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APR 15 1985

CLERK, SUPREME COURT

By Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, *
Complainant, *
VS. *
BERNT MEYER, *
Respondent. *

CASE NO. 65,616

(TFB NO. 12B84H06)

FINAL FINDINGS AND RECOMMENDATIONS OF JUDICIAL REFEREE

This proceeding having come on before the undersigned Judicial Referee for final evidentiary hearing on October 17, 1984, and the Respondent, BERNT MEYER, having appeared before the Judicial Referee with his attorney-of-record, Laurence I. Goodrich, and the Complainant, THE FLORIDA BAR, having been represented by its Branch Staff Counsel, Steve Rushing; and the Court having considered the pleadings on file; and the Respondent having admitted the correctness of the allegations in Count I of the Complaint subject only to further evidence in mitigation thereof; and the Respondent having further admitted certain unintentional violations of The Florida Bar Code of Professional Responsibility more particularly referred to in paragraphs 14, 15, 16 and 17 of Count II of the Complaint, while denying any violation with respect to those matters referred to in paragraph 13 of Count II of the Complaint; and the Judicial Referee having heard testimony of the Respondent and the Respondent's former bookkeeper, Erika Hauschildt, and having received certain exhibits in evidence from members of The Florida Bar practicing law in Sarasota County, Florida, relating to the Respondent's conduct as an attorney and touching upon the question of whether or not the Respondent would represent a danger to the public and to clients; and the Judicial Referee having heard the argument of counsel for the Complainant and Respondent; the Judicial Referee finds as follows:

a. That on July 19, 1971, the Respondent was adjudicated guilty of certain crimes constituting felonies under the laws of the United States of America as more particularly alleged in paragraph 4 of Count I of the Complaint.

b. That the Respondent thereafter served four (4) years in a federal penal institution upon concurrent twelve (12) year sentences and one (1) year on supervised parole in his native State of Georgia before early termination of his parole.

c. In 1976 the Respondent petitioned THE FLORIDA BAR for reinstatement for dues delinquency without mention to THE FLORIDA BAR of his 1971 federal conviction. The Respondent rationalized within his own mind that since he had already abstained from the practice of law for a period of five (5) years and would have been eligible to petition for readmission, he would not disturb his situation by further inquiry or notification to THE FLORIDA BAR. There was no evidence presented to indicate that the Respondent had not been rehabilitated by this point in time. The Respondent candidly admitted that he knew that he had acted improperly and that he was very sorry that he had elected to take the easy way out at this time by failing to candidly discuss these matters with representatives of THE FLORIDA BAR and by proceeding in the designated manner to apply for proper reinstatement. The Respondent did have reason to believe that THE FLORIDA BAR had been notified of his prior conviction, but admitted that there was no evidence available to corroborate his belief that THE FLORIDA BAR had been previously notified of his conviction in that appropriate records could not be obtained either as a part of the investigation conducted by THE FLORIDA BAR or by the Respondent's independent efforts to obtain such records.

d. The Respondent engaged in the practice of law in Sarasota County, Florida, from the time of his reinstatement for dues delinquency in 1976 until the implementation of an automatic three (3) year suspension by reason of the felony conviction of Respondent by order of the Supreme Court of Florida

effective March 19, 1983, in Case Number 62,978. The Respondent was not aware of any impediment to his practice of law by reason of the fact that his civil rights had not been restored to him subsequent to his felony conviction. The Florida Bar v. Clark, 359 So2d 863 (Fla. 1978), which is the only case cited to the Judicial Referee touching upon the inability of an attorney to practice law in the State of Florida without his civil rights, was decided approximately two (2) years after the Respondent had returned to the practice of law in Sarasota County, Florida. Upon being advised of this impediment, he promptly petitioned for restoration of his civil rights, which have now been restored to him.

e. While the Judicial Referee in no way condones the action of the Respondent in failing to exhibit the candor expected and required of an attorney in dealing with THE FLORIDA BAR by reason of his failure to openly and specifically discuss his prior felony conviction with representatives of THE FLORIDA BAR at the time of his reinstatement for dues delinquency in 1976, the Judicial Referee is nonetheless impressed by the fact that while the Respondent engaged in the practice of law in Sarasota County, Florida, from the time of his reinstatement for delinquent dues in 1976 until the effective date of his automatic three (3) year suspension by reason of his felony conviction on March 19, 1983, he apparently conducted himself in a proper and ethical manner in his practice of law and in his personal life, thus demonstrating his actual rehabilitation during this period of time. Upon the filing of these disciplinary proceedings, THE FLORIDA BAR conducted an in depth investigation of the Respondent, including an audit of his general office and trust accounts. While the audit revealed certain technical violations with respect to required records and the allowance of time for the actual clearance of funds deposited in his trust account before making disbursements based thereupon, there is no evidence of any willful or intentional violation by the Respondent in this regard. The Respondent had been engaged as an associate

in a law office and had not been personally involved in the management of the trust account. Upon termination of his employment with the law firm and the commencement of his practice as a solo practitioner, he hired on a part-time basis the bookkeeper who was the full-time bookkeeper for the law firm by whom he had been previously employed, believing her to be familiar with the requirements of THE FLORIDA BAR pertaining to the maintenance of a trust account. The bookkeeper testified that she maintained the records of the Respondent's trust account, made all deposits and prepared all checks for disbursement. The bookkeeper indicated that she believed that she was in compliance with the requirements of the Code of Professional Responsibility and the pertinent provisions of the Integration Rule and Bylaws thereunder in the maintenance of a trust account. There was no improper commingling of funds, nor is there any evidence whatsoever of any misappropriation of client's funds. There was no violation with respect to the actual situation more particularly referred to in paragraph 13 of Count II of the Complaint in that the Respondent was no longer engaged in the practice of law at the time of the receipt of the client funds referred to therein and no longer maintained a trust account. Therefore, the client funds referred to therein, which were received in settlement of a case which had been settled prior to the effective date of the Respondent's suspension from the practice of law effective March 19, 1983, were deposited into Respondent's personal account with the knowledge of the client, and disbursement of the client's share of said settlement proceeds were promptly disbursed to the client.

f. Any technical violations with respect to the maintenance of Respondent's trust account and trust account records, which were unintentional, would not justify any additional disciplinary action other than a warning that any future failure in such regard would result in more serious disciplinary action.

g. Therefore, the essential matter before the Judicial Referee is the recommendation of the Judicial Referee as to the appropriate disciplinary action to be recommended by reason of Respondent's lack of candor in advising THE FLORIDA BAR of his prior felony conviction and discussing same at the time of his application for reinstatement for dues delinquency in 1976, and his failure to seek proper reinstatement at that time. The Respondent has paid his debt to society by his incarceration in a federal penal institution for a term of four (4) years, and his supervised parole after his release from prison for an additional term of one (1) year. In addition, the Respondent has now been suspended from the practice of law for an additional term of three (3) years by reason of his prior felony conviction. While the Judicial Referee does not feel that the Respondent should be rewarded in any way for his own misconduct in failing to candidly advise THE FLORIDA BAR of his prior felony conviction, or to discuss same in order to determine the necessary action for his reinstatement in 1976 because of his 1971 conviction, the Judicial Referee does find that by reason of the circumstances in this case, there is present greater evidence of his actual rehabilitation than could otherwise be normally demonstrated because the record of Respondent's conduct of his personal and professional life since 1976 is subject to actual scrutiny and does indicate that Respondent does not represent a danger to the public or to his clients. Since the Respondent is now under an automatic suspension from the practice of law for a term of three (3) years by reason of his felony conviction, no additional rehabilitative purpose would be served by any extended disciplinary action. While it is not the purpose of the Judicial Referee to speculate upon whether or not the Respondent, if he had made candid disclosure of his prior felony conviction at the time of his dues reinstatement in 1976, would have by this time be readmitted to the practice of law, there is no evidence before the Judicial Referee to indicate the contrary. The Respondent has paid his debt to society, and since he does not represent

any danger to the public or to his clients at this time as evidenced by his record from 1976 until March 19, 1983, and since he will now be required to seek readmission to THE FLORIDA BAR at the expiration of his automatic three (3) year suspension running from March 19, 1983, by demonstrating to the satisfaction of the Supreme Court of Florida his rehabilitation, the appropriate disciplinary action upon the Complaint in this cause is the suspension of the Respondent from the practice of law for a term not to exceed seventeen (17) months from October 19, 1984, to run concurrently with his automatic suspension from the practice of law by reason of his felony conviction as heretofore ordered by the Supreme Court of Florida and to terminate at an earlier time in the event of any earlier termination of said three (3) years suspension by the Supreme Court of Florida.

h. The Respondent should be required to pay the cost of these proceedings in accordance with the Statement of Costs in the total sum of \$1,666.84 filed in these proceedings by THE FLORIDA BAR, with provision for such costs to be paid by the Respondent in four (4) equal quarterly installments, the first installment being due ninety (90) days after Respondent's readmission to the practice of law by the Supreme Court of Florida.

i. The Respondent has fully cooperated with THE FLORIDA BAR in its investigation of Respondent in connection with all matters pertaining to these proceedings.

WHEREFORE, the Judicial Referee makes the following recommendations for disciplinary action against the Respondent in these proceedings:

1. That the Respondent, BERNT MEYER, be suspended from the practice of law for a term not to exceed seventeen (17) months from October 19, 1984, to run concurrently with the automatic three (3) year suspension of the Respondent from the practice of law which commenced effective March 19, 1983, pursuant to the Order of the

Supreme Court of Florida in the case of The Florida Bar v. Bernt Meyer, Case Number 62,978.

2. That the suspension be terminated at an earlier date concurrent with any early termination of Respondent's current automatic three (3) year suspension from the practice of law by the Supreme Court of Florida.

3. That the Respondent be further admonished with respect to violations of The Florida Bar Code of Professional Responsibility, Disciplinary Rule 11.02(4)(b), Integration Rule, Article XI, Rule 11.02(4)(c), paragraph 4(a) of the Bylaws and Rule 11.02(4)(c), paragraph 2(d) of the Bylaws, that any future violations of same by Respondent after any future reinstatement to the practice of law will be dealt with more stringently.

4. The Respondent is required to pay to THE FLORIDA BAR costs of these proceedings in the sum of \$1,890.44. Payment of same shall be deferred until reinstatement of Respondent to active membership in THE FLORIDA BAR after which the same shall be payable in four (4) equal quarterly installments, the first installment becoming due and payable ninety (90) days after the date of Respondent's reinstatement and quarterly thereafter until paid in full.

DATED at Tampa, Hillsborough County, Florida, this 2nd day of January, 1985.


DANIEL GALLAGHER, Judicial
Referee

Copies to:

Laurence I. Goodrich, Esquire - Attorney for Respondent
Steve Rushing, Branch Staff Counsel - Attorney for Complainant