

IN THE SUPREME COURT

(BEFORE A REFEREE)

CASE NO. 69,240

CONFIDENTIAL

THE FLORIDA BAR,

COMPLAINANT,

vs

DONALD E. McLAWHORN,

RESPONDENT.

REPORT OF REFEREE

I. Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, a Final Hearing was held on February 5, 1988.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: RICHARD A. GREENBERG

For the Respondent : MICHAEL L. KINNEY

II. After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

As to the alleged VIOLATION OF DISCIPLINARY RULE 1-102(A) (4);
Conduct Involving Deceit, Dishonesty, Fraud or Misrepresentation:

The evidence supports the Bar's contention that the Respondent's filing of a traverse in the case being litigated in Circuit Court, constituted deceit or misrepresentation. (Bar's Exhibit # 4)

Paragraph # 4 of the traverse alleges a desire on the part of the husband, along with the wife, to sell the property. It further states in Paragraph # 5 that the parties are also joint owners of another piece of property. These allegations were not true, which were known to the Respondent, because he had already had the other property referred to transferred to him. (Bar's Exhibit # 3) (TR Pg. 9, Line 19-25, Pg 10, Line 1-10, Pg 29, Line 13-17)

As to the alleged VIOLATION OF DR 1-102 A (5); Conduct that is prejudicial to the Administration of Justice:

The Respondent did deprive the Court of the ability to order the sale of the property being litigated. The Respondent was not a party to the action and was not present at the hearing as counsel for the litigant

he represented, Mr. Draughn. The Respondent was the legal owner of the property and not his client, thus preventing a Court ordered transfer from his client to Mrs. Varon until several months later.

(TP Pg 21, Line 22-25; Pg 27, Line 9-25; Pg 28, Line 1-24)

As to the alleged VIOLATION OF 5-103(A); (An attorney shall not acquire a property interest in the course of action or subject matter of litigation he is conducting for a client):

The Respondent admitted that he acquired an interest in the matter, which he knew was the subject of litigation. (TP Pg 27, Line 9-25; Pg 28, Line 1-24)

The evidence further established the Respondent knew of a pending hearing involving the subject property when he had his client, Mr. Draughn, transfer said property to him. The Respondent's explanation for his actions fails to meet the required ethical standards of the Florida Bar.

As to the alleged VIOLATION OF 7-102(A) (1) (Taking an Action or Conducting a Defense merely to Harass Another):

The evidence fails to establish an intentional effort by the Respondent to conduct a defense or take action merely to harass Mrs. Varon. Even though the Respondent's actions caused some delay in the proceedings, it appears that his primary concerns were to assure payment of fees and costs to be incurred by his client in the Criminal Case, rather than cause malicious injury to Mrs. Varon.

III. I recommend that the Respondent, DONALD E. McLAWHORN, be found GUILTY of having VIOLATED FLORIDA BAR CODE OF PROFESSIONAL RESPONSIBILITY, DISCIPLINARY MISREPRESENTATION: DR 102(A) (5) (Conduct prejudicial to the Administration of Justice) DR 102(A) (4) (Conduct involving Deceit, Dishonesty, Fraud or Misrepresentation); and DR 5-103(A) (Acquiring a proprietary interest in subject matter of the litigation).

I recommend that the Respondent, DONALD E. McLAWHORN, be SUSPENDED from the practice of law for a period of 30 DAYS:

That the Respondent pay the COSTS of these proceedings and:

That the Respondent attend a CLE Seminar on Ethics.

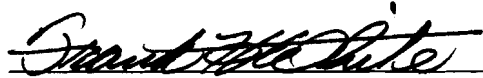
After findings of Guilt and prior to recommending said discipline, I considered (pursuant to Rule 3-7.5(k) (1) (4): the prior disciplinary conviction and disciplinary measure imposed.

IV. I find the following Costs were incurred by the FLORIDA BAR:

COSTS incurred at the Grievance Committee Level as reported by Bar Counsel:	\$339.10
Administrative Costs at Grievance Committee Level under Rule 3-7.5(k)(1)(5)	\$150.00
Court Reporter Costs	\$288.00
Administrative Costs at Referee Level under Rule 3-7.5(k)(1)(5)	\$150.00
TOTAL ITEMIZED COSTS	\$927.10

It is apparent that other Costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the Respondent, DONALD E. McLAWHORN.

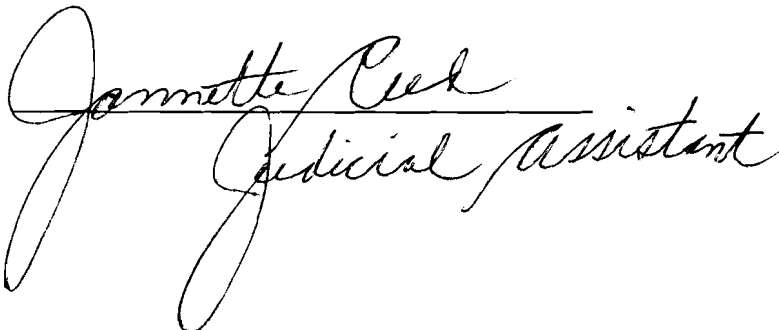
DATED THIS 14~~th~~ DAY OF MARCH, 1988.



REFEREE

CERTIFICATE OF SERVICE

Copies were mailed this 14 day of March, 1988, to the Florida Bar Counsel: Richard A. Greenberg, Esquire, Assistant Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport Marriott, Tampa, FL 33607; and to Respondent's Attorney: Michael L. Kinney, Esquire, 208 South McDill Avenue, Tampa, FL 33609.


Judicial Assistant