IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR, Complainant, v. STEVEN F. JACKSON, Respondent.	)	CONFIDENTIAL Supreme Court Case No. 66,777 Florida Bar File No. 17D84F95

Chief Deputy Clerk

REPORT OF REFEREE

I SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as the referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of the Florida Bar, a final hearing was held in this matter November 20, 1985 in the Palm Beach County Courthouse at West Palm Beach, Florida. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to the Supreme Court with this report, constitutes the entire record in this case.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: Richard B. Liss, Esquire

For the Respondent: Sandra M. Salter Jackson, Esquire

II FINDINGS OF FACTS AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED:

After considering all of the pleadings and all of the evidence before me, including the request for admissions, the transcript of the proceedings before the Grievance Committee of the Seventeenth Judicial Circuit Grievance Committee D, conducted and heard on Tuesday, February 19, 1985, which was admitted into evidence without objection, and together with the request for admissions, including the transcript of hearings before the Honorable Norman C. Roetteger, Jr., United States District Court Judge, on February 27, 1984, and the transcript of proceedings before the Honorable Norman C. Roetteger, Jr., United States District Court Judge on April 12, 1984, and transcript of proceedings before the Honorable C. Roetteger, Jr., on April 16, 1984 and a transcript of the proceedings before the Norman C. Roetteger, Jr., United States District Court Judge on April 17, 1984, and the second request for admissions filed and answered herein.

This Court refers to those facts delineated in United States of America v. Johnathan Scott Baldwin, et als, in re Steven F. Jackson, Esq., 592 F. Supp. 149 (Dist. Ct. Fla. 1984).

The Referee adopts as a pertinent concise statement of the facts outlined in the opinion rendered by the United States Court of Appeals of the Eleventh Circuit on September 17, 1985 in United States v. Baldwin, supra, commencing on page 6257, which provides in part:

I. BACKGROUND

Appellant was the lawyer for Howard Jones, one of nine codefendants in a federal criminal case. On February 27, 1984, the district court held a calendar call in order to set the trial date. The parties estimated that the trial would last three to four weeks. At that time, the court inquired as to the dates in April or May when the lawyers for the various defendants would be unavailable. Jackson responded: "I don't have any vacation planned, but I do have a trial in New York, first week of April. After that, I have no objections to any of the time in those two months." The judge set the trial to begin on Monday, April 16, 1984.

On April 12, 1984, the Thursday preceding the Monday on which the trial was to begin, Jackson's brother, Jeffrey Jackson, attended a pretrial hearing in his brother's place. Jeffrey Jackson orally advised the district court that Steven Jackson was ready for trial, but that he would not be available for trial Tuesday and Wednesday of the next week and Monday and Tuesday of the following week because he would be observing Passover, a Jewish holiday. The udge responded that he had never before

received such a request, but that he always recessed court by sundown so that everyone could be home in time for Passover. Jeffrey Jackson said that he would so advise his brother.

On the following Monday, the day the trial was scheduled to begin, Jackson filed a written motion to stay all proceedings on that Tuesday and Wednesday and the following Monday and Tuesday. This motion was based on the free exercise clause of the first amendment. Jackson told the court that he was an observant Jew, that these days were the first and last two days of Passover which were equal in station to the highest of the Jewish holy days, and that it had been his practice since childhood to follow Jewish law that no work be done on those days. Jackson further stated that if the trial proceeded in his absence his client would be unduly prejudiced. The court denied Jackson's motion, but stated that the court would adjourn early for Passover. The court explained that with a nine-defendant, three to four week trial, the case could not be rescheduled at that point in time.[2] In response Jackson stated: "I just want to inform the court that with due deference to your ruling, I will not be here tomorrow and Wednesday or Monday and Tuesday of next week." The court warned Jackson that it would consider whether to send a marshal to bring him.

Following the lunch recess that day, the court asked Jackson's client, Jones, whether he would object to one of the other lawyers filling in on the days that Jackson

2. The judge further told Jackson that he did not adjourn court for his own religious holidays and that he was not insensitive to Jackson's faith or the requirements of it.

was absent. Jones stated that he had no objection. However, after Jones conferred with Jackson, Jackson informed the court that he could not adequately represent Jones unless he was present throughout the proceedings, and that Jones would object to another lawyer filling in. The court then suggested that Jackson could get a transcript of the missed testimony. Jackson declined this offer. The other defendants' lawyers explored the possibility of one of them representing Jackson. Again, Jackson found this alternative unacceptable. The court also offered to recess at four p.m. or anytime during the day that Jackson had to attend religious services. Jackson maintained that he could not work at all during these days.[3] The court specifically ordered Jackson to be at court the following day or he would be subject to contempt and criminal sanctions.

At around four o'clock that afternoon, after the jury had been partially selected, the court recessed so that any lawyers or jurors who wished to do so could return home for Passover. The court again told Jackson that it would not grant a stay given the size and expense of the trial. The court urged Jackson to appear and stated that it would consider a failure to attend in direct defiance of a court order. Jackson again advised the court that he would not attend the trial the next day:

> JACKSON: With all due respect, Your Honor, I answer to a higher authority than this court in this matter and I will not be here tomorrow.

3. Apparently, the judge contacted a Jewish lawyer and a Jewish judge to investigate the veracity of Jackson's religious claim. Although we do not condone this type of *ex parte* investigation, the inquiry proved harmless as the court's ruling was premised upon the judge's acceptance of the existence and sincerity of Jackson's claimed religious need to refrain from work on the days in question.

JUDGE: Well, act at your peril.

The next morning, the trial resumed and the jury selection continued. Jackson did not appear. The court found that Jackson had committed contempt twice on April 16 when he stated on two occasions that he would not obey the court's order to appear; the court also found that the contempt had been ratified that morning when Jackson failed to appear. The court stated that it would issue a certificate of contempt as soon as it was typed and would then give Jackson an opportunity to be heard. Next, the court addressed the problem of Jones' representation. After some delay, the court was able to find a lawyer who would agree to represent Jones at that late date. That evening, the court issued a certificate of contempt finding that Jackson had committed contempt twice on April 16 and that this contempt had continued on April 17. The certificate stated that the court did not doubt Jackson's representation of his religious practices and concluded:

> Despite what attorney Jackson thinks about this matter, it is not a case involving Mr. Jackson's exercising of his religious practices. It is a case of an officer of the court who failed to advise the court in ample time of his scheduled conflicts, especially after having assured the court when the trial date was selected that he had none in April or May. His defiance of the court's order denying his motion for stay constitutes contempt.

The order also set a hearing on the matter for April 19.

Jackson appeared on April 19, represented by counsel. The judge stated that he

had filed the certificate of contempt, but would afford Jackson the opportunity to explain his conduct at that time. Jackson's counsel argued that the court should vacate its certificate of contempt because the court had not afforded Jackson an opportunity to be heard prior to finding him in contempt as required by Federal Rule of Criminal Procedure 42(b), and because Jackson lacked the requisite criminal intent. In addition, Jackson's lawyer proffered evidence on the importance of the first and last two days of Passover, but was not permitted to introduce the testimony of two rabbis on this issue. The court found that such evidence was not relevant, as the court did not question Jackson's religious practice or his devotion to his religion.

Jackson testified next. He admitted that Passover occurred in March or April of each year. He further admitted that "perhaps" he had been "tarry in informing the court" that he could not be present during Passover, but stated that he had never before had a request for a continuance due to a religious holiday denied. The court stated that had Jackson filed the motion when he should have, it would have been easy to rearrange the court's calendar, but that his failure to do so fell pitifully short of his responsibility as a lawyer. The court then fined Jackson $1,000.

The complaint filed by the Florida Bar alleges this conduct by the respondent constitutes a violation of Disciplinary Rules 1-102(A)(1), Disciplinary Rule 1-102(A)(5), Disciplinary Rule 1-102(A)(6), Disciplinary Rule 7-101(A)(2), Disciplinary Rule 7-101(A)(3), Disciplinary Rule 7-106(A), are in violation of Article XI, Rule 11.022 of the Code of Professional Responsibility.

The respondent maintains that he is being unfairly and unjustifiably victimized for exercising his First Amendment Rights to freely practice his religion. As the Court stated in United States v. Baldwin, supra, which this Referee agrees, this is not a proceeding under the First Amendment. The evidence is replete in the transcript where the respondent, by his own admissions, indicates the flexibility of the religious exercise under the terms of its personal application. The action taken by the United States District Court flowed not from the respondent's exercising his First Amendment rights to practice his religion, but from the failure of the respondent to adhere to the rules of professional conduct in dealing with courts of justice.

A second issue raised by the respondent pertains to the ability of the complainant to discipline the respondent for acts which have been previously been dealt with the by the United States District Court.

This Court concludes that the United States District Court, as all courts, have an obligation to deal with errant behavior of officers of its court in a manner appropriate for that behavior. However, these acts do not prevent the Florida Bar, in its jurisdiction under the integration rule, from imposing disciplinary action against the respondent for failure to comply with the disciplinary rules.

III RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

As to the complaint filed by the Florida Bar, I make the recommendation of guilt for violating the integration rules of the Florida Bar and the disciplinary rules of the Code of Professional Responsibility, and the oath of admission to the Florida Bar.

IV RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

After the finding of guilty and before recommending discipline to be recommended pursuant to Rule 11.06(9)(A)(4),Code of Professional Responsibility, I have considered the personal history of the respondent and have considered the prior disciplinary actions taken by this Court, including the history and background of the respondent.

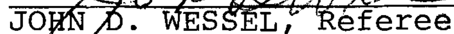
I will not repeat that background in this proceeding. I will indicate I have considered the fact that the respondent has been disciplined by the United States District Court for the Southern District of Florida in the contempt proceedings before it, which was affirmed by the United States Court of Appeals for the Eleventh Circuit. I further will make the comment that this is the second disciplinary action taken against the respondent and heard by this Referee. Although each of the acts were considered by this Court separately and without consideration of the acts of the other. In recommending a discipline for the respondent I cannot do so without mentioning that in both disciplinary actions the conduct of the respondent has shown a cold and calculating disregard for the proper function and administration of justice of the courts in their efficient, fair and orderly operation.

Accordingly, I recommend that the respondent be suspended from the practice of law for a period of four (4) months to run consecutive to the term imposed by the disciplinary action recommended in case number 65,432, and that the respondent shall prove to the Florida Bar and the Board of Governors of the Florida Bar that he has rehabilitated himself significantly for reinstatement as provided in Rule 11.10(4), and that respondent be publicly reprimanded.

V STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

It is apparent that costs have been incurred. It is recommended that all such costs and expenses, together with any costs which may be incurred, should be charged to the respondent and that interest at the statutory rate shall accrue and be payable beginning thirty (30) days after the judgment of this case becomes final, unless a waiver is granted by the Board of Governors of the Florida Bar under the provisions of the Integration Rule.

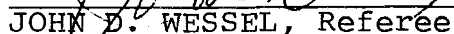
DONE AND ORDERED this 9 day of January, 1986.



JOHN D. WESSEL, Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been sent by United States Mail this 9 day of January, 1986 to Sandra Salter Jackson, Esquire, Jackson & Jackson, 2121 N. Federal Highway, Fort Lauderdale, Florida 33305 and Richard B. Liss, Esquire, The Florida Bar, 915 Middle River Drive, Fort Lauderdale, Florida 33304.



JOHN D. WESSEL, Referee