

IN THE SUPREME COURT OF FLORIDA

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THE FLORIDA BAR,
Complainant,

By _____
Deputy Clerk *pl*

v.

Case No. 73,747
[TFB Case No. 89-30,909 (09B)]

JAMES T. GOLDEN,
Respondent.

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". James T. Golden will be referred to as "the respondent" or "Mr. Golden".

Abbreviations utilized in this Brief are as follows:

"T- —" will refer to the transcript of the proceeding before the referee on June 14, 1989.

"RR- —" will refer to the Report of Referee as filed dated July 17, 1989.

"A- —" will refer to the Appendix, attached.

STATEMENT OF THE CASE AND FACTS

On September 22, 1988, this Court ordered respondent to be suspended from the practice of law for ninety days beginning on October 24, 1988, through December 24, 1988, and until payment of costs of the proceeding, as discipline in The Florida Bar v. Golden, 530 So.2d 432 (Fla. 1988). On February 21, 1989, The Florida Bar filed a Motion for Order to Show Cause why respondent, James T. Golden, should not be held in contempt of the Supreme Court of Florida for violating the order of suspension of September 22, 1988, for practicing law while suspended, A-2.

The Bar's motion was based upon the affidavit of Mr. Isaac Mitchell who stated that respondent continued to practice law after his suspension by representing Mr. Mitchell in traffic court in Orange County, Florida. The respondent appeared with Mr. Mitchell in county court on December 16, 1988, at which time the presiding judge notified Mr. Golden that he was aware of Mr. Golden's current suspension from The Florida Bar. The affidavit of the Honorable George A. Sprinkel, IV, the presiding judge, substantiated this allegation, A-2. Mr. Mitchell testified at the Final Hearing that he first visited respondent in mid-October of 1988 in order to secure legal representation for charges of driving with a suspended license, T-7-8. Mr. Mitchell paid respondent \$800 toward the total fee charged of \$1800.00 as legal

fees for the traffic court representation, T-10. At this time respondent was aware of his suspension which had been ordered by the Court on September 22, 1988. However, respondent failed to advise Mr. Mitchell of his forthcoming suspension and accepted \$800 as the initial payment on his total fee of \$1800. Mr. Mitchell did not learn of Mr. Golden's suspension until December 16, 1988, when the judge of the traffic court forced Mr. Golden to cease practicing law while suspended, T-12. Respondent also prepared pleadings for Mr. Mitchell to sign during his suspension period, requesting a continuance, T-20-21, 31. Respondent refused to return Mr. Mitchell's money when he requested a refund after learning of the suspension, T-12. Mr. Mitchell was forced to retain new counsel for \$750, T-12-13.

Mr. Golden filed a Response to Motion to Show Cause with the Supreme Court on March 29, 1989, in which he admitted appearing in court with Mr. Mitchell and stated that his purpose in being there was "to be of assurance to him if he were unable to articulate his need for a continuance in a satisfactory manner to the court", A-3. On April 24, 1989, this Court appointed a referee to hear and consider the matters addressed in the petition and the response and to make a report and recommendation to the Court. Thereafter, final hearing was scheduled and held on June 14, 1989.

In the Report of Referee, filed July 17, 1989, the referee found the respondent guilty of practicing law while suspended, recommended that he be found in violation of the Order of the Supreme Court of Florida, and recommended that respondent be suspended for no less than one year with proof of rehabilitation required before he is allowed reinstatement into The Florida Bar. The referee further recommended that respondent pay The Florida Bar's costs in the matter, **A-1**.

The referee's report was considered by the Board of Governors at its meeting held September 20-23, 1989. The Board directed the filing of the Petition for Review to contest the discipline as recommended by the referee as being insufficient in that disbarment was necessary given the seriousness of the conduct involved as well as respondent's prior record. The findings of fact of the referee are not contested.

SUMMARY OF ARGUMENT

Respondent has knowingly and willfully violated the Order of the Supreme Court of September 22, 1988, suspending him from the practice of law. In continuing to practice law in contravention of this Order, respondent has harmed his client, Mr. Mitchell, as well as the legal system. Respondent has yet to display the slightest remorse or understanding of his wrongdoing.

The law in this matter is clear. Disbarment is warranted for wrongfully engaging in the practice of law despite a suspension. Respondent's actions indicate the highest disregard for the court system. Further, respondent's lengthy prior record indicates that nothing less than disbarment would have an impact on this attorney. Therefore, disbarment is necessary in order to fulfill the goals of attorney discipline. The message must be clearly established that attorneys who violate suspension orders face disbarment.

ARGUMENT

POINT I

DISBARMENT IS THE APPROPRIATE DISCIPLINE WHERE THE RESPONDENT ENGAGED IN THE PRACTICE OF LAW IN DIRECT VIOLATION OF A SUPREME COURT ORDER OF SUSPENSION.

Pursuant to the Rules of Discipline, Rule 3-5.1(e), any respondent who is suspended pursuant to a discipline order, as in this case, shall continue to be a member of The Florida Bar but without the privilege of practicing law. The court order suspending respondent, James T. Golden, of September 22, 1988, clearly mandated that he should not continue the practice of law during his period of suspension. Further, it even gave the respondent a reasonable period in which to close down his practice in order that he might comply with the suspension order with the least possible inconvenience to himself as well as his clients. Respondent chose to disobey this Order. On or about October 16, 1988, he accepted \$800 from Mr. Mitchell and then appeared in court with him at least two times, T-9, 11, 57. He failed to advise Mr. Mitchell of his suspension and finally ended up failing to perform any services due to his suspension and then refused to return the money to the client when requested. In fact, Mr. Mitchell did not learn of respondent's previous suspension until, while appearing in traffic court with Mr. Golden, Mr. Golden was advised by the judge that he was aware of

the respondent's suspension, T-12. Respondent appears to argue that his appearance in court with Mr. Mitchell was somehow outside the realm of appearing as an attorney. However, this is not substantiated by the pleadings he prepared for Mr. Mitchell or any disclosure of his status to the court, T-64, see affidavit of The Honorable George A. Sprinkel, IV, A-2. Further, respondent accepted Mr. Mitchell as a new client after learning of his imminent suspension and did not advise him of his suspension, T-12. This, despite the fact that respondent was given more than adequate notice in which to close out his practice prior to the suspension. The facts are not in dispute here because the referee's clearly outlined findings have not been challenged by the Bar or respondent and are fully supported by the evidence, RR-1-2.

Willfully engaging in the practice of law despite a suspension warrants disbarment, The Florida Bar v. Hartnett, 398 So.2d 1352 (Fla. 1981) and The Florida Bar v. Hirsch, 359 So.2d 856 (Fla. 1978). In the latter case, 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. Clearly, respondent has failed to understand the basic tenets of professional conduct. As the referee noted at Section IV of his report, RR-2, respondent's failure to obey an discipline order of the Supreme Court of

Florida is a serious matter, as is his lack of remorse or understanding of his wrongdoing. Respondent's prior discipline history also indicates that nothing less than disbarment will impress upon him his responsibilities as a lawyer. In 1981 he received a public reprimand for borrowing his client's money and failing to repay it for two years and for maintaining unsatisfactory trust accounting records and for utilizing inadequate trust account record keeping procedures, The Florida Bar v. Golden, 401 So.2d 1340 (Fla. 1981). In 1987 he received a 10 day suspension with one year probation for neglect of a legal matter, The Florida Bar v. Golden, 502 So.2d 891 (Fla. 1987). In 1988 he received a 90 day suspension resulting in the court order issued in this case for neglect of a legal matter, The Florida Bar v. Golden, 530 So.2d 931 (Fla. 1988).

According to Section 6.21 of Florida Standards for Imposing Lawyer Sanctions, disbarment is appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding. Such harm to the client, the public, the legal system, and the profession of law is inevitable when an attorney chooses to ignore court orders. Further, Section 9.22 provides that (a) prior disciplinary offenses and (e) bad faith

obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, call for more severe sanctions than otherwise. Respondent's prior record, coupled with respondent's utter disregard for the judicial system and the court order as well as his inability to understand his wrongdoing in this case indicate that nothing less than disbarment will serve the purposes of attorney discipline.

These purposes have been previously indicated by this Court to include protection of the public without denial of a qualified attorney due to undue harshness; fairness to the respondent by being sufficient to punish yet also encourage rehabilitation; and deterrence to other attorneys, The Florida Bar v. Pahules, 233 So.2d 130, 132 (Fla. 1970). To merely suspend the attorney, as recommended by the referee, would be meaningless. A suspension of an attorney who has already violated such a suspension order does not have any deterrent effect and does not accomplish the goals of attorney discipline. Disbarment is necessary to enforce the principles of attorney discipline and the entire judicial system.

CONCLUSION

WHEREFORE, The Board of Governors of The Florida Bar respectfully requests this Honorable Court to accept the referee's report finding respondent guilty of violating the Suspension Order of this Court of September 22, 1988, but to reject the referee's recommended suspension of one year and instead to impose disbarment upon the respondent as well as to order respondent to pay the costs of The Florida Bar in bringing this discipline now totalling \$843.90.

Respectfully submitted,

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BY:



JAN WICHROWSKI
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing Complainant's Initial Brief on Petition for Review have been furnished by regular U.S. mail to the Honorable Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished to respondent, James T. Golden, by regular U.S. mail to his record Bar address, Post Office Box 5401, Orlando, Florida, 32858; and a copy of the foregoing has been furnished by regular U.S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 23rd day of October, 1989.



JAN WICHROWSKI
Bar Counsel

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APPENDIX TO
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