

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

HERBERT P. SAPP, JR.,

Respondent.

Case No. 70,493

(TFB File Nos. 85-13840-14,
85-13852-14, and 87-26088-14;
Formerly File Nos. 14-85N31,
14-85N45, and 14-87N21)

REPORT OF THE REFEREE

FILED

JAN 22 1988

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 May 5, 1987, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. This matter was assigned to the undersigned Referee on May 7, 1987. Upon Respondent's failure to respond thereto, The Florida Bar filed a Motion to Deem Matters Admitted and a Motion for Summary Judgment on July 2, 1987. Respondent did not oppose the Bar's Motions which were granted on October 19, 1987. All of the aforementioned pleadings, attachments thereto, and exhibits received in evidence, and this report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. 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.

B. Narrative Summary Of Case.

Count I

Respondent was retained by Mr. ██████████ to petition the Calhoun County Court for permission to sell a piece of property belonging to his mother. In January of 1984, a hearing was held in county court and permission was granted to sell the piece of property. During this process, Respondent discovered that the property did not have clear title and that a quiet title action would be necessary before the property could be sold. Respondent advised Mr. ██████████ that it would require \$360.00 plus costs to handle the matter. A retainer of \$200.00 was received by Respondent on May 24, 1984. Respondent failed to place the notice of quiet title action in the local newspaper as required by law. In February of 1985, Respondent sent Mr. ██████████ several documents that required his signature. Mr. ██████████ promptly returned these documents but received no further communication from respondent. Mr. ██████████'s repeated efforts to contact Respondent failed. During this period, the piece of property in question was listed for sale. Due to the extended delay in quieting title, a \$500.00 binder was withdrawn and the sale was lost.

Count II

In June, 1984, Respondent was paid a \$500 retainer by Ms. ██████████ ██████████ to administer the estate of the mother of Ms. ██████████' aunt. The purpose of the probate proceeding was to clear title to property belonging to the aunt, and Respondent was advised that the matter needed to be finalized by September, 1984. On or about July 11, 1984, Respondent was advised by Ms. ██████████ that the survey he had ordered had been made on the wrong property. Respondent advised Ms. ██████████ that he would order a correct survey, but he never did so. On September 7, 1984, Ms. ██████████ went to Respondent's office with her aunt. After the aunt executed the necessary release forms,

Respondent told Ms. [REDACTED] he would file the probate papers on the following Monday. Respondent did not file the probate papers until September 28, 1984. Subsequently, Respondent demanded additional monies to complete the probate matter.

Count III

On July 15, 1985, Mr. and Mrs. [REDACTED] [REDACTED] paid Respondent a \$100.00 retainer to represent them in a matter involving defective siding on their residence. The [REDACTED] attempted to contact Respondent on September 3 and September 15, 1985, but Respondent never returned their phone calls. On October 1, 1985, Respondent met with the [REDACTED] in his office and assured them that he was working on the case. Respondent failed to keep appointments with the [REDACTED] on January 3, 1986, March 15, 1986, and April 5, 1986. Additionally, Respondent failed to return a phone call to the [REDACTED] in mid-February of 1986. In response to a telephone inquiry from the [REDACTED] on or about July 15, 1986, Respondent advised that he would mail a settlement check to them. On August 3, 1986, Respondent again failed to keep an appointment to meet with the [REDACTED]. On February 20, 1987, after the [REDACTED] had filed a complaint against Respondent with The Florida Bar, Respondent wrote to the [REDACTED] apologizing for the "misunderstanding" regarding their claim and offering to refund the \$100 retainer.

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

Count I - Disciplinary Rules 1-102(A)(4) (conduct involving dishonesty, fraud, or misrepresentation) and 6-101(A)(3) (neglect of a legal matter).

Count II - Disciplinary Rule 6-101(A)(3) (neglect of a legal matter).

Count III - Disciplinary Rules 6-101(A)(3) (neglect of a legal matter) and 7-101(A)(2) (failure to carry out a contract of employment).

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 the Joint Recommendation as to Discipline, to wit:

- A. Thirty (30) day suspension from the practice of law in Florida.
- 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 of the Rules of Discipline of The Florida Bar, I considered the following personal history of Respondent, to wit:

Age: 46 years old

Date admitted to the Bar: June 2, 1967

Prior Discipline: Received a grievance committee private reprimand on July 23, 1982 for violating Disciplinary Rule 6-101(A)(3) (a lawyer shall not neglect a legal matter entrusted to him). The private reprimand arose from Respondent's failure to file promptly a lawsuit on behalf of his client. Received a public reprimand on May 22, 1986, for violating Disciplinary Rules 1-102(A)(1) (a lawyer shall not violate a disciplinary rule) and 6-101(A)(3) (a lawyer shall not neglect a legal matter entrusted to him). This matter involved a foreclosure suit that was dismissed for Respondent's failure to prosecute.

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 - TFB File No. 85-13852-14

1. Administrative Costs	\$ 150.00
2. Court Reporter's Fees	105.00
3. Bar Counsel Travel	<u>52.25</u>
Subtotal	\$ 307.25

Grievance Committee Level - TFB File No. 85-13840-14

1. Administrative Costs	\$ 150.00
2. Court Reporter's Fees	145.00
3. Bar Counsel Travel	<u>30.75</u>
Subtotal	\$ 325.75

Grievance Committee Level - TFB File No. 87-26088-14

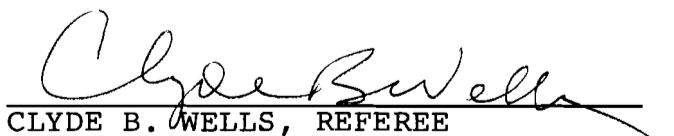
1. Administrative Costs	\$ 150.00
2. Court Reporter's Fees	56.20
3. Bar Counsel Travel	<u>85.42</u>
Subtotal	\$ 291.62

B. Referee Level

1. Administrative Costs (pursuant to Rule 3-7.5(k)(1), Rules of Discipline (3 cases at \$150.00 each)	\$ 450.00
2. Court Reporter's Fees	\$ 60.00
3. Bar Counsel Travel	<u>\$ 102.60</u>
Subtotal	\$ 612.60
TOTAL	\$1,537.22


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 22 day of January, 1988.


CLYDE B. WELLS, REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to SID J. WHITE, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and that confidential copies were mailed by regular U.S. Mail to JOHN T. BERRY, Staff Counsel, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32301; SUSAN V. BLOEMENDAAL, Bar Counsel, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32301; and JOHN A. WEISS, COUNSEL FOR RESPONDENT, at his record Bar address of Post Office Box 1167, Tallahassee, Florida 32302, this 27 day of January, 1988.



CLYDE B. WELLS, REFEREE