

76,724

FILED
SID J. ...
MAY 23 1991
CLERK, SUPREME COURT
By _____
Chief Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

C. STEWART McHENRY,

Respondent.

CASE NO. 76-724

(TFB Nos. 89-10,327 (13C)
89-10,536 (13C))

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 of Discipline, a hearing was held on April 29, 1991. The following attorneys appeared as counsel for the parties:

- For The Florida Bar - Susan V. Bloemendaal
- For the Respondent - Richard T. Earle, Jr.
Donald A. Smith, Jr.

II. 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 upon below, I find:

As to Count I

The essential allegations contained in Count I were proved by The Bar by clear and convincing evidence. A recitation of the facts thus proven are not necessary. The attached affidavit by Miriam P. Lopez is in all essential respects consistent with her testimony in the above proceedings (see attached affidavit of Miriam Lopez). Tr.P. 5-36

It is noted that the respondent professes no memory of having interviewed Ms. Lopez. Tr.P. 111-112. His explanation about rubbing an injured knee does not reasonably meet the accusations contained in Count I. Tr.P. 112-113. I furthermore find that the respondent committed a battery upon the person of Miriam Lopez. The respondent acted outrageously in suggesting that his representation of Ms. Lopez necessitated a physical examination. Her intimidated compliance does not lessen the respondent's guilt. Tr.P. 11-16 (Also see Tr.P. 44-48). It is the finding of the referee that respondent violated Rules 3-4.3 and 4-8.4(b) of the Rules Regulating The Florida Bar.

As to Count II

The essential allegations contained in Count II were proved by The Bar by clear and convincing evidence. A recitation of the facts thus proven are not necessary. The attached affidavit by Wanda Ferguson is

in all essential respects consistent with her testimony in the above proceedings (see attached affidavit of Wanda Ferguson) Tr.P. 45-54.

It should be born in mind that Miriam Lopez and Wanda Ferguson never communicated about their strikingly similar experiences. This, of course, adds validity to the testimony of both witnesses. Tr.P. 29-30 and P. 57. This court finds that while Mrs. Ferguson may have a stressful family situation, her testimony concerning the respondent's conduct is sufficient to prove Count II of the complaint by the standard of clear and convincing evidence. Tr.P. 82-85

The respondent's explanation concerning the event which is the subject of Count II is woefully insufficient to overcome the proof of guilt. Tr.P. 113-114.

It is the finding of this referee that the respondent's office was a place where the public was invited, and, therefore, the respondent committed the crime of exposure of sexual organs as provided for in F.S. 800.03. It is furthermore the finding of the referee that the respondent has thereby violated Rules 3-4.3 and 4-8.4(b) of the Rules Regulating The Florida Bar.

III. Recommendation 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 :

As to Count I

I recommend that the respondent be found guilty and specifically that he be found guilty of the following violations of Rules Regulating The Florida Bar, Rule 3-4.3 and Rule 4-8.4(b).

As to Count II

I recommend that the respondent be found guilty and specifically that he be found guilty of the following violations of Rules Regulating The Florida Bar, Rule 3-4.3 and Rule 4-8.4(b).

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the respondent be suspended from the practice of law for a period of twenty-four (24) months, and, thereafter, until respondent shall prove mental and ethical rehabilitation as provided in Rule 3-51(3), Rules of Discipline. The respondent should thereafter serve a probationary period of one (1) year. It should be a condition of probation that he receive such mental health evaluation and treatment as is necessary to assist him in overcoming his deficiencies. Additionally, the respondent's probation should be conditioned so that he is forbidden from being in a secluded relationship with a female client. It should be sufficient that he have a legal secretary or some other competent office staff member present. It is significant that the respondent was previously disciplined on two occasions. (The Florida Bar v. George S. McHenry, 478 So. Rep 2d, Sup.Ct.Fla. Oct. 31, 1985; The Florida Bar v. George S. McHenry, Supreme Court Case No. 71,829). It is obvious that the respondent has a significant

mental problem which causes him to act disgracefully. This conduct reflects upon The Bar. Additionally, the respondent will pay the cost in these proceedings in the sum of \$4,346.74.

V. Personal History and Past Disciplinary Record: After finding of guilt and prior to recommending discipline pursuant to Rule 3-7.6(k)(1)(4), I considered the following personal history and prior disciplinary record of the respondent, to-wit:

Age: **Born** 1947
 Date admitted to Bar: 1975
 Prior disciplinary convictions and disciplinary measures imposed therein: a public reprimand in Supreme Court Case The Florida Bar v. George S. McHenry, 478 So. Rep 2d, Sup. Ct. Fla. Oct. 31, 1985, and The Florida Bar v. George S. McHenry, Supreme Court Case No. 71,829.

VI. Statement of Costs and Manner in Which Cost Should be Taxed: I find the following costs were reasonably incurred by The Florida Bar.

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Costs incurred at the grievance committee level as reported by bar counsel	
Court Reporter Fees and Transcripts	\$722.50
Bar Counsel Travel Expenses	27.65
Photocopies	30.69
Administrative Costs pursuant to Rule 3-7.6(k)(1)	\$500.00
1/2 Referee Level Court Reporter/ Transcripts	354.80
Investigator Fees	
50.1 hrs. at \$17.50 per hour	876.75
Mileage: 82 mi. at .30 cents a mile	24.60
Subtotal	<u>\$2,536.99</u>

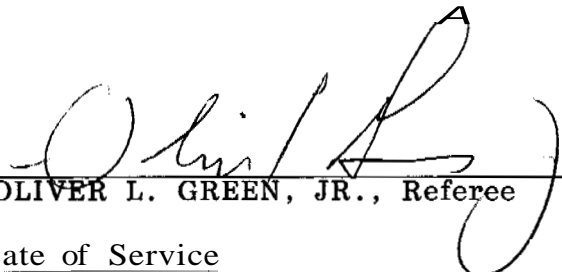
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Grievance Committee Level	
Court Reporter Fees and Transcripts	\$462.20
Bar Counsel Travel Expenses	7.90
Administrative Costs pursuant to Rule 3-7.6(k)(1)	500.00
1/2 Referee Level Court Reporter/ Transcripts	354.80
Investigator Fees	
26.3 hrs. at \$17.50 per hour	460.25
Mileage: 82 mi. at .30 cents a mile	24.60
Subtotal	<u>\$1,809.75</u>
TOTAL ITEMIZED COST	\$4,346.74

It is apparent that other costs have or may be incurred. It is

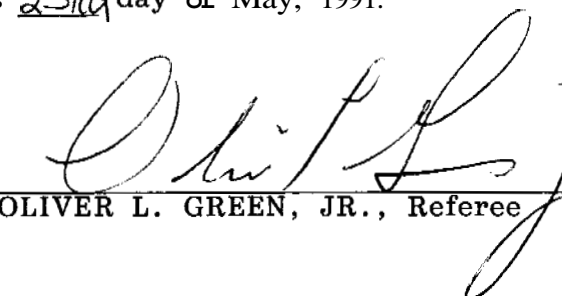
recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent.

DATED this 23rd day of May, 1991.


OLIVER L. GREEN, JR., Referee

Certificate of Service

I hereby certify that a copy of the above report of referee has been served on Susan V. Bloemendaal, Assistant Staff Counsel, The Florida Bar Suite **C-49**, Tampa Airport Marriott Hotel, Tampa FL 33607, G. Stewart McHenry, Respondent, c/o Donald A. Smith, Jr., Esquire, 109 North **Brush** Street, Suite 150, Tampa, FL 33602-4152, and Richard T. Earle, Jr., Esquire, 150 Second avenue North, Suite 1220, St. Petersburg, Florida 33701 by U. S. Mail this 23rd day of May, 1991.


OLIVER L. GREEN, JR., Referee