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FILED

SID J. WHITE

JAN 24 1993 *2/4*

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

SUPREME COURT CASE
NO. 83-322

THE FLORIDA BAR
CASE NO. 93-70,755 (11H)
93-70,909 (11H)

* * * * *

LEON ROLLE

Respondent

vs.

THE FLORIDA BAR

Petitioner

* * * * *

An Appeal From the Referee

INITIAL BRIEF OF RESPONDENT

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RECORD REFERENCES

This is an appeal raising objections to the Recommendation of Referee Stuart Simon (hereinafter "Referee") regarding the Complaint for Disciplinary Action by the Florida Bar (hereinafter "Florida Bar"). The Appellant Respondent Leon Rolle is referred to as Respondent herein. The record consists of only this brief and the Report of the Referee for purposes of this appeal.

STATEMENT OF THE CASE

Respondent, Leon Rolle, is a member of The Florida Bar. After a hearing on the complaint, the Referee issued a report finding that the Bar Complaint was proven and recommending suspension from the practice of law for 3 months and thereafter until Respondent has successfully taken and completed the Ethics portion of the Florida Bar as provided in the Rules of Discipline. This appeal is taken then from the Referee's Report and Recommendation.

SUMMARY OF ARGUMENT

A survey of Bar discipline cases involving lack of diligence and lack of communication indicate that a 3 month suspension recommended herein is disproportionate and unduly harsh. The proper discipline is a public reprimand and/or probation rather than suspension.

ARGUMENT

THE REFEREE'S RECOMMENDATION IS EXCESSIVE AND IS DISPROPORTIONATE TO OTHER BAR CASES INVOLVING SIMILAR VIOLATION

INTRODUCTION

The Referee's Report and Recommendation finding that the Bar Complaint was proven and recommending suspension from the practice of law for 3 months and thereafter until he has successfully taken and completed the Ethics portion of the Florida Bar as provided in the Rules of Discipline is excessive in comparison to other Bar cases involving lack of diligence and/or lack of communication. Suspension is rarely used especially with such facts as found to exist as in this case at bar.

This Court in spite of the violations must still evaluate how Respondent's actions reflect on his present fitness to practice law. Additionally the Courts must evaluate the appropriate punishment for his actions and how this punishment should match the degree of violation in comparison to other discipline cases involving the same violations and similar fact patterns.

In this discussion, the Respondent will demonstrate that the Referee's recommendation is clearly out of sync with past dispositions of this Court and therefore should not be imposed to support the extreme penalty recommended.

The Respondent will also demonstrate that an imposed sanction is one which fairly considers appropriateness as opposed to the need to merely discipline. In the context of disciplinary measures meted out in other similar cases, the appropriate discipline is a public reprimand and/or probation.

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

A review of recent cases involving lack of diligence and/or lack of communication show a range of sanction from public reprimand to probation.

In The Florida Bar v. Barksdale, ___ So. 2d ___ (Fla. 1994), the respondent was retained to file a motion for post-conviction relief on behalf of a man convicted of a felony. Barksdale accepted a \$10,000 filing fee, did not file the motion, allowed the statute of limitations to run out and did not inform his client of the situation. This Court publicly reprimanded Barksdale and placed

him on probation for three years. In The Florida Bar v. Brakefield, ___ So. 2d ___ (Fla. 1994), involving an attorney who failed to provide his client with a written agreement of representation and failed to communicate with the client for three months resulting in the client getting assistance from a second attorney, this Court publicly reprimanded him and imposed an 18 month probation. In the case of The Florida Bar v. Davis, ___ So. 2d ___ (Fla. 1994), where Davis failed to communicate effectively with his client, failed to forward interrogatories, failed to advise the client that he had been sanctioned by the court with respect to his case, and failed to advise the client as to the results of his appeal that he filed, this Court publicly reprimanded Davis and imposed probation for one year.

This Court has determined that the purpose of attorney discipline is to protect the public, to deter other members of the Bar from committing misconduct, to impose sanctions for violations, and to "encourage reformation and rehabilitation". The Florida Bar v. Summers, 508 So. 2d 341, 344 (Fla. 1987), quoting The Florida Bar v. Pahules, 233 So. 2d 130, 132 (Fla. 1970), The Florida Bar v. Hartman, 519 So. 2d 606, 608 (Fla. 1988).

CONCLUSION

The Respondent contends that when this Court reviews the standard which has been applied in prior cases involving lack of diligence and lack of communication it will deem that the appropriate resolution of this case is not suspension but public reprimand and/or probation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the above and foregoing Brief was forwarded/ mailed/ hand delivered to the Clerk of The Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee 32399-1925 and a true and correct copy was forwarded/ mailed/ hand delivered to Pamela Pride-Chavies, Bar Counsel at her official address The Florida Bar, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131 or to her person on this 20th day of January, 1995.

Leon Rolle

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