

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

REMBERT L. LOWERY,
Respondent.

SEP 10 1987
CONFIDENTIAL

By _____
Case No. 70,416
(TFB No's. 06D87H14
and 06D87H18)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee for the Supreme Court of Florida pursuant to Rule 3-7.5(a), Rules Regulating the Florida Bar, to preside in the disciplinary action in the matter of The Florida Bar v. Rembert L. Lowery, Supreme Court Case No. 70,416, the consolidated final hearing was held on September 11, 1987.

The following attorneys appeared as counsel for the parties:

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

For the Respondent: Rembert L. Lowery, Pro se

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

COUNT I - CASE NO. 06D87H14

After considering the allegations of the complaint, matters deemed admitted, and corrections to those admissions stipulated to by all parties, the factual finding of the undersigned is as follows: In April of 1984, respondent was hired by Robert Carciello to set up a guardianship for Mary Chieco, with Mr. Carciello as guardian. Respondent established the guardianship and in June of 1984, filed a Petition to Authorize the Sale of Personal Assets. Due to respondent's failure to list a vehicle identification number on the petition, the sale was delayed. This delay did not evidence neglect, and was not the cause of a subsequent requirement that Mr. Carciello had to post an additional \$33,000.00 bond, which in fact was unrelated to any misconduct by the respondent.

In June of 1985, the Court issued a Citation to Show Cause why Robert Carciello should not be held in contempt for not filing the required annual report of guardian, report of doctor, and annual accounting. Mr. Lowery was served with a copy of the citation. He was at that time assisting Mr. Carciello with drawing together the annual report, but the report had not been timely completed.

In August of 1985, Mary Chieco passed away and respondent was hired by Robert Carciello to probate the estate. He failed to file a Petition for Discharge of Guardian, though he did file a Petition for Order Waiving Annual Appearance of Guardian. However, respondent failed to set the matter for hearing and as a direct result of this failure, in May of 1986, ten (10) months after Mary Chieco's death, the

Court issued a Citation to Show Cause why Robert Carciello should not be held in contempt for failure as guardian to file annual reports. Respondent was served with a copy of the citation. No action was taken with the respect to the citation, and a Petition to Discharge the Guardian was still not filed. In August of 1986, the Court issued an Order of Contempt giving the guardian a sixty (60) day jail sentence to be served only if the annual reports were not filed within twenty (20) days. Robert Carciello retained other counsel, who then filed the Petition for Discharge of Guardian.

COUNT II - CASE NO. 06D87H18

In 1984, Mary Adams retained respondent to handle a breach of warranty action against Ford Motor Company and Walker Ford of Clearwater. Respondent was paid a non-refundable retainer and thereafter initiated action on the case. Ford Motor Company and Walker Ford, by and through their agent sent checks to Mary Adams in hopes of settling the alleged breach of warranty. Mary Adams on her own initiative rejected the settlement offer and gave the settlement checks to the respondent with the understanding that they would be returned to Ford Motor Company and Walker Ford. The checks were placed in the respondent's files without the knowledge or permission of Mary Adams, and not returned to the defendants. Due to the respondent's failure to timely proceed with the case, in May of 1986 Mary Adams demanded her file be turned over to her and that her retainer be returned. In July of 1986, respondent agreed to Mary Adams demands, but took no action to comply with them. In October of 1986, respondent assured an investigator from The Florida Bar that he would provide Mary Adams' with her file and a refund within a few weeks, but he failed to do so. In February of 1987, respondent told Bar counsel that he would provide Mary Adams with her file within a week, and would sign a promissory note for the refund if Mary Adams so desired. In April of 1987, Mary Adams husband was given the file by respondent. The refund was discussed at that time, but immediate payment was not demanded by Mr. Adams. Final payment of the refund had not occurred by the time of the hearing in the instant case, nor apparently had it been demanded.

III. Recommendation as to whether or not the Respondent should be found Guilty: I recommend that the respondent be found guilty of violated the following provisions of the Code of Professional Responsibility:

Case No. 70,416:

Count I: Disciplinary Rule 6-101(A)(3)
(Neglect of a legal matter)
Count II: Disciplinary Rule 6-101(A)(3)
(Neglect of a legal matter)

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 of this action in the amount of \$535.76.

V. Personal History and Past Disciplinary Record: After a finding of guilt and prior to recommending discipline, I considered the following personal history, prior disciplinary record, and mitigating circumstances:

- (1) Age: 40
- (2) Date Admitted to Bar: May 25, 1983
- (3) Respondent has no prior disciplinary history.
- (4) The respondent's violations involve no dishonesty or intentional misconduct. At the time of the violations, he was experiencing severe personal and financial problems, which contributed significantly to the neglect which occurred. He has taken positive steps to correct those underlying problems. Respondent was very honest and forthright with The Florida Bar and in the disciplinary proceedings about his personal responsibility for the neglect of the cases and sincerely regretted the inconvenience to his clients.

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

A. Grievance Committee Level	
1. Administrative Costs	\$ 150.00
2. Court Reporter Costs	7.00
3. Staff Investigator Expenses	184.76
4. Assistant Staff Counsel Expenses ...	7.00
B. Referee Level	
1. Administrative Costs	150.00
2. Court Reporter Costs	30.00
3. Assistant Staff Counsel Expenses ...	<u>7.00</u>
TOTAL AMOUNT DUE TO DATE:	<u><u>\$535.76</u></u>

It is recommended that all such costs and expenses be charged to the respondent, and that interest at the statutory rate shall accrue and be payable within 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 17th day of September, 1987.

Thomas A. Miller, Sr.

 HONORABLE THOMAS A. MILLER, SR/
 Referee

Copies furnished to :

Thomas E. DeBerg, Assistant Staff Counsel, The Florida Bar
 Rembert L. Lowery, Respondent
 John T. Berry, Staff Counsel, Tallahassee