

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC06-1430

v.

TFB File No. 2004-00,188(2B)

DEBORAH A. TYACK,

Respondent.

_____ /

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

Respondent, in addition to being a member of the Florida Bar, was admitted to practice law in the state of Ohio. On November 16, 2005, Respondent was indefinitely suspended by the Supreme Court of Ohio. On July 20, 2006, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings.

At the case management conference on September 20, 2006, the Respondent did not appear. The undersigned attempted to contact the Respondent by telephoning her at the number listed in her official bar records and received a recorded message indicating the

number had been disconnected. On November 27, 2006, a final hearing was held in this matter. The Respondent did not appear at the final hearing.

The bar presented into evidence copies of correspondence from bar counsel advising Respondent of her ethical obligations to respond to a bar complaint, a returned envelope marked “Not Deliverable As Addressed” mailed to Respondent at her official bar address, the affidavit of the membership records custodian of The Florida Bar attesting to the fact that Respondent’s official bar address has been unchanged since her admission on June 1, 1984, a certified copy of the Order of the Supreme Court of Ohio indefinitely suspending the Respondent, and the reported opinion of the Supreme Court of Ohio in Disciplinary Counsel v. Tyack, 107 Ohio St.3d 35 (Ohio 2005).

All items properly filed including pleadings, exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary Of Case. The salient facts of this case are set out in the opinion of the Supreme Court of Ohio. Respondent was found guilty in Ohio of neglecting the legal matters of 5 separate clients and neglecting her duties as a guardian ad litem. She was also found guilty of taking a fee in 4 of the 6 matters and failing to return

the unearned portion of the fee. In one of the matters, the Respondent voluntarily dismissed a case without the client's permission.

Additionally, Respondent commingled her personal funds with client funds in a bank account that was not an IOLTA account and failed to respond to correspondence, the complaint, and a motion for default filed by Ohio disciplinary counsel.

Respondent also failed to respond to inquiries made by the Florida Bar.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating Rules 4-1.3, 4-8.4(d), 4-8.4(g), 5-1.1(a)(1), and 5-1.1(e) of the Rules Regulating the Florida Bar.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

3.0 GENERALLY

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors.

4.1 FAILURE TO PRESERVE THE CLIENT'S PROPERTY

Absent aggravating or mitigating circumstances, and upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

4.11 Disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury.

4.12 Suspension is appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

4.13 Public reprimand is appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

4.14 Admonishment is appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client or where there is a technical violation of trust account rules or where there is an unintentional mishandling of client property.

4.4 LACK OF DILIGENCE

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

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.

4.44 Admonishment is appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual

or potential injury to a client.

V. CASE LAW

The Florida Bar v. Feige, 937 So.2d 605 (Fla. 2006) Three-year suspension from practice of law was appropriate sanction for attorney's misconduct, which amounted to a complete lack of diligence in representing his clients. Attorney's misconduct involved violation of 16 different bar rules in handling seven different client matters.

The Florida Bar v. Elster, 770 So.2d 1184 (Fla. 2000). Three-year suspension was warranted for attorney's failure to accomplish any meaningful work on behalf of clients, misrepresentations to clients, and issuance of misleading business card.

The Florida Bar v. Blunt, 564 So.2d 129 (Fla. 1990). Neglect of legal matters, improper trust accounting, and misuse of client funds warrants disbarment.

The Florida Bar v. Setien, 530 So.2d 298 (Fla. 1988). Attorney's neglect of client matters, issuance of bad checks, and failure to notify clients of abandonment of law practice constituted misconduct warranting disbarment.

The Florida Bar v. Ribowsky-Cruz, 529 So.2d 1100 (Fla. 1988). Attorney, who abandons her law practice without notice to clients and without taking any steps to allow clients or Bar to contact her, will be disbarred.

The Florida Bar v. Murray, 489 So.2d 30 (Fla. 1986). Neglecting legal matters, thus forcing clients to secure other legal help, and failure to pursue or seek lawful objectives of client warrants disbarment.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that she be disciplined by:

- A. 3 year suspension; and
- B. Payment of The Florida Bar's costs in these proceedings.

In making my recommendation, I also considered the discipline imposed by The Supreme Court of Ohio. Rule V, Section 10(B) of the Rules for the Government of the Bar of Ohio prohibits the Respondent from petitioning for readmission within 2 years of the order of indefinite suspension. Respondent's discipline in Ohio is second only to permanent disbarment in degree of severity.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:

Age: 49 years old

Date admitted to the Bar: June 1, 1984

B. Aggravating Factors:

- 9.22** (c) a pattern of misconduct;
(d) multiple offenses;
(h) vulnerability of victim; and
(i) substantial experience in the practice of law;

C. Mitigating Factors:

- 9.32** (a) absence of a prior disciplinary record;

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs	\$ 1,250.00
Court Reporter's Fees	120.00

Bar Counsel Travel	24.14
Investigative Costs	67.50
TOTAL	\$ 1,461.64

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this _____ day of _____, 2006.

P. Kevin Davey, Circuit Judge/Referee
Gadsden County Courthouse
24 North Adams Street
Quincy, Florida 32351

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; Arne Carl Vanstrum, Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and Deborah H. Tyack, Respondent, at her record Bar address of 71 East Wilson Bridge Road, Suite A4, Worthington, Ohio 43085-2358, on this _____ day of _____, 2006.

P. Kevin Davey, Circuit Judge/Referee