

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

Supreme Court Case No.

RONALD S. GOLUB,

71,055

Respondent

FILED
D. J. WHITE
MAY 31 1988
CLERK SUPREME COURT *ph*

PETITION FOR REVIEW OF REPORT OF REFEREE

Respondent's Reply Brief

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ARGUMENT

NOTWITHSTANDING THE SERIOUS NATURE OF THE MISCONDUCT, A SUBJECTIVE ANALYSIS OF THE SURROUNDING CIRCUMSTANCES LEADS TO THE CONCLUSION THAT NEITHER DISBARMENT NOR A LENGTHY SUSPENSION IS WARRANTED.

This Court, as the court of original jurisdiction, has consistently dealt with the imposition of lawyer discipline with a subjective approach, taking into account on a case by case basis the presence or absence of both aggravating and mitigating circumstances. Accordingly the complainant's rigidity in demanding disbarment notwithstanding the referee's conclusions that no matters in aggravation were present and that several matters in mitigation were present seems not well taken. Reference is here had to the complainant's initial brief at page 12 and to its answer brief at page 4.

Illustrative of this Court's subjective approach is the recent opinion in The Florida Bar v. Seldin, 13 FLW. 315 (Fla. 5/12/88), wherein both the opinion and the dissent carefully analyze the facts surrounding the respondent's misconduct in revising the referee's recommendation as to discipline. The referee recommended a one year suspension, the Bar asked for disbarment and the Court imposed a two year suspension in considering "the totality of the violations".

Reference is here had to the analysis of the circumstances in Justice Ehrlich's dissent. Rules 4.11 and 5.11 of the Florida Standards for Imposing Lawyer Sanctions are cited as carrying an element of persuasiveness, although not having "received the imprimatur of this Court". The cited rules respectively call for disbarment

when a lawyer intentionally or knowingly converts client's property irregardless of injury or potential injury,

and when a

lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law.

Justice Ehrlich then addressed the nature of the circumstances surrounding the misappropriation of the money and then addressed the nature of the testimony of the respondent's witnesses. What he deemed most relevant was the absence of testimony

....as to extenuating circumstances that might have ameliorated the gravity or enormity of Mr. Seldin's offenses.

Justice Ehrlich concluded that disbarment was the appropriate discipline under the circumstances.

In the instant case, the respondent's witnesses' testimony related to the state of mind of the respondent and the motivations surrounding the taking of the money (Dr. Jules Trop, tr.-29 et seq. and the respondent, tr-96 et. seq.) and to the respondent's efforts towards rehabilitation (Dr. Trop, infra, Charles Hagan, Esq., Tr.-49 et seq.; Gael Georgeson, Esq., Tr.-77 et seq. and Mr. Gregory Grosgard, tr.-88 et seq.).

Absent from the record is any evidence of dishonesty, fraud, deceit or misrepresentation other than that involved in the dishonest act of taking the money itself. There were no misrepresentations made to the probate court, the heirs or to the estate's one creditor and no effort was made to cover-up or conceal the misconduct.

The "referee's findings of fact will be presumed correct and will be upheld unless clearly erroneous and lacking in evidentiary support". The Florida Bar v. Neely, 502 So. 2d 1237 (Fla. 1987); The Florida Bar v. Marks, 492 So. 2d 1327 (Fla. 1986), as cited in Seldin, supra, and that

.....the sole underlying cause of respondent's professional misconduct was his alcoholism (rr.-3).

In contrast, in the Seldin case, it was found that the dishonest act was "intentional", intended to benefit the respondent, there were other violations and there were no mitigating circumstances surrounding the taking of the funds.

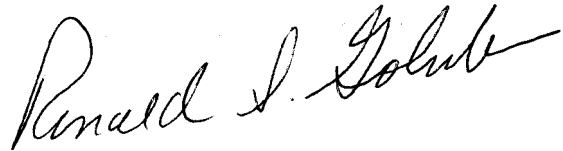
The "totality of the violations" have been thoroughly briefed by the respondent (respondent's initial brief-10 et seq., 14 et seq; respondent's answer brief-5 et. seq, 11 et seq.) and it is submitted that referee's findings of fact, but not his recommendation, are fully supported by the evidence.

A subjective analysis of the instant case leads only to the conclusion that notwithstanding the serious nature of the misconduct, neither disbarment nor a suspension is appropriate in the circumstances.

CONCLUSION

It is submitted that the three pronged goal of attorney discipline, to protect the public, to serve as a punishment and deterrent to others and to rehabilitate the errant but deserving attorney will be served by the imposition of probation in the instant case.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ronald S. Golub". The signature is written in black ink and is positioned below the typed name.

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