

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 72,643  
TFB NO. 88-10,001 (20B)

VS.

BRUCE D. FRANKE,

Respondent.

FILED  
D. WHITE

DEC 10 1988

CLERK, SUPREME COURT

Deputy Clerk

AMENDED REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to article XI of the Integration Rule of the Florida Bar and Rule 3-7.5 Rules of Discipline, a final hearing was held on October 31st, 1988. The enclosed pleadings, transcripts and exhibits are forwarded to the Supreme Court of Florida with this report, and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: John T. Berry & Thomas E. DeBerg

For The Respondent: Donald T. Franke

II. Findings of Fact as to Each Item of Misconduct with Which the Respondent is Charged: After considering all the pleadings and evidence before me, I find the respondent has violated The Florida Bar Code of Professional Responsibility in the following cases:

1. On or about April 30, 1987, respondent removed a swiss Army knife priced at approximately \$4.99 from the Sunshine Hardware Store located at 141-9th street North, Naples, Florida.
2. Respondent didn't pay for the aforesaid knife and was not authorized to remove the knife from the premises without paying for it.
3. Respondent removed the aforesaid knife from the Sunshine Hardware Store with the intent to permanently, or temporarily, appropriate the knife to his own use or to the use of another person not entitled thereto.
4. In about April 1987, respondent used an illegal substance, to wit, cocaine.
5. In about April or May of 1988, respondent used an illegal substance, to wit, marijuana.
6. Respondent entered a treatment program for his drug addiction, but failed to complete the program.
7. Respondent admitted to illegal drug use after he left the drug treatment program and he has failed to avail himself of the lawyers assistance substance abuse program of the Florida Bar, though it was made available to him.

III. Recommendation as to Whether or Not the Respondent Should be Found Guilty, I find that the respondent be found guilty of the following violations of the Code of Professional Responsibility:

That Bruce D. Franke has violated the following Disciplinary rules:

1. Committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer.

Pule 4-8.4 (b)

IV. Recommendation as to Disciplinary Measures to be Applied:

1. Suspension from the practice of law for a period of ninety days (90) and enrollment and successful completion of the Florida Lawyers assistance for Substance Abuse Rehabilitation Program and demonstration to the satisfaction of the court that he is fully rehabilitated.

2. probationary period of 2 years for the respondent, following his rehabilitation and his return to the practice of law, conditioned on the respondent abstaining from the use of any illegal substances during the probationary period with the understanding that the respondent will be suspended for any probation violations.

V. Personal History and Past Disciplinary Record: After finding of guilt and prior *to* recommending discipline to be recommended pursuant to Rule 11.06 (9) (a) (4), and Rule 3-7.5 (k) (4), I considered the following personal history and prior disciplinary record of the respondent to wit:

1. Age: 37
2. Date admitted to Bar:
3. Prior Disciplinary Record: None
4. Mitigating Factors: Bruce D. Franke made a full and free disclosure and exhibits a cooperative attitude to this referee.

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	
1. Administrative Costs.....	\$ 150.00
2. Court Reporting Costs.....	328.94
3. Bar Counsel Expenses.....	116.07
4. Miscellaneous Costs.....	23.00
5. Staff Investigator Expenses.....	116.07
B. Referee Level	
1. Administrative Costs.....	\$ 150.00
2. court Reporting Costs.....	311.10
3. Bar Counsel Expenses.....	
4. Miscellaneous Costs.....	
5. Staff Investigator Expenses.....	112.60
6. Audit Expenses.....	
ESTIMATED COSTS TO DATE: .....	<u>\$1,191.71</u>

DATED THIS 23<sup>rd</sup> DAY OF NOVEMBER, 1988.

  
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 REFEREE

Copies furnished to:

Bruce D. Franke, respondent  
 Donald T. Franke, Esq.  
 John T. Berry, Staff Counsel, The Florida Bar  
 Thomas E. Deberg, Assistant Staff Counsel, The Florida Bar