

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant

Case No. 66,399
TFB No. 12B82H26

vs.

ROBERT F. THOMPSON,
Respondent

FILED
JUL 9 1966
CLERK, SUPREME COURT
By *[Signature]*
Deputy Clerk

BRIEF OF RESPONDENT

ROBERT F. THOMPSON
Attorney pro se

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STATEMENT OF THE FACTS AND THE CASE

On or about April 22, 1982, Respondent was involved in an automobile accident when the car which he was driving collided with an automobile which was partially in the road as the result of a prior accident between said car and another vehicle.

Almost immediately after the accident, the Respondent was found by a Deputy Sheriff a short distance from the scene of the accident walking along the side of the road. He was returned to the scene of the accident. During the course of the accident investigation, law enforcement officials "observed a small glass vile and spoon on the dashboard of Respondent's vehicle. The vile was retrieved and found to contain a white powder, later chemically tested and proven to be cocaine. Also discovered on the floorboard of Respondent's vehicle was a white bottle which was later chemically tested and proved to contain Darvon pills, a controlled substance."

Respondent was placed under arrest and taken to Sarasota Memorial Hospital where he was loud and boisterous and created a disturbance.

As a result of all of the foregoing, Respondent plead No Contest to possession of cocaine, the Court withheld adjudication of Guilt and sentenced Respondent to pay a \$500 fine. Respondent was charged with possession of a controlled substance, he pled No Contest, the Court withheld adjudication of Guilt and sentenced Respondent to a \$500 fine and one year

probation. Respondent pled No Contest to Disorderly Intoxication, the Court withheld adjudication of Guilt and sentenced Respondent to a \$500 fine and six months probation. Respondent pled No Contest to Leaving the Scene of an Accident and the Court withheld adjudication and sentenced Respondent to a \$500 fine and six months probation.

On January 15, 1985, the Complainant filed its Complaint charging that as a result of the foregoing, Respondent was Guilty of violating Disciplinary Rule of the Code of Professional Responsibility DR1-102(A)(3), Engaging In Illegal Conduct Involving Moral Turpitude; DR1-102(A)(6), Engaging In Any Other Conduct That Adversely Reflects On His Fitness To Practice Law; and Integration Rule 11.02(3)(a), Engaging In Conduct Contrary To Honesty, Justice And Good Morals.

Said Complaint was tried before the Referee on January 4, 1986. On April 2, 1986, the Referee recommended that Respondent be found Guilty of the above set misconduct in violation of the above set out Disciplinary Rules. The Referee recommended that:

"...Respondent receive a ninety one (91) day suspension and thereafter until he shall prove his rehabilitation as provided in Rule 11.10(4). It is recommended that Respondent be ordered to pay the cost of these proceedings. (Statement of Costs attached). It is further recommended that Respondent be placed on probation for two (2) years. As a condition of probation Respondent provide one hundred (100) hours of community service; that respondent obtain a drug evaluation within twenty days from the date of the Order of Discipline by The Supreme Court of Florida; and in the event said evaluation recommends treatment that Respondent undergo said treatment consistent with that evaluation and recommendation; and if said

evaluation recommends screening that Respondent undergo any screening that is recommended. It is also recommended that Respondent pay the above costs of these proceedings within twenty (20) of the twenty-four (24) months he is on probation."

On Motion of the Respondent, the time for filing Petition for Review and Brief was extended to and including July 2, 1986.

POINT INVOLVED

UNDER THE FACTS OF THIS CASE, IS NOT
THE DISCIPLINE RECOMMENDED BY THE
REFEREE UNDULY HARSH AND CONTRARY TO
THE PRINCIPLES HERETOFORE ENUNCIATED
BY THE COURT

A suspension of 90 days does not require proof of rehabilitation while a suspension of 91 days does require an additional proceeding to determine whether rehabilitation has occurred. It is this factor alone which Respondent is questioning. A ninety (90) day suspension would allow Respondent to practice law automatically. A ninety-one (91) day suspension is, in fact, a suspension of at least nine months.

This Court has uniformly held that the purpose of lawyer discipline is not punishment. It is for the purpose of protecting the Bench, the Bar and the public from lawyers who do not adhere to the standards of conduct prescribed by this Court and for the further purpose of deterring other lawyers from engaging in similar misconduct. The Florida Bar v. Murrell, 74 So. 2d 221 (S.Ct. 1954); The Florida Bar v. Fishkind, 107 So. 2d 131 (S.Ct. 1958); The Florida Bar v. Thompson 271 So. 2d 758 (S. Ct. 1972); The Florida Bar v. MacKenzie, 319 So. 2d 9 (S. Ct. 1975).

Further, this Court has held that the discipline administered should be such as to encourage reformation. The Florida Bar v. Larkin, 420 So. 2d 1080; The Florida Bar v.

MacKenzie (supra). In The Florida Bar v. MacKenzie, the Court stated:

"As stated in Ruskin supra, the consideration that should go into an order of discipline is that the discipline should be both fair to the public and to the attorney, with an object of correcting the wayward tendency in the accused lawyer, while offering to him a fair and reasonable opportunity for rehabilitation" (Emphasis added)

Cases so holding are numerous and should not require citation.

In this case, Respondent was guilty of four misdemeanors, all growing out of a single unfortunate incident. The seriousness of these misdemeanors is best measured by the view that the trial court took of them. In each case, it withheld adjudication of guilt and fined the Respondent Five Hundred Dollars (\$500.00). In one case, Respondent was put on one year probation and in two cases, six months probation. From this, it is apparent that the Trial Judge did not consider the Respondent's criminal conduct to be of a very serious nature. However, the Referee apparently took a different view.

A suspension of ninety-one (91) days requires proof of rehabilitation. To accomplish this, Respondent must file, at the end of 91 days, a Petition for Reinstatement, a Referee must be appointed, the Bar must, of necessity, investigate the matter and a Referee must hold a Hearing to determine whether rehabilitation has, in fact, occurred. After the testimony at said Hearing has been transcribed, the Referee will make his Findings of Fact and Recommendations relative to reinstatement which then will come before this Court for consideration.

Respondent suggests that said matter cannot be concluded in less than six months and will, more than likely, take nine months, at least. Thus, Respondent will be suspended for not less than nine months and probably one year. In addition, he will incur very substantial costs for The Florida Bar's investigation and the costs of the Hearing.

There is no evidence in this Record that Respondent has been guilty of any similar offenses and so far as the Record shows, this one event is an isolated incident in his lifetime. A ninety (90) day suspension should be adequate discipline for the conduct of the Respondent. Such suspension, coupled with the one hundred (100) hours of community service recommended by the Referee and payment of the costs of this disciplinary proceeding should be adequate to deter any lawyer from engaging in like conduct. However, Respondent suggests that, for the protection of the public, Respondent should be placed on probation, as recommended by the Referee, for two years but that the conditions of the probation be:

1. That he not drink any alcoholic beverages;
2. That he not have in his possession or use any controlled substance;
3. That at regular intervals, Respondent obtain drug evaluation, which drug evaluation shall be promptly forwarded to The Florida Bar;
4. In the event said drug evaluation recommends treatment, Respondent undergo said treatment consistent with said evaluation and recommendation and submit proof to The Florida Bar that he has done so;
5. If said evaluation recommends screening, Respondent undergo such screening as may be

recommended and furnish proof to The Florida Bar that he has done so;

6. In the event that Respondent violates any of the terms of his probation, The Florida Bar shall file an appropriate pleading in this Court setting forth the violations, furnishing the Respondent a copy thereof. In the event the Respondent does not deny said violations within a short time to be fixed by the Court, the Court should suspend Respondent for a period of ninety (90) days and until such time as he can demonstrate to the Court that he has been rehabilitated from the use of alcohol and/or controlled substances. In the event Respondent does take issue with the facts set out in the Bar's pleading, the matter be promptly set for Hearing before a Referee to determine whether or not he has violated his probation and if the evidence reflects that he has done so, he be disciplined therefor as heretofore set out.

Respondent submits that the discipline above recommended protects the public far better than the discipline recommended by the Referee, gives him hope and desire for rehabilitation and yet does not unduly deprive him of his ability to earn a livelihood.

Respectfully submitted,

A handwritten signature in cursive script that reads "Robert F. Thompson". The signature is written in black ink and is positioned above a horizontal line.

ROBERT F. THOMPSON

Respondent

SUMMARY OF ARGUMENT

The suspension of ninety-one (91) days and until Respondent can prove rehabilitation is unduly harsh for the misconduct of which Respondent is guilty for the reason that in reality said suspension will last anywhere from nine months to a year. A suspension of ninety (90) days and the other disciplinary measures recommended by the Referee is adequate to deter other lawyers from similar misconduct. Further, a two year probation, with regular reports to The Florida Bar and with provisions for speedy suspension of Respondent if he violates his probation, is better calculated to protect the public than are the Recommendations of the Referee.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert F. Thompson", written over a horizontal line.

ROBERT F. THOMPSON

Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to
the following:

John F. Harkness
Executive Director
The Florida Bar
Tallahassee, FL 32301

John T. Berry, Esquire
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by U.S. Mail, this 1st day of July, 1986.


ROBERT F. THOMPSON
Respondent