IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

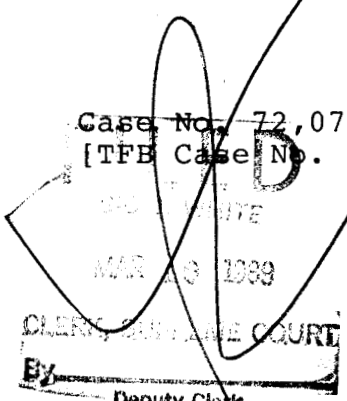
Complainant,

v.

VAL R. PATARINI

Respondent.
_____/

Case No. 72,070
[TFB Case No. 87-23,943 (10B)



THE FLORIDA BAR'S INITIAL BRIEF

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SYMBOLS AND REFERENCES

The complainant, The Florida Bar, shall be referred to as The Bar.

The Report of Referee dated January 9, 1989, shall be referred to as R.

The transcript of the final hearing on December 22, 1988, shall be referred to as T.

Bar exhibits which are contained in the Appendix shall be referred to as App, B-Ex.

STATEMENT OF THE FACTS

Respondent and his wife, Kay Patarini, separated in 1983 after experiencing marital problems. (T p.8) Kay retained attorney John **Frost** to represent her in the dissolution of marriage proceedings. (T p.9) The final judgment was issued in the matter in July, 1984. (T pp.32-33) The Court ordered the respondent to pay his wife $50,000 in lump sum alimony, $20,000 in special equity, and $1,000 per month in periodic permanent alimony. (T pp.35, 36, 11) Respondent was also required to pay $10,000 as a contribution toward his wife's attorney's fees and an additional sum for her costs. (T p.12) The respondent complied with the order to pay his share of the fees and costs and he began making the $1,000 monthly alimony payments. (T pp.12, 38) Respondent, however, did not promptly pay the remaining $70,000 due his wife and eventually stopped paying the $1,000 monthly alimony. (T pp.12)

The respondent began seeing Kay again on a regular basis in or around October, 1984. (T pp.13-14) They began acting as man and wife although they did not move in together. (T p.14; R p.2) The respondent paid the bills and put their son through college. (T p.15) However, he ceased making the required monthly alimony payments to Kay sometime between October, 1985 and December, 1985. (T pp.12, 38)

In late August or early September, 1986, Kay received a letter from Mr. Frost reminding her that she still owed $10,000 in attorney's fees. (T p.15) She asked the respondent to pay it for her, but he refused to do so. (T pp.15-16) He told her he would willingly buy her something that cost $10,000, but he would not pay Mr. Frost's fees as he felt Mr. Frost had overcharged her for the work performed. (T pp.15-16) This led to a disagreement and shortly thereafter, Kay went to see Mr. Frost. (T p.16) On October 28, 1986, Mr. Frost filed *a* Motion for Contempt on Kay's behalf alleging that the respondent had failed to comply with the Court's order that he pay his ex-wife $50,000 in lump sum alimony, $20,000 as special equity, and $1,000 per month as permanent alimony. (T p.16) Mr. Frost then began to conduct additional discovery of the respondent's financial condition. (T pp.16-17) Apparently this greatly upset the respondent as he felt he had produced considerable information regarding his finances during the original divorce proceedings. (T p.17; R p.2)

On October 23, 1986, prior to the filing of the Motion for Contempt, Salvadore Cimino came to see the respondent to retain him to represent him in a dissolution of marriage. (T pp.17-19) During the ensuing conversation, the respondent mentioned that he would like to meet someone who could provide "muscle". (T pp.17-19) The respondent wanted to scare Mr. Frost by blowing up his car or by breaking his arm (T p.17: App, B-Ex.1, pp. 3, 4, 6). The respondent did not realize Mr. Cimino was a confidential police informant. After this conversation, Mr. Cimino contacted

the Wauchula Police Department which in turn contacted the Florida Department of Law Enforcement (FDLE). Thereafter, on October 24, 1986, he engaged the respondent in a second conversation during which Mr. Cimino wore a "body bug". (App, B-Ex.1) As a result of this conversation, on October 30, 1986, the respondent was put in contact with Special Agent Randy Dey, who was acting undercover as "Max". (R p.2; App, B-Ex.1) The respondent advised "Max" that he was experiencing problems with his former wife and her demands in a pending legal proceeding. He informed "Max" that Kay's attorney was also causing him some problems and that he wanted to do something about it. The respondent wanted "Max" to scare Mr. Frost so that he would ease up on his demands for money on behalf of Kay. He also wanted "Max" to provide muscle to obtain money owed him by other people. He wanted to find somebody who could "bust a head, or do whatever necessary to take care of something for [him]". (App, B-Ex.1 p.2) Without setting a specific amount to be paid, they discussed the general terms for compensation and decided that the respondent would pay one-half in cash up front and one-half when the job was completed. (App, B-Ex 1, pp. 2-3) The respondent advised "Max" that he did not want anything done at the present time and that he would call him when he did. (T p.22)

The hearing on the Motion for Contempt was held on December 5, 1986. (T p.17) At that time the judge asked the respondent if he was financially able to pay his ex-wife the $70,000. The respondent replied that he could do so but would

not. (T p.24) The judge elected to reschedule the matter for December 19, 1986. (T p.24) At the December 19, 1986, hearing, the respondent offered to convey his one-half interest in certain real property he held jointly with Kay, but steadfastly refused to pay her any cash. (T p.26) Kay refused to take the property in lieu of the lump sum. (T pp.26-27) Thereafter, the judge found the respondent in contempt of court and ordered him jailed. (T p.27) After spending sixteen hours in jail, the respondent arranged to pay Kay the lump sum in full. (T pp.28-29)

The respondent has since married another women and is current in his monthly alimony payments to Kay. (T pp.29-30, 47-48) His relationship with his ex-wife is now friendly. (T p.29)

STATEMENT OF THE CASE

The respondent voluntarily entered a consent to a grievance committee finding of probable cause on November 19, 1987. The Bar filed its Complaint on March 7, 1988. The respondent filed a Motion to Strike on March 18, 1988, to which The Bar filed its response on March 25, 1988. Respondent filed his Answer on March 18, 1988, in which he admitted virtually all the allegations set forth in The Bar's Complaint, except the use of the term "hit". On March 28, 1988, The Bar filed its Requests for Admission which was never responded to and therefore, under the provisions of Fla. R. Civ. P. 1.370(a), the Requests are deemed admitted. The respondent filed a Request to Produce and Demand for Witness List on March 24, 1988, to which The Bar filed its response on April 1, 1988.

The final hearing was held on December 22, 1988, and th referee filed his report on January 9, 1989.

The Board of Governors considered the Report of Referee at its January, 1989, meeting and voted to approve the referee's findings of fact and recommendations as to guilt, but to seek review of his recommendation as to discipline. In the opinion of the Board, the respondent's interview of a man who he thought would "provide muscle" to scare his ex-wife's attorney, even

though it was never put into effect, is of such a serious nature that it warrants a ninety-one day suspension rather than a mere public reprimand.

SUMMARY OF ARGUMENT

The Florida Bar seeks review of the discipline recommended by the referee. In this case the referee recommended that the respondent receive a public reprimand and be placed on probation for one year. The Florida Bar believes that a suspension of at least ninety-one days, which would require proof of rehabilitation, and a period of probation would be a more appropriate sanction given the opprobrious nature of the respondent's admitted conduct.

The facts of this case are uncontroverted. The respondent admitted the contents of the transcript of his tape-recorded conversation with Special Agent Randy Dey of the Florida Department of Law Enforcement were accurate. (T p.44) He also admitted to the allegations contained in The Bar's Complaint with exception of the use of the word "hit". Although it is possible that the respondent's emotional difficulties may have contributed to his misconduct, his personal problems should in no way totally justify or condone his actions. It is beyond belief that a member of The Florida Bar, an officer of the court, would even briefly consider hiring, let alone personally interview, someone to injure another or damage another's property in an attempt to intimidate that person. Such conduct represents a serious breach of ethics and moral conscience. Although the respondent may have ultimately abandoned his intent to frighten Mr. Frost, he went so

far as to actually seek contact with "Max" and discuss the general details of hiring his services. The respondent actually took steps to act out his "fantasy", if that is what it was, of blowing up Mr. Frost's car. Although he may ultimately have abandoned his intent, certainly Mr. Frost and Agent Dey had to take him seriously. To engage in a fantasy is one thing, to actually take steps toward acting it out is quite another.

The Bar believes that a ninety-one day suspension is warranted for such serious misconduct. There is no absolute assurance that the respondent would not again indulge in a similar course of conduct given the right circumstances. A suspension would allow the respondent to withdraw for a time from the rigors of the practice of law and allow him the opportunity to seriously contemplate his past misconduct and seek the supportive therapy that his doctor testified he needed. A requirement that he prove his rehabilitation will give some measure of asurance that the respondent has successfully put the past events behind him and has fully regained emotional stability.

ARGUMENT

A PERIOD OF SUSPENSION FOR AT LEAST NINETY-ONE DAYS RATHER THAN A PUBLIC REPRIMAND AND A ONE YEAR PERIOD OF PROBATION IS THE APPROPRIATE LEVEL OF DISCIPLINE IN THIS CASE GIVEN THE SERIOUS NATURE OF THE RESPONDENT'S CONDUCT.

The respondent admitted substantially all the facts of The Bar's Complaint in his answer dated March 18, 1988, to the Bar's formal complaint. (See Appendix) It should be noted that no answer to The Bar's Requests for Admission was ever filed and, therefore, under Rule 1.370(a) of the Fla. R. Civ. P., the Requests, which substantially repeated the complaint, were admitted. The respondent also testified under oath at the final hearing that the transcript of his conversations (App, B-Ex 1) with Sal Cimino and "Max" was accurate. (T p.44) In fact, there is very little the respondent does not admit. Apparently his entire argument in this case is based upon excusing his misconduct due to his emotional state at the time. Granted, the breakup of a long term marriage is a very stressful period in any person's life, however, the events charged in this case did not occur until more than two years after the final decree of divorce. Moreover, most people do not attempt to contact a person to provide "muscle" to scare the opposing counsel either before or after a divorce.

It is noteworthy that the respondent was able to refrain from acting in such a bizarre fashion for more than two years after the divorce while he was again enjoying the fruits of married life with his former wife without complying with most of the financial requirements of the divorce decree. It was not until about the time the former wife's attorney wrote her a letter attempting to collect the balance of his fee followed by his filing of a Motion for Contempt on behalf of the former wife on or about October **28, 1986,** that respondent had his conversation with "Max" (T p. **41-45).** It can be suggested then that there was an elemental, selfish motive involved here. Greed. The respondent simply did not want to part with his money to either his former wife or to her lawyer. Indeed, he even went to jail later to avoid making certain payments to his wife which the court had repeatedly ordered.

The transcript of the conversation between the respondent and Special Agent Dey, posing as "Max", on October **30, 1986,** clearly indicates the respondent was serious, at least at that point, in considering causing injury to either Mr. Frost personally or to his property. During the course of their conversation, the respondent indicated to "Max" that he did not know whether he wanted him to do a job for him right away or not. By his own words he was "teetering". (App, B-Ex **1,** p.3)

He discussed blowing up Mr. Frost's car as a warning and although he stated that he did not wish to hurt Mr. Frost, he

wanted him to think that perhaps someone did. (App, B-Ex 1, p.3) Later in the same conversation, the respondent went on to state the following:

> ...I don't know whether I ought to break his f_____ arm or blow up his car, or ya know, get a warning to him, one way or the other. (Expletive omitted) (App, B-Ex 1, p.4)

Apparently the respondent had not firmly resolved not to cause serious physical harm to Mr. Frost.

In spite of the testimony of the defense expert witness, the Bar finds it difficult to characterize the foregoing as a mere "fantasy". What if the respondent had "teetered" the other way instead and had hired "Max"? He was only one step away. He clearly understood the consequences of his proposed actions.

> VAL: Uh, I'm just as scared as hell too, where my whole G_____n career is down the tubes if anything happens.
> SA: Oh.
> VAL: I'm gone. (Expletive omitted) (App, B-Ex 1, p.6)

The respondent fully understood that what he was doing was wrong and that he could be disciplined for engaging in such conduct. Yet he did it anyway.

Dr. Sidney J. Merin, a clinical psychologist and neuropsychologist, examined the respondent on three occasions in April, June and August of 1987 for the defense. (T pp.51, 56) He testified at the final hearing, on behalf of the defense, that he had met face to face with respondent for only approximately three

or four hours. (T. p56) He found no evidence of psychosis, but did state that the respondent was emotionally immature and engaged in fantasies when he was unsuccessful in dealing directly with a situation. (T p.60) He opined there was little probability of the respondent acting out any of these ideas. (T p.61) Yet the respondent did in fact act on one of his thoughts. He considered hiring someone to send a violent message to Mr. Frost. He did not merely engage in daydreams. He went so far as to actually seek out and meet with someone whom he believed could carry out his intentions. He was only one step away from employing a person who he thought could intimidate another person, or persons, by violent means. It was obviously not until sometime after this meeting where he discussed the general details of the situation and terms of payment that the respondent decided against his plan.

Dr. Merin acknowledged that the respondent may have tried to make himself look better to the doctor by not being entirely factual in the information he provided to the doctor (T pp.75-79). While this is an understandable impulse, inaccurate conclusions by the doctor are likely to result. Although Dr. Merin acknowledged that he never even saw Kay Patarini, let alone interview her, or test her (T p.69), he testified that he came to the conclusion that Kay was a more dominant personality and that she could, and did, manipulate the respondent. (T p.69) Dr. Merin specifically admitted that he did not check on the factual accuracy of respondent's statements to

him (T p.77), though he was of the opinion that the tests given the respondent did not suggest any effort to distort the facts. However, according to Dr. Merin, a part of the respondent's problem is that he may not always recognize when he is being realistic. (T p.79) Indeed, the entire analysis by the psychologist, with no means of determining factual matters except reliance on self serving, and possibly manipulative statements of the respondent, and with no supporting interviews of family members or others, appears to be only a superficial review at best. Computer experts have a succinct epigram describing this situation: "Garbage in: garbage out."

Dr. Merin further testified that the respondent revealed evidence of a depressive disorder as well as a post-traumatic stress disorder. (T p.62) He opined that the present Bar proceedings represent an additional source of despair and despondency and strongly recommended that the respondent seek further supportive therapy. (T pp.70-71) He believed the respondent will be unable to begin thinking clearly again until the present Bar proceedings are resolved. (T p.81) Until such time, he is in "limbo". (T p.81)

It is significant, however, that Dr. Merin's report is dated August 25, 1987, more than a year and three months before the final hearing in December, 1988, and the respondent had not yet sought any supportive therapy.

Although the respondent's conduct was not directly related to his professional life, nevertheless here is a situation in which an officer of the court has admitted interviewing a "muscle man" with the intention of possibly hiring him to injure another or to damage another's property. He also mentioned to "Max" the possibility of using his services to collect a fee from a client (App, B-Ex 1, p.3). Yet, the referee recommended only a public reprimand and probation for one year.

This Court has held in The Florida Bar v. Hefty, 213 So.2d 422 (Fla. 1968), and The Florida Bar v. Kay, 232 So.2d 378 (Fla. 1970), that The Bar has the authority to regulate and discipline the morals of its members.

In The Florida Bar v. Martell, 446 So.2d 1058 (Fla. 1984), a case quite similar to the one at Bar, except that in Martell money was actually paid, an attorney received a three year suspension for knowingly soliciting and hiring a person to cause harm to a borrower and his dog in order to collect on a loan. The person the attorney hired was actually an undercover detective. The attorney discussed the detail of what he wanted done and they agreed on a price. When the undercover detective later advised him the job had been completed, the attorney paid him for his services and stated that he wanted to use him again in the future.

In The Florida Bar v. Colee, 533 So.2d 767 (Fla. 1988), an attorney received a ninety-one day suspension and a one year period of probation for attempting to benefit financially by selling information. The attorney learned that a party in a local lawsuit might have perjured himself during the course of the trial. The accused attorney then attempted to sell this information to the opposing counsel. This Court found that while the Code of Ethics did not specifically prohibit such activity, his misconduct was of such an egregious nature that it warranted discipline.

In The Florida Bar v. Johnson, 511 So.2d 295 (Fla. 1987), an attorney received a public reprimand for writing "threatening" letters to his client. The attorney had entered into a joint venture with his client but failed to contribute the funds he was required to put up as a limited partner. The client later transferred title of a salvage ship used in the joint venture to the respondent as security for his legal fees. The client sold the ship and the attorney requested that the proceeds be applied to pay his outstanding legal fees. When the client failed to do this, the attorney wrote several letters to him. This was done in the attorney's capacity as an ordained minister. He disclosed a revelation from God that the client would be visited with a variety of biblical curses unless he paid the money owed. The attorney made no threats that he himself would injure his client.

In The Florida Bar v. Goldin, 240 So.2d 300 (Fla. 1970), an attorney was found to be suffering from a neurotic condition that clouded his professional judgment and sense of responsibility to his clients and the public. Due to his mental illness, he converted clients funds to his own use. He was suspended for a period of eighteen months for his misconduct.

Here the respondent's actions clearly warrants a more severe discipline than a public reprimand. The guiding principles in determining discipline are protection of society; fairness to the attorney; and deterrence of other attorneys who may be tempted to engage in similar misconduct. The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970). A ninety-one day suspension from the practice of law will provide the respondent with an opportunity to seek the supportive therapy he needs. The required proof of rehabilitation will give some assurance that he has in fact overcome his emotional difficulties by providing The Florida Bar with a psychological evaluation generated over a period of time by numerous in-depth counseling sessions. Although The Bar does not dispute Dr. Merin's qualifications, he was afforded only three occasions, totalling only three or four hours, to interview the respondent over one year ago.

He never checked on the factual accuracy of what he was told by his patient. Nor did he conduct other interviews of family or associates of the respondent. He testified that the respondent's emotional difficulties are continuing today. (T p.81) The Bar

feels that there are no assurances the respondent would not again engage in similar conduct given the right circumstances. A period of suspension requiring proof of rehabilitation would give him the time he needs to insure that he has fully regained control of himself and his life, has learned that there may be serious consequences to his immature actions, and has learned to deal with his difficulties in a more appropriate manner, rather than resorting to acts which might well lead to violence.

CONCLUSION

Wherefore, The Florida Bar requests this Honorable Court to affirm the Referee's findings of fact and recommendations of guilt, but review his recommended discipline of a public reprimand, one year period of probation and payment of costs and instead impose a period of suspension of at least ninety-one days requiring proof of rehabilitation, probation, and payment of costs now totaling $1,241.71.

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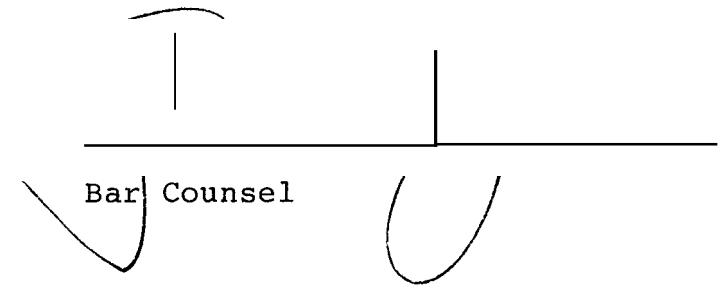

Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the The Florida Bar's Initial Brief have been sent by regular U.S. mail to the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by certified mail, return receipt requested no. P-630 486 072, to Jack T. Edmund, counsel for respondent, at 423 Pool Branch Road, Ft. Meade, Florida 33841: and a copy of the foregoing has been furnished by regular U.S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 8th day of March, 1989.

Respectfully submitted,

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