

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

Case No. SC08-2014

TFB File No. 2008-90,161(02S)

MARDI LEVEY COHEN

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings

The undersigned was appointed referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar. The following proceedings occurred:

On October 22, 2008, The Florida Bar filed its Complaint of Minor Misconduct against respondent as well as its Request for Admissions in these proceedings in which it alleged violations of Rules 4-8.4(c) and 4-8.4(e), Rules Regulating The Florida Bar. Respondent filed her initial answer to the Bar's complaint and her responses to the Bar's requests for admissions on November 11, 2008. Respondent was granted leave to amend her answers and to submit additional affirmative defenses, which were filed on February 5, 2009. Respondent filed a motion for summary

judgment on February 26, 2009 and an affidavit in support of same on March 24, 2009. The Bar filed a memorandum in opposition to respondent's motion for summary judgment on April 22, 2009. A hearing was held on respondent's motion for summary judgment on May 1, 2009 at which time respondent's motion for summary judgment was denied.

At the conclusion of the May 1, 2009 hearing, the court ordered the parties to mediation. Mediation was held before mediator Melvin Rubin on May 14, 2009. While the parties were unable to reach an agreed settlement at the mediation they were able to stipulate as to certain facts and issues in the case.

On May 18, 2009, a final hearing was held in this matter. All the pleadings, notices, responses and exhibits, which are forwarded to the Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys have appeared as counsel for the parties:

For The Florida Bar: Kathy J. Bible, Esq., Tallahassee, Florida

For the Respondent: Lewis J. Levey, Esq., Miami Beach, Florida

II. Findings of Fact

A. Jurisdictional Statement

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 of Florida.

B. Narrative Summary of Case

Respondent disseminated a law firm website that contained a picture of herself with her husband in business attire and also a picture of her husband (who is a sitting circuit judge) in his judicial robes. There was no identifying information under the pictures and respondent's husband's name did not appear on the website. Exhibit A to the Bar's complaint, which accurately depicts the pages of respondent's website in question, was proffered and entered into evidence as Bar's Exh. 1 in evidence. The Bar's Exhibits 2 and 3 were entered into evidence, consisting of respondent's letters to the Bar dated June 1, 2009 and June 9, 2008, respectively. These responses acknowledge that respondent's website was public and viewable on the worldwide web, but respondent did not pay Google or any other search engine to actively advertise her website.

Respondent's affidavit and attached exhibits, dated March 24, 2009, was also entered into evidence as Respondent's Exhibit 1 in evidence. As noted in respondent's affidavit, none of her clients or prospective clients complained of her

website or of her conduct and she immediately took down the picture of her husband that was the impetus for the Bar's complaint and has been cooperative with bar counsel. Respondent's affidavit and attached exhibits also presented evidence that the complaint against respondent was politically motivated. The parties proffered legal arguments as argued to the court at hearing on respondent's motion for summary judgment.

C. Findings of Fact

The court finds that the respondent disseminated a website, set forth in Bar's Exhibit 1 in evidence, which included pictures of respondent with her husband in a family photo and also a picture of her husband (a Florida circuit judge) in his judicial robes. There was no name or other identifying information under the pictures on the website other than the name of respondent's law firm at the top of the page of the website. Respondent's website was published on the worldwide web, but she did not pay a search engine to display it at the top of the page in a key word search or otherwise make the website prominent to anyone searching for a criminal defense attorney (respondent's area of practice) in Florida.

The complaint made to the bar regarding the website was an anonymous complaint, which the court understands is allowable pursuant to Rule 3-7.3(c), Rules Regulating The Florida Bar. The court is further cognizant of the Bar's concerns that

the images on the website were susceptible to varying interpretations which raised a fact issue for this court under the rule violations alleged. Nevertheless, the court finds it a matter of concern that there is evidence indicating that the complaint against respondent was motivated by political considerations of persons not party to this proceeding. The court finds it noteworthy that there is no evidence of anyone actually being misled by the website advertisement; in particular, no clients of respondent claim to have been misled or improperly influenced by the picture of respondent's husband on her website. Furthermore, respondent acted very quickly to remove the information from her website that was alleged to be noncompliant with Bar rules as soon as she was notified by the bar that it was a problem and has been cooperative with bar counsel.

III. Recommendations as to Guilt

Pursuant to Rule 3-5.3(h)(2), the undersigned has determined that the conduct committed by the respondent is not more serious than minor misconduct and, given all the facts and circumstances set forth above, warrants a recommendation of diversion as set forth in paragraph IV below. Therefore, pursuant to Rule 3-5.3(h)(2) this court recommends that respondent be ordered to a diversion program, specifically the Bar's Advertising Workshop and that a finding as to guilt be withheld.

IV. Recommendation as to Disciplinary Measures to be Applied

This court recommends that a finding as to guilt be withheld and respondent be directed to complete a diversion to a practice and professionalism program, specifically the Bar's Advertising Workshop. In addition, this court recommends that respondent complete and pay for all costs associated with the advertising workshop and that she pay the Bar's administrative costs of these proceedings in the amount of \$1,250.00.

V. Personal History and Past Disciplinary Record of Respondent, Aggravating and Mitigating Factors

Prior to recommending diversion pursuant to Rule 3-5.3(h)(2), I considered the following:

A. Personal History of Respondent

Age: 48

Date admitted to bar: September 4, 1987

B. Standards for Imposing Lawyer Sanctions

In making my recommendation for diversion I considered Section 13.1(f) and (h), Florida Standards for Imposing Sanctions, evidence presented by the parties regarding the rules allegedly violated by respondent, defenses of respondent, and the following factors.

C. Aggravating Factors

The following sections of the Florida Standards for Imposing Sanctions are applicable: 9.22(i) substantial experience in the practice of law.

D. Mitigating Factors

The following sections of the Florida Standards for Imposing Sanctions are applicable:

- 9.32(a) absence of a prior disciplinary record;
- 9.32(e) cooperative attitude toward proceedings;
- 9.32(l) remorse of respondent and immediate mitigating action to correct the advertisement.

VI. Statement of Costs and Manner in which Costs Should be Taxed:

I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs	\$ 1,250.00
Advertising Workshop	750.00
TOTAL	\$2,000.00

It is hereby recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, respondent shall be deemed delinquent and ineligible to practice law, pursuant to Rule Regulating The Florida Bar 1-3.6, unless otherwise deferred by the Board of the Governors of The Florida Bar.

Dated this _____ day of _____, 2009.

The Honorable Donald W. Hafele, Referee
Main Judicial Complex
205 North Dixie Hwy. Room 11.1204
West Palm Beach, FL 33401

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

Kathy J. Bible, Bar Counsel, 651 E. Jefferson St., Tallahassee, FL 32399-2300

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Lewis J. Levey, Respondent's Counsel, 1688 Meridian Avenue, Suite 902, Miami Beach, Florida 33139-2712.