

FILED

SID J. WHITE

APR 5 1991

CLERK, SUPREME COURT

By _____ Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

BEFORE A REFEREE

A CONFIDENTIAL DISCIPLINARY
MATTER CONDUCTED UNDER THE
AUTHORITY OF THE INTEGRATION
RULE OF THE FLORIDA BAR

SUPREME COURT CASE #75,932
FLORIDA BAR CASE #90-70,790
(11F)

THE FLORIDA BAR, *
Complainant, *

v. *

EDWARD J. SALNICK, *
Respondent, *

* * * * *

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein, according to the Rules of Discipline, a hearing was held on February 27, 1991, in Chambers, Broward County Courthouse, 201 S.E. Sixth Street, Fort Lauderdale, Florida 33301, venue having previously been waived by the Respondent.

Attorneys appearing were:

For the Florida Bar: Patricia Etkin, Esq.

For the Respondent: Louis M. Jepeway, Jr., Esq.

Also present was Edward J. Salnick, Esq.,

Respondent.

A copy of the transcript is attached hereto and, by reference made a part hereof.

II. Findings of Fact as to Alleged Misconduct: The Florida Bar filed a Complaint against the Respondent on the 27th day of April, 1990, charging a violation of the Rules of Discipline Rule 3-4.3 and Rules of Professional Conduct 4-8.4(b), 4-8.4(c) and 4-8.4(d).

Preliminary pleadings were filed and a pretrial conference was held on October 16, 1990.

Due to a conflict of schedules between Counsel and the Court, an extension was sought, and granted by the Supreme Court. The Referee has only recently received the transcript of the hearing and has now reviewed same.

Shortly before the final hearing was to be held, at the request of Mr. Jepeway, a conference call was instituted between the Referee, Mr. Jepeway and Ms. Etkin, in which Mr. Jepeway agreed that Ms. Etkin should file a Motion for Summary Judgment to which he would not respond, and that the Referee would enter his Order granting the Summary Judgment. The Respondent's attorney waived the twenty day waiting period so that the Order could be entered forthwith. (Order is dated February 26, 1991).

The hearing would concern itself only with the matter of discipline.

This procedure was approved by the Respondent, Edward J. Salnick, on the record at the final hearing.

At that hearing the Florida Bar recommended disbarment and cited the cases of the Florida Bar vs. Kickliter 559 So.2d 1123, and The Florida Bar v. Roman 526 So.2d 60.

The Respondent recommended a period of suspension and cited the cases of:

The Florida Bar v. Greene 515 So.2d 1280;
The Florida Bar v. Pahules 233 So.2d 130;
The Florida Bar v. Vernell 374 So.2d 473;
The Florida Bar v. Brooks 504 So.2d 1227;
The Florida Bar v. Price 348 So.2d 887;
The Florida Bar v. Shapiro 456 So.2d 452;
The Florida Bar v. Oxner 431 So.2d 983;
The Florida Bar v. Cohen 534 So.2d 392;
The Florida Bar v. Sax 530 So.2d 284;
The Florida Bar v. Murrell 411 So.2d 178.

The Referee finds that the Respondent, having failed to respond to the Motion for Summary Judgment, is deemed to have admitted the allegations in the Complaint.

III. Recommendation as to Whether or Not the Respondent Should be Found Guilty: The Referee recommends that the Respondent be found guilty as to violation of the Rules as alleged in the Bar Complaint.

IV. Personal History and Past Disciplinary Records:

Age: 29 years;

Date Admitted to Bar: October 9, 1987;

Prior Discipline: None.

Other Personal Data: Respondent lives with mother in Broward County. Single. Employed in the firm

of Adolfo A. Aguila-Rojas P.A. in Dade County.

V. Recommendations as to Disciplinary Measures: At the outset the Referee would note that the purpose of lawyer sanctions "is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to discharge, their professional duties to clients, the public, the legal system and the legal profession properly." (Standard 1.1).

Factors to be considered in imposing sanctions after a finding of lawyer misconduct are: (a) the duty violated; (b) the lawyers mental state; (c) the actual or potential injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors (See Standard 3.0).

In this case the Referee finds the aggravating factors as follows: (See Standard 9.22)

a) Prior Disciplinary Offenses. None.

b) Dishonest or Selfish Motive. Selfish - No.

Dishonest - Yes. The Respondent did commit an extremely egregious act and deserves harsh punishment.

c) A Pattern of Misconduct. No.

d) Multiple Offenses. No.

- e) Not applicable.
- f) Not applicable.
- g) Refusal to acknowledge wrongful nature of conduct. No.
- h) Not applicable.
- i) Substantial experience in the practice of law. No.

As to mitigating factors, (Standard 9.32) the

Referee finds:

- a) An absence of prior disciplinary records. Yes.
- b) Absence of dishonest or selfish motive.
Dishonest: No. Selfish: Yes.
- c) Personal or emotional problems. Yes. The respondent was the firstborn of a marriage of some thirty years, having a younger brother and sister. This family was extremely close knit and the harmony was shattered when the father moved out of the home and subsequently divorced the Respondent's mother and remarried. The brother and sister also left the home, leaving the Respondent to deal with a devastated mother. This was an extremely stressful time in his life for the Respondent and apparently had serious effects upon his emotional state.

At the time he had practiced law only for a relatively short period of time, and additionally, due to the stress in his life, developed a heart problem for which he was treated by a cardiologist.

He expressed deep remorse for his conduct in this episode.

As to the character and reputation of the Respondent, the Referee heard the testimony of witnesses Andres Bengochea; Robert DePalma; Maria Capo and Robin Bengochea. The first three were classmates of the Respondent and each testified in glowing terms regarding the Respondent's integrity and general reputation, and were shocked at the allegations contained in the Bar's Complaint. It was, as they testified, completely contrary to the makeup of the respondent's personality.

In the words of Mr. Jepeway this act was an "aberration" in the professional and personal life of this young lawyer.

The Bar has recommended disbarment, citing Standard 6.11, however, the Referee is of the view that Standard 6.22 is more appropriate to the facts of this case. 6.22 suspension is appropriate when a lawyer knows that he is violating a court order, or rule, and that there is injury, or potential injury, to a client or party, or interference or potential interference with a legal proceeding.

Finally, THE RECOMMENDATION OF THE REFEREE is that the Respondent be suspended from the practice of law for ninety-one

(91) days, and at the expiration of that time be prepared to demonstrate rehabilitation, and be required to take the Ethics portion of the Bar exam.

VI. STATEMENT OF COSTS. The Referee finds that the costs incurred, as reflected in the attached Cost Affidavit, were reasonable and incurred by the Florida Bar in the amount of Two Thousand, Eight Hundred and Fifty-three Dollars and Thirty Cents (\$2,853.30) and should be assessed and taxed against the Respondent, together with interest at a rate of twelve percent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Final Order of the Supreme Court.

FOR WHICH AMOUNT LET EXECUTION ISSUE.

DATED this 27th day of March, 1991.



Referee

Judge Thomas M. Coker, Jr.

cc: Bar Counsel
Patricia Etkin, Esq.
Counsel for Respondent
Louis Jepeway, Jr., Esq.
Staff Counsel, Florida Bar
Tallahassee