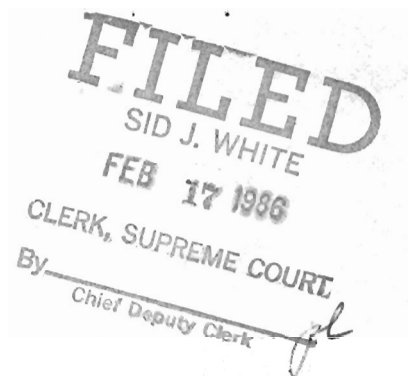


IN THE SUPREME COURT OF FLORIDA
(Before a Referee)



THE FLORIDA BAR,
Complainant,
v.
JOHN M. DOWNING, JR.,
Respondent.

Supreme Court Case
No. 68,073

The Florida Bar Case
Nos. 17F85F94 and 17F86F04

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Respondent tendered a Consent Judgment on December 10, 1985 wherein he admitted to certain violations of the Code of Professional Responsibility and agreed to accept a suspension from the practice of law for a period of sixty (60) days with automatic reinstatement as the appropriate disciplinary sanction. The Florida Bar submitted a Petition for Approval of Respondent's Consent Judgment on December 20, 1985. The undersigned was duly appointed as Referee by the Acting Chief Justice of the Supreme Court of Florida by order entered January 15, 1986. Upon due deliberation and being satisfied that the proposed discipline is appropriate, the undersigned Referee has determined to approve Respondent's Consent Judgment, recommend its ultimate acceptance by the Supreme Court of Florida and, in addition, recommend a refund of legal fees.

The following attorneys appeared for the respective parties:

On Behalf of The Florida Bar: Richard B. Liss, Esq.
On Behalf of Respondent: John M. Downing, Jr., in proper person

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH RESPONDENT IS CHARGED:

AS TO COUNT I

1. Respondent was retained by Gary McElrath on May 22, 1984 to institute a dissolution of marriage proceeding on his behalf.

2. The sum of Two Hundred Eighty Five Dollars (\$285.00) was tendered by McElrath and accepted by Respondent as payment for the

aforesaid services.

3. In response to McElrath's inquiries on the status of his matter in October, 1984, Respondent advised his client that the case was still pending.

4. Respondent further responded to McElrath's inquiries in February, 1985 by stating that he had no progress to report on his case.

5. Respondent eventually filed a Petition for Dissolution of Marriage on behalf of McElrath on July 1, 1985.

6. McElrath's dissolution is still pending since his wife resides in Pennsylvania and will not execute a Waiver and Consent until certain issues are resolved to her satisfaction.

7. Respondent has attempted to serve the Summons and Complaint on McElrath's wife in Pennsylvania and the case has not progressed beyond that point.

AS TO COUNT II

1. Respondent's law office was retained by Jeffrey Picklesimer on December 5, 1983 to institute a dissolution of marriage proceeding on his behalf.

2. The sum of Five Hundred Dollars (\$500.00) was tendered by Picklesimer and accepted by Respondent or his authorized agent as payment for the aforesaid services.

3. A Petition for Dissolution of Marriage was filed by Respondent on the aforesaid matter on January 3, 1984.

4. A Motion for Default was filed on February 16, 1984 in this cause and a Default was entered on March 5, 1984.

5. Upon Respondent's Motion, the cause was set for final hearing on March 19, 1984.

6. The presiding judge did not enter a final order after this matter came on for final hearing on March 19, 1984.

7. Respondent took no further action until February 20, 1985 when he again filed a Motion for Final Hearing.

8. The cause was set for final hearing on February 26, 1985 but the presiding judge again did not enter a final order after the final hearing was concluded.

9. Respondent failed to ascertain the status of the Picklesimer dissolution, the reasons for a final order not being entered after two (2) separate final hearings, and the requirements that must be met before a final order would be entered.

10. Picklesimer's spouse instituted proceedings in Ohio and a Decree of Divorce was entered on October 10, 1985.

11. The aforesaid decree ordered child support in the amount of Forty Dollars (\$40.00) per week which was Ten Dollars (\$10.00) more per week than would have been ordered by the Florida court had the Default been reduced to final judgment.

III. RECOMMENDATIONS AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY:

AS TO COUNT I

Respondent should be found guilty of violating Disciplinary Rules 1-102(A)(1) [a lawyer shall not violate a disciplinary rule], 1-102(A)(6) [a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law], 6-101(A)(3) [a lawyer shall not neglect a legal matter entrusted to him], 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] and 7-101(A)(3) [a lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship] of the Code of Professional Responsibility.

AS TO COUNT II

Respondent should be found guilty of violating Disciplinary Rules 1-102(A)(1) [a lawyer shall not violate a disciplinary rule], 1-102(A)(6) [a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law], 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], 6-101(A)(2) [a lawyer shall not handle a 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)(2) [a lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services] and 7-101(A)(3) [a lawyer shall not intentionally prejudice

or damage his client during the course of the professional relationship] of the Code of Professional Responsibility.

IV. STATEMENT AS TO PAST DISCIPLINE AND PERSONAL HISTORY:

Respondent was admitted to The Florida Bar on May 10, 1974 and is 42 years of age. He has previously received private reprimands on December 19, 1984 and July 1, 1985.

V. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:

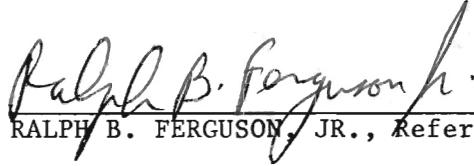
The undersigned finds the following costs were reasonably incurred by the Florida Bar and should be taxed against Respondent in accordance with article XI, Rule 11.06(9)(a) of the Integration Rule of The Florida Bar:

Administrative Costs at Grievance Committee Level	\$150.00
Attendance of court reporter and transcripts	\$239.58
Investigative Costs	\$113.82
Administrative Costs at Referee Level	<u>\$150.00</u>
TOTAL	\$653.40

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

The undersigned recommends that Respondent's Consent Judgment be accepted by the Supreme Court of Florida and that Respondent be suspended from the practice of law in this jurisdiction for a period of sixty (60) days with automatic reinstatement provided that reinstatement be conditioned upon a refund of legal fees to Gary McElrath in the amount of Two Hundred Eighty Five Dollars (\$285.00) and to Jeffrey L. Picklesimer in the amount of Five Hundred Dollars (\$500.00) and payment of costs. Costs of these proceedings should be taxed against Respondent in the amount of Six Hundred Fifty Three Dollars and Forty Cents (\$653.40) with execution to issue and with interest at a rate of twelve per cent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final Order in this cause, unless time for payment is extended by the Board of Governors of The Florida Bar.

DATED THIS 11th day of February, 1986 at Miami, Dade
County, Florida.


RALPH B. FERGUSON, JR., Referee

Copies furnished to:

Richard B. Liss, Attorney for Complainant
John M. Downing, Jr., in proper person