

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED

SID J. WHITE

JUL 22 1985

THE FLORIDA BAR,
Complainant,
v.
MITCHELL DENKER,
Respondent.

CLERK, SUPREME COURT
CONFIDENTIAL
By _____
CASE NO. 65,487
Deputy Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS. On June 20, 1984, The Florida Bar filed its Complaint with the Supreme Court. The undersigned was appointed Referee by order of the Chief Justice, dated July 12, 1984. There was a Pre-Trial Conference on August 16, 1984, and Respondent waived the Venue and agreed to have these proceedings in Dade County, rather than in Monroe County. The undersigned referee was available to have the trial, but he acceded to the Respondent's request for a delay. The final hearing was held on May 1, 1985.

The following attorneys appeared for the parties:

For The Florida Bar - Robert D. Hertzberg and
Paul A. Gross, Co-Bar Counsel, of Miami

For the Respondent - Sheldon R. Schwartz of
North Miami Beach

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED. After considering all of the pleadings, testimony and the Conditional Guilty Plea for Consent Judgment, the undersigned referee finds:

IN GENERAL

1. That the Respondent, Mitchell Denker, is and at all times hereinafter mentioned, was a member of The Florida Bar (He was admitted during 1975) Record, Page 26. He is subject to the jurisdiction of this Court and the Disciplinary Rules of the Code of Professional Responsibility. Article V, Section 15 of the Florida Constitution.

2. That on February 21, 1985, the Respondent signed a Conditional Guilty Plea for Consent Judgment. (Bar Exhibit No. 1), in return for the following discipline:

SUSPENSION FROM PRACTICING LAW IN THE STATE OF FLORIDA FOR A PERIOD OF ONE YEAR, WITH PROOF OF REHABILITATION REQUIRED BEFORE BEING REINSTATED, IN ACCORDANCE WITH THE FLORIDA BAR INTEGRATION RULE, ARTICLE XI, RULE 11.11.

It was FURTHER AGREED, in exchange for the aforementioned guilty plea and discipline, that COUNT I of the Complaint would be dismissed. In addition, it was agreed that the suspension shall be effective September 10, 1985, thereby giving the Respondent, Mitchell Denker, the opportunity to complete the representation of those persons charged with criminal offenses whom he is presently representing, and to protect the interests of those clients. It is, however, further agreed that appellate representation cannot be undertaken unless the same is concluded prior to September 10, 1985. However, Respondent shall not accept any new law business, effective on the date of the Order approving this CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT.

3. That in accordance with Florida Bar Integration Rule, article XI, Rule 11.13(6)(b), both Co-Bar Counsel, with the approval of the Designated Reviewer, approved the Conditional Guilty Plea that was signed by Respondent and his counsel. Bar Exhibit 1.

4. That the Respondent voluntarily signed the Conditional Guilty Plea. Bar Exhibit 1 and Record, Page 24.

III. THE FACTS ARE AS FOLLOWS: On May 28, 1982 the Respondent pleaded nolo contendere to violations of Florida Statutes 838.015 and 777.04(4)(d) (Solicitation of a Bribe), and was adjudicated guilty of said misdemeanors. See Count II of Complaint.

IV. RECOMMENDATION AS TO WHETHER OR NOT RESPONDENT SHOULD BE FOUND GUILTY. The undersigned Referee recommends that the Conditional Guilty Plea for Consent Judgment be approved and that

Respondent be found guilty of Count II of the Complaint. Specifically, it is recommended that Respondent be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility and violating The Florida Bar Integration Rule, as follows: DR 1-102(A)(3), a lawyer shall not engage in illegal conduct involving moral turpitude; DR 1-102(A)(4), a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; DR 1-102(A)(6), a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law; DR 7-102(A)(7), a lawyer shall not counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent; DR 7-102(A)(3), a lawyer shall not knowingly engage in other illegal conduct or conduct contrary to a disciplinary rule; Florida Bar Integration Rule, article XI, Rule 11.02(3)(a) and (b), which deals with moral conduct.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

The undersigned referee recommends that the Conditional Guilty Plea for Consent Judgment be approved and the Respondent be Suspended from Practicing Law in the State of Florida for a period of one year, with proof of rehabilitation required before being reinstated, in accordance with The Florida Bar Integration Rule, article XI, Rule 11.11. In addition, it is recommended that the suspension shall be effective September 10, 1985, thereby giving Respondent the opportunity to complete the representation of those persons charged with criminal offenses whom he is presently representing, and to protect the interests of those clients. Furthermore, it is recommended that Respondent shall not accept any new law business, effective on the date of the Supreme Court order approving the Conditional Guilty Plea for Consent Judgment.

The undersigned Referee recommends that Confidentiality be waived at the time the Supreme Court issues its order approving the Report of Referee.

VI. PERSONAL HISTORY AND DISCIPLINARY RECORD: The Respondent is 38 years of age, was admitted to practice law in Florida during 1975 and has never been disciplined for violating the Code of Professional Responsibility or The Florida Bar Integration Rule.

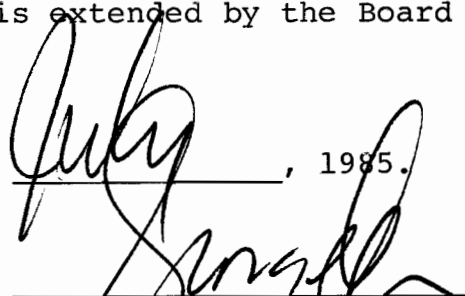
VII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED. In accordance with the Conditional Guilty Plea for Consent Judgment, the Respondent agreed to pay all costs in the grievance committee proceedings and all costs at the referee level, including \$300.00 administrative costs. Accordingly, the following costs, as reported by The Florida Bar, are taxed against the Respondent:

Court Reporter Costs at Grievance Committee level	295.10
Court Reporter Costs at Referee level, 5/1/85	93.80
Fees and expenses paid to Robert D. Hertzberg, Co-Bar Counsel	4,550.30
Travel expenses incurred by John A. Weiss, Bar Counsel - Grievance Committee level	877.19
Administrative Costs (Fla. Bar Integr. Rule, art. XI, Rule 11.06 (9) (a) (5).	<u>300.00</u>
TOTAL COSTS.	6,116.39

The undersigned recommends that \$6,116.39 in costs be charged to the Respondent and said costs be paid within 30 days of the Supreme Court's order approving this Report of Referee.

It is further recommended that execution issue with interest at the rate of twelve (12%) percent per year on all costs not paid within 30 days of entry of the Supreme Court's final order, unless time for such payment is extended by the Board of Governors of The Florida Bar.

Dated this 17 day of July, 1985.

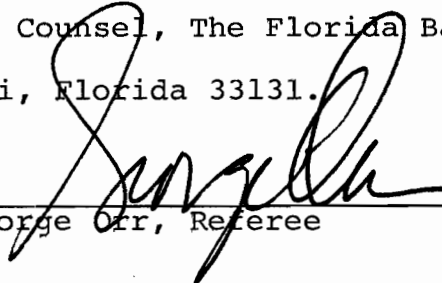


GEORGE ORR, REFEREE
Dade County Courthouse, Room 626
73 West Flagler Street
Miami, Florida 33130
(305)375-5297

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Report of Referee were mailed this 17 day of July, 1985, to the following persons:

Sheldon R. Schwartz, Counsel for Respondent, 1500 N.E. 162nd Street, North Miami Beach, Florida 33162; Robert D. Hertzberg, Co-Bar Counsel, 25 W. Flagler Street, Suite 1010, Miami, Florida 33130, and Paul A. Gross, Co-Bar Counsel, The Florida Bar, 444 Brickell Avenue, Suite 211, Miami, Florida 33131.


George Orr, Referee