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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

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MAR 21 1988

CLERK, SUPREME COURT

By _____
Deputy Clerk

THE FLORIDA BAR,
Complainant,
v.
ROGER D. PATTERSON,
Respondent.

Case No. 71,141

(TFB Nos. 86-19734-14, 86-19742-14,
86-19747-14, 87-26073-14, 87-26092-14,
and 87-26093-14)

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 September 15, 1987, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. The Florida Bar attempted service of its Complaint and Request for Admissions at Respondent's record Bar address on that date by certified mail. The Complaint and Request for Admissions were returned unclaimed. The Florida Bar attempted service of its Complaint and Request for Admissions by regular U.S. mail on October 21, 1987, at Respondent's third alternate address, the address at which Respondent is apparently residing. The Complaint and Request for Admissions were not returned to this office. This matter was assigned to the undersigned Referee on October 6, 1987. Upon Respondent's failure to respond thereto within 45 days as required by The Florida Rules of Civil Procedure, The Florida Bar filed a Motion to Deem Matters Admitted and a Motion for Summary Judgment on December 21, 1987. On February 2, 1988, minutes before the referee hearing in this matter was to begin, the undersigned received Respondent's answers to the Complaint and Request for Admissions by

Federal Express. Respondent failed to attend the hearing in this matter. The Respondent having offered no explanation for the considerable tardiness in filing, the answers were struck as untimely and the motions granted. Having reviewed the allegations in the Complaint which were admitted, it would appear that Respondent is not qualified to practice law. Respondent's lack of concern for Bar disciplinary proceedings seems consistent with the allegations infra, regarding Respondent's misconduct as a practicing attorney. All of 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.

Count I (86-19742-14) - Respondent was retained in the Spring of 1983 by a Mr. Thomas Henn to resolve a property dispute over trees on Mr. Henn's property that had been cut by a neighbor. Respondent requested payment of \$359.00, consisting of \$300.00 retainer and \$59.00 for court costs, which Mr. Henn paid in full on November 30, 1984. Respondent eventually mailed a letter to Mr. Henn's neighbor, but the letter was incomplete. Respondent subsequently suggested to Mr. Henn that he contact a nursery for an estimate on damages. Mr. Henn contacted a nursery per Respondent's suggestion and received estimates which he attempted to deliver to Respondent through various means over a two to three-month period. Mr. Henn was eventually successful in delivering the estimates to Respondent. Approximately one month later, at a hearing held in the spring of 1985, the Circuit Court for the Fourteenth Judicial Circuit, granted the defendant's motion to dismiss for lack of title assignment and admonished Respondent because he had not furnished an original title assignment. Respondent

promised that he would contact the original owner of the property so that the owner could be joined in the action, but failed to do so. Mr. Henn therefore found it necessary to contact the individual himself. Respondent's phone was disconnected in the fall of 1985. In an attempt to contact Respondent, Mr. Henn left many messages with a real estate broker's office adjacent to Respondent's office. Respondent never responded to any of the messages. In the Fall of 1985, Respondent advised Mr. Henn that he could not find any record of his neighbor's purchase of the adjacent property. Mr. Henn researched the matter himself and was able to determine the identity of the individual who had sold the adjacent property to his neighbor. In early December 1985, Mr. Henn conveyed the information regarding the identity of the seller to Respondent. Mr. Henn contacted Respondent at his home on December 25, 1985 because Mr. Henn's messages to Respondent continued to go unanswered. Respondent made more promises of action to Mr. Henn at this time. Sometime in 1986, Respondent closed his office and moved to Tennessee without notifying Mr. Henn. Respondent returned Mr. Henn's file and his \$359.00 payment after being informed of Mr. Henn's intention to file a complaint with The Florida Bar.

Count II (86-19734-14) - On November 28, 1984, Respondent filed a notice of appeal with the First District Court of Appeal in the matter of Dr. Thomas Franklin Yancey, D.C., Appellant, versus State of Florida, Appellee (Case number BD-398). Because of Respondent's failure to file a brief, a motion for extension of time or any other motion, the First District Court of Appeal entered an order on October 30, 1985, directing Respondent to show cause within ten (10) days why the appeal should not be dismissed. On November 15, 1985, Respondent filed an untimely response which was found to be insufficient. Attached to the reply was a motion for extension of time for filing final brief which Respondent had filed in the circuit court on July 10, 1985, and a statement by Respondent to the effect that he had mistakenly believed that the circuit court continued to have jurisdiction. On November 27, 1985, the First District Court of Appeal entered an order directing Respondent to file an initial brief within ten (10) days. Respondent failed to file an initial brief within the prescribed ten (10) day period; instead, Respondent filed an unauthorized motion to remand on December 10, 1985. On December 20, 1985, the First District Court of Appeal entered an order denying Respondent's motion to remand and directing Respondent to show cause within ten (10) days why sanctions should not be imposed for his failure to comply with the appellate

court's November 27, 1985 order. Respondent failed to respond within the prescribed ten (10) day period, but filed a late response on January 7, 1986 stating his belief that the aforementioned motion to remand had tolled the time for complying with the appellate court's November 27, 1985 order. Respondent's response also assured the appellate court that the initial brief would be filed by January 6, 1986. Respondent's failure to file the initial brief by January 22, 1986 resulted in the entry of an order by the appellate court directing him to appear on January 29, 1986. Respondent appeared on January 29, 1986 and tendered the initial brief for filing, but offered no additional explanation or justification for his failure to comply with the time limitations imposed by the Florida Rules of Appellate Procedure or the orders of the appellate court. On January 29, 1986, the First District Court of Appeal entered an order finding Respondent's conduct to be below the acceptable standards for competent attorneys.

Count III (87-26093-14) - Respondent was retained by a Ms. Inez Saunders to update her will. Within a year, on August 13, 1985, Ms. Saunders passed away. Respondent was contacted on August 16, 1985, by Mr. Richard DuBose who was the nephew of Ms. Saunders and a beneficiary of the Estate of Inez Saunders (hereinafter referred to as the Estate), and by Ms. Eileen Whitley, who was then co-trustee of the Estate, to provide legal services and to act as counsel in the probate administration of the Estate. Respondent requested an advance fee of \$470.00 which Mr. DuBose paid on August 16, 1985. At that time, Respondent agreed to send out the letters of administration within three weeks. Respondent also agreed to handle for the estate a dispute with the Panama City Nursing Center over a bill. In mid-November 1985, after numerous attempts to contact Respondent, Mr. DuBose traveled on two separate occasions from Andalusia, Alabama to Respondent's office, but Respondent was never present. On one of the two trips to Respondent's office, Respondent's secretary gave Mr. DuBose a letter of administration dated October 30, 1985, which appointed him personal representative of his aunt's estate. Subsequently, Mr. DuBose attempted to contact Respondent at his office, home, and at a plumbing supply office number given to Mr. DuBose by Respondent, but the office and home phones were eventually disconnected. Respondent never returned any calls made to the plumbing supply office. The Panama City Nursing Center filed a motion dated March 18, 1986 to compel Mr. DuBose as the Estate's personal representative, to publish a notice of administration for the Estate. On March 19, 1986, Mr. DuBose received a

notice of hearing concerning the motion to compel. Respondent received a letter of termination from Mr. DuBose dated March 27, 1986, which demanded the return of Mr. DuBose's file and any unused portion of the fee. Respondent forwarded the file to Mr. DuBose's new attorney, but failed to return any portion of the fee.

Count IV (87-26073-14) - In mid-summer 1985, a Ms. Johnnie Wilson retained Respondent to represent her in a property dispute. Ms. Wilson provided Respondent with a piece of paper containing a sketch of the property in question, wherein the parties had agreed to the division of the property. The paper was dated and contained the signatures of family members. Respondent was also paid \$350.00 to obtain a guardianship for Ms. Wilson's children. Ms. Wilson subsequently learned that this guardianship was not legally required because she was the children's natural guardian. In an unrelated matter, Respondent was paid \$30.00 in attorney fees to send letters to two members of Ms. Wilson's family regarding Ms. Wilson's children. In early summer of 1986, Ms. Wilson attempted to contact Respondent by letter wherein she requested that Respondent return her file. The letter was mailed both to Respondent's home and business addresses, but Respondent's never responded. Ms. Wilson subsequently went to Respondent's office in another attempt to contact him, but the office had been closed. Ms. Wilson therefore left a note for Respondent on the office door. In response to her note, Respondent contacted Mrs. Wilson promising to send the letters to her relatives and to obtain additional documents regarding the property. Respondent failed to send the letters or acquire the additional papers as he had promised. Respondent subsequently moved to Tennessee without notifying Mrs. Wilson or returning her file.

Count V (87-26092-14) - Sometime during 1986, a Mr. Vernon B. Anderson retained Respondent to represent him in a collection matter. Respondent was paid \$500.00 in attorney fees and was furnished with important papers pertaining to the case. Respondent moved to Tennessee without notifying Mr. Anderson. Mr. Anderson attempted to contact Respondent to determine the status of the matter, but he was unsuccessful. Respondent never returned Mr. Anderson's papers or money, and no work was done by Respondent in furtherance of the matter.

Count VI (86-19747-14) - Pursuant to an order dated January 29, 1986, in Yancey v. State of Florida, Case No. BD-398,

Respondent suggested that in the future he would refrain from practicing appellate law. In mid-1986, Mr. Raymond Rhodes, Clerk of the District Court of Appeal, First District, sent material to The Florida Bar relating to two separate appeals handled by Respondent. The first appeal concerned an indirect criminal contempt appeal in Brody v. Department of Professional Responsibility, Case No. BG-80. Respondent represented the appellant, Mr. Harris B. Brody. In an order entered by the First District Court of Appeal on April 14, 1986, the Brody appeal was dismissed without prejudice to appellant's right to seek reinstatement. Mr. Rhodes forwarded a copy of the order of dismissal, in addition to the initial brief prepared by Respondent, to The Florida Bar Grievance Committee. The second appeal involved a child custody dispute, in the matter of Patterson v. Campbell, Case No. BH-349. Respondent represented the appellant, Mr. Jimmy Lee Patterson. Pursuant to an order entered August 8, 1986, Mr. Rhodes forwarded a copy of Respondent's initial brief to The Florida Bar Grievance Committee for purposes of aiding The Bar's already pending investigation of Respondent.

III. RECOMMENDATIONS AS TO GUILT. I recommend that Respondent be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility:

Disciplinary Rules 1-102(A)(6) (engaging in conduct adversely reflecting on his fitness to practice law); 6-101(A)(1) (handling a legal matter which he knew or should have known he was not competent to handle); 6-101(A)(2) (handling a legal matter without preparation adequate in the circumstances); 6-101(A)(3) (neglect of a legal matter); and 9-102 (failing to preserve the identity of funds belonging to a client) of the Code of Professional Responsibility 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 he be disciplined by:

- A. Suspension from the practice of law in Florida for a period of one year and restitution to the parties injured by his misconduct.

B. Successful completion of The Florida Bar Examination including the ethics portion, and proof of rehabilitation as a condition of 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: 44 years old

Date admitted to the Bar: November 6, 1978


Prior Discipline: None

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

I find the costs listed as Exhibit A were reasonably incurred by The Florida Bar.

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.

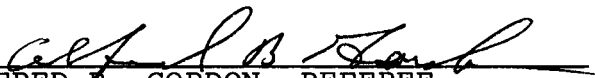
Dated this 8 day of March, 1988.


ALFRED B. GORDON, REFEREE
6th Floor, Judicial Building
190 Governmental Center
Pensacola, Florida 32501
(904) 436-5580

623-0135
ext 410

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; JOHN V. MCCARTHY, Bar Counsel, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32301; and ROGER D. PATTERSON, Respondent, at his record Bar address of Post Office Box 245, Nashville, Tennessee 37202-0245 and to ROGER D. PATTERSON, Respondent, at his alternate address of Post Office Box 185, Scarratt Graduate School, Nashville, Tennessee 37212, this 18th day of March, 1988. 32388
615-329-3920


ALFRED B. GORDON, REFEREE