IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR, Complainant-Appellee v. STEVEN F. JACKSON, Respondent-Appellant.	CONFIDENTIAL Supreme Court Case No. 66,777

COMPLAINANT'S ANSWER BRIEF

RICHARD B. LISS
Bar Counsel
The Florida Bar
915 Middle River Drive
Suite 602
Ft. Lauderdale, FL 33304
(305) 564-3944

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
Tallahassee, FL 32301-8226
(904) 222-5286

JOHN T. BERRY
Staff Counsel
The Florida Bar
Tallahassee, FL 32301-8226
(904) 222-5286

TABLE OF CONTENTS

TABLE OF CITATIONS

TABLE OF CITATIONS (continued)

PREFACE

In this brief, Steven F. Jackson shall be referred to as "Respondent" or "Mr. Jackson" and The Florida Bar will be referred to as "the Bar". Abbreviations utilized in this brief shall be as follows:

"T1"	Transcript of grievance committee hearing, February 19, 1985.
"T2"	Transcript of final hearing before Referee, November 20, 1985.
"RAI"	Request for Admissions filed March 27, 1985 and Response thereto filed April 16, 1985.
"RAII"	Second Request for Admissions filed May 10, 1985 and Response thereto filed June 7, 1985.
"RR"	Report of Referee

STATEMENT OF THE CASE AND OF THE FACTS

The Bar agrees with Respondent's rendition of the procedural aspects of this cause and therefore adopts Respondent's Statement of the Case. The Bar is constrained, however, to submit its own Statement of the Facts in order to provide the Court with a more complete picture of the events in question through the verbatim comments of Respondent, his client and the presiding judge.

Respondent was the court appointed attorney for Howard Avery Jones, a defendant in a federal criminal proceeding styled United States of America v. Jonathan Scott Baldwin, et al, United States District Court, Southern District of Florida, Case No. 83-6046-CR-NCR. The aforesaid proceeding involved nine (9) defendants charged with criminal conduct in a multi-count indictment (RAI).

A calendar call was held on February 27, 1984 by the Honorable Norman C. Roettger, the presiding judge in the case (RAI). During the course of said calendar call the following excerpted discussion occurred between the presiding judge and Respondent (RAII, Exhibit one, pages 7-8):

> The Court: Anybody have any problem with trying this case in April or May?
>
> The Court: If a lawyer does, you better speak now or you're going to have to explain it to your wife. If you have a pre-planned, prepaid deposit or something, let me know,

because I don't want to interfere with your vacation.

Mr. Jackson: Your Honor, I don't have any vacation planned, but I do have a trial in New York, first week of April. After that, I have no objections to any of the time in those two months.

Respondent did not object when the presiding judge set the case for trial commencing April 16, 1984. The first indication given to the presiding judge that Respondent would have any problem with the scheduled trial date occurred at a calendar call held on April 12, 1984 (RAI). Respondent's brother Jeffrey Jackson, a duly licensed attorney, appeared on Respondent's behalf and the following excerpted discussion occurred with the presiding judge (RAII, Exhibit two, pages 26-27):

Mr. Jeffrey Jackson: Good afternoon, Your Honor. I'd like to make my appearance. Jeffrey Jackson, attorney for court-appointed Counsel Steven F. Jackson, for Howard Avery Jones, Defendant. Mr. Jackson is currently out of town now but will be ready to proceed on Monday morning. However, he asks that I apprise the Court that for religious reasons, he will not be available for trial Tuesday and Wednesday next week, and Monday and

Tuesday the week following.

The Court: I don't understand. What?

Mr. Jeffrey Jackson: For religious reasons --

The Court: For what?

Mr. Jeffrey Jackson: It is the first two days of the Jewish holiday Passover, and Mr. Jackson will be observing that.

The Court: I never had a juror or a lawyer request time off for Passover yet. I always close by sundown, in plenty of time so everybody can get home for sundown, attend the seder. I close for Yom Kippur for Jewish lawyers and try it with non-Jewish lawyers.

Mr. Jeffrey Jackson: I will so advise Mr. Jackson.

Respondent thereafter presented a written Motion for Stay of Proceedings for consideration by the presiding judge on April 16, 1984 (RAI). The following excerpted discussions occurred between Respondent, the presiding judge and the client (RAII, Exhibit three, pages 42, 43, 46, 47, 49, 50, 51, 52, 53, 56, 58, 62, 64 and 65):

Mr. Jackson: I have some motions here. Your Honor, the motion that Mr. Entin was referring to was my motion for a stay of proceedings for tomorrow, Wednesday and

Monday and Tuesday of next week. I have a motion which I have just presented to the Court based on the right under the First Amendment to the Constitution of the United States, right of free exercise of religion.

I am an observant Jew and I will not be here tomorrow and Wednesday and Monday and Tuesday of next week. I feel that if the trial proceeds in my absence, my client will be unduly prejudiced and will deny him his rights to counsel which is a right also guaranteed by our Constitution.

With all due respect to the Court, the fact that no other attorney or juror has requested this relief in the past does not mean that there is no basis for it. According to the Jewish law, no work shall be done during the Sabbath or holidays. This is tradition that my family has followed for many years. It is a long-established religion, it antedates Christianity in fact, and I feel that I have a right under the Constitution to observe my religion and I am respectfully telling the Court that I will not be here tomorrow and Wednesday or Monday and Tuesday of next week. So I'm asking the

Court to permit me to exercise my religious right as guaranteed under the Constitution.

* * * * * * *

The Court: I am going to deny your motion without leave to renew it again ... and I simply, with a nine-defendant, three to four week trial, can't schedule around it at this point in time ... I am going to deny your motion sir, but I shall follow the practice I have always followed because it has been the one requested over the years by jurors who are practicing members of the Jewish faith and by lawyers, and that is that they be able to leave on certain days of the Passover feast at a sufficient hour to get home in time for celebration of the seder or in case of some persons to prepare it, for preparation.

* * * * * * * *

Mr. Jackson: I just wanted to inform the Court that with due deference to your ruling, I will not be here tomorrow and Wednesday or Monday and Tuesday of next week. Thank you.

The Court: With due deference to you sir, I will consider whether or not to send a

Marshal to bring you.

* * * * * * * *

The Court: Is Mr. Jones here? Mr. Jones I want to ask you a couple of questions. You heard the problem that Mr. Jackson has --

Mr. Jones: Yes sir.

The Court: -- in connection with his attendance. Would you have any problem if one of the other lawyers who did not represent a client who had a conflict with you filling in for Mr. Jackson on the days he wants to attend service?

Mr. Jones: No objection, Your Honor.

The Court: Why don't you talk about it with Mr. Jackson? We will see if we can resolve this thing without a problem. I want you to talk with him about it.

* * * * * * * *

The Court: Mr. Jackson, have you had a chance to go over the matter with Mr. Jones.

Mr. Jackson: Yes, Your Honor. In view of our conversation, Mr. Jones is going to inform the Court that he does object to having another attorney represent him since

he feels, and I have advised him, that I don't think I could adequately represent him unless I am present throughout the entire proceedings.

* * * * * * * *

The Court: ... I do expect you to be here tomorrow and you are ordered to be here tomorrow subject to contempt if you are not. That is true of the first and second day, which I understand is tomorrow and Wednesday and of the Passover day itself. But I shall most certainly take a recess long enough during the Passover, the eighth day, so that you could go to synagogue during the day if you need to ... If you're right, I certainly will assume that Jehovah will not hold it against you because you are doing matters under penal sanctions of the Court sir.

* * * * * * * *

Mr. Jones: I have a problem and I feel my case may be prejudiced as such with an appointed attorney, and he can't be here tomorrow. I don't believe my case will be defended properly. I don't know what to do, Your Honor.

* * * * * * * *

Mr. Jones: Should it become an issue tomorrow, should I address the Court then?

The Court: Well I'm --

Mr. Jones: I'm really in a bad position. I don't know what to do.

The Court: I'm really hopeful it won't become an issue tomorrow. If we have to go into it, then of course we would.

* * * * * * * *

The Court: It's just very simple. I'm not going to give you four days off and hold up this trial because for the reasons I indicated I cannot grant a stay for that period. This is a nine-Defendant four week criminal case sir. There is great expense involved. We would have completed jury selection had we not had all this matter with you. The taxpayers are going to bear a huge expense because we didn't complete the jury selection as it is because all those people have got to come back in here tomorrow; instead we would only have fourteen otherwise.

* * * * * * * *

The Court: I can only urge you sir, that you be here.

Mr. Jackson: With all due respect, Your Honor --

The Court: I most assuredly will consider your action in direct defiance of a Court order if you are not.

Mr. Jackson: With all due respect, Your Honor, I answer to a higher authority than this Court in this matter and I will not be here tomorrow.

The Court: Well you act at your peril ... I would hope somewhere along the line Mr. Jackson will talk with somebody else that would shed some light on his decision.

Respondent was therefore ordered by the presiding judge to be in Court on April 17, 1984 and he understood this order. Respondent absented himself from court on April 17, 1984 and the client Jones was in court on that date without an attorney to represent him. The services of another attorney for Jones were obtained on April 17, 1984 and the case proceeded to trial as scheduled. A Certificate of Contempt against Respondent was issued by the presiding judge on April 17, 1984 (RAI). Per Respondent's Statement of the Facts, the contempt was not vacated after Respondent was afforded an opportunity to explain his conduct prior to sentencing. The United States Court of Appeals, Eleventh Circuit, found that the court below properly found Respondent

in criminal contempt and affirmed the judgment. United States v. Baldwin, In re Steven Jackson, 770 F.2d 1550 (11th Cir. 1985). A complete copy of this opinion is attached in the Appendix to this brief.

SUMMARY OF ARGUMENT

The arguments made by Respondent in his initial brief should be rejected by the Court for reasons summarized below and more fully set forth in the body of this answer brief.

The facts giving rise to this disciplinary proceeding are not in dispute as reflected in the Bar's two (2) Requests for Admissions and Respondent's Responses thereto. In dispute are whether those undisputed facts constitute a violation of the various provisions of the Code of Professional Responsibility as charged in the Bar's complaint and, if so, whether the Referee's recommended disciplinary sanction is appropriate.

The Bar posits that the evidence adduced below clearly and convincingly establishes that by his failure to timely request a stay of proceedings; willful disobedience of the presiding judge's order to appear for trial, as scheduled, by deliberately absenting himself from court; and abandonment of his client; Respondent has violated various disciplinary rules by engaging in conduct that was prejudicial to the administration of justice; engaging in conduct that adversely reflected on his fitness to practice law; intentionally failing to carry out a contract of employment entered into with a client for professional services; intentionally prejudicing or damaging a client during the course of the professional relationship; and disregarding a ruling a tribunal made in the course of a proceeding.

The Bar further posits that due to Respondent's blatant disregard

for judicial authority and abandonment of his client, which were both in total derogation of his professional responsibilities as an attorney, proof of rehabilitation is clearly demonstrated to be a necessary part of any disciplinary sanction and a suspension for a period of four (4) months to commence at the conclusion of the previously recommended suspension is not excessive.

ARGUMENT

I. THE COMPLAINT IN THIS CAUSE SHOULD NOT BE DISMISSED AS COMPLAINANT DID SUSTAIN ITS BURDEN OF PROVING ALL CHARGES BY CLEAR AND CONVINCING EVIDENCE.

A respondent in Bar disciplinary proceedings, when seeking to overturn a referee's findings of fact and report, is required to meet a very heavy burden. Fla. Bar Integr. Rule, art. XI, Rule 11.06(9)(a) provides in pertinent part that the referee's

> findings of fact shall enjoy the same presumption of correctness as the judgment of the trier of fact in a civil proceeding.

Further, Fla. Bar Integr. Rule, art. XI, Rule 11.09(3)(e) provides that

> upon review, the burden shall be upon the party seeking review to demonstrate that a report of referee sought to be reviewed is erroneous, unlawful or unjustified.

Applicable decisions of this Court are in accord with the aforementioned provisions of the Integration Rule. The referee's findings of fact in disciplinary proceedings are entitled to the same presumption of correctness as the judgment of a trier of fact in a civil proceeding. The Florida Bar v. Stillman, 401 So.2d 1306 (Fla. 1981). A referee's findings of fact should be accorded substantial weight and should not be overturned unless clearly erroneous or lacking in evidentiary support. The Florida Bar v. Carter, 410 So.2d 920 (Fla. 1982); The Florida Bar v. Baron, 392 So.2d 1318 (Fla. 1981); The Florida Bar v. Hirsch, 359 So.2d 856 (Fla. 1978); The Florida Bar v. Wagner, 212 So.2d 770 (Fla. 1968).

Respondent has failed to advance any cogent reasons for this Court to overturn the Referee's findings of fact which carry a presumption of correctness nor has he met his burden of demonstrating that the Report of Referee sought to be reviewed was erroneous, unlawful or unjustified. Accordingly, the subject Report of Referee should not be overturned and the findings of the Referee should be adopted as those of this Court.

It should be noted that the Referee, in arriving at his findings, did not rely solely on the contempt judgment but considered the acts of Respondent which led to said judgment. Those acts were fully set forth in the various transcripts admitted into evidence, excerpted portions of which are contained in the Bar's Statement of the Facts, supra.

Respondent, by his own words and deeds, as reflected in said transcripts, convicts himself. He advised the presiding judge at the February 27, 1984 calendar call that he only had a conflict during the first week of April and he did not object when the case was then set for trial commencing April 16, 1984. On April 12, 1984, Respondent's brother appeared at another calendar call on his behalf and the presiding judge was informed for the first time that Respondent would not be available for four (4) days of the scheduled trial. Respondent personally appeared before the presiding judge on April 16, 1984 to argue a written motion for stay of proceedings. After denial of this motion and despite numerous attempts by the presiding judge to achieve a compromise, Respondent remained adamant in his refusal to attend the trial. Notwithstanding being ordered by the presiding judge to appear, subject to being held in contempt, Respondent failed to appear thereby abandoning his client.

The foregoing undisputed actions of Respondent clearly and convincingly establish the professional misconduct charged by the Bar. Should this Court accept Respondent's argument that the Bar has failed to present clear and convincing evidence of such misconduct, then the Code of Professional Responsibility would be eviscerated and cease to have any meaning pertaining to an attorney's obligation to facilitate the orderly administration of justice, obey orders of a tribunal and faithfully represent his client. The plain language of the Code of Professional Responsibility dictates that Respondent's refusal to obey a judge's order to attend a trial, after his untimely request to be excused from said trial was denied, must be deemed to be conduct prejudicial to the administration of justice, conduct adversely reflecting on his fitness to practice law and the improper disregarding of a ruling by a tribunal made in the course of a proceeding. Further, the plain language of the Code of Professional Responsibility dictates that Respondent's treatment of his client, to-wit: articulating, in the presence of his client, an intent not to appear on certain days of trial and then bringing that intent to fruition by not appearing on behalf of his client; must be deemed to be conduct prejudicial to the administration of justice, conduct adversely reflecting on his fitness to practice law, intentional failure to carry out a contract of employment entered into with a client for professional services and intentional prejudice or damage to a client during the course of the professional relationship.

Respondent makes much of his perception that there are no cases on point to support the charges made by the Bar. Concededly there are no disciplinary cases with the same exact fact pattern presented in the

case sub judice. There is ample case authority, however, for the proposition that a failure to attend all legal necessary legal proceedings on behalf of a client will be deemed a disciplinary offense.

In The Florida Bar v. Welch, 369 So.2d 343 (Fla. 1979), respondent left the courtroom to keep a bowling date while the jury was out considering the verdict in his client's case. The jury reached its verdict and respondent could not be found. The judge decided to receive the verdict. The client was found guilty of the crime charged and the jury was then polled by the judge on his own motion. The judge subsequently held a contempt hearing and found respondent guilty of contempt which was affirmed on appeal. This Court agreed with the referee's analysis that an attorney's duty to a client does not end when the jury begins its deliberations. Finding neglect of a legal matter entrusted to him and conduct adversely reflecting on his fitness to practice law, this Court publicly reprimanded respondent. There was also a finding that no specific prejudice resulted to the client.

Further in The Florida Bar v. Page, 419 So.2d 332 (Fla. 1982); The Florida Bar v. Larkin, 420 So.2d 1080 (Fla. 1982); and The Florida Bar v. Hoffer, 412 So.2d 858 (Fla. 1982), all of which are cited in great detail in Respondent's brief, failure to appear in court for scheduled proceedings was deemed to be professional misconduct warranting disciplinary sanctions. The Bar submits that Respondent's failure to appear in court was no less egregious, and perhaps more so, than that of Messrs. Welch, Page, Larkin and Hoffer. This is due to the fact that Respondent's own neglectful handling of his calendar caused him to be dilatory in requesting leave of court to be excused for the religious

observance. Respondent then deliberately and consciously chose to defy the presiding judge's order to appear in court the next day and thereby abandoned his client.

The Bar would respectfully submit that the lateness of Respondent's request to the presiding judge defeats any claim that this case is of constitutional dimensions and negates the defense of justification. The United States Court of Appeals, Eleventh Circuit, certainly gave no credence to Respondent's first Amendment claim when it stated that

> ...appellant was not held in contempt because he chose to exercise his religious beliefs; rather, the contemptuous acts flowed from appellant's failure to give the court adequate notice of his inability to appear. Passover is not an unpredictable event; it occurs in the spring of each year. Appellant had a duty to inform the court sufficiently before the trial in order to assert his first amendment rights. If the court, given adequate notice of appellant's religious convictions had, nevertheless, scheduled trial for the first and last two days of Passover, we would be faced with a first amendment question. In the present case, we are not. United States v. Baldwin, In re Steven Jackson, supra at 1557.

The court found Respondent's situation to be similar to one that had confronted the Fifth Circuit Court of Appeals. In that case, a member of the Texas State Senate who was acting as defense counsel in a criminal trial failed to appear for said trial because he was attending a legislative session. In affirming the judgment of contempt on appeal the court stated that

> Requiring a lawyer to adhere to the proper orders of a federal court does not threaten legislative integrity. Senator Washington was not called suddenly to his legislative duties, and the federal case was not

> precipitately assigned for trial. From the time he sought to enter an appearance in the case, in March, Washington knew or should have known of the trial date and of the scheduled, regular legislative session. He had ample time to communicate with the court in person and to seek an alternative trial date. ...Under these circumstances, the problem was created not by Senator Washington's attention to his state legislative duties but his carelessness concerning his responsibilities as a member of the bar of the federal court. This resulted in a panel of prospective jurors being needlessly summoned to their great personal inconvenience and in expense that could have been averted by simple diligence. United States v. Onu, 730 F.2d 253, 257, 258 (5th Cir. 1984).

The court also cited a First Circuit Court of Appeals case involving a lawyer's failure to appear at trial because he was attending a political conference. It was pointed out that the conduct of defense counsel was

> either (1) the unrealistic if not contemptuous expectancy that the court, despite elaborate advance scheduling of a trial, would at the last moment subordinate the interests of all others to the personal plans of a lawyer who had not taken the smallest step of giving notice earlier, or (2) the willingness to abandon his clients, forcing them to retain trial counsel at the eleventh hour when a serious trial and the real possibility of lengthy imprisonment impended. At the least, this disregard of court and clients would seem to fly in the face of both the Code of Professional Conduct and the Standards Relating to the Defense Function of the American Bar Association. A standard of values which places an attorney's private political activities above his responsibilities to the court and to his own clients - even if they approve - is fundamentally incompatible with the premises underlying the adversary system. United States v. Lespier, 558 F.2d 624, 627, 628 (1st Cir. 1977).

Finally, even in a case where the court did consider first amendment claims pertaining to freedom of speech, certain axioms were stated whose import seem to have escaped Respondent:

> Lawyers are officers of the court, subject to reprimand and the imposition of other disciplinary sanctions for the violations of rules to which non-lawyers are not subject. The lawyer is under a high fiduciary duty to fairly represent his client, but he owes substantial duties to the court and to the public as well.
>
> Lawyers have First Amendment rights of free speech. They are not second class citizens. They are first class citizens with many privileges not enjoyed by other citizens. With privilege, however, goes responsibility, and codes of professional responsibility have traditionally recognized that a lawyer is subject to special disciplinary sanctions when he neglects his responsibility to his clients and to the public. He is equally subject to disciplinary sanctions when he violates his responsibilities to courts, to other litigants and to the public when he invokes extraneous influences to deprive judicial processes of fairness. Hirschkop v. Snead, 594 F.2d 356, 366 (4th Cir. 1979).

Under the circumstances presented and the case authorities previously cited, there is no justification or excuse for Respondent's patently outrageous conduct. Respondent's abandonment served to deprive his client of unique legal services that could only be provided by Respondent as evidenced by the extensive trial preparation undertaken (see page ten (10) of Respondent's brief) and can only be characterized as a blatant act of professional nonfeasance and an abdication of an attorney's fundamental obligations to a client.

Respondent's cavalier attitude toward the court system, in general, and his client, in particular, are amply demonstrated in the following exchanges during the grievance committee hearing (T1, pages 91-93 and 119-121):

> Committee Chairman: What did you think was going to happen if he denied your continuance -- if the judge ruled, "Continuance denied"?
>
> Mr. Jackson: Right
>
> Committee Chairman: What did you think was going to happen the next day?
>
> Mr. Jackson: Well, this is what I felt the possibility could happen was that when I didn't show up, the judge would send the Federal Marshal to pull me into court as he threatened to do the day before, in which case they would have had to take me bodily in the courtroom. I would not have gone voluntarily.
>
> He could have -- he couldn't compel me to -- I mean, unless he had me chained there -- to stay. The only thing that I imagine could happen would be I'd [sic] have to put the trial off for the time that I asked and that to reconvene the trial on Thursday when I told the judge I would be back and ready to

continue with the case.

And that the matter of my failing to appear would be an ancillary proceeding which, in fact, it was -- would be a contempt hearing, and which would not affect my representation of my client whatsoever.

Committee Chairman: What you're saying is, that despite the fact that he ruled to the contrary, he would have had to continue the case; that's what you thought would have happened?

Mr. Jackson: That's what I believe would have been the most prudent thing to do, because I think that's the only way my client's rights could have been adequately protected.

* * * * * * * *

Committee member: When did you say you first learned that the trial had proceeded without you -- Professor Rogow's phone call -

Mr. Jackson: Well --

Committee member: -- whether it was Tuesday or Wednesday.

Mr. Jackson: It was one of those days. I don't remember. I think it was Wednesday, but I'm not sure.

* * * * * * * *

Committee member: Whenever it was that you found out, whether it was Tuesday or Wednesday, did you have any second thoughts then or did you consider getting down to the courthouse, realizing that your client was sitting there without you and perhaps something could be done at that point in time or did you still intend, even at that point, not to go back until Thursday regardless?

Mr. Jackson: Well, no. I mean, I was -- when I learned that the trial was proceeding, I learned that there was a substitution of counsel.

Committee member: So you didn't consider, then, going down there, either Tuesday afternoon, Wednesday -- Wednesday afternoon, whatever?

Mr. Jackson: No, because when I found out the trial was going -- when Professor Rogow was telling me that the trial was continuing, he had told me that the judge had removed me from the case and appointed another attorney, and my reaction was, "God help him and God help my client," because I didn't think it would be possible, you know,

for someone to represent my client on such short notice.

Respondent's callous disregard for his client is further evidenced by his earlier testimony before the grievance committee that he had not learned that he had been replaced until Thursday morning (T1, page 78):

> Committee Chairman: What did you do to help Mr. Miller get ready to represent your former client?
>
> Mr. Jackson: Well, I didn't learn that I was replaced until the Thursday morning, at which time Judge Roettger held me in contempt.

It is inconceivable that an attorney could have so little regard for his professional responsibilities and the rights of his client that he would not even make inquiry as to what had transpired at trial on Tuesday and Wednesday. Having clearly and convincingly established Respondent's dereliction of professional responsibility to both the court and his client, it only remains for this Court to determine the appropriate measure of discipline.

II. THE DISCIPLINE RECOMMENDED BY THE REFEREE IS NOT EXCESSIVE AND SHOULD BE ADOPTED BY THE COURT.

Liberally sprinkled throughout Respondent's argument that he should not be found guilty of violating any of the disciplinary rules charged in the Bar's complaint are various arguments that, for want of a better term, should be labelled as "defenses in mitigation of sentence". The Bar, for the most part, has answered those arguments in the preceding portion of this brief.

Respondent, in his argument that the disciplinary sanction recommended by the referee is excessive, again emphasizes the unique facts presented in the instant matter. The mere fact that a Respondent has found a new and unique way to violate basic rules of professional responsibility should not hamper this Court in approving the recommended disciplinary sanction. If violations exist, as surely they must in the instant matter, then discipline must follow and the sole issue before this Court is the appropriate level of discipline to be imposed.

The Bar readily concedes that this Court, as it should, makes a conscious effort to apply precedent in considering appropriate discipline. This Court also recognizes, however, the principle that each case must be determined based upon the facts presented in that case. This principle was articulated in The Florida Bar v. Scott, 197 So.2d 518, 520 (Fla. 1967) wherein it was stated that:

> ... the degree of punishment in each case where violations of Canons of Professional Ethics are involved depends entirely upon the factual situation presented by the record in that particular case. Over the years this Court has not found any areas of black and white as to the degree of punishment to be

> imposed in all cases. Rehabilitation as well as punishment is involved in every case. Such factors call upon the total experience of the Justices of this Court in determining the appropriate judgment in each instance (emphasis supplied).

This Court similarly stated in The Florida Bar v. Rubin, 362 So.2d 12, 16 (Fla. 1978) that:

> The power to render ultimate judgment in attorney disciplinary proceedings rests solely with this Court, and we have often stated that the exercise of that power should achieve a result which, in light of the circumstances of each case, will best protect the interests of the public, maintain the integrity of the Bar, and ensure fairness to the accused attorney (emphasis supplied).

As previously pointed out, failure to appear at trial has resulted in the imposition of suspensions by this Court:

In The Florida Bar v. Larkin, supra, besides neglecting several legal matters entrusted to him, respondent failed to appear for the continuation of his client's trial without the prior permission of the trial judge. Professional misconduct caused by alcohol abuse was found and a ninety-one day suspension, continuing until proof of rehabilitation, was ordered.

In The Florida Bar v. Page, supra, respondent agreed to represent a client in a criminal matter and accepted a fee to do so. He thereafter failed to appear when the client had to appear in court. A three (3) year suspension was imposed to run consecutively to a prior suspension.

In The Florida Bar v. Hoffer, supra, respondent undertook representation to pursue modification of a dissolution order and filed

the appropriate petition to accomplish same. Respondent thereafter failed to appear at the hearing that had been scheduled on the petition. A suspension for one (1) year was ordered as the appropriate sanction, with proof of rehabilitation required, to run concurrent with a two (2) year suspension already imposed.

The Bar would respectfully suggest that, although this case is sui generis, the egregious nature of Respondent's misconduct and the criteria utilized by this Court in arriving at appropriate discipline dictate that the Referee's recommended disciplinary sanction be approved. Respondent argues that he should, at most, receive a reprimand. This Court has held that a public reprimand should be reserved only for isolated instances of neglect, technical violations of trust accounting procedures without willful intent or lapses in judgment. The Florida Bar v. Welty, 382 So.2d 1220, 1223 (Fla. 1980). No such isolated instance of a lapse in judgment exists in the instant matter. This Court currently has under consideration the Report of Referee in Case Number 65,432 wherein a suspension for a period of ninety (90) days was recommended. The underlying facts in that case reveal a separate assault by Respondent on the sanctity of our system of jurisprudence through his repeated attempts to secure excessive compensation for material fact, non-expert witnesses. Said acts predated the actions under review and should therefore serve as past derelictions of responsibility that increase the penalty. The Florida Bar v. Greenspahn, 396 So.2d 182 (Fla. 1981).

Further, while the Bar concedes that Respondent felt he was motivated by sincere religious beliefs, it was pointed out to the

Referee that Respondent had shown flexibility in his religious beliefs in the past (T2, page 26, lines 16-23). The Referee so found when he stated:

> The evidence is replete in the transcript where the respondent, by his own admissions, indicates the flexibility of the religious exercise under the terms of its personal application. (RR, page 7).

The portion of the grievance committee transcript referred to by the Referee consisted of the following exchange between Respondent and a member of the grievance committee (T1, pages 96-97):

> Mr. Jackson: ... I remember that there was a problem with the SAT's, that they were given on Saturday and a lot of people -- a lot of religious Jews objected to it. I for one, took the SAT's on the Saturday when I took them, and that was the only day it was available. Later on, they made an exception and give the examination on Sunday to students who were very religious.
>
> Committee member: But at the time you took it, you deemed it more prudent to take the SAT on a Saturday rather than not to take them at all?
>
> Mr. Jackson: That's correct. I had to. It was the only time that it was given, was on a Saturday. I wanted to go to college. I

think that was a very compelling reason to take it. As I said, everyone observes in different levels. A holiday to me -- although in strict Jewish tradition, the most holiest day is Yom Kippur and then Sabbath. The way I was brought up is that the holidays were given the most important emphasis and that's when the family went together to services.

Committee member: You did make an exception for the SAT's, so you made it once and it could be made another time, also?

Mr. Jackson: That was a Saturday, not a religious holiday. As I stated, I have driven -- I drive on Saturday. I've gone and played ball on Saturday. These things are religious -- very religious Jews do not do those things, but on the holidays, I spend it with my family and we observe by going to temple.

The following excerpted discussion between the presiding judge and Respondent bears repeating because, juxtaposed with the foregoing testimony, it demonstrates the flexibility of Respondent's application of the religious exercise as found by the Referee and his highly selective pursuit of the tenets of his chosen religious (RA II, Exhibit

three, page 43):

> Respondent: According to Jewish law, no work shall be done during the Sabbath or holidays. This is a tradition that my family has followed for many years. It is a long-established religion, it antedates Christianity in fact, and I feel that I have a right under the Constitution to observe my religion and I am respectfully telling the Court that I will not be here tomorrow and Wednesday or Monday and Tuesday of next week (emphasis supplied).

The contrasts in Respondent's positions are startling. The free exercise of his religion, in Respondent's view, allowed him to ignore a judge's order to appear at trial and represent a client. Respondent abandoned this client because he would not perform legal work on the religious holiday of Passover yet he took the SAT test on a Saturday because he wanted to go to college and had no other alternative. Respondent, as set forth above, told the presiding judge that according to Jewish law no work shall be done on the Sabbath but he has clearly violated said law when it suited his purposes. How sad that Respondent feels free to drive a car and play ball on the Sabbath, contrary to Jewish law as explained by him to the judge, but cannot bring himself to obey a judicial order to appear in court and represent a client.

Under the circumstances, there is no excuse or justification for

Respondent's conduct. Respondent has presented no proof in this proceeding that attending court, under penal sanction, would constitute a mortal sin that would place him outside the pale of his religion. It is respectfully submitted that the same compulsion that forced Respondent to take the SAT test on a Saturday existed in the instant matter. It is also respectfully submitted that Respondent's open defiance of a judge and intentional abandonment of his client are the real sins that merit this Court's attention. Respondent had a professional obligation to obey the judge and represent his client - especially in view of his highly selective religious practices. His failure to do so warrants imposition of the discipline recommended by the Referee to both protect the public and deter others who might commit a like violation.

In closing, Respondent argues that the discipline recommended by the Referee is not required to encourage rehabilitation. It is noteworthy that Respondent's counsel, while explaining his absence at the final hearing, stated that Respondent's testimony before the grievance committee set forth his position and that he would testify in a similar fashion before the referee (T2, page 8, lines 14-22). This Court should pay particular attention to the absolute lack of remorse shown by Respondent in his testimony before the grievance committee (T1) and the responses given when asked what he would do if he had the benefit of hindsight (T1, pages 103, 104 and 119):

> Committee member: Now you're telling me that notwithstanding the hindsight, the crystal ball that tells you what would have

happened, that you still have chosen to put your own individual religious rights above those of the client that you swore to defend when his freedom was in jeopardy and would not have even made arrangements for someone else to appear on his behalf?

Mr. Jackson: Well I don't think someone would have come in. That's the point that I was trying to make. I don't think anyone could be there without having read through all the discovery and read through the entire file and listened to all thirteen tapes and taken notes on all thirteen tapes.

Committee member: You're ignoring the question.

Committee Chairman: I think the question may have been asked and answered. I think he said he would do the same thing over again. Is that correct?

Mr. Jackson: Yes.

* * * * * * * *

Committee member: ... Knowing everything that's happened, the consequences of everything that's happened except the outcome of the appeal you don't know, is there anything that you would do differently,

> if you were presented with the identical circumstances in this case before this judge for this client?
>
> Mr. Jackson: The only thing that I would have done had I thought -- you're saying if I knew --
>
> Committee member: Knowing what you know now, knowing everything that happened, the crystal ball.
>
> Mr. Jackson: The only thing that I could have possibly done was try to get an appellate court to overrule the judge's determination. But had I not been able to do that, I still would have not gone to -- into court that day.

The record is therefore replete with Respondent's stubborn refusal to admit that in hindsight he should have obeyed the judge and appeared in court to represent his client. Even with the benefit of hindsight, Respondent clearly would have again disobeyed the judge and abandoned his client. Further, as pointed out by the United States Court of Appeals, Eleventh Circuit, Respondent's actions were not de minimus.

> The disruption caused by Jackson's conduct was severe. During the first two days of trial, the court spent a significant amount of time dealing with Jackson's refusal to attend the trial and represent his client. The members of the jury venire, the lawyers for the other defendants, and the defendants, especially Jackson's client, were greatly inconvenienced at considerable public expense

> - in addition to the fact that the trial judge was both inconvenienced and had his authority undermined by appellant's refusal to follow a direct court order ... this case involved an ongoing trial, and Jackson's behavior caused the trial to come to a halt. United States v. Baldwin, In re Steven Jackson, supra at 1554.

The foregoing should serve to establish the egregious nature of Respondent's misconduct and convince this Court, upon application of its criteria for arriving at appropriate discipline, to adopt the Referee's recommended discipline. As was stated by the Supreme Court of South Dakota in In Re Gorsuch, 75 N.W. 2d 644, 648 (S.D. 1956):

> This does not mean that the Court has the function or right to regulate the morals, habits or private lives of lawyers, who like other citizens are free to act and to be responsible for their acts, but when the morals, habits or conduct of a lawyer demonstrate unfitness to practice law or adversely affect the proper administration of justice, then the Court may have the duty to suspend or revoke the privilege to practice law in order to protect the public.

Similarly, as stated by the Supreme Court of Iowa in the Matter of Frerichs, 238 N.W. 2d 764, 769 (Ia. 1976):

> All lawyers practicing before this court are bound by the canons and the provisions of the Iowa Code above set out. They are not free to view them merely as aspirational. A canon cannot be ignored by an attorney on the claim he believes it conflicts with his view of a constitutionally protected right. The purpose of the canons as explained by the ethical considerations, disciplinary rules and adjudicated decisions is to show him the professionally acceptable route through questions or doubts he may have regarding such conflicts.

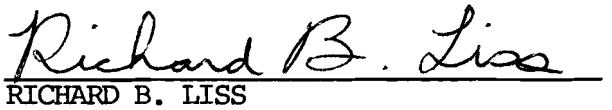
Respondent's actions should convince this Court of his current unfitness to practice law. He should not be permitted to practice until he can demonstrate that his jaundiced view of professional responsibility has been cured.

CONCLUSION

By reason of the foregoing, the Bar requests this Honorable Court adopt the findings of fact and disciplinary recommendation of the Referee that Respondent be suspended from the practice of law for a period of four (4) months to run consecutive to the term of suspension recommended in Supreme Court Case No. 65,432, with said suspension continuing until proof of rehabilitation. In addition, the Bar requests that costs in the amount of One Thousand Ninety Six Dollars and twenty-eight cents ($1,096.28) be assessed against Respondent and be made payable within thirty (30) days of the Supreme Court's final order in this cause.

Imposition of any lesser form of discipline would fail to serve the purposes of attorney discipline. It would also be a clarion call that attorneys owe a lesser allegiance to their professional obligations when personal beliefs and convenience are involved. If all attorneys viewed their professional responsibility as does Respondent, our legal system would quickly grind to a halt.

Respectfully submitted,



RICHARD B. LISS
Bar Counsel
The Florida Bar
915 Middle River Drive, Suite 602
Ft. Lauderdale, FL 33304
(305) 564-3944

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
Tallahassee, FL 32301-8226
(904) 222-5286

JOHN T. BERRY
Staff Counsel
The Florida Bar
Tallahassee, FL 32301-8226
(904) 222-5286

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complainant's Answer Brief was sent by U.S. Mail to Sandra M. Salter Jackson, Esquire, Attorney for Respondent-Appellant, Jackson & Jackson, Coral Springs Sunrise Towers, 3111 University Drive, Suite 622, Coral Springs, FL 33065, on this 15th day of May, 1986.

Richard B. Liss
RICHARD B. LISS