

6-27-82

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,
v.
JOEL KAUFFMAN,
Respondent.

CONFIDENTIAL

Case No. 67,652

(TFB No. 04B85N08)

INITIAL BRIEF OF THE FLORIDA BAR

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STATEMENT OF THE CASE

On September 17, 1985, The Florida Bar filed a formal complaint against the Respondent alleging conduct in violation of the Code of Professional Responsibility. Upon filing the complaint with the Supreme Court, the matter was assigned to the Honorable R. Michael Hutcheson, Circuit Judge, as referee.

On March 14, 1986, a final hearing was held before Judge Hutcheson in Daytona Beach, Florida. The referee's report was filed on April 2, 1986.

The referee found Respondent guilty of having violated the following Disciplinary Rules: DR 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud or misrepresentation; DR 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law; and DR 7-101(A)(3) (a lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship.

Based upon the findings of guilt, the referee recommended that Respondent be disciplined by a private reprimand by the Board of Governors with a period of supervised probation for two years. The referee also

recommended that during the probation, Respondent attend those CLE courses given by The Florida Bar for Family Law Practice.

The Board of Governors of The Florida Bar considered the referee's report at the May 1986 meeting and voted to petition for review the recommended discipline and recommended that the appropriate disciplinary sanction should be a suspension for ninety (90) days.

Respondent filed a Motion to Maintain Confidentiality based upon the referee's recommended discipline on May 7, 1986. On May 12, 1986, the Court granted Respondent's motion.

POINT INVOLVED ON APPEAL

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

A. 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 is, and at all times mentioned in The Florida Bar's Complaint was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

Sometime in April 1981, Respondent was retained by [REDACTED] to seek a divorce from his wife. Mr. [REDACTED] was on emergency leave from the U.S. Navy and required the proceedings to be expedited.

Respondent only spoke with the husband who informed him that his wife wanted the divorce. The children of the marriage had been placed in emergency custody by the Department of HRS upon an allegation that they had been abandoned by their mother, [REDACTED].

Respondent prepared a stipulation for the [REDACTED] providing for custody of the children with the father and distribution of marital property. Both parties signed the stipulation agreement.

Respondent prepared documents entitled Authorization Agreement, Quit Claim Deed, and Answer and Waiver as part of these proceedings.

The wife was told that she would be represented by another attorney named Albert Buschman, whose name appeared on the Answer and Waiver, Stipulation, and Authorization Agreement.

Respondent never contacted Mr. Buschman regarding his representing Mrs. [REDACTED] and never discussed the matter with him. Mr. Buschman never met Mrs. [REDACTED] or counseled her as to her rights regarding the documents she had executed.

Since Mr. [REDACTED] was on emergency leave, Respondent was required to obtain a waiver of the required twenty-day period after filing to have the divorce petition heard.

Respondent obtained a hearing time before the Honorable Thomas Oakley, Circuit Judge, Duval County, Florida, on May 1, 1981.

Shortly before the scheduled hearing, Respondent discovered that he had failed to have Mr. Buschman execute the wife's pleadings necessary to go forward with the dissolution.

Without contacting Mr. Buschman, Respondent signed Buschman's signature to the Stipulation and Answer and

Waiver. Respondent failed to inform his client of this situation.

Respondent proceeded to hearing without informing the court of the forged documents and obtained a final judgment dissolving the [REDACTED]'s marriage.

After the hearing, Respondent contacted Mr. Buschman and informed him of what had transpired.

At the time of this incident, Respondent had only been practicing law in Florida for about a year. Mr. Buschman and Respondent were in the practice of referring clients to each other in uncontested dissolutions for stipulations and answer and waivers when required. Respondent's principal means of support presently is a full-time teaching position at the University of North Florida.

In July 1984, the ex-wife sought to vacate the Final Judgment of Dissolution based upon Respondent's actions of signing Mr. Buschman's name. As a result of this hearing, the Honorable Lawrence Fay found that the judgment was merely voidable, not void, and would have to be attacked by separate action. As of this time, no such action has been filed by the ex-wife.

Pursuant to an announcement by The Florida Bar, the allegation of Respondent not having witnessed the signing of the quit claim deed was withdrawn.

The above facts were stipulated to by both The Florida Bar and Respondent at the time of the final hearing.

SUMMARY OF ARGUMENT

The Florida Bar would argue that the referee erred in recommending a private reprimand as appropriate discipline and asks that upon review, the Court suspend Respondent from the practice of law for ninety (90) days.

The Florida Bar feels that the nature of Respondent's conduct is an affront to his responsibilities to his client and the court and that suspension should be the appropriate discipline.

Respondent's actions demonstrate a lack of responsibility not only to his client but to his profession at all levels.

ARGUMENT

I. THE REFEREE'S DISCIPLINARY RECOMMENDATION
WAS ERRONEOUS AND THE DISCIPLINARY SANCTION
IMPOSED SHOULD BE SUSPENSION.

The referee recommended that Respondent be disciplined by receiving a private reprimand with two years probation. This Court has previously stated that it is not bound by the referee's recommendations for discipline. The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978). Accordingly, the Court has imposed greater discipline than recommended to it by referees when deemed appropriate. The Florida Bar v. Wilson, 425 So.2d 2 (Fla. 1983); The Florida Bar v. Shapiro, 413 So.2d 1184 (Fla. 1982); and The Florida Bar v. Lopez, 406 So.2d 1100 (Fla. 1981).

The Court has set forth certain criteria for determining the proper disciplinary sanction to be imposed against attorneys in actions brought pursuant to The Florida Bar Integration Rule, article XI. The Court has mandated that:

{F}irst, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing a penalty. Second, the judgment must be fair to

the Respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. The Florida Bar v. Pahules, 233 So.2d 130, 132 (Fla. 1970); Accord The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1982); and The Florida Bar v. Pettie, 424 So.2d 734 (Fla. 1982).

Mindful of the foregoing criteria, the Board of Governors of The Florida Bar has directed that Bar Counsel seek Respondent's suspension.

In the instant matter, there is no dispute by Respondent that he committed the acts as charged in the complaint. Respondent freely admits that he forged another attorney's signature to certain court documents, to wit: an Answer and Waiver of court appearance and stipulation, in a dissolution of marriage action and allowed the court to rely upon such documents in entering a final judgment of dissolution. Respondent also does not deny that he failed to inform the court of such actions until such time as the opposing party sought to vacate the final judgment.

Respondent's willful actions that he has admitted to can be seen as prejudicing his client in the attempt of the wife to vacate the final judgment based upon Respondent's forging the other attorney's name to the court documents.

While it may have been an inconvenience to Respondent and his client to have obtained the signature of the wife's attorney, it does not appear that any consideration to such consequences for his client was taken by Respondent.

In the instant matter, The Florida Bar is greatly concerned about Respondent's conduct exhibiting a lack of appreciation of the overall nature and concept of the adversarial proceedings and that he would present fraudulent pleadings to the court. The reasoning employed by Respondent herein was one of inconvenience of time that outweighed his obligation and duty of truth and veracity to the judiciary and his fellow lawyers.

As an attorney, Respondent is deemed to be an officer of the court and as such is an essential component of the administration of justice. State ex rel. Florida Bar v. Calhoun, 102 So.2d 604, 608 (Fla. 1958). The administration of justice is a service rendered by the state to the public and it exacts from those who engage in it the highest degree of confidence and good faith. Kloss v. State, 95 Fla. 433, 116 So.39 (Fla. 1928).

As a member of The Florida Bar and an officer of the court, Respondent had a duty that encompassed far more than the narrow objectives of his client. Respondent's actions

violated his responsibility to the court and public in failing to assure that the proper administration of justice was provided in the handling of this matter. The argument by Respondent that having to obtain the signature of opposing counsel would have inconvenienced his client cannot outweigh the duty he owed the court to present a true and accurate status of the case and relevant pleadings.

While it does not appear that this particular set of facts have been presented to the Court for prior disciplinary consideration, the Court has addressed the aspect of fraudulent practices by attorneys.

In The Florida Bar v. Babbitt, 475 So.2d 242 (Fla. 1985), the Court suspended an attorney for sixty (60) days for preparing and using a forged use and occupancy permit in connection with a real estate closing. The Court found that such action was a violation of Disciplinary Rule 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

This Court has held that lying to a trial judge in order to obtain a continuance warrants a sixty (60) day suspension. The Florida Bar v. Oxner, 431 So.2d 983 (Fla. 1983). In Oxner, the Respondent described his predicament as "I got myself in a crunch, and I was

careless with what I had to say to the Court to get out of my mistake." Supra, p. 985.

The referee in Oxner felt that such action by a lawyer toward a court of this state tarnished the honor of all members of the Bar and is intolerable and should not be passed over lightly. In affirming the referee's recommendation, this Court held that a lawyer should never mislead the court and emphasized the importance of a judge's being able to rely on representations made by counsel. Supra, p. 986.

In The Florida Bar v. Reese, 421 So.2d 495 (Fla. 1982), the Respondent therein was found guilty of signing an attorney's name to a Motion for Final Judgment without that attorney's knowledge. For this act, Respondent Reese was found to have violated Disciplinary Rules 1-102(A)(4) and (6). Respondent Reese received a three-year suspension, an enhanced penalty based upon cumulative past discipline.

Respondent's failure to inform the court in this matter of the fraud may be viewed as an aggravating factor. In The Florida Bar v. Agar, 394 So.2d 405, 406 (Fla. 1981), it was argued as mitigation that the false testimony presented by a lawyer would not be capable of

affecting the outcome of the case in question. The Court rejected such argument and stressed the perpetration of the fraud on the court. In the instant matter, Respondent has argued that his actions of signing another lawyer's name had no material effect upon the ultimate outcome of the divorce. Respondent did inform the other lawyer after the fact but failed to voluntarily inform the court.

In the instant case, Bar records reveal that Respondent had received a private reprimand at the grievance committee level for similar conduct, to wit: going before a court in a dissolution matter at final hearing, representing the wife when he had been retained by the husband in an uncontested divorce. Respondent failed to inform the court of this matter.

This Court has repeatedly held that in considering appropriate penalty in a disciplinary matter, prior misconduct and cumulative misconduct are relevant factors. The Florida Bar v. Greenspan, 386 So.2d. 523 (Fla. 1980); The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1982).

Respondent has argued in mitigation certain personal problems and possible damage to his career as a college professor. The Florida Bar would argue that neither were propounded as an excuse or reason for his actions that led

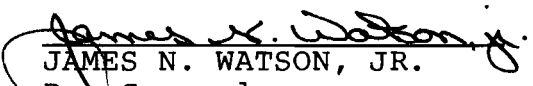
to this matter. The Bar does not feel that the duty owed to the public should be compromised by possible harm to a lawyer's endeavors he chooses to take on outside the legal profession. It is also felt that the responsibility to deter such similar conduct cannot be compromised by such considerations.

In conclusion, the Bar would argue that the appropriate discipline in the instant matter be suspension from the practice of law for ninety (90) days.

CONCLUSION

For the foregoing reasons, The Florida Bar respectfully requests that this Honorable Court uphold the referee's recommendation of guilt as to disciplinary violations and to enter an order that Respondent be suspended from the practice of law for ninety (90) days.

Respectfully submitted,

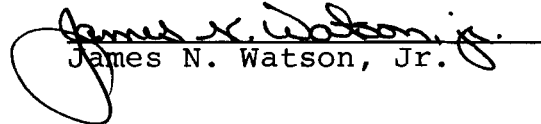

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been mailed to Samuel S. Jacobson, Attorney for Respondent, at Suite 2902, Independent Square, Jacksonville, Florida 32202, this 2nd day of June 1986.


James N. Watson, Jr.