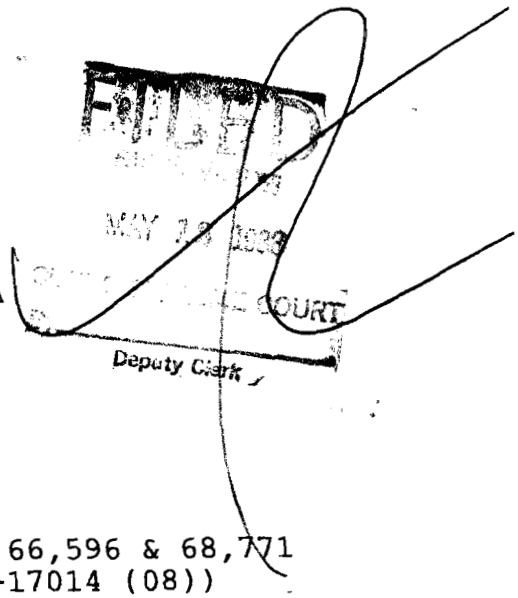

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JOHN H. KEANE,

Respondent.
_____/

CASE NOS. 66,596 & 68,771
(TFB # 86-17014 (08))

REPLY BRIEF OF THE FLORIDA BAR

John A. Boggs
Bar Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, Fl 32399-2300
(904) 222-5286

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Summary of Argument

The findings and recommendations of the referee have ample support in the record and therefore cannot be overturned.

The objection, on appeal, to matters of evidence is not timely and therefore fails.

The disciplinary sanction of disbarment, recommended by the Bar, is the most appropriate measure for the circumstances of this case.

THE REFEREE'S FACT FINDINGS AND RECOMMENDATIONS WHETHER RESPONDENT SHOULD BE FOUND GUILTY ARE NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE

In this regard the argument of respondent is flat wrong. In Bar disciplinary proceedings the referee hears testimony, receives evidence and places the weight to be given same. The Florida Bar v. Lipman , 497 So. 2d 1165 (Fla. 1986). That the referee has done in this case and the respondent's argument merely raises again his version of what happened and why. There is ample documentary and testimonial evidence, which corroborates each other, for the referee to have made his findings.

The referee's findings of fact cannot be overturned unless they are clearly erroneous or without support in the record. The Florida Bar v. Vannier, 498 So. 2d 896 (Fla. 1986). In this case there is the testimony of respondent as to one version of facts and the documentary evidence and testimony (via transcripts) of Anita Taylor and investigators for the State of Florida. The version provided by respondent conflicts with that of the other evidence but such conflict is not enough to overturn the referee's findings. Vannier, supra; The Florida Bar v. Stalnaker, 485 So. 2d 815 (Fla. 1986) and The Florida Bar v. Fields, 482 So. 2d 1354 (Fla. 1986).

The documents, verified by testimony of Ms. Taylor, clearly indicate travel of respondent certified as being in one manner yet actually occurring in an altogether different way, generally as a subterfuge for personal trysts in Banner Elk (Beech Mountain), North Carolina.

The respondent has admitted, twice, to engaging in straw-man transactions in order to sell personal property to his state agency. He defends the sales as having been for fair value. He misses the point. He was told he could not engage in self-dealing, the law clearly prohibited it (he was then a long standing practitioner and according to his own admissions an accomplished lawyer) and yet in repetitious acts he schemed to evade the law.

The respondent admits Ms. Taylor' gasoline was charged to the state. He asserts mistake. He presented no evidence showing attempts to repay or rectify the mistake. Ms. Taylor testified that she was doing little or no public defender work at the times in question and respondent admits that at least some of the gasoline went to her personal purposes.

Respondent challenges Ms. Taylor's veracity and alleges bias in her testimony. Respondent is subject to the same charge in his testimony regarding her as a result of their personal relationship gone sour. Ms. Taylor's testimony is largely directly supported by independent documentary evidence and is contradicted only by respondent.

For the first time respondent now challenges admission of matters into evidence at the referee trial. He blames his trial counsel but does not acknowledge his presence and his capacity as co-counsel throughout these proceedings. His challenge is too late and in any event insufficient. The matters admitted were part of a duly noticed hearing at which respondent did not appear. They do not constitute hearsay under applicable law and even if they were hearsay they are admissible in Bar proceedings. Vannier, supra.

Respondent also challenges the venue decision of the sixteenth and eighth circuit grievance committees. He made no timely objection at the committee level, filing a motion the day before the committee hearing. That motion was denied. He also made no formal challenge to venue before the referee, although general displeasure was voiced. His challenge in this regard is too late. Also there is no venue privilege in a grievance committee proceeding. There is a venue rule but it relates to referee trials only. See, rule 3-7.5 (c), Rules Regulating The Florida Bar.

THE REFEREE'S RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED IS EXCESSIVE, AND IS CONTRARY TO ESTABLISHED PRECEDENT

Respondent argues that the discipline recommended by the Bar and by the referee is improper. The Bar recommends disbarment and the referee recommends a suspension of two and one-half years.

Respondent argues that mitigation is such in this case to warrant much less of a sanction. He cites The Florida Bar v. Lord, 433 So. 2d 983 (Fla. 1983). While this case addresses mitigation it provides no guidance for sanction as the factual patterns are so dissimilar. Respondent did not address the cases cited in the Bar's initial brief. They are the only cases on point where there has been breach of public trust and misuse of funds by an elected officer. Those cases mandate disbarment in this matter.

Respondent would have you believe that he,John Keane, is the victim in this matter. He blames everyone for his current status. He blames the state attorney for improperly prosecuting him. He blames former Governor Graham for suspending him from office. He blames the Judicial Administration Commission for not telling him how to fill out his travel vouchers. He blames the law for not allowing him to sell his personal property to his state agency. He blames the Bar for his temporary suspension, for the length of his suspension and for the court's and the referee's

failure to reinstate him. He blames the state attorney for not clarifying his plea agreement as it relates to the agreed upon six months suspension. He blames his former trial counsel for allowing matters into evidence in these proceedings (respondent was present as co-counsel and had been provided the documents complained of and apparently did not share them with his counsel).

Its time to put the blame for respondent's misconduct where it belongs. It belongs with the respondent, nowhere else.

Conclusion

The referee, based on ample record support, found respondent guilty of multiple violations of the Code of Professional Responsibility. Those findings must be upheld as respondent has not carried his burden of showing that the findings are clearly erroneous or wholly lacking in evidentiary support. The lack of remorse and failure to acknowledge wrongdoing evidenced by respondent and existing case law regarding abuse of public trust and public funds and property mandate disbarment.

Respectfully submitted

John A. Boggs