IN THE SUPREME COURT OF FLORIDA

047

THE FLORIDA BAR,

Complainant,

v.

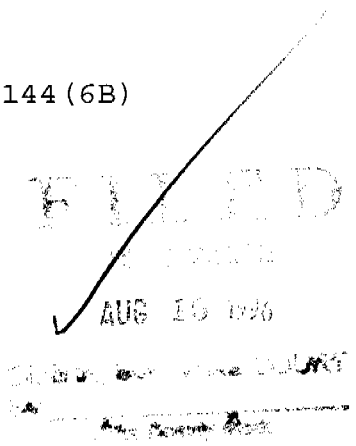
ROBERT H. LECZNAR,

Respondent.

_____/

Case No. 85,862

TFB No. 95-10,144(6B)



REPLY BRIEF

OF

THE FLORIDA BAR

David R. Ristoff
Branch Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607
(813) 875-9821
Florida Bar No. 358576

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SYMBOLS AND REFERENCES

In this Brief, The Florida Bar will be referred to as "The Florida Bar," or "the Bar." The Respondent, Robert H. Lecznar, will be referred to as "Respondent."

"RR" will refer to the Report of Referee in Supreme Court Case No. 85,862, dated March 25, 1996.

"TR" will refer to the Transcript of testimony before the Referee in the disciplinary case styled THE FLORIDA BAR v. ROBERT H. LECZNAR, TFB No. 95-10,144(6B), dated November 20, 1995.

"Rule" or "Rules" will refer to the Rules Regulating The Florida Bar. "Standard" or "Standards" will refer to the Florida Standards for Imposing Lawyer Sanctions.

SUMMARY OF THE ARGUMENT

In reply to Respondent's Answer Brief, the Petitioner, THE FLORIDA BAR, argues the following two points:

I. In the Answer Brief, Respondent contends that the false statements made to his clients regarding the true status of their lawsuits cannot be an aggravating circumstance; this argument is unavailing because its fundamental premise (that "no causal connection" exists between Respondent's lack of candor and his adjudicated misconduct) is misleading and illogical.

II. Several of Respondent's case authorities, cited in the Answer Brief on the issue of appropriate sanction, are distinguishable from the instant cause.

ARGUMENT

I. THE FALSE STATEMENTS RESPONDENT INTENTIONALLY MADE TO HIS CLIENTS AROSE FROM A DISHONEST MOTIVE, AND ARE CAUSALLY CONNECTED TO HIS MISCONDUCT.

In the final hearing of this matter, Respondent stipulated to the following facts concerning his misconduct:

> During the course of the representation, Mary and Harold Leighty met with Respondent on several occasions and also spoke with him by telephone regarding the status of their personal injury claims.
>
> During 1994, after the statutory time limits had expired, Respondent represented to the Leightys that mediations on their personal injury claims had been scheduled; however, no mediations were actually held.
>
> From approximately November 1987 through July 1994, Respondent repeatedly assured the Leightys that litigation on their claims was progressing.
>
> Upon checking with Colonial Penn in July of 1994 to determine the status of their claims, the Leightys learned that their case had been closed in 1992.
>
> Thereafter, the Leightys terminated Respondent's representation and retained another attorney.
>
> Mary and Harold Leighty subsequently learned that due to Respondent's failure to timely pursue claims on their behalf, they would be unable to recover from Colonial Penn due to the expiration of the five (5) year Statute of Limitations.

(Paragraphs 11, 12, 13, 14, 15, and 16 - Stipulation of Facts).

Thus, Respondent made the following misrepresentations to his clients, the Leightys:

a) Before their cases became time-barred, "Respondent repeatedly assured the Leightys that litigation on their two claims was progressing," while the claims were languishing due to Respondent's admitted neglect in this matter; and

b) After their cases became time-barred, Respondent "represented to the Leightys that mediations on their personal injury claims had been scheduled."

In the Answer Brief, Respondent argues that these misstatements have "no causal connection" to his adjudged lack of competence, diligence, or failure to communicate. Respondent's argument in this regard has no basis in logic or fact. Clearly, Respondent engaged in a continuing pattern of misrepresentations over several years, as concerns the "progress" of the Leighty's two lawsuits. Thus, the Bar argues that Respondent had a dishonest and selfish motive for intentionally stating the opposite of what he knew to be true, namely, that the cases were not "progressing." Had Respondent truly been selfless and forthright with his clients while their claims were still legally viable, the Leightys might have sought out and obtained new counsel, and thereby save their claims from becoming time-barred.

However, Respondent contends that no "dishonest motive" prompted his continuing lack of candor, and notes that the

referee declined to specifically find that any such "dishonest motive" existed. By way of distinction, Respondent points out that he merely possessed a "lack of candor" according to the referee.

Respondent's lack of candor was intentional, and therefore inherently dishonest. It is readily apparent that Respondent's active deceit aggravated his ethical breaches, by masking their existence, and thereby making possible their continuation.

II. THE CASE LAW CITED BY RESPONDENT IS DISTINGUISHABLE, AND INAPPOSITE TO THE ISSUE OF APPROPRIATE SANCTION.

In his Answer Brief, Respondent cites The Florida Bar v. Riskin, 549 So. 2d 178 (Fla. 1989), and argues that "the facts below compare favorably to the facts in Riskin and the imposition of a public reprimand is appropriate." (Answer Brief at 9-10). It is true that, like Respondent, the attorney in Riskin had been previously admonished for neglecting a lawsuit, and then was subsequently charged with neglecting another lawsuit to the detriment of his client. Mr. Riskin was again found guilty of neglect, for which he was publicly reprimanded. Id. at 179.

However, in the instant case, Respondent neglected two lawsuits to such a degree that both became a nullity, resulting in client harm. In addition, the Respondent herein

misrepresented to his clients that their cases were progressing.

Respondent's Answer Brief also cites to The Florida Bar v. Knowlton, 527 So. 2d 1378 (Fla. 1988), on the issue of appropriate sanction, wherein Mr. Knowlton was publicly reprimanded for actions similar to Respondent's admitted misconduct. Like the Respondent, Mr. Knowlton failed to forthrightly apprise his client as to the status of her case, and neglected to sue the appropriate party until after the statute of limitations had run. However, the Knowlton opinion makes no mention as to whether Mr. Knowlton had been previously disciplined. Respondent herein was disciplined for neglect in the past.

CONCLUSION

For the foregoing reasons, the false or misleading statements made by Respondent to his clients were causally connected to his lack of competence, diligence, and failure to communicate, and significantly aggravated that misconduct. Based on that aggravating factor, Respondent's previous similar misconduct, and other aggravating factors set forth in The Florida Bar's Initial Brief, the discipline recommended by the referee in this case should be disapproved. Respondent should be disciplined by a ninety (90) day suspension and probation for one (1) year, the terms of which would require Respondent to schedule and complete an evaluation with Law Office Management Service (LOMAS) within ninety (90) days of this Court's Order. Further, within ninety (90) days after completion of the LOMAS review, Respondent shall implement any changes as set forth within the LOMAS evaluation.

Respectfully submitted,

David R. Ristoff
Branch Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport, Marriott Hotel
Tampa, FL 33607
(813) 875-9821
Florida Bar No. 358576

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Reply Brief has been furnished by Airborne Express to **Sid J. White, Clerk**, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; a true and correct copy by regular U.S. Mail to **Scott K. Tozian, Counsel for Respondent**, at 109 North Brush Street, Suite 150, Tampa, Florida 33602; and a copy by regular U.S. Mail to **John T. Berry, Esq., Staff Counsel**, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 15th day of August, 1996.

DAVID R. RISTOFF
Branch Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607
(813) 875-9821
Florida Bar No. 358576