

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

FILED

SEP 9 1988

CLERK, SUPREME COURT

By M  
Deputy Clerk

THE FLORIDA BAR,  
Complainant,

v.

CASE NO. 72,216  
[TFB NO. 88-31,064(05A)]

ROBERT STEPHEN RYDER,  
Respondent.

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REPORT OF REFEREE

For The Florida Bar - David G. McGunegle, Esq.  
For the Respondent - John A. Weiss, Esq.

**I SUMMARY OF PROCEEDINGS**

The Florida Bar on April 6, 1988 filed a Complaint against Respondent, Robert Stephen Ryder, a member of The Florida Bar, charging him with violations of Article XI, Rule 11.02(3)(a) and (b) of The Florida Bar's Integration Rule and violations of Disciplinary Rules of The Florida Bar's Code of Professional Responsibility, DR 1-102(A)(3), (4), (5) and (6).

These charges resulted following a jury verdict December 3, 1987 finding Respondent guilty of three felony counts of perjury, two counts involving testimony under oath before a Federal Grand Jury and one count involving testimony under oath during a trial in the Federal District Court for the Middle District of Florida. The Court convicted Respondent on each of the three counts and sentenced him to three concurrent sentences of 18 months each with a specific condition that he be confined "in a

jail-type institution for a period of SIX (6) MONTHS" followed by 12 months probation during which Respondent must contribute 5 hours of community service each week of his probation.

By his Answer Respondent admitted the essential allegations of the Complaint, including the convictions of the three felony perjury charges and the judgment of the Federal District Court thereon, but he denied the allegations of his having violated the provisions of the Integration Rule and the Disciplinary Rules.

This matter was set for hearing and the hearing completed before the undersigned July 21, 1988. Although the Court Reporter's Certificate is dated August 14, 1988, this Transcript was not received by the Referee until August 29, 1988, and then only after many calls and inquiries.

At the hearing the Bar, without objection, presented a copy of the Indictment charging 4 counts of perjury, a copy of the jury verdict of guilty on three counts and not guilty on the fourth count, a copy of the judgment of the Federal District Court rendered January 28, 1988, and a Transcript of the trial proceedings before the Federal District Court consisting of four bound volumes.

Respondent presented six (6) witnesses who testified as to the character and reputation of Respondent and he filed as a composite exhibit copies of several letters and statements as to his character that were presented to the Federal District Judge. Respondent testified in his own behalf at this hearing. He essentially maintains his innocence and asks that his testimony and other evidence be considered in mitigation of the penalty to be recommended by

the Referee.

## II FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT

The Referee finds as follows:

- A. Respondent is charged by The Florida Bar with violating The Florida Bar's Integration Rule Article XI.
- (1) Rule 11.02(3)(a) for conduct contrary to honesty, justice or good morals, and
  - (2) Rule 11.02(3)(b) for engaging in misconduct constituting a felony.
- B. The Florida Bar also charges that Respondent violated Disciplinary Rules of The Florida Bar's Code of Professional Responsibility:
- (1) DR 1-102(A)(3) for engaging in illegal conduct involving moral turpitude;
  - (2) DR 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit and misrepresentation;
  - (3) DR 1-102(A)(5) for engaging in conduct prejudicial to the administration of justice; and
  - (4) DR 1-102(A)(6) for engaging in any other conduct that reflects adversely on his fitness to practice law.
- C. Respondent testified under oath before a Federal Grand Jury on March 10, 1983 and May 12, 1983 and he also testified under oath during the trial in the case of United States v. James Joseph Erp et

al., Case No. 83-8-Cr-DC-16, in the United States District Court, Middle District of Florida, Ocala Division, on or about August 22, 1983.

- D. During his testimony under oath Respondent denied being aware that a Mr. Erp, a client of Respondent, was involved in the purchase of an airport through a Mr. Richards.
- E. The denial of Respondent in each instance was false.
- F. Respondent was indicted by the Federal Grand Jury on four felony counts of perjury in connection with his testimony before the Grand Jury and before the Trial Court.
- G. Respondent was found guilty on three counts, two involving his testimony before the Grand Jury, and one count involving his testimony before the Trial Court. He was found not guilty on one count.
- H. Respondent was convicted by the Federal District Court on the three counts and given 3 concurrent sentences of 18 months with a special condition that he be "confined in a jail-type institution for a period of SIX (6) MONTHS", to be followed by 12 months probation during which he is required to contribute 5 hours of "community service per week while on probation."
- I. Although Respondent maintains his innocence, and his convictions and sentences are on appeal, he stands before this Referee as a member of The Florida Bar having been lawfully convicted of three felonies of perjury.

**III RECOMMENDATION AS TO GUILT AND INNOCENCE**

From the evidence presented the Referee finds and recommends that Respondent be found guilty of the following:

A. Violating The Florida Bar's Integration Rule, Article XI:

- (1) Rule 11.02(3)(a) by being guilty of conduct contrary to honesty, justice or good morals, and
- (2) Rule 11.02(3)(b) by being guilty of engaging in misconduct constituting a felony,

and

B. Violating Disciplinary Rules of The Florida Bar's Code of Professional Responsibility:

- (1) DR 1-102(A)(3) for being guilty of engaging in illegal conduct involving moral turpitude;
- (2) DR 1-102(A)(4) for being guilty for engaging in conduct involving dishonesty, fraud, deceit and misrepresentation;
- (3) DR 1-102(A)(5) for being guilty for engaging in conduct prejudicial to the administration of justice; and
- (4) DR 1-102(A)(6) for being guilty of any other conduct that reflects adversely on his fitness to practice law.

**IV RECOMMENDATION AS TO DISCIPLINE**

I recommend that the Respondent be disbarred from the practice of law in Florida.

- A. The crime of perjury involves an intentional interference with the very system and process we at the Bar are sworn to serve and uphold. Such an offense must be sternly and positively denounced in every instance, but when committed by a member of the Bar the crime is greater, and the punishment must be greater. We must avoid in every instance the impression that "we protect our own" when dealing with such intrinsic threats to our courts and our system of justice.
- B. There are no aggravating circumstances that should affect the punishment here.
- C. The only mitigation circumstances are the character and reputation evidence presented by the witnesses at this hearing and the copies of statements and letters from friends and supporters presented to the Federal District Court, together with the absence of prior disciplinary action against Respondent other than a 1985 private reprimand. There are insufficient mitigating factors to justify reduction of the recommended penalty of disbarment.
- D. The Bar and Respondent both agree that the Referee is not permitted to determine whether Respondent is guilty of the three felony offenses because that issue is appropriately determined by the Federal District Court. See The Florida Bar v. Pavlick 504 So.2d 1231 (Fla. 1987). They both agreed that the trial transcript and other evidence be considered

by the Referee, on behalf of Respondent to convince the Referee of his innocence and therefore mitigate the recommended punishment, and on behalf of The Bar to convince the Referee of Respondent's guilt and thereby avoid any mitigation.

The Referee has studied all the evidence presented, including the trial transcript, and the Referee finds that there was abundant evidence to convict the Respondent on each of the three counts of perjury. I find the evidence to be not only clear and convincing, but sufficient to discharge the burden on the government to prove his guilt beyond and to the exclusion of a reasonable doubt.

E. Bar counsel urges that I impose the restraint of Respondent's being disallowed to reapply for admission only after 5 years as provided in Rule 3-5(f) Rules of Discipline. Respondent argues that if disbarment is to be recommended that I impose the 3 year restraint on application for readmission as provided in Rule 11.10(5) of Article XI of The Florida Bar Integrative Rule that was in effect at the time of the offenses here. It seems to me that such a restraint is one that only the Supreme Court of Florida can determine and I therefore make no comment or recommendation as to reinstatement.

**V. PERSONAL HISTORY AND DISCIPLINARY RECORD**

The personal history and prior disciplinary record were testified to by Respondent at the hearing.

Age: 46

Date admitted to Bar: 1970

Prior disciplinary measures: Respondent received a private reprimand in 1985 for neglect of a legal matter in Case 84,05904(5a) formerly 05A84C53 involving minor misconduct.

Other personal data:

Respondent is married and has 2 sons, ages 8 and 4. He has practiced law in Marion County, Florida since his 1970 admission to the Bar. He was a county prosecuting attorney, an Assistant State Attorney, and later Chief Assistant State Attorney. He also served 3 years as Marion County Attorney.

**VI. STATEMENT OF COSTS AND MANNER IN WHICH COST SHOULD BE TAXED:**

I find the following costs were reasonably incurred by The Florida Bar, and I recommend that such costs be charged to the Respondent:

Administrative cost at referee level under Rule 3-7.5(k)(1)(5)	\$ 150.00
Transcript Costs	1,254.90
Bar Counsel/Branch Staff Counsel Travel Costs	216.70
Investigator's Expenses	88.00
<b>TOTAL ITEMIZED COSTS:</b>	<b>\$1,709.60</b>



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**VII. ACCOMPANYING RECORD:**

Forwarded herewith to the Supreme Court of Florida is the complete record, an Index of which is attached. Copies of this Report and the Index to the Record are also furnished to Bar counsel and to Respondent's counsel.

Respectfully submitted,

  
OSEE R. FAGAN, REFEREE

DATE: September 7<sup>th</sup>, 1988

INDEX TO RECORD

1. Complaint
2. Answer
3. Waiver of Venue
4. Notice of Final Hearing
5. Order Setting Final Hearing
6. Evidence on behalf of the Bar, Complainant:
  - Exhibit 1. Indictment
  - Exhibit 2. Verdict
  - Exhibit 3. Judgment in First District Court
  - Exhibits 4-1, 4-2, 4-3, 4-4 - Four bound volumes of Transcript of Trial in Federal District Court
7. Evidence on behalf of Respondent:
  - Exhibit 1. A composite exhibit of several copies of letters and statements submitted to the Federal District Court.
8. Transcript of Final Hearing
9. Affidavit of Costs by Bar

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I CERTIFY that copy of the foregoing REPORT OF REFEREE  
was furnished to:

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P. O. BOX 1167  
TALLAHASSEE, FL 32302.

This 10<sup>th</sup> day of September, 1988.

A. Sandefur  
Judicial Assistant