

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

CASE NO. 67,875

v.

J.B. HOOPER,
Respondent.

COMPLAINANT'S BRIEF

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SYMBOLS AND REFERENCES

In this Brief, the Complainant, The Florida Bar, will be referred to as "The Bar"; Respondent, J.B. Hooper, will be referred to as "Respondent". "Suncoast" will refer to Suncoast Service Center, Inc.

The Disciplinary Rules of the Code of Professional Responsibility will be referred to as the Disciplinary Rules. The symbol "R" will denote the records of the final hearing held March 14, 1986, and March 21, 1986, while the symbol "Ref" will denote the Report of the Referee attached in the appendix to this Brief.

STATEMENT OF THE CASE AND FACTS

Ms. Bonnie Rodriguez complained to The Florida Bar on March 6, 1985, regarding certain actions of the Respondent; See Exhibit 7 of The Florida Bar. Ms. Rodriguez complained that Respondent had contracted with the company of which she is president, Suncoast Service Center, Inc., for the installation of a central air conditioning system into a residence owned by Respondent. Ms. Rodriguez further complained that Respondent had failed to pay for the contracted work upon completion as agreed and that she had found it necessary to retain an attorney to collect the funds, that Respondent had contacted her agent personally after receiving a letter from Suncoast's attorney regarding the matter, failed to appear at a deposition, and wrote letters to agencies in an attempt to harass Suncoast. It also appeared that Respondent had fraudulently identified himself as the dealer and salesman of the air conditioning equipment on a rebate form in order to receive a rebate from Tampa Electric Company.

After probable cause was found on July 12, 1985, by the Thirteenth Judicial Circuit Grievance Committee "B", a complaint was filed on November 8, 1985, charging violations of Disciplinary Rules of the Code of Professional Responsibility of The

Florida Bar, Rules 1-102(A)(4), 1-102(A)(6), and 7-104(A)(1), and Rule 11.02(3)(a) of The Florida Bar Integration Rules, Article XI. The Bar charged the facts outlined above as well as the fact that Respondent had threatened to sue Suncoast unless they agreed to his settlement offer which included withdrawing the complaint with The Florida Bar, R-21 and Exhibit 1 of March 14, 1986, of The Florida Bar. The Supreme Court of Florida appointed The Honorable Gerard J. O'Brien, Circuit Judge of Pinellas County, Florida, as Referee.

Respondent filed a Motion to Dismiss on December 30, 1985, which alleged that The Bar's complaint was improper and that The Florida Bar and the grievance committee had not acted properly. The Bar filed a Response to the Motion to Dismiss on January 8, 1986, and the Respondent filed an Addendum to Motion to Dismiss on February 11, 1986. A hearing on this matter was held on February 11, 1986, at the conclusion of which the Referee denied the Motion to Dismiss. The final hearing was held on March 11, 1986, and March 21, 1986, in Tampa, Florida.

In his Referee's Report dated June 27, 1986, the Referee found the Respondent had violated Disciplinary Rule 7-104(A)(1) which states an attorney shall not:

Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

The Referee found that Respondent had violated this rule by telephoning Suncoast Service Center, Inc., after he had received a letter from Suncoast's attorney demanding payment for the air conditioning installation. As Respondent admitted at final hearing, he telephoned Suncoast in immediate reaction to his receipt of the letter, R-310-312. During the phone call, Respondent spoke to Mr. Jim Alexander, an agent of Suncoast, and advised him that if Suncoast attempted to sue him for the amount owed Suncoast would regret it since he, Mr. Hooper, would protract the litigation for years. See Mr. Alexander's deposition of March 17, 1984, pages 60-61, The Florida Bar Exhibit 8 of March 14, 1986.

The Referee further found that Respondent failed to appear at a deposition scheduled in the civil litigation between Suncoast and himself on January 18, 1984, without good cause, Ref-4. Further, the Referee found that the Respondent has misrepresented himself on a rebate application to Tampa Electric Company to obtain a rebate on the air conditioning equipment

installed by Suncoast. Respondent misrepresented himself as the dealer and the salesman of the equipment on the application although, as the Referee noted, Suncoast was clearly the dealer and the salesman.

The Referee further found that the Respondent took other actions in the lawsuit which reflected adversely on his fitness to practice law. After Respondent prevailed on the civil suit in Circuit Court between himself and Suncoast he mailed a thank you card along with a copy of the rebate check from Tampa Electric Company and the Order granting his Motion for Summary Judgment to Suncoast's attorney. Respondent freely admits doing so and apparently sees nothing wrong with the action. In fact, Respondent stated under oath that he would have done more than this if possible, R-313. The Referee noted, "Such actions, apparently in an effort to "gloat" over a perceived victory, reflect poorly on any attorney's judgment as well as the Bar as a whole. Such conduct is clearly violating Disciplinary Rule 1-102(A)(6) for conduct reflecting adversely on Respondent's fitness to practice law". Ref-4.

Finally, the Referee found that after Suncoast had retained new counsel to represent them in this matter and complained to

The Florida Bar regarding the Respondent, the Respondent threatened Suncoast with further lawsuits unless Suncoast withdrew their grievance against him with The Florida Bar and continued to threaten further lawsuits against Suncoast in pleadings to the Referee, Ref.-6. The Referee found the above in violation of the Integration Rules, Article XI, Rule 11.02(3)(a) and Disciplinary Rule 1-102(A)(6).

The Referee noted that Respondent's misconduct was apparently the result of protracted mechanics lien litigation in which Respondent represented himself over the original air conditioning installation contract which had totalled \$3,021.00. Suncoast's original attorney was also disciplined for ethical violations concerning the excessive fees he charged Suncoast for the litigation against Mr. Hooper.

SUMMARY OF ARGUMENT

The Florida Bar seeks review of the discipline recommended by the Referee. The Referee in this case recommended that Mr. Hooper be placed on probation for one year, or in the alternative be suspended for three months. The Florida Bar believes that the latter of these two rather discrepant alternatives is appropriate.

Nothing less than a ninety day suspension would serve the purpose of attorney discipline in this case. The facts regarding Respondent's violations, outlined in the Statement of the Case and Facts, supra, show multiple violations of the Disciplinary Rules of the Code of Professional Responsibility of The Florida Bar and The Florida Bar Integration Rules, Article XI. Respondent's behavior was not an isolated instance of poor judgment, but rather a series of incidents apparently calculated to harass another party. It is well settled by this Court that multiple violations warrant more serious discipline than would a single violation. Respondent's violations include personally contacting an opposing party known to be represented by counsel to threaten to deliberately protract litigation, intentionally failing to appear at a deposition, obtaining a rebate by misrepresentation,

mailing a copy of the rebate and a court order with a thank you card to opposing counsel, and threatening to sue the same party if their complaint against him with The Florida Bar was not withdrawn. Respondent's attitude, expressed at final hearing, was that he would have liked to do more than the above if possible. Further, Respondent continued to threaten the other party with further lawsuits if they took part in these proceedings in pleadings before the Referee.

The facts of the multiple violations warrant nothing less than a three month suspension to serve the purpose of attorney discipline.

ARGUMENT

POINT ONE

NOTHING LESS THAN A NINETY DAY SUSPENSION IS APPROPRIATE IN THIS CASE INVOLVING MISREPRESENTATION FOR MONETARY GAIN, CONTACTING AN OPPOSING PARTY HE KNOWS TO BE REPRESENTED BY COUNSEL, THREATENING FURTHER LAWSUITS AGAINST A PARTY IF THEY DID NOT WITHDRAW THEIR GRIEVANCE AGAINST HIM WITH THE FLORIDA BAR, AND OTHER ACTIONS REFLECTING ADVERSELY ON RESPONDENT'S FITNESS TO PRACTICE LAW.

This Court has clearly outlined the goals of attorney discipline. In The Florida Bar v. Lord, 433 So.2d 986 (Fla. 1983), this Court stated:

Discipline for unethical conduct by a member of The Florida Bar must serve three purposes; First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations; at 986.

In The Florida Bar v. Larkin, 447 So.2d 1340, 1341 (Fla. 1984) this Court noted another important purpose, that of

protecting a favorable image of the legal profession by imposing visible and effective discipline for serious violations.

Individual consideration is necessary to carry out the above purposes in each case since each discipline case has a different fact pattern. In the case at hand, multiple violations are involved as set out in the Referee's Report and Statement of Facts of this Brief, supra. A summary of these violations as quoted from the Referee's Report includes:

1. Respondent evaded or refused requests from Suncoast for payment and Suncoast found it necessary to retain counsel to represent them in this matter. (Record at p. 54-56, 58-61) Suncoast's attorney wrote Respondent a letter indicating his representation of Suncoast and demanded payment, Exhibit 4 of The Florida Bar.
2. After receiving the letter marked as Exhibit 4 of The Florida Bar, Respondent admits that he telephoned Suncoast directly and spoke to Suncoast's agent, Jim Alexander, regarding the matter, see paragraph 6 of the Respondent's Answer to Complaint filed March 4, 1986, and the record, pages 62, 65, 310-312.
3. Respondent admits that he has never paid Suncoast any money for the contracted installation although he did offer to settle for \$2,700.00 which was rejected at the start of the case. (Record at p.68) Respondent further admits that, although only a few hundred dollars worth of problems were involved (Record at p. 259) his legal research convinced him that he could win the lawsuit (Record at. 263). After finding that the law provided for attorney's fees to the prevailing party (Record at p. 264) he became determined to win the lawsuit in order to a-

void being assessed attorney fees involving Mr. Andrew J. Mirabole. It is not contended that his decision subjected himself to expend efforts on his own behalf in litigation of this matter. Mr. Mirabole later withdrew from representation of Suncoast and sued Suncoast for attorney fees in the amount of \$25,000.00. This was after Suncoast lost its suit against Hooper in the Circuit Court on a Partial Summary Judgment, Ref-3.

The Referee found the above, which should be noted in conjunction with the Referee's complete findings of fact, in violation of Disciplinary Rule 7-104(A)(1) for communicating on the subject of his representation with a party he knows to be represented by a lawyer in that matter without prior consent or authorization and in violation of Disciplinary Rule 1-102(A)(6) for conduct reflecting adversely on his fitness to practice law. Further,

4. Respondent admits that he failed to appear at a deposition scheduled in the civil litigation between Suncoast and himself.
5. Respondent admits that he received a rebate of \$426.50 from Tampa Electric for the equipment installed by Suncoast. (Respondent's Answer to Complaint of March 4, 1986, and R-313). The rebate form, in evidence as Exhibit 5 of The Florida Bar, clearly provides that the dealer, sales representative, and buyer of the equipment are to be specifically identified. This is due to the fact that a dealer and sales representative would receive a portion of the rebate. The application form for the rebate shows clearly

that the Respondent attempted to represent himself as both the dealer and the salesman of the equipment. It is undisputed and obvious that the dealer and salesman of the equipment were Suncoast, who refused to apply for the rebate since they had never been paid for the equipment, Ref-4.

The Referee found the above in violation of the Integration Rule of The Florida Bar, Article XI, Rule 11.02(3)(a) for conduct contrary to honesty, justice, good morals; Disciplinary Rule 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and Disciplinary Rule 1-102(A)(6) for conduct reflecting adversely on his fitness to practice law. Further,

6. Respondent freely admits to mailing a thank you card along with a copy of the check from the Tampa Electric Rebate and the Order from the Circuit Court granting his Motion for Summary Judgment to Suncoast's attorney shortly after the motion was granted, Respondent's Answer to Complaint, 15. In fact, Respondent apparently sees nothing wrong with such action and has stated under oath that he would have done more than this if possible, R-313. Such actions, apparently in an effort to "gloat" over a perceived victory, reflect poorly on any attorney's judgment as well as the Bar as a whole. Such conduct is clearly a violation of Disciplinary Rule 1-102(A)(6) for conduct reflecting adversely on his fitness to practice law.
7. The final allegation against Respondent in Count Two involves threats and demands made by Respondent towards Suncoast. Respondent wrote a letter to Suncoast's attorney who had filed a subsequent suit in County Court, in which Respondent stated that he would file additional lawsuits against Suncoast unless they dismissed the County Court claim, Exhibit

1 of The Florida Bar. Further, in violation of ethical standards, was Respondent's last condition: that Suncoast "withdraw" their pending complaint against him with The Florida Bar. It is clearly stated in Article XI, Rule 11.02(4) of the Integration Rules of The Florida Bar, which all attorneys are sworn to abide, that the complainant is not a party to the disciplinary proceedings and that an investigation will not be waived because of settlement, Ref-5.

The Referee found the above in violation of Integration Rule, Article XI, Rule 11.02(3)(a) as well as Disciplinary Rule 1-102(A)(6).

It is the position of The Florida Bar that while any of the above outlined violations occurring alone would warrant significant discipline, the fact that there are so many violations warrants nothing less than the ninety day suspension recommended as one alternative by the Referee.

In The Florida Bar v. Bennett , 276 So.2d 481 (Fla. 1973) this Court suspended the respondent for one year for failing to promptly pay taxes and misrepresenting a transaction to a group of investors. As in the case at hand, Respondent's violations were not related to clients. The Court stated:

Some may consider it "unfortunate" that attorneys can seldom cast off completely the mantle they enjoy in the profession and simply act with simple business acumen and not be held responsible under the high standards of our

profession. It is not often, if ever, that this is the case. In a sense, "an attorney is an attorney is an attorney", much as the military officer remains "an officer and a gentleman" at all times. We do not mean to say that lawyers are to be deprived of business opportunities; in fact, we have expressly said to the contrary on occasion; but we do point out that the requirement of remaining above suspicion, as Caesar's wife, is a fact of life for attorneys. They must be on guard and act accordingly, to avoid tarnishing the professional image or damaging the public which may rely upon their professional standing, at p. 482.

In The Florida Bar v. Adams, 453 So.2d 818 (Fla. 1984) this Court also suspended an attorney for sixty days for ethical violations involving nonclients. The attorney failed to notify a business partner of the sale of property and further failed to make a timely accounting of the funds received from the sale.

The Florida Bar v. Davis, 373 So.2d 683 (Fla. 1979) also involved discipline to an attorney whose ethical violations did not involve an attorney-client relationship. The respondent in this case was publicly reprimanded for his conduct associated with his handling of the funds of another businessman involved in a real estate transaction with him.

In The Florida Bar v. Shapiro, 413 So.2d 1184 (Fla. 1982) this Court found the respondent guilty of misconduct regarding a number of different violations, as in the case at hand. The court

noted that the respondent's violations which included communicating an offer of settlement directly to an adverse party knowing that party is represented by counsel, placing trust funds of clients' in a general account, engaging in law practice under a trade name, making an employee's salary contingent upon how much money his legal clinic received in fees, and electing a nonlawyer as secretary of a legal clinic. The court suspended the attorney for three months and one day, making proof of rehabilitation mandatory. It is well settled that discipline has a cumulative effect, The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1983); The Florida Bar v. Reese, 421 So.2d 495 (Fla. 1982); and The Florida Bar v. Kirtz, 445 So.2d 576 (Fla. 1984). In Kirtz, the attorney was found guilty of multiple violations which this court treated as cumulative requiring more serious discipline, at 577.

The Respondent has apparently failed to take heed of the importance of strict ethical adherence and has yet to acknowledge wrongdoing in the present case. A suspension is warranted in order to effectuate the purpose of protecting the public is especially necessary where respondent uses his status and legal knowledge gained as an attorney to his advantage in threatening a nonlawyer party to a service contract, as in the case at hand.

Secondly, a ninety day suspension is fair to the respondent to punish the breach as well as encourage rehabilitation and reform. This is particularly required in this case where the respondent has yet to acknowledge wrongdoing and continued to threaten the party who complained to The Florida Bar in pleadings before the Referee. Lastly, deterrence of other attorneys is important in this public case as is the protection of a favorable image of The Florida Bar in the eyes of the public.

CONCLUSION

WHEREFORE, the Board of Governors of The Florida Bar respectfully prays that this Honorable Court will review the Referee's findings and recommendation; approve the findings of fact and recommendation of guilt, order that respondent be suspended for ninety days as recommended as an alternative by the Referee, and pay costs in these proceedings currently totalling \$ 1721.69.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing Complainant's Brief has been furnished by ordinary U.S. mail to the Supreme Court of Florida, the Supreme Court Building, Tallahassee, Florida, 32301; a copy of the foregoing was mailed by ordinary U.S. mail to J.B. Hooper, Respondent, at Post Office Box 1891, Tampa, Florida, 33601; and a copy has been furnished by ordinary U.S. mail to Staff Counsel, The Florida Bar, Tallahassee, Florida, 32301, on this 6th day of August, 1986.



Jan K. Wichrowski
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