

12-2

IN THE SUPREME COURT OF FLORIDA

FILED  
 STATE OF FLORIDA  
 NOV 7 1988  
 CLERK, SUPREME COURT  
 By \_\_\_\_\_  
 Deputy Clerk

THE FLORIDA BAR,

Petitioner,

Case No. 67,261

v.

WILLIAM FENTON LANGSTON,

(TFB File No. 83-03599-02)

Respondent.

\_\_\_\_\_ /

INITIAL BRIEF

JAMES N. WATSON, JR.  
 Bar Counsel, The Florida Bar  
 650 Apalachee Parkway  
 Tallahassee, Florida 32399-2300  
 (904) 222-5286

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	4
SUMMARY OF ARGUMENT	8
ARGUMENT	10
<u>ISSUE I</u> - THE REFEREE'S FINDINGS AS TO RESPONDENT'S CONDUCT IN REGARDS TO RESPONDENT'S FINANCIAL STATEMENTS ARE ERRONEOUS.	10
<u>ISSUE II</u> - THE REFEREE'S FINDINGS AS TO RESPONDENT'S CONDUCT IN REGARDS TO BEING HELD IN CONTEMPT OF COURT ARE ERRONEOUS.	14
<u>ISSUE III</u> - WHETHER A PRIVATE REPRIMAND IS AN APPROPRIATE DISCIPLINE WHEN A LAWYER KNOWINGLY COMMITTS PERJURY AND VIOLATES INJUNCTIVE COURT ORDERS.	18
CONCLUSION	23
CERTIFICATE OF SERVICE	24

TABLE OF CITATIONS

<u>CASES CITED</u>	<u>PAGE(S)</u>
<u>Dodd v. The Florida Bar,</u> 118 So.2d 17 (Fla. 1960)	19
<u>The Florida Bar v. Gentry,</u> 447 So.2d 1342 (Fla. 1984)	19
<u>The Florida Bar v. Hendrickson,</u> 222 So.2d 1 (Fla. 1969)	20
<u>The Florida Bar v. Manspeaker,</u> 428 So.2d 241 (Fla. 1983)	19, 20
<u>The Florida Bar v. McGovern,</u> 365 So.2d 131 (Fla. 1978)	20
<u>The Florida Bar v. Moran,</u> 462 So.2d 1089 (Fla. 1985)	19
<u>The Florida Bar v. Mueller,</u> 351 So.2d 960 (Fla. 1977)	18
<u>The Florida Bar v. Neely,</u> 372 So.2d 89 (Fla. 1979)	20
<u>The Florida Bar v. Siegel,</u> 511 So.2d 995 (Fla. 1987)	13
<u>The Florida Bar v. Weaver,</u> 356 So.2d 797 (Fla. 1978)	18

OTHER AUTHORITIES CITED

Disciplinary Rules of The Florida Bar

1-102(A) (3)	2, 18, 23
1-102(A) (4)	2, 13, 18, 23
1-102(A) (5)	2, 16, 18, 23
1-102(A) (6)	2, 16, 18, 23

Florida Standards for Imposing Lawyer Sanctions

Section 6.12	21
Section 6.22	21
Section 7.2	21
The Florida Bar Journal, Oath of Admissions, 1988, p. 118	16

PRELIMINARY STATEMENT

In this Brief, Petitioner, The Florida Bar (Complainant below) will be referred to as "The Florida Bar." Respondent, WILLIAM FENTON LANGSTON, will be referred to as "Respondent."

References to the transcript of hearing before the Referee will be (T - page number) and references to exhibits introduced at the hearing will be (Bar's Exhibit - number). References to the Referee's Report will be (RR - page number).

STATEMENT OF THE CASE

Respondent waived his appearance and the necessity of a formal hearing before the Second Judicial Circuit Grievance Committee on a complaint filed against him setting forth certain charges of misconduct in connection with dissolution proceedings. He entered a stipulation of probable cause on October 26, 1983.

On June 28, 1985 a formal Complaint and Request for Admissions were filed with the Supreme Court of Florida. The Supreme Court subsequently appointed Judge Royce Agner as Referee to conduct a formal hearing in this matter.

A formal hearing was held in Perry, Florida on April 12, 1988 before Judge Agner.

On August 29, 1988, Judge Agner filed his Report of the Referee wherein he found Respondent guilty of violating Disciplinary Rules 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), and 1-102(A)(6) of The Florida Bar. In his report, Judge Agner recommended that Respondent be disciplined by receiving a private reprimand, probation for twelve (12) months and passage of the ethics portion of the Bar Exam.

At the September 28 - October 1, 1988 meeting of the Board of Governors of The Florida Bar, the Board voted to petition this Court to review the findings and recommendations of the Referee's Report.

On October 7, 1988, The Florida Bar filed its Petition for Review in this matter.

STATEMENT OF FACTS

Respondent became a member of The Florida Bar in 1969 and was a member at all times pertinent to the times attendant to this matter.

During May, 1981, Respondent's wife, Ramsey C. Langston, began dissolution of marriage proceedings against Respondent.

Respondent had ceased practicing law some time in 1974 and had become involved in developing real estate and construction of rental properties. (T-17). Prior to the dissolution proceedings, Respondent had been in partnership in the developing of real estate with Mr. Kent Deeb.

During the pendency of the divorce proceedings, Respondent transferred his title in a substantial amount of real property to Mr. Deeb and others. This property had been acquired during the marriage of Respondent and had been placed solely in Respondent's name.

This transfer of property was found to have been an attempt by Respondent to fraudulently convey marital property to avoid alimony and child support. As a result, the presiding circuit judge, Judge Kenneth Cooksey, entered an order compelling Respondent to cause record title to all such



property to be reconveyed to himself. Respondent failed to do this and was held in contempt of court by Judge Cooksey on April 2, 1982. (Bar's Exhibit 12).

Rather than submit himself to the jurisdiction of the court under the contempt order, Respondent absconded from the State of Florida to avoid being committed to jail by Judge Cooksey. (T-29, 30). Respondent subsequently returned to Florida in December, 1982 asking that the contempt order be abated. Respondent was unsuccessful and was committed to jail for failing to comply with the order of Judge Cooksey. (Bar's Exhibit 12). Respondent spent forty-six days in jail as a result of his contempt of court. (T-30).

As part of the contempt actions, Judge Cooksey found that Respondent had assigned certain notes receivable to a Cairo, Georgia bank for \$15,000.00 cash. This was also in violation of a court restraining order. Respondent admitted this at the final hearing and that it was violative of the court order. (T-36).

Prior to the dissolution of marriage proceedings, Respondent had filed a financial affidavit with Tallahassee Sun Federal Savings and Loan (hereinafter referred to as Sun Federal) in an attempt to borrow funds. That financial statement showed a personal net worth of \$4,543,000.00 in

November, 1979. (Answer to Request for Admissions paragraph N). On this financial affidavit, Respondent represented a parcel of real estate as a wholly owned asset when in reality it was titled in his mother's and father's names. (T-31, 32).

In a deposition in the dissolution proceedings, Respondent admitted that he lied on his financial statement to Sun Federal. (Bar's Exhibit 9). Respondent also admitted at the deposition that the financial statement was an overstatement of his net worth and an inaccurate representation of his net worth. (Bar's Exhibit 7). Respondent also overstated the value of his cash on hand and notes receivable in this financial statement. (Bar's Exhibit 8).

During the dissolution proceedings, Respondent was deposed on February 16, 1982 by the wife's attorney. At this deposition, Respondent refused to answer certain questions pertaining to extra-marital affairs. (T-39, 40). After obtaining an order from the presiding judge, Respondent was compelled to answer such questions at a March 5, 1982 deposition. At this time, Respondent denied having had sexual relations with anyone other than his wife during his marriage. (Bar's Exhibit 1, T-40, 41). Respondent admitted at the trial on the wife's Petition for Dissolution that he understood he was making a false statement under oath when he said he had not

engaged in sexual relations with anyone other than his wife during their marriage. (Bar's Exhibit 2 - p. 12).

## SUMMARY OF ARGUMENT

The position of The Florida Bar is that the Referee erred in his Findings of Fact wherein he found Respondent not guilty of having violated the cited Disciplinary Rules.

In the first instance, the Referee found that Respondent is not guilty of misconduct of misrepresenting his net worth on a sworn financial statement to a bank. The Florida Bar takes the position that by his own admissions, written and oral, Respondent has admitted knowingly making misrepresentations on such financial affidavit. In view of these facts, the position of the Referee is incorrect and Respondent should be found guilty as charged.

In the second instance, the Referee found that certain willful and contemptuous conduct by Respondent was incorrect and not violative of Disciplinary Rules. The Florida Bar's position is that the facts and testimony of Respondent show he knowingly violated certain court orders that resulted in Respondent being held in contempt of court and committed to jail. These actions are more than merely incorrect and are sufficient to substantiate a finding of guilty as to conduct prejudicial to the administration of justice and conduct adversely reflecting on one's fitness to practice law.

The Florida Bar's third argument is that the above conduct, when viewed in conjunction with the Referee's finding that Respondent knowingly committed perjury, requires a sanction more severe than a private reprimand.

ARGUMENT

ISSUE I

THE REFEREE'S FINDINGS AS TO  
RESPONDENT'S CONDUCT IN REGARDS TO  
RESPONDENT'S FINANCIAL STATEMENTS ARE ERRONEOUS.

As set forth in the Report of Referee, Respondent was charged with four situations of ethical misconduct arising from divorce proceedings brought by Respondent's ex-wife.

One of the situations of misconduct regarded the financial affidavit filed by Respondent as required in such divorce proceedings. As a result of discovery, certain admissions were made by Respondent as to inaccuracies he had made on a financial statement to Sun Federal.

In the Report of the Referee, this matter is specifically dealt with in Section 2 of the Referee's Findings of Fact. Specifically, the Referee found that the explanation given by Respondent was plausible and the information given on the financial statement was not intended to mislead the bank. The Referee also found such evidence was not conclusive of dishonesty, fraud, deceit, or misrepresentation. As a result, the Referee found Respondent not guilty of any misconduct in connection with such actions by the Respondent.

A review of the testimony and the exhibits presented at the hearing will show that such a finding by the Referee is erroneous.

A review of the Request for Admissions (Bar's Exhibit 5) and the Answers thereto (Bar's Exhibit 6) filed in the divorce proceedings of Respondent show that the attached financial statement to Sun Federal purported to be a true and accurate statement of Respondent's financial condition as of November 1, 1980.

The Admissions filed by Respondent show this financial statement was submitted in connection with Respondent's transactions with Sun Federal and that Sun Federal was the major creditor of Respondent.

In his Admissions, Respondent admitted that the financial representations made in the financial statements were true and accurate.

At a deposition given by Respondent (Bar's Exhibit 7), he testified that the financial statement given to Sun Federal was overstated and was an inaccurate representation of his net worth.

Respondent specifically admitted that he had overstated the value of the notes receivable shown on the statement to Sun Federal. (Bar's Exhibit 8, p. 61).

In this same deposition, Respondent admitted that at the time the financial statement was submitted, there were two parcels of real estate shown therein as belonging to him that he, in fact, did not have title to at the time. (Bar's Exhibit 9, p. 140-141). These parcels were certain lots on Ocala Road, Tallahassee, Florida and 192 acres of land in Wakulla County, Florida that belonged to Respondent's mother.

When questioned about the Wakulla County property, Respondent said he thought he was going to purchase the land but admitted he lied to Sun Federal when he represented he owned it. (Bar's Exhibit 9, p.140).

At the formal hearing, Respondent testified that regarding the property in question on the financial statement, his mother only owned an one-half interest in the Wakulla County land and intended to give him the property to work out something with Respondent's father. (T-34). Respondent again admitted overstating the value of his notes receivable. (T-35).

At the hearing, Respondent, upon questioning by his counsel, explained that his assets had a value that was



dependent upon the amount owed on the property and the fair market value. He also testified that such property assets deteriorated without maintenance. (T-55). Respondent on cross examination again admitted certain undervaluation (T-54) of assets and gave no real explanation as to why he misrepresented his net worth on his financial statement to Sun Federal.

From the testimony of the Respondent and his admissions, it is clear that he misrepresented his assets and net worth on the financial statement to Sun Federal. A review of his explanation at the final hearing (T-34, 35; T-54, 55) reveals that there was no explanation or justification for lying on his financial statement. There was certainly no plausible explanation for such misrepresentation.

It is clear that Respondent did misrepresent his financial standing from the evidence presented at the final hearing and the findings of the Referee as to this violation are clearly erroneous.

This Court has held that misrepresenting facts in an attempt to secure financing by an attorney is violative of Disciplinary Rule 1-102(A)(4). The Florida Bar v. Siegel, 511 So.2d 995 (Fla. 1987).

ISSUE II

THE REFEREE'S FINDINGS AS TO  
RESPONDENT'S CONDUCT IN REGARDS TO BEING  
HELD IN CONTEMPT OF COURT ARE ERRONEOUS.

Under Section three of the Referee's Findings of Fact, the conduct of Respondent resulting in numerous orders of contempt and a commitment order are addressed by the Referee.

As a composite exhibit, Judge Cooksey's orders of contempt and his commitment order were introduced into evidence as Bar's Exhibit 12.

At the final hearing, Respondent verified that Judge Cooksey had ordered him to have title to certain property transferred back to Respondent's name. (T-27). Respondent failed to do this and was held in contempt of court for not complying with Judge Cooksey's order. (Bar's Exhibit 12; T-27).

Respondent states that it is his belief that he was legally incapable of accomplishing the specifics of Judge Cooksey's order of transfer. (T-27).

Respondent cannot recall appealing Judge Cooksey's order or contempt citation; however, the same findings and order to transfer such property were contained in the Final Judgment of Dissolution entered by Judge Cooksey. Respondent acknowledges

that the final judgment was appealed and was subsequently affirmed. (T-28).

In both Respondent's Response to Discovery and in testifying at the final hearing, Respondent also admits to having willfully violated an injunctive order of Judge Cooksey by assigning certain notes receivables for a personal loan from a bank in Cairo, Georgia. (T-36; Answer to paragraph 16 of Complaint and paragraph U of Request for Admissions).

In regards to the commitment order entered by Judge Cooksey on September 28, 1982, Respondent acknowledged being aware of such order and admitted leaving the jurisdiction of the court to evade commitment. (T-29).

Respondent later returned to Tallahassee, Florida and voluntarily submitted himself to the court's jurisdiction asking that Judge Cooksey abate his order of commitment. (T-30). This request was refused and Respondent was sentenced to jail where he spent forty-six days before he finally purged himself by settlement with the ex-wife of the outstanding requirements under the final judgment. (T-31).

At no time did Respondent seek to obtain relief from these orders through circuit court modification or appellate review but unilaterally determined that he could not or would not

comply with their provisions and proceeded in whatever fashion best suited his own immediate personal needs.

The Referee found that presently Respondent is not in contempt and has ultimately satisfied all the prior court orders. The Referee has chosen to characterize the Respondent's actions as not being correct but not in violation of the cited Disciplinary Rules.

The Florida Bar takes exception to these findings. It is clear that Respondent chose to take a path of conduct that was knowingly in direct contradiction to the injunctive and contempt orders of Judge Cooksey. As a member of The Florida Bar, Respondent took an oath upon admission to "maintain the respect due to the Courts of Justice and judicial officers." Oath of Admission, The Florida Bar Journal, 1988, p. 118.

While Respondent was not actively engaged in the active practice of law, he is still charged with the provisions of the ethical conduct required of a member of The Florida Bar.

By his willful disregard of Judge Cooksey's orders, Respondent is clearly in violation of Disciplinary Rules 1-102(A)(5) and 1-102(A)(6) in that his conduct was prejudicial to the administration of justice and reflected adversely on his fitness to practice law.

The Referee's finding that the actions of Respondent were incorrect is correct only in characterizing them as to how Respondent may have chosen to deal with his problems; but, as an officer of the court, Respondent's actions clearly are violative of the cited Disciplinary Rules and the Referee was in error for not finding Respondent guilty of ethical misconduct for his contemptuous behavior.

ISSUE III

WHETHER A PRIVATE REPRIMAND IS AN  
APPROPRIATE DISCIPLINE WHEN A LAWYER KNOWINGLY  
COMMITS PERJURY AND VIOLATES INJUNCTIVE COURT ORDERS.

It is a well established point of law in Florida that the Florida Supreme Court is not bound by the referee's recommendation for discipline. The Florida Bar v. Mueller, 351 So.2d 960 (Fla. 1977) and The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978).

As a result of having found Respondent guilty of perjury in regards to denying under oath engaging in extramarital affairs, the Referee herein has recommended Respondent be found guilty of violating Disciplinary Rules 1-102(A)(3), 1-102(A)(4), 1-102(A)(5) and 1-102(A)(6).

It is the position of The Florida Bar that, as set forth in its earlier arguments, Respondent should also have been found guilty of two additional charges of misconduct.

The Referee has recommended that Respondent be disciplined by receiving a private reprimand, a twelve-month term of probation and passage of the ethics portion of The Florida Bar Exam.

It is The Florida Bar's position that the proper discipline where a lawyer has knowingly committed perjury, misrepresented his net worth to a financial institution, and violated court orders, is a suspension from the practice of law for a period in excess of ninety days.

The case law in support of The Florida Bar's position is substantial. In The Florida Bar v. Moran, 462 So.2d 1089 (Fla. 1985) this Court held that knowingly making a false statement of law or fact to a court warrants a four-month suspension.

The Florida Supreme Court has held that no breach of professional ethics is more harmful to the administration of justice or more harmful to the public appraisal of the legal profession than the knowledgeable use by an attorney of false testimony in judicial process. Dodd v. The Florida Bar, 118 So.2d 17 (Fla. 1960).

In The Florida Bar v. Gentry, 447 So.2d 1342 (Fla. 1984), this Court suspended a lawyer for six months for various acts of misconduct including giving false answers to questions at a deposition. Attorneys have also been disbarred and suspended for false swearing to a grievance committee which is tantamount to perjury. The Florida Bar v. Manspeaker, 428 So.2d 241

(Fla. 1983); The Florida Bar v. Neely, 372 So.2d 89 (Fla. 1979).

Respondent's conduct in ignoring the injunctive orders of Judge Cooksey should also subject Respondent to a period of suspension from the practice of law. In The Florida Bar v. Hendrickson, 222 So.2d 1 (Fla. 1969), this Court held that ignoring the orders of a county court judge resulting in contempt attributed to the lawyer being suspended for a period of one year.

Respondent's actions herein have been laid to his personal problems surrounding his divorce proceedings. The Florida Bar would point out that Respondent's inclination to misrepresent facts for his benefit, to wit: financial misrepresentations, predated his marital problems. In each case, Respondent had ample time to reflect on what course of action he was going to take and what the ramifications would be.

In the matter of The Florida Bar v. McGovern, 365 So.2d 131 (Fla. 1978), this Court disbarred an attorney where it determined that a lawyer has evidenced a total lack of understanding of his responsibilities as an attorney and as a member of The Florida Bar.



Respondent admittedly stopped practicing law around 1974 and proceeded to pursue a profession as a real estate developer. However, Respondent maintained his status as a member of The Florida Bar and considered himself an attorney.

Respondent's actions are indicative of one who takes lightly his duties and responsibilities as a lawyer and casts aside the ethical obligations of a lawyer when they do not serve his immediate personal needs. All the actions cited as misconduct on the part of Respondent were done knowingly and with time to reflect on what course of action he was going to take. Such misconduct dictates a disciplinary sanction stronger than a private reprimand.

The Florida Bar would also direct the Court's attention to several sections of Florida Standards for Imposing Lawyer Sanctions (1986) that would also indicate suspension is the appropriate discipline in this matter.

Section 6.12 of the Standards provides that suspension is appropriate when false statements or documents are being submitted to the Court. Section 6.22 provides that suspension is appropriate when a lawyer knows that he or she is violating a court order or rule and causes interference or potential interference with a legal proceeding. Section 7.2 provides

that suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional.


The above-cited Sections of Florida's Standards for Imposing Lawyer Sanctions, coupled with the cited case authority, clearly establish that the appropriate discipline in this matter is a period of suspension in excess of ninety days and until such time as Respondent demonstrates rehabilitation.

CONCLUSION

In light of Respondent's admissions and testimony and the exhibits submitted by The Florida Bar, it is clear that Respondent violated Disciplinary Rules 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), and 1-102(A)(6) by his actions relating to the allegations of contempt, perjury, and misrepresentation. The Referee's findings that Respondent was not guilty of misconduct in regards to his contempt citations and financial statements are in error.

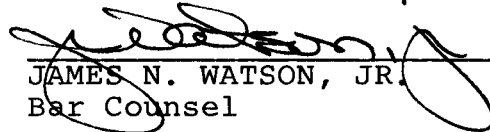
The appropriate disciplinary sanction that should be imposed against Respondent is a period of suspension in excess of ninety days and until proof of rehabilitation.

Respectfully submitted,

  
\_\_\_\_\_  
JAMES N. WATSON, JR.  
Bar Counsel, The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Florida 32399-2300  
(904) 222-5286

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Initial Brief has been forwarded by certified mail # P978 505 596, return receipt requested, to CHARLES R. GARDNER, Counsel for Respondent, at his record Bar address of 1300 Thomaswood Drive, Tallahassee, Florida 32312, this 7<sup>th</sup> day of November, 1988.

  
\_\_\_\_\_  
JAMES N. WATSON, JR.  
Bar Counsel