IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

ANDREW SPARK,

Respondent.

_____/

Supreme Court Case No.
SC19-1163

The Florida Bar File No.
2018-10,359 (13D) (HFC)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

On July 15, 2019, The Florida Bar filed a Notice of Determination of Judgment of Guilt in these proceedings. On August 2, 2019, respondent filed a Corrected Request for Waiver of Time Limits. The hearing on sanctions commenced on February 28, 2020, however, it was not concluded and was continued to September 24, 2020. 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.

The Following attorneys appeared as counsel for the parties; for The Florida Bar Lisa Buzzetti Hurley, ESQ. and Evan D. Rosen, ESQ.; and for Respondent: Andrew Spark, pro se, and Roger Lamont Young, ESQ.

II. FINDINGS OF FACT AND RECOMMENDATION AS TO GUILT

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 November 25, 2017, respondent utilized his Florida Bar issued identification card and attorney privileges to visit with an inmate within the Pinellas County Jail. Respondent requested to visit with the inmate whom he knew to be an adult film actress and whose arrest and conviction was widely publicized. Respondent had no official business with this inmate, and the inmate did not request nor was expecting a visit from respondent, as she was represented by other counsel. Respondent had met this inmate previously at a pornography convention he had attended. Respondent engaged in conversation about her case, advising he could not really help her, and then proceeded to ask the inmate if she would be interested in engaging in sexual acts with him while she was being held in the jail. Respondent stated he would video record and subsequently publish the video of the sexual acts in exchange for putting money in her jail account. Respondent indicated that he had similar agreements with other female inmates and provided his contact information to the inmate. Jail surveillance video shows the respondent

inside a secure facility being escorted by detention deputies, the respondent having to produce identification to meet with the inmate, and detention deputies monitoring the attorney/client visitation room containing the respondent and inmate. The inmate later told her family about this encounter with the respondent and her family notified local authorities.

Through their investigation, law enforcement confirmed that respondent did in fact solicit another female inmate to engage in sex acts with him inside the county jail. Respondent had a prior friendship with this inmate, had provided pro bono legal advice from time to time, and had been intimate with her in the past prior to her incarceration. It was discovered that on October 12, 2017, respondent entered the Pinellas County Jail under the guise of official attorney business, and entered a secure, un-monitored, attorney/client visitation room with the inmate. The respondent brought with him multiple electronic devices that are customarily used by attorneys. Respondent had no official business with this inmate. Once inside the room, he solicited and received oral sex from this female inmate which he recorded on his electronic tablet. The inmate, upon being confronted with the evidence against respondent, agreed to serve as an undercover agent. On December 17, 2017, respondent entered the Pinellas County Jail under the guise of official attorney business, and as before entered a secure, attorney/client visitation room, which unbeknownst to respondent was now being monitored by law

enforcement. Once inside the room, respondent again solicited oral sex from the female inmate which he intended to record on his electronic tablet. Law enforcement then entered the room and arrested respondent who had his zipper down. A review of deposit records into the female inmate's jail account show deposits coinciding with the dates of solicitation and/or engagement in the sexual acts recorded in Pinellas County Jail.

As a result, respondent was arrested and charged with introduction/possession of contraband in county detention facility (felony), solicitation of prostitution (misdemeanor), and exposure of sexual organs (misdemeanor). On February 8, 2019, respondent entered a plea of guilty and adjudication was withheld as to introduction into or possession of contraband in a county detention facility, a third-degree felony, and soliciting for prostitution, a misdemeanor offense in the matter *State of Florida v. Andrew Spark*, Case No. 17-15280-CF-D, in the Sixth Judicial Circuit in and for Pinellas County, Florida. Respondent was placed on probation for five (5) years for the felony offense and twelve (12) months for the misdemeanor offense running concurrent with the felony probation. Respondent was also required to complete his inpatient treatment at the Palms and undergo a mental health evaluation and complete any recommended treatment, among other terms. (See TFB Exhibits 1, 2 and 7)

As part of the law enforcement investigation into the alleged activity at the Pinellas County Jail, photos of a different female inmate, an inmate held at the Falkenburg Road Jail, in Hillsborough County, Florida, were later discovered during a court authorized search warrant. On October 12, 2017, the Hillsborough County inmate called respondent on a recorded jail telephone line and asked respondent if he would put money on her account so she could contact her mother. Respondent stated that he would, and that it would be a credit against her fee for her first porn shoot. Respondent and the inmate discussed what would be the best time for respondent to visit the jail to not get caught engaging in and filming the sex acts. Respondent had a prior friendship with this inmate, had provided her pro bono legal advice from time to time, and had been intimate with her in the past prior to her incarceration. On October 13, 2017, respondent entered the Falkenburg Road Jail under the guise of official attorney business, and entered a secure, un-monitored, attorney/client visitation room. Respondent had no official business with this inmate. Once inside the room, respondent solicited and received oral sex from this female inmate which he recorded on his electronic tablet. A review of the inmate's jail account reflects a $10 deposit into the female inmate's account coinciding with the solicitation and/or engagement in the sexual act.

As a result, respondent was arrested and charged with introduction/possession of contraband in county detention facility (felony), and

solicitation of prostitution (misdemeanor). On May 15, 2019, Respondent entered a plea of guilty and adjudication was withheld as to introduction of contraband to a county facility, a third-degree felony in the matter of *State of Florida v. Andrew B. Spark*, Case No. 17-CF-018394-A, in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida. Respondent was placed on probation for fifty-six (56) months concurrent with the Pinellas County sentence with other similar terms. (See TFB Exhibits3,4,5,6 and 8)

Respondent's conduct was planned, calculated and repeated, and would have continued but for his arrest. Respondent emailed a friend on October 10, 2017 to obtain a sample modeling contract used in the porn industry which he used to draft his own modeling contract which he had both inmates sign (See Respondent's Composite Exhibit 38 and Respondent's exhibit marked 67 under Composite Exhibit 37). The contract titled "Model Release" states the inmates are being compensated for engaging in sex acts recorded on video with a lawyer (respondent being the producer and actor) and requires the inmates agree that the agreement does not negatively affect their interests unless they were to get caught, or it creates a conflict of interest between the inmate and the lawyer. The contract further states the inmates are to act how appreciative they are for having access to a man, particularly respondent, in the midst of incarceration, and they acknowledge respondent does not want them to get caught by jail or prison personnel performing

sex acts. The contract further requires the inmates to agree that they will not reveal the identity of the male lawyer/performer to anyone without his written consent, and that if they do so, they will be subject to liquidated damages of $1,000,000.00. The videos respondent recorded of his sex acts with the inmates in jail include conversation about the possibility of getting caught by jail personnel. (See videos submitted by the bar as rebuttal exhibits). Respondent clearly knew that the conduct he engaged in was not permitted inside the jail.

The respondent had numerous social visits with inmates within both the Pinellas County Jail and the Falkenburg Road Jail, in Hillsborough County. Each time the respondent entered a facility he had to produce identification or state his reasons for access to the inmates.

Respondent testified that the statute charging introduction into or possession of contraband in a county detention facility has been changed from constituting a felony to now constituting a misdemeanor; however, the statute did not apply retroactively and did not change the outcome of respondent's criminal cases.

Respondent's withholds of adjudication are a determination of guilt pursuant to Rule 3-7.2, and are conclusive proof of guilt of the criminal offenses charged, and thus respondent is guilty of violating Rule 4-8.4(b) (Misconduct: 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).

III. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards for Imposing Lawyer Sanctions as adopted by the Board of Governors of the Florida Bar, prior to recommending discipline:

5.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY

Absent aggravating or mitigating circumstances and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

(a) Disbarment. Disbarment is appropriate when a lawyer:

(1) is convicted of a felony under applicable law;

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

(3) engages in the sale, distribution, or importation of controlled substances;

(4) engages in the intentional killing of another;

(5) attempts, conspires, or solicits another to commit any of the offenses listed in this subdivision; or

(6) engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

(b) Suspension. Suspension is appropriate when a lawyer knowingly engages in criminal conduct which is not included elsewhere in this subdivision or other conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

3.2 AGGRAVATION

I considered all of the following aggravating factors prior to recommending discipline:

(1) Prior Disciplinary Offenses (respondent has no prior disciplinary history and thus this factor is not applicable);

(2) Dishonest or Selfish Motive (respondent engaged in a course of conduct for his own sexual gratification and potential to use his videos for profit in the porn industry)

(3) A Pattern of Misconduct: (respondent entered into multiple county jail facilities under the guise of official attorney business for social visits which developed into visitation to engage in sex acts with two different inmates in two different jails and solicited a third who declined his offer which led to his arrest);

(4) Multiple Offenses: (respondent was charged and pled to two separate charges in two separate counties for two separate acts);

(5) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (this was not applicable to respondent);

(6) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process (this was not applicable to respondent);

(7) Refusal to acknowledge the wrongful nature of the conduct: (respondent believed using his Florida Bar identification card to visit anyone in the attorney/client visitation rooms was acceptable and that the pornographic videos he recorded in the jail were not illegal);

(8) Vulnerability of the victim (the respondent testified that all sexual acts were consensual between adults. The respondent also testified that the female inmates' had extensive criminal histories, drug addictions, lived troubled lives, and that all times the women were inmates and confined to dentition facilities. The lack of freedom and life circumstances made these women vulnerable.);

(9) Substantial experience in the practice of law (respondent was admitted to practice law on October 4, 1991, and had been practicing law for 26 years);

(10) Indifference to making restitution (this was not applicable to respondent); and

(11) Obstruction of fee arbitration awards by refusing or intentionally failing to comply with a final award (this was not applicable to respondent).

3.3 MITIGATION

I considered all of the following mitigating factors prior to recommending discipline:

(1) Absence of a prior disciplinary record (respondent has no prior disciplinary history);

(2) Absence of a dishonest or selfish motive (this is not applicable as there was a dishonest or selfish motive);

(3) Personal or emotional problems (this is not applicable to respondent);

(4) Timely good faith effort to make restitution or to rectify the consequences of the misconduct (this is not applicable to respondent);

(5) Full and free disclosure to the bar or cooperative attitude toward the proceedings (respondent did provide full and free disclosure and had a cooperative attitude toward the proceedings);

(6) Inexperience in the practice of law (this is not applicable to respondent);

(7) Character or reputation (respondent provided a substantial number of exhibits including character references and showcasing his membership on bar and other committees, speaking engagements, legal publications, awards and certificates and

thank you cards and letters for his legal work during the course of his career which appear to span through 2011);

(8) Physical or mental disability or impairment or substance-related disorder (I do not find this factor applicable. Respondent testified that he suffers from a sex addiction and that he went to inpatient treatment at the Palms, and underwent counseling thereafter. Respondent produced a letter from Sean P. Jennings, Psy.D., but it did not provide any information concerning a diagnosis, nor was there evidence of progress and results of treatment. The treatment respondent sought was at the recommendation of his counsel in the criminal case and in satisfaction of the terms of his sentencing. Respondent continued his relationship with the inmates he videotaped after his arrest and sentencing);

(9) Unreasonable delay in the disciplinary proceedings if the respondent did not substantially contribute to the delay and the respondent demonstrates specific prejudice resulting from that delay (this is not applicable);

(10) Interim rehabilitation (Outside of completing treatment required as part of his sentencing, respondent did not provide sufficient evidence of interim rehabilitation);

(11) Imposition of other penalties or sanctions (respondent has complied with the terms of his criminal sentencing);

(12) Remorse (I did not find this applicable. Respondent was remorseful that he got caught by law enforcement and for the negative consequences it has resulted from it, but the respondent does not express a genuine remorse for his conduct. The respondent was evasive when directly question about his remorse.);

(13) Remoteness of prior offenses (this is not applicable to respondent); and

(14) Prompt compliance with a fee arbitration award (this is not applicable to respondent).

IV. CASE LAW

I considered the following case law prior to recommending discipline: Florida Bar v. Blackburn, 255 So. 3d. 168 (Fla. 2018): (Disbarment) The supreme court rejected a consent judgment for an 18-month suspension and disbarred the attorney for visiting two female clients in prison and engaging in sexual activities initiated by attorney. Attorney visited two female clients that he was representing in criminal matters while they were incarcerated and while in adjacent rooms attorney and the women engaged in sexual activities initiated by attorney. Attorney solicited the sexual conduct by depositing money in one of the women's personal bank account and promised free or discounted legal services designed to reduce the sentence of the other woman. Attorney pled no contest to misdemeanor battery and adjudication was withheld. Aggravating factors were prior disciplinary offenses (prior 30-day suspension for misconduct in a family law matter), multiple

offenses, and vulnerability of the victim. Mitigating factors were personal or emotional problems (Attorney voluntarily sought treatment through FLA) and remorse. Court found attorney's behavior toward two of his clients in the two separate incidents demonstrates severe moral turpitude and found his character and conduct were wholly inconsistent with approved professional standards.

The Florida Bar v. Liberman, 43 So.3d 36 (Fla. 2010), the Supreme Court disapproved the proposed sanction of a three-year suspension and instead disbarred the attorney, nunc pro tunc to the effective date of his felony suspension. The attorney had been convicted of one felony count of drug trafficking. The Court noted that the presumptive discipline for a felony conviction is disbarment, and the burden is on the lawyer to overcome this presumption. The referee had found and considered the following mitigating factors: (1) respondent did not have a prior disciplinary record; (2) he lacked a dishonest or selfish motive; (3) he made a timely good-faith effort to rectify the consequences of his misconduct; (4) he made a full and free disclosure to the disciplinary board and had a cooperative attitude toward the proceeding; (5) he was inexperienced in the practice of law; (6) he otherwise had a good reputation and character; (7) he had a physical or mental disability or impairment, as he suffered from drug addiction; (8) he participated in an interim rehabilitation program; (9) other penalties or sanctions were imposed on him; (10) he showed remorse for his actions; and (11) he was involved in ongoing supervised

rehabilitation under Florida Lawyer's Assistance, Inc. The referee considered one aggravating factor, which was a pattern of misconduct. The Court considered the criteria that the sanction must be (1) fair to the disciplined attorney, being sufficient to punish while at the same time encouraging rehabilitation; (2) fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the service of a qualified lawyer as a result of undue harshness; and (3) severe enough to deter others who might be tempted to engage in like violations. The Court stated that disbarment of an attorney convicted of a serious felony offense cannot be interpreted as unfair to the attorney. Illegal behavior involving moral turpitude demonstrates intentional disregard for the very laws an attorney is bound to uphold. Disbarment under these circumstances also serves best to encourage rehabilitation and to protect the public in that it ensures the attorney may be readmitted only upon full compliance with the rules and regulations governing admissions to the bar. Although the Court did not find that the mitigating circumstances presented were sufficient to overcome the presumption of disbarment for a felony conviction, it did find that such mitigation was sufficient to justify making the order of disbarment effective, nunc pro tune, to the date respondent was automatically suspended due to the felony conviction.

Florida Bar v. Cohen, 908 So. 2d 405 (Fla. 2005): (Disbarment) Attorney was disbarred following a felony suspension wherein attorney conspired with a third party over a period of 8 years to structure a large quantity of money delivered to

the attorney in small increments in order to avoid federal reporting requirements, with knowledge the money was the produce of illegal activities. Attorney entered a plea agreement and pled guilty to federal conspiracy. Aggravating factors were: dishonest or selfish motive, pattern of misconduct, multiple offenses, submission of false evidence, false statements and other deceptive practices during disciplinary process, refusal to acknowledge wrongful nature of his conduct, substantial experience in the practice of law; indifference to making restitution. Mitigating factors were: good reputation, lack of disciplinary history, community service, imposition of other sanction including his 4 month incarceration.

The Florida Bar v. Cueto, 834 So. 2d 152 (Fla. 2002): (Disbarment). The attorney participated over the course of 6 years in an illegal kickback scheme involving settlement of injury cases with a count adjuster until attorney's arrest and subsequent felony conviction for unlawful compensation. Mitigating factors were: lack of a prior disciplinary history and inexperience in the practice of law. The Court found that the attorney engaged in a crime involving dishonesty. The Supreme Court found the term "dishonest act" refers to "fraudulent act" which is defined as "[c]onduct involving…dishonesty, a lack of integrity, or moral turpitude." Further, the Supreme Court found offenses of "moral turpitude" in the area of legal ethics traditionally make a person unfit to practice law.

Florida Bar v. Rosenberg, 169 So.3d 1155 (2015): The Supreme Court pointed out it has moved toward imposing stronger sanctions for unethical and unprofessional conduct (citing Fla. Bar v. Adler, 126 So.3d 244, 247 (2013) noting that "this Court has moved toward stronger sanctions for attorney misconduct"). (Also citing Fla. Bar v. Rotstein, 835 So.2d 241, 246 (Fla. 2002) noting many of the cases cited by respondent were inapplicable "because the cited cases are dated and do not reflect the evolving views of this Court").

State ex rel. Fla. Bar v. Evans, 94 So.2d 730, 733 (Fla.1957): The Supreme Court stated that "The lawyer is an essential component of the administration of justice. A courtroom without a lawyer would be like a hospital without a doctor or a house of God without a spiritual guide. So it is that a lawyer is an officer of the Court. As such his conduct is subject to judicial supervision and scrutiny." The Supreme Court further stated that "...[T]he practice of law is a privilege. The standing of the profession in a community is often measured in the lay mind by the deviations of a small minority who break the rules rather than the fidelity and devotion of the overwhelming majority who regard their license to practice as a sacred trust. So it is that in disciplinary matters we justly impose higher standards of conduct on the lawyer than we demand of the layman who is not charged with a similar trust" Id. at 735. The Supreme Court further outlined the factors that must be considered in a case such as this: "(1) it must be just to the public and must be designed to correct

any anti-social tendency on the part of respondent as well as deter others who might tend to engage in like violations; (2) it must be fair to respondent at the same time the duty of the court to society is paramount." Id. at 735-736.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

A. Disbarment, *nunc pro tunc* to the date respondent was automatically suspended due to the felony suspension.

B. Payment of The Florida Bar's costs in these proceedings.

Respondent engaged in a pattern of deception to gain access to three different female inmates in a manner that would provide him with direct and private contact with these women by misrepresenting to more than one jail facility that he was there to visit these inmates on official legal business. The jail system is an essential part of our criminal justice system and attorneys are given special privileges as officers of the court to visit with client inmates in a secure and private manner that the general public visiting inmates is not provided. Respondent abused his privilege to practice law and used his law license to engage in this deception with the intent to access the private rooms provided to attorneys for the purpose of soliciting prostitution which he recorded with the goal of creating an adult pornographic film depicting sex in jail for his own prurient and/or financial interests. Respondent's conduct resulted in

determinations of guilt pursuant to Rule 3-7.2 for two separate felonies and a misdemeanor. Respondent's character and conduct are wholly inconsistent with approved professional standards. Respondent's conduct demonstrates a disregard for and an inability to uphold the laws of this state, intentional interference with the administration of justice, and further demonstrates severe moral turpitude, making him unfit to practice law. The mitigation presented by respondent is insufficient to overcome the presumption of disbarment for his felonious conduct. Given the nature of respondent's misconduct, relevant case law, and the Standards for Imposing Lawyer Sanctions, the appropriate discipline in this case is disbarment.

VI. 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: 57

Date admitted to the Bar: October 4, 1991

Prior Discipline: None.

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

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

Administrative Fee	$1250.00
Investigative Costs	$449.50
Court Reporters' Fees	$715.00

determinations of guilt pursuant to Rule 3-7.2 for two separate felonies and a misdemeanor. Respondent's character and conduct are wholly inconsistent with approved professional standards. Respondent's conduct demonstrates a disregard for and an inability to uphold the laws of this state, intentional interference with the administration of justice, and further demonstrates severe moral turpitude, making him unfit to practice law. The mitigation presented by respondent is insufficient to overcome the presumption of disbarment for his felonious conduct. Given the nature of respondent's misconduct, relevant case law, and the Standards for Imposing Lawyer Sanctions, the appropriate discipline in this case is disbarment.

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

Personal History of Respondent:

Age: 57

Date admitted to the Bar: October 4, 1991

Prior Discipline: None.

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

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

Administrative Fee	$1,250.00
Investigative Costs	449.50
Court Reporters' Fees	715.00
TOTAL	$2,414.50

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 26 day of October, 2020.

Christopher Michael LaBruzzo, Referee

Original To:

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