IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

PHILLIP R. WASSERMAN

Respondent.

Case Nos. 83,818, 84,438, 84,814
TFB Nos. 94-10,293(12B)
94-10,558(12B)
94-11,393(12B)

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 Regulating the Florida Bar, hearings were held on April 20th and May 1st, 1995. All pleadings, notices, motions, orders, transcripts, and exhibits are attached to this report and are a part of the record in this case.

The following attorneys appeared as counsel:

For the Florida Bar: Stephen Whalen, Esq.
For the Respondent: Scott Tozian, Esq.

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

As to Case No. 83,818, on August 23, 1993, respondent attended a hearing before Judge Bonnie Newton and lost his temper after a ruling by Judge Newton. He stood and shouted his criticism, he waved his arms, he challenged Judge Newton to hold him in contempt and displayed his arms as if to be handcuffed, he stated his "contempt" for the court, he banged the table or podium and generated such a display of anger that the bailiff who was present felt it necessary to call in a backup bailiff. (Vol. I, pp 52-53, 61-62, 96-97). Immediately thereafter, outside the hearing room, in the presence of both parties and opposing counsel, respondent stated that he would advise his client to disobey the court's ruling. (Vol. I, pp 80-81, 86, 98). I am convinced that all these facts are true.

As to Case No. 84,438, on October 6, 1993, respondent told attorney Catherine Catlin's secretary that he would be out of town the following day and, for that reason, unable to attend an emergency hearing Ms. Catlin wished to schedule for that date. Respondent introduced evidence of a planned presence in Nashville, Tennessee, on October 7, 1993, supporting his defense that he indeed intended to be out of town on that date at the time he had the conversation with Ms. Catlin's secretary. (Resp. ex. #1, Vol.

I, pp 15-17, Vol. II, pp 309-313, 318-320). This evidence creates a doubt in my mind about whether respondent intentionally misrepresented his unavailability. I am not convinced of his guilt.

As to Case No. 84,814, on April 14, 1994, after getting an unfavorable response to a question asked over the telephone of Judge John Lenderman through his judicial assistant, respondent said to the assistant, Cynthia Decker, "You little motherfucker; you and that judge, that motherfucking son of a bitch". Ms. Decker was so upset by the incident that she had to leave the office early that day. The incident was related by Ms. Decker to Judge Lenderman later that evening. (Vol. II, pp 170-173, 194). I am convinced that all these facts are true.

III. Recommendations as to Whether or Not the Respondent should Be Found Guilty:

As to Case No. 83,818 I recommend that respondent be found guilty of violating Rule 3-4.3 (Misconduct not otherwise specified) and Rule 4-3.5(c) (engaging in conduct intended to disrupt a tribunal).

As to Case No. 84,814, I recommend that respondent be found guilty of violating rule 3-4.3 (misconduct not otherwise specified), Rule 4-8.4(a) (Violating the Rules of Professional Conduct). I understand the Florida Supreme Court has interpreted Rule 4-8.4(d) (conduct prejudicial to the administration of justice) in such a manner as to probably not include the circumstances of this case; otherwise I would recommend that respondent be found guilty of violation of that rule.

As to Case No. 84,438, I recommend that respondent be found not guilty of all violations.

IV. Recommendation as to Disciplinary Measures to Be Applied:

As to Case No. 83,818, I recommend a sixty-day suspension.

As to Case No. 84,438, not applicable.

As to Case No. 84,814, I recommend a six-month suspension.

V. Personal History and Past Disciplinary Record: After the finding of guilt and prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following history and disciplinary record of the respondent:

Year of Birth: 1956

Year of Admission to Bar: 1985

Prior Disciplinary convictions and Disciplinary Measures Imposed Therein:

January 11, 1990. Charging excessive fee. Incompetence in handling legal matter. Failure to act with reasonable diligence. Failure to promptly deliver funds and render a full accounting. Public reprimand.

March 5, 1992. Failure to comply with rules regulating trust accounts. Public reprimand and probation (12 months)

April 2, 1993. Failure to communicate diligently with opposing counsel. Conduct prejudicial to the administration of justice. Failure to protect client's interest. Admonishment for minor misconduct.

April 20, 1995. Charging a prohibited fee. Representation of a client resulting in a violation of the rules of professional conduct or law. Suspension (60 days).

Aggravating Factors:

As to Case No. 83,818, None.
As to Case No. 84,438, not applicable.
As to Case No. 84,814. Respondent's theory of defense, that Ms. Decker concocted the facts regarding the words said by respondent or, alternately, that <u>if</u> respondent said the words he <u>may</u> have said them after thinking the phone had been hung up (but probably didn't because no one in his office heard him say them), is an insult to the intelligence of any reasonable person familiar with the circumstances. I feel this defense manifests a serious lack of a sense of the importance of truth and forthrightness in legal proceedings. Respondent attempted to get some "mileage" out of these accusations. The incident had received publicity and respondent received a letter congratulating him for his conduct and he distributed copies to his staff and posted it in a conspicuous location in his waiting area. (Vol. III, pp 72-74, Bar Ex. No. 1).

Mitigating Factors:

As to Case No. 83,818 and 84,814. Respondent gives generously of his money and time to the Suncoast Child Protection Team, Inc., in support of needy children. Respondent has performed considerable pro bono legal services.

As to 83,818. Respondent admits his behavior was inappropriate and indicates he would not do the same again but, at the same time, he seems to feel such conduct is/was justified by a heavy caseload or the details of the litigation or as mere "theatrics". (Vol. I, pp 23-32, 82-85, 90, 124-142).

IV. Statement of Costs and Manner in Which Costs Should Be Taxed: After reviewing the Affidavit of Costs, the Objection by Respondent and the Bar's response thereto I am satisfied that the costs set forth in the Affidavit were reasonably incurred by the Bar in the prosection of cases 83,818 and 84,814 and the Affidavit is attached and made a part hereof.

Dated this 26TH day of June, 1995.

Referee

Copies to: Stephen C. Whalen, Esq.
Scott K. Tozian, Esq.
John T. Berry, Esq.