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SEP 2 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Case No. 81,169

vs.

WILLIAM RICHARD MERWIN,
Respondent.

REPORT OF THE REFEREE

COMES NOW Referee, **WILLIAM C. ATACK**, and submits his report and recommendations pursuant to an Order by the Florida Supreme Court dated February 18, 1993. Immediately prior to the hearing of this cause, on August 2, 1992, Mr. Merwin's attorney, **JOSEPH E. WARREN**, advised the Referee and counsel for The Bar that his client had emotionally broken down in his office and would not appear at the hearing. The hearing proceeded as scheduled without the presence of Mr. Merwin. The Referee has heard sworn testimony of witnesses and judged their credibility, received exhibits, judicially noticed court records and entertained opening and closing arguments and is fully advised. Based upon all the evidence presented, after resolving all conflicts, the Referee makes the following findings of fact and conclusions:

FINDINGS OF THE REFEREE

1. Respondent is and at all times up until the date of the hearing on August 2, 1993, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.

2. Sometime in 1991, Respondent was representing one **KIMBERLY DARTY**

HODGINS in a divorce proceeding, case no. 90-1941CA, Fourth Judicial Circuit, Duval County, Florida.

3. By an order dated December 12, 1991, a trial date was set for February 14, 1992 and a pretrial conference was set for February, on January 31, 1992.

4. Respondent did not appear at the pretrial conference scheduled in this case.

5. Respondent failed to respond to telephone calls from Duval County Circuit Judge, Aaron Bowden's, Judicial Assistant which were placed at the request of Judge Bowden to ascertain why counsel failed to appear for the pretrial conference.

6. Subsequent to the entry of the pretrial order the attorney for the husband, **DALE G. WESTLING, SR.**, telephoned the Respondent starting approximately three weeks prior to the trial every two to three days and left messages on the Respondent's answering machine. A week prior to the trial, Mr. Westling called the Respondent's answering machine and left messages twice a day, each and every day. The Respondent failed to respond to any of the messages left by Mr. Westling.

7. On February 14, 1992, the day of the trial, Mr. Westling was standing outside of Judge Bowden's hearing room area when the Respondent walked past him at which time Mr. Westling called to the Respondent and was advised by the Respondent that he had withdrawn from the case and that the Respondent was on his way to another trial with another circuit judge.

8. Respondent showed no surprise that a trial was scheduled for February 14, 1992.

9. Mr. Westling reported his contact with Respondent to Judge Bowden.

The trial commenced without either the Respondent or his client.

10. At the conclusion of the trial, Judge Bowden summoned the Respondent to his chambers at which time in the presence of Mr. Westling and another attorney, **PETER D. BLACK**. Judge Bowden then proceeded to inquire of the Respondent as to why he had failed to appear for the pretrial and the trial of this matter. The Respondent related that his client didn't care about this case and wanted nothing more to do with the case and that she had moved to California.

11. Judge Bowden then explained to the Respondent that the failure to appear for a pretrial, trial and then failing to move to withdraw as attorney of record is a very serious matter for which the court has the option of a number of sanctions. Judge Bowden also inquired of the Respondent as to whether or not he was suffering from some type of a problem and offered to obtain help for the Respondent if he was suffering from a mental or substance abuse problem. Respondent was advised that Judge Bowen would require the attorneys who were present to maintain this matter in confidence.

12. Respondent vehemently denied that he suffered from a substance abuse problem and then inexplicably broke down and cried.

13. The Respondent showed no surprise about the date and the time of the trial at the time of the February 14, 1992 meeting with Judge Bowden nor was a reason given by Respondent for his failure to comply with the Rules of Judicial Administration Rule 2.060(i) which requires a motion and a notice of hearing being sent to an attorney's client when an attorney wishes to withdraw from a case.

14. On February 14, 1992, Judge Bowden and the attorneys who were present believed because of Respondent's representation that his client had

lost interest in the case and had discharged Respondent and further that she ad moved to California.

15. Subsequent to the February 14, 1992, Judge Bowden contacted Mr. Westling and instructed him to attempt to contact Respondent's client, **KIMBERLY DARTY HODGINS**.

16. Mr. Westling then contacted his client, **GEORGE FRANK HODGINS**, who came to his office at which time Mr. Hodgins supplied Mr. Westling with Mrs. Hodgins mother's phone number. Within five minutes, Mr. Westling was speaking to Mrs. **KIMBERLY D. HODGINS** who advised Mr. Westling that she had not lost interest in the case; discharged her attorney; moved to California as represented by the Respondent and, further, she had no idea that there had been a trial at which her attorney failed to appear.

17. Mr. Westling contacted Judge Bowden who in light of Respondent's action realized he could not enter a judgment in Mrs. Hodgins's case and continued the matter.

18. On Motion by opposing counsel for attorney's fees Judge Bowden ordered the Respondent to pay the husband's attorney \$1,000.00 as result of his actions in Mrs. Hodgins's case on May 18, 1992 (TFB Exhibit 2).

19. The Order entered by Judge Bowden was paid by Respondent without objections to any of the findings of Judge Bowden. Respondent at this point had never made any allusion to a lack of notice for the pretrial and trial of this cause.

20. When Respondent contacted his client, Mrs. Hodgins, he related falsely to her that he had been sent to jail by Judge Bowden and that he would find another lawyer to help her finish the case. In fact, Respondent had not been sent to jail by Judge Bowden and he never helped her find

another lawyer to represent her in the case.

21. When Respondent's deposition was taken by the Florida Bar on June 18, 1993, he was questioned about his conversation with DALE WESTLING in the corridor in the courthouse on February 14, 1992. The Respondent testified that he had no recollection of Mr. Westling's conversation wherein he reported to Mr. Westling that he had withdrawn from the case and that his client had lost interest in the case (P 12, L 8). When questioned about what had occurred before Judge Bowden on February 14, 1992, the Respondent falsely stated that he had told the Judge that he had missed the trial because he was not aware that a trial had been set for February 14 before Judge Bowden (P 13 L 9). When Respondent was asked if he had told Judge Bowden on February 14, 1992 that his client had moved to California, he falsely replied, "no" (P 14 L 6-9). When Respondent was asked if he had informed Judge Bowden that his client no longer cared about her divorce, he, again, falsely replied, "no" (P 14 L 16-18).

As a result of the foregoing, the Referee recommends that the Respondent be found guilty of violating Rule 4-1.5 (A lawyer shall provide competent representation to a client. Competent representation requires legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation), 4-1.3 (A lawyer shall act with reasonable diligence and promptness in representing a client.), 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), 4-3.3(a)(1) (A lawyer shall not knowingly make a false statement of material fact or law to a tribunal), 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit and misrepresentation, and 4-8.4(d) (A lawyer shall not engage in

conduct that is prejudicial to the administration of justice), of the Rules of Professional Conduct of the Florida Bar.

MITIGATING CIRCUMSTANCES

The Referee was given no evidence of any mitigating circumstances in Mr. Merwin's case.

AGGRAVATING CIRCUMSTANCES

Mr. Merwin has two prior public reprimands by the Florida Supreme Court recorded in 384 S. 2d 33 and 424 S. 2d 726.

RECOMMENDATION FOR DISCIPLINE

Florida's Standards for Imposing Lawyer Sanctions¹ in Standard 6.1 False Statements, Fraud, and Misrepresentation provides that

Disbarment is appropriate when a lawyer: (a) with the intent to deceive the court, knowingly makes a false statement, ... or (b) improperly withholds material information, and causes serious or potentially serious injury to a party, or adverse effect on the legal proceeding.

Respondent in this case obviously lied to a tribunal, to another member of The Bar and to his client.

Respondent is totally unreliable in a system that relies on the integrity of attorneys. To permit Respondent to continue to practice would be a disservice to The Bar and judiciary and the community they serve. A lawyer is an officer of the court and when the judiciary can no longer rely

¹Approved November 1986 by The Florida Bar Board of Governors

upon a lawyer's representation, the lawyer has lost his usefulness to the system. Judges have a right to rely on representations by attorneys and a duty to take action when attorneys are not candid with them. Mr. Merwin can not be relied upon by the judiciary and therefore should not be practicing law in the state of Florida.

It is therefore the Referee's recommendation that

The Respondent, WILLIAM RICHARD MERWIN, be disbarred from further practice of law in the state of Florida.

Respectfully submitted,


WILLIAM C. ATTACK, REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to: James N. Watson, Jr., The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 and Joseph E. Warren, Esquire, 1930 San Marco Blvd., Suite 200, Jacksonville, FL 32207 this 31 day of August, 1993.


JUDICIAL ASSISTANT

PAGE(s) MISSING

ORIGINAL PLEADINGS

DATE	PLEADING
3/29/93	Motion to Deem Matters Admitted and Motion for Summary Judgment
4/7/93	Notice of Hearing (4/30/93 at 11 a.m.) on Motion to Deem Matters Admitted etc.
4/16/93	Notice of Hearing (supplied by TFB) same as above but new date of May 7 at 10:30 a.m.
5/7/93	Order Continuing Motion to Deem Matters ... to May 13 at 1 p.m.
	Order for Pretrial Conference and Directing Attorneys to Hold Preliminary Conference (pretrial 7/9, 11:30 a.m. trial 8/2, 10 a.m.)
5/11/93	Notice of Appearance (Joseph E. Warren for Respondent)
5/14/93	Answer and Affirmative Defenses Response to Request for Admissions
6/22/93	Notice of taking Deposition
7/9/93	Respondent's Pre-trial Statement Motion to Amend Answer and Affirmative Defenses Joint Pre-trial Compliance Pre-trial Order (trial 8/2 at 9:30 in Jax) Report of the Referee Bar's Exhibits 1 through 8 Trial transcript of August 2, 1993 Statement of Costs