

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Complainant,

Case No. 72,835

v.

JOHN N. SAMAHA,  
Respondent.

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FILED  
SID J. WHITE

JUL 28 1989  
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RESPONDENT'S ANSWER BRIEF

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## SYMBOLS AND REFERENCES

In this Brief the Appellant will be referred to as The Florida Bar or the Bar and Appellee, JOHN N. SAMAHA, will be referred to as such or as the Respondent. References to the Referee's Report will be indicated by the symbol "RR" - and followed by the page number. References to the Transcript of the Final Hearing will be by T - followed by the appropriate page number. References to the Transcript of the Dispositional Hearing will be by the symbol TD - followed by the appropriate page number.

STATEMENT OF THE FACTS AND OF THE CASE,

This matter is before the Court on appeal by The Florida Bar of the Referee's recommendation that Respondent be found guilty of various violations of the Code of Professional Responsibility and that he receive a public reprimand and probation for one year.

The Referee's actual findings of fact were very concise. They were:

In July, 1986, a young lady employed the Respondent to represent her in a personal injury claim growing out of a May, 1986, automobile accident. At the time of employment, the young lady was 19 years with a ninth grade education and single with a four year old daughter.

The Respondent, at his law office and again at the young lady's apartment, under the guise that it was necessary to prepare the personal injury action, did, without the approval of the young lady, touch her on the back and thighs. He photographed her, in her bedroom, partially nude and wearing a Tens (sic) Unit. The young lady became angry and as soon as Respondent left her apartment she reported the incident to the police. The Respondent was charged and later entered a no contest plea to Battery in the County Court of Pinellas County.

There was no finding by the Referee that Respondent touched the outside of Ms. R.'s vagina.

During direct examination, Ms. R. testified that she first went to see Respondent about a car accident that occurred on approximately May 4, 1986. T-6. She retained him upon the recommendation of a friend, M.R. Ms. R. was a client of Respondent. T-7.

Ms. R. testified that she first visited Mr.













improper touching by Respondent. T-94.

Respondent testified that if the situation were to arise again, he would handle it differently. However, he testified he had no lewd or lascivious purpose in touching his client. T-94.

Respondent has been married for thirty-seven years. He has four children, two of whom are lawyers and one of whom is about to graduate from law school. His brother is a Tampa lawyer and his brother-in-law is a lawyer in Missouri. In his wife's family, there are several lawyers in Brazil. TD-33, 34.

Respondent was admitted to The Florida Bar in 1957 and has practiced in St. Petersburg since 1965. TD-31, 32. During the last twenty-four years, a substantial percentage of Respondent's practice has been representing clients in personal injury cases. T-69.

At the dispositional hearing, numerous witnesses attested to Respondent's substantial community service and to his excellent character. Those witnesses consisted of his wife and six other individuals, including two lawyers and one client. In addition, two affidavits were submitted into evidence attesting to Respondent's good character, including one from the Mayor of St. Petersburg and one from another client.



Respondent did not appeal the Referee's findings of fact and has not questioned the Referee's recommended discipline. He acknowledges wrongdoing and argues to this Court that a public reprimand is sufficient punishment for his offenses.

















Referee considered since the Standards were argued to him, is Standard 5.13. It says:

Public reprimand is appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

While Respondent argues that his conduct did not involve dishonesty, fraud, deceit, or misrepresentation, he acknowledges that his mere conviction adversely reflects on his fitness to practice. For that reason, he accepts a public reprimand.

Standard 9.32 lists numerous factors that can be considered in mitigation of discipline. Among them are: (b) absence of dishonest or selfish motives; (g) character or reputation; (j) interim rehabilitation; (l) remorse; and (m) remoteness of prior offenses.

Respondent's prior public reprimand was for conduct that occurred in 1978 and involved a fee dispute. There was absolutely no nexus between that matter, occurring ten years ago, and this one. The conduct involved was entirely different. The discipline imposed in the current case should not be enhanced because of the prior offense.

Prior decisions by this Court simply do not support the Bar's demand for the extremely serious sanction of a two-year suspension. For example, one lawyer received two public reprimands within two years. The first involved conduct involving dishonesty, fraud, deceit, or misrepresentation and

conduct adversely reflecting on one's fitness to practice law. The second involved illegal conduct involving moral turpitude. The Florida Bar v. Merwin, 384 So.2d 33 (Fla. 1980) and The Florida Bar v. Merwin, 424 So.2d 726 (Fla. 1982). Mr. Merwin engaged in illegal conduct involving moral turpitude two years after engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Yet, in both instances, he got a public reprimand.

In The Florida Bar v. Rocha, 453 So.2d 823 (Fla. 1984), the Respondent received a public reprimand, eighteen months' supervised probation, and the requirement of a psychological evaluation and continuing counselling, if required, for illegal conduct involving moral turpitude. Similarly, in The Florida Bar v. Clelland, 457 So.2d 1026 (Fla. 1984), a lawyer received a public reprimand after being found guilty of engaging in illegal conduct involving moral turpitude and conduct involving dishonesty, fraud, deceit, or misrepresentation together with neglect.

In The Florida Bar v. Betts, 530 So.2d 928 (Fla. 1988), the Respondent received a public reprimand for coercing an incompetent client into executing a codicil. In The Florida Bar v. Fields, 520 So.2d 272 (Fla. 1988), a lawyer who had received a prior public reprimand received a second public reprimand for conduct involving charging usurious interest on past-due debts, for driving under the influence of alcohol, and for battery. Finally, in The Florida Bar v. Pascoe, 526

So.2d 912 (Fla. 1988), the lawyer received a public reprimand for a plea of no contest for possession of a misdemeanor quantity of marijuana, improperly criticizing a judge, improper advertising, and for neglect. He received a public reprimand.

In all the aforementioned cases, the misconduct involved at least illegal conduct involving moral turpitude and, in several instances, behavior far worse than that at Bar. Yet, each of the lawyers received but a public reprimand.

There have been numerous instances where lawyers have engaged in conduct far worse than that at Bar and have received disciplines not even requiring proof of rehabilitation. For example, in The Florida Bar v. Weintraub, 528 So.2d 367 (Fla. 1988), the lawyer was suspended for ninety days for possession of cocaine, a felony. In The Florida Bar v. Stoskopf, 513 So.2d 141 (Fla. 1987), a lawyer was suspended for but ninety days for five misdemeanor convictions involving undeclared currency in foreign banks.

In The Florida Bar v. Thompson, 500 So.2d 1335 (Fla. 1987), a lawyer was suspended for ninety-one days for pleading no contest to possession of cocaine, possession of a controlled substance, disorderly intoxication, and leaving the scene of an accident. Clearly, he was engaged in felonious conduct, yet he received but a ninety-one day suspension.

The discipline asked for in this case even exceeds the discipline imposed in some misappropriation of trust fund

cases. See, for example, The Florida Bar v. Tunsil, 503 So.2d 1230 (Fla. 1986).

Respondent is highly regarded and a respected practitioner in the St. Petersburg area. He has practiced law in St. Petersburg for twenty-four years without problems with the exception of the fee dispute resulting in his prior public reprimand. The witnesses for him at the dispositional hearing were very impressive. They included two lawyers, Irene Sullivan and Michael Kenny, both of whom attested to his ethics, excellent reputation, and expertise.

The Mayor of St. Petersburg, Robert Ulrich, submitted an affidavit attesting to Respondent's good reputation as a lawyer and to his many public contributions to the fine arts and to the Church in St. Petersburg. Two clients attested to Respondent's fine professionalism. Lillian Redding, by affidavit, attested to his high professionalism and courtesy in representing her in a Workers' Compensation case and in a malpractice suit against a physician. Richard Rayhall, also attested to Respondent's excellent character and professionalism. Mr. Rayhall continues to use Respondent as his lawyer.

Karen Thomas and Joan Malone attested to Respondent's superlative efforts on behalf of the fine arts in the St. Petersburg community. Father Leroy Lawson attested to Respondent's services within the Church.

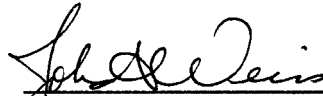
Clearly, Respondent is a man of integrity and is held in high esteem by his community. He has been an asset to The Florida Bar.

The Referee's decision in the case at hand is soundly based on the evidence before him. Clearly, he was of the opinion that a public reprimand is sufficient punishment for Respondent's wrongdoing. His opinion should not be overturned by this Court.

CONCLUSION

The Referee's recommendation that Respondent receive a public reprimand to be followed by one years' probation, including psychological counselling, should be upheld by this Court in its entirety.

Respectfully submitted,

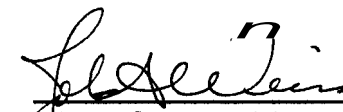


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer Brief has been mailed to DAVID R. RISTOFF, Branch Staff Counsel, The Florida Bar, Suite C-49, Tampa kAirport Marriott Hotel, Tampa, Florida 33607, this 28th day of July, 1989.



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