

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Supreme Court Case
No. SC11-45

vs.

The Florida Bar File
No. 2010-70,301(11F)

DANIEL EDGAR TROPP,

Respondent.

_____ /

AMENDED REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred: On January 11, 2011, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. On July 21, 2011, a final hearing was held in this matter. All of the pleadings, notices and orders are forwarded with this report and the foregoing constitutes the record in this case.

The following attorneys appeared as counsel for the parties:

On behalf of The Florida Bar: Jennifer R. Falcone Moore
Bar Counsel
444 Brickell Avenue, Suite M-100
Miami, Florida 33131
Tel: (305) 377-4445

For The Respondent:

Daniel Edgar Tropp
5750 Collins s Avenue
No. 4A
Miami Beach, Florida 33140
Tel: (786) 306-1293

II. FINDINGS OF FACT:

A. Jurisdictional Statement:

The Respondent is and was at all times material herein, a member of The Florida Bar and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. Findings of Fact and Conclusions of Law:

In 2001, Respondent and his wife, Iris Toledano Egozi (“Egozi”), initiated divorce proceedings. Judge Leon M. Firtel presided over the proceedings and entered a Final Judgment of Divorce Order on or about September 22, 2002. Following the Divorce Order, Respondent and Egozi engaged in post-dissolution litigation concerning custody issues and Respondent’s support payments. During the relevant time period, Judge Firtel presided over the post-dissolution litigation. Respondent was represented by Richard Baron (“Baron”), and Egozi was represented by Deborah Chames (“Chames”).

On August 7, 2009, Respondent filed a motion to disqualify Judge Firtel, claiming he was biased. The motion was amended on August 13, 2009 and denied as

legally insufficient on August 21, 2009. Thereafter, on August 25, 2009, Respondent filed a third motion to disqualify. The third motion also alleged bias, and was denied on September 1, 2009. During this time period, Richard Baron filed a Notice of Limited Appearance and a Motion to Withdraw as to all issues except custody issues; however, the Court did not grant this motion and Richard Baron remained counsel of record in this matter. Irrespective of same, Respondent and Baron acted as co-counsel in the handling of post dissolution proceedings, and at all times material herein, Respondent was acting in his capacity as a lawyer as well as a party litigant.

On the same day that the third motion to disqualify Judge Firtel was denied, September 1, 2009, Respondent himself filed a Fourth Amended and Updated Verified Motion to Disqualify with Further Evidence Discovered on August 25, 2009 (“Fourth Motion”). On the same date, September 1, 2009, Judge Firtel issued an Order Granting Fourth Verified Motion to Disqualify. Although the Order states that the Fourth Motion is legally sufficient, it refers the matter to The Florida Bar. This Fourth Motion, and the allegations contained therein form the basis of the present disciplinary proceeding. Significantly, Richard Baron, counsel of record for Respondent, did not join in any of the four motions to disqualify Judge Firtel.

Respondent’s Fourth Motion was also predicated upon Judge Firtel’s prejudice. It alleged that Judge Firtel and Chames had improper ex parte discussions

about the amount of Respondent's support payments, outside of Respondent's presence, in August 2009. Specifically, the motion alleged:

Then Ms. Chames told me that the Judge had a discussion with *her* and that he 'showed *her* a piece of paper saying I will owe about \$1,500 a month.' I learned of Judge Firtel predisposition on amount 'he's going to order' on 8/25/200[9] which was said and done in his chambers outside of my presence and involving the financial issues herein sometime between 8/5/2009 to 8/23/2009.

(The Florida Bar Ex. 1, section I(a))(emphasis added). Significantly, and with reckless disregard for the truth, Respondent makes no mention of the fact that Mr. Richard Baron, Respondent's counsel of record, was present during this meeting. The evidence presented at the final hearing established that this in-chambers meeting took place during a recess of a hearing at which Respondent, Mr. Baron and Ms. Chames were all present. Judge Firtel summoned Ms. Chames and Mr. Baron into chambers, where discussion was had as to the child support guidelines, in addition to other matters. Mr. Baron was, therefore, present in chambers during this meeting, and Mr. Baron informed Respondent of same. The evidence further established that Ms. Chames had never met with, nor spoken to, the judge regarding substantive issues without either Mr. Baron and/or Respondent present.

Respondent's failure to state that Baron was present at this meeting constitutes a misrepresentation by omission, designed to mislead the court. There was no objectively reasonable basis for making the allegation of an ex parte meeting, because Respondent knew that Baron was present in chambers during the meeting. Thus, although Respondent's Fourth Motion was granted because it was, on its face, legally sufficient; it was, in fact, frivolous. Further, the fact that Respondent filed three earlier motions, also alleging prejudice, within the three weeks prior to the filing of the Fourth Motion, establishes a pattern and constitutes abuse of the legal process. Additionally, by asserting that Judge Firtel had engaged in an ex parte meeting, Respondent also wrongfully impugned the integrity of the court. Finally, Respondent knew that Judge Firtel would be unable to deny the allegations, or pass on the truth or falsity of same, but would be required to recuse himself based solely on the legal sufficiency of the allegation. The Fourth Motion was filed shortly before the date of the final hearing in the post dissolution proceedings, and following Judge Firtel's recusal, the matter then had to be reassigned. Thereafter, Respondent requested that the successor judge pass on the correctness of all of Judge Firtel's prior rulings. Thus, the proceedings in the family court, already long standing and contentious, were further frustrated and delayed.

III. RECOMMENDATION AS TO GUILT:

Based on the foregoing, I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rules 4-3.1 (Meritorious Claims and Contentions); 4-3.3(a) (Candor Toward the Tribunal); 4-8.2(a) (Impugning Qualifications and Integrity of Judges or Other Officers); 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice) of the Rules of Professional Conduct.

IV. CASE LAW:

I considered the following case law prior to recommending discipline:

In *The Florida Bar v. Ray*, 797 So.2d 556 (Fla. 2001), the Court held that making statements questioning a judge's veracity and integrity with reckless disregard as to the truth or falsity of such statements warrants a public reprimand.

In *The Florida Bar v. Clark*, 528 So.2d 369 (Fla. 1988), the Court held that making repeated and frivolous claims on appeal, and making unsubstantiated charges against judiciary warrants a public reprimand.

In *The Florida Bar v. Carter*, 410 So.2d 920 (Fla. 1982), the Court held that making statements derogatory to the trial judge in a motion to recuse warrants a public

reprimand.

In *The Florida Bar v. Weinberger*, 397 So.2d 661 (Fla. 1981), the Court held that making public statements denigrating the courts and the administration of justice, followed by apologies and other actions indicating remorse, warrants a public reprimand.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE

APPLIED: I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

- A. Public Reprimand.
- B. Respondent shall submit to any evaluation that Florida Lawyer's Assistance, Inc. (FLA) deems appropriate. Respondent shall enter into any rehabilitative contract deemed necessary by such evaluation.

Should a rehabilitative contract be recommended, Respondent shall be placed on probation for a period that is commensurate with the rehabilitative contract (but shall not exceed three years).

Respondent will contact Florida Lawyers Assistance, Inc. (FLA), at 800-282-8981 for an evaluation within thirty (30) days of the order of the Supreme Court of Florida. At the end of the sixty (60) day period, Respondent will provide the Bar's headquarters office with proof that Respondent has scheduled an evaluation. Respondent will abide by all recommendations made by FLA including, but not limited to, entering into a rehabilitation contract if recommended.

If a contract is recommended, Respondent will pay an FLA registration fee of \$250.00 and a probation monitoring fee of \$100.00 a month to The

Florida Bar's headquarters office. All monthly monitoring fees must be remitted no later than the end of each respective month in which the monitoring fee is due. All fees must be paid to the Bar's headquarters office in Tallahassee. Failure to pay shall be deemed cause to revoke probation.

- C. Payment of The Florida Bar's costs in these proceedings.

VI. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

Prior to recommending discipline pursuant to Rule 3-7.6(k)(l), I considered the following:

- A. Personal History of Respondent:

Age: 43

Date admitted to The Florida Bar: September 24, 1992

Prior Discipline: None

- B. Factors Considered in Aggravation:

None.

- C. Factors Considered in Mitigation:

9.32(a) – absence of a prior disciplinary record;

9.32(c) – personal or emotional problems;

VII. COSTS: I find that pursuant to Rule 3-7.6(q) of the Rules of Discipline, reasonable costs are to be awarded to The Florida Bar as the prevailing party in this disciplinary proceeding. The amount to be assessed against the Respondent shall be determined by the Referee following a further submission by The Florida Bar regarding its taxable costs.

It is recommended that the costs to be charged to Respondent shall accrue interest at the statutory rate and be payable beginning sixty (60) days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this _____ day of _____, 2011.

HONORABLE ANDREA R. WOLFSON
Referee

Copies to:

Jennifer R. Falcone Moore Bar Counsel
Daniel Edgar Tropp Respondent
Kenneth L. Marvin, Staff Counsel