

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 70,497

[TFB Case No. 86-20,938 (18A)]

v.

JAMES T. GOLDEN,

FILED
SID J. WHITE

MAR 3 1988

Respondent.

CLERK, SUPREME COURT

REPORT OF REFEREE By _____
Deputy Clerk

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Integration Rule and The Rules Regulating The Florida Bar, hearings were held on December 18, 1987, and February 5, 1988. 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 - John B. Root, Jr.

For The Respondent - In pro se

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 on below, I find:

As to Count I

1. On June 11, 1987, The Florida Bar served Requests for Admission on the respondent in this case.

2. On July 10, 1987, the respondent served a response to the Requests for Admission on The Florida Bar.

3. The Requests for Admission tracked the complaint, paragraph by paragraph, and the response to the request

admitted virtually each item of the complaint in Count I with certain exceptions including paragraph 33, which accused the respondent of violating Disciplinary Rule 6-101(A)(3) of the Code of Professional Responsibility.

4. In regard to paragraph 8 of the Bar's complaint, I find that the respondent did not comply with the Court's order to file an amended complaint within twenty days. (Bar Exhibits 4-8 and admission of the respondent)

5. On April 13, 1982, respondent did file a Motion for Extension of Time to file the amended complaint. This motion was filed at least two days after the due date for an amended complaint. (Bar Exhibit 5)

6. The respondent did serve a first amended complaint on April 28, 1982. On April 30, 1982, an order was filed, pursuant to the motion permitting respondent to file the amended complaint by April 30, 1982. (Bar Exhibits 7 and 8)

7. As to paragraph 12 of the Bar's complaint, I find that the Court did, in fact, orally admonish the respondent to file a second amended complaint in a timely fashion and within twenty days from the date of the hearing on May 25, 1982. (Bar Exhibits 17 and 24)

8. The nunc pro tunc order was signed by Judge Davis on June 10, 1982, confirming the oral order did not contain the admonishment, it merely gave respondent twenty days to file an amended complaint and ordered him to file answers to interrogatories by July 1, 1982. (Bar Exhibit 16) I believe, however, that the oral admonition was made, based on the arguments of counsel. (Bar Exhibits 17 and 24)

9. The respondent, however, did not serve his second amended complaint until June 18, 1982, a period of 24 days after the oral order of the court. (Bar Exhibit 18)

10. Concerning the denied portion of paragraph 16, which indicates that Judge Salfi "...permitted the late filing of the respondent's second amended complaint...", I find it to be factual. In his "Opinion and Decision" dated May 11, 1983, (Bar Exhibit 29) Judge Salfi refers to the fact that the court "...subsequently permitted the late filing of second amended complaint...". (See also Bar Exhibit 18)

11. In regard to paragraph 23 of the complaint, the respondent denies that the decision of the Fifth District Court of appeals "...specifically criticized respondent...".

I take judicial notice of Whack v. Seminole Memorial Hospital, 456 So.2d 561 (Fla. 5th DCA 1984). Associate Judge R.J. Stroker, writing for the court, said, in pertinent part, "The record clearly shows that appellant's counsel acted with willful disregard of the court's authority and gross indifference to an order of the court." I find that the case contains specific criticism of the respondent as alleged in the complaint.

12. In paragraph 32 of that complaint I take judicial notice of Whack v. Seminole Memorial Hospital, et al., 487 So.2d 1091 (Fla. 5th DCA 1986) in which Judge Dauksch, writing for the court, upheld the lower court's denial of respondent's motion to file late answers to a requests for admission.

13. As to the balance of the allegations in Count I of the complaint, I find that the admissions of the respondent, together with the documentary evidence admitted during the trial adequately proves each allegation by clear and convincing evidence.

As to Count II

I find that there is insufficient evidence to prove the alleged violation by clear and convincing evidence.

III. Recommendations as to whether or not the Respondent should be found guilty: As to each count of the complaint I make the following recommendations as to guilt or innocence:

As to Count I

I recommend that the respondent be found guilty and specifically that he found guilty of violating Disciplinary Rule 6-101(A)(3) of the Code of Professional Responsibility for neglecting a legal matter entrusted to him.

As to Count II

I recommend that the respondent be found not guilty of violating Disciplinary Rule 7-102(A)(1) of the Code of Professional Responsibility.

IV. Recommendation as to Disciplinary measures to be applied:

I recommend that the respondent be suspended from the practice of law for a period of three months with automatic reinstatement at the end of period of suspension as provided

in Rule 3-5.1(e) of the Rules of Discipline. I further recommend a probationary period of one year during which the respondent shall report at least quarterly to The Florida Bar on the status of each case.

- V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 41

Date admitted to Bar: May 22, 1975

Prior Disciplinary convictions and disciplinary measures imposed therein:

a. July 30, 1981, respondent received a public reprimand - The Florida Bar v. Golden, 401 So.2d 1340 (Fla. 1981).

b. February 5, 1987, respondent received a ten day suspension and probation for one year - The Florida Bar v. Golden, 502 So.2d 891 (Fla. 1987).

- 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 Costs

1. Administrative Costs	\$150.00
2. Transcript Costs	\$142.80
3. Investigator's Expenses	\$133.30

B. Referee Level Costs

1. Administrative Costs	\$150.00
2. Transcript Costs	\$461.50
3. Investigator Expenses	\$146.81

C. Miscellaneous Costs

1. Certified Copies	\$147.00
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TOTAL ITEMIZED COSTS: \$1,331.41

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 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 26th day of February, 1988.


Frederick T. Pfeiffer
Referee

2/29/88

Copies to:

Mr. John B. Root, Jr., Bar Counsel
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Mr. John T. Berry, Staff Counsel, The Florida Bar,
Tallahassee, Florida 32301

W. Roscher, Jud. Asst.