IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

JOEL KAUFFMAN,

Respondent.

CONFIDENTIAL
Case No. 67,652
(TFB No. 04B85N08)

RESPONDENT'S ANSWER BRIEF

Samuel S. Jacobson of
Datz, Jacobson & Lembcke, P.A.
2902 Independent Square
Jacksonville, Florida 32202
904/355-5467
Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE CASE

Respondent accepts the Bar's Statement of the Case, subject to the following supplementation.

The Grievance Committee which found probable cause in this matter recommended that respondent receive a nonpublic reprimand. Thus both of the fact finders--the Grievance Committee and the Referee--having first hand feel for the facts considered a nonpublic reprimand the appropriate discipline.

The Board of Governors, in voting not to accept the discipline recommended by the Grievance Committee and by the Referee, acted without hearing from the respondent or counsel on his behalf.

POINT INVOLVED ON APPEAL

WHETHER THE REFEREE ERRED IN RECOMMENDING A PRIVATE REPRIMAND AND PROBATION AS THE CONDUCT OF RESPONDENT DESERVES AND DEMANDS SUSPENSION.

A. WHETHER RESPONDENT'S WILLFUL FORGING OF AN ATTORNEY'S SIGNATURE TO A COURT PLEADING AND HIS FAILURE TO INFORM THE COURT OF SUCH FACT DEMANDS SUSPENSION.

STATEMENT OF THE FACTS

Respondent acted entirely with good intentions, not to overreach or take advantage. The instant incident occurred when he was relatively new and inexperienced and was entirely the product of his inexperience, without any bad faith.

Respondent was a faculty member of the University of North Florida teaching commercial law courses. Although an admitted lawyer, he initially did not practice. With the advent of legal-clinic law practices, he opened a clinic-type parttime law office in the Beaches area of Jacksonville. He provided representation primarily in uncontested divorces and small bankruptcies. His clientele consisted largely of Navy enlisted personnel and other clients of limited financial means. The level of his fees was commensurate with the nature of his practice. The people who came to him were from the client group which would otherwise have looked to secretarial services or other nonlawyer sources for assistance.

When respondent began his parttime practice, he was advised by an established lawyer that in uncontested domestic cases involving a stipulation between the parties, the "adverse party" needed to file an answer and waiver for procedural

completion of the case. This lawyer agreed to be available for answer and waiver purposes. Respondent did not know that by the 1980's it had become unnecessary to have attorney executed answers and waivers, if indeed it was ever really necessary.[1]

During 1981 respondent was contacted by an enlisted sailor who was having serious domestic problems. While on cruise the sailor had received notification that his wife had

---

1. The domestic relations attorney's ethical perspective in dealing with an unrepresented adverse spouse is somewhat murky. A significant percentage of dissolution cases realistically do not require an attorney for each spouse. Nor are double attorney's fees pragmatically warranted in such cases. As an understandable result there has been a long histroy of one lawyer divorce cases where the one lawyer prepares papers for signing by both his client and the other spouse. See, State v. Oxford, 127 So.2d 107 (Fla. 1961). Abuses of this practice have from time to time stimulated prohibitions against preparation by a lawyer of divorce papers for an unrepresented adverse spouse. When respondent's counsel began practicing in the Fourth Circuit in the mid-1960's, the trial courts frowned upon uncounseled stipulations and answers and waivers, and it was common for dometic relations attorneys to execute stipulations and answers and waivers for unrepresented parties for a nominal fee. The circuit judges for respondent's circuit at one point issued a written notice that divorce papers prepared by a lawyer for an unrepresented adverse party would not be approved. See also Opinion 66-8, Professional Ethics of the Florida Bar (March 30, 1966). Over the years both the bench and bar have receded from this position. As a matter of practice lawyers now routinely prepare documents and pleadings for both parties to expedite dissolution cases, and the obtaining of lawyers for answer and waiver purposes is virtually nonexistent. This has essentially evolved from recognition of the social and economic realities of the day.

abandoned their children and was living with another man. The children had been taken into custody by HRS. The sailor was granted emergency leave to get things straightened out.

The sailor returned to Jacksonville and consulted respondent. The sailor advised respondent that he and his wife had agreed that the sailor would have the children and the marital home, and the wife would receive her freedom and the family car. Respondent accordingly prepared the necessary papers to accomplish this, consisting of an agreement, a quit-claim deed, and an answer and waiver for execution by the wife. Each of these documents was in fact signed by the wife. The answer and waiver also had a line for execution by respondent's cooperating attorney, and the wife was advised that he would be her lawyer of record.

Upon receipt of the signed documents, respondent scheduled an uncontested final hearing. The final hearing was scheduled on an emergency basis so that it could be held during husband's short period of emergency leave.

When respondent arrived at the Duval County Courthouse for the final hearing, he realized that the answer and waiver had not been signed by the cooperating attorney. Obtaining the attorney's signature at that point would have necessitated cancellation of the hearing and would have made it impossible to have a final hearing during the sailor's leave. Respondent

accordingly signed the cooperating attorney's name to the answer and waiver. He thereafter proceeded with the final hearing and presented the answer and waiver to the court. Immediately after the final hearing respondent contacted the cooperating attorney and told him about signing his name to the answer and waiver.

Respondent sought no undue advantage by signing the cooperating attorney's name to the answer and waiver. He obtained only the relief previously agreed to by the parties. He obtained no additional fee or other financial advantage for himself from signing the other attorney's name. He acted only to overcome what he perceived to be a technical obstacle to a final hearing which was under the circumstances rather badly needed for both client and children. When ultimately questioned about signing the other attorney's name, respondent openly and forthrightly acknowledged what he had done.

SUMMARY OF ARGUMENT

Respondent was guilty of no bad faith or intentional wrongdoing. He neither sought nor obtained advantage for himself from the complained-of act. He acted only out of good faith toward his client to overcome what he perceived to be a procedural technicality which was obstructing the manifest

needs of the divorcing parties and of their children. His wrongdoing represented a poorly considered effort by an inexperienced attorney to achieve a legitimate end by foolish means.

The Bar's Grievance Committee and this Court's Referee both felt that a nonpublic reprimand and probation would be appropriate here. The recommendations of the Grievance Committee and the Referee should be accepted.

ARGUMENT

WHETHER THE REFEREE ERRED IN RECOMMENDING A PRIVATE REPRIMAND AND PROBATION AS THE CONDUCT OF RESPONDENT DESERVES AND DEMANDS SUSPENSION.

A. WHETHER RESPONDENT'S WILLFUL FORGING OF AN ATTORNEY'S SIGNATURE TO A COURT PLEADING AND HIS FAILURE TO INFORM THE COURT OF SUCH FACT DEMANDS SUSPENSION.

The Bar's presentation of respondent's act as a willful, fraudulent deed done with bad motive is altogether inaccurate. Respondent in no way acted out of corrupt motive to obtain an improper, illegal benefit.

There was no question that the divorcing parties had agreed upon the terms of their divorce. Each of the parties had signed all of the documents requisite to obtaining a dissolution on their agreed upon terms. Respondent sought only to bring about what they had agreed upon, and also what their children patently needed.

Respondent was presented at the final hearing with a difficult situation. His client was home only on very short emergency leave. A final hearing had to be held prior to expiration of the emergency leave, not only in the interests of the parties, but also of their minor children. Delay of the final hearing would have been tantamount to cancelling it and leaving the parties and their children indefinitely in limbo.

By reason of inexperience, respondent failed to realize that an attorney's signature was not actually necessary for an answer and waiver.[2] He was also insufficiently experienced to realize that he could proceed with a final hearing subject to obtaining the attorney's signature after the hearing, prior to actual entry of final judgment.

Respondent regarded the absence of the attorney's signature as a technical formality which threatened to frustrate the evident needs of justice. His signing of the other attorney's name was intended only to serve the needs and interests of all concerned parties. He intended no deception or fraud, as indicated by his immediate advice to the other attorney as to what he had done. He obtained no undue or

---

2. Probably the best thing would have been to have the wife, who was the spouse more desirous of a divorce, appear at the final hearing to state her agreement to the final judgment and execute an answer and waiver in the presence of the Court.

improper benefit for his client. Nor did he impose any loss upon the client's wife.

Significantly, respondent's conduct was in no way motivated by self-gain. He obtained neither additional fee nor other selfish benefit.

Respondent acknowledges before this Court, as he has at all other times, that signing the other lawyer's name was ill-considered and improper. But he feels that the state of mind with which he acted is highly material to the discipline to be imposed upon him. He firmly denies that he should be treated as an attorney who willfully sought to overreach or take advantage of anyone.

The Bar correctly states in its brief that no case involving facts of this sort has previously been presented to this Court for disciplinary consideration. (Bar Brief P. 12). As the Bar concedes, all of the cases cited in its brief dealt with "fraudulent practices." (Bar Brief P. 12). All of those cases are accordingly to all intents and purposes altogether inapplicable here. Certainly all of them presented a different order or dimension of conduct from what is charged against respondent.

A word also is in order about the previous Grievance Committee private reprimand imposed upon respondent. That matter involved respondent's first or second case as a

practicing attorney. There respondent represented a wife in another uncontested divorce case. After the filing of a dissolution petition on behalf of the wife, it was decided between the husband and wife that the wife would return to her native country without waiting for a divorce, and that the husband would obtain the divorce on a counterpetition filed by him. When the final hearing was held, respondent appeared for wife, and the husband appeared in proper person with his residency witness. Respondent, out of ignorance, by direct examination elicited from the husband all of the information needed for a divorce. The Circuit Judge assumed that respondent was representing the husband. When respondent became aware of the Judge's understandable misperception, he and the husband explained the actual situation to the Judge. The Judge thereupon required that the hearing be redone and reported the matter to the Bar. After investigation, a private reprimand was administered. Respondent did not, in fact, understand that the reprimand was reflected in the Bar's records as an adverse disciplinary action against him. In that case, as here, there was no improper advantage either sought or obtained. Respondent, after counseling by the Circuit Judge and the Grievance Committee, never again repeated his error, and assuredly would not have committed it then with any experience to draw on.

Respondent also objects to the Bar's comments as to the irrelevancy of the impact of a suspension on his livelihood. (Bar Brief P. 14-15). Respondent does not argue that misconduct should be excused or overlooked because discipline will be injurious. But he does say that this Court should consider, as the Referee did, the degree of injury to be suffered from discipline, as well as the need for some reasonable relation between discipline and misconduct.

Here respondent will suffer serious, irreparable harm from public discipline. A publicly revealed 90-day suspension may involve permanent loss of his teaching job, which is his primary livelihood. A temporary suspension would for all intents and purposes threaten as much impact on this respondent as a disbarment upon the usual respondent.

Respondent's attitude is good. There is no suggestion of any moral deficit or characterological problem on his part. His derelictions or deficiencies were the result of lack of understanding. Five years of experience since the events here complained of have already greatly corrected the deficiency of understanding which gave rise to this matter. The period of probation and continuing legal education recommended by the Referee will insure that respondent's understanding will be brought to where it should be.

On the other hand the Bar's requested discipline goes

substantially beyond what is required in the public's interests and will subject respondent to injury far out of proportion to his conduct.

CONCLUSION

For the foregoing reasons respondent says that the report and recommendations of the Referee should be approved. He pledges himself to wholehearted cooperation in carrying out the report and recommendations.

Respectfully submitted,

DATZ, JACOBSON & LEMBCKE, P.A.

Samuel S. Jacobson

Samuel S. Jacobson
Attorneys for Respondent
2902 Independent Square
Jacksonville, Florida 32202
904/355-5467

I HEREBY CERTIFY that a copy of the foregoing has been furnished to James N. Watson, Jr., Esquire, The Florida Bar, Tallahassee, Florida 32301, by mail this 22nd day of July, 1986.

Samuel S. Jacobson
Attorney