

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

CASE NO. 70,376

v.

The Florida Bar Case No.
86-20,219 (17A)

STUART L. STEIN,

Respondent.

REPORT OF REFEREE

1. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to The Florida Bar Integration Rule, Article XI, hearings were held on the following dates: Motion Hearing on December 4, 1987. Final Hearings on April 15, 1988 and April 20, 1988.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - Jacquelyn P. Needelman

For the Respondent - Stuart L. Stein and Joseph S. Karp

11. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

1. The Respondent, Stuart L. Stein, 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. On or about June 14, 1985, Respondent, in his capacity as an attorney, was retained by Frances and Tammy Wilson, mother and daughter, to obtain an injunction against Broward County to prohibit County officials from obtaining a cash bond before allowing the Wilsons to sell fireworks within the County.

3. On or about June 14, 1985, Respondent prepared, and the Wilsons signed, a retainer agreement whereby the Wilsons agreed to pay to Respondent the sum of \$5,000 for legal services, a fee which this Court finds to be reasonable.

4. Respondent included a provision in the agreement which stated: We agree to pay said law firm the sum of \$5,000 (five thousand dollars) as a non-refundable retainer, plus costs. Alternatively, if we do not have sufficient funds to pay said retainer, we agree to transfer to Stuart L. Stein, P. A. fireworks for their wholesale value of \$10,000 (tenthousand dollars) to secure said payment.

5. The agreement that Respondent prepared failed to make it clear the date by which the Wilsons had to pay the Respondent his retainer to avoid the Respondent taking their fireworks in lieu of a paid fee.

6. Pursuant to a verbal understanding between the parties, on or about June 14, 1985, Respondent instructed his agent, one Hank Reiter, to meet the Wilsons at the warehouse that the Wilsons had leased for a limited period and wherein only the fireworks in question and no other objects of importance were stored.

7. On or about June 14, 1985, Hank Reiter met with the Wilsons at their warehouse and placed a lock of his own on the warehouse beside the Wilsons' lock. The Wilsons retained the key to their lock and Mr. Reiter retained the key to his lock.

8. Prior to the warehouse being locked, Hank Reiter, a former police officer and private investigator retained by the Respondent and the Respondent's only agent at the scene, looked in the warehouse and took photographs of the interior of the warehouse showing the cartons, but did not take an itemized inventory.

9. The Respondent had a duty when he took his clients' fireworks as collateral to issue to them a full receipt telling them everything that he received and the Respondent failed to do so and failed to maintain complete records of all properties of a client and, accordingly, was unable to render an appropriate accounting to his clients.

10. On or about July 2, 1985, Respondent had a locksmith forcibly remove the Wilsons' lock off of the Wilsons' warehouse and seized the fireworks inventory without the Wilsons' authorization or knowledge.

11. On July 4, 1985, Respondent sold a portion of the aforementioned seized inventory to his clients biggest competitor for a price below wholesale value.

12. On July 4, 1985, the Wilsons tendered to Respondent the sum of \$5,000 and took possession of part of the remaining fireworks inventory which Respondent had moved to his law office.

13. This Referee finds that the action of the Respondent in deciding to use self help when he thought he was going to not be paid in full on his fee, and going to the warehouse of another and taking a locksmith with him and drilling off the lock of his client that was on his clients' warehouse door to obtain the collateral that had been placed up to guarantee his fee, was conduct completely adverse and reflecting on his ability to serve as an attorney.

14. Before he arrived at this self help, the Respondent had a duty to advise, clearly and unequivocally, the Wilsons of the fact that if you do not pay the fee by "X" date, I, the lawyer, am going to take possession of the fireworks in the warehouse and sell same. Respondent talked to his clients, The Wilsons, telephonically on July 2, 1985, he talked to them on July 3, 1985, and he talked to them on July 4, 1985. Given Mr. Stein's testimony that he did not talk to Mrs. Wilson until after he had already sold the material on the 4th, he still should have told her I have sold it. When she called and said I have the \$5,000 fee, I want to come and get my material, he should have said I have already sold "X" number of dollars worth, the remainder is in my office. He should have advised Mrs. Wilson on July 2nd and on the 3rd when he spoke to her that I am preparing to sell your property tomorrow morning or day after tomorrow when he had made arrangements to sell the material.

15. This Referee finds that the Respondent had no right to the Wilsons' fireworks until after July 4, 1985, and not until he had given them notice.

16. This Referee finds against the Respondent on his affirmative defenses.

111. Recommendation as to Whether or Not the Respondent Should Be found Guilty: As to the complaint, I make the following recommendations as to guilt or innocence:

I recommend that the Respondent be found guilty of having violated Disciplinary Rules 1-102(A) (6) [a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law] and 9-102(B) (3) [a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them] of the Code of Professional Responsibility.

I recommend that the Respondent be found not guilty of having violated Disciplinary Rules 1-102(A) (4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation], 1-102(A) (6) [a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law], 5-101(A) [except with the consent of his 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 interests] and 9-102(B) (2) [a lawyer shall identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safe keeping as soon as practicable] of the Code of Professional Responsibility and Florida Bar Integration Rule, article XI, Rules 11.02 (3)(a) [the commission by a lawyer of any act contrary to honesty, justice or good morals constitutes cause for discipline] 11.02(3 (b) [if the alleged misconduct constitutes a felony or misdemeanor, The Florida Bar may initiate disciplinary action] and 11.02(4) (b) [preservation of records pertaining to the property of a client].

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the Respondent be suspended for a period of **six** (6) months and make restitution in the amount of \$6,900 to **Mr.** Thomas Rushing who is the supplier of the fireworks that were the subject of this proceeding.

V. Personal History and Past Disciplinary Record:

Age: 41

Date admitted to **The Florida Bar:** September 15, 1977

Prior disciplinary convictions and measures imposed therein:

(1) On June 6, 1985, in Case No. 63,669, Respondent received a public reprimand for violation of Disciplinary Rule 6-101(A)(2) .

(2) Also on June 6, 1985, in Case Numbers 63,413 and 65,878, Respondent was publicly reprimanded and suspended from the practice of law for ten (10) days for violation of Disciplinary Rules 1-102(A) (6) and 6-101(A) (3).

(3) On March 13, 1986, Respondent received a public reprimand and probation for a period of three (3) years in Case No. 66,602, for violation of Disciplinary Rule 6-101(A) (3) .

VI. Statement of Costs and Manner in Which Cost Should be Taxed: I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs	\$ 300.00
Court Reporter Costs (excluding final hearings held in April 15, 1988 and April 20, 1988)	924.60
Witness Fees	<u>99.00</u>
SUB TOTAL	\$1,323.60
Court Reporter Costs for April 15, 1988 and April 20, 1988	\$
TOTAL	\$

It is recommended that all such costs and expenses be charged to the Respondent.

DATED this _____ day of _____, 1988.

ELLEN J. MORPHONIOS
Referee

Copies furnished to:
Jacquelyn P. Needelman, Bar Counsel
Stuart L. Stein, Respondent
Joseph S. Karp, Esquire