

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

SAM E. BARKET, JR.,
Respondent.

CASE NO. 77,961

FILED

SID J. WHITE

SEP 1 1993

REPORT OF REFEREE

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

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, on 10 December 1992, held in Gainesville, Alachua County, Florida.

The following attorneys appeared as counsel for the parties:

For The Florida Bar; James N. Watson, Jr., Esquire
650 Apalachee Parkway
Tallahassee, FL 32399-2300

For The Respondent; Norman J. Abood, Esquire
1015 Blackstone Building
233 East Bay Street
Jacksonville, FL 32202

* * * * *

Abbreviations and Symbols

Abbreviations and symbols have been used in this report in an attempt to enhance brevity. They refer to various records in the file and examples are:

- C 1,2 refers to the allegations in Paragraphs 1 and 2 of Complainant's Complaint; and, where inserted within a paragraph of this report, the findings in that paragraph relate to the allegations within those paragraphs in the Complaint.
- CRA-C,E refers to Complainant's Request For Admissions C and E served on 15 May 1991.
- RRA-1 refers to Respondent's Answer to Request For Admissions filed before the Referee on 7 June 1991.
- TH 1-3,40 refers to pages 1 thru 3 and page 40 of the Transcript of Hearing held before the Referee on 10 December 1992.
- Ex #1 VA, 155-160 refers to pages 155 thru 160 of Complainants' Exhibit #1 Volume A received in evidence by the Referee on 10 December 1992.
- Ex #1 VB, 333-335 refers to pages 333 thru 335 of Complainants' Exhibit #1 Volume B received in evidence by the Referee on 10 December 1992.
- Ex #1 VC, 37-40 refers to pages 37 thru 40 of Complainants' Exhibit #1 Volume C received in evidence by the Referee on 10 December 1992.
- Ex #1 VD, 497-499 refers to pages 497 thru 499 of Complainants' Exhibit #1 Volume D received in evidence by the Referee on 10 December 1992.

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

1. That Respondent, SAM E. BARKET, JR., is now and was, at all times mentioned in the Complaint, a member of the Florida

Bar subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida (C 1; CRA-A; RRA-1).

2. On or about 29 September 1989, Respondent was charged with sexual battery, a felonious crime, pursuant to the provisions of Chapters 794 and 800, Florida Statutes. These criminal charges resulted from Respondent paying one of his clients \$100 so that he could have sexual intercourse with a young girl. At the time Respondent had sexual intercourse with the girl, she was: fifteen years old; staying in the client's house; and, was a runaway from somewhere in North Carolina (C 2; CRA-B; RRA-1; TH 20; Ex #1 VC, 13-15, 25, 55, 60-61; Ex #1 VA 172-180; CRA-G).

3. On 19 March 1991 and at the conclusion of his jury trial on the criminal charges, the jury returned its verdict finding Respondent guilty of a lewd and lascivious assault upon a child. Thus, by reason of his having sexual intercourse with the girl, Respondent has been found guilty of having committed a felony (C 3; CRA-C; RRA-1; Ex #1 VB, 472-473; Ex #1 VD 500).

4. On 19 April 1991, Respondent was adjudicated guilty of the crime charged in the information filed against him and in accordance with the verdict returned by his trial jury. Therefore, Respondent now stands again convicted of a felonious crime as defined by the Rules of the Florida Bar (C 4; CRA-D; CRA-G; RRA-1; Ex #2 VD, 527; TH 5).

5. At the time of his conviction on 19 April 1991, the Trial Court sentenced the Respondent to serve three (3) years imprisonment within the Department of Correction with that imprisonment to

be followed by two (2) years of probations under supervision of the Department of Correction. Apparently, the sentence originally imposed was later reduced by the Trial Court to imprisonment for a year and a day. (C 5; CRA-E; RRA-1; Ex #2 VD, 524-525; TH 21-23).

6. Respondent has violated Rule 3-4.4 of the Rules of Discipline for the Florida Bar and Rule 4-8.4 (Misconduct) Rules Of Professional Conduct for the Florida Bar (C 6; CRA-F; RRA-1).

III. Recommendation as to Whether or Not the Respondent Should be Found Guilty:

1. I recommend that Respondent be found guilty and specifically that he be found guilty of the following violation of Rule 3-4.4 (Criminal Conduct) Rules of Discipline for the Florida Bar, to wit:

On 19 April 1991 and in Duval County Florida Circuit Court Case Number 33-12256CT, Respondent was adjudicated guilty of the felonious crime, committing a lewd and lascivious assault upon a child.

2. I recommend that Respondent be found guilty and specifically that he be found guilty of the following violation of Rule 4-8.4(b) (Misconduct) Rules Of Professional Conduct for the Florida Bar, to wit:

The criminal act committed by Respondent on the person of the 15 year old female victim reflects adversely on Respondent's honesty, trustworthiness and fitness as a lawyer.

IV. Recommendation as to Discipline: I recommend that Respondent be disbarred.

V. Personal History and Past Disciplinary Record: In determining the discipline to be applied, I have considered the fact that Respondent was approximately sixty years old and was admitted to The Florida Bar in October 1961. I have also taken into consideration the fact that, while a member of The Florida Bar, he was previously convicted of another felonious crime, dealing in stolen property.

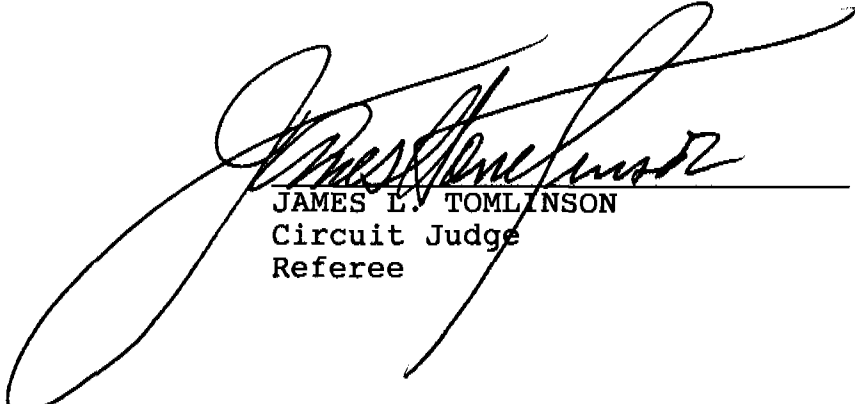
VI. Statement of Costs and Manner in Which Cost Should be Taxed:
I find the following costs were reasonably incurred by The Florida Bar.

Referee Level

Administrative Costs, pursuant to Rule 3-7.6(k)(1), Rules of Discipline	\$ 500.00
Court Reporter Fees and Transcripts	169.99
Bar Counsel Travel Expenses	280.50
Staff Investigator Expenses	<u>15.00</u>
TOTAL	<u>\$1,065.49</u>

It is recommend that all of the above costs and expenses be charged to the Respondent.

DONE at Gainesville, Alachua County, Florida, this 31st day of August, 1993.



JAMES L. TOMLINSON
Circuit Judge
Referee

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery or U.S. Mail to the following, this 31 day of August, 1993.

James N. Watson, Jr., Esquire
650 Apalachee Parkway
Tallahassee, FL 32399-2300

Norman J. Abood, Esquire
1015 Blackstone Building
233 East Bay Street
Jacksonville, FL 32202



Judicial Assistant