IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,
Complainant,

v.

[redacted]

CASE NO. 66,398

(1984C86 Mr. and Mrs. Rich/1985C11 Mr. and Mrs. Brown)

J. Blayne Jennings,
Respondent.

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 June 21, 1985 in Vero Beach, Florida. The Pleadings, Notice of Hearing, Transcript 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

For The Respondent: J. Blayne Jennings, In pro se

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 generally that the Respondent, J. Blayne Jennings, is and at all time herein after mentioned was a member of The Florida Bar and subject to the

jurisdiction and disciplinary rules of the Supreme Court of Florida. He resided and practiced law in Indian River County in all pertinent periods of these complaints.

As to Count I

(1984C86 - The Florida Bar)

I find specifically that:

1. Respondent borrowed $30,000.00 from Titus and Emma Rich in late January, 1982 as a short term loan. Respondent is an in-law of the Rich's. As collateral, Respondent pledged a parcel of his real property in North Vero Beach he advised would be theirs in the event of default.

2. Respondent prepared, filed and had recorded on February 10, 1982 in the Circuit Court of Indian River County the mortgage and note attesting to this agreement. In order to make the loan to the Respondent, the Rich's took out a second mortgage on their home.

3. Respondent made payments on the loan for approximately one and a half years before defaulting around October, 1983. When asked by the Rich's about resuming payments, the Respondent stated he did not have the ability to do so. Thereafter, the Rich's consulted an attorney who discovered that the property securing the loan was already in foreclosure and had been subject to another lien at the time the loan was made. Since that time, the Rich's have had to make both the first and second mortgage payments to protect their home against foreclosure which constitutes a

significant financial burden on them. Respondent has made an additional payment to them of approximately $1,000.00 since their complaint to The Florida Bar.

4. At no time during the negotiation of the loan or thereafter did the Respondent inform the Rich's that the property securing the loan was already encumbered or that was in foreclosure although he was well aware of these facts. However, he did inform them that he owed taxes to the I.R.S. Respondent further failed to inform the Rich's of the full extent of his debts totalling at least $75,000.00 consisting of loans from ex-clients, demand notes from local banks and two I.R.S liens. Respondent also failed to advise them the mortgage was a second mortgage at best and that he was giving another mortgage on the same property to Mr. and Mrs. Brown. In fact, the mortgage to the Brown's was later recorded before the mortgage to the Rich's. Respondent further failed to advise them of measures they could take to protect their interest in the foreclosure by redeeming the property at foreclosure sale for some $23,000.00 on property purportedly worth $200,000.00.

5. At no time during the loan negotiations or thereafter did the Respondent advise the Rich's that their security could differ or that they should retain an attorney to insure adequate representation of their interest. Although the respondent was not the Rich's attorney, they relied upon his status as a family member and as an attorney with apparent

sufficient earning power in making the loan and did not feel the need for additional legal counseling.

6. I find that the Respondent took advantage of his position as a family member and as an attorney securing the loan by not making a full and complete disclosure of his financial indebtedness and encumbrances on the property he was using as collateral. Although there was not an attorney and client relationship, I note the Respondent was the only attorney involved and did what legal work was necessary. In securing the loan he did not adhere to the high standards expected of attorneys when engaging in business dealings under such circumstances.

As to Count II

(1985C11 - The Florida Bar)

I find specifically that:

1. Respondent borrowed $30,000.00 as a short term loan from Eugene and Mary Brown in late January of 1982 in order to pay his I.R.S debts among other things. Respondent is an in-law of the Browns. They found it necessary to secure a second mortgage on their home in order to furnish the loan. Respondent advised Mr. Brown that the loan was needed to clear a parcel of property which he would pledge as full security for the loan once it was cleared.

2. On February 10, 1982 the Respondent filed and recorded a note and mortgage prepared by himself purportedly providing collateral for the Brown's loan. He never sent a copy of the

mortgage and note to Mr. Brown. The property described in the mortgage was located in North Vero Beach and was the same property used to secure at least two other loans including the Rich's. One had already been defaulted upon and a property was in foreclosure at the time of the loan. Respondent did not provide the Brown's with copies of these documents or this information.

3. After making approximately ten monthly payments, the Respondent defaulted. Mr. Brown visited the Respondent to discuss his failure to pay and to inquire about the status of the mortgage on the property. At that time, the Respondent asked Mr. Brown to wait approximately six months before doing anything further and not to seek counsel during that time. When Mr. Brown again approached Respondent about his failure to act, he learned the property was in foreclosure and had been for some time. Respondent also advised him at some point that his mortgage was without value. As with the Rich's, the Brown's have had to make both the first and second mortgage payments to protect their home from foreclosure which constitutes a significant financial burden on them. Respondent has made one additional payment of approximately $1,000.00 since their complaint to The Florida Bar.

4. At the time the loan was negotiated, the Respondent did not inform the Brown's of the full status of the property he offered as security for their loan even though he was aware it was in foreclosure. Respondent did not tell them it would be a second mortgage at best and that he was giving the same

mortgage on the same property to the Rich's although their mortgage was recorded first. Once again, Respondent failed to apprise the Brown's of the full extent of his debts. He further did not advise them to seek independent counsel to protect their interests. As with the Rich's, the Brown's relied upon the Respondent's status as a family member and practicing attorney in making the loan and trusted him to protect their interests in the loan transaction. Finally, Respondent failed to advise them of the routes they could take to protect their interests in the foreclosure by redeeming the property at foreclosure sale for $23,000.00 on property purportedly worth ~~$20,000.00~~ $200,000.00.

5. Once again, although there was no attorney and client relationship present in this transaction, the Respondent was the only attorney involved and did what legal work was necessary. As with the Rich's, I find that the Respondent has failed to fully disclose his indebtedness status in securing the loan and in so doing misrepresented the extent of the security that he was offering to the Brown's for the loan. His deficiencies in securing this loan are the same as in Count I.

As to Counts I and II

1. I make further finding that Respondent solicited some $60,000 in loans from his in-laws in order to help handle his mounting indebtedness in the neighborhood of some $75,000.

At the time of the loans, he gave each the same purported security on property already encumbered with at least a $23,000 mortgage which was in foreclosure as well as two I.R.S liens totalling $36,266.03. As noted in both instances, he failed to make full disclosure of his financial indebtedness or the status of the purported security.

2. Although an actual attorney and client relationship was not present in either case, I find that he abused his status as an attorney in securing these loans. I specifically note disciplinary jurisdiction extends to over reaching situations even where an attorney and client relationship is not actually present. See the line of cases beginning with The Florida Bar v. Bennett 276 So2d. 41 (Fla. 1973); The Florida Bar v. Davis 273 So.2d 683 (Fla. 1979); and The Florida Bar v. Adams 453 So.2d 818 (Fla. 1984).

3. I do specifically find in both instances the Respondent was less than candid in failing to make a full disclosure and solicited from other members of his family loans and allowed them to be made without making full disclosure necessary for an attorney to do under such circumstances and thereby is guilty of over reaching. As the Supreme Court stated in Bennett Supra at page 482:

> "Some may consider it "unfortunate" that attorneys can seldom cast off completely the mantle they enjoy in the profession and simply act with simple business acumen and not be held responsible under the high standards of our profession. It is not often, if ever, that this is the case. In a sense, "an attorney is an attorney is an attorney", much as the military officer remains "an officer and a gentleman" at all times. We do not mean to say that lawyers are to be deprived of business

opportunities; in fact we have expressly said to the contrary on occasion; but we do point out that the requirement of remaining above suspicion, as Caesar's wife, is a fact of life for attorneys. They must be on guard and act accordingly, to avoid tarnishing the professional image or damaging the public which may rely upon their professional standing."

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 Count I-

I recommend that the respondent be found guilty and specifically that:

1. He be found guilty of violating the following Integration Rule of The Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to wit: Article XI, Rule 11.02(3)(a) for engaging in conduct contrary to honesty, justice, or good morals through his failure to completely disclose his indebtedness and the status of the property in securing the loan; and Disciplinary Rules 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation by failing to divulge the full extent of his debts and the status of the title to the property in securing the loan and 1-102(A)(6) for engaging in other misconduct adversely reflecting on his fitness to practice law by failing to advise the Rich's of their possible differing interests in negotiating the loan and the means of further their interests in the foreclosure matter.

As to Count II-

I recommend the Respondent be found guilty and specifically:

1. He be found guilty of violating the following Integration Rule of The Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to wit: Article XI, Rule 11.02(3)(a) for engaging in conduct contrary to honesty, justice, or good morals for failing to divulge the full extent of his debts and the status of the property he was purportedly giving the security in making the loan; and Disciplinary Rules 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in failing to divulge the full extent of his debts or the status to the title to the property offered as security in securing the loan and 1-102(A)(6) for engaging in other misconduct reflecting adversely on his fitness to practice law and failing to advise the Brown's of their possible differing interests in securing the loan and of the possibilities for protecting their interests in the collateral in the foreclosure matter.

IV. Recommendation as to Disciplinary measures to be applied: I recommend the Respondent be pubicly reprimanded by personal appearance before the Board of Governors of The Florida Bar pursuant to Rule 11.10(3).

V. Personal History and Past Disciplinary Record: After finding Respondent guilty of both Counts 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 records Respondent, to wit:

Age: 41
Date admitted to The Florida Bar: December 20, 1974
Prior disciplinary convictions and disciplinary measures imposed therein: N/A
Other personal data: The Respondent is married with three minor dependents. He graduated from Howard University located in Washington, D.C. Respondent is a sole practitioner practicing in Indian River County.

VI. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonable incurred by The Florida Bar.

A.	Grievance Committee Level Costs	
	1. Administrative Costs	$150.00
	2. Transcript Costs	$285.00
	3. Bar Counsel/Branch Staff Counsel Travel Costs	$ 35.96
B.	Referee Level Costs	
	1. Administrative Costs	$150.00
	2. Transcript Costs	$203.30
	3. Bar Counsel/Branch Staff Counsel Travel Costs	$ 65.84
	4. Audit costs pursuant to Rule 11.02(4) (c) will be furnished separately	-0-
C.	Miscellaneous Costs	
	1. Telephone charges	$ n/a
	2. Staff investigator expenses	$ n/a
	TOTAL ITEMIZED COSTS:	$890.10

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 judgement in this case becomes final unless a waiver is granted by The Board of Governors of The Florida Bar.

F.T.P. 29th

Dated this 17th day of July, 1985.

Frederick Bruton

Referee

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