097

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Complainant,

v.

LEON ROLLE,

Respondent.

_____/

Supreme Court Case
No. ~~82~~,979
83,
The Florida Bar File
No. 93-71,262(11H)

FILED
SID J. WHITE
MAY 23 1995
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

ANSWER BRIEF OF THE FLORIDA BAR

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

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 Florida Bar" The following abbreviation will be utilized:

RR. Will represent the Report of Referee.

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.

The Florida Bar does not challenge the Respondent's statement of facts as presented, as the Brief submitted by the Respondent in this matter is exactly identical, (except for the amount of time of the suspension that was recommended by the Referee) to that which is contained in Respondent's Brief filed in the Supreme Court, under Case number 83-322.

For purposed of clarity, however, The Florida Bar would briefly add the following facts in order to insure that the record is complete. Respondent's Petition for Review was filed with the Court on February 9, 1995, Respondent's Initial Brief was due on March 13, 1995. On April 26, 1995, Respondent filed a Motion for Extension of Time and for Brief as Timely Filed. On May 4, 1995, The Florida Bar filed an Opposition to Respondent's Motion. This Court granted Respondent's Motion for Extension of Time and allowed Respondent's Brief to be timely filed as of April 27, 1995.

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.

The Respondent's matter originally came on for trial on

October 17, 1994 at 9:30 a.m. and neither the Respondent nor his attorney appeared. The Court granted a continuance of the matter from that trial date to the trial period commencing December 5, 1994 and set it for 9:15 a.m. The Court set the matter for December 5, 1994 and heard nothing from the respondent nor his attorney until the day before the aforesaid trial for December 5, 1994 at 9:15 a.m. At that time the Court was advised that the Respondent was in trial in another matter representing a Defendant in a capital case. At the time of the trial on December 5, 1994, again neither the Respondent nor his attorney appeared. In an abundance of caution, the Referee reset the matter for trial for December 13, 1994 at 11:00 a.m. The Respondent's attorney professed surprise on December 13, 1994 to the fact that The Florida Bar was prepared to proceed only as to the appropriate discipline in the matter, in accordance with Chapter 3 of the Rules Regulating The Florida Bar. The Respondent indicated that he had been too busy with other matters during the last months to turn the Request for Admissions over to his attorney or advise him that they had been deemed admitted. The Court then noted on the record that the Florida Bar filed its motion to determine matters admitted on September 30, 1994, with copies to both the Respondent and his attorney, and that an order deeming matters admitted was signed by

the Referee on November 28, 1994 of which a copy had been sent to the attorney for the Respondent. No motion directed to the matters admitted was made by the Respondent or his attorney and the Referee proceeded with the hearing.

The Referee, based upon the matters admitted found that the actions of the Respondent constituted a failure to act with reasonable dilegence when representing a client, in violation of Rule 4-1.3 of the Rules of Professional Conduct and recommended that the Respondent be suspended from the practice of law for a period of six (6) months.

SUMMARY OF THE ARGUMENT

The Referee properly found that the cumulative nature of the Respondent's conduct and the repeated pattern of Respondent's behavior, supported the recommendation of a six (6) month suspension from the practice of law. The sanction recommended by the Referee is not erroneous but is fair consistent with the law and supported by prior rulings of this Court in matters which are similar in content.

ARGUMENT

I

THE REFEREE'S RECOMMENDATION OF A SIX 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 consideration of its fairness to the Respondent and to the public, 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 harsh and that it is rarely imposed in cases involving lack of diligence. Contrary to Respondent's assertion, there is case law which not only supports the suspension of an attorney for such conduct but there are cases in which disbarment has been determined to be the appropriate sanction where the type of conduct committed by the Respondent is cumulative.

Specifically, in In The Florida Bar v. Wilder, 543 So. 2d 222 (Fla. 1989), Wilder was suspended for a period of six (6) months for his neglect of legal matters entrusted to him.

In the instant matter, the Respondent was retained by Michael Sweeting, (hereinafter referred to as Sweeting) to represent Sweeting in a Federal Criminal matter in the Northern District of Florida in United States of America v. Michael Anthony Sweeting, Case Number 92-0322-5 MN. Although Respondent filed a Notice of Appearance with the Court on November 9, 1992, to represent Sweeting in the aforementioned case, the Notice of Appearance was

subsequently returned to the Respondent by the Clerk of the Northern District on November 12, 1992. The Respondent was advised that he was no longer admitted to practice in the Northern District under the Local Rules. In lieu of being allowed to file a formal appearance, Respondent was advised to file a Motion to Appear Pro Hoc Vice. Over a month later the Respondent had not filed the motion as directed by the Clerk or made any other arrangements to protect his client's rights at trial. Over two(2) months later Respondent still had not filed the Motion to Appear In Pro Hoc Vice with the Court. When the Motion was finally filed, it was denied by the Court. Though the Respondent was eventually granted leave to make a limited appearance on behalf of Sweeting, he failed to do so, and did not attend Sweeting's trial. The Respondent likewise never filed written or oral notice of a withdrawal in the matter on behalf of Sweeting. The Referee found the Respondent guilty of violating Rule 4-1.3 of the Rules Regulating The Florida Bar and imposed a discipline consistent with Wilder. Wilder clearly demonstrates that a six (6) month suspension is proper and not an excessive discipline for the type of conduct committed by the Respondent.

The Florida Bar Standards for Imposing Lawyer Sanctions under Section 9.22(a), indicates that in striving for a fair disciplinary

sanction, consideration must not only be given to the facts pertaining to the professional misconduct, but consideration must also be given to any aggravating factors found to exist in the case. 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 Respondent's prior disciplinary record before deciding upon the appropriate discipline to impose upon Respondent. This fact is evidenced by the reference the Referee's report to Respondent's previous "minor misconduct" and the Referee's own recent findings of guilt in a two count complaint filed by the Florida Bar for violations of the Rules of Professional Conduct which were similar to the instant case. The Referee noted that the two aforementioned Florida Bar cases were on appeal, but specifically noted that the Respondent failed to file a timely appeal on those matters. The Referee indicated Respondent's actions reflected an attitude not in keeping with the responsibilities of a member of The Florida Bar and may therefore prejudice the public.

The two earlier cases heard by the Referee involved misconduct that occurred near in time to the instant offense and therefore was cumulative. See The Florida Bar v. Golden, 561 So. 2d 1146 (Fla. 1990). This factor was also considered in aggravation of

Respondent's cause. In the two prior cases which the Referee made reference to, the Respondent was found to have inadequately represented his clients and/or failed to keep them reasonably informed about the status of their legal matters. In essence he neglected his clients in those cases as well.

The Referee found that in this matter the period of suspension should be enhanced to a longer time than previously imposed upon the Respondent, because of the cumulative nature of the Respondent's neglectful actions and his continued display of unconcern for his clients. The allegations and findings by the Referee were not erroneous and were based upon the Respondent's display of a pattern of negligent behavior towards his clients. Such multiple instances of misconduct will support the imposition of a harsher penalty than would be imposed for a single act of misconduct standing alone. See The Florida Bar v. Coutant, 569 So. 2d 442 (Fla. 1990) and The Florida Bar v. Dubbeld, 594 So. 2d 735 (Fla. 1992).

According to the Standards for Imposing Lawyer Sanctions, Section 9.22(c), a pattern of misconduct is also 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 use such factor in aggravation of imposing

discipline.

The Referee found that the Respondent did not appear to understand or care how deeply his inaction as a professional impacted his clients. (RR p.7) In reviewing the Respondent's prior misconduct and having personal knowledge of his prior findings against the Respondent, the Referee found that the Respondent demonstrated neglectful behavior towards his client's on more than one occasion, that resulted in injury to his clients. The Referee therefore, was justified in considering factors in aggravation of this matter and when making a recommendation that the Respondent be suspended from practice for a period of six(6) months.

In The Florida Bar v. Bern, 425 So. 2d 526 (Fla. 1982) this Court stated the following:

> In rendering discipline, this Court considers the respondent's previous disciplinary history and increase the discipline where appropriate... (citations omitted) The Court deals more harshly with cumulative misconduct than it does with isolated misconduct. Additionally, cumulative misconduct of a similar nature should warrant an even more severe discipline than might dissimilar conduct. At p. 528.

The discipline recommended by the Referee satisfies the stated purposes for discipline as set forth in Lord. The instant facts, case law, and Respondent's prior disciplinary history which

demonstrates a patter of misconduct which is cumulative in nature fully support the discipline recommended herein.

A six (6) month suspension is appropriate in this cause and it is not disproportionate to the circumstances which were found to exist in this case. The Referee's ruling was based upon competent substantial 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 offenses.

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 contained in Respondent's Initial Brief, as framed above is a restatement of Respondent's primary argument. The Florida Bar has fully addressed Respondent's subissue in The Florida Bar's Argument I.

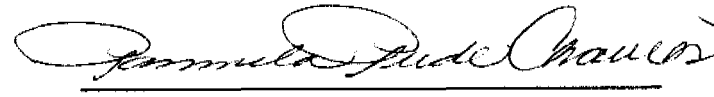
The evidence reviewed by the Referee supports the recommendation made, and is clearly not erroneous. Therefore, the Referee's recommendation is in line with the controlling authority of cases which are similar nature, and is not outside the realm of other like dispositions that have taken place.

CONCLUSION

The Referee properly found that the facts, evidence and aggravating circumstances warranted the imposition of a six (6) month suspension of the Respondent from the practice of law.

The recommendation by the Referee therefore should be affirmed.

Respectfully submitted,



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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 **22nd** of **May, 1995.**

PAMELA PRIDE-CHAVIES
Bar Counsel

INDEX TO APPENDIX

APPENDIX "1"

Report of Referee

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

LEON ROLLE,

Respondent.

_____/

Supreme Court Case
No. 82,979

The Florida Bar File
No. 93-71,262 (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:

This matter came on for Trial on October 17, 1994 at 9:30 p.m. and neither the Respondent nor his attorney appeared based upon an Agreed Continuance resetting the trial. The Court granted a continuance of this matter from that trial period to the period commencing December 5, 1994 at 9:15 a.m. At the time of the call of the calendar, neither the Respondent nor his attorney appeared. The Court set the matter for December 5, 1994 and heard nothing from the Respondent nor his attorney until the day before the aforesaid trial for December 5, 1994 at 9:15 a.m., at which time the Court was at that time advised that the Respondent was in trial in another matter representing a Defendant in a capital case. At the time of the trial on December 5, 1994, neither the Respondent nor his attorney appeared. In an abundance of caution, this Court reset the

matter for trial for December 13, 1994 at 11:00 a.m. at which time these proceedings commenced. The Complainant relied upon the matters admitted in the Notice to Admit and made the Bar's recommendation for discipline in accordance with Chapter 3, Rules Regulating the Florida Bar. The Respondent's attorney professed surprise as to the legal effect of the matters admitted and the Respondent himself indicated that he had been too busy with other trials during the last months to turn the Request for Admissions over to his attorney. The Court then noted on the record that the Florida Bar had filed a motion to determine matters admitted on September 30, 1994, with copies to both the Respondent, LEON ROLLE, and his attorney and that an order determining matters admitted had been signed by the Court on November 28, 1994 of which a copy had been sent to the attorney for the Respondent. No motion directed to the matters admitted was made and the court proceeded with the hearing. At the time of the December 13, 1994 hearing, the following attorneys appeared as counsel.

For the Florida Bar: Pamela Pride-Chavies

For the Respondent: James McQueen

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 Request for Admission and the Order deeming said requests admitted, I find:

1. That each of the following statements are true and properly admissible:

A. That Leon Rolle is and was at all times hereinafter mentioned a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. That in or approximately the latter part of October 1992, Michael Sweeting (hereinafter referred to as "Sweeting"), hired Respondent, Leon Rolle, to represent him in a Federal criminal case in the Northern District of Florida captioned, United States of America v. Michael Anthony Sweeting, 92-03022-5 MN.

C. That the Respondent filed a Notice of Appearance with the Court on November 9, 1992, to represent Sweeting in the aforementioned case. (Attached hereto and incorporated herein as Exhibit 1, is a copy of the Notice of Appearance).

D. That the Notice of Appearance was returned to the Respondent by the Clerk of the Northern District on November 12, 1992, based upon the fact that he was no longer admitted to practice in the Northern District of Florida and under Local Rule 4(A). (Attached hereto and incorporated herein as Exhibit 2, is a copy of the Notice of Document Return).

E. That in lieu of filing an appearance, the

Respondent was advised to process a Motion to Appear Pro Hoc Vice in order to represent Sweeting.

F. That at the time Respondent attempted to give notice to the Court of his representation of Sweeting, the Sweeting case was set to go forward for trial on November 16, 1992.

G. That on the trial date, November 16, 1992, the Respondent did not appear in court on behalf of his client and Sweeting appeared without counsel.

H. That based upon the non-appearance of the Respondent on Sweeting's behalf, the Court appointed the Public Defender for Sweeting and continued the case until January 25, 1993.

I. That on January 21, 1993, the Respondent was still not counsel of record, although hired by Sweeting.

J. The Public Defender on January 21, 1993, filed a Motion for Continuance to allow additional time to determine the Respondent's role in the Sweeting trial.

K. That the Respondent did not file the recommended Petition to Appear Pro Hoc Vice with the Court until January 22, 1993.

L. That the Court, on February 2, 1993, denied the Respondent's Petition to Appear Pro Hoc Vice.

M. That the Respondent refiled his Petition for Pro Hoc Vice on February 17, 1993, and still had not appeared in person on behalf of Sweeting.

N. That as of February 17, 1994, the Respondent

had not been admitted to practice in the Northern District of Florida nor admitted to Federal Practice in the Southern District of Florida.

O. That in order to appear in Pro Hoc Vice in Federal practice in the Northern District of Florida it is required that an attorney be admitted to practice in the Southern District of Florida.

P. That on February 18, 1993, the Court granted the Respondent's Petition to Appear Pro Hoc Vice, in part and allowed the Respondent to represent Sweeting in the Northern District as co-counsel only.

Q. That the Respondent charged Sweeting fees for the time he spent in his pursuit of the Respondent's admittance to practice before the Federal Bar in the Northern District of Florida.

R. That on the eve of the Sweeting trial, the Respondent contacted Sweeting and advised him that he would not be present at his trial in Pensacola.

S. That Sweeting on February 23, 1993, was convicted of the offense for which he was charged and was not represented at the trial in whole or in part by the Respondent.

T. That the Respondent did not, prior to the trial and conviction of Sweeting, give Sweeting or anyone else written or oral notice of withdrawal of his services as Sweeting's lawyer.

U. That although the Respondent had offered to

refund a portion of the fees rendered to him by Sweeting, to date, no money has been refunded to Sweeting in reference to this matter.

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: I make the following recommendations as to guilt or innocence: By reasons of the foregoing, I recommend that the Respondent be found guilty as he has violated Rule 4-1.3 (A lawyer shall act with reasonable diligence and promptness in representing a client) of the Rules of Professional Conduct.

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:

A. Respondent, LEON ROLLE, has previously received a "Minor misconduct".

B. Respondent has been found to have been guilty of two counts of breaches of the Rules of Professional Conduct for similar misconduct (Case #93,70;755(llH), 93-70,909(ll H) Supreme Court Case 83,322, by way of Order dated August 1, 1994, which Order is on appeal. The Respondent failed to file a timely brief in that matter and it is the understanding of the undersigned that a motion to dismiss that appeal has been made by The Florida Bar.

C. All of these matters reflect an attitude not in keeping with the responsibilities of a member of The Florida Bar and the undersigned fears that if appropriate discipline is not administered, the public at large is in danger of being prejudiced by Respondent's inattention to his duties. This is reflected by his inattention not only to those matters entrusted

to him but as reflected by his proceedings in this matter personally and in the prior disciplinary matter and the appeal thereon. The Respondent does not appear to understand or care just how deeply his inactions as a professional, impact upon his clients.

V. Recommendations as to Disciplinary Measures to be Applied: I recommend that the actions of the Respondent, LEON ROLLE, constitute a failure to act with reasonable diligence when representing a client, in violation of Rule 4-1.3 of the Rules of Professional Conduct and recommend that he be suspended from the practice of law for a period of six (6) months.

VI. Statement of Costs and Manner in Which Costs should be Taxed. I find the following costs were reasonably incurred by The Florida Bar.

Administrative Costs	
(Pursuant to Rule 3-7.5(k) (5) of the Rules of Discipline	$ 750.00
Court Reporter Costs (Personal Touch) Grievance Committee Hearing (4-19-94) Attendance & Transcripts	265.95
Process Server Costs (caplan & Markowitz) attempted service on 12-6-94	44.00
Court Reporter Costs (Personal Touch) Referee Hearing held on 12-5-94	50.00
Court Reporter Costs (Personal Touch) Final Hearing held on 12-13-94	108.20
TOTAL	$1,218.15

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

Dated this 9th day of January, 1995.

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; James D. McQueen, Attorney for Respondent, Leon Rolle, 5190 N. W. 167 St., Suite 205, Miami, Florida, and John A. Boggs, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 on this 9th day of January, 1995.

STUART M. SIMONS, Referee