

IN THE SUPREME COURT OF FLORIDA

CASE NO. 85-152

THE FLORIDA BAR,

Complainant

vs.
STEPHEN F. JACKSON,

Respondent

FILED

RESPONDENT'S BRIEF IN SUPPORT OF
REVISION FOR REVIEW

FILED
CLERK OF THE COURT
TALLAHASSEE, FLORIDA
MAY 15 1985

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INTRODUCTION

The Respondent, STEPHEN F. JACKSON, is a member of the Florida Bar and was the Respondent before the Referee. He will be referred to as Mr. Jackson and/or the Respondent. The Complainant, the Florida Bar, was the Complainant before the Referee and will be referred to as the Complainant and/or the Bar.

References to the transcript of the hearing before the Referee will be designated by the symbol "T".

References to certain documents in the Appendix will be referred to as "App.".

STATEMENT OF THE CASE AND OF THE FACTS

Hearings were held before the Florida Bar Grievance Committee of the 17th Judicial Circuit in Fort Lauderdale, Florida, on Grievances filed against Mr. Jackson. The Grievance Committee found probable cause. The Grievance Committee also determined that a private reprimand would be suitable discipline (App. 4). The designated reviewer having jurisdiction over the Committee concurred (App. 4). The Board of Governors, however, refused to concur.

On June 8, 1984, the Complainant filed a complaint against Mr. Jackson. It alleged that Mr. Jackson represented Michael J. Bollo and Edward Shepherd, Jr., who were material witnesses to certain facts and circumstances involving a residence fire in Washington County, New York. They had given written, verified statements of their knowledge concerning the fire to Merchants Mutual Insurance Company, the fire carrier for the owner of the residence. The insurance company declined coverage, based upon these written statements, and claimed the defenses of arson and exaggeration of loss. The owner of the residence sued the insurance company in Washington County, New York, seeking to recover the proceeds of the insurance policy.

It further alleged that Mr. Jackson entered into a retainer agreement with Bollo and Shepherd in which he was to have 50% of any witness compensation he could obtain from the insurance company for them. Mr. Jackson made several telephone calls to the attorney for the insurance company in July and August, 1982, and demanded, as compensation for the attendance of Bollo and Shepherd and their testimony, sums vastly in excess of the expenses which

they reasonably would have received for their attendance, testimony, and loss of time in connection with the attendance and testimony. The first demand was for \$50,000.00, then \$20,000.00, and finally \$10,000.00.

The complaint further alleged that at the time Mr. Jackson made such demands from the insurance company he knew that each such sum demanded bore no reasonable relationship to the reasonable expenses that Bollo and Shepherd would incur in connection with their attendance, testimony, and loss of time. He predicated each such demand upon the importance of the witnesses' testimony and his evaluation of the value of the savings the insurance company reasonably would expect to receive on the basis of such testimony. The complaint further alleges that by his actions Mr. Jackson violated Disciplinary Rule 1-102(A)(5) of the Code of Professional Responsibility prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice and violated Rule 11.02(3) of the Integration Rule of the Florida Bar prohibiting commission by a lawyer of any act contrary to honesty, justice, or good morals.

On July 1, 1984, Rule 11.04(6)(c) of the Integration Rule was amended to provide that if the designated reviewer concurs in a grievance committee's recommendation of a private reprimand, approval by the Board of Governors is not needed.

Prior to the final hearing, Mr. Jackson and the Complainant entered into a conditional guilty plea for consent judgment. They agreed that Mr. Jackson's discipline would be a private reprimand by the Board of Governors (App.1-3). The Bar predicated its

recommendation of a private reprimand upon two considerations. First, Mr. Jackson had no prior disciplinary history (App. 4). Second, the Grievance Committee that investigated and heard Mr. Jackson's case determined that a private reprimand would be suitable discipline (App. 4) and the designated reviewer concurred in the Grievance Committee's recommendation (App. 4). Under the amendment to the Integration Rule that became effective July 1, 1984, specifically Rule 11.04(6)(c), the designated reviewer has the final word in approving grievance committees' recommendations of private reprimands (App.4-5). Thus, had Mr. Jackson's Grievance Committee met subsequent to July 1, 1984, the matter would have been closed. The Bar also referred to similar cases supporting a private reprimand (App.5).

The Referee refused to accept the conditional guilty plea.

The cause came on for hearing at the Palm Beach County Courthouse, Delray Beach Annex, on April 19, 1985.

The Bar's first witness was Paul J. Campito, who testified through his deposition. He is an attorney and has been admitted to the New York State Bar since January, 1980. (T.11). In June, 1981, he was employed as house counsel with the Merchant's Mutual Insurance Company and was there until February, 1984 (T.11).

During his employment with the Insurance Company, he became familiar with a claim filed by an insured, Albert Guildler. Guildler had a homeowner's insurance policy (T.12). In December, 1980, Guildler had a fire which destroyed his home (T.12). Sometime in 1981, Guildler filed a claim against Merchant's which was denied based upon suspicion of arson and overstatement of his proof of loss (T.12). Guildler employed counsel and sued Merchant's (T.12).

He was working with Kris Jackstadt, who was also house counsel for the Insurance Company (T.12). They represented the insurance company in the defense of that lawsuit (T.12). Discovery and investigation commenced (T.12). Richard Ronda, employed by the Insurance Company, did a substantial part of the investigation (T.13).

It was determined that the arson defense and overstatement of the proof of loss could be proven by two of Guilder's associates, Michael J. Bollo and Edward Shepherd, Jr., who at the time of the loss and for a subsequent period worked with Guilder and resided in the Washington County - Saratoga County area (T.13). Both witnesses moved to Fort Lauderdale, but Mr. Ronda continued contact with them and they indicated their willingness to return to New York and testify in the trial against Guilder as long as they were provided with transportation, costs, living expenses and any lost wages (T.13).

In July, 1982, they received a trial date certain for August 17, 1982 (T.17).

Mr. Jackson called him and introduced himself as an attorney in Florida (T.18). Mr. Jackson told him that he represented Michael Bollo and that Mr. Bolla had indicated to him that they had requested his attendance at the trial in Washington County, New York to testify in the Guilder trial (T.18). He said yes and that they have indicated to Mr. Bollo that they would reimburse him for transportation costs, living expenses and any lost wages he would incur as a result of the trial (T.18). Mr. Jackson told him that Mr. Bollo had had a change of heart (T.18). Mr. Bollo wanted to be paid a percentage of what his testimony would save the insurance company (T.18). Mr. Jackson told him that he under-

stood that the case was worth \$150,000 to Guilder if Mr. Bollo did not testify (T.18). So Mr. Bollo was willing to accept \$50,000, plus his expenses, to go to New York and testify in the case (T.18).

His recollection was that total damage was somewhere in the vicinity of \$85,000 - \$90,000 (T.19). The case was worth substantially more than that (T.19).

He told Mr. Jackson that at least in New York State they could not pay for testimony, only expert testimony (T.19). It was improper and unethical from his standpoint, as an attorney, even to recommend this kind of payment (T.19). It perhaps was illegal and in violation of the New York state criminal law (T.19). Very often, Mr. Jackson said "I know that" (T.19). But then he had a little more of a discussion and he was not really sure of what the content was (T.19). It was all related to bringing Mr. Bolla up to testify (T.20). At the end of the conversation he said that he would speak to his client and maybe he would be willing to take \$20,000 (T.20). He told Mr. Jackson that he would get back to his principal, the insurance company, but that he could not recommend it, based upon what he had told him (T.20).

On August 5, 1982, he received another call from Mr. Jackson (T.20). He said that he was also representing Edward Shepherd Jr. and that after discussions with both his clients they would be willing to take \$5,000 each, plus travelling expenses, living expenses and lost wages (T.21). He told Mr. Jackson that he had the same difficulties that he had before (T.21). No matter what the amount was, he was still paying for testimony (T.21). It was improper to do that (T.21). Mr. Jackson told him that the reason his clients

wanted the extra inducement to come up to New York state was because they were fearful of reprisals from Guilder (T.21). He told Mr. Jackson that if that was their concern the insurance company would be more than willing to hire an investigator to protect them while they were in New York state (T.21). Mr. Jackson said that that was nice, but they were fearful even of what would happen after they returned to Florida (T.21-22). He told Mr. Jackson that he thought that it was strange that they would not be willing to come up to New York state for their expenses but that they would be willing to come up for \$5,000, notwithstanding their fear of reprisals by Guilder (T.22). Mr. Jackson told him that he did not think that it was that unusual, since police officers risked their lives every day and are paid for it (T.22). He admitted that he really did not understand what Mr. Jackson was trying to say (T.22). He did not ask for an explanation (T.22). He again reiterated that the only things for which they could pay Mr. Bolla and Mr. Shepherd would be their transportation, costs, their living expenses while they were in New York, and any lost wages that they would incur as a result of their appearance in New York (T.22). That ended the conversation (T.22). Mr. Jackson said that he would talk to his clients and get back to him (T.22).

On August 9, 1982, Mr. Jackson called again (T.22-23). Mr. Jackson said that he had spoken to his clients and that he would try to fit the expenses within the parameters that he had set forth, their travel money, their living expenses and their lost wages. Mr. Jackson said that working within that framework he

would be able to obtain statements from the witness' employers which would indicate that five days spent in New York would result in a loss of \$5,000 to each in commissions (T.23-24). Mr. Jackson said that he would obtain the statements only if it would set the deal (T.24). He again told Mr. Jackson that he would present the proposal to the insurance company but that he could not recommend it (T.24).

It was getting close to the trial date (T.24). He prepared papers for an open commission to take the deposition of the witnesses in Fort Lauderdale, Florida (T.24). The depositions were taken (T.24). The deposition of Edward Shepherd was taken (T.24). Mr. Bollo left the conference room where the depositions were to be held because the attorney was late getting there (T.24).

Mr. Jackson made it very clear from the beginning that he was not looking for mere reimbursement for expenses (T.29). From the first conversation at the end of July he was looking for something beyond the ordinary transportation or living or lost wages reimbursement that are normally given to the witnesses (T.30). He made it clear inasmuch as he said that he was looking for certain amounts of money, in addition to the travel expenses and normal living expenses and lost wages (T.30). Every time he talked to Mr. Jackson he made it very clear that he was looking for something in addition to the transportation, living expenses and lost wages (T.30).

Richard Ronda testified. He is an insurance adjustor and was a property adjustor and property supervisor with the Merchants insurance group. From 1980 to 1982 he handled the receipt of

the assignments, investigations and settlement of property claims (T.37). Guilder commenced an action against the Merchants insurance group and the insurance company's staff counsel, Paul Campito and Kris Jackstadt, defended (T.38).

Mr. Bollo and Mr. Shepherd were represented by Mr. Jackson (T.39). Mr. Jackson phoned him once in his office in Albany, New York (T.39-40). Mr. Jackson said that he was representing Mr. Shepherd and Mr. Bollo and that their testimony was very important to the insurance company in its defense and he felt that in return for their testimony his client should be paid approximately one third of the value of the total claim (T.40). It was his opinion that the claim was worth about \$150,000, and therefore, each of his clients should be paid \$50,000 in return for their testimony. (T.40). He indicated to Mr. Jackson that he felt that the insurance company could not pay for testimony and at that point he felt that it was more up to the insurance company's attorneys than it was to him to be involved in this situation (T.40).

He went to the insurance company's attorneys and informed them of the conversation he had and left everything in their hands (T.41).

He had no further contact with Mr. Jackson (T.41).

He spoke to Mr. Bollo and Mr. Shepherd (T.41). He spoke to Mr. Bollo on August 10, 1982 (T.42). He had two conversations with Mr. Bollo (T.43). He had one conversation with Mr. Shepherd and he does not recall whether Mr. Shepherd made any mention of Mr. Jackson (T.43-44).

The Bar rested (T.48).

Mr. Jackson then testified. He is 35 years of age (T.48). He is an attorney, admitted to practice in New York in February, 1976, and then in Florida in June, 1979 (T.49). He practiced law in New York from February, 1976 through and including June, 1979 (T.49).

He opened his own office in June, 1980 (T.50). His predominant work has been in real estate closings and business closings, although in the last two years, when the real estate market turned sour in Florida, he started to do some criminal defense work (T.50). However, the bulk of his practice is still real estate (T.50).

He is in partnership with his wife, Sandra Jackson, who is also an attorney and also is admitted to practice both in New York and in Florida (T.51). He has known her for almost twenty years (T.51). They have been married seven years (T.51).

Mr. Bollo came to see Mr. Jackson about the injuries he sustained in an automobile accident case (T.52). Mr. Jackson's firm agreed to represent Mr. Bollo (T.53). Mr. Jackson advised Mr. Bollo that he was a real estate attorney and that his wife, who was the personal injury attorney, would be handling the case (T.53). Mr. Jackson signed the retainer agreement between the firm and Mr. Bollo (T.53).

Mrs. Jackson thought that Mr. Bollo had a valid claim (T.53-54). His firm eventually collected money for Mr. Bollo (T.54).

During the time that Mr. Jackson's firm represented Mr. Bollo, Mr. Bollo talked to him about a New York situation (T.54). Mr. Bollo came in to see Mr. Jackson about the New York situation during the summer of 1982 (T.54). Mr. Bollo stated that he and his friend,

Mr. Shepherd, previously had lived in upstate New York and that while they were living there they had given statements to an insurance investigator regarding a claim by Mr. Guildler for damages, fire damage to Mr. Guildler's property (T.54-55). Mr. Bollo said that the essence of his statement to the insurance company was that it was his belief that the fire was suspicious (T.55). He then said that Mr. Guildler was vicious, was what he called a mountain man, that he owned a gun and that he had used that gun to threaten people in the past (T.55). Mr. Bolla said that he recently had been contacted by the insurance company which asked him if he would agree to come up to New York to testify in a civil matter in which Mr. Guildler was seeking to recover for the losses to his property (T.55).

Mr. Bollo stated that Mr. Guildler was a very big man, a brutish type, that he had a violent temper, and that he had threatened people with a gun in the past (T.56). Mr. Guildler had no qualms about using the gun (T.56).

Mr. Bollo asked Mr. Jackson if he could be compelled by the New York court to appear as a witness in the case in New York (T.56). Mr. Jackson told him that, to the best of his knowledge, the New York court did not have jurisdiction over him since he was a Florida resident (T.56). It was a civil matter and the New York subpoena could not compel him to leave Florida and attend the New York trial as a witness (T.56). Mr. Bollo stated that he did not want to attend the trial in New York because he was afraid of retribution by Mr. Guildler (T.56).

Mr. Bollo then asked Mr. Jackson if he could be compensated if he decided to attend the trial in New York (T.56). Mr. Jackson said that he was not a litigation attorney and that he would have to look up the law as far as that was concerned (T.56-57). He told Mr. Bollo that his gut reaction was that only expert witnesses were entitled to compensation (T.57). When he looked up the New York statute he saw that lay witnesses can be paid, in addition to the minimum witness fee, for their transportation cost, lodging, meals, and for lost wages (T.57). That is what Mr. Jackson explained to Mr. Bollo (T.57). He explained that to Mr. Bollo the same day in the same conversation (T.57).

That did not end the conversation (T.57). Mr. Bollo then said to Mr. Jackson that he and his friend, Mr. Shepherd, for whom he was speaking, would agree to go to New York to be witnesses if they could be compensated (T.57). Mr. Jackson told him that if he were afraid for his life, no matter how much money was offered, he would not risk it (T.57). Mr. Bollo's reply was that a police officer puts his life on the line everyday, but at least he is compensated for it (T.57). So, although he may risk his life, he is compensated by payment of his salary (T.57).

Then Mr. Bollo asked Mr. Jackson, as a favor to him, since he was a client of the firm, if Mr. Jackson would contact the insurance company and determine whether they would be willing to compensate him (T.58). Mr. Bollo did not employ Mr. Jackson to do this (T.58). Mr. Bollo specifically asked if Mr. Jackson would do it as a courtesy to him, since he was a client of the firm (T.58). Mr. Jackson never asked for any fee or compensation

(T.58). In fact, the law firm absorbed the cost of the long distance phone calls (T.59). Mr. Jackson did not intend to accept any compensation (T.59).

Mr. Jackson called Mr. Steven Vitar, the insurance investigator that Mr. Bollo had spoken to (T.59). He told Mr. Vitar that he was calling as a favor to Michael Bollo, a client of his firm (T.59). He told Mr. Vitar that the reason he called was to determine whether there was a method by which Mr. Bollo could be compensated (T.59). He told Mr. Vitar that he was not a litigation attorney, that as far as he knew, from reading the New York statute, a lay witness could only obtain travel expenses and lost wages (T.59). He told Mr. Vitar that since he was not a litigation attorney there might be some provision of what which he was not aware which provided for additional compensation (T.59).

Mr. Vitar referred Mr. Jackson to Mr. Jackstadt, the insurance company's attorney (T.60). Mr. Jackson spoke to Mr. Campito in Mr. Jackstadt's office (T.60). He told Mr. Campito that he was calling as a favor to Michael Bollo, a client of his firm (T.60). Mr. Jackson stated that his firm represented Mr. Bollo in an automobile accident case (T.60). Mr. Bollo had asked Mr. Jackson if he could be compelled to travel to New York to testify (T.60). Mr. Bollo was afraid for his life if he should go to New York because Mr. Guilder was a vicious, vindictive man, who owned a gun and was not hesitant to use it and had threatened people before (T.61). Mr. Jackson told Mr. Campito that he personally felt and had said to Mr. Bollo that it was ridiculous to put his life on the line (T.61). But Mr. Bollo was willing to do it for compensation (T.61).

Mr. Campito asked Mr. Jackson what Mr. Bollo wanted in a way of compensation (T.62). Mr. Bollo was sitting right in front of Mr. Jackson during this conversation with Mr. Campito (T.62). Mr. Jackson said that he and his friend wanted \$25,000 each to testify (T.62). Mr. Campito said that that was ridiculous (T.62). Mr. Jackson said that he also had told Mr. Bollo that that was ridiculous and he told Mr. Campito that he thought that the request was ridiculous (T.62). He did not believe that the insurance company would honor such a request (T.62).

Mr. Bollo had told Mr. Jackson that it was his belief that Mr. Guildler's claim was for \$150,000 (T.62). Mr. Bollo then told Mr. Jackson that if he were going to risk his life, he felt that he and his friend, Ed Shepherd, should be entitled to \$25,000 a piece (T.62).

Mr. Jackson felt uncomfortable when he made these phone calls (T.63). Mr. Jackson was not a litigation attorney and he just asked Mr. Campito, who was a litigation attorney, if he knew of any method by which these two men could be compensated, which he, not being a litigation attorney, was unaware of (T.63). He only knew that statute and had never had to deal with any witnesses before (T.63). He felt uncomfortable because he was unsure of what he was asking (T.63). He felt that, since he was not a litigation attorney, he was only asking the question of Mr. Campito if he knew of a way that these men could be compensated of which he was unaware (T.64).

He had told Mr. Bollo right out when Mr. Bollo said \$25,000.00 for him and \$25,000.00 for his friend that he did not think that the insurance company would go along with it

(T.64). Then Mr. Bollo pleaded with him to call on his behalf (T.64). He said: "You speak better than I do. Could you please call and ask?" (T.64). He used Mr. Jackson's inexperience and said: "You said yourself, you are not a litigation attorney. Maybe there is a way that I can be compensated." (T.64). So, Mr. Jackson agreed, since Mr. Bollo was a client of the firm, to try to do something to assist him and to resolve the problem for both him and the insurance company by asking a question (T.64).

Mr. Jackson never asked Mr. Bollo for any fee for this, he never expected any fee, he never intended to bill Mr. Bollo (T.65). Mr. Jackson's firm bore the entire cost of the long distance telephone conversations (T.65).

Mr. Jackson reiterated that he spoke with Mr. Vitar once and with Mr. Campito three times (T.66). He never spoke with Mr. Ronda at all (T.66). He stated that on his honor, as an attorney, and as a religious person, and everything that Mr. Ronda said is a lie. (T.66).

Mr. Jackson is of the Jewish religion and has been all his life (T.66-67). He is a member of Temple Beth Israel (T.67). Prior to that, he was a member of Temple Sholom and prior to that, when he lived in New York, he was a member of the Flatbush Park Jewish Center (T.67).

Mr. Jackson is very active in a number of organizations in addition to his Temple (T.67). He is a member of the B'nai B'rith Lodge of Coral Springs, which is a part of the Jewish Federation, which helps disadvantaged people of all faiths throughout the country (T.67). They sponsor such programs as Meals on Wheels and also

voluntary medical and legal assistance to disadvantaged people (T.68). He also is a member of the American Red Magen David Israel, which is an organization that raises funds to supply medical emergency equipment for the state of Israel and for the United States (T.68). He is on the Board of Directors of that organization (T.68). He is a member of Temple Beth Israel and Temple Brotherhood, which is a male fundraising organization to raise funds for construction, renovation, prayer books and other charitable activities of the Temple (T.68). He also is involved in the Fort Lauderdale Chamber of Commerce (T.68). He also is involved in the fundraiser for the Papanicolaou Cancer Research Institute (T.68). He also is one of the few men who are life members of Hadassah, which is an organization pledged to providing medical treatment and research for people here and in Israel (T.68). It is basically a women's organization, but they have a limited number of male numbers and he is one (T.68). He just received an honor from the Hadassah organization for his fundraising activities on behalf of Hadassah for contributions to the Hadassah Hospital in Israel (T.69).

On cross examination, Mr. Jackson testified that he asked his wife, the litigation specialist in the firm, if she knew of any method by which the witnesses could be compensated (T.69). She said that she did not (T.69). However, her entire legal experience prior to that time was as an attorney for the New York corporation counsel, the legal department of the City of New York (T.69). Her experience did not include anything

that dealt with subpoenaing witnesses or payment of witnesses (T.70). Her knowledge concerning that was limited (T.70). She said that as far as she knew, the only compensation that a witness could receive were the lost wages, traveling expenses, meals and lodging (T.70).

Mr. Bollo asked him if he would call up and make a request (T.70). He was not acting as an attorney (T.70). He was not representing him (T.70). He did it as an accommodation, as a favor (T.70). He reiterated that he told Mr. Bollo that he thought that it was a ridiculous request for that type of money (T.70). But he also understood how Mr. Bollo felt (T.70). He also told him that he understood (T.70). He told Mr. Bollo that he would not want to put his life on the line, if he really felt that he would be subject to physical reprisals from the person against whom, he would be testifying (T.70).

He did not have a long association with Mr. Bollo (T.71). Perhaps it was naive of him, but he always likes to look on the good side of people and to believe that people are honest until he has evidence to show otherwise (T.71). So, perhaps it was naive, but he went along with the assumption that people are basically good and honest and sincere individuals (T.71). He had no reason for suspecting or intuiting that Mr. Bollo was not (T.71).

Mr. Jackson reiterated that when he spoke to Mr. Campito he told him that he was not a litigation attorney (T.71). He asked him, since that was his field, if there were a way that Mr. Bollo could be compensated of which he was not aware (T.71). He had misgivings with respect to the amount because he thought that

Mr. Bollo was asking for an amount that the insurance company would not be willing to compensate him and he had misgivings because there might have been a method by which Mr. Bollo could be compensated of which he was unaware (T.72). So he was asking a question (T.72). It was like a criminal attorney asking a probate attorney a question about an estate or a tax attorney asking a criminal attorney a question about criminal law (T.72). That was what he did in this situation (T.72). He asked Mr. Campito, since that was his field, if there were a way that Mr. Bollo could be compensated (T.72).

Mr. Campito did not use the word unethical (T.72). Mr. Campito used the word improper, he never used the word unethical (73).

During the first conversation with Mr. Campito, Mr. Jackson did not make a request for \$50,000 (T.73). He stated that they were not his clients (T.73). He said that he was doing it as a favor to Mr. Bollo and Mr. Shepherd (T.73). He asked Mr. Campito if there were a way that they could be compensated and Mr. Bollo, right accross the desk from him, said that he and Mr. Shepherd wanted \$25,000 each to go to New York (T.74). He did not say \$50,000 (T.74). His language was \$25,000 apiece (T.74). \$50,000 was Mr. Campito's aggregation of the two amounts (T.74).

Mr. Jackson further testified that he did not state that that amount was in addition to travel and other expenses (T.74). All he stated was the figure (T.74). He never stated, in any conversation with Mr. Campito, that the sums that he asked for were in addition to the travel expenses and in addition to the lost

wages (T.74). It was just the total (T.74). He just gave a total sum and that was it (T.74). He never said that it was in addition (T.74).

Mr. Jackson did not regard the aggregate sum of \$50,000 or \$25,000 per individual as being far in excess of travel and the other expenses that witnesses ordinarily receive because he did not sit down and consider it (T.74-76). If he had sat down and thought about it, he would have considered it excessive (T.75).

He further testified that when he said on direct that he regarded the aggregate of \$50,000 as ridiculous he thought that the insurance company would not grant a request for that type of money (T.76). It was just because he thought the amount of money that he was asking was a lot (T.76). Mr. Bollo stated to him that the reason he was asking for that amount was because he was putting his life on the line (T.76).

During the course of Mr. Jackson's second conversation with Mr. Campito, he told Mr. Campito that Mr. Bollo and Mr. Shepherd would consent to go to New York as witnesses if the insurance company would pay them \$5,000 (T.77).

During the period between his first conversation with Mr. Campito and his second conversation with Mr. Campito he had no conversations at all with any representative of Merchants Mutual Insurance Company (T.77).

He regarded the \$5,000 apiece as a proper sum to request (T.77). During the second conversation Mr. Campito did not indicate to him that he thought that this request was proper or improper (T.78). He did not agree to have his company pay that sum (T.78). What he said was that he would relay the request to the

insurance company but he did not think that he would recommend it (T.78).

He later had a third conversation with Mr. Campito (T.78). He had no conversations or communications at all with any representative of Merchants Mutual Insurance Company between his second and third conversations with Mr. Campito (T.78). During the course of his third conversation with Mr. Campito the same figures were discussed as were discussed in the second conversation (T.79). Mr. Campito brought the figure up (T.79). Mr. Campito stated to him that in order for the insurance company to agree to pay any sum they would have to obtain affidavits from the witnesses' employers as to what a reasonable loss of wages would be, since they were both on commission, and it was conceivable that they could lose thousands of dollars in a single week (T.79). They would have to obtain affidavits from their employers stating such before the insurance company would agree to pay any sum of money to them (T.79).

Mr. Jackson left the matter in Mr. Campito's hands, as he was the litigation specialist in New York (T.80). It would be up to Mr. Campito to resolve the matter and to get back to him and say that he had consulted with his insurance company, as he said he was going to do, and state that the insurance company felt that it was improper (T.80-81). He never did that (T.81).

On re-direct examination, Mr. Jackson testified that he told Mr. Campito that Mr. Bollo had informed him that Mr. Guilder was a vicious man, had a gun, and was not hesitant to use it (T.81). That is why they believed that if they testified against Mr. Guilder their lives would be in jeopardy (T.81).

Michael Bollo testified. He has been a resident of Broward County for three years (T.82). Before that, he lived in New York (T.82-83). He is a car salesman (T.83).

He knows Mr. Jackson (T.83). He employed Mr. Jackson to represent him in connection with a car accident that occurred in approximately the summer of 1982 (T.82). He employed Mr. Jackson approximately in June or July, 1982 (T.83).

He spoke to Mr. Jackson about testifying in New York, he was concerned about testifying in a case in New York (T.83-84). He asked Mr. Jackson if he could be required to testify in a case that occurred in New York, since he now lived in Florida (T.84). Mr. Jackson told him that he did not think that he would have to testify in that case since he was out of the state of New York (T.84). A fellow worker, Ed Shepherd, was also concerned (T.84).

He asked Mr. Jackson if the insurance company would be willing to pay him compensation for testifying (T.85). He asked Mr. Jackson to call the insurance company to see if they would consider it (T.85). He asked Mr. Jackson to do that only as a favor to him (T.85). He was not going to pay Mr. Jackson anything (T.85). Mr. Jackson was not to receive any compensation if Mr. Bollo obtained any money (T.85). He is positive of that (T.85). Mr. Jackson did not get any money for him; he never thought that he could (T.85-86).

He felt that he should be paid money because he would risk his life by going to New York and testifying against Mr. Guildler (T.86). He was afraid of incurring bodily harm because Mr. Guildler

is a big man (T.86). He is constantly physically moving people (T.86). He owned a Colt.45, which he carried in his pick-up truck (T.86). He would wave it around after drinking in the house (T.86). He would come over to the house and he used to love to show it off (T.86). He is a crazy man (T.86). Mr. Bollo was afraid of him (T.86). Toward the end, when Mr. Shepherd called the insurance company the last time and said that they would be willing to go to New York and testify for \$1,000 apiece, Mr. Shepherd told the insurance company that they wanted to be escorted from the plane in Saratoga, New York to the Courthouse and from the Courthouse back to the plane (T.86). They did not want to spend the night in Saratoga (T.86).

On cross-examination, he testified that on the first occasion when he discussed this matter with Mr. Jackson he mentioned \$25,000 apiece (T.92). He would be willing to testify and risk everything, his life, for \$25,000 (T.92). Police do it everyday (T.92). Mr. Jackson told him that it was ridiculous (T.92). Mr. Jackson did not believe that the insurance company would pay this money unless he were an expert witness (T.93).

Marsha Green testified. She is a legal secretary (T.93). She worked as a legal secretary for Mr. Jackson, starting in April, 1982, and leaving in February, 1983(T.94). She was his secretary when he represented Mr. Bollo in his personal injury case (T.94).

Mr. Bollo made his appointments through her to see Mr. Jackson (T.94). Mr. Bollo called and made an appointment to discuss testifying as a witness in an insurance case (T.94). Mr. Bollo

called the office and asked for an appointment (T.94). She asked if it was in reference to his personal injury case and he said no, it was not(T.94). It was about another matter (T.94).

Mr. Bollo kept the appointment (T.95).

She heard the discussion between Mr. Bollo and Mr. Jackson (T.95). She heard Mr. Jackson make telephone calls regarding Mr. Bollo's testifying in an insurance case (T.95). Mr. Jackson spoke to the attorney for the insurance company (T.95). The Bar objected to her testimony regarding Mr. Jackson's statements to the attorney for the insurance company (T.95-96). The testimony was proffered (T.96). She heard Mr. Jackson tell the attorney for the insurance company that he was calling for Mr. Bollo (T.96). Mr. Jackson told him that he did not handle this type of case, he was a real estate attorney, and he wanted to know whether, if Mr. Bollo went to New York to testify, there were any kind of monetary compensation he could obtain because Mr. Bollo had mentioned in the office that he did not want to testify in the case at all because he was afraid of the man against him whom he would be testifying (T.96). Mr. Jackson had said to Mr. Bollo that if he were so afraid, how did he get involved in the beginning (T.97). Mr. Bollo told him that the man from the insurance company had asked for a statement and that they had contacted him and that they wanted him to go up and testify (T.97). Mr. Bollo asked Mr. Jackson about being a witness and he wanted to know if he had to go (T.97).

Mr. Jackson made two calls like that that day (T.97).

Mr. Bollo did not employ or hire Mr. Jackson in connection with that matter (T.98).

Mitchell Pasin testified. He has been a resident of Florida for 9 years (T.99). He is an attorney and has been admitted to the Florida Bar for 9 years (T.99). He has known Mr. Jackson since high school (T.99-100). He has known him for about 20 years (T.100). They have had a close relationship and he has good respect for Mr. Jackson (T.100). Mr. Jackson worked for him when he moved to Florida in 1979 (T.100). Mr. Jackson is a good attorney (T.100). He is very forthright with his clients (T.100). He respects the law (T.100). He respects the attorneys he works with (T.100). He has referred cases to Mr. Jackson and he has always done a fine job (T.100). He knows that he can trust Mr. Jackson when he refers clients to him (T.100). His responsibility is perfect (T.100-101). He has been with Mr. Jackson when he was working with clients whom he referred to him and he knows the law and, even in criminal matters he tells the clients exactly what their rights are, not what they want to hear (T.101). He respects the law (T.101). He has always found Mr. Jackson to be knowledgeable and very truthful, not only with him, but also with the other members of the Bar (T.101). Mr. Jackson is responsible (T.101). He is completely truthful (T.101).

Mr. Jackson worked for him and was associated with him for almost two years (T.101). Then he went out to practice on his own (T.101). Several years later he opened up larger offices and

he and Mr. Jackson now share offices (T.101). He knows Mr. Jackson very well (T.101). He sees Mr. Jackson all the time (T.101). He is a person of good character and a fine attorney (T.101).

Leonard Grades testified. He is an attorney and has been a member of the Florida Bar for 6 years (T.102). He graduated from Law School in 1973 in Pennsylvania and is a member of the Pennsylvania Bar (T.102).

He has known Mr. Jackson for approximately 6 years (T.102-103). He has known Mr. Jackson both professionally and socially (T.103). He has been co-counsel of Mr. Jackson on several cases and Mr. Jackson has referred cases to him (T.103). Mr. Jackson has a dedication to ethical standards (T.103). He conducts himself well and is a thinking person (T.103). He is articulate and is very responsive to the needs of his clients and of his friends (T.103). He has never found any reason whatsoever to doubt Mr. Jackson's truth or veracity (T.103).

Sandra Salter Jackson testified. She is Mr. Jackson's wife and law partner (T.104). They have been married seven years (T.104). She graduated from New York Law School in 1975 and is a member of the New York and Florida Bars (T.104). She practiced in New York for five years as an assistant corporation counsel, that is as an attorney representing the City of New York in civil litigation (T.104-105). She was admitted to the Florida Bar in 1981 (T.105).

She and Mr. Jackson maintain legal offices together in Fort Lauderdale (T.105). The nature of her practice is civil litigation (T.105). She represented Mr. Bollo in a personal injury matter

(T.105-106). She knows about Mr. Bollo asking Mr. Jackson to make some calls to New York for him (T.106). Mr. Bollo came in to the office and he had some question and saw Mr. Jackson about it, It concerned whether or not he had to appear in New York to testify in a civil matter (T.106). Mr. Bollo was living in Florida at the time (T.106). Mr. Jackson did not discuss the propriety of making the calls to New York before he made them (T.107).

The calls were in the nature of an inquiry (T.107). Anybody can ask a question, even though it may be a stupid question (T.107). Mr. Jackson received no compensation whatsoever for the calls (T.107). The firm received a fee on the personal injury case and that was the only fee they ever received for Bollo (T.107).

She has known Mr. Jackson since high school, for 20 years (T.107). He is a decent, concerned man (T.107). He is a very devoted son (T.108). Her in-laws live down here and her mother-in-law is very ill and Mr. Jackson is very devoted to both of them, as he is to her brother-in-law and to her (T.107-108). He is devoted to his clients, perhaps too much so (T.108).

As a husband, Mr. Jackson is a devoted man and a good family man (T.108). He is honest to her (T.108). As a law partner, he is very concerned (T.109). He is very honest (T.109). He is very devoted (T.109). Clients come back again and again when they have a problem (T.109). The clients send new clients (T.109). Clients write him thank you notes thanking him for his kindness and patience (T.109). If anything, she is the tough one (T.109).

She says that Mr. Jackson spends too much time with clients who are not paying him (T.109). He still does it (T.109). If anything, he was foolish to make the calls involved here and upon reflection it may not have been the best thing to do (T.109). He did not have any ulterior purpose however (T.109). Mr. Bollo contacted him and asked him to make an inquiry (T.109). He made the inquiry before thinking it out or thinking how it might sound to someone who does not know him (T.109-110). And the people in New York did not know him (T.109-110). If Mr. Jackson had thought a little longer he might have realized that something might be improperly inferred about he was saying (T.110). But this was certainly nothing other than assisting someone who asked him a question (T.110).

Mr. Jackson rested (T.110).

The Referee entered his report recommending that Mr. Jackson be found guilty and further recommending that Mr. Jackson be suspended from the practice of law for a period of three months with automatic reinstatement (Report of Referee).

The Board of Governors of the Florida Bar concurred in all respects with the Referee's Report and decided not to seek review.

Mr. Jackson's Petition for Review followed.

POINTS ON REVIEW

I

THE COMPLAINT MUST BE DISMISSED BECAUSE THE COMPLAINANT DID NOT PROVE THE CHARGES BY CLEAR AND CONVINCING EVIDENCE, PARTICULARLY SINCE THERE REALLY WAS ONLY ONE WITNESS WHO TESTIFIED AGAINST MR. JACKSON, HIS TESTIMONY WAS UNCORROBORATED, AND MR. JACKSON DENIED THE CHARGES UNDER OATH.

II

THE MOST SEVERE DISCIPLINE WHICH MAY BE IMPOSED UPON MR. JACKSON IS A PRIVATE REPRIMAND; HE IS ENTITLED TO THE BENEFIT OF THE AMENDMENT TO RULE 11.04(6)(c) OF THE INTEGRATION RULE.

III

THE REFERRE'S RECOMMENDED DISCIPLINE, SUSPENSION FROM THE PRACTICE OF LAW FOR NINETY DAYS, IS EXCESSIVE; THE MAXIMUM DISCIPLINE SHOULD BE A PRIVATE REPRIMAND.

ARGUMENT

I

THE COMPLAINT MUST BE DISMISSED BECAUSE THE COMPLAINANT DID NOT PROVE THE CHARGES BY CLEAR AND CONVINCING EVIDENCE, PARTICULARLY SINCE THERE REALLY WAS ONLY ONE WITNESS WHO TESTIFIED AGAINST MR. JACKSON, HIS TESTIMONY WAS UNCORROBORATED, AND MR. JACKSON DENIED THE CHARGES UNDER OATH.

A charge of unprofessional conduct against an attorney must be proved by clear and convincing evidence. The Florida Bar v. Rayman, 238 So.2d 594 (Fla. 1970); State v. Junkin, 89 So.2d 481 (Fla. 1956); The Florida Bar v. Quick, 279 So.2d 4 (Fla. 1973); The Florida Bar v. Abney, 279 So.2d 834 (Fla. 1973); The Florida Bar v. Johnson, 313 So.2d 33 (Fla. 1975).

In Rayman, this Court enunciated the precise standard in a case such as this:

"The law is well settled in this jurisdiction that the evidence to sustain a charge of unprofessional conduct against a member of the Bar, where in his testimony under oath he has fully and completely denied the asserted wrongful act, must be clear and convincing and that degree of evidence does not flow from the testimony of one witness unless such witness is corroborated under some extent either by facts or circumstances." (238 So.2d at 597)
(Emphasis Added)

Junkin, relied upon and reaffirmed in Rayman, held that evasive and inconclusive testimony given by the complaining witness is insufficient to sustain a charge of unprofessional conduct against a member of the Florida Bar.

Rayman compels dismissal of the complaint. There, the complaining witness testified that he made a cash payment to one of the attorneys in the amount of \$2,608.00 on January 2, 1965, with the

express understanding that the money was to be given to a probate judge to influence his decision. The witness also testified that on January 12, 1965, he gave a check made payable to himself from a stock brokerage firm to the other attorney in the amount of \$2,392.22. The witness testified that he saw the second attorney cash the check at the drawee bank located in the same building as the brokerage firm and that the second attorney then left with the money.

There was testimony from an attorney whom the witness sought to retain to bring a civil suit to recover \$5,000.00 from the second attorney. He testified that the witness told him that he had given the entire \$5,000.00 directly to the second attorney.

An additional discrepancy appeared concerning the alleged payment of the proceeds from the brokerage check to the second attorney. It was endorsed only by the complaining witness, however, he testified that the second attorney cashed it at the bank. The second attorney's name did not appear on the check.

The evidence concerning the purpose for which the money allegedly was given to the attorney was conflicting. The complaining witness's own testimony was self-contradictory in that at times he stated that the money was to be given to a judge while at other times he denied that the purpose was to bribe a judge.

The attorneys testified and denied any and all wrongdoing.

This Court held that:

"While we cannot say that there was no evidence to support the referee's findings, we are constrained to the view that much of the supportive testimony is itself evasive and inconclusive so that when it is considered together with the

above recited inconsistencies, the evidence does not establish the charges with that degree of certainty as should be present in order to justify a finding of guilt on charges as serious as those made against these respondents." (238 So.2d at 598)

This Court concluded:

"...As judges and lawyers, it is one of our highest duties to eliminate from our ranks those guilty of so serious an offense. Concomitant therewith, however, we have a continuing duty to require charges such as these to be supported by clear and convincing evidence where the charges have been denied by reputable members of the Bar." (238 So.2d at 598)

In Junkin, this Court dismissed a complaint where the only evidence was the testimony of one witness whose testimony was evasive and inconclusive. The witness also had informed the Grievance Committee that he told the attorney that he would make it hot for him if the case were not satisfactorily handled. This Court held the evidence insufficient to support discipline against the attorney.

In Quick, a complaint was made against an attorney alleging that he had charged a fraudulent and extortionate fee. The primary issue was the existence of an oral novation of the written fee agreement materially altering the total fees charged to the client. The client testified that the oral novation existed. The attorney testified that it did not. There was other conflicting evidence.

This Court held:

"...We do not view these contradictory facts, supported only by the two statements tendered to the client and the testimony of interested parties to the matter as establishing by 'clear and convincing evidence' a novation of the original fee agreement and subsequent disregard thereof ..." (279 So.2d at 8)

Here, the Bar called Paul J. Campito, a New York attorney (T.11). In June, 1981, he was employed as house counsel with the Merchant's Mutual Insurance Company and was there until February, 1984(T.11). While with the Insurance Company, he became familiar with a claim filed by an insured, Albert Guildler. Mr. Guildler had a homeowner's insurance policy (T.12). In December, 1980, a fire destroyed his home (T.12). In 1981 he filed a claim against the Insurance Company, which was denied based upon suspicion of arson and overstatement of proof of loss (T.12). Mr. Guildler sued the Insurance Company (T.12). Mr. Campito was involved in the defense of the lawsuit (T.12). Richard Ronda, employed by the Insurance Company, did a substantial part of the investigation (T.13).

The defenses of arson and overstatement of the proof of loss could be established by two of Mr. Guildler's associates, Michael J. Bollo and Edward Shepherd, Jr., who at the time of the loss and for a period thereafter worked with Mr. Guildler and resided in the Washington County-Saratoga County area (T.13). Both witnesses later moved to Fort Lauderdale, Florida, but Mr. Ronda continued contact with them and they indicated their willingness to return to New York and testify in the trial against Mr. Guildler as long as they were provided with transportation, costs, living expenses and any lost wages (T.13).

Mr. Campito testified that Mr. Jackson called him and introduced himself as a Florida attorney (T.18). Mr. Jackson told him that he represented Mr. Bollo and that Mr. Bollo had told him that the Insurance Company had requested his attendance at the trial in New York to testify in the Guildler trial (T.18). Mr. Campito con-

firmed that and said that they had indicated to Mr. Bollo that they would reimburse him for transportation, costs, living expenses, and any lost wages he would incur as a result of travelling to New York to testify (T.18). Mr. Jackson told him that Mr. Bollo had had a change of heart (T.18). Mr. Bollo wanted to be paid a percentage of what his testimony would save the Insurance Company (T.18). Mr. Jackson told him that he understood that the case was worth \$150,000.00 to Mr. Guildler if Mr. Bollo did not testify (T.18). Mr. Bollo was willing to accept \$50,000, plus his expenses (T.18).

He told Mr. Jackson that at least in New York State they could only pay for expert testimony (T.19). It was improper and unethical even to recommend this kind of payment (T.19). It perhaps was illegal and in violation of the New York State criminal law (T.19). Very often, Mr. Jackson said: "I know that" (T.19). There was a little more discussion whose content he did not recall (T.19). It concerned bringing Mr. Bollo up to testify (T.20). At the end of the conversation, Mr. Jackson said that he would speak to his client and maybe he would be willing to take \$20,000 (T.20). He told Mr. Jackson that he would get back to his client but that he could not recommend it, based upon what he had told him (T.20).

On August 5, 1982, he received another phone call from Mr. Jackson (T.20). Mr. Jackson said that he also represented Edward Shepherd, Jr. (T.21). They would be willing to take \$5,000 each, plus traveling expenses, living expenses, and lost wages (T.21). He told Mr. Jackson that he had the same difficulties that he had had before (T.21). He was still paying for the testimony no matter what the amount (T.21). It was improper to do that (T.21). Mr.

Jackson told him that the reason his clients wanted the extra inducement was that they were fearful of the reprisals from Mr. Guilder (T.21). He told Mr. Jackson that the insurance company would be more than willing to hire an investigator to protect him while they were in New York State (T.21). Mr. Jackson said that that was nice, but they were fearful even of what would happen after they returned to Florida (T.21-22).

Mr. Campito told Mr. Jackson that he thought that it was strange that they would not be willing to come up to New York for their expenses but that they would be willing to come up for \$5,000, notwithstanding their fear of reprisals by Mr. Guilder (T.22). Mr. Jackson told him that he did not think that it was that unusual, since police officers risk their lives every day and are paid for it (T.22). He admitted that he really did not understand what Mr. Jackson was trying to say (T.22). Moreover, he did not ask for an explanation (T.22). He again reiterated that the only things for which they could pay Mr. Bollo and Mr. Shepherd were their transportation, costs, their living expenses while they were in New York, and any lost wages that they would incur as a result of their appearance in New York (T.22). That ended the conversation (T.22). Mr. Jackson said that he would talk to his clients and get back to him (T.22).

On August 9, 1982, Mr. Jackson called again (T.22-23). He had spoken to his clients and he would try to fit the expenses within the parameters that he had set forth, their travel money, their living expenses, and their lost wages (T.23). Mr. Jackson said that he would be able to obtain statements from the witnesses' employers which would indicate that five days spent in New York would result in a loss of \$5,000 in commissions to each (T.23-24).

Mr. Jackson said that he would obtain the statements only if it would set the deal (T.24). He again told Mr. Jackson that he would present the proposal to the Insurance Company but that he could not recommend it (T.24).

Mr. Jackson made it very clear from the beginning that he was not looking for a mere reimbursement for expenses (T.29). From the first conversation at the end of July he was looking for something beyond the ordinary transportation or living costs or lost wages reimbursement that are normally given to the witnesses (T.30). He made it clear inasmuch as he said that he was looking for certain amounts of money, in addition to the travel expenses and normal living expenses and lost wages (T.30). Everytime he talked to Mr. Jackson he made it very clear that he was looking for something in addition to the transportation expenses, living expenses, and lost wages (T.30).

Richard Ronda testified about a conversation that he allegedly had with Mr. Jackson (T.35-45). Mr. Jackson emphatically denied that he ever spoke to Mr. Ronda (T.66). Everything Mr. Ronda said was a lie (T.66). The Referee apparently did not credit Mr. Ronda's testimony since he did not even mention it in his Report. Thus, the Bar had only Mr. Campito's testimony.

Mr. Jackson testified that he is 35 years old and has been admitted to practice in Florida since June, 1979 and in New York since February, 1976 (T.48-49). His work has consisted primarily of real estate and business closings, although in the last two years he started to do some criminal defense work (T.50). The bulk of his practice is still real estate (T.50). He is in partnership with his wife (T.51).

Mr. Bollo came to see Mr. Jackson about the injuries he received in an automobile accident case (T.52). Mr. Jackson's firm agreed to represent Mr. Bollo.(T.53). Mr. Jackson informed Mr. Bollo that he essentially was a real estate attorney and that his wife, who was the personal injury attorney, would be handling the case (T.53).

His firm eventually collected money from Mr. Bollo from the personal injury claim (T.54).

During the time that Mr. Jackson's firm represented Mr. Bollo, Mr. Bollo spoke to him about a situation in New York (T.54). He came in to see Mr. Jackson about it during the summer of 1982 (T.54). Mr. Bollo stated that he and his friend, Mr. Shepherd, had lived in upstate New York and they had given statements to an insurance investigator regarding a claim by Mr. Guildler for fire damage to Mr. Guildler's property (T.54-55). The essence of the statement to the insurance company was that it was his belief that the fire was suspicious (T.55). He then said that Mr. Guildler was vicious, was what he called a mountain man, that he owned a gun, and that he had used that gun to threaten people in the past (T.55). Mr. Bollo said that he recently had been contacted by the insurance company which asked him if he would agree to come to New York and testify in the defense of a law suit which Mr. Guildler had brought to recover for the losses to his property (T.55).

Mr. Bollo reiterated that Mr. Guildler was a very big man, a brutish type, he had a violent temper, and he had threatened people with a gun in the past (T.56). Mr. Guildler had no qualms about using the gun (T.56).

Mr. Bollo asked Mr. Jackson if he could be compelled to appear as a witness in the New York case (T.56). Mr. Jackson told him that, to the best of his knowledge, the New York court did not have jurisdiction over him, since he was a Florida resident (T.56). It was a civil matter and the New York subpoena could not compel his attendance as a witness in a New York trial (T.56). Mr. Bollo stated that he did not want to attend the New York trial because he was afraid of retribution by Mr. Guilder (T.56).

Mr. Bollo then asked Mr. Jackson if he could be compensated if he attended the trial in New York (T.56). Mr. Jackson stated that he was not a litigation attorney and that he would have to look up the law on that (T.56-57). He told Mr. Bollo that his "gut" reaction was that only expert witnesses were entitled to compensation (T.57). When he looked up the New York statute he saw that lay witnesses could be paid for their transportation costs, lodging, meals, and lost wages, in addition to the minimum witness fee (T.57). He explained that to Mr. Bollo the same day in the same conversation (T.57).

Mr. Bollo then said that he and his friend, Mr. Shepherd, for whom he spoke, would agree to go to New York and testify if they could be compensated (T.57). Mr. Jackson told him that if he (Mr. Jackson) were afraid for his life, he would not risk it, no matter how much money was offered (T.57). Mr. Bollo's reply was that a police officer puts his life on the line every day, but at least he is compensated for it (T.57).

Mr. Bollo then asked Mr. Jackson, as a favor to him, since he was a client of the firm, if Mr. Jackson would contact the insurance

company and determine whether they would be willing to compensate him (T.58). Mr. Bollo did not employ Mr. Jackson to do this (T.58). Mr. Bollo specifically asked if Mr. Jackson would do it as a courtesy to him, since he was a client of the firm (T.58). Mr. Jackson never asked for any fee or compensation (T.58). In fact, the law firm absorbed the cost of the long distance phone calls (T.59). Mr. Jackson did not intend to accept any compensation (T.59).

Mr. Jackson called Mr. Stephen Vitar, the insurance investigator to whom Mr. Bollo had spoken (T.59). He told Mr. Vitar that he was calling as a favor to Mr. Bollo, a client of his firm (T.59). He was calling to determine whether there was a method by which Mr. Bollo could be compensated (T.59). He stated that he was not a litigation attorney and that, as far as he knew, from reading the New York statute, a lay witness can only obtain travel expenses and lost wages (T.59). There might be some provision of which he was unaware which provided for additional compensation (T.59).

Mr. Vitar referred Mr. Jackson to the insurance company's attorney (T.60). Mr. Jackson spoke to Mr. Campito in the insurance company's attorneys office (T.60). He said that he was calling as a favor to Mr. Bollo, a client of his firm (T.60). He stated that his firm represented Mr. Bollo in an automobile accident case (T.60). Mr. Bollo had asked Mr. Jackson if he could be compelled to travel to New York to testify (T.60). Mr. Bollo was afraid for his life because Mr. Guilder was a vicious, vindictive man, who owned a gun, was not hesitant to use it, and had threatened people before (T.61). Mr. Jackson stated that he personally felt, and had told Mr. Bollo, that it was ridiculous to put his life on the line (T.61). But Mr.

Bollo was willing to do it for compensation (T.61).

Mr. Campito asked Mr. Jackson what Mr. Bollo wanted by way of compensation (T.62). Mr. Bollo was sitting right in front of Mr. Jackson during this phone conversation (T.62). Mr. Jackson said that Mr. Bollo and his friend wanted \$25,000 each to testify (T.62). Mr. Campito said that that was ridiculous (T.62). Mr. Jackson said that he also had told Mr. Bollo that that was ridiculous and he told Mr. Campito that he thought that the request was ridiculous; he did not believe that the insurance company would honor such a request (T.62).

Mr. Jackson felt uncomfortable when he made these phone calls (T.63). He was not a litigation attorney and he simply asked Mr. Campito, who was a litigation attorney, if he knew of any method by which these two men could be compensated of which he was unaware since he only knew the statute and had never had to deal with any witnesses before (T.63). He felt uncomfortable because he was unsure of what he was asking for (T.63). He was only asking Mr. Campito if he knew of a way, of which he was unaware, that these men could be compensated (T.64). He had told Mr. Bollo right out when Mr. Bollo had mentioned \$25,000 each for him and his friend that he did not think that the insurance company would go along with it (T.64). Then Mr. Bollo had pleaded with him to call in his behalf (T.64). He said: "You speak better than I do. Could you please call and ask?" (T.64). He said: "You said yourself, you are not a litigation attorney. Maybe there is a way that I can be compensated." (T.64). So, Mr. Jackson agreed, since Mr. Bollo was a client of the firm, to try to do something to assist him and to resolve the problem for both him and the

insurance company by asking a question (T.64).

Mr. Jackson never asked Mr. Bollo for any fee for this, he never expected any fee, he never intended to bill Mr. Bollo (T.65). Mr. Jackson's firm bore the cost of the long distance telephone calls (T.65).

On cross examination Mr. Jackson reiterated that he told Mr. Bollo that he thought that a request for that type of money was ridiculous (T.70). But he also understood how Mr. Bollo felt (T.70). He would not want to put his life on the line if he believed that he would be subject to physical reprisals from the person against whom he would be testifying (T.70). He reiterated that he was not acting as Mr. Bollo's attorney in this matter (T.70). He was not representing Mr. Bollo (T.70). He made the call as an accommodation, as a favor (T.70).

Mr. Jackson reiterated that when he spoke to Mr. Campito he told him that he was not a litigation attorney (T.71). He asked Mr. Campito, since litigation was his field, if there were a way that Mr. Bollo could be compensated of which he was not aware (T.71). He had misgivings with respect to the amount because he thought that the insurance company would not be willing to compensate him in that large an amount (T.72). He had misgivings also because he simply did not know if there were a method by which Mr. Bollo could be compensated (T.72). So, he was just asking a question (T.72). It was like a criminal attorney asking a probate attorney a question about an estate or a tax attorney asking a criminal attorney a question about criminal law (T.72). That was what he did in this situation (T.72). He asked Mr. Campito, since this was his field,

if there were a way that Mr. Bollo could be compensated (T.72).

The amount mentioned was not in addition to travel and other expenses (T.74). All he stated was the figure (T.74). He never stated, in any conversation with Mr. Campito, that the sums that he asked for were in addition to the travel expenses and in addition to the lost wages (T.74). It was just the total (T.74). He just gave a total sum and that was it (T.74). He never said that it was in addition to anything (T.74).

During the course of Mr. Jackson's second conversation with Mr. Campito, he told Mr. Campito that Mr. Bollo and Mr. Shepherd would consent to go to New York as witnesses if the insurance company would pay them \$5,000 apiece (T.77). Mr. Campito did not indicate that he thought that this request was improper or unethical (T.78). He said that he would relay the request to the insurance company but he did not think that he would recommend it (T.78).

He had a third conversation with Mr. Campito (T.78). The same figures were discussed as those discussed in the second conversation (T.79). Mr. Campito brought the figure up (T.79). Mr. Campito stated to him that in order for the insurance company to agree to pay any sum they would have to obtain affidavits from the witnesses' employers as to what a reasonable loss of wages would be, since they were both on commission, and it was conceivable that they could lose thousands of dollars in a single week (T.79). They would have to obtain affidavits from their employers stating such before the insurance company would agree to pay any sum of money to them (T.79).

Mr. Jackson left the matter in Mr. Campito's hands, as he was the litigation specialist in New York (T.80). It would be up to Mr.

Campito to resolve the matter and get back to him and inform him that the insurance company felt that it was improper (T.80-81). He never did that (T.81).

On redirect examination, Mr. Jackson testified that he told Mr. Campito that Mr. Bollo had informed him that Mr. Guilder was a vicious man, had a gun, and was not hesitant to use it (T.81). That is why they believed that if they testified against Mr. Guilder their lives would be in jeopardy (T.81).

Mr. Bollo testified that he has been a resident of Broward County, Florida, for three years (T.82). Before that, he lived in New York (T.82-83). He is a car salesman (T.83). He knows Mr. Jackson (T.83). He employed Mr. Jackson to represent him in connection with a car accident that occurred in the summer of 1982 (T.82). He employed Mr. Jackson approximately in June or July, 1982.(T.83).

He spoke to Mr. Jackson about testifying in New York (T.83). He was concerned about testifying in a case in New York (T.84). He asked Mr. Jackson if he was required to testify in a case that occurred in New York, since he now lived in Florida (T.84). Mr. Jackson told him that he did not think that he would have to testify in that case since he was out of New York (T.84). A fellow worker, Ed Shepherd, was also concerned (T.84).

He asked Mr. Jackson if the insurance company would be willing to pay him compensation for testifying (T.85). He asked Mr. Jackson to call the insurance company to see if they would consider it (T.85). He asked Mr. Jackson to do that only as a favor to him (T.85). He was not going to pay Mr. Jackson anything (T.85). Mr. Jackson was not to receive any compensation if Mr. Bollo obtained

any money (T.85). He is positive of that (T.85). Mr. Jackson did not get any money for him; he never thought that he could (T.85-86).

Mr. Bollo felt that he should be paid money because he would risk his life by going to New York and testifying against Mr. Guildler (T.86). He was afraid of incurring bodily harm because Mr. Guildler is a big man (T.86). He is constantly physically moving people (T.86). He owned a Colt .45, which he carried in his pick-up truck (T.86). He would wave it around after drinking in the house (T.86). He would come over to the house and he loved to show it off (T.86). He is a crazy man (T.86). Mr. Bollo was afraid of him (T.86). Toward the end, when Mr. Shepherd called the insurance company the last time and said that they would be willing to go to New York and testify for \$1,000 apiece, Mr. Shepherd told the insurance company that they wanted to be escorted from the plane in Saratoga, New York, to the courthouse and from the courthouse back to the plane (T.86). They did not want to spend the night in Saratoga (T.86).

On cross examination, he testified that on the first occasion when he discussed this matter with Mr. Jackson he mentioned \$25,000 apiece (T.92). He would be willing to testify and risk everything, his life, for \$25,000 (T.92). Police do it every day (T.92). Mr. Jackson told him that it was ridiculous (T.92). Mr. Jackson did not believe that the insurance company would pay this money unless he was an expert witness (T.93).

Marsha Green testified. She is a legal secretary (T.93). She worked as Mr. Jackson's legal secretary, commencing in April, 1982, and ending in February, 1983 (T.94). She was his secretary when the firm represented Mr. Bollo in his personal injury case (T.94).

Mr. Bollo made his appointments to see Mr. Jackson through her (T.94). Mr. Bollo called and made an appointment to discuss testifying as a witness in an insurance case (T.94). Mr. Bollo called the office and asked for an appointment (T.94). She asked if it was in reference to his personal injury case and he said no, it was not, it was about another matter (T.94). Mr. Bollo kept the appointment (T.95).

She heard the discussion between Mr. Bollo and Mr. Jackson (T.95). She heard Mr. Jackson make telephone calls regarding Mr. Bollo's testifying in an insurance case (T.95). Mr. Jackson spoke to the attorney for the insurance company (T.95). The Bar objected to her testimony regarding Mr. Jackson's statements to the attorney for the insurance company on the ground of hearsay (T.95-96). The proffer was offered into evidence (T.97-98). The proffer was not admitted (T.98).

The Referee erred in sustaining the Bar's objection. First, the statement was not offered to prove the matter contained in it. Rather, it was offered to show what was said. See Florida Statute 90.801(1)(c). Second, and more basically, Florida Statute 90.801(2)(b) provides that a statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is consistent with his testimony and is offered to rebut an express or implied charge against him of improper influence, improper motive, or recent fabrication. Here, Mr. Jackson testified at the hearing and was subject to cross-examination concerning the statement and the statement was consistent with his testimony and was offered to rebut the Bar's express charge against him of improper

influence and improper motive.

The proffer of Miss Green's testimony was that she heard Mr. Jackson tell the attorney for the insurance company that he was calling for Mr. Bollo (T.96). Mr. Jackson told him that he did not handle this type of case, he was a real estate attorney, and he wanted to know whether, if Mr. Bollo went to New York to testify, there was any kind of monetary compensation he could obtain. (T.96). Mr. Jackson also told the insurance company's attorney that Mr. Bollo had mentioned in his office that he did not want to testify at all because he was afraid of the man against whom he would be testifying (T.96).

Mr. Jackson made two calls like that that day (T.97).

Mr. Bollo did not employ or hire Mr. Jackson in connection with that matter (T.98).

The Bar did not prove its case by clear and convincing evidence. All Mr. Jackson did was make inquiry of Mr. Campito as to whether or not there was a method by which Mr. Bollo could be compensated of which he (Mr. Jackson) was unaware (T.72). He was merely asking a question (T.72). It was like a criminal attorney asking a probate attorney a question about an estate or a tax attorney asking a criminal attorney a question about criminal law (T.72). That was what Mr. Jackson did in this situation (T.72). He asked Mr. Campito, since this was his field, if there were a way that Mr. Bollo could be compensated (T.72). The testimony of Mr. Bollo and Miss Green corroborate and support Mr. Jackson. Mr. Campito's testimony is much too thin a reed upon which to sustain the Referee.

Moreover, it is rather obvious that Mr. Campito, who was a very inexperienced attorney, misunderstood Mr. Jackson's questions. Mr. Jackson was not demanding compensation for Mr. Bollo and Mr. Shepherd. He simply was asking whether or not compensation was available. Indeed, Mr. Campito conceded that he really did not understand what Mr. Jackson was trying to say, nor did he ask for an explanation (T.22). The Court cannot permit Mr. Campito's mistake to lead to tragic consequences for Mr. Jackson.

The Court must disapprove the Report of Referee and dismiss the complaint with prejudice.

II

THE MOST SEVERE DISCIPLINE WHICH MAY BE
IMPOSED UPON MR. JACKSON IS A PRIVATE
REPRIMAND; HE IS ENTITLED TO THE
BENEFIT OF THE AMENDMENT TO RULE
11.04(6)(c) OF THE INTEGRATION RULE

It is now apodictic that procedural changes in the law are applied to pending proceedings. Johnson v. State, 371 So.2d 556, 557 (Fla. 2d DCA 1979); Rothermel v. Fla. Parole and Probation Com'n, 441 So.2d 663, 664-665 (Fla. 1st DCA 1983); Batch v. State, 405 So.2d 302, 304 (Fla. 4th DCA 1981).

Here, the Grievance Committee determined that a private reprimand would be suitable discipline (App. 4). The designated reviewer having jurisdiction over the Committee concurred (App. 4). The Board of Governors, however, refused to concur.

On June 8, 1984, the Complainant filed a complaint against Mr. Jackson.

On July 1, 1984, Rule 11.04(6)(c) of the Integration Rule was

amended to provide that if the designated reviewer concurs in a grievance committee's recommendation of a private reprimand, approval by the Board of Governors is not needed. Clearly, if Mr. Jackson's Grievance Committee had met subsequent to July 1, 1984, the matter would have been closed.

However, the failure of Mr. Jackson's Grievance Committee to meet subsequent to July 1, 1984 does not end the matter. The amendment of Rule 11.04(6)(c) was a procedural change. Procedural changes in the law are applied to pending proceedings. Johnson v. State, supra; Rothermel v. Fla. Parole and Probation Com'n, Supra; Batch v. State, supra. This cause was pending on July 1, 1984. The amendment to Rule 11.04(6)(c) applies. Mr. Jackson is entitled to the benefit of the amendment.

Significantly, the Bar acknowledged the unfairness of proceeding against Mr. Jackson beyond the Grievance Committee stage. Prior to the final hearing, Mr. Jackson and the Bar entered into a conditional guilty plea for consent judgment. They agreed that Mr. Jackson's discipline would be a private reprimand by the Board of Governors (App.1-3). The Bar predicated its recommendation of a private reprimand upon two considerations. First, Mr. Jackson had no prior disciplinary history (App. 4). Second, the Grievance Committee had determined that a private reprimand would be suitable discipline (App. 4) and the designated reviewer concurred (App. 4). Under the amendment to the Integration Rule that became effective July 1, 1984, specifically Rule 11.04(6)(c), the designated reviewer has the final word in approving grievance committees' recommendations of private reprimands (App.4-5). Thus, had Mr. Jackson's Grievance

Committee met subsequent to July 1, 1984, the matter would have been closed.

The Bar also cited several cases, in its letter to the Referee, which supported its recommendation of a private reprimand:

"In case 15C77029 the Board approved a consent judgment for a Board appearance private reprimand where the respondent knowingly presented false evidence and perjured evidence to a court. In case 06C78H47 the Board approved a grievance committee recommendation for a Board level private reprimand where the respondent filed a pleading containing statements which he knew were false. In case 06A76016 the Board approved a referee's report recommending a Board level private reprimand and payment of costs where there was evidence that respondent allowed a bribe to pass from his client to a county commissioner in respondent's office. The respondent thereafter introduced another client to the same commissioner. Apparently the evidence regarding the bribe was of questionable weight. In the case before your honor, there is a sharp difference as to whether or not the respondent, in fact, intended to profit from the witness fees in the event of payment thereof." (App. 5)

The most severe discipline which may be imposed upon Mr. Jackson is a private reprimand.

III

THE REFEREE'S RECOMMENDED DISCIPLINE, SUSPENSION FROM THE PRACTICE OF LAW FOR NINETY DAYS, IS EXCESSIVE; THE MAXIMUM DISCIPLINE SHOULD BE A PRIVATE REPRIMAND.

Here, Mr. Jackson possessed an unblemished record prior to this incident.

Several very fine character witnesses testified for Mr. Jackson.

Mitchell Pasin testified. He has been a resident of Florida for nine years and has been admitted to the Florida Bar for nine years (T.99). He has known Mr. Jackson for about twenty years, since high school (T.99-100). They have had a close relationship and he has good respect for Mr. Jackson (T.100). Mr. Jackson worked for him when he moved to Florida in 1979 (T.100). Mr. Jackson is a good attorney (T.100). He is very forthright with his clients (T.100). He respects the law (T.100). He respects the attorneys he works with (T.100). He has referred cases to Mr. Jackson and he has always done a fine job (T.100). He knows that he can trust Mr. Jackson when he refers clients to him (T.100). His responsibility is perfect (T.100-101). He has been with Mr. Jackson when he was working with clients whom he had referred (T.101). Mr. Jackson knows the law and, even in criminal matters, he tells the clients exactly what their rights are, not what they want to hear (T.101). He respects the law (T.101). He has always found Mr. Jackson to be knowledgeable and very truthful, not only with him, but also with the other members of the Bar (T.101). Mr. Jackson is responsible (T.101). He is completely truthful (T.101).

Mr. Jackson worked for him and was associated with him for almost two years (T.101). Then he went out to practice on his own (T.101). Several years later he opened up larger offices and he and Mr. Jackson now share offices (T.101). He knows Mr. Jackson very well (T.101). He sees Mr. Jackson all the time (T.101). He is a person of good character and a fine attorney (T.101).

Leonard Grades testified. He is an attorney and has been a member of the Florida Bar for six years (T.102). He graduated from law school in 1973 in Pennsylvania and is a member of the Pennsylvania Bar (T.102).

He has known Mr. Jackson for approximately six years (T.102-103). He has known Mr. Jackson both professionally and socially (T.103). He has been co-counsel with Mr. Jackson on several cases and Mr. Jackson has referred cases to him (T.103). Mr. Jackson has a dedication to ethical standards (T.103). He conducts himself well and is a thinking person (T.103). He is articulate and is very responsive to the needs of his clients and of his friends (T.103). He has never found any reason whatsoever to doubt Mr. Jackson's truth or veracity (T.103).

Sandra Salter Jackson testified. She is Mr. Jackson's wife and law partner (T.104). They have been married seven years (T.104). She graduated from New York law school in 1975 and is a member of the New York and Florida Bars (T.104). She practiced in New York for five years as an assistant corporation counsel, i.e., as an attorney representing the City of New York in civil litigation (T.104-105). She was admitted to the Florida Bar in 1981 (T.105).

She has known Mr. Jackson since high school, for 20 years (T.107). He is a decent, concerned man (T.107). He is a very devoted son (T.108). Her in-laws lived down here and her mother-in-law is very ill and Mr. Jackson is very devoted to both of his parents, as he is to her brother-in-law and to her (T.107-108). He is devoted to his clients, perhaps too much so (T.108).

As a husband, Mr. Jackson is a devoted man and a good family man (T.108). He is honest to her (T.108). As a law partner, he is very concerned (T.109). He is very honest (T.109). He is very devoted (T.109). Clients come back again and again when they have a problem (T.109). The clients send new clients (T.109). Clients write him thank you notes thanking him for his kindness and patience (T.109).

Anything, she is the though one (T.109). She says that Mr. Jackson spends too much time with clients who are not paying him (T.109). He still does (T.109).

Mr. Jackson would be hard put to improve upon the Bar's argument, in its letter to the Referee, in support of its recommendation of a private reprimand:

"In case 15 C77029 the Board approved a consent judgment for a Board appearance private reprimand where the respondent knowingly presented false evidence and perjured evidence to a court. In case 06C78H47 the Board approved a grievance committee recommendation for a Board level private reprimand where the respondent filed a pleading containing statements which he knew were false. In case 06A76016 the Board approved a referee's report recommending a Board level private reprimand and payment of costs where there was evidence that respondent allowed a bribe to pass from his client to a County Commissioner in respondent's office. The respondent thereafter introduced another client to the same commissioner. Apparently the evidence regarding the bribe was of a questionable weight. In the case before your honor, there is a sharp difference as to whether or not the respondent, in fact, intended to to profit from the witness fees in the event of payment thereof." (App. 5)

Mr. Jackson can only add that the evidence was uncontradicted that he was not to receive anything, even if the witness fees were paid.

The most severe discipline which may be imposed upon Mr. Jackson is a private reprimand.

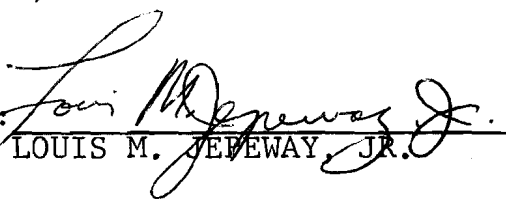
CONCLUSION

This Court must disapprove and vacate the Report of the Referee, and dismiss the complaint with prejudice; in the alternative the Court must disapprove and vacate the Referee's recommended discipline and impose discipline no more severe than a private reprimand; and the Court should grant such other further relief as it deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to DAVID M. BARNOVITZ, Esq., The Florida Bar, Fort Lauderdale Office, Galleria Professional Building, 915 Middle River Drive, Suite 602, Fort Lauderdale, Florida 33304, this 7th day of October, 1985.

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