

FILED
 SID J. WHITE
 AUG 21 1991
 CLERK, SUPREME COURT
 By M
 Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
 (Before a Referee)

THE FLORIDA BAR,
 Complainant,

Case No. 76,908

vs.

TFB File No. 91-00353-02

MICHAEL J. NEDICK,
 Respondent.

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 3-7.6, Rules of Discipline, the following proceedings occurred:

On November 7, 1990, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. All of the aforementioned pleadings, responses thereto, exhibits, received in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT.

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. In 1982, a partnership was formed between Respondent, William T. Martin, and Mark T. Weinstein. From 1982 through 1984, Respondent and his partners received cash fees between \$40,000 to \$55,000; they agreed not to report these fees on their partnership and individual income tax returns. In 1983, Respondent filed a false income tax return in which he failed to report \$7,500 that he had received.

In March of 1985, Respondent's partnership with Mr. Martin and Mr. Weinstein dissolved. Thereafter, Respondent and Mr. Martin formed a two-person partnership doing business in the Bronx. During 1985 and 1986, Respondent and his partner failed to report approximately \$50,000 they had received in cash fees.

In 1987, Mr. Martin, Respondent's partner, was elected as a Justice of the New York Supreme Court for Bronx. Following Mr. Martin's election, the United States Department of Justice investigated Mr. Martin. This investigation included reviewing Respondent's individual tax returns because the income reported on the partnership's income tax returns was suspiciously low. Apparently this investigation revealed that Respondent had filed false income tax returns. Based upon this investigation, Respondent cooperated with the Federal Government and eventually pled guilty to one count of tax evasion. On April 4, 1990, Respondent was found guilty of attempting to evade or defeat tax in violation of 26 U.S.C. §7201. On April 7, 1990, Respondent was sentenced to two-years imprisonment with all but three months suspended, to be followed by nine months of probation. On November 7, 1990, The Florida Bar initiated disciplinary proceedings against Respondent.

III. RECOMMENDATIONS AS TO GUILT.

A final hearing was held on April 23, 1991, and Respondent admitted his guilt. Accordingly, I recommend Respondent be found guilty of violating: Rule 3-4.4 of the Rules of Discipline of The Florida Bar (a determination or judgment of guilt of a member of The Florida Bar by a court of competent jurisdiction of any crime or offense that is a felony under the laws of such jurisdiction is cause for automatic suspension from the practice of law in Florida. In addition, whether the alleged misconduct constitutes a felony or misdemeanor, The Florida Bar may initiate disciplinary action regardless of whether the respondent has been tried, acquitted, or convicted in a court for the alleged criminal offense); Rule 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) and Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct of The Florida Bar.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED.

Having found Respondent guilty as cited above, a review of both aggravating and mitigating factors need to be considered in imposing an appropriate discipline. Under Section 9.3 of the Florida Standards for Imposing Lawyer Sanctions, I find the following mitigating factors apply: absence of a prior disciplinary record and the imposition of other penalties or sanctions. I also find in mitigation, even though not listed under the Florida Standards for Imposing Lawyer Sanctions, the fact that Respondent apparently cooperated with the authorities in his criminal investigation. Under Section 9.2 of the Florida Standards

for Imposing Lawyer Sanctions, I find that the following aggravating factors also apply: Respondent had a dishonest or selfish motive and there was a repetition of misconduct (Respondent's conduct occurred over a period of years and was not a single, solitary act).

After determining what aggravating and mitigating factors apply in this case, a review of the Florida Standards for Imposing Lawyer Sanctions is also necessary to determine the appropriate discipline Respondent should receive in light of his actions. I find the following sections apply: Section 5.11(a) (disbarment is appropriate when a lawyer is convicted of a felony under the applicable law) and Section 5.11(f) (disbarment is appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice).

Having considered the foregoing and all matters contained in the record, I have determined that Respondent's action warrant severe disciplinary measure. However, given the Respondent's cooperation with the investigative authorities, the imposition of penalties and sanctions by the New York Bar and the significant number of letters of support included as part of the instant record, I feel disbarment is too harsh a discipline in this case. Accordingly, I recommend that Respondent be disciplined by:

A. Three-year suspension from The Florida Bar with said suspension commencing April 4, 1990, the date of his conviction, and successful completion of a law school ethics course as well as the ethics portion of The Florida Bar examination as conditions of reinstatement.

B. Payment of costs in these proceedings.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD.

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), Rules of Discipline of The Florida Bar, I considered the following personal history of Respondent, to wit:

Age: 43 years old.

Date Admitted to the Bar: March 30, 1982.

Prior Discipline: N/A.

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

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

A. Referee Level

1.	Administrative Costs	\$500.00
2.	Court Reporter's Fees	<u>74.00</u>
	TOTAL	\$574.00

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.

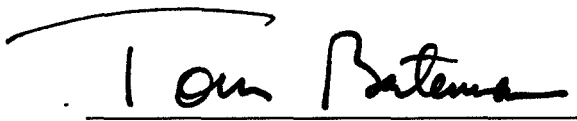
Dated this 20th day of August, 1991.



THOMAS H. BATEMAN III
County Court Judge / Referee
Room 265-B, Leon County Courthouse
301 South Monroe Street
Tallahassee, Florida 32301
(904) 922-6120

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of the Referee has been mailed to SID J. WHITE, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399 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; JAMES N. WATSON, JR., Bar Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; and MICHAEL J. NEDICK, Esquire, Respondent, at his record Bar address of 930 Grand Concourse, Bronx, New York 10451-2705, on this 20th day of August, 1991.



THOMAS H. BATEMAN III, Referee
Fla. Bar. No. 0349781