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CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Case Nos. 66,596 and 68, 771

Complainant,

v.

JOHN H. KEANE,

Respondent.

COMPLAINANT'S BRIEF

Submitted by:

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PROCEDURAL HISTORY

On November 6, 1984, the Respondent, John Keane, entered an Alford plea of guilty to one count of grand theft in violation of Florida Statutes Section 812.014. On the same date, the Sixteenth Judicial Circuit Court accepted the plea and ordered that judgment be withheld and placed Mr. Keane on probation for a period of three years.

The guilty plea was a product of a plea negotiation between the State of Florida and Mr. Keane. The negotiations also led to a Contract to Plea Negotiations entered into between the parties. Pursuant to that contract, Mr. Keane agreed to surrender his license to practice law in Florida until such time as The Florida Bar's disciplinary proceedings were resolved. On January 4, 1985, and after Bar inquiry, Mr. Keane notified his probation officer by letter that he was voluntarily abstaining from the practice of law.

On February 22, 1985, The Florida Bar filed a Petition for Temporary Suspension to enforce the plea contract as it related to the surrender of Mr. Keane's license. On March 4, 1985, this Court ordered that Mr. Keane be suspended from the practice of law until further order of the court.

On February 14, 1985, The Florida Bar filed a complaint against Mr. Keane with the Sixteenth Judicial Circuit Grievance Committee "B" for investigation.

On April 12, 1985, the Sixteenth Judicial Circuit Grievance Committee "B" recused itself because of past contacts with Mr. Keane and the action was reassigned to the Eighth Judicial Circuit Grievance Committee. On June 4, 1985, the Eighth Judicial Circuit Grievance Committee conducted a proceeding and found that probable cause existed for further disciplinary proceedings. On July 15, 1985, Mr. Keane filed a Motion to Vacate Order of Temporary Suspension. On September 20, 1985, this Court denied Mr. Keane's motion.

On May 21, 1986, this Court appointed Norman S. Gerstein, a judge of the Eleventh Judicial Circuit Court of Florida, as referee. On January 29, 1987, and September 15, 1987, final hearings were held before the referee and the referee issued his report on November 20, 1987.

On January 15, 1988, the Board of Governors of The Florida Bar considered the referee's report and directed staff counsel of The Florida Bar to file a Petition for Review with this Court to review the discipline recommended by the referee. On February 1, 1988, The Florida Bar filed a Petition to Review with this Court.

FACTUAL HISTORY

John H. Keane had been employed as a public defender in Monroe County, Florida for a period of approximately twelve years prior to these proceedings. During the period in question, from 1979 through 1984, Mr. Keane frequently traveled throughout the State of Florida and the southeastern portion of the United States in his capacity as public defender, giving speeches and lobbying on behalf of the public defender's office for Monroe County and the Criminal Law Section of The Florida Bar. Mr. Keane was reimbursed for most of these trips by submitting travel vouchers to the Judicial Administrative Commission in Tallahassee. The Judicial Administrative Commission would then forward the vouchers to the Comptroller General's Office which would issue the reimbursement warrants.

In approximately 1979, Mr. Keane acquired a home in Beach Mountain, North Carolina which he used as a vacation home. Paragraphs numbered 1 through 9 of the Report of Referee deal with Mr. Keane's submission of vouchers for expenses incurred during travel to and from the North Carolina residence.

During the period at issue in this cause, Mr. Keane shared a residence with Ms. Anita Taylor. Also during this same period, the public defender's office maintained gasoline credit cards and

open accounts billable to the public defender's office. Numbered paragraph 10 of the Report of Referee deals with the issue of Ms. Taylor's purchases of gasoline for her personal use, using the public defender's office gasoline credit cards or accounts.

During the period in question, the Monroe County Public Defender's Office owned a stereo tape deck system with accompanying speakers. Mr. Keane allowed Ms. Taylor to remove the stereo system from the public defender's office and retain possession of the system for several years. Numbered paragraph 11 of the Report of Referee deals with this issue.

From 1974 through 1979, the public defender's office leased office furniture from Abacus Investments Corporation. Abacus Investments Corporation during that time was wholly owned by a relative of Mr. Keane and Mr. Keane served as the secretary of the corporation. In 1979, the Auditor General instructed Mr. Keane to terminate the lease arrangement, which he subsequently did. When Mr. Keane later obtained sole ownership of the office furniture and Abacus Investments Corporation was dissolved.

In 1981, sometime after the lease arrangement was terminated, Mr. Keane arranged for the office furniture to be purchased by the public defender's office. The purchase was accomplished by the public defender's office issuing a check to an

establishment known as the Desk Center. The Desk Center then issued a check to Anita Taylor which was deposited into a bank account held jointly by Ms. Taylor and Mr. Keane. The funds were then used by Mr. Keane as partial payment for the North Carolina residence. Numbered paragraph 12 of the Report of Referee deals with the furniture transaction.

In 1982, Mr. Keane arranged for the public defender's office to lease an automobile which he used in his capacity as public defender and which he also took home in the evenings to be used for his personal use. After approximately six months, the Comptroller's Office disallowed the lease and Mr. Keane personally assumed the lease. The insurance premium for the vehicle was paid by the public defender's office out of a Cuban-Haitian fund obtained through a federal grant. Numbered paragraph 13 of the Report of the Referee deals with that issue.

Prior to 1982, Mr. Keane owned a camera and a variety of accessories. Mr. Keane arranged for the Public Defender's Office to purchase the camera from Ms. Taylor. Numbered paragraph 14 deals with that transaction.

Finally, Mr. Keane arranged for the public defender's office to purchase a belt sander. Thereafter, Mr. Keane removed the sander from the offices of the public defender in order to sand

floors at his Key West residence. Mr. Keane returned the sander when the criminal proceedings against him were instituted.

After the criminal investigation uncovered the above facts, Mr. Keane was removed from the Office of Public Defender. He was subsequently charged in a 16 count criminal indictment which resulted in an "alford" plea to one count of grand larceny in violation of Section 812.014, Florida Statutes.

SUMMARY OF ARGUMENT

Disbarment is the proper disciplinary sanction in the case now before the Court. Mr. Keane used the public's trust and confidence to misappropriate property belonging to the State of Florida for his own personal benefit. This Court's prior case law indicates that disbarment is the appropriate remedy. The record is replete with aggravating factors and there are no acceptable mitigating factors applicable to this case.

ARGUMENT

I. WHETHER A TWO AND ONE-HALF YEAR SUSPENSION IS AN APPROPRIATE DISCIPLINE WHERE A PUBLIC OFFICIAL KNOWINGLY AND UNLAWFULLY MISAPPROPRIATES PROPERTY OF THE STATE OF FLORIDA FOR HIS PERSONAL USE.

The referee found that Mr. Keane had committed each act of misconduct alleged in the complaint of The Florida Bar. The referee found that the misconduct had been committed repeatedly over a period of years. In order to fully understand the gravity and duration of the misconduct engaged in by Mr. Keane, a brief review of the referee's findings is necessary.

The referee found that Mr. Keane, as a public official, unlawfully and knowingly obtained property from the State of Florida. Mr. Keane obtained this property by falsely obtaining travel reimbursements for travel expenses by submitting a travel vouchers for expenses incurred while traveling for personal reasons and not on official business for the State of Florida. The referee further found that he engaged in the above activities in nine separate instances between October, 1979 and March, 1984.

The referee found that Mr. Keane unlawfully and knowingly authorized Anita Taylor to purchase gasoline for her personal use

through the use of credit cards issued to the public defender's office. The referee found that Mr. Keane appropriated for his personal use a stereo and a belt sander belonging to the State of Florida.

Mr. Keane admitted that he sold furniture that he owned to the Office of the Public Defender through a straw-man sale and that he received the entire proceeds of the sale (Ref. Trans., Pgs. 150, 151).

Despite the grievous nature of Mr. Keane's misconduct, the length of time he engaged in misconduct and the fact that he used the public's trust and confidence to succeed in his misappropriations, the referee only recommended he be disciplined by two and one-half year suspension from practice. The Florida Bar's position is in a situation such as the one now before the Court, involving numerous instances of theft over a long period of time, the proper discipline is disbarment.

It is a well-established point of law in Florida that the Florida Supreme Court is not bound by the referee's recommendation for discipline, The Florida Bar v. Mueller, 351 So.2d 960 (Fla. 1977) and The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978).

The case law in support of the Bar's position is substantial. This Court decided in case involving very similar misconduct that disbarment was the appropriate discipline. The Florida Bar v. Bunch, 195 So.2d 558 (Fla. 1967), involved an attorney who, while serving as clerk of the Second Court of Broward County, converted to his own use \$55,000 belonging to the public. The attorney was also found to have misappropriated \$4,500 while serving as Secretary-Treasurer of the Broward County Bar Association. The attorney had repaid the \$55,000 to the Circuit Court of Broward County but had not repaid the Broward County Bar Association. In The Florida Bar v. Bunch, the referee had recommended a five-year suspension. This court found that the recommended five-year suspension was too lenient and ordered disbarment even though the attorney "had a fine record as a citizen having been active in civic and church work."

A situation involving a circuit court judge who used a state credit card to pay for airline tickets for personal trips was before this court in In re LaMotte, 341 So.2d 513 (Fla. 1977). This court removed Judge LaMotte from office because of his misconduct even though the court earlier in the opinion had held: "But they [judges] . . . should not be subject to the extreme discipline of removal except in instances where it is free from doubt that they intentionally committed serious and grievous wrongs of a clearly unredeeming nature," 341 So.2d at 517. The referee in the case now

before the court found that Mr. Keane authorized Ms. Taylor to use the public defender's office gasoline credit card or accounts to purchase gasoline for her personal use. Certainly, if Judge LaMotte's use of a credit card for his personal use justifies the extreme discipline of removal from office, Mr. Keane's unlawful use of the public defender's credit card or accounts for his girlfriend's personal use, coupled with his other acts of misconducts, justifies disbarment.

In The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1980), this Court implied that in imposing discipline, the Court should consider the discipline imposed on other attorneys for similar misconduct. Disbarment has almost invariably been imposed on attorneys for misconduct involving theft. In The Florida Bar v. Nagel, 440 So.2d 1287 (Fla. 1983), this Court held that where an attorney repeatedly converted his client's funds for his personal use, the appropriate discipline was disbarment and ineligibility for readmission to The Florida Bar for ten years. In The Florida Bar v. Atkins, 218 So.2d 748 (Fla. 1969), this Court held that disbarment is appropriate when an attorney misappropriates funds which he receives by virtue of his fiduciary relationship with his client. In The Florida Bar v. Vallecorsa, 209 So.2d 452 (Fla. 1968), disbarment was held to be the appropriate remedy where the attorney embezzled \$45,000 from his client's trust fund, (see also The Florida Bar v. Rogers, 192 So.2d 757 (Fla. 1966)). In The Florida

Bar v. Ruskin, 232 So.2d 13 (Fla. 1970) the attorney was allowed to resign without leave to reapply for admission where he was convicted of unlawful sale of securities. This Court stated, "Lawyers owe a special duty to be circumspect in the conduct when handling funds belonging to others. When any attorney is unable to withstand the temptation to misappropriate funds, he should obviously not be allowed to continue in the practice of law." It appears that the only reason the attorney was allowed to resign rather than being disbarred in The Florida Bar v. Ruskin was because his misconduct had been committed nine years prior to the institution of the disciplinary proceedings and the attorney had continually been a law abiding, civic-minded citizen subsequent to misconduct. In The Florida Bar v. Rhodes, 355 So.2d 774 (Fla. 1978) disbarment was held the appropriate discipline where the attorney, acting as an executor of a probate estate, withdrew funds from the estate and exchanged them with personal promissory notes. In The Florida Bar v. Wolbert, 446 So.2d 1071 (Fla. 1984), disbarment was held to be the appropriate discipline where the attorney had misappropriated monies from a client's trust fund even though the attorney had reported himself to The Florida Bar.

Many of the above-cited cases dealt with the theft of property belonging to specific clients. However, the cases should apply at least equally, if not more stringently, to an attorney in Mr. Keane's position. Mr. Keane used the public's trust and

confidence to steal from the citizens of the State of Florida. The intent of the two situations is identical, to permanently deprive the rightful owners of their property for the benefit of the attorney.

Were this Brief to end at this point, The Florida Bar would be confident that this Court would determine disbarment to be the appropriate remedy. However, other issues regarding this case must be brought to the Court's attention. First, this Court held in The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1982) that, "The court deals more harshly with cumulative misconduct than it does with isolated misconduct. Additionally, cumulative misconduct of a similar nature should warrant an even more severe discipline than might dissimilar conduct. The referee in a case now before a court found that Mr. Keane had committed similar misconduct numerous times over a period of approximately six years.

The Florida Bar recognizes that pursuant to Mr. Keane's "Alford" plea he did not admit his guilt to the felony charge of grand larceny. However, pursuant to the "Alford" plea he did plea guilty to a felony charge and he admits the facts alleged in that charge. This Court has repeatedly held that conviction of grand larceny justifies disbarment, The Florida Bar v. Scott, 165 So.2d 167 (Fla. 1964) and State ex rel. The Florida Bar v. West, 149 So.2d 557 (Fla. 1963).


The Florida Bar further wishes to direct the Court's attention to section 5.21 of the Florida Standards for Imposing Lawyer Sanctions, (1986) which states: "disbarment is appropriate when a lawyer in an official or governmental position knowingly misuses a position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal process." The Court should also to note the fact that even as late as the hearing before the referee on September 15, 1987, Mr. Keane refused to admit that his conduct was unethical. Throughout the disciplinary process, Mr. Keane has continually attempted to rationalize his actions as being ethical even though they are clearly violations of both the criminal code and the Rules of Professional Conduct (formerly Code of Professional Responsibility). Mr. Keane maintained that he has been unfairly persecuted by the State Attorney's Office and The Florida Bar. Such an attitude displays contempt for both the criminal process of the State of Florida and the disciplinary process conducted by The Florida Bar.

CONCLUSION

Disbarment is the appropriate disciplinary sanction where an attorney commits acts of theft numerous times over a period of years. Aggravating factors present in this case include Mr. Keane's dishonest and criminal intent; a pattern of misconduct extending over a period of years; the multiple offenses engaged in by Mr. Keane; Mr. Keane's refusal to acknowledge wrongful nature of his conduct; and Mr. Keane's substantial knowledge and experience concerning both the criminal law and the administrative provisions that he violated. The Florida Bar's position is that this Court should take this opportunity to hold that attorneys practicing law in the governmental field will be held to the same demanding standards as those practicing law in the private sector.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the true and correct copy of the foregoing brief has been furnished by U. S. Mail to Charles J. Chedes, Chedes and Rapkin, 341 Venice Avenue, West Venice, Florida 34285, attorney for respondent, Randy Ludcar, 1700 Bahama Drive, Key West, Florida 33040-5217, attorney for respondent and to John H. Keane, Post Office Box 1172, Key West, Florida 33041, Respondent, this 1st day of March, 1988.



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