

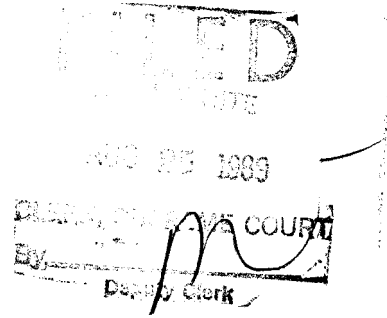
IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

Case No. 73,211  
TFB No. 88-10,179 (06E)

v.

GORDON B. SCOTT,  
Respondent.



REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.5, Rules of Discipline, hearings were held on April 25th and June 23rd, 1989. The pleadings, notices, motions, orders and transcripts, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: RICHARD A. GREENBERG  
Assistant Staff Counsel

For The Respondent: JOSEPH F. MCDERMOTT  
Counsel for Respondent

11. 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:

Between the years 1977 through 1981, respondent and Stanley A. Lowe, Sr. were close friends. In addition, respondent and Mr. Lowe lived together off and on during this time period. During

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the aforementioned time period, Mr. Lowe owned several pieces of property in Pinellas County, Florida.

Prior to November 3, 1978, Mr. Lowe and Janice Lowe, his former wife, owned the property described in Bar's Exhibits 1 and 7 (Pirate's Table property) as tenants in common. On November 3, 1978, Mr. Lowe conveyed his interest in the property described in Exhibit 1 to respondent. Respondent gave no consideration to Mr. Lowe for the transfer of property. Mr. Lowe transferred this property in order to avoid creditors and the respondent knew the transfer was for the purpose of Mr. Lowe avoiding creditors.

On November 3, 1978, Mr. Lowe also transferred to respondent Mr. Lowe's interest in the property described in Bar's Exhibit 2 (Island Estates property). This transaction was also for the purpose of Mr. Lowe avoiding creditors. Respondent knew that this transfer was for the purpose of Mr. Lowe avoiding creditors. In addition, respondent paid no consideration to Mr. Lowe for the transfer.

At the time of the transfers mentioned above, Mr. Lowe prepared Quit Claim Deeds whereby respondent was to transfer the properties back to Mr. Lowe at Mr. Lowe's request. At the final hearing in this matter, respondent denied that any such Quit Claim Deeds were ever prepared. I find that the respondent was not being entirely truthful in his testimony.

On May 1, 1979, respondent sold the Island Estates property. Respondent received a check in the amount of \$53,109.94 from the aforementioned sale. At the final hearing in this matter, respondent testified that the money was never deposited in his bank account, that he received none of the proceeds and that the money went to Mr. Lowe. The check (Bar's Exhibit 5), however, does not reveal that it was made payable to the order of Stanley Lowe.

On July 21, 1980, Mr. Lowe transferred to respondent the property described in Exhibit 7. At the time of this transfer, Mr. Lowe prepared a Quit Claim Deed whereby respondent was to transfer the property back to Mr. Lowe at Mr. Lowe's request. Respondent paid no consideration to Mr. Lowe for the aforementioned transaction. At the final hearing in this matter, respondent testified that no Quit Claim Deed existed for this transfer. The respondent's testimony is found to be less than entirely truthful in regard to this issue.

After Mr. Lowe died on August 22, 1981, respondent claimed ownership of the properties which had been transferred to him by Mr. Lowe. On September 3, 1981, respondent wrote Mr. Lowe's son, Stanley A. Lowe, Jr., and told him that his father had left no assets with which to open an estate. In addition, Mr. Lowe was survived by another son, Jeffrey E. Lowe. Respondent failed to inform either of Mr. Lowe's sons of the existence of the property which had been transferred to respondent by Mr. Lowe.

Eventually, Stanley Lowe, Jr. and Jeffrey Lowe learned of

the existence of the properties which had been transferred to respondent by Mr. Lowe and they filed suit against respondent to recover the properties. The suit was eventually settled whereby respondent paid Mr. Lowe's sons the proceeds realized from the sale of the properties of Mr. Lowe.

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: Respondent should be found guilty of violating the following Disciplinary Rules:

DR 1-102(A)(4) (engage in conduct involving dishonesty, fraud, deceit, or misrepresentation);

DR 1-102(A)(5) (engage in conduct that is prejudicial to the administration of justice);

DR 1-102(A)(6) (engage in any other conduct that adversely reflects on his fitness to practice law);

DR 7-102(A)(7) (a lawyer shall not counsel or assist his client in conduct that a lawyer knows to be illegal or fraudulent); and,

DR 7-102(A)(8) (a lawyer shall not knowingly engage in conduct contrary to a disciplinary rule).

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the respondent be suspended from the practice of law for ninety-one (91) days with the requirement that respondent show proof of rehabilitation prior to his reinstatement to the practice of law.

V. Personal History and Past Disciplinary Record: After a finding of guilt and prior to recommending discipline to be imposed pursuant to Rule 3-7.5 (k)(1)(4), Rules of Discipline, I considered the fact that respondent has no prior disciplinary record. In addition, however, I find that the respondent was not entirely truthful in his testimony at the final hearing in this matter.

(1) Age: 53 years old

(2) Date Admitted to Bar: December 2, 1968

(3) Mitigating Factors: Respondent's reputation in the Public Defender's offices for the Second and Sixth Judicial Circuits.

(4) Aggravating Factors: Respondent's lack of credibility at the final hearing, respondent's refusal to acknowledge the wrongful nature of his conduct and respondent's dishonest and selfish motive.

VI. Statement of Costs and Manner in Which Costs Should Be Taxed: I find that the costs of this proceeding should be

assessed against the respondent attorney. Costs in the amount of \$1,677.50 were previously provided by The Florida Bar on June 23, 1989.

VII. It is apparent that other costs might be incurred in the future, if further proceedings are necessary in this matter. It is recommended that such future costs, together with the foregoing costs, be charged to the respondent and that interest at the statutory rate shall accrue and be payable beginning thirty (30) days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 16<sup>th</sup> day of August, 1989.

*Susan Sexton*

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The Honorable Susan Sexton  
Referee

Copies furnished to:

Joseph F. McDermott, Counsel for Respondent  
Richard A. Greenberg, Assistant Staff Counsel  
John T. Berry, Staff Counsel