087

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

v.

CHARLES K. INGLIS,
Respondent.
_____/

Case Nos. 80,262
81,222
83,325

THE FLORIDA BAR'S REPLY BRIEF

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SYMBOLS AND REFERENCES

In this Brief, the Petitioner, THE FLORIDA BAR, will be referred to as "The Florida Bar" or "The Bar." CHARLES K. INGLIS will be referred to as "Respondent." "TR" will refer to the transcript of the Final Hearing in Case No. 80,262 and "RR" will refer to the Report of Referee in that case.

ARGUMENT

Respondent, in his Statement of Facts in Case No. 80,262 (the "Goldfoot" case), cites to the record to support his version of the facts. However, Respondent has filed no Petition for Review challenging the Findings of Fact by the Referee. These Findings of Fact are found in the Report of Referee appended to the Bar's Initial Brief as Appendix A and are presumed correct. The Referee made specific findings that Respondent knew that someone was going to serve him with papers, and that he was acquainted with Mr. Goldfoot. Although the Referee made no specific findings concerning whether Respondent knew that Mr. Goldfoot had come to the office for the purpose of serving process, there is testimony in the record by Mr. Goldfoot indicating that Respondent had appeared to see him on a prior attempt to serve Respondent with process (TR 10). Further, it is important to note that the Referee made a general finding that "the facts related by Mr. Goldfoot and Ms. O'Donnell are what actually occurred," and that, "[t]he testimony of Ms. O'Donnell and Mr. Goldfoot was credible--that of Mr. Inglis was not..." (RR 5-6). The Bar therefore respectfully submits that in areas where the testimony of Ms. O'Donnell or Mr. Goldfoot conflicts with the testimony of the Respondent, the version of the facts related by Ms. O'Donnell and Mr. Goldfoot should be accepted. Not only is Respondent's version of the facts contrary to that of Ms. O'Donnell and Mr. Goldfoot, but it is also

contrary to the law enforcement officers who testified at the Final Hearing. According to Deputy Amsler's testimony, the Respondent related to him that an unknown person had come to the office and looked around as if he were trying to find a file and that there had been no touching (TR 134). That version of the facts is not only contrary to the testimony of Ms. O'Donnell and Mr. Goldfoot, but it is contrary to the Respondent's own testimony before the Referee. Further, according to Ms. O'Donnell's testimony, Respondent instructed her to prepare an affidavit setting forth facts known to him to be false (TR 85-86).

Standing alone, the complaint of Mr. Goldfoot against the Respondent would warrant serious disciplinary action. However, that case is not being viewed by this Court in isolation. It arrives with two other cases against the Respondent finding him guilty of incompetence. Further, pursuant to the Florida Standards for Imposing Lawyer Discipline, Respondent's prior discipline is to be considered as an aggravating factor.

On page eighteen (18) of his Answer Brief in the Goldfoot case, Respondent cites to a long list of cases where this Court found that "a suspension was appropriate based on *facts similar to the [Goldfoot] case.*" The Bar respectfully submits that, not only are these cases factually dissimilar from the Goldfoot case, but that there is no mention in *any* of the cited cases of either prior misconduct *or* cumulative misconduct.

As Respondent pointed out in his Answer Briefs, while a referee's findings of fact enjoy a presumption of correctness, this Court's review is broader in matters involving legal conclusions and recommendations by a referee. The Florida Bar v. Inglis, 471 So.2d 38 (Fla. 1985). In the instant cases, the recommendations of the Referees concerning the appropriate discipline should be rejected as wholly insufficient due to the serious nature of the misconduct and Respondent's disciplinary record. Additionally, neither of the two Referees who made recommendations of discipline in the three pending cases had the benefit of considering all three cases together with the prior disciplinary record. The three pending cases have now been consolidated by this Court for the purpose of determining the appropriate discipline. Had these three pending cases been filed as multiple counts of a single complaint, this Court clearly would have considered the totality of the circumstances in determining an appropriate discipline. In The Florida Bar v. Vernell, 374 So. 2d 473 (Fla. 1979) this Court considered the attorney's prior discipline (two previous reprimands) and his cumulative misconduct in that case (two counts of misconduct) in fashioning an appropriate discipline. Likewise, this Court disbarred an attorney found guilty of multiple charges of misconduct based on the totality of the circumstances, and observed that the "mitigating factors are outweighed by the significant and aggravating factors as well as the cumulative

misconduct...." The Florida Bar v. Williams, 604 So. 2d 447, 452 (Fla. 1992). In The Florida Bar v. Greenspahn, 396 So. 2d 182 (Fla. 1980), this Court consolidated four separate cases for the purposes of determining discipline. In Greenspahn, then Justice Alderman wrote an opinion dissenting to the discipline imposed by the Court, but noting his agreement with the Court's consideration of the four acts of misconduct together based on the totality of the circumstances as though all of the charges had been presented to the Court in one proceeding. Greenspahn at 184. Justice Alderman observed that Greenspahn's prior discipline plus current charges demonstrated that he was guilty of a "persistent course of misconduct over several years," that "[o]ver a number of years he ha[d] clearly demonstrated that he d[id] not measure up to the high standards of the profession," and that [b]y his conduct he ha[d] forfeited the privilege of practicing law." Greenspahn at 184.

Respondent likewise has demonstrated by his persistent course of misconduct over the years that he does not measure up to the high standards of the profession, and has forfeited the privilege of practicing law. The misconduct which resulted in Respondent's 1964 suspension took place during his *first two years of practice.* In that disciplinary case, Respondent admitted willfully and knowingly making false statements to his clients and wrongfully and secretly withholding and converting to his own use over $17,000 of his clients' funds. The Florida Bar v. Inglis, 160 So.2d 701,702

(Fla. 1964). The Board of Governors ordered that Respondent be disbarred for a period of seven years. However, this Court, citing the Respondent's relative youth and inexperience in the practice of law, his cooperation with The Florida Bar, and his displayed attitude of penitence and remorse, reduced the discipline to a suspension for a period of eighteen (18) months.

After a contested reinstatement proceeding, Respondent was reinstated to the practice of law in September of 1987. The misconduct that took place in the Goldfoot case began on February 4, 1991, *less than four years after Respondent was reinstated to the practice of law.* Respondent's first two years as an attorney were marred by serious conduct involving moral turpitude. The years since Respondent's 1987 reinstatement have been marred by three additional findings of misconduct, including violations of the following Rules:

Rule 3-4.3	-	Conduct contrary to honesty and justice;
Rule 3-4.4	-	Conduct constituting a misdemeanor;
Rule 4-8.4(a)	-	Violation of a disciplinary rule;
Rule 4-8.4(b)	-	Conduct involving a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
Rule 4-8.4(c)	-	Conduct involving dishonesty, fraud, deceit, or misrepresentation;

Rule 4-8.4(d)	-	Conduct that is prejudicial to the administration of justice; and
Rule 4-1.1	-	Failure to provide competent representation to a client.

In his briefs, Respondent has cited to mitigating factors found by the two Referees. However, the mitigating factors are far outweighed by the numerous *aggravating* factors found by these Referees. In Case No. 80,262, the Referee found *five* aggravating factors, including Respondent's prior disciplinary record and multiple offenses, and only two mitigating factors. The same Referee found two aggravating factors in Case No. 81,222, and only one mitigating factor. The second Referee, in case No. 83,325. found four aggravating factors and three mitigating factors. One of the mitigating factors found by this Referee was "health-related problems." While the Bar acknowledges Respondent's *current* health problems, the Referee did not find, and there is no indication in the record, that these health problems were in the nature of a "physical or mental disability or impairment." *See,* Section 9.32 (h). In all three cases, the Referees found as a mitigating factors, Respondent's cooperative attitude toward the proceedings. However, these same Referees also found *in all three cases,* Respondent's failure or refusal to recognize the wrongful nature of his misconduct.

Not only has the Respondent demonstrated a lack of moral

fitness to practice law, and that he is incompetent to engage in the practice of law, he has refused throughout these three disciplinary proceedings to even acknowledge the wrongful nature of his misconduct. In 1987 the Respondent was given a second chance. He was allowed to return to the practice of law and to demonstrate that his prior misconduct was not the result of a basic lack of fitness to practice law. Rather, what appeared in 1964 to be errors caused by youth and inexperience, sadly now appears to be a reflection of defective character and a basic unfitness to practice law. As plainly evidenced by the three cases pending before this Court, and his prior discipline, Respondent has demonstrated an attitude and course of conduct that is inconsistent with standards of professional conduct, and should be disbarred.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the FLORIDA BAR'S REPLY 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 12th day of May, 1995.

SUSAN V. BLOEMENDAAL