

IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

THE FLORIDA BAR,
Complainant,
v.
ROGER MAAS,
Respondent.

CONFIDENTIAL

CASE NO. 67,854
TFB #06684H78

FILED
NOV 17 1986

NOV 17 1986

CLERK, SUPREME COURT

REPORT OF REFEREE

By _____
Deputy Clerk

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, final hearings were held on July 9th and October 2nd, 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

Michael L. Kinney

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: The respondent was hired by Mrs. Judy Lyons to be the attorney for the Estate of Mrs. Ruth Leto, her mother. During all pertinent times herein, the Respondent was the attorney for said estate and was responsible for all the legal matters relating thereto.

On the date the Respondent undertook the representation of the Leto Estate, he was incompetent to handle that matter and he was aware of this incompetency and admitted as much in his testimony. His personal and professional life at that time was such that he was incapable of properly handling this matter. In realization of this incompetency, he attempted to get a legal secretary to handle the estate.

The estate was not handled in an appropriate manner. The Respondent neglected this estate as was evidenced by the long delay in closing the estate and the fact that when some attention was paid to the estate by some other attorneys, it was rather quickly closed. The Respondent was repeatedly contacted by the interested parties and failed to take any actions to adequately represent the estate.

III. Recommendation as to Whether or not the Respondent Should Be Found Guilty: I recommend that the respondent be found guilty of the following violations of the Code of Professional Responsibility: That Roger Maas has violated Disciplinary Rules 6-101(A) (1) (handling a legal matter an attorney knows or should know he is incompetent to handle); and DR 6-101(A) (3) (neglect of a legal matter). I recommend that the Respondent be found not guilty of the following violation of the Code of Professional Responsibility Disciplinary Rule 2-107 (A) (1) (division of fees with another attorney who is not a partner without full disclosure and consent of the client).

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the respondent be suspended for a fixed period of four months, thereafter until he shall prove his rehabilitation and for an indefinite period until he shall pay the cost of this proceeding and make restitution to his client in the amount of \$11,300 as provided in the Rule 11.10(4); said amount was determined as follows:

1. \$1,500 fee paid to Mr. Shames
2. \$6,000 fee paid to Mr. Winick
3. \$3,000 refund of the \$9,000 fee paid to Mr. Maas
4. \$ 800 bond premium the estate was required to post.

V. Personal History and Past Disciplinary Record: After a finding of guilty 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: 44
- (2) Date Admitted to Bar: 1970

(3) Mitigating Factors: The Respondent has no prior disciplinary record and appeared to be remorseful of the inconvenience caused his client and was apparently going through a very difficult personal period of his life.

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 (12/11/84)	575.00
Bar Counsel Expenses	17.80
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	\$ 742.80

Referee Level	
Administrative Costs	\$ 150.00
Court Reporter (6/16/86)	454.90
Court Reporter (10/2/86)	()
Copy of Probate File #81-5141-ES 003	68.00
Investigators Costs	162.04
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	\$ 834.94

TOTAL AMOUNT DUE TO DATE: \$ 1,577.74

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 12th day of November, 1986.


Honorable Robert H. Bonanno

Copies furnished to:

Michael L. Kinney, Counsel for Respondent
Diane Victor Kuenzel, Bar Counsel