IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

Case No. 82,526
(Florida Bar Case No.
93-30,902 (19A))

THE FLORIDA BAR

Complainant,

v.

PHILLIP H. TAYLOR

Respondent.
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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 of Discipline, a hearing was held on January 20, 1994.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: James W. Keeter, Bar Counsel

For The Respondent: G. Michael Keenan, Esquire

II. Findings of Fact: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find as follows:

1. Respondent became a member of the law firm of Gary, Williams, Parenti, Finney & Taylor ("Gary firm") in November, 1991, after resigning as an associate attorney with the law firm of Searcy, Denney, Scarola, Barnhardt & Shipley ("Searcy firm").

2. Prior to Respondent's resignation, one of the Searcy firm's clients had been Mary Barner, who was pursuing a medical malpractice claim on behalf of her minor child.

3. As an associate lawyer at the Searcy firm, part of Respondent's duties included working on Ms. Barner's case.

4. When Respondent became a member of the Gary firm, Ms. Barner apparently decided that she wanted the Respondent and the Gary Firm to represent her and her child.

5. Although the Searcy firm raised an objection to such substituted representation, the Gary firm and Respondent began to represent Ms. Barner and her child.

6. Around this same time, Respondent spoke with Willie Gary (senior partner in the Gary firm) and advised him that Ms. Barner was indigent. Furthermore, he advised Mr. Gary that the Searcy firm's "medical group"[1] had been loaning Ms. Barner $600.00 per month pursuant to the terms of a promissory note and security agreement. Repayment was to come from the proceeds of the lawsuit. There is no evidence to suggest that Respondent was involved with this so-called "medical group."[2]

7. In any event, Respondent inquired as to whether the Gary firm had a similar "program" and whether the Gary firm would be in a position to continue such monthly support to Ms. Barner.

8. Mr. Gary advised Respondent that the Gary firm had no equivalent to the Searcy firm's medical group and that he had ethical concerns about regular monthly payments to any client. Thus, he advised Respondent that the Gary firm would not continue the payments to Ms. Barner.

9. Nonetheless, at some point during the Gary firm's representation of Ms. Barner (the exact date is unclear), Mr. Gary signed a check payable to Ms. Barner on the Gary firm's account (not its trust account), in the amount of $200.00. It was issued to help Ms. Barner pay for some basic necessities. Contrary to Respondent's arguments, the evidence did establish that Mr. Gary would not have issued the check, but for, Respondent's representations as to Ms. Barner's needs. Although that payment has been referred to as a "loan", the clear and convincing evidence in this case did not establish any pledge, agreement or expectation of repayment from any settlement or trial recovery in this case. Furthermore, the evidence did not establish that it was given as a condition for continued representation of Ms. Barner by Respondent and the Gary firm.

10. Nor did the clear and convincing evidence establish that Respondent made the "loan" to Ms. Barner without Mr. Gary's prior knowledge and consent (Paragraph 10 of the Bar's Complaint). Mr. Gary testified that he knew exactly what he was doing and that he signed the check because of Ms. Barner's need for basic necessities and without any condition of repayment.

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[1]The evidence is unclear, but apparently the Searcy firm's "medical group" is a subsidiary or related corporation to the Searcy firm.

[2]Furthermore, I have not been appointed to consider the ethical propriety of such a practice.

11. There was also evidence tending to establish that Respondent did give Ms. Barner used clothing for her child. However, there was no evidence to suggest an expectation of repayment. Nor did the evidence suggest that it was given as a condition for his continued representation.

12. There was also evidence indicating that, at various times, Respondent may have given Ms. Barner some "pocket-money." However, that was hearsay testimony from Mr. Gary, which even given the liberal application of evidentiary rules in these proceedings, does not rise to the level of clear and convincing evidence.[3] Furthermore, there was no evidence even tending to suggest that any "pocket-money" advances were made with the expectation of reimbursement from case recoveries or as a condition for his continued representation.

III. Recommendation As To Whether Or Not The Respondent Should Be Found Guilty:

The Florida Bar has essentially charged Respondent with violating three provisions of Florida's Rules Of Professional Conduct (the fourth charge (Rule 4-8.4(a) is based upon violations of the three underlying Rules).

As to the charges under Rules 4-1.8(a) and 4-1.8(i), I recommend that Respondent be found not guilty.

The reason for my recommendation is that there is absolutely no evidence to support violations of these Rules.

As to Rule 4-1.8(e), I recommend that Respondent be found not guilty.

The reasons for my recommendation are necessarily more extensive, since both parties agree there is no Florida case "on point" and the evidence could be applied to support a broad application of that Rule.

Rule 4-1.8(e) essentially says that an attorney may not provide financial assistance to a client in connection with pending (or contemplated) litigation. It seems to me the key phrase in that Rule is "in connection with."

Absent some kind of condition for repayment from suit proceeds or establishment/ maintenance of the attorney/client relationship as a result of the assistance, I simply do not believe

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[3]Opening statements are not evidence.

it is appropriate to sanction lawyers who provide used clothing for a client's child or persuade the senior partner in the law firm to issue a single check for $200.00 for an indigent client's necessities I agree with Louisiana State Bar Association v. Edwins, 329 So. 2d 437 (La. 1976). State v. Dawson, 111 So. 2d 427 (Fla. 1959), is not on point, but is also instructive.

In this case Ms. Barner was already a client of the Gary firm. There was no evidence to suggest that she became a client as a result of promised loans or cash advancements. Furthermore, there was no evidence to establish that she maintained that relationship because of the money or used clothes.

IV. Recommendation As To Disciplinary Measures to Be Applied:

Having found the Respondent not guilty, no discipline is recommended.

V. Past History And Past Record:

Having found the Respondent not guilty, this section is not applicable.

VI. Statement Of Costs And Manner In Which Costs Should Be Taxed:

The Florida Bar has not submitted an Affidavit of Costs as of this date. However, having found the Respondent not guilty, I recommend that costs not be charged to the Respondent.

DATED this 4th day of February, 1994.

SCOTT M. KENNEY, REFEREE

Copies To:
SEE ATTACHED MAILING LIST

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a conformed copy of the foregoing has been furnished via first class, postage prepaid mail to each of the above-stated attorneys or pro se parties, at the address listed for them on the attached mailing list, this 4th day of Feb, 1994.

Judicial Assistant

The Florida Bar v Phillip H. Taylor

Case No. 92-31,232 (19A)

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