

IN THE SUPREME COURT OF FLORIDA
(BEFORE A REFEREE)

THE FLORIDA BAR,
Complainant,
v.
NELAN SWEET,
Respondent.

CASE NO. 67,441
(Florida Bar Case Nos.
11I84M99 and 11I85M80)

FILED
APR 7 1986
CLERK, SUPREME COURT
BY _____
Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

I was appointed as referee in this case on August 16, 1985, by order of the Chief Justice of the Supreme Court of Florida. Although the venue is Dade County, the Complainant and the Respondent stipulated and agreed that the venue should be Broward County. Accordingly, the hearing was held on March 21, 1986, in my chambers at the Broward County Courthouse.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Paul A. Gross

For the Respondent: Nelan Sweet, pro se

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED

The Respondent plead guilty to violating the Code of Professional Responsibility, Disciplinary Rule 6-101(A)(3), neglect of a legal matter entrusted to him, as to Counts I and II of the Complaint.

After considering all of the pleadings, the evidence and the guilty pleas, I find:

AS TO COUNT I

Margaret Benz died in Dade County, Florida, on or about May 8, 1980. Mary Daley, her sister, retained the Respondent during May 1980 to recover from the estate approximately \$5,900.00 she had loaned Margaret Benz. Ms. Daley told the Respondent that the only assets her sister owned were in a safety deposit box at Barnett Bank at Miami Beach. The vault wasn't opened until February 12, 1982, when the contents were inventoried. At or about this time, Marion Skipper, the daughter of the deceased, retained the Respondent to probate the estate. She and Ms. Daley agreed to this representation in order to avoid a conflict. There were numerous inquiries by the clients to the respondent concerning the status of the case, but the Respondent never did close the estate or distribute the assets. However, during February 1986, the Respondent was discharged and the clients retained Abner Solomon to represent them. Mr. Solomon reports that he had the vault opened and reported that there are no missing funds from the estate. (Bar Exhibit 1) Although I am satisfied that the Respondent did not steal anything from the estate, I do believe there was an inordinate delay, which was caused by his neglect.

The Respondent's son was murdered a few years ago and since then he has had considerable difficulty in going into the probate division of the Circuit Court. While this does not excuse Respondent's neglect, it is a mitigating factor. Also, the Respondent never received a fee from Mary Daley or Marion Skipper.

AS TO COUNT II

In concise form, the facts are as follows:

During 1976 or 1977 Belle Lazar, who fell on a dance floor, consulted with the Respondent. She was led to believe that the Respondent would represent her regarding a claim for damages. While there was no written retainer agreement, I find there was a de facto attorney-client relationship.

The statute of limitations apparently expired and the Respondent gave Belle Lazar \$500.00 from his own funds as a settlement.

Although the Respondent may have believed that there was not an attorney-client relationship, I find that there was such a relationship and that it was due to Respondent's neglect that the statute of limitations expired.

While there was a long delay, the client apparently accepted the \$500.00 as a settlement.

III. RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY

I recommend that the Respondent be found guilty of violating the Code of Professional Responsibility, Disciplinary Rule 6-101 (A) (3), as to Counts I and II of the Complaint. Although I believe the Respondent was guilty of neglecting matters that were entrusted to him, I do not believe he was guilty of any fraud.

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that the Respondent receive a public reprimand to be published in the Southern Reporter. Confidentiality is waived in accordance with Florida Bar Disciplinary Rule, article XI, Rule 11.12(1) (d).

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

The Respondent is 63 years of age and was admitted to The Florida Bar during 1949. On June 28, 1985, Grievance Committee I of the Eleventh Judicial Circuit prepared a Grievance Committee Report Recommending an Order of Private Reprimand for Minor Misconduct because Respondent neglected a legal matter that was entrusted to him. The private reprimand has been approved by The Florida Bar.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar and that said costs be charged to the Respondent:

Court Reporter Costs:

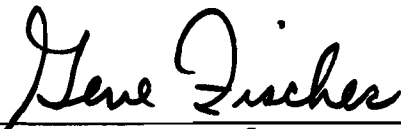
Grievance Committee Hearing	(11/28/84)	108.75
Grievance Committee Hearing	(05/29/85)	271.70
Referee Hearing	(03/21/86)	132.50
(Copies of court reporter statements are attached hereto)		

Administrative Costs:

[Fla. Bar Integration Rule, art. XI, Rule 11.06(9)(a)(5)]

Grievance Committee Level		150.00
Referee Level		150.00
Bar Counsel Travel Costs	(3/21/86)	19.35
TOTAL:		832.30

Dated this 3rd day of April, 1986.

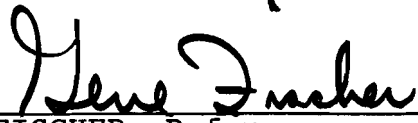


GENE FISCHER, Referee
Broward County Courthouse
201 SE 6th Street
Fort Lauderdale, FL 33301
(305) 764-4730

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Report of Referee were mailed this 3rd day of April, 1986, to the following attorneys: Paul A. Gross, Bar Counsel, The Florida Bar, 444 Brickell Avenue, Suite 211, Miami, Florida, 33131; Nelan Sweet,

Respondent, 1301 Dade Boulevard, Miami Beach, Florida, 33139; and
to John T. Berry, Staff Counsel, The Florida Bar, Tallahassee,
Florida, 32301-8226.

A handwritten signature in cursive script that reads "Gene Fischer". The signature is written in black ink and is positioned above a horizontal line.

GENE FISCHER, Referee