IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

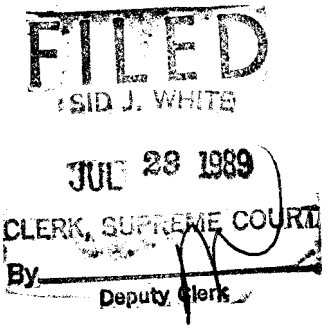
Complainant,

v.

JOHN N. SAMAHA,

Respondent.
_____/

Case No. 72,835



RESPONDENT'S ANSWER BRIEF

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SYMBOLS AND REFERENCES

In this Brief the Appellant will be referred to as The Florida Bar or the Bar and Appellee, JOHN N. SAMAHA, will be referred to as such or as the Respondent. References to the Referee's Report will be indicated by the symbol "RR" - and followed by the page number. References to the Transcript of the Final Hearing will be by T - followed by the appropriate page number. References to the Transcript of the Dispositional Hearing will be by the symbol TD - followed by the appropriate page number.

STATEMENT OF THE FACTS AND OF THE CASE,

This matter is before the Court on appeal by The Florida Bar of the Referee's recommendation that Respondent be found guilty of various violations of the Code of Professional Responsibility and that he receive a public reprimand and probabion for one year.

The Referee's actual findings of fact were very concise. They were:

> In July, 1986, a young lady employed the Respondent to represent her in a personal injury claim growing out of a May, 1986, automobile accident. At the time of employment, the young lady was 19 years with a ninth grade education and single with a four year old daughter.
>
> The Respondent, at his law office and again at the young lady's apartment, under the guise that it was necessary to prepare the personal injury action, did, without the approval of the young lady, touch her on the back and thighs. He photographed her, in her bedroom, partially nude and wearing a Tens (sic) Unit. The young lady became angry and as soon as Respondent left her apartment she reported the incident to the police. The Respondent was charged and later entered a no contest plea to Battery in the County Court of Pinellas County.

There was no finding by the Referee that Respondent touched the outside of Ms. R.'s vagina.

During direct examination, Ms. R. testified that she first went to see Respondent about a car accident that occurred on approximately May 4, 1986. T-6. She retained him upon the recommendation of a friend, M.R. Ms. R. was a client of Respondent. T-7.

Ms. R. testified that she first visited Mr.

Samaha in approximately October, 1986. T-7. She testified that several weeks later she went to see Mr. Samaha again. T-8. At one of the meetings, Mr. R. testified that Respondent asked her to unbutton her blouse (she could not remember if she had to take it off or not) and he felt her back under her shirt. T-11. She testified that she did not complain to Mr. Samaha about the touching. T-12. She did not go back to his office after that visit. T-12.

The next time that she saw Respondent was about December 11, 1986. T-13.

Contrary to her testimony during direct, Ms. R. admitted during cross-examination that the May 4, 1986 accident involving Debbie Davis was not the first time that she had consulted with Respondent. Six or seven months prior to that she had consulted with him about an accident involving Roberta Reed. T-25. And, she may have consulted Respondent about an accident that occurred between the Roberta Reed accident and the Debbie Davis accident. T-26, 27.

Respondent testified, based on his files, that Ms. R. first contacted him in February, 1986 about the Roberta Reed accident that occurred on October 17, 1985. That file was closed on June 16, 1986. T-69, 70.

On June 16, 1986, Ms. R. called Respondent about the May 4, 1986 accident involving Ms. Davis. He suggested she visit a doctor and she did so on June 26, 1986. T-71.

Respondent's file and his time sheet (R.Ex. A)

specifically indicated that Respondent's first office conference with T. R. was on July 18, 1986. T-72; R.Ex. A. There were no other office visits.

In between the July 18, 1986 and December 11, 1986 meetings, either Respondent or his secretary, Dorothy Biggs, had at least six telephone conversations with Ms. R.. T-76.

On October 15, 1986, there was a substantial telephone conversation between Respondent and Ms. R. that lasted approximately thirty minutes. Respondent took two pages of hand-written notes on that telephone conversation. T-74; R.Ex. E. During that conversation, Respondent discussed with Ms. R. the taking of photographs of her while using the TENS Unit. T-75; R.Ex. E. Respondent first asked Ms. R. to get the pictures herself. However, she had no camera. He then asked her to come to the office to have the pictures taken. T-74.

Respondent's secretary, Dorothy Biggs, testified that between July, 1986 and December, 1986, she had several conversations with Ms. R. T-58. During those conversations, Ms. R. never complained to Ms. Biggs about any aspect of Respondent's representation of her and never evinced any desire to replace him as her lawyer. T-58. During that time period, Ms. Biggs asked Ms. R. to come to the office several times. Ms. R. never did so. T-59.

Ms. Biggs also identified a phone message from Ms. R. to Respondent dated October 31, 1986. T-61, R.Ex. B. In her message, Ms. R. asked Respondent to call an individual at Dr. Gilbert's office and advised Respondent that the insurance company was not paying her bills. T-61, R.Ex. B. Ms. Biggs also prepared a memorandum dated November 11, 1986 regarding a telephone conversation she had with Ms. R. in which the latter asked Respondent to contact an insurance company to see if they would pay for transportation to visit her doctor. T-62, 63; R.Ex. C. Finally, Ms. Biggs identified a message slip to Respondent dated December 5, 1986 in which it was indicated that Ms. R. called Respondent and asked for a return telephone call. T-64, R.Ex. D.

Ms. Biggs testified that she had been Respondent's secretary for nine years and that none of his clients, particularly females, had ever complained about the manner in which he treated them. T-65.

Ms. R. and Respondent both testified that he called her on the morning of December 11, 1986 to see if he could drop by her apartment on his way to Tampa. Respondent testified that the purpose of his call was to enable him to visit her so that they could review her case and he could take the pictures discussed on October 15, 1986. T-77. Respondent and his secretary had repeatedly requested Ms. R. to come to his office without success. T-77.

Prior to the December 11, 1986 incident, Respondent had never been advised by Ms. R. that she was uncomfortable about his touching her back during the July, 1986 office visit. She had not complained about any facet of the representation at all. T-80. Ms. R. testified at trial that she never complained to Respondent or to his secretary about his representation. T-28.

When Respondent arrived at Ms. R.'s apartment, she said that her next door neighbor, T. P., and Ms. P.'s father, R.D., were at the apartment and that Respondent asked them to ieave. T-14. Ms. P. indicated that she and her husband, J. P., were separating that day (hence, her father's presence) and that Ms. R. asked them to stay after she received the telephone call from Mr. Samaha. T-48. She further testified that stayed about fifteen or twenty minutes and then left to check on her husband next door. T-49. She said nothing about Respondent asking her to leave.

Mr. D. testified that Ms. R. asked him and his daughter to remain for Respondent's visit. T-53. Mr. D. was there about thirty minutes, he testified, before Respondent asked him to leave. T-54.

The witnesses are in accord that the total visit lasted about one hour.

After Mr. D. left, Respondent took eleven pictures of Ms. R. either holding or wearing her TENS Unit.

R.Ex. F. Although the Referee found the pictures showed Ms. R. partially nude, none of her clothes were completely removed nor was her bra ever unfastened. R.Ex. F.

Contrary to Ms. R.'s testimony that the pictures were taken with the door to her bedroom closed, some of the pictures clearly show the door open. R.Ex. F.

Ms. R. testified that during his visit at her apartment, Respondent touched her back, her iegs, and the outside of her vagina. **T-18,** 19.

Ms. R. acknowledged that she did not object to Respondent's coming by her apartment on December 11, **1986.** T-**32-33.** She testified that she did not object to his touching her body. T-34. She does not remember if he touched her breasts. **T-34.**

Ms. R. acknowledged that Respondent's touching was not like he was making a pass at her. **T-35.**

Basically, Respondent would touch her and ask if it hurt. **T-35.**

After Respondent left her apartment, Ms. R. called the police. Subsequently, the police taped a telephone conversation between Ms. R. and Respondent. **T-20;** Bar Ex. **1.** With the exception of Respondent's comment that he should not give physical exams to clients, the conversation was innocuous.

Respondent acknowledged that during his first meeting

with Ms. R. on July 18, 1986, he touched her back. T-68. She was complaining of lower back injury and of pain in the pelvic area. Upon that complaint, he asked her if she had difficulty during intercourse. T-78, 79. Respondent denied ever asking Ms. R. to undo any of her clothing during the July 18, 1986 meeting. T-79.

Respondent denied ever asking Mr. D. to leave the apartment. T-82.

He indicated that the photographs were taken in Ms. R.'s bedroom because it contained the only blank wall in the apartment. T-83. In none of the pictures was Ms. R.'s bra unbuttoned or her shorts down. T-86. She was holding her shirt in front of her during the pictures with her back towards Respondent. T-86, 87. While at the apartment, Respondent took three legal pages of notes on their meeting. T-88; R.Ex. G.

At no point during the December 11, 1986 meeting did Ms. R. object to any aspect of Respondent's meeting. T-89. Respondent denied putting his hands underneath her clothes, although he admitted touching her body. T-89, 90.

Respondent ultimately pled no contest to a misdemeanor charge of simple battery for his unauthorized touching of Ms. R. T-93. His conviction resulted in substantial publicity. T-93, 94.

Despite the press coverage, there have been no other claims against Respondent by clients or anybody else alleging

improper touching by Respondent. T-94.

Respondent testified that if the situation were to arise again, he would handle it differently. However, he testified he had no lewd or lascivious purpose in touching his client. T-94.

Respondent has been married for thirty-seven years. He has four children, two of whom are lawyers and one of whom is about to graduate from law school. His brother is a Tampa lawyer and his brother-in-law is a lawyer in Missouri. In his wife's family, there are several lawyers in Brazil. TD-33, 34.

Respondent was admitted to The Florida Bar in 1957 and has practiced in St. Petersburg since 1965. TD-31, 32. During the last twenty-four years, a substantial percentage of Respondent's practice has been representing clients in personal injury cases. T-69.

At the dispositional hearing, numerous witnesses attested to Respondent's substantial community service and to his excellent character. Those witnesses consisted of his wife and six other individuals, including two lawyers and one client. In addition, two affidavits were submitted into evidence attesting to Respondent's good character, including one from the Mayor of St. Petersburg and one from another client.

SUMMARY OF ARGUMENT

The Referee, after considering the evidence before him at final hearing and the testimony of the witnesses at the dispositional hearing, and after hearing exactly the same arguments the Bar is putting forth in this appeal, recommended that Respondent receive a public reprimand for his offense. That offense consisted of simple battery and nothing more.

It is implied throughout the Bar's arguments, both before the Referee and in its appeal, that this case involves sexual misconduct. Such is not the case. Respondent has been convicted of simple battery and the Referee specifically found, in his unassailable findings of fact, that the touching was on Ms. R.'s back and thighs.

This is not a sexual misconduct case. It is a case involving a lawyer who exercised poor judgment in trying to ascertain the nature of the injuries of a ciient who had a great deal of difficulty communicating with her doctors and with Respondent.

Respondent's misconduct occurred almost three years ago. There is no evidence before the Court of any similar misconduct ever having previously occurred during the Respondent's twenty-four years of practicing personal injury law in St. Petersburg. Despite extensive press coverage, no other clients came forth to complain about Respondent engaging in improper touching.

Respondent did not appeal the Referee's findings of fact and has not questioned the Referee's recommended discipline. He acknowledges wrongdoing and argues to this Court that a public reprimand is sufficient punishment for his offenses.

ARGUMENT

POINT I

A PUBLIC REPRIMAND IS THE APPROPRIATE DISCIPLINE FOR A LAWYER FOUND GUILTY OF SIMPLE BATTERY FOR TOUCHING HIS CLIENT'S BACK AND THIGHS WITHOUT HER EXPRESS PERMISSION.

The Referee found that:

> The Respondent, at his law office and again at the young lady's apartment, under the guise that it was necessary to prepare the personal injury action, did, without the approval of the young lady, touch her on the back and thighs. RR-1.

The Referee did not find that Respondent had contact of a sexual nature with Ms. R. Furthermore, Respondent's conviction was not for sexual battery. He was found guilty of touching his client's back and thighs without her consent. (It must be emphasized, however, that there was never any objection voiced to Respondent's touching.)

In recommending discipline, a Referee has to consider many, many factors. In a case such as this, there is a great deal of subjectivity involved in the determination of the sanction to be meted out. Very important in that determination is the attitude of the Respondent. The sincerity in his testimony and the genuineness of his remorse are factors that can only be observed by the Referee. They are, howver, very important in deciding on the penalty to be imposed.

It is axiomatic that only the Referee is in the best position to observe the demeanor and gauge the credibility of

the witnesses testifying at trial. ~~The Florida Bar~~ v. Greer, **541** So.2d **1149** (Fla. **1989).** After such observation and after viewing the documentary evidence before him, the Referee found that Respondent's improper touching was confined to Ms. R.'s back and thighs. His failure to find that Respondent touched Ms. R.'s sexual organs is a very important element for this Court to consider in determining the appropriate discipline to be imposed. It removes the case from one involving sexual misconduct to one involving a lawyer who exercised bad judgment. Consider the factors before the Referee:

1. Ms. R. testified that it did not appear that Respondent was making a pass at her. **T-35;**

2. No other individuals, be they clients or otherwise, appeared before the Bar complaining of any prior sexual misconduct or improper touching by Respondent. **T-94;**

3. The pictures that Respondent took were tasteful and professional. R.Ex. F;

4. The door to Ms. R.'s bedroom was open in at least some of the pictures;

5. Respondent never asked Ms. R. not to talk about either of the examinations in July or in December. Bar Ex. **1;**

6. In the five months that elapsed from the July, **1986** incident until the December, **1986** incident, Ms.

R. never complained about Respondent's earlier touching or indicated any disenchantment about his representation whatsoever. T-58, 80;

7. Ms. R. did not object to Respondent's coming by her apartment in December, 1986 and did not complain about anything that he did while he was there;

8. Respondent visited Ms. R.'s apartment only after numerous requests for her to visit his office were unsuccessful;

9. There was no breast touching invoived in any incident. T-34;

10. Respondent's conviction was for simple battery and involved no incarceration or fine. TD-39, 40;

11. The psychiatric evaluation ordered after Respondent's conviction resulted in a recommendation of no further treatment. TD-40; and

12. Respondent has been married thirty-seven years in a good, sound marriage. TD-5, 6.

All these are important factors to consider in determining the discipline. Had the Referee believed that Respondent was deliberately taking advantage of his client for sexual gratification or for improper motive, it is obvious that the Referee would have recommended more than a public reprimand.

The Florida Bar had the obligation of proving by clear and convincing evidence its allegations. The Florida Bar v.

Rayman, 238 So.2d 594 (Fla. 1970). The Referee found only that Respondent touched Ms. R.'s back and thighs. The Bar failed to prove that there was any touching of Ms. R.'s sexual organs. The Referee's factual findings will be upheld unless clearly erroneous or lacking in evidenciary support. The Florida Bar v. Greer, 541 So.2d 1149 (Fla. 1989). In Greer, this Court stated that, while upholding the Referee's findings of fact:

> While there are some inconsistencies in the version of events as presented by Greer and the version of events presented by the witnesses, the Referee is in a better position to make determinations concerning a witness's (sic) credibility because he is privileged to observe the witness's (sic) demeanor while we are forced to review the cold transcript of the proceedings.

A referee's failure to find guilt of an allegation of misconduct, i.e., touching sexual organs, is tantamount to a finding that no such misconduct occurred. The Referee in the instant case did not find for the Bar on the issue of touching Ms. R.'s vagina. This was an important factor in the Referee's decision. Since the Bar did not appeal the Referee's findings, they cannot now argue that the Referee meant to find such misconduct. The burden is on the Bar to prove something happened by clear and convincing evidence. Rayman, supra. The Respondent does not have to prove something did not happen.

Respondent submits to the Court that only the Referee could evaluate Ms. R.'s demeanor during her testimony. Only he could tell, during her testimony, whether she had a

penchant for overreaction and exageration. While the Referee obviously believed (Respondent admitted it) that there was touching, he clearly did not find that Respondent touched Ms. R.'s sexual organs. Perhaps Ms. R.'s admission that it did not seem like Respondent was making a pass (T-35), was important in the Referee's recommended discipline. Perhaps the fact that Ms. R. has summoned police to her apartment on four occasions prior to Respondent's visit entered into the Referee's recommendation. **T-36.** Ms. R. is nineteen years old and she had already summoned police to her apartment on five different occasions. Perhaps, she is an individual who overreacts and then, once having called the police, has to make the actions that offended her seem worse than they really were.

When there are many ambiguities and controverted facts in a case, the Referee's recommended discipline must be given greater weight. This is not a situation in which the cold, hard facts point to a specific offense. For example, there is no paper trail to look at in determining that trust funds were misused. The evidence before the Referee is subject to varied interpretation. The Referee's findings are not being challenged by the Bar and they form the basis for the Referee's determination that a public reprimand is the appropriate discipline.

The documentary evidence proves that Respondent saw Ms. R. for the May **4, 1986** accident but twice: July **18,**

1986 (during which Respondent touched Ms. R.'s back) and December 11, 1986. T-72, 73; R.Ex. 1. In the intervening five months, not once did Ms. R. complain about Respondent's touching her back in his office. Not once.

Not once during at least six telephone conversations during those five months, including a one-half-hour telephone conversation on October 15, 1986, did Ms. R. complain about Respondent's actions. During that October 15, 1986 telephone conversation, Respondent specifically told her that he needed pictures of her wearing her TENS unit. She did not object.

On at least two occasions after the October 15, 1986 telephone conversation, Ms. R. called Respondent and asked him to assist her with problems getting the insurance company to pay for her bills and to pay for her transportation to and from her doctor. Clearly, she was expecting Respondent to work for her. This is inconsistent with somebody who was greatly offended by a lawyer's conduct during an interview in that lawyer's office.

When Respondent called Ms. R. for permission to visit her apartment on December 11, 1986, she did not object. Yes, she asked individuals to stay in the apartment. Perhaps, because of past experiences with men, she felt awkward about being alone in her apartment with Respondent. Perhaps, she felt awkward about having the photographs taken. Regardless, she did not object to his visit and she did not insist that

Ms. Delancey stay in the room during her meeting with Respondent.

Ms. R.'s December 15, **1986** taped telephone conversation is inconclusive. Respondent acknowledged that he was not authorized to give physical examinations. He did not acknowledge that he was not allowed to touch her body. Nowhere in that conversation is there any comment by Respondent that indicated that his touching of her was for sexual gratification or that he was trying to compromise her integrity or that he was making a pass at her. Nowhere in that telephone conversation is there a request by Respondent that she not talk to anybody about the July or December, **1986** episodes. Nowhere are there any snide or suggestive comments. It is an innocent conversation.

Respondent submits to this Court that his touching of Ms. R. was nothing more than attempt to find out where she hurt. It was professional. He never, until the December **15, 1986** telephone conversation, had any indication from Ms. R. whatsoever that she was offended by his conduct.

If there is any doubt about the professionalism of Respondent's visit on December 11, **1986,** one need only look at the photographs that he took and review his notes from the meeting. R.Ex. F, G. There were three pages of notes taken during that interview. If Respondent were there to engage in some sort of perversion, peccadillo, or outright seduction,

would he be taking legal notes during the episode? Of course not.

Respondent should be disciplined for using poor judgment, nothing more. There should be no implication that he was engaged in sexual misconduct. The discipline for poor judgment is a public reprimand.

The Bar's request for a two-year suspension is totally unsupported by the caselaw and is absolutely unjustified by the facts before the Court. Even without any mitigation, Respondent asserts that his misconduct with Ms. R. would not even warrant a suspension. There is certainly no need for a showing of rehabilitation. He has already been psychiatrically evaluated and there was a finding of no necessity of future treatment. T-40.

Rehabilitation should be required only when there is a need to show rehabilitation or when there has been a suspension for such a length of time that the lawyer's competency is in question.

The Bar refers to the Florida Standards for Imposing Lawyer Sanctions as support for its asking for a suspension of two years. The Bar's argument that Respondent's misdemeanor conviction for simple battery "seriously adversely reflects'' on his fitness to practice (Standard 5.12) grossly exagerates this case.

The appropriate standard to look at in determining the discipline in this case and, obviously, the one that the

Referee considered since the Standards were argued to him, is Standard 5.13. It says:

> Public reprimand is appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

While Respondent argues that his conduct did not involve dishonesty, fraud, deceit, or misrepresentation, he acknowledges that his mere conviction adversely reflects on his fitness to practice. For that reason, he accepts a public reprimand.

Standard 9.32 lists numerous factors that can be considered in mitigation of discipline. Among them are: (b) absence of dishonest or selfish motives; (g) character or reputation; (j) interim rehabilitation; (l) remorse; and (m) remoteness of prior offenses.

Respondent's prior public reprimand was for conduct that occurred in 1978 and involved a fee dispute. There was absolutely no nexus between that matter, occurring ten years ago, and this one. The conduct involved was entirely different. The discipline imposed in the current case should not be enhanced because of the prior offense.

Prior decisions by this Court simply do not support the Bar's demand for the extremely serious sanction of a two-year suspension. For example, one lawyer received two public reprimands within two years. The first involved conduct involving dishonesty, fraud, deceit, or misrepresentation and

conduct adversely reflecting on one's fitness to practice law. The second involved illegal conduct involving moral turpitude. The Florida Bar v. Merwin, 384 So.2d 33 (Fla. 1980) and The Florida Bar v. Merwin, 424 So.2d 726 (Fla. 1982). Mr. Merwin engaged in illegal conduct involving moral turpitude two years after engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Yet, in both instances, he got a public reprimand.

In The Florida Bar v. Rocha, 453 So.2d 823 (Fla. 1984), the Respondent received a public reprimand, eighteen months' supervised probation, and the requirement of a psychological evaluation and continuing counselling, if required, for illegal conduct involving moral turpitude. Similarly, in The Florida Bar v. Clelland, 457 So.2d 1026 (Fla. 1984), a lawyer received a public reprimand after being found guilty of engaging in illegal conduct involving moral turpitude and conduct involving dishonesty, fraud, deceit, or misrepresentation together with neglect.

In The Florida Bar v. Betts, 530 So.2d 928 (Fla. 1988), the Respondent received a public reprimand for coercing an incompetent client into executing a codicil. In The Florida Bar v. Fields, 520 So.2d 272 (Fla. 1988), a lawyer who had received a prior public reprimand received a second public reprimand for conduct involving charging usurious interest on past-due debts, for driving under the influence of alcohol, and for battery. Finally, in The Florida Bar v. Pascoe, 526

So.2d 912 (Fla. 1988), the lawyer received a public reprimand for a plea of no contest for possession of a misdemeanor quantity of marijuana, improperly criticizing a judge, improper advertising, and for neglect. He received a public reprimand.

In all the aforementioned cases, the misconduct involved at least illegal conduct involving moral turpitude and, in several instances, behavior far worse than that at Bar. Yet, each of the lawyers received but a public reprimand.

There have been numerous instances where lawyers have engaged in conduct far worse than that at Bar and have received disciplines not even requiring proof of rehabilitation. For example, in The Florida Bar v. Weintraub, 528 So.2d 367 (Fla. 1988), the lawyer was suspended for ninety days for possession of cocaine, a feiony. In The Florida Bar v. Stoskopf, 513 So.2d 141 (Fla. 1987), a lawyer was suspended for but ninety days for five misdemeanor convictions involving undeclared currency in foreign banks.

In The Florida Bar v. Thompson, 500 So.2d 1335 (Fla. 1987), a lawyer was suspended for ninety-one days for pleading no contest to possession of cocaine, possession of a controlled substance, disorderly intoxication, and leaving the scene of an accident. Clearly, he was engaged in felonious conduct, yet he received but a ninety-one day suspension.

The discipline asked for in this case even exceeds the discipline imposed in some misappropriation of trust fund

cases. See, for example, The Florida Bar v. Tunsil, 503 So.2d 1230 (Fla. 1986).

Respondent is highly regarded and a respected practioner in the St. Petersburg area. He has practiced law in St. Petersburg for twenty-four years without problems with the exception of the fee dispute resulting in his prior public reprimand. The witnesses for him at the dispositional hearing were very impressive. They included two lawyers, Irene Sullivan and Michael Kenny, both of whom attested to his ethics, excellent reputation, and expertise.

The Mayor of St. Petersburg, Robert Ulrich, submitted an affidavit attesting to Respondent's good reputation as a lawyer and to his many public contributions to the fine arts and to the Church in St. Petersburg. Two clients attested to Respondent's fine professionalism. Lillian Redding, by affidavit, attested to his high professionalism and courtesy in representing her in a Workers' Compensation case and in a malpractice suit against a physician. Richard Rayhall, also attested to Respondent's excellent character and professionalism. Mr. Rayhall continues to use Respondent as his lawyer.

Karen Thomas and Joan Malone attested to Respondent's superlative efforts on behalf of the fine arts in the St. Petersburg community. Father Leroy Lawson attested to Respondent's services within the Church.

Clearly, Respondent is a man of integrity and is held in high esteem by his community. He has been an asset to The Florida Bar.

The Referee's decision in the case at hand is soundly based on the evidence before him. Clearly, he was of the opinion that a public reprimand is sufficient punishment for Respondent's wrongdoing. His opinion should not be overturned by this Court.

CONCLUSION

The Referee's recommendation that Respondent receive a public reprimand to be followed by one years' probation, including psychological counselling, should be upheld by this Court in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer Brief has been mailed to DAVID R. RISTOFF, Branch Staff Counsel, The Florida Bar, Suite C-49, Tampa kAirport Marriott Hotel, Tampa, Florida 33607, this 28th day of July, 1989.

JOHN A. WEISS
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