

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

LARRY R. BERGMAN,

Respondent.

FILED Case No. 67,735
(TFB Case No. 06A85H69)

JUN 12 1987

CLERK, SUPREME COURT

By: Deputy Clerk

REPORT OF REFEREE

- I. Summary of Proceedings: This report is filed pursuant to a hearing held on May 1, 1987, at 2:15 P.M., in which both parties came to be heard regarding respondent's allegations that he was not properly noticed of the proceedings against him. The Pleadings, Motions, Orders, 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 appeared as counsel for the parties:

For The Florida Bar

Jan K. Wichrowski

For The Respondent

In Proper Person

- 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, regarding the issue of whether The Florida Bar exercised due diligence in their attempt to give respondent notice of the proceedings against him, pertinent portions of which are commented on below, I find:

1. That a grievance committee hearing was held in this matter in July, 1985, and probable cause was found. Thereafter, a Final Hearing was held on January 15, 1986, and a Report of Referee forwarded to the Supreme Court of Florida by the undersigned on April 17, 1986. On August 21, 1986, the Court suspended respondent for six months and thereafter pursuant to the recommendations. On September 18, 1986, the Supreme Court received a telegram and subsequent

Motion for Rehearing from respondent in which he claimed he was not given proper notice of the proceedings. Thereafter, this Referee was assigned to determine the issue of sufficient notice only.

2. That the governing rules at the time in question, the Integration Rules of The Florida Bar, provided:

Article II, Section 6: It shall be the duty of each member of The Florida Bar to immediately advise the executive director of any change of mailing address or military status.

Article XI, Rule 11.01(2): Every member of The Florida Bar is charged with notice of the provisions of Section 6 of Article II relating to change of mailing address or military status and that mailing by registered or certified mail of papers or notices prescribed in these rules to the last mailing address of an attorney as shown by the official records in the office of the executive director of The Florida Bar shall be sufficient notice and service unless this court shall direct otherwise.

Article XI, Rule 11.13(2): Every member of The Florida Bar is within the jurisdiction of the Supreme Court and its agencies under these rules, service of process is not required to obtain jurisdiction over respondents in disciplinary proceedings; but due process requires the giving of reasonable notice and such shall be effective by the service of the complaint upon the respondent by mailing a copy thereof by registered or certified mail return receipt requested to the last known address of the respondent according to the records of The Florida Bar or such latter address as may be known to the person effecting the service.

The Florida Bar sent all pleadings, notices, and other correspondence in this matter to respondent's record Bar address, 423 30th Street North, Post Office Box 16412, St. Petersburg, Florida, 33733, as well as other addresses they found to be possible. As The Florida Bar Exhibit 1, the affidavit of the assistant custodian of membership records of The Florida Bar states respondent's record Bar address remained as above until late 1986 when respondent chose to notify The Florida Bar and the Supreme Court of Florida of

his whereabouts. I therefore find that respondent was correctly noticed of all proceedings pursuant to the above named rules.

3. Further, respondent apparently received notice of the fact that grievance committee matters were pending against him. The Florida Bar Exhibit 2 includes a receipt of certified mail, #P436009053, indicating that a Notice of Finding of Probable Cause for Further Disciplinary Proceedings was received by respondent's agent, Shirley Bergman, on August 7, 1985, in this case. Respondent was therefore apparently aware of this case in actual fact as well as by constructive service pursuant to the appropriate rules.

4. Further, The Florida Bar went above and beyond their duty in a good faith attempt to locate respondent's whereabouts and attempt actual service. Pursuant to the testimony of The Florida Bar Investigator, Charles Lee, and the affidavit of Mr. Ernest Kirstein, Jr., The Florida Bar Exhibit 3, it is apparent that The Florida Bar conducted an investigation to determine respondent's whereabouts and was unsuccessful in locating him despite good faith efforts.

5. Respondent claims that The Florida Bar should have gone to greater efforts to locate him, stating his mother and his fiance were aware of his whereabouts. Respondent also states that he was traveling extensively about the country at the time in question. I find respondent's contention to be without merit. It would be unduly burdensome to expect The Florida Bar to find every respondent who chooses to move and not notify The Florida Bar of his whereabouts. Further, if actual notice was made mandatory, a respondent could avoid prosecution simply by making himself unavailable to The Florida Bar service, presenting an obvious threat to the protection of the public. I note that the Order in this case indicated respondent abandoned his practice as well as his client who had paid him a large sum of money to prosecute an appeal.

Respondent admitted at the hearing in this matter that he had been negligent in failing to inform The Florida Bar of his address.

Copies to:

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