

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR,
Complainant,
vs.
JOHN A. BARLEY,
Respondent.

FILED
812 JUN 21 1988
JUN 21 1988
CLERK, SUPREME COURT
By _____
CASE NO. 86-701

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule Of The Florida Bar, the following proceedings occurred:

A hearing was held in the above matter and a ruling by letter issued to counsel of record on February 25, 1988. Since that time, the undersigned has received and considered the written arguments of all parties as to appropriate discipline, and the Respondent's Motion For Reconsideration.

II. FINDINGS OF FACT:

The complaint in this cause arose from the representation of Mrs. Mary [REDACTED] by the Respondent in divorce proceedings initiated by her husband, in 1980, post-judgment proceedings, and representation in matters related thereto. One of the provisions of the property settlement agreement entered into by the parties on September 24, 1981, and approved by the court, provided that among other things, Mrs. [REDACTED] would receive a lump-sum cash settlement of \$250,000.00. It further provided that of this sum, \$200,000.00 was to be placed in a trust fund, with the appointment of three trustees, for the benefit of Mrs. [REDACTED]'s financial security. The remaining \$50,000.00 was to be

her. In fact, she has on occasion since that time employed the Respondent as her attorney in other matters.

III. Recommendations As To Whether The Respondent Should Be Found

Guilty:

I recommend that the respondent be found guilty of the following violations of the Code of Professional Responsibility:

Rule 1-102(A)(6)---(a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law).

Rule 2-106(A)---(a lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee).

Rule 2-106(C)---(a lawyer shall not enter into an arrangement for, charge or collect a contingency fee in a domestic relations matter, the payment or amount of which is contingent upon the amount of alimony or support or property settlement in lieu thereof).

Rule 5-101(A)---(except with consent of client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property or personal interest).

Rule 5-104(A)---(a lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure).

Rule 9-102(B)(4)---(a lawyer shall promptly pay or deliver to the client, as requested by a client, the funds, securities, or other properties in possession of the lawyer which the client is entitled to receive).

I recommend that the respondent be found not guilty of violating the following rules under the Code of Professional Responsibility:

Rule 1-102(A)(4).
Rule 6-101(A)(1).
Rule 6-101(A)(3).
Rule 9-102(B)(3).

IV. Recommendation As To Disciplinary Measures To Be Applied:

I recommend that respondent be disciplined by:

(a) A period of suspension from the practice of law for sixty (60) days.

(b) Payment of costs in these proceedings.

In addition, I have considered the Respondent's good attitude and genuine desire to rectify his wrongs. I am convinced that a substantial part of his misconduct was done through ignorance. I also feel that it is unlikely that the Respondent will be guilty of misconduct in the future. Although the misconduct did not involve misappropriation of funds, and no intent to defraud, he is nevertheless guilty of such serious misconduct that a short period of suspension is warranted.

V. Personal History And Past Disciplinary Record:

Prior to recommending discipline pursuant to Article XI, Rule II.06(9)(a)(4), I considered the following personal history of the Respondent, to-wit:

Date admitted to the Bar: 1969

Prior Discipline: None

VI. Statement Of Costs And Manner In Which Costs Should Be Taxed:

I find the following costs were reasonably incurred by The Florida Bar:

Grievance Committee Level

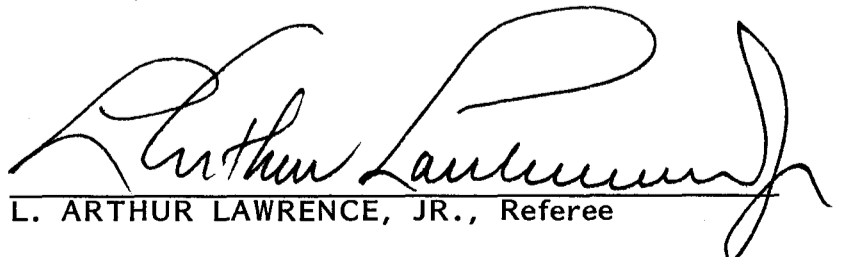
Administrative Costs, pursuant to Rule 3-7.5(k)(1), Rules of Discipline	\$ 150.00
Court Reporter and Transcripts	325.00
Bar Counsel	<u>00.00</u>
Subtotal	\$ 475.00

Referee Level

Administrative Costs, pursuant to Rule 3.7(k)(1), Rules of Discipline	\$ 150.00
Court Reporter and Transcripts	1,229.00
Bar Counsel Travel Expenses	53.60
Subtotal	<u>\$1,432.60</u>
TOTAL	\$1,907.60

It is recommended that such costs be taxed against the respondent and that interest at the statutory rate shall accrue and be payable beginning thirty (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 17th day of June, 1988.


L. ARTHUR LAWRENCE, JR., Referee

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