

FILED
SID J. WHITE
DEC 8 1991
CLERK, SUPREME COURT
By _____
Chief Deputy Cbrk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Case No. 77,910
[TFB Case No. 90-70,897 (19A)]

v.

GUILLERMO J. FARINAS,
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** Regulating The Florida Bar, the **final** hearing was held on October 24, 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 David G. McGunegle

For The Respondent Donald E. Mason

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:

As to Count I

1. **The** respondent was retained on March 8, 1989, by Larry and Deanna **Blakely**. The Blakelys had purchased a business from Byron and Margaret Tappan for \$30,000.00.

2. The **Blakelys** made monthly payments to the Tappans from **August, 1988**, to March, 1989. **After** March, 1989, the Blakelys stopped making payments to the Tappans due to an alleged fraud **by** the Tappans. The alleged fraud concerned the original negotiations and **sale** of the business to the Blakelys.

3. The Tappans filed suit against the Blakelys for their failure to make the required monthly payments and the Blakelys wanted to file a counter-suit against the Tappans for fraud and misrepresentation.

4. On May 12, 1989, the respondent filed an Answer And Counterclaim in the matter. The respondent did not file responses to the Tappans first Requests For Admission which had been filed on June 5, 1989, until September 19, 1989. The respondent made no attempts to obtain an extension of time to file the responses and he did not advise his clients that he had not timely filed the responses to the Requests for Admission.

5. It was the respondent's position that he was unable to contact the Blakelys to obtain the necessary information to respond to the Requests For Admission, The Blakelys contended they were not contacted by the respondent despite timely providing his office with their address for the summer in North Carolina and their daughter's local telephone number. From the testimony at the final hearing there was not clear and convincing evidence presented that the respondent failed to keep in contact with the Blakelys.

6. On September 18, 1989, the respondent filed a Motion to Withdraw from the Blakelys' case. In a letter dated September 19, 1989, the respondent announced his intention to withdraw from the Blakelys' case but made no mention of communication problems with them. The respondent wanted to withdraw because he had moved his law practice to Miami and travel between Dade County and Martin County would be impracticable and costly for the Blakelys.

7. After September 18, 1989, the respondent did nothing further on the Blakelys' counterclaim. On September 29, 1989, a Summary Judgment was entered for the Tappans after a hearing. The respondent represented the Blakelys at the Summary Judgment hearing. A judgment was ordered against the Blakelys in the amount of \$22,347.37.

8. The referee found that although the respondent failed to timely file responses to the Requests For Admission, the matters contained in the Requests For Admission were not the primary cause for the Summary Judgment finding.

9. The Blakelys claim they were never informed of the hearing on the Motion For Summary Judgment and were not in attendance at the hearing. However, the court file

contained a handwritten letter from the Blakelys which indicated they were aware of the Summary Judgment hearing and that the respondent intended to withdraw from their case. Despite Mrs. Blakely's denials under oath at the final hearing that she was not aware of the Summary Judgment hearing, it was apparent from the court file that Mrs. Blakely was aware of the hearing.

As to Count II

1. Fairly early in the Blakelys' case, the respondent gave Mr. and Mrs. Blakely copies of Plaintiff's First Set Of Interrogatories, Plaintiff's First Requests For Production Of Documents, and Plaintiff's First Requests For Admission. The respondent requested they complete the answers to the pleadings and return the documents to his office. The Blakelys sent these documents to the respondent's office which was then located in Miami, Florida.

2. When the respondent received the answers to the Interrogatories that the Blakelys had completed, the documents were signed **but** were not notarized **as** required. The respondent requested his secretary, who was a notary public, notarize the documents. The Blakelys were not present before the respondent or his secretary when they signed the documents and the secretary notarized the documents even though she had not witnessed the Blakelys' signatures.

3. The secretary's conduct in notarizing a document without witnessing the signatures of the signees violated Florida Statute 117.09, being a second-degree misdemeanor. The Bar charged the respondent with soliciting his secretary to improperly and illegally notarize the Blakelys' answers to the Interrogatories.

4. It was the respondent's assertion that he recognized the signatures of the Blakelys as being genuine and was unaware that even though he recognized the signatures, the signatures had to be witnessed by the notary when she notarized the document.

111. Recommendations as to whether or not the Respondent should be found guilty: **As** to each count of the complaint I make the following recommendations as to guilt or innocence:

As to Count I

It is my finding that the respondent knew back in June, 1989, that the Blakelys were probably not going forward with their case and chose to let the case drop. Perhaps it would have been a better practice for the respondent to withdraw from the Blakelys' case at the time he began experiencing difficulties contacting them and obtaining their cooperation, however, I find the respondent's conduct was not ethically improper. Therefore, I find the respondent not guilty of violating Rules of Professional Conduct 4-1.1, 4-1.3, 4-1.4(b), 4-3.2 and 4-8.4(a).

As to Count II

It is my finding at the hearing on October 24, 1991, that it seems to be fairly common among members of the Bar to accommodate their clients who reside out of state to not require they find a notary in their area to notarize pleadings and then **send** them back to the attorney in Florida. The practice seems to be that if the attorney is satisfied that a pleading contains the clients' signature, it is acceptable to notarize it without the clients being present. Although I do not find such conduct entirely ethical, it is a problem that also appears to be common practice among other members of the Bar. Thus, at the hearing, I entered a directed verdict **as** to Count II for the respondent against the Bar. Therefore, I find the respondent not guilty of violating Rule of Discipline 3-4.3 and Rules of Professional Conduct 4-8.4(a), 4-8.4(c) and 4-8.4(d).

IV. Recommendation as to Disciplinary measures to be applied:

Being that I find the respondent not guilty of all charges, no discipline is recommended and each party shall bear their own costs.

Dated this 3rd day of December, 1991.


Referee

Copies to:

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