

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

Supreme Court
Case No. 68,278

vs.

The Florida Bar
File No. 16B86M12

MANUEL WINSTON JAMES,
Respondent.

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.5, Rules of Discipline, review of a consent judgment for discipline was undertaken. All of the pleadings, notices, motions, orders, transcripts, and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The following attorneys appeared as counsel for the parties:

On Behalf of The Florida Bar: Patricia S. Etkin
On Behalf of the Respondent: John A. Weiss

Respondent submitted a Conditional Guilty Plea for Consent Judgment ("consent judgment") which provides for a five (5) year disbarment retroactively effective as of October 27, 1982, the date of the Supreme Court order suspending Respondent from the practice of law because of his conviction of a felony. Respondent has, in addition, agreed to pay for the costs of these proceedings.

In response, Complainant filed a Petition for Approval of Consent Judgment for Discipline which reflects the position of The Florida Bar, as approved by the Designated Reviewer of the Sixteenth Judicial Circuit Grievance Committee "B",

that Respondent's plea be accepted based upon the imposition of the following disciplinary terms:

- (a) disbarment wherein Respondent shall not tender an application for admission to The Florida Bar for a period of five (5) years. The date of disbarment shall be made retroactive to October 27, 1982, the date Respondent was suspended from the practice of law by the Supreme Court based upon his conviction of a felony.
- (b) Pursuant to Rule 3-7.9(a), Rules of Discipline, Respondent shall be readmitted to membership in The Florida Bar only upon full compliance with the rules and regulations governing admission to the Bar.
- (c) The Florida Bar does not object to Respondent submitting an application to take The Florida Bar examination in February 1988. The Florida Bar recognizes, however, that Respondent's eligibility to take the Bar examination is within the sole discretion of the Florida Board of Bar Examiners and that Respondent must fully comply with the rules and regulations pertaining thereto.
- (d) taxation of costs of this disciplinary proceeding assessed against Respondent, with execution to issue with interest at a rate of twelve per cent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order, unless the time for payment is extended by the Board of Governors.

Having reviewed the record of these proceedings, I find that Respondent's plea, including his request for a retroactive effective date of disbarment, and the position of The Florida Bar as to terms of discipline are both fair to the Respondent and in the best interests of the public. Accordingly, Respondent's consent judgment and the terms of discipline recommended by The Florida Bar are accepted and hereby adopted as the recommendations of this Referee in this matter.

II. FINDINGS OF FACT: In his consent judgment, Respondent admits the allegations contained in the Bar's complaint which I hereby accept and adopt as the findings of fact in this cause, to wit:

- (a) On or about September 24, 1981 in an indictment filed in the United States District Court, Northern District of Florida, Case No. PCR 81-440, Respondent was charged with a felony alleging his involvement in a conspiracy to import and distribute large quantities of marijuana into Florida.

- (b) On or about October 8, 1982 Respondent was adjudicated guilty of knowingly and willfully conspiring to distribute and to possess with intent to distribute, marijuana, a Schedule I controlled substance in violation of Title 21, United States Code, Section 841(a), all in violation of Title 21, United States Code, Section 846, as charged in Count Five of the Indictment.
- (c) Respondent was sentenced to a term of imprisonment for a period of five (5) years, with credit for time served since January 14, 1982, and ordered to pay a fine to the United States in the amount of \$15,000.00. A copy of the Judgment and Probation/Commitment Order is attached hereto and incorporated herein as Exhibit "A".
- (d) Respondent appealed his conviction to the United States Court of Appeals, Eleventh Circuit.
- (e) Respondent's conviction was affirmed on appeal. United States v. Bascaro, et al., 742 F.2d 1335, (11th Cir. 1984), reh. denied, 749 F.2d 733 (11th Cir. 1984). Accordingly, Respondent's conviction is now final.

III. RECOMMENDATION AS TO GUILT: In his consent judgment, Respondent admits that he was convicted of a felony which constitutes a violation of the Code of Professional Responsibility and Integration Rule of The Florida Bar. Based upon Respondent's admissions, I recommend that Respondent be found guilty of violating Article XI, Rule 11.02(3) (a) and (b) of the Integration Rule of The Florida Bar and Disciplinary Rule 1-102(A) (3) and (6) of the Code of Professional Responsibility.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE

APPLIED: I recommend acceptance of Respondent's consent judgment and the imposition of the following disciplinary terms:

Disbarment for a five (5) year period retroactively effective as of October 27, 1982, the date Respondent was suspended from the practice of law by the Supreme Court based upon his conviction of a felony.

In making this recommendation, I have considered the facts offered by Respondent in his consent judgment that he has paid the fine levied against him, was released from parole on July 15, 1986, and has had his civil rights restored.

V. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED: I find that the following were reasonably incurred by The Florida Bar as costs in these proceedings and should be assessed against Respondent:

<u>Administrative Costs:</u>	<u>Amount</u>
Rule 3-7.5(k)(1), Rules of Discipline	
Referee Level	<u>\$150.00</u>
	TOTAL \$150.00

It is recommended that the foregoing costs be assessed against Respondent. It is further recommended that execution issue with interest at a rate of twelve per cent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order, unless the time for payment is extended by the Board of Governors of The Florida Bar.

Dated this 18 day of November, 1987.


ROSEMARY USHER JONES
Referee

Copies furnished to:

Patricia S. Etkin, Esq., Bar Counsel
John A. Weiss, Esq., Attorney for Respondent