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SID J. WHITE

FEB 3 1988

CLERK, SUPREME COURT

By \_\_\_\_\_  
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JEFFREY J. FITOS,

Respondent.

Case No. 70,826

TFB Case Nos. 87-22,305 (05A)

87-22,306 (05A)

87-22,310 (05A)

87-22,314 (05A)

87-22,315 (05A)

and 87-22,338 (05A)

REPORT OF REFEREE ACCEPTING CONDITIONAL PLEA

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, a hearing was held on December 21, 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 - David G. McGunegle

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:

The respondent tendered an oral Conditional Guilty Plea at the final hearing on December 21, 1987, where his input was taken by telephone since he resides out of state. Bar counsel was present in Chambers. Respondent was on a speaker phone. After full consideration it has been accepted by the undersigned. He practiced law in Marion County, Florida, at the time of these problems. The allegations to which he has tendered his condition plea are as follows:

As to Count I

1. The respondent began negotiating with Valley Forge Military Academy in Pennsylvania for a faculty position several months prior to the close of his law practice. He received an offer of employment in early September, 1986, and decided in mid-September, 1986, to accept it.

2. The respondent arranged for another attorney to handle some of the cases and entered into an agreement whereby the respondent would receive ten percent of any attorney's fees collected. He entered into this agreement without prior knowledge and consent of the affected clients.

As to Count II

3. The respondent represented ██████████ B ██████████ in a wrongful termination of employment action. A hearing on a motion to dismiss was scheduled for September 22, 1986, before Circuit Judge, Wallace E. Sturgis. The client had no notice of the hearing.

4. Ms. B ██████████ called the respondent's office on September 22, 1986, and was advised by the answering service that the office was closed. She then called the judge's office and was advised the hearing she had no prior notice of had been cancelled that morning. The judge's secretary stated the respondent had previously cancelled other hearings and was giving up the practice of law and leaving the area.

5. Ms. B ██████████ again called the respondent's office and left a message requesting him to contact her early the next day or she would notify The Florida Bar. The respondent called her the following day and advised he had turned the case over to another attorney, David Eddy. He further stated that he, the respondent, would represent her if the case proceeded to trial. Ms. B ██████████ had no contact with Mr. Eddy, and he later declined to accept her case. Respondent later sent her a letter stating he had arranged with a different attorney to handle it. That attorney also declined. Finally, respondent failed to file a Motion to Withdraw or advise his client of his intent to leave the practice prior to doing so.

6. Ms. B ██████████ was unable to find other counsel and dismissed the case herself.

As to Count III

7. During the first week of September, 1986, the respondent was retained by [REDACTED] D [REDACTED] to represent him on a DUI charge.

8. On September 24, 1986, Mr. D [REDACTED] received a letter dated September 22, 1986, from the respondent notifying him of his decision to move to Pennsylvania and that he had arranged for David Eddy to handle the case. Respondent did not advise the client of his intent to leave the practice when he accepted the case. He did not consult with the client about transferring this case to another attorney nor did he have the client's permission to do so when he did. He also withdrew without any appropriate motion or order and had inadequate communication with the client throughout the representation.

9. Mr. D [REDACTED] subsequently pled no contest, was adjudicated and spent forty-five days in jail work release of which he served twenty-four days. His main fear had been going to jail.

As to Count IV

10. In mid-August, 1986, the respondent was retained by [REDACTED] W [REDACTED] to represent his son, [REDACTED] W [REDACTED] on a drug possession charge. Respondent was paid some \$2,800.

11. The W [REDACTED] had no contact with the respondent after a bond reduction hearing was held on August 25, 1986, until they received a letter dated September 22, 1986, advising them the respondent was leaving the practice of law to teach in Pennsylvania. He further advised David Eddy would be handling the case. He declined. Mr. W [REDACTED] was thereafter unable to contact the respondent despite numerous telephone calls.

12. Mr. W [REDACTED] retained another attorney who was successful in having the bond reduced. Again, respondent failed to file a Motion to Withdraw as required.

As to Count V

13. The respondent was retained by [REDACTED] H [REDACTED] in April, 1986, to represent her son on five felony charges.

14. In mid-September, 1986, Mrs. H [REDACTED] went to the respondent's office where she was advised by the secretary

he had moved his office. Another client came in and informed Mrs. H [REDACTED] the respondent was leaving the state. The respondent then came in and advised her he had transferred the case to Mr. Eddy.

15. Although the respondent completed the main representation, he failed to notify his client he was leaving the practice of law. He also failed to make proper arrangements to withdraw or transfer the case.

As to Count VI

16. In August, 1986, [REDACTED] C [REDACTED] retained the respondent to represent her father, [REDACTED] C [REDACTED] on charges of cocaine importation.

17. In mid-September, 1986, Ms. C [REDACTED] learned from another attorney who practiced in the same building as the respondent that he was leaving the practice and moving to Pennsylvania.

18. The respondent failed to advise his client that he was leaving the state or that Mr. Eddy was going to handle the case. Ms. C [REDACTED] found out about Mr. Eddy at a bond reduction hearing in October, 1986. Respondent again filed no Motion to Withdraw in the case.

19. The C [REDACTED] decided not to hire Mr. Eddy and retained other counsel.

20. The respondent also represented the C [REDACTED] in a bankruptcy action. Upon his advice, the C [REDACTED] filed a Chapter 11 bankruptcy for their business on or about September 4, 1986.

21. After doing the initial filing, the respondent turned the matter over to Paul Ashe to handle without his client's knowledge or consent and without filing a Motion to Withdraw.

As to Count VII

22. The respondent represented [REDACTED] B [REDACTED] [REDACTED] B [REDACTED], and [REDACTED] G [REDACTED] in a criminal matter.

23. The respondent negotiated a plea on his clients' behalf and filed a notice of appeal of an order denying suppression of their statements on April 18, 1986, in the Fifth District

Court of Appeal. The respondent later filed a voluntary dismissal of the appeal without his clients' knowledge or permission.

24. After their release in July, 1986, the B [REDACTED] visited the respondent's office and were advised he would take further actions in their behalf including administrative remedies with the Police Standards Board, securing the return of some of their property, and filing charges against the complainants in the criminal case.

25. The B [REDACTED] called the respondent's office in September, 1986, regarding the receipt of a subpoena from the Police Standards Board. The secretary advised them the respondent was no longer in business; the file was closed; and it had been placed in storage.

26. The B [REDACTED] were provided only with one partial accounting for their fees and costs on August 27, 1985, notwithstanding several requests for a complete accounting.

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 based on the conditional plea and the responses to the Requests for Admission:

As to Count I

Disciplinary Rule 2-107(A) of The Florida Bar's Code of Professional Responsibility for entering into an improper fee agreement with another attorney without the prior knowledge and consent of the client.

As to Counts II, III, IV, V, VI, and VII

Article XI Rule 11.02(3) (a) of The Florida Bar's Integration Rule for behavior contrary to honesty, justice or good morals, and the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 1-102(A)(4) for conduct involving deceit, deception, or misrepresentation; 1-102(A)(6) for other misconduct reflecting adversely on his fitness to practice law; 2-110(A)(1) for withdrawing from a case without the permission of the tribunal and without notice to the client; 2-110(A)(2) for withdrawing without taking reasonable steps to avoid foreseeable prejudice to the rights of clients; and 6-101(A)(3) for neglecting a legal matter entrusted to him.

Additionally as to Count VII

The following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 1-102(A)(5) for conduct prejudicial to the administration of justice; 7-101(A)(1) for intentionally failing to carry out the lawful objectives of a client; 7-101(A)(2) for intentionally failing to carry out a contract of employment; 7-101(A)(3) for intentionally prejudicing the rights of a client; and 9-102(B)(3) for failing to render an appropriate accounting to a client upon request.

IV. Recommendation as to Disciplinary measures to be applied:

I recommend the respondent's oral Conditional Guilty Plea be accepted and he be suspended from the practice of law for a period of twelve months with proof of rehabilitation required prior to reinstatement as provided by Rule 3-5.1(e) of the Rules of Discipline. In addition, the respondent should be required to pay all costs of these proceedings.

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: 37

Date admitted to Bar: November 9, 1986

Prior Disciplinary convictions and disciplinary measures imposed therein: 05A86C45 - Respondent received a grievance committee level private reprimand without an appearance in May, 1986, for threatening to present criminal charges solely to obtain an advantage in a civil matter.

Family: Respondent is married and has one minor child.

Other: The respondent is currently teaching school in Pennsylvania and is not engaged in the active practice of law.

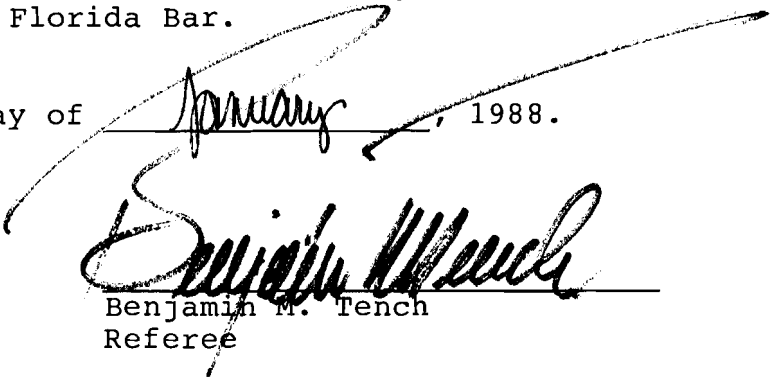
VI. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

A. Grievance Committee Level Costs	
1. Administrative Costs	\$150.00
2. Transcript Costs	\$733.40
3. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 58.94
4. Investigator's Expenses	\$747.10
B. Referee Level Costs	
1. Administrative Costs	\$150.00
2. Transcript Costs	\$ 58.99
3. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 77.18
4. Investigator Expenses	\$ 20.15
C. Miscellaneous Costs	
1. Witness Fee	\$ 58.00

TOTAL ITEMIZED COSTS: \$2053.76

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 29 day of January, 1988.

  
Benjamin M. Tench  
Referee

Copies to:

David G. McGunegle, Bar Counsel  
Jeffrey J. Fitos, Respondent  
John T. Berry, Staff Counsel, The Florida Bar, Tallahassee,  
Florida 32301