

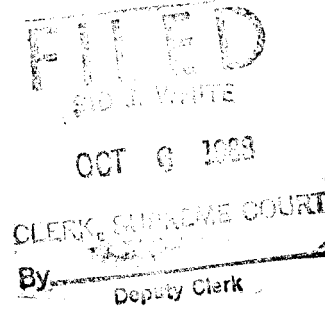
IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

Case No. 71,480
TFB #87-22,886(06D)

v.

EDWARD L. PEDRERO,
Respondent.



THE FLORIDA BAR'S REPLY BRIEF

RICHARD A. GREENBERG
Bar Counsel
The Florida Bar
Suite C-49
Tampa Airport Marriott Hotel
Tampa, FL 33607
(813) 875-9821

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS.....	ii
STATEMENT OF THE CASE.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	3
CONCLUSION.....	8
CERTIFICATE OF SERVICE.....	9

CITATION OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>The Florida Bar v. Baron</u> 392 So. 2d 1318 (Fla. 1981)	3
<u>The Florida Bar v. Pettie</u> 424 So. 2d 734 (Fla. 1982)	4, 5
<u>The Florida Bar v. Rambo</u> Case No. 70,045 (Fla. September 15, 1988)	6
<u>The Florida Bar v. Wagner</u> 212 So. 2d 770 (Fla. 1968)	3
<u>The Florida Bar v. Weaver</u> 356 So. 2d 797 (Fla. 1978)	3
<u>The Florida Bar v. Wendel</u> 254 So. 2d 199 (Fla. 1971)	3

ADDITIONAL AUTHORITY

<u>Orrick, "Chief Justice Ehrlich - A Lawyer's Lawyer Leads The Court"</u> 62 Fla. B.J. 12, 17 (Oct. 1988).....	6, 7
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STATEMENT OF THE CASE

Respondent's Statement of the Case should be struck in its entirety. The recitation of events outlined therein comes primarily from Respondent's affidavit (Respondent's Exhibit 1) which the Referee specifically found to be "replete with intentional falsehoods calculated to mislead, if not to deceive, the referee." (RR, p.6).

In addition, many of the events outlined in Respondent's Statement of the Case are not contained within the record below.

SUMMARY OF ARGUMENT

The Referee's recommendation of a three year suspension is not supported by substantial competent evidence. The mitigation respondent alleges to be present in the present case should not be sufficient to reduce what would otherwise be an offense calling for disbarment to a suspension. The public will not tolerate it, the legal profession will not tolerate it, and this Court should not tolerate the type of conduct engaged in by respondent.

Therefore, The Florida Bar respectfully requests this Court to reject the Referee's recommendation of a three year suspension and order the respondent disbarred from the practice of law in the State of Florida.

ARGUMENT

Complainant submits it has shown that the Referee's recommended discipline is not supported by substantial competent evidence. The Referee's recommendation of a three year suspension is inconsistent with his Findings of Fact. Therefore, the Referee's recommendation should not be accepted by this Court.

Respondent has cited The Florida Bar v. Wagner, 212 So.2d 770 (Fla. 1968); The Florida Bar v. Wendel, 254 So.2d 199 (Fla. 1971); and The Florida Bar v. Baron, 392 So.2d 1318 (Fla. 1981), for the proposition that the findings and conclusions of a referee should not be overturned unless they are clearly erroneous or lacking in evidentiary support. The aforementioned cases deal only with a Petition for Review of the Referee's Findings of Fact, not with a review of the Referee's recommendation of the sanction to be imposed. No challenge has been made to the Referee's Findings of Fact. As previously noted, this Court is not bound by a Referee's recommendation of the discipline to be imposed. The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978).

Respondent's argument as it relates to "errors" has absolutely no bearing on the issues raised in Complainant's Petition for Review and The Florida Bar's Initial Brief. Complainant is not accusing the Referee of error.

Complainant is asking this Court to reject the Referee's recommendation of the sanction to be imposed upon respondent.

Respondent has cited The Florida Bar v. Pettie, 424 So.2d 734 (Fla. 1982), as an example of a case in which the respondent received leniency from this Court based upon cooperation with law enforcement authorities. Pettie is entirely different than respondent's case. In Pettie, the respondent voluntarily contacted law enforcement before law enforcement was aware of his activities. In the present case, respondent did not have any contact with law enforcement until after Daryl Christian's arrest in March 1986. In Pettie, the respondent's information led to the arrest of approximately thirty (30) subjects. A witness testified that without respondent's assistance the investigation could not have succeeded. In addition, the respondent in Pettie assisted in his own case.

In the present case, the respondent's cooperation with law enforcement led to the arrest of only one (1) person. (R, p.149). In addition, respondent's "cooperation" with law enforcement was totally unrelated to the case involving respondent.

In Pettie, The Florida Bar had recommended a one (1) year suspension to the Referee. The Referee recommended disbarment. This Court reluctantly agreed that disbarment was inappropriate. Pettie, at 738. This Court found that

the Pettie case was atypical and that "given the unique facts" of the case a one (1) year suspension was appropriate. Pettie should be confined to its facts and limited to the unique and atypical situation.

Respondent's argument as it relates to Costs (Respondent's Brief, p.14), should also be struck in its entirety. Respondent has filed no Petition for Review asking this Court not to impose the costs of this proceeding against him. Again, the sole issue before this Court is that raised by Complainant in its Initial Brief.

In the section entitled "Evidence" (Respondent's Brief, p.15), the respondent appears to argue that the evidence before this Court is conflicting. On the contrary, the Referee clearly found the case against respondent to be clear and convincing. (RR, p.6). No challenge is being made to the facts as found by the Referee.

Respondent argues that one mitigating factor in this case is that restitution has been made. Restitution has only been made in one instance - the travelers checks forged by respondent. (RR, p.5). No restitution has been made for the thousands of dollars in cash and merchandise fraudulently obtained by respondent through the actions of Mr. Christian.

As noted in the "Background" (Respondent's Brief, p.2), respondent continues to refuse to admit his culpability in this case. If respondent is truly interested in

"successful therapy" it would seem he would need to take the first step toward rehabilitation - admitting his misconduct. Despite over a year and a half of psychiatric treatment at the time of the final hearing in this case, respondent still denied committing most of the acts set forth in the Report of Referee. Respondent's theory appears to be "I didn't do it, but if I did do it, I did it because I had mental problems". This Court should reject that theory as a sham.

This Court recently held in The Florida Bar v. Rambo, Case No. 70,045 (Fla. September 15, 1988), that no leniency would be shown to a lawyer who committed bribery. This same standard should apply to an attorney who engaged in the unlawful, unethical and anti-social behavior engaged in by respondent. This Court should not overlook the fact that respondent's alleged psychiatric and emotional problems are suspect. The respondent took steps to "establish his own defense in this matter" after Mr. Christian's arrest in March 1986. (RR, p.6).

The Florida Bar again suggests that no amount of mitigation should be sufficient to prevent disbarment in the present case. To paraphrase Chief Justice Ehrlich, when a lawyer ceases to be a professional, then he should cease to

be a lawyer.¹ A lawyer who "deceives" a Referee, who assists another in stealing and who assists others in dealing in drugs should cease to be a lawyer. The public will not tolerate anything less than disbarment in this case. The Florida Bar will not tolerate it. This Court should not tolerate it.

Based on the foregoing, The Florida Bar respectfully requests this Court to reject the Referee's recommended discipline of a three (3) year suspension and disbar respondent from the practice of law in the State of Florida.


1. Orrick, "Chief Justice Ehrlich - A Lawyer's Lawyer Leads The Court", 62 Fla. B.J. 12, 17 (Oct. 1988).

CONCLUSION

This Court is not bound by the Referee's recommendation of the sanction to be imposed and should reject it. The only sanction appropriate in the present case is disbarment.

Wherefore, The Florida Bar respectfully requests this Honorable Court to reject the Referee's recommended discipline and disbar the respondent, Edward L. Pedrero, from the practice of law in the State of Florida.

Respectfully submitted,



RICHARD A. GREENBERG
Assistant Staff Counsel
The Florida Bar, Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607
(813) 875-9821

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing THE FLORIDA BAR'S REPLY BRIEF has been furnished to MICHAEL KINNEY, Counsel for Respondent, 3502 Henderson Blvd, Chemex Bldg., Suite 301, Tampa, FL 33609; and to JOHN T. BERRY, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300; this 24th day of October, 1988.



Richard A. Greenberg