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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,
Complainant,

vs.

James A. Helinger, Jr.,
Respondent.

REPORT OF REFEREE

Summary of Proceedings

This matter came on to be heard upon the Complaint filed by the Florida Bar and the Answer filed **by** the Respondent. The Respondent in his Answer admitted all of the material allegations of the Complaint and as a result, there is no issue of fact or law as to the guilt of the Respondent of the breaches of the Rules Regulating the Florida Bar as alleged in the Complaint. The only issues are raised by that portion of the Respondent's Answer designated Affirmative Defenses in Mitigation.

Findings of Fact

1. In June 1986, Respondent began making obscene telephone calls to a lady in Tallahassee, which telephone calls continued intermittently until April 1991, when Respondent was apprehended by the Tallahassee Police Department. All of said phone calls originated in Tallahassee and occurred on Fridays, Saturdays and Sundays on weekends when Florida State University had a home football game. The Complaint here was the result of said telephone calls.

2. Respondent was a substantial booster of the Florida State University football team and rarely, if ever, missed a home football game. He and other boosters had condominium units in a condominium complex in the vicinity of the Florida State University stadium. From the time of Respondent's arrival in Tallahassee on Friday, before a football game, through all of Saturday and even a portion of Sunday, there were continuous parties in which alcohol was served and consumed and at which Respondent became intoxicated. It was on these occasions that he made the obscene telephone calls for which he was arrested.

2a. The testimony of the victim at the Final Hearing, together with her written statement given to the State Attorney's office of Leon County, gives some indication of the devastating effect of this lengthy period of intentional and systematic harassment by Respondent. The victim, Ms. N , testified that during the first telephone call, Respondent advised that he was in possession of nude photographs and that he would show these photographs to her boss unless she went out with him on a date and had sex with him. Although she knew that there were no such photographs in existence Ms. N testified, she felt compelled to reveal the contents of the telephone call to her boss. This experience was both humiliating and embarrassing to her. There was also testimony by Ms. N concerning the distress and terror which she experienced as a result of receiving threatening and obscene calls from a stranger whose identity and motive were unknown to her. By his own admission, Respondent placed these telephone calls in Tallahassee in order to avoid detection.

The facts set forth above are either undisputed or unrefuted. Respondent plead guilty to criminal conduct in May of 1991 and was subsequently sentenced to thirty (30) days in jail, six months probation, together with a fine and costs. The bulk of evidence presented to this Court was presented by Respondent in an effort to mitigate the discipline to be imposed in this matter.

3. Almost immediately after his arrest, Respondent determined that he needed professional help in relation to making obscene telephone calls. He decided to enter Golden Valley Health Center, Golden Valley, Minnesota, an institution specializing in diagnosing and treating sexual psychiatric disorders. He was admitted to said Center on May 15, 1991, and was discharged on June 14, 1991. At the time of his discharge, he was diagnosed as having:

- a. Adjustment disorder with emotional features.
- b. Alcoholism.
- c. Mixed chemical abuse, cocaine.
- d. Psychological Disorder, NOS.
- e. Narcisstic and dependency personality traits

The Discharge Plan recommended by Golden Valley consisted of:

- a. Securing the services of a therapist.
- b. Attending chemical dependency treatment in Florida.
- c. Seeking help from various support groups in Florida including Recovering Lawyers Alcoholic Anonymous Group.

3a. At the time of the Final Hearing, Respondent was approximately 45 years of age. He acknowledged placing obscene telephone calls since the age of 11. Since the age of 11, Respondent made calls on and off through the years until his prior arrest for the same

type of misconduct in 1978. Although the conduct ceased for a time after that arrest, he began again and placed calls not only to Ms. N ., but to other individuals, chosen either at random or out of the newspaper.

4. During the course of Respondent's treatment at Golden Valley, he was told, for the first time, that he was an alcoholic and a cocaine addict and, when he was so told, he came to believe it.

5. Informationally it should be noted that in connection with the arrest in 1978, Respondent entered a plea to six counts of placing harassing telephone calls. The amended information indicates that Respondent was charged with placing harassing telephone calls to a woman and offering to exchange a piece of lost jewelry for sexual favors. Respondent admitted proposing such an exchange. In connection with the 1979 plea agreement, Respondent was placed on probation for a period of 3 years. While on probation, Respondent consulted with and was treated by a psychologist, Dr. Sidney Merin. Dr. Merin did not diagnose Respondent's problems as being related to the consumption of alcohol or drugs. According to his own testimony, Respondent complied with the probationary conditions set forth in the plea, including the requirement that he continue counseling. Although he may have complied with probationary conditions, unfortunately, it has been proven that by 1986 he began making the telephone calls to Ms. N

5. After leaving Golden Valley Health Center, Respondent went to Parkside Lodge of Florida for treatment of his alcoholism

and cocaine addiction where he remained for one (1) week, after which he was discharged. He then sought the services of the Florida Lawyers Assistance Program, Inc., a program operated with the cooperation of the Florida Bar to serve as support for lawyers with alcohol and/or chemical addictions and to monitor their progress. As a part of this program, he joined Alcoholics Anonymous and he has attended meetings of Alcoholics Anonymous and he has attended meetings of Alcoholics Anonymous approximately twice weekly since joining. Under his contract with Florida Lawyers Assistance Program, he reports monthly to his monitor and has submitted to quarterly random tests for alcohol and controlled substances, all of which tests have proven negative.

6. The testimony in this cause is to the effect that the Respondent has not consumed any alcoholic beverages or controlled substances since his discharge from Golden Valley Health Center and this Referee so finds. It should also be noted that Respondent's testimony indicates that he began using cocaine, an illegal drug, at the age of 34. After he abstained from the use of the drug for approximately three years during that 11 year period (approximately 1984 through 1986), he returned to using the drug again. This cocaine use continued even after Respondent's arrest in the N matter. In fact, upon admission to Golden Valley Health Center, on May 15, 1991, Respondent tested positive for cocaine and cocaine metabolite, the Respondent was obviously addicted to cocaine.

7. Prior to his sentencing in Tallahassee, Respondent conferred with the victim of the obscene telephone calls and as a result thereof, the victim's attitude changed from one of anger to one

of compassion and at his sentencing, she testified that she did not believe that the telephone calls were made maliciously, but were the result of a deep-rooted problems for which the Respondent needed treatment.

8. Subsequent to Respondent's release from Golden Valley, his attitude toward his Wife has changed resulting in a much improved marital relationship in which he enjoys the full **support** of his wife.

9. Respondent enjoys the full support of his two (2) brothers as well as the pastor of his church.

10. Alcohol and substance addiction to cocaine and Respondent's psychiatric problems are all illnesses which are probably not curable. However, they are controllable in the sense that symptoms of these illnesses will not happen if:

a. Respondent is dedicated to resisting the effects of the illnesses.

b. Respondent seeks professional assistance in controlling the illnesses.

c. Respondent has the **support of** Alcoholics Anonymous, Florida Lawyers Assistance, Inc. and like organizations, his family and his friends.

11. I further find that Respondent is determined to resist the effects of this illnesses, he is determined to continue cooperating in the programs of Alcoholics Anonymous and Florida Lawyers Assistance, inc. and to continue securing professional help for his psychiatric problems.

12. As a result of the foregoing, Respondent has an excellent

chance of avoiding exhibiting any symptoms of his illnesses and any repetition of his prior misconduct and thus to be fully rehabilitated.

Recommendation As To Whether The Respondent Should be Found Guilty

Based upon the pleadings in this case, the pleadings in the criminal case and the admissions of the Respondent at the hearing before me, I am compelled to recommend that Respondent **be** found guilty of the misconduct alleged in the Complaint.

Recommendation As To Disciplinary Measures To Be Applied

I recommend that the Respondent be suspended from the practice of law for (90) days and that he be placed on probation for an extended period of time, probably until he is no longer a member of the Florida Bar, the conditions of said probation should be:

1. He continue to regularly secure professional counseling and therapy relative to this psychiatric problems. Prior to the termination of the 90 day suspension period, Respondent must submit to an evaluation by a psychiatrist chosen by the Florida Bar and that evaluation and report should be forwarded to the Supreme Court.

2. He abstain from any use of alcohol or controlled substances except on written direction from a physician.

3. He continue with the programs of Alcoholics Anonymous and Florida Lawyers Assistance, Inc., fully complying with all the provisions of said programs including, but not limited to, random testing for the use of alcohol and controlled substances and monitoring by Florida Lawyers Assistance, Inc; These random tests should be conducted at least twice a month at Respondent's expense.

In reaching these conclusions, I have carefully considered the various factors set-out in Rule 9.22 and 9.32 of the Florida Standards for Imposing Lawyer Sanctions. I find the following aggravating factors: 9.22(c) a pattern of misconduct & 9.22(d) multiple offenses. On the other hand, I find the following mitigating factors: 9.32(a) absence of prior record, 9.22(b) absence of dishonest or selfish motivation and 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings. The conduct was caused by Respondent's personal and emotional problems and his addiction to alcohol and cocaine.

After being apprehended, Respondent made a good faith effort to rectify the consequences of the misconduct by, in effect, apologizing to the victim. Again it should be noted that the victim now has testified twice on behalf of the Respondent. Once at the sentencing in Tallahassee and during the course of the hearing before this Court.

Respondent is truly remorseful for his conduct and is determined to rehabilitate himself.

No client nor the administration of justice was injured by Respondent's misconduct.

Further explaining the recommendation above, I do not believe that ninety (90) days suspension will be beneficial in any way to the Respondent. He does not need any suspension to demonstrate to him the gravity of his offense. On the other hand, the ninety (90) days suspension will demonstrate to other members of the Bar and to the public that the Court will not tolerate misconduct such as that engaged in by Respondent. The probation, however,

is absolutely necessary to encourage the Respondent in continuing the professional help which he needs and at the same time, keeping him aware of the probable results of any repetition of the misconduct herein involved. Such probation on the one (1) hand will be an encouragement and on the other hand, it will serve as a crutch upon which he can lean, knowing full well that the consequences of future similar misconduct will be disastrous.

I have also considered that the Respondent is 48 years old, married with one minor child. Standing in sharp contrast to the conduct in 1978 and 1991 are the array of factual accounts, psychological reports and testimonials that establish a very strong case for mitigation. This record overwhelmingly describes a man who has been an outstanding lawyer for some 20 years, generously gives his time and energy for the betterment of one of the state universities, whose work is highly regarded by respected citizens and attorneys. All this plainly shows that the events of 1978 and 1991 were aberrations caused largely by an undiagnosed and untreated disease and mental problem which now is under medical control and continuing supervision by capable support organizations. While the Respondent's illness and addictions resulted in hospitalization and treatment, it did not otherwise interfere with his work; and nothing in this record shows that the misconduct harmed any client or resulted in prejudice to anyone's rights.

Likewise, any longer suspension of the respondent would serve no useful purpose in this case, One of the purposes of a suspension in addition to punishment is to hold the attorney up to public criticism, thereby reinforcing the urgent need to

correct the misconduct. The Respondent's case has called him into intense scrutiny by the press in Tallahassee as well as the press in his home county.

Statement Of Costs And Manner In Which Costs Should Be Taxed:

I have reviewed the Statement of Costs Affidavit submitted by The Florida Bar. I find that the costs were reasonably incurred by The Florida Bar. It is apparent that other costs have been or may be incurred. It is recommended that all such costs and expenses, together with costs listed in the Affidavit be charged to the Respondent. The Affidavit is attached to this Report, marked as Exhibit A and made a part hereof.

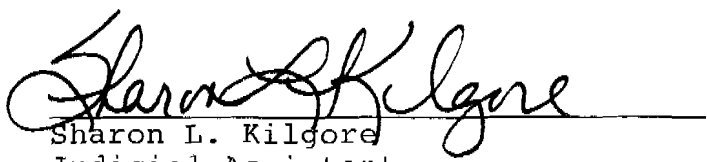
DATED this 12 day of October, 1992.



Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Richard T. Earle, Jr., Esquire, 150 2nd Avenue, N., Suite 910, St. Petersburg, FL 33701 and Susan V. Bloemendaal, Assitant Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport, Marriott Hotel, Tampa, FL 33607 by U.S. Mail/delivery on this 13 day of October, 1992.



Sharon L. Kilgore
Judicial Assistant