

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ROY EDWARD LEINSTER,

Respondent.

Case No. 89405

[TFB Case No. 97-30,767 (09C) (OSC)]

FILED

SID J. WHITE

NOV 25 1996

CLERK, SUPREME COURT

By

Chief Deputy Clerk

PETITION FOR ORDER TO SHOW CAUSE

COMES NOW The Florida Bar, by and through its undersigned counsel, pursuant to R. Regulating Fla. Bar 3-7.7(g), and requests this Honorable Court to issue an Order to Show Cause as to why respondent should not be held in contempt of this Court and as grounds therefore would state:

1. The Ninth Judicial Circuit Grievance Committee "C" issued a subpoena duces tecum to respondent on October 11, 1996 requesting the following: All bank statements with enclosures (including canceled checks), deposit slips, verification of wire transfers, cash receipts and disbursement journals and reconciliations for the period January, 1993 through April 30, 1996 and the client ledger(s) for Anton D. Meyers. Respondent was requested to produce the original document(s) if possible and he was to have produced

these items by October 31, 1996. A copy of the subpoena duces tecum is attached hereto and incorporated herein as Exhibit "A".

2. On October 31, 1996, respondent produced copies of three (3) receipts for Anton Meyers; a deposit slip and bank statement dated May 28, 1993 for account no. 2240503479 at Orange Bank; and a deposit slip dated January 11, 1996 and bank statement for account no. 3720072236 at AmSouth Bank of Florida.

3. Respondent has failed and/or refused to substantially comply with the grievance committee's subpoena duces tecum. Respondent has not filed any written objections to the subpoena with the bar or the grievance committee.

4. Respondent's trust account records were subpoenaed pursuant to R. Regulating Fla. Bar 5-1.1(c), which states: "In any instance of an alleged violation by a member of The Florida Bar of this rule or of any of the Rules of Professional Conduct, such records insofar as they may relate in any way to the transaction, occurrence, or client in question shall be produced by the members of The Florida Bar for inspection, audit and copying by a designated representative of The Florida Bar upon direction of this

court, a grievance committee, the board of governors if acting pursuant to Rule 3-7.5(b), or a referee."

5. The grievance committee issued the subpoena duces tecum as part of its investigation of a grievance filed by Anton D. Meyers in The Florida Bar file no. 96-31,594 (09C). Mr. Meyers alleges that in 1993 he hired respondent to handle his criminal trial and later the criminal appeal. In January, 1996, his sister gave respondent \$400.00 for copying the trial transcripts, photographs, the appellate brief, and for travel expenses. After respondent failed to produce the copies, and after several requests, Mr. Meyers filed a grievance with the bar. In April, 1996, respondent furnished the transcripts. Mr. Meyers alleges the transcripts were incorrect and that respondent's delay in sending them prevented him from doing a motion to correct the record. Mr. Meyers also alleges that respondent did not competently represent him at trial, did not explain anything or prepare him for a suppression hearing, did not contact essential witnesses, and did not ensure that the proper sentencing guidelines were used, and that respondent doctored the receipts showing payment of legal fees.

6. The grievance committee is concerned as to respondent's handling of funds provided by Mr. Meyers and his sister when such funds were entrusted to respondent for a specific purpose. The committee is further concerned with the fees paid to respondent over a long period of time regarding Mr. Meyers' criminal trial and appeal due to discrepancies in respondent's receipts for legal fees on the Meyers matters and his responses. The grievance committee determined that its investigation required a review of respondent's client ledger, cash journal and receipts for the period of representation.

7. The documents requested in the subpoena duces tecum are necessary for the grievance committee to properly investigate all of the above allegations. There is no less burdensome method for the committee to carry out its duties of investigation pursuant to R. Regulating Fla. Bar 3-7.4, which requires the grievance committee to investigate allegations of professional misconduct.

8. In addition, R. Regulating Fla. Bar 3-7.11 (d)(2) provides that grievance committees may issue subpoenas for the production of documentary evidence in pursuance of an investigation authorized by the committee. "Any persons who without adequate

excuse fail to obey such a subpoena served upon them may be cited for contempt of this court in the manner provided by this rule." R. Regulating Fla. Bar 3-7.11(d)(5).

WHEREFORE, The Florida Bar respectfully requests this Honorable Court to enter an order to show cause why respondent should not be held in contempt of the Supreme Court of Florida for his failure to comply with the grievance committee's subpoena duces tecum, and that he be suspended from the practice of law until he complies with the subpoena.

Respectfully submitted,

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BY: 
FRANCES R. BROWN
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Petition for Order to Show Cause has been served by regular U.S. Mail to the Clerk of the Court, The Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing Petition has been forwarded by regular U.S. Mail to the respondent, Roy Edward Leinster, 1302 East Robinson Street, Orlando, Florida, 32801-2178; and a copy has been furnished to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300 this 21st day of November, 1996.


Frances R. Brown
Bar Counsel