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ARGUMENT

AN EIGHTEEN MONTH SUSPENSION WITH PROOF OF REHABILITATION IS MORE APPROPRIATE THAN THE DISCIPLINE RECOMMENDED BY THE REFEREE, GIVEN THE SERIOUS NATURE OF THE VIOLATION.

Respondent, although acknowledging that this court is not bound by the recommendation of the referee, maintains that the referee is in a better position to personally observe the Respondent and witnesses, taking into account not just the violation but the nature of the violator, his problem with alcohol and marijuana, along with his attempts to rehabilitate himself (Answer Brief of Respondent at page 6). Respondent continues by asserting that the referee based her recommendation on the record as a whole, which showed that Respondent had no prior disciplinary history and that the only victim involved was Respondent himself. (Answer Brief of Respondent at page 7).

While The Florida Bar acknowledges the above factors and did in fact take them into consideration in recommending an eighteen month suspension and not disbarment, these mitigating factors do not obviate the serious nature of Respondent's misconduct. As the court held in The Florida Bar v. Rosen, 495 So.2d 180 (Fla. 1986), Mr. Rosen was suspended for three years for trafficking in cocaine despite mitigating factors (including his own drug addiction). In The Florida Bar v. Knowles, 500 So.2d 140 (Fla. 1986) Mr. Knowles was disbarred even though alcoholism played a role in his misconduct.

Respondent was engaged in selling marijuana for pecuniary gain. The cases cited by Respondent in support of his contention that the referee's recommendation is in line with case law deal with mere possession of illegal substances, not trafficking in illegal substances. (Answer Brief of Respondent at page 7) However, in cases where the attorney was found to have been involved in drug trafficking, as Mr. Sheppard was, the courts have dealt severely with such attorneys. In The Florida Bar v. Hecker, 475 So.2d 1240, 1243 (Fla. 1985) the Supreme Court disbarred Mr. Hecker for deliberately setting out to engage in illegal activity for pecuniary gain. Likewise, in The Florida Bar v. Beasley, 351 So.2d 959 (Fla. 1977), the Supreme Court disbarred Mr. Beasley for delivering four pounds of marijuana to a client. As the court warned in The Florida Bar v. Hecker, 475 So.2d 1240, 1243 (Fla. 1985), "Members of the Bar should be on notice that participation in such activities will be dealt with severely".

Further, Respondent argues as support of the referee's recommendation of more lenient discipline, that the primary victim of Respondent's conduct was Respondent (Answer Brief of Respondent at Page 7). However, it is the contention of both the Florida Bar and the Supreme Court, as stated in The Florida Bar v. Hecker, supra, that "illegal drug activities are a major blight on our society nationally, statewide and locally."

The Florida Bar considers an eighteen month suspension more appropriate than the twelve month suspension recommended by the Referee.

When considering the serious nature of Respondent's misconduct and the position taken by both The Florida Bar and The Florida Supreme Court on illegal drug activities involving attorneys, any lessor discipline would be inappropriate.

CONCLUSION

In conclusion, The Florida Bar reiterates its request that this Court reject the Referee's recommendation pertaining to discipline and adopt the Bar's recommendation that Respondent be suspended from the practice of law for eighteen months, show proof of rehabilitation before reinstatement and pay costs.



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CERTIFICATE OF SERVICE

I CERTIFY THAT the original and (7) copies of the foregoing Florida Bar's Reply Brief has been mailed to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301 and a copy has been mailed to Edward A. Carhart, Counsel for Respondent, 717 Ponce deLeon Blvd, Suite 331, Coral Gables, Florida 33134 and a copy was mailed to Staff Counsel, The Florida Bar, Tallahassee, Florida 32301 this 29 day of May, 1987.



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