

IN THE SUPREME COURT OF FLORIDA

FILED

ED J. WHITE

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THE FLORIDA BAR,
Complainant,

v.

HALLARD J. GREER,
Respondent.

CASE NO. 71,280 SUPREME COURT
TFB NO. 84-05,988 (06A)
~~84-06,029 (06A)~~
84-06,085 (06A)
85-10,868 (06A)
85-10,900 (06A)

THE FLORIDA BAR'S INITIAL BRIEF

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SYMBOLS AND REFERENCES

In this Brief, Complainant, The Florida Bar, will be referred to as "The Florida Bar". The Respondent, Hallard J. Greer, will be referred to as "Respondent". "RR" will refer to the Report of Referee filed on August 16, 1988.

STATEMENT OF THE CASE

On February 19, 1987, the Sixth Judicial Circuit Grievance Committee "A" found Probable Cause for Further Proceedings in File Numbers 84-06,085(06A) (Count III) and 85-10,900(06A) (Count V). On March 19, 1987, the Sixth Judicial Circuit Grievance Committee "A" found Probable Cause for Further Proceedings in File Number 85-10,868(06A) (Count IV). On July 28, 1987, the Sixth Judicial Circuit Grievance Committee "A" found Probable Cause for Further Proceedings in File Numbers 84-05,988(06A) (Count I) and 84-06,029(06A) (Count II).

On October 14, 1987, The Florida Bar filed a formal Complaint with this Court. On October 26, 1987, Judge Thomas A. Miller, Sr. was appointed to act as Referee in this matter. On February 29, 1988, an Amended Complaint was filed.

On August 1, 2 and 3, 1988, a Final Hearing was held before the Referee. On August 16, 1988, the Referee filed his Report of Referee recommending that the respondent be found guilty in Count I of violating DR 6-101(A) (3); in Count II of violating DR 1-102(A) (4), DR 1-102(A) (5), DR 1-102(A) (6) and DR 6-101(A) (3); in Count IV of violating DR 6-101(A) (2) and DR6-101(A) (3); and, in Count V of violating DR 1-102(A) (6). The Referee recommended respondent be found not guilty in Count III. In addition, the Referee recommended that the respondent receive a public reprimand and be placed on two years probation.

On September 30, 1988, the Board of Governors of The Florida Bar voted to file a Petition for Review to seek a 91-Day

Suspension with a requirement of rehabilitation that the respondent take and attain a passing score on the Professional Responsibility portion of The Florida Bar examination. On October 6, 1988, a Petition for Review of Referee's Report was filed.

STATEMENT OF THE FACTS

Count I

In early 1981, Mr. and Mrs. Alexander Stefan entered into a contract with Mr. and Mrs. McGrath for the McGraths to purchase the Stefans' home. The McGraths put down a non-refundable deposit of \$4,000.00. Due to problems with obtaining a free and clear title on the property the closing date was moved from April 1, 1981 to June 1, 1981. At that time, the McGraths hired Richard Carr to represent them and the \$4,000.00 deposit was placed in Mr. Carr's law firm's trust account.

The aforementioned closing was continued from June 1, 1981 to July 1, 1981 due to liens on the Stefans' property. On July 1, 1981, the Stefans appeared for the closing, but the McGraths did not appear. When the McGraths failed to appear for the closing the Stefans met with respondent and asked him to represent them in seeking to retain the \$4,000.00 deposit.

Respondent wrote a letter to Mr. Carr demanding the \$4,000.00 on behalf of the Stefans. Respondent failed to follow up on his letter to Mr. Carr.

On September 8, 1981, respondent received a check from Mr. Carr's office in the amount of \$1,000.00 made payable to Mr. and Mrs. Stefan and respondent. Respondent did not deliver the check to the Stefans until December 1981. At that time, respondent told the Stefans he would continue to try and collect the

remaining \$3,000.00 from Mr. Carr. Respondent took no further steps to recover the money from Mr. Carr.

Count II

In September 1982, Philip Trimmer retained respondent to seek a reduction of Mr. Trimmer's child support payments. On October 12, 1982, Mr. Trimmer executed a Motion to Modify Final Judgment which sought a reduction of his child support payments. Respondent scheduled a hearing on the Motion to Modify Final Judgment for November 17, 1982. No hearing was held on that date. Subsequently, respondent failed to schedule any hearing on the Motion to Modify Final Judgment.

In September 1983, a hearing was held on Mr. Trimmer's ex-wife's Motion for an Order Sentencing Husband for Contempt. At the hearing, the presiding judge reviewed the court file and asked respondent why no Petition to Reduce Child Support had ever been filed. Respondent replied that one had been filed and should have been in the court file. In spite of the judge's statement that no Petition or Motion to Reduce Child Support was in the court file, respondent failed to file a copy of his Motion to Modify Final Judgment with the court.

Also in September 1983, Mr. Trimmer asked respondent to file a Petition for Bankruptcy on his behalf. Subsequently, respondent told Mr. Trimmer that the Petition for Bankruptcy had been filed with the court, even though respondent knew that the

Petition had been returned by the Bankruptcy Court due to errors in the Petition.

Respondent also represented Mr. Trimmer's wife in her divorce action. On July 12, 1983, Peter Meros sent a letter to respondent outlining three options for Mrs. Trimmer to take in regard to her former marital home. In August 1983, Mrs. Trimmer told respondent she wished to exercise option no. 3 of the letter. Respondent stated that he would contact Mr. Meros and have the appropriate paperwork prepared. Respondent failed to follow through on the matter for Mrs. Trimmer. Subsequently, Mr. Meros filed a Motion to Terminate Exclusive Use and for Contempt and scheduled the Motion for Hearing in November 1983. Mrs. Trimmer did not attend the hearing because respondent told her she did not need to attend.

Count IV

In May 1983, James Fish entered into an oral agreement with respondent whereby respondent would represent Mr. Fish in two medical malpractice cases. Subsequently, on September 19, 1983, respondent wrote a letter on behalf of Mr. Fish to one of the doctors demanding a \$6,500.00 settlement in the matter.

On December 5, 1983, a claims supervisor for the doctor's insurance carrier wrote a letter to respondent requesting medical records from Mr. Fish. Respondent did not answer the aforementioned letter until January 31, 1984.

In February 1984, respondent was advised by the claims supervisor that there was no merit to Mr. Fish's claim. Respondent was also advised that if no correspondence was received from him within thirty days the insurance company planned to close the file. Respondent failed to submit any additional correspondence to the insurance company within the thirty-day time period. In addition, respondent failed to inform Mr. Fish that the insurance company intended to close their file.

During the time respondent represented Mr. Fish, Mr. Fish wrote several letters to respondent seeking an update on the status of the matters being handled by respondent. Respondent failed to respond to Mr. Fish's inquiries.

Count V

In January 1979, respondent was representing Audrey Bright Tongel in her dissolution of marriage case. At that time, the attorney for Mrs. Tongel's husband contacted respondent in reference to reaching a settlement in the case. Respondent agreed to pay Mrs. Tongel's husband \$1,000.00 in settlement of his claim for a special equity in the parties' home. Mrs. Tongel never agreed to the \$1,000.00 settlement nor did she authorize respondent to agree to a \$1,000.00 settlement on her behalf.

On February 5, 1979, respondent told Mrs. Tongel's husband's attorney he would send a \$1,000.00 check that week in settlement of the case. Mrs. Tongel had not authorized the respondent to issue a check in the amount of \$1,000.00 on her behalf.

SUMMARY OF ARGUMENT

The Referee's Recommendation of a Public Reprimand plus two years Probation is not a sufficient disciplinary sanction for the unethical conduct of respondent. The numerous violations committed by respondent along with respondent's prior disciplinary record require a more severe sanction than a Public Reprimand and Probation.

THEREFORE, The Florida Bar respectfully requests this Court to reject the Referee's Recommendation of a Public Reprimand and two years Probation and order respondent suspended from the practice of law for 91 days with a requirement of rehabilitation that respondent take and attain a passing score on the Professional Responsibility portion of The Florida Bar examination.

ARGUMENT

ISSUE: WHETHER THE REFEREE'S RECOMMENDATION OF A PUBLIC REPRIMAND AND TWO YEARS PROBATION IS A SUFFICIENT SANCTION IN LIGHT OF RESPONDENT'S CUMULATIVE MISCONDUCT AND PRIOR DISCIPLINARY RECORD.

The Referee's Recommendation of a Public Reprimand and two years Probation is an insufficient sanction in light of respondent's cumulative misconduct and respondent's prior disciplinary record.

In the present case, the Referee has recommended that respondent be found guilty in four separate cases of eight separate violations of the Code of Professional Responsibility. The present case is not respondent's first contact with the disciplinary system of The Florida Bar. In The Florida Bar, In Re: Hallard J. Greer, 343 So. 2d. 838 (Fla. 1977), this Court imposed a Public Reprimand and one year probation upon respondent for violation of numerous sections of the Code of Professional Responsibility, including several of the rules violated in the present case.

In considering the discipline to be imposed this Court should consider the respondent's previous disciplinary record. In addition, this Court has stated it will deal "more harshly with cumulative misconduct than it does with isolated misconduct. Additionally, cumulative misconduct of a similar nature should warrant an even more severe discipline than might dissimilar conduct." The Florida Bar v. Bern, 425 So. 2d 526, 528 (Fla. 1982), reh. den. February 8, 1983. See also The

Florida Bar v. Grant, 514 So. 2d. 1075, 1077 (Fla. 1987), reh. den. November 24, 1987.

When an attorney has engaged in misconduct similar in nature to conduct which caused an earlier discipline, this Court has not hesitated to impose a greater discipline than the one recommended by the Referee. In The Florida Bar v. Glick, 397 So. 2d. 1140 (Fla. 1981), this Court imposed a suspension of three months and one day, and thereafter until the respondent proved his rehabilitation, due to the similarity between the respondent's misconduct in the pending case and the misconduct which had caused an earlier discipline for the respondent. Id., at 1141. As noted above, the respondent in the present case has engaged in misconduct similar to the misconduct which caused his earlier discipline.

In many cases this Court has imposed a suspension upon a respondent for fewer acts of misconduct than were found in the present case. For example, in The Florida Bar v. Jones, 457 So. 2d. 1384 (Fla. 1984), this Court imposed a six-month suspension upon the respondent for violation of Disciplinary Rules 1-102(A)(4) and 6-101(A)(3). Id., at 1385. Respondent in the present case has violated the aforementioned rules and several others.

In The Florida Bar v. Schilling, 486 So. 2d. 551 (Fla. 1986), reh. den. May 5, 1986, this Court imposed a six-month suspension upon the respondent for violation of Disciplinary Rule 6-101(A)(3). In imposing the discipline, this Court stated:

"Confidence in, and proper utilization of, the legal system is adversely affected when a lawyer fails to diligently pursue a legal matter entrusted to that lawyer's care. A failure to do so is a direct violation of the oath a lawyer takes upon his admission to the bar." Id., at 552. In the present case, the Referee has recommended respondent be found guilty of violating Disciplinary Rule 6-101(A)(3) in three separate counts. (RR, pp. 3,4).

Based on the foregoing, The Florida Bar respectfully requests that this Court reject the Referee's recommended discipline of a Public Reprimand and Probation and suspend respondent from the practice of law in the State of Florida for 91 days with a requirement of reinstatement that respondent take and attain a passing score on the Professional Responsibility portion of The Florida Bar examination.

CONCLUSION

In light of respondent's numerous violations and respondent's prior disciplinary record a Public Reprimand plus Probation is an insufficient sanction. This Court should reject the Referee's recommendation of a Public Reprimand and Probation and impose on respondent a 91-day suspension from the practice of law in the State of Florida with a requirement of reinstatement that respondent take and attain a passing score on the Professional Responsibility portion of The Florida Bar examination.

WHEREFORE, The Florida Bar respectfully requests this Honorable Court to reject the Referee's Recommended Discipline and suspend the respondent, Hallard J. Greer, from the practice of law in the State of Florida for 91 days.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing INITIAL BRIEF has been furnished to JOHN T. BERRY, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, HALLARD J. GREER, respondent, 3110-D First Avenue, North, St. Petersburg, Florida 33713, Certified Mail, #P 827 895 881, Return Receipt Requested and JAMES DE MOULLY, co-counsel for respondent, 6829 18th Street, North, St. Petersburg, Florida 33702, Certified Mail, #P 827 886 137, Return Receipt Requested, on this 3rd day of November, 1988.



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