

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Petitioner,

vs.

CHARLES F. WISHART,  
Respondent.

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CASE No. 70,584  
TFB No. 85-13,803(13C)  
(formerly 13C85100)

**THE FLORIDA BAR'S INITIAL BRIEF**

BONNIE L. MAHON  
Assistant Staff Counsel  
The Florida Bar  
Suite C-49  
Tampa Airport, Marriott Hotel  
Tampa, Florida 33607  
(813) 875-9821

and

DAVID R. RISTOFF  
Branch Staff Counsel  
The Florida Bar  
Suite C-49  
Tampa Airport, Marriott Hotel  
Tampa, Florida 33607  
(813) 875-9821

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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 F. WISHART, will be referred to as "the respondent". "C" will refer to the Complaint filed in this cause. "TR1" will refer to the transcript of the final hearing held on March 10, 1988. "TR2" will refer to the transcript of the final hearing held on March 25, 1988. "TR3" will refer to the transcript of the final hearing held on April 4, 1988. "TR4" will refer to the transcript of the hearing on May 9, 1988. "RR" will refer to the Report of Referee. "RA" will refer to respondent's Answer, Affirmative Defenses and Motion to Strike Complaint. "R" will refer to the record in this case.

STATEMENT OF FACTS AND OF THE CASE

In May, 1983, respondent and his wife, Bobby Sue Wishart, had physical possession of Tiffany Bates. Respondent was the step-grandfather of Tiffany Bates. In May, 1983, respondent and Bobby Sue Wishart were named as parties in the dissolution of marriage between Randall A. Bates and Leslie M. Bates, the parents of Tiffany, based upon the Wisharts' physical possession of Tiffany Bates. (RR, p.1; Respondent's Exhibit #5).

On June 1, 1983, Circuit Judge Phillip L. Knowles conducted a hearing to determine who should receive temporary custody of nine month old Tiffany Bates. Judge Knowles provided the respondent with an opportunity to be heard at the temporary custody hearing; however, Judge Knowles did not provide the respondent with an opportunity to present witnesses. (RR, p.1; Respondent's Exhibit #1).

On June 2, 1983, Judge Knowles entered a Temporary Order awarding the temporary care, custody, control and primary place of residence of Tiffany Bates, to her mother, Leslie M. Bates. (RR, p.2; Bar's Exhibit #1).

On November 18, 22, and 23, 1983, respondent sent letters to Judge Knowles, with copies to opposing counsel. All of the letters sent to Judge Knowles contained information which was

beyond the scope of the evidence and testimony presented at the previous hearings held in the Bates' case. Furthermore, the letters contained matters which were potentially detrimental to the other parties to the cause. (RR, p.2; Bar's Exhibit #2).

On November 29, 1983, Judge Knowles entered an Order of Recusal recusing himself from the Bates' custody case due to the letters sent by the respondent to Judge Knowles. (RR, p.2; Bar's Exhibit #3; TR1 p.31, L.9-13). The November 29, 1983 Order of Recusal did not operate to vacate the Temporary Custody Order dated June 2, 1983. (RR, p.2; Bar Exhibit #3; TR1 p.33, L.6-15; TR1, p.88, L.10-20; Bar's Exhibit #4).

On December 10, 1983, the respondent and his wife took possession of the minor child, Tiffany, and refused to return her to her mother in violation of the June 2, 1983 Temporary Custody Order. (RR, p.2; Bar's Exhibit #1; TR1, p.90, L.17-25, p.91, L.1-13). The respondent disregarded the Temporary Custody Order dated June 2, 1983, claiming that said Order was "void" due to Judge Knowles' Recusal Order dated November 29, 1983. (TR3, p.145, L.2-6; RA, p.2).

On December 13, 1983, Circuit Judge Robert W. Rawlins, Jr. entered a Temporary Restraining Order requiring the respondent and his wife to return the minor child, Tiffany, to her mother. (RR, p.2; Bar's Exhibit #5; TR1, p.93, L.18-25, p.94, L.1-6). A Hillsborough County Deputy Sheriff went to the respondent's

home and attempted to serve the Temporary Restraining Order on the respondent. The respondent refused to recognize the validity of the Temporary Restraining Order based on his assertion that it was "void" because the June 2, 1983 Temporary Custody Order was "void". Further, respondent refused to recognize the validity of the Temporary Restraining Order, alleging that it was not certified. (RR, p.2; Bar's Exhibit #6; and TR3, p.145, L.2-6).

On December 13, 14, and 15, 1983, the respondent actively participated in a course of conduct deliberately calculated to conceal Tiffany's whereabouts, to conceal his wife's whereabouts, and to thwart the lawful orders of the Court. (RR, p.3). On December 14, 1983, the respondent drove himself and his wife to a store owned by his wife's cousin. After dropping off his wife, the respondent drove to the Hillsborough County Courthouse to appear before Judge Rawlins in response to the Temporary Restraining Order dated December 13, 1983. Mrs. Wishart concealed herself and Tiffany. (RR, p.3; and TR1 p.306, L.20-25, p.307, L.1-25, p.308, L.1-4). At two hearings held on December 14, 1983 before Judge Rawlins, the respondent refused direct orders from Judge Rawlins to reveal the whereabouts of Tiffany. After the respondent refused to reveal the whereabouts of Tiffany, Judge Rawlins committed the respondent to the Hillsborough County Jail with a condition that he could be released by either revealing the whereabouts of the child, or

producing her before the Court. (RR, p.3; and TR1, p.308, L.1-12). On December 15, 1983, Judge Rawlins made arrangements for the Hillsborough County Jail to transport the respondent to the Hillsborough County Courthouse for a hearing beginning at 10:00 a.m. During the hearing on December 15, 1983, the respondent again refused to disclose the whereabouts of Tiffany unless the Court agreed not to deliver the child to her mother. At the hearing on December 15, 1983, the Court made an agreement with the respondent to turn the child over to H.R.S. if the respondent would assist the Court and have the child brought to the Court. (RR, p.3; TR1, p.105, L.2-25, p.106, L.1-25, p.107, L.1-10; and Bar's Exhibit #9). The respondent then contacted his wife by phone. Thereafter, Mrs. Wishart delivered Tiffany to Judge Rawlins for placement with H.R.S. (RR, p.3; and TR1, p.107, L.11-25, p.108, L.1-7). The minor child, Tiffany, remained in the custody of H.R.S. for a short time, and was then returned to her mother. (RR, p.3).

On December 3, and 4, 1984, a final hearing on the Bates' dissolution of marriage and child custody action was held before the Honorable Manuel Menendez, Jr., Circuit Judge. The respondent actively participated in the final hearing as a party and as an attorney. (RR, p.4). In the Final Judgment, shared parental responsibility was ordered, with primary residence of the child, Tiffany, being with her mother, Leslie Bates. (RR,



p.4; Bar's Exhibit #13; and TR4, p.152, L.25, p.153, L.1-15). The respondent refused to recognized the presumptive validity of the Final Judgment based on his assertion that the case was not at issue when the final hearing was held. (RR, p.4).

On February 7, 1985, the respondent obtained possession of Tiffany, and wrongfully refused to return the child to her mother. (RR, p.4; and TR4, p.153, L.21-25, p.154, L.1-8).

On March 1, 1985, a Writ of Habeas Corpus was entered by Circuit Judge Donald C. Evans, ordering the respondent and/or his wife to immediately deliver the minor child, Tiffany, to her mother. (RR, p.4; and Bar's Exhibit #14). The respondent refused to comply with the Writ of Habeas Corpus based on his assertion that it was "void" because:

- (1) there was no return date in the body of the Writ; and
- (2) the Writ was predicated on the "void" Final Judgment. (RR, p.4).

The respondent appealed the Final Judgment of Dissolution of Marriage in the Bates' case. On April 2, 1986, the Second District Court of Appeals issued an opinion reversing and remanding for further proceedings based on a finding that the Wisharts should have been afforded an opportunity to be heard and present evidence at the final hearing held on December 3 and 4, 1984. (Bar's Exhibit #21). On remand, another final hearing on the Bates' custody matter was held before the Honorable Vernon

Evans, Circuit Judge. On December 17, 1987, Judge Evans entered an Order granting a Motion for Involuntary Dismissal of the Wisharts Counter-Claim for Custody of Tiffany Bates. The aforementioned Order was entered by Judge Evans based upon the fact that the Wisharts failed to establish their claim for custody of the natural mother's child. (Bar's Exhibit #23; and TR1, p.177, L.23-25, p.178, L.1-16, p.181, L.25, p.182, L.1-24).

The Florida Bar filed a Complaint in this case charging the respondent with violating the following Disciplinary Rules of the Code of Professional Responsibility: DR 1-102(A)(4) (engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-102(A)(5) (engage in conduct that is prejudicial to the administration of justice); DR 7-102(A)(1) (file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another); DR 7-102(A)(3) (conceal or knowingly fail to disclose that which he is required by law to reveal); DR 7-102(A)(7) (counsel or assist his client in conduct that a lawyer knows to be illegal or fraudulent); DR 7-106(C)(4) (assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence, for any position or

conclusion with respect to the matter stated herein); DR 7-106(C)(6) (engage in undignified or discourteous conduct which is degrading to a tribunal); and DR 7-106(C)(7) (intentionally or habitually violate any established rule of procedure or of evidence). (C, p.4).

A final hearing in this cause was held before the Honorable William A. Norris, Jr., Referee, on March 10, March 25, and April 4, 1988. On April 21, 1988, Judge Norris issued a preliminary ruling concluding that The Bar had proved each of the allegations in its Amended Complaint, thereby establishing violations of each of the disciplinary rules enumerated above. Subsequently, on May 9, 1988, a hearing was held regarding the appropriate discipline for the respondent's misconduct. At the May 9, 1988 hearing, Bar Counsel, with the approval of the Designated Reviewer, recommended that the respondent be disbarred from the practice of law for his misconduct.

On June 9, 1988, the referee issued his Report recommending that the respondent be disbarred from the practice of law. In addition, the referee recommended that the respondent be responsible for The Florida Bar's costs in the disciplinary proceedings. In recommending that the respondent be disbarred from the practice of law, the referee found as follows:

On numerous occasions (too numerous to count) during the torturous history of the custody

dispute, respondent asserted his personal opinions and/or feelings about the justness of court rulings, the truthfulness of witnesses, opposing counsel and reports of court counselors (as he continued to do during this disciplinary proceeding).

Throughout the entire time-frame encompassed by the Bar's Complaint, respondent deliberately, willfully and knowingly disobeyed, and counseled others to disobey, orders and judgments of the Circuit Court of the Thirteenth Judicial Circuit. Respondent pursued a course of conduct knowingly designed to disrupt the orderly process of the judicial system in order to serve his own ends, as he alone defined them. Whenever confronted with an adverse judicial determination, respondent invented reasons to classify the adverse ruling, order, or judgment as "void" thereby permitting him, in his own mind, to ignore the ruling, order, or judgment with impunity. He has yet to recognize, or even acknowledge, the adverse impact this course of conduct had, or will have in the future, on the very system he took an oath to support. His overall defense that he was only motivated by the necessity to protect Tiffany from harm, real or imagined, is rejected in its entirety.

Respondent's attitude toward the law and toward the judicial system generally can be gleaned from an examination of just one of his 185 exhibits, Respondent's 121-A, an amazing 246 page document entitled "Complaint for Declaratory Judgment, Equitable, and other Appropriate Relief," Charles E. Wishart et al v. The Honorable Joseph A. Boyd, Jr., et al, Case No. 85-603-CIV-T-13, United States District Court, Middle District. I, of course, do not expect the Court to plow through all of the respondent's 185 exhibits (consisting of 1,471 pages) or to read the 994 page transcript, however, I urge the Court to review Respondent's 121-A in order to fully understand the recommended discipline contained in paragraph D below. This exhibit alone demonstrates respondent's unfitness to continue as a member of The Florida Bar. (RR, p.4,5).

On December 29, 1988, The Florida Bar's Board of Governors reviewed the Report of Referee in this cause and voted to appeal the referee's recommended discipline of disbarment. The Board recommends that a three (3) year suspension is more appropriate in light of respondent's personal and emotional involvement in the Bates' custody matter.

SUMMARY OF ARGUMENT

The referee in this case recommended that the respondent be disbarred from the practice of law for violating numerous Court Orders and for displaying inappropriate conduct during the course of the Bates' Dissolution of Marriage action.

It is the Florida Bar Board of Governors recommendation that the appropriate discipline for respondent's misconduct is a three (3) year suspension rather than disbarment in light of respondent's personal and emotional involvement in the Bates' case.

ARGUMENT

WHETHER THE REFEREE'S RECOMMENDATION OF DISBARMENT FOR RESPONDENT'S REFUSAL TO OBEY COURT ORDERS SHOULD BE REDUCED TO A THREE (3) YEAR SUSPENSION IN LIGHT OF RESPONDENT'S PERSONAL AND EMOTIONAL INVOLVEMENT?

The respondent and his wife, Bobbie Sue Wishart, were made parties to a Dissolution of Marriage action between Randall A. Bates and Leslie M. Bates, by virtue of the fact that they had physical possession of the Bates' infant, Tiffany.

The respondent acted as the attorney for himself and his wife in the Bates' action in an effort to obtain the legal custody of his step-granddaughter, Tiffany.

During the course of the Bates' proceedings, the respondent violated and counseled others to disobey a Temporary Custody Order dated June 2, 1983; a Temporary Restraining Order dated December 13, 1983; oral orders of Circuit Judge Robert W. Rawlins, Jr. on December 14 and 15, 1983; a Final Judgment of Dissolution of Marriage dated February 26, 1985, nunc pro tunc, December 4, 1984; and a Writ of Habeas Corpus dated March 1, 1985. In addition, respondent corresponded with the Court wherein he asserted his personal opinions and provided information beyond the scope of the testimony and evidence presented during the hearings on the Bates' case.

Furthermore, during the Bates proceedings, the respondent pursued a course of conduct knowingly designed to disrupt the orderly process of the judicial system in order to serve his own ends.

After the final hearing in this case, the referee recommended that the respondent be disbarred from the practice of law.

The Florida Bar's Board of Governors reviewed the Report of Referee in this cause and voted to appeal the referees recommended discipline of disbarment, and seek a three (3) year suspension based upon respondents personal and emotional involvement in the Bates case.

The Florida Standards for Imposing Lawyer Sanctions provides that disbarment is the appropriate discipline for the Respondents misconduct. Standard 6.11(b) states that disbarment is appropriate when a lawyer improperly withholds material information and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding. Standard 6.21 states that disbarment is appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

Under each of the aforementioned sections, aggravating and



mitigating factors can be considered to increase or decrease the degree of discipline to be imposed against an attorney for misconduct.

The referee found the following aggravating factors present in this case; a) dishonest or selfish motive; b) a pattern of misconduct; c) refusal to acknowledge wrongful nature of conduct; d) substantial experience in the practice of law and; e) respondent intentionally violated several Court orders, a Writ of Habeas Corpus and a final judgment. In addition, the referee found as a mitigating factor that the respondent did not have a prior disciplinary record. (RR, p. 6,7).

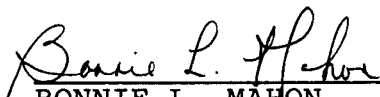
It is the position of The Florida Bar Board of Governors that the respondent's personal and emotional involvement in the Bates' dissolution case should have been considered as a mitigating factor sufficient to decrease the degree of discipline in this case from disbarment to a three (3) year suspension. The child to whom the Court orders applied was respondent's step-grandchild. Respondent has insisted throughout the proceedings that his step-granddaughter would be subjected to neglect if returned to her mother.

CONCLUSION

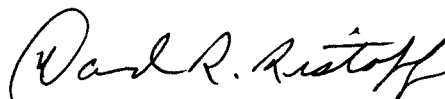
It is the recommendation of The Florida Bar Board of Governors that the respondent's personal and emotional involvement in the Bates' Dissolution of Marriage action be deemed sufficient mitigation to decrease the degree of discipline to be imposed in this case from disbarment to a three (3) year suspension.

WHEREFORE, The Florida Bar respectfully requests this Honorable Court disapprove the referee's recommended discipline of disbarment and suspend the respondent from the practice of law for three (3) years.

Respectfully submitted,



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BONNIE L. MAHON  
Assistant Staff Counsel  
The Florida Bar  
Suite C-49  
Tampa Airport, Marriott Hotel  
Tampa, Florida d 33607  
(813) 875-9821



\_\_\_\_\_  
DAVID R. RISTOFF  
Branch Staff Counsel  
The Florida Bar  
Suite C-49  
Tampa Airport, Marriott Hotel  
Tampa, Florida 33607  
(813) 875-9821

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of  
The Florida Bar's Initial Brief has been furnished by  
Certified Mail No. P 827-885-959 to Charles F. Wishart,  
respondent at his record bar address of 410 West Bloomingdale,  
Brandon, Florida, 33511-7402, and John T. Berry, Staff Counsel,  
The Florida Bar, Tallahassee, Florida, 32301, on this 9th  
day of September, 1988.

  
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BONNIE L. MAHON