

087

IN THE SUPREME COURT OF FLORIDA

FILED

310 J. WHITE

AUG 8 1997

8/29

THE FLORIDA BAR,

Complainant,

Supreme Court
Case No.. 89,111

CLERK, SUPREME COURT

v.

ROBERT PAUL JORDAN, II

Respondent.

On Petition for Review of
the Referee's Report in
a Disciplinary Proceeding

INITIAL BRIEF OF THE RESPONDENT

ROBERT P. JORDAN, II
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STATEMENT OF THE CASE

This disciplinary proceeding was commenced with the filing of a complaint against the Respondent, Robert P. Jordan, II, alleging a violation of Rules 4-1.1, 4-1.3, 4-1.4 and 4-8(c)..

A final hearing before the Referee was held on February 13, 1997. Prior to that time, the Referee had entered an Order deeming the Florida Bar's Requests for Admissions to be Admitted. However, prior to the hearing, a brief hearing was held by the referee to apprise the Referee as to the status of any and all pleadings. At this hearing, the Respondent, admitted violating Rule 4-1.1, 4-1.3 and 4-1.4 but denied violating 4-8.4(c).

Testimony and evidence were taken thereafter.

At the conclusion of the matter, each party was asked to submit a proposed Order as to discipline.

The Referee filed a Report of Referee dated April 7, 1997, recommending that Respondent be suspended from the practice of law for a period of one (1) year, thereafter until Respondent shall prove rehabilitation including proof of passage of the Florida Bar Examination and until all costs of the proceeding are paid.

The Report of the Referee was considered and approved by the Board of Governors of the Florida Bar.

Respondent has petitioned for Review of the Referee's findings of fact and. recommendations as to discipline.

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>The Florida Bar v. Carter</u> 429 So.2d 3 (Fla. 1983)	1
<u>The Florida Bar v. Flowers</u> 672 So.2d 526 (Fla. 1996)	4
<u>The Florida Bar v. Knowlton</u> 527 So.2d 1378 (Fla. 1988)	2
<u>The Florida Bar v. Morrison</u> 669 So.2d 1040 (Fla. 1996)	2,3
<u>The Florida Bar v. Riskin</u> 549 So.2d 178 (Fla. 1989)	2
<u>The Florida Bar v. Rolle</u> 661 So.2d 301 (Fla. 1995)	2,4

ARGUMENT

I. THE REFEREE ERRED IN CONSIDERING RESPONDENT'S PRIOR DISCIPLINARY RECORD

After the finding of guilt and prior to recommending discipline, the Referee considered the Respondent's prior disciplinary record. This in and of itself was not error.. However, to consider the thirty (30) day suspension in Case No. 85,109 and the ninety-one (9 1) suspension in Case No. 86,271 was error.

The Supreme Court ruled in The Florida Bar v. Carter, 429 So.2d 3 (Fla. 1983) that were the alleged misconduct in the resent case occurred prior to the decision in the previous case, the cumulative misconduct argument is applicable.

In the above-noted case, the Respondent had recently been publicly reprimanded by the Court. The Court held that under the circumstances, “[t]he prior discipline could not, therefore, have deterred his conduct in this case.” id at 4

The decisions rendered against the Respondent, Jordan, resulting in his suspension from the practice of law were rendered in October, 1996. The last alleged misconduct regarding Respondent and Ms. Mitchell allegedly occurred in February, 1996.

Clearly, the referee erred in considering those two (2) cases prior to his recommendation.

ARGUMENT

II. THE REFEREE'S RECOMMENDATION OF A ONE YEAR SUSPENSION IS EXCESSIVE

The **range** of appropriate discipline for neglect of a legal matter and inadequate communication is between a public reprimand and a six month suspension.

In The Florida Bar v. Knowlton, 527 So.2d 1378 (Fla. 1988), the Respondent received a public reprimand for neglect of a legal matter and failure to respond to a client's inquiries. The neglect of the legal matter allowed the **statute** of limitations to run.

In The Florida Bar v. Riskin, 549 So.2d 178 (Fla. 1989), the Respondent received a public reprimand for neglect of a legal matter. Again, the neglect of the legal matter allowed the statute of limitations to run.

In The Florida Bar v. Rolle, 661 So.2d 301 (1995), the Court imposed **a six (6) month** suspension **on** the Respondent for neglect in two matters. Respondent had a prior disciplinary record.

The Court has broad latitude in reviewing a referee's recommendation for discipline. The Court in The Florida Bar v. Morrison, 669 So.2d 1040 (1996), gave the purposes of sanctions:

“The sanction must be fair to society, the sanction must be fair to the attorney and the sanction must be severe enough to deter **other** attorneys from similar misconduct.” id at 1042

The Court's previous rulings clearly indicate that the discipline recommended by the Referee is excessive.

ARGUMENT

III. THE REFEREE ERRED IN HIS RECOMMENDATION THAT RESPONDENT BE SUSPENDED UNTIL PROOF OF PASSAGE OF THE FLORIDA BAR EXAMINATION IS PROVIDED

The recommendation of proof of passage of the Florida Bar Examination by the Respondent is unduly harsh and excessive.

In a matter similar to the Respondent's, the Court in The Florida Bar v. Morrison, 669 So.2d 1040 (Fla. 1996), found that passage of the ethics portion of the Florida Bar Examination was a sufficient showing of rehabilitation.

In the above-cited case, Respondent, Morrison, was found guilty of Rules 4-1.3, 4-1.4(a), 4-8.4(a) and 4-8.4(g). In addition, the Court found matters in aggravation, specifically: "Respondent's prior disciplinary offense, a pattern of misconduct, multiple offenses, obstruction of the disciplinary proceeding, refusal to acknowledge the wrongful nature of conduct and indifference to making restitution." id at 104 1

The only matter in aggravation found in this cases was the consideration of the prior disciplinary offenses, which Respondent argues should only have occurred regarding two (2) early matters. No other matters in aggravation were made.

In fact, in this case, the Respondent readily admitted his wrongdoing regarding Rules 4-1.1, 4-1.3 and 4-1.4; responded to all disciplinary inquiries and in fact attempted to make restitution which the Referee construed as a violation of Rule 4-1.8 (h)

If the Court agrees with Respondent's argument that the previous suspension of Respondent should not be considered as a matter in aggravation, then Respondent's and Morrison's previous disciplinary record are quite similar

The Court should also consider its ruling in The Florida Bar v. Rolle, 66 I So.2d 302 (Fla. 1995), where again it ruled that passing the ethics portion of the Florida Bar Examination was sufficient proof of rehabilitation.

In Rolle, the Respondent was Found guilty of two counts of 4-1.3 and 4-1.4 and one count of 4-8. I(b). Rolle had previously received a private reprimand for failing to adequately represent a client in a matter and failure to inform a client of the status of his matter.

Lastly, the Court should consider its ruling in The Florida Bar v. Flowers, 672 So.2d 526 (Fla 1996), where again it ruled that the passing of the ethics portion of the Florida Bar Examination was sufficient.

Flowers was found guilty of Bar Rules 3-4.8, 4-1.1, 4-1.3, 4-1.4(a)(b), 4-2.1, 4-5.3© and 4-8.4(d). Flowers had a prior history which included a private reprimand for neglect, public reprimand for inadequate trust account record keeping procedures and a suspension for trust account violations.

In order for a sanction to be proper, it must not only be fair to society but it just also be fair to the attorney. This sanction is fair to neither party.

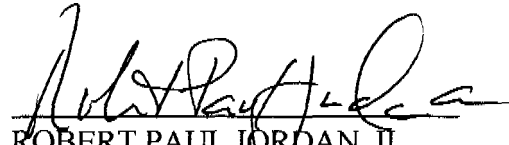
A proper sanction would be suspension until proof of passage of the Ethics portion of the Florida Bar Examination is provided.

CONCLUSION

The referee erred in considering the Respondent's prior suspensions prior to making his recommendations regarding sanctions.

A **proper** sanction which serves society and the attorney would be a suspension of no more than six (6) months and thereafter until proof of passage of the Ethics portion of the Florida Bar Examination is provided.

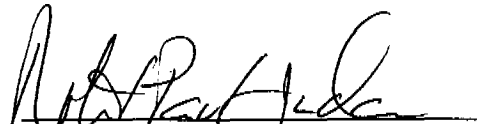
RESPECTFULLY SUBMITTED



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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that the original and seven copies of the Brief of Respondent was mailed by regular U.S. Mail to Sid 3. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, 32399-1927, and a copy mailed to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Fl 32399-2300 and to Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Fl 32801 this 4th day of August, 1997.



ROBERT PAUL JORDAN, II