

**IN THE SUPREME COURT OF FLORIDA
Before a Referee**

**THE FLORIDA BAR,
Complainant,**

vs.

Case No. SC 15-1288

**JEFFERSON F. RIDDELL,
Respondent,**

REFEREE'S REPORT

This matter having come before the referee for a Final Hearing on the Complaint on 12/10/2015 and 12/11/2015, it is ordered:

1. The Record

The Petitioner filed the Complaint in the Supreme Court of Florida on 7/13/2015. The referee admits into evidence all of the exhibits offered by both parties at the final hearing. The referee has read all of these, many of them several times.

2. Findings

The Respondent is a member of The Florida Bar. He was admitted on 4/10/1979.

The allegations of the Complaint are not proven by clear and convincing evidence.

The facts giving rise to the Complaint are:

- (a) On 9/23/2003 the Respondent's first professional association filed a lawsuit against Mrs. F. seeking a money judgment in the amount of \$15,978.55;
- (b) before trial, Mrs. F made an offer of judgment of \$500;
- (c) after a trial, the trial judge rendered a judgment in her favor;

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- (d) the Respondent's first association appealed the judgment;
- (e) the appellate court issued a *per curiam* affirmed opinion on 4/28/2006;
- (f) the Respondent formed a second professional association a few days after the *per curiam* affirmed opinion issued;
- (g) Mrs. F was awarded a second judgment on 10/31/2006 for \$21,857.50 against the Respondent's first association for her fees and costs at trial and on appeal pursuant to the offer of judgment she made before the first judgment in her favor;
- (h) Mrs. F assigned her second judgment to her lawyers;
- (i) the judgment creditor filed proceedings supplementary against the Respondent's first and second associations and the Respondent personally to collect the second judgment, which resulted in a judgment dated 12/2/2011 against the Respondent's second association and the Respondent personally for the amount of the second judgment plus accrued interest;
- (j) on 10/23/2014 the trial court issued another judgment against the Respondent's first and second associations and the Respondent personally for \$175,139.24 for the fees and costs of the judgment creditor in the proceedings supplementary;
- (k) the Respondent filed an appeal of the judgment for \$175,139.24, which was settled on appeal by a payment of \$50,000 to the judgment creditor. The referee assumes this \$50,000 payment also released the Respondent and his associations from the balance remaining, if any, on the second judgment for \$21,857.50, although this is not clearly reflected in the record. The record does reflect that the second judgment had been reduced by at least \$7,000 by the time the 10/23/2014 judgment for fees and costs was entered.

The findings and rulings of the trial judges in the various judgments stemming from the lawsuit against Mrs. F are not *res judicata* in this matter or otherwise conclusive in this proceeding. The issues in this matter are distinct from those in that lawsuit. The parties are also distinct.

The Respondent had a good faith basis in fact and in law for his lawsuit against Mrs. F. He lost the lawsuit. He had a good faith basis for his appeal of the judgment in her favor. He lost the appeal. He had a good faith basis in fact and in law for his defense of her motion for attorney's fees on her offer of judgment. He lost on her motion for fees.

The Respondent formed a second professional association shortly after he lost the appeal but he did not transfer the tangible assets of his first association to the second. He also did not transfer the accounts receivable.

The "goodwill" of his sole practitioner office consisted of him coming to work every day. It had no marketable value. The "goodwill" was not transferred to the second association because the first association did not have a "goodwill" asset any more than the second did. The Respondent coming to work every day was what made the enterprise go, whatever its form of business entity.

His bookkeeping habits long before he sued Mrs. F consisted of his paying his personal expenses out of the professional association's operating account as well as the business expenses rather than taking draws payable to himself, depositing those draws in a personal account and paying his personal expenses from that personal account, but this practice of paying business and personal expenses from a business operating account is more the norm for small businesses than the exception in this judge's experience trying family cases for the last 22 years and practicing law for 20 years before that. In any event, every year his C.P.A. sorted out the personal expenses from the business expenses so they were all properly accounted for. Nothing was hidden. Nothing was "laundered."

He did not hide his bank accounts or his income and expenses at any time. He did not change his financial habits of long standing when he did not prevail in the lawsuit against Ms. F, or on the first appeal, or in the proceedings supplementary.

The Respondent did not commit the tort of fraud. He did not make a misrepresentation. He was not deceitful. He just lost his lawsuit from beginning to end. In the end, the trial court ruled in the

proceedings supplementary that his first association made a voidable transfer to his second association and that his second association and the Respondent personally were liable to the judgment creditor on various theories.

The Respondent had a good faith basis in law and in fact for his argument that he had not made a voidable transfer to his second association and that he and his second association had no liability to the judgment creditor on any theory, but his defenses in the proceedings supplementary were not upheld by the trial court. He also had a good faith basis for his appeal of the adverse judgment.

The judgment creditor must have believed he had some basis for that appeal. The creditor had a judgment against the Respondent for an additional \$175,139.24 in attorney's fees, which it settled for \$50,000 while that appeal was pending.

In hindsight, the Respondent should have settled earlier. He would have saved himself and the judgment creditor much aggravation and expense, but he acted like many litigants who pursue a principle in good faith and do not prevail. The outcome of any lawsuit is uncertain. The result may appear obvious now. Trial court judgments are written so that the result is justified and sustainable on appeal, so long as there is substantial competent evidence to support the findings.

But at the trial level the result is anything but obvious. A trial court proceeding is a maelstrom of conflicting testimony, bewildering detail, inconsistencies, and contrary positions. The legal opinions of both sides are influenced by passionate beliefs in the justice of each cause. From this a trial judge must render a judgment and bring the lawsuit to an end. The trial judges here rendered their judgments and the appellate court gave its order. The Respondent did not prevail.

But he pursued his principle in good faith and he did not pursue it dishonestly, fraudulently, or deceitfully. He did not do anything that was unlawful or contrary to honesty and justice.

3. Ruling

The Petitioner did not carry its burden to prove by clear and convincing evidence that the Respondent violated Florida Bar Rule 4-8.4(c) or (d). The Petitioner did not prove that the Respondent engaged in conduct that involved dishonesty, fraud, deceit, or misrepresentation or that was prejudicial to the administration of justice.

He also did not violate Rule 3-4.3 or any other Rule. The evidence is not clear and convincing that he did anything that was unlawful or contrary to honesty and justice.

The referee recommends that the Respondent be found not guilty of violating any of the Rules Regulating The Florida Bar. The referee recommends that the Complaint against the Respondent be dismissed. It is time for the lawsuit to end.

Done and ordered in Fort Myers, Lee County, Florida, this 12/18/15



R. Thomas Corbin, Circuit Judge, Referee

Copies provided to:
Brett Alan Geer, Esq., and Julie Heffington, Esq.