

FILED
SID J. WHITE

FEB 5 1990

CLERK, SUPREME COURT
By _____
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 74,422

[TFB Case No. 89-31,449 (18C)]

v.

ERIC R. JONES,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Integration Rule and The Rules Regulating The Florida Bar, a hearing was held on December 15, 1989. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits, 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 - John B. Root, Jr.

For The Respondent - Pro Se

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 on below, I find:

1. I specifically find that the respondent did not make a good faith effort to comply with the suspension order of the Supreme Court of Florida in The Florida-Bar v. Eric R. Jones, 543 So.2d 751 (Fla. 1989). Furthermore, the respondent knowingly made untrue representations to the court with respect to his efforts to comply.

2. The Florida Bar filed a Petition For Order To Show Cause on July 14, 1989. The Bar alleged that the respondent, who had been suspended from the practice of law for a period of ninety-one days commencing on May 30, 1989, continued to engage in the practice of law after his suspension became effective.

3. On July 26, 1989, this court issued an order to show cause why he should not be held in contempt by August 15, 1989. On August 2, 1989, the respondent filed his response to that order.

4. In his Reply to Petition To Show Cause dated August 2, 1989, the respondent falsely represented to the court that he had informed all of his clients of his suspended status and had otherwise complied with the Order of Suspension. Transcript pp 26 through 27.

5. Affidavits provided by five of the respondent's clients clearly indicated that the respondent failed to properly notify them of his suspension and provide them with a copy of the order of the Supreme Court of Florida as required by Rule of Discipline 3-5.1(h) of the Rules Regulating The Florida Bar. Bar Exhibits 3 through 7; Transcript pp 11 through 13.

6. The respondent asserted in his reply that on several occasions he had sought assistance and guidance from The Florida Bar as to the appropriate steps to take in order to comply fully with the court's Order of Suspension. He falsely represented that his inquiries met without any response. Respondent Exhibit 3; Transcript pp 24 through 33.

7. In fact, Staff Counsel provided the respondent with guidance by letter, dated June 16, 1989. This letter were received by the respondent. Respondent Exhibit 3; Transcript p. 25.

8. Respondent further falsely represented that he attended a legal proceeding in June, 1989, with the sole purpose of presenting certain evidentiary matters. Reply to Petition to Show Cause. Transcript pp 16 through 18, 35.

9. Testimony of attorney W. David Dugan clearly showed that the respondent not only attended a legal proceeding in June, 1989, but that during the proceeding he conferred with the new attorney who was handling the

respondent's client's case, handed him notes and attempted unsuccessfully to assist in argument until the presiding judge reminded him that he was suspended. In addition, the respondent wrote to the presiding judge the following day, June 8, 1989, and provided additional case law. Transcript p 14 through 21; p 35. Exhibit 2 to Bar Reply to Response to Order to Show Cause.

10. The respondent admitted during the referee hearing that at the time he filed his Reply to the Bar's Petition To Show Cause on August 2, 1989, he had not ever read the Rules of Discipline of The Florida Bar, had not advised his clients of his suspension, provided them with a copy of the court order nor had he advised them to seek alternate counsel despite making these assertions in his reply. Transcript pp 26 through 27.

11. The respondent did not discontinue the use of stationary letterhead indicating his attorney status until after it was brought to his attention by Bar Counsel. Despite receiving a letter from Bar counsel date June 16, 1989, advising the respondent that he would need to remove or cover his attorney sign, respondent failed to do so. This was brought to his attention again by Bar counsel in a letter dated July 20, 1989. Petition for Order to Show Cause, Exhibit D. Exhibit 2 to Bar Reply to Response to Order to Show Cause. Respondent Exhibit 3.

12. The respondent signed a summons, a supplemental Petition for Modification of Final Judgment and a financial affidavit as attorney for the petitioner in Marilyn Carter v. Gary Lee Mitchell, Case No. 80-2631-FD-0 dated June 13, 1989. Exhibit A to Petition for Order to Show Cause.

13. The respondent's office produced a Notice of Appeal and a Motion for Supersedeas Bond in the case of Building Management Systems, Inc. v. Moyer-Brownson, Inc., Case No. 89-02371-CA-N and delivered same to client Charles C. Brownson on June 21, 1989. The documents were prepared for Mr. Brownson's signature. The respondent continued giving Mr. Brownson legal advice on numerous occasions during June, 1989. Reply to Respondent's Response to Order to Show Cause, Exhibit 1; Bar Exhibit 4.

14. The respondent failed to comply with the requirements of Rule of Discipline 3-5.1 (h) by failing to provide a sworn affidavit listing the name and addresses of all clients to whom he had furnished copies of the court's

suspension order to The Florida Bar within thirty days after the service of the suspension order itself. Bar Exhibit 2; Transcript p. 12, 13.

15. I further find that The Florida Bar has not unnecessarily delayed the respondent's reinstatement proceeding currently pending before the undersigned as Referee. The respondent did not file his Petition for Reinstatement until September 22, 1989 although the ninety-one day period expired on August 29, 1989. The undersigned was appointed as Referee on October 16, 1989, approximately 48 days later, and the hearing was scheduled for January 19, 1990. On July 26, 1989, the Supreme Court ordered respondent to show cause on or before August 15, 1989, why he should not be held in contempt. He filed a response on August 2, 1989, and The Florida Bar filed a reply to that response on August 11, 1989. It was not until September 26, 1989, that Supreme Court ordered a referee hearing in the matter. That hearing was scheduled on December 15, 1989. The only unnecessary delay was caused by the respondent's own failure to file his Petition for Reinstatement promptly upon the expiration of the ninety-one day period.

16. I specifically find that the respondent violated both the letter and the spirit of the law by engaging in conduct that constituted the practice of law after his suspension became effective on May 30, 1989. These acts include, but are not limited to :

a) appearing in court and attempting to engage in legal argument on June 7, 1989;

b) prompting the attorney representing his former client while present in court on June 7, 1989;

c) sending a letter to the court citing additional authority on June 7, 1989.

d) Further, respondent prepared and signed a summons, a supplemental Petition for Modification of Final Judgment and a financial affidavit as attorney for the petitioner in

Marilyn Carter v. Gary Lee Mitchell, Case No. 80-2631-FD-0 dated June 13, 1989, some two weeks after the effective date of his suspension.

e) Producing a Notice of Appeal and a Motion for Supersedeas Bond in the case of Building Management Systems, Inc. v. Moyer-Brownson, Inc., Case No. 89-02371-CA-N, and delivered same to his client, Charles C. Brownson, with instructions on how to file the documents:

f) by consulting with and advising Mr. Brownson on his legal problem on several occasions during the month of June, 1989.

g) Preparing and delivering to Ms. Karen V. Headrick interrogatories for use in her lawsuit against her former husband, Gilbert Meeks, Case No. 87-14153-FD-ND, Brevard County, Florida, on June 22, 1989. The documents were prepared for her signature.

17. In view of my findings in this matter, it is my opinion that the reinstatement hearing should be postponed until the Supreme Court of Florida makes a final decision on this Order to Show Cause. If the court approves the undersigned's recommended discipline, the reinstatement hearing will be moot. The reinstatement hearing previously scheduled for January 19, 1990, has been cancelled.

111. Recommendations as to whether or not the Respondent should be found guilty: As to each count of the complaint I make the following recommendations as to guilt or innocence:

I recommend that the respondent be found in contempt of the order of suspension of the Supreme Court of Florida in the case of The Florida Bar v. Eric R. Jones, Supra. Specifically, I find that facts proved establish that respondent has violated the following Rules of Discipline:

a) 3-5.1(e) by continuing to practice law while properly suspended by the court; and,

b) 3-5.1 h) by failing to furnish a copy of the suspension order to all of his clients with matters pending in his practice; and by failing to furnish Staff Counsel of The Florida Bar within 30 days a sworn affidavit listing the names and addresses of all clients who have been furnished copies of the order;

c) 3-6.1(c) by continuing to have direct client contact and by giving legal advice to clients while suspended from the practice of law;

and the following Rules of Professional Conduct:

d) 4-3.3(a) (1) by knowingly making a false statement of material fact to a tribunal; and

e) 4-8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

IV. Recommendation as to Disciplinary measures to be applied:

I recommend that the respondent's ninety-one day period of suspension be extended for an additional two years nunc pro tunc August 30, 1989.

V. Personal History and Past Disciplinary Record: After the finding of guilty 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:

Age: 43

Date admitted to Bar: November 19, 1971

Prior Disciplinary convictions and disciplinary measures imposed therein: The Florida Bar v. Jones, 543 So.2d 751 (Fla. 1989).

VI. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

A. Referee Level Costs		
1. Transcript Costs	\$	223.40
B. Administrative Costs	\$	500.00
C. Miscellaneous Costs		
1. Investigator Expenses	\$	319.20
TOTAL ITEMIZED COSTS:		\$1,042.60

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent and that interest at the statutory rate shall accrue and be payable beginning 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 24th day of January, 1990.


FREDERICK T. PFEIFFER
Referee

Copies to:

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