

IN THE SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THE FLORIDA BAR,

Complainant,

Case Number: 90,228

v

TFB File Number: 97-00188-02

LAWRENCE E. SHINNICK,

Respondent,
_____ /

RESPONDENT'S ANSWER BRIEF IN
OPPOSITION TO PETITION FOR REVIEW

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ISSUE I

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UNIQUE DATA, INC., UNDER THE AUSPICES AND RESPONSIBILITY OF COUNSEL FOR THE RESPONDENT WHO BY HIS ENDORSEMENT AND THE WITHIN ANSWER BRIEF CERTIFIES THAT THIS BRIEF WAS PREPARED USING TIMES NEW ROMAN 14 POINT TYPE.

TABLE OF AUTHORITIES

CASES CITED:	PAGE
<u>In re: Petition of William B. Dawson</u> 131 So.2d 472 (Fla. 1961)	10
<u>The Florida Bar In re: Russell T. Sickmen</u> 523 So.2d 154 (Fla. 1994)	9;10
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OTHER AUTHORITIES CITED:

Rule 3-4.3	3
Rule 3-5.1(e)	7
Rule 3-7.7(c)(5).	6,11
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RESPONDENT'S PRELIMINARY STATEMENT

In this, the Respondent's Answer Brief, the Appellee, Lawrence E. Shimmick, will be referred to as "Respondent." The Appellant, The Florida Bar will be referred to as "The Florida Bar."

The report of Referee shall be referenced by the symbol "RR" followed by the appropriate page number.

References to the transcript of the Motion Hearing before the Referee on September 08, 1997, shall be by the symbol "MHTR" followed by the appropriate page and line number. (copy of MHTR, attached)

References to the transcript of the hearing before the Referee on April 01, 1998, shall be by the symbol "TR" followed by the appropriate page and line number.

References to reported decisions and opinions of the courts will be made by citation to the appropriate reporter.

RESPONDENT'S STATEMENT OF THE CASE

On July 25, 1996, the Supreme Court of the State of Minnesota suspended the Respondent from the privilege of the practice of law, without the right to petition for reinstatement, until (6) six months elapsed from the date of the Order. The Minnesota Order included specific findings of fact that Respondent had engaged in deceitful and fraudulent conduct, although not in relation to any action or lack of action by the Respondent in the representation of a client, but only as a Corporate Officer, which affiliation involved the Respondent personally, by his personal endorsement of Corporate Guarantees, in Inter-corporate Litigation, which, due to the (11th) eleventh hour withdrawal of his previously retained Counsel, without the Respondent's prior knowledge; whereon he was advised that he need not appear, resulted in a default judgment being entered against your Respondent, based upon fraud. Although this Respondent did not have prior knowledge of his Attorney's Motion to Withdraw, on the date of trial, because he was not present (per the advice of his surreptitiously, withdrawing Counsel); at said hearing, the Minnesota Supreme Court still found "that although Mr. Shinnick was not acting as an Attorney representing clients in either transaction, his conduct nevertheless, warrants discipline" (per curiam opinion of the Minnesota Supreme Court) (July 25, 1996 at page 4)

On April 14, 1997, the Honorable Charles D. McClure, was appointed as Referee and a final hearing in this cause was conducted on April 01, 1998.

On May 12, 1998, the Referee issued his Report of Referee recommending Respondent be found guilty of the following Rules Regulating The Florida Bar:

Rule 3-4.3 of the Rules of Discipline

The commission by a lawyer of any act which 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, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

Rule 4-8.4(a) of the Rules of Professional Conduct

A lawyer shall not 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.

and,

Rule 4-8.4(c) of Rules of Professional Conduct

A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

The Referee further recommended the following; "So the Court does accept the Minnesota findings and would recommend to the Supreme Court the suspension of Mr. Shinnick to last until the suspension in Minnesota expires, and that it be retroactive back to the date of the suspension order in Minnesota" (RR page 64, line 6-11)

The suspension order in Minnesota was filed on July 25, 1996, and by its own terms, expired on January 25, 1997, almost (3) three months prior to the appointment of the Referee in this Florida Bar proceeding.

The Florida Bar served its Petition for Review on August 28, 1998.

The Respondent has filed this, his Answer Brief in opposition to said Petition for Review.

STATEMENT OF FACTS

The Respondent does not contest the statement of facts as set forth in The Florida Bar's Initial Brief at page 4; except as controverted in the Respondent's Statement of the Case (infra) and the record references contained in this the Respondent's Answer Brief.

RESPONDENT'S SUMMARY OF ARGUMENT

The Respondent admits that he was disciplined as an Attorney at Law and member of the Minnesota Bar, by Order of the Supreme Court of Minnesota, filed July 25, 1996. The form of the discipline was a (6) six month suspension of the Respondent's privilege and license to practice law in the state of Minnesota.

The Respondent further admits that the Referee appointed by The Florida Bar, the Honorable Charles D. McClure, accepted the findings of the Supreme Court of Minnesota as the basis of the Respondent's misconduct for the purposes of the within Florida Bar proceeding.

The Referee recommended "... to the Supreme Court (of Florida) the suspension of Mr. Shinnick to last until the suspension in Minnesota expires, and that it be retroactive back to the date of the suspension order in Minnesota. (RR page 64, lines 8-11)

The Referee did not recommend that the Respondent be required to provide proof, to The Florida Bar, of his rehabilitation, nor otherwise be required to petition for reinstatement, as a prerequisite to, nor in conjunction with, the expiration of his suspension by The Florida Bar.

As a matter of law, The Florida Bar, pursuant to Rule 3-7.7(c)(5), has the burden to demonstrate that the report of the Referee (RR) "sought to be reviewed is erroneous,

unlawful or unjustified.” The Respondent submits that, the report of Referee (RR) is not erroneous, unlawful nor unjustified, as it simply adopted the findings of fact the penalty and the sanctions previously imposed by the Minnesota Supreme Court, said Referee further recommended that The Florida Bar suspension begin on July 26, 1996, the date of the Minnesota Order of Suspension, “nunc pro tunc.”

As such, the Respondent’s Florida Bar suspension already expired on January 26, 1997, approximately 14 months prior to the Final Hearing, before the Honorable Charles D. McClure, Referee.

It is the position of the Respondent that the Referee, by recommending a sanction which the Respondent had already satisfied; namely a previously expired (6) six month license and practice suspension, was not required to impose the additional sanction of the Respondent, filing a Petition for Reinstatement with accompanied proof of rehabilitation.

Had the Referee recommended more than a 90-day suspension, in addition to the Minnesota (6) six months suspension, or if the recommendation was not entered “nunc pro tunc,” where thereby the Florida suspension would not have expired prior to the recommendation, then the Referee would be required to recommend proof of rehabilitation, in conjunction with a Petition for Reinstatement. (Rule 3-5.1(e))

ARGUMENT

ISSUE I

THE DISCIPLINE RECOMMENDED BY THE REFEREE; WHICH DISCIPLINE HAD ALREADY BEEN SATISFIED BY THE RESPONDENT, PRIOR TO THE DATE OF SAID RECOMMENDATION; NEED NOT INCLUDE A PETITION FOR FORMAL REINSTATEMENT NOR PROOF OF REHABILITATION; AS A CONDITION TO SUCH REINSTATEMENT.

The Respondent would urge this Honorable Court, to accept the recommendation of its appointed Referee, Charles D. McClure, which recommended the acceptance of the findings of fact of the Minnesota Supreme Court and also the discipline imposed upon the Respondent by said Court; namely a (6) six months suspension from the privilege and practice of law, in the state of Minnesota.

Because the out of state discipline was already satisfied by this Respondent by the expiration of the (6) six months suspension in Minnesota, by the recommendation of this Court's Referee; it is the Respondent's position that said fact was also recognized by the Referee, when he recommended that the Respondent's Florida suspension only "... last until the suspension in Minnesota expires, and that it be retroactive back to the date of the suspension order in Minnesota." (RR page 64, lines 9-11)

As persuasive, but not controlling authority, the Respondent would seek to bring to this Honorable Court's attention the undisputed facts set forth in the transcript of the motion hearing before said Referee on September 08, 1997, to wit;

(Mr. Shinnick);

"I am also a member of the Bar of Washington, D.C. (and the United States Supreme Court), I am also a member of the Bar of Michigan and I am a member of the Bar of Florida." (MHTR page 6, lines 22-24)

"The Bar Association in Washington, D.C. chose to do nothing about this matter. The Bar Association in Michigan decided to go ahead and hold a hearing and they accepted what the Bar in Minnesota had done and entered an order of discipline for the exact same period of time which the Minnesota Bar had entered (in) their Order, which was a (6) six months suspension. (MHTR page 7, lines 3-9) (please see also, TR April 01, 1998, page 9, lines 9-24, for supportive authority)

The Michigan Bar's recommendation did not impose any additional penalties, nor conditions to reinstatement, such as providing proof of rehabilitation, which The Florida Bar is seeking to do, in the within case at bar.

The Respondent would cite the case of The Florida Bar v Sickmen, 523 So.2d 154, (Fla. 1988); which stands for the proposition that where a second jurisdiction imposed a more severe sanction for the same misconduct (than did The Florida Bar)

such action does not justify the placing of any greater burden on the petition than those already imposed by The Florida Bar. (Sickmen, Supra at page 155)

Although a reverse analogy, the Respondent would urge this Honorable Court to accept the disciplinary recommendation of It's appointed Referee "as is," without imposing a more severe burden than was imposed by the other secondary review jurisdictions, Michigan, to wit; which did not require proof of rehabilitation, especially in light of the decision of the Washington, D.C. Bar not to impose any additional, nor even the same discipline imposed by the primary jurisdiction where the misconduct occurred, namely the Minnesota Supreme Court's Order requiring a (6) six month suspension of the Respondent's privilege to practice law. (please see also; The Florida Bar v Susser, 639 So.2d 30, (Fla. 1994)

The Florida Bar, at page 8 of its Initial Brief, cites the case of In re: The Petition of William B. Dawson, 131 So.2d 472, (Fla. 1961), as holding "that unless the disciplinary order expressly requires a condition to reinstatement, no such requirement is authorized."

The Respondent would agree that such synopsis embodies the holding of this Honorable Court in Dawson and further would urge to emphasize, that the Referee, in the cause at bar, did not recommend any added conditions to the Respondent's reinstatement, other than the already expired Minnesota (6) six months suspension; by

his recommendation that the Florida suspension be applied retroactively to the date of the Minnesota Order. (RR page 64, lines 6-12)

The Respondent further urges this Honorable Court to hold the Petitioner to the burden of proof required by Rule 3-7.7(c)(5), namely, that this Petitioner, The Florida Bar, must “demonstrate that the report of the Referee sought to be reviewed is erroneous, unlawful, or unjustified.”

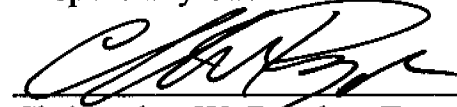
The Respondent, in conclusive summary, would state that there is nothing “erroneous, unlawful nor unjustified” in the Referee’s recommending a (6) six months suspension, retroactive to the Minnesota suspension period, based upon the same facts, since said suspension had already expired, and “a fortiori,” the Respondent had already satisfied said suspension. Accordingly, the Respondent respectfully submits that the Referee was fully within his discretion, not to recommend any further conditions to the Respondent’s reinstatement, other than the previously expired, secondarily based suspension.

The Respondent further submits that the within Referee, could well have recommended other conditions, including a petition for reinstatement and/or the requirement that he be reexamined by the Florida Board of Bar Examiners, (but under the facts of the cause, chose not to do so).

CONCLUSION

WHEREFORE, the Respondent prays that this Honorable Court deny The Florida Bar's Petition for Review, accept the recommendation of It's appointed Referee and not impose any further burdens or conditions upon this Respondent which was, not recommended by this Honorable Court's appointed Referee.

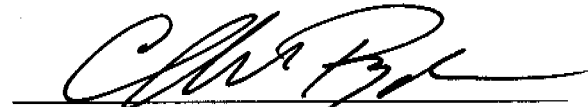
Respectfully Submitted



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Certification of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Answer Brief in Opposition to Petition for Review" was forwarded by Overnight Courier this 24th day of October, 1998 upon the following; The Florida Bar, Attn.: Olivia P. Klein, Esq., 650 Apalachee Parkway, Tallahassee, Florida 32399-2300.



Christopher W. Boyden, Esq.
Counsel for the Respondent