

FILED

SID J. WHITE

JAN 9 1994

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

THE FLORIDA BAR,

Complainant,

Case Nos. 81,060 & 81,145  
[TFB Case Nos. 92-31,975 (07C);  
and 93-30,115 (07C)]

v.

PETER L. NILES, JR.

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 Regulating The Florida Bar, a hearing was held on December 28, 1993. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record of this case. The Florida Bar did not proceed in the Supreme Court of Florida Case No. 81,060, each party to bear its own costs. - *Wichrowski*

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Jan Wichrowski

For the Respondent: William J. Sheppard

II. Rule Violations Found:

COUNT I

Rule of Discipline 3-4.3 Misconduct And Minor Misconduct - Respondent has engaged in conduct contrary to honesty and justice by lying to the prison officials and his client regarding the nature of the September 26, 1990, interview. He has lied to Kathy Kelly, Daytona News Journal, Carol Hunt, and his client, by denying his receipt of a \$5,000.00 fee from "A Current Affair".

Rule of Professional Conduct 4-1.2(a) Scope Of Representation - Respondent failed to abide by his client's decisions concerning the representations and/or consult with his client as to the means by which such objectives would be pursued. Respondent failed to advise his client of the planned "Deadly Deidre" interview or of its implications to her case. He has stated that he did it to "force" his client to testify against her co-defendant; "He said the interview was intended to force Ms. Hunt to make good on her promise to testify against Kosta

Fotopoulos, later convicted and condemned to death in the bizarre plot that began as a plan to kill his wife for insurance money." (Bar Ex. 16). It is clearly beyond Mr. Niles' scope of ethical representation to "force" his client to do anything, especially testify against a co-defendant by his deceit and trickery. The appellate court has found it "clear" from the record that Deidre Hunt's testimony against Fotopoulos was never guaranteed or promised as a way for her to gain more lenient sentencing.

**Rule of Professional Conduct 4-1.4 Communication -** Mr. Niles clearly failed to explain a matter (the media interview) to his client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation where the client was unaware of the media interview until it was underway.

**Rule of Professional Conduct 4-1.5 Fees For Legal Services -** (a) prevents illegal or prohibited fees and fees (a)(2) secured by means of intentional misrepresentation or fraud upon the client, a nonclient party, or any court, as to entitlement to, the fee.

Mr. Niles, as a special public defender, was compensated by the court. He failed to advise the court that he had received \$5,000.00 independently from "A Current Affair" in connection with this case. Only after negotiations with the assistant state attorney on this issue did Mr. Niles deliver the \$5,000.00 to the county (Bar Exs. 2, 4, 5, and 6). The subsequent return of the money pursuant to the ASA investigation does not negate this violation.

**Rule of Professional Conduct 4-1.6 (a) Confidentiality Of Information -** Mr. Niles revealed client information without his client's consent by obtaining her interview without her waiver, authorization, or permission (Bar Ex. 1).

**Rule of Professional Conduct 4-1.7(b) Conflict Of Interest; General Rule -** Mr. Niles' exercise of independent professional judgment in the representation of Deidre Hunt was materially limited by his own motives in participating in the "A Current Affair" interview.

**Rule of Professional Conduct 4-1.8(b) Conflict Of Interest; Prohibited Transactions -** Mr. Niles used information relating to the representation of Deidre Hunt to her disadvantage without her consent. Mr. Niles obtained the interview without her informed consent. In the interview, Deidre Hunt made damaging admissions and was cast in a exploitative and negative manner by this entertainment/news show.

**Rule of Professional Conduct 4-1.8(d) Conflict Of Interest; Prohibited Transactions -** Prior to his conclusion of Deidre

providing "A Current Affair" with information relating to the case.

**Rule of Professional Conduct 4-1.8(i) Conflict Of Interest; Prohibited Transactions** - Respondent acquired a proprietary interest in Ms. Hunt's cause of action by contracting with "A Current Affair" to receive \$5,000.00 if her interview was aired.

**Rule of Professional Conduct 4-1.9(b) Conflict Of Interest; Former Client** - is not further alleged by The Florida Bar since Ms. Hunt was clearly the respondent's present client, not former client. (Bar Ex. 17 - he had a motion pending).

**Rule of Professional Conduct 4-2.1 Adviser** - Mr. Niles failed to exercise independent professional judgment and render candid advice to his client because he was interested in pursuing his own pecuniary motives through the airing of "Deadly Deidre".

**Rule of Professional Conduct 4-4.1(a) Truthfulness In Statements To Others** - In the course of his representation of Deidre Hunt, Mr. Niles made false statements of material fact to Superintendent Villacorta, his client, Kathy Kelly and Carol Hunt.

**Rule of Professional Conduct 4-4.4 Respect For Rights Of Third Persons** - Mr. Niles failed to respect the rights of Superintendent Villacorta, Kathy Kelly and Carol Hunt when he lied to them concerning the "Deadly Deidre" interview.

**Rule of Professional Conduct 4-8.4(c) Misconduct** - Mr. Niles engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in arranging the interview at BCI, arranging the interview with his client, and in his response to questions regarding the \$5,000.00 payment he received from "A Current Affair".

**Rule of Professional Conduct 4-8.4(d) Misconduct** - Mr. Niles engaged in conduct that prejudiced the administration of justice by his misrepresentations to a prison official, by the subsequent breach of prison security, and by his misrepresentations to his client about to the "A Current Affair" interview. He further prejudiced the administration of justice by accepting \$5,000.00 in connection with his appointment as a special public defender and by failing to initially disclose this payment to the court.

#### COUNT II

**Rule of Professional Conduct 4-1.15 Safekeeping Property:** Since Mr. Niles was not entitled to the \$5,000.00 from "A Current Affair" because of his status as a court appointed special public defender, his ethical obligation was to safeguard these funds,

which properly belonged to the state, in his trust account. Mr. Niles failed to hold these funds in trust, as evidenced by his reimbursement to the state for his worthless check.

**Rule of Professional Conduct 4-8.4(b) Misconduct** - Mr. Niles committed a criminal act by passing a worthless check. See, Florida Statute 832.05 (1991). This conduct reflects adversely on his honesty, trustworthiness, and fitness as a lawyer.

III. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged:

In regard to Case No. 81,145, The Florida Bar has presented clear and convincing evidence that the respondent, a member of The Florida Bar since 1965, has engaged in serious violations of the Rules Regulating The Florida Bar.

Respondent, Peter L. Niles, Jr., was appointed by the court as a special public defender to represent defendant Deidre Hunt in a first degree murder case in 1990.

COUNT I

On September 13, 1993, Ms. Hunt was placed in Broward Correctional Institution (BCI) pursuant to her guilty plea to first degree murder, for which she received the death penalty.

Pursuant to State of Florida Department of Corrections rules, media interviews of such inmates are disallowed during their initial orientation, a two to three week period. See, Bar Ex. 10, Standard Operating Procedures at BCI; Ex. 11, Florida Administrative Code Ch. 33-5.

On September 26, 1993, the date of the "Deadly Deidre" interview by Mike Watkins of "A Current Affair", Ms. Hunt was still undergoing orientation at BCI and media interviews were not allowed.

Marta Villacorta, the superintendent and highest ranking officer in BCI at this time, was required to personally approve all such media interviews pursuant to Florida Administration Code Ch. 33-5 and BCI's SOP (Bar Ex. 10, 11).

Respondent Peter Niles represented to Superintendent Marta Villacorta that he intended to conduct an attorney-client visit with Deidre Hunt on September 26, 1993 (Bar Ex. 12). As a result of Mr. Niles' representation, Superintendent Villacorta believed an attorney-client visit would occur where a videotape of Ms. Hunt would be produced for judicial purposes and used by the court. Only Superintendent Villacorta could have authorized a

media interview. Ms. Villacorta did not know or contemplate that any type of media interview would occur as a result of respondent's representations. According to her testimony, and as mandated by BCI's SOP and Florida Administration Code Ch. 33-5, she would not have allowed such a media interview to occur during Ms. Hunt's processing period. Further, BCI rules required that all inmates must execute a waiver before undergoing a media interview (Bar Ex. 10, 11). No such waiver was obtained from Ms. Hunt since no media interview was contemplated by Superintendent Villacorta.

Superintendent Villacorta had received many requests for media interviews of Deidre Hunt during Ms. Hunt's orientation period, but had rejected all requests, as required.

In reliance upon Mr. Niles' representation that an attorney-client visit would occur on September 26, 1990, Superintendent Villacorta, under an authorization memo directed to BCI subordinates, allowed Mr. Niles, his law clerk and his camera operator access to Ms. Hunt (Bar Ex. 13).

On September 26, 1990, respondent arrived at BCI with Mike Watkins, a television reporter for the entertainment/news program "A Current Affair", and with a cameraman. On the BCI control room log, reflecting their entry, at 2:50 p.m., Watkins and the cameraman were not identified as being associated with "A Current Affair" or the media. Superintendent Villacorta was not present at BCI. The officers on duty complied with Superintendent Villacorta's earlier authorization memo and allowed Niles, Watkins, and the cameraman access to Ms. Hunt. Additionally, security at the prison was breached since only the minimal security required for attorney-client interviews was present and this was actually a media interview. A media interview of inmate Deidre Hunt subsequently took place on September 26, 1990, as a result of the Mr. Niles' misrepresentation to Superintendent Villacorta that an attorney-client interview, not a media interview, was planned for the meeting.

Further, the affidavit of Deidre Hunt states that she was also misled by Mr. Niles (Bar Ex. 1). Mr. Niles advised Ms. Hunt on or about September 13, 1990, upon her incarceration at BCI, that he planned to take a videotaped deposition of her for the court. However, the court deposition she expected did not occur. Only upon being escorted into the September 26, 1990 visit, did she learn that she was being interviewed by "A Current Affair". She had no prior knowledge and had not authorized such an interview. As Deidre Hunt's mother, Carol Hunt, testified, Deidre was concerned about giving interviews to "tabloid" types of media. Later, Carol Hunt asked Mr. Niles whether he had received any money from "A Current Affair". Mr. Niles denied receiving any money.

Additionally, Carol Hunt testified that Mr. Niles exhibited little concern for Deidre, his client. She further testified that Mr. Niles advised her that he was not paid for the "A Current Affair" interview. Even Deidre's mother was aware of the BCI orientation policy restricting inmate interviews. Further evidence that Mr. Niles was aware of BCI media interview restrictions was presented by Carol Hunt's testimony concerning an interview attempt by the London Times. According to Carol Hunt, Mr. Niles knew that the Volusia County Jail had denied interview access to the London Times well prior to the BCI interview by "A Current Affair".

The "A Current Affair" interview is entitled "Deadly Deidre" (Bar Ex. 9). The interview includes admissions from Deidre Hunt and excerpts from a videotape which showed Deidre Hunt shooting and killing Kevin Ramsey. The "A Current Affair" interview is potentially damaging evidence to Deidre Hunt. Clearly, appeals are a routine in all first degree murder convictions and requests for appellate review had already been made in Ms. Hunt's case (Bar Ex. 17). With little or no regard for his client's welfare, Mr. Niles, after months of planning with "A Current Affair", lied to Superintendent Villacorta and his client, Deidre Hunt, for his own pecuniary gain. Mr. Niles received a \$5,000.00 fee from "A Current Affair".

Upon questioning by Kathy Kelly, a journalist with a Daytona Beach newspaper, Mr. Niles denied receiving a fee from "A Current Affair". In a subsequent newspaper article, Ms. Kelly states: "Niles said Thursday he wasn't paid for arranging the interview for 'A Current Affair', and did it only to assure Ms. Hunt's testimony in the upcoming Fotopoulos trial." Ms. Kelly testified that Mr. Niles told her he had not been paid. Ms. Kelly had previously unsuccessfully attempted to interview Deidre Hunt at BCI during Ms. Hunt's inmate orientation and was, therefore, shocked when she viewed "Deadly Deidre" on national television. When Ms. Kelly telephoned Superintendent Villacorta to inquire about the "A Current Affair" interview, Superintendent Villacorta expressed her initial belief that no such interview had occurred because she had not authorized it.

Mr. Niles testified that he received \$5,000.00 from "A Current Affair" solely based on negotiations occurring five to six months before the taping of "Deadly Deidre". The negotiations resulted in an agreement that Mr. Niles would receive the fee if the interview was aired. Thus, Mr. Niles was clearly motivated to provide a sensationalist type interview for "A Current Affair". Mr. Niles' denials that the fee was for the airing of "Deadly Deidre" are patent misrepresentations to The Florida Bar and to this court. Mr. Niles has also attempted to confuse the clear ethical issue of his lying to prison officials and others with legalistic arguments about the reliability of

witness testimony and documentary evidence.

In response to initial inquiries from The Florida Bar, Mr. Niles admitted that Deidre Hunt was his client at the time of the "Deadly Deidre" interview (Bar Ex. 17: "I had a pending motion in front of Judge Foxman"). He admitted that he has represented between fifteen (15) and twenty (20) first degree murder defendants, thus suggesting an expected familiarity with restrictions on death row inmate media interviews. Mr. Niles' call to Superintendent Villacorta further suggests that he knew official permission was required to gain interview access. In none of his statements to The Florida Bar or to the New Journal before the final hearing did Mr. Niles ever mention any last minute switch in plans; nor in such prior statements did mention his intent to provide copies of the interview to the trial judge and the assistant state attorney. As Superintendent Villacorta testified, she personally asked the Assistant State Attorney, David Damore, if Mr. Niles had given Mr. Damore the interview tape. Mr. Damore stated that he never received the tape.

Mr. Niles stated under oath that he had provided copies of the videotape to the assistant state attorney and the judge. Even if this could be verified, Mr. Niles' earlier misrepresentations to Superintendent Villacorta remain. It further remains that Mr. Niles helped "A Current Affair" gain a media interview to sensationalize "Deadly Deidre", whether or not he contemporaneously conducted an attorney-client interview for legitimate judicial purpose.

Mr. Niles is the only party with any matter at stake in the outcome of this proceeding. The testifying witnesses and supporting affidavits and documents reflect true and correct statements from disinterested witnesses.

#### COUNT II

As a consequence of the investigation into Mr. Niles' receipt of \$5,000.00 fee from "A Current Affair", respondent gave a \$5,000.00 check to the County of Volusia on December 14, 1990 (Bar Exs. 2, 3, 4, 5, and 6). The check was deposited on or about March 26, 1991, and was thereafter returned by the depository bank for insufficient funds. The check (Bar Ex. 6) does not state a condition that Mr. Niles must be notified before the check is negotiated, nor does any of the correspondence between the ASA and respondent so indicate (Bar Exs. 2, 3, 4, and 5). Mr. Niles' letter enclosing the check does not indicate that deposit is conditional upon prior notice. Further, such a condition would be of questionable value in view of UCC requirements for negotiable instruments such as drafts and checks.

It is well settled that attorneys can be subject to disciplinary violations for writing worthless checks even on non-trust accounts; The Florida Bar v. Brennan, 411 So. 2d 176 (Fla. 1982), The Florida Bar v. Dingle, 235 So. 2d 479 (Fla. 1970), The Florida Bar v. Harris, 436 So. 2d 88 (Fla. 1983), all attached.

Mr. Niles' later replacement of the insufficient funds check with a cashier's check should only be considered for disciplinary mitigation.

IV. Recommendations as to Whether or Not the Respondent Should Be Found Guilty: As to each count of the complaint I find the respondent guilty as charged.

V. Recommendation as to Disciplinary Measures to be Applied:

Mr. Niles has engaged in serious violations of the Rules Regulating The Florida Bar. His lies and misrepresentations to Superintendent Villacorta, Deidre Hunt, Carol Hunt, Kathy Kelly of the Daytona News Journal, and to the public via dissemination of Ms. Kelly's news article have resulted in harm to BCI through a security breach, to Deidre Hunt, whose case was pending review, through a sensationalist and derogatory media interview and to the legal profession through damage done to the reputation of all attorneys.

I recommend that the respondent be suspended for one year, with proof of rehabilitation required prior to reinstatement.

VI. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(D), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 57

Date admitted to bar: October 15, 1965

Prior disciplinary convictions and disciplinary measures imposed therein:

1. Supreme Court No. 72,554 - Gagnon - complainants. Public reprimand by supreme court order dated March 9, 1989 for technical trust account violations. Published at 542 So. 2d 990 (Fla. 1989).
2. The Florida Bar Case No. 89-31,028 (07C) - Grievance committee private reprimand issued August, 1989.



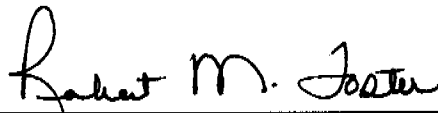
3. The Florida Bar Case No. 91-31,029 (07C) -  
Douglas - complainants.  
Public reprimand for making financial advances to  
clients.

VII. Statement of costs and manner in which costs should be  
taxed: I find the following costs were reasonably incurred by  
The Florida Bar in Case No. 81,145.

A. Grievance Committee Level Costs:	
1. Transcript Costs	\$ N/A
2. Bar Counsel Travel Costs	\$ 25.94
B. Referee Level Costs	
1. Transcript Costs	\$651.40
2. Bar Counsel Travel Costs	\$125.53
C. Administrative Costs	\$500.00
D. Miscellaneous Costs	
1. Investigator Expenses	\$629.10
2. Witness Fees	\$967.50
3. Copy of Video Tape "A Current Affair"	\$117.00
4. Airborne Express mail	\$ 36.50
TOTAL ITEMIZED COSTS:	\$3,052.97

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent, and that interest at the statutory rate shall 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 6<sup>th</sup> day of JANUARY, 1994.

  
Robert M. Foster, Referee

Original to Supreme Court with Referee's original file.

Original to Supreme Court with Referee's original file.

Copies of the Report of Referee only to:

Ms. Jan K. Wichrowski, Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801

Mr. William J. Sheppard, Counsel for Respondent, 215 Washington Street, Jacksonville, Florida 32202-2808

Mr. John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300