

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

CASE NOS. 71,182 and 71,699

v.

The Florida Bar Case Nos.
87-27,053(17E) & 87-27,068(17E)

JOSEPH J. TITONE,

Respondent.

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REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings, Respondent submitted a Consent Judgment which has been approved by the Designated Reviewer of The Florida Bar. I approve said Guilty Plea for Consent Judgment.

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:

1. That Joseph J. Titone, hereinafter referred to as 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 CASE NO. 71,699 The Florida Bar Case No. 87-27,053(17E)

2. In or about March 1985 Respondent was retained on a contingency fee basis, by [REDACTED] S [REDACTED] in the cause styled [REDACTED] S [REDACTED] Plaintiff, vs. Broward County Sheriff's Department, et al, Defendants, Case No. 83-2208 CH.

3. Respondent received notice that opposing counsel had filed a Motion for Summary Judgment and scheduled same for hearing on July 23, 1986. This hearing was cancelled and reset for August 28, 1986.

4. Respondent did not appear at the August 28, 1986 hearing on the Defendant's Motion for Summary Judgment.

5. The Honorable Robert Lance Andrews granted Defendant's Motion for Summary Judgment without prejudice.

6. Respondent received a copy of the Order granting the Defendant's Motion for Summary Judgment without prejudice.

7. Respondent failed to inform his client of this Order and its repercussions.

8. Respondent failed to move to set aside the Order granting the Motion for Summary Judgment without prejudice.

9. The Plaintiff in the civil action, Donald T. Swinarski, chose not to proceed with his lawsuit when he was advised by another lawyer he consulted that he would not take the case on a contingency basis.

As to Supreme Court Case No. 71,182, The Florida Bar Case No.

87-27,068(17E):

1. Respondent was retained to represent ██████████ M██████ in the matter of State of Florida vs. ██████████, Case No. 86-143-CF, on the charge of possession of cocaine, in Leon County, Florida.

2. Respondent was paid the sum of Three Thousand Dollars (\$3,000.00) for his representation in this matter plus he was to be paid costs of travel and any other costs.

3. Respondent thoroughly investigated this matter and determined that it would be in his client's best interest to plead guilty as charged notwithstanding the State's refusal to enter into a negotiated plea.

4. Accordingly, Respondent appeared with his client before the Honorable John W. Peach, Circuit Judge of the Third Judicial Circuit, on December 8, 1986 and entered a plea of guilty on behalf of his client.

5. Judge Peach engaged in the standard plea colloquy with the defendant and satisfied himself that the plea was voluntarily and intelligently made and, therefore, accepted same.

6. The defendant had waived the pre-sentence investigation since he had been incarcerated since on or about August 1, 1986.

7. Judge Peach stated on the record that he was prepared to impose a sentence of probation whereupon the State indicated that they were going to recommend a departure from the sentencing guidelines.

8. Judge Peach then determined he would have to put the matter over until he obtained the pre-sentence investigation report.

9. The client could not make his bond so he continued to be incarcerated.

10. The client's wife could not afford to pay for the additional travel expenses that would be incurred were Respondent to appear for sentencing.

11. As a consequence of Respondent's perception that the client was not abiding by the fee agreement, no preparation was done for the sentencing hearing.

12. Respondent filed a Motion to Withdraw and noticed same for January 30, 1987, the date the client was scheduled to be sentenced.

13. Respondent had placed upon his notice the notation that he would not be appearing and the State Attorney had no objection to the Motion to Withdraw.

14. In point of fact, the Assistant State Attorney handling the matter had taken the position that he had no position - that such matters were between defense counsel, his client and the court.

15. Respondent did not serve a copy of his Motion to Withdraw on his client in jail, but mailed a copy to his client's residence. Respondent did not appear for the sentencing.

16. The client was given the option of having his sentence put over and re-noticing Respondent to appear. The client chose to proceed and since Judge Peach found him to be indigent, the Public Defender's office was appointed to represent him.

17. The Court imposed a sentence of probation, a special condition of said probation being the time served in the County Jail, fifty (50) hours community service, a One Thousand Dollar (\$1,000.00) fine and Two Hundred Dollars (\$200.00) costs.

18. A complaint was filed with The Florida Bar by the client's wife alleging Respondent was paid a fee of Three Thousand Dollars (\$3,000.00) but failed to appear at the sentencing.

19. Respondent in reply to the Bar's inquiry on the aforesaid complaint, by his letter dated March 11, 1987, stated that he had moved to withdraw from the case and this motion was granted.

20. Respondent recognizes that he was not precise in his use of language in both his response to the Bar and the Notice on the Motion to Withdraw and for his he apologizes. There was no intent to deceive.

21. Respondent had learned of the ultimate disposition of the client's case and believed that the appointment of the Public Defender's office at sentencing constituted a de facto granting of his motion to withdraw. Respondent also believed that the State's neutral position on the Motion to Withdraw constituted acquiescence.

22. Respondent recognizes that it was incumbent upon him to provide the client with a copy of the Motion to Withdraw, notice the motion for hearing and then continue representation until leave of court to withdraw was obtained.

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

As to Case No. 71,699 (The Florida Bar Case No. 87-27,053(17E))

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following: Disciplinary Rules 1-101(A)(1), 6-101(A)(2) and 6-101(A)(3) of the Code of Professional Responsibility.

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As to Case No. 71,182 (The Florida Bar Case No. 87-27,068(17E))

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following: Rules 4-1.1, 4-1.3, 4-1.4, 4-1.4(b), 4-1.16(d), 4-3.4(c), 4-8.1(a) and 4-8.4 of the Rules of Professional Conduct, and Rule 2.060(i) of the Florida Rules of Judicial Administration.

IV. Recommendation as to Disciplinary Measures to be Applied

Pursuant to Respondent's Guilty Plea, I recommend that:

- (1) The Respondent receive a Public Reprimand with said reprimand being published in the Southern Reporter and being administered during a personal appearance by him before the Board of Governors of The Florida Bar.
- (2) That Respondent pay restitution to Eugene Lamar Mitchell in the sum of Three Thousand Dollars (\$3,000.00).
- (3) That Respondent be placed on probation for a period of three (3) years under the following terms and conditions:

A. Supervision by an attorney chosen by The Florida Bar.

B. Monthly meetings to be held with the supervising attorney with submission at each meeting of a written report from Respondent setting forth the status and future action to be taken on all open files. Copies of said status reports shall be furnished to the Fort Lauderdale and Tallahassee offices of The Florida Bar.

C. The supervising attorney will report to The Florida Bar any failure by Respondent to abide by the terms and conditions of probation.

D. A failure to comply with all terms and conditions of probation shall result in termination of probation as provided in Rule 3-5.1(c), Rules of Discipline.

E. That a finding of probable cause for misconduct committed during the period of probation shall terminate the probation in these cases and that Respondent shall then receive a ten (10) day suspension regarding the cases in this consent judgment.

F. Respondent shall take and pass an ethics course at an American Bar Association approved law school.

V. Personal History and Past Disciplinary record:

Age 41

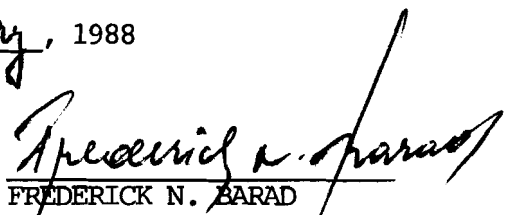
Date admitted to Bar: October 27, 1975

Prior Disciplinary convictions and disciplinary measures imposed therein: Respondent received a private reprimand in Case No. 17F84F17 on September 21, 1984.

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

Administrative Costs	\$450.00
Court Reporter and Transcript Costs	<u>807.00</u>
TOTAL COSTS	\$1,257.00

dated THIS 25th DAY OF January, 1988


FREDERICK N. BARAD
Referee

Copies furnished to:
Jacquelyn P. Needelman, Bar Counsel
John T. Berry, Staff Counsel
Lance J. Thibideau, Esquire