

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

DANIEL O. PALMER,

Respondent.

CONFIDENTIAL

Case No. 69,115

(TFB No. 04C85N17)

FILED

JUL 31 1986

CLERK SUPREME COURT

Deputy Clerk

REPORT OF THE REFEREE By _____

I. Summary of Proceedings

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to THE FLORIDA BAR Integration Rule, Article XI, the following proceedings occurred:

On July 31, 1986, The Florida Bar filed its Complaint against Respondent, DANIEL O. PALMER, and on August 12, 1986 filed its request for admissions in these proceedings. Upon Respondent's failure to respond thereto, THE FLORIDA BAR filed a Motion to Deem Matter Admitted and a Motion for Summary Judgment on October 15, 1986. An Order Granting Complainant's Motion to Deem Matters Admitted and Motion for Summary Judgment were entered on December 5, 1986. All of the aforementioned pleadings attached thereto, and exhibits received in evidence, and this report constitute the record in this case and are forwarded to the Supreme Court of Florida, together with the transcript of proceedings held November 26, 1986, and December 9, 1986.

II. Findings of Fact as to Each Item of Misconduct of Which Respondent is Charged

After carefully considering all pleadings, I find:

1. The Respondent, a member of The Florida Bar, was retained in May of 1982 by one, Kathryn Goethe, to represent her as Plaintiff on a contingency fee basis in a personal injury action, but a written agreement regarding the contingency fee was never prepared.

2. Subsequent thereto, the Respondent did not contact his client for some six months, whereupon she telephoned him. Mrs. Goethe was informed by the Respondent in the telephone exchange that he had been in several meetings and had made several telephone calls regarding the suit. He advised that he would call her back with more information, but in fact, Respondent never called back.

3. Respondent was again contacted by his client, Kathryn Goethe, who was concerned about the slow progress of her case. She was informed by her attorney that opposing counsel had withdrawn and the delay was the result of a new attorney entering the case. This was a lie as Defendant's counsel never changed during the period Respondent was involved in the Goethe cause.

4. At a later date Mrs. Goethe requested of the Respondent copies of Court documents and correspondence. The Respondent agreed to send same but never did.

5. Several months before the Statute of Limitations would run, and thus being concerned, Mrs. Goethe contacted her attorney expressing such anxiety. The Respondent, to allay her fears, informed her that the Statute could not expire because the lawsuit had been filed.

6. Respondent had not filed the Complaint and knew that he was misleading his client when he made such representation.

7. Being contacted again by Mrs. Goethe about the progress of the case, the Respondent informed her that he had secured a court date. This assertion was false as well as two other assertions by Respondent to his client that different court dates had been set.

8. Again, Mrs. Goethe requested information about the status of her case. The Respondent falsely told her that it had been settled out of court and that the settlement check was in the mail. Mrs. Goethe later learned from Respondent's employer that her case had never been filed, no court dates had been set, no settlement had ever been negotiated and that her cause of action had been foreclosed by the running of the Statute of Limitations.

9. I further find that Respondent, by reason of the foregoing violated Disciplinary Rules 1-102(A)(4) (engaging in conduct involving a dishonesty, fraud, deceit or misrepresentation); 2-106(E) (failure to enter into a written contingency fee agreement); 6-101(A)(3) (neglect of a legal matter); 7-101 (A)(1) (failure to seek the lawful objective of a client); 7-101(A)(2) (failure to carry out a contract of employment); and 7-101(A)(3) (prejudicing or damaging a client during the course of a professional relationship) of the Florida Bar's Code of Professional Responsibility.

III. I recommend that Respondent be found guilty of the following violations of the Code of Professional Responsibility:

DR 1-102(A)(4) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.)

DR 2-106(E) (Every attorney who, in connection with an action or claim for personal injury----whereby his compensation is to be---contingent---on successful prosecution or settlement thereof shall do so only where such fee arrangement is reduced to a written contract---);

DR 6-101(CA)(3) (A lawyer shall not neglect a legal matter entrusted to him.);

DR 7-101 (A)(1)(a) (A lawyer shall not intentionally fail to seek the lawful objectives of his client---);

DR 7-101(A)(2) (A lawyer shall not intentionally fail to carry out a contract of employment entered with a client for professional services---);

DR 7-101(A)(3) (A lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship.).

IV. A. I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

1. Suspension from the practice of law for a period of eight (8) months, and that he be required to demonstrate with other appropriate attributes, his rehabilitation, by satisfactorily passing the written examination relating to ethics administered by the Florida Board of Bar Examiners.

2. I would recommend the payment of cost.

V. Mitigating Factors

Prior to recommending discipline pursuant to Article XI, Rule 11.06(9)(a)(4), I considered the following:

A. There has not been any prior disciplinary problem involving the Respondent.

B. He borrowed \$10,000.00 on his own which was paid to said Kathryn Goethe in apparent satisfaction of her claim. He is remorseful.

The Referee sympathizes with Respondent because of the illness and death of his mother during the violations, supra, but does not consider this personal plight and loss a mitigating factor.

VI. Statement of Costs and Manner in Which Costs Should be Taxed

I find the following costs were reasonably incurred by The Florida Bar:

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|---|----------|
| A. Grievance Committee Level | |
| 1. Administrative Costs | \$150.00 |
| 2. Court Reporter and transcription costs | 193.57 |
| 3. Bar Counsel travel | 107.00 |

B. Referee Level

| | |
|---|----------|
| 1. Administrative Costs | \$150.00 |
| 2. Court Reporter and transcription Costs | 209.84 |
| 3. Bar Counsel Travel | 182.30 |
| TOTAL | \$992.71 |

It is recommended that such costs be charged to 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 31st day of December, A.D., 1986.


JOHN J. CREWS, REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to HONORABLE SID J. WHITE, Clerk of The Supreme Court of Florida, Supreme Court Building, Tallahassee, FL. 32301, and a confidential copy sent to SUSAN V. BLOEMENDAAL, ESQ., Bar Counsel, The Florida Bar, Tallahassee, FL. 32301, and to DANIEL O. PALMER, Respondent, at his record Bar address of Post Office Box 275, Orange Park, Florida 32067, by U. S. Mail, this 31st day of December, A.D., 1986.


Judicial Assistant