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SID J. WHITE

JUL 17 1992

CLERK, SUPREME COURT

By  Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,
Complainant,

v. Case No. 78,795

Edward B. Rood,
Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: The undersigned was duly appointed as referee and conducted disciplinary proceedings according to the Rules of Discipline. Hearings were held on the following dates:

November 8, 1991	status conference
February 18, 1992	motion to continue count I
February 26 & 27, 1992	evidentiary hearing, count I
March 24, 1992	count II voluntarily dismissed
April 20, 1992	evidentiary hearing, count III
June 19, 1992	disposition hearing

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Bonnie L. Mahon and Joseph A. Corsmeier
Edward B. Rood represented himself except at the disposition hearing at which he was represented by Richard T. Earle, Jr.

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged: The Complaint filed in this case contains three counts. The Florida Bar voluntarily dismissed count II and, after an evidentiary hearing, this referee found that count III had not been proved by clear and convincing evidence. The findings of fact which follow concern only count I of the Complaint.

When Heidi Stephenson was eleven years old she fell and hurt herself at Skateland of Brandon. Her mother and father employed Mr. Rood's law firm to represent them in the litigation which followed. David Webster, of the firm, was assigned the case. In the spring of 1984 the case was amicably

settled for \$50,000. Heidi was fourteen at the time of the settlement and her share of the settlement proceeds amounted to \$20,000. On May 23, 1984, a guardianship case was opened for Heidi in the Circuit Court for Hillsborough County, Florida. Her parents were designated the co-guardians of the property. The court ordered that the money be deposited in a guardianship account at Barnett Bank of Tampa. The funds were to be withdrawn only by order of the probate division judge.

The settlement proceeds were actually disbursed in July, 1984, by Mr. Rood's son, Edward C. Rood. The checks were given directly to Heidi's parents without insuring that Heidi's money was deposited in the guardianship account. Thereafter, Mr. and Mrs. Stephenson spent Heidi's money without obtaining the permission of either the probate division judge or Heidi.

On October 16, 1986, the probate division judge issued an Order to Show Cause directed to both the co-guardians and Mr. Rood's law firm. The court was concerned that no annual accounting and inventory had been filed. There was no response to the Order to Show Cause and on December 17, 1986, the court issued a Contempt Notice to the Stephenson's and to Mr. Rood's law firm. A hearing was scheduled for February 25, 1987. Mr. Rood directed his secretary to mail to the Stephensons the appropriate forms to complete before the contempt hearing. When they failed to return the forms, his secretary sent another letter to the Stephensons which requested a phone call regarding the case.

Sometime in late January or early February, 1987, Mrs. Stephenson mailed a letter to Mr. Rood which stated that all of Heidi's money had been spent, that she hadn't answered Rood's inquiries because she was afraid, and that she was ready to be punished for spending her daughter's money. Mr. Rood's secretary responded in a letter dated February 6, 1987, informing Mrs. Stephenson that Mr. Rood had scheduled a hearing before the probate judge on March 20, 1987. She was directed to come to Mr. Rood's office immediately before the hearing to discuss the matter.

At the appointed time, Mrs. Stephenson and Heidi attended the meeting with Mr. Rood and presumably Mrs. Stephenson repeated the same things she said in the letter. This is the first time Mr. Rood had ever met Mrs. Stephenson or Heidi. The three of them then went to the judge's office. While the mother and daughter remained in the waiting room, Mr. Rood went into the judge's chambers to speak with the judge. When he emerged, Mr. Rood advised the Stephensons that everything had been taken care of but that Heidi had to be paid her money by her eighteenth birthday. Heidi was due to turn eighteen five months after the hearing. Mr. Rood did

nothing further on this case until April, 1988, when another Order to Show Cause was issued because of the failure to file the annual accounting and inventory. A hearing on this Order was scheduled by the judge for June 22, 1988.

The foregoing chronology is essentially uncontested. From this point on, however, the testimony is diametrically at odds. Mr. Rood claims that his office mailed some probate forms to the Stephensons and filed the forms with the court when they were returned to his office. He had no reason to doubt the validity of the statements contained in the forms and took no personal role in either the preparation or execution of the forms. For various reasons, I do not believe this testimony. Mrs. Stephenson testified that in June, 1988, Mr. Rood called her and advised her that she needed to come into his office to sign some papers in order to stay out of trouble with the court. When she went to the office she was presented with a completed document entitled Annual Return of Co-Guardians. She again informed Mr. Rood that she and her husband had spent Heidi's money and, therefore, the contents of the document were false. He informed her that she had to sign the document or risk going to jail. She signed the documents and Mr. Rood filed them with the court. The contempt hearing was never held.

There are several reasons why I believe Mrs. Stephenson's version is correct. It was necessary for Heidi to sign certain documents and she did not accompany her mother to Mr. Rood's office. When told that she would have to sign a document stating that she had received her money, she became concerned that if she signed it she would never get her money. She consulted her older sister, Kalebra, who advised her to speak with an attorney friend. On June 10, 1988, after her mother's conversation with Mr. Rood, but before the scheduled contempt hearing, Heidi and Kalebra went to Mark Clements law office to discuss the matter. They wanted a "second opinion" about how the guardianship case was being handled. During that office visit, Mr. Clements telephoned Mr. Rood and informed him again that Heidi was claiming that she had not been paid her money. There is no reason to doubt Mr. Clements testimony.

Shortly after signing the false Annual Return of Co-Guardian, Mrs. Stephenson was admitted to Shand's Hospital in Gainesville for treatment of a serious illness. She advised Heidi not to sign any documents concerning the guardianship because she felt that if she died of this illness, and Heidi had sworn in writing that she had received all her money, Heidi would never recover anything. During this period Heidi was receiving numerous telephone calls from Mr. Rood imploring her to come to his office to sign some papers. Eventually Kalebra called Mr. Rood, at Heidi's request, and was

advised by Mr. Rood that Heidi needed to sign a document to keep her mother from going to jail. Both of the sisters went to Mr. Rood's office on June 20, 1988. They testified that Mr. Rood was advised that the document entitled Acknowledgment of Receipt of Property, which Mr. Rood wanted Heidi to sign, was false. He responded that if Heidi failed to sign the document, her mother would go to jail. She signed the document and Mr. Rood filed it.

The Annual Return of Co-Guardians and the Acknowledgment of Receipt of Property were filed with the court on June 22, 1988. Neither an Inventory nor a Petition for Discharge were filed. As a result, another Order to Show Cause was issued on June 6, 1989, directing the Stephensons and Mr. Rood's law firm to appear on August 17, 1989. Mr. Rood asked an associate, Dennis Lopez, to handle the matter.

On July 10, 1989, Mr. Lopez sent a letter to the Stephensons together with a Petition for Discharge of Co-Guardians and a document entitled Receipt Approval of Account, Waiver of Notice and Consent of Discharge of Co-Guardians. Mr. Lopez had completed the forms with the information gleaned from the firm's file. His letter asked the Stephensons to execute the documents and return them prior to the hearing date. They did this even though they knew the information was false. Mrs. Stephenson and Heidi testified that they assumed Mr. Lopez knew the sworn statements were false since he worked for Mr. Rood.

The documents were filed August 7, 1989. On August 14, 1989, Mary Cummings, a clerk of the probate division, contacted Mr. Lopez's secretary and advised that the guardianship could not be closed until an inventory was filed. She also inquired about the status of the guardianship funds since the court's file contained no court order permitting disbursement of the funds. Since he didn't know the answer to Ms. Cummings' question, he called Mrs. Stephenson. She told him the truth, that she and her husband had spent Heidi's money and, at Mr. Rood's behest, had been filing false documents. Upon receiving this information, Mr. Lopez asked Mrs. Stephenson and Heidi to come to his office the next day. They came to the office and once again told Mr. Lopez the truth. He asked them to return the next day for the purpose of making a statement before a court reporter. After that meeting, in the afternoon of August 16, 1989, Mr. Lopez spoke with Mr. Rood about what the Stephensons had said. Mr. Rood told Mr. Lopez that he could not recall the Stephenson case.

The next morning Mr. Rood went to the probate judge's office and obtained from him an Order of Discharge of Co-Guardians. He knew that the documents in support of that Order were false.

Mr. Lopez was late getting to the office on August 17, 1989. When he arrived, his secretary gave him the following message:

I called Mary Cummings and she said the Order of discharge was in her pending drawer because we had not filed the inventory. The order would not be submitted until we did this.

Mr. Rood then comes in - told me he had been to the hearing, that Judge Alvarez signed the Order of Dis. and judge said that when a ward says she has received the assets that is enough - Mr. Rood has advised Mrs. Stephenson's atty, Sansone of this and the Stephensons are out of trouble.

MR. ROOD WANTS TO SEE YOU WHEN YOU GET IN.

Mr. Lopez promptly informed Mr. Rood that he was preparing an affidavit outlining what the Stephensons had told him about spending their daughter's money and signing false documents. He intended to submit it to the court. Oddly, Mr. Lopez' affidavit is silent about the allegation that Mr. Rood made the Stephensons sign the documents. Faced with this, Mr. Rood immediately returned to the probate judge's chambers, informed the judge that a mistake had been made, and got the judge to void the Order of Discharge. Another hearing was scheduled for September 8, 1989.

On September 6, 1989, Mr. Rood contacted the Stephensons' new attorney, Douglas Gregory, and advised him that the Stephensons should execute a promissory note to Heidi prior to September 8th hearing so that the judge would have no reason to ask Heidi or her parents about the "perjured" documents. Finally, in closed chambers just prior to the hearing, Mr. Rood advised the judge that, because a promissory note had been prepared, there was no reason to ask the Stephensons about the false documents. At the same time, Mr. Gregory advised the judge that he had been informed that the Stephensons were not the targets of criminal investigation. He had explained to them their fifth amendment rights, but that they wanted to answer any questions the judge wanted to ask them. The judge asked no questions about the documents.

III. RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY: Mr. Rood failed to competently and diligently pursue and conclude Heidi Stephenson's guardianship case. During his representation of the Stephensons, he knowingly and intentionally encouraged, advised and caused his clients to execute false documents in June, 1988, and thereafter knowingly and intentionally filed the false documents with the probate court. I recommend that he be found guilty of violating the following Rules of Professional Conduct: Rule 4-1.1 (DR 6-101(A)(1) prior to January 1, 1987) (competence); Rule 4-1.2(d) (a lawyer shall not counsel a client to engage in conduct that the lawyer knows or reasonably should know is criminal or fraudulent); Rule 4-1.3 (DR 6-101(A)(2) and (3), prior to January 1, 1987) (diligence); Rule 4-3.3(b) (candor towards the tribunal); Rule 4-3.3(d) (in an ex parte proceeding a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse); Rule 4-4.1(b) (in the course of representing a client, a lawyer shall not knowingly fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client); and Rule 4-8.4(a)(b)(c) and (d) (DR 1-102(A), conduct prior to January 1, 1987) (a lawyer shall not: (a) 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; (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; or (d) engage in conduct that is prejudicial to the administration of justice.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED: I recommend that Edward B. Rood be suspended for a period of one year and thereafter until he shall prove rehabilitation as provided in Rule 3.5.1(e), Rules of Discipline. Additional reasons for this recommendation may be found in the Report of Referee filed this date in case number 78,741 and 78,742 (consolidated).

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD: After a finding of guilt and prior to recommending discipline pursuant to Rule 3-7.5(K)(4), Rules of Discipline, I considered the following personal history and prior disciplinary record of the respondent, to wit:

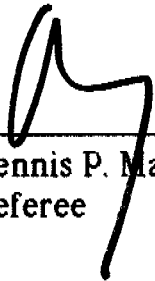
- (1) Age: 76 years old
- (2) Date admitted to the Bar: 1941

- (3) Prior Disciplinary Record: none
- (4) Aggravating Factors:
 - (a) a pattern of misconduct
 - (b) dishonest or selfish motive
 - (c) substantial experience in the practice of law
 - (d) refusal to acknowledge wrongful nature of conduct
- (5) Mitigating Factors:
 - (a) lack of prior disciplinary action
 - (b) substantial contributions of time to Bar related activities
 - (c) substantial monetary contributions to various educational, charitable and non-profit organizations

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE

TAXED: I have reviewed the Statement of Costs affidavit submitted by The Florida Bar. I find that the costs were reasonably incurred by The Florida Bar. It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses, together with the costs listed in the Statement of Costs, be charge to the respondent. The Statement of Costs affidavit is attached, marked as exhibit "A", and made a part hereof.

Dated this 15 day of July, 1992



Dennis P. Maloney
Referee

Certificate of Service

I hereby certify that a copy of the above report of referee has been mailed to Bonnie L. Mahon, Esq. and Joseph A. Corsmeir, Esq. at Suite C-49, Tampa Airport Marriott Hotel, Tampa, Florida 33607; Richard T. Earle, Jr., Esq. at 150 Second Ave. North, Suite 1220, Bank of Florida Building, St. Petersburg, Florida, and John T. Berry, Staff Counsel, The Florida Bar, Legal Division, 650 Apalachee Parkway, Tallahassee, Florida, this 15 day of July, 1992.



Dennis P. Maloney

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Case No. 78,795
(TFB No. 90-10,733(13E)
90-11,550(13E)
90-11,116(13E)

v.

EDWARD B. ROOD,
Respondent.

STATEMENT OF COSTS
(As to TFB No. 90-10,733(13E))

The following costs have been incurred by The Florida Bar in the above-referenced case at the Grievance Committee and Referee levels:

1. Administrative Costs \$ 500.00

I. GRIEVANCE COMMITTEE LEVEL:

2. Court Reporting Service (Grievance Committee Hrg.)
Michael Mussetta Court Reporting (3-13-91)
Appearance Fee: \$110.00 (divided by three)... 36.66
Transcript Fee: 226.00

3. Assistant Staff Counsel: (GC Hearing)
(Bonnie L. Mahon) (3-13-91)
Mileage: 20 Miles X .31 = \$6.20 (divided by 3) 2.06
Parking: \$2.00 (divided by 3)..... .66

(Joseph A. Corsmeier) (5-8-91)
Mileage: 20 miles X .31 = \$6.20 (divided by 3) 2.06
Parking: \$2.00 (divided by 3)..... .66

II. REFEREE LEVEL:

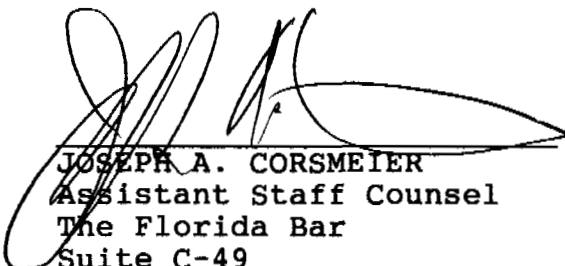
1. Court Reporting Service (Michael Mussetta)
Appearance Fee: (2/26/92)..... 180.00
Appearance Fee: (2/27/92)..... 115.00

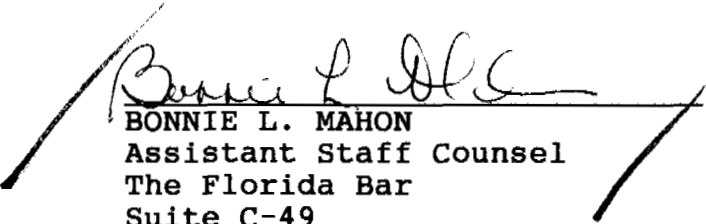
Transcript:	
Volume I.....	489.80
Volume II.....	390.60
Volume III.....	328.60
Scalfani Williams Court Reporting (12-19-91) Status Hearing Appearance Fee:.....	
	35.00
2. Assistant Staff Counsel: (Bonnie L. Mahon) (2-20-92) Deposition of Detective Frost	
40 miles X .32.....	12.80
Parking.....	2.00
3. Miscellaneous Expenses: MCI: (telephone hearing) 4-3-92.....	
	34.80
4. <u>Staff Investigator Expenses:</u> (Joseph McFadden)	
Time Expended: 2.7 hours @ \$19.00.....	51.30
Mileage: 10 miles X .32.....	3.20
(Martin S. Egan)	
Time Expended: 19.6 hours @ \$20.00.....	1,832.00
Mileage: 454 miles X .32.....	145.28
TOTAL ESTIMATED COSTS TO DATE:	\$ <u>4,388.48</u>

The foregoing costs have been incurred in the above-styled cause at the Grievance Committee and Referee level by The Florida Bar.

Dated this 16th day of June, 1992.

Respectfully submitted,


 JOSEPH A. CORSMEIER
 Assistant Staff Counsel
 The Florida Bar
 Suite C-49
 Tampa Airport Marriott Hotel
 Tampa, FL 33607
 (813) 875-9821
 Attorney No. 492582


 BONNIE L. MAHON
 Assistant Staff Counsel
 The Florida Bar
 Suite C-49
 Tampa Airport Marriott Hotel
 Tampa, FL 33607
 (813) 875-9821
 Attorney No. 376183

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Statement of Costs has been furnished by regular U.S. Mail to Richard T. Earle, Jr., Counsel for Respondent at 150 Second Ave. North, Suite 1220, Bank of Florida Building, St. Petersburg, FL 33701; and a copy to John T. Berry, Staff Counsel, The Florida Bar, Legal Division, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 16th day of June, 1992.

Bonnie L. Mahon
BONNIE L. MAHON