

047

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,
v.
HALLARD J. GREER,
Respondent.

CASE NO. 71,280
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 REPLY AND ANSWER

FILED
SID J. WHITE
DEC 27 1988
CLERK, SUPREME COURT
By

Deputy Clerk
RICHARD A. GREENBERG
Assistant Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607
(813) 875-9821

TABLE OF CONTENTS

Table of Contents.....	i
Table of Citations.....	ii
Reply to Respondent's Reply to The Florida Bar's Initial Brief.....	1
Argument as to Respondent's First Point on Review.....	2
Argument as to Respondent's Second Point on Review.....	3
Argument as to Respondent's Third Point on Review.....	4
Argument as to Respondent's Fourth Point on Review.....	5
Argument as to Respondent's Fifth Point on Review.....	6
Argument as to Respondent's Sixth Point on Review.....	7
Conclusion.....	8
Certificate of Service.....	9

TABLE OF CITATIONS

	<u>Page</u>
<u>The Florida Bar v. Baron</u> 392 So. 2d. 1318 (Fla. 1981).....	4
<u>The Florida Bar v. Rubin</u> 362 So. 2d. 12 (Fla. 1978) reh. den. October 2, 1978.....	1

REPLY TO RESPONDENT'S REPLY TO
THE FLORIDA BAR'S INITIAL BRIEF

In his Reply to The Florida Bar's Initial Brief, the respondent asserts that the 06A Grievance Committee recommended respondent be found guilty of only minor misconduct. There is absolutely no support in the record below for this assertion by respondent. If the grievance committee had recommended a finding of minor misconduct, then the present case would have been brought as a complaint of minor misconduct, instead of as a complaint based upon a finding of probable cause.

In addition, the respondent alleges that The Florida Bar deliberately withheld the present cases so they could all be brought to a hearing at one time before the grievance committee. Again, there is absolutely no support in the record below for respondent's allegations.

Respondent argued to the Referee that his case was similar to The Florida Bar v. Rubin, 362 So. 2d. 12 (Fla. 1978) reh. den October 2, 1978, but the respondent presented no evidence to support his contention. The Referee denied respondent's motion.

ARGUMENT AS TO RESPONDENT'S FIRST POINT ON REVIEW

In his argument, the respondent asserts he was told by Grievance Committee 06A that the committee could find nothing that he had done wrong and that Count I, File No. 84-05,988(06A), was going to be dismissed. There is no support in the record below for the respondent's assertion.

The respondent also asserts that as to Count II, File No. 84-06,029(06A), he was informed that the committee was not going to take any action on the case. Again, there is no support in the record below for the respondent's assertion. The respondent makes the same accusation as to Count IV, File No. 85-10,868(06A). The record below is also devoid of any evidence as to this Count. The Referee heard Respondent's Motion to Dismiss the Complaint and denied respondent's motion. (T - Vol. I, pp. 11-19).

ARGUMENT AS TO RESPONDENT'S SECOND POINT ON REVIEW

In his Point II, respondent attacks the finding of probable cause made by the grievance committee as it relates to Counts III and IV of the Complaint. The respondent's attack on the finding of probable cause is untimely. If respondent had valid grounds to attack the finding of probable cause he should have raised those issues with this Court immediately after the finding of probable cause.

The purpose of the grievance committee is to determine whether there is probable cause to believe the respondent attorney has violated the Code of Professional Responsibility. Since the grievance committee is not bound by the technical rules of evidence it should not be prevented from finding probable cause based upon the testimony of a witness over the telephone. In any event, after the filing of a complaint and a final hearing before a Referee, this Court should not dismiss a case based upon an allegation that the grievance committee found probable cause based upon unsworn testimony. In addition, the Referee below denied Respondent's Motion to Dismiss Counts III and IV, finding there was no proof of the violations alleged by respondent. (T - Vol. I, pp. 6-11).

ARGUMENT AS TO RESPONDENT'S THIRD POINT ON REVIEW

The findings and conclusions of a Referee should not be overturned unless they are clearly erroneous or lacking support in evidence. The Florida Bar v. Baron, 392 So. 2d. 1318 (Fla. 1981). The record below supports the Referee's Findings of Fact in Count I.

The testimony of Mr. Stefan (Bar's Exhibit 34) provides ample support for the Referee's finding that respondent violated Disciplinary Rule 6-101(A)(3). Specifically, the testimony of Mr. Stefan contained on pages 20-25 shows a continuous pattern whereby respondent put off his clients by misrepresenting the status of his attempts to recover the \$4,000.00 deposit on their behalf. In addition, Richard Carr testified he told respondent well before May 1982 that he had returned \$2,000.00 to the McGraths in July 1981. (T - Vol. I, p. 45, lines 14-22). Therefore, respondent knew he could not recover these funds for the benefit of the Stefans, yet he continued to lead them to believe he was working toward this goal.

Respondent states in his brief that there was no closing set for June 1, 1981. The testimony of Mr. Stefan indicates that at one point the closing was set for June 1, 1981. (Bar's Exhibit 34, p. 11).

ARGUMENT AS TO RESPONDENT'S FOURTH POINT ON REVIEW

The record below supports the Referee's Findings of Fact as to Count II of the Complaint. In his answer to the complaint, respondent admitted that in September 1983 Mr. Trimmer asked respondent to file a Petition for Bankruptcy and paid respondent \$250.00. Mr. Trimmer testified before the Referee that the Petition for Bankruptcy was filed, but had to be refiled because it was not filled out properly. (T - Vol. I, p. 82, lines 11-13). Respondent did not refile the Petition for Bankruptcy for Mr. Trimmer. Instead, he refunded \$250.00 to Mr. Trimmer. (T - Vol. I, p. 82, line 21).

As to respondent's representation of Mrs. Trimmer, the record shows respondent failed to follow through on the matter for Mrs. Trimmer. Mrs. Trimmer testified that she never received any documents from respondent after respondent allegedly contacted Mr. Meros. (T - Vol. I, p. 94, line 10). In addition, Mr. Meros testified he had nothing in his file to indicate that respondent had contacted him in reference to Bar's Exhibit 13. (T - Vol. I, p. 130, lines 12-14 and p. 131, line 13).

In reference to the hearing held in November 1983, Mrs. Trimmer testified respondent told her it was cancelled and she did not need to appear. (T - Vol. I, p. 95, lines 1-2).

ARGUMENT AS TO RESPONDENT'S FIFTH POINT ON REVIEW

Mr. Fish did in fact testify that respondent was retained to represent Mr. Fish in two medical malpractice cases. (T - Vol. III, p. 6, line 5).

The record below clearly shows that respondent failed to respond to the inquiries of Mr. Fish. (See Florida Bar's Exhibits 24, 27 and 29). In addition, Mr. Fish testified that respondent failed to respond to Mr. Fish's inquiries. (T - Vol. III, p. 13, line 20; p. 14, line 2; and p. 21, line 8).

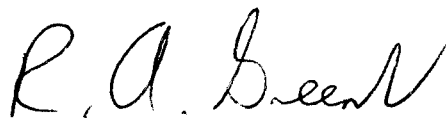
ARGUMENT AS TO RESPONDENT'S SIXTH POINT ON REVIEW

The testimony of Mrs. Tongel supports the Referee's finding that respondent's conduct violated Disciplinary Rule 1-102(A)(6). Mrs. Tongel testified that respondent settled the matter with her husband and paid her husband \$1,000.00 without her authorization or consent. (T - Vol. III, p. 58, lines 9-24). Clearly, an attorney who has settled a case without his client's knowledge or consent has engaged in conduct that adversely reflects on his fitness to practice law.

CONCLUSION

The Florida Bar submits that the Referee's Findings of Fact are all supported by clear and convincing evidence. The discipline requested by The Florida Bar in its Initial Brief is appropriate and should be imposed by this Court on respondent.

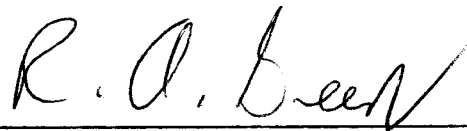
WHEREFORE, The Florida Bar respectfully requests this Court to accept the Referee's Findings of Fact, reject the Referee's recommended discipline and suspend the respondent, HALLARD J. GREER, from the practice of law in the State of Florida for 91 days.



RICHARD A. GREENBERG
Assistant Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607
(813) 875-9821

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing REPLY AND ANSWER 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, by Certified Mail, #P 827 886 145, Return Receipt Requested and to JAMES DE MOULLY, co-counsel for respondent, 6829 18th Street, North, St. Petersburg, Florida 33702, by Certified Mail, #P 827 886 146, Return Receipt Requested on this 22^d day of December, 1988.



RICHARD A. GREENBERG
Assistant Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607
(813) 875-9821