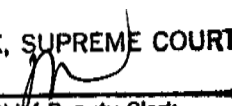


FILED

SID J. WHITE

APR 20 1992

CLERK, SUPREME COURT

By 
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

CASE NO. 78615

Complainant,

TFB No. 90-11,348 (6D)

v.

LARRY G. RIGHTMYER,

Respondent.

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 Friday, March 20, 1992, in Courtroom 21, 801 East Twiggs Street, Tampa, Hillsborough County, Florida.

The following attorneys appeared as counsel for the parties:

For the Florida Bar; David R. Ristoff, Esquire.

For the Respondent; Joseph F. McDermott, Esquire.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED:

AS TO COUNT I

(Respondent's Failure to Comply with the Minimum Trust Accounting Rules)

Respondent admitted to the Bar's allegations of failure to comply with the minimum trust accounting rules as alleged in the Bar's Complaint. (See pages 6,7,8,9,10 of the Transcript of Testimony and Proceedings).

AS TO COUNT II

(Respondents Conviction on or about January 24, 1991, in Florida's Sixth Judicial Circuit, of Three (3) Counts of Felony Perjury).

Respondent admitted to the Bar's allegations of Perjury as alleged in the Bar's Complaint. (See pages 6,7,8,9,10 of the Transcript of Testimony and Proceedings).

Additionally, it should be noted that the following Exhibits **were** tendered and received without objection from Respondent:

BAR EXHIBIT NO. 1: The Information charging Respondent with Perjury.

BAR EXHIBIT NO. 2: The Judgment and Sentence of the Circuit Court, Sixth Judicial circuit.

BAR EXHIBIT NO. 3: A Composite Exhibit containing the Report of the Auditor and attachments thereto. This report and/or the attachments thereto concern Respondent's Trust Account and the allegations as admitted in the Bar's Complaint. (**Said** Exhibits are Attached Hereto and Incorporated by Reference).

III. RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

As to each allegation of the Complaint and/or as stated by Counts I and II in this Report of Referee, Respondent admitted his guilt. Based upon Respondent's admissions to the allegations and to his guilt, the Referee does find Respondent guilty as alleged

in the Bar's Complaint. (See pages 6,7,8,9,10 of the Transcript of Testimony and Proceedings).

(Said Complaint is Attached **Hereto** and Incorporated by Reference).

Respondent's case at the hearing was limited to the presentation of mitigating circumstances and argument as to mitigation, rather than a defensive presentation concerning the allegations in the Complaint.

AS TO COUNT I :

I recommend that the Respondent be found guilty as alleged in the Bar's Complaint.

AS TO COUNT II:

I recommend that the Respondent be found guilty as alleged in the Bar's Complaint.

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

AS TO COUNT I:

I recommend that the Respondent be suspended for a fixed period of twelve (12) months, thereafter until Respondent shall prove rehabilitation and for an indefinite period until Respondent shall pay the costs of these proceedings as provided in Rule 3-5.1 (e), Rules of Discipline. Furthermore, if Respondent proves that he has been rehabilitated and is reinstated, Respondent should be placed on a period of Probation for twelve (12) months with supervision and periodic audits of his **Trust** Accounts by a member

of the Florida Bar as provided in Rules 3-5.1(c) and 3-5.1 (e), Rules of Discipline.

AS TO COUNT II:

I recommend that the Respondent be suspended for a fixed period of thirty-six (36) months, consecutive to **the** suspension as recommended in Count I, thereafter until Respondent shall prove rehabilitation and for an indefinite period until Respondent shall pay the costs of these proceedings. Furthermore, if Respondent proves that he has been rehabilitated and is reinstated, Respondent should be placed on a period of Probation for twelve (12) months with any and all of his work supervised by a member of the Florida Bar.

Respondent shall, as part of his rehabilitation and prior to any reinstatement:

1. Successfully complete a course in legal ethics taught at a law school approved by the Florida Bar; and
2. Complete and attain a passing score on the ethics portion of the Florida Bar Examination; and
3. File with counsel for the Florida Bar, a psychological report prepared by a licensed psychologist/psychiatrist, detailing Respondent's current mental condition and/or state and Respondent's fitness to handle the rigors of the legal practice. Respondent may not be reinstated if the results of said report are negative; and
4. File with counsel for the Florida Bar an evaluation prepared by an expert of the Bar's choosing, indicating as to

whether or not Respondent is in need of alcohol treatment and/or rehabilitation. Respondent may not be reinstated if the results of said report are negative; and

5. Pay the costs of this Disciplinary Proceeding. All recommended discipline as **provided** in Rule 3-5.1(c); 3-5.1(e); 3-7.10, Rules of Discipline.

COMMENT AS TO COUNT II

The Referee heard testimony from five (5) witnesses, including the Respondent. The first, Thomas J. Quinn, is Respondent's current employer. Mr. Quinn has also known Respondent for fifteen (15) **years**. Among other things, Mr. Quinn testified that Respondent seems to be remorseful and that Respondent is of very good character, (Pages 14, 15 of the Transcript of Testimony and Proceedings).

The Second witness, Susan Allen, is one of Respondent's ex-wives. She, among other things, indicated that she and Respondent have two (2) children together, that during the period of the admitted perjury Respondent was very nervous and uptight, that he was drinking a lot, and that Respondent was remorseful. (Pages 19, 22, 23, 25, 27 of the Transcript and Proceedings).

The Third Witness is Dr. Sidney J. Merin, a clinical psychologist and neuropsychologist. Dr. Merin testified, among other things, that he evaluated Respondent in 1984, assumedly in a child-custody proceeding and prior to the commission of the

acts of perjury. Although Dr. Merin found Respondent to be a favorable parent, Respondent had an unrealistic self-appraisal and a personality that inclined toward being manic. Dr. Merin indicated that at that time, Respondent had a rather inflated ego.

More recently, in November and December of 1991, Dr. Merin re-evaluated Respondent, Dr. Merin testified that at this time, Respondent has a more realistic self-appraisal, is not manic and has no difficulty in being able to adhere to concepts of right and wrong. (Pages 29,30,31,32,33,34,35,40,43 of the Transcript of Testimony and Proceedings).

The fourth witness was the Respondent. Among other things, Respondent explained the circumstances surrounding the perjury charges and the trust account discrepancies. Respondent stated that he **was** wrong and his suspension from the practice of law **is** justified. Respondent stated that he has lost everything and now **is** totally broke, except for his home.

Respondent also stated that during the time of his business problems and just prior to the foreclosure suit that led to the perjury charges, his wife (not Susan Allen), left with the children, taking all of the contents of the marital home. He had several deficiency judgments against him, other pending lawsuits in which he was the Defendant, a custody lawsuit with the ex-wife (Dawn) who had left with the children and property and he had began to drink. Respondent states that he stopped drinking two **(2)** years

ago. (See pages 53-62, 64-71 of the Transcript of Testimony and Proceedings).

The Fifth witness was Dr. Donald H. Eckart, retired senior minister of the Pass-A-Grille Beach Community Church. Presently, Dr. Eckart is a professor of religion and archaeology at Eckard College. Dr. Eckart explained, among other things, that Respondent was a parishioner and an attorney for the church. Dr. Eckart explained that Respondent represented some people from the church at no cost and that he was familiar with Respondent's children and family. Dr. Eckart stated that he knew Respondent was sorry and **had** been demoralized (**See** pages 73,74 of the Transcript of Testimony and Proceedings).

This Referee has considered all of the testimony, facts, circumstances, exhibits, caselaw, standards, rules and argument of the parties in this matter regarding **the** absolute fact that Respondent deliberately and unequivocally lied under oath. I am in agreement with the sound reasoning as stated in The Florida Bar v. O'Malley, 534 So.2d 1159 at 1162 (Fla. 1988), wherein the Court stated:

.... A lawyer may commit no greater professional wrong. Our system of justice depends for its existence on the truthfulness of its officers. When a lawyer testifies falsely under oath, he defeats the very purpose of legal inquiry. Such misconduct is grounds for disbarment....

Although Respondent's acts of perjury are grounds for disbarment, I find that there are mitigating circumstances here that cause this Referee to recommend a lesser penalty than disbarment. Those circumstances are as follows:

1. Respondent was experiencing severe marital difficulties the time of his actions, along with additional business and financial difficulties.

2. Respondent was experiencing an alcohol problem and possibly psychological problems, at the time of his wrong actions.

3. It does not appear that any person who may have been affected by Respondent's actions has not been made financially whole and no financial loss to any person was presented.

4. Respondent admitted his guilt, has shown remorse and recognized that his actions were incorrect and harmful to the public, the Bar, himself and **his** family.

5. Respondent appears to recognize that punishment is justified and has accepted and admitted the criminal charges as well as the Bar's allegations against him.

6. But for these acts, witnesses for the Respondent acknowledge his remorse and testified as to his better qualities and good reputation.

7. But for these acts which occurred in 1987 and a public reprimand which occurred in 1986, Respondent appears to have

enjoyed a good reputation as a member of the Florida Bar for the last twenty-seven (27) years.

I do not find that these mitigating circumstances excuse Respondent's conduct. There really appears to be no "excuse" whatsoever. Indeed, it appears to this Referee that at the time of the **perjury**, Respondent **was** acting on his own and in furtherance of his own greed and self-serving interest.

However, taking all facts and circumstances into consideration, this Referee must make a recommendation of what I feel would be proper disciplinary procedures for ~~this~~ particular case and ~~this~~ particular Respondent. I must consider said circumstances in light of Respondent's state of mind at the time. Realizing that these acts occurred in 1987, nearly five (5) **years** ago and considering that since that time Respondent has fully and completely admitted his guilt, changed his way of thinking and appears to be truly remorseful for his actions, I am recommending the suspension with conditions. Otherwise, without my findings of probative and compelling mitigating circumstances, I would surely recommend that Respondent be permanently disbarred from the practice of law.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

After finding Respondent 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: **55**

Date admitted to Bar: **1965**

Prior disciplinary convictions and disciplinary measures imposed therein:

Respondent received a public reprimand in 1986.
The Florida Bar v. Rightmyer, 488 So.2d (Fla. 1986).
(See Guilty Plea for Consent Judgment attached hereto and Incorporated by Reference).

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

Costs incurred at the grievance committed level as reported by Bar Counsel:

Administrative Costs:	<u>\$500.00</u>
Auditor Expenses	<u>\$3,396.15</u>
Investigator Expenses	<u>\$340.00</u>
Final Hearing - March 20, 1992	<u>\$75.00</u>
Transcript of Hearing	<u>\$344.80</u>
Bar Counsel Travel Expenses	<u>\$7.56</u>
TOTAL:	<u>\$4,663.51</u>

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 the 17 day of April, 1992.



Referee
DICK GRECO, JR.,
COUNTY COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above report of referee has been mailed to David R. Ristoff, Counsel for the Florida Bar, Tampa Airport Marriott Hotel, Suite C-49, Tampa, Florida 33604, Mr. John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399 and Mr. Joseph McDermott, Suite 701, NCNB Building, 501 1st Avenue North, St. Petersburg, Florida 33701, this 17 day of April, 1992.



DICK GRECO, JR.,