IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

-vs-

EDWARD B. ROOD,

Respondent.
_____/

Case No. 83,768

TFB No. 94-11,215 (13D)

ANSWER AND REPLY BRIEF OF RESPONDENT

EDWARD B. ROOD
200 Pierce Street, 1A
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Phone: 813-229-6591
RESPONDENT

STATEMENT OF THE CASE

In 1994, the Bar claimed that Rood was suspended from practice on September 2, 1994 and that he practiced thereafter by representing a Mrs. LoCastro.

When the case came on for Hearing before the Referee, the Bar presented to the Referee that Rood was actually suspended beginning on July 24, 1994 instead of September 2. The Bar also alleges that Rood advised Mrs. LoCastro about her lawsuit after he was suspended.

The Briefs filed by Rood show that he is not guilty. Rood also proved that another lawyer handled all of the legal work after July 24, 1994. Although there are six Briefs in this matter in this Court's files, no other charge was made against Rood. At the Hearing before the Referee, the Bar presented a new claim against Rood without any notice whatsoever. The Bar had in its possession the files showing that Rood was not guilty of this new assertion, and the Bar refused to turn over those files to Rood because those files would prove him innocent.

SUMMARY OF THE ARGUMENT

The Bar has no believable evidence to contradict Rood's evidence that he had withdrawn from representing Mrs. LoCastro by following his doctor's orders withdrawing from the cases to be tried away from Tampa.

The new allegation made on the date the Hearing before the Referee began is not valid and not true.

CONCLUSION

The six Briefs filed by the Bar and by Rood in 1994, and the Briefs filed recently, clearly show that Rood is not guilty of the Bar's allegations.

The Bar does not dispute that I had to withdraw from representing Mrs. LoCastro due to my increasingly poor vision and doctor's orders not to drive in misty or wet weather and never at night. Therefore, I reviewed all of my clients' files and found that three out of the thirty-two cases were out-of-town lawsuits. Those three were the LoCastro, the Tucker, and the Zeller cases. I had filed the suit for Mrs. LoCastro for an accident that happened in her county (Citrus); however, the Judge transferred to Citrus County the suit I had filed in Hillsborough County. I was unable to get any lawyer in Citrus County to take the case, because they knew her reputation or because they didn't want to take a case in which two Citrus County doctors wrote reports that she was not injured in the accident. I also had to tell each lawyer that I tried to get to take the case that she had ordered me not to pay some of the doctors. I had not agreed that I would not pay the doctors if there was a recovery of money in her case, but I felt obligated to inform prospective lawyers that she didn't want to pay some of the medical bills. I then began a search among Tampa lawyers to see if I could get one to take the LoCastro case which I had worked on for approximately two years, and the only offer that had been made was of $1,000.00. I couldn't find a Hillsborough County lawyer that would take her case.

On June 1, 1993, a trial lawyer named Michael Freeman rented an office in my building. His main office was still

to be in Brandon, but he wanted another office close to the Tampa Courthouse. I had had an experience with him in another case, and I knew that he was a brilliant able lawyer. In June of 1993, I mentioned to him the three cases that I had to withdraw from because of my poor vision and because they were out-of-town cases. He said that he would be glad to take them over if the clients approved. It was in January or February 1994 that I learned that he had no Trust Fund, and that he did not have the three clients sign a new contract with him. I also learned from Bill Kilby, The Florida Bar's lawyer who handles the treatment of Florida Bar alcoholics, that Mr. Freeman was a good lawyer and that he was taking the prescribed treatment. Unfortunately, after his success in settling all three cases, and after settling Mrs. LoCastro's case for $40,000.00, probably much more than I would have been able to recover, that on or about his birthday in late January, 1994, Mr. Freeman testified that he started drinking again.

In all three cases, he had excellent results from his work, and secured excellent settlements for the three clients. In particular, his settlement of $40,000.00 for Mrs. LoCastro was a miracle, and it is undisputed that it was all handled by Mr. Freeman. He filed the suit in Hillsborough County against the insurance company, and there is no dispute that he had all of the negotiations with the insurance company. (See Exhibit in my Brief of June 27, 1994.)

After Freeman started drinking again in late January, messages were brought to my bedroom that he informed my bookkeeper and secretary that he was not using Trust Bank Accounts in his practice, and that he had not signed a contract with his clients in the LoCastro, Tucker and Zeller cases. I also learned from my staff that Mr. Freeman had said to Mrs. LoCastro that his fee was 40%.

If I had not been bedridden with terrible injuries during January, February and part of March of 1994, I may have been able to help Freeman to continue to stay away from alcohol.

This Complaint against me filed by Mr. Corsmeier is asking this Court to punish me, thereby suggesting that I should have abandoned Mrs. LoCastro when I couldn't get a lawyer willing to take over her case in which the only offer to settle was for $1,000.00, and even though her deposition had been scheduled, and the trial date set in Citrus County, and a date for mediation was being selected. When I finally found a lawyer who would take over those three out-of-town cases, did I have the duty to ask him whether or not he had a contract signed with the client; and did I have the duty of asking Mr. Freeman if he had a Trust Fund; and did I have the duty to ask further questions other than asking Mr. Kilby if the Bar approved Mr. Freeman practicing law.

If I did have such a duty, I didn't know about it and hadn't read anything about it, and during the years in which I taught at seminars the proper procedures in handling

cases, I had never heard or read that I had any such duty. I have looked further since these charges were made against me for any such information of what I should have done, and I can't find anything on the subject. It is too bad that I was bed-ridden for the month of January, February and half of March 1994.

The Rules of Professional Conduct are Rules of Reason. (Florida Bar Journal, Sept. 1989, Page 67.) If the Rule of Reason does not govern in this case, then we should correct the Rule that allows just thirty days to turn over my 30 cases to other lawyers.

THE REPORT OF THE REFEREE

The Report of the Referee states: "The sole issue in this case is whether Rood continued representation of clients during his suspension". The evidence is that in all three of the cases, I did nothing but sign the necessary closing statements as required by the law that all lawyers that did any work in a case would have to sign the closing statement and show the percent of the work done before the suspension. This is so because the suspended lawyer gets a fee for the work done before the suspension. There is no evidence that I continued to represent them, and in fact, I got out of the case before I was suspended. The Referee was of the opinion that one of the reasons I was guilty was that I failed to file a withdrawal in each of the three cases. There is no such Rule that required me to sign some sort of

a withdrawal. I don't know that there is such a Rule, and if there is such a Rule, the Bar produced no evidence of it. The reason for not withdrawing is so that the insurance company will also put your name as one of the Payees on the settlement check. Insurance companies want the settlement check to name all lawyers who have done any work on the case.

The Referee further stated that I violated my suspension "by continuing to meet with and advise clients and receiving and disbursing client funds from my Trust Account". That statement is clearly refuted. Mrs. LoCastro said under oath that she was irritated because I refused to advise and talk to her. In her sworn statement under oath on March 25, 1994 she testified:

Page 27, Line 17:

"So I was really disillusioned with Mr. Rood. I thought that he wasn't working on my case."

Page 28, Line 9:

"See, because I had not seen the letter he sent my husband and I about his suspension or whatever, I was bewildered as to why I was getting Michael Freeman's name on the correspondence and now Marilyn Rash's name on the correspondence."

Page 34, Line 6:

"Mr. Freeman gave me the check. Whatever the check said --."

Page 34, Line 19:

"It was Mr. Freeman.

"Q. Mr. Freeman gave you the check?

"A. Yeah.

"Q. Was the check signed by Mr. Freeman or by Mr. Rood?

"A. No. By Mr. Freeman, Mike Freeman."

In its Briefs in this case filed with the Supreme Court in 1994, the Bar admitted that Freeman handled her deposition, all the mediation, the preparation for the trial in Citrus County, and the filing of the suit in Hillsborough County, and handling the settlement for $40,000.00.

The only payments from my Trust Account was the $40,000.00 entry and distribution of the $40,000.00 settlement made by Mr. Freeman for Mrs. LoCastro. Mr. Freeman testified that he had no Trust Fund, and because he thought it was the only way to see that Mrs. LoCastro could be paid her money at the same time that she signed the Release of All Claims for the insurance company, a document which she had refused to sign for almost two months because Mr. Freeman did not have an account from which he was able to pay her on the same day that she signed the Release. He then thought of the solution of placing it in my Trust Fund.

With reference to the other two out-of-town clients, the Tucker and the Zeller cases, they are not mentioned in

the Bar's Complaint, and the six Briefs filed with the Supreme Court almost two years ago do not mention those two cases. When I learned at the Hearing before the Referee that the Tucker and Zeller cases were going to be discussed, I objected on the ground that I had no notice about any of Mr. Freeman's handling of those two cases, and that I did not have the files in my possession, and that without the files, I could not show the written evidence that I did nothing to advise the clients or to disburse client funds from my Trust Account. It was made clear to the Referee that Mr. Freeman handled those two out-of-town cases from early June until settlement, and that there would be evidence in their files that the only thing left for Freeman to do when he took over the files in June of 1993 was to determine from the proof of liability on the part of the defendant, and the doctor bills and the lost income and lost consortium, that the only thing for him to do was to try to settle the case for the amounts that the plaintiffs had already put in writing, before my suspension, what they would settle for. The file would also show that there was no need or occasion for those plaintiffs to ever come to Mr. Freeman's office until it was settled with the insurance company, and that only then would the clients have to go to Mr. Freeman's office to sign the Release Of All Claims. Those files would show that is exactly what happened; that is, they came to sign the Release Of All Claims and to see the closing statement which Mr. Freeman or his secretary had

prepared.

In the Tucker case, the file would show that they signed the papers prepared by Freeman and that the only discussion I had was with Mr. Tucker, who asked if I would lend him $4,000.00 so that he could move into his new home. I agreed to do that, and that was certainly not advice, and I offered it because I was just assisting a nice gentleman. I was not his attorney. Probably we will never know what happened to the file, but we do know positively that the Bar made copies of all the files. That was admitted by Mr. Corsmeier on Page 59, Lines 23-25 of the deposition of Respondent. I am certain that if there had been anything in that file that was against Bar Rules, the Bar would have filed it in evidence. The fact that the Bar was the only entity with a copy of the file and that they failed to put anything into the record from that file is good evidence that there was nothing in the file indicating I did anything improper.

The same thing is true of the Zeller file. It, too, was subpoenaed by the Bar from Mr. Freeman, and I am positive it would have shown no improper advice or action by me. I am attaching to this Brief a copy of the Bar's Order to Produce served on Mr. Freeman requiring him to give the Bar the Tucker and Zeller files.

In summary, the Referee announced that the sole issue was and all the evidence shows that I did not continue representation of the clients. (Page 4 of the Referee's

Report.) All three of them were handled entirely by Mr. Freeman.

Mr. and Mrs. Tucker and Mrs. Zeller knew from reading in the paper in late June of 1993 that I was suspended. Thus, he knew from that date from the newspaper story that I could not represent them any longer. I advised them that Mr. Freeman was going to get the case settled if that was okay.

The bottom line in this matter of Mr. Tucker is that he wasn't sure of any date. We will never know the exact date unless Mr. Freeman finds the files that he stacked somewhere while he was intoxicated or that the Bar, who has a copy of the Tucker file, will show me the file.

Regarding the Zeller case, Mrs. Zeller testified that I handled the first part of her case that settled in June of 1993. A copy of the settlement check with the St. Petersburg attorney was resolved in June of 1993. Mrs. Zeller testified that the second part of her case was handled by Freeman and that he prepared the closing and that on the settlement check from the insurance company, Mr. Freeman was listed as her attorney. Again, if I had the file or the copy that the Bar has, it would show that her testimony was accurate that the main part of her case was settled by me in June 1993 and that I did nothing with the second case against State Farm. Mr. Freeman handled it.

Thus, the testimony of Mr. and Mrs. Tucker and Mrs. Zeller clearly shows that I gave no advice to them. A great

deal of the closing occurred while I was bedridden due to my severe injuries. I had no inkling or knowledge that those two ex-clients would be called as witnesses or that their file would not be available. There is no dispute that the Bar made copies of the files, and certainly if it had helped the Bar's case, it would have put its copies of the files into evidence. The Bar found no wrongdoing in the files, because if it did, it would have put it in evidence.

The final error of the Referee is on his third page where he states: "Respondent claims a defense that the foregoing clients were notified of his suspension but the itemized list of clients submitted by Rood as being advised of his suspension failed to list either of the out-of-town clients." The testimony of each of these former clients is that they learned of my suspension from the news media in June of 1993. (That is the only time it was in the news.) Those two files would show that I discussed with them about Mr. Freeman and all of this occurred in June or July of 1993 when the news media used a lot of space discussing the suspension.

On Page 4, the Referee discusses the deposition I took of Gary Lehman in the LoCastro case on June 30, 1993. On that same day, Mr. Freeman handled the deposition of Mrs. LoCastro. I knew all about Gary Lehman (the driver of the defendant's vehicle) who might have caused a part of the accident to Mrs. LoCastro. It puzzles me that the Referee would think it wrong, on June 30, 1993, for me to handle

taking the deposition of the driver of the defendant's vehicle, since Mr. Freeman had not had but a few weeks to get familiar with a complicated case. It is true that Mr. Freeman and I did not discuss those depositions at the hearing because they were admittedly taken before I was suspended. I think that if I had not taken the deposition of the driver of the vehicle, that I would then have been guilty of malpractice.

In the next paragraph of the Referee's Report at the bottom of Page 4, in the first sentence he says that testimony clearly indicates meetings between Respondent and the three Bar witnesses. Those meetings had nothing to do with practicing law. There is no dispute that the case was settled by Freeman. When the settlement check arrives, a secretary calls the client to come to the office to sign the papers.

On Page 4, the Referee mentions the mediation hearing for Mrs. LoCastro, with the sentence: "It appears, however, that Respondent and Mr. Freeman consulted together during the mediation process." The evidence is that Rood, Freeman and the Mediator all said that Rood took no part in the mediation, and the only other witness at that mediation was Mrs. LoCastro, and she said in her sworn statement that is filed with the Referee: "Rood took no part in the mediation." (See Mrs. LoCastro's deposition.)

On Page 4, he does say the truth, that a check was drawn and a $40,000.00 check in the LoCastro case was put in

my Trust Account on March 7 of 1994. That was not done by me. As we have already discussed, it was Mr. Freeman's idea to do it as the only way to pay his client was on the same day that she signed the Release. The date of that matter was March 7, 1994. The Prudential check for $40,000.00 was made payable to the clients and to "Michael Freeman, **their** attorney".

On Page 5, the Referee criticizes the testimony of Mr. Freeman to be unreliable. Mr. Freeman was not on trial, but the Referee lists no reason that he thought it unreliable, and certainly Mr. Freeman's testimony was not evasive. As stated in other parts of this Brief, I do not know whether Mr. Freeman violated a law about getting new contracts signed by his three clients involved herein, but even if true, those allegations about Mr. Freeman have nothing to do with whether I am guilty as charged. It also puzzles me that a Judge would say that it was proof of Mr. Freeman's believability in the LoCastro case that "if he saw her, he might not recognize her". I and many others would say the same. The Referee's finding that Mr. Freeman was a straw man or a puppet is not reasonable. Corsmeier suggests to the Referee several times that Freeman was a puppet. Why did they forget all the testimony that I could not get anyone else to represent Mrs. LoCastro.

It was uncontradicted that I tried everywhere to get someone to handle Mrs. LoCastro's case, and if I ever had a chance to live my life over, I would have not gone to all

the trouble that I did to get her a remarkable settlement due to Mr. Freeman's efforts.

In the next paragraph, the Referee says that on direct and cross-examination, my testimony included admissions and errors, clearly indicating participation in advising and meetings with the three clients turned over to Mr. Freeman. He lists absolutely no such advising or meetings. The last sentence is the crux of this case and shows how far the Referee is from understanding Trust Accounts and Trust Account records. He states "the tangible evidence relative to using his Trust Account ... is uncontroverted." The truth is that every bit of the testimony shows that the Bar's expert on this subject, Fred Schultz, Staff Auditor of The Florida Bar, examined all of the files and checks and records, and he reported that no error was made regarding Trust Funds unless the $40,000.00 check deposited by Freeman was error. In addition, my bookkeeper and manager of my office for years testified the Trust Fund records did not contain any improper action. (Beginning on Page 421). The Referee stopped me from asking her questions and asked them himself. In fact, the Referee took over the examination of two of my witnesses, and it is hard for me to understand how a former County Judge could believe that he should stop me from asking questions and take over the examination himself. The Referee was rough on Mrs. Rash, and I don't think that a Referee should take sides and still be impartial when he came to writing his decision. In any event, <u>any</u> expert on

the subject can look at the bank records of my Trust Fund that are filed with the record on the last Brief filed with this Court on September 6, 1994 which will show that no error was made by my office with reference to my Trust Fund. If I had been well during January, February and March of 1994, this matter would never have caused this matter to have taken up so much time. If I had not been all bashed up, I would have been able to answer Mr. Freeman's query as to whether his statement to Mrs. LoCastro the fee would be 40% was proper. I could also have tried to find some way to get her paid without using my Trust Fund.

If this Court decides that I should have withdrawn from the case (which trial lawyers do not do in order to protect their fees for the work they have done); if I would have checked to see if he had new contracts signed; or if I had known he didn't have a Trust Fund; or if I had known he would start drinking again in late January of 1994; or if Mr. Kilby had not asked me to help Mr. Freeman; or if Mr. Corsmeier had allowed Mrs. LoCastro to withdraw her complaint that 40% was too much, because on the <u>same day</u> that she made the complaint to the Bar, Mr. Freeman reduced the fee to one-third, and she then asked Mr. Corsmeier to cancel her complaint. Mr. Corsmeier refused her request, and then when the evidence proved to Mr. Corsmeier that he had no case, he spent over $8,000.00 trying to find something I was guilty of. This Court should, for The Florida Bar's sake, get someone to spend the time to read

the facts in this case and to tell the Referee that he made a poor decision in view of the evidence.

The Referee in his Report says: "The sole issue is whether he continued representation of clients during his suspension."

Freeman completely represented the three out-of-town clients (LoCastro, Tucker, and Zeller), and I had represented them well before my eyes got bad.

There is no evidence I represented anyone else after my suspension, and there is no evidence I advised my former clients or that I disbursed clients' funds from my accounts to anyone.

The only cases to discuss are the three "out-of-town cases" turned over to Freeman because my doctor advised me to not try cases away from Tampa. The only out-of-town cases were the Tuckers, Zellers and LoCastros.

I have already briefed all the evidence in my Briefs sent to and filed with The Supreme Court of Florida, Case No. 83,768.

I talked to Mrs. LoCastro, Mr. Zeller, and Mr. and Mrs. Tucker after each read of my suspension in the newspaper in late June and early July 1993. All three clients knew that I had delivered all evidence necessary to get the case settled, or if it wouldn't settle, to try each case away from Tampa. Since all of those clients were living away from Tampa, there was no reason for Freeman or me to talk to them until the offer was accepted by the insurance

companies. Freeman did get sufficient offers to settle the cases. When the first checks were received in the Tucker case, Mr. and Mrs. Tucker came to Tampa to sign the Release Of All Claims. Freeman paid them in January 1994. I was bed-ridden from the kidnapping so that no meetings or conversations were with me. The Tuckers obviously picked up their settlement checks with anyone on the first floor of my building, but there was no conversation with me except on the occasion in 1993 when he wanted to borrow $4,000.00 because he was in a jam and needed that to finance his new home. Practically the same things occurred in the Zellers' case.

In all three of those cases handled by Freeman, the evidence is:

1) They were my only cases which were away from Tampa.

2) Although suits were filed, no trial became necessary because Freeman was an excellent settler.

3) Each client read of my suspension in June or early July of 1993 and discussed it with me. They were Freeman's clients when my suspension became final.

4) There were no visits to me or Mr. Freeman to discuss the case or to get advice. The only visit was to sign Releases for the insurance company and sign closing statements, all handled by Freeman or his secretary. There was nothing to discuss and no legal advice to any of them. The reason why a look at the file in each of the three cases is to prove that no advice was asked for and none given.

The file would also show that I was not involved in any way except to say hello.

In summary, the Referee stated several of his thoughts that were not material. His Order stated that he found me guilty of violating the Suspension Order in that I "continued to practice law by meeting with and advising clients, and maintaining his Trust Account, and using personal and non-lawyer business accounts to receive and disburse client funds." The facts concerning the Referee's statement "that I practiced law by meeting with and advising clients" is nowhere in the record as to my ever advising them after my suspension. In fact, Mrs. LoCastro complained that I wouldn't advise her, and there was no evidence that any of the others were advised by me after my suspension. It is certainly true that I saw them when they came into my building to sign their closing statements prepared by Freeman. There is nothing in the Rules saying I couldn't meet with former clients to say hello. In other words, just being a friendly person and saying hello is not a violation.

The rest of the Referee's Conclusion was that I maintained my Trust Account, and there is nothing in the Rules that I can find that it was not proper to let a small amount of my dollars stay in my IOTA Trust account to pay small checks written before my suspension and still not cashed. In the exhibits showing the bank statements of my Trust Account, you will see a small amount. It should be kept in mind that all of the experts who have looked at the

records of my IOTA Trust Fund have said that there was no error made on my part. Those two experts were the Bar's expert, Fred Schultz, Staff Auditor of The Florida Bar, who spent hours looking at the records and informed us that there was no error, and we also had the testimony of my bookkeeper who is thoroughly familiar with the bank records and who testified there was no error, unless the $40,000.00 check that Mr. Freeman put in could be called an error by me, although I was bedridden by my injuries.

On May 22, 1995, months before the Hearing, a meeting was held with Referee Judge Easton. He was informed by The Florida Bar that there were three files that they had not received. They were Bonnie Robinson, Mary Wadsworth, and Linda Collie. Since then, with our cooperation, the Bar found that those three cases were not relevant. There was no request for any other files. There was never mention of Tucker or Zeller.

With reference to the missing files, the following occurred at the hearing held on May 22, 1995 before the Referee, Judge Easton, on Page 5:

> MR. CORSMEIER: "Mr. Egan, could you tell us which two files that you have not received? Is it two. Correct?
> MR. EGAN: "It is three.
> MR. CORSMEIER: "Three. Okay.
> MR. EGAN: "Well, it was three and it's now down to two. Let me get my notes here. One client was Bonnie Robinson. The other client was Mary Wadsworth. And Linda Collie. There was three files."

The Referee found that because of my lengthy service to the Bar, my community service, the fact that no client

suffered financially from my actions, and the fact that I limited my practice after suspension, is all true. However, the Referee said: "I find that Respondent's use of his personal bank account, his trust fund, and Mr. Freeman as a straw man" indicates that I willfully continued representation of the cases in issue. Taking the Referee's opinions one by one, he finds that I used my personal bank account and my Trust Account. First of all, I did not use my Trust Account, and the Referee admits that it was only used one time, and that was by Mr. Freeman depositing the LoCastro checks therein. Mr. Freeman explained at length why he did that and the reason for doing it, and the main reason for doing it was that Mrs. LoCastro would not sign the insurance company's release form for the Release of All Claims unless she was paid that day. It was undisputed that he had no Trust Fund, and that the only way he could pay Mrs. LoCastro on the day she signed was to use my Trust Fund. No one controverted the evidence that I was unable to work. The Referee ammits that no one was injured. In fact, I requested the Bar and the Referee to tell me how Mr. Freeman could satisfy his client in any other way.

Another mistake is that the Referee has the opinion that I should have closed my Trust Account, even though I didn't use it, and even though the small amounts of money in it were never used for improper purposes. The Referee fails to state the reason he feels I should have closed my Trust Account, even though it wasn't used. The Referee also

failed to state that there was any Rule that required its closing. The reason it should not be closed is that a hospital, or a doctor, has a small check that has not been cashed.

The real key to this case is whether or not the Bar's allegation that I misused my IOTA Trust Fund when a $40,000.00 check was deposited in that Trust Fund on March 7, 1994. There is no dispute about how it occurred, because Mr. Freeman acknowledges that he did so while I was bed-ridden because he could think of no other way to pay Mrs. LoCastro on the same day that she signed the insurance company's Release. For almost two months, she had refused to sign the Release Of All Claims until Mr. Freeman could pay her on the same day. It is also clear that there was no other violation. The proof that there was no other violation is clearly visible on the bank statements, but unfortunately the Referee and Mr. Corsmeier have proved they do not know how to read bank records. The Florida Bar Auditor examined my bank records on several occasions, and he stated that there was no improper use of my Trust Account.

The Auditor also noted that a few small checks were deposited in my operating account. There were two or three but all the evidence is that they were for a fee due me for work done before my suspension, or to pay for expenses I had before my suspension. Also, Mrs. Rash testified that she handled the banking records and that there was no misuse in

those records. I cannot find case law or any other ruling that determines whether or not, even though I was bed-ridden, that I should be held responsible for Freeman's depositing the check in my Trust Account. If this Court agrees with the Bar's Auditor, and with Mrs. Rash, and with me, then this case should be dismissed.

Mr. Corsmeier does not understand the clear explanation given to him by Mrs. Rash that although there were several checks that were written before September 2 that did not reach my bank until after September 2, they were not violations. It is not unusual in my practice for checks to be written to doctors or hospitals outside the State of Florida or in some other city that were not presented for payment until after September 2, but were clearly written before I was suspended.

The evidence is also clear that I did not give advice nor did I represent Mr. Tucker or Mrs. Zeller or Mr. and Mrs. LoCastro after my suspension. The record also shows that all of the files that the Bar asked for were delivered to them and that Mr. Corsmeier spent over $8,000.00 trying to show that I was giving advice to some client after I was suspended. There is no evidence whatsoever of my giving advice to Mrs. Zeller or Mr. and Mrs. Tucker or Mrs. LoCastro.

Concerning the issue of the burden of proof, it should be remembered that when seeking disciplinary action against a member of the Bar, the phrasing of the Petition is not the

key to the problem, it is the result sought against the lawyer that places the burden on the Bar to prove its allegations that would justify the result sought against the Respondent.

Dennis O'Flannery, the General Manager of the Hyatt Regency in downtown Tampa testified that he was thoroughly familiar with me and my physical problems during January and February of 1994, and he described at length my awful physical condition. He noticed my crutches, my broken right wrist, and my other injuries. (Page 414).

Mrs. Marilyn Rash was the secretary and business assistant of E. B. Rood. Concerning the LoCastro case, she testified that I was kidnapped, I did not come down to the office during January and February, not even during the lunch hour. (Page 438, Line 6-8). She testified I did not use my personal account as a trust account. (Line 9-10). she testified I never put client funds in my personal account. (Line 18-21). She testified that I had no contact with clients. (Page 439, entire page). Exhibits 22, 23, 34 & 35, she wrote letter to Mrs. LoCastro, and all were <u>former clients</u> of Rood. Letters to Mrs. LoCastro were Freeman's letters. In January, they were done during the <u>terrible time for us</u>. (Page 441). We even changed our stationary in June of 1993 to remove "attorney at law".

The record in this case proves that the Referee had had little or no experience in solving the problems of serious injuries in a personal injury case.

In past years when I lectured at Bar Seminars, I discussed the fact that the Rule required that a plaintiff's lawyer who was suspended must stop all of his legal matters promptly. I occasionally discussed the Rule that requires the lawyer to cease practicing law within 30 days after his suspension. I discussed the fact that personal injury accident cases would sometimes be difficult to close or transfer to another lawyer due to the problems concerning the lawyer's promises to protect doctors for the plaintiff's treatment and problems in cases that were already set for trial or were set for depositions, or hearings, or set for mediations, or notices of many other problems in getting a new lawyer to take the case. We could never agree what number of days to close should be allowed, particularly if the lawyer involved represented a lot of clients. If it was impossible for the suspended lawyer to finish the cases within the 30 days, it was harmful to the client, particularly if other lawyers did not want to take the case because of who the plaintiff was, or whether it would be difficult to win the cases, or whether the client insisted on a trial in spite of poor liability, and problems of whether there was solid proof of an injury, and problems where one or more of the doctors treating the client would continue treating the plaintiff if a less experienced lawyer or a lawyer the doctor didn't know took over the handling of the case.

During my lectures on that problem, I never expected

that I would face those problems, but I want the Supreme Court, and the Bar, to know of this problem because it was impossible for me to settle all of my cases or to find a lawyer to handle some of the cases. I did get all of my many cases settled or transferred to another lawyer within 30 days, but in several instances, the 30-day Rule harmed some of the clients. I have suggested that the 30-day Rule should be amended to protect clients. I have discussed at Seminars that perhaps the "Rule of Reason" would protect clients. The 30-day Rule has caused damage to several of my clients, but no damage to Mrs. LoCastro, Mr. and Mrs. Tucker, and Mr. and Mrs. Zeller, because all of the evidence proves that Mr. Freeman settled each of those three cases for more than I would have settled.

It should be kept in mind that the Bar in its August 23, 1994 Brief admits that Rood did not violate any Rule when he represented Mrs. LoCastro by attending Mrs. LoCastro's deposition and when he attended the mediation, because he did nothing improper at those occasions.

Mrs. LoCastro knew why Mr. Freeman was representing her because she was informed that I could not find a lawyer in her county who would represent her and because she also couldn't find someone in her county that would represent her. Mrs. LoCastro does not deny that I told her that I couldn't find anyone in her county who would represent her, and I also told her that I couldn't find anyone in Hillsborough County who would take the case. I had the duty

to tell the lawyers in her county and the lawyers in Tampa that the Inverness doctors who examined her found there was nothing wrong with her caused by the accident. Mrs. LoCastro knew I was having difficulty in getting a lawyer to take my place. She was glad that I finally found Mr. Freeman. The evidence shows he got a better settlement for each of her two cases than I could have gotten.

The important thing about the Bar's Reply Brief is that it did not contest the appropriate statements of the Supreme Court's four questions that should be considered in imposing discipline listed on Page 1 of my Brief filed August 15, 1994. the Bar knew from that Brief that because of health problems, I could not handle cases away from the City of Tampa due to my vision problems. The Brief further mentioned that Mr. Freeman decided that the only way to pay Mrs. LoCastro on the day she signed the Release Of All Claims was to deposit the settlement check in my IOTA Trust Fund. Since there wasn't any other way to do what the client insisted on, Mr. Freeman picked the only way to resolve the case without hurting anybody. In addition, my three Briefs filed in the Supreme Court in 1994 clearly explain, with exhibits, that Mrs. LoCastro knew and stated under oath to Mr. Egan that I was not her lawyer and that Tampa lawyers (except for Mr. Freeman) did not want to represent her. Later events (concerning Mrs. LoCastro) proved Tampa lawyers to have been wise in refusing to represent her.

I have had to spend many hours of writing four Briefs, and attending meetings to pick dates for the Referee Hearing, and attending a three-day Referee Hearing, all because I found a brilliant lawyer who would take her case even though there were clear signs that Mrs. LoCastro was a sick client.

Edward B. Rood

EDWARD B. ROOD, RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing have been furnished to Sid J. White, Clerk, The Supreme Court Of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; and that a copy has been furnished to John T. Berry, Esquire, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; and to Joseph A. Corsmeier, Assistant Staff Counsel, The Florida Bar, Tampa Airport Marriott Hotel C-49, Tampa, Florida 33607; this 29th day of February, 1996.

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