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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

RICHARD LEON,

Respondent.
_____/

Case No. 66,[illegible]
(TFB #13B84H52)

RESPONDENT'S ANSWER BRIEF

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STATEMENT OF THE CASE AND THE FACTS

The Florida Bar's Statement of the Case and the Facts contains some truths, but it does not contain an accurate reflection of the facts or the proceedings.

The Respondent was removed from his judicial office by the Judicial Qualifications Commission on October 23, 1983.

He was tried before a jury on Two Counts of Perjury, One Count of Official Misconduct, Bribery and Unlawful Compensation. He was convicted on November 12, 1983, of Two Counts of Perjury and One Count of Official Misconduct. He was found not guilty of Bribery and and Unlawful Compensation.

Following his conviction, the Respondent was sentenced to five years probation on each Count, to run concurrently, ordered to pay $5,000 in Court costs, and ordered to perform 1,000 hours of community service.

The matter was appealed to the Second District Court of Appeal, and in a decision rendered on July 3, 1985, the Second District Court of Appeal dismissed the charge of Official Misconduct and declared the Statute unconstitutional. The Court affirmed the Respondent's conviction on Two Counts of Perjury in State v. Leon, 474 So.2d 832 (Fla. 2d DCA July 3, 1985).

When the Respondent appeared before The Florida Bar's appointed Referee on October 3, 1986, he admitted that he had been convicted as alleged without requiring The Florida Bar to submit any

relevant facts regarding his conviction. The Respondent presented evidence in mitigation for the Referee's Recommendations and offered character testimony from a former judge, active members of The Florida Bar, and other respected members of the community. The Respondent and his counsel still continued to maintain and stress the Respondent's innocence.

The criminal charges and subsequent conviction occurred as a result of the Respondent's meeting with former Circuit Court Judge Arden Mays Merckle. The State's position was that the meeting was an attempt by the Respondent to influence Judge Merckle to change a sentence. The Respondent's position was, and still is, that he met with Judge Merckle, as Chief Judge, to find out if Respondent was incorrect in his understanding of the Court's policy and procedure for first offenders charged with drug violations.

None of the facts in this case were presented to the Referee herein. The Respondent readily admitted that he had been convicted of a felony and was still on probation.

SUMMARY OF ARGUMENT

The Referee's recommendation that the Respondent receive a three (3) year suspension is sufficient disciplinary sanction. The Bar's request is not in the protection of the public, but "excessively punitive." Respondent has been a member of The Florida Bar in excess of 21 years and has never been disciplined. On the contrary, the Respondent is a familyman with five children and five grandchildren. Respondent has worked only in the legal field during his adult life, and has no other means of support for his wife and remaining minor child.

The Referee, as the trier of facts, had the opportunity to evaluate facts, testimony, appearance, forthrightness and all other factors important to make a determination.

Respondent will concur that the Referee's Report is technically defective and Respondent must show Rehabilitation, but that suspension should be retroactive to January 10, 1983, as in numerous other cases.

ARGUMENT I

A three-year suspension is more than sufficient sanction for a felony conviction for perjury.

Respondent's felony conviction warrants suspension under case law, not disbarment as recommended by The Florida Bar.

Respondent was convicted primarily on the testimony of former Chief Circuit Court Judge Arden Mays Merckle after his grant of immunity from prosecution, even though in an unrelated matter, he faced prosecution for Bribery, Extortion, Unlawful Compensation, Misbehavior in Office, Perjury, and Filing of False Affidavits. He was subsequently found guilty of Bribery, Extortion, Unlawful Compensation and Misbehavior in Office, and sentenced to five years in prison. That case remains on appeal.

The Florida Bar alleges that Judge Merckle changed or altered a sentence (at this Respondent's request). The record in State v. Leon, 474 So.2d 832 (Fla. 2d DCA July 3, 1985) is clear from the testimony of former Chief Circuit Court Judge Arden Mays Merckle that Respondent never "asked, requested, or sought Merckle to do anything in the case of State of Florida v. Avery, Hillsborough County Circuit Court Case Nos. 80-9781 and 81-3103. The Florida Bar v. Merckle, 498 So.2d 1242 (Fla. 1986).

In The Florida Bar v. Davis, 379 So.2d 942 (Fla. 1980), the Court stated:

> "Disbarment from practice of law is an extreme penalty and should be imposed only in those cases where rehabilitation is improbable." (Emphasis Supplied).

Disbarment is generally reserved for the most infamous types of misconduct and is justifiable only where possibility of rehabilitation and restoration to ethical practice is least likely. State v. Ruskin, 126 So.2d 142 (Fla. 1961).

Respondent would show that in The Florida Bar v. Giordano, 500 So.2d 1343 (Fla. 1987), Giordano, "an Assistant State Attorney" pled guilty to possession with intent to distribute cocaine and three counts of distribution of marijuana. He was suspended for three years retroactive to the date of his automatic suspension.

Also, in The Florida Bar v. Chosid, 500 So.2d 150 (Fla. 1987), Chosid was charged with five felony charges concerning importation and distribution of marijuana and the concealment of money from that operation for income tax purposes. Chosid pled guilty to one count of the five-count indictment and was sentenced to two years in prison and ordered to pay a $5,000 fine. The Referee recommended a three-year suspension, which the Court approved and made the suspension retroactive to the date of conviction.

Likewise, in The Florida Bar v. Stahl, 500 So.2d 540 (Fla. 1987), Stahl pled guilty to obstruction of justice in the United States District Court and he was suspended for three years retroactive to the date of his automatic suspension.

Additionally, in The Florida Bar v. Milan, 499 So.2d 829 (Fla. 1986), Milan pled guilty to conduct involving dishonesty, fraud,

deceit or misrepresentation, conduct contrary to honesty, justice or good morals. He was suspended for two years retroactive to his suspension date.

Finally, in The Florida Bar v. Rosen, 495 So.2d 180 (Fla. 1986), Rosen was convicted in Federal Court of knowingly and intentionally possessing cocaine with intent to distribute. He was also suspended for three years to the date of the automatic suspension.

In the case at Bar, RICHARD E. LEON, should not be punished further. He has been suspended for more than three (3) years, and is still on probation. Because he is still on probation, he does not expect this Honorable Court to order his immediate reinstatement. However, he would like to be considered for reinstatement if his probation is terminated prior to his completion of the full five (5) years' probation. When a decision is rendered in this case, the Respondent will have been suspended for almost four (4) years. He has suffered immeasurably, has insufficient employment to properly support his family, and has been deprived of his right to practice his profession. He should not be treated more harshly because of his prior judicial position. He has undergone enough pain and agony, and now is the proper time for his suffering to come to an end.

ARGUMENT II

The Referee's recommendation should be approved, except for the date of suspension. Failure to conform to Integration Rule, Article XI, Rule 11.06 is merely technical in nature.

The basic thrust of the Bar's Petition for Review is for the Court to disapprove the Referee's Recommendation and fails to cite any precedent or showing that the recommendation is clearly erroneous other than technical. Respondent would show unto the Court that for a referee's recommendation to be disapproved, a referee's findings should not be overturned unless clearly erroneous. See The Florida Bar v. Carter, 410 So.2d 920 (Fla. 1982); The Florida Bar v. Lopez, 406 So.2d 1100 (Fla. 1981); The Florida Bar v. Stillman, 401 So.2d 1306 (Fla. 1981); The Florida Bar v. McCain, 361 So.2d 700 (Fla. 1978); The Florida Bar v. Hirsch, 359 So.2d 856 (Fla. 1978).

The Respondent is certainly remorseful for all of the degradation he and his family has suffered throughout this very painful and humiliating ordeal. The Referee surely was impressed with Respondent's testimony, demeanor, and sincerity when viewing his Recommendations. What better person to judge than the Referee herein.

Mercy should be shown to the Respondent as he has suffered so long, and notwithstanding, his outstanding record before this incident. Therefore, the Respondent should be allowed to return to the profession he loves so much.

CONCLUSION

Respondent requests this Court to uphold the Recommendations of the Referee, and suspend the Respondent for three (3) years retroactive to the date of his automatic suspension.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to DIANE V. KUENZEL, Bar Counsel, The Florida Bar, Suite C-49, Tampa Airport Marriott Hotel, Tampa, FL 33607, and to JOHN T. BERRY, ESQUIRE, Staff Counsel, The Florida Bar, Tallahassee, FL 32301, by mail, this 1st day of April, 1987.

B. ANDERSON MITCHAM