

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

THE FLORIDA BAR,

Complainant,

v.

GEORGE W. WILDER,

Respondent.

Supreme Court Case No. 71,847

The Florida Bar File Nos.
87-26,502 (15E) and 87-26,503 (15E)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The undersigned was appointed as the referee to preside in the above disciplinary action by order of this court dated February 10, 1988. The pleadings, notices and transcript, all of which are forwarded to the court with this report, constitute the entire record in this case.

The respondent appeared pro se. The bar was represented by David M. Barnovitz, assistant staff counsel. The final hearing was held on October 6, 1988.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED:

I find as follows:

A. 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.

B. In or about October, 1986, respondent was retained by Leonardo Bustamante and Eugenia Ponce (hereinafter called "clients") to institute litigation against the clients' ex-employer to recover wages due and owing to the clients.

C. Upon retaining respondent the clients paid to him the sum of \$375.00.

D. Respondent thereafter failed and neglected to pursue the clients' claim or to refund to the clients the sum of \$375.00 received by him from the clients, as aforesaid.

E. In or about April, 1987, upon inquiry by the clients regarding the status of their case, respondent represented to the clients that the action had been duly filed with the Clerk of the County Court, Palm Beach County, together with payment of the statutory fee and that arrangements had been made for a copy of the papers so filed, with the appropriate fee, to be delivered to the Sheriff of Palm Beach County for service upon the defendants.

F. In fact, no papers were ever filed in the subject action and no copy thereof was ever delivered to or received by the Sheriff of Palm Beach County.

G. Heretofore and sometime in the Spring or early Summer of 1982 respondent was retained by one Randall Christopher to institute an action to recover damages for personal injuries and property damage sustained by Christopher as a result of an automobile accident which occurred on April 10, 1982.

H. After instituting an action respondent failed and neglected to pursue the action and permitted the same to be dismissed, with prejudice, without conferring with Christopher.

III. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

I make the following recommendations with respect to the violations charged by the bar:

A. By failing to pursue the claims of his clients, Leonardo Bustamante and Eugenia Ponce, respondent violated Rule 4-1.3, Rules of Professional Conduct which provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

B. By representing to his clients, Leonardo Bustamante and Eugenia Ponce, that papers had been filed with the court clerk and arrangements had been made to deliver papers to the sheriff for service when, in fact, no filing or arrangements had been made, respondent violated Rule 4-8.4(c), Rules of Professional Conduct, which provides that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

C. By failing to pursue Randall Christopher's action and permitting the same to be dismissed, with prejudice, respondent violated

Disciplinary Rule 6-101(A) (3) of the Code of Professional Responsibility which provides that an attorney shall not neglect a legal matter entrusted to him.

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend as discipline for the violations hereinabove enumerated that respondent be suspended for a period of one hundred eighty (180) days. In addition, I recommend that within thirty (30) days of the court's final order herein respondent refund to his clients, Leonardo Bustamante and Eugenia Ponce, the \$375.00 legal fee respondent received from such clients and that within the same time period respondent pay to his client, Randall Christopher, the sum of \$940.00 representing the sum Mr. Christopher had in hand, but lost, due to respondent's neglect.

I have predicated my recommendation of a one hundred eighty (180) day suspension upon findings of aggravating circumstances as enumerated in Florida's Standards for Imposing Lawyer Sanctions including the submission by respondent of false statements during the disciplinary process (Rule 9.22(f) and respondent's refusal to acknowledge the wrongful nature of his conduct (Rule 9.22(g)). These aggravating circumstances arose in connection with respondent's insistence, testified to by him under oath, that he filed certain pleadings in connection with the Bustamante/Ponce representation despite the fact that he had no filing receipt, the recording office had no evidence of any such filing and the file number allegedly secured by respondent in a thirty (30) second telephone call with a recording office clerk did not, in fact, exist. I regard respondent's story as a contrived tale running afoul of Rule 9.22(f) and his refusal to recant therefrom when offered an opportunity to do so, as constituting the circumstances described in Rule 9.22(g).

In the event that the court should determine that there are insufficient bases for finding such aggravating circumstances, then, in that event, I recommend that respondent be suspended for a period of ninety-one (91) days plus make the restitution as hereinabove recommended.

V. PERSONAL HISTORY:

Respondent was admitted to The Florida Bar on September 18, 1979 and is 44 years of age.

VI. STATEMENT AS TO PAST DISCIPLINE:

Respondent has no disciplinary record.

VII. STATEMENT OF COSTS OF THE PROCEEDING AND RECOMMENDATIONS:

The costs of these proceedings were as follows:

Administrative Costs:

Grievance Committee Level --- \$ 150.00

Referee Level ----- 150.00

Court Reporter Costs:

Grievance Committee Level --- 407.20

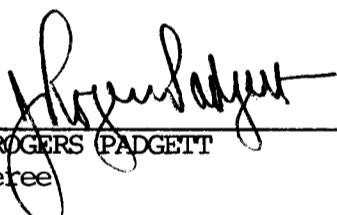
Referee Level ----- 514.25

Witness Travel Expenses ----- 74.92

TOTAL ----- \$ 1,296.37

I recommend that such costs be taxed against the respondent.

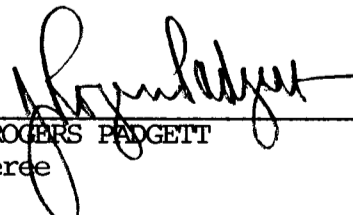
RENDERED this 12TH day of ~~November~~ DECEMBER, 1988 at Tampa, Florida.



J. ROGERS PADGETT
Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing report of referee was furnished to George W. Wilder, respondent, at his official record bar address of 2600 9th Street North, St. Petersburg, FL 33704 and to David M. Barnovitz, bar counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 835, Ft. Lauderdale, FL 33309 by regular mail on this 12 day of ~~November~~ December, 1988.



J. ROGERS PADGETT
Referee