

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC10-1223

v.

TFB File No. 2009-00,887(2A)
2010-00,080(2A)

DONALD LOUIS WEST 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 June 23, 2010, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. Complainant filed a Motion for Summary Judgment. A hearing on the Motion was held on September 21, 2010. The Motion for Summary Judgment was granted. On September 28, 2010, a final sanction hearing was held in this matter. 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. On or about October 19, 2008, Matt McCoy ("Mr. McCoy") hired Respondent to represent him in connection with a DUI charge. Mr. McCoy paid Respondent a \$3,500 fee. No client contract was executed by either Mr. McCoy or Respondent. Later that same day, Mr. McCoy decided to hire alternate counsel and terminated Respondent's services. Respondent told Mr. McCoy that he would return his \$3,500 check. Despite knowledge of his termination, and his assurance to Mr. McCoy that he would return the un-cashed check, Respondent chose not to return the check, but instead cashed it. Mr. McCoy, having temporarily relocated, retained Orlando Castano, Jr., an attorney in California. On March 5, 2009, Mr. Castano sent an e-mail to Respondent, informing him that due to the numerous messages and texts that had been ignored over the past 5 months, he and his client felt they had no recourse but to complain to The Florida Bar. He again requested the return of Mr. McCoy's fee. On March 27, 2009, Respondent responded via e-mail to Mr. Castano,

acknowledging a prior telephone conversation in which he informed Mr. Castano that he was "working to return his [client's] retainer payment according to the timeline I shared on the phone." No monies have been received by Mr. McCoy as of this date.

On or about September 17, 2008, Timothy Crawford, Sr. ("Mr. Crawford") retained Respondent to represent him in the appeal of a custody matter. Mr. Crawford executed a contract on September 23, 2008. Respondent received at least \$2,900 from Mr. Crawford or on his behalf. Respondent filed a notice of appearance on October 6, 2008, followed by a response to an order to show cause and a motion for extension of time, filed on October 7, 2008. The court granted the motion for extension, allowing Respondent until November 7, 2008 to file his initial brief. On November 6, 2008, Respondent filed a second motion for extension of time, which was denied by the court on November 7, 2008. Respondent did not file any further pleadings in this matter. On January 12, 2009, the court entered an order, sua sponte, dismissing Mr. Crawford's appeal for lack of prosecution. On or about July 18, 2009, Mr. Crawford filed a complaint with The Florida Bar. The Florida Bar forwarded Respondent a copy of the complaint on July 24, 2009. On August 20, 2009, The Florida Bar sent Respondent a reminder letter allowing him additional days to respond to the complaint. Respondent failed to respond to inquires by The Florida Bar or the Grievance Committee.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 4-1.3 (Diligence), 4-1.4 (Communication), 4-1.5(a)(Illegal, Prohibited, or Clearly Excessive Fees and Costs), 4-8.4(c) (Engage in Conduct Involving Dishonesty, Fraud, Deceit, or Misrepresentation), and 4-8.4(g)(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.

6.2 ABUSE OF THE LEGAL PROCESS

6.22 Suspension is appropriate when a lawyer knowingly violates a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

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. Patterson, 530 So.2d 285(Fla. 1988), a one-year suspension was warranted for attorney's faulty representation, neglect of legal matters, failure to communicate with clients, and failure to return documents or refund unearned fees in a timely manner.

The Florida Bar v. Winderman, 614 So.2d 484 (Fla. 1993), the Supreme Court held that one-year suspension, followed by one year probation, was appropriate sanction for failing to keep clients informed of progress and failing to take steps to protect their interests.

The Florida Bar v. Centurion, 801 So.2d 858 (Fla. 2000), failure to file all required documents and to follow up on filing of those documents, failure to comply with court orders, and failure to act with reasonable diligence in representing client warranted one-year suspension.

The Florida Bar v. Shoureas, 913 So.2d 554 (Fla. 2005), attorney's conduct in connection with her representation of two separate clients relating to competent representation, diligence and promptness, and misconduct towards the state Bar warranted a three-year suspension.

The Florida Bar v. Jones, 543 So.2d 751 (Fla. 1989), the Supreme Court held that neglect of legal matter and failure to cooperate in investigation warranted 91-day suspension. Respondent did not have any prior discipline record.

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. a one year suspension from the practice of law

B. Restitution payments of \$3,500 to Matt McCoy and \$2,900 to Timothy Crawford, Sr. to be paid in full within 30 days after the judgment in this case becomes final and

C. 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: 36

Date admitted to the Bar: December 20, 2001

B. Aggravating Factors:

- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (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;
- (j) indifference to making restitution.

Respondent failed to participate in the process at the grievance level and failed to appear before this Referee. He further failed to respond for several months to requests from Mr. McCoy's attorney. Additionally, he has yet to refund monies that were not earned.

C. Mitigating Factors:

- (a) absence of a prior disciplinary record.

Prior Discipline: None

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	150.00
TOTAL	\$ 1,400.00

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 Jackie Lee Fulford, Referee
Leon County Courthouse
301 South Monroe Street
Tallahassee, FL 32301-1861

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, Donald Louis West Jr., whose record bar address is 122 Holbrook Drive, Huntsville, AL 35806-4083, Kenneth L. Marvin, Staff Counsel, The Florida Bar, 651 E. 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 Jackie Lee Fulford, Referee

Thomas D. Hall, Clerk
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500 South Duval Street
Tallahassee, FL 32399-1927

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