

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

CONFIDENTIAL

VS

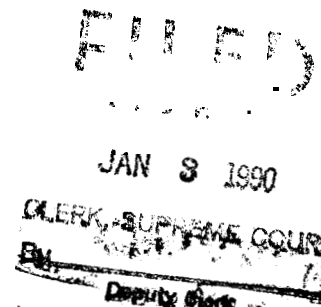
The Florida Bar File
No. 88-70,100 (11A)

JOHN E. KIRKPATRICK,

Supreme Court Case

Respondent.

No. 74,051



REPORT OF REFEREE

1. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.5 of the Rules Regulating The Florida Bar (article XI, Rule 11.06 of the Integration Rule of The Florida Bar), a Final Hearing was held at the Dade County Courthouse, which began on August 23, 1989 and concluded on November 9, 1989. Thereafter, the Referee left this matter open until mid-December to afford Respondent an opportunity to complete the Advocate Program which he did. All of the pleadings, transcripts, notices, motions, orders and exhibits are forwarded with this report and the foregoing constitutes the record of the case:

The following attorneys acted as counsel for the parties:

For the Florida Bar:

Randi Klayman Lazarus
Suite M-100, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

For the Respondent:

Gregory Borgognoni, Esq.
Tew, Jordan, Schulte & Beasley
701 Brickell Avenue
Miami, Florida 33131

11. FINDINGS OF FACTS: I find the following facts to be true and correct, as admitted by the Respondent.

1. That on or about March 2, 1987, the Respondent was arrested for resisting arrest without violence in violation of Florida Statute 843.02 and no valid tag in violation of Florida Statute 320.07 (3)(b).
2. That Respondent was issued a notice to appear in Court on April 6, 1987 for the arraignment.
3. That such notice as heretofore mentioned in paragraph 2, was mailed by regular mail to the address Respondent provided to the arresting officer.
4. That Respondent left the address of 777 Brickell Avenue with the arresting officer.
5. That Respondent failed to appear at the scheduled hearing on April 6, 1987.
6. That a bench warrant was issued by Judge Gerald J. Klein, as a result of Respondent's failure to appear on April 6, 1987.
7. That on May 13, 1987, Respondent appeared in Court, had the April 6, 1987 bench warrant set aside and pled not guilty to the charges.
8. That on June 11, 1987 Respondent pled no contest to the charges and was placed in the Advocate Program.
9. That on June 11, 1987 Respondent's request for a Stay of Execution to pay Court costs was granted until June 18, 1987.
10. That a Notice to Appear before the County Court on July 23, 1987 was mailed to the Respondent as a result of his failure to pay the Court costs in compliance with the Stay of Execution referred to in paragraph 9.
11. That such notice was mailed by regular mail to the address left with the Court.
12. That Respondent left the address of 1869 Brickell Avenue, with the Court as indicated on the Request for Stay of Execution.
13. That Respondent failed to appear at the scheduled hearing on July 23, 1987 as heretofore mentioned in paragraph 11.
14. That a bench warrant was issued by Judge Gerald J. Klein as a result of Respondent's failure to appear on July 23, 1987.
15. That Respondent failed to comply with the requirements of the Advocate Program by failing to attend all classes.
16. That Respondent failed to comply with the requirements of the Advocate Program by failing to pay the balance of his fee of one hundred fifty-five dollars (\$155.00).

17. That as a result of Respondent's failure to comply with the requirements of the plea negotiation, Respondent was issued a notice to appear in Court on November 16, 1987.
18. That such notice was mailed by regular mail to the address Respondent left with the Advocate Program.
19. That Respondent left the address of 1865 Brickell Avenue with the Advocate Program on June 17, 1987.
20. That Respondent failed to appear at the scheduled hearing on November 16, 1987.
21. That a bench warrant was issued by Judge Gerald J. Klein as a result of Respondent's failure to appear on November 16, 1987.
22. That on November 3, 1988, subsequent to the Grievance Committee hearing Respondent had the July 23, 1987 and November 16, 1987 bench warrants set aside.
23. That on November 3, 1988, Respondent advised the County Court of a change of address to 701 Brickell Avenue.
24. That on November 21, 1988, Respondent was given thirty days to complete probation.
25. That on December 21, 1988 the Court at the request of the Respondent extended his time to complete probation for one more month.
26. That as of the date of the last hearing (November 9, 1989) & extension, the terms of probation have been fulfilled by the Respondent.

111. RECOMMENDATION AS TO GUILT: I find Respondent guilty of all violations charged by The Florida Bar. I find that Respondent has violated Rules 4-8.4(d) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice] and Rule 4-3(c) [a lawyer shall not knowingly disobey an obligation under the rules of tribunal except for an open refusal based on an assertion that no valid obligation exist] of the Rules of Professional Conduct.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED:

Sitting in judgment of another human being is a difficult and responsible obligation. Judging a fellow attorney increases that obligation. The Florida Supreme Court has asked me to review the alleged misconduct of attorney John Kirkpatrick. It is my task to determine whether the allegations are supported by

the evidence and if so, what discipline should be imposed. The findings of fact contained within this report clearly establish that the Bar has proven their case.

As in any matter before a court it is important to evaluate the demeanor of the witnesses. The Bar's witness, Blas Lugones, who is a counselor with the Advocate Program was credible and informative. Mr. Kirkpatrick, however, presented a very different impression. His indifference and lack of attentiveness to the matter at hand was apparent. He took no responsibility for actions and occurrences which clearly were his own. In fact, he did not recognize that the privilege of being an attorney should have caused him, more than a lay person, to show respect and deference to the judicial system. Despite the fact that the Bar filed its complaint in April of 1989 which was preceeded by Grievance Committee action and this matter has been pending before this Referee since my appointment in May of 1989, the Respondent has just recently fulfilled his responsibilities in reference to his June 11, 1987 Advocate Program obligation. Consequently, Mr. Kirkpatrick's indifference of the legal system began with his encounter with the police officer at the time of his arrest, and continued with his disobedience of Judge Klein.

Unquestionably, the initial act which began with the Respondent's incarceration for resisting arrest, although unrelated to his law practice, is worthy of disciplinary action. The Florida Supreme Court has repeatedly held that a lawyer may be disciplined for any improper conduct even if unrelated to his law practice. The Florida Bar v. Hosner, 520 So2d 567 (Fla.1988).

Mr. Kirkpatrick's ensuing conduct, causing the issuance of three bench warrants is very significant. All mailings were sent by the Court and the Advocate Program to the precise addresses provided to them by the Respondent. Nonetheless, Mr. Kirkpatrick steadfastly asserts that he received no notice "because of moving".

Clearly, the Court and the Advocate Program fulfilled their responsibilities. Judge Barkett's words in The Florida Bar v. Wishart, 543 So. 2d 1250 (Fla. 1989) are relevant.

Short of defrauding a client, I can think of no more flagrant misconduct by an attorney than deliberately disobeying a series of direct orders by a Court.

Wishart. at 1253

Although, the facts of Wishart, supra are more serious than those before this Referee, the principle espoused therein is no less important.

In The Florida Bar v. Calhoun, 102 So.2d 694 (Fla. 1958) it was held that:

• • .Any conduct of an attorney which brings the administration of justice into scorn and disrepute demands condemnation and application of penalties.

Calhoun. at 604

I have reviewed the Florida Standards for Imposing Lawyer Sanctions and believe that no less than a private reprimand should be imposed in this case.

Rule 6.24 provides:

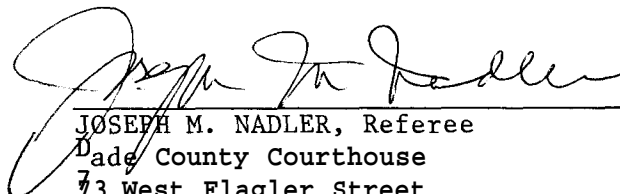
6.24 Private Reprimand is appropriate when a lawyer negligently fails to comply with a court order or rule, and causes little or no injury to a party, or causes little or no actual or potential interference with a legal proceeding.

Although Rule 9.22 provides that discipline may be enhanced, hopefully a private reprimand will obtain the same result, to-wit: the attention of Mr. Kirkpatrick.

V. RECOMMENDATION AS TO COSTS: I find the following costs to have been reasonably incurred by The Florida Bar:

Administrative Costs [Rule 3-7.5(k) (5)]	\$ 500.00
Court Reporter's Attendance & Transcript at Grievance Committee Hearing (November 2, 1988)	235.80
Court Reporter's Attendance & Transcript Hearing (August 23, 1989)	144.90
Hearing (November 9, 1989)	233.30
Florida Bar Attorney's expenses	13.00
TOTAL.....	<u>\$1,127.00</u>

Respectfully submitted this day of December, 1989.



 JOSEPH M. NADLER, Referee
 Dade County Courthouse
 73 West Flagler Street
 Miami, FL 33130

copies furnished to:

Randi Klayman Lazarus, Bar Counsel

Gregory Borgognoni, Attorney for Respondent