

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. SC01-617

TFB No. 992083(06A) &

992128(06A)

vs.

ROBERT E. HUGHES, SR.,

Respondent.

_____ /

ANSWER BRIEF
OF
THE FLORIDA BAR

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SYMBOLS AND REFERENCES

In this Brief, The Florida Bar, Petitioner, will be referred to as “The Florida Bar” or “The Bar”. The Respondent, Robert E. Hughes, Sr., will be referred to as “Respondent”.

“TT” will refer to the transcript of the final hearing before the Referee in Supreme Court Case No. SC01-617 held on June 15, 2001.

The Referee’s report entitled Judgment of Guilty and Recommended Sentence dated October 18, 2001 will be referred to as “RR,” and is appended to this brief, marked “Appendix A.”

“TFB Exh.” will refer to exhibits presented by The Florida Bar and “R. Exh.” will refer to exhibits presented by the Respondent at the final hearing before the Referee in Supreme Court Case No. SC01-617.

“Rule” or “Rules” will refer to the Rules Regulating The Florida Bar.

STATEMENT OF THE FACTS AND OF THE CASE

Respondent did not submit a statement of the facts and of the case in his initial brief objecting to the Referee's finding of guilty. The Florida Bar accepts the Summary of Proceedings and Recital of Facts that are contained in the Referee's Judgment of Guilty and Recommended Sentence. The Judgment of Guilty and Recommended Sentence dated October 18, 2001 is appended to this brief, marked "Appendix A."

SUMMARY OF THE ARGUMENT

The Referee's finding of guilty in this case is amply supported by the record and should be presumed correct. Respondent fails to prove that the Referee's finding is erroneous or lacking in evidentiary support. In his report entitled Judgment of Guilty and Recommended Sentence, the Referee carefully reviewed all the pleadings, exhibits and testimony presented at trial, set forth the facts constituting contempt and ruled that Respondent was guilty beyond a reasonable doubt of indirect criminal contempt.

The Referee's ruling on Respondent's Motion to Continue should not be disturbed. The Referee denied Respondent's motion on the basis that Respondent had sufficient time to secure an attorney and he waited until the last minute to retain counsel. It is not an abuse of discretion for the Referee to deny a last minute motion for continuance.

All procedural due process safeguards were followed in this matter. Respondent was given notice of the charge, a reasonable opportunity to meet it by way of a defense or explanation and he was informed that an attorney would be provided for him if he could not afford an attorney. The Referee's finding of guilty should be approved by this Court and Respondent should be sentenced as recommended by the Referee.

ARGUMENT

ISSUE I: REFEREE’S FINDING THAT RESPONDENT IS GUILTY OF INDIRECT CRIMINAL CONTEMPT BEYOND A REASONABLE DOUBT IS SUPPORTED BY THE RECORD EVIDENCE AND MUST BE APPROVED.

A judgment of contempt comes to this Court clothed in a presumption of correction.¹ Furthermore, in an indirect criminal contempt proceeding, a Referee’s findings must be approved unless they are erroneous or wholly lacking in evidentiary support.² Respondent has the burden to demonstrate that there is no evidence in the record to support the Referee’s findings or that the record evidence clearly contradicts the Referee’s conclusions.³

In his objections to the Referee’s finding of guilty, Respondent argues that the Referee’s finding should be reversed because the Referee permitted the Bar to present testimony that was irrelevant to Count II of the Order to Show Cause to bolster their case against Respondent. Respondent further argues that the only witness for the Bar that did provide relevant testimony has a vendetta against him and therefore his testimony cannot be believed. Respondent then reasserts his

¹ *Krueger v. State*, 351 So. 2d 47, 49 (Fla. 3d DCA 1977).

² *Florida Bar v. Furman*, 451 So. 2d 808, 812 (Fla. 1984).

³ *See, Florida Bar v. Vining*, 721 So.2d 1164 (Fla. 1998)

defenses and expands upon the testimony that he presented at trial. Respondent's arguments fail to show that the Referee's findings are erroneous or lacking in evidentiary support. It is the duty of the Referee to determine the relevancy of the witnesses, weigh the credibility of their testimony and resolve any conflicts in the evidence.⁴ If the Referee's findings are supported by competent, substantial evidence, this Court is precluded from reweighing the evidence or substituting its judgment for that of the Referee.⁵

The Referee's finding of guilty in this case is amply supported by the record. The Referee carefully detailed all the evidence that was presented at trial in the recital of facts section of his report.⁶ As no testimony was presented as to Count I of the Order to Show Cause, the Referee only considered the evidence presented as it related to whether Respondent was guilty beyond a reasonable doubt of violating this Court's injunction as alleged in Count II of the Order to Show Cause. Based on the pleadings, exhibits and testimony of the witnesses, the Referee determined that the evidence presented at the trial proved beyond a reasonable doubt that Respondent was guilty of violating the injunction by: 1) counseling,

⁴ See, *Florida Bar v. Lipman*, 497 So. 2d 1165 (Fla. 1986).

⁵ See, *Florida Bar v. MacMillian*, 600 So. 2d 457 (Fla. 1992).

⁶ RR at 3-6.

advising and preparing documents for individuals in the creation and transfer of land trusts; 2) holding himself out as an expert in land trust agreements; 3) allowing individuals to rely on him to properly prepare legal documents that affect individuals important legal rights; and 4) using the designation of trustee as a means to practice law in Florida including buying, selling, managing, and conveying real property and representing individuals in legal matters when he is not licensed or otherwise authorized to do so.⁷ As the Referee's Judgment of Guilty and Recommended Sentence in this case is supported by competent, substantial evidence, it must be presumed correct.

⁷ RR at 3.

ISSUE II: THE DENIAL OF RESPONDENT’S MOTION TO CONTINUE ON THE EVE OF TRIAL WAS WITHIN THE SOUND DISCRETION OF THE REFEREE AND SHOULD NOT BE DISTURBED.

On April 18, 2001, Respondent was served with the Order to Show Cause commanding him to appear before the Referee on June 15, 2001 to show cause why he should not be held in indirect criminal contempt and punished accordingly. On June 13, 2001, Counsel for Respondent filed a Motion to Continue the trial on grounds that they were only retained by Respondent on June 12, 2001. The Referee denied Respondent’s Motion to Continue finding that Respondent waited until the last minute to retain counsel.⁸ The Referee stated that Respondent knew of his court hearing since April 18, 2001 and had sufficient time to secure an attorney and discuss the ramifications involved in this trial.⁹

It is within the sound discretion of the Referee, who has been assigned by this Court, to grant or deny a motion for continuance.¹⁰ And, such a ruling should not be disturbed absent a clear abuse of discretion.¹¹ This Court has previously determined that it is not an abuse of discretion for the Referee to deny an “eleventh

⁸ TT at 9.

⁹ *Id.*

¹⁰ *Lipman*, 497 So. 2d at 1167

¹¹ *Id.*

hour” request to continue the trial.¹² A motion to continue made two weeks before the trial was considered to be an eleventh hour request and the Referee’s denial of the motion for continuance was upheld.¹³ As Respondent’s Motion to Continue was filed only two days before trial, the Referee did not err in denying of Respondent’s Motion to Continue and the ruling should not be disturbed.

ISSUE III: THE REFEREE’S FINDING OF GUILTY DID NOT

¹² See, *Florida Bar v. Kandekore*, 766 So. 2d 1004 (Fla. 2000).

¹³ *Lipman*, 497 So. 2d at 1168

DEPRIVE RESPONDENT OF DUE PROCESS AND
SHOULD BE APPROVED.

In proceedings for indirect criminal contempt, due process of law requires that the accused be given notice of the charge and a reasonable opportunity to meet it by way of a defense or explanation.¹⁴ The absence of fair notice as to the reach of the procedure deprives the accused of due process.¹⁵ Rule 10-7.2 sets forth the procedural due process safeguards for indirect criminal contempt proceedings.¹⁶ All procedural due process safeguards required in Rule 10-7.2 were followed in this matter. Respondent was served with an Order to Show Cause on April 18, 2001 stating the essential allegations charged and requiring Respondent to appear before the Referee on June 15, 2001 to show cause why he should not be held in contempt of court. Respondent was given sufficient time after service of the Order to prepare a defense and he was informed in the Order that an attorney would be provided for him if he could not afford an attorney.

In Count II of the Order to Show Cause, Respondent was put on notice that he was being accused of drafting over twenty (20) land trusts for Keith Barbour

¹⁴ *State ex rel. Giblin v. Sullivan*, 157 Fla. 496, 511, 26 So. 2d 509, 518 (Fla. 1946).

¹⁵ *Florida Bar v. Vernell*, 721 So. 2d 705, 707 (Fla. 1998).

¹⁶ R. Regulating Fla. Bar 10-7.2.

and/or one of Mr. Barbour's companies, executing the trust documents, giving legal advice on land trusts, holding himself out as The Trust Law Center and as an expert on land trusts and allowing Mr. Barbour to rely on his legal advice concerning land trusts and on his ability to properly draft land trust documents. Respondent argues that his due process rights were denied because witnesses David Browder, Esquire, Benita Pagac, Kimberly Ann Behr, and Larry Bunting were not specifically named in Count II of the Order to Show Cause.

Respondent's argument is without merit.

Respondent was not denied procedural due process. The Referee only considered the testimony of the witnesses as it related to Count II of the Order to Show Cause. No additional charges were considered. Additionally, Rule 10-7.2 does not require that every witness be named specifically in the Order to Show Cause only that the Order state the essential allegations charged against Respondent. As Respondent was given notice of the charge and a reasonable opportunity to meet it by way of a defense or explanation, the Referee's finding of guilty should be approved.

CONCLUSION

The Referee's Judgment of Guilty and Recommended Sentence in this case is supported by competent, substantial evidence. It was not an abuse of discretion for the Referee to deny Respondent's last minute request to continue the trial. All procedural due process safeguards required in Rule 10-7.2 were followed in this matter. Respondent was given notice of the charge and a reasonable opportunity to meet it by way of a defense or explanation. The Referee's finding of guilty should be approved and Respondent should be sentenced as recommended.

Dated this _____ day of January, 2002.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of this brief have been provided by Airborne Express, Airbill Number 5061991071 to The Honorable Thomas D. Hall, Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, FL 32399-1927; a true and correct copy by regular U.S. Mail to Robert E. Hughes, Sr., Respondent, 1813 Carlton Drive, Clearwater, FL 33759; and a copy by regular U. S. mail to Lori S. Holcomb, UPL Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, on this ____ day of January, 2002.

Loretta Comiskey O’Keeffe
Branch UPL Counsel

CERTIFICATION OF FONT SIZE AND STYLE
CERTIFICATION OF VIRUS SCAN

Undersigned counsel does hereby certify that this brief is submitted in WordPerfect 14 point proportionally spaced Times New Roman font, and the computer disk filed with this brief has been scanned and found to be free of viruses, by Norton Antivirus for Windows.

Loretta Comiskey O’Keeffe