

SUPREME COURT OF FLORIDA

The Florida Bar v. Ray

797 So. 2d 556 (Fla. 2001) · No. SC94433 · Decided August 16, 2001

SUMMARY

The Supreme Court of Florida upheld a referee’s finding that Michael Dean Ray violated Rule of Professional Conduct 4-8.2(a) by making false statements about an immigration judge with reckless disregard for their truth or falsity. The court held that attorney disciplinary proceedings apply an objectively reasonable factual-basis standard, rather than the purely subjective New York Times actual-malice standard, and approved a public reprimand and costs.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Wells, C.J.; Shaw, J.; Harding, J.; Anstead, J.; Pariente, J.; Lewis, J.; Quince, J.
JURISDICTION	Florida
DECIDED	August 16, 2001
DOCKET	SC94433
DISPOSITION	approved
PROCEDURAL POSTURE	Ray petitioned the Supreme Court of Florida for review of a referee's report recommending a public reprimand for violating Rule of Professional Conduct 4-8.2(a) through statements concerning an immigration judge.
STANDARD OF REVIEW	The referee's factual findings are upheld if supported by competent substantial evidence and are not clearly erroneous; the court reviewed the record and independently resolved the legal issues.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; binding precedent in Florida on the stated attorney-discipline standard.
PARTIES	Michael Dean Ray v. The Florida Bar

TOPICS

- free speech
- first amendment
- constitutional law
- administrative law

PRACTICE AREAS

attorney discipline

professional responsibility

constitutional law

First Amendment

QUESTIONS PRESENTED

1. Whether an attorney's statements impugning the qualifications or integrity of a judge were protected speech under the First Amendment when the attorney lacked an objectively reasonable factual basis for making them.
2. Whether the subjective actual-malice standard from *New York Times Co. v. Sullivan* applies in attorney disciplinary proceedings under Rule of Professional Conduct 4-8.2(a).
3. Whether competent substantial evidence supported the referee's findings that Ray made the statements with reckless disregard for their truth or falsity.
4. Whether the referee properly denied Ray's motion for summary judgment.
5. Whether the burden of proof was improperly shifted to Ray to provide a factual basis for his statements.
6. Whether a public reprimand was appropriate.

HOLDINGS

1. Statements by an attorney impugning a judge's qualifications or integrity are not protected speech for purposes of Rule of Professional Conduct 4-8.2(a) when the attorney lacks an objectively reasonable factual basis for making them.
2. The purely subjective *New York Times Co. v. Sullivan* actual-malice standard does not apply in attorney disciplinary proceedings under Rule of Professional Conduct 4-8.2(a).
3. Competent substantial evidence supported the referee's findings that Ray's statements were false and made with reckless disregard for their truth or falsity.
4. The referee properly denied Ray's motion for summary judgment because the Bar's opposing affidavit demonstrated genuine issues of material fact.
5. Because the statements concerned the qualifications or integrity of a judge, the referee did not err in requiring Ray to provide a factual basis supporting those statements.
6. The referee's recommendation of a public reprimand was reasonable and was approved.

KEY QUOTATIONS

"The purpose of a defamation action is to remedy what is ultimately a private wrong by compensating an individual whose reputation has been damaged by another's defamatory statements." (558)

"For this reason, we, like many other courts, conclude that in attorney disciplinary proceedings under rule 4-8.2(a), the standard to be applied is whether the attorney had an objectively reasonable factual basis for making the statements." (559)

"We therefore approve the referee's recommended discipline." (560)

FACTUAL BACKGROUND

Ray, an immigration attorney, frequently appeared before a Miami immigration judge. Between February 1996 and August 1997, he sent three letters to the Chief Immigration Judge questioning the judge's veracity, integrity, and fairness. A referee found that certain accusations were false and were made with reckless disregard for their truth or falsity, including accusations based on statements the judge had never made and allegations unsupported by the hearing record.

PROCEDURAL HISTORY

The Florida Bar filed a minor-misconduct complaint against Ray. After a hearing on disputed factual and legal issues, the referee found that Ray made false statements concerning an immigration judge with reckless disregard for their truth or falsity and recommended a public reprimand. Ray petitioned for review, asserting First Amendment protection, error in denying summary judgment, and improper burden shifting. The Supreme Court of Florida approved the referee's report and recommended discipline in full.

DISPOSITION

approved

CASES CITED

- New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964)
- Kentucky Bar Ass'n v. Waller, 929 S.W.2d 181, 183 (Ky. 1996), cert. denied, 519 U.S. 1111 (1997)
- United States Dist. Court v. Sandlin, 12 F.3d 861, 864 n.13 (9th Cir. 1993)
- In re Holtzman, 78 N.Y.2d 184, 573 N.Y.S.2d 39, 577 N.E.2d 30 (1991), cert. denied, 502 U.S. 1009 (1991)
- In re Graham, 453 N.W.2d 313, 322 (Minn. 1990), cert. denied, 498 U.S. 820 (1990)
- Florida Bar v. Herzog, 521 So. 2d 1118, 1119-1120 (Fla. 1988)
- Florida Bar v. Clark, 528 So. 2d 369, 372 (Fla. 1988)
- State ex rel. Oklahoma Bar Ass'n v. Porter, 766 P.2d 958, 969 (Okla. 1988)
- Florida Bar v. Graham, 679 So. 2d 1181 (Fla. 1996)
- Florida Bar v. Flynn, 512 So. 2d 180 (Fla. 1987)
- Smith v. Harr, 571 So. 2d 575, 577 (Fla. 5th DCA 1990)