

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

NATHANIEL W. TINDALL, 11,

Respondent.

Case No. 71,531
TFB #87-26,020-13D
(formerly #13D87H87)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to the Rules of Discipline, hearings were held on the following dates:

June 17, 1988
August 26, 1988

The following attorneys appeared as Counsel for the parties:

For The Florida Bar Richard A. Greenbers, Ess.

For The Respondent Scott K. Tozian, Esq.

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

1. In August, 1984, Respondent filed a Declaratory Judgment action in the Circuit Court of Hillsborough County in which he, as Plaintiff, sought a determination of his rights in regard to a business transaction. (T 20) The case was eventually assigned to Judge J. C. Cheatwood. During the course of the litigation, Judge Cheatwood made several rulings adverse to Respondent. (T 24-25) Respondent testified that, after a hearing held in May, 1986, an attorney for the Defendants in the case told Respondent that he would never win the case because the Judge and one of the Defendants were good friends. (T 29)

Respondent filed a Motion to Disqualify Judge Cheatwood in June of 1986 (Bar Exhibit 3) and filed a Notice of Voluntary Dismissal immediately prior to the hearing on that motion. (T 35-36)

2. In December of 1986, Respondent filed a Complaint in the United States District Court, Middle District of Florida, Tampa Division, (Bar Exhibit 5) in which Respondent, as Plaintiff, alleged racketeering activities on the part of the Defendants named therein.

3. Paragraph 3 of the Complaint stated:

"This is an action based upon the racketeering activities of mail fraud, wire fraud, bribery, extortion, perjury, corruptly trying to influence a public official, civil theft, fraud and the sale of securities, bankruptcy fraud, and other crimes which will be identified in the course of this **litigation.**"

4. Paragraph 111 of said Complaint stated:

"Defendants eventually got a favorable ruling from their 'friendly' Circuit Judge"

5. Under the heading, Act XII, of the Complaint the following paragraphs were stated:

"163. That after suit was filed in the State Circuit Court, the Defendants came up with a fraudulent scheme to corruptly influence a public official.

"164. Sometime after suit had been filed, for reasons unknown to Plaintiff, the court file was reassigned to another Judge.

"165. Unknown to Plaintiff at the time,

but known to all the Defendants, was the fact that there was a close personal relationship between the Defendant Peavyhouse and the trial judge.

"166. As a result thereof, Defendants contrived an illegal scheme to corruptly use their influence for an advantage in litigation.

". . . .

"169. The Defendants use (sic) their influence to commit bribery of a public official.:

6. These same allegations were repeated in an amended Complaint filed in the United States District Court case on December 3, 1987 (Bar Exhibit 7), as set forth in Paragraphs 3, 118, and the allegations of Act XIII thereof.

7. Respondent testified that the "public official" referred to in the Federal Court Complaints included Judge Cheatwood. (T 42) He also testified that the "friendly Circuit Judge" referred to Judge Cheatwood. (T 56) Respondent testified that he had no evidence to establish any improper activity on the part of Judge Cheatwood (T 62;174) and that, to this day, he does not know whether Judge Cheatwood had been improperly influenced. (T 175)

111. Recommendation as to Whether or Not the Respondent Should Be Found Guilty:

I recommend that Respondent be found guilty and specifically that he be found guilty of violating Disciplinary Rules 7-102 (A)(1), by asserting a position when it is obvious that such action would serve merely to harass or maliciously injure another; and 8-102 (B) by knowingly making false accusations against a Judge. I recommend that the Respondent be

found not guilty of violating the other Disciplinary Rules cited in the Complaint.

It is noted that the Complaint filed in the Federal Court (Bar Exhibit 5) was filed by Respondent in December, 1986. The Amended Complaint (Bar Exhibit 7) was not filed until after the Rules Revisions that became effective on January 1, 1987.

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the Respondent receive a public reprimand.

V. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(1)(4), I considered the following personal history and prior disciplinary record of the Respondent, to-wit:

Dated admitted to Bar: May 10, 1974

Prior disciplinary convictions and disciplinary measures imposed therein: None

VI. State of Costs and Manner in Which Cost Should be Taxed: I find the following costs were reasonably incurred by The Florida Bar.

GRIEVANCE COMMITTEE LEVEL

Administrative Costs.....\$	150.00
Grievance Committee Hearing (7-1-87)	
Staff Counsel Expense.....	4.35

REFEREE LEVEL

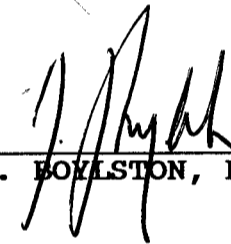
Administrative Costs.....\$	150.00
Deposition (3-23-88)	
Court Reporter Costs.....	141.00
Hearing (6-17-88)	
Court Reporter Costs.....	852.50
Staff Counsel Expense.....	50.45

Hearing (8-26-88)	
Court Reporter Costs.....	\$ 115.40
Staff Counsel Expense.....	<u>37.35</u>
TOTAL COSTS TO DATE.....	<u>\$ 1,501.05</u>

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the Respondent.

DATED this 13th day of September, 1988.

ROK


 J. BOYLSTON, REFEREE

Copies furnished to:

Richard A. Greenberg, Esq., Bar Counsel

Scott K. Tozian, Esq., Counsel for the Respondent

Staff Counsel of the Florida Bar
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