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11-23

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Plaintiff,

CASE NO: 92,892
[TFB Case No:98-31,911(07A) (OSC)]

vs.

PAUL J. DUBBELD,

Respondent.
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STATEMENT OF THE CASE

Petitioner, Florida Lawyers Assistance(hereinafter referred to FLA) and Respondent engaged in a contract for resolution of the instant cause on or about September 2, 1997. Said contract reflects inter alia, a stipulation that Respondent be placed on probation for a period of three (3) years and'counsel agreed to the terms contained in the contract as it pertains to alcoholism. The assigned referee John H. Skinner, Circuit Judge, Duval County filed his recommendation for acceptance of said contract and its terms on or about September 11, 1997 placing Respondent on probation with the terms of the aforenoted contract to be in full force and effect for said three (3) year period. Florida Bar filed its Petition for Rule to Show Cause and this court issued its order to Show Cause on or about May 8, 1998. Respondent timely filed its response to the same at some date after June 8, 1998. The certificate of service reflects service of June 8, 1998.

The Hearing ensued on or about August 5. 1998 and the Referee, Judge Skinner issued his order August 10, 1998. Respondent thereafter filled a Motion to Reconsideration on or about August 17, 1998 with the same being denied on that same date. Respondent thereafter filed his timely response to response to Report of Referee.

STATEMENT OF FACTS AND ARGUMENTS

It has been aforenoted that a hearing on the instant cause occurred before Honorable Judge Skinner on or about August 5, 1998 at 11:00 a.m. Respondent in Pro Se engaged in telephonic communication with Bar Counsel Jane K Wichorwski on or about July 27, 1998. A tentative stipulation was engaged between the respective parties; Ms. Wichorwski faxed on or about July 28, 1998 the essential agreement between the parties. A copy of said stipulation is attached hereto in composite as Respondent's A1-2. Accordingly, Respondent prepared a Motion for Continuance on or about July 27, 1998. A copy of said Motion is attached hereto and incorporated into by reference as Respondent's exhibit composite B-1-3.

Said Motion to Continue was not filed by Respondent's secretary of many years. Respondent's secretary had tended her resignation on Monday, August 3, 1998, yet however she had previously made hectic plans for a quick wedding to a minister with a notion that they would virtually immediately relocate to Minnesota. Said motion was not filed. Said secretary'c affidavit is attached hereto and incorporated hereto by reference a B-3. The stipulation engaged between the parties reflects under Paragraph 2-A-A that Respondent enter an approved rehabilitation center for 4 to 7 day evaluation purposes. Paragraph 2-B states that Respondent "enter any and all treatment programs recommended by the Florida Lawyers Assistance, Inc., as a result of the 4 to 7 day evaluation outlined above in (A)." Respondent's cause for concern was that he be allowed to secure a second opinion. Said request was due to some "horror stories" which has been communicated to Respondent over the years. No communication occurred between the Florida Bar and Respondent and as the Court hearing loomed Respondent made numerous phone calls to the Florida Bar to notify Ms. Wichorwski that he would accept the terms of the stipulation as it was established within the written stipulation proposed by the Florida Bar.

Respondent tried on numerous occasions to contact Ms. Wichorwski to no avail. Definite messages where left regarding Respondent's name and phone number and the content of the message. Specifically, Respondent repeatedly left messages Respondent was accepted the offer of stipulation.

Respondent had a pre-paid flight for August 5, 1998 to fly to Providence Rhode Island in order to meet his wife and 20 month old son. Respondent's wife had taken a temporary position of 3 months on Cape Cod Massachusetts. It was Respondent's understanding that the Motion for Continuance had been filed and further that he would be allowed to appear telephonically for purposes of the Motion to Continue if it be necessary to be argued. Instead, Judge Skinner's Judicial Assistant notified Respondent that he could not appear telephonically, and to Respondent's horror that Ms. Wichorwski intended to go forward with the hearing.

Rule *3-7.6* (1) provides that "All hearings at which testimony is presented shall be reported in a transcript of the testimony shall be filed in the cause." Respondent has not yet received a copy of any transcript of any testimony, which may have occurred during the brier hearing. However, Respondent called Judge Skinner's Judicial Assistant again at approximately 11:10 a.m. and was told that the hearing had been concluded leaving Respondent to believe that no testimony in fact was presented during the ten (10) minute hearing. Rather, it is apparent that the Referee findings were predicated upon the sole piece of possible evidence, that being an affidavit submitted by Karal B. Oberdier dated June 3, 1998.

Respondent has consistently maintained that he is in full compliance as required by the FLA. Garret Fox, Respondent's monitor has stated on numerous occasions, that in the event Respondent does not attended the number of required AA meeting per week then he need only be ready to assure and prove to Mr. Fox that he had attended sixteen (16) meetings for a month period. Thereafter, an addendum to Respondent's contract with FLA was engaged between the parties whereby Respondent would be required to attend 5 AA meetings each week for six (6) consecutive weeks. NO stated reason was given to Respondent as to why FLA chose to unilaterally modify the contract. Respondent did not question said action.

That Respondent did not attend any attorney support group meetings is consequential for two reasons: no attorney support group meetings are available within Volusia County whereby Respondent resides and secondly, Paragraph 8 on the

initial contract between FLA and Respondent states specifically that attendance should occur "if possible".

Respondent admits paragraph *6* of Oberdier's affidavit to the extent that, at a group meeting Respondent admitted to a weakened moment while returning from a business trip in that he had purchased a beer and started to drink it. The contente of the statement made **I** a group meeting that evening was that the Respondent thought out the insanity as it pertains to **his** personal life and his professional repercussions and disposed of what was essentially **a** full beer. The statement to the support group with Hearthstone was simply that **I** was proud of what **I** had done. Oberdier has cauced this **to** be distorted for purposes of prosecution on the instant cause.

Respondent is found to be at fault for having a "low creatine level". It is perplexing in that all parties wee notified that Respondent drinks bottle water both at his house and at his office in the amount of better than 10 to **12** glascec per day. Respondent will move to amend his record by providing to this Court his water bills fro Crystal Water, which serves both his house and his office. His office water is remote in fashion in that it is not available to clients. It is refreshing that Oberdier did note specifically in here affidavit that the lower creatine level could be from "simply drinking a lot of water." Respondent was unaware that this would effect any test results.

As to the drug screen being positive for alcohol on December *3*, **1997** Respondent immediately notified all parties that he had imbibed *3* to 4 O'Douls while returning on a business trip and within an approximate hour of submitting to said urine test. Dr. Thomas acknowledges that this was plausibly the reason for showing a positive alcohol residual; no blood alcohol level was tected for nor revealed to Respondent. A philosophical approach was discussed with Dr. Thomas, the FLA medical review officer in that he thought the Respondent was teasing himself. **I** acknowledged that if it would in any way interfere with the testing process that **I** would refrain imbibing what Respondent thought was a completely non-alcoholic beverage. Respondent was frankly shocked to find that there was alcohol is said beer in that is labeled a Non-alcoholic.

It is acknowledge that Respondent failed to appear for a March 4, 1998 drug screen. Attached hereto and incorporated hereinto by reference **is** Respondent's letter to FLA contact, Jennifer Kenney from Respondent designated as Respondent's composite C-1-5. It should be noted that Kenney had never spoken with Respondent regarding requirements to appear for random urinalysis test. Respondent's time as counsel is marked virtually minute by minute in said letter and all appearances by Respondent before all judges are well documented. It is not as if Respondent was out behaving in some irresponsible fashion. Respondent's secretary failed to notify Respondent because of the tremendous workload for those given days. Further Respondent took it upon himself to submit to a urinalysis test immediately upon hearing of the request the morning of March *6*, 1998, the next immediate time. The conversation with Kenney and Respondent occurred only when Respondent contacted Kenney to notify her of his pending vacation plans. However, the phone call was made from Bunnell, Flagler County, Florida and it would have been after business hours for the testing agency. Further, attached hereto and incorporated hereinto be reference a Appendix D1-3 is an affidavit by Respondent's secretary. Said motion displays the hectic schedule and further establishes that **a** message was left with Judge Hammond's Judicial Assistant, (Judge Kim Hammond, Circuit Judge in and for the Seventh Judicial Circuit). Respondent had not returned the call to his law office on March 4,1998 because Respondent never received the said message. Respondent's secretary was out with her doctor in the morning and Respondent's morning calendar is well documented. It was later determined the Judge Hammond's Judicial Assistant apologized to Ms. Arcuri for not telling Respondent that she had a message for Respondent to call the office. Surely if Respondent was attempting to duck submission on the date of the 4th it would be widely understood that the test could have been submitted to on the 5th and Respondent's body would have been alcohol free. However, as aforenoted Respondent was completely unaware that a request had been made and Respondent took affirmative steps to notify his secretary that she will notify Respondent even if she is to drive to any given location ***so*** the Respondent could timely report. No other failure to reports occurred.

As to Paragraph 11 of Oberdier's affidavit Respondent's secretary did subsequently notify Respondent that she told FLA that Respondent was in St. Petersburg on Thursday until Saturday April **11. 1998.** Respondent was traveling to St. Petersburg to retrieve his son and neglected to tell his secretary that plans had change in that Respondent's ex-wife had agreed to meet in Orlando to deliver Respondent's eleven (11) year old son. Respondent went to Orlando and, frankly, was not aware that he needed to notify the FLA every time he stepped foot outside of the county.

As to Paragraph **12** and **13** of the subject affidavit it is true that Craig Tedford of Hearthstone Foundation was recommending additional extension of **12** weeks for aftercare. Petitioner was well acquainted with Mr. Tedford's financial problems rather than focusing on rehabilitation for the Respondent. Respondent's exhibit **E** is attached hereto and incorporated hereto by reference. Specially said exhibit notes that Respondent spoke with John Lowe and he had no "position" as to whether or not an extension of after-care was required. The letter was not contradicted. Said exhibit notes how Mr. Tedford's telling my secretary to "start looking for another job'' because I had a positive test on a urinalysis. He breached the confidentiality and lost what was left of my professional trust with him. **I** specifically noted my concern for his "extended" aftercare program. Respondent's exhibit **F** is attached herein and incorporated hereinto by reference. Said letter dates September 25 1998 is uncontradicted by Oberdier in that I let her know that Tedford told me personally that **I** completed the program successfully. Tedford thereafter denied such conversation. The positive urinalysis is reflected as being a false positive in both letters contained in exhibit E and F. Exhibit F especially notes and is uncontradicted that there was an error on the part of the FLA people and had been so acknowledged. Respondent's letter to Oberdier dated March 24, **1998** is attached hereto and incorporated hereto by reference as exhibit **G-1-3.** Said letter reflects that John Lowe again stated that he had no position one way or the other as to whether or not any advance aftercare should be required. Said exhibit notes with specificity several, but yet not all of the request by Tedford of Respondent in the attorney posture. Further, regarding any innuendo that Respondent had failed to attend group meetings with Hearthstone it is noted that Respondent

did miss only one of said meetings and said action occurred because Respondent was in Federal Criminal Court on the case of United States v. Jodi Scheinter, case number 98-20 CCR-FMT-23 in Fort Meyers. Hearthstone had been notified well in advance that Respondent would unable to attend due to being out of town on a Federal felony case. It should be noted that Respondent had completed 21 weeks of 2 hours of group session and 1 hour o individual counseling each week. This is in addition to Respondent's attendance at AA meetings.

Respondent answers pertaining to Paragraph 16 of subject affidavit that Oberdier had requested on March 3, 1998 an evaluation which Respondent had undergone approximately one year previously. Oberdier was notified that the consultation results were in storage and would be retrieve that same at his earliest convenience. Oberdier does not allege that she gave any specific time frame for compliance and, in fact exhibit G-2 shows compliance by and through that letter dated March 24, 1998. Further, a copy of said document is self explanatory in that, as of December 20, 1996 as certified additional specialist decided not to request either individual or group counseling.

Respondent notified Oberdier of the name and phone number of his AA sponsor, Bill DeKnight. Mr. DeKnight and Tedford are inextricably intertwine as friends and participating members of AA. Affiant did not feel it was necessary to maintain contact with Mr. DeKnight on a close or intimate level in that Respondent saw Mr. DeKnight approximately 3 to 5 times a week at the AA meetings. It was certainly felt that this was sufficient contact in that it gave Mr. DeKnight an opportunity to view Respondent's demeanor, his conversational level, thought process and Respondent felt no need to view his sponsor as he views his priest. Respondent does now recognize that this, ~~may~~ have been error, however, Respondent does not feel that it is interfering in any fashion with his constant and on going rehabilitative efforts. It should be noted that Paragraph 5 *of* the contract requires only one (i) personal contact per month. Personal contact occurred before, during and after these meetings.

Respondent felt that it was Craig Tedford's financial woes which led him to recommend an additional twelve (12)

month outpatient treatment. Tedford wanted Two Hundred forty ($240.00) dollars for the service and Respondent felt that it was an unnecessary expenditure of funds. Oberdier in her affidavit insinuates that Respondent's attendance at Charter-By-The Sea as required. Attached hereto and incorporated hereto by reference as Respondent's exhibit I-1-2 is Oberdier's letter to Respondent dated March 3, 1998. The letter states specifically that:

"I am also attempting to find another facility I your area where we could refer you for another evaluation. Short of this I would recommend you evaluated by Cheryl Rayl, LMMC, MAC at Charter-By-The-Sea."

Respondent was unaware as to whether or not there was a special financial arrangement in view of the moneys paid by Respondent to FLA. Exhibit G-2 establishes that he was uncertain to whether or not FLA would be paying for the evaluation and specifically notes that it would be less expensive for me (Respondent) to remain with Tedford's group. A direct inquiry as to who will be responsible for this evaluation and posed and unanswered. Respondent had been evaluated on December 11, 1197 by Dr. Pennell in fulfillment of the subject contract. Dr. Pennell was recommended by FLA for evaluative purposes. The Minnesota Mutliphasic Personality Inventory (herein after referred to as MMPI) was given and a general evaluative session ensued. This session and test was paid for by Respondent and was undertaken as a result of the FLA contract. However, when Respondent arrived at Charter-By-The-Sea on March 30, 1998, Respondent requested *to* see his file; Respondent had assumed that Oberdier had cause to forward all pertinent documentation for this evaluation. Respondent was informed that they had no such file and wanted Respondent to yet again submit to the MMPI test. That the evaluation would cost Two Hundred ($200.00) dollars or more. Respondent was some what exasperated and expressed this to Ms. Rayl and inquired as to why an identical test must be resubmitted to in view of the fact that Respondent had taken the same test in an evaluative process on December 11, 1997 as aforenoted. Ms. Rayl's response was " I would prefer to work with my own numbers". There was to be a cost of urinalysis evaluation (which was redundant in that Respondent had just recently submitted pursuant to his obligation with the FLA program). Respondent's letter to Oberdier dated April 1, 1998 is

attached hereto an incorporated hereto by reference as J-1-2. Said letter reflects that Respondent did not want to pay the Two Hundred ($200.00) dollars when he could had remained in his hometown for a mere Two Hundred forty ($240.00) dollars. Said exhibit also reflects that Respondent was on the eve of a capital murder trial. Oberdier statec that two counselors smelled alcohol on my breath. I suggest that this smell was the Halls Metho-Lyptus Respondent was chewing on for his sore throat. It is noted that Ms. Rayl, the individual who had close and detailed contact with Respondent did not smell alcohol on the Respondent's breath. Simply put this is because no such smell was in existence. the refusal to submit to the drug screen as requested by Charter-By-The-Sea was not because Respondent had recently urinated and a sample could not be obtained at that time but rather, it was because Respondent assessed that he would not be utilizing the services of Charter-By-The-Sea for the requested amount and did not choose to submit to the requested sample.

Further communication occurred between Respondent, Oberdier, Angela Froelich, Legal Assistant, Lawyer Regulation, the Florida Bar, Garret Fox, monitor and Judy Rushlow, FLA. Respondent explained that as a result of Oberdier's letter that he felt that the additional evaluation by Charter-By-The-Sea subsequent to Dr. Pennell's was discretionary on Respondent's part. The aforenoted authorities stated that they required an evaluation. Accordingly, Respondent underwent an evaluation with Dr. Kenneth Thomas on or about May 21, 1998. Said evaluation cost Respondent Four Hundred ($400.00) dollars. Respondent did submit to an urinalysis and said urinalysis was clean. After a very general discussion Dr. Thomas recommended in-house 4 to 7 day evaluation for further assessment.

The Bar should have been precluded from going forward on August 5, 1998. Respondent attempted to contact Bar Counsel to notify her of his acceptance of the Bar's offer. Specific messages were left with counsel's office regarding his acceptance of the Bar's offer and Respondent was notified by some assistant at the Bar office that they would not accept a faxed copy of settlement offer resulting in a dismissal with prejudice. This offer was unequivocally accepted. Respondent seriously regrets not appearing in person at said hearing, however Respondent fully anticipated

that the hearing would be continued. Further, upon finding out from Judge Skinner's Judicial Assistant that the matter was still on the calendar for hearing purposes he moved ore tenus for a telephonic appearance. In Respondent's eighteen (18) years of practice he has never had this request denied by any Circuit or County Judge. Finally, it does appear that the circumstances would have specifically warranted this telephonic appearance. Respondent did notify the Judicial Assistant for Judge Skinner of the offer settlement by the Florida Bar and that Respondent had accepted the same.

Paragraph **15** of the Report of the Referee can not stand in that the FLA contract simply recommends attendance at a convention held between July **29** and July **31, 1998.**

Respondent is aware that he has no vested right to his license to practice law and it is a conditional privilege, which is revocable for cause. Rule **3-1.1.1** Rule Regulating the Florida Bar. Any judgment must be just not only **to** the public and designed to correct any "antisocial tendency" of any attorney and others who may intend to negate in said violation but it must also be fair to the attorney. State ex rel. Florida Bar v. Evans, **157, 94** So.2d **730.** Respondent understands there must be clear and convincing evidence necessary to sustain a Referee's finding of guilt. The Florida Bar v. Quick, **1973,** 279 So.2d **4.** The standard is more than the mere preponderance of evidence sufficient for any civil action and is not as difficult to past muster as any criminal prosecution, Quick, id.

Respondent understands that in this disciplinary proceedings, the Referee's findings should be affirmed unless determined to be erroneous or without support in the evidence. Florida Bar v. McKenzie, **1983, 142** So.2d **943.** In the instant cause of the Referee's findings are in fact and in law clearly erroneous for reasons as aforenoted. That Respondent has been alcohol free is one of the factors which the Referee should have considered in recommending an appropriate decision. Concomitantly the Florida Bar should have considered Respondent's well-established rehabilitative efforts which have been successful. The essence of the gravamen, as alleged **by** Florida Bar, stems from Respondent's refusal to pay Two Hundred ($200.00) dollars to a questionable enterprise which had recommended a baseless and

questionable form of extended treatment. It has been previously noted that Respondent had completed twenty-one (21) weeks worth of bi-weekly meetings with Hearthstone and that Respondent had a solid basis for questioning the extension *of* the aspect of this aftercare and the professionalism **of** Tedford and thereafter the proverbia1 snowball turned into an avalanche racing down the mountain at your Respondent. It should be relatively clear from the tenor *of* the attached exhibits that a degree of exasperation developed on the Respondent's end towards FLA.. Perhaps it is because Respondent was alcohol free much prior to the signing of the contract the FLA. Respondent's scheduled meeting with James Keeter, former attorney for the Florida Bar had not been scheduled for purposes of signing any contract with FLA. However, Keeter and Oberdier had presented a solution to the pending grievances and, because of Respondent's comfortableness with his sobriety felt as if he would have no difficulty with the contract. Respondent apparently misunderstood the unforgiving attitude of both the **FLA** and Florida Bar and turns to this Court for reasonable and just decision.

Respondent's reputation within the legal community and community as large is that he is an outstanding criminal trial lawyer. Respondent points out that no crimes of dishonesty have been lodged against him, as well as no crimes of violation of trust account, no perpetration of fraud and no allegations of performing while impaired or even showing up **at** court subsequent to imbibing any alcohol beverages. It is parenthetically noted that it has come to Respondent's attention that the Florida Bar investigator(s) **has** been inquiring during the pendency of the Respondent's probationary period as to whether or not he has, in facts showed up at court appearing or smelling as if he had been imbibing alcoholic beverages. Clearly this has not occurred in that, number one it has not occurred, and number two the Florida Bar has not brought this item to the court's attention.

The Florida bar has an obligation to conduct itself in good faith. This certainly would extend to the overseers of your Respondent in FLA. Because of the unquestionable and unconditional offer and acceptance of the stipulated settlement, which went ignored by the Florida Bar, the good faith of Bar counsel comes into play. **As** relegated to

contract law, the offer of settlement was extended and said offer was accepted without reservation and without modification by Respondent. Said acceptance **was** conveyed to agents of the Florida Bar and to the Referee by and through his Judicial Assistant. The subject hearing, simply put, should not have occurred.

It is maintained by Respondent that he is in full compliance with his contract with FLA and the Florida Bar. However, should this Court decide that Respondent is not in full compliance Respondent would respectfully request an imposition of less than the **91** day period. It has been more than six *(6)* years since Respondent's public reprimand and **as** such he is eligible for public reprimand for any de minimus infraction perceive by this Honorable Court. Further, the Respondent is eligible for a finding of minor misconduct under Rule 3.5-1 (b) **(i)**(c) Rules Regulating the Florida Bar. Of course, this Court could re-institute the subject contract and all its obligations coupled with any other modifications. The allegations, even taken as true should not result in the damning effect of a 91-day suspension. Unquestionably, Respondent has remained alcohol free. It seems excessive that Respondent loose all that which he has built regarding his practice in the past eighteen **(18)** years. It would create a financial burden which Respondent would find, most likely insurmountable. Certainly this Court has the full authority to craft a just resolution to the instant cause and Respondent turns to the Honorable Court for said resolution.

CONCLUSION

That there is no clear and convincing evidence that the Referee's finding of guilt and for reasons stated herein. In fairness to the public and in fairness to the Respondent it is respectfully requested that this Court order that the subject contract be re-instituted for reasons prayed for herein.

Respectfully submitted this 27th day of October, **1998**.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 27th day of October **1998** to the Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida **32399-2300** and the font is Courier New and the characterc are **12**.

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REQUEST FOR ORAL ARGUMENT

COMES NOW, Respondent, PAUL J. DUBBELD, in Pro Se and pursuant to Rule 3-7.7(c)(4) files this request for oral argument on the instant cause.

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