

FILED

SID J. WHITE

AUG 22 1984

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JOHN MONTGOMERY GREENE,

Respondent.

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

CASE NO. 64,091

(05A83C31)

COMPLAINANT'S REPLY BRIEF IN SUPPORT OF
PETITION FOR REVIEW

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PRELIMINARY STATEMENT

Complainant will address only the issues raised by respondent in his untimely one-page brief received on August 9, 1984. In all other respects, the Bar maintains its position as set forth in the main brief with supporting citations.

ARGUMENT

THE REFEREE'S RECOMMENDED PUBLIC REPRIMAND, PAYMENT OF COSTS, CORRECTION OF PROBLEMS AND THE REPAYMENT OF OVERCHARGES WITHIN A STIPULATED TIME PERIOD IS ERRONEOUS AND UNJUSTIFIED GIVEN RESPONDENT'S PRIOR DISCIPLINARY RECORD AND THE BOARD OF GOVERNORS' RECOMMENDED SUSPENSION FOR AT LEAST 90 DAYS, PAYMENT OF COSTS, CORRECTION OF PROBLEMS AND REPAYMENT OF \$330.00 WITHIN THE RECOMMENDED TIMEFRAMES IS THE APPROPRIATE MEASURE OF DISCIPLINE.

Respondent indicates he has no objection to the decision of the referee or to the Bar's recommendation for payment of costs and personal appearance to receive the reprimand. This would be for a public reprimand if the Court chooses not to suspend the respondent for at least 90 days with automatic reinstatement as urged by the Board of Governors of The Florida Bar. The Bar notes that the referee recommended the respondent repay to Mrs. Vandenberg through her attorney a total of \$330.00 within 30 days of the referee's recommended order dated April 25, 1984. The respondent was further directed to prepare and record all necessary corrective deeds to clear the title problems within 90 days of the recommendations. Failure to accomplish both tasks within the recommended timeframes would change the referee's recommended public reprimand into a suspension for 90 days with automatic reinstatement and payment of costs.

It appears respondent has repaid the \$330.00 within the necessary timeframe. However, it is not known

whether the respondent has prepared and recorded all necessary corrective deeds to clear the title problems within 90 days of the recommendation. Further, respondent has not furnished any proof to the Court or The Florida Bar indicating he has accomplished the tasks within the times mandated by the referee. If the title problems were not corrected by July 24, 1984, the referee's recommended discipline became a 90 day suspension with automatic reinstatement and payment of costs. The Board of Governors recommends a suspension for at least 90 days, completion of the tasks as recommended by the referee and payment of costs.

Respondent submits The Florida Bar has indicated no authority which would allow this Court to override the recommendation of the referee as to discipline. Obviously, this Court is the final decisionmaker in discipline cases. It noted in The Florida Bar v. Hoffer, 383 So.2d 639 (Fla. 1980),

Our responsibility in a disciplinary proceeding is to review the referee's report and, if his recommendation of guilt is supported by the record, to impose an appropriate penalty. The Florida Bar v. Hirsch, 359 So.2d 856 (Fla. 1978).

Moreover, it is clear the Court has authority to impose a discipline different than that recommended by the referee. See The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978) and The Florida Bar v. Mueller, 351 So.2d 960 (Fla. 1977). In Weaver, they approved the referee's recommendation whereas in Mueller they imposed the discipline of disbarment as opposed to a recommended suspension. A more recent case involving a disagreement between the Bar and the referee is The Florida Bar v. Morris, 415 So.2d 1274 (Fla. 1982). In that case, the referee recommended a six month suspension whereas the Bar argued for disbarment. The Court suspended the attorney for two years. Obviously, there is ample authority for this Court to impose a discipline different than that recommended by the referee.

CONCLUSION

Wherefore, The Florida Bar prays this Court will approve the referee's findings of fact and recommendation of guilt, conditions of repayment and correction of deeds within the timeframes set forth and payment of costs but reject the public reprimand with one year's probation and; instead suspend the respondent with the referee's conditions of repayment and deed corrections for a period of at least 90 days and if the suspension is not adopted by the Court, order the respondent to appear before the Board of Governors to receive any public reprimand as part of the disposition of this case.

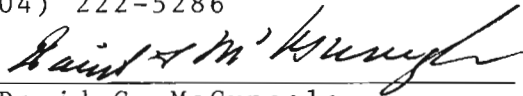
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply Brief has been furnished, by Certified Mail No. P 704 610 548, return receipt requested, to John Montgomery Greene, Respondent, at 201 N. Magnolia Avenue, Ocala, Florida 32670; and a copy of the foregoing Reply Brief has been furnished, by mail, to Staff Counsel, The Florida Bar, Tallahassee, Florida 32301 on this the 21ST day of August, 1984.


David G. McGunegle
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