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IN THE SUPREME COURT OF FLORIDA

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THE FLORIDA BAR,
Complainant,
v.
LAURENCE GOLDEN,
Respondent.

Case No. 72,026

The Florida Bar Case No.
88-50,761 (17C)

INITIAL BRIEF OF THE FLORIDA BAR

JACQUELYN P. NEEDELMAN
Attorney No. 262846
Bar Counsel
The Florida Bar
5900 North Andrews Avenue
Suite 835
Ft. Lauderdale, FL 33309
(305) 772-2245

JOHN T. BERRY
Attorney No. 217395
Staff Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(904) 222-5286

JOHN F. HARKNESS, JR.
Attorney No. 123390
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(904) 222-5286

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PREFACE

In this brief, The Florida Bar will be referred to as The Florida Bar. Laurence Golden, Respondent will be referred to as Respondent.

The following symbols will be used in this brief:

T. - Transcript of the September 22, 1988 hearing held before the Referee, to be followed by page numbers.

STATEMENT OF THE CASE

On March 1, 1988 The Florida Bar filed a Complaint and Request for Admissions in this cause.

On March 14, 1988, the Honorable S. Peter Capua was designated Referee.

On April 13, 1988, Respondent filed his reply to The Florida Bar's Request for Admissions and he filed his Answer to The Florida Bar's Complaint on April 15, 1988. The Referee set a hearing for report on this matter for May 12, 1988. This hearing was reset for June 2, 1988 and final hearing was set for August 3, 1988. This final hearing was reset for and held on September 22, 1988.

The Referee filed his report on November 28, 1988 finding the Respondent guilty of the violations charged in The Florida Bar's Complaint and recommending that he be suspended from the practice of law for a period of twenty-four (24) months retroactive to February 3, 1988, the date he was automatically suspended pursuant to the felony suspension rule. The Referee further recommended that Respondent take and pass the ethics portion of The Florida Bar examination prior to reinstatement and that upon reinstatement, Respondent be placed on probation for a period not to exceed twelve (12) months.

STATEMENT OF FACTS

On December 18, 1987, Laurence Golden was sentenced in the cause styled State of Florida, Plaintiff, vs. Laurence Golden, Defendant, Case No. 87-5312CF, in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. The Respondent was determined guilty (adjudication was withheld) on the felony charge of insurance fraud. (The Florida Bar's Exhibit A-1).

On December 18, 1987, the Honorable Daniel Futch, Jr. placed Respondent on probation for a period of three (3) years. Restitution was ordered and Respondent was ordered not to practice law for a period of three (3) years. (The Florida Bar's Exhibit A-1).

Respondent's misconduct concerns two (2) letters he forwarded on April 1, 1986. The Respondent deleted one line from a treating physician's report, signed a demand letter pursuant to that report and mailed both documents to Liberty Mutual Insurance Company. Based upon these documents and the misrepresentation therein, Respondent settled his client's personal injury claim for \$3,100.00, the Respondent netting \$1,240.00 (The Florida Bar's Exhibits 2 and 3).

Respondent, by virtue of his insurance fraud, violated Disciplinary Rules 1-102(A)(1) [a lawyer shall not violate a Disciplinary Rule], 1-102(A)(3) [a lawyer shall not engage in illegal conduct involving moral turpitude], 1-102(A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation] of the Code of Professional Responsibility and Florida Bar Integration Rule, Article XI, Rules 11.02(3)(a) [commission by a lawyer of an act contrary to honesty, justice or good morals] and 11.02(3)(b) [conduct that constitutes a felony or misdemeanor]. (Report of Referee, page 1).

SUMMARY OF ARGUMENT

Because of the severity of the insurance fraud, committed by Respondent, the Bar believes that disbarment is the appropriate discipline. The Supreme Court has repeatedly disbarred attorneys for serious breaches of conduct.

ARGUMENT

DISBARMENT IS THE APPROPRIATE DISCIPLINE TO BE
IMPOSED IN THIS CAUSE.

The Florida Bar maintains that the misconduct in this cause warrants disbarment. Respondent has admitted that he intentionally presented and modified a demand letter and medical report of Dr. David Teperson to an insurance company representative which contained false or misleading information concerning a material claim. (The Florida Bar's Exhibit 1, T. 31-32). Respondent admitted that he personally signed this letter (The Florida Bar's Exhibit 1, T. 31-33, 37). This was an intentional act, not merely an error in judgment. This intentionally fraudulent act was quite serious and constituted moral turpitude. The Supreme Court of Florida has disbarred attorneys for similar acts of fraud or misrepresentation. In the case The Florida Bar v. Hosner, 13 FLW 551 (Sept. 16, 1988), the Respondent was found guilty of assisting in the preparation of false income tax returns. Hosner also pled guilty to one count of using the U.S. mail to commit fraud and had helped falsify documents and then submitted them to the appropriate receiver.

In the case at Bar, Respondent has committed similar misconduct to that committed in Hosner. In instant matter, Respondent modified a doctor's report for presentation to an insurance company regarding negotiation of a client's claim (T. 31-33, 37).

Similarly, in the case The Florida Bar v. Weinsoff, 498 So.2d 942 (Fla. 1986), the Supreme Court disbarred the Respondent wherein he was

adjudicated guilty of nine (9) counts of mail fraud and one (1) count of conspiracy to commit mail fraud.

Similarly, the instant Respondent has committed an intentional act of insurance fraud.

In the case The Florida Bar v. Haimowitz, 512 So.2d 200 (Fla. 1987) the Respondent was found guilty of conspiracy to use the postal service to execute a scheme to defraud, obtaining property by false and fraudulent pretenses, conspiracy to obstruct interstate commerce by extortion and mail fraud.

The Haimowitz Court cited The Florida Bar v. Onett, 504 So.2d 388 (Fla. 1987) and The Florida Bar v. Adamo, 493 So.2d 450 (Fla. 1986), stating, "conviction of felony charges can warrant disbarment". The Court in Haimowitz disbarred the Respondent.

In the case The Florida Bar v. Agar, 394 So.2d 405 (Fla. 1981), Respondent Agar called a witness to testify who concealed her marriage to Agar's client and used a false name. Both the husband and the wife testified that it was Respondent Agar's idea that the wife misrepresent herself to the Court. In its opinion, this Court cited Dodd v. The Florida Bar, 118 So.2d 17 (Fla. 1960) in which this Court stated:

No breach of professional ethics, or of the law is more harmful to the administration of justice or more hurtful to the public appraisal of the legal profession than the knowledgeable use by an attorney of false testimony in the judicial process. When it is done it deserves the harshest penalty. Id.

The Court in Agar cited the Dodd case in its refusal to accept the Referee's recommendation of a four (4) month suspension from the practice of law as submitting false testimony is too severe to warrant a

four (4) month suspension. Therefore, this Court disbarred Respondent Agar.

Similarly, in the case at Bar, the Respondent submitted a false document to an insurance carrier and collected a settlement on behalf of his client and a contingency fee for himself using the modified document.

The Board of Governors of The Florida Bar has promulgated Standards for Imposing Lawyer Sanctions. Sanctions 5-11(b) and (f) provides: Disbarment is appropriate when: (b) A lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misinterpretation, fraud, extortion, misappropriation, or theft; or (f) A lawyer engaged in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law.

Respondent has testified concerning personal difficulties he has encountered (T. 24-25). The unfortunate difficulties Respondent has suffered occurred approximately two (2) years before the criminal misconduct which is a felony, and certainly cannot justify such intentional fraudulent behavior (T. 48, The Florida Bar's Exhibits A-1, 2 and 3).

In The Florida Bar v. Roman, 13 FLW 366 (June 10, 1988), the Respondent was disbarred by the Supreme Court of Florida. A mitigating factor found by the Referee in Roman was "(4) at the time of the misconduct involved in this cause, the Respondent was suffering from an acute anxiety reaction stemming from severe domestic turmoil and was

engaged in extensive psychotherapy", Id. Said mitigating factor did not prevent the Supreme Court of Florida from disbarring the Respondent in Roman.

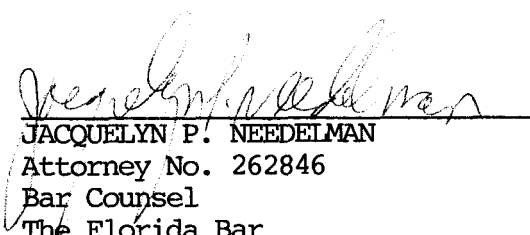
The Referee's recommendation that Respondent be suspended for a period of twenty-four (24) months is inconsistent with the fact that the criminal court in sentencing the Respondent on December 18, 1987 ordered and required as a condition of his probation that Respondent not practice law for a period of three (3) years.

The Florida Bar requests that the Respondent be disbarred for a period of five (5) years pursuant to Rule 3-5.1(f). Rule 3-5.1(f) provides that Respondent may apply for readmission to The Florida Bar after the expiration of such five (5) year period. At that time, Respondent would have an opportunity to establish his rehabilitation and fitness to be readmitted to the practice of law.

CONCLUSION

The Florida Bar respectfully requests this Honorable Court to uphold the Referee's findings of fact, impose a discipline of disbarment pursuant to Rule 3-5.1(f) of the Rules of Discipline and tax the costs of these proceedings in the amount of \$436.65 against the Respondent.

Respectfully submitted,



JACQUELYN P. NEEDELMAN

Attorney No. 262846

Bar Counsel

The Florida Bar

5900 North Andrews Avenue

Suite 835

Ft. Lauderdale, FL 33309

(305) 772-2245

JOHN T. BERRY

Attorney No. 217395

Staff Counsel

The Florida Bar

650 Apalachee Parkway

Tallahassee, FL 32399-2300

(904) 222-5286

JOHN F. HARKNESS, JR.

Attorney No. 123390

Executive Director

The Florida Bar

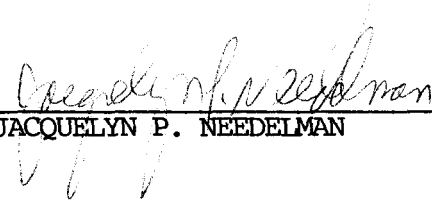
650 Apalachee Parkway

Tallahassee, FL 32399-2300

(904) 222-5286

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief of The Florida Bar has been furnished to Edward G. Salantrie, Attorney for Respondent, 1323 Southeast 3rd Avenue, Ft. Lauderdale, FL 33316 and to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 on this 9th day of February, 1989 by regular mail.



JACQUELYN P. NEEDELMAN