

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR,

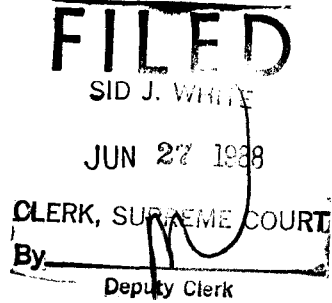
Complainant,

vs.

Case No. 71,697

SHANE L. STAFFORD,

Respondent.



REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

After appointment as Referee to preside over a hearing in the captioned matter, the undersigned conducted a hearing May 13, 1988, in Ft. Lauderdale, Florida at the Offices of The Florida Bar. Venue had been previously waived by the Respondent. All pleadings, transcript of hearing, notices, motions and other documentation are included and filed with this report and constitute the record in the case.

Appearances as counsel:

For The Florida Bar: David M. Barnovitz, Esquire
Cypress Financial Center
5900 North Andrews Avenue
Suite 835
Ft. Lauderdale, Florida 33309
305-772-2245

For the Respondent: John A. Weiss, Esquire
P. O. Box 1167
Tallahassee, Florida 32302
904-681-9010

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED:

After considering all the pleadings and evidence, including admissions by the Respondent and his attorney, pertinent portions of which are commented upon below, I find:

A. Respondent is and was at all pertinent times a member of The Florida Bar subject to the jurisdiction and disciplinary rules of The Supreme Court of Florida.

B. From Spring, 1984 through Fall, 1985 Respondent engaged in an arrangement with Roy Blevins, a police officer employed by West Palm Beach, Florida. The purpose of the arrangement with Blevins was solicitation of personal injury cases for handling by Respondent. These cases resulted in the filing of claims for personal injury arising from automobile accidents and other cases involving personal injury.

C. Blevins did in fact solicit personal injury cases for handling by the Respondent who then pursued the claims in his capacity as a lawyer. Under this arrangement, Blevins referred ten to eleven cases to Respondent; three of these were automobile accident cases investigated by Blevins in his capacity as a policeman; Blevins was paid referral fees on nine or ten of these cases. Transcript at page 102. The fee splitting arrangement involved payment to Blevins of fifteen percent of Respondent's fees. Respondent believes Blevins was paid ten to eleven thousand dollars (\$10,000-\$11,000) in total. Transcript at page 105.

D. Section 817.234(8)(9) Fla.Stats., in effect at all pertinent times, provided as follows:

(8) It is unlawful for any person, in his individual capacity or in his capacity as a public or private employee, or for any firm, corporation, partnership, or association, to solicit any business in or about city receiving hospitals, city and county receiving hospitals, county hospitals, justice courts, or municipal courts; in any public institution; in any public place; upon any public street or highway; in or about private hospital, sanitariums, or any private institution; or upon private property of any character whatsoever for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits required by s. 627.736. Any person who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9) It is unlawful for any attorney to solicit any business relating to the representation of persons injured in a motor vehicle accident for the purpose of filing a motor vehicle tort claim or a claim for personal injury protection benefits required by s. 627.736. Any attorney who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084. Whenever any circuit or special grievance committee acting under the jurisdiction of the Supreme Court finds probable cause to believe that an attorney is guilty of a violation of this section, such committee shall forward to the appropriate state attorney a copy of the finding of probable cause and the report being filed in the matter. This section shall not be interpreted to prohibit advertising by attorneys which is permitted by the Code of Professional Responsibility as promulgated by the Florida Supreme Court.

COUNT I

Charges: The above conduct violates the specified statutory provisions as well as: DR2-103(c) [a lawyer shall not ask persons/organizations to recommend employment of himself]; DR1-102(a)(3) [a lawyer shall not engage in illegal conduct involving moral turpitude]; DR1-102(A)(4) [a lawyer shall not engage in dishonest fraudulent, deceitful conduct]; and Integration Rule 11.02(3) [a lawyer shall not engage in conduct contrary to honesty, justice or good morals].

- Findings: a) As to s. 817.234(9) - a criminal violation for which Respondent was charged by the State Attorney's Office and processed to a conclusion without an adjudication of guilt.
- b) As to DR2-103(c) - a violation.
- c) As to DR1-102(a)(3) - no violation because Respondent's conduct did not constitute moral turpitude. The Florida Bar v. Pettie, 424 So2d 734, 737 (Fla.1982).
- d) As to DR1-102(a)(4) - no violation for the same reasoning in c).
- e) The conduct violates Integration Rule 11.02(3) [good morals as to lawyers].

COUNT II

Charges: The sharing of fees with a non-lawyer.

Findings: A violation of DR3-102 which proscribes such conduct.

COUNT III

Charges: The solicitation for referrals of cases occurred in public places and involved a public employee (policeman Blevins) contrary to s. 817.234(8) and the same Bar Rules cited in Count I.

Findings: A criminal violation which was handled in the same fashion described in Count I. As to the Rules violations, the same findings expressed in Count I are made for the same reasons.

ADDITIONAL FINDINGS

The conduct charged and the findings of fact also constitute violations of DR1-102(a)(1) and (6).

While not charged, I recommend a finding that the described misconduct of Respondent also violates DR1-102(A)(1) and (6).

III. RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

Mr. Stafford should be found guilty as to Counts I, II, and III to the extent of the findings in Section II, above.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend the Respondent receive the following discipline:

- A. Public reprimand.
- B. Suspension for a period of three months with automatic reinstatement at the end of the period of suspension as provided in Rule 3-5.1(e) Rules of Discipline.
- C. Upon reinstatement, probation for three years.

D. As a condition of probation, a requirement that Respondent speak at least four times each year during his probation to local bar associations or law school classes about his own misconduct or other ethical concerns of The Florida Bar, a local bar association or a law school ethics class. For any breach of this condition of probation or any other ethical requirement of attorneys during the probationary period, Respondent should be suspended for two years.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD.

The above recommendation as to disciplinary measures is based on the admitted facts and the testimonial admissions of Respondent, as well as his character witnesses. I find the following mitigating circumstances:

A. No prior disciplinary record.

B. Respondent has an excellent reputation for ability and integrity in the legal community in spite of this series of events.

C. Respondent cooperated with law enforcement authorities and The Florida Bar in their investigation into his conduct.

D. Respondent voluntarily stopped his misconduct before it ever came to light.

E. Respondent freely admits his wrongdoing and impressed the Referee with his sincerity in recognizing the wrongness of his acts; he appeared genuinely remorseful. It appears he has wreaked a substantial amount of emotional trauma to himself and his family as a result of his misconduct.

F. While it does not excuse his conduct, I do not believe the Respondent appreciated the criminality of what he was doing although he did appreciate its ethical impropriety at the time he was doing it.

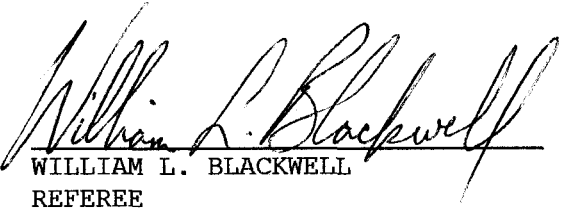
G. The testimony of the Prosecutor who handled the criminal prosecution of Respondent was persuasive as to Mr. Stafford's acknowledgement of wrongdoing, cooperation, and rehabilitation.

The most difficult aspect of this for the referee is in fashioning a recommendation as to punishment, given some of the older cases involving similar conduct. The difficult issue is whether the climate of today, vis-a-vis lawyer misconduct, demands more rigorous punishment than has been meted out for similar offenses in the past.

VII. RECOMMENDATION AS TO COSTS:

Having no specific costs items before me other than my own expenses incidental to the hearing in this case, I find and recommend all costs reasonably incurred by The Florida Bar be assessed against Respondent.

Respectfully submitted this 23d day of June, 1988.


WILLIAM L. BLACKWELL
REFEREE

COPIES FURNISHED TO:

David Barnovitz, Esquire
Cypress Financial Center
5900 North Andrews Avenue
Suite 835
Ft. Lauderdale, Florida 33309

John A. Weiss, Esquire
P. O. Box 1167
Tallahassee, Florida 32302