3-16

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,)

Complainant,)

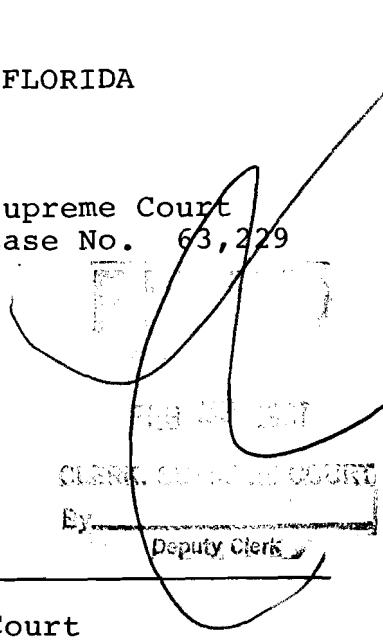
v.)

H. LEE BAUMAN,)

Respondent.)

_____/

Supreme Court
Case No. 63,229



On Order of Supreme Court

BRIEF OF COMPLAINANT

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SUMMARY OF THE ARGUMENT

The Integration Rule, article XI, Rule 11.04(2)(c) provides that disciplinary action may be taken against an attorney, where he has been acquitted of a crime. Such rule is based on the fact that the standard of proof in a disciplinary proceeding is less than in a criminal proceeding and that attorneys are held to high professional standards. Moreover, a defense to a criminal case, such as the defense of insanity, has been held not to be a defense to a disciplinary proceeding, but rather is a matter of mitigation.

INTRODUCTION

The Florida Bar, Complainant, will be referred to as "the Bar" or "The Florida Bar", H.L. Bauman, Respondent, will be referred to as "Mr. Bauman" or "the Respondent." The letter "A" will be used to designate the Appendix.

STATEMENT OF THE CASE AND OF THE FACTS

On February 5, 1987, The Florida Bar was ordered to file a brief with this Honorable Court as to why any discipline should be imposed on the Respondent. Such order was issued subsequent to the Report of Referee approving a consent judgment, submitted pursuant to Integration Rule, article XI, Rule 11.13(6)(b).

The Florida Bar would respectfully request that this Court utilize the facts contained in the Referee's Report for a concise chronology of the case. The Report has been attached as an appendix to this brief for the Court's convenience.

POINT ON APPEAL

WHETHER THE IMPOSITION OF BAR DISCIPLINE IS APPROPRIATE WHERE AN ATTORNEY WAS ACQUITTED OF A FELONY WHEN HIS CONDUCT IS VIOLATIVE OF THE CODE OF PROFESSIONAL RESPONSIBILITY AND/OR THE INTEGRATION RULE.

THE IMPOSITION OF BAR DISCIPLINE IS APPROPRIATE WHERE AN ATTORNEY WAS ACQUITTED OF A FELONY WHEN HIS CONDUCT IS VIOLATIVE OF THE CODE OF PROFESSIONAL RESPONSIBILITY AND/OR THE INTEGRATION RULE

This Honorable Court has previously addressed the foregoing question. In The Florida Bar v. Price, 478 So.2d 812 (Fla. 1985), the Respondent was charged with trafficking in cannibis. His first two trials resulted in mistrials. On the third retrial the jury acquitted him. This Court affirmed the referee's recommendation that the respondent be disbarred for the acts comprising his criminal charges, although a jury acquitted him. In so doing, it was held:

> Respondent claims that the referee erroneously rejected the jury's findings. In so arguing, he fails to appreciate the differences in the standards of proof in criminal cases and Bar proceedings and the different goals pursued. Florida Bar Integration Rule, article XI, Rule 11.04(2)(c) provides: "The acquittal of an accused in a criminal proceeding shall not necessarily be a bar to disicplinary proceedings . . ."
>
> Price, at 813.

Price, supra goes on to explain the rationale behind the above-mentioned portion of the Integration Rule. First, the burden of proof in a criminal case is proof of guilt beyond a reasonable doubt; whereas, the standard in a bar proceeding is proof by clear and convincing evidence. Thus, the Bar must meet a lesser burden. The Florida Bar v. Hirsch, 359 So.2d 856 (Fla. 1978), The Florida Bar v. Quick, 279 So.2d 4 (Fla. 1973). Second, the conduct of an attorney is subject to high professional standards, in that practicing law is a privilege.

Integration Rule, article XI, Rule 11.02. Consequently, the doctrine of collateral estoppel does not operate as a bar to attorney disciplinary proceedings where the attorney was acquitted of criminal charges, since the above distinguishing factors exist. The Florida Bar v. Musleh, 453 So.2d 794 (Fla. 1984).

The case sub judice is quite similar to Price, supra. Mr. Bauman was charged with conspiracy to traffick in cocaine and marijuana. His first trial resulted in a directed verdict, which was later reversed amd remanded by the Fourth District Court of Appeal. On remand, Mr. Bauman was acquitted.

Futhermore, the fact that an attorney is charged with a crime and acquitted will not automatically cause the Bar to go forward with a disciplinary proceeding. The conduct of the attorney must be violative of the Code of Professional Responsibility and/or the Integration Rule[1]. In the instant case the Bar is confident that the acts Mr. Bauman admitted to in his consent judgment are violative of our code of ethics. Specifically, he admitted to meeting with individuals on twelve separate occasions to discuss the purchase and importation of large quantities of cocaine and marijuana. (A-2) He went on to admit during his "renunciation", that:

> I plan on calling all persons involved and telling them that I will no longer be involved in any illegal acts...
>
> (A-3)
> emphasis added

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[1] - The conduct Mr. Bauman admitted to occurred prior to the adoption of the Rules Regulating The Florida Bar.

The foregoing admissions in and of themselves clearly represent conduct unbecoming of the legal profession. The fact that Mr. Bauman may have been acquitted of a crime does not absolve him of his involvement from the Bar's perspective. Certainly, even if the consent judgment did not clearly advise the Court of the motive and intent of the twelve meetings, Mr. Bauman's admitted statement that "he would no longer be involved in any illegal acts" clarifies any misunderstanding. It is the Bar's firm conviction that the foregoing admissions constitute violations of the Integration Rule, article XI, Rule 11.02(3)(a), commission of an act contrary to honesty, justice and good morals and Disciplinary Rule 1-102 (A)(6) conduct that adversely reflects on his fitness to practice law.

Additionally the Respondent relied on the defense of renunciation. Such defense was included in the consent judgment as a matter of mitigation. In The Florida Bar v. Parsons, 238 So.2d 644 (Fla. 1972), the Respondent had been found not guilty of worthless check charges by reason of insanity. Despite Parson's defense of insanity, this Court accepted the recommended discipline of a one year suspension. In Parsons, supra and other cases this court has viewed the defense of insanity as a matter of mitigation, rather than a defense to disciplinary proceedings, Musleh, Supra; The Florida Bar v. Perri, 435 So.2d 827 (Fla. 1983).

Consequently, Mr. Bauman's defense of renunciation to his criminal charge was included as a matter of mitigation in the consent judgment, rather than a complete defense, pursuant to the previously mentioned caselaw.

It would therefore be the Bar's position that caselaw together with Integration Rule, article XI, Rule 11.04(2)(c) provide for the imposition of discipline, where an attorney has been adquitted of a crime, where his conduct is violative of the Code of Professional responsibility. The Bar respectfully urges this Court to approve the proposed consent judgment.

CONCLUSION

Based upon the foregoing reasons and citations of authority, The Florida Bar respectfully submits that the imposition of discipline is appropriate where an attorney has been acquitted of a criminal charge, and would urge this court to approve the Report of Referee.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the Brief of Complainant On Order of Supreme Court was mailed to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, FL 32301 and that a true and correct copy was mailed to ROBERT SHEVIN, Attorney for Respondent, Suite 2200 AmeriFirst, 30th Floor, One Southeast Third Avenue, Miami, Florida 33131, this 19th day of February, 1987.

RANDI KLAYMAN LAZARUS