IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,	**Supreme Court Case Nos. SC03-1194 and SC03-1333**
Complainant,	
v.	**The Florida Bar File Nos. 2003-50,917(17J); 2003-50,993(17J); and 2003-51,418(17J)(OSC)**
MARJORIE HOLLMAN SHOUREAS,	
Respondent.	

_____/

BRIEF OF THE FLORIDA BAR

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PRELIMINARY STATEMENT

Throughout this Brief, The Florida Bar will refer to specific parts of the record as follows: The Report of Referee in Supreme Court Case No. SC03-1194 will be designated as RR1 ____ (indicating the referenced page number). The Report of Referee in Supreme Court Case No. SC03-1333 will be designated as RR2 ____ (indicating the referenced page number). The transcript of the Final Hearing held on November 9, 2004, will be designated as T ____, (indicating the referenced page number).

STATEMENT OF THE CASE AND THE FACTS

Complainant/Appellant, The Florida Bar, seeks review of two Reports of Referee on two matters involving respondent/appellee, Marjorie Hollman Shoureas. The Florida Bar filed two separate complaints against respondent which were consolidated for purposes of trial. One complaint involved respondent's neglect and lack of communication in two separate client matters. These two neglect cases were also consolidated for purposes of trial and tried under Supreme Court Case No. SC03-1194.

The first complaint in that case involved the retention of respondent by a Mr. Flanders on two civil matters. Subsequent to his retaining respondent, Mr. Flanders made numerous attempts to contact respondent, but was not able to do so. Respondent also failed to execute a summons and complaint on the defendant, failed to meet discovery deadlines, and eventually her conduct resulted in Mr. Flanders' case being dismissed for lack of prosecution. The Florida Bar alleged, and the referee agreed, that respondent had failed to competently represent Mr. Flanders [Rule 4-1.1], had failed to act with reasonable diligence and promptness in representing her client [Rule 4-1.3], had failed to adequately communicate with her client [Rules 4-1.4(a) and 4-1.4(b)], and violated the Rules of Professional Conduct [Rule 4-8.4(a)]. The referee also found that respondent was guilty of violating Rule 4-8.4(g) in that respondent admitted to failing to respond to the Bar proceedings.

In the second matter, respondent was hired by Magnolia Jager to represent her in an employment discrimination case and was paid $100 towards the representation. After hiring respondent, Ms. Jager was not able to reach her. The referee found that respondent had failed to competently represent Ms. Jager [Rule 4-1.1], that she failed to diligently pursue her client's case [Rule 4-1.3], that she failed to adequately communicate with her client [Rule 4-1.4(a) and 4-1.4(b)], that she charged an excessive fee [Rule 4-1.5], and that she violated the Rules of Professional Conduct [Rule 4-8.4(a)]. The referee further found that respondent was guilty of violating Rule 4-8.4(g) in that she also failed to respond to this Bar complaint.

Despite the fact that respondent has been disciplined twice since her admission to The Florida Bar in the year 2000, first in Supreme Court Case No. SC02-2226 for 91 days for neglecting clients and then in Supreme Court Case No. SC03-293 for 3 years for also neglecting clients, the referee only recommended another 3 year suspension to run concurrent and coterminous with her prior suspension (RR1 7).

On the same day, the referee also heard The Florida Bar File No. 2003-51,418(17J)OSC, Supreme Court Case No. SC03-1333, involving contempt proceedings for respondent's numerous and continuous failures to abide by the terms of her prior suspension. While respondent contested some of The Florida Bar's allegations, she admitted to the following:

1. Failing to furnish a copy of her suspension order to all of her existing clients (RR2 3);

2. Failing to submit an affidavit to The Florida Bar as required by Rule 3-5.1(g) (RR2 3);

3. Being present in her office following the suspension (RR2 3);

4. Continuing to meet with clients during the period of her suspension (RR2 3);

5. Keeping her signs and listings in the office building directory listing her as an attorney (RR2 3);

6. All of the allegations in Counts IV, V, VI, VII, VIII and IX in The Florida Bar's Complaint (RR2 5-6);

7. Meeting with a Diane Curtis in her office during the period of her suspension, accepting money from her, and not informing her of her suspension (RR2 6);

8. Meeting with Michael Riggio, another client, during the period of her suspension and accepting money from him, and not informing him of her suspension (RR2 6-7);

9. Meeting with yet another client, Renee Kamin, during the period of her suspension, and accepting money from her (T 75-79).

Despite all of these admissions, the referee found respondent not guilty of any of the allegations raised in The Florida Bar's contempt case. It is these findings that The

Florida Bar appeals as they are inconsistent with the evidence presented in the final hearing of this cause. For purposes of appeal, both of the cases tried during the final hearing will be consolidated and addressed in this Brief.

SUMMARY OF THE ARGUMENT

In the neglect/lack of diligence cases (SC03-1194), The Florida Bar charged respondent with neglecting several client matters, not communicating with her clients, failing to respond to The Florida Bar, and in one case, an excessive fee. The referee found respondent guilty of all of these allegations yet only ordered a three year suspension, which was nunc pro tunc to the prior suspension received by respondent in another case. Respondent already had received prior discipline consisting of a 91 day suspension and a 3 year suspension. In that this Court treats subsequent discipline more harshly than prior discipline, particularly when the conduct alleged involves the same conduct for which a respondent was disciplined previously, the referee in the instant case should have disbarred respondent.

Of even greater significance is the contempt case. This Court has held time and time again that violation of a prior order is one of the most serious violations an attorney can commit. In the instant case, respondent admitted to a number of counts which alleged that she practiced while suspended. She admitted to failing to abide by the terms of her prior suspension order. Despite respondent's admissions and the evidence presented by The Florida Bar, the referee found respondent not guilty of any of the allegations. Since the record reveals that respondent admitted to a number of allegations,

a not guilty finding is inconsistent with these admissions. Disbarment should have clearly been recommended, particularly given the fact that respondent had prior discipline.

ARGUMENT

DISBARMENT IS WARRANTED FOR AN ATTORNEY WHO ENGAGES IN THE SAME KIND OF MISCONDUCT SHE DID IN THE PAST AND WAS DISCIPLINED FOR, AND WHO VIOLATES A PRIOR SUSPENSION ORDER.

While a referee's findings of fact should be upheld unless clearly erroneous, The Florida Bar v. Vannier, 498 So.2d 896 (Fla. 1986), this Court is not bound by the referee's recommendations in determining the appropriate level of discipline. The Florida Bar v. Padgett, 481 So.2d 919 (Fla. 1986). Furthermore, this Court has stated that the review of the discipline recommendation does not receive the same deference as the guilt recommendation because this Court has the ultimate authority to determine the appropriate sanction. The Florida Bar v. Grief, 701 So.2d 555 (Fla. 1997) and The Florida Bar v. Wilson, 643 So.2d 1063 (Fla. 1994). This Court has further stated it will not second guess a referee's recommended discipline if it has a reasonable basis in law in the standards for imposing lawyer sanctions. The Florida Bar v. Feinberg, 760 So.2d 933 (Fla. 2000), The Florida Bar v. Sweeney, 730 So.2d 1269 (Fla. 1998), The Florida Bar v. Lecznar, 690 So.2d 1284 (Fla. 1997). As will be seen below, the recommendations in the instant case cannot possibly be said to have a reasonable basis in the law or in the standards.

The Court has held that disbarment is appropriate for an attorney's neglect of a client's case, at least when the attorney has previously been suspended for similar misconduct and fails to participate in the disciplinary proceeding. The Florida Bar v. Bartlett, 509 So.2d 287 (Fla. 1987). In Bartlett, the court noted that repeated instances of attorney misconduct should be treated cumulatively so that the lawyer's disciplinary history can be considered as grounds for more serious punishment than his misconduct, considered in isolation, might seem to warrant. Id. at 288.

Like in Bartlett, this respondent has been disciplined not once, but twice before. She had received a 91 day suspension and then a 3 year suspension. Both of these disciplinary sanctions were received as a result of respondent's neglect of her clients. The referee also found respondent guilty of the conduct alleged by The Florida Bar with regards to her representation of Lavont Flanders and her representation of Magnolia Jager (RR1 5-6). Because this Court deals with subsequent similar misconduct more harshly than it does with misconduct that is isolated or occurs only once, respondent should have been disbarred.

Furthermore, respondent admitted to failing to respond to the Bar's inquiries as to these two complaints. She chose not to participate in the disciplinary process and did not at any time during the course of those proceedings (except during the final hearing in

these cases) raise the issue of her emotional condition as a defense for her failure to respond.

As to the contempt case, the referee's findings are also not supported by evidence. In the instant case, the referee found that respondent had not engaged in any "…willful contempt of the Supreme Court Order" (RR2 7). He made this naked finding without propounding any explanation as to why he found respondent not guilty, without articulating any mitigating factors which would cause a departure from the appropriate discipline, and without citing to any applicable standards or case law. Because the referee's findings have no support in the record, in the standards, or in case law, they should not stand.

The record reveals that respondent prominently displayed her listing as an attorney on the outside of the building where her office was located and on the lobby directory during the term of her suspension (T 19-20). Photographs were admitted without objection showing this blatant violation of her suspension order (T 19-20). Additionally, respondent admitted that she failed to notify a number of her clients about her suspension and admitted this violation during the final hearing (T 20).

Even more serious is the fact that respondent admitted going to her office after she was suspended (T 47-48). During one of those instances she admitted that she met with Michael Riggio, a client, during the term of her suspension and accepted a check from

him (T 50). Specifically, Mr. Riggio testified during the final hearing in this case that on April 15, 2003, during the terms of respondent's suspension, he gave her a retainer check for representation in a legal matter (T 22). The check was admitted into evidence without objection (T 22). Mr. Riggio further testified that on that date, respondent was present at her office to meet with him, that the office appeared open, that there was no indication that respondent was suspended, and that he was not informed by her about the suspension (T 22-23, 24). While respondent attempted to make it appear as if the payment was for work done prior to her suspension, she did not have any paperwork to provide showing that it was work done before (T 82), could not deny the meeting, and could not deny the acceptance of the check or the date it was written, which was clearly during the suspension period.

Respondent not only met with Mr. Riggio and accepted money from him, but continued to meet with other clients during the terms of her suspension. For example, respondent admitted to meeting with a Diane Curtis during her period of suspension (T 66-67). Respondent admitted to being in her office during the suspension, meeting with Ms. Curtis, and agreeing to handle a debt collection problem for her (T 67). Respondent further admitted to being well aware of her suspension during this time (T 68), taking money from Ms. Curtis (T 68-69) in the form of a check which in the memo section read "for legal representation" and cashing the check (T 69), and not

informing Ms. Curtis of the suspension (T at 70). Respondent was conveniently emotionally well enough to take money from Mr. Riggio and Ms. Curtis, but not well enough for other things like complying with the terms of her suspension.

Not only did respondent violate her prior suspension order by meeting with Mr. Riggio and Ms. Curtis, and accepting money from each of them during the term of her suspension, but the testimony during the final hearing revealed that respondent also met with a Renee Kamin and her boyfriend on June 30, 2003 (T 75), and again on July 11, 2003 (T 78). Respondent admitted to still being in her law office building on those dates (T 75-76), meeting with Ms. Kamin and her boyfriend (T 75-76, 78), and receiving $1,000 (T 76). While respondent stated (as she did in the case of Michael Riggio) that the $1,000 was for work done in the past, prior to the suspension, she did not have any documentation to support her position (T 77-79, 80). It is simply not credible to believe that respondent was well enough to meet with clients, well enough to collect payment for past legal work, well enough to have conversations with individuals, and not well enough to comply with the terms of her suspension. From the record, the only logical conclusion is that respondent willingly violated the terms of her suspension.

Respondent also engaged in prohibited communications on behalf of her client, Mr. Leal, with opposing counsel during her suspension, as testified to by Juliette Lippman, opposing counsel in the case (T 37, 38, 39). Ms. Lippman testified that respondent never

informed her of the suspension and even spoke to her during the period of suspension (T 37-39). Respondent further communicated with Carol Field, Senior Assistant Attorney General with the Office of the Attorney General. Ms. Field testified that she was not informed by respondent of the suspension (T 158), that respondent did not, to her knowledge, inform the judge in the case about her suspension (T 158), and that someone in her office had conversations about the ongoing case with respondent during respondent's period of suspension (T 159).

While respondent raised her emotional state as a defense for her not being aware of her suspension and not willingly failing to abide by the terms of the suspension, her testimony was inconsistent as to this issue. For example, respondent testified that she was too depressed to open her mail or to return clients' phone calls (T 45-49). She was still able, however, to go to her office (T 50), to meet with Mr. Riggio and take money from him (T 50), to meet with Ms. Curtis and take money from her (T 67, 68-69), to meet with Renee Kamin and her boyfriend not once, but twice (T 75, 78), and receive money from them (T 76), to not miss any court appearances (T 50), to pick up her mail (T 64), but not to open it (T 64), and to continue taking money from clients (T 65-66).

This Court has found time and time again that disbarment is appropriate when a lawyer violates a suspension order. See The Florida Bar v. Rood, 678 So.2d 1277 (Fla. 1996); The Florida Bar v. McAtee, 674 So.2d 734 (Fla. 1996); The Florida Bar v.

Greene, 589 So.2d 281 (Fla. 1991) and The Florida Bar v. Jones, 571 So.2d 426 (Fla. 1990). It is undisputed that respondent violated the prior suspension order.

In The Florida Bar v. Bauman, 558 So.2d 994 (Fla. 1990), the attorney was found guilty of engaging in at least five distinct acts of practicing law while suspended. The referee recommended that the attorney be suspended for a period of three years. This Court found, however, that the attorney's willful, deliberate and continuous refusal to abide by a court order indicated a person who was unlikely to be rehabilitated and for this reason disbarment was found to be the appropriate level of discipline. In fact, the Court stated, "We can think of no person less likely to be rehabilitated than someone like respondent, who willfully, deliberately, and continuously, refuses to abide by an order of this Court." Bauman, at 994. The Court should apply the same principle here where the respondent has clearly demonstrated she will not abide by orders of the Court.

In The Florida Bar v. Winter, 549 So.2d 188 (Fla. 1989), an attorney was found to be in indirect criminal contempt of court for continuing the practice of law after the effective date of his resignation. The attorney had been representing that he resigned from the Bar for health reasons when in fact he was granted leave to resign permanently in the face of pending disciplinary action. The Court ruled the attorney would be permanently disbarred so that the stigma of disbarment would be attached to his record.

Furthermore, disbarment is appropriate in this case per The Florida Standards of Imposing Lawyer Sanctions 8.0, Prior Discipline Orders. The Standards suggest that an attorney should be disbarred when a lawyer intentionally violates the term of a prior discipline order or has been suspended for same or similar misconduct and intentionally engages in further similar acts of misconduct. Respondent was suspended not once, but twice, for neglecting clients in the past. She engaged in the same type of misconduct and was found to have done so in the neglect cases. She should, therefore, be disbarred.

While the referee stated that he believed this Court believed in the power of rehabilitation for a young lawyer, this Court has also stated that some are beyond rehabilitation. The Florida Bar v. Bauman, 558 So.2d 994 (Fla. 1990). The respondent falls under such a category. She has shown time and time again that she takes money from clients and leaves them hanging. She has not paid her outstanding costs to the Bar (T 85-86) despite the fact that she is employed (T 85), she had not made any restitution to any of her clients (T 86), and she also violated her prior suspension order. Rather than taking responsibility for her own actions, the respondent attempts to place the blame on the fact that she was too depressed to open her mail, to competently represent her clients, or to comply with the terms of her suspension. Such a weak excuse should not be allowed, particularly in the face of testimony that reveals that respondent functioned quite well when it came time to meet with clients and take their money.

Respondent also admits that she never treated with a psychiatrist or psychologist or other mental health professional until she retained a lawyer to represent her in the Bar proceedings and admitted that her lawyer sent her to this professional (T 83-84). Had respondent felt she needed help she would have and should have certainly sought out the appropriate help.

This lawyer should not be allowed to continue to abuse her clients and the system. To excuse her conduct merely because she is a young lawyer or one who was suffering from depression given all of the evidence suggesting that time and time again she neglected client matters, took money from clients and abandoned them, has been disciplined twice for similar misconduct, and blatantly ignores a suspension order is simply unacceptable.

Of even greater concern is the fact that respondent paid no attention to the terms of her suspension. Respondent clearly failed to abide by the terms of her suspension, and ignored this Court's disciplinary Order.

CONCLUSION

As the referee in this case did not make findings of fact based on competent, substantial evidence, and because his recommendation as to discipline is totally inconsistent with the case law and the Florida Standards for Imposing Lawyer Discipline, the referee's report should not be approved and respondent should be disbarred.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Brief of The Florida Bar have been furnished by regular U.S. mail to Kevin P. Tynan, Counsel for Respondent, 8142 North University Drive, Tamarac, Florida 33321; and to Staff Counsel, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, on this _____ day of January, 2005.

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ADRIA E. QUINTELA

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

Undersigned counsel hereby certifies that the Brief of The Florida Bar is submitted in 14 point, proportionately spaced, Times New Roman font, and that the computer disk filed with this brief has been scanned and found to be free of viruses by Norton Anti-Virus for Windows.

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ADRIA E. QUINTELA

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