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IN THE SUPREME COURT OF FLORIDA

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STANLEY E. MARABLE,

Petitioner,

v.

CASE NO.: 82, 024  
TFB NO.: 92-10, 931

THE FLORIDA BAR,

Respondent.

PETITION FOR REVIEW

PETITIONER'S INITIAL BRIEF

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TABLE OF CONTENTS

Citations of Authority.....	ii
Statement of the Case and Statement of the Facts.....	1
Issues Presented.....	10
Summary of Arguments.....	11
Argument I.....	12
<u>THE REFEREE'S CONCLUSIONS IN THIS MATTER ARE CLEARLY ERRONEOUS AND WITHOUT AN EVIDENTIARY BASIS.</u>	
Argument II.....	20
<u>THE REFEREE'S RECOMMENDATION AS TO THE DISCIPLINARY MEASURE TO BE APPLIED IS CLEARLY ERRONEOUS AND SHOULD BE REJECTED IN LIGHT OF THE FACT THERE IS NO CLEAR AND CONVINCING EVIDENCE OF GUILT.</u>	
Conclusion.....	21
Certificate of Service.....	22

CITATIONS OF AUTHORITY

<u>CASES</u>	<u>PAGE</u>
<u>Slomowitz v. Walker</u> , 429 So.2d 797 (Fla. 4th DCA 1983).....	12
<u>The Florida Bar v. Colclough</u> , 561 So.2d 1147 (Fla. 1990).....	12
<u>The Florida Bar v. Della-Donna</u> , 583 So.2d 307 (Fla. 1991).....	12
<u>The Florida Bar v. New</u> , 597 So.2d 266 (Fla. 1992).....	12
<u>The Florida Bar v. Scott</u> , 566 So.2d 765 (Fla. 1990).....	12
<u>The Florida Bar v. Weiss</u> , 586 So.2d 1051 (Fla. 1991).....	12
<u>The Florida Bar v. Wilson</u> , 599 So.2d 100 (Fla. 1992).....	12
 <u>OTHER</u>	
<u>Fla. Std. Jury Instr. (Civ.)</u> , MI4.1.....	12
<u>Rules Regulating the Florida Bar</u> , Rule 3-7.7.....	1

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

WHEN THE TERM "PETITIONER" IS USED IN THIS BRIEF IT SHALL REFER TO THE PETITIONER, STANLEY E. MARABLE. WHEN THE TERM "RESPONDENT" IS USED IN THIS APPEAL IT SHALL REFER TO THE RESPONDENT, THE FLORIDA BAR. WHEN THE TERM "T" IS USED IN THIS APPEAL IT SHALL REFER TO THE TRANSCRIPT OF PROCEEDINGS.

This appeal involves a Petition for Review of a Referee's Report, pursuant to Rule 3-7.7, Rules Regulating the Florida Bar.

The Petitioner is an Attorney licensed to practice law in the State of Florida, and has been so licensed in Florida since 1973. (T-117-118).

Factually, this matter first began in April of 1991, when the Petitioner undertook to file an civil action on behalf of Eugene Matthews against the Sheriff's Department of Manatee County, Florida. The action was based upon an alleged violation of Mr. Matthews' civil rights and for false arrest and false imprisonment. (T-121). Mr. Matthews, subsequent to his alleged false arrest, became a political adversary of Charles Wells, the Sheriff of Manatee County (T-105), and began a campaign to have the Sheriff defeated in an election or ousted from public office. (T-105).

In late August of 1991, Sheriff Wells claimed to have received an anonymous telephone call from someone who said that at some time in the future the Sheriff would receive an extortion attempt that involved the payment of money, and the settlement of the Matthews lawsuit against the Sheriff Department, and in return a part of this future extortion attempt would involve that no embarrassing photographs of the Sheriff would be released to the public.

In late August of 1991, Mr. Marable's client, Mr. Matthews, informed him that there was a private investigator in Manatee County who had a hobby of making tapes of Sheriff's Deputies, and other law enforcement officers, speaking over the airwaves. Mr. Matthews suggested to Mr. Marable that he contact this particular investigator in an attempt to see if he had any information relevant to their case. (T-104). Mr. Matthews did not know the name of the investigator, but knew that he had done work for a lawyer by the name of "Carter". (T-122). Mr. Marable subsequently contacted Mr. Carter and arranged a meeting to meet Frank Lanzillo at his office. (T-122).

On August 30, 1991, Mr. Marable and Mr. Lanzillo met in Mr. Marable's office. At the August 30th meeting Mr. Lanzillo brought along some tapes that he had recorded from a police scanner, and played one of the tapes for Mr. Marable. (T-56-57, 123). The Petitioner, Stanley Marable, after hearing the initial tapes, indicated to Mr. Lanzillo that he was not interested in that type of information or any other information that was not relevant to the Matthews case. (T-79, 128).

At the end of the August 30th meeting, the Petitioner asked Mr. Lanzillo if he knew anything about a partially nude photograph of Sheriff Wells, supposedly taken at a drug dealer's house during a party. (T-79, 124). Mr. Marable showed Mr. Lanzillo a copy of a partially nude photograph of Sheriff Wells, which had been given to him by Mr. Matthews in July of 1991. (T-52, 125). Mr. Matthews had, for political reasons, distributed over 100 copies of this

photograph to various people in Manatee County in July of 1991. (T-106).

Shortly after the August 30th meeting with the Petitioner, Mr. Lanzillo met with Sheriff Wells, and indicated to him that he had seen a partially nude photograph of the Sheriff at Mr. Marable's office. (T-59). Mr. Lanzillo was then questioned by the Sheriff's Department, and an investigation was begun, with Mr. Lanzillo agreeing to act as an undercover operative. (T-24-25, 59). The Sheriff Department's investigation initially began by the Department directing Mr. Lanzillo to attempt to obtain a copy of the photograph that Mr. Marable had shown him. (T-84). Mr. Lanzillo contacted the Petitioner and requested a copy of the photograph, however the Petitioner did not give him one, but indicated that he would see if one could be sent to Mr. Lanzillo, which was subsequently done by Mr. Matthews. (T-127-128).

The Manatee County Sheriff's Department, acting through Mr. Lanzillo, began a course of conduct to attempt to bait Mr. Marable into taking some course of action by providing him with various bogus tape recordings, incorrect information, and numerous requests by Mr. Lanzillo. (T-25-31). In response to the actions of the Sheriff's Department, Mr. Marable did not rise to any of the bait presented by the Department, and continued to inform Mr. Lanzillo that he was not interested in any of the bogus information presented him, and was only interested in matters that related to the Matthews case. (T-79). In the course of attempting to lure Mr. Marable into some type of action, the Sheriff's Department

provided Mr. Marable, through Mr. Lanzillo, phony tape recordings of alleged rendezvous between Sheriff Wells and various women, including a rendezvous in Tampa, involving Sheriff's Deputies, the Sheriff, and nude dancers from a topless bar, all having a meeting or party at a motel. When presented with this type of information Mr. Marable continued to stand by his position to Mr. Lanzillo that he was not interested in that type of material, and was only interested in matters related to the Matthews case. (T-80).

Once Mr. Lanzillo received the initial copy of the photograph that Mr. Matthews had sent to him, each and every time Mr. Lanzillo met or had contact with Mr. Marable he would ask about obtaining other photographs involving Sheriff Wells. (T-78). Mr. Marable did not ever question or inquire of Mr. Lanzillo to obtain photographs of the Sheriff or anyone in the Sheriff's Department for him. (T-79).

During one of the conversations when Mr. Lanzillo had made a request of Mr. Marable about obtaining other photographs, Mr. Marable informed Mr. Lanzillo that he was unaware of any other photographs, but that he had heard a rumor, from Mr. Matthews, that there were other photographs of the Sheriff and other officials using narcotics, which were allegedly in the possession of a County employee, Dottie Poindexter. (T-30, 129). After the Sheriff Department was two months into their investigation, and Mr. Marable had not taken a bite of any of the phony information the Sheriff's Department was offering to him, the Sheriff's Department then finally realized that Mr. Marable was not going to react to

anything that did not relate to the Matthews case. (T-81). In a further effort to attract Mr. Marable into some improper conduct, the Sheriff's Department made a bogus tape involving two of the detectives who were involved in the Matthews' arrest, joking about how they had withheld information from Mr. Marable in response to a Request for Production and a Public Records Request he had made in the Matthews matter. (T-26, 81). The Sheriff's Department then instructed Mr. Lanzillo to go to Mr. Marable's office and play the bogus tape for him. (T-81).

On November 6, 1991, Mr. Lanzillo went to Mr. Marable's office, and played a copy of the bogus tape involving the detectives laughing about not complying with the discovery request. (Exhibit 6, 6A). The bogus tape was played and replayed several times for the benefit of Mr. Marable who could not understand how the officers had not complied with the Requests, and was concerned about whether or not there had been a mistake on his part. (Exhibit 6, 6A). Mr. Marable, during the playing of the tape, rechecked his file, and had his secretary recheck the file, to verify that the Requests were properly done as far as the spelling of Mr. Matthews' name. (Exhibit 6, 6A, p.8). During the course of the meeting, which lasted approximately 45 to 50 minutes, Mr. Lanzillo again asked Mr. Marable for the photographs involving the Sheriff using drugs. (Exhibit 6, 6A, p.12). In response to Mr. Lanzillo's request Mr. Marable made a statement that he hadn't seen any different photographs. (Exhibit 6A, p.12).



Mr. Marable indicated to Mr. Lanzillo, concerning his request for additional photographs, that he would continue to check with his client about the photographs. (Exhibit 6A, p.19). Toward the end of the taped conversation of November 6, 1991, Mr. Marable made a statement to Mr. Lanzillo concerning the photographs, "She's got 'em, get her address, you can break in there and steal 'em". (Exhibit 6A, p.20). Shortly after this statement the meeting terminated, with Mr. Lanzillo leaving.

After hearing the bogus tape on November 6th, Mr. Marable did respond to the information by sending a letter to the Sheriff Department's lawyer indicating that he had received information that discovery had been withheld in response to his Request for Production. He requested the lawyer to follow up on this to get it straightened out. (Exhibit A).

At the time Mr. Marable heard the bogus tape, and the conversation that was taking place on the tape, Mr. Marable did reconfirm with Mr. Lanzillo that the bogus tape of the conversation was recorded off of the airwaves, so as not to have been illegally recorded. (Exhibit 6A, p.17). At the November 6th meeting, Mr. Marable also had a discussion with Mr. Lanzillo concerning disclosure of the tape. Mr. Marable indicated that he would take the position that the tape was "work product" and he would not have to disclose Mr. Lanzillo's identity. (Exhibit 6A, p.19).

On November 8, 1991, Mr. Lanzillo called Mr. Marable and requested that Mr. Marable come to his office. (T-136). Mr. Lanzillo indicated to Mr. Marable that the reason for the meeting

at his office was because he thought his phone had been tapped. (T-136).

Mr. Marable met at Mr. Lanzillo's office in Bradenton, Florida, prior to a hearing that Mr. Marable was going to have in the Matthews case. At the direction of the Sheriff's Department, Mr. Lanzillo was instructed to have a discussion with Mr. Marable about a break-in. (T-31). During the meeting, Mr. Lanzillo indicated to Mr. Marable that he was going to pay someone to break into Dottie Poindexter's house over the weekend and steal the alleged photographs of the Sheriff and others using narcotics. (Exhibit 7A, p.1).

After Mr. Lanzillo indicated to Mr. Marable that he was going to have someone commit the burglary over the weekend, Mr. Marable informed Mr. Lanzillo that he did not want to be involved, and further indicated that he would not pay anyone to commit a break-in. (Exhibit 7A, p.2). Mr. Lanzillo then indicated to Mr. Marable that he got the idea from the statement the Petitioner had made at the November 6th meeting, at which point the Petitioner told Mr. Lanzillo that he wasn't serious when he said that. (Exhibit 7A, p.4). Mr. Marable also told Mr. Lanzillo not to go over there on the weekend on his account. (Exhibit 7A, p.4). Mr. Marable then left Mr. Lanzillo's office without committing to any involvement in any alleged burglary, and then met Mr. Matthews at the Courthouse for the hearing, and informed Mr. Matthews of the conversation with Mr. Lanzillo. (T-139).

After the November 8th meeting at Mr. Lanzillo's office, five weeks elapsed without Mr. Lanzillo or Mr. Marable having any contact with each other. (T-85). On December 13, 1991, Mr. Lanzillo telephoned Mr. Marable and told him that Christmas had come early for him. (Exhibit 8A, p.1). Mr. Lanzillo informed Mr. Marable that he had gotten the photographs out of the garage. (Exhibit 8A, p.2). After Mr. Lanzillo informed Mr. Marable that he had the photographs, Mr. Marable indicated several times that he did not want to see them. (Exhibit 8A, p.3). Mr. Marable asked Mr. Lanzillo what he proposed to do with them, and Mr. Lanzillo indicated that they would go to the highest bidder. Mr. Lanzillo then informed him that he had copies of the photographs and that he was going to bring a copy to Mr. Marable. (Exhibit 8A, p.3-4). It was only after being told by Mr. Lanzillo that he was going to bring them to his office, that Mr. Marable suggested that he send them anonymously rather than Mr. Lanzillo personally bring them to his office. (Exhibit 8A, p.4).

After Mr. Marable had the phone conversation with Mr. Lanzillo, he called Mr. Matthews and indicated to him that Mr. Lanzillo claimed to have the photographs and that if Mr. Matthews wanted to look at them he should contact Mr. Lanzillo. (T-142). Mr. Marable had no further contact with Mr. Lanzillo after the December 13, 1991, telephone conversation. Mr. Lanzillo and Eugene Matthews met or spoke on December 13, December 16, and December 18. (Exhibits 11-1, 11-2, 11-3).

During the entire time of the Sheriff Department's investigation, the investigation was monitored by State Attorney Earl Moreland, and Assistant State Attorney Mack Futch, of the State Attorney's Office of the Twelfth Judicial Circuit. (T-37). At the conclusion of the investigation, the State Attorney's Office determined that no criminal charges were to be brought in this matter. (T-38).

The Florida Bar subsequently filed the Complaint in this matter, and a Hearing was held on December 17, 1993, before Donald E. Pellecchia, acting as Referee. After the Hearing a transcript was prepared and each party submitted proposed Reports to be considered by the Hearing Officer in preparing his Report. The Referee subsequently submitted a Report to this Court, and the Report basically adopted almost word for word the proposed Report of the Florida Bar, with the exception of the disciplinary action recommended. The Florida Bar had recommended disbarment in its proposed Report, and the Hearing Officer recommended a one year suspension. (See proposed Reports and Referee's Report).

The Petitioner subsequently filed his Petition for Review with this Court, and The Florida Bar has also filed a Petition for Review.

ISSUES PRESENTED

- I. WHETHER OR NOT REFEREE'S CONCLUSIONS IN THIS MATTER WERE CLEARLY ERRONEOUS AND WITHOUT AN EVIDENTIARY BASIS?
  
- II. WHETHER OR NOT, THE REFEREE'S RECOMMENDATION AS TO THE DISCIPLINARY MEASURE TO BE APPLIED IS CLEARLY ERRONEOUS AND SHOULD BE REJECTED IN LIGHT OF THE FACT THERE IS NO CLEAR AND CONVINCING EVIDENCE OF GUILT?

## SUMMARY OF ARGUMENTS

### SUMMARY OF ARGUMENT I

The Referee's Report, finding that the Petitioner solicited Mr. Lanzillo to commit a burglary and therefore violated the Rules of Professional Conduct as set forth by the Florida Bar in the Complaint, is lacking in evidentiary support and is clearly erroneous.

The transcripts of the meetings between Mr. Lanzillo and the Petitioner, which were admitted into evidence, together with the testimony presented at the Hearing, clearly establishes that the Petitioner never solicited Mr. Lanzillo to commit a burglary, and in fact, the evidence shows that the Mr. Marable told Mr. Lanzillo not to commit a burglary on his account.

There being no evidentiary support to establish by clear and convincing evidence that the Petitioner committed a violation of the Rules set forth in the Complaint in this matter, the findings and conclusions of the Referee are clearly erroneous and require this Court to reject the Referee's finding of guilt.

### SUMMARY OF ARGUMENT II

The Florida Bar has failed to establish by clear and convincing evidence that the Petitioner committed violations set forth in the Complaint, and therefore the Referee's recommendation that the Petitioner be suspended for one year is erroneous and should be rejected.

## ARGUMENT I

### THE REFEREE'S CONCLUSIONS IN THIS MATTER ARE CLEARLY ERRONEOUS AND WITHOUT AN EVIDENTIARY BASIS.

The law in Florida is clear that in attorney disciplinary matters, The Florida Bar has the burden to prove the allegations of the Complaint by clear and convincing evidence. The Florida Bar v. Wilson, 599 So.2d 100 (Fla. 1992), The Florida Bar v. New, 597 So.2d 266 (Fla. 1992), The Florida Bar v. Weiss, 586 So.2d 1051 (Fla. 1991).

"Clear and convincing evidence" has been defined as evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue. Slomowitz v. Walker, 429 So.2d 797 (Fla. 4th DCA 1983), Fla. Std. Jury Instr. (Civ.), MI4.1.

In reviewing this matter the Court is confronted with the issue as to whether or not the findings and conclusions of the Referee's Report are lacking in evidentiary support or are clearly erroneous. The Florida Bar v. Colclough, 561 So.2d 1147 (Fla. 1990), The Florida Bar v. Scott, 566 So.2d 765 (Fla. 1990), and The Florida Bar v. Della-Donna, 583 So.2d 307 (Fla. 1991).

The main thrust of the Florida Bar's allegations, and the Referee's findings and conclusions in this matter, deal with the issue of whether or not the Petitioner solicited Frank Lanzillo to commit a burglary to obtain photographs of Sheriff Charles Wells for himself or his client.

The majority of the Referee's actual factual findings are correct, however when one looks at these factual findings, together with the other clearly undisputed evidence in this matter, the conclusions reached by the Referee are clearly erroneous and are not supported by the evidence.

The evidence presented at the Hearing in this matter demonstrates that Mr. Marable did not solicit Mr. Lanzillo to commit a burglary to obtain photographs or any other items. The evidence does establish that Mr. Marable's only reason for contacting Mr. Lanzillo was in reference to previously recorded conversations, which Mr. Lanzillo had obtained prior to his ever having met Mr. Marable.

The testimony of Frank Lanzillo established clearly that it was Mr. Lanzillo, not the Petitioner, who was the one wanting and requesting the photographs which are discussed in the Referee's Report. During the cross-examination of Mr. Lanzillo he was asked about the Sheriff's Department requesting him to see if he could obtain photographs from Mr. Marable, and testified that it was the Sheriff's Department who had him request photographs from Mr. Marable. Mr. Lanzillo stated that each time that he met Mr. Marable or spoke with him over the phone, he was requesting or asking Mr. Marable about other photographs. Mr. Lanzillo also stated that at no time, other than how one may choose to interpret the one statement made on November 6, 1991, did Mr. Marable ever ask him to get any photographs of Sheriff Wells, or of any other member of the Sheriff's Department. (T-78-79).



At the tape recorded meeting of November 6, 1991, between Mr. Lanzillo and Mr. Marable, the tape clearly indicates that it was Mr. Lanzillo who was again asking Mr. Marable about obtaining photographs of Sheriff Wells. (Exhibit 6A, p.12). During that conversation Mr. Marable did indicate to Mr. Lanzillo that he would check on whether or not the photographs were available. (Exhibit 6A, p.19).

It appears from the Referee's Report that the major area of the Referee's findings dealt with a statement made by Mr. Marable during the November 6th, 1991, meeting with Mr. Lanzillo. During that meeting Mr. Marable, after being asked by Mr. Lanzillo about the photographs, did make a statement to Mr. Lanzillo indicating that he (Mr. Lanzillo) could get her address, break in and steal them. (Exhibit 6A, p.20). It is clear from the context of this statement, and the subsequent actions of the Petitioner, that the words were in the nature of a mere statement in response to Mr. Lanzillo, concerning Mr. Lanzillo's concern or questions about the photographs, rather than a request or solicitation for him to commit a burglary.

After the November 6, 1991, meeting, Mr. Lanzillo was instructed by the Manatee County Sheriff's Department to recontact Mr. Marable. On November 8, 1991, Mr. Lanzillo arranged a meeting with Mr. Marable, and pursuant to previous discussions with the Sheriff's Department, and at their instruction, Mr. Lanzillo discussed a break-in with Mr. Marable. (T-31).

During the November 8th, 1991, meeting Mr. Lanzillo brought up the idea to Mr. Marable of committing a burglary to obtain the photographs, and indicated that he had gotten the idea from the statement Mr. Marable had made on November 6th, 1991. Mr. Marable responded to Mr. Lanzillo that he was not serious when he had made that statement, (Exhibit 7A, p.4), and Mr. Marable also told Mr. Lanzillo not to go over to the house and commit a burglary on his account, further stating that he would not pay anyone to commit a burglary. Mr. Marable left the November 8th meeting without requesting Mr. Lanzillo, or encouraging him in any way, to commit any burglary. (Exhibit 7A).

The Referee's Report reaches a conclusion that Mr. Marable's statement that he was "not serious" when he made the previous statement, was rebutted by his subsequent statements of interest in the tapes(sic). This conclusion is clearly erroneous, by virtue of interest in the tapes having nothing to do with photographs or a burglary.

The most telling evidence and facts presented during the course of the Hearing which establishes clearly that the Petitioner was not involved in encouraging or soliciting Mr. Lanzillo to commit a burglary, was the length of time between the November 8th, 1991, meeting when Mr. Lanzillo indicated that he was going to commit the burglary that weekend, and when Mr. Lanzillo next contacted Mr. Marable. The facts clearly establish that Mr. Lanzillo did not contact the Petitioner during the five week period following November 8th, nor did the Petitioner make any contact

with Mr. Lanzillo during that five week period. (T-85). It was on December 13, 1991, when Mr. Lanzillo, out of the blue, called Mr. Marable and indicated to him that "Christmas has come for you early", and that he had gone and gotten the negatives of the photographs out of the garage of Dottie Poindexter. (Exhibit 8A, p.1-2). Logic and common sense clearly lead one to the conclusion that had Mr. Marable solicited, requested, or encouraged Mr. Lanzillo to commit a burglary to obtain the photographs, he would have been calling him after the weekend of November 8th, to determine if Mr. Lanzillo had in fact committed the burglary and obtained the photographs. The fact that no contact was made clearly leads one to the conclusion that Mr. Marable had not expected any burglary to occur.

In determining if Mr. Marable was the encouraging party, it is also interesting to note that from the evidence, with the exception of initial meeting between Mr. Lanzillo and Mr. Marable on August 30, 1991, it was Mr. Lanzillo who initiated all the contact between the Petitioner and Mr. Lanzillo; he was either arranging meetings or initiating telephone calls, and the Petitioner did not initiate any of the contact other than the August 30, 1991, meeting. (T-86).

It also logically follows that had Mr. Marable solicited Mr. Lanzillo to commit a burglary to obtain the photographs, when he was contacted five weeks later he would certainly have expressed some desire to see the photographs right away, rather than telling Mr. Lanzillo that he did not want to see them. (Exhibit 8A, p.3).

The fact that the Petitioner asked Mr. Lanzillo what he was going to do with the photographs, after Mr. Marable said he did not want to see them and Mr. Lanzillo said that they were going to the highest bidder, clearly indicates that there was no agreement on the part of Mr. Marable that Mr. Lanzillo commit a burglary to obtain the photographs for him. (Exhibit 8A, p.3).

Once the Petitioner informed Mr. Lanzillo that he did not wish to see them and Mr. Lanzillo indicated that he was going to sell them, Mr. Lanzillo then indicated to the Petitioner that he did have an extra copy that he was going to bring them to the Petitioner in a couple of days. It is only at this point that the Petitioner instructed Mr. Lanzillo that if he was going to bring them, to send them or bring them anonymously. (Exhibit 8A, p.4). The fact that this statement was made does not indicate that Mr. Marable had solicited the action of Mr. Lanzillo, but was merely a reaction to Mr. Lanzillo's statement that he was going to bring a copy of the negatives to Mr. Marable's office. This fact in no way leads one to the conclusion, or establishes by clear and convincing evidence, that Mr. Lanzillo's purported burglary was at the solicitation of the Petitioner.

The Referee's conclusions and findings of fact also makes reference to the Petitioner reacting to the bogus tape played by Mr. Lanzillo at the direction of the Sheriff's Department, on November 6th, 1991. The evidence is clear that both the Petitioner and Mr. Lanzillo were acting under the assumption and the impression that there was nothing illegal or improper in recording

voices over the general airwaves. After hearing the tape Mr. Marable did what a lawyer should do when he or she has received information that another party to litigation has failed to comply with a proper discovery request, i.e, contacting the opposing party's lawyer and requesting that they verify the information and properly comply with the request. (Exhibit A).

In discussing the information contained on the bogus tapes at the November 6th meeting, there was a discussion between Mr. Lanzillo and Mr. Marable concerning Mr. Lanzillo not wanting to be disclosed as the person involved in giving him the information. The Petitioner indicated to Mr. Lanzillo that he could claim the information received as "work product" to avoid disclosing Mr. Lanzillo's identity. (Exhibit 6A, p.19). These discussions clearly do not constitute a violation of the Rules of Professional Conduct, and in fact the receiving of this information from an investigator, if lawfully obtained, could arguably have been determined to be "work product".

When Mr. Marable was subsequently questioned about the November 6th bogus tape by Assistant State Attorney, Mack Futch, the Petitioner told Mr. Futch that he had promised anonymity to the person giving him the tape, and did not want to disclose his name, and no further action was taken by the State Attorney. The Petitioner's position to Mr. Futch was consistent to the statements he made on November 6, 1991. (T-145).

The testimony of Mr. Lanzillo at the Hearing, the Petitioner's testimony, the transcripts of the various meetings arranged by Mr.

Lanzillo with Mr. Marable, and the actions of both Mr. Lanzillo and Mr. Marable, clearly do not constitute clear and convincing evidence of Mr. Marable encouraging a burglary or any other act which would warrant severe disciplinary action, and therefore the Referee's Report finding the Petitioner guilty of violating the Rules of the Florida Bar set forth in the Complaint is clearly erroneous and without an evidentiary basis, and should be reversed.

ARGUMENT II

THE REFEREE'S RECOMMENDATION AS TO THE DISCIPLINARY MEASURE TO BE APPLIED IS CLEARLY ERRONEOUS AND SHOULD BE REJECTED IN LIGHT OF THE FACT THERE IS NO CLEAR AND CONVINCING EVIDENCE OF GUILT.

Based upon the preceding argument, it is the Petitioner's position that there has been no violation of the Rules set forth in the Complaint, and therefore no disciplinary measures should be applied in this matter.

CONCLUSION

Based upon the foregoing arguments, the Referee's Report should be rejected, and this Court should find that the Florida Bar has failed to prove the allegations in the Complaint, and subsequent More Definite Statement, by clear and convincing evidence.

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Attorney for Petitioner



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing has been furnished via Federal Express to THE SUPREME COURT, and a copy has been furnished by mail to DAVID R. RISTOFF, Branch Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport Marriott Hotel, Tampa, Florida 33607, and to JOHN T. BERRY, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, on this 17<sup>th</sup> day of March, 1994.

  
\_\_\_\_\_  
JACK MCGILL