

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Case No. 71,280

Complainant,

TFB #84-05,988(06A),

v.

#84-06,029(06A),

HALLARD GREER,

#84-06,085(06A),

#85-10,868(06A) and

Respondent.

#85-10,900(06A)

REPORT OF 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, hearings were held on August 1, 2 and 3, 1988. The pleadings, notices, motions, orders and transcripts, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Richard A. Greenberg
Assistant Staff Counsel

For the Respondent: Hallard Greer and James L. DeMouilly

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged: After considering all the pleadings and the evidence before me, pertinent portions of which are commented upon below, I find:

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 Stefan's home. The McGraths put down a non-refundable deposit of \$4,000.00. On April 1, 1981, a closing was scheduled to take place on the sale of the Stefan's home. Due to problems with obtaining a free and clear title on the property the closing date was moved 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.

On June 1, 1981, the closing was continued to July 1, 1981, due to the liens on the Stefan's 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 their efforts to retain the aforementioned \$4,000.00.

On July 6, 1981, respondent wrote to Mr. Carr demanding the \$4,000.00 on behalf of the Stefans. (Bar's Exhibit 1.) 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. (Bar's Exhibit 3.) Respondent did not deliver the check to the Stefans until December 1981. At the time respondent delivered the check to the Stefans he told them that 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.

On May 18, 1982, respondent wrote to the Stefans and informed them that Mr. Carr was releasing the balance of the deposit money to the McGraths. (Bar's Exhibit 6.) In January 1983, respondent told the Stefans to get a new lawyer to represent them and he returned the Stefan's file to them.

Count II

In September 1982, Phillip 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. (Bar's Exhibit 8.) On November 3, 1982, 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 before Judge Sanderlin on Mr. Trimmer's ex-wife's Motion for an Order Sentencing Husband for Contempt. At the hearing, Judge Sanderlin 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 Judge Sanderlin'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.

In September 1983, Mr. Trimmer asked respondent to also 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 he knew that the petition had been returned by the bankruptcy court due to errors in the petition.

On November 29, 1983, Mr. Trimmer's wife phoned the bankruptcy court and discovered that no Petition for Bankruptcy had been filed by respondent. Mr. Trimmer confronted respondent with this information and the next day respondent refunded the fee Mr. Trimmer had paid for the filing of the bankruptcy 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. (Bar's Exhibit 13.) In August 1983, when Mrs. Trimmer returned from vacation and was made aware of the letter, she told respondent that 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. A hearing was held on the motion in November 1983 and Mrs. Trimmer did not attend because respondent told her she did not need to attend.

Count III

I find that The Florida Bar has failed to prove the allegations set forth in Count III of the Complaint. ✓

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 pertinent to Mr. Fish's claim. (Bar's Exhibit 19.) 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 that the insurance company planned to close the file. Respondent failed to submit any additional correspondence to the insurance company within the requested thirty day time period. In addition, respondent failed to inform Mr. Fish that the insurance company intended to close their file. In May 1984, pursuant to Mr. Fish's request, respondent returned Mr. Fish's records to him.

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. (Bar's Exhibits 26, 28, 29 and 30.) 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 that 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. Subsequently, respondent paid \$1,000.00 to Mr. Tongel's ex-wife's attorney.

III. Recommendation as to Whether or Not the Respondent Should be Found Guilty: Respondent should be found guilty of violating the following disciplinary rules:

Count I

DR 6-101(A) (3) (neglect of a legal matter entrusted to him).

Count II

DR 1-102(A) (4) (engage in conduct involving dishonesty, fraud, deceit or misrepresentation);

DR 1-102(A) (5) (engage in conduct prejudicial to the administration of justice);

DR 1-102(A) (6) (engage in any other conduct that adversely reflects on his fitness to practice law); and,

DR 6-101(A) (3) (neglect of a legal matter entrusted to him).

Count III

I recommend that the respondent be found not guilty.

Count IV

DR 6-101(A) (2) (a lawyer shall not handle a legal matter without preparation adequate in the circumstances); and,

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

Count V

DR 1-102(A) (6) (engage in any other conduct that adversely reflects on his fitness to practice law).

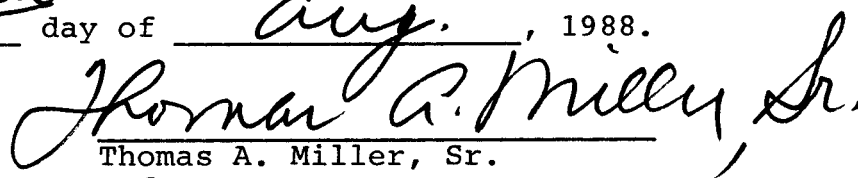
IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the respondent receive a public reprimand to be administered by appearance before the Board of Governors of The Florida Bar and by publication of an opinion in the Southern Reporter. In addition, I recommend that the respondent be placed on two years probation and, as a condition of the probation, that he successfully attend and pass a course on legal ethics given at an accredited law school. In addition, I recommend that respondent take and attain a passing score on the Professional Responsibility portion of The Florida Bar exam.

V. Personal History and Past Disciplinary Record: After a finding of guilt and prior to recommending discipline to be imposed pursuant to Rule 3-7.5(k) (1) (4), Rules of Discipline, I considered respondent's prior disciplinary record. Respondent received a public reprimand and one year probation in Case No. 50,733. The Florida Bar In Re: Hallard J. Greer, 343 So. 2d 838 (Fla. 1977).

- (1) Age: 63
- (2) Date Admitted to Bar: June 8, 1953
- (3) Prior Disciplinary Record: Public reprimand and one year probation in Case No. 50,733.
- (4) Mitigating Factors: None

VI. Statement of Costs and Manner in Which Costs Should be Taxed: I find that the costs of this proceeding should be assessed against the respondent attorney. It is recommended that all such costs and expenses and interest at the statutory rate shall accrue and be payable beginning thirty days after judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar. Staff Counsel will provide an affidavit of those costs including transcript costs.

Dated this 16th day of Aug., 1988.


Thomas A. Miller, Sr.
Referee

Copies furnished to:

Hallard Greer, Respondent
James DeMouly, Attorney for Respondent
Richard A. Greenberg, Assistant Staff Counsel
John T. Berry, Staff Counsel