

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case Nos. 69,647 and
69,936

v.

THOMAS L. SMITH,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, hearings were held on April 2, 1987. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar Jan K. Wichrowski

For The Respondent No Appearance

II. Findings and Rulings in General: After considering all the pleadings and evidence before me, pertinent portions of which are commented on below, I find:

This Referee notes that neither respondent nor any counsel in his behalf appeared at the final hearing on April 2, 1987. However, respondent was properly sent notice of hearing, a copy of which is in evidence. The Bar's Complaint and notice were sent pursuant to the Rules Regulating The Florida Bar, Rule 3-7.10(c). Respondent was mailed by certified mail all pleadings to his last record Bar address as shown by the official records in the office of the Executive Director of The Florida Bar. Thus, the service is presumed sufficient. Further, The Florida Bar attempted to locate respondent through investigations which led to several other addresses at which all pleadings were sent to respondent.

Final Hearing was held in my chambers at West Palm Beach, Florida, after proper notice. Respondent's objections are deemed waived regarding venue. Further, respondent failed to respond to the Request for Admissions which was sent to his record Bar address as well as other addresses obtained through the investigation of The Florida Bar. It appeared that respondent failed to receive actual notice of these proceedings since he has chosen not to inform The Florida Bar of his whereabouts. Testimony from The Florida Bar investigator indicated that respondent had abandoned his practice after becoming aware of The Florida Bar grievance proceedings. I specifically find that The Florida Bar made good faith attempts to locate the respondent beyond what is required by the rules. Therefore, since respondent failed to reply to the Request for Admissions, I deem the admissions made for purposes of this proceeding.

III. Findings of Fact as to each item of Misconduct of which the respondent is charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented on below, I find that it was established by clear and convincing evidence:

Supreme Court Case No. 69,936

1. That respondent, Thomas L. Smith, 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. Until early October, 1986, respondent resided in St. Lucie County, maintaining his record Bar address in Brevard County, Florida. Respondent's present whereabouts are unknown.
3. Respondent was ordered to be temporarily suspended by the Supreme Court of Florida in an Order dated September 8, 1986, for accepting fees and costs from numerous clients and failing to perform legal services or return the unearned money to his clients.
4. Upon hearing of the Order temporarily suspending him, respondent abandoned his practice without complying with any of the provisions of the Order and his present whereabouts are unknown.
5. An earlier Complaint was filed on November 18, 1986, in this matter.

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6. Mr. John J. Moore, III., retained respondent to represent him in a divorce proceeding filed by Mr. Moore's wife, Ms. Delyne Moore. Respondent failed to adequately communicate with his client or to provide any accountings or billings. Respondent failed to submit a final order to the court as he had been requested to do, causing a delay in the final decree of divorce, and failed to return any unearned fees or costs.

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7. On September 11, 1985, Ms. Joan Walden paid respondent \$250.00 to represent her in an uncontested divorce proceeding. Thereafter, respondent failed to file the appropriate pleadings or to respond to Ms. Walden's efforts to communicate with him. On January 6, 1986, Mrs. Walden went into respondent's office unannounced and respondent told her that her husband would be served within a short time. Respondent never filed the appropriate pleadings or served Ms. Walden's husband. Ms. Walden did not receive any refund of unearned fees or costs or any further communication from respondent despite further attempts to contact him.

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8. In June, 1986, Mr. Walter E. Blakeslee paid respondent \$360.00 to represent him in an uncontested divorce proceeding. Respondent failed to file any of the appropriate pleadings regarding the divorce or to take any actions toward same. Respondent further failed to communicate with Mr. Blakeslee or to refund any unearned fees or costs.

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9. Mr. Lee R. Pierce paid respondent \$400.00 to represent him in a divorce proceeding. Respondent failed to file any pleadings regarding the divorce, communicate with his client, or to return any unearned fees or costs.

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10. On July 3, 1986, Mr. G. Anthony West paid respondent \$500.00 to represent him in litigation pending in Fort Pierce, Florida. Respondent failed to perform any work in the case or to communicate with Mr. West. Mr. West did not receive any refund of unearned fees or costs from respondent.

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11. On August 25, 1986, Ms. Gail F. Sullivan retained respondent for \$500.00 to represent her in divorce proceedings and obtain an emergency restraining order. Respondent failed to take any steps toward such representation. Respondent failed to communicate with Ms. Sullivan and respondent's office phone was disconnected without notice about one month after he was retained. Respondent has failed to return any unearned fees or costs.

1 12. Ms. Dorothy P. Walker paid respondent \$350.00 for representation regarding the adoption of her grandchild. Ms. Walker later informed respondent that she did not wish to proceed with the adoption since her husband had passed away. Respondent failed to return any unearned fees or costs to Ms. Walker although he did not proceed with the adoption.

8 13. Ms. Carol A. Carpenter retained respondent for \$300.00 on August 25, 1986, to represent her in divorce proceedings, including obtaining an emergency restraining order. Respondent failed to complete the requested legal services, communicate with Ms. Carpenter, or return any unearned fees or costs.

9 14. Ms. Tommie H. Bryant retained respondent for \$500.00 to represent her in a child custody case. Respondent failed to file a Notice of Appearance or attend any hearings. Ms. Bryant therefore lost the custody case by default. Respondent failed to communicate with Ms. Bryant or to return any unearned fees or costs.

15. Respondent is presently under criminal investigation in St. Lucie and Brevard Counties for his actions outlined above in accepting fees and costs and failing to perform the agreed upon services or provide refunds.

16. Respondent failed to respond to The Florida Bar inquiries in the above named case or to attend any grievance committee hearings in these matters despite notice being sent to respondent's address as well as other known addresses.

Supreme Court Case No. 69,647

1. That respondent, Thomas L. Smith, 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. Until early October, 1986, respondent resided in St. Lucie County, maintaining his record Bar address in Brevard County, Florida. Respondent's present whereabouts are unknown.

3. Respondent was ordered to be temporarily suspended by the Supreme Court of Florida in an Order dated September 8, 1986, for accepting fees and costs from numerous clients and failing to perform legal services or return the unearned money to his clients.

4. Upon hearing of the Order suspending him, respondent abandoned his practice without complying with any of the provisions of the Order and his present whereabouts are unknown.

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5. In The Florida Bar Case No. 18B86C36, respondent neglected the real estate transaction he had agreed to perform for his client, Mr. Duane McKeown. Despite being paid in full, respondent failed to forward Mr. McKeown any of the documents regarding the sale as requested. Respondent has further failed to communicate with Mr. McKeown as requested or return any unearned fees or costs.

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6. In The Florida Bar Case No. 18B86C39, respondent accepted a \$500.00 fee from a client, Mr. William N. Ames, for an emergency hearing regarding Mr. Ames' child support visitation rights. After accepting the \$500.00, respondent refused to communicate with Mr. Ames or perform any of the agreed services. Respondent has failed to contact his client or return any unearned fees or costs.

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7. In The Florida Bar Case No. 18B86C58, respondent neglected to probate the estate of his client's father. His client, Ms. Theresa M. Geronimo, was forced to retain a new attorney after respondent failed to proceed in this matter. Respondent has failed to return important documents belonging to the client to her new attorney despite repeated requests and has failed to contact his client or return any unearned fees or costs.

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8. In The Florida Bar Case No. 18B86C60, respondent neglected to handle a guardianship case for his client, Ms. April Duveyoung, despite accepting a \$500.00 fee to do so. Respondent has failed to contact his client or return any unearned fee or costs.

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9. In The Florida Bar Case No. 18B86C63, respondent neglected to proceed in a divorce case for his client, Mr. Robert L. Rymer, after accepting a \$500.00 fee. Respondent failed to contact his client or return any unearned fees or costs.

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10. In The Florida Bar Case No. 18B86C69, respondent neglected his client's case causing a default judgment to be entered against his client, Mr. E. Kennedy, in a paternity action. Respondent failed to contact his client or return any unearned fees or costs.

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11. In The Florida Bar Case No. 18B87C01, respondent neglected to perform legal research on child support modification after accepting a \$150.00 fee from his client, Mr. Patrick Guettler, to do so. Respondent has failed to contact his client or to return any unearned fees or costs.

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12. In The Florida Bar Case No. 18B86C46, respondent neglected to proceed on the divorce case of his client, Ms. Carol J. Smith, after accepting a \$325.00 fee to do so. Respondent has failed to contact his client or return any unearned fees or costs.

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13. In The Florida Bar Case No. 18B87C05, respondent neglected a marital dissolution case of Ms. Sandra L. Ludy for which Ms. Ludy had retained respondent for a fee of \$540.00. Respondent refused to communicate with Ms. Ludy or attempt to negotiate a settlement on her behalf as requested. Although respondent appeared in court at the time Ms. Ludy's divorce was finalized, he has failed to provide requested documents to his client. Respondent was paid an additional \$200.00 by Ms. Ludy's ex-husband as part of the divorce settlement, making his total fee in this case \$740.00. Respondent failed to return any unearned fees or costs to his client.

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14. In The Florida Bar Case No. 18B87C08, respondent neglected the case of Ms. Linda J. Jones regarding representation for a Petition to Increase Child Support Payments. Respondent was paid a total requested fee of \$350.00 but failed to file such a petition. Respondent further refused to communicate with his client or return the unearned fees and costs.

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15. In The Florida Bar Case No. 18B87C09, respondent neglected his client, Ms. Lonna Lea Johansen, after being paid in full to represent her in a divorce. Respondent failed to file the requested dissolution as agreed upon. Respondent further refused to communicate with his client or return any unearned fees or costs.

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16. In The Florida Bar Case No. 18B87C12, respondent neglected to file the requested documents on behalf of his client, Mr. Charles W. Randhan, Jr., in order to finalize Mr. Randhan's divorce. Although respondent was paid in full, respondent refused to contact his client or opposing counsel or return any unearned fees or costs.

17. In The Florida Bar Case No. 18B87C16, respondent neglected the divorce case of his client, Mr. Jesse Gene

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Starkey. Mr. Starkey paid respondent a \$500.00 fee for representation. Respondent's neglect in answering pleadings, attending hearings, and in failing to notify Mr. Starkey of hearings caused a default judgment to be entered against Mr. Starkey which prejudiced his case. Respondent failed to contact or return any unearned fees or costs to his client.

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18. In The Florida Bar Case No. 18B87C18, respondent neglected his client, Mrs. Taffner, in the child support case of Taffner v. Hubbard, St. Lucie County Case No. 85-948 FR 08. Respondent failed to file a final judgment in the matter as ordered by the court. A notice to show cause as to why respondent should not be held in contempt for his failure is presently pending in this court case.

19. Respondent presently has outstanding criminal charges in St. Lucie County for his actions outlined above in accepting fees and costs and failing to perform the agreed upon services.

20. Respondent failed to respond to The Florida Bar inquiries in the above named case or to attend any grievance committee hearings in these matters despite notice being sent to respondent's record Bar address as well as other known addresses.

21. The Florida Bar continues to receive letters and inquiries from clients of the respondent alleging similar conduct by the respondent in accepting fees and costs and failing to receive any legal services.

IV. Recommendations as to whether or not the respondent should be found guilty: As to the above numbered findings of fact, I make the following recommendations as to guilt or innocence:

Supreme Court Case No. 69,936

By copy of the foregoing contained in this case, I find the respondent guilty of violating the following Rules of the Integration Rules of The Florida Bar, Article XI, Rules 11.02(3)(a) for conduct contrary to honesty, justice, or good morals, and Rule 11.02(4) for trust fund violations in retaining unearned fees and costs. Additionally, I find the respondent guilty of the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 1-102(A)-(4) for conduct involving dishonesty, fraud, deceit, or misrepresentation, 1-102(A)(6) for other conduct that

adversely reflects on his fitness to practice law; 6-101(A)-(1) for failing to seek the lawful objectives of his client; 7-101(A)(2) for failing to carry out a contract of employment entered into with a client for professional services; 7-101(A)(3) for prejudicing or damaging his client during the course of the professional relationship; and 9-102(B)(4) for failing to promptly pay or deliver to the client as requested by the client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

Supreme Court Case No. 69,647

By copy of the foregoing contained in this case, I find the respondent guilty of violating the following Rules of the Integration Rules of The Florida Bar, Article XI, Rules 11.02(3)(a) for conduct contrary to honesty, justice, or good morals, and Rule 11.02(4) for trust fund violations in retaining unearned fees and costs. Additionally, I find the respondent guilty of the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 1-102(A)-(4) for conduct involving dishonesty, fraud, deceit, or misrepresentation, 1-102(A)(6) for other conduct that adversely reflects on his fitness to practice law; 6-101(A)-(1) for failing to seek the lawful objectives of his client; 7-101(A)(2) for failing to carry out a contract of employment entered into with a client for professional services; 7-101(A)(3) for prejudicing or damaging his client during the course of the professional relationship; and 9-102(B)(4) for failing to promptly pay or deliver to the client as requested by the client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

- V. Recommendation as to Disciplinary measures to be applied:
In Case Nos. 69,647 and 69,936, I recommend that the respondent be disbarred from the practice of law in Florida as provided in Rule 3-5.1(f) of the Rules of Discipline. In making this recommendation, I note the multitude of clients harmed by respondent's neglect and subsequent abandonment of his practice. I further note that although respondent was aware of the grievance committee proceedings, he made no attempt to respond to the complaints, appear at grievance committee hearings, or otherwise express any interest in retaining his status as a member of The Florida Bar.

VI. Personal History and Past Disciplinary Record: In each case, after findings of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: Unknown
Date admitted to Bar: January 29, 1980
Prior Disciplinary convictions and disciplinary measures imposed therein: None

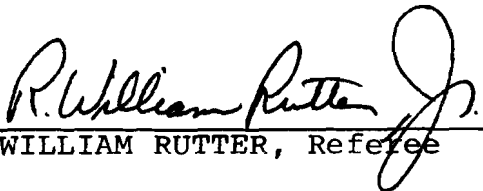
VII. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar in both cases.

A.	Grievance Committee Level Costs	
	1. Administrative Costs	\$450.00
	2. Transcript Costs	\$143.80
	3. Bar Counsel/Branch Staff Counsel Travel Costs	\$390.01
B.	Referee Level Costs	
	1. Administrative Costs	\$150.00
	2. Transcript Costs	not yet obtained
	3. Bar Counsel/Branch Staff Counsel Travel Costs	\$132.05
C.	Miscellaneous Costs	
	1. Telephone Costs	\$17.10
	2. Staff Investigator Expenses-	not yet obtained
	3. Storage of files & rental truck	\$143.40
	4. Inventory attorney fee	\$63.50

TOTAL ITEMIZED COSTS: \$1489.86

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the 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 14th day of April, 1987.


R. WILLIAM RUTTER, Referee

Copies to:

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