

FILED
SID J. WHITE

MAR 2 1990

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CLERK, SUPREME COURT

By _____
Deputy Clerk

THE FLORIDA BAR,

Complainant,

Case No. 74,380

[TFB Case No. 89-30,584 (19)]

v.

ANDREW T. COUTANT,

Respondent.

REPORT OF REFEREE

- I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar, hearings were held on November 14, 1989, and February 6, 1990. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits 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 - David G. McGunegle

For The Respondent - In pro se

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

1. The respondent was retained on or around January 12, 1988, by Deborah J. Potter. Earlier in 1987, Ms. Potter had filed a small claims action against the sellers of a home she had purchased for failing to repair the roof. The case was styled Potter v. McAdams, et al. Case No. 87-1589, in County Court, Martin County, Florida.

2. Ms. Potter retained the respondent after a counterclaim was filed by the seller of the house. She also wanted to join the real estate broker as a co-defendant.

She paid the respondent a \$250.00 retainer and he was to seek his fees from the sellers in accordance with the contract for sale. She understood it would not cost her more than the retainer but there was some confusion regarding her understanding of the terms and her liability if she lost.

3. Communication between Ms. Potter and the respondent was satisfactory until mid-summer, 1988.

4. Beginning in July, 1988, Ms. Potter left numerous telephone messages with the respondent's office on a weekly basis. None of her phone calls were successfully returned by the respondent.

5. Ms. Potter wrote the respondent by letter dated September 27, 1988, and requested that he contact her and provide her with an update as to the status of her case.

6. The respondent testified that he replied to her by a letter written on or around October 4, 1988. He maintained that the letter was inadvertently addressed incorrectly. Ms. Potter never received any such letter from the respondent during this time period and evidence is lacking as to whether or not the respondent actually wrote the letter at that time.

7. He made no further attempts to contact his client and did only enough work on the case to keep it from being dismissed by the court for failure to prosecute. He did not attempt to further ready the case for trial other than to schedule a deposition of the seller for February 17, 1989, which was continued.

8. Ms. Potter complained to The Florida Bar on or around November 21, 1988. She did not attempt to contact the respondent further and she heard nothing further from the respondent until the grievance committee hearing on April 12, 1989.

9. The respondent failed to keep his client adequately informed as to the status of her case. When she failed to respond to his letter allegedly written on October 4, 1988, he made no further attempts to contact her either

by phone or letter to discuss her case with her and seek her wishes on how to proceed given the problems as he perceived with the case.

111. Recommendations as to whether or not the Respondent should be found guilty: As to each count of the complaint I make the following recommendations as to guilt or innocence:

I recommend the respondent be found guilty and specifically that he be found guilty of violating the following Rules of Professional Conduct: 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep his client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; and 4-3.2 for failing to make reasonable efforts to expedite litigation consistent with the interests of his client.

- IV. Recommendation as to Disciplinary measures to be applied:

During the evidentiary hearing held on February 6, 1990, the parties agreed that the undersigned entertain the disposition hearing at the same time. I recognize that standing alone the respondent's misconduct would warrant a much lesser discipline such as a public reprimand, but considering his extensive disciplinary history, I recommend that he be suspended for a period of thirty days with automatic reinstatement at the end of the period of suspension as provided in Rule 3-5.1(E) of the Rules of Discipline. See The Florida Bar v. Bern, 425 So.2d 526, 528 (Fla. 1982).

- V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 46

Date admitted to Bar: October 6, 1972

Prior Disciplinary convictions and disciplinary measures imposed therein:

The Florida Bar v. Coutant, Case Nos. 72,308 & 72,766 -
A public reprimand and two years probation for
practicing while suspended for non-payment of dues,
for trust account record keeping violations and
inadequate communication.

The Florida Bar v. Coutant, 87-27,657 (19) - Private
reprimand with an appearance before the Board of
Governors for neglect and inadequate communication with
a client.

The Florida Bar v. Coutant, 86-21,181 (19) - Grievance
committee private reprimand for neglect and inadequate
communication with a client.

VI. Statement of costs and manner in which costs should be
taxed: I find the following costs were reasonably
incurred by The Florida Bar.


A.	Grievance Committee Level Costs	
	1. Transcript Costs	\$204.65
	2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 51.70
B.	Referee Level Costs	
	1. Transcript Costs	\$ **
	2. Bar Counsel/Branch Staff Counsel Travel Costs	\$275.83
C.	Administrative Costs	\$500.00
D.	Miscellaneous Costs	
	1. Copies of Documents	\$ 54.00

TOTAL ITEMIZED COSTS: \$1,086.18

** Transcript costs for the final hearing held on February
6, 1990, are not yet known.

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 26 day of Feb, 1990.


WALTER N. COLBATH, JR.
Referee

Copies to:

Bar Counsel
Counsel for Respondent
Staff Counsel, The Florida Bar, 650 Apalachee Parkway,
Tallahassee, Florida 32399-2300