

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
JAN 2 1987
By [Signature]
Deputy Clerk

THE FLORIDA BAR,)
Complainant,)
v.)
EDWARD J. WINTER, JR.)
Respondent.)

CONFIDENTIAL

The Florida Bar File Nos.
11G85M26, 11G85M27,
11G85M28, 11G85M30,
11G85M31, 11G85M32

Supreme Court Case
No. 68,541

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 article XI of the Integration Rule of The Florida Bar, a Final Hearing was held on December 23, 1986. All of the pleadings, notices, motion, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Louis Thaler
Suite 211, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131
(305) 377-4445

For Respondent: H. Mark Purdy
Sams & Purdy
500 East Broward Boulevard
Suite 1450
Ft. Lauderdale, Florida 33301
(305) 765-5427

Before me is a Stipulation for Unconditional Guilty Plea for Consent Judgment of Public Reprimand (hereinafter referred to the "Stipulation"), which sets forth:

1. That on or about April 4, 1986, The Florida Bar filed a seven-count Complaint against Respondent in the Supreme Court of Florida, duly assigned Case No. 68,541.

2. That on or about April 16, 1986, the Supreme Court of Florida appointed the Honorable Miette K. Burnstein to act as Referee with regard to these proceedings.

3. That the Final Hearing of this case was set for September 10, 1986, but was continued upon request of Respondent.

4. That the Final Hearing of this case was re-set for October 3, 1986, but was continued upon request of Respondent, who was experiencing medical problems.

5. That the Final Hearing of this case was again re-set for November 6, 1986, but was continued upon request of Respondent, who was still experiencing medical problems and who represented that he had to undergo surgery.

6. That the Final Hearing of this case was again re-set for December 23, 1986.

7. That on or about December 17, 1986, Respondent contacted H. Mark Purdy, Esq. to act as Counsel at the Final Hearing set for December 23, 1986.

8. That on or about December 17, 1986, Respondent's Counsel contacted Louis Thaler, Bar Counsel, regarding the resolution of this case.

9. That both parties are aware of the Supreme Court of Florida's opinion in The Florida Bar v. Fields, 482 So.2d 1354 (Fla. 1986) (The Supreme Court held that dereliction in failing to reach fee agreements with clients before representing them, in failing to communicate with clients concerning their legitimate concerns and questions on fees, and in failing to properly supervise non-lawyer employees warrants public reprimand).

10. That Respondent's unconditionally pleads guilty to violating Disciplinary Rules 1-102(A)(5) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice) and 1-102(A)(6) (A lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law) of the Code of Professional Responsibility as alleged in all counts of The Florida Bar's Complaint.

11. That Respondent admits that, in all instances alleged in The Florida Bar's Complaint, Respondent should have been more zealous in avoiding controversies as to the amounts of fees with his clients.

12. That, consistent with the Fields case, Respondent is willing to accept a Public Reprimand to be published in the Southern Reporter and pay the costs of these proceedings.

13. That the Public Reprimand is consistent with the recommendation of The Florida Bar.

14. That both parties understand that this Stipulation must be approved by the Referee and then the Supreme Court of Florida.

15. That both parties believe that the disposition of this case is in accord with the Fields case.

II. GENERAL FINDINGS OF FACT: Based on the Stipulation, I find that the facts are as stated within The Florida Bar's Complaint, which sets forth:

(The Florida Bar Case No. 11G85M27)

1. That Respondent, Edward J. Winter, Jr., is and at all times hereinafter mentioned was, a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. That during or about 1983, Respondent was retained by [REDACTED] (hereinafter referred to as "[REDACTED]") and his daughter, [REDACTED] (hereinafter referred to as [REDACTED]), to represent them in a child custody action in order to regain custody of [REDACTED]'s young daughter.

3. That Respondent had no written fee agreement with [REDACTED] or [REDACTED] but alleges that [REDACTED] had agreed to pay the costs and disbursements and [REDACTED] promised to do typing and copying for the National Society of Fathers, United Fathers for Equal Rights and Fathers Demanding Equal Justice, organizations which Respondent represents.

4. That the child custody action was set in the jurisdiction of the State of Tennessee.

5. That [REDACTED] advanced sixty dollars to Respondent, in addition to paying process servers in Tennessee.

6. That thereafter, Respondent and [REDACTED] had a dispute as to the amount of Respondent's legal fees.

7. That Respondent alleges that his legal fees were worth between \$5,000.00 and \$15,000.00.

8. That Respondent assigned his cause of action for legal fees alleged to be owing from [REDACTED] and [REDACTED] to a nonlawyer, Lou Bass (hereinafter referred to as "Bass").

9. That on or about November 21, 1983, Bass filed a Statement of Claim as assignee, in Dade County Court in the amount of \$256.00 against [REDACTED] and [REDACTED], Case No. 83-22244-SP-05.

10. That Respondent acted as counsel for Bass as assignee of the cause of action against [REDACTED] and [REDACTED].

11. That presiding County Court Judge Harvey L. Goldstein considered the lawsuit a "questionable cause of action" and refused to proceed further with the case.

(The Florida Bar Case No. 11G85M30)

12. That during or about 1983, Respondent was retained by [REDACTED] (hereinafter referred as to [REDACTED]) to perform legal work for [REDACTED]'s business, "[REDACTED]".

13. That thereafter, Respondent and [REDACTED] had a dispute as to the amount of Respondent's legal fees.

14. That Respondent assigned his cause of action against [REDACTED] as an account receivable to a non-lawyer, Ann Rose (hereinafter referred to as "Rose").

15. That on or about November 18, 1983, Rose, assignee, care of Respondent, filed a Statement of Claim for "attorney fee and costs" in the amount of \$125.00 against [REDACTED] d/b/a [REDACTED] in Dade County Court, Case No. 83-22422-SP-05.

16. That there existed an agreement between Rose and Respondent in which Rose was to receive a percentage of any amount recovered by the lawsuit against [REDACTED].

17. That Respondent was acting as the attorney for Rose.

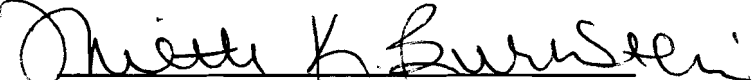
Further, the Fields Case, being a 1986 decision, has only recently made clear the guidelines in which an attorney should avoid controversies as to fees with clients.

Accordingly, based on the Stipulation and the Fields case, I recommend that Respondent receive a Public Reprimand. I also specifically recommend that this Public Reprimand, unlike Respondent's past disciplinary record, be published in the Southern Reporter.

V. RECOMMENDATION AS TO COSTS: I find the following costs to have been reasonably incurred by The Florida Bar.

Grievance Committee Level	
Administrative Charge	
[Rule 11.06(9)(a)(5)]	\$ 150.00
Transcript	
June 18, 1985	413.95
Referee Level	
Administrative Charge	
[Rule 11.06(9)(a)(5)].....	<u>150.00</u>
	\$ 713.95
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Respectfully submitted this 23 day of Dec,
1986.



MIETTE K. BURNSTEIN
Referee
Broward County Courthouse
201 S.E. 6th Street, Room 1030
Ft. Lauderdale, Florida 33301

cc: Louis Thaler,
Bar Counsel
H. Mark Purdy,
Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee, along with all pleadings, notices, motions, orders, exhibits and transcripts has been sent to Sid J. White, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and a true and correct copy of the Report of Referee has been sent to Louis Thaler, Suite 211 Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131, and to H. Mark Purdy, Counsel for Respondent, Sams & Purdy, 500 East Broward Boulevard, Suite 1450, Fort Lauderdale, Florida 33301, on this 23 day of Dec, 1986.


MIETTE K. BURNSTEIN
Referee