

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,)
)
 Complainant,)
)
 v.)
)
 STEPHEN F. JACKSON,)
)
 Respondent.)

CONFIDENTIAL

CASE NO. 65,432

FILED
S/D J. WHITE
JUN 10 1985
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as the referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of the Florida Bar, a final hearing was held on April 19, 1985. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits all of which are forwarded to the Supreme Court with this report, constitute the entire record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar David M. Barnovitz, Esquire
For The Respondent Louis M. Jepeway, Esquire

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: After considering all of the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

A. In July of 1982 one Michael Bolla contacted the respondent in reference to a legal matter that Bolla had (T 53). He related to the respondent that he and one Edward Shepard were material witnesses to an incident in the State of New York (T 54). The respondent at the time was representing Bolla in a personal injury action (T 53). As a result of the conversations that the respondent had with his client, Bolla, respondent contacted in the latter part of July, Mr. Paul J. Campito, an attorney for the Merchant's Insurance Group, pertaining to a claim against one of their carriers, Merchant's

principals

Mutual Insurance Company (T 60). Mr. Campito received a call the latter part of July from the respondent pertaining to the testimony of Bolla (T 61). Mr. Campito indicated to the respondent that his company would provide for the witness, Bolla, the transportation costs, living expenses and lost wages that would occur as a result of the witnesses having to travel from Fort Lauderdale, Florida to the New York area. There is some dispute in the record as to the exact conversation. However, there is no dispute that the respondent requested of Mr. Campito and his company and the company he represented \$50,000.00 for the testimony of Bolla and Shepard (T 62). Campito indicated to the respondent that it was improper to pay for testimony and the respondent indicated that he knew that it was improper (T 73). Mr. Campito indicated to the respondent that he would pass the content of the telephone conversation along to his principals and he indicated he would not recommend it. Subsequently there were two additional phone calls to Mr. Campito in which the respondent lowered the amount of compensation that his client would require and indicated that this compensation was equivalent to payment to a law enforcement officer for the services that they get paid for in the execution of their duties as law enforcement officers in having to testify (T 71-73). Mr. Campito was unimpressed by this rationalization but on each conversation indicated that he would pass the information along to its principle.

The respondent indicated that after being apprised of the situation by his client, Bollo, at the initial meeting in July, that he made a request of Campito for \$25,000.00 for each of the clients Bollo and \$25,000.00 for Edward Shepard (T 62). Further sustained corroborated Mr. Campito's testimony that he analogized his request for funds for his clients Bollo and Shepard to that of compensation for police officers who take the risk of every day by testifying in courts and receive compensation for their duties as law enforcement officers and such duties include their testifying in court. Respondent also indicated that Campito did inform him that this was improper on his behalf as an attorney (T 73). He also indicated that he did not consult his partner who was his wife, and who had more experience in trial matters concerning the propriety of these actions.

Michael Bollo testified and indicated that he was unwilling to take the risk of testifying because of the dangerous propensities of the alleged arsonist and he felt justified in requesting compensation for his testimony.

Disciplinary Rule DR1-102(A)5 of the Code of Professional Responsibility provides that a lawyer shall not engage in conduct that is prejudicial to the administration of justice. Furthermore, the Integration Rule of the Florida Bar, Article XI, provides:

(3) MORAL CONDUCT A STANDARDS

The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibitive acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act contrary to honesty, justice or good morals, whether the act is committed in the course of his relations as an attorney or otherwise, whether committed within or outside the State of Florida or whether or not the act is a felony or misdemeanor, constitutes a cause for discipline.

Furthermore, the oath of admission of a lawyer as a member of the Florida Bar states as from the rules adopted by the Florida Supreme Court on January 27, 1941 145 Fla. 797 and 798:

I will maintain the respect due to court's of justice and judicial officers...I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

It would appear to me that the very heart of the judicial system lies in the integrity of the participants, that is the court officers, to promote fair and just resolutions of matters before all courts, without the fear that an injustice could occur by the procurement of witnesses' testimony. Justice must not be bought or sold. Attorneys have a solemn responsibility to assure that not even the taint of impropriety exists as to the procurement of testimony before courts of justice. It is clear that the actions of the respondent in

attempting to obtain compensation for the testimony of his clients, Michael Bollo and Edward Shepard, violates the very essence of the integrity of the judicial system and the disciplinary rule and code of professional responsibility, the integration rules of the Florida Bar and the oath of his office.

III. Recommendations as to whether or not the Respondent should be found guilty. As to the complaint, I make the recommendation of guilt for violating the Integration Rules of the Florida Bar and the Disciplinary Rules of the Code of Professional Responsibility and the oath of admission to the Florida Bar.

IV. Recommendation as to Disciplinary measures to be applied: After the finding of guilty and before recommending discipline to be recommended pursuant to Rule 11.06(9)(a)(4), I consider the following personal history of the respondent. That the respondent's age is 35. He was born in Brooklyn, New York. He received his law degree in 1975 from Brooklyn Law School. He was admitted to the Florida Bar in 1978 and began practicing when he moved to Florida in July of 1979. He began practicing with Mitchell Pasin and has been primarily engaged during that period of time in real estate closings and business closings. He has also handled criminal cases. He is presently partner with Sandra Jackson, who also is a lawyer and admitted to practice in Florida. He is active in his Jewish faith and a member of the Congregation of Temple Bethel. He is also active in community affairs. Mitchell Pasin testified in his behalf, who presently practices in Coral Springs. He indicated that he went to high school and law school with the respondent, and the respondent is a forthright person who has a great deal of respect for the law, that he refers cases to the respondent, that he has always been truthful and trustful. Ms. Jackson testified that she has practiced law with him, she is admitted in the state of New York and was an assistant corporate counsel for the New York legal corporation, that she concedes that the respondent's actions were foolish and she says that he is truthful, a good family man and has great integrity. The counsel for the respondent, Louis Jepeway, has requested that this court, in considering any discipline that would be recommended if the referee does recommend a guilt of the defendant, that it be by a private reprimand. This court as considered the personal history of the respondent and has considered the recommendations made. However, this referee feels that considering the nature of the violation and the fact that it goes to the very heartbeat and life of the judicial system, that a discipline of a private reprimand would be too lenient to be effective.

Accordingly I recommend that respondent be suspended from the practice of law for a period of three months with automatic reinstatement at the end of the period of suspension as provided in Rule 11.10(4).

- V. Statement of costs and manner in which cost should be taxed:
It is apparent that costs have been incurred. It is recommended that all such costs and expenses, together with any costs that may be incurred, should be charged to the respondent and that interest at a statutory rate shall accrue and be payable beginning thirty (30) days after the judgment in this case becomes final, unless a waiver is granted by the Board of Governor's of the Florida Bar (3) of the Integration Rule.

Dated this 4th day of June, 1985.



Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been sent by United States Mail this 6th day of June, 1985 to Louis M. Jepeway, Sr., Esquire, Jepeway and Jepeway, P.A. 619 Dade Savings Building, 101 East Flagler Street, Miami, Florida 33131 and to David M. Barnovitz, Esquire, The Florida Bar, Ft. Lauderdale Office, Galleria Professional Building, 915 Middle River Drive - Suite 602, Fort Lauderdale, Florida 33304.



JOHN D. WESSEL