IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v. Case No.: 81,824

RICHARD PAUL CONDON,

Respondent.
_____/

RESPONDENT'S INITIAL BRIEF

RICHARD P. CONDON
Respondent, pro se
Suite C
214 C Bullard Parkway
Temple Terrace, FL 33617
(813) 985-3467

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Symbols and References

The following symbols and references will be used in this brief:

1T: Transcript of hearing of September 29, 1993

2T: Transcript of hearing of December 1, 1993

Depo: Deposition of December 30, 1992, of Joseph Rawlings, M.D.

RR: Report of Referee dated January 14, 1994

Statement of Case

On or about December 3, 1991, Larry T. Freeman filed a sworn Florida Bar Complaint against Respondent. On or about January 5, 1993, Pedro J. Pizarro, Branch Staff Auditor for the Florida Bar, conducted an audit of Respondent's trust account records relating to the Freeman funds from July, 1985 through June, 1991.

On or about February 10, 1993, the Thirteenth Judicial Circuit Grievance Committee "A" found probable cause for further disciplinary proceedings.

Respondent was charged with violation of the following Rules Regulating The Florida Bar:

> Rule 4-1.15(a) (A lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation),
>
> Rule 4.1.15(b) (Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person),
>
> Rule 4-1.15(c) (When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be treated by the lawyer as trust property),
>
> Rule 5-1.1(a) (Money or other property entrusted to an attorney for a specific purpose, is held in trust and must be applied only to that purpose).

Pasco County Judge William G. Sestak, was appointed Referee; testimony was taken on September 29, 1993, and December 1, 1993. On January 18, 1994, the Referee filed his

report, finding respondent not guilty of the following count:

> Rule 4.1.15(b) (Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person),

The Referee found the Respondent guilty of the following counts:

> Rule 4-1.15(a) (A lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation),
>
> Rule 4-1.15(c) (When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be treated by the lawyer as trust property),
>
> Rule 5-1.1(a) (Money or other property entrusted to an attorney for a specific purpose, is held in trust and must be applied only to that purpose).

The Referee recommended disbarment.

A Petition for review of Referee's Report was timely filed.

Statement of Facts

RICHARD PAUL CONDON was admitted to the Florida Bar on November 13, 1970.

Respondent had an ongoing attorney client relationship with Larry Freeman since the early 1970's. [1T:118] The relationship started first with representation in a bad check case and later in a carrying concealed weapon charge. When FREEMAN began bail bond work, CONDON handled his estreature work. [1T:149:4-11] Later CONDON loaned FREEMAN money to open his own bail bond and insurance business [1T:149:22-25] and assisted FREEMAN in a marital matter [1T:151:2-7]

CONDON and FREEMAN had only minimal contact between 1979 CONDON and 1985.

In 1980 LARRY and MARAS FREEMAN, his wife, executed and delivered to AMERICAN METROPOLITAN MORTGAGE COMPANY a second mortgage on their homestead. The note indicated that the interest rate was eighteen percent. The note and mortgage were allegedly transferred to AMERICAN FUNDING. [Complainant's Exhibit 17]

In 1983, FREEMAN was, in FREEMAN's words, "set up in a sting operation and charged with getting stolen property." He received an eight thousand dollars fine, five year probation, one year of community control, and five hundred hours of community service. He lost his right to sell insurance or write bonds; he was unemployed for the next three years. [1T:116:5-117:13]

During this period, FREEMAN was also sued by Charles

Bernard Rogers [1T:155:3-6]. However, prior to that time, FREEMAN had placed all of his real property in the names of other people. [1T:161:1-4]. His homestead was only in his wife's name.

During this same time, CONDON was having his own set of problems. In 1979 he left the practice of law to attend graduate school. [2T:96:9] In 1981 he was hospitalized in Chicago for depression, a problem that was taken a year later to the Mayo Clinic in Rochester, Minnesota. The Mayo Clinic determined that the problem was depression* and stress, proscribing imipramine. [2T:98:13-99:3] CONDON had been suffering from some form of peculiarity (now identified for the first time in his life as "depression") from at least the time of his law school career. [2T:97:21-24]

CONDON remained on imipramine for two years and returned to the practice of law. When he stopped taking the medication, the depression returned after six months. CONDON sought out a psychiatrist who placed him back on the medication. [2T:99:1-9]

In 1985 the FREEMANs came to CONDON with a summons and complaint from AMERICAN FUNDING in which the plaintiff was attempting to foreclose on its eighteen percent note and mortgage. CONDON told MR. FREEMAN that he did not believe

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* According to the American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 222-23 (3rd ed. revised 1980), the signs of depression are: change in appetite and weight, sleep disturbance, loss of energy, change in anxiety level, decreased sex drive, diminished ability to think or concentrate, feelings of worthlessness or excessive guilt, and recurrent thoughts of self-harm.

the note was usurious. [1T:127:7-8] However, CONDON stated that he was not able to personally do the mathematics necessary to correctly determine the interest rate because of his inexperience with the "Rule of 78's." [2T:71:8-14] This foreclosure action was resolved by FREEMAN paying over money received by selling money hidden in the equity of property titled in FREEMAN's mother's name. [2T:12:24-13:7]

In 1986 FREEMANs once again got behind on their AMERICAN FUNDING debt; through CONDON a Chapter 13 was filed. However, the protective stay was subsequently lifted on when the FREEMANs got behind on their post-petition mortgage payments (adequate protection). A second mortgage foreclosure [87-19351-0] was filed in October of 1987. [Complainant's Exhibit 10].

About this time, CONDON received payment of a bill of $7,500.00 in one hundred dollar bills from a client. For whatever reason, CONDON was ambivalent about keeping the cash. He put the money in a can. As time passed, he would gave FREEMAN (and others) cash from the can. [2T:107:4-22]

According to FREEMAN, his practice was to use the mortgage money for other purposes and wait for as long as six months to catch up on the house payments. [1T:204:22-25] Because of that practice, in April of 1988, CONDON insisted that the money be escrowed with CONDON. The purpose was to guarantee payment of debts. The debts were to both CONDON and AMERICAN FUNDING LIMITED. When there would be an opportunity

to have the mortgage reinstated, the money would be there to complete the reinstatement. [1T:121:15-24] Corresponding to that was a pledge of the amount of the escrow toward payment to CONDON of future fees if FREEMAN chose not to reinstate the mortgage. [2T:22:19-25]

At Final Hearing on October 31, 1988, AMERICAN FUNDING did not prevail and judgment in favor of the FREEMANs was granted, AMERICAN FUNDING having failed to prove that the FREEMANs were behind in payments prior to the filing of the action by AMERICAN FUNDING. [1T:172:5-7; 1T:197:4-9]

In early 1988, CONDON had stopped taking his medication; by April of 1990 when his friend and mentor died, CONDON hit bottom. [2T:99] In May of 1990 he was placed on a regimen of prozac; in December of 1991, he was diagnosed as also having a partial complex seizure disorder; the drug tegretol was prescribed in addition to the prozac.

A third mortgage foreclosure [89-12907-J] was filed against FREEMAN by AMERICAN FUNDING on June 16, 1989. The case was assigned to Judge PADGETT. An answer consisting of a general denial was filed by CONDON on behalf of FREEMAN. After FREEMAN provided a financial expert who said that the note was usurious [1T:213:1-7], the defense of usury was added in an amended answer. [1T:128:15-18]. Later Freeman procured a second expert that the loan was usurious.

Between October of 1989 and January of 1990, GARY SIEGEL replaced DOUG ZAHM [1T:11:17-19] as counsel for AMERICAN FUNDING. CONDON was in communication with SIEGEL about

determining whether the usury claim was correct and stating that $11,103.00 was in escrow. [Complainant's Exhibit 2]

On August 30, 1990, the FREEMANs in two separate affidavits acknowledged owing CONDON the sum of $11,280.00 in attorney's fees in defense of the mortgage foreclosures. [Respondent's Exhibit 5] At this time, CONDON believed that FREEMAN had pledged the amount of the escrow toward payment of these fees. [2T:22:19-25]

At this point in time, CONDON's financial records were confused. [1T:28:21-29:5]. Part of the problem was created by wrongly written receipts [2T:37:4-10]; part was created by a duplication of receipts [2T:39:14-18]; part was created by the confusion of frequent Bar audits [2T:82:19-83:4]; part was created by the Bar physically being in possession of CONDON's records [2T:58:11-16]; part was, perhaps, created by the manipulations of others, a problem to which CONDON was susceptible [Depo:30:9-11].

CONDON's client ledger cards indicate that between April 22, 1988, and June 1, 1993, $6,439.44 was received from the FREEMANs. [2T:37, 45-52] A January 5, 1993, Bar audit indicates that the total deposit by the FREEMANs was $5,036.44; a September 24, 1993, Bar re-audit indicates that the total deposit by the FREEMANs was $6,283.44. [1T246:13-21] The respondent, by recreating the deposits based on his receipts ledger, guessed the amount to be $8,500.59 [1T:38:4]; one lawyer claims that the sum was $10,222.59 [1T:41:18]; another claims the sum to be $11,103 [1T:14;6].

However all claims are based upon reviews of CONDON's records. Personally, CONDON believed that the funds were not to be found. He so informed the client on several occasions. [1T:142:23-24 and 1T:143:22-144:12]

Subsequently, CONDON began keeping his accounts on computer with reconciliation by three people every month. [2T:104:5-7]

On November 13, 1990, there was a hearing on AMERICAN FUNDING'S motion for summary judgment; the judge continued the hearing to get more evidence in the form of amortization schedules. [1T:32:25-33:8] CONDON had not yet played his "ace in the hole" which was that the mortgage was not vested in AMERICAN FUNDING. [2T:13:25-14:14]

FREEMAN was present for the January 8, 1991, hearing before Judge PADGETT.*

On January 7, 1991, the day before the continued summary judgment hearing, FREEMAN fired CONDON [2T53:22-54:3]. While FREEMAN claimed CONDON had done nothing for him [1T:206:18-20], counsel for AMERICAN FUNDING said that he had to do quite a bit of research with regard to the defenses raised by CONDON in the case. [1T:23:19-22]

The situation of CONDON's discharge was duly reported to Judge PADGETT at the hearing the next day. The Judge asked FREEMAN if he had a new lawyer. When FREEMAN responded in

*It must be noted, however, that the record carries statements by FREEMAN that he never saw a judge other than Judge Spicola concerning the mortgage foreclosure [1T:158:15-17].

the negative, the Judge asked when the new lawyer would be appearing. The Judge considered the proffered evidence on interest rates and, six days later, signed a final judgment of foreclosure. [2T:54:10-24] Counsel for AMERICAN FUNDING was awarded a fee of $9,150.00 in the summary judgment. [Complainant's exhibit 3, page 2]

MUSIAL, the new counsel for the FREEMANs, subsequently appeared. [Compare 1T:219:4-7 and 1T:53:4]

When the new counsel for the FREEMANs came to CONDON'S office to pick up the money, CONDON stated that if he released the money, he would never get paid; he was, therefore, impressing a lien. [1T:61:13-17]

When the new lawyer requested that Judge PADGETT order the release the funds, the Judge refused to require a turn over. [1T:44:25-45:11] The new lawyer then filed another Chapter 13 for the FREEMANs. [1T:48:2-4] FREEMAN thereafter made two attempts to claim the liened money through the bankruptcy court; each attempt being rejected by the bankruptcy court. [1T:55:3-5] Immediately after the defeat of the second attempt, there was a settlement conference between CONDON and FREEMAN and MUSIAL at the bankruptcy court. It was agreed that CONDON would distribute $5,000.00 on behalf of FREEMAN. [1T:51:4-23] CONDON and FREEMAN also spoke frankly to resolve some personal issues; when it was over, they hugged. [1T:59:6-17]

Subsequently, CONDON's lawyer and MUSIAL prepared a settlement instrument. [1T:57:5-8] To FREEMAN this document

"means he's released from any claims." [1T:225:22-24] Complainant's Exhibit 9 May 12, 1992. To FREEMAN's lawyer it "was a good faith settlement offer, a settlement compromise of a controversy between his attorney and his client." [1T:58:20-22]

Argument

Number One: THE REFEREE'S CONCLUSION THAT DISBARMENT IS APPROPRIATE IS WITHOUT SUPPORT IN THE EVIDENCE

The Referee recommended a finding of guilt against CONDON for three specific trust account rule violations:

> Rule 4-1.15(a) (A lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation),
>
> Rule 4-1.15(c) (When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be treated by the lawyer as trust property),
>
> Rule 5-1.1(a) (Money or other property entrusted to an attorney for a specific purpose, is held in trust and must be applied only to that purpose).

The referee then goes on to recommend disbarment as punishment.

Disbarment, however, is an punishment only with a specific finding of intentionality.

In imposing discipline for trust account violations, clear distinction is made between cases where the lawyer's conduct is deliberate or intentional and cases where the lawyer acts in a negligent or grossly negligent manner. The Florida Bar v. Weiss, 586 So.2d 1051 (Fla 1991). This is augmented by the Lawyer Sanction Standards. Of these, in matters involving failure to preserve client property, Section 4.11 requires disbarment after a finding of intention or knowledge, regardless of injury; Section 4.12 requires

suspension after a finding that the lawyer knew or should have known that he/she was dealing improperly with client funds and there was injury or potential of injury; Section 4.13 requires a reprimand for negligence with injury or potential for injury; Section 4.14 requires an admonishment for negligence with little or no injury. In the absence of a specific finding of specific misconduct, a referee's recommendation in a disciplinary proceedings that an attorney be found guilty of the Bar's allegation to that specific misconduct can not be adopted. The Florida Bar v. Lancaster, 448 So.2d 1019, 1023 (Fla 1984).

The facts brought at the trial of this matter establish that (1) CONDON had stopped taking his medication during the time of the escrow deposits; (2) FREEMAN is motivated to some degree by the Client's Security Fund [1T:223:4-10]; (3) FREEMAN's dismissal of CONDON compromised his own case, bringing injury upon himself; and (4) CONDON and FREEMAN have resolved their dispute concerning fees and escrow and pledge balances. The Referee's Report made no specific finding of injury to anyone.

The Bar has the burden of proving that the attorney is guilty of specific rule violations. The Florida Bar v. Rood, 622 So.2d 974, 977 (Fla 1993), citing The Florida Bar v. Weiss, 586 So.2d 1051 (Fla 1991). This burden must be carried by proof that is clear and convincing. The Florida Bar v. Simring, 612 So.2d 561, 565 (Fla 1993), citing to The Florida Bar v. Burke, 578 So.2d 1099 (Fla 1991).

The ability to make a clear and convincing case of intentionality is negated by the record which establishes that (a) CONDON was suffering from a medically recognized disability, a trait of which is a diminished ability to think or concentrate, (b) CONDON was consistent in his attempt to correct the errors caused by his disability, and (c) the Bar relies upon a logical error in its presentation to the Court.

(a) Disability

It has been established that CONDON suffers from the illness of depression. CONDON's illness is identified with a trait of diminished ability to think or concentrate and this interfered with his performance of his accounting function. Other signs of the illness are change in appetite and weight, sleep disturbance, loss of energy, change in anxiety level, decreased sex drive, diminished ability to think or concentrate, feelings of worthlessness or excessive guilt, and recurrent thoughts of self-harm. See: American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 222-23 (3rd ed. revised 1980).

Only three to nine percent of individuals in Western industrialized countries suffer from depression. [J.H. Boyd and M.M. Weisman, "Epidemiology of affective disorders," 38 Archives of General Psychiatry, 1039-1044 (1981)] However, nineteen percent of lawyers suffer from significantly elevated levels of depression. Five percent of lawyers are both depressed and alcohol abusers. [G. Andrew H. Benjamin, Elaine J. Darling, and Bruce Sales, "The

prevalence of depression, alcohol abuse, and cocaine abuse among United States lawyers", 13 International Journal of Law and Psychiatry, 233-246, 240 (1990)] While only ten percent of law student are depressed before matriculation, depression affects thirty-two to forty percent of first and third law school students. [G.A.H. Benjamin, A. Kaszniak, B. Sales and S.B. Shanfield, "The role of legal education in producing psychological distress among law students and lawyers," American Bar Foundation Research Journal, 225-252, (1986)]

Depression is recognized as a handicap entitled to protection from job discrimination. Pridemore v. Rural Legal Aid Society of West Central Ohio, 625 F.Supp. 1180 (S.D. Ohio 1985); Doe v. Region 13 Mental Health-Mental Retardation Commission, 704 F.2d 1402 (5th Cir. 1983).

(b) Consistent effort to correct errors

The record reflects that CONDON did and redid his FREEMAN's ledger in an attempt to trace his money and pay the debt. At one point every penny received went into the accounting. CONDON was working on a correct record up until the Bar impounded CONDON's files.

(c) Frustration caused by the Bar

It is a paradox that the Bar function of protecting the general population, the client, and the lawyer is sometimes complicated when the Bar concentrates too heavily on one function and engages in circular logic. In the instant matter, the Bar was so concerned with determining guilt that it failed to assist in resolution of the problem. This is

the logical fallacy of "special pleading." Special pleading is refraining from mentioning unfavorable aspects to one's case and only presenting part of the truth. [Winston W. Little, W. Harold Wilson, W. Edgar Moore, Applied Logic, Boston: Houghton Mifflin Co. (1955) p. 9-10.]

The failure of the Bar to consult with CONDON [1T:274] concerning the meaning the CONDON's records caused CONDON to have to guess at the correct amount of money, if any, in escrow. The failure of the Bar to review all of the documents in its possession in reconstructing CONDON's accounts [1T:274 & 278] could only result in the Bar reaching the wrong conclusions. Further the Bar's auditor admits the Bar's pre-disposition to find errors it member's records: "You have to remember, the only audits we do are for costs, we don't do any spot audits, we only do for costs, so it is reasonable obviously to expect that in most cases I will find they are not in compliance." [1T:-287:7-10]

The auditor admits to "circular logic." Circular logic occurs when a "conclusion, or some proposition that follows from the conclusion alone, appears tacitly or explicitly among the supporting premises." Ruggero J. Aldisert, Logic for Lawyers: A Guide to Clear Legal Thinking, New York: Clark Boardman Co. (1989) p. 201.

The tragedy to both FREEMAN and CONDON was, that while the Bar withheld the records, CONDON could only guess as to their contents.

(d) Conclusion

The record tends more to establish CONDON's illness than intention. CONDON said in the record: "I did not steal, I did not intentionally convert, I was negligent. I don't think I was grossly negligent, I think I was negligent." [2T: 101] The negligence consisted in the Respondent's decision to cease taking a prescribed medication. While, based on his prior history, the respondent knew or should have known of the consequences, there is no showing of intent to convert.

Number Two: CERTAIN OF THE REFEREE'S CONCLUSIONS OF FACT ARE WITHOUT SUPPORT IN THE EVIDENCE

Rule 3-7.6(k)(1)(A), Rules Governing the Bar, requires a finding of fact as to each item of misconduct. The referee's findings must be supported by the evidence. The Florida Bar v. McKenzie, 442 So.2d 934 (Fla 1983), citing to The Florida Bar v. Hirsch, 359 So.2d 846 (Fla 1978). In the absence of a specific finding of specific misconduct, a referee's recommendation in a disciplinary proceedings that an attorney be found guilty of the Bar's allegation to that specific misconduct can not be adopted. The Florida Bar v. Lancaster, 448 So.2d 1019, 1023 (Fla 1984).

Numerous paragraphs of the Referee's Findings of Fact are in error or unsupported by the record.

(a) Paragraph 3

In Paragraph 3 the referee concluded that there (was)

should have been $9,500.00 in the trust account. The referee's conclusion is based on FREEMAN's testimony which is based, for the large part, on the statements of others. [1T:130-131]. Moreover, the statements of others are conclusions based on "circular logic" and are contradicted by the record.

Circular logic occurs when a "conclusion, or some proposition that follows from the conclusion alone, appears tacitly or explicitly among the supporting premises." Ruggero J. Aldisert, Logic for Lawyers: A Guide to Clear Legal Thinking, New York: Clark Boardman Co. (1989) p. 201.

CONDON's financial records were confused. [1T:28:21-29:5]. The various projections of the amount in the trust account were based upon reviews of CONDON's records. Part of the problem was created by wrongly written receipts [2T:37:4-10]; part was created by a duplication of receipts [2T:39:14-18]; part was created by the confusion of frequent Bar audits [2T:82:19-83:4]; part was created by the Bar physically being in possession of CONDON's records [2T:58:11-16].

All amounts claimed are based on reviews of CONDON's records. All estimates are conclusions based upon defective data input from CONDON.

The Referee relies upon FREEMAN's statement that CONDON called FREEMAN on July 19, 1989, upon receipt of AMERICAN FUNDINGS offer of settlement [Complainant's Exhibit 17]. And relies upon FREEMAN's testimony that he "took the money out to him as soon as we got the money out. Then there was

another $1,000.00 that he needed, so we had to come up with that money, and I gave him half the money, and took the other part to him and that made the $9,500.00." [1T:131:18-23]. This is in conflict with Complainant's Exhibit 19 which indicates three payments after the date of the letter: one on July 26, 1989, for $690.00; one on September 1, 1989, for $401.00: and one on November 17, 1989, for $602.00. This is also in conflict with FREEMAN's testimony on September 29, 1993, that of the late July payment(s), "there was a check, it was partially given to him in cash, and we give him a check for $260.00, and he took that -- I mean, he held that check, and we went back and gave it to him, but that was within a week." [1T:134:8-11].

CONDON's lawyer and FREEMAN's lawyer reached an agreement as to the amount to be contained in the FREEMAN account; the amount was $5,000.00. [1T:57:5-8] To FREEMAN's lawyer it "was a good faith settlement offer, a settlement compromise of a controversy between his attorney and his client." [1T:58:20-22]

All in all, there is nothing to support the Referee's conclusion as to any amount other than the $5,000.00 agreed to between counsel.

(b) Paragraph 5

In paragraph 5 the referee concluded that CONDON prepared a letter [Complainant's Exhibit 18] accepting an offer from AMERICAN FUNDING and purportedly forwarded a trust account check to AMERICAN FUNDING. This is not a valid

finding supported by the Referee's findings, the record or logic.

As to the record, counsel for AMERICAN FUNDING states that he never received such a letter or check. [1T:84:5-17]

As to logic, logic dictates that such a letter must only have reached the draft stage. If you will remember, FREEMAN has said that upon receipt of AMERICAN FUNDING'S July 19, 1989, offer of settlement he took the money out to CONDON as soon as he could get the money out. Then he paid another $1,000.00 132/9-11 that CONDON needed that FREEMAN had to come up with that money. Then "I gave him half the money, and took the other part to him and that made the $9,500.00." [1T:131:18-23]. That would be <u>three</u> events between July 18th and July 27, 1989. The Complainant's exhibit 21 indicates only <u>one</u> transaction between June 28, 1989 and September 1, 1989, a deposit of $690.00 on July 26, 1989. This one deposit is memorialized as receipt 926 in the December 31, 1990, letter which is page three of Complainant's exhibit 6.

Logic would dictate that upon receipt of the $690.00 on July 26, 1989, CONDON drafted the letter under discussion while waiting for the rest of the funds. When the funds were not received, the letter went into the trash can.

<u>(c) Paragraph 7</u>

In paragraph 7 the referee concluded that CONDON advised the FREEMANs that he had sent off the settlement in July of 1989. This conclusion is contrary to the record.

In his testimony of September 29, 1993, FREEMAN identified the purported letter to ZAHM of July 26th and stated that "Mr. Condon wrote this letter to me, mailed it to us." [1T:132:19-25]. FREEMAN continued by testifying that the copy he received in the mail "was signed" but now he "couldn't find the signed letters." [1T:133:3-8]

FREEMAN goes on to maintain that CONDON maintained for the next six months that the money had been sent. [1T:133:15-24]. However, Complainant's Exhibits 6 and 21 indicate two more deposits during those six months, indicating that FREEMAN thought payments were still to be made as if settlement had not been reached.

(d) Paragraph 11

In paragraph 11 the referee concluded that CONDON had two accounts between April 22, 1988, and June 1, 1989. This is either misleading or unsupported by the record. The Bar's expert in accounting wrote in his June 4, 1991, report [Complainant's exhibit 25] that the last check on the University State Bank account was May 29, 1987. In Exhibit 21 he also indicated a balance of $7.68 on April 22, 1988. He also testified that the Respondent had closed it by May 1988. [1TR:254:5-6]

(e) Paragraph 14

In paragraph 14 the referee concluded that CONDON intentionally mislead FREEMAN and MUSIAL. However the record, read most graciously for FREEMAN, indicates a confusion surrounding him in general. In an attempt to make

sense of the confusion, more-than-likely he has projected reasons for what has happened that are not wholly correct.

MUSIAL never said that CONDON lied to him or mislead him. At most MUSIAL assumed certain things that were not reliable or permitted himself to suffer from the fallacy of amphiboly.

(f) Paragraph 20

In paragraph 20 the referee concluded that CONDON was to hold the money only for mortgage payments. This is contradicted by the testimony concerning the pledge of escrow funds to guarantee the fees of the penurious FREEMAN.

(g) Paragraph 24

In paragraph 24 the referee concluded that the trust funds were never applied. However GARY SIEGEL testified that the sum of $5,000.00 was received by him on May 26, 1992, for payment of the mortgage with funds originating with CONDON. [1T:26:23-27:10]. Complainant's Exhibit verifies this, as does the testimony of FREEMAN's last lawyer. [1T:52:3-6]

Conclusion

It is all quite subjective. In the first The Florida Bar v. Condon, 632 So.2d 70 (Fla. 1994), the Referee determined that a six month suspension was appropriate: this Court, however, indicated that eighteen was more appropriate. In this instant matter, the Referee indicates that disbarment is appropriate for essentially the same conduct (or lack thereof). It all depends on how mental illness is viewed and one's perspective.

***

(a) Personal conclusion

When the undersigned first read this Court's opinion in the first The Florida Bar v. Condon, he felt an existential pain only equalled by the death of his father. However, having read and reread the transcript of the proceedings below, the undersigned sees the obvious signs of depression and stress and wonders about his current ability as a lawyer. Unless the undersigned feels an increase in his ability to be a lawyer and a healing of his illness, it is doubtful he will start the reinstatement procedures required in The Florida Bar v. Condon.

(b) The Florida Bar's perspective

While the conduct complained of by the Bar in the instant case are identical in time and conduct with the first The Florida Bar v. Condon, the Florida Bar stated at the

Referee level that there is a new victim and therefore, by implication, another recommendation of disbarment.

(c) The Public's perspective

The undersigned reads The Florida Bar v. Condon as saying that it is just as wrong for a mentally ill person to stop taking his/her medicine as it is for a knowing alcoholic to take that first drink. If one does that wrong, one must accept the consequences. If this Court does nothing in this matter, the public is still protected by the procedure of reinstatement the undersigned must undergo before he accepts his next client.

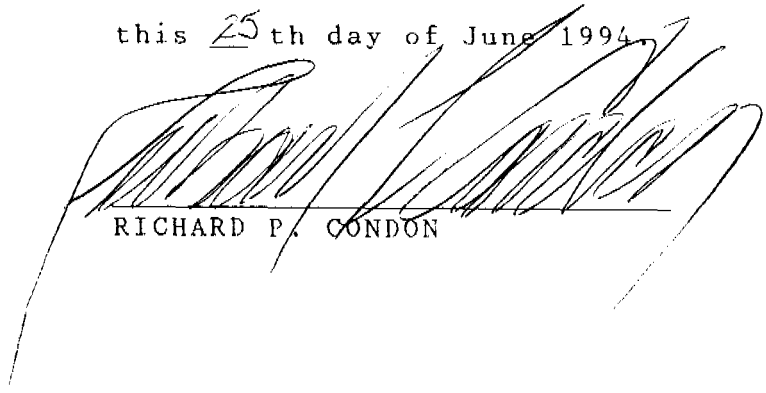
***

Respectfully submitted,

RICHARD P. CONDON
FBN: 126676
214C Bullard Parkway
Temple Terrace, Florida 33617-5512
(813) 985-3467

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by United States Mail to THOMAS E. DEBERG, Assistant Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport Marriott Hotel, Tampa, Florida 33607 on this 25th day of June 1994.



RICHARD P. CONDON