IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, Complainant,	Supreme Court Case No. SC08-689
v.	The Florida Bar File No. 2008-70,084(11E)
ROBERT JOSEPH RATINER, Respondent.	

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REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.6 of the Rules Regulating The Florida Bar undertook consideration of this cause. All of the pleadings, notices, motions, orders, and exhibits are forwarded with this report and the foregoing constitutes the record in this case.

The following attorneys appeared as counsel for the parties:

On behalf of The Florida Bar: Randi Klayman Lazarus
The Florida Bar
444 Brickell Avenue
Suite M100
Miami, Florida 33131

On behalf of the respondent: John A. Weiss
Weiss & Etkin
2937 Kerry Forest Parkway, Suite B-2

Tallahassee, Florida 32309

II. FINDINGS OF FACT:

A. Jurisdictional Statement:

The respondent is and was at all times material herein, a member of The Florida Bar and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. Narrative Summary of Case and Facts:

On September 5, 2008, this referee entered an order granting The Florida Bar's Motion for Partial Summary Judgment regarding the following facts:

1. The Respondent represents the plaintiff in the matter of Claire J. Sidran v. E.I. DuPont de Nemours & Co., Inc., Case Number 92-18377 CA 23. (11th Circuit, Miami/Dade County, FL)

2. On or between May 14, 2007 and May 18, 2007, the Respondent conducted a deposition of Ms. Deborah Naylor in the above-referenced matter.

3. During the course of the deposition, the defendant's attorney, Mr. Thomas Sherouse, attempted to place an exhibit sticker on the Respondent's laptop computer.

4. Just prior to Mr. Sherouse attempting to place the exhibit sticker on the computer, the Respondent was standing up and speaking forcefully towards Mr. Sherouse.

5. As soon as Mr. Sherouse attempted to place the exhibit sticker on the computer, the Respondent very briefly touched Mr. Sherouse's hand, then attempted to run around the table towards Mr. Sherouse.

6. Additionally, the witness being deposed, Deborah Naylor expressed that she was very scared as a result of the Respondent's conduct.

7. The Respondent's own consultant had to attempt to calm the respondent down and specifically told the Respondent to " take a Xanax."

8. Further, while the Respondent was acting as described above, the court reporter stated, "I can't work like this!"

9. Respondent then proceeded to forcefully lean over the deposition table, lambast Mr. Sherouse in a tirade while proceeding to tear up the evidence sticker, wad it up and flick or toss it in the direction of Mr. Sherouse.

10. The Respondent's conduct during the deposition was outrageous, disruptive and intimidating to the witness, opposing counsel, and other persons present during the deposition and otherwise prejudicial to the administration of justice.

11. Further, as a result of the Respondent's conduct during the deposition, opposing counsel had to file a Motion for Protective Order Regarding Abusive and Oppressive Deposition Conduct by Plaintiff's Counsel and Request for Referee before the presiding judge, Judge Amy Steele Donner.

12. By Order dated June 28, 2007, Judge Donner issued an Order denying defendant's motion. Nevertheless, in her Order, Judge Donner specifically found that the Respondent acted inappropriately and unprofessionally.

The fact finding and legal conclusions of the Referee were based on the Bar's Motion for Partial Summary Judgment, it's attachments, and a portion of the video taped deposition of Debra Naylor referred to as "the Laptop incident." Respondent was found to be not guilty of having committed any criminal misconduct (Rule 3-4.4) or criminal act (4-8.4(b) during the deposition. There were

no affidavits filed in opposition. The findings were made by clear and convincing evidence.

III. RECOMMENDATION AS TO GUILT:

I recommend that respondent be found guilty of violating the following Rules Regulating The Florida Bar as reflected in the Order on Summary Judgment dated September 5, 2008:

- Rules 3-4.3 (... The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the State of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline);

- Rule 4-3.5(c) (A lawyer shall not engage in conduct intended to disrupt a tribunal);

- Rule 4-4.4(a) (In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person);

- Rule 4-8.4(a) (A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); and

- Rule 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment or physical characteristic); of the

Rules Regulating The Florida Bar.

IV. CASE LAW:

I considered the following cases prior to recommending discipline:

- *Florida Bar v. Morgan*, 938 So.2d 496 (Fla. 2006)
- *Florida Bar v. Morgan*, 791 So.2d 1103 (Fla. 2001)
- *Florida Bar v. Martocci*, 699 So.2d 1357 (Fla. 1997)
- *Florida Bar v. Martocci*, 791 So.2d 1074 (Fla. 2001)
- *Florida Bar v. Wasserman*, 675 So.2d 103 (Fla. 1996)
- *Florida Bar v. Pahules*, 233 So.2d 130 (Fla. 1970)
- *DeBock v. State*, 512 So.2d 164 (Fla. 1987)
- *Florida Bar v. Hirsch*, 342 So.2d 970 (Fla. 1977)
- *Florida Bar v. Thomson*, 271 So.2d 758 (Fla. 1973)
- *The Florida Bar v. Tobkin*, 944 So.2d 219 (Fla. 2006)
- *The Florida Bar v. Morgan*, 938 So.2d 496 (Fla. 2006)

V. FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS:

I considered the following standards prior to recommending discipline:

- **Standard 2.2** states that disbarment terminates the individual's status as a lawyer. Where disbarment is not permanent, procedures should be established for a lawyer who has been disbarred to apply for readmission, provided that:

  (1) no application should be considered for five years from the effective date of disbarment; and

  (2) the petition must show by clear and convincing evidence;
  (a) successful completion of the bar examination; and
  (b) rehabilitation and fitness to practice law.

- **Standard 7.1** states that disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with intent to obtain a benefit for lawyer or another, and causes serious or potentially serious injury to a client, the public or the

legal system.

- **Standard 7.2** states that suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

I found the commentary with regard to a disbarment recommendation in Standard 2.2 particularly appropriate as set forth, in pertinent part, below:

> Disbarment enforces the purpose of discipline in that the public is protected from further practice by the lawyer; the reputation of the legal profession is protected by the action of the bench and bar in taking appropriate actions against unethical lawyers.

It is necessary to protect the public, bench and bar from the manner in which Mr. Ratiner practices law since he has not shown any indication, belief or self-reflection, that any changes are necessary or forthcoming.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recognize that disbarment is an extreme sanction. I also recognize that an attorney must practice within the bounds of civility and professionalism required of any member of The Florida Bar and abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness. Oath of Admission to The Florida Bar. The practice of law is a privilege. The Supreme Court of Florida has the power to revoke the license of an attorney whose unfitness

to practice law has been duly established. Rule 3-1.2 of The Rules Regulating The Florida Bar. The Florida Bar, in the case before me, has established that unfitness.

My recommendation of disbarment stems from the multiple acts of misconduct and the severity of each act. The egregiousness of the misconduct and the lack of professionalism exhibited by the respondent are only outweighed by the fact that Mr. Ratiner fails to recognize either. I carefully listened to and observed the respondent's demeanor during his testimony, which exceeded four (4) hours. Not once did the respondent express remorse for any of his multiple acts of misconduct.[1] Rather, in each instance blame was either placed on the deponent, the adverse party, the opposing attorney, the court or the Bar. The record is replete with Mr. Ratiner's views that he believes his conduct is justified.

According to Dr. Haupt, Mr. Ratiner's paid consultant, Dupont is a big defendant engaging in some very bad behavior. (FH-TR p. 44, lines 2-8) He acts as if the only way to get to the truth is to force it out through the use of aggressive, rude, and belligerent deposition tactics. Mr. Ratiner is completely unable to see within himself and to understand how harmful his conduct is to the legal process and to the Florida legal profession.

SPITTING, DRIBBLING and BOOGERS

Mr. Ratiner saw Ms. Naylor's discomfort with his tobacco chewing as

nothing more than misdirection on the part of Mr. Sherouse, in order to secure a break. Mr. Ratiner stated that after the break "He (Sherouse) would come back and all of a sudden the witness would have a new focus." (FH-TR p. 180, line 4) Mr. Ratiner saw the request for a break as unrelated to Ms. Naylor's discomfort but solely as a ploy by defense counsel to have a chance to talk with his witness before testifying further. A brief review of the transcript gives an insight into Mr. Ratiner's view of how to handle Mr. Sherouse's request regarding Mr. Ratiner's spitting of tobacco into a cup.

> MR.SHEROUSE: On the subject of here in a deposition, **Sir, can you stop spitting. (E.S.)**
> MR.RATINER: Can you - -
> MR.SHEROUSE: **And whatever that is dribbling out of your mouth. (E.S.)** I have already talked to the witness about this. It's very disconcerting to see you spitting three or four or five times a minute - -
> MR. RATINER: Sir - -
> MR. SHEROUSE: _ - and showing the results of that in that cup and pulling things out of your mouth. It's probably chewing tobacco. But whatever it is it is highly disconcerting to me and the witness, and probably to others in the room.
> MR. RATINER: **Sir, can you remove that large booger hanging from your nose? (E.S.)** It's extremely disconcerting to me. Now we have this bullshit taken care of can you read back the last question.
>
> (5-16-07 Naylor Deposition, p. 179, line. 15 to p. 180 line 8)

This brief exchange demonstrates that Mr. Ratiner meets any comment that

[1] Mr. Ratiner did not apologize for tobacco chewing. His primary fear regarding the tobacco chewing and spitting it

is perceived as demeaning (i.e. quit spitting) with a counter comment (i.e. booger) in order to level the accusational field.

SCRATCHING HER CROTCH

Ms. Naylor stated in her affidavit of 7/20/07, Mr. Ratiner was " . . . abusive and degrading throughout the deposition." In fact, the record reflects that Mr. Ratiner was also rude and sexually vulgar. Mr. Ratiner stated the following during a break in Ms. Naylor's deposition:

"I wish the witness would quit scratching her crotch . . . " (E.S.)

(5-16-07 Naylor Deposition, p. 182, lines 11-12)
(The Florida Bar's Exhibit 4)

This vulgar statement was made after opposing counsel requested that Mr. Ratiner refrain from repeatedly spitting into a cup in close proximity to the witness. Mr. Ratiner believed that his statement was appropriate since Ms. Naylor was not in the room. At trial before me he claimed that he was simply making a comment to his consultant. (FH-TR p. 189, lines 9-13) I do not believe him. In the trial he testified that "We gave everyone specific instructions that if him or I or any - - if I'm within earshot of Dupont or their lawyers we are on the record. That's their order." (FH-TR p. 193, lines 1-3) Had it been his intent for his lewd comment to be made only to Dr. Haupt, he would have made it quietly, so as not to be

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out into a cup was that " . . . oh, my God, if my wife ever finds out, she will kill me ." (FH-TR p. 180, line 12)

overheard. He obviously said it loudly enough it ended up it in the transcript of the deposition. He never said, "strike that" or that comment was not meant to be a part of the deposition. His only response was to state, "And also note that the witness is not in the room." (FH-TR p. 182, lines 15-16) However, Ms. Naylor did hear his comment. She stated:

> "… I walked out of the room. From this location I heard Mr. Ratiner make some comment about my 'crotch.' I was embarrassed, offended and upset by this remark. I immediately walked away and went to a nearby lunch room. While standing there, I was approached by Mr. Ratiner's consultant who said 'I am so sorry, I am so very sorry, I am so sorry.'
>
> (7-20-07 Naylor Affidavit p. 2, paragraph 6)
> (The Florida Bar's Exhibit 3)

At the trial Mr. Ratiner was given several chances to explain himself and this particular comment. In finally responding to Bar counsel's questioning of why he didn't state on the record that the comment was just a private conversation he stated:

> " Sir, I should have. Ma'am, I should have. I certainly - - I don't think that would have mattered. I don't think that would have cleared up anything. Yeah, it would have been better I guess. The real question is why didn't I speak softer or not - -."
>
> (FH-TR p. 191, lines 10-15)

The point Mr. Ratiner doesn't get about the crotch comment is that the "real

question" is not why didn't he speak softer or not, but rather why he did not immediately apologize on the record and in person to everyone present. The comment was meant to embarrass, humiliate and demoralize. I cannot imagine that it did not achieve its goal.

Ms. Naylor appeared, to me to be an educated, polite, and very patient witness.[2] I have carefully reviewed the affidavit of the deponent, Deborah Naylor. (The Florida Bar's Exhibit 3) She is 51 years old, married 34 years and the working mother of three (3) children. Common sense dictates that her life is filled with everyday obstacles. Yet, she describes her deposition taken by Mr. Ratiner as follows:

- Unlike anything I have ever experienced in the 18 years I have been working in the legal industry.
- I have never been so mistreated by anyone in my life.
- Mr. Ratiner was rude, abusive, sexually vulgar and degrading with his behavior towards me and his actions would be an embarrassment to anyone.
- This was by far the worst experience of my life both personal and professional.

For any witness to describe their experience with a member of The Florida Bar as set forth above is incomprehensible to me. Ms. Naylor was not alone in her

[2] Respondent accuses Ms. Naylor of falsely stating in her September 2, 2008 affidavit that her deposition was moved after two days because of Mr. Ratiner's behavior. The fact, the deposition was moved after three, not two days, and that she was also wrong about the address where the fourth and fifth days of the deposition were held are

observations.

I CAN'T WORK LIKE THIS

The court reporter, Audree Burg, in attendance during the laptop incident and the following day gave the following descriptions:

- I consider that deposition the most memorable of my 20-year career as a Court Reporter, due to the behavior of Mr. Ratiner.
- During the deposition, Ratiner was verbally abusive to opposing counsel and the witness.
- I found Ratiner's behavior unprofessional, unacceptable and frightening.
- At one point Ratiner became physically aggressive. Ratiner advanced in my direction, in an agitated state concerning an exhibit sticker being placed on his laptop by opposing counsel. I was in fear that a physical altercation might erupt, and feared for my personal safety. At that point, I commented that I could not continue to work under those conditions. It was only Mr. Ratiner's conduct that caused me to make that comment.

Every trial lawyer knows that generally, experienced court reporters are fairly patient and familiar with the difficulties inherent in civil discovery depositions. From my viewing on the film clip contained in the Bar's Exhibit 1 it is obvious that Ms. Burg meets that standard. Most court reporters are reluctant to get involved in testifying regarding events that occurred at a deposition. For her to refer to the deposition as the "most memorable" of her career says a lot. We should

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largely irrelevant.

listen.

I AM GOING TO TORTURE THIS WOMAN

Once again, a short portion of the May 17, 2008, transcript is the most revealing. Starting with the last sentence by Mr. Ratiner, on page 147, line 23.

> MR. RATINER: You can do that while we take a break to swap tapes.
> MR. SHEROUSE: Off the record at 2:57. We've been at it for an hour or so. We can take a short break if you like.
> MR. RATINER: If you take a short break you will cause extreme delays and heartache. If we push through I will finish hopefully in 15 minutes.
> MR. SHEROUSE: We're taking a break.
> MR. RATINER: If I don't finish in 15 minutes I have no reason to finish in less than 24 hours. You make the choice.
> [MR.SHEROUSE:] We're taking a break.
> MR. RATINER: You make the choice. I'm trying to be nice and give you the option.
> MR. SHEROUSE: You virtually guarantee a break.
> Mr. RATINER: I'm sorry? Counsel?
> Mr. SHEROUSE: A short break.
> **MR. RATINER: I am going to torture this woman. (E.S.)**
> MR. SHEROUSE: Did you get that?
> MR. RATINER: Did you get he called me a jew kike?[3] Did you?
> MR. SHEROUSE: Take down what he is saying.
> MR. RATINER: I heard that clearly as he walked out the door.
> (5-17-07 Naylor Deposition, p.147, line 23 to p.48 line 25)

* * *

[3] This issue was addressed by Judge Donner in her Order of June 28, 2007. (Paragraph 3 of Respondent's Exhibit 3)

VIDEO SPECIALIST: Back on the record at 3:14 p.m.
(5-17-07 Naylor Deposition, p. 149, lines 19-20)

The entire break was seventeen (17) minutes. The saga of the missed opportunity to conclude the deposition early continues throughout several portions of the deposition of May 17, 2008.

(5-17-07 Naylor Deposition, p. 149, line 2 to p. 150 line 18)
(5-17-07 Naylor Deposition, p. 159, line 14 to p. 161 line11)
(5-17-07 Naylor Deposition, p. 164, lines 8-23)
(5-17-07 Naylor Deposition, p. 190, line. 13 to p. 191 line 16)

The sum of it all is that Mr. Sherouse said no to Mr. Ratiner's request to continue on with the deposition, rather than take a break, so he (Ratiner) could catch a plane on the afternoon of the 17th. Mr. Sherouse takes a 17-minute break and returns to continue the deposition. This makes Mr. Ratiner very unhappy. After the break Mr. Ratiner frequently reminds Mr. Sherouse, that he (Sherouse) had his chance to conclude the deposition and he didn't take it Mr. Ratiner believes Mr. Sherouse will consider the deposition terminated if Mr. Ratiner leaves prior to 5:00 p.m. (5-17-07 Naylor Deposition, p. 160, lines. 1-2) In furtherance of the torture promise Mr. Ratiner responded to a request by Ms. Naylor to read back a portion of the previous answer, as follows "We'll go through it. I'm not reading anything back. You don't run the show ma'am." (5-17-07 Naylor Deposition, p. 192, lines.

8-10) The deposition of Ms. Naylor, on May 17, continues almost 50 pages more, until page 195 when it concludes for the day. It is continued until the next morning at 9:00 a.m. After another 200 pages on that day the deposition of Ms. Naylor concluded on May 18, 2008, at 3:50 p.m.

YOU WILL NOT TOUCH MY COMPUTER

In the primary underlying act, which is charged in the Bar's complaint, and upon which I granted their Motion for Summary Judgment (with the exception of criminal conduct) Mr. Ratiner erupted when the opposing attorney sought to place an exhibit sticker on his personal laptop computer. Earlier in that day Mr. Ratiner sought to and did place an exhibit sticker on the deponent's personal laptop computer. (5-17-07 Naylor Deposition, p. 40, lines 9-24). There was not any outburst from opposing counsel. Neither opposing counsel nor the deponent stood up and threatened to "defend their computer with their life", as Mr. Ratiner later would. Here, Mr. Ratiner grabbed the arm of the attorney, began to charge around the table - - only to be restrained by God only knows what.[4] Mr. Ratiner maintains that Ms. Naylor doesn't look like she is afraid in the video. Her composure speaks for itself. Mr. Ratiner's own expert attempted to calm him down and stated, "take a

[4] Dr. Haupt testified that he did not restrain Mr. Ratiner at any point during the entire deposition. (FH-TR p. 41.lines1-3) Judge Donner's Order references that Mr. Ratiner was " . . . apparently held back by his expert consultant." (Paragraph 4 of Respondent's Exhibit 3)

Xanax". (The Florida Bar's Exhibit 1).[5] The court reporter cried out "I cannot work like this." If Ms. Naylor was not afraid, she should have been. Then, not to be deterred, Mr. Ratiner embarked on a verbal tirade, while balling up the exhibit sticker and flicking it at opposing counsel. Then, while leaning forcefully over the table, and in a moment of pure psychological projection, Mr. Ratiner announced to Mr. Sherouse "You are going to go before the Board (sic) Ethics Committee on this one, son. We are going to quit the deposition right now so you can rethink what you are doing." (5-17-07 Naylor Deposition, p.155, lines 13-17). Mr. Ratiner was correct in observing that there needed to be some rethinking, however, in large part, the needed rethinking needed to be done by him.

JUDGE DONNER

Judge Donner had the responsibility for presiding over the case involving Mr. Ratiner's clients and Dupont. She addressed the issues of disagreement between the parties regarding the deposition of Deborah Naylor. On June 28, 2007 she entered her Order on Dupont's Motion for Protective Order and Request for Referee and on Dupont's Expedited Motion To Depose Court Reporters and Videographers. (Respondent's Exhibit 3) Judge Donner's Order speaks for itself. It is well written and very clear. She did not believe Mr. Ratiner when he stated

[5] This comment is not found in the transcript of the May 17, 2008 deposition of Deborah Naylor. However, it is clearly heard in the DVD video of the deposition.

Mr. Sherouse insulted him with an "offensive racial epithet." She stated "… it was very inappropriate and unprofessional for Mr. Ratiner to make rude comments to and about opposing counsel and the witness, and to chew tobacco during the deposition." She comments on his aggressiveness by saying that "Such behavior is clearly inappropriate and unacceptable in every way." After viewing videotaped excerpts of the Borek and Naylor depositions, Judge Donner concluded that those excerpts " . . . demonstrates that such aggressiveness during depositions has been an ongoing problem for Mr. Ratiner. I concur with the findings made by Judge Donner.

THOMAS SHEROUSE – OPPOSING COUNSEL

Mr. Ratiner blames a good deal of his bad behavior on Mr. Thomas Sherouse. Judge Donner even concluded in her June 28, 2007, Order " . . . that Mr. Sherouse's manner during the deposition was inappropriately obstructive. I presume that part of the reason for Judge Donner's conclusion regarding Mr. Sherouse was that Mr. Sherouse objected to the form of the question for virtually every question asked during the deposition of Deborah Naylor.

On the fourth day of deposition, the afternoon of May 17, 2008, shortly after a break, and as the DVD shows, Mr. Sherouse stood up, leaned across the table and

attempted to place Respondent's laptop computer into evidence by placing an exhibit sticker on it.

Mr. Ratiner had picked up his computer and moved it out of Mr. Sherouse's reach. At that point in time Respondent asked that the videographer turn his camera on to record the proceedings. When Mr. Sherouse sat back down, Respondent placed his computer back on the table and sat down himself. Mr. Sherouse then stood up again, knowing full well that Respondent was upset by his prior actions and again leaned across the table and again tried to place an exhibit sticker on Respondent's laptop computer. I find that Mr. Sherouse's conduct was deliberately provocative, especially in light of Respondent's forceful and deliberate admonition that Mr. Sherouse should not touch or attempt to place into evidence Respondent's computer. Mr. Sherouse should have held up the evidence sticker to the camera and stated that Mr. Ratiner was refusing to allow him to place it on Mr. Ratiner's personal computer. That would have preserved the matter for the record.

I find that Mr. Sherouse's conduct was inappropriate for three reasons:

> (a) the Rules of Civil Procedure do not permit him to place exhibits into evidence, without the consent of adverse party, at a deposition called by adverse counsel;
> (b) the contents of Respondent's laptop computer are clearly privileged and is the work product of counsel and cannot be placed into evidence; and
> (c) Mr. Sherouse's conduct was clearly in retaliation for Respondent's placing Ms. Naylor's computer into evidence earlier that morning.

All that being said, none of Mr. Sherouse's conduct justifies or excuses Mr. Ratiner's behavior, on May 17th or any other day. The storming around the table, the forceful leaning over the table, the pointing of fingers, the flicking or tossing of the torn up evidence sticker, the tirade, the insults and the false accusations all constitute inexcusable conduct on the part of Mr. Ratiner.

ROBERT JOSEPH RATINER – RESPONDENT

Shut up, Bullshit and Hell

> MR. RATINER: You're suggesting that - - you know what? **Just shut up. (E. S.)** I'm done with you.
>
> (5-17-07 Naylor Deposition, p. 159, lines 14-16)
>
> MR. RATINER: Sir, can you remove that large booger hanging from your nose? It's extremely disconcerting to me. Now we have this **bullshit (E.S.)** taken care of can you read back the last question.
>
> (5-16-07 Naylor Deposition, p.179, line 15 to p.180 line 8)
>
> MR. RATINER: And you say no, I can't, if I leave it's terminated. Well **hell, (E.S.)** I'm not terminating this deposition. I am going to conclude this deposition.
>
> (5-17-07 Naylor Deposition, p. 160, lines 12-15)

It is clear that Mr. Ratiner's approach in a deposition is nothing short of

warfare. Aggression, intimidation, and insults are seemingly the hallmarks of a Ratiner deposition. He lets opposing counsel and the witness know it's not going to be pleasant or easy. This type of conduct, in depositions, has given the civil discovery process a bad name. I could have labeled this section – "I don't care what you want to hear, shut up, spitting, bullshit, boogers, Jew kike, torture, hell" and I would not have even touched on the physical intimidation that is clearly demonstrated on the video clip of him charging around the table, leaning over the table and finger jabbing while leaning over the table. It is interesting to observe that each time Mr. Ratiner says something outrageous he quickly accuses the other lawyer of something equally outrageous. Look at the relationship between the spitting comment and the booger response, (12 lines later); the torture comment and the Jew kike accusation (5 lines later); and in the Borek deposition where he screamed the " I don't care what you want to hear" comment and accusing the other lawyer of pointing at his wife and him (2 lines). This type of behavior, particularly from an experienced lawyer of eighteen (18) years, is unforgivable.

GRIEVANCE COMMITTEE RECOMMENDATION OF DIVERSON

I have considered The Grievance Committee Report of Diversion filed September 14, 2006. (The Florida Bar's Exhibit 8) It is relevant to the style and type of behavior that has been exhibited by the Respondent in the past. It is the

same style and type of behavior that has resulted in this case.

Respondent was ordered to have a mental health evaluation and to follow the recommendations of the evaluator. I do not know what the evaluation revealed. There was no evidence presented by either side regarding mental health. I presume Respondent's evaluation did not find any underlying mental health issue. The only requirement of the mental health evaluation appears to have been for Respondent to attend The Florida Bar's Anger Management Workshop. Respondent attended The Florida Bar's Anger Management Workshop. Clearly, he got nothing out of the workshop. He testified that the only insight he gained from the course was to note that no one from a big firm had attended the course. (FH-TR p. 199, lines 20-23) I do not know the accuracy of that statement, but recognize that Mr. Ratiner believes his attendance at the course is related to his status as a small firm practitioner, rather than the fact that he is "out of control" and in need of change.

The first matter set forth in the Grievance Committee Recommendation of Diversion concerned a case before the Honorable Richard Eade of the Seventeenth Judicial Circuit beginning in 2002. There, like here, Mr. Ratiner became abusive during depositions and was scolded by the Judge. That rebuke was unsuccessful and a special master attended all depositions with all costs charged to Mr. Ratiner. Mr. Ratiner blamed Judge Eade and accused him of engaging in tirades.

Another incident set forth in the Grievance Committee Report of Diversion occurred in early 2006. (The Florida Bar's Exhibit 8) There Mr. Ratiner engaged in a verbal encounter with a fellow lawyer, James Nosich, at a children's basketball game. Mr. Ratiner explained that his actions were justified since that attorney had filed a motion that Mr. Ratiner found to be objectionable, despite the other attorney's request not to be so personal. Mr. Ratiner continued his harassment by taking photographs of that attorney, who ultimately sought a Petition for Temporary Injunction.

Mr. Ratiner, however, does not seek forgiveness or offer apologies for his behavior. He claims that the opposing attorney orchestrated a plot to bait him into his conduct. Talk about personal responsibility. When you continue to "rise to the bait" year after year, miserable deposition after miserable deposition something is really wrong. There is no excuse that Mr. Ratiner offered that comes close to excusing his conduct in the presence of Ms. Naylor, the court reporter, and the videographer. I really expected to hear profuse apologies, acknowledgement of mistakes and offers of propitiation. This is what worries me. This is the foundation of my recommendation of disbarment. Without a change of attitude, there is nothing to rehabilitate. It gets worse.

WITH FRIENDS LIKE THIS

Dr. Haupt, Respondent's witness, even put forth the theory that Dupont was behind the Bar complaint. (FH-TR p. 48, lines 6-9) This is the same witness that testified that: " In my experience, it is necessary for a lawyer to struggle with the witness, to press them, to be adversarial." (FH-TR p. 37, lines 12-13) Dr. Haupt was of the opinion that, Mr. Ratiner's behavior during the Laptop incident didn't even come close to the threshold for misconduct. (FH-TR p.38, lines19-20) Finally, Dr. Haupt summed up Respondent's position that he was "baited" when he testified, " I think - -I think they wanted to intentionally provoke Bobby. That's my view, after seeing three and a half days of it." (FH-TR p. 40, lines 23-25) Together, Mr. Ratiner and Dr. Haupt are engaged in a long-term legal struggle with Dupont. It is clear that Dr. Haupt doesn't do anything to help keep the situation under control, however, Mr. Ratiner, and he alone, is responsible for his conduct as a member of The Florida Bar.

BOREK, BALLS, AND THE SONG "YOUR SO SCREWED"

In August of 2005, during the deposition of Mr. Borek, Mr. Ratiner became enraged. Instead of simply objecting to the question, or insisting on contacting the Judge, Mr. Ratiner pontificated about the methodology of opposing counsel's questioning. When opposing counsel calmly and quietly asked for a yes or no

answer, Mr. Ratiner bellowed at the top of his lungs **"I don't care what you want to hear." (E.S.)** In response to opposing counsel's suggestion of a break, Mr. Ratiner began to accuse continued opposing counsel of "pointing" at his wife and himself. Mr. Ratiner, then threatening to get affidavits from the other people in the room when opposing counsel responded, "I didn't point at anyone . . .." (The Florida Bar's Exhibit 6)

Another example of Mr. Ratiner's behavior surrounding the Naylor deposition was Mr. Ratiner's comment to opposing counsel concerning opposing counsel and his wife being childless. Ms. Naylor stated in her affidavit that she heard the following loud statement by Mr. Ratiner, **"It takes balls to make children." (E.S.)** This supremely personal attack on one's adversary, in the presence of the deponent, epitomizes a lack of professionalism and civility. This allegation is found in Paragraph 10 of Ms. Naylor's 7/20/07 Affidavit, (The Florida Bar's Exhibit 3) and Mr. Sherouse Letter to Bar Counsel dated 9/5/07. (Respondent's Exhibit 5)

Finally, Ms. Naylor in her Affidavit of September 12, 2008, states that " At the conclusion of the last day of the deposition, Mr. Ratiner proceeded to dance and sing **'you are so screwed' (E.S.)** over and over again, laughing and directing it towards myself and Dupont's lawyer from the elevator lobby of the reception area

of the firm" This allegation is found only in Ms. Naylor's Affidavit of September 12, 2008. (The Florida Bar's Exhibit 3)

CAN AGGRAVATING FACTORS INCLUDE STATEMENTS OR CONDUCT WHICH WAS KNOWN TO THE GREVENCE COMMITTEE BUT UPON WHICH NO PROBABLE AUSE WAS FOUND

Respondent maintains that the Bar's may not use as aggravators those incidents specifically considered by the grievance committee and not included in their probable cause finding. Respondent maintains a finding of no probable cause by a grievance committee eliminates the use of such conduct in any way by the Bar. I reject this contention.

Similarly, Respondent maintains incidents covered by Respondent's prior no probable cause finding and diversion cannot be used as aggravators. Respondent's position is the consideration of these bare allegations and accusations without any competent, substantial evidence establishing the occurrence or impropriety of such events violates any concept of fundamental fairness. Further, allowing the Bar to proffer matters for which a grievance committee found no probable cause improperly gives the Bar the ability to second-guess its own committee. I reject this contention.

PRESUMPTION OF CORRECTNESS AS TO FACTUAL FINDINGS BASED ON VIDEO AND WRITTEN EVIDENCE

I am of the opinion that all of the findings included herein that are based

solely on video and/or written evidence are not entitled to any presumption of correctness. *Redondo v. Jessup*, 426So.2d 1146 (Fla. 3rd DCA 1983). As stated by Judge Padovano "The reason for showing deference to the trial judge in the review of factual determinations is not present if the trial judge has made a decision solely on written evidence." Phillip J. Padovano, West's Fla. Prac. Vol. 5, Florida Civil Practice, s. 26.3, p. 800 (2007). This rationale would equally apply to factual determinations made solely from viewing video evidence and to factual determinations made solely from viewing video evidence and written evidence in combination. The only reason I include this section in my Report is because of the unusual aspect of this case. That aspect is that most of the findings made herein are from depositions, video clips, Grievance Committee Reports, affidavits, and Orders issued by another Judge. Most of the findings relating to Respondent were based on him explaining, his view, of what or why he was doing something that was on a video clips or transcribed in a deposition. Is that testimony or commentary?

Lastly, to show how difficult this credibility determination can be, I point out the disagreement between the parties as to whether Ms. Naylor was afraid. The Bar's position is that she was afraid. Respondent's position is that she was not. It is hard to tell from the video clip of Mr. Ratiner attempting to charge around the table

what Ms. Naylor's expression is or is not. She is in the background of the video clip. A few moments later she is shown briefly attempting to smile. It looked quite forced to me. Dr. Haupt, Respondent's consultant, when asked if anybody in the room was scared during the laptop incident testified "No. My viewing of the DVD incident shows Ms. Naylor smiling during it. It certainly shows me smiling during it" (FH-TR p.42, lines 12-14) Respondent, in their proposed Report, has asked me to find that: " I cannot gauge her credibility through observation of her tone of voice, her facial gestures and body language and the manner in which she responds to cross-examination." I don't agree. While I have stated that I believe there is no presumption attached to my findings regarding Ms. Naylor's appearance, tone of voice or facial gestures, I think it is clear and I am convinced that she was, in fact, put through an ordeal. Additionally, I find that after a review of the multitude of video clips from the days of the deposition, the lap top incident video clip, her transcribed testimony, and her Affidavits, I am clearly convinced that she is to be believed when she states " This was the worst experience of my life . . . ." If it was the worst experience of her life, then there is only one person to blame. And that person is, Mr. Ratiner, because he said "I am going to torture this woman," and he obviously meant it.

POST-TRIAL MOTIONS

Both parties filed post-trial motions. Respondent filed a Motion for Leave to Supplement the Record on September 25, 2008. Respondent desired to supplement the record of the Borek video clip (The Florida Bar's Exhibit 6) with portions of the actual transcript of the deposition, pages 1-3 and pages 38-52. The Referee granted the Respondent's Motion for Leave to Supplement the Record on 10/13/08.

The Bar filed a Motion to Substitute the Florida Bar's Exhibit No. 3 on September 16, 2008. The Bar, in paragraph 2 of it's motion, desired to address the issue raise by Respondent that the "additional information" document signed by Ms. Naylor on September 2, 2008, which was attached to Ms. Naylor's affidavit of 7/20/07, was not a proper affidavit in that it failed to state that the contents of the affidavit were personally known to the affiant and it was not signed under oath subject to the penalty of perjury. Respondent did not dispute that the "additional information" document was admissible. Respondent argued that because the "additional information" document was not signed under penalty of perjury and based on personal knowledge the Referee should treat it as unsworn testimony. (FH-TR p.12, lines 11-25) The "additional information" document was clearly an attempt by Ms. Naylor to supplement her previous affidavit of 7/20/07. The Bar represented that Ms. Naylor would have no problem signing an affidavit in proper

form that would contain the exact same information as the "additional information" document of September 2, 2008. I stated that I would address that at the appropriate time. (FH-TR p.17, lines 6-8) On September 12, 2008, the next day after the Final Hearing Ms. Naylor executed her affidavit in proper form and it contained the exact same information that was set forth in the "additional information" document of September 2, 2008. The Bar's Motion was filed September 16, 2008 and on that same day I considered the prior arguments of counsel and granted the Bar's motion. I have treated Ms. Naylor's substituted affidavit of September 12, 2008, as sworn testimony for purposes of the findings set forth herein.

CONCLUSION

At the conclusion of the final hearing, I announced that I believed Mr. Ratiner's cumulative misconduct, together with his terminal inability to modify his conduct, warranted disbarment. I am even more convinced of the appropriateness of that recommendation after the following incident. After the eight (8) hour final hearing in this matter concluded and the parties began to leave my chambers, Mr. Ratiner stopped in the doorway as he was leaving and addressed Bar Counsel in my presence. He inappropriately and sardonic tone stated, "Congratulations

Counselor, you got what you wanted."[6] Bar Counsel was taken aback and disturbed by the comment. I thought the comment was completely out of line. At no time during the entire proceeding did Ms. Lazarus do anything that could have caused Mr. Ratiner to believe that she had a personal interest in seeing him subject to discipline. She acted professionally, as did Mr. Weiss, during the entire proceeding. In fact, I was of the opinion that The Florida Bar, Ms. Lazarus's client, was being far too lenient in its' initial recommendation of discipline. If Mr. Ratiner didn't like the outcome of the hearing, his angst should have been directed at myself. The comment was consistent with Mr. Ratiner's behavior throughout the deposition of Ms. Naylor, Mr. Borek, with Judge Eade and with Mr. Nosich. Mr. Ratiner had heard nothing of what was said to him. He will never change. That is why disbarment is appropriate.

PLAN B

It is my finding by clear and convincing evidence that Mr. Ratiner, and Mr. Ratiner alone, is responsible for his reprehensible and inexcusable behavior. I further find that he clearly and convincingly, said and did all of words and deeds of which he was accused, and which are set forth in this Report. However, my review of the case law set out in Section IV, reveals that there is no case directly on point with the misconduct set forth in the Bar's complaint. Respondent, through his

[6] Bar Counsel recalled the remark as "Congratulations Counselor, this is wonderful."

capable counsel, has pointed to a number of cases where the conduct was egregious yet the discipline imposed was less than disbarment. I am also aware of the Court's pronouncements in DeBock v. State, 512 So.2d. 164, 166, 167 (Fla. 1987), to the extent that disciplinary proceedings are remedial and are not designed to punish a lawyer.

In reaching my recommendation, I have specifically considered the Supreme Court's disciplinary orders in Florida Bar v. Martocci, 699 So.2d 1357 (Fla. 1997) (lawyer found not guilty of misconduct despite using profanity against adverse counsel due, in part, to adverse counsel's conduct); Florida Bar v. Martocci, 791 So.2d 1074 (Fla. 2001) (public reprimand for disparaging adverse counsel and her client, including referring to them as "crazy," "nutcase," "stupid idiot" and other demeaning remarks. He also challenged the adverse party's father to a fight and suggested that adverse counsel "go back to Puerto Rico.").

In Florida Bar v. Morgan, 938 So.2d 496 (Fla. 2006), the respondent received but a 91-day suspension, notwithstanding the fact that he was guilty of a diatribe in the courtroom before the jury during which he demeaned the judge. Mr. Morgan had been disciplined on two prior occasions for similar misconduct. He received but a 91-day suspension.

Counsel for Respondent argues that when comparing Mr. Morgan's conduct with that of Respondent, it is clear that the discipline imposed in this case should be far, far less than that meted out to Mr. Morgan. Counsel for Respondent maintains, Mr. Ratiner, who has never been disciplined, should not receive a harsher discipline than Mr. Morgan received for his third offense. (E.S.)

It just doesn't seem right. Outrageous misconduct in court and at depositions must be subject to discipline. Attorneys' who believe they will not be sanctioned or disciplined for unprofessional conduct will, by nature, continue to try and get away with it. Opposing counsel have little if any remedy available to them because of the usual scenario: lack of direct proof; and the reluctance of trial judges to impose sanctions because of the lack of direct proof. Also, every experienced attorney knows that if you file a grievance, the other side will, in all likelihood, just file one back at you. Ethics aside, psychologically, as well as, strategically it's important to level the accusational playing field as much as possible in grievance cases in order to increase one's chances in the heat of the contest. As the old toast goes "confusion to the enemy." Confusion is the friend of the unprofessional attorney and the enemy of good judgment. That is why, in this case, the Court should act to give weight and meaning to our Professionalism Standards and our Oath of Admission. In this case, there is direct proof, it's on video, and it's in the

transcript. From a proof perspective, it doesn't get much better. Lastly, if a lawyer robs a bank of $25.00 they are disbarred. If, in a deposition, a lawyer robs a person of their dignity, then what? Maybe a persons' sacred honor is just as important as their money.

OK, so why call it Plan B? Because if Disbarment is not appropriate in the Court's view, based on the current state of the law, then I, as your appointed Referee would recommend the following alternative disposition:

Two-year suspension from The Florida Bar.

No matter what discipline is ultimately imposed, I believe, the following conditions are essential prior to Mr. Ratiner's return to being an attorney in good standing with The Florida Bar:

1. Mental Health Counseling to address anger management. There is no need for an evaluation. He did one already. He needs to go straight to counseling. Copies of the video clips admitted into evidence must be shown to the mental health counselor. The counseling needs to specifically address how not to "rise to the bait."
2. Any future deposition, that Mr. Ratiner, as an attorney, participates in or attends for any reason, must be video taped. I would consider requiring him to have co-counsel present at any deposition in which he participated as an attorney.
3. Letters of apology to Ms. Naylor, all court reporters involved in the Naylor deposition, and the videographer.

II. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

Prior to recommending discipline pursuant to Rule 3-7.6(k)(l), I considered

the following:

A. Personal History of Respondent:

Age: 44
Date admitted to The Florida Bar: October 26, 1990
Prior Discipline: None

B. Factors Considered in Aggravation:

9.22(c) - a pattern of misconduct;
9.22(d) - multiple offenses;
9.22(g) - refusal to acknowledge wrongful nature of conduct; and
9.22(i) - substantial experience in the practice of law.

C. Factors Considered in Mitigation:

9.32(a) - absence of a prior disciplinary record;
9.32(b) - absence of a dishonest motive, however, absence of a selfish motive specifically not included as a mitigating factor;
9.32(c) - emotional problems; and
Other - excluding his lack of professional behavior, Mr. Ratiner appears to have an intelligent understanding of the law, as well as, the facts surrounding the various cases he is prosecuting on behalf of his clients. He believes strongly in the justness of his cause.

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

SHOULD BE TAXED: I find the following costs were reasonably incurred by The Florida Bar:

Administrative fee
Rule 3-7.6(o)(1)(I) …….$1,250.00

Bar Counsel's costs……1,255.93

Court reporting costs…….....756.90

Staff Investigators' costs……...403.00

TOTAL: **$3,665.83**

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this _____ day of _____, 2008.

_____

GEORGE SPEARS REYNOLDS, III, Referee
Gadsden County Courthouse
10 East Jefferson Street, Room 201
Quincy, Florida 32351

Copies to:
Randi Lazarus, Bar Counsel
John A. Weiss, Counsel for Respondent
Kenneth Lawrence Marvin, Staff Counsel