

**FILED**

SID J. WHITE

OCT 17 1991

CLERK, SUPREME COURT

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

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR,

Complainant

vs.

JAMES A. BAZLEY, JR.,

Respondent

Case No. 77,999  
TFB File No. 91-00592-04A

**REPORT OF REFEREE**

1. **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:

July 29, 1991

September 10, 1991

The following attorneys appeared as counsel for the Parties:

James N. Watson, Jr., for the Florida Bar

James A. Bazley, Jr., Pro Se

II. **FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT AS TO WHICH**

**THE RESPONDENT IS CHARGED:** After considering all the pleadings and the evidence before me, pertinent portions of which are commented upon below, I find:

1. Respondent is, and at all times mentioned in the complaint was, a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida. (Admission "A")

2. In August 1987, Respondent agreed to represent THOMAS R. MANGAN in regards to an injury MANGAN suffered while working for Good Housekeeping Gas Company. (Admission "B")

3. Respondent orally agreed to represent MANGAN for a 25% contingency fee in his lawsuit against Good Housekeeping Gas Co. (Admission "C")

4. Respondent received the facts of the injury and determined there was a basis for a civil suit and so informed his client, MANGAN. (Admission "D")

5. In late 1987, Respondent subsequently determined Workmen's Compensation was a bar to any civil action for MANGAN'S injury. (Admission "E")
6. Respondent failed to notify MANGAN of his determination that there was no basis for a civil action. (Admission "F")
7. From August, 1987, until early 1990, Respondent misled MANGAN as to the status of the suit. (Admission "G")
8. Respondent misrepresented to MANGAN that he had filed suit against Good Housekeeping Gas Co., and that the matter was being pursued. (Admission "H")
9. In June, 1990, Respondent told MANGAN that he had won the law suit and received a Judgment against Good Housekeeping Gas Co., for \$14,500.00. (Admission "I")
10. From June to August, 1990, Respondent misrepresented to MANGAN he was attempting to execute on the Judgment. (Admission "J")
11. In mid-August, 1990, Respondent told MANGAN he was finalizing his collection efforts on the Judgment. (Admission "K")
12. During the period from August to November, 1990, Respondent advanced MANGAN payments on the Judgment totaling \$2375.00. (Admission "L")
13. In October/November, 1990, Respondent admitted to MANGAN there had never been a suit filed against Good Housekeeping Gas Co., and there never was a Judgment. (Admission "M")
14. Respondent felt he owed MANGAN some compensation for his inaction and agreed to pay MANGAN the amount of the fictitious Judgment less his 25% contingency fee or \$10,875.00. (Admission "N")
15. Respondent later executed a promissory note in favor of MANGAN for \$9,000.00 representing the balance owed on November 15, 1990. This note was for settlement of all claims by MANGAN against Respondent. (Admission "O")

16. Respondent has failed to return MANGAN'S file, records and medical documents to him as requested. Such action has prejudiced MANGAN. (Admission "P")

The Respondent has admitted the truth of all allegations in the Complaint and has admitted his guilt.

I further find that the Respondent was admitted to practice law in November of 1985 and practiced as a sole practitioner until approximately September of 1988. Thereafter, he was associated with another attorney until December of 1990 and has practiced as a sole practitioner thereafter until today's date. (Record page 19)

**III. RECOMMENDATION 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:** I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of the Rules of Professional Conduct, to wit:

Respondent has violated Rule 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), 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), 4-1.16 (b)(1) (except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent), 4-1.16 (b)(2), (except

as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interest of the client, or if the client has used the lawyer's services to perpetrate a crime or fraud), 4-1.16 (b) (3), (except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent), 4-1.16 (b)(4) (except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled), 4-1.16 (b)(5) (except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client), 4-1.16 (b)(6) (except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if other good cause for withdrawal exists), 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and 4-8.4 (a lawyer shall not engage in conduct that is prejudicial to the administration of justice) of the Rules of Professional Conduct of the Florida Bar.

**IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:**

I recommend that the Respondent receive a public reprimand, be suspended for thirty days, and be placed on probation for a period of eighteen months as provided in Rules 3-5.1 (c) and 3-5.1 (d) Rules of Discipline. The terms of probation recommended are as follows:

1. That the Respondent successfully take and pass the Ethics portion of the Florida Bar.
2. That the Respondent file semiannual reports of case load status with the Clerk of the Supreme Court of Florida and a copy to Bar Counsel.
3. That the Respondent participate in alcohol abuse programs as recommended by the Florida Bar Alcoholics Recovery Program. The reasons for recommending said discipline are that although the Respondent has a prior private reprimand for neglect of a matter, he was relatively inexperienced in the practice of law. At the time of his mistake in this case, he did not have the benefit of a supervising attorney or associates with whom he could consult in this case and by his own admission he was drinking heavily during all times involved. His client was not injured in this case, and in fact has recovered monies from the Respondent which he could not have recovered in a negligence claim had the Respondent filed same. The Respondent is remorseful and is now receiving treatment for his alcohol abuse.

**V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:**

After finding of guilty 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 the Respondent, to wit:

Date Admitted to Bar:                      October 25, 1985

Prior disciplinary convictions and disciplinary measures imposed therein: Private reprimand in 1988.

Other personal data: Married with three children.

Sole practitioner.

**STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:**

Costs incurred at the Grievance Committee Level as reported by Bar Counsel:

Administrative costs	\$500.00
Attorney travel	382.52
Investigator expenses	168.00
Court reporter attendance and transcripts	115.30
TOTAL	<u>\$1165.82</u>

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.

DATED this 16<sup>th</sup> day of October, 1991.



ROBERT K. MATHIS  
CIRCUIT COURT JUDGE, REFEREE

I HEREBY CERTIFY that a copy of the above and foregoing Report of Referee has been served on James N. Watson, Jr., Bar Counsel at 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, to James A. Bazley, Jr., Respondent at 418 Kingsley Avenue, Post Office Box 815, Orange Park, Florida, 32067-0815, this 16 day of October, 1991.



JUDICIAL ASSISTANT