

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Complainant,

CASE NO. 71,531  
TFR NO. 87-26,020(13D)  
(Formerly #13D87H87)

v.

NATHANIEL W. TINDALL, II,  
Respondent.

**FILED**  
JAN 3 1988

JAN 3 1988

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**THE FLORIDA BAR'S ANSWER BRIEF**

CLERK SUPREME COURT  
BY \_\_\_\_\_  
JAN 3 1988

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STATEMENT OF THE FACTS

Hugh Smith never informed respondent that respondent would not prevail in the pending State Court litigation because the presiding judge, Judge Cheatwood, and Russell Peaveyhouse, one of the named defendants in the State Court action, were good friends. (T - p. 70, line 15).

SUMMARY OF ARGUMENT

I. The Referee's recommended finding that respondent violated Disciplinary Rule 8-102(B) is supported by clear and convincing evidence. Respondent had no evidence to support his allegation that "the defendants used their influence to commit bribery of a public official."

11. The Referee's finding that respondent violated Disciplinary Rule 7-102(A)(1) is supported by the evidence. Respondent's unsupported allegation that Judge Cheatwood was bribed would certainly tend to maliciously injure Judge Cheatwood.

III. A public reprimand is the appropriate disciplinary sanction in the present case.

ARGUMENT

I. THE REFEREE'S RECOMMENDED FINDING THAT  
RESPONDENT KNOWINGLY MADE FALSE ACCUSATIONS  
AGAINST A JUDGE IS SUPPORTED BY THE EVIDENCE  
PRESENTED BELOW.

The findings and conclusions of a Referee should not be overturned unless they are clearly erroneous or lacking support in evidence. The Florida Bar v. Baron, 392 So. 2d 1318 (Fla. 1981). The record below supports the Referee's finding that respondent violated Disciplinary Rule 8-102(B) by knowingly making false accusations against a judge. In Section 11, paragraph 7 (Report of Referee, page 3) the Referee clearly sets forth the basis for his recommendation that respondent be found guilty of violating DR 8-102(B). The Referee's findings are supported by clear and convincing evidence.

The testimony of respondent is replete with support for the Referee's finding that respondent had no evidence to support his allegations of bribery of Judge Cheatwood. The respondent admitted he did not see any ill motive or bad purpose in any ruling by Judge Cheatwood. (T - p. 25, lines 4-6). Respondent was also unable to give any evidence of any acts of the defendants in the State Court action to bribe Judge Cheatwood (T - p. 46, lines 16-20). In addition, the respondent was unable to answer when asked to identify what the defendants had offered to Judge Cheatwood as a bribe. (T - p. 193, line 24 - p. 196, line 15).

Respondent argues that his complaints (Bar's Exhibits 5 and 7) don't clearly accuse Judge Cheatwood of accepting any bribe attempt. While it may be true the exhibits don't state expressly "Judge Cheatwood accepted a bribe," they clearly imply Judge Cheatwood was bribed. Far's Exhibit 5 states at page 21, paragraph 169: "The defendants use [sic] their influence to commit bribery of a public official." Bar's Exhibit 7 states at page 22, paragraph 1-76: "The defendants used their influence to commit bribery of a public official." Complainant submits that it really doesn't matter whether respondent accused Judge Cheatwood of actually accepting a bribe. The mere allegation of an attempt to bribe Judge Cheatwood without anything more than what respondent knew is sufficient to support the Referee's recommendation of a finding of guilt.

Respondent also attacks Complainant for not calling Judge Cheatwood or Russell Peaveyhouse as witnesses. The testimony of these two individuals is not really pertinent to the underlying case. What matters is whether respondent had any facts to support his allegation that "the defendants used their influence to commit bribery." Clearly, the respondent did not have any evidence to support this allegation. (T - p. 62, line 25 - p. 63, lines 1-5). In addition, the respondent admitted that when he filed the complaint (Bar's Exhibit 5) he did not know whether Judge Cheatwood had been improperly influenced. (T - p. 174, line 25).

## ARGUMENT

11. THE REFEREE'S RECOMMENDED FINDING THAT RESPONDENT ASSERTED A POSITION WHEN IT WAS OBVIOUS THAT SUCH ACTION WOULD SERVE MERELY TO HARASS OR MALICIOUSLY INJURE ANOTHER IS SUPPORTED BY THE EVIDENCE BELOW.

Respondent misconstrues the Referee's recommendation that respondent be found guilty of violating Disciplinary Rule 7-102(A) (1) as a finding of malicious prosecution on the part of respondent. On the contrary, the Referee clearly found that the allegations about Judge Cheatwood being bribed would tend to maliciously injure Judge Cheatwood. Complainant never attempted to prove that the underlying action between respondent and the defendants in the federal court action was unwarranted. That particular matter is still being litigated in federal court. The sole thrust of Complainant's case is respondent's unsupported attack on the integrity of a Circuit Court judge. (T - p. 53, lines 17-24. See also respondent's Waiver of Probable Cause Hearing, para. 2).

Respondent argues that Hugh Smith constantly referred to the social and professional standing of his clients when appearing before Judge Cheatwood. Mr. Smith denied making such statements. (T - p. 72, line 25 - p. 73, line 13). Respondent also argues that Hugh Smith told the respondent the respondent would never win in state court because Judge Cheatwood and Mr. Peaveyhouse were close personal friends. Mr. Smith denied making



any such statement to respondent. (T - p. 70, line 15). The Referee, as trier of fact, observed the witnesses and judged the credibility of each witness. Clearly, the Referee accepted Mr. Smith's testimony that the aforementioned events did not occur. The judgment of a trial court comes before this Court clothed with a presumption of correctness, St. Joe Paper Co. v. State Dept. of Env. Reg., 371 So. 2d 178, 181, (1st D.C.A., 1979), and should not be overturned unless found to be lacking support in the evidence. The Florida Bar v. Baron, supra.

Finally, respondent argues that bar counsel was not convinced respondent was guilty of the two Disciplinary Rule violations found by the Referee. Obviously, Complainant would not have argued for a finding of guilt if it had not been convinced it had satisfied the burden of proving its case by clear and convincing evidence. (T - p. 198, lines - p. 199, line 11 and p. 200, lines 5-12). In addition, this Court should give much greater weight to the recommendations of the Referee than to the argument of counsel. The argument of counsel for the parties is merely meant to attempt to persuade the Referee to a certain point of view. The Referee's Findings of Fact, however, are based upon the evidence presented to him.

## ARGUMENT

### III. A PUBLIC REPRIMAND IS THE APPROPRIATE DISCIPLINE IN THE PRESENT CASE.

The Referee's recommended discipline of a public reprimand is the appropriate disciplinary sanction in the present case. The present proceeding arose after a waiver of probable cause by respondent, therefore, a public reprimand is the least severe sanction appropriately recommended by the Referee. Rule 3-7.5(k)(1)(3), Rules of Discipline. In light of the fact that respondent has publicly falsely accused Judge Cheatwood of bribery, respondent should be publicly reprimanded.

Florida's Standards for Imposing Lawyer Sanctions support the Referee's recommendation of a public reprimand. In fact, the Standards would call for a suspension of respondent, if not for the mitigating factors which may be considered.

Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the Court or that material information is improperly being withheld, and takes no remedial action. Standard 6.13.

Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. Standard 7.2.

Aggravating factors include: (i) substantial experience in the practice of law. Standard 9.22.

Mitigating factors include: (a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; and, (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Standard 9.32.

CONCLUSION

Complainant submits that the Referee's Findings of Fact are all supported by clear and convincing evidence. The Referee's recommended finding of guilt for violation of Disciplinary Rules 7-102(A)(1) and 8-102(B) should be accepted by this Court. The discipline suggested by the Referee is appropriate and should be imposed by this Court on respondent.

Respectfully submitted,

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