

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC09-1041

[TFB Case No. 2009-31,522(18A)(CFC)]

v.

MADONNA H. WHITTAKER,

Respondent.

_____ /

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

- I. Summary of Proceedings: The undersigned was appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar. The Pleadings, Notices, Motions, Orders, and Exhibits, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - JoAnn Marie Stalcup

For The Respondent – *Pro Se*

- II. Findings of Fact as to Each Item of Misconduct of which the Respondent Is Charged: After considering all the pleadings and evidence, pertinent portions of which are commented on below, this referee finds pursuant to the Conditional Guilty Plea for Consent Judgment that the facts of the Consent Judgment are admitted. The Conditional Guilty Plea for Consent Judgment is attached hereto and incorporated herein.
- III. Recommendations as to Whether the Respondent Should Be Found Guilty: As to each count of the complaint this referee makes the following recommendations as to guilt or innocence: Pursuant to the Conditional Guilty Plea for Consent Judgment, this referee finds the respondent guilty as admitted in the Conditional Guilty Plea for Consent Judgment.

IV. Recommendation as to Disciplinary Measures to Be Applied: Pursuant to the Conditional Guilty Plea for Consent Judgment, this referee makes the following recommendations as to the disciplinary measures to be applied:

- A. Permanent disbarment;
- B. Payment of disciplinary costs noted below.

In recommending the above disciplinary measures, this referee considered the following:

The respondent entered a plea of nolo contendere to Attempted First Degree Premeditated Murder (Reclassified). Rule 3-5.1(f) permits the permanent disbarment of an attorney.

Florida Standards for Imposing Lawyer Sanctions:

5.1 Failure to Maintain Personal Integrity

5.11 Disbarment is appropriate when:

- (a) a lawyer is convicted of a felony under applicable law; and
- (e) a lawyer attempts to commit the intentional killing of another.

9.22 Aggravating Factors

- (a) prior disciplinary offenses;
- (h) vulnerability of the victim; and
- (i) substantial experience in the practice of law.

9.32 Mitigating Factors

- (h) physical or mental disability or impairment.

Case Law:

1. The Florida Bar v. Kandekore, 729 So.2d 395 (Fla. 1999), respondent was emergency suspended in Florida due to misconduct in New York where he was charged with assaulting a police officer. Thereafter, in The Florida Bar v. Kandekore, 766 So.2d 1004 (Fla. 2000), respondent was disbarred due his conviction for the assault on the officer. Afterwards, in The Florida Bar v. Kandekore, 868 So.2d 525 (Fla. 2003), respondent was permanently disbarred for continuing to engage in the practice of law after being disbarred.

2. The Florida Bar v. de la Puente, 658 So.2d 65 (Fla. 1995) respondent was disbarred for the enhanced period of 10 years for engaging in forgery, misusing client funds, misrepresenting information to the court in a probate proceeding, and fabricating evidence in the bar proceeding.

3. The Florida Bar v. Lechtner, 666 So.2d 892 (Fla. 1996), respondent was disbarred for the enhanced period of 10 years after he was convicted of six counts which involved racketeering, bribery, and mail fraud.

4. The Florida Bar v. McKeever, 766 So.2d 992 (Fla. 2000), respondent was disbarred after pleading guilty to five counts of aggravated child abuse.

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

Age: 48

Date admitted to bar: December 9, 1993

Prior disciplinary convictions and disciplinary measures imposed therein:

1. In Supreme Court Case No. SC04-2281, respondent received a 91 day suspension for knowingly disobeying an obligation under the rules of the tribunal, for engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice, and for failing to respond to the bar's inquiry into her conduct.

VI. Statement of Costs and Manner in which Costs Should Be Taxed: This referee finds the following costs were reasonably incurred by The Florida Bar.

A.	Administrative Costs	\$1,250.00
B.	Miscellaneous Costs	
	1. Investigator Expenses	<u>\$ 230.90</u>

TOTAL ITEMIZED COSTS: \$1,480.90

It is recommended that 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. It is further recommended that respondent shall be deemed delinquent and ineligible to practice law pursuant to R. Regulating Fla. Bar 1-3.6 for failure to timely pay the costs assessed in this proceeding.

Dated this _____ day of _____, 2009.

PAUL B. KANAREK
Referee

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

JoAnn Marie Stalcup, Bar Counsel, The Florida Bar, 1200 Edgewater Drive,
Orlando, Florida 32804-6314

Madonna H. Whittaker, DC#E37845, Lowell Correctional Institution, 11120 NW
Gainesville Road, Ocala, Florida 34482-1479 and Gadsden Correctional
Institution, 6044 Greensboro Highway, Quincy, Florida 32351

Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 East Jefferson
Street, Tallahassee, Florida 32399-2300

this _____ day of _____, 2009.

Judicial Assistant/Deputy Clerk