

D47 2/5

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

SUPREME COURT CASE

Complainant,

NO: 85,757

vs.

The Florida Bar Case

RALPH LORENZO FLOWERS,

Nos. 95-30,360(19B); and

95-30,713(19B)

Respondent.

FILED
JAN 1995
CLERK OF THE SUPREME COURT
By _____

INITIAL BRIEF OF RESPONDENT

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PREFACE

This is a petition for review of a Report of Referee in a disciplinary proceeding brought by The Florida Bar against Ralph Lorenzo Flowers, an attorney licensed to practice law in the state of Florida.

This case was tried by Judge John R. Sloop serving as Referee. Following a one-day trial, the Referee entered a report recommending that the lawyer be found guilty of all the charges. The Referee recommended a 91-day suspension and thereafter until Respondent takes and passes the ethics portion of The Florida Bar examination, pay the cost of the proceedings, make restitution to Frances-Lopez in the amount of Seven Hundred Fifty Dollars (\$750.00), and to the Guardianship of Thalaria L. Watkins, Mario D. Watkins, and Clayton I. Jordan, Jr. in the amount of Eight Hundred Forty-seven Dollars (\$847.00). Ralph L. Flowers seeks review of this recommendation.

In this Brief, the parties will be referred to as "Flowers" or "Respondent" and "the bar".

The following symbols will be used in this Brief:

(TR-__) transcript of proceedings

(B.E.-__) Bar's exhibits

(R.E.-__) Respondent's Exhibits

STATEMENT OF THE CASE AND THE FACTS

STATEMENT OF THE CASE

The Florida Bar filed its Complaint on May 23, 1995. The Respondent filed a timely response thereto. The Florida Bar filed a Request for Admissions on June 21, 1995, after which Flowers filed his Response.

Pursuant to timely notice, Judge John R. Sloop conducted the final hearing in this matter on July 28, 1995. During the course of the final hearing, the bar presented the testimony of four witnesses, and entered 14 exhibits into evidence; Respondent presented the testimony of four witnesses and entered eight exhibits into evidence.

On October 4, 1995, the Referee served his report in which he found Respondent guilty under Count I of violation of the Rules of Professional Conduct, Rule 4-5.3(c) for ratifying the misconduct of a non-lawyer associated with a lawyer; Rule 4-8.4(d) for engaging in conduct prejudicial to the administration of justice; Rule 4-1.1 for failing to provide competent representation to a client; and Rule 4-4.8 by failing to respond in writing to all investigative inquiries made by the bar counsel's grievance committee under Count I. Under Count II, the Referee found Respondent guilty of violation of the Rules of Professional Conduct, Rule 4-1.1 for failing to provide competent representation to a

client; Rule 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; Rule 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly complying with reasonable request for information; Rule 4-1.4(b) for failing to explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding their representation; Rule 4-2.1 for failing to render candid advice to a client; Rule 4-8.4(d) for engaging in conduct prejudicial to administration of justice; and Rule 3-4.8 for failing to respond in writing to all investigative inquiries made by bar counsel's grievance committee. Referee recommended the Respondent be suspended for fixed period of ninety-one (91) days, and thereafter until Respondent shall have taken and passed the ethics portion of The Florida Bar examination, and for an indefinite period until Respondent shall have paid the cost of these proceedings and has made restitution to Frances-Lopez in the amount of \$750.00, and Clayton I. Jordan, Jr. in the amount of \$847.00.

The Report of Referee was presented to the Board of Governors of the Florida Bar for consideration at its December 1995, meeting. Bar counsel thereafter was directed not to file a petition for review in this matter. The Respondent's Petition for Review was served on December 13, 1995.

STATEMENT OF THE FACTS

Stanley Brown is an immigration consultant with offices at 601 North 7th Street in Ft. Pierce, Florida. (TR-8) This is in a building owned by Flowers out of which he practices law. (TR-8) In June of 1991 Shirley Frances visited Mr. Brown in his office seeking his immigration services. (TR-9,10) At the first meeting Mr. Brown gave Ms. Frances written information on what she needed to gather in order to prepare forms and advised that she would have to have an attorney. (TR-10) There was no mention of Flowers' name in this regard. Ms. Frances agreed to Brown's representation and she paid him \$500.00. (TR-11) The following October Ms. Frances, together with other clients of Mr. Brown, went to Tampa to get registered in the program for the Immigration and Legalization Office. (TR-11) At this point in time there was no discussion about Flowers representing Ms. Frances. (TR-12) In her affidavit, which was admitted into evidence, Ms. Frances stated she paid Brown an additional \$250.00, which was denied by Brown. (TR-13,14) After Ms. Frances was registered she was given a date for an interview and was told that she would need to take various forms and see a lawyer.

The date for Ms. Frances' interview was rescheduled to December 16th and when Brown advised Ms. Francis of this he also reminded her that she must see a lawyer. (TR-15) After again advising Ms. Frances that she needed to see an attorney he did not

hear anything from her until 1994 when she contacted him and asked for her money back. (TR-18) Not only did Ms. Frances fail to keep any appointment with Flowers, he has never met her and has never collected a fee of any type from her. (TR-44)

With respect to Count II, Carrie Jacobs went to see Flowers in 1986 to set up a guardianship for her deceased sister's children. (TR-76) The guardianship was established in 1987 and Ms. Jacobs and her brother-in-law, Ellison Winn were appointed guardians. (TR-89) By November 1987 physical custody of the three children were with three different custodians. (TR-90,91)

Since an annual accounting for the guardianship had not been made Judge Scott Kenney appointed Kevin Hendrickson as guardian ad litem to determine if there had been any wrongdoing. (TR-98) After Mr. Hendrickson reviewed all the pertinent materials he reported to the Court that the guardianship estate had not suffered any losses. (TR-109)

In June 1989 Flowers contracted organic pesticide poisoning. (TR-136) He was hospitalized at Lawnwood Medical Center and Treasure Coast Rehabilitation Hospital through October 1989. Towards the end of the year he began experiencing further trouble and was again hospitalized. (TR-137,138) After his release from the hospital Flowers' wife, Mary, had a recurrence of a long-standing heart problem. (TR-138) During attempted by-pass surgery she expired on July 24, 1990. (TR-139)

SUMMARY OF ARGUMENT

The referee's recommendation that the Respondent be suspended for a period of 91-days fails to take into consideration all of the mitigating circumstances that are involved in this case. The uncontradicted evidence shows that during the times relevant to the improper actions on the part of Respondent were during a period when Respondent was critically ill after sustaining pesticide poisoning, and being hospitalized essentially the latter half of 1989, followed by the terminal illness of his wife which culminated in her death in July 1990.

The recommendation that Shirley Frances-Lopez should be repaid \$750.00 fails to take into consideration that Respondent never receive \$750.00 from Ms. Frances-Lopez and in fact the uncontroverted evidence is that Respondent never saw her. Further, there is no suggestion in the record the Respondent exhibited any dishonest or selfish motive.

ARGUMENT

I.

**THE REFEREE'S RECOMMENDATION OF SUSPENSION FOR
91-DAYS FAILS TO CONSIDER ALL THE MITIGATING
CIRCUMSTANCES.**

It is wrong that Respondent did not ensure that timely annual accounts in the guardianship were filed. It is easily understandable why this frustrated the trial judge (TR-108) and lead to the appointment of a guardian ad litem. (TR-98) The problems with the guardianship started with the 1989 accounting. (TR-107) This period coincides with the Respondent's serious illness and culminated with the death of his wife in July 1990.

As stated by this Court in The Florida Bar v Breed, 378 So.2d 783 (Fla. 1980):

* * * We recognize that each case must be assessed individually and in determining the punishment we should consider the punishment imposed on other attorneys for similar conduct. * * *

In The Florida Bar v Collier, 385 So.2d 95 (Fla. 1980) the court approved the recommendation of a referee for 60-days suspension of an attorney that was guilty of extremely dilatory administration of an estate and failure to properly comply with orders of the probate court. Similarly, in the case at bar we have the Respondent who was extremely dilatory in administration of a guardianship and failed to respond to orders of the probate court.

Standard 3.0 suggests those factors to be considered in imposing sanctions. Some of these factors are the lawyers mental state, and existence of aggravating or mitigating factors. Standard 9.3 sets forth factors that may be considered in mitigation, to-wit, presence of a dishonest or selfish motive; personal or emotional problem; physical or mental disability or impairment. In the case at bar it is submitted referee failed to properly consider the mitigating circumstances in question.

II.

**THE REFEREE ERRED IN RECOMMENDING SHIRLEY
FRANCES-LOPEZ BE REPAID \$750.00.**

In Colonial Press of Miami, Inc. v Sanders, 264 So.2d 92

(Fla. 3d DCA 1972) the District Court held:

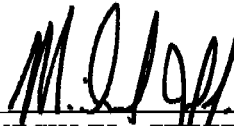
* * * An attorney has no power to act for another as legal representative or counsel by virtue of his license alone. He must have a contract of employment, express or implied, with the party for whom he purports to act or someone authorized to represent that party.

Although Shirley Frances-Lopez did not testify at the hearing before the referee her affidavit was submitted as Exhibit 1. (TR-38) The affidavit was filed years after the event in question, and clearly the motivating cause is Ms. Frances-Lopez's desire to get her money back from someone and it matters not who. The money was given to Stanley Brown for his services as a naturalization consultant and it is uncontradicted that the Respondent received nothing for his non-services.

CONCLUSION

Whether respondent violated certain rules promulgated by this court is not an issue in this petition for review. Referee found specific rule violations and his report comes to this court with a presumption of correctness. The issue to be determined is whether the discipline recommended by the referee is appropriate. Clearly it is not. Referee's recommendation for punishment is too severe, and fails to take into account: 1) the mitigating circumstances involved; and 2) the fact respondent received no monies from which restitution can be made.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served upon JAMES W. KEETER, ESQUIRE, Bar Counsel, The Florida Bar, 880 N. Orange Avenue, Suite 200, Orlando, FL 32801; and Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, by mail, this 11th day of January, 1996.



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