IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
JUL 1986
CLERK, SUPREME COURT
By Deputy Clerk

THE FLORIDA BAR,

Complainant,

v.

MICHAEL J. JAHN,

Respondent.

CONFIDENTIAL

Case No. 68,279
TFB No. 90B84C01

REPORT OF REFEREE

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of the Florida Bar, a hearing was held on April 24, 1986. Following denial of the Bar's motion to allow rebuttal testimony, written closing arguments were filed. The pleadings, notices, motions, orders, transcripts, exhibits and written closing arguments, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

Jan K. Wichrowski, Esquire, Bar Counsel

John A. Weiss, Esquire, Counsel for Respondent

1. BACKGROUND

This is a difficult, troublesome case involving a drug-impaired professional whose addiction to cocaine resulted in two felony convictions and subsequent incarceration.

Respondent entered a plea of nolo contendere to possession of cocaine, a third degree felony (Case No. CF84-2909), and delivery of cocaine to a minor, a first degree felony (Case No. CF84-3393), in the Ninth Judicial Circuit in and for Orange County, Florida. On June 12, 1985, he was adjudicated guilty and sentenced to two 4½ year concurrent sentences (the maximum guideline sentence). He remains incarcerated. Pursuant to Rule 11.07, on June 12, 1985, respondent was automatically suspended from The Florida Bar for a period of three years.

In its amended complaint the Bar alleges that the respondent's convictions are violations of The Florida Bar's Integration Rules, Article XI, Rule 11.02(3)(a) for engaging in conduct contrary to

honesty, justice and good morals, and 11.02(3)(b) for engaging in felonious criminal conduct, and the following Disciplinary Rules of the Code of Professional Responsibility of The Florida Bar 1-102(A)(4) for engaging in conduct involving fraud, misrepresentation, dishonesty, or deceit, and 1-102(A)(6) for other misconduct reflecting adversely on his fitness to practice law, and urges disbarment as further disciplinary action as provided by Integration Rule 11.07(4).

At the April 26 hearing the following witnesses testified:

A. For the Bar	Transcript reference (TR)
1. [redacted]	6-49; 54-55
2. [redacted]	63-130
3. Shaski B. Gore, M.D. (by deposition)	132 (Bar Exhibit 7)
B. For Respondent	
1. Doyle Preston Smith M.D.	132-169
2. John Robert McCann	170-181
3. Julia Harden Marshall	181-205
4. George Dayton Dugan, III, Esquire	205-215
5. Valerie A. Jahn, Esquire	216-225
6. Stephen Douglas Milbrath, Esquire	226-237
7. George N. Jahn, Esquire	237-253
8. Michael Joseph Jahn	253-334

The Bar presented testimony from [redacted] to establish the underlying facts for the charge of delivery of cocaine to a minor (CR84-3393), and from [redacted] to establish the underlying facts for the charge of possession of cocaine (CR84-2909).

Much of the testimony regarding the facts underlying the two criminal charges is in dispute, although the respondent does not deny either his guilt or the ultimate responsibility for his own conduct. He does, however, dispute the Bar's interpretation of the facts and characterization of his conduct.

The [redacted] Incident

This is by far the more serious of the two criminal episodes because it involves the delivery of cocaine (by injection) to a minor who was, at the time, 15 years old. The Bar contends that

respondent: (1) possessed the cocaine; (2) that he forcibly injected it into [redacted] in a bathroom in an Eckerds Drug Store; and, (3) that respondent knew that [redacted] was a minor. Respondent admits that he injected cocaine into [redacted] however, he vigorously denies that: (1) it was his cocaine; (2) that any force was used; and, (3) that he knew [redacted] was a minor and only 15 years old.

As to the age issue, based on my personal observations of [redacted] [redacted] (see TR 55), I have no difficulty in finding that on June 21, 1984, respondent should have known that [redacted] [redacted] was under the age of eighteen. I have doubt, however, whether respondent or anyone else would have concluded that she was merely 15 years old.

I find that to the extent [redacted]'s testimony conflicts with respondent's testimony and the testimony of Julia Harden Mitchell (TR 63-130), whose testimony I find to be especially believable, [redacted]'s version of the incident is highly unreliable and worthy of little weight. Thus, I find, based on my personal observations of the appearance and demeanor of the witnesses, that:

(1) The cocaine was in the original possession of [redacted] [redacted], not the respondent; and,

(2) [redacted] [redacted] was a willing participant in the injection of cocaine into her body; and,

(3) No force was used.

<u>The [redacted] [redacted]. [redacted] Incident</u>

Although respondent was only convicted of possession of cocaine as a result of the episode involving [redacted] [redacted] [redacted] the Bar presented her testimony to attempt to establish that she, too, was an unwilling participant in forcible injection(s) of cocaine. Frankly, I find it extremely difficult to believe much of [redacted]'s version of her "relationship" with the respondent and the events that gave rise to the possession of cocaine conviction. To the extent that her testimony conflicts with respondent's testimony and the testimony of the other witnesses I elect to rely on and believe the other witnesses. [redacted]'s testimony does not have "the ring of truth." It simply doesn't smell right. Thus,

I find, based on my personal observations of the appearance and demeanor of the witnesses, that:

(1) [redacted] was a willing participant in the injection of cocaine into her body; and,

(2) No force was used.

II. RESPONDENT'S ADDICTION TO COCAINE

Respondent presented his own testimony and the testimony of Dr. Smith, Mr. McCann, Mrs. Marshall, Mr. Dugan, Miss Jahn and Mr. Jahn to establish: (1) the degree of his addiction to cocaine; (2) the terrible consequences of this addiction; (3) his efforts directed toward rehabilitation; and, (4) his remorse for his criminal conduct.

The most important testimony in this area was given by Dr. Doyle Preston Smith (TR 132-169), Director of Pine Grove Recovery Center, and an expert in the field of treatment and rehabilitation of impaired professionals. In evaluating my findings and subsequent recommendations I urge the Court to read Dr. Smith's testimony in its entirety.

With regard to respondent's testimony, I find him to be extremely candid and forthcoming in discussing his addiction and in accepting ultimate responsibility for his conduct. He is indeed remorseful. This candor is, for example, a refreshing contrast to the attitude exhibited by a respondent in a recent case also heard by the undersigned. See The Florida Bar v. Price, 478 So.2d 812 (Fla. 1985).

Based on the testimony of the above witnesses, I make the following findings:

(1) that at all times material to the Bar's complaint, respondent was addicted to cocaine;

(2) that respondent's acts underlying the criminal conduct for which he was convicted were caused by and directly attributable to his cocaine addiction;

(3) that from August 1984 through the date of the hearing respondent has lived a drug and alcohol free life;

(4) that respondent is medically classified as a recovering addict;

(5) that the treatment plan and recovery prognosis for individuals addicted to alcohol and individuals addicted to cocaine is identical;

(6) that respondent's addiction involved neither the practice of law nor his clients.

III. IMPORTANCE OF FINDINGS RE: [redacted] AND [redacted] AND RESPONDENT'S ADDICTION

The findings of fact involving [redacted] and [redacted] and concerning respondent's addiction to cocaine are not defenses to respondent's criminal conduct. The findings are, however, important to negate the Bar's characterization of respondent:

> "The most shocking aspect of the facts concerning Respondent's actions concerns his bizarre compulsion to forcefully inject the young girls with cocaine against their will. These facts indicate a personality disorder rather than an addiction to a drug." (Bar Closing Argument - Page 6)

and as mitigating factors to support my subsequent recommendations regarding discipline.

IV. RECOMMENDATIONS REGARDING GUILT

Based on his two felony convictions I recommend that respondent be found guilty of The Florida Bar's Integration Rules, Article XI, Rule 11.02(3)(a) for engaging in conduct contrary to honesty, justice and good morals, and 11.02 (3)(b) for engaging in felonious criminal conduct, and the following Disciplinary Rule of the Code of Professional Responsiblity of The Florida Bar, Rule 1-102(A)(3) for engaging in illegal conduct involving moral turpitude.

I recommend that he be found not guilty of violating Rule 1-102(A)(4) for engaging in conduct involving fraud, misrepresentation, dishonesty, or deceit, and Rule 1-102(A)(6) for other misconduct reflecting adversely on his fitness to practice law.

V. CONCLUSION AND RECOMMENDATIONS REGARDING DISCIPLINE

As mentioned earlier, this is a difficult, troublesome case. The issue is: disbarment versus suspension. Which is appropriate under the unique facts of this case?

The Bar, as sanctioned by the Supreme Court, has addressed

the alcohol-impaired professional but what of the cocaine-impaired professional? Is there a rational distinction between alcohol addiction and cocaine addiction other than the obvious one that the use and possession of one drug is legal and the other illegal? I think not!

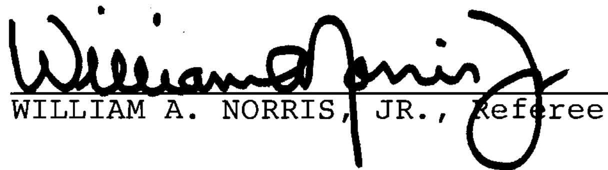
Can we in today's enlightened times recognize the recovering alcoholic and, after treatment and rehabilitation, permit him to remain in, or return to, the Bar, and not offer the same compassion and understanding to those of our brothers and sisters who suffer from, and are recovering from cocaine addiction? I think not!

Where cocaine was once thought to be a "safe" drug of choice, today the media is replete with stories detailing the emerging horrors of cocaine addiction. Are those of our profession (such as the respondent) who have succumbed to the lure and temptation of a so-called "safe" recreational drug, so unworthy of compassion and understanding, is their addiction so reprehensible, that our profession is justified in casting them from our midst with the stigma of the ultimate penalty--disbarment? I think not!

With respect to this case, there is no competent evidence before me that respondent's cocaine addiction adversely impacted any of his clients or that his drug involvement was for pecuniary gain. There is, of course, ample evidence that his cocaine-induced conduct reflected adversely on the public image of the Bar and on the respondent individually. For his drug-induced conduct he has paid a very high price. He and his family have been the subject of extensive media attention, he is a twice convicted felon, he has been incarcerated in the state prison system, and he has been suspended from the practice of his profession. I believe he has been punished enough. Whether at some future time he can demonstrate his worthiness to again practice law remains to be seen -- only time will tell.

Accordingly, it is recommended that respondent be suspended from The Florida Bar for three years and thereafter until his civil rights are restored and he demonstrates rehabilitation, and that the suspension be retroactive to June 12, 1985.

DATED this 28th day of July, 1986.



WILLIAM A. NORRIS, JR., Referee

copies without exhibits to:

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