

**FILED**

SID J. WHITE

MAY 16 1994

CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

vs.

H. EUGENE JOHNSON,  
Respondent.

Supreme Court  
Case No.: 82,673  
TFB No. 93-10,983 (13)

6/15

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, hearings were held on the following dates:

January 7, 1994 - Defendant's Motion to Dismiss Complaint

March 25, 1994 - Status Conference

April 15, 1994 - Final Hearing

David Ristoff appeared for The Florida Bar.

H. Eugene Johnson appeared pro se.

II. Findings of Fact:

The Court, having heard testimony of witnesses, finds the following facts in this cause:

1. The Respondent was the family attorney for the father of Joseph Bartholomew. In approximately 1980, Respondent began to represent Bartholomew in certain corporate matters, being kept

on retainer and, also paid by the case for extra work (T. 7, L. 9). In 1983, Bartholomew married the daughter of Respondent. From the date of the marriage until approximately June or July, 1991 the Respondent provided services to Bartholomew, both in personal matters and for his companies without charge (T. 40, 41, L. 11 et seq.).

2. In the latter part of 1989, Respondent, at the request of Bartholomew and his wife, moved into a building owned by Bartholomew (T. 8, L. 6, 7). It was understood between the parties that Respondent would rent free for 3 years (T. 83, L. 17; T. 89, L. 7). Respondent continued to perform legal services gratis (T. 40, L. 11 se seq.; T. 52, L. 11-18). No lease was executed at the time Respondent took possession of his office space. Respondent did draft a form lease for Bartholomew's use with other tenants in the building. The form lease was then placed on Bartholomew's computer and used as needed (T. 31, L. 10-15).

3. In mid-to-late October 1989, Bartholomew was attempting to obtain a line of credit or a loan from Village Bank (T. 75, L. 1-6). The bank required certain information and documents from Bartholomew, specifically copies of the tenants' leases and tenant affidavits (T. 57, L. 4 et seq.).

4. Thereafter, Bartholomew approached Respondent to obtain a lease and tenant affidavit from him, so Bartholomew could present these, with those of the other tenants, to Village Bank (T. 53, L. 10). Neither the lease (TFB Exhibit 1) nor the

tenant affidavit (TFB Exhibit 2) were to be binding between Respondent and Bartholomew (T. 83-85). They were executed solely for the protection of the bank in case the credit line or loan were defaulted on (T. 90-94, L. 18)). To this end, the lease (TFB Exhibit 1) is executed solely by Bartholomew, though the property was owned by the entirety, each signature was witnessed by only one person, and the tenant affidavit (TFB Exhibit 2) contains paragraph 8. Additionally, Respondent advised Bartholomew to inform the bank of the situation (T. 94, L. 7-13).

5. On or about June 1991, the relationship between Bartholomew and Respondent began to deteriorate (T. 42, L. 8-21; T. 43, 44, L. 14-L. 12). Additionally, the marriage between Bartholomew and Respondent's daughter began to deteriorate at about the same time, and Respondent confronted Bartholomew regarding alleged adulterous behavior.

6. Shortly thereafter, Bartholomew demanded rent from Respondent (T. 95, L. 7-10). In June 1992, a civil action for eviction and past due rents was filed. A Motion for Summary Judgment was filed by Respondent and granted on or about August 1992. The Bar complaint was filed November 4, 1993.

### III. Discussion:

The Florida bar has brought this action under certain provisions of the Rules Regulating The Florida Bar:

Rule 3-4.30: ...The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act

is committed in the course of the attorney's relations as an attorney or otherwise..., and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

Rule 3-4.4: ...The Florida Bar may initiate disciplinary action regardless of whether the Respondent has been...acquitted...in a court for the alleged criminal offense;...(N)or shall the findings...of any court in civil proceedings necessarily be binding in disciplinary proceedings.

Rule 4-4.1: In the course of representing a client, a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited...

Rule 4-8.4: A lawyer shall not:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonest, fraud, deceit or misrepresentation.

The Bar has alleged that the Respondent violated these Rules because he: a) drafted an invalid lease; b) executed and

allowed Bartholomew to execute an invalid lease; and c) executed a false tenant affidavit which affected Village Bank.

I find that Bartholomew prepared and printed the lease, and that while the lease was signed, it was meant to be ineffective only as between the parties. At no time did Bartholomew plan or intend it to be a valid lease. The execution of the tenant affidavit did not and would not have affected the rights of any third party lending institution, but would have required Respondent to pay the rental price contained therein to such third party. There was no misrepresentation of a material fact or false statement to the third party.

While Respondent's conduct is not necessarily approved, such conduct must be viewed in the totality of the circumstances. This was a family matter effectuated while there was still a family association. Had the family association continued intact, it is doubtful this complaint would have arisen. Respondent is an attorney, true; however, under the facts of this case, he was acting as a father and father-in-law to help those for whom he cared. This help would not affect a third person. Had a lending institute or other third party relied upon the lease or affidavit, Respondent would have been bound to the terms of the documents.

In considering the evidence, I determined also the credibility of the witnesses. Taking all factors into consideration, I find that The Florida Bar has failed to establish the guilt of the Respondent.

IV. Recommendation as to Whether or Not the Respondent Should Be Found Guilty:

I recommend that the Respondent be found not guilty.

Having found the Respondent not guilty, no discipline is recommended.

V. Statement of Costs:

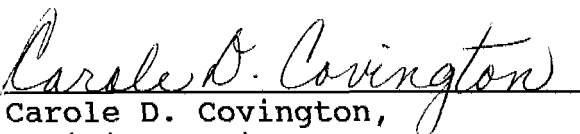
I have reserved jurisdiction regarding costs. Respondent is given 15 days from the date of the Report to submit those costs for which recovery he believes he is entitled.

Dated this 13 day of May, 1994.

  
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CLAIRE K. LUTEN, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Report of Referee has been furnished by U.S. mail to David R. Ristoff, Branch Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport Marriott Hotel, Tampa, FL 33607, and John A. Boggs, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, and to H. Eugene Johnson, Esq., Respondent, 715 East Bird Street, Suite 409, Tampa, FL 33604, this 15<sup>th</sup> day of May, 1994.

  
Carole D. Covington,  
Judicial Assistant