

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,)
Complainant,)
v.)
DAVID J. MAICHACK,)
Respondent.)

The Florida Bar Case
Nos. 11D85M66, 11D86M47
11D86M82, 11D87M18

FILED
Supreme Court Case
No. 70,535

AUG 12 1987

REPORT OF REFEREE, SUPREME COURT

By _____
Deputy Clerk

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 Rule 3-7.5 of the Rules Regulating The Florida Bar (article XI, Rule 11.06 of the Integration Rule of The Florida Bar), a Final Hearing was held in chambers on July 23, 1987. All of the pleadings, transcripts, notices, motions, orders and exhibits are forwarded with this report and the foregoing constitutes the record of the case.

The following attorneys acted as counsel for the parties:

For The Florida Bar: Louis Thaler
211 Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

For the Respondent: No appearance

This matter was set for Pre-trial Conference on June 25, 1987 and subsequently for Final Hearing on July 23, 1987. Respondent has made no appearance before this Referee despite adequate notice pursuant to Rules 3-7.10(b) and (c) of the Rules of Discipline of The Florida Bar. I note that, according to an affidavit submitted by Bar Counsel from the Custodian of Membership Records of The Florida Bar, Respondent's Record Bar Address since January 5, 1984 has been 285 Sunrise Drive, Apartment 30, Key Biscayne, Florida 33149. Further, Bar Counsel has advised me of his office's unsuccessful

attempts to reach Respondent by regular mail, certified mail, telephone and investigator contact.

Since Respondent has made no appearance, I have ruled that he has waived any objection to venue and has waived the confidentiality of these proceedings.

II. FINDINGS OF FACT: Upon Bar Counsel's Motion for Order Deeming Matters Admitted and this Referee's review of the file which indicated no response to The Florida Bar's Request for Admissions, I entered an Order Deeming Matters Admitted on July 9, 1987. Accordingly, and based on various exhibits introduced by Bar Counsel, I find the following facts as contained in The Florida Bar's complaint:

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

COUNT I
(The Florida Bar File No. 11D86M47)

2. That on or about April 8, 1985, [REDACTED] [REDACTED] (hereinafter referred to as [REDACTED]) retained Respondent to prepare her tax return for the year 1984.

3. That on or about April 15, 1985, Respondent advised [REDACTED] that he requested an extension of time from the Internal Revenue Service in which to file [REDACTED]'s tax return.

4. That on or about June 14, 1985, after several requests by [REDACTED] Respondent presented [REDACTED] with an allegedly complete tax return for her signature.

5. That Respondent advised [REDACTED] he would mail the tax return that same day of June 14, 1985, and that she would receive a copy within a week.

6. That [REDACTED] paid Respondent \$150.00 on June 14, 1985, per an oral arrangement made between them on April 8, 1985, the date [REDACTED] retained Respondent.

7. That despite repeated requests by [REDACTED] thereafter, Respondent never sent her a copy of her return.

8. That on or about November 7, 1985, [REDACTED] received a letter from the Internal Revenue Service informing her that a tax return for 1984 was not received.

9. That Respondent failed to file the tax return for [REDACTED] although he was entrusted to do so.

COUNT II
(The Florida Bar File No. 11D87M18)

10. That during or about 1984, [REDACTED] (hereinafter referred to as [REDACTED]) retained Respondent to represent him in a lawsuit filed against [REDACTED] by Cafar Corporation.

11. That [REDACTED] tendered all documents relating to the lawsuit to Respondent.

12. That [REDACTED] had retained Respondent on approximately five other occasions, had known him for approximately three years, and therefore did not have a formal fee arrangement with him.

13. That although there was no formal fee arrangement, [REDACTED] paid Respondent approximately \$2,000.00 for legal services in connection with the lawsuit.

14. That [REDACTED] assumed Respondent was handling the defense of the lawsuit although he had difficulty in communicating with Respondent and obtaining status reports from Respondent.

15. That Respondent took no steps to defend [REDACTED] in the lawsuit or apprise [REDACTED] of the status of the lawsuit.

16. That on or about February 18, 1986, a Final Judgment was entered against [REDACTED] in the amount of \$52,547.35.

17. That Respondent failed to apprise [REDACTED] of the Final Judgment.

18. That during or about August 1986, [REDACTED]'s bank account and wages were garnished as a result of the Final Judgment entered against [REDACTED] on February 18, 1986.

19. That subsequently, despite assurances made to [REDACTED] by Respondent that he would appeal the Final Judgment, Respondent took no action in that regard.

20. That thereafter, [REDACTED] hired a new attorney to attempt to set aside the Final Judgment.

21. That Respondent failed to return [REDACTED]'s file and documents or otherwise cooperate with [REDACTED]'s new attorney.

22. That on or about September 9, 1986, in subsequent proceedings to set aside the Final Judgment brought by [REDACTED]'s new attorney, the Honorable Frederick N. Barad entered an Order to Show Cause against Respondent for failure to cooperate.

23. That Respondent failed to appear as was required by Judge Barad's Order to Show Cause.

COUNT III
(The Florida Bar File No. 11D85M66)

24. That Respondent, despite notice of delinquency from The Florida Bar, has not paid his bar dues for the year 1985.

COUNT IV
(The Florida Bar File No. 11D86M82)

25. That Respondent, despite notice of delinquency from The Florida Bar, has not paid his bar dues for the year 1986.

COUNT V

26. That despite regular mail and certified mail notice of the matters alleged above, Respondent has failed to respond or otherwise communicate with The Florida Bar.

III. RECOMMENDATIONS AS TO GUILT: I find Respondent guilty as alleged by The Florida Bar as to all five Counts before me. Specifically, with regard to Counts I and II, I find that Respondent has violated Disciplinary Rules 1-102(A)(4), 1-102(A)(6) and 6-101(A)(3); with regard to Counts III and IV, I find that Respondent has violated Disciplinary Rule 3-101(B); and with regard to Count V, I find that Respondent has violated Disciplinary Rules 1-102(A)(5) and 1-102(A)(6) of the Code of Professional Responsibility.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED: Respondent apparently has no interest in remaining a member of The Florida Bar. According to a second affidavit introduced by Bar Counsel from the Custodian of Membership Records of The Florida Bar, Respondent last paid his Bar dues on July 11,

1983 and has been suspended for non-payment of dues since October 4, 1984.

Having determined that The Florida Bar's charges have been proven and sufficiently severe to warrant a disbarment, I recommend that Respondent be disbarred from the practice of law in the State of Florida.

Based on The Florida Bar v. Montgomery, 412 So.2d 346 (Fla. 1982), and The Florida Bar v. Tato, 435 So.2d 807 (Fla. 1983), I believe the recommendation of disbarment is appropriate in this case.

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 3-7.5(k)(1)]	\$ 150.00
Investigator Gordon Sither [37.8 hours at \$15.50 per hour] ...	585.90
[Travel Expenses]	68.04
Transcript	111.85

Referee Level

Administrative Charge [Rule 3-7.5(k)(1)]	150.00
Pre-trial Court Reporter [June 25, 1987]	45.00
Final Hearing Transcript [July 23, 1987]	<u>34.10</u>
TOTAL	\$ 1,144.89 =====

Respectfully submitted this 6 day of August, 1987.

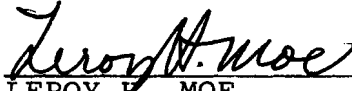


LEROY H. MOE
Referee

cc: Sid J. White, Clerk
Supreme Court of Florida
Louis Thaler, Bar Counsel
David J. Maichack, 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, was mailed to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and a true and correct copy was mailed to Louis Thaler, Bar Counsel, at 444 Brickell Avenue, Suite 211 Rivergate Plaza, Miami, Florida 33131, and to David J. Maichack, Respondent, at his last known and record Bar Address of 285 Sunrise Drive, Apt. 30, Key Biscayne, Florida 33149, this 5th day of August, 1987.



LEROY W. MOE
Referee