

FILED

SID J. WHITE

MAY 20 1991

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CLERK, SUPREME COURT

By 
Chief Deputy Clerk

THE FLORIDA BAR,

Complainant,

Case Nos. 76,252 and 77,003

v.

[TFB Case Nos. 90-30,982 (18C)

90-31,360 (18C)]

JACK PERLMUTTER,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary Rules Regulating The Florida Bar, a hearing was held on May 2, 1991. 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 - John B. Root, Jr.

For The Respondent - Pro Se

II. 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:

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[The Florida Bar Case No. 90-30,982 (18C)]

1. During the course of representing Doris and Jay Bottrell in a possible action for slander and malicious prosecution against William and Lyn Patton, the respondent wrote a strongly worded letter to the Pattons threatening them with a lawsuit if they did not leave the Bottrells and their family alone and cease filing reports with either the police department or any other agency.

2. The Pattons' son and the Bottrells' son had been involved in an altercation and apparently there were continuing problems between the two families.

3. In his letter on January 8, 1990, the respondent threatened that the Pattons "would be forced to court on numerous occasions and subjected to extensive discovery, including but not limited to request to produce, interrogatories and a deposition". He further advised them that once a judgment had been obtained against them their assets could be seized. The respondent concluded his letter by instructing the Pattons not to contact him.

4. The respondent sent copies of this letter to the two schools that the Pattons two sons each attended. Mr. and Mrs. Patton were members of the school advisory board of one of the schools.

5. The respondent did not conduct any independent investigation of the facts prior to sending this letter. Further, the respondent replied to the Pattons' letter of complaint to The Florida Bar with a scathing letter that threatened to sue them for malicious prosecution. The respondent also made numerous insulting and derogatory statements about the Pattons and their family members in this letter.

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6. Sami A. Masri initially retained attorney Eric R. Jones to file a Chapter 7 Bankruptcy for himself and his corporation, Audio Trend, Inc. Mr. Jones did some of the initial work on the case then referred it to the respondent.

7. Mr. Jones was suspended from the practice of law effective May 30, 1989, for a period of ninety-one days with proof of rehabilitation required prior to readmission. See The Florida Bar v. Jones, 543 So.2d 1751 (Fla. 1989).

8. The respondent was aware at the time he accepted the referral that Mr. Jones was not a member in good standing with The Florida Bar, but was not aware that he could not accept a referral from Jones.

9. The respondent paid the suspended attorney \$669 in referral fees. The Bankruptcy Court found the referral fee agreement to be unethical, unlawful, and under Section 329(b) of the Bankruptcy Code, excessive. Mr.

Jones was ordered to return to the trustee, for the benefit of the bankruptcy estate, the \$669 paid to him by the respondent.

III. Recommendations as to whether or not the Respondent should be found guilty: I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following Rules Regulating The Florida Bar pursuant to his Conditional Plea For Consent Judgment:

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Rule of Discipline **3-4.3** for engaging in conduct that is contrary to honesty and justice by threatening citizens with multiple lawsuits, verbally attacking them personally, narrowing their standing in the community, and impugning their motivation and standing in the community without just cause; Rule of Professional Conduct **4-8.4(d)** for engaging in conduct that is prejudicial to the administration of justice by threatening to retaliate against citizens who file complaints with The Florida Bar and by making threats without any independent knowledge or investigation of the true facts; and **Oath of Admission** for failing to abstain from all offensive personality by indulging in vituperative correspondence on behalf of a client, and, while doing so, by advancing allegations prejudicial to the honor or reputation of a party.

Case No. 77,003

[The Florida Bar No. 90-31,360 (18C)]

Rule of Professional Conduct **4-1.5(g)** for entering into an agreement for payment of a referral fee that is excessive given the proportion of services performed by the referring attorney and for which the referring attorney cannot assume joint legal responsibility for the representation; and Rule of Professional Conduct **4-5.4** for entering into an agreement providing for the payment of legal fees to a non lawyer.

IV. Recommendation as to Disciplinary measures to be applied:

Pursuant to the respondent's Conditional Guilty Plea For Consent Judgment, which I accept as being an appropriate measure of discipline, I recommend that the respondent receive a public reprimand and pay costs.

V. Personal History and Past Disciplinary Record:

Age: 37

Date admitted to the Bar: February 8, 1982

Law School attended: University of Miami

Undergraduate school attended: Emory University

Prior Disciplinary convictions and disciplinary measures imposed therein: Case No. 87-27,564 (18C) - private reprimand without an appearance before the Board of Governors for engaging in conduct that adversely reflected on his fitness to practice law and charging a clearly excessive fee. The respondent held a client's diamond ring as collateral to cover his legal fees. He had the ring appraised and billed the client for time spent on this activity.

Other personal data: The respondent is not married and has no dependants.

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	\$138.87
2.	Bar Counsel/Branch Staff Counsel Travel Costs	\$ 64.76
B.	Referee Level Costs	
1.	Transcript Costs	\$ 72.40
2.	Bar Counsel/ Branch Staff Counsel Travel Costs	\$ 33.17
C.	1. Administrative Costs	\$500.00
	TOTAL ITEMIZED COSTS:	\$809.20

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 16 day of May, 1991.


Referee

Copies to:

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