

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

FRED J. WARD,

Respondent.

TFB CASE NO.: 17F80F11

SUP. CT. CASE NO.: 64,278

FILED

SID J. WHITE

JAN 28 1985

CLERK, SUPREME COURT
Chief Deputy Clerk

PETITION FOR REVIEW

This petition is filed by respondent to review the report of the referee rendered on December 6, 1984. The portions of the report sought to be reviewed are as follows and as numbered by the referee:

2. O. Neither Mr. Elliot nor his clients were aware of the existence of the notice of appeal at the time of the title closing.

R. Respondent appeared as attorney for Mr. Wolkowitz, himself, and respondent's professional association in Gold v. Wolkowitz, et al. and conducted all proceedings in such case on behalf of such parties up until the time of trial.

3. B. Respondent prepared the affidavit of ownership and warranty deed for his client, Mr. Wolkowitz. He thereafter assisted and counseled Mr. Wolkowitz in delivering the affidavit and deed at the closing. Contrary to the plain language on the affidavit no reference was made to any pending appeal. While the appeal was a matter of record, it is abundantly clear from the totality of the circumstances that neither Mr. Elliot nor his clients were aware of the existence of such an appeal. Therefore, I find respondent guilty of violating Disciplinary Rule 7-102(A) (7) in that his assistance of his client in the preparation and delivery of the affidavit of ownership was conduct which respondent knew to be fraudulent.

C. I find that Mr. Ward's appearance as the attorney for himself, his client, Mr. Wolkowitz, and Mr. Ward's professional association constitutes so fundamental a conflict of

interest that the conduct could not be condoned even with disclosure to Mr. Wolkowitz. The conflict existed from the inception of the Gold v. Wolkowitz litigation and it is irrelevant that Mr. Ward intended only to represent Mr. Wolkowitz until such time as it became apparent through the court of litigation that the matter could not be settled and must proceed to trial. The conflict existed whether the case was settled or proceeded to trial. Therefore, I find that Mr. Ward violated Disciplinary Rule 5-101(A) by failing to refuse employment on behalf of Mr. Wolkowitz when Mr. Ward's interests, both financial and professional, must assuredly have impaired or vicissiated his independent professional judgment.

D. Since Mr. Ward and his professional association and Mr. Wolkowitz were all co-defendants and charged with fraud and misrepresentation, it is obvious that a very real potential existed for Mr. Ward to be called as a witness in his own behalf, on behalf of his professional association, and certainly on behalf of his client, Mr. Wolkowitz, against whom the Golds were seeking both compensatory and punitive damages. Under such circumstances, Mr. Ward by not refusing such employment when he knew that he would have to at one point in the proceedings become a witness, violated Disciplinary Rule 5-101(B).

4. I recommend as discipline in this matter that the respondent be suspended for a period of 30 days.

5. Respondent was admitted to The Florida Bar in 1956 and is 54 years old (55 years old).

6. In 1970 respondent was administered a private reprimand for violating the Disciplinary Rules of the Florida Bar (for minor misconduct).

RICHARD R. KIRSCH, P.A.
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By: 
Richard R. Kirsch

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail this 24th day of January, 1985, to DAVID M. BARNOVITZ, Bar Counsel, The Florida Bar, 915 Middle River Drive, Suite 602, Fort Lauderdale, Florida 33304.

By: 
Richard R. Kirsch