit 6).

On October 21, 1983, the judge in the case filed a notice of intention to dismiss the action for want of prosecution. A hearing was held on the matter and the judge did not dismiss it at that time. (T., p. 73; Bar Exhibit 6).

Again on January 6, 1984 the judge filed a notice of intent to dismiss for want of prosecution. Again there was a hearing and the judge did not dismiss the case. (T., p. 73; Bar Exhibit 6).

Ms. Faulkner had her first personal conference with the respondent in January, 1984 and during this meeting she was informed for the first time of the October meeting relating to dismissing the case. Respondent then told Ms. Faulkner that it

would cost $10.00 for service on her husband and an additional $50.00 for a court appearance at the January hearing. (T., pp. 73-74; Bar Exhibit 6).

After the meeting in January a new child custody agreement was prepared reflecting additional rights for Mr. Faulkner. Ms. Faulkner did not sign that agreement. (T., p. 74; Bar Exhibit 6).

In late January, 1984, Ms. Faulkner was advised by memorandum that her husband had signed a new property settlement and that she should arrange an appointment to sign the agreement. At this time Ms. Faulkner advised a member of respondent's staff that she no longer desired his services. (T., pp. 74-75; Bar Exhibit 6).

Ms. Faulkner then received a bill from respondent in February, 1984, charging her an additional $100.00 for the October and January hearings relating to dismissing the action for lack of prosecution. She did not pay the bill. (T., p. 76; Bar Exhibit 6).

Ms. Faulkner did not receive her dissolution until July 6, 1984, after she had retained the services of another attorney. (T., p. 76; Bar Exhibit 6).

Respondent did not return any of the $223.00 paid him by Ms. Faulkner. (T., p. 76).

COUNT VI

(09A84C24)

In April, 1983, Mr. and Mrs. Roscoe Brown retained the respondent to obtain the adoption of their granddaughter. Their granddaughter was a child who had been born out-of-wedlock to their daughter. (T., pp. 77-78; Bar Exhibit 6).

Mr. and Mrs. Brown felt the child was being neglected and they were concerned for its welfare because of poor living conditions and lack of adequate care. (T., p. 78; Bar Exhibit 6).

The respondent told Mr. Brown an adoption would take about five or six months to accomplish and the cost would be $475.00. (T., p. 79; Bar Exhibit 6).

Mr. Brown paid respondent $15.00 for the initial consultation. The following day he paid the respondent $475.00. (T., pp. 78-79; Bar Exhibit 6).

Mr. and Mrs. Brown filled out an adoption application for their granddaughter. (T., pp. 79-80; Bar Exhibit 6).

The respondent never investigated the present living conditions of the child or made any other effort to ascertain whether the child was being taken care of adequately. (Bar Exhibit 6).

The Browns made several unsuccessful attempts to call the respondent and in May, 1983 the Browns received an original petition for adoption as prepared by the respondent. The petition contained many errors. (T., p. 80; Bar Exhibit 6).

The Browns took the petition to the respondent's office and attempted to see the respondent but were unable to and they told a secretary of the many errors. She promised the corrections would be made. (T., pp. 80-81; Bar Exhibit 6).

In August, 1983 the Browns received an amended petition for adoption which they signed and returned to respondent. This petition was subsequently filed with the court. (T., pp. 80-81; Bar Exhibit 6).

A summons was successfully served upon the mother and father and the father filed an answer to the petition on September 14, 1983. A default was entered against the mother shortly thereafter. (Bar Exhibit 6).

In late September respondent met with Mr. Brown concerning the matter and Mr. Brown informed the respondent of his concern for his grandchild and of their fear that the child had been subjected to abuse. (Bar Exhibit 6).

Respondent then told Mr. Brown that he thought he could get the Browns temporary custody of the child for an additional

$345.00. The Browns did not have the respondent seek temporary custody. (T., p. 81; Bar Exhibit 6).

In late November, 1983, the respondent filed a notice for trial. The trial was held on or about February 28, 1984. (Bar Exhibit 6).

Prior to trial the respondent and the Browns engaged in a telephone conference during which the Browns again recited their concern for the safety of their grandchild. (Bar Exhibit 6).

At the trial testimony was presented by the Browns, the mother and the father. During that trial the presiding judge told respondent that the matter should have gone through Health and Rehabilitative Services (HRS) rather than through court proceedings. The judge also informed the Browns that the action filed by respondent was actually one of abandonment, not one of adoption. (T., pp. 81-83; Bar Exhibit 6).

The judge ordered the return of the child to the mother and told the respondent he should withdraw the proceedings and go through HRS. (T., pp. 82-84; Bar Exhibit 6).

Respondent thereafter requested a meeting with the Browns following the trial during which he restated what the judge had said. Later the Browns received a bill from respondent charging for the trial and conference held afterwards. Subsequently, the

respondent filed a motion to withdraw as counsel for the Browns. (T., p. 84; Bar Exhibit 6).

No portion of the $490.00 paid to respondent was ever returned to the Browns. (T., p. 86).

COUNT VII

(09A84C30)

In April, 1983 Mr. and Mrs. Richard W. Cramer were experiencing harassment of their property and themselves by juveniles in their neighborhood. (Bar Exhibit 6).

They retained respondent to represent Mrs. Cramer at a deposition to be taken the following day, and paid him the sum of $275.00 to cover the costs of the initial consultation, representation at the deposition and a second meeting to discuss further legal action, if appropriate. (Bar Exhibit 6).

At the initial consultation possible remedies were discussed for the damages done to the Cramers' property by the juveniles including the possibility of a suit for damages against the Cramers if the juveniles were acquitted. (Bar Exhibit 6).

The respondent did appear with Mrs. Cramer at the deposition on April 5, 1983. From April through August, 1983, Mrs. Cramer was subpoenaed numerous times to appear in court to address the matter brought up in her deposition. She called the respondent's office and left messages several times in an effort to consult

him about the subpoenas and the continued instances of harassment. (Bar Exhibit 6).

Respondent called the Cramers once and engaged in brief conversation. (Bar Exhibit 6).

In August Mrs. Cramer was informed by the State Attorney's Office that the case against a juvenile was completed and that she would not have to testify. (Bar Exhibit 6).

In late August the Cramers made an appointment to discuss further action against the juvenile. The Cramers arrived early for their appointment and waited at least four and one-half hours to see respondent but were never able to speak with him. (Bar Exhibit 6).

Respondent wrote the Cramers a letter dated October 6, 1983 stating that he was retained only to represent Mrs. Cramer at the deposition on April 5, 1983 and that he had no further obligation on his part for professional services. (Bar Exhibit 6).

CASE NO. 66,886

COUNT I

(09A84C79)

On or about April 2, 1982, Ms. Helen Patricia Compton retained the respondent for the purpose of obtaining an uncontested divorce. (T., p. 117). She paid him the sum of $226.00 for fee and costs. (T., p. 118).

A petition for dissolution of marriage was filed in the case. (T., p. 118).

The petition sought child support of $50.00 a week. (T., p. 119).

When Ms. Compton attempted to obtain her husband's signature on the answer, the husband refused to sign it saying that he could not afford $50.00 a week. (T., p. 119).

Respondent then informed Ms. Compton that he could have her husband served at a cost of $50.00. (T., p. 119).

Unknown to Mrs. Compton at the time, the petition for dissolution was dismissed on February 4, 1983, for failure to prosecute. (T., p. 118). On February 7, 1983 she paid him $150.00, on April 9, 1983 she paid him $150.00 and on April 16, 1983 she paid him an additional $40.00, all for services she expected in her behalf. (T., p. 120).

The total amount which the respondent received from Ms. Compton including the initial $226.00 required by the contract was $566.00. (T., p. 120).

After Ms. Compton paid the additional amount of money she experienced great difficulty in attempting to contact the

respondent or to get any information concerning her divorce. (T., p. 120).

Respondent did not inform Ms. Compton that her case had been dismissed for lack of prosecution at the time of her February and April, 1983 payments. (T., pp. 118-121).

In the fall of 1983 when she returned to his office, she was told by the respondent that he needed more money to continue the case because there were problems, and he would have to take depositions and other paperwok. He told her he would need approximately $1,000.00 more. (T., pp. 120-121).

Ms. Compton thereupon sought assistance from attorney William Corbley. She retained Mr. Corbley, who reviewed her divorce file at the courthouse, and learned that the case had been dismissed in February of 1983. (T., p. 121).

She paid Mr. Corbley the sum of $350.00 and he obtained a divorce and a custody and support agreement on Ms. Compton's behalf within a two month period. (T., pp. 121-122).

The support agreement provided for the former husband to pay $50.00 a week. (T., p. 122).

Respondent never returned any of the money that Ms. Compton paid him to obtain the divorce. (T., p. 122).

COUNT II

(09A84C74)

On or about November 28, 1983, Ms. Tina McCormick retained the respondent to obtain an uncontested divorce, permanent and temporary child custody, and a restraining order for her husband. (T., pp. 123-124).

Ms. McCormick paid respondent $198.50 at the time she retained him. (T., p. 124).

Ms. McCormick was given a financial affidavit form to take to her husband for him to complete, sign and return to the respondent. (T., p. 125).

She was unable to obtain her husband's cooperation and she so informed the respondent by telephone on several occasions. (T., pp. 125-126).

At a later meeting with the respondent Ms. McCormick and her mother were informed that the husband could be served and that additional funds would have to be paid to the respondent. Ms. McCormick's mother then wrote a check for an additional $290.00 and both ladies were assured that amount would take care of the problems. (T., pp. 124-129).

On one occasion the respondent and Ms. McCormick had a brief hearing in court concerning extending the temporary restraining order. (T., p. 127).

Ms. McCormick received an additional bill for $75.00 from the respondent. She did not pay this bill. (T., p. 129).

On one occasion while the respondent was seeking Ms. McCormick's husband to serve him with notice of the dissolution of marriage Ms. McCormick went to respondent's office and reported her husband's then current address and told respondent that he would have to be prompt at serving her husband because he moved around a lot. She informed him that if he had the summons served at that particular time her husband could be found. (T., pp. 126-127, 131).

Several days later when respondent attempted to serve the husband at that address it was learned that the husband had left the state. (T., p. 127).

During the time that Ms. McCormick was attempting to get child support from her husband the only money she received was approximately $400.00 which was comprised of a portion of an income tax refund to her husband and herself. There was no child support paid. (T., p. 130).

Respondent never got Ms. McCormick's divorce and she is now represented by a Legal Aid lawyer. (T., pp. 128, 130).

NOTE: As to Complaint No. 66,397 I also find that The Florida Bar properly served requests for admission on the respondent by virtue of the acceptance of the service of requests

for admission by certified mail by "P. Ramsey" on February 2, 1985. See Bar Exhibit No. 6. Because of the failure to respond to the requests for admission within thirty days by the respondent, I find that the allegations made in Complaint No. 66,397 are deemed admitted pursuant to the provisions of the rules of civil pleading and particularly the allegations of Count VII, the complaint of Richard W. Cramer, Jr., are deemed to be admitted. The Florida Bar was unable to locate Mr. or Mrs. Cramer for service of subpoena to testify in the referee proceedings in this matter.

Consistent with my ruling that The Florida Bar had made sufficient service of process on the respondent in this matter, I also find that the requests for admission filed in Complaint No. 66,308 was properly served by mailing by certified mail, return receipt requested, to the record Bar address of the respondent in this matter. The respondent failed to respond to the requests for admission in this complaint, also. However, I have not found it necessary to rely on the rule that failure to respond to requests for admission within thirty days would constitute admission, in this matter, and have relied primarily on the testimony of the witnesses in the two counts therein contained.

I also found from the evidence of record, that the respondent has failed utterly to cooperate in any manner whatsoever with The Florida Bar in resolving these issues.

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 Case No. 66,308

COUNT I

(09A83C19)

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to wit: DR 2-106(A) and 2-106(B) for charging and collecting a clearly excessive fee under the circumstances.

As to Count II

(09A83C21)

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to wit: DR 3-104(A) for allowing nonlawyer personnel to counsel clients, thereby engaging in the unauthorized practice of law; 3-104(C) for not insuring compliance by nonlawyer personnel with the Code of Professional Responsibility; 6-101(A)(3) for neglect of a legal matter and 7-101(A)(1) for intentionally failing to seek the lawful objectives of his client through reasonably available means permitted by law.

As to Case No. 66,397

COUNT I

(09A83C27)

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to wit: DR 6-101(A)(3) by failing to attend the court ordered pretrial conference or to file a court ordered pretrial statement which caused the client's case to be removed from the court docket.

As to Count II

(09A83C46)

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to wit: DR 1-101(A)(1) for violating Disciplinary Rules of The Florida Bar's Code of Professional Responsibility; 1-102(A)(5) for conduct prejudicial to the administration of justice by not appearing at properly noticed hearings on Ms. LeBar's behalf, especially on December 13, 1982 and on June 9, 1983; 1-102(A)(6) for engaging in conduct adversely reflecting on his fitness to practice law; 3-104(C) for failing to exercise the high standard of care to assure compliance by nonlawyer employees with the Code of Professional Responsibility; 3-104(E) for permitting a nonlawyer member of his staff to discuss a legal matter with a client without first advising the client that the nonlawyer staff member was not a lawyer; 7-101(A)(1) for failing to seek the lawful objectives of his client in that he did not appear on her behalf in court or at hearings; 7-101(A)(2) by failing to carry out his contract of employment with a client.

As to Count III

(09A83C68)

I recommend that the respondent be found guilty and that specifically he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to wit: DR 6-101(A)(3) for neglecting to prosecute the Air Force claim on behalf of his client; 7-101(A)(1) for failing to seek the lawful objectives of his client; 7-101(A)(2) for intentionally failing to fulfill his contract of employment with Mr. Wilson and 9-102(B)(4) for failing to promptly deliver possession of property entrusted to him by a client during his representation, after request for their return.

As to Count IV

(09A84C29)

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit: Integration Rule 11.02(3)(a) for engaging in conduct contrary to honesty, justice and good morals, by using trust funds for other than the clients' purposes; 11.02(4)(b) and the associated Bylaws for failing to comply with the trust accounting procedures and keeping prescribed records of those trust accounts for a period of six years; Disciplinary Rules 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 1-102(A)(5) for engaging in conduct prejudicial to the administration of justice by failing to produce all records of

his trust accounts, as required by two properly served subpoena duces tecum; 1-102(A)(6) for engaging in conduct adversely reflecting on his fitness to practice law by maintaining trust accounts in which shortages of individual clients' funds existed, and failing to follow the recordkeeping requirements of the Integration Rule of The Florida Bar and Bylaws thereto; 9-102(A) by allowing his personal funds to remain on deposit in the trust account in amounts more than reasonably enough to pay bank charges, thus constituting commingling of personal funds in his trust account; 9-102(B)(3) for failing to maintain complete records of all funds of a client coming into his possession.

As to Count V

(09A84C23)

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to wit: DR 3-104(A) by failing to insure that nonlawyer personnel perform only delegated duties, supervised by a licensed attorney, and thereby permitting the unauthorized practice of law; 3-104(C) by failing to exercise a high standard of care to assure compliance by nonlawyer personnel with the Code of Professional Responsibility; 6-101(A)(2) by handling a legal matter which he knew or should have known he was not competent to handle without unreasonable delay or expense to his client; 6-101(A)(3) by neglecting a legal matter entrusted to him.

As to Count VI

(09A84C24)

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to wit: DR 6-101(A)(2) by handling the adoption without adequate preparation under the circumstances; 6-101(A)(3) by neglecting the adoption matter entrusted to him.

As to Count VII

(09A84C30)

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to wit: DR 7-101(A)(1) for intentionally failing to seek the lawful objectives of his client.

CASE NO. 66,886

As to Count I

(09A84C79)

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to wit: DR 1-102(A)(4) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 1-102(A)(6) by engaging in conduct adversely reflecting on his fitness to practice law; 6-101(A)(3) for neglecting a legal matter entrusted to him; 7-101(A)(1) by intentionally failing to seek the lawful objectives of his client through reasonably available means;

7-101(A)(2) by failing to carry out a contract of employment entered into with a client for professional services; 7-101(A)(3) for prejudicing or damaging his client during the course of the professional responsibility.

As to Count II

(09A84C73)

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to wit: 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 1-102(A)(6) for engaging in conduct that adversely reflects on his fitness to practice law; 6-101(A)(3) for neglecting a legal matter entrusted to him by a client; 7-101(A)(1) for intentionally failing to seek the lawful objectives of his client; 7-101(A)(2) for failing to carry out a contract of employment entered into with a client for professional services; 7-101(A)(3) by prejudicing or damaging his client during the course of the professional relationship.

IV. Recommendation as to Disciplinary Measures to be applied:

I recommend that the respondent be disbarred from the practice of law in Florida for a period of ten years; that he be required to take and pass a course in legal ethics; that he be required to make restitution in the following amounts to the following former clients: Mr. Paul Guimarin, $185.00; Mr. William J. Montes, the sum of $240.00; Ms. Diane Helbling, $795.00; Ms. Florence LeBar, $185.00; Mr. Gary Wilson, $400.00; Ms. Sandra Faulkner, $110.00; Mr. and Mrs. Roscoe Brown, the sum of $245.00; Ms. Helen Patricia

Compton, the sum of $283.00; and Ms. Tina McCormick, $245.00. In addition to the forgoing, I further recommend the respondent be ordered to pay to the Bar its Bar costs as reflected in paragraph VI hereof.

V. Personal History and Past Disciplinary Record: After 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: 41
Date admitted to Bar: June 10, 1968
Prior disciplinary convictions and disciplinary measures imposed therein: On July 6, 1978, respondent received two private reprimands:

(1) For an incident which arose in September, 1974, for representing both parties in connection with a sale of a business and improperly relinquishing to the sellers' new attorney stock held in escrow; and

(2) For an incident which arose October, 1974, involving neglect of a client's legal affairs and then providing his client with an improperly predated letter in an attempt to rectify the fact.

Other personal data: None.

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. Transcripts of grievance committee hearings:		
Case Nos. 09A83C19, 09A83C21		489.00
Case Nos. 09A83C27, 09A83C46 09A83C68, 09A84C23 09A84C24, 09A84C29 09A84C30		325.00

Case Nos. 09A84C73, 09A84C79	204.90
3. Staff Auditor's Expenses	3,480.74
B. Referee Level Costs	
1. Administrative Costs	150.00
2. Transcript of referee hearing held 5/30/85 (all cases)	416.75
3. Staff Investigator's expenses	153.56
4. Staff Auditor's expenses of referee hearing held 5/30/85	220.23
TOTAL ITEMIZED COSTS	$5,590.18

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 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 31st day of July, 1985.

Jerry T. Lockett

The Honorable Jerry T. Lockett,
Circuit Judge,
Referee

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