

67,850

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
JUN 27 1986
CLERK, SUPREME COURT
BY _____
Deputy Clerk

THE FLORIDA BAR,
Complainant,

CASE NO. 18B85C12

v.

EUGENE COLLIER,
Respondent.

FILED
SID J. WHITE
JUN 30 1986
CLERK, SUPREME COURT
BY _____
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 Article XI of the Integration Rule of The Florida Bar, hearings were held on March 20, 1986, and April 10, 1986, in Titusville, Florida. The pleadings, notices, 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: David G. McGunegle, Esquire

For The Respondent: Eugene Collier, pro se

II. Findings of Fact as to Each Item of Misconduct with which the Respondent is Charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

AS TO ALL COUNTS

1. The Respondent, Eugene Collier, 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.
2. At all material times the Respondent resided in and practiced law in Brevard County, Florida.
3. In the 1930's a testamentary trust was created by Charlotte Scranton Crisman, designating Elton Morris Crisman, Sr. as beneficiary of a life estate in the trust. At some time in the 1950's Katharine Collier, the daughter of the settlor and wife of the Respondent, became a successor trustee of the trust.

AS TO COUNT I

1. On June 29, 1983, the Respondent had Mr. Crisman, Sr., who was not represented by any other attorney, execute a waiver and relinquishment of his interest in this trust. The effect of this relinquishment would be to have the corpus of the trust pass to Mrs. Collier, who in addition to being the trustee, was also the beneficiary of the corpus of the trust upon the extinguishment of Mr. Crisman's interest.

2. Just prior to executing the aforesaid waiver Mr. Crisman had visited his son who lived in Blairsville, Georgia. During this visit Mr. Crisman exhibited a lack of familiarity with his surroundings and appeared to be disoriented much of the time. He flew back to Florida from Georgia by commercial airline, but was tagged and monitored as a small child during this flight. On the day the waiver was executed the Respondent drove to Ocala to visit with Mr. Crisman. They took him out to get ice cream and asked him to sign some documents. Mr. Crisman later did not know what documents he had signed nor what the effect of the documents might be.

3. The only income Mr. Crisman received other than this trust income was a small pension from Ford Motor Company and his Social Security income. He had no significant assets and it strains the credibility of this Court to believe that he would knowingly relinquish this income.

4. This referee finds that this Respondent secured this waiver knowing that Mr. Crisman was not competent to execute it.

AS TO COUNT II

1. In July 1983, Mr. Crisman Sr. was found incompetent and his son, Elton Crisman, Jr., was appointed guardian of his person and estate. This appointment was made over the objection of Respondent who sought to have either himself or his wife substituted as guardian.

2. Although Mr. Crisman had been receiving money from the estate for years, he never received another payment from the time the guardianship was established.

3. Shortly after the guardianship was established the guardian found it necessary to institute a law suit against

the Respondent and his wife. The lawsuit alleged that the wife, as trustee, and the Respondent, as her attorney, had engaged in improper conduct in their handling of the estate.

4. Between the years 1968 and 1979, the attorney for the estate, Ed Jackson (now a circuit judge in Brevard County) received a total of \$811.20 as attorney fees for his work for the estate. A total of \$1,200.00 was paid to the Respondent's wife for her services as trustee. Between 1980 and 1983, when the Respondent was attorney for the trustee, he was paid \$7,595.00 in legal fees, His wife received \$6,200.00 for her services as trustee during this period.

5. After being advised of the lawsuit against him , the Respondent proceeded to engage in prolonged dilatory action to try to delay the lawsuit rather than furnish an accounting of his activities to the guardian. He made numerous motions to continue, motions for protective orders, and appeals. In the process of this litigation the Respondent argued that the guardian was not entitled to know anything about the trust because Mr. Crisman, Sr. had relinquished his interest in the trust on June 29, 1983. This is the waiver referred to in Count I which appears to have been wrongfully obtained by the Respondent. The Respondent also relied upon a document purportedly signed by Mr. Crisman, Sr. on December 11, 1952, in which he waived his interest in the estate. This reliance was made notwithstanding that the court in the 1952 action apparently found that the waiver had not been effectively made. In fact, Mr. Crisman, Sr. continued to receive money from the trust up until Mr. Crisman, Jr. was appointed guardian in 1983. It would appear to be inconsistent for Mrs. Collier, as trustee, to maintain that Mr. Crisman's interest had terminated in 1952 when she continued to make payments to him for over 25 years. The reliance by the Respondent on the 1952 waiver was a fraud upon the court as was an effort to rely on the 1983 waiver.

6. At all times during the litigation between the guardian and Respondent and his wife, the Respondent was, at the very

least, a witness to many of the substantive matters being disputed in the litigation. He was also a real party in interest because some of the allegations were to the effect that he had personally come into possession of property which should have remained in the estate of Mr. Crisman. The obvious interest of the Respondent in the litigation provides a strong motive for his continued efforts to obstruct and delay the litigation. That interest also clearly should have prevented him from acting as counsel for his wife, the trustee.

7. On March 1, 1984, the Respondent appeared before the Honorable J. William Woodson, a circuit judge in the Eighteenth Judicial Circuit, and asked that a hearing which had been scheduled by the opposing side on the Respondent's motions, scheduled for March 1, 1984, be continued. In his request for a continuance the Respondent alleged that he had a conflicting appearance scheduled before another judge of that circuit, Judge Goshorn. This representation was false. The Respondent had only one matter pending before Judge Goshorn and he had appeared before the judge on February 28, 1984, and had been permitted to withdraw from representation in a criminal matter that was pending before that judge. The representation made by the Respondent on March 1 was made with the knowledge that it was blatantly untrue.

AS TO COUNT III

1. On April 1, 1985, Katharine Collier, the Respondent's wife, sent a letter to a public housing officer in Calhoun, Georgia, in which she advised that officer, Mr. Joe Pool, that she was acquainted with one of the public housing tenants and that the tenant had failed to report certain income she had received. The tenant was one Mary Nell Crisman, a former wife of Mr. Crisman, Sr. Mary Nell Crisman had apparently married Mr. Crisman after the settlor of the disputed trust, Charlotte Scranton Crisman, had died in 1939. One might could assume that this letter had been prompted simply by the interest of a taxpayer and a citizen

residing in Merritt Island, Florida, concerned that a tenant in public housing in Calhoun, Georgia, might not be paying the appropriate amount of rent because she had understated her income. One might also could presume that the letter was motivated by the fact that on March 22, 1985, that same Mrs. Crisman had written a letter to The Florida Bar, complaining about the Respondent's representation of her in another legal matter. The evidence presented at the hearing seems to suggest that the letter was prepared at the Respondent's office, on a typewriter in that office, and that it may have been prepared by Mrs. Collier, who frequently worked for her husband at the office.

III. Recommendations as to whether or not the Respondent should be Found Guilty: As to each count of the complaint this referee makes the following recommendations as to guilt or innocence.

AS TO COUNT I

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to-wit:

1. Article XI, Rule 11-02 (3) (a) for engaging in conduct contrary to honesty, justice and good morals.
2. Disciplinary Rule 1-102 (A) (4) for engaging in conduct involving fraud, deceit, or misrepresentation.
3. Disciplinary Rule 1-102 (A) (6) for engaging in conduct reflecting adversely on his fitness to practice law.

AS TO COUNT II

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to-wit:

1. Article XI, Rule 11-02 (3) (a) for engaging in conduct contrary to honesty, justice and good morals.
2. Disciplinary Rule 1-102(A) (4) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

3. Disciplinary Rule 1-102 (A) (5) for engaging in conduct prejudicial to the administration of justice.

4. Disciplinary Rule 1-102 (A) (6) for engaging in conduct reflecting adversely on his fitness to practice law.

5. Disciplinary Rule 5-101 (A) for accepting employment under such circumstances where he knew or it was obvious that his own personal or financial interest would be involved.

6. Disciplinary Rule 5-101 (B) for accepting employment where he knew or it was obvious that he would be called as a witness.

7. Disciplinary Rule 5-102 (A) for failing to withdraw after accepting employment in contemplated or pending litigation after learning or after it became obvious that he would be called as a witness.

8. Disciplinary Rule 5-105 (B) for continuing multiple employment where his exercise of independent judgment on behalf of a client was likely to be adversely affected by his representation of another client, to-wit: himself.

AS TO COUNT III

I recommend that the Respondent be found not guilty of the allegations charged in Count III.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the Respondent be suspended for a period of six months and thereafter until he shall prove his rehabilitation as provided in Rule 11-10 (4).


V. Personal History and Past Disciplinary Record: After finding the Respondent to be guilty of violation of the indicated Integration Rules and Disciplinary Rules, and prior to recommending a discipline to be imposed, I considered that the Respondent was admitted to The Florida Bar in 1976 and that he had not previously received any discipline from The Bar.

VI. Statement of Costs and Manner in which Costs should be Taxed:

Although no accounting for costs has been furnished to this referee it is apparent that costs have been incurred. It

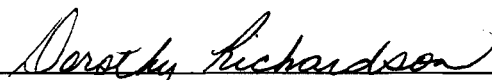
is recommended that such costs and expenses be charged to the Respondent and that interest at the statutory rate accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated at Orlando, Orange County, Florida, this 26th day of June, 1986.



TED P. COLEMAN, Referee

I HEREBY CERTIFY that the original of this report, as well as the original of all exhibits and transcripts, have been forwarded this day to The Supreme Court of Florida and that copies of this report have been furnished this day to David G. McGunegle, Bar Counsel, 605 East Robinson Street, Orlando, Florida 32801 and Eugene Collier, Respondent, Post office Box 1778, Merritt Island, Florida 32952.



Dorothy Richardson
Judicial Assistant