047

4/25

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

Case No. 80,262
(TFB No. 91-11,119 (13C))

v.

CHARLES K. INGLIS,
Respondent.
_____/

THE FLORIDA BAR'S INITIAL BRIEF

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RULES REGULATING THE FLORIDA BAR:

SYMBOLS AND REFERENCES

In this Brief, the Petitioner, THE FLORIDA BAR, will be referred to as "The Florida Bar" of "The Bar." CHARLES K. INGLIS will be referred to as "Respondent." "TR" will refer to the transcript of the Final Hearing and Disciplinary Hearing held on March 2, 1994, April 11, 1994, and October 12, 1994. "RR" will refer to the Report of Referee dated July 20, 1994, and "SRR" will refer to the Supplemental Report of Referee dated November 16, 1994. "TFB Ex." will refer to The Florida Bar exhibits and "R Ex." will refer to Respondent's exhibits, admitted into evidence at the Final Hearings.

STATEMENT OF FACTS AND THE CASE

The misconduct by Respondent that is the subject of this case began on February 4, 1991, when he battered a process server named Arnold Goldfoot. Respondent engaged in further misconduct when he engaged in a scheme to cover up his misconduct. There is no dispute that Mr. Goldfoot went to Respondent's office on February 4, 1991, for the purpose of serving process on the Respondent (TR 11-12). Mr. Goldfoot, who was a process server and a former acquaintance of the Respondent, had previously attempted to serve process on the Respondent at another address, and believed that Respondent was avoiding service(TR 9-10). Upon arriving at Respondent's office on the day in question, there was an initial conversation between Mr. Goldfoot and Respondent's secretary, Tammy O'Donnell, during which Mr. Goldfoot asked to see the Respondent (TR 11 and 71). After being advised by Ms. O'Donnell that Respondent was not in, Mr. Goldfoot left the building to determine whether Respondent's car was in the parking lot. He returned to the office shortly thereafter, and advised Ms. O'Donnell that he knew Respondent was in the office and wanted to see him (TR 11 and TR 72-73). As Mr. Goldfoot approached Mr. Inglis' closed office door, Respondent bolted out of the door and immediately struck Mr. Goldfoot (TR 12 and 74). Respondent continued to punch, kick, and shove

Mr. Goldfoot, while swearing and cursing at him (TR 12). By his own testimony, Respondent grabbed Mr. Goldfoot from behind and pushed, shoved and physically ejected him from the office without making any inquiry as to Mr. Goldfoot's purpose for being in the office (TR 212, RR 2, Appendix B). Respondent further admitted that he was loud and profane, calling Mr. Goldfoot an "SOB" (TR 212).

Subsequent to Respondent's unprovoked battery of Mr. Goldfoot, he engaged in a scheme to cover-up his misconduct, by lying to law enforcement authorities, and by later directing Ms. O'Donnell to prepare and sign a false affidavit (TR 85-86, 158, 200-201). After Ms. O'Donnell left Respondent's employment, he encouraged her to stick by her false story. He wrote a letter dated July 17, 1991, advising her, "I suggest that you tell anyone that the affidavit tells the whole story. You have nothing further to add" (TFB Ex. 6).

Deputy Amsler, who responded to the scene at Respondent's Office on February 4, 1991, testified that Respondent related to him that an unknown man had come into the office, looked around, and left (TR 133-134). Respondent gave no indication to Deputy Amsler that there had been any kind of physical altercation, or that he and Mr. Goldfoot were acquainted (TR 135, RR 2, Appendix B).

Mr. Goldfoot initially filed no complaint with law enforcement authorities, but by letter dated February 11, 1991, he did file a complaint with The Florida Bar (TR 18-19, TFB Ex. 3). On March 25, 1991, when Respondent received a letter from The Bar concerning Mr. Goldfoot's complaint, he immediately instructed Ms. O'Donnell to call law enforcement authorities (TR 81-82, 195-196). Deputy Potter, who responded to this call, presented himself at Respondent's office on March 25, 1991. He interviewed both Ms. O'Donnell and Respondent (TR 53). According to Deputy Potter, Ms. O'Donnell related the incident in the presence of Respondent (TR 55-56). Respondent then corroborated everything Ms. O'Donnell had said (TR 55). In his statement to Deputy Potter, Respondent related that Mr. Goldfoot had forced his way into the office and was attacking Ms. O'Donnell when he was ejected from Respondent's office (TR 57). Ms. O'Donnell then filled out and signed a Request for Prosecution (TR 83-85, TFB Ex. 4).

Within a week of giving this false report to Deputy Potter, Respondent directed Ms. O'Donnell to prepare and sign an affidavit falsely stating that Mr. Goldfoot had broken into Respondent's office and had attacked and assaulted her on February 4, 1991 (TR 85-87, TFB Ex.5). Ms. O'Donnell subsequently recanted this statement when questioned in July

of 1991 by the State Attorney's Office. She testified to the Referee in this case that she had initially gone along with Respondent's fabricated version of facts out of fear of losing her job (TR 87-89, RR 2).

Based on the above, Respondent was criminally charged with giving false information to a law enforcement officer in violation of Florida Statutes, Section 837.05, and with committing a battery in violation of Florida Statutes, Section 784.03. On February 25, 1992, Respondent was found guilty by a jury of both charges. However, the judgment and sentence were reversed, and the cause was remanded for a new trial. In January of 1994, the criminal charges against Respondent were retried, resulting in a hung jury on the battery charge, and a verdict of not guilty on the charge of giving false information to a law enforcement officer.

On March 2, and April 11, 1994, the charges in the Bar's Amended Complaint were heard by the Referee. On July 20, 1994, the Referee issued a Report of Referee containing the following recommendation:

> I have concluded as a matter of law and as a matter of fact that there is clear and convincing evidence that Mr. Inglis violated the following Rules Regulating The Florida Bar: Rules 3-4.3, 3-4.4, and 4-8.4(a), and 4-8.4(b), and 4-8.4(c), and 4-8.4(d), when he battered Mr. Goldfoot and lied about the incident to the investigating officers and this referee. (RR 3, Appendix B)

The Referee reserved his recommendation as to discipline pending arguments from counsel. On October 12, 1994, a hearing was held for the purpose of presenting evidence and arguments relating to the issue of discipline. On November 16, 1994, the Referee issued a Supplemental Report of Referee, setting forth aggravating and mitigating factors, and recommending a suspension of 91 days and requiring proof of rehabilitation prior to reinstatement.

Following the Board of Governors' meeting which terminated February 17, 1995, a Petition for Review was filed on February 27, 1995, requesting review of the recommended discipline.

SUMMARY OF THE ARGUMENT

The issue addressed in this Brief is whether an attorney found guilty of perpetrating an unprovoked physical assault upon a process server and subsequently engaging in a deliberate scheme to cover up his conduct by lying to law enforcement authorities should receive only a ninety-one (91) day suspension. Even without considering aggravating factors such as prior discipline, a ninety-one (91) day suspension would be insufficient in light of the seriousness of the Respondent's misconduct. Taking into consideration Respondent's history of serious misconduct, a ninety-one day suspension becomes woefully inadequate. Respondent was previously suspended in 1964 for a period of eighteen (18) months for admitted misconduct wherein he willfully and knowingly made false statements to clients and wrongfully withheld and converted to his own use $17,597.25 of his clients' funds. This prior misconduct occurred within his first two years of practice. Approximately twenty years later, in 1985, after a contested Reinstatement Proceeding, this Court ordered that Respondent be reinstated upon successful passage of the Bar Examination. Respondent was readmitted on September 3, 1987. The misconduct by Respondent in this case occurred merely three and one-half years later.

Without considering aggravating factors, Section 5.11(b)

of the Florida Standards for Imposing Lawyer Sanctions provides for disbarment for misconduct involving "intentional interference with the administration of justice, false swearing, misrepresentation, fraud..." Subsection 5.11(f) likewise provides for disbarment when "a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously reflects on the lawyer's fitness to practice law."

The Supplemental Report of Referee finds the following aggravating factors in the instant case:

Section 9.22(a)	Prior Disciplinary Offenses
Section 9.22(b)	Dishonest or selfish motive
Section 9.22(d)	Multiple Offenses
Section 9.22(f)	Submission of false statements during a disciplinary process
Section 9.22(g)	Refusal to recognize the wrongful nature of his misconduct.

Respondent, by virtue of his misconduct in the instant case and his prior record of serious misconduct, has demonstrated an attitude and course of conduct that is wholly inconsistent with approved professional standards and should be disbarred.

ARGUMENT

THE REFEREE'S RECOMMENDED DISCIPLINE OF A 91 DAY SUSPENSION IS INSUFFICIENT IN LIGHT OF THE SERIOUS NATURE OF RESPONDENT'S MISCONDUCT AND HIS PRIOR RECORD OF SERIOUS MISCONDUCT.

A. Respondent's misconduct reflects adversely on his fitness as a lawyer, and demonstrates an absence of honesty and integrity

During the course of the Disciplinary Hearing in the instant case, the Referee made the following observations:

> "I think you misstated -- made a false statement to a police officer. It's not a judicial proceeding, but you compounded it somewhat by coming in front of me. And when I had to make the finding I did, *frankly I found I didn't believe your testimony.* That's what it amounted to. And I'll look you in the eye and tell you that." (TR 289) (emphasis supplied).

In February of 1991, when Mr. Goldfoot went to Respondent's office to serve Respondent with process, it was not his first attempt to serve Respondent. On at least two prior occasions, Mr. Goldfoot had attempted to serve the Respondent at another location. On the first occasion, Mr. Goldfoot was told that Respondent was not there. On the second occasion, Mr. Goldfoot saw the Respondent's car, rang the bell, and observed Respondent peeking out through the blinds in the window. According to Mr. Goldfoot's testimony, the Respondent appeared to see him but did not answer the door (TR 10). Ms. O'Donnell testified that, prior to the February

4, 1991 incident, the Respondent had informed her that he thought he was going to be served with papers, and instructed her to indicate that he was not in (TR 76). He told her that he thought he might be sued personally, and that he was desirous of avoiding service (TR 76-77).

When Mr. Goldfoot arrived at Respondent's office on February 4th, Respondent did indeed attempt to avoid service by telling Ms. O'Donnell that he did not want to see the gentleman identified on his business card as Mr. Goldfoot (TR 71). When Mr. Goldfoot returned to the office after observing Respondent's car in the parking lot, Respondent bolted out of a door and viciously attacked Mr. Goldfoot. At the Final Hearing before the Referee, Mr. Goldfoot described the attack as follows:

> And that's when he started punching and kicking and shoving me and swearing and cursing. And I asked him, I said, "Chuck, this is not necessary. Please don't. Stop, please." (TR 12)

According to Mr. Goldfoot, Respondent ripped the papers from his hand, came up behind him, and hit him over the back of the head with something (TR 12-13). The photographs of Mr. Goldfoot taken a few days after the incident indicate a blackened eye (TR 16-18, TFB Ex. 2 and 3). As a result of the injuries sustained to his neck, Mr. Goldfoot required medical treatments for displaced vertebrae and pressure on his sciatic

nerve (TR 16).

Ms. O'Donnell also described a vicious and unprovoked attack on Mr. Goldfoot. According to Ms. O'Donnell, the office door opened without warning and Respondent immediately began to hit Mr. Goldfoot, striking continuous blows to Mr. Goldfoot's face, back, neck, and leg (TR 74-75). Both Mr. Goldfoot and Ms. O'Donnell testified that Mr. Goldfoot never attempted to protect himself and did not strike back at Respondent (TR 15, 78). Ms. O'Donnell testified that Mr. Goldfoot appeared to be "in shock" following the attack (TR 78).

The Respondent's own testimony relates an attack on Mr. Goldfoot that was preceded neither by inquiry nor warning. Respondent made no attempt to question Mr. Goldfoot, nor did he ask him to leave, before physically ejecting Mr. Goldfoot from the office (TR 212).

Respondent's misconduct did not stop with the vicious and unprovoked assault upon Mr. Goldfoot. He compounded his misconduct by lying to the Sheriff's Deputy summoned to the scene. Respondent related to Deputy Amsler a totally false story wherein an unknown person had come to the office and looked around as if he were looking for a file (TR 134). In fact, as the Referee found, Mr. Goldfoot *was* known to the Respondent (TR 8-10, RR 2). Further, although Respondent

indicated to the Deputy that there had been no touching or assault, this is clearly contrary even to the version of facts Respondent related in his *own testimony* before the Referee(TR 135, 189-190).

When Respondent received notice from the Bar on March 25, 1991, that a complaint had been filed by Mr. Goldfoot, he immediately instructed Ms. O'Donnell to call law enforcement authorities. She did so and Deputy Potter, another representative from the Sheriff's office, came to Respondent's office that same day (TR 81-82). During the interview with Deputy Potter, Ms. O'Donnell corroborated the Respondent's false statement to the effect that Mr. Goldfoot had shoved, pushed, and hit her during the February 4th incident (TR 83). According to Ms. O'Donnell's testimony to the Referee, she gave this false version of facts to Deputy Potter out of fear of losing her job (TR 83). Some time after Deputy Potter's interview, Respondent instructed Ms. O'Donnell to prepare an affidavit, and further instructed her to set forth facts in the affidavit *known to both he and Ms. O'Donnell to be false* (TR 85-86).

The Record before this Court is replete with evidence that Respondent engaged in an unprovoked attack on a process server, that he lied to law enforcement authorities concerning the incident, that he engaged in a scheme to cover up his own

illegal and unethical conduct , that he involved his employee in this scheme by allowing her to corroborate his false statement and by instructing her to prepare a false affidavit, and that he then lied to the Referee who heard this matter.

B. Cases previously decided by this Court, together with the Florida Standards for Imposing Lawyer Sanctions, provide for disbarment in light of the serious nature of the misconduct and the aggravating factors.

The Florida Standards for Imposing Lawyer Sanctions indicate that disbarment is the appropriate discipline for misconduct such as Respondent's. Section 5.11 of the Standards provides as follows:

> Disbarment is appropriate when:
>
> . . .
>
> (b) a lawyer engages in *serious criminal conduct*, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or
>
> . . .
>
> (e) a lawyer attempts or conspires or solicits another to commit any of the offenses listed in sections a)-(d); or
>
> (f) 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. (emphasis supplied)

Respondent's misconduct falls within the above cited provisions of the Florida Standards. He engaged in serious criminal conduct involving misrepresentation by virtue of his giving a false report to law enforcement authorities. Further, pursuant to Section 5.11(a), he allowed his secretary, Tammy O'Donnell, to corroborate his false statement

to the law enforcement officer, and he instructed her to prepare and sign a false affidavit. Section 5.11 (f) also applies in that Respondent's conduct was intentional, it involved deceit and misrepresentation, *and* it seriously adversely reflects on his fitness to practice.

In The Florida Bar v. Weinstein, 624 So. 2d 261 (Fla. 1993), attorney Weinstein was found guilty of solicitation of a brain-injured patient, lying to a nurse, and lying again under oath. He was found guilty of violating many of the same rules which the Respondent has been found guilty of violating, including Rules 3-4.3, 4-8.4 (a) and (c). In Weinstein, the Referee considered the fact that Mr. Weinstein had a longstanding kidney disease, had surgery and financial difficulties, and had previously been disciplined with a private reprimand. The Referee recommended a ninety (90) day suspension. This Court rejected the recommended ninety (90) day suspension and agreed with The Bar that disbarment was the appropriate discipline, noting that Mr. Weinstein had lied under oath and to health care providers. The Court further commented that Mr. Weinstein's misconduct brought the legal profession into disgrace. While Respondent has not been found guilty of lying under oath, his conduct is more serious than that of Mr. Weinstein in that Respondent not only lied to law enforcement authorities, but he involved another individual in

his misconduct to the extent of allowing her to corroborate his false statement and instructing her to prepare a false affidavit. Unlike Weinstein, who had only a prior private reprimand, Respondent has previously been suspended for serious misconduct similar to that in the instant matter.

In The Florida Bar v. Manspeaker, 428 So. 2d 241 (Fla. 1983), this Court disbarred attorney Manspeaker for perpetrating a fraud on a client and then lying to a grievance committee. There is no indication in the opinion that Mr. Manspeaker had received prior discipline. In Manspeaker, this Court agreed with the Referee that disbarment was the appropriate discipline.

Prior disciplinary offenses is at the top of the list of factors to be considered in aggravation of a disciplinary measure. Section 9.22(a), Florida Standards. The Referee found Respondent's prior discipline to be one of the aggravating factors present in the instant case, specifically noting Respondent's 1964 suspension and subsequent reinstatement (SRR 2). Other aggravating factors found by the Referee were a dishonest or selfish motive, the presence of multiple offenses, the submission of false statements during a disciplinary process, and a refusal on the part of Respondent to recognize the wrongful nature of his misconduct.

Respondent has been found guilty of multiple offenses, violating Rules 3-3.3, 3-4.3, 3-4.4, 4-8.4(a), 4-8.4(b), 4-8.4(c), and 4-8.4(d). These multiple violations arise out of more than one instance of misconduct. Respondent's apparent motivation for engaging in the cover-up scheme was his selfish desire to avoid both the criminal and disciplinary consequences of his misconduct. Further, Respondent made false statements to the Referee during the course of these proceedings and showed no evidence that he recognized the wrongful nature of his misconduct.

In considering the appropriate level of discipline, both the cumulative nature of an attorney's misconduct and any prior breaches of professional discipline should be considered. See The Florida Bar v. Vernell, 374 So. 2d 473, 476 (Fla. 1979), and The Florida Bar v. Greenspahn, 386 So. 2d 523 (Fla. 1980). This Court has consistently held that cumulative discipline is to be dealt with much more harshly than isolated incidents of misconduct. The Florida Bar v. Dubbeld 594 So. 2d 735 (Fla. 1992), and The Florida Bar v. Adler 589 So. 2d 899 (Fla. 1991)

Respondent's serious misconduct in the instant case, his selfish motivation, the cumulative nature of the misconduct, and Respondent's numerous prior breaches of professional ethics warrant disbarment. As this Court has recognized in

the past, disbarment is an extreme measure of discipline and should be resorted to only in cases where a lawyer demonstrates an attitude or course of conduct wholly inconsistent with approved professional standards. The Florida Bar v. Oxford, 127 So. 2d 107 (Fla. 1960). Respondent has, by his prior misconduct and by his misconduct in this case, demonstrated an attitude and a course of conduct which are wholly inconsistent with approved professional standards. The public's perception of the legal profession is severely diminished by attorneys who engage in a course of conduct such as Respondent's. Respondent has violated duties to both the the public and to the legal profession.

As eloquently stated by Justice Terrell in State ex rel. Florida Bar v. Murrell, 74 So. 2d 221 (Fla. 1954), the two general categories for which attorneys are disciplined may be described as follows:

> (1) Cases in which the lawyer's conduct has shown him to be one who cannot properly be trusted to advise and act for clients.
>
> (2) *Cases in which his conduct had been such that to permit him to remain a member of the profession and to appear in court, would cast a serious reflection on the dignity of the court and on the reputation of the profession.*

Murrell at 224 (emphasis supplied).

Allowing Respondent to remain as a member of the legal profession would cast serious reflection on the dignity of the court and the reputation of the legal profession. This Court is not bound by the Referee's recommendations for discipline. The Florida Bar v. Weaver, 356 So. 2d 797 (Fla. 1978). In this case, a suspension of only 91 days is wholly insufficient and meets *none* of the purposes set forth in The Florida Bar v. Pahules, 233 So. 2d 130 (Fla. 1970). The recommended discipline is not fair to the public, as it fails to sufficiently protect the public from unethical conduct. It is further insufficient to punish the serious breach of ethics by this Respondent or to deter others who might be prone or tempted to become involved in like violations.

CONCLUSION

The Referee's recommendation of a ninety-one day suspension is woefully insufficient in light of the seriousness of Respondent's misconduct and his prior history of serious misconduct.

WHEREFORE, The Florida Bar respectfully requests that this Court reject the Referee's recommendation of a ninety-one day suspension and instead order Respondent's immediate disbarment from the practice of law.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and 12 copies of the FLORIDA BAR'S INITIAL BRIEF is being sent to SID J. WHITE, CLERK, The Supreme Court of Florida, 500 South Duval, Tallahassee, Florida 32399-2927, and a copy to DAVID A. MANEY, Esquire, Attorney for Charles K. Inglis at Post Office Box 172009, Tampa, Florida 33602, by regular U.S. Mail, this 31st day of March, 1995.

SUSAN V. BLOEMENDAAL

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