IN THE SUPREME COURT OF FLORIDA
[Before a Referee]

THE FLORIDA BAR,

Complainant,

vs.

Cases Nos. 94,111 & 92,890
Consolidated

JULIUS L. WILLIAMS,

Respondent.
_____/

AMENDED INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES

The issues in this review is whether the referees findings of fact and guilt is based on clear and convincing evidence, and whether the recommended discipline is appropriate.

REFEREE'S FINDINGS OF FACT

Julien Matter(92,890)

1. In May of 1997 Gregory Julien engaged the respondent to handle a personal bankruptcy matter. He paid respondent $500(in two installments) in legal fees and a $175 filing fee.

2. Mr. Julien testified that he had no contact with the respondent after the first visit, but respondent claims he spoke to Mr. Julien both times he came in to make a deposit against his legal fee. In any event, it is clear that despite numerous telephone calls from Mr. Julien and several letters and facsimile transmissions from Mr. Julien's attorney, Irwin N. Sperling, the respondent did not complete the bankruptcy filing he had been hired to do.

3. Moreover, despite Mr. Sperling's efforts detailed below, no refund of the legal fee, cost deposit or return of Mr. Julien's property(his financial records) was made until about February 8,

1998.

4. Sperling's efforts include: letters of Sep. 5. 1997 [The Florida Bar exhibit 5] received by certified mail receipt Sep. 19, 1997 [The Florida Bar exhibit2]; facsimile reminder of Sep. 19, 1997 [The Florida Bar exhibit 1]; letter of Oct. 1, 1997, by fax and U.S. mail [The Florida Bar exhibit 5]; letter of Oct. 6, 1997 [The Florida Bar exhibit3] faxed and received October 6, 1997 [The Florida Bar exhibit 4].

5. Respondent did not respond to any of attorney Sperling's efforts until Oct. 13, 1997, when respondent returned Julien's uncashed cost deposit check together with respondent's personal(not trust) check for $500 representing the total attorney's fees paid by Julien. The respondent's personal check was dishonored because of insufficient funds after several attempts to cash it.[The Florida Bar exhibit 6]. None of Julien's financial records were returned at that time.

6. Not until Dec. 12, 1997, did Julien receive his money in the form of postal money order. He received his documents sometimes after Dec. 12, 1997, and before Feb. 9. 1998.

7. Respondent submitted partially completed bankruptcy schedules at the hearing [respondent's exhibit 2]. He claimed he was impeded from completing the engagement by Mr. Julien's wife's delay in providing necessary information.

Trust Accounting Violations(92,890)

1. On May 30, 1997, The Florida Bar caused a subpoena duces tecum to be served on the respondent seeking his trust account records. The respondent was generally cooperative in his dealings with The Florida Bar, but even with several time extensions he did not produce all of the records sought. There were several items missing altogether: there were no ledger cards or journals for the clients and there were no monthly reconciliations or comparisons for the account. Some other items were not complete: ten months of

bank statements (and the canceled checks) were missing for 1995 and one month in 1997[The Florida Bar exhibit 12].

2. Respondent explained that his ledger consisted of client cards maintained in the client files. Many client files were lost or destroyed, so the ledgers could not be reconstructed from the client cards. It is possible to allow check stubs to substitute for the journal required by the rules. But the typical check stubs produced by the respondent which are in evidence are woefully inadequate to satisfy the journal requirement [The Florida Bar exhibit 13]. Hence, there is no way to audit the respondent’s trust account.

Simmons Matter (94,111)

1. Thelma Stevens hired respondent to represent her in her

pending litigation against Adventist Health System Sunbelt, Inc., Case No. 94-01904-CA-16C-K filed in the Eighteenth Judicial Circuit [The Florida Bar exhibit 10]. The litigation related to the terms and conditions of her employment with the defendant.

2. The case proceeded to trial with an unfavorable outcome for Ms. Stevens. Sometime thereafter Ms. Stevens suffered a seriously debilitating strike which left her with severe aphasia.

3. The Florida Bar claims that the respondent improperly orchestrated spurious grounds for a continuance of the impending trial by urging Ms. Simmons to check herself into the hospital when it was not medically necessary for her to do so. The evidence of

this alleged misconduct consists solely of conversations between Ms. Simmons and the respondent. Unfortunately Ms. Simmons' profound aphasia makes it impossible for The Florida Bar to present clear and convincing evidence on this point in light of respondent's plausible explanation.

4. Other alleged deficiencies in respondent's professional relationship with Ms. Simmons are also unprovable under the circumstances.

5. The Florid Bar requested respondent's written response to the Simmons matter on Feb. 17, 1998. It informed the respondent of his obligation to respond in writing, and mailed the request to his bar address by certified mail [The Florida Bar exhibit 16].

Although respondent received the correspondence on Feb. 27, 1998, he did not respond.

Wheaton Matter (94,111)

1. Linda Wheaton was respondent's employee. He issued a pay check to her on Oct. 10, 1997, in the amount of $496.10 from his office account. The check was returned for insufficient funds on Oct. 17, 1997 [The Florida Bar exhibit 8].

2. Respondent paid Ms. Wheaton on October 27, 1997, for the returned check together with her associated bank fees [Respondent exhibit 1].

3. The Florida Bar requested respondent's written response to the Wheaton matter on Mar.2, 1998. It informed the respondent of

his obligation to respond in writing and mailed the request to his bar address [The Florida Bar exhibit 16]. Respondent did not respond.

SUMMARY OF THE ARGUMENT

I. The Referee's Recommendation of Guilt is not Supported by Substantial Competent Evidence.

II The Referee's Recommendation as to Punishment is too Severe, is Based on an Erroneous Finding as to Previous Discipline and Imposes a Standard That is Vague and Ambiguous.

ARGUMENT

I. THE REFEREE'S RECOMMENDATION OF GUILT IS NOT SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE

The referee recommends that respondent be found guilty of Rule 4-1.15(d), 5-1.1(c), 5-1.1(d), 5-1.2(b) and 5-1.2(c). The record indicates that respondent produced records that he had and indicated that the other records were misplaced. There is no evidence that respondent did not keep the required records.(Tr. 87). In addition, action had taken against respondent for the same

records.(Tr.87).

The referee recommends that respondent be found guilty of Rule 3-4.3 with regard to Wheaton. The referee does not find that the actions of the respondent in giving the check to Wheaton was deliberate(the check was made good). Without such a finding, the referee's recommendation cannot stand. In addition, the rule itself is so vague and ambiguous that no one could know what conduct is prohibited by the rule.

The referee recommends that respondent be found guilty of Rule 4-1.3, 4-1.4, and 4-1.5 with regard to Julien. The record shows that work was done on behalf of Julien (Resp. Ex.2) and that contact was made with Mr. Julien(Tr.95-97).

II. THE REFEREE'S RECOMMENDATION AS TO PUNISHMENT IS TOO SEVERE, IS BASED ON AN ERRONEOUS FINDING AS TO PREVIOUS DISCIPLINE AND IMPOSES A STANDARD THAT IS VAGUE AND AMBIGUOUS

The referee recommends that respondent be:

1. suspended for one year and thereafter until he passes the ethics portion of the Florida Bar examination and otherwise demonstrates proof of rehabilitation.

2. placed on 3 years probation and complete a trust accounting workshop.

3. required for the first 2 years of probation to provide monthly trust account records and reconciliations to a person designated by the Florida Bar.

The punishment recommended by the referee is to severe.

There are three purposes for disciplining unethical conduct: (1) judgment bust be fair to society in terms of protecting public from unethical conduct and at same time not denying public the service of a qualified lawyer because of unduly harsh penalty, (2) judgment must be fair to the attorney by sufficiently punishing breach of ethics while encouraging reformation and rehabilitation, and (3) judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. The Florida Bar v. Birdsong, 661 So.2d 1199(Fla. 1995).

If the referee's recommendation is accepted, respondent will be prevented from practicing law for a period of 1 year. Respondent is a sole practitioner. A 1 year suspension would be an unduly harsh penalty and deny the public of the services of a

qualified lawyer. The expenses of closing down respondent's office and re-opening would be enormous. The requirement of passing the ethics portion of the bar examination and 3 years probation adds to an already onerous burden, when mandatory courses

would suffice. Id at 1202.

The referee's contentions about respondent disciplinary record is without merit. The most severe discipline was a 20 day suspension and 1 year probation. There is no escalating pattern of misconduct in respondent's history. In addition, Julien as well as Wheaton received refunds from respondent.

The referee does not indicate what discipline he recommends for the violations he recommends. His recommendations cannot be reviewed in the light of discipline in other cases. Respondent is put at a disadvantage by lumping all violations in a single penalty.

CONCLUSION

Any discipline in this case should not be more than the 30

days which respondent suggested to the referee.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Respondent's Amended Initial Brief has been furnished by U.S. mail to Patricia Savitz, Esq., 1200 Edgewater Drive, Orlando, Florida 32804 this 12th day of July, 1999.

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JULIUS L. WILLIAMS, ESQ.