IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

GERALD E. ANDERSON,

Respondent.
_____/

Case No. 66,461
(07A85C04)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of The Florida Bar, a hearing was held on October 8, 1985. The pleadings, notices, motions, orders, transcripts and exhibits all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: David G. McGunegle
Jan K. Wichrowski

For The Respondent: Richard S. Rhodes and
Robert A. Leventhal

II. Findings and Rulings in General: This referee notes that neither Respondent nor his counsel appeared at the final hearing on October 8, 1985. However, counsel for the Respondent were properly noticed of the final hearing and discussed their scheduling problems with this referee on the morning of the hearing and no continuance was sought. It should be noted that although counsel filed an Answer to the Complaint in Respondent's behalf, it is fairly evident by Respondent's absence that counsel was not actually retained for this proceeding and whatever actions were taken by Respondent's counsel appears to be a carry over from his criminal representation.

Further, Respondent himself was properly sent Notice of Hearing, a copy of which is in evidence. The Bar's complaint and

notice were sent pursuant to Section 6 of Article II and Rule 11.01(2), Respondent was mailed by certified mail notices to his last record Bar address as shown by the official records in the office of the Executive Director of The Florida Bar. Thus, the service is presumed sufficient. See The Florida Bar v. Travelstead, 435 So.2d 842 (Fla. 1983).

The Supreme Court of Florida, in assigning this referee, ordered the trial of this matter to be held in Orange County, Florida. However, it was inadvertently scheduled to be held at the Seminole County Court House, in the county where the matters upon which the Complaint is based occurred, and it was deemed unnecessary to move the proceedings to Orange County, only 15 miles away, on the morning of the hearing. Since no objections were raised by any parties after proper notice, this matter is waived and I specifically find this court has authority in jurisdiction and venue to proceed in this matter.

III. Findings of Fact as to Each Item of Misconduct of which the Respondent is Charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find that it was established by clear and convincing evidence:

1) In April, 1983, Respondent was charged in a four count indictment in United States District Court, Middle District of Florida, Orlando Division, Case No. 83-47-CR-ORL-11. The indictment charged him with knowing, wilful and unlawful possession with intent to distribute approximately one kilogram of cocaine hydrochloride, and with distributing that amount on both December 29, 1982, and February 14, 1983, in Seminole County, Florida. Said charges are federal felonies under Title 21 of the United States Code.

2) In April, 1983, Respondent was also charged in a nine count indictment, along with others, in the United States District Court, Middle District of Florida, Orlando Division, Case No. 83-46-CR-ORL-11 with conspiring to import cocaine with the intent to distribute from approximately March 26, 1983, through April 11, 1983, in Volusia and Seminole Counties, Florida, and elsewhere.

3) Respondent conspired with others to arrange with Columbians to fly a plane to Columbia to pick up approximately 115 kilograms of cocaine hydrochloride. During various recorded meetings and telephone conversations between Respondent and

undercover agents for the Drug Enforcement Administration, discussions were held concerning price, quantity, and arrangements for the importation of the illegal substance. Respondent acted as a principal in arranging for the purchase of the cocaine through Columbians and its subsequent transportation. Respondent was known to have participated in such illegal drug importing activities before this time. Respondent arranged for a pilot to make the flight on approximately April 9, 1983, to Columbia, South America, and back to the United States where it landed in Homerville, Georgia. Respondent and another co-conspirator met the aircraft. Respondent did assist in unloading approximately 115 kilograms of cocaine into an automobile on or about April 10, 1983, and transporting the automobile containing the cocaine from Georgia to his home in Volusia County, Florida. On the evening of approximately April 10, 1983, Respondent directed Mr. Kirk, an undercover agent acting as a buyer, to his home where Respondent participated with Mr. Kirk in finalizing arrangements for the sale and delivery of the drugs. Mr. Kirk took a sample of the drug that night and gave it to agent Hershey of the Drug Enforcement Administration. It later tested very positively for cocaine hydrochloride with the percentage in the 90's. On April 11, 1985, Mr. Kirk returned to Respondent's residence where the cocaine was weighed and then placed in the trunk of Mr. Kirk's rental car by the Respondent. Respondent drove the vehicle to the Holiday Inn in Sanford, Florida. Mr. Kirk and a third individual followed in a separate vehicle. Shortly after arrival, Respondent and the other individual were arrested on the above noted charges.

4) Respondent knowingly imported at least 20 kilograms of cocaine hydrochloride, a controlled substance, into the United States and thereafter arranged for its sale, along with others.

5) Respondent's above activities, as well as use of communication facilities to facilitate the intentional distribution of approximately 20 kilograms of cocaine hydrochloride constitute felonious acts under several sections of Title 21 of the United States Code as set forth in the indictment.

6) Respondent failed to appear for trial of either case in June, 1983, and August, 1983.

7) In September, 1983, Respondent was charged in a two count indictment in the United States District Court, Middle District of Florida, Case No. 83-81-CR-ORL-11, with wilful failure to appear for trial in June 27, 1983, for case 83-46-CR-ORL-11 and on August 29, 1983, for case 83-47-CR-ORL-11.

8) Respondent's present whereabouts continue to be unknown.

IV. Recommendations as to whether or not the Respondent should be found guilty: As to the above numbered findings of fact, I make the following recommendations as to guilt or innocence:

1) I recommend that the Respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar: Article XI Rule 11.02(3)(a) for engaging in conduct contrary to honesty, justice and good morals and 11.02(3)(b) for engaging in felonious criminal conduct. Additionally, Respondent has violated the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 1-102(A)(3) for engaging in illegal conduct involving moral turpitude, 1-102(A)(4) for engaging in conduct involving fraud, misrepresentation, dishonesty or deceit and 1-102(A)(6) for other misconduct reflecting adversely on his fitness to practice law.

V. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the Respondent be disbarred from the practice of law in Florida for a minimum period of at least five years. I note the gravity of this type of offense as recently reiterated by the Supreme Court of Florida in The Florida Bar v. Arnold Hecker, No. 65,563, September 19, 1985:

> Respondent's conduct in attempting to act as a drug procurer is wholly inconsistent with his professional obligations as a member of the Bar. We appreciate that disbarment is the severest sanction available to us and should not be imposed where less severe punishment would accomplish the desired purpose. . . Respondent deliberately set out to engage in illegal drug activity for pecuniary gain. Illegal drug activites are a major blight on our society--nationally, statewide and locally. Necessarily, members of the Bar are brought into contact with the illegal activity because of their professional obligations to offer legal assistance to clients accused of wrongdoing. Members of the Bar should be on notice that participation in such activities beyond professional obligations will be dealt with severely.
>
> The conduct of Respondent warrants disbarment. The legal profession cannot tolerate such conduct.

I further take into consideration Respondent's fugitive status. Respondent has underscored his lack of respect for the law and the legal profession by his actions in failing to appear for trial.

VI. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 11.06(9)(a)(4), I considered the following personal history and prior disciplinary record of the Respondent, to wit:

Age: Born in 1946
Date admitted to Bar: 5/01/73
Prior disciplinary convictions and disciplinary measures imposed therein: N/A

VII. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar:

A.	Grievance Committee Level Costs	
	1) Administrative Costs	150.00
	2) Transcript Costs	69.00
	3) Bar Counsel Travel Costs	5.39
B.	Referee Level Costs	
	1) Administrative Costs	150.00
	2) Transcript Costs	
	Deposition of A. Lively (4/25/85)	112.80
	Deposition of E. Hershey (5/17/85)	108.20
	Transcript of Criminal Proceedings	162.00
	Final Hearing Transcript (10/8/85)	178.95
	3) Bar Counsel Travel Costs	15.10
	4) Witness subpoena fees	
	Mr. E. Hershey	65.40
	Mr. J. Kirk	19.68
C.	Miscellaneous Costs	
	1) Telephone charges	11.09
	2) Staff Investigator expenses	17.78
	3) Out-of-Town Witness Travel Costs	
	Mr. E. Hershey (5/16/85)	389.00
	Mr. E. Hershey (10/04/85)	334.23
	TOTAL COSTS INCURRED:	**$1,788.62**

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the Respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by The Board of Governors of The Florida Bar.

Dated this 24 day of October, 1985.

G. Richard Singeltary

G. RICHARD SINGELTARY, Referee

Copies to:

David G. McGunegle, Bar Counsel
Staff Counsel, The Florida Bar, Tallahassee, Florida
Robert A. Leventhal, Counsel for Respondent
Richard S. Rhodes, Counsel for Respondent