

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. 69,937

vs.

The Florida Bar
File No. 11J86M42

MICHAEL H. WEISSER,
Respondent.

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.5, Rules of Discipline, final hearings were held on September 18, 1987 and October 9, 1987. All of the pleadings, notices, motions, orders, transcripts, and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The following attorneys appeared as counsel for the parties:

On Behalf of The Florida Bar: Patricia S. Etkin
On Behalf of Respondent: Nicholas R. Friedman

II. SPECIFIC FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED: After considering the pleadings and evidence before me, I find:

Findings as to Count I

1. [REDACTED] and his wife, [REDACTED], and [REDACTED] (hereinafter "[REDACTED]") together with [REDACTED], [REDACTED], were defendants in an action filed by [REDACTED] plaintiff, in the Circuit Court, Broward County, Case No. 82-5208 (hereinafter "civil action").
2. Respondent represented the [REDACTED] in connection with the civil action.
3. By order dated January 18, 1983, trial was scheduled for the week commencing February 7, 1983.

4. Calendar call was held February 7, 1983.
5. Respondent failed to appear at the aforementioned calendar call.
6. Trial in the civil action was scheduled for February 10, 1983.
7. Respondent failed to appear at the aforementioned trial.
8. Respondent filed a motion to continue the trial (hereinafter referred to as "motion for continuance").
9. Respondent's motion for continuance was recorded by the Clerk's office for filing in the civil action on February 10, 1983, the day of trial.
10. Respondent failed to request a hearing on his motion for continuance.
11. Respondent failed to contact the Court to ascertain the status of his motion for continuance and specifically, whether the trial scheduled for February 10, 1983 had been continued.
12. Respondent's clients, the [REDACTED] were neither notified of nor represented at the trial held February 10, 1983.
13. At the conclusion of the trial, the Court entered a final judgment in favor of plaintiff and against the [REDACTED] for the sum of Thirty Thousand Four Hundred Ten Dollars and Fifty-Six Cents (\$30,410.56), with interest, plus costs and attorneys fees (hereinafter "final judgment").
14. The entry of the final judgment against the [REDACTED] was the result of Respondent's neglect in failing to appear on his clients' behalf at trial.

Findings as to Count II

1. In April 1983, the judge signed the order of final judgment in the civil action, referred to in Paragraph 13, above.
2. In April 1983, upon receipt of a copy of the final

judgment, Respondent filed a Motion to Vacate Final Judgment.

3. Respondent's Motion to Vacate Final Judgment was denied.

4. Respondent thereafter filed a Renewed Motion to Vacate Final Judgment.

5. Respondent's Renewed Motion to Vacate Final Judgment was denied.

6. On or about June 1, 1983 Respondent filed a Notice of Appeal seeking review of the final judgment and the order denying, his Renewed Motion to Vacate Final Judgment (hereinafter referred to as "appeal").

7. Respondent made demand upon [REDACTED] and/or [REDACTED] [REDACTED] for payment of his legal fees.

8. Respondent advised the [REDACTED] that unless payment was received, Respondent would not prepare a brief or proceed with the appeal.

9. Respondent's action of conditioning his handling of the appeal upon payment of fees was improper in that an appeal was necessitated by Respondent's neglect.

10. The [REDACTED] did not pay Respondent the fee he demanded.

11. Respondent failed to file a brief or take action to pursue the appeal.

12. The appeal was dismissed for lack of prosecution.

III. RECOMMENDATIONS AS TO WHETHER RESPONDENT SHOULD BE

FOUND GUILTY: I recommend that Respondent be found guilty of all the violations of the Code of Professional Responsibility charged in the Bar's Complaint and, specifically, that he be found guilty of violating the following:

1. As to Count I, I recommend that Respondent be found guilty of violating Disciplinary Rule 6-101(A)(3) (neglect of a legal matter) of the Code of Professional Responsibility.

2. As to Count II, I recommend that Respondent be found guilty of violating Disciplinary Rule 1-102(A)(6) (conduct that adversely reflects on fitness to practice law) of the Code of Professional Responsibility.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED: I recommend that Respondent receive a public reprimand.

In recommending discipline, I reject Respondent's position that either medication or his physical or mental impairment following a skiing accident caused the misconduct alleged in the Bar's complaint and, therefore, do not consider Respondent's medical condition to be a mitigating factor. I have, however, considered Respondent's lack of prior disciplinary history as a factor in recommending discipline.

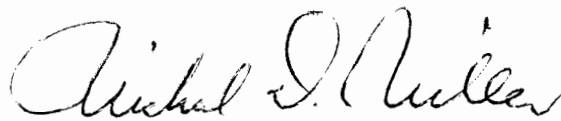
V. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED: I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs	
Rule 3-7.5(k)(1), Rules of Discipline:	
Grievance Level	\$ 150.00
Referee Level	150.00
Court Reporter:	
Grievance Committee Hearing	876.95
Hearings before a Referee	1,747.53
Depositions	1,461.60
Witness Fees and Subpoena Service	26.00
Cost of Examination by Document	
Examiner and appearance at hearing	
(September 18, 1987)	1,925.00
Photocopies, Postage	<u>180.00</u>
TOTAL	6,517.08

It is recommended that the costs of these proceedings, in the amount of Six Thousand Five Hundred Seventeen Dollars and Eight Cents (\$6,517.08), be taxed against Respondent. It is further recommended that execution issue with interest at the rate of twelve percent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order in this cause, unless time for payment

is extended by the Board of Governors of The Florida Bar.

Dated this 6th day of ^{Nov.}~~October~~, 1987.



MICHAEL D. MILLER
Referee

Copies to: Patricia S. Etkin, Attorney for Complainant
Nicholas R. Friedman, Attorney for Respondent