IN THE SUPREME COURT OF FLORIDA

CASE NO. SC96,090
TFB NO. 99-10,015 (13F)

THE FLORIDA BAR

Appellee

v.

JOHN STANLEY MORSE

Appellant

INITIAL BRIEF OF APPELLANT

John S. Morse, Esquire
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Appellant
Florida Bar No. 120056

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Rule 3-7.7 Rules Regulating The Florida Bar. . 1

Rule 4-1.1 Rules Regulating The Florida Bar. . 2

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Rule 4.43 Florida Standards for Imposing Lawyer Sanctions. 6,10

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(_______________$__¥_[0](__yE___ STATEMENT OF JURISDICTION

The Supreme Court of Florida has jurisdiction to review the Report of Referee pursuant to Rule 3-7.7 of the Rules Regulating The Florida Bar.

II. STATEMENT OF THE CASE AND THE FACTS

This is a review of the Report of Referee dated May 11, 2000. The Florida Bar filed a formal complaint against the Appellant on July 21, 1999. Default was entered against the Appellant on November 4, 1999 and Motion to Set Aside Default was denied. Subsequently, a hearing was conducted on March 15, 2000 to determine appropriate sanctions.

The Complaint arose from the handling of matters relating to the Estate of Ms. Marguerite W. Sheffield. This claim was first brought to the Appellant by Mrs. Thelma L. Williams in December, 1997 after the death of Marguerite Sheffield. It included the processing of claims through the Federal Employees' Group Life Insurance Corporation and an annuity that was payable by the Office of Personnel Management. Mrs. Thelma L. Williams and her husband, James, were named beneficiaries for two-thirds of the Estate, and Mrs. T. W. Isbell was named beneficiary for one-third of the Estate. The Estate was closed out with entry of an Order on Summary Administration on May 8, 1999. Ultimately, distributions were made to the beneficiaries during the month of June, 1999.

The handling of this Estate by the Appellant resulted in findings of guilty against the Appellant for violating Rule 4-1.1 of the Rules Regulating The Florida Bar (a lawyer should provide competent representation to a client) and Rule 4-1.3 of the Rules Regulating The Florida Bar (a lawyer shall act with reasonable diligence and promptness in representing a client).

The Appellant is not seeking review of the findings of the Referee, but is seeking review of the recommendations as to appropriate sanctions to be applied. In that respect, those recommendations are that the Respondent's license to practice law be suspended for thirty (30) days after which he shall be automatically reinstated and the recommendation that the Respondent's Board Certification be withdrawn by The Florida Bar.

III. ISSUES ON APPEAL

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III A. The Referee failed to take into consideration mitigating factors presented at the hearing on March 15, 2000.

B. Aggravating circumstances should not have been considered by the Referee given the circumstances of this case.

C. Circumstances of this case do not warrant the sanctions recommended by the Referee.

IV. SUMMARY OF ARGUMENT

The case presented by The Florida Bar to the Referee for sanctions arose from a single complaint of misconduct. Throughout the proceedings, both before the Grievance Committee on April 13, 1999 and before the Referee on March 15, 2000, the Appellant admitted that actions could have been taken by him to accelerate the final distribution of the Estate to the beneficiaries. Testimony was taken and presented at the Grievance Committee on April 13, 1999 that the Appellant was waiting for approvals from government administrators in order to proceed with the summary administration of this small estate. In fact, once approval was provided, the time span for completing the Estate took from April 29, 1999 through final disbursement at the end of June, 1999. The Referee found in his report that there was three (3) factors in mitigation. Those factors included no prior disciplinary records; service to the Bar and the legal profession; and remorse. The record, however, also established absence of a dishonest or selfish motive, timely good faith effort to make restitution or to rectify consequences of misconduct and character or reputation.

Although the Referee found that substantial experience in the practice of law was an aggravating factor, the handling of this small estate was not within the substantial experience of the Appellant.

The recommended penalty, taking into consideration all factors, did not warrant sanctions recommended by the Referee. Under Florida Standards for Imposing Lawyer Sanctions, Rule 4.43, a public reprimand is appropriate when a lawyer is negligent and does not act within reasonable diligence in representing a client and causes potential injury to a client. Likewise, under Rule 4.52, a public reprimand is appropriate when a lawyer is negligent in determining whether the lawyer is competent to handle a legal matter and causes injury or potential injury to a client. The thirty (30) day suspension and withdrawal of certification were not appropriate.

V. ARGUMENT

IV A. The Referee failed to take into consideration mitigating factors presented at the hearing on March 15, 2000.

The Referee reported three (3) mitigating factors: no prior disciplinary records; service to the Bar and legal profession; and remorse. All three were presented at the hearing. In addition, it is clear from the facts of this case, the transcript of the hearing before the Grievance Committee and the transcript of the hearing on sanctions, that there was no dishonest or selfish motive.

In addition, evidence was presented that timely good-faith efforts were made to rectify the consequence of misconduct. As soon as the Appellant received approval to proceed with summary administration, he did so. The summary administration moved quickly from the date of filing to the

date of distribution of the beneficiaries' shares from the Estate. In fact, the petition was filed on April 29, 1999 and an order on summary administration was entered on May 8, 1999. Distributions were made as soon as they were received and the beneficiaries were sent their distributions on June 29, 1999. Likewise, it was uncontroverted that the beneficiaries received interest on distributions to which they were entitled.

The character and reputation of the Appellant was also presented at the hearing on March 15, 2000. Specifically, the Appellant presented evidence of the receipt of the Chair's Special Award of Merit received on March 20, 1999 from the Chair of the Family Law Section of The Florida Bar, as well as the Chair's Award of Merit that the Appellant received on June 18, 1998 from the Section's prior Chair. Also, the Appellant offered in evidence Awards of Merit that he received from the National Center for Missing and Exploited Children. Two awards were presented to him: the first on July 3, 1997; and the second on February 2, 1999. Both were recognition of his commitment to the protection of children under the Hague Convention.

In addition, evidence was presented at the hearing on his contribution to the Matrimonial and Family Law Certification Exam Review Course for the years 1998, 1999 and 2000 where he served as program chairman, his participation as editor of the Family Law Section column in *The Florida Bar Journal*, and his

service as editor for the Family Law Section *Commentator*. Additionally, evidence was presented of his contribution to the Hillsborough County Bar Association, Family Law Section, specifically, the codification of an administrative order on The Twelve Rules of Courtroom Civility, as well as his service on the Executive Council of the Family Law Section of the Hillsborough County Bar Association.

V. ARGUMENT

B. Aggravating circumstances should not have been considered by the Referee given the circumstances of this case.

The Referee listed as an aggravating circumstance, substantial experience in the practice of law. While it is true that the Appellant has been a member of The Florida Bar since 1969, matters relating to the probate of small estates are not within his recognized field of expertise, marital and family law. Evidence in that regard was presented that the Appellant sought and secured the advice of an attorney who routinely handles probate matters and followed the advice in order to proceed under rules relating to summary

administration of this small estate. The Appellant did not possess extraordinary experience in the handling of small estates, and made no such representations either to the beneficiaries or to attorneys involved in the disciplinary proceedings.

v. ARGUMENT

C. Circumstances of this case do not warrant the sanctions recommended by the Referee.

The Appellant in this cause of action has been a member of The Florida Bar since 1969 with no prior disciplinary record. This action is based upon the handling of a single matter and essentially deals with the delay in completing the summary administration of an estate. In accordance with the Florida Standards for Imposing Lawyer Sanctions, a public reprimand is the appropriate sanction when the lawyer is negligent and does not act within reasonable diligence in representing a client and causes injury or potential injury to a client. In this case there was no evidence of actual injury to the beneficiaries. Likewise, under Rule 4.52, a public reprimand is appropriate when a lawyer is negligent in determining whether the lawyer is competent in handling a legal matter and causes injury or potential injury to a client.

CONCLUSION

The sanctions recommended by the Referee are disproportionate to the claims of misconduct taking into consideration all the mitigating factors that were presented at the hearing on March 15, 2000. Specifically, the suspension for thirty (30) days and withdrawal of board certification should be reduced by this Court to a public reprimand. The Appellant does not seek review of the assessment of costs as stated in the Report of the Referee.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2000 the original Initial Brief has been furnished by Airborne Express to Thomas D. Hall, Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida, 32399-1925 and a true and correct copy has been furnished by U.S. Mail to Brett Alan Geer, Assistant Staff Counsel, The Florida Bar, Suite C-49, Tampa, Airport, Marriott Hotel, Tampa, FL 33607, and to John Anthony Boggs, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399.

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