

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,  
v.  
DAVID A. DANCU,  
Respondent.

CONFIDENTIAL

Supreme Court Case  
No. 66,547

The Florida Bar Case  
No. 17D85F12

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Respondent tendered a Consent Judgment to The Florida Bar on January 25, 1985 whereby he unconditionally pled guilty to certain violations of the Code of Professional Responsibility and the Integration Rule of The Florida Bar enumerated therein. Supreme Court Case Number 66,547 was initiated on February 12, 1985 by the filing of a Petition for Approval of Respondent's Unconditional Guilty Plea with the Supreme Court of Florida. The undersigned was appointed as Referee in this cause on March 20, 1985 by order of the Chief Justice of the Supreme Court of Florida. On April 3, 1985, Respondent's counsel directed a letter to this Referee wherein he indicated that Paragraph twenty five (25) of the aforesaid Consent Judgment was waived and that Respondent would agree to accept, as a disciplinary sanction, a suspension from the practice of law for a period of thirty (30) days. Upon due deliberation and having concluded that Respondent's Consent Judgment and the agreed discipline made a part thereof was fair to society, fair to Respondent and sufficiently severe to deter others who might be tempted to commit similar violations, this Referee recommended acceptance of said Consent Judgment to this Court. By order dated July 10, 1985, the Court rejected the recommendations of the Referee and remanded the case for further proceedings. A final hearing was thereafter conducted on October 31, 1985.

All pleadings, correspondence, and orders contained in the file are forwarded with this report together with the transcript and evidence

admitted at the final hearing. The foregoing constitutes the record of these proceedings. The following attorneys appeared as counsel for the parties:

On Behalf of Respondent: Arthur M. Wolff, Esq.  
On Behalf of The Florida Bar: Richard B. Liss, Esq.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED:

In that Respondent had previously submitted what, in essence, was a guilty plea to the matters charged by The Florida Bar, a copy of the Consent Judgment is attached hereto and each and every admission contained therein is hereby incorporated herein by reference as the undersigned's findings of fact.

III. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

As a result of the aforesaid findings of fact, it is recommended that Respondent be found guilty of violating Disciplinary Rules 1-102(A) (1), 1-102(A) (4), 1-102(A) (6), 9-102(A) and 9-102(B) (3) of the Code of Professional Responsibility; article XI, Rules 11.02(3) (a) and 11.02(4) of the Integration Rule of The Florida Bar; and article XI, Section 11.02(4) (c), paragraph 2.a., Bylaws Under The Integration Rule.

IV. PERSONAL HISTORY:

Respondent, David A. Dancu, was admitted to The Florida Bar on May 10, 1974 and is thirty eight (38) years of age.

V. STATEMENT OF PAST DISCIPLINE IMPOSED ON RESPONDENT:

Respondent has not been the subject of disciplinary sanctions except for the present matter under consideration.

VI. STATEMENT OF COSTS AND RECOMMENDATIONS AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:

Respondent should be taxed costs in the amount of Four Hundred Forty Nine Dollars and Fifty One Cents (\$449.51) pursuant to article XI, Rule 11.06(9) (a) of the Integration Rule of The Florida Bar.

VII. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Having again reviewed Respondent's Consent Judgment in conjunction with the testimony, evidence and legal arguments presented at the final hearing conducted on October 31, 1985, I recommend the following

disciplinary sanctions be imposed against Respondent by the Supreme Court of Florida.

1. A suspension from the practice of law for a period of six (6) months and continuing thereafter until proof of rehabilitation.
2. As part of the proof of rehabilitation, successful passage of the ethics portion of the Multistate Bar Examination.
3. Taxation of costs in the amount of Four Hundred Forty Nine Dollars and Fifty One Cents (\$449.51) against Respondent, with execution to issue and with interest at a rate of twelve per cent (12%) to accrue on all costs not paid within thirty (30) days of the Supreme Court's Final Order in this cause, unless the time for payment is extended by the Board of Governors of The Florida Bar.

In closing, it should again be noted that Respondent voluntarily gave full and complete cooperation to The Florida Bar when the instant complaint was made known to him. In addition, appropriate restitution was made by him. Although the acts engaged in by Respondent were egregious and are deserving of severe sanction, payment of claimed legal fees could have been effectuated by the assertion of a retaining lien and the institution of appropriate legal proceedings to perfect the lien. Simply stated, Respondent could have easily accomplished his objective in an ethical and legal manner but did not do so. Compounding the tragic nature of this case even further are the physical and mental problems that plague Respondent from his Vietnam service and the favorable character testimony that was admitted into evidence at the final hearing. Notwithstanding consideration of the foregoing, it is felt that the disciplinary recommendation now being made to the Court is appropriate under the facts and circumstances of this case.

Dated this 2 day of December, 1985, at Miami, Dade County, Florida.

Respectfully submitted,

  
ROSEMARY USHER JONES, Referee

Copies furnished to:  
Arthur M. Wolff, Attorney for Respondent  
Richard B. Liss, Attorney for Complainant

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THE FLORIDA BAR,

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Supreme Court Case  
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\_\_\_\_\_/

RESPONDENT'S CONSENT JUDGMENT FOR  
UNCONDITIONAL GUILTY PLEA AND  
WAIVER OF PROBABLE CAUSE FINDING

COMES NOW, DAVID A. DANCU, pursuant to Fla. Bar Integr. Rule, art. XI, Rule 11.13(6)(a), and hereby tenders his Consent Judgment for Unconditional Guilty Plea and Waiver of Probable Cause Finding to the Supreme Court of Florida and states as follows:

1. That, David A. Dancu, hereinafter referred to as Respondent, is and at all times hereinafter mentioned was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.
2. That Respondent is currently the subject of a grievance filed against him and assigned The Florida Bar Case No. 17D85F12.
3. That Respondent is represented by Counsel and has been apprised of all procedural and substantive rights afforded him in disciplinary proceedings by the Integration Rule of The Florida Bar.
4. That Respondent waives his right to a finding of probable cause by a grievance committee of The Florida Bar based upon a full hearing on this matter as provided by Fla. Bar Integr. Rule, art. XI, Rule 11.04.
5. That Respondent is aware of his right to confront his accusers, his right against self-incrimination, his right to call witnesses in his own behalf, his right to a full and impartial hearing before a duly constituted grievance committee of The Florida Bar, and hereby acknowledges his knowing and voluntary waiver of same.

6. That Respondent wishes to admit to certain facts and rule violations as hereinafter set forth.

7. That Respondent was retained to represent a client in a dispute she had regarding release of insurance proceeds resulting from the death of her husband.

8. That the client's late husband had been married previously and as part of the final decree, he had been required to maintain \$100,000 in life insurance for the benefit of his children.

9. That the client's late husband maintained a \$1,000,000 life insurance policy but prior to his death removed the children from his first marriage as beneficiaries.

10. That subsequent to the client's husband's death, suit was instituted by the children from the first marriage to obtain the \$100,000 in life insurance proceeds.

11. That on or about April 9, 1984, Respondent was successful in obtaining a check from the insurance company in the amount of \$934,520.40. The sum of \$34,520.40 represented interest that had accrued during the pendency of the dispute.

12. That Respondent advised his client that the aforementioned check had been deposited to a trust account.

13. That Respondent did in fact open the interest-bearing Money Market account at Landmark First National Bank and deposited the \$934,520.40 to that account and which account was styled "David Dancu".

14. That the foregoing account was opened and the deposit made without the client's knowledge except as aforesaid.

15. That on or about May 22, 1984, the Respondent tendered a check drawn on his trust account to the client in the amount of \$931,500.00. This amount was arrived at by Respondent deducting the sum of \$2,500.00 which he previously had paid to his client at her request to accommodate her needs.

16. That the insurance proceeds generated interest in the approximate amount of \$8,812.00 while in the Money Market account.

17. That the Respondent allowed the interest to remain in the Money Market account.

18. That the client inquired of Respondent about the lack of interest generated on her behalf on the sums in question.

19. That Respondent provided bank records to the client which she turned over to her accountant and which purported to show that the monies were held in a non-interest bearing account.

20. That the client's accountant sought further information with respect to the bank records from Respondent at which time Respondent acknowledged that the money was held in the interest-bearing Money Market account.

21. That Respondent thereafter refunded to the client interest earned on the money in the interest-bearing account in the amount of \$8,812.00 and he paid attorney's fees in the amount of \$742.50 to the client's new lawyer and he forgave the client outstanding attorney's fee obligations in excess of \$5,000.00 due and owing to him for legal work he had performed for the client with respect to the estate problems and the insurance proceeds in particular.

22. That Respondent additionally agreed to pay a reasonable accountant's fee in connection with this matter, but, when a bill in the amount of \$10,200.00 was demanded of Respondent by the client and her accountant, the Respondent positioned that this sum was far in excess of a reasonable accounting fee for the little work performed by the accountant with respect to this matter. The client and her accountant indicated that the matter would not be brought to the attention of The Florida Bar if the \$10,200.00 was paid. The Respondent, believing the sums to be grossly inflated, refused to pay the amount but rather tendered the sum of \$2,500.00 as a reasonable accounting fee which amount was delivered to the attorney for the client and which was accepted by the client.

23. That, by virtue of the foregoing course of conduct, Respondent hereby acknowledges that he has violated Fla. Bar Code Prof. Resp., D.R. 1-102(A)(1), 1-102(A)(4), 1-102(A)(6), 9-102(A) and 9-102(B)(3); Fla. Bar Integr. Rule, art. XI, Rules 11.02(3)(a) and 11.02(4); and Fla. Bar Integr. Rule By-laws, art. XI, §11.02(4)(c), para. 2a.

24. That Respondent and The Florida Bar are not able to agree on appropriate disciplinary action. The Florida Bar positions that a 30-day suspension from the practice with automatic reinstatement is appropriate while Respondent contends that a reprimand is sufficient in lieu of his voluntary cooperation with The Florida Bar in its investigation, his monetary refunds to his client and other mitigating factors.

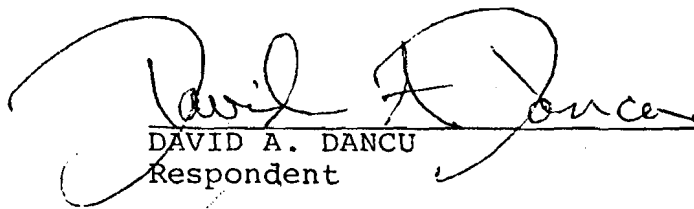
25. That Respondent wishes to present certain matters in mitigation to the Referee that will be appointed by this Court and who will ultimately make a disciplinary recommendation to this Court.

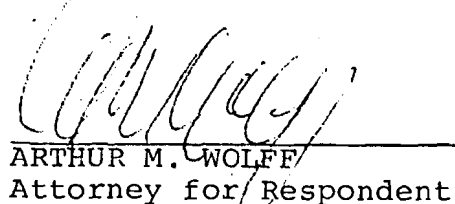
26. That Respondent agrees to pay all costs reasonably incurred by The Florida Bar in the prosecution of this matter within thirty (30) days of this Court's final order unless time for payment is extended by the Board of Governors of The Florida Bar.

27. That Respondent acknowledges that this Consent Judgment for Unconditional Guilty Plea and Waiver of Probable Cause Finding is tendered freely, voluntarily and without fear or threat or coercion.

DATED this 25<sup>th</sup> day of Jan, 1985.

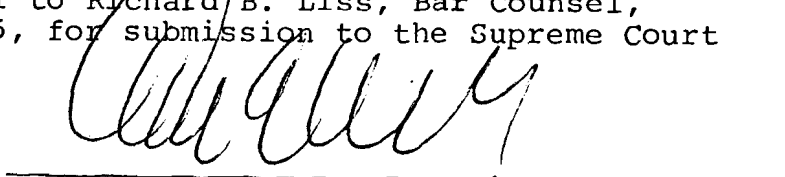
Respectfully submitted,

  
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DAVID A. DANCU  
Respondent

  
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ARTHUR M. WOLFF  
Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Respondent's Consent Judgment for Unconditional Guilty Plea and Waiver of Probable Cause Finding was sent by U. SM Mail to Richard B. Liss, Bar Counsel, this 31 day of January, 1985, for submission to the Supreme Court of Florida.

  
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