

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

HALTON J. HART,
Respondent.

Case No. 69,935;
69,991
(TFB No's. 8513471-13A;
8513531-13A; 8619284-13A;
and 8513505-13A)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to article XI of the Integration Rule of the Florida Bar and Rule 3-7.5, Rules of Discipline, final hearings were held on July 1, 1987 and November 3, 1987. The enclosed pleadings, orders, transcripts and exhibits are forwarded to the Supreme Court of Florida with this report, and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Thomas E. DeBerg
Assistant Staff Counsel
Richard Greenberg
Assistant Staff Counsel

For the Respondent: Richard T. Earle, Jr.

II. Findings of Fact as to Each Item of Misconduct with which the Respondent is Charged:

After considering all the pleadings and the evidence before me, pertinent portions of which are commented on below, I find:

CASE NO. 69,935 (TFB NO. 8513471-13A): COUNT I

Respondent, through his employment at the Family Legal Centers of Chawk and Associates, P.A., was retained by ██████████ R█████████, ██████████ to represent Mr. R█████████ on a careless driving charge. At their initial consultation on November 8, 1984, Mr. R█████████ told respondent that his next court date was November 27, 1984 and that the case was set for trial on that date.

On November 19, 1984, Mr. R█████████ delivered a check in the amount of \$125.00 to respondent. At that time a discussion was held as to whether or not Mr. R█████████ would need to be present for court on November 27, 1984. Respondent told Mr. R█████████ that he would not need to be in court. Respondent told Mr. R█████████ that he would be filing a motion for continuance of the November 27, 1984 court date. The motion was prepared and delivered to respondent's secretary, but the motion was never filed with the Court. Respondent took no steps to insure that the motion for continuance had, in fact, been filed.

On November 27, 1984, Mr. R [REDACTED] did show up for traffic court, but respondent did not appear. Since no motion for continuance had been filed, Mr. R [REDACTED] was forced to proceed to trial on the careless driving charge without being represented by respondent. If Mr. R [REDACTED] had not shown up for court on November 27, 1984 it is very likely that a *capias* would have been issued for his arrest.

Respondent cannot abdicate to his secretary the duty of assuring that a motion for continuance is both filed and granted. It was incumbent upon respondent to insure that his motion for continuance was in fact granted.

CASE NO. 69,935 (TFB NO. 8513531-13A): COUNT II

On or about January 28, 1985, [REDACTED] J [REDACTED] retained Family Legal Centers of Chawk & Associates, P.A. to submit final mortgage payments and obtain a satisfaction of a second mortgage on property being purchased from [REDACTED] and [REDACTED] S [REDACTED]. Respondent represented Mr. J [REDACTED]. [REDACTED] J [REDACTED] testified that he emphasized to the respondent during the initial conference the problems he was having with the S [REDACTED]. He was quite concerned about paying off the second mortgage because he found the S [REDACTED] untrustworthy. The respondent informed Mr. J [REDACTED] that he should not be concerned because there were ways to take care of problems of that type. Respondent testified that he was informed by a Chawk Legal Services manager that they did not accept funds into trust accounts in matters of this type, and he did not investigate other means to protect his client's interests. Without further conferring with Mr. J [REDACTED], respondent mailed the J [REDACTED] check for \$2,050.00, which constituted the balance of the second mortgage, directly to the S [REDACTED] in California enclosed a request that the S [REDACTED] execute the Satisfaction of Mortgage and return it to the respondent for recording. The S [REDACTED] cashed the check but did not return the Satisfaction of Mortgage. Shortly thereafter, Mr. Hart left the employment of Family Legal Services and the representation of the [REDACTED] was undertaken by Jerry M. Nelson, also an attorney with Family Legal Centers of Chawk and Associates. A letter sent by Mr. Nelson to the S [REDACTED] requesting that they return the properly executed Satisfaction of Mortgage was returned by the post office as addressee unknown. Within approximately four (4) months following payoff of the second mortgage, an attorney was successful in acquiring the Satisfaction of Mortgage. [REDACTED] ?

Based on the testimony, it is clear that the primary, if not sole reason, for which Mr. J [REDACTED] sought out the assistance of an attorney at Family Legal Centers was his concern that his interest be protected when he submitted the balance of the second mortgage. Respondent did not take the proper steps to protect Mr. J [REDACTED]'s interests, but simply mailed the check to the S [REDACTED] and asked them to execute the mortgage.

CASE NO. 69,935 (TFB NO. 8619284-13A): COUNT III

While working for the Family Legal Centers of Thomas Joel Chawk, respondent represented [REDACTED] P [REDACTED] on a charge of violation of right of way following a traffic accident on July 29, 1982. On August 12, 1982 respondent filed a Notice of Appearance as attorney of record, and a plea of not guilty on behalf of Mr. P [REDACTED]. Trial was set for September 17, 1982, and both respondent and Mr. P [REDACTED] were notified of that fact. Respondent informed Mr. P [REDACTED] that it was unnecessary to attend the hearing scheduled for September 17 and on that date filed a Motion for - not guilty

Continuance. Neither respondent nor Mr. P [REDACTED] appeared at the scheduled hearing. The Motion for Continuance was denied on October 14, 1982. Respondent filed a motion for trial, which was denied on October 15, 1982. Respondent and Mr. P [REDACTED] were notified by the Court that Mr. P [REDACTED] was adjudicated guilty, and that his driver's license would be suspended unless he paid a \$65.00 fine on or before November 15, 1982. Testimony indicated that this notice was received either by Mr. P [REDACTED] or by Mr. P [REDACTED]'s wife. On or about March 11, 1983, Mr. P [REDACTED]'s license was suspended for failure to pay the amount assessed. After having been confronted with this information, respondent paid Mr. P [REDACTED]'s fine and Mr. P [REDACTED]'s license was reinstated.

The Court finds that the aforesaid conduct does not warrant finding that the respondent is guilty of a violation of the Code of Professional Responsibility. At the time of this incident, respondent had been a member of The Florida Bar for only approximately one (1) year. Although it was an error for him to inform his client that it was unnecessary to appear at the hearing on September 17, 1982, there is no evidence to support Mr. P [REDACTED]'s contention that he was damaged by the denial of the Motion for Continuance and his non-appearance. Further, both Mr. P [REDACTED] and the respondent had been notified that Mr. P [REDACTED]'s driver's license would be suspended if he did not pay the assessed fine by November 15, 1982, but the responsibility for failing to pay that fine rests with Mr. P [REDACTED] and not with the respondent.

On December 27, 1982, respondent filed an answer to a complaint for damages for personal injuries, arising out of the traffic accident on July 29, 1982, and a counterclaim for damages on behalf of the P [REDACTED]. Although P [REDACTED] contended that Halton Hart represented him in the personal injury action, the testimony at trial suggests that the respondent filed the answer to a complaint for damages and the counterclaim as a personal favor for Mr. P [REDACTED]. It further appears that the P [REDACTED]'s automobile insurance company's attorney very quickly took over representation in the case. Since respondent was not the attorney for the defendant in this matter, all allegations related to that representation are without merit.

During and after the period in which respondent provided representation to the P [REDACTED] on the violation of right of way charges, he developed and maintained a close personal relationship with them. He, in fact, moved in with the family and was treated in many respects as a family member. Respondent and the P [REDACTED] discussed on several occasions respondent's desire to purchase realty from the P [REDACTED]. Mr. and Mrs. P [REDACTED] testified that respondent suggested quit claiming the property to him to protect it against a possible judgment in the personal injury action. However, Mrs. P [REDACTED] testified that she never had any intention of making this transfer, and that this was made clear to respondent. Allegations that respondent attempted to rent out the P [REDACTED]'s property in Lutz, Florida by falsely representing to the prospective tenants that he was owner of that property were not supported by clear and convincing evidence. Much of the evidence presented by the P [REDACTED] at the hearing was confusing and at times contradictory, on this as well as on other points. The referee notes that respondent may have used poor judgment in attempting to purchase property from the P [REDACTED] during a time when he was their attorney. However the predominate relationship between the individuals involved was, at this time, personal. It is not felt that the facts support finding any violation of the Code of Professional Responsibility.

not guilty

On or about October 24, 1984, H [REDACTED] retained Family Legal Services of Chawk & Associates, P.A. to represent him in a petition to modify a final judgment of dissolution. In addition, Mr. H [REDACTED] wished the question of visitation to be addressed. Respondent paid \$200.00 towards attorney's fees and \$35.00 requested by respondent to cover the cost of out of state service on his ex-wife. Service was delayed because the cost turned out to be \$40.00. Although the Chawk agency did not promptly notify Mr. H [REDACTED] that they were delaying service until the \$40.00 was paid, and in fact Mr. H [REDACTED] discovered the reason for delay only after repeatedly contacting Family Legal Centers, the period of delay was not significant and there was no harm to the respondent occasioned thereby.

Due to a conflict within his schedule, respondent was unable to attend a hearing set for January 21, 1985, on Mr. H [REDACTED]'s ex-wife's petition. Respondent filed a Motion for Continuance, alleging that the case was not at issue when set for hearing, and an associate from the Family Legal Centers attended in respondent's stead and argued the Motion. Because of his conviction that the Motion for Continuance would of necessity be granted, respondent did not meet with the H [REDACTED] after January 9, 1985 to further review their position regarding the petition to modify. Further, the respondent's review of the case with James Heptner, the attorney who went to the hearing, may have been perfunctory. The Motion for Continuance was denied and a hearing was held on the ex-wife's motion to modify final judgment of Dissolution of Marriage to address change of custody and visitation. Although testimony indicated that Mr. Heptner was not familiar enough with the case to properly represent Mr. H [REDACTED] at the hearing, there was no significant prejudice to Mr. H [REDACTED].

On or about January 23, 1985 a contempt hearing was held based on Mr. H [REDACTED]'s failure to comply with visitation ordered on January 21, 1985. Notice of that contempt hearing was sent to an office of Family Legal Centers of Thomas Joel Chawk. However, respondent had been transferred from that office and the agency failed to notify respondent that a contempt hearing was to be held. Respondent, by chance, was present when the contempt hearing occurred and represented Mr. H [REDACTED] in that proceeding. Little, if any, prejudice occurred to Mr. H [REDACTED] based on his not being present during the proceeding. Furthermore, the failure to notify Mr. H [REDACTED] of the proceeding was not due to any fault on the part of respondent since he himself had not been properly notified.

III. Recommendation as to whether or not the Respondent should be found Guilty: I make the following recommendation as to guilt or innocence:

CASE NO. 69,935

As to Count I (TFB NO. 8513471-13A), I recommend that the respondent be found guilty, and specifically that he be found guilty of violating DR 6-106(a)(3) (Neglect of a legal matter entrusted to him).

As to Count II (TFB NO. 8513531-13A), I recommend that the respondent be found guilty of violating DR 6-101(a)(1) (An attorney shall not handle a legal matter which he knows, or should know, that he is not competent to handle), and DR 6-101(a)(2) (An attorney shall not handle a legal matter

without preparation adequate in the circumstances).

As to Count III (TFB NO. 8619284-13A), I recommend that respondent be found not guilty on all charges.

CASE NO. 69,991 (TFB NO. 8513505-13A)

As to Case No. 69,991, I find respondent not guilty as to all charges.

IV. Recommendation as to Disciplinary Measures to be Applied:
I recommend that the respondent receive a public reprimand and that he be assessed the costs attributable to Counts I and II of Case No. 69,935, along with any other reasonable costs incurred in this matter.

V. Personal History and Past Disciplinary Record:

- (1) Age: 31
- (2) Date Admitted to Bar: 1/21/81
- (3) Prior disciplinary convictions and disciplinary measures imposed therein: Respondent has no prior disciplinary history.

VI. Statement of Costs and Manner in which Costs Should Be Taxed: I find the following costs were reasonably incurred by The Florida Bar.

Costs of File No. 8513471-13A

A. Grievance Committee Level	
1. Administrative Costs	\$150.00
2. Court Reporter Costs	880.40
3. Staff Investigator Expenses	92.80
B. Referee Level	
1. Administrative Costs	150.00
2. Staff Counsel Expenses	12.13
3. Staff Investigators Expenses	41.83
4. Court Reporter Costs	241.85
5. Assistant Staff Counsel Expenses ...	22.14

Costs of File No. 8513531-13A

A. Grievance Committee Level	
1. Administrative Costs	150.00
2. Court Reporter Costs	352.50
B. Referee Level	
1. Administrative Costs	150.00
2. Staff Counsel Expenses	12.14
3. Staff Investigator Expenses	55.96
4. Court Reporter Costs	241.82
5. Staff Counsel Expenses	22.15

TOTAL AMOUNT DUE TO DATE: \$2,575.72

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 thirty (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 24th day of November, 1987.


HONORABLE PHILIP A. FEDERICO
Referee

Copies furnished to :

Thomas E. DeBerg, Assistant Staff Counsel, The Florida Bar
Richard T. Earle, Jr., Attorney for Respondent
John T. Berry, Staff Counsel, Tallahassee

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

HALTON J. HART,

Respondent.

CONFIDENTIAL

Case No. 69,935 & 69,991
TFB No. 8513471-13A
(Formerly 13A85H48)

STATEMENT OF COSTS

Grievance Committee Level:

1. Administrative costs at the Grievance Committee Level, Rule 3-7.5(k)..... \$ 150.00
2. Staff Investigator Expenses: (Martin Egan - 5/29/85 & 6/6/85)
 - a. Time Expended (4 hours @ 14.00). 56.00
(1 hour @ 15.50) 15.00
 - b. Mileage (60 miles @ .27)..... 16.20
(20 miles @ .28) 5.60TOTAL 92.80
3. Court Reporter Costs: (Clark Reporting Service - 1/6/86)
 - a. Transcript 866.40
 - b. Tapes..... 14.00TOTAL 880.40

Referee Level:

1. Administrative costs at the Referee Level, Rule 3-7.5(k) 150.00
2. Staff Counsel Expenses: (Thomas E. DeBerg - Status Conference on 5/6/87, Pre-Trial Conference on 6/4/87 and Trial on 7/1/87)
 - a. Transportation and Meals 12.13
3. Staff Investigator Expenses: (Ernest Kirstein - 10/26-27/87)
 - a. Time Expended (.5 hours) 7.50
 - b. Mileage (50 miles @ .29 by 3) 3.83TOTAL 11.33
4. Staff Investigator Expenses: (Martin Egan - serving subpoenas 10/30/87)
 - a. Time Expended (1.5 hours)..... 23.25
 - b. Mileage (25 miles @ .29)..... 7.25TOTAL 30.50
5. Court Reporter Costs: (Morgan J. Morey Reporting Service - 11/3/87)
 - a. Appearance Fee..... 47.50

b. Transcript Fee.....	141.88	
c. Postage	1.83	
d. Copying Fee	50.64	
TOTAL		241.85
6. Staff Counsel Expenses: (Thomas E. DeBerg - Final Hearing 11/3/87)		9.22
7. Staff Counsel Expenses: (Richard Greenberg - Final Hearing 11/3/87)		12.92

TOTAL AMOUNT DUE TO DATE: 1,591.15

The foregoing costs have been incurred in the above-styled cause at the Grievance Committee and Referee level by The Florida Bar.

Respectfully submitted,

Thomas E. DeBerg
 THOMAS E. DEBERG
 Assistant Staff Counsel
 The Florida Bar, Suite C-49
 Tampa Airport, Marriott Hotel
 Tampa, Florida 33607
 (813) 875-9821

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing STATEMENT OF COSTS has been furnished by Hand Delivery, to RICHARD T. EARLE, JR., Attorney for Respondent, at 150 Second Avenue North, Suite 1220, St. Petersburg, Florida 33701; and by Regular U.S. Mail to JOHN T. BERRY, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301; on this 19 day of November, 1987.

Thomas E. DeBerg
 THOMAS E. DEBERG

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.
HALTON J. HART,
Respondent.

CONFIDENTIAL

Case No. 69,935 & 69,991
TFB No. 8513531-13A
(Formerly 13A85116)

STATEMENT OF COSTS

Grievance Committee Level:

1. Administrative costs at the Grievance Committee Level, Rule 3-7.5(k) \$ 150.00
2. Court Reporter Costs: (Clark Reporting Service - 3/10/86)
 - a. Transcript 285.00
 - b. Attendance..... 65.00
 - c. Tapes 2.50
 - TOTAL 352.50

Referee Level:


1. Administrative costs at the Referee Level, Rule 3-7.5(k) 150.00
2. Staff Counsel Expenses: (Thomas E. DeBerg - Status Conference on 5/6/87, Pre-Trial Conference on 6/4/87 and Trial on 7/1/87)
 - a. Transportation and Meals 12.14
3. Staff Investigator Expenses: (Ernest Kirstein - 10/26-27/87)
 - a. Time Expended (.5 hours) 7.50
 - b. Mileage (50 miles @ .29 by 3) 3.83
 - TOTAL 11.33
4. Staff Investigator Expenses: (Martin Egan - serving subpoenas 10/30/87)
 - a. Time Expended (2.5 hours)..... 38.25
 - b. Mileage (22 miles @ .29)..... 6.38
 - TOTAL 44.63
3. Court Reporter Costs: (Morgan J. Morey Reporting Service - 11/3/87)
 - a. Appearance Fee..... 47.50
 - b. Transcript Fee..... 141.86
 - c. Postage 1.83
 - d. Copying Costs 50.63
 - TOTAL 241.82
4. Staff Counsel Expenses: (Thomas E. DeBerg - Final Hearing 11/3/87)..... 9.22

5. Staff Counsel Expenses: (Richard Greenberg -
Final Hearing 11/3/87)..... 12.93

TOTAL AMOUNT DUE TO DATE: 984.57

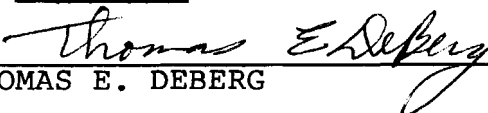
The foregoing costs have been incurred in the above-styled cause at the Grievance Committee and Referee level by The Florida Bar.

Respectfully submitted,


THOMAS E. DEBERG
Assistant Staff Counsel
The Florida Bar, Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607
(813) 875-9821

CERTIFICATE OF SERVICE

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THOMAS E. DEBERG