IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

THE FLORIDA BAR,
Complainant,

Case No. SC17-542
TFB File No. 2016-10,778 (12A)

v.

JOHN FRANCIS LAKIN,
Respondent.

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REPORT OF THE 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 March 29, 2017, the Bar filed a complaint alleging that Respondent had violated Rules 3-4.3, 4-8.4(a), and 4-8.4(d) of the Rules Regulating the Florida Bar.

Trial was held on May 30, 2018 through May 31, 2018. The transcript was received by the Referee on June 8, 2018. 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:

On behalf of the Florida Bar:	Troy Matthew Lovell The Florida Bar 4200 George J. Bean Parkway Suite 2580 Tampa, Florida 33607
On behalf of the Respondent:	John A. Weiss Rumberger, Kirk & Caldwell, P.A. 101 North Monroe Street Suite 120 (32301) P.O. Box 10507 Tallahassee, Florida 32302

II. FINDINGS OF FACT

A. 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.

B. Narrative Summary

Underlying Proceedings

Respondent presided over a jury trial from June 22, 2015 through June 25, 2015, on which date the jury returned a verdict in favor of the defendant. On June 26, 2015 Respondent's Judicial Assistant received a call from plaintiff's counsel

offering Respondent tickets to a baseball game between the Tampa Bay Rays and the Boston Red Sox that night. Respondent instructed the Judicial Assistant to call and accept the tickets. Plaintiff's counsel provided Respondent with five tickets, and he used two, discarding the remainder.

On July 2, 2015, plaintiff's counsel filed a motion for new trial. On August 21, 2015, a hearing was held on the motion, and Respondent reserved ruling. On August 25, 2015, Respondent instructed his Judicial Assistant to request tickets to the baseball game between the Tampa Bay Rays and the Minnesota Twins. Plaintiff's counsel delivered the tickets to the Judicial Assistant in open court. On August 26, 2015, Respondent granted the motion for new trial. On September 12, 2015, Respondent requested additional baseball game tickets, which plaintiff's counsel provided. The defendant appealed on September 21, 2015. On October 3, 2015, Respondent requested additional tickets, which plaintiff's counsel provided. On October 9, 2015, Respondent held a status conference, at which time he disclosed he had accepted baseball tickets from plaintiff's counsel. On October 15, 2015, Respondent recused himself from the case.

On February 1, 2016, the JQC filed a notice of formal charges against Respondent. On March 7, 2016, Respondent resigned as a circuit court judge. The JQC voluntarily dismissed its case against Respondent based on his resignation on March 10, 2016. On March 15, 2016, the Supreme Court dismissed formal charges

against Respondent. On November 17, 2016, the Second District Court of Appeal reversed his order granting the motion for new trial.

Trial

At trial, Respondent testified that he was admitted in 2001 (T. 18). He had been admitted in Massachusetts in 1990 and the District of Columbia in 2001 (T. 18). He had never been sanctioned or disciplined before (T. 18). He was certified in civil practice (T. 19). He was elected circuit court judge in 2012 (T. 20). He presided over approximately 40 trials while on the bench (T. 20). Respondent acknowledged that Exhibit 1 was the gift disclosure form dated June 23, 2014, wherein he had disclosed baseball tickets worth about $200 from the law firm of Gallagher & Hagopian (T. 24-25). He filed a similar form in 2015 (T. 25). He acknowledged that Exhibit 2 was an evaluation of judges by the Sarasota Bar Association, in which he was ranked highly (T. 25-26). He acknowledged that Exhibit 3 was a composite of character attestations (T. 27). He testified that the situation had garnered a lot of press (T. 27). Respondent testified that he was extremely remorseful that the appearance of the justice system was compromised, but insisted that the receipt of the baseball tickets "had nothing to do with the ruling" (T. 27-28).

Respondent testified that it was extremely difficult to transition to being a judge, stating that "I did not anticipate the level of scrutiny day-to-day on

individual decisions I would make as a judge by outside factors. I found that to be very troubling" (T. 32). He recalled that he sent the jury to deliberate approximately 5:00 P.M., over the strenuous objection of plaintiff's counsel (T. 33). The jury verdict was read about 8:00 P.M. (T.33). He testified that he was stunned by the jury's verdict, because he felt there was overwhelming evidence for the plaintiff (T. 36). He started researching the law on a new trial, and asked court counsel to research the issue as well (T. 40). The day after the verdict, plaintiff's counsel offered the tickets, and he went to the game with his son (T. 40-41). The remaining three times he received tickets, he asked his Judicial Assistant to call to request tickets (T. 41). Respondent testified that he believed he could accept the tickets as gifts as long as he disclosed the tickets on the form (T. 42). He did not believe the tickets were an attempt to influence him, because he did not know plaintiff's counsel, and "no lawyer ever had any influence on my decisions" (T. 41). His decision on the motion for new trial "had nothing to do with baseball tickets" (T. 48; 52).

Respondent testified that it was well known that the attorneys would drop off tickets with the bailiffs for anyone to take (T. 48-49). He wanted to go to the baseball games with his son because his son was having mental health issues (T. 49; 53-54). While he received five tickets each time he requested tickets, he only used two tickets per game (T. 49-50; 51). Respondent stated that he asked a fellow

judge in the elevator whether he should disclose all five tickets or just the two he used, and the fellow judge asked him what law firm had given him the tickets (T. 55-56). It did not occur to him that he should not have received the tickets at all (T. 56). He had received tickets from a law firm before (T. 56). The attorney at that law firm had appeared before him in criminal court before and after he received the tickets (T. 57). He also received tickets from another law firm, but the attorney did not appear before him, and he paid for those tickets (T. 58). After his discussion with the fellow judge in the elevator, he was called into a meeting and was advised of the violation (T. 59). Based on the recommendation of the other judges, he self-reported to the JQC (T. 59). He strenuously denied violating the rule of fairness to the parties because "the process was not corrupted in any way. There was no nexus or connection to the tickets and my decision" (T. 63). He conceded that receiving the tickets from attorneys appearing before him created the appearance of impropriety (T. 63). The JQC voluntarily dismissed its investigation because he resigned in order to focus on his son (T. 63-66). On cross-examination, Respondent testified that he was not aware of any other judges using baseball tickets from the law firm (T. 75).

Judge Peter Dubensky testified that Respondent had frequently come to him for advice (T. 82). He never had any reservations about Respondent's integrity or honesty (T. 83). Respondent had a reputation as a hard worker and a judge who

struggled to be fair (T. 84). Judge Dubensky believed that Respondent had the highest moral character (T. 85). Respondent discussed with him how many baseball tickets to disclose (T. 86-87). When he learned that Respondent had received the tickets from the law firm in a pending case Respondent was presiding over, he discussed it with another judge, and then brought it to the chief judge (T. 87). At the meeting, Respondent was initially bewildered by the importance they were attaching to the situation (T. 87-88). Respondent was viewed differently after he recused, because "I think that to a lot of lawyers, it was staggering that he and Mr. Kallins and Mr. Little had been involved in this … exchange" (T. 91). On cross-examination, Judge Dubensky testified that he learned about Respondent's receipt of the tickets through Respondent's Judicial Assistant, who was concerned about it and discussed it with his Judicial Assistant (T. 92). He was surprised "because it seems to me to be an elementary principle of being a judge not to accept a gift from an attorney while you are considering a matter when the other side is not aware of what's going on" (T. 92-93). He was not aware of any other judges accepting baseball tickets, or accepting any gifts from attorneys appearing before them while a case was in progress and without disclosing it to the other side (T. 93).

Attorney Steven Heintz testified that he had known Respondent for 17 or 18 years (T. 98). He was impressed with Respondent's diligence and preparation (T.

99). Mr. Heintz believed Respondent had an excellent reputation in the legal community while he was on the bench, as being very fair (T. 100-101). When he learned Respondent had accepted baseball tickets, he thought it was unfortunate, and it looked bad (T. 102). Based on his knowledge of Respondent, he did not think receiving the tickets would have influenced how Respondent ruled on a case (T. 103). It was well known in the community that Mr. Kallins and Mr. Little offered free baseball tickets to the legal community (T. 103). He had no reservations about Respondent's ethics, professionalism or integrity (T. 103-104).

Attorney Layon Robinson testified that he has known Respondent since the 1990s (T. 107). Respondent had a very good reputation and was an excellent judge (T. 108). Shortly after Respondent resigned, they offered him a partnership in their firm (T. 109-110). He has full confidence in Respondent's integrity (T. 111-112).

Jerome Tomasso testified that he had been a bailiff before retiring (T. 114). He believed Respondent was a good man (T. 115-116). Respondent was very professional on the bench, patient, and calm (T. 118). Respondent had an excellent and unblemished reputation in the community when he was on the bench (T. 118). Mr. Tomasso stated that he had been in the field for 40 years and "there's not one iota in my body that believes that he would do anything wrong" (T. 119). He believed that Respondent is an asset to the legal profession (T. 120).

Attorney Tracy Lee Kramer testified that she is an associate in

Respondent's law firm (T. 122). She believed that Respondent "is a person of utmost good character and professionalism, honesty, and integrity" (T. 128). She believed he was an asset to the Florida Bar (T. 129).

Judge Edward Nicholas testified that he has known Respondent for three or four years prior to Respondent taking the bench (T. 135). Respondent was a good judge, and would not have done anything deliberately to damage the reputation of the bench (T. 137). He did not believe Respondent would have intentionally done anything to jeopardize the appearance of fairness or justice in the circuit (T. 137-138). He believed that there was never any intention "to influence a decision or impact the case, but that wasn't the point. The point was just how bad it looked…" (T. 139). Judge Nicholas did not believe receiving the tickets influenced Respondent's decision in any way (T. 139).

Attorney Lisa Chittaro testified that she practiced before Respondent as a prosecutor when he was on the criminal bench (T. 144). She attended his investiture and believed that it was something very important to him (T. 145-146). She appreciated that he took the time to explain his rulings so people left the courtroom "feeling that justice was served" (T. 148). When she was a prosecutor she appeared before over 100 judges, and she ranked Respondent in the top five (T. 149). She did not believe Respondent would deliberately do anything to damage the reputation of the bench in the circuit (T. 149).

Judge Frederick Mercurio testified that he met Respondent seven or eight years ago (T. 154). He believed Respondent has a great character, and was hard working and honest (T. 157). "There is no question in my mind that" Respondent had no bad intent when he accepted the baseball tickets (T. 158). He did not believe accepting the tickets would have influenced Respondent's decision (T. 158-159). He believed Respondent would be an asset to the 12th Circuit Bar if he was allowed to continue practicing there (T. 159-160).

Judge Charles Williams testified that he had known Respondent for ten years or more (T. 164). Judges Dubensky and Moreland met with him to advise him of the situation regarding Respondent's receipt of the tickets, and he subsequently met with them and Respondent (T. 166-167). During the meeting, Respondent appeared to realize his actions could be perceived as improper, and he was apologetic (T. 167). He believed Respondent had been a judge for two or three years at that point (T. 167-168). Respondent did not resist the advice to self-report to the JQC (T. 168). Judge Williams did not believe Respondent accepted the tickets with any wrongful motive (T. 169). He did not believe the tickets influenced Respondent's decision in the case (T. 169-170). He believed Respondent would be an asset to the Bar if allowed to continue practicing (T. 170).

In rebuttal, regarding the inconsistency between his testimony and that of Judge Dubensky as to how Judge Dubensky was informed about the tickets being

provided by counsel in the pending case, Respondent maintained that he told Judge Dubensky in the elevator, and perhaps Judge Dubensky did not hear him (T. 173). Respondent expressed his remorse, and indicated he took responsibility for his actions (T. 175-176). Respondent believed he would always be rehabilitating his reputation (T. 178).

C. Violation

I recommend that the Respondent be found guilty of violating the following Rules Professional Conduct or Rules of Discipline:

1. Violation of Rule 3-4.3: Misconduct and Minor Misconduct.

> "The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline…"

The clear and convincing evidence is that Respondent accepted baseball tickets from counsel while their motion for new trial was pending before him. No other judges had ever taken or requested tickets, even though the attorneys routinely left tickets with the bailiffs for anyone to use. Respondent knew or should have known that accepting tickets from counsel as the presiding judge while a ruling on counsels' motion was pending was contrary to justice. Respondent did not inform opposing counsel that he had accepted tickets four times from plaintiff's counsel. Respondent's only concern was disclosing the

tickets on the gift form. Respondent was not forthcoming about the facts surrounding his acceptance of the tickets, and Judge Dubensky was informed of those facts only when Respondent's Judicial Assistant disclosed her concerns about the situation.

2. Violation of Rule 4-8.4(a): Misconduct.

> "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;"

The clear and convincing evidence is that the Referee believes Respondent violated Rule 3-4.3 and Rule 4-8.4(d), and the analyses for those violations are incorporated here by reference.

3. Violation of Rule 4-8.4-(d): Misconduct.

> "A lawyer shall not … engage in conduct in connection with the practice of law that is prejudicial to the administration of justice…"

The clear and convincing evidence is that Respondent accepted and requested baseball tickets from plaintiff's counsel while he was the presiding judge, while counsels' motion for new trial was pending before him. This was prejudicial to the administration of justice because it damaged the perception of Respondent's impartiality. Judge Dubensky and Judge Nicholas testified that the situation looked bad, and no other judges had ever accepted baseball tickets from a lawyer. Second, Respondent was required to recuse himself, delaying

proceedings. Third, it caused the defense to incur the time and expense of an appeal that may have been unnecessary based on the strongly worded reversal by the Second District Court of Appeal.

III. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS

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

A. Personal History of Respondent:

Respondent testified that he was admitted to the Bar in 2001. He was board certified in civil trial practice since 2006. He had been a member of the Bar for 28 years. He was also admitted in Massachusetts in 1990 and the District of Columbia in 2001. He was elected to the bench in 2013 and resigned in 2016. Respondent testified that going to the baseball games was important to him in order to spend time with his son, who had mental health issues.

B. Duties Violated:

1. The duties violated by Respondent to the public. (*See* Florida's Standards for Imposing Lawyer Sanctions; Section 5.0, pp. 34–38).
2. The duties violated by the Respondent to the legal system. (*See* Florida's Standards for Imposing Lawyer Sanctions with Commentary, Section 6.0, pp. 38–43).
3. The duties violated by the Respondent as a professional. (*See* Florida's Standards for Imposing Lawyer Sanctions with Commentary, Section 7.0, pp. 43–45).

C. The potential or actual injury caused by the Respondents' Misconduct:

No evidence was presented regarding any actual injury or prejudice caused by Respondent's conduct. The potential injury caused was damage to the public's perception of the justice system and the impartiality of judges. Judge Dubensky testified that Respondent was viewed differently after this incident came to light. The appearance of undue influence damaged the public perception of Respondent, and the justice system. Respondent's acceptance of the tickets, then request for more tickets damaged the reputation of the attorneys who provided those tickets. Respondent's failure to notify defense counsel about his receipt of the tickets precluded counsel from the opportunity to object to his presiding over the motion for new trial. Defense counsel's testimony in the hearing for Mr. Kallins and Mr. Little implied that the defense in the underlying case could have been prejudiced by engaging in what he felt was unnecessary appellate proceedings. However, Respondent testified that he would have granted the motion for new trial even if he had not received the tickets, so the defense would have appealed his ruling regardless.

D. The existence of aggravating or mitigating circumstances

The recommendation for discipline takes into consideration the

following aggravating and mitigating factors as were in effect during the period of time relevant to this proceeding:

1. **Aggravators:**

   a. Multiple offenses: Standard 9.22(d). During the relevant time period, Respondent engaged in more than one incident of improper conduct.

   b. Substantial experience in the practice of law: Standard 9.22(i). Respondent had been practicing for about 22 years.

2. **Mitigation**: The Court finds the following as to mitigating factors:

   a. Absence of prior disciplinary record: Standard 9.32(a). The Referee has not been made aware of any prior disciplinary record of the Respondent.

   b. Character or reputation: Standard 9.32(g). Multiple witnesses testified as to the character of Respondent.

   c. Interim rehabilitation: Standard 9.32(j). Respondent self-reported to the JQC, and voluntarily resigned.

   d. Remorse: Standard 9.32(l). Respondent appeared genuinely remorseful for the events that have occurred.

IV. RECOMMENDATION AS TO GUILT

I recommend that Respondent be found guilty of violating the above rules. Resspondent was a veteran attorney who knew or should have known that receiving a gift of any value from counsel while counsels' motion was pending before him would create an appearance of being influenced by the gift. *See* The

Florida Bar v. Saxon, 379 So. 2d 1281 (Fla. 1980). While not as egregious as an outright bribe, and while the monetary value may have been minimal, Respondent here accepted the gift of value, then requested tickets three more times during the pendency of the motion for new trial. The tickets had value to Respondent because it allowed him to bond with his son, who was having health issues. Respondent admitted that it did not occur to him that accepting the tickets, and requesting tickets three more times, while the case was pending would create an appearance of impropriety. The rules require the profession, especially judges, to always to think about the implications of their words or actions. It is unacceptable that Respondent was so oblivious to the implications of his actions.

As to rule 4-8.4(d), Respondent's actions prejudiced the administration of justice because his conduct created the appearance of impropriety. *See* The Florida Bar v. Scheinberg, 129 So.3d 315, 318 (Fla. 2013). The appearance of Respondent's conduct, given the timing of his acceptance of the baseball tickets from counsel during the pendency of a ruling on counsels' motion for new trial, was that Respondent was influenced by the gift to rule in counsels' favor. As in Scheinberg, the appearance of improper influence in this case "served to damage the perception of judicial impartiality." Id. There is no requirement that the judge actually be influenced by an attorney's conduct in order for that conduct to prejudice the administration of justice. *See* The Florida Bar v. Von Zamft, 814 So.

2d 385, 389 (Fla. 2002).

As to rule 3-4.3, Respondent violated this rule because accepting a gift of value as the presiding judge from counsel during the pendency of a ruling on counsels' motion for new trial was contrary to justice. Further, Respondent was not forthcoming regarding the situation surrounding his receipt of the tickets. Respondent's Judicial Assistant was so concerned by the situation that she brought it to Judge Dubensky's Judicial Assistant.

Rule 4-8.4(a) is violated whenever any other rule is violated, and I have recommended that Respondent be found guilty of violating other rules. *See* The Florida Bar v. Letwin, 70 So.3d 578 (Fla. 2011).

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I find that the mitigating evidence outweighs the aggravating evidence in this case. There was no evidence presented of actual prejudice to the defendants in the underlying case. Respondent recused from the case, self-reported to the JQC, then resigned from the bench. Respondent expressed remorse, acknowledged that he did not think about the implications, and acknowledged that his actions were wrong. Respondent presented compelling evidence to show his good character and reputation in the legal community. I recommend that Respondent be found guilty of misconduct justifying disciplinary measures and that he be disciplined by:

A. Suspension lasting 90 days, *see* 3-5(e); followed by probation lasting one year, *see* 3-5(c); and

B. Admonishment, *see* 3-5.1(a) & (b). I recommend that Respondent, while on probation, complete a practice and professionalism enhancement program. I would also recommend that Respondent be required to speak to new judges about this incident as part of the training given to new judges.

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

I find the following costs were submitted to the Court in the form of an Affidavit by The Florida Bar and the Respondent did not object:

A.

1. Administrative costs pursuant to Rule 3-7.6(q)(1)(I)……………………………………..… $1,250
2. Court Reporter's Fees……………………………$3,480.55
3. Bar Counsel Costs………………………………$476.07
4. Shipping Costs…………………………………...$37.39

Total: $5,244.01

B. Manner of Payment:

It is recommended that such costs be charged to the Respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment has become final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 22nd day of June, 2018.

/s/ARCHIE B HAYWARD JR
Archie B. Hayward Jr.
Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been sent: by certified mail to THE HONORABLE JOHN TOMASINO, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; by email to THE HONORABLE JOHN TOMASINO, Clerk, Supreme Court of Florida, e-file@flcourts.org; and that copies were mailed by regular U.S. Mail to: Troy Matthew Lovell, Esq., The Florida Bar, 4200 George J. Bean Parkway, Ste. 2580, Tampa, Florida 33607; John A. Weiss, Esq., Rumberger, Kirk & Caldwell, P.A., 101 North Monroe Street, Suite 120 (32301), P.O. Box 10507, Tallahassee, Florida 32302; this 22 day of June, 2018.

/s/SIMONE HUMES
Judicial Assistant