IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

SAUL CIMBLER,

Respondent.
____________________________/

Supreme Court Case
No. SC01-116

The Florida Bar File Nos.
1999-71,000(11H), 2000-70,519(11H),
and 2000-71,321(11H)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.5 of the Rules Regulating The Florida Bar, a Final Hearing was held on August 16 - August 23, 2001. All of the pleadings, transcripts, notices, motions, orders and exhibits are forwarded with this report and the foregoing constitutes the record of the case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Randolph M. Brombacher
Suite M-100, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131
305-377-4445

For The Respondent: Richard Baron
11077 Biscayne Boulevard
Suite 307
Miami, Florida 33161
305-893-2535

II. FINDINGS OF FACT:

A. Jurisdictional Statement. Respondent is, and at all times mentioned was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary of Case.

As to Count I - Complaint by Ralph R. Crabtree, Esq. (The Florida Bar File No. 2000-71,321 - 11H), the parties have stipulated to and I find the following:

1. Sometime on or about November, 1998, Respondent was hired by Jorge Ruiz Del Vizo and his wife, Gladys Ruiz Del Vizo (hereinafter "Vizos") to represent them in the sale of their property located at 605 Ocean Drive, Unit 10M, Key Biscayne, Florida.

2. On or about November 18, 1998, the real estate transaction for the above mentioned property was effected/closed.

3. The transaction was a “1031" tax free exchange, in which Asset Preservation, Inc. (hereafter "Asset") was intermediator. As intermediator, “Asset” was named as the buyer on the closing statement in lieu of the actual buyer, Ms. Dorothy Sternberg Papzian, who was represented by Ralph R. Crabtree, Esquire whose title commitment was relied upon the parties at the closing.

4. On November 18, 1998, in furtherance of the real estate closing, Ms. Papzian, through her intermediator, “Asset”, had the closing statement and all closing documents executed.

5. On November 18, 1998, Ms. Papzian transferred the sum of $408,994.61 to the Respondent's trust account in Miami, Florida in furtherance of the real estate closing.

6. Respondent agreed to disburse funds as indicated in the closing statement and to properly record the warranty deed which conveyed the property to Ms. Papzian in the public records in and for Miami Dade County, Florida.

7. Although Respondent claims that he directed his assistant to complete post closing matters, including the mailing of the deed and real estate tax payment, the warranty deed prepared by Respondent was never recorded in Dade County and the real estate taxes were never paid.

8. Mr. Crabtree was unable to issue the final title insurance policy for Ms. Papzian in a timely or proper manner.

9. Shortly after the November 18, 1998 closing, Mr. Crabtree, for over a 12 month period, sought to contact the Respondent’s office in order to obtain a copy of the recorded warranty deed which his office promised would be forthcoming.

10. In addition, Mr. Crabtree also sought to locate the Respondent, individually. However, Mr. Crabtree could not locate Respondent, nor could he be contacted through Respondent's Florida Bar address and last known business address.

11. Having been unable to locate the Respondent or obtain a copy of the warranty deed, Mr. Crabtree, on or about July 23, 1999, had a title search performed on the above-referenced property at which point Mr. Crabtree first learned that the warranty deed had never been recorded.

12. After having tried to have Respondent rectify his failure to record the

warranty deed, Mr. Crabtree, on his own initiative, caused to have a subsequent warranty deed executed by the "Vizos" on January 4, 2000, and recorded in the public records in and for Miami Dade County, Florida.

13. As a consequence of having to record a subsequent warranty deed, Mr. Crabtree individually had to supply funds for the documentary stamps, surtax, and recording fees and real estate taxes, all of which had been previously remitted to Respondent.

14. Because Respondent had failed to properly remit the escrowed funds which had been entrusted to him approximately 1 ½ years earlier, Respondent had to reimburse Mr. Crabtree for the monies which Mr. Crabtree advanced to perfect the real estate closing.

15. Throughout this entire matter, the Respondent never, in any fashion, declined or withdrew his services/representation for the "Vizos" in spite of any physical and/or mental conditions which impaired or created limitations upon his ability to represent his client.

16. In regard to Count I, in addition to the above stipulation, this Referee specifically finds that:

a) Respondent was notified sometime thereafter by Mr. Jeffrey Cummins and/or his Legal Assistant, Ms Marilyn Rosario, that the Warranty Deed as prepared by Respondent was never recorded in Dade County and that the real estate taxes had not been paid. (See Affidavits of Ms. Marilyn Rosario and Mr. Jeffrey Cummins, Esq.); and

b) Respondent remitted the funds to Mr. Crabtree on or about April 7, 2000.

As to Count II - Complaint by Antonio Dominguez (The Florida Bar File No. 1999-71,000 -11H), the parties have stipulated to and I find the following:

17. Respondent, in or about March, 1995, was hired by Antonio Dominguez

(hereinafter referred to as “Mr. Dominguez”) to prepare a contract for the purchase of real property located in Marathon, Florida (hereinafter referred to as "property").

18. A contract was prepared by Respondent in furtherance of the purchase of real property for which Mr. Dominguez remitted $2,000.00 as a deposit for the property.

19. Sometime in or about May, 1995, it became apparent that the sale of the property would not take place and Mr. Dominguez, acting upon the advice of Respondent, remitted $800.00 to Respondent in order to file a suit for specific performance and breach of contract.

20. Sometime in or about May, 1995, Respondent filed a lawsuit in Monroe County on behalf of Mr. Dominguez.

21. Prior to filing an answer, opposing counsel filed a Motion to Dismiss and for Judgment on the Pleadings and initially set the hearing on or about January 18, 1996, but reset same for November 14, 1995 hearing date on same.

22. Respondent did not appear at the November 14, 1995 hearing on the Motion to Dismiss and for Judgment on the Pleadings.

23. The Judge entered a Final Judgment on the pleadings in favor of the Defendant, although no answer had yet been filed.

24. Respondent filed a Motion to Set Aside the Final Judgment.

25. The Judge denied Respondent's Motion to Set Aside the Final Judgment with leave to refile the motion pursuant to Fla.R.Civ.P. 1.540.

26. In or about September, 1996, Respondent filed a Second Motion to Set Aside Final Judgment based upon Fla.R.Civ. P. 1.540.

27. Opposing counsel served a notice for the Second Motion to Set Aside Final Judgment for hearing on August 5, 1997 and served a notice for

attorney's fees and costs.

28. Respondent failed to attend the Second Motion to Set Aside Final Judgment and the Judge entered an order for the Defendant, as well as an attorney's fee judgment against Mr. Dominguez for $7,294.00 with interest.

29. Respondent has not provided restitution to Mr. Dominguez in spite of his having said he would do so.

30. As a result of a $7,294.00 judgment, a lien has been placed on property owned by Mr. Dominguez and Mr. Dominguez was hired additional legal counsel in regard to these matters.

31. Mr. Dominguez attorney sent correspondence to Respondent to resolve this matter. To date, Respondent has not resolved the matter with Mr. Dominguez or his attorney.

32. Throughout the entire matter, the Respondent never declined or withdrew his representation of Mr. Dominguez in spite of any physical and/or mental conditions which impaired or created limitations upon his ability to represent his client.

33. In regard to Count II, in addition to the above stipulation, this Referee specifically finds that:

a) Respondent was provided timely and proper notice of the November 14, 1995 hearing - both by facsimile and by mail - from opposing counsel, Ms. Lynn Hankins-Fielder and Respondent not only failed to establish excusable neglect for not attending, but offered only failed communication as an explanation; and

b) efforts were made by Respondent to set aside the final judgement; and

c) Respondent's failed to attend the August 5, 1997 hearing; said failure to attend resulted in an attorney's fee judgment against Mr. Dominguez for $7,294.00 with interest which Respondent only first became aware of

in February or March, 1998 (see Transcript Day 3, p. 61-62); and

d) Respondent having been informed of the attorney's fee judgment against Mr. Dominguez for $7,294.00, did not timely remit funds to Mr. Dominguez nor did Respondent return the $2,000.00 dollar deposit for purchase of the real property from his trust account until Mr. Dominguez's subsequent attorney, Mr. Paul Contreras, Esq. requested same.

As to Count III - Complaint of Todd & Corey Narson (The Florida Bar File No. 2000-70,519 - 11H), the undersigned finds as follows:

34. Sometime in or about 1994 to 1995, Drs. Todd & Corey Narson (hereinafter referred to as the "Narsons") hired Respondent in order to file a civil law suit against their then landlord regarding a commercial lease dispute in Miami-Dade County.

35. The gravamen of this civil suit concerned whether Narsons, as tenants, could obtain a certificate of use that would enable them to use the property for commercial purposes.

36. The lease at issue in the lawsuit was terminated on or about January, 1997.

37. Sometime in or about May or June, 1997, the Narsons contacted Respondent and discharged him as their attorney on another unrelated matter (a real estate closing).

38. At no time after this May or June 1997, communication with Respondent did the Narsons have any further substantive communications or correspondence with Respondent in regard to their civil law suit.

39. Sometime on or about the later part of 1997, Respondent, having maintained his status as counsel of record, failed to inform the Narsons that they were to appear so that the opposing party could take their depositions.

40. Sometime during the course of this litigation Respondent, as counsel for the Narsons, was ordered by Judge Wilson to remit $2500.00 to Court Registry which Respondent had obtained as payment for legal services. To date the Narsons have not returned these funds to the Court Registry.

41. In addition, Respondent attended a December 18, 1997 hearing at which time the Court generated an Order also dated December 18, 1997 that required that the Narsons were to make themselves available for deposition within 30 days of said Order or suffer sanctions as a result of their failure to attend said deposition. Respondent testified that contrary to the testimony of Judge Thomas Wilson, Jr. and Mr. Eric Stein, Esq. -who both maintain Respondent was present at the December 18, 1998 hearing- Respondent was not present at the hearing and as such never informed the Narsons of their obligation to appear for deposition.
The Referee finds Respondent's testimony in regard to his attendance at the December 18, 1998 hearing is neither honest, straightforward, or truthful and that Respondent deliberately ignored Judge Wilson's order requiring that Respondent produce his client's for deposition within thirty (30) days.

42. As a result of the Respondent's failure to produce his clients (Drs. Narson) for deposition, the Court, sometime on or about April 16, 1998, entered a Final Judgment in favor of the Defendants in which the Narsons were held accountable for $58,400.00, as well as attorney's fees of $15,391.25 and costs of $940.17, totaling approximately $74,731.41.

43. Sometime on or about August 4, 1999, the Narsons were informed by their bank that a writ of garnishment had been attached to their bank account based on the above Final Judgment for approximately $74,731.41.

44. Throughout this entire matter, the Respondent never, in any fashion, declined or withdrew his representation of the Narsons in spite of any physical and/or mental conditions which impaired or created limitations upon his ability to represent his client.

As to All Counts, the undersigned finds as follows:

45. The Respondent was previously under contract with FLA, Inc. and was under the Psychiatric care of Dr. Stephen Kahn, M.D. from June, 1993 through 1998; and

46. The Respondent has been diagnosed as suffering from both recurrent and severe depression as well as suffering from avoidant personality disorder; in addition Respondent has, at times concomitant to the events described herein, exhibited signs of diminished psychological, social, and occupational functioning which would effect his ability to practice law and would go unnoticed or not be apparent to the Respondent's clients. (See testimony of Dr. Stephen Kahn, M.D.); and

47. The Respondent failed to maintain his Florida Bar address or a public phone number and made deliberate efforts to make himself unavailable and/or difficult to contact as was evidenced by the testimony of Ms. Lynn Hankins-Fielder, Esq., Mr. Robert Miller, Esq., Mr. Dominguez, Mr. Eric Stein, Esq., Mr. Pedro Cofino, Esq., Mr. Ralph Crabtree, Esq., and the Respondent himself who admitted to such conduct.

III. RECOMMENDATIONS AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY:

Respondent has admitted by stipulation to many of the facts underlying the Florida Bar's complaint in this matter.

My recommendation as to guilt is as follows:

A. COUNT I

As to Case No. SC2000-71, 321 (11H) (CRABTREE)

Based upon the facts presented at the hearing and stipulated to by Respondent I recommend that the Respondent be found guilty of violating Rule 1-3.3 which

provides that a lawyer shall promptly notify the executive director of any changes in mailing address and business telephone, and Rule 4-1.3 which provides that a lawyer shall act with reasonable diligence and promptness in representing a client. Respondent admitted his failure to record the subject warranty deed or pay the real estate tax payment and associated post closing fees in a timely manner as required.

B. <u>COUNT II</u>

As to Case No. 1999-71,000 (11H) (DOMINGUEZ)

In the Dominguez case the Respondent violated Rules(s) 1-3.3, in failing to maintain and/or notify of address and telephone changes making it virtually impossible for Dominquez to contact Respondent, therefore I recommend Respondent be found guilty of violating Rule 1-3.3, and Rule 4-1.4 (a) and (b) providing that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. Further a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. There is ample evidence that the damage suffered by Mr. Dominguez arose as a direct result of Respondent's negligent abandonment of his practice without notice to Dominguez as to the status of his specific performance action during a two year period (May 1995-August 1997).

<u>COUNT III</u>

As to: Case No. 2000-70, 519 (11H) (TODD & COREY NARSON)

I recommend that the Respondent he found guilty of violating Rule(s) 4-1.4 as stated above in Count II. Respondent again failed to communicate relevant information regarding the Narsons' pending case, including the court ordered attendance at depositions for both Todd and Cory Narson. Further Rule 4-1.3 provides a lawyer shall act with reasonable diligence and promptness in representing a client. Respondent did not seek to vindicate his clients' cause, nor dedicate himself to the interests of the Narsons with zeal. Respondent also failed to throughly investigate the legitimacy of the breach of lease cause of action, and/or notify his clients of the potential for suffering monetary damages related to the counter-claim brought by the Narson's landlord for rent arrearage. Lastly, Rule 4-1.16 (a) (2) which provides that a lawyer . . . . shall withdraw from the representation of a client if:

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.

Respondent was suffering from physical and psychological health impairments, yet failed to terminate representation after being diagnosed with said impairments once it became necessary to protect his clients from potential loss as a result of his avoidance personality syndrome. Respondent was again simulating the ostrich by putting his head in the sand. (See Fla. Bar v. Saul Cimbler, Case 81,952, Record Ex.

40, Referee's Report, March 4, 1994 Hon,. Eli Breger p. 2).

All other Florida Bar rules violations brought in the Florida Bar's complaint Counts I, II & III) were found not to be supported by clear and convincing evidence.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I hereby recommend the following discipline:

Respondent shall be suspended from the practice of law for a period of ninety (90) days from the date of this report, with automatic reinstatement at the end of that period of suspension. Thereafter, Respondent shall be placed on probation for a period of five years.

It is recommended that the suspension will be effective thirty (30) days from the filing of this opinion so that Respondent can close out his practice and protect the interests of existing clients.

During the period of probation, Respondent at his own cost shall be supervised by an attorney acceptable to the Florida Bar. The supervising attorney shall provide a continuous monitoring of Respondent's client case files and provide monthly reports to the Florida Bar regarding the status of the client's files and inform the Florida Bar if Respondent is diligently corresponding with clients, opposing counsel and handling his client's matters in a organized and professional manner. Respondent shall

cooperate fully with this supervision which will be a required good faith compliance of this probation.

During the period of probation Respondent Saul Cimbler, at his sole cost and expense, shall be monitored by the Florida Lawyers Assistance Program and shall conform to the terms and conditions of any contract applicable by and between himself and the Florida Lawyers Assistance Program. He shall attend regular psychotherapy sessions with a licensed mental health physician acceptable to the director of the Florida Bar's Legal Assistance Program. Monthly reports to the Florida Bar will be mandatory regarding the physician's evaluation and confirmation of Respondent's continued ability to engage in the active practice of law.

During the probationary period, Respondent shall submit annually to an independent psychiatric evaluation (Multiaxial Examination) at Respondent's expense, performed by a license psychiatrist of the Florida Bar's selection, and forward the evaluation report to the director of the Florida Legal Assistance Program for review as to mental impairment, current health conditions, improvement, competency, etc. The Respondent shall be directed to cooperate fully with any such evaluation otherwise requested by the Florida Bar or it's authorized program directors.

Respondent Saul Cimbler will immediately notify in writing all existing clients of the ninety (90) day suspension and allow all clients and/or their designated legal

counsel immediate access to their individual case files.

Respondent Saul Cimbler shall immediately enroll in the Florida Bar's Law Office Management Assistance Service (LOMAS) and engage it's services at Respondent's expense, maintaining enrollment at all times during the probationary period, or as deemed by it's executive director to be necessary.

Respondent Saul Cimbler shall pay $8,000.00 as restitution to Antonio Dominquez within ninety (90) days to satisfy any outstanding debts arising from real estate liens placed against Mr. Dominquez's real estate holdings real property arising from the adverse attorney's fee award in the underlying Dominguez lawsuit. I have evaluated for purposes of these recommendations the following:

a.) Florida's Standards for Imposing Lawyer Sanctions, Sections 1.1-12.0 (1996)

b.) Relevant Florida Appellate Case Law Opinions

c.) Florida Rules of Professional Responsibility (2000)

Respondent is required to conform to the following as set forth in the Florida Standards for imposing lawyers sanctions.

-4.42 Suspension is appropriate when: (Lack of Diligence)

A. a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

B. a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

I have considered the following before recommending or imposing discipline:

(1) the duties violated;

(2) the lawyers mental state;

(3) the potential or actual injury caused by the lawyer's misconduct;

(4) the existence of aggravating or mitigating circumstances.

Saul Cimbler has stipulated that he factually committed the various acts alleged in the Florida Bar's Complaint. However, as set forth above, I find that the evidence introduced at the hearing of the matter did not establish in certain instances a clear and convincing standard of willful, intentional conduct by Respondent. It is therefore my finding that Saul Cimbler's negligent handling of the three (3) matters in question either occurred due to simple communication lapses, errors in calendaring legal hearings, or possibly failures to attend hearings which were duly notice, yet not communicated to Respondent by staff or opposing counsel. This coupled with his symptoms of mental depression discussed in greater detail in this report.

It was established by the Florida Bar through the expert testimony of Dr. Stephen Kahn (psychiatrist) that Saul Cimbler suffers from avoidance personality syndrome, causing Respondent to suffer mental impairment sufficient to prohibit

Respondent from performing his duties, indeed stepping away from his practice to avoid the stress of active case management. Dr. Kahn first diagnosed Respondent in 1993, and has continued to treat Respondent for his mental impairment.

Respondent further suffered a mild heart attack in October 10, 1996 which was the prelude to approximately six angioplasties and cardiac catheterizations testified to by Dr. Raskin, a licensed cardiologist.

Whether by pure neglect or psychological complications related to the stress, coupled with avoidance personality syndrome, Respondent closed his practice and retained only a few active case files, which unfortunately resulted in the grievances currently pending with the Florida Bar.

Clearly Respondent's failure to handle matters diligently, and failure to routinely communicate with his clients about pending legal matters, hearings, and correspondence created a situation ripe for malfeasance. However several facts point to a complex set of procedural mistakes which were not totally put in motion by Respondent. The key issue is the mental state of Respondent. This helps explain much, if not all of his "leave of absence" from the daily practice.

As referee, I find that the following **aggravating** factors justify the discipline recommended.

-9.22 (a) (Prior disciplinary offenses).

Although not factually identical, the prior referee findings indicate similar emotional problems and mental health impairment as the basis for the prior ninety (90) day suspension, and three (3) year probation. (Record Ex. 40 Eli Breger Report of Referee March 3, 1994).

-9.22 (d) (Multiple offenses)

The facts indicate clear and convincing evidence of multiple offenses by Respondent.

-9.22 (j) (Indifference in making restitution)

To date, Respondent has failed to reimburse the attorney's fee lien in the Anthony Dominquez matter, even though he has had ample time to do so. Respondent's failure to timely communicate to his client the status of the case caused direct and irreparable harm which mandated timely restitution.

I find that the following **mitigating** factors justify the discipline recommended.

-9.32 (d) (timely good faith effort to make restitution or to rectify consequence of misconduct).

Respondent has made efforts at restitution and remedy of the various claims in mitigation of the damages suffered by his clients. In the Crabtree matter, the final trust account disbursements were made by Respondent to complete the post closing accounting as to the warranty deed in question. In the Dominquez case, Respondent

attempted, albeit twice unsuccessfully, to set aside the order of judgment on the pleadings entered against his client by the Honorable Richard Payne, 16th Judicial Circuit, Marathon, Florida, based upon an incomplete real estate sales contract addendum filed by opposing counsel in support of the original motion for judgment on the pleadings which order was potentially entered in error. (Record testimony Saul Cimbler).

In the Narson case, it was revealed during the testimony of Todd Narson that many of the initial facts predicating the filing of the breach of commercial lease (commercial) contract action were not revealed to Respondent prior to filing suit, thereby rendering the case and contentions of the Narsons against their landlord without merit. (Record testimony of Todd Narsons). Todd Narson also testified that he did not have the money to pay the outstanding rent ($43,300.00) for the 16 months he remained in the premises, yet never notified Respondent to dismiss the meritless suit. Although Respondent did not actively move the case to trial, there was sufficient evidence to support a finding that the Narsons misled Mr. Cimbler initially regarding the facts of the case as to questionable zoning issues, which they had knowledge of, and sought to hold the landlord at bay with by maintaining a wrongful breach of contract action. Occasional verbal communications with the Narson's regarding case status occurred however not in writing. (Record testimony of Todd Narson).

It is clear that Mr. Cimbler acted in good faith with respect to his handling of this case, yet failed to advise of potential losses, such as the ever mounting rent payments, which ultimately were awarded by default in favor of the landlord, after the Narson's failed to attend court ordered depositions (Order of Judge Thomas Wilson). The Florida Bar contends Respondent willfully failed to advise his clients of the depositions, however it is disputed as to whether the notification was timely received by the Respondent. Based upon a fair interpretation of the facts presented I find that Respondent acted in good faith with respect to his involvement with the Narson case, although failed communication did result in unattended hearings.

-9.32 (e) (full and free disclosure to disciplinary board or cooperative attitude toward proceedings).

This mitigating factor is undisputed by the referee herein or the Florida Bar. Respondent at all times fully cooperated with the investigation and proceedings.

-9.32 (g) (character or reputation)

At the hearing of this matter numerous character witnesses testified on behalf of Respondent, Saul Cimbler. Each witness commented on his reputation and character as a trial attorney, especially in the area of criminal defense. Indeed eight 11th Judicial Circuit Judges appeared during the hearing and attested to the character of Respondent as being diligent, prepared, courteous, and generally very proficient in his handling of

criminal court matters. However, it should be noted that the conduct subject of this case occurred exclusively in the civil arena. Yet, I was impressed by the caliber of the character witnesses. It was apparent that Respondent maintains a good reputation among his legal peers, and the judges which he currently appears before.

-9.32 (h) (physical or mental disability or impairment)

It is the opinion of both Dr. Kahn (psychiatrist) and Dr. Raskin (cardiologist) and the executive director of the Florida Bar Legal Assistance Program, Myer Cohen, Esq., that Respondent Saul Cimbler suffers from poor physical health, emotional and depressive syndrome impairments, and over an extended period of time, has been plagued by avoidance personality syndrome, especially during the time relevant to the negligent conduct alleged and supported by the evidence in the record. The experts opined that the illness is not an excuse, but merely an explanation for the conduct itself. I find that Mr. Cimbler was indeed incapacitated in his daily legal activities to a degree that his combined illnesses caused the aforementioned failure to appropriately handle his client's business with diligence and reasonable competence. However, expert testimony also reveals his marked improvement within the last 24 months including stabilization of weight, cardiology symptoms, and lack of mental depression. (Record testimony of Dr. Kahn). (Record testimony of Dr. Raskin). This recovery is due in part to the overall positive outlook and stress free environment Respondent is currently

maintaining. It should be noted that Respondent is limiting his legal practice to criminal defense only with approximately 50 active files. He no longer wishes to engage in civil litigation from a career standpoint, which has helped make his law office practice more manageable. (Record testimony of Saul Cimbler). Therefore I find that the Respondent's personal and emotional problems which reached crisis proportions in October 1996 through September 1997 were a contributing cause of the admitted conduct, deemed herein to be a mitigating factor.

Saul Cimbler's medical crisis may have passed and the future is bright, but not totally stable to any medical certainty.

-9.32 (j) (interim rehabilitation)

I find that Respondent has continuously participated in the Florida Bar's Legal Assistance Program for the past five (5) years. He has made efforts to improve his office management and organizational efficiency by contacting LOMAS and by seeking their advice, with a recently scheduled evaluation as of (8/2001). Lastly, Respondent has attended both private and group mental health therapy sessions on a routine basis attempting to control his mental depression impairment.

-9.32 (1) (remorse)

Respondent has expressed true remorse throughout these proceedings. He regrets having neglected his client's business matters resulting in loss. He has accepted

his responsibility fully, and appears quite willing to rationally see his mistakes as having caused real harm and/or potential loss to his clients. Respondent has verbally apologized on more than one occasion to the referee and Florida Bar counsel for the necessity of this inquest and disciplinary review.

The appellate case law submitted by the Florida Bar and by Respondent differ greatly in their facts and ultimate sanctions. However the case(s) most similar to the one presented herein support suspension, not disbarment. See Florida Bar v. Roberts, 770 So. 2d 1207 (Fla. October 27, 2000); Florida Bar v. Brakefield, 679 So.2d 766 (Fla. 1996). In a strikingly similar case, an attorney received a 60 day suspension for failing to act with reasonable due diligence and promptness in representing a client; failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; and similar negligent acts. See Florida Bar v. Maier, 784 So. 2d 411 (Fla. April 19, 2001). This suspension was accompanied by a three year probation. It must not be overlooked that Respondent Saul Cimbler has a prior disciplinary history in 1994, (90 day suspension, 3 year probation and admonishment). This prior history must be considered as an aggravating factor. See generally, Florida Bar v. Morrison, 669 So.2d 1040, 1042 (Fla. 1996). In light of the significant mitigating factors set forth above there is reasonable evidence supporting a

90 day suspension, contrary to the requested three year suspension sought at the close of the proceedings by the Florida Bar. The referee's findings of fact are entitled to a presumption of correctness when they are supported by competent substantial evidence. Florida Bar v. MacMillian, 600 So.2d 457, 459 (Fla. 1992). See also Florida Bar v. Patterson, 530 So.2d 285 (Fla. 1988) (one year suspension appropriate for failing to communicate with clients and return documents; abandoning clients by leaving the State without notice; neglecting legal matters entrusted to him; and providing faulty representation).

When there are no mitigating factors then the disciplinary recommendation may properly be instituted for a longer period of suspension from practice. See Florida Bar v. Brakefield, 679 so.2d 766, 770 (Fla. 1996).

In making these recommendations I am aware that a sanction must serve three purposes. The judgment recommended must be fair to society, be fair to the attorney, and sufficiently deter others from similar misconduct. Florida Bar v. Poplack, 599 So.2d 116, 118 (Fla. 1992).

It is fair to recommend an opportunity for rehabilitation of Respondent as he has sought to stabilize his depressive behavior and has made strident efforts to turn the corner in his legal career regarding the necessity to be ever vigilant to protect his client's interests, Florida Bar v. Cox, 26 Fla. L. Weekly S 331 (Fla. May 17, 2001).

Intentional acts of misconduct including deliberate misrepresentation of material facts to a court and related acts have been deemed to warrant suspensions of 90 days. See generally, Florida Bar v. Corbin, 701 So.2d 334 (Fla. 1997); Florida Bar v. Story, 529 So.2d 1114 (Fla. 1988); Florida Bar v. Morrison, 496 So.2d 820 (Fla. 1986). Although it can be argued that Respondent Saul Cimbler is a danger to himself and others if allowed to continue practicing law, there appears to be no clear and convincing evidence for this supposition. A properly placed safety net of therapy and monitoring would provide the public with sufficient protection to both allow Respondent to continue to serve our legal community, and place reasonable checks and balances for a requisite period of time to fairly stabilize and prohibit the potential for future negligence.

I find Mr. Cimbler perceives and recognizes the future consequences if he fails to conduct himself with professionalism to practice in the future, and knows that indeed this may truly be his last opportunity. He is willing to prove to the public at large that he is a fine trial lawyer of integrity, and not a candidate for disbarment. It is respectfully submitted that consideration of recommendation of leniency or suspension based upon the mitigating factors is warranted under the circumstance presented.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED: I find the following costs were reasonably incurred by The

Florida Bar.

Administrative fee	$	750.00
Clerk of court receipt for photocopies made on October 12, 2000		345.00
Clerk of court receipt for photocopies made on December 18, 2000		210.30
Court Reporter's attendance at Referee hearing on February 27, 2001...		60.00
Court Reporter's attendance and transcript of deposition of Ralph R. Crabtree taken on April 27, 2001		611.47
Court Reporter's attendance at Referee hearing on May 4, 2001................		60.00
Court Reporter's attendance and transcript of deposition of Jeffrey Drew Cummins, Esq. on May 22, 2001		615.10
Court Reporter's attendance and transcript of videotaped deposition of Lynne Hankins-Fielder on June 11, 2001		362.45
Salazar Productions Legal Video Services of deposition of Lynne Hankins-Fielder on June 11, 2001		475.00
Half of Black's Duplicating Services charge of $320.77 of Eric Stein's photocopies made on June 22, 2001		320.77

Court Reporter's attendance at
Referee hearing on July 9, 2001 .... 60.00

Court Reporter's transcript of deposition of
Pedro Cofino on August 1, 2001 .... 37.05

Court Reporter's attendance at deposition of
Manuel Farach on August 8, 2001 .... 60.00

Three (3) hours of Professional Services
rendered by Manuel Farach 700.00

Court Reporter's transcript of deposition of
Bruce Hermelee on August 15, 2001 .... 222.90

Court Reporter's transcript of deposition of
Marilyn Rosario on August 15, 2001 .... 270.00

Court Reporter's attendance at final hearing on
August 16-23, 2001 .... 915.00

Court Reporter's transcript of final hearing on
August 16-23, 2001 .... 2,110.80

Staff Investigator’s fee.................................... 2,720.64

Staff Auditor’s fee ....

Bar Counsel’s costs.. 829.52

____

TOTAL $.

=========

Dated this ________ day of _______________, 2001.

____

Lawrence D. King, Referee

Copies to:

Randolph M. Brombacher, Bar Counsel
Richard Baron, Attorney for Respondent
John Anthony Boggs, Staff Counsel