

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

ROBERT K. HAYDEN,

Respondent.

Case No. 75,351
TFB Nos. 89-10,262
89-10,308

FILED
AUG 18 1990
KJ
CLERK

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 the following dates:

May 11, 1990 at Clearwater, Florida
July 30, 1990 at Tampa, Florida (Oral Argument)

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Susan V. Bloemendaal, Esq.
For Respondent: Denis M. deVlaming, Esq.

II. Findings of Fact: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

1. Respondent is, and at all times mentioned herein was a member of The Florida Bar subject to the Rules Regulating the Florida Bar including those relating to disciplinary matters.

2. Respondent was retained by June S. Ferreri, wife of Frank C. Ferreri, to represent her in an uncontested dissolution of marriage proceeding. (R-9)

3. On July 11, 1988, a final hearing was held wherein it was agreed that the husband aforementioned would pay to Mrs. Ferreri child support plus lump sum alimony in the amount of \$2500.00. (R-11)

4. On or about July 25, 1988, Mrs. Ferreri accepted a check from her husband in the amount of \$300.00 in settlement of the lump sum alimony obligation. She did not, however, notify respondent or his associate that she had made a total settlement with the former husband. Meanwhile, respondent was making contact with the husband endeavoring to collect the alimony and at least secondarily to recover his legal fees from the proceeds. Respondent's efforts in this regard were not contrary to the wife's instructions or her interests in that she was desirous of avoiding more expense.
5. On or about September 9, 1988, respondent contacted Mrs. Ferreri to inquire whether or not she wanted him to petition for contempt of court against Mr. Ferreri for non-payment of the alimony. Mrs. Ferreri instructed respondent not to proceed with the contempt proceeding, with her primary motivation being to avoid incurring any additional lawyer's fees.
6. Nevertheless, respondent proceeded with the contempt proceeding, serving the husband on September 14, 1988 with notice of the action for non-payment of the alimony judgment.
7. Respondent met with Mr. and Mrs. Ferreri in his office on or about September 27, 1988 and advised them that he would not pursue the contempt proceeding if his bill was paid, and he would not compromise the balance due him. The hearing on the contempt motion was later cancelled by respondent.

III. Recommendations:

I recommend the respondent be found guilty of violating Rule 4-1.2(a) for failure to abide by the client's decision not to proceed with the contempt proceedings; that he be found guilty of violating Rule 4-3.1 for initiating the contempt proceeding without authority from the client; that he be found not guilty of violating Rule 4-8.4(c) as charged.

In the Referee's opinion, the prime objective of the hastily filed contempt action was to enhance recovery of the fees claimed by and perhaps due respondent from his client despite her instructions to desist from taking such action in the first instance. Respondent's record of unacceptable professional conduct in the past appears not to have been corrected by the moderate treatment administered. Hence, the penalty for the current violations should be measurably but fairly increased.

IV. Recommendation as to Disciplinary Measures:

I recommend that the respondent be suspended from the practice of law for a period of six months and thereafter until rehabilitation is proved as required by Rule 3-5.1(e).

V. Personal History and Past Disciplinary Record:

After finding of guilty and prior to recommending discipline pursuant to Rule 3-7.5(k)(1)(4), I considered the following personal history and prior disciplinary record of the respondent, to-wit:

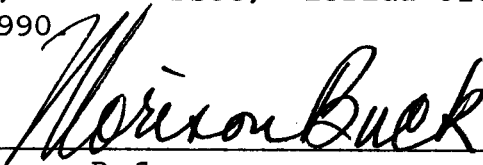
Age: 47
Date Admitted to Bar: May 1, 1973

Prior Disciplinary Convictions and disciplinary measures imposed therein:

1. Received private reprimand in 1981 in Consol. TFB Cases, 06A78H06, 06A78011, 06A78H39, 06A78H43, and 06A78H31, upon conditional guilty plea to an assortment of alleged improprieties.
2. Received thirty day suspension in 1986 pursuant to respondent's Conditional Guilty plea to complaints charging improper handling of property entrusted to him by a client, and trust account violations.

VI. Statement of costs reasonably incurred by The Florida is attached and made part of this report. It is recommended that the costs reflected on such statement and any additional costs not shown be charged to the respondent.

I certify that copy of this report has been furnished by mail to Bar counsel, respondent's counsel, respondent and to staff counsel, The Florida Bar, Tallahassee, Florida 32399-2300, this 9th day of August, 1990.



Referee

IN THE SUPREME COURT OF FLORIDA
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THE FLORIDA BAR,

Complainant,

Case No. 75,351
TFB Nos. 89-10,262(06C)
89-10,308(06C)

v.

ROBERT K. HAYDEN,

Respondent.

STATEMENT OF COSTS

The following costs listed below have been incurred by
The Florida Bar in the above-referenced cases:

Administrative Costs (Pursuant to Rule 3-7.5(k)(1)(5)).....	500.00
Court Reporter Expenses Morgan J. Morey - 4/11/89	
Appearance.....	77.00
Transcript.....	235.20
Postage.....	2.00
Assistant Staff Counsel Expenses Susan V. Bloemendaal - 4/11/89	
(11 miles @ \$0.30).....	3.30
(Meals).....	7.00
Court Reporter Expenses Morgan J. Morey - 7/19/89	
Appearance.....	67.50
Transcript.....	228.00
Karleen F. DeBlaker Clerk of the Circuit Court (Copies of pleadings).....	10.00
Assistant Staff Counsel Expenses Susan V. Bloemendaal (5/11/90)	
(40 miles @ \$0.30).....	12.00
(Parking).....	2.00

Court Reporter Expenses
Robert A. Dempster & Associates (5/11/90)
Attendance..... 60.00
Transcript..... 406.60


Assistant Staff Counsel Expenses
Susan V. Bloemendaal (7/30/90)
(20 miles @ \$0.31)..... 6.20
(Parking)..... .60

Court Reporter Expenses
Betty M. Lauria (7/30/90)
Attendance..... 35.00
Transcript (estimated)..... 140.00

Miscellaneous (8/2/90)
Fax sent..... 50.70

TOTAL AMOUNT DUE \$1,842.30
(ESTIMATED)

Respectfully submitted,


SUSAN V. BLOEMENDAAL
Assistant Staff Counsel
Atty. No. 347175
The Florida Bar, Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607
(813) 875-9821

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing STATEMENT OF COSTS has been furnished by Regular U. S. Mail to Denis M. de Vlaming, Counsel for Respondent, at 1101 Turner Street, Clearwater, Florida, 34616, and a copy was sent by U.S. Regular Mail to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32300-2300; this 10th day of August, 1990.


SUSAN V. BLOEMENDAAL
Atty. No. 347175