

IN THE SUPREME COURT OF FLORIDA

**FILED**  
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THE FLORIDA BAR,  
Complainant,

SUPREME COURT CASE NO. 73,545  
The Florida Bar Case No.  
88-50,375(17E)

v.

RICHARD F. RENDINA,  
Respondent.

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INITIAL BRIEF OF THE FLORIDA BAR

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JACQUELYN P. NEEDELMAN  
ATTORNEY NO. 262846  
BAR COUNSEL  
THE FLORIDA BAR  
M-100 RIVERGATE PLAZA  
444 BRICKELL AVENUE  
MIAMI, FLORIDA 33131  
(305) 377-4445

JOHN T. BERRY  
Attorney No. 217395  
Staff Counsel  
The Florida Bar  
Tallahassee, Florida  
32399-2300  
(904) 561-5600

JOHN F. HARKNESS, JR.  
Attorney No. 123390  
Executive Director  
The Florida Bar  
Tallahassee, Florida  
32399-2300  
(904) 561-5600

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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

STATEMENT OF THE CASE

A two (2) count complaint and The Florida Bar's First Request for Admissions was filed on January 11, 1989. On January 19, 1989, The Honorable Edward N. Moore was appointed Referee in this cause. On February 21, 1989, Respondent forwarded his Answer and Affirmative Defenses, Respondent's First Set of Interrogatories and Respondent's Response to The Florida Bar's First Request for Admissions. The matter was scheduled for final hearing on April 11, 1989. Said date was cancelled. On February 22, 1989, The Florida Bar forwarded its First Set of Interrogatories and its First Request to Produce.

On March 3, 1989, The Florida Bar forwarded a Reply to Respondent's Affirmative Defenses. The Florida Bar answered Respondent's Interrogatories on March 27, 1989. Respondent answered The Florida Bar's First Set of Interrogatories on March 28, 1989.

A pre-trial conference and hearing on pending motions was held on April 11, 1989. On April 12, 1989, The Florida Bar submitted a Petition for Rule to Show Cause regarding the taking of Christopher Debock's deposition on April 13, 1989. Judge Moore issued an Order to Show Cause regarding same. A hearing was held and Mr. Debock was ordered to appear and testify at his deposition. Certain immunity was given to Mr. Debock for said testimony by the appropriate State Attorney's Office. On April

27, 1989, The Florida Bar served its Second Set of Interrogatories.

A Pre-Trial Order was signed by Judge Moore on June 21, 1989. On June 28, 1989, Bar Counsel provided a change of address. The final hearing was scheduled for July 27 and July 28, 1989. On July 13, 1989, The Florida Bar submitted its Pre-Trial Statement and Respondent submitted his Pre-Trial Statement on July 17, 1989.

The Florida Bar filed its Motion to Compel Discovery on July 18, 1989, and same was granted by the Referee. On July 31, 1989, the final hearing was scheduled for September 27 and 28, 1989. Respondent answered The Florida Bar's Second Set of Interrogatories on September 7, 1989. The Florida Bar submitted its Motion to Compel better answers to Interrogatories on September 11, 1989 and Respondent submitted his Amended Pretrial Statement on said date.

The final hearing was rescheduled to be held on October 26 and 27, 1989, and later rescheduled to be held on December 14 and 15, 1989 and then February 8 and 9, 1989. Further, the hearing was then rescheduled for February 12 and 13, 1990. Due to illness of the Honorable Edward N. Moore, Judge Moore's appointment as Referee in this cause was terminated and the Honorable Edward Swanko was appointed Referee on January 29, 1990. The final hearing was rescheduled to be held on March 13, 14 and 15, 1990. The Referee entered an Order on February 20, 1990 stating that no further continuances would be granted. The

final hearing was held on March 13, 14, and 15, 1990.

Prior to trial, Respondent submitted a Motion to Exclude Testimony of a witness. The Florida Bar filed a response to same on March 13, 1990. At the hearing, the Referee granted Respondent's Motion for direct verdict as to Count II. At the conclusion of the final hearing the Referee advised that he was finding the Respondent guilty regarding Count I of the Complaint and that his recommendation of discipline was suspension for a period of two (2) years. Both parties submitted proposed Reports of Referee. On May 25, 1990, a hearing was held on the merits of the Entry of Judgment, wherein the parties presented argument as to the proposed Reports of Referee and the findings of fact. At the May 25, 1990 hearing, The Florida Bar submitted a Memorandum of Law in support of its proposed Report of Referee, a Memorandum as to the Discipline to be Imposed, and an Amended Statement of Costs. At this May 25, 1990 hearing, the Respondent submitted pleadings styled Objection to The Florida Bar's Proposed Findings and Report of Referee, Objection to Imposition of Punishment or Disciplinary Action, and a Motion to Present Evidence in Mitigation. After hearing arguments of counsel, the Referee executed the proposed Report of Referee which had been tendered by The Florida Bar. (See, RR 23). A copy of said Report dated May 25, 1990 is attached hereto as Appendix I.

On June 1, 1990, The Florida Bar submitted its Second Amended Statement of Costs and on June 18, 1990, Judge Swanko



entered an Order amending the Report of Referee and recommended that the costs to be taxed against the Respondent be in the amount of \$5,014.48. (A copy of said Order is attached hereto as Appendix II). On August 2, 1990, The Florida Bar filed its Petition for Review in this cause and the Respondent filed his ~~Cross~~-Petition for Review on August 20, 1990.

STATEMENT OF THE FACTS

The Florida Bar filed a two (2) count complaint against the Respondent. Count I charged that in his representation of one Thomas Bono, the Defendant in a criminal case, the Respondent unlawfully offered or promised a payment of monies to one Christopher Debock, the Assistant State Attorney handling the matter, in exchange for Bono receiving a lesser criminal sentence in his case. The Respondent had plead guilty in the criminal cause styled, State of Florida vs. Richard Rendina, Case No. 84-6521 CF pursuant to North Carolina v. Alford, 400 U.S. 25 (1970).

The Referee, in his Report, made the following findings of fact:

As to Count I

1. Respondent, Richard F. Rendina is, and at all times hereinafter mentioned was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. Respondent represented one Thomas Bono regarding the criminal cause State of Florida vs. Thomas Bono.

3. During the course of Respondent's representation of him, in or about 1984, Thomas Bono asked the Respondent if he could pay off the prosecutor and/or Judge to receive a lesser sentence regarding the criminal charges pending against him. (Testimony of Thomas Bono and Richard Rendina).

4. 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.

5. Between February 1, 1984 and May 31, 1984, Respondent engaged in discussions with his client, Thomas Bono, that gave the impression that the Respondent was attempting to bribe the assistant state attorney on the case. (See The Florida Bar Exhibits 4, 5, 6, 7, 8, 9, 10, 11, 12, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and testimony of Thomas Bono).

6. Christopher Debock, the Assistant State Attorney in the case, gave a sworn statement on May 31, 1984 to agents of the Florida Department of Law Enforcement that he had discussions with the Respondent wherein the Respondent's client would receive a favorable sentence in exchange for payment of monies. (See The Florida Bar's Exhibit 2, Pages 5-10, 11, 13-14).

7. Respondent entered a plea of guilty to the criminal charge, conspiracy to commit unlawful compensation in Case No. 84,6521 CF, in the Circuit Court, in and for Broward County, Florida, regarding the facts of the Bono/Debock matter. The court adjudicated Respondent guilty of said charge. (The Florida Bar Exhibit 30). Respondent entered his plea pursuant to Alford v. North Carolina. However, Respondent stands convicted of said crime.

8. I find that Respondent's conduct stated above in paragraphs 1 through 7 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.

#### Count II

9. Respondent represented one Gregory Romano regarding the criminal case, State of Florida vs. Gregory Romano, Case No. 83-732 CF10, in Broward County, Florida.

10. The Florida Bar's Complaint alleged that during Respondent's representation of Mr. Romano, Respondent advised his client that he needed \$15,000.00 from him to pay off the prosecutor in the case to get probation for Mr. Romano.

11. I granted the Respondent's Motion for directed verdict on Count II.

Christopher Debock was called as a witness at the hearing. (T. 18-67). On May 31, 1984, Debock gave a sworn statement to agents of the Florida Department of Law Enforcement regarding the Bono incident. (TFB Ex. 2). He 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 Statute Section 90.804(1)(c) that Debock had suffered a lack of memory of the subject matter of his previous statement. (T. 61).

Susan Reich testified at the hearing. (T. 113-121). Mrs. Reich was the court reporter who took and transcribed Mr. Debock's May 31, 1984 statement to the agents of the Florida Department of Law Enforcement. Ms. Reich was shown the transcript of Mr. Debock's May 31, 1984 statement and she testified that same was a true and correct transcription of Mr. Debock's testimony. (T. 114).

The May 31, 1984 Debock statement was then introduced into evidence as The Florida Bar Exhibit 2.

Florida Department of Law Enforcement's agents Michael Brown (T. 69-112), Harry Solowski (T. 217-264) and Rose Marie Pineda (T. 273-311) testified regarding their participation in the investigation concerning the allegations of unauthorized compensation and bribery regarding Respondent's representation of Bono.

Ralph Ray, Chief Assistant State Attorney for the Seventeenth Judicial Circuit for Broward County, Florida, testified (T. 123-139) regarding statements made to him on May 31, 1984 by Debock wherein Debock advised that the Respondent on several occasions had offered Debock some money regarding his handling of the Bono case. (T. 128-129). It was immediately after Mr. Ray's conversation on May 31, 1984 with Debock, that

Debock's sworn statement was taken by the agents of the Florida Department of Law Enforcement.

Marshall King Hall, Deputy State Attorney for the Twentieth Judicial Circuit of Florida testified (T. 140-189). Mr. Hall's office was assigned the executive assignment to handle the investigation/prosecution regarding the Bono/Debock/Rendina matter. (T. 141). Mr. Hall testified that his office considered the Respondent to be more culpable than Debock regarding the Bono incident because: (1) Debock was younger, (2) Debock was less experienced, (3) the Respondent initiated it and, (4) Debock had personal troubles at the time. (T. 165).

Thomas Bono testified. (T. 324-421). Bono acknowledged that he asked the Respondent if it would be possible to pay monies to someone in exchange for a lesser sentence regarding his criminal case. (T. 325-326).

The phone calls and meetings between Bono and the Respondent were electronically recorded pursuant to the consent of Bono and the authorization of The Florida Department of Law Enforcement. (TFB Ex. 3). The taped conversations and the transcripts of same were introduced into evidence. Bono paid Respondent's fee in the amount of \$15,000 in full. (TFB Exs. 31, 32). Bono's testimony and the taped conversation reflect that the Respondent was attempting to extract an additional \$15,000 from the Respondent for payment to the prosecutor on Bono's case. (T. 326-329).

Respondent contended that the additional monies were for

attorney fees. Wayne Spath testified. (T. 666-673). Spath was the bondsman who wrote Bono's bond. (T. 666-667). Spath testified that he was paid the premium fee of \$3,000 for the bond on Bono and that there was no balance due to him. (T. 667, TFB Ex. 40).

The court documents reflecting Respondent's guilty plea to the misdemeanor charge of conspiracy to commit unlawful compensation were introduced as Florida Bar Exhibit 30.

Judge Leonard Fleet testified as a character witness for the Respondent. Judge Fleet acknowledged that an adjudication of guilt pursuant to an Alford plea has the same effect as if the Plea was not pursuant to said case. (T. 663-664).

Respondent presented the testimony of character witnesses, witnesses to whom he had denied his guilt, his defense counsel in the criminal trial, and other persons.

David Damore, Esq., was called as a witness by the Respondent. (T. 592-597). Damore had represented Christopher Debock regarding his appearing as a witness in the matter of State v. Rendina. He testified that in those proceedings Debock had asserted a fifth amendment privilege because he felt any testimony would be inconsistent with a prior statement given to investigators and the Florida Department of Law Enforcement. (T. 593-594).

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

The Referee entered his report finding Respondent guilty of conduct charged in Count I of The Florida Bar's Complaint and recommended that the Respondent be suspended for a period of two (2) years. A directed verdict was entered by the Referee regarding Count II of the complaint.

The Board of Governors's of The Florida Bar directed that The Florida Bar file a Petition for Review seeking disbarment as the appropriate discipline in this cause. The Florida Bar's Petition has been filed and Respondent has filed a Cross-Petition for Review.



SUMMARY OF ARGUMENT

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

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.

Besides the testimony of the client, the taped conversations and the transcripts thereof evidence Respondent's active participation in said discussions. Most importantly, the prosecutor gave a sworn statement detailing Respondent's offers of payment to him. (TFB Ex. 2)

Further, Respondent entered a guilty plea to the criminal charge of conspiracy to commit unlawful compensation. Respondent had the opportunity to explain his version of the case and certainly did so through his testimony.

This court has disbarred attorneys who have engaged in bribery type misconduct. The Florida Bar v. Morales, 366 So.2d 431 (Fla. 1978), The Florida Bar v. Rambo, 530 So.2d 926 (Fla. 1988), The Florida Bar v. McCain, 361 So.2d 700 (Fla. 1978).

Accordingly, disbarment is the appropriate discipline in this cause.

## ARGUMENT

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

The Florida Bar believes that the Referee's disciplinary recommendation was erroneous. This Court has stated that it is not bound by the Referee's recommendations for discipline. The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978). Accordingly, this court has imposed greater discipline than recommended by referees when deemed appropriate. The Florida Bar v. Wilson, 425 So.2d 2 (Fla. 1983); The Florida Bar v. Shapiro, 413 So.2d 1184 (Fla. 1982); The Florida Bar v. Lopez, 406 So.2d 1100 (Fla. 1981); and The Florida Bar v. Harris, 400 So.2d 1220 (Fla. 1981).

The Florida Bar submits that Respondent's misconduct was wholly inconsistent with the high professional standards of the legal profession. Disbarment is, therefore, more appropriate than the disciplinary sanction of suspension for a period of two (2) years recommended by the Referee. The criteria established by the court in determining appropriate discipline and the misconduct and criminal conviction of the Respondent fully support the Bar's position.

This court has established three (3) criteria for determining the proper disciplinary sanction to be imposed against attorneys in disciplinary proceedings. This court has mandated that:

{F}irst, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the Respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. The Florida Bar v. Pahules, 233 So.2d 130, 132 (Fla. 1970).

The Board of Governors of The Florida Bar has directed that The Florida Bar seek Respondent's disbarment.

This Court has stated that "...any conduct of a lawyer which brings into scorn and disreputed the administration of justice demands condemnation and the application of appropriate penalties. State v. Calhoon, 102 So.2d 604 (Fla. 1958). Judge Swanko, Referee, found 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. (See Report of Referee, Page 2, TFB Exs. 4-12, 20-29, Testimony of Thomas Bono).

The following portions of the indicated transcripts of the taped recordings evidence that Respondent discussed with Bono the giving of improper compensation to influence the sentence to be received by Bono.

(1) TFB Exhibit 27, transcript of April 27, 1984 telephone conversation between Respondent and Bono.

(a) On page 3, at lines 12-14, Bono states "what if I increase the size of the bag." Respondent does not dispute that "the bag" exists.

(2) Exhibit 28, transcript of May 3, 1984 meeting between Respondent and Bono.

(a) At Page 5, lines 8-12, the Respondent references that the cost of getting probation is "testifying and other general matters." (emphasis supplied). There were no other general matters. (T. 343-344).

(b) At page 6, lines 7-8, Respondent states, "Now he particularly wouldn't want to give you a deal in the first place if it wasn't for the other incentive." Bono then states, "fifteen is a lot of incentive." Same is not disputed by the Respondent. The fifteen was fifteen thousand dollars. (T. 344).

(c) At Pages 13-16, the Respondent and Bono clearly were discussing the payment of a larger sum of money, \$100,000.00 to the prosecutor, in exchange for letting all of the other co-defendants and Bono plead to probation. The following is the colloquy: TF = Refers to Thomas Bono

RR = Refers to the Respondent

TB - All right this, this whole case is muddled up. Right?

RR - Oh, somewhat yes . . .

TB - All right. With that in mind can the whole thing be shitcanned? Can, can, can this guy DeBock say, yeah, fuck it, the whole case is all screwed up because we got perjury, we got a drug addict, we got some guy carrying a, a, John was caught carrying a gun or some shit like that. Why can't we, why can't the whole thing be dropped?

RR - It won't.

TB - Could it be?

RR - Technically it could be argued. The judge will not do it. The prosecutor will not voluntarily dismiss it. He will argue against it vehemently. If anybody does it, it will be a jury.

TB - Even with more money?

RR - I, I'll be honest with you, I never approached that ...I mean the case is so fucked up with all the defendants.

TB - Wait, see where's that, wait a minute.

RR - Yeah, yeah, well...

TB - If he can do this, and I'm sure these guys can come up with that hundred thousand dollars. If Debock can do this with a hundred thousand dollars then I don't have to testify.

RR - Right.

TB - You know what I mean?

RR - Right.

TB - I can come up with, ah, sixteen, seventeen, whatever it is divided by six to reach ...will you talk to him about that this weekend?

RR - I'll have to do it this weekend.

TB - Are you going to talk to him this weekend?

RR - ...yea I see him every weekend.

TB - Call me back Monday and tell me. You don't have to ...you...

RR - All right let's just say that's a negative. But, ah, let's just say that's assume that's no. You still want to go ahead with the other thing.

TB - Yes.

RR - OK, but you want me to pursue that, because I really never have.

TB - Yes.

RR - That might be a way out for everybody and, ah, if everybody's willing to accept a probation plea.

TB - Of course they will. But then I don't have to testify and worry about my ass.

RR - If they thought you engineered this whole thing they'll thank you for the whole ...really, or me.

TB - Right.

RR - Well let me try it and see.

TB - Try it will ya, cause it really...

RR - (Unintelligible) he might be able to hang his hat on the whole thing. I don't have an ash tray.

TB - That's all right, I won't light it till I get out of here.

RR - Cause, you know, Israel is a fuckin perjurer, a liar. We don't want to fool with, with his testimony.

TB - Israel is an asshole and a hero. He, he's somebody's hero. I think he's a hero to himself.

RR - And ah, the CI is a dirtbag. There's, there's uh legal defects in the case. But unfortunately the whole fucking case is horrible, horrible.

TB - All right, do what you can. This would save me, look I don't mind coming up with the extra money if . . .

RR - Yea, but you're talking terms like that but I can't guarantee.. he wants ...I'm going to be able to see it.

TB - What, the hundred thousand?

RR - Whatever...

TB - All right, you do what you can and you say yea; If I get you on the phone you say that negative item is yea, it, it's affirmative, ah, and give me sixty units, seventy units.

RR - Right, right.

TB - OK, get me on the phone, tell me something like that. I'll get in up, I'll bring it in here...

RR - Yea, but you're not...tell those other people I don't want any, any conversation.

TB - You don't, you don't have to get involved with the other people. I'll tell the other people, look it, you just plead to probation and that's how it's going to be. I don't give a shit what you lawyer says, that's how it's going to be.

RR - I'll take care of the lawyers.

TB - OK.

RR - All right, all right, we'll see what we can do. It's here it stands right now, I'll see him tonight, tomorrow night, Friday night, I'll see him Friday night and Sunday. And Saturday...I play on the State Attorney's team...Saturday.

TB - For what, softball, are you really? Where?

RR - ...hard third baseman.

TB - I wanna go see you play. Where you playing?

RR - Oh, shit. George English park or...

TB - Oh shit. I have to stay home with my wife.

RR - It's the young lawyers' tournament.

TB - Young Lawyers' tournament?

TB - Let me get home to dinner.

TB - Yea.

RR - That will be funny, you'll see me playing with a State Attorney on my team (laughs).

TB - No, I don't want to see that.

RR - (laughing) I'll be on third base and he'll be in shortstop.

TB - ...I hope he get hit with a ball.

RR - Say hello to your wife.

TB - I will Rich. Don't forget it's really important.

RR - All right you know, I don't think it's possible.  
(Static on tape as TB walked out of office).

TB - Take care Rich.  
(TFB Ex. 28, Pages 13-16).

As evidenced above, the Respondent very actively participated in this discussion regarding monies being paid to the prosecutor on behalf of all of the co-defendants in the case for the defendants to receive probation sentences.

(3) Exhibit 29, transcript of May 9, 1984 telephone call from Bono to Respondent.

(a) At Pages 1 and 2 the Respondent clearly advises Bono that the whole case can not be worked out (as was discussed in TFB Exhibit 28, pages 13-16).

(b) However, at page 2, the Respondent states that the case can be worked out as to Bono.

(c) At Page 3, the Respondent states that he (the prosecutor) settled at fifteen.

(4) TFB Exhibit 20, transcript of May 10, 1984 telephone call from Bono to Respondent.

(a) At Pages 2-3, Respondent and Bono discuss that it was fifteen units, and an excuse (testifying against others) was needed. Bono testified that fifteen units referred to the \$15,000.00 to be paid to the prosecutor. (T. 366-368).

(b) At Page 4, lines 8-9 Respondent says the deal cannot be made without the units.

(5) TFB Exhibit 21, May 16, 1984 meeting between Bono and Respondent.



(a) At Page 4, Respondent states finding the excuse is the problem.

(b) At Pages 4-6, Bono establishes to the Respondent that he paid him \$15,000.00 already as attorney fees.

(c) The Respondent attempts to call the additional \$15,000.00 payment as his fee (at Pages 15-16). However, Respondent was already paid \$15,000.00 in fees by Bono. (See Florida Bar Exhibits 31 and 32, T. 341, 352).

(6) Exhibit 22, May 24, 1984 meeting between Respondent and Bono.

(a) At Page 10, lines 5-21, Respondent states that he has to have the fifteen thousand before he goes into the Prosecutor's office to take the statement.

(b) At page 10, lines 30-31, in response to Bono's question to Respondent, "you're putting that away for him (clearly referring to the \$15,000.00 payment), Respondent states, "not until you are sentenced to probation..."

(7) Transcript of May 30, 1984 1500 hours meeting between Respondent and Bono, TFB Exhibit 25.

(a) At page 4, Respondent states that the \$15,000.00 is for additional attorney's fees. Bono gets upset about same.

(8) Transcript of May 30, 1984, meeting between Respondent, Bono and Debock, TFB Exhibit 26.

(a) On Page 20, the Respondent contradicts himself and says that the additional money is going into his trust account and is refundable at the end of the case. This statement was

made after the meeting between Debock, Bono and Respondent, wherein Debock and the Respondent seemed upset and scared by Bono's actions, wherein Bono attempted to give money to Debock in the State Attorney's Office.

Debock gave a sworn statement on May 31, 1984 to Florida Department of Law Enforcement agents wherein he testified that he had discussions with the Respondent wherein the Respondent's client would receive a favorable sentence in exchange for payment of monies. (See The Florida Bar's Exhibit 2, pages 5-10, 11, 13, 14). (A copy of said sworn statement is attached hereto as Appendix III).

Respondent tried to infer at the trial in this cause that Debock was confused at the time he gave the May 31, 1984 statement under oath. Said argument belies reason, as being confused does not cause one to make up statements which are untrue and against one's own interest. The Florida Bar submits that Debock became nervous when he realized that he had been "caught" regarding his discussions with the Respondent. Further, Debock testified at Page 10 of the May 31, 1984 statement (The Florida Bar Exhibit 2) 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 acknowledges that he entered into a deal with the Respondent that Debock would receive monies when Bono received a favorable probationary sentence.

Further, Respondent plead guilty to the criminal charge conspiracy to commit unlawful compensation. (TFB Exhibit 30). Even though the Respondent entered his guilty plea pursuant to the case, North Carolina v. Alford, supra, the Respondent stands convicted of the offense. In Bar disciplinary proceedings wherein there exists a criminal plea, it is important that the Respondent be given a chance to explain the circumstances surrounding his plea. See The Florida Bar v. Marks, 492 So.2d 1327 (Fla. 1986). The Respondent could offer in mitigation his version of the underlying case. The Florida Bar v. Pavlick, 504 So.2d 1231 (Fla. 1981). Pavlick makes it clear that said offer relates to mitigation of the discipline to be imposed. See Pavlick, at 1233, 1234.

In The Florida Bar v. Isis, 552 So.2d 912 (Fla. 1989), the Respondent entered a no contest plea to a serious crime, fraud. The court held under such circumstances that disbarment was appropriate.

The instant Respondent testified and certainly explained his version of the facts. The Respondent, in effect, admitted that he had entered into inappropriate discussions with his client. (T. 635-636, 640, 645, 697-700). Further, the taped conversations clearly evidence the Respondent's culpability in this cause, as well as the sworn May 31, 1984 statement of Christopher Debock. (TFB Ex. 2).

Besides the charge of conspiracy to commit unlawful compensation, the charge of bribery is also applicable. Florida

Statute Section 838.015(1) provides:

(1) "Bribery" means corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept for himself or another, any pecuniary or other benefit with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

The Referee did not specifically find that the Respondent engaged in bribery, but he found that the Respondent engaged in discussions with his client that gave the impression that he was attempting to bribe the Assistant State Attorney on the case. (See Report of Referee, Page 2, paragraph 5). The Referee found the Respondent guilty of the following rules:

The 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.

Case law supports disbarment in this cause. In The Florida Bar v. Riccardi, 264 So.2d 5 (Fla. 1972), the Respondent

was disbarred for conviction on the charge of bribery of an Internal Revenue Agent with intent to influence the Agent's determination of the current tax liability of a third person. Similarly, in the instant case, the Respondent engaged in discussions with his client and the prosecutor wherein a favorable probationary sentence would be imposed in exchange for a payment of monies to the prosecutor.

The Supreme Court in Riccardi stated as follows: That bribery is a particularly noxious ethical failure.

In our view bribery is a particularly noxious ethical failure under the Code of Professional Responsibility, because it not only involves a breach of the individual attorney's public trust as a member of the legal profession, but also represents an attempt by the offending lawyer to induce a third party to engage in fraudulent and corrupt practices. Such conduct strikes at the very heart of the attorney's responsibility to the public and profession. We are, therefore, not inclined to leniency in bribery matters, absent mitigating factors in the individual case. See The Florida Bar v. Craig, 238 So.2d 78 (Fla. 1970). No such mitigating factors have been brought to our attention in the instant case.

In The Florida Bar v. Morales, 366 So.2d 431 (Fla. 1978), the Respondent was disbarred for attempting to extract a \$10,000.00 "fee" to be used to reach and influence the judge or prosecutor concerning sentencing and for other misconduct.

Further, in The Florida Bar v. Rambo, 530 So.2d 926 (Fla. 1988), the Respondent was disbarred for delivery of a bribe to a county commissioner on behalf of a client.

In The Florida Bar v. McCain 361 So.2d 700 (Fla. 1978), an attempt by a sitting judge to use his position to influence the

outcome in a pending matter was found to "cut to the very heart of the judicial system." Because such conduct "eroded the public confidence in the integrity of the judiciary and the bar, thus undermining the entire judicial process," it is subject to severe punishment. The Florida Bar v. McCain, supra. The McCain Court further found that Respondent's blatant disregard for the integrity of the truth finding process has direct bearing on his fitness to practice law and disbarred him. Id. at 707.

According to Florida Standards For Imposing Lawyer Sanctions, approved by The Florida Bar Board of Governors approved in November, 1986, disbarment is the appropriate sanction for Respondent's misconduct.

The following section of The Standards apply to Respondent's misconduct in this case:

Section 5.1 "Failure to Maintain Personal Integrity":  
Under this section, disbarment is appropriate, absent aggravating or mitigating circumstances, when a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft.

Section 7.1 "Violations of other duties owed as a professional": Under this section, disbarment is appropriate, absent aggravating or mitigating circumstances, when a lawyer

intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

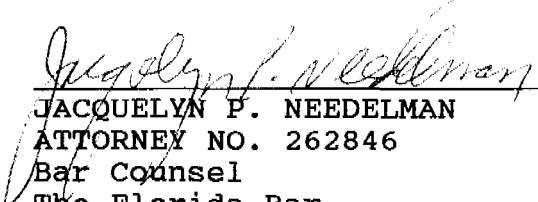
While imposition of the disciplinary sanction of disbarment is the most severest sanction available, the nature of Respondent's misconduct dictates that said sanction be imposed. It is axiomatic that an attorney, by virtue of his position, must not take any action in either his professional or personal life that would be violative of duly enacted laws and the administration of justice. Respondent's guilty plea to the misdemeanor charge of conspiracy to commit unlawful compensation and his discussions with Bono and Debock clearly places him in violation of his sacred trust as an attorney and subject to the harshest available disciplinary sanction.

Accordingly, disbarment for a period of five (5) years is necessary in this cause.

CONCLUSION

For the foregoing reasons, The Florida Bar respectfully requests this Honorable Court to uphold the Referee's findings of fact and impose disbarment for a period of five (5) years as discipline, and tax the costs of these proceedings against Respondent in the amount of \$5,014.48.

Respectfully submitted,

  
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JACQUELYN P. NEEDELMAN

ATTORNEY NO. 262846

Bar Counsel

The Florida Bar

Rivergate Plaza, Suite M-100

444 Brickell Avenue

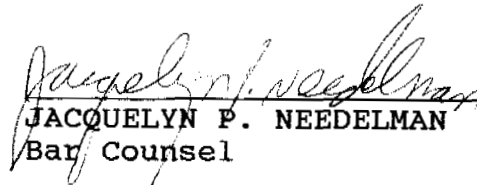
Miami, Florida 33131

(305) 377-4445



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of The Florida Bar's Initial Brief was sent to Sid J. White, Clerk of The Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301-8167; and a copy was mailed to Lance J. Thibideau, Esq., Attorney for Respondent, 901 South Federal Highway, Fort Lauderdale, Florida 33316 via certified mail, RRR P 110 986 714; and a copy was mailed to John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32399-2300 this 31<sup>st</sup> day of August, 1990.

  
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JACQUELYN P. NEEDELMAN  
Bar Counsel