

**IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)**

**THE FLORIDA BAR,**

**Complainant,**

**v.**

**ROBERT L. ROTH,**

**Respondent,**

**Supreme Court Case  
No. SC00-921**

**The Florida Bar File  
No. 99-71,053 (11E)**

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**REPORT AND RECOMMENDATION OF REFEREE**

**I. SUMMARY OF PROCEEDINGS:**

The undersigned was duly appointed as Referee to conduct the disciplinary hearing in this matter. Randolph M. Brombacher, Gregg Wenzel, and Vivian Reyes

appeared as co-counsel for Complainant, The Florida Bar. Nicholas R. Friedman and Anthony J. Barranco appeared as co-counsel for the Respondent, Robert L. Roth (hereinafter referred to as “Roth”).

After conducting a final hearing<sup>1</sup>, considering the arguments of counsel, the applicable law and the transcript of the proceedings, the referee makes the following findings and recommendations:

## **II. FINDINGS OF FACT:**

- A. Roth is and was at all times material a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.
- B. Roth knew that prior to May of 1998, his friend, George Petrie (hereinafter referred to as “Petrie”) had suffered from depression and had been prescribed and taken a number of different antidepressant medications including Prozac, Wellbutrin, Effexor, Zoloft and Paxil.<sup>2</sup>
- C. Between the months of May and June of 1998, Roth represented Petrie

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<sup>1</sup> The final hearing was conducted from September 11, 2000 through September 21, 2000.

<sup>2</sup> Roth claims that he believed Petrie had stopped taking these medications a year before his representation of Petrie. Roth makes no such claim as to believing whether Petrie had stopped suffering from depression.

as his legal counsel. It is undisputed that during this time the following occurred:

1. Roth prepared a Last Will and Testament for Petrie which named Roth as the sole beneficiary and named Roth's brother as an executor of the will;
2. Roth prepared a quit claim deed wherein Petrie quit-claimed his residence to Roth;
3. Roth executed documents to make himself a joint signatory on Petrie's checking account;
4. Roth took possession of Petrie's car and title;
5. Roth prepared a Power of Attorney giving Roth full power over all of Petrie's affairs; and
6. Roth knowingly became the sole beneficiary of Petrie's life insurance policy.

All documents referenced above<sup>3</sup> were fully executed by Petrie and/or Roth so as to give each transaction its intended full force and effect.

D. In July of 1998, only weeks after the transactions referenced above, Roth took Petrie to see Dr. Hughes, a psychiatrist. Roth was present during

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<sup>3</sup> Most of these documents are attached as **Exhibit A**.

the portion of Petrie's evaluation wherein Dr. Hughes advised Petrie that he suffered from a major depressive disorder, ordered him to take a two-week leave of absence from his employment at AAA and prescribed him Prozac.

- E. On July 7, 1998, Roth acting as Petrie's lawyer, sent AAA a letter<sup>4</sup> providing Dr. Hughes' "Certification of Physician"<sup>5</sup> setting forth that Petrie suffers from a "major depressive disorder" and prescribing the leave of absence. By this letter Roth sought to obtain for Petrie a paid disability leave of absence pursuant to Petrie's disability coverage provided by AAA. Furthermore, Roth directed AAA to send Petrie's disability checks to Roth's home address (3155 South Miami Avenue, Miami, Florida 33129). Roth admits having received and taken one or more of Petrie's disability checks for his own use and benefit.
- F. The referee specifically finds that Petrie was disabled due to his major depressive disorder and that this disability was known to Roth<sup>6</sup>.

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<sup>4</sup> This letter is attached as **Exhibit B**.

<sup>5</sup> This certification is attached to Roth's letter to AAA and is part of **Exhibit B**.

<sup>6</sup> Roth both admits and denies knowing about Petrie's depression. For example, on page 155 (Final Hearing, 9/12/2000) Roth was asked: Q: Did you believe George Petrie was suffering from a mental disorder at the time of Dr. Hughes' session? He responded: "I'm not a psychiatrist, but he seemed fine to me." Minutes later (page 164), he

- G. On August 3, 1998, Petrie attempted suicide while at Roth's home. Present in the home at the time were Roth and his then *fiancée*, Alicia Accinelli, Esq.
- H. On or about August 19, 1998, Petrie demanded that Roth return all of his property. Roth did not return the property at that time yet claimed he would have immediately done so but for the fact that he was leaving for Europe on the day Petrie demanded the property.
- I. Due to Roth's failure to return any of the property, Petrie retained Joseph Shook, Esq. (hereinafter referred to as "Shook") to represent him in his effort to regain his real and personal property from Roth. On August 31, 1998, Shook sent Roth a letter advising him that Petrie was his client and they desired an amicable return of Petrie's property <sup>7</sup>.
- J. On September 14, 1998, upon his return from Europe Roth received Shook's letter. In response, Roth first went to Shook's office (without an appointment) and was unsuccessful in his effort to meet with him.

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is asked, "Q: Did it occur to you that Dr. Hughes was prescribing Prozac because in Dr. Hughes' opinion, Mr. Petrie suffered from depression? Did that occur to you?" Roth this time answered: " Yes, because I know what the drug Prozac is for." Pages 155 through 164 of the transcript are attached as **Exhibit C**.

<sup>7</sup> The letter of representation is attached as **Exhibit D**.

- K. From Shook's office Roth went to Petrie's house armed with a gun and was there and then arrested<sup>8</sup> for aggravated assault with a firearm upon Petrie.<sup>9</sup>
- L. On January 25, 1999, Shook filed a verified complaint for damages<sup>10</sup>. The complaint sought damages from Roth under the following theories:
- Count I - Breach of a fiduciary duty;
  - Count II - Defamation;
  - Count III - Conversion through fraud in the inducement, false pretenses and trickery;
  - Count IV - Conversion;
  - Count V - Civil theft;
  - Count VI - Civil theft;
  - Count VII - Conversion through fraud in the inducement, false pretenses and trickery;
  - Count VIII - Civil theft;
  - Count IX - Assault;

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<sup>8</sup> Attached hereto as **Exhibit E** is a copy of the arrest affidavit.

<sup>9</sup> The State Attorney's Office ultimately "no-actioned" the charge against Roth.

<sup>10</sup> Attached hereto as **Exhibit F** is a copy of the verified complaint for damages.

Count X - Battery; and

Count XI - Professional negligence.

- I. On or about May 13, 1999, almost a full year after Roth took possession of Petrie's property, the suit was settled<sup>11</sup> and Roth eventually returned *most* of the property<sup>12</sup>.
- J. Regarding credibility, the referee finds that Roth's testimony was not credible and not worthy of belief. Roth's testimony was coy, solicitous, flip, unclear, evasive, misleading, disingenuous and contradictory. Roth's testimony was not honest, straightforward or truthful.<sup>13</sup> With respect to the testimony of Petrie, the referee finds that his testimony was not credible and not worthy of belief. Petrie's testimony was exaggerated, melodramatic, pompous, unclear evasive and he obviously

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<sup>11</sup> Attached hereto as **Exhibit G** is a copy of the Mutual Release.

<sup>12</sup> Roth had already sold Petrie's home and, thus it could not be returned, Roth admits taking and depositing the proceeds of the sale of Petrie's home into his personal account. There were other items also not returned which Roth claims that he had not taken from Petrie.

<sup>13</sup> Throughout this case Roth claimed that Petrie had told him that he was dying of prostate cancer and that he wanted Roth to have all of his property. Petrie, on the other hand claimed that he advised Roth that he was depressed and was going to commit suicide and thus needed Roth's help with his estate. It is noteworthy that Roth's brother, Jeffrey Roth testified that Roth told him that Petrie was going to commit suicide. The brother also testified that *at the time* Petrie transferred all of his property to Roth it was Roth's understanding that Petrie intended to kill himself.

immensely enjoyed his role in this proceeding. Likewise, his testimony was not honest, straightforward or truthful.

### **COUNT I**

The Florida Bar's first claim is that Roth violated Rules 4-1.8(a) and 4-1.8(c) of the Rules of Professional Conduct.<sup>14</sup> Rule 4-1.8(a) prohibits a lawyer from entering into a business transaction with a client and knowingly acquiring an ownership, possessory, . . . interest adverse to the client. Rule 4-1.8(c) prohibits a lawyer from preparing an instrument giving the lawyer any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

The referee finds the evidence presented constitutes overwhelming proof (far in excess of the required "clear and convincing" standard), that Roth knowingly and intentionally violated both of these Rules.

Roth's claim, that his conduct is not prohibited because he considered Petrie to be "related" to him<sup>15</sup> because Petrie had been the *partner* of Roth's ex-wife's deceased brother, is specious and offensive. Roth also claims that he was unaware of any Rule prohibiting a lawyer from preparing instruments giving the lawyer substantial

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<sup>14</sup> Hereinafter referred to as RPC.

<sup>15</sup> By this contention, Roth hoped to have his (mis)conduct excused pursuant to the exception found in Rule 4-1.8(c).

gifts, (even though Roth claims to lecture lawyers and judges on ethics). This testimony by Roth is not credible and is rejected.

## **COUNT II**

The Bar's second claim is that Roth violated Rule 4-1.14, RPC which requires a lawyer to maintain a normal client-lawyer relationship when a client is impaired. Again, the evidence establishing this violation was overwhelming and exceeded the required "clear and convincing" standard. The evidence showed that Roth knew his client was disabled and impaired due to major depression. In fact, Roth had personally obtained for Petrie disability leave from work and he obtained disability compensation through the employer's disability policy as a result of this major depressive disorder which Roth repeatedly disavowed having knowledge of. Knowing about this severe depression, Roth took and withheld all of his client's assets. Upon learning that Petrie had retained another lawyer to represent Petrie against him, Roth then went to his (then former) client's home armed with a gun where he was arrested for aggravated assault. These facts do not constitute a "normal" relationship with a client who is impaired as required by Rule 4-1.14.<sup>16</sup>

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<sup>16</sup> Roth's claim that he went to Petrie's house with a gun in order to return Petrie's property is also specious, disingenuous and is found by this referee to not be credible.

### **COUNT III**

Count III alleges that Roth violated Rule 4-1.15, RPC by failing to hold Petrie's property in trust, separate from his own property. Even if the testimony of the Roth was credible and believed (which it is not) that when he "helped" Petrie transfer all of the property to himself he believed that Petrie wanted him to have it, his fiduciary duty to his client would have required, *inter alia*, that the property be placed in trust when he confirmed that his client suffered from major depression and was thus disabled. The referee finds that Roth knew of Petrie's depression and disability at the time (and for years prior to) the transfers. Not only did Roth fail to hold the property in trust, he actually refused to return the property, had to be sued and still continued to withhold his former client's assets.

### **COUNT IV**

In its next claim the Bar alleges that Roth violated Rule 4-4.2 RPC because he communicated with Petrie when he knew Petrie was represented by another lawyer in the matter. Again, the evidence of this violation was overwhelming and exceeded the required Clear and convincing standard.

It is undisputed that after Roth received Shook's letter, he went to Petrie's residence armed with a concealed handgun. It is equally undisputed that Roth did not have the consent of Shook to have this or any other contact with Petrie. With respect

to this violation, Roth attempts to excuse his transgression/crime by claiming that he misunderstood Shook's letter and that he believed Shook was acting only as an intermediary and not as Petrie's attorney despite the fact that Shook refers to Petrie as his client twice in that letter. The referee finds that Roth's testimony with respect to his claimed misunderstanding to be not credible and is thus rejected.

### **COUNT V**

In the last count the Bar alleges general misconduct on the part of the Roth. This claim specifically alleges violations of RPC Rule 4-8.4(a) (violating or attempting to violate the Rules of Professional Conduct); Rule 4-8.4(b) (committing criminal acts); and Rule 4-8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). The facts found by this referee and referenced above with respect to the prior counts establish violations of these Rules by clear and convincing evidence and those facts will not be repeated herein.

### **III. RECOMMENDATION AS TO GUILT:**

I recommend that Roth be found **GUILTY** on all charges.

### **IV. DISCIPLINARY RECORD:**

On May 15, 1997, only one year before the misconduct in question in this case

the Florida Supreme Court publicly reprimanded Roth (Case No. 86,208) with respect to unethical conduct. In that case, Roth, *inter alia*, provided a fraudulent fax cover sheet during the litigation with the Bar in an apparent effort to cover up other alleged misconduct. Upholding the finding of guilt, the Court imposed a public reprimand for each of the two alleged violations<sup>17</sup>.

**V. RECOMMENDATION AS TO DISCIPLINARY MEASURES:**

I recommend that Roth be **DISBARRED**. A review of the reported opinions makes it abundantly clear that disbarment is warranted in far less egregious cases and thus is appropriate and indeed required here. The fact that Roth had been publicly reprimanded one year earlier and the seriousness of the misconduct in this case weigh heavily against any lesser sanction. It is considered that this recommendation is fair to society, fair to the attorney and severe enough to deter similar misconduct.

In making this recommendation the referee is mindful of the Florida Standards for Imposing Lawyer Sanctions and the aggravators<sup>18</sup> that can be considered. With respect to the aggravators the referee finds that Roth:

1. has been found guilty of prior disciplinary offenses;

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<sup>17</sup> The Court's opinion is attached as **Exhibit H**.

<sup>18</sup> See section 9.2 Florida Standards for Imposing Lawyer Sanctions.

2. exhibited a dishonest and selfish motive;
3. engaged in a pattern of misconduct;
4. committed multiple offenses;
5. testified falsely;<sup>19</sup>
6. refuses to acknowledge the wrongful nature of his conduct;<sup>20</sup>
7. was unethical with respect to a vulnerable victim; and
8. has substantial experience in the practice of law.

The referee is also mindful of the character witnesses who testified for Roth. With respect to this testimony, the referee finds that Roth must have a good reputation for truthfulness in the community since the testimony from the many character witnesses was unrebutted and uncontradicted. However, the character testimony was most disturbing<sup>21</sup> because none of the many lawyers and judges who testified considered there was anything wrong with what Roth had admittedly done.<sup>22</sup> Thus,

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<sup>19</sup> A review of Roth's testimony reveals how he repeatedly directly contradicted himself throughout the proceeding, resulting in false testimony, thus showing his contempt for the proceeding and the legal profession as a whole.

<sup>20</sup> Throughout the hearing, Roth attempted to *excuse* his misconduct rather than acknowledge it.

<sup>21</sup> This testimony may warrant Bar and/or Judicial Qualifications Commission review.

<sup>22</sup> By way of example, a Circuit Court Judge essentially testified that Roth "should have done" the things he did. (See the testimony of Judge Phillip Bloom attached as **Exhibit I**). The Federal Bankruptcy Court Chief Judge for the Southern District of Florida

this testimony, although unrebutted and uncontradicted, is not given much weight.

**VI. RECOMMENDATION AS TO TAXATION OF COSTS:**

By affidavit dated October 6, 2000, The Florida Bar has submitted its costs relating to this matter.<sup>23</sup> Roth has not responded or objected to this affidavit and, therefore, it is recommended that \$15,920.60 be taxed against Roth.

Dated this \_\_\_\_\_ day of October, 2000.

**Respectfully Submitted,**

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**PEDRO P. ECHARTE, JR.**  
**REFEREE**

Copies to:

Randolph M. Brombacher, Esq., Bar Counsel

Nicholas Friedman, Esq., Attorney for Roth

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testified that the attorney/client relationship was not necessarily a fiduciary relationship. (See the excerpt of the testimony of Judge Robert Mark attached as **Exhibit J**).

<sup>23</sup> The affidavit of costs is attached as **Exhibit K**.

