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PRELIMINARY STATEMENT

Petitioner, JUDITH DALE SHAPIRO, was the Respondent in Bar disciplinary proceedings below. Respondent, The Florida Bar, was the Petitioner in the proceedings below. In this brief the parties are referred to as they appear in this Court and by their proper names.

The record on the Petition consists of the Report and record filed by the Referee pursuant to Rule 11.09(3)(b), Article XI of the Integration Rule of The Florida Bar. An affidavit by the Petitioner is contained in Appendix 1 to this brief. Appendix 2 consists of the Report of the Referee which will be referred to by proper name and page number.

STATEMENT OF THE CASE AND FACTS

On or about October 25, 1983, The Florida Bar filed a formal complaint against the Petitioner alleging violations of Article XI, Rule 11.02(3)(a) of the Integration Rule of The Florida Bar bearing case number 1083C18. On November 4, 1983, the Honorable James E. Alderman, Chief Justice of the Supreme Court of Florida designated Robert C. Scott, a judge of the Seventeenth Judicial Circuit of Florida, as referee for the Court in this cause. This cause came on for hearing before the Referee on February 3, 1984 at which time the parties presented a Joint Stipulation of Facts by which a proposed resolution of this case was presented to the Referee. On February 20, 1984, the Referee entered his Report recommending adoption in full of the Joint Stipulation of Facts and, in Part IV of the Report, recommending adoption of the disciplinary disposition agreed to by the parties with the addition of two special conditions of probation one of which is the subject matter of this Petition for Review. On March 20, 1984, this Court granted a thirty day extension in which to file this brief.

Petitioner adopts in full the Statement of Facts as contained in the Joint Stipulation of Facts contained in Appendix 2 to this brief and part of the record on review. In Part II of his Report, the Referee adopted the Joint Stipulation of Facts between the parties in full and, in Part III recommended that the Petitioner be found guilty of those disciplinary

violations covered by the Stipulation. In Part IV of his Report, the Referee recommended the adoption of the disciplinary disposition agreed to between the parties with the addition of two special conditions of probation:

1. Respondent will confine her professional undertakings to civil, as opposed to criminal, matters.
2. Respondent participate in the guardian ad litem program of the Eleventh Judicial Circuit and expend 250 hours, in the two year period of probation, as an attorney guardian ad litem for an abused, neglected or otherwise dependant child.

This Petition for Review and brief contests the second of the proposed special conditions of probation.^{1/}

^{1/} In her Petition for Review, Petitioner contested both special conditions of probation. However, she has now determined to forego her complaint about the first special condition of probation for the reasons stated in her affidavit (Appendix 1).

STATEMENT OF ISSUE

WHETHER THE SUPREME COURT OF FLORIDA WILL
ACCEPT A JOINT STIPULATION OF FACTS
BETWEEN THE PETITIONER AND RESPONDENT IN
BAR DISCIPLINARY PROCEEDINGS AND DELETE A
SINGLE SPECIAL CONDITION OF PROBATION
RECOMMENDED BY THE REFEREE.

SUMMARY OF THE ARGUMENT

Petitioner, JUDY SHAPIRO, respectfully contends that the agreement between herself and The Florida Bar includes no special condition of probation. Petitioner further contends that the agreement, calling for a ninety (90) day suspension followed by a two-year period of probation is consistent with other similar Bar disciplinary cases and is also consistent with the Court's duty to weigh personal factors as they effect the Petitioner and at the same time to discharge its responsibility to protect the public and generate confidence in the integrity of the legal profession. Furthermore, the Referee was specifically advised of Petitioner's intention not to practice law for the foreseeable future and, therefore, there was no basis for the recommended special condition of probation requiring Petitioner's participation in the guardian ad litem program during the period of her probation. The special condition of probation is, therefore, unjustified. Finally, Petitioner contends that she is entitled to specific enforcement of her agreement with The Florida Bar.

ARGUMENT

THE SUPREME COURT OF FLORIDA SHOULD
ACCEPT THE JOINT STIPULATION OF FACTS
BETWEEN THE PETITIONER AND RESPONDENT IN
BAR DISCIPLINARY PROCEEDINGS AND DELETE A
SINGLE SPECIAL CONDITION OF PROBATION
RECOMMENDED BY THE REFEREE.

Frankly, the issue raised herein seems a little strange to have to litigate. However, due to practical considerations it will be virtually impossible for Petitioner to complete the 250 hours in the guardian ad litem program recommended by the Referee. Petitioner asks only that this special condition of probation be deleted and that the Court otherwise adopt the Referee's Report in full. Petitioner is also willing to pay appropriate costs connected with these proceedings.

In Bar disciplinary proceedings it is the duty of the Court to weigh personal factors as they effect the attorney involved and in so doing also to discharge its impersonal responsibility to protect the public and to generate confidence in the integrity of the legal profession. The Florida Bar v. Blalock, 325 So.2d 401, 404 (Fla. 1976). Since the Petitioner did not agree to any special conditions of probation, to impose them would fly directly in the face of the terms of the agreement by which this matter was resolved. Combined with the fact that Petitioner does not plan to practice law for the foreseeable future, a fact which was brought to the attention of the Referee, the special condition of probation is unjustified by the facts.

Moreover, a comparison of the discipline imposed in

this case with the discipline imposed in other similar cases, The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1979), reveals that the agreed to discipline (90 days suspension and two years probation) is at the upper end of the disciplinary scale even without the special conditions of probation. See e.g., The Florida Bar v. Oxner, 431 So.2d 983 (Fla. 1983); The Florida Bar v. Saphirstein, 376 So.2d 7 (Fla. 1979); The Florida Bar v. Pearce, 356 So.2d 317 (Fla. 1978).

Finally, while Bar disciplinary proceedings are not criminal in character, they are penal in character, The Florida Bar v. Quick, 279 So.2d 4 (Fla. 1973), and, as such, an analogy can be made to plea agreements in criminal cases as to which the parties are entitled to specific enforcement. Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495 (1971). Since it is clear that the Petitioner has relied heavily on the stipulated disposition and, in fact, changed her position and left the practice of law partly as a result of the contemplated disposition of this matter, (Appendix 1), she is, by analogy to the criminal law, entitled to specific enforcement of her agreement.

CONCLUSION

Based upon the foregoing cases and authorities, the Petitioner requests that this Court accept in full the report of the Referee filed in this cause with the exception of that portion of Part IV of the report requiring as a special condition that the Respondent participate in the guardian ad litem program.

Respectfully submitted,

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BY


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail this 18 day of April 1984 to DAVID G. MCGUNEGLE, ESQ., Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 102, Orlando, Florida 32801.

BY


EDWARD R. SHOCHAT