

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,

Complainant,

CASE NO. 63,933

v.

The Florida Bar Case
No. 15A83F30

Don G. Donaldson,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to The Florida Bar Integration Rule, Article XI, hearings were held on the following dates: September 7, 1984, and October 1, 1984. The report of William G. Ryan, Ph.D. was filed on October 31, 1984, and thereafter supplemented.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: Jacquelyn Plasner Needelman, Esq.

For the Respondent: Robert J. Fogan, Esq.

During the course of these proceedings, Respondent submitted a guilty plea and amended conditional guilty plea for consent judgment. Bar Counsel and the Designated Reviewer of The Florida Bar approved Respondent's conditional guilty plea for a consent judgment. I approve Respondent's conditional guilty plea.

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged: After considering all the pleadings and evidence before me, and Respondent's conditional guilty plea for consent judgment, I find:

As to the Complaint

1. The Respondent, Don G. Donaldson, is, and at all times hereinafter mentioned was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. Respondent is 55 years of age and has been a member of The Florida Bar since 1971.

3. During the years 1975 through 1978, inclusive, Respondent failed to file any income tax returns, although required to do so by Title 26, United States Code, Section 6012.

4. In a cause styled United States of America v. Don G. Donaldson, Defendant, in the United States District Court for the Middle District of Florida, at Case Number 81-40-Cr-J-B, the Respondent entered a plea of guilty to one misdemeanor count of violation of Title 26, United States Code, Section 7203, by willfully failing to file a federal income tax return for 1977.

The Respondent testified that he did not feel that his failure to file was "willful." However, he said he agreed to enter the plea on the advice of his attorney.

The plea of guilty was accepted by the Court, and on January 12, 1982, the Respondent was sentenced to pay a fine of \$5,000. Imposition of sentence as to imprisonment was suspended, and Respondent was placed on supervised probation for a period of five years.

5. During the period of time in which the Respondent failed to file his income tax returns, the Respondent was suffering from chronic alcoholism and, as a result, was impaired in his ability to attend to his own personal responsibilities. The Referee finds that his failure to file was not willful but was the result of active and uncontrolled alcoholism during the time of the events in question.

The Respondent first began to show signs of active alcoholism in the late 1950s or early 1960s. As a result of family pressure he attended his first meeting of Alcoholics Anonymous in 1965. He continued attending on and off for the next four years, but he refused to admit to himself that he had a drinking problem until his wife left him in 1969. He then joined the AA program in earnest, with the goal of reuniting his family being his primary motivation.

He stopped drinking, maintained fairly regular AA attendance, and reconciled with his wife. He remained sober for almost five years, but having achieved his family objectives he became less active and regular in his AA attendance and placed more emphasis upon increasing his earning capacity. He was attending the AA program but not practicing its precepts, and he never achieved genuine sobriety. It is not surprising, therefore, that he started drinking again in late 1974. By

the middle of 1975, he was fully in the grip of chronic, episodic alcoholism. He was admitted twice to Good Samaritan Hospital in West Palm Beach for treatment of alcoholism--once in June and again in September, 1975--and between these two hospitalizations he spent 30 days in the residential treatment program at Bowling Green. He was hospitalized in June, 1976, at Doctor's Hospital in Lake Worth, and in 1976 or early 1977 at St. Luke's Hospital in Jacksonville.

At the time his income tax problems began in the Spring of 1976, he had become powerless over alcoholism and his personal life had become unmanageable. Over the next four years, encompassing the tax years in question, he went steadily downhill and required hospitalization, detoxification, and treatment on at least six different occasions.

Respondent "hit bottom" in January, 1980. At this time he rejoined AA, and he rededicated himself to sobriety and to the Twelve Steps to recovery of the Alcoholics Anonymous program. He attended over 500 meetings of Alcoholics Anonymous in 1980, joined a group, practiced the twelve steps, and became active in AA service work. He has enjoyed continuous daily sobriety since at least September, 1981. He has appeared at AA State convention programs, and has sponsored over 100 people, including 12 at the present time. He is currently a trustee of the Triangle Club, a non-profit club offering facilities to AA groups in the West Palm Beach area and a focal point to the newcomer in AA. He is also a member of the Florida Lawyer Recovery Network of The Florida Bar and has been active in helping lawyers, judges, and members of their families find an answer to alcohol problems.

Ordinarily the fact that the Respondent had previously returned to drinking in 1975 after five years of sobriety would be a ground for concern because the period of his present sobriety is for a shorter time. However, I believe that the Respondent's prior sobriety was for the wrong reason: for his family's sake. I believe his present sobriety is for the right reason: for his own sake. The most important factor in assessing the prospects of continuing sobriety is the quality of the sobriety. While significant, length of sobriety is not as important as the motivation for the sobriety and the sincerity of the commitment. This time, I believe the Respondent's sobriety is for the right reason--a sincere desire to change himself and his way of living. The quality of his sobriety is good and the prospects for his continuing sobriety are solid.

6. Concerning the criminal case, the Respondent has paid his fine of \$5,000 timely, has been deeply involved in alcoholism rehabilitation programs, and has more than tripled his required community service commitment. As of this date he has spent over 1,200 hours in community service when he was only required to perform 400 hours over the total five-year probationary period. Most of his service is in alcoholism, but he does not include in this total the time of his own attendance activities.

The record will reflect that the Referee has over 16 years experience in the field of alcoholism rehabilitation and treatment. I felt, however, that the decision in this case should be based upon expert testimony and opinion rather than upon personal experience. As a result, the Respondent submitted himself for examination and evaluation by William G. Ryan, Ph.D., a clinical psychologist and Director of the Family Institute of Broward and Palm Beach. The Referee is acquainted with Dr. Ryan's professional qualifications and experience and recognizes and accepts him as an expert in the diagnosis and treatment of alcoholism; in recognizing the psychological effects of alcoholism upon cognition, intent, and behavior; and in evaluating the degree of an alcoholic's rehabilitation and recovery.

Dr. Ryan's report, a copy of which is attached, reflects that Mr. Donaldson was indeed suffering from chronic alcoholism during the period of time that his tax problems developed. Dr. Ryan has stated that the Respondent's concern with and ability to handle his clients' problems while being unable to face or handle his own is typical of the chronic alcoholic and was consistent with Mr. Donaldson's psychological make-up.

Dr. Ryan's testimony further indicates that the Respondent has made an effective and promising recovery, and it is Dr. Ryan's belief that as long as the Respondent continues to remain involved with Alcoholics Anonymous that he should have no difficulties in continuing to remain sober and to continue as an effective member of the legal profession.

8. Respondent has no prior disciplinary record.

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

As to the Complaint, I make the following recommendations as to guilt or innocence:

I recommend that the Respondent be found guilty of a violation of Florida Bar Integration Rule, Article XI, Rules 11.02(3) (a) and (b), and Disciplinary Rule 1-102(A) (6) of the Code of Professional Responsibility.

IV. Recommendation as to Disciplinary Measures to be Applied:

I approve the Respondent's conditional guilty plea and accordingly recommend: that the Respondent receive a public reprimand; and that he be placed on probation for a period of three (3) years with the following special conditions: (a) that Respondent abstain from the consumption of any alcoholic beverages; (b) that he remain active in the AA program by attending Alcoholics Anonymous meetings at least once a week, by practicing AA principles in all his affairs, and by carrying the AA message to other sick alcoholics; (c) that Respondent submit quarterly reports stating that he is attending the AA meetings and is sober and free from active alcoholism; (d) that Respondent comply with the payment schedule between the Internal Revenue Service and Respondent for the payment of back-taxes owed by the Respondent; and (e) that he pay the costs reasonably incurred by The Florida Bar in these proceedings.

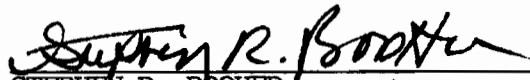
The reasons for my recommendation of this discipline are: that the Respondent was suffering from the disease of acute alcoholism during the period of misconduct and his activities were the result of chronic alcoholism rather than willful intent; and that the Respondent is today a recovering alcoholic whose commitment and quality of sobriety justify the conclusion that he can continue as a responsible, productive, and effective member of The Florida Bar.

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

Administrative Costs (at Grievance and Referee levels)	\$ 300.00
Copying Costs	27.80
Witness Subpoena and costs of Service of Process	24.50
Court Reporter's attendance and transcript of 9/7/84 hearing	639.75
Court Reporter's attendance and transcript of 10/1/84 hearing	<u>174.75</u>
TOTAL COSTS	\$1,166.80

I recommend that the Respondent be directed to pay these costs, pursuant to his agreement in Paragraph 13 of Respondent's Amended Conditional Guilty Plea for Consent Judgment to pay these costs and any additional costs incurred subsequent thereto.

DATED THIS 31st day of December, 1984.


STEPHEN R. BOOHER
Referee

Copies furnished to: Jacquelyn Plasner Needelman, Esq., Bar Counsel
Robert J. Fogan, Esq., Counsel for Respondent