IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

HIRAM LEE BAUMAN,

Respondent.

Supreme Court Case
No. 72,868

On Petition to Review

Initial Brief of Complainant

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SYMBOLS AND REFERENCES

In this Brief, The Florida Bar will be referred to as either "The Florida Bar" or "The Bar" or "Petitioner". Hiram Lee Bauman will be referred to as "Respondent" or "Bauman".

Abbreviations utilized in this Brief are as follows: "TR1" will refer to the transcript of proceedings before the Referee dated May 1, 1989. "TR2" will refer to the transcript of proceedings before the Referee dated May 22, 1989. "RR" will refer to the Report of Referee as filed, dated June 22, 1989. "APP" will refer to Appendix to Brief of Petitioner, as attached hereto.

STATEMENT OF THE CASE

These disiplinary proceedings commenced upon the filing by The Florida Bar on August 8, 1988 of a Petition For Order to Show Cause why Respondent, Hiram Lee Bauman should not be held in contempt of the Supreme Court Order of Suspension dated April 16, 1987 (see Appendix 1).[1]

Respondent was charged in a Complaint filed by The Florida Bar with engaging in unethical conduct: specifically, violation of Article XI, Rule 11.02(3)(A), of the Integration Rule of The Florida Bar (Commission of an act contrary to honesty, justice, and good morals) and DK 1-102(A)(6) (conduct that adversely reflects on his fitness to practice law). A Consent Judgment was entered into and approved by the Referee and Supreme Court and Respondent was ordered suspended beginning May 1, 1987 for six months with the requirement that he take and pass the Professional Responsibility portion of The Florida Bar Exam and demonstrate proof of rehabilitation (see Appendix 2).

Pursuant to said Petition, on August 18, 1988, the Supreme Court entered its Order to Show Cause on or before September 7, 1988 why Respondent, Hiram Lee Bauman, should not be held in contempt of court (see Appendix 3). A Referee was appointed to hear this matter and this cause proceeded to hearing before a Referee on May 22, 1989.

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1. An Amended Petition For Order to Show Cause was filed by The Florida Bar on May 5, 1989 and by Order dated May 10, 1989, said Amended Petition was deemed filed nunc pro tunc as of August 8, 1988.

On June 22, 1989, the Keferee submitted its Report of Referee finding Respondent in contempt of the Supreme Court Order as issued and imposing as discipline a three year suspension to commence May 22, 1989 (RR-5).

Further, it was recommended that Respondent comply with all requirements for reinstatement as established by The Florida Bar.

The Referee also recommended that as an integral condition of the suspension, any additional violation of the terms and conditions of the suspension by Respondent after May 22, 1989 shall result in the automatic and immediate disbarment of Respondent without leave to reapply for a period of five years from the date of the violation (RR-5).

On June 13, 1989, The Florida Bar filed a Cost Affidavit reflecting the costs of the proceedings to date.

The Referee's Keport and recommendation were considered by the Board of Governors at its meeting held July 18-22, 1989. At that time, the Board of Governors directed the filing of the instant Petition For Review to contest the discipline as recommended by the Referee.

The Florida Bar recommends the rejection of the Referee's recommendation of a three year suspension as a discipline of contempt of a Supreme Court Order of Suspension and in lieu thereof recommends that Respondent be disbarred, pursuant to the recommendations of The Florida Bar.

STATEMENT OF THE FACTS

Respondent was suspended from the practice of law by Order of the Supreme Court dated April 16, 1987 (see Appendix 2).

On August 8, 1988, The Florida Bar filed a Petition For Order to Show Cause why Respondent, Hiram Lee Bauman, should not be held in contempt of the Supreme Court alleging Respondent's continuous practice of law in violation of the Supreme Court Order of Suspension, to wit:[2]

On or about July 27, 1988, the Honorable Judge E. L. Eastmoore, Putnam County, held Respondent in contempt of court for holding himself out as an attorney, taking money from clients for their representation, and then subsequently failing to appear and represent said clients. Additionally, on June 28, 1988, Respondent appeared at Final Hearing before the Honorable Judge Constance R. Nutaro, Broward County, and affirmatively represented clients in the defense of a civil proceeding, although Respondent had not filed a Notice of Appearance.

Furthermore, on multiple occasions, post suspension, in Dade County, Florida, Respondent affirmatively secured deposition testimony and appeared in open court to negotiate plea agreements on behalf of criminal defendants. As recently as April 26, 1989, Respondent affirmatively appeared in court, announced his representation of a criminal defendant, and advised the court to discharge the Public Defender's office from representation on the case (see Appendix 4).

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2. See footnote 1.

A hearing was held before the Referee on May 22, 1989 wherein The Florida Bar presented testimony in evidence of Respondent's violation of the Supreme Court's Order of Suspension. Respondent admitted the underlying allegations as contained in the Bar's Petition and argued in mitigation that he was contemporaneously being prosecuted by both State and Federal authorities for the same acts as originally complained of by The Florida Bar in its Complaint which resulted in the Consent Judgment for Discipline imposing the initial six month suspension (TR1-29; 37; 24-38) (TR2-218).

The Referee issued its Report on June 22, 1989 recommending a three year suspension to begin May 22, 1989 with the requirement that Respondent meet all conditions as set out in the Report of Referee and by The Florida Bar. Further, as an added condition, the Referee stated that proof of a single violation post May 25, 1989 by Respondent will result in the automatic 5 year disbarment of Respondent.

SUMMARY OF THE ARGUMENT

Respondent was suspended by Order of the Supreme Court dated April 16, 1987 for a period of six months beginning May 1, 1987.

The Florida Bar first became aware of Respondent's unauthorized practice of law in July, 1988 when Respondent was held in contempt of court by the Honorable Judge E.L. Eastmoore, Putnam County, for holding himself out as an attorney, accepting fees and subsequently abandoning the client's case. The Florida Bar presented at trial no less than five additional instances whereby Respondent engaged in the unauthorized practice of law.

The law is clear. Willfully engaging in the practice of law despite a suspension warrants disbarment. The Florida Bar v. Hartnett, 398 So.2d 1352 (Fla. 1981).

Respondent argued in mitigation that he was wrongfully being prosecuted by both State and Federal authorities for the same underlying offense for which he was initially suspended. However, this does not preclude the Bar from going forward. The affirmance of a judgment of contempt for conduct which warrants disbarment does not preclude The Florida Bar or a circuit court from proceeding independently with disciplinary proceedings. Sachse ex rel. Roberts v. Sachse, 102 So.2d 300 (Fla. App. 2nd DCA 1958).

Respondent became eligible for reinstatement 2 1/2 months prior to being indicted by the U.S. Government for conspiracy to import cocaine and marijuana, yet he never applied (nor has he

done so to date) for reinstatement.

Suspending an attorney who is already suspended is meaningless. To be effective as both a sanction to punish and an effective deterent, it should be clearly established policy that attorneys who violate suspension orders face disbarment.

After all, being a member of The Florida Bar is not a right, it is a privilege. If violated, the privilege should be taken away.

POINTS ON APPEAL

POINT I

WHETHER THE REFEREE ERRED IN NOT IMPOSING DISBARMENT AS THE APPROPRIATE DISCIPLINE WHERE RESPONDENT OPENLY AND CONTINUOUSLY ENGAGED IN THE PRACTICE OF LAW IN DIRECT CONTRAVENTION AND VIOLATION OF A SUPREME COURT ORDER OF SUSPENSION.

ARGUMENT

I

WHETHER THE REFEREE ERRED IN NOT IMPOSING DISBARMENT AS TEE APPROPRIATE DISCIPLINE WHERE RESPONDENT OPENLY AND CONTINUOUSLY ENGAGED IN THE PRACTICE OF LAW IN DIRECT CONTRAVENTION AND VIOLATION OF A SUPREME COURT ORDER OF SUSPENSION.

Respondent was suspended by Order of the Supreme Court dated April 16, 1987. Pursuant to said Order, Respondent was to stand suspended for a six month period to begin May 1, 1987. Additionally, Respondent was required to take and pass the Professional Responsibility portion of The Florida Bar Exam and demonstrate proof of rehabilitation.

Pursuant to Rule 3-5.1(e), Rules Regulating The Florida Bar, during the term of suspension, the Respondent shall continue to be a member of The Florida Bar but without the privilege of practicing. This does not mean that a suspended attorney may selectively choose when and where to practice or to what extent to practice, but rather to cease practicing. Respondent, Hiram Lee Bauman, chose the former rather than the latter.

As evidenced by the Petition For Order to Show Cause (see Appendix 1) The Florida Bar first became aware of Respondent's unauthorized practice of law when in July, 1988 Respondent was held in contempt of court by the Honorable Judge E. L. Eastmoore, Putnam County, for holding himself out as an attorney, taking money from clients for representation and subsequently abandoning the client's case.

This incident was not isolated in that on no less than five additional occasions, over a 12 month period, Respondent affirmatively appeared in court representing criminal and civil defendants, engaged in the taking of discovery depositions and accepting money from prospective and actual clients for representation which, by Order of the Supreme Court, Respondent was not authorized to provide or accept.

The law is clear. Willfully engaging in the practice of law despite a suspension warrants disbarment. The Florida Bar v. Hartnett, 398 So.2d 1352 (Fla. 1981). In The Florida Bar v. Hirsch, 359 So.2d 856 (Fla. 1978), the court ordered the attorney disbarred for conduct which included receiving fees from a client, drafting pleadings and conducting two or more client interviews while suspended. Respondent, Bauman, engaged in activities such as these and more. This is not in dispute; Bauman himself admits that he continued to practice law while suspended (TR1-29; 37).

Why then was Respondent not disbarred? After all, he was adjudged in contempt of the Supreme Court Order. Respondent attempted to argue in mitigation that he was wrongfully being prosecuted by both State and Federal authorities for the same underlying offense for which he was initially ordered suspended. However, this does not preclude the Bar from proceeding forward with disciplinary proceedings nor should it affect the proposed discipline to be imposed on an errant attorney. The affirmance of a judgment of contempt for conduct which warrants disbarment does not preclude The Florida Bar or a circuit court from

proceeding independently with disciplinary proceedings. Sachse ex rel. Roberts v. Sachse, 102 So.2d 300 (Fla. App. 2nd DCA 1958).

It should be noted that pursuant to the terms and conditions of Bauman's Suspension Order, he was eligible for reinstatement on November 1, 1987 having taken and passed the Professional Responsibility portion of The Florida Bar Exam in August, 1987. Respondent stated at trial before the Referee that the reason he did not reapply was the potential Federal and State court actions that may arise as a result of his involvement in a conspiracy to import cocaine and marijuana (TR2-209-220). Respondent, Hiram Lee Bauman, was not indicted until January, 1988, some two and one half months after he could have applied for reinstatement. Further, at no time since his eligibility has Respondent attempted to apply for reinstatement, but rather chose to disregard the Order of Suspension, Order of Contempt and Rules Regulating The Florida Bar by continuously and willfully engaging in the unauthorized practice of law.

In recommending discipline, this Court has considered the purposes of discipline set forth in The Florida Bar v. Pahules, 233 So.2d 130, 132 (Fla. 1970):

> "First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violation."

There is no more egregious an act committed on the public than an attorney who has been ordered to cease practicing law, ignores a court's order and continues to hold himself out publicly as an attorney able to practice law.

To suspend an attorney who is already under a suspension is meaningless. A suspension under these circumstances does not have any deterent effect and may actually encourage attorneys to ignore court orders of suspension for as long as possible and to continue to practice law.

In order to be effective as both a sanction to punish an attorney for violating an order of suspension and as an effective deterent, it should be clearly estabiished policy that attorneys who violate a suspension order face disbarment. Unless the court deals swiftly and severely in enforcing its orders, confidence in its ability to regulate the profession will be eroded.

"A license to practice law confers no vested right to the holder thereof, but is a conditional privilege which is revocable for cause." Rule 3-1.1 Rules Regulating The Florida Bar. As with any other privilege, if you violate the rules, the privilege is taken away. Respondent Bauman violated the rules. His privilege to practice law should be taken away.

CONCLUSION

Given the evidence and testimony as presented to the Referee, coupled with Respondent, Hiram Lee Bauman's admission of willfully and continuously engaging in the practice of law in violation of the Supreme Court's Order of Suspension, the appropriate discipline to be imposed is disbarment.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the above and foregoing Complainant's Initial Brief on Petition for Review was mailed to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927 by Certified Mail Return Receipt Requested (#P 110 986 167) and that a true and correct copy was mailed to Hiram Lee Bauman, Respondent, at his record bar address of 1644 N.W. 17th Avenue, Miami, Florida 33125 by Certified Mail Return Receipt Requested (#P 110 986 173) and to 3641 Loquat Avenue, Miami, Florida 33133 by Certified Mail Return Receipt Requested (#P 110 986 168) and to the Honorable Harvey Baxter, Referee, North Dade Justice Center, 15555 Biscayne Boulevard, Room 207, North Miami, Florida 33160 on this 23 day of August, 1989.

WARREN JAY STAMM
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