

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
MAR 6 1988
CLERK OF THE COURT
Deputy Clerk

THE FLORIDA BAR,

Complainant,

Case No. 70,585

[TFB Case Nos. 85-11,149(06C)

v.

85-11,150(06C), 86-16,719(06D)]

NOEL ROBBINS,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Integration Rule and the Rules Regulating The Florida Bar, a hearing was held on February 8, 1988. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - John B. Root, Jr.

For The Respondent - In pro se

II. 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 on below, I find:

The Florida Bar filed it's Requests for Admission on July 7, 1987. The requests tracked the complaint filed in this court. When respondent failed to respond, a staff investigator from The Florida Bar orally advised him on August 3, 1987, that the Bar did expect an answer regardless of any other developments in the case. Respondent had filed a Petition for Resignation on August 3, 1987, which was later denied by the Florida Supreme Court on December 7, 1987.

In any event, more than thirty days elapsed from the time of the court order to the date of the final hearing on February 8, 1988, at which the respondent stated he wished to deny some of the allegations contained in the Requests for Admission. In accordance with Rule 1.370 of the Florida Rules of Civil Procedure, I deem the requests for admission as to all five counts be admitted.

As to Count I

1. In June, 1984, the respondent was retained by the family of [REDACTED], Jr., to represent him in a criminal matter including the filing of a petition to determine competency.

2. The petition was prepared under the respondent's direction and signed by three members of Mr. [REDACTED]'s family and notarized on June 30, 1984. However, the petition was not filed at that time.

3. In July, 1984, [REDACTED] notified the respondent that the family no longer desired his services. The respondent claimed he was working for [REDACTED] Sr., and [REDACTED]

4. At the same time during the summer of 1984, Ms. [REDACTED] Beville was retained by [REDACTED] and [REDACTED] Sr., to represent [REDACTED] Jr., in a guardianship. Ms. Beville, an attorney, called the respondent's office and spoke with his wife and notified her that she had been retained in the [REDACTED] guardianship matter.

5. In December, 1984, the respondent learned Mr. [REDACTED] Jr. had been released from jail into a mental health facility. This triggered a decision to file the previously prepared petition to determine competency of Mr. [REDACTED]. The respondent did not consult with Ms. Beville nor review the file nor the petition before filing it.

6. Prior to filing the document, non-lawyer employees within the respondent's office, for an undetermined reason, changed the date of the notarization from June 30, 1984, to December 20, 1984, without informing the respondent or obtaining permission from the affiants.

As to Count II

7. On October 8, 1984, the respondent was retained by [REDACTED], the personal representative of the

estate of [REDACTED] to represent him in the administration of the estate. Mrs. [REDACTED] had died on September 25, 1984. The fee was to be 7% of the value of the estate.

8. Prior to Mrs. [REDACTED]'s death, she had been declared incompetent. [REDACTED] the respondent's mother-in-law, and a professional guardian, had been appointed as guardian. Mrs. [REDACTED]'s husband, [REDACTED], had died in September, 1983, and the personal representative for his estate, [REDACTED] also served as attorney for the guardianship of Mrs. [REDACTED]. Mr. [REDACTED]'s estate was still open when Mrs. [REDACTED] died.

9. Although the respondent was not the attorney for the guardianship, after Mrs. [REDACTED]'s death Ms. [REDACTED] referred guardianship matters to him rather than to Mr. [REDACTED]. Thus the respondent interfered with and usurped the duties, rights and position of Mr. [REDACTED].

10. Ms. [REDACTED] was not timely discharged as guardian. Assets of the estate of [REDACTED] were received by [REDACTED] Guardian, even though at the time of such distribution Mrs. [REDACTED] was deceased and the guardian was without lawful authority to receive and give releases for such distribution. There was no real property.

11. Mrs. [REDACTED]'s estate, after distributions to it from her husband's estate and her guardianship, amounted to approximately \$280,000.

12. Approximately \$5,000 received from Mr. [REDACTED]'s estate, and \$61,418.11 from Mrs. [REDACTED]'s guardianship estate were placed in the respondent's non-interest bearing trust account. From there funds were disbursed to the guardianship for expenses and for deceased estate expenses in an indiscriminate manner.

13. On November 14, 1984, Ms. [REDACTED] from a guardianship bank account, paid the respondent \$4,000 as partial attorney's fee for his services as attorney for the personal representative of Mrs. [REDACTED]'s estate. The respondent paid himself from his trust account for "partial fees" the sums of \$3,000 on December 26, 1984, and \$4,000 on February 13, 1985. The respondent paid Ms. [REDACTED] from his trust account for her services as guardian the sums of \$5,000 on December 21, 1984, and \$3,390 on February 13, 1985. All of these payments were made without the knowledge or consent of Mr. [REDACTED] the personal representative.

14. As a result of the foregoing, the accountings for the guardianship assets and Mrs. [REDACTED]'s estate became seriously intertwined. As of January 14, 1986, the guardianship had not been closed out although Mrs. [REDACTED] had been dead since September, 1984. This was caused in part by the respondent's improper record keeping and confusion between the guardianship and estate accounts.

15. In May, 1985, Mr. [REDACTED] discharged the respondent and retained [REDACTED] Broida. At the time the case file was turned over to the new estate attorney, there were dividend checks which had not been deposited, at least of which was stale and had to be replaced.

16. When the respondent turned his file over to Mr. Broida, he retained \$10,000 of estate funds in his trust account to insure payment of his fee. He held this money until the court ordered him to return it to the estate on August 22, 1985.

17. Respondent received fees totalling \$11,000. Because he signed a stipulation for substitution of counsel after being discharged by his client, and because the estate was not only not ready for closing but also needed extensive accounting work to be done before it could qualify to be closed, he did not earn his full fee of 7% of the value of the estate. In any event, he was not entitled to another \$10,000 for his services.

As to Count III

18. On November 18, 1983, the same Ms. [REDACTED] [REDACTED] was appointed as guardian of [REDACTED] [REDACTED] by the Circuit Court for Pinellas County, Florida. The respondent was attorney for Ms. [REDACTED] both as guardian, and later as personal representative.

19. Mr. [REDACTED] died on January 1, 1984.

20. The inventory for the guardianship was not filed until March 12, 1984, more than four months after Ms. [REDACTED]'s appointment as guardian and two months after Mr. [REDACTED]'s death. The inventory consisted solely of securities and a trailer with a total value of \$22,746.59.

21. The accounting for the guardianship was not completed and became part of the accounting for the estate.

22. The respondent allowed the rent on Mr. [REDACTED]'s trailer space to exceed the value of the trailer by more than six times. The trailer, previously valued at \$5,250.00 was ultimately sold for \$250.00 and the trailer park rental fee exceeded \$1,521.00.

23. Notes of the guardian reflect that there was a checking account at Rutland Bank which she closed on November 22, 1983, four days after her appointment as guardian. The guardianship inventory does not reflect the existence of the account or the funds received.

24. Respondent failed to file a Fiduciary Income Tax return and made errors in the final accounting in the estate. The amount of \$5,733.99 was distributed to the heirs, thus reflecting a shortage of \$555.05. When the matter was brought to his attention, the respondent later located the missing money in the estate account.

25. The personal representative's final accounting reflected a capital loss of \$50 with no explanation.

26. The court files reflected a bare minimum of work by the respondent, but he submitted a bill for \$2,500 for the estate, more than 10% of the value of the estate. Under the circumstances, this was an unreasonable fee for the work done.

As to Count IV

27. [REDACTED] named the respondent alternate personal representative for her estate in her will. Her husband, [REDACTED] was the sole beneficiary. Mrs. [REDACTED] died on October 14, 1983.

28. Upon the refusal of the named primary personal representative to serve, the respondent was appointed personal representative of the estate in February, 1984.

29. Respondent did not file an inventory until June 14, 1984, despite a notification by the Clerk of the Court on April 27, 1984, advising him that he should do so and provide proof of publication within thirty days. On June 6, 1984, the court issued an Order to Show Cause and ordered the respondent to appear on June 15, 1984. As previously stated, the inventory was filed on June 14, 1984.

30. The inventory, dated May 8, 1984, indicated the value of the real property was \$60,000. In November, 1984, Mr.

As to Count I

Disciplinary Rule 3-104(c) by failing to exercise a high degree of care to assure compliance by nonlawyer personnel with applicable provisions of the Code of Professional Responsibility.

As to Count II

Disciplinary Rules 6-101(A)(1) for handling a legal matter which he knew or should have known he was not competent to handle; and 9-102(A) for failing to preserve the identity of the funds of a client.

As to Count III

Disciplinary Rules 2-106(A) for charging a clearly excessive fee; and 6-101(A) for his failure to act competently.

As to Count IV

The following Disciplinary Rules: 1-102(A)(4) for conduct involving dishonesty, fraud, deceit or misrepresentation in setting the value of the real property; 6-101(A)(3) for neglecting a legal matter entrusted to him; and 7-102(A)(5) for making a false statement of law or fact in that he set the fictitious value of the home more than \$17,000 over its appraised value and more than \$1,500 higher than the market analysis value which he had received.

As to Count V

The following Disciplinary Rules of Article XI of The Florida Bar's Integration Rule and the accompanying bylaws: 11.02(4) for using clients' funds for purposes other than the specific purpose for which the funds were entrusted to the respondent; 11.02(4)(a) and bylaw section 11.02(4)(c) 2.a for failing to clearly label and designate the bank account as a trust account; bylaw section 11.02(4)(c) for failing to make quarterly reconciliations through June 30, 1984, and monthly reconciliations after June 30, 1984, and bylaw section 11.02(4)(c) 3.d for failing to authorize the bank to notify The Florida Bar of returned trust checks after June 30, 1984.

IV. Recommendation as to Disciplinary measures to be applied:

I recommend the respondent be suspended from the practice of law for a period of three years and thereafter

until he shall prove his rehabilitation and for an indefinite period until he shall pay the costs of this proceeding and make restitution to his clients as provided in Rule 3-5.1(e) of the Rules of Discipline.

- V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 58

Date admitted to Bar: October 23, 1975

Prior Disciplinary convictions and disciplinary measures imposed therein: None

Other: The serious nature of these charges which include responsibility for alteration of a notarization, multiple cases of neglect, misrepresentation to the court, making false statements to the court, and trust account violations make this recommendation for suspension appropriate.

- VI. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

A. Grievance Committee Level Costs

1. Administrative Costs	\$ 150.00
2. Transcript Costs	\$1008.13
3. Investigator's Expenses	\$ 580.23
4. Auditor Expense	\$ 871.60

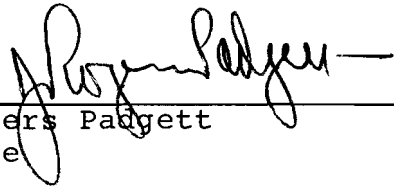
B. Referee Level Costs

1. Administrative Costs	\$ 150.00
2. Transcript Costs	159.93
3. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 57.33
4. Investigator Expenses	\$ 87.05

TOTAL ITEMIZED COSTS: \$3,064.27

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 29TH day of February, 1988.



J. Rogers Padgett
Referee

Copies to:

Mr. David G. McGunegle, Bar Counsel
Mr. Noel Robbins, Respondent
Mr. John Berry, Staff Counsel, The Florida Bar, Tallahassee,
Florida 32301