

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

HOWARD D. ROSEN,

Respondent.

Case no. ~~67,442~~

Chief Deputy Clerk

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 Florida Bar Integration Rule, a hearing was held at the Broward County Courthouse on September 11, 1985. It was agreed that the trial of this case would take place at Broward County.

The following attorneys appeared as counsel for the parties:

For the Florida Bar - Paul A. Gross, Esq. of Miami, Florida

For the Respondent - Laurel W. Marc-Charles of Fort

Fort Lauderdale, Florida

II. FINDINGS OF FACT AS TO MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED. After considering all the pleadings and evidence presented before me, pertinent portions of which are commented upon below, the undersigned referee finds:

The respondent admitted that he was adjudicated guilty of a federal felony of knowingly and intentionally possessing, with intent to distribute cocaine and that he was sentenced by a federal court to imprisonment for one year and a day. Record, Page 6, Answer and Response to Request for Admission. The sentence was later reduced to six months. Record, Page 15.

Because the respondent was adjudicated guilty of a felony, he was suspended from practicing law effective April 30, 1984, in accordance with Florida Bar Integration Rule, Article XI, Rule 11.07. Bar Exhibit 1.

I find that the respondent's involvement in the crime for which he pleaded and was adjudicated guilty was as a result of his own addiction to cocaine at the time. I further find that it affirmatively appears that, since the time of his arrest and conviction in early 1983, Mr. Rosen has overcome his addiction, and no longer engages in illegal drug use.

I further find, however, that at the activity which led to his arrest and conviction is conduct that adversely reflects on his fitness to practice law, as he has acknowledged.

A. The respondent's conviction involved possession with intent to distribute cocaine to an undercover DEA agent. The transaction involved almost 3 ounces of cocaine valued at approximately \$5,500. See Sentencing Memorandum, Page 4, Respondent's Composite Exhibit A.

III. RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY. The undersigned referee made the following recommendations as to guilt or innocence:

This referee recommends that the respondent be found guilty of the allegations in Paragraphs 1 through 4 of the Complaint, and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility: DR 1-102(A)(3), a lawyer shall not engage in illegal conduct involving moral turpitude; DR 1-102(A)(6), a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law. The Florida Bar v. Wilson, 425 So. 2d 2 (Fla. 1983); The Florida Bar v. Beasley, 351 So. 2d 959 (Fla. 1977); The Florida Bar v Heckler, 475 So. 2d 1240.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED: Because I find that the respondent's addiction was the prime force behind his felony conviction, and because I find, given the evidence Respondent produced at the hearing of this case - - both by witnesses and documents, see Respondent's Composite Exhibit A -- that Respondent has now conquered this

addiction, I recommend that he be suspended for a period of three years, to run concurrently, nunc pro tunc, with the suspension which was imposed upon him under Florida Bar Integration Rule 11.07(3), effective April 30, 1984.

Further, I recommend that Mr. Rosen be ordered to provide 200 hours of community service to the Florida Bar's Special Committee on Alcohol Abuse, or to any entity that committee may establish to carry out its mandate. The assistance of a man of Mr. Rosen's ability would not relate to any legal matters or matters of confidentiality which - - given Mr. Rosen's present status as a suspended member of the bar - - would be improper. Specifically I suggest that the Chairman or Vice Chairman of the aforesaid Committee utilize respondent's talents in carrying out the committee's objectives. I think it inappropriate for respondent to work, for example, as a file clerk.

I have been impressed with Mr. Rosen's previous outstanding record as an attorney, and believe that he has an excellent chance of being a great asset to the Bar of this State. As such, I must reject the recommendation of the Florida Bar that he be disbarred, since such a punishment appears not only too harsh in the circumstances, but may well deprive the legal community of the benefit of Mr. Rosen's participation as an attorney in the future, should he be found rehabilitated and reinstated after the suspension period. The period of community service I recommend should remind Mr. Rosen of his obligations to the Bar and to the community remain drug free.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD. The respondent has no previous disciplinary record.

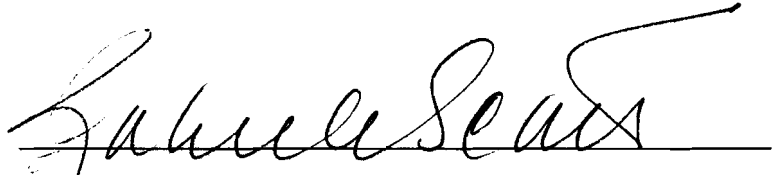
In 1969, the Respondent graduated magna cum laude with a Bachelor's degree in Business Administration from the University of Miami. The following November, he became a Certified Public Accountant.

He entered the University of Miami Law School in 1973, winning 8 book awards while a student, and - - after only two and a half years - - graduated summa cum laude, ranking second in his class. While an attorney, he specialized in tax law, and wrote several articles in this area for legal and CPA publications. He was admitted to the Florida Bar in 1974.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED: The undersigned Referee has been advised that the following costs were incurred by the Florida Bar, and should be assessed against the Respondent.

Court Reporter Costs for hearing on 9/11/85	\$175.00
Administrative Costs, Florida Bar Inte- gration Rule 11.06(9)(a)(5)	150.00
Bar Counsel travel expenses	<u>13.00</u>
TOTAL COSTS	\$338.05

Dated this 24th day of March, 1986.



ROBERT C. SCOTT, REFEREE
Rm. 453, Broward County Courthouse
201 SE 6th Street
Fort Lauderdale, Florida 33301
(305) 765-4150

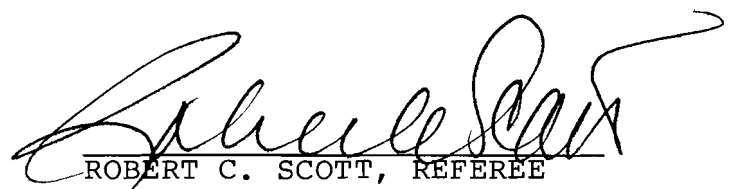
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Report of Referee was mailed this 24th day of March, 1985, to each of the following persons:

Laurel White Marc-Charles
Counsel for Respondent
Suite 805
2455 E. Sunrise Blvd.
Fort Lauderdale, FL 33304

Paul A. Gross
Bar Counsel
The Florida Bar
444 Brickell Ave.
Miami, FL 33131

John T. Berry
Staff Counsel
The Florida Bar
Tallahassee, FL 32301-8226



ROBERT C. SCOTT, REFEREE