

IN THE SUPREME COURT OF FLORIDA
(BEFORE A REFEREE)

THE FLORIDA BAR,
Complainant,
vs.
VAUGHN C. BRENNAN,
Respondent.

FILED

SID J. WHITE

Case No. 67,851
(10A85C45)

APR 24 1986

CLERK, SUPREME COURT

Chief 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 19, 1986. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits all of which are forwarded to the Supreme Court 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

For the Respondent: Vaughn C. Brennan, appearing on his own behalf

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:

In early 1981, Mary Allred contacted Respondent for the purpose of representing her and her sister in a certain matter connected with the death of their mother, Mary McKinley. Mrs. McKinley died in 1980. (R12) Although it's not exactly clear as to what Respondent's legal obligations were in representing Mrs. Allred, generally the record discloses that she took certain papers and documents to Respondent for review and determination concerning what would be necessary to do in connection with possibly improper deposits of retirement benefits from the State of Florida to her deceased mother's bank account in Iowa. (R-12-13) Specifically, Mrs. Allred requested Respondent to communicate with the parties in Tallahassee and Iowa concerning this matter. (R32) Respondent was not paid a fee and there doesn't seem to have been any fee arrangement made at any time between Mrs. Allred and Respondent. (R13) Within a short time of the initial client interview Respondent corresponded with a

law firm in Iowa and with the Division of Retirement, State of Florida, in regard to the matters of concern to Mrs. Allred. (Bar Composite Exhibits received into evidence). Mrs. Allred received copies of the correspondence between Respondent and at least the Division of Retirement. (R14) After this, initial correspondence, apparently Respondent did nothing else, although it's not at all certain that Mrs. Allred desired him to do anything further.

In any event, about six months later Mrs. Allred attempted to contact Respondent to follow up on the case. She bumped into Respondent at her neighbor's house and made an appointment to see him. When she arrived at the appointed time, she found not the Respondent's office but rather a vacant building where his office had formerly been. (R16)

On June 23, 1983, Mrs. Allred contacted another attorney, Jon Anderson. (R38) Mr. Anderson began to attempt to contact Respondent about the status of Mrs. Allred's problem and specifically tried on many occasions in writing to secure her file containing original documents from Respondent. According to testimony received from Mr. Anderson, and copies of letters received into evidence, Mr. Anderson was unable to secure Mrs. Allred's papers from Respondent and was unable, until September of 1984, to ascertain why Respondent would not release Mrs. Allred's file to her new attorney. It was not until January, 1985, some sixteen months after his attempts first began that attorney Anderson finally received the requested documents from Respondent. (R47)

There was no clear and convincing evidence that Respondent intentionally failed to seek lawful objectives, and intentionally failed to carry out a contract.

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:

Respondent is charged with violation of the following Disciplinary Rules of the Code of Professional Responsibility:

1-102(A)(6) by engaging in other misconduct reflecting adversely on his fitness to practice law in that he failed to keep his client's informed of his whereabouts.

6-101(A)(3) by neglecting a legal matter entrusted to him.

7-101(A)(1) by intentionally failing to seek the lawful objectives of his clients.

7-101(A)(2) by intentionally failing to carry out a contract of employment.

I recommend that the Respondent be found guilty of

violating Disciplinary Rule 6-101(A)(3) by neglecting a legal matter entrusted to him in that his refusal, without sufficient justification, to communicate with successor counsel and turn over to Mr. Anderson the requested documents belonging to Mrs. Allred for a period of sixteen months constitutes neglect.

I recommend Respondent be found guilty of violating Disciplinary Rule 1-102(A)(6) in that he failed to keep his client informed of his whereabouts.

I recommend that the Respondent be found not guilty of violating Disciplinary Rules 7-101(A)(1), and 7-101(A)(2).

IV. Recommendations to Disciplinary measures to be Applied:

I recommend that the Respondent receive a public reprimand and be placed on supervised probation for a period of one year, as provided in Rule 11.10(1), for violation of Disciplinary Rules 6-101(A)(3), and 1-102(A)(6). Conditions of probation shall be:

a. Payment of all costs assessed against him in this disciplinary proceeding.

b. Keep the Bar informed at all times of his current business and residential addresses.

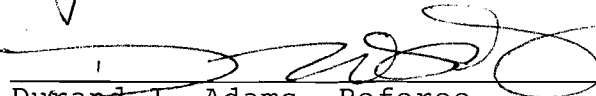
V. Personal History and Past Disciplinary Record:

Respondent is 52 years old. He was admitted to the Bar in 1972. He has moved to Louisiana and is currently winding up his law practice in Florida. Although he has no intention to continue to actually practice law in Florida, he desires to remain a member of the Bar. Respondent has been subject to two prior public reprimands: The Florida Bar v. Brennan, 377 So2d. 1181 (Fla. 1979); and, The Florida Bar v. Brennan, 411 So2d. 176 (Fla. 1982). Any harsher recommendation would be disproportionate to the acts committed by the Respondent in view of the totality of the circumstances.

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

It is recommended that all costs and expenses incurred 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 21 day of April, 1986.


Duane J. Adams, Referee

cc: Bar Counsel
Staff Counsel
Vaughn C. Brennan