IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case Nos. 77,463
78,723

v.

RICHARD P. CONDON,

Respondent,
_____/

RESPONDENT'S INITIAL BRIEF

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Fla. Bar No.

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SYMBOLS AND REFERENCES

For convenience in referencing, Respondent adopts the symbols used by The Florida Bar as follows:

TR1: Transcript of February 6, 7, 1992 in the proceedings before the referee.

TR2: Transcript of March 6, 1992 in the proceedings before the referee.

TR3: Transcript of March 13, 1992 in the proceedings before the referee.

TR4: Transcript of April 10, 1992 in the proceedings before the referee.

TR5: Transcript of November 23, 1992 in the proceedings before the referee.

TR6: Transcript of January 8, 1993, in the proceedings before the referee.

Depo: Deposition on December 30, 1992 of Dr. Joseph Rawlings.

ARR: Amended Report of Referee

C's Exh.: Exhibits of The Florida Bar

R's Exh.: Exhibits of Respondent

Standards: Florida Standards for Imposing Lawyer Sanctions

TABLE OF CITATIONS

STATEMENT OF THE CASE

Respondent does not contest Complainant's statement of the case and statement of the Referee's recommendations of guilt.

STATEMENT OF THE FACTS

Respondent re-states the facts as follows:

Case No. 77,463: In January, 1990, Respondent negotiated a settlement of Olga Austin's property damage claim resulting from an auto accident. [TR1:79]. The settlement was for payment of $600.00. [TR1:79]. Respondent agreed with the client that if she would settle the claim he would retain no fee from the proceeds. [TR1:301]. The client was unable to negotiate the check and Respondent agreed to deliver cash to her from his collection of one hundred dollar bills. [TR1:305]. Thereafter, Respondent deposited the check into his operating account. [TR1:301]. Ms. Austin then rejected the settlement, but the opposing party declined to re-negotiate and eventually sought enforcement of the settlement. [TR1:302]. In July, 1990 the court found the settlement to be binding on the client and also awarded Respondent a fee of $200.00. [TR1:324]. The $400.00 was paid to Ms. Austin. [TR1:40].

Case No. 78,723; Count I: In October, 1989, Respondent represented Woolf Printing Corporation. [TR3:5]. The corporation had been through a Chapter 11 bankruptcy reorganization, had been unable to regain its financial health and was in the process of voluntary liquidation. [TR3:5,68]. On April 4, 1990, the president of Woolf Printing Corporation, Mrs. Chlotielde Woolf, delivered to Respondent two checks in the amounts of $1,200.00 and $7,000.00. [TR3:15,70]. By agreement between Respondent and Mrs. Woolf, she was to receive funds from the $1,200.00 check back and Respondent was to retain the $7,000.00 check for fees.

[TR3:78,86]. However, it was also agreed that Respondent was to misrepresent to the tax collector that he was holding funds in escrow for application to the corporation's overdue tangible tax assessment. [TR3:88]. Based upon this understanding, Respondent made an "equivocal statement" to the tax collector indicating that the funds were in escrow. [TR3:80]. This statement was made for the benefit of his client. [TR3:80,81]. Respondent did not place the funds from Woolf Printing into his trust account or into an escrow account. [TR3:70,74]. Respondent provided his client legal services and provided a written statement on January 10, 1991 for these services. [TR3:16 and C's Exh. 13]. Respondent also provided Woolf Printing a statement dated April 18, 1991 indicating a fee credit of $7,000.00 as of that date. [C's Exh. 7]. Mrs. Woolf presented a copy of the $7,000.00 check to The Florida Bar which contained the notation that the funds were for "trust". [TR3:71]. However, the check delivered to Respondent bore no such notation and it was place thereon by Mrs. Woolf after its return to her by the bank and before its delivery to The Florida Bar. [TR3:29].

Case No. 78,723; Count II: On Monday, January 7, 1991, Respondent appeared for his deposition to be taken pursuant to a subpoena issued in the case of Roosevelt Paper v. Woolf Printing. [TR3:121]. The subpoena had been served on Respondent on the previous Friday without prior communication to Respondent concerning calendar conflicts. [TR3:142]. The subpoena required the production of information privileged to Respondent's clients other than Woolf Printing. [TR3:149]. Despite Respondent's

objections to the deposition based upon the failure to be paid a witness fee; the lack of reasonable notice; and the privileged information, attorney Berman continued the questioning of Respondent. [TR3:144]. In reaction, Respondent became very upset and made statements to attorney Berman which were rude. [TR3:137,138]. After a stapler and candy dish top flew from Respondent's hands, the deposition was terminated. [TR3:145 and C's Exh. 1].

Case No. 78,723; Count III: In July, 1986, Respondent was retained by the daughters of Florence Sherlock to probate her estate. [TR3:223]. However, the initial retainer occurred before the death of Ms. Sherlock which occurred on July 29, 1986. [TR4:33]. In December, 1986, Respondent obtained a certificate of administration and in June, 1987 filed the published notice of administration. [TR3:152,153]. The estate was closed in April, 1990. The two daughters became co-personal representatives and difficulty in communications and decision making began between Respondent and the two daughters. [TR4:36]. Respondent volunteered to withdraw from representation but the clients refused these offers. [TR4:39]. Respondent eventually enlisted the assistance of another attorney, Malory Frier, who was more experienced than Respondent in similar matters. [TR4:44]. During the pendency of the estate, delays occurred, in part due to the failure of the Bank of New York to deliver corrected stock certificates for a period of six months [TR4:49]; the failure of the personal representatives to execute the documents necessary for

closing the estate [TR4:39]; and the long pending sale of the decedent's house. [TR4:40]. Notices to show cause were issued on several occasions and Respondent responded to each. No determination of contempt or imposition of sanctions occurred during the pendency of the estate. Respondent received funds through this representation and deposited the funds into his trust account. Respondent expended time in the course of representation and charged fees against the estate and used these funds for payment of his fees. [TR4:57]. He did not receive prior court approval for the fees nor did he receive written authorization from the personal representatives. However, the fees charged were not contested and were approved by the probate court, except for those associated with show cause hearings. [TR4:52].

Case No. 77,463 (Trust Audit): Respondent was served with a subpoena by The Florida Bar in May, 1990 requiring him to produce at the Bar's office certain trust account records. [TR1:14]. On May 14, 1990, Respondent delivered to the Bar a file storage box and brief case containing his bank records, canceled checks, monthly bank statements, check stubs, and receipts journal. [TR1:289]. The Bar staff auditor and Respondent reviewed the documents and discussed additional items to be presented at a later date. [TR1:290]. Respondent also explained to the auditor the events concerning receipt and negotiation of Olga Austin's settlement check. [TR1:294].

On May 29, 1990, Respondent again met with the Bar auditor at Respondent's office. Again, Respondent voluntarily discussed the

Austin transaction and showed the auditor the cash he was holding for her. [TR1:48]. Again, on June 5, 1990, the Bar auditor visited Respondent at his office. [TR1:27]. At that time, Respondent delivered his general account banking statements, canceled checks, deposit slips and journal. [TR1:332].

STATEMENT OF ISSUES

I. Several of the Referee's recommendations of guilt are not supported by clear and convincing evidence and should be rejected.

II The aggravating factors determined by the Referee are not supported by clear and convincing evidence and the mitigating factors are incomplete.

III. The Referee's recommended discipline is excessive and unwarranted in view of the facts of this case and the purpose of lawyer discipline.

ARGUMENT SUMMARY

Several of the Referee's recommendations of guilt are erroneous. Not all of the determinations of aggravating factors are supported by the record evidence. The mitigation is clear, convincing and far outweighs any aggravation. Therefore, the purposes of discipline are best served by the imposition of a discipline which places Respondent on probation and requires continued treatment for his depression. Discipline of a six month suspension is excessive in view of Respondent's mental/emotional condition. Disbarment is unwarranted and is not justified by the facts or case law.

I. SEVERAL OF THE REFEREE'S RECOMMENDATIONS OF GUILT ARE NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE AND SHOULD BE REJECTED.

In Case No. 77,463, the Referee recommends that Respondent be found guilty of Rule 4-1.15(a) because his failure to deposit Ms. Austin's settlement check into trust is a "per se" violation. [ARR II]. In Count I, Case No. 78,723, the Referee recommends a finding of guilt of Rule 5-1.1 based upon a determination that the Woolf Printing funds were received for the purpose of paying taxes and in Count II of Rule 4-8.4(d) for conduct prejudicial to the administration of justice. Each of these recommendations should be rejected and Respondent found not guilty of each rule cited.

The determination of guilt concerning the Austin check is based upon an incorrect interpretation of Rule 4-1.15(a). That rule addresses the safekeeping of a client's property as distinguished from that of the attorney. It requires an attorney to separate from his property that of a client and to keep it safely. The rule also specifically requires certain types of client property - "funds" - to be deposited into a separate trust account. It also allows for other means of safekeeping the client's "funds" if consent is granted and if the property is other than "funds".

In the Austin scenario, the evidence proved that Respondent received a check for the client. Because he was at that time to receive no fee, the entire amount was for the client. Therefore, the property at issue was initially the check, not funds/money. Accordingly, the failure to deposit the check into trust was not

necessarily required by Rule 4-1.15 and cannot be a per se violation.

Only in a circumstance where the check was to be held for negotiation by Respondent and distribution to both the firm for fees or costs and to the client was Respondent required to make a trust deposit. That circumstance was not clearly proven by the Bar, nor found to exist by the Referee.

Similarly, the recommendation of guilt concerning the Woolf check is also based upon a fundamental misapplication of the rule to the facts. In that case, Respondent testified that his understanding of the nature and purpose of the check was for fees. [TR3:70]. Respondent's agreement with the client was unambiguous and was consistent with the documentary evidence including: Respondent's billing statements to the client; the client's bankruptcy petition; and the check in its original form (without the notation of "Trust").

Based upon this evidence, the Bar failed to prove that the check was entrusted to Respondent for a specific purpose requiring its deposit into trust. Conversely, based upon this evidence, Respondent's deposit into his general account and expenditure of the funds followed by an accounting to the client for fees was appropriate. Therefore, this determination of guilt should also be rejected.

The Referee's recommendation that Respondent violated Rule 4-8.4(d) in Count II results form a misapplication of the rule to the facts. Rule 4-8.4(d) prohibits conduct which is prejudicial to the

administration of justice. No evidence was offered establishing any judicial prejudice. Absent evidence of prejudice, this determination is unsupported. Furthermore, the rule is not intended to prohibit the type of conduct at issue here. Rudeness, profanity and even outbursts of temper are not necessarily prejudicial to the administration of justice. This Court has held that this rule is intended not to proscribe all conduct but rather "[T]hose activities, for example, more directly associated with bribery of jurors, subornation of perjury, misrepresentations to a court or any other conduct which undermines the legitimacy of the judicial process." The Florida Bar v. Pettie, 424 So.2d 734 (Fla. 1982).

II. THE AGGRAVATING FACTORS DETERMINED BY THE REFEREE ARE NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE AND THE MITIGATING FACTORS ARE INCOMPLETE.

In his amended report, the Referee determined that both aggravating and mitigating factors existed. [ARR V]. These factors include Respondent's "Apparent lack of cooperation with Bar auditors" and the mitigating factors of Respondent's absence of a prior disciplinary action; remorse; continuing medical treatment; and his personal, emotional and marital problems caused by the impairments of depression and anxiety. [ARR V].

These determinations fail to recognize Respondent's cooperative attitude toward the proceedings and erroneously includes his "apparent" lack of cooperation as aggravation.

Standard 9.0 states several factors to be considered as aggravation or mitigation in disciplinary proceedings. Standard 9.22(e) states that the "bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency" is an aggravating factor. Standard 9.32(e) states that mitigation includes "full and free disclosure to disciplinary board or cooperative attitude toward proceedings". An apparent lack of cooperation is not recognized as a factor under the standards and because of the unambiguous distinguishable language of the factors, it should not be considered an aggravating factor.

Additionally, the record clearly and convincingly proves the existence of factor 9.32(e) and disproves factor 9.22(e). The record evidence proves that Respondent timely complied with the subpoena of May, 1990 by delivering his original trust records. [TR1:289]. He then again met with the auditor and delivered additional documents. [TR1:18]. He then met a third time, voluntarily, with the auditor and bar investigator. [TR1:27]. In fact, Respondent placed his office at the Bar's disposal. [TR1:290]. He also attempted on several occasions to answer, to the best of his ability, despite feeling ill and confused, all questions of the Bar. [TR1:51, 290]. He also voluntarily provided handwriting samples to the Bar. [TR6:65]. Additionally, Respondent never failed to respond to any pleading in this case nor did he fail to attend any proceeding. Therefore, at all times he clearly displayed a cooperative attitude.

On the other hand, Respondent's actions are inconsistent with a bad faith obstruction of these proceeds and no evidence exists of any failure to intentionally comply with a rule or order. Because Standard 9.0 does not list the converse of Standard 9.32(e) as an aggravating factor and because the Referee only concluded an "apparent" lack of cooperation, which is inconsistent with Respondent's cooperative efforts, this aggravating factor should be rejected and an additional factor should be recognized as mitigation.

III. THE REFEREE'S RECOMMENDED DISCIPLINE IS EXCESSIVE AND UNWARRANTED IN VIEW OF THE FACTS OF THIS CASE AND THE PURPOSE OF LAWYER DISCIPLINE.

In this case, the Referee recommends that Respondent be suspended for six months and thereafter until he proves rehabilitation; pays costs; receives clearance from his physician that he is competent to practice law; and completes a course in law office management and trust accounting. This recommendation is predicated upon the findings of fact, recommendations of guilt, recommendations of aggravation and recommendations of mitigation.

However, as has been discussed herein, the Referee's recommendation is based upon erroneous recommendations of guilt and aggravation. Additionally, the recommendation of a suspension is inconsistent with the totality of circumstances and the significant mitigation. Moreover, a suspension of six months is inconsistent with the primary purpose of discipline which is to protect the

public. [Standard 1.1]. It is furthermore inconsistent with the decisions of this Court to the effect that discipline should protect the public; deter others; and be fair to the Respondent and encourage his reformation and rehabilitation. The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970). In fact, the recommended discipline can serve only to unjustly punish Respondent for errors in judgment directly resulting from his severe medical condition.

The facts as supported by the record evidence establish that Respondent's conduct occurred between January, 1990, the date of the Austin settlement, and January, 1991, the date of the Berman deposition. The uncontroverted facts also establish that Respondent had been suffering from severe depression and anxiety since 1983 and had ceased taking prescribed anti-depressant medication in 1988 due to his marriage. [TR6:58 and Depo:10]. Therefore, all relevant acts occurred while Respondent suffered from severe depression without the benefit of appropriate medication prescribed to minimize the adverse effects of this medical condition.

Consideration of Respondent's mental/emotional condition is critical to an evaluation of Respondent's conduct and a determination of appropriate discipline. Respondent's medical/emotional condition explains how an attorney can actively practice law for twenty years and represent 3,000 clients without discipline and then, within a relatively short time period, commit acts of misjudgment. [TR6:52]. It also identifies the essential element necessary to the protection of the public and Respondent's

rehabilitation - continued treatment and medication!

Clearly, the Referee recognized and appreciated this factor. As he reported, "It would appear that Respondent has been and is being treated by Dr. Rawlings for depression and anxiety and this is recognized as a mitigating factor in this case. But for this factor, the recommendation would have been much more severe. These impairments caused Respondent personal, emotional and marital problems". [RR sec. V]. The Referee also recognized the appropriateness of continuing treatment by his recommendation that the treating physician report the medications prescribed for Respondent and "any on-going/continuing treatment/therapy Respondent is required to undergo". [RR sec IV].

However, the Referee's recommended discipline fails to impose appropriate prophylactic conditions while imposing a severe sanction which is in effect only a punishment. A modification of the recommended discipline should include an elimination of any suspension and the imposition of a public order with a term of probation. The probation should include a condition of continued compliance with the treating physician's prescribed course of treatment and medication as well as the other recommended acts. This discipline will serve to protect the public and the Bar more effectively than a six month suspension. It will also eliminate a sanction which will be devastating to Respondent [Depo:19]; will serve to increase his personal/marital problems; and will prejudice Respondent's clients by requiring them to obtain substitute representation regardless of the status of pending matters.

Additionally, the recommended discipline misapplies the requirement of proof of rehabilitation to the facts of this case. Here, the medical evidence proves that Respondent was, at all relevant times, suffering from recurrent major depression and had ceased using the prescribed antidepressant medication in 1988. [Depo:10,12]. Therefore, the treating psychiatrist explained, Respondent's work function was impaired and his marriage was in jeopardy. [Depo:13].

But, as of the date of the medical testimony, December 30, 1992, Respondent had suffered no recurrence of the spells of confusion or extreme anxiety. [Depo:14]. Furthermore, as of December, 1992, Respondent was functioning at a much better occupational level. [Depo:15]. More importantly, Respondent's condition has improved and is being appropriately treated. [Depo:17].

Therefore, proof of rehabilitation has been established as of December 30, 1992. To now require Respondent to again prove rehabilitation in the future serves no purpose other than to unreasonably postpone Respondent's ability to practice his profession. This is in effect a penalty. Finally, in view of the procedural requirements for reinstatement pursuant to Rule 3-7.10, Respondent will be effectively suspended for a minimum of nine to twelve months. Nothing within the record suggests that the Referee intended such a harsh result.

These factors require this Court to impose a discipline without suspension so that Respondent may continue to practice

without suffering unnecessary sanctions which have no rehabilitative or protective purpose.

Conversely, The Florida Bar argues that the Referee's recommended discipline should be rejected and disbarment be ordered. In support of its position, the Bar argues that the mitigating factors do not justify discipline less severe than disbarment, that the aggravation outweighs the mitigation and that Respondent deserves to be disbarred because of alleged misrepresentation. The Bar cites several cases which it suggests establish that Respondent be disbarred.

Each of the necessary elements of this argument fails and therefore the Bar's conclusion also fails. Moreover, the requested discipline is not consistent with the decisions of this Court.

First, it is critical to an evaluation of the Bar's request that this Court recognize the unusual and distinguishable circumstances recognized by the Referee giving rise to the recommendation of discipline. Here, Respondent has not been determined to have committed a theft of client funds. Instead, the facts found by the Referee show that Respondent failed to appropriately deposit Ms. Austin's settlement funds; used estate funds for his fees prior to court approval; and, as the Bar acknowledged, used funds which were designated for delivery to a governmental agency. Furthermore, the uncontroverted evidence indicates that Respondent was never the subject of criminal charges. Therefore, the presumption of disbarment to which the Bar alludes is not applicable to this case.

Additionally, the suggestion that Respondent made misrepresentations which require or justify harsh discipline is unsupported by both the record and the Referee's findings. In fact, the Referee made no finding of misrepresentation as either a fact or aggravating factor. The Bar's reliance on such allegations further indicates the lack of justification for imposing disbarment.

As to the determination of mitigating and aggravating factors, the Bar suggests that the mitigation proven by Respondent is inadequate to justify the recommended discipline. To the contrary, the mitigation far outweighs any aggravation. Here, the single most important factor is that of Respondent's mental/emotional condition at relevant times. Respondent's condition of depression and its resulting affects upon his judgment account for his procrastination, which was a contributing factor in the handling of the Sherlock estate. [Depo:16]. It accounts for his disorganization and sloppiness in his business practices, including his trust records. [Depo:22]. It also explains how Respondent, despite many years of experience, acted impulsively and inappropriately at the deposition, as found by the Referee. [Depo:23, 24]. It also explains how Respondent allowed himself to exercise bad judgment in making inaccurate representations to the taxing authority as a result of his client's misrepresentation. [Depo:23].

In comparison, the aggravation found by the Referee pales in significance. The aggravating factors also do not justify any

enhancement of discipline because not one reflects upon Respondent's motive or indicates prejudice to a client.

The Bar cites this Court to several prior decisions and suggests that a review mandates the imposition of disbarment. Each case cited is significantly distinguishable from the facts and circumstances existing here.

The Bar cites The Florida Bar v. Shanzer, 572 So.2d 1382 (Fla. 1991). In that case, this Court recognized that mental, drug, or alcohol problems may impair an attorney's judgment so that culpability is diminished. But there, no medical/expert testimony was introduced to that effect and neither the Referee nor this Court found Shanzer to have been impaired. Here, the Referee determined that Respondent's depression and anxiety did impair Respondent and caused him personal, emotional and marital problems. [RR sec. V]. This determination was consistent with the expert testimony of Dr. Rawlings. Additionally, in Shanzer, the aggravating factors of a selfish motive, a pattern of misconduct and multiple offenses existed. These factors do not exist in this case.

The Bar also relies upon The Florida Bar v. Knowles, 500 So.2d 140 (Fla. 1986). There, the respondent converted $197,000.00 from trust to his own use. Respondent presented evidence to the effect that the money delivered to him by Ms. Woolf was not to be ultimately returned to her but was to be used to delay action by the tax collector and then be applied to his fees. [TR3:70,88]. Such evidence is contrary to the clear theft by respondent Knowles

which resulted in eight criminal charges for grand theft and his pleas to the charges. Also, in Knowles, the thefts occurred over approximately four years and totalled $197,000.00.

An important factor in Knowles as distinguished from the case sub judice is that there the Referee recommended disbarment and this Court declined to disturb that decision. Here, the Referee, after considering all evidence, has determined that disbarment is inappropriate and unnecessary. Therefore, the disbarment should not now be imposed upon Respondent.

Next, the Bar argues that this Court should disbar Respondent as it did respondent Shuminer because in that case, as here, the respondent was mentally impaired. The Florida Bar v. Shuminer, 567 So.2d 430 (Fla. 1990). An analysis of that decision indicates the existence of significant factors which are non-existent in this case. First, Mr. Shuminer established a pattern of misappropriating monies which belonged to his clients, and using these monies to purchase such items as a luxury automobile.

Also, in that case, this Court considered the fact that the impairment was caused by alcohol and cocaine abuse and, as in The Florida Bar v. Knowles, the respondent failed to establish that his addictions rose to a sufficient level of impairment to outweigh the seriousness of his offenses. Shuminer, 567 So.2d at 432. The significant impairment found by the Referee and supported by the only medical evidence here, is a significant distinguishing factor which obviates the precedential value of Shuminer.

The Bar cites The Florida Bar v. Anderson, 594 So.2d 302 (Fla. 1992), to suggest that despite the fact that no client suffered any loss, Respondent should receive the most severe discipline available. The facts, rules violated and absence of investigation which existed in Anderson cause it to have no relevance to a determination of discipline in this case. Ms. Anderson committed criminal acts of grand theft and was prosecuted. The court and the Referee determined her guilty of several violations, including the commission of criminal acts. Importantly, there was no finding of Ms. Anderson suffering from a diagnosed disorder which impaired her judgment. In view of these significant differences, it is not persuasive to argue disbarment for Respondent based upon Anderson.

The argument that disbarment is appropriate because of Respondent's alleged misrepresentations attempts to inject an irrelevant element into this proceeding. The Referee, as the trier of fact, failed to conclude that any misrepresentation occurred. The record evidence also fails to support such allegations. In fact, the evidence presented is consistent with a determination that Respondent was often confused and always depressed while his clients engaged in deceptive actions, including attempts to mislead the Bar by altering the Woolf check. Absent any finding of fact or recommendation of guilt for misrepresentation, this argument by the Bar also fails to justify the requested discipline.

On the other hand, the applicable Florida Standards For Imposing Lawyer Sanctions mandate the standards of discipline without suspension. Standard 4.13 provides for a public reprimand

when a lawyer has violated his duty in dealing with client property because of negligence rather than intentional or knowing acts. In view of Respondent's mental impairment at all relevant times and the absence of client prejudice, such discipline is appropriate and consistent with the standards.

Accordingly, the Bar's requested discipline can only serve to enhance the adverse effects of Respondent's condition while addressing no recognized purpose of discipline. The Referee's recommended suspension is also too severe in view of the unique facts and circumstances of this case. A public reprimand combined with an order of probation will however protect the public and also provide Respondent a realistic opportunity to maintain his course of successful treatment and rehabilitation.

CONCLUSION

Richard P. Condon practiced law for twenty years without discipline. Then, during a relatively limited time period, the effects of his depressed condition resulted in technical violations of trust procedures; his failure to adequately handle the property/money of his clients or third parties; his lack of discipline and his inappropriate conduct during a deposition. Although this conduct is not excusable nor justifiable because of Respondent's condition, the conduct is consistent with a mental/emotional condition which impairs the judgment of those who suffer from it. This clearly existing factor, combined with other mitigation and only minimal aggravation, results in a case where this Court should fashion a remedy in lieu of imposing a penalty.

No factors exist which justify disbarment. All factors support a conclusion that Richard P. Condon can continue to serve and protect the public and the Bar without the necessity of suspension.

Respectfully submitted,

Donald A. Smith, P.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail delivery this 22nd day of July, 1993, to: Thomas E. DeBerg, Esquire, The Florida Bar, Suite C-49, Tampa Airport, Marriot Hotel, Tampa, Florida 33607.

Donald A. Smith, Jr.
DONALD A. SMITH, JR., ESQUIRE