

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
SID J. WHITE
JUN 15 1985
CLERK, SUPREME COURT
Chief Deputy Clerk

THE FLORIDA BAR, :
Complainant, :
vs. : CASE NO. 66,563
JOSEPH PADAWER, : (09D85C05)
Respondent. :

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, hearings were held on June 12, 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 John B. Root, Jr.

For the Respondent James A. Moreland

II. 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:

As to Count I

That the Respondent planned with his client to arrange for a fictitious loan transaction involving the sale of a Lear Jet. The Respondent knowingly used certain hidden cash assets of the client to fund this fictitious loan, drew up the fictitious loan document, and took the necessary steps to close the transaction. Respondent did not realize a financial gain for this particular transaction, although he did receive a \$3,000 retainer from the client and was to receive a corporate salary of \$1,500 a month from the corporation that was to own the jet purchased by the fictitious loan. The client and the client's associates were later convicted for certain federal offenses resulting from this transaction. (Paragraph 2, Stipulation and Consent to Finding of Probable Cause)

As to Count II

Respondent did, in fact, give false testimony on two occasions to a federal grand jury about the fictitious loan transaction. (Paragraph 2 of the Stipulation and Consent to Finding of Probable Cause.)

As to Count III

Respondent did, in fact, assist a client in the preparation and the filing of an income tax return for the calendar year 1978 and said return contained false information, said false information being known to the Respondent at the time of the filing. (Paragraph 2 of the Stipulation and Consent to Finding of Probable Cause.)

III.

Recommendations as to whether or not the Respondent should be found guilty: As to each count of the complaint I make the following recommendations as to guilt or innocence.

As to Count I

I recommend that the respondent be found guilty and that he specifically be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to-wit: Disciplinary Rules 1-102 (a)(3); 1-102 (a)(4); 1-102 (a)(6); 7-102 (a)(5); 7-102 (a)(6); 7-102 (a)(7); 7-102 (a)(8); Integration Rule 11.02 (3).

As to Count II

I recommend that the respondent be found guilty and that he specifically be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to-wit: Disciplinary Rules 1-102 (a)(4); 1-102 (a)(6); 7-102 (a)(5); 7-102 (a)(8); Integration Rule 11.02 (3).

As to Count III

I recommend that the respondent be found guilty and that he specifically be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to-wit: Disciplinary Rule 1-102(a)(4); 1-102 (a)(6); 7-102 (a)(5); 7-102 (a)(7); 7-102 (a)(8); Integration Rule 11.02 (3).

IV.

Recommendation as to Disciplinary measures to be applied:

I recommend that the respondent be suspended for a fixed period of thirty-six months; thereafter, until he shall prove his rehabilitation and for an indefinite period until he shall pay the cost of this proceeding. This suspension should be effective retroactively to June 15, 1983, the date on which the respondent's previous felony conviction suspension (Case No. 63,456) became effective.

V.

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: Fifty-three

Date admitted to Bar: November 6, 1959

Prior disciplinary convictions and disciplinary measures imposed therein: Case 63,456, suspension upon felony conviction, said conviction being related to the transactions alleged in the instant complaint.

Other personal data:

VI.

Statement of costs and manner in which cost 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	\$ 0.00
3. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 0.00
B. Referee Level Costs	
1. Administrative Costs	\$150.00
2. Transcript Costs	\$ 86.15
3. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 38.74
4. Audit costs pursuant to Rule 11.02(4)(c)	\$ 0.00

C. Miscellaneous Costs	
1. Telephone charges	\$ 0.00
2. Staff Investigator expenses	\$ 0.00
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TOTAL ITEMIZED COSTS	\$424.89

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.

VII. That the finding of fact, findings of guilt and recommended disciplinary measures referred to above are specifically based on that Stipulation and Consent to Finding of Probable Cause and the Conditional Guilty Plea for Consent Judgment executed by the parties and approved by the designated reviewer of The Florida Bar, both documents being attached hereto and made a part of the record. Specifically, the referee accepts the Stipulation and Consent and the Conditional Guilty Plea and recommends their acceptance to the Supreme Court of Florida.

Dated this 9th day of July, 1985.



CHARLES A. DAVIS, JR.
Referee