

IN THE SUPREME COURT OF FLORIDA  
(BEFORE A REFEREE)

THE FLORIDA BAR,  
  
Complainant,

CASE NO: 69,646  
(TFB No. 18A87C01)

vs.

MARVIN S. DAVIS,  
  
Respondent.

FILED

JUL 14 1987

CLERK, SUPREME COURT

REPORT OF REFEREE

By \_\_\_\_\_  
Deputy Clerk

I. Summary of Proceedings: 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, hearings were held on April 24, 1987, and April 30, 1987. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this cause.

The following attorneys appeared as counsel for the parties:

For The Florida Bar, David G. McGunegle.

For the Respondent, Marvin S. Davis represented himself.

(References to the portion of the transcript supporting these findings shall be followed by the number for the page followed by the number for the line.)

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged in Case No. 69,646: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I make the following findings of fact:

A. Marvin S. Davis, at all times here and after mentioned, was a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of The Supreme Court of Florida.

B. At all times material, Marvin S. Davis, (hereafter "Respondent"), resided in Orange County, Florida, and practiced law in Orange County and Seminole County, Florida.

C. That Respondent was under the influence of alcohol while in the office of (then) Circuit Judge Dominick J. Salfi, at approximately 10:30 AM on June 4, 1986. (T-46-13 thru 23; T-67-21; T-84-22) That Respondent was

also at that time agitated, angry, loud and abusive in addressing Judge Salfi's secretary and members of his staff, while insisting that they interrupt and let him see Judge Salfi who was then conducting a meeting in chambers. (T-101-8 thru 10; T-46-13 thru 23; T-67-14 thru 25; T-68-1 thru 25; T-85-2 thru 5) Further Respondent while under the influence of alcohol on the same date while in the public areas of the courthouse in Seminole County addressed in a loud and antagonistic manner an Assistant State Attorney demanding to speak to him if he knew what was good for him. (T-171-14 thru 21)

D. Thereafter, Respondent appeared in open court before Judge Salfi while under the influence of alcohol at approximately 11:00 AM (T-172-22; T-174-20 thru 25). Further, that Respondent admitted to Judge Salfi that he had been drinking with a reference to medical reasons or reasons related to a physical ailment for doing so. (T-102-18 thru 22; T-104-5 thru 8)

E. That at that time, Judge Salfi directed Respondent to go to a certain location and take a breathalyzer test and to return the results of the test to the said Judge Salfi by that afternoon. (T-104-8 thru 14)

F. That at the time of the above described occurrences, Respondent was representing and appearing in behalf of a juvenile in a criminal case then pending before Judge Salfi.

G. That Respondent did take a breathalyzer test that day as requested. Said test was administered at the Seminole County Jail by Lt. Paul Riggins and the test results came back .110% and .098% for the first and second test respectively. Said tests were conducted at 12:21 PM and 12:22 PM respectively. At the time of said tests, Respondent smelled heavily of alcohol and was unsteady on his feet. (T-157-19 thru 23; T-167)

H. That Respondent previously had appeared in open court for Pre-Trial (May 22 as per T-129-7) on the same juvenile case and on that date was under the influence of alcohol. (T-185-3 thru 22; T-186-15; T-187-10) That the Pre-Trial scheduled to occur on May 22 was not conducted and was continued by Judge Salfi to another special Pre-Trial date (June 22 as per T-129-15). Judge Salfi continued the May 22nd Pre-Trial because Respondent was not doing what he should have been doing in the case (T-131-2 thru 8) and the statements he was making were out of character and grandiose (T-131-19 thru 23)

I. That on June 4, 1986, Respondent also appeared before Circuit Judge Kenneth Leffler in the afternoon; that Judge Leffler inquired of Respondent as

to the mornings event, specifically as to the results of the breathalyzer tests, and that Respondent falsely advised Judge Leffler, "Your Honor, I was under the legal limit." (T-142-15 and 16) That at the time of the appearance before Judge Leffler, Respondent appeared to be somewhat unsteady on his feet and perhaps slightly disoriented and that his appearance was indicative of the fact that he was still under the influence of something. (T-143-5; T-212, 213, 214) That at the time the Respondent appeared before the said Judge Leffler, he was representing an adult defendant in a criminal case.

J. That Respondent denied having drank any alcoholic beverages that day, stating that he had taken a small dosage of cough syrup early that morning. (Florida Bar Exhibit 2, Page 3, Line 1-3)

K. That on June 4, 1986, after the incidents described above, Judge Dominick Salfi gave Respondent an opportunity to voluntarily submit himself to Florida Lawyers Assistance, Incorporated, Charles Hagan, Executive Director, for evaluation for possible treatment for substance abuse. Respondent interviewed with Charles Hagan, but when Hagan's recommendation was that Respondent under go a 96-hour in-depth inpatient evaluation, the Respondent refused indicating that he was only willing to undergo an outpatient evaluation. Respondent gave as his reasons that he had worked for a governmental agency and that he was concerned that he would have to reveal secrets in such an in-depth evaluation. (Florida Bar Exhibit 1) (T-34-15 thru 22)

III. Recommendations as to whether or not the Respondent should be found guilty: I recommend that the Respondent be found guilty of violating the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 1-102(A)(5) for conduct prejudicial to the administration of justice, and 1-102(A)(6) for misconduct adversely reflecting on his fitness to practice law.

IV. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending the below discipline to be recommended pursuant to Rule 11.06(9)(a)(4), I considered the following personal history and prior disciplinary record of the Respondent, to-wit: None.

V. Statement of Costs and Manner in Which the Costs should be taxed: I find that the following costs were reasonably incurred by The Florida Bar:

A. Grievance Committee Level Costs:

1. Administrative Costs	\$ 150.00
2. Transcript Costs	345.20
3. Bar Counsel/Branch Staff Counsel Travel Costs	13.66
4. Investigator's Expenses	151.28

B. Referee Level Costs

1. Administrative Costs	\$ 150.00
2. Transcript Costs	1,135.05
3. Bar Counsel/Branch Staff Counsel Travel Costs	25.35
4. Investigator's Expenses	440.46

C. Miscellaneous Costs

1. Telephone Charges	23.99
2. Witness Fees	7.40

TOTAL ITEMIZED COSTS: \$2,442.39

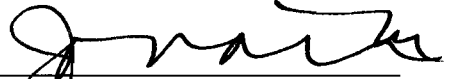
It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the Respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

VI. Recommendations as to Disciplinary measures to be applied: I recommend that the Respondent, Marvin S. Davis, be publicly reprimanded, and that he be required to pay all costs of this proceeding amounting to \$2,442.30, and that furthermore he be placed on probation for a period of two years with the following conditions:

1. That Respondent shall immediately submit to evaluation by Executive Director, Charles Hagan, Jr., Florida Lawyers Assistance, Inc., and that should Director Hagan determine that a treatment and recovery program is indicated as a result of that evaluation that Respondent be required to comply with all provisions of any such program determined and recommended by said Charles Hagan. That said evaluation and treatment program shall be approved by The Florida Bar.

2. That Respondent shall not violate the Integration Rules or the Code of Professional Responsibility.

DATED this 13 day of JULY, 1987.

  
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JOHN W. WATSON, III  
CIRCUIT COURT JUDGE  
REFEREE

Attachments  
Copies to:

Bar Counsel  
Respondent Marvin S. Davis