

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,

Complainant,

CONFIDENTIAL

v.

CASE NO. 70,449
TFB NO. 20B87F05

Dennis S. Gold,

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, a hearing was held on October 16, 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 Thomas E. DeBerg

For The Respondent Edward R. Miller

- II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

As to Count I

1. The evidence established that respondent secured a dissolution of marriage for his client, [REDACTED], on February 1, 1985. Pursuant to agreement, the respondent charged his client approximately \$768.50, of which sum \$456.00 remained unpaid as of August 4, 1986.
2. On August 4, 1986, the respondent filed a small claims action against his client for the outstanding balance. Notice was served on the client to appear in court on September 11, 1986.
3. Shortly thereafter, but prior to the court date, the client contacted respondent's secretary, Beverly A. Berk, and proposed a payment plan in lieu of further court action. After placing the client on "hold" on several occasions during which she allegedly conferred with respondent, Ms. Berk told the client that respondent agreed to hold the suit in abeyance if she paid \$100.00 down and smaller payments thereafter.
4. In reliance upon Ms. Berk's representations, the client paid \$100.00 and later \$25.00 on her account. A statement balance crediting these payments and confirming that the suit would be held in abeyance was sent to the client (Complainant's exhibit 5) but was not placed in respondent's small claims file against the client. The file did contain a ledger which showed the recent payments made by the client, but the ledger did not indicate any agreement to delay suit.

5. On September 11, 1986 when the client did not appear in court, respondent obtained a final judgment against her. The client called respondent after she received a copy of the judgment and asked him why he had gone ahead with the court proceedings. She further asked him why he had not told her that she had to be in court, to which he responded that he "didn't have to". The client then became upset, threatened not to pay another cent and hung up. There was no further communication between the client and respondent.
6. The evidence showed that respondent delegated all authority to his secretary as to billing and collection of his accounts, that he exercised virtually no control over the manner or means of collection used and that he further conditioned any future raises for his secretary on her success in collection.
7. The evidence also established that respondent's secretary has on other occasions made agreements with debtors to defer collection of judgments or hold a lawsuit in abeyance in return for payment, yet she has no procedure whereby she informs the respondent of these agreements. When questioned by the undersigned referee as to why she did not tell respondent of her agreement with Ms. [REDACTED], her response and general attitude was that it (the agreement) wasn't important since it concerned "only a small claims case."
8. The testimony, general demeanor and attitude of the respondent show a reckless disregard and total lack of concern for the actions of his secretary. Even when the client in this instance questioned him about the judgment, he refused to make any appropriate inquiry into the matter, thereby effectively closing his eyes to the whole situation. Moreover, respondent had not filed a motion to set aside the judgment as of the date of this hearing which was approximately sixteen (16) months after service of the complaint.

CONCLUSION

Although the testimony was in conflict, I find no clear and convincing evidence that respondent had actual knowledge of the agreement to hold the lawsuit in abeyance pending payments by the client. However, I find clear and convincing evidence that his lack of care, concern and control over the actions of his secretary and his refusal to even attempt to resolve the problem upon inquiry by the client is conduct which reflects adversely on his fitness to practice law.

As to Count II

The complainant took a voluntary dismissal of Count II.

- III. Recommendations as to whether or not the Respondent should be found guilty: I make the following recommendation as to guilt or innocence:

As to Count I

I recommend that the respondent be found not guilty and specifically that he be found not guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit: DR 1-102 (A)(4) (misrepresentation).

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Codes of Professional Responsibility, to wit: DR 1-102(A)(6) (conduct reflecting on his fitness to practice).

IV. Recommendation as to Disciplinary measures to be applied: I recommend that the respondent receive a public reprimand as requested by complainant. The parties had originally stipulated at the hearing that respondent would file a satisfaction of judgment since it was felt that the judgment could not be vacated under Fla. SCR 7.190(b) because over one year has passed since entry. However, the client has not paid the fee and an argument could be made that the one year prohibition only applies where the motion is made by a party against whom a judgment has been entered. Here, the moving party would be one who has received a favorable judgment. Therefore, I recommend that respondent take every reasonable step to vacate the judgment within thirty (30) days of the final judgment in this cause.

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

Age: 42
Date admitted to Bar: May 22, 1975
Prior disciplinary convictions and disciplinary measures imposed therein: Private reprimand administered before the Board of Governors.

VI. Statement of costs and manner in which cost should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

A. Grievance Committee Level Costs	
1. Administrative Costs	\$150.00
2. Transcript Costs	\$275.00
3. Bar Counsel/Branch Staff Counsel	\$187.65
Travel Costs	\$138.87
B. Referee Level Costs	
1. Administrative Costs	\$150.00
2. Transcript Costs	\$507.80
3. Bar Counsel/Branch Staff Counsel	
Travel Costs	\$194.17
C. Miscellaneous Costs	
Staff Investigator Expenses	\$117.93
TOTAL ITEMIZED COSTS:	\$1,721.82

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 2 day of November, 1987.

Bucky A. Latus
Referee

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to Thomas E. DeBerg, Assistant Staff Counsel, The Florida Bar, Suite C-29, Tampa Airport, Marriott Hotel, Tampa, Fl 33607 and to Edward R. Miller, Attorney for Respondent, 2335 Tamiami Trail North, Suite 301, Naples, Fl 33940 this 2 day of November, 1987.

Sail Hargreaves
Judicial Assistant