IN THE CIRCUIT COURT FOR
BROWARD COUNTY, FLORIDA

CASE NO.: 70,114
70,907

JUDGE: MARK A. SPEISER
(REFEREE)

THE FLORIDA BAR :
Complainant :
:
vs. :
:
MICHAEL J. KNOWLES :
Respondent :
:
:

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, hearings were held on December 11, 1987 and December 18, 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: Randi Klayman Lazarus
For the Respondent: Pro Se

II. FINDINGS OF FACTS AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENTS CHARGED

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

Case No. 70,114

COUNT I

Respondent in May, 1985 personally opened a charge account with Hopkins-Carter, a Miami marine hardware company. The agreement for credit covered all charges made for his yacht "Thriller" by the Respondent's boat captain Richard Wagner.

Between May 5, 1985 and June 3, 1985, $531.29 of charges were incurred by this account. Following continued unsuccessful efforts by Hopkins-Carter to secure payment of this account, Hopkins-Carter sued the Respondent for this sum.

Respondent despite knowledge of the existence and legitimacy of this claim never contacted Hopkins-Carter to work out a payment plan. Respondent who does not despute the amount of the unpaid charges claims he gave Richard Wagner the cash to pay this account. Yet, Respondent who knew of the pendency of this lawsuit never defended himself against this claim and consequently a final judgement by default was entered against him in the amount of $531.29 plus costs and attorneys fees.

COUNT II

Ernestine Ballard who was employed as Respondent's secretary for approximately 8 to 10 weeks was issued two salary checks on or about November 27, 1985 (#2951) and on or about December 6, 1985 (#2969). These checks were drawn on the Respondent's law office account maintained at the Peoples National Bank of Miami. Respondent concedes sums represented by these two checks each in the amount of $229.96 were due to Ms. Ballard. Although he admits signing check #2969, he claims his signature is not on check #2951 and that Karen Saxon, an employee signed his name on that check without his authorization. Respondent however, never reported this to the bank, the police or state attorney.

Ms. Ballard took both of these checks to her neighborhood Winn-Dixie supermarket to cash them. After receiving payment, Ms. Ballard was subsequently notified by Winn-Dixie that both checks were dishonored. Winn-Dixie threatened to take legal action against her because of the dishonored checks. Ms. Ballard advised Respondent on numerous occasions of the existence of the dishonored checks and Winn-Dixie's threatened lawsuit against her. After she left the Respondent's employ, she continued to attempt to contact the Respondent concerning this matter but Respondent never returned her messages.

On or about January 18, 1986, Ms. Ballard filed a complaint with the Florida Bar because of the aggravation and embarrassment these course of events caused her. Ultimately, the Respondent on April 10, 1986 issued a cashiers check to Winn-Dixie in an amount to cover these two dishonored checks to

Ms. Ballard.

Although Ms. Ballard is college-educated, Respondent attempts to justify what occurred by pointing out that Ms. Ballard lacked any legal experience and could not cope with the hectic pace of his office. Respondent claims he did Ms. Ballard a favor by hiring her because she was otherwise unemployable. Furthermore, Respondent contends he hired Ms. Ballard under a program which would reimburse him for her salary, which sum and payment he never received. Respondent claims Ms. Ballard suffered no financial loss, but only some embarrassment. During this period, Respondent indicates that his ex-wife had absconded with their child, and that his bank account was drained because he had expended considerable sums in trying to locate them.

COUNT III

On or about March 23, 1985, the Respondent purchased carpet from Miami Rug Co. which was to be installed at his law office. Respondent paid a deposit of $252.53 and had a balance of $400 to be paid following installation of the carpet. The carpet was installed but despite numerous letter and phone calls made by a representative of Miami Rug to the Respondent, no response was ever forthcoming explaining the Respondent's failure to pay. Respondent never attempted to contact Miami Rug to work out a payment plan. Following a letter Miami Rug sent to Respondent approximately four months following installation indicating the balance due and inquiring whether installation was satisfactory, no complaint or response was furnished by the Respondent. Miami Rug then sued Respondent and a final judgement by default was entered against the Respondent on July 23, 1985 in the amount of $400 plus costs.

Respondent claims at the hearing the carpet was not installed to his satisfaction. When asked why if this were true why did he not defend himself against this lawsuit, he indicated it was not cost effective for him to do so and that it was his intention all along to pay Miami Rug. As of this date, Miami Rug has not been paid.

Respondent also contends this matter occurred while his

ex-wife kidnapped his child and therefore he did not have the opportunity or energy to defend himself.

COUNT IV

Between January and April, 1985 Javan Thompson retained the Respondent to represent him in a paternity and child custody matter. Thompson paid Respondent $1,500 to institute this proceeding and an additional $1,550 subsequent thereto pursuant to a written retainer agreement.

On November 27, 1985 a final hearing was set at 10:00 A.M. before Dade Circuit Judge Greenbaum. Thompson contends that the Respondent never notified him that this matter had been scheduled. After one hour of this hearing had elapsed, Respondent telephoned Thompson at work to advise him that everybody was in Court waiting for him. Thompson could not leave work due to his lack of notice of this hearing and his consequent inability to make prior arrangements to attend. Thompson arranged to meet the Respondent in his office later that day but the Respondent never showed up as he indicated he would. Thompson subsequently had another attorney contact Respondent and Respondent agreed to furnish Thompson with his files so that they could be reviewed and handled by his new lawyer. Thompson again went to Respondent's office, this time to retrieve his files, but was unsuccessful because Respondent was not there. Several more unanswered telephone calls were made by Thompson to the Respondent, but all to no avail Respondent has never turned over these files to Thompson's new attorney.

As a result of this November 27, 1985 hearing which Thompson had no knowledge of until it was to late for him to attend, the opposing party received custody of the child, he had to pay her lawyer's fees, he had his salary garnished, his child support was increased and his visitation rights were restricted.

Respondent contends without any corroborating documentation that the final hearing on this cause was not on November 27, 1985 but one month prior to that date (for which Respondent claims Thompson was notified of) and that following that hearing at which testimony was taken, Judge Greenbaum took the matter under advisement and that November 27, 1985 was merely

the date the Court to was to report to the lawyers its final decision.

Respondent further claims that Judge Greenbaum determined Thompson to be the father of the child and that the increase in monthly child support was primarily to cover accrued arrearages. Respondent claims he did in fact secure a determination of custody and visitation rights, but that Thompson was merely frustrated with the results. Respondent contends he never apprised Thompson his wages were going to be garnished because the Judge personally informed him of that fact.

Lastly, Respondent indicated he never surrendered his Thompson files to subsequent lawyer(s) because they never furnished him with written authorization from Thompson to release them.

COUNT V

On or about November 13, 1985 Jeanine Smith retained Respondent to represent her in a divorce matter and she paid him $500 to initiate the proceedings. On March 24, 1986, Smith attended the schedule final hearing, but the Respondent did not appear. Smith who took a day off from work without pay to attend, was never notified by the Respondent that he had cancelled the hearing. She only learned of that fact once she called Respondent's office from the courthouse and was apprised by Respondent's secretary of the cancellation.

Smith called Respondent's office over 20 times after this March 24, 1986 hearing but he never returned her calls. On April 11, 1986, the Circuit Court Judge entered an order of default against Smith. On April 21, 1986, Smith sent Respondent by certified mail a letter detailing her plight and frustrations, a copy of which was introduced in evidence as an exhibit. Even after receipt of this letter by Respondent's office, Respondent continued to ignore Smith's request for attention.

Smith who was unaware that a default judgement had been entered against her subsequently secured another lawyer to represent her who Smith claims was unable to get her files from the Respondent. Consequently her new attorney had to secure a

court order to retrieve her files from the Respondent.

CASE NO. 70,907

COUNT I

In October, 1985 Mary Walton agreed to pay the Respondent $300 to redeem certain bonds held by her that were issued by the Pasco County Water and Sewer District. Respondent was to be paid his fee following the redemption of the bonds.

On or about May 5, 1986, Respondent received two checks totally $2,350 representing the bond proceeds. These checks, made payable to Respondent were deposited in his trust account upon receipt. By letter dated May 5, 1986, Respondent advised Ms. Walton of the foregoing and indicated that upon clearance of these checks, which he stated would be by the end of the week, he would forward to Ms. Walton a trust account check in the amount of $2,050, the difference representing his agreed upon $300 fee.

On or about May 12, 1986, Respondent issued check #567 drawn on his trust account payable to Ms. Walton in the amount of $2,050. Ms. Walton was then notified by her bank that the foregoing check issued to her by the Respondent had been dishonored. Ms. Walton advised the Respondent of this fact, he told her to redeposit the check which she did at the bank where Respondent maintained his aforementioned trust account where upon she was informed the account was closed. Subsequently, Ms. Walton was told by Respondent's secretary that he would meet her at her home to make good on the bounced check which he never did. Following numerous unsuccessful efforts to contact the Respondent, Ms. Walton went to the Florida Bar in June, 1986. It was not until December 5, 1986, three days after the Florida Bar Grievance Committee hearing that Respondent paid the sum owed Ms. Walton by leaving the money with her sister.

Respondent claims that between June and August, 1986 he attempted to contact Ms. Walton several times to resolve this matter but that she was out of town.

A Florida Bar auditor testified he reviewed the Respondent's trust account in the period of May-June, 1986 and that it revealed that as of May 12, 1986, the date check #567 was

purportedly written, there were sufficient funds in the Respondent's account to cover the check. As of the date the check was presented to Respondent's bank for payment June 6, 1986, there were insufficient funds in his account to honor the draft. The auditor however was unable to testify when the Respondent actually mailed the check to Ms. Walton. The cover letter with the check was dated May 9, 1986. The check itself was post-dated to May 12, 1986. Ms. Walton indicates she did not receive the check until Memorial Day (end of May, 1986). The subject check indicates it was deposited by Ms. Walton at her bank on June 2, 1986.

Respondent claims that at the time the check was presented to his bank for payment June 6, 1986, he was in trial in Virginia and that he had withdrawn all the funds from his trust account and placed it in his safe since he thought the IRS was investigating him.

COUNT II

In November, 1984, Natasha Wright retained the Respondent to represent her in a claim arising out of an auto accident. A contingency agreement was signed by Ms. Wright.

Ms. Wright contends the Respondent never communicated with her concerning the status of the case. Other than filing a complaint on her behalf in May, 1986, Ms. Wright claims the Respondent did little to represent her and exacerbated frustrations by neglecting to return her telephone calls.

Respondent contends that he did help Ms. Wright by helping her to get her car repaired which she was otherwise unable to do on her own. Respondent further indicates that Ms. Wright never forwarded to him the identities of any potential witnesses to the accident. In sum, Respondent was of the opinion that it was a very poor case on Ms. Wright's behalf and there was nothing more that he could do other than what he did, to assist her.

COUNT III

In April or May, 1985, Charlie Mae Culpepper retained the Respondent to represent her in a divorce proceeding. A

written fee agreement entered between the two provided for a $75 retainer fee and a balance due of $325 all of which was paid.

On April, 1985, Respondent filed a petition for dissolution of marriage on Ms. Culpepper's behalf. The aforementioned petition however omitted any prayer for special equities. Consequently at the February, 1986 final hearing the Circuit Court would only grant the divorce if Ms. Culpepper forfeited her special equities since they had not been properly plead. Following this hearing Respondent informed Ms. Culpepper that her divorce was final but that the property settlement had not been concluded. Ms. Culpepper attempted to contact the Respondent continuously after the February, 1986 hearing both by telephone and in person to no avail to resolve the property settlement. She made several appointments with the Respondent but he never appeared nor notified her to explain his absence.

In July, 1986 Ms. Culpepper contacted the Clerk of Court's office and was informed to her chagrin that she was not yet divorced. She thereafter persisted with no success to contact the Respondent who never notified her that he was no longer representing her or seeking to withdraw as counsel.

IV. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY

Case No. 70,114

Count I

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating Disciplinary Rules 1-102 (a) (4) and 1-102 (a) (6) of the Code of Professional Responsibility and Rule 11.02 (3) (a) of the Integration Rules of the Florida Bar.

Count II

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating Disciplinary Rules 1-102 (a) (4) and 1-102 (a) (6) of the Code of Professional Responsibility and Rule 11.02 (3) (a) and (b) of the Integration Rules of the Florida Bar.

Count III

I recommend that the Respondent be found guilty and

specifically that he be found guilty of violating Disciplinary Rules 1-102 (a) (4) and 1-102 (a) (6) of the Code of Professional Responsibility and Rule 11.02 (3) (a) of the Integration Rules of the Florida Bar.

Count IV

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating Disciplinary Rules 1-102 (a) (4), 1-102 (a) (6), 6-101 (a) (3) and 9-102 (b) (4) of the Code of Professional Responsibility and Rule 11.02 (3) (a) of the Integration Rules of the Florida Bar.

Count V

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating Disciplinary Rules 2-110 (a) (2), 2-110 (b) (4) and 6-101 (a) (3) of the Code of Professional Responsibility.

Case No. 70,907

Count I

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating Disciplinary Rule 9-102 (b) (4) of the Code of Professional Responsibility and Rule 11.02 (4) of the Integration Rule of the Florida Bar.

Count II

I recommend that the Respondent be found not guilty and specifically that he be found not guilty of violating Disciplinary Rule 6-101 (a) (3) of the Code of Professional Responsibility.

Count III

I recommend that the respondent be found guilty and specifically that he be found guilty of violating Disciplinary Rule 6-101 (a) (3) of the Code of Professional Responsibility.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that the Respondent be suspended for a fixed of three years, thereafter until he shall prove his rehabilitation and for an indefinite period until he shall pay the cost of this proceeding and make restitution to his clients.

The Respondent in these proceedings by his actions or

perhaps more appropriately characterized as lack of action has stigmatized the reputation of his chosen profession. Respondent, as demonstrated to this Referee in Counts I-III of Case No. 70,114, intentionally availed himself of goods (boat supplies and carpet) and services (secretarial help) which was provided to him with the reasonable expectation that he, as would any other member in good standing in our profession, make prompt and timely payment.

On the contrary, the Respondent refused to accept financial responsibility for the goods and services he received and utilized. He angered Hopkins-Carter Hardware Company, Miami Rug and Ernestine Ballard by never returning their calls to the extent that lawsuits had to be initiated against him and complaints filed with the Bar. The exasperations experienced by these companies and individuals was deeply sensed by this Referee who witnessed and perceived their frustrations while they testified. The indifference and rather unsympathetic position of the Respondent was equally evident by testimony revealing that he failed to defend himself in lawsuits brought by Hopkins-Carter and Miami Rug to recover funds they were duly entitled to. His indefference and unwillingness to accept responsibility is revealing that by the entry of default judgements against him in both these suits. His callousness is demonstrated by his statement during these proceedings to the effect that Ms. Ballard merely suffered an emotional and not a financial loss.

This Referee is of the further opinion that aside from demonstrating conduct pointing to improper personal and guasi-personal gain, the Respondent's fitness to practice law has been called to question by evidence of his violation of duties owed to his clients Thompson and Smith (identified in Counts IV and V respectively of Case No. 70,114) and Walton and Culpepper (identified in Counts I and III respectively of Case No. 70,907). In the Thompson, Smith and Culpepper cases, the Respondent accepted fees from these clients and affirmatively indicated to them that he would represent them in Court in their respective divorce proceedings. Unfortunately, these individuals, unfamiliar

with one another shared a common misfortune stemming from the Respondent's lack of diligence in performing and completing the legal services he agreed and was compensated to undertake. Were each of these incidences singular and isolated the Respondent's conduct and purported explanations and excuses offered in support thereof might be palpable. When viewed as a whole however which is the perspective this Referee is charged to undertake a contrary conclusion is inescapable.

In these three cases the Respondent's neglect caused injury to the victims. Thompson was denied his opportunity to appear at his final divorce hearing. Thompson was totally and justifiably frustrated by Respondent's refusal to meet with him after this hearing to attempt to resolve the predicament caused by the Respondent. Thompson was further injured by Respondent's failure to respond to telephone calls or furnish Thompson with his files so he could facilitate his retention of new counsel.

In the Smith case, as a result of the Respondent's neglect, Smith appeared at her schedule final hearing only to learn that Respondent had cancelled it without notifying her. In addition to losing a day's work without pay, a default judgement was entered against her in this matter. Lastly, as in these related cases, since Respondent ignored Smith's untiring efforts to speak with her about his future handling of her case, she had to retain other counsel, and was unsuccessful in securing Respondent's file on her case.

In Culpepper's case, Respondent's omission to file proper pleadings precipitated a bofurcated divorce proceeding. After representing to Culpepper that she was in fact divorced. Respondent totally ignored Culpepper's efforts to get together to resolve the property settlement facet of her divorce by cancelling or not appearing for schedule appointments. The ultimate of frustrations was endured by Culpepper when contrary to Respondent's representation to her that she was divorced, she learned from the Clerk of Court that that was not true. In sum, Respondent as he so frequently did with the other identified, similarly-situated clients left Ms. Culpepper "holding the bag".

The Walton case unfolds a tale of the Respondent's total failure to timely and properly remit his clients funds. Respondent issued a trust account check to Walton representing the proceeds of bonds she entrusted him to redeem. Due to insufficient funds in his account this check bounced. The aggravation Walton endured was compounded by her following Respondent's instruction to redeposit the check at his bank only to learn that his account was closed. The financial deprivation of Walton's funds continued while Respondent again ignored her legitimate and anguished efforts to speak and meet with him so she could resolve this problem. The fact that Respondent did not ultimately refund Ms. Walton her funds until after the Bar Grievance Committee hearing confirms to this Referee that Respondent never voluntarily intended to do so.

Even assuming arguendo there were sufficient funds at the time Respondent issued the check, and there was a substantial delay between that date and the date of presentment, Respondent cannot ignore his responsibility to retain the necessary funds in that account to cover the Walton check he issued. Prior to closing that account Respondent owed a duty to his clients to insure that all checks issued had been presented for payment or alternatively to make a due diligence inquiry of holders of uncashed checks as to why presentment was not made. This was obviously not attended to nor even considered. This Referee can only characterize as borderline deceit the explanation offered by the Respondent that he removed the existing or remaining funds in his trust account and placed them in a safe to protect the money from an IRS investigation.

VI. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Respondent is a 35 year old attorney who was admitted to the Florida Bar on November 23, 1983. Respondent has had one prior disciplinary referred in Supreme Court Case No. 68,904 that resulted in the imposition of a suspension of September 26, 1986. He was reinstated on February 12, 1987.

VII. STATEMENT OF COSTS AND MANNER IN WHICH COST SHOULD BE TAXED

Administrative Costs:
(Rule 3-7.5 (k) (1), Rules of Discipline)

Grievance Level	$ 150.00
Referee Level	150.00
Court Reporter:	
Grievance Committee Hearings: July 10, 1986; July 21, 1986 December 2, 1986	1,534.95
Hearing on Motion to Disqualify Referee: December 9, 1987	37.50
Final Hearing: December 11, 1987	2,296.00
Audit	21.00
Witness Fees and Subpoena Service	26.00
Travel Costs	31.00
TOTAL:	$ 4,246.00

Mark A. Speiser

MARK A. SPEISER
CIRCUIT COURT JUDGE

Encl.

cc: Randi Klayman Lazarus,
Bar Counsel
Michael J. Knowles, Respondent
Sid J. White, Clerk
Supreme Court of Florida