IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

ROBERT BRIAN BAKER,

Respondent.
_____________________________/

Supreme Court Case No. SC06-2028

The Florida Bar File No. 2005-51,571(15F)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar's formal Complaint in this cause was filed on October 13, 2006. Thereafter, the undersigned was appointed to preside as referee in this proceeding by order of the Chief Judge of the Seventeenth Judicial Circuit. Final hearing in the case was held on February 20, 2007. The pleadings, and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

During the course of these proceedings, respondent was initially represented by Andrew Scott Berman, Esq., and represented himself at the final hearing. The Florida Bar was represented by Michael David Soifer, Bar Counsel.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT WITH WHICH RESPONDENT IS CHARGED:

1. Respondent is, and at all times hereinafter mentioned was, a member

of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. Respondent's law firm represented Alireza Montazer in a personal injury case. Montazer received medical treatment from Alan K. Gruskin, D.O., for injuries received relating to the personal injury case, thereby incurring medical bills totaling $1,765.00. On or about October 19, 2000, respondent's office provided Dr. Gruskin with a letter of protection, which contained a promise to pay him for Montazer's treatment from Montazer's recovery in the personal injury case. The letter of protection was signed by respondent's employee, John A. Willis, Esq. That same day, there was an entry made into the computer "matter notes" maintained by respondent's firm on the Montazer file reflecting that the letter of protection was being sent. Respondent claims he was not aware of the letter of protection, but that Willis had respondent's authority to send such a letter, and that issuing such letters of protection was a common practice in respondent's law firm. On or about August 15, 2001, Montazer's personal injury case was settled for $42,500. The distribution did not take place until March 4, 2002. On November 16, 2001, Willis left the firm, and respondent assumed responsibility for the file. Respondent delegated to an employee, who was not an attorney, the task of negotiating Montazer's medical bills and liens with the providers, and preparing the Schedule of Distribution. Respondent testified that he did not recall personally

reviewing the client file for Montazer or otherwise verifying that all liens were protected at any time prior to the distribution, even though the first draft of the Schedule of Distribution prepared by his employee listed Dr. Gruskin's claim and succeeding drafts, and the final Schedule of Distribution, omitted that debt. It is not a defense to respondent's actions that they were the result of negligence rather than intention; respondent was unquestionably the responsible attorney on this case.

3. The distribution of the settlement was made pursuant to the Schedule of Distribution prepared by his employee and was executed by respondent and Montazer on or about March 4, 2002. Respondent failed to advise Gruskin that Montazer's case was settled and that the settlement funds had been received by respondent. At the time of the settlement distribution, respondent failed to promptly deliver to Gruskin the funds or hold the necessary funds in his trust account to pay Gruskin's medical bills incurred by Montazer. Subsequent to the distribution, in 2003, Gruskin's office learned of the settlement independently and contacted respondent for payment. Respondent did not pay the bill and a collection letter, dated May 13, 2003, was sent to respondent. Respondent forwarded that letter to Montazer with a letter requesting that he pay the bill, which Montazer did not. Thereafter, in further contact with Dr. Gruskin's office, respondent continued to refuse to honor the letter of protection, testifying that he did not want to have to

pay this bill from his own pocket. Respondent disputed the bill by claiming Doctor Gruskin breached the letter of protection by over billing Montazer and refusing to treat the client because of the client's alleged offensive body odor. However, these claims were refuted, and respondent offered to settle Dr. Gruskin's claim for $500.00, which offer was refused. Even assuming there had been a valid dispute over the amounts due Dr. Gruskin, respondent failed to hold any such disputed amounts in his trust account and seek independent resolution of any dispute.

After the bar complaint was filed and referred to the grievance committee, respondent paid Dr. Gruskin $1,200 to settle Montazer's medical bill. Respondent required Dr. Gruskin's office to execute a release, prepared by respondent that provided for Dr. Gruskin's office to agree to drop the bar complaint in exchange for the payment. Respondent's actions were intended to discourage the bar's involvement in the disciplinary matter.

III. RECOMMENDATION AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY:

By the conduct set forth above, respondent, as he admitted at the final hearing, violated R. Regulating Fla. Bar 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline]; Former Rule 4-1.15(b) [Upon receiving funds in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or agreement

with the client, a lawyer shall promptly deliver to the client or third person any funds that the client or third person is entitled to receive.]; Former Rule 4-1.15(c) [Disputed ownership of funds]; Former Rule 4-1.15(d) [A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts.]; 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.] and 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice . . .].

IV. **RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED**:

Before making my recommendation as to the disciplinary measures to be applied, I considered all of the testimony and other evidence offered in the case and other documents filed in the matter which are included as part of my filings with the Supreme Court of Florida. I recommend that respondent receive a public reprimand to be administered by the Board of Governors of The Florida Bar for which respondent shall appear personally. Further, respondent shall pay The Florida Bar's costs in this matter.

In arriving at the foregoing disciplinary recommendation, consideration was given to the factors set forth below:

A. Aggravating Factors pursuant to the Florida Standards for Imposing Lawyer Sanctions set forth in Standard 9.22:

1. 9.22(b): Selfish motive;

2. 9.22(d): Multiple offenses;

3. 9.22(i): Substantial experience in the practice of law

B. In addition to the matter of aggravation listed in Standard 9.22, I also considered mitigating factors set forth in Standard 9.3 and found the following mitigating factors:

1. 9.32(l): Remorse;

2. 9.32(m): Remoteness of prior offenses.

C. The Florida Standards for Imposing Lawyer Sanctions specifically speak to the duties owed to the legal system that were violated by the respondent. Section 7.0 of the Florida Standards For Imposing Lawyer Sanctions relates to violations of other duties owed as a professional. I find that Standard 7.3 applies in that it provides for public reprimand as the appropriate sanction 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.

D. Existing case law also supports a public reprimand for failure to honor the letter of protection. The Florida Bar v. Silver, 788 So.2d 958,962 (Fla. 2001).

In The Florida Bar v. Frederick, 756 So.2d 79 (Fla. 2000), the attorney's conduct in drafting a release containing a provision requiring a bar complaint be withdrawn was found to be in violation of R. Regulating Fla. Bar 4-8.4(d).

E. I am satisfied that a public reprimand administered to respondent in person by the Board of Governors of The Florida Bar and payment of The Florida Bar's costs is necessary to meet the Court's criteria for appropriate sanctions: attorney discipline must protect the public from unethical conduct and have a deterrent effect while still being fair to respondents. The Florida Bar v. Pahules, 233 So.2d 130,132 (Fla. 1972).

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

After finding respondent guilty but prior to making my disciplinary recommendation, I considered the following personal history and prior disciplinary record of respondent, to wit:

Age: 42

Date Admitted to The Florida Bar: November 22, 1993

Prior disciplinary convictions and disciplinary measures imposed therein:

November 17, 1994: Respondent received an Admonishment The Florida Bar's File No. 1995-50,386(15F). This prior discipline is set forth herein solely to fulfill the requirement of R. 3-7.6(m)(1)(D), Rules Regulating The Florida Bar, and was not considered as an aggravating factor in this matter because 7 or more years have passed in which no disciplinary sanction was imposed on respondent as provided in Standard 9.22(a) of the Florida Standards for Imposing Lawyer Sanctions.

VI. **STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED**:

I find that The Florida Bar has incurred reasonable costs in the matter and that same should be assessed against the respondent, as follows:

A.	Grievance Committee Level Costs:	
	1. Court Reporting Costs	$ - 0 -
	2. Bar Counsel Travel Costs	$ - 0 -
B.	Referee Level Costs:	
	1. Court Reporting Costs	$ 476.25
	2. Bar Counsel Travel Costs	$ - 0 -
C.	Administrative:	$ 1,250.00
D.	Miscellaneous Costs:	
	1. Investigators Expenses	$ 123.70
	2. Witness Fees	$ 5.00
	3. Copy Costs	$ - 0 -
	4. Auditor Costs	$ - 0 -
	TOTAL ITEMIZED COSTS:	**$ 1,854.95**

It is apparent that other costs have been or may be incurred. It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within 30 days of said judgment becoming final, respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 26th day of February, 2007.

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Honorable Jane D. Fishman, Referee
West Regional Courthouse
100 N. Pine Island Road, Room 210
Plantation, Florida 33324

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, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-6556, and that copies were mailed by regular U.S. mail to the following: STAFF COUNSEL, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-6584; MICHAEL DAVID SOIFER, Bar Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 900, Fort Lauderdale, Florida 33309-2397; and ROBERT BRIAN BAKER, Respondent, Baker & Zimmerman, P.A., 6991 North State Road 7, Floor 2, Parkland, Florida 33073-4327 on this 26th day of February, 2007.

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Honorable Jane D. Fishman, Referee

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