

63,259

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Complainant,

vs.

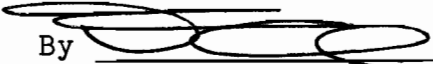
CONFIDENTIAL

EMMETT A. MORAN,  
Respondent.

Case Nos. 18A83C08  
18A83C19  
18A83C31

BRIEF OF THE RESPONDENT

McKEOWN AND GAMOT, P.A.  
Attorneys for Respondent  
340 Royal Palm Way  
Palm Beach, FL 33480  
(305) 832-5650

By   
Frank J. McKeown

**FILED**  
SID J. WHITE  
09/28/18  
CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

TABLE OF CONTENTS

Preliminary Statement..... 1  
Statement of the Case..... 2  
Statement of the Fact..... 4  
Point on Appeal..... 5  
Argument..... 6  
Conclusion..... 8  
Certificate of Service..... 9

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

CONFIDENTIAL

EMMETT A. MORAN,

Case Nos. 18A83C08

18A83C19

18A83C31

Respondent.

---

BRIEF OF THE RESPONDENT

Preliminary Statement

EMMET A. MORAN, Respondent below will be referred to herein as Respondent and the Florida Bar will be referred to as Complainant. The two transcripts are designated by reference as "T1" and "T2". However, since it is the position of the Respondent that the transcripts are void of any evidence or testimony sustaining the Referee's recommendation, it is unnecessary to designate any portion thereof, but only to include by reference the entire transcript for the purpose of demonstrating this fact.

Statement of the Case

On June 3, 1983, the Florida Bar as Complainant filed three counts against EMMET A. MORAN, Respondent, pursuant to Article 11 of the Integrated Rule of the Florida Bar.

On July 16, 1983, the Respondent, EMMETT A. MORAN, filed his Answer and a Counterclaim and a Motion to Dismiss.

The Referee set this matter for final disposition on February 10, 1984 at the Seminole County Courthouse, Sanford, Florida. The transcript of that hearing is made a part of this appeal by reference (T1). That as a result of the above hearing, Count I was dismissed, and as to Count II the Respondent was found not guilty. As to Count III, the Respondent was found guilty, specifically that he be found guilty of violating the following Integrated Rules of the Florida Bar and/or the Disciplinary Rules of the Code of Professional Responsibility, to wit: Florida Bar Integrated Rule Article 11, Rule 11.02(3)(a) and the Code of Professional Responsibility Disciplinary Rule, 1-102(a)(5), for conduct prejudicial to the administration of justice and Disciplinary Rules 7.102(a)(5) for knowingly making false statement of law or fact to the Court.

A subsequent hearing was held for the purpose of

determining the extent of guilt, this hearing was held in the Conference Room of the Orange County Bar Office, 8880 North Orange Avenue, Orlando, Florida, on May 4, 1984. The transcript of that hearing is made a part of this appeal by reference (T2).

As a result of this hearing, the Referee recommended that the Respondent be suspended for a period of four (4) months and thereafter until he shall prove his rehabilitation as provided in Rule 11.10(4). The Referee further recommended the Respondent obtain substance abuse counseling.

Statement of Fact

Nothing in either of the transcripts of the hearings (T1 and T2) refer to the Respondent having any problem with alcohol or other mind altering substances.

The report of the Referee states at page 3:

"From the record, the Referee finds that the Respondent was under extreme mental and physical pressures due to health difficulties and self induced indulgences that prohibited him from exercising sound judgment."

The transcripts of the hearings (T1 and T2) are void of any information that can even be construed to be of an evidentiary nature that would suggest that the Respondent was under any extreme mental and physical pressures due to health difficulties and self induced indulgences. The Complainant elicited no factual evidence from any witnesses or documents presented at either of these hearings.

Point on Appeal

Whether or not the appellant should be suspended for a period of four months and thereafter until he proves his rehabilitation as provided in rule 11.10(4) and that he obtain substance abuse counseling when the record is void of any evidence of such abuses.

## Argument

If the record of the hearing before the Referee is entirely void of any testimony or other evidence pertaining to the Respondent's mental and physical pressures due to health problems and self induced indulgences that prohibited him from exercising sound judgment, then there seems to have been some misunderstanding on the Referee's part as to what evidence was in the record related to the Respondent's physical condition when he made his recommendations or how it related to his misconduct.

The Respondent was found guilty of relatively minor infraction; that is, he mistakenly misrepresented to the Trial Court that he had not previously represented a Defendant in a criminal case. The fact that he had made such misrepresentation is of course part of the record of that case. However, this misrepresentation neither provided the Respondent's client nor the Respondent of any advantage. It was certainly not prejudicial to the administration of justice in that case. The facts are that the Judge in that criminal case was in physical possession of the entire court file, the Respondent was unable to obtain it, and the Judge was fully aware that there was misstatement made by the Respondent prior to the hearing. The outcome of the criminal case was uneffected in any way by this misrepresentation. This



misstatement in the form of a pleading denying representation of the Defendant some ten (10) years prior was known in advance to the Trial Judge who had the court file in his possession, and the Judge failed to call this matter to the attention of the Respondent prior to the hearing. The motive of the Trial Judge in not making this information available to the Respondent in advance of the hearing is known only to him.

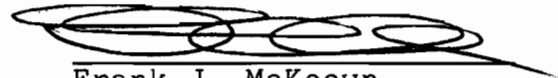
If the Referee is going to request or recommend the Respondent obtain substance abuse counseling there must be some evidence in the record to indicate that the Respondent was in fact suffering from drug or alcohol abuse, and that his misconduct was the result of alcohol abuse, drug abuse or other mental lapse when he made the representations to the Trial Court. We suggest to this Court no such evidence was available to the Referee.

### Conclusion

Therefore, based on the entire record in this matter including the report of the Referee, and the fact that his recommendations are not substantiated by evidence, the referee's recommendations should be reconsidered by this Court and reversed, discharged or remanded for further evidentiary hearings to ascertain the need for rehabilitation for substance abuse by the Respondent.

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail to: David G. McGunegle, Bar Counsel, The Florida Bar, 880 North Orange Avenue, Orlando, Florida 32801 and Staff Counsel, The Florida Bar, Tallahassee, Florida 32301, this 8 day of October, 1984.

Respectfully submitted,



Frank J. McKeown  
McKeown and Gamot, P.A.  
Attorneys for Respondent  
340 Royal Palm Way  
Palm Beach, FL 33480  
(305) 832-5650