

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,
v.
VAUGHN C. BRENNAN,
Respondent.

Case No. 67,851
(10A85C45)

SEP 8 1986 C
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SUPPLEMENTAL BRIEF OF RESPONDENT

ROBERT T. MANN
356 Holland Law Center
Gainesville, Florida 32611
Attorney for Respondent

*10-8-86
Bar w/not be
responding to
Respondent's Supple-
mental Brief*

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STATEMENT OF THE CASE

Respondent accepts Complainant's statement of the case, except that the use of the word "attempted" and the phrase "without success" are pejorative and excessive in the light of the entire record.

POINTS INVOLVED ON APPEAL

WHETHER RESPONDENT CAN LAWFULLY AND CONSTITUTIONALLY BE DISCIPLINED FOR FAILING TO TRANSMIT A CLIENT'S DOCUMENTS TO SUCCESSOR COUNSEL PRIOR TO RECEIPT OF THE CLIENT'S AUTHORIZATION WHEN HE COULD HAVE BEEN DISCIPLINED HAD HE DONE SO.

WHETHER RESPONDENT CAN BE DISCIPLINED FOR FAILING "TO KEEP HIS CLIENT INFORMED OF HIS WHEREABOUTS," WHEN HE HAD AT ALL TIMES CORRECTLY REPORTED HIS ADDRESS TO THE FLORIDA BAR AND WAS LISTED IN THE TELEPHONE DIRECTORY, WHERE THE CLIENT ADMITS PURSUING THE MATTER DESULTORILY.

WHETHER, IF THE ANSWER TO EITHER OF THE FIRST TWO QUESTIONS IS AFFIRMATIVE, DISCIPLINE BEYOND A PRIVATE REPRIMAND IS APPROPRIATE.

ARGUMENT

WHETHER RESPONDENT CAN LAWFULLY AND CONSTITUTIONALLY BE DISCIPLINED FOR FAILING TO TRANSMIT A CLIENT'S DOCUMENTS TO SUCCESSOR COUNSEL PRIOR TO RECEIPT OF THE CLIENT'S AUTHORIZATION WHEN HE COULD HAVE BEEN DISCIPLINED HAD HE DONE SO.

It is the triviality of this case which makes it important. In it, a third disciplinary proceeding is brought against the respondent Vaughn Brennan. The first is reported at 377 So.2d 1181, and involves action taken against respondent for giving information to the trial judge without the consent of a client accused in a criminal proceeding. The respondent learned this lesson well, and when asked to transmit the client's documents by a lawyer purporting to represent, as successor counsel, a client for whom respondent had done what needed to be done (although without fully reporting to the client) he declined to do so in the absence of the client's authorization. It is indisputable that the client's authorization is a condition precedent to the obligation to surrender documents, and the record is clear that as soon as that authorization was furnished the documents were transmitted. Unfortunately, the respondent did not call as a witness his former wife, who was his secretary at the times pertinent here, because the hearing was held on the eve of the final hearing on the dissolution of marriage, and the former wife's account of the events, sent by her to this Court after the record was complete, was disallowed. Nevertheless, a fair reading of the record will support no version of the facts except that Mrs. Allred and the two attorneys involved all treated the matter desultorily. She appears to have concerned herself with it semi-annually, and the long period of time during which the matter

remained unresolved is attributable to this casual attitude on the part of all concerned.

One thing is certain: had Brennan sent the documents to Anderson promptly as requested, without Anderson's supplying the client's authorization, he would justifiably have been subject to censure. Brennan acted properly in insisting on authorization. To subject him to discipline for failing to do what he was forbidden to do would be a deprivation of due process under Article I, Section 9 of the Florida Constitution and the Fifth and Fourteenth Amendments to the Constitution of the United States.

II

WHETHER RESPONDENT CAN BE DISCIPLINED FOR FAILING "TO KEEP HIS CLIENT INFORMED OF HIS WHEREABOUTS," WHEN HE HAD AT ALL TIMES CORRECTLY REPORTED HIS ADDRESS TO THE FLORIDA BAR AND WAS LISTED IN THE TELEPHONE DIRECTORY, WHERE THE CLIENT ADMITS PURSUING THE MATTER DESULTORILY.

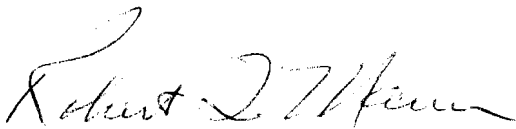
While it is true that Brennan did not notify Mrs. Allred of his change of address, he did notify the Florida Bar and was at all times listed in the telephone directory. Mrs. Allred concedes that she did not diligently pursue Brennan after finding that he had moved from his former office. Although Brennan was not diligent in returning Anderson's calls, Anderson's testimony shows that Brennan did not simply disappear. The evidence of a failure demanding discipline in this regard is lacking. The record demonstrates compliance with Fla. Bar Integ. Rule, art. 2, Section 6. Disciplining respondent on this record violates his right to due process under Article I, Section 9 of the Florida

Constitution and the Fifth and Fourteenth Amendments to the Constitution of the United States.

III

WHETHER, IF THE ANSWER TO EITHER OF THE FIRST TWO QUESTIONS IS AFFIRMATIVE, DISCIPLINE BEYOND A PRIVATE REPRIMAND IS APPROPRIATE.

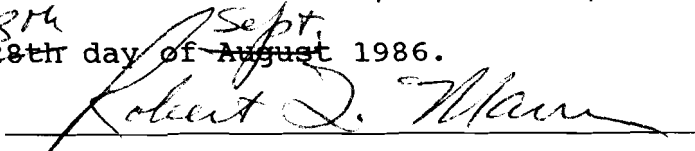
Any fair reading of this record will show that Brennan is being disciplined in this matter primarily for having been disciplined before. This is a case in which successor counsel should have furnished the client's authorization for transfer of the file without Brennan's requesting it. When the matter was brought to the attention of the grievance committee it should have been handled under Rule 11.04(6)(a), with the committee admonishing both lawyers that they should have improve this particular aspect of their practices. At the most, private reprimand under Rule 11.04(6)(c) would be appropriate except for the portion of that rule which rules out this sensible resolution for a lawyer who has been subject to discipline with the past ten years. Under the circumstances of this case, the request of the Florida Bar for punishment more severe than recommended seems inordinately punitive. Indeed, the appropriate resolution of the matter should be a private reprimand, which this Court may administer pursuant to Rule 11.10(2), if discipline is found to be appropriate in this case at all.


ROBERT T. MANN
356 Holland Law Center
Gainesville, Florida 32611
(904) 392-2211

Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing supplemental brief of respondent has been furnished to John F. Harkness, Jr., Esquire, Executive Director, The Florida Bar, Tallahassee, Florida 32301; John T. Berry, Esquire, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301 and to David G. McGunegle, Esquire, Bar Counsel, The Florida Bar, 605 E. Robinson St., Suite 610, Orlando, Florida 32801, this ^{8th} 28th day of ^{Sept.} ~~August~~ 1986.


Robert D. Mann