

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

FILED  
JAN 2 1987  
By [Signature]  
Deputy Clerk

THE FLORIDA BAR, )  
Complainant, )  
v. )  
EDWARD J. WINTER, JR.)  
Respondent. )

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CONFIDENTIAL

The Florida Bar File Nos.  
11G85M26, 11G85M27,  
11G85M28, 11G85M30,  
11G85M31, 11G85M32

Supreme Court Case  
No. 68,541

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by article XI of the Integration Rule of The Florida Bar, a Final Hearing was held on December 23, 1986. All of the pleadings, notices, motion, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Louis Thaler  
Suite 211, Rivergate Plaza  
444 Brickell Avenue  
Miami, Florida 33131  
(305) 377-4445

For Respondent: H. Mark Purdy  
Sams & Purdy  
500 East Broward Boulevard  
Suite 1450  
Ft. Lauderdale, Florida 33301  
(305) 765-5427

Before me is a Stipulation for Unconditional Guilty Plea for Consent Judgment of Public Reprimand (hereinafter referred to the "Stipulation"), which sets forth:

1. That on or about April 4, 1986, The Florida Bar filed a seven-count Complaint against Respondent in the Supreme Court of Florida, duly assigned Case No. 68,541.

2. That on or about April 16, 1986, the Supreme Court of Florida appointed the Honorable Miette K. Burnstein to act as Referee with regard to these proceedings.

3. That the Final Hearing of this case was set for September 10, 1986, but was continued upon request of Respondent.

4. That the Final Hearing of this case was re-set for October 3, 1986, but was continued upon request of Respondent, who was experiencing medical problems.

5. That the Final Hearing of this case was again re-set for November 6, 1986, but was continued upon request of Respondent, who was still experiencing medical problems and who represented that he had to undergo surgery.

6. That the Final Hearing of this case was again re-set for December 23, 1986.

7. That on or about December 17, 1986, Respondent contacted H. Mark Purdy, Esq. to act as Counsel at the Final Hearing set for December 23, 1986.

8. That on or about December 17, 1986, Respondent's Counsel contacted Louis Thaler, Bar Counsel, regarding the resolution of this case.

9. That both parties are aware of the Supreme Court of Florida's opinion in The Florida Bar v. Fields, 482 So.2d 1354 (Fla. 1986) (The Supreme Court held that dereliction in failing to reach fee agreements with clients before representing them, in failing to communicate with clients concerning their legitimate concerns and questions on fees, and in failing to properly supervise non-lawyer employees warrants public reprimand).

10. That Respondent's unconditionally pleads guilty to violating Disciplinary Rules 1-102(A)(5) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice) and 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 as alleged in all counts of The Florida Bar's Complaint.

11. That Respondent admits that, in all instances alleged in The Florida Bar's Complaint, Respondent should have been more zealous in avoiding controversies as to the amounts of fees with his clients.

12. That, consistent with the Fields case, Respondent is willing to accept a Public Reprimand to be published in the Southern Reporter and pay the costs of these proceedings.

13. That the Public Reprimand is consistent with the recommendation of The Florida Bar.

14. That both parties understand that this Stipulation must be approved by the Referee and then the Supreme Court of Florida.

15. That both parties believe that the disposition of this case is in accord with the Fields case.

II. GENERAL FINDINGS OF FACT: Based on the Stipulation, I find that the facts are as stated within The Florida Bar's Complaint, which sets forth:

(The Florida Bar Case No. 11G85M27)

1. That Respondent, Edward J. Winter, Jr., 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. That during or about 1983, Respondent was retained by [REDACTED] (hereinafter referred to as "[REDACTED]") and his daughter, [REDACTED] (hereinafter referred to as [REDACTED]), to represent them in a child custody action in order to regain custody of [REDACTED]'s young daughter.

3. That Respondent had no written fee agreement with [REDACTED] or [REDACTED] but alleges that [REDACTED] had agreed to pay the costs and disbursements and [REDACTED] promised to do typing and copying for the National Society of Fathers, United Fathers for Equal Rights and Fathers Demanding Equal Justice, organizations which Respondent represents.

4. That the child custody action was set in the jurisdiction of the State of Tennessee.

5. That [REDACTED] advanced sixty dollars to Respondent, in addition to paying process servers in Tennessee.

6. That thereafter, Respondent and [REDACTED] had a dispute as to the amount of Respondent's legal fees.

7. That Respondent alleges that his legal fees were worth between \$5,000.00 and \$15,000.00.

8. That Respondent assigned his cause of action for legal fees alleged to be owing from [REDACTED] and [REDACTED] to a nonlawyer, Lou Bass (hereinafter referred to as "Bass").

9. That on or about November 21, 1983, Bass filed a Statement of Claim as assignee, in Dade County Court in the amount of \$256.00 against [REDACTED] and [REDACTED], Case No. 83-22244-SP-05.

10. That Respondent acted as counsel for Bass as assignee of the cause of action against [REDACTED] and [REDACTED].

11. That presiding County Court Judge Harvey L. Goldstein considered the lawsuit a "questionable cause of action" and refused to proceed further with the case.

(The Florida Bar Case No. 11G85M30)

12. That during or about 1983, Respondent was retained by [REDACTED] (hereinafter referred as to [REDACTED]) to perform legal work for [REDACTED]'s business, "[REDACTED]".

13. That thereafter, Respondent and [REDACTED] had a dispute as to the amount of Respondent's legal fees.

14. That Respondent assigned his cause of action against [REDACTED] as an account receivable to a non-lawyer, Ann Rose (hereinafter referred to as "Rose").

15. That on or about November 18, 1983, Rose, assignee, care of Respondent, filed a Statement of Claim for "attorney fee and costs" in the amount of \$125.00 against [REDACTED] d/b/a [REDACTED] in Dade County Court, Case No. 83-22422-SP-05.

16. That there existed an agreement between Rose and Respondent in which Rose was to receive a percentage of any amount recovered by the lawsuit against [REDACTED].

17. That Respondent was acting as the attorney for Rose.

18. That the case was dismissed by the County Court for lack of prosecution on January 19, 1984.

(The Florida Bar Case No. 11G85M31)

19. That during or about 1983, Respondent was retained by [REDACTED] (hereinafter referred to as "[REDACTED]"), to represent her in an action to regain custody of her children.

20. That on November 15, 1983, a hearing was held before Circuit Judge John Gale concerning the custody of [REDACTED]'s children.

21. The Respondent drafted a promissory note dated November 15, 1983, in the amount of \$275.00 payable to Respondent in 90 days.

22. That [REDACTED] signed the promissory note.

23. That [REDACTED]'s friend, [REDACTED] (hereinafter referred to as "[REDACTED]"), also signed the promissory note.

24. That [REDACTED] signed the promissory note because she believed she was signing as a witness to [REDACTED]'s signature.

25. That [REDACTED] had the belief that she was signing the promissory note as witness to [REDACTED]'s signature because Respondent told her to sign the promissory note as a witness to [REDACTED]'s signature.

26. That thereafter, Respondent and [REDACTED] had a dispute regarding the promissory note and regarding the amount of Respondent's legal fees.

27. That Respondent assigned his alleged cause of action on the promissory note against [REDACTED] to a non-lawyer, Al Novi (hereinafter referred to as "Novi").

28. That Respondent also assigned his alleged cause of action on the promissory note against [REDACTED] to Novi.

29. That Respondent believed he had a cause of action against [REDACTED] because [REDACTED] had signed, and therefore, endorsed the promissory note.

30. That on or about May 4, 1984, Novi filed a Statement of Claim as assignee, care of Respondent, in Dade County Court against [REDACTED] and [REDACTED] in the amount of \$235.00 based upon the promissory note dated November 15, 1983.

31. That on or about May 4, 1984, Respondent reduced the assignment to Novi in writing.

32. That on or about September 25, 1984, Novi assigned the cause of action back to Respondent.

33. That on or about October 1, 1984, upon Respondent's Motion for Default Final Judgment, presiding County Court Judge Harold L. Goldstein denied the motion and set the cause for trial.

34. That on or about November 2, 1984, Judge Goldstein granted Final Judgment for the Defendants, [REDACTED] and Mrs. [REDACTED].

35. That on or about January 8, 1985, Respondent filed a Motion to Vacate and Set Aside Final Judgment.

36. That Judge Goldstein denied Respondent's motion as without merit and as untimely filed.

(The Florida Bar Case No. 11G85M32)

37. That during or about 1979, Respondent met with [REDACTED] [REDACTED] (hereinafter referred to ' [REDACTED] ') in Tampa, Florida.

38. That at the meeting in Tampa, Respondent alleges that [REDACTED] retained Respondent to do legal work.

39. That Respondent alleges that Respondent and [REDACTED] agreed upon a fee of \$500.00.

40. That Respondent alleges [REDACTED] gave Respondent a check in the mistaken amount of \$200.00.

41. That Respondent alleges that upon Respondent's return to his office in Miami, Respondent discovered the mistaken amount of [REDACTED]'s check and returned same to [REDACTED] with a request for a check for \$500.00.

42. That thereafter, Respondent and [REDACTED] had a dispute as to the amount of Respondent's legal fees.

43. That Respondent assigned has alleged cause of action against [REDACTED] to his office manger, a non-lawyer, Rose Fishman (hereinafter referred to as "Fishman").

44. That on or about October 22, 1982, Fishman filed a Statement of Claim as assignee, care of Edward J. Winter (Respondent), in Dade County Court, against [REDACTED] a/k/a [REDACTED], Case No. 83-20731-SP-05.

45. That assignee Fishman brought this suit in the amount of \$500.00 for alleged past due billings for legal services provided by Respondent to [REDACTED]

46. That subsequent thereto, Respondent again assigned his alleged cause of action against [REDACTED] to another non-lawyer, Ann Rose (hereinafter referred to as "Rose").

47. That on or about October 25, 1983, Rose filed a Statement of Claim as assignee, c/o Edward J. Winter (Respondent), Dade County Court against Chase, Case No. 83-20731-SP-05.

48. That assignee Rose brought suit in the amount of \$350.00 for an alleged "delinquent account from law office billing".

49. That on or about December 7, 1983, after examining the court file, which included the two Statements of Claim dated October 22, 1982 by Fishman and October 24, 1983 by Rose, presiding County Court Judge Harvey L. Goldstein, sui sponte dismissed the case without prejudice because the plaintiff failed to properly state a cause of action.

50. That on or about June 1st, 1984, Judge Goldstein signed a second order of dismissal.

51. That on or about June 7th, 1984, Respondent filed a Motion for Clarification to the Court.

52. That on or about December 19, 1984, Judge Goldstein recused himself from the County Court case(s) against [REDACTED]

53. That on or about August 26, 1985, Respondent filed a "Plaintiff's Motion to Vacate and Motion for Rehearing and

Motion of Plaintiff to Correct the Record and Motion for Leave to Amend".

54. That on or about October 29, 1985, presiding County Court Judge James S. Rainwater entered an Order denying with prejudice Plaintiff's Motion to Vacate and Motion for Rehearing and Motion of Plaintiff to Correct Record and Motion for Leave to Amend.

(The Florida Bar Case Nos. 11G85M26)

55. That during or about 1984, Respondent was retained by [REDACTED] to perform legal work.

56. That thereafter, Respondent and [REDACTED] had a dispute as to the amount of Respondent's legal fees.

57. That on or about September 7, 1984, Respondent filed a Statement of Claim in Dade County Court against [REDACTED] [REDACTED] in the amount of \$220.14 for the balance due on unpaid attorney fees owed to Respondent, Case No. 84-15961-SP-05.

58. That Respondent failed to attend the pre-trial conference on October 9, 1984.

59. That on October 12, 1984, County Court Judge Harvey L. Goldstein signed an Order of Dismissal for lack of prosecution.

60. That on December 5, 1984, Respondent filed a Motion to Vacate and Set Aside Dismissal.

61. That on April 24, 1985, the case was settled in presiding County Court Judge Rainwater's court for \$85.00.

(The Florida Bar Case No. 11G85M28)

62. That during or about 1984, Respondent was retained by [REDACTED] (hereinafter referred to as "[REDACTED]") to perform legal work.

63. That thereafter, Respondent and [REDACTED] had a dispute as to the amount of legal fees owing to Respondent.

64. That on or about February 29, 1984, Respondent filed a Statement of Claim in Dade County Court in the amount of \$455.00 for "past due billings, attorneys fees and costs" against [REDACTED], Case No. 84-3570-SP-05.



65. That a pre-trial conference was set for April 3, 1984.

66. That prior to the pre-trial conference, [REDACTED] and Respondent settled the dispute and Respondent voluntarily dismissed his claim against [REDACTED].

(The Florida Bar File No. 11G85M16)

67. That Respondent was not zealous in avoiding controversies as to amounts of fees with his clients.

68. That Respondent has sued clients for fees where there has been no fraud or gross imposition by the client.

69. That Respondent has engaged in conduct that is prejudicial to the administration of justice.

70. That Respondent has engaged in conduct that adversely reflects on his fitness to practice law.

III. RECOMMENDATION AS TO GUILT: Based on the Stipulation and The Florida Bar v. Fields, 482 So.2d 1354 (Fla. 1986), I find Respondent guilty of violating Disciplinary Rule 1-102(A) (5) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice) and 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 as alleged in all counts of The Florida Bar's Complaint.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES: I am aware of Respondent's past disciplinary record, which includes a Private Reprimand in 1971 (The Florida Bar Case No. 11F71-12); an unpublished 91 day suspension in 1976 (Supreme Court Case No. 49,372); and an unpublished Public Reprimand in 1985 (Supreme Court Case No. 66,631).

However, in determining discipline herein, I must take into consideration the Supreme Court's recent opinion in the Fields Case, in which the accused attorney therein received a Public Reprimand. Respondent's conduct in suing clients for fees when there was no clear understanding as to fees is almost identical to the conduct in the Fields case.

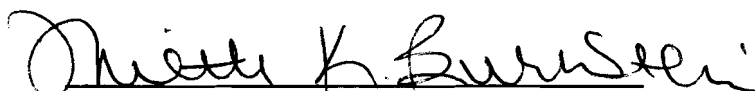
Further, the Fields Case, being a 1986 decision, has only recently made clear the guidelines in which an attorney should avoid controversies as to fees with clients.

Accordingly, based on the Stipulation and the Fields case, I recommend that Respondent receive a Public Reprimand. I also specifically recommend that this Public Reprimand, unlike Respondent's past disciplinary record, be published in the Southern Reporter.

V. RECOMMENDATION AS TO COSTS: I find the following costs to have been reasonably incurred by The Florida Bar.

Grievance Committee Level	
Administrative Charge	
[Rule 11.06(9)(a)(5)] .....	\$ 150.00
Transcript	
June 18, 1985 .....	413.95
Referee Level	
Administrative Charge	
[Rule 11.06(9)(a)(5)].....	<u>150.00</u>
	\$ 713.95
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Respectfully submitted this 23 day of Dec,  
1986.

  
MIETTE K. BURNSTEIN  
Referee  
Broward County Courthouse  
201 S.E. 6th Street, Room 1030  
Ft. Lauderdale, Florida 33301

cc: Louis Thaler,  
Bar Counsel  
H. Mark Purdy,  
Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee, along with all pleadings, notices, motions, orders, exhibits and transcripts has been sent to Sid J. White, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and a true and correct copy of the Report of Referee has been sent to Louis Thaler, Suite 211 Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131, and to H. Mark Purdy, Counsel for Respondent, Sams & Purdy, 500 East Broward Boulevard, Suite 1450, Fort Lauderdale, Florida 33301, on this 23 day of Dec, 1986.

  
MIETTE K. BURNSTEIN  
Referee