

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
JOHN A. TOMASINO
NOV 17 2014
CLERK, SUPREME COURT
BY _____

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. SC14-1260

v.

The Florida Bar File
No. 2010-00,502 (2B)

JEFFREY WAYNE DAY,
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 June 30, 2014, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. Respondent failed to file any written response to the complaint. Respondent also failed to file any answer admitting, denying or objecting to the request for admissions. The Florida Bar filed a Motion for Summary Judgment on September 11, 2014. On October 24, 2014, a hearing on the Bar's Motion for Summary Judgment and final hearing was held in this matter. Allison Carden Sackett, bar counsel, appeared on behalf of The Florida Bar. Although, respondent was properly noticed, he failed to appear. The

Bar's Motion for Summary Judgment was granted and those matters set forth in the Bar's request for admissions were deemed admitted. 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

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.

Narrative Summary Of Case. Respondent resided and practiced law in Orange County, Florida, however, he no longer resides in the state of Florida or maintains an office here. In or about June 2006, Edward Stewart hired respondent to represent him in a civil matter entitled Edward A. Stewart v. Time Warner Communications, Inc., et al., Orange County Circuit Case No. 2006-CA-001146. Although this was a contingency fee case, respondent did not provide Mr. Stewart with a contingency fee agreement or a statement of client's rights. As a result, Mr. Stewart was unclear as to what percentage respondent would be taking as a fee from any settlement.

In or about May 2009, a settlement was reached in the case, with regard to Mr. Stewart, for \$19,000. The settlement was to be paid in two installments.

The first installment of \$9,500 was deposited into in respondent's trust account on May 21, 2009. Respondent forwarded to Mr. Stewart 70% of the first half of the settlement proceeds, a total of \$6,650 on May 23, 2009. Also included, was a letter stating that the second half of the proceeds would be forwarded along with a settlement statement as soon as they were received. Respondent paid himself \$2,850 as attorney's fees. The second installment of \$9,500 was deposited into respondent's trust account on July 27, 2009. Mr. Stewart repeatedly attempted to contact respondent via email and phone calls, however, respondent failed to respond. Sometime after May 2009, respondent closed his Florida practice and moved to Virginia.

Mr. Stewart hired Rumson, Bolling & Assoc., a collection agency, in the hope of collecting the remaining portion of his settlement. On August 22, 2011, respondent paid Rumson, Bolling & Assoc. in the amount of \$9,600, with the memo section reading "Ed Stewart, settlement in full". Respondent never provided Mr. Stewart with a settlement statement.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 4-1.4 Communication (a) Informing Client of Status of Representation and (b) Duty to Explain Matters to Client; 4-1.5(f) Contingent Fees; 4-8.4 (c) A lawyer shall not engage in conduct involving

dishonesty, fraud, deceit or misrepresentation; 4-8.4(g) A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency and 5-1.1(a) Nature of Money or Property Entrusted to Attorney.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.1 Failure To Preserve The Client's Property:

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.

4.4 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:

The Florida Bar v. Whitney, 132 So.3d 1095 (Fla. 2013), the Court has dealt seriously with attorneys who have demonstrated an egregious disregard for the judicial process. In Florida Bar v. Bloom, 632 So.2d 1016 (Fla.1994), the Court imposed a ninety-one-day suspension on a respondent who engaged in discovery violations in a lawsuit where he was named the defendant. The Court found that "Bloom's flagrant disregard for the judicial process, as reflected by the facts of this case, warrants a suspension requiring proof of rehabilitation."

The Florida Bar v. Maier, 784 So.2d 411 (Fla. 2001), attorney suspended for 60 days for failure to act with diligence in pursuing her client's case, failure to keep her client reasonably informed about the status of the case and failure to timely respond to inquiries made by the Bar. Respondent in the current matter not only did not timely respond, but has failed to respond both to the Grievance Committee and to the Court's Order to Show Cause. He further has not participated at all in the matter before the Referee.

The Florida Bar v. Grosso, 760 So.2d 940 (Fla. 2000), attorney suspended for 90 days followed by one year probation for failure to return client's property despite repeated requests. The Referee found in his report that respondent had a "cavalier or lackadaisical" attitude during the disciplinary proceedings.

The Florida Bar v. Jones, 543 So.2d 751 (Fla. 1989), attorney suspended for 91 days for neglect of legal matter and failure to cooperate in disciplinary proceeding. Jones failed to appear either in person or by counsel at the grievance committee hearing or at his final hearing, despite having notice. The Referee felt this was the same callous disregard for the Bar proceedings as he had shown toward his client.

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 and

B. 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(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 41

Date admitted to the Bar: January 22, 2004

Aggravating Factors:

- (b) dishonest or selfish motive;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law;

Prior Discipline: The Florida Bar filed a Petition for Contempt and Order to Show Cause. The Supreme Court issued an Order to Show Cause and respondent failed to respond. Pursuant to Supreme Court order dated June 1, 2012, respondent was held in contempt and suspended until further order of the Court.

Mitigating Factors: None considered.

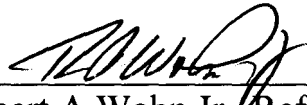
VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

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

Administrative Costs	\$1,250.00
Audit Costs	42.00
Investigative Costs	266.30
Court reporter Costs	75.00
Auditor Costs	413.00
 Total	 \$2,046.30

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 10th day of November, 2014.


 Robert A Wohn Jr., Referee
 2825 Judge Fran Jamieson Way
 Viera, FL 329408006

Original To:

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies to:

Jeffrey Wayne Day, The Day Law Firm, 13 Mountain View Rd, Flint Hill, VA 22627-1856, jeff@thedaylawfirm.com

Allison Carden Sackett, Tallahassee Branch Office, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, asackett@flabar.org

Staff Counsel, The Florida Bar, at aquintel@flabar.org