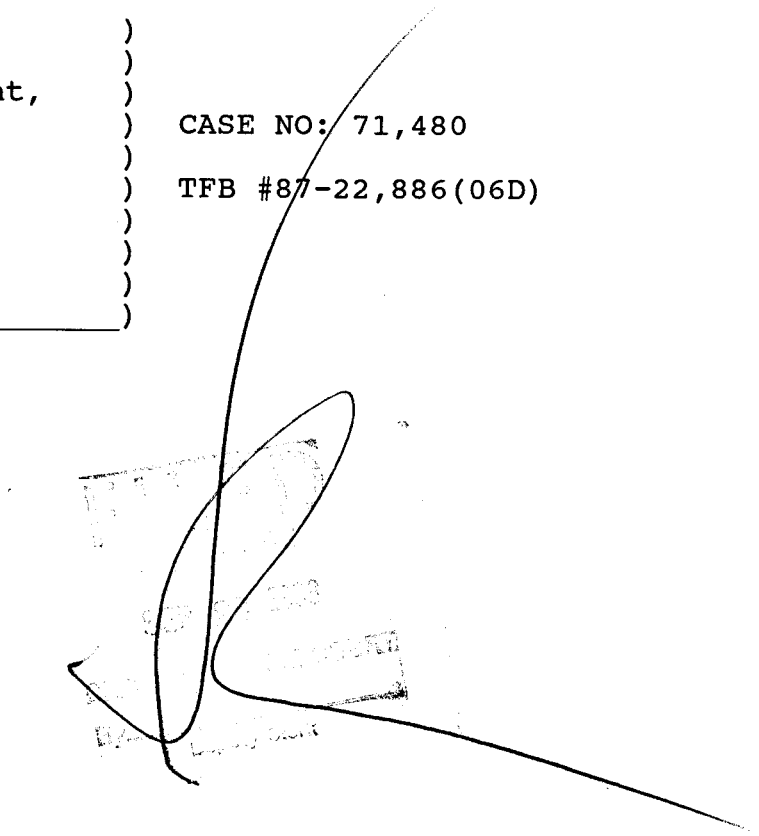
IN THE SUPREME COURT
STATE OF FLORIDA

THE FLORIDA BAR, Complainant, vs. EDWARD L. PEDRERO, Respondent.	CASE NO: 71,480 TFB #87-22,886(06D)



AMENDED RESPONDENT'S BRIEF

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I. SUMMARY OF ARGUMENT

The Court had enough evidence in front of it to makes its findings. Specifically, the mitigating factors present were Repondent's mental condition, voluntary cooperation with the authorities, restitution and treatment for his mental infirmaties. The record clearly supports these findings and, therefore, the Trial Judge did not err in finding these mitgation circumstances as being applicable in warranting lesser discipline that the severe sanction of disbarment.

II. BACKGROUND

In June of 1987, The Florida Bar petitioned for the immediate suspension of Respondent, EDWARD L. PEDRERO, based on the Affidavits supplied by a Federal prisoner claiming that Respondent was, or appeared to be, causing "great public harm" (See Trial Record). The Supreme Court granted the Petition and ordered that the suspension take effect on August 8, 1987. Respondent petitioned the Court to Dissolve the Suspension Order and the Honorable Joseph McNulty was appointed to hear the Motion. In October of 1987, a hearing was held during which the Honorable Joseph McNulty refused to lift the suspension because Respondent had not shown "good cause" and recommended that a prompt

trial be held on all related charges of misconduct. The Florida Bar Rules provide for a 36-month suspension upon a felony conviction.

The Florida Bar, after representing to the Trial Referee that it would file its complaint within ten days of the October 12, 1987 hearing, did not do so until December of 1987. Respondent promptly answered and motioned the Referee to set the case down for hearing. The Supreme Court also denied Respondent's request for confidentiality.

Trial was held on April 4th and 5th, 1988. The Referee filed his Findings of Fact and Recommendations. Respondent was given credit for the time he had been indefinitely suspended. Respondent, although in serious disagreement with the Findings of Fact, chose not to seek review based on his personal psychiatrist's opinion that in order to continue successful therapy, the matter must be "put behind and cognitively resolved.1

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1) Hector R. Corzo's report dated March 25, 1988 states that Respondent has been emotionally rehabilitated and that full functioning had been restored. (See Trial Record)

III. STATEMENT OF FACTS

Respondent suffered from emotional difficulties stemming from his mother's death in 1982, his maternal grandmother's death in 1983 and the death of his fiancee's mother 1986. In 1983, Respondent tried to overcome his depression over his mother's death by becoming a counselor at a drug rehabilitation center. Respondent met Daryl John Christian at this center.

The medical evidence indicates that Respondent, as a result of pressures placed upon him, experienced loss of appetite, sleep disturbances, decreased energy, and feelings of worthlessness. He withdrew from his immediate family and friends. These feelings and the despair he felt made him ill-equipped to function properly when faced with events he perceived as a threat to him. Respondent lacked a clear understanding of the psychological complexities of his reaction to his mother's suicide. Respondent was experiencing difficulty in his thought processes and was having difficulty in dealing with emotionally disturbing experiences to a degree that caused him trouble in his ability to concentrate and attend to everyday pressures and responsibilities.

Respondent assisted the Pinellas County Sheriff's Department in several of their investigations in late April of 1986 and has cooperated fully and to the best of his

ability. Respondent is still fulfilling his obligations to them. Respondent proved his reliability to law enforcement. His contribution was valuable in that it provided intelligence information in a specific area of Pinellas County which had proven difficult to infiltrate (see Trial Brief Record). Since April of 1986, Respondent has been under the care of a psychiatrist and is continuing to seek such treatment on a monthly basis.

There are many mitigating circumstances present. Specifically, Respondent's temporary mental aberrations for which he has sought treatment, restitution, cooperation with law enforcement and emotional interim rehabilitation are evidence that reformation and rehabilitation has already occurred (see Trial Brief).

IV. STATEMENT OF THE CASE

Respondent, EDWARD L. PEDRERO, graduated from Loyola University, School of Law, in New Orleans, Louisiana in May of 1982. In June of 1982, Respondent returned to his home town of Tampa, Florida, and began preparations to take The Florida Bar examination. On July 11, 1982, the Respondent found his mother dead from a barbiturate overdose. As a result of her death, Respondent became depressed, confused

and suffered from a post-traumatic stress disorder. Pathologically distorted grief and disordered behavior became evident causing a lack of clarity in the Respondent's thought processes.

Prior to this time, Respondent had never suffered from mental aberrations nor had he ever been involved in highly stressed or charged situations. In October of 1983, Respondent began working for the law firm of Stephen W. Sessums, P. A., and continued his clerking responsibilities until approximately May of 1983, when he began working as a counselor at a drug rehabilitation program in Tampa, Florida, known as the Drug and Alcohol Abuse Coordinating Office. During his duties with DACCO, Inc., Respondent met Daryl J. Christian acting as his personal counselor and eventually appearing as a witness on behalf of Mr. Christian when Mr. Christian's probation was about to be revoked by a Hillsborough County Circuit Judge. Mr. Christian received a Community Control sentence.

Respondent began another job with The Greater Tampa Bay Title Company in early 1984 and continued in his duties there until the early summer of the same year. In the fall of 1984, Respondent began working full time as a law clerk of the insurance defense firm of Marlow, Shofi, Smith, Hennen & Slother, P. A., and also part time as a law clerk/writer for the stock brokerage firm of Raymond, James

& Associates. Respondent was admitted to The Florida Bar in 1985 and began working as a salaried attorney for the firm of Stuart M. Rosenblum, P. A., located in Clearwater, Florida.

On or about December of 1984, Respondent was visited by an old law school classmate who showed up at Respondent's apartment with all of his belongings and reported to Respondent that he was in danger and had been assaulted and threatened in Pinellas County, Florida. Respondent lodged the classmate, Nelson L. Burchfield, in a nearby hotel and took the weapon he was carrying away from Burchfield for his own protection. These events regarding Nelson L. Burchfield were later relayed by Respondent to agents of the United States Secret Service and the Pinellas County Sheriff's Department. As a result of the Sheriff's interest in the information relayed, Respondent volunteered to assist in a drug investigation regarding the town Nelson L. Burchfield had come from in southern Pinellas County. Respondent assisted and helped the Sheriff's Department for approximately twenty months.

In December of 1983, Respondent's maternal grandmother passed away. This added to Respondent's post traumatic stress disorder, and resulted in pathologically disordered and distorted behavior. In early 1985, Respondent sought professional help and continued with the therapy he

was receiving for a few months.

After his therapy was discontinued, Respondent perceived that he was being pressured by Mr. Christian and his Iranian associates. Respondent was not functioning well and lacked clarity of thinking during this period of time.

Respondent committed several acts as a result of the pressure he was under. Respondent suffered from depression, a post-traumatic stress disorder, and pathologically distorted grief during this period of time.

In March of 1986, Respondent was "set up" by Federal Agents and Mr. Christian. Respondent was told that "if Respondent did not submit himself to questioning and if his story did not conform to the story told by the Iranians and Christian, that he would be arrested immediately".

Respondent was questioned at length and during the questioning, experienced several crying episodes and was suffering from severe anxiety. Agents alleged that Respondent was responsible for everything Mr. Christian had done and that he was the driving force behind all events regarding the Iranians and Christian.

Federal agents contacted The Florida Bar and relayed to them that Respondent was the ringleader and recruiter for an international theft ring before any defensive evidence was offered or explanation given to each of the allegations. This caused The Bar to petition for immediate

suspension. Mr. Christian was sentenced to a five-year jail term in October of 1986.

Before Respondent's suspension was ordered, The Florida Bar was notified of Respondent's continuing cooperation regarding a drug investigation by the Pinellas County Sheriff's Department. The Florida Bar, to the detriment of Respondent, contacted the media regarding the suspension which substantially placed Respondent's life in danger, as well as the lives of his family, friends and working association (see Trial Brief).

V. ISSUE INVOLVED ON REVIEW

ISSUE: Whether the Trial Referee erred in issuing its Discipline Recommendations.

ANSWER: The record shows that the Trial Referee made the requisite showings required by Florida Bar Mitigation Standards.

VI. APPLICABLE PRINCIPLES

A. THE TRIAL REFEREE'S MITIGATION RECOMMENDATIONS MUST BE AFFIRMED UNLESS COMPLAINANT SHOWS THAT IT IS NOT SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE OR THAT IT IS BASED ON AN ERRONEOUS APPLICATION OF LAW.

The findings and conclusions of a referee or circuit judge are accorded substantial weight, and they will not be overturned unless they are clearly erroneous or lacking in evidentiary support. The Florida Bar v. Wagner, 212 So.2d 770 (Fla. 1968); The Florida Bar v. Wendel, 254 So.2d 199 (Fla. 1971); The Florida Bar v. Baron, 392 So.2d 1318 (Fla. 1981).

The judgment of a trial court is clothed with a presumption of correctness, and the burden rests upon the complaining party to demonstrate clearly that error has been committed. Clayton v. Clayton, 275 So.2d 588, 589 (Fla. 2nd DCA 1973). It is well settled that the appellate courts do not decide cases de novo, but that the standard applied on review is whether there is substantial competent evidence to support the trial court's order, and whether there are any errors which adversely affect the substantial rights of a party. Shaw v. Shaw, 344 So.2d 13, 14 (1976). And, in assessing the evidence, the reviewing court will affirm an order of the trial court if it is consistent with any theory revealed by the record, regardless of the reason stated in

the order under review. Elmex Corporation v. Atlantic Federal Savings & Loan Association, 325 So.2d 58, 61 (Fla. 4th DCA 1976); Kephart v. Pickens, 271 So.2d 163, 164 (Fla. 4th DCA 1972).

The burden is also on the petitioning party, The Florida Bar, to provide the Appellate Court with a record sufficient to review the matter assigned as error. Latin America Ben Center, Inc. v. Johnstoneaux, 257 So.2d 86, 87 (Fla. 3rd DCA 1972); Curtis-Wright Corp. v. King, 207 So.2d 294, 295 (Fla. 3rd DCA 1968). In the absence of a complete record, the Appellate Court must presume that there was sufficient evidence and testimony presented to support the findings made. Ben-Hain v. Tacker, 418 So.2d 1107-1108 (Fla. 3rd DCA 1982).

Error cannot be raised initially on appeal for "practical necessity and basic fairness in the operation of a judicial system" require that the trial court be allowed an opportunity to correct the error that is alleged to have been made. Castor v. State, 365 So.2d 701, 702 (Fla. 1978); Dormincy v. State, 314 So.2d 134 (Fla. 1975). Failure to object before the trial court waives the subsequent right to raise the error on appeal. Polaco v. Smith, 376 So.2d 409 (Fla. 1st DCA 1979).

Finally, harmless errors, which have little or no effect on a party's rights, do not provide grounds for

reversal of a trial court's order. See Bew v. Williams, 373 So.2d 446, 448 (Fla. 2d DCA 1979). No judgment shall be set aside based on error unless it shall appear that the error complained of has resulted in a miscarriage of justice.

B. THE SUPREME COURT HAS AUTHORITY TO ISSUE APPROPRIATE ATTORNEY DISCIPLINE.

IN GENERAL: Discipline for unethical conduct by a member of The Bar must serve three purposes: First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying public services of qualified lawyers as a result of undue harshness in imposing penalty; Second, judgment must be fair to the attorney, being sufficient to punish breach of ethics and at the same time encourage reformation and rehabilitation; and, Third, judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983).

The Florida Supreme Court has explicitly or impliedly expressed or recognized the view that a mental or emotional disturbance may constitute a mitigating factor at attorney disciplinary proceedings. The Florida Bar v.

Price, 348 So.2d 887 (Fla. 1977) by implication; The Florida Bar v. Larkin, 420 So.2d 1080 (Fla. 1982) by implication; The Florida Bar v. Busish, 421 So.2d 501 (Fla. 1982); The Florida Bar v. Hill, 298 So.2d 161 (Fla. 1974) by implication.

It is only when a penalty is expressly mandated for particular conduct that cooperation or restitution may not be taken into account in disciplinary proceedings in determining appropriate punishment. The Florida Bar v. Pincket, 398 So.2d 802 (Fla. 1881) (emphasis supplied).

Complete disregard of responsibilities as lawyer and as officer of court, resulting in serious harm to public, without any known mitigating reasons, would warrant disbarment. The Florida Bar v. Mitchell, 385 So.2d 96 (Fla. 1980). 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. The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1979). A disciplinary penalty must be fair to respondent by punishing him for the misconduct while at the same time encouraging rehabilitation, and it should be severe enough to deter others from similar misconduct. The Florida Bar v. Neely, 372 So.2d 89 (Fla. 1979).

1) Factors to be Considered in Imposing Sanctions: Rule 3.0 Generally - In imposing a sanction after a

finding of lawyer misconduct, a court should consider the following factors: (a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors.

2) Mitigating circumstances - Mental Illness: In attorney disciplinary proceedings, attorney's mental illness was correctly considered in mitigation of his wrongful actions. The Florida Bar v. Musleh, 453 So.2d 794 (1984).

While personal difficulties should not be relied upon to excuse attorney's misconduct, referee should not be restrained from considering hardships in recommending discipline which would be fair to society and to attorney, in addition to being effective deterrent to others. The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983).

In determining appropriate discipline after attorney's misconduct, referee properly based his recommendation, in part, on attorney's personal difficulties by considering what effect attorney's misconduct had upon him as attorney, and what impact his further suspension would have upon his clients. The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983).

Suspension for two years, and until successful conclusion of probation on criminal charges and demonstration of rehabilitation, is warranted following conviction of

felonies upon guilty pleas after becoming addicted to alcohol, apparently due to marital problems. The Florida Bar v. Dietrich, 469 So.2d 1377 (Fla. 1985).

3) Cooperation with Law Enforcement: Participation in conspiracy to import 15,000 pounds of marijuana warranted one-year suspension from practice of law in light of voluntarily initiated contact with law enforcement agencies and cooperation with those authorities, including risk of life to help further investigation. The Florida Bar v. Pettie, 424 So.2d 734 (Fla. 1982).

4) Forgery: Attorney who admitted forging certain mortgages, releases and other documents willingly to obtain substantial sums of money from one or more persons, including a client, and converting to his own use some $12,000.00 received on behalf of client and who had made complete restitution would be suspended from practice of law for one year and thereafter until he shall have demonstrated fitness to resume practice of law and shall have paid costs of proceedings. The Florida Bar v. Silverman, 196 So.2d 442 (Fla. 1967).

5) Costs: Discretionary approach should be used in disciplinary actions as to awarding costs, and referee and court should consider the fact that the attorney has been acquitted on some charges or that incurred costs are unreasonable. The Florida Bar v. Davis, 419 So.2d 325 (Fla.

1982). Cost of attorney disciplinary proceeding should not be paid as condition of reinstatement. The Florida Bar v. Jones, 403 So.2d 1340 (Fla. 1981). Attorney, who was subject to six-month suspension following disciplinary proceeding, was required to pay costs of the proceeding within 30 days after the decision became final. Id.

Although attorney was disbarred, where The Florida Bar took an excessively broad approach in case and failed to early abandon counts that could not be proved, it was inequitable to impose all costs of disciplinary proceedings upon attorney and each party must bear own costs. The Florida Bar v. McCain, 361 So.2d 700 (Fla. 1978). Only those costs directly attributable to disciplinary proceeding should be assessed against Respondent. State ex rel. The Florida Bar v. Hogsten, 127 So.2d 668 (Fla. 1961).

6) Rehabilitation Suspension: Where state bar recommended that attorney be suspended, at minimum, for three months and one day for misconduct, so as to preclude automatic reinstatement referee did not err in considering attorney's rehabilitation as one of ten factors in recommending appropriate discipline. The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983).

7) Evidence: In proceeding to disbar attorney, where evidence is conflicting, there must be clear preponderance thereof against him to warrant his disbarment.

Petition for Revision of, or Amendment to, Integration Rule of The Florida Bar, 103 So.2d 873 (Fla. 1958) (emphasis supplied).

8) Disbarment/Suspension - Standards: Disbarment and suspension of attorney should not be imposed lightly. The Florida Bar v. Wendel, 254 So.2d 199 (Fla. 1971). Disbarment is an extreme penalty and should be imposed only in those cases where rehabilitation is improbable. The Florida Bar v. Davis, 379 So.2d 942 (Fla. 1980). Disbarment should be resorted to only in cases where lawyer has demonstrated an attitude or course of conduct which is wholly inconsistent with approved professional standards. The Florida Bar v. Moore, 194 So.2d 264 (Fla. 1966). Severe punishment should be imposed only when evidence shows that the possibility of restoration is unlikely or remote. State ex rel. The Florida Bar v. Dunham, 134 So.2d 1 (Fla. 1962). The Court's power to disbar or suspend an attorney should be exercise only in a clear case for weighty reasons and on clear proof and not arbitrarily or lightly or with passion or prejudice. State ex rel. The Florida Bar v. Bass, 106 So.2d 77 (Fla. 1958) (emphasis supplied).

A removal from The Bar should never be decreed where any punishment less severe, such as reprimand, temporary suspension or fine, would accomplish the end desire. State ex rel. The Florida Bar v. Murrell, 74 So.2d 221 (Fla.

1954).

Disbarment is the extreme measure of discipline and should be resorted to only in cases where the lawyer demonstrates an attitude or course of conduct wholly inconsistent with approved profession standards. Id.

9) Florida Bar Standards for Imposing Attorney Sanctions: Rule 9.32 provides that mitigating factors include: (a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (f) inexperience in the practice of law; (g) character or reputation; (h) physical or mental disability or impairment; (i) unreasonable delay in disciplinary proceeding, provided that the respondent did not substantially contribute to the delay and providing further that the respondent has demonstrated specific prejudice resulting from that delay; (j) interim rehabilitation; (k) imposition of other penalties or sanctions; (l) remorse; (m) remoteness of prior offenses.

VII. THE RECORD PROVIDES AMPLE SUPPORT FOR THE TRIAL REFEREE'S MITIGATION FINDINGS

Disbarment is not warranted in this case due to the numerous mitigating circumstances surrounding the Respondent's conduct. Specifically, the facts and evidence indicate that restitution has been made, voluntary cooperation has been rendered to the Pinellas County Sheriff's Department Organized Crime Bureau in which Respondent risked harm and life to further the investigation. It is clear that Respondent suffered from extreme mental infirmity due to the traumatic suicide death of his mother in July of 1982. In response to his condition, Respondent has sought treatment and is still in therapy. Respondent has become emotionally rehabilitated and has become cognitive of the ramifications of stress, threats and pressure (see Trial Record, Hector R. Corzo, M. D.'s report dated March 25, 1988).

Respondent was functioning under a great deal of pressure and duress when the complained of acts occurred. Respondent has demonstrated a great deal of remorse concerning his actions and inactions. In his meetings with investigators and others, Respondent indicated much regret and remorse for his vulnerabilities. Restitution was made for what he was told he was responsible.

Respondent showed a great deal of character and

intent to bring his conduct into conformity when he volunteered to work in an undercover posture with the Pinellas County Sheriff's Organized Crime Bureau in April of 1986. Specifically, Respondent worked in this position with the Sheriff's Office for thirty months providing intelligence and making several undercover drug buys in a small southern Pinellas County town. This decision to cooperate and provide information to law enforcement authorities placed Respondent and those close to him in a vulnerable and dangerous position. Respondent cooperated to the extent of testifying in the prosecution of an individual arrested due to his effort and contribution. Respondent has proved his cooperation and reliability to law enforcement (see Trial Record, Pinellas County Sheriff's Office letter dated 11/10/87).

The report from Hector R. Corzo, M. D., dated May 20,1986, states that once the initial information had been gained from the Respondent that:

> the subsequent acts could not be prevented because Respondent was not only functioning well, but felt tremendously threatened and intimidated. He was having very serious difficulty facing other real situations, including the death of his mother as noted before and he continued to use avoidance as a copying mechanism, as well as detachment. He continued to do so and rely on some wishful thinking which appears to be based on his sheltered background as a way of seeking a solution to his problems.

The medical evidence submitted indicates that Respondent is competent and deals well with other people's problems. Circumstances surrounding the acts of misconduct indicate that Respondent's mental unsoundness actually interferred with his ability to entertain a malicious intent or the necessary state of mind required to conclusively establish premeditation and bad intent. The medical evidence presented establishes that Respondent acted or failed to act due to unconscious fears, tensions, delusions, fantasies and impulses.

Respondent's primary physician stated in his March 25, 1988 report that:

> ...as part of my diagnostic assessment, psychological testing performed on him depict him mainly as an ethical individual who shows no tendency towards psychosis. It describes him as being insecure, compliant and going along with other peoples' wishes. He is described to have personality traits of submissive type... Other testing describes him as being anxious and having a diagnosis of a fearful personality cluster.

(see Trial Record)

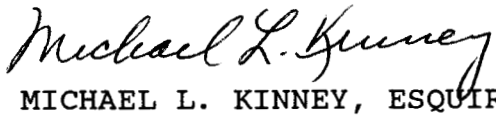
While most normal individuals exercise some degree of free choice, many of their actions are determined by unconscious forces which they do not recognize themselves. Every individual must be considered with respect to the particular circumstances and forces which affect him at the time of his actions.

Respondent's temporary mental aberrations for which he has sought treatment, restitution, cooperation with law enforcement and emotional interim rehabilitation should be viewed by the Court as mitigating factors warranting lesser discipline than the severe sanction of disbarment.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that the recommended discipline not be disturbed. The Final Disciplinary Order should be made Nunc Pro Tunc giving Respondent credit for the delay in moving the case in light of his cooperation with the Pinellas County Sheriff's Office, Organized Crime Bureau and his interim emotional rehabilitation.

Respectfully,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by United States mail upon RICHARD A. GREENBERG, ESQUIRE, Assistant Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport Marriott Hotel, Tampa, Florida, 33607, and Honorable Sid J. White, Clerk of Supreme Court, Supreme Court Building, Tallahassee, Florida, 32301, this the **21st** day of **September**, A. D., 1987.

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