69,242

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complaintant,

vs.

RICHARD WAYNE GRANT,

Respondent.

CASE NO. 68,842
(TFB No. 14-84N49)

REPLY BRIEF

JAMES P. JUDKINS
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TABLE OF CONTENTS

TABLE OF CITATIONS

ARGUMENT

Mr. Grant should not be sanctioned pursuant to standards or guidelines which were not in effect at the time he committed the negligent acts alleged by the Bar. Even in punishment of a criminal, the standards may not be changed nor may the punishment be increased after the criminal act has been committed. Recognizing this, the Bar acknowledges that the new Rules Of Professional Conduct cannot be applied retroactively. By the same token, the Bar's reliance on The Standards Of Imposing Lawyer Sanctions: Black Letter Rules is misplaced. These "rules" are apparently unpublished and have not yet been found to be authoritative by this court. Further, these "Black Letter Rules" run contrary to the position advocated by the Bar. Section 4.43 of these standards provides that public reprimand is appropriate when a lawyer is negligent and causes injury or potential injury to a client. On the other hand, these standards suggest that suspension may be appropriate when a pattern of neglect is demonstrated which causes injury or potential injury to a client.

The Bar gives considerable weight to Mr. Grant's two prior reprimands, seeking to support the Referee's recommendation of a four month suspension. The Bar's argument is proposed to establish a "pattern of neglect" by Mr. Grant and implies that Mr. Grant's behavior was not modified following the two prior reprimands. This is not supported by the record.

Mr. Wheelless retained Mr. Grant on December 30, 1981 (Tr-7). The last interaction between Mr. Wheelless and Mr. Grant was early in 1984, since Wheelless' complaint was filed with the Bar on February 21, 1984 (Tr-16). Mr. Grant's first public reprimand was on May 19, 1983. The Florida Bar vs. Grant, 432 So.2d 53 (Fla. 1983). The second public reprimand was on March 7, 1985. The Florida Bar vs. Grant, 465 So.2d 527 (Fla. 1985). These dates are critical because they establish that the complaints of neglect related to the Wheelless matter all occur prior to the second public reprimand. There is no evidence of any neglectful conduct by Respondent at any time after March 7, 1985. The most obvious inference or conclusion to be drawn from the facts now before the court is that the second public reprimand did effectively protect the public against a continuing pattern of neglect. A clear distinction has been made between cases involving multiple acts of contemporaneous neglect and those cases involving a continuing pattern of misconduct. Compare The Florida Bar v. Merrill, 462 So.2d 827 (Fla. S.Ct 1985) with The Florida Bar v. Brennan, 12 FLW 175 (1987).

The three purposes for disciplinary action set forth in The Florida Bar vs. Pahules, 233 So.2d 130 (Fla. 1970), have been cited by the Respondent and the Florida Bar as the basis

for determining the proper level of sanctions to be applied in a disciplinary judgment. We urge the court to make an even handed application of those standards to the facts in the case now before it. We agree with the Florida Bar that each case must be judged on its own facts. The disciplinary purposes of Pahules will be met by imposing a period of probation on Respondent with required submission of progress reports. This will protect the public. It will be fair to Mr. Grant and will encourage his continued reformation. Such a judgment of discipline will act as a deterrent to others with similar inclinations of neglect. The Pahules purposes of discipline will have been served.

For the reasons set forth in Mr. Grant's original brief, the recommended punishment in this case is much too harsh, given the treatment of similar offenders. In fact, the punishment recommended is more severe than the Bar sought.

If precedent and fairness play any role in this court's decision, then Mr. Grant should not be suspended.

CONCLUSION

For these reasons, the court should place Mr. Grant on probation, but should not suspend him.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U. S. Mail to Susan V. Bloemandaal, Bar Counsel, The Florida Bar, Tallahassee, Florida 32301-8226, this 5th day of June, 1987.

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