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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Petitioner,

vs.

ALAN K. MARCUS,

Respondent.

Supreme Court Case
No. 72,505

INITIAL BRIEF OF THE FLORIDA BAR

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SYMBOLS AND EE

In this Brief, Petitioner, The Florida Bar, will be referred to as either "The Florida Bar", "The Bar", or as "Petitioner". Alan K. Marcus will be referred to as either the "Respondent" or "Marcus".

RR1 will refer to Report of Referee dated May 29, 1989. RR2 will refer to the Report of Referee dated July 23, 1990. RR3 will refer to the Amended Report of Referee dated February 18, 1992.

**STATEMENT OF THE CASE
AND OF THE FACTS**

On or about May 31, 1988, The Florida Bar filed a complaint against Alan K. Marcus. The complaint was predicated upon allegations that while employed as an associate with the law firm of Hayden & Milliken, P.A., Respondent had systematically and repeatedly engaged in a pattern of misconduct whereby he had misappropriated client funds. Essentially, Respondent was able to accomplish the misappropriation by misrepresenting to the firm's client, The Great American Insurance Company, through their adjusters, that he either had or would be settling a claim against them for a designated sum of money. In reliance on this information supplied by Respondent, the adjusters would then arrange for the forwarding of funds to cover the alleged amount of the settlement. Respondent, however, had actually settled the claim for an amount less than he had represented. He would then misappropriate to his own use the difference between the settlement amount and the amount forwarded by the client. In this manner, Respondent was able to misappropriate at least \$39,000.00. **For** the most part, this **was** accomplished by passing the funds through an account designated as the "Alan K. Marcus Trust Account". This trust account was not an account maintained by the law firm of Hayden & Milliken, Respondent's employer.

As each instance of misappropriation was brought to the attention of Respondent's employer, Respondent made restitution.

On June 6, 1988 the Supreme Court of Florida assigned a referee to hear this matter. On February 10, 1989 this matter

proceeded to final hearing before the Referee. At hearing, an Unconditional Guilty Plea and Consent Judgment was entered into by the parties. Additionally, Respondent alleged that these actions were the result of a substance abuse problem and presented evidence in mitigation. The Florida Bar amended the complaint to include additional matters involving the intentional misappropriation of funds.

The ore tenus consent judgment initially agreed to by the parties provides for an eighteen month suspension with a life time probation for substance abuse. Additionally, there was to be a five year trust account probation allowing random audits without cause of Respondent's trust account by The Florida Bar.

The Report of Referee was entered on May 2, 1989. The Referee made findings of fact consistent with The Florida Bar's allegations as set forth in the complaint and at the final hearing. The Referee found Respondent guilty of violations of Rule 11.02(3)(A) (commission by a lawyer of any act contrary to honesty, justice, or good morals) of the Integration Rule of The Florida Bar and Disciplinary Rules 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and 1-102(A)(6) (a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law) of the Code of Professional Responsibility. The Referee imposed an eighteen month suspension. (See attached Exhibit A.)

In or about May, 1989 The Florida Bar and Respondent entered into a Stipulation of Parties whereby the parties agreed that

Respondent unconditionally admitted guilt and the matter was deemed to have been fully heard at the hearing before the Referee which occurred on February 10, 1989.

On June 14, 1989, the Supreme Court of Florida directed that simultaneous briefs were to be filed by The Florida Bar and Respondent as to the discipline recommended by the Referee. (See attached Exhibit B.)

On July 19, 1989, Respondent filed a Motion To Remand Cause to Referee to Complete Evidentiary Hearing. By virtue of that Motion, Respondent requested to be allowed to present evidence in mitigation before the Referee. (See attached Exhibit C.)

On July 21, 1989, The Florida Bar filed the Complainant's Response to Motion To Remand Cause to Referee to Complete Evidentiary Hearing. By virtue of said response, the Bar requested permission to present testimony in aggravation. (See attached Exhibit D.)

On July 25, 1989, the Supreme Court of Florida entered an Order denying the Respondent's Motion To Remand Cause to Referee to Complete Evidentiary Hearing. (See attached Exhibit E.)

On August 2, 1989, The Florida Bar filed its Initial Brief. Respondent's Brief on Discipline was filed August 17, 1989.

On November 13, 1989, an Order was entered by the Supreme Court accepting the Referee's findings, but rejecting his recommendation of discipline. The matter was remanded to the Referee for the taking of additional evidence in mitigation. (See attached Exhibit F.)

On March 26, 1990, The Florida Bar filed a Motion For Clarification regarding the issue of whether the Referee was also to consider evidence in aggravation. (See attached Exhibit G.) By Supreme Court Order dated April 9, 1990, The Florida Bar's Motion For Clarification was denied. (See attached Exhibit H.)

Respondent subsequently filed an Extraordinary Motion In Limine to Prohibit the Bar from Seeking Enhanced Discipline and to Prohibit the Bar from Introducing Evidence in Aggravation. (See attached Exhibit I.) On May 25, 1990 the Supreme Court entered an Order granting Respondent's motion. (See attached Exhibit J.)

On June 5, 1990, the Supreme Court entered an Order denying a Motion For Six Month Stay of Referee Proceedings filed by Respondent. (See attached Exhibit K.)

Pursuant to Order of the Supreme Court, the Referee heard evidence relative to the issue of mitigation. A Report of Referee dated July 23, 1990 was filed with the Supreme Court on January 17, 1992. The Referee recommended in said Report of Referee that Respondent be suspended for a period of eighteen months as well as a ten year probation with participation in alcohol and drug abuse programs. (See attached Exhibit L.)

An Amended Report of Referee was entered on February 18, 1992 whereby it was still recommended that the Respondent receive an eighteen month suspension, but the recommended probationary period was reduced to three years. (See attached Exhibit M.)

Prior to the filing of the Report of Referee and Amended Report of Referee with the Supreme Court, but subsequent to the

date of July 23, 1990 which appears on the Report of Referee, on August 24, 1990, the Respondent was adjudicated guilty of a felony in United States District Court for the Southern District of Florida.

SUMMARY OF THE ARGUMENT

Subsequent to The Florida Bar and Respondent's entry into a consent judgment, Respondent was convicted of a felony for the same misconduct which resulted in the underlying Bar disciplinary proceedings. It is the position of The Florida Bar that the conviction is so significant a change of circumstance as to warrant enhancement of the discipline initially agreed to in the consent judgment; or in the alternative, The Florida Bar would seek an order vacating all prior orders in this cause and remanding to the Referee for a full evidentiary hearing.

The Bar's position is that the current posture of the matter is analagous to that of the consideration of uncharged misconduct when determining discipline. Accordingly, in order to satisfy the purposes of attorney discipline, the court is respectfully requested to consider Respondent's felony conviction before imposing discipline upon Respondent.

ARGUMENT

THE DISCIPLINE IMPOSED ON RESPONDENT SHOULD BE ENHANCED IN LIGHT OF THE FELONY CONVICTION WHICH OCCURRED SUBSEQUENT TO THE PARTIES ENTRY INTO A CONSENT JUDGMENT

Subsequent to The Florida Bar and Respondent entering into a consent judgment, Respondent was convicted of a felony with regard to the same misconduct which resulted in the underlying disciplinary proceedings. It is the position of The Florida Bar that this subsequent felony conviction constitutes a significant change in circumstances which would require enhanced discipline. In the alternative, it is the Bar's position that as a result of these changed circumstances, the judgments previously entered in these proceedings, along with Reports of Referee, should be vacated **and** the matter remanded **back to the Referee for a full evidentiary** hearing.

The analogy between the circumstances present in the matter sub judice and those instances where a Referee is asked to consider uncharged misconduct is apparent. In the present matter, The Florida Bar and Respondent entered into a consent judgment based upon a particular set of facts. Approximately one and a half years later, the misconduct which resulted in the consent Judgment results in Respondent's being felony convicted in federal court. The **Bar** believes that the felony conviction is so significant a charge in circumstances that the court should be made aware of it prior to making a final determination as to the ultimate discipline

to be imposed upon Respondent.

This court has previously **held that a Referee may receive evidence and make findings on misconduct not alleged in the complaint, as it relates to discipline.** The Florida Bar v. Setien, 530 So.2d 298 (Fla. 1988).

In The Florida Bar v. Stillman, 401 So.2d 1306 (Fla. 1981) this court stated:

It was proper for the referee, in making his report, to include information not charged in The Florida Bar's complaint. Evidence of unethical conduct, not squarely within the scope of the Bar's accusations, is admissible, **and** such unethical conduct, if established by clear and convincing evidence, should be reported because it is relevant to the question of the respondent's fitness to practice law and thus relevant to the discipline to be imposed. Stillman supra at 1307.

The Florida Bar submits that **a distinction can be made** between the present matter and the Stillman case. In the present matter, The Florida Bar seeks to introduce **new evidence not to the Referee**, but directly to the Florida Supreme Court subsequent to the conclusion of proceedings before the Referee. In Stillman, the Respondent was still at the Referee stage of the proceedings when he brought up the misconduct not charged in the complaint. The distinction, however, between Stillman and Marcus is easily overcome by looking to the court's purpose in allowing consideration of uncharged misconduct by the Referee. The purpose, as clearly set forth in the Stillman decision, is to allow in evidence that which is relevant to the issue of Respondent's fitness to practice law and consequentially, to the discipline to

be imposed, Clearly, Respondent's felony conviction is relevant to his fitness to practice law. Additionally, it is relevant to the question of what discipline should be imposed on him.

A similar ruling can be found in The Florida Bar v. DeSerio, 529 So.2d 1117 (Fla. 1988). In this case, The Florida Bar failed to include a charge in its complaint of which it had no knowledge at the time of filing. Standing on its findings in the Stillman case, the court held that it was proper for the referee to receive evidence and make findings on misconduct not alleged in the complaint where the evidence developed during a disciplinary proceeding.

Florida's Standards for Imposing Lawyer Sanctions, Section 5.11(a) states that:

5.11 Disbarment is appropriate when
(a) a lawyer is convicted of a
felony under applicable law.

Florida's Standards for Imposing Lawyer Sanctions, Section 5.12 states that:

5.12 suspension is appropriate when a
lawyer knowingly engages in criminal
conduct which is not included within
Standard 5.11 and that seriously
adversely reflects on the lawyer's
fitness to practice.

Clearly, the foregoing indicates that a felony conviction is a very serious matter. So serious, in fact, that disbarment is considered the appropriate discipline where there is a felony conviction present while similar criminal conduct not resulting in a felony conviction may result in suspension.

In deciding whether to enhance Respondent's discipline in light of his felony conviction, this Honorable Court must consider the purpose sought to be accomplished by attorney discipline. The purpose is three fold.

In The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970) this Court discussed the three factors to consider when imposing attorney discipline. First, the judgment must be fair to society. That is, it must protect the public from unethical attorneys while **at** the same time, not deny the public the services of a qualified practitioner by imposing to severe a penalty. Second, the discipline must be fair to the Respondent. That is, it must both accomplish punishment and encourage rehabilitation. Lastly, the punishment must be severe enough to deter others from engaging in the same or similar misconduct.

It is the Bas's position that the Court should consider Respondent's felony conviction before imposing discipline in order to insure that it considers all evidence relevant to the issue of discipline and satisfied its own high standards of regarding the purpose of attorney discipline.

Respondent's felony conviction and resulting suspension is already before this Court, albeit under a separate file number. This very Court, already having knowledge of Respondent's felony conviction, is urged to weight this conviction as a factor in determining a discipline fair to both Respondent and the public.

CONCLUSION

Respondent's conviction of a subsequent to the parties entry into a consent judgment felony constitutes a significant change of circumstances. This change of circumstances **is so significant as** to warrant an enhanced discipline **more severe than that** contained in the consent judgment.

Wherefore, The Florida Bar respectfully requests **that this** Honorable Court either enhance **the** discipline imposed **upon** Respondent and enter an Order of disbarment or, in the alternative, vacate the previous Orders entered in this cause and remand to the Referee for a **full evidentiary** hearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original **and** seven copies of the Initial Brief of The Florida Bar were sent via Airborne Express to Sid J. White, Clerk, Supreme Court of Florida, **500** South Duval Street, Tallahassee, Florida **32399** and copies were mailed to Jack A. Weiss, Esquire, Attorney For Respondent, P. O. Box **1167**, Tallahassee, FL **32302**; John T. Berry, Staff Counsel, The Florida Bar, **650** Apalachee Parkway, Tallahassee, FL **32399**; and Stuart Z. Grossman, Esquire, Designated **Reviewer**, **2665** South **Bayshore Drive**, PH 1, Miami, Florida **33133**, this **17th** day of June, **1992**.

Arlene K. Sankel

Arlene K. Sankel, Bar **Counsel**

APPENDIX

EXHIBIT

Report of Referee dated
May 2, 1989..... A

Order of the Supreme Court of Florida
dated June 14, 1989..... B

Motion To Remand Cause to Referee to
Complete Evidentiary Hearing bearing a certification
date of July 19, 1989..... C

Complainant's Response to Motion To Remand
Cause to **Referee** to Complete Evidentiary
Hearing bearing a certification date of
July 21, 1989..... D

Order of the Supreme Court of Florida
dated July 25, 1989..... E

Order of the Supreme Court of Florida
dated November 18, 1989..... F

Motion For Clarification bearing a certification
date of March 26, 1990..... G

Order of the Supreme Court of Florida
dated April 9, 1990..... H

Respondent's Extraordinary Motion In Limine to
Prohibit the Bar from Seeking Enhanced Discipline
and to Prohibit the Bar from Introducing Evidence
in Aggravation bearing a certification date
of May 1, 1990..... I

Order of the Supreme Court of Florida
dated May 25, 1990..... J

Order of the Supreme Court of Florida
dated June 5, 1990..... K

Report of Referee dated July 23, 1990.. L

Amended Report of Referee dated
February 18, 1992..... M

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

The Florida Bar File
Nos. 87-24,345(11D)
88-71,054(11D)

vs.

ALAN K. MARCUS,
Respondent.

Supreme Court Case
No. 72,505

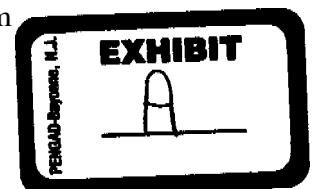
REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings pursuant to Rules 3-7.2 and 3-7.9 of the Rules Regulating The Florida Bar, a final hearing was held on February 10, 1989 in Fort Lauderdale, Broward County, Florida.

All of the pleadings, notices, motions, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

Louis Thaler and Warren Jay Stamm appeared as counsel for The Florida Bar. Louis Jepeway, Jr. and Sheldon Zilbert appeared as counsel for the Respondent.

After finding of Probable Cause at Grievance Committee level, on May 31, 1988, a Complaint was filed with the Supreme Court (Florida Bar Case No. 87-24,345(11D) (formerly 11D87M14) (Supreme Court Case No. 72,505) wherein it was alleged that during the period of 1981 through July 26, 1986 while Respondent was employed as an associate with the law firm of Hayden and Milliken, P.A., Respondent systematically transferred settlement funds from



various lawsuits being handled by Respondent on behalf of the Hayden and Milliken firm to an account that was not a Hayden and Milliken account.

As each instance of misappropriation was brought to the attention of Respondent's employer, restitution of funds was made by Respondent.

This Referee was appointed to hear this matter and final hearing was scheduled for February 10, 1989.

At hearing, an Unconditional Guilty Plea and Consent Judgment ("consent judgment") was negotiated and entered into by the parties to encompass The Florida Bar v. Alan K. Marcus, The Florida Bar File No. 87-24,345(11D) and The Florida Bar v. Alan K. Marcus, The Florida Bar File No. 88-71,054(11D). The latter case having been heard at the Grievance Committee level and a finding of Probable Cause was found on October 11, 1988. Respondent waived the filing of a formal complaint and unconditionally pled guilty and admitted to violation of Disciplinary Rules 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation) and 1-102(A)(6) (conduct that adversely reflects on fitness to practice law) of the Code of Professional Responsibility. Although the matter of The Florida Bar v. Alan K. Marcus, The Florida Bar File No. 88-71,054(11D) was not formerly before this Court prior to hearing, the parties agreed to waive the filing a formal charging document, and in exercising judicial economy, this matter was considered (*see* trial transcript of February 10, 1989 at pages 4 - 5; 14 - 17).

That said consent judgment provides for an 18-month suspension with life time probation for substance abuse to be monitored by Florida Lawyers Assistance Inc. and reports made to The Florida Bar no more than quarterly. Although this Referee and all parties are aware of Rule 3-5.1(c) (limitation of suspension to three year probation), this Referee and all parties stipulate to a lifetime probation. Additionally, there will be a five-year trust account probation allowing The Florida Bar to conduct a random audit without cause.

Having reviewed the record of these proceedings, I find that Respondent's **plea** and the position of The Florida Bar as to the terms of discipline are both fair to the Respondent and in the best interest of the public. Additionally, Respondent's consent judgment and the terms of discipline recommended by The Florida Bar are accepted and hereby adopted as the recommendation of this Referee in this matter.

II. SPECIFIC FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH RESPONDENT IS CHARGED: In his ore tenus consent judgment, Respondent admits the allegations contained in the Bar's complaint on the matter The Florida Bar v. Alan K. Marcus, The Florida Bar File No. 87-24,345(11D) which I hereby accept and adopt as the findings of fact in this **cause**, to wit:

Findings as to Count I

1. While employed by the law firm of Hayden and Milliken, Respondent was assigned the responsibility of representing Anchor-
@ age Marina, Inc., an insured of Great American Insurance Company,

in the case of the Oxbow Corporation v. Anchorage Marina, Inc., Broward County Circuit Court Case No. 82-11336 CN.

2. That on or about December 20 and 23, 1985 Respondent instructed an agent of **Great American** to wire transfer the sum of \$50,000.00 through an account labeled "**Windchasers III Escrow Account**" located at **Amerifirst Federal Savings and Loan Association** in Miami, Florida.

3. That said **Amerifirst** account was not an account maintained by the law firm of **Hayden and Milliken, P.A.**

4. That the Oxbow lawsuit was settled for \$39,000.00.

5. That Respondent induced the wire transfer of the \$50,000.00 from **Great American** to the bank account at **Amerifirst** in order to misappropriate \$11,000.00.

6. That on or about **August 27, 1986** after Respondent was advised that a complaint had been filed with **The Florida Bar** on August 5, 1986, Respondent made restitution for the \$11,000.00 to **Great American Insurance Company**.

Findings as to Count II

1. That while employed by the law firm of **Hayden and Milliken, P.A.**, Respondent was assigned the responsibility of representing **Indian Cove Marina, Inc.** an insured of **Great American**, in the case of Melba Boggess (Maes) v. Indian Cove Marina, Inc., **Broward County Circuit Case No. 82-6799-CA.**

2. That on or about April 3, 1986, Respondent advised **Great American** that this case could be settled for \$11,000.00. Subsequently, **Great American** check no. 473216 in the amount of

\$11,000.00 payable to "Michael F. Hofer, Esquire as attorney for Melba Boggess f/k/a Melba Maes" was issued which was endorsed by and deposited by Respondent in **an** account titled "Alan K. Marcus Attorney Trust Account".

3. That said trust account was not an account maintained by the law firm of Hayden and Milliken, **P.A.**

4. That this case was subsequently settled in the amount of **\$4,000.00.**

5. That Respondent caused the issuance of \$11,000.00 from Great American in order to misappropriate \$7,000.00.

6. That on or about August 27, 1986 after Respondent was advised that a complaint had been filed with The Florida Bar on August 5, 1986, Respondent made restitution to Great American Insurance Company.

Findings as to Count III

1. That **while employed by the law firm** of Hayden and Milliken, **P.A.**, Respondent was assigned the responsibility of representing Bonefish Harbor Marina, an insured of Great American in the case of Larry White v. Robert **Joyce, Inc., d/b/a Bonefish Harbor Marina and Great American**, Monroe County Circuit Case No. **82-1048-CA.**

2. That on or about January 29, 1986 Great American issued **check no, 472888 in the** amount of \$6,500.00 payable to Leonard K. Mikul, Esquire Trust Account.

3. That said check was endorsed by and deposited by Respondent in "Alan K. Marcus Attorney Trust Account".

4. That this **case** was **settled** in the amount of \$3,000.00.

5. That Respondent **induced** the issuance of \$6,500.00 from Great American in order to misappropriate \$3,500.00.

6. That on or about August 27, 1986, after Respondent was advised that a complaint had been filed with The Florida Bar on August 5, 1986, Respondent made restitution to Great American.

Findings as to Count IV

1. That while employed by the law firm of Hayden and Milliken, P.A., Respondent was assigned the responsibility of representing Marina Biscayne, Inc., an insured of Great American in the case of William Schacter and Associates v. United States and Marina Biscayne, Inc., United States District Court, Southern District of Florida, Case No. 83-0630-CIV.

2. That on or **about** June 6, 1986, pursuant to Respondent's telephone instructions, Great American issued draft no. 473577 for \$47,500.00 payable to "Something Special **Escrow** Account".

3. That said check **was** endorsed by and deposited by Respondent in "Alan K. Marcus Attorney Trust Account".

4. That "Something Special Escrow Account" is not a trust account maintained by the law firm of Hayden and Milliken, P.A.

5. That this case **was** settled for **\$30,000.00**.

6. That the Respondent induced the issuance of \$47,500.00 from Great American in order to misappropriate \$17,500.00 from Great American.

7. That on or about August 27, 1986, after Respondent was advised that a complaint had been filed with The Florida Bar on

August 5, 1986, Respondent made restitution to Great American. With respect to the matter of The Florida Bar v. Alan K. Marcus, The Florida **Bar** File No. **88-71,054(11D)**, Respondent **admits** the allegations as stated by Bar counsel at trial which I hereby accept and adopt as the findings of fact in this cause, to wit:

1. That on or about October 11, 1985, J. R. Gonzalez Agreda retained the services of the law firm of Hayden and Milliken, P.A. for the purpose of representing him in the purchase of a vessel. This matter was to be handled for the firm by Alan K. Marcus, then an employee of Hayden and Milliken, P.A.
2. That Mr. Gonzalez made the following payments relative to this matter:
 - a. October 11, 1985 - **\$1,500.00** (check was deposited in Hayden and Milliken trust account).
 - b. October 24, 1985 - \$5,950.00 (check payable to Alan K. Marcus; funds not deposited in Hayden and Milliken trust account).
 - c. October 28, 1985 - \$1,500.00 (check payable to Alan K. Marcus; funds not deposited in Hayden and Milliken trust account).
 - d. December 16, 1985 - **\$7,500.00** (wire transfer to Alan K. Marcus account at Amerifirst Savings and Loan; not an account of Hayden and Milliken).
3. That it was affirmatively represented to Mr. Gonzalez by Respondent that the checks be made payable to Alan K. Marcus.
4. That Respondent did send to Mr. Gonzalez an interim statement for services rendered dated December 19, 1985 alleging **\$950.00** worth of services performed by Hayden and Milliken by and through Respondent. Additional statements were sent alleging billings of an additional \$200.00 **and** \$1,500.00 respectively.

5. That despite numerous requests by the client, Respondent failed to provide an accounting of those monies received and expended **by** Respondent.
6. That Respondent misappropriated to his own use the approximate sum of \$4,921.16.

III. RECOMMENDATION AS TO GUILT: In his consent judgment, with respect to the matter of The Florida Bar v. Alan K. Marcus, The Florida Bar File No. 87-24,345(11D) Respondent admits that he misappropriated funds, committed acts contrary to honesty, justice or good morals and engaged in conduct involving dishonesty, fraud, deceit and misrepresentation; and that such conduct adversely reflects on his fitness to practice law. Respondent further admits such conduct constitutes a violation of the Code of Professional Responsibility and Rules of Professional Conduct. Based upon Respondent's admissions, I recommend that Respondent be found guilty of the following:

1. **As** to Count I, I recommend that Respondent be found guilty of violating Rule 11.02(3) (a) (Commission **by** a lawyer of any act contrary to honesty, justice or good morals) of the Integration Rule of The Florida Bar and Disciplinary Rules 1-102(A) (4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and 1-102(A) (6) (a lawyer shall not engage in **any** other conduct that adversely reflects on his fitness to practice law) of the Code of Professional Responsibility.

2. **As** to Count II, I recommend that Respondent be found guilty of violating Rule 11.02(3) (a) (Commission **by** a lawyer **of**

any act contrary to honesty, justice or good morals) of the Integration Rule of The Florida Bar, and Disciplinary Rules 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and 1-102(a)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law) of the Code of Professional Responsibility.

3. As to Count III, I recommend that Respondent be found guilty of violating Rule 11.02(3) (a) (Commission by a lawyer of any act contrary to honesty, justice or good morals) of the Integration Rule of The Florida Bar, **and** Disciplinary Rule 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation and 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law) of the Code of Professional Responsibility.

4. As to Count IV, I recommend that Respondent **be** found guilty of violating Rule 11.02(3) (a) (Commission by a lawyer of any act contrary to honesty, justice or good morals) of the Integration Rule of The Florida Bar, and Disciplinary Rules 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law) of the Code of Professional Responsibility.

In his consent judgment with respect to the matter of The Florida Bar v. Alan K. Marcus, The Florida Bar File No. 88-71,054(11D) Respondent admits that he misappropriated funds, committed acts contrary to honesty, justice or good morals and engaged in conduct involving dishonesty, fraud, deceit and misrepresentation and that such conduct adversely reflects on his fitness to practice law. Respondent further admits that such conduct constitutes a violation of the Code of Professional Responsibility and Rules of Professional Conduct. **Based** upon Respondent's admissions, I recommend that Respondent be found guilty of the following:

Violation of Disciplinary Rules 1-102(A) (4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation and 1-102(A) (6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law) of the Code of Professional Responsibility.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED: 1
recommend acceptance of Respondent's ore tenus consent judgment and the imposition of the following disciplinary terms:

That Respondent be suspended for a period of 18 months with life time probation for substance abuse to be regulated by Florida Lawyers Assistance, Inc. and reviewed by The Florida Bar no more than quarterly. Additionally, Respondent will be subject to a five-year trust account probation which allows The Florida Bar to conduct a random audit without cause.

In making this recommendation, I have considered Respondent's lack of prior disciplinary history, as well **as** the following mitigating factors:

- a. Respondent has **made full** restitution for those monies misappropriated as set out in the Bar's complaint.
- b. Respondent is currently enrolled in a substance abuse program with Florida Lawyers Assistance, Inc.

V. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH

COSTS SHOULD BE TAXED: I find that the following were reasonably incurred by The Florida Bar as costs in these proceedings and should be assessed against Respondent:

<u>Administrative Costs:</u>	<u>Amount</u>
Rules 3-7.5 (k)(1), Rules of Discipline	
Grievance Level	\$ 150.00
Referee Level	150.00
 <u>Court Reporter</u>	
(attendance at grievance committee hearing held October 11, 1988)	100.00
(attendance at hearing before Judge Wright)	<u>233.60</u>
TOTAL	\$ 633.60

It is recommended that **the** foregoing costs **be** assessed against Respondent. It is further recommended that execution issue with interest at a rate of twelve percent (12%) to accrue on all costs not **paid** within thirty days of entry of **the Supreme Court's** final order, unless **the** time for payment is extended by the **Board** of Governors of The Florida Bar.

Dated this 2 day of May, 1989.

FILED

ZEBEDEE W. WRIGHT
Referee
Broward County Courthouse
201 S. E. 6th Street
Fort Lauderdale, Florida 33301
(305) 357-7841

Copies furnished to:

Sheldon Zilbert, Esquire
Louis Jepeway, Jr., Esquire
Warren Jay Stamm, Bar Counsel

Supreme Court of Florida

WEDNESDAY, JUNE 14, 1989

THE FLORIDA BAR,
Complainant,
v.
ALAN K. MARCUS,
Respondent.

**
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**
**
**

CASE NO. 72,505

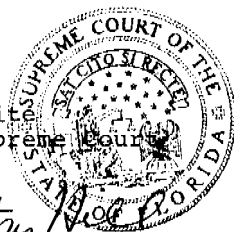
Simultaneous briefs shall be served by the parties in the above cause on or before July 5, 1989, as to the Referee's recommended discipline. Rule 3-7.6(c) (6) of the Rules Regulating The Florida Bar.

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

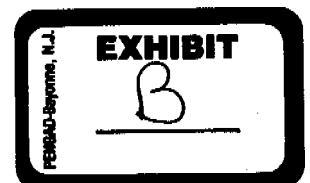
Betsy Noel
Deputy Clerk



H
cc: Warren Jay Stamm, Esquire
Lewis Jepeway, Jr., Esquire
Alan K. Marcus, Respondent
John T. Berry, Esquire

JUN 16 1989

U.S. DEPT. OF JUSTICE
MIAMI OFFICE



IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

111 01 21

THE FLORIDA BAR,

Complainant,

vs.

Supreme Court
Case No. 72,505

ALAN K. MARCUS,

Respondent.

ON TC AND CAUSE T REFEREE
TO COMPI EVIDENTIARY HEARING

The Respondent, ALAN K. MARCUS, by and through his undersigned attorneys, moves the Court to remand this cause to the Referee and order that he might complete the presentation of his mitigation evidence and says that:

1. During the hearing before the Referee the parties reached an agreement **as** to discipline for the Respondent: eighteen (18) months suspension.

2. Because of the agreement, the Respondent was precluded from presenting substantial mitigating evidence, including his own testimony which would have shown that he was under the influence of cocaine at the time of the commission of the acts resulting in discipline and would not have committed the acts but for his cocaine addiction. The evidence also would **have** shown that the Respondent **has** rehabilitated himself totally and **has** taken the following steps:

A. On **December** 8, 1986, he entered the Coral Reef Hospital Chemical Dependency Unit on **an** in-patient basis for one week.

B. On December 13, 1986, he commenced a one year out-patient program with Coral Reef Hospital Chemical **Dependency** Unit. He successfully completed the program.



a :

C. On December 13, 1986, he commenced attending a program sponsored by the Florida Lawyers' Assistance, Inc. This program meets every Monday. He **has** attended regularly, missing only several meetings. Additionally he has entered into a contract with the **Florida** Lawyers' Assistance, Inc. and has abided by its terms.

D. **He** attends meetings of Narcotics Anonymous -- at least several times a week -- and **has** done **so** for more than two years. He **also** sponsors people in this program.

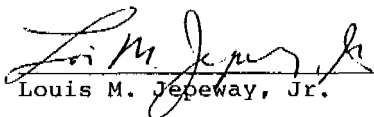
E. **He** voluntarily visits hospitals and institutions and shares his experience with addicts who are patients there.

3. The Court has requested briefs **as** to the Referee's recommended discipline. However without the additional mitigating evidence, which was not presented because of the agreement reached, the Court will not have a full and complete picture of the Respondent. In all fairness, a remand to the Referee in order to complete the record **is** necessary and proper. Anything less would **deprive** the **Court** of all **the** information **it** needs and would be fundamentally unfair to the Respondent.

4. The Complainant, The Florida Bar, has no opposition to this Motion.

Respectfully submitted,

JEPEWAY AND JEPEWAY, P.A.
Attorneys for Respondent
407 Biscayne Building
19 West Flagler Street
Miami, Florida 33130
Tele.: (305)377-2356

By: 
Louis M. Jepeway, Jr.

CERTIFICATE OF SERVICE

I **HEREBY** CERTIFY that a true and correct copy of the

foregoing Motion to Remand Cause to Referee to Complete Evidentiary Hearing was mailed to WARREN J. STAMM, ESQ., Counsel for The Florida Bar, Suite 211, Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131 this 19th day of July, 1989.

By: Louis M. Jépeyway, Jr.
Louis M. Jépeyway, Jr.

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Supreme Court Case No.
72,505

v.

ALAN K. MARCUS,

Respondent.



COMPLAINANT'S RESPONSE TO MOTION TO REMAND CAUSE TO
REFEREE TO COMPLETE EVIDENTIARY HEARING

Complainant, The Florida Bar, by and through its undersigned counsel, files this Response to Respondent's Motion to Remand Cause to Referee to Complete Evidentiary Hearing and in support thereof states as follows:

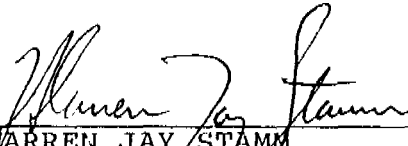
1. That by Order of the Supreme Court dated June 14, 1989, the respective parties were to submit simultaneous briefs on or before July 5, 1989 as to the Referee's recommended discipline.

2. That a Motion for Extension of Time within which to file said briefs was filed by Respondent and granted by the Supreme Court on June 29, 1989, ordering said briefs to be filed on or before August 5, 1989,

3. That Complainant is in receipt of Respondent's above referenced Motion to Remand and although Complainant does not oppose said Motion for the purpose of providing this Court with additional information (if needed) to assist this Court in rendering its decision concerning discipline, if Respondent is going to

present additional testimony in mitigation, Complainant requests permission to present additional testimony in aggravation.

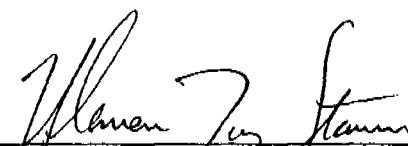
Respectfully submitted



WARREN JAY STAMM
Bar Counsel
Florida Bar No. 582440
The Florida Bar
Suite 211, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131
(305) 377-4445

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the above and foregoing Complainant's **Response to Motion to Remand Cause to Referee to Complete Evidentiary Hearing** was forwarded to the Honorable **Zebedee W. Wright, Referee**, at Broward County Courthouse, Room 358, 201 S.E. 6th Street, Fort Lauderdale, Florida 33301 and a true and correct copy of the above and foregoing was mailed to **Louis M. Jepeway, Jr., Esquire, Jepeway and Jepeway**, 19 West Flagler Street, Suite 407, Miami, Florida 33130, Attorney for Respondent, by Certified Mail Return Receipt Requested (#P110 986 119) this 21st day of July, 1989.



WARREN JAY STAMM
Bar Counsel

Supreme Court of Florida

TUESDAY, JULY 25, 1989

THE FLORIDA BAR,
Complainant,
v.
ALAN K. MARCUS,
Respondent.


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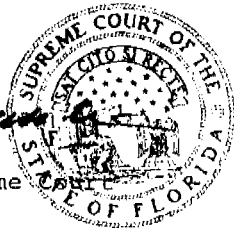
CASE NO. 72,505

Respondent's Motion to Remand Cause to Referee to
Complete Evidentiary Hearing is hereby denied.

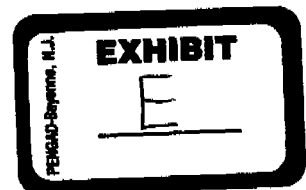
A True copy

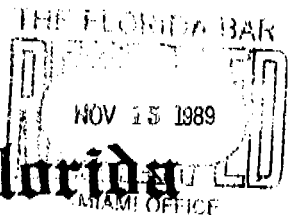
TEST:


Sid J. White
Clerk, Supreme



H
cc: Louis M. Jepeway, Jr., Esquire
Warren J. Stamm, Esquire
John T. Berry, Esquire





Supreme Court of Florida

MONDAY, NOVEMBER 13, 1989

No. 12,505

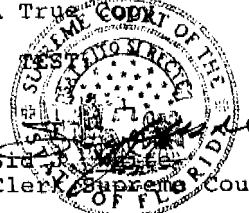
THE FLORIDA BAR, Complainant,

vs .

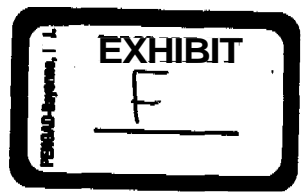
ALAN K. MARCUS, Respondent.

O R D E R

Based on the record before us, including the parties' supplemental briefs on recommended discipline, we accept the referee's findings, but reject his recommendation as to disciplinary measures. The record discloses that the hearing before the referee was abbreviated due to the "Stipulation of Parties." Specifically, the record discloses that although respondent was present at the hearing before the referee and entered an unconditional guilty plea, he did not testify other than to state that he gratefully accepted the agreement reached with The Florida Bar. This Court will not entertain a motion to withdraw respondent's unconditional guilty plea, but, in fairness to respondent and in light of the abbreviated nature of the hearing, we rescind our order of July 25, 1989, and remand to the referee for the taking of additional evidence relative to the issue of mitigation.

A True Copy

Clerk Supreme Court
OF FLORIDA

B
cc: Honorable Zebedee W. Wright, Referee
Sheldon Zilbert, Esquire
Louis Jepeway, Jr., Esquire
Warren Jay Stamm, Esquire
John T. Berry, Esquire



IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

ALAN K. MARCUS,
Respondent.

Supreme Court Case
No. 72,505

The Florida Bar File
No. 87-24,345(11D)



MOTION FOR CLARIFICATION

COMES NOW the Complainant, The Florida Bar, by and through its undersigned counsel and files this its Motion for Clarification and in support thereof states as follows:

1. That the above styled cause **was before** this Court on a Report of Referee as submitted wherein the Referee accepted an Unconditional Guilty Plea and Consent Judgment for Discipline entered into by and between **the** parties recommending an 18 month suspension and **and** conditions subsequent as discipline.

2. That pursuant to **Order** of this Court **dated** Monday, November 13, 1989, this cause **was** remanded back to the Referee for the taking of additional evidence relative to the issue of mitigation.

3. That additionally, the Order states that this Court **accepts** the **Referee's findings, but** rejects his recommendation as to disciplinary matters.

4. Further, the Order states that this Court will not entertain a Motion to **Withdraw** from Respondent's Unconditional

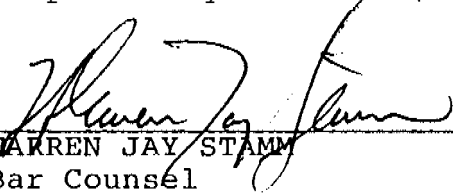
Guilty Plea and rescinds its Order of July 25, 1989.

5. That The Florida Bar seeks clarification with respect to the Court's directive, to wit:

Whether those matters to be considered by the **Referee** on remand include additional evidence solely relative to the issue of mitigation or whether if the Referee is to entertain additional evidence in mitigation, the **Referee** is also entitled to entertain evidence in aggravation.

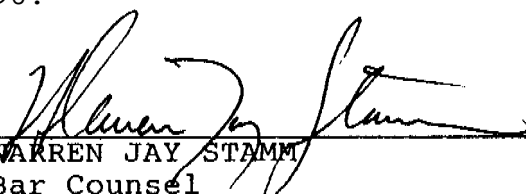
WHEREFORE, The Florida Bar petitions this Court for clarification of its November 13, 1989 Order and any and all other relief as this Court deems just and **proper**.

Respectfully submitted,


WARREN JAY STAMM
Bar Counsel
Attorney No. 582440
The Florida Bar
Suite M-100, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33143
(305) 377-4445

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the above and foregoing Motion for Clarification was forwarded to the Honorable Zebedee W. Wright, Broward County Courthouse, Room 358, 201 S.E. 6th Street, Fort Lauderdale, Florida 33301 and a true and correct copy was mailed to Louis M. Jepeway, Jr., Attorney for Respondent, 407 Biscayne Building, 19 West Flagler Street, Miami, Florida 33130, John A. Weiss, Attorney for Respondent, P.O. Box 1167, Tallahassee, Florida 32302-1167 and to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 26th day of March, 1990 and a copy was forwarded to Sid J. White, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927 by Federal Express this 2nd day of April, 1990.


WARREN JAY STAMM
Bar Counsel

Supreme Court of Florida

MONDAY, APRIL 9, 1990

THE FLORIDA BAR,

COMPLAINANT,

VS.

CASE NO. 72,505

ALAN K. MARCUS,

RESPONDENT.

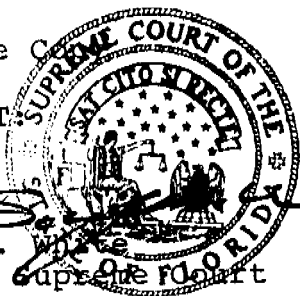
Motion for Clarification filed by the Florida Bar
is hereby denied.

APR 12 1990
RECEIVED
CLERK OF THE SUPREME COURT

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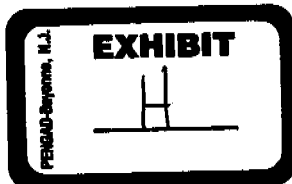
TEST:

Sid J. [Signature]
Clerk Supreme Court



B

cc: Warren Jay, Stamm, Esquire
Louis M. Jepeway, Jr., Esquire
Sheldon Zilbert, Esquire
John T. Berry, Esquire
Honorable Zebedee W. Wright,
Referee
John A. Weiss, Esquire



IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,)
)
 Complainant,)
)
 vs.)
)
 ALAN K. MARCUS,)
)
 Respondent.)
)
 _____)

Supreme Court Case,
No. **72,505**

**RESPONDENT'S EXTRAORDINARY MOTION IN LIMINE
TO PROHIBIT BAR FROM SEEKING ENHANCED DISCIPLINE AND
TO PROHIBIT BAR FROM INTRODUCING EVIDENCE IN AGGRAVATION**

The Respondent, ALAN K. MARCUS, by and through his undersigned attorneys, extraordinarily moves the Court in limine to prohibit the Complainant, The Florida Bar, from seeking enhanced discipline and further to prohibit The Florida Bar from introducing aggravating evidence at the hearing on remand which is scheduled before the referee on June 6, 1990, and says that:

1. The parties entered into a Consent Judgment in which they agreed upon discipline was a suspension for a period of eighteen months, with life time probation for substance abuse to be regulated by Florida Lawyers' Assistance, Inc. and reviewed by The Florida Bar no more than quarterly. Additionally, the parties agreed that the Respondent will be subject to a five year trust account probation which allows The Florida Bar to conduct a random audit without cause.



2. This Court, on November 13, 1989, accepted the referee's findings but rejected his recommendation **as** to the discipline. The last sentence of the Order states, inter alia, that:

"...in fairness to respondent and in light of the abbreviated nature of the hearing, we rescind our order of July 25, 1989, and remand to the referee for the taking of additional evidence relative to the issue of mitigation." (emphasis added)

A copy of this Court's Order is attached hereto and made a part hereof.

3. Clearly, this Court remanded this cause to the referee for the sole purpose of permitting the Respondent to present additional evidence of mitigation. There is not a syllable in the Order even hinting that the Bar would be permitted to seek enhanced discipline or to present evidence in aggravation.

4. The Bar, under the guise of a "motion for clarification" sought permission from this Court to entertain evidence in aggravation. This Court denied the Motion for Clarification on April 9, 1990.

5. Notwithstanding the clarity of this Court's Orders of November 13, 1989, and April 9, 1990, the Bar has announced that it will still seek enhanced discipline and to introduce evidence in aggravation at the hearing on remand before the referee.

6. This Court can not countenance such conduct by the Bar. It is most unseemly of the Bar to seek to enhance discipline and to introduce evidence in aggravation at the hearing on remand. The parties entered into an agreement. Now, the Bar unilaterally seeks to tear **up** the agreement it freely entered into. The Bar, of all litigants, must be held to its agreements. This Court must hold the Bar to its agreement in this case.

Respectfully submitted,

JEPEWAY AND JEPEWAY, P.A.

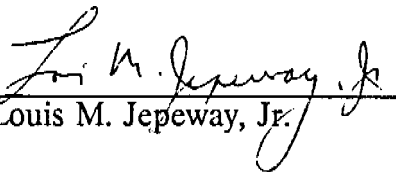
407 Biscayne Building
19 West Flagler Street
Miami, Florida 33130
Tele.: (305)377-2356
Fla. Bar No. 113699

SHELDON ZILBERT, ESQ.

200 S. Biscayne Boulevard
Suite 3120
Miami, Florida 33131

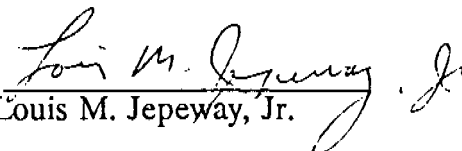
JOHN A. WEISS, ESQ.

P.O. Box 1167
Tallahassee, Florida 32302-1167
Tele.: (904)681-9010
Attorney No. 185229

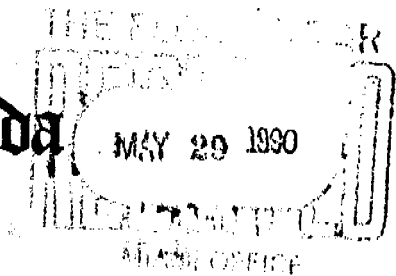
By: 
Louis M. Jepeway, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Respondent's Extraordinary Motion in Limine to Prohibit Bar from Seeking Enhanced Discipline and to Prohibit Bar from Introducing Evidence in Aggravation** was mailed to the **HONORABLE ZEBEDEE W. WRIGHT**, Referee, Broward County Courthouse, Room 358, 201 S.E. 6th Street, Ft. Lauderdale, Florida 33301, and to **WARREN J. STAMM**, Bar Counsel, The Florida Bar, Suite 211, Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131 this ^{1st} 2nd day of May, 1990.

By: 
Louis M. Jepeway, Jr.

Supreme Court of Florida



FRIDAY, MAY 25, 1990

THE FLORIDA BAR

Complainant,

vs.

Case No. 72,505

ALAN K. MARCUS

Respondent.

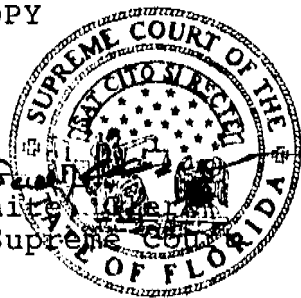
* * * * *

Respondent's Extraordinary Motion In Limine To Prohibit Bar From Seeking Enhanced Discipline and To Prohibit Bar From Introducing Evidence In Aggravation is granted.

OVERTON, BARKETT, GRIMES and SHAW, JJ., Concur
EHRlich, C.J., McDONALD and KOGAN, JJ., Dissent

A TRUE COPY

TEST:



Sid J. White
Florida Supreme Court

bdm

c: Louis M. Jepeway, Jr., Esquire
John A. Weiss, Esquire
Sheldon Zilbert, Esquire
Warren J. Stamm, Esquire
John Berry, Esquire

Honorable Zebedee W. Wright



Supreme Court of Florida

TUESDAY, JUNE 5, 1990

THE FLORIDA BAR

Complainant,

vs.

Case No. 72,505

ALAN K. MARCUS

Respondent .

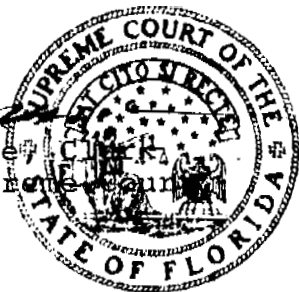
* * * * *

Respondent's Motion For Six Month Stay Of Referee
Proceedings in the above styled case is denied.

A TRUE COPY

TEST:

Sid J. White, Clerk
Florida Supreme Court



bdm

c: John A. Weiss, Esquire
Louis M. Jepeway, Jr., Esquire
Warren J. Stamm, Bar Counsel
Honorable Zebedee W. Wright
Sheldon Zilbert, Esquire
John T. Berry, Esquire
Alan K. Marcus, Respondent



FILED

SID J. WHITE

JAN 17 1992

CLERK, SUPREME COURT.

By _____
Chid Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

TEE FLORIDA BAR,)

Complainant,)

vs.)

ALAN K. MARCUS,)

Respondent.)

Supreme Court Case
No. 72,505

The Florida Bar File, 72-2434
No. 87-24,345(11D)

JAN 17

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct the taking of additional evidence relative to the issue of mitigation.

All of the transcripts are forwarded with this report and the foregoing constitutes the record of this evidentiary hearing.

The following attorneys appeared as counsel for the parties:

On behalf of The Florida Bar!, Warren J. Stamm, Esq.

On behalf of the Respondent: Louis Jepeway, Esq.

John A. Weiss, Esq.

Respondent submitted additional testimony and a cadre of other witnesses which provided a positive character, long standing rehabilitation and recovery of over three years and a strong affiliation with Narcotics Anonymous and fellow addicts needed to maintain recovery.

II. FINDINGS OF FACTS: Upon the testimony and cadre of other witnesses testimony on behalf of the Respondent the Referee finds as follows:



- (1) As previously established, there was a direct and causal link between the Respondents misconduct and his narcotic addiction to cocaine.
- (2) Respondent has established a repore and strong affiliation with Narcotics Anonymous Program over the last three years and continues this affiliation on a bi-weekly basis.
- (3) Respondent has successfully fulfilled a two year contract with the Florida Lawyers Assistance Corporation and voluntarily continues to report to his assigned monitor to date.
- (4) Respondent has shown an active and helpful role in the recovery of other suffering addicts.
- (5) Respondent adequately and responsibly performs as an attorney in the community today.
- (6) Respondent has made full restitution to the harmed parties.

111. **RECOMMENDATION AS TO THE ADDITIONAL EVIDENCE AND THE DISCIPLINARY MEASURES TO BE APPLIED:**

Whereupon, the recommended disciplinary measures to be imposed are as follows:

- (a) An eighteen month period of suspension of the Respondent from the practice of law.
- (b) A ten year probation period with participation in alcohol or drug abuse programs.

V. **STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:**

I find that the fallowing were reasonably incurred by The Florida Bar as costs in there proceedings and should be assessed against Respondent :

Administrative Costs:

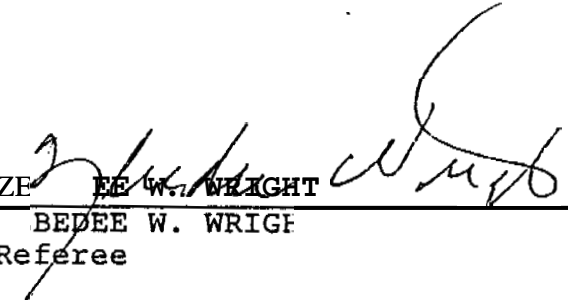
Referee Level

Cost of Audit: Investigation

TOTAL :

It is recommended that the foregoing costs be assessed against Respondent. It is further recommended that execution issue with interest at a rate of twelve percent (12%) to accrue on all costs not paid within 30 days of entry of the Supreme Court's final order, unless the time for payment is extended by the Board of Governors of The Florida Bar.

DATED this 23^E day of July 90.


ZEE W. WRIGHT
BEDEE W. WRIGH
Referee

Copies furnished to:

Warren J. Stamm, Esq.
Louis Jepeway, Esq.
John A. Weiss, Esq.

TRUE COPY

IN THE SUPREME COURT OF FLORIDA

MAR 2 1992

The Florida Bar,
Complainant,
vs.
Alan K. Marcus,
Respondent.

Supreme Court Case
No. 72,505

The Florida Bar File
No. 87-24,345(11D)

AMENDED REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct the taking of additional evidence relative to the issue of mitigation. All of the transcripts are forwarded with this report and **the** foregoing constitutes the record of this evidentiary hearing.

The following attorneys appeared as counsel for the parties:

On behalf of The Florida **Bas**: Warren Jay Stamm, Esquire

On behalf of the Respondent: Louis Jepeway, Esquire
John A. Weiss, Esquire

Respondent submitted additional testimony and **a** cadri of other witnesses which provided **a** positive character, long standing rehabilitation and recovery of **over** three years and a strong affiliation with Narcotics Anonymous and fellow addicts needed to maintain recovery.

11. FINDINGS OF FACTS: Upon the testimony and cadri of other witnesses testimony on behalf of the Respondent the Referee finds as follows:



- (1) **As** previously established, there was a direct and causal link between the Respondents misconduct and his narcotic addiction to cocaine.
- (2) Respondent has established a repore and strong affiliation with Narcotics Anonymous Program over the last three years and continues this affiliation on a bi-weekly basis.
- (3) Respondent has successfully fulfilled a two year contract with the Florida Lawyers Assistance Corporation and voluntarily continues to report to hi3 assigned monitor to date.
- (4) Respondent has shown an active and helpful role in the recover of other suffering addicts.
- (5) Respondent adequately and responsibly performs as an attorney in the community today.
- (6) Respondent has **made** full restitution to the harmed parties.

111. **RECOMMENDATION AS TO THE ADDITIONAL EVIDENCE AND THE DISCIPLINARY MEASURES TO BE APPLIED:**

Whereupon, the recommended disciplinary measures to imposed are as follows:

- (a) **An** eighteen month suspension effective upon the date so **ordered** by the Supreme Court.
- (b) Respondent shall be placed on probation for **a** period of three (3) years from the date so ordered by the Supreme Court. During this period of probation, Respondent shall enroll in and successfully complete a Florida Lawyers Assistance, Inc. (FLA) or a Florida Lawyers Assistance, Inc. sponsored rehabilitation program. **Proof of** successful completion of said program shall be provided to The Florida Bar by Respondent at the conclusion of the three (3) year probationary period.

V. **STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:**

I find that the following were reasonably incurred by The Florida Bar **as** costs in their proceedings and should be assessed against **Respondent:**

Administrative Costs:

Referee Level

Cost of Audit: Investigation

TOTAL :

It is recommended that the foregoing costs be assessed against Respondent. It is further recommended that execution issue with interest at a rate of twelve percent (12%) to accrue on all costs not paid within 30 days of entry of the Supreme Court's final order, unless the time for payment is extended by the Board of Governors of The Florida Bar.

Dated this 18 day of February, 1992.

ZEBEDEE W. WRIGHT
ZEBEDEE W. WRIGHT, REFEREE

A TRUE COPY

Copies furnished to:

Warren Jay Stamm, Esquire
Louis Jepeway, Esquire
John A. Weiss, Esquire

c:\referee\marcus.ror