IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

K. KRISTINE NOWACKI,

Respondent.
_____/

Case No. 86,586
[TFB Case Nos. 95-31,168(07C)
95-31,421(07C)
95-31,597(07C)
95-31,715(07C)
95-31,718(07C)]

THE FLORIDA BAR'S ANSWER BRIEF

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SYMBOLS AND REFERENCES

In this brief, the complainant, The Florida Bar, shall be referred to as "The Florida Bar" or "the bar."

The appellant, The Florida Bar, shall be referred to as "The Florida Bar" or "the bar."

The transcript of the final hearing held on _____, shall be referred to as "T," followed by the cited page number.

The Report of Referee dated _____, will be referred to as "ROR," followed by the referenced page number(s) of the Appendix, attached. (ROR-A____)

The bar's exhibits will be referred to as Bar Ex.___, followed by the exhibit number.

The respondent's exhibits will be referred to as Respondent Ex. _____, followed by the exhibit number.

STATEMENT OF THE CASE

The Seventh Judicial Circuit Grievance Committee "C" voted to find probable cause in this matter on August 31, 1995. The bar filed its complaint on October 9, 1995. The referee was appointed on October 30, 1995. The final hearing was held on July 9, 1996. The referee entered his report on August 21, 1996, in which he recommended the respondent be found guilty of violating Rules Regulating The Florida Bar 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; and 4-1.4 for failing to keep a client reasonably informed about the status of a matter, failing to promptly comply with reasonable requests for information and failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (Count I); 4-8.4(c) for engaging in conduct involving dishonesty (Count II); 4-1.2(a) for failing to abide by a client's decisions concerning the objectives of representation and for failing to consult with the client as to the means by which they are to be pursued; 4-1.3 for failing to act with reasonable diligence and promptness in dealing with a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; and 4-5.1(b) for

having direct supervisory authority over another lawyer and failing to make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct (Count III); 4-1.3 for failing to act with reasonable diligence and promptness in representing a client and 4-1.4(a) for failing to keep the client reasonably informed about the status of the matter, failing to promptly comply with reasonable requests for information and failing to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (Count IV); 4-1.3 for failing to act with reasonable diligence and promptness in representing a client and 4-1.4(a) for failing to keep a client reasonably informed about the status of the matter, failing to promptly comply with a reasonable request for information and failing to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (Count V).

On September 12, 1996, the respondent moved to vacate and withdraw the report of referee because her counsel had not had the opportunity to provide the referee with a proposed report prior to the referee entering the final report of referee, On

September 13, 1996, the respondent served her objections to the report and her suggestions as to appropriate factual findings. On September 13, 1996, the referee entered an order withdrawing his report dated August 21, 1996, so as to consider the respondent's objections to his findings of fact and conclusions. On November 18, 1996, the referee entered his final report of referee, making the same recommendations as to rule violations, findings of guilt and recommendation as to discipline as in his earlier report.

The respondent served her petition for review on December 17, 1996. The board of governors considered the referee's report at its January, 1997, meeting and voted not to seek an appeal. On January 11, 1997, the respondent moved for a 30 day extension of time to file her initial brief, which the bar did not oppose. The court granted her until February 21, 1997, to file her initial brief. The respondent served her initial brief on February 19, 1997.

STATEMENT OF THE FACTS

The respondent was retained to represent William Ludecker in March, 1994, in connection with a dissolution of marriage action (ROR-A2-3). The representation was concluded before the respondent's illness and, therefore, her medical condition was not a factor affecting this particular client's case (ROR-A2). After a temporary hearing in May, 1994, the respondent took little further action in the case, despite receiving a letter from Mr. Ludecker in August, 1994, advising that he wanted to pursue obtaining a change of custody order which his wife had agreed not to contest (ROR-A3). Opposing counsel wrote the respondent on June 27, 1994, proposing a settlement but nothing was done until opposing counsel requested the matter be set for final hearing (ROR-A3-4). Although the respondent argued she did not have a reliable telephone number where she could reach Mr. Ludecker, she did receive a number of letters from him that had return addresses (ROR-A3-4). There was no evidence the respondent wrote Mr. Ludecker to keep him informed as to the status of his case or to request information from him (ROR-A3). The respondent testified she did not meet with Mr. Ludecker and at most spoke to him by telephone, if even that much, between

June, 1994, and October, 1994 (T p. 155) .

The respondent employed Ann Rogers initially as a paralegal/secretary/receptionist, then later as an associate lawyer after Ms. Rogers was admitted to the bar (ROR-A4). The respondent issued her a paycheck in January, 1995, which twice was returned due to insufficient funds before it was honored (ROR-A4). Later, after Ms. Rogers advised the respondent she was quitting, the respondent failed to pay her for four days Ms. Rogers claimed she had worked (ROR-A5). The respondent maintained Ms. Rogers had not worked for two of the four days claimed and would not pay her despite a prior pattern of having paid Ms. Rogers for time not worked (ROR-A5). After Ms. Rogers opened her own law practice, she **was** opposing counsel in a case handled by the respondent, however, Ms. Rogers found it difficult to call the respondent's office because the respondent had set up a call blocking feature to prevent Ms. Rogers from calling her about the salary dispute (ROR-A5).

Franklin E. Burns hired the respondent in January, 1995, to file **a** personal bankruptcy (ROR-A6). Thereafter, the respondent commenced her cancer treatment and delegated Mr. Burns' case to

her associate (ROR-A6). The respondent was not able to be in the office but was available by telephone for emergencies (ROR-A6). She had no personal contact with Mr. Burns to inform him of the need to have his case handled by someone other than herself (ROR-A6). When Mr. Burns learned the respondent would not be personally handling his case, he requested a refund and refused to allow the respondent's associate to proceed further with the matter (ROR-A6). The respondent's associate refused to refund any of the fee because he had prepared the necessary paperwork and the dispute escalated to the point that the police had to be called (ROR-A6).

Perry White retained the respondent April, 1994, to file a personal bankruptcy (ROR-A7). Mr. White advised the respondent that he was an illegal alien but she did not answer his questions concerning the effect a bankruptcy filing would have on his immigration status (ROR-A7). For this reason, he decided against filing for bankruptcy shortly after paying the respondent her fee (ROR-A7). Mr. White requested a refund and a copy of his file but the respondent refused and would not provide him with copies of documents she allegedly prepared to earn the fee paid (ROR-A7-8). This incident occurred before the respondent's illness (ROR-

A8). In addition, the respondent failed to respond to the bar's investigative inquiries into Mr. White's grievance (ROR-A8).

Teresa Arrington hired the respondent in late 1994 to represent her in a claim against Dow Corning arising from injuries allegedly suffered as a result of a breast implant (ROR-A8). Ms. Arrington became dissatisfied after she called the respondent's office repeatedly to speak to her and was unable to communicate with the respondent directly (ROR-A8). She also was upset that she had requested the respondent prepare a letter of protection but was advised she would have to pay for such a service (ROR-A8). Ms. Arrington believed this information conflicted with the terms of her contingent fee contract with the respondent (ROR-A8-9). Ms. Arrington terminated the respondent's services by letter dated April 28, 1995, because the respondent refused to return her calls and would not assist her in obtaining the necessary letter of protection (ROR-A8).

SUMMARY OF THE ARGUMENT

A referee's findings of fact are presumed to be correct and will not be disturbed by this court absent a showing that they are materially erroneous or unsubstantiated by the record. The Florida Bar v. Benchimol, 681 So. 2d 663, 665 (Fla. 1996). The burden for making such a showing rests with the party seeking a review of the referee's factual findings, Benchimol, supra. This cannot be accomplished merely by pointing out contradictory evidence when the record contains other competent, substantial evidence to support the referee's findings. Benchimol, supra. The bar submits the respondent has failed to carry this burden and the referee's findings are amply supported by the record. Further, his recommendation that the respondent receive a ninety-one day suspension is appropriate given the number of similar violations present here and the respondent's prior disciplinary history. The referee considered the mitigating factor of the respondent's serious illness and correctly determined that a suspension requiring proof of rehabilitation was still warranted, especially in light of the fact that some of the misconduct occurred before she underwent treatment for her cancer.

ARGUMENT

POINT I

THE REFEREE'S FINDINGS OF FACT ARE SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE.

A referee's findings of fact carry a presumption of correctness and will be upheld by this court unless the party seeking to challenge those findings can prove they are clearly erroneous or the record clearly contradicts the conclusions. Benchimol, supra. This is because the referee acts as this court's fact finder and is in the best position to resolve conflicts in the testimony and evidence because he is able to observe each witness' demeanor. The Florida Bar v. Herzog, 521 so. 2d 1118, 1120 (Fla. 1988).

The respondent argues she **was** not put on notice that she was charged with failing to take action on settling Mr. Ludecker's case after June, 1994, and with failing to provide Mr. Ludecker with a copy of his file. Paragraph ten of the bar's complaint alleges "the respondent failed to timely and diligently pursue the legal matters for which she had been retained by Mr. Ludecker . . , [and] failed to adequately respond to Mr. Ludecker's numerous written and telephonic inquiries or provide him with

information about his case." Under rule 3-7.6 (g), **pleadings may** be informal and the complaint need only set forth the particular act or acts of conduct for which the attorney is sought to be disciplined. There is no need for the bar to have set forth every action of the respondent that showed neglect **in** her handling of Mr. Ludecker's case or every instance where she failed to adequately communicate with him. She was put on notice that she was charged with violating those rules in connection with her handling of Mr. Ludecker's case by Mr. Ludecker's initial grievance to the bar (exhibit 1 to B-Ex. 3) and by the bar's complaint.

So long as the bar's complaint alleges a rule violation and states the alleged acts of misconduct in clear and unambiguous terms, the complaint is deemed to be sufficient. Lambdin v. State, 9 So. 2d 192, 193 (Fla. 1942). A complaint that alleges the misconduct occurred in connection with the representation of a particular client has been deemed sufficient to put the lawyer on notice, although alleging a lawyer engaged in misconduct on many, unspecified instances is not sufficiently clear to advise the attorney of the particular acts alleged to have violated the **rules.** State v. Grant, 85 So. 2d 232, 233 (Fla. 1956). There

is no requirement that a bar complaint be drawn as precisely **as** a criminal indictment. Lambdin, supra. Furthermore, under The Florida Bar v. Stillman, 401 So. 2d 1306, 1307 (Fla. 1981), a referee may include in his or her report information not charged by the bar in its complaint.

> Evidence of unethical conduct, not squarely within the scope of the Bar's accusations, is admissible, and such unethical conduct, if established by clear and convincing evidence, should be reported because it is relevant to the question of the respondent's fineness to practice law and thus relevant to the discipline to be imposed. **Stillman, supra.**

In The Florida Bar v. Vaughn, 608 So. 2d 18 (Fla. 1992), a lawyer **was** found guilty of violating **a** rule that the bar did not charge in its complaint. In fact, the referee recommended he be found not guilty of all the rule violations charged by the bar in its complaint and instead recommended he be found guilty of failing to respond to the bar's investigative inquiries. The referee found, and this court agreed, that the bar's complaint had put Mr. Vaughn on notice about his failure to cooperate by including a paragraph stating that he had not responded to the bar's inquiry letters and had not attended the grievance committee hearing even though there was no corresponding rule

violation alleged.

The respondent's arguments that the record fails to support the referee's finding that she failed to diligently prosecute Mr. Ludecker's case are without merit. The June 30, 1994, letter contained in R-Ex. 18 is not, contrary to the respondent's statement in her initial brief, the only letter he wrote the respondent asking that she settle the matter. He also wrote her on June 24, 1994, requesting that she "please expedite and bring this divorce to a close" and copied the respondent with a letter he wrote to opposing counsel on an unknown date after June 27, 1994, wherein he again reiterated his desire to settle the case. (R-Ex. 18). Irrespective of whether or not a client asks a lawyer to expedite a matter, the lawyer has an obligation to diligently pursue a legal matter and a failure to do so certainly cannot be excused by claiming a client has not repeatedly asked for the case to be resolved. The respondent's own billing statement, R-Ex. 25, clearly showed that after attending a hearing on May 26, 1994, other than reviewing a temporary support order on June 8, 1994, the respondent did absolutely nothing except review Mr. Ludecker's many letters until September 29, 1994, when she reviewed a Notice of Issue and Request to Docket

(R-Ex. 22), prepared and served by opposing counsel [in contradiction to the respondent's testimony at the final hearing that "we" had submitted the request for trial (T p. 145)]. The billing statement alone more than fully supports the referee's finding that the respondent failed to diligently pursue the case. As for the referee's finding that the respondent failed to adequately communicate with Mr. Ludecker, Mr. Ludecker testified the respondent failed to advise him of the contents of a telephone conversation she had with opposing counsel concerning a matter despite Mr. Ludecker's request that she explain to him what opposing counsel's position was (B-Ex. 3 p.p. 9-10). He found it difficult to get the respondent to return his telephone calls (B-Ex. 3 p.p. 13, 14-15). There was no evidence the respondent attempted to write Mr. Ludecker because she was unable to contact him by telephone.(ROR-A3). There was no need to prove the respondent's secretary failed to inform her Mr. Ludecker had requested his file. It is presumed a lawyer's supervision of the office staff is sufficient to ensure that the staff conveys messages and a failure to do so would subject the lawyer to charges of failing to supervise the nonlawyer employees. The final responsibility rests with the lawyer. The attorney's ethical responsibilities cannot be delegated to the nonlawyer

support staff.

With respect to the allegations contained in Count II of the bar's complaint pertaining to Ann Rogers, the respondent maintains the evidence was insufficient to support a finding the respondent intentionally engaged in dishonest conduct by paying Ms. Rogers with a check that was dishonored due to insufficient funds and failing to pay for the disputed hours during Ms. Rogers' last week of employment. The referee heard the testimony of both the respondent and Ms. Rogers at the final hearing and clearly **gave** greater weight to Ms. Roger's credibility than to the respondent's. Although the respondent may not have known the paycheck she wrote to Ms. Rogers in January, 1995, would be dishonored at the time she wrote the check, she would have been aware of the overdraft by the time the financial institution presented it for payment the second time. Yet the respondent failed to make the check good until one month later (T p. 28). There is substantial case law to support the referee's finding that the respondent's conduct constituted a dishonest act in violation of the Rules Regulating The Florida Bar.

In The Florida Bar v. Williams, 604 So. 2d 447 (Fla. 1992),

a lawyer was found guilty of violating, among other things, rules 3-4.3 and 4-8.4(c), both of which involve engaging in dishonest conduct, for having issued a worthless check. Ms. Williams paid the holder of a promissory note with a check that was dishonored due to insufficient funds. The holder of the note thereafter insisted she pay him in cash, a cashier's check or money order rather than issue him another check. She eventually paid the debt, but only after the note holder took legal action against her. There was no indication Ms. Williams knew the check would be dishonored due to insufficient funds at the time she wrote it.

In The Florida Bar v. Brodsky, 471 So. 2d 1273 (Fla. 1985), a lawyer was suspended for three years after he paid another attorney for services rendered in connection with a case they both had been involved with as counsel by checks that were returned due to insufficient funds. The attorney who received the checks was unable to contact Mr. Brodsky to obtain payment. Mr. Brodsky was found guilty of having engaged in dishonest conduct under the former Code of Professional Responsibility.

In a **case** similar to the instant one, a lawyer employed a legal stenographer to perform services for him then paid her with

checks, one of which was drawn on his office account, that were dishonored due to insufficient funds. He was found guilty of having engaged in dishonest conduct. The Florida Bar v. Davis, 361 So. 2d 159 (Fla. 1978).

The respondent stated in her response to Ms. Roger's grievance to the bar that she had normally paid Ms. Rogers for time she had taken during her normal work hours to conduct personal business (page 8 to exhibit 1 of B-Ex. 1). Therefore, the bar submits that the evidence supports the referee's finding that the respondent's refusal to pay Ms. Rogers for the disputed number of hours worked during her last week of employment was dishonest. Clearly Ms. Rogers had an expectation, based on the respondent's prior policy, to be paid even if she did not work all the hours required.

In connection with Count III of the bar's complaint concerning Mr. Burns, the respondent makes much of the referee's finding that she knew little about Mr. Kwas' qualifications as a lawyer when she hired him as an associate attorney to run the office during her medical leave. However, this is not material to the allegations or the findings of fact. It is more in the

nature of an aggravating factor the referee determined existed based on the respondent's testimony that she did not know how long Mr. Kwas had been admitted to practice law in Florida (T p. 114). Certainly the number of years an associate lawyer has practiced would be an important piece of information to know if the associate was going to be working with little supervision. All the respondent knew was that he had worked for about three years as an assistant public defender (T p. 114). The respondent's practice did not emphasize criminal defense work. The respondent practiced primarily in the family law and bankruptcy fields (T p. 15).

When a lawyer employs an associate attorney, the lawyer has a responsibility under rule 4-5.1 of the Rules Regulating The Florida Bar to supervise that assistant. A supervising attorney is responsible for the actions of subordinate lawyers. The Florida Bar v. Hollander, 607 So. 2d 412 (Fla. 1992).

The bar submits the respondent's failure to advise Mr. Burns that his case would be handled by her associate, Mr. Kwas,

because she was taking a leave of absence from the office was a violation of the rules alleged by the bar in its complaint. Mr. Burns had a right to decide if he wanted to continue with the respondent as his counsel or retain another attorney. After the initial interview, she had very little personal contact with Mr. Burns (T p.p. 103-105, 118-119; B-Ex. 5). In the paperwork prepared by the respondent's office it was the respondent, and not Mr. Kwas, who was listed as the attorney for the debtor (R-Ex. 8; R-Ex. 10). Clearly, the respondent **was** not available to Mr. Burns to answer any questions he might have had because she **was** on medical leave and available only for emergencies (T p.p. 104, 118). Mr. Burns believed he was hiring the respondent to file his bankruptcy for him, perform all the necessary services, answer his questions and keep him advised as to important developments. The respondent failed to perform **as** Mr. Burns required.

Concerning Count IV, involving Perry White, the respondent argues the evidence fails to support the referee's findings she violated the rules concerning neglect and inadequate communication. Mr. White had serious concerns about the effect the bankruptcy would have on his efforts to become a legal alien

and asked the respondent's advice on this issue (B-Ex. 6 p. 16). The respondent presented no evidence she made any effort to research Mr. White's question and obtain an answer for him on this very important issue. Such action, by itself, clearly supports a violation of the rules concerning negligence and failure to explain a matter to the extent reasonable necessary to enable Mr. White to make an informed decision concerning whether or not it was in his best interest to file for bankruptcy at that time. He consulted the respondent for legal advice, not merely to have her act as a scrivener and fill out forms. According to Mr. White, he was not able to contact the respondent personally after he retained her and was told that if he wanted another consultation with her, it would cost him additional money (B-Ex. 6 p. 6). Clearly Mr. White terminated the respondent's services before she could have completed the paperwork because he never returned to her the completed questionnaire she needed to finish preparing the necessary bankruptcy documents (R-Ex, 12; R-Ex. 13; B-Ex. 6 p.p. 9, 18-19) and, therefore, Mr. White believed he was entitled to a refund of the initial retainer he had paid. He was not able to speak to the respondent directly about a refund. He was only able to speak to Mr. Kwas (B-Ex. 6 p. 8). The respondent testified she believed she had earned the fee Mr.

White paid, in part because she had accepted a number of creditor calls on his behalf (T p. 136), yet her billing statement (R-Ex. 13), sent to him only after he filed his grievance with the bar, showed no charges for this service and she also testified that she did not bill Mr. White for talking to his creditors (T p. 130). What is clear is that the respondent did not speak directly to Mr. White about his desire to be refunded whatever portion of the fee she had not earned.

Lastly, concerning Count V of the bar's complaint, regarding Teresa Arrington, the respondent maintains the evidence fails to support the referee's findings that she neglected Ms. Arrington's case and failed to adequately communicate with her. The respondent did not advise Ms. Arrington that she was taking a leave of absence and her associate attorney employee would be handling the matter (T p. 115), thus the respondent did not provide Ms. Arrington with the opportunity to decide if she wanted to retain the services of another lawyer. Ms. Arrington clearly believed she was not able to effectively communicate with the respondent (B-Ex. 8). Despite the respondent's statement on page 27 of her initial brief that her telephone logs indicated that she personally called Ms. Arrington from her office

extension (T p.p. 78-79) on March 10 and 16, 1995, the respondent testified that she was not in the office between December, 1994, and August, 1995, and was available only by telephone for emergencies (T p.p. 80, 118), although she had an office extension at her home (T p.p. 116-117). The respondent did not put into evidence the telephone message pad that she testified would prove she had communication with Ms. Arrington (T p. 78). Regardless, the referee clearly gave greater weight to Ms. Arrington's testimony that despite having called the respondent's office some fourteen times between December, 1995, and February, 1995, she was only able to speak to the respondent three times and was never advised that the respondent was not available due to a medical leave of absence, nor did the respondent advise her at the time she retained her that she anticipated taking a leave of absence in the near future and her associate would handle the case during that time (T p.p. 52-53). There was no evidence the respondent, or her associate, initiated any calls to Ms. Arrington concerning her case that were not made in response to Ms. Arrington's repeated calls for information (T p.p. 85-86). The evidence clearly showed the respondent wrote Ms. Arrington only two times during the period of representation (R-Ex. 4; T p. 77).

The respondent failed to present any evidence she did anything to advance Ms. Arrington's claim other than filing the initial claim. In fact, Ms. Arrington testified she later learned that the respondent failed to have her claim included in the settlement and it was now barred because the plaintiff had declared bankruptcy (T p. 55). As for the respondent's failure to prepare a letter of protection, it is common for medical services providers to insist on being issued letters of protection and the contingency fee contract (R-EX. 1) prepared by the respondent gave no indication that Ms. Arrington would be responsible for paying the respondent to prepare documents that would be necessary for Ms. Arrington to prove her claim. Ms. Arrington also had questions concerning a form she had to complete for the claim, yet the respondent advised her that any assistance she rendered Ms. Arrington in completing the paperwork would be for a charge and not covered by the contingency fee the respondent would later receive if the claim was allowed (T p. 49).

POINT II

THE REFEREE'S RECOMMENDATION OF A NINETY-ONE DAY SUSPENSION IS APPROPRIATE GIVEN THE FACTS AND PRIOR DISCIPLINARY HISTORY.

The bar submits that the case law and Standards for Imposing Lawyer Sanctions support the referee's recommendation that the respondent be suspended from the practice of law for 91 days and not be reinstated until she proves rehabilitation.

In The Florida Bar v. Rolle, 661 So. 2d.301 (Fla. 1995), a lawyer was suspended for 91 days for two counts of inadequate communication with his clients. In the first case, Mr. Rolle represented an indigent inmate in an appeal of his criminal conviction. Mr. Rolle failed to respond to the client's repeated letters requesting a status update. He also failed to comply with the grievance committee's request that he produce all correspondence with the client. In a second case, Mr. Rolle represented a client in a divorce matter. After being paid, he took no action in furthering the case. He failed to communicate with the client or provide her with the requested copies of documents filed in her case. 'In aggravation, Mr. Rolle had a

prior disciplinary history for engaging in the same type of misconduct.

In The Florida Bar v. Larkin, 420 So. 2d 1080 (Fla. 1982), a lawyer was suspended for 91 days for neglect and inadequate communication due to his alcoholism. In one case, Mr. Larkin failed to appear for the continuation of his client's trial. In a second case, he received several hundred dollars as fees but failed to take any significant action to secure the client's release from prison and failed to communicate with either the client or the client's family. In a third case, he was retained to restore a client's civil rights and was paid a significant fee. He failed to contact the client to advise he had misplaced the necessary application form or that a replacement form was needed. As conditions for Mr. Larkin's reinstatement to the practice of law, he was required to submit proof his alcoholism was under control and would not affect his ability to practice law and was required to make restitution to the affected clients.

In The Florida Bar v. Glick, 397 So. 2d 1140 (Fla. 1981), a lawyer was suspended for three months and one day after he neglected a legal matter and failed to provided competent

representation to a client, Mr. Glick was hired to probate such estates as would be necessary to establish the client as record title holder to certain real property. Mr. Glick failed to properly assess the situation involving the chain of title passing from one heir to another and failed to probate the estates necessary to establish clear title in the client's name. The problem was discovered after the client contracted to sell the property and the title insurance company advised that a particular estate needed to be probated in order to clear the title. Mr. Glick refused to acknowledge he had made an error and refused to take any steps to correct the situation. He refused to refund any of the fee the client had paid him. The client was forced to retain another lawyer to clear the title. In aggravation, Mr. Glick had a prior disciplinary history for engaging in similar misconduct.

The Florida Standards for Imposing Lawyer Sanctions also support a suspension in this case. Standard 4.42(b) calls for a suspension when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. The respondent's neglect of Mr. Ludecker's divorce, Mr. Burns' bankruptcy, Mr. White's bankruptcy, and Ms. Arrington's class action claim either

caused the clients prejudice or could have caused them prejudice. Further, the referee found the respondent engaged in dishonest conduct with respect to paying Ms. Rogers by a check that was dishonored due to insufficient funds and failing to pay her for several hours Ms. Rogers maintained she worked. Under Standard 5.13, a public reprimand is appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law. This would be true if there were no aggravating factors. The presence of these factors, the bar submits, warrants a suspension.

The respondent has a prior disciplinary history [Standard 9.22(a)]. In 1993, the respondent was publicly reprimanded pursuant to a conditional guilty plea for consent judgment for attempting to limit her scope of representation in bankruptcy cases in violation of rule 4-1.2(c). The Florida Bar v. Nowacki, 626 So. 2d 209 (Fla. 1993). In 1992, she was publicly reprimanded and placed on a three year period of probation pursuant to a conditional guilty plea for consent judgment for utilizing advertisements that failed to comply with the Rules Regulating The Florida Bar and that failed to make it clear that

the lowest advertised price for bankruptcy services did not include the respondent's services as an attorney. The Florida Bar v. Nowacki, 599 so. 2d 659 (Fla. 1992). When imposing sanctions, it is appropriate and necessary to consider an attorney's prior disciplinary history and the existence of such a history warrants the imposition of a harsher sanction than might otherwise be warranted. The Florida Bar v. Wasserman, 654 So. 2d 905, 908 (Fla. 1995). In addition, the respondent's case shows a pattern of misconduct, at least some of which predated her illness, [Standard 9.22(c)], there are multiple offenses [Standard 9.22(d) 1, and she demonstrated an indifference to making restitution to the clients who paid her fees for legal services not rendered [Standard 9.22(j)]. In mitigation, the referee did consider the respondent's illness [Standard 9.23(h)] and the depression she suffered as a result of her situation [9.23(c)].

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendation of a 91 day suspension and uphold same and suspend the respondent from the practice of **law** for a period of 91 days and tax costs against her currently totaling $2,321.88.

Respectfully submitted,

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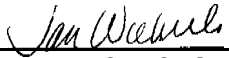
By: 

JAN WICHROWSKI
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Brief and Appendix have been sent by regular U.S. Mail to the Supreme court of Florida, Supreme court Building, 500 S. Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by regular U.S. Mail to the respondent, K. Kristine Nowacki, 1001 South Ridgewood Avenue, Daytona Beach, Florida, 32114; and a copy of the foregoing has been furnished by regular U.S. Mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 11th day of March, 1997.

Respectfully submitted,

Jan Wichrowski

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Bar Counsel

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PAGE

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

A TRUE COPY HEREOF
IN ABOVE CASE SIGNED
NOV 18 1996
Bill Parsons
CIRCUIT COURT JUDGE

THE FLORIDA BAR,

Complainant,

v.

K. KRISTINE NOWACKI,

Respondent.
_____/

Case No. 86,586
[TFB Case Nos. 95-31,168 (07C)
95-31,421(07C)
95-31,597 (07C)
95-31,715(07C)
95-31,718(07C)

RECEIVED
NOV 25 1996
THE FLORIDA BAR
ORLANDO

REPORT OF REFEREE

I. **Summary of Proceed-:** 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 July 9, 1996. 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 — Jan Wichrowski

For The Respondent — John Tanner

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:

This matter was originally scheduled for a hearing on March 26, 1996. Prior to the hearing, counsel for the respondent filed a Motion to Continue on the basis that his client was mentally incompetent to undergo a referee hearing. Therefore, this matter was rescheduled for July 9, 1996, at which time the respondent indicated that she believed that she was

mentally competent. The respondent indicated that she was no longer on anti-depressant medication and had been advised by her treating physician to decrease her visits with him accordingly. (Transcript [hereinafter T] at page 170, 171). The respondent also indicated that she had undergone significant trauma due to suffering from breast cancer from late 1994 through 1995. The respondent was further troubled by her husband's diagnosis with cancer and subsequent operation during 1994. (T 171 - 178). During this period of time, the respondent kept her sole practitioner type law practice open and running by hiring a paralegal and associates to whom she delegated the day to day running of the office. The respondent remained available to her staff and clients for emergencies only during her chemotherapy. (T 115 - 118).

As to All Counts

1. The respondent was subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating The Florida Bar, residing and practicing **law** in Volusia County, Florida, at all times material.

As to Count I

2. Count I of the bar's complaint involves the complaint of William Ludecker. The record reflects Count I of the. complaint in the transcript, pages 29 - 35 and 138 - 169, as well as exhibits of The Florida Bar 3 - 4 and the respondent's exhibits **16 - 25.**

3. The respondent's representation of William Ludecker commenced in March 1994, respondent's exhibit 16, and concluded with the respondent's certified letter of October, 1994 discharging the respondent, respondent's exhibit **20.** The respondent attended a hearing granting her discharge in December, 1994. During this time period the respondent's illness was not at issue, since the representation was prior to her illness, (T 160).

4. The respondent charged Mr. Ludecker a total of $2,000.00 for her representation of him in this dissolution of marriage case that involved several contested issues.

5. A temporary hearing was held on May 26, 1994, respondent's exhibit 25.

6. It appears that after the temporary hearing, the respondent received a letter from Mr. Ludecker dated August 9, 1994, bar's exhibit 18. The letter advised the respondent that Mr. Ludecker desired that the respondent obtain a custody change order immediately from the court, giving himself custody of the minor child and that his wife concurred with this. See Mr. Ludecker's deposition, Bar exhibit 3, at pp. 13 - 15.

7. Although the respondent maintains that the dissolution case was set for a trial due to the failure of the settlement conference to reach a settlement, the evidence reflects that on June 27, 1994 the respondent received a letter from opposing counsel suggesting a settlement. (T 20, composite page 4). Respondent's recollection of any settlement conferences is conflicting, (T 164 - 165).

8. The respondent is charged with failing to timely and diligently pursue the legal matters for which she had been retained by Mr. Ludecker. By respondent's own exhibit, respondent's exhibit 25, statement for professional services rendered, her only actions subsequent to the May 26, 1994 temporary hearing were reviewing the temporary support order, reviewing letters from Mr. Ludecker, her client, reviewing a. notice requesting the matter be set for a final hearing from opposing counsel and withdrawing from representation at a hearing on December 5, 1994. The respondent's position is that she also made numerous phone calls at no charge and that she was unsuccessful in speaking to Mr. Ludecker by telephone because he did not give her a good telephone number, respondent's exhibit 23. The respondent has offered no indication of any letters or other written communications ever sent by her office to Mr. Ludecker. The respondent has a large number of letters written from the client, Mr. Ludecker, to the respondent and indicated that she charged a $30.00 fee for reviewing each of those letters, in her statement for

services rendered, respondent's exhibit 25. The respondent has acknowledged that each of those letters had return addresses on them, (T 156).

9. The evidence is clear in several points: The client's numerous letters to the respondent continually request the respondent to take action in his case, respondent's exhibit 18. The respondent's own statement of services does not indicate that any further settlement conferences took place subsequent to June, 1994, respondent's exhibit 25. I find clear and convincing evidence that the respondent did indeed fail to act with reasonable diligence and promptness in representing Mr. Ludecker and further failed to keep Mr. Ludecker reasonably informed about the status of his case and promptly comply with reasonable requests for information. I further note that Mr. Ludecker's request for a copy of his file was never granted by the respondent, bar exhibit 3.

***As* to *Count* II**

10. Count II of the bar's complaint concerns the complaint of Ann W. Rodgers, an individual who worked for the respondent initially as a paralegal/secretary/receptionist and after she passed The Florida Bar exam as an associate attorney (T 13, 14). The record reflects Count II in T 13 - 28, bar exhibits 1 - 2, 96 - 102 and respondent's exhibit 5.

11: Ms. Rodgers complained to The Florida Bar that the respondent had issued her an office account check which was returned for insufficient funds and that the respondent had later failed to pay Ms. Rodgers the amount of salary owed her for her last week of employment, bar exhibit 1, deposition of Ann Rodgers and attachments thereto.

12. In regard to the bounced check, it appears that the check, in the amount of $277.50, dated January 13, 1995, was returned twice by Ms. Nowacki's financial institution because of insufficient funds. On February 10, 1996, the check was made good (T 102). Ms. Nowacki's position is that the check bounced because one (1) of her client's checks had bounced without her knowledge (T 96).

13. The salary dispute involves Ms. Rodgers claim that she was due to be paid for four (4) days that she had worked in her last week of work. The respondent's position is that Ms. Rodger's had not worked for two (2) days of that week and she would not pay her, (T 98). Ms. Rodgers maintains that she was indeed due to be paid for four (4) days of work that week, bar exhibit 1, and attachments thereto.

14. The respondent's response to The Florida Bar's inquiry in regard to Ms. Ann Rodgers complaint, dated May 10, 1995, indicates that it was her practice to pay Ms. Rodgers for time she did not work.

15. On this basis, I find the respondent's conduct in failing to properly reimburse Ms. Rodgers for her last week of employment as well as bouncing a check to her, which was returned twice by the financial institution, involved dishonest conduct in regard to the R. Regulating The Florida Bar 4-8.4(c) as charged.

26. I further note that the respondent utilized a call blocking system to prevent Ms. Rodgers from calling respondent's office to make inquiries as to the status of her payment. This call blocking system prevented Ms. Rodgers from calling the respondent's office to discuss a case in which they were opposing counsel, (T 23).

As to Count **III**

17. Count III of the bar's complaint involves the complaint of Franklin E. Burns. Count III is reflected in the record by bar exhibit composite 5, respondent's exhibits 6 - 10 and T 36 - 39 and T 103 - 121. Count III of the bar's complaint alleges that the respondent failed to properly consult with her client, Franklin Burns, as to the objectives of representation, failed to act with reasonable diligence and promptness in representing the client, failed to keep the client reasonably informed, and failed to make reasonable efforts to supervise her associate to ensure compliance with the Rules of Professional Conduct.

18. On January 23, 1995 Mr. Franklin Burns retained the respondent to represent him in regard his individual filing of bankruptcy pursuant to Chapter 7, respondent's exhibit 6. The respondent and Mr. Burns had an office consultation at this time (T 103). Subsequently, the respondent stopped coming to her office regularly because of her cancer treatment (T 104). The respondent was out of the office except for emergencies and delegated all of Mr. Burns' and her other client's needs to her associate (T 115). The respondent took no steps to personally inform her clients of this situation (T 115). The respondent was accessible to her associate on an emergency basis, via a phone line into her home (T 118).

19. It was unacceptable to Mr. Burns that the respondent would not be providing him timely personal representation, bar exhibit 5; Mr. Burn's letter of April 10, 1995. He therefore refused to continue with' his' bankruptcy and requested a refund. This was refused and the respondent's associate called the local police to the office due to the dispute which erupted with Mr. Burns, bar exhibit 5.

20. The respondent maintains that Mr. Burns is not entitled to any refund of his fees because her office did in fact prepare the paperwork (T 112). The respondent acknowledges that her new associate prepared the paperwork without her participation (T118 - 119).

21. The respondent has acknowledged that, in retrospect, she should have written each and every client or called them, and informed them of her need to be out of the office on medical leave. She has further testified that she believed that her associate, hired for the purpose of handling her clients during her leave, was competent and able to advise her clients accordingly (T 180).

22. The respondent has acknowledged that she was available to her newly hired associate for emergencies only. In view of the respondent's acknowledged lack of communication with her clients regarding her wholesale delegation of her cases to a new associate, about whom she apparently knew little about (T 114, 179). I find the respondent guilty of 4-1.2(a) for failing to abide by a client's decision concerning the

objectives of representation and failing to consult with the client as to the means by which they are to be pursued; 4-1.3 for failing to act with reasonable diligence and promptness in dealing with a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; and 4-5.1(b) for having direct supervisory authority over another lawyer and failing to make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. I further note that the respondent's medical situation causing these violations is a matter of mitigation which will be addressed below.

As to Count IV

23. Count IV is reflected in the record by bar exhibits 6 - 7 and respondent's exhibits 11 - 15, and the transcript at pp. 39 - 41 and pp. 121 - 137.

24. The bar's complaint alleges that the respondent had an initial meeting with Perry White regarding a Chapter 7 individual bankruptcy filing in April, 1994, respondent's exhibit 11. On May 12, 1994 the respondent's legal assistant, Ann Rodgers, wrote to Perry White and advised him "before we can proceed with the referenced case we will need the following: 1) Your completed questionnaire 2) The court filing fee for $160.00 in the form of a money order made payable to the Clerk of the Bankruptcy Court.", respondent's, composite exhibit 12, page 1.

25. Mr. Perry White maintains that he decided not pursue the bankruptcy because of his concerns about his status as an illegal alien in the country (T 16, 17). Mr. White telephoned the respondent to inquire as to the specific legal issues affecting his immigration status very shortly after initially paying the respondent the $350.00 retainer, bar exhibit 6, deposition of Perry White at page 16 - 17. The respondent refused to answer his questions, page 16, and therefore Mr. White decided not to proceed with the bankruptcy and requested a refund of his monies from the respondent, at page 8. Mr.

White also requested a copy of his file, specifically requesting any documentation on which the respondent based her refusals to refund his fees. He did not receive them.

26. It is noted that this incident occurred prior to Ms. Nowacki's illness. I find the respondent's failure to consult with the client regarding the serious status of his bankruptcy on his immigrations matter, her failure to discuss the client's request for a refund violated rules 4-1.3 and 4-1.4 as charged. It is further noted that the respondent failed to respond to the bar's inquiry in this matter, dated May 12, 1995. The incident involving Mr. White occurred prior to the respondent's illness, although the bar inquiry was conducted during her illness.

As to Count V

27. Count V is reflected in the record by the bar's exhibits a - 10, and respondent's exhibits 1 - 4, and the transcript at pp. 41 - 95.

28. The respondent is charged with lack of communication and neglect in regard to her representation of Teresa Arrington in regard to breast implant litigation involving Dow Corning. Ms. Arrington retained the respondent to represent her in this matter in late 1994. Ms. Arrington ultimately wrote the respondent on or about April 28, 1995 and informed her that she was terminating her representation. Ms. Arrington terminated the representation because the respondent did not return her phone calls and did not assist her in getting a letter of protection to obtain medical treatment while her claim was pending.

29. The respondent acknowledges that her associate advised her that Ms. Arrington had telephoned the respondent's office many times requesting to speak with the respondent (T 85). Ms. Arrington was further displeased because when she telephoned the respondent's office to request a letter of protection, she was told that there would be a charge for her office visit for this purpose (T 89), and that this conflicted

unacceptably with her previous contingent fee contract with the respondent. See bar exhibits 8 - **10.**

30. In view of the above, I find that the respondent violated Rule 4-1.3 by failing to act with reasonable diligence and promptness in representing Ms. Arrington and 4-1.4(a) by failing to keep Ms. Arrington reasonably informed about the status of the matter and promptly comply with a reasonable request for information and in failing to explain the matter to the extent **reasonably** necessary to permit the client to make informed decision regarding the representation.

III. Recommendations as f-o Whether or Not the Respondent Should Be **Found Guiltv:** As to each count of the complaint, I make the following recommendations as to guilt or innocence:

As to All Counts

Guilty as Charged.

IV. Rule Violations Found:

As to Count I

I find clear and convincing evidence that the respondent failed to act with reasonable diligence and promptness in representing Mr. Ludecker and further failed to keep Mr. Ludecker reasonably informed about the status of his case and promptly comply with reasonable requests for information in violation of R. Regulating The Florida Bar 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; and 4-1.4 for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information and failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

As to Count II

I find the respondent's conduct in failing to properly reimburse Ms. Rodgers to her last week of employment as well as bouncing a check for her, which was returned twice by the financial institution; involved dishonest conduct in regard to the R. Regulating The Florida Bar 4-8.4(c) as charged.

As to Count III

I find the respondent guilty of 4-1.2(a) for failing to abide by a client's decision concerning the objectives of representation and failing to consult with the client as to the means by which they are to be pursued; 4-1.3 for, failing to act with reasonable diligence and promptness in dealing with a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; and 4-5.1(b) for having direct supervisory authority over another lawyer and failing to make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

As to Count IV

I find that the respondent violated Rule 4-1.3 by failing to act with reasonable diligence and promptness in representing Mr. White and 4-1.4 (a) by failing to keep the cleint reasonably informed about the status of the matter and promptly comply with reasonable requests for information and in failing to explain the matter to the extent reasonably necessary to permit the client to make informed decision regarding the representation.

As to **Count** V

I find that the respondent violated Rule 4-1.3 by failing to act with reasonable diligence and promptness in representing Ms. Arrington and 4-1.4(a) by failing to keep Ms. Arrington reasonably

informed about the status of the matter and promptly comply with a reasonable request for information and in failing to explain the matter to the extent reasonably necessary to permit the client to make informed decision regarding the representation.

V. Recommendation as to Disciplinary Measures to Be Applied:

In view of the respondent's significant discipline history involving violations similar to the ones charged at hand, I find that the respondent has a serious client relations problem that needs to be addressed. For that reason, I recommend that the respondent be suspended for no less than ninety-one (91) days and that she be required to demonstrate her rehabilitation prior to being reinstated to practice law.

The following standards apply: Florida Standards for Imposing Lawyer Sanctions: 4.42 Suspension is appropriate when: *(b)* a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. 9.22 Factors which may be considered in aggravation. Aggravating factors include: (a) prior disciplinary offenses; provided that after 7 or more years in which no disciplinary sanction has been imposed, a finding of minor misconduct shall not be considered as an aggravating factor; *(c)* a pattern of misconduct; *(d)* multiple offenses. 9.32 Factors which may be considered in mitigation. Mitigating factors include: (cl personal or emotional problems.

VI. Personal History and Past Disciplinary Record: After the finding of guilt 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: 44
Date admitted to bar: May 11, 1988.
Prior disciplinary convictions and disciplinary measures imposed therein:

All

The disciplinary records reflect that K. Kristine Nowacki received a public reprimand for improperly limiting the scope of her bankruptcy representation with clients in Case No. 91-31315 by order of the Supreme Court of Florida dated April 2, 1992; and a public reprimand with probation in Case Nos. 92-31574 and 93-30,975 by order of the Supreme Court of Florida dated September 16, 1993. Copies of the appropriate documents are attached.

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	$ 100.00
2.	Bar Counsel Travel Costs	$ 102.91
B.	Referee Level Costs	
1.	Transcript Costs	$1073.70
2.	Bar Counsel Travel Costs	$ 141.63
C.	Administrative Costs	$ 750.00
D.	Miscellaneous Costs	
1.	Investigator Expenses	$ 43.50
2.	Witness Fees	$ 87.14
3.	copy costs	$ 23.00
4,	Telephone Charges	$ N/A
5.	Translation Services Fees	$ N/A
	TOTAL ITEMIZED COSTS:	$2,321.88

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 _____ day of _____, 1996.

ORDER ENTERED

NOV 1 8 1996

/s/ BILL PARSONS

BILL PARSONS
Referee

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

Jan Wichrowski, Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801

John Tanner, Counsel for Respondent, 630 N. Wild Olive Avenue, Daytona Beach, Florida 32118

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

Sara A Brock
JUDICIAL ASSISTANT

AFFIDAVIT

STATE OF FLORIDA,

COUNTY OF LEON

_____/

BEFORE ME, the undersigned authority, this day personally appeared Paul A. Remillard who, after being sworn, stated:

1. I am Assistant Director of Lawyer Regulation of The Florida Bar.

2. I have reviewed the disciplinary records of The Florida Bar as the same relate to K. Kristine Nowacki, Florida Bar No. 750212.

3. The disciplinary records reflect that K. Kristine Nowacki received a public reprimand in Case No. 91-31,315 by order of the Supreme Court of Florida dated April 2, 1992; and a public reprimand with probation in Case Nos. 92-31,574 and 93-30,975 by order of the Supreme Court of Florida dated September 16, 1993. Copies of the appropriate documents are attached.

4. Further, the membership records reflect that K. Kristine Nowacki was admitted to The Florida Bar on May 11, 1988.

Paul A. Remillard
Assistant Director
Lawyer Regulation

Sworn to and subscribed before me by Paul A. Remillard, who is personally known to me, this 24th day of October, 1995.

Notary Public
State of Florida

PHYLLIS LAURIENZO
MY COMMISSION # CC420692 EXPIRES
November 29, 1998
BONDED THRU TROY FAIN INSURANCE, INC.

PL1095B/G131

Supreme Court of Florida

THURSDAY, APRIL 2, 1992

THE FLORIDA BAR,	*	
	*	
Complainant,	*	
	*	
v.	*	CASE NO. 78,653
	*	
K. KRISTINE NOWACKI,	*	TFB No. 91-31,315(07C)
	*	
Respondent.	*	
	*	

* * * * * * * * * * * * * * * * *

We approve the uncontested referee's report and direct that respondent be given a public reprimand for professional misconduct in the manner set forth in the referee's report.

Judgment for costs in the amount of $1,280.25 is entered against respondent for which sum let execution issue.

Not final until time expires to file motion for rehearing and, if filed, determined.

A True Copy

TEST:

Sid 3. White
Clerk, Supreme Court

TC
cc: Hon. Harry Stein, Referee
Jan Wichrowski, Esquire
Richard E. Brown, Esquire
John A. Boggs, Esquire
Dan Warren, Esquire

PUBLISHED

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 78,653
[TFB Case No. 91-31,315 (07C)]

v.

K. KRISTINE NOWACKI,

Respondent.
_____/

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the respondent, K. Kristine Nowacki, pursuant to the Rules Regulating The Florida Bar, Chapter 3, Rule 3-7.9(b) and tenders this consent plea for a public reprimand by appearance before the Board of Governors and states as follows:

1. The respondent, K. Kristine Nowacki, is and at all times here and after mentioned, was a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. The respondent is acting freely and voluntarily in this matter.

3. The following constitutes a statement of the charges in the pending disciplinary cases in which the respondent is the accused. The respondent admits violations of the Rules Regulating The Florida Bar as follows:

A. The respondent improperly attempted to limit the scope of her representation of **clients in bankruptcy matters** in violation of the Rules Regulating The Florida Bar, Rule 4-1.2(c). This plea shall include all other contracts of a similar kind entered into prior to the date of this agreement.

4. Should this Conditional Guilty Plea for consent Judgment not be approved by the Board of Governors of The Florida Bar and by the Supreme Court of Florida, it and all the statements herein are void and of no effect whatsoever.

5. If this plea is accepted,' the respondent agrees that all costs concerned with this case pursuant to Rule of Discipline 3-7.6(k)(5) shall be paid by the respondent. such costs now total $1,280.25. The respondent further agrees that should she file for personal bankruptcy she shall continue to remain liable for payment of the costs incurred in this case.

Dated this 18th day of February, 1992.

K. Kristine Nowacki
Respondent
ATTORNEY NO. 750212

Dated this 18th day of February, 1992.

Dan Warren
Counsel for Respondent
ATTORNEY NO. 084870

Dated this 27th day of February, 1992.

Jan K. Wichrowski
Bar Counsel
ATTORNEY NO. 381586

Dated this 27th day of Feb, 1992.

Horace Smith, Jr.
Designated Reviewer
ATTORNEY NO. 105948

Supreme Court of Florida

THURSDAY, SEPTEMBER 16, 1993

THE FLORIDA BAR,

Complainant,

v.

K. KRISTINE NOWACKI,

Respondent.

CASE NO. 81,598

TFB No. 92-31,574(07C)
93-30,975(07C)

we approve the uncontested referee's report and direct that respondent be given a public reprimand for professional misconduct in the manner set forth in the referee's report.

Respondent is further placed on probation for three (3) years under the terms and conditions set forth in the report.

Judgment for costs in the amount of $741.46 is entered against respondent for which sum let execution issue.

Not final until time expires to file motion for rehearing and, if filed, determined.

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

KBB
cc: Hon. Bill Parson, Referee
Mr. Kirk T. Bauer
Mr. John A. Boggs
Ms. Jan K. Wichrowski
Mr. Robert K. Rouse

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

K. KRISTINE NOWACKI,

Respondent.

Case No. 81,598

TFB No. 92-3 1,574(07C)

PUBLIC REPRIMAND

Ms. Nowacki, you are being reprimanded because of your professional misconduct.

You failed to comply with the rules regulating advertisements with regard to three advertisements which appeared in two separate newspapers.

Ms. Nowacki, the public's education about legal services can be fulfilled in part through advertising that provides the public with useful, factual information. However, as both the Bar and the public recognize, attorney advertising contains the potential for serious abuse. Failure to adhere strictly to rules regulating attorney advertising undermines confidence in the justice system and fosters distrust of attorneys.

The privilege of practicing law carries with it heavy responsibilities, Those include conduct in professional and personal activities. Your conduct should never call into question the validity of the legal system or the propriety of a strong and independent legal profession. You have failed these responsibilities.

The members of the Bar will not tolerate actions such as yours. They denigrate the Bar and threaten the existence of our profession.

This reprimand is now a part of your permanent Bar record. The lawyers of Florida expect your future conduct to always be in compliance with your oath. Although this disciplinary sanction does not affect your privilege of practicing law, future misconduct will.

DONE AND ADMINISTERED this 20th day of January, 1995.

William F. Blews
President
The Florida Bar

A TRUE COPY HEREOF
IN ABOVE CASE SIGNED

AUG 2 6 1993

CIRCUIT COURT JUDGE

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 81,598
[TFB Case Nos. 92-31,574 (07C);
and 93-30,975 (07C)]

v.

K. KRISTINE NOWACKI,

Respondent.
_____/

FILED

AUG 2 ? '93

THE FLORIDA BAR
LEGAL DIVISION

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

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. 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 - Jan K. Wichrowski

For The Respondent - Robert K. Rouse, Jr., Co-Counsel
C. Anthony Schoder, Jr., Co-Counsel

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 pursuant to the Conditional Guilty Plea for Consent Judgment that the facts of the Consent Judgment are admitted, The Conditional Guilty Plea for Consent Judgment end the Complaint are attached hereto and incorporated herein.

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:

Pursuant to the Conditional Guilty Plea for Consent Judgrnent, I find respondent guilty as admitted in the Conditional Guilty Plea for Consent Judgment.

8/26/93
PUBLIC RECORD
MPC 8/26/93

IV. Recommendation as to Disciplinary measures to be applied:

A. Payment of costs which currently total $741.46. Should respondent ever file for bankruptcy she agrees to continue to remain liable for payment of the costs incurred in this case,

B. A public reprimand to be administered by letter from the president of The Florida Bar and a three year period of probation to be monitored by The Florida Bar requiring respondent to seek approval from the Standing Committee on Advertising prior to promulgating any advertisements. Additionally respondent shall comply with the Rules Regulating The Florida Bar in regard to the sale of her do-it-yourself bankruptcy kits.

V. 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), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 40
Date admitted to Bar: 5/11/88
Prior Disciplinary convictions and disciplinary measures imposed therein: The Florida Bar v. K. Kristine Nowacki, 599 so. 2d 659 (Fla. 1992), for failing to clarify the scope of her representation to clients in bankruptcy proceedings. Public reprimand administered by appearance before the board.

VI. 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/Branch Staff Counsel Travel Costs	$45.46
B.	Referee Level Costs	
	1. Transcript Costs	$ 0
	2. Bar Counsel/Branch Staff Counsel Travel Costs	$ 0
C.	Administrative Costs	$500.00
D.	Miscellaneous Costs	
	1. Investigator Expenses	$194.00
	2. copy costs	$ 2.00
	TOTAL ITEMIZED COSTS:	$741.46

It is noted that respondent has previously tendered the above amount of $741.46 to The Florida Bar by check should other costs 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 _____ day of _____, 1993.

ORDER ENTERED

AUG 20 1993

/s/ BILL PARSONS

BILL PARSONS, REFEREE

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

Copies of this Report of Referee only to:

Ms. Jan K. Wichrowski, Bar Counsel, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801

Mr. Robert K. Rouse, Co-Counsel for Respondent, 605 S. Ridgewood Avenue, Daytona Beach, Florida 32114

Mr. C. Anthony Schoder, Jr., Co-Counsel for Respondent, 605 S. Ridgewood Avenue, Daytona Beach, Florida 32114

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

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF LEON

BEFORE ME, the undersigned authority, this day personally appeared Paul A. Remillard who, after being sworn, stated:

1. I am Assistant Director of Lawyer Regulation of The Florida Bar,

2. I have reviewed the disciplinary records of The Florida Bar as the same relate to K. Kristine Nowacki, Florida Bar No. 750212.

3. The disciplinary records reflect that K. Kristine Nowacki received a public reprimand in Case No. 91-31,315 by order of the Supreme Court of Florida dated April 2, 1992; and a public reprimand with probation in Case Nos. 92-31,574 and 93-30,975 by order Of the Supreme Court of Florida dated September 16, 1993. Copies of the appropriate documents are attached,

4. Further, the membership records reflect that K. Kristine Nowacki was admitted to The Florida Bar on May 11, 1988.

Paula. Remillard

Paul A. Remillard
Assistant Director
Lawyer Regulation

Sworn to and subscribed before me by Paul A. Remillard, who is personally known to me, this 24th day of October, 1995.

Phyllis Laurienzo

Notary Public
State of Florida

PHYLLIS LAURIENZO
MY COMMISSION # CC420592 EXPIRES
November 29, 1998
BONDED THRU TROY FAIN INSURANCE, INC.

PL1095B/G131

Supreme Court of Florida

THURSDAY, APRIL 2, 1992

THE FLORIDA BAR,	*	
	*	
Complainant,	*	
	*	
v.	*	CASE NO. 78,653
	*	
K. KRISTINE NOWACKI,	*	TFB No. 91-31,315(07C)
	*	
Respondent.	*	
	*	

* * * * * * * * * * * * * * * * *

We approve the uncontested referee's report and direct that respondent be given a public reprimand for professional misconduct in the manner set forth in the referee's report.

Judgment for costs in the amount of $1,280.25 is entered against respondent for which sum let execution issue.

Not final until time expires to file motion for rehearing and, if filed, determined.

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

TC

cc: Hon. Harry Stein, Referee
Jan Wichrowski, Esquire
Richard E. Brown, Esquire
John A. Boggs, Esquire
Dan Warren, Esquire

PUBLISHED

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 78,653
[TFB Case No, 91-31,315 (07C)]

v.

K. KRISTINE NOWACKI,

Respondent.
_____/

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the respondent,,. K. Kristine Nowacki, pursuant to the Rules Regulating The Florida Bar, Chapter 3, Rule 3-7.9(b) and tenders this consent plea for a public reprimand by appearance before the Board of Governors and states as follows:

1. The respondent, K. Kristine Nowacki, is and at all times here and after mentioned, was a member of The Florida Bar, subject to the jurisdiction end disciplinary rules of the Supreme Court of Florida.

2. The respondent is acting freely and voluntarily in this matter.

3. The following constitutes a statement **of** the charges in the pending disciplinary cases in which the respondent is the accused. The respondent admits violations of the Rules Regulating The Florida Bar **as** follows:

3/6

A. The respondent improperly attempted to limit the scope of her representation of clients in bankruptcy matters in violation of the Rules Regulating The Florida Bar, Rule 4-1.2(c)* This plea shall include all other contracts of a similar kind entered into prior to the date of this agreement.

4. Should this Conditional Guilty Plea for consent Judgment not be approved by the Board of Governors of The Florida Bar and by the Supreme Court of Florida, it and all the statements herein are void and of no effect whatsoever.

5. If this plea is accepted, the respondent agrees that all costs concerned with this case pursuant to Rule of Discipline 3-7.6(k)(5) shall be paid by the respondent. such costs now total $1,280.25. The respondent further agrees that 'should she file fcr personal bankruptcy she shall continue to remain liable for payment of the costs incurred in this case.

Dated this 16th day of [illegible], 1992.

K. Kristine Nowacki
Respondent
ATTORNEY NO. 750212

dated this 16th day of [illegible], 1992.

Dan Warren
Counsel for Respondent
ATTORNEY NO. 084870

Dated this 27th day of February, 1992.

Jan Wichrowski

Jan K. Wichrowski
Bar Counsel
ATTORNEY NO. 381586

Dated this 27th day of Feb, 1992.

Horace Smith, Jr.
Designated Reviewer
ATTORNEY NO. 105948

Supreme Court of Florida

THURSDAY, SEPTEMBER 16, 1993

THE FLORIDA BAR,

Complainant,

v.

K. KRISTINE NOWACKI,

Respondent.

CASE NO. 81,598

TFB No. 92-31,574(07C)
93-30,975(07C)

* * * * * * * * * * * * * * * *

We approve the uncontested referee's report and direct that respondent be given a public reprimand for professional misconduct in the manner set forth in the referee's report.

Respondent is further placed on probation for three (3) years under the terms and conditions set forth in the report.

Judgment for costs *in* the amount of $741:46 is entered against respondent for which sum let execution issue.

Not final until time expires to file motion for rehearing and, if filed, determined.

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

KBB
cc: Hon. Bill Parson, Referee
Mr. Kirk T. Bauer
Mr. John A. Boggs
Ms. Jan K. wichrowski
Mr. Robert K. Rouse

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

K. KRISTINE NOWACKI,

Respondent.

Case No. 8 1,598

TFB No. 92-3 1,574(07C)

PUBLIC REPRIMAND

Ms. Nowacki, you are being reprimanded because of your professional misconduct.

You failed to comply with the rules' regulating advertisements with regard to three advertisements which appeared in two separate newspapers.

Ms. Nowacki, the public's education about legal services can'be fulfilled in part through advertising that provides the public with useful, factual information. However, as both the Bar and the public recognize, attorney advertising contains the potential for serious abuse. Failure to adhere strictly to rules regulating attorney advertising undermines confidence in the justice system and fosters distrust of attorneys.

The privilege of practicing law carries with it heavy responsibilities. Those include conduct in professional and personal activities. Your conduct should never call into question the validity of the legal system or the propriety of a strong and independent legal profession. You have failed these responsibilities.

The members of the Bar wil! not tolerate actions such as yours. They denigrate the Bar and threaten the existence of our profession.

This reprimand is now a part of your permanent Bar record. The lawyers of Florida expect your future conduct to always be in compliance with your oath. Although this disciplinary sanction does not affect your privilege of practicing law, future misconduct will.

DONE AND ADMINISTERED this 20th day of January 1995.

William F. Blews
President
The Florida Bar

PUBLIC RECORD