

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

RUSSELL L. JOHNSON,

Respondent.

Case No. 70,496
File No. 86-19,416 (13B)
formerly #13B86H87)

REPORT OF REFEREE

A. 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 January 20, 1988. The pleadings, notices, motions, orders, and transcripts 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: Richard A. Greenberg
 Assistant Staff Counsel

For the Respondent: No appearance

B. Findings of Fact as to Each Item of Misconduct of
Which the Respondent is Charged

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

1. The uncontested and uncontroverted evidence in this case shows that respondent agreed to represent Steven Scott Bristol for the charges of DUI Manslaughter and Manslaughter. The respondent agreed to represent Mr. Bristol for a total fee of \$3,500.00. The respondent did not tell Mr. Bristol, nor did Mr. Bristol understand, that the agreed upon fee was only for preliminary matters and did not include taking the case to trial before a jury. Respondent did not inform Mr. Bristol that respondent did not do trial work.

2. During the course of his representation, respondent took no depositions, filed no pre-trial motions to suppress evidence or to attack the sufficiency of the charging instrument and conducted no other pre-trial discovery. At a pre-trial hearing in which the State

Attorney offered a period of incarceration for Mr. Bristol's offenses, respondent informed Mr. Bristol for the very first time that respondent was not a trial attorney. Mr. Bristol immediately requested a continuance of his case so that he could obtain new counsel.

3. The uncontroverted testimony of any expert witness established that respondent's fee was clearly excessive for the work performed on Mr. Bristol's behalf. The expert witness estimated that respondent spent no more than three hours of court time working on Mr. Bristol's case.

C. Recommendation Whether the Respondent Should Be Found Guilty

Respondent should be found guilty of violation of the following disciplinary rules:

1. DR 1-102(A)(4) (conduct involving dishonesty, deceit, fraud or misrepresentation);
2. DR 2-106(A)(1) (charging or collecting a clearly excessive fee);
3. DR 6-101(A)(1) (handling a legal matter which the attorney knows, or should know, that he is not competent to handle); and
4. DR 7-101(A)(2) (failure to carry out a contract of employment entered into with a client for professional services).

D. Recommendation Regarding Discipline and Other Matters

1. I recommend that the respondent receive a public reprimand and that he be placed on probation for a period of two years during which time his practice is to be supervised by another member of The Florida Bar.

2. The respondent appeared before me on August 18, 1987 for a status conference and before Circuit Judge Oliver L. Green, Jr. (sitting in my absence) on November 5, 1987 for a motion hearing. Transcripts of each of these proceedings are included as a part of this record. After again reviewing these transcripts, Judge Green and I share the view that there is a serious question whether respondent may be so mentally and emotionally unstable that his ability to practice law is impaired. Unfortunately, a mere reading of the naked transcripts cannot impart a true picture of the degree of respondent's anger, his obvious disdain for the entire disciplinary proceedings, his borderline contemptuous conduct, and his otherwise erratic and irrational behavior. We, therefore, strongly recommend that the Court order respondent to undergo an immediate psychiatric evaluation

by a psychiatrist approved by The Bar, and that the evaluation be filed with the Court. Alternatively, we recommend that the Court, on it's own motion, immediately issue a Rule to Show Cause why a psychiatric evaluation should not be ordered. It should also be noted that respondent elected not to attend the first final hearing scheduled for December 1, 1987, or the second final hearing held on January 20, 1988, although he received notices thereof.

E. Personal History and Past Disciplinary Record

After finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 11.06(9)(A)(4), I considered the personal history of respondent as displayed by his conduct described in paragraph D-2 above. I have no knowledge of any prior disciplinary record of the respondent.

F. Statement of Costs and Manner in Which Costs Should be Taxed

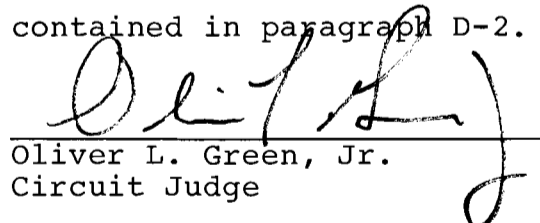
I find that the costs of this proceeding should be assessed against the respondent attorney. It is recommended that all such costs and expenses and interest at the statutory rate shall accrue and be payable beginning 30 days after judgment in this case becomes final unless a waiver is granted by the board of governors of The Florida Bar. The Staff Counsel will provide an affidavit of those costs including transcript costs.

*not
filed*

Dated this 10th day of FEB., 1988.


William A. Norris, Jr.
Referee

I concur in the recommendations contained in paragraph D-2.


Oliver L. Green, Jr.
Circuit Judge

Copies furnished to:

Russell L. Johnson, Respondent
Richard A. Greenberg, Assistant Staff Counsel
John T. Berry, Staff Counsel