

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

CASE NOS. SC10-640
SC10-1584

Complainant,

TFB NOS. 2009-10,745(13C)
2010-10,873(13C)

v.

NICHOLAS FRANCIS MOONEY,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: The undersigned was duly appointed as Referee in these proceedings. The parties have agreed to a Conditional Guilty Plea for Consent Judgment, which I recommend that the Court accept. 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: Lisa Buzetti Hurley

For The Respondent: William L. Bromagen

Respondent participated fully in this proceeding.

II. Findings of Fact: I adopt the stipulated facts as set forth in the Conditional Plea for Consent Judgment as my findings of fact, as follows:

- a. Supreme Court Case No. SC10-640, TFB No. 2009-10,745(13C): During the course of litigation, Respondent engaged in a series of email exchanges with opposing counsel that were disparaging, humiliating and discriminatory against opposing counsel. Respondent also engaged in a hostile verbal exchange with opposing counsel during a deposition. Respondent contends that his conduct was a reaction to opposing counsel making disparaging remarks about his son with special needs.

b.) Supreme Court Case No. SC10-1584, TFB No. 2010-10,873(13C): Respondent took the deposition of an opposing party in a civil case. Respondent engaged in a hostile confrontation with opposing counsel at the deposition in the presence of the deponent and the court reporter. Respondent's conduct at the deposition was unprofessional and disruptive to the proceeding. Respondent contends that his conduct was a reaction to what he perceived was an assault upon him by opposing counsel with a notepad and disparaging remarks made by opposing counsel about his son with special needs.

III. Recommendations as to Guilt: I recommend that Respondent's Conditional Guilty Plea for Consent Judgment be accepted and Respondent be found guilty of violating:

a.) Supreme Court Case No. SC10-640, TFB No. 2009-10,745(13C): Rule 3-4.3 (commission of any act that is unlawful or contrary to honesty and justice); and Rule 4-8.4(d) (conduct in connection with the practice of law that is prejudicial to the administration of justice).

b.) Supreme Court Case No. SC10-1584, TFB No. 2010-10,873(13C): Rule 3-4.3 (commission of any act that is unlawful or contrary to honesty and justice); and Rule 4-8.4(d) (conduct in connection with the practice of law that is prejudicial to the administration of justice).

IV. Recommendation as to Discipline: I recommend that the discipline agreed to in the Conditional Guilty Plea for Consent Judgment and set forth as follows be accepted:

a.) **Public Reprimand** to be administered before the Board of Governors of the Florida Bar.

b.) Respondent shall attend the Florida Bar's Professionalism workshop within one year of the date of the Order approving the Report of Referee. Respondent shall pay the fee for attending the workshop in the amount of \$750.00.

V. Personal History and Past Disciplinary Record: In recommending approval of the Conditional Guilty Plea for Consent Judgment, I considered the following personal history and prior disciplinary record of Respondent, to wit:

Year of Birth: 1960

Date Admitted to Bar: October 28, 1985

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

The following Aggravating Factors are applicable in this matter:

9.22(c) pattern of misconduct;

9.22(d) multiple offenses.

The following Mitigating Factors are applicable in this matter:

9.32(a) absence of a prior disciplinary record;

9.32(b) absence of a dishonest or selfish motive;

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

9.32(g) character or reputation;

9.32(l) remorse.

VI. Standards for Imposing Lawyer Sanctions and case law considered: After the finding of guilt and prior to recommending discipline pursuant to Rule 3-7.6(m)(l), I considered the following:

7.0 Violations of Other Duties Owed as a Professional - Standard 7.3 Public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Florida Bar v. Sayler, 721 So.2d 1152 (Fla. 1998): (public reprimand plus 6-month probation) An attorney received a public reprimand for a single incident involving sending a harassing and threatening letter to opposing counsel in a highly contested case. Sayler was found guilty of violating Rules 3-4.3 (any act contrary to honesty or justice), 4-4.4 (using means with no purpose but to embarrass, delay or burden a third person), and 4-8.4(d) (conduct prejudicial to administration of justice).

Florida Bar v. Martocci, 791 So.2d 1074 (Fla. 2001): (public reprimand plus 2-year probation) During various times during the course of litigation, Martocci made unethical, disparaging and profane remarks to belittle and humiliate the opposing party and her attorney. In a confrontation in the courtroom, Martocci threatened the opposing party's father. Martocci was found guilty of violating Rule 4-8.4(d).

VII. Costs: I find the costs set forth in The Florida Bar's Motion to Assess Costs filed in this cause were reasonably incurred and were not unnecessary, excessive or improperly authenticated and Respondent stipulated to the payment of such costs incurred by The Florida Bar.

It is recommended that the costs itemized in The Florida Bar's Motion to Assess Costs in the total sum of **\$2,470.19** be charged to 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 _____, 2010.

TRUE COPY
Original signed

OCT 20 2010

Honorable R. Timothy Peters, Referee
R. TIMOTHY PETERS
CIRCUIT JUDGE

Copies To:

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