IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case Nos. SC94965 and SC00-801

v.

TFB File Nos. 1998-00,138(4A) and
1999-01,339(4A)

JOHN NEWMAN BRYANT,

Respondent.
_____/

INITIAL BRIEF

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CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN

Undersigned counsel does hereby certify that the Initial Brief of The Florida Bar v. John Newman Bryant is submitted in 14 point proportionately spaced Times New Roman font, and that the computer disk filed with this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

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PRELIMINARY STATEMENT

Appellee, **John Newman Bryant**, will be referred to as Respondent, or as Mr. Bryant throughout this brief. The Appellant, **The Florida Bar**, will be referred to as such, or as the Bar.

References to the Report of Referee shall be by the symbol **RR** followed by the appropriate page number.

References to the transcript of the hearing before the Referee on March 29, 2000, shall be by the symbol **TR.I.** followed by the appropriate page number. References to the transcript of the hearing before the Referee on July 28, 2000, shall be by the symbol **TR.II.** followed by the appropriate page number.

References to specific pleadings will be made by title.

STATEMENT OF THE CASE AND FACTS

The Florida Bar v. John Newman Bryant
(Case No. SC94965; TFB File No. 1998-00,138(4A))

Frank Albano ("Albano") retained Respondent in April 1996 in regards to a contempt action being filed against him for back child support (TR.I., p. 5). Albano retained Respondent to represent his interest through a referral from a Virginia lawyer (TR.I, p. 5).

Respondent received $750 from Albano as a retainer. Albano was residing in Virginia at this time and mailed Respondent the contempt pleadings and the retainer (TR.I, p. 6).

Respondent made an appearance in court in Jacksonville, Florida, on Albano's behalf and obtained a continuance of the contempt proceedings (TR.I, p. 7).

In July 1996, Albano moved his residence from Richmond, Virginia, to Virginia Beach, Virginia. At this time, Albano notified Respondent of his new address in writing, as well as communicating the move to Respondent's secretary. Albano gave Respondent both his new address and telephone number (TR.I, p. 7).

Albano does not recall receiving any communications from Respondent regarding the granting of a continuance in his case (TR.I., p. 8). Respondent testified

he was sure he notified Albano of the continuance but cannot find a letter where he sent him a copy of the order (TR.I., pp. 28, 29).

On August 28, 1996, the trial judge in the contempt matter dismisses the action for failure to prosecute (TR.I., p. 29). Albano cannot remember receiving notice of the dismissal (TR.I., p. 8). Respondent could not produce a letter wherein he gave Albano such notice (TR.I., p. 30).

On October 24, 1996, Respondent wrote Albano a letter notifying Albano that the contempt proceeding had been reinstated. This letter was sent to Albano at his former address in Richmond, Virginia (TR.I., p. 30).

Respondent received a notice of hearing in the contempt matter setting the case for trial on December 6, 1996. On November 11, 1996, Respondent received a letter from Albano providing several checks and some notes (TR.I., p. 31).

Albano did not recall ever receiving notice of the hearing and he first learned of the hearing after the trial in speaking with his ex-wife (TR.I., p. 10). Respondent testified that a few days or a week before the December 6, 1996, hearing, he became concerned after not hearing from Albano (TR.I., pp. 31, 32).

Respondent appeared at the December 6, 1996, hearing without Albano. At this time, Respondent believes he asked for a continuance which was denied. An order was entered against Albano for an arrearage in child support payments (TR.I., p. 32).

On December 6, 1996, Respondent wrote Albano at the former Richmond, Virginia, address informing Albano of the results of the hearing. In this letter, he seeks information that may be useful for a motion for rehearing (TR.I., p. 33).

After learning of the missed hearing, Albano contacted Respondent and expressed his displeasure (TR.I., p. 33). Albano requested a return of attorney fees from Respondent which he did not receive (TR.I., p. 11). During the course of Respondent's representation, Albano stated he provided Respondent's office notice of his new address and location twice in writing and five or six times during telephone calls to Respondent's office (TR.I., p. 11).

Respondent was mailed a copy of the Albano complaint on August 7, 1997, with a request to file a response to it with the Bar within 15 days. Respondent failed to do so (TR.I., p. 34). Respondent received a certified letter from the Bar which was signed for by his secretary dated August 26, 1997. This letter requested Respondent to respond to the Albano complaint within seven days of receipt of the letter. Respondent again failed to file a response (TR.I., p. 35). Respondent finally filed a response to the complaint on April 10, 1998, after the matter had been referred to a grievance committee (TR.I., p. 34).

The grievance committee reviewed Albano's complaint against Respondent and returned a finding of probable cause for violations of Rules 4-1.3, 4-1.4(a), 4-1.4(b),

and 4-8.4(g) of the Rules of Professional Conduct of The Florida Bar. After a formal hearing was held in this matter, the Referee filed his Report of the Referee wherein he recommended Respondent be found guilty of violating the provisions of Rules 4-1.3 and 4-8.4(g). The referee's report consolidated the Albano complaint with that of the Bar's complaint in SC00-801. The recommendation for discipline was a public reprimand, probation and payment of costs to The Florida Bar.

A Petition for Review was filed by The Florida Bar followed by the instant brief.

The Florida Bar v. John Newman Bryant
(Case No. SC00-801; TFB File No 1999-01,339(4A))

Respondent is a sole practitioner with a general trial practice with about one-quarter of his business being criminal defense work (TR.II., p. 11). Respondent's normal practice is to charge a flat rate in the range of $500 - $1,500 for misdemeanor cases (TR.II., pp. 12-13).

In 1998, Respondent represented a client named Pamela Rodehaver (Rodehaver) on two charges. Initially, Respondent represented Rodehaver on a municipal code violation in Jacksonville, Florida, for adult entertainment (TR.II., pp. 14, 45). The second charge was a felony RICO violation for operating an escort service (TR.II., pp. 14, 53).

Respondent was recommended to Rodehaver by a long-time friend/client, Barbara "Nicole" Herndon (Herndon). Herndon had been charged with the same municipal code violation as Rodehaver (TR.II., p. 14). Rodehaver testified Herndon arranged for the representation for both of them with Respondent (TR.II., pp. 46, 47).

Rodehaver states the first time she met Respondent was at Herndon's motel room. At this time, Herndon explained to Rodehaver the fee arrangement was sex for fees (TR.II., p. 47). Rodehaver explained she understood the arrangement to be one session of sex for each court appearance by Respondent. Herndon would perform oral sex on Respondent while Rodehaver would be an observer (TR.II., pp. 47, 48). At the first session, Herndon performed oral sex on Respondent while Rodehaver held Respondent's penis and allowed him to fondle her breasts (TR.II., pp. 46, 47).

When asked to confirm his fee arrangements with Rodehaver, Respondent is unsure of where or when such discussion took place. At one time, Respondent testified he thought the discussion was with Rodehaver in his office (TR.II., p. 15), but later said it could have been over the telephone while in his office.

FDLE Agent Mullen late testified that during an interview of Respondent, he stated he had met Rodehaver through Herndon and was representing her in the same way by having sex for fees (TR.II., p. 76).

During the municipal code representation, Rodehaver states there were three occasions when she had a sexual session with Respondent. Twice in a motel, in accordance with her original understanding, and on the day she went to court she performed oral sex on Respondent at his insistence in his law office (TR.II., p. 48).

Ms. Rodehaver stated that on the day she was to appear in court, Respondent informed her Herndon had already performed her part and that Rodehaver needed to perform oral sex on Respondent (TR.II., pp. 48-52). She testified that she felt pressured and manipulated into doing something she had not agreed to do.

At the final hearing, Respondent denied having oral sex with Rodehaver in his office on the day of the disposition of her case or pressuring her to perform oral sex that day to have her case completed (TR.II., p. 22).

While Respondent was representing Rodehaver on the municipal ordinance violation, a warrant was issued against her for a felony RICO charge of operating an escort service. Rodehaver was subsequently arrested on this charge (TR.II., p. 61).

Respondent was retained by Rodehaver to represent her on the felony charge for $750 against a total fee quoted as $2,500 (TR.II., p. 64). Rodehaver stated the only services she provided directly with the escort service was a sensual massage, verbal fantasies, and touching of the customer's genitals with her hands (TR.II., p. 67).

During the felony representation by Respondent, there was no sex between Respondent and Rodehaver (TR.II., p. 65). Rodehaver testified she was pressured by Respondent to have sexual intercourse with him during this time, as well as oral sex (TR.II., p. 70).

There came a time when Rodehaver went to the Florida Department of Law Enforcement (FDLE) and spoke to an agent named Terrance Mullen (Mullen). Mullen testified Rodehaver stated Respondent had threatened and coerced her for sex in return for payment of legal fees (TR.II., p. 72). Rodehaver gave FDLE a sworn statement (Bar's Exhibit No. 4). Based upon this statement, FDLE wired Rodehaver and recorded a conversation she had with Respondent in his office (TR.II., pp. 73, 74). During their recorded conversation, Rodehaver and Respondent discussed whether or not she owed any more sex on the first case and Respondent joked about her giving him a "blow job" for his birthday (Bar's Exhibit No. 4).

After the taped conversation, Mullen and another FDLE agent interviewed Respondent about Rodehaver's allegations (TR.II., p. 75). During the interview, Respondent admitted he was having sex for fees with Ms. Rodehaver as well as with other female clients (TR.II., p. 75). Respondent confirmed having sex with Rodehaver approximately three times. Respondent denied threatening to have Rodehaver's bond revoked unless she had sex with him but did confirm he had told her the happier she

kept him the harder he would work (TR.II., p. 76). Rodehaver states she recalled him saying this or something similar to her (TR.II., p. 56).

Respondent was charged with violating the provisions of Rule 3-4.4 of the Rules of Discipline of The Florida Bar and Rules 4-8.4(b), 4-8.4(d), and 4-8.4(i) of the Rules of Professional Conduct of The Florida Bar. The Referee herein recommended Respondent be found guilty of violating Rules 4-8.4(b) and 4-8.4(d) and not guilty of violating Rule 4-8.4(i). Based upon these rule violations, the Referee recommended a cumulative discipline in conjunction with Case No. SC94965 of a public reprimand, a six-month term of suspension during which Respondent must complete a Professional Enhancement Program, and payment of costs to The Florida Bar.

A Petition for Review was filed by The Florida Bar followed by the instant brief.

SUMMARY OF ARGUMENT

The Florida Bar v. John Newman Bryant
(Case No. SC94965; TFB File No. 1998-00,138(4A))

Based upon the findings of fact and the total record, Respondent should have been found guilty of violating Rules 4-1.4(a) and 4-1.4(b), as well as Rules 4-1.3 and 4-8.4(g).

It was clearly shown that Respondent failed to provide Albano with copies of pertinent court orders dealing with the dismissal of the contempt proceedings or communicate with him about the effect of such action. The record also showed that Respondent failed to competently communicate with Albano about the hearing Respondent appeared at without providing adequate notice to his client.

In view of the two former minor misconducts which dealt with similar misconduct, the action of Respondent in this matter must be viewed as cumulative misconduct.

The fact that Respondent had been the subject of three prior disciplinary actions must show he is intimately familiar with the requirements of the Bar's disciplinary rules. Respondent's failure to respond to not one, but two notices regarding the Albano complaint must be viewed as contemptuous.

The appropriate discipline in this matter alone should be a short-term of suspension and not a public reprimand as recommended by the Referee.

The Florida Bar v. John Newman Bryant
(Case No. SC00-801; TFB File No. 1999-01,339(4A))

The Referee correctly found Respondent guilty of violating Rules 4-8.4(b) and 4-8.4(d) of the Rules of Professional Conduct of The Florida Bar. Based upon the facts found by the Referee and those in the record, Respondent is also guilty of violating the provisions of Rule 4-8.4(i). The finding of not guilty by the Referee herein of this rule is misplaced in light of the evidence.

The Referee found Respondent guilty of committing criminal misconduct connected with Respondent's practice of law. The recommended discipline of a public reprimand is inappropriate for several reasons. Respondent had been disciplined previously for sexual misconduct with a client. The cumulative effect of the current violations with three prior admonishments should aggravate the discipline beyond a public reprimand. The recommended discipline is insufficient to deter other lawyers from engaging in similar misconduct.

Based upon the cumulative violations by Respondent, the appropriate discipline should be a rehabilitative suspension of 91 days or more.

ARGUMENT

The Florida Bar believes that the Referee's recommendation was in error. This Court has stated it is not bound by the Referee's recommendations for discipline. The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978). Accordingly, this Court has imposed greater discipline than that recommended by Referees when deemed appropriate. The Florida Bar v. Wilson, 425 So.2d 2 (Fla. 1983); The Florida Bar v. Shapiro, 413 So.2d 1184 (Fla. 1982).

In the instant matter, there were two complaints before the Referee under an Order to Consolidate.

The Florida Bar v. John Newman Bryant
(Case No. SC94965; TFB File No. 1998-00,138(4A))

In this matter, Respondent represented a client, Frank Albano (Albano), on a contempt charge for nonpayment of child support. At all times during Respondent's representation, Albano was a resident of Virginia. Albano's initial contact with Respondent, when he was retained, was by telephone from Virginia (TR.I., p. 5).

As a result of being retained by Albano, Respondent obtained a continuance of the contempt hearing set for May 6, 1996.

Albano testified that he never received a copy of the order continuing his case from Respondent (TR.I., p. 7). Respondent also failed to supply Albano with copies

of any other pleadings in this attempt to continue. Albano also stated Respondent never took the time to explain what he was doing for him (TR.I., p.8). Albano also testified that he was never made aware of the fact his wife's contempt proceeding had been dismissed for lack of activity (TR.I., p.8). Albano never received a copy of such order.

Respondent forwarded Albano a letter on October 24, 1996, informing him that the contempt proceeding had been reinstated. This was the same date the order to reinstate was entered. Respondent's letter of October 24, 1996, also gave the date of the December 6, 1996, hearing.

Albano testified that the first he knew of the December 6, 1996, hearing was from his ex-wife during a telephone conversation subsequent to the hearing (TR.I., pp. 9-10). As a result of the hearing, a judgment of $2,900 was entered against Albano for arrearages. Respondent notified Albano of the result in a letter of December 6, 1996 (TR.I., p. 11).

After Albano retained Respondent, he moved to Virginia Beach, Virginia, from Richmond, Virginia, in July 1996. Albano notified Respondent of this change by telephone and in writing (TR.I., p. 7). Albano testified that between the time he retained Respondent and the last hearing, he wrote Respondent twice and called him five or six times, always leaving his new address and telephone number (TR.I., p. 11).

Upon being questioned about communicating with his client, Albano, Respondent was unable to verify notice of the various proceedings to Albano. When asked if he wrote Albano about his representation, Respondent replied he had only written Albano one letter (October 24th) (TR.I., p. 27). In response to questions about providing Albano copies of pleadings and orders, Respondent answered "I'm sure I did" (TR.I., p. 28); "I may have" (TR.I., p. 29); and "I believe I did" (TR.I., p. 30). Respondent repeatedly answered that he had no cover letters to confirm such mailings to Albano.

Respondent testified that it was not until a few days or a week before the December 6th hearing that he became concerned about not having heard anything more from Albano than the receipt of the check stubs (TR.I., p. 31). When asked if he had tried to contact Albano the week before the hearing, all Respondent could say was "I'm sure I did" (TR.I., p. 32). Respondent had no memo to the file or other communication to show contact.

After the hearing on December 6th, Respondent wrote Albano the same day informing him of the result but not copying him with the order (TR.I., pp. 32-33). Respondent again mailed his December 6th letter to Albano at his former address in Richmond, Virginia.

The Referee has recommended a finding of not guilty as to Rule 4-1.4(a) and 4-1.4(b). In support of this finding, the Referee found the testimony on the issue was stale. The Referee centers most of his attention on the final hearing of December 6, 1996.

Rule 4-1.4(a) provides that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

In the instant case, the testimony has shown that Respondent failed to inform the client of the results of the dismissal of the case for lack of prosecution. The Referee also found such fact (RR, p. 3, ¶6). The Referee further found as a fact that Albano spoke to Respondent after the initial hearing where a continuance was granted and not again until after the hearing on December 6, 1996. Albano had attempted written and telephone contacts without success (TR.I., p. 11).

Within the comments to the provisions of Rule 4-1.4 (Communication) it is stated that the guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interest and the client's overall requirements as to the character of representation.

It is unreasonable for the Referee to take a restricted view of the entire representation of Respondent as to Albano's case and focus on only the final hearing.

The evidence is clear that Respondent failed to keep his client appraised of all aspects of the case and to keep the client informed of the status of the matter. Respondent accepted the representation of Albano and his retainer knowing in advance the client was residing in another state. This fact should have placed Respondent on notice that such communication, as required by the rules, would be all the more important.

The finding of not guilty by the Referee as to Rules 4-1.4(a) and 4-1.4(b) should be reversed because it ignored the totality of facts surrounding the entire representation of Albano by Respondent and merely concentrated on the facts concerning the final hearing of December 6, 1996.

The Florida Bar v. John Newman Bryant
(Case No. SC00-801; TFB File No. 1999-01,339(4A))

In this case, the Referee found Respondent guilty of violating the provisions of Rules 4-8.4(b), commission of a criminal act that reflects adversely on the lawyer's fitness as a lawyer, and 4-8.4(d), engaging in conduct prejudicial to the administration of justice. The Referee found Respondent not guilty of violating Rule 4-8.4(i) which states a lawyer shall not engage in sexual conduct with a client that exploits the lawyer-client relationship.

This matter concerns Respondent trading his legal services for sex acts by a client named Pamela Rodehaver (Rodehaver) and Barbara Herndon (Herndon), a former client and friend.

Respondent represented Rodehaver on two occasions — the first for a violation of a city ordinance concerning adult entertainment and the second for a felony charge of a RICO violation of running an escort service/prostitution.

The Referee found three basic allegations of exploitation in the record of this proceeding: (a) Respondent's demanding Rodehaver step aside from her "voyeuristic" role and perform fellatio upon him in his office; (b) Respondent demanding Rodehaver perform fellatio upon him immediately prior to the final hearing on the misdemeanor charge; and (c) Respondent demanding "interest payments" in the form of fellatio and intercourse in the course of the felony case (RR, p. 13). The Referee added he was not persuaded by the truth of the allegations.

A further review of the record reveals that several other allegations were made against Respondent. Rodehaver testified that Respondent also threatened to call her bondsman (TR.II., p. 55) and told her "the happier you keep me, the harder I will work for you" (TR.II., p. 56).

The Referee has placed more emphasis on Respondent's version of the facts because Respondent never denied having sex with his client or avoided relating his

conduct (RR, p. 13). It is also noted that Respondent's only denial goes to the allegations of threats or coercion.

In support of at least part of Rodehaver's allegations, Agent Mullen testified that Respondent admitted to him during the interview in Respondent's office that he did make the statement to Rodehaver that the happier you keep me, the harder I will work (TR.II., p. 76). Respondent admitted making this statement at the final hearing (TR.II., p. 28).

At least in this instance, Rodehaver's testimony was supported by a third party.

The Bar would argue that the Referee's reliance on Respondent's testimony and denials is misplaced. Respondent had been placed on notice, since Agent Mullen visited his office, that his actions were being investigated as extortion, coercion and exploitation. Respondent's denials can only be viewed as self-serving. Rodehaver did not personally complain against Respondent and likewise freely came forward with her testimony and conduct. The fact that Rodehaver entered into such agreement should not reduce the effect of revealing her conduct in a public forum.

Rodehaver was clear and forthcoming about the specifics of how Respondent came to represent her. She was clearly the more assertive during testifying about how she came to meet Respondent and the activities surrounding Respondent's "collection" of his fees. Respondent, on the other hand, could not remember exactly

how or where the fee arrangements were made or what part Herndon played in the relationship. All he is sure of is that Rodehaver paid her fees with sex at both the motel and in his office.

The Referee, in making a finding that Respondent was not guilty of violating Rule 4-8.4(i), held that exploitation, as used in the rule, implies a vulnerability of the client. The Referee further holds that since Rodehaver was a prostitute and entered the sexual contract with Respondent with her eyes wide open, there is no violation of Rule 4-8.4(i). Respondent knew Rodehaver had no money when he first started representing her (TR.II., p. 15).

The Bar would argue that the Referee's view of the rule is too narrow as applied in this case. The rule prohibits a lawyer from engaging in sexual conduct that exploits the lawyer-client relationship. In this instance, Respondent was presented with a potential client who he knew to be a prostitute with no financial means of paying his fees. Respondent's actions and conduct can only be seen as taking advantage of the situation and further allowing his client to commit a criminal act just so he could satisfy his own sexual desires. This can only be seen as exploitation on Respondent's part. Respondent's conduct was no different than if he had bartered drugs from a criminal defendant charged with dealing illegal drugs for fees.

Once into the relationship, Respondent was in control of the situation. Respondent controlled the case which in turn determined the amount of sex that was forthcoming from Rodehaver. Respondent's statement about the happier Rodehaver kept him the harder he would work is clearly indicative of an intent to exploit the relationship.

The fact that Rodehaver was a prostitute or an adult entertainer does not prevent or remove her relationship with Respondent from being exploited. Such does not amount to an affirmative defense. The Referee's assessment of the circumstances and the facts are in error and should not be allowed to stand. Respondent's conduct was violative of the provisions of Rule 4-8.4(i) and he should be found guilty.

The Referee did find Respondent guilty of violating Rules 4-8.4(b) and 4-8.4(d) based upon his relationship with his client. Under Rule 4-8.4(b), the Referee found that Respondent's conduct was indeed criminal in nature regarding his exchange of legal services for sexual activity with Rodehaver. Respondent's actions were found to violate the criminal statute prohibiting prostitution, namely F.S. 796.07 (1997). The Referee also found that Respondent's conduct with Rodehaver, which necessitated his withdrawal and the appointment of a public defender, to be prejudicial to the administration of justice.

After reviewing Respondent's misconduct and his past disciplinary history, the Referee recommended Respondent receive a public reprimand, six months probation, the successful completion of a Professionalism Enhancement Program, and payment of costs to The Florida Bar. The Bar submits that the discipline recommended is too lenient in view of Respondent's prior discipline history and the violations of the instant case.

This Court has repeatedly held that it is not bound by the Referee's recommendations for discipline. The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978). Accordingly, this Court has imposed greater discipline than that recommended by referees when deemed appropriate. The Florida Bar v. Wilson, 425 So.2d 2 (Fla. 1983); The Florida Bar v. Shapiro, 413 So.2d 1184 (Fla. 1982).

As presented to the Referee, Respondent had received two private reprimands in 1989 and an admonishment in 1998. In 1989, Respondent was reprimanded in one case for having made suggestive comments and unconsented to physical contacts that placed his client in a position of concern regarding her legal representation (Bar's Affidavit, Albano case). In 1998, Respondent was admonished for failing to communicate with his client about the status of a workers' compensation claim and misrepresenting the status of an appeal.

In The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1982), this Court held that cumulative misconduct will be dealt with more harshly than isolated misconduct and that misconduct of a similar nature should warrant an even more severe discipline.

This Court has not been reluctant to suspend members of the Bar for conduct similar to Respondent's in regards to his handling of the Albano complaint. In The Florida Bar v. Jordan, 682 So.2d 547 (Fla. 1996), this Court suspended the lawyer for one month where he failed to respond to the complaint, failed to keep his client informed of the status of the case, and failed to act with reasonable diligence and promptness. In The Florida Bar v. Glick, 693 So.2d 550 (Fla. 1997), the lawyer was suspended for ten days for failing to provide competent representation and to act with reasonable promptness and not keeping his client informed of the status of the case.

The Court has not hesitated to suspend a lawyer for willfully ignoring the Bar's request to respond to a client's complaint. The Florida Bar v. Grosso, 647 So.2d 840 (Fla. 1994).

Respondent, in this matter, was also found guilty of criminal misconduct which was committed in the course of his legal practice and not merely the result of personal conduct. The Referee found Respondent committed the crime of prostitution with his client, Rodehaver, and probably Herndon. In both his testimony to the Referee, as well as statements to FDLE Agent Mullen, Respondent has admitted to having

engaged in similar acts on other occasions. The Referee found that this criminal misconduct reflected on Respondent's fitness as a lawyer and violated Rule 4-8.4(b).

In The Florida Bar v. Schreiber, 631 So.2d 1081 (Fla. 1994), a Florida lawyer was convicted of misdemeanor battery on his girlfriend and received a 120-day suspension after being found in violation of Rule 4-8.4(b). The Referee in Schreiber found that the Respondent's criminal actions "affected the perception of the public that the lawyers of this state do uphold the laws. . . ." Schreiber, p. 1082. In the instant case, the same reasoning should be applied to Mr. Bryant. The public, looking at the facts of this case, could easily view Respondent as choosing to ignore the oath he took upon entering the Bar and thumbing his nose at those criminal statutes that stand in the way of his sexual pleasure.

In a Colorado case, Colorado v. Crossman, 850 P.2d 708 (Colo. 1993), a lawyer was suspended for one year and one day for solicitation of sexual favors for fees. The Colorado court found such conduct particularly repugnant while the client is dependent upon an attorney for guidance and assistance. In this instance, Rodehaver's position made her no less dependent upon Respondent for representation.

In a Louisiana case, In re Redd, 660 So.2d 839 (La. 1995), a Louisiana lawyer was suspended for one year and one day where he touched the breasts of an exotic

dancer applying to Redd, a public legal adviser, for a dancing permit. Redd was charged and convicted of simple battery.

Standard 5.1, Standards for Imposing Lawyer Sanctions, provides that sanctions are applicable in cases involving the commission of a criminal act that reflects adversely on the lawyer's fitness to practice law. Section 5.12 provides that suspension is appropriate when a lawyer knowingly engages in criminal conduct not included in Section 5.11.

In The Florida Bar v. Helinger, 620 So.2d 993 (Fla. 1993), this Court suspended a Florida lawyer for two years where he engaged in misdemeanor conduct, making obscene telephone calls. As in Helinger, Respondent herein can be seen as having a selfish motivation, personal gratification, in his criminal misconduct.

The Referee has found Respondent's conduct was wrong, immoral, and illegal. Under the provisions of Rule 3-4.3, Rules Regulating The Florida Bar, such conduct is grounds for discipline. Respondent has continuously argued that what he did may have been morally right but he did no more than to barter with a tradesman. In taking this stance, Respondent is arguing that he can ignore the laws he swore to uphold if he views them in a light favorable to his situation.

The rule violations in the Albano matter are similar to those in Respondent's most recent Report of Minor Misconduct. The discipline from the former case is for

the same misconduct within the last five years and this would prevent the Referee from characterizing the current findings as minor misconduct.

Regarding Respondent's actions in Albano, such actions by themselves, without involving Rodehaver, should result in Respondent's suspension from the practice of law. The Florida Bar v. Jordan, 682 So.2d 547 (Fla. 1996). In Jordan, the Respondent was suspended for one month for failing to respond to a Bar complaint, failing to keep his client informed about the case, and failing to act with reasonable diligence.

There are three primary purposes in disciplining attorneys: first, the discipline should be fair to the public by protecting the public from unethical conduct and not denying the public services of a qualified lawyer; second, it should be fair to the lawyer by being sufficient to punish for the breach of ethics and to encourage reformation and rehabilitation; and, finally, severe enough to deter others who might be prone or tempted to become involved in like violations. The Florida Bar v. Dubbeld, 594 So.2d 735 (Fla. 1992).

The recommended discipline by the Referee herein does not serve the purposes expressed by this Court. A public reprimand for the violations of Respondent, in light of former misconduct, will not protect the public or instill confidence in our legal system, it does not sufficiently punish Respondent for continuing to neglect the needs of his clients and for engaging in criminal conduct directly connected with his practice

of law, and the discipline cannot be seen as a deterrent to other lawyers who may be tempted to engage in similar conduct.

Based upon the facts and applicable case law, the Bar would argue that a rehabilitative suspension of at least one year would sufficiently met this Court's criteria for appropriate discipline.

CONCLUSION

Based upon the facts presented, the findings of the Referee that Respondent was not guilty of violating Rules 4-1.4(a), 4-1.4(b) and 4-8.4(i) were in error. There was clearly substantial and competent evidence that Respondent violated these rules. By his conduct, Respondent failed to adequately communicate with his client, Albano, during the course of his representation. Respondent's actions during his representation of Rodehaver can clearly be seen as exploiting the lawyer-client relationship.

The discipline recommended by the Referee is insufficient to meet the requirements for appropriate discipline. A more appropriate discipline would be to suspend Respondent for a period of at least one year, place him on a term of probation upon reinstatement, passing a Professionalism Enhancement Program, and payment of costs to The Florida Bar.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief regarding Supreme Court Case Nos. SC94965 and SC00-801, TFB File Nos. 1998-00,138(4A) and 1999-01,339(4A) has been mailed by certified mail #7000 0600 0020 9376 6309, return receipt requested, to John Newman Bryant, Respondent, at his record Bar address of 1101 Blackstone Building, Jacksonville, Florida 32202-3449, on this 25th day of January, 2001.

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