

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

FILED
SID J. WHITE
SEP 12 1990
CLERK, SUPREME COURT
BY _____
Deputy Clerk

THE FLORIDA BAR,

Complainant,

v.

S. RICHARD KAPLAN,

Respondent.

Supreme Court Case No. 75,777

The Florida Bar File No.
89-71,631 (15B)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The undersigned was appointed as referee to preside in this disciplinary action by order of this court dated April 12, 1990. The pleadings, transcripts and all other papers filed with the undersigned which are forwarded to the court with this report constitute the entire record in this case.

Respondent defaulted in responding to the bar's request for admissions and defaulted upon the return of the bar's application for judgment on the pleadings which application was granted in light of such defaults. Respondent appeared in person upon the special, bifurcated hearing held to determine appropriate sanction recommendations. The bar was represented by David M. Barnovitz, bar counsel.

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

Based upon respondent's total defaults in responding to the bar's request for admissions and in responding and/or attending upon the bar's application for judgment on the pleadings, I find as follows:

A. Respondent is, and at all times hereinafter mentioned, was, a member of The Florida Bar subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating The Florida Bar.

B. Heretofore respondent was retained by one Florence Taylor ("Taylor") for purposes of representing Taylor in connection with a claim to recover damages for personal injuries sustained by Taylor in a motor vehicle accident.

C. In early 1988 respondent contacted Taylor and advised her that the other party involved in the motor vehicle accident did not have automobile insurance and that Taylor would have to pursue her remedies under the uninsured motorist provisions of her policy.

D. Respondent thereafter initiated no communications with Taylor.

E. Thereafter Taylor attempted, on numerous occasions, to communicate with respondent, by telephone in attempts to ascertain the status of her case.

F. Respondent failed and refused to respond to any of such attempts by Taylor to communicate with him.

G. At Taylor's behest, Taylor's son made numerous attempts to communicate with respondent regarding the status of Taylor's complaint.

H. Respondent failed and refused to respond to any communications from Taylor's son.

I. Thereafter, Taylor retained the services of another Florida attorney, one David L. Magidson, Esquire ("Magidson").

J. Magidson thereafter attempted to contact respondent who failed and refused to communicate with Magidson.

K. Having ascertained that Taylor's recourse was to pursue her remedies under the uninsured motorist provision of her insurance policy, respondent thereafter failed to take actions to file, perfect and collect such proceeds as were available to Taylor under such policy.

L. Respondent failed to give any notice to Taylor regarding the termination of his representation.

M. Respondent failed and refused to turn over any papers or documents to successor counsel despite due request and demand therefor.

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

GUILTY:

A. As a result of respondent's failure and refusal to communicate with his client and her representatives, respondent violated Rule 4-1.4(a), Rules of Professional Conduct which provides that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

B. As a result of respondent's failure to pursue Taylor's claim under the uninsured motorist provision of her policy, 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.

C. As a result of respondent's failure to give reasonable notice to Taylor of the termination of his representation and his failure and refusal to surrender papers to successor counsel as requested and demanded respondent violated Rule 4-1.16(d), Rules of Professional Conduct which provides that upon termination of representation a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client and surrendering papers to which the client is entitled.

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Respondent recently received a private reprimand in two neglect cases. In each (The Florida Bar case number 89-70,345 and 89-70,786) respondent was retained to represent clients seeking to recover damages for personal injuries received in accidents. He failed to prosecute the claims and did not communicate with his clients for approximately a year during the 1987-1988 period. His neglect, failure to communicate and improper withdrawal in the case at bar reflect a pattern. Respondent offered in mitigation that his neglect and other violations occurred during a particularly stressful period when respondent underwent a bitter matrimonial proceeding and lost his father. While I take this into consideration, there seems no excuse why respondent neglected this discipline proceeding, defaulted at every stage and had to be persuaded by virtue of my June 11, 1990 order to attend the sanction hearing. This causes me great concern and requires, in my opinion a sanction that will serve to impress respondent with the seriousness of his conduct

while at the same time protect the public and hopefully cause other members of the bar soberly to act diligently in attending to their clients' cases. Accordingly, I recommend that respondent be placed on probation for a period of one year, with all work supervised by a member of the Florida Bar.

V. PERSONAL HISTORY:

Respondent is 39 years of age and has been a member of The Florida Bar since January 21, 1980.

VI. STATEMENT AS TO PAST DISCIPLINE:

In The Florida Bar case number 85-12,227, respondent received a private reprimand in connection with technical trust account violations. In The Florida Bar case numbers 89-70,345 and 89-70,786, respondent admitted to and was administered a private reprimand for minor misconduct involving his neglect of two personal injury actions and lack of communications with the clients involved therein.

VII. STATEMENT OF COSTS OF THE PROCEEDING AND RECOMMENDATIONS:

The costs of these proceedings were as follows:

Administrative Costs (Rule 3-7.5(k) (5) ----	\$ 500.00
Grievance Committee Court Reporter -----	85.00
Referee Court Reporter:	
Motion Hearing -----	73.30
Sanction Hearing -----	150.00
Investigator Costs -----	43.50
<u>TOTAL</u> -----	\$ 851.80

I recommend that such costs be taxed against respondent.

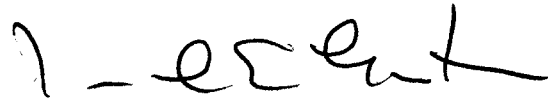
RENDERED this 21st day of ~~July~~^{August}, 1990 at Delray Beach, FL.



MICHAEL E. GERSTEN, Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing report of referee was furnished to S. Richard Kaplan, respondent, at his record bar address of Northbridge Centre, Suite 802, 515 North Flagler Drive, West Palm Beach, FL 33402 and to David M. Barnovitz, assistant staff counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 835, Ft. Lauderdale, FL 33309 by U.S. Mail delivery on this 21st day of ~~July~~^{August}, 1990.



MICHAEL E. GERSTEN, Referee