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

REPLY 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 AND STATEMENT OF THE FACTS

The Complainant, The Florida Bar, hereby adopts and realleges the Statement of the Case and Statement of the Facts presented in its Initial Brief filed in this cause.

Respondent has correctly stated in the first paragraph of his Statement of the Facts that the last paragraph on page 5 of The Florida Bar's Initial Brief was not included in the Referee's Findings of Facts. It is clear from reading said page 5 of The Florida Bar's Initial Brief that this is an additional paragraph supported by Respondent's testimony.

ISSUE PRESENTED FOR REVIEW

I. 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.

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 SUSPENSION.

Respondent's misconduct involving moral turpitude justifies disbarment. The Florida Bar v. Dodd, 118 So.2d 17 (Fla. 1960); The Florida Bar v. Kastenbaum, 263 So.2d 793 (Fla. 1972). Said disbarment should be for a minimum period of three (3) years pursuant to Florida Bar Integ. Rule, art. XI, Rule 11.10(5). Said period must run from the date Respondent's felony suspension became effective. It would make no sense to have Respondent's disbarment or suspension begin from a period beginning three (3) months prior to his conviction.

ARGUMENT

I. 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.

Respondent has incorrectly stated that The Florida Bar seeks disbarment in every case that involves a felony conviction. In this case, disbarment is being sought based upon Respondent's conviction for conduct involving moral turpitude.

The Florida Bar maintains that Respondent's 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).

This Court has likewise imposed disbarment where 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. 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. Id.

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. 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, 425 So.2d 2, 3 (Fla. 1983):

> ...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. Id.

Respondent is claiming that he should have been suspended pursuant to the automatic felony suspension rule prior to his conviction. Pursuant to Florida Bar Integ. Rule, art. XI, Rule 11.07, The Florida Bar required a judgment from a competent court of law before it could so notify this Court of same. Respondent's voluntariness to cease practicing law was not sufficient under Rule 11.07.

Respondent was adjudicated guilty and judgment was imposed against him on February 1, 1985 (See TFB's Ex. 1). The Florida Bar was unable to receive a certified copy of the Judgment and Probation Committment Order from the Clerk's Office of the United States Court for the Eastern District of Michigan until March 11, 1985. (Attached as Composite Appendix I are Memorandum of Staff Investigator Lawrence E. Coutre, dated February 22, 1985 and March 11, 1985). The Florida Bar then forwarded its Notice of Felony Conviction on March 13, 1985, Case No. 66,706 (See Appendix II). Accordingly, The Florida Bar acted as promptly as it could in this matter.

The Florida Bar Integ. Rule, art. XI, Rule 11.10(5) provides as follows:

> A judgment of disbarment terminates the respondent's status as a member of the Bar. A former member who has been disbarred may only be admitted again upon full compliance with the rules and regulations governing admission to the Bar. Except as might be otherwise provided in these rules, no application for admission may be

> tendered within three years after the date of disbarment or such longer period as the court might determine in the disbarment order.

Said rule clearly provides that three (3) years is the minimum period for disbarment. Said disbarment should be for a period of three (3) years 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. 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 as Appendix I to The Florida Bar's Initial Brief).

CONCLUSION

For the foregoing reasons and the reasons stated in The Florida Bar's Initial Brief in this cause, 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 assess 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 Reply 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 24th day of October, 1986, and a copy to John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301-8226.

JACQUELYN PLASNER NEEDELMAN