IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

CHARLES B. RAMBO,

Respondent.

_____/

CONFIDENTIAL

Case No. 70,045
TFB No. 86-19,593(13C)
(formerly 13C85100)

FILED
SID J. WHITE
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CLERK, SUPREME COURT
By
Deputy Clerk

THE FLORIDA BAR'S INITIAL BRIEF

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SYMBOLS AND REFERENCES

In this Brief, the appellant, The Florida Bar, will be referred to as "The Florida Bar" or "The Bar". The appellee, Charles B. Rambo, will be referred to as "the respondent". "TR" will denote the transcript of the Final Hearing before the referee. "R" will refer to the record. "RR" will refer to the Report of Referee. "RA" will refer to Complainant's First Request for Admissions which was deemed admitted by the referee's Order dated January 11, 1988.

STATEMENT OF THE FACTS AND THE CASE

In January, 1982, the respondent was retained by Kenneth Pitts to rezone a parcel of land in Hillsborough County, Florida. (RA, paragraph 1).

In February, 1982, the respondent submitted a rezoning application to the Hillsborough County Planning Commission on behalf of his client, Kenneth Pitts. (RA, pararagraph 3).

Thereafter, the Hillsborough County Planning Commission set a hearing for July 22, 1982 before the Hillsborough County Commissioners on the Pitts' rezoning application.

On June 29, 1982, the respondent received a letter from the Hillsborough County Planning Commission stating that the Planning Commission was recommending to the County Commissioners a denial of Mr. Pitts' rezoning application. (RA, pararagraph 4).

After the respondent received the Planning Commission's letter dated June 29, 1982, he met with Hillsborough County Commissioner Joseph Kotvas to discuss Mr. Pitts' rezoning application and the upcoming hearing set for July 22, 1982. (RA, paragraph 5). During the meeting, Mr. Kotvas informed the respondent that he would not be present at the July 22, 1982 hearing on Mr. Pitts' rezoning application. (RA, paragraph 6).

After meeting with Mr. Kotvas, the respondent continued the

hearing on Mr. Pitts' rezoning application so that Mr. Kotvas could be present at the hearing. (RA, paragraph 7). The hearing on Mr. Pitts' rezoning application was rescheduled to be heard before the County Commissioners on August 26, 1982. (RA, paragraph 8).

Prior to August 26, 1982, the respondent met with Mr. Kotvas and inquired as to whether or not there was anything he could do to be sure that his client's rezoning application would be approved by the County Commissioners. Mr. Kotvas informed the respondent that his client would have to pay some money in order to guarantee the approval of the requested rezoning. The respondent told Mr. Kotvas that he would consult with his client regarding their conversation. (TR, p.41, L.24-25, p.42, L.1-15; and RA, paragraphs 9, 10).

Subsequent to the conversation with Mr. Kotvas, the respondent contacted his client, Mr. Pitts, and informed him that an undetermined amount of money would have to be paid to County Commissioner Joseph Kotvas, in order to guarantee passage of the requested rezoning. (RA, paragraph 11). Mr. Pitts informed the respondent that he was willing to pay Mr. Kotvas a reasonable sum of money in return for a guarantee that his rezoning application would be approved. (TR, p.43, L.20-25, p.44, L.2-17).

After receiving Mr. Pitts' consent to the payment of a bribe, the respondent met with Mr. Kotvas to determine the amount of money required to guarantee his client's rezoning. Mr. Kotvas

informed the respondent that he would need somewhere between $5,000.00 and $7,000.00 to guarantee the requested rezoning. (TR, p.45, L.12-18).

Thereafter, the respondent informed Mr. Pitts that he would need $7,500.00 to obtain the desired rezoning. (TR, p.45, L.22-25; and RA, paragraph 12).

Mr. Pitts sent the respondent $7,000.00. After receiving Mr. Pitts' money, the respondent again met with Joseph Kotvas to determine the exact amount of money required to obtain a guarantee that the County Commissioners would approve Mr. Pitts' rezoning application. (TR, p.46, L.12-25). During the meeting, Mr. Kotvas gave the respondent a folded piece of paper which had written on it "4,000 Strawberries". The respondent understood "4,000 Strawberries" to mean he would have to pay Mr. Kotvas $4,000.00 in order to guarantee that Mr. Pitts' rezoning application would be approved. (TR, p.47, L.6-17, TR, p.48, L.2-22, TR, p.50, L.13-17; and RA, paragraph 14).

Subsequent to the meeting with Mr. Kotvas, the respondent went to the bank and withdrew $4,000.00 of Mr. Pitt's funds from his trust account, placed the cash in an envelope and contacted Mr. Kotvas to inform him that the "Strawberries" had arrived. (TR, p.48, L.20-25, p.49, L.1-9; and RA, paragraph 15).

Thereafter, the respondent picked Mr. Kotvas up at the Hillsborough County Courthouse and gave him the envelope containing $4,000.00 in cash. (TR, p.52, L.15-20; and RA,

paragraph 17).

On August 26, 1982, Mr. Pitts' rezoning application was approved by the County Commissioners in spite of the Hillsborough County Planning Commission's opposition to the same.

Subsequently, a federal investigation ensued regarding corruption by the Hillsborough County Commissioners. As part of the federal investigation, the respondent was contacted and questioned by the Federal Bureau of Investigation. (TR, p.54, L.6-10).

On April 28, 1983, the respondent testified before the Hillsborough County Grand Jury under a grant of use immunity as to his action in paying a bribe to County Commissioner Joseph Kotvas. (RA, paragraph 18).

On April 23, 1986, the respondent gave testimony on behalf of the United States of America in the case of U.S.A. vs. Fred Arthur Anderson, et al, under a grant of use immunity. (RA, paragraph 19).

The Florida Bar filed a complaint against the respondent charging him with violating the following rules of The Florida Bar Code of Professional Responsibility: Disciplinary Rule 1-102(A)(3) (engaging in illegal conduct involving moral turpitude); DR 1-102(A)(4) (engage in conduct that involves dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(6) (engage in conduct that adversely reflects on his fitness to practice law); DR 7-102(A)(3) (conceal or fail to disclose that

which he is required by law to reveal); and DR 7-102(A)(7) (counsel or assist his client in conduct that the lawyer knows to be illegal).

The Florida Bar submitted Request for Admissions to the respondent which tracked The Bar's Complaint. The Bar's Request for Admissions was not answered by the respondent and as a result, they were deemed admitted by the referee by an Order dated January 11, 1988. (R, Order dated January 11, 1988).

After the final hearing in this cause held on February 3, 1988, the referee recommended that the respondent be found guilty of violating DR 1-102(A)(3), DR 1-102(A)(4), DR 1-102(A)(6), DR 7-102(A)(3) and DR 7-102(A)(7). The referee recommended that the respondent be suspended from the practice of law in Florida for a period of thirty (30) months and thereafter until he proves rehabilitation. In addition, the referee recommended that the respondent be responsible for the costs of The Bar's proceedings. (RR, at p.2).

The Florida Bar's Board of Governors reviewed the Report of Referee and voted to seek disbarment in this matter.

SUMMARY OF ARGUMENT

In July, 1982, the respondent bribed a Hillsborough County Public Official in order to obtain a guarantee that a client's rezoning application would be approved by the Hillsborough County Commissioners.

The referee's recommendation of a thirty (30) month suspension is not a sufficient disciplinary measure for such criminal and unethical conduct. Furthermore, the recommended discipline neither achieves the purpose for which disciplinary sanctions are ordered by this Court nor is the recommendation consistent with current case law and the Standards For Imposing Lawyer Sanctions.

The respondent's cooperation with government officials in return for use immunity should not be considered mitigating in a case of bribery in light of the fact that such misconduct strikes at the very heart of the attorney's responsibility to the public and the legal profession. The respondent's misconduct was an abuse of the legal system and a disgrace to the legal profession. Simply put, there should be no mitigation for unethical misconduct as serious as that which was committed by the respondent.

Therefore, The Florida Bar respectfully requests this Court to disapprove the referee's recommendation of a thirty (30) month suspension and order the respondent disbarred from the practice of law in the State of Florida.

ARGUMENT

ISSUE: WHETHER A THIRTY (30) MONTH SUSPENSION IS A SUFFICIENT DISCIPLINARY SANCTION FOR AN ATTORNEY WHO PARTICIPATES IN ILLEGAL CONDUCT INVOLVING BRIBERY OF A PUBLIC OFFICIAL.

A thirty (30) month suspension is an insufficient disciplinary sanction for the respondent's illegal conduct of paying a bribe to a Hillsborough County Commissioner in order to obtain a favorable result on his client's rezoning application.

In The Florida Bar vs. Riccardi, 264 So.2d 5 (Fla. 1972), this Court disbarred Mr. Riccardi for conduct involving bribery of an Internal Revenue Agent with the intent to influence the agent's determination of the tax liability of one Robert Rosenbloom. In disbarring Mr. Riccardi, this Court stated:

> "In our view bribery is a particularly noxious ethical failure under the Code of Professional Responsibility, because it not only involves a breach of the individual attorney's public trust as a member of the legal profession, but also represents an attempt by the offending lawyer to induce a third party to engage in fraudulent and corrupt practices. Such conduct strikes at the very heart of the attorney's responsibility to the public and profession. We are therefore, not inclined to leniency in bribery matters, absent mitigating factors in the individual case." (Riccardi, supra, at 5).

In the case at hand, the respondent bribed a Hillsborough County Commissioner in order to obtain a favorable vote on a client's rezoning petition. (TR, p.48, L.8-15; and RA, paragraph 17). The only distinction between the Riccardi case and this case is that Mr. Riccardi was criminally prosecuted and convicted of offering a bribe to a Public Official in violation of Title 18, Section 201(f), U.S. Code and the respondent was not, due to a grant of use immunity. Although the respondent was not criminally charged with committing the felony offense of bribery, he does in fact freely admit that he committed such an offense.

The referee in this cause found that the respondent's misconduct merited disbarment, however, he only recommended a thirty (30) month suspension based on the following factors which he considered mitigating:

1. The respondent's cooperation with the federal authorities by agreeing to testify in regards to his participation in the bribery scheme with Hillsborough County Commissioner, Joseph Kotvas. (RR, at 2).

2. The respondent's discipline free record with The Florida Bar. (RR, at 2).

3. The respondent's character and reputation as established by fellow attorneys and numerous judges. (RR, at 2).

4. The Florida Bar's selective prosecution of the respondent in light of The Bar's lack of inquiry into the participation of three (3) other attorneys alleged to have been involved in related bribery schemes, based simply upon the three (3) attorneys acquittal on the criminal charges brought against them in the United States District Court. (RR, at 2).

The respondent's cooperation with the federal authorities should not be considered a mitigating factor in this case. The respondent cooperated with the federal authorities in order to avoid criminal prosecution and possible imprisonment. It is important to note that the respondent did not confess to the crime he committed until after Hillsborough County Commissioner Joseph Kotvas was arrested and federal authorities sought to interview him. (RR at 1; and TR, p.66, L.19-21). Furthermore, the respondent did not cooperate with the federal authorities until after he was granted use immunity. The respondent had nothing to lose and everything to gain by cooperating with the federal authorities and thus his cooperation should not be considered mitigating.

In addition, the referee's belief that The Florida Bar selectively prosecuted the respondent should not be considered as a mitigating factor in this case. During the final hearing in this cause, it was alleged that The Florida Bar selectively prosecuted the respondent. The aforesaid allegation was based upon a letter written by U.S. Attorney Robert Merkle and the testimony of U.S. Assistant Attorney Joseph Magri. Mr. Merkle and Mr. Magri made comments to the referee that the U.S. Attorney's Office had not been notified by The Florida Bar of any pending prosecution of attorneys Cannella, Demmi and Sierra. (TR, p.11, L.24-25, p.12, L.1-5). Based upon the aforementioned comments and The Bar's lack of comment, the referee concluded

that The Bar selectively prosecuted the respondent.

The Bar did not selectively prosecute the respondent. On March 17, 1988, this Court disbarred Michael Sierra from the practice of law for his participation in a bribery scheme with Hillsborough County Commissioners. (See The Florida Bar vs. Sierra, 521 So.2d 1111 (Fla. 1988)).

Furthermore, in regards to an alleged absence of a Bar inquiry into possible misconduct by attorneys Demmi and Cannella, The Bar made no comment based upon the confidentiality rule of the Rules Regulating The Florida Bar. Based on the foregoing, this Court should not consider as a mitigating factor,The Bar's alleged selective prosecution of the respondent.

Even if this Court considers the respondent's cooperation with federal authorities, his discipline free record with The Florida Bar, and his character and reputation as mitigating factors in this case, these factors are not sufficient to reduce the appropriate discipline in this case from disbarment to a thirty (30) month suspension.

In The Florida Bar vs. Cruz, 490 So.2d 48 (Fla. 1986), The Bar charged Mr. Cruz with violating DR 1-102(A)(3), DR 1-102(A)(5) and DR 1-102(A)(6) for felony convictions for conspiracy to bribe and bribery of a United States Government Official. At the final hearing, Mr. Cruz called as a witness, the U.S. District Court Judge who had presided at his criminal

trial and who had accepted his guilty plea. The Judge testified that Mr. Cruz was religious, "not a criminal type", and "essentially a very good person". The Judge also testified that Mr. Cruz was an aider or abettor rather than a conspirator in the strict sense of the word. In addition, Mr. Cruz called as witnesses, the probation officer who conducted his P.S.I. Report and Bishop Armando Leon. Both individuals testified favorably concerning Mr. Cruz's character and exemplary background. After hearing the aforesaid testimony, the referee recommended that Mr. Cruz be disbarred and as a result Mr. Cruz appealed. This Court approved the referee's recommendation.

The respondent's misconduct in this case is certainly as serious as the misconduct of Mr. Cruz in that he admittedly committed the crime of bribery. Therefore, this Court should disbar the respondent from the practice of law in this State.

Furthermore, a thirty (30) month suspension in this case fails to achieve the purpose for which disciplinary sanctions are ordered by this Court in that it is not fair to society, it is not sufficient to punish the breach of ethics by respondent and it is not a severe enough sanction to deter others who might be prone or tempted to become involved in like violations. The Florida Bar vs. Paules, 233 So.2d 130 (Fla. 1970).

According to Florida's Standards For Imposing Lawyer Sanctions (hereinafter referred to as The Standards), approved by The Florida Bar's Board of Governors in November, 1986, disbarment is the appropriate sanction for respondent's

misconduct.

The following sections of The Standards apply to respondent's misconduct in this case:

Section 5.1 "Failure to Maintain Personal Integrity": Under this section, disbarment is appropriate, absent aggravating or mitigating circumstances, when a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft.

Section 7.1 "Violations of other duties owed as a professional": Under this section, disbarment is appropriate, absent aggravating or mitigating circumstances, when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

The Standards, Section 9.2 "Aggravation" and Section 9.3 "Mitigation" set forth the aggravating and mitigating factors which should be considered when determining the appropriate discipline for an attorney's misconduct. In this case, the mitigating factors include an absence of a prior disciplinary record and respondent's character or reputation. The aggravating factors in this case include dishonest or selfish motive and

substantial experience in the practice of law.

Clearly, under The Standards, respondent committed a disbarble offense. The mitigating factors present in this case are not sufficient to negate disbarment in light of the aggravating factors also present.

Based on the foregoing, The Florida Bar respectfully requests that this Court disapprove the referee's recommended discipline of a thirty (30) month suspension and disbar respondent from the practice of law in this State.

CONCLUSION

This Court has held that it is not inclined to be lenient in bribery matters absent mitigating factors since such conduct by an attorney strikes at the very heart of an attorney's responsibility to the public and to the legal profession.

Although some mitigating factors are arguably present in this case, they are not sufficient to justify a reduction of the degree of discipline which should be imposed against respondent. The only appropriate sanction for the respondents egregious misconduct is disbarment.

WHEREFORE, The Florida Bar respectfully requests this Honorable Court to disapprove the referee's recommended discipline and disbar the respondent, Charles B. Rambo, from the practice of law in this State.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FLORIDA BAR'S INITIAL BRIEF has been furnished by Regular U.S. Mail to B. Anderson Mitcham, attorney for respondent, 1509 East Eighth Avenue, Tampa, Florida, 33605, and John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida, 32399-2300, this 6th day of July, 1988.

Bonnie L. Mahon
BONNIE L. MAHON