

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC96,090
TFB NO. 99-10,015 (13F)

THE FLORIDA BAR

Appellee

v.

JOHN STANLEY MORSE

Appellant

RESPONSE BRIEF OF APPELLANT

John S. Morse, Esquire
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(813)286-4300
Appellant
Florida Bar No. 120056

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CERTIFICATE OF FONT SIZE

The Appellant hereby certifies that he has utilized 12 point Courier font in this brief.

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I. STATEMENT OF THE CASE AND THE FACTS

The Respondent agrees with the representations contained in the Answer Brief filed by The Florida Bar; however, the factual scenario failed to include one essential fact that bears on the mitigating circumstances for sanctions in this cause of action. Bar counsel has failed to point out that Summary Administration had been filed, Order of Summary Administration entered, and distributions had been made to the beneficiaries, including interest payments. Those payments were made and distributed to the beneficiaries in June, 1999. It is clear from the record that there was a total absence of a dishonest or selfish motive and timely good faith effort to rectify the consequences of misconduct were evidenced by the record presented at the hearing on March 15, 2000.

II. ARGUMENT

II A. The recommended sanctions are not appropriate in view of the mitigating circumstances in this cause of action.

The Respondent agrees with the argument of Bar counsel that a bar disciplinary action must serve three purposes: judgment must be fair to society; must be fair to the attorney; and it must be severe enough to deter other attorneys from similar misconduct. However, the case before the Court represents one claim for handling of the Sheffield Estate that was resolved completely in eighteen (18) months.

Furthermore, the Respondent has served The Florida Bar without any other disciplinary actions and has served The Bar with distinction. Evidence of Awards of Merit, service to the National Center for Missing and Exploited Children, service to *The Florida Bar Journal* and the Family Law Section *Commentator*, as well as service to the Hillsborough County Bar Association, Family Law Section, were all presented in detail to the Referee at the hearing on March 15, 2000. In addition, the record reflects and establishes an absence of a dishonest or selfish motive, serving to mitigate circumstances in this cause of action.

II. ARGUMENT

III
IV

- V B. The authorities presented by The Bar are not comparable to the case before the Court.

The Bar has cited authorities to support the sanctions imposed by the Referee. These authorities are not consistent with the facts presented in the case before the Court.

1. In The Florida Bar v. Golden, 502 So.2d 891 (Fla. 1987), it was pointed out by The Bar that the respondent had been previously issued a public reprimand. In addition, it is apparent from the facts of that case that no action had ever been taken by the respondent to further the claim of his client. Nevertheless, the Supreme Court found it appropriate to reduce the suspension imposed by the Referee from 30 days to a 10-day suspension.

2. In The Florida Bar v. Zyne, 248 So.2d 1 (Fla. 1971), the Referee pointed out that the attorney not only failed to comply with the request of his client, but also failed to comply with the Court's admonishment. Further, it was brought to the attention of the Referee that the attorney had previously been admonished and failed in the past to take steps that had been imposed upon him by the trial court.

3. The Bar has also referenced the case of The Florida Bar v. Shannon, 365 So.2d 858 (Fla. 1970). The facts in the Shannon case reveal that the testator in that estate died in February 1963. The estate had not been concluded in January 1977, fourteen (14) years later. A significant issue in that case was the fact that the attorney billed the estate and was

paid a total of \$7,014.89 for 855 hours of service, despite having failed to file an accounting, failed to close out the estate, and having charged an excessive fee for services for which there was no accounting. In no way is this case comparable to the handling of the Sheffield Estate. In fact, all services were ultimately performed for the beneficiaries in the Sheffield Estate and there have been no allegations of excessive fees charged. Further, the beneficiaries received full payment on their claims.

4. In The Florida Bar v. Daniel, 626 So.2d 178 (Fla. 1993), the attorney was suspended for 30 days; however, this was based upon two separate complaints that had been filed. One was for failure to get approval of a settlement reached for personal injuries sustained by a minor and the other for failure to proceed with the public sale in obtaining a judgment in a foreclosure matter. In the instant case, it is again pointed out that sanctions are being imposed for one and only one claim. Further, the claims of the beneficiaries were fully satisfied pursuant to an order entered by the Court on summary judgment.

CONCLUSION

The recommended sanction of a suspension for thirty (30) days and withdrawal of board certification should be reduced by this Court to a public reprimand. Although the Bar has

cited cases supporting suspension for various lengths of time, none of the cases presented by the Bar reflected any services to The Florida Bar performed by any of the attorneys whose licenses were being suspended. Further, there is no evidence of any other mitigating factors, such as the absence of dishonest or selfish motive or the efforts made to rectify the misconduct of the attorney.

For these reasons, Respondent requests that the suspension and withdrawal of board certification be reduced by this Court to a public reprimand.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of October, 2000 the original Response Brief has been furnished by Federal Express to Thomas D. Hall, Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida, 32399-1925 and a true and correct copy has been furnished by

U.S. Mail to Brett Alan Geer, Assistant Staff Counsel, The Florida Bar, Suite C-49, Tampa, Airport, Marriott Hotel, Tampa, FL 33607, and to John Anthony Boggs, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399.

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