IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

RICHARD G. CHOSID,

Respondent.

_____/

CASE NO. 68,157

The Florida Bar Case
No. 17A86F54

INITIAL BRIEF OF THE FLORIDA BAR

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PREFACE

For purposes of this brief, the Complainant, The Florida Bar will be referred to as The Florida Bar and Richard G. Chosid will be referred to as the Respondent.

Abbreviations utilized in this brief are as follows:

"RR" Refers to the Report of Referee, to be followed by page number and paragraph of report.

"T" Refers to the transcript of final hearing held on April 14, 1986, to be followed by page numbers.

"E" Refers to exhibits introduced at the final hearing.

STATEMENT OF THE CASE

A formal Complaint and The Florida Bar's Request for Admissions were filed on January 14, 1986. The Honorable Mary Ann MacKenzie was appointed Referee on January 20, 1986.

In January, 1986, the Respondent and The Florida Bar entered into a stipulation for extension of time for the Respondent to answer the Complaint and Request for Admissions. On March 7, 1986, the Respondent forwarded his Answer to The Florida Bar's Request for Admissions.

The final hearing was scheduled for and held on April 14, 1986.

On May 2, 1986, The Florida Bar submitted its statement of costs. On May 10, 1986, the Respondent submitted his objection to The Florida Bar's statement of costs. On May 16, 1986, The Florida Bar submitted its Response to Respondent's objection to The Florida Bar's statement of costs. The Referee submitted her Report of Referee on August 4, 1986.

The Referee has recommended that Respondent be found guilty of Violating Florida Bar Code of Professional Responsibility Disciplinary Rules 1-102(A)(1), 1-102(A)(3), 1-102(A)(4) and 1-102(A)(6) and Florida Bar Integration Rule, article XI, Rules 11.02(3)(a) and (b). The Referee recommended,

as a disciplinary sanction, that Respondent be suspended for a period of thirty-six (36) months, beginning November 1, 1984, and thereafter until he shall prove his rehabilitation as provided in Rule 11.10(3).

The Board of Governors of The Florida Bar considered the Referee's findings at its meeting held September 17-20, 1986. The Board determined that review of the Referee's recommendations should be initiated and that the appropriate disciplinary sanction to be sought was disbarment for a period of three (3) years from the effective date of Respondent's felony suspension, that being April 24, 1985.

ISSUE PRESENTED FOR REVIEW

I. WHETHER THE REFEREE'S DISCIPLINARY RECOMMENDATION WAS ERRONEOUS AND THE DISCIPLINARY SANCTION IMPOSED SHOULD BE DISBARMENT FOR A PERIOD OF THREE (3) YEARS FROM APRIL 24, 1985, THE EFFECTIVE DATE OF RESPONDENT'S FELONY SUSPENSION.

STATEMENT OF THE FACTS

The Referee's Findings of Fact are as follows:

Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged; After considering all of the pleadings and evidence before me, pertinent portions of which are commented upon below, I make the following Findings of Fact:

1. The Respondent, Richard G. Chosid, although presently suspended from the practice of law by order of the Supreme Court of Florida, dated March 26, 1985, pursuant to Florida Bar Integration Rule, article XI, Rule 11.07, at all times hereinafter mentioned was a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. On or about June 18, 1984, Respondent was indicted by a grand jury in the United States District Court for the Eastern District of Michigan, Southern Division, Case No. 84-CR-20350-DT-01.

3. On or about December 26, 1984, Respondent, pursuant to a plea bargain agreement, pled guilty to Count Four (4), Making and Subscribing a False Individual Income Tax Return, in violation of 26 U.S.C. 6202(1). The Court accepted Respondent's guilty plea and adjudicated Respondent guilty of said felony.

4. The Court sentenced Respondent to a term of imprisonment for a period of two (2) years and further ordered him to pay a committed fine of five thousand dollars ($5,000). (R.R., pp 1-3).

The Respondent possesses a history of prior discipline from The Florida Bar. The Respondent received a grievance level private reprimand in The Florida Bar Case No. 17A80F21. The facts of The Florida Bar Case No. 17A80F21 concerned charges of conflict of interest against the Respondent. (T. 48).

SUMMARY OF ARGUMENT

THE REFEREE'S DISCIPLINARY RECOMMENDATION WAS ERRONEOUS AND THE DISCIPLINARY SANCTION IMPOSED SHOULD BE DISBARMENT FOR A PERIOD OF THREE (3) YEARS FROM APRIL 24, 1985, THE EFFECTIVE DATE OF RESPONDENT'S FELONY CONVICTION.

The Respondent's criminal misconduct was wholly inconsistent with the professional standards of the legal profession. Respondent's guilty plea to the felony charge of making and subscribing a false income tax return places the Respondent in violation of his sacred trust as an attorney and subject to the harshest available disciplinary sanction.

The Referee found the Respondent to have engaged in illegal conduct involving moral turpitude and perjury. The Respondent's motivation for this crime was for pecuniary gain by understating his taxable income.

In The Florida Bar v. Cooper, 429 So.2d 1 (Fla. 1983) this Court ordered disbarment of the Respondent attorney for a period of twenty (20) years for his involvement in several fraudulent schemes. In The Florida Bar v. Dodd, 118 So.2d 17 (Fla. 1980), the court ordered disbarment of the Respondent attorney for urging and advising clients to give false testimony. In The Florida Bar v. Hecker, 475 So.2d 1240

(Fla. 1985), this Court held that attempting to act as a drug procurer warrants disbarment. In The Florida Bar v. Wilson, 425 So.2d 2 (Fla. 1983), this Court held that convictions for solicitation to traffic in cocaine and attempted trafficking in cocaine warrants disbarment.

In the past, this Court has dealt more severely with cumulative misconduct than with an isolated case of misconduct.

In light of the serious rule violations of which the Referee found the Respondent guilty, disbarment is the only discipline that will be fair to society, be sufficient punishment, and severe enough to deter others.

ARGUMENT

THE REFEREE'S DISCIPLINARY RECOMMENDATION WAS ERRONEOUS AND THE DISCIPLINARY SANCTION IMPOSED SHOULD BE DISBARMENT FOR A PERIOD OF THREE (3) YEARS FROM APRIL 24, 1985, THE EFFECTIVE DATE OF RESPONDENT'S FELONY CONVICTION.

The Referee recommended that Respondent be suspended for a period of three (3) years, beginning November 1, 1984, and thereafter until he shall prove his rehabilitation as provided in Rule 11.10(3). (R.R. IV).

The Florida Bar believes that the Referee's disciplinary recommendation was erroneous. This Court has stated that it is not bound by the Referee's recommendations for discipline. The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978). According, this Court has imposed greater discipline than recommended 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); The Florida Bar v. Lopez, 406 So.2d 1100 (Fla. 1981); and The Florida Bar v. Harris, 400 So.2d 1220 (Fla. 1981).

The Florida Bar submits that Respondent's misconduct was wholly inconsistent with the high professional standards of the legal profession. Disbarment, is, therefore, more appropriate than the disciplinary sanction of suspension

recommended by the Referee. The criteria established by the court in determining appropriate discipline and the misconduct and criminal conviction of the Respondent fully support the Bar's position.

This Court has established three (3) criteria for determining the proper disciplinary sanction to be imposed against attorneys in actions brought pursuant to Florida Bar Integration Rule, article XI. This 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 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).

Mindful of the foregoing criteria, the Board of Governors of The Florida Bar has directed that Bar Counsel seek Respondent's disbarment. The circumstances justifying the disciplinary sanction of disbarment have been articulated in The Florida Bar v. Moore, 194 So.2d 264, 271 (Fla. 1966):

> (D)isbarment is the extreme measure of discipline that can be imposed on any lawyer. It should be resorted to only in cases where the person charged has demonstrated an attitude

> or course of conduct that is wholly inconsistent with approved professional standards. To sustain disbarment there must be a showing that the person charged should never be at the bar. It should never be decreed where punishment less severe, such as a reprimand, temporary suspension, or fine will accomplish the desired purpose. (citations omitted).

While imposition of the disciplinary sanction of disbarment is the severest sanction available, the nature of Respondent's offense dictates that said sanction be imposed. It is exiomatic that an attorney, by virtue of his position, must not take any action in either his professional or personal life that would be violative of duly enacted laws. Respondent's guilty plea to the felony charge of making and subscribing a false individual income tax return, in violation of 26 U.S.C. 6202(1), clearly places him in violation of his sacred trust as an attorney and subject to the harshest available disciplinary sanction.

The Referee found Respondent's actions to be violative of Disciplinary Rules 1-102(A)(1) (a lawyer shall not violate a disciplinary rule), 1-102(A)(3) (a lawyer shall not

engage in illegal conduct involving moral turpitude), 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law) and Florida Bar Integration Rule, article XI, Rule 11.02(3)(a) (commission by a lawyer of any act contrary to honesty, justice and good morals) and 11.02(3)(b) (misconduct that constitutes a felony).

The Respondent's conviction of the felony charge of making and subscribing a false individual income tax return stands as conclusive proof of Respondent's guilt of said felony pursuant to Integration Rule, article XI, Rule 11.07(1). Under these circumstances, the only remaining issue is that of the appropriate discipline to be imposed. The Florida Bar maintains that felonious conduct is tantamount to perjury, and a crime of moral turpitude which requires that disbarment be imposed. Respondent's misconduct concerned the fact that Respondent's income tax return indicated that he had 100% ownership of a vessel regarding a deduction he claimed on the income tax return, when in fact he only had a 20% ownership interest in said vessel. (T. 23).

In the past, felonious conduct in and of itself has resulted in disbarment. In The Florida Bar v. Jackman, 145 So.2d 482 (Fla. 1982), Respondent was convicted of a felony under the laws of Florida and sentenced to prison

for a term of six (6) months to five (5) years. The matter was accordingly considered by the Board upon the documents certified by the Criminal Court of Record showing the criminal conviction and other pleadings and documents in the case. The Board of Governors found that Respondent had been found guilty of a felony and directed that he be disbarred. This Court subsequently ordered disbarment.

This Court has likewise imposed disbarment where the felonious misconduct has been a crime involving moral turpitude. In The Florida Bar v. Kastenbaum, 263 So.2d 793 (Fla. 1972), the respondent was disbarred after he was convicted of a felony in that he interfered with commerce by threats or violence in violation of Section 1951, Title 18, United States Code. The court in Kastenbaum held that:

> Article XI, Rule 11.07(4), of the Integration Rule provides that the final judgment entered by the United States District Court of Appeal shall be conclusive proof of the guilt of the offense charged. The respondent is therefore, disbarred from the practice of law.

This Court in Kastenbaum ordered disbarment grounded solely upon a felony conviction for a crime involving moral turpitude. The case at bar also involves a crime of moral turpitude and disbarment is justified. In The Florida Bar v. Lewis, 145 So.2d 875 (Fla. 1962), the respondent was convicted of fraudulently concealing the assets of a bankrupt

estate, a felony under Title 18, U.S.C. § 152. On July 19, 1962, the Board of Governors of The Florida Bar entered a judgment directing that respondent be disbarred from the practice of law. This Court confirmed the judgment of the Board of Governors and disbarred the respondent. The case at bar is factually similar to the Lewis case. Respondent's felony conviction warrants disbarment.

This Court has ordered disbarment where the alleged misconduct involves dishonesty and misrepresentation. In The Florida Bar v. Dodd, 118 So.2d 17 (Fla. 1960), this Court ordered disbarment of the respondent resulting from respondent's urging and advising several persons, including clients, to give false testimony.

In The Florida Bar v. Cooper, 424 So.2d 1 (Fla. 1983), this Court disbarred respondent with no opportunity to apply for readmission to The Florida Bar for a period of twenty (20) years for his involvement in fraudulent schemes.

In the case at bar, Respondent himself signed a sworn statement, under penalty of perjury which contained false statements. In Dodd, this Court held:

> No breach of professional ethics, or of the law is more harmful or more hurtful to the public appraisal of the legal profession than the knowledgeable use by an attorney of false testimony in the judicial process. When it is done it deserves the harshest penalty.

In the case at bar, Respondent's misconduct involves the use of false testimony under penalty of perjury. In light of Dodd, such misconduct warrants disbarment.

The Respondent will undoubtedly seek to advance various arguments that he should not be subjected to disbarment. Any argument made that the Respondent's actions were somehow less serious or not subject to disciplinary sanctions because they did not involve the attorney/client relationship should be dismissed as specious. Florida Bar Integration Rule, article XI, Rule 11.02(3)(a) provides that:

> (T)he commission by a lawyer of any act contrary to honesty, justice or good morals, whether the act is committed in the course of his relations as an attorney or otherwise, whether committed within or outside the State of Florida, and whether or not the act is a felony or misdemeanor, constitutes a cause for discipline (emphasis added).

The argument will also no doubt be made that other cases involving felonious conduct and felony convictions did not result in disbarment. Such cases are, however, clearly distinguishable. For example, in The Florida Bar v. Pettie, 424 So.2d 735 (Fla. 1983), the referee found that the respondent was involved in a criminal conspiracy to import marijuana. The Court found that the referee properly found respondent guilty of violating Florida Bar Code of Professional Responsibility, Disciplinary Rule

1-102(A)(3) and Florida Bar Integration Rule, article XI, Rule 11.02(3)(a). Both rule violations are charged against Respondent in the instant matter and he was found guilty of same. The Court only suspended the Respondent because of his extensive and extraordinary cooperation with law enforcement authorities. The instant Respondent provided no such cooperation with law enforcement authorities.

In The Florida Bar v. Moore, 194 So.2d 264 (Fla. 1966), this Court held that: "To sustain disbarment, there must be a showing that the person charged should never be at the bar. It should never be decreed where punishment less severe, such as reprimand, temporary suspension, or fine will accomplish the desired purpose". The facts in Moore address a non-criminal conflict of interest situation where respondent represented both the life tennant and the trustees of an estate. The case at bar involves a felony conviction for misconduct involving moral turpitude.

Respondent testified concerning his personal difficulties. However, this Court has held that personal difficulties do not excuse the misconduct of an attorney. See The Florida Bar v. Thue, 244 So.2d 424 (Fla. 1971) and The Florida Bar v. Weaver, 356 So.2d 979 (Fla. 1978).

The Florida Bar submits, in light of the serious role violations charged in this case and found by the Referee,

that disbarment is the only punishment that will be fair to society, sufficient punishment, and severe enough to deter others. Imposition of a lesser sanction in a case where an intentional violation of law has been committed would indeed raise the spectre of the slap on the wrist punishment referenced by the Court in The Florida Bar v. Wilson, 425 So.2d 2 (Fla. 1983). An attorney simply cannot be allowed to maintain his privileged position as an officer of the court after violating the very laws he was sworn to uphold. Such an attorney should be deemed to have forfeited his position at the bar.

Further, disbarment imposes the more appropriate process of readmission rather than reinstatement for the errant attorney who wishes to rehabilitate himself and become once again a member in good standing of The Florida Bar. Such readmission is possible since disbarment in this jurisdiction is not permanent. The Florida Bar v. Mattingly, 341 So.2d 508 (Fla. 1977). As the Court stated in The Florida Bar v. Wilson, supra at 3:

> ...suspension and disbarment may very well have a similar effect toward the correction of a convicted attorney's anti-social behavior, but disbarment insures that respondent could only be admitted again upon full compliance with the rules and regulations governing admission to the bar. In the case of a felony conviction, this additional requirement is significant, as it would better encourage reformation and rehabilitation.

Lastly, Respondent has a past history of discipline from The Florida Bar. Respondent received a private reprimand for misconduct involving a conflict of interest. (T. 48). In The Florida Bar v. Vernell, 374 So.2d 476 (Fla. 1979), this Court stated that "This Court deals more severely with cumulative misconduct than with isolated misconduct".

In the case at bar, Respondent's felony conviction combined with his prior disciplinary history justify disbarment. Said disbarment should be for a period of three (3) from the date the Respondent's felony suspension became effective, that being April 24, 1985. The referee recommended that Respondent be suspended for a period of thirty-six (36) months beginning November 1, 1984, which is three (3) months prior to Respondent's conviction. (See The Florida Bar's Exhibit 13). The Florida Bar submits that if suspension or disbarment is recommended nune pro tunc, that it should run from the date the Respondent's suspension for his felony conviction became effective, that being April 24, 1985. (See this Court's Order dated March 26, 1986, attached hereto as Appendix 1).

CONCLUSION

For the foregoing reasons, The Florida Bar respectfully requests this Honorable Court to uphold the Referee's recommendation as to guilt and recommendation as to disciplinary violations and to enter an order that the Respondent be disbarred from the practice of law for a period of three (3) years from April 4, 1985, the date Respondent's felony suspension became effective, and access the costs of the proceedings against Respondent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief of The Florida Bar was forwarded to Richard G. Chosid, Respondent, 1700 Southeast 15th Street, Fort Lauderdale, Florida 33316, by regular United States mail on this 3rd day of October, 1986, and a copy to John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301-8226.

JACQUELYN PLASNER NEEDELMAN