

67,048

FILED

S'D J. WHITE

MAY 20 1985

17
Jack
18

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

v.

MICHAEL H. MERRILL,
Petitioner.

CONFIDENTIAL

CLERK, SUPREME COURT

By _____
S. D. Duty Clerk

TFB File Nos.: 20A85F23,
20A85F38, 20A85F53, 20A85F64,
20A85F65, 20A85F79.

PETITION FOR RESIGNATION

COMES NOW the petitioner, Michael H. Merrill, and files this, his petition for resignation pending disciplinary proceedings, pursuant to Fla. Bar Integr. Rule, article XI, Rule 11.08.

1. Petitioner is 40 years of age and was admitted to the practice of law in the State of Florida on December 13, 1979.

2. I have not been and am not now the subject of any criminal proceedings.

3. My past disciplinary history consists of the following: By order dated January 17, 1985 this Court directed that I receive a public reprimand, make a refund to a specified client and pay the bar's costs in The Florida Bar v. Merrill, No. 65,652 (Fla. Jan. 17, 1985). The proceeding which was the subject of such order embraced three (3) counts, each involving neglect. I was found guilty of violating Disciplinary Rules 1-102(A) (1), 1-102(A) (6), 3-104(C), 6-101(A) (2), 6-101(A) (3), 9-102(A) (2) and 9-102(B) (4) of the Code of Professional Responsibility and Fla. Bar Integr. Rule, article XI, Rules 11.02(2) and 11.02(4). A copy of the Court's order is attached as Exhibit 1. I have no other disciplinary history.

4. There is presently pending the following proceedings:

a. On April 16, 1985 the Honorable Durand J. Adams, referee appointed in The Florida Bar v. Merrill, No. 66,072, filed his report with this Court recommending that in connection with an unconditional guilty plea I had tendered to grievance committee 20A involving four (4) grievances filed with The Florida Bar that I be found guilty of violating Disciplinary Rule 6-101(A) (3) of the Code of Professional

Responsibility in one such case, Disciplinary Rules 6-101(A)(3), 1-102(A)(6), 3-104(C) and 3-104(D) in two (2) such cases and Disciplinary Rules 1-102(A)(6), 3-104(C), 3-104(D), 9-102(B) and Rule 11.02(4) of the Integration Rule in the fourth such case. Each of the grievances involved neglect and improper supervision of non-lawyer personnel. As discipline, the referee recommended that I be suspended from The Florida Bar for sixty (60) days with automatic reinstatement plus a probation period of eighteen (18) months following the suspension. A copy of the referee's report (to which is attached my unconditional guilty plea) is attached as exhibit 2. It contains the particulars of each grievance.

b. There are six (6) cases presently pending at grievance committee level awaiting formal hearings. Case 20A85F23 involves a grievance filed by Farmers Union Oil Company of Minnesota who claims that I was retained to perfect a Minnesota judgment in Florida and then execute against specific real property owned by the judgment debtor in Florida. It is claimed that I neglected to perfect the judgment or take any steps to collect the judgment. I admit to neglecting this client's case. The client's case was attended to fully by another attorney.

Case 20A85F38 involves a grievance filed by one Pamela S. Summers. Ms. Summers complains that I neglected to prosecute a personal injury action on her behalf in which I was retained in October, 1983; that despite the passage of over a year and one-half I did nothing to pursue her rights. I admit to neglecting this client's case.

Case 20A85F53 involves a grievance filed by Diane L. and Milton J. Hamilton. They complain that they retained me to represent them in connection with the purchase of real property but that I neglected to prepare papers essential to secure financing for my clients and failed and neglected to ~~perform any other services~~ provide a policy of title insurance until the passage of many months beyond what was reasonable or necessary. I admit to neglecting the Hamiltons' matter.

Case 20A85F64 involves a grievance filed by Mr. William R. Ackerman. Mr. Ackerman charges that he retained me to represent him in connection with the probate of his deceased brother's will but that I neglected to take any steps required to carry out my retainer despite

the passage of fourteen (14) months. I did not take the action requested and returned Mr. Ackerman's retainer payment to him. The will was probated by others.

Case 20A85F65 involves a grievance filed by Ms. Margaret E. Adkins and Mr. Duane E. Bellmore. Ms. Adkins and Mr. Bellmore complain that I was hired by their principal, Padre Bay Development Corporation to assist the corporation in securing certain financing for a building to be constructed by the corporation. In their complaint Ms. Adkins and Mr. Bellmore contend that I neglected to prepare required documents and that those papers I did prepare were deficient. I deny each and every allegation of this grievance. Central to all of my problems with the bar is misconduct by a former employee of mine, Kathy Wead. Ms. Wead, who, as my personal secretary, receptionist and confidante, enjoyed a position of trust and confidence in my office, betrayed her trust by misappropriating funds from me and clients, by shielding me from client communications, by misrepresenting facts regarding the status of cases to my clients and attributing the misrepresentations to me and by being devious, dishonest and disloyal, is a principal and/or employee of Padre Bay Development Corporation. As a result of her defalcations while working for me Ms. Wead is being prosecuted by the State of Florida for larceny and will stand trial in June, 1985. The complaint filed by her colleagues in Padre Bay is merely an attempt to strike back at me for Ms. Wead's problems with the criminal justice system. I am not guilty of any violations alleged in this grievance.

Case 20A85F79 involves a grievance filed by Mrs. Patricia Thompson. Mrs. Thompson complains that I was retained by her daughter, Ms. Kathleen Thompson, to file child support proceedings; that despite being retained in June, 1984 I have done nothing to pursue the child support proceedings. I admit neglecting Mrs. Thompson's case.

5. I file this resignation with the proviso and condition that prior to any application I may make for reinstatement to The Florida Bar under Fla. Bar Integr. Rule, article XI, Rule 11.08(5) as amended January 17, 1985, I must first satisfactorily pass The Florida Bar examination.

6. I believe that the public interest will not be adversely affected by the granting of this petition and that permitting me to resign with the condition and proviso recited hereinabove in paragraph 5 of this petition will not adversely affect the purity of the courts, hinder the administration of justice or affect the confidence of the public in the legal profession.

7. I understand that I would be generally liable for any costs incurred by The Florida Bar in prosecuting disciplinary proceedings against me. Under the circumstances I am willing to have taxed against me the costs incurred by The Florida Bar to date in the disciplinary proceedings that are listed as pending in this petition.

8. I agree to cooperate fully with the Clients Security Fund should any claim be filed involving me and I understand that I will remain personally liable to make restitution in any case where liability is determined in an appropriate proceeding.

9. I have retained counsel in this matter and am acting freely and voluntarily herein with the advice and assistance of such counsel.

WHEREFORE, I respectfully pray that my application for leave to resign with the proviso and condition as recited in paragraph 5 hereinabove relating to reinstatement, be granted.

Under the penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Executed this 15th day of May, 1985.



MICHAEL H. MERRILL, Petitioner

State of Florida
County of

On this 15th day of May, 1985 personally appeared before me, the undersigned authority, Michael H. Merrill, who signed the foregoing petition in my presence and who being by me first duly sworn, deposed and said that he knows the contents of said petition and that the same are true to his best knowledge and belief.



NOTARY PUBLIC
State of Florida at Large

My commission expires:

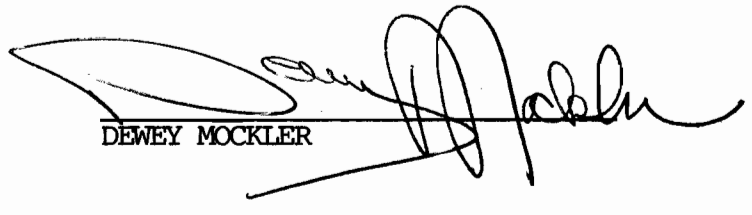
MY COMMISSION EXPIRES
NOV. 17, 1988



DEWEY MOCKLER, Esquire
Attorney for Petitioner
Post Office Box 749
Fort Myers, FL 33902

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of this petition was filed with the Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301 and that copies thereof were furnished to John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, FL 32301-8226 and David M. Barnovitz, Bar Counsel, The Florida Bar, 915 Middle River Drive, Suite 602, Fort Lauderdale, FL 33304, on this ~~15th~~ 10th day of May, 1985.



DEWEY MOCKLER