

THE FLORIDA BAR,

Complainant,

vs.

ADELAIDE E. DAVIS,

Respondent.

FILED

SID J. WHITE

JUN 1 1988

CLERK, SUPREME COURT

By _____
Deputy Clerk

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REPORT OF REFEREE

I. SUMMARY PROCEEDINGS:

Pursuant to the undersigned being appointed as referee to conduct disciplinary proceedings according to the rules regulating the Florida Bar, a pre-trial conference was held February 2, 1988 (see February 8, 1988 order) and final hearing was held at the Volusia County Courthouse Annex, Daytona Beach, Florida on April 13, 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.

Jan Wichrowski, Esquire, Bar Counsel, represented The Florida Bar, and Scott Tozian, Esquire, represented the Respondent.

This report was prepared before the transcript was completed so there are no references to the record. There were however exhibits admitted into evidence and they will be referred to as "B" for Bar exhibits, and "R" for Respondent's exhibits.

II. FINDINGS OF FACT:

A. List of principal participants: The following is a list of principal participants in the events surrounding this action:

1. Adelaide E. Davis, Esquire - Respondent and attorney for ex-husband;
2. J. H. [REDACTED] - ex-husband;
3. A. A. [REDACTED] - ex-husband's private investigator;
4. K. [REDACTED] H. [REDACTED] (M. [REDACTED]) - ex-wife;
5. J. [REDACTED] M. [REDACTED] - ex-wife's father;
6. Ray McDaniel, Esquire - ex-wife's attorney in custody/visitation proceedings;
7. Jack Edmund, Esquire - ex-wife's attorney representing her against felony charge;

8. Larry Schuchman - Orlando police officer investigating alleged offense;

9. Tim Terry, Esquire - assistant state attorney prosecuting felony case against ex-wife.

B. FACTS:

On February 24, 1984 in Orlando, Florida, J [REDACTED] and K [REDACTED] H [REDACTED] were divorced. Primary custody of the couple's son was given to K [REDACTED] H [REDACTED] subject to the husband's visitation privileges. Ten days later K [REDACTED] took the minor child and fled. She secreted the child from J [REDACTED]

The mother and child could not be located. The mother hid the child in several different states. J [REDACTED] eventually hired private investigator A [REDACTED] A [REDACTED] to help him locate the child. A [REDACTED] was recommended by Respondent but did not work at the direction of the Respondent. Federal and Florida criminal warrants were issued against the ex-wife. In the wife's absence the husband was granted temporary custody of the child. Ultimately the wife's surrender was arranged by attorney Edmund and the child reunited with his father.

A motion to hold the ex-wife in contempt was scheduled to be heard October 28, 1986 at the Orange County Courthouse. This motion (R-3) did contain prayers for investigative fees and attorney fees. At the hearing Judge Gridley did not rule on the fees, but denied the ex-wife visitation privileges with the child. After the hearing there was a discussion between attorney McDaniel, Respondent and A [REDACTED]. This conversation was the catalyst for this action because McDaniel interpreted what was said as extortion and it was reported to authorities.

Respondent told McDaniel that if the husband were reimbursed for expenses the ex-wife would be given visitation privileges and the husband would sign a declination of prosecution regarding the pending felony charge against the ex-wife. McDaniels told Davis to put the demand in writing. She did so in a letter dated October 30, 1986 (B-1). The demands by Respondent were done on behalf of her client. They were reasonably related to the domestic relations litigation pending in the circuit court. At no time during this conversation did Respondent threaten criminal action against the ex-wife's parents, the M [REDACTED], but, Respondent did mention that civil action against the M [REDACTED]

was a possibility because of the help they gave their daughter in secreting the child.

At the request of Officer Schuchman McDaniels made calls to Respondent that were taped (see B-7). These calls reiterated the October 26, 1986 courthouse conversation, and the October 30, 1986 letter.

On November 6, 1987 the Respondent called Assistant State Attorney Terry to discuss the case against the ex-wife being dropped if her client signed a declination of prosecution (B-6). Terry gave no assurances the matter would be dropped.

At the request of Mr. M█████ a meeting was set up at a restaurant in Orlando. The first meeting took place on November 17, 1986. Attending the meeting were Respondent, A█████, H█████ and M█████. This meeting was taped by law enforcement (B-7). There was settlement talk, but no agreement was reached at this meeting. A second meeting was held at the restaurant December 4, 1986 (B-9). This meeting was recorded and video taped. No agreement was reached at this meeting either, but M█████ had a settlement check in his possession. Respondent had a letter of declination and a waiver by J█████ H█████ of civil claims against the M█████ (see Page 5 of B-9). The check was never exchanged for the documents. Settlement was never reached and this essentially ended the matter. The state attorney did not file criminal charges against Respondent or A█████. Charges against K█████ M█████ were dropped.

III. DISCUSSION:

The facts in this case need to be discussed. They do not necessarily speak for themselves. At first glance it would seem the Bar's charge of extortion is well founded. A close analysis reveals no dishonesty or criminal intent, but rather an attorney trying to represent a client who truly needed legal assistance. Also this case is a graphic illustration of the sometimes fine line between settlement negotiations and extortion.

The monies claimed by the Respondent on behalf of J█████ H█████ were legitimate expenses. They were the subject matter of pending litigation. There was no evidence the figures were unreasonable. In fact the evidence suggest H█████ should have recovered these sums.

There was no misconduct regarding the declination of prosecution. It is not uncommon to see related criminal prosecution cease when the domestic problems are settled. The criminal charge in this case was directly related to the domestic situation and if there was to be full settlement of the domestic situation, and restoration of some type of harmony, the criminal charges against the child's mother should have been dropped. Despite Assistant State Attorney Terry's reluctance to agree, most prosecutors would have dropped this case upon the ex-husband filing a declination of prosecution.

Of great importance to this case is the fact that Mrs. Davis contacted Assistant State Attorney Terry to discuss the declination of prosecution (B-6). She did this early on. If she had criminal intent or purpose she would not have discussed the situation with Terry. A [REDACTED] also discussed the matter with the assistant state attorney (B-13). Certainly this rambling conversation covered the "whole waterfront". A [REDACTED] would not have discussed this matter if he did not feel that his claims were legitimate. In fact, there was substantial evidence to support the claims asserted by Davis and A [REDACTED] on behalf of H [REDACTED].

There are some serious lapses of judgment by the Respondent. These lapses contributed to the perception of extortion. She should not have been dealing with Mr. M [REDACTED] directly. She should not have talked with him on the phone, and should not have met with him at the restaurant. She should have insisted on dealing with an attorney, not M [REDACTED]. Also her choice of language surrounding the declination of prosecution such as "sour" or "forgetful witnesses" was unfortunate. Finally she should have distanced herself from investigator A [REDACTED] who was like a "loose cannon on the deck."

While these lapses are regrettable the undersigned concludes there was no criminal or malicious intent on the part of Respondent. In fact, it appears she was doing her best to represent a client who had legitimate claims against opposing parties whose hands were unclean.

IV. RECOMMENDATION AS TO WHETHER OR NOT RESPONDENT SHOULD BE FOUND GUILTY:

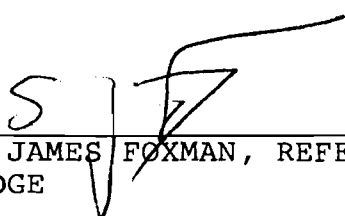
For the foregoing reasons the referee recommends the Respondent be found not guilty of all the violations set forth in paragraph eight of the Bar's complaint (at final hearing the Bar withdrew from its charges

violations of Rule 7-102(a)(3), 7-109(c), and 9-101(c)).

V. COSTS:

It is recommended each side bear their own costs.

DATED this 22 day of April, 1988 at Daytona Beach, Volusia
County, Florida.



S. JAMES FOXMAN, REFEREE/CIRCUIT
JUDGE

COPIES TO: Jan Wichrowski, Attorney for The Florida Bar
Scott Tozian, Attorney for Respondent Davis