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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

CASE NO. 82,014

TFB No. 92-10,931(12B)

v.

STANLEY E. MARABLE,
Respondent.

_____ /

ANSWER BRIEF

AND

INITIAL BRIEF ON CROSS PETITION

OF THE FLORIDA BAR

DAVID R. RISTOFF
Branch Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport Marriott Hotel
Tampa, Florida 33607
(813)875-9821
Florida Bar No. 358576

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SYMBOLS AND REFERENCES

In this Brief, the Respondent, Stanley E. Marable, will be referred to as the "Respondent". The Florida Bar will be referred to as "The Florida Bar" or "The Bar". "RR" will refer to the Report of Referee. "TR." will refer to the transcript of the Final Hearing held on December 17, 1993.

STATEMENT OF THE FACTS AND OF THE CASE

The Florida Bar does not agree with all of the facts set forth in Respondent's Initial Brief and adopts the Findings of Fact set forth in the Report of Referee. (Attached hereto as Appendix A to this Brief).

The following facts are taken from the Report of Referee:

In August 1991, Manatee County Sheriff Wells received an anonymous telephone call stating that he (Wells) was going to receive extortion demands. The extortion demands would include settling a lawsuit with an individual named Eugene Matthews. (Tr. p. 21, L. 2-9).

Respondent had been retained by Eugene Matthews regarding a false arrest lawsuit against the Sheriff and the Sheriff's office. (Tr. p. 92, L. 20-23, p. 121, L. 3). Respondent had been advised by Mr. Matthews that a private investigator had a "hobby" of investigating police misconduct. Respondent was told the investigator had tapes from a scanner. (Tr. p. 122, L. 7-10). Respondent contacted a third party who arranged for the private investigator, Frank Lanzillo, Jr., to contact Respondent. (Tr. p. 122, L. 13-25).

On August 30, 1991, Respondent met with Frank Lanzillo, Jr. (Tr. p. 56, L. 13). During this August 30, 1991 meeting, Respondent inquired as to whether Mr. Lanzillo had ever observed a semi-nude photo of Sheriff Wells. (Tr. p. 57, L. 6-23). The photograph had been given to Respondent by Mr. Matthews. (Tr. p. 125, L. 16). Respondent then showed the photo of Sheriff Wells to Mr. Lanzillo to obtain some verification of whether the photo was taken of Sheriff Wells at a drug party. (Tr. p. 125, L. 11-24).

During the first week of September 1991, Mr. Lanzillo reported the August 30, 1991 discussion with Respondent to Sheriff Wells and the Manatee County Sheriff's office. (Tr. p. 19, L. 17-24). It was suspected that the Respondent made the telephone call to Sheriff Wells. This telephone call and subsequent meeting between Respondent and Mr. Lanzillo prompted the Sheriff's office to contact the State Attorney for the Twelfth Judicial Circuit. An investigation was undertaken by the Sheriff's office and was monitored by the State Attorney. (Tr. p. 29, L. 12-21). Mr. Lanzillo agreed to participate in this investigation. There was no independent evidence discovered that the Respondent made the telephone call to Sheriff Wells. (Tr. p. 24, L. 6-7 should read: "There was 'no' independent evidence.....").

Mr. Lanzillo contacted Respondent and requested a copy of the semi-nude photograph of Sheriff Wells. (Tr. p. 84, L. 3, p. 127, L. 16). Respondent testified that he did not feel comfortable giving Mr. Lanzillo his copy, and called Mr. Matthews to request a copy be sent to Mr. Lanzillo. (Tr. p. 127, L. 20-25). On

September 6, 1991, a copy was then received in the mail by Mr. Lanzillo. (Tr. p. 84, L. 11). Mr. Lanzillo called Respondent and thanked him for the photo. Thereafter, a series of conversations between Respondent and Mr. Lanzillo were taped under the supervision of the Sheriff/State Attorney investigation. These contacts were initiated by Mr. Lanzillo.

On November 6, 1991, Respondent met with Mr. Lanzillo at Respondent's office. At this November 6, 1991 meeting, Mr. Lanzillo produced a bogus taped telephone conversation between two Manatee County Sheriff deputies. The taped conversation concerned an alleged file not presented to Respondent in a discovery request. (Tr. p. 29, L. 11-13). Law enforcement provided the staged conversation as a vehicle for Respondent to act on this information. (Tr. p. 28, L. 11-13).

During the November 6, 1991 meeting Mr. Lanzillo stressed to Respondent that he did not want the taped conversation traced back to Mr. Lanzillo. The following is a conversation between Respondent and Mr. Lanzillo:

Lanzillo: Hey, I don't want this shit biting me on the ass.
Marable: Well, I ain't.....
Lanzillo: I mean, I don't wa...want my name used or how you got it.....
Marable: ...I won't.....
Lanzillo: I mean that's, that you do with that tape what ever you want but I don't wanta.... you know.
Marable: Yeah, I understand.
Lanzillo: As far as I'm concerned.....
Marable: ...so what...what happens at some point they hey, we don't know what the fuck you're talking about Marable. Say hey, I've got this, I guess I could say I got this anonymous tape.
Lanzillo: I'll deny anything... You did, you can say anything you want.....
Marable:Yeah at that point I can...we tape it, change the writing so won't find your writing or fingerprints then it's none of their business where I got it. They can't....
Lanzillo: Make your own copy. Do with it what you want.
Marable: Say, hey. I don't know how I got this fucker, but I got it. I ain't telling you. Work product. (pause) I don't know just more intrigue. That's strange, you know, the dealings I've had with Ference have always been cordial. I'm sure he's got to in (inaudible) and stuff to me. I mean he always acted like a gentleman. And he seemed to have more sense. But.....

(R. Bar Ex. 6, 6A - pg. 19, November 6, 1991 conversation)

On November 7, 1991, the Respondent forwarded a letter to the attorneys representing the Manatee County Sheriff's Department in the Matthews lawsuit, indicating that he had received information that evidence and discovery had been withheld.

In the November 6, 1991 conversation Mr. Lanzillo inquired about any other photographs that Respondent may have obtained. Respondent had told Mr. Lanzillo that he had heard a rumor of Sheriff Wells and a cowboy singer in some other photos. (Tr. p. 129, L. 21-24). Respondent heard the rumor from Mr. Matthews. (Tr. p. 130, L. 4). The photos allegedly depicted Sheriff Wells using narcotics. (R. Bar Ex. 6, 6A - p.19). Respondent was told that a Ms. Poindexter had the negatives somewhere in her house. (Tr. p. 130, L. 16). The conversation on November 6, 1991 continued:

Lanzillo: You never know...Anything else? That you can clue me in on or anything else I need to know?
OK. Got any subpoena's coming up?

Marable: You know, I will.

Lanzillo: Thanks.....whatever.....

Marable: OK. Well again I will check as I said I, I..you know those pictures of Wells and Chance going drugs....

Lanzillo:those would.....

Marable: Apparently, they scared the woman that has them, she won't turn them loose.

Lanzillo: Who's scared her?

Marable: Who?

Lanzillo: Who's scared her?

Marable: Wells and Chance fucker her...You know her? she's working for the County six years. She's got the pictures. They think they broke in and stole but she's got the negatives. It'd be interesting.

Lanzillo: About what?

Marable: She's got um. Get her address you can break in there and steal em'.

Lanzillo: Oh, I'd never do anything like that.....Homey, don't play that. Everything's above Board.

Marable: The end justify....

Lanzillo: Testing one, two, three.

Marable: The end justifies the means.

Lanzillo: The ends justify the means? Is that the motto, the new motto for the day.

Marable: That's something I heard somewhere. I didn't make it up. I appreciate you're a good man. Oh, you know, listen, listen more maybe you'll get more interesting stuff. Like how would they say ha, ha. How could we forget that Matthews case what was the big deal? They arrest people every day.

Lanzillo: Whatever, I just gave you a little early Christmas present. Something for you think

about underneath the tree.

(R. Bar Ex. 6, 6A - p. 19 and 20).

On November 8, 1991, Respondent met with Mr. Lanzillo at Mr. Lanzillo's office. The following conversation was tape recorded:

Lanzillo: Hanging in there. Anyway, got a meeting at 2:45? Or a hearing at 2:45? First of all, I want to thank you for uh, that clip and that file. I know it was....I made out like a bandit on that. It wasn't you know for that cell phone, one, one cell phone tape. But uh, you were talkin' about.....I've been doin' some thinkin' and remember our discussion the other day, you said it'd be nice if we could get the address and break into that house and get them, get them pictures?

Marable: (inaudible).

Lanzillo: (laughs). Anyway, um, I have a, well, let me put it to you this way if you would; gettin' those pictures be worth a hundred bucks to ya?

(pause)

Marable: Yeah, the picture'd be, would be interesting. Again, you know, I don't know what I could use 'em for, you know. It'd, it'd be worth, it'd be worth that to a lot of people. Um, yea, and maybe not to me, but I think I know people for whatever their own political agenda's they'd be worth that but not.....

(R. Bar Ex. 7, 7A - p.1).

Respondent reiterates that the photos would be worth a lot of money.

Marable: Now to me, to me, they're worth, you know, that to people that I happen to know who for whatever reason uh, you know, it would be worth, you know, worth it. But I'm not....I can't say I would pay anybody or (inaudible) somebody bustin' in. But damn, it'd be worth you, you'd make some money.

Lanzillo: Well.....

Marable: You know, you could sell 'em for a hell of a lot more than that.

Lanzillo: Well, I'd just get em' to you.

Marable: Yeah. Yeah, but see, then I get involved in the...you know, yeah if you're interested I would mention to some people that if they wanted, that these, perhaps these things can be gotten by somebody but I don't wanna be acting as the middle man.

(R. Bar Ex. 7, 7A - p. 2).

Mr. Lanzillo continued the discussion of the break in.

Lanzillo: Well, an idea I had, 'cause I've been thinkin' about it since you mentioned that.

Marable: Well, it's a good one, you know, I don't know how I somehow become a central clearing house for shit (laughs).

(R. Bar Ex. 7, 7A - p. 3).

Respondent then indicated to Mr. Lanzillo that he wasn't serious about the break in. However, Respondent continued to show an interest in the photos and encouraged Mr. Lanzillo. When Mr. Lanzillo told Respondent that Ms. Poindexter would be out of town that weekend Respondent stated, "OK. Well, I'll uh, give it some thought but it might be interesting it would be. She's out of town, huh? Good for her." (R. Bar Ex. 7, 7A - p. 5).

After the November 8, 1991 meeting, the Respondent had no contact with Mr. Lanzillo, nor did Mr. Lanzillo have any contact with the Respondent until December 13, 1991. In the interim, law enforcement prepared a staged photograph of Sheriff Wells and others purportedly using cocaine. (Tr. p. 32, L. 21-25, p. 33, L. 1). On December 13, 1991, Mr. Lanzillo advised Respondent that he had obtained the photographs out of the Poindexter garage. No burglary ever occurred. Respondent showed some hesitancy in receiving the photos but then told Mr. Lanzillo to send them anonymously.

Marable: Yeah. Well, send 'em, send 'em to me anonymously or drop 'em off....

Lanzillo: Send 'em to you anonymously.....

Marable:I can say that.....

Lanzillo:I'll, I'll drop 'em off, man. I don't trust these.....

Marable:I can say in good faith. I don't know where the hell these....

Lanzillo: And you won't know where they've come from either. I didn't see you, you didn't see me.

Marable: Yep.

(R. Bar Ex. 8, 8A - p. 4).

Within an hour Respondent told Mr. Matthews about the telephone call from Mr. Lanzillo. (Tr. p. 158, L. 12-24). Also, on December 13, 1991, Mr. Matthews then contacted Mr. Lanzillo and advised that Respondent told him to call Mr. Lanzillo because Lanzillo had "something that I need." (R. Bar Ex. 11 - December 13, 1991, p. 1).

On December 16, 1991, Mr. Lanzillo met with Mr. Matthews at Mr. Lanzillo's office. Mr. Lanzillo asked what Respondent told Mr. Matthews.

Matthews: He told me, in order to protect his ass so he wouldn't get in the middle of somethin', for me to take care of this and uh, it was cool to take care of it whenever uh, it would just be between Stan, me and you and no other, and uh,

Lanzillo: I would never say where I got anything.....
You know my prints ain't going to be on this
shit.
(R. Bar Ex. 11, December 16, 1991, p. 2).

Mr. Lanzillo then asked if Respondent told Mr. Matthews how
the negatives were obtained.

Lanzillo: Um. Did, did he tell you that I broke into
the place?

Matthews: Right.

Lanzillo: I was scared shitless, man. (laughs).

Matthews: Did you find it in the garage? In the box?
Right where I said it was. That's pretty good
information ain't it.

Lanzillo: Where'd you get that from?

Matthews: That's what I heard.

Lanzillo: Oh, OK.

Matthews: Remember I told you that?

Lanzillo: Yeah.

Matthews: I said that Livingston broke into her house
and stole her other picture and she had it out
in the garage in a box.

(R. Bar Ex. 11, December 16, 1991, p. 3, 4).

Mr. Lanzillo then showed the negatives to Mr. Matthews
depicting Sheriff Wells using cocaine. Mr. Matthews agreed to pay
\$50.00 to cover the developing costs. A meeting was held on
December 18, 1991 between Mr. Lanzillo and Mr. Matthews, however,
no photos or negatives were given to Mr. Matthews.

The State Attorneys office for the Twelfth Judicial Circuit
monitored the investigation involving Mr. Lanzillo, the Respondent
and the Sheriff's Department, and determined that no criminal
charges should be filed against the Respondent. The investigation
was concluded. (RR. p. 1-7, End of Portion taken from the Report
of Referee, see Appendix A).

A Final Hearing was held in the instant case on December 17,
1993. The Report of Referee was served on January 21, 1994. The
Referee recommended a one (1) year suspension and assessed the
costs of the disciplinary proceeding. The Referee also recommended
that Respondent be required to pass the Ethics portion of The
Florida Bar examination prior to the expiration of the suspension
period. The Report of Referee was considered by the Board of
Governors of The Florida Bar at its meeting which ended February

18, 1994. The Board of Governors voted to seek review of the discipline recommended in the Report of Referee. The Board of Governors voted to seek disbarment and assessment of the costs of the disciplinary proceeding.

SUMMARY OF ARGUMENTS

SUMMARY OF ARGUMENT I

The Referee's Findings of Fact as set forth in the Report of Referee are supported by the evidence and should be upheld. The tape recorded conversations and transcripts of those conversations between Mr. Lanzillo and Respondent was admitted into evidence. The Referee also heard the live testimony of Mr. Lanzillo, Respondent, and other essential witnesses and was able to determine demeanor and credibility. The Referee chose, based upon the evidence, not to believe the testimony of Respondent. The findings of fact should be upheld.

SUMMARY OF ARGUMENT II

The Florida Bar has filed a Cross Petition for Review on the issue of the appropriate sanction to be imposed. The Florida Bar submits that disbarment is the appropriate sanction for an attorney who encourages someone to engage in felonious activity. Therefore, it is requested that the Referee's recommendation for a one (1) year suspension be set aside and disbarment imposed on Respondent.

ISSUE I

THE REFEREE'S CONCLUSIONS IN THIS MATTER ARE PRESUMED TO BE CORRECT AND SUPPORTED BY THE EVIDENCE IN THE RECORD.

A Referee's findings of fact are presumed to be correct and will be upheld unless clearly erroneous. The Florida Bar v. Stalnaker, 485 So. 2d 815 (Fla. 1986). In this case the Referee determined that the Respondent's position was not credible. (RR. p. 8). The evidence established at the Final Hearing clearly supports Respondent's guilt. "The referee who presides over the proceedings is in the best position to make judgments concerning the character and demeanor of the lawyer being disciplined." The Florida Bar v. Fine, 607 So. 2d 416, 417 (Fla. 1992).

Respondent's Initial Brief correctly states that "the majority of the Referee's actual factual findings are correct....." (R. Initial Brief, p. 13, ¶ 1). However, Respondent argues that the conclusions based upon those facts are clearly erroneous and not supported by the evidence.

The evidence presented at the Final Hearing in this matter clearly establishes that Respondent encouraged Mr. Lanzillo to break into the Poindexter garage and obtain the photographs. Further, the series of conversations between Mr. Lanzillo and Respondent show Respondent's willingness to engage in deceitful and fraudulent conduct to obtain the photographs or incriminating material against Sheriff Wells.

On November 6, 1991, Respondent met with Mr. Lanzillo at Respondent's office. During this November 6, 1991 meeting, Mr.

Lanzillo produced a bogus tape recorded conversation between two Manatee County Sheriff deputies. The taped conversation concerned an alleged file not presented to Respondent in a discovery request. (Tr. p. 29, L. 11-23). During this November 6, 1991 meeting, Mr. Lanzillo stressed to Respondent that he did not want the tape recorded conversation traced back to Mr. Lanzillo. Respondent assured Mr. Lanzillo that Respondent would say he obtained the tape anonymously. Respondent told Mr. Lanzillo, "yeah at that point I can.....we tape it, change the writing so won't find your writing or fingerprints then its none of their business where I got it. They can't....." (R. Bar Ex. 6, 6A - p. 19. November 6, 1991 conversation). Respondent's statements reflect a willingness to engage in dishonest and unethical means to obtain evidence and conceal the source of origin.

During this November 6, 1991 conversation, Respondent also encouraged Mr. Lanzillo to break into the Poindexter garage and obtain the photographs allegedly depicting Manatee County Sheriff Wells using cocaine. (Tr. p. 130, L. 4). Respondent stated to Mr. Lanzillo, "She's got um. Get her address you can break in there and steal em'." Mr. Lanzillo responded, "Oh. I'd never do anything like that....Homey, don't play that. Everything's above Board." Respondent responded that "the end justifies the means." (R. B. Bar Ex. 6, 6A - p. 19, and 20.).

The Referee made specific findings regarding Respondent's position that he was not serious when he told Mr. Lanzillo to break into the Poindexter garage.

The Referee finds Respondent's position lacking credibility in that he made statements about the break in "flippantly and sarcastically." (Tr. p. 135, L. 9). Respondent's statement immediately thereafter that the "ends justify the means", was made in a serious tone and consistent with his efforts to obtain incriminating evidence or photographs. The forensic report of Dr. Hollien clearly establishes that Respondent made the statement "the ends justify the means." (R. Bar Ex. 9). Further, I find any statements made by Respondent that he "wasn't serious" to be rebutted by his subsequent statements of interest in the tapes, as well as his involvement of his client, Mr. Matthews, in conduct he believed to be criminal. The Respondent should not have involved hi client, Mr. Matthews, in conduct he believed to be criminal. (RR. p. 8).

On November 8, 1991, Respondent met with Mr. Lanzillo at Mr. Lanzillo's office. The following conversation was tape recorded:

Lanzillo: Hanging in there. Anyway, got a meeting at 2:45? Or a hearing at 2:45? First of all, I want to thank you for uh, that clip and that file. I know it was....I made out like a bandit on that. It wasn't you know for that cell phone, one, one cell phone tape. But uh, you were talkin' about.....I've been doin' some thinkin' and remember our discussion the other day, you said it'd be nice if we could get the address and break into that house and get them, get them pictures?

Marable: (inaudible).

Lanzillo: (laughs). Anyway, um, I have a, well, let me put it to you this way if you would; gettin' those pictures be worth a hundred bucks to ya?

(pause)

Marable: Yeah, the picture'd be, would be interesting. Again, you know, I don't know what I could use 'em for, you know. It'd, it'd be worth, it'd be worth that to a lot of people. Um, yea, and maybe not to me, but I think I know people for whatever their own political agenda's they'd be worth that but not.....

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Respondent reiterates that the photos would be worth a lot of money.

Marable: Now to me, to me, they're worth, you know, that to people that I happen to know who for whatever reason uh, you know, it would be

worth, you know, worth it. But I'm not....I can't say I would pay anybody or (inaudible) somebody bustin' in. But damn, it'd be worth you, you'd make some money.

Lanzillo:

Well.....

Marable:

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Lanzillo:

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Respondent then indicated to Mr. Lanzillo that he wasn't serious about the break in. However, Respondent continued to show an interest in the photos and encouraged Mr. Lanzillo. When Mr. Lanzillo told Respondent that Ms. Poindexter would be out of town that weekend Respondent stated, "OK. Well, I'll uh, give it some thought but it might be interesting it would be. She's out of town, huh? Good for her." (R. Bar Ex. 7, 7A - p. 5).

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Marable:

Yeah. Well, send 'em, send 'em to me anonymously or drop 'em off....

Lanzillo: Send 'em to you anonymously.....
Marable:I can say that.....
Lanzillo:I'll, I'll drop 'em off, man. I don't trust these.....
Marable:I can say in good faith. I don't know where the hell these....
Lanzillo: And you won't know where they've come from either. I didn't see you, you didn't see me.
Marable: Yep.
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Within an hour Respondent told Mr. Matthews about the telephone call from Mr. Lanzillo. (Tr. p. 158, L. 12-24). Also, on December 13, 1991, Mr. Matthews then contacted Mr. Lanzillo and advised that Respondent told him to call Mr. Lanzillo because Lanzillo had "something that I need." (R. Bar Ex. 11 - December 13, 1991, p. 1).

On December 16, 1991, Mr. Lanzillo met with Mr. Matthews at Mr. Lanzillo's office. Mr. Lanzillo asked what Respondent told Mr. Matthews.

Matthews: He told me, in order to protect his ass so he wouldn't get in the middle of somethin', for me to take care of this and uh, it was cool to take care of it whenever uh, it would just be between Stan, me and you and no other, and uh, I would never say where I got anything.....
Lanzillo: You know my prints ain't going to be on this shit.
(R. Bar Ex. 11, December 16, 1991, p. 2).

Mr. Lanzillo then asked if Respondent told Mr. Matthews how the negatives were obtained.

Lanzillo: Um. Did, did he tell you that I broke into the place?
Matthews: Right.
Lanzillo: I was Scared shitless, man. (laughs).
Matthews: Did you find it in the garage? In the box? Right where I said it was. That's pretty good information ain't it.
Lanzillo: Where'd you get that from?
Matthews: That's what I heard.

Lanzillo: Oh, OK.
Matthews: Remember I told you that?
Lanzillo: Yeah.
Matthews: I said that Livingston broke into her house and stole her other picture and she had it out in the garage in a box.
(R. Bar Ex. 11, December 16, 1991, p. 3, 4).

Mr. Matthews' testimony at the Final Hearing attempted to shield Respondent and himself from any wrongdoing. Mr. Matthews asserted that he really did not believe that Mr. Lanzillo committed a burglary at the time he tried to obtain the photographs. (Tr. p. 95, L. 21). The Referee properly concluded that the Respondent involved "his client, Mr. Matthews in conduct he believed to be criminal." (RR., p. 8). In addition, the Referee found "Mr. Matthews' testimony lacked credibility." (RR. p. 8). The Referee noted that Mr. Matthews made a statement to Mr. Lanzillo that the photos were "in the garage in a box." (R. Bar Ex. 11, December 16, 1991, p. 3). Respondent likewise made an almost identical statement to Mr. Lanzillo on December 8, 1991. (R. Bar Ex. 7, 7A - November 8, 1991, p. 2). (RR. p. 8). The coincidence of Mr. Matthews and Respondent separately making reference to the location of the photographs in the Poindexter garage in statements to Mr. Lanzillo corroborates their mutual involvement. It further bolsters Mr. Matthews' belief that a burglary was committed when he met with Mr. Lanzillo to obtain the photographs and bragged that he was correct as to the location of the photographs in the garage. (R. Bar Ex. 11, December 16, 1991, p. 3,4).

The tape recorded conversations, transcripts of those taped conversations and the live testimony of the witnesses were

evaluated by the Referee who determined the credibility of the witnesses. The Referee's findings of fact are presumed correct, supported by the evidence and should be upheld.

ISSUE II

WHETHER DISBARMENT RATHER THAN THE ONE (1) YEAR SUSPENSION RECOMMENDED BY THE REFEREE IS THE APPROPRIATE SANCTION.

While the Referee's findings of fact are presumed to be correct, the Referee's recommendation as to discipline is subject to a review that is broader in scope. The Florida Bar v. Poplack, 599 So. 2d 116 (Fla. 1992).

The Referee concluded that Respondent solicited or encouraged Mr. Lanzillo to engage in felonious activity. The Referee further concluded that Respondent involved his client, Mr. Matthews, in conduct he believed to be criminal. (RR., p. 8). The Referee found Respondent guilty of violating the following Rules Regulating The Florida Bar: Rule 3-4.3 (the standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibitive acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act which is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the State of Florida, and whether or not the act

is felony of misdemeanor, may constitute a cause for discipline); Rule 4-8.4(a) (a lawyer shall not violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 4-8.4(d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice). (RR. p. 8, p. 9).

In The Florida Bar v. Beasley, 351 So. 2d 959 (Fla. 1977), Beasley was disbarred for assisting a client in obtaining marijuana. Beasley was convicted of delivery of marijuana while Respondent has not been tried or convicted.

In Beasley the client requested that Beasley assist her in obtaining quaaludes. Respondent made a telephone call to arrange for the introduction of the client to a certain person who instead supplied marijuana to the client. In the instant case, Respondent's conduct went far beyond making a telephone call and arranging a meeting. Respondent encouraged Mr. Lanzillo to break into the garage and involved his client in conduct Respondent and Respondent's client, Mr. Matthews, believed was a burglary.

Encouraging someone to violate the law goes to the very heart of ethics. "By the very nature of his professional commitment the lawyer is least expected to be a violator of criminal laws." The Florida Bar v. Levinson, 211 So. 2d 173, 174 (Fla. 1968).

In addition to encouraging Mr. Lanzillo to break into the garage, Respondent engaged in conduct intended to conceal Mr.

Lanzillo as the source of the "bogus" taped conversation. Respondent's statement to Mr. Lanzillo, ".....Yeah at that point I can....we tape it, change the writing so won't find your writing or fingerprints then its none of their business where I got it. They can't....." (R. Bar Ex. 6, 6A - p. 19, November 6, 1991 conversation).

The Referee noted the following applicable Florida Standards for Imposing Lawyer Sanctions:

According to Standard 5.1 Failure to Maintain Personal Integrity, Florida Standards for Imposing Lawyer Sanctions, disbarment is the appropriate sanction. Standard 5.11(b) states that disbarment is appropriate when "a lawyer engages in serious criminal misconduct, a necessary element which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft. Standard 5.11(e) states that disbarment is appropriate when "a lawyer attempts or conspires or solicits another to commit any offenses listed in section (a) - (d)." Subsection (a) being a felony conviction. Standard 5.11(f) states that disbarment is appropriate when 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."

However, a reduction in the degree of discipline to be imposed is appropriate in this case because in mitigation, I find the Respondent has no prior disciplinary record.

Standard 7.2 states that "suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to client, the public, or the legal system."

(RR. p. 9).

Also applicable, but not found by the Referee is Standard 7.1, which states:

"Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system."

The Referee also noted the appropriate applicable aggravating and mitigating factors:

Aggravating Factors: Standard 9.22(b) dishonest or selfish motive; (c) a pattern of misconduct; (g) refusal to acknowledge wrongful nature of conduct; (i) substantial experience in the practice of law.

Mitigating Factors: Standard 9.22(a) absence of a prior disciplinary record.

(RR. p. 10).

It is requested that the Referee's findings of fact and conclusions of law be upheld. However, the Referee's recommendation of a one (1) year suspension should be set aside, and disbarment imposed.

CONCLUSION

Respondent's conduct reflects a lawyer who will use any means, legal or otherwise, to obtain information. The facts as of this case demand disbarment. The case law and The Florida Standards for Imposing Lawyer Sanctions support disbarment. The Aggravating Factors found by the Referee far outweigh the single mitigating factor.

Respondent encouraged the break in and involved his client in conduct Respondent believed to be felonious. In addition, Respondent's statements to Mr. Lanzillo demonstrated a willingness to use deceit to conceal Mr. Lanzillo as the source of the tape.

Respondent's pattern of dishonesty and deceit establishes that Respondent should be disbarred from the practice of law in this state.


Respectfully submitted,



DAVID R. RISTOFF
Branch Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport Marriott Hotel
Tampa, FL 33607
(813) 875-9821
Florida Bar No. 358576

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing Answer Brief and Initial Brief on Cross Petition of The Florida Bar was furnished by Airborne Express Mail to Sid J. White, Clerk, The Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1926, and a true and correct copy by regular U.S. Mail to R. Jackson McGill, Counsel for the Respondent at 1101 S. Tamiami Trail, Suite 101, Venice, FL 34285, and to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 by regular U. S. Mail this 23rd day of March, 1994.



DAVID R. RISTOFF
Branch Staff Counsel