

**IN THE SUPREME COURT OF FLORIDA
(Before a Referee)**

THE FLORIDA BAR,

Supreme Court Case
No. SC06-1387

Complainant,

vs.

MONTGOMERY BLAIR SIBLEY

The Florida Bar File
Nos. 2003-00,597(2B) and
2005-00,557(2B)

Respondent.

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.6 of the Rules Regulating The Florida Bar, trial of this cause was undertaken on April 16, 2007. All of the pleadings, notices, motions, orders, and exhibits are forwarded with this report and the foregoing constitute the record in this case.

The following individuals appeared as for the parties:

On Behalf of The Florida Bar: Barnaby L. Min
The Florida Bar
444 Brickell Avenue
Suite M-100
Miami, Florida 33131

On Behalf of the Respondent: None. Mr. Sibley, representing himself, failed to appear after properly being notice to appear.

II. FINDINGS OF FACT:

A. Jurisdictional Statement:

The Respondent is, and was at all times material herein, a member of The Florida Bar, and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. Narrative Summary of Cases:

The undersigned attempted to schedule a mutually convenient time for the final hearing and left messages for the Respondent to determine what his schedule was. As of the filing of this report, none of those messages have been returned. Accordingly, on March 28, 2007, the undersigned sent out a Notice of Final Hearing and scheduled the final hearing for April 16, 2007. On April 11, 2007, the Respondent filed a Motion to Dismiss or, Alternatively, Fifth Affidavit and Motion to Disqualify, or, Alternatively, Motion to Continue Hearing which was denied. On the final hearing date of April 16, 2007, the Respondent failed to appear. The Respondent failed to contact the undersigned's chambers or counsel for The Florida Bar to indicate that he was unavailable or would not be appearing for the final hearing. The undersigned notes that in his motion filed on April 11, 2007, the Respondent stated that he would be available by telephone. Yet, as noted, the Respondent failed to contact either the undersigned or counsel for The Florida Bar by telephone, facsimile, or electronic mail.

Accordingly, the final hearing proceeded without the Respondent being present. *See The Florida Bar v. Catalano*, 685 So. 2d 1299 (Fla. 1996).

COUNT I
The Florida Bar File No. 2003-00,597(2B)

By order dated August 5, 2002, Judge Maxine Cohen Lando of the Eleventh Judicial Circuit found the Respondent in contempt of court for willfully failing to pay child support. In that order, Judge Lando determined that the Respondent owed child support in the amount of \$100,000.00. Judge Lando further determined that the Respondent had the present financial ability to pay the child support but willfully failed to do so and, accordingly, willfully violated the trial court's order. Because the Respondent was in contempt of court for willfully failing to pay child support, Judge Lando sentenced the Respondent to 90 days in jail unless the Respondent paid the outstanding child support. Judge Lando further set a payment plan for the Respondent to pay his outstanding child support.

By order dated October 18, 2002, Judge Lando amended her contempt order to increase the incarceration period to an indefinite period of time until the Respondent fully paid the outstanding child support. As of November 22, 2002, the Respondent failed to pay any of the outstanding child support and failed to comply with Judge Lando's payment plan. Accordingly, on November 22, 2002, Judge Lando issued an Order of Contempt and Commitment to the Miami-Dade County Corrections Department. Respondent sought review of Judge Lando's various orders of contempt and they were upheld on appeal.

COUNT II
The Florida Bar File No. 2005-00,57(2B)

On November 3, 2004, the Third District Court of Appeal filed an opinion in the matter of *Sibley v. Sibley*, 885 So. 2d 980 (Fla. 3rd DCA 2004) affirming the lower court's child support and contempt orders, and directing that the Respondent was precluded from further self-representation in that court. In that opinion, the Third District Court of Appeal found that the Respondent had initiated 25 self-represented appellate proceedings (24 of which were found to be of no merit); filed at least 12 federal court actions against various judges assigned to his case, the court system, and his former wife (all of which were dismissed); and had filed a federal action in Delaware against his former wife (which was dismissed). The Third District Court of Appeal also found that the Respondent "has served as an unending source of vexatious and *meritless* litigation", and agreed that his appeals were without merit. (emphasis added). The Respondent sought review of the Third District's opinion by the Supreme Court of Florida, which was denied at *Sibley v. Sibley*, 901 So. 2d 120 (Fla. 2005).

III. **RECOMMENDATION AS TO GUILT:**

Based on the foregoing, I find that The Florida Bar has presented clear and convincing evidence of guilt to this Court and I make the following recommendations:

AS TO CASE NUMBER 2003-00,597(2B)

I recommend that the Respondent be found guilty of violating Rule 4-8.4(h) (A lawyer shall not willfully refuse, as determined by a court of competent jurisdiction, to timely pay a child support obligation) of the Rules of Professional Conduct.

AS TO CASE NUMBER 2004-70,036(11F)

I recommend that the Respondent be found guilty of violating Rule 4-3.1 (Meritorious Claims and Contentions) of the Rules of Professional Conduct.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Based on the foregoing, I recommend that the Respondent be suspended from the practice of law in the State of Florida for a period of three (3) years.

My recommendation is based on the facts presented and found and the following applicable standards from **Florida Standards for Imposing Lawyer Sanctions:**

A. 5.14 Admonishment is appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

B. 6.21 Disbarment is appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

C. 6.22 Suspension is appropriate when a lawyer knowingly violates a court

order or rule and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

D. 7.1 Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

E. 7.2 Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD, AGGRAVATING FACTORS, AND MITIGATING FACTORS:

Prior to recommending discipline pursuant to Rule 3-7.6(m) (1) (C) of the Rules Regulating The Florida Bar, I considered the following:

A. Personal History of the Respondent:

Age: 50

Date Admitted to Bar: December 7, 1987

Prior disciplinary record: N/A

B. Aggravating Factors:

1. 9.22(b) Dishonest or selfish motive

2. 9.22(c) Pattern of misconduct
3. 9.22(d) Multiple offenses
4. 9.22(e) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency
5. 9.22(g) Refusal to acknowledge wrongful nature of conduct
6. 9.22(i) Substantial experience in the practice of law

C. Mitigating Factors: None

VI. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:

I find the following costs were reasonably incurred by The Florida Bar in these proceedings and should be assessed against the Respondent:

Administrative Fee	\$1,250.00
Court Reporter (Hearing on 1-23-07)	\$ 75.00
Court Reporter (At Final Hearing)	\$ 135.00
Copy Costs	\$1,176.35
Staff Investigator's Costs	\$1,354.15
Bar Counsel's Travel Costs	\$ 19.86
INTERIM TOTAL	<u>\$4,010.36</u>

I recommend that the foregoing costs be assessed against the Respondent. It is further recommended that the execution issue with interest at the statutory rate to accrue

on all costs not paid within 30 days of entry of the Supreme Court's final order.

Dated this _____ day of _____, 2007.

Orlando A. Prescott
ORLANDO A. PRESCOTT
Referee, Circuit Court Judge
Richard E. Gerstein Justice Building
1351 NW 12 Street, Room 713
Miami, Florida 33125

Copies to:

Barnaby L. Min, Bar Counsel
Montgomery Blair Sibley, Respondent
Kenneth L. Marvin, Staff Counsel
Brian B. Burgoon, Designated Reviewer