IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

RONALD LEON BLOOM,

Respondent.
_____/

CASE NO.: SC06-1025

TFB File Nos. 2004-01,412(4A); 2005-00,002(4A); 2005-00,737(4A); 2005-00,874(4A); 2006-00,472(4A); 2006-00,514(4A); 2006-00,559(4A); and 2006-00,950(4A)

RESPONDENT'S INITIAL BRIEF

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SYMBOLS AND REFERENCES

Resp. Exh.	=	Respondent's Exhibit from final hearing.
TFB Exh.	=	The Florida Bar's Exhibit from final hearing.
ROR.	=	Report of Referee.
T.	=	Transcript of Final Hearing before Referee on October 16, 2007; Volumes I and II.
T2.	=	Transcript of Final Hearing before Referee on October 17, 2007.

STATEMENT OF THE FACTS

A. Introduction

Over a two-year period, Mr. Bloom's drug addiction caused the extreme degradation from an accomplished AV-rated attorney with a flourishing thirty-year worker's compensation practice to a destitute addict who was unable to effectively represent his clients. (ROR. 11, 12). The Referee recognized Mr. Bloom's severe chemical dependency resulted in a complete inability to effectively function and make reasoned decisions. In pertinent part, the Referee found as follows, "Mr. Bloom's testimony about his own conduct and addiction is alarmingly scary. His way of thinking and logic was strictly driven by an impaired mind and recklessly unsound judgment." (ROR. 13). The Referee further determined that his drug addiction was the only "patent explanation for Mr. Bloom's behavior." (ROR. 17). The Referee recommended disbarment, reasoning that the severity of Mr. Bloom's chemical dependency required complete devotion to recovery without the distraction of practicing law. Specifically, the Referee concluded as follows:

> While the referee agrees that being an attorney is a big part of Mr. Bloom's identity as a person, the overwhelming facts of this case demonstrate that Mr. Bloom's focus in the near and distant future needs to be directed towards a complete change of lifestyle and overcoming addiction.

(ROR. 22). The Referee did not reference or cite to any case precedent or Standard for Imposing Lawyer Sanctions in support of his recommendation for the ultimate sanction of disbarment.

B. Mr. Bloom's Career Prior to 2004

The Referee found that for approximately thirty years prior to 2004, Mr. Bloom "enjoyed a thriving law practice and an excellent reputation" practicing "almost exclusively in the area of workmen's compensation." (ROR. 11). The Referee also noted that Mr. Bloom "was well respected and a strong advocate for injured individuals." (ROR. 11).

The Referee recognized that Mr. Bloom had "strong support from many members of the judiciary." (ROR. 17). One former Florida Supreme Court justice and seven county and circuit court judges testified either live or by affidavit regarding Mr. Bloom's impressive career and excellent reputation for legal abilities for thirty of his thirty-three year career. (ROR. 17). All judges testified that Mr. Bloom would be an asset to the Bar following rehabilitation. (ROR. 17). For instance, former Supreme Court Justice Major B. Harding submitted an affidavit averring that he had known Mr. Bloom throughout his legal career and had the opportunity to observe Mr. Bloom's abilities while Justice Harding served as a circuit court judge. (R. Exh. 4). Justice Harding opined that "[h]is performance as a practicing attorney demonstrated outstanding legal skills" and that he had "a

good reputation as a practicing attorney." (R. Exh. 4). After discussing the allegations of misconduct and Mr. Bloom's struggle with addiction, Justice Harding explained, "[i]t is apparent that Mr. Bloom's good reputation was interrupted by a pattern of behavior that is attributable to his disease of addiction." (R. Exh. 4).

County Court Judge Tyrie W. Boyer, a Florida Bar member since 1976 and the former chair of two grievance committees, described Mr. Bloom's impressive background, including Mr. Bloom's membership in Blue Key at the University of Florida, Mr. Bloom's organization of the national charter for the Bold City Jaycees, as well as Mr. Bloom's impressive reputation as one of the best worker's compensation lawyers in the area. (R. Exh. 3, at 5-6, 8, and 11). Senior Circuit Court Judge James L. Harrison, who assumed the circuit bench in 1983, knew Mr. Bloom throughout his legal career. (R. Exh. 5). Judge Harrison averred that Mr. Bloom appeared before him numerous times and "demonstrated outstanding legal skills as a practicing attorney and had an excellent reputation in his personal and professional life." (R. Exh. 5). Judge Charles W. Arnold, a circuit court judge since 1998, and Judge Lawrence P. Haddock, a circuit court judge since 1974, both testified that they had witnessed Mr. Bloom's "performance in and out of the courtroom" and believed that he was an excellent attorney prior to his current problems. (R. Exh. 6 and R. Exh. 8). Judge Bernard Nachman, who has been on

the circuit court bench since 1991, averred that "before the onset of [Mr. Bloom's] current problems, Mr. Bloom had an excellent reputation in the community both personally and professionally." (R. Exh. 7).

Judge Peter Fryefield, who has served on the circuit court bench since 1995, testified at the final hearing. (T. 68). Judge Fryefield testified that before his current problems, Mr. Bloom was "well respected," a "man of his word" and had an "excellent reputation in the community." (T. 68). Judge Fryefield acknowledged that Mr. Bloom's reputation would always have a stain from his misconduct, but he believed that he could regain his former legal abilities and that Mr. Bloom was sincere and motivated about his rehabilitation. (T. 70-71).

County court Judge Harold C. Arnold had served on the bench since 1988 and testified that Mr. Bloom had a "high reputation" and that many lawyers referred cases to him. (T. 81-82). Judge Arnold explained that he became familiar with the Alumni House, where Mr. Bloom completed a six-month rehabilitation program, when he covered the drug court docket for Judge Moran and opined that it is the city's best rehabilitation program. (T. 83-84). Judge Arnold interacted with Mr. Bloom during his residential treatment and commented that Mr. Bloom looks completely different than when he began treatment. (T. 87).

Circuit court judge Donald R. Moran, Chief Judge of the Fourth Judicial Circuit, has served as a judge for over thirty years and as the chief judge for ten

years. (T. 169-170). Judge Moran testified that Mr. Bloom had an excellent reputation with the Bar and the worker's compensation judge. (T. 172). When he first became the chief judge, he started the drug court in the circuit and personally witnessed great success from people who have turned their lives around. (T. 173-74). Judge Moran testified that there is "no satisfactory excuse" for Mr. Bloom's behavior and that Mr. Bloom had never tried to justify his conduct to him. (T. 180, 182). Nonetheless, Judge Moran opined that Mr. Bloom should be given credit for his thirty-year practice before the misconduct and his hard work achieving sobriety. (T. 183, 186-87).

C. Stipulation of Misconduct and Guilty Findings

The misconduct referenced in the Complaint occurred between January 2004 and January 2006. The Referee found that "nearly all of the witnesses agreed that the behavior exhibited by Mr. Bloom was the direct result of his drug addiction." (ROR. 17). Mr. Bloom and the Bar stipulated to the majority of the allegations in the Complaint. (T. 1-20). The stipulated facts and the Referee's guilty findings are summarized below.

1. *Count I – Attorney's Fee Assignments and Client Loans between July 2004 and November 2005*

Count I pertained to Mr. Bloom's breach of two agreements with Cybersettle Financial Services ("CFS"), Mr. Bloom's solicitation of loans from clients and his failure to provide closing statements to these same clients. (ROR. 3-4; Complaint,

para. 3-9).[1] Pursuant to Mr. Bloom's agreements with CFS, CFS advanced Mr. Bloom funds based on expected attorney's fees in pending cases in exchange for an assignment of the attorney's fees. (Complaint, para. 3, 6(A), and 6(B)). In the "Sakhno settlement," CFS paid Mr. Bloom $8,762.50 in August 2005 for an assignment of $9,250.00 in attorney's fees. (Complaint, para. 6(C)). When the case settled in September 2005, Mr. Bloom did not pay CFS the assigned attorney's fees. (Complaint, para. 6(D) and 6(E)). In the "Adams settlement," CFS paid Mr. Bloom $12,095.75 in August 2005 in exchange for an assignment of $12,750.00 in attorney's fees. (Complaint, para. 6(F), 6(G)). However, when the case settled in November 2005, Respondent did not pay CFS the assigned attorney's fees. (Complaint, para. 6(H), 6(I)). Mr. Bloom has cooperated with counsel for CFS to repay CFS the $22,000.00 owed to CFS from an assignment of fees awarded in an unrelated case. (ROR. 15, n. 4).

Between July 2004 and October 2005, Mr. Bloom borrowed funds from clients. (Complaint, para. 8). The clients did not have the benefit of independent advice from separate legal counsel and the loans were not secured with any collateral. (Complaint, para. 8(E), 8(F), 8(J), 8(K), 8(L), 8(P), 8(Q)). In July 2004,

[1] Mr. Bloom was found not guilty of any misconduct pertaining to a third agreement with CFS that was described in Count I, paragraphs 6(J), 6(K) and 7. (ROR. 8-9). In addition, Mr. Bloom was found not guilty of paragraph 10 charging Mr. Bloom with failing to maintain trust account documents. (ROR. 9-10).

Mr. Bloom borrowed $10,000.00 from a client, Mr. Michael Boykin, giving him a handwritten promissory note to repay the funds in ninety days with seven percent interest. (Complaint, para. 8(G), 8(I), para. 31). Mr. Bloom later borrowed another $2,500.00 from the same client, without any provision for interest. (Complaint, para. 8(L), 31).[2] Mr. Bloom repaid the funds after Mr. Boykin filed a complaint. (Complaint, para. 8(M)).

In February 2005, Mr. Bloom borrowed $4,600.00 from another client, Mr. Terry Pollock, and then in July 2005, Mr. Bloom borrowed another $5,000.00 from the same client. (Complaint, para. 8(N)). Neither handwritten loan agreement contained any provision for interest payments. (Complaint, para. 8(Q)). Mr. Pollock's settlement is not yet final and Mr. Bloom will repay Mr. Pollock out of the $61,250.00 in attorney's fees the court has already awarded to Mr. Bloom for legal services rendered in Mr. Pollock's case. (Resp. Exh. 1; T. 31).

In October 2005, Mr. Bloom demanded a $10,000.00 advance on attorney's fees from the $175,000.00 settlement of another client, Ms. Margaret Fernandez. (Complaint, para. 8(A), 8(D)). Mr. Bloom told Ms. Fernandez that he would not give her the settlement unless she gave him an advance. (Complaint, para. 8(C)). Mr. Bloom ultimately received a $5,000.00 loan from his client, without any

[2] These same loans to Mr. Boykin are also charged in Count V, paragraph. 31.

provision for interest. (Complaint, para. 8(C), 8(F)). Mr. Bloom repaid the $5,000.00 to Ms. Fernandez. (T. 202).

Based on the misconduct charged in Count I, the Referee recommended that Mr. Bloom be found guilty of violating Rules Regulating The Florida Bar 4-1.3, 4-1.4(a), 4-1.4(b), 4-1.5(a)(2), 4-1.5(e), 4-1.15, 4-4.1, 4-8.4(b), 4-8.4(c), 5-1.1(a)(1), 5-1.1(b), 5-1.1(e), 5-1.2(b), and 5-1.2(c). (ROR. 22).

2. *Counts II and III – Lack of Diligence and Communication from January 2004 to June 2004.*

Counts II and III pertained to Mr. Bloom's failure to communicate with and diligently represent two different clients in 2004. Mr. Bloom admitted to all of the allegations in Counts II and III. (ROR. 8). Count II references conduct occurring between May through June 2004 describing a client's inability to contact Mr. Bloom. (Complaint, para. 12-14). Consequently, Mr. Bloom's client, Mr. Bass, asked Mr. Bloom to withdraw. (Complaint, para. 15). When Mr. Bass complained to The Florida Bar, Mr. Bloom wrote Mr. Bass a letter telling him that Mr. Bloom would not be able to continue to represent him unless Mr. Bass dropped the complaint. (Complaint, para. 16). The Referee recommended that Respondent be found guilty of violating Rules Regulating The Florida Bar 4-1.3, 4-1.4(a), and 4-1.4(b). (ROR. 22).

Count III concerned Mr. Bloom's inability to diligently represent another client, Mr. Heath, between January and April 2004, repeatedly failing to appear for

scheduled meetings with his client and not returning his client's telephone calls. (Complaint, para. 18-20). Mr. Bloom also did not timely respond to the Bar complaint that Mr. Heath filed in June 2004. (Complaint, para. 21). The Referee recommended that Respondent be found guilty of violating Rules Regulating The Florida Bar 4-1.3, 4-1.4(a), 4-1.4(b), and 4-8.4(g). (ROR. 23).

3. *Count IV – Arrest for Possession of Cocaine in February 2005*

On February 28, 2005, police found rock cocaine, powder cocaine and paraphernalia in Mr. Bloom's car after arresting Mr. Bloom for driving with a suspended license. (Complaint, para. 23-26). The State Attorney's Office declined to prosecute based on issues underlying the stop of Mr. Bloom's car, as well as consideration of Mr. Bloom's participation in Florida Lawyers Assistance, Incorporated. (Complaint, para. 27). The Referee recommended that Respondent be found guilty of violating Rules Regulating The Florida Bar 4-8.4(b) and 4-8.4(c). (ROR. 23).

4. *Count V – Erratic Behavior in July 2004*

On July 2, 2004, Mr. Bloom was driven by his drug dealer from Jacksonville to Orlando, Florida, to confront opposing counsel about the status of a settlement check. (Complaint, para. 35; T. 205). Mr. Bloom's client, Mr. Boykin, was being subjected to foreclosure proceedings and needed the check to avoid the sale of his home. (T. 205).

Unbeknownst to Mr. Bloom, defense counsel had sent the settlement check to Mr. Bloom's office earlier that morning by courier. (Complaint, para. 35). When defense counsel was unavailable to discuss the settlement check with Mr. Bloom, Mr. Bloom removed artwork from defense counsel's office indicating that his client would at least have a painting to hang in his tent after his home was sold. (Complaint, para. 36; T. 206). Instead of returning to Jacksonville, Mr. Bloom rented a hotel room in Orlando, believing that defense counsel would return his phone call to discuss the missing painting. (T. 206). The painting was later returned to the law office. (Complaint, para. 37). The Referee referenced this incident as "illustrative of the type of mental state Mr. Bloom possessed over the next two years" and Mr. Bloom conceded that it was "absolutely bizarre behavior by an attorney." (ROR. 13; T. 206).[3] The Referee recommended that Respondent be found guilty of violating Rules Regulating The Florida Bar 4-1.3, 4-1.4(a), 4-1.4(b), 4-1.5(b), 4-1.8(a), and 4-8.4(c). (ROR. 23).

5. Count VI – Borrowing Funds from Client in January 2006

Count VI describes Mr. Bloom's conduct in January 2006, shortly before he entered residential drug treatment in April 2006. Mr. Bloom had negotiated a

[3] Mr. Bloom was found not guilty of the misconduct described in paragraphs 33 and 34 of Count V, pertaining to the satisfaction of prior counsel's attorney fee lien. Count V, paragraph 31 also references loans Mr. Bloom solicited from Mr. Boykin. These same loans are also charged in Count I, paragraphs 8 (G)-(M). See supra at 6-7.

settlement of $35,000.00 for his client, Mr. Colbert, which included a court-approved attorney's fee of $4,250.00. (Complaint, para. 40). Instead of depositing these funds into his trust account, Mr. Bloom asked Mr. Colbert to meet him at a check cashing institution, falsely stating that he no longer had a trust account due to employee theft. (Complaint, para. 41, 42). After the check was cashed, Mr. Bloom delivered $20,000.00 to his client, with the institution charging a $700.00 fee and Mr. Bloom keeping the remainder, indicating that the balance had to be retained until the check cleared. (Complaint, para. 43, 44). Mr. Bloom has repaid $3,750.00 to Mr. Colbert and still owes $7,000.00. (Complaint, para. 45, 46; T. 18). The Referee recommended that Respondent be found guilty of violating Rules Regulating The Florida Bar 4-1.3, 4-1.4(a), 4-1.4(b), 4-1.5(b), 4-1.8(a), and 4-8.4(c). (ROR. 23).

D. Severely Impaired Judgment in Every Aspect of Mr. Bloom's Life

The record reveals an attorney who was unable to effectively represent his clients due to a severely impaired mental status. For example, Allison Hauser, Esquire, the attorney who represented CFS, testified to the toll drug addiction had taken on his abilities. Ms. Hauser testified that Mr. Bloom had previously had an excellent reputation as an attorney who "often obtained large settlements on behalf of his clients" with catastrophic injuries. (ROR. 18). Ms. Hauser explained that the "representation of his clients began to suffer when he began to use drugs" and

recounted an incident in which Mr. Bloom had acted in a "bizarre and irrational manner" during a deposition. (ROR. 18). Ms. Hauser corroborated Mr. Bloom's efforts at rehabilitation averring that Mr. Bloom once again appeared "lucid, coherent and articulate." (ROR. 18).

In addition, Mr. Bloom's personal life similarly suffered extensive damage. As Mr. Bloom lost his ability to function effectively due to drug use, Mr. Bloom's life fell apart. Although Mr. Bloom's eighty-three-year-old father had been Mr. Bloom's firm accountant for fourteen years following his father's retirement, Mr. Bloom fired him in 2004 to use the money to purchase cocaine and to avoid his father's monitoring and oversight. (T. 197; T2. 25-26). The Referee noted, "Mr. Bloom lost just about everything he owned; his home by the sea, his car, and all of his possessions." (ROR. 12-13). Mr. Bloom's sponsor explained that Mr. Bloom went from an ocean-side home to the Alumni House, which is a "fairly deep bottom." (T. 108).

E. Mr. Bloom's Chemical Dependency and Rehabilitation Efforts

Mr. Bloom had struggled with cocaine addiction for almost twenty years but had managed to remain a functioning attorney. (ROR. 11). Mr. Bloom attempted several rehabilitation programs, including Beachcomber in Boca Raton in 1990, Charter by the Sea in 1994 and Healthcare Connection in early 2000. (T2. 9). Between 2001 and 2006, Mr. Bloom participated in several two-week programs

that would stabilize him to return to work. (T2. 10). In retrospect, Mr. Bloom believed the detoxification style programs were too short-term to address his underlying addiction since he always suffered a relapse after achieving sobriety. (ROR. 11; T. 192-193; T2. 23). Mr. Bloom had been under contract with Florida Lawyers Assistance, Incorporated, several times since 1987, but without mandatory enforcement he would begin using cocaine after supervision ended. (ROR. 14).

The Referee found that "[i]n the year 2004, Mr. Bloom's addiction began to spiral out of control." (ROR. 12). After Mr. Bloom's arrest in February 2005, he sought short-term treatment and then quickly relapsed. (T. 160). Mr. Bloom testified that the shorter programs allowed him to become "clean" but not "sober." (T2. 24). Judge Arnold noted that drug addiction is a disease, not a "lack of self control," and relapse before stable recovery is a common symptom of the disease. (T. 92).

During 2004 and 2005, Mr. Bloom was entirely focused on obtaining and using cocaine. (T. 197). Mr. Bloom testified that by seeking loans from his clients, he was "turning on" the clients he fought so hard to help in exchange for cocaine. (T. 198). Desperate for money, Mr. Bloom sought out CFS to borrow funds against expected attorney's fees. (T. 201). Eventually, Mr. Bloom used all available funds to purchase cocaine and lost his house, his car and all his assets.

(T. 207). Mr. Bloom's condition deteriorated so severely that even his drug supplier told Mr. Bloom that he had "lost it all" and drove him to drug rehabilitation at Focus by the Sea in April 2006. (ROR. 16; T2. 30).

Dr. Mickey Greenfield, a certified addiction professional, became actively involved in Mr. Bloom's recovery in late 2005 or early 2006. (ROR. 19). At this point, "Mr. Bloom was at a level of a 'not functional' drug user." (ROR. 19). Dr. Greenfield has specialized in treating chemical dependency for nineteen years and has been appointed by the Florida Supreme Court to oversee the licensure of state-wide DUI schools and has taught advanced judicial seminars on substance abuse. (R. Exh. 2; T. 43). Dr. Greenfield testified that his first brief evaluation of Mr. Bloom occurred in December 2001. (T. 56). Based on Mr. Bloom's repeated but unsuccessful attempts to engage in rehabilitation as well the severity of his cocaine dependency in early 2006, Dr. Greenfield recommended "long term in-patient treatment." (T. 47). Dr. Greenfield explained that Mr. Bloom's prior rehabilitation treatment was "short-term" and that the "most common cause of failure in treatment is inadequate treatment." (T. 56).

Between April 14 and April 28, 2006, Mr. Bloom entered into a two-week treatment program at Focus by the Sea to stabilize his condition. (T. 204; T2. 20). Immediately after his release from Focus by the Sea, Mr. Bloom went directly into the residential program at Gateway Community Services and then transferred to

the Alumni House at Gateway Community Services on May 3, 2006. (ROR. 17; T2. 17). Judge Moran testified that the Alumni House program has great success because they have a "zero tolerance" policy. (T. 176). Mr. Bloom then graduated to the Independence Village, which is next to the Alumni House. (ROR. 17). Ms. Virginia Thomas, the Senior Administrator of Recovery at Gateway Community Services, explained that in order to move from the Alumni House to Independence Village, the resident had to exhibit a genuine change of habit and thinking after continuously observing the resident's behavior and participation in a closely monitored environment. (T. 122-123). Ms. Thomas observed "vital" qualities to Mr. Bloom's recovery including "discipline and responsibility, integrity and some self-honesty" as well as finally surrendering to the fact that he would pay the "ultimate cost" for drinking and drugging. (T. 125). The Referee found that Mr. Bloom's graduation to the Independence Village demonstrated "his strong commitment to recovery." (ROR. 21).

Michael Blaylock, lead case manager for Independence Village, indicated that the community is organized to assist recovering addicts regain self sufficiency in a safe environment. (T. 131, 134). Mr. Blaylock found Mr. Bloom to exhibit "legitimate remorse" and a genuine "desire to get recovery and regain his life." (T. 136, 138). At the time of the final hearing, Mr. Bloom had been in the program for eight months. (ROR. 17).

Mr. Myer "Michael" Cohen, the executive director of Florida Lawyers Assistance, Incorporated, testified on behalf of Mr. Bloom. Mr. Bloom's current Florida Lawyers Assistance, Incorporated, contract was reinstated in March 2006. (ROR. 14). Mr. Cohen testified that Mr. Bloom appears genuine about his recovery and is sincere about treating his addiction rather than just saving his Bar license. (ROR. 15; T. 162).

Mr. James Sullivan, Mr. Bloom's Alcoholics Anonymous ("AA") sponsor, a retired American Express vice president, has been active with Gateway Community Services, Mr. Bloom's rehabilitation program, since 1991. (T. 99-100). Mr. Sullivan explained that he had been in recovery for thirty-four years and had sponsored people for thirty years. (T. 101). Mr. Sullivan had sporadic contact with Mr. Bloom since meeting him in 1998 at an AA meeting but had reconnected when Mr. Bloom was a resident in the Alumni House. (T. 101-02). Mr. Sullivan was in daily contact with Mr. Bloom for the six months prior to the final hearing. (T. 103). Mr. Sullivan explained that recovery is "more than a treatment plan" and more than a "statement of feelings" but is "taking a personal action to correct the past." Mr. Sullivan stated that he is "pretty hard" on Mr. Bloom but confirmed that Mr. Bloom had "been doing everything I've asked him to do and more so." (T. 104-05, 108-09). Mr. Sullivan testified that Mr. Bloom's addiction should "absolutely not" exempt him from punishment for his misconduct and that Mr.

Bloom was sincerely pursuing his rehabilitation as his first priority and not to escape a sanction. (T. 116-118).

Similarly, Rabbi Michael Matuson, who had known Mr. Bloom for twenty-one years, described a profound change in his relationship with Mr. Bloom over the six months prior to the hearing. (T. 147). Instead of their usual conversations regarding "things" such as sports and politics, Rabbi Matuson testified that Mr. Bloom's focus turned to "ethics and how to live a righteous life," with Mr. Bloom "expressing the need to be guided by God." (T. 148, 152). Rabbi Matuson explained that Mr. Bloom exhibited a "willingness to confront mistakes and a willingness to admit to them, to take responsibility for them and be accountable for them." (T. 151).

At the time of the final hearing, Dr. Greenfield diagnosed Mr. Bloom as suffering from cocaine dependence in remission pursuant to the DSM IV. (ROR. 19; T. 46). Dr. Greenfield noted that Mr. Bloom was committed to his recovery and opined that if he continued his treatment, "he has a very good chance of a long term prognosis." (T. 50).

STATEMENT OF THE CASE

In Case Number SC06-578, the Bar filed a Petition for Emergency Suspension on April 4, 2006. Mr. Bloom did not contest the emergency suspension and it became effective on April 10, 2006. In Case Number SC06-1025, the Bar filed its Complaint on May 26, 2006 and the final hearing was held on October 16 and 17, 2006. The Referee executed his Report on October 31, 2006 recommending disbarment. Mr. Bloom filed his Petition for Review on December 27, 2006 and contests the Referee's recommendation that Respondent be found guilty of violating Rules Regulating The Florida Bar 5-1.2(b) and 5-1.2(c), the Referee's findings with regard to the mitigating circumstances and the discipline to be imposed.

STANDARD OF REVIEW

The Court has held that "a referee's findings as to the existence of a particular mitigator is considered a factual determination and is 'presumed correct and will be upheld unless clearly erroneous or lacking in evidentiary support.'" Florida Bar v. Tauler, 775 So. 2d 944, 946 (Fla. 2000) (quoting Florida Bar v. Hecker, 475 So. 2d 1240, 1242 (Fla. 1985)).

It is well established that "[i]n reviewing a referee's recommendation of discipline, [the] Court's 'scope of review is somewhat broader than that afforded to findings of facts because, ultimately, it is [the Court's] responsibility to order an appropriate punishment.'" Florida Bar v. Karahalis, 780 So. 2d 27, 29 (Fla. 2001) (quoting Florida Bar v. Anderson, 538 So. 2d 852, 854 (Fla. 1989)). However, the "Court will not 'second-guess a referee's recommended discipline as long as that discipline has a reasonable basis in existing caselaw.'" Karahalis at 29 (quoting Florida Bar v. Temmer, 753 So. 2d 555, 558 (Fla. 1999)).

SUMMARY OF THE ARGUMENT

For thirty years of practice, Mr. Bloom earned the respect of the judiciary, an AV rating and maintained a thriving worker's compensation practice representing people who suffered catastrophic injuries. For the last twenty years of his practice, Mr. Bloom was a functional cocaine addict, repeatedly seeking short-term residential treatment, but always relapsing. The Referee determined that his addiction spiraled out of control in 2004, severely impairing his judgment and resulting in numerous ethical violations, the destruction of his practice and the loss of all of his possessions. The Referee found Mr. Bloom exhibited remorse and rehabilitation but ultimately recommended disbarment, finding the possibility of reinstatement to be an unnecessary distraction from his recovery. Although well intentioned, the Referee's analysis has no basis in existing case law.

The Standards for Imposing Lawyer Sanctions and case law do not impose a presumptive sanction of disbarment for improper client loans and a failure to preserve the collateral securing loans with a commercial entity. Moreover, Mr. Bloom's severe addiction casts doubt on the knowing and intentional nature of his actions, greatly mitigating his culpability. A three-year suspension, followed by an indefinite term of probation with a monitoring contract would protect the public by requiring Mr. Bloom to affirmatively prove his fitness for reinstatement while encouraging reformation and rehabilitation.

ARGUMENT

I. The Referee Erred in Finding Respondent Guilty of Violating Rules Regulating The Florida Bar 5-1.2(b) and 5-1.2(c).

In Count I of the Bar's Complaint, Mr. Bloom was charged with violating Rule 5-1.2(b) (requiring an attorney to keep "minimum trust accounting records") and Rule 5-1.2(c) (requiring an attorney to follow "minimum trust accounting procedures") based on the allegation in paragraph 10 that Mr. Bloom's trust accounting records were inadequate. However, as the Referee noted, the Bar abandoned the allegations in paragraph 10. (ROR. 9-10). Although the Referee found Mr. Bloom not guilty of the allegations in paragraph 10, he neglected to find Mr. Bloom not guilty of the corresponding rule violations. (ROR. 22). Accordingly, this Court should dismiss the Rule 5-1.2(b) and 5-1.2(c) violations.

II. The Referee Did Not Appropriately Find or Weigh the Mitigating Factors.

The Referee painstakingly described Mr. Bloom's drug addiction and its effect on every aspect of his life, including the destruction of his thirty-year law practice over a two-year period. Although the Referee's findings comprehensively referenced the existence of many mitigating factors, the Report of Referee found remorse and interim rehabilitation as the only applicable mitigators. (ROR. 24).

The Report of Referee does not set forth any case law or standard that the Referee may have considered in recommending disbarment. As a result, the legal

basis for the Referee's recommendation is not clear. Despite finding that Respondent had demonstrated his strong commitment to recovery from chemical dependency, it appears the Referee felt that the possibility of reinstatement to the practice of law was unnecessarily distracting and thus, disbarment was appropriate. (ROR. 21). The Referee's subjective analysis and recommendation does not have a "reasonable basis in existing caselaw" and should not be accepted. Karahalis at 29.

A. The Referee's failure to consider all applicable mitigating factors was clearly erroneous.

Standard for Imposing Lawyer Sanctions 3.0 requires the consideration of the "duty violated," the "lawyer's mental state," the "potential or actual injury caused by the lawyer's misconduct," and "the existence of aggravating or mitigating factors." Standard for Imposing Lawyer Sanctions 9.3 sets out the possible mitigating factors. The Report of Referee found interim rehabilitation and remorse as the only appropriate mitigating factors. (ROR. 24).

A "referee's finding as to the existence of a particular mitigator is considered a factual determination and is 'presumed correct and will be upheld unless clearly erroneous or lacking in evidentiary support.'" Florida Bar v. Tauler, 775 So. 2d 944, 946 (Fla. 2000) (quoting Florida Bar v. Hecker, 475 So. 2d 1240, 1242 (Fla. 1985)). In this case, the Referee's failure to find the additional mitigators of: (1) "timely good faith effort to make restitution or to rectify

consequences of misconduct"; (2) "full and free disclosure to the disciplinary board or cooperative attitude toward the proceedings"; (3) "character or reputation"; and (4) "physical or mental disability or impairment" was clearly erroneous based on the Referee's own factual findings. See Fla. Stds. Imposing Law. Sancs. 9.32(d), 9.32(e), 9.32(g), 9.32(h).

1. *Physical or Mental Disability.*

Chemical dependency is a physical or mental disability that mitigates misconduct. The Court has long recognized that "loss of control due to addiction may properly be considered as a mitigating circumstance in order to reach a just conclusion as to the discipline to be properly imposed." Florida Bar v. Rosen, 495 So. 2d 180, 181 (Fla. 1986). This mitigating factor is clearly applicable in Mr. Bloom's case based on the Referee's findings. The Referee referenced Dr. Greenfield's diagnosis of "cocaine dependence in remission" pursuant to the guidelines of the DSM IV and noted that Mr. Bloom suffered from a "very powerful addiction to drugs." (ROR. 19, 22). The Referee also found that Mr. Bloom's "way of thinking and logic was strictly driven by an impaired mind and recklessly unsound judgment." (ROR. 13). The Referee contrasted Mr. Bloom's irrational behavior over the two-year period described in the Complaint with the excellent reputation that Mr. Bloom had built over a thirty-year career. (ROR. 13, 17). Moreover, the Referee determined that "there was no other patent explanation

for Mr. Bloom's behavior" other than his drug addiction given the contrast between his stellar thirty-year practice and the rapid deterioration of his practice over a two-year period. (ROR. 17). The Referee even found that Mr. Bloom had demonstrated his strong commitment to recovery and that he had proven "interim rehabilitation." (ROR. 21, 24). The Referee's findings point directly to physical or mental impairment as a strong mitigating factor that should have been considered prior to recommending disbarment.

2. *Character or Reputation.*

While Mr. Bloom's recent reputation at the time of the final hearing suffered due to his uncontrolled drug addiction during the last two years of his practice, the Referee found that Mr. Bloom had for thirty years "enjoyed a thriving law practice and an excellent reputation," practicing "almost exclusively in the area of worker's compensation" and further noted that Mr. Bloom "was a well respected and a strong advocate for injured individuals." (ROR. 11). The strength of Mr. Bloom's reputation earned him the respect of the judiciary. Former Supreme Court Justice Harding and seven other county and circuit court judges testified on his behalf. The Referee noted that Mr. Bloom had "strong support from many members of the judiciary." (ROR. 17).

In addition, even Allison Hauser, Esquire, whom CFS retained to prosecute Mr. Bloom for breaching his contract with the company, testified on Mr. Bloom's

behalf. (T. 29). Ms. Hauser testified that since she had begun practicing in 1989, primarily representing employers in worker's compensation cases, she had litigated cases against Mr. Bloom. (T. 27). Ms. Hauser averred that prior to succumbing to addiction, Mr. Bloom was "extremely skilled" at defending workers who suffered catastrophic injuries. (T. 28). Ms. Hauser explained that Mr. Bloom's legal abilities greatly suffered in the last two years of his practice due to his addiction and described erratic behavior during a deposition. (T. 34-36; ROR. 18). However, Ms. Hauser also noted that since committing himself to treatment, Mr. Bloom appeared "lucid," "articulate and well spoken" and opined that he would be an asset to the Bar if he rehabilitated himself from drug and alcohol addiction. (T. 40-41).

It is appropriate to consider the attorney's age and length of membership in The Florida Bar in mitigation. Florida Bar v. Stark, 616 So. 2d 41, 43 (Fla. 1993) (citing Florida Bar v. Crowder, 585 So. 2d 935 (Fla. 1991)). At the time of the final hearing, Mr. Bloom was fifty-nine years old and had been a member of The Florida Bar for almost thirty-four years. With the exception of a minor misconduct finding in 1995 that the Referee independently discovered through on-line research, Mr. Bloom had no prior discipline. (T. 31; ROR. 12). Moreover, pursuant to Florida Standard for Imposing Lawyer Sanctions 9.22(a), the minor misconduct finding was too remote to be considered in aggravation. While

character reputation does not act "as a credit" against misconduct, Mr. Bloom's solid reputation as an excellent worker's compensation lawyer for the majority of his thirty-three-year practice should be considered before disbarring him from the practice of law. Florida Bar v. Brown, 790 So. 2d 1081, 1089 (Fla. 2001). The Referee repeatedly referenced the positive character testimony offered by the judiciary and thus, his failure to include character or reputation as a mitigating factor was clearly erroneous.

3. *Cooperative Attitude Toward the Proceedings.*

Mr. Bloom did not contest the Bar's Petition for Emergency Suspension that was filed in April 2006 in Florida Supreme Court Case Number SC06-578. The Referee also noted that Mr. Bloom stipulated to the majority of the Bar's allegations of misconduct. (T. 1-21; ROR. 8-11). Assistant Staff Counsel acknowledged to the Referee that Mr. Bloom was cooperative and that this mitigating factor was relevant. (T2. 64-65). The Referee's failure to include this mitigating factor was clearly erroneous based on the Referee's factual findings and the record.

4. *Timely Good Faith Efforts to Make Restitution*.

The Referee reasoned that the "restitution in this case was compelled by the circumstances of the case, and as such he makes a finding that this circumstance is a non-mitigating / non-aggravating circumstance." (ROR. 25). The Referee

appears to reason that Mr. Bloom's restitution efforts should not be viewed favorably because had he not committed the misconduct in the first place, he would not have had to make restitution. However, any time restitution is a relevant mitigating factor, the responding attorney has committed misconduct "compelling" restitution.

The record established good faith efforts to make restitution. Mr. Bloom repaid Ms. Fernandez and Mr. Boykin. (T. 202; Complaint, para. 8(M)). The Referee found that Mr. Bloom has cooperated with CFS' counsel to make restitution. In pertinent part, the Referee found as follows, "Mr. Bloom is anticipating fees in the Pollock case which will cover for the debt owed to CFS. CFS' attorney, Allison Hauser, has been working with Mr. Bloom to insure a smooth transfer of the fees to CFS." (ROR. at 15, n. 4). In the Pollock case, the trial court awarded Mr. Bloom $61,250.00 in attorney's fees. (Resp. Exh. 1). In addition to paying CFS, Mr. Pollock will also be repaid through the attorney's fee award. (T. 31). Ms. Hauser explained that Mr. Bloom has cooperated extensively with CFS and has also agreed to assign his attorney's fees in other pending cases in the event the Pollock attorney's fees are insufficient. (T. 33-34). Mr. Bloom has also made payments to Mr. Colbert. (T. 18). Although the restitution has not yet been paid in full, Mr. Bloom has made "good faith efforts" to repay the funds, which should be considered in mitigation.

B. The Referee's analysis does not have a basis in existing case law.

Instead of considering whether Mr. Bloom's mental status and the appropriate mitigating circumstances should reduce the severity of his sanction, the Referee followed his own standard in recommending disbarment. Specifically, the Referee concluded as follows:

> While the referee agrees that being an attorney is a big part of Mr. Bloom's identity as a person, the overwhelming facts of this case demonstrate that Mr. Bloom's focus in the near and distant future needs to be directed towards a complete change of lifestyle and overcoming addiction.

(ROR. 22). The Referee's analysis is not endorsed by experts who treat professionals struggling with chemical dependency. In fact, the Referee dismissed the testimony of Dr. Greenfield who explained that "it would not help his situation to no longer be a lawyer." (T. 57). While acknowledging that the appropriate sanction must be balanced between protection of the public and encouraging reformation and rehabilitation, Dr. Greenfield offered his opinion that disbarment could actually be "detrimental" to his recovery. (T. 57-58). Moreover, the Referee's own findings that Mr. Bloom had demonstrated a "strong commitment to recovery" and achieved "interim rehabilitation," undermine the Referee's ultimate conclusion that disbarment was needed to "overcom[e] his addiction." (ROR. 21, 24).

The Referee's conclusion that Mr. Bloom's legal career is an unnecessary distraction from his recovery efforts appears to be a sincere attempt to assist Mr. Bloom. Nonetheless, the Referee's finding that disbarment is an essential step to recovery demonstrates a fundamental misunderstanding of this Court's prior treatment of chemically dependent lawyers whose addiction undermines their reasoning. This Court has constructed the appropriate sanction by balancing the severity of the misconduct with the lawyer's mental status, while not losing sight of the principal concern of encouraging reformation and rehabilitation. Florida Bar v. Sommers, 508 So. 2d 341, 343 (Fla. 1987); Florida Bar v. Hartman, 519 So. 2d 606, 608 (Fla. 1988). A bright line rule disbarring attorneys who are severely chemically dependent in order to benefit the attorney's recovery is a radical deviation from precedent and should be rejected by the Court.

III. The Appropriate Sanction is a Three-Year Suspension Followed by Probation if Mr. Bloom is Reinstated.

The misconduct referenced in the complaint, encompassing misuse of funds, client neglect and criminal drug charges, is consistent with a non-functioning chemically dependent lawyer. See Florida Bar v. Wells, 602 So. 2d 1236, 1239 (Fla. 1992) (comparing facts to Florida Bar v. Sommers, 508 So. 2d 341 (Fla. 1987), and noting that the "numerous ethical violations [in both cases] resulted from an unspecified substance-abuse problem."). The first factor to consider in constructing the appropriate sanction is the type of "duty violated" since different

types of violations warrant sanctions with varying degrees of severity. Fla. Stds. Imposing Law. Sancs. 3.0; See also Florida Bar v. Broome, 932 So. 2d 1036, 1043 (Fla. 2006) (noting "not all rule violations are equal."). Misconduct strictly related to a felony drug arrest with no conviction, as set forth in Count IV, may warrant a presumptive sanction of a ninety-one day suspension and probation. Fla. Stds. Imposing Law. Sancs. 10.3(a). Similarly, suspension is the presumptive sanction if a lawyer engages in a pattern of neglect and causes injury or potential injury to a client, as set forth in Counts II and III. Fla. Stds. Imposing Law. Sancs. 4.42(b).

While the drug arrest and neglect are significant problems, this Court has emphasized that the "misuse of client funds is one of the most serious offenses a lawyer can commit." Florida Bar v. Pellegrini, 714 So. 2d 448, 452 (Fla. 1998) (quoting Florida Bar v. Farbstein, 570 So. 2d 933, 936 (Fla. 1990)). However, even in this category of misconduct, there are levels of egregiousness and corresponding sanctions. Florida Standard for Imposing Lawyer Sanctions 4.1 draws a distinction between "intentionally or knowingly convert[ing] client property," which presumptively calls for disbarment and when a lawyer "knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client," which carries a presumptive sanction of suspension. In this case, this misconduct does not rise to the level of intentional or knowing

conversion based on the facts of the misconduct and Mr. Bloom's diminished mental status. Compare Fla. Stds. Imposing Law. Sancs. 4.11 with 4.12.

A. Improperly obtaining loans from three clients is not misconduct carrying a presumptive sanction of disbarment.

The Court has suspended and publicly reprimanded attorneys who have improperly obtained loans from a client. See Florida Bar v. Wells, 602 So. 2d 1236 (Fla. 1992) (imposing an 18-month suspension for possession of cocaine, abandonment of law practice and obtaining an improper loan from a client); Florida Bar v. Black, 602 So. 2d 1298 (Fla. 1992) (ninety-one-day suspension for obtaining unsecured loan from client with usurious rate of interest); Florida Bar v. Barley, 541 So. 2d 606 (Fla. 1989) (sixty-day suspension for persuading client to loan him $47,500.00 with no written evidence of loan or security); Florida Bar v. Tunsil, 513 So. 2d 120 (Fla. 1987) (public reprimand imposed for obtaining a single $200.00 loan from a client, without any written agreement); Florida Bar v. Golden, 401 So. 2d 1340 (Fla. 1981) (public reprimand for borrowing $3,000.00 from a client and failing to timely repay the loan); Florida Bar v. Allen, 355 So. 2d 778 (Fla. 1978) (imposing one-year suspension for neglect, failing to account for costs charged to client, borrowing funds from client); Florida Bar v. Davis, 361 So. 2d 159 (Fla. 1978) (one-year suspension for multiple offenses including issuing worthless checks, failure to repay judgment to employee; soliciting unsecured loan from client).

Similarly, Mr. Bloom solicited loans and obtained funds from three clients. Mr. Bloom obtained one $5,000.00 loan from Ms. Fernandez and two loans from Mr. Boykin totaling $12,500.00 after they had received their settlement funds. Mr. Bloom repaid the loans to Ms. Fernandez and Mr. Boykin. (T. 202; Complaint, para. 8(M)). Mr. Bloom also obtained two loans from Mr. Pollock, totaling $9,500.00 before Mr. Pollock received his settlement. Although Mr. Bloom has not yet repaid Mr. Pollock's loan, he has agreed to repay Mr. Pollock from his $61,250.00 attorney's fee awarded by the court, once the funds are received. (T. 31). In contrast to attorneys who withdraw clients' money even though the clients believe the funds are safe in trust, Mr. Bloom's clients knew that Mr. Bloom was borrowing their money and Mr. Bloom gave them a written agreement memorializing the transaction. Since the clients were not told to consult independent counsel and the loan agreements did not provide for interest or security, Mr. Bloom improperly dealt with client property. However, after considering Standard 4.12 and precedent, the conduct does not warrant a presumptive sanction of disbarment.

B. Failure to repay funds to CFS is factually distinguishable from misappropriation cases warranting disbarment.

After Mr. Bloom became desperate for money to fund his cocaine addiction, he found a company, Cybersettle Financial Services ("CFS"), that lent money, secured by an assignment of attorney's fees that were pending in two cases. These

agreements are referred to in the Bar's Complaint as the "Sakhno Settlement" and the "Adams Settlement." (Complaint, Count I). The Referee found that Mr. Bloom has cooperated with counsel for CFS to enter into satisfactory arrangements to repay the funds. (ROR. at 15, n. 4).

In contrast to misappropriation cases in which the attorney has utilized funds earmarked for the satisfaction of liens for which a client would ultimately be responsible, no clients were endangered by Mr. Bloom's breach of his contract with CFS. Contra Florida Bar v. Krasnove, 697 So. 2d 1208 (Fla. 1997) (attorney suspended for one year based on use of settlement proceeds for personal reasons rather than the satisfaction of a medical lien and thereby harming his client). Instead, Mr. Bloom's conduct is most analogous to circumstances in which the attorney has profited in a commercial transaction by failing to protect pledged collateral. For example, in Florida Bar v. Brown, 905 So. 2d 76 (Fla. 2005), the attorney was accused of violating the Rules Regulating The Florida Bar by giving his law firm a secured interest in a certificate of deposit that he had previously pledged to an insurance company as collateral for a surety bond. Brown at 79-80. The Court found that by "double pledging" the security interest, the insurance company lost money that could not be recouped through the certificate of deposit. Brown at 80. After considering Mr. Brown's disciplinary history of a previous 90-day suspension, the Court imposed a six-month suspension. Brown at 84.

While the Court's sanction against Mr. Brown was severe, the Court did not indicate that his conduct warranted disbarment. As the Bar alleged in Brown, Mr. Bloom did not protect the security for his loans from CFS and instead, used the collateral for his own benefit. Mr. Bloom's conduct with CFS does not rise to the level of "intentionally or knowingly convert[ing] client property" and thus, does not warrant a presumptive sanction of disbarment. Fla. Stds. Imposing Law. Sancs. 4.11.

C. The severity of Mr. Bloom's chemical dependency casts doubt on the knowing and intentional nature of Mr. Bloom's misconduct.

Mr. Bloom's most serious misconduct, described in Count VI, occurred in January 2006, immediately before Mr. Bloom sought emergency residential treatment at Focus by the Sea in April 2006. Mr. Bloom conceded that his actions were "absolutely bizarre behavior by an attorney" in taking Mr. Colbert's settlement check, not to a bank, but to Ace Check Cashing and keeping a portion of Mr. Colbert's settlement funds. (T. 206). Even though misappropriation raises the presumptive sanction of disbarment, this "presumption can be overcome by mitigating factors." Florida Bar v. Pellegrini, 714 So. 2d 448, 452 (Fla. 1998). In this case, Mr. Bloom's diminished mental status due to cocaine use grossly impaired his judgment.

Chemical dependency does not excuse misconduct but the impairment can mitigate the sanction from disbarment if the evidence "casts doubt on the knowing

and intentional nature of his or her misconduct." Florida Bar v. Martinez-Genova, 2006 WL 3627012 (Fla.). For example, in Florida Bar v. Larkin, 420 So. 2d 1080, 1081 (Fla. 1982), the Court explained, "In those cases where alcoholism is the underlying cause of professional misconduct and the individual attorney is willing to cooperate in seeking alcoholism rehabilitation, we should take these circumstances into account in determining the appropriate discipline." In Larkin, the Court found that "Mr. Larkin's professional misconduct stems totally from the effects of alcohol abuse." Id.

Similarly, the Referee in this case found that Mr. Bloom's "way of thinking and logic was strictly driven by an impaired mind and recklessly unsound judgment." (ROR. 13). The Referee further determined that his drug addiction was the only "patent explanation for Mr. Bloom's behavior." (ROR. 17). The severe impact of Mr. Bloom's addiction on his judgment, as found by the Referee, diminishes his culpability to mitigate his sanction. See Florida Bar v. Shanzer, 572 So. 2d 1382, 1384 (Fla. 1991) ("We recognize that mental problems as well as alcohol and drug problems may impair judgment so as to diminish culpability.").

The Referee's findings show a complete impairment of ability to function rather than "selective impairment" offered to excuse misconduct. This is not a case in which the responding lawyer claims that chemical dependency only affected his or her judgment to misuse client funds even though the lawyer had the

requisite faculties to otherwise practice law and function effectively. The Court has previously rejected drug use as a mitigating factor when the usage did not appear to have any causal connection to the misconduct. Most recently, in Florida Bar v. Martinez-Genova, this Court considered whether the responding attorney's use of cocaine substantially mitigated her misconduct in misappropriating trust funds and assisting her client to steal funds from a third party. However, after noting factual similarities with Florida Bar v. Shuminer, 567 So. 2d 430 (Fla. 1990), this Court concluded that the responding attorney's addictions did not rise "to a sufficient level of impairment to outweigh the seriousness" of her misconduct. Martinez-Genova 2006 WL 3627012 (Fla.) at 5-6. In Martinez-Genova and Shuminer, both attorneys were able to work effectively despite their struggles with chemical dependency and thus, the Court was not persuaded that the attorneys' substance abuse impaired their ability to make reasoned decisions at the time of the misappropriation.

In contrast, the Referee directly commented on Mr. Bloom's impaired mental status describing the state of his addiction as "alarmingly scary," finding that his reasoning was "strictly driven by an impaired mind," and concluding that Mr. Bloom's chemical dependency was the "only patent explanation for his misconduct." (ROR. 13, 17). Contra Martinez-Genova at 6 (referee found the responding attorney "was able to distinguish right from wrong at the time of the

misappropriation despite the effects of her drug addiction and depression."). A distinction was easily drawn between Mr. Bloom's prior thirty-year successful practice and the sharp decline in 2004 when the Referee noted his addiction "spiraled out of control." (ROR. 12). The Referee's findings clearly established that Mr. Bloom's impaired judgment detrimentally impacted all of his decisions, including the termination of his eighty-three-year-old father who had acted as his law firm's accountant for fourteen years (ROR. 12; T. 197; T2. 25-26); exhibiting "bizarre and irrational" behavior at depositions (ROR. 18); and the strange attempt to obtain leverage in locating a belated settlement check by taking artwork from the opposing counsel's law office (ROR. 13).

In addition, this is not a case in which the responding attorney has misused client funds to support a luxurious lifestyle. In evaluating whether a responding lawyer was legitimately in the grip of a debilitating addiction that might mitigate the lawyer's actions, the Court has considered how the misused funds were spent. For example, in Shuminer and Florida Bar v. Knowles, 500 So. 2d 140 (Fla. 1986), the Court noted that while both responding attorneys, who had misappropriated client funds, claimed mitigation due to alcohol or drug addiction, neither attorney used the funds as a desperate attempt to obtain drugs. Mr. Knowles stole $197,900.00 from his trust account although he "continued to work regularly" and his "income did not diminish discernably as a result of his alcoholism." Knowles

at 142. Mr. Shuminer "used a significant portion of the stolen funds not to support or conceal his addictions but rather to purchase a luxury automobile." Shuminer at 432. In contrast to Shuminer and Knowles, Mr. Bloom did not use the income to support a lavish or extravagant lifestyle. To the contrary, Mr. Bloom lost everything he owned, including his house, his car and all of his assets. (ROR. 13). The Referee found that Mr. Bloom had used the loans and Mr. Colbert's money to subsidize his cocaine use. (ROR. 15). At the final hearing, Mr. Bloom did not attempt to justify or excuse his conduct. While Mr. Bloom's impaired mental state does not erase his actions, the undisputed severity of his impairment calls into question the "knowing and intentional nature of his [] misconduct" and warrants a sanction less than disbarment. Fla. Stds. Imposing Law. Sancs. 4.11.

D. Cumulative rule violations do not warrant disbarment when misconduct is caused by loss of control due to drug addiction.

Mr. Bloom admitted that his misconduct violated numerous rules. Although this Court has imposed greater sanctions for cumulative misconduct, this aggravator should be tempered when the misconduct results from an impaired attorney. When an attorney's mental state is genuinely compromised by drug addiction or mental health problems, the damage will appear in many aspects of the legal practice and personal life. See Florida Bar v. Broome, 932 So. 2d 1036 (Fla. 2006) (severe depression resulted in extensive rule violations warranting attorney's suspension); Florida Bar v. Wells at 1238 (attorney suspended after

"debilitating effects of substance abuse problem" resulted in arrest, abandonment of law practice and solicitation of client loan); Florida Bar v. Farbstein, 570 So. 2d 933 (Fla. 1990) (attorney's "poly-substance abuse" appropriately mitigated misconduct involving trust account misappropriation, client neglect, failure to communicate and inadequate trust account records); Florida Bar v. Sommers, 508 So. 2d 341 (Fla. 1987) (numerous ethical violations related to attorney's substance abuse).

The Court has questioned the legitimacy of chemical dependency as a mitigator when the impairment is offered to explain isolated misconduct without affecting other aspects of the attorney's practice or lifestyle. See Knowles at 142; Martinez-Genova at 6; Shuminer at 432. Since drug addiction results in a "loss of control" impacting the attorney's ability to make reasoned decisions, the misconduct will likely be cumulative and thus, the multiple rule violations do not mandate disbarment. See Florida Bar v. Rosen, 495 So. 2d 180, 181 (Fla. 1986).

E. A three-year suspension followed by probation is a severe sanction that will ensure public protection.

Disbarment is an extreme sanction "imposed only in rare cases where rehabilitation is highly improbable." Florida Bar v. Kassier, 711 So. 2d 515, 517 (Fla. 1998). Prior to losing his battle with drug addiction in 2004, Mr. Bloom had earned an excellent reputation, confirmed by eight members of the judiciary, during his thirty year practice. The Referee recognized that the misconduct

resulted from the drug addiction. Each judge who testified opined that he could be a credit to the profession if he were given the chance to prove his rehabilitation and be reinstated to the practice of law. (ROR. 17). Even though the Referee believed that abandoning his profession would benefit his continued sobriety, the Referee also found that he had "demonstrated a strong commitment to recovery" and had proven "interim rehabilitation." (ROR. 21, 24). Given Mr. Bloom's age, disbarment would effectively end any prospect of practicing law in the future. Based on the testimony of the judiciary and addiction specialists, as well as the Referee's findings, Mr. Bloom is a "candidate for rehabilitation."

In this case, the mitigating factors overcome the sanction of disbarment. Mr. Bloom's severe drug addiction greatly impacted his mental status and diminished his culpability. Mr. Bloom expressed remorse for his conduct and made good faith attempts to provide restitution. A three-year suspension, followed by a lengthy term of probation, would encourage "reformation and rehabilitation" while still protecting members of the public. See Florida Bar v. Wells at 1239 (recognizing the "goal of reformation and rehabilitation" in crafting the appropriate sanction).

A three-year suspension followed by probation upon any reinstatement is a sanction with a reasonable basis in existing case law. The Court has imposed suspensions in lieu of disbarment even when the attorney engages in misappropriation of trust funds. For example, in Florida Bar v. Hochman, 815 So.

2d 624 (Fla. 2002), the Court declined to disbar Mr. Hochman who had stolen from his trust account and had received felony determinations in two counts of grand theft based on the misappropriation. Since Mr. Hochman's misconduct was related to his drug addiction, the Court offered him the opportunity to establish rehabilitation for reinstatement following his three-year suspension. Id. Similarly, in Florida Bar v. Condon, 632 So. 2d 70 (Fla. 1994), the Court recognized that disbarment may be excessive, even in cases involving misappropriation, when the attorney's mental status is impaired by drug addiction or mental health problems. See also Florida Bar v. Tauler, 775 So. 2d 944 (Fla. 2000) (imposing three-year suspension for three acts of trust account theft totaling $56,628.45 when attorney established significant emotional problems impacting her mental status). In Florida Bar v. Kassier, the Court imposed a one-year suspension for multiple violations, including misappropriation of trust funds and neglect. In Florida Bar v. Feige, 937 So. 2d 605 (Fla. 2006), the Court imposed a three-year suspension when the attorney, who had received a prior two-year suspension, committed numerous violations, including gross neglect, lying to clients to cover his misconduct, failing to apply trust funds to a specific purpose and acquiring interests adverse to clients. The Court imposed a three-year suspension in Florida Bar v. Stark, 616 So. 2d 41 (Fla. 1993), although the attorney had misappropriated clients' funds and practiced law after he was suspended.

A three-year suspension protects the public by requiring Mr. Bloom to prove his rehabilitation by clear and convincing evidence prior to any reinstatement. An attorney seeking rehabilitation carries a heavy burden to conclusively establish fitness to practice. See Florida Bar v. Hoch, 944 So. 2d 198 (Fla. 2006) (attorney denied reinstatement after he failed to present evidence of alcohol or drug rehabilitation); Florida Bar v. McGraw, 903 So. 2d 905 (Fla. 2005) (attorney repeatedly denied reinstatement based on inability to conclusively establish rehabilitation and strict compliance with the terms of his monitoring contract).

Imposing a three-year suspension instead of disbarment would permit Mr. Bloom to one day resume the practice of law only if this Court determines that he has proven his rehabilitation. Moreover, an indefinite probationary period upon any reinstatement with a monitoring contract through Florida Lawyers Assistance, Incorporated, would ensure his continuing commitment to sobriety while allowing the public to receive the services of an attorney who had previously established an excellent reputation for outstanding legal abilities.

CONCLUSION

Mr. Bloom respectfully requests this Court to reject the Referee's recommendation that disbarment is needed to encourage Mr. Bloom's continuing recovery from drug addiction. A three-year suspension, followed by an indefinite term of probation with a monitoring contract is a severe and appropriate sanction after applying the Standards for Imposing Lawyer Sanctions and considering Court precedent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Respondent's Initial Brief has been furnished by FedEx overnight delivery and electronic submission via e-file@flcourts.org to the Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1926 and a true and correct copy has been furnished by U. S. Mail to James N. Watson, Jr., Esquire, The Florida Bar, 651 Jefferson Street, Tallahassee, Florida 32399-2300 and Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, on this 27th day of February, 2007.

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GWENDOLYN H. HINKLE, ESQUIRE

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 H. HINKLE, ESQUIRE