

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

FILED

DEC 2 1987

CLERK, SUPREME COURT

By _____
Deputy Clerk

THE FLORIDA BAR,

Complainant,

Case No. 70,908

v.

TFB No. 8722014(02);
(formerly File No. 02-87219)

SUSAN E. ROMAN,

Respondent.

_____ /

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 July 24, 1987, The Florida Bar filed its Complaint against Respondent. On August 6, 1987, The Florida Bar filed its Request for Admissions and properly served a copy of same on Respondent. On September 17, 1987, The Florida Bar filed a Motion to Deem Matters Admitted and a Motion for Summary Judgment in these proceedings and properly served a copy of same on Respondent. This matter was heard pursuant to an order setting final hearing on November 3, 1987 at 2:30 p.m. at the Leon County Courthouse, Tallahassee, Florida. Each party was properly noticed pursuant to the Rules of Discipline pertaining to formal hearings. The Florida Bar appeared at the final hearing through counsel and Respondent failed to appear. More than 45 days have elapsed since the service of the Request for Admissions and no answers to the Request have been filed in this cause by Respondent. Pursuant to Rule 1.370(a) of the Florida Rules of Civil Procedure, all matters as set forth in in the Request for Admissions are deemed admitted. There being no issue of fact remaining,

Complainant's Motion for Summary Judgment is hereby granted. All the aforementioned pleadings, attachments thereto, and exhibits received in evidence, 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 Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary Of Case.

Respondent was admitted to the practice of law in the State of New Hampshire in 1981 and is currently a sole practitioner in Dover, New Hampshire. On December 7, 1984 the New Hampshire Supreme Court Committee on Professional Conduct forwarded two separate complaints to Respondent and asked her to respond to each complaint within 10 days. Having received no reply to either complaint, the Committee again wrote to Respondent on January 7, 1985 asking that she give the matters her immediate attention. The Committee still received no response from Respondent. On January 22, 1985, the Committee sent Respondent a notice to attend a hearing on February 20, 1985 on the issue of her failure to respond promptly to its previous requests. The Committee first heard from Respondent when she telephoned its Administrator on February 19, 1985. Respondent stated the responses had been mailed on January 9, 1985 and had apparently crossed in the mail with the Committee's letter of January 7, 1985. Respondent further indicated that she was having problems with mail deliveries. At the Committee hearing on February 20, 1985, Respondent testified under oath that she had prepared her responses in January 1985 and that they were mailed to the Committee on January 9, 1985. Respondent's explanations were accepted by the Committee. On April 2, 1985 the Committee sent Respondent a copy of a complaint filed by Shelly Venne and asked her to respond within 10 days. Concerned about Respondent's continuing failure to cooperate, the Committee sent her a notice on May 2, 1985 to attend a hearing on May 15, 1985. On May 6, 1985, Respondent telephoned the Administrator and said she never received the Committee's letter of April 2, 1985. Another copy of the Venne complaint was mailed to Respondent on May 6, 1985. Her response dated May 10, 1985 was

received and the hearing scheduled for May 15, 1985 was cancelled. Also on May 2, 1985, the Committee sent Respondent a copy of a complaint filed by Douglas Williams and asked her to respond within 10 days. Having received no reply, the Committee wrote to Respondent on June 14, 1985 asking that she give the matter her immediate attention. When the Committee still received no reply, a Committee member called Respondent in July. Respondent arranged to have hand delivered a copy of her response dated May 15, 1985, to the Williams complaint. Respondent's transmittal letter is dated July 15, 1985 and states that she thought the Committee had received her reply "some time ago" and that she was again speaking to the Dover Postmaster about the delay in mail delivery. The Committee then docketed a Committee generated complaint on August 8, 1985 which expressed concern about Respondent's continued failure to cooperate, her apparent lack of concern for the Committee and its responsibilities, and possible misrepresentation as to: (1) when requests of the Committee were actually received by her, and (2) the actual dates her responses were prepared and sent to the Committee. The Committee never received a written response to its complaint. A hearing on the merits of the three aforementioned complaints was held on November 10, 1985. Upon hearing and review of the Venne Complaint, Respondent's response, and the testimony and evidence presented, the Committee made findings of fact that Respondent misrepresented facts to her client with reference to her alleged efforts to contact a contractor; that she misrepresented to the Committee that a letter was sent to the contractor in December 1984; that the letter to the contractor was actually prepared in March or April 1985; and that Respondent neglected her client's case. The Committee determined that with respect to the Venne Complaint, there was clear and convincing evidence that Respondent violated the following provisions of the Code of Professional Responsibility of the New Hampshire Bar: (a) DR 1-102(A)(4), by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation and (b) DR 6-101(A)(3), by neglecting a legal matter entrusted to her. Upon hearing and review of the Williams Complaint, Respondent's answer, and the testimony and evidence presented, the Committee made findings of fact that Respondent made statements to her client which were calculated to mislead the client into believing that suit had been filed and that litigation was pending. The Committee determined that with respect to the Williams Complaint, there was clear and convincing evidence that Respondent violated DR 1-102(A)(4) of the Code of Professional Responsibility of the New Hampshire Bar by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Upon hearing and review of the Committee Complaint and the testimony and evidence presented, the Committee made findings of fact that Respondent by her own admission, lied to the Committee at the hearing on February 20, 1985 when she presented copies of two responses to two separate complaints and

represented that they had been prepared on January 9, 1985 when, in fact, they had been prepared shortly prior to February 20, 1985 in anticipation of the hearing on that date; and that Respondent made misrepresentations to the Committee when she stated that she did not receive a letter of complaint which was mailed to her on April 2, 1985. The Committee determined that with respect to the Committee Complaint there was clear and convincing evidence that Respondent violated the following provisions of the Code of Professional Responsibility of the New Hampshire Bar: (a) DR 1-102(A)(1), by violating a Disciplinary Rule; (b) DR 1-102(A)(4), by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; (c) DR 1-102(A)(5), by engaging in conduct that is prejudicial to the administration of justice; and (d) DR 1-102(A)(6), by engaging in conduct that adversely reflects on her fitness to practice law. The Committee determined that the aforesaid conduct of Respondent and the aforesaid violations of the Code of Professional Responsibility warranted formal disciplinary proceedings in the Supreme Court of New Hampshire. Accordingly, the Committee authorized the filing of a Petition and voted to recommend to the Court a two (2) year suspension of Respondent from the practice of law in New Hampshire. On October 1, 1983, Respondent was suspended from The Florida Bar for failure to pay annual dues. She remains suspended to date.

III. RECOMMENDATIONS AS TO GUILT. I recommend that Respondent be found guilty of violating the following provisions of the Code of Professional Responsibility of The Florida Bar:

1-102(A)(1) (a lawyer shall not violate a disciplinary rule);

1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation);

1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law); and

6-101(A)(3) (a lawyer shall not neglect a legal matter entrusted to him).

I further recommend that Respondent be found guilty of violating the following provisions of the Rules Regulating The Florida Bar:

1-7.3 (every active member of The Florida Bar shall pay dues); and

3-7.2(j)(1) (a member of The Florida Bar shall provide notice of discipline by a foreign jurisdiction).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

Based upon all the facts and evidence supporting the cited violations, it is my recommendation that Respondent be suspended from the practice of law in Florida, which suspension shall run concurrently with the two year suspension imposed on Respondent by the Supreme Court of New Hampshire, to terminate on March 31, 1989. Additionally, I recommend Respondent be required to complete successfully the Ethics portion of The Florida Bar Examination as a condition for reinstatement to The Florida Bar.

This recommendation is made after a consideration of the discipline imposed by the Supreme Court of Florida in the following cases involving similar misconduct:

The Florida Bar v. Wentworth, 453 So.2d 406 (Fla. 1984) - the Court held that neglect of a legal matter warrants suspension from the practice of law for a period of 2 years.

The Florida Bar v. Fath, 386 So.2d 787 (Fla. 1980) - the Court held that neglect of a legal matter and violation of Disciplinary Rules 1-102(A)(1), 1-102(A)(4), 1-102(A)(6), and 6-101(A)(3) of the Code of Professional Responsibility of The Florida Bar warrants a suspension for a period of 2 years.

The Florida Bar v. Schneiderman, 285 So.2d 392 (1973) - the Court held that neglect of a legal matter and failure to appear or file responses in disciplinary proceedings warrants suspension from practice for 3 years, with the requirement that rehabilitation be proved before reinstatement.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to article XI, Rule 11.06(9)(a)(4), I considered the following personal history of Respondent, to wit:

Age: 35 years old

Date admitted to the Bar: November 20, 1981

Prior Discipline: None in Florida

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

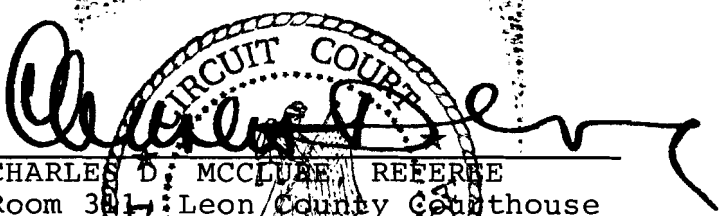
I find the following costs were reasonably incurred by The Florida Bar:

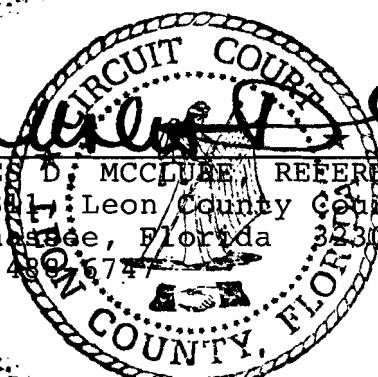
A. Referee Level

1. Administrative Costs	\$150.00
2. Court Reporter's Fees	84.75
TOTAL	<u>\$234.75</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.

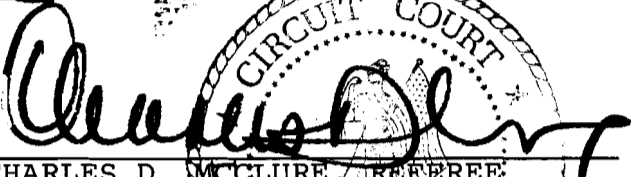
This Report and Recommendation was entered this 4th day of December, 1987, in Tallahassee, Leon County, Florida.


CHARLES D. MCCLURE REFEREE
Room 311 Leon County Courthouse
Tallahassee, Florida 32301
(904) 496-6747



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to SID J. WHITE, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and that confidential copies were mailed by regular U.S. Mail to JOHN T. BERRY, Staff Counsel, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32301; JAMES N. WATSON, JR., Bar Counsel, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32301; and SUSAN E. ROMAN, Respondent, at her record Bar address of 4 Portland Avenue Post Office Drawer 230, Dover, New Hampshire 03820, this 4th day of December, 1987.



CHARLES D. MCCLURE, REFEREE

