

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

63,759

THE FLORIDA BAR,
Complainant,
v.
EMMETT A. MORAN,
Respondent.

FILED

SID J. WHITE

JUN 6 1984

CONFIDENTIAL

CLERK, SUPREME COURT

Case Nos. 18A83C08
18A83C19
18A83C31

By _____
Clerk

REPORT OF REFEREE

1. Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rules of The Florida Bar, hearings were held on February 10, 1984, and May 4, 1984. 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: Frank J. McKeown, Jr.

2. After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

As to Count I

That the Florida Bar had served upon the witnesses to the allegations contained in Count I subpoenas to appear and testify at the hearing scheduled for February 10, 1984; no witnesses appeared and no testimony was taken.

As to Count II

Referee received testimony from the Complainant, KATHY CARBONARY, in regard to the conferences with Respondent

toward representing her boyfriend, RONALD LEE SCOTT. The purpose of the conference was to review an adverse decision upon the presumptive parole release date of the said RONALD LEE SCOTT pursuant to Florida Statute Chapter 947. A fee was agreed upon and the Respondent accepted a partial payment and the remainder was to be paid in two weeks after July 28, 1982. The Complainant attempted to contact the Respondent approximately fourteen times (P 33, L 15-18) without success in obtaining future conference time. The Complainant eventually discharged the Respondent and a part of the retainer was returned by Respondent. It is apparent from the testimony that the Respondent was pre-occupied with other matters outside the practice of law and as a result thereof Complainant became disenchanted with his services. Referee finds that Respondent may have been lax in his responsibilities, but that his conduct was not such to warrant discipline.

As to Count III

The Complainant was thirty-nine minutes late in answering his subpoena to testify and as all testimony was based upon events that occurred ten (10) years prior to the filing of the Complaint, the oral testimony before the Referee was at best limited as to exactness and completeness. It appears from the record of the exhibits introduced into evidence, namely, Composite Exhibits 1 and 2 of the Bar that an individual named DARLENE GRACE SIRTOLI was charged with a criminal offense before the Circuit Court of the Eighteenth Circuit, Seminole County, Florida, Case No. 4038, Criminal Division. That after entering a plea of Guilty in Count I to the lesser included offense of Unlawful Possession of a Controlled Substance of less than five grams (cannibus), the Defendant, SIRTOLI, was at that time and place in accordance with the Court docket represented by the Respondent. Subsequent thereto, when the matter was set for sentencing, the Defendant failed to appear, bond was estreated and a capias was issued on January 30, 1973. Eventually, the Defendant, SIRTOLI, was returned to custody and, accordingly, before the Court. Based upon an Order dated

April 6, 1982, setting the matter for sentencing on May 13, 1982 (Respondent's Exhibit 8), the Defendant, her attorney and others were directed to comply with an order setting forth guidelines for sentencing procedures far beyond those envisioned by the Statutes of the State of Florida or the Florida Rules of Criminal Procedure.

Replying to the Order referred to in Respondent Exhibit 8, the Respondent filed a "Motion For Request of Hearing". (Composite Exhibit 1 of The Florida Bar). In this Motion Respondent stated, "that at no time was Emmett A. Moran retained by Darlene Grace Sirtoli". Further, "there was an error as to Darlene Grace Sirtoli, as I did not ever represent her, nor was I ever retained by her, and I lost complete contact with her for the past ten (10) years."

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. Even though Respondent represented a person charged with a criminal offense, zealously he was not within the bounds of the law in his representations to the Court and his conduct was prejudicial to the administration of justice for knowingly making a false statement of fact to the Court.

3. As to each count of the Complaint, I make the following recommendations as to guilt or innocence:

As to Count I

I recommend that the Count be dismissed.

As to Count II

I recommend that the Respondent be found Not Guilty.

As to Count III

I recommend that the Respondent be found Guilty and specifically that he be found Guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to-wit:

Florida Bar Intergration Rule Article XI,
Rule 11.02(3) (a)

Code of Professional Responsibility Disciplinary Rule, 1-102(A) (5), for conduct prejudicial to the administration of justice and

Disciplinary Rule 7-102(A) (5) for knowingly making a false statement of law or fact to the Court.

4. I recommend 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). I further recommend that the Respondent obtain substance abuse counseling.

5. After finding of guilty and prior to recommending discipline, I considered the following personal history and prior disciplinary record of the Respondent, to-wit:

Date of Birth: May 9, 1919

Date Admitted to The Florida Bar: In 1960

Prior disciplinary convictions and disciplinary measures imposed therein:

1. Public Reprimand and Probation imposed in The Florida Bar, Complainant, v. Emmett A. Moran, Respondent 273 So.2d 379.
2. Private Reprimand imposed in The Florida Bar, Complainant, v. Emmett A. Moran, Respondent (Supreme Court of Florida No. 60,896, rendered April 1, 1982 - Not Published - Confidential)

6. Statement of costs incurred in this matter will be filed in an Addendum Report by the undersigned.

DATED this 4th day of June, A.D. 1984.


Uriel Blount, Jr., Referee

Copies to: Mr. David G. McGunegle, Bar Counsel, The Florida Bar
Mr. Frank J. McKeown, Jr., Counsel for the Respondent
Grievance Section, The Florida Bar, Tallahassee, Florida