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SID J. WHITE

NOV 25 1991

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA, BAR,

Complainant,

Case No. 77,812 and 78,064 ✓

vs.

TFB File Nos. 90-01167-02 and  
90-01263-02

CURLEY R. DOLTIE,

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 of Discipline, hearings were held on the following dates:

November 1, 1991

The following attorneys appeared as counsel for the parties:

For The Florida Bar James N. Watson, Jr. ✓  
For The Respondent Curley Roosevelt Doltie ✓

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 upon below, I find:

That all of the material allegations of the complaint in case 77,812 have been admitted by the Respondent except for paragraphs 10, 26 and 33.

As to paragraph number 10, the Bar charges that the Respondent told his client, Mr. Peoples, to rent an automobile and that the entire cost would be covered by the insurance company. The evidence is in conflict as to this point. Mr. Peoples testified in his direct examination that Mr. Doltie "urged him to get" a rental vehicle. On cross examination, Mr. Peoples stated that after getting

his settlement from Allstate, the renting of a replacement vehicle occurred upon Mr. Doltie's advice and that Mr. Doltie actually gave him an automobile ride to the place of the rental. Mr. Peoples testimony was that Mr. Doltie had assured him that the cost of the rental would be collected from Allstate. However, it became an established fact that the Respondent and client had already released Allstate and that Respondent had never read the provisions of the Prudential policy; in fact, it was undisputed that no policy had ever actually been issued by Prudential but that Prudential covered Peoples' claim nevertheless.

The Court finds that the evidence is clear and convincing that the allegations in the Complaint in numbered paragraph 10 have been proved.

Paragraph 26 of the Complaint alleges that:

"On or about November 20, 1989, Respondent executed a Release and Discharge Statement thereby releasing Prudential from any further claims by Mr. Peoples regarding the June 30, 1989, automobile accident. A copy of the aforementioned release and discharge statement is attached hereto as Bars exhibit P."

Request for admission Z reads:

"On or about November 20, 1989, you executed a Release and Discharge Statement thereby releasing Prudential from any further claims by Mr. Peoples regarding the June 30, 1989, automobile accident."

This request for admission was denied. The Bar offered into evidence its exhibit number 3 which is obviously on a form used by the Prudential Insurance Company which has, in its upper right hand corner, the statement "release of all claims". It is unmistakably signed by Curley R. Doltie and dated November 20, 1989.

The Respondent sought to avoid the effect of this release by breaking it down into its categories of payments by Prudential. This breakdown does not appear on the face of the form and Respondent offered no substantiating documents. It showed that, according to his testimony or admissions gleaned from Mr. Peoples on cross, or both, that the categories are 5 in number and are as follows:

1. Rental	\$348.75
2. Automobile damage	\$646.55
3. Property damage	\$368.20
4. Out of pocket	\$200.00
5. Attorneys fees	\$1,500.00

The total of these sums is the \$3,063.50 received from Prudential.

The Respondent sought to show that, although he charged Mr. Peoples \$1,000.00 deducted from this settlement, it actually was a reduction of his fee charge and allowance from \$1,500.00 to \$1,000.00. (He readily admitted that he had already received \$1,000.00 at the time of the Allstate settlement).

On cross examination of Mr. Peoples, he admitted that he had agreed to the settlement with his attorney, Doltie, at the time of the receipt of the Prudential settlement but "felt he had no other choice". Mr. Peoples added that he signed the settlement statement because Mr. Doltie contended that "we" were going to have a claim against Allstate based upon his understanding of what Mr. Doltie had told him about the "breach of the contract". The settlement statement is in evidence as Bars exhibit number 4.

The evidence is clearly convincing that the allegations of paragraph 26 of the Complaint have been proved.

In its numbered paragraph 15, the Bar alleges that:

"On or about August 18, 1989, Mr. Peoples executed a Release in Full document in lieu of Allstates check for \$2,000.29, thereby releasing Allstate from any damages or claims resulting from the June 30, 1989, accident."

The Bars request for admission 0 repeats this exact language. The Respondents reply was "admitted in part".

The Bars exhibit number 2 in evidence is a document headed "Release In Full" signed by Dave Peoples and supportive of this allegation.

The Referee finds that this allegation is clearly proved.

Summarizing the evidence in this case involving the client Peoples, it is completely clear that the Respondent entered into a contract for legal services in which he stated that in the matter of "insurance claim" he was to receive 33% of whatever maybe recovered from said claim whether by suit, settlement, or any other manner and the additional terms were that he was "not to exceed \$1,000.00 in fees, unless a law suit is filed and a recovery is accomplished".

It is equally clear that the client was charged not \$1,000.00, but \$2,000.00. It is also clear that the attorney actually rendered legal services over and 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". Peoples insist that it was a claim he had for Prudential's denial of his coverage; Doltie admits this is true but insists that the claim became one primarily against Allstate with that against Prudential added.

The Referee finds the Respondent guilty of violating Rule 4 - 1.1 because he failed to provide competent representation to his client, Peoples; and further finds that Respondent is guilty of violating Rule 4-1.5(d) by reason of his having charged the client, Peoples, in excess of the fees provided by the Contract which he, the Respondent, had prepared and which is viewed in the light most favorable to the client, Peoples.

Case 78.064 - Client: Sabrina Skipper

In this case 78,064, the Referee finds that to Request for Admissions through his answers Respondent, Curley R. Doltie, admitted all the allegations of the Complaint except for numbered paragraphs 2 and 8, both of 2 which he admitted in part, and paragraphs 9, 13, 14 and 15, which he denied.

Paragraph Number 2 of the Bar's Complaint, alleges:

"Respondent undertook the representation of a client who was in the process of appealing a decision by the

Unemployment Compensation Claims Examiner which denied her request for unemployment compensation benefits."

The Referee finds that these allegations are true based upon Bar Exhibit #1 which is Respondent's Notice of Appearance before the Unemplotment (sic) Compensation Appeals Commission in Skipper v. City of Tallahassee, certified to have been mailed to counsel for the City on May 6, 1988.

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

It is further admitted that, upon, remand, a hearing for October 12, 1988, was scheduled; that there is no indication that Respondent was served with such Order; that the opposing party, the city, filed a request for continuance; and that Respondent was served with same.

Before the Referee the Respondent admitted that, though he was not served this Order by the Commission, he became aware of the new Notice from the Commission rescheduling the matter for October 27, 1988.

The Referee finds that the City requested another continuance and suggested alternative possible dates which included November 10, 1988; that Respondent was served with this request for a continuance, Bar Exhibit 4.

It is admitted that the Appeals referee sent a new Notice rescheduling the hearing for November 10, 1988, but again no certificate that Respondent was served by such Notice, although he admitted that he received the Notice from the City requesting such date, among others.

The evidence at the hearing before the Referee is in sharp conflict as to whether or not Respondent knew of this November 10, 1988, hearing. The Respondent never admitted that he did know. The Client was unshakeable in her testimony that he did know; that she and he discussed whether it was necessary that she attend; that he said there was no need for her to go because she was, according to her characterization of his words, "in victory lane"

with the City and would not be penalized for not going because of his being her counsel.

Respondent testified that he never told her she did not need to go: he explained that he did not know that the hearing was scheduled for November 10, 1988; that he never, at any time, contacted the Commission as to why he was not receiving Notices.

At the hearing, the Referee asked Respondent if he requested a re-hearing of the Appeal's Commission adverse ruling regarding his client. His reply was to the effect that he felt sure he had, but had no copy of such. He was given an additional period of time to secure such from the Commission files.

Respondent has forwarded to the Referee what is considered to be the complete file in the Unemployment Compensation Appeals Case involving the Client. There is a letter, dated January 29, 1990, which reads, in part, as follows:

"The purpose of this letter is to make formal application for review of . . . the Referee Decision of 1/18/1990 inasmuch as Claimant disputes the Findings of Fact and Conclusions of Law and Decision entered by the Appeals Referee".

Curiously, the letter ends with

"please contact my office to set a hearing in this matter".

There is no indication that Respondent ever attempted to pursue this application in anyway.

A March 29, 1990, an apparent final Order of the Commission states that upon review the appeals referee's decision is affirmed.

Thus the evidence is clear and compelling to the conclusion that the Respondent failed to act with reasonable diligence and promptness in representing his client in violation of Rule 4-1.3; that he failed to keep her reasonably informed about the status of her matter in

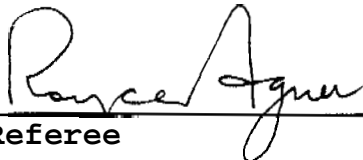
violation of Rule 4-1.4(a); and further failed to explain her matter to the extent reasonably necessary to permit her to make informed decisions regarding his representation in violation of Rule 4-1.4 (b).

After finding of guilty as stated hereinabove and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(4), I considered the following personal history and disciplinary record of the Respondent, to-wit: Respondent admitted having been given private reprimands by the Supreme Court in 1985, again in 1987 and a public reprimand April 23, 1991.

The undersigned Referee recommends that the Respondent be suspended for a fixed period of one (1) month followed by a period of one (1) year probationary period during which Respondent shall take all steps necessary to successfully pass the Ethics Section of the Florida Bar Examination and, additionally take all steps necessary to attend and successfully complete the "Bridge the Gap" seminar provided for applicants for admission to The Florida Bar.

It is apparent that costs have been incurred in these disciplinary proceedings. I recommend that all such costs be charged to the Respondent upon conclusion of these disciplinary proceedings.

DATED this 22<sup>d</sup> day of November, 1991.

  
Referee

Certificate of Service

I hereby certify that a copy of the above report of referee has been served on James N. Watson, Jr. at The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, Curley R. Doltie at 118 N. Gadsden Street, Post Office Box 1325, Tallahassee, Florida 32302-1325 and Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 22<sup>d</sup> day of November, 1991.

  
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