

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

FREDERICK E. GRAVES,

Respondent.

CASE NO. 69,274

FILED

SID J. WHITE

APR 6 1987

CLERK, SUPREME COURT

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THE FLORIDA BAR'S BRIEF ON SUITABILITY  
OF RECOMMENDED DISCIPLINE

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PREFACE

In this brief, Complainant, The Florida Bar, will be referred to as "The Florida Bar", and Frederick E. Graves will be referred to as the "Respondent". Abbreviations utilized in this brief are as follows:

"C.J." - refers to Respondent's Conditional Guilty Plea  
for Consent Judgment

"R.R." - refers to Report of Referee

STATEMENT OF THE CASE

A formal complaint was filed against the Respondent on September 4, 1986, and the Honorable Richard B. Burke was appointed as Referee on September 10, 1986. On September 12, 1986, The Florida Bar submitted its First Request for Admissions. On October 1, 1986, this cause was set for final hearing on December 15, 1986.

On September 25, 1986, the parties filed a Stipulation for Waiver of Venue and on October 7, 1986, the Respondent submitted his Answer.

On October 20, 1986, The Florida Bar submitted its Response to Respondent's Affirmative Defenses and Respondent submitted his Answer to The Florida Bar's First Request for Admissions on November 21, 1986.

On December 19, 1986, Respondent's Conditional Guilty Plea for Consent Judgment was submitted by Respondent. The final hearing was cancelled when it appeared that a Consent Judgment was about to be agreed upon.

On January 8, 1987, the Honorable Richard B. Burke issued his Report of Referee wherein he approved Respondent's Guilty Plea to Counts I and II of the complaint and also approved Respondent's additional guilty pleas in Florida Bar Case Nos. 17C85114, 17C86104, 17C87F27 and 17C87F35.

This brief is being submitted in response to this Court's March 10, 1987, Order requesting briefs as to the Referee's recommended discipline.

ISSUE PRESENTED FOR REVIEW

- I. WHETHER THE DISCIPLINARY MEASURE  
RECOMMENDED BY THE REFEREE IS SUITABLE.

STATEMENT OF THE FACTS

The facts upon which Respondent's Conditional Guilty Plea for Consent Judgment and the Referee's Report are based are as follows:

Respondent agreed to be Christopher Alfaro's counsel in a number of related traffic offenses and accepted \$1,500 as a retainer regarding The Florida Bar Case No. 17C85114. (R.R. p. 1). Due to conflicting court appearances which Respondent failed to reconcile, a number of Mr. Alfaro's hearings were not attended by Respondent. (R.R. p. 1).

Respondent filed a Notice of Appearance and Request for Documents, and requested that all future correspondence be sent to Respondent's office. After failing to appear at plaintiff's scheduled hearings, which Mr. Alfaro was unable to attend due to his being out of town, Respondent filed untimely requests for continuances in the cases. (R.R. p. 2). Due to both Mr. Alfaro's and Respondent's failure to appear at trial, bench warrants were issued for Mr. Alfaro, who was subsequently arrested on the warrants. (R.R. pp. 2, 3).

Respondent failed to handle to completion the vacating and return of bond estreatures resulting from Mr. Alfaro's arrest, and Mr. Alfaro successfully handled the matter on his own, as well as the dismissal of the remaining traffic cases. (R.R. p. 3).

Christopher Alfaro also retained Respondent to handle a dissolution of marriage proceeding. (R.R. p. 3). After filing an answer and a notice of withdrawal of waiver, conflicts between Respondent and Mr. Alfaro arose concerning Mr. Alfaro's refusal to obey Respondent's advice to Mr. Alfaro about negotiations between Mr. Alfaro and his wife and her attorney. Respondent then failed to take any further action in the proceedings. (R.R. p. 3). The proceedings were handled to completion

by Mr. Alfaro. However, Mr. Alfaro apparently was negotiating said matter with his wife and her attorney against Respondent's advice.

As to The Florida Bar Case No. 17C86104, Respondent, who was the defendant in the action, failed to appear at his deposition to be taken by Lawrence Spiegel, Esquire, at Mr. Spiegel's offices in Miami. (R.R. p. 4). Respondent felt that it was inequitable to have to appear at counsel's private office some distance away, rather than at a neutral meeting place, although Respondent did not seek a change in the place of deposition. Mr. Spiegel filed for a Rule to Show Cause, and Respondent was held in Contempt of Court. (R.R. p. 4). Respondent has purged himself of the contempt and the said contempt order has been vacated by the Court. (R.R. p. 4).

As to The Florida Bar Case No. 17C87F27, during the course of his representation of a client, Respondent sent his client to Dr. Ervin Lesser for a medical evaluation. In order to appease Dr. Lesser's impatience with the lack of his client's retribution, Respondent sent a check for partial payment of the bill to Dr. Lesser. The check, drawn on Respondent's office account, was returned for non-sufficient funds, and has since been reissued to Dr. Lesser. (R.R. p. 4). Respondent had no legal obligation to issue this check to Dr. Lesser. Additionally, the check was drawn on Respondent's office account, not his trust account. The check was issued with insufficient funds due to a bookkeeping error.

As to The Florida Bar Case No. 17C87F35, Respondent was held in contempt of court by the Honorable James C. Paine, United States District Court Judge in West Palm Beach on October 16, 1986 for his tardiness. Respondent was late to court because of bad weather and due



to the fact that the Respondent was waiting for his criminal client to appear to accompany the Respondent to court before Judge Paine. However, Respondent's client failed to appear.

SUMMARY OF ARGUMENT

THE DISCIPLINARY MEASURE RECOMMENDED BY THE  
REFEREE IS SUITABLE.

Attorneys have received public reprimands for neglect of legal matters. In The Florida Bar v. Harrison, 398 So.2d 1367 (Fla. 1981), the respondent attorney received a public reprimand for neglect wherein he had previously received a private reprimand. Similarly, the instant Respondent has received two (2) private reprimands for technical trust account matters. (Page 5, C.J.).

In The Florida Bar v. Stein, 471 So.2d 36 (Fla. 1985), the Respondent attorney received a public reprimand and a ten (10) day suspension wherein three (3) disciplinary proceedings were consolidated. The misconduct concerned neglect of legal matters.

This Court deals more severely with cumulative misconduct than with isolated instances of misconduct. The Florida Bar v. Baron, 392 So.2d 1318, 1320 - 1321 (Fla. 1981).

In negotiating the guilty plea for consent judgment in this cause, the parties considered the following as mitigating circumstances:

1. In The Florida Bar Case No. 17C85114, the client, Mr. Alfaro, was negotiating his cause contrary to Respondent's advice.

2. In The Florida Bar Case No. 17C86104, the Respondent has been purged of the contempt and the contempt order has been vacated by the court.

3. In The Florida Bar Case No. 17C87F27, Respondent's check that was returned for non-sufficient funds was issued on his office account, not his trust account, and has been reissued to Dr. Lesser. The returned check was issued due to a bookkeeping error.

4. In The Florida Bar Case No. 17C87F35, wherein Respondent was held in contempt of court for his tardiness, Respondent was late to court because of bad weather and due to the fact that the Respondent was waiting for his criminal client to appear to accompany the Respondent to court before Judge Paine. However, Respondent's client failed to appear.

Accordingly, The Florida Bar submits that the disciplinary measure recommended by the Referee is suitable.

ARGUMENT

THE DISCIPLINARY MEASURE RECOMMENDED  
BY THE REFEREE IS SUITABLE.

The charges of misconduct against the Respondent concern:

- (1) Neglect regarding Respondent's representation of Mr. Alfaro concerning traffic cases and a dissolution of marriage matter in The Florida Bar Case No. 17C85114.
- (2) Respondent being held in contempt of court for not appearing at his scheduled deposition in The Florida Bar Case No. 17C86104.
- (3) Respondent's check to Dr. Lesser issued on his office account being returned for non-sufficient funds in The Florida Bar Case No. 17C87F27.
- (4) Respondent being held in contempt of court by the Honorable James C. Paine, United States District Judge, for his tardiness in appearing in court in The Florida Bar Case No. 17C87F35.

Attorneys have received public reprimands for neglect of legal matters. The Florida Bar v. Harrison, 398 So.2d 1367 (Fla. 1981); The Florida Bar v. Baker, 431 so.2d 601 (Fla. 1983).

In Harrison supra, the Respondent attorney received a public reprimand for neglect wherein he had previously received a private reprimand. Similarly, the instant Respondent has received two (2) private reprimands for technical trust account matters. (Page 5, C.J.).

In The Florida Bar v. Stein, 471 So.2d 36 (Fla. 1985), the Respondent attorney received a public reprimand and a ten (10) day suspension wherein three (3) disciplinary proceedings were consolidated. The misconduct concerned neglect of legal matters.

This Court has held that issuance of a worthless check by an attorney subjects the attorney to professional discipline. The Florida Bar v. Davis, 361 So.2d 159 (Fla. 1978).

Further, this Court deals more severely with cumulative misconduct than with isolated instances of misconduct. The Florida Bar v. Baron, 392 So.2d 1318, 1320 - 1321 (Fla. 1981). The two (2) contempt matters concerning not appearing for his deposition and being late to court constitute cumulative misconduct as well as all the misconduct stated herein.

In negotiating the guilty plea for consent judgment in this cause, the parties considered the following as mitigating circumstances:

1. In The Florida Bar Case No. 17C85114, the client, Mr. Alfaro, was negotiating his cause contrary to Respondent's advice.

2. In The Florida Bar Case No. 17C86104, the Respondent has been purged of the contempt for his failure to appear at a deposition and the contempt order has been vacated by the court.

3. In The Florida Bar Case No. 17C87F27, Respondent's check that was returned for non-sufficient funds was issued on his office account, not his trust account, and has been reissued to Dr. Lesser. The returned check was issued due to a bookkeeping error. Respondent had no legal obligation to issue this check to Dr. Lesser, but did so to appease Dr. Lesser's impatience with the lack of retribution from the client.

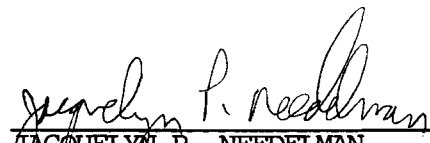
4. In The Florida Bar Case No. 17C87F35, wherein Respondent was held in contempt of court for his tardiness, Respondent was late to court because of bad weather and due to the fact that the Respondent was waiting for his criminal client to appear to accompany the Respondent to court before Judge Paine. However, Respondent's client failed to appear.

Accordingly, based upon all of the above, The Florida Bar submits that the disciplinary measure recommended by the Referee is suitable.

CONCLUSION

For the foregoing reasons, The Florida Bar respectfully suggests that the disciplinary measure recommended by the Referee is suitable and should be approved by this Court. Accordingly, the Respondent should be suspended from the practice of law for a period of ten (10) days and the costs of these proceedings in the amount of \$1,242.17 should be taxed against the Respondent as recommended by the Referee.

Respectfully submitted,

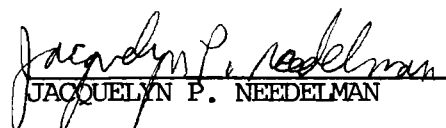
  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing brief has been forwarded to Lance J. Thibideau, Attorney for Respondent, 901 South Federal Highway, Suite 300, Fort Lauderdale, Florida 33316, via regular United States mail, on this 3rd Day of April 1987, and a copy to John T. Berry, Staff Counsel.

  
\_\_\_\_\_  
JACQUELYN P. NEEDELMAN