

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED

SID J. WHITE

JUN 20 1988

CLERK, SUPREME COURT

By _____
Deputy Clerk

MICHAEL J. KNOWLES,
Respondent/Appellant,

vs.

THE FLORIDA BAR,
Complainant/Appellee.

The Florida Bar File
Nos. 11A86M63, 11A86M83,
11A86M81, 11A86M93,
11A86159, 11A86163,
11A86147

Supreme Court Case
Nos. 70,114 and 70,907

BRIEF IN SUPPORT OF
PETITION FOR REVIEW

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ISSUED PRESENTED

WHETHER THE REFEREE ERRED BY REFUSING TO DISQUALIFY HIMSELF?

WHETHER THERE EXISTS SUFFICIENT EVIDENTIARY SUPPORT FOR THE FINDINGS OF FACT CONTAINED WITHIN THE REPORT OF REFEREE?

WHETHER THE REFEREE ERRED IN CONCLUDING THE RESPONDENT VIOLATED VARIOUS DISCIPLINARY RULES?

WHETHER THE RECOMMENDATIONS OF THE REFEREE ARE SUPPORTED BY RELEVANT PRECEDENT?

STATEMENT OF CASE AND FACTS

This case consolidates in ten (10) counts complaints spanning a period beginning March, 1985 and ending February, 1986. The Respondent sought to have the referee disqualified. The referee refused, and devoted one day to take evidence in this case. The report of referee followed, and the Respondent now files this brief in support of his petition for review.

ARGUMENT

- I. The referee erred when he refused to disqualify himself in this matter. Rule 3-7.5(g)(8) of the Rules Regulating the Florida Bar state that a referee may be disqualified "in the same manner and to the same extent that a trial judge may be disqualified under existing law from acting in a judicial capacity." The case law and Florida statute clearly set forth the method by which trial judges may be disqualified. Fla. Stat. 38.10 et. seq.

The Respondent fulfilled every requirement of the statute, and the referee violated every mandatory legal requirement contained within the statute.

Accordingly, the referee erred in failing to disqualify himself.

- II. The referee, driven by his prejudice against the Respondent, failed to give the Respondent a full and fair hearing in this matter.

The Respondent was accorded less than one hour to present his case after the referee allowed the Bar over 5 hours to present its case. In order to buttress the "Findings of Facts" contained within his report, the referee erroneously excluded evidence which unequivocally established facts which are in direct conflict with the "Findings of Facts" created from whole cloth by the referee. Brief examples follow: In Count IV, the referee made a finding of fact that a final hearing in Jovan Thompson's paternity and child custody matter was held on November 27, 1985. Report of Referee, Page 4. This conclusion was reached despite Jovan Thompson's admission that he attended a hearing where testimony was taken from him and his child's mother. Thompson acknowledges that he presented witnesses on his behalf. The other party also presented witnesses and both were cross-examined by the opposing parties' attorney. This referee's "Finding of Fact" that a final hearing was held without Thompson's presence is erroneous and is totally unsupported by

refused to review the court file which the Respondent sought to have him examine. By excluding relevant evidence and ignoring the logical conclusion to be drawn from that which he allowed into the record, the referee created findings of fact which are clearly erroneous.

This procedure was again utilized in Court III on page 7. The referee found that the Respondent failed to properly plead special equities. When the Respondent attempted to introduce the court file which showed that successor counsel had copied the petition filed by the Respondent, the file was deemed inadmissible. The Complainant claimed that both the trial judge hearing her case and the Respondent told her she was divorced. The referee concluded the Respondent violated disciplinary rules and ethical considerations when his actions in representing the client paralleled the attorney who followed him and whose ethics were not questioned.

This method was continuously used by the referee to buttress the findings of fact in the report.

This Court should not approve of this procedure and should not give validity to any findings of fact made by this referee.

III. Even if this Court imputes integrity to the "fact finding process" which the referee created, these facts do not constitute violations of the Rules and Canons.

IV. The discipline which this referee recommends is unprecedented.

CONCLUSION

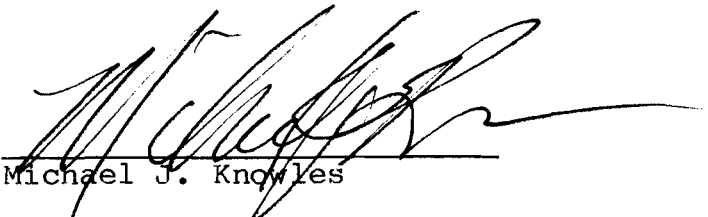
The Respondent prays that this Court will:

1. Appoint another referee to this and any further matters involving the Respondent
2. Order all relevant documents reviewed by a new referee
3. Set aside the recommendations of the referee.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been forwarded by mail to Randi Lazarus, Esq., The Florida Bar, 444 Brickell Avenue, Miami, FL and John Harkness, Staff Counsel, Florida Bar, Tallahassee, FL on this 24th day of June, 1988.

Respectfully submitted,



Michael J. Knowles