

IN THE SUPREME COURT OF FLORIDA

FILED
APR 1 1987
CLERK OF THE COURT
By: *ph*
Deputy Clerk

THE FLORIDA BAR,
Complainant,

vs.

CHARLES E. BARTLETT,
Respondent.

Case No. 68,868

TFB No. 04A86N23

INITIAL BRIEF OF COMPLAINANT

JAMES N. WATSON, JR.
Branch Staff Counsel
The Florida Bar
600 Apalachee Parkway
Tallahassee, Florida 32301
(904) 222-5286

COUNSEL FOR COMPLAINANT

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OTHER AUTHORITIES CITED

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Rule 3-7.6(c)(6), Rules of Discipline

1,2

STATEMENT OF THE CASE

The underlying disciplinary action was brought pursuant to the provisions of article XI, Rule 11.02(6) and Rule 11.07(4), Integration Rule of The Florida Bar.

On November 12, 1985, The Florida Bar received a complaint from Mr. Paul Porter, 2160 University Boulevard South, Jacksonville, Florida, alleging that Respondent had accepted a fee and failed to perform any services or return the fee.

On March 20, 1986, the Fourth Judicial Circuit Grievance Committee "A" found probable cause for the violation of Disciplinary Rules 1-102(A)(1),(4),(5),(6); 6-1-101(3); and 7-101(A)(1),(2) of The Florida Bar's Code of Professional Responsibility.

On June 4, 1986, The Florida Bar filed a formal disciplinary Complaint alleging violation of the above-referenced Disciplinary Rules. Along with the Complaint, The Florida Bar served upon the Respondent a Request for Admissions. Respondent failed to file an answer to the complaint or respond to the Request for Admissions.

On September 9, 1986, The Florida Bar filed with the appointed Referee a Motion to Deem Matters Admitted and a Motion for Summary Judgment based upon the pleadings and the lack of response from the Respondent. A final hearing was held on October 29, 1986.

On November 13, 1986, the Referee entered his report in which he found Respondent guilty of violating the cited disciplinary rules and provisions of the Integration Rule. Based upon his findings, the Referee recommended Respondent be disbarred.

On January 23, 1987, The Florida Bar notified the Court that The Florida Bar would not seek review of the Referee's report. Respondent did not file a petition for review within the period permitted by the Integration Rule. On March 11, 1987, the Court entered its order pursuant to Rule 3-7.6(c)(6) directing the parties hereto to submit briefs as to the suitability of the disciplinary measure.

STATEMENT OF THE FACTS

In April 1984, Respondent was contacted by Mr. Paul Porter concerning an encroachment upon an easement owned by Mr. Porter. On April 26, 1984, Respondent received \$50.00 from Mr. Porter as a retainer and assured him a quick resolution of the problem. On October 31, 1984, Respondent received an additional \$272.00 from Mr. Porter for attorney fees.

By November 7, 1985, Respondent had failed to take any action concerning the claim, including failure to contact the adverse party regarding the removal of the encroachment as he had expressly agreed. Respondent has failed to refund the fees he accepted for the work or respond to Mr. Porter's requests for information concerning the matter. Mr. Porter has since hired new counsel to represent his interests.

SUMMARY OF ARGUMENT

The Referee herein recommended the Respondent be disbarred and assessed costs incurred in the proceedings based upon the admitted facts contained in the Complaint.

The Respondent has exhibited a pattern of similar misconduct in the past and has previously been suspended twice for misconduct.

The Respondent has displayed willful disregard for the disciplinary proceedings by failing to cooperate or respond to The Florida Bar, to answer any of the pleadings, or to attend the final hearing.

Disbarment, as recommended by the Referee, is consistent with case holdings wherein similar conduct of accepting a fee, performing little or no work, and thereafter willfully ignoring the client's request for either an accounting or refund of the fee has been held to warrant disbarment.

ARGUMENT

THE DISCIPLINE RECOMMENDED BY THE REFEREE IS SUITABLE AND APPROPRIATE.

The Respondent accepted a fee for his services, performed no work on behalf of the client and thereafter willfully ignored his client's requests for either an accounting or a refund of the unearned fee. The Respondent has a disciplinary history that exhibits a pattern of conduct similar to his actions in the present case.

The Respondent received a 30-day suspension for trust fund violations on January 24, 1985, The Florida Bar v. Bartlett, 462 So.2d 1087 (Fla. 1985). In The Florida Bar v. Bartlett, 489 So.2d 21 (Fla. 1986), the Respondent received a 15-month suspension with reinstatement conditioned upon his passage of the full Bar exam. The suspension was received by Respondent because he had accepted fees, neglected the case, then misrepresented the status of the case to the client. Similar to the present case, Respondent refused to return the fee in that case.

On January 8, 1985, a complaint was received by The Florida Bar alleging actions by the Respondent virtually the same as those he has been found guilty of in the present case. The Florida Bar v. Bartlett, (Case No. 69,403, TFB No. 04A85N27). That case has been

continued at the request of the referee until such time as this case is resolved.

Two other complaints have been received by The Florida Bar and filed with the Court; The Florida Bar v. Bartlett, (Case No. 70,035, TFB No. 04A86N63) and The Florida Bar v. Bartlett, (Case No. 70,036, TFB No. 04A86N55), wherein the Respondent has been charged with committing the same type of violations that he was found guilty of in the present case.

The Court, in The Florida Bar v. Delves, 397 So.2d 919 (Fla. 1981), rejected the referee's recommendation of suspension and held disbarment was the appropriate sanction where Respondent had a disciplinary history of misconduct similar to that charged. In The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1983), the Court held:

The Court deals more harshly with cumulative misconduct than it does with isolated misconduct. Additionally, cumulative misconduct of a similar nature should warrant an even more severe discipline than might dissimilar conduct.

The Respondent's disciplinary history consists of a number of complaints involving virtually the same misconduct as that which he has currently been found guilty of and therefore his cumulative misconduct should warrant disbarment.

The Respondent has displayed willful disregard for the entire disciplinary process in the current case as well as the other complaints that have been filed against him. He has failed to acknowledge any correspondence sent to him by The Florida Bar. He failed to answer the Complaint, the Request for Admissions and failed to appear at the Final Hearing. This type of willful refusal to cooperate with the disciplinary procedures has been held by the Court to constitute an aggravating factor to consider when deciding on the sanction to be imposed. The Court, in The Florida Bar v. Montgomery, 412 So.2d 346 (Fla. 1982), considered the respondent's failure to cooperate with the procedure and his failure to attend the final hearing when deciding on disbarment as the proper sanction.

The position of The Florida Bar is that because Respondent has shown as little regard for the disciplinary proceedings as he did for his client's interests, the correct sanction for such activity is disbarment.

The imposition of the recommended discipline would be consistent with current case authority. In The Florida Bar v. Montgomery, 412 So.2d 346 (Fla. 1982), the Court held that disbarment was the proper sanction where the respondent neglected his practice, failed to answer the Bar's complaint or the request for admissions, and failed to appear at the final hearing. In The Florida Bar v. Lehman, 417 So.2d 648 (Fla. 1982), the Court held that failure to pursue the client's claims and abandoning his practice after accepting a retainer warrants disbarment.

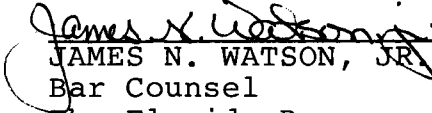
The Court ordered disbarment in The Florida Bar v. Toto, 435 So.2d 807 (Fla. 1983). The respondent in Toto accepted a fee retainer and thereafter did little or no work on behalf of the client and willfully ignored the client's request for either an accounting or refund of the fee. The respondent in Toto had not been the subject of any disciplinary action prior to the action that led to disbarment. By contrast, the Respondent in the case now before the Court has been suspended twice previously and his conduct parallels that of the respondent in Toto.

The final effect of the recommended discipline would appear to be in line with the case authority and consistent with the Court's stated objectives of discipline in State ex rel. The Florida Bar v. Murrell, 74 So.2d 221 (Fla. 1954). In Murrell, the Court held that the administering of discipline must be just to the public, fair to the attorney, and designed to deter others from similar conduct. Where, as here, the Respondent has demonstrated an attitude and course of conduct wholly inconsistent with approved professional standards, The Florida Bar believes disbarment is warranted.

CONCLUSION

The Florida Bar believes that the discipline recommended by the Referee is suitable under the circumstances of this case.


Respectfully submitted,



JAMES N. WATSON, JR.
Bar Counsel
The Florida Bar
600 Apalachee Parkway
Tallahassee, Florida 32301
(904) 222-5286

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief has been forwarded by certified mail # PL675 195 493, return receipt requested, to CHARLES E. BARTLETT, Respondent, at his record Bar address of 1536 Kingsley Avenue, #128, Post Office Box 732, Orange Park, Florida 32073, this 1st day of April, 1987.



James N. Watson, Jr.
Bar Counsel