

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JANICE MILIN,

Respondent.

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Case No. 70,716

(TFB File Nos. 01-86N17, 01-86N38,  
01-86N60, 01-87N97 and 01-87N98)

REPORT OF THE REFEREE

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 June 17, 1987, The Florida Bar filed its Complaint against Respondent, in Case No. 70,716 (TFB Nos. 01-86N17, 01-86N38, and 01-86N60). This case was assigned to the undersigned Referee on June 23, 1987.

On September 23, 1987, Respondent filed waivers of probable cause in TFB File Nos. 01-87N97 and 01-87N98. These matters were assigned to the undersigned on September 24, 1987 and, pursuant to a joint motion to consolidate, have been consolidated with Case No. 70,716.

Respondent tendered a conditional guilty plea for consent judgment on September 14, 1987, wherein she pled guilty to all charges pending against her. Respondent and The Florida Bar have filed a joint recommendation as to discipline so that all matters presently pending against Respondent might be disposed of with one disciplinary order.

All of the aforementioned pleadings, attachments thereto, 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 Rules of the Supreme Court of Florida.

B. Supreme Court Case No. 70,716

Count I

(TFB File No. 01-86N17)

Respondent represented the defendant in a capital sexual battery case before Judge Lacy Collier of the First Judicial Circuit. During the aforementioned representation, Respondent filed a motion to have Judge Collier recused from the case, stating that Judge Collier was highly prejudiced in favor of the state and could not be fair in sexual battery cases involving minors. During the hearing concerning the motion to recuse Judge Collier, held on July 26, 1985, Respondent represented to the Court that the allegations in her motion were the consensus of opinion in the legal community. Respondent was questioned by Judge Collier and was asked to state the names of anyone who in fact had made such statements to Respondent. Respondent responded to the court and furnished the names of local attorneys, J. B. Murphy, Barry Beronet, Joseph Crowell, and Michael Griffith, as those who had made statements concerning Judge Collier. Each of the four above-named attorneys was questioned by Judge Collier and a determination made that none of the four had in fact made such statements to Respondent. Respondent subsequently submitted an affidavit from her former secretary, Kelly Marie Burrows, to the grievance committee wherein it was alleged that she had listened in on a conversation between Respondent and Mr. Barry Beronet, and that she heard Mr. Beronet make statements concerning Judge Collier's unfairness in sexual battery cases involving minors. Mr. Beronet

testified before the grievance committee that he had made no such statements concerning Judge Collier, and that he could not recall ever having the alleged telephone conversation. Respondent also submitted to the grievance committee an affidavit from Ms. Burrows alleging that Mr. Michael Griffith had made statements in her presence concerning Judge Collier's unfairness. Mr. Griffith testified before the grievance committee that he had made no statements concerning Judge Collier's unfairness and that the alleged conversation never took place. Respondent submitted a third affidavit to the grievance committee alleging that Ms. Burrows had heard Mr. J. B. Murphy make statements regarding Judge Collier's inability to be impartial in sexual battery cases involving minors. Mr. Murphy also testified before the grievance committee that he had made no statements to Respondent concerning Judge Collier's fairness in sexual battery cases involving minors, and that no such telephone conversation took place. Respondent submitted a fourth affidavit to the grievance committee alleging that her son, Gregory Bierman, had overheard Mr. Joseph Crowell make statements regarding Judge Collier's unfairness to Respondent in a local bar. Mr. Crowell testified before the grievance committee that he had not made the alleged statements concerning Judge Collier's unfairness. By reason of the foregoing, the First Judicial Circuit Grievance Committee found probable cause for violation of Disciplinary Rules 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation); 1-102(A)(5) (conduct prejudicial to the administration of justice); 1-102(A)(6) (conduct adversely reflecting on fitness to practice law); 7-102(A)(5) (knowingly making a false statement of law or fact in the representation of a client); 7-106(C)(6) (engaging in undignified or discourteous conduct which is degrading to a tribunal) of the Code of Professional Responsibility of The Florida Bar and Article XI, Rule 11.02(3)(b) (any act contrary to honesty, justice or good morals) of the Integration Rule of The Florida Bar.

#### Count II

(TFB File No. 01-86N60)

Respondent was retained sometime in August of 1984 by a Mrs. [REDACTED] (hereinafter referred to as Ms. [REDACTED]) to prepare a marital settlement agreement and have it incorporated into a divorce judgment.

Respondent was paid a retainer of \$350.00 and was to receive an additional \$300.00 in three monthly payments of \$100.00 each. The marital settlement agreement was prepared by Respondent and signed by Ms. [REDACTED] and her husband on or about September 15, 1984. Respondent was advised of the importance of having the agreement reduced to judgment as quickly as possible. Respondent received two additional payments of \$100.00 each in October and December of 1984. Ms. [REDACTED] attempted to contact Respondent repeatedly from September of 1984 through June of 1985, but Respondent either failed or refused to return telephone calls or to communicate with Ms. [REDACTED]. In September or October of 1984, Respondent represented to Ms. [REDACTED] that she had filed the marital settlement agreement with the court but that there was a delay due to difficulty in having Ms. [REDACTED]'s husband properly served. At the time when Respondent represented to Ms. [REDACTED] that the settlement agreement had been filed, no such agreement had been filed. Respondent represented to the grievance committee that the reason she had not filed the agreement with the court was that Ms. [REDACTED] had not made the final \$100.00 payment on the agreed fee. Respondent never advised Ms. [REDACTED] that the matter could not be concluded until the \$100.00 final payment was made, nor did Respondent send any correspondence or bill concerning the \$100.00 payment to her client at any time. Respondent failed to file the agreement, and Ms. [REDACTED] was forced to retain substitute counsel. The matter was finalized by the substitute counsel within one month's time. By reason of the foregoing, the First Judicial Circuit Grievance Committee found probable cause for violation of Disciplinary Rules 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation); 6-101(A)(3) (neglect of a legal matter); 7-101(A)(1) (failure to seek the lawful objectives of a client); 7-101(A)(2) (failure to carry out a contract of employment); and 7-101(A)(3) (prejudicing or damaging a client during the course of a professional relationship) of the Code of Professional Responsibility of The Florida Bar.

### Count III

(TFB File No. 01-86N38)

Respondent was retained in August of 1984 to file a bankruptcy petition for a Mr. [REDACTED] [REDACTED] (hereinafter referred to as Mr. [REDACTED]), and a fee of \$350.00, plus \$50.00 for costs, was agreed upon and paid to Respondent. Throughout 1985, Respondent failed to file the petition for bankruptcy

and would not communicate any reason for the delay to Mr. [REDACTED]. During one telephone conversation with Mr. [REDACTED] in 1985, Respondent represented that she had filed the petition with the bankruptcy court and provided a case number which she represented as the one assigned to the case by the bankruptcy court. Upon checking with the bankruptcy court, Mr. [REDACTED] determined that the petition had not been filed and that the case number given to him by Respondent did not correspond to numbers used by the bankruptcy court. As of the date of the grievance committee hearing, May 20, 1986, the petition for bankruptcy had not been properly filed with the bankruptcy court. When asked by the grievance committee whether she had filed the petition, Respondent testified that she had. Upon further questioning, Respondent testified that in fact she had only mailed the petition to the court the day before the grievance committee hearing. When asked by the grievance committee if she had signed the bankruptcy petition as an attorney, Respondent testified that she had not because her client owed her more money. Upon further questioning, Respondent admitted that she had not signed the petition as an attorney because she was no longer admitted to practice before the federal court. By reason of the foregoing, the First Judicial Circuit Grievance Committee found probable cause for violation of Disciplinary Rules 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation); 6-101(A)(3) (neglect of a legal matter); 7-101(A)(1) (failure to seek the lawful objectives of a client); 7-101(A)(2) (failure to carry out a contract of employment); and 7-101(A)(3) (prejudicing or damaging a client during the course of a professional relationship) of the Code of Professional Responsibility of The Florida Bar.

C. (TFB File No. 01-87N97)

Respondent was arrested on August 8, 1985 for driving under the influence of alcoholic beverages in Pensacola, Florida. On August 16, 1985, a criminal information was filed against Respondent in Case No. 17-85-MT-1590-A. The information charged Respondent with driving under the influence of alcoholic beverages, failure to obtain a Florida driver's license, driving with a suspended driver's license and driving without a valid driver's license. Respondent entered a plea of not guilty on August 23, 1985, and trial was set for October 17, 1985. On September 17, 1985, Respondent filed a demand for discovery. At a pretrial conference on October 2, 1985, Respondent

requested an answer to the September 17, 1985 demand. The state informed Respondent it had not been furnished with the demand. Respondent was granted a continuance on October 11, 1985 pursuant to her motion. Trial was set for December 10, 1985. At the trial, Respondent submitted a motion to suppress based on the state's noncompliance with the demand for discovery. The state once again advised Respondent the state had not been furnished with a copy of the discovery demand. Consequently, the motion to suppress was denied. On December 10, 1985, Respondent was adjudged guilty of driving under the influence. Respondent appealed the conviction alleging prejudice due to the trial court's denial of her motion to suppress. In an opinion issued September 25, 1986, in Case No. 86-121, the Circuit Court of Escambia County affirmed the county court's decision.

Respondent waived probable cause for violation of article XI, Rule 11.02(3)(b) (conduct that constitutes a crime) of the Integration Rule of The Florida Bar and Rule 1-102(A)(3) (engaging in illegal conduct involving moral turpitude) of the Code of Professional Responsibility of The Florida Bar.

D. (TFB File No. 01-87N98)

Respondent became delinquent in the payment of dues to The Florida Bar and was suspended from practicing law on October 3, 1986. Subsequent to her suspension, Respondent undertook representation of a client for modification of final judgment. A hearing was scheduled for February 2, 1987 before Circuit Judge William Frye, III, of the First Judicial Circuit Court. Judge Frye caused his judicial assistant to contact Respondent on January 13, 1987, concerning her status as a member not in good standing due to her failure to pay dues. Respondent represented to the judicial assistant that Respondent had mailed a check to The Florida Bar on January 12, 1987. On January 28, 1987, Judge Frye contacted The Florida Bar and was informed that Respondent remained a member not in good standing. Consequently, on January 29, 1987, Judge Frye wrote to Respondent and advised her not to appear at the February 2, 1987 hearing without proof of her reinstatement as a member in good standing. Judge Frye also notified Respondent not to practice law until she was reinstated. Respondent filed a petition for reinstatement on February 12, 1987 with The Florida Bar. Respondent was reinstated on February 17, 1987.

Respondent waived probable cause for violation of Rules 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), 1-102(A)(6) (conduct adversely reflecting on her fitness to practice law), and 3-101(B) (practicing law in violation of the regulations of the profession in this jurisdiction) of the Code of Professional Responsibility of The Florida Bar and Rules 4-5.5(a) (practicing law in violation of the regulations of the profession in this jurisdiction) and 4-8.4 (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) of the Rules of Discipline of The Florida Bar.

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

A. Supreme Court Case No. 70,716

Count I

(TFB File No. 01-86N17)

In The Florida Bar File No. 01-86N17, Rules 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation); 1-102(A)(5) (conduct prejudicial to the administration of justice); 1-102(A)(6) (conduct adversely reflecting on fitness to practice law); 7-102(A)(5) (knowingly making a false statement of law or fact in the representation of a client); 7-106(C)(6) (engaging in undignified or discourteous conduct which is degrading to a tribunal) of the Code of Professional Responsibility of The Florida Bar and Article XI, Rule 11.02(3)(b) (any act contrary to honesty, justice or good morals) of the Integration Rule of The Florida Bar.

Count II

(TFB File No. 01-86N60)

In The Florida Bar File No. 01-86N60, Rules 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation); 6-101(A)(3) (neglect of a legal matter); 7-101(A)(1) (failure to seek the lawful objectives of a client); 7-101(A)(2) (failure to carry out a contract of employment); and

7-101(A)(3) (prejudicing or damaging a client during the course of a professional relationship) of the Code of Professional Responsibility of The Florida Bar.

Count III

(TFB File No. 01-86N38)

In The Florida Bar File No. 01-86N38, By reason of the foregoing, Respondent has violated Disciplinary Rules 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation); 6-101(A)(3) (neglect of a legal matter); 7-101(A)(1) (failure to seek the lawful objectives of a client); 7-101(A)(2) (failure to carry out a contract of employment); and 7-101(A)(3) (prejudicing or damaging a client during the course of a professional relationship) of the Code of Professional Responsibility of The Florida Bar.

B. (TFB File No. 01-87N97)

In The Florida Bar File No. 01-87N97, article XI, Rule 11.02(3)(b) (conduct that constitutes a crime) of the Integration Rule of The Florida Bar and Rule 1-102(A)(3) (engaging in illegal conduct involving moral turpitude) of the Code of Professional Responsibility of The Florida Bar.

C. (TFB File No. 01-87N98)

In The Florida Bar File No. 01-87N98, Rules 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), 1-102(A)(6) (conduct adversely reflecting on your fitness to practice law), and 3-101(B) (practicing law in violation of the regulations of the profession in that jurisdiction) of the Code of Professional Responsibility of The Florida Bar and Rules 4-5.5(a) (practicing law in violation of the regulations of the profession in that jurisdiction) and 4-8.4 (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) of the Rules of Discipline of The Florida Bar.



IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that she be disciplined for all three matters as set forth in Section II of this report, as agreed to by Respondent in his Conditional Guilty Plea for Consent Judgment, to wit:

A. Suspension for a period of 90 days, with automatic reinstatement.

B. Probation for a period of one year, such period to begin on the date of Respondent's reinstatement to the practice of law, with the following terms and conditions:

a. That Respondent will take and attain a passing score on the Multistate Professional Responsibility Examination.

b. That Respondent will continue to see Dr. Timothy J. Donovan, or such other psychotherapist as approved by The Florida Bar, and will complete whatever treatment is recommended by Dr. Donovan until such time as he certifies that Respondent is free from disabilities which would significantly impair her ability to practice law.

c. That Respondent agrees that a probable cause finding against her for misconduct occurring during the period of probation shall result in an automatic suspension from the practice of law for 91 days with proof of rehabilitation required prior to reinstatement.

d. Respondent acknowledges that pursuant to Rule 3-5(c), Rules of Discipline, a failure to comply with any of the aforementioned conditions of probation may result in suspension from the practice of law.

C. Payment of costs in these proceedings.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.5(k)(1), Rules of Discipline, I considered the following personal history of Respondent, to wit:

Age:

Date admitted to the Bar: December 10, 1979

Prior Discipline: In Case No. 68,599, Respondent was publicly reprimanded on February 5, 1987 for violation of Rules 1-102(A)(1) (violating a disciplinary rule), 1-102(A)(5) (engaging in conduct prejudicial to the administration of justice), 1-102(A)(6) (engaging in conduct adversely reflecting upon fitness to practice law), and 5-105(A) (failing to decline employment if the interests of another client may impair the lawyer's independent judgment) of the Code of Professional Responsibility of The Florida Bar.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonable incurred by The Florida Bar:

Case No. 70,716 (TFB File Nos. 01-86N17, 01-86N38, 01-86N60)

A. Grievance Committee Level

1. Administrative Costs (\$150.00 for each TFB File)	\$ 450.00
2. Court Reporter Transcripts & Fees	597.25
3. Bar Counsel Travel & Expenses (TFB File No. 01-86N17)	101.57
(TFB File No. 01-86N38)	82.00
(TFB File No. 01-86N60)	82.00
4. Witness Fees & Expenses	<u>256.49</u>

Subtotal \$1,569.31

B. Referee Level

1. Administrative Costs (\$150.00 for each case)	\$ 450.00
2. Court Reporter's Fees & Transcripts	0.00
3. Bar Counsel Travel	<u>0.00</u>

Subtotal \$ 450.00

TOTAL \$2,019.31

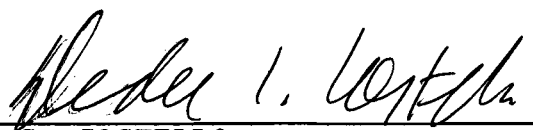
(TFB File Nos. 01-87N97 and 01-87N98)

A. Grievance Committee Level

1. Administrative Costs (\$150.00 for each TFB File)	\$ 300.00
2. Court Reporter's Fees & Transcripts	000.00
3. Bar Counsel Travel & Expenses	103.14
TOTAL	\$ <u>403.14</u>
GRAND TOTAL	\$ <u>2,422.45</u>

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 1 day of October, 1987.

  
DEDEE S. COSTELLO  
Circuit Judge/Referee  
Post Office Box 647  
Chipley, Florida 32428

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee and all documents constituting the record in these proceedings have been mailed to SID J. WHITE, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and that a copy of the above has been provided to JOHN T. BERRY, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301. A copy of this Referee's Report has been forwarded by regular U.S. Mail to SUSAN V. BLOEMENDAAL, Bar Counsel, The Florida Bar, Tallahassee, Florida 32301, and to JAMES A. JOHNSTON, Counsel for Respondent, at his record Bar address of 1375 West Garden Street, Pensacola, Florida 32501, this 1 day of October, 1987.

  
DEDEE S. COSTELLO  
Circuit Judge/Referee