

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC08-2050
SC08-838

v.

TFB File No. 2007-51,592(15A)
2008-00,184(2B)NFC

JOSEPH SAILOR GARWOOD,

Respondent.

_____ /

REPORT OF THE 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 March 5, 2008, The Florida Bar filed its Amended Notice of Determination of Guilt against Respondent. On or about May 20, 2008, Respondent filed a motion to waive the 90 day time frame to conduct a final hearing. On or about August 27, 2008, the parties filed an Agreed Motion to Continue Hearing and Abate Action Pending Disposition of Appeal in Underlying Case. An order granting the motion was signed

on the same day. On February 5, 2010, a final sanction hearing was held in this matter.

All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of 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.

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Respondent was arrested on June 26, 2005, and charged with one count each of aggravated assault with a deadly weapon in violation of F.S. 784.0211(A), battery in violation of F.S. 784.031(A)(1) and resisting an officer without violence in violation of F.S. 843.02. On March 8, 2006, Respondent entered into a deferred prosecution agreement with the State Attorney. On October 16, 2007, after violating the provisions of the deferred prosecution agreement, Respondent was charged by information of the above listed offenses. On December 5, 2007, Respondent was tried and found guilty by a jury of aggravated assault with a deadly weapon, a third-degree felony, battery, and resisting an officer without violence, and sentenced to 24 months probation with adjudication withheld.

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Respondent represented his wife, Karissa Smith, in certain post dissolution and child custody issues in the case, George Vazquez v. Karissa Smith, Case No. 00-4276, in Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida. On or about November 28, 2006, the presiding judge entered an Order disqualifying Respondent as counsel for Karissa Smith. In contravention of the order, Respondent continued to represent Ms. Smith. In March 2007, Respondent sent an email to opposing counsel, Erika Deutsch Rotbart, wherein he stated, "I will not be very nice unless you change your EVIL ways and instruct your client that he needs to change his EVIL ways." He also sent letters and emails to opposing counsel asserting his intention to appear at the court ordered mediation on Ms. Smith's behalf. On or about April 25, 2007, Respondent appeared at Ms. Rotbart's office in an attempt to represent Ms. Smith at mediation. During this visit, Respondent became angry and admitted to "throwing coffee against the wall and slamming his briefcase down". The Sheriff's Office was called to investigate Respondent's actions.

Ms. Rotbart filed a complaint with The Florida Bar in May 2007. Respondent continued his tirade against her. In his response to the Bar he stated that she is evil and "sounds like a Nazi bitch to me". On the copy of his Bar response provided to Ms. Rotbart he further wrote "rot in hell" and "you are scum".

Respondent has continued to harass Ms. Rotbart throughout the disciplinary process. On October 31, 2007, in an email to opposing counsel, Respondent wrote, “You’re pure evil!...I wonder if your malpractice insurance will cover the judgment? What do you suppose a jury will say when your evil actions resulted in a divorce and the killing of the unborn? How do you live with yourself?”

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating Rule 3-4.2 (Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline); 3-4.3 (The commission by a lawyer of an 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); 3-4.4 (Criminal Misconduct); 4-3.4(c) (A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists); 4-8.4(a) (A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); 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 an a

lawyer in other respects) 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 Regulating The Florida Bar.

IV. 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. Disbarment nunc pro tunc to his suspension date of June 5, 2008.
- B. Payment of The Florida Bar's costs in these proceedings.

V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1), I considered the following:

A. Personal History of Respondent:

Age: 42

Date admitted to the Bar: November 1, 1991

B. Aggravating Factors:

- 9.22 (c) a pattern of misconduct
- (d) multiple offenses

C. Mitigating Factors:

Respondent offered no mitigating circumstances. Respondent failed to appear for the final sanction hearing.

Prior Discipline: None.

In making my recommendation, I considered the following case law:

The Florida Bar v. Kandekore, 766 So. 2d 1004 (Fla. 2000), the Supreme Court held that disbarment was warranted for attorney's New York conviction of assault of a law enforcement officer, which resulted in a felony conviction.

The Florida Bar v. McKeever, 766 So.2d 992 (Fla. 2000), the lawyer was found guilty of five counts of aggravated child abuse involving three boys. The Supreme Court reversed a Referee's recommendation of an indefinite suspension and ordered McKeever disbarred. Even in light of a finding of mitigation factors of no prior discipline, absence of a selfish motive, personal problems, good character, interim rehabilitation, imposition of other penalties and remorse, the Court held that such conduct is completely contrary to the oath every attorney takes to abstain from offensive personality. The Court also re-emphasized that where one is convicted of a felony, the burden is on the attorney to overcome the presumption of disbarment.

The Florida Bar v. Grief, 701 So.2d 555 (Fla. 1997), disbarment was the appropriate penalty for engaging in felony activity of conspiring to defraud the government. In rejecting a recommendation of a three-year suspension, the Court found mitigation of full and free disclosure, a good reputation, and acceptance of

responsibility would justify making the disbarment order *nunc pro tunc* to date of temporary suspension.

I further considered the following Florida Standards for Imposing Lawyer Sanctions Standard 5.11(a) which states that disbarment is appropriate when a lawyer is convicted of a felony under applicable law.

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
Court Reporter's Fees	75.00
Investigative Costs	250.00
TOTAL	\$ 1,575.00

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this _____ day of _____, 20____.

Honorable Kenneth Norris Scaff, Jr., Referee
207 N.E. 1st Street
Room 103
Jasper, FL 32052

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; JAMES N. WATSON, JR., Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and JOSEPH SAILOR GARWOOD, Respondent, at his record Bar address of c/o Richard A. Greenberg, 215 South Monroe Street, Suite 130, Tallahassee, FL 32301, on this _____ day of _____, 20_____.

Honorable Kenneth Norris Scaff, Jr., Referee