

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

vs.

CHARLES F. WISHART,

Respondent.

CASE No. 70,584
TFB No. 85-13,803(13C)
(formerly 13C85100)

FILED

NOV 30 1985

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COMPLAINANT'S ANSWER AND REPLY BRIEF

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SYMBOLS AND REFERENCES

In this Brief, the appellant, THE FLORIDA BAR, will be referred to as "The Florida Bar" or "The Bar". The appellee, CHARLES F. WISHART, will be referred to as "the respondent".

ARGUMENT

The respondent argues throughout his Answer and Cross-Appellant Brief that the referee's findings of fact are erroneous.

The Bar takes issues with respondent's argument. "A referee's findings of fact are presumed to be correct and should be upheld unless clearly erroneous or lacking evidentiary support." The Florida Bar vs. Stalnaker, 485 So.2d 815, 816 (Fla. 1986); The Florida Bar vs. McCain, 361 So.2d 706 (Fla. 1978), The Florida Bar vs. Wagner, 212 So.2d 770, 772 (Fla. 1968). Further, Rule 3-7.6(c)(5), Rules of Discipline, specifically states that, "Upon review, the burden shall be upon the party seeking review to demonstrate that a Report of Referee sought to be reviewed is erroneous, unlawful, or unjustified." Respondent has not sustained his burden.

The Bar finds it impossible to respond any further to the rambling arguments of the respondent's 361 paragraph, 65 page Answer and Cross-Appellant Brief.

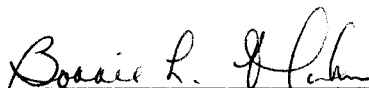
CONCLUSION

The respondent has failed to sustain his burden to determine that the referee's findings of fact are erroneous, unlawful or unjustified.


In addition, it is the recommendation of The Florida Bar Board of Governors that the respondent's personal and emotional involvement in the Bates' Dissolution of Marriage action be deemed sufficient mitigation to decrease the degree of discipline to be imposed in this case from disbarment to a three (3) year suspension.

WHEREFORE, The Florida Bar respectfully requests this Honorable Court approve the referee's findings of fact and disapprove the referee's recommended discipline of disbarment and suspend the respondent from the practice of law for three (3) years.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of
COMPLAINANT'S ANSWER & REPLY BRIEF has been furnished by
Certified Mail No. P 827-885-921 to Charles F. Wishart,
respondent at his record bar address of 410 West Bloomingdale,
Brandon, Florida, 33511-7402, and John T. Berry, Staff Counsel,
The Florida Bar, Tallahassee, Florida, 32301, on this 23
day of November, 1988.



BONNIE L. MAHON