

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant.

v.

JOSEPH WIMBERT GIBSON, JR.

Respondent.

Supreme Court Case
No. SC06-526 and
SC06-2407

The Florida Bar File
Nos. 2004-70,889(11M) and
2004-71,449(11M)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.6(a) of the Rules Regulating The Florida Bar, review of a consent judgment for discipline was undertaken. All of the pleadings, notices, motions, orders, and exhibits are forwarded with this report and the foregoing constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: William Mulligan
The Florida Bar
444 Brickell Avenue, Suite M-100
Miami, FL 33131

For Respondent: Steven David Pinkert
9130 S. Dadeland Blvd., Suite 1528
Miami, Florida 33156

Respondent submitted a Conditional Guilty Plea and Consent Judgment for Discipline ("Consent Judgment") providing for a Public Reprimand to be administered by appearance before the Board of Governors with the special condition that he complete twenty hours of community service within six months of the Supreme Court's final order. The position of The Florida Bar, as approved by a Designated Reviewer of the Eleventh Judicial Circuit, is that Respondent's plea be accepted.

II. FINDINGS OF FACT: In his consent judgment, Respondent has admitted certain factual matters which I hereby accept and adopt as the findings of fact in this cause, to-wit:

A. As to The Florida Bar File No. 2004-70,889(11M):

1. On or about May 30, 2002, Monica Bruno ("Bruno") retained Respondent to represent her in a sexual harassment case.
2. On or about November 22, 2002, Respondent filed a complaint on behalf of Bruno in federal court.
3. On or about February 28, 2003, Respondent served answers to Defendants' Interrogatories and recited essentially the same allegations as were set forth in the complaint.
4. On or about October 16, 2003, Bruno's deposition was taken and her testimony was consistent with the allegations set forth

in the complaint and in said answers to the interrogatories.

5. Thereafter, Defendants filed a motion for summary judgment.
6. Respondent failed to adequately analyze the case and confer with Bruno prior to filing the complaint and did not adequately respond to the motion for summary judgment.
7. On or about December 8, 2003, Respondent filed a motion to withdraw as counsel for Bruno due to irreconcilable differences.
8. On or about December 11, 2003, Respondent's motion to withdraw was granted.
9. Bruno failed to obtain new counsel, and thereafter, the court granted the defense's motion for summary judgment.
10. On or about January 24, 2004, Bruno filed a complaint against Respondent with The Florida Bar.
11. On or about June 23, 2004, The Florida Bar sent Respondent a letter requesting a copy of his entire client file including a copy of Bruno's deposition in the matter no later than July 2, 2004.
12. Respondent failed to respond to said request until August 2, 2004.
13. Respondent admits that by reason of the foregoing facts, he has violated Rules 4-1.1 (A lawyer shall provide competent representation to a client...), 4-1.3 (A lawyer shall act with reasonable diligence and promptness in representing a client), and 4-8.4(g) (A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or disciplinary agency...) of the Rules of Professional Conduct.

B. As to The Florida Bar File No. 2004-71,449(11M):

1. Respondent served as defense counsel in the case of State of Florida v. Homer Scruggs, case no. F0203505B before the Honorable Judge Rosa I. Rodriguez (“Judge”).
2. While at sidebar during trial, Respondent began arguing with the Judge about an objection that she had overruled.
3. The Judge ordered Respondent to take his seat and he refused and continued to assert his position.
4. The Judge again ordered Respondent to return to his seat.
5. Instead, Respondent remained at sidebar within two to three feet of the Judge and continued to argue. When the Judge tried to speak, Respondent interrupted her.
6. The Judge then warned Respondent that if he continued his behavior, he would be held in contempt.
7. Finally, after Respondent repeatedly interrupted the Judge and defied her orders, the court held a contempt hearing.
8. During the contempt hearing, Respondent failed to offer a good reason as to why he should not be held in direct contempt by the court and instead continued to argue with the Judge who held him in direct criminal contempt.
9. On May 25, 2004, Respondent filed a motion with the court to vacate the judgment and stay the contempt proceedings pending compliance with the Judge’s order.
10. On June 9, 2004, the Judge granted Respondent’s motion and vacated the finding of criminal contempt and held the contempt proceedings in abeyance until May 24, 2005.
11. Respondent failed to complete all Continuing Legal Education Requirements (“CLER”) that were required under said order.
12. On or about July 31, 2005, Respondent filed an amended motion seeking to vacate the court’s judgment.

13. Respondent's motion to vacate was denied since Respondent failed to timely complete all of the aforesaid CLER.
14. Respondent admits that by reason of the foregoing facts, he has violated Rules 4-3.4(c) (A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists), 4-3.5(c) (A lawyer shall not engage in conduct intended to disrupt a tribunal), 4-8.4(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer...), 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...) of the Rules of Professional Conduct.

III. RECOMMENDATION AS TO GUILT: Based upon Respondent's admissions as to The Florida Bar File No. 2004-70,889(11M), I recommend that Respondent be found guilty of violating Rules 4-1.1 (A lawyer shall provide competent representation to a client...), 4-1.3 (A lawyer shall act with reasonable diligence and promptness in representing a client), and 4-8.4(g) (A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or disciplinary agency...) of the Rules of Professional Conduct.

Based upon Respondent's admissions as to The Florida Bar File No. 2004-71,449(11M), I recommend that Respondent be found guilty of violating Rules 4-3.4(c) (A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists), 4-3.5(c) (A lawyer shall not engage in conduct intended to disrupt a tribunal), 4-8.4(b) (A lawyer shall not commit a criminal act that reflects adversely

on the lawyer's honesty, trustworthiness, or fitness as a lawyer...), 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...) of the Rules of Professional Conduct.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE

APPLIED: Having reviewed the record of these proceedings, I find that Respondent's plea and the recommendation of The Florida Bar as to terms of discipline are both fair to the Respondent and in the best interest of the public. Accordingly, Respondent's Consent Judgment and the term of discipline recommended by The Florida Bar are accepted and hereby adopted as the recommendation of this Referee in this matter. Therefore, I recommend that Respondent receive a Public Reprimand to be administered by appearance before the Board of Governors with the special condition that he complete twenty hours of community service within six months of the Supreme Court's final order.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

Age: 51

Date Admitted to The Florida Bar: June 28, 1982

Prior disciplinary record: In The Florida Bar File No. 1998-71,472(11K) Respondent received a private reprimand.

VI. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE

MANNER IN WHICH COSTS SHOULD BE TAXED: I find that the following costs were incurred by The Florida Bar in this proceeding:

Administrative costs	
Rule 3-7.6(o)(1)(I)	\$ 1,250.00
Staff Investigator's Costs	\$ <u>110.00</u>
TOTAL:	\$ 1,360.60

It is recommended that costs in the amount of \$1,360.00 be assessed against Respondent. It is further recommended that execution issue with interest at the prevailing statutory rate to accrue on all costs not paid within 30 days of the entry of the Supreme Court's final order, unless time for payment is extended by the Board of Governors of The Florida Bar.

Dated this ____ day of _____ 2007.

HONORABLE WENDELL M. GRAHAM,
Referee

Copies furnished to:

William Mulligan, Bar Counsel
Steven David Pinkert, Attorney for the Respondent
Kenneth L. Marvin, Staff Counsel