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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Complainant,

v.

LEON ROLLE,

Respondent.

_____/

Supreme Court Case
No. 83,322

The Florida Bar File
Nos. 93-70,755(11H)
and 93-70,909(11H)

ANSWER BRIEF OF THE FLORIDA BAR

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PREFACE

For the purpose of this Brief, Leon Rolle will be referred to as "Respondent", The Florida Bar will be referred to as "The Florida Bar" or "the Bar" The following abbreviation will be utilized:

RR - Report of Referee to be followed by the appropriate page.

STATEMENT OF THE FACTS AND CASE

Respondent's statement of the case is an extremely condensed version of the occurrences which took place in this matter.

Although The Florida Bar does not challenge the statement presented by the Respondent, it simply adds the following for purposes of clarification and completeness.

The Florida Bar filed its Complaint in this matter on March 15, 1994, and simultaneously served the Respondent with a Request for Admissions. On March 21, 1994, the Honorable Judge Stuart M. Simons was appointed as Referee to hear the matter. On April 7, 1994, the Referee held a status conference in his chambers and set a trial date for July 18, 1994. At said status conference The Florida Bar was present and no one appeared on behalf of the Respondent. On June 16, 1994, The Florida Bar filed a Motion Deeming Matters Admitted based upon the Respondent's failure to answer the Bar's Complaint and failure to respond to the Bar's Request for Admissions. On July 18, 1994, a final hearing took place at which The Florida Bar was present and at which time no one appeared on behalf of the Respondent. Prior to the Referee's written findings and Referee of a recommendation for discipline, the Respondent filed a Motion for Rehearing, based upon his absence at the final hearing and consequent inability to present his case to the Referee. On July 25, 1995 the Referee scheduled another hearing at which the Respondent's Motion for Rehearing was allowed, and the Respondent was permitted to address the facts in this case. Upon hearing the facts and after weighing all of the evidence, including several aggravating factors presented by the Bar, the Referee found the Respondent guilty of all violations charged in both Counts I and II. The Referee made particularly note in his report that the Respondent had "previously received a "minor misconduct" which was a private reprimand for conduct that was almost identical." (RR p.6) The Referee recommended that the Respondent "be suspended from the practice of law for a period of three (3)

months and thereafter until he has successfully taken and completed the Ethics portion of the Florida Bar as provided in the Rule of Discipline." (RR p.6)

The Referee filed his report with this Court on August 3, 1994. On August 31, 1994, the Respondent filed a Petition for Review which raised an objection to the Referee's recommendation for discipline. In accordance with Florida Bar Rule 3-7.3(c)(3) of the Rules Regulating The Florida Bar, Respondent's Initial Brief was due on September 30, 1994. On November 2, 1994, Respondent's brief had not been served upon the Court and The Florida Bar filed a Motion to Dismiss Respondent's Petition for Review. On December 7, 1994, prior to a ruling on The Florida Bar's Motion to Dismiss, the Respondent filed a Motion for Extension of Time to file his Initial Brief. On December 28, 1994, this Court granted Respondent's Motion for Extension of Time and allowed the Respondent until December 30, 1994, to serve his Initial Brief upon the Court. On January 24, 1995, the Florida Bar received the Respondent Initial Brief. On February 16, 1995, The Florida Bar requested an Enlargement of Time until March 15, 1995, to file an Answer Brief. On February 24, 1995, the Court granted the Florida Bar's Request for an Enlargement of Time until March 15, 1995, plus 5 days for mailing to file The Florida Bar's Answer Brief.

The Respondent raises only one issue in his Petition for Review. Respondent challenges the degree of discipline recommended by the Referee for the misconduct found in this matter.

SUMMARY OF THE ARGUMENT

The Referee properly found that the cumulative nature of the Respondent's conduct and the repeated pattern of his behavior, as well as Respondent's prior discipline for an almost identical offense, supported the recommendation for a three (3) month suspension from the practice of law.

The Sanction recommended by the Referee is fair consistent and supported by this Court's ruling in matters which are similar in nature and content.

ARGUMENT

I

THE REFEREE'S RECOMMENDATION OF A THREE MONTH SUSPENSION IS THE APPROPRIATE DISCIPLINE IN THIS MATTER.

Essential to the determination whether the sanction imposed by a Referee in a disciplinary matter is appropriate, is a consideration of its fairness and whether the discipline will encourage rehabilitation of the guilty party. In The Florida Bar v. Pahules, 233 So. 2d 130 (Fla.1970) and, The Florida Bar v. Hartman, 519 So. 2d 606 (Fla.1988) it was also emphasized that consideration must be given to the fact that the discipline imposed should serve to discourage others prone to like misconduct .

In The Florida Bar v. Lord, 433 So. 2d 983 (Fla.1983), the Supreme Court stated that discipline must serve the following three (3) purposes:

"(1) First, the judgment must be fair in society, both in terms of protecting the public from unethical conduct and at the same time, not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty.

(2) Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time, encourage reformation and rehabilitation.

(3) Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations." Id., at 986.

Respondent argues in his brief, that the Referee's recommendation of suspension is too severe and that it is rarely imposed in cases involving lack of communication and diligence. Contrary to Respondent's assertion, extensive case law exits in which a three (3) month suspension

was imposed for the same type of conduct committed by the Respondent.

In The Florida Bar v. Fath, 368 So. 2d 357 (Fla. 1979), Fath was suspended for a period of three (3) months for his failure to represent a client after accepting a fee for services.

In the instant matter, the Referee found in Count II of the Bar's Complaint, that on or about October 4, 1991, the Respondent accepted a fee in the amount of $450.00 (Four Hundred and Fifty Dollars) for the legal representation of one Harolyn Williams (hereinafter referred to as "Williams"). The Referee further found that after accepting the fee for services, the Respondent took no action in furtherance of the legal representation. Based upon the Respondent's failure to take action in Williams' case, the Referee found that the Respondent was guilty of violating Rule 4-1.3 and Rule 4-1.4 of the Rules Regulating The Florida Bar. The discipline imposed in Fath, clearly demonstrates that a three (3) month suspension has been determined to be the proper discipline for violations like those of the Respondent. (i.e., lack of diligence and inadequate communication with the client.) Respondent's circumstances which exceed those found in Fath, do not merit a lesser discipline. Fath had no prior disciplinary record, the Respondent herein does. Fath was not charged with or found guilty of multiple instances of neglectful conduct, the Respondent herein was.

Prior misconduct, according to The Florida Bar Standards for Imposing Lawyer Sanctions under Section 9.22 (a), indicates when striving for a fair disciplinary sanction, consideration must necessarily be given to the facts pertaining to the professional misconduct and (emphasis added) to any aggravating factors. A prior disciplinary offense is a factor which may be used in aggravation of discipline. The Referee was clearly aware of and gave consideration to the aggravating factors which were found to exist, before deciding upon the appropriate discipline to impose. This fact is evidenced by the Referee's note in his report that the Respondent had "previously received a minor misconduct, which was a private reprimand for conduct that was almost identical."

In the prior case for which the Respondent received discipline, the Respondent was found to have inadequately represented a client and failed to keep a client reasonably informed about the status of the client's matter.

The fact that the Respondent was subsequently charged and found guilty of identical conduct, strongly suggests that reformation or rehabilitation has not taken place.

In The Florida Bar v. Knapp, 219 So. 2d 41 (Fla. 1969) and The Florida Bar v. Champlin, 195 So. 2d 215 (Fla. 1967), the Court imposed a three (3) month suspension upon the attorneys in each case, where the facts revealed that legal fees were paid to the attorneys for services which the lawyers either never performed or reluctantly performed after a substantial period of time.

This Court has been consistent in holding that a three (3) months suspension is the appropriate sanction for an attorney's failure to diligently pursue a case on behalf of a client and for the attorney's failure advise the client of the outcome of a case. See The Florida Bar v. Rose, 187 So. 2d 329 (Fla. 1966).

The Referee further found the Respondent guilty of all the charges alleged in Count I of The Florida Bar's Complaint. In Count I, the Referee found that on March 13, 1992, the Respondent was appointed to represent one Junior Beaubrum (hereinafter referred to as "Beaubrum") in the appeal of a criminal matter. Subsequent to the appointment, Beaubrum attempted for over one year to contact the Respondent by letter and by telephone without success.The Referee found that the Respondent failed to properly represent Beaubrum and failed to keep Beaubrum reasonably informed concerning the status of his case. The allegations in Count I are not only strikingly similar to those which the Respondent was found guilty of in Count II, and demonstrate that the Respondent displays negligent behavior towards his clients but it was also found that the Respondent knowingly failed to respond to a lawful demand for information from the Grievance Committee.

Multiple instances of misconduct which demonstrate a pattern of behavior support the imposition of a harsher penalty than would be imposed for a single act of misconduct standing alone. See The Florida Bar v. Mavrides, 442 So. 2d 220 (Fla. 1983).

According to the Standards for Imposing Lawyer Sanctions, Section 9.22(c), a pattern of misconduct is an aggravating factor which may justify an increase in the degree of discipline to be imposed. If multiple offenses are found, under Section 9.22(d), the Referee may also use such factor as aggravation when imposing discipline.

The Referee found that the Respondent repeatedly ignored his client's telephone calls, requests for information, requests for copies and requests for the legal services for which Respondent was employed. The Referee also found that the Respondent ignored requests for information from the Grievance Committee during the disciplinary investigation of this matter.The Referee found that the Respondent demonstrated neglectful behavior towards his client's on more than one occasion. Respondent's conduct clearly establishes a pattern of behavior that resulted in injury to his clients. The Referee therefore was justified in taking these aggravating factors into consideration when recommending discipline.

Assuming arguendo that a public reprimand is the appropriate discipline in the instant circumstances, the aggravating factors which were found provide grounds for the enhancement of discipline to the level of a three (3) months suspension.

The discipline recommended by the Referee satisfies the stated purposes for discipline as set forth in **Lord.**. The instant facts and other cases similar in fact support the discipline recommended herein.

A three (3) month suspension is appropriate and it is not disproportionate to the circumstances which were found to exist in this case.The Referee's ruling was based upon competent

evidence that was clear and convincing. In weighing the evidence the Referee properly meted out a disciplinary sanction that was consistent with the facts reviewed, their cumulative nature, the Respondent's demonstration of a pattern of misconduct and Respondent's prior discipline for an almost identical offense.

ARGUMENT

II

THE REFEREE'S IMPOSITION OF SANCTION RECOMMENDING SUSPENSION IS OUTSIDE THE REALM OF DISPOSITIONS THAT HAVE TAKEN PLACE IN CASES SIMILAR TO THE RESPONDENT (Restated)

The subissue in Respondent's brief as framed above is a restatement of Respondent primary argument. The Florida Bar has fully addressed this subissue in its Argument I.

The evidence reviewed by the Referee supports the recommendation made. It is therefore clear that the Referee's recommendation is in line with the controlling authority of cases of a similar nature.

CONCLUSION

The Referee properly found that the facts, evidence and aggravating factors reviewed warranted a three (3) month suspension of the Respondent from the practice of law.

The recommendation by the Referee therefore should be affirmed.

Respectfully submitted,

PAMELA PRIDE-CHAVIES
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the above and foregoing THE FLORIDA BAR's ANSWER BRIEF was sent Via Airborne Express to Sid J. White, Clerk, Supreme Court of Florida, 500 Duval Street, Tallahassee, Florida 32399-1927 and a true and correct copy was mailed to Leon Rolle, Respondent at 155 Miami Avenue, Penthouse I, Miami, Florida 33130 and to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 on this **16th** of **March, 1995.**

PAMELA PRIDE-CHAVIES
Bar Counsel

APPENDIX

Appendix

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

LEON ROLLE,

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_____/

Supreme Court Case
No. 83-322

The Florida Bar File
Nos. 93-70,755(11H)
93-70,909(11H)

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, hearings were held on the following dates:

A hearing was held on July 18, 1994 at the time set for the hearing, at which time the Respondent failed to appear. The Respondent, prior to the entry of written findings and recommendation, served a Motion for Rehearing. (However, apparently he did not serve a copy thereof on opposing counsel.) The matter then came on to be heard on July 25, 1994, at which time the Court granted the Motion for Rehearing and proceeded to rehear the matter on its facts. At the time of the July 25, 1994 hearing, the following attorneys appeared as counsel:

For The Florida Bar: Pamela Pride-Chavies

For The Respondent: Leon Rolle, in pro per

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: After considering all the pleadings and evidence before me, pertinent portions of which are

commented upon below and after considering all the pleadings before me, which allegations of the Complaint were deemed admitted by virtue of the unanswered Requests for Admission and the Order deeming said requests admitted, I find:

As to Count I

That on or about March 13, 1992, Respondent, LEON ROLLE, was appointed by Judge Arthur S. Snyder to represent the Defendant, Junior Beaubrum on an appeal of his conviction in the Dade County Circuit Court Criminal Division.

That Defendant, Junior Beaubrum, attempted to contact Respondent, LEON ROLLE, by letter dated March 30, 1992, to communicate with him and to obtain a status report on his appeal.

That Respondent, LEON ROLLE, failed to respond to Junior Beaubrum's letter and first request for information concerning his case.

That Junior Beaubrum attempted to contact Respondent, LEON ROLLE, by letter dated May 25, 1992, to obtain a status report on his appeal.

That Respondent, LEON ROLLE, failed to respond to Junior Beaubrum's second request for information concerning his case.

That Junior Beaubrum attempted to contact Respondent, LEON ROLLE, by letter dated November 18, 1992, to obtain a status report on his appeal.

That Respondent, LEON ROLLE, failed to respond to Junior Beaubrum's third request for information concerning his case.

That Respondent, LEON ROLLE, eventually filed a brief on behalf of Junior Beaubrum, and later a Motion to Supplement Appellee's Brief.

That Junior Beaubrum requested, by notarized letter dated May 23, 1993, from Respondent, LEON ROLLE, a copy of the trial transcript.

That Respondent, LEON ROLLE, failed to provide a copy of the transcript requested by Mr. Beaubrum and failed to respond to the fourth request of Junior Beaubrum for status information and/or documentation related to his appeal.

That Grievance Committee 11"H" investigating member, Julie Feigeles, requested from Respondent, LEON ROLLE, by letter dated July 27, 1993, a copy of all correspondence and documentation evidencing communication between Respondent, LEON ROLLE, and Junior Beaubrum.

That Respondent, LEON ROLLE, failed to respond to the request of investigating member Julie Feigeles, or provide her with any copies of correspondence and/or documentation evidencing communication between Respondent, LEON ROLLE, and Junior Beaubrum.

That by reason of the foregoing, Respondent, LEON ROLLE, has failed to act with reasonable diligence and promptness in representing a client in violation of Rule3 4-1.3, Respondent, LEON ROLLE, has failed to explain to and inform his client of the status of his matters in the course of representation in violation of Rule 4-1.4 and Respondent, LEON ROLLE, has knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 4-8.1(b) of the Rules Regulation Professional Conduct.

As to Count II

That on or about October 4, 1991, Harolyn Williams retained the Respondent, LEON ROLLE, to represent her in a dissolution of marriage proceeding.

That on or about October 4, 1991, Harolyn Williams paid Respondent, LEON ROLLE, $425.00 (Four Hundred and Twenty-Five Dollars) to represent her in said dissolution of marriage proceeding.

That Respondent, LEON ROLLE, took no steps in furtherance of the dissolution of marriage action captioned Harolyn Williams v. Raymond L. Williams, 91-231600 FC-04.

That the civil docket sheet in Case Number 91-231600 FC-04, reflected that there had been no activity in the case of Harolyn Williams v. Raymond L. Williams since November of 1991.

That Harolyn Williams has repeatedly requested that the Respondent, LEON ROLLE, forward to her information and documents pertaining to her case.

That Respondent, LEON ROLLE, failed to provide Harolyn Williams with copies of any pleadings or documents filed in connection with her case as requested by her.

That Harolyn Williams had attempted to contact Respondent, LEON ROLLE, by telephone on numerous occasions and that Respondent, LEON ROLLE, had repeatedly failed to respond to Harolyn Williams by telephone and has never contacted her by mail in relation to her case.

That by reason of the foregoing, Respondent, LEON ROLLE, has failed to act with reasonable diligence and promptness

in representing his client in violation of Rule 4-1.13, and Respondent, LEON ROLLE, has failed to adequately inform his client of the status of her representation or explain matters to his client in violation of Rule 4-1.4 of the Rules Regulating The Florida Bar.

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, LEON ROLLE, be found guilty and specifically that he be found guilty of the following violations, to wit: That by reason of the foregoing, Respondent has violated Rule 4-1.3 (A lawyer shall act with reasonable diligence and promptness in representing a client,, Rule 4-1.4 (A lawyer shall inform a client of the status of representation and shall inform a client of the status of representation and shall explain matters to a client) and Rule 4-8.1(b) (A lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority).

As to Count II

I recommend that the respondent be found guilty and specifically that he be found guilty of the following violations, to wit: That by reason of the foregoing, Respondent has violated Rule 4-1.3 (A lawyer shall act with reasonable diligence and

promptness in representing a client) and Rule 4-1.4 (A lawyer shall inform a client of the status of representation and shall explain matters to a client) of the Rules Regulating The Florida Bar.

IV. 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)(l)(D), I considered the following personal history and prior disciplinary record of the Respondent, to wit: Respondent, LEON ROLLE, has previously received a "minor misconduct" which was a private reprimand for conduct that was almost identical: For failing to adequately represent a client in a matter and for that client having difficulty in communicating with and contacting LEON ROLLE and reaching his office.

V. Recommendations as to Disciplinary Measures to be Applied: I recommend that the Respondent, LEON ROLLE, be suspended from the practice of law for a period of three months and thereafter until he has successfully taken and completed the Ethics portion of the Florida Bar as provided in the Rules of Discipline.

VI. Statement of Costs and Manner in Which Cost Should

be Taxed: I find the following costs were reasonable incurred by The Florida Bar.

Administrative Costs	
(Pursuant to Rule 3-7.5(k) (5) of the Rules of Discipline	$500.00
Court Reporter Costs (Personal Touch) Grievance Committee Hearing 10-12-93 Attendance & Transcripts	$213.90
Court Reporter Costs (Personal Touch) Referee Hearing 4/19/94 Attendance & Transcripts	$ 73.45
Court Reporter Costs (Personal Touch) Referee Hearing 7/7/94 Attendance	$ 40.00
TOTAL	$837.35

It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the Respondent, LEON ROLLE.

Dated this 1st day of August, 1994.

STUART M. SIMONS, ~~Referee~~

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Report of Referee has been served via U. S. Mail on Pamela Pride-Chavies, Bar Counsel, The Florida Bar, Rivergate Plaza, Suite M-100, 444 Brickell Avenue, Miami, Florida 33131; Leon Rolle, Respondent, 155 South Miami Avenue, Penthouse I, Miami, Florida 33130, and John A. Boggs, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 on this 1st day of ~~July~~ August, 1994.

STUART M. SIMONS, Referee