

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
vs.
DONALD N. STORY,
Respondent.

Case No. 71,532
[TFB No. 88-30,047(10B)]

FILED
SID J. WHITE

APR 20 1988

REPORT OF REFEREE

CLERK, SUPREME COURT

I. Summary of Proceedings: Pursuant to ~~the undersigned~~ ^{Deputy Clerk} being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, hearing was held on the following date:

April 5, 1987.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: John B. Root, Jr.

For the Respondent: Donald N. Story, in proper person.

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:

The Florida Bar filed a Complaint against the Respondent on December 3, 1987 charging a violation of the following rules of Professional Conduct of the Rules Regulating the Florida Bar: 4-101 for failing to competently represent a client; 4-8.4(b) for commission of a criminal act which reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and 4-8.4(d) for engaging in conduct which is prejudicial to the administration of justice.

The acts alleged to have been committed were that the Respondent met with his client at her home for the purpose of preparing a will in June of 1987. He returned later in June to the client's home to execute the will. The Respondent had obtained the signature of two witnesses prior to arriving at the client's

home to have her sign the will. In addition, the Respondent had also notarized that portion of the self-proving paragraph which contained the statement that the witnesses had signed the will in the presence of the testatrix. This act of notarizing the will had also taken place before the Respondent arrived at the home of his client to have her execute the will.

The Respondent did not respond to the Complaint.

On the 23rd of December, 1987, The Florida Bar served on the Respondent Request for Admission. The Request for Admission requested the Respondent to admit each and every allegation of the Complaint. The Respondent did not answer this Request for Admission.

The Respondent was very candid with the Referee, as he was with the Grievance Committee on October 15, 1987 in admitting that he did the acts set forth in the Complaint.

Each witness signed the will while not in the presence of the testatrix or the other witnesses (TR Grievance Committee hearing page 9).

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: As to the Complaint, I make the following recommendation as to guilt or innocence:

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of the Rules of Professional Conduct of the Rules Regulating The Florida Bar, to-wit: Rule 4-1.1 failure to competently represent a client; Rule 4-8.4(b) commission of a criminal act which reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other aspects; Rule 4-8.4(c) engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and Rule 4-8.4(d) engaging in conduct which is prejudicial to the administration of justice.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the Respondent be suspended from the practice of law for thirty (30) days as provided by Rule 3-5.1(e) Rules Regulating The Florida Bar.

This recommendation was suggested by counsel for The Florida Bar and not contested by the Respondent. (TR 14 Referee's hearing).

V. Personal History and Post 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:

Age: Sixty-nine
Date admitted to the Florida Bar: 1952
Prior Disciplinary Convictions and Discipline Measures Imposed therein: None in recent years.
Respondent advised of one in 1957 or 1958, the Florida Bar has no record of any (TR 13, 14, Referee's Hearing)


VI. Statement of Costs and Manner in which Costs should be Taxed:

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

A. Grievance Committee Level Costs:		
1. Administrative costs		\$150.00
2. Transcript costs		116.25
3. Bar Counsel/Branch Staff Counsel travel costs		39.47
B. Referee Level Costs		
1. Administrative costs		\$150.00
2. Transcript cost		<u>78.35</u>
	TOTAL ITEMIZED COSTS	<u>\$534.07</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 14th day of April, 1988.


FRANK N. KANEY, Referee

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished by regular U.S. mail to John B. Root, Jr., The Florida Bar, 605 East Robinson St., Suite 610, Orlando, FL 32801 Donald N. Story, Post Office Box 2553, Lakeland, FL 33803, and The Florida Bar, Tallahassee, FL 32301 this ___ day of April, 1988.

Judicial Assistant