IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ROBERT F. THOMPSON

Respondent.

CONFIDENTIAL

CASE NO. 66,399
(TFB No. 12B82H26)

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THE FLORIDA BAR'S ANSWER BRIEF

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STATEMENT OF THE CASE

This disciplinary proceeding is before this court upon Respondent's Petition for Review of the Report of the Referee finding Respondent, Robert F. Thompson, in violation of The Florida Bar Code of Professional Responsibility Rule 1-102(A)(3) (engage in illegal conduct involving moral turpitude); DR 1-102(A)(6) (engage in any other conduct that adversely reflects on his fitness to practice law); and Integration Rule 11.02(3)(a) (engage in conduct contrary to honesty, justice, or good morals). The referee recommended that Respondent receive a 91-day suspension and thereafter until he shall prove his rehabilitation as provided in Rule 11.10(4). It was recommended that Respondent be ordered to pay the cost of these proceedings, and that he be placed on probation for two years.

The Petitioner in this Petition for Review is Robert F. Thompson and the Respondent is The Florida Bar. In this answer brief, each party will be referred to as they stood before the Referee. Record references in this brief are to portions of the trial transcript and Respondent Thompson's Opening Brief.

STATEMENT OF THE FACTS

Respondent was involved in a multiple car accident on or about August 22, 1982. Respondent walked away from the accident scene and was found nearby by a Deputy Sheriff.

Sheriff Deputies observed a small glass vial and spoon on the dashboard of Respondent's vehicle. The vial contained a white powder, later chemically tested and proven to be cocaine. A bottle containing Darvon was discovered on the floor of Respondent's vehicle.

Respondent was placed under arrest. While he was being transported to jail, he pretended he was unconscious so he would be taken to the hospital instead of to jail. Respondent was taken to Sarasota Memorial Hospital, where he became loud and boisterous and creating a disturbance.

Respondent was subsequently charged by information with possession of cocaine, possession of a controlled substance, disorderly intoxication, and leaving the scene of an accident without injuries. He pled no contest to all of the charges.

The Court adjudged Respondent guilty of disorderly intoxication, and sentenced him to a $500.00 fine and six months probation. Adjudication was withheld on the other three charges.

SUMMARY OF THE ARGUMENT

The Referee's recommendations are clearly supported by the record and previous holdings of this Court. The Referee based his decision on circumstances surrounding Respondent's no contest plea and conform to this Court's stated purposes of attorney discipline.

ARGUMENT

The Referee's recommendations should be approved in that the recommendation is based on Respondent's individual conduct as it relates to the disciplinary violations and as such is in conformity with the principles and purposes of attorney discipline enunciated and followed by this Court.

This Court has determined that an attorney's plea of no contest to a misdemeanor charge is relevant to his fitness to practice law. The Florida Bar v. Lancaster, 448 So.2d 1019 (Fla. 1984). A no contest plea accompanied by an adjudication of guilt is sufficient to sustain a disciplinary action, as is a no contest plea when there has been no adjudication of guilt. Id at 1022. The Lancaster case stated that the important factor is whether the attorney was given an opportunity to explain the circumstances surrounding his no contest plea and otherwise contest the inference that he engaged in illegal conduct. Id at 1022.

Respondent was given ample opportunity to explain the circumstances surrounding his plea. T. 59-113. In fact, these circumstances are the primary factor underlying the Referee's recommended discipline. The referee determined that the various incidents to which Respondent testified would individually suggest the possibility of a substance problem, and cumulatively

they more than suggest it. The Referee concluded that the circumstances strongly argue that there is a substance problem. T. 138.

The referee apparently felt that a mere suspension with the automatic assurance of reinstatement would not impose upon Respondent the responsibility of taking affirmative action to control and remedy this problem. Respondent repeatedly admitted to having a substance abuse problem related to this incident, as well as a number of personal problems. T. 82,83,84,103. Respondent did not seek help for these problems prior to the hearing so that it could be used as a mitigating factor. A 91-day suspension will impose upon Respondent the burden of justifying his readmittance to the practice of law by his own conduct. This Court has previously followed such reasoning. See The Florida Bar v. Ruskin, 126 So.2d 142 (Fla. 1961).

This court has uniformly held that the purpose of attorney discipline is not to obtain retribution, but to correct the tendency of the accused lawyer while offering him a fair and reasonable opportunity for rehabilitation if such is apparently possible. Id at 144. The Referee's recommended discipline conforms to this reasoning in light of the aforementioned circumstances. It will also protect the public, protect the favorable image of the profession, and serve as a deterrent to other members of the Bar who may be similarly minded, which are

also important purposes behind disciplinary measures. The Florida Bar v. Larkin, 447 So.2d 1340 (Fla. 1984).

Respondent presents a peculiar argument in support of his contention that the recommended discipline is too harsh. He states that he was guilty of four misdemeanors, but his criminal conduct was not of a very serious nature, though the Referee apparently took a different view. Opening Brief 5. Respondent seems to feel that for this reason, the recommended discipline should not be followed. This reasoning is erroneous for several reasons.

First, this reasoning reflects the philosophy that discipline should be imposed solely on the basis of the seriousness of the offense. This limitation would turn the imposition of discipline into a purely retributive form of action. As mentioned previously, this is not the purpose behind attorney discipline. The Referee clearly articulated his reasons for the recommended discipline and they are in conformity with the purposes followed by this Court.

Second, Respondent was charged with possession of cocaine, possession of a controlled substance, disorderly intoxication and leaving the scene of an accident without injuries. Clearly these are not all misdemeanors.

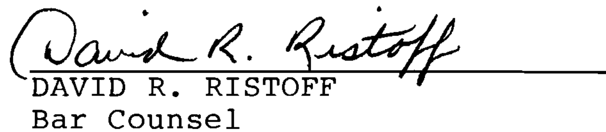
Third, this Court has imposed even greater discipline under similar circumstances. The Florida Bar v. Schram, 355 So.2d 788 (Fla. 1978). Schram was charged with possession of paraphernalia, a misdemeanor, and admitted guilt to a felony quantity of marijuana. He was adjudged guilty of the misdemeanor, and adjudication was withheld on the felony charge. Similarly, in the present case, Respondent was adjudged guilty of a misdemeanor, and adjudication was withheld as to the cocaine possession charge.

Schram was suspended from the practice of law for one year and indefinitely thereafter until he demonstrated proof of rehabilitation. In the present case, The Bar asked for and the Referee recommended a 91-day suspension, in that such a suspension would require proof of rehabilitation before Respondent is readmitted to the practice of law. The Referee, who was able to observe Respondent's attitude and demeanor correctly decided that the appropriate disciplinary measure under all the facts and circumstances should be a 91-day suspension and thereafter until he shall prove his rehabilitation.

CONCLUSION

The Complainant respectfully requests that this Court adopt the Referee's Report as to the findings of misconduct and impose the recommended discipline.

Respectfully Submitted,



DAVID R. RISTOFF
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Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing Answer Brief has been furnished by regular U.S. Mail to ROBERT F. THOMPSON, Respondent, Suite 200, The Legal Building, 447 - 3rd Avenue, North, St. Petersburg, Florida, 33701-3281, and to JOHN T. BERRY, Staff Counsel, The Florida Bar, Tallahasse, Florida, 32301-8226, this 21st day of July, 1986.

DAVID R. RISTOFF