

047

6-24

IN THE SUPREME COURT OF FLORIDA

**FILED**

W.D. WHITE

JUN 1 1992

CLERK, SUPREME COURT

BY Chief Deputy Clerk

THE FLORIDA BAR,

Complainant

C. SE NOS. 77, 81 and  
78, 064

vs.

CURLEY R. DOLTIE,

Respondent.

\_\_\_\_\_ /

**INITIAL BRIEF OF RESPONDENT**

An appeal of Report Of Referee rendered on November 22, 1991.

✓  
Curley R. Doltie, Esquire  
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## INTRODUCTION

The Respondent will argue that the Report Of Referee filed in this cause is erroneous as to its findings of fact set out in this cause.

The Respondent will argue that the Report Of Referee filed in this cause is unlawful as to its conclusions reached in this cause.

The Respondent will argue that the Report Of Referee filed in this cause is unjustified inasmuch as the proposed discipline is excessive under the circumstances of this matter.

Reference to the record **below** will be the symbol (R ); the transcript of the hearing before the Referee shall be referred to by (T ).

## STATEMENT OF THE CASE AND FACTS

### CASE No. 77, 812

On May 31, 1990, Mr, David L. People filed a Bar Inquiry/Complaint Form (**Complaint**) with The Florida Bar alleging unethical conduct by the Respondent in the Respondent's representation of him in a property damage claim against an insurance company.

Upon receipt of the **Complaint** and a request for comments from The Florida Bar, the Respondent provided his written explanation of the circumstances surrounding his representation of Mr. Peoples.

The Florida Bar's Staff Counsel did not accept the Respondent's comments/explanation and, on July 18, 1990, referred the matter the Second Judicial Circuit Grievance Committee. A member of the grievance committee was assigned to investigate the **Complaint** on August 7, 1990.

In its Notice Of Review By A Grievance Committee filed on November 6, 1990, the grievance committee alleged that Respondent had violated the Rules of Professional Conduct Of The Florida Bar. Specifically, the grievance committee alleged that the Respondent, during his representation of Mr. Peoples, violated the following rules:

Rules 4-1.2(d) (a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent. However, a lawyer may discuss legal

consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law), 4-3.4(b) (a lawyer shall not falsely, or offer an inducement to a witness that is prohibited by law), 4-3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists), 4-4.1(a) (in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person), 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another), of the Rules of Professional Conduct of The Florida Bar.

In its Amended Notice Of Review By A Grievance Committee filed on November 26, 1990, the grievance committee alleged that Respondent had violated the Rules Of Professional Conduct of The Florida Bar. Specifically, the grievance committee alleged that the Respondent, during his representation of Mr. Peoples, violated the following rules:

Rules 4-1.1 (a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation), and 4-1.5(d) (Contracts or agreements for attorney's fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreement, unless found to be illegal, prohibited by this rule, or clearly excessive as defined by this rule), of the Rules Of Professional Conduct of The Florida Bar.

On February 7, 1991, the grievance committee issued its **Notice Of Finding Of Probable Cause For Further Disciplinary Proceedings** alleging probable cause that Respondent had violated the Rules Of Professional Conduct of The Florida Bar. The Committee alleges that Respondent had violated Rule 4-1.5(d) (Contracts or agreements for attorney's fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreement, unless found to be illegal, prohibited by this rule, or clearly excessive as defined by this rule), of the Rules of Professional Conduct of The Florida Bar.

On March 28, 1991, the grievance committee issued a second **Notice Of Finding Of Probable Cause For Disciplinary Proceedings** alleging probable cause that Respondent had violated the Rules Of Professional Conduct of The Florida Bar. The committee alleges that Respondent had violated Rules 4-1.1 (a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation), and 4-1.5(d) (Contracts or agreements for attorney's fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreement, unless found to be illegal, prohibited by this rule, or clearly excessive as defined by this rule), of the Rules of Professional Conduct of The Florida Bar.

On April 23, 1991, The Florida Bar filed its **Complaint** with this Court alleging violation of Rules 4-1.1 and 4-1.5(d) of the Rules of Professional Conduct of The Florida Bar.

The Florida Bar also filed its Request For Admissions on April 23, 1991.

The Respondent filed his Answer To Request For Admissions on May 23, 1991.

On November 1, 1991, the hearing in this cause was conducted before the Referee. The Report Of Referee was issued in this cause.

The Respondent filed his Petition For Review in this cause on February 7, 1992.

Case No. 78, 064

On June 29, 1990, Ms. Sabrina Skipper filed a Bar Inquiry/Complaint Form (**Complaint**) with The Florida Bar alleging unethical conduct by the Respondent in the Respondent's representation of her in a unemployment compensation case.

Upon receipt of the Complaint and a request for comments from The Florida Bar, the Respondent provided his written explanation of the circumstances surrounding his representation of Ms. Skipper.

The Florida Bar's Staff Counsel did not accept the Respondent's comments/explanation and, on August 16, 1990, referred the matter to the Second Judicial Circuit Grievance Committee. A member of the grievance committee was assigned to investigate the Complaint on August 23, 1990.

In its Notice Of Review By A Grievance Committee filed on February 5, 1991, the grievance committee alleged that Respondent had violated the Rules Of Professional Conduct of The Florida Bar.



Specifically, the grievance committee alleged that the Respondent, during his representation of Ms. Skipper, violated the following rules:

Rules 4-1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client), 4-1.4(a) (a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information), and 4-1.4(b) (a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation) of the Rules of Professional Conduct of The Florida Bar.

On June 10, 1991, The Florida Bar filed its **Complaint** with this Court alleging violation of Rules 4-1.3, 4-1.4(a) and 4-1.4(b) of the Rules of Professional Conduct of The Florida Bar. The Florida Bar also filed its **Requests For Admissions** on June 10, 1991.

The Respondent filed his **Answer To Request For Admissions** on July 2, 1991.

On November 1, 1991, the hearing in this cause was conducted before the Referee. The **Report Of Referee** was issued in this cause.

The Respondent filed his **Petition For Review** in this cause on February 7, 1992.

## SUMMARY OF ARGUMENT

### Case No. 77, 812

The Respondent argues that the Referee's Report is contrary to the facts and testimony adduced at the hearing in this cause and that the recommended discipline is excessive in light of the facts of this cause.

The facts and testimony in this cause do not support the allegations set out in the Complaint that the Respondent did not provide competent representation to Mr. Peoples nor do the facts and evidence support the allegations set out in the Complaint that the attorney fee paid to the Respondent was excessive.

### Case No. 78, 064

The Respondent argues that the Referee's Report is contrary to the facts and evidence adduced at hearing in this cause and that the recommended discipline is excessive in light of the facts of the cause.

The facts and evidence in this cause do not support the allegations set out in the Complaint that the Respondent failed to act with reasonable diligence, or keep Ms. Skipper reasonably informed or explain the matter to her.

## ARGUMENT

Case No, 77. 812

THE REPORT OR REFEREE IS CONTRARY TO THE TESTIMONY AND EVIDENCE ADDUCED AT THE HEARING IN THAT IT FAILS TO CONSIDER THE RESULTS OBTAINED BY THE RESPONDENT AND IT FAILS TO CONSIDER CONCURRENT LEGAL SERVICES RENDERED BY THE RESPONDENT ON BEHALF OF THE CLIENT.

The Respondent submits that the Report Of Referee is contrary to the testimony and evidence received at the hearing in this cause.

The Respondent fails to find any testimony or evidence in the record that he failed to provide competent representation to his client as concluded by the Referee in his report. In fact, the Report Of Referee finds that Respondent secured two (2) separate settlements on behalf of the client for which the Respondent received an attorney fee in the amount of One Thousand Dollars (\$1,000.00) on each claim. One of these claims involved a determination that insurance benefits were due to the client where the insurance company alleged that no policy or coverage existed. (T-18, 19)

Further, the Report Of Referee is erroneous in that it overlooks testimony from the client that the Respondent was engaged to represent him in three other matters relating to a separate property loss claim, the client's breach of an installment loan contract with GMAC and violation of his felony probation in Gadsden County, Florida.

The legal services provided to the client by the Respondent in these matters was clearly established at the hearing. (T-25-30)

The Report Of Referee, in summarizing the evidence, finds: "It is also clear that the attorney actually rendered legal services over an above what might be considered indispensable to the prosecution of the insurance claim aspect of this matter. However, it is unclear as to exactly what the parties had in mind when they spoke of "insurance claim."

This summarization is inconsistent with the Referee's finding that fee charged by the Respondent was excessive.

Further, it should be noted that the client executed the insurance drafts and signed settlement statements' for the disbursement of the attorney fees; however, the client failed to pay any of the disbursed sums to the repair shop for the repair of his vehicle.(T-10, 21, 34-29)

**As** a direct result of the client's failure to pay for the repair of his vehicle, the vehicle was repossessed. The Respondent submits that this complaint filed against him by the client is the result of the clients mismanagement of insurance proceeds obtained as a result of Respondent's legal service rendered in those matters.

**A** careful review of the facts in this cause will reveal that fees charged by the Respondent were not excessive inasmuch as the fees were not overreaching nor were the *fees* charged an unconscionable demand made by the Respondent.

Case No. 78. 064

THE REPORT OF REFEREE IS CONTRARY TO THE TESTIMONY AND EVIDENCE ADDUCED AT THE HEARING IN THAT IT ERRONEOUSLY ASSUMES THAT RESPONDENT HAD KNOWLEDGE OF THE NOVEMBER 10, 1988 UNEMPLOYMENT HEARING WHERE NOTICE OF THE HEARING WAS NOT RECEIVED BY THE RESPONDENT.

The Respondent submits that the Report Of Referee is contrary to the testimony and evidence received at the hearing in this cause.

The sole and controlling issue of this matter **has** been deemed to be whether the Respondent knew of an unemployment compensation hearing that was held on November 10, 1988. It is at this hearing that an unemployment compensation Appeals referee determined that, **as** a result of voluntarily resigning from her job, the client was not entitled to receive unemployment compensation benefits.

The Report Of Referee finds that the evidence at the hearing is in sharp conflict as to whether or not Respondent knew of this November 10, 1988 hearing.

The preliminary facts in this matter, as set out in the Report Of Referee, are clear and uncontested. The facts are:

a. that on September 13, 1988 the Unemployment Appeals Commission remanded this case to supplement the record and that Respondent was served with said Order on September 13, 1988.

b. that, upon remand, a hearing was scheduled for October 12, 1988 and that there is no indication that Respondent was served with such Order. IT-81)

c. that the opposing party (City Of Tallahassee) filed a request for continuance of the hearing and that the Respondent was served with a copy of the request for continuance.

d. that the Respondent became aware of the subsequent notice rescheduling the matter for October 27, 1988.

e. the opposing party requested another continuance and suggested alternative possible dates, including November 10, 1988.

f. the Appeals referee sent a new notice rescheduling the hearing for November 18, 1988, but, again, there is no certificate that Respondent was served by such notice.

The testimony from the client was also clear that she knew of the November 10, 1988 hearing but chose not to attend the hearing because she attended an all day seminar on that date. (T-73) Further, the client stated that, upon receiving notification of the Appeal referee's decision, she wrote the letter to the Unemployment Appeals Commission on November 23, 1988 and offered her reason for failing to attend the hearing. (T-75)

The Respondent submits and The Florida Bar acknowledges that the Respondent did not receive notice from the Unemployment Appeals Commission that a hearing in the unemployment compensation matter had been scheduled for November 10, 1988. (R- Bar's Exhibits 3 and 4)

It was after the November 10, 1988 hearing that Respondent first learned that the hearing had been held.

The Respondent submits that he did not have actual nor constructive notice of the November 10, 1988 hearing, It is important

to note that the adverse decision rendered as a result of the November 19, 1988 hearing was subsequently vacated by the Unemployment Appeals Commission on the basis of the client's assertion that she was unable to attend the rescheduled hearing because her employer required her to attend an all day seminar on that date.

It is apparent from the unemployment compensation records provided to the Referee that the client filed subsequent pro se appeal on February 9, 1990 of a January 18, 1990 Appeal Referee's decision that she was not entitled to unemployment compensation benefits. The Appeal Referee's decision of January 18, 1990 affirmed an Examiner's determination of November 28, 1989 that the client had been paid benefits to which she was not entitled. The Appeals Referee decision of January 19, 1989 which held that the client was disqualified from the receipt of benefits. The January 19, 1989 referee decision was not appealed by the Claimant.

The Respondent did not receive notice of the January 19, 1989 hearing or any subsequent hearing and, in fact, the client represented herself in the subsequent proceedings.

The client contacted the Respondent on January 29, 1990 and a request was made for review of the January 18, 1990 Appeal Referee's decision. On March 29, 1990, the Unemployment Appeals Commission affirmed the Appeal Referee's January 18, 1990 decision.

The Respondent submits that the client's unemployment compensation claim was adjudicated on its merits and that the hearing held on November 10, 1988 had no bearing on the ultimate disposition of the worker compensation claim.

Therefore, the Respondent submits that, because he had no knowledge of the November 10, 1988 hearing held in this cause, he did not fail to act with reasonable diligence nor did he fail to keep Ms. Skipper reasonably informed about this matter.



**CONCLUSION**

The Respondent submits that based on the foregoing argument the **Report Of Referee** is contrary to the facts and testimony set forth in the hearing in this cause.

The **Report Of Referee** erroneously concludes that the Respondent violated the Rules Of Professional Conduct of The Florida Bar.

The Respondent respectfully requests that this Honorable Court enter its order finding the Respondent not guilty of those rule violations set forth in the Complaints filed herein.

Respectfully submitted,

*Curley R. Doltie*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to The Honorable J. Royce Agner, Circuit Judge, P.O. Box 1000, Perry Florida; James N. Watson, Jr., Esquire, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300; and John T. Berry, Esquire, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 this 1st day of June, 1992.

*Curley R. Doltie*  
Curley R. Doltie, Esquire

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