IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

HAROLD W. COLEE, JR.,

Respondent.

CASE NO.: 70,804
(TFB FILE NO. 85-10627-04A)

ANSWER BRIEF

HAROLD COLEE
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SYMBOLS AND REFERENCES

In this Answer Brief, the Respondent, HAROLD COLEE, will be known as the Respondent.

The Referee's Report shall be referred to as "R".

The Initial Brief of the Complainant, THE FLORIDA BAR, shall be referred to as "B".

The parties hereto stipulated to the transcript of the Grievance Committee hearing in lieu of Testimony and referral to such shall be as "T".

STATEMENT OF THE CASE

The State of the Case is apparently true and correct; Respondent, however, is without knowledge as the vote of the Board of Governor's directing The Bar to file a Petition for Review.

STATEMENT OF THE FACTS

The Statement of Facts as therein set forth (B 2-6) are admitted as true and correct except as hereinafter delineated and described; viz.,

B 4 (paragraph unnumbered 5) which reads as follows:

> "Respondent and Mr. Tumin said their witness had enough evidence for Southern Bell to set aside the verdict and receive a new trial (T-12)."

The above statement was never made either directly, indirectly or by implication or intimidation; a review of such record would explicitly and clearly reflect that such never transpired and does represent a false concoction by The Bar, which candidly Respondent finds repugnant and repulsive; the record would show that Respondent neither knew or talked to any such witness.

B 4 (paragraph unnumbered 7) which reads as follows, viz.:

> "The payment was to be made through an escrow agreement making the payment to Respondent, Mr. Tumin, and their client."

The record is wholly devoid of any statement made by anyone to such effect; there is just no evidence in the records to support such a statement and it is noteworthy that The Bar does not reference by symbol or otherwise to the record any statement to support same. Neither Mr. Tumin nor Respondent was to participate therein.

B 4-5 (paragraph unnumbered 8) which reads as follows, viz.:

> "During the January 15, 1985, meeting, Respondent would not reveal the nature of the evidence possessed by his client...."

In response thereto, the record would reflect that "client" did not know what the evidence was or would be, but only that he had a person who may have evidence thereof. (underscoring supplied as and for emphasis.)

B 5 (paragraph unnumbered 11) reads as follows, viz.:

> "Shortly thereafter, Respondent received permission from his client to reveal his identity and inform Southern Bell that his client's name was Edgar Amos."

In response thereto this statement is false; the client, Edgar Amos, never agreed with Respondent to reveal his name; Respondent never revealed his name, although Respondent and Respondent's Wife pleaded with Mr. Amos and Mrs. Amos to reveal his identity; Mr. Amos, himself, disclosed his name and submitted to a deposition without knowledge of Respondent.

SUMMARY OF ARGUMENT

In response thereto, Respondent would respectfully submit that whether the duly appointed Referee's recommendations may be out of order or even erroneous, there seemingly was just cause or reason for his recommendations, which may or may not have been predicated in part on the age of Respondent, his unblemished record as an attorney since 1948; that the learned Referee is certainly more qualified to give his circumspect view and opinion based on his experience and qualifications; that when the Canons were inaugurated, they must have contemplated a flexibility in the application of the Canons by providing for a judicial mind in the application of same.

Respondent's mind or state of mind thereof on January 15, 1985, is not known to anyone except Respondent, but Respondent did not do what he is accused of doing, for and in consideration of any monetary gain.

As the Referee stated in his Report, he felt that Respondent was only guilty of an "absymal lack of judgment"; that with this Respondent concurs.

That the Referee's Report is entitled to a presumption of correctness; Rule 3.7-5(k), which provides him the necessary flexibility as above suggested.

Under Rule 3.5.1(a), this Honorable Court has the inherent power to follow the Report and Recommendations of the Referee.

The Bar, at B 10, cites the case of The Florida Bar vs.

Jackson, 490 So. 2nd 935, which is clearly, on its face, wholly inapplicable as a cited precedent in this cause, for in the case at bar, there was no request "that his clients be paid for testimony in a pending case."

In response to The Bar's assertion of Section 6.12, Florida Standards for Imposing Lawyer Sanctions, Respondent responds thereto by stating that the record is devoid of any evidence that Respondent had any knowledge of what the "material information" was or what it consisted of, due to the fact that he had no contact whatsoever with the witness purportedly having such information.

CONCLUSION

Dehors the record, Respondent would state that he is an Eighth Generation Floridian; he is proud of his record as a member of The Florida Bar, both as a layman and practioner; that he takes great pride in the distinguished career of his father, who has been honored not only by the Florida Legislature as one of the most outstanding Floridians, but by other State, Federal and Municipal entities, thus the reason and purpose of filing this Brief.

Respectfully Submitted,

HAROLD W. COLEE, JR.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to James N. Watson, Jr., Esq., Bar Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399, by U.S. Mail on this 17th day of July, 1988.

Attorney