

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

CASE NO. SC08-2214
TFB NO. 2009-10,472(12B)

Complainant,

v.

PHILIP FRANK FILOSA,

Respondent.

_____ /

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar. Any pleadings, notices, motions, orders, transcripts, and exhibits are forwarded to The Supreme Court of Florida with this report and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Susan Varner Bloemendaal

For The Respondent: *pro se*

II. Findings of Fact as to Each Item of Misconduct With Which the Respondent Is Charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented on below, I find:

The Bar's Complaint was filed on November 19, 2008, and the parties have entered into a Conditional Guilty Plea for Consent Judgment in this case. Disciplinary proceedings brought by the Board of Bar Overseers of the Supreme Judicial Court for the Commonwealth of Massachusetts resulting in a public reprimand in that jurisdiction formed the basis for the Florida Bar proceeding pursuant to Rule 3-4.6(a). Respondent and Massachusetts Bar Counsel submitted an Answer to Petition for Discipline and Stipulation of the Parties,

attached as Exhibit A to the Conditional Guilty Plea for Consent Judgment in this case. On October 10, 2008, Respondent received a public reprimand in Massachusetts. Respondent was found to have violated Massachusetts Rules of Professional Conduct 1.8(c), by preparing an instrument under which Respondent received a substantial bequest from a person to whom Respondent was not related.

On November 20, 2008, Respondent was publicly censured by the Supreme Court of Rhode Island, pursuant to a petition for imposition of reciprocal discipline based on the Massachusetts public reprimand. A copy of the Rhode Island Order is attached to the Consent Judgment in this case as Exhibit B.

III. Recommendations as to Whether or Not the Respondent should Be Found Guilty:

This court recommends that Respondent be found guilty of violating Rule 4-1.8(c), Rules Regulating The Florida Bar, pursuant to the Conditional Guilty Plea for Consent Judgment. This rule is the Florida counterpart to Massachusetts Rule 1.8(c), and Rhode Island Rule 1.8(c).

IV. Recommendation as to Disciplinary Measures to Be Applied:

Suspension for ninety (90) days.

Before recommending approval of the agreed disposition, this court considered the following Florida case: The Florida Bar v. Anderson, 638 So. 2d 29 (Fla. 1994), wherein the Florida Supreme Court ordered a ninety-day suspension for drafting various testamentary instruments for a client that named the attorney as a beneficiary).

V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(m)(1), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Year of Birth: 1948
Date Admitted to Bar: 1992
Prior Disciplinary convictions and Disciplinary
Measures Imposed Therein: None

The referee notes that the Respondent is not certified in any area of practice.

Aggravating Factors: Florida Standard 9.22(i) substantial experience in the practice of law.

Mitigating Factors: Florida Standard 9.32(a) absence of a prior disciplinary record; and (e) full and free disclosure to disciplinary board and cooperative attitude toward proceedings.

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 pursuant to Rule 3-7.6(q)(1)(I)	\$1,250.00
Florida Bar Counsel Expenses	52.50
TOTAL ITEMIZED COSTS	<u>\$1,302.50</u>

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses, together with the foregoing itemized costs, be charged to the respondent and that interest at the statutory rate shall accrue and be payable beginning 30 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 _____, 2009.

Honorable Marc B. Gilner, Referee

Copies:

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