

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JOHN STANLEY MORSE,

Respondent.

CASE NO. SC96090

TFB NO. 1999-10,015 (13F)

**ANSWER BRIEF
OF
THE FLORIDA BAR**

Brett Alan Geer
Assistant Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607
(813) 875-9821
Florida Bar No. 061107

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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, John Stanley Morse, Esq., will be referred to as “Respondent.”

“RR” will refer to the Report of Referee in Supreme Court Case No. SC96090, dated May 11, 2000.

“TR-1” will refer to the transcript of a hearing on sanctions conducted March 15, 2000, in this proceeding.

“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.

STATEMENT OF THE CASE AND OF THE FACTS

The facts stated below are not in dispute. Because Respondent failed to timely file or serve any papers required by law in this case, he suffered a default. As such, the factual allegations of the complaint were deemed admitted by the referee and incorporated into his report. The underlying facts are as follows:

Sometime prior to November 17, 1997, Respondent prepared a last will and testament for Ms. Marguerite W. Sheffield ("Ms. Sheffield"), which instrument named Respondent as personal representative of the estate. On or about November 17, 1997, Ms. Sheffield passed away. Sometime in December, 1997, Ms. Sheffield's surviving step-sister, Ms. Thelma L. Williams ("Ms. Williams") received a claim form and correspondence from the Office of Federal Employees' Group Life Insurance Corporation ("Office of Group Life Insurance"), requesting that a claim be filed on behalf of Ms. Sheffield's estate so that it could receive proceeds from a life insurance policy. As a former federal employee, Ms. Sheffield had been entitled to such life insurance through Group Life Insurance.

Immediately after receiving the correspondence from Group Life Insurance, Ms. Williams contacted Respondent by mail and furnished him with the form and information necessary to file the claim on behalf of Ms. Sheffield's estate.

Respondent failed to file the claim for life insurance proceeds in a diligent manner. Also, Respondent failed to file on behalf of Ms. Sheffield's estate a separate claim for annuity benefits payable by the Office of Personal Management, another federal agency, to which benefits Ms. Sheffield's estate was similarly entitled by and through her previous federal employment. Ms. Sheffield's estate consisted almost entirely of the insurance policy and the annuity, with a total valuation of approximately \$13,600.00.

Respondent failed or refused to file the prepared Petition for Summary Administration, or otherwise failed or refused to open or administer Ms. Sheffield's estate. Because it did not receive a claim for life insurance on behalf of Ms. Sheffield's estate, the Office of Group Life Insurance continued to forward to Ms. Williams the forms necessary to be filed in order to have the life insurance proceeds distributed. Each time the Office of Group Life Insurance sent such forms to Ms. Williams, she contacted Respondent, who would assure her that the estate's claim would be filed with no further delay. Despite such his assurances, Respondent failed or refused to file the claim promptly.

On or about November 4, 1998, almost four months after Ms. Williams filed a grievance against Respondent with The Florida Bar -- and nearly one year after Ms. Sheffield had passed away -- Respondent corresponded with the Group Life

Insurance and advised them for the first time of the possibility of utilizing summary procedures to effectuate distribution of the life insurance proceeds. However, Respondent thereafter failed to make any further attempts to contact the Office of Group Life Insurance or to file a petition for summary administration.

Under these facts, the referee held that Respondent was guilty of violating Rule 4-1.1 (competence) and Rule 4-1.3 (diligence), as charged in the complaint. On March 15, 2000, a sanctions hearing was held, at which the referee heard argument and received evidence purporting to mitigate the instant misconduct. Most if not all of the proposed mitigation evidence related to Respondent's service to the profession.

The referee's report was issued May 11, 2000. The referee recommended that Respondent be suspended from practicing law for thirty (30) days, and that his certification by The Florida Bar in marital and family law be revoked. This appeal followed.

SUMMARY OF THE ARGUMENT

On appeal, Respondent does not contest the findings of fact or those regarding guilt. Rather, he objects to the recommended suspension as too severe a sanction and argues for a public reprimand. The Bar's position is that the recommended sanction is appropriate under the facts of what occurred in this case, and also under pertinent case authority. Though the referee noted Respondent's service to the Bar and the legal profession, and listed the same as a mitigating factor, such service is not sufficient in and of itself to modify the recommended sanction downward from a suspension to a lesser sanction. Under all the circumstances and the pertinent case authority, the sanction which the referee has recommended is appropriate and should be approved.

ARGUMENT

I. THE RECOMMENDED SANCTION IS APPROPRIATE IN VIEW OF THE MISCONDUCT AND AGGRAVATING FACTS.

A. The Recommended Sanction Serves the Purposes of Bar Discipline.

While a referee's recommendation regarding discipline is persuasive, this Court has the ultimate responsibility to determine and order the appropriate sanction in any given case. The Florida Bar v. Reed, 644 So. 2d 1355, 1357 (Fla. 1994). A Bar disciplinary action must serve three purposes: the judgment must be fair to society, it must be fair to the attorney, and it must be severe enough to deter other attorneys from similar misconduct. The Florida Bar v. Lawless, 640 So. 2d 1098, 1100 (Fla. 1994).

Respondent took over a year and a half to complete a simple matter that could and should have been taken care of in one or two months. All he needed to do was to file a Petition for Summary Administration for the subject estate, and provide proof of that proceeding to persons responsible for disbursing the government benefits, so that the beneficiary, Thelma Williams, would timely receive those benefits. Respondent did eventually provide this service, but only after he utterly neglected the matter for some seventeen (17) months, and only after the grievance committee issued its finding of probable cause in the matter.

As for the discipline being fair to society, the societal interest is served when

substantially similar sanctions are imposed for substantially similar misconduct. Public confidence in the rule of law suffers when attorneys who violate the Rules of Professional Conduct receive widely disparate sanctions from others whose conduct is or was similar. Here, the imposition of a brief suspension is fair to society because it reassures the public of the Court's lack of tolerance for an attorney's neglect of important legal matters, especially where there is no apparent reason for such neglect. Moreover, the recommended revocation of Respondent's board certification is fair to society because an attorney who is proven to engage in such neglect has forfeited the privilege to hold himself out to the public as one of the select group or lawyers whom the Bar recognizes with its "seal of approval", and all that that means regarding a lawyer's ability, ethics, and professionalism. (NOTE: Standing Policy 2.17 of the Board of Legal Specialization and Education provides for mandatory revocation of certification when an attorney is suspended or publicly reprimanded.)

The recommended sanction is fair to Respondent because it is not unduly harsh nor disproportionate to the adjudicated misconduct. The Court should note that Respondent's neglect of the Sheffield estate matter is not the only instance of neglect the referee encountered. Respondent also neglected this case to the extent that the referee entered a default. Then, Respondent failed to show any excusable neglect for failing to file or serve any paper required by law, so the default stood.

Thus, through his inaction, Respondent forfeited his right to defend this case on the merits, and to introduce record evidence that might explain or justify his neglect of the Sheffield matter. In the instant matter Respondent is his own counsel and his own client, and the client side of him has been prejudiced through the neglect shown by his attorney side. Beyond any harm to his own interests, Respondent's lack of engagement shows a disrespect for the seriousness of this proceeding and for this Court. The Bar argues that such disrespect militates in favor of a sterner sanction than would (perhaps) be imposed in a probate / neglect case where the respondent did defend the disciplinary action on its merits. For that reason, the Bar argues that the recommended sanction is fair to Respondent (as will be shown in the discussion of case law, *post*).

The recommended sanction is also severe enough to deter other lawyers from similar misconduct. As will be shown, imposition of a 30-day suspension is consistent with the case law regarding similar neglect cases. Publication of the order in this case will reinforce for others this Court's determination to discipline gross, unexcused inattentiveness to important client matters.

B. Under the Florida Standards for Imposing Lawyer Sanctions, Suspension is the Appropriate Sanction for the Misconduct

In imposing a sanction after a finding of lawyer misconduct, the Court should consider the following factors: a) the duty violated; b) the lawyer's mental state; c)

the potential or actual injury caused by the lawyer's misconduct; and d) the existence of aggravating or mitigating factors. Fla. Stds. Imposing Law Sancs. 3.0. The duty violated here is one of professional diligence. This Court has stated that "[t]he failure of an attorney to pursue representation on behalf of a client resulting in prejudice to a client's rights is an intolerable breach of trust." The Florida Bar v. Morrison, 669 So. 2d 1040, 1042 (Fla. 1996).

No evidence was adduced regarding Respondent's mental state at the time the neglect was occurring, due to the entry of default. Potential harm is evident here, however. Respondent's client was Ms. Sheffield's estate, and presumably it was her intention that upon her death Respondent would make sure that her assets were paid to Ms. Williams, her beneficiary, in a timely manner. However, Ms. Williams did not gain the benefit or enjoyment of those assets in a timely manner, and the sole reason for that delay was Respondent's neglect. It is not known whether Ms. Williams needed the funds during the 17 months that Respondent neglected the matter. She certainly wanted them sooner. (TR-1, p. 16, line 4). There is also an unresolved question as to whether Ms. Williams lost the benefit of any interest accumulating on the proceeds from the date of the testator's death until when they finally were paid. The referee doubted that the interest was applied retroactively, but the issue was not resolved at the sanctions hearing. (See TR-1, p.

29). Be that as it may, the possibility that Ms. Williams did lose such interest, or did need the proceeds at a much earlier time is sufficient to establish the existence of potential injury to a beneficiary. Because Respondent, as the estate's lawyer and its personal representative, owed fiduciary duties to the estate's beneficiaries, this frustration of the testator's reasonable expectations and potential harm to Ms. Williams must be considered in the context of deciding an appropriate sanction. As the facts show, even Ms. Williams' repeated attempts to get Respondent to perform his professional duties did not produce results.

As the referee found and considered in mitigation, Respondent has no prior disciplinary record, and he has provided significant service to the Bar and the profession. (RR at 4.) There is little doubt that Respondent is now remorseful over having neglected the underlying matter to the point where it poses a threat to his license, and the referee found such remorse in mitigation as well. Id. The referee also considered Respondent's extensive experience in the practice of law as an aggravating factor. Id. When a Respondent with 30 years of legal experience neglects his own disciplinary case to the point of personal prejudice and default, that rightly raises concern. Surely he realized (or should have) that his failure to file or serve any paper required by law could well result in default. For Respondent to neglect the disciplinary case when the gravamen of the matter concerns his neglect

of a civil matter is mystifying and troubling. Respondent has offered no credible reason for the conduct.

Service to the Bar is laudable and should be encouraged; however, service to one's clients must be considered of overriding importance to any lawyer. It is barely mitigating for a lawyer to argue that, though he neglected his client's case, he didn't slack off on his Bar work. In the end, such service to the profession, though exemplary, is insufficient to mitigate an offense of client neglect. Though probative, Respondent's *ex post facto* remorse is similarly insufficient. As such, the Bar argues that, to the degree that these factors might mitigate the misconduct, the aggravating factor fairly cancels their mitigating value. Thus, we are left, in the end, with the misconduct itself.

Standard 4.42 states that "Suspension is appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client." There is no question that Respondent knowingly failed to perform the requested service. The Sheffield estate suffered potential harm because the testator's intentions were not carried out in anything resembling a timely manner. Ms. Williams, the object of the estate's objectives, also suffered potential harm, as has been discussed. For these reasons, Standard 4.42 applies to the instant misconduct, and, in the absence of compelling mitigation, should be applied in

deciding the sanction to be imposed.

C. The Recommended Discipline is Consistent with Relevant Case Authority.

Given Respondent's misconduct, and the lack of compelling mitigation, the threefold objectives of Bar discipline will be adequately served by approval of the referee's recommended sanction. Pertinent case authority supports such a result. In The Florida Bar v. Golden, 502 So. 2d 891 (Fla. 1987), the referee recommended a 30-day suspension for neglecting to file a probate case in a timely manner, before an interested person opened the subject estate elsewhere. The opinion does not reveal the length of time during which Mr. Golden had failed to file the action. On appeal, the Court ordered a 10-day suspension. Golden had previously been issued a public reprimand, according to Bar records.

The Florida Bar v. Zyne, 248 So. 2d 1 (Fla. 1971) also describes neglect of a probate matter where the respondent was found guilty of dilatory and delinquent tactics in representing the executrix. When she complained that nothing was being done, the probate court admonished Mr. Zyne and directed him to forthwith perform the services for which he was retained. Though Mr. Zyne promised the court that he would do so, he did not. The Zyne opinion makes no mention of any prior disciplinary history. Mr. Zyne was suspended for six months. Id.

In The Florida Bar v. Shannon, 376 So. 2d 858 (Fla. 1979), the respondent

failed to file required accountings of estate's assets, failed to abide by the probate court's directives regarding filings, and "failed to disburse to those entitled to receive the proceeds of the [] estate their funds in a timely manner." Id. at 860. As in Zyne, and the instant case, Mr. Shannon had no prior disciplinary history; thus that was not a factor in deciding the proper sanction. The Shannon opinion does reveal that the respondent made timely payments to himself (but not the estate's beneficiaries), which the court discussed at length. For his dilatory estate practice, with timely payments, the court ordered Mr. Shannon's license suspended for 91 days and thereafter until proof of rehabilitation.

Lastly, in The Florida Bar v. Daniel, 626 So. 2d 178 (Fla. 1993), the respondent faced two counts of failing to diligently pursue probate matters. In the first instance, Mr. Daniel failed to timely gain court approval to disburse settlement funds to a minor. Id. at 180. Secondly, he failed to timely effectuate a public sale of property after obtaining a judgment of foreclosure. Id. at 181-82. Similar to the default in the instant case, Mr. Daniel failed to answer the Bar's Request for Admissions, and, as a result, the matters therein were deemed admitted. Id. at 182. Thus, the case proceeded solely on the issue of appropriate sanction, as did the instant case. Also, Mr. Daniel had no prior disciplinary history. The referee recommended a 30-day suspension, and this Court agreed. Id. at 184.

In considering the above-cited cases and their similarities and differences

with the instant matter, it becomes apparent that the referee's recommended sanction of a 30-day suspension is consistent with the extant case law as far as that case law might reasonably relate to the facts and circumstances of this case. For that reason, the recommended sanction should be approved.

CONCLUSION

For the reasons stated herein, Respondent's arguments on appeal are without substantial merit, and the Report of Referee issued in this case should be approved in its entirety.

Respectfully submitted,

BRETT ALAN GEER
Assistant Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport Marriott Hotel
Tampa, Florida 33607
(813) 875-9821
Florida Bar No. 061107