

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

CASE NO. 72,026

v.

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

LAURENCE GOLDEN,

Respondent.

FILED
SID J. WHITE

MAR 23 1989

CLERK, SUPREME COURT

REPLY BRIEF ~~BY THE FLORIDA BAR~~
Deputy Clerk

JACQUELYN P. NEEDELMAN
Attorney No. 262846
Bar Counsel
The Florida Bar
5900 North Andrews Avenue
Suite 835
Fort 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

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS	ii
SUMMARY OF ARGUMENT	2
ARGUMENT	
DISBARMENT IS THE APPROPRIATE DISCIPLINE TO BE IMPOSED IN THIS CAUSE	3
CONCLUSION	6
CERTIFICATE OF SERVICE	7

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGES</u>
<u>The Florida Bar v. Kastenbaum</u> 263 So.2d 793 (Fla. 1972)	2, 4
<u>The Florida Bar v. Pahules</u> 233 So.2d 130 (Fla. 1970)	4
<u>The Florida Bar v. Roman</u> 526 So.2d 60 (Fla. 1988)	2, 4
<u>The Florida Bar v. Weaver</u> 356 So.2d 797 (Fla. 1978)	2, 3
<u>The Florida Bar In Re Inglis</u> 471 So.2d 38 (Fla. 1985)	3
 <u>RULES OF DISCIPLINE</u>	
Rule 3-5.1(f)	5, 6

SUMMARY OF ARGUMENT

DISBARMENT IS THE APPROPRIATE DISCIPLINE
TO BE IMPOSED IN THIS CAUSE

This Court is not bound by the Referee's recommendation for discipline. The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978).

The instant Respondent's criminal misconduct included moral turpitude and warrants disbarment. See The Florida Bar v. Kastenbaum, 263 So.2d 793 (Fla. 1972)

In The Florida Bar v. Roman, 526 So.2d 60 (Fla. 1988), this Court disbarred the Respondent even though the Referee had found as a mitigating factor that at the time of the misconduct, the respondent was suffering from an acute anxiety reaction and was engaged in extensive psychotherapy.

Respondent's intentional modification of a doctor's report for presentation to an insurance company for settlement purposes constitutes an intentional and knowing criminal fraudulent act.

ARGUMENT

DISBARMENT IS THE APPROPRIATE DISCIPLINE
TO BE IMPOSED IN THIS CAUSE

The Florida Bar agrees with the Respondent that the Referee's findings of fact should be upheld. However, this Court held in The Florida Bar In Re Inglis, 471 So.2d 38 (Fla. 1985), that

With regard to legal conclusions and recommendations of a referee, this Court's scope of review is somewhat broader as it is ultimately our responsibility to enter an appropriate judgment.

Further, this Court has stated that it is not bound by the referee's recommendations for discipline. The Florida Bar v. Weaver, 358 So.2d 797 (Fla. 1978)

The \$3,100.00 that was repaid by the Respondent was ordered to be repaid as restitution by the Court in Respondent's criminal case (TFB Exhibit A-1). Even though the Respondent's fee in the matter was \$1,240.00, the full amount of \$3,100.00 was fraudulently obtained by the Respondent and was the basis for his plea in the criminal case.

This Court has established three (3) criteria for determining the proper disciplinary sanction to be imposed against attorneys in disciplinary actions. This Court has mandated that:

(F)irst, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the Respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in

like violations. The Florida Bar v. Pahules, 233 So.2d 130, 132 (Fla. 1970).

Mindful of the foregoing criteria, the Board of Governors of The Florida Bar has directed that Bar Counsel seek Respondent's disbarment.

This Court has imposed disbarment where the felonious misconduct has been a crime involving moral turpitude. In The Florida Bar v. Kastenbaum, 362 So.2d 793 (Fla. 1972), the respondent was disbarred after he was convicted of a felony in that he interfered with commerce by threats of violence in violation of Section 1951, Title 18, United States Code. The court in Kastenbaum held that:

Article XI, Rule 11.07(4), of the Integration Rule provides that the final judgment entered by the United States District Court of Appeal shall be conclusive proof of the guilt of the offense charged. The respondent is therefore, disbarred from the practice of law.

This Court in Kastenbaum ordered disbarment grounded solely upon a felony conviction for a crime involving moral turpitude. The case at bar also involves a crime of moral turpitude and disbarment is justified.

In The Florida Bar v. Roman, 526 So.2d 60 (Fla. 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." Said mitigating factor did not prevent the court from disbaring the respondent in Roman.

While imposition of the disciplinary sanction of disbarment is the severest sanction available the nature of Respondent's offense dictates

that said sanction be imposed. It is axiomatic that an attorney, by virtue of his position, must not take any action in either his professional or personal life that would be violative of duly enacted laws.

The Referee found the Respondent guilty of having engaged in illegal conduct involving moral turpitude.

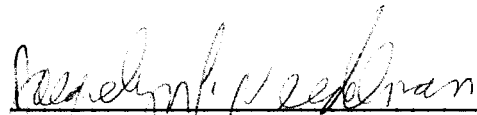
The Florida Bar maintains that the misconduct in this cause warrants disbarment. Respondent has admitted that he intentionally presented and modified a demand letter and medical report of Dr. David Teperson to an insurance company representative which contained false or misleading information concerning 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 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

Based upon the above and The Florida Bar's Initial Brief in this cause, 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,



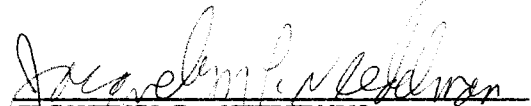
JACQUELYN P. NEEDELMAN
Attorney No. 262846
Bar Counsel
The Florida Bar
5900 North Andrews Avenue
Suite 835
Fort Lauderdale, FL 33309
(305) 772-2245

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 Reply Brief of The Florida Bar has been furnished to Edward G. Salantrie, Attorney for Respondent, 1323 Southeast 3rd Avenue, Fort Lauderdale, Florida 33316 and to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 on this 22nd day of March, 1989 by regular mail.


JACQUELYN P. NEEDELMAN