

**IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)**

**THE FLORIDA BAR,  
Complainant,**

**CASE NO: SC07-2003**

**v.**

**TFB No. 2006-11,304(6A)**

**JOHN K. RENKE, II,  
Respondent.**

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**AMENDED  
REPORT OF THE REFEREE**

**I. SUMMARY OF PROCEEDINGS:**

1. Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.6(a) of the Rules Regulating the Florida Bar, the Referee conducted hearings in this proceeding on June 9 through June 11, 2008; and October 16<sup>th</sup> 2008. The Referee entered a Recommendation as to Guilt on July 24<sup>th</sup>, 2008. Thereafter, the Referee conducted a hearing for the Recommendation as to Disciplinary Measures to be applied. The record in this case includes all of the pleadings filed with both the initial and amended report.
2. The following attorneys appeared as counsel for the parties:

For The Florida Bar: Charles Anthony Samarkos, Esquire  
Johnson, Pope, Bokor, Ruppel & Burns, LLP  
911 Chestnut Street  
Clearwater, Florida 33756-5643

Jodi A. Thompson, Esquire  
Assistant Staff Counsel  
The Florida Bar  
5521 West Spruce Street  
Tampa, Florida 33607-5958



denied Respondent's Motion for Summary Judgment on Count II in its entirety. The following material finding is reflected in paragraph (3):

John K. Renke, III, did perform some amount of work on the files that are the subject matter of this dispute. This finding, however, does not quantify the amount of work performed by John K. Renke, III.

7. On June 11, 2008, the Referee entered an Order Denying Respondent's Motion for Rehearing and/or Clarification, finding that the Referee may admit evidence derived from Judge John Renke III's case as relevant to resolving factual questions presented by The Florida Bar.

## **II. FINDINGS OF FACT RE: TFB No.: 2006-11,304(6A)**

In reaching the following findings of fact and conclusions of law, the Referee has afforded substantial weight to the testimony of Respondent in these proceedings and weighed it very carefully against the evidence adduced in the proceedings before the Judicial Qualifications Commission... The Referee has also considered Respondents defenses in determining the proper weight to be accorded the evidence. Respondent contends (a) that under section 106.011, Florida statute 2002, a payment to a candidate is a contribution only and solely if it is "made for the purpose of influencing the results of an election (2) that the contribution statute does not and cannot make a payment illegal just because the payee is a candidate for office (3) the only two parties to the contract, Respondent and Renke III are free to agree to pay for work performed whenever they want to and (4) the State cannot preclude two contracting parties from agreeing to payment at anytime they wish. Based upon the testimony of the witnesses and the exhibits of record, the following findings of fact and conclusions of law are made:

1. Respondent is, and at all times mentioned during this Investigation was, a member of The Florida Bar subject to the jurisdiction and Disciplinary Rules of the Supreme Court.
2. The Florida Bar instituted disciplinary proceedings against Respondent John Renke II, based upon findings of fact in the proceedings regarding the removal of John Renke III, Circuit Judge (“Renke III”) from the bench. The Judicial Qualifications Commission (“JQC”) found that Respondent made illegal campaign contributions to his son’s judicial campaign in 2002 and also made misrepresentations regarding same.
3. From 1995 to 2002, prior to becoming a judge Renke III was employed as an independent contract employee for Respondent. Respondent and Renke III had an oral employment agreement that initially provided for a weekly amount of pay, plus 20% of legal fees from larger cases that generated over \$10,000.00.
4. At some point, the parties changed their compensation agreement to provide for an increase in the percentage of Renke III’s recovery from firm cases that were settled. Throughout these proceedings, Renke II has offered inconsistent explanations for both the timing and purpose(s) behind the change in Renke III’s compensation package. The obviousness of Respondent’s inconsistent explanations on this issue are best demonstrated by the following excerpt from the testimony of Respondents witness J.R. Phelps:

Q Do you have a clear understanding of what their alleged agreement was regarding this splitting or sharing of fees in 2002?

A From the testimony, yes, sir.

Q What was that?

A It was that John Renke would be paid a minimal hourly rate and he would then receive 20 percent from cases that were settled. And at some point in time that arrangement changed to increase the amount of the percentage, whether it's 40, 45, 50. There was some dispute on that percentage base.

Q All right, so the, quote, compensation system that you're relying on is entirely unclear and up in the air based on Judge Renke's witnesses' own testimony?

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A Mr. Green, that does not change the fact that he could pay his son from his operating account at any time as any employer.

Q But you're saying that you're operating on the compensation system, which in turn depends on the alleged verbal agreement. Now, you say that --you say it was 20 percent and then it was raised to 50 percent. Is that your testimony?

A I said 40, 45, 50. There appeared to be - - from listening to the trial, there appeared to be some discussion on that point.

Q So we've got -

A **Mrs. Renke said one thing, Judge Renke said another, his father may have said something else.**

Q Isn't it true that the Renke family have come in here and contradicted themselves regarding what the terms of that fee-sharing arrangement were, did they not?

A It would appear.

Q Wouldn't I?

A I said it would appear that they contradicted themselves.

**Q** So we start out with 20 percent, then it becomes 40 percent. Now, the Senior Renke testified it was 45 percent, did he not?

**A** I won't dispute that.

**Q** All right. And then Mrs. Renke comes in here last night and says it's 50 percent and quibbles with me over whether she had said that five minutes before. Did you hear that?

**A** Yes, sir. (TFB Exhibit 31(f) Transcript of September 8, 2005 JQC proceedings, See pages 35, 36)

5. Renke III's tax records show that, between the years of 1995 and 2001, his net income ranged from \$10,941.00 to \$35,987.00, averaging approximately \$17,290.00 per year.
6. Respondent underpaid his son, John K. Renke III ("Renke III"), throughout his tenure as an independent contract employee for Respondent. Due in part to the underpayments, Renke III considered leaving his father's employment.
7. Renke III preformed substantial work on a series of cases Respondent's firm had litigated since 1995, known as the Driftwood cases. In March 2001, a written settlement was executed in the Driftwood cases. The settlement provided for payment of a specified amount of attorney fees with interest to Respondents firm. There were however several material terms in the settlement agreement to be resolved including the wording of the restrictive covenants, by-laws and articles of incorporation.
8. The Driftwood settlement documents unequivocally provided for the release of monies pursuant to contingencies that did not occur until 2003, several months after Renke III was elected to the bench in 2002.

9. When Renke III decided to run for office, between May 2002 and September 2002, Respondent advanced him a percentage of attorney fees that were owed but not due under the terms of the settlement agreement in the Driftwood case that had been pending for years. The advance of monies owed but not due was in effect a loan.
10. The Driftwood monies were advanced to Renke III by Respondent on a piece meal basis as needed for his campaign. Respondent was fully aware that all of the advances were being funneled into Renke III's judicial campaign.
11. Because the clear and convincing evidence, presented during these proceedings supports the factual findings set forth in pages 10-22 of the "Findings, Conclusions and Recommendations by the Hearing Panel of the Judicial Qualifications Commission" submitted in the Inquiry Concerning Judge John Renke III, those findings are adopted by reference and incorporated into this report. (Respondents Exhibit 48)

### **III. RECOMMENDATION AS TO GUILT**

1. The Referee recommends that the Respondent be found guilty of violating Rule 3-4.3 (the commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline); Rule 4-3.3 (a lawyer shall not knowingly (1) make a false statement of material fact or law to a tribunal or (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client), Rule 4-8.4(b) (a lawyer shall not commit a criminal act that reflects adversely

on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), and Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules regulating The Florida Bar.

2. The Referee finds The Florida Bar established by clear and convincing evidence that Respondent made illegal campaign contributions under Count I and has thereby violated Rule 3-4.3, Rule 4-8.4(b), and Rule 4-8.4(c) pursuant to section 106.08, Florida Statutes.
3. The Referee finds The Florida Bar established by clear and convincing evidence that Respondent made misrepresentations before the Judicial Qualifications Commission under Count II and has thereby violated Rule 3-4.3, Rule 4-3.3, and Rule 4-8.4(c).

Lastly, the Referee finds it necessary to comment upon the crux of Respondents defense(s): that he and Renke III are free to agree to pay for work performed whenever they want to. If the Referee and the Court were to accept Respondent's argument, then any private individual or organization could escape the restrictions of Chapter 106, Florida Statutes, by merely labeling donations as unspecified "earned income." The timing of Respondent's actions in this matter, as related to his son's judicial campaign, amounted to an illegal indirect contribution and a disregard of election rules designed to circumvent such conduct.

#### **IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS**

I considered the following Standards prior to recommending discipline:

7.2 Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.3 Public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

**V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED**

I recommend that the following disciplinary measures be imposed:

- A. The imposition of a public reprimand before the Board of Governors of The Florida Bar as provided in R. Regulating Fla. Bar 3-5.1(d).
- B. A sixty (60) day suspension with automatic reinstatement at the end of the period of suspension as provided in R. Regulating Fla. Bar 3-5.1(e).
- C. Payment of the Florida Bar's costs in these proceedings.

**VI. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS**

Prior to recommending discipline pursuant to Rule 3-7.6, I considered the following:

**A. Personal History of Respondent:**

- 1. Age: 62
- 2. Date admitted to the Florida Bar: May 15, 1980. Further, the Referee notes Respondent also practiced law outside of Florida, without incident, since 1971.
- 3. Prior Discipline: None

**B. Duties Violated:**

- 1. Respondent violated a duty to the public by improperly influencing the outcome of Renke III's judicial election through providing campaign

contributions disguised as undefined income. Respondent failed to follow proper election rules, thus causing injury to the integrity of the legal process.

2. Respondent violated a duty to the legal system by making misrepresentations before the Judicial Qualifications Commission.

**C. The existence of aggravating or mitigating circumstances:**

1. **Aggravators:** The Court finds the following reference aggravating factors:

- a. Throughout the proceedings, Respondent refused to acknowledge the wrongful nature of his conduct.
- b. Respondent has substantial experience in both the practice of law and the electoral processes. Although there must be consistency in the imposition of disciplinary sanctions for the same or similar offenses within the same jurisdiction, Respondent's prior experience with the electoral processes in contrast to Renke III's experience, dictates that a more stringent sanction be imposed.

2. **Mitigation:** The Court finds the following are mitigating factors:

- a. Respondent does not have a prior disciplinary record.
- b. Respondent's actions do not demonstrate dishonesty or a selfish motive. Rather, Respondent's actions appear to be derived from the dynamics of the father/son, employer/employee relationship between himself and Renke III. Though the relationships do not excuse

Respondent's behavior, the Referee finds the closeness of the relationship obstructed Respondent's capacity to provide the objective oversight required of both a lawyer and campaign manager during an election cycle.

- c. Respondent possesses an excellent reputation in the legal community.
- d. Respondent's misconduct neither involved the practice of law, nor demonstrates an actual breach of a professional responsibility to litigants or clients. *See The Florida Bar v. Corbin*, 540 So. 2d 105, 107 (Fla. 1989).
- e. The Florida Bar's reliance on *The Florida Bar v. Miller*, 863 So. 2d 231 (Fla. 2003) and related case law is unpersuasive because Respondent's conduct does not rise to the level of egregiousness demonstrated in *Miller*. Instead, the record establishes Respondent cursorily managed his son's campaign.
- f. Because of the closeness of the relationship, Respondent was indirectly punished throughout the proceedings and subsequent removal of Renke III from the judicial bench.

**VII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED**

I find the following costs were submitted to the Court in the form of an Affidavit by The Florida Bar and the Respondent has no objection to the assessment of these costs:

- I. Administrative costs pursuant to Rule 3-7.6(q)(1)(I).....\$1,250.00
- II. The Florida Bar Out of Pocket Expenses Staff level (Investigative Expense):...\$19.58

III. The Florida Bar Out of Pocket Expenses Referee Level:

Investigative Expense	\$107.15
Bar Counsel Expense	\$151.21
Court Reporter Expense	\$6,288.27
Florida Bar Out of Pocket	\$23.20
Johnson, Pope, Bokor, Ruppel & Burns, Out of Pocket	\$141.43
	<b>Total: \$7,980.84</b>

VIII. **Manner of Payment:**

It is recommended that such costs be charged to the Respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment has become final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 14 day of November, 2008.

/s/  
HON. MARVA L. CRENSHAW,  
Referee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been sent: by certified mail to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32301; by email to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, e-file@flcourts.org; and that copies were mailed by regular U.S. Mail to: Kenneth Marvin, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; Charles Anthony Samarkos, Esquire, Staff Counsel, The Florida Bar, 911 Chestnut Street, Clearwater, Florida 33756-5643; Jodi A. Thompson, Assistant Staff Counsel, The Florida Bar, 5521 W. Spruce Street, Suite C-49,

Tampa, FL 33607-5958 and John K. Renke, II, Esquire, Respondent, 7637 Little Road, New Port Richey, Florida 34654: this 14 day of November, 2008.

/s/  
**HON. MARVA L. CRENSHAW,**  
Referee