

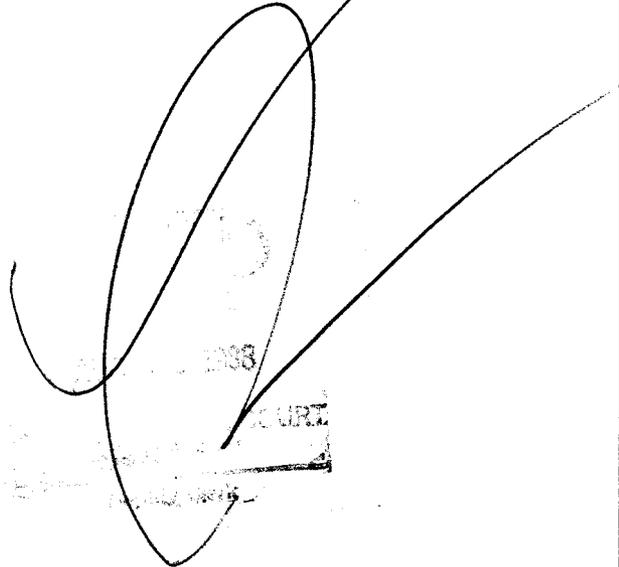
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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,
v.
EDWARD L. PEDRERO,
Respondent.

Case No. 71,480
TFB #87-22,886(06D)

_____ /



THE FLORIDA BAR'S INITIAL BRIEF

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SYMBOLS AND REFERENCES

In this brief complainant, The Florida Bar, will be referred to as "The Florida Bar". The respondent, Edward L. Pedrero, will be referred to as "respondent". "R" will refer to the transcript of the final hearing held before the Referee on April 4 and 5, 1988. "RR" will refer to the Report of Referee filed on May 27, 1988.

STATEMENT OF THE CASE

On July 8, 1987, this Court entered an Order granting a Petition for Temporary Suspension of respondent in Case Number 70,765. On September 17, 1987, this Court entered an Order appointing Judge Joseph P. McNulty (retired) as Referee to hear respondent's Motion to Dissolve the Temporary Suspension.

On October 13, 1987, a hearing was held on respondent's Motion to Dissolve. On October 27, 1987, the Referee filed his report and recommendation to this Court recommending that respondent's motion be denied. On January 6, 1988, this Court entered an Order accepting the Referee's recommendation to deny respondent's motion.

On May 19, 1987, the Sixth Judicial Circuit Grievance Committee "D" found probable cause for further proceedings. On November 19, 1987, The Florida Bar filed a formal Complaint with this Court based on substantially the same allegations as set forth in the Petition for Temporary Suspension in Case Number 70,765. On November 25, 1987, Judge Joseph P. McNulty (retired) was appointed to act as referee in this matter.

On April 4 and 5, 1988, a final hearing was held before the Referee. On May 27, 1988, the Referee filed his Report of Referee recommending that the respondent be found guilty

of violating DR 1-102(A) (3), DR 1-102(A) (4) and DR 1-102(A) (6). In addition, the Referee recommended that respondent be suspended from the practice of law for three years retroactive to the date of the temporary suspension order in Case Number 70,765.

On July 29, 1988, the Board of Governors of The Florida Bar voted to file a Petition for Review to seek respondent's disbarment. On August 11, 1988, a Petition for Review of Referee's Report was filed.

STATEMENT OF THE FACTS

In approximately August 1983, respondent met Daryl John Christian at the Drug Abuse Comprehensive Coordinating Office (DACCO) in Tampa, Florida. In approximately January 1984, Mr. Christian left DACCO and contacted the respondent. The respondent provided Mr. Christian with the birth certificate of Nelson Lee Burchfield. (Respondent's Composite Exhibit 4C). At respondent's direction, Mr. Christian assumed the identity of Nelson Lee Burchfield until Mr. Christian's arrest by federal authorities on March 19, 1986.

In approximately March 1985, respondent gave Mr. Christian the birth certificate of John Fernandez, a friend or acquaintance of respondent. Mr. Christian used the identity of John Fernandez to acquire credit cards in that name. Respondent was aware of the fact that Mr. Christian intended to use the birth certificate of John Fernandez for the aforementioned purpose.

Sometime after March 1985, respondent gave Mr. Christian money with which to open bank accounts in the Tampa Bay area under the name of John Fernandez. Mr. Christian then used credit cards obtained in the name of John Fernandez to purchase merchandise and to receive cash advances. Mr. Christian shared these fraudulently obtained items with the respondent. The respondent admitted to this

conduct in a statement to special agent Walter Tuller of the U. S. Secret Service in April 1986. (R., pp. 32-36).

Mr. Christian also used the identity of John Fernandez to obtain a U. S. Passport. In approximately May or June 1985, Mr. Christian used the aforementioned passport to travel to Amsterdam at the direction of respondent to purchase a quantity of diamonds and hashish. Upon his return to the United States, Mr. Christian gave respondent the aforementioned diamonds and approximately 10 grams of the hashish.

In approximately May 1985, respondent gave Mr. Christian a social security card in the name of John Richmond Melton. Mr. Christian then acquired credit cards in the name of John Richmond Melton and used these cards to purchase merchandise and receive cash advances. Mr. Christian shared these ill-gotten gains with the respondent.

In approximately August 1985, Mr. Christian again travelled to Amsterdam to purchase drugs. While in Amsterdam, Mr. Christian met Peter Corby who sold Mr. Christian some heroin which was then smuggled back into the United States. Mr. Corby then delivered five to ten grams of the heroin to respondent.

In late July 1985, respondent began to represent David G. Pavlick on the charges of driving with a suspended license and driving under the influence of alcohol. At the

time of his arrest, David Pavlick was using the driver's license of his twin brother, Douglas.

In August 1985, respondent obtained the fingerprints of Douglas Pavlick which he then used to obtain the identification of Douglas Pavlick. This identification was given to Mr. Christian by respondent for the purpose of Mr. Christian obtaining credit cards and bank accounts in the name of Douglas Pavlick.

The respondent attempted to cover his tracks for the aforementioned transaction by filing a report with the Pinellas County Sheriff's Department. (Respondent's Composite Exhibit 4(16), report from Pinellas County Sheriff's Department, dated June 5, 1986). The report to the Sheriff's Department states that Daryl Christian broke into the respondent's car and stole the Pavlick file. In his testimony before the Referee, however, the respondent stated that Daryl Christian, Mr. Corby and Kevin Kami took the file from the trunk of his car. (R., pg. 127, line 8). In addition, respondent told the Referee that his trunk was unlocked and not that his car was broken into. (R., pg. 127, line 11).

The respondent admitted before the Referee to using a fraudulently obtained credit card to purchase merchandise from a clothing store in Tampa, Florida. (R., pg. 124, line 20). The respondent also admitted to purchasing merchandise from one of the Iranian men whom he later claims

to have been threatening him. (R., pg. 118, line 21).

On February 24, 1986, respondent purchased \$4,500.00 worth of Citicorp Travellers Cheques at the Freedom Savings Office in Largo, Florida. While at the Freedom Savings, the respondent refused to use the bank's pen but rather used a pen with erasable ink which he had brought with him to the bank. The respondent then erased his name from the travellers cheques and, in a shaky hand, wrote his name to make it appear as if the cheques had been forged. Respondent did this with \$800.00 worth of cheques. The remaining \$3,700.00 was given to Mr. Christian for Mr. Christian to take to Amsterdam to purchase narcotics.

On February 25, 1986, respondent cashed \$800.00 worth of the travellers cheques that he had kept in his own name. On February 26, 1986, respondent reported to the bank that the balance of the \$4,500.00 in travellers cheques was missing. At the time respondent made this false report, he knew that the travellers cheques were in the possession of Daryl Christian. On February 27, 1986, respondent called Citicorp and falsely reported the cheques as being missing. Subsequently, the respondent received a full refund of \$4,500.00 from Citicorp. On April 10, 1986, respondent made restitution to Citicorp for the \$4,500.00.

The tapes which surreptitiously recorded the conversations between respondent and Mr. Christian in March

1986 (Bar's Exhibits 3A and 3B) clearly show that the respondent was a knowledgeable, willing and active participant in the unlawful activities of Daryl Christian. There is no sign of any coercion, duress or intimidation of the respondent by Daryl Christian, nor is there any sign of fear in the respondent's voice. On the contrary, it appears that the respondent was fully in charge of the situation and was already making plans to establish his own defense in this matter.

SUMMARY OF ARGUMENT

The Referee's recommendation of a three year suspension is not a sufficient disciplinary sanction for the criminal and unethical conduct of respondent. In addition, the Referee's recommendation is inconsistent with his finding that respondent intentionally sought to deceive the Referee (RR, pg. 7) and that the respondent was a knowledgeable, willing and active participant in the unlawful activities of Daryl Christian. (RR pg. 6).

No amount of mitigation should be sufficient in the present case to reduce what would otherwise be an offense calling for disbarment to a suspension. The public and the legal profession cannot tolerate the type of conduct engaged in by respondent.

Therefore, The Florida Bar respectfully requests this Court to reject the Referee's recommendation of a three year suspension and order the respondent disbarred from the practice of law in the State of Florida.

ARGUMENT

ISSUE: Whether the Referee's recommendation that there is sufficient mitigation to reduce what would otherwise be a case calling for disbarment to a three year suspension is inconsistent with his Findings of Fact.

The Referee's recommendation that there is sufficient mitigation to reduce what would otherwise be an offense calling for disbarment to a three year suspension is inconsistent with his Findings of Fact.

The Referee found that respondent was not fully of responsible disposition and was suffering from psychiatric and emotional problems. (RR, pg. 8). Based upon this finding, the Referee recommended that respondent be suspended from the practice of law for three years. The Referee's finding that the alleged psychiatric and emotional problems of respondent were sufficient to prevent him from "recommending disbarment under the facts of this case" (RR, pg. 8) is inconsistent with several of the other findings made by the Referee.

The Referee found that the affidavit of Daryl John Christian (Bar's Exhibit 4) is supported by the independent investigation conducted by Special Agent Walter Tuller. (RR, pg. 5). In addition, the Referee found that the respondent admitted to engaging in the conduct set forth in Mr. Christian's affidavit.

Moreover, the Referee found the respondent's affidavit (Respondent's Exhibit 1) "to be incredible in almost every relevant detail." (RR, pg. 6). In addition, the Referee found that the affidavit was "replete with intentional falsehoods calculated to mislead, if not to deceive, the Referee." (RR, pg. 6).

The Referee also found that "the most damning affirmative evidence of all" was the tapes which surreptitiously recorded the conversations between respondent and Mr. Christian in March 1986. (Bar's Exhibits 3A and 3B). The Referee found that the tapes "clearly show that the respondent was a knowledgeable, willing and active participant in the unlawful activities of Daryl Christian. There is no sign of any coercion, duress or intimidation of the respondent by Daryl Christian. Nor is there any sign of fear in the respondent's voice; further giving the lie to much of respondent's affidavit. On the contrary, it appears that the respondent was fully in charge of the situation and was already making plans to establish his own defense in this matter and to assist Daryl Christian in establishing his." (RR, pg. 6).

The Referee's finding that the respondent intentionally deceived the Referee is not consistent with the Referee's finding that the respondent was not fully of reasonable disposition. If the respondent was capable of intentionally

deceiving the Referee in order to seek to avoid the consequences of his actions then he was aware of the impropriety of his conduct and it is extremely likely that he intentionally deceived the psychiatrists he visited. It is important to note that respondent, in keeping with his plan to "establish his own defense in this matter", only saw psychiatrists on a regular basis after Mr. Christian's arrest in March, 1986. (R., pg. 122, line 21).

In addition, the Referee's finding that respondent was a willing and active participant in the unlawful activities of Daryl Christian is inconsistent with the Referee's finding that the psychiatric and emotional problems of respondent contributed to his participation in the activities of Mr. Christian. The record is clear that once Daryl Christian was apprehended and respondent's illegal activities were brought to light, the respondent immediately took steps to "establish his own defense in this matter." The steps respondent took consisted largely of attending several psychiatrists and having them prepare reports which would show that respondent suffered from psychiatric and emotional problems.

Even though the Referee's Findings of Fact are presumed to be correct, the recommended discipline

should not automatically receive the same standard. This Court is not bound by a Referee's recommendation of the discipline to be imposed. The Florida Bar v. Weaver, 356 So. 2d 797 (Fla. 1978). It should also be noted that, in the present case, the Referee made his recommendation of a three year suspension without holding a separate hearing after making his Findings of Fact to have the parties present argument as to what would be an appropriate sanction.

Fortunately The Florida Bar has found no cases directly on point with the present case. It is fortunate because if the Bar found other cases to present to this Court then it would mean that respondent is not the only Florida attorney to commit such egregious acts.

The Bar suggests that no amount of mitigation should be sufficient to prevent disbarment in the present case. The public will not tolerate it. The legal profession should not tolerate it.

In The Florida Bar v. Price, 478 So. 2d 812 (Fla. 1985), the respondent had been charged with trafficking in cannabis. The Referee's findings indicate that respondent here was, at least in part, engaged in the importation of illegal drugs. (RR, pg. 3). After an acquittal by a jury, The Florida Bar brought disciplinary proceedings against Mr. Price. The respondent's testimony in Price consisted of the

incredible statement that he and his wife and children had been threatened by three unknown Jamaicans. Price, at 813. The respondent in the present case made the incredible statement that Iranians were threatening him. In Price, this Court set forth a standard which is clearly applicable to the present case: "Respondent's reprehensible acts are completely inconsistent with the high professional standards expected, indeed required, of members of The Florida Bar." Id., at 814. The respondent in Price was disbarred.

In The Florida v. Hecker, 475 So. 2d 1240 (Fla. 1985), this Court set down a strict standard for attorneys which is applicable to the present case: "Illegal drug activities are a major blight on our society - nationally, statewide and locally. Necessarily, members of the Bar are brought into contact with the illegal activity because of their professional obligations to offer legal assistance to clients accused of wrongdoing. Members of the Bar should be on notice that participation in such activities beyond professional obligations will be dealt with severely." Id., at 1243. Respondent's activities in the present case clearly did not involve any professional obligations on his part and he should be dealt with severely.

One case which is similar to the present case, although on a much smaller scale, is The Florida Bar v. Bryan, 506 So. 2d 395 (Fla. 1987). In Bryan, the respondent on two

separate occasions made written application for a Master Card and a Visa Card in the name of his deceased father. Subsequently, the respondent used the credit cards to obtain money, goods, services or other things of value in the approximate amount of \$1,767.32. By comparison, the respondent in the present case falsely applied for at least three credit cards (John Fernandez, John Richmond Melton and Douglas Pavlick) and obtained money, goods, services or other things of value easily in excess of \$25,000.00. (Respondent's Exhibit 4 - Affidavit of Daryl John Christian). The respondent in Bryan was disbarred.

In considering the discipline to be imposed, this Court has noted three purposes which must be served: "First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations." The Florida v. Lord, 433 So. 2d 983, 986 (Fla. 1983).

In order for the judgment in this case to be fair to society it is incumbent upon this Court to disbar

respondent. Since neither the state nor federal prosecuting authorities have taken steps to criminally prosecute respondent for his actions this Court must act to protect the public from respondent engaging in the practice of law. It would certainly not be unduly harsh to deny the public the services of respondent.

Disbarment would be fair to respondent because it will allow him to seek reformation and rehabilitation without the pressure of having his conduct supervised by The Florida Bar and by this Court. Respondent will be free to pursue another career or profession.

Disbarment is the only judgment which is severe enough to deter others who might be prone or tempted to become involved in violations similar to those committed by respondent. Since disbarment is the most serious sanction that may be imposed by this Court, it is the only sanction which is appropriate in this case.

Florida's Standards for Imposing Lawyer Sanctions (hereinafter referred to as The Standards) provide that disbarment is the appropriate sanction for respondent's unethical and illegal conduct.

The following sections of The Standards apply in the present case:

Standard 5.11(b): Disbarment is appropriate 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. (emphasis supplied).

Standard 5.11(c): Disbarment is appropriate when a lawyer engages in the sale, distribution or importation of controlled substances.

Standard 5.11(e): Disbarment is appropriate when a lawyer attempts or conspires or solicits another to commit any of the offenses listed in sections (a) through (d).

Standard 5.11(f): Disbarment is appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law.

Standard 6.11(a): Disbarment is appropriate when a lawyer with the intent to deceive the Court knowingly makes a false statement or submits a false document.

Standard 7.1: Disbarment is appropriate 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.

Standard 9.22: Aggravating factors include: (b)

dishonest or selfish motive; (c) a pattern of misconduct; (f) submission of false evidence, false statements or other deceptive practices during the disciplinary process; and (g) refusal to acknowledge wrongful nature of conduct.

Standard 9.32: Mitigating factors include: (a) absence of a prior disciplinary record and (c) personal or emotional problems.

Clearly 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 reject the Referee's recommended discipline of a three year suspension and disbar respondent from the practice of law in the State of Florida.

CONCLUSION

The criminal and unethical conduct engaged in by respondent is so egregious that no amount of mitigation should be sufficient to warrant any sanction other than disbarment. The public and the legal profession cannot tolerate the type of conduct engaged in by respondent.

The Referee's recommended discipline is inconsistent with his Findings of Fact. The respondent planned his defense in this case at the time of Mr. Christian's arrest and carried through on that plan by means of the submission of a deceitful affidavit to the Referee.

WHEREFORE, The Florida Bar respectfully requests this Honorable Court to reject the Referee's recommended discipline and disbar the respondent, Edward L. Pedrero, from the practice of law in the State of Florida.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to MICHAEL KINNEY, Counsel for Respondent, 3502 Henderson Blvd, Chemex Bldg., Suite 301, Tampa, FL 33609 and to JOHN T. BERRY, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 this 29th day of August, 1988.

R. A. Greenberg
Richard A. Greenberg