

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JOHN E. KIRKPATRICK,

Respondent.

Supreme Court Case
No. 74,051

CONFIDENTIAL

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Reply Brief of Complainant and
Answer Brief of Complainant On
Cross-Petition for Review

RANDI KLAYMAN LAZARUS
Bar Counsel
TFB #360929
The Florida Bar
Suite M-100, Rivergate Plaza
Miami, Florida 33131
(305) 377-4445

JOHN F. HARKNESS, JR.
Executive Director
TFB #123390
The Florida Bar
Tallahassee, Florida 32399-2300
(904) 561-5600

JOHN T. BERRY
Staff Counsel
TFB #217395
The Florida Bar
Tallahassee, Florida 32399-2300
(904) 561-5600

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INTRODUCTION

In this Brief, The Florida Bar will be referred to as either "the Bar" or "The Florida Bar". John A. Kirkpatrick will be referred to as "Respondent" or "Mr. Kirkpatrick".

POINTS ON APPEAL

POINT I

WHETHER RESPONDENT DID VIOLATE
THE RULES OF DISCIPLINE?

POINT II

WHETHER THERE ARE GROUNDS TO
SUPPORT THE IMPOSITION OF A
PUBLIC REPRIMAND?

ARGUMENT

I

**RESPONDENT DID VIOLATE
THE RULES OF DISCIPLINE
(RESTATED)**

Respondent states that the "cornerstone of the Referee's Report is that Mr. Kirkpatrick was arrested for a misdemeanor and that he pled no contest to the charges." (Brief of Respondent, Pg.11). Respondent has missed the point. Although the fact that Respondent was arrested is significant it is the ensuing conduct and particularly Respondent's numerous failures to appear in court causing the issuance of bench warrants and failure to complete probationary requirements until prior to the final hearing which caused the Referee to conclude as he did. Respondent further urges this Court to find that his conduct is not prejudicial to the administration of justice. Rule 4-8.4(d). Such conduct does constitute conduct prejudicial to the administration of justice. In The Florida Bar v. Pettie, 424 So.2d 734 (Fla. 1982) this court held that "obstructing court orders or criminal investigations" does constitute such conduct¹. Obstructing is defined as follows:

To hinder or prevent from progress, check, stop, also to retard the progress of, make accomplishment of difficult and slow. To be

¹Rule 4-8.4(d) and its predecessor DR 1-102(A)(5) provide that a lawyer shall not engage in conduct that is prejudicial to the administration of justice. The Pettie, supra decision uses the term "obstruction of justice" as a synonym for the term "prejudicial to the administration of justice".

or come in the way of or to cut off the sight of an object. To block up; to interpose obstacles; to render impassable; to fill with barriers or impediments; as to obstruct a road or way. To impede; to interpose impediments, to the hindrance or frustration of some act or service; as to obstruct an officer in the execution of his duty. (citations omitted)

Black's Law Dictionary,
Fourth Edition, Pg.1228

Certainly, Respondent's acts of failing to appear in court which create the need to issue bench warrants and failing to complete probationary requirements has the effect of "impeding and frustrating the judicial process."

Respondent further argues that it is "undisputed" that he did not receive notices from the court. Obviously, neither the Clerk of the Court, the presiding Judge, the United States Postal Service, The Florida Bar or the Referee were present to physically observe that Respondent collected his mail. There are presumptions that must be made. For instance, if the Clerk of the Court mails notices to the address provided by a defendant, or a Respondent as in this case, then the Clerk has fulfilled their responsibility. The Referee found precisely that, which is all that he was required to do. In an analogous situation this Court found that an attorney who was suspended could not claim he was unaware of the suspension because he did not open his mail.

We cannot countenance such behavior and reject the proposition that disciplinary proceedings and orders of this Court can be

ignored by consciously deciding not to open mail. To accept such a proposition as mitigation would require that the Bar and this Court take physical custody of Respondents in order to ensure notification of disciplinary actions or proceedings has been accomplished.

The Florida Bar v. Santiago,
521 So.2d 1111 (Fla. 1988)

ARGUMENT

II

**THERE ARE GROUNDS TO SUPPORT
THE IMPOSITION OF A PUBLIC
REPRIMAND (RESTATED)**

Respondent has argued that Rule 6.24 of The Florida Standards for Imposing Lawyer Sanctions which provides for a private reprimand is applicable to the case sub judice. The Bar would urge this court to find that Rule 6.23 of The Florida Standards for Imposing Lawyer Sanctions which provides for a public reprimand is the suitable sanction. It states:

Public Reprimand is appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

The Referee has found that Respondent received notice of the proceedings yet failed to appear which constitutes an "interference" with a legal proceeding. (see Argument I of this brief).

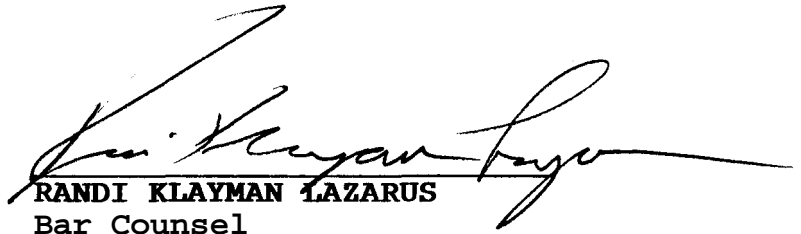
Moreover, although the Referee did not specifically enumerate the existence of aggravating circumstances the essence of what he did find are three aggravating circumstances. First, he found that Respondent was arrested, failed to appear in court on several occasions causing the issuance of bench warrants and did not complete his probationary obligations until just prior to the final hearing. Thus, the existence of a pattern of misconduct, as well as the existence of multiple offenses. Rule

9.22(c) and (d) of the Florida Standards for Imposing Lawyer Sanctions. Next, the Referee specifically found that Respondent took no responsibility for his actions and he exhibited an indifferent attitude. Thus, the refusal to acknowledge wrongful nature of conduct, Rule 9.22 (g) Florida Standards for Imposing Lawyer Sanctions.

The Referee did not find inferentially or specifically the existence of any mitigation. In fact, the last sentence of his recommendation provides that "hopefully a private reprimand will obtain the same result, to wit: the attention of Mr. Kirkpatrick [sic]" (emphasis added). Hopefully, this Court will find that based on Respondent's misconduct and the Referee's findings and sentiments a public reprimand is more appropriate.

CONCLUSION

Based upon the foregoing reasons and citations of authority, The Florida Bar respectfully submits that this Court reject the recommendation of the Referee and impose a Public Reprimand.



RANDI KLAYMAN LAZARUS
Bar Counsel
TFB #360929
The Florida Bar
Suite M-100, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131
(305) 377-4445

JOHN F. HARKNESS, JR.
Executive Director
TFB 1123390
The Florida Bar
Tallahassee, Florida 32399-2300
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TFB #217395
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