

Florida and the rules regulating The Florida Bar. The Respondent is 38 years of age, born July 14, 1953, and was admitted to practice in Florida in 1983. (Hearing Transcript Pages 46-48; Probable Cause Hearing, Plaintiff's Exhibit 1, Page 68). He is a partner in the law firm of Whitaker, Dorough, Whitaker. (Plaintiff's Exhibit 1, Page 69; Record, Page 48).

2. In April, 1985, Complainant, O████ S████, formerly known as O████ W████, was contacted by the Department of Health and Rehabilitative Services who informed her that her three and one-half year old daughter, A████ T████, may have been sexually molested at the Mother Goose Nursery where she had been placed in day care, by an employee named ██████████ or ██████████. (Plaintiff's Exhibit 1, Page 7 and 8; Hearing Transcript, Page 7). As a result, she contacted Respondent's law firm and went to its office on January 3, 1986, for a consultation. She saw another member of the firm on that date, not Respondent. (Hearing Record, page 7; Plaintiff's Exhibit 1, Page 8 and 9). On that date, she was offered representation and she employed the firm by signing a contingency fee agreement. (Hearing Transcript, Page 7; Plaintiff's Exhibit 1, Florida Bar Exhibit 9 contained therein). She first met with Respondent on January 13, 1986, and over the years, only met with him a total of three times. (Hearing transcript, Page 8; Plaintiff's Exhibit 1, Page 9).

3. The Respondent agreed to investigate the case but did not initially promise to file suit. (Hearing Transcript, Page 8). He sent her two claim forms to file against Mother Goose and Revel and

she signed them and sent them back. (Hearing transcript, Page 9). She did not hear from Respondent for quite a few months. She telephoned him often but only got to talk with him a few times. He was in court, busy, or had some other excuse. (Hearing transcript, Page 9).

4. The following correspondence was exchanged between Complainant and Respondent after employment of Respondent on January 4, 1985:

(a) Letter from Complainant to Respondent dated June 14, 1988, requesting status of case, evaluation of case and basic information, some 3 1/2 years after employment. (Florida Bar Exhibit 3 to Plaintiff's Exhibit 1).

(b) Letter from Respondent to Complainant dated August 26, 1988, responding to June 14, 1988 letter, advising that the Statute of Limitations ran against Mother Goose and ██████████ based upon the 1 year statute for FIGA claims. The letter also advises of the filing of a suit on June 30, 1986, and voluntary dismissal of the suit on June 18, 1987, to avoid dismissal for lack of prosecution. The letter also contains an evaluation of Complainant's case. It took Respondent over two (2) months to respond to his client's request. (Florida Bar Exhibit 4 to Plaintiff's Exhibit 1).

(c) Certified mail letter from Complainant to Respondent dated September 13, 1988, requesting clarification of status and requesting meeting. (Plaintiff's Exhibit 2).

(d) Letter from Respondent to Complainant dated October

28, 1988, advising second suit had been filed (suit against Department of Health and Rehabilitative Services) in Leon County and that it would be set for trial within nine to twelve months. (Florida Bar Exhibit 5 to Plaintiff's Exhibit 1).

(e) Letter from Complainant to Respondent dated April 11, 1989, requesting information on documents she had advised Respondent of but had not received from him. (Florida Bar Exhibit 1 to Plaintiff's Exhibit 1).

(f) Certified mail letter from Complainant to Respondent dated January 26, 1990, still asking for information and noting she had not heard from him even though she had tried to contact him on several occasions. (Florida Bar, Exhibit 2 to Plaintiff's Exhibit 1).

(g) Letter from Respondent to Complainant dated August 29, 1990, sending some materials, apologizing for no communication and saying that the case work "slipped through the cracks", blaming it on secretaries. (Florida Bar Exhibit 6 to Plaintiff's Exhibit 1). This letter was sent more than 1 year and 3 months after requests by Complainant.

(h) Letter from Respondent to Complainant dated April 22, 1991, sending copies of documents and advising that Complainant had no case and recommending dismissal of the case. (Plaintiff's Exhibit 3).

(i) Letter from Complainant to Respondent dated April 26, 1991, objecting to dismissal and reminding of the existence of a document she had seen which would show prior knowledge of HRS

that [REDACTED] [REDACTED] and Mother Goose were suspected of sexual abuse of children at Mother Goose prior to the incident with her child. (Plaintiff's Exhibit 5).

(j) Letter from Respondent to Complainant dated June 10, 1991, sending copy of letter from Brevard County Sheriffs Department and letter dated July 22, 1991, from Respondent to Complainant sending copy of letter from the Cocoa Beach Police Department. (Plaintiff's Exhibit 4).

5. Complainant was never advised of the filing of the first lawsuit on June 30, 1986 nor of its dismissal on June 29, 1987. (Complaint, Bar Exhibit 8; dismissal, Bar Exhibit 7; Plaintiff's Exhibit 1, Pages 12-13).

6. When Complainant went to Respondent's office on September 21, 1988, Respondent told her he had been tied up with a big money lawsuit with Florida Power and Light Co., had won and could now "do better" on her case. (Plaintiff's Exhibit 1, Page 11; Hearing transcript, Pages 12-13).

7. Respondent filed a new Complaint on October 28, 1988 against HRS in Leon County without prior discussion with or notification of Complainant. (Petitioner's Exhibit 1, Pages 14-15) She did not get a copy of it until after she wrote him a letter and complained to The Florida Bar. (Plaintiff's Exhibit 1, Page 14).

8. After the first Complaint was filed with The Florida Bar, Respondent called Complainant and told her to "call the war dogs off" because he was working on the case now. (Plaintiff's Exhibit 1, Page 33). The only time she could get a response from

Respondent was after she would contact The Florida Bar (Hearing transcript, Page 15).

9. Respondent canceled a deposition he scheduled of HRS without notifying Claimant and she could not get any information on it or why it was canceled. (Hearing transcript, Pages 16-17).

10. Respondent took the position that no cause of action existed against the Department of Health and Rehabilitative Services until the rendition of the opinion in Department of Health and Rehabilitative Services vs. Yamuni, 529 So 2d 258 (Fla 1988), on June 2, 1988, over two years after taking the case. Respondent felt that prior knowledge on the part of HRS could now support a claim against HRS. (Plaintiff's Exhibit 1, Pages 39-40; Hearing transcript, Page 29).

11. Respondent allowed the Statute of Limitations to run on claims against Revel and Mother Goose because of lack of knowledge of the one year statute as it pertains to FIGA as governed by Section 95.11(5)(d), Florida Statutes. He thought the statute was four years. (Petitioner's Exhibit 1, Pages 41-42; Hearing transcript, Page 54). Respondent argues the "trap" caught lots of attorneys and his partner, Lee Dorough, challenged the statute but lost in Blizzard v. W.H. Roof Co., Inc., 573 So 2d 334 (Fla 1991).

12. Respondent never served the Complaint on the Defendants in the first suit but filed only to maintain legal rights under the old law on joint tortfeasors prior to a change in the law effective July 1, 1986. (Hearing transcript, Pages 51-53; 55).

13. The evidence shows that Respondent failed to return

telephone calls or to adequately communicate with Claimant throughout the case. (Hearing transcript Pages 9, 10, 11, 14, 15, 16, 17, 19, 20, 64; Plaintiff's exhibits 1, Pages 9, 10, 11, 15, 16, 21, 22, 32, 33 and 47). In fact, the Respondent admitted his failure to communicate with the Complainant. (Plaintiff's Exhibit 1, Pages 47-50; Hearing transcript, Pages 54-55; 64; 67-69).

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14. The letter of April 22, 1991, from Respondent to Claimant requested her to telephone him upon receipt of the letter. She did so but again could not speak with him. She had to write him a letter. (Hearing transcript, Page 20). Again, in Respondent's letter to Complainant dated June 10, 1991, Complainant was invited to telephone Respondent if she had questions. Again she was unable to talk with him. (Hearing transcript, Page 21).

15. Respondent did not adequately investigate the case. (Hearing transcript, Pages 21-23; 50-53, Petitioner's exhibit 1, Pages 43, 46, 50, 52, 53, 58, 62, 63). He also admitted his obligation to communicate with his client. (Hearing transcript, Page 68). He admitted that he did not keep his client advised of the matters transpiring in her case. (Plaintiff's Exhibit 1, Pages 64-66; Hearing transcript page 60, 64; 69-70).

16. Part of the reason Respondent filed the second case (against HRS) was because Complainant filed a grievance against him (Plaintiff's Exhibit 1, Page 64). The case did not have much value. (Plaintiff's Exhibit 1, Page 64). Respondent tried to get Complainant to agree to dismiss her case in April, 1991 (Plaintiff's Exhibit 3; Hearing transcript, Pages 19-20). He tried

to refer her case out but no attorney he talked to was interested since he had been "grievanced" by the client. (Plaintiff's Exhibit 1, Page 62).

17. The Respondent had two previous clients file grievances against him prior to the two grievances filed by the Complainant. (Plaintiff's Exhibit 1, Page 69).

18. The lawsuit against HRS is still active. (Hearing transcript Page 66; Plaintiff's Exhibit 1, Page 54).

19. The Grievance Committee, "9-E" of the Ninth Judicial Circuit, found probable cause on January 4, 1991, and recommended a public reprimand with an appearance before the Board of Governors. (Plaintiff's Exhibit 1, Page 70).

III. RECOMMENDATION AS TO GUILT OR INNOCENCE: As to the charges in the Complaint, I recommend that the Respondent be found guilty of violation of Rule 4-1.3 and Rule 4-1.4, Rules of Professional Conduct.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED: I recommend that the Respondent be admonished as provided in rule 3-5.1(a), Rules of Discipline before the Grievance Committee of the Ninth Judicial Circuit, and that Respondent be placed on probation for 24 months as provided in Rule 305.1(c) and Rule 3-5.1(d), Rules of Discipline. The terms of probation recommended are that at least each ninety days, that Respondent review with a designated member of the Ninth Judicial Circuit Grievance Committee, his case load and that a report of the status of each of Respondent's open litigation files be made by Respondent in writing to the Grievance

Committee with information regarding the diligent prosecution of the case and communication with the client. It is recommended that a probation report be made by the Grievance Committee each six months on Respondent's evaluation and that the report be filed with the Bar Counsel with a copy to Respondent. It is further recommended that Respondent submit, within thirty days of the Disciplinary Order, a written plan of procedure and policy to facilitate adequate communication with clients and a "tickler" system to remind him to use diligence in prosecution of his cases, such plan to be filed with the Ninth Judicial Circuit Grievance Committee, with a copy to Bar Counsel.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD: After making a finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(4), I considered the following personal history and prior disciplinary record of Respondent; to wit:

Age: 38

Date Admitted to Bar: 1983

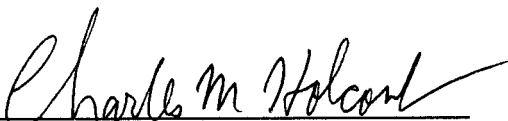
Prior disciplinary conviction and disciplinary measures imposed:
NONE

Other Personal Data: Two prior grievance complaints but no disciplinary convictions.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS BE TAXED: The only costs provided the referee was the statement of the court report, Linda A. Bulmer, in the amount of \$313.15 for reporting and transcribing the hearing before the referee on August 9, 1991. It


is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the statement referred to above, be charged to the Respondent.

Dated this 17th day of September, 1991.


REFeree

CERTIFICATE OF SERVICE

I hereby certify that copy of the above report of referee has been served on KRISTEN M. JACKSON, Bar Counsel, 880 N. Orange Ave., Suite 200, Orlando, Florida 32801; R. LEE DOROUGH, Counsel for Respondent, 45 W. Washington Street, Orlando, Florida 32801 and Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 17th day of September, 1991.


REFeree