IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

RICHARD STUART SHANKMAN,

Respondent.
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CASE NO. SC08-1107
TFB NO. 2007-51,241(15G)

REPORT OF REFEREE

I. Summary of Proceedings: The undersigned was duly appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar. Any pleadings, notices, motions, orders, transcripts, and exhibits are forwarded to The Supreme Court of Florida with this report and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Karen Boroughs Lopez

For The Respondent: Stephen Christopher Whalen

The Florida Bar filed a complaint against Respondent on June 11, 2008. On October 30, 2008, Respondent filed a Petition for Review of Non-Final Order, requesting the Florida Supreme Court to review the Referee's Order granting judicial notice of the Report and Recommendation of U. S. Magistrate Judge Elizabeth A. Jenkins, dated January 27, 2006, in Pippin v. Playboy Entertainment Group, Inc., and the Order of U. S. District Judge Elizabeth Kovachevich, dated March 31, 2006, approving the Report and Recommendation. The Florida Bar filed a motion to dismiss Respondent's Petition for Review. On January 22, 2009, the Florida Supreme Court issued an Order granting the Bar's motion, and dismissing Respondent's Petition for Review without prejudice. A final hearing

before the Referee was held on April 17, April 24, May 8, May 22, 2009, and June 5, 2009.

II. Findings of Fact as to Each Item of Misconduct With Which the Respondent Is Charged: In making the following findings, I considered the pleadings and all the evidence presented, including live and video testimony, and documentary evidence.

This disciplinary case arises out of Respondent's representation of Monica Seles Pippin over an approximately two-year period beginning in July 2002 and ending in August 2004, when Ms. Pippin discharged Respondent. In 2001, when she was 16 years old, Ms. Pippin participated in a "wet t-shirt contest" during spring break in Daytona Beach, Florida. The contest, including Ms. Pippin's participation was videotaped. She was later informed by friends that they had seen a video of her on cable television. Ms. Pippin contacted the law firm Shankman, Tancredo & Co. L.C. regarding potential claims arising out of the videotaping and subsequent distribution of the videotapes.

Ms. Pippin was a young person when she retained Respondent's services. At the time he was hired by Ms. Pippin, Respondent was a young and relatively inexperienced attorney. Respondent had been practicing law for less than three years and had no experience litigating in federal court. Respondent associated with Trenam Kemker, a Tampa law firm with trial and federal court experience. Ms. Pippin entered into a contingency fee agreement with Respondent and the Trenam Kemker firm, providing that the attorneys would receive 40 percent of her gross recovery. Under this agreement, Respondent was to receive 9.6 percent of the gross recovery (32 percent of the fee, less 25 percent to his partner Tancredo). The Trenam Kemker attorneys were concerned about the jury appeal of the case and advised Respondent that the case could and should settle. (Vol. III, P-293, L-20) Respondent disagreed with the manner in which the Trenam Kemker firm was handling the case. He did not want the case settled, and tried to tell the more experienced attorneys how to run the case. (Excerpt 5/22/09, P-8, L-10) Respondent convinced Ms. Pippin to fire Trenam Kemker and he promised her she would not owe the law firm any fees. He instructed her not to talk to anyone from the firm or she would owe fees.

Respondent then advised his client to hire a second law firm, Gary, Williams, et al. Ms. Pippin entered into a contingency fee agreement with the

Gary firm and Respondent, which provided for a 45 percent contingency fee to the attorneys. Under this agreement, Respondent's share of the fees increased to about 11.25 percent of Ms. Pippin's gross recovery (one-third of the fee, less 25 percent to Tancredo). Respondent did not like the way the Gary firm was handling the case. The Gary firm thought the case should and could settle. The Gary firm attorneys arranged a settlement conference with the Playboy defendants. Respondent did not want the case to settle. He wanted to see the case go to trial. Respondent did not want to listen to his more experienced co-counsel and refused to take their advice. He talked Ms. Pippin into firing that firm. (Excerpt 5/22/09, P-9, L-8) He promised Ms. Pippin she would not have to pay the Gary firm any fees. He instructed her not to talk to the Gary firm attorneys, or she would owe fees.

Ms. Pippin signed a contingency fee agreement with Respondent's newly formed law firm, Litigation Concepts. L.C. Respondent then advised his client to hire a third law firm, Arthur Tifford, P.A. Ms. Pippin signed a fee agreement addendum, providing for a 45 percent contingency fee to be split equally between the Tifford firm and Litigation Concepts. Under this agreement, Respondent's fee again increased (50 percent of the fee, less 25 percent to Tancredo). Respondent disagreed with Mr. Tifford's handling of the case. After Respondent and Mr. Tifford exchanged a divisive email, Respondent told Ms. Pippin that Mr. Tifford had resigned from her case. He told Ms. Pippin not to talk to Mr. Tifford, or she would owe fees. (Vol. I, P-63, L-20)

Respondent then hired a fourth and then a fifth law firm. On August 30, 2004, Ms. Pippin fired Respondent and returned to the Tifford firm. Mr. Tifford negotiated a confidential settlement on behalf of Ms. Pippin. All the prior firms filed charging liens.

When the Gary and Tifford firms were hired, Respondent renegotiated his fee contract so as to receive a higher percentage of the recovery. (TFB Exhibit No.’s 9 and 10) Respondent did not structure any of the fee agreements (except the Gary agreement) to provide that the fees of prior attorneys would be paid out of the attorney's portion of recovery rather than the client's. Respondent repeatedly promised Ms. Pippin that he would pay any fees owed to prior counsel out of his portion of the fees. After the case eventually settled, Respondent reneged on this promise and filed a charging lien against Ms. Pippin. (Excerpt 5/22/09, P-7, L-9)

All prior attorneys except Respondent settled their claims for fees within the 40 percent allocated to fees in the various contracts. (Vol. IV, P-441, L 1-25) Respondent then pursued his lien in federal court under a quantum meruit theory, claiming he was entitled to up to 45 percent of Ms. Pippin's gross settlement recovery. (Vol. IV, P-441, L 1-25) If Respondent had been successful in this claim, his client could have been left with 15 percent of the total recovery. The fee litigation resulted in two evidentiary hearings lasting a total of four days. Respondent presented evidence that the value of his services to Ms. Pippin was at least $350,000. The federal district court magistrate awarded Respondent $29,560.

At the final hearing in the disciplinary proceedings, The Florida Bar presented the testimony of Monica Pippin, her stepfather Shelton Keely, John Vento of the Trenam Kemker firm, and the Honorable Shields McManus, formerly of the Gary firm. Respondent testified on his own behalf and presented the testimony of attorney Thomas DeBerg.

In making my findings and decision, I did not have access to and did not consider the confidential settlement agreement entered into by Ms. Pippin and the defendants in the Playboy litigation. I did not hear testimony from the federal district court judges or magistrate involved in the underlying litigation. My findings are based on the evidence and testimony presented during the final hearing, the closing arguments, and the pre-trial proceedings. As to the Report and Order that were judicially noticed, I considered only the portions that were referred to during the final hearing in testimony.

As to Count I

I find by clear and convincing evidence that Respondent violated Rule 4-1.5(a) (an attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee). With the successive hiring of the Gary and Tifford firms, Respondent renegotiated his fee contracts so that he received a higher percentage of the total contingency fee. Although Respondent's fee increased by a small amount on some of the contracts as he progressed from one firm to another, this increase in his fees was a violation of Rule 4-1.5(a).

In pursuing his fee claim against his client in federal court, Respondent claimed a maximum of a 45 percent contingency fee after Ms. Pippin had already paid 40 percent to other attorneys. Ultimately, if Respondent was successful in his

fee claim, this would have resulted in a substantial decrease in Ms. Pippin's percentage of the gross recovery from 40 percent to only about 15 percent. By making this claim, Respondent violated Rule 4-1.5(a). The federal district court did not award Respondent the full amount of his claim; however, Respondent's action in making the claim was clearly excessive in light of his prior promises to Ms. Pippin. Respondent's fee claim against Ms. Pippin was in direct contradiction to the promises he made to her telling her that she would not be responsible for multiple fees to multiple law firms.

As to Count II

In Count II of the Bar's complaint, Respondent is charged with violating Rule 4-1.1 (a lawyer shall provide competent representation to a client) and Rule 4-1.4(b) (a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation).

I find by clear and convincing evidence that Respondent violated Rule 4-1.1. (Excerpt 5/22/09, P-7, L-16) Respondent started off with the right idea, but ultimately failed to provide competent representation. Respondent acknowledged from the beginning that he did not have the experience as a young attorney to handle Ms. Pippin's case. He took the proper steps in trying to find competent co-counsel. He did so immediately by going to the Trenam Kemker firm. Clearly, the Trenam Kemker firm was big enough to handle the costs of the litigation and had experienced attorneys to handle this type of case.

Respondent's problems began when he hired more experienced, competent law firms to help him and then decided not to take the advice of these firms. (Excerpt 5/22/09, P-8, L-8) There may have been reasons to fire the Trenam firm. However, based on the testimony of John Vento, the Trenam firm was certainly competent to bring the case to conclusion according to Ms. Pippin's wishes. On the advice of Respondent, Ms. Pippin fired that firm and hired another similarly experienced law firm in the Gary firm. The Gary firm attorneys gave similar advice to Respondent concerning the case. The Gary firm was also fired. It is even less clear why this firm was fired when there was a real possibility of obtaining a settlement. Judge McManus testified that this was a case that could have been settled during the Gary's firm's representation.

In order to provide competent representation, it was necessary for

Respondent to associate with other counsel. In order to best serve his client, he should have taken the advice of co-counsel seriously and considered it and communicated it to his client. I believe he failed to do that. Therefore, he did not provide competent representation to Ms. Pippin, which was ultimately his responsibility. (Excerpt 5/22/09, P-9, L-12)

I also find by clear and convincing evidence that Respondent violated Rule 4-1.4(b) (communication). Although Respondent did communicate with his client on a regular basis, he failed to fully explain important matters to her. Taking into consideration Ms. Pippin's age and experience, Respondent did not give his client full information concerning what her case was worth and the potential costs of hiring multiple firms. (Excerpt 5/22/09, P-9, L-22) Ultimately, this lack of communication resulted in protracted litigation over fees. Taking into consideration the client's age and experience, she would have been better served had Respondent taken more time and better communicated to her what all her options were, not just at the beginning of the case, but as Respondent learned more. He failed to do this on a number of occasions. Also, Respondent failed to provide weekly updates to Ms. Pippin as she requested. I find Respondent guilty of violating Rule 4-1.4(b) (communication). (Excerpt 5/22/09, P-10, L 1-15)

As to Count III

I find by clear and convincing evidence that Respondent violated Rules 4-1.7(b) (conflict of interest) and 4-8.4(d) (conduct prejudicial to the administration of justice). The factual findings as to Counts I and II above also support these violations.

I find that Respondent violated Rule 4-1.7(b) by putting his own interests before the interests of his client. The hiring and firing of a series of law firms, at the Respondent's initiation, delayed the case and postponed any opportunity for settlement. Ms. Pippin testified that, from the beginning, she wanted the case to be resolved. The continuous hiring and firing of law firms only moved Ms. Pippin further and further away from her goal of settling the case and also caused her to incur additional costs that were not fully explained to her. For those reasons and because Respondent incrementally increased his fee with the hiring of successive law firms, he engaged in a conflict of interest in violation of Rule 4-1.7(b).

Respondent's behavior in hiring and firing multiple law firms clearly caused

a delay in the administration of justice. Although this referee does not know the terms of the confidential settlement agreement entered into by Ms. Pippin, I find that this case could have been settled much earlier in the process, which would have saved considerable time and effort on the part of the many lawyers and judges that were involved in the case. The inability of the Respondent to resolve conflicts with other attorneys and firms added to the time necessary to resolve the case and increased the cost to his client. (Excerpt 5/22/09, P-12, L-13) By this conduct, Respondent engaged in conduct prejudicial to the administration in violation of Rule 4-8.4(d).

As to Count IV

In Count IV of complaint, Respondent was charged with violating Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The Florida Bar argued that Respondent acted in a deceitful manner by intentionally withholding important information from Ms. Pippin about her case, while at the same time pursuing his own agenda for the litigation and increasing his percentage of the fee with the hiring of successive counsel. The Florida Bar also argued that Respondent was deceitful by repeatedly promising Ms. Pippin he would pay the fees of discharged attorneys out of his share, and then suing her for the maximum amount of his fee contract, which if successful would have left her with a 15 percent recovery.

The Florida Supreme Court has held that intent is a necessary element in order to find that an attorney acted with dishonesty, misrepresentation, deceit, or fraud. *Florida Bar v. Fredericks*, 731 So.2d 1249, 1252 (1999). I find no evidence that Respondent intended to deceive his client at any time. Therefore, I find him not guilty of violating Rule 4-8.4(c) because the key element of intent has not been proven.

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

I find Respondent guilty of violating Rule 4-1.5(a) (illegal, prohibited, or clearly excessive fee or cost).

As to Count II

I find Respondent guilty of violating Rule 4-1.1 (a lawyer shall provide competent representation to a client); and Rule 4-1.4(b) (a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation).

As to Count III

I find Respondent guilty of violating Rule 4-1.7(b) (conflict of interest); and Rule 4-8.4(d) (conduct in connection with the practice of law that is prejudicial to the administration of justice).

As to Count IV

I find Respondent not guilty of violating Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

IV. Recommendation as to Disciplinary Measures to Be Applied:

Suspension for a period of ninety (90) days.

Attendance at The Florida Bar's Ethics School.

V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(m)(l), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Year of Birth: 1965
Date Admitted to Bar: September 17, 1999
Prior Disciplinary convictions and Disciplinary Measures Imposed Therein: None
The referee notes that Respondent is not certified in any area of practice.

Aggravating Factors: None

Mitigating Factors:
9.32(a) absence of a prior disciplinary record;
9.32(f) inexperience in the practice of law;
9.32(l) remorse.

Giving the Respondent the benefit of a doubt, I further find as a mitigating factor that Respondent had a genuine but clearly misguided desire to obtain the resolution he thought was best for his client. (Excerpt 5/22/09, P-6, L-7)

In making this recommendation, I considered the following case law:

Florida Bar v. Maurice, 955 So.2s 535 (Fla. 2007): 90-day suspension for violating Rules 4-1.1 (failure to provide competent representation) and 4-1.7(b) (conflict of interest). Maurice provided incompetent representation by unnecessarily opening an estate. She opened an estate out of a desire to give the deceased's caretaker an opportunity to purchase the deceased's condominium, which had already been deeded to the heirs. The referee found that Maurice's duty to the heirs was limited by her interest in helping the caretaker. Maurice's improper actions delayed the transfer of the estate assets, but she did not profit from her misconduct. Maurice had no disciplinary history. The Florida Supreme Court suspended Maurice for 90 days, finding that she was motivated by "a genuine but misguided desire" to fulfill what she believed to be the deceased's wishes. Maurice was also ordered to complete several CLE programs, attend Ethics School, and reimburse the Bar's costs.

VI. Statement of Costs and Manner in Which Costs Should Be Taxed: I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs	
pursuant to Rule 3-7.6(q)(1)(I)	$1,250.00
The Florida Bar Out of Pocket Expenses:	
Referee Level:	
Investigator Costs	100.00
Bar Counsel Expenses	252.26
Copying Costs	1,423.65
Witness Expenses	72.55
Court Reporter Expense	9,647.99

TOTAL: 12,746.45

It is recommended that 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 June, 2009.

_____
Honorable John Carassas, Referee

Copies:

Karen B. Lopez, Bar Counsel, The Florida Bar, 4200 George J. Bean Pkwy., Suite 2580, Tampa, Florida 33607-1496

Richard Stuart Shankman, Respondent, c/o Stephen C. Whalen, Esq., 1108 Nebraska Ave., Palm Harbor, FL 34683-4031

Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300