

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC96,648

TFB CASE NO.: 1997-51,446 (07C)

DOROTHY V. MAIER,

Petitioner.

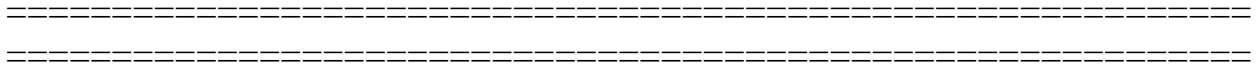
vs.

THE FLORIDA BAR,

Respondent,



PETITIONER'S REPLY BRIEF



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**CERTIFICATE OF INTERESTED PERSON**

COMES NOW, Counsel for Petitioner, DOROTHY V. MAIER, and certifies that the following persons and entities have an interest in the outcome of this case.

- 1) Patricia Ann Toro Savitz, Esquire  
Bar Counsel  
The Florida Bar
- 2) John Anthony Boggs, Esquire  
Staff Counsel  
The Florida Bar
- 3) J. David Bogenschutz, Esquire  
Counsel for Petitioner
- 4) Dorothy V. Maier  
Petitioner
- 5) Judge Peter Evans  
Acting as Referee

**CERTIFICATE OF TYPE SIZE AND STYLE**

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2(d), Rules of the United States Court of Appeals for the Eleventh Circuit, counsel for Petitioner, Dorothy V. Maier, hereby certifies that the instant brief has been prepared with 14 point, Arial, a font that is proportionately spaced.

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## **PRELIMINARY STATEMENT**

Petitioner, Dorothy V. Maier, a member of the Florida Bar, was complained against by the Respondent on September 2, 1999. That complaint resulted in a Stipulation as to Facts and Rule Violations entered into by Petitioner on the date that the disciplinary hearing commenced, March 16, 2000. The hearing proceeded and concluded on that same date. The Court, acting as a referee, requested proposed orders to be provided.

In April, 2000, the Court issued its Report of Referee, in essence, recommending that the Petitioner be suspended from the practice of law for ninety-one (91) days.

The transcript of the disciplinary hearing and the reference thereto in this appeal, shall be noted as (TR- ).

This matter was then lodged for this Honorable Court for review on June 16, 2000.

## **STATEMENT OF THE CASE AND FACTS**

Petitioner relies upon the Statements and the Case and Facts previously set forth in her Initial Brief.

## **ARGUMENT**

The Appellant does not contest the fact that the referee could, and did, properly consider the prior disciplinary record of Petitioners - and did so seriatim. Blatantly absent from that finding was any consideration of the myriad of reasons for mitigation presented, most poignantly by Dr. William Grady Ryan and the Defendant herself - mitigation factors which are set forth with specificity in the Bar Rules themselves.

Fortunately, in reviewing a referee's recommendation of attorney discipline, "This Court's review is broader than that afforded to findings of facts because it is this Court's ultimate responsibility to order an appropriate punishment." The Florida Bar v. Grosso, 760 So.2d 940, 943 (Fla 2000); The Florida Bar v. Anderson, 538 So.2d 852, 854 (Fla 1989). In Grosso, the Court found a ninety-day suspension appropriate grounded upon four prior disciplines including one of suspension (10 days), plus false testimony and a "cavalier" attitude toward discipline. The history of Grosso is far more egregious than Respondent's. Moreover, Grosso did not display any mitigation except that he "attempted restitution." Just as importantly, Grosso did not suggest that the violations which preempted the complaint were the product of anything more than simple self-interest.



In the instant cause, Respondent's violation was clearly and unequivocally the product of a tumultuous and unforgiving family upheaval, both in her marriage and her family life. This was further complicated by psychological trauma and difficulties which were chronicled by Dr. Ryan as causing a "shattered life" (TR 34). Because she sought and accepted evaluation and treatment, and has accepted medication for that deep depression, her prognosis is now "excellent." (TR 29) She continues "upward" in progress and she is a role model for her honesty (TR 33).

Her practice instilled confidence in her employer, Bruce Wagner, and she is considered to be a pleasure and a "bonus" to his staff (TR 45), and a "hard worker" (TR 43).

The Report and Recommendation was curiously silent as to these matters and to any other mitigators, although the tenor and quality of the Defendant's own testimony was especially reflective of a person coping with, and recovering from these previous difficulties, and with an understanding and resolve to eliminate those prior distractions. The Appellee, The Florida Bar, did not really contest the fact that these mitigators existed at the hearing. In fact, the Bar recognized three factors: absence of a dishonest or selfish motive (contrary to Grosso), personal problems and remorse.

Furthermore, other mitigators existed which, including the above, were presented but never addressed by the Report of the Referee (ROR); 1) interim rehabilitation; 2) character or reputation; 3) full and free disclosure to disciplinary board or a cooperative attitude towards the proceedings; 4) physical or mental disability or impairment - totaling seven (7) recognized mitigators. The ROR declined to even acknowledge their existence.

Attorney discipline should serve the following three purposes:

First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. (cites omitted)

The Florida Bar v. Feinberg, 760 So2d 933, 939 (Fla 2000)

Moreover, in reviewing a referee's recommendation of discipline, this court does not "pay the same deference to this recommendation because the Court has the ultimate responsibility to determine the appropriate sanction." The Florida Bar v. Sweeney, 730 So2d 1369, 1272 (Fla 1998); The Florida Bar v. Feinberg, supra at 938.

Each of the reasons for discipline above is more satisfied by the

imposition of discipline less than 91-days.

The Petitioner is a good attorney as testified by her employer. She suffered from emotional and psychological travails of an extended and severe nature. She is now recovering well and her life is progressively upward. She is a role model for honesty. Seven mitigators urge leniency. A ninety-one (91) day suspension will work serious hardship for her in 1) her job (TR 47); 2) her continued clinical progress (TR 31); and would catastrophically affect her already tenuous financial situation (TR 75).

This is a woman, if it please the Court, who has confronted her demons and is clinging to the ability to continue her fight against them and their heretofore assault upon her emotions, her psyche and her ability to continue a practice and her life. When viewed in the multiple crucibles of compassion, reality and pragmatism, and on the record as a whole in general, and Petitioner's presentation in specifics, a ninety-one (91) day suspension fails the tri-partite litmus test espoused in Feinberg, supra.

Therefore, for the reasons set forth herein and pursuant to Feinberg, Grosso, Sweeney, The Florida Bar v. Grigsby, 640 So2d 1341 (Fla 1994), and all other citations set forth in her initial brief. This Honorable Court, respectfully, should reject the ROR as to its recommendation of discipline,

and impose a lesser sanction than a ninety-one (91) day suspension

## **CONCLUSION**

The Referee in Petitioner's case, in his imposition of sanctions, specifically in reference to the ninety-one (91) day suspension, failed to take into account mitigating factors despite their obvious presence in the facts. There is ample case law to support less than a ninety-one (91) day suspension especially on the record below. This Honorable Court is urged to take into account the mitigating factors, and the Record as a whole, that the Referee did not take into account (either intentionally or inadvertently), and reject the Referee's recommendation, and to impose a sanction substantially less than the ninety-one (91) day suspension recommended.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that copy of Petitioner's Initial Brief, has been furnished by U.S. Mail this \_\_\_\_ day of October, 2000, to: Patricia Ann Toro Savitz, Esquire, Bar Counsel, The Florida Bar, 1200 Edgewater Drive, Orlando, Florida, 32804-6314; John Anthony Boggs, Esquire, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300.

Respectfully submitted,

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