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CLERK, SUPREME COURT

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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 77,340
(TFB Case Nos. 90-30,934 (07A)
and 90-31,307 (07A)]

v.

PAUL JOHN DUBBELD,

Respondent.

REPLY BRIEF

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SYMBOLS AND REFERENCES

In this brief, the complainant, The Florida Bar, shall be referred to as the Bar.

ARGUMENT

At the outset, it should be noted the Bar is limiting its reply to those issues addressed by the respondent in his answer brief.

The purpose for seeking a public reprimand is not to punish the respondent by republishing in the minds of the public the respondent's arrest and conviction for driving while under the influence of alcohol but rather to deter other Bar members who might consider in engaging in similar misconduct and, more importantly, to pursue the additional purpose served by disciplinary sanctions as stated by this Court in The Florida Bar v. Larkin, 447 So.2d 1340 (Fla. 1984). Protection of the favorable image of the legal profession is an important aspect in this case. The public's view of attorneys is not high. The public outcry against drunk drivers has been strong in recent years, with many continuing to push for even stronger sanctions for DUI convictions than now exist. The respondent's arrest and conviction are already public knowledge. The Bar submits that anything less than a public reprimand will send a negative message to the general population. It will serve only to reinforce a belief held by some lay persons that if one is an attorney, then he or she can "get away with it". Additionally, because the grievance committee voted to find probable cause, the Bar's files on this case are now a matter of public record and

available for inspection. If the respondent receives an admonishment, it could be interpreted as "protecting one's own".

It is unfortunate for the respondent that his arrest received the publicity it did. Adverse publicity, however, is a price that must be paid by more prominent members of any community. Often times small transgressions result in unforeseen consequences.

In his answer brief, the respondent argues that the grievance committee and/or bar counsel should have reminded him to file his monthly status reports. Neither the committee, nor bar counsel, are under any obligation to perform this service for the respondent. The finding of probable cause by the committee was a direct consequence of the respondent's failure to comply with the committee's directive. The responsibility was his and he now seeks to shift the blame to others. The respondent's argument simply has no merit.

The Florida Standards for Imposing Lawyer Sanctions support the Bar's position. Black Letter Rule 5.1 concerns an attorney's failure to maintain personal integrity. The applicable Standard is 5.14 which calls for a private reprimand (admonishment) when a lawyer engages in any other conduct that reflects adversely on his fitness to practice law. Mitigating and aggravating factors, however, must be considered in the instant matter.

Under Black Letter Rule 8.0, prior disciplinary orders play a role in determining the appropriate level of discipline in a given case. Standard 8.3(b) states that a public reprimand is appropriate when a lawyer has received a private reprimand or admonishment for the same or similar misconduct and engages in further similar acts of misconduct. Standard 8.4 clearly states that an admonishment is not an appropriate sanction when a lawyer violates the terms of a prior disciplinary order or engages in the same or similar misconduct as that in the past.

Black Letter Rule 9.0 outlines factors that may be considered in aggravation and mitigation in arriving at an appropriate level of discipline in a given case. Standard 9.22 lists several aggravating factors that may be considered in aggravation and mitigation to arrive at an appropriate level of discipline in a given case. Standard 9.22 lists several aggravating factors which are applicable to the respondent's case. Subsection (a) concerns the existence of prior disciplinary cases. Subsection (c) concerns the existence of a pattern of misconduct; and subsection (i) concerns the attorney who has substantial experience in the practice of law.

Standard 9.32 lists mitigating factors which must also be considered. Of these, only subsection (c) is clearly applicable to the respondent's case. It concerns the existence of personal or emotional problems. The Bar maintains that subsection (j),

interim rehabilitation, is arguable.

The Bar stands on its arguments contained in its initial brief. The referee's recommendation of an admonishment is erroneous and unauthorized under the Rules of Discipline. The sole authority to issue admonishments in probable cause cases rests with this Court. The cumulative nature of the respondent's prior disciplinary history and the protection of a favorable image of the legal profession warrant the issuance of a public reprimand in this case.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact, recommendation of guilt, and recommendation as to discipline, and accept the findings of fact and recommendation as to guilt, but reject the recommendation as to discipline and order the respondent be publicly reprimanded by personal appearance before the Board of Governors and tax costs against the respondent now totalling \$1,414.58.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing Reply Brief has been furnished by regular U.S. Mail to The Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927; a copy of the foregoing Reply Brief has been furnished by regular U.S. Mail to respondent, Mr. Paul John Dubbeld, 444 Seabreeze Boulevard, Suite 942, Daytona Beach, Florida 32118-3952; and a copy has been furnished by regular U.S. Mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 27th day of December, 1991.


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