

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

FILED  
SID J. VAN

AUG 20 1987

CLERK, SUPREME COURT  
Deputy Clerk

THE FLORIDA BAR,  
Complainant,

Case No. 69,529

v.

(TFB No. 08-85N44)

DAVID M. ANDERSON,  
Respondent.

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

This cause was heard upon the Complaint filed by The Florida Bar at the final hearing on April 13, 1987. Pursuant to motions and arguments at the final hearing, the following alleged violations were dismissed: Disciplinary Rules 2-106(A); 2-106(B); 2-110(A)(2); 7-102(A)(4) and 7-102(B)(1). It is the recommendation of the Referee that the Respondent be found not to have violated the provisions of the cited disciplinary rules.

II. FINDINGS OF FACT

Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

The facts contained within this section are relevant to the remainder of the alleged violations cited within the formal complaint.

On or about June 17, 1982, Respondent executed an unsecured promissory note in the amount of \$10,000 payable to his clients, Raymond L. Tassinari (Referee Exhibit No. 2).

On or about May 18, 1982, Mr. Tassinari assigned the above promissory note from Respondent to his daughter, Ms. Jeane T. Ford (Referee Exhibit No. 1).

After the assignment by Mr. Tassinari, both he and Ms. Ford notified Respondent in writing of the assignment and made demand for payment under the note (Referee Exhibit Nos. 3 and 4).

Upon Respondent's failure to make timely payment on the promissory note, Ms. Ford was required to obtain the services of a lawyer and sue Respondent for his failure to comply with the provisions of his promissory note (Referee Exhibit No. 5).

Upon being served with the complaint of Ms. Ford, Respondent filed an Answer and Affirmative Defenses to the claimed debt. Respondent initially asserted in his affirmative defenses that: one, the debt had been paid in full; two, there was no underlying indebtedness at the time the note was executed; three, the note was executed under false representations and threats of extortion; and four, failure of consideration (Referee's Exhibit No. 6). Respondent represented himself in filing his response.

Respondent subsequently filed an amended Answer wherein he asserted only one affirmative defense, that being the indebtedness for which the promissory note was executed had been paid in full prior to the alleged assignment to Ms. Ford.

Subsequent to the filing of the amended complaint, Respondent was subpoenaed for deposition by Ms. Ford's attorney. Prior to the deposition, Respondent filed a Final Amended Answer wherein he waived all affirmative defenses, admitted the allegations in the complaint and waived further appearance in the proceedings.

Mr. Tassinari testified that the note was for a \$10,000 loan that had been requested by Respondent. Tassinari stated that there had been no threats made to get Respondent to execute the note and that there had never been any real estate venture involving him and Respondent where he had agreed to loan Respondent the amount of \$100,000. Tassinari had never received any payment on said note from Respondent. Respondent has acknowledged that the assertions within the affirmative defenses were not true and unsupported.

Based upon the evidence and testimony it is apparent that there was no basis in law or fact to support any of the affirmative defenses filed by Respondent. Respondent's actions impeded the orderly process of the administration of justice and created unnecessary legal fees for Ms. Ford.

A final judgment was subsequently entered against Respondent which was ultimately paid off as part of a settlement between Respondent and Tassinari.

### III. RECOMMENDATION AS TO GUILT.

I recommend that Respondent be found guilty of the following violations:

DR 7-102(A)(1) (a lawyer shall not assert a position when he knows that such action would serve merely to harass or maliciously injure another);

DR 7-102(A)(2) (a lawyer shall not knowingly advance a defense that is unwarranted under existing law);

Integration Rule 11.02(3)(a) (the commission by a lawyer of any act contrary to honesty, justice, or good morals constitutes a cause for discipline).

### IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

In mitigation of the charges herein, it is noted that Respondent subsequently withdrew his unfounded defenses and admitted

owing the debt. It is also noted that at the time of this hearing, Respondent had outstanding a recommendation by the undersigned for a six-months suspension in a prior disciplinary matter.

Based upon the foregoing, I recommend that Respondent receive a public reprimand as the appropriate discipline in this matter.

V. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

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

A. Grievance Committee Level

- |                          |           |
|--------------------------|-----------|
| 1. Administrative Costs  | \$ 150.00 |
| 2. Court Reporter's Fees | 224.35    |
| 3. Bar Counsel Travel    | 1,071.50  |

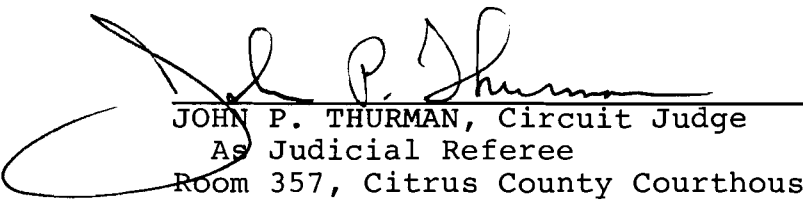
B. Referee Level

- |                          |           |
|--------------------------|-----------|
| 1. Administrative Costs  | \$ 150.00 |
| 2. Court Reporter's Fees | 697.18    |
| 3. Bar Counsel Travel    | 303.00    |
| 4. Referee Travel Costs  |           |

TOTAL \$ 2596.03

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 4<sup>th</sup> day of August, 1987.

  
JOHN P. THURMAN, Circuit Judge  
As Judicial Referee  
Room 357, Citrus County Courthouse  
100 North Apopka Avenue  
Inverness, Florida 32650

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been forwarded by regular U.S. Mail to SID J. WHITE, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and that confidential copies were forwarded by regular U.S. Mail to JAMES N. WATSON, JR., Bar Counsel, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32301 and JOHN A. WEISS, ESQUIRE, Counsel for Respondent, Post Office Box 1167, Tallahassee, Florida 32302, this 10<sup>th</sup> day of August, 1987.

  
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JOHN P. THURMAN