IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

CASE NO. 67,890, 67,926, 68,641

STEVEN L. SOMMERS,

Respondent.

RESPONDENT'S REPLY BRIEF

Counsel for Respondent
John A. Weiss
P. O. Box 1167
Tallahassee, FL 32302
(904) 681-9010

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SUMMARY OF ARGUMENT

The Referee found Respondent guilty of eleven counts of misconduct involving neglect of his client's cases over a one year period extending from August 1984 until June 1985. Prior to the period during which Respondent's misconduct occurred, he had practiced law for seven years without complaint. None of Respondent's offenses involved dishonesty, misrepresentation or a lack of integrity.

Respondent argues that the one year suspension demanded by the Florida Bar, or the six month suspension recommended by the Referee, is unduly harsh in light of the numerous mitigating circumstances involved. Those mitigating factors include: (1) no prior record; (2) all acts of misconduct occurred within a relatively tight time period and only involved inattention to Respondent's practice; (3) the underlying cause of Respondent's misconduct, drug dependency, has been treated and Respondent is now active in NA and AA programs and is recovering from his dependency; (4) after a brief period of repression and denial, Respondent cooperated with the Bar, waived probable cause, admitted guilt on ten of the eleven counts for which he is guilty and stipulated to facts; and (5) Respondent is genuinely remorseful for his misconduct.

Respondent argues that a 45 day suspension coupled with three years probation is sufficient discipline to impose for his misconduct and will insure protection of the public.

ARGUMENT

SUSPENSION FROM THE PRACTICE OF LAW FOR 45 DAYS WITH AUTOMATIC REINSTATEMENT AND PROBATION FOR THREE YEARS WITH QUARTERLY CASE LOAD REPORTS, MANDATORY WEEKLY NA OR AA ATTENDANCE AND RESTITUTION TO CLIENTS IS THE APPROPRIATE DISCIPLINE TO BE ENTERED FOR RESPONDENT'S NEGLECT OF HIS CLIENT'S CASES

Although the Referee found Respondent guilty of eleven separate acts of essentially neglect, in fact, his offense can be summarized as the single offense of inattention to his practice over a one year period. After seven years of blemish-free practice, Respondent's professionalism suddenly deteriorated in the summer of 1984. We now know that Respondent's problem was attributable to his dependence upon drugs.

By autumn 1985, Respondent realized his dependency and sought help. Ultimately he spent six weeks in a rehabilitation clinic.

Despite the fact that Respondent has no prior disciplines, cooperated fully with the Florida Bar, acknowledged his guilt and showed genuine remorse for his misconduct, successfully completed a six-week rehabilitation

program and participated thereafter in a treatment regimen, the Florida Bar urges this court to suspend Respondent for one year and thereafter until he proves rehabilitation, coupled with a three-year probationary period. Although Respondent's misconduct involves no dishonesty or misrepresentation or lack of integrity, the Bar seeks a discipline more severe than than imposed in cases involving outright theft. Examples are:

a. The Florida Bar v. Dancu, 490 So. 2d 40 (Fla. 1986). Respondent was suspended for six months for lying to his client about the receipt of $934,000 in trust funds and for stealing $8,800 in interest earned on those trust funds.

b. The Florida Bar v. Stalnaker, 485 So. 2d 815 (Fla. 1986). Respondent was suspended for 90 days for taking almost $37,000 from his law firm. Apparently, he thought he could take the $37,000.

c. The Florida Bar v. Gillin, 484 So. 2d 1218 (Fla. 1986). Respondent was suspended for six months for intending to steal $25,000 from his law firm.

d. The Florida Bar v. Wall, 491 So. 2d 549 (Fla. 1986). Respondent was suspended for three months and one day, for deliberately and knowingly failing to indicate defects on title insurance policies,

conduct involving dishonesty, fraud, deceit or misrepresentation. His actions resulted in losses of $161,200.

e. The Florida Bar v. Jennings, 482 So. 2d 1365 (Fla. 1986). Respondent was given a public reprimand for fraudulently giving two second mortgages on the same piece of property.

f. The Florida Bar v. Welty, 382 So. 2d 1220 (Fla. 1980). Respondent was suspended for six months for stealing $24,000 in trust funds over a two-year period.

There should be some degree of consistency in the penalties imposed by this court for misconduct. Each of the cases cited in the preceding paragraph involved a lack of integrity. They each involved fraud or misrepresentation. Yet, each of those lawyers received a discipline far less severe than that which the Florida Bar is urging for Respondent.

Respondent argues that his offenses are more closely related to those in which public reprimands are imposed. See, e.g. The Florida Bar v. Long, 486 So. 591 (Fla. 1986), (public reprimand for nine counts of misconduct including neglect, excessive fees and violation of trust accounting provisions), and The Florida Bar v. Ehrlich, 484 So. 2d 417

(Fla. 1986), (public reprimand for various counts of neglect which includes two years probation requiring urinalysis).

In discussing The Florida Bar v. Garcia, 484 So. 2d 1254 (Fla. 1986), a public reprimand case for four counts of neglect, the Bar points out that two justices dissented from the "token discipline" imposed and recommended a 30 day suspension. The penalties suggested by Respondent as the appropriate one for his offenses, i.e., 45 days suspension, plus 3 years probation, is even more severe than that recommended in the Garcia dissent.

Respondent is not so naive as to argue to this court that his offense is not serious. He acknowledged that when he apologized to the Bench and to the Bar in the Referee proceedings (TR-126). He is asking this court to give him a penalty that will not destroy what little practice he has remaining and to give him a chance to prove, as he did for seven years, that he can be an asset to the Bar.

When Respondent's 45 day suspension is coupled with a three year probationary period, requiring continued participation in AA or NA and including quarterly caseload reports, there is no risk to the public whatsoever.

The Florida Bar also argues that The Florida Bar v. Larkin, 447 So. 2d 1340 (Fla. 1984) is support for an enhanced discipline for Respondent. That simply is not the case.

The 1984 Larkin case was the third time that Mr. Larkin appeared before this court. In the first case, The Florida Bar v. Larkin, 370 So. 2d 371 (Fla. 1979), Respondent received a public reprimand and probation for one year for neglect of a legal matter. Shortly after his probation expired, Respondent again neglected various legal matters. This court then suspended Respondent for 91 days and cited as a mitigating factor Respondent's alcoholism. The Florida Bar v. Larkin, 420 So. 2d 1080 (Fla. 1982). Finally, in 1984, Respondent appeared before the court for mishandling trust funds. It was at that time the Court stated that "alcoholism explains the violations, it does not justify them." In that case, even though Larkin was appearing before the court for the third time, and in a case involving trust fund violations, this court only suspended the Respondent for 91 more days.

None of the Larkin cases support the Bar's position that Respondent should be suspended for one year. Larkin's actions occurred over a long period of time, involved dishonesty and reflected a complete rejection of this court's tendering him a second chance in 1979. Even so, Mr. Larkin was only suspended for 91 days.

Respondent appears before this court a rehabilitated and recovering drug addict, whose misconduct occurred over a relatively short period of time, whose misconduct involved no dishonesty, and who has indicated great regret for the

embarrassment he has caused the Bar and for the tribulations he has caused his clients. His punishment should be less, not more, than Larkin's.

Respondent is not, as stated by the Bar, arguing that his discipline should be reduced because he was a drug addict at the time of his offenses. Rather, he is arguing that his discipline should be reduced because: (1) he recognized that drug dependency was ruining his life and his practice, (2) he entered a six-week in-house rehabilitation program and (3) he is participating in an aftercare program. The distinction between the two is very important. Respondent's offenses occurred during a period in which he was under the influence of drugs--that explains the misconduct, it does not mitigate it. However, Respondent's voluntary treatment and wholehearted embracing of a program designed to prevent the offense's recurrence, is a mitigating factor that should result in a reduction in discipline.

This court should clearly annonce to the Bar that it will consider as a mitigating factor the recognition by a wayward lawyer that he has a chemical dependency problem and his subsequent treatment of that problem. Such a policy may encourage our brethren with dependency problems to come forth and seek treatment without fear that the Florida Bar will argue for a harsher discipline as a result of the nature of the problem leading to the misconduct.

CONCLUSION

Respondent asks this court to enter a single order of discipline encompassing all three cases consolidated before this court in this appeal, such discipline consisting of 45 days suspension from the practice of law with automatic reinstatement to be followed by three years probation, including quarterly caseload reports, mandatory weekly NA attendance and abstinence from all controlled substances. Such a discipline is consistent with previous disciplines ordered by the court.

This court should reject the Referee's recommendations that Respondent be disciplined by a private reprimand in Case 67,890, a six month suspension in Case 67,926, and a six month suspension in Case 68,641. The court should further reject the Florida Bar's recommendation that Respondent be suspended for one year with probation period.

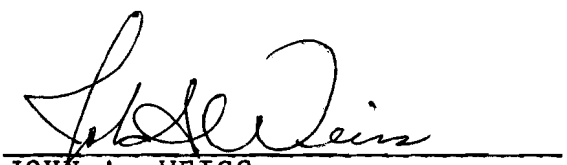
RESPECTFULLY SUBMITTED this 13th day of October, 1986.

JOHN A. WEISS
Post Office Box 1167
Tallahassee, FL 32302
(904) 681-9010

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing Brief and Appendix have been hand delivered to the Supreme Court,and that a copy of this Brief was mailed to JOHN B. ROOT, JR., Bar Counsel, 605 E. Robinson Street, Suite 610, Orlando, FL 32801, on this 13th day of October, 1986.



JOHN A. WEISS
Post Office Box 1167
Tallahassee, FL 32302
(904) 681-9010

Counsel for Respondent