

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

CASE NO. 84,435

Complainant,

vs

MILTON KELNER,

Respondent.

FILED

SID. I WHITE

JUN 2 1995

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

REPORT OF REFEREE

Summary of Preceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, a hearing was held on April 27, 1995.

The following attorneys appeared as counsel for the parties:

For the Florida Bar JAN WICHROWSKI
For the Respondent JOHN D. KELNER

PART II

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

As to each alleged violation of the complaint I make the following recommendations as to guilt or innocence:

1. That the respondent be found guilty of violating rule 4-3.1, Rules Regulating The Florida Bar for asserting an issue within the proceeding which was without a basis.
2. That the respondent be found guilty of violating rule 4-3.4(e), Rules Regulating The Florida Bar for alluding to matters, in trial, that the lawyer does not reasonably believe relevant or supported by admissible evidence.
3. That the respondent be found innocent of violating rule 4-3.5(c), Rules Regulating The Florida Bar for engaging in conduct intended to disrupt a tribunal.
4. That the respondent be found innocent of violating rule 4-8.4(d), Rules Regulating The Florida Bar for engaging in conduct that is prejudicial to the administration of justice.

II. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the respondent receive a public reprimand without probation, as provided for in rules 3-5.1(c) and 3-5.1(d), Rules Regulating The Florida Bar.

III. Personal History and Past Disciplinary Record:

After finding of guilty and prior to recommending discipline to be recommended pursuant to rule 3-7.6(k)(1)(D), Rules Regulating The Florida Bar, I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 77

Date admitted to Bar: 1939 New York State Bar and a member of the Florida Bar since 1948.

Prior disciplinary convictions and disciplinary measures imposed therein: None

Other personal data: Appointed Guardian Ad Litem Pro Bono in numerous cases; receiving excellent results for his clients.

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

A. Grievance Committee Level Costs:	
1. Transcript Costs	\$ -0-
2. Bar Counsel Travel Costs	\$ -0-
B. Referee Level Costs	
1. Transcript Costs	\$356.46
2. Bar Counsel Travel Costs	\$622.88
C. Administrative Costs	\$750.00
D. Miscellaneous Costs	
1. Investigator Expenses	\$153.35
2. Copy Costs	\$118.84
TOTAL ITEMIZED COSTS	\$2,001.53

It is recommended that the foregoing itemized costs and expenses be charged to the respondent.

Dated this 3rd day of May, 1995.

A. Leo Anthony
Referee

Certificate of Service

I hereby certify that a copy of the above report of referee - part II has been served upon Jan Wichrowski, Bar Counsel, The Florida Bar, 800 North Orange Avenue, Suite 200, Orlando, Florida, 32801; John D. Kelner, Counsel for Respondent, 1200 Courthouse Tower, 44 West Flagler Street, Miami, Florida, 33130; and John A. Boggs, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 3rd day of May, 1995.

A. Leo Anthony
Referee