

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED

S: D J. WHITE

MAR 13 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THE FLORIDA BAR,
Complainant,

v.

DEITRA R. H. MICKS,
Respondent.

Case Nos. 80,236 and 80,714

TFB File Nos. 87-21613-04C and
90-00370-04C

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, hearing was held on Friday, March 12, 1993. The following attorneys appeared as counsel for the parties:

For the The Florida Bar, Alisa M. Smith.

For the Respondent, Ms. Elizabeth L. White, Sheppard & White.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar,

subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find the following facts:

1. As to case number 80,236, that:

a) On or about February 1985, Ms. Lillian V. Bush was contacted by the Respondent, Ms. Deitra Micks, concerning the foreclosure action against her property located at 5242 Locksley Avenue, Jacksonville, Florida, hereinafter referred to as the Locksley property.

b) On or about March 1, 1985, Ms. Bush met the Respondent in her law office in Jacksonville to discuss the foreclosure of the Locksley property and Ms. Bush's financial circumstances.

c) Ms. Bush informed Respondent that she had very little money, had judgments against the Locksley property and she had defaulted on the two mortgages on her home, that is, the Locksley property.

d) The Respondent held herself out to be a real estate attorney.

e) The Respondent agreed to represent Ms. Bush in her foreclosure case concerning the above described property.

f) The Respondent informed Ms. Bush that she would assist her by obtaining funds from a private source to satisfy the bank and halt the foreclosure.

g) On or about March 11, 1985, the Respondent met with Ms. Bush, again.

h) At this March 11th meeting, the Respondent told Ms. Bush she could not obtain funds from a private source.

i) The Respondent also told Ms. Bush she would utilize a lending institution to obtain the monies to stop the bank from foreclosing on the Locksley property.

j) Also at the March 11th meeting, the Respondent advised Ms. Bush that her attorney's fee would be a flat rate of four thousand dollars for the foreclosure work.

k) The Respondent, on or about March 11, 1985, prepared a warranty deed to be signed by Mr. Shyon Antonio Bush, Ms. Bush's son.

l) Mr. Bush held ownership and title to the Locksley property.

m) The deed was signed to convey the Locksley property to the Respondent.

n) On or about March 1985, the Respondent orally inquired of Barnett Bank representatives whether a loan to Ms. Bush for refinancing the Locksley property would be feasible.

o) This inquiry was made to determine whether the bank would agree to refinance the Locksley property. The bank indicated it would not refinance.

p) The representatives at Barnett Bank would not loan Ms. Bush monies because her first and second mortgages were in foreclosure and she had a number of judgments against the Locksley property.

q) On or about March 11, 1985, the Respondent induced Ms. Bush to convey ownership of the Locksley property to the Respondent.

r) The Respondent advised that conveyance would enable the Respondent to obtain a loan from a lending institution.

s) The Respondent advised this loan would be used to pay the debts of the first and second mortgages as well as the judgments against her property.

t) The Respondent explained that an Agreement Deed conveying the Locksley property back to Ms. Bush would be executed.

u) On or about March 22, 1992, the Respondent had received thirteen thousand dollars from her brother and/or other family members.

v) The Respondent used the funds from her family to pay the following debts for Ms. Bush: 1) reinstatement of the first mortgage holder; 2) the second mortgage holder; and 3) Copytronics.

w) On March 18, 1985, the Respondent had paid for Ms. Bush \$287 dollars toward her first mortgage to Smith and Husley.

x) Ms. Bush paid \$600 dollars toward the amount owed to Smith and Husley.

y) On March 25, 1985, the Respondent had paid for Ms. Bush \$7,811.96 to Mr. Sid Lewis to cover the total amount due and owing Finance America.

z) On or about March 29, 1985, the Copytronics judgment was paid in the amount of \$1,900 by the Respondent.

aa) On or about March 1985, the Respondent paid the Montgomery Ward judgment in the amount of \$851.46.

bb) On or about March 1985, the Respondent paid the 1984 tax judgment in the amount of \$60.91.

cc) The amount paid for mortgages and judgments by Respondent for Ms. Bush totalled \$10,911.63.

dd) On April 30, 1985, the Respondent had induced Ms. Bush to sign a Purchase and Sale Agreement.

ee) Ms. Bush signed the Purchase and Sale Agreement in which the Locksley property was conveyed to the Respondent.

ff) Ms. Bush did not have an attorney, other than the Respondent, at this meeting.

gg) The Respondent at all times before, during and after the April 30th meeting acted as Ms. Bush's lawyer.

hh) The Purchase and Sale Agreement reflects a sale price of \$39,000 dollars.

ii) The \$39,000 dollar price includes the Respondent's \$4,000 dollar attorney's fee.

jj) The \$39,000 dollar sale price includes a \$10,000 dollar fee for other good and valuable consideration.

kk) This \$10,000 dollar fee was to be conveyed to Ms. Bush.

ll) This \$10,000 dollar fee was never transferred in any form to Ms. Bush.

mm) Also on April 30, 1985, Respondent induced Ms. Bush to sign an Agreement for Deed.

nn) The Agreement for Deed reflects a sale price of \$39,000 dollars.

oo) This Agreement for Deed sets forth the conditions for the Locksley property to be conveyed back to Ms. Bush.

pp) Ms. Bush was not advised to have outside counsel during this business transaction.

qq) Ms. Bush did not have outside counsel during this business transaction.

rr) The amount of money reflected in these sales is inflated and do not reflect the actual price paid for the property.

ss) The \$10,000 dollars was never conveyed to anyone during this transaction.

tt) The promissory note signed April 30, 1985 reflects that Ms. Bush is to pay the Respondent \$29,000 dollars, not \$39,000.

uu) The interest rate on the promissory note is 15-1/2 percent per annum.

vv) Ms. Bush signed this note to pay installments of \$415.86 until balance is paid.

ww) Ms. Bush had no outside legal counsel when she signed the promissory note.

xx) The Purchase and Sale Agreement conveying the Locksley property to Respondent was recorded in the County Court of Duval County by the Respondent.

yy) The Agreement for Deed conveying the property to Ms. Bush was not recorded in the County Court of Duval County.

zz) On May 8, 1985, the Respondent borrowed \$15,000 dollars from Barnett Bank.

aaa) The collateral used to secure the \$15,000 dollar loan is the Locksley property, property located at 5423 Soutel Drive, and property located at 5411 Soutel Drive.

bbb) The Respondent showed the Purchase and Sale Agreement conveying property to Respondent to Barnett Bank to obtain the \$15,000 dollar loan.

ccc) The Purchase and Sale Agreement reflects the value of the Locksley property at \$39,000 dollars.

ddd) The true value of the Locksley property is \$29,000 dollars.

eee) The Respondent did not disclose to Barnett Bank that the monies were for a third party, that is, Ms. Bush.

fff) The borrowed \$15,000 dollars was used to repay the Respondent's family member or members.

ggg) The borrowed \$15,000 dollars was also used to pay the Respondent's attorney fees.

hhh) The Respondent did not disclose the use of funds, i.e., to repay family and pay fees to Barnett Bank.

iii) On May 8, 1985, the Respondent also borrowed \$56,000 dollars from Barnett Bank.

jjj) The Respondent utilized the following properties as collateral to secure this personal loan: 1) the Locksley property; 2) 5423 Soutel Drive; and 3) 5411 Soutel Drive.

kkk) The Respondent did not have Ms. Bush's permission to use the Locksley property as collateral for Respondent's personal loan.

lll) Respondent borrowed both monies from Barnett Bank on May 8, 1985.

mmm) At no time before, during or after any of these transactions did the Respondent advise Ms. Bush to seek outside counsel.

nnn) At no time before, during or after any transactions as mentioned above did Respondent advise Ms. Bush of a conflict of interest when entering into a business relationship with her lawyer.

ooo) At no time before, during or after any of the aforementioned transactions did Ms. Bush have legal counsel other than the Respondent.

ppp) In accord with the provisions in the Promissory Note and Agreement for Deed, the Respondent collected \$415.86 per month beginning May 1, 1985 from Ms. Bush.

qqq) This amount collected was utilized by Respondent to pay the \$15,000 mortgage and loan taken out by Respondent.

rrr) The Barnett Bank \$15,000 dollar loan payment equals monthly installments of \$252.79.

sss) The Tucker Brothers' loan was amortized including principal, interest, taxes and mortgage insurance premiums at \$117.25 per month.

ttt) The total payment made by Respondent to pay the loans was \$370.40 a month.

uuu) Thirty to \$45 dollars per month was collected by Respondent from Ms. Bush out of the \$415.86 payment for consultation fees.

vvv) Ms. Bush did not utilize the Respondent for any other legal work but for the foreclosure.

www) Ms. Bush made her \$415.86 per month payment to Respondent from May 1, 1985 to April 2, 1986.

xxx) In April 1986, the Respondent increased the amount due from Ms. Bush to \$530.86.

yyy) On April 2 and upon Ms. Bush's failure to pay the \$530.86 amount, the Respondent filed and issued to Ms. Bush a "Final Notice to Quit Premises."

zzz) There was not a signed lease agreement between Respondent and Ms. Bush.

aaaa) The Notice demanded "payment of rent" in the amount of \$1,061.99 or surrender of the premises on or before April 8, 1986.

bbbb) The Notice was prepared by the Respondent.

cccc) The Notice refers to Respondent as record owner of the Locksley property and Ms. Bush as a month to month tenant.

dddd) A landlord/tenant arrangement was not the original agreement between Respondent and Ms. Bush.

eeee) Since the Agreement for Deed conveying the Locksley property to Ms. Bush was never filed, the Respondent was recorded title holder.

ffff) Ms. Bush was not informed that the Agreement for Deed was not filed.

gggg) The Respondent received certified funds in the amount of \$1,200.00 from Ms. Bush on or about May 9, 1986, in response to the Respondent's Notice of April 2, 1986.

hhhh) Upon receipt of the \$1,200 dollars, the Respondent did not cease and discontinue eviction of Ms. Bush.

iiii) The Respondent sent a letter to Ms. Bush indicating she would "tentatively hold it pending receipt of an additional \$415.86."

jjjj) The eviction proceedings were advanced and not held.

kkkk) On May 28, 1986, Ms. Bush was served with a Final Judgment of Eviction and Writ of Possession.

llll) The Respondent had deposited the \$1,200 dollar check prior to May 28, 1986.

mmmm) Ms. Bush was not present at any eviction proceedings.

nnnn) The \$1,200 dollar check given to Respondent by Ms. Bush included consulting fees.

oooo) At the time of Ms. Bush's notice of eviction, Respondent was acting as Ms. Bush's lawyer.

pppp) The Respondent did not make a record of the \$13,000 dollar amount loaned to her by her family.

qqqq) The Respondent did not make a record of all consulting fees collected monthly from Ms. Bush.

rrrr) The Respondent did not maintain records of all payments made on Ms. Bush's behalf concerning judgments and mortgages.

ssss) The Respondent failed to have Ms. Bush execute a contract for fees.

2. As to case number 80,714, that:

a) Ms. Phyllis Brown (Singletary) contacted the Respondent in or about November 1983 concerning a discrimination allegation. .

b) The allegation concerned discrimination against Ms. Brown regarding her application to the Sheriff's Office and the discriminatory use of agility tests as a prerequisite for hiring employees.

c) The Respondent had told Ms. Brown that she had a good case against the City of Jacksonville and Dale Carson, Sheriff, for discrimination on the basis of gender.

d) Respondent knew that Ms. Brown began taking steroids in April 1983 and again two months before her agility test.

e) Respondent knew of the requirements of the agility test.

f) Respondent was aware that the week prior to Ms. Brown's final test (October 14, 1983), the results demonstrated that Ms. Brown was not meeting the requirements of the agility test.

g) Respondent was aware that the day of the final physical agility test that Ms. Brown left the test site after failing the first event.

h) On or about December 8, 1983, the Respondent, on behalf of Ms. Brown, filed a Title VII action with the Equal Employment Opportunity Commission concerning the alleged discriminatory practices of the Sheriff's Office.

i) The Respondent was aware that prior to filing a civil action under Title VII of the Civil Rights Act of 1964 on behalf of Ms. Brown she was required to receive the "right to sue" from the Equal Employment Opportunity Commission.

j) In a separate action, the Respondent filed case number 83-1195-Civ-J-16 on behalf of Ms. Brown on December 22, 1983, alleging violation of Section 1983 in Federal Court.

k) Respondent's basis for a federal Civil Rights Statute 42 Section 1983 claim (to be referred to as Section 1983 in subsequent statements) was that the agility test requirement discriminated against Ms. Brown because she was a female.

l) Respondent knew that according to Section 1983 there is an element of discriminatory intent that must be proven and that she had no evidence of discriminatory intent.

m) On February 3, 1984, Respondent was shown a videotape of Ms. Brown's poor performance on the preliminary agility tests given to Sheriff's Office applicants during the week prior to the final test.

n) This videotape clearly establishes that the Section 1983 action in case number 83-1195-Civ-J-16 was without foundation.

o) United States District Judge Moore on February 23, 1984, ordered the Respondent and opposing counsel to submit a status report.

p) On March 2, 1984, Respondent submitted an amended claim to the Equal Employment Opportunity Commission.

q) On March 12, 1984, the Respondent filed a joint status report in case number 83-1195-Civ-J-16 with opposing counsel advising the federal court judge that discovery would take approximately three to six months.

r) On March 12, 1984, Respondent had not received the right to sue under Title VII from the Equal Employment Opportunity Commission.

s) On March 23, 1984, the court entered an order requiring discovery to be completed by May 18, 1984 and set a pre-trial conference for May 31, 1984 and trial for June 18, 1984.

t) On or about April 4, 1984, Respondent filed a further supplement to the Equal Employment Opportunity Commission.

u) In or about April 1984, the Respondent had obtained an expert in exercise physiology for the action set forth in case number 83-1195-Civ-J-16.

v) On or about June 8, 1984, the Respondent received notice of Ms. Brown's right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq. against the Office of the Sheriff, City of Jacksonville.

w) On June 12, 1984, Respondent filed a motion to amend the complaint, motion for continuance of trial and reinstatement of discovery in case number 83-1195-Civ-J-16.

x) On June 18, 1984, the Respondent announced that she was not ready for trial.

y) On June 18, 1984, the court denied Respondent's motion and set commencement of the trial for June 19, 1984 at 9:00 o'clock a.m.

z) On June 18, 1984, the Respondent filed a new complaint pursuant to Tile 42, U.S.C. Section 2000(e), et seq.

aa) The complaint filed on June 18, 1984 involved the same facts as the case pending trial.

bb) On June 19, 1984, the Respondent announced that she was not ready to proceed and upon her failure to proceed, the defendants moved for involuntary dismissal pursuant to Rule 41(b), Federal Rules of Civil Procedure.

cc) The court granted this motion for involuntary dismissal on June 19, 1984.

dd) On June 27, 1984, the defendants moved for taxation of attorney's fees and costs against the Respondent and the plaintiff, Ms. Brown.

ee) The sum of attorney's fees was \$7,680.00 and was assessed against Ms. Brown and Respondent, jointly and severally.

ff) The sum of costs in litigating case number 83-1195-Civ-J-16 assessed against Respondent and Ms. Brown by Judge Moore was \$530.03.

gg) The court specifically found in the Order on attorney's fees and costs that Respondent's conduct in continuing to litigate the Section 1983 action after February 3, 1984 when it became clear the Respondent's Section 1983 action was without foundation constituted bad faith.

hh) Further, the Honorable Judge Moore found that this action (case number 83-1195-Civ-J-16) was frivolous and prosecuted in bad faith.

ii) The Respondent convinced Ms. Brown to file an appeal regarding the dismissal and taxation of costs.

jj) Ms. Brown advised Respondent she did not have enough money for the costs of an appeal.

kk) Ms. Brown, with the assistance of Respondent, mortgaged her home for \$18,000.

ll) Respondent set up this mortgage for Ms. Brown through a "friend" of the Respondent's in Jacksonville.

mm) Respondent filed an appeal in case number 83-1195-Civ-J-16.

nn) Respondent received \$10,000 from Ms. Brown for this appeal.

oo) On August 20, 1985, the District Court's decision was affirmed on appeal by the United States Court of Appeals for the Eleventh Circuit.

pp) The Respondent has not contributed to the order to pay costs and fees as prescribed by the federal court's Order and affirmed on appeal.

qq) Respondent on November 26, 1985, informed Mr. Rohan, attorney with the Office of General Counsel, that the ordered costs would be paid by Ms. Brown.

rr) Ms. Brown has not agreed to hold the Respondent harmless from this judgment and has not agreed to pay it in its entirety.

ss) Respondent failed to return Ms. Brown's phone calls after the dismissal and order to pay costs and fees.

iii. RECOMMENDATIONS AS TO GUILT.

As to each count in the complaint, I make the following recommendations as to guilt or innocence:

A. I recommend, as to case number 80,236, that the Respondent be found guilty and specifically that she be found guilty of the following violations of the Rules Regulating The Florida Bar, to wit: Rules 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), 2-106(A) (a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee), 5-104(A) (a lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure), 7-101(A)(1) (a lawyer shall not intentionally fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rules, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process), 7-101(A)(3) (a lawyer shall not intentionally prejudice or damage his client during the course of the

professional relationship, except as required under DR 7-102(B)), 9-102(B)(3) (a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them) of the Code of Professional Responsibility of The Florida Bar.

B. I recommend, as to case number 80,714, that the Respondent be found guilty and specifically that she be found guilty of the following violations of the Rules Regulating The Florida Bar, to wit: Rules 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice), 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law), 6-101(A)(1) (a lawyer shall not handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it; however, he may accept such employment if in good faith he expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to his client), 6-101(A)(2) (a lawyer shall not handle a legal matter without preparation adequate in the circumstances), 7-101(A)(3) (a lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102(B)), 7-102(A)(1) (in his representation of a client, a lawyer shall not file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he

knows or when it is obvious that such action would serve merely to harass or maliciously injure another) and 7-102(A)(2) (in his representation of a client, a lawyer shall not knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law) of the Code of Professional Responsibility of The Florida Bar.

IV. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

After a finding of guilt and prior to recommending discipline pursuant to Rule 3-7.6(k)(1)(4), I considered the following personal history and prior disciplinary record of the Respondent, to wit:

Age: 48 years old

Date admitted to the Bar: 1972

Prior Discipline: Private Reprimand imposed by the State of Florida in case number 89-526

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

After considering the factors set forth in the Standards for Imposing Lawyer Sanctions regarding aggravating and mitigating circumstances, I find evidence in these cases of the following aggravating factors:

- a) prior disciplinary offense;
- b) dishonest or selfish motive;
- c) multiple offenses;
- d) vulnerability of the victim;
- e) substantial experience in the practice of law;
- f) indifference to making restitution.

Likewise, I find the following mitigating factors:

- a) personal or emotional problems
- b) full and free disclosure to disciplinary board
- c) unreasonable delay in disciplinary proceeding

Having reviewed all of the testimony, admissions and Standards and considering the above aggravating and mitigating circumstances, I recommend the Respondent be suspended from the practice of law for a period of eighteen (18) months.

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

I find the following costs were reasonably incurred by The Florida Bar:

Case No. 80,236

Administrative Costs	\$	500.00
Court Reporter's Fees		253.25
Investigator Expenses		184.50
In-house Copy Charges		113.25
		<hr/>
SUBTOTAL		\$1,051.00

Case No. 80,714

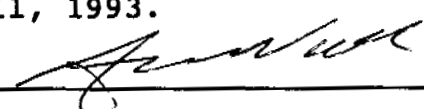
Administrative Costs	\$	500.00
Court Reporter's Fees		60.00
Investigator Expenses		59.50
Attorney Travel Expenses		104.54
In-house Copy Charges		160.00

SUBTOTAL \$ 874.04

Please note that the above costs do not include the court reporter's invoice from the March 12, 1993 hearing.

I recommend the above costs, together with any additional costs, be charged to Respondent and that interest at the statutory rate begin to accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 7th day of April, 1993.


A. W. NICHOLS, III, Referee
Putnam County Courthouse
410 St. Johns Avenue
Post Office Box 26
Palatka, FL 32178

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to SID J. WHITE, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, FL 32301, and that copies were mailed by regular U. S. Mail to JOHN T. BERRY, Staff Counsel, c/o JOHN A. BOGGS, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; ALISA M. SMITH, Bar Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; and DEITRA R. H. MICKS, Respondent, c/o WILLIAM J. SHEPPARD, Counsel for Respondent, at his record Bar address of 215 Washington Street, Jacksonville, Florida 32202, on this 7th day of April, 1993.



A. W. Nichols, III, Referee