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SID J. WHITE

MAY 19 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,
Complainant,

CASE NO: 80,471

V.

(TFB File Nos. 92-00673-03
and 92-00766-03)

Stephen Michael Witt,
Respondent.

INITIAL BRIEF OF THE RESPONDENT

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STATEMENT OF THE CASE AND FACTS

This arises from the Request for Review filed by Respondent, STEPHEN MICHAEL WITT, from the report of the Referee dated February 25, 1993. The request for review relates to the recommendation as to disciplinary measures to be applied.

The two incidents giving rise to this proceeding involves a personal injury claim of Donald Richerson and appeals of indigent criminal defendants and termination of parental rights.

The Respondent requests this Court to review this case and the recommendation of disciplinary measures imposed.

SUMMARY OF ARGUMENT

The recommendation of a 91 day suspension is excessive in light of the fact that the different degree of disciplinary measures appears to be related to the injury to the client. In each of the incidents giving rise to these proceedings the issues that were meritorious or arguably so, were presented. Mr. Richerson's case was filed and proceeded with based upon the evidence available.

Further, the Respondent deeply regrets these proceedings and the actions giving rise there to and will assuredly follow any probationary conditions.

ARGUMENT

WHETHER THE RESPONDENT SHOULD BE SUSPENDED FROM THE PRACTICE OF LAW AS RECOMMENDED BY THE REFEREE.

The Respondent requests this Court to not follow the recommendation of the Referee as to suspension for a period of 91 days. The Florida Standards for Imposing Lawyer Sanctions sets forth aggravating and mitigating factors to be evaluated in deciding the proper disciplinary measures to be applied.

Standard 4.4 Lack of Diligence in paragraph 4.44 states: "Admonishment is appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes little or no actual or potential injury to a client."

This differs from paragraph 4.43, which states: "Public reprimand is appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes injury or potential injury to a client."

The difference is whether injury to the client is caused by the action. Paragraph 4.42 states that suspension is appropriate when a lawyer causes injury. The question of injury is prevalent in Standard 4.5 Lack of Competence and Standard 4.6 Lack of Candor in distinguishing between suspension, public reprimand and admonishment.

In Count I involving the personal injury action of Donald Richerson as alleged by Respondent, Mr. Richerson

claimed injuries, but did not obtain medical proof to proceed to trial. In order to avoid injury to Mr. Richerson his action was filed prior to the statute of limitations and set for trial.

Many of the discrepancies Respondent had with Mr. Richerson were his misunderstanding of the requirement of proof at a trial. However, he was given every opportunity to provide this and the case was properly filed.

As to Count II involving appeals of indigent criminal defendants they were finally resolved with Anders briefs, because there was not a meritorious appeal or the appeal was rejected, except as to Buiey v. State, where the court asked for a supplemental brief as to sentencing and costs, wherein he was resentenced.

In the appeal of In the Interest of D.J.H. and D.H., Jr., Respondent never could contact the mother and to this day has not heard from her nor was there a meritorious defense. In the Interest of W.L.M., a minor child a brief was filed and rejected by the appeals court.

In none of the above was a client's rights lost by inaction, where there was a meritorious issue to be raised.

Respondent fully regrets the facts giving rise to these proceedings and recognizes the importance of these proceedings.

In Standard 9.3 Mitigation a factor to be considered is dishonest or selfish motive. Respondent has not gained or

attempted to gain anything from these cases.

I, the Respondent, certainly regret the events that have led up to these proceedings and request consideration in discipline being imposed. I will be glad to comply with any form of probation to allow me to continue to pursue my livelihood.

CONCLUSION

Based upon the Florida Standards for Imposing Lawyer Sanctions it is requested that based upon the facts of the allegations giving rise to these proceedings the injury or potential injury to the client is the key factor in deciding between admonishment, public reprimand and suspension. In all of the relevant cases, where there were meritorious issues, they were pursued, particularly as to Mr. Richerson.

It is respectfully requested that disciplinary measures less than suspension, be applied in this case.

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BY: 
STEPHEN M. WITT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above foregoing was served by mail on: JOHN V. McCARTHY, BAR COUNSEL, THE FLORIDA BAR, 650 APALACHEE PARKWAY, TALLAHASSEE, FLORIDA 32399-2300, this 18 day of May, 1993.

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