


IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
SID J. WHITE
JUL 30 1987
CLERK, SUPREME COURT
By 
Deputy Clerk

THE FLORIDA BAR,

Complainant,

Case No. 70,375

v.

(TFB No. 03-85N15)

MERRILL CARLTON TUNSIL,

Respondent.

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.5, Rules of Discipline, the following proceedings occurred:

On April 15, 1987, The Florida Bar filed its Complaint in this matter, which was assigned to the undersigned Referee on April 24, 1987. The Complaint, together with all other pleadings filed in this matter, constitute the record in this case and are forwarded to the Supreme Court of Florida, with a copy to Staff Counsel of The Florida Bar.

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.

Respondent was retained by a Mr. Joe Willie Lee (hereinafter referred to as Mr. Lee) on August 24, 1984. Respondent was to pursue a worker's compensation claim

resulting from an injury received by Mr. Lee in July of 1984. An initial benefit check was issued to Mr. Lee by the insurance carrier in October of 1984. Respondent informed his client that he would require \$200.00 of that initial check. Mr. Lee gave Respondent the \$200.00 requested. There was some dispute as to whether Respondent said he would discontinue representation unless he received the \$200.00. It is also disputed as to whether the \$200.00 was in the nature of a fee or a loan, and Respondent later came under inquiry by the judge handling the compensation claim. As a result of the court's inquiry, Mr. Lee wrote a letter in January of 1985 to the Division of Workers' Compensation. The letter stated that the \$200.00 in question had been loaned by Mr. Lee to a third party as payment of that party's bill owed to Respondent. Mr. Lee filed a complaint with The Florida Bar on February 18, 1985 concerning the loan of \$200.00 and other fee matters. On March 14, 1985, in his response to The Florida Bar, Respondent characterized the \$200.00 as a loan from Mr. Lee to himself. Respondent did not sign a promissory note or loan agreement, and no security was given for the loan. Respondent did not inform Mr. Lee of their differing interests before entering into the loan transaction, nor did Respondent advise Mr. Lee to seek legal advice from another attorney. Respondent informed his client on March 7, 1985, by letter, that a money order in the amount of \$200.00 was available at his office to repay the loan. Mr. Lee went to Respondent's office and retrieved the money order. Since the filing of the Bar's Complaint, Respondent has tendered payment of interest in the amount of \$6.97 to Mr. Lee. This amount represents interest at the rate of 15% on \$200.00 from November 1984 through March 1985.

III. RECOMMENDATIONS AS TO VIOLATIONS I recommend that Respondent be found guilty of the following violations of the Code of Professional Responsibility:

Disciplinary Rule 5-104(A) (entering into a business transaction with a client when they have differing interests therein, and failing to obtain consent from the client after full disclosure) of the Code of Professional Responsibility of The Florida Bar.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined for all matters as set forth in Section II of this report, as agreed to by Respondent in his Conditional Guilty Plea for Consent Judgment, to wit:

- A. A public reprimand to be administered at an appearance before the Board of Governors of The Florida Bar, and by publication in the Southern Reporter.
- B. Payment of costs incurred by The Florida Bar in bringing this action. Such costs to be paid within thirty (30) days of the date of the Supreme Court's order imposing discipline, unless such time is extended by the Board of Governors.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.5(k)(1), Rules of Discipline, I considered the following personal history of Respondent, to wit:

Date admitted to the Bar: November 7, 1978

Prior Discipline: On October 16, 1986, Respondent was suspended for one year for violation of article XI, Rules 11.02(4) (misappropriation of trust funds) and 11.02(4)(c) (failing to comply with trust accounting procedures), and Disciplinary Rules 9-102(B)(3) (failure to maintain complete records of client's property) and 9-102(B)(4) (failure to promptly deliver to a client property he is entitled to receive) of the Code of Professional Responsibility of The Florida Bar.

VI. 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		309.85
	3. Bar Counsel Travel		000.00
B.	Referee Level		
	1. Administrative Costs	\$	150.00
	2. Court Reporter's Fees		000.00
	3. Bar Counsel Travel		000.00
	TOTAL	\$	<u>609.85</u>

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 29 day of July, 1987.


STAN R. MORRIS, REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee and all documents constituting the record in these proceedings have been mailed to SID J. WHITE, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and that a copy of the above has been provided to JOHN T. BERRY, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301. A copy of this Referee's Report has been forwarded by regular U.S. Mail to SUSAN V. BLOEMENDAAL, Bar Counsel, The Florida Bar, Tallahassee, Florida 32301, and to MERRILL CARLTON TUNSIL, Respondent, at his record Bar address of 505 East Duval Street, Suite C, Lake City, Florida 32055, this 29 day of July, 1987.


STAN R. MORRIS, REFEREE