

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,
Complainant,

The Florida Bar Case
No. 89-71,665 (11B)

vs.

Supreme Court No. 76-823

Ariel Poplack,

Respondent.

JUL 20 1991

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, hearings were held on the following date: March 14, 1991.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Randi K. Lazarus, Esquire

For The Respondent: Harold M. Braxton, Esquire

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:

The Florida Bar seeks to discipline Ariel Poplack for violation of 3-4.3, 4-8.4(b) and 4-8.4(c) of the Rules of Professional Conduct. This complaint arose out of an incident which occurred on May 14, 1989 in Coral Gables, Florida. The testimony of Officers Swikehart and Adler establish that Mr. Poplack was arrested at the scene of an apparent automobile theft. There was evidence that Mr. Poplack gave a different response to the first officer in explanation of his presence and involvement. However, after the initial inquiry by officer Swikehart, Mr. Poplack remained consistent in his assertions that his activities were a "prank" or "practical joke."

Mr. Ader testified from the Dade County State Attorney's Office that he filed a third degree felony charge of grand theft against Mr. Poplack. Mr. Adler explained that because the victim and officers had no objection and there was no prior criminal history, the case was referred to the Pre-trial Intervention Program. Upon successful completion of the program, the theft charge against Mr. Poplack was Nolle Prossed.

Mr. Emilio Juan Son Pedro testified that he owned a 1988 Volkswagon Fox that he parked on a street in Coral Gables and later discovered missing. His car was found a short time later two blocks away at the location where he came into contact with Mr. Poplack and another person (Steve Validares). Mr. San Pedro verified that he had received restitution for the damage to his vehicle and was satisfied.

The defense presented witnesses who testified to Mr. Poplack's general character and professional competence. The testimony of Mr. Oldak, Mr. Kaplan, Mr. Genet, Mr. Meloni, and Mr. Rothman was consistent in the picture they presented of Mr. Poplack. All these men espoused good opinions of Mr. Poplack. They said he was an honest, hard working young man who had suffered from the dissolution of his short marriage. They reported that his work and living habits had been adversely affected by his personal problems, but that he now seemed to be in better control of his life. They felt he was completely trustworthy and extremely honest. In addition, it was confirmed that he had a penchant for playing practical jokes.

The last witness, Dr. Bregman, a psychiatrist who evaluated Mr. Poplack, gave his opinion regarding Mr. Poplack's behavior. Dr. Bregman indicated that Mr. Poplack has some psychological problems which would benefit from treatment, was truly remorseful, his judgment was clouded at the time of the incident - by alcohol and depression, which led to this self-defeating behavior.

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 not guilty of the following violations of 3-4.3, misconduct and minor misconduct for committing an unlawful act to wit: theft of automobile.

As to Count II

I recommend that the respondent be found not guilty of the following violations of 4-8.4(b), to wit: theft of automobile.

As to Count III

I recommend that the respondent be found guilty as to 4-8.4(c) by misrepresentation, dishonesty in talking to police officer.

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 30 days with automatic reinstatement at the end of period of suspension as provided in Rule 3-5.1(e), Rules of Discipline. I further recommend that the respondent be placed on probation for a period of 18 months as provided in Rules 3-5.1(c) and 3-5.1(d), Rules of Discipline. The terms of probation recommended are as follows: respondent shall continue with psychological counseling during the probation period.

V. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending discipline to be recommended 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: 33 years old

Date admitted to Bar: January, 1986

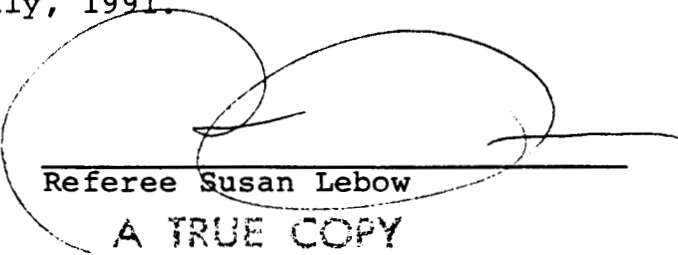
Other personal data: Divorced, no children, all family in New York

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

Administrative Costs Rule 3-7.5(k)(1)	\$ 500.00
Court Reporter's Attendance and transcription of :	
Grievance Committee Hearing of March 14, 1990	453.35
Deposition of Dr. Bregman of March 11, 1991	299.48
Final Hearing before Referee of March 14, 1991	772.90
Bar Counsel's Expenses	39.00
Witness Subpoenas and Witness Fees	176.00
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Total:	\$2,240.93

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 16 day of July, 1991.



Referee Susan Lebow

A TRUE COPY

I hereby certify that a copy of the above report of referee has been mailed to Randi K. Lazarus, Counsel for The Florida Bar at Suite M-100, Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131, Harold M. Braxton, Counsel for Respondent at One Datran Center, Suite 400, 9100 South Dadeland Boulevard, Miami, Florida 33156 and Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 16 day of July, 1991.