IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

JUSTIN JEROME LIPMAN,

Respondent.

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Case No. 67,262
TFB Case No. 01-81N15

ANSWER BRIEF OF COMPLAINANT

THOMAS H. BATEMAN, III
MARY ELLEN BATEMAN
Bar Counsel

3722 Lifford Circle
Tallahassee, Florida 32308
(904) 893-4693

Attorneys for Complainant

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CITATION OF AUTHORITIES

PRELIMINARY STATEMENT

The Florida Bar is the complainant in these proceedings and will be referred to hereinafter as "The Bar."

Justin Jerome Lipman, the accused attorney, is the respondent and will be referred to as "Respondent" or by use of his surname.

The record on review consists of the following: the record on appeal of Lipman v. State, 428 So.2d 733 (Fla. 1st DCA 1983); the report of the referee, the Honorable William A. Cooper, Jr.; the transcript of the hearing before the referee; and, certain other documents entered into evidence at said hearing. The record on review will be referred to by the same designations utilized by the referee in the list attached to his report which will be followed by the appropriate pagination in parentheses. The referee's report will be referred to by the symbol "RR" followed by the appropriate page number.

Oral argument is not requested by The Bar inasmuch as the issues presented have been adequately argued by the parties in their respective briefs and oral argument will not facilitate a greater or better understanding of the issues.

STATEMENT OF THE CASE AND FACTS

The Bar rejects Respondent's rendition of the Statement of the Facts and his Statement of the Case. Each contains immaterial, contradictory and impertinent argument which is not appropriate for those portions of his initial brief. Moreover, Respondent does not present the facts in the light most favorable to The Bar, the prevailing party.

The Bar adopts and relies upon the facts as found by the referee and which are set out in his report (RR 1-6). Each finding of fact delineated by the referee is accompanied by a corresponding reference to the record. It is not necessary to repeat the facts here. However, it is appropriate to set out the statement of the case for purposes of these proceedings.

Respondent seeks review of the referee's report and his recommendation that Respondent be found guilty of violating the following provisions of the Code of Professional Responsibility and the Integration Rule and its Bylaws which arose from the allegations made in The Bar's complaint and which were proved at the hearing: DR 1-102(A)(1) (violation of a disciplinary rule); DR 1-102(A)(3) (illegal conduct involving moral turpitude); DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(6) (conduct that adversely reflects on his fitness to practice law); DR 9-102(A) (commingling of funds); DR 9-102(B)(3) (maintenance of trust account records); Integration Rule 11.02(4)(b) (trust accounts as official records); and, Integration Rule and its Bylaws 11.02(4)(c) (trust accounting procedures). (RR 5).

Respondent also seeks review of additional recommendations of the referee made pursuant to this Honorable Court's decision in The Florida Bar v. Stillman, 401 So.2d 1306 (Fla. 1981). The referee recommended Respondent be found guilty of the following provisions of the Code of Professional Responsibility and the Integration Rule: DR 9-102(A) (commingling of funds); DR 9-102(B) (preserving identity of funds of a client); Integration Rule 11.02(4)(c) (trust accounting procedures); and Integration Rule 11.02(4)(d)[1] (interest bearing trust accounts). (RR 5-6).

Finally, Respondent seeks review of the referee's recommendation that Respondent be disbarred from the practice of law in Florida. (RR 6).

The path to the instant stage in the proceedings began in August and September, 1981, when the First Judicial Circuit Grievance Committee determined there was probable cause to believe Respondent, a member of The Florida Bar, was guilty of misconduct justifying disciplinary action. Respondent had been indicted by an Escambia County Grand Jury on June 26, 1980, charging him with two counts of being a principal to making instruments for forging bills and two counts of aiding and abetting a federal prisoner to escape. Upon motion of the Respondent, the latter two counts were dismissed by the trial court.

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[1]It appears the referee's report contains a typographical error inasmuch as The Bar did not allege any improprieties concerning Rule 11.02(4)(d) nor was any evidence presented to the referee regarding same. The referee was probably referring to Rule 11.02(4)(b) (trust accounts as official records) which was addressed in his report. No reference to Rule 11.02(4)(d) (interest bearing accounts) is made in the referee's report. (RR 1-6).

On February 20, 1981, following a five-day trial, the jury returned a verdict of guilty to the two counts of being a principal to making instruments for forging bills. On September 4, 1981, Respondent was formally adjudged guilty and sentenced to five (5) years imprisonment.

Respondent, by Order of this Court, was automatically suspended from the practice of law in Florida on October 16, 1981, following his two felony convictions.

The First District Court of Appeal, on March 18, 1983, rendered its opinion reversing Respondent's conviction and remanding to the lower court for a new trial. Thereafter, on November 2, 1983, Respondent pleaded nolo contendere to reduced charges of conspiracy to make instruments for forging bills, first degree misdemeanors. He was adjudicated guilty on January 18, 1984, and sentenced to six (6) months imprisonment in the Escambia County Jail.

Respondent did not seek relief from his automatic felony suspension until October, 1984. The Bar opposed Respondent's petition to terminate suspension. However, this Honorable Court allowed Respondent to be readmitted to the Bar in December, 1984. The Court specifically noted Respondent's readmission was without prejudice to the Bar to go forward with disciplinary proceedings.

The undersigned were appointed as bar counsel in these proceedings in May, 1985.

The formal complaint was filed against Respondent on June 28, 1985. On July 30, 1985, Acting Chief Justice Adkins appointed the

Honorable William A. Cooper, Jr., as referee for the Supreme Court in this matter.

Several pre-trial motions were filed by Respondent before the referee which were argued and ruled upon on September 6, 1985. On that date and upon agreement of the parties, the referee set the cause for final hearing on January 30 and 31, 1986. Thereupon on January 30, 1986, the final hearing was held before the referee. The Report of the Referee was rendered on April 14, 1986. On May 12, 1986, Respondent filed his Petition for Review.

This review follows.

SUMMARY OF ARGUMENT

Respondent's initial brief raises six (6) points for review. In responding, The Bar has consolidated Respondent's points into four (4) issues.

First, the referee was correct in denying Respondent's pre-trial motions to dismiss. Jurisdiction over the discipline of persons admitted to the practice of law in this state is exclusively with this Honorable Court. Respondent's "statute of limitation" or "estoppel" argument is completely without merit pursuant to the precedent laid down by this Court. Indeed, in reinstating Respondent following his automatic felony suspension, this Honorable Court stated it was doing so without prejudice to The Bar going forward with disciplinary proceedings. The referee's ruling denying Respondent's motion to dismiss was not erroneous.

Similarly, the referee's denial of Respondent's motion for continuance was not made in error. Generally, denial of a motion for continuance will be overturned only where there has been a showing of a complete abuse of discretion. Respondent does not even allege an abuse of discretion much less demonstrate it.

Second, the findings of fact of the referee come to this Court clothed with the presumption of correctness. They will be overturned only where they are wholly lacking in evidentiary support. The referee below painstakingly sat through ten (10) hours of testimony, considered several volumes of evidence and wrote a report setting out thirty-five (35) findings of fact each for which there is at least one (1) reference to the record in support thereof. The Bar submits

the evidence is clearly and convincingly sufficient to warrant the referee's recommendations of guilt and disbarment.

Third, the circumstances surrounding Respondent's involvement with the counterfeiting scheme are not just coincidental. Nor is Respondent's claim that he merely used bad business judgment to be believed when his actions belie such a claim. The findings of the referee demonstrate the evidence is of such a clear and convincing nature that a recommendation of guilt is the appropriate disposition.

Finally, the evidence before this Court is of such magnitude that the only appropriate sanction is disbarment. The referee's finding that Respondent was more than an unwitting, naive financier of a business enterprise which he did not know to be criminal is clearly supported by the documentary as well as the testimonial evidence before this Court. Inasmuch as the primary purpose of disciplining attorneys is the protection of the public, the administration of justice, and the protection of the legal profession, this Court must purge the Bar of those unworthy to practice law in this state. In conspiring to print counterfeit bills for the purpose of buying drugs which will later be resold for real money, Respondent exhibited dishonest, fraudulent and deceitful conduct which must be sanctioned in the most serious manner. This case calls out for Respondent's disbarment from the practice of law in Florida.

ARGUMENT

ISSUE I

THE REFEREE DID NOT ERR IN DENYING RESPONDENT'S PRE-TRIAL MOTIONS

Respondent challenges the referee's denial of Respondent's Motion to Dismiss and his Motion for Continuance. It is The Bar's position the referee's denial of the Motion to Dismiss was not clearly erroneous. Moreover, the referee's denial of Respondent's Motion for Continuance was not an abuse of discretion. Inasmuch as the standards for the scope of review are different, each motion will be discussed separately.

(a) Motion to Dismiss

Upon the filing of the formal complaint on June 28, 1985, Respondent moved the referee to dismiss the cause of action for lack of jurisdiction. Respondent alleged The Bar violated the spirit of Fla. Bar Integr. Rule, art. XI, Rule 11.04(6)(b) by not filing a complaint "promptly" upon the finding of probable cause.

A hearing was held before the referee on September 6, 1985, wherein the parties were given an opportunity to fully argue their respective positions. Respondent appeared on his own behalf and was given every opportunity to demonstrate some sort of prejudice resulting from the alleged delay. In short, Respondent was given a full and fair hearing and failed to persuade the referee. The referee denied the motion to dismiss specifically finding "the Florida Bar has proceeded expeditiously in this matter." (Order, September 6, 1985). In addition, the referee specifically

"determined that the rights of the Respondent have not been prejudiced" by the alleged delay. Id.

On review, Respondent asks this Court to ignore its own precedent and to fashion some sort of statute of limitation for him. He asks this of the Court while expressly acknowledging "a statute of limitation does not exist in proceedings such as these." (Respondent's Brief, 10). This Honorable Court should not honor his request.

In The Florida Bar v. McCain, 361 So.2d 700, 704 (Fla. 1978), the Court stated, "There is no express statute of limitations governing discipline proceedings." Furthermore, the Court noted, "[T]he statutory bar against actions at law has no application in a disbarment proceeding." Id. Quoting with approval People ex rel. Healy v. Hooper, 218 Ill. 313, 75 N.E. 896 (1905), the McCain Court opined that lawyers' rights may be protected without a mechanical and automatic rule of limitations for actions involving misconduct. However, the Court did note that it would always be open to address the issue when it is raised. E.g., The Florida Bar v. Fussell, 474 So.2d 210 (Fla. 1985).

Notwithstanding the referee's determination of the lack of prejudice, Respondent persists in this appeal to attempt to demonstrate prejudice by alluding to an apparent inconsistency in Secret Service Agent Donald Stebbins' testimony at the disciplinary hearing (Respondent's Brief, 10-11), and by the general statement that "because of the passage of time, people's memories have a tendency to fade." Id. This inferential laches argument is not

compelling given the lack of citation to legal precedent regarding the issue. See McCain, 361 So.2d at 705-706.

Indeed, Respondent's argument has no merit. As in the case of The Florida Bar v. Price, 478 So.2d 812 (Fla. 1985), Respondent stipulated to entry of the record on appeal in Lipman v. State into evidence in the disciplinary hearing. The testimony in the record has been frozen in time for all time. There are no memories to fade. However, Respondent, obviously wanting to point out inconsistencies at every turn (at the hearing and on appeal) took advantage of the passage of time in attacking Agent Stebbins' hearing testimony as being inconsistent with his deposition testimony. (HT, 84-116; 135-183). Respondent has clearly attempted to manufacture prejudice where none exists.

At the hearing on the Motion to Dismiss the undersigned directed the referee's attention to the previous course of events leading up to the filing of the complaint. More importantly, the referee's attention was drawn to this Court's Order terminating Respondent's automatic felony suspension. In that Order this Honorable Court reinstated Respondent to the practice of law expressly and clearly doing so without prejudice to The Bar to proceed with disciplinary proceedings.

Inasmuch as Respondent had been suspended from the practice of law until December, 1984, the public and the legal profession were protected during the interim. The Bar opposed Respondent's readmission but upon his reinstatement moved promptly to bring the matter to a conclusion. The referee's finding of fact that The Bar was diligent in prosecuting this case is not clearly erroneous and

should be affirmed. See generally The Florida Bar v. Hirsch, 359 So.2d 856 (Fla. 1978) and The Florida Bar v. Wagner, 212 So.2d 770 (Fla. 1968).

(b) Motion for Continuance

At the conclusion of the September 6, 1985 hearing on Respondent's motions, the referee discussed possible dates for the final hearing. Upon agreement of the parties and the referee, the hearing was set for January 30 and 31, 1986. The date allowed the parties nearly five (5) months to prepare. However, the referee made it clear that he intended to abide by this Court's directive to render a report within 180 days. Respondent was abundantly aware of the referee's intentions.

In the face of the foregoing, two weeks before the hearing, the Respondent, in the eleventh hour, moved the referee for a continuance claiming he had just received the funds to hire counsel--the same counsel who had represented him at his criminal trial. In addition, he claimed the undersigned was dilatory in responding to interrogatories.

The undersigned responded to Respondent's request for a continuance in writing. However, the referee, noting the motion contained insufficient reasons for allowing a continuance, denied the request without a hearing.

Respondent "feels" the referee erred in denying the continuance. His chief reason seems to be that if other counsel (Leo Thomas) had been able to represent him at the hearing, a better presentation would have been made on his behalf. In addition,

Respondent claims the referee was "more interested in adhering to a time table" than Respondent's rights.

The Bar submits Respondent has utterly failed to demonstrate a palpable abuse of discretion by the referee as Respondent is required to do. It is black letter law that a motion for continuance is grounded in the sound discretion of the trial court and a judgment or ruling of the court will not be disturbed absent a clear abuse of discretion. In re Gregory, 313 So.2d 735 (Fla. 1972); McNealy v. State, 17 Fla. 198 (1879).

Perhaps Respondent is correct in inferring other counsel "would have done a better job in presenting the facts" on his behalf. (Respondent's Brief, 13). Perhaps other counsel would have presented a better case for The Bar, too. However, these clearly are not compelling reasons not to go forward with a trial that is at issue. Any advocate worth his salt will later perceive some sort of inadequacy in his presentation. Only through experience does one improve.

The fact of the matter is Respondent, by agreeing to stipulate to the record on appeal in Lipman, in effect, had the effective assistance of his previous counsel (Leo Thomas) in this proceeding. It was Mr. Thomas who cross-examined the witnesses at Respondent's criminal trial who, except for Kenneth Massoud, were the same witnesses subpoenaed and prepared to testify against Respondent at the disciplinary hearing. Thus, Respondent's argument in this regard is completely without merit.

Whether Respondent has an attorney at this point in the proceedings is irrelevant to his argument regarding the denial of his

motion for continuance of the disciplinary hearing.[2] However, had Respondent read Fla. Bar Integr. Rule, art. XI, Rule 11.09(3)(a) correctly, he would have known his brief in support of the petition for review was not due to be filed until 15 days after the termination of the meeting of the Board of Governors following by ten (10) days the mailing date of a letter from the referee serving a copy of the referee report on Respondent and The Bar. Indeed, Respondent has not even seen fit to move this Court for an extension of time in which to attempt to secure counsel. Again his argument is baseless and merely a manufactured issue without substance.

(c) Summary

Upon review, it is Respondent's burden to demonstrate the referee's denial of Respondent's pre-trial motions as erroneous, unlawful or unjustified. Respondent has not met his burden. The Bar submits Respondent has failed to demonstrate the denial of the motion to dismiss as clearly erroneous. In addition, he has failed to show a palpable abuse of discretion in the referee's denial of the motion for continuance. Consequently, the denial of the pre-trial motions must be affirmed.

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[2]Compare Respondent's argument regarding delay (Point I, Respondent's Brief) with his argument that he should have been granted a continuance. (Point II, Respondent's Brief).

ISSUE II

THE REFEREE'S FINDINGS OF FACT ARE CLEARLY SUPPORTED BY THE RECORD

Respondent claims it is inconceivable to him how the referee can "smugly" state the evidence is clear and convincing when it is "apparent that the referee did not read Lipman v. State, 428 So.2d 733." (Respondent's Brief, 16). He claims he was convicted in the criminal trial because of an overzealous prosecutor and except for the testimony of one witness there was not corroborating evidence that he is guilty of anything but bad business judgment. Id. Respondent points out that at the hearing he attempted to refer to inconsistencies in Kenneth Massoud's testimony. He asserts his actions were for naught, however, because they apparently fell on the deaf ears of the referee. Id.

Respondent takes exception to the following findings of fact of the referee: (Count I) paragraphs 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 14, 15; (Count II) paragraphs 33, 34, 35. Respondent admits paragraphs 1, 7, 9, 16-20 of the report pertaining to Count I and paragraphs 21-32 regarding Count II.

The Bar submits the findings of fact as reported by the referee are clearly supported by the record.

The fact finding responsibility in disciplinary proceedings is imposed upon the referee as an agent of this Honorable Court. The Florida Bar v. Hirsch at 857; McCain at 706. It is well settled that his findings come to the Court clothed with the presumption of correctness and should not be overturned unless clearly lacking support in the evidence. Wagner at 772; The Florida Bar, Petition

of Rubin, 323 So.2d 257 (Fla. 1975); Fla. Bar Integr. Rule, art. XI, Rule 11.09(3)(e). A referee's findings of fact are entitled to the same presumption of correctness as afforded the judgment of the trier of fact in a civil proceeding, The Florida Bar v. Hawkins, 444 So.2d 961 (Fla. 1984), and should be upheld unless clearly erroneous or wholly without support in the evidence. The Florida Bar v. McKenzie, 442 So.2d 934 (Fla. 1983).

The referee, alone, must weigh the credibility of the witnesses and of the evidence placed before him. The Florida Bar v. Saxon, 379 So.2d 1281 (Fla. 1980). Any conflicts in the evidence are properly resolved by the referee in a disciplinary proceeding as the trier of fact. The Florida Bar v. Hoffer, 383 So.2d 639 (Fla. 1980). The burden is upon the party seeking review to demonstrate that a report of the referee sought to be reviewed is erroneous, unlawful or unjustified. Fla. Bar. Integr. Rule, art. XI, Rule 11.09(3)(e).

The Bar asserts Respondent has failed to meet his burden as the findings of fact are not wholly lacking in evidentiary support, are not clearly erroneous and should not be overturned.

Contrary to Respondent's bare, unsupported statements that the referee "apparently" did not read Lipman v. State and that all Respondent did at the disciplinary hearing "apparently" fell on deaf ears, the report of the referee clearly and unequivocally states the findings of fact were made "[A]fter considering all the pleadings and evidence . . ." (e.s.). (RR, 1). It could not be said any simpler or in plainer terms.

There can be only one reason why the referee did not refer to Respondent's testimony below. He found Respondent's version of the matter not to be credible. The referee was in the best position to view the Respondent who represented himself and testified before him, to hear and weigh his testimony and to observe his demeanor. Moreover, Respondent was given more than ample opportunity to explain his position to the referee. By considering all of the pleadings and evidence before him, the referee cannot be in error unless he has totally misconstrued the evidence. The Bar submits that is not the situation sub judice.

Accordingly, the findings of fact with regard to Counts I and II must be affirmed.

ISSUE III

THE REFEREE'S RECOMMENDATION OF GUILT IS SUPPORTED BY CLEAR AND CONVINCING EVIDENCE

Pursuant to article XI, Rule 11.09(3)(e) of The Florida Bar Integration Rule:

> Upon review, the burden shall be upon the party seeking review to demonstrate that a report of a referee sought to be reviewed is erroneous, unlawful or unjustified.

Accordingly, Respondent is required to meet a heavy burden when seeking to overturn a Referee's findings of fact and report.

The Florida Bar must present clear and convincing evidence of a breach of the Code of Professional Responsibility or the Integration Rule before the Supreme Court can find that the Respondent has breached the rules of conduct governing attorneys. McCain at 706. Bar Counsel apprised the Referee of this burden of proof during the final hearing. (HT-258). In fact, the referee made a specific finding that the evidence of Respondent's involvement in the counterfeiting scheme was clear and convincing. (RR-6).

Respondent has totally failed to demonstrate that the findings of the referee are without support in the record much less that they are clearly erroneous.

Accordingly, the recommendations of guilt made by the referee pursuant to his finding of facts should be approved by this Court.

Respondent's argument that "the best that can be said for the evidence is that it amounts to a 'swearing match' between Massoud and myself" is completely erroneous as Massoud's testimony was

corroborated by Clarese Wilson during her grand jury testimony as well as other witnesses and documentary evidence.

ISSUE IV

THE REFEREE'S RECOMMENDATION OF DISBARMENT IS APPROPRIATE ON THE FACTS OF THIS CASE

The referee, in his report of April 11, 1986, recommended that Respondent be disbarred from the practice of law in Florida. In making his recommendation, the referee concluded that "the evidence is clear and convincing that Respondent's complicity in the counterfeiting scheme extends to its very core." Furthermore, the referee found that Respondent refused to acknowledge his own guilt, has never expressed any remorse and has presented no indication whatsoever of the slightest degree of rehabilitation. (RR-6).

In view of the serious nature of Respondent's misconduct, the Bar asserts that the referee's recommendation of disbarment is appropriate and meets the criteria enunciated by this Court in State ex rel. The Florida Bar v. Murrell, 74 So.2d 221 (Fla. 1954), and more recently in The Florida Bar v. Wilson, 425 So.2d 2 (Fla. 1983).

In Murrell, the Court reasoned that any discipline imposed on an attorney must be: (1) fair to the attorney; (2) just to the public; (3) designed to correct any anti-social tendencies on the part of the connected attorney; and (4) severe enough to deter similar conduct by other attorneys. 74 So.2d at 222.

Disbarment of Respondent after he has been adjudged guilty of conspiracy to violate Section 831.18 of the Florida Statutes cannot be interpreted as unfair to him. "By the very nature of his professional commitment the lawyer is least expected to be a violator

of the criminal law." The Florida Bar v. Levenson, 211 So.2d 173, 174 (Fla. 1968).

Only when convincing and weighty evidence of mitigating circumstances is presented would it be unfair to disbar an attorney after he has been convicted of such a crime. No evidence in mitigation has been presented by Respondent.

As stated by this Court in State ex rel. Florida Bar v. Evans, 94 So.2d 730 (Fla. 1957), "in a disbarment proceeding based on conviction of a crime, the proof of conviction and adjudication of guilt are sufficient to establish a prima facie case for disciplinary action. Due process, however, requires that the accused attorney shall be given full opportunity to explain the circumstances and otherwise offer testimony in mitigation of the penalty." 94 So.2d at 735. Respondent was accorded the opportunity to explain the circumstances surrounding his plea of nolo contendere and otherwise contest the inference that he engaged in illegal conduct. No mitigation was offered and no excuse given, outside of Respondent's plea of "poor business judgment." (Respondent's Brief, 33).

There are aggravating circumstances involved in this case, however, as Respondent enticed a client who was trying to successfully complete a felony probation to revert to his former criminal ways to do the "dirty work" in Respondent's scheme. (RR-6).

In light of the absence of any relevant mitigating factors, and in light of the aggravating factors involved in this case, disbarment is a fair penalty.

Additionally, as required by Murrell, disbarment in this case would be just to the public.

Disbarment would operate to protect the public from further unethical, illegal and immoral conduct on the part of the attorney. A lesser penalty would not adequately demonstrate to the public the Court's determination and desire to uphold the standards of the legal profession and its members. As this Court reasoned in Wilson, a suspension, with continued membership in the Bar, albeit without the privilege of practicing, is susceptible of being viewed by the public as a slap on the wrist when the gravity of the offense calls out for a more severe discipline. 425 So.2d at 3.

Another factor to be considered when imposing discipline is that the discipline must be designed to correct any anti-social tendencies of the convicted attorney. It was the opinion of the referee that Respondent has presented "no indication whatsoever of the slightest degree of rehabilitation, and it is apparent that he will never again be fit to practice law in this state or any other state." (RR-6).

In view of the referee's findings, disbarment would better provide an opportunity for the Respondent to attempt to rehabilitate himself and to correct any anti-social tendencies which would need to be corrected before he could again practice law. In addition, disbarment, while facilitating rehabilitation would insure that the Respondent could only be admitted again upon full compliance with the rules and regulations governing admission to the Bar. Fla. Bar Integr. Rule, art. XI, Rule 11.10(5).

The last requirement of Murrell, is that the discipline imposed on an attorney be severe enough to deter similar conduct by other attorneys.

Respondent was convicted of a serious crime involving conspiracy to counterfeit. Any discipline other than disbarment would do little to deter similar conduct by other attorneys. As this Court reasoned in Wilson, "if the discipline does not measure up to the gravity of the offense, the whole disciplinary process becomes a sham to the attorneys who are regulated by it." 425 So.2d at 4.

There is one additional factor to be taken into account by the Court when assessing the referee's recommendation as to appropriate discipline.

In The Florida Bar v. Breed, 368 So.2d 356 (Fla. 1979), this Court held that each attorney disciplinary case must be assessed individually, and in determining the punishment, the Supreme Court should consider the punishment imposed on other attorneys for similar misconduct.

In cases involving crimes of moral turpitude, this Court has not hesitated to impose disbarment as discipline. See, The Florida Bar v. Weissel, 180 So.2d 649 (Fla. 1965) (counterfeiting and uttering forged instruments); The Florida Bar v. Wilson, 425 So.2d 2 (Fla. 1983) (solicitation to traffic and attempted trafficking in cocaine); The Florida Bar v. Rubin, 257 So.2d 5 (Fla. 1972) (falsely endorsing government bonds); and The Florida Bar v. Price, 478 So.2d 812 (Fla. 1985) (conspiracy to import marijuana).

In view of the Court's duty to impose discipline which is fair to the Respondent, just to be public, designed to correct anti-social

tendencies of the Respondent and strong enough to deter other attorneys from similar misconduct, the Bar would urge the Court to approve the recommendation of the referee that the Respondent be disbarred.

CONCLUSION

By reason of the foregoing, The Florida Bar requests this Honorable Court approve the Referee's findings of fact and recommendations as to guilt and approve the discipline that was recommended by the Referee that Respondent be disbarred from the practice of law in Florida and that costs be taxed against Respondent.

Respectfully submitted,

Thomas H. Bateman, III

THOMAS M. BATEMAN, III

for Thomas H. Bateman, III

MARY ELLEN BATEMAN

Bar Counsel
3722 Lifford Circle
Tallahassee, Florida 32308
(904) 893-4693

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing COMPLAINANT'S ANSWER BRIEF was sent by U. S. Mail to Mr. Justin J. Lipman, Respondent, at P. O. Box 15229, Pensacola, Florida 32514, on this 16th day of June, 1986.

Thomas H. Bateman, III
for Mary Ellen Bateman
Bar Counsel