

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,)

v.)

EDWARD J. WINTER, JR.,)

Respondent.)

Supreme Court Case
No. 72,406

FILED

W. J. WHITE

FEB 9 1989

SUPREME COURT

Deputy Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct contempt proceedings as provided for by Rule 3-7.5 of the Rules Regulating The Florida Bar, all of the pleadings, notices, motions, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The following attorneys appeared as counsel for the parties:

On behalf of The Florida Bar: Louis Thaler
Bar Counsel
Suite 211 Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131
(305) 377-4445

On behalf of the Respondent: Edward J. Winter
P.O. Box 010847
Flagler Station
Miami, Florida 33101
(305) 895-7461

Respondent did not appear at the Final Hearing set for December 2, 1988, despite actual notice of the date and time of the hearing. On November 9, 1988, this Referee entered an Order to Show Cause setting this matter for Final Hearing on December 2, 1988, at 10:00 A.M. Thereafter, Respondent filed a "Respondent's Motion for Court Appointed Counsel and Respondent's Motion for Injunction and Restraining Order," dated November 22, 1988, and a "Respondent's Motion, (Sworn, Verified) Motion for Injunction and Restraining Order to Enjoin and Restrain Continued, Deliberate Interference with Advantageous Business Relationship and Motion for Deliberate Conspiracy to Violate and Deprive Respondent of His Legally Protected Constitutional Rights and Civil Rights," dated

November 23, 1988. On November 29, 1988, this Referee entered an Order on Various Motions, specifically holding that Respondent "shall be permitted to argue and this court shall consider said motions, and any other pre-trial motions, before the commencement of the Final Hearing set for Friday, December 2, 1988, at 10:00 A.M.," and holding that "should this court deny said Motions, Respondent shall be prepared to proceed to Final Hearing in this matter on Friday, December 2, 1988, at or about 10:00 A.M." On December 1, 1988, this Referee received a letter from Respondent dated November 29, 1988, signed by Respondent, indicating he would "not be in South Florida December 2, 1988" for various reasons relating to the health of his parents in Sarasota. Said letter was contained in an envelope postmarked from Miami dated November 30, 1988.

Respondent's failure to appear at the Final Hearing was without excuse. Accordingly, the Final Hearing was conducted in Respondent's absence. However, because of the potentially serious consequences of Respondent's alleged actions, this Referee entered an Order dated December 13, 1988, attaching a proposed Report of Referee, requiring that Respondent personally appear within ten (10) days of said Order to contest the findings and recommendations contained in the proposed Report of Referee. Thereafter, Respondent contacted this office and a second hearing was set for December 23, 1988, at 9:00 A.M. At the hearing of December 23, 1988, Respondent filed a "Sworn, Verified Answer of Respondent" dated December 22, 1988. During the hearing of December 23, 1988, Respondent admitted that he had filed pleadings after February 27, 1988, the effective date of his permanent resignation. Based upon the two hearings and my review of this matter, I enter this Report of Referee.

11. FINDINGS OF FACT:

At the Final Hearing on December 2, 1988, Bar Counsel introduced a Notice of Filing Exhibits dated December 2, 1988. Thereafter, the Referee received into evidence the 31 exhibits set forth in the Notice of Filing Exhibits. These exhibits are set

forth herein as the evidence presented in this case by The Florida Bar.

NOTICE OF INABILITY TO PRACTICE LAW

1. Letter from Edward J. Winter to Supreme Court of Florida dated September 15, 1987.

2. Petition for Leave to Resign From The Florida Bar Permanently With No Right to Reapply for Admission dated October 31, 1987 in Supreme Court Case No. 70,122.

3. Statement of Respondent Pursuant to Rule 3-7.11(a) of the Rules of Discipline dated, signed and notarized November 9, 1987 in Supreme Court Case No. 70,122.

4. Respondent's Motion for Extension of Time dated December 19, 1987 in Supreme Court Case No. 71,150.

5. Supreme Court Order dated December 23, 1987 denying Respondent's Motion for Extension of Time.

6. Supreme Court Order dated January 28, 1988, effective February 27, 1988, granting the "petition of Edward J. Winter, Jr., for leave to resign permanently from The Florida Bar."

7. Certified Mail letter dated February 23, 1988 from Stephen Tabano to Edward J. Winter, Jr. regarding Rule 3-5.1(h) of the Rules Regulating The Florida Bar.

8. Letter from Edward J. Winter, Jr. postmarked March 24, 1988 enclosing The Florida Bar Membership Card belonging to Mr. Winter.

NEW JERUSALEM DISCIPLES CHURCH v. POLLACK
Third District Court Case No. 87-2229

9. Appellant's Motion for Extension of Time in Which to File and Serve Reply Brief submitted by Edward J. Winter, Jr. dated March 3, 1988, filed March 3, 1988.

10. Third District Court Order dated March 4, 1988 striking Appellant's Motion for Extension of Time.

11. Letter from John A. Boggs to Louis J. Spallone dated March 8, 1988.

12. Letter from Edward J. Winter, Jr. to John A. Boggs and Louis J. Spallone dated March 14, 1988.

13. Letter from Louis J. Spallone to John A. Boggs dated March 16, 1988.

14. Letter from John A. Boggs to Louis J. Spallone dated March 24, 1988.

COPELAND ELECTRIC, INC. v. BO MIN CONTRACTING CORP.
Dade County Circuit Court Case. No. 85-46882 (30)

15. Letter from Honorable Murray Goldman, Dade Circuit Judge, dated April 5, 1988, with attachments.

16. Certified Copy of Amended Notice of Hearing signed by Edward J. Winter, Jr. dated March 23, 1988 setting hearing before Judge Goldman on April 19, 1988.

17. Certified Copy of Plaintiff's Motion to Vacate and Set Aside Dismissal dated November 21, 1987 and filed April 19, 1988.

18. Certified Copy of Movant's Pro Se Motion for Leave of Court and Permission of Court to Appear "Amicus Curae" signed by Edward J. Winter dated May 11, 1988.

IN RE MARRIAGE OF PHILIP ROY AND IRENA V. ROY
Dade County Circuit Court Case No. 85-2558 (FC05)

19. Letter from Philip A. Roy to The Florida Bar dated March 16, 1988 enclosing a Notice of Hearing signed by Edward J. Winter, Jr., dated February 6, 1988 setting a hearing before the Honorable Jon I. Gordon, Dade Circuit Judge, for March 1, 1988.

20. Certified Copy of Notice of Hearing signed by Edward J. Winter dated October 19, 1988 setting hearing before Judge Gordon on November 22, 1988.

21. Certified Copy of letter from Edward J. Winter, Jr. to Judge Gordon dated November 21, 1988, filed November 1, 1988.

FRANK MARRERO, ESQ. MATTER

22. Letter from Edward J. Winter, Jr., with attachments, sent to Frank Marrero, Esq. postmarked September 21, 1988.

TOMERLIN MATTER

23. Affidavit of Janice L. Gallagher dated November 21, 1988.

NON-COMPLIANCE WITH RULE 3-5.1(h) OF RULES OF DISCIPLINE

24. Affidavit of Stephen Tabano dated May 9, 1988.

FAILURE TO PAY COSTS IN DISCIPLINARY PROCEEDING

25. Letter from Peggy Henley to Edward J. Winter, Jr. dated August 14, 1988.

FATHERS FOR EQUAL RIGHTS

26. Receipt to Dan Comiskey for \$85.00 from Edward J. Winter, Jr. for Fathers for Equal Rights dated March 5, 1988.

27. Copy of article appearing in News/Sun Sentinel on February 6, 1988 sent to The Florida Bar by George Klaus indicating a Fathers for Equal Rights stamp and "Edward J. Winter, Jr., Assistant Director, Fathers for Equal Rights."

28. Letter from John Harper of Radio Station WNWS dated November 4, 1988.

29. Letter from Marc A. Fishman, Esq. with attached affidavit dated November 30, 1988.

CYNTHIA SULLIVAN, ASSIGNEE v. CHARLES R. KING
Manatee County Circuit Court Case No. CA-88-2933

30. Summons and Complaint dated October 3, 1988.

EDWARD J. WINTER, JR. v. WAYNE F. O'BRIEN, ET AL.
Orange County Circuit Court Case No. CI-88-6183

31. Summons and Complaint dated September 9, 1988.

Based upon Exhibits 1 through 8, inclusive, I find that Respondent was aware of the Supreme Court of Florida decision in The Florida Bar v. Edward J. Winter, Jr., Supreme Court Case No. 71,150, dated January 28, 1988, effective February 27, 1988, which granted the permanent resignation without leave to reapply filed by Respondent. There is no doubt as to Respondent's notice of his inability to practice law effective February 27, 1988.

Based upon Exhibit 7, a certified mail letter from Stephen Tabano of The Florida Bar to Respondent dated February 23, 1988, Respondent was notified of the requirements of Rule 3-5.1(h) of the Rules Regulating The Florida Bar regarding providing notice of his resignation to clients and an affidavit acknowledging compliance with that rule to The Florida Bar.

Based upon Exhibits 9 through 14, inclusive, I find that Respondent filed a pleading on March 3, 1988, in New Jerusalem Disciples Church v. Pollack, Third District Court of Appeal Case No. 87-2229.

Based upon Exhibits 15 through 18, inclusive, I find that Respondent filed an Amended Notice of Hearing on March 23, 1988 setting a hearing before the Honorable Murray Goldman on April 19,

1988, in Copeland Electric Inc. v. Bo Min Contracting Corp., Dade County Circuit Court Case No. 85-46882(30). Further, on April 19, 1988, I find that Respondent filed a "Plaintiff's Motion to Vacate and Set Aside Dismissal" and on May 11, 1988, Respondent filed a "Movant's Pro Se Motion for Leave of Court and Permission of Court to Appear "Amicus Curae," signed and dated by Respondent on May 11, 1988, in that case.

Based upon Exhibits 19 through 21, inclusive, I find that Respondent filed a Notice of Hearing dated October 19, 1988, setting a hearing before the Honorable Jon I. Gordon on November 22, 1988, In Re Marriage of Philip Roy and Irena Roy, Dade County Circuit Court Case No. 85-2558(FC05). Further, I find that Respondent sent a letter dated November 21, 1988, filed November 21, 1988, to Judge Gordon, regarding that case.

Based upon Exhibit 24, I find that Respondent failed to comply with Rule 3-5.1(h) of the Rules Regulating The Florida Bar.

Based upon the Exhibit 25, I find that Respondent failed to pay the disciplinary costs in the underlying disciplinary matter.

Several of the remaining exhibits, although not proof of the unauthorized practice of law by Respondent, are of concern to this Referee because they are evidence that Respondent is soliciting legal cases. Exhibit 22 is a letter from "Edward J. Winter, Attorney at Law" to attorney Frank Marrero. The letter is contained in an envelope postmarked from Miami dated September 21, 1988, and sets forth, inter alia,

I (Respondent) cut way back on the office case load. Your file is one of the select few remaining. My law office declined to accept any more than a carefully chosen case load of clients like you. That's where we stand today, so please give us a call so we can make arrangements to work out the details to protect your best interests which is the paramount consideration, as you know, in my mind, professionally speaking.

Exhibit 23 is the affidavit of Janice L. Gallagher dated November 21, 1988, which indicated that Respondent attempted to refer a personal injury case to the law firm of Spence, Payne, Masington & Needle, P.A., on November 18, 1988. Therein, Ms. Gallagher, an attorney with the Spence firm, stated:

I asked Mr. Winter if he had been disbarred from practicing law in the State of Florida. He replied that he had permanently resigned from The Florida Bar for health reasons. I then asked him whether he was allowed, after resigning from the Bar, to share referral fees. He stated that he had several cases that had been pending prior to his resignation that were being handled by other attorneys from which he expected to receive a referral fee at the termination of the cases. I then asked him what he thought he should receive from this firm if we were to find merit with the Tomerlin case. He stated that he would expect to receive a portion of the fee as a referral for work that he performed. I then brought the clients in and the interview proceeded.

Exhibits 26 through 29, inclusive, deal with Respondent's association with a support group known as "Fathers for Equal Rights." I note that the address and telephone of Fathers for Equal Rights are the same address and telephone that Respondent maintained for his law office before his permanent resignation. I also note that Exhibit 27 contains a copy of a business card indicating that Respondent is "Assistant Director" of Fathers for Equal Rights.

Exhibit 30 is a Summons and Complaint dated October 3, 1988, in the case of Cynthia Marlow Sullivan, Assignee v. Charles R. King, Manatee County Circuit Court Case No. CA-88-2933. From these documents, it appears that Cynthia Marlow Sullivan is the "assignee" of Respondent's attorney fee claim against Charles R. King. Further, based upon my past experience with Respondent and his unique "style," it appears that the Summons and Complaint were prepared by Respondent and the name Cynthia Marlow Sullivan was signed by Respondent.

Exhibit 31 is a Summons and Complaint dated September 9, 1988 in the case of Edward J. Winter, Jr. v. Wayne F. O'Brien, et al, Orange County Circuit Court Case No. CI-88-6183. From these documents, it appears Respondent is suing for attorney fees in the amount of \$1500 and in addition for "punitive damages and compensatory damages" in excess of one million dollars.

111. RECOMMENDATIONS AS TO GUILT:

Based upon Exhibits 1 through 21, involving the New Jerusalem Disciples Church matter, the Copeland Electric matter, and the Roy v. Roy matter, I recommend that Respondent be found guilty of

engaging in the unauthorized practice of law and accordingly, be found guilty of indirect criminal contempt of the Supreme Court of Florida.

Based upon Exhibit 24, I recommend that Respondent be found guilty of failing to comply with Rule 3-5.1(h) of the Rules of The Florida Bar and accordingly, be found guilty of indirect criminal contempt of the Supreme Court of Florida.

IV. RECOMMENDATIONS AS TO THE DISCIPLINARY MEASURES:

Respondent has been before this Referee on several prior occasions. I tendered a Report of Referee dated August 13, 1987, in Supreme Court Case No. 70,122, recommending that Respondent be disbarred for abandoning a client in a child custody matter and charging fraudulent fees. I note that prior to that Report of Referee, Respondent received a Private Reprimand in 1971 (The Florida Bar File No. 11F71-12), a 91-day suspension in 1976 (Supreme Court Case No. 49,372), a Public Reprimand in 1985 (Supreme Court Case No. 66,6311, and a Public Reprimand in 1987 (Supreme Court Case No. 68,541).

From Respondent's past record and Respondent's appearances in these matters before this Referee, I would add several observations about this present matter. Respondent has demonstrated that he does not learn a lesson from past discipline. In 1971, Respondent received a private reprimand in The Florida Bar File No. 11F71-12. In that case, Respondent had sued an ex-client for legal fees and in said suit prayed for the fees and damages in "excess of one hundred million dollars (\$100,000,000.00)." In 1988, in the Cynthia Marlow Sullivan, Assignee, v. Charles R. King matter (See Exhibit 30), Respondent, using Cynthia Marlow Sullivan as an Assignee, has sued for an attorney fee of \$3,075.30, plus interest, attorney fees, costs, treble damages for civil theft, and punitive damages in the amount of \$50,000. Also, the Edward J. Winter v. Wayne O'Brian matter (See Exhibit 31) involves another fee dispute in which Respondent prays for punitive and compensatory damages in excess of one million dollars. Additionally, it is noteworthy that Respondent received a Public Reprimand in 1987 in Supreme Court

Case No. 68,541 for, inter alia, not being zealous in avoiding fee controversies with clients.

Respondent has acted in indirect criminal contempt of the Supreme Court of Florida's order dated January 28, 1988, effective February 27, 1988. Respondent's contempt has been obvious and egregious. Respondent has demonstrated that he cannot abide by the terms of his voluntary permanent resignation. Therefore, I strongly recommend that Respondent be disbarred effective December 23, 1988, and that this Report of Referee be published in the Southern Reporter. Respondent had an opportunity to avoid the stigma of disbarment and because of his contemptions actions, now must be so stigmatized. I believe this recommendation is appropriate because Respondent has been representing to members of the public that he resigned from The Florida Bar for health reasons. This is not the case. The case is that I issued a Report of Referee on August 13, 1988, recommending that Respondent be disbarred for intentional misconduct. As I understand the position of The Florida Bar, the permanent resignation was accepted because it would preclude any possibility of readmission by Respondent in the future. Accordingly, I recommend that the disbarment be effective for a period of twenty-five years. See The Florida Bar v. Cooper, 429 So.2d 1 (Fla. 1983) (disbarment for twenty years).

Further, the recommendation of disbarment shall encompass any acts of Respondent prior to December 23, 1988. Should The Florida Bar uncover any other acts of unauthorized practice of law by Respondent that occur after this date, The Florida Bar shall immediately issue a Motion for Rule to Show Cause providing Respondent with ten (10) days written notice of a hearing on said motion. I will entertain no motion for continuance without a physician's affidavit or a physician's appearance in person, wherein appropriate motions will be made and heard. Should I determine that Respondent has engaged, in any manner, in the unauthorized practice of law, I will again find him in indirect criminal contempt of the Supreme Court of Florida and will seriously consider recommending a definite term of incarceration.

Finally, Respondent is ordered to comply with Rule 3-5.1(h) of the Rules of Discipline of The Florida Bar and file the appropriate affidavit pursuant to said rule within ten (10) days of the Supreme Court's Order in this matter.

V. RECOMMENDATION WITH REGARD TO COSTS:

I find that the following costs were reasonably incurred by The Florida Bar and should be assessed against Respondent at a rate of twelve percent (12%) per annum should the costs not be paid within thirty (30) days of the entry of the Supreme Court's final order. These costs are in addition to unpaid costs in Supreme Court Case No. 70,122.

Administrative Cost [Rule 3-7.5(k)(5)]	\$ 150.00
Final Hearing [Transcript of December 2, 1988]	194.15
Second Hearing [Transcript of December 23, 1988]	<u>132.10</u>
TOTAL	\$ <u>476.25</u> =====

Dated this 4 day of January, 1989.


MIETTE K. BURNSTEIN

Referee

cc: Louis Thaler
Bar Counsel
Edward J. Winter, Jr.