

FILED

SID J. WHITE

AUG 23 1991

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THE FLORIDA BAR,

Complainant,

Case No. 77,340

v.

[TFB Case Nos. 90-30,934 (07A)
and 90-31,307 (07A)]

PAUL JOHN DUBBELD,

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 Regulating The Florida Bar, a hearing was held on June 17, 1991. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar

David G. McGunegle

For The Respondent

In Pro Se

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented on below, I find:

1. The respondent declined to answer the Bar's Requests For Admission. I deemed them admitted in full upon the Bar's motion at the final hearing. Further, at the hearing, the respondent admitted all of the allegations.

As To Count I

2. On or around January 7, 1990, the respondent was involved in a traffic accident in Daytona Beach Shores. The respondent drove into the path of an oncoming car and caused a collision. Although there were no injuries sustained in the accident, there was approximately \$6,000.00 worth of property damage.

3. The respondent was arrested after he failed a field sobriety test and refused to submit to a breath-alcohol test. The respondent was charged with driving under the influence of alcohol resulting in property damage, careless driving, failure to yield at an intersection, and failure to carry and exhibit a driver's license on demand.

4. The case ultimately proceeded to a jury trial which resulted in the respondent being found guilty of driving while under the influence of alcohol. The charges of careless driving, failure to yield, and failure to display his driver's license upon demand were dismissed. A judgment and sentence was filed in open court on October 25, 1990. The respondent was ordered to pay \$475.00 in fines and costs, and be placed on probation for six months during which time he was to perform fifty hours of community service, consume no alcohol, and provide an alcohol screening report to the Salvation Army within seventy-two hours. The respondent's driver's license was suspended for six months.

5. On November 2, 1990, the respondent moved the court to convert his fifty hours of community service to a \$500.00 fine due to his heavy work schedule. The court granted his motion on November 5, 1990.

As To Count II

6. On or around March 18, 1990, Joe and Laurie Bonk received a message on their answering machine at home which was also their business answering machine.

7. The caller identified himself as Paul Dubbeld. The call was directed toward Mrs. Bonk. The respondent swore and called her an obscene or at least a patently offensive name during the call.

8. Apparently, Mr. and Mrs. Bonk had a friend whose ex-wife had an affair with the respondent. The respondent was married at the time.

9. The respondent apparently believed Mrs. Bonk was the source of telephone calls to the respondent's wife regarding the respondent's personal life. The respondent made the telephone call to the Bonks under the influence of alcohol and for the purpose of harassing Mrs. Bonk.

10. Although criminal charges were filed against the respondent, they were later summarily dismissed.

III. Recommendations as to whether or not the Respondent should be found guilty: As to each count of the complaint I make the following recommendations as to guilt or innocence:

As To Count I

I recommend the respondent be found guilty and specifically that he be found guilty of violating Disciplinary Rule 3-4.3 for engaging in conduct contrary to honesty and justice; and the following Rules of Professional Conduct: 4-8.4(a) for violating the Rules of Professional Conduct; and 4-8.4(b) for engaging in criminal conduct that reflects adversely on his fitness as a lawyer in other respects.

As To Count II

I recommend the respondent be found guilty and specifically that he be found guilty of the following violations of the Rules of Professional Conduct, to wit: 4-4.4 for using means that have no substantial purpose other than to embarrass, delay, or burden a third person; and 4-8.4(a) for violating the Rules of Professional Conduct.

IV. Recommendation as to Disciplinary measures to be applied:

Bar Counsel advised the undersigned that these cases are based upon findings of probable cause rather than minor misconduct by the grievance committee. I recognize that Rule of Discipline 3-7.6(k)(3), as promulgated by the Supreme Court of Florida, appears to preclude the undersigned from recommending an admonishment in this case. It was also brought to my attention by Bar Counsel, however, that there are other instances where referees have recommended admonishments or private reprimands in probable cause cases and the Court as upheld these recommendations as to discipline. Therefore, for these reasons and due to the mitigating factors as outlined below, I recommend that the respondent be admonished and be placed on an unsupervised two year period of probation with the sole condition that he not imbibe to the excess in alcoholic beverages and that he not operate any motor vehicle within four hours after imbibing in any alcoholic beverages.

In mitigation, the circumstances leading to the instant complaint concerning the respondent's DUI conviction were thoroughly covered by the news media in Volusia County. An additional public reprimand would serve only to republish the event in the minds of the citizenry of Volusia County, the county in which the respondent practices law. In

effect, the respondent would be subjected to discipline twice. Furthermore, the respondent testified that he has voluntarily completed alcohol abuse courses, attended Alcoholics Anonymous, and voluntarily entered himself into a twenty-nine day in-house alcohol rehabilitative program and successfully completed same. I find the respondent's unacceptable conduct was a direct result of his abuse of alcohol.

In making my recommendation as to discipline, I have taken into account the respondent's prior disciplinary history consisting of two findings of minor misconduct. One involved a traffic related offense and another a domestic dispute. The latter arose due to the respondent's abuse of alcohol at the time and it may have been a factor in the former.

V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 38

Date admitted to Bar: December 17, 1980

Prior Disciplinary convictions and disciplinary measures imposed therein:

The Florida Bar v. Dubbeld, Case No. 88-30,523 (07A) - Private reprimand with an appearance before the grievance committee for becoming verbally abusive toward a police officer during a traffic stop. The respondent's remarks were both profane and very loud so that several onlookers were witnesses to his conduct.

The Florida Bar v. Dubbeld, Case No. 90-30,386 (07A) - Private reprimand with an appearance and an indefinite period of probation during which the respondent shall continue therapy until his therapist deems it no longer necessary with the additional requirement that he submit quarterly reports to The Florida Bar from his therapist as to his progress. The respondent was arrested and charged with battery on his wife, assault on a law enforcement officer, disorderly conduct, criminal mischief and resisting arrest without violence. The charges arose out of a domestic dispute and the respondent entered into a plea and sentencing agreement whereby he plead no contest to battery on his wife and disorderly intoxication. The remaining charges were dropped.

Other personal data: The respondent is married and has two minor children.

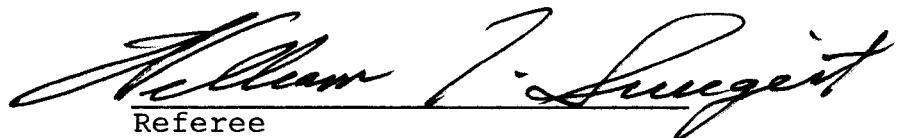
VI. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

A.	Grievance Committee Level Costs	
	1. Transcript Costs	\$ 126.40
	2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 18.45
B.	Referee Level Costs	
	1. Transcript Costs	\$ 135.65
	2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 52.75
C.	1. Administrative Costs	\$ 500.00
D.	Miscellaneous Costs	
	1. Investigator Expenses	
	A. 90-30,934 (07A)	\$ 301.55
	B. 90-31,307 (07A)	\$ 257.15
	2. Copy Fees	\$ 22.63

TOTAL ITEMIZED COSTS: \$1,414.58

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 13 day of August, 1991.


Referee

/rbs
Encs.

cc: David G. McGunegle, Bar Counsel
The Florida Bar
880 North Orange Ave., Suite 200
Orlando, FL 32801-1085
(copy of Record)

Copies to:

Mr. David G. McGunegle, Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida, 32801-1085.

Mr. John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300.

Mr. John P. Dubbeld, Respondent, 444 Seabreeze Boulevard, Suite 942, Daytona Beach, Florida, 32118-3952.