

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED

200 J. WHITE

APR 10 1990

CLERK, SUPREME COURT

Deputy Clerk

THE FLORIDA BAR,

Complainant,

v.

DANIEL DWIGHT MOODY,

Respondent.

Case No. 74,820

TFB File No. 90-00421-08

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.2(i), Rules of Discipline, the following proceedings occurred:

On October 5, 1989 The Florida Bar filed a Notice of Judgment of Guilt showing that Respondent had been convicted of a felony. Subsequently Respondent filed a response to the Notice of Judgment of Guilt consenting to the entry of a suspension pursuant to Rule 3-7.2(e) of the Rules Regulating The Florida Bar and waiving the filing of a formal complaint and requesting the immediate appointment of a referee pursuant to Rule 3-7.2(i).

I. FINDINGS OF FACT

On September 5, 1989, Respondent was found guilty, after pleading nolo contendere of one count of manslaughter, a second degree felony, in violation of Florida Statute §316.193; and one count of leaving the scene of an accident with injuries, a best interest plea, (North Carolina v. Alford, 400 U.S.25 (1970)), a third degree felony, in violation of Florida Statute §316.027.

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary Of Case.

Pursuant to these felony convictions on September 5, 1989, Respondent was sentenced to serve concurrently, 11 1/2 months imprisonment (suspended) to be followed by two years community control under the supervision of the Department of Corrections, followed by 5 years probation. Additionally, Respondent has to pay a fine of \$500.00, plus \$25.00 as 5% surcharge required by Florida Statute §960.25; and restitution in an unspecified amount, plus clerk's fees.

Respondent's convictions did not involve the practice of law and there was no negative effect to any of his clients. Respondent's

explanation of the circumstances surrounding his conviction of the offense of leaving the scene and The Florida Bar's rebuttal witness' testimony leads the undersigned to the conclusion that although Respondent was away from the accident scene his reasoning at the time was impaired to such an extent due to the use of alcohol and injuries incurred as to mitigate to a great extent the effect of this conviction. I find that the death of an individual in the automobile accident is an aggravating factor. I also find that the following mitigating factors are present in this case:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (d) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (e) character or reputation;
- (f) interim rehabilitation;
- (g) imposition of other penalties or sanctions; and
- (h) remorse.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating Rule 3-4.3 (the commission by a lawyer of any act which is unlawful or contrary to honesty and justice) of the Rules of Discipline of The Florida Bar and Rules 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another), and 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 in other respects) of the Rules of Professional Conduct of The Florida Bar.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. A Suspension from the practice of law for a period of nine (9) months. The suspension to be nunc pro tunc to November 16, 1989, the date Respondent's felony conviction suspension began.

B. Payment of costs in these proceedings.

I further recommend that Respondent be allowed to:

- 1) petition for reinstatement to active status with The Florida Bar 60 days prior to the end of the nine (9) month suspension;
- 2) that the fact that Respondent's civil rights may not be restored at the time he petitions for reinstatement not prevent him from being reinstated; and
- 3) that he be allowed to make payments on the costs of these proceedings and that the fact that a balance of said costs are unpaid at the time of his petition for reinstatement not prevent him from being reinstated as long as his payments are current with The Florida Bar.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.5(k)(1), I considered the following personal history of Respondent, to wit:

Age: 33 years old

Date admitted to the Bar: October 17, 1985

Prior Discipline: None. (This action was based on The Florida Bar v. Daniel Dwight Moody, TFB File No. 90-00258-NFC-08.)

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Referee Level


- | | |
|--------------------------|-----------|
| 1. Administrative Costs | \$ 500.00 |
| 2. Court Reporter's Fees | 1,183.50 |

3. Bar Counsel Travel 144.50
4. Witness Fee & Expenses 201.22

TOTAL \$2,029.22

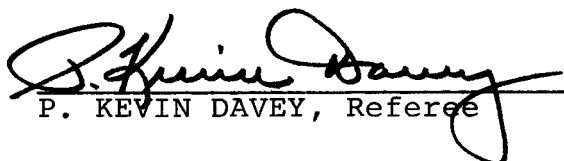
It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 6th day of April, 1990.


P. KEVIN DAVEY, Circuit Judge/Referee
Leon County Courthouse
Tallahassee, Florida 32301
(904) 488-6527

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to SID J. WHITE, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and that copies were mailed by regular U.S. Mail to JOHN T. BERRY, Staff Counsel, c/o JOHN A. BOGGS, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; JOHN V. MCCARTHY, Bar Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; and JOHN A. WEISS, Esquire, at his record Bar address of Post Office Box 1167, Tallahassee, Florida 32302-1167, on this 6th day of April, 1990.


P. KEVIN DAVEY, Referee