

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

MAY 20 1988

THE FLORIDA BAR,

Complainant,

Supreme Court Case
No. 70,859

v.

FREDERICK E. GRAVES,

The Florida Bar Case Nos.
86-20,414, 86-20,466 and
86-20,526

Respondent.

INITIAL REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings, a final hearing was held on March 4, 1988. An additional hearing will be held concerning the discipline to be imposed in this cause.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - Jacquelyn P. Needelman

For the Respondent - Lance J. Thibideau

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 the following:

1. Respondent is, and at all times hereinafter mentioned, was a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

AS TO COUNT I

2. In or about October, 1984, one Joseph Stronccone hired the Respondent to represent him regarding a criminal aggravated assault charge.
3. By October 31, 1984, Mr. Stronccone paid the Respondent Fifteen Hundred Dollars (\$1,500).
4. Respondent failed to appear in court on or about November 1, 1984 for Mr. Stronccone's scheduled arraignment.
5. Mr. Stronccone's court case was rescheduled for hearing. A few days before Mr. Stronccone's case was set for a court appearance, Respondent advised Mr. Stronccone's wife and/or father-in-law that

he would not be representing Mr. Stroncione any further.

6. Respondent subsequently advised Mr. Stroncione and/or Mrs. Stroncione that Respondent only said he was withdrawing from the case to teach Mr. Stroncione a lesson for being late for an appointment.

7. I find by clear and convincing evidence that Respondent's announced withdrawal failed to give sufficient notice to Mr. Stroncione and violated Disciplinary Rule 2-110(A) (2) of the Code of Professional Responsibility concerning withdrawal of representation even though Respondent subsequently attempted to reinstate the representation.

8. I do not believe that it has been proved clearly and convincingly that there was a fee pay back owed to Mr. Stroncione with regard to these matters.

AS TO COUNT II

9. Respondent was hired to represent Dennis Caruso in the cause styled Frank W. Fisher, Inc., a Florida Corporation, Plaintiff, vs. Dennis Caruso, Defendant, in the County Court In and For Broward County, Florida, Case No. 84-13399 CC "F".

10. Respondent failed to file an answer on Mr. Caruso's behalf and a default was entered against Mr. Caruso regarding liability.

11. Respondent advised Mr. Caruso not to appear at a scheduled January 22, 1985 hearing and advised that he would handle same. However, Respondent failed to appear at said hearing.

12. Respondent failed to properly represent Mr. Caruso regarding the matters Respondent was hired to handle for Mr. Caruso.

13. Respondent scheduled a deposition of the plaintiff in his office and failed to appear for this deposition.

14. A hearing was held as to damages on May 31, 1985 and Respondent arrived late for the hearing.

15. Respondent only gave Mr. Caruso two (2) hours notice of the May 31, 1985 hearing.

16. Respondent failed to have a court reporter present at the May 31, 1985 hearing, although Mr. Caruso had requested the Respondent to have a court reporter present.

17. Respondent filed a notice of appeal on Mr. Caruso's behalf and then failed to properly pursue Mr. Caruso's appeal as the appeal was dismissed based upon Respondent's failure to submit a timely brief. Once Respondents undertook the appeal, he was responsible to handle said appeal in a manner other than to neglect the appeal.

18. I find that it has been shown by clear and convincing evidence that Respondent handled Mr. Caruso's legal matter without preparation adequate in the circumstances.

19. I find that it has been shown by clear and convincing evidence that Respondent neglected Mr. Caruso's legal matters.

20. Respondent failed to file and obtain leave of court to withdraw from representing Mr. Caruso in his appeal.

AS TO COUNT III

21. Respondent represented Rosemary Reynolds regarding a judicial sale on her property that was based upon the foreclosure of a note and mortgage.

22. Respondent filed frivolous pleadings and improperly delayed the judicial sale of the property.

23. I find that it has been proved by clear and convincing evidence that Respondent engaged in conduct prejudicial to the administration of justice by filing frivolous and inappropriate representations concerning the objections Respondent raised to the sale certificate being issued.

24. I find that it has been proved by clear and convincing evidence that the Respondent failed to obtain leave of court before withdrawing from his representation of Mrs. Reynolds.

25. I find that it has been found by clear and convincing evidence that the Respondent violated Disciplinary Rule 2-110(A)(2) of the Code of Professional Responsibility in that he withdrew from representing Ms. Reynolds without taking reasonable steps to avoid foreseeable prejudice to her, including failing to give due

notice to Mrs. Reynolds.

26. I find that it has not been shown by clear and convincing evidence that Respondent failed to deliver the file to Mrs. Reynolds as Mrs. Reynolds had copies of the pleadings in the file.

III. Recommendation 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 of the following violations: Disciplinary Rules 1-102(A) (6), 2-110(A) (2) and 6-101(A) (3) of the Code of Professional Responsibility.

I recommend that the Respondent be found not guilty as to Disciplinary Rule 2-110(A) (3) of the Code of Professional Responsibility.

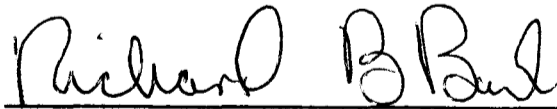
AS TO COUNT II

I recommend that the Respondent be found guilty of the following violations: Disciplinary Rules 6-101(A) (2) and 6-101(A) (3) of the Code of Professional Responsibility.

AS TO COUNT III

I recommend that the Respondent be found guilty of the following violations: Disciplinary Rules 1-102(A) (5), 2-110(A) (1) and 2-110(A) (2) as it concerns Respondent's failure to take reasonable steps to avoid foreseeable prejudice to the rights of his client including giving due notice of his withdrawal to her. I find the Respondent not guilty concerning the charge of failing to deliver his files to Mrs. Reynolds.

A supplemental report will be submitted after the hearing regarding the discipline to be imposed.



RICHARD B. BURK
Referee

March 25, 1988

Copies Furnished to:

Sid J. White, Clerk
Supreme Court of Florida
Jacquelyn P. Needelman, Bar Counsel
Lance J. Thibideau, Attorney for Respondent

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CASE NO. 70,859

FILED
MAY 30 1988

MAY 30 1988

CLERK OF THE COURT
By: *jl*
Deputy Clerk

THE FLORIDA BAR,)
)
Complainant,)
)
vs.)
)
FREDERICK E. GRAVES,)
)
Respondent.)

RECOMMENDATION OF DISPOSITION

The Referee is very sympathetic to the historic background of the Respondent together with the significant amount of pro bono work that the Respondent has rendered. The record of prior bar disciplinary actions indicated, however, that the Respondent has not benefited from or taken seriously the previous transgressions.

Based upon the Referee's previous findings as contained in the Initial Report of Referee dated March 25, 1988, the Referee determines and recommends that the appropriate disciplinary recommendation in this case should be a six (6) month suspension from the practice of law. Proof should be required of rehabilitation pursuant to Rule 3-5.1(e) and 3-7.9 of the Rules of Discipline. Further, probation for a period of three (3) years should follow any reinstatement pursuant to Rule 3.5.1(c). The Referee also recommends that during the probationary period, the Respondent be required to submit to the Florida Bar quarterly status reports of all pending cases and that an attorney, appointed by the Florida Bar to supervise Respondent's probation, should receive a copy of the status reports. The Referee further recommends that the Respondent be required to take and pass the Ethics portion of the Florida Bar examination before being readmitted to practice after the period of suspension.


The Referee recommends that the costs of these

proceedings in the sum of \$2,898.01 be paid by the Respondent prior to any r reinstatement to practice.

This Recommendation of Disposition of this matter together with the Initial Report of Referee constitute the complete recommendations in this matter.

The entire file in this matter is being forwarded at this time to the Supreme Court of the State of Florida and copies of this Recommendation of Disposition are being furnished to the Florida Bar, Complainant, and Frederick E. Graves, Respondent.

DONE AND RECOMMENDED at West Palm Beach, Florida, this 17th day of May, 1988.



RICHARD B. BURK, REFEREE

COPIES FURNISHED TO:

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