047

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

RICHARD F. RENDINA,

Respondent.
_____/

Supreme Court Case
No. 73,545
88-50,375(17E)

ANSWER/REPLY BRIEF OF THE FLORIDA BAR

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PREFACE

For purposes of this brief, the Complainant, The Florida Bar, will be referred to as "The Florida Bar" and Richard F. Rendina, will be referred to as "Respondent." the following abbreviations will be utilized:

RR - refers to Report of Referee

T - refers to the Transcript of final hearing held on March 13, 14 and 15, 1990

TRR - Refers to transcript of May 25, 1990 hearing regarding the contents of the Report of Referee

TFB - refers to The Florida Bar

TFB EX - refers to Florida Bar Exhibits introduced at the final hearing

RESP EX - refers to Respondent's Exhibits introduced at the final hearing

RESPONSE TO RESPONDENT'S STATEMENT OF THE CASE

Respondent correctly states that Judge Moore, the first Referee in this cause, entered a pre-trial order limiting the number of character witnesses. Respondent's counsel did not object to said ruling. (See transcript of the April 11, 1989 pre-trial conference hearing held before Judge Moore and attached hereto as The Florida Bar's Appendix IV.)

Attached hereto as The Florida Bar's Appendix V is The Florida Bar's Response to Respondent's Motion to Exclude testimony based on due process violations, and Incorporated Memorandum of Law.

On page 4 of his brief, Respondent erroneously states that the Court set a final hearing on May 25, 1990. The hearing set for May 25, 1990 was scheduled by the Referee for the Merits of the Entry of Judgment. (See copy of notice of hearing of said hearing, attached hereto as The Florida Bar's Appendix VI). The final hearing in this cause was scheduled for and held on March 13, 14 and 15, 1990. (See Order of Referee dated February 20, 1990 rescheduling final hearing, attached hereto as Appendix VII).

At the final hearing in this cause held on March 13, 14 and 15, 1990, Respondent called to testify six (6) fact witnesses, (2) character witnesses including one Judge and (6) witnesses that testified as character and fact witnesses. At the conclusion of the presenting of witnesses, Respondent's counsel

stated, "I have nothing further." (See page 708, line 15 of the transcript of the March 15, 1990 final hearing date. At the March 13, 14, and 15, 1990 final hearing, Respondent presented his witnesses, advised that he had nothing further, and did not request to present additional witnesses (T. 708). The May 25, 1990 hearing was scheduled by the Referee solely regarding the Merits of the Entry of Judgment as both parties had submitted contrasting proposed Reports of Referee and the hearing was scheduled for the parties to present argument regarding the proposed reports of referee. Respondent even filed a Motion to Set Hearing to Determine Appropriate Discipline and submitted a letter requesting an opportunity to argue discipline. Attached as The Florida Bar Composite Appendix VIII are copies of Respondent's Motion to Set Hearing to Determine Appropriate Discipline and Respondent's letter dated April 27, 1990. A copy of the transcript of the May 25, 1990 hearing on the Merits of the Entry of Judgment is attached hereto as The Florida Bar Appendix IX. In his motion and letter, Respondent did not request an opportunity to present additional witnesses. At the May 25, 1990 hearing on the Merits of the Entry of Judgment, Respondent hand delivered for the first time his Motion to present evidence in mitigation Respondent was not denied his right to present evidence in mitigation as same was presented at the final hearing held on March 13, 14 and 15, 1990 and Respondent could have presented any additional witnesses he wished to present on March 15, 1990.

On Page 5 of his brief, Respondent incorrectly states that the content of Chris Debock's statement was rejected by the

Referee in his findings. The Referee's findings did not reject said statement.

On Page 5 of his brief, Respondent further improperly references proceedings before the Board of Governors of The Florida Bar which are not part of this record. Accordingly, said references should be stricken. If this court does not strike said references, The Florida Bar advises that there is nothing improper in providing information to its Board of Governors. Further, said information was provided after the Respondent provided his letter dated July 17, 1990 to certain members of the Board of Governors (a copy of one such letter is attached hereto as The Florida Bar Appendix X). It is interesting to note that Respondent's July 17, 1990 letter disputed the signed Report of Referee and referred to pages of the transcript of the March 13, 14 and 15, 1990 final hearing. However, said letter most noticeably failed to inform the Board Members that a separate hearing was held on May 25, 1990 which specifically addressed the Report of Referee.

RESPONSE TO RESPONDENT'S STATEMENT OF THE FACTS

Respondent in his brief at Page 7 states that Christopher Debock testified that he had no recollection of the Respondent offering to pay money in exchange for giving Bono a lesser sentence and that he never recalled Rendina trying to bribe him. Debock's testimony was that he did not have recollection of Respondent trying to bribe him. (T. 60) However, most importantly Mr. Debock testified that he did not have a recollection or memory of the events regarding Respondent's

representation of Bono and discussions as to payments of monies for reduction of the criminal sentence (T. 41, 50, 59). The Referee declared pursuant to Florida Section 90.804(1)(c) that Debock had suffered a lack of memory of the subject matter of his previous statement. (T. 61) Debock testified, "...I have blocked it out, I am sure consciously and subconsciously I have blocked out the whole thing and I do not want to even think about it." (T. 35).

On Page 8 of his brief, Respondent mistakenly states in underlined words that Debock testified at pages 63 and 64 of the transcript that because of the passage of time his recollection would have been better six (6) years ago. However, the transcript clearly reflect that Mr. Debock in response to a question stated that he "could speculate that his recollection could have been better in 1984 or 1985 or 1986 or 1987, but he cannot really answer that." (T. 64)

Debock testified that he could not recall giving the May 31, 1984 statement. (T. 65).

Ms. Susan Reich testified (T. 113-121). She was the court reporter who took and transcribed Christopher Debock's May 31, 1984 statement. (See The Florida Bar Exhibit 2 and The Florida Bar's Appendix III to its initial brief). Ms. Reich testified that she had seen Chris Debock in a professional capacity when he prosecuted cases, and when she took his May 31, 1984 statement that he did not appear different to her on that date than on any other occasion when she had seen him. (T. 115-116). She further testified that she did not see anything in Mr.

Debock's behavior or mannerism that reflected that he was confused at the time the statement was taken. (T. 117)

Ralph Ray, Chief Assistant State Attorney for the Seventeenth Judicial Circuit testified (T. 123-139). Mr. Ray testified that on May 31, 1984 Chris Debock did not appear to be confused. (T. 127) Ralph Ray testified regarding his discussion with Mr. Debock on May 31, 1984. Debock advised Mr. Ray on that date that he opined that he would offer a negotiated plea to Mr. Rendina's client because he was going to have to offer it to one of them anyway and he would view the ten thousand dollars as a gift because he wasn't doing anything... (T. 130).

Respondent in his brief provided his summary of Thomas Bono's testimony. Respondent, on page 11, lines 6-8 of his brief, incorrectly states that the May 30, 1984 (sic) call refers to "...an attorney fee of fifteen thousand ($15,000) Dollars...". Bono's testimony clearly states that what was being discussed in the May 31st transcript was, "the fifteen thousand that he was to pay Debock to get me probation." (T. 339)

At Page 12 of his brief, Respondent states that Rendina's reply on the transcript shows, "Those are my attorneys fees." (R. 350). However, the Respondent had already been paid his fees of $15,000 in full by Mr. Bono. (See The Florida Bar Exhibits 31 and 32, T. 34, 352).

Respondent points out at Page 12 of his brief that Mr. Bono wanted to pay one hundred thousand ($100,000) Dollars to get the case dropped. However, Respondent's brief fails to address how

actively the Respondent engaged in these conversations. (See The Florida Bar Ex. 28, Pages 13-16 and pages 15-19 of The Florida Bar's Initial Brief in this cause).

Respondent states on Page 12 of his brief that the May 9, 1984 transcript shows that the deal could not be feasibly worked out according to Rendina (R. 360). This statement pertained to a deal for all the co-defendants. Respondent in his brief, then states, "Instead Bono would have to testify truthfully" (R. 361). Respondent left out the taped discussion discussed on page 360 of the transcript wherein Bono states, "We're still talking fifteen units," and respondent stated, "Yeah..." (T. 360).

Respondent's fee for his representation of Thomas Bono was clearly $15,000 (See The Florida Bar Exhibit 31 and 32).

The Florida Bar disputes Respondent's characterization of Bono's informant activities as illegal.

Rosemary Pineda, the case agent in charge of the Florida Department of Law Enforcement investigation in this matter testified. She testified that she listened to all the tapes in the matter and it was her opinion that the Respondent was soliciting money from Mr. Bono to pay to Mr. Debock (T. 302-303). The Florida Bar disputes Respondent characterization of this as being improper opinion testimony.

The Florida Bar disputes Respondent's statement on Page 16 of his brief that there was some confusion as to duplicate tapes. All the tapes including duplicates were admitted into evidence (T. 85).

Respondent on page 17 of his brief incorrectly related the testimony of Florida Department of Law Enforcement Agent Harry Solowsky. Respondent's brief states that Solowsky stated that "no inquiry was made regarding background and the appropriateness of using him (Bono) as an informant (R. 232-33)."

In fact, the transcript of the final hearing at pages 232-233 clearly evidences that when Agent Solowsky was asked if he made inquiry of Mr. Bono to determine his background and the appropriateness of using him as an informant, Agent Solowsky testified, "No, I did not, but I believe that the case agent did." (T. 232-233).

H. Dohn Williams, Esq. testified Mr. Williams was Thomas Bono's attorney. Mr. Williams testified that he did not know whether he specifically talked with Mr. Bono about a problem paying Mr. Rendina a fee but he knew that Mr. Bono had a problem coming up with an initial retainer for Mr. Williams law firm. (T. 208).

Linda Bono, wife of Thomas Bono, was called to testify by the Respondent. She identified the receipt (The Florida Bar Exhibit 31) she received from Respondent's office for $5,000 cash she paid to Respondent's office. Mrs. Bono did not remember the amount of cash she paid. Respondent in his brief, at pages 21-22 erroneously states that Mrs. Bono did not remember the amount because of difficulty she and C. Maggie Coffey had in counting the funds. Same was not Mrs. Bono's testimony. (T. 513-514).

At Page 22 of his brief, Respondent incorrectly states that C. Maggie Coffey stated Bono was charged a premium as to Count One. Ms. Coffey's testimony does not reflect this statement (T. 520-542).

Again, at Page 22 of his brief, Respondent incorrectly states that Ms. Coffey testified that Respondent advised her to be careful with this client because Bono wanted to flee the jurisdiction of this court. However, Ms. Coffey's testimony does not state any words to the effect of Mr. Bono wishing to flee the jurisdiction of the court. (T. 526-527).

Wayne Spath was called to testify in this cause by The Florida Bar. Mr. Spath was the bondsman who wrote Mr. Bono's bond. (T. 666-667). Mr. Spath identified The Florida Bar's Exhibit 40 as a receipt from Brandy Bail Bonds (Mr. Spath's Company) for having received $3,000 from Thomas Bono for the premium of Mr. Bono's bond regarding Mr. Bono's conspiracy to traffick in marijuana charge and that there was no balance owing. (T. 667). Ms. Spath further testified that the Respondent agreed to hold $10,000 in his trust account as collateral for the bond. Mr. Spath testified that his office did not have a problem with Mr. Bono appearing in court. (T. 669).

Respondent states at page 27 of his brief that confusion was apparent as to the amount of fees tied up in the bond matter. However, the exhibits clearly reflect same. The Florida Bar Exhibit 31 was a receipt given to Mrs. Bono for receipt of $5,000 on behalf of Mr. Bono. Respondent testified that his fee for representation of Mr. Bono was $15,000. (T.

687). A copy of said receipt is attached hereto as Appendix XI. The Florida Bar's Exhibit 32 is a receipt from Respondent of $10,000 received from Mrs. Bono to be used as collateral for the bond and which represents the remaining attorney's fee. A copy of said receipt is attached hereto as Appendix XII. The Florida Bar's Exhibit 40 is the receipt from Brandy Bail Bonds for the receipt of $3,000 received from Mr. Bono for payment of the premium on the bond. Said receipt is attached hereto as Appendix XIII. Mr. Spath, bail bondsman, testified that no balance was owing on the bond. (T. 667).

Edward Kaye, Respondent's attorney regarding the criminal charge testified that the Respondent voluntarily took the Alford Plea (T. 567).

SUMMARY OF ARGUMENT

The Referee properly admitted Christopher Debock's May 31, 1984 in this cause pursuant to Florida Statute Section 90.804(1)(c) and State v. Dawson, 111 So.2d 427 (Fla. 1957) and The Florida Bar v. Vannier, 498 So.2d 896 (Fla. 1986).

Additionally, the testimony of Ralph Ray and the expert opinion testimony of Rosemary Peneda were properly admitted in this cause.

Respondent could have presented any evidence he wished to present at the March 13, 14 and 15, 1990 final hearing in this cause. Respondent was not prevented from presenting evidence or argument on matters of mitigation at the final hearing. The May 25, 1990 scheduled hearing was set regarding the Merits of the Judgment to be Entered and was not scheduled to be an

evidentiary hearing but to resolve the disputes in the parties proposed Reports of Referee.

There was no unreasonable delay by The Florida Bar in handling this cause. The Florida Bar proceeded with its investigation shortly after Respondent entered his plea in his criminal case. The Respondent was not prevented from presenting any evidence he wished to present at the final hearing regarding his allegation of delay. The Referee Report properly reflected that Respondent did not have a prior disciplinary record. Respondent was more culpable than Christopher Debock, and accordingly, his discipline must be more stringent.

The Referee's findings of fact were appropriately made. Thomas Bono's testimony was properly presented to the Referee and no basis existed to exclude his testimony in this disciplinary case.

Disbarment for a period of five (5) years is the appropriate discipline to be imposed in this cause based upon the seriousness of the misconduct.

ARGUMENT

I. THE REFEREE PROPERLY ADMITTED EVIDENCE IN THIS CAUSE

The Referee made proper evidentiary rulings in this cause.

A. DEBOCK'S 1984 STATEMENT TO THE LAW ENFORCEMENT AGENTS WAS PROPERLY ADMITTED AS SUBSTANTIVE EVIDENCE.

A Referee's findings of fact has a presumption of correctness. Rule 3-7.6 (k)(1) of the Rules of Discipline. The Referee's findings of fact should be accorded substantial weight and should not be overturned unless clearly erroneous or lacking in evidentiary support. The Florida Bar v. Hawkins, 444 So.2d

961, 962 (Fla. 1984); The Florida Bar v. Lopez, 406 So.2d 1100, 1102 (Fla. 1982); The Florida Bar v. Carter, 410 So.2d 920, 922 (Fla. 1982); The Florida Bar v. Baron, 392 So.2d 1318 (Fla. 1981); The Florida Bar v. McCain, 361 So.2d 700, 706 (Fla. 1978); The Florida Bar v. Hirsch, 359 So.2d 856, 857 (Fla. 1978); The Florida Bar v. Wagner, 212 So.2d 770, 772 (Fla. 1968). The Referee found pursuant to Florida Statute Section 90.804(1)(c) that Mr. Debock had suffered a lack of memory of the subject matter of his May 31, 1984 statement (T. 61).

On May 31, 1984, Debock gave a sworn statement to agents of The Florida Department of Law Enforcement regarding the Bono/Rendina matter (See The Florida Bar Exhibit 2, Appendix III to The Florida Bar's Initial Brief in this cause). Debock testified at the final hearing that he did not have a recollection or memory of the events regarding Respondent's representation of Bono and discussion as to payment of monies for reduction of the criminal sentence, or his giving of the May 31, 1984 statement (T. 40, 41, 50, 59). Debock stated that he does not remember that day or anything said in that statement (T. 41). Respondent at Page 37 of his brief attempts to state that Debock did not recall the Respondent trying to bribe him and he had no recollection of the Respondent offering to pay money in exchange for giving Bono a lesser sentence. Debock's testimony was clear that he blocked the incident out of his mind and he had no recollection of any of these matters. (T. 18-67), and that is why he did not recall this matter, not because it did not occur.

Pursuant to Florida Statute 90.804(1)(c) a witness can be declared unavailable if he has suffered a lack of memory of the subject matter of his statement so as to destroy his effectiveness as a witness during the trial.

The Referee properly ruled that same occurred in this case (T. 61) Debock denied complicity verbally on the evening of May 30, 1984. However, in his May 31, 1984 sworn statement (The Florida Bar Exhibit 2, The Florida Bar's Appendix III to The Florida Bar's Initial Brief in this cause), Debock made admissions against his and Respondent's interests. At page 10 of the May 31, 1984 sworn statement, Debock testified that there was no doubt in his mind that the money offered to him by Bono referred to the deal Debock had made with the Respondent that he would receive money if Bono got probation. At page 11, lines 18-23, Debock admits that he entered into a deal with the Respondent that Debock would receive monies when Bono received a favorable probationary sentence. Florida Statute Section 90.804(2)(c) provides as follows:

> Statement against interest. A statement which, at the time of its making, was so far contrary to the declarant's pecuniary or proprietary interest or tended to subject him to liability or to render invalid a claim by him against another, so that a person in the declarant's position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is inadmissible, unless corroborating circumstances show the trustworthiness of the statement. A statement or confession which is offered against the accused in a criminal action, and which is made by a codefendant or other person implicating both himself and the accused, is not within this exception.

Debock's statement certainly subjected him to liability as he admitted that he agreed to accept monies improperly. (See

pages 11, 18-23 of The Florida Bar's Exhibit 2, The Florida Bar's Appendix III to its Initial Brief). A Florida Bar disciplinary proceeding is neither civil nor criminal, but is a quasi judicial administrative proceeding, Rule 3-7.6(e) of the Rules of Discipline.

In Brinson v. State, 382 So.2d 322 (Fla. 2d DCA 1979), the Court held that an out of court declaration may be admitted, even for the truth of the matter asserted, if two requirements are met: 1) the out-of court declarant must be unavailable and 2) the declaration must be contrary to the interests of the declarant. As demonstrated above, both factors are present in this case. The Brinson case holds that statements against penal interest are included in this exception to the hearsay rule.

Susan Reich, Court Reporter, (T 113-121) testified that the May 31, 1984 statement truly and accurately reflected the statement taken from Debock on May 31, 1984 and that he did not appear confused. (T. 113-121) Debock's statement (The Florida Bar's Exhibit 21) is the best evidence of same being a declaration against interest. Further, Marshall Hall testified that he felt the Debock May 31, 1984 statement was against both Respondent's and Debock's interests as Hall thought Debock was saying he tried to bribe me and I agreed to accept it. (T. 185) The statement made by Debock on May 31, 1984 was close in time to the events and as it was against his interests, it is illogical to believe he created the statement. Furthermore, how could he have created such facts that were also substantially corroborated by Thomas Bono's testimony (T. 324-422) and the

taped conversations between Bono and the Respondent (The Florida Bar's Exhibits 4-12, 20-29).

Furthermore, in disciplinary proceedings, a referee is not bound by the technical rules of evidence. State v. Dawson, 111 So.2d 427 (Fla. 1959) and The Florida Bar v. Vannier, 498 So.2d 896 (Fla. 1986).

Debock testified at the final hearing that his statement was subject to being untruthful because of his state of mind. (T. 40). The Florida Bar submits that Debock became nervous when he realized that he had been "caught" regarding his discussions with the Respondent. Additionally, being confused does not cause one to make up statements which are untrue and against one's own interest. Debock clearly testified that he had no knowledge of the contents of his May 31, 1984 statement (T. 41) Therefore, he could have no knowledge of its truth or falsity. Debock's May 31, 1984 sworn statement was given one day after Thomas Bono tried to give Debock cash in Debock's office at the State Attorney's office. Debock refused the cash and became upset. Respondent also became upset. One day later, the facts were fresh in Debock's mind.

Respondent cites the case of Lecroy v. State, 533 So.2d 750 (Fla. 4 DCA 1988). Said case is not applicable to the instant facts as the Lecroy court held that the declarant had not made a statement against interest. Gillis v. State, 518 So.2d 902 (Fla. 3 DCA 1980) cited by Respondent is inapplicable as in said case the out of court statement was inconsistent with the declarant's trial testimony. Debock's trial testimony was that he had a lapse of memory and he was declared unavailable by the

Referee as to his May 31, 1984 statement. (T.61) Respondent is disputing the Referee's findings of Debock being unavailable. Same is refuted by the record and the Referee's finding has a presumption of correctness.

Respondent argues that Debock's statement could not have been introduced as impeachment evidence as a prior inconsistent statement. The Florida Bar clearly did not introduce the statement under that basis or pursuant to Florida Statute Section 90.801(2)(a) (T. 118-121). Under Florida Statute Sections 90.804(1)(c) and 90.804(2)(c), Debock's May 31, 1984 statement was properly admitted into evidence under the Evidence Code. However, in any event, said statement would have been admissible pursuant to Dawson, supra and Vannier, supra.

B. RALPH RAY'S TESTIMONY WAS PROPERLY ADMITTED INTO EVIDENCE.

Ralph Ray, Chief Assistant State Attorney, properly testified to statements voluntarily made by Debock to him verbally on May 31, 1984 (T. 123-139) regarding the fact that Respondent had on several occasions offered Debock some money regarding his handling of the Bono case. (T. 128-129). Same is corroborated by Debock's sworn May 31, 1984 statement and Respondent's own taped statements (The Florida Bar's Exhibits 4-12 and 20-29) as well as Bono's testimony (T. 324-421).

The Respondent testified and admitted that he had entered into inappropriate discussions with his client, Bono (T. 635-636, 640, 645, 697-700).

Additionally, as a referee is not bound by technical rules of evidence, same was properly admitted. See Dawson supra and

Vannier supra. Respondent's citation of criminal cases on hearsay are inapplicable to a Bar disciplinary proceeding.

C. AGENT ROSEMARY PINEDA'S TESTIMONY WAS PROPERLY ADMITTED INTO EVIDENCE.

Agent Pineda was the case agent in charge of the Florida Department of Law Enforcement investigation in this matter. She had been a special agent for approximately ten (10) years (T. 273). As an experienced police officer and investigator, the witness was able to give her opinion of the taped conversations between Respondent and Bono. Agent Pineda is an expert in the field of law enforcement and entitled to testify as such. It was then in the discretion of the Referee to weigh her testimony as well as the rest of the evidence in making his determination.

D. THERE WERE NO ERRORS IN ADMISSION OF EVIDENCE AND NO HARMFUL ERROR.

For the reasons stated in Sections A-C above, there were no errors in admissions of evidence and certainly no harmful error. Debock's statement was properly admitted under the Florida Evidence Code, and certainly under the Dawson and Vannier cases cited previously. Furthermore, Bono's testimony, Respondent's admissions of inappropriate discussions with Bono (T. 635-636, 640, 645, 697-700) and the taped conversations between Bono and the Respondent (The Florida Bar's Exhibits 4-12, and 20-29) clearly establish Respondent's guilt in this cause independently of the evidence disputed by respondent herein.

II. THE REFEREE DID NOT ERR IN EXCLUDING EVIDENCE AND RESTRICTING ARGUMENT ON MATTERS OF MITIGATION OF PUNISHMENT OR DISCIPLINE.

A. Respondent's Motion to present evidence in mitigation of punishment was hand-delivered to Bar Counsel and the Referee, at the May 25, 1990 hearing on the Merits of Entry of Judgment. (Said Motion is attached hereto as Appendix XIV.) The transcript of same has been attached as Appendix IX. At the March 13, 14 and 15, 1990 Final Hearing, Respondent could have introduced any testimony or evidence he wished. Respondent's counsel advised at the Final Hearing that he had nothing further to present. (T. 708) In fact, at the March 13-15, 1990 Final Hearing, Respondent presented character witnesses. Additionally, at the April 11, 1989 pre-trial conference, Respondent's counsel discussed the possibility of introducing the depositions of Judges at the hearing (See Page 41 of The Florida Bar's Appendix IV). Respondent failed to depose any Judges, except Judge Fleet who testified at the final hearing. The Final Hearing in the cause was scheduled for and held on March 13, 14 and 15, 1990. Both parties were requested by the referee to submit proposed Reports of Referee. Both parties submitted proposed Reports. A dispute arose as to which Report should be signed. Respondent forwarded a letter and filed a Motion to Set Hearing to Determine Appropriate Discipline, both dated April 27, 1990 (See The Florida Bar's Composite Appendix VIII). In his letter and Motion, Respondent did not mention presenting any additional witnesses. The Referee then scheduled the May 25, 1990 hearing on the Merits of Entry of Judgment (See The Florida Bar's Appendix VI) No evidence was envisioned to be introduced at the May 25, 1990 hearing. Respondent was advised on the day of the May 25, 1990 hearing that he could not present

additional witnesses because the May 25, 1990 hearing was not an evidentiary hearing. It was a hearing regarding the Report of Referee to be entered. Further, the Motion to Present Evidence In Mitigation of Punishment was only filed at the time of the May 25, 1990 hearing. This ruling by the Referee on May 25, 1990 did not violate Judge Moore's Pretrial Order as Respondent could have produced his character witnesses at the March 13, 14 and 15, 1990 hearing, and Respondent did produce several character witnesses at that time, including Judge Leonard Fleet. After the three days of final hearing, Judge Swanko, Referee, indicated his disciplinary recommendation at the close of the March 15, 1990 final hearing that he would be recommending that the Respondent be suspended for a period of two years. (T. 724, 726). Judge Swanko further stated on March 15, 1990 that he found the Respodnent guilty of the charges contained in Count 1 of The Florida Bar's Complaint (T. 726, lines 10-22). Judge Swanko further made some inconsistent statements on March 15, 1990 as to his findings. (T. 729-735) Judge Swanko then scheduled the May 25, 1990 hearing on the Merits of Entry of Judgment wherein any inconsistencies were resolved by Judge Swanko's signing of the Report of Referee as his findings (Appendix I to The Florida Bar's Initial Brief).

Respondent claims that all other evidence in mitigation was summarily denied by the Referee and it was not reflected in the Report. It is solely in the Referee's discretion to make findings of mitigating circumstances. There is nothing in the record that the Referee is required to consider as a mitigating

factor. See The Florida Bar v. Setien, 530 So.2d 298, 300 (Fla. 1988).

Respondent submitted evidence at the final hearing regarding his Alford Plea. (Testimony of Edward Kay, T. 550-570).

Respondent was not denied an opportunity to present substantial character witnesses. At the March 13, 14 and 15, 1990 Final Hearing, Respondent presented the testimony of Daniel Tedesco, Esq. and the Honorable J. Leonard Fleet, Circuit Judge as character witnesses. Additionally, Respondent presented the testimony of John Howes, Esq., David Bogenschutz, Esq., Edward Kay, Esq., Robert Dolman, Esq., Christopher Pole, Esq. and David Damore, Esq. as fact and character witnesses. Respondent could have and should have presented any witnesses he wished to present at the March 13, 14 and 15, 1990 Final Hearing. Respondent's letter dated April 27, 1990 and Motion to Set Hearing to Determine Discipline (The Florida Bar's Appendix VIII) did not request an evidentiary hearing, but discussed a dispute of the parties as to the Referee's Findings and the appropriate contents of the Referee's Report.

B. UNREASONABLE DELAY IN PROCEEDING.

Respondent raised in his pleadings the allegation of delay by The Florida Bar. At the final hearing, The Florida Bar introduced into evidence exhibits to disprove any allegations of delay in this cause. (See The Florida Bar's Exhibits 34,35, 36, 37, 38). Respondent could have introduced any evidence he wished to present on this point at the March 13, 14 and 15, 1990 Final Hearing. It is abundant that no delay occurred in this

cause due to action of The Florida Bar. The Florida Bar monitored Respondent's criminal charge until it was resolved with Respondent's plea in this cause. (See The Florida Bar Exhibit 30). Respondent's Plea in the criminal case was entered on October 14, 1987. Respondent's counsel requested by letter dated October 16, 1990 the status of The Florida Bar investigation regarding the Respondent. (The Florida Bar Exhibit 34). The Florida Bar advised by letter dated October 20, 1987 that the matter would shortly be referred to a Grievance Committee (The Florida Bar Exhibit 35). On November 20, 1987, the matter was referred to Grievance Committee 17"E" (The Florida Bar Exhibit 36). After an investigation was conducted, probable cause was found by the Grievance Committee seven months later on June 30, 1988 (See The Florida Bar Exhibit 37). Prior to the disposition of the criminal case, the issue existed in the criminal case regarding immunity to be conferred on a witness, Christopher Debock (See The Florida Bar's Composite Exhibit 39). The Florida Bar submits that it could not have proceeded with its case while the Debock immunity issues were pending. Soon after Respondent entered his plea in the criminal case, The Florida Bar proceeded with its investigation. (The Florida Bar's Exhibits 30, 35, 36 and 37).

C. ABSENCE OF PRIOR DISCIPLINARY RECORD AND REHABILITATION.

The Referee's Report at Page 4 states that Respondent has no prior disciplinary record. As stated in The Florida Bar v. Setien, supra, The Referee who had evidence put before him of

mitigation could have considered it not sufficient compared with the conduct involved. Id. at 300.

D. DEBOCK'S DISCIPLINE AND UNIFORMITY IN LAWYER SANCTIONS.

Respondent is erroneously claiming that he was prevented from presenting evidence as to the discipline received by Debock, the prosecutor in the case involving Bono, wherein Respondent was the defense counsel. However, Respondent presented evidence at the Final Hearing that Debock received a suspension for thirty (30) days. (T. 63). Marshall Hall, Deputy State Attorney for the Twentieth Judicial Circuit of Florida testified that his office was assigned the executive assignment to handle the Bono/Rendina/Debock investigation. (T. 140-141). Mr. Hall provided that his office considered the Respondent to be more culpable than Debock because Respondent was older, had more experience, and they felt Respondent initiated the conduct and Debock had been experiencing personal troubles. (T. 165).

Therefore, for all of the above stated reasons, Respondent was not denied an opportunity to present testimony but failed to offer the introduction of such evidence at the final hearing held on March 13, 14, and 15, 1990.

III. THE REFEREE DID NOT ERR IN IMPOSING DISCIPLINE BASED ON MATTERS NOT CHARGED IN THE COMPLAINT AND AT VARIANCE WITH THE BAR PLEADINGS AND PROOF.

The Referee's Findings are set forth in his Report of Referee. (See The Florida Bar's Appendix I to its Initial Brief) and is set forth at Pages 5-7 of The Florida Bar's Initial Brief in this cause. The Respondent argued his views on the Referee's Findings and same were rejected at the May 25,

1990 hearing on the Merits of Judgment to be Entered. (See Appendix I and appendix IX). Respondent's recitation of the Referee's findings on page 54 of his brief does not set forth the Referee's findings. The Report of Referee sets forth the Referee's findings. The Referee's findings follow in substantial substance The Florida Bar's Complaint in this cause. (A copy of said complaint is attached hereto as Appendix XV). The only matter not in substance stated in The Florida Bar's complaint is the Referee's finding in paragraph II. 4 that Respondent did not disclose as an officer of the court to the proper officials the fact that his client wanted him to influence the assistant state attorney and/or others.

In The Florida Bar v. Stillman, 401 So.2d 1306 (Fla. 1981), this court held that it was proper for the referee, in making his report, to include information not charged in The Florida Bar's complaint. Id at 1307. The Stillman Court states:

> 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. Id, at 1307.

Further, misconduct not charged may be considered as to discipline by the referee. The Florida Bar v. Setien, supra at 300.

Therefore, all of the Referee's Findings of Fact were properly presented.

IV. THE REFEREE DID NOT ERR IN FAILING TO EXCLUDE THE TESTIMONY OF THOMAS BONO, INFORMANT, IN THE CRIMINAL CASE

Respondent is attacking in this proceeding the criminal sentence Thomas Bono received regarding his criminal charges. Whether or not the appropriate state attorney's office and the Court agreed to an improper sentence in Mr. Bono's case is irrelevant to this disciplinary proceeding. First of all, the exclusionary rule does not apply to attorney disciplinary proceedings. The Florida Bar v. Lancaster, 448 So.2d 1019 (Fla. 1984). Secondly, Thomas Bono was sentenced in the criminal case on March 6, 1985. The events of the instant complaint regarding Thomas Bono, Count I of the Complaint, occurred prior to May 31, 1984 and Mr. Bono's substantial assistance with the government had already ended a long period of time prior to his sentencing. The only item remaining subsequent to May 31, 1984 for Mr. Bono to perform was to testify truthfully. Accordingly, prior to his plea agreement Mr. Bono had already completed the transaction with the Respondent in this case.

Accordingly, there was no basis to exclude Mr. Bono's testimony as a witness in this Florida Bar Disciplinary Proceeding. Respondent, at page 59 of his brief states without any record support that The Florida Bar was a party to governmental action involving Bono. The Florida Bar has no idea as to what the Respondent is referring to. Further, Respondent appears to be stating that the Respondent was entrapped by Bono. The tapes of the conversations between Bono and the Respondent (The Florida Bar Exhibits 4-12, and 20-29) clearly evidence Respondent's active participation in the discussions and that he was not entrapped. Therefore, for the above stated reasons, no basis existed to exclude Mr. Bono's testimony or to mitigate

this case based on said testimony. Regardless of the fact that Bono originated the idea of a bribe, Respondent's testimony (T. 635-636, 640, 645, 697-700) taped discussions between Mr. Bono and the Respondent (The Florida Bar Exhibits 4-12, 20-29) and the May 31, 1984 statement of Christopher Debock (The Florida Bar Exhibit 2, The Florida Bar Appendix III) evidence Respondent's guilt and active involvement in same.

V. THE DISCIPLINE TO BE IMPOSED IN THIS CAUSE SHOULD BE DISBARMENT FOR A PERIOD OF FIVE (5) YEARS.

The Florida Bar adopts its argument presented in its Initial Brief submitted in this cause.

The evidence in this cause was abundant and certainly clear and convincing to support the Referee's findings which include that the Respondent engaged in discussions with his client, Bono, that gave the impression that the Respondent was attempting to bribe the assistant State Attorney on the case, one Christopher Debock. (The Florida Bar Exhibit 2). Further, the Respondent entered a Plea of Guilty to the criminal charge of conspiracy to commit unlawful compensation and the Respondent was adjudicated guilty of such charge. Regardless of his Alford Plea, the Respondent stands convicted of the crime. Additionally, at the final hearing respondent had an opportunity to explain his plea and presented testimony regarding the circumstances and the referee after hearing all the evidence found the respondent guilty of having violated Florida Bar Integration Rule, article XI, Rules 11.02(3)(a) [commission of an act contrary to honesty, justice or good morals] and 11.02(3)(b) [commission of a crime] and Disciplinary Rules 1-

102(A)(3) [a lawyer shall not engage in illegal conduct involving moral turpitude], 1-102(A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation], 1-102(A)(5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice], 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.

As stated in The Florida Bar's Initial Brief, Respondent's misconduct goes to the core of our system of justice, engaging in discussions regarding paying funds to a prosecutor for reduction of a criminal sentence. Each case should be determined on its own facts and the attendant case law. Based on the law presented in The Florida Bar's Initial Brief, disbarment is appropriate and mandated in this cause for a period of five (5) years. See The Florida Bar v. Greenberg, 534 So.2d 1142 (Fla. 1989).

Respondent, in his brief cites the case of The Florida Bar v. Denker, 479 So.2d 73 (Fla. 1985), wherein the Respondent was suspended for one (1) year wherein he plead to soliciting a bribe. The Denker case was a consent judgment entered into with The Florida Bar and it is difficult to know at this point what evidentiary or proof difficulties existed and the reasons for the acceptance of the plea. However, the instant facts with the attendant evidence warrants disbarment.

CONCLUSION

Based upon the foregoing, The Florida Bar submits that all evidence was properly admitted, no matters were improperly

excluded, all of the Referee's findings were properly included, the Referee properly denied Respondent's Request to Exclude the testimony of Thomas Bono, and the discipline in this cause should be disbarment for a period of five (5) years.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that the original and seven copies of the foregoing Answer Brief was forwarded to Sid J. White, Clerk, Supreme Court of Florida, Tallahassee, Florida 32301, and a copy was mailed via certified mail RRR #P943091523 to Fred Haddad, Esq., Attorney for Respondent, One Financial Plaza, Suite #2612, Fort Lauderdale, Florida 33394, and a copy was mailed via certified mail RRR #P943091524 to Lance Thibideau, Attorney for Respondent, 901 S. Federal Highway, Suite #300, Fort Lauderdale, Florida 33316, and a copy was mailed via regular mail to John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301 this 26th day of December, 1990.

Jacquelyn P. Needelman
Bar Counsel
The Florida Bar