

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC10-0448

v.

TFB File No. 2009-00,364 (2B)

HARRY ROBERT BISHOP JR.,

Respondent.

REPORT OF 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:

On March 10, 2010, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. On June 22, 2010, Complainant's Motion for Summary Judgment was heard and granted. Respondent failed to timely appear for the telephonic motion hearing. Respondent later corresponded with bar counsel and ultimately the court and was provided an opportunity to file a motion to set aside the summary judgment. Respondent did not to file the motion. On August 12, 2010, a final telephonic penalty hearing was

held in this matter. Both parties were in attendance. All items properly filed including pleadings, recorded testimony (if transcribed), 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. Rixena Dailey (“Ms. Dailey”) hired Respondent in early 2008 to represent her in a divorce proceeding. Respondent was paid a \$3,000 fee. On March 20, 2008, Respondent attended a hearing on Ms. Dailey’s behalf, at which time he advised her he would be filing for an emergency child custody hearing and a notice of appearance. Respondent also advised Ms. Dailey her divorce papers would be filed in May. Respondent further informed Ms. Dailey that he would be attending a hearing on her behalf on July 8, 2008, and would be by her office to pick up some papers on either July 2nd or 3rd. Respondent did not come by Ms. Dailey’s office, did not contact her and did not appear at the court hearing. Respondent did not file any divorce papers or file a notice of appearance on Ms. Dailey’s behalf. Both Ms. Dailey and her brother attempted to contact Respondent, with no success. Messages were left, but no

return calls were received. On July 14, 2008, Ms. Dailey sent Respondent a letter via certified mail return receipt requested terminating his services and requesting the return of her \$3,000 fee. The letter was received. Respondent finally left a message on Ms. Dailey's phone on October 14, 2008. She attempted to return his call, left a message, but received no response. On October 18, 2008, Ms. Dailey again telephoned Respondent. This time he answered the phone. Respondent informed Ms. Dailey that he was unable to return her retainer because he did not have her money. Respondent further failed to respond to inquiries by The Florida Bar or the Grievance Committee.

Respondent appeared pro se at the final hearing and presented mitigation testimony. Aside from Ms. Dailey's case, Respondent has not practiced in approximately three years. Respondent testified that during the last three years he experienced hardships that caused deterioration in his health, both physically and mentally, and in his ability to practice law. Due to the relocation of his minor children, Respondent became depressed and started drinking. Respondent received a DUI and ultimately entered a detoxification center. He has been evicted from his home and is currently residing in the homeless shelter. He also suffers from severe arthritis and gout and has lost a finger to such.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rules 4-1.3 (Diligence); 4-1.4(a) (Informing Clients of Status of Representation); 4-1.4(b) (Duty to Explain Matters to Client); 4-1.5 (Fees and Costs for Legal Services) and 4-8.4(g)(1) (Misconduct: Failure to Respond in Writing to any Official Inquiry by Bar Counsel).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.4 Lack of Diligence

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.

7.0 Violations of Other Duties Owed As a Professional

7.2 Suspension is appropriate when a lawyer knowingly 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.

V. CASE LAW

I considered the following case law prior to recommending discipline:

TFB v. Jones, 543 So.2d 751 (Fla. 1989) – attorney suspended for 91 days for neglect and failing to cooperate with Bar investigation. Restitution was ordered to his client. Referee specifically noted Respondent’s complete lack of cooperation with the Bar. Respondent had no prior discipline.

TFB v. Brakefield, 679 So.2d 766 (Fla. 1996) – attorney suspended for 6 months for failing to clarify status of representation and discuss fee; failure

to attend depositions and hearings; failing to keep clients informed and failure to act with diligence and promptness. Prior disciplinary history of admonishment and public reprimand for similar misconduct were noted as aggravation.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

A. 91-day suspension, effective immediately, as Respondent does not need 30 days to conclude his practice;

B. Submit to and complete a mental health evaluation including a component to evaluate alcohol abuse and follow any recommendation with the Veteran's Administration or FLA, Inc. Pursuant to Respondent's testimony, he is currently receiving mental health services from the Veteran's Administration. I am not requiring Respondent to change programs, but allowing him to choose from the two programs and complete it before he petitions for reinstatement;

C. Restitution of \$3,000 shall be paid to Respondent's prior client, Rixena Dailey. No less than 50% of the restitution amount should be paid to Ms. Dailey prior to Respondent's petition for reinstatement and the full amount should be returned to Ms. Dailey in no more than 3 years;

D. Reimbursement to the Client Security Fund if any payments are made on behalf of the Respondent;

E. Payment of The Florida Bar's costs in these proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

A. Personal History of Respondent:

Age: 55

Date admitted to the Bar: April 25, 1988

Prior Discipline: None

B. Aggravating Factors: 9.22

(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;

(i) substantial experience in the practice of law; (Admitted, 1988).

C. Mitigating Factors: 9.32

(a) absence of a prior disciplinary record;

(b) absence of a dishonest or selfish motive;

(c) personal or emotional problems;

(h) physical or mental disability or impairment;

(l) remorse.

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	75.00
Investigative Costs	50.00
TOTAL	\$1,375.00

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 _____, 2010.

Honorable Frederick L. Koberlein, Referee

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 Respondent, Harry Robert Bishop Jr., whose record bar address is 8738 Belarado Court, Tallahassee, FL 32311-3412, Kenneth L. Marvin, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; Allison Carden Sackett, Bar Counsel, The Florida Bar, Tallahassee Branch Office, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; on this _____ day of _____, 2010.

Honorable Frederick L. Koberlein, Referee

Honorable Frederick L. Koberlein
Dixie County Judge
Post Office Box 1995
Cross City, FL 32628

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