

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Case No. SC06-1012

[TFB Case Nos. 2006-30,546(10A)

Complainant,

2006-30,746(10A), and

v.

2006-31,513(10A)]

CHARLES DANIEL AKES,

Case No. SC06-1949

[TFB Case No. 2006-32,069(10A), and

Respondent.

2006-32,130(10A)]

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

- I. Summary of Proceedings: The undersigned was appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar. 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 - Kenneth H. P. Bryk

For The Respondent - *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, this referee finds pursuant to the Conditional Guilty Plea for Consent Judgment that the facts of the Consent Judgment are admitted. The Conditional Guilty Plea for Consent Judgment is attached hereto and incorporated herein.
- III. Recommendations as to Whether the Respondent Should Be Found Guilty: As to each count of the complaint this referee makes the following recommendations as to guilt or innocence:

Pursuant to the Conditional Guilty Plea for Consent Judgment, this referee finds the respondent guilty as admitted in the Conditional Guilty Plea for Consent Judgment.

IV. Recommendation as to Disciplinary Measures to Be Applied:

Pursuant to the Conditional Guilty Plea for Consent Judgment, this referee makes the following recommendations as to the disciplinary measures to be applied:

A. Public reprimand to be administered by the Board of Governors; and,

B. Three year period of probation with the following conditions:

1. Respondent shall contact Florida Lawyers Assistance, Inc., at 800-282-8981 to schedule an evaluation within **thirty (30)** days of the order of the Supreme Court of Florida approving the Report of Referee unless he has already done before that date. The evaluation shall be completed within **ninety (90)** days of the date of the court order. If treatment is recommended, petitioner shall enter into a rehabilitation contract with Florida Lawyers Assistance Inc., within **thirty (30)** days of the recommendation. Respondent shall follow all recommendations by Florida Lawyers Assistance Inc., during the entire period of probation.

2. The respondent shall pay Florida Lawyers Assistance Inc., a registration fee of \$250.00 and a probation monitoring fee of \$100.00 a month to The Florida Bar headquarters office. All monthly monitoring fees must be remitted no later than the end of each respective month in which the monitoring fee is due. All fees must be paid to the Bar's headquarters office in Tallahassee. Failure to pay shall be deemed cause to revoke probation; and,

C. Payment of costs, now totaling \$1,399.10.

V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to R. Regulating Fla. Bar 3-7.6(m)(1)(D), this referee considered the following personal history, prior disciplinary record of the respondent, case law and standards, to wit:

Age: 61

Date admitted to bar: December 20, 1974

Prior disciplinary convictions and disciplinary measures imposed therein:
None.

CASE LAW

1. In The Florida Bar v. Robinson, 654 So.2d 554 (Fla. 1995), an attorney received a public reprimand and a two year period of probation for failing to adequately communicate with a client, for failing to file a notice of appeal on behalf of another client, and for failing to adequately prepare for another client's criminal trial. The referee found the following mitigating circumstances: no prior disciplinary record, full and free disclosure to the disciplinary board and cooperative attitude toward the proceedings, and good character and reputation.

2. In The Florida Bar v. Lowery, 522 So.2d 27 (Fla. 1988), an attorney received a public reprimand for neglecting a guardianship matter. As a result, the court issued an order to show cause for the guardian. Lowery received the order to show cause but took no action. The guardian hired new counsel to complete the case. In a second case, Lowery failed to diligently pursue a client's civil matter, and, although he promised the client he would return the original documents and the fee, he failed to do so in a timely manner. In mitigation, Lowery was suffering from personal and financial problems that contributed to his neglect, and he took steps to correct those problems. Lowery had no prior disciplinary history.

3. In The Florida Bar v. Grosso, 647 So.2d 840 (Fla. 1994), an attorney received a ten-day suspension for neglecting to respond to a Bar inquiry, despite the absence of a prior disciplinary history.

STANDARDS

4.4 Lack of Diligence

4.43 Public reprimand is appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

6.2 Abuse of the Legal Process

6.23 Public reprimand is appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

7.0 Violations of Other Duties Owed as a Professional

7.3 Public reprimand is appropriate when a lawyer negligently engages in

conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

9.22 Aggravating Factors

- (i) substantial experience in the practice of law.

9.32 Mitigating Factors

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (g) character or reputation; and,
- (h) physical or mental disability or impairment.

VI. Statement of costs and manner in which costs should be taxed: this referee finds the following costs were reasonably incurred by The Florida Bar.

A. Grievance Committee Level Costs:	
1. Bar Counsel Travel Costs	\$ 124.50
B. Administrative Costs	\$ 1,250.00
C. Miscellaneous Costs:	
1. Copy Costs	\$ 24.60
 TOTAL ITEMIZED COSTS:	 \$ 1,399.10

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. It is further recommended that respondent shall be deemed delinquent and ineligible to practice law pursuant to R. Regulating Fla. Bar 1-3.6 for failure to timely pay the costs assessed in this proceeding.

Dated this _____ day of _____, 2007.

C. Jeffery Arnold
Referee

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

Kenneth H. P. Bryk, Bar Counsel, 1200 Edgewater Drive, Orlando, Florida 32804-6314

Charles Daniel Akes, Respondent, P. O. Box 5986, Lakeland, Florida 33807-5986

Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 East Jefferson Street,
Tallahassee, Florida 32399-2300