

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC01-114

[TFB Case No. 2000-30,672(07C)]

v.

[TFB Case No. 2000-32,134(07C)]

[TFB Case No. 2000-32,142(07C)]

JONATHAN ISAAC ROTSTEIN,

Respondent.

_____ /

REPORT OF REFEREE

- 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, a hearing was held on June 26, 2001 and June 27, 2001. 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 - Elizabeth Sikora Conan

For The Respondent - Patricia Sue Etkin

- 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, based on admissions, stipulation and other evidence, I find by clear and convincing evidence:

As to Count I
[TFB Case No. 2000-30,672 (07C)]

1. The respondent was hired by Linda Jarrett to handle a personal injury claim and accepted representation in the case, evidenced by documentation executed by Ms. Jarrett.

2. The respondent negligently failed to file the claim, only writing one letter to M&M/Mars and taking no further action.

3. The statute of limitations lapsed and the respondent did not advise Ms. Jarrett of that fact.

4. The respondent fraudulently created a letter dated July 8, 1998 purportedly advising Ms. Jarrett that he withdrew and that the statute of limitations would run on December 25, 1998.

5. In testimony, the respondent testified that he drafted the letter sometime in September 1999, not in 1998 as he represented. The respondent testified that he became aware of that the statute of limitations had expired and panicked.

6. Thereafter, the respondent created a letter dated January 29, 2000, a letter dated February 26, 2000, and a letter dated May 14, 2000 to the Bar's grievance committee, all indicating that the withdrawal letter was accurate and true, thereby submitting four false documents to the grievance committee and to The Florida Bar.

7. The respondent through counsel on September 8, 2000 sent to The Florida Bar a letter which repudiated the July 8, 1998 letter. In the letter, the respondent disavowed all representations in his handling of the M&M/Mars claim, including that he'd timely withdrawn and notified his client of the statute of limitations.

8. On December 11, 2000, the respondent wrote a letter to Linda Jarrett indicating that he failed to file her case and failed to admit his mistake earlier, and suggesting mediation to compensate her for her injuries.

9. The original probable cause vote was scheduled for August 30, 2000 and notice of the vote was sent August 11, 2000. The respondent obtained counsel and an amended notice of probable cause vote was sent on September 28, 2000 in response to a continuance request by respondent's counsel, resetting the probable cause vote to October 25, 2000.

As to Count II
[TFB Case No. 2000-32,134 (07C)]

10. Mrs. Margaret Beaver retained the respondent to represent her in a claim for slip and fall injuries.

11. Pursuant to a March 16, 2000 mediation, Mrs. Beaver's claim was voluntarily settled for \$4,250.00. Mrs. Beaver subsequently refused to execute the release.

12. On July 7, 2000, the respondent filed a motion to enforce settlement without consulting with Mrs. Beaver and without her knowledge or consent, knowingly taking a position adverse to his client.

As to Count III
[TFB Case No. 2000-32,142 (07C)]

13. Mrs. Olga Petrucha retained the respondent to represent her in a suit against a restaurant.

14. The case settled at mediation for \$500 and Mrs. Petrucha executed some of the settlement documents, but refused to endorse the settlement check when she discovered that \$12.15 would be her proceeds.

15. The respondent filed a motion to enforce settlement without discussing his actions or notifying Ms. Petrucha, and without her knowledge or consent, knowingly taking a position adverse to his client.

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:

As to Count I

Through the conduct cited previously, I recommend respondent be found guilty and specifically that he be found guilty of violating the following Rules Regulating The Florida Bar: 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and for failing to

comply with reasonable requests for information; 4-3.3 for knowingly making false statements of material fact or law to a tribunal; 4-8.1(a) for knowingly making a false statement of material fact in connection with a disciplinary matter; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice. These findings do justify discipline.

As to Count II

Through the conduct cited previously, I recommend respondent be found guilty and specifically that he be found guilty of violating the following Rule Regulating The Florida Bar: 4-1.7 for representing a client where the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interests. These findings do justify discipline.

As to Count III

Through the conduct cited previously, I recommend respondent be found guilty and specifically that he be found guilty of violating the following Rules Regulating The Florida Bar: 4-1.7 for representing a client where the lawyer's exercise of independent professional judgment in the representation may be materially limited by the lawyer's responsibilities to another client or to third person or by the lawyer's own interests. These findings do justify discipline.

- IV. Rule Violations Found: **Count I** - 3-4.3; 4-1.4(a); 4-3.3; 4-8.1(a); 4-8.4(c); and 4-8.4(d).
Count II - 4-1.7.
Count III - 4-1.7.

- V. Recommendation as to Disciplinary Measures to Be Applied: Counts 2 and 3 alone would likely have resulted in a public reprimand or an admonishment, but

the inclusion of count one's violations render the respondent's conduct an extremely serious violation. The respondent's conduct can clearly fit within sanction standard 6.11 and justify disbarment. The respondent's conduct also clearly fits sanction standard 5.11(f) and justifies disbarment. It is a serious offense and carries with it the most extreme punishment, but under the circumstances, disbarment is neither required nor appropriate. The totality of the circumstances supports the following: I recommend respondent be suspended from the practice of law for a period of one year. Respondent will be required to prove rehabilitation before he is reinstated to the practice of law.

1. Respondent shall be required to retake the ethics portion of the bar exam.
2. Respondent shall pay all disciplinary costs as set forth herein.
3. Respondent's failure to fully comply with any of the above shall be deemed cause to subject respondent to further disciplinary proceedings.

In reaching these recommendations, I have considered the following Florida Standards for Imposing Lawyer Sanctions:

9.22 Aggravating Factors

- 9.22(a) prior disciplinary offenses;
- 9.22(b) dishonest or selfish motive;
- 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- 9.22(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- 9.22(i) substantial experience in the practice of law;

9.32 Mitigating Factors

- 9.32(d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- 9.32(l) remorse.

I have also considered all relevant case law submitted by the parties.

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: 41

Date admitted to bar: November 20, 1991

Prior disciplinary convictions and disciplinary measures imposed therein:

1. The Florida Bar v. Rotstein, TFB Case No. 1999-31,449(07C) - Admonishment of minor misconduct for neglecting a client's legal matter.

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	\$ 653.37
2.	Bar Counsel Travel Costs	\$ 216.26
B.	Referee Level Costs	
1.	Transcript Costs	\$ 3,104.02
2.	Bar Counsel Travel Costs	\$ 333.43
C.	Administrative Costs	\$ 750.00
D.	Miscellaneous Costs	
1.	Investigator Expenses	\$ 1,692.62
2.	Copy Costs	33.25
	TOTAL ITEMIZED COSTS:	\$ 6,782.95

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 _____, 2001.

The Honorable L. Page Haddock, Referee

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

Elizabeth Sikora Conan, Bar Counsel, The Florida Bar, 1200 Edgewater Drive,
Orlando, Florida, 32804-6314

Patricia Sue Etkin, Counsel for Respondent, 8181 W. Broward Boulevard, Suite
262, Plantation, Florida, 33324-2049

John Anthony Boggs, Staff Counsel, The Florida Bar, 650 Apalachee Parkway,
Tallahassee, Florida 32399-2300