IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

LEWIS R. PEARCE,

Respondent.
_____/

Case No. 80,377
[TFB Case No. 92-30,743 (18C)

INITIAL BRIEF

JOHN F. HARKNESS, JR.
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SYMBOLS AND REFERENCES

In this Brief, the complainant, The Florida Bar, shall be referred to as "the bar".

The transcript of the final hearing dated February 5, 1993, shall be referred to as "T", followed by the cited page number.

The Report of Referee dated February 23, 1993, shall be referred to as "RR", followed by the cited page number.

STATEMENT OF THE CASE

On May 26, 1992, the Eighteenth Judicial Circuit Grievance Committee "C" found probable cause against the respondent for violating Rule of Discipline 3-4.3 and Rules of Professional Conduct 4-8.4(a), 4-8.4(b) and 4-8.4(d) with respect to the respondent's January, 1992, misdemeanor convictions for failing to file his United States Federal Income Tax Returns for the years 1986 and 1987.

On August 25, 1992, the bar filed a formal Complaint against the respondent and on September 8, 1992, served Requests For Admission on him. However, in those documents the bar inadvertently charged the respondent with violating Rule of Professional Conduct 4-8.4(c). The grievance committee had not found probable cause against the respondent for that rule. During the final hearing held on February 5, 1993, the bar filed with the court a Motion For Order Declaring Complainant's Requests For Admission To Be Admitted as the respondent had failed to respond to the bar's requests within the time period required by the Rules of Civil Procedure. The referee entered an order deeming the bar's Requests For Admission to be admitted. At that time, bar counsel requested the referee strike Rule 4-8.4(c) which had been charged against the respondent in error. Also during the final hearing, the respondent admitted the conduct for which he was convicted and also admitted the charges

brought by the bar against him. The respondent argued that a public reprimand was the appropriate discipline given the circumstances of the case. Bar counsel urged the referee consider at least a 91 day suspension.

On February 23, 1993, the referee submitted his report in which he found the respondent guilty of all the charges brought by the bar with the exception of Rule 4-8.4(c) which had been stricken at the bar's request. The referee recommended that the respondent receive a public reprimand and that he be placed on probation for a period of thirty (30) months. The referee further recommended as terms of the probation that the respondent comply with the probation orders of the United States District Court, Middle District of Florida, Orlando Division (Case No. 91-182-CR-ORL-18, Counts I and II); that the respondent file, as they become due, copies of his 1992, 1993, and 1994 United States Federal Income Tax Returns with the bar; that the respondent reimburse the bar for the cost of supervision; and that he perform an additional two hundred hours of pro bono work in the area of assisting the elderly and/or economically disadvantaged in completing their personal income tax returns.

On February 26, 1993, the respondent filed a Motion For Rehearing specifically with respect to the recommendation by the referee in his report that the respondent perform two hundred

hours of pro bono work to assist the elderly and/or economically disadvantaged in completing their personal income tax returns. The respondent suggested that since he had no particular expertise in the preparation of personal income tax returns, that he be permitted to provide those pro bono services in the area of guardianships in which he had a greater level of skill and experience. The bar did not object to that amendment to the referee's probationary recommendations and on March 4, 1993, the referee issued an order on the respondent's Motion For Rehearing in which the report was modified to reflect the pro bono recommendation in the area of guardianships. The Amended Report of Referee was also issued on March 4, 1993.

The Board of Governors of The Florida Bar considered this matter at its meeting which ended April 2, 1993. The board voted to appeal the referee's recommended discipline of a public reprimand and instead seeks a six month suspension along with the referee's recommended probationary conditions. The bar filed its Petition For Review on April 13, 1993.

STATEMENT OF THE FACTS

During 1986 and 1987 the respondent owned and operated a law practice in Merritt Island, Florida. The respondent failed to timely file United States Individual Income Tax Returns for the years 1986 and 1987 although he knew he had earned sufficient gross income from his law practice which required him to file income tax returns. During 1986, the gross income from the respondent's law practice totalled approximately $151,000.00 and during 1987 the gross income from the respondent's practice totalled approximately $137,000.00. The respondent delinquently filed his 1986 Individual Income Tax Return 1040 on March 7, 1990, and delinquently filed his 1987 Individual Income Tax Return 1040 on December 11, 1990. The respondent's tax liability as he reported on his delinquently filed income tax returns for 1986 and 1987 totalled approximately $25,000.00

On or about November 6, 1991, an Information was filed against the respondent in the United States District Court, Middle District of Florida, charging him with two counts of failing to file federal income tax returns, a misdemeanor punishable by a fine of $25,000.00 and one year in prison. On January 21, 1992, the respondent entered a guilty plea as to both counts. Also on January 21, 1992, the respondent was sentenced to a four year period of probation in connection with count one and a four year period of probation with respect to count two to

run concurrent with the sentence imposed in count one. There were further conditions that the respondent pay the taxes, interest and penalties owed to the Internal Revenue Service for the calendar years 1986 and 1987; that he cooperate with the Internal Revenue Service to determine taxes owed; that he pay a fine of $2,500.00 in count one and $2,500.00 in count two within the first two years of his probation; and that he pay a special assessment of $25.00 in connection with count one and $25.00 in connection with count two.

In this disciplinary proceeding, the respondent was found guilty by the referee of violating Rule of Discipline 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; and Rules of Professional Conduct 4-8.4(a) for violating or attempting to violate the Rules of Professional Conduct; 4-8.4(b) for committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

SUMMARY OF THE ARGUMENT

This case involves an attorney's failure to file United States Federal Income Tax Returns for a two year period. For that misconduct, the respondent pled guilty to and was convicted of misdemeanor offenses in two counts. The respondent was sentenced to restitution, fines and probation, although he could have received much higher penalties for his crime, including a prison sentence.

Attorneys, as are all citizens and members of society, are required to file income tax returns. There are no individuals, professions or groups that are excused from that obligation. Attorneys, as officers of the court, must at all times respect the law due to the very nature of their profession. Given the greater knowledge of the law attorneys possess over ordinary citizens, there is simply no excuse for an attorney's failure to file his income tax returns.

This court has held over the past twenty-five years that attorneys who fail to file their income tax returns will be disciplined. In several of the bar disciplinary cases involving this issue, this court has ordered six month suspensions. These cases range from attorneys who are convicted for not filing a tax return one year to not filing them for a period of twenty-two years. However, in each case the discipline was the same. A

strong discipline should be imposed any time an attorney knowingly engages in conduct constituting a criminal offense. When there are misdemeanor offenses, as in the instant matter, there should be no differential between one misdemeanor conviction and another as these offenses all reflect adversely on an attorney's fitness to practice law.

The bar appreciates that in this case there are some factors to be considered in mitigation, including the respondent's lack of a prior disciplinary history. However, it is the bar's position that those factors are not sufficient to warrant the referee's recommendation of a public reprimand. A suspension would be more appropriate in order to demonstrate to other attorneys and the public that attorneys will receive a strong discipline when they choose to break the law.

ARGUMENT

A SUSPENSION OF SIX MONTHS IS APPROPRIATE GIVEN THE RESPONDENT'S MISDEMEANOR CONVICTIONS FOR WILLFULLY FAILING TO FILE TWO YEARS OF UNITED STATES FEDERAL INCOME TAX RETURNS.

In The Florida Bar v. Levin, 570 So. 2d 917 (Fla. 1990), a case in which an attorney was charged with engaging in illegal gambling activities, a misdemeanor offense, this court stated:

> Respondent argues that mere misdemeanor-betting violations should warrant different discipline than misdemeanor-drug violations. If this were a criminal prosecution, the respondent's point might be well taken, but for the purpose of bar discipline, the distinction is irrelevant. The lawyer has knowingly engaged in conduct constituting a misdemeanor. In this regard, the purpose of the discipline is the same. (At page 918).

This appears to suggest that it does not matter the type of misdemeanor offense an attorney commits because a misdemeanor is a misdemeanor for which the attorney will be disciplined accordingly. However, that is not exactly the case in disciplinary matters involving attorneys who fail to file their income tax returns. Over the last twenty-five years, attorneys who were convicted of that misdemeanor offense, have received either public reprimands or six month suspensions with nothing in between. There was no clear indication of why one attorney received the lesser discipline of a public reprimand while another received the harsher sanction of a suspension. It did not seem to matter how many years that attorneys did not file

their income tax returns or what penalties they received from the federal government. Regardless, in all of the cases, including the instant matter, the attorneys knowingly and willfully chose to break the law by not filing their income tax returns.

The case law regarding this issue begins with The Florida Bar v. Childs, 195 So. 2d 862 (Fla. 1967). The attorney was found guilty of failing to file income and social security tax returns but there was no indication of the length of time he engaged in that misconduct. The attorney admitted he had no excuse for failing to file the returns. During the final hearing many individuals testified as to the attorney's excellent reputation during his long standing career as a municipal judge. The referee recommended the attorney receive a private reprimand although the bar urged a one year suspension. The court found a six month suspension was appropriate under the circumstances.

After the Childs case and throughout the 1970's there were a rash of cases where attorneys were convicted for failing to file income tax returns. See The Florida Bar v. Greene, 235 So. 2d 7 (Fla. 1970); The Florida Bar v. Snyder, 313 So. 2d 33 (Fla. 1975); The Florida Bar v. Silver, 313 So. 2d 688 (Fla. 1975); The Florida Bar v. Schonfeld, 336 So. 2d 77 (Fla. 1976); The Florida Bar v. Beamish, 327 So. 2d 11 (Fla. 1976); The Florida Bar v. Ryan, 352 So. 2d 1174 (Fla. 1977); and The Florida Bar v. Marks,

376 So. 2d 9 (Fla. 1979).

Some of the attorneys in the above cases received fines and/or probation from the federal government and some received prison sentences. However, the above cases have one common distinction - the attorneys all received public reprimands. With the exception of the Greene case, the attorneys executed conditional guilty pleas for consent judgments to receive those public reprimands.

During the 1970's only three disciplinary cases for failing to file income tax returns resulted in six month suspensions. In The Florida Bar v. Solomon, 338 So. 2d 818 (Fla. 1976), the attorney received a six month suspension for a 1973 conviction for failing to file an income tax return for the year 1969. The referee found the attorney guilty and recommended a one year suspension. The attorney asked the court to reduce the discipline to a public reprimand based upon evidence presented to the referee that the attorney had led an exemplary professional life since his conviction and that in other disciplinary cases of similar nature, the court had ordered public reprimands. The court found that:

> A showing that an attorney has been contrite, honest, professional and well-behaved during the pendency of disciplinary proceedings against him does not, however, fully abrogate the need for discipline. (At page 819).

Despite the mitigating factors present and due to the attorney's prior disciplinary record, the court found a six month suspension was appropriate.

In The Florida Bar v. Starr, 357 So. 2d 730 (Fla. 1978), the attorney was convicted of failing to file an income tax return for the year 1973 and he was sentenced to prison for a short period of time. The attorney was also charged in the Bar's complaint with neglecting a legal matter entrusted to him. The attorney executed a conditional guilty plea for consent judgment in which he agreed to a six month suspension to commence on the date of his release from jail. There was no indication if he had a prior disciplinary record.

In The Florida Bar v. Vernell, 374 So. 2d 473 (Fla. 1979), the attorney was convicted of failing to file income tax returns for the years 1967 through 1971. The attorney was also found guilty by the referee of conflict of interest in a criminal matter. The court found that due to the attorney's prior disciplinary record of a private and a public reprimand, a six month suspension was warranted.

It appears from the above case law that during the 1970's an attorney would receive a public reprimand for failing to file income tax returns unless the attorney had a prior disciplinary

record or there were other ethical violations involved. However, in 1983, an attorney received a six month suspension for failing to file income tax returns for a period of twenty-two years. The Florida Bar v. Lord, 433 So. 2d 983 (Fla. 1983); Appendix, p. A-6. The attorney pled guilty to four misdemeanor counts of failing to file his income tax returns and was sentenced to a minimum of ninety (90) days in jail. He was also placed on probation for three years during which time he was to perform 400 hours of community service. During the final hearing the attorney pled guilty to all the charges brought by the Bar. The referee recommended a ninety (90) day suspension based upon the numerous mitigating factors present including the attorney's lack of a prior disciplinary record and the referee's belief that the attorney had rehabilitated himself. Although the court agreed with the mitigating factors found by the referee, it was their finding that the length of time the attorney had engaged in the misconduct demonstrated serious cumulative misconduct involving moral turpitude. Therefore, a six month suspension was a more appropriate discipline.

In a case most similar to the instant matter, an attorney pled guilty to one misdemeanor count of failing to file an income tax return for the year 1978. The Florida Bar v. Blankner, 457 So. 2d 476 (Fla. 1984); Apendix, p. A-12. Although the attorney was only convicted of one count, the referee found during the

final hearing that due to financial difficulties the attorney had failed to timely file his personal income tax returns from 1970 through 1979 and that he had filed his income tax returns for the years 1976 through 1979 several years after they were due. However, the attorney had filed all of his partnership tax returns on time. The referee recommended that the attorney receive a two month suspension with automatic reinstatement due to the fact the attorney had been practicing law for thirty-five years and had never been disciplined. The Bar subsequently argued that a one year suspension was more appropriate.

In the Blankner case, the court indicated that in disciplinary cases involving attorneys failing to file their income tax returns, the Childs and Lord cases represented a higher standard than other cases of like nature. Those two cases required that an attorney not only be suspended for failing to file income tax returns, but that reinstatement would not be automatic as the court would need to determine the attorney's character and fitness to practice law. The court stated:

> Lord serves notice that in the future an attorney's failure to file a tax return, even though such failure is a misdemeanor under federal law and no client is injured, will warrant a suspension and subsequent inquiry into the attorney's fitness to practice law before reinstatement will be granted. **For such conduct a public reprimand will no longer be viewed as sufficient.** (Blankner, at page 478). (Emphasis added).

Although Blankner's misconduct was not as flagrant as in the

Lord case, the court still found that his conduct was cumulative in nature and resulted in the attorney receiving probation and fines by the federal court. Therefore, the court determined the appropriate discipline was a six month suspension.

Since the Blanker and Lord cases, there have been no recent court opinions concerning attorneys who fail to file their income tax returns. Perhaps there were so many of those type of cases in the 1970's because attorneys knew that in all likelihood they would only receive a public reprimand if they were caught engaging in that misconduct. Regardless, Blankner and Lord appear to stand for the proposition that this court will suspend attorneys who are convicted for failing to file their income tax returns. There have been no recent cases to the contrary.

The Florida Standards For Imposing Lawyer Sanctions also support a suspension. Standard 5.12 calls for a suspension when a lawyer knowingly engages in criminal conduct that is not included within Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice. (Standard 5.11 involves attorneys who are convicted of or engage in felony criminal conduct). Standard 7.2 calls for a suspension when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

As for the aggravating factors present in this case, under Standard 9.22, the respondent's misconduct involved a dishonest or selfish motive and he has substantial experience in the practice of law. The respondent has been a practicing attorney for twenty years. (T. p. 36). In mitigation, under Standard 9.23, the respondent has no prior disciplinary record and he has received other penalties or sanctions from the federal government due to his misconduct.

During the final hearing the respondent admitted that what he did was wrong and that he needed to be disciplined. (T. p. 36). However, he questioned how severe the discipline should be to best serve the bar and the public while still being fair to himself as an attorney. The respondent stated:

> If this Court imposes a six month suspension, then my ability to comply with the conditions of probation will be eliminated, and that is going to put me in severe jeopardy with the federal court system. (T. p. 36).

It is difficult to understand how the respondent's abilities to rehabilitate himself will be "eliminated" by a six month suspension from the practice of law. Any time attorneys engage in criminal misconduct they should be aware that it will affect not only their roles in society but also that of their professional lives. However, a suspension will not permanently deprive the respondent of the ability to practice law as one of its purposes is to ensure the attorney is sufficiently

rehabilitated prior to the continuation of the practice of law.

The Bar submits that a suspension would serve the purposes of attorney discipline as stated in the Lord and Blankner cases. It would be fair to society both in terms of protecting the public from unethical conduct and at the same time not deny the public the services of a qualified lawyer. The judgment would be fair to the respondent in that it is sufficient to punish his breach of ethics while at the same time encourage reform and rehabilitation. The Bar suggests that it is possible the referee recommended the respondent be placed on a thirty (30) month period of probation with specific conditions to ensure that the respondent would be rehabilitated. (RR. p. 4). A suspension would also help promote that concept.

More importantly, perhaps, with respect to this case, a suspension would also be severe enough to deter others who might be prone or tempted to become involved in similar violations. In these difficult economic times, it would be all too tempting for attorneys or others to decide not to file their income tax returns to avoid possible financial distress. However, during 1986 and 1987, when the respondent did not file his income tax returns, it appears he made sufficient gross income from his practice where paying his taxes should not have been a hardship.

It is hoped that a suspension would demonstrate to the respondent and other attorneys that they will be severely disciplined should they choose to break the law. The Bar also submits that if any citizens of the United States choose to break the law by not filing income tax returns, then they will be required to face the consequences with the federal government or any other entity involved. We should not expect any less from attorneys.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will uphold the referee's findings of fact and recommendations as to guilt but review his recommendation that the respondent receive a public reprimand and a thirty (30) month period of probation with conditions, and instead enter an order directing that the respondent be suspended from the practice of law for a period of six months and thereafter be placed on a period of probation consistent with the referee's recommendations and assess against the respondent the costs of these proceedings which now total $855.91.

Respectfully submitted,

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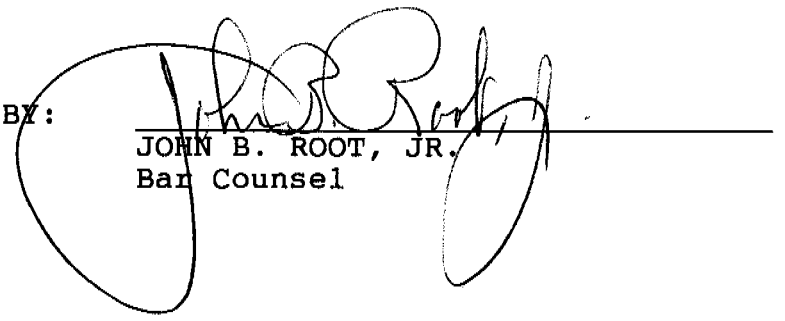
BY: 

JOHN B. ROOT, JR.
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Initial Brief and Appendix have been sent by Airborne Express Mail to the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by regular U.S. mail, to respondent, Lewis R. Pearce, 2255 North Courtenay Parkway, Post Office Box 540037, Merritt Island, Florida, 32954-0037; and a copy of the foregoing has been furnished by regular U.S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 14th day of May, 1993.

Respectfully submitted,

JOHN B. ROOT, JR.
Bar Counsel

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

CASE NO.: 80,377
92-30, 743 (18C)

LEWIS R. PEARCE,

Respondent.
_____/

AMENDED
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 final hearing was held on February 5, 1993. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits, all of which are forwarded to the Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For the Florida Bar - John B. Root, Jr.
For the Respondent - In Pro Se

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

1. The Respondent, Lewis R. Pearce is and at all times hereinafter mentioned was a member of the Florida bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules regulating the Florida Bar.

2. Venue: The parties stipulated to being heard in Osceola County. Referee Proceeding p. 8, L12-22.

3. At the request of Complainant, Count IV, paragraph 10(d) of Complaint, is stricken from the proceeding. It was placed in the Complaint in error. Referree Proceeding p. 8, L 3-13 and p. 12, L 7-14.

4. Requests for Admission were filed by Complainant on September 8, 1992. There was no response. On February 5, 1993 by Order of the Referee, those matters set forth in the

Bar's Requests for Admission were deemed admitted except for, by stipulation of the parties, paragraph (d) on page 4 of said Request for Admission. Referee Proceeding p. 7, L 17-25 and p. 8, L 1.

5. The Respondent failed to timely file U.S. Individual Income Tax Returns for 1986 and 1987 although he knew he had earned sufficient gross income from his law practice which required him to file income tax returns.

6. The Respondent delinquently filed his 1986 Individual Income Tax Return 1040 on March 7, 1990, and delinquently filed his 1987 U.S. Individual Income Tax Return 1040 on December 11, 1990.

7. Lewis R. Pearce was charged on November 6, 1991 by the United States Attorney in the U.S. District Court, Middle District of Florida, Orlando Division, with two counts of failing to make an income tax return for the years 1986 and 1987. Each count was a Misdemeanor punishable by a fine of $25,000.00 and one year in prison. Referee Proceeding, Complainant's Composite Exhibit 1, No. I.

8. On January 21, 1992, the Respondent entered a guilty plea with the U.S. Attorney as to both counts. Referee Proceeding, Complainant's Composite Exhibit 1, Nos. V and VI.

9. On January 21, 1992, the Respondent was sentenced to a four year period of probation in connection with count one with the conditions that he pay the taxes, interests and penalties owed to the Internal Revenue Service for the calendar year 1986; cooperate with the Internal Revenue Service to determine taxes owed; pay a fine of $2,500.00 within the first two years of his probation; and pay a special assessment of $25.00 in connection with count one and $25.00 in connection with count two. Referee Proceeding, Complainant's Composite Exhibit 1, Nos. IV and V.

10. The Respondent was also placed on a four year period of probation in connection with count two which was to run concurrently with the sentence imposed as to count one. The respondent was further ordered to pay an additional $2,500.00 in connection with count two within the first two years of probation. Referee Proceeding, Complainant's Composite Exhibit 1, Nos. IV and VI.

11. The Respondent, Lewis R. Pearce admitted violating Rule of Discipline 3-4.3 for engaging in conduct that is unlawful. Referee Proceeding, p. 9, L 5-13 and p. 11, L 9-21.

12. The Respondent, Lewis R. Pearce admitted violating 4-8.4 (a), for violating the Rules of Professional

Conduct. Referee Proceeding, p. 9, L 5-13 and p. 11, L 9-21.

13. The Respondent, Lewis R. Pearce admitted violating 4-8.4 (b) Rules of Professional Conduct for committing a criminal act that reflects adversely on the lawyer's honestly, trustworthiness and fitness as a lawyer in other respects. Referee Proceeding, p. 9, L 5-13 and p. 11, L 9-21.

14. The Respondent, Lewis R. Pearce admitted violating 4-8.4 (d) Rules of Professional Conduct, for engaging in conduct that is prejudicial to the administration of justice. Referee Proceeding, p. 9, L 5-13 and p. 11, L 9-21.

15. In further support of the Complaint, the Florida Bar, with no objection from the Respondent, placed the following documents into evidence: 1. The original charging document of the United States District Court; 2. The consent to proceed before the United States Magistrate in the misdemeanor case, signed by Respondent; 3. The plea agreement, which includes the Stipulated Facts, signed by the Respondent and the Assistant United States Attorney; 4. The minutes of the hearing in which sentencing took place; 5. The judgment and sentence on Count I. 6. The judgment and sentence on Count II. Referee Proceeding, Complainant's Exhibit I, Nos. I-VI; and p. 10, L 5-24.

III. Recommendations as to whether or not the Respondent should be found guilty:

As to Count I Rule of Discipline 3-4.3

I recommend that the Respondent be found guilty of violating Rule 3-4.3. The Respondent has admitted this violation, and the complainant has verified this admission with evidence that is clear and convincing.

As to Count II Rule of Professional Conduct 4-8.4 (a)

I recommend that the Respondent be found guilty of violating Rule 4-8.4 (a). The Respondent has admitted this violation, and the complainant has verified this admission with evidence that is clear and convincing.

As to Count III Rule of Professional Conduct 4-8.4 (b)

I recommend that the Respondent be found guilty of violating Rule 4-8.4 (b). The Respondent has admitted this violation, and the complainant has verified this admission with evidence that is clear and convincing.

As to Count IV Rule of Professional Conduct 4-8.4 (c)

At the request of complainant, this count was stricken.

As to Count V Rule of Professional Conduct 4-8.4 (d)

I recommend that the Respondent be found guilty of violating Rule 4-8.4 (d). The Respondent has admitted this violation, and the complainant has verified this admission with evidence that is clear and convincing.

IV. Recommendations as to Disciplinary measures to be applied:

I recommend that the Respondent receive a public reprimand and be placed on probation for a period of thirty (30) months as provided in Rules 3-5.1 (c) and 3-5.1 (d) Rules of Discipline. The terms of probation recommended are as follows: that the Respondent comply with the probation orders of United States District Court, Middle District of Florida, Orlando Division (Case No. 91-182 - CR - ORL - 18, Counts I and II); and the respondent file, as they become due, copies of his 1992, 1993, and 1994 income tax returns with the bar; and the Respondent reimburse the bar for the costs of supervision; and, that he shall perform an additional 200 hours of pro bono work in the area of assisting the elderly and/or economically disadvantaged in the area of Guardianship.

V. Personal History and Past Disciplinary Record:

After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(c), I considered the following personal history and prior disciplinary record of the Respondent, to-wit:

Age: 49
Date Admitted to Bar: April 24, 1973
Prior Disciplinary Convictions and Disciplinary Measures Imposed Therein: None

VI. Statement of Costs and Manner in Which Costs Should be Taxed:

I find the following costs were reasonably incurred by the Florida Bar.

A.	Grievance Committee Level Costs	
1.	Transcript Costs	$ 62.50
2.	Bar Counsel/Branch Staff Counsel Travel Costs	$ 27.40
B.	Referee Level Costs	
1.	Transcript Costs	$147.25
2.	Bar Counsel/Branch Costs	$ 15.51

C.	Administrative Costs	$500.00
D.	Miscellaneous Costs	
	1. Investigator Expenses	$103.25
	TOTAL ITEMIZED COSTS:	**$855.91**

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, and that interest at the statutory rate shall accrue and be payable beginning thirty (30) days after the judgment in this case becomes final.

DATED THIS 4th DAY OF MARCH, 1993.

/S/ Ronald A. Legendre

RONALD A. LEGENDRE
REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above report of referree has been furnished by Certified Mail Return Receipt Requested to John Root, Jr., Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801; Lewis R. Pearce, Respondent, Post Office Box 540037, Merritt Island, Florida 32954-0037; Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 4th day of March, 1993.

Judith A. Taylor
JUDICIAL ASSISTANT

against his penal interest, are such that if they are true and had been known at the time of petitioner's trial, they conclusively would have changed the outcome of that litigation and would have prevented entry of the judgment from which petitioner ultimately seeks relief. Although the surviving victim identified Riley as one of the perpetrators, which normally would be considered sufficient evidence for a jury finding of guilt, it is inconceivable that a qualified, properly instructed jury would have found Riley guilty in the face of clear evidence of such well corroborated admissions of guilt by another person as are alleged in the petition. The information in the petition, if true, would probably have prevented the indictment and prosecution of Riley had it been known prior to the trial, and would conclusively have prevented verdicts and judgments of guilt. I would therefore grant the petition for leave to apply for a writ of error coram nobis in the trial court. We should direct that such application be immediately filed and that the trial court promptly hold appropriate further proceedings.

With regard to the motion for post-conviction relief, I do not agree that the motion and record conclusively established that Riley was not entitled to any relief. Therefore, I believe that the court should not have summarily denied the motion, but should have held an evidentiary hearing. Fla.R.Crim.P. 3.850. Under the circumstances of this case, it may well be that Riley can establish that his defense lawyer's investigation of evidentiary matters and the tactics used to undermine the eyewitness testimony of the surviving victim did not rise to the standard of performance expected of attorneys in criminal cases. Therefore, the court should have held an evidentiary hearing on the allegations of the motion. I would stay the execution and remand for such further proceedings. This Court should grant a stay of execution.

THE FLORIDA BAR, Complainant,

v.

William A. LORD, Respondent.

No. 61649.

Supreme Court of Florida.

June 9, 1983.

Disciplinary proceeding was brought. The Supreme Court held that failure to file income tax returns for period of 22 years warrants six-month suspension.

Six-month suspension ordered.

Alderman, C.J., and McDonald, J., concurred in part, dissented in part, and filed opinions.

Ehrlich, J., concurred in part, dissented in part, and filed opinion with which McDonald, J., concurred.

1. Attorney and Client ⇐58

Where state bar recommended that attorney be suspended, at minimum, for three months and one day for misconduct, so as to preclude automatic reinstatement referee did not err in considering attorney's rehabilitation as one of ten factors in recommending appropriate discipline. West's F.S.A. Integration Rule, Art. 11, Rule 11.10(4).

2. Attorney and Client ⇐58

While personal difficulties should not be relied upon to excuse attorney's misconduct, referee should not be restrained from considering hardships in recommending discipline which would be fair to society and to attorney, in addition to being effective deterrent to others.

3. Attorney and Client ⇐58

In determining appropriate discipline after attorney's misconduct, referee properly based his recommendation, in part, on attorney's personal difficulties by considering what effect attorney's misconduct had upon him as attorney, and what impact his

further suspension would have upon his clients.

4. Attorney and Client ⇐58

Discipline for unethical conduct by member of bar must serve three purposes: first, judgment must be fair to society, both in terms of protecting public from unethical conduct and at same time not denying public services of qualified lawyer as result of undue harshness in imposing penalty; second, judgment must be fair to attorney, being sufficient to punish breach of ethics and at same time encourage reformation and rehabilitation; and third, judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations.

5. Attorney and Client ⇐58

Failure to file income tax returns for period of 22 years warrants six-month suspension. West's F.S.A. Integration Rule, Art. 11, Rule 11.02(3)(a, b); West's F.S.A. Code of Prof.Resp., DR1–102(A)(3, 4, 6); 26 U.S.C.A. §§ 6012, 7203.

John F. Harkness, Jr., Executive Director and Stanley A. Spring, Staff Counsel, Tallahassee, and Jacquelyn Plasner Needelman, Bar Counsel, Fort Lauderdale, for complainant.

William H. Pruitt of Pruitt & Pruitt, West Palm Beach, for respondent.

PER CURIAM.

This attorney-discipline proceeding is before the Court on petition of The Florida Bar. Before us, we have the report of the referee and the petition of The Florida Bar for review thereof. We have jurisdiction. Art. V, § 15, Fla.Const.

From 1954 to 1976 respondent knowingly and willfully failed to file any income tax returns, although required to do so under Title 26, United States Code, section 6012 (1976). In 1980 respondent was charged with four misdemeanor counts of violating Title 26, United States Code, section 7203 (1976), by willfully failing to file income tax returns for the years of 1973 to and including 1976. He subsequently entered guilty pleas to all counts and was found to have failed to account for and pay taxes on approximately $545,000.00 in income during that period. The United States District Judge sentenced respondent to one-year imprisonment, to be suspended except for ninety days at a minimum security institution, and three years with the added obligation of performing four hundred hours of community service. He has completed his term of confinement and is presently continuing to perform his required period of community service.

The Florida Bar filed a formal complaint against respondent charging him with violations of article XI, Rule 11.02(3)(a) and (b), of the Integration Rule of The Florida Bar, and Disciplinary Rules 1–102(A)(3), (4), and (6) of the Code of Professional Responsibility of The Florida Bar. These charges all stem from respondent's failure to file federal income tax returns for the twenty-two year period from 1954 to 1976, inclusive. At the hearing held before the referee, respondent entered a guilty plea to the above charges. The findings and recommendations of the referee, as taken in pertinent part from the referee's report, provide as follows:

> III. *Recommendations of the Referee as to Disciplinary Measures to be Applied:* I recommend that the Respondent be found guilty in accordance with his plea as set forth above and that he be suspended from the practice of law for the period of three months.
>
> IV. *Findings and Basis for Recommendation of the Referee:*
>
> In making the above recommendation, the Referee has concluded that the Respondent has been rehabilitated and that no further showing of rehabilitation is appropriate in this case inasmuch as the same would constitute a rerecitation of the evidence and testimony already received by the Referee.
>
> In making the above recommendation, the Referee has further taken into consideration:

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B) The testimony
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C) That, notwithst
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G) That the afores
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A) The age of the Respondent, his years of service to his clients, his community, his Bar and his Country.

B) The testimony of leaders of the Palm Beach County Bar and members of the community with respect to the Respondent's rehabilitation.

C) That, notwithstanding the extreme seriousness of the charges, the plea was in fact to misdemeanors and that the Respondent has not pled to or been found guilty of a felony. Further, the United States Government, including the Honorable Susan H. Black, United States District Judge, were satisfied with a sentence of probation, including 81 days served in a minimum security facility.

D) The other personal hardships incurred by the Respondent, including his loss of standing as a leading member of the Palm Beach community, the loss of his position in an outstanding law firm, his loss of clients, his loss of professional esteem and the acute personal embarrassments and personal tragedies associated with the disclosures in this case.

E) The extent to which any further period of suspension would likely lead to the loss of all clients and law practice that might remain following the period of suspension, inasmuch as it is clear to this Referee that the Respondent would in any event be reinstated. In this respect the Referee has also taken into consideration that there will be money judgments obtained by the United States and that it will be necessary for the Respondent to continue in the practice of law in order to satisfy the obligations of said judgments.

F) In making the above recommendation, the Court has also taken into consideration that there has been no argument presented to the Referee in support of the disbarment of the Respondent, so that the primary concern of this Referee, notwithstanding the fact that disbarment is an option available, is in fact the length of term of suspension.

G) That the aforesaid Honorable Susan H. Black stated in the record, at the time of sentencing, that the Court was of the opinion that the Respondent needs no further rehabilitation and that this was, and is, an isolated event in his life.

H) The Respondent's witnesses, all of whom were leaders and outstanding members of the Palm Beach area Bar, banking and business community, testified in support of the Respondent's good reputation in the community, notwithstanding the charges against him, as to his good character, and as to their belief that he has been rehabilitated.

I) That by the application of relative standards, the sentence recommended herein is adequate to address those interests of the Bar with respect to discipline unconnected with rehabilitation.

J) The unblemished record of the Respondent exclusive of these charges.

The Florida Bar challenges this referee report. Specifically, The Bar feels that the referee erred in basing his recommendations on the conclusion that respondent had been rehabilitated and on respondent's personal difficulties. Moreover, The Bar contends that the referee's proposed term of suspension is inappropriate considering the severity of the charges to which respondent has admitted guilt.

[1] First, we find that the referee did *not* err in considering Lord's rehabilitation in his report. The Bar erroneously contends that the referee's recommendation was based solely upon the belief that respondent had been rehabilitated. The referee's recommendation was, in fact, made after a thorough consideration of ten factors, among which rehabilitation was one.

In addition, rehabilitation became relevant to the proceeding when The Bar recommended, over Lord's objection, that respondent be suspended, at minimum, for three months and one day. Article XI, Rule 11.10(4), of the Integration Rule of The Florida Bar, provides in pertinent part:

> A suspension of three months or less shall not require proof of rehabilitation or satisfactory passage of The Florida Bar examination; *a suspension of more than three months shall require proof of rehabilitation;* no suspension shall be ordered

for a specific period of time in excess of three years.

(Emphasis added). The significance of The Bar's recommended suspension of three months and one day is that respondent would be required to establish his rehabilitation before reinstatement. Conversely, if, as recommended by the referee, respondent is suspended for three months or less he would automatically be reinstated at the conclusion of his suspended term without further proof of rehabilitation. When The Bar's and referee's respective disciplinary proposals are juxtaposed, it is evident that rehabilitation is a major distinguishing factor for the referee to consider before recommending an appropriate discipline.

[2, 3] Equally without merit is The Bar's contention that the referee erred by basing, in part, his recommendation on respondent's personal difficulties. While personal difficulties should not be relied upon to excuse Lord's misconduct, the referee should not be restrained from considering hardships in recommending a discipline which would be fair to society and to respondent in addition to being an effective deterrent to others. *The Florida Bar v. Pahules,* 233 So.2d 130 (Fla.1970); *cf., The Florida Bar v. Weaver,* 356 So.2d 797 (Fla.1978); *The Florida Bar v. Thue,* 244 So.2d 424 (Fla.1971). Here the referee quite properly considered what effect Lord's misconduct had upon him as an attorney and what impact his further suspension would have upon society, namely respondent's clients.

Although the referee properly considered respondent's rehabilitation and personal difficulties in arriving at his recommendation, we cannot agree with his proposed three-month suspension. The complaint now brought against respondent reflects Lord's failure to file income tax returns for an extended period of twenty-two years. Respondent has pled guilty to violations of Florida Bar Integration Rule 11.02(3)(a) and (b) and Disciplinary Rules 1–102(A)(3), (4), and (6) of the Code of Professional Responsibility. The misconduct charged is not an isolated event, rather, it constitutes serious cumulative misconduct involving moral turpitude. *The Florida Bar v. Rubin,* 362 So.2d 12, 15 n. 11 (Fla.1978), *citing, State ex rel. The Florida Bar v. Murrell,* 74 So.2d 221 (Fla.1954); *The Florida Bar v. Baron,* 392 So.2d 1318 (Fla.1981); *The Florida Bar v. Vernell,* 374 So.2d 473 (Fla.1979). Moreover, the misconduct present here reflects a flagrant and deliberate disregard for the very laws which respondent took an oath to uphold.

[4] Discipline for unethical conduct by a member of The Florida Bar must serve three purposes: First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, *the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. The Florida Bar v. Thue,* 244 So.2d 424, 425 (Fla.1971), citing, *The Florida Bar v. Pahules,* 233 So.2d 130, 132 (Fla.1970). *See also, State ex rel. The Florida Bar v. Murrell,* 74 So.2d 221, 227 (Fla.1954) (emphasis added). We find that the recommended three-month suspension lacks the requisite severity to adequately deter others tempted to engage in similar violations.

[5] Accordingly, we find William A. Lord guilty in accordance with his plea and suspend him for a period of six months, the suspension effective July 11, 1983. We also assess the cost of this proceeding against respondent in the amount of $674.54.

It is so ordered.

ADKINS, BOYD, OVERTON and SHAW, JJ., concur.

ALDERMAN, C.J., and McDONALD, J., concur in part and dissent in part with opinions.

EHRLICH, J., concurs in part and dissents in part with an opinion with which McDONALD, J., concurs.

ALDERMAN, Chief Justice, concurring in part, dissenting in part.

I agree with the majority that we approve the referee's recommendation that Lord be found guilty in accordance with his guilty plea. I also concur with its finding that the three-month suspension recommended by the referee lacks the requisite severity to adequately deter others tempted to engage in similar violations.

I do not concur, however, that a six-month suspension is sufficiently severe discipline for Lord's misconduct. Lord admitted that he failed to file income tax returns for more than twenty years. His misconduct does not consist of one isolated event, but rather, as the majority points out, consists of serious cumulative misconduct which involves moral turpitude and which reflects a flagrant and deliberate disregard for the laws which Lord took an oath to uphold.

Normally, this type of misconduct would warrant disbarment. But, in light of the many mitigating factors found by the referee, I would find that a three-year suspension is the appropriate discipline for Lord.

McDONALD, Justice, concurring in part and dissenting in part.

I concur with the opinion in everything except the punishment. Any lawyer who fails to file income tax returns for twenty years should be disbarred. From an ethical standpoint I see little difference in a lawyer converting a client's trust funds, for which we regularly disbar, from a lawyer converting the funds belonging to the United States in the form of a wilful failure to send them in when due. Lord's conduct was cumulative and gross and so far below what we expect of lawyers that he should forfeit the privilege of practicing law.

EHRLICH, Justice, concurring in part and dissenting in part.

I concur with that portion of the opinion and decision relating to guilt, but I dissent as to the discipline imposed. I agree that the three-month suspension recommended by the referee is disproportionate to the gravity of the offense. I cannot agree that adding three more months cures that disproportion.

An attorney bears a special responsibility under the law. As expressed in the Preamble to the Code of Professional Responsibility:

> Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

Respondent knowingly and willfully failed to file income tax returns for more than two decades. He violated those very laws he has sworn to uphold and preserve. In so doing, he purloined from the United States government and ultimately all other United States citizens $412,220.82 in tax revenues over the twenty-two year period.

Our profession proscribes involvement in illegal conduct involving moral turpitude, dishonesty, fraud, deceit and misrepresentation. Fla.Bar Code Prof.Resp., D.R. 1–102. It ill behooves the legal profession to condone theft which takes the form of failure to pay a legal obligation to the government. By imposing a mere token sanction against such misconduct we fail to deter others who may be tempted to behave similarly; far worse, we diminish the credibility of the entire bar as a self-regulating profession, ever vigilant to insure strict compliance to the values embodied in the Code of Professional Responsibility.

The Florida Bar, the ever vigilant guardian of the Code of Professional Responsibility, recommends that respondent be suspended for a period of six months. I find it difficult to reconcile this recommendation with the position of the Bar in other matters involving the honesty of a lawyer. If respondent had taken or even "borrowed" from a trust account for a period of twenty-two years, I am certain that the Bar would be urging the ultimate in discipline, disbarment. To me this is symptomatic of an

attitude that seemingly pervades our whole society. We as a people countenance and, at least tacitly, approve a double standard in our criminal justice system. If it be the Internal Revenue laws that are violated, our disapproval is muted and the punishment is token. I do not believe that this Court or the Bar can knowingly be a party to any such disparity in the enforcement of the Code of Professional Responsibility.

In light of the ongoing and flagrant disregard respondent has shown for the law, I would recommend he be disbarred from the practice of law.

McDONALD, J., concurs.

Levis Leon ALDRIDGE, a/k/a Levis Leon Aldrich, Petitioner,

v.

Louie L. WAINWRIGHT, etc., Respondent.

No. 63789.

Supreme Court of Florida.

June 14, 1983.

In original habeas corpus proceeding, the Supreme Court held that: (1) in prior appeals by defendant, issues of propriety of aggravating and mitigating circumstances and appropriateness of death sentence were properly addressed in accordance with law as it was established at time of decision of case on the merits; (2) rule of law entitling defendants in capital cases to instructions on lesser included offenses when evidence warrants such instructions was never intended to limit the giving of lesser included offense instructions in capital cases; (3) standard jury instructions which present to the jury in the penalty phase of trial all statutory aggravating circumstances are neither erroneous nor do they create fundamental error; and (4) instruction given to jury regarding vote necessary for recommendation of death sentence was not violative of Eighth and Fourteenth Amendments.

Petition and motion for stay of execution denied.

1. **Criminal Law** ⇐1181

In prior appeals by defendant, propriety of aggravating and mitigating circumstances and appropriateness of death sentence were properly addressed in accordance with law at time of decision of case on the merits, including finding of no mitigating circumstances and adequate statutory aggravating circumstances to sustain death penalty.

2. **Criminal Law** ⇐795(1)

Rule that defendants in capital cases are entitled to instruction on lesser included offenses when evidence warrants such instruction was never intended to limit giving of lesser included offense instructions in capital cases or to render giving of such instructions unconstitutional. U.S.C.A. Const.Amend. 14.

3. **Criminal Law** ⇐796

Standard jury instructions which present to jury in penalty phase of trial all statutory aggravating circumstances are neither erroneous nor do they create fundamental error.

4. **Constitutional Law** ⇐268(11)
Criminal Law ⇐1213

Instruction given to jury regarding vote necessary for recommendation of death sentence was not violative of Eighth and Fourteenth Amendments. U.S.C.A. Const.Amends. 8, 14.

Richard L. Jorandby, Public Defender and Craig S. Barnard, Chief Asst. Public Defender, Fifteenth Judicial Circuit, West Palm Beach, for petitioner.

Jim Smith, Atty. Gen.
gen, Asst. Atty. Gen., We
respondent.

PER CURIAM.

The petitioner, Levis
filed a petition for writ
seeking relief from his
tence of death previous
Court. This is the fifth
this cause has been befo

In *Aldridge I* we af
conviction and sentence
v. State, 351 So.2d 942
nied, 439 U.S. 882, 99 S.
194 (1978).

In *Aldridge II*, in a
dated December 21, 19
application for relief fr
this Court, in considerin
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found two aggravating
had not been found
Aldridge's petition for
United States Supreme
was denied. *Aldridge*
891, 101 S.Ct. 251, 66

In *Aldridge III*, petit
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this Court and we affir
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of counsel under the
Court in *Knight v. S*
(Fla.1981). *Aldridge*
1132, 1136 (Fla.1982).

[1] In this proceed
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conduct under which attorneys must operate. The Citation for Contempt and Petition to Show Cause issued by this Referee on April 5, 1983 illustrates Respondent's contemptuous conduct.

(2) The testimony and the evidence clearly establish that from the inception of The Florida Bar's inquiry into these matters, Respondent not only failed to cooperate with the Bar's investigation but engaged in conduct which was apparently directed at frustrating the disciplinary proceedings. Respondent's actions, including his obvious stalling tactics, have caused unnecessary delay, inconvenience and expense in processing these matters.

(3) Respondent failed to appear at the final hearing.

Considering all relevant factors, I find that Respondent has exhibited a course of conduct in these proceedings which indicates that he has as little regard for the disciplinary system as he has for his clients' interests.

The referee also found costs amounted to $12,043.08.

Accordingly, we disbar Turner without leave to apply for readmission for a period of five years. Disbarment shall run from the date this order is filed. Costs are taxed to the respondent pursuant to the referee's recommendation, with interest to accrue at twelve per cent for any amount unpaid after thirty days from the date of this order.

It is so ordered.

BOYD, C.J., and ADKINS, OVERTON, EHRLICH and SHAW, JJ., concur.

THE FLORIDA BAR, Complainant,

v.

Francis W. BLANKNER, Respondent.

No. 63230.

Supreme Court of Florida.

Sept. 20, 1984.

In attorney disciplinary proceeding, the Supreme Court held that conduct of knowingly failing to timely file personal income tax returns, which is cumulative in nature and results in probation and fine by federal court, warrants six months suspension subject to proof of rehabilitation prior to reinstatement.

So ordered.

Alderman and Ehrlich, JJ., concurred specially with opinions; Boyd, C.J., concurred in part and dissented in part with opinion; Adkins, J., dissented with opinion.

Attorney and Client ⇐58

Conduct of knowingly failing to timely file personal income tax returns, which is cumulative in nature and results in probation and fine by federal court, warrants six months suspension subject to proof of rehabilitation prior to reinstatement. West's F.S.A. Integration Rule, Art. 11, Rules 11.-02(3)(a, b); 26 U.S.C.A. § 7203; West's F.S.A. Integration Rule, Art. 11, Rule 11.–6).

John F. Harkness, Jr., Executive Director and John T. Berry, Staff Counsel, Tallahassee, and David G. McGunegle, Bar Counsel, Orlando, for complainant.

F. Wesley Blankner, Jr., Orlando, for respondent.

PER CURIAM.

This attorney discipline proceeding is before the Court on the complaint of The Florida Bar and the report of the referee. The Florida Bar has petitioned for review pursuant to article XI, Rule 11.09(1) of the

Integration Rule of
have jurisdiction. A
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Integration Rule of The Florida Bar. We have jurisdiction. Art. V, § 15, Fla. Const.

In May, 1982, the respondent, Francis W. Blankner, was indicted by a federal grand jury on three counts of willfully and knowingly failing to file income tax returns for 1977, 1978, and 1979. Under 26 U.S.C. § 7203 (1982), any person who willfully fails to file a tax return is guilty of a misdemeanor. The respondent pled guilty to count II of the indictment, which charged him with failing to file a return for 1978. Counts I and III were then dismissed by the government. Respondent was sentenced to five years' probation and fined ten thousand dollars.

In February, 1983, The Florida Bar filed a formal complaint against the respondent. The complaint charged that the respondent violated article XI, Rule 11.02(3)(a) and (b), of the Integration Rule of The Florida Bar and Disciplinary Rules 1-102(A)(4) and 1-102(A)(6) of the Code of Professional Responsibility. Specifically, the complaint alleged that the respondent knowingly failed to file his federal income tax returns for the years 1970 through 1975 and 1977 through 1979. The respondent answered by denying the allegations as to the years 1977 through 1979, but he admitted the allegations as to the years 1970 through 1975.

A referee was appointed and a hearing was held. The referee found that the respondent failed to timely file his personal income tax returns for the years 1970 through 1979 and that respondent belatedly filed his return for 1976 in 1980 and his returns for 1977, 1978, and 1979 in 1981.

Testimony at respondent's hearing revealed that he suffered financial difficulties and that he failed to file tax returns because of his inability to pay the taxes owed. Testimony also revealed that respondent timely filed all his partnership tax returns. The referee recommended that the respondent be found guilty of the charges brought by The Florida Bar, which then asked that respondent be suspended for ninety-one days with proof of rehabilitation prior to reinstatement. The referee, however, recommended that the respondent receive a public reprimand and, due to the cumulative nature of the respondent's misconduct, that the respondent be suspended from the practice of law for a period of two months with automatic reinstatement at the end of the suspension period. In recommending this discipline, the referee noted that the respondent was admitted to the bar in 1949 and had had no prior disciplinary charges brought against him. The referee also noted that respondent is an excellent family man with an otherwise impeccable professional, social, and military record.

The Florida Bar now petitions this Court to review the referee's recommended discipline. The Bar contends that the recommended discipline is erroneous considering the number of years in which the respondent failed to file his personal income tax return. Although the Bar requested that the referee suspend the respondent for ninety-one days, the Bar now argues that the respondent should be suspended for one year with proof of rehabilitation required prior to reinstatement. The respondent argues that the referee's recommendation is supported by the evidence presented at the hearing. Respondent also contends that the recommended discipline is supported by the case law.

Several decisions of this Court have considered the discipline appropriate in cases involving attorneys who have failed to file tax returns, a misdemeanor under federal law. *See* 26 U.S.C. § 7203 (1982). In the first of these decisions, *The Florida Bar v. Childs*, 195 So.2d 862 (Fla.1967), the respondent, a respected municipal judge, failed to file income tax and social security tax returns. The referee, considering the respondent's reputation for honesty and integrity in the community, recommended that respondent be given a public reprimand. As in the instant case, the Bar requested that the respondent be suspended for a period of one year and thereafter until he proved his rehabilitation and fitness to practice law. This Court determined that a six-month suspension was an

adequate penalty. In *The Florida Bar v. Silver*, 313 So.2d 688 (Fla.1975), the respondent pled nolo contendere to a federal charge that he failed to file an income tax return. Upon a conditional guilty plea to a violation of the bar disciplinary rules, the referee recommended that the respondent be publicly reprimanded. This Court approved the respondent's conditional guilty plea. Public reprimands for attorneys convicted of failing to file tax returns were also approved by this Court in several subsequent cases. *See The Florida Bar: In re Beamish*, 327 So.2d 11 (Fla.1976); *The Florida Bar: In re Schonfeld*, 336 So.2d 77 (Fla.1976); *The Florida Bar v. Turner*, 344 So.2d 1280 (Fla.1977); *The Florida Bar v. Ryan*, 352 So.2d 1174 (Fla.1977); *The Florida Bar v. Greenspahn*, 366 So.2d 396 (Fla.1978); *The Florida Bar v. Wasman*, 366 So.2d 409 (Fla.1978); and *The Florida Bar v. Marks*, 376 So.2d 9 (Fla.1979). None of these cases involved misconduct which affected a client.

In *The Florida Bar v. Lord*, 433 So.2d 983 (Fla.1983), disciplinary proceedings were brought against an attorney who failed to file income tax returns for twenty-two years. The federal government did not prosecute Lord for the felony offense of tax evasion, but accepted a guilty plea to the misdemeanor offense of failing to file tax returns. He received a one-year sentence of imprisonment, of which all but ninety days was suspended. The Bar recommended that Lord be suspended for ninety-one days to assure that Lord could not be automatically reinstated following the suspension period. The referee had recommended that Lord be suspended for three months with automatic reinstatement. In considering the proper discipline in *Lord*, this Court noted that

> [d]iscipline for unethical conduct by a member of The Florida Bar must serve three purposes: First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, *the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations.*

Id. at 986 (citations omitted). Considering this articulated standard in view of the charges against Lord, we determined that the recommended three-month suspension with automatic reinstatement lacked "the requisite severity to adequately deter others tempted to engage in similar violations." *Id.* Because Lord's conduct was cumulative and reflected "a flagrant and deliberate disregard" for the law, this Court suspended him for six months and, as important, required proof of rehabilitation prior to reinstatement. *Id.*

This Court's decision in *Lord* represented a return to the higher standard set out in *The Florida Bar v. Childs*, 195 So.2d 862 (Fla.1967), requiring that an attorney not only be suspended for failure to file tax returns but that reinstatement would not be automatic and that subsequent proceedings to determine character and fitness to practice law would be required. *Lord* serves notice that in the future an attorney's failure to file a tax return, even though such failure is a misdemeanor under federal law and no client is injured, will warrant a suspension and subsequent inquiry into the attorney's fitness to practice law before reinstatement will be granted. For such conduct a public reprimand will no longer be viewed as sufficient.

Although in the instant case the respondent's conduct was not as flagrant as that exhibited in *Lord*, the respondent's conduct was cumulative in nature and did result in respondent's being placed on probation and fined by the federal court. We reject the Bar's contention that the respondent be suspended for one year. In accordance with our decision in *Lord*, however, we find that the appropriate discipline in this case is a suspension of six months subject to the requirement that the respondent prove rehabilitation prior to reinstatement. This

discipline is still greater than that originally requested by The Florida Bar in the hearing before the referee.

Accordingly, the respondent is suspended for a period of six months effective October 22, 1984, giving him time to protect the interests of his client. Respondent shall pay the costs of this proceeding in the amount of $817.31.

It is so ordered.

OVERTON, ALDERMAN, EHRLICH and SHAW, JJ., concur.

ALDERMAN and EHRLICH, JJ., concur specially with an opinion.

BOYD, C.J., concurs in part and dissents in part with an opinion.

ADKINS, J., dissents with an opinion.

ALDERMAN, Justice, concurring specially.

I agree that respondent should be found guilty of the charges brought by The Florida Bar. I also agree that an attorney's failure to file his income tax returns warrants, at the very least, a suspension and subsequent inquiry into his fitness to practice law before his reinstatement.

In *The Florida Bar v. Lord*, 433 So.2d 983 (Fla.1983), I dissented from this Court's decision to give Lord a six-month suspension and concluded that a three-year suspension would have been appropriate. 433 So.2d at 987. In the present case, although respondent's conduct was cumulative, it was not as flagrant as Lord's. Therefore, the appropriate discipline should not be greater than that imposed upon Lord. I, accordingly, reluctantly concur with the imposition of the six-month suspension. Had *Lord* been decided in accordance with my views, I would have found a two-year suspension to be appropriate in the present case.

EHRLICH, Justice, concurring specially.

I concur with the Court's opinion and judgment. In so doing, I cannot, and do not, recede from anything that I said in my dissent in *The Florida Bar v. Lord*, 433 So.2d 983 (Fla.1983). My feelings and observations about a lawyer's failure to file income tax returns remains the same. However, the conduct in *Lord* is far more blatant and egregious than in this case. The punishment the Court meted out is the same in both cases. I am of the opinion that what the Court did in *Lord* was wrong. I believe that the punishment in this case more nearly fits the facts.

The record reflects that even though respondent failed to file personal income tax returns, he did file partnership returns for the years in question. It appears that respondent was not making enough money to support a disabled wife, a dependent mother, three children in college, and to pay his income taxes, during the years that he failed to file returns. While this does not excuse his conduct, it does explain it. He is now destitute. I am of the opinion that the self-executing punishment the respondent has undergone can be taken in mitigation.

BOYD, Chief Justice, concurring in part and dissenting in part.

I concur in the Court's approval of the referee's finding of misconduct. However, I would also adopt the referee's recommended discipline of a two-month suspension with automatic reinstatement and with respondent to pay the costs of these proceedings.

ADKINS, Justice, dissenting.

In my opinion a public reprimand is the proper discipline to be imposed upon respondent.

Punishment imposed upon an attorney in grievance procedures should be tailored to fit the nature of the conduct as well as the character of the individual. The majority seems to be more interested in punishment for the conduct than consideration for the nature and character of the lawyer involved. No one would have a suit of clothes with well tailored trousers, but a coat that wraps around the individual twice

and hides all of the workmanship in the well fitting trousers.

The respondent, Francis W. Blankner, 59 years of age, was admitted to the practice of law in 1949, and has been an active lawyer in Orlando, Florida, since that date. He served in the armed forces in the Pacific during World War II as a radar operator and aerial gunner aboard a B-29 bomber, and was a recipient of the Purple Heart. He was honorably discharged at the end of the war and returned to Orlando, Florida.

Respondent is a family man. His wife suffered a debilitating stroke in the late 1960's and is not employed outside the home. He is the father of three children. His oldest son is a practicing attorney, his daughter is employed as a mechanical engineer for Ford Motor Company in Michigan, his youngest son is employed as a mechanical engineer for the Orlando Utilities Commission. Respondent resides with his wife and his 89-year-old mother-in-law. He has provided a home and support for his mother-in-law.

Respondent pled guilty to a misdemeanor in federal court. The judge placed him on probation for a period of five years and imposed a fine of $10,000 to be paid $2,000 annually until paid.

The referee in the grievance proceeding recommended a 60-day suspension from the practice of law with automatic reinstatement and a public reprimand. The referee found that respondent had an impeccable professional, social and military record, and that respondent had no disciplinary history.

His financial difficulty arose while he was the sole support for his wife, his aged mother-in-law, and his three children. During the period of time within which his income tax returns were not filed, he was providing financial support for the college education of his three children. Funds were borrowed from friends and relatives to defray living and college expenses. Of course, his financial problems were no excuse for failure to file his income tax returns; however, such circumstances should be taken into consideration when the Court is considering the proper disciplinary action in grievance procedures.

Every lawyer knows that he is required to file an income tax return and his failure to do so will result in punishment by the federal authorities. We should not be concerned with aiding the federal government in enforcing the tax laws. Our only concern is the ability of the individual to represent any member of the public in accordance with the Rules of Professional Conduct.

I approach this proceeding with the thought that respondent has committed a misdemeanor. Where an attorney has a previous record of disciplinary problems and has displayed no interest or concern for his family, the publicity involved in an income tax criminal charge would mean nothing. On the other hand, the criminal charge in federal court against respondent has been a trauma, not only to him, but to each member of his family. The grievance proceedings have probably been even a greater trauma.

A reprimand in this case would be a deterrent to every reputable lawyer.

The federal judge believes that probation and a fine were sufficient punishment for a violation of these federal laws. It seems ridiculous for us to paint The Florida Bar with a broader brush of holiness by suspending the respondent from the practice of law. A public reprimand is fair to The Florida Bar, to the respondent, and is sufficient deterrent to others.