

FILED

SID J. WHITE

FEB 13 1986

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

CONFIDENTIAL

Supreme Court Case
No. 68,115

The Florida Bar Case
Nos. 17E85F92 and
17E86F20

THE FLORIDA BAR,

Complainant,

v.

BRIAN J. FOGARTY,

Respondent.

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Respondent tendered a Consent Judgment on December 19, 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 six (6) months and continuing thereafter until proof of rehabilitation 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 and recommend its ultimate acceptance by the Supreme Court of Florida.

The following attorneys appeared for the respective parties:

On Behalf of The Florida Bar: Richard B. Liss, Esq.

On Behalf of Respondent: Christopher A. Grillo, Esq.

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

AS TO COUNT I

1. Respondent represented the defendant in Case No. 84-10475 CG, Patricia J. Weidling, Plaintiff v. Vickie L. Bennett, Defendant, Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida.

2. Plaintiff's attorney filed a Request for Admissions on October 10, 1984 with a copy being served on Respondent by mail.

3. On December 6, 1984, a second copy of the aforesaid Request for Admissions was hand delivered to Respondent.

4. Respondent filed an untimely response to Plaintiff's Request for Admissions on January 25, 1985.

5. Plaintiff's attorney filed a Motion for Summary Judgment as to Counts I and III of Plaintiff's Complaint on February 15, 1985.

6. On February 21, 1985, Plaintiff's attorney filed a Motion to Strike Defendant's Response to Plaintiff's Request for Admissions.

7. Plaintiff's attorney sent Respondent a Notice of Hearing advising him that the aforesaid Plaintiff's Motion To Strike Defendant's Response To Plaintiff's Request For Admissions and Plaintiff's Motion For Summary Judgment would be heard on March 12, 1985.

8. Respondent filed a Motion for Relief From Untimely Response To Request For Admissions on March 7, 1985 and set this motion for hearing also on March 12, 1985.

9. Respondent did not attend the hearing set for March 12, 1985 and an Order was entered whereby Defendant's Motion for Relief From Untimely Response To Request For Admissions was denied and Plaintiff's Motion To Strike Defendant's Response To Plaintiff's Request For Admissions was granted. In addition, Plaintiff's Motion For Summary Judgment was granted.

10. Respondent filed a Motion For Rehearing on April 8, 1985 wherein Respondent stated that his mistakes and excusable neglect had prevented his client from presenting the merits of her defense.

11. Respondent filed a Motion To Vacate Summary Judgment and Stay Proceedings on April 12, 1985 and as grounds therefor stated that the neglect, mistake and inadvertence of Respondent had precluded his client from obtaining a hearing on the merits of her case.

12. The presiding judge granted Respondent's Motion To Vacate Summary Judgment by order entered April 18, 1985.

13. Respondent's client then discharged him and retained new counsel who concluded the matter.

AS TO COUNT II

1. Pursuant to disciplinary action taken by the United States Court of Appeals for the Eleventh Circuit, Respondent has been suspended from practice before that Court for One Hundred Eighty Days (180) with readmission only upon reapplication and demonstration of fitness.

2. The aforesaid Court action was predicated upon Findings of Fact by the Special Master appointed by the Court wherein she found that Respondent had filed a Motion for Additional Extension of Time which contained material misrepresentations which he knew or should have known were false statements. The Special Master's full findings of fact are adopted by reference and incorporated herein as if fully set forth.

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] and 6-101(A) (3) [a lawyer shall not neglect a legal matter entrusted to him] 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) (4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation], 1-102(A) (5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice], 1-102(A) (6) [a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law] of the Code of Professional Responsibility.

IV. STATEMENT AS TO PAST DISCIPLINE AND PERSONAL HISTORY:

Respondent was admitted to The Florida Bar on September 12, 1978 and is 36 years of age. He has previously received two private reprimands which were administered during personal appearances by him before the Board of Governors of The Florida Bar on May 18, 1984 (TFB Case No. 17F83F86) and on November 2, 1984 (TFB Case No. 17F84F36).

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 partial transcript	\$ 80.25
Investigative Costs	\$ 94.12
Service of process and witness fees	\$ 46.86
Administrative Costs at Referee Level.....	\$150.00
TOTAL.....	\$521.23

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 six (6) months and continuing thereafter until proof of rehabilitation. It is further recommended that pursuant to the Consent Judgment, Respondent shall refund legal fees in the amount of Two Thousand Dollars and No Cents (\$2,000.00) to his former client, Vickie L. Bennett, upon entry of the Supreme Court's final disciplinary order in this matter. Costs of these proceedings should be taxed against Respondent in the amount of Five Hundred Twenty One Dollars and Twenty-Three Cents (\$521.23) 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 North Miami, Dade County, Florida.


A. LEO ADDERLY, Referee

Copies furnished to:

Christopher A. Grillo, Attorney for Respondent
Richard B. Liss, Attorney for Complainant