

FILED

SID J. WHITE

MAY 18 1984

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

JUDY DALE SHAPIRO,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

CASE NO. 64,439

(1083C18)

RESPONSE BRIEF OF THE FLORIDA BAR

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STATEMENT OF THE CASE AND FACTS

The Florida Bar accepts petitioner's statement of the case and facts. She was the respondent before the referee and will be so addressed in this brief.

POINT INVOLVED ON APPEAL

WHETHER THE SUPREME COURT OF FLORIDA SHOULD ADOPT THE REFEREE'S REPORT ACCEPTING THE JOINT STIPULATION OF FACTS INCLUDING BOTH CONDITIONS OF PROBATION AS FURTHER RECOMMENDED BY THE REFEREE.

ARGUMENT

THE SUPREME COURT OF FLORIDA SHOULD ADOPT THE REFEREE'S REPORT ACCEPTING THE JOINT STIPULATION OF FACTS INCLUDING BOTH CONDITIONS OF PROBATION AS FURTHER RECOMMENDED BY THE REFEREE.

This case was presented to the referee based on a joint stipulation of facts on November 4, 1983. Included in the conditional disposition was an agreement for two years' probation following ninety days' suspension with automatic reinstatement and payment of costs. No particular conditions had been attached or agreed to for that period of probation. Respondent previously had agreed to sever all links to her former law firm which had been done at the time of the referee hearing and thus was no longer a consideration. In rendering his report which adopted the joint stipulation, the referee set out two conditions of probation:

1. Respondent will confine her professional undertakings to civil, as opposed to criminal, matters.
2. Respondent will participate in the guardian ad litem program of the Eleventh Judicial Circuit and expend 250 hours, in the two year period of probation, as attorney guardian ad litem for an abused, neglected or otherwise dependent child.

(Referee Report, p. 2). Respondent objects to performing the latter condition stating primarily that she is leaving the practice of law for work in the real estate

field and out-of-town travel requirements could render her incapable of completing the requirements within the two year period. (See Appendix 1 to the initial brief.)

Probation as part of the disposition of a Bar disciplinary case is not uncommon. Sometimes it forms part of a conditional guilty plea and sometimes it is imposed by this Court as recommended by a referee. The primary issue is not whether the referee can alter the terms of an agreement regarding probation; rather it is whether he can inject terms of probation where none have otherwise been provided. The Bar submits that the referee has that inherent power subject to review and ratification by this Court. For example, in The Florida Bar v. Stillman, 401 So.2d 1306 (Fla. 1981) a referee considered evidence outside the scope of the Bar's complaint in making his findings and recommendations. The Court considered it proper since it was relevant to that individual's fitness to practice law and thus to the discipline. The real question here is whether the term of probation objected to by the respondent renders the discipline inappropriate given the joint stipulation of facts. The Bar submits it

does not and that the participation in the guardian ad litem program should be included as part of this Court's disposition. The referee's findings of fact are accorded the same weight as a civil trier of fact and should not be disturbed unless clearly erroneous or without support in the evidence. See The Florida Bar v. Hoffer, 383 So.2d 639 (Fla. 1980), and The Florida Bar v. Hirsch, 359 So.2d 856 (Fla. 1978). Of course, this Court is not bound by a referee's recommended discipline. The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978). However, it should accord his recommendations great weight in rendering the final discipline.

The guardian ad litem service requirement should not be struck by this Court as part of the disposition of this case absent a conclusion that it undermines the three purposes of discipline most recently reiterated in The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983). One, judgment must be fair to society protecting it from unethical conduct and not denying the public the services of a qualified lawyer as a result of an unduly harsh penalty. Two, it must be fair to the respondent, both sufficient to punish the breach of ethics and to encourage

reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone to become involved in like violations. Respondent's actions in filing the sworn motion to dismiss as fully set forth in the joint stipulation of facts clearly warrant the stipulated ninety day suspension and as further recommended by the referee the two conditions of probation to be fulfilled during the two year probationary period. Refraining from practicing any criminal law, which she accepts, as well as participation in the guardian ad litem program will most clearly enhance items one and two of the purposes of discipline stated above.

In conclusion, The Florida Bar submits that the referee has made valid and proper recommendations to fill in an otherwise unconditional period of probation with conditions to further serve the purposes of discipline. The Bar believes it is within the inherent powers of the referee to make the recommendations and it would be entirely appropriate for this Court in disposing of this case to include both conditions of probation as part of the disciplinary order. Obviously, if the respondent

could not complete the recommended number of hours within the two year period of probation due to her occupational plans and requirements, the period could be extended until it was completed.

CONCLUSION

WHEREFORE, The Florida Bar prays this Court will approve the referee's recommended discipline as agreed to by The Florida Bar and the respondent of a ninety day suspension with automatic reinstatement, payment of costs and two years' probation and further include both conditions of probation as recommended by the referee.

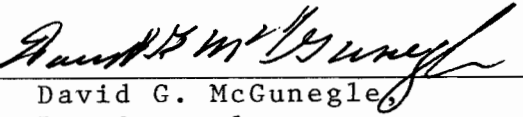
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the Response Brief of The Florida Bar have been furnished by Purolator Courier Service to the Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301; a copy of the foregoing Response Brief of The Florida Bar has been furnished by mail to Edward R. Shohat, Counsel for Petitioner, 200 S.E. First Street, Suite 500, Miami, Florida 33131; a copy of the foregoing Response Brief of The Florida Bar has been furnished by mail to Staff Counsel, The Florida Bar, Tallahassee, Florida 32301 on this 17th day of May, 1984.



David G. McGunegle,
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