

**FILED**

SID J. WHITE

FEB 9 1990

CLERK, SUPREME COURT

By \_\_\_\_\_

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

vs.

FREDERIC G. LEVIN,  
Respondent.

CASE NO. 74,443  
[TFB Case No. 87-27,937 (01A)]

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar, hearing were held on January 16 and 17, 1990, in Pensacola, Florida. 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 - David G. McGunegle, Bar Counsel  
and Mimi Daigle, Assistant Bar Counsel.

For the Respondent - Alan H. Rosenbloum.

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. The respondent routinely engaged in illegal gambling activities involving placing bets on the outcome of football games. This occurred over a period of time of at least five years through late 1986. The respondent placed his wagers through a bookmaker in the Pensacola, Florida area. The wagers ranged between \$500.00 and \$2,000 nearly

every weekend during the 1986 football season with some weekend totals reaching upwards of \$6,000.

2. The respondent was aware that betting on football games was and is illegal in the State of Florida. Section 849.14 of The Florida Statutes makes it a second degree misdemeanor. He viewed betting on football games as his form of recreation. He expressed the attitude that it was an activity engaged in by many residents in the state and that the law was not routinely enforced.

3. Capt. Gerald Gigon and his wife Patricia were friends of the respondent. Mrs. Gigon had also consulted with the respondent concerning an unrelated legal matter from an accident in North Carolina. During a social conversation the respondent casually mentioned that he bet on football games. Capt. Gigon and his wife apparently had been interested in learning how to place bets on football games for quite some time and requested his help.

4. The respondent facilitated the Gigons in placing bets. He did not, however, entice them to engage in this activity. When it became too costly for them, he urged they stop.

5. Initially, the respondent placed bets for the Gigons through his bookmaker. Thereafter, he provided the Gigons with the bookmaker's telephone number and they began placing their own bets.

6. At least with respect to the Gigons, the respondent

permitted bets to be delivered to his law office in Pensacola, Florida and the payoffs as well. It appears other wagers including his and his brother's went through the office.

7. The respondent's illegal betting activities did not cease until late fall 1986 when his bookmaker was arrested.

8. On or about March 5, 1987, and again on August 19, 1987, the respondent appeared on his own television show "**LAWLINE**", as televised on "BLAB TV" a local television station in Pensacola, Florida.

9. During both aforementioned television shows, the respondent stated that he engaged in illegal gambling activities by placing football bets with a bookmaker. During the August 19, 1987 show, he asserted his belief on camera that placing bets on football games with a bookmaker was an acceptable recreational activity. He further admitted he knew he was committing a misdemeanor offense by placing such bets.

10. The respondent testified before the First Judicial Circuit Grievance Committee "**A**" on September 20, 1988, that if he had the opportunity to place bets on football games, he would continue to do so.

11. At least **six** other attorneys in the Pensacola area also were involved in placing similar illegal bets in varying degrees. Of these, two received private reprimands

and the remainder were not disciplined by the Bar. The details of each case are not known to this Referee.

12. Respondent argued that the grievance committee conspired to embarrass him publicly. I find little evidence of this in the record. It appears the respondent's attitude at the time may have differed considerably from that of the other attorneys who received lesser or no discipline. He saw nothing wrong with breaking the law because he felt it was a bad law to begin with. Furthermore, he aired his views publicly through his television program. Further, although the respondent denied he was advocating breaking the law, he must have been aware his stature in the community could foster that impression as opposed to merely airing his opinion.

13. I find that the respondent repeatedly engaged in illegal gambling over a lengthy period of time involving a substantial amount of money. Respondent is an officer of the Court and as such is sworn to uphold the laws of the State of Florida. It is not acceptable for a member of the Bar to simply ignore a law with which he does not agree. Rather, he should work to have the law repealed by the State Legislature which, by his own admission he has not done.

14. I recognize that the respondent has a long and distinguished career in the practice of law. He has made many contributions to the community. Good deeds, however, do not excuse his routinely engaging in conduct he

admittedly knew to be illegal.

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 guilty and specifically be found guilty of violating Article **XI**, Rule 11/02(3)(a) of The Florida Bar's Integration Rule for engaging in conduct that is contrary to honesty, justice, or good morals; Rule 11.02(3)(b) for engaging in conduct that constitutes a misdemeanor; and the following Disciplinary Rules of The Florida Bar' Code of Professional Responsibility; **1-102(A)(1)** for violating a disciplinary rule; and **1-102(A)(6)** for engaging in any other conduct that adversely reflects on his fitness to practice law.

- IV. Recommendation as to Disciplinary measures to be applied:

I recommend that the respondent receive a public reprimand by personal appearance before the Board of Governors.

- 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: 53  
Date admitted to Bar: October 20, 1961  
Prior Disciplinary convictions and disciplinary measures imposed therein: None  
Other personal data: Respondent has no minor dependents.

- 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.	Grievance Committee Level Costs	
	1. Transcript costs	\$612.25
	2. Bar Counsel/Branch Staff Counsel Travel Costs	90.72
B.	Referee Level Costs	
	1. Transcript Costs	\$**
	2. Bar Counsel/Branch Staff Counsel Travel Costs	\$458.47
C.	Administrative Costs	\$500.00

IN THE SUPREME COURT OF FLORIDA  
(before a Referee)

THE FLORIDA BAR,

Complainant,

vs .

Case No. 74,413  
[TFB No. 87-27,937 (01A)]

FREDRIC G. LEVIN,

Respondent.

-----  
M E M O R A N D U M

I have previously filed my formal findings in this case, but I feel that some brief Memorandum should accompany those findings because of the novelty of the questions presented and the defenses raised by the Respondent.

The Respondent has not denied engaging in gambling activities, indeed there is an avowal on his part that he did so engage in gambling activities during the year 1986 and prior years. His defense is that the gambling Statute, (849.08, F.S.) is not enforced. He did not and does not attack the Statute on constitutional grounds, but urges that the Statute is selectively enforced and those who are prosecuted are victims of prosecutors who are not evenhanded in their enforcement of the law.

This "tongue-in-cheek" defense is not a viable defense to the charges brought by the Bar. The Supreme Court has spoken to that proposition in Standard Jury Instructions in criminal cases where the Court has said, (page 29):

"For two centuries we have agreed to a Constitution and to live by the law. No one of us has the right to violate rules we all share."

The Respondent, like all other members of society is not free to pick and choose which laws he will obey and which laws he will not obey. A violation of law puts that person "at risk" and if discovered, he cannot urge that there are other persons, like offending, that have not been caught and prosecuted. We have not reached the millennium utopia in law enforcement; but we are working on it.

The Referee must comment upon the Respondent as a member of The Florida Bar and a practitioner of law. He has enjoyed a tremendous success at the Bar and has worked diligently at his profession. He is an able and competent trial lawyer, who enjoys a wide and successful practice. He is an acknowledged innovative leader in his professional field having written and lectured extensively. He is a patron of the arts, and philanthropist and enjoys a wide circle of friends, who are leaders in our State and Country. He has a facile mind and is a devoted family man.

All of the above was testified to before the Referee or submitted in the form of depositions and are contained in the record.

The record before the Referee establishes that he has not engaged in gambling activities since 1986 which he now says upon

reflection was an aberration, which he will not repeat. I believe him.

At a conference between Bar Counsel and Respondent's Attorney, prior to hearing, the Bar announced that they did not seek a disbarment and Bar Counsel advised that a private reprimand was not appropriate. The evidence clearly and convincingly justifies a public reprimand in this case, which I recommend.

Dated this 27 day of February, 1990.

W. Fred Turner

W. FRED TURNER, CIRCUIT JUDGE



IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

Case No. 74,443  
[TFB No. 87-27,937 (01A)]

v.

FREDERIC G. LEVIN,  
Respondent.

Before The Honorable and

This 6<sup>th</sup> Day of

February 1990  
W. Fred Turner

Circuit Judge

Referee

PRELIMINARY  
AFFIDAVIT OF COSTS

STATE OF FLORIDA)  
COUNTY OF ORANGE)

BEFORE ME, personally appeared David G. McGunegle, who,  
first being duly sworn and under oath states the following:

Below is an itemized list of the expenses incurred in  
the above-styled cause.

A.	Grievance Committee Level Costs	
	1. Transcript Costs	\$ 612.25
	2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 90.70
B.	Referee Level Costs	
	1. Transcript Costs	\$ **
	2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 458.47
C.	Administrative Costs	\$ 500.00
D.	Miscellaneous Costs	
	1. Investigator Expenses	\$ 125.35
	2. Copies of Videos/Cassettes	\$ 27.21

**TOTAL ITEMIZED COSTS: \$1,814.00**

\*\* Transcript costs for the final hearing are not yet known.