

FILED

SID J. WHITE

MAY 7 1992

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,
Complainant,

v.

CASE NO. 78,823
TFB NO. 89-11,351 (13B)

Michael Kinney,
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: March 27, 1992

The following attorneys appeared as counsel for the parties:
For The Florida Bar Susan V. Bloemendaal, Esquire
For The Respondent Michael Kinney, Esquire

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 upon below, I find:

Both parties waived venue in Hillsborough County, Florida and agreed that this hearing could be conducted in Pasco County, Florida.

The facts of this case are **as** set forth in the Stipulation of Facts filed with this Referee on March 27, 1992 and attached hereto.

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:

I recommend that the respondent be found guilty and specifically that he be found guilty of the following violation of Rule 4-1.3 (a lawyer shall act with reasonable diligence and promptness).

It has been proven, by clear and convincing evidence, that Attorney Kinney failed to file suit on behalf of his client, Agnes T. Schuchardt, within the legal deadline for the filing of said lawsuits. This failure of Attorney Kinney violates Rule 4-1.3 of The Florida Bar (a lawyer shall act with reasonable diligence and promptness).

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It was not proven, by clear and convincing evidence, that Attorney Kinney violated Rule 4-1.4 of The Florida Bar (a lawyer shall keep a client reasonably informed about the status of the legal matter).

IV. I recommend that the respondent receive a public reprimand and be placed on probation for a period of three years.

The terms of the recommended probation are as follows:

1. Respondent will **file** a monthly report with the Clerk of the Supreme Court of Florida, and a copy to Bar Counsel, listing:

- a) All new clients who have retained Respondent in each preceding month;
- b) The type of legal matter for which client has retained counsel;
- c) The deadline for the filing of a lawsuit on client's behalf;
- d) In what court the lawsuit should be filed.

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: Practicing attorney since 1945 and practicing in Florida since 1955.

Prior disciplinary convictions and disciplinary measures imposed therein: TFB No. 88-11,434 (13B), a Minor Misconduct for violation of Rule 4-1.3 for which respondent received a Minor Misconduct.

Other personal data: Respondent's law practice is strictly personal injury work for plaintiffs, and occasional criminal work in federal court.

VI. Statement of Costs and Manner in Which cost Should be Taxed: I find the following costs were reasonable incurred by The Florida Bar at the Grievance Committee and Referee levels:

1. Administrative Costs \$ 500.00

I. GRIEVANCE COMMITTEE LEVEL:

2. Assistant Staff Counsel:
Susan V. Bloemendaal (3/01/92)
Travel Expenses: 8.00


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11. REFEREE LEVEL:

3. <u>Assistant Staff Counsel:</u> (Final Hearing) Susan V. Bloemendaal (3/27/92) Travel Expenses:	24.97
4. <u>Court Reporting Service:</u> (Final Hearing) Gregg R. Stone & Associates (3/27/92) Appearance Fee: Transcript Fee:	70.00 365.75
5. <u>Staff Investigator Expenses:</u> Joseph P. McFadden Time Expended: (8 Hrs. @ \$19.00) Mileage: (126 Miles @ \$.32) TOTAL ESTIMATED COSTS TO DATE:	152.00 40.32 <u>\$1,161.04</u>

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Dated this 4 day of May, 1992.



Referee Bruce Boyer
Circuit Court Judge
7530 Little Road
New Port Richey, FL 34654

Certificate of Service

I hereby certify that a copy of the above report of referee has been served on Susan V. Bloemendaal, Assistant Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport, Marriott Hotel, Tampa, Florida 33607, Respondent Michael L. Kinney, Esquire, P.O. Box 18055, Tampa, Florida 33679-8055, John T. Berry, Esquire, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, this 4th day of May, 1992.



Helen S. Carter
Judicial Assistant

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

MICHAEL KINNEY,

Respondent.

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STIPULATION OF FACTS

On July 16, 1984, Agnes T. Schuchardt was injured in a slip and fall accident which occurred at the Offices of DRs. Murphy and Von Palaske, P.A.

At the time that Ms. Schuchardt sustained her injuries, Murphy and Von Palaske, P.A. was insured by Iowa National Mutual Insurance Company.

In April of 1985, Ms. Schuchardt retained the law offices of Dennis Slater to represent her.

On October 11, 1985, an order appointing ancillary receiver for purposes of liquidation was entered after Iowa National was declared insolvent by the insurance commissioner's office.

Pursuant to this order, all claims were required to be filed with the ancillary receiver on or before October 10, 1986 or be forever barred.

On or about June 9, 1986, a claim was filed on behalf of Ms. Schuchardt with the ancillary receiver.

Pursuant to Section 631.68, Florida Statutes, Ms. Schuchardt

Accepted by Judge Bruce Boyer
2/12/87

suit was required to be filed within one year after the deadline for filing claims with the receiver, October 10, 1987, or it would be forever barred,

Respondent took over responsibility for Ms. Schuchardt's case in May of 1987 and, **his** first contact with Ms. Schuchardt took place in May or June of 1987. During his initial conversation with Ms. Schuchardt, Respondent advised her that he **intended** to file **a** complaint in her case. However, no complaint was filed until June 13, 1988. No further pleadings were filed by Mr. Kinney on behalf of Ms. Schuchardt in this lawsuit.

By letter dated April 27, 1989, Respondent requested that Ms. Schuchardt contact his office for an immediate appointment in order to discuss the status of the case.

On or about May 11, 1989, Respondent met with Ms. Schuchardt at his office. During this meeting, Respondent advised Ms. Schuchardt that he had failed to timely file her claim with the ancillary receiver.

Respondent further advised Ms. Schuchardt that he would proceed with the case pending **a** ruling by the Court and that he would advise her **as** soon **as** he had such **a** ruling.

Respondent indicated to Ms. Schuchardt that he would contact her within two **(2)** weeks to advise her whether or not her claim could be heard in spite of the fact that the claim to the ancillary receiver had not been timely filed.

On June 19, 1989, the defendant **filed a** Notice of Request to

Produce and a Notice of Interrogatories. The Interrogatories were mail to Ms. Schuchardt on June 19, 1989, with a cover letter instructing her to complete the Interrogatories and return them to Respondent for review and finalization.

Ms. Schuchardt completed the Interrogatories and returned them to Respondent's office.

Respondent had no further communication with Ms. Schuchardt after their meeting of June, 1989. After mailing the Interrogatories to Ms. Schuchardt on June 19, 1989, Respondent took no further action on behalf of Ms. Schuchardt.

On October 26, 1989 a Motion for Summary Judgment was filed by defendant together with a Notice of a November 21, 1981-1981 ^{2/2/89} hearing on the Motion for Summary Judgment. ^(K)

^{MYK}
^(BB) The hearing on defendant's Motion for Summary Judgment was held on November 21, 1989. ^{1989 (BB)} Respondent did not attend the hearing ^{31/2/91} nor did he file a Motion to Withdraw as counsel for Ms. Schuchardt.

Defendant's Motion for Summary Judgment was granted and the Final Judgment entered on November 21, 1989.

Michael L. Kinney
Michael L. Kinney, Esquire
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3128 Kennedy Boulevard
Tampa, Florida 33602
(813) 875-5445

Susan V. Bloemendaal
Susan V. Bloemendaal
Assistant Staff Counsel
Atty. No. 347175
The Florida Bar, Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607
(813) 875-9821

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing STIPULATION OF FACTS was delivered by hand delivery to Michael L. Rinney, Respondent, at 3128 West Kennedy Boulevard, Tampa, Florida, 33602 this 26th day of March, 1992.


Susan V. Bloemendaal