

IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

THE FLORIDA BAR,
Complainant,
v.
DONALD McLAWHORN,
Respondent.

CONFIDENTIAL

CASE NO. 67,540
TFB #13B85H10

FILED
AUG 11 1986
CLERK, SUPREME COURT
Deputy Clerk

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the article XI of the Integration Rule of The Florida Bar, a final hearing was held on July 18, 1986. The enclosed pleadings, orders, transcripts and exhibits 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: DIANE VICTOR KUENZEL
For The Respondent: SCOTT K. TOZIAN

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, I find: that respondent's statements to plaintiff's fiancée (now husband) that "it was a million dollar case, no doubt", which he subsequently related to plaintiff, apparently affected her unwillingness to accept offers of judgment of sums substantially less. That respondent made misrepresentations in a letter to doctors seeking reductions in their bills by stating that the "verdict was not sufficient to satisfy all outstanding financial obligations resulting from her accident and injuries". The damages awarded were more than ample to satisfy all obligations.

That respondent also made misrepresentations regarding the judgment proceeds of \$65,000.00, which were to be kept in escrow, but which were later placed in a different account in respondent's name only without prior permission of the plaintiff. Such conduct creates distrust of the legal profession and gives the appearance of an effort to defraud plaintiff of monies belonging to her, even though the money was placed in a money market account. Such actions should not have been taken without her prior permission.

The failure of respondent to pay outstanding medical bills, resulting in a law suit and damages to plaintiff's credit, was prejudicial to the administration of justice in her behalf. The evidence failed to show a genuine effort by respondent to protect his client from creditors he knew existed, or to persuade her to permit him to make immediate payment of undisputed bills. Respondent was told to pay certain of the bills but failed to do so for several months. The delay was unjustified.

The referee recognizes the inherent difficulties in attorney/client relationships, especially in matters dealing with the settlement of claims or obtaining a jury verdict satisfactory to the client. However, competent attorneys should possess the necessary skills and experience to effectively deal with such problems in a manner which does not adversely reflect upon the respect and confidence the public places in the legal profession. The over-all conduct of respondent in the handling of this case does reflect upon his fitness to practice law./

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: I recommend that the respondent be found guilty of the following violation of the Code of Professional Responsibility: that the respondent has violated the Code of Professional Responsibility Disciplinary Rules 1-102(A)(1) (a lawyer shall not violate a disciplinary rule); DR 1-102(A)(4) (conduct seeking to defraud and mislead; DR 1-102(A)(5) (conduct prejudicial to the administration of justice; DR 1-102(A)(6) (conduct that adversely reflects on an attorney's fitness to practice law).

I find no violation of DR 9-102(A) or DR 9-102(B).

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that respondent receive a Public Reprimand with an appearance before the Board of Governors and payment of costs in these proceedings.

V. Personal History and Past Disciplinary Record: After finding a guilt 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:

- (1) Age: 43
- (2) Date Admitted to Bar: 11/13/70
- (3) Designated: None
Certified: None
- (4) Prior Disciplinary Record:

VI. Statement of Costs and Manner in Which Costs Should Be Taxed: I find the following costs were reasonably incurred by The Florida Bar:

Grievance Committee Level	
Administrative Costs	\$ 150.00
Court Reporter (2/1/85)	317.50
Investigative Costs	30.00
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	\$497.50
Referee Level	
Administrative Costs	\$ 150.00
Court Reporter (4/1/86)	592.80
Court Reporter (7/18/86)	116.70
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	\$ 859.50

TOTAL AMOUNT OF COSTS \$1,357.00

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, 1986.


FRANK H. WHITE, REFEREE

Copies furnished to:

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