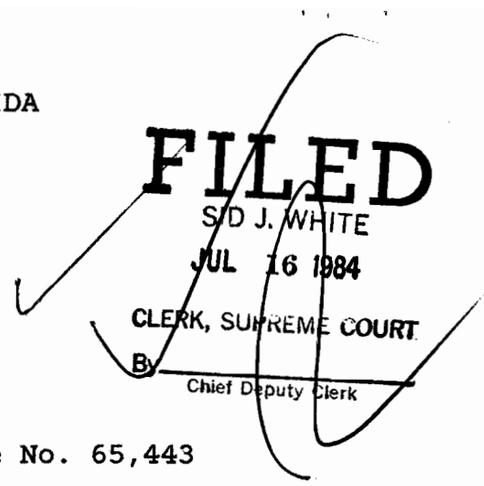
IN THE SUPREME COURT OF FLORIDA




THE FLORIDA BAR,

Complainant,

v. Case No. 65,443

JEFFREY L. MELDON,

Respondent.

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RESPONSE TO PETITION TO DENY, MODIFY OR TERMINATE SUSPENSION

Complainant, The Florida Bar, hereby responds to Respondent's Petition to Deny, Modify or Terminate the Proposed Suspension.

1. The allegations of paragraph 1 are admitted.

2. Complainant denies the allegations of paragraph 2, based on the following:

a. On December 23, 1983 Respondent signed a document entitled "Information for Felony Clients", in which he acknowledged his status as a felon and the loss of certain civil rights on the basis of such status, pursuant to Florida law. (A copy is attached as Complainant's Exhibit A.)

b. Pursuant to the plea agreement entered into with the United States Government, Respondent voluntarily acknowledged his exposure to a sentence of incarceration for five years, and further indicated his knowledge of the nature of the offense and the possible penalties provided by law. (A copy of the Agreement was attached to Complainant's Notice of Felony Conviction as Exhibit 1).

c. On December 22, 1983 Respondent was sentenced by the United States District Court for the Middle District of Florida to imprisonment for five (5) years, said sentence suspended in lieu of five (5) years supervised probation. 18 U.S.C. §1 provides:

> Notwithstanding any Act of Congress to the contrary...
> (1) Any offense punishable by . . . imprisonment for a term exceeding one year is a felony.

The United States District Court clearly construed Respondent's offense as a felony under the United States Code and imposed an actual term of imprisonment suitable only for a felony offense, to which Respondent remains subject should he violate the terms of his probation.

d. 18 U.S.C. §371 provides that conspiracy either to commit an offense against or defraud the United States is a felony. The second paragraph of the statute requires that if the conspiracy is only to commit misdemeanors, then the punishment for the conspiracy cannot exceed that for the misdemeanor. However, the conspiracy to defraud does not require the contemplation of any unlawful conduct; it merely requires a conspiracy for the purpose of impairing or obstructing any function of a department of the federal government. United States v. Winkle, 587 F.2d 705 (5th Cir. 1979). Under the definition of Winkle, supra, conspiracy to defraud is a crime in its own right and does not rely on underlying criminal acts. It should be noted that the issues in Winkle, supra originally arose at trial level in the United States District Court for the Middle District of Florida, the same Court which sentenced Respondent. Further, the statute only modifies the maximum punishment for a conspiracy to commit an offense, in the event only misdemeanors are contemplated, and does not specifically modify the nature of conspiracy as being a felony.

Because of the fact that the statutory modification for misdemeanor offenses goes only to punishment and not the nature of the offense, that the conspiracy to defraud is a felony in its own right, that the United States District Court clearly construed the offense as a felony in imposing sentence, and that Respondent has repeatedly

acknowledged his status as a felon, this Court should find that Respondent was convicted for a felony.

3. Complainant denies that good cause exists for Respondent to be excepted from the strictures of the Florida Bar Integration Rule, article XI, Rule 11.07. As to the specific grounds asserted by Respondent, Complainant states the following:

a. Respondent voluntarily and knowingly plead guilty to the charge of conspiring to defraud the United States or an agency thereof. As set forth in the plea agreement, the gist of Respondent's offense was conspiring to:

> . . . impair and impede the ascertaining and collection of income taxes of Jack C. Ryals by, among other things, aiding and abetting in . . . Ryals's(sic) willful failure to file income tax returns in certain years and his avoidance and failure to pay income taxes due from him and by aiding and abetting Jack C. Ryals's(sic) delivery or disclosure to authorized representatives of the Secretary of the Treasury of statements and documents know by . . . Ryals to be false as to material matters .

Respondent willfully joined the conspiracy.

The element of moral turpitude is not necessary for a criminal conviction to support a disciplinary proceeding. State ex rel. The Florida Bar v. Evans, 94 So.2d 730 (Fla. 1957). This Court has found that the conviction of a felony in a court of the United States would support disbarment. The Florida Bar v. Whiting, 157 So.2d 77 (Fla. 1963). The issue in a suspension for a federal felony conviction is not whether the state views the offense as less reprehensible than a felony, but whether the attorney should be allowed to continue as an active member of the Bar and officer of the court after knowingly engaging in illegal conduct. The Florida Bar v. Warren, 330 So.2d 12 (Fla. 1976).

b. At Page 7 of his Memorandum in Support of his Petition to Deny, etc. Respondent cites the Court to numerous instances where seemingly analogous conduct was punished by discipline less severe than a suspension. However, all of the following cases are readily distinguishable because none arose under

The Florida Bar Intengration Rule, article XI, Rule 11.07 and all were decisions reached pursuant to either a conditional plea of guilty or a referee's recommendation of guilt in disciplinary proceedings brought under other provisions of article XI. Further, not one of the cases involved a felony conviction. This Court found a public reprimand to be appropriate where the subject attorney entered a conditional guilty plea under The Florida Bar Integration Rule, article XI, Rule 11.13(6) and the underlying discipline proceedings were premised on the attorney's conviction of a federal misdemeanor. The Florida Bar v. Marks, 376 So.2d 9 (Fla. 1979); The Florida Bar v. Thomson, 372 So.2d 1124 (Fla. 1979); The Florida Bar v. Freed, 366 So.2d 440 (Fla. 1978); The Florida Bar v. Greenspahn, 366 So.2d 396 (Fla. 1978); The Florida Bar v. Wasman, 366 So.2d 409 (Fla. 1978).

Where the misconduct of the attorney consisted of misrepresentation or the improper alteration of a legal document, this Court imposed a public reprimand where no criminal charges arose from the conduct. Hodkin v. The Florida Bar, 293 So.2d 56 (Fla. 1974); The Florida Bar v. Wendel, 254 So.2d 199 (Fla. 1971); The Florida Bar v. Borns, 306 So.2d 486 (Fla. 1975); The Florida Bar v. Murrell, 411 So.2d 178 (Fla. 1982).

Where disciplinary proceedings were brought against an attorney who had been prosecuted for a felony, this Court imposed only a public reprimand where adjudication of guilt had been withheld, The Florida Bar v. Urgo, 343 So.2d 621 (Fla. 1977), or where the attorney had actually been acquitted of the criminal charge, The Florida Bar v. Pearce, 356 So.2d 317 (Fla. 1978).

These cases, cited by Respondent, are inapplicable to the present proceedings. Complainant does not now seek to prosecute Respondent for a violation of the Code of Professional Responsibility. Rather, Complainant has complied with its duties as directed by this Court in The Florida Bar Integration Rule, article XI, Rule 11.07. A suspension in accord with this Rule is not to punish the attorney but is for "...protection of the public to maintain the high standards of the profession." The Florida Bar v.

Prior, 330 So.2d 697, 706 (Fla. 1976) (Boyd, J. concurring in part and dissenting in part). As elequently stated by then Chief Justice Overton and Justice England:

> (The) appearance of convicted attorneys continuing to practice does more to disrupt public confidence in the legal profession than any other discipline problem. Members of the Bar must maintain a high standard of conduct. If the law is to be respected, the public must be able to respect the individuals who administer it. By failing to swiftly discipline an attorney found guilty of a serious offense, we necessarily impair the public's confidence in the law and in this Court's willingness to enforce the law evenhandedly.

Prior, supra at 702 (Overton, C.J. and England, J. specially concurring).

The purpose of Rule 11.07 is clearly "...(to) cleanse the profession of those who can't abide by the law." Prior, supra at 702 (Overton, C.J. and England, J. specially concurring).

c. Regardless of the motivating factors for his plea to the substantive charge, the fact remains that Respondent voluntarily plead to and was adjudicated guilty of a felony. This Court has found that discipline proceedings stemming from a criminal conviction were valid and proper even though the attorney had entered the plea allegedly for concerns of personal health. Evans, supra.

d. Suspension of Respondent pursuant to The Florida Bar Integration Rule, article XI, Rule 11.07 would not preclude socially beneficial community service. As specified by his sentence, Respondent could perform the equivalent amount of community service in some alternative form should he be rendered unable to practice law. (A copy of the court order of sentence was attached to the Notice of Felony Conviction as Complainant's Exhibit 2.)

e. Respondent's reputation and activities prior to his conviction were overwhelmed by his felony conviction.

"Preconviction prominence is not a balancing factor." Prior, supra at 702 (Overton, C. J. and England, J. specially concurring).

It should be remembered that it was the felony conviction of Respondent that triggered those concerns underlying Rule 11.07, that is, the public must be protected and respect must be encouraged for the evenhanded administration of justice.

WHEREFORE, Complaint requests this Court to deny Respondent's Petition to Deny, Modify or Terminate Proposed Suspension and suspend Respondent from the practice of law in Florida until further order of this Court.

Respectfully submitted,

The Florida Bar

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed by regular mail to Respondent's attorneys: Samuel S. Jacobsen, 2902 Independent Square, Jacksonville, Florida 32202; and John A. Weiss, 1018 Thomasville Road, Suite 116, Tallahassee, Florida 32303, this 16th day of July, 1984.

John A. Boggs