

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED

JAN 2 1986

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THE FLORIDA BAR,

Complainant,

v.

TRACY BAXTER,

Respondent.

CONFIDENTIAL

Case No. 67,519

(TFB Case Nos. 04A82N51;
04A84N19)

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, the following proceedings occurred:

On August 20, 1985, The Florida Bar filed its complaint against Respondent. Respondent failed to answer the complaint nor did he respond to the Bar's request for admissions. As a result of this failure to respond, the Bar filed its Motion to Deem Matters Admitted and Motion for Summary Judgment on October 1, 1985. The aforementioned pleadings, all of which are forwarded to the Supreme Court of Florida with this report, constitute the record in this case.

II. Findings of Fact as to Each Item of Misconduct of Which Respondent is Charged

After considering all the pleadings, I find in reference to TFB Case No. 04A82N51:

1. Respondent is, and at all times mentioned in this complaint was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

2. In September of 1980, Respondent represented Mr. E. W. Thomas in the sale of five acres of real estate to Mr. Jeff R. Smith. Mr. Smith was responsible for payment of attorney's fees. Respondent prepared the closing documents which included a warranty deed, a promissory note, and a mortgage. All parties involved signed the necessary documents.

3. Sometime shortly after the closing Respondent was advised that the legal description of the parcel of land on the deed was incomplete and should be corrected. Respondent made no effort to correct the warranty deed or other documents containing the incomplete legal description of the land.

4. Meanwhile, Mr. Smith was trying to obtain a building permit for this property but was unable to do so because of the incorrect legal description on the deed. Jacksonville Electric Authority refused to install electrical power until these permits were obtained.

5. Respondent was aware of Mr. Smith's dilemma but failed to actively take steps to remedy the incomplete legal description on the warranty deed.

6. Respondent corrected the warranty deed and other documents after several attempts by Mr. Smith and Mr. Thomas to persuade him to do so.

7. Respondent had Mr. and Mrs. Thomas sign the corrected warranty deed and other documents but notarized their signatures on the corrected documents as if they were signed in his presence on September 3, 1980, thus backdating the documents.

8. Despite the fact that all parties had signed the corrected warranty deed and corrected mortgage, Respondent refused to record the corrected deed until Mr. Smith also signed the corrected promissory note. Mr. Smith refused to sign this third document. Mr. Thomas did not instruct Respondent to require the signing of the corrected promissory note to complete the transaction.

9. As a result of Respondent's refusal to record the corrected warranty deed, Mr. Smith was unable to obtain building permits for his newly purchased property.

10. Respondent's actions constitute a violation of Disciplinary Rules 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice); 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law); 6-101(A)(2) (a lawyer shall not handle a legal matter without preparation); 6-101(A)(3) (a lawyer shall not intentionally fail to carry out a contract of employment); 7-101(A)(3) (a lawyer shall not intentionally prejudice his client during the course of the professional relationship); and 9-102(B)(4) (a lawyer shall promptly deliver to the client as requested by a client properties in the possession of the lawyer).

In reference to TFB Case No. 04A84N19, I find:

1. Sometime in late August of 1981 Respondent agreed to represent Mrs. Jessie K. Neff and began probate proceedings of her late husband's will.

2. Shortly after acquiring Mrs. Neff as a client, Respondent closed his law office and became almost completely inaccessible to Mrs. Neff.

3. During the course of probating the Neff estate, Respondent had problems accounting for all the assets such as bonds and such of the estate. Respondent made little effort to reconcile this problem with Mrs. Neff.

4. Unable to reach Respondent by phone during 1982, Mrs. Neff wrote Respondent requesting a copy of the joint IRS return for 1981 which was in Respondent's possession. The IRS planned to audit her files because of a question over a medical deduction. Mrs. Neff had itemized her late husband's medical expenses but Respondent combined the figures into a single total.

5. After some preliminary action in late 1981, Respondent failed to complete probating the Neff estate. As a results of his failure to respond to Mrs. Neff's letter of September 14, 1982, Mrs. Neff had to obtain a copy of her 1981 joint return from Atlanta. As a result of Respondent's neglect, Mrs. Neff was fined by the IRS for having filed an improper tax return.

6. On February 1, 1983, the Duval County Circuit Court ordered Mrs. Neff to fulfill the duties of the personal representative of the Neff estate within twenty days. Mrs. Neff unsuccessfully tried to contact Respondent to inform him of the order.

7. Respondent appeared in court on March 1, 1983 to inform the court that he was having problems tracing treasury bills owned by the decedent. The court ordered that Mrs. Neff as personal representative file an inventory of the estate and serve a final accounting and petition for discharge within thirty days.

8. Respondent failed to inform Mrs. Neff of any action taken subsequent to the court orders. Mrs. Neff wrote Respondent demanding some sort of information on the case in a letter to

Respondent dated April 5, 1983. Respondent never responded to this letter.

9. Judge John Cox of the Duval County Circuit Court wrote Respondent to inform him that the estate should be closed within the next ten days.

10. Respondent made no effort to comply with Judge Cox's orders or to withdraw from representing the Neff estate.

11. During the course of Respondent's representation of the Neff estate he lost Mrs. Neff's files and records and was unable to return them to her upon Respondent's being discharged.

12. Respondent's actions constitute a violation of Disciplinary Rules 1-102(A)(4) (a lawyer shall not engage in conduct involving misrepresentation); 1-102(A)(5) (a lawyer shall not engage in any conduct that is prejudicial to the administration of justice); 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law); 6-101(A)(1) (a lawyer shall not handle a legal matter which he knows he is not competent to handle); 6-101(A)(2) (a lawyer shall not handle a legal matter without preparation); 6-101(A)(3) (a lawyer shall not neglect a legal matter entrusted to him); 7-101(A)(1) (a lawyer shall not intentionally fail to seek the lawful objectives of his client); 7-101(A)(2) (a lawyer shall not intentionally fail to carry out a contract of employment); 7-101(A)(3) (a lawyer shall not intentionally prejudice his client during the course of the professional relationship); and 9-102(B)(4) (a lawyer shall promptly deliver to the client as requested by a client properties in the possession of the lawyer).

In related matters, I find:

1. Respondent has not paid his dues since August of 1980.
2. Respondent has made no effort to correct the delinquency of his due payments.
3. Respondent practiced law while he was not a member in good standing.
4. Respondent's actions constitute a violation of Section 2 of article [✓]II of the Integration Rule (no person shall engage in any way in the practice of law in this state unless such person is an active member of The Florida Bar in good standing); Section 1 of article [✓]VIII of the Integration Rule (every active member of The Florida Bar shall pay annual dues to The Florida Bar); and Section 2 of article VIII of the Integration Rule (any members in arrears in payment of annual dues shall become a delinquent member, entitled to none of the privileges of membership and shall not practice law in this state).

III. Recommendations as to Whether the Respondent Should be Found Guilty

I recommend that the Respondent be found guilty of the following violations of the Code of Professional Responsibility: Disciplinary Rules 1-102(A)(4) (a lawyer shall not engage in conduct involving misrepresentation); 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice) (two counts); 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law) (two counts); 6-101(A)(1) (a lawyer shall not handle a legal matter which he knows he is not competent to handle); 6-101(A)(2) (a lawyer shall not handle a legal matter without preparation) (two counts); 6-101(A)(3) (a lawyer shall not intentionally fail to carry out a

contract of employment) (two counts); 7-101(A)(1) (a lawyer shall not intentionally fail to seek the lawful objectives of his client); 7-101(A)(2) (a lawyer shall not intentionally fail to carry out a contract of employment); 7-101(A)(3) (a lawyer shall not intentionally prejudice his client during the course of the professional relationship) (two counts); 9-102(B)(4) (a lawyer shall promptly deliver to the client as requested by a client properties in the possession of the lawyer) (two counts); Section 2 of article II of the Integration Rule (no person shall engage in any way in the practice of law in this state unless such person is an active member of The Florida Bar in good standing); Section 1 of article VIII of the Integration Rule (every active member of The Florida Bar shall pay annual dues to The Florida Bar); and section 2 of article VIII of the Integration Rule (any members in arrears in payment of annual dues shall become a delinquent member, entitled to none of the privileges of membership and shall not practice law in this state).

IV. Recommendation as to Disciplinary Measures to be Applied

I recommend that Respondent be disciplined by:

- A. Disbarment
- B. Payment of costs in these proceedings.

V. Personal History and Past Disciplinary Record

Prior to recommending discipline pursuant to article XI, Rule 11.06(9)(a)(4), I considered the following personal history of Respondent, to wit:

Age: 49

Date Admitted to the Bar: November 6, 1959

Prior Disciplinary: 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. Bar staff travel	\$ 233.00
3. Court reporter and transcript costs	\$ 362.12

B. Referee Level Costs

1. Administrative costs	\$ 150.00
2. Bar staff travel	\$ 136.00
3. Court reporter and transcript costs	\$ <u>40.18</u>

TOTAL \$1,071.30

It is recommended that such costs be charged to 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.

Date this 30th day of December, 1985.

Richard Watson
Referee

Copies to: 12/30/85 ag
James N. Watson, Jr., Staff Counsel of The Florida Bar
Tracy Baxter, Respondent