

047 w/app

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Complainant,

Case No. 75,906

V.

PATRICIA G. WILLIAMS,  
Respondent.

*[Handwritten signature]*  
FILED  
JAN 14 1981  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

REPLY BRIEF OF THE FLORIDA BAR

JACQUELYN P. NEEDELMAN  
Bar Counsel  
Attorney No. 262846  
The Florida Bar  
444 Brickell Avenue  
Suite M-100  
Miami, Florida 33131  
(305) 377-4445

JOHN T. BERRY  
Staff Counsel  
Attorney No. 217395  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Fl 32399-2300  
(904) 561-5600

JOHN F. HARKNESS, JR.  
Executive Director  
Attorney No. 123390  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, FL 32399-2300  
(904) 561-5600

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SUMMARY OF ARGUMENT

ARGUMENT I

THE FLORIDA BAR HAS NOT VIOLATED  
RESPONDENT'S DUE PROCESS RIGHTS  
REGARDING IT'S DISCIPLINARY  
RECOMMENDATION IN THIS CAUSE.

No due process violations exist regarding The Florida Bar's disciplinary recommendations. The Board of Governors as the governing body of The Florida Bar has the right to advise Bar Counsel of the discipline to seek based upon the findings of serious misconduct made by the Referee in this cause.

ARGUMENT II

THE DISCIPLINE TO BE IMPOSED IN  
THIS CAUSE SHOULD BE DISBARMENT  
FOR A PERIOD OF FIVE (5) YEARS.

Based upon the serious cumulative misconduct engaged in by Respondent, disbarment is the appropriate discipline in this cause. This Court is not bound by a Referee's disciplinary recommendations. The Florida Bar v. Weaver, 356 So.2d 797, 799 (Fla. 1978).

Accordingly, the Referee's findings of fact should be upheld and the Respondent should be disbarred for a period of five (5) years.

ARGUMENT I

THE FLORIDA BAR HAS NOT VIOLATED  
RESPONDENT'S DUE PROCESS RIGHTS  
REGARDING IT DISCIPLINARY  
RECOMMENDATION IN THIS CAUSE.

Respondent is claiming that her due process rights were violated regarding The Florida Bar's disciplinary recommendation in this cause. Said argument should be stricken based upon Respondent's failure to file a Cross-Petition for Review on said issue. The Florida Bar has filed a Motion to Strike Argument I of Respondent's Brief.

However, in the alternative The Florida Bar will address this matter. Respondent's claim is devoid of any merit. Respondent's counsel was advised by letter dated October 17, 1990 that her tendered consent judgment was not accepted by The Florida Bar (see Appendix I). At the final hearing in this cause, Bar Counsel advised on page 263 of the transcript at lines 5 through 17 the following:

Bar Counsel: The Florida Bar is seeking as discipline in this matter a suspension for a period of at least one year, that being the minimum period of discipline that The Florida Bar thinks should be imposed. Of course, His Honor is free to make any recommendations deemed appropriate.

I would submit, for Your Honor's information, this recommendation is based on staff and designated reviewer's recommendation. The matter will not go to the Board of Governors until after Your Honor's report is issued.

It was clear from said statements that the disciplinary recommendation was only that of Staff and the Designated Reviewer. Bar Counsel clearly advised that the matter would not be presented to the Board of Governor's for its position until after the Referee's Report was issued. Bar Counsel's statement six (6) pages later, on page 269 of the transcript, that "well, we're not seeking disbarment. We're seeking a suspension for a period of at least one year" clearly related only to the recommendation of Staff and the Designated Reviewer.

After the Board of Governors reviewed the serious findings made by the Referee in his report, the Board of Governor's voted to seek disbarment. Respondent was not misled by The Florida Bar in any fashion. Bar Counsel has advised that disbarment could be sought based on these facts. Further, before the Referee, Bar Counsel cited case law resulting in disbarment for similar violations (T. 267-268).

Respondent amazingly claims in her brief at page 19 that her response might have been very different if she knew The Florida Bar was seeking disbarment. Respondent's counsel cross-examined the witnesses and attacked credibility. Respondent states that the Referee relied on The Florida Bar's representation. It is inconceivable that the Respondent would know what was in the mind of the Referee. Additionally, Bar Counsel clearly stated that the recommendation of Staff and Designated Reviewer was the minimum recommendation (T. 263). Regardless of any recommendation made by The Florida Bar, a Referee can recommend any discipline he desires. Further, this Honorable Court can impose any discipline

measure deemed appropriate (see Rule 3-7.7(c)(6) of the Rules of Discipline).

Respondent contends that it is improper for the Board of Governors to recommend disbarment in this cause. Respondent appears to misunderstand the role of the Board of Governors. The Board of Governors is the governing body of The Florida Bar and bar counsel is subject to the direction of the board (see Rule 3-7.5(e) of the Rules of Discipline). The rules are clear that Bar Counsel can not bind The Florida Bar to a consent judgment without the approval of the Board of Governors (see Rule 3-7.9(e) of the Rules of Discipline).

Rule 3-7.7 regarding review by the Supreme Court of Florida specifically provides for review by the Board of Governors of a Report of Referee, and the time for review begins after the termination of the Board's meeting (see Rule 3-7.7(c) of the Rules of Discipline). The presenting of the report of referee to the Board of Governors of The Florida Bar is to obtain the position of The Florida Bar regarding the Report of Referee. It is not an additional procedural step for the Respondent. The Board of Governors is in effect the client of Bar Counsel. The Board of Governors reviews the Report of Referee and advises Bar Counsel of what position to take before the Supreme Court of Florida. Rule 3-7.7 authorizes the filing of a petition for review by either The Florida Bar or the Respondent. Respondent certainly has the right to present her position before this Court.

Accordingly, no due process violations have occurred in this cause. Bar Counsel clearly advised the Court and Respondent that

its recommendation was a minimum recommendation and that the matter had not yet been presented to the Board of Governors of The Florida Bar for its position (T. 263).

ARGUMENT II

THE DISCIPLINE TO BE IMPOSED IN  
THIS CAUSE SHOULD BE DISBARMENT  
FOR A PERIOD OF FIVE (5) YEARS.

The Florida Bar agrees with the Respondent that a referee's findings of fact should be upheld. Said findings employ a presumption of corrections (see Rule 3-7.6(k)(1)(1) of the Rules of Discipline). The Referee's findings detail serious misconduct engaged in by the Respondent. This Court has held that it is not bound by the Referee's disciplinary recommendations and that the scope of review on recommendations for discipline is broader than that afforded to a referee's findings of fact. The Florida Bar v. Weaver, 356 So.2d 797, 799 (Fla. 1978) and The Florida Bar v. Langston, 540 So.2d 118, 120-121 (Fla. 1989).

Respondent at page 25 of her brief states that "there was nothing to be gained by Respondent failing to volunteer to the Grievance Committee that the United Mortgage application had been funded when the inquiry centered on the Metropolitan application." The Grievance Committee's Report of Minor Misconduct, dated April 29, 1988 states that the mortgage was never funded (see Appendix D to The Florida Bar's Brief). It would have certainly been relevant for the Grievance Committee to have known that the Respondent received monies from a mortgage on the property. However, Count II of The Florida Bar's complaint concerned misrepresentations made by the Respondent to the Grievance



Committee wherein she clearly misrepresented to the Grievance Committee that she had not received funds from the property, when in fact she had received a mortgage and funds. The Referee most significantly found: "This Referee finds Respondent's explanations for said statement not credible." (page 3, Report of Referee).

The Florida Bar will rely on its arguments and authorities presented in its initial brief in this cause that disbarment is the appropriate discipline based upon the serious and cumulative misconduct in this cause. The Respondent's cumulative misconduct has demonstrated an attitude or course of conduct wholly inconsistent with approved professional standards.

The discipline imposed for such serious and cumulative misconduct engaged in by Respondent not only must operate to punish the Respondent fairly and effectively, but to deter others from similar misconduct and to protect the integrity of the law and its processes and the legal profession. The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970). Accordingly, the proper discipline to be imposed in this cause should be disbarment.

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- I. Bar Counsel's October 17, 1990 letter to Respondent's Counsel.