IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ARTHUR JAMES SPRINGER,

Respondent.

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Case No. 02-1687

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

RESPONDENT'S REPLY BRIEF

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SYMBOLS AND REFERENCES

The following abbreviations and symbols are used in this brief:

I.B.	=	Initial Brief
A.B.	=	Answer Brief
RO R	=	Report of Referee

ARGUMENT

I. DISBARMENT IS TOO SEVERE A SANCTION FOR AN ATTORNEY WHO IS FOUND TO BE COOPERATIVE, REMORSEFUL AND WHO IS CAPABLE OF REHABILITATION.

In its Answer Brief, Complainant contends that, because Respondent caused harm to his clients, was dishonest about the status of cases and took affirmative action to cover up what might have otherwise been correctable mistakes over a period of time, disbarment of Respondent is warranted. *See* A.B. at 30. Additionally, although no negative observations of Respondent's demeanor during the hearing before the Referee are specifically made in the record, Complainant asks this Court to consider Respondent's "demeanor during live hearings" as a basis for disbarment. Id.

Respondent has never attempted to diminish the severity of his past conduct. Indeed, the Referee found in mitigation that Respondent was cooperative and sincerely remorseful for his actions. (ROR 3-4). Disbarment is too severe, particularly in light of his cooperation, his remorse and his capacity for rehabilitation, which he has demonstrated throughout the disciplinary proceedings. Disbarment is designed to be imposed only in cases where rehabilitation is highly improbable. Florida Bar v. Mason, 826 So.2d 985, 989 (Fla. 2002).

A rehabilitative suspension and upon reinstatement, a probationary term with reasonable conditions are appropriate sanctions based upon his misconduct. (ROR 3). A rehabilitative suspension would protect the public while affording "a wayward attorney" a fair and reasonable opportunity for rehabilitation. Florida Bar v. Blessing, 440 So.2d 1275, 1276 (Fla. 1983)(concluding that disbarment of attorney was too extreme a sanction, despite the cumulative nature of his misconduct, where the lawyer failed: (1) to pay funds owed to insurance company, (2) to disburse client trust funds and (3) to file pleadings and attend hearings, in light of his cooperation with investigation and efforts at rehabilitation). As to the sanction of disbarment, this Court has noted, on several occasions:

> [D]isbarment is the extreme measure of discipline that can be imposed on any lawyer. It should be resorted to only in cases where the person charged has demonstrated an attitude or course of conduct that is wholly inconsistent with approved professional standards. *To sustain disbarment there must be a showing that the person charged should never be at the bar. It should never be decreed where punishment less severe, such as reprimand, temporary suspension or fine will accomplish the desired purpose.*

Blessing, 440 So.2d at 1277(citations omitted)(emphasis added). Respondent's attitude exhibited throughout the disciplinary process renders disbarment inappropriate based on the standard outlined above. Instead, a rehabilitative suspension and probation upon reinstatement will protect the public and deter other

attorneys while giving Respondent the opportunity to affirmatively establish his rehabilitation for reinstatement. *See* Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970) (outlining threefold purposes of discipline as (1) protection of the public (2) deterrence and (3) fairness to a lawyer subject to sanction).

II. THE REFEREE'S RECOMMENDED SANCTION OF DISBARMENT IS INCONSISTENT WITH THE CASE LAW APPLYING THE STANDARDS FOR IMPOSING LAWYER SANCTIONS.

This Court has the ultimate responsibility to impose disciplinary sanctions. While the Court will not "second guess" a referee's recommendation as to discipline, that 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). This Court's review of sanctions is broader than when reviewing findings of fact and conclusions of guilt. Florida Bar v. Baker, 810 So.2d 876, 881 (Fla. 2002).

A. The sanction of disbarment is not supported by the relevant case law, even in light of the seriousness of Respondent's conduct, the detrimental effect on his clients and the length of time during which Respondent's attempts to cover up neglect occurred.

Complainant is unable to provide this Court with a factually similar case imposing disbarment. A.B. at 32. While Complainant relies on the Florida

Standards for Imposing Lawyer Sanctions, Complainant fails to adequately consider the significant mitigating factors as well as similar case law imposing rehabilitative suspensions.

1. Complainant's Case Law in Favor of Disbarment is Distinguishable.

Complainant discusses two disciplinary cases, either of which Complainant contends provide a "good starting point" for applying a sanction in this matter, prior to application of mitigating or aggravating factors. *See* A. B. at 33-38. Both cases are distinguishable from the case at bar.

In Florida Bar v. Benton, 157 So.2d 420 (Fla. 1963), the lawyer had provided his client with an altered divorce decree issued by the court in another client's case after failing to file suit on behalf of the client. Id. at 421. Although the referee recommended probation, the Benton court ordered a two-year suspension. Id. Complainant argues that since one act of misconduct justified a two-year suspension in Benton, Respondent should be disbarred due to the aggravating factors. A.B. at 33-32. However, this forty-year case provides little guidance because it does not provide an in-depth analysis nor any discussion of aggravating or mitigating factors. Although Benton did not commit multiple offenses, his dishonesty led a client to believe he was divorced while, in fact, the client was still married. Few subjects are more vital to an individual

than marital status. Moreover, the Benton lawyer actually committed a fraud upon the court by altering a court order. While Respondent's actions in falsifying certificates of title are indeed serious, there is a distinction relevant to the issue of discipline between Respondent's conduct and that of Benton. *See* Baker, 810 So.2d at 881 (concluding lawyer should not be disbarred for falsifying several documents in part because "[w]hile Baker forged several legal documents" related to real estate he jointly owned with his ex-wife, "he did not commit a fraud on the court"). In that respect alone, Benton's and Respondent's actions are distinct as to the issue of discipline.

Next Complainant cites Florida Bar v. Klausner, 721 So.2d 720 (Fla. 1998) as an "instructive case" in this matter. A.B. at 34. Klausner forged debtors' names on ten stipulations of settlement to prevent abatement of his corporate clients' cases and submitted the documents to the court. Id. at 720-21. During a hearing in which one of the forged documents was presented to the court, Klausner made affirmative misrepresentations to the court to cover up his conduct. Id. Later, Klausner gave a false statement under oath to an investigator from the State Attorney's Office to cover up his misconduct. Id. at 721. Klausner also cast blame on his secretary and his father by suggesting that either one of the two could have forged the documents. Id. Klausner pled no contest to three felony charges

and a misdemeanor charge stemming from his misconduct. Id. The Court approved the referee's recommendation of a three-year suspension and additional conditions relying upon the mitigating factors of Klausner's remorse, inexperience and lack of prior bar discipline and the referee's legal reasoning that his conduct was not "nearly as egregious as that in other similar cases where suspension, not disbarment, was the appropriate disciplinary sanction." Id. at 721-22.

As Complainant notes, Respondent was neither charged nor convicted of criminal offenses and did not lie under oath. A.B. at 35. Moreover, unlike Klausner, Respondent did not attempt to perpetrate a fraud on the court or make affirmative misrepresentations to a court. While a lawyer's dishonesty resulting in ethical violations should be punished, the form of the dishonesty is a significant factor in determining the severity of the sanction. *See* Baker, 810 So.2d at 881; *see also*, Florida Bar v. Stillman, 606 So.2d 360, 363 (Fla. 1992)(acknowledging that the Court does not usually allow substantial discipline in cases "involving misrepresentations to lending institutions"). Nor did Respondent attempt to cast blame on others for his misconduct as did Klausner. As Complainant has stipulated, Respondent cooperated fully throughout the investigation of his misconduct. (ROR 3). Finally, Complainant cites the three-year suspension in Klausner as a "starting point" for disbarment in this matter, prior to applying either

the mitigating or aggravating factors in the case at bar. Such an application of Klausner is misplaced because the Klausner opinion already included a determination of the sanction applying the relevant mitigating and aggravating factors in that matter. Complainant then argues that the three-year sanction in Klausner should used to support the referee's recommendation that Respondent be disbarred due to the aggravating factors. A.B. at 35-36. However, the conduct in Klausner is in many aspects more egregious than Respondent's conduct. Finally, in contrast to Klausner, the Referee here failed to cite any case law supporting his recommendation. (ROR 3-4).

Complainant next asserts disbarment is the presumptive starting point based on several relevant Florida Standards for Imposing Sanctions and argues that, based upon Respondent's aggravating factors of (a) a pattern of misconduct and (b) multiple offenses versus his mitigating factors of (a) cooperative attitude and (b) remorse, disbarment is reasonable discipline. A.B. at 36-38. Complainant fails to consider relevant case law that applied these standards to similar fact patterns and the same aggravating factors and determined that a rehabilitative suspension with additional conditions was appropriate.

2. Existing Relevant Case Law does not Support the Referee's Recommendation of Disbarment.

Florida Bar v. Stillman, 606 So.2d 360 (Fla. 1992) is a materially similar case in which the Court imposed a one-year suspension. Stillman was retained by a bank to act as counsel for several real estate transactions and to issue title policies. Id. at 361-363. The client bank had specified that, as a condition for sales, there be no secondary financing on the properties. Id. On several occasions, Stillman failed to disclose the existence of a second, and in one case, a third, mortgage on properties on which the bank held mortgages. Id. In each instance, Stillman submitted falsified settlement statements to the bank and issued false title insurance policies. Id. Two of the properties went into default and foreclosure. Id. At the time of his disciplinary proceeding, a property in which Stillman had issued to the bank a $54,000 title insurance policy was in arrears and the policy had failed to disclose the existence of a second note and mortgage. Id. at 362.

The referee in Stillman found in mitigation that Stillman's motive did not involve either personal gain or greed and that the conduct was unlikely to be repeated and recommended a public reprimand and six-month suspension. Id. at 363. The Florida Bar petitioned for a two-year suspension. Id. This Court stated:

> we believe that the overall pattern of misconduct here is so severe, involving so many separate acts of fraudulent conduct, as to require

> harsher discipline. The amount of money put at risk by Stillman's conduct together with the likelihood he violated federal and state laws warrants a severe penalty. Accordingly, we adopt the referee's findings regarding ethical violations but conclude that a greater discipline is warranted. We hereby suspend Stillman from the practice of law for a period of *one year and thereafter until he establishes proof of rehabilitation*.

Id. at 363(emphasis added). In addition to the analogous facts, both Stillman and this case involve multiple offenses and a pattern of misconduct. Moreover, a one-year suspension would require Respondent to prove his rehabilitation which would adequately ensure that Respondent's conduct would not be repeated.

In Florida Bar v. Rotstein, 835 So.2d 241, 242-44 (Fla. 2002), Rotstein committed numerous ethical violations through his negligent handling of a personal injury claim, his subsequent attempts to cover up his mistakes and his attempts to enforce settlement agreements while knowingly taking positions adverse to his clients. The Rotstein referee found (a) dishonest or selfish motive, (b) substantial experience in the practice of law, (c) a prior disciplinary offense and (d) submission of false evidence, false statements or other deceptive practices. Id. at 243, 246. Additionally, this Court observed that "[i]nstead of being truthful and admitting his mistake from the start, [Rotstein] engaged in the extremely dishonest and fraudulent conduct of creating a backdated letter to his client" and then made intentional misrepresentations to the Bar. Id. at 246-47. In mitigation, the referee found (a)

timely effort to make restitution or to rectify consequences of misconduct and (b) remorse. In approving the referee's recommended one year suspension, the Court distinguished the disbarment cases offered by the Bar because the cases involved "*criminal misdeeds or frauds upon the court[.]*" Id. at 245-46(emphasis added).

In contrast to Rotstein's uncooperative and dishonest behavior during his disciplinary proceedings, the Referee in this matter found as a mitigating factor that Respondent was fully cooperative and remorseful. An important distinction that sets both Rotstein and Respondent's case apart from disbarment cases cited by Complainant is that neither case involved "criminal misdeeds or frauds upon the court."

Even in cases of a lawyer's misuse of trust funds, disbarment, although the presumptive discipline, is not imposed where there is potential for rehabilitation, even if there exists a pattern of misconduct over a period of time, gross negligence and false statements to The Bar to cover up misuse of client trust funds. Mason, 826 So. 2d at 987, 989-990, *see also,* Pahules, 233 So.2d at 131-32 (disbarment penalty for lawyer's misuse of client trust funds disregarded in favor of rehabilitative suspension where lawyer's restitution provided evidence of his ability for rehabilitation); State ex rel Florida Bar v. Ruskin, 126 So.2d 142, 143-44(1960) (affirming referee's recommendation

of a one-year suspension for misuse of client trust funds where The Bar petitioned for disbarment based upon lawyer's candor and cooperation during disciplinary proceedings and restitution). Disbarment is not an appropriate sanction, even in the most egregious cases, if the lawyer has exhibited cooperation, remorse and potential for rehabilitation.

B. Respondent's suggestion of a one-year suspension is appropriate, even in light of the seriousness of Respondent's misconduct, its duration, and the damage to clients.

Complainant distinguishes cases cited by Respondent in his initial brief because they do not involve a pattern of conduct. A.B. at 39-40. The cases to which Complainant objects,[1] were cited by Respondent as "a starting point" prior to application of the aggravating factors in a method similar to that employed by Complainant in its Answer Brief. *Compare* I. B. at 13-16, A.B. at 32-36.

Respondent cited to a series of cases that, while distinct in certain aspects from the case at bar, provide guidance as to the appropriate discipline in this matter in light of the aggravating factors of Respondent's pattern of conduct and multiple

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[1]. Florida Bar v. Varner, 780 So.2d 1 (2001) (attorney suspended for 90 days for misrepresenting to his client's insurance company that suit had been filed, then falsifying a Notice of Voluntary Dismissal to hide his lack of diligence); Florida Bar v. Morse, 587 So.2d 1120 (Fla. 1991) (90-day suspension for deceitful conduct to hide missing statute of limitations); and Florida Bar v. Kravitz, 694 So.2d 725 (Fla. 1997) (30-day suspension for presenting false evidence to the court and opposing counsel, plus lying to a witness).

offenses, as well as his continued misrepresentations to clients despite promises to reform. I. B. at 19-21. Florida Bar v. Centurion, 801 So.2d 858 (Fla. 2000) and Florida Bar v. Cimbler, 840 So.2d 955 (2002) support a one-year suspension followed by a period of probation and supervision in light of the seriousness of Respondent's misconduct, its duration and the damage to his clients. While Complainant dismisses each of the cases because the facts were not *directly on point,* Complainant fails to acknowledge the purposes for which they were relied upon by Respondent. A.B. 41-42.

Centurion committed numerous ethical violations in handling seven separate legal matters on behalf of five separate clients. Centurion, 801 So.2d at 859-62. Of particular relevance is Centurion's continued false representations as to the status of a case, even after the client had discovered Centurion's negligence and Centurion had promised to reform his conduct. Id. at 861. In accepting the referee's recommended one-year suspension with additional conditions, this Court held that cooperation with disciplinary proceedings may appropriately be considered in mitigation in imposing discipline. Id. at 863 at n.2. Further, this Court noted that, although the referee did not expressly make findings with regard to mitigating and aggravating factors, the transcript reflected that such factors were considered by the referee in arriving at his disciplinary recommendation. Id. at 863.

Like Centurion, Respondent continued to make misrepresentations to cover up his negligence after being confronted by the client and promising to reform. However, as with the lawyer in Centurion, Respondent has demonstrated, through his cooperation and remorse, that he has the potential for rehabilitation. Accordingly, Respondent respectfully suggests that a one-year suspension with probation and conditions upon reinstatement as approved in Centurion is the appropriate discipline and is supported by the existing case law.

Respondent also cited Cimbler, 840 So.2d at 955 (Fla 2002) in support of his argument that a one-year suspension is more appropriate. Cimbler exhibited gross neglect in his representation of three clients in legal matters spanning a period of four years. Cimbler, 840 So.2d at 956-958. In aggravation, the referee in Cimbler found that Cimbler had (1) a prior discipline in 1994, (2) had shown indifference to making restitution to one of his clients and (3) had committed multiple offenses. Id. at 958. In mitigation, the referee found, among other factors, that Cimbler (1) made a timely good faith effort to make restitution or to rectify the consequences of his misconduct, (2) made full and free disclosure or had a cooperative attitude during disciplinary proceedings, (3) had demonstrated interim rehabilitation and (4) had shown remorse. Id. The referee recommended a 90-day suspension coupled with a five-year probation and specific conditions upon

reinstatement. Id. The Bar petitioned for a three-year suspension. Id. This Court, finding that the referee's recommended discipline failed to fulfill the three purposes of discipline and did not have a reasonable basis in existing case law, disapproved the referee's recommendation. Id. Finding that the facts reflected "a long-term pattern of multiple client neglect," this Court determined that the circumstances and existing case law supported a one-year suspension followed by a three-year term of probation along with the other conditions recommended by the referee upon reinstatement. Id.

Both Cimbler and this case involve similar aggravating and mitigating factors. While Respondent may have committed additional rule violations, Cimbler's actions affected more clients and he had previously received a ninety- day suspension for similar misconduct. Thus, Cimbler provides persuasive authority to impose a one-year suspension.

If this Court determines that while similar to Stillman, Rotstein, Centurion and Cimbler, this case is more egregious, it is respectfully submitted that the discipline should not be increased to disbarment. Instead, it would be appropriate to impose a lengthier term of suspension, such as the two-year term originally recommended by Complainant at the final hearing or to impose additional conditions for reinstatement. A long-term rehabilitative suspension and additional

conditions would increase the punitive aspect of the sanction as well as provide Respondent a fair opportunity to establish his worthiness to practice law in the future.

CONCLUSION

The Referee failed to give sufficient weight to Respondent's remorse, cooperation and attempts to rectify the consequences of his misconduct in recommending disbarment. For these and all of the reasons stated above, Respondent moves this Court to disapprove the Referee's recommended sanction of disbarment and order a one-year suspension followed by probation with reasonable conditions once Respondent has affirmatively established rehabilitation and is reinstated to the practice of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Respondent's Reply 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 June, 2003.

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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.

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GWENDOLYN HOLLSTROM HINKLE, ESQ.