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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)]

REPLY BRIEF

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SYMBOLS AND REFERENCES

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

ARGUMENT

A SUSPENSION IS THE APPROPRIATE DISCIPLINE GIVEN THE RESPONDENT'S MISDEMEANOR CONVICTIONS FOR WILLFULLY FAILING TO FILE TWO YEARS OF UNITED STATES FEDERAL INCOME TAX RETURNS RESULTING IN THE RESPONDENT'S VIOLATIONS OF THE RULES REGULATING THE FLORIDA BAR.

In his Answer Brief the respondent has basically cited the same case law as The Florida Bar in its Initial Brief. The respondent's interpretation of the available case law is somewhat different than the bar's. It is apparent the only issue to be resolved in this case is the type of discipline to be imposed as there are no disputes as to the facts or the rules the respondent has violated.

The bar does not desire to appear overly harsh in seeking a suspension in this matter. As was demonstrated in the bar's Initial Brief, case law and the Florida Standards For Imposing Lawyer Sanctions do support a suspension as an appropriate discipline. Perhaps a more specific issue to be considered is whether the mitigating factors present in this case warrant the discipline of a public reprimand as the respondent suggests. The bar concedes, in mitigation, that the respondent has fully cooperated with the federal government in investigating his failure to file two years of federal income tax returns and he has also cooperated with the bar in this disciplinary matter. However, it should not be ignored that it was due to the respondent's illegal conduct in the first place that his

cooperation became necessary.

The bar also concedes that the available case law on the issue of attorneys failing to file their income tax returns has been rather inconsistent over the years. While there have been several cases where public reprimands were ordered, there have also been cases such as The Florida Bar v. Childs, 195 So. 2d 862 (Fla. 1967); The Florida Bar v. Lord, 433 So. 2d 983 (Fla. 1983); and The Florida Bar v. Blankner, 457 So. 2d 476 (Fla. 1984). Those three cases appear to stand for the proposition that because failing to file income tax returns reflects adversely on an attorney's character and fitness to practice law, a suspension is the more appropriate discipline rather than a public reprimand. The bar agrees that such misconduct is a serious breach of ethics requiring substantial review of the attorney's character, fitness and subsequent rehabilitation.

To further illustrate the bar's position, the bar submits the following:

This court has routinely issued public reprimands in cases where attorneys committed technical violations of The Florida Bar Rules Regulating Trust Accounts. Those cases usually involve situations where the attorney had no prior discipline and there was no resulting harm to the client. Further, it was determined that when there was a finding that the attorney had no intent to

convert client trust funds, then a public reprimand was appropriate. [See The Florida Bar v. Borja, 554 So. 2d 514 (Fla. 1990) and The Florida Bar v. Hosner, 513 So. 2d 1057 (Fla. 1987)]. Public reprimands have also been imposed in cases where there have been technical trust accounting violations combined with other offenses. However, this court has imposed suspensions where technical violations occur due to attorneys gross negligence in handling trust accounts and client property. [See The Florida Bar v. Neu, 597 So. 2d 266 (Fla. 1992) where the attorney received a six month suspension for trust accounting violations]. Moreover, this court has consistently maintained that misuse of client funds is one of the most serious offenses a lawyer can commit requiring a harsh discipline. The Florida Bar v. Shanzer, 572 So. 2d 1382 (Fla. 1991).

While it is true that the respondent's misconduct in the instant matter did not involve any clients as did the trust accounting cases mentioned above, the bar questions whether his misconduct is to be considered a "technical violation" of the law and the Rules Regulating The Florida Bar. Apparently, the federal government did not find it so as a prosecution was instituted against the respondent for his illegal acts. Therefore, the bar asserts that although there are some mitigating factors present in this case on behalf of the respondent, they are not sufficient to warrant the imposition of a public reprimand as discipline based upon prior case law and

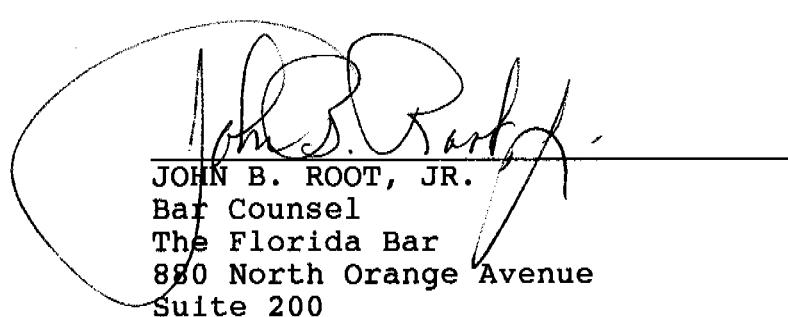
the Standards. This court may, due to the respondent's financial situation as presented in his answer brief, impose a suspension less than six months. That is within the court's discretion but the bar urges that a suspension, in whatever form, should be the discipline imposed.

"Attorneys are officers of the court and as such are expected by the bar, bench and public to conduct themselves in accordance with the law". The Florida Bar v. Weintraub, 528 So. 2d 367 (Fla. 1988). The respondent, as a private citizen, was appropriately sanctioned by the federal government. Should it not also be required that the respondent be seriously sanctioned by virtue of his higher duty as an officer of the court?

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 and thereafter be placed on a period of probation consistent with the referee's recommendations and assess against the respondent the cost of these proceedings which now total \$855.91.

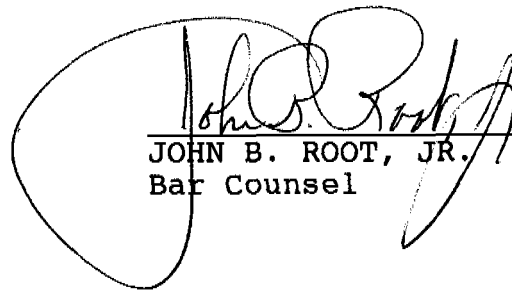
Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read "John B. Root, Jr.", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing Reply Brief has been furnished by regular U.S. 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 the respondent, Lewis R. Pearce, 2255 North Courtenay Parkway, Post Office Box 540037, Merritt Island, Florida, 32954; 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 17th day of June, 1993.



JOHN B. ROOT, JR.
Bar Counsel