

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR

Complainant,

Case No. 75,557

vs.

ROBERT V. PALMER

Respondent.

BRIEF OF RESPONDENT
STATEMENT OF THE CASE AND FACTS

Initially a complaint was filed by the Complainant, the FLORIDA BAR, and subsequently a Pre-Trial Order was entered March 30, 1990 allowing the FLORIDA BAR to file an Amended Complaint and an Amended Request for Admissions. The Amended Complaint and the Amended Request were mailed to the Respondent on April 20, 1990. At the time these latter pleadings were filed and served, the Respondent was in South Carolina with his son working on a construction project. The Respondent while incarcerated and without having the pleadings, filed a General Denial to the Allegation of the Pleadings.

The referee rescheduled the Final Hearing for July 20, 1990, the Complainant having requested a Continuance of an earlier scheduled date of June 25, 1990 (The Court granting the Complainant's motion for continuance.)

Respondent while living in South Carolina with his son was notified by phone of the hearing scheduled for July 20, 1990. On July 19, 1990, Respondent's Son was in an automobile accident,

the Hospital, and subsequently incarcerated for failure to have a valid Driver's License on his person, he inadvertantly having left his license in Jacksonville. When Respondent learned of his Son's predicament, he being in the process of packing his bags to return to St. Augustine for the July 20, hearing, he immediately called his Attorney, Michael Edwards, Esquire to request a continuance of the July 20, hearing.

A four-way telephone conversation ensued with Judge Weinburg (Referee), Complainant's Counsel, Respondent's Counsel, and the Respondent. The Complainant's Counsel read a proposed consent order to Respondent and Respondent being primarily concerned with his Son's physical condition at the Hospital, told the Referee and Complainant's Counsel just to do what they had to do, Respondent hanging-up.

Subsequently, Respondent returned to Jacksonville and commenced his sentence for Possession of cocaine. While incarcerated, the Complainant's agent (Alan Booth) brought a Consent Judgment for Respondent to sign. Respondent refused to sign the proposed Consent Judgment, stating that any conversation or agreement made on the telephone while his Son was injured and in the Hospital were not freely given but merely to allow him to immediately return to attend to his Son's situation. This is borne out by Mr. Booth's subsequent testimony at the November 3, 1990 Hearing (Tr. 8-9).

The Respondent then sent his answer to the Complainant's Pleadings and wrote to the Referee explaining why he did not sign the Alleged Consent Judgment, as well as asking for a

Continuance, particularly since the Complainant had been given a Continuance earlier (Tr. 12). He denied specifically that he made any voluntary agreement in view of the condition he was in upon learning of his Son's being taken to the Hospital and possible incarceration (Tr. 14).

The Referee admitted that he had some communications with the Respondent in written letter form, although such written communications do not appear in the present record (Tr. 6). Part of these letters constituted a Request for Continuance of any hearings, the Respondent requesting that the hearing be scheduled for the middle of December, 1990 upon his release from the County Jail.

A hearing took place on November 3, 1990 without Notice to the Respondent, he being awoken at 3:00 A.M. some three days before the hearing and taken to St. John's County in chains. He was kept in solitary confinement at the St. John's County Jail for three days in chains, prior to the hearing scheduled for November 3, 1990, and not allowed to contact counsel or family prior to the hearing.

As the record reveals the Respondent was handcuffed and in chains, although the court ordered that the handcuffs be removed so that he could handle papers and pleadings. (Tr. 4).

The Court considered the Proposed Judgment as by consent of the Respondent, despite his denial of same explaining his telephone conversation.

Nowhere was there a hearing at which Respondent was present concerning the five Counts of the Amended Complaint, and

the Respondent has never had an opportunity to refute the allegations before the Referee. Moreover, at the only hearing that the Respondent was present (Albeit without counsel and in chains), no testimony was elicited as to the five counts against him. He never was granted his constitutional right of being confronted by any of the witnesses forming the basis Amended Complaint.

On December 14, 1990, the Referee entered his Report which is the basis of the present review. The following day the Respondent was released from the Duval County Jail and returned home, such factor being the basis for his earlier request for continuance to the Referee.

A Petition for Review was properly filed with the Supreme Court.

SUMMARY OF ARGUMENT

POINT ONE: THE RESPONDENT WAS DENIED DUE PROCESS AT THE ONLY HEARING HE WAS PRESENT IN THAT HE WAS NEVER CONFRONTED BY ANY WITNESSES TO SUPPORT THE ALLEGATIONS OF THE AMENDED COMPLAINT, AND UNDER THE CIRCUMSTANCES WAS NOT GIVEN AN OPPORTUNITY TO DEFEND THE SUBSTANTIVE ALLEGATIONS OF THE AMENDED COMPLAINT WITH THE ASSISTANCE OF COUNSEL AND TIME TO PREPARE A DEFENSE, AS WELL AS THE RIGHT TO CROSS-EXAMINE THE COMPLAINING WITNESSES, AND THE AUDIT OF HIS OFFICE TRUST ACCOUNTS.

ARGUMENT

The Respondent was denied his Constitutional Rights of being able to confront his accusers, cross-examine witnesses, and to be allowed to prepare a proper defense to the accusations made against him under the peculiar circumstances in the case at Bar.

Initially it should be noted that the Amended Complaint alleged failure to properly represent two clients, an alleged improper maintaining of his trust account, and conviction of two

felonies. The Constitution of the United States and the Declaration of Rights of the Florida Constitution properly establish due process elements including the basic right of being confronted by complaining witnesses inherent in this concept is the right of cross-examination and preparation for a hearing.

In the Case at Bar, nowhere does there appear any evidence to sustain the five counts of the Amended Complaint, and the Respondent was given no opportunity to confront any witnesses against him or to examine any of the documentary evidence or audit which the Referee had before him and upon which he based his conclusions in his Report.

The alleged Consent to the Proposed Judgment did not in fact exist and clearly could not be view as voluntary under the circumstances as outlined in the statement of the facts above and by no stretch of the imagination could it constitute a freely given expression.

Moreover, the record is barren of substantiating facts to support the self-serving narrative Summary of Case, and the Respondent has never been faced by any witness or document upon which the Referee rendered his conclusions.

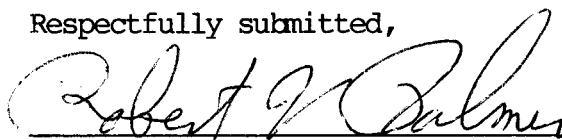
Moreover, the Court can take Judicial Notice of the Fact that the basis of one of the counts of the Amended Complaint (Count V) is presently the basis of an appeal in good faith pending before the District Court of Appeal, First DIstrict, State of Florida, In Docket No. 90-832.

Under the circumstances in the case at Bar, it is crystal clear that the Respondent has never had any hearing as to the substantive allegations against him.

CONCLUSION

The Report of the Referee should be reversed and the Respondent re-admitted to the Practice of Law.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief has been furnished to MIMI DIAGLE, Counsel for the Complainant, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, This 13th day of May, 1991, by U. S. Mail

A handwritten signature in cursive script that reads "Robert V. Palmer". The signature is written in black ink and is positioned above a horizontal line.

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