IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

MARIE S. HOTALING,

Respondent.

CONFIDENTIAL

CASE NO. 67,545

The Florida Bar Case Nos. 17C84101, 17C85F15, 17C85F28 and 17C85F32

/

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 on The Florida Bar's Motion for Judgment on the Pleadings was held on November 22, 1985. The Pleadings, Notices, Motions, Transcripts 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 appared as counsel for the parties:

For The Florida Bar: Jacquelyn Plasner Needelman and Richard B. Liss

For the Respondent: No appearance.

STATEMENT AS TO NOTICE OF PROCEEDINGS TO RESPONDENT

The Florida Bar's Complaint and First Request for Admissions were mailed to Respondent on August 26, 1985, via certified and regular mail to her official record bar address and to the address provided to The Florida Bar by the United States Post Office as the Respondent's forwarding address.

Additionally, on October 3, 1985, Allyson A. Kline, a secretary for the Fort Lauderdale office of The Florida Bar, personally went to Ms. Hotaling's former law office in Fort Lauderdale. Ms. Kline personally saw Ms. Hotaling and personally handed her an envelope containing the pleadings and correspondence in this cause. Ms. Kline then observed the

Respondent deposit the envelope unopened into a wastepaper basket and exit the office. (Ms. Kline's affidavit detailing said events is attached as an Exhibit to The Florida Bar's Motion for Judgment on the Pleadings).

I find that The Florida Bar properly served and provided notice to the Respondent of the pleadings and correspondence in this cause and that Respondent was additionally personally served with the pleadings and correspondence in this cause. The Respondent's actions in discarding the pleadings and correspondence from The Florida Bar evidences her disdain for these proceedings.

At the November 22, 1985 hearing on The Florida Bar's Motion for Judgment on the Pleadings, said Motion was granted by this Referee. The Respondent failed to respond in any manner to the charges or pleadings filed in this cause.

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:

1. Respondent, Marie S. Hotaling, 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.

As to Count I:

2. In or about March, 1982, Respondent was retained by members of the Tam-O-Shanter Condominium Association to represent them in certain actions.

3. In or about March, 1982, Respondent asked Attorney John T. Carlon to accompany her to a meeting with the above clients.

4. Attorney John T. Carlon was sharing office space with Respondent at this time and at all times relevant herein, as

well as handling some legal matters for the Respondent in exchange for office space.

5. Upon inquiry by her clients concerning payment of the two (2) attorneys, Respondent told her clients that they would only be billed by the Respondent, as Attorney John T. Carlon was only her adviser as an expert in condominium law. Mr. Carlon confirmed at this meeting that he would be happy to assist Ms. Hotaling at no additional charge to the condominium association.

6. Respondent told her clients that they would be billed at the rate of $75.00 an hour, such billing to be submitted only by Respondent, and that charges by Attorney John T. Carlon, if any, would be taken care of by Respondent. Respondent billed the condominium association client for said services and the bills were paid by the client.

7. On or about March 10, 1982, a complaint was filed on behalf of the above clients, naming Respondent and Attorney John T. Carlon as counsel for Plaintiffs in the cause styled Karen Gaigelias, Virginia Dorfler and Felicia Atkinson, Plaintiffs, vs. Hale Pike, Robert Varela and Sherry Stephanowski, in the Circuit Court of the Seventeenth Judicial Circuit In and For Broward County, Florida, Case No. 82-5003 CH.

8. On March 24, 1983, John T. Carlon was granted a leave to withdraw as counsel for the above clients.

9. On or about August 4, 1983, the Defendants in Case No. 82-5003 CH filed a Motion to Dismiss, said Motion being noticed for a hearing on November 1, 1983.

10. On or about October 21, 1983, Respondent filed a Motion to Withdraw as Attorney for the Plaintiffs in Case No. 82-5003 CH, said Motion being noticed for hearing on November 1, 1983.

11. At the November 1, 1983 hearing, Judge Andrews denied Respondent's Motion to Withdraw because of the Defendant's pending Motion to Dismiss.

12. At the November 1, 1983 hearing Judge Andrews heard the Defendant's counsel's argument on the Motion. Judge Andrews then requested the Respondent to respond to the Defendant's Motion to Dismiss with Prejudice. Respondent refused to respond on behalf of her clients, leaving her clients unrepresented regarding said motion.

13. On or about July 8, 1982, the condominium association received a bill from Mr. Carlon in the approximate amount of $1,250.00. The bill was turned over to the Respondent, who advised not to worry, that she would take care of it.

14. In or about December, 1982, John T. Carlon sued the condominium association for attorney's fees in connection with his representation of them in the above-referenced action.

15. Respondent represented the condominium association regarding the law suit by Attorney John T. Carlon, despite a conflict of interest in that the Respondent and Mr. Carlon had a business and financial arrangement regarding clients and office space.

16. Respondent did not notify or disclose to her client this conflict of interest nor was the clients' consent obtained.

17. Regarding his lawsuit for fees, Mr. Carlon obtained a Default Judgment against Respondent's clients for attorney fees on April 5, 1983, because the Respondent did not appear on behalf of her clients at the final hearing, and failed to advise the condominium association of the date set for the hearing on Mr. Carlon's lawsuit.

18. During her representation of the condominium association, Respondent received and had access to privileged client information.

19. Respondent received notice of the judgment against the condominium association, and notice of execution of judgment in suit, regarding Mr. Carlon's lawsuit against them.

20. The Respondent improperly informed Attorney John T. Carlon of the name of the clients' condominium association bank. Attorney John T. Carlon was then able to execute a judgment lien on the condominium association's funds.

21. Respondent, through her secretary, advised the client condominium association to withdraw all funds from their bank in order to avoid the judgment execution by Mr. Carlon. The condominium associations' bank account had already been attached by a Court Order.

As to Count II:

22. On or about May 29, 1984, Frank J. Nestrole and his wife, Carole, had an appointment and conference with the Respondent at her office regarding adoption proceedings to be brought on behalf of their daughter.

23. At the end of the meeting, the Nestroles issued a check to the Respondent in the sum of $171.00, $71.00 representing a Court filing fee and the remaining $100.00 representing Respondent's attorney fee.

24. On or about May 30, 1984, Mr. Nestrole went to Respondent's office and left documents the Respondent had requested, the Nestroles' marriage license and their daughter's birth certificate. During this visit, Respondent's secretary made copies of said documents for Mr. Nestrole.

25. On or about June 15, 1984, Respondent advised the Nestroles that all the necessary papers were ready for their signature. The Respondent further advised that she would be out of town and requested the Nestroles to come to her office on Wednesday, June 20, 1984, at 4:00 o'clock p.m.

26. When the Nestroles appeared at the appointed time, they were advised by Respondent's secretary that the Respondent was still out of town.

27. On Monday, June 25, 1984, the Nestroles placed a phone call to Respondent's office and left a message on

Respondent's answering machine. The Nestroles did not receive a return phone call from the Respondent.

28. On or about June 26, 1984, Mr. Nestrole went to the Respondent's office regarding the adoption matter. At that time, Respondent advised Mr. Nestrole that she had been unable to prepare the necessary papers since he had failed to bring her the child's birth certificate.

29. At this June 26, 1984 meeting, Respondent advised that she would return $71.00 since the case had not been filed with the Court but would retain the remaining $100.00 for her time. Mr. Nestrole left the Respondent's office without receiving any of the monies he had paid.

30. The Nestroles have not received from the Respondent the documents left with her office, their marriage certificate and the child's birth certificate.

31. The Respondent has failed to take any action on behalf of the Nestroles and has failed to return the $171.00 she received.

As to Count III:

32. Respondent was retained by one Donna Haynes Alexander in or about June, 1983, regarding representing Ms. Alexander in the cause styled Cambridge Mutual Fire Insurance Company, Plaintiff, v. International Oho Investment, Inc., Donna Hayes Alexander, Rodger Dale, Jack and Patrick J. Alexander, Case No. 80-6557 CIV-JCP in the United States District Court for the Southern District of Florida, concerning a fire that destroyed Ms. Alexander's home. Cambridge Mutual Fire Insurance Company was seeking to have the insurance policy on Ms. Alexander's home declared null and void.

33. At the time Ms. Alexander first contacted the Respondent, Respondent advised her that she had previously handled similar cases and had experience with Federal trials.

34. Respondent did not have prior experience in handling cases of this nature.

35. Respondent advised the Trial Court on January 18, 1984, that she had never handled a Federal Jury Trial before and was not prepared with questions for the prospective jurors.

36. Respondent failed to take any depositions in the case, and did not conduct appropriate discovery proceedings.

37. At the trial in this cause, Respondent failed to raise objections to evidentiary exhibits and testimony that warranted objections being raised.

38. Respondent handled Ms. Alexander's case while she knew or should have known that she was not competent to handle same. Respondent failed to associate or consult an attorney competent to handle the matter.

39. Respondent did not conduct any study or preparation of the issues involved to become competent to handle Ms. Alexander's case.

40. Respondent handled Ms. Alexander's legal matters without preparation adequate in the circumstances and neglected this matter entrusted to her.

As to Count IV:

41. In or about November, 1982, Trayco, Incorporated, filed a lawsuit against Jack Leathers for injunctive relief and for damages for violations of a covenant not to compete involving the sale of plumbing parts by Mr. Leathers' company, Fox Distributors, in the cause styled Trayco, Inc., et al vs. Jack Douglas Leathers, Defendant, in the Circuit Court for the Fifteenth Judicial Circuit Court In and For Palm Beach County, Florida, Case No. 82-6357 CA(L) 01J.

42. The Respondent was retained to represent Mr. Leathers in this action.

43. The Respondent filed an Answer and Counter-claim on behalf of Mr. Leathers on or about April 1, 1983. Subsequently, an amended Counter-claim was filed.

44. During the course of discovery, Trayco attempted several times to obtain the deposition of a witness, Mike Bass.

45. The Respondent advised the witness, Mike Bass, not to appear for his deposition even though he had been subpoenaed for same.

46. In or about October, 1983, the Court granted a permanent injunction against Mr. Leathers and ruled that Trayco had a right to obtain attorney's fees but reserved jurisdiction on the issue of attorney's fees. Respondent failed to advise Mr. Leathers of this Court ruling.

47. When Mr. Leathers inquired about the status of his case, the Respondent advised him that he had won the case and that the Judge erred in awarding attorney's fees in favor of Trayco.

48. On or about November 14, 1983, Respondent filed a Notice of Appeal on behalf of Mr. Leathers, but failed to deposit the required Appellate Court filing fee.

49. The Respondent failed to appear at the January 4, 1984, hearing in Circuit Court regarding the award of attorney's fees and costs to Trayco.

50. The Court found a complete absence of justifiable issues of either law or fact raised by Mr. Leathers and pursuant to Florida Statues § 57.105 ordered that Trayco recover from Mr. Leathers the sum of $9,340.15 for costs and reasonable attorney's fees.

51. The Respondent dismissed with prejudice Mr. Leather's counter-claim without his authorization, consent, or knowledge.

52. The Respondent failed to respond to Trayco's Motion to Dismiss the Appeal. As a result, the appeal was dismissed by the Fourth District Court of Appeal on June 25, 1984.

53. The Respondent misrepresented to her client that the appeal was still pending when in fact it had been dismissed.

54. In or about January, 1983, Mr. Leathers attempted to contact the Respondent concerning his appearance at trial.

55. Mr. Leathers made approximately nineteen (19) telephone calls but failed to make contact with the Respondent.

56. In a desperate attempt to contact the Respondent, Mr. Leather's "employed" his friend, Mike Bass, for $50.00 to wait in the parking lot of the Respondent's office for her arrival and to have Mr. Bass then call Mr. Leathers collect and place the Respondent on the phone. Mr. Bass put the Respondent on the phone and she advised Mr. Leathers need not attend said hearing.

57. After learning that the award of attorney's fees had been affirmed, Mr. Leathers made numerous attempts to contact the Respondent by telephone over a period of twelve (12) days. The Respondent failed to respond to Mr. Leather's phone calls and messages.

58. In addition, the Respondent made herself inaccessible to opposing counsel, Alan Pollack, by failing to respond to Mr. Pollack's phone calls and messages.

59. On one occasion, Mr. Pollack went to the Respondent's office and observed that the phone was off the hook.

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 of violating the following Integration Rules of The Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to wit:

Florida Bar Integration Rule, article XI, Rule 11.02(3)(a), by engaging in actions contrary to honesty, justice or good morals; Disciplinary Rules 1-102(A)(4), (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), 1-102(A)(6), (engaging in any other conduct that adversely reflects on her fitness to practice law), 4-101(B)(1), (knowingly revealing a confidence or secret of client), 4-101(B)(2), (knowingly using a confidence or secret of the client to the disadvantage of the client), 5-101(A), (refusing employment

when the interests of the lawyer may impair her independent professional judgment, except with the consent of the client after full disclosure), and 6-101(A)(3), (neglecting a legal matter entrusted to her).

AS TO COUNT II

I recommend that the Respondent be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to wit: Rules 2-106 (a lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee), 6-101(A)(3) (neglect of a legal matter), and 9-102(B)(4) (a lawyer shall pay or deliver to the client as requested the funds, securities or other properties in the possession of the lawyer which the client is entitled to receive).

AS TO COUNT III

I recommend that the Respondent be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to wit: 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation), 6-101(A)(1) (a lawyer shall not handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it; however, he may accept such employment if in good faith he expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to his client), 6-101(A)(2) (a lawyer shall not handle a legal matter without preparation adequate in the circumstances, and 6-101(A)(3) (a lawyer shall not neglect a legal matter entrusted to him).

AS TO COUNT IV

I recommend that the Respondent be found guilty of violating

the following Disciplinary Rules of the Code of Professional Responsibility, to wit: 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation), 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice), 2-109(A)(2) (a lawyer shall not bring a legal action, conduct a defense or assert a position in litigation or otherwise have steps taken for him merely for the purpose of harassing or maliciously injuring any person), 6-101(A)(1) (a lawyer shall not handle a legal matter which he knows or should know he is not competent to handle, without associating with him a lawyer who is competent to handle it; however, he may accept such employment if in good faith he expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to his client), 6-101(A)(2) (a lawyer shall not handle a legal matter without preparation adequate in the circumstances, 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 entered into with a client for professional services), 7-101(A)(3) (a lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship), and 7-102(A)(1) (a lawyer shall not file a suit, assert a position, conduct a defense, delay a trial or take any action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another).

IV. Recommendation as to disciplinary measures to be applied: I recommend that the Respondent be disbarred from the practice of law in Florida and only be readmitted pursuant to the rules governing readmittance, including the taking and passing of the complete Florida Bar Exam.

The present cases evidence the Respondent's lack of fitness to practice law. The public will best be served by the Respondent not being a member of The Florida Bar. The Respondent has caused great harm to her clients in the instant cases as well as the cases involving her past discipline. I find that disbarment is warranted based upon the totality of these bases and the cumulativeness of the cases involving the prior discipline.

V. Personal history and past disciplinary record:

Age: 37

Date admitted to The Florida Bar: October 25, 1974

Prior Discipline: (1) On March 29, 1984, Respondent received a public reprimand and probation for a period of two (2) years for neglect. The Florida Bar v. Hotaling, 454 So.2d 555 (Fla. 1984).

(2) On May 30, 1985, the Supreme Court ordered the Respondent's suspension for a period of eighteen (18) months and probation to follow for a period of eighteen (18) months based upon cumulative neglect and misrepresentation.

VI. Statement of costs and manner in which costs should be taxed: I find the costs stated by The Florida Bar in the amount of $1,816.17 in its Statement of Costs were reasonably incurred by The Florida Bar and should be taxed against 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 9th DAY OF December, 1985.

Sidney

SIDNEY B. SHAPIRO
Referee

Copies furnished to

Jacquelyn Plasner Needelman, Bar Counsel
Marie S. Hotaling, Respondent, by
Regular and certified mail #P 578 599 418 at
1519 N. E. 4th Avenue, Fort Lauderdale, FL 33304
and regular and certified mail #P 578 599 419
at Route 3, Box 376, Old Town, FL 32680
John T. Berry, Staff Counsel, The Florida Bar