IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

VAL R. PATARINI,

Respondent.

CASE NO. 87-23,943 (0B)

REPORT OF REFEREE

I. Summary of proceedings: The undersigned was appointed as Referee to conduct disciplinary proceedings in this case. A hearing was held on December 23, 1988. John B. Root, Jr., appeared as counsel for The Florida Bar, and Jack T. Edmund appeared as counsel for the Respondent.

Respondent was charged with violating:

A. Article XI, Rule 11.02(3) of The Florida Bar's Integration Rule for conduct contrary to honesty, justice or good morals;

B. Rule 1-102(A)(3), engaging in illegal conduct involving moral turpitude;

C. Rule 1-102(A)(4), for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;

D. Rule 1-102(A)(5), engaging in conduct that is prejudicial to the administration of justice; and

E. Rule 1-102(A)(6), engaging in any other conduct that adversely reflects on his fitness to practice law.

Respondent admitted the allegations of fact in the Complaint, although a reading of the transcript of two taped conversations between Respondent and others does not reflect that the word "hit" was ever spoken. The Bar called no witnesses, but did introduce a typed transcript of a taped conversation between Respondent and his client on October 24, 1986, and between Respondent and Agent Randey Dey (acting in an undercover capacity) on October 30, 1986.

Respondent called himself, Dr. Sidney J. Merin, Ph.D., and

attorney C. Ray McDaniel. Dr. Merin's report of August 25, 1987, was received into evidence.

11. Finding of Fact: Respondent and his former wife, Kay, separated in 1983 after some 20 years of marriage and one child. A Final Judgment dissolving their marriage was entered in July of 1985. It provided, among other things, that Respondent was to pay Kay a total of $70,000.00 as lump sum alimony and special equity, and $1,000.00 a month as permanent alimony.

Within a month or two after the date of the Final Judgment, Respondent and Kay began keeping company on a regular basis. Although neither moved in with the other, their relationship was one of man and wife. During this time, Respondent paid for various expenses and trips out of state, but did not pay the alimony. In September of 1986, Kay got a letter from the lawyer who had represented her in the dissolution asking for the balance of his fee...some $10,000.00. Kay asked Respondent to pay this sum, but he refused. Respondent had either paid, or was still obligated to pay her lawyer $12,000.00 in costs and fees, and he told Kay he would buy her something that cost $10,000.00, but he thought the lawyer had overcharged her and he wouldn't pay the money to him. The two argued over this and parted company. Kay contacted her lawyer, who began enforcement proceedings for both the lump sum and periodic alimony owed by Respondent. This included discovery demands upon Respondent, which he thought were unreasonable, and the entire series of events greatly upset him.

In October of 1986, Respondent had the first of two conversations with his client "Sal", which resulted in the two conversations reported in the transcript received in evidence as The Florida Bar's Exhibit 1. A few days after his conversation with Respondent, Agent Dey, contacted Respondent and either said he had heard Respondent wanted him to do something or asked Respondent if he wanted him to do something. Respondent told Dey he would call him, but he never did. By that time, Respondent had completely abandoned any thought of ordering "Max" to do

anything...if Respondent was ever serious in the first place.

On December 5, 1986, Respondent attended a hearing on Kay's motions to enforce the Final Judgment. He admitted to the judge that he could pay the amounts claimed due, but said he felt he didn't owe the money because he'd lived with Kay and paid for things he was not obligated to pay. The court told Respondent that it had no choice but to hold him in contempt of court, but set another hearing for December 19, 1986. Respondent attended that hearing, accompanied by attorney C. Ray McDaniel. McDaniel was not counsel of record for Respondent, but the court and Kay's lawyer allowed him to appear and speak on Respondent's behalf. McDaniels persuaded the court to give Respondent until 5:00 O'Clock that day to pay the arrearages. Respondent told the court he was prepared to go to jail, and he told McDaniel that Kay would not let him go to jail and would do something to stop that from happening. McDaniel told Respondent it wasn't going to happen, and, of course, it didn't. Respondent spent 16 hours in jail before making arrangements to purge himself of contempt.

In early 1987, Respondent met his present wife, and they were married in February. Before the wedding, Kay approached Respondent, urged him not to marry, and claimed she would always be "first in his life". Respondent reports he is happily married and wishes to put the events of 1986 behind him. He has resolved his past financial problems with Kay, and he is current in his permanent alimony payments.

According to Dr. Merlin, Respondent was very depressed at the time of his conversations with Agent Dey and felt he was losing or had lost, control over his life. He indulged himself in a fantasy of causing some concern to Kay's lawyer by blowing up his car, but never followed through, even though there was time to do *so* before the first court hearing in December. Dr. Merin was of the opinion that Respondent never intended to do more than what he did, and that opinion was unchallenged by The Bar. Dr. Merin stated that Respondent has no mental illness or disorder which would adversely affect his ability to practice

law, and that continuing his practice would help him re-establish himself an an effective and viable professional. Dr. Merin felt some form of "supportive" therapy would be helpful to Respondent. Respondent poses no danger to society, and the probability of any re-occurrence of his conversational conduct is very remote, according to Dr. Merin. These findings also were not challenged by The Bar.

Respondent is 51 years old, and was admitted to The Florida Bar in 1963. He has not been previously disciplined by The Bar, and no current disciplinary proceedings were brought to the attention of the Referee. The only evidence presented to the Referee was that Respondent has very high ethics.

III. Findings as to Alleaed Violations. Based on the evidence presented and received, the Referee finds:

A. Respondent should be found not guilty of a violation of Rule 1-102(A)(3), engaging in illegal conduct involving moral turpitude. Respondent and Agent Dey never agreed on any illegal conduct of any kind. Assuming Respondent was serious at the time he talked with Agent Dey, he had clearly completely and voluntarily abandoned any plan he may have formed.

B. Respondent should be found not guilty of a violation of Rule 1-102(A)(4), engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Once again, no criminal act or attempted criminal act was committed by the Respondent. Neither did he commit any act which would constitute any fraud or deceit. The only 'misrepresentation" he may have made was to Agent Dey, assuming he was never serious about contracting for Dey's offered illegal services.

C. Respondent should be found not guilty of a violation of Rule 1-102(A)(5), engaging in conduct that is prejudicial to the administration of justice. The evidence is clear that Respondent's conversations with Agent Dey in no way interfered with Kay's prosecution of her claims against Respondent. His conduct was apparently not brought to the attention of the court. Although it may (hopefully) have been

brought to the attention of Kay's lawyer, there is no evidence that any hearings were postponed or claims abandoned because of the conduct. In fact, Respondent went to jail and was forced to purge himself of contempt by paying the amounts ordered. There is no evidence that Kay was forced to accept less than that found due her for **any** reason, let alone Respondent's fantasy.

D. Respondent should be found guilty of a violation of Rule 1-102(A)(6) for engaging in "any other" conduct adversely reflecting on his fitness to practice law. Even assuming that Respondent would never have actually requested Agent Dey to commit some illegal act, a lawyer subject to the rules of conduct has no business indulging his fantasy to the extent of actually discussing the possibility of some act of violence towards a third person with one who the lawyer believes has the inclination and capability of committing that act. Although the Referee did not hear from Agent Dey, one can assume that he thought Respondent was serious...at least up to the point when Respondent did not return his telephone call. The other law enforcement officers who heard of Respondent's requests had to assume they were serious, and (assuming he was notified) Kay's lawyer had to consider the possibility that Respondent was serious. Therefore, Respondent created the impression that he was seriously considering ordering an illegal, possibly violent, act against another. This clearly adversely reflects on his fitness to practice law.

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the Respondent be given a public reprimand and be placed on probation for a period of one year. As conditions of probation, I recommend that the Respondent pay all costs taxed in these proceedings and undergo "supportive therapy" as recommended by Dr. Merin. Therapy should be provided by a health care provider with qualifications similar to those of Dr. Merin. This was an isolated incident in Respondent's career. All the evidence points to the conclusion that Respondent has more than **"paid"** for his admittedly stupid conduct, and that it

is extremely unlikely he would repeat it. Respondent did not actually request Agent Dey to perform any illegal act, and--fortunately--no one was harmed or even inconvenienced by it.

V. Statement of Costs and Manner in Which Costs Should be Taxed: I find that costs should be taxed against the Respondent as follows:

Administrative Costs	$ 300.00
Court Reporter Appearance	80.00
Investigator's Expenses	385.98
Travel Costs	89.43
Transcript Costs	386.30
Total	$1,141.71

Respectfully submitted,

Stephen L. Dakan
Referee

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