

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Case No. 74,025
TFB No. 88-11,185 (6D)

v.

GENE M. KICKLITER,
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, a final hearing was held on July 10, 1989. The enclosed pleadings, orders, 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: David R. Ristoff

For The Respondent: Richard T. Earle, Jr.

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 therefrom the following facts:

In December, 1987, Frank Bruno Macenas retained Respondent to prepare his Last Will and Testament. On or about December 15, 1987, Mr. Macena furnished the Respondent with the information necessary to draft said Will. Mr. Macena told Respondent that he did not want his sons, who were heirs-at-law, to receive anything under the Will and he wanted his estate to go to his grandchildren, one of whom was Nancy Meyer. On December 15, Respondent prepared the Will of the decedent, bequeathing Nancy Meyer the bulk of Mr. Macena's estate. Mr. Macena died on the evening of December 15 or the early morning of December 16, without executing the Will.

Upon learning of the death of Mr. Macena and after discussing the effect of Mr. Macena's death without the execution of his Will with Nancy Meyer, Respondent determined to do what was necessary to effectuate the intent of Mr. Macena as expressed to him and in the Will which he had prepared.

On or about December 16, 1987, Respondent forged the signature of Frank B. Macena to the document which he had prepared as his Last Will and Testament. Respondent directed or caused two of his employees to witness the purported Last Will and Testament so forged by him, and he notarized the self-authenticating clause of the purported Last Will and Testament of Mr. and Mrs. Macena. On or about March 16, 1988, Nancy Meyer met with the Respondent to discuss the forged execution of Mr. Macena's Will. Specifically, Ms. Meyer sought Respondent's advice regarding the likelihood of Mr. Macena's forged signature being revealed in the course of a Will contest and Respondent advised her that the only way the forgery would be revealed was disclosure by one of the participants of the forgery.

In so forging the Will of Mr. Macena, causing the same to be witnessed by two witnesses, and notarizing the self-authenticating clause of the purported Will, Respondent was not motivated by any expectation of financial gain or other ulterior motives, but was acting out of a misguided feeling of loyalty to his client and in an effort to carry out his client's testamentary intent.

On or about March 18, 1988, an Information was filed in the Circuit Court for the Sixth Judicial Circuit, Pinellas County, Florida, in The State of Florida v. Gene M. Kickliter, Case Number 88-04050 CFANO, charging respondent with Forgery; Uttering a Forged Instrument; and Taking a False Acknowledgment, all of which are Third Degree Felonies. On or about June 20, 1988, respondent entered a plea of guilty of the three aforementioned charges. On or about August 22, 1988, adjudication of guilt was withheld as to the aforementioned charges. The respondent was placed on three (3) years probation, with the special conditions that he perform 200 hours of community service, complete a law school ethics course, not hold status as a Notary Public and pay court costs and assessments.

On or about August 25, 1988, The Florida Bar filed a Notice of Determination or Judgment of Guilt, seeking respondent's suspension from the practice of law. On or about October 10, 1988, respondent was suspended from the practice of law pursuant to Rule 3-7.2(e), Rules of Discipline.

On or about April 14, 1989, The Florida Bar filed the instant Complaint, as a disciplinary proceeding separate from the above-mentioned felony suspension.

111. 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 Rules of Discipline: That GENE M. KICKLITER, has violated the following Disciplinary Rules:

Rule 3-4.3 (commission of a felony), Rules of Discipline; and the following Rules of Professional conduct: Rule 4-3.1(a

lawyer shall not bring a proceeding unless there is a basis for doing so that is not frivolous); Rule 4-3.3(a)(1)(a lawyer shall not knowingly make a false statement of material fact or law to a tribunal); Rule 4-3.3(a)(2)(a lawyer shall not knowingly fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client); Rule 4-3.4(a)(a lawyer shall not unlawfully alter, destroy, or conceal a document); Rule 4-3.4(b)(a lawyer shall not fabricate evidence, cancel or assist a witness to testify falsely); Rule 4-8.4(b)(a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); Rule 4-8.4(c)(a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 4-8.4(d)(a lawyer shall not engage in conduct prejudicial to the administration of justice).

IV. Recommendation as to Disciplinary Measures to be Applied: After a review of the Florida Standards for Imposing Sanctions I recommend that GENE M. KICKLITER be disciplined-by:

It is recommended that Respondent be suspended from The Florida Bar for a minimum period of two (2) years, from October 10, 1988 (the date of his suspension by the Supreme Court of Florida) provided however, if he has not completed his period of probation ordered by the Circuit Court of Pinellas County, Florida in the case of State of Florida v. Gene M. Kickliter, case number CRC 88-04050 CFANO-A by said time, he shall be suspended until he completes said period of probation and, further, until he proves his rehabilitation for a maximum suspension period of three (3) years. Further, respondent shall pay the costs of these proceedings as set forth below.

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

- (1) Age: 43
- (2) Date Admitted to Bar: 10/06/72
- (3) Prior Disciplinary Record: None
- (4) Mitigating Factors: Absence of a dishonest or selfish motive; cooperative attitude towards disciplinary proceedings; good character and reputation; remorse; imposition of criminal penalties.
- (5) Aggravating Factors: A pattern of misconduct; substantial experience in the practice of law.

VI. Statement of Costs and manner in Which Costs Should be Taxed:

(1) Administrative Costs	\$500.00
(2) Bar Counsel Expenses	7.80
(3) Court Reporting Costs	<u>290.50</u>

ESTIMATED COSTS TO DATE: \$798.30

Dated this 26th day of Oct . 1989.


THE HONORABLE DONALD F. CASTOR
Referee

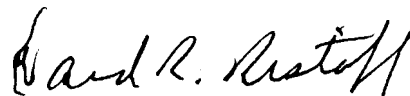
Copies furnished to:

Richard T. Earle, Jr., Counsel for Respondent
John T. Berry, Staff Counsel, Tallahassee
David R. Ristoff, The Florida Bar

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Statement of Costs has been furnished to RICHARD T. EARLE, JR., Counsel for Respondent at his record Bar address of 150 Second Avenue, North, Suite 1220, St. Petersburg, Florida 33701, by Regular U.S. Mail, and a copy to JOHN T. BERRY, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32301-8226; on this

21st day of July, 1989.



DAVID R. RISTOFF
(Attorney #358576)