

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Case No. 64,940

v.

(TFB No. 02-83N41)

WILLIAM R. PHILLIPS,
Respondent.

FILED
SID J. WHITE

JUN 29 1987

CLERK, SUPREME COURT

REPORT OF THE REFEREE By _____

Deputy Clerk

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, the following proceedings occurred:

On February 29, 1984, The Florida Bar filed its Complaint against Respondent. On March 13, 1986, The Florida Bar filed its Request for Admissions. On June 3, 1986, The Florida Bar filed its Amended Complaint. And on June 4, 1986, The Florida Bar filed its Amended Request for Admissions in these proceedings. This matter was heard pursuant to an order setting final hearing on May 14, 1987 at 9:00 a.m. at the Hamilton County Courthouse, Jasper, Florida. Each party was properly noticed pursuant to the Rules of Discipline pertaining to formal hearing. The Florida Bar appeared at the final hearing through counsel and Respondent failed to appear as a result of his incarceration for federal criminal misconduct. Respondent corresponded with the Referee on April 23, 1987 complaining of lack of notice of the proceedings and a lack of information on all issues to be heard. In support of The Bar's position that there had been full compliance with the notice procedures required by the appropriate rules, the Referee received the grievance committee's finding of probable cause as to Count I, the original Complaint and

*not
in the
file*

the Notice of Hearing for the grievance committee hearing. All notices had been sent to the last known requisite Bar address for the Respondent and had been returned since the post office box of Respondent had been closed with no forwarding address. It also appears that Respondent has received the complaint and discovery from The Florida Bar in this matter and has responded to each pleading. I find that Respondent had received proper notice of the nature of the charges and the proceedings. The Florida Bar has no obligation to wait for Respondent's discharge from prison to proceed in such hearings and is not required to secure the presence of a respondent under such circumstances. All of the aforementioned pleadings, attachments thereto, and exhibits received in evidence, and this report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

Narrative Summary Of Case

Count I - Respondent was retained by the Peughs in connection with their purchase of real property in Franklin County, Florida in October 1977 (See Exhibits 5 and 6). Respondent was to prepare all documents for closing, conduct a title search and issue a title insurance policy for the property in question. As a result of the title search, Respondent discovered a problem concerning an outstanding interest in the property. Respondent was to remove this interest and proceed with the closing. Respondent failed to obtain a clear title at the time of closing and failed to inform the Peughs of this fact. Respondent charged a fee of \$165.00 for the title search and an insurance premium of \$85.75 (see Exhibit 7, closing

statement). Respondent failed to secure title insurance for the Peughs after receiving the referenced premium. During a divorce, the Peughs discovered the title defect and lack of title insurance in an attempt to sell the subject property. Ms. Peugh was required to obtain additional counsel to protect her interest and secure clear title to the property. Respondent's file showed receipt of the fees and a partially completed application for title insurance (Exhibit 8).

Count II - Based upon the evidence presented I find the following: Respondent was still a member of The Florida Bar at all times pertinent to Count II and subject to the jurisdiction of the Supreme Court. On October 2, 1985, Respondent was indicted by the Grand Jury of the United States District Court for the Northern District of Florida for his involvement in a plan to import marijuana into the United States (see Exhibit 9). Respondent pled guilty to violating 18 U.S.C. 1952(A)(2) and (3) as set forth in count five (5) of the indictment on March 11, 1986 (see Judgment and Sentence, Exhibit 10). Respondent was charged with traveling to Jamaica to perform various acts with others to facilitate the importation of marijuana into the United States. Respondent was convicted of the federal felony and sentenced to a consecutive five (5) year prison term to be served in conjunction with another term from South Carolina.

III. DETERMINATION OF GUILT

I recommend that Respondent be found guilty of violating the following provisions of the Code of Professional Responsibility:

1-102(A)(1) (a lawyer shall not violate a disciplinary rule);

1-102(A)(3) (a lawyer shall not engage in illegal conduct involving moral turpitude);

1-102(A)(6) (a lawyer shall not engage in any conduct that adversely reflects on his fitness to practice law);

6-101(A)(3) (a lawyer shall not neglect a legal

matter entrusted to him); and,

7-101(A)(2) (failure to carry out a contract of employment entered into with a client for professional services).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

In making the following recommendation the conduct of the Respondent in each count of the Complaint was considered. While the conduct concerning the real estate closing and its attendant problems should not be considered less important, the Respondent's felony drug conviction renders any recommended discipline directly to Count I meaningless.

The conduct of the Respondent that resulted in his conviction in the United States District Court of a drug importation felony can only be characterized as conduct evidencing moral turpitude. As described in the similar case of The Florida Bar v. Price, 478 So.2d 812, 814 (Fla. 1985), such acts as committed by the Respondent "are completely inconsistent with the high professional standards expected, indeed required, of members of The Florida Bar."

Based upon all the facts and evidence supporting the cited violations, it is my recommendation that Respondent be DISBARRED and ordered to pay those costs attendant to these proceedings. See The Florida Bar v. Marks, 492 So.2d 1327 (Fla. 1986); The Florida Bar v. Hecker, 475 So.2d 1243 (Fla. 1985); The Florida Bar v. Wilson, 425 So.2d 4 (1982).

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to article XI, Rule 11.06(9)(a)(4), I considered the following personal history of Respondent, to wit:

Age: 60 years old
Date admitted to the Bar: June 12, 1964
Prior Discipline: two private reprimands; one felony
suspension

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonable incurred by The Florida Bar:

Count I

A. Grievance Committee Level

1. Administrative Costs \$150.00

B. Referee Level

1. Administrative Costs \$150.00

Subtotal \$300.00

Count II

A. Referee Level

1. Administrative Costs \$150.00

2. Court Reporter's Fees 109.15

3. Bar Counsel Travel 69.00


Subtotal \$328.15

TOTAL \$628.15

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

This report and recommendation was entered this 24th day of

June, 1987 in Jasper, Hamilton County, Florida.


JOHN W. PEACH, REFEREE
Post Office Box 272
Jasper, Florida 32052
(904) 792-1719

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to SID J. WHITE, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and that a confidential copy was mailed by regular U.S. Mail to JAMES N. WATSON, JR., Bar Counsel, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32301 and to WILLIAM R. PHILLIPS, #82469-071, PMB, Atlanta, Georgia 30315 this 24 day of June, 1987.

for E. D. Dargin
JOHN W. PEACH, REFEREE