

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Plaintiff(s),

Case No.: 70,115
(Florida Bar Case No.: 17C87F26)

vs.

RICHARD G. NEWHOUSE.
Defendant(s).

FILED
OUT 5 1987
BY [Signature]

REPORT OF REFEREE

I. Summary of Proceedings. Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Intergration Rule of The Florida Bar, a hearing was held on May 22, 1987, upon the Bar's motion for Judgment on the Pleadings served by mail May 11, 1987.

A single count complaint was filed in the Supreme Court by The Florida Bar on February 25, 1987, charging that Respondent filed Petition for Review in prior disciplinary case No. 66,642(Fla. Bar #17A84F20) on August 18, 1986, which contained false statements of fact. Respondent is accused of falsely charging Ft. Lauderdale attorney Morris Finkel with neglect in failing to file in a timely manner a Petition for Review of the Referee's Report.

At a hearing on the Bar's Motion on May 22, 1987, there was no appearance for the respondent. Petitioner's Exhibit "A", the notice of said Hearing with a signed postal receipt indicating actual receipt by respondent on 5/12/87 was received as Petitioner's Exhibit "A".

As the respondent had neither responded to the Bar's Complaint personally served on him 3-5-87 and had not answered written requests for admissions also personally served 3/5/87 the undersigned entered an Order on June 2, 1987, granting the Florida Bar's Motion for Judgment on the Pleadings.

Later the same day, June 2, 1987, the undersigned received "Respondent's Opposition to Bar's Motion for Judgment on the Pleadings" served by mail 6-1-87. Treating this pleading as a motion for relief from judgment pursuant to Rule 1.540(b), CPR, or as a motion to allow late response to requests for admissions pursuant to Rule 1.370(a), CPR, I entered an Order on Pleadings on June 10, 1987, denying the motion.

Respondent filed Motion for Rehearing, Motion to File Answers to Request for Admissions and Answer and Response to Request for Admissions, served by mail June 22, 1987. An Order on Pleadings was entered July 9, 1987, denying the relief sought as there was no emergency, excusable neglect or oversight on the part of the respondent in not attending the hearing of 5-22-87 or in responding to pleadings, prior thereto.

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

Hearing on Discipline to be imposed was noticed for August 28, 1987, in the Broward County Courthouse. At this hearing the following appeared:

For The Florida Bar: Jacquelyn Plasner Needelman
Bar Counsel
915 Middle River Dr. No. 602
Ft. Lauderdale, FL 33304

For The Respondent: Richard G. Newhouse (Pro Se)
1410 NE 56th Court
Ft. Lauderdale, FL 33334
and
Richard G. Newhouse (Pro Se)
P.O. Box 11699
Ft. Lauderdale, FL 33339-1699

Abbreviations used: "TR" for transcript of proceedings before the referee on August 28, 1987.
"DE" for transcript of the deposition of Morton Abrams, Esq., received in evidence at the hearing.
"BE" for Bar Exhibit.

II. Findings of Fact: After considering the pleadings and evidence before me, I find:

1. On or about August 13, 1986, Respondent prepared and forwarded to the Supreme Court of Florida Respondent's Petition for Review in the case styled the Florida Bar, Complainant, vs. Richard G. Newhouse, Respondent, case no. 66,642 (Bar Case No. 17A84F20) a copy of Respondent's Petition for Review is attached to the Bar Complaint and is in evidence (BE-"A")

2. In paragraphs 1,2,4 and 5 of the petition for review, Respondent represented to the Court that it was the responsibility of his then attorney, Morris Finkel, to file a timely Petition to the Bar objecting to the referee's findings and recommendations for sanctions.

3. Despite the Order granting Judgment on the Pleadings entered June 2, 1987, the Bar presented testimony at the August 28, 1987, hearing about the circumstances surrounding the preparation and filing of the Petition for Review filed in the former proceeding.

4. In an unsworn statement Respondent castigated The Bar officers having charge of the disciplinary process as being unscrupulous persons who, after prosecuting "some sort of phoney charge against me" (i.e., talking to jurors without permission of the trial judge)(TR-15, 16), were now seeking the (Unconscionable) remedy of disbarment (TR-15). With considerable reluctance respondent finally took the oath (TR-37, 38) and in a brief conclusory statement denied that the petition to the Supreme Court contained anything but the truth (TR-38).

His excuse for not answering the Bar's Complaint in the instant case and the Requests for Admissions associated with

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

it consists of a rambling and somewhat disjointed discourse about his problems with personnel (TR-21 to TR-26), including an accusation that one employee, a David Monaco (phonetic) was a spy, a Judas-style character working for the Florida Bar. (TR-22,28 and 29)

In the prior disciplinary matter he wanted to petition for review of the findings in the referee's report, but the deadline was missed and he knew the Court would be looking for good cause why the petition was not timely filed. He states there was no polite way of excusing the lateness issue except the "ugly truth" which was that his attorney botched the deadline. (TR-19).

Katay Jackson Lerman, a Ft. Lauderdale attorney specializing in appellate practice, was contacted by respondent and Mr. Finkel regarding review of the referee's report (TR-41). Respondent asked her to prepare the brief but she declined to represent respondent because she was working on an unrelated matter for the Bar (TR-43). During the discussion with respondent, she mentioned that Morris (Finkel) had discussed some type of administrative proceeding with the Florida Bar that had to be pursued to which respondent replied "I will take care of it" (TR-43).

Morris Finkel, a Ft. Lauderdale attorney, responded to Mr. Newhouse's Petition for Review in the prior disciplinary proceeding because respondent had falsely accused him of neglect in failing to timely file his objections to the Referee's report. (TR-47). As to Newhouse's claim that he did not know what the deadline was, Mr. Finkel stated that he and Newhouse went through the disciplinary rules in The Bar Journal together and that respondent was extremely knowledgeable about all the rules (TR-48).

Following the submission of the Referee's Report in the prior case, Mr. Finkel received a letter from the Board of Governors advising that recommendations for disciplinary sanctions had been made by the Board. Finkel and respondent met and went over the applicable rule and highlighted its provisions. Since he was no longer doing appellate work, Finkel gave respondent the name of an appellate attorney. (i.e. Atty. Lerman)(TR-49).

Respondent later informed Finkel that respondent had consulted with her and another appellate specialist and that he, Newhouse, was knowledgeable as to the procedures and knew that he had to file a timely appeal. (TR-49,50).

As to the extent of his representations of respondent, Finkel testified that he was instructed by respondent to represent him in arguing the case before the referee and, perhaps, fly to Tallahassee if there was oral argument. "He (Newhouse) wrote all the pleadings." Finkel did sign pleadings up to the point that he filed a petition to withdraw as counsel. (TR-50).

Some months following the receipt of the letter from the Board of Governors, containing the Board's recommendations Finkel received a call from respondent who said he was going to file a motion which would allege that he didn't know the rules and that it was Finkel's fault that the petition had NOT been filed

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

earlier. (TR-51) When he received a copy of respondent's petition, Finkel realized its allegations were false and he filed an affidavit to that effect with the Supreme Court. (TR-51)(DE "A")

Respondent disagreed with Finkel and even challenged Finkel's right to protest the charges of neglect made against him characterizing Finkel's protest as having

"***a stench of corruption where the lawyer who used to represent you as a common foe has now sided up with action arising in the first action is now rising up against you." (TR-71)

Norton Abrams' deposition testimony was received into evidence. (DE "B") Abrams is Morris Finkel's law partner and was aware that Finkel was representing respondent in a Florida Bar disciplinary matter. (DE-5) He was present on numerous occasions when Finkel and Newhouse were discussing the matter. (DE-5,6)

At a luncheon meeting with Finkel and Newhouse in December, 1985, he recalled a conversation in which a referee's report containing recommendations was being discussed. (DE-6,7) It was determined that an appeal should be taken and that Newhouse said he understood the rules and regulations applicable to such an appeal and that he would write his own briefs but that he might consult with an appellate specialist. (DE-8) He also recalls his partner stating that he would recommend several appellate lawyers for respondent to contact. (DE-8,9) He is also fairly certain that Newhouse would either handle the appeal himself or have an appellate attorney do it for him. (DE-9)

5. I find by clear and convincing evidence that respondent has violated Disciplinary Rule 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) and Disciplinary Rule 7-102(A)(5) (in his representation of a client a lawyer shall not knowingly make a false statement of fact) by proceeding and filing a petition for review before the Supreme Court in which he deliberately misled the Court as to the reasons he had not submitted a timely petition for review by falsely accusing another attorney of responsibility for the lateness in filing.

III. Recommendations as to whether or not the Respondent should be found guilty:

I recommend that the respondent be found **GUILTY** with respect to the violation of Disciplinary Rules 1-102(A)(4) and 7-102(A)(5) as alleged in the Complaint.

IV. Recommendations as to Disciplinary Measures:

1. Referring to sanction 6.11 of Florida's Standards for Imposing Lawyer Sanctions approved by the board of Governors in November, 1986, it is stated that

"Disbarment is appropriate when a lawyer:
(a) with the intent to deceive the Court, knowingly makes a false statement, or submits a false document;***"

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

I have previously found that the statements in the Petition for Review accusing a fellow attorney of fault in the late filing of a Petition for Review were false and that such false statements were wilfully made with the intent of inducing the Supreme Court to grant him review of the referee's report outside the time constraints provided for in the rules.

2. Sanction 3.0 of the "Standards" provide that a court should consider (c) the existence of aggravating or mitigating factors. I find the following aggravating factors enumerated in Sanction 9.22 of the "Standards" to be present:

a. The prior disciplinary offense set forth in the Court's opinion (#66,642), *The Florida Bar v. Newhouse*, 498 So2d 935(Fla. 1986) in which the Respondent was publicly reprimanded. (Factor 9.22(a) of Sanctions)

b. His dishonest motive in attempting to gain consideration of a tardily-filed Petition for Review by falsely accusing a fellow attorney of client neglect. [Factor 9.22(b) of Sanctions]

c. A Pattern of Misconduct. Subsequent to the filing of the instant disciplinary proceeding (respondent's second) a third proceeding has been instituted by Bar complaint #70,792 filed in the Supreme Court July 1, 1987, in which respondent has been accused of conversion of funds and violation of court orders and disciplinary rules in the settlement of a personal injury claim on behalf of a minor. [Factor 9.22(c)]

The final hearing in the third grievance matter was held Sept. 25, 1987. Respondent did not appear at the hearing, the Florida Bar presented a prima facie case and the undersigned is now awaiting the transcript before compiling a report. It might be advisable for the Board of Governors to await my report in Complaint #70,792, which should be forthcoming in the next few weeks.

d. The statement in the Petition for Review is certainly a false statement and a deceptive practice so sanction 9.22(f) applies.

e. Respondent completely refuses to acknowledge the wrongful nature of his false representation to the Supreme Court. He blames everyone else for his problems, Morris Finkel, former employees, The Florida Bar and the Supreme Court.

f. The respondent has substantial experience in the practice of law; he was admitted to the Bar in 1975. [Factor 9.22(i) of sanctions]

g. Although not expressly listed as an aggravating factor, I consider that falsely accusing a fellow lawyer of neglect to cover one's own hide to be an especially loathsome offense.

3. I find that none of the mitigating factors enumerated in Factor 9.32 of the "Sanctions" are present. I find nothing in the nature of a mitigating factor or circumstance not specifically listed in Factor 9.32 to be present in this case.

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

4. Because of the false statements of fact contained in the Petition for Review in Case No. 66,642, dated August 18, 1986, his prior disciplinary record, the existence of numerous aggravating factors and the absence of any mitigating factors I conclude and therefore recommend that Disbarment of the respondent from the practice of law is the only appropriate remedy.

IV. Personal History:

I consider the following personal history which was elicited by me at a hearing in prior disciplinary proceeding #66,642, on November 15, 1985. The references are of course to the transcript of that hearing.

"Age: Not in evidence but birth year given as 1947 in 2 Martindale-Hubbell 288(1985 ed.) so age is 38.

"Date admitted to bar: 1975 (TR-90)

"Prior disciplinary convictions and disciplinary measures imposed therein: No evidence was offered by the Florida Bar.

"Other Personal Data: Following graduation from law school respondent worked for a firm in Pompano Beach for a short period of time, then worked with a Ft. Lauderdale firm for six months. He went with a Miami firm for a short time then went with another Broward County firm for six months. He then associated himself with Mitchell Pasin, P.A., and specialized in commercial litigation (50%) and personal injury litigation (50%). (TR-91)

"After three years with Mitchell Pasin he went on his own for the past four years specializing mostly in personal injury litigation (90%). He is a believer in continuing legal education, has attended approximately 100 days of seminars in ten years of practice, and belongs to the American Trial Lawyers Association (TR-II-92).

"He has been married to Carolyn Joyce Newhouse for 17 years, who is employed as a legal secretary to another Ft. Lauderdale law firm. (TR II-83,84).

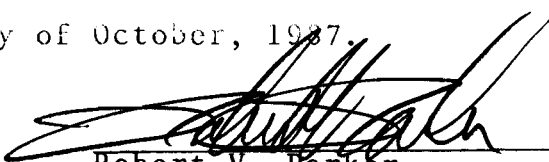
VI. Prior Disciplinary Record:

I considered the disciplinary proceeding in prior Case No. 66,642 reported in 498 So2d 935(Fla. 1986), in which respondent was administered a public reprimand.

VII. Statement of Costs.

As soon as a complete statement of same is received, I will forward it with appropriate recommendations.

Dated this 7th day of October, 1987.


Robert V. Parker
Referee

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

Original to Supreme Court Clerk

Copies to:

JACQUELINE P. NEEDELMAN

Bar counsel
915 Middle River Drive, Ste. 602
Ft. Lauderdale, FL 33304

JOHN HUME

Chairman
Seventeenth Judicial Circuit
Greivance committee "C"
1401 University drive
Ste. 301
Coral Springs, FL 33071-6039
(305) 755-9880

JOHN T. BERRY

Staff Counsel
THE FLORIDA BAR
Tallahassee, FL 32301-8226
(904) 222-5286

JOHN F. HARKNESS, JR.

Executive Director
The Florida Bar
Tallahassee, FL 32301-8226

RICHARD G. NEWHOUSE, ESQ.

Post Office Box 11699
Ft. Lauderdale, FL 33339-1699

RICHARD G. NEWHOUSE, ESQ.

1410 N.E. 56th Court
Ft. Lauderdale, FL 33334