

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs

CHARLES F. WISHART,

Respondent.

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

JUL 13 1988
SUPREME COURT
TALLAHASSEE

REPORT OF REFEREE

A. Summary of Proceedings

See:
Supplemental Report

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, and Rule 3-7.5, Rules of Discipline, a final hearing was held on March 10, March 25, April 4, and May 9, 1988. The enclosed pleadings, orders, transcripts and exhibits are forwarded to The Supreme Court of Florida with this report, and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Bonnie L. Mahon and
David R. Ristoff

For the Respondent: Pro Se

B. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged:

After considering all the pleadings and evidence before me, I find as follows:

1. In May, 1983, respondent became involved in a bitterly contested, and extremely protracted, child custody dispute, both as a named party and as attorney for himself and his wife, Bobbie Sue Wishart, the paternal grandmother of the minor child, Tiffany Michelle Bates. It is important to understand that respondent is only Tiffany's step-grandfather.

2. On June 1, 1983, Circuit Judge Phillip L. Knowles, Thirteenth Judicial Circuit, conducted a hearing to determine, among other things, who should receive temporary custody of then nine month old Tiffany. Contrary to his assertions, at this proceeding respondent was indeed given an opportunity to be heard, although he was not given an opportunity to present witnesses.

3. On June 2, 1983, Judge Knowles entered a Temporary Order awarding the temporary care, custody, control and primary place of residence of Tiffany to her mother, Leslie M. Bates. Respondent unjustifiably refused to recognize the presumptive validity of this order, setting in motion a continuing pattern of conduct which ultimately gave rise to these disciplinary proceedings. Thereafter, further hearings were held before Judge Knowles on August 3, 1983, and November 4, 1983.

4. On November 18, 22 & 23, 1983, respondent sent letters to Judge Knowles, with copies to opposing counsel. Each of these letters contained information which was beyond the scope of the evidence and testimony at the three previous hearings. The letters contained matters which were potentially extremely detrimental to the other parties to the cause. As a direct result of these materials Judge Knowles very properly, and on his own motion, recused himself. The November 29, 1983, Order of Recusal did not operate to vacate the Temporary Custody Order dated June 2, 1983, and that order remained as a presumptively valid order.

5. Notwithstanding the June 2, 1983, Temporary Custody Order, on December 10, 1983, respondent and his wife took possession of Tiffany and refused to return her to her mother. Respondent's affirmative defense that the June 2, 1983, Temporary Custody Order was "void" and, therefore, he was justified in refusing to recognize that order, is specifically rejected in its entirety.

6. On December 13, 1983, Circuit Judge Robert W. Rawlins, Jr., entered a Temporary Restraining Order ordering respondent and his wife to return Tiffany to her mother. A Hillsborough County Deputy Sheriff went to respondent's home and attempted to serve the Temporary Restraining Order on respondent. Respondent would not comply with the Temporary Restraining Order because he asserted that it, too, was "void" because it was not certified, and because he still refused to recognize the presumptive validity of the June 2, 1983, Temporary Custody Order. It does appear to me that the order was

indeed certified, however, I specifically find that as an attorney, and a party, respondent was ethically and legally required to comply with the December 13, 1983, Temporary Restraining Order by immediately delivering Tiffany to her mother, whether the order was certified or not. His affirmative defenses that his conduct was justified because the December 13, 1983 order was not certified, and the June 2, 1983 order was "void" are specifically rejected in their entirety.

7. On December 13, 14 & 15, 1983, 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, in that:

(a) On December 14, 1983, respondent drove himself and his wife to a store owned by his wife's cousin. After his wife departed the automobile respondent drove to the Hillsborough County Courthouse in order to appear before Judge Rawlins in response to the December 13 Temporary Restraining Order. Mrs. Wishart thereafter concealed herself and Tiffany. At two hearings that day before Judge Rawlins, respondent refused direct orders from Judge Rawlins to reveal the whereabouts of Tiffany. He was committed 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. He remained in jail overnight.

(b) On December 15, 1983, respondent again appeared before Judge Rawlins. He again refused to disclose the whereabouts of Tiffany unless the Court agreed not to deliver the child to her mother. Ultimately, respondent contacted his wife and Tiffany was taken into HRS custody. She remained in HRS custody for a short time and was then returned to her mother.

8. Respondent's conduct before Judge Rawlins on December 14 & 15, when viewed as a whole, was part of a continuing pattern of conduct knowingly designed to thwart the lawful orders and processes of the Court. Respondent's testimony that he did not know of Tiffany's whereabouts, or his wife's whereabouts, was either

untrue, deceitful, or both.

9. On December 3 & 4, 1984, a final hearing was held before Circuit Judge Manuel Menendez, Jr. Respondent actively participated in that hearing as a party and as an attorney. Thereafter, a Final Judgment was entered wherein shared parental responsibility was ordered with the primary residence of the child being with her mother. Again, respondent refused to recognize the presumptive validity of the Final Judgment because he claimed that the case was not at issue when the final hearing was held.

10. On February 7, 1985, respondent again gained possession of Tiffany and again wrongfully refused to return her to her mother. Respondent's affirmative defense that he was justified in ignoring the Final Judgment because it was "void" because the case had been forced to trial when not at issue, is specifically rejected in its entirety.

11. On March 1, 1985, a Writ of Habeas Corpus was entered by Circuit Judge Donald C. Evans ordering respondent and/or his wife to immediately deliver Tiffany to her mother. Respondent refused to comply with the Writ because he asserted that it, too, 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. I specifically find that the Final Judgment was presumptively valid and that respondent, as an attorney and a party, improperly refused to honor the Writ of Habeas Corpus issued by Judge Evans. Respondent's defense that the Writ was "void" because it did not contain a return date is specifically rejected as constituting an after-the-fact excuse for his unethical and perhaps illegal conduct.

12. 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).

13. Throughout the entire time-frame encompassed by the Bar's

Complaint respondent deliberately, wilfully 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.

14. 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.

C. Recommendation as to Whether or Not the Respondent should be Found Guilty:

I recommend that the respondent be found guilty of the following violations 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 which 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).

D. Recommendation as to Disciplinary Measures to be Applied:

I recommend that respondent be disbarred.

E. Personal History and Past Disciplinary Record:

After a finding of guilt and prior to recommending discipline, pursuant to Integration Rule 11.06(9)(a)(4), and Rule 3-7.5(k)(4), Rules of Discipline, I considered the following personal history and prior disciplinary record of the respondent, to-wit:

- (1) Age: 52 years old
- (2) Date Admitted to Bar: May 23, 1966
- (3) Prior Disciplinary Record: None
- (4) Mitigating Factors: No prior disciplinary record
- (5) Aggravating Factors:
 - 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.

F. Statement of Costs and Manner in Which Costs Should Be Taxed:

I find the following costs were reasonably incurred by
The Florida Bar:

1. Grievance Committee Level

a) Administrative Costs	\$ 150.00
b) Court Reporter Costs	2,122.00
c) Staff Investigator Costs	1,068.70

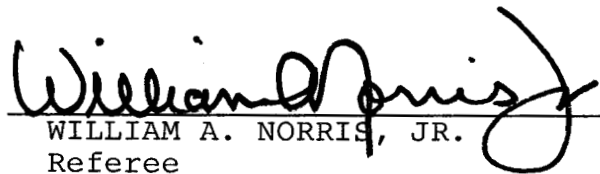
2. Referee Level

a) Administrative Costs	150.00
b) Court Reporting Costs	4,244.30
c) Bar Counsel Expenses	127.38
d) Referee Expenses	<u>172.80</u>

ESTIMATED COSTS TO DATE: \$8,035.18

It is apparent that other costs might be incurred in the future, if further proceedings are necessary in this matter. It is recommended that such future costs, together with the foregoing costs be charged to the respondent and that interest at the statutory rate shall accrue and be payable beginning thirty (30) days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 9th day of June, 1988.


WILLIAM A. NORRIS, JR.
Referee

copies furnished to:

Charles F. Wishart, Respondent
Bonnie L. Mahon, Assistant Staff Counsel
David R. Ristoff, Branch Staff Counsel
John T. Berry, Staff Counsel