

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
JOHN A. TOMASINO
AUG 22 2014
CLERK, SUPREME COURT
BY _____

THE FLORIDA BAR,

Complainant,

v.

ERIC R. HURST,

Respondent.

Supreme Court Case
No. SC14-946

The Florida Bar File
No. 2013-00,889 (2B) NFC

REPORT OF 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 May 15, 2014, The Florida Bar filed its Notice of Determination of Guilt against Respondent in these proceedings. On July 29, 2014, a final sanction hearing was held in this matter. Bar Counsel, Allison Carden Sackett appeared on behalf of the Bar and Respondent, Eric R. Hurst, appeared pro se. 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

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.

Narrative Summary Of Case. On or about April 13, 2013, respondent was arrested and charged with 2 felony counts: 1 count of obscene communication use of computer to seduce, solicit a minor, a 3rd degree felony, in violation of F.S.S. § 847.0135(3)(a), and 1 count of traveling to meet a minor, a 2nd degree felony, in violation of F.S.S. § 847.0135(4)(a). On May 8, 2014, respondent pled *nolo contendere* to the above charges and was sentenced on May 19, 2014, to incarceration in the Department of Corrections for 60 months on count 1 and 8 years on count 2, both sentences to run concurrently. Further, upon release, respondent will serve 7 years on sex offender probation with special conditions.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rule 4-8.4(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyers' honesty, trustworthiness or fitness as a lawyer in other respects) of the Rules Regulating The Florida Bar.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

5.11(a) Disbarment is appropriate when a lawyer is convicted of a felony under applicable law.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Liberman, 43 So. 3d 36 (Fla. 2010), attorney disbarred after conviction of one felony count of illegal drug trafficking. The Court stated that only disbarment could measure up to the gravity of conviction and serve as a sufficient deterrent for others who might be tempted to engage in similar illegal activity. The Court found that disbarment was the appropriate sanction despite the presence of substantial mitigation.

The Florida Bar v. Cohen, 908 So. 2d 405 (Fla. 2005), when an attorney has been convicted of a felony, the presumptive discipline is disbarment.

The Florida Bar v. McKeever, 766 So.2d 992 (Fla. 2000), after attorney has been convicted of a felony, burden is on attorney to overcome presumption of disbarment. McKeever provided significant mitigating factors, including good character and reputation which was substantiated by an extensive heroic military record. The Referee found that McKeever overcame the presumption of disbarment, however, the Supreme Court concluded that even if all the mitigating

factors were supported by competent, substantial evidence, disbarment would still be the appropriate discipline in his case. The Court further noted that “such conduct is completely contrary to the oath that every attorney takes to abstain from offensive personality.”

The Florida Bar v. Diamond, 548 So.2d 1107 (Fla. 1989), the Court held that the number of mitigating factor, particularly the abundant character testimony, justified a three year suspension instead of disbarment. Diamond provided testimony from leaders of The Florida Bar and the community and the trial judge in his underlying criminal case. Diamond also completed his incarceration and had his civil rights restored. Respondent was convicted of 6 counts of mail and wire fraud.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that be disciplined by:

- A. Disbarment and
- B. Payment of The Florida Bar's costs in these proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

Personal History of Respondent:

Age: 49 years old

Date admitted to the Bar: April, 29, 1991

Prior Discipline: None

Aggravating Factors:

9.22(i) substantial experience in the practice of law

Mitigating Factors:

9.32(a) absence of a disciplinary record;

9.32(c) personal or emotional problems;

While Respondent may have personal or emotional problems, aside from Respondent's testimony that the incident occurred as a result of a crisis in his personal life and that he received psychological and spiritual counseling and vigorously pursued his rehabilitation, no additional information was provided to support or explain these claims. Respondent did submit a letter from his therapist, but there is no current diagnosis, no indication of Respondent's current emotional status or emotional status at the time of the criminal acts, and not indication of whether Respondent is currently receiving counseling or treatment.

9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

9.32(g) character or reputation; and

In support of mitigating factor (g)(Character or Reputation), Respondent submitted the following mitigation for consideration:

Employment evaluations from 2002 to 2012-submitted to reflect his supervisors' opinions of Respondent and his work while employed with the state of Florida.

Approximately 17 letters of character reference from former employers, colleagues, clergy and friends.

Respondent also testified to his 23 years of service to the community as chief executive officer for a non-profit community arts organization.

9.32(l) imposition of other penalties or sanctions.

The above mitigation was considered, however, I do not believe Respondent met the burden to overcome the presumption of disbarment.

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

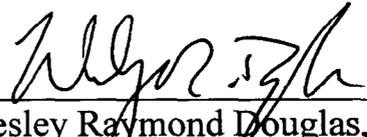
I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs, pursuant to Rule 3-7.6(q)(1)(I), Rules of Discipline	\$1,250.00
Investigative Costs and Expenses	62.50
Court Reporter Costs	75.00
TOTAL	\$1,387.50

The referee may assess the bar's costs against the respondent unless it is shown that the costs of the bar were unnecessary, excessive, or improperly authenticated. See Rule 3-7.6(q)(3). 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 18 day of August, 2014.


Wesley Raymond Douglas, Referee
PO Box 2075
Lake City, FL 32056-2075

Original To:

Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399-1927. *ok attached 8/19/14*

Conformed Copies to:

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