

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 70,830
71,085

v.

GARY H. NEELY,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, hearings were held on the following dates: November 18, 1987, January 20, 1988, and April 1, 1988.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: Jan K. Wichrowski

For the Respondent: Gary A. Bloom

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 upon below, I find:

CASE NO. 70,830

A. The respondent was employed by Betty Ruth Kern in the summer of 1982 to represent her in a suit to recover damages for an injury she sustained in an automobile collision (R-12,13).

B. The respondent asked Betty Ruth Kern to meet him at the Volusia County Courthouse in order to attend a hearing to determine whether her suit should be dismissed for lack of prosecution; the respondent did not meet Betty Ruth Kern but did attend the hearing (R-17,18). Also see Attachment A attached hereto.

C. Respondent failed to advise Betty Ruth Kern when her suit had been dismissed for lack of prosecution (R-26). Also see Attachment A attached hereto.

D. When Betty Ruth Kern asked about the hearing, the respondent falsely advised her, "We won." (R-18).

E. As a result of this action being dismissed for lack of prosecution, a cost judgment was entered against Betty Ruth Kern in the amount of \$438.00 (R-117, 118). Also see Attachment B attached hereto.

**CASE NO. 71,085
COUNT I**

F. For several years the respondent represented the complainant, Sandra Teresa Mancuso and Richard F. Mancuso, in various matters (R-23, 40-43).

G. The respondent was requested by the complainant to pick up money from Miami and deliver it to the complainants in Daytona (R-24, 26, 33).

H. After the respondent gained possession of the money, the complainants telephoned the respondent many times requesting delivery but were unable to reach the respondent; messages were left but the respondent did not respond (R-28,29).

I. The respondent came to the complainants' home uninvited at approximately 9:30 p.m. with the complainants' money, but refused to deliver it unless Ms. Mancuso signed a paper "dropping" her daughter's lawsuit for medical malpractice, as well as other unidentified papers (R-30, 60).

J. When the respondent did not agree to give her the money the complainant, Ms. Mancuso, grabbed it from the respondent's car and retreated into her home (R-31).

K. At the time respondent arrived at the home of the complainants with the money, no fees were owed to the respondent (R-45).

L. The complainants have no recollection of exactly how long the money was in the possession of the respondent (R-32,45), but the respondent testified that he picked it up on the 15th or 16th of January and delivered it to the complainants' home on the 19th of January and that in the meantime he was out of town (R-57-59).

M. At the time the respondent brought the money to the home of the complainants, the respondent had received word that the complainants were seeking a warrant for the arrest of the respondent (R-65).

COUNT II

N. Since 1972, the respondent has maintained a trust account at Sun Bank in Daytona Beach (R-63).

O. Respondent held in trust \$37,500 he received from the Wilkinsons' insurance company on December 12, 1986 (R-37).

P. The respondent overdrew on the Wilkinsons' trust account by writing a check to himself in the amount of \$450.00, and an overdraft was issued February 24, 1987 (R-37,38,45).

Q. On March 2, 1987, the respondent deposited \$220.00 cash of his own money crediting Wilkinsons' account (R-39).

R. There was no client identification on the cash deposit made by the respondent (R-42,49).

S. The funds which were deposited into the Wilkinson trust account by the respondent in an effort to correct the overdraft were the only funds belonging to respondent which were deposited into that account (R-68).

III. Recommendation as to Whether or Not the Respondent Should be Found Guilty: As to each count of the complaint I made the following recommendations as to guilt or innocence:

RECOMMENDATION AS TO CASE NO. 70,830

I recommend that the respondent be found guilty, and, specifically, that he be found guilty of the following violations of Disciplinary Rules of the Florida Bar's Code of Professional Responsibility: 1-102(A)(4), 1-102(A)(6), 6-101(A)(3), and 7-101(A)(3).

RECOMMENDATION AS TO CASE NO. 71,085

COUNT I

I recommend that the respondent be found guilty, and, specifically, that he be found guilty of the following Rules Regulating The Florida Bar (the relevant conduct of the respondent occurred after January 1, 1987): 3-4.3, 4-1.15(b).

RECOMMENDATION AS TO CASE NO. 71,085

COUNT II

I recommend that the respondent be found guilty, and, specifically, that he be found guilty of violations of the following sections of The Florida Bar's Rules Regulating Trust Accounts: 5-1.1(c) and 5-1.2(b)(2).

IV. Recommendations as to Disciplinary Measures to be Applied:
I recommend that the respondent be suspended from the practice of law for a period of more than three (3) months and thereafter respondent shall prove rehabilitation as provided in Rule 3-5.1(e), Rules of Discipline.

V. Personal History and Past Disciplinary Record: After finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(1)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

AGE: 46

DATE ADMITTED TO BAR: 1972

PRIOR DISCIPLINARY CONVICTION AND DISCIPLINARY MEASURES IMPOSED THEREIN:

- A) Ninety-day suspension from 7/9/79 to 10/7/79, by order of the Supreme Court dated 6/7/79. Fla. Bar v. Neely, 372 So.2d 89, (Fla. 1979).
- B) Public reprimand and one year probation by order of the Florida Supreme Court on May 13, 1981. Fla. Bar v. Neely, 417 So.2d 957, (Fla. 1982).
- C) Respondent found not guilty by order of the Florida Supreme Court in Case No. 66,251, November 7, 1985.
- D) Sixty-day suspension followed by two years' probation by order of the Florida Supreme Court on May 22, 1986.
- E) Ninety-day suspension by order of the Florida Supreme Court, January 29, 1987.

OTHER PERSONAL DATA: Married with two dependent children.

EDUCATION: Daytona Beach Community College, University of Florida, Stetson Law School. Sole practitioner with offices at 547 North Ridgewood, Daytona Beach. He has designations in areas of real property, personal injury and wrongful death, corporations.

VI. Statement of Costs and Manner in Which Cost Should Be Taxed:
The following costs were incurred by the Florida Bar:

A) Grievance Committee Level Costs:

1. Administrative Costs	\$	450.00
2. Transcript Costs		918.91
3. Bar Counsel/Branch Staff Counsel Travel Costs		110.30

B) Referee Level Costs

1. Administrative Costs	150.00
2. Bar Counsel/Branch Staff Counsel Travel Costs	81.86
3. Transcript Costs	1,060.65

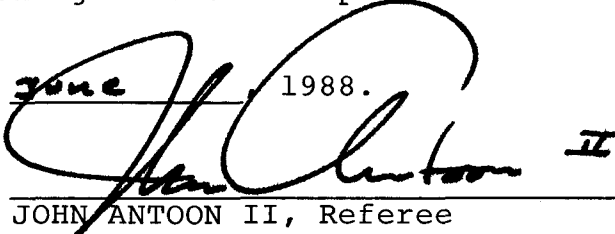
C) Miscellaneous Costs

1. Telephone Charges	54.07
2. Miscellaneous Travel	103.74
3. Investigator Expenses	1,212.97

TOTAL ITEMIZED COSTS: \$ 4,142.50

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.

Dated this 8th day of June, 1988.



JOHN ANTOON II, Referee

Copies furnished to:

Bar Counsel-Jan A. Wichrowski, The Florida Bar, Orlando, Florida
Respondent's Counsel-Gary A. Bloom, Daytona Beach, Florida
Staff Counsel, The Florida Bar, Tallahassee, Florida