

IN THE SUPREME COURT OF FLORIDA

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TALLAHASSEE, FLORIDA
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THE FLORIDA BAR,
Complainant,

v.

Supreme Court Case
No. 69,008

DENNIS P. SHEPPARD,
Respondent.

_____ /

RESPONDENT'S ANSWERING BRIEF

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INTRODUCTION

In this brief, The Florida Bar, Complainant, will be referred to as either "The Florida Bar" or "The Bar".

Dennis P. Sheppard, Respondent, will be referred to as either "Dennis P. Sheppard," "Mr. Sheppard" or "Respondent".

Abbreviations utilized in this brief are as follows:

"GC-T" refers to transcript of proceedings before Grievance Committee "I" dated April 30, 1986.

"T" refers to Transcript of Proceedings before the referee dated December 5, 1986.

"RR" refers to Report of Referee dated January 20, 1987.

"Memo" refers to Complainants Memorandum concerning Discipline dated December 24, 1986.

"R Memo" refers to Respondent's Memorandum concerning Discipline filed January 2, 1987.

STATEMENT OF THE CASE

Respondent accepts the Florida Bar's Statement of the Case.

STATEMENT OF THE FACTS

Respondent accepts the Statement of Facts in the Florida Bar's Initial Brief, but supplements it as follows:

Respondent has been an attorney since 1973 and has no record of prior disciplinary action. (RR Par V) Respondent was an outstanding law student and served his country honorably as a member of the United States Army in Vietnam. (RR Par V)

Of the thirteen (13) witnesses called on behalf of the Respondent at the Final Hearing, seven (7) were lay clients. (T. 61 - 69, 83 - 89, 89 - 92, 109 - 112, 112 - 121, 144 - 148)

Each of the clients testified Respondent was an excellent attorney, (T. 65, 88, 90, 110, 115, 145) a faithful servant (T. 62, 85, 110, 133, 145) who had never given them cause to doubt his honesty or integrity. (T. 63, 85, 90, 110, 115, 133, 145)

Six (6) members of the Florida Bar also testified on behalf of Respondent. (T. 49 - 61, 69 - 83, 94 - 101, 102 - 109, 122 - 132, 138 - 144) Each testified they knew the Respondent well, had worked with him on cases or referred clients to him over the years. (T. 50, 51, 70, 71, 94, 96, 104, 123, 139 - 140) Each also testified that Respondent is an excellent attorney (T. 52, 53, 72, 97, 105 - 106, 123,

140) who is faithful to his clients and never gave them cause to be concerned about his honesty or integrity.

(T. 53, 77, 97 - 98, 104, 124, 140, 143)

Both the lawyers and the clients were unanimous in assuring the referee that Mr. Sheppard was capable of rehabilitating himself and in urging that he be given the opportunity to do so. (T. 55 - 57, 63 - 65, 77, 86, 91, 101 - 102, 107 - 108, 111, 118, 129 - 130, 136, 142, 147)

The Bar itself did not contest Respondent's competence as an attorney. (T. 152)

The Grievance Committee unanimously recommended a suspension for up to a maximum of one (1) year. (GC-T. 30 - 31) Concededly, the Grievance Committee did not hear the testimony of the Respondent. (GC-T. 29)

While Respondent couldn't deny there wasn't small profit motive involved in his activities (T. 11) he believes he permitted himself to be pushed into the situation by friends who wanted to sell marijuana and who wanted to buy marijuana. (T. 157)

SUMMARY OF ARGUMENT

Counsel for Respondent requested the Respondent receive a public reprimand and a lengthy period of probation with stringent conditions. The Bar requested a recommendation of suspension for 18 months. After hearing all the evidence, the referee recommended a suspension of 12 months and proof of rehabilitation before Respondent is reinstated to the Bar. Such a sanction is appropriate and serves the interest of the public, The Florida Bar and the individual who is the subject of these proceedings.

ARGUMENT

THE DISCIPLINARY RECOMMENDATION OF THE REFEREE IS REASONABLE AND APPROPRIATE BASED UPON ALL THE FACTS IN THIS CASE.

The violation in this case is serious and the Respondent admits that. As part of his efforts to rehabilitate himself The Respondent has made a full and candid disclosure of his violation without any resort to his privilege against self incrimination.

The court has the power to impose the discipline it deems appropriate without regard to the recommendation of the referee and it is acknowledged that more severe discipline has been imposed in other cases involving drug violations as set forth in the Florida Bar's Brief.

Unlike this court, the Board of Governors of the Florida Bar or even the designated reviewer in this case, the referee had the opportunity to personally observe the Respondent while he testified and sat through the final hearing and the witnesses and thus to take into account not just the violation, but the nature of the violator and his worthiness for the opportunity to rehabilitate himself.

Presumably, the referee did take into account the Respondent's problem with alcohol and marijuana and his attempts to rehabilitate himself in formulating the recommendation of discipline in this matter. To contend that

that is the sole basis for the recommendation, however, is not a fair reading of the record. The detailed nature of the report of the referee demonstrates that the recommendation is based upon the record as a whole.

The record as a whole shows:

The Respondent has no prior or subsequent criminal charges or disciplinary matters and his conduct in this case is an aberration in an otherwise honorable life and legal career.

The primary victim of Mr. Sheppard's conduct is Mr. Sheppard. While the image of the Florida Bar has also been damaged, Mr. Sheppard took great pains to see that his personal problems did not damage his clients or their interests.

Mr. Sheppard has started on the road of rehabilitation by abstaining from alcohol and marijuana (T. 31, 32, 41, 45) and has committed himself to a carefully supervised rehabilitation program. (T. 42, 43)

The referee's recommendation in this case is not inconsistent with the discipline imposed in such cases as The Florida Bar v. Pettie, 424 So.2d 734 (Fla. 1982) (conspiracy to import 15,000 pounds of marijuana - 1 year suspension; the Respondent provided significant assistance to law enforcement authorities); The Florida Bar v. Levine, 498 So.2d

941 (Fla. 1986) (misdemeanor cocaine possession [sic] - public reprimand); and The Florida Bar v. Piggee, 490 So.2d 1260 (Fla. 1986) (possession of small quantities of cocaine and marijuana - 60 day suspension).

The recommendation of a one year suspension is severe enough to punish Mr. Sheppard and warn he and others that such conduct will not be tolerated. The requirement of proof of rehabilitation before reinstatement serves to protect the Bar and the public by insuring Mr. Sheppard will never practice law again unless he demonstrates his fitness to do so.

CONCLUSION

Based upon the record as a whole, the recommendation of the referee for a twelve (12) month suspension and proof of rehabilitation before reinstatement is a reasonable and appropriate sanction. The court is asked to uphold the recommendation of the referee.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed this 22 day of May, 1987 to Paul A. Gross, Bar Counsel, Suite 211, 444 Brickell Avenue, Miami, Florida 33131 and John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301-8226.

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