IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JOEL E. GRIGSBY,

Respondent.
_____/

Case No. 81,980
[TFB Case No. 93-30,446 (10A)]

REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF OTHER AUTHORITIES

SYMBOLS AND REFERENCES

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

The Report of Referee dated November 24, 1993, will be referred to as "ROR."

The bar's exhibits will be referred to as "B-Ex."

ARGUMENT

THE REFEREE'S RECOMMENDATION OF A PUBLIC REPRIMAND IS INAPPROPRIATE GIVEN THE FACTS OF THIS CASE

The sole issue before this court is what disciplinary sanction to impose on the respondent. Neither party disputes the referee's findings of fact, the respondent's past disciplinary record, or the referee's recommendation that the respondent be found guilty of violating the following Rules Regulating The Florida Bar: 4-8.1(b) for failing to respond to a lawful demand for information from a disciplinary authority; and 4-8.4(a) for violating the Rules of Professional Conduct. It is uncontroverted that the conduct in the complaint involved several failures to respond to lawful demands for information from the bar. The referee recommended that the respondent be publicly reprimanded and placed on conditional probation for three (3) years during which time respondent shall continue to actively participate in therapy with a licensed mental health counselor and be supervised by an attorney acceptable to The Florida Bar.

The bar's position is that the referee's recommended discipline is not adequate given the facts of this case and that departure from the referee's recommendation is appropriate. Except for the public reprimand, the bar does not dispute the referee's other discipline recommendations.

The bar asserts that given the respondent's cumulative misconduct and prior significant disciplinary history, the appropriate discipline would be ninety (90) days suspension in addition to the three (3) year conditional probation already recommended by the referee. The respondent's position is that the referee's recommendation is appropriate.

The decision of this court in The Florida Bar v. Pearce, 631 So. 2d 1092 (Fla. 1994), clearly established that while a referee's finding of fact carries a presumption of correctness that should be upheld unless clearly erroneous or without support in the record, the scope of review is somewhat broader in reviewing a referee's recommendation of discipline because this court ultimately has the responsibility to order an appropriate sanction. This court also reiterated that in deciding an appropriate discipline for an attorney's misconduct, a bar disciplinary action must serve three purposes: the judgment must be fair to society, it must be fair to the attorney, and it must sufficiently deter other attorneys from similar misconduct. In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors: the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors. See Florida Standards for Imposing Lawyer Sanctions, Standard 3.0. If these principles are to be addressed adequately in this case, it is the position of The Florida Bar

that nothing less than a ninety (90) day suspension in addition to the three (3) year conditional probation already recommended by the referee will be sufficient.

The bar strongly disagrees with the respondent's assertion that his failure to respond to the several requests for information in the instant case was of a relatively minor nature. Respondent's misconduct was not minor. This is not a case of a single and isolated ethical lapse, but six (6) distinct failures to respond to lawful demands for information from the bar and the investigating member of the grievance committee. The referee found (ROR, p.2) that on October 7 and November 16, 1992, the bar wrote the respondent and asked him to reply in writing to the complainant and to copy the bar. The respondent failed to reply. The investigating member of the grievance committee then wrote the respondent in November, 1992, and asked him to contact him regarding the bar's investigation, telephoned the respondent in December, 1992, and asked him to make a written response to the bar concerning the allegations, and verbally reminded the respondent to make a written response after seeing him at the county courthouse. Although the respondent repeatedly assured the investigating member he would do so, he did not follow through. An assistant staff attorney with The Florida Bar also spoke with the respondent by telephone and asked him to make a written response to the bar. The respondent failed to do so. Respondent's repeated failures to reply to the aforementioned

requests for information unnecessarily encumbered the proper and efficient operation of the disciplinary system. Had the respondent timely provided the information he had in his possession all along, he would have obviated the need to hold a grievance committee hearing because his evidence clearly showed there was no merit to the complainant's allegations.

The incidents giving rise to this matter demonstrate a pattern of misconduct upon which the respondent's prior two disciplines appear to have had no effect. He was admonished for minor misconduct in 1991 for failing to maintain adequate communication with his client (B-Ex. 3). The client, a disabled man, had retained the respondent to probate an estate. After being unable to contact the respondent for one year, the client found it necessary to hire another attorney. He then complained to the bar. Respondent refused to cooperate with the bar's investigation by not responding to its repeated inquiries. In another case, he was suspended for three (3) months for neglect and failure to communicate with his clients in three cases. In the first matter, he neglected a civil suit which resulted in it being dismissed due to a failure to prosecute. In a second case, he failed to file a client's petition for reduction of child support. He did not communicate with the client and the client was arrested because he was behind on the support payments. In a third matter, he was retained by an out-of-state client to seek a modification of child support. He failed to attend the hearing

and did not send any documents to the client who was facing action for collection of the arrearages. Because this court's opinion in this case, The Florida Bar v. Grigsby, 617 So. 2d 321 (Fla. 1993), appeared without a recitation of the facts, the bar submitted the referee's report into evidence as B-Ex. 4. Respondent clearly has failed to take heed of the importance of strict adherence to the rules and the importance of his active participation in the disciplinary process when he is accused of misconduct. Communication, whether it be with clients or the bar, also appears to be an ongoing problem.

The referee determined (ROR, p.2) that according to the evidence presented by the respondent at the final hearing, the respondent suffered from clinical depression for which he has voluntarily sought treatment. The referee also found that the respondent's depression did not excuse his conduct. Replying to the bar's multiple requests for information consisted of nothing more than mailing a copy of a previously written letter. The referee further found that it was contradictory that the respondent was unable to mail a letter but was able to attend the grievance committee hearing, thus incurring additional costs for himself and the bar.

The bar concedes that personal or emotional problems such as family and law practice problems as well as depression could be considered as mitigating factors, but such factors are not

controlling and should not be used as an automatic shield to outweigh the significant aggravating factors present in this case. The Florida Bar disputes the implication contained in the respondent's answer brief that his depression is the controlling factor. Although personal or emotional problems, as stated in standard 9.32(c) of the Florida Standards for Imposing Lawyer Sanctions, could be considered as mitigation, it is by no means controlling in light of the significant aggravating factors in this case such as the existence of prior disciplinary offenses, existence of a pattern of misconduct, and substantial experience in the practice of law.

In summary, given the respondent's cumulative misconduct and prior disciplinary history, a departure from the referee's recommended discipline in appropriate. The cumulative nature of the respondent's prior disciplinary history warrants a ninety (90) day suspension in addition to the three (3) year conditional probation and payment of costs recommended by the referee. As was stated in the bar's initial brief, the case law and the Florida Standards for Imposing Lawyer Sanctions do support a ninety (90) day suspension as appropriate discipline. The bar stands on its arguments contained in its initial brief.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will approve the referee's findings of fact and recommendation of guilt, but reject in part the recommendation as to discipline and instead impose a ninety (90) day suspension followed by the three (3) year conditional probation already recommended by the referee and require the respondent to pay costs in these proceedings currently totalling $1,137.37.

Respectfully submitted,

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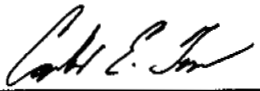
By: 

CARLOS E. TORRES
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing reply brief and appendix have 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 certified mail No. P 381 851 803, return receipt requested, to respondent, Joel E. Grigsby, at P.O. Box 497, Ashland, Illinois 62612-0497; 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 25 day of APRIL, 1994.

Carlos E. Torres
Bar Counsel