

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

THE FLORIDA BAR,

Case No. SC95539

Complainant,

TFB Case No. 99-50,838(17H)

v.

JOHN T. CARLON,

Respondent.

_____ /

REPORT OF REFEREE ON REMAND

I. SUMMARY OF PROCEEDINGS:

The Florida Bar's formal complaint in this cause was filed on May 10, 1999. The undersigned was appointed to preside as referee by order of the Chief Judge of the Fifteenth Judicial Circuit dated May 18, 1999. The final hearing came on to be heard on February 25, 2000. The initial report of referee was entered on March 9, 2000. By order dated October 4, 2001, the Supreme Court of Florida approved the referee's recommendation of guilt for violation of R. Regulating Fla. Bar 4-1.5(a) [clearly excessive fee] and sanction of a ninety-one day suspension, but remanded to the referee for a determination as to the amount considered clearly excessive given the services respondent did perform. Currently pending before the Supreme Court of Florida is the bar's motion for rehearing on the issue of whether the restitution may be

ordered as a disciplinary sanction not limited as a component of reinstatement or readmission. The outcome of that motion will not affect the amount of restitution to be recommended in this proceeding.

During the course of the proceedings on remand, respondent appeared pro se and The Florida Bar was represented by Ronna Friedman Young, Esq.

II. FINDINGS OF FACT

A. It was previously determined that, on or about December 16, 1997, one Darlean Woodburn (hereinafter called "Woodburn") contacted respondent by telephone and then related to respondent that she had been divorced in the state of Arizona in 1988, wished to secure an asset that had been allocated to her ex-husband, and requested from respondent that he furnish a name of an Arizona attorney.

B. It was previously determined that rather than simply informing Woodburn that she should consult an Arizona legal directory, respondent, instead, informed Woodburn that because she was a Florida resident, she would need to conform to the laws of Florida as well as the laws of Arizona.

C. It was previously determined that relying upon such advice, Woodburn, on or about December 18, 1997, entered into a written retainer agreement prepared by respondent, under which agreement respondent charged Woodburn a \$4,000.00 retainer and then and there collected such \$4,000.00 retainer from Woodburn.

D. It was previously determined that thereafter, between December 18, 1997, and March 27, 1998, respondent drafted two (2) letters, one, seeking an Arizona attorney to represent Woodburn in securing the asset she sought to recover, a copy of which letter [eight (8) of which were identical and four (4) of which contained an inconsequential change] was directed to twelve (12) Arizona attorneys, and the other, seeking an Arizona attorney to represent Woodburn in connection with a malpractice claim against her Arizona matrimonial attorney, an exact copy of which was directed to two (2) Arizona attorneys.

E. It was previously determined that not having heard from respondent, Woodburn, on April 1, 1998, upon her own initiative, secured representation from an Arizona attorney, who secured a June 5, 1998, amended divorce decree recovering the asset sought by Woodburn, for the total charge of \$404.00.

F. It was previously determined that Woodburn terminated respondent's representation on July 16, 1998, whereupon respondent refunded to Woodburn from the \$4,000.00 fee he had charged and collected in December, 1997, as aforesaid, the sum of \$659.90, retaining for the services he claimed to have rendered and including \$15.10 in costs he claimed to have incurred, and a \$500.00 administrative fee for opening the file, the sum of \$3,340.10.

G. It was previously determined that as evidenced by the two (2) bills

rendered by respondent to Woodburn, the only services claimed to have been rendered by respondent to Woodburn consisted of an initial consultation, securing names from Martindale-Hubbel, drafting and mailing the two (2) above referenced form letters, and receiving and responding to his client's two correspondences regarding respondent's fees.

H. It was previously determined that respondent's task in securing names from Martindale-Hubbel for purposes of obtaining Arizona counsel for Woodburn did not present respondent with a novel, complex or difficult question requiring any skill other than the ability to extract names from a directory.

I. It was previously determined that in undertaking representation of Woodburn there was no likelihood that the acceptance of such employment would preclude other client employment of respondent.

J. It was previously determined that the significance of, amount and responsibility involved in the subject matter of Woodburn's representation was minimal.

K. It was previously determined that respondent obtained no results for Woodburn.

L. It was previously determined that Woodburn imposed no time limitations upon respondent nor did any circumstances arise during the course of his

representation of Woodburn which imposed any such time limitations.

M. It was previously determined that Woodburn made no special time demands or requests of the respondent.

N. It was previously determined that there was no prior attorney/client relationship between the respondent and Woodburn nor any unusual nature or length of the professional relationship.

O. It was previously determined that respondent's representation of Woodburn demonstrated no skill, expertise or efficiency of effort.

P. Upon remand, the bar relied on the testimony taken on February 25, 2000.

III. RECOMMENDATION AS TO THE AMOUNT OF THE CLEARLY EXCESSIVE FEE:

In making my recommendation, I was mindful of the facts previously determined in this matter. Particularly, I noted that respondent charged \$3,340.10 but did not secure an Arizona attorney for the client, and that the Arizona attorney, secured on her own by the client, charged only \$404. Of the \$3,340.10 charged and retained by respondent, I find \$_____ to be clearly excessive, which amount shall be restituted in accordance with interest and conditions as determined by the Supreme Court of Florida.

Dated this ____ day of _____, 2001

Virginia Gay Broome, Referee

Copies furnished to:

Ronna Friedman Young, Bar Counsel
John T. Carlon, Jr., Respondent
Staff Counsel, The Florida Bar