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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

JAMES A. HELINGER, JR.,
Respondent.
_____/

Case No. 79,370

TFB No. 91-11,585 (6C)

THE FLORIDA BAR'S INITIAL BRIEF

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SYMBOLS AND REFERENCES

In this Brief, the Petitioner, THE FLORIDA BAR, will be referred to as "The Florida Bar" or "The Bar". JAMES A. HELINGER will be referred to as "Respondent". "TR." will refer to the transcript of the Final Hearing held on August 5, 1992. "RR." will refer to the Report of Referee dated October 12, 1992. "TFB Ex." will refer to The Florida Bar exhibits admitted into evidence at the Final Hearing on August 5, 1992.

STATEMENT OF FACTS AND THE CASE

Beginning in June of 1986 and continuing for almost five (5) years, until his arrest in September of 1989, Respondent systematically harassed a woman by placing threatening and obscene phone calls to her home. These telephone calls were placed by Respondent when he travelled to Tallahassee for the purpose of attending sporting events at Florida State University. (RR.1) During the weekends when these sporting events took place, Respondent placed repeated obscene calls to the victim's residence from Friday evening through the following Sunday morning. (TR.14-19) This lengthy period of intentional and systematic harassment by Respondent was emotionally devastating to the victim. (RR.2) During the first telephone call to the victim, Respondent advised her that he was in possession of nude photographs of her, and that he would show these photographs to her boss unless she went out with him on a date and had sex with him. (TR.17, RR.2, 8) Although she knew that there were no such photographs in existence, the victim felt compelled to reveal the contents of the telephone call to her boss. This experience was both humiliating and embarrassing to her. For the following five years, the victim was terrorized by Respondent's threatening and obscene phone calls. (TR.17-18; TFB Ex.#1; Appendix B.) The scheme and its implementation by Respondent were both systematic and intentional. By his own admission, Respondent placed these telephone calls in Tallahassee in order to avoid detection. (RR.2) He was able to control his impulse to place the telephone calls, delaying doing so

until he was attending sporting events in Tallahassee. The timing of the telephone calls likewise demonstrates control and scheme. (TR.14) After the victim threatened Respondent with jail if he made more calls, the phone calls became random. (TR.15)

Respondent plead guilty to criminal conduct in May of 1991 and was subsequently sentenced to thirty (30) days in jail, six month's probation, together with a fine and costs.[1]

The criminal acts culminating in the 1991 plea were not the first instance of this type of criminal misconduct by Respondent. At the Final Hearing, Respondent acknowledged placing obscene telephone calls since the age of 11. In 1978, Respondent was arrested and charged with placing obscene and harassing telephone calls to a woman, advising her that he would return a ring only upon her agreement to engage in sexual relations with him. (TR. 157-158, RR.4, TFB Ex.#8) Respondent entered into a plea agreement in 1979 and was placed on probation for three years, with a requirement that he continue counseling.[2] Although the conduct apparently ceased for a time after his 1978 arrest, by 1986 he began making the telephone calls to the victim in the instant case and to other individuals, chosen either at random or out of the newspaper. (RR.3-4)

Because the facts in this case were not in dispute, the Final Hearing held August 5, 1992, was used for presentation of evidence

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[1] Respondent entered a plea and was adjudicated guilty of violation of Section 365.16(1)(a) Fla. Stat.

[2]Respondent plead guilty to six (6) counts of Section 365.16(1)(d)/26.012, Fla. Stat.

relating to aggravating and mitigating factors. Although he admitted his guilt on the underlying charges, Respondent took the position that his misconduct was due to a psychiatric problem that exhibited itself only when he was under the influence of alcohol and/or cocaine. Respondent proclaimed his recovery from addiction to alcohol and cocaine. However, no expert witness testified in support of this position. Non-expert witnesses who testified at the Final Hearing, including Respondent's brothers and his wife, testified as to observable changes in Respondent's behavior. However, Respondent had successfully concealed from these same individuals the fact that he was engaging in the use of an illegal drug (cocaine), and that he was engaging in a long-term and persistent pattern of placing obscene and harassing telephone calls to women. (TR.107; 120-121; 129) Further, the testimony of Respondent's own therapist indicates that Respondent had, at the time of Final Hearing, only begun the process of recovery from what was labeled as addictive behaviors. Just ten months prior to the Final Hearing, Respondent's therapist advised Florida Lawyers' Assistance, Inc. that Mr. Helinger was in the beginning stages of recovery. (TFB Ex.#3, p.43, Appendix A, p.8) Approximately two months prior to the Final Hearing the same therapist's notes indicate a resistance by Respondent to attending meetings of a support group, Sex and Love Addicts Anonymous. (TFB Ex.#3, p.1, Appendix A, p.1) Although Respondent professed remorse for the effects of his misconduct on the victim, his therapist's notes describe him as having no empathy. (TR.162-163, TFB Ex.#3, p.39,

Appendix A, p.7)

Subsequent to the Final Hearing and submission of written closing arguments by counsel, the Referee issued a report dated October 13, 1992, wherein he recommended a 90-day suspension together with "probation for an extended period of time, probably until [Respondent] is no longer a member of The Florida Bar." The conditions of the suggested probation are as follows:

> 1. He continue to regularly secure professional counseling and therapy relative to this psychiatric problems (sic). Prior to the termination of the 90 day suspension period, Respondent must submit to an evaluation by a psychiatrist chosen by the Florida Bar and that evaluation and report should be forwarded to the Supreme Court.
>
> 2. He abstain from any use of alcohol or controlled substances except on written direction from a physician.
>
> 3. He continue with the programs of Alcoholics Anonymous and Florida Lawyers' Assistance, Inc., fully complying with all the provisions of said programs including, but not limited to, random testing for the use of alcohol and controlled substances and monitoring by Florida Lawyers' Assistance, Inc.; These random tests should be conducted at least twice a month at Respondent's expense.

On November 20, 1992, the Board of Governors of The Florida Bar instructed Bar Counsel to appeal the Referee's recommendation of a 90 day suspension and seek a three year suspension, and a Petition for Review was filed on November 30, 1992.

SUMMARY OF THE ARGUMENT

The issue addressed in this Brief is whether an attorney charged with systematically harassing a woman with obscene telephone calls for a period of almost five years, and who has twice been arrested and criminally sanctioned for this type of conduct, should receive a ninety-day (90) suspension and be reinstated without proof of rehabilitation. There is no dispute as to the underlying facts. Respondent has engaged in the practice of harassing woman with obscene telephone calls since the age of 11. This behavior persisted even after an arrest, probation, and counseling, and resulted in a second criminal prosecution which is the subject of the instant case.

The record before this Court is devoid of any expert testimony that would support the position that Respondent's criminal conduct was caused by a psychiatric disorder. Nor does the record support a conclusion that Respondent's criminal behavior was causally related to his use of alcohol and cocaine.

Respondent has, since his most recent arrest, sought treatment for several "addictive behaviors". He has not however, been required to prove, by clear and convincing evidence, that he is rehabilitated. A suspension of three years duration is an appropriate discipline for Respondent's serious misconduct, and requires that he demonstrate his rehabilitation before being allowed to resume the practice of law.

Attorneys are officers of the Court who must live within the

law. When they do not, they demean not only themselves, but the dignity of the legal profession. As Justice Ehrlich stated in his dissenting opinion in The Florida Bar v. Levine, 498 So. 2d 941, at 942 (Fla. 1986):

> Lawyers are officers of the Court and members of the third branch of government. That unique and enviable position carries with it commensurate responsibilities. If the public cannot look to lawyers to support the law and not break it, then, pray tell, to whom may they look. It is this proper perception that makes this seemingly innocuous (in the superficial sense that the only one adversely affected is the one who indulges in the use of the drug) breach of law, so very pernicious, in the eyes of the public and understandably gives rise to a full measure of cynicism. The bar needs the support of the public but it must merit that support, and when this Court gently slaps the wrist of a member of the bar who uses cocaine in contravention of the statute, the public may arguably have reason to believe that we are treating the bar as a privileged class above law and other citizens.

A suspension of three years would send a strong message to the bar, bench, and public that conduct such as Respondent's will not be treated lightly.

ARGUMENT

I. THE REFEREE'S RECOMMENDED DISCIPLINE, A 90-DAY SUSPENSION, IS INSUFFICIENT CONSIDERING THE SERIOUS NATURE OF RESPONDENT'S MISCONDUCT.

A. THE NATURE AND DURATION OF RESPONDENT'S MISCONDUCT REFLECTS ADVERSELY ON RESPONDENT'S FITNESS AS A LAWYER AND THE REPUTATION AND DIGNITY OF THE PROFESSION.

For almost five years Respondent deliberately and systematically victimized a woman to meet his own perverse needs. While attending sporting events at Florida State University, Respondent placed repeated phone calls, some in rapid succession, to the victim's home. These telephone calls generally began on a Friday evening and continued through the following Sunday morning. (TR.18-19, TFB Ex.#1, Appendix B) The content of these telephone calls was obscene and/or threatening in nature. Respondent apparently singled out this particular woman as a victim because he had known her briefly while attending college. (TR.13, TFB Ex.#1, p.6)

There is no dispute as to the Respondent's guilt in this case. Respondent has not challenged the Bar's charges against him. Therefore, the issue before this Court is whether the 90-day suspension recommended by the Referee is sufficient for the misconduct in question.

Pursuant to the Florida Standards for Imposing Lawyer Sanctions, a lawyer's mental state is a factor which is relevant to the determination of an appropriate discipline. In this case, there can be no question that Respondent's conduct was deliberate,

intentional, and systematic. The conduct with which he was charged took place over a period of almost five years, and the evidence before this Court demonstrates a long history of misconduct by Respondent which reflects a disregard for society and the laws of the State. The Respondent has acknowledged placing obscene telephone calls since the age of 11. He has twice been arrested, charged, and criminally sanctioned for placing obscene and harassing telephone calls to women. The earlier arrest took place in 1978 and, although the misconduct apparently ceased for a time after that arrest and probation, Respondent again began placing obscene and harassing telephone calls to other individuals, including the victim in the instant case. His disregard for the law is further evidenced by the fact that for a period of approximately ten years, Respondent also engaged in the use of cocaine, an illegal drug.

Respondent's 1978 arrest arose out of repeated harassing and obscene telephone calls to a woman who had placed an advertisement concerning a lost ring. Respondent suggested to the woman that he would not return the ring unless she agreed to engage in a sexual relationship with him. (TR.157-158, TFB Ex.#8) In the case at bar, in his initial call to the victim, Respondent threatened to show non-existent nude photographs of the victim to her employer unless she agreed to go out with him. Both of these instances of criminal misconduct involve extortion and degradation of the women he was victimizing. Respondent's misconduct reflects adversely, both on his fitness as a lawyer, and on the reputation and dignity

of the profession.

B. THE EVIDENCE IN THE RECORD IS INSUFFICIENT TO ESTABLISH A CAUSAL CONNECTION BETWEEN THE UNDERLYING CONDUCT AND RESPONDENT'S USE OF ALCOHOL AND COCAINE.

Respondent would have this Court believe that in the case at bar, he was unable to control his conduct, and unable to seek professional help, even though at that same period of time he was able to maintain a successful law practice and to confine his misconduct to those weekends when he was in Tallahassee to attend sporting events. His ability to think, analyze, and organize information remained intact during the time he tormented his victim and abused cocaine. Respondent further seeks to excuse his misconduct because of his use of alcohol and cocaine. However, it is clear from the record that Respondent began engaging in the practice of placing obscene/harassing telephone calls as early as the age of 11. The Referee noted that, in connection with the Court ordered probation in the 1978 charges, the treating psychologist did not diagnose Respondent's problem as being related to the consumption of alcohol or drugs. (RR.4) Respondent's own testimony indicates that his cocaine use did not begin until approximately 1981, well after the 1978 charges. (TR.153-154)

The record is devoid of <u>expert</u> testimony which would establish a causal connection between Respondent's alcohol and cocaine use and the criminal conduct. The primary evidence in the record offered to support such a connection is Respondent's own self-serving testimony to the effect that he only placed the obscene

phone calls when he was abusing alcohol and cocaine.

Respondent's current therapist, Mr. Timothy McGivern, testified at the Final Hearing but was not offered as, nor qualified as, an expert witness. Mr. McGivern testified that it is not uncommon to have multiple addictions, i.e. alcohol, cocaine and "sexual addiction." However, he also testified as follows under questioning by Respondent's counsel:

> Q. (By Mr. Earle) In the case of Mr. Helinger, do you have to look at all these addictions as a common problem create -- or a common cause of the problem which is involved here? If you took away if he didn't drink any and he had no cocaine, do you have any reason to believe that he would engage in making obscene phone calls?
>
> A. (By Mr. McGivern) I think that unless he works the program, there is a high probability that even without the alcohol or cocaine, that that problem can happen.
>
> Q. All right. Now, if he works at the program, what does that do with that high probability?
>
> A. It lowers the probability. And there are specific things that we can look at that as he continues and he follows through with the program that he is doing, that it lowers the probability. That does not mean that that behavior-- Just because he is not drinking or doing cocaine, that would not happen. The probability can't -- (TR.56-57)

Respondent's own witness does not support the proposition that absent substance abuse, Respondent's perverse mistreatment of women would not have occurred.

C. PROOF OF REHABILITATION SHOULD BE REQUIRED IN ORDER TO PLACE AN AFFIRMATIVE DUTY ON RESPONDENT TO SHOW THAT HE HAS REHABILITATED HIMSELF.

The Referee's Report details Respondent's steps in seeking and obtaining treatment for his various addictive behaviors. The Referee did not make a finding of rehabilitation; rather, he noted in his report that Respondent has "an excellent chance of being fully rehabilitated." (RR.6-7) (emphasis supplied) The Referee also noted that Respondent is apparently "determined to rehabilitate himself." (RR.8) In the Referee's citation to applicable sections of the Florida Standards relating to aggravating and mitigating factors, there is no citation to the section dealing with interim rehabilitation.

No expert testimony was offered at the Final Hearing concerning the nature and extent of Respondent's treatment for "sexual addiction," nor was any expert testimony offered as a diagnosis or as to prognosis. Mr. McGivern, who testified as to factual information, preserved his impressions of Respondent's treatment in the form of treatment notes which were introduced into evidence. A summary of these notes indicates as follows:

> August 6, 1991: Respondent reported to Mr. McGivern that he had been making contact with a woman with whom he had engaged in consensual phone sex and that they were engaging in flirting behavior in "dangerous areas." [Appendix A; TFB Ex.#3, p.31]
>
> August 12, 1991: Notes of this date indicate Mr. Helinger "is somebody who very much wants to control, wants to do it his way. At this point he has not contacted SLAA which is Sex and Love Addiction Anonymous hotline."
>
> ...

"Staying very concrete with him and wanting him to take a look if he does not go to his meetings there is very much a possibility or probability of relapse." (emphasis supplied)

...

"I like Jim and feel that he will embrace recovery at some point. He has done that with the cocaine and alcohol but has not with the sexual recovery." (emphasis supplied) [Appendix A; TFB Ex.#3, p.32]

...

August 20, 1991: Mr. McGivern's notes describe Mr. Helinger as reacting with extreme anger when confronted with control issues. [Appendix A; TFB Ex.#3, p.33]

September 11, 1991: These notes describe Mr. Helinger as feeling angry, victimized, and blaming. Notes of this day also describe Mr. Helinger's attitude one day prior to his criminal trial on the telephone harassment charges as "[it's] as if there's no empathy, he's almost kind of washed his hands and everything is fine now." (emphasis supplied) [Appendix A; TFB Ex.#3, p.39]

October 1, 1991: In a letter to Charles Hagan, Executive Director of Florida Lawyers Assistance, Inc., Mr. McGivern stated as follows: "I see Mr. Helinger in beginning stages of sexual addiction and drug and alcohol recovery which means that his sobriety is the key at the present time." (emphasis supplied) [Appendix A; TFB Ex.#3, p.43]

October 8, 1991: Mr. McGivern's notes describe Mr. Helinger as follows: "Jim wants to look good, but has a difficult time with honesty. He even said in this session that he doesn't have a problem with lying, he has lied his whole life to get what he wants." The notes of this date further indicate, "he's a very charming and manipulative man who has a lot of feelings of distrust and fear and is beginning to take a look at his part and his own addiction." (emphasis supplied) [Appendix A; TFB Ex.#3, p.45]

November 13, 1991: Mr. Helinger's own notes are as follows: "I still fantasize about having sex with some woman outside my relationship. With my sexual addiction, I have power, control, I watch rape scenes and I get excited. The more dangerous, the more exciting for me. Hitting, biting, - - - this lady I was seeing would have rings on her nipples and vagina - - - a lot of

bondage and I admit I still fantasize about that. Open, caring, fearful of relapse." [Appendix A; TFB Ex.#3, p.47]

January 29, 1992: Notes of this day include: "What I saw with him too was know - it - all, he sees himself "as better, than" and what he'll do is rescue - - play "Superman" with people he thinks are inferior to him and then can play big shot." Notes of this date further indicate: "He is a major caretaker and I told him that I could see that he'll relapse because of his co-dependency." [Appendix A; TFB Ex.#3, p.53]

June 3, 1992: McGivern indicates that he recommended to Helinger that he begin attending S.L.A.A. meetings and that "he does not like it, was upset, mildly upset. Went on to explain why he doesn't need to be doing that." The notes further indicate: "I am seeing some patterns I don't feel comfortable with." [Appendix A; TFB Ex.#3, p.1]

The last entry in Mr. McGivern's notes, made a little more than a month before the Final Hearing in the instant case, describe Respondent as an individual who continues to be resistant to treatment.

In the light most favorable to Respondent, the evidence presented at the Final Hearing shows an individual who has begun the process of recovery from alcohol and cocaine addiction. No expert witness testified concerning resolution of Respondent's criminal behavior.

Respondent's initial treatment in the instant matter was in a residential treatment center in Minnesota by the name of Golden Valley Health Center. This treatment commenced on May 15, 1991, and continued for approximately one month. The individuals at Golden Valley who evaluated and treated Respondent did not testify at the Final Hearing. We have only their reports, which comprise Florida Bar composite Ex.#2. The discharge evaluation by Dr.

Stephen Barton of Golden Valley describes Respondent as follows:

> It should be emphasized that Jim's intent is not always hostile or malicious. It is frequently derived from an intense underlying insecurity, although he would tend to cover this up with a feeling of omnipotence and that the arrogant assumption that the rules of social responsibility do not apply to him. Unfortunately, he is quick to project to blame (sic) onto others and will use anger as a pretense of fending off what he perceives to be his attackers and it is very likely that therapeutic relationships will follow this pattern as well. It should be emphasized that beneath his public posture is an intense anxiety over being exposed, and he fears, to be shamed.
>
> People with this personality style are frequently found to resort to addictive behaviors, special excesses and other forms of irresponsible acting out. They also tend to devalue others and to not trust others judgment, not (sic) their own. Rather than question the correctness of their own beliefs, they quickly assume that others are at fault. [Appendix A; TFB Ex.#3, p.13-14) (emphasis supplied)

Dr. Barton's evaluation describes an individual whose feelings of omnipotence allow him to devalue and victimize others, then project the blame for his actions onto others. This is consistent with the feelings of "power and control" experienced in connection with fantasies about rape, bondage, and violent sex, that were related to his current therapist. (TR.70; TFB Ex.#3, p.47) Also consistent with the Golden Valley evaluation, is the attempt by Respondent to excuse his misconduct by blaming it variously on his family history, his alcoholism, and his abuse of an illegal drug.

The discharge summary from Golden Valley recommended that Respondent receive follow-up treatment as an inpatient. Respondent testified concerning treatment sought at a facility known as "Parkside", but no evidence was presented concerning the nature or extent of the treatment, the diagnosis, or the prognosis given to

Respondent by "Parkside." Without expert testimony, it cannot reasonably be concluded that Respondent's behavior was a result of a treatable, now controlled, psychiatric disorder. In fact, there was no expert testimony establishing that the Respondent could not have controlled these behaviors at the time he indulged in them, had he chosen to do so. To the contrary, Respondent appears to have been capable of controlling the time, place and manner of the telephone calls in order to avoid detection. (TFB Ex.#1, p.6) During the time when the misconduct took place, Respondent retained the ability to make judgments, to reason, and to carry on a successful law practice. (TR.161)

D. CASES PREVIOUSLY DECIDED BY THIS COURT, TOGETHER WITH THE FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS, SUPPORT THE IMPOSITION OF A THREE-YEAR SUSPENSION IN THIS CASE.

Pursuant to Standard 5.12 of the Florida Standards for Imposing Lawyer Sanctions, "Suspension is appropriate when a lawyer knowingly engages in criminal conduct not included within Standard 5.11 and that seriously reflect on the lawyer's fitness to practice." None of the disciplinary cases reviewed that have been previously decided by this Court is directly on point. However, there are a number of critical factors in this case which have been previously addressed. For example, Respondent's misconduct was unrelated to the practice of law, and constituted misdemeanor, rather than felony, violations of the law. This Court has previously recognized that misdemeanor conduct unrelated to the practice of law is a proper subject for a disciplinary proceeding.

In The Florida Bar v. Levine, 498 So. 2d 941 (Fla. 1986), this Court held that a misdemeanor conviction of personal use of cocaine warranted a public reprimand. Likewise, in The Florida Bar v. Levin, 570 So. 2d 917 (Fla. 1990), this Court found that an attorney who engaged in illegal gambling should be disciplined by public reprimand. This Court noted in the Levin case that attorneys, as officers of the Court, must live within the law. The Levin case recognized the fact that an attorney's knowing and intentional participation in illegal conduct has the effect of bringing the legal profession into disrepute.

Several factors set Respondent's conduct apart from cases such as Levin and Levine, where there was misdemeanor conduct unrelated to the practice of law. Respondent's conduct in the instant case involved the deliberate and intentional victimization of a woman for a period of almost 5 years. The crimes in Levin and Levine were "victimless" crimes. Additionally, Respondent has previously been convicted, received probation and counseling, for the same type of misconduct. A suspension of three years duration in this case would allow Respondent to continue pursuing reformation and rehabilitation, while at the same time the public would be protected from such misconduct by a practicing attorney. Such a suspension would likewise send a message both to other attorneys and to members of the public that this Court does not take lightly a pattern of disregard both for the criminal statutes and the rights of others.

The discipline recommended by the Referee, a 90-day

suspension, falls short of the ninety-one day period which requires that an attorney prove rehabilitation prior to reinstatement. This Court has imposed periods of suspension requiring proof of rehabilitation on attorneys who engage in serious criminal misconduct unrelated to the practice of law, even where the attorney has taken steps towards rehabilitation and reformation. In The Florida Bar v. Corbin, 540 So. 2d 105 (Fla. 1989), this Court ordered a suspension for three years for a single incident of attempted sexual activity with a child between the ages of 12 and 18 over whom the attorney had custodial authority. This Court stopped short of disbarment even though Corbin's conduct constituted a felony, because of "substantial mitigation". Corbin, like Respondent, had entered and completed a residential alcohol treatment program, had begun psychosexual counseling, and had completed Court ordered probation. Respondent's misconduct, while not a felony, involved repeated instances of harassment over a period spanning almost five years. Furthermore, Respondent is also a repeat offender. Respondent should only be allowed to continue as a member of The Florida Bar after a suspension followed by proof of rehabilitation. Respondent should be required to demonstrate by clear and convincing evidence, and with expert testimony, that he has received evaluation and treatment, and that he has rehabilitated himself.

As noted in The Florida Bar v. Thompson, 500 So. 2d 1335 (Fla. 1986):

> "[a] mere suspension for a period of time with the assurance of automatic reinstatement at the end of the

> prescribed period does not impose upon the lawyer the responsibility of taking affirmative action during the period of suspension to gain readmittance at the end of the period." (citation omitted).

A failure to require Respondent to prove rehabilitation would cast serious doubt on the ability of the legal profession to police itself, and would tend to breed contempt and distrust of lawyers.

The Referee's recommendation of a 90-day suspension was based in part on his conclusion that "the events of 1978 and 1991 were aberrations caused largely by an undiagnosed and untreated disease and mental problem which is now under medical control and continuing supervision by capable support organizations". (RR. 9) Respondent's misconduct can hardly be characterized as an "aberration". Respondent has admitted placing obscene and threatening telephone calls to women since the age of 11. This pattern resurfaced even after the 1978 arrest and a court-ordered period of probation and counseling. The most recent occurrences took place over a period of almost five years. Respondent's conduct is not an aberration; for him it has been a perverse, cruel, recreational activity for over thirty years.

CONCLUSION

The cold record containing the testimony of the victim, and the letter which she wrote to the State Attorneys Office, cannot adequately portray the injury to this woman, who was but one of Respondent's many victims. Over a period of 34 years, Respondent chose women as his victims and terrorized, threatened, and harassed them with obscene telephone calls. During those 34 years he became skilled at concealing his behavior. Respondent's own therapist's notes describe him as a "charming and manipulative man," someone who "has a difficult time with honesty," and someone who "has lied his whole life to get what he wants." [Appendix A; TFB Ex.#3, p.45.] The record clearly shows an attorney who has again and again violated the law, victimizing women to meet his own selfish needs. This behavior predated his use of alcohol and drugs, persisted during periods of abstinence, and resumed after his first arrest, probation, and counseling. No competent evidence of a causally related psychiatric disorder was presented to the Referee. There has therefore been no showing that Respondent could not have controlled his behavior. In fact, he carefully controlled the time, place, and manner of his perverse recreation. His actions reflect a general unfitness to practice law.

A lengthy suspension is required in order to compel Respondent to prove rehabilitation, and to demonstrate to the public that this Court takes very seriously repeated harassment and victimization of women by a Florida attorney, and deems such an attorney unfit to be a member of The Bar without proof of rehabilitation.

WHEREFORE, THE FLORIDA BAR respectfully requests that this Court reject the Referee's recommendation for a 90-day suspension and instead suspend Respondent for a period of three years.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and 12 copies of the FLORIDA BAR'S INITIAL BRIEF is being sent to SID J. WHITE, Clerk, The Supreme Court of Florida, 500 South Duval, Tallahassee, Florida 32399-2927, and a copy to James A. Helinger, Jr., Esquire, c/o RICHARD T. EARLE, JR., Esquire, 150 2nd Avenue North, Suite 1220, St. Petersburg, Florida 33701-3342, by regular U.S. Mail this 21st day of December, 1992.

SUSAN V. BLOEMENDAAL
Assistant Staff Counsel