IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ARTHUR JAMES SPRINGER,

Respondent.

_____

Case No. 02-1687

TFB No. 2001-11,216(13F)
TFB No. 2001-10,820(13F)
TFB No. 2003-10,799(13E)

RESPONDENT'S INITIAL BRIEF

SCOTT K. TOZIAN, ESQUIRE
Florida Bar No. 253510
GWENDOLYN HOLLSTROM HINKLE, ESQUIRE
Florida Bar No. 83062
Smith and Tozian, P.A.
109 N. Brush Street, Suite 150
Tampa, Florida 33602
(813) 273-0063
Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

FLORIDA STATUTES

FLORIDA RULES

SYMBOLS AND REFERENCES

The following abbreviations and symbols are used in this brief:

T	=	Transcript of January 27, 2003 Final Hearing
ROR	=	Report of Referee
SF	=	Stipulated Facts

STATEMENT OF THE FACTS AND CASE

A final hearing as to sanctions based upon Complainant's six-count complaint was held on January 27, 2003. Prior to the final hearing, Respondent and Complainant stipulated to all factual matters. A complete recitation of the relevant facts is set forth in the "Stipulated Facts" included within the documents forwarded by the Referee to the Florida Supreme Court. The Referee made his recommendations on the rule violations based upon the Stipulated Facts after Respondent and Complainant waived argument. (T. 10-14). Complainant and Respondent presented testimony and argument on the appropriate discipline. A summary of the stipulated facts and witness testimony follows below.

In count one, Mr. Howard Mitchell hired Respondent in December 1997 to represent his corporation's interest in Georgia real property. (SF 1-2). Mr. Mitchell's corporation was a named defendant in a Georgia partition action. (SF 2). Opposing counsel knew Respondent was not admitted in Georgia and Respondent did not file a *pro hac vice* motion to appear. (SF 2). Respondent served answers to interrogatories and an Answer to the Petition for Equitable Distribution on opposing counsel but did not file the Notice of Serving Answers or the Answer in the court file. (SF 2-3). Since Respondent did not file a Notice of Appearance, he missed a docket call on January 11, 1999. (SF 3).

Following this date, opposing counsel wrote Respondent a letter informing him that trial was scheduled for the week of January 25, 1999. (SF 3). On January 27, 1999, opposing counsel called Respondent's law office and told his staff that the trial was scheduled for the next day. (SF 3-4). Respondent did not attend the trial and the jury returned a verdict in favor of the Plaintiff. (SF 4). On January 29, 1999, Respondent requested opposing counsel to forward correspondence to his office. (SF 4). Opposing counsel forwarded the judgment dated February 25, 1999 to Respondent. (SF 4).

Respondent misrepresented the progress of the case to his client and in October 1999, he confirmed that a judgment had been entered. (SF 4-5). Respondent filed a Motion to Set Aside the Judgment on February 28, 2000. (SF 5). Respondent misrepresented the existence of an earlier motion and the progress of scheduling a hearing. (SF 5). Respondent did not schedule a hearing on the Motion and Mr. Mitchell did not recover his interest in the property. (SF 5-6). A final restitution amount was not finally established although the Stipulated Facts reference Mr. Mitchell's belief that he lost approximately $29,000.00. (SF 6).

The Referee found violations of Rules Regulating The Florida Bar 4-1.1(competence) , 4-1.3 (diligence), 4-1.4(a) (keeping a client informed) , 4-5.5 (UPL in another jurisdiction), 4-8.4(c) (dishonesty), 4-8.4(d) (conduct prejudicial

to the administration of justice) and 4-8.4(a) (violating Rules of Professional Conduct). (T. 10).

In count two, Mr. Mitchell, who was president of the Camelot Condominium Owner's Association (owners for a timeshare condominium project, "Camelot by the Sea") hired Respondent in 1993 to pursue foreclosure proceedings against delinquent owners. (SF 6). In March 1998, Mr. Mitchell learned that some of the foreclosure actions had not been finalized and inquired of Respondent. (SF 7). Respondent provided photocopies of approximately twenty-four Certificates of Title that were false and informed Mr. Mitchell that he needed the originals to obtain judgments against the owners. (SF 7).

Mr. Mitchell offered some of the units that corresponded to the false Certificates of Title for sale and signed warranty deeds. (SF 7). In April 1999, Mr. Mitchell discovered that the Certificates of Title were not recorded and some of the foreclosure cases had been dismissed. (SF 8). In May 1999, Respondent admitted to Mr. Mitchell that the photocopies were not legitimate. (SF 8). In August 1999, Respondent signed an agreement with Camelot promising to diligently resolve all of the problems associated with every foreclosure that had been entrusted to him. (SF 8-9).

Ms. Sharane Jenkins, the manager of Camelot by the Sea since 1994,

testified that Respondent assisted with the foreclosures which were ultimately completed from start to finish including obtaining foreclosures, judgments, certificates of title and repurchasing units. (T. 68-70). Mr. John Predmore, the president and chief executive officer of Camelot by the Sea testified that the two situations in which two separate parties claimed ownership of units due to the false certificates of title were resolved by Camelot offering comparable units to the party with the invalid deed. (T. 76, 81-82). Mr. Predmore also testified that Respondent had provided competent assistance with Camelot's other legal problems. (T. 79).

Mr. Mitchell initially stated that he suffered $47,000 in damages. However, after questioning from Respondent, Complainant and the Referee, Mr. Mitchell explained that the $47,000 figure also included litigation costs from lawsuits unrelated to Respondent's conduct. (T. 29, 33, 40). A final restitution figure was not established at the final hearing. (T. 33). The Referee found Respondent to have violated Rules Regulating the Florida Bar 4-1.1, 4-1.3, 4-1.4(a), 4-8.4(a), 4-8.4 (c) and 4-8.4(d). (T. 11).

In count three, Mr. Mitchell hired Respondent in December 1995 to represent him in a breach of agreement for deed against Garland and Mary Cunningham. (SF 9). In March 1999, Respondent told Mr. Mitchell he had obtained a garnishment against Mr. Cunningham's wages and provided Mr. Mitchell a letter purportedly

written to Mr. Cunningham's employer demanding garnishment. (SF 10). At that time, Respondent had not filed a complaint or Affidavit of Proof of Claim nor obtained a judgment in the matter. (SF 9-10). Respondent misrepresented the status of the case and garnishment efforts. (SF 10-11). Respondent filed a complaint in October 2000 and was permitted to withdraw as counsel in January 2001. (SF 11). Respondent prepared a Motion for Default which was filed by Mr. Mitchell *pro se*. (SF 11). Mr. Mitchell obtained a default judgment in January 2001. (SF 11). The Referee found violations of Rules Regulating The Florida Bar 4-1.1, 4-1.3, 4-1.4(a), 4-8.4(a), 4-8.4(c). (T. 12).

In count four, Mr. Mitchell hired Respondent in January 2000 to file a breach of contract action against Randy Baron and Jennifer Wall. (SF 11). Respondent filed a claim of lien and complaint in February 2000. (SF 12). In March 2000, the court granted the defendants' motion to dismiss without prejudice for Respondent to file an amended complaint. (SF 12). Respondent did not notify Mr. Mitchell of the dismissal and did not file an amended complaint within the time required by the court; rather, Respondent told Mr. Mitchell that a hearing was scheduled on his Motion for Default. (SF 12). In July 2000, the case was dismissed although Respondent told Mr. Mitchell the case was progressing. (SF 13).

Respondent filed a new complaint in October 2000 but did not respond to a

counterclaim and a default judgment was entered against Mr. Mitchell. (SF 13). The court permitted Respondent to withdraw on December 21, 2000. (SF 13). The Referee found violations of Rules Regulating The Florida Bar 4-1.1, 4-1.3 and 4-1.4(a). (T. 13).

In count five, Mr. Mitchell hired Respondent in November 1997 to pursue a lawsuit against C & D Printing whom he alleged had not completed a construction project. (SF 14). In February 1999, Respondent told Mr. Mitchell that a hearing was scheduled, although he had not filed a complaint. (SF 14). In September 1999, he filed the complaint. (SF 15). In February 2000, the clerk notified Respondent of a Notice of Intent to Dismiss due to lack of service. (SF 15). In May 2000, Respondent told Mr. Mitchell that he had obtained a judgment and was pursuing collection. (SF 15). In October 2000, Respondent filed an amended complaint correcting the name of the corporate defendant. In October 2000, the defendant filed a motion to dismiss. (SF 15-16). In January 2001, the court permitted Respondent to withdraw as counsel of record. (SF 16). The Referee found Respondent to have violated Rules Regulating The Florida Bar 4-1.1, 4-1.3, 4-1.4(a) and 4-8.4(c). (T. 13).

Respondent waived probable cause pertaining to the allegations contained in count six so the Referee could consider and resolve all pending disciplinary

complaints at one time. (SF 16). In count six, Respondent, in his capacity as attorney for the Camelot Condominium Association, Inc., filed a lien against Mr. Richard Beserap based on delinquency in payment of maintenance fees and taxes. (SF 17). Mr. Beserap's attempt to resolve the lien was rejected by the Camelot Condominium Association's President because his payment did not include attorney's fees and costs. (SF 17).

In November 1998, Mr. Beserap filed suit against Camelot alleging illegal lock-out of his unit. (SF 17). Respondent did not timely comply with discovery requests as ordered by the court and Camelot's pleadings were struck. (SF 17). Respondent did not file a timely appeal. (SF 17). Respondent settled Mr. Beserap's claim for $18,000, which he paid out of his own funds. (SF 17-18). Respondent did not obtain Camelot's permission to settle the suit. (SF 17). The Referee found Respondent violated Rules Regulating The Florida Bar 4-1.4(a), 4-1.3 and 4-1.2(a lawyer shall abide by client's decision whether to accept an offer of settlement of a matter). (T. 14).

Respondent did not retain counsel to defend the allegations or represent him at the final hearing, but rather stipulated to the underlying facts and waived argument concerning the rule violations. (ROR, T. 10-14, 99). At the Referee's request, Respondent also waived argument pertaining to his submitted case law

addressing the appropriate sanction. (T. 98-99). Respondent bore no ill will toward The Florida Bar for prosecuting the Complaint and in fact, his respect and admiration for the bar prosecutor was evident when he explained that the prosecutor would serve as a "guidepost" for the "professional and ethical lawyer" that he hoped to become. (T. 102). In contrast to the professionalism demonstrated by the bar prosecutor, Respondent expressed his regret and embarrassment at his admittedly shameful conduct. (T. 102-103). Respondent took full responsibility for his actions and did not attempt to blame circumstances or anyone else. (T. 101-102). Ms. Danene Trusner, Respondent's secretary, testified that she had worked for Respondent for several years and had observed during that time that Respondent exhibited loyalty to his clients and worked with those clients who could not immediately pay their legal fees. (T. 65).

The Florida Bar stipulated that his prior public reprimand discipline should not constitute an aggravating factor since it concerned neglect and competence rule violations that occurred during the same time frame. (T. 86). Rather the prior case was discussed in reference to a pattern of conduct. (T. 86). The Florida Bar recognized Respondent's potential for rehabilitation and recommended a two-year suspension based upon its review of applicable case law involving similar conduct and mitigating factors. (T. 96).

The Referee referenced Respondent's prior public reprimand imposed in 2002 in the Report of Referee. The Referee found Florida Standards for Imposing Lawyer Sanctions 9.22(c) (pattern of misconduct) and (d) (multiple offenses) as aggravating factors and 9.32(e)(cooperative attitude) and (l) (remorse) as mitigating factors. (ROR 4). The Referee rejected The Florida Bar's recommendation and Respondent's argument and recommended disbarment. (ROR 4). The Report of Referee does not refer to any case law supporting the recommendation.

Respondent filed his Petition for Review requesting Review of the factual finding and sanction imposed on April 7, 2003. Respondent filed a Motion for Extension of time on April 25, 2003, which was granted on May 6, 2003 .

STANDARD OF REVIEW

The Florida Supreme Court has the ultimate responsibility of determining the appropriate disciplinary sanction. While the Florida Supreme Court will not "second guess" a referee's recommendation as to discipline, the recommendation must have a "reasonable basis in existing case law." Florida Bar v. Varner, 780 So. 2d 1, 5 (Fla. 2001)(citing Florida Bar v. Sweeney, 730 So. 2d 1269, 1272 (Fla. 1998); Florida Bar v. Lecznar, 690 So. 2d 1284, 1288 (Fla. 1997).

SUMMARY OF ARGUMENT

The Referee adopted the Stipulated Facts as the factual findings. Since Respondent previously stipulated to those facts, he does not now contest the factual findings. Respondent acknowledged the serious deficiencies in his representation of Mr. Mitchell and the Camelot Condominium Owners' Association. Respondent did not attempt to defend his conduct but instead fully cooperated with the entire disciplinary process. However, it is respectfully submitted that disbarment is not the appropriate sanction.

Although the facts show cumulative misconduct involving misrepresentations and lack of competence and diligence during Respondent's representation of his client, Respondent's cooperation, genuine remorse and acknowledgment of wrongdoing demonstrate that he is not beyond hope of redemption. A one-year rehabilitative suspension guarantees that Respondent would not practice law without affirmatively establishing entitlement to that privilege. Moreover, if Respondent is subsequently able to prove his rehabilitation, his practice could be restricted by probation and conditions to reasonably require a sponsoring, supervising attorney or other conditional practice.

ARGUMENT

I. The Referee's disbarment recommendation does not have a reasonable basis in existing case law.

The Report of Referee does not contain any case law relied upon in reaching the recommendation to disbar Respondent. It is unfortunate that Complainant and Respondent accepted the Referee's request to waive their arguments comparing and contrasting their submitted case law with the facts since the Report of Referee, final hearing transcript and record are devoid of any reference to applicable case law. Perhaps disciplinary proceedings are more prone to visceral reactions than other legal disputes since these proceedings necessarily involve judgment of those who share our profession. Nonetheless, equity mandates careful, analytical consideration of existing case law.

Although the Referee does not reference case law, common sense dictates and the Report's narrative section understandably emphasizes the deceptive practices Respondent used to cover up his mistakes and lack of diligence. There is an abundance of case law discussing the appropriate sanction under these circumstances. While isolated cases of neglect and misrepresentation have warranted a short-term non-rehabilitative suspension, the Court has imposed longer rehabilitative suspensions when a pattern of misconduct is detected. A discussion

of these cases is set forth below.

The Court has imposed short-term suspensions for lack of diligence in an attorney's representation of one client compounded by misrepresentations intended to cover the attorney's malpractice. In 1997, a ten-day suspension was imposed for an attorney's lack of diligence in pursuing an automobile accident claim which was dismissed after the statute of limitations had run and after the attorney failed to convey settlement offers to the client. Florida Bar v. Glick, 693 So. 2d 550, 552-53 (Fla. 1997). The attorney entered into a settlement agreement with the clients, specifically requesting them not to disclose the matter. Id at 550-52. However, in a response to the Bar, the attorney represented that the settlement was confidential due to the client's wishes. Id. Despite the multiple violations, the Court considered the mitigating factors of remorse, good reputation and lack of disciplinary history and ordered a ten-day suspension. Glick at 552 (Fla. 1997)(citing Florida Bar v. Golden, 502 So. 2d 891, 892 (Fla. 1987); Florida Bar v. Stein, 471 So. 2d 36, 37 (Fla. 1985); Florida Bar v. Morrison, 496 So. 2d 820, 821 (Fla. 1986); Florida Bar v. Lund, 410 So. 2d 922, 923 (Fla. 1982)).

The Court has more commonly imposed longer non-rehabilitative sanctions for misconduct involving deceptive practices to hide lack of competence and diligence. In Florida Bar v. Varner, 780 So. 2d 1 (Fla. 2001), the Court imposed a

ninety-day suspension due to an attorney's conduct in incorrectly representing to his client's insurance company that suit had been filed against it and offering to settle for fees and costs. After the company agreed to those terms, the attorney discovered that suit had not actually been filed. Id. at 2. Instead of correcting his mistake, the attorney drafted a Notice of Voluntary Dismissal, made up a case number and forwarded it to opposing counsel. Id. As a result, the attorney violated Florida Statutes, section 817.234(1)(a)(2), a third degree felony. Id. at 4. The Varner Court cited to Florida Bar v. Morse, 587 So. 2d 1120 (Fla. 1991) as support for its holding. Id. at 5. In Morse, a ninety-day suspension was also imposed for an attorney's deceitful action in covering up the firm's malpractice in missing the statute of limitations. 587 So. 2d at 1120-21. After the opposing party realized the action was worthless, the attorney sent the client a $2,500 check from trust fund proceeds representing that it constituted final settlement of the lawsuit. Id. at 1120. The attorney never advised the client of his mistake and instead attempted to insulate his firm using other clients' money. Id.

Similarly, in Florida Bar v. Kravitz, 694 So. 2d 725 (Fla. 1997), the attorney was suspended for thirty days for making separate misrepresentations to opposing counsel and to the court, for misrepresenting to a witness that he would be arrested if he failed to pay funds allegedly owed and for presenting false evidence to a court.

See also Florida Bar v. Corbin, 701 So. 2d 334 (Fla. 1997)(attorney with prior disciplinary history who included false statements of material fact in a motion for summary judgment and supporting affidavit and subsequently misrepresented facts in his initial response to the Bar received ninety-day suspension); Florida Bar v. Stockman, 370 So. 2d. 1146 (1979)(attorney who failed to diligently prosecute a real estate claim and attempted to cover up his negligence after case was dismissed by fabricating five letters purportedly written to the client explaining the unlikelihood of prevailing was suspended for ninety days); Florida Bar v. Fortunato, 788 So. 2d 201 (2001)(ninety-day suspension imposed when an attorney failed to respond to two appellate court orders resulting in the dismissal of her client's appeal, did not initially respond to a third order sanctioning her and gave false and misleading testimony when asked to explain her actions).

The Court has ordered a ninety-one-day rehabilitative suspension when there is cumulative misconduct involving negligence and deception. Most recently in Florida Bar v. Batista, No. SC00-2219 (Fla. April 17, 2003), this Court ordered a ninety-one-day suspension for multiple instances of neglect including taking a retainer and failing to do any meaningful work which was aggravated by the attorney contacting the complaining witnesses and offering a full refund if they signed false affidavits. In Florida Bar v. Schramm, 668 So. 2d 585, 589 (Fla. 1996), an attorney

was suspended for ninety-one days for falsely representing to the court that he had verified facts in motion for disqualification and lying in two separate instances to another judge concerning a purported scheduling conflict. In a separate count, Mr. Schramm was found to have accepted a retainer to represent a client in a foreclosure action but never filed an appearance or pleadings, did not communicate with his client about the action and ultimately failed to appear at the final hearing maintaining that his secretary was supposed to get a continuance. Id. at 587-88.

A six-month suspension was imposed in Florida Bar v. Gelman, 504 So. 2d 1228 (Fla. 1987), in which the attorney was found guilty of similar rule violations in a three-count complaint. Specifically, in response to a motion to dismiss for failure to attach a copy of the contract to his complaint alleging breach of contract, Mr. Gelman offered an altered letter which had been changed to better reflect his client's understanding of the agreement. Id. at 1229. At the disciplinary hearing, he blamed the altered document on a secretary whom he alleged was going to correct the error prior to the hearing. Id. Mr. Gelman was also found to have violated conflict of interest rules and rules relating to his failure to satisfy a judgment lien in his capacity as a real estate closing agent. Id. at 1230. Although sufficient funds had been placed in his trust account since 1973, he did not satisfy the lien until 1986. Id.

The rehabilitative suspension term has been increased to a year if the

attorney's lack of diligence and misrepresentations appear to indicate a pattern of behavior. Florida Bar v. Centurion, 801 So. 2d 858 (Fla. 2000) contains analogous facts. In Centurion, The Florida Bar filed a five-count complaint pertaining to violations that occurred in seven separate legal matters, including several cases involving lack of diligence, competence, communication and misrepresentations concerning the case progress. Id. at 859-62. The Court approved the referee's recommendation of a one-year suspension, followed by one year of probation with the additional term that he pass the ethics portion of the Florida Bar Exam. Id. at 864.

Florida Bar v. Cimbler, 840 So. 2d 955 (Fla. 2002) also addresses comparable facts. In Cimbler, the Court imposed a one-year suspension for cumulative misconduct involving three clients over a four-year time period in which the attorney neglected his cases by failing to file pleadings, failing to appear at a hearing and deposition, failing to record a warranty deed or pay taxes using funds that had been deposited in his trust account. Id. at 959-62. In addition, he failed to timely return a $2000 deposit for real estate he was holding in his trust account until his former clients hired a new lawyer to request it from him. Id. at 956. Although there were no charges of affirmative misrepresentation concerning the status of cases, the attorney took deliberate steps to avoid contact with his clients following

his faulty representation of them. Id. at 956-58. The Court also considered the attorney's prior ninety-day suspension for similar misconduct in determining that a one-year suspension was the appropriate sanction. Id. at 961.

In Florida Bar v. Rotstein, 835 So. 2d 241, 242 (Fla. 2002), the attorney attempted to conceal his lack of diligence in missing the statute of limitations by creating and backdating a letter to his client informing him of the looming deadline that he submitted and referred to in three separate letters to the grievance committee. In addition, the attorney was found to have engaged in conduct contrary to two of his clients' best interests by filing motions to enforce settlement. Id. at 243. The Court found a one-year suspension appropriate for the attorney's misconduct in view of the seriousness of his offenses and in consideration of the five aggravating factors, including prior disciplinary offenses and obstruction of the disciplinary process. Id. at 246-47. See also Florida Bar v. Patterson, 530 So. 2d 285 (Fla. 1988)(one-year suspension and passage of the entire Florida Bar exam warranted when attorney failed to timely refund unearned fees in three cases in which he neglected legal matters and did not communicate with clients, abandoned two other cases by leaving the state without returning documents or refunding fees and was sanctioned by an appellate court for not following proper appellate procedures in a sixth case.)

Respondent's conduct appears most analogous to the facts in Centurion, Cimbler, Rotstein and Patterson. In particular, Centurion and Cimbler are especially similar. First, Centurion, Cimbler and Respondent's case concern multiple findings of misconduct in several legal matters. While the relevant time frame in Centurion is not clear from the reported opinion, the attorney's misconduct affected five different clients in seven different matters. In Cimbler, the attorney's misconduct expanded a four-year time period and affected three different clients. The present case concerns an approximately three to four year period, five different legal matters and affected his representation of Mr. Mitchell and the Camelot Condominium Owner's Association.

Second, the cases all involve attempts to prevent detection of the attorney's neglect. Centurion and the present case include affirmative misrepresentations to the client(s) concerning the progress and status of the legal matter. However, neither Centurion nor the case at bar involve misrepresentations to opposing counsel or to the court or concern fraudulent documents filed in any legal or disciplinary proceeding. Cimbler was not charged with affirmative misrepresentations but he "made efforts to make himself unavailable and difficult to contact."

Third, in both Centurion and this case, when confronted with their conduct, both attorneys gave assurances that they would not engage in similar dilatory

practices. The attorney in Centurion assured the bar investigator that he would schedule a final hearing in a delinquent matter but as of the disciplinary hearing, had not done so. Id. at 859. In the present case, after Respondent admitted to Mr. Mitchell that the deeds were not valid, he signed a memorandum promising to diligently represent the Association in future representation. While Respondent took remedial measures and completed all the foreclosures that pertained to the invalid deeds, he subsequently neglected and made misrepresentations in another legal matter.

In contrast to Mr. Cimbler, who was previously suspended for ninety days and subjected to a three-year probation for similar violations, no prior discipline was considered as an aggravating factor in this case. In contrast to Centurion, Respondent did not contest any of Complainant's allegations and waived argument pertaining to the rule violations. Moreover, Respondent did not attempt to blame anyone else for his own misconduct. Contra Centurion at 861 (blaming his paralegal/client for failing to recognize that her claim was not viable). In addition, the Referee in the present matter specifically found that the mitigating factors of remorse and cooperative attitude were appropriate considerations . (ROR at 4). Comparison of the facts of the case at bar with Centurion and Cimbler is not the only guide in determining discipline in this matter. This case has mitigating factors

not present in either Centurion or Cimbler. Further, Centurion and Cimbler involve aggravating factors that are absent in the case at bar. Therefore, a one-year suspension is a reasonable sanction in this case.

The Referee's disbarment recommendation does not have a reasonable basis in existing case law. While short-term suspensions have been imposed for isolated incidents of similar rule violations, it is acknowledged that cumulative misconduct is punished more severely. However, a rehabilitative suspension exceeding one year does not appear to be warranted because Respondent's case is not further aggravated by a prior disciplinary record, criminal conduct or especially vulnerable victims. After considering the range of cases in this area and factually similar cases, it is respectfully submitted that one year is the appropriate term of suspension.

II. Mitigating factors of cooperative attitude and remorse make Respondent a promising candidate for rehabilitation.

Reformation and rehabilitation are established considerations in formulating the appropriate disciplinary sanction. Florida Bar v. Pahules, 233 So. 2d 130, 132

(Fla. 1970). Potential for rehabilitation is most promising when the responding attorney acknowledges the misconduct, accepts the disciplinary process and harbors no ill will toward the disciplinary system. See R. Regulating Fla. Bar 3-7.10 (f)(2(I) and (f)(3)(D). A respondent's cooperative attitude is important because there is no internal barrier to the disciplined attorney seeking guidance and moving affirmatively forward toward rehabilitation. In fact, Respondent began the process of rehabilitation by working with the Camelot Condominium Owner's Association to resolve the problems his pattern of conduct caused. (T. 69, 73, 79, 95). Such actions show both the Respondent's real potential for rehabilitation and his lack of malicious intent to harm either his clients or the public.

The Florida Bar has contributed to the development of programs, such as LOMAS, that are designed to help young or struggling lawyers organize their practices and meet the high standards expected of Florida lawyers. Based upon Respondent's genuine acknowledgment of misconduct and desire for rehabilitation, a one-year suspension followed by a probationary term that incorporates conditions requiring assessment, recommendations and supervision would promote reformation as well as protect the public. Moreover, the length of the suspension in conjunction with the additional terms is severe enough to deter other attorneys from committing the same sort of misconduct.

The experienced Florida Bar assistant staff counsel who investigated this matter and met directly with Respondent throughout the disciplinary process formed the opinion that Respondent was an appropriate candidate to establish rehabilitation and that Respondent would benefit greatly from LOMAS and supervised practice. While it is respectfully suggested that the appropriate length of the suspension is one year rather than two years as argued at the final hearing, Bar counsel's recommendations for additional supervisory conditions upon reinstatement are logical and consistent with the purposes of Bar discipline.

CONCLUSION

In the absence of theft or criminal convictions, disbarment should be reserved for those cases in which the attorney has established the incapability of rehabilitation and inability to conform with accepted standards of practice as demonstrated by

prior discipline or the absence of remorse or cooperation. Respondent's cooperative attitude and remorse are substantial mitigating factors that greatly increase Respondent's ability to reform. Respondent requests an opportunity to prove entitlement to reinstatement and to learn how to manage his practice from a supervisory lawyer. The sanction of a rehabilitative suspension coupled with a probationary term restricted with reasonable conditions is supported by existing case law and was advocated by the Complainant at the disciplinary hearing.

Respectfully submitted,

SCOTT K. TOZIAN, ESQUIRE
Florida Bar No. 253510
GWENDOLYN HOLLSTROM HINKLE, ESQ.
Florida Bar No. 83062
SMITH AND TOZIAN, P.A.
109 North Brush Street, Suite 150
Tampa, Florida 33602
(813)273-0063
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Respondent's Initial Brief has been furnished by UPS overnight delivery to the Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 S. Duval Street, Tallahassee, Florida 32399-1927 and true and correct copies have been furnished by U.S. Mail to

Thomas E. DeBerg, Esquire, Assistant Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport, Marriott Hotel, Tampa, Florida 33607 and John Anthony Boggs, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this _____ day of May, 2003.

_____
_
GWENDOLYN HOLLSTROM HINKLE, ESQ.

CERTIFICATION OF FONT SIZE AND STYLE

The undersigned counsel does hereby certify that this brief is submitted in 14 point proportionally spaced Times New Roman font.

_____
_
GWENDOLYN HOLLSTROM HINKLE, ESQ.