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IN THE SUPREME COURT OF FLORIDA

9/21

THE FLORIDA BAR,

Complainant,

vs.

TARYN XENIA TEMMER,

Respondent.

CASE NO. 80,982

FILED
SID J. WHITE
AUG 30 1993
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

RESPONDENT'S INITIAL BRIEF

SCOTT K. TOZIAN, ESQUIRE
SMITH AND TOZIAN, P.A.
109 North Brush Street
Suite 150
Tampa, Florida 33602
(813) 273-0063
Fla. Bar No: 253510

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FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS

PRELIMINARY STATEMENT

The following abbreviations and symbols are used in this brief:

Resp. Ex.	=	Respondent's Exhibits
TFB Ex.	=	The Florida Bar's Exhibits
R. R.	=	Report of Referee
T. R.	=	Transcript of final hearing

STATEMENT OF THE CASE AND THE FACTS

The respondent was charged and found guilty of violating Rules 3-4.3 and 4-8.4(b) of the Rules Regulating The Florida Bar. The respondent does not contest these findings. However, pursuant to these findings the referee has recommended that "the respondent be suspended for a period of 91 days and thereafter until respondent shall prove rehabilitation as provided in Rule 3-5.1(e)." (R.R. at 3). It is also the referee's recommendation that the respondent "be placed on probation for a period of three years during which time she shall undergo substance abuse evaluation (including testing) and treatment as required." Id. It is the recommendation of discipline that the respondent contests.

In early 1991, the respondent became engaged in a relationship with a gentleman named Frank Alvaro. The respondent and Mr. Alvaro subsequently began living together and were romantically involved. Although the respondent was aware that Mr. Alvaro had used drugs in the past, he and his family appeared to be of good moral character. (T.R. 134). There was no indication to the respondent at this time that Mr. Alvaro was using drugs again. As a result of the relationship, the respondent fell in love with Mr. Alvaro and considered him a candidate for marriage. (T.R. 135). However, in time Mr. Alvaro began using drugs again. (T.R. 134). Because the respondent suffered from depression, (Resp. Ex. 3), and co-dependency, (T.R. 69), she found it impossible to get out of the relationship with Mr. Alvaro when he resumed using drugs. (T.R.

69). In fact, the respondent began using cocaine with Mr. Alvaro while they were living together. The respondent felt that participation with him would keep him off the streets and home with her. (T.R. 136). Mr. Alvaro began physically, (T.R. 55 - 59), and emotionally abusing the respondent, isolated her from her friends and family, and took control of her on a personal basis. (T.R. 137). The respondent felt helpless because of threats to report her for her conduct to the Florida Bar. (T.R. 140).

It was only after a tremendous beating from Mr. Alvaro that the respondent tried to get out of the relationship and contacted a fellow attorney for advice. (T.R. 57).

Thereafter, in July 1991, with the help of her father and her employer, Mr. Soeten, the respondent had Mr. Alvaro removed from her residence. (T.R. 109, 110). Immediately thereafter, the respondent sought the assistance of Marilyn Bailey, a licensed mental health counselor and psychotherapist. (T.R. 66). The respondent saw Ms. Bailey weekly for twenty weeks, (T.R 68), until her insurance ran out in December 1991. (T.R. 70, 71).

In October of 1991, the respondent suffered further depression from the death of her aunt as a result of brain cancer. Ten days later, the respondent's thirty year old cousin and the cousin's unborn child died as a result of a heart attack. Additionally, at the same time the respondent was advised of a possible malignancy in her mother, she received The Florida Bar complaint of Mr. Alvaro alleging respondent's drug use, as well. All of the aforementioned events occurred within a two-week interval of time. (T.R. 141,

142). When the respondent asked for an extension of time to respond to the complaint, a Florida Bar representative advised her to copy Mr. Alvaro with the letter requesting the extension. (TFB Ex. 4 and T.R. 142).

Thereafter, Mr. Alvaro contacted the respondent on the day of her cousin's funeral. (T.R. 142). As a result, the respondent did not immediately commence a relationship with Mr. Alvaro, although she did do so later. (T.R. 143). Due to these tragedies, the respondent was vulnerable, (T.R. 38), and easily manipulated by this individual; she had been "mesmerized", (T.R. 69), by him in the past and was vulnerable to his promises of love in the fall of 1991. (T.R. 69, 143, 39, 169). The respondent resumed some drug use with Mr. Alvaro for a brief period of time, but got away from Mr. Alvaro more quickly this time and has had no contact with him, nor used any drugs since January 1992. (T.R. 24, 182 and Resp. Ex. 3).

In defense of Mr. Alvaro's complaint, the respondent retained the services of Patricia Brown, Esquire for the purpose of responding. (T.R. 168 - 169 and Resp. Ex. 1, 2). Although, respondent admitted to Ms. Brown that she had used drugs with Mr. Alvaro, Ms. Brown instructed the respondent to deny these allegations. Ms. Brown prepared a response of denial and instructed the respondent to simply retype her response on her letterhead. (T.R. 168 - 169 and Resp. Ex. 1, 2). The respondent followed the precise advice of her counsel. The recent tragedies in respondent's life made it at least very difficult to respond to the

complaint and she believed she was getting competent advice, as Ms. Brown was previously employed as a prosecutor (Assistant Staff Counsel) for The Florida Bar. (T.R. 170).

In January of 1992, the respondent was terminated from her employment with the Brandon Law Center as a result of her re-involvement with Mr. Alvaro. (T.R. 110, 111). Dr. Michael Sheehan testified that she became reinvolved with Mr. Alvaro "... because in her personal life she didn't have the level of support that she would need at this time that people have, she found it very difficult to deal with that situation and her involvement with this gentleman started again. It was ill-advised and she understands that." (T.R. 38).

After being terminated from her employ the respondent ended her relationship with Mr. Alvaro. Respondent then voluntarily left the profession temporarily until she felt she was emotionally ready to resume the practice of law. (T.R. 146). As Dr. Sheehan testified, Ms. Temmer was aware that the reinvolvement was ill-advised and got out of the relationship more quickly than the first time. (T.R. 38, 172).

The respondent thereafter was employed with Mr. Ronald S. Reed, Esquire for a period of one year, (T.R. 83), but was forced to resign that position because of the pendency of these disciplinary proceedings. (T.R. 86). The respondent subsequently began sharing office space with her past employer, Mr. Soeten. (T.R. 112, 113).

The respondent has engaged in voluntary drug screens since

March 1992, (T.R. 24), and has abstained from all illicit drug use since January 1992. The respondent has continued in therapy, (T.R. 153, 77), and will continue in therapy for her personal problems. (T.R. 159).

The respondent offered fifteen witnesses, including herself on her behalf. These witnesses included two circuit court judges; one county court judge; three former employers; the program director of F.L.A. Inc.; Dr. Michael Sheehan, addictionologist; Marilyn Bailey, mental health counselor; Patricia Parker, social worker; and four other lawyers who have had an opportunity to observe her professionally. Every witness familiar with her professional ability testified to her competency, (see depositions of Judge Robert Simms and Judge James Dominguez, (T.R. 28, 55, 62, 86, 89, 103, 106, 108, 122, 126), and diligence and zealous representation of her clients. None of the witnesses indicated that she had a drug problem. (T.R. 50, 100). Moreover, Steven P. Shea, Program Director for Florida Lawyers Assistance, Inc. testified that the respondent did not require F.L.A., Inc. participation. There was testimony that she was young and had made a mistake in her personal life, but her error did not affect her professionally. Additionally, Dr. Sheehan, the specialist respondent was referred to by F.L.A., Inc., testified that "this is not primarily a case of drug abuse or drug dependence. It is primarily an issue of dependence on people and her relationship with people and her feeling that she needed to be involved in a close relationship and getting support from that relationship even if that relationship is

destructive to her." (T.R. 39). There was no evidence offered to rebut any of these facts.

Based upon the evidence adduced at trial as referenced above, and despite finding no evidence of drug dependence, the referee recommended the respondent be suspended from the practice of law for a period of 91 days and thereafter until she shall prove rehabilitation. (R.R. at 2, 3). The Referee opined that the basis for the recommended discipline was the fact that the respondent initially denied Mr. Alvaro's allegations and also that she resumed drug usage after Mr. Alvaro's complaint was filed. (R.R. at 2, 3). The Referee further recommended that the respondent be placed on probation for three (3) years and that she undergo substance abuse evaluation and treatment as required.

SUMMARY OF ARGUMENTS

The referee's recommendation of a 91 day suspension and proof of rehabilitation followed by three years of probation under the facts in this case is unwarranted and therefore penal in nature. This Court has found in similar cases involving more aggravation and less mitigation, that discipline ranging from a public reprimand to a 90 day suspension is appropriate. The Florida Standards for Imposing Lawyer Sanctions dictates that there be consistency in the imposition of disciplinary sanctions.

The referee recommended a suspension requiring rehabilitation, the basis of which was that respondent "was not candid with respect to the original complaint and did resume the use of cocaine for a significant time following the first complaint". (R.R. at 3). The finding of lack of candor by respondent is unsupported by the evidence and a recent amendment to the Rules Regulating The Florida Bar. The referee's recommendation also ignores the fact that the evidence indicated that the respondent did not and does not have a drug dependence problem. Finally, the referee failed to make note of and give proper weight to the substantial mitigation presented by the respondent.

ARGUMENTS

I. THE REFEREE'S RECOMMENDATION OF SUSPENSION REQUIRING PROOF OF REHABILITATION IS NOT SUPPORTED BY THE FACTS.

A. THE UNREBUTTED EVIDENCE PROVES THE RESPONDENT IS NOT DRUG DEPENDENT.

The referee's basis for his recommendation of a 91 day suspension and thereafter until the respondent shall prove rehabilitation was "the underlying use of drugs . . ." and respondent's perceived lack of candor in responding to the initial complaint. (R.R. at 3). However, the respondent presented a total of fifteen witnesses at her hearing. These witnesses included an addictionologist, a mental health counselor, a social worker and the program director of F.L.A., Inc. These specialists concurred that the respondent did not have and does not now have a drug dependence problem.

Dr. Michael Sheehan, a psychiatrist with a subspecialty in addiction psychiatry, testified that he saw the respondent for the first time in June of 1992 as a result of a referral by F.L.A., Inc. (T.R. 20). A psychiatric evaluation was performed and the doctor opined that the respondent "was suffering from adjustment reaction with some depression and that she also had suffered with cocaine abuse and marijuana abuse. But she didn't meet the criteria at that time for cocaine dependence or marijuana dependence." (T.R. 22). The doctor further stated "I didn't think she needed any further intervention other than advice at the time.

I think her drug abuse was very much linked in with the relationship she was having with her boyfriend. And so, when that terminated, her risk of relapsing into drug abuse were very limited at the time I saw her." (T.R. 23). Further, the respondent voluntarily submitted to random urine screens monitored by Dr. Sheehan. The doctor testified that "since I've seen her one year ago, we have done a number of urine drug screens. And over that period of time each of those have been negative." (T.R. 24). There were a total of four unannounced tests. (T.R. 24). Finally, the doctor stated "I think it would be unfair to restrict her practice". (T.R. 50).

The program director of F.L.A., Inc., Mr. Steven P. Shea also met with and evaluated the respondent. He testified that "after I spoke with her, I also felt like there wasn't enough evidence to show an addiction toward any kind of drugs or substance abuse even though there apparently had been some type of use or even abuse in the past." (T.R. 97). Additionally, Mr. Shea testified that "I felt we really didn't need to be further involved because I didn't feel like she was at this time an addict or alcoholic." (T.R. 100). He went on to state "our program is just for people who are alcoholic or drug addicts". (T.R. 99). Thus, it may be concluded that F.L.A., Inc., could not provide any useful service for the respondent as she did not have a substance abuse problem. (T.R. 99-100).

Therapists, Marilyn Bailey and Patricia Parker both testified that the respondent suffers from depression and co-dependency.

(T.R. 69, 80, 82). Ms. Bailey opined that the respondent should continue in counselling to help her "gain more strength and build her self-esteem". (T.R. 70). Ms. Bailey further recommended continued therapy for the respondent. (T.R. 72). Patricia Parker, agreeing with Ms. Bailey, recommended "individual psychotherapy for her to continue to deal with the issues of codependency, depression, coping, personality styles." (T.R. 82).

These experts confirm that the respondent does not have a drug dependence problem, although she would benefit from continued therapy for personality issues. The suggestion of therapy for the emotional problems of the respondent under the circumstances of this case does not warrant proof of her rehabilitation to continue practicing law, nor did the referee so find.

Moreover, the respondent had several other witnesses testify on her behalf regarding her competency and reputation in the community. Theses witnesses included two circuit judges and a county court judge. The Honorable James D. Whittemore, Circuit Judge of the Thirteenth Judicial Circuit testified that during his assignment to the East Division of Hillsborough county from a period from February, 1990 through Mid-October 1992 he had the occasion to have the respondent before him "10 or 15 times, if not more". (T.R. 26). The respondent's performance was characterized as "energetic, zealous, thorough. She was always well prepared". (T.R. 28). He testified that the respondent was called upon in a very difficult child custody matter as attorney ad litem and provided the court with "service above and beyond... It was pro

bono". (T.R. 30). Further the Judge stated there was "nothing in the negative sense" as to her representation before the court. (T.R. 31). Two other judges independently concurred with Judge Whittemore's opinion. (Depositions of Judge Robert Simms and Judge James Dominguez).

Further, the respondent offered testimony of seven lawyers (three were former employers) attesting to the respondent's abilities, appearance in court and her representation of her clients. These witnesses verified that at no time during the respondent's relationship with Mr. Alvaro, was she affected professionally; and certainly there was no indication that she had a drug problem. For example, Joe Episcopo, Esquire testified that the respondent has "a very good reputation as far as being an astute and hard working attorney... I think she's an excellent attorney". (T.R. 55). He further stated "[t]his was not a person I knew as a drug abuser. And it was out of character... it was this wild relationship that she had apparently developed with this individual." (T.R. 60). Additionally, Louis D. Putney, Esquire was opposing counsel with the respondent and testified that, "I was very impressed with her preparation for that hearing and the law she presented. In fact, I lost that hearing to dismiss her pleadings... I thought her presentation of the client was very effective and was zealous within reason. She brought up some very salient facts in law which resulted in a compromise, I think, on my client's position and ultimately a fair settlement." (T.R. 62).

Mr. Ronald S. Reed, Esquire, the respondent's most recent

former employer, testified that during the year the respondent was employed with him that there was no suspicion of illegal substance abuse or use of alcohol". (T.R. 86). He characterized her as "diligent, she was prepared. Her legal research skills and writing skills were better than normal". (T.R. 84). The record continues with complimentary statements by all the witness similar to those indicated above, and is unrebutted proof that the respondent does not require rehabilitation.

B. THE RESPONDENT'S DENIAL OF THE CONDUCT ALLEGED IN RESPONSE TO THE INITIAL COMPLAINT UPON ADVICE OF COUNSEL WAS NOT IMPROPER AND DOES NOT WARRANT PROOF OF REHABILITATION.

The referee's recommendation of a suspension requiring proof of rehabilitation was in large part predicated upon the fact that the respondent denied the allegations of drug use when she originally responded to the complaint herein. (T.R. 169 and TFB Ex. 1, 2). However, before responding, the respondent obtained the advice of counsel, a former Florida Bar prosecutor and followed that advice. The respondent testified that "I was told to deny the allegations." (T.R. 169). The referee stated in response to this testimony that "... when it comes to saying things that are significant and untrue, no attorney can stand behind a defense of legal advice." (T.R. 178). He further stated that "... I don't see that it makes a world of difference that Ms. Temmer was encouraged to lie or did so on her own volition from the standpoint of her problem." (T.R. 179). However, the referee's interpretation and characterization of respondent's denial is clearly erroneous.

On July 1, 1993, this Honorable Court entered an opinion that amended the Rules Regulating the Florida Bar. Rule 4-8.4 was amended and states

> "A Lawyer shall not:
> ...(g) fail to respond, in writing , to any inquiry by a disciplinary agency when such agency is conducting an investigation into the lawyer's conduct"

The comment to this rule states,

> "A lawyer's obligation to respond to an inquiry by a disciplinary agency is stated in subdivision (g) and rules 3-4.8 and 3-7.6(g)(2). While response is mandatory, the lawyer may deny the charges or assert any available privilege or immunity or interpose any disability that prevents disclosure of certain matter. A response containing a proper invocation thereof is sufficient under the Rules Regulating the Florida Bar. This obligation is necessary to ensure the proper and efficient operation of the disciplinary system." (emphasis added). (The Florida Bar Re: Amendments to Rules Regulating The Florida Bar, 18 F.L.W. S433 (July 1, 1993).

The Court in this amendment simply allows accused attorneys to make responses that are tantamount to a not guilty plea in a criminal case. Although this rule was amended after the respondent's hearing, clearly, her conduct could not be said to require rehabilitation when it is now condoned by this court and The Florida Bar. The respondent's initial response was equivalent to such a plea. The respondent did not make any false statements in her response, she simply made a categorical denial now sanctioned by this Honorable Court. (Resp. Ex. 1, 2).

Accordingly, the referee's characterization of the respondent's initial response as "untrue" or a "lie" is incorrect. As a result, a suspension requiring proof of rehabilitation cannot be upheld.

II. THE REFEREE'S RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED WERE NOT APPROPRIATE AS HE FAILED TO ACKNOWLEDGE AND PROPERLY GIVE WEIGHT TO THE UNREBUTTED EVIDENCE OF MITIGATION AS DELINEATED IN THE FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS AND FAILED TO FOLLOW THE PRECEDENT SET IN CASES INVOLVING SIMILAR MISCONDUCT.

According to The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970), the purposes of Bar disciplinary proceedings are three;

> "First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish the breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations." at 132.

This Court reaffirmed these purposes in The Florida Bar v. Sommers, 508 So.2d 341 (Fla. 1987) and emphasized that of principle concern is the encouragement of reformation and rehabilitation. at 343.

This Court again acknowledged these principles in The Florida Bar v. Hartman, 519 So.2d 606, 608 (Fla.1988).

Further, this court has adopted the principle that each attorney discipline case brought before the court must be viewed "solely on the merits presented therein". The Florida Bar v. Jahn, 509 So.2d 285 (Fla. 1987).

Additionally, The Standards for Imposing Lawyer Sanctions require the referee and this court to consider mitigation when imposing discipline on an attorney for misconduct. The list of

mitigating factors in Section 9.32 is as follows:

(a) absence of a prior disciplinary record;
(b) absence of a dishonest or selfish motive;
(c) personal or emotional problems;
(d) timely good faith effort to make restitution or to rectify consequences of misconduct;
(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
(f) inexperience in the practice of law;
(g) character or reputation;
(h) physical or mental disability or impairment;
(i) unreasonable delay in disciplinary proceeding provided that the respondent did not substantially contribute to the delay and provided further that the respondent has demonstrated specific prejudice resulting from that delay;
(j) interim rehabilitation;
(k) imposition of other penalties or sanctions;
(l) remorse;
(m) remoteness of prior offenses.

Further Section 11.0 provides additional mitigation in drug cases. Section 11.1 states:

> "In addition to those matters of mitigation listed in Standard 9.32, good faith, ongoing supervised rehabilitation by the attorney, through FLA Inc., and any treatment programs approved by FLA., Inc., whether or not the referral to said program(s) was initially made by FLA., Inc., occurring both before and after disciplinary proceedings have commenced may be considered as mitigation."

The respondent does not have a prior record for discipline, did not have a dishonest or selfish motive, and she was suffering from personal and emotional problems in that she has been diagnosed with depression, co-dependency, and had personal problems from three family deaths and a possibly malignancy in her mother. The respondent has made a timely good faith effort to rectify the consequences of her actions in that she has sought therapy and is continuing in therapy. She has been fully cooperative with the disciplinary proceedings, and F.L.A., Inc. The respondent has an

excellent reputation as an attorney and is known to be of good character. Moreover, the respondent has rehabilitated herself in that she took time off from her practice to recover from an emotional standpoint, and she is plainly remorseful as indicated in her testimony and the testimony of Darlene Rebowe, Esquire. (T.R. 128). These mitigating factors were unrebutted. Further, the Bar provided no evidence of any aggravation, except the initial denial, which as stated above, should not be considered in aggravation. The referee did not properly consider this mitigating evidence, nor make mention of it in his report, other than the absence of a prior disciplinary record. The referee clearly erred in this regard.

According to the Standards for Imposing Lawyer Sanctions their purpose is "to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to discharge their professional duties to clients, the public, the legal system, and the legal profession properly." "The Standards constitute a model, setting forth a comprehensive system for determining sanctions, permitting flexibility and creativity (emphasis added) in assigning sanctions in particular cases of lawyer misconduct. They are designed to promote: (1) consideration of all factors relevant to imposing the appropriate level of sanctions in an individual case; (2) consideration of the appropriate weight of such factors in light of the state goal of lawyer discipline; (3) consistency in the imposition of disciplinary sanctions for the same or similar offenses within and among jurisdictions." (emphasis added).

Finally, in DeBock v. State of Florida, 512 So.2d 164 (Fla. 1987), this Court held that bar disciplinary proceedings are remedial and not penal in nature.

The referee recommended that the respondent be suspended for a period of 91 days and thereafter until she shall prove rehabilitation This requirement of proof of rehabilitation requires the filing of a petition for reinstatement, appointment of a referee, investigation by The Florida Bar, and evidentiary hearing before the referee, prior to ruling by this Court. As a result, this Court has recognized the reinstatement process takes six (6) to nine (9) months. The Florida Bar in re Roth, 500 So.2d 117, 118 (Fla. 1986). Clearly, the facts of this case do not warrant such harsh treatment. This recommendation is in absolute contravention of the law as stated in Pahules. Further, the referee's recommendations fly in the face of this court's ruling in Sommers. Essentially, the respondent's substantial efforts to rectify her conduct over the past eighteen (18) months were ignored or went unnoticed by the referee.

The Florida Supreme Court has addressed sanctions to be imposed on lawyers for use of cocaine on many occasions. In The Florida Bar v. Franke, 548 So.2d 1119 (Fla. 1989), the Court approved a ninety-day suspension followed by two years of probation despite the Bar's request that the suspension be increased to 91 days. In Franke, the respondent not only used cocaine and marijuana, but committed retail theft at a hardware store. The Court also approved a 90 day suspension followed by two years

probation in The Florida Bar v. Weintraub, 528 So.2d 367 (Fla. 1988). Here, the respondent was charged criminally with delivery and possession of cocaine in addition to his use of the same. Again, the Bar sought a 91 day suspension, and The Supreme Court rejected that request because:

> "1) the expert testimony indicated that the respondent is not a drug addict in need of rehabilitation;
> 2) the respondent has had no prior convictions or bar disciplinary record; and
> 3) after his arrest the respondent began to take significant remedial steps to correct his behavior." at 369.

Similarly, in the immediate case the respondent has been found not to be a drug addict, has no prior disciplinary record and has taken significant steps toward progress in her emotional problems. Further, she was never convicted of a crime.

In The Florida Bar v. Sommers, 508 So.2d 1329 (Fla. 1987) the respondent had ten separate counts of misconduct relating to his failure to perform legal work in a timely manner as well as a dependency on cocaine. The Court, finding that the Bar's concerns are to allow and encourage reformation and rehabilitation, affirmed the referee's recommendation and ordered a 90 day suspension followed by 3 years of probation. In the immediate case, there was no allegation or finding of attorney misconduct relating to representation of clients or diligence in preparation. In fact, all relevant witnesses testified to the contrary.

Further, in The Florida Bar v. Levine, 498 So.2d 941 (Fla. 1986), the respondent received a public reprimand where he was convicted of a misdemeanor and engaged in personal use of cocaine.

Clearly, these facts are more egregious than in the immediate case.

Moreover, in The Florida Bar v. Pascoe, 526 So.2d 912 (Fla. 1988), the respondent was found guilty of violating numerous disciplinary and integration rules as well as a criminal violation for marijuana and received a public reprimand, despite the Bar's position that the case warranted a 91 day suspension. In The Florida Bar v. Corrales, 505 So.2d 1327 (Fla. 1987), the attorney received a 90 day suspension followed by two years probation for personal use of marijuana pursuant to a consent judgment.

The respondent's misconduct herein was primarily precipitated by a dysfunctional relationship and respondent's depression and co-dependency problems. Her efforts to rectify her misconduct have been substantial and continuous since January, 1992 and The Florida Bar offered no evidence to the contrary. Based upon the evidence adduced below and the applicable rules and case law, the referee's recommendation must be modified.

CONCLUSION

The respondent admits using cocaine and marijuana primarily in a personal relationship. This drug use never affected her clients or her performance as an attorney. In fact, she has an excellent reputation in the community, a fact which was verified by many witnesses. The respondent acknowledges her mistakes and has made substantial efforts to rehabilitate herself. She is continuing in therapy and is presently sharing office space in Brandon as a sole practitioner. The respondent suffers form depression and co-dependency and is working towards a better self. This Court must modify the referee's recommendations as they are punitive, are not appropriate for the misconduct herein and are inconsistent with other disciplinary sanctions in like circumstances. A public reprimand is the proper discipline in this case and it should be so ordered.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail delivery this 27 day of August, 1993, to: Joseph A. Corsmeier, Esquire, Assistant Staff Counsel, The Florida Bar, Tampa Airport, Marriott Hotel, Suite C-49, Tampa, Florida 33607.

SCOTT K. TOZIAN, ESQUIRE