

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ROBERT PETER MCKEEVER, JR.,

Respondent.

Case No. 94,561

TFB File No. 99-00425-4A

REPLY BRIEF

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CERTIFICATE OF TYPE, SIZE AND STYLE

Undersigned counsel does hereby certify that the Initial Brief of Complainant is submitted in 12 point Courier New, a font that is not proportionately spaced.

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REBUTTAL TO ARGUMENT

Respondent argues that the instant recommendation by the Referee should stand since the Bar failed to meet its burden of proof showing the Referee's recommendation was clearly erroneous or lacking in evidentiary support. The Florida Bar v. Hooper, 507 So. 2d 1078 (Fla. 1987). This Court however, is not compelled to defer to a Referee's finding where there was no evidence before the Referee to support that finding. The Florida Bar v. Moran, 462 So. 2d 1089 (Fla. 1985).

Respondent was found guilty of five (5) felony convictions based upon his guilty pleas to the felony charges of aggravated child abuse. There is no dispute as to Respondent's guilt.

In his brief, Respondent has again seen fit to recount episodes involving his charges over a five (5) year period that he uses in an attempt to still justify his actions that he claims were a means of discipline. Respondent fails to provide a nexus between his actions in beating these boys to any one particular problem of their conduct. What Respondent fails to address, in his response, is the real reason for his brutality against these boys and that it was his attempt to show his estranged wife he was taking a proactive role in their discipline so she would reconcile their marital differences. (Respondent's Trial Brief, pgs. 7,8.)

Respondent's continuing reliance on the misbehavior of his charges as a reason or excuse for his committing criminal acts he admitted he knew were wrong, flies in the face of the Referee's finding of remorse.

While it may be true that a Referee occupies a favored vantage point to assess key considerations in making recommendations, there must be a basis for his findings and these must meet the same standard of proof as for Appellant. The Florida Bar re Inglis, 471 So. 2d 38 (Fla. 1985).

The Bar has shown that the reliance of the Referee on Respondent's mitigation was erroneous in his recommendation for discipline less than disbarment. Respondent begs that a lack of evidence was due to procedural problems prior to the hearing. This, in effect, admits there is no record upon which the Referee could base such findings as he did relating to Respondent's problems with alcohol, marital problems, and injuries.

Respondent argues that his military career is an adequate example of his character and should mitigate his exposure to disbarment. Respondent, at the final hearing, admitted that even in light of all his accomplishments in the military prior to his conviction, he would probably not receive a promotion for which he was being considered (TR 4).

As pointed out in its initial brief, the only two mitigating factors remaining, after the others cited by the Referee were

shown to be erroneous, were a lack of prior discipline and Respondent's character. These alone are not enough to overcome the presumption that disbarment is the appropriate discipline.

Respondent has failed to overcome the fact there was no testimony or independent evidence establishing a basis for the Referee to make factual findings of injuries, alcohol abuse, and marital problems as mitigating factors. The need for such evidence has been made a requirement for such findings and, in the absence of such, the findings must be viewed as erroneous. The Florida Bar v. Bobbeld, 594 So. 2d 735, 737 (Fla. 1992).

Respondent is clearly his own detractor in making an argument in support of the Referee's finding of remorse. It is easy to say I am sorry for what I have done but to show genuineness is the true test. As before the Referee, Respondent again argues justification for his actions based upon a five (5) year history of problems with his charges, argues statutory definitions of injury, talks of legal remedies for his acts as extortion, and justifies such "discipline" based upon approval polls of similar acts by a foreign government. Nowhere does he acknowledge any potential harm or a mistake in judgment.

This is an instant where the recommendation of the Referee and his findings were unsupported by competent, substantial evidence and as such should be overturned. Based upon

Respondent's five (5) felony convictions, the appropriate discipline should be disbarment.

CONCLUSION

The appropriate discipline for Respondent's felony convictions should be disbarment. The findings made by the Referee were unsupported by the record evidence before him and were erroneous. The Court should reject the recommendation for an indefinite suspension and disbar Respondent with an effective date of his felony suspension.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief regarding Supreme Court Case No. 94,561, TFB File No. 99-00425-4A has been mailed by regular U.S. mail to ROBERT PETER McKEEVER, JR., Respondent, at his record alternate address of DC# J07771/M1105, Okaloosa Work Camp, 3189 Little Silver Road, Crestview, Florida 32539-6708, on this 18th day of October, 1999.

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