

**FILED**

SID J. WHITE

MAR 1 1993

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

CLERK, SUPREME COURT.

By [Signature]  
Chief Deputy Clerk

The Florida Bar,  
Complainant,

CASE NO. 80,471

v.

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

Stephen Michael Witt,  
Respondent.

**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: February 4, 1993.

The Following attorneys appeared as counsel for the parties:

For the Florida Bar: James N. Watson, Jr.

For the Respondent: Stephen Michael Witt

As to Count 1

The Respondent has been charged with violation of the following Florida Bar Rules of Professional Conduct:

1. 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.)

2. Rule 4-1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client.)
3. Rule 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. Rule 4-1.4(b) (a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation).
5. Rule 4-1.5 (Fees for legal services.)
6. Rule 4-1.8(e)(1) (a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter.) and  
Rule 4-1.8(e)(2) (a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client).
7. Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct of the Florida Bar.

Upon consideration of the Complaint, Respondent's Answer to Request Bar Admissions, and evidence received, the Referee finds that:

In June, 1988, Donald Richerson (hereinafter Richerson) retained Respondent to represent him in connection with a worker's compensation case for money owed and a personal injury case for negligence resulting from an incident that occurred in March, 1988, on the property of Occidental Petroleum. (Referee Hearing Trans. [hereinafter RHT] pg.13). Respondent did not provide Richerson with an explanation of his rights, or responsibilities,

or the nature of the legal process involved in the two claims. He instructed Richerson to "bring all the papers and stuff that I had, which I did, and turn them over to him." (RHT, pg.14).

Respondent had Richerson to sign a couple of papers but Richerson was not furnished copies and does not know what he signed (RHT, p. 16): he does know that he never received a copy of the Client's Bill of Rights (RHT, p.16). Actually fees and costs were not discussed.

Richerson moved back to his home state of Illinois in July, 1988; he contacted Respondent who then notified him that Respondent needed a small amount of money for the cases; Richerson advised Respondent that he was unable to pay at the time, to which Respondent said "don't worry about it, he'll take care of it, we'll work around it." (RHT, p. 17).

Thereafter, Richerson called Respondent several times but his calls were never returned; he sent Respondent a certified letter in March, 1991, but it went unanswered. After numerous inquires to Respondent, Richerson was told that the suit was filed and court hearings scheduled. This was not true (RHT pgs. 19,20).

Richerson never received notice that a law suit had been filed, or a copy of a complaint, or any other evidence of activity on his two claims until after becoming frustrated, he notified Respondent in 1991 that he was going to complain to the Florida Bar (RHT, p. 15 and p. 20). Respondent asked Richerson to let him contact Occidental before complainant filed with the Florida Bar. Respondent thereafter called Richerson "repeatedly" to discuss an offer of settlement first for \$400, then \$500, then

\$600.

Richerson testified that he told Respondent that he was owed a least \$1600 on the worker's comp claim, that Respondent offered to send him \$1600 if he would not file a complaint. (RHT, p. 21) Respondent sent Richerson \$1200 via Western Union (RHT, p. 22) deducting \$400 for fees. There was never a release, or settlement agreement, or report, or any follow-up paperwork after the \$1200 was received. These were Respondent's personal funds. (RHT, p. 47)

In March, 1992, Respondent filed a suit against Occidental Petroleum. He did not confer with Richerson or send him a copy of the complaint (RHT, p. 35). The only evidence of correspondence or transmittal of papers relative to the lawsuit was a letter dated May 1, 1992, from Respondent advising Richerson that a deposition was scheduled for May 21, 1992 at 3:00 o'clock p.m. (RHT, p. 51) Richerson's case against Occidental is scheduled for non-jury trial on March 5, 1993, for three (3) hours. There was no evidence of pre-trial preparation.

Respondent reported that he handled some personal injury cases when he first began to practice law in 1977, that he had 10 or 20 or maybe 50 cases, and recalled taking one personal injury case to trial; it involved a car hitting a cow. Personal injury isn't one of the Respondent's specialities, he admitted (RHT, p.53).

As to Count II

TFB File No. 92-00766-03

The Respondent has been charged with violation of the following Florida Bar Rules of Professional Conduct:

1. 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.)
2. Rule 4-1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client.)
3. Rule 4-3.3 (a) (1) (a lawyer shall not knowingly make a false statement of material fact or law to a tribunal).
4. Rule 4-8.4 (c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).
5. Rule 4-8.4 (d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

Respondent represented appellants in five (5) appeals to the Florida District Court of Appeals, First District, in the cases listed below between 1988 and 1992:

In the interest of D.J.H. and D.H. Jr., case number 88-1059 ( an appeal by the mother from an Order Permanently committing the children to HRS for subsequent adoption). Respondent filed the Notice of Appeal April 27, 1988. The Appeal was ultimately dismissed due to Respondent's failure to file the initial brief or respond to the Court's Order to Show Cause.

The case of Gissendanner v. State, case number 89-2076. The Notice of Appeal in this direct criminal appeal was filed July 31, 1989; Respondent was appointed substitute counsel on December, 1989. A show cause Order was issued April 4, 1990, because no initial brief had been filed. In response, Respondent cited an extremely heavy caseload and difficulty in contacting his client, who was incarcerated, and further, that he had determined there were no meritorius appealable issues, that he did not oppose the Order to Show Cause and moved that the appeal be dismissed. The Court rejected the suggestion that the Appeal be dismissed and ordered Respondent to serve a brief within 20 days. Respondent tendered a brief, but it was stricken for failure to comply with appellate Rule 9.210. An amended initial brief was filed and the Court ultimately affirmed.

The case of Buiey v. State, case number 89-2731, the Notice of Appeal for this direct criminal appeal was

filed October 9, 1989. Again, the initial brief was not timely filed, a Show Cause Order was issued. Respondent cited an extremely heavy case load, difficulty in

contacting his incarcerated client, no meritorious appealable issues, and that he did not appeal the Order to Show Cause, and moved that the appeal be dismissed. The Court again rejected the suggestion that the appeal be dismissed and ordered Respondent to serve a brief within 20 days. The initial brief was stricken. An amended initial brief was filed. Thereafter, the District Court of Appeals issued an Order November 4, 1990 requiring supplemental briefing within 20 days. The brief was not filed; on March 8, 1991, the District Court issued an Order directing Respondent to show cause why he should not be held in contempt. Again, Respondent cited an extremely heavy caseload and that he would immediately file a supplemental brief. It was filed April 11, 1991. The DCA reversed on two of the four issues that it directed be argued in the supplemental brief.

The case of Gadson v State, case number 90-262. The Notice for this direct criminal appeal was filed January 19, 1990. Again, no initial brief was filed; a show cause order on dismissal was issued September 29, 1990. No response was filed and this case was dismissed by the Clerk on October 30, 1990.

In the Interest of: W.L.M., a minor child, case number 91-3319, (an appeal from an Order terminating a mother's rights). Respondent filed a Notice to Appeal on October 9, 1991. He failed to timely file the certificate concerning the transcript to be provided by the Court Reporter, failed to timely file the initial brief; he was directed by the District Court of Appeal to show cause within ten days why the appeal should not be dismissed, and/or other sanctions imposed. Respondent did not respond to the Order but tendered the initial brief 28 days later. Respondent was directed to show cause why he should not be held in contempt. Appearing before the District Court of Appeals on February 26, 1992, Respondent stated that the law library available to him was inadequate and that this was an isolated case, and he did not normally practice law in this manner.

The Respondent admitted each of the allegations in Count II of the Complaint except Paragraph 70 which alleges:

"70. No response was filed and this case was dismissed by the Clerk on October 30, 1990." (See ANSWER TO REQUEST FOR ADMISSIONS filed by Respondent October 30, 1992).

Paragraph 70 of the Complaint in this cause was addressed by the Florida District Court of Appeal, First District by ORDER dated March 10, 1992, In the Interest of W.L.M., a minor child, wherein it finds that "No response was filed and this [Gadson v. State] case was dismissed by the Clerk on October 30, 1990: (See Florida Bar Exhibit No. 1, entered without objection before the Referee on February 4, 1993).

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 Rules of Professional Conduct, to wit:

1. 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.)
2. Rule 4-1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client.)
3. Rule 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. Rule 4-1.4(b) (a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation).
5. Rule 4-1.5 (Fees for legal services.)
6. Rule 4-1.8(e)(1) (a lawyer shall not provide financial

assistance to a client in connection with pending or contemplated litigation, except that a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter.) and

Rule 4-1.8 (e)(2) (a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client).

7. Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct of the Florida Bar.

#### As to Count II

I recommend that the respondent be found guilty and specifically that he be found guilty of the following violations of Rules of Professional Conduct, to wit:

1. 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.
2. Rule 4-1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client.)
3. Rule 4-3.3 (a) (1) (a lawyer shall not knowingly make a false statement of material fact or law to a tribunal).
4. Rule 4-8.4 (c) (a lawyer shall not engage in conduct involving misrepresentation).
5. Rule 4-8.4 (d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

#### IV. Recommendation as to Disciplinary Measures to be Applied:

I Recommend that the respondent be suspended for a period of 91 days, thereafter he shall petition the Court for reinstatement and prove rehabilitation. As a condition of rehabilita-

tion, he shall take the ethics portion of the Florida Bar Exam, pass the same and pay the costs thereof.

- 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:

Age: Not reported  
Date admitted to Bar: 1977  
Prior disciplinary convictions and disciplinary measures imposed therein:  
Respondent received a private reprimand in 1989 pursuant to Report of the Grievance Committee, Third Judicial Circuit, Case No. TFB 89-00310-03 (copy included with Referee's Report).

- VI. Statement of Costs and Manner in Which Costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar and recommend that Respondent pay these costs as a condition of rehabilitation.

Costs incurred at the grievance committee level as reported by Bar counsel:

Administrative costs	
Rule 3-7.6(k)(1)	\$500.00
Investigator expenses	283.05
Travel expenses	194.29
Bar counsel travel expenses	1,186.00
Court reporter fees and transcripts	152.75
<b>TOTAL ITEMIZED COSTS</b>	<b>\$2,316.09</b>

DATED this 25<sup>th</sup> day of February, 1993.

Virginia Z. Beverly  
REFEREE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above report of referee has been served on John V. McCarthy, Esquire, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300 and Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, and Stephen Michael Witt, Esquire, P.O. Box 2064, Lake City, Florida 32056-2064, this 25<sup>th</sup> day of February, 1993.

Virginia Z. Beverly