IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant

vs.

CHARLES K. INGLIS,

Respondent.
_____/

Case No. 80,262
TFB No. 91-11,119(13C)

RESPONDENT'S ANSWER BRIEF

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Florida Standards for Imposing Lawyer Sanctions, Standard 3.0

Florida Standards for Imposing Lawyer Sanctions, Standard 5.1

PRELIMINARY STATEMENT

In this brief, the Petitioner, THE FLORIDA BAR, will sometimes be referred to as "The Florida Bar" or "The Bar." CHARLES K. INGLIS will sometimes be referred to as the "Respondent." "TR" will refer to the transcript of the Final Hearing and the Disciplinary Hearing held on March 2, 1994, April 11, 1994, and October 12, 1994. The Report of the Referee dated July 20, 1994 will be referred to as the "Report" and the Supplemental Report of the Referee dated November 16, 1994 will be referred to as the "Supplemental Report." "TFB Ex." will refer to The Florida Bar exhibits and "R. Ex." will refer to the Respondent's exhibits, admitted into evidence at the Final Hearing.

STATEMENT OF THE FACTS AND CASE

The Respondent disagrees with the STATEMENT OF FACTS AND CASE of The Florida Bar to the extent noted herein.

The Florida Bar has included the fact that "there is no dispute that Mr. Goldfoot went to Respondent's office on February 4, 1991, for the purpose of serving process on the Respondent." However, the Respondent disputed that he had any knowledge of the purpose of Mr. Goldfoot's visit. Mr. Goldfoot testified, as did Ms. O'Donnell, that when he initially entered the Respondent's office Mr. Goldfoot did not identify himself as a process server but instead just handed Ms. O'Donnell a business card which stated "Arnold Goldfoot, Realtor." (TR. 11, 25-26, 101-102). The Respondent testified that his secretary, Ms. O'Donnell advised him that a real estate broker was here to see him. (TR. 184). The Respondent testified that neither Mr. Goldfoot or Ms. O'Donnell advised him that Mr. Goldfoot was at his office to serve him with process. (TR. 192).

The Florida Bar has included the fact that Mr. Goldfoot was a former acquaintance of the Respondent. However, the Respondent denied knowing Mr. Goldfoot. (TR. 192). In fact, it was not until the Respondent received a letter from The Bar which included the complaint filed by Mr. Goldfoot did the Respondent know the identity of the person at his office. (TR. 195). Deputy Potter confirmed that the Respondent stated that he did not know the name of the person in his office at the time of the incident. (TR. 57).

The Florida Bar has stated that "[a]s Mr. Goldfoot approached Mr. Inglis' closed office door, Respondent bolted out of the door and immediately struck Mr. Goldfoot...Respondent continued to punch, kick, and shove Mr. Goldfoot, while swearing and cursing at him..." Ms. O'Donnell testified that she asked Mr. Goldfoot to leave but Mr. Goldfoot did not leave. (TR. 107). Instead, Mr. Goldfoot walked by Ms. O'Donnell and down the hall towards the Respondent's office. (TR. 107). Ms. O'Donnell then followed Mr. Goldfoot and placed herself between Mr. Goldfoot and the door leading to the Respondent and once again asked Mr. Goldfoot to leave. (TR. 107). Ms. O'Donnell testified that she was speaking in a voice loud enough for the Respondent, on the other side of the door, to hear. (TR. 107). The Respondent testified that he heard Ms. O'Donnell scream "Look out. There's somebody breaking in." (TR. 185). The Respondent then heard a large rap on one of the walls of the building. (TR. 186). The Respondent then opened the door and saw a man standing in front of the door facing his secretary. (TR. 186-7). The Respondent believed that the man was an intruder and thought that the man was holding Ms. O'Donnell's wrists. (TR. 188). The Respondent then used force to eject the intruder from the office. (TR. 189-191). Ms. O'Donnell testified that the Respondent was attempting to maneuver Mr. Goldfoot out the door and was not simply kicking Mr. Goldfoot in one area of the office. (TR. 110).

Immediately following the incident, Deputy Sheriff Amsler arrived at the office. The Florida Bar has stated that "Respondent gave no indication to Deputy Amsler .... that he and Mr. Goldfoot

were acquainted..." The Respondent testified that he had no idea who the man was. (TR 192). The Respondent testified that he asked the deputy to file charges but the deputy advised them that he could not file charges when the identity of the intruder was unknown. (TR. 193-194).

The Florida Bar has stated that "when Respondent received a letter from The Bar concerning Mr. Goldfoot's complaint, he immediately instructed Ms. O'Donnell to call law enforcement authorities." The Respondent testified that he did not know the identity of the man until he received a letter from the Bar which included the complaint filed by Mr. Goldfoot. (TR. 195). Therefore, at the time of the receipt of the letter from the Bar, the Respondent did instruct Ms. O'Donnell to call the Sheriff's office. (TR. 196). Deputy Potter then arrived at the office. (TR. 197).

The Florida Bar has stated the "[s]ubsequent to Respondent's unprovoked battery of Mr. Goldfoot, he engaged in a scheme to cover-up his misconduct, by lying to law enforcement authorities [including submitting a false report to Deputy Potter], and by later directing Ms. O'Donnell to prepare and sign a false affidavit...After Ms. O'Donnell left Respondent's employment, he encouraged her to stick by her false story."

Both Ms. O'Donnell and the Respondent related the incident to Deputy Potter and described the incident as an intruder breaking into the office. (TR. 197-198). The Respondent testified that he really did not know what had occurred in the office between Mr. Goldfoot and Ms. O'Donnell. (TR. 198). The Respondent assumed

that what Ms. O'Donnell told Deputy Potter was true. (TR. 198). Ms. O'Donnell testified that:

> Q. Before he [Deputy Potter] got there, did Mr. Inglis tell you, "Now, Tammy, if you value your job, this is the version you're going to give the Sheriff, because, if you don't, you're going to find yourself on the street"? Did he say that to you?
>
> A. No.
>
> Q. Before the Sheriff's representative came out there, did he ever tell you that unless you give a story to that representative that was satisfactory to him, Charles Inglis, that you would no longer be employed there?
>
> A. No.

(TR. 116). In fact, Ms. O'Donnell testified that the Respondent had never told her that she would be fired if she did not tell the sheriff what he wanted her to nor had he ever threatened her with the loss of her job. (TR. 117). Ms. O'Donnell testified that she lied to Deputy Potter in relating the incident to him. (TR. 117).

Ms. O'Donnell completed a Request for Prosecution form which stated that Mr. Goldfoot had placed his hands on her and almost knocked her down. (TR. 58-59 and TFB Ex. 4). Ms. O'Donnell testified that what she put in the Request for Prosecution was also a lie. (TR. 118).

The Respondent testified that he asked Ms. O'Donnell to put the statement she made to Deputy Potter into an affidavit because of his concern regarding the complaint filed with the Bar by Mr.

Goldfoot. (TR. 200). The Respondent testified that he assisted Ms. O'Donnell in preparing the affidavit by providing her with an affidavit form, asking her questions as to the facts, so she could take notes and then use the notes to put the information in numbered paragraphs. (TR. 200-201). Ms. O'Donnell testified that the information in the affidavit was a lie. (TR. 126).

The Florida Bar omitted the Findings of Fact of the Referee. The Referee made the following Findings of Fact in his July 20, 1994 Report of Referee:

1. Arnold Goldfoot's testimony was that he went to Mr. Inglis' office to serve process on Mr. Inglis, identified himself to Mr. Inglis's secretary, Tammy O'Donnell, as a process server, and was attacked by Mr. Inglis unprovoked.

2. Tammy O'Donnell testified that Mr. Inglis knew that someone was going to serve him with papers and that she was to tell that person that he was not in. Additionally, Ms. O'Donnell's testimony that Mr. Goldfoot never touched her and that Mr. Inglis attacked Mr. Goldfoot without being provoked is consistent with Mr. Goldfoot's testimony.

3. Although Ms. O'Donnell initially lied in the version of the facts she related to Deputy Amsler, and later related in written form in the request for prosecution and the affidavit, she swears that she gave these false statements because she was afraid of losing her job. Even though she gave directly conflicting testimony, her later version impressed the referee that the facts

related by Mr. Goldfoot and Ms. O'Donnell are what actually occurred.

4. Mr. Inglis' testimony was that he thought Mr. Goldfoot was an intruder attacking his secretary, Ms. O'Donnell. Mr. Inglis himself testified that he grabbed Mr. Goldfoot from behind and physically ejected him from the office without inquiring as to Mr. Goldfoot's identity or why he was in the office. He told the deputy that he did not know who was in the office even though the evidence presented indicated that Mr. Inglis and Mr. Goldfoot were acquainted.

5. It is obvious to this referee that one of the parties is lying. The testimony of Ms. O'Donnell and Mr. Goldfoot was credible--that of Mr. Inglis was not, especially considering the circumstances of his prior suspension. *State v. Inglis*, 169 So. 2d 701 (Fla. 1964). The evidence presented rose to the clear and convincing standard that is needed to sustain a disciplinary decision against the respondent.

(Report pp.1-2).

On November 16, 1994, the Referee issued a Supplemental Report of Referee recommending that the Respondent be suspended for a period of 91 days, with proof of rehabilitation required prior to reinstatement. (Supplemental Report p.1). The Referee considered the following aggravating factors: prior disciplinary offenses, dishonest or selfish motive, multiple offenses, submission of false statements during a disciplinary process, and refusal to recognize the wrongful nature of the misconduct. (Supplemental Report p.2).

The Referee considered the following mitigating factors: cooperative attitude toward the proceedings and reputation. (Supplemental Report p.2).

SUMMARY OF ARGUMENT

The Referee's recommendation that the Respondent be suspended for a period of 91 days, with proof of rehabilitation required prior to reinstatement, is sufficient discipline under the circumstances presented in this case and is in accordance with the *Florida Standards for Imposing Lawyer Sanctions*.

The Referee found that there was clear and convincing evidence that the Respondent violated the following *Rules Regulating The Florida Bar*: Rules 3-4.3, 3-4.4, 4-8.4(a), 4-8.4(b), 4-8.4(c), and 4-8.4(d), "when he battered Mr. Goldfoot and lied about the incident to the investigating officers and this referee." (Report p.3).

The Referee found the following aggravating factors: prior disciplinary offenses, dishonest or selfish motive, multiple offenses, submission of false statements during a disciplinary process, and refusal to recognize the wrongful nature of the misconduct.

The Respondent's only prior disciplinary offense occurred in 1964. The Respondent was subsequently reinstated in 1985.

The Referee found the following mitigating factors: cooperative attitude toward the proceedings and reputation.

The Florida Bar has argued that the Respondent should be disbarred. However, the imposition of the discipline of disbarment is too extreme under the circumstances presented in this case.

The standard to be applied in reviewing the Report of the Referee is that the findings and conclusions of the Referee are to be accorded substantial weight and should not be overturned unless they are clearly erroneous or lacking in evidentiary support.

ARGUMENT

I. THE REFEREE'S RECOMMENDED DISCIPLINE OF A 91 DAY SUSPENSION IS SUFFICIENT UNDER THE CIRCUMSTANCES PRESENTED IN THIS CASE.

A. Response to The Bar's argument that the Respondent's misconduct reflects adversely on his fitness as a lawyer and demonstrates an absence of honesty and integrity.

The Florida Bar has set forth in its Argument summarized excerpts from the final hearing in this matter in support of the proposition that the Respondent's conduct reflects adversely on his fitness as a lawyer and demonstrates an absence of honesty and integrity.

However, the only findings of fact made by the Referee in his July 20, 1994 Report of Referee are as follows:

"1. Arnold Goldfoot's testimony was that he went to Mr. Inglis' office to serve process on Mr. Inglis, identified himself to Mr. Inglis's secretary, Tammy O'Donnell, as a process server, and was attacked by Mr. Inglis unprovoked.

2. Tammy O'Donnell testified that Mr. Inglis knew that someone was going to serve him with papers and that she was to tell that person that he was not in. Additionally, Ms. O'Donnell's testimony that Mr. Goldfoot never touched her and that Mr. Inglis attacked Mr. Goldfoot without being provoked is consistent with Mr. Goldfoot's testimony.

3. Although Ms. O'Donnell initially lied in the version of the facts she related to Deputy Amsler, and later related in written form in the request for prosecution and the affidavit, she swears that she gave these false statements because she was afraid of losing her job. Even though she gave directly conflicting testimony, her later version impressed the referee that the facts related by Mr. Goldfoot and Ms. O'Donnell are what actually occurred.

4. Mr. Inglis' testimony was that he thought Mr. Goldfoot was an intruder attacking his secretary, Ms. O'Donnell. Mr. Inglis himself testified that he grabbed Mr. Goldfoot from behind and physically ejected him from the office without inquiring as to Mr. Goldfoot's identity or why he was in the office. He told the deputy that he did not know who was in the office even though the evidence presented indicated that Mr. Inglis and Mr. Goldfoot were acquainted.

5. It is obvious to this referee that one of the parties is lying. The testimony of Ms. O'Donnell and Mr. Goldfoot was credible--that of Mr. Inglis was not, especially considering the circumstances of his prior suspension. *State v. Inglis*, 160 So. 2d 701 (Fla. 1964). The evidence presented rose to the clear and convincing standard that is needed to sustain a disciplinary decision against the respondent.

6. I have concluded as a matter of law and as a matter of fact that there is clear and convincing evidence that Mr. Inglis violated the following Rules Regulating the Florida Bar...[rule

citations omitted]..when he battered Mr. Goldfoot and lied about the incident to the investigating officers and this referee. The referee finds him guilty of each of the charges brought by the Florida Bar."

(Report pp 1-3).

The Florida Bar failed to prove and the Referee did not find that the Respondent was aware that the purpose of Mr. Goldfoot's visit was to serve process on the Respondent. Mr. Goldfoot testified, as did Ms. O'Donnell, that when he initially entered the Respondent's office he did not identify himself as a process server but instead just handed Ms. O'Donnell a business card which stated "Arnold Goldfoot, Realtor." (TR. 11, 25-26, 101-102). The Respondent testified that his secretary, Ms. O'Donnell advised him that a real estate broker was here to see him. (TR. 184). The Respondent testified that neither Mr. Goldfoot or Ms. O'Donnell advised him that Goldfoot was at his office to serve him with process. (TR. 192).

The Florida Bar has stated that the "Respondent bolted out of a door and viciously attacked Mr. Goldfoot." However, the Referee did not make such a finding. The Referee did find that the Respondent battered Mr. Goldfoot. (Report p.2). Ms. O'Donnell testified that she asked Mr. Goldfoot to leave but Mr. Goldfoot did not leave. (TR. 107). Instead, Mr. Goldfoot walked by Ms. O'Donnell and down the hall towards the Respondent's office. (TR. 107). Ms. O'Donnell then followed Mr. Goldfoot and placed herself between Mr. Goldfoot and the door leading to the Respondent and once again

asked Mr. Goldfoot to leave. (TR. 107). Ms. O'Donnell testified that she was speaking in a voice loud enough for the Respondent, on the other side of the door, to hear. (TR. 107). The Respondent testified that he heard Ms. O'Donnell scream "Look out. There's somebody breaking in." (TR. 185). The Respondent then heard a large rap on one of the walls of the building. (TR. 186). The Respondent then opened the door and saw a man standing in front of the door facing his secretary. (TR. 186-7). The Respondent believed that the man was an intruder and thought that the man was holding Ms. O'Donnell's wrists. (TR. 188). The Respondent then used force to eject the intruder from the office. (TR. 189-191). Ms. O'Donnell testified that the Respondent was attempting to maneuver Mr. Goldfoot out the door and was not simply kicking Mr. Goldfoot in one area of the office. (TR. 110).

The Florida Bar has stated that subsequent to the attack on Mr. Goldfoot, the Respondent "lied to law enforcement authorities concerning the incident, that he engaged in a scheme to cover up his own illegal and unethical conduct, that he involved his employee in this scheme by allowing her to corroborate his false statement and by instructing her to prepare a false affidavit, and that he then lied to the Referee who heard this matter." The Referee found that the Respondent lied to the investigating officers and to the Referee. (Report P.3). However, the Bar failed to prove and the Referee did not find that "he [the Respondent] engaged in a scheme to cover up his own illegal and unethical conduct [or] that he involved his employee in this scheme by

allowing her to corroborate his false statement...[or that the Respondent] instructed her to prepare a false affidavit..."

Both Ms. O'Donnell and the Respondent related the incident to Deputy Potter and described the incident as an intruder breaking into the office. (TR. 197-198). The Respondent testified that he really did not know what had occurred in the office between Mr. Goldfoot and Ms. O'Donnell. (TR. 198). The Respondent assumed that what Ms. O'Donnell told Deputy Potter was true. (TR. 198). Ms. O'Donnell testified that:

> Q. Before he [Deputy Potter] got there, did Mr. Inglis tell you, "Now, Tammy, if you value your job, this is the version you're going to give the Sheriff, because, if you don't, you're going to find yourself on the street"? Did he say that to you?
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> A. No.
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> Q. Before the Sheriff's representative came out there, did he ever tell you that unless you give a story to that representative that was satisfactory to him, Charles Inglis, that you would no longer be employed there?
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> A. No.

(TR. 116). In fact, Ms. O'Donnell testified that the Respondent had never told her that she would be fired if she did not tell the sheriff what he wanted her to nor had he ever threatened her with the loss of her job. (TR. 117). Ms. O'Donnell testified that she lied to Deputy Potter in relating the incident to him. (TR. 117).

Ms. O'Donnell completed a Request for Prosection form which stated that Mr. Goldfoot had placed his hands on her and almost knocked her down. (TR. 58-59 and TFB Ex. 4). Ms. O'Donnell testified that what she put in the Request for Prosecution was also a lie. (TR. 118).

The Respondent testified that he asked Ms. O'Donnell to put the statement she made to Deputy Potter into an affidavit because of his concern regarding the complaint filed with the Bar by Mr. Goldfoot. (TR. 200). The Respondent testified that he assisted Ms. O'Donnell in preparing the affidavit by providing her with an affidavit form, asking her questions as to the facts, so she could take notes and then use the notes to put the information in numbered paragraphs. (TR. 200-201). Ms. O'Donnell testified that the information in the affidavit was a lie. (TR. 126).

B. Cases decided by this Court and the *Florida Standards For Imposing Lawyer Sanctions* do not provide for disbarment under the circumstances presented in this case.

The standard to be applied by this Court in reviewing the Report of the Referee is that the Report must be erroneous, unlawful, or unjustified to be overturned. Rule 3-7.7 of the *Rules Regulating The Florida Bar*. The findings and conclusions of a referee or circuit court judge in disciplinary proceedings against an attorney are accorded substantial weight, and they will not be overturned unless they are clearly erroneous or lacking in evidentiary support. *The Florida Bar v. Hooper*, 507 So. 2d 1078 (Fla. 1987). Although the referee's findings of fact enjoy the

sane presumption of correctness as the judgment of the trier of fact in a civil proceeding, this Court's scope of review is broader in regard to legal conclusions and recommendations made by a referee. *The Florida Bar v. Inglis*, 471 So. 2d 38 (Fla. 1985).

The recommendation of the Referee that the Respondent should be suspended for a period of 91 days, with proof of rehabilitation required prior to reinstatement, for his violation of Rules 3-4.3, 3-4.4, 4-8.4(a), 4-8.4(b), 4-8.4(c), and 4-8.4(d) of the *Rules Regulating The Florida Bar* was not erroneous, unlawful, or unjustified and therefore should not be overturned by this Court. A 91 day suspension under the circumstances presented in this case is sufficient discipline.

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors: (a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating circumstances. Standard 3.0 of the *Florida Standards for Imposing Lawyer Sanctions*.

Standard 5.1 of the *Florida Standards for Imposing Lawyer Sanctions* provides that:

> Absent aggravating or mitigating circumstances, and upon application of the factors set out in Standard 3.0, the following standards are generally appropriate in cases involving the commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

5.11 Disbarment is appropriate when:

***

(b) 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; or

***

(e) a lawyer attempts or conspires or solicits another to commit any of the offenses listed in (a)-(d); or

(f) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is appropriate when a lawyer knowingly engages in criminal conduct which is not included within Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

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

****

The Referee, after the opportunity to hear the testimony, consider the evidence, and view the credibility of the witnesses, determined that a 91 day suspension was appropriate discipline. The Referee found that the Respondent cooperated during the proceedings and considered the reputation of the Respondent. The Referee was aware that the criminal charges against the Respondent had resulted in a hung jury on the battery charge, and a verdict of not guilty on the charge of giving false information to a law

enforcement officer. Under these circumstances, the Referee, in accordance with the *Florida Standards for Imposing Lawyer Sanctions*, found that a 91 day suspension was appropriate.

For cases of this Court finding that a suspension was appropriate based on facts similar to the instant case, see *The Florida Bar v. Routh*, 414 So. 2d 1023 (Fla. 1982) (filing false affidavit in judicial proceeding and committing crimes of shooting into occupied vehicle, aggravated battery, and aggravated assault, warrants suspension from practice of law for three years); *The Florida Bar v. Simons*, 391 So. 2d 684 (Fla. 1980) (giving improper advice to clients to testify under oath to facts known to attorney to be false and to fabricate false evidence to support testimony warrants suspension); *The Florida Bar v. Pearce*, 356 So. 2d 317 (Fla. 1978) (knowing of and participating in plans for witnesses to perjure themselves warrants public reprimand); *The Florida Bar v. Schreiber*, 631 So. 2d 1081 (Fla. 1994) (conviction upon plea of nolo contendere to charge of misdemeanor battery was conduct warranting 120 day suspension from practice of law); *The Florida Bar v. Lund*, 410 So. 2d 922 (Fla. 1982) (untruthful testimony given before grievance committee hearing warrants suspension for a period of ten days); *The Florida Bar v. Meyer*, 194 So. 2d 255 (Fla. 1967) (conviction in federal court of making a false statement to a governmental agency would warrant suspension for 30 days); *State ex rel. Florida Bar v. Langford*, 126 So. 2d 538 (Fla. 1961) (for falsely testifying before a grievance committee and requesting another attorney to corroborate such testimony in effort to conceal

fact that he filed forged deed without knowledge of forgery, attorney was suspended for period of 18 months).

The Florida Bar has cited, as a similar case, *The Florida Bar v. Weinstein*, 624 So. 2d 261 (Fla. 1993), where this Court held that disbarment was warranted. However, the misconduct of the respondent in that case was much more egregious than in the instant case. That respondent was found guilty of violating more rules than in the present case, including Rule 3-4.3, 4-8.4(a), 4-8.4(c), 4-7.1, 4-7.1(b), 4-7.3, 4-7.4(b), and 4-8.1(a). In addition, this court stated "[w]e moreover view Weinstein's in-person solicitation of a brain-injured patient in a hospital room, accompanied by lying to health-care personnel, as one of the more odious infractions that a lawyer can commit..." *Id.* at 262.

The Florida Bar has cited, as a similar case, *The Florida Bar v. Manspeaker*, 428 So. 2d 241 (Fla. 1983) where this Court approved the recommendation of the Referee that the Respondent be disbarred. However, the misconduct of the respondent in that case is more egregious than that of the instant case. The Referee stated in that case that "[i] is the opinion of the Referee that the Respondent manifested a cavalier attitude, offering no explanation for his conduct, nor any excuses or mitigating circumstances nor did the Respondent demonstrate any awareness that he had perpetrated a fraud on his client nor indicate any remorse or contrition for his actions." *Id.* at 243. Here, the Respondent offered his explanation for his actions in attacking Mr. Goldfoot, namely that he thought Mr. Goldfoot was an intruder. In addition,

the Respondent presented testimony at the disciplinary hearing phase of the proceeding and the Referee found that mitigating factors were present.

The Florida Bar has argued that the Respondent should be disbarred.

However, disbarment, being the most extreme penalty, should be imposed only in cases where the attorney has demonstrated an attitude or course of conduct wholly inconsistent with approved professional standards. *The Florida Bar v. Oxford*, 127 So. 2d 107 (Fla. 1960). Disbarment is reserved for the most infamous type of misconduct; it is justifiable only in those instances where the possibility of the attorney's rehabilitation and restoration to an ethical practice are the least likely; where it is the remedy of last resort; where the conduct of the attorney indicates he is beyond redemption; or where there is shown a total disregard, over an extended period of time, of basic concepts of honesty and reliability and a flagrant violation of trusts reposed in an attorney. *State ex rel. Florida Bar v. Dunham*, 134 So. 2d 1 (Fla. 1961); *Sheiner v. State*, 82 So. 2d 657 (Fla.1955); *The Florida Bar v. Turk*, 202 So. 2d 848 (Fla. 1967); and *The Florida Bar v. Oppenheimer*, 459 So. 2d 1029 (Fla. 1984). The test of disbarment may be stated as the presence or absence of moral turpitude or a corrupt motive. *The Florida Bar v. Thomson*, 271 So. 2d 758 (Fla. 1972).

In the instant case, the Referee found, as mitigating factors, the Respondent's cooperative attitude toward the proceedings and

the Respondent's reputation. The Respondent has not been convicted or any crime. Under the circumstances presented in this case, disbarment is too harsh a sanction.

CONCLUSION

The misconduct of the Respondent does not rise to the level of misconduct which warrants disbarment. The Referee's recommendation of a 91 day suspension, with proof of rehabilitation required prior to reinstatement, is sufficient discipline under the circumstances presented in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the Respondent's Answer 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 Susan V. Bloemendaal, Esquire, Assistant Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport Marriott Hotel, Tampa, Florida 33607, by regular U.S. Mail this 20th day of April, 1995.

David A. Maney, Esquire