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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
SID J.
DEC 22 1989
CLERK, SUPREME COURT
By
Deputy Clerk

THE FLORIDA BAR,

Complainant,

v.

ANTHONY L. BAJOCZKY,

Respondent.
_____/

Case No.' 73,377

RESPONDENT'S REPLY BRIEF ON DISCIPLINE

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SUMMARY OF ARGUMENT

This Court is entitled to consider any record evidence in determining the appropriate discipline to be imposed. To focus on the actual offense, to the exclusion of any other matters, is completely inappropriate and defies the spirit of the standards for imposing lawyer discipline.

Respondent's actions are not tantamount to conversion. The grievance committee had the option of finding probable cause for misappropriation or conversion of trust funds. They did not do so. If this Court finds that Respondent acted improperly, the discipline handed down should be for a misunderstanding over fees -- not for a violation of the sanctity of client's funds.

Respondent's excellent representation, his lack of intent and his blemish-free past record, are sufficient mitigation to reduce the discipline to be imposed from a public to a private reprimand.

ARGUMENT

POINT III

IF RESPONDENT IS FOUND TO HAVE COMMITTED MISCONDUCT, THE APPROPRIATE DISCIPLINE FOR HIS OFFENSE, IN LIGHT OF HIS SUPERLATIVE REPRESENTATION OF JANET COX, IS A PRIVATE REPRIMAND.

Respondent avers that the evidence did not prove that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. If this Court finds misconduct, however, a private repremand should be imposed.

The Bar states on page 3 of its Brief that it is "inherently necessary to isolate" Respondent's conduct in determining the discipline to be imposed. If such is the case, matters such as a lawyer's prior disciplinary record could not be considered in aggravation or mitigation. Respondent submits that any information before the Court is fair game for the purpose of determining the sanction to be imposed. This Court has repeatedly stated that disciplinary cases are considered on case by case basis. The purpose of such a policy is to allow the Court to consider all information pertinent to a sanction.

Respondent is a superlative lawyer with an exaellent reputation. He ably and zealously represented Janet Cox throughout her litigation. There is no doubt that he was entitled to the $12,000 in fees that he billed her. (In fact, Respondent was entitled to the $16,000 in fees that he listed

before he voluntarily reduced them by $4,000). Such loyal, aggressive, and sterling representation, while not excusing misconduct, should certainly be a mitigating factor in determining discipline.

Respondent's superior representation and his proper handling of trust fees are important factors to consider in determining both the intent of Respondent's conduct and his character. As to the latter, it stands Respondent is good stead that when Ms. Cox's funds ran out, he did not miss a beat in his representation of her. He continued to represent her in a dedicated and zealous fashion.

If, as Ms. Cox and the Bar argue, there was no agreement for Respondent to be paid after the second fee deposit was made, is it not to his credit that he continued to represent her enthusiastically? Doesn't dedicated representation show good character? He did not abandon her or curtail the firm's representation. He and Ms. Fournier continued to do a good job.

The quality and nature of Respondent's representation is certainly an important factor to consider in determining the intent of the Respondent. Intent is a factor to consider under the standards. Respondent's good intentions are shown by his devoting substantial time on her case after her initial deposits ran out. Furthermore, Respondent saw to it that funds coming into the firm were promptly applied to Ms. Cox's

debts with the Insurance Commissioner to avoid the funeral home losing its license.

If Respondent was concerned primarily with fees, as Ms. Cox and the Bar seem to believe, would he not have been demanding that any revenues coming into the firm be applied towards reducing fees and costs rather than promptly applying miscellaneous revenues to the Insurance Commissioner? That Respondent scrupulously adhered to trust accounting rules shows both his good character and his good intentions.

The Bar rhetorically questions on page 3 of its brief if a Respondent should be excused for taking more money than originally contracted for if the lawyer rendered excellent representation. That is not the case before the Court. Respondent not only kept his fees within the range of the original contract, but he reduced them.

The Bar would have this Court believe that Respondent's reduction of fees by $4,000 was only "an effort to placate" the Complainants. (pp. 5 and 6). As pointed out by the evidence before the Court, at the time Respondent reduced the fee the Garys and Ms. Cox were still utilizing Respondent's firm's services, both in post-dissolution matters and for a potential bankruptcy. There was no need for Respondent to placate anybody. His reduction of fees was done for one reason and one reason only: to reduce by over 25% Ms. Cox's indebtedness to the firm and to abide within the lower limits of his initial estimate of fees.

On page 6 of its Brief, the Bar speculates that Respondent could have placed a lien against the Garys' funds. In fact, he still can. However, that Respondent did not do so or did not file suit against Ms. Cox or the Garys bespeaks of his good character and his intent.

The Bar's reliance on the public reprimands meted out in The Florida Rar v. Bern, 433 So.2d 1209 (Fla. 1983) and The Florida Rar v. Sterling, 380 So.2d 1295 (Fla. 1980) is inappropriate. Both Bern and Sterling were disciplined for mishandling of trust funds. There was no such rule violation alleged in the case at Bar. In The Florida Bar v. Fields 482 So.2d 1354 (Fla. 1986), the lawyer received a public reprimand for numerous counts of misconduct and numerous instances of suing clients inappropriately. No such pattern of multiple misconduct is present in the case at Bar. We have a single incident -- an incident that was, Respondent submits, a misunderstanding at worst.

If this Court finds that Respondent is guilty of any misconduct, the appropriate discipline for this first-time, isolated offense is a private reprimand. Holding the lawyer up to the opprobrium of his peers and the public for this single lapse is simply inappropriate. A private reprimand will protect the public, will convey upon the lawyer this Court's concern over his conduct, and will encourage rehabilitation without retribution.

CONCLUSION

If this Court finds Respondent guilty of misconduct, the sanction it imposes should be a private reprimand.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief has been mailed to James N. Watson, Jr., Bar Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 22nd day of December, 1989.

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