

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

CYRUS ALAN COX,

Respondent.

Case No. 83,582
[TFB Case No. 93-31,770 (09A)]

FILED

SID J. WHITE

MUG 31 1994

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

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 August 5, 1994. 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 in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - John B. Root, Jr.

For The Respondent - In pro se

- 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 on below, I find:

1. The respondent did not contest the allegations contained in the bar's complaint.

2. Mr. Cox was employed by the law firm of Sears and Manuel, P.A., from approximately October 1, 1990, through August 17, 1992, when he was discharged.

3. Initially, Mr. Cox was paid on a billable hour basis and was expected to bill a minimum of thirty (30) hours per week for forty-eight (48) weeks. On October 5, 1991, the terms of the association were changed and Mr. Cox went on a salary basis of \$40,000 per year plus a discretionary bonus.

4. The firm had in effect an informal policy that employee attorneys were not to engage in outside employment of a legal nature. This informal policy was incorporated into an office manual that was adopted in June, 1992. The restrictions on outside employment had previously been discussed with the respondent during a review in October, 1991. The respondent signed for a copy of the manual on June 1, 1992, but did not review it.

5. Almost from the very beginning of his employment, the respondent violated the firm's policy. This continued even after he was warned during his employment review in October, 1991, not to engage in outside legal work.

6. On numerous occasions, the respondent accepted representation of clients without proper office documentation. Some of his correspondence in these cases was performed on business stationery. Files were not prepared for the office and, in some cases, fees which were paid were never received by the law firm but instead were received by the respondent. In several cases the respondent requested of the client that checks be made out in his, the respondent's, name.

7. While working for the law firm, the respondent accepted cases without the knowledge or consent of his firm, corresponded on such matters on firm stationery in some cases, billed clients on same, and, in some cases, asked them in writing to make payments of checks to him personally rather than to the firm. The respondent collected some fees which he kept. Initially, he denied having done so and admitted to having collected fees only after having been faced with documented evidence in each case.

III. Recommendations 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:

I recommend the respondent be found guilty and specifically that he be found guilty of the following violations of the Rules Regulating The Florida Bar:

4-1.7(b) for representing clients without the knowledge and consent of the law firm for which he was working which could have limited his exercise of independent professional judgment in the representation of those clients or which could have resulted in the law firm having a conflict of interest by accepting a case against an unknown client of the respondent.

4-4.1(a) for representing clients without the knowledge or consent of the law firm for which he was working and concealing the fact from that firm and in some cases denying such representation; and

4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation pertaining to his performance of work for clients without the consent or authorization of the law firm and attempting to conceal the representation of those clients.

IV. Rule Violations Found: 4-1.7(b); 4-4.1(a) and 4-8.4(c) of the Rules of Professional Conduct.

V. Recommendation as to Disciplinary Measures to Be Applied:

I recommend the respondent be suspended from the practice of law for a period of thirty (30) days with automatic reinstatement at the end of the period of suspension as provided in Rule Regulating The Florida Bar 3-5.1(e). I specifically decline to recommend that the respondent make any restitution to the law firm because no audit was performed by the firm in order to ascertain the amount of the alleged deficiency, if any. Such would be a matter more appropriately addressed by the civil courts.

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: 39

Date admitted to bar: October 16, 1990

Prior disciplinary convictions and disciplinary measures imposed therein: None

VII. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

A. Grievance Committee Level Costs	
1. Transcript Costs	\$ -0-
2. Bar Counsel Travel Costs	\$ -0-
B. Referee Level Costs	
1. Transcript Costs	\$102.65
2. Bar Counsel Travel Costs	\$ -0-
C. Administrative Costs	\$500.00
D. Miscellaneous Costs	
1. Investigator Expenses	\$ -0-
2. Copy Costs (318 copies \$.25)	\$ 79.50

TOTAL ITEMIZED COSTS: \$682.15

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 26 day of August, 1994.


Referee

Original to Supreme Court of Florida with Referee's original file.

Copies to:

Mr. John B. Root, Jr., Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, FL 32801

Mr. Cyrus Alan Cox, Respondent, South Trust Bank Building, Suite 1100, 135 West Central Blvd. Orlando, FL 32801

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