

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

CASE NO. 63,230

FRANCIS W. BLANKNER,

Respondent.

FILED

MAY 23 1983

SID J. WHITE

CLERK SUPREME COURT

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of The Florida Bar, hearings were held on March 24, 1983, and April 19, 1983. 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: HARRISON T. SLAUGHTER

II. Findings of Fact as to Charges Against Respondent: After considering all of the pleadings and evidence before me, pertinent portions of which are commented upon below, I make the following findings and determinations:

1. Respondent failed to timely file with the Internal Revenue Service his personal income tax returns for the years 1970 through 1979 (Record (R) Pages (pp) 22, 23, 24; Complainant's Exhibits (X) 1, 2; Complainant's Complaint and Respondent's Answer).
2. As to all of said returns, Respondent only filed with the Internal Revenue Service the returns for the years 1976, 1977, 1978 and 1979; the 1976 return was belatedly

filed in 1980 (R pp 22, 23); and he filed the 1977 through 1979 returns in 1981 (R pp 56, 57), and paid the taxes due (R p 57).

3. Respondent's income for the years 1977 through 1979 was such as to place him under a duty to file his returns for those years (Complainant's X 2; Respondent's Xs 3 and 4); and that he states the only reason he failed to timely file said 1977-79 returns was his inability to pay the required income taxes at the subject times (R p 67).
4. Respondent was indicted by a Federal Grand Jury on three (3) counts for willfully and knowingly failing to file his income tax returns for the years 1977 (Count I), 1978 (Count II) and 1979 (Count III), each being a Federal misdemeanor under 26 U.S.C. Sec. 7203 (Internal Revenue Code) (Complainant's X 1); that Respondent pled guilty to Count II in exchange for Counts I and III being dropped pursuant to a Plea Agreement (Complainant's X 2); and that Respondent was adjudicated guilty of Count II and sentenced to five (5) years probation plus a Ten Thousand Dollar (\$10,000.00) fine (Complainant's X 3).
5. Clear and convincing evidence shows that Respondent was gainfully employed as a practicing attorney in Orange County, Florida, from 1949 to the present time (R pp 16, 17, 37); that for the years 1970 through 1972 he earned enough money to pay the mortgage payments due on a four (4) bedroom house, support himself, his wife and his aged mother-in-law in the home, as well as provide substantially for the college education of his two (2) sons and one (1) daughter (R pp 18, 19, 27, 29-33, 60, 61); that the only stated reason Respondent gave for his failure to file said 1970 through 1972 returns was his inability to pay the required income taxes (R p 68); and that Respondent's earnings during those years were at such a level as to place him under duty to file income tax returns.
6. Clear and convincing evidence shows that Respondent willfully and deliberately failed to file his said income tax returns for the years 1970 through 1972 and 1977 through 1979; and that such failure was a conscious decision on Respondent's part over a period of at least six (6) years, and was without any justifiable reason or excuse.

III. Recommendations as to whether Respondent should be found guilty:
I recommend that Respondent be found guilty, and specifically that he be found guilty of violating Integration Rule of the Florida Bar 11.02(3)(a) and Florida Bar Disciplinary Rules 1-102(A)(4) and 1-102(A)(6).

IV. Recommendations as to Disciplinary Measures to be applied:
I recommend that Respondent receive a public reprimand; and due to the cumulative nature of misconduct, I further recommend that Respondent be suspended from the practice of law in Florida for a period of two (2) months with automatic reinstatement at the end of suspension as provided by Integration Rule 11.04(4).

V. Personal History and Past Disciplinary Record: After finding Respondent guilty and prior to recommending discipline to be recommended pursuant to Integration Rule 11.06(9)(a)(4), I considered the following personal history and prior disciplinary record of the Respondent, to-wit:

Age of Respondent:	58 years
Date Admitted to Bar:	1949
Prior Disciplinary Record:	No prior charges whatsoever.
Other Personal Data:	Excellent family man with wife and three fine children, all adults. He has acted responsibly in assisting in the care of his aged mother-in-law. He is a lifelong resident of Orange County, Florida, with many friends. He is a very likeable man with an impeccable professional (except for the within charges), social and military record. (See letters attached to Respondent's X 2).

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:

Administrative Costs\$150.00

B. Referee Level Costs:

1. Administrative Costs	150.00
2. Transcript Costs	341.45
3. Bar Counsel/Branch Staff Counsel Travel Costs	39.61

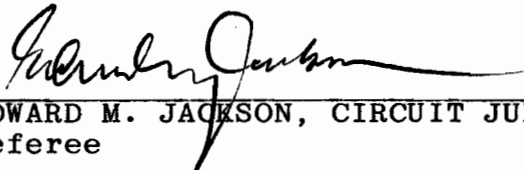
C. Miscellaneous Costs:

1. Telephone Charges	2.15
2. Staff Investigator Expenses	14.92

TOTAL \$698.13

It is recommended that the foregoing itemized costs be charged to the Respondent and that interest at the statutory rate shall accrue and be payable beginning thirty (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 23rd day of May, 1983.


EDWARD M. JACKSON, CIRCUIT JUDGE
Referee

Copies furnished to:

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