

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

KENNETH CLARENCE JENNE, II,

Respondent.

**Supreme Court Case
No. SC07-2182**

**The Florida Bar File
No. 2008-50,327(17A)**

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar filed its Notice of Judgment of Guilt in this case on November 26, 2007. On that same date, the Supreme Court of Florida issued an Order of suspension, effective 30 days thereafter. The Court's Order also referred the matter to the Chief Judge of the Fifteenth Judicial Circuit, for the appointment of a referee, pursuant to R. Regulating Fla. Bar 3-7.2(h). On December 4, 2007, the Chief Judge of the Fifteenth Judicial Circuit appointed a referee. Shortly thereafter, the matter was set for final hearing on March 19, 2008. Before that date, however, the referee entered an Order of Recusal and Reassignment, and cancelled the March 19, 2008 final hearing. On March 27, 2008, the Chief Judge of the Fifteenth Judicial Circuit appointed a successor referee, who served until she entered an Order of Recusal and Reassignment, on May 16, 2008. The Chief

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BY

Judge of the Fifteenth Judicial Circuit appointed the undersigned to serve as referee, on May 19, 2008. On May 22, 2008, I set the matter for a case management conference and on May 23, 2008, the parties agreed to set the matter for final hearing on June 27, 2008. Before that date, the parties presented to me a fully executed Guilty Plea and Consent to Immediate Disbarment, which had been approved by The Florida Bar Board of Governors' designated reviewer. After due deliberation, I have determined to recommend that respondent's Guilty Plea and Consent to Immediate Disbarment be approved, for the reasons set forth herein. The pleadings, and all other papers filed in this cause, are forwarded to the Supreme Court of Florida with this report, and constitute the entire record.

During the course of these proceedings, respondent was represented by J. David Bogenschutz; The Florida Bar was represented by Lorraine Christine Hoffmann.

II. **FINDINGS OF FACT:**

A. Jurisdictional Statement: Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. Narrative Summary:

1. At all times relevant to the facts of the case, respondent served as the Sheriff of Broward County, Florida.

2. On or about August 31, 2007, in the case styled United States of America v. Kenneth C. Jenne, in the United States District Court for the Southern District of Florida, Case No. 07-60209-CR-Dimitrouleas, respondent entered into a plea agreement, and pled guilty to one count of conspiracy to commit mail fraud (in violation of Title 18, United States Code, Section 371) and three counts of filing a false tax return (in violation of Title 26, United States Code, Section 7206(1)).

3. Pursuant to his guilty plea, respondent was found guilty of both criminal violations, which are felonies under federal law.

4. On or about November 16, 2007, respondent was sentenced to one year and one day imprisonment in a federal prison camp. Upon release, respondent will remain on supervised release (pursuant to certain standard and special terms and conditions) for a term of one year on each Count, to run concurrent. Respondent is also required, pursuant to his criminal plea agreement, to pay certain criminal, monetary penalties.

5. Based on the foregoing criminal conduct, to which respondent pled guilty, respondent is guilty of violating the following Rules Regulating The Florida Bar: **3-4.4** [In addition, whether the alleged misconduct constitutes a felony or misdemeanor The Florida Bar may initiate disciplinary action regardless of whether the respondent has been tried,

acquitted, or convicted in a court for the alleged criminal offense.]; **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.]; **4-8.4(b)** [A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.]; and **4-8.4(c)** [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.].

III. RECOMMENDATION AS TO GUILT:

A. Based on the foregoing, I find clear and convincing evidence to support respondent's guilty plea to violation of R. Regulating Fla. Bar **3-4.4** [In addition, whether the alleged misconduct constitutes a felony or misdemeanor The Florida Bar may initiate disciplinary action regardless of whether the respondent has been tried, acquitted, or convicted in a court for the alleged criminal offense.]; **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.]; **4-8.4(b)** [A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.]; and **4-8.4(c)** [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.].

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that respondent be found guilty of misconduct justifying disbarment, and that he be disbarred from the practice of law — with leave to reapply after five years. Respondent should also be required to pay The Florida Bar's costs in this matter, with statutory interest accruing until such costs are paid in full.

I have based my recommendation upon the plea agreement between the parties, and upon my review of the applicable case law and the Florida Standards For Imposing Lawyer Sanctions. Under the case law, disbarment is the presumptive sanction for conviction of a felony. *See* The Florida Bar v. Cohen, 908 So. 2d 405 (Fla. 2005) [Respondent was disbarred after pleading guilty to a federal conspiracy charge]; The Florida Bar v. Hosner, 536 So. 2d 188 (Fla. 1988) [Respondent was disbarred after being convicted on felony charges involving the preparation of false income tax returns and using the United States mail to commit fraud.]. The Florida Standards for Imposing Lawyer Sanctions also support disbarment. The applicable standards are as follows:

Standard 5.1 Failure to Maintain Personal Integrity

5.11 Disbarment is appropriate when:

- (a) a lawyer is convicted of a felony under applicable law, or

(b) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misappropriation, fraud, extortion, misappropriation or theft.

Standard 5.2 Failure to Maintain Public Trust

5.21 Disbarment is appropriate when a lawyer in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a part or to the integrity of the legal process.

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

Prior to recommending discipline, and pursuant to R. Regulating Fla. Bar 3-7.6(k)(1), I considered the following:

A. Respondent's personal history:

Age: 51

Date admitted to The Florida Bar: April 24, 1972

B. Aggravating or Mitigation Factors - Pursuant to Standard 9.0 of the Florida Standards for Imposing Lawyer Sanctions:

Standard 9.2 – Aggravation:

9.22(b) dishonest or selfish motive;

9.22(i) substantial experience in the practice of law

(Respondent has been a member of The Florida Bar since April 24, 1972).

Standard 9.3 – Mitigation:

- 9.32(a) lack of a prior disciplinary record;
- 9.32(g) character or reputation;
- 9.32(k) imposition of other penalties or sanctions;
- 9.32(l) remorse.

C. Prior Discipline: None

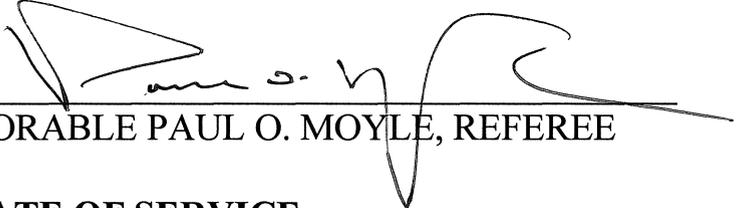
VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

I find that The Florida Bar has incurred reasonable costs in the matter and that same should be assessed against the respondent, as follows:

A. Grievance Committee Level Costs:	
1. Court Reporter Costs	\$ - 0 -
2. Bar Counsel Travel Costs	\$ - 0 -
B. Referee Level Costs:	
1. Court Reporter Costs	\$ 598.25
2. Bar Counsel Travel Costs	\$ - 0 -
C. Administrative Costs	\$1,250.00
D. Auditor Costs	\$ - 0 -
E. Miscellaneous Costs:	
1. Investigator Costs	\$ 32.88
2. Witness Fees	\$ 10.00
3. Copy Costs	\$ - 0 -
4. Telephone Charges	\$ - 0 -
5. Translation Services Fees	\$ - 0 -
TOTAL COSTS	<u>\$1,891.13</u>

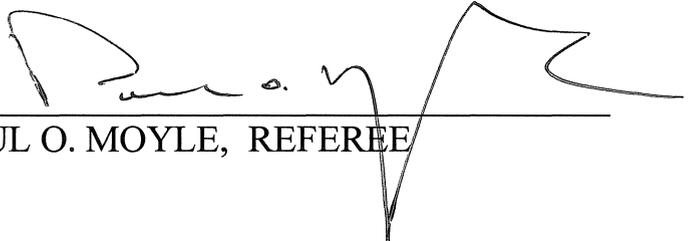
I recommend that these costs be charged to respondent and that statutory interest should accrue until these costs are paid in full.

Dated this 25th day of July, 2008.


HONORABLE PAUL O. MOYLE, REFEREE

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 the following: STAFF COUNSEL, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; and LORRAINE CHRISTINE HOFFMANN, Bar Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 900, Fort Lauderdale, Florida 33309-2366; and J. DAVID BOGENSCHUTZ, counsel for respondent, Bogenschutz & Dutko, 600 South Andrews Avenue, Suite 500, Fort Lauderdale, Florida 33301 on this 29 day of July, 2008.


PAUL O. MOYLE, REFEREE

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THE FLORIDA BAR,

Complainant,

v.

KENNETH CLARENCE JENNE, II,

Respondent.

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GUILTY PLEA AND CONSENT TO IMMEDIATE DISBARMENT

Kenneth Clarence Jenne, II, respondent, hereby tenders his guilty plea and consent to immediate disbarment for five years (with leave to reapply thereafter), nunc pro tunc to December 27, 2007 (the date of his felony suspension), pursuant to R. Regulating Fla. Bar 3-5.1(j), 3-7.2(h), and 3-7.9. In support of his guilty plea and consent to immediate disbarment, respondent states as follows:

1. Respondent is, and at all times material to this action was, a member of The Florida Bar and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. The respondent is currently under felony suspension from The Florida Bar, and is the subject of a bar complaint in The Florida Bar file number 2008-50,327(17A), Supreme Court Case No. SC07-2182. Respondent was felony

suspended by Order entered by the Supreme Court of Florida on November 26, 2007. The effective date of his suspension was December 27, 2007.

3. Respondent pleads guilty to the following facts, which support his consent to immediate disbarment.

4. On or about August 31, 2007, in the case styled United States of America v. Kenneth C. Jenne, in the United States District Court for the Southern District of Florida, Case No. 07-60209-CR-Dimitrouleas, respondent entered into a plea agreement, and pled guilty to one count of conspiracy to commit mail fraud (in violation of Title 18, United States Code, Section 371) and three counts of filing a false tax return (in violation of Title 26, United States Code, Section 7206(1)).

5. Pursuant to his plea, respondent was found guilty of both criminal violations, which are felonies under federal law.

6. On or about November 16, 2007, respondent was sentenced to one year and one day imprisonment in a federal prison camp. Upon his release, respondent will remain on probation for an additional year.

7. Having admitted the foregoing misconduct, respondent pleads guilty to violating the following Rules Regulating The Florida Bar: **3-4.4** [In addition, whether the alleged misconduct constitutes a felony or misdemeanor The Florida

Bar may initiate disciplinary action regardless of whether the respondent has been tried, acquitted, or convicted in a court for the alleged criminal offense.]; **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.]; **4-8.4(b)** [A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.]; and **4-8.4(c)** [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.].

8. Respondent has been afforded an opportunity to be represented by legal counsel of his choosing and expressly states that he is well satisfied with his counsel, whose initials and signature are affixed to this plea.

9. Respondent tenders this Guilty Plea and Consent to Immediate Disbarment with full knowledge of all rights afforded to respondents in disciplinary proceedings, as set forth in The Rules Regulating The Florida Bar.

10. Respondent is acting freely and voluntarily in this matter and acknowledges that this consent judgment is tendered voluntarily without fear, threat, coercion or promises not set forth in this agreement.

11. Respondent hereby certifies that he is not acting under duress and that he is not laboring under any physical or mental infirmity, or under the influence of

any substance which would preclude him from knowingly and intelligently executing and submitting this guilty plea and consent to immediate disbarment.

12. Respondent understands that The Florida Bar's agreement with this Guilty Plea and Consent to Immediate Disbarment is conditioned upon approval by The Florida Bar Board of Governors and The Supreme Court of Florida.

13. Respondent is aware that R. Regulating Fla. Bar 3-7.6(q) provides for the taxing of The Florida Bar's costs against the respondent in bar disciplinary proceedings. Respondent hereby agrees to pay The Florida Bar's costs in these proceedings (as set forth in The Florida Bar's affidavit of costs) within 30 days of the entry of The Supreme Court's final order, unless time for payment is extended by the Board of Governors. Respondent also understands that statutory interest will apply to his unpaid cost judgment, until paid in full.

14. Respondent further agrees that he will not attempt to discharge his obligation to pay The Florida Bar's costs in any future proceedings including, but not limited to, a petition for bankruptcy.

15. As respondent is currently incarcerated and is not practicing law, he does not need time to close down a law practice, and agrees to be disbarred immediately.

16. Respondent understands and agrees that this Guilty Plea and Consent to Immediate Disbarment is a public document, and will become part of the public record in this case.

Dated: 6/26/08

Kenneth Clarence Jenne, II
KENNETH CLARENCE JENNE, II, #142565
Respondent
Register #77434-004
USP Lee
U.S. Penitentiary
P.O. Box 305
Jonesville, Virginia 24263

STATE OF VIRGINIA)
COUNTY OF LEE)

BEFORE ME, the undersigned authority, duly authorized to administer oaths and take acknowledgments, personally appeared KENNETH CLARENCE JENNE, II and after being by me first and duly sworn on oath deposes and says that he has signed the foregoing Guilty Plea and Consent To Immediate Disbarment and acknowledges that he approves the filing thereof for the purposes therein expressed.

The foregoing instrument was acknowledged before me on this 26th day of June, 2008 by KENNETH CLARENCE JENNE, II, who is personally known to me or who has produced Inmate ID# as identification and who did take an oath.
77434-004

Ellene M. Marques
NOTARY PUBLIC

Ellene M. Marques
VA Notary #315690
Notary Exp. Date: 9/30/2010

Dated: _____

6/26/08



J. DAVID BOGENSCHUTZ, #131174
Counsel for Respondent
Bogenschutz & Dutko
600 S. Andrews Avenue, #500
Fort Lauderdale, Florida 33301
(954) 764-2500

Dated: _____

7/24/08



LORRAINE CHRISTINE HOFFMANN, #612669
Bar Counsel
The Florida Bar
5900 N. Andrews Avenue, Suite 900
Fort Lauderdale, Florida 33309
(954) 772-2245