IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

JOHN R. WEED,

Respondent.
_____/

Case No. 68,866

(TFB File Nos. 03-83N21 and 03-85N16)

COMPLAINANT'S INITIAL BRIEF

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PRELIMINARY STATEMENT

The Florida Bar, Complainant below, files this petition for review in this case against JOHN R. WEED, who will hereinafter be referred to as Respondent.

References to the transcript of hearing will be (TR - page number) and, references to exhibits introduced as evidence at the hearing will be (TFB Exhibit - number). Documents forming an appendix to this brief will be referred to as (Appendix - letter).

STATEMENT OF THE CASE

This is a case of original jurisdiction, pursuant to article V, section 15 of the Florida Constitution.

Because the events forming the factual basis of this case occurred prior to January 1, 1987, all citations to disciplinary rules are to the Code of Professional Responsibility of The Florida Bar which was in effect at the time the misconduct occurred.

On June 4, 1986, The Florida Bar filed a five-count complaint against Respondent. The first two counts of the Bar's complaint dealt with the complaints of a Ms. Wilma Brown, her daughter, Carolyn Brown McMullen and her daughter's husband, Otis W. McMullen, Jr. The remaining three counts of the Bar's complaint charged Respondent with misconduct which was the subject of a consolidated order issued by the First District Court of Appeal relating to three separate appellate cases handled by Respondent. This cause came to be heard before the Honorable William L. Gary, Referee, on October 29, 1986.

The report of Referee was filed with this Court on March 3, 1987 and sets forth the Referee's findings of fact, and recommendations as to guilt and discipline. The Referee recommended that Respondent be found not guilty of the misconduct alleged in Counts I and II of the Bar's complaint. The Referee further recommended that Respondent be found guilty in Count III of violation of Disciplinary Rule

1-102(A)(4) and in Counts IV and V, that Respondent be found guilty of the violation of Disciplinary Rules 1-102(A)(1) and 6-101(A)(3) of the Code of Professional Responsibility of The Florida Bar. As to the recommended discipline, the Referee recommended a public reprimand together with a three-year period of probation, during which Respondent would be supervised by The Florida Bar. The Referee recommended that Respondent be found not guilty of the violation of Disciplinary Rules 6-101(A)(3), 1-102(A)(5) and 7-106(C)(7) in Count III, and that Respondent be found not guilty of violating Disciplinary Rules 1-102(A)(5) and 7-106(C)(7) in Counts IV and V.

On March 20, 1987, the Board of Governors of The Florida Bar met and directed the undersigned Bar Counsel to petition for review of the following aspects of the Referee's report:

1. The Referee's findings that Respondent be found not guilty of violation of Disciplinary Rule 7-106(C)(7) of the Code of Professional Responsibility in Counts III, IV and V; and

2. The Referee's recommendation of a public reprimand as the disciplinary measure to be imposed.

The Board of Governors of The Florida Bar further directed the undersigned Bar Counsel not to appeal the Referee's recommendations of not guilty as to Counts I and II of The Bar's complaint. The conduct relating to Counts I and II is therefore not the subject of this petition for review.

STATEMENT OF THE FACTS

On February 12, 1985, the First District Court of Appeal issued a consolidated order relating to three separate appellate cases which had been handled by Respondent. This order is now reported at 463 So.2d 511 (Fla. 1st DCA 1985). (Appendix A). These three cases were styled and numbered as follows: (1) R. J. P., Jr., Appellant v. State of Florida, Appellee, Case No. AV-500; (2) Pernell Driver, Appellant v. Lafayette County, Florida, Appellee, Case No. BA-279; (3) Annie Lou Gentry, Appellant v. Vernon Leroy Gentry, Appellee, Case No. AZ-454. The First District Court of Appeal reprimanded Respondent for his handling of the above-named matters and directed that a copy of the order be forwarded to The Florida Bar for appropriate action. The Bar's complaint alleges as a factual basis for Counts III, IV and V of its complaint, the misconduct on the part of Respondent relating to his handling of the three above-named cases.

Count III of the Bar's complaint involved an appeal by Mr. Weed in Case No. AV-500, R. J. P., Jr., Appellant v. State of Florida, Appellee. Respondent represented R. J. P., Jr., a juvenile, and filed a notice of appeal on November 8, 1983 (TR 84). After no record activity in this matter, the District Court of Appeal, sua sponte, issued an order to show cause dated May 11, 1984 (TFB Exhibit 3). A response was filed by Respondent on May 25, 1984 (TFB Exhibit 4) and, on June 15, 1984, the District Court issued a

subsequent order to show cause finding Respondent's response to be inadequate. The second order to show cause ordered Respondent to show cause in writing within ten (10) days why sanctions should not be imposed for his disregard of appellate rules and failure to properly prosecute the appeal. Respondent was further ordered to include as an index to his response, copies of all motions, pleadings or correspondence relating to the case which showed efforts by him to have the record properly prepared in accordance with appellate rules (TFB Exhibit 5). Respondent's response to this order was essentially the same as his previous response and had as attachments two unsigned, undated and unverified affidavits which had apparently been prepared for the signatures of a Ms. Charlotte Pittman and a Ms. Nancy Nydam (TFB Exhibit 6). Neither Ms. Nydam or Ms. Pittman had signed the purported affidavits and, the information contained in the affidavits was both false and misleading. The First District Court of Appeal found this response to be inadequate also and ordered Respondent to appear personally on January 14, 1985 (TFB Exhibit 1). Respondent appeared on January 14, 1985 and was ordered by the court to file stipulated facts on or before January 21, 1985 (TFB Exhibit 7). The stipulated facts were filed by Respondent on January 21, 1985 (TFB Exhibit 8). On October 11, 1985, the First District Court of Appeal affirmed the decision of the lower court in R. J. P., Jr. vs. State of Florida, Case No. AV-500, now reported at 476 So.2d 678. (Appendix B).

Count IV of the Bar's complaint charges Respondent with

misconduct arising out of an appeal filed by Respondent in a matter styled, Pernell Driver, Appellant v. Lafayette County, Florida, Appellee, Case No. BA-279. The notice of appeal was filed by Respondent on July 9, 1984 and the initial brief was due by September 17, 1984. When no brief was filed by Respondent, the appellee filed a motion to dismiss on October 24, 1984. The First District Court of Appeal on October 26, 1984 ordered Respondent to show cause within ten (10) days why the appellee'smotion to dismiss should not be granted (TFB Exhibit 9). Respondent filed an untimely response on November 20, 1984 (TFB Exhibit 10). The substance of this response was that the surgery on October 8, 1984 of Respondent's secretary had prevented his filing the brief. The First District Court of Appeal found that Respondent's explanation did not constitute good cause and on December 20, 1984, ordered Respondent to appear personally and show cause why he should not be held in contempt or sanctions imposed for his dereliction in failing to prosecute this appeal (TFB Exhibit 1). Respondent did appear on January 14, 1985 but offered no further justification for his failure to file the initial brief. The District Court of Appeal ordered Respondent to file his brief within five (5) days (TFB Exhibit 2). The brief was filed by Respondent on January 16, 1985 but was subsequently dismissed due to the fact that no record was ever provided in the case (TR 73).

Count V of the Bar's complaint alleges misconduct on the part of Respondent arising out of an appeal in the matter of Annie Lou Gentry, Appellant vs. Vernon Leroy Gentry, Appellee, Case No.

AZ-454. A notice of appeal was filed by Respondent on June 11, 1984 and the initial brief was due on August 20, 1984 (TR 87). Because no initial brief was filed, the appellee filed a motion to dismiss on October 10, 1984. The First District Court of Appeal issued an order to show cause on October 11, 1984 ordering Respondent to show cause why the appellee's motion to dismiss should not be granted (TFB Exhibit 12). Respondent tendered no response to that order (TFB Exhibit 2). On November 5, 1984, the First District Court of Appeal issued an order directing Respondent to show cause why he should not be held in contempt or sanctions imposed for his failure to file an initial brief, a motion for extension, and failure to respond to the court's previous order (TFB Exhibit 13). Respondent filed an untimely response to this order identical to the one which he had filed in Case No. AZ-454, asserting that he had been unable to prosecute the appeal due to his secretary's illness (TFB Exhibit 13-A). Subsequent to this response, the First District Court of Appeal entered its consolidated order to show cause, ordering Respondent to appear on January 14, 1985 (TFB Exhibit 1). Respondent did appear on January 14, 1985 but offered no further justification for his failure to file a timely brief. Respondent was ordered to file a brief in the matter within five (5) days. Respondent complied with this order and filed a brief on January 16, 1985. On December 17, 1985, the First District Court of Appeal affirmed the lower court's decision (TFB Exhibit 16).

SUMMARY OF ARGUMENT

Respondent was charged with violation of numerous disciplinary rules for misconduct arising out of his handling of three appellate cases. The Referee found Respondent guilty of violating Disciplinary Rule 1-102(A)(4) in Count III, and guilty of violating Disciplinary Rules 1-102(A)(1) and 6-101(A)(3) in Counts IV and V. The Florida Bar is appealing the Referee's finding that Respondent was not guilty of violating Disciplinary Rule 7-106(C)(7). The record is replete with evidence that shows clearly and convincingly that Respondent's misconduct in Counts III, IV and V constitutes a violation of this rule. Respondent has exhibited a pattern of habitual violation of the rules of established procedure which goes beyond neglect.

The Florida Bar also petitions this Court for review of the Referee's recommended level of discipline. A public reprimand is not sufficient discipline for Respondent's misconduct which showed a willful pattern of disregard both for his clients' rights and the judicial system and, which involved misrepresentation to a court. This misconduct, viewed together with aggravating factors, including prior discipline, justifies imposition of a suspension of at least 90 days and probation.

ARGUMENT

ISSUE I

THE REFEREE ERRED IN FINDING RESPONDENT NOT GUILTY OF VIOLATING DISCIPLINARY RULE 7-106(C)(7) FOR HABITUALLY VIOLATING ESTABLISHED RULES OF PROCEDURE.

Count III of the Bar's complaint charged Respondent with violation of Disciplinary Rules 1-102(A)(1), 1-102(A)(4), 1-102(A)(5), 6-101(A)(3) and 7-106(C)(7). The Referee recommended that Respondent be found guilty in Count III of violation of Disciplinary Rule 1-102(A)(4). The Florida Bar has petitioned for review, charging as error the Referee's failure to find Respondent guilty of violating Disciplinary Rule 7-106(C)(7) in Count III.

Counts IV and V of the Bar's complaint charged Respondent with violation of Disciplinary Rules 1-102(A)(1), 1-102(A)(5), 6-101(A)(3) and 7-106(C)(7). The Referee recommended that Respondent be found guilty in Counts IV and V of violating Disciplinary Rules 1-102(A)(1) and 6-101(A)(3). The Florida Bar has petitioned for review, charging as error the Referee's failure to find Respondent guilty of violating Disciplinary Rule 7-106(C)(7) in Counts IV and V.

The underlying facts which support a finding of guilt by Respondent for habitually violating rules of procedure in violation of Disciplinary Rule 7-106(C)(7) in Counts III, IV and V are well

supported by the record and, for the most part, are unrefuted. On February 12, 1985, the First District Court of Appeal issued a consolidated opinion which admonished Respondent for his handling of three separate cases.

The allegations in Count III of The Bar's complaint concern Respondent's handling of appellate Case No. AV-500, R. J. P., Jr., Appellant v. State of Florida, Appellee. Respondent filed a notice of appeal on November 8, 1983. There was no record activity in the matter until May 11, 1984 when the First District Court of Appeal, sua sponte, issued an order requiring Respondent to show cause why the appeal should not be dismissed for failure to timely file a record and brief in accordance with the Florida Rules of Appellate Procedure (TFB Exhibit 3). Respondent's response, filed on May 25, 1984, stated briefly that the court administrator for the Third Judicial Circuit could not determine the name of the court reporter assigned to transcribe the hearing in question (TFB Exhibit 4).

The District Court found this response to be inadequate and issued an order on June 15, 1984 commanding Respondent to show cause in writing within ten (10) days why sanctions should not be imposed for his disregard of appellate rules and failure to properly prosecute the appeal (TFB Exhibit 5). Respondent was further directed to include an appendix to his response containing copies of all motions, pleadings, or correspondence relating to the case which would show the efforts made by him since the notice was filed to have

the record on appeal properly prepared in accordance with appellate rules. Respondent's response to this order stated again as justification for his failure to file the brief, his inability to locate the court reporter (TFB Exhibit 6). As appendix to this response, Respondent attached two signed, undated and unverified affidavits which appeared to have been prepared for the signatures of a Ms. Charlotte Pittman and a Ms. Nancy Nydam. Both Ms. Pittman and Ms. Nydam testified at the final hearing. Ms. Pittman testified that the only time she was ever asked to sign anything relating to the case in question was the morning that the grievance committee hearing in the disciplinary matter was held, approximately one year after the date that the affidavit in question had been submitted to the First District Court of Appeal (TR 92, 93). Ms. Nydam testified at the final hearing that she did not recall ever having been asked to sign the affidavit in question and, further, had she been requested to sign it, she would have declined to do so because the contents of the affidavits were not true and correct (TR 104, 105).

The First District Court of Appeal found the second response to be inadequate and ordered Respondent to personally appear before the Court and to show cause why he should not be held in contempt or exposed to sanctions for his failure to comply with the court's order and the appellate rules (TFB Exhibit 1). Respondent appeared on January 14, 1985 and was ordered to serve on opposing counsel and on the court a proposed statement of evidence pursuant to Rule 9.200, Florida Rules of Appellate Procedure (TFB Exhibit 2). While finding

that Respondent's conduct did not rise to the level of contempt or justify dismissal of the case, the Court noted that it could not condone or allow such repeated disregard for appellate rules and its own orders and, that despite the fact that previous violations of the rules had been brought to Respondent's attention, he had persisted in ignoring the appellate rules and orders of the First District Court of Appeal. This matter, together with the other two matters which form the factual basis for Counts IV and V of The Bar's complaint, were refereed to The Florida Bar for appropriate disciplinary action.

Count IV of The Bar's complaint was based on Respondent's representation of the appellant in Pernell Driver, Appellant v. Lafayette County, Florida, Appellee, Case No. BA-279. The notice of appeal was filed by Respondent on July 9, 1984. By Respondent's own admission, he failed to file an initial brief within the time allotted by the Rules of Appellate Procedure (Respondent's answer to request for admissions). When the appellee moved for dismissal, the District Court of Appeal issued an order to show cause on October 26, 1984, directing Respondent to respond to the motion to dismiss within ten (10) days (TFB Exhibit 9). Respondent failed to timely respond, and on November 20, 1984, filed a response to the District Court in which he stated that his secretary had had surgery on October 8, 1984 and that he had been required to devote much of his time to looking after her affairs (TFB Exhibit 10). However, under the time limitations of Rule 9.110(f), The Florida Rules of Appellate Procedure, the initial brief in the matter was due on September 17,

1984, approximately three weeks prior to the date Respondent gives as the date of his secretary's surgical procedure. Respondent testified at the final hearing in this matter that his secretary had become ill sometime near the middle of August 1984 (TR 120). Although twice directed by the District Court of Appeal to show cause why he had failed to timely file the brief, he made no mention of any illness on the part of his secretary prior to her surgery in October. By his own admission, Respondent never filed a motion for extension of time to file the brief (TR 123).

Count V of The Bar's complaint against Respondent alleges as misconduct Respondent's representation of the appellant in the matter of Annie Lou Gentry, Appellant v. Vernon Leroy Gentry, Appellee, Case No. AZ-454. The notice of appeal was filed by Respondent on June 11, 1984 and, under the Rules of Appellate Procedure, the initial brief was due on August 20, 1984. On October 10, 1984, the appellee moved to dismiss the appeal based on Respondent's failure to file an initial brief. The District Court of Appeal issued an order to show cause on October 11, 1984 (TFB Exhibit 12). Respondent tendered no response to this order, and on November 5, 1984, a second order was issued by the District Court of Appeal directing Respondent to show cause why he should not be held in contempt or sanctions imposed for his failure to file an initial brief or a motion for extension of time and failure to respond to the Court's previous order to show cause (TFB Exhibit 13). Respondent's untimely response to the second order was identical to that filed in the Pernell v.

Driver matter (TFB Exhibit 13-A). Although Respondent's initial brief was due August 20, 1984, the date cited to the Court for his secretary's surgery was October 8, 1984, some six weeks after the brief was due. Respondent testified at the final hearing that he had had time to file the brief prior to his secretary's becoming ill in August (TR 122). Respondent agreed that the onset of his secretary's illness had occurred approximately 5 days before the due date for the brief (TR 123). No motion for extension of time was ever filed by Respondent.

The District Court of Appeal found Respondent's responses to the orders to show cause in the Driver matter and the Gentry matter to be inadequate and directed Respondent to appear personally before the court on January 14, 1985. Respondent appeared on that date but offered no further justification to the District Court of Appeal for his disregard of both the court's orders and the Florida Rules of Appellate Procedure. At the final hearing, Mr. Raymond Rhodes, Clerk for the First District Court of Appeal, testified that Respondent's name had appeared twice before on the District Court of Appeal's culpa list. The culpa list derives its name from the maxim culpa teneat suos auctores, which means "misconduct should bind its own authors." In September of 1977, Respondent, as counsel for appellant, had filed a notice of appeal on behalf of a client. On May 26, 1978, the court on its own motion directed Respondent to show cause why the appeal should not be dismissed for failure to prosecute the appeal. Respondent filed a response to that order and

was permitted additional time to file the brief (TR 70, 71). In a second case, the Respondent filed a notice of appeal on behalf of another client on October 27, 1982. On June 29, 1983 the District Court of Appeal directed Respondent to show cause within 15 days why he should not be held in contempt or other sanctions imposed and to serve the initial brief within 15 days. Respondent filed the brief in that case on July 18, 1983. (TR 72) These two other instances wherein Respondent's name was placed on the court's culpa list are not the subject of the instant disciplinary action. However, testimony relating to the instances was presented to the Referee and is cited to this Court for the purposes of establishing that Respondent had been put on notice that his behavior in previous cases was unacceptable.

The pattern of misconduct exhibited by Respondent in Count III, IV and V of The Florida Bar's Complaint goes beyond mere neglect of client matters. In fact, the District Court of Appeal specifically admonished Respondent for his repeated disregard for appellate rules and court orders. At the final hearing, Mr. Rhodes also testified that an attorney's name is not put on the culpa list for technical or inadvertent violations of appellate procedure rules, but for violations which show willful and inexcusable neglect of a clients interest (TR 69,70).

Disciplinary Rule 7-106(C)(7) is not a complex rule subject to interpretation. It states quite simply that a lawyer appearing

before a tribunal shall not intentionally or habitually violate any established rule of procedure or evidence. At the final hearing in this matter, it was clearly established that Respondent had, in the handling of three separate appellate court cases, habitually violated established rules of appellate procedure by filing notices of appeal on behalf of clients then failing to file the initial briefs or motions for extension of time. As a result of his handling of these three cases, the First District Court of Appeal issued an order finding that Respondent had repeatedly disregarded Florida Rules of Appellate Procedure, despite warnings from the court in two previous instances.

Respondent's excuse to the district court for his failure to file briefs in two of the matters, the Driver and Gentry appeals, was found by the District Court to be totally inadequate. Accepting Respondent's excuse in its very best light - that he was consumed by his obligation to his secretary from mid-August 1983 until her death November 19, 1983 - Respondent took no steps to either remove himself from the responsibility of these representations or to request extensions of time in which to file the initial briefs. At the very minimum, the rules of procedure and common courtesy require that an attorney unable to comply with the time requirements for filing a brief request additional time from the court.

Respondent's representation in the R.J.P. appeal is even more egregious. When ordered by the District Court of Appeal to file a

written response detailing his efforts to have the record prepared, Respondent tendered a one and ome-half page response offering no explanation regarding any efforts on his part to have the record prepared. He summarized his efforts as having "done all within his power...to assist in locating the transcript of [the] trial." (TFB Exhibit 6) Respondent further advised the district court that the court administrator's had made diligent and full effort to locate the court reporter. Attached to the response was an unsigned, undated, unverified affidavit apparently prepared for the signature of Ms. Nancy Nydam, the court administrator. Ms. Nydam testified at the final hearing in this matter that she had not been asked to sign the affidavit in question and, would not have signed it, as the facts stated in the affidavit were not true and correct (TR 104,105). Ms. Nydam further testified that an examination of her records indicated that the hearing in question had been taped rather than recorded by a court reporter, so that there would not have been a court reporter to locate (TR 102-103). Respondent therefore not only failed to demonstrate good cause, but misrepresented the facts to the court in his response.

The record is well documented with evidence, both in the form of testimony and exhibits, which supports a finding that Respondent violated Disciplinary Rule 7-106(C)(7) by habitually violating established rules of procedure in his handling of three separate appellate cases before the First District Court of Appeal. Respondent exhibited a consistent pattern for ignoring and

disregarding rules of procedure and court orders. Such conduct on the part of any attorney is clearly violative of Disciplinary Rule 7-106(C)(7).

ISSUE II

THE REFEREE'S RECOMMENDATION OF A PUBLIC REPRIMAND AS DISCIPLINE IS NOT SUFFICIENT DISCIPLINE FOR RESPONDENT'S MISCONDUCT.

The Referee in this matter found Respondent guilty of three separate counts of misconduct. In Count III of the Bar's complaint, Respondent was found guilty of violating of Disciplinary Rule 1-102(A)(4), which prohibits an attorney from engaging in misconduct involving dishonesty, fraud, deceit or misrepresentation. The Referee also found Respondent guilty in Counts IV and V of the Bar's complaint for misconduct constituting violation of Disciplinary Rules 1-102(A)(1) and 6-101(A)(3) which prohibit violation of a disciplinary rule and neglect of a legal matter entrusted to an attorney. The Bar is appealing the Referee's recommendation of not guilty in Counts III, IV and V of violation of Disciplinary Rule 7-106(C)(7) for habitually violating established rules of procedure, as the evidence in the records clearly supports a finding of guilt on this charge.

In addition to the misconduct charged in the instant case, Respondent was previously reprimanded in a confidential order No. 64,142 for violation of Disciplinary Rules 6-101(A)(3) and 1-102(A)(6). This order of private reprimand was issued on July 19, 1984 (Appendix C).

This Court has previously set forth the three purposes for discipline which should be considered in determining the appropriate level of discipline in a grievance matter:

> First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations.

The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970).

The Referee's recommendation of public reprimand does not fulfill the three purposes of discipline as set forth in Pahules. Although no serious damage occurred to Respondent's clients, Respondent's conduct undermines the confidence of the public in both Respondent and the legal system within which he operates. The Florida Bar recommended to the Referee that Respondent be suspended for a period greater than three months with proof of rehabilitation required prior to reinstatement. The Board of Governors of The Florida Bar in reviewing this matter for the purposes of recommending a petition for review, directed the undersigned Bar Counsel to request suspension of ninety (90) days, together with conditions of probation as recommended by the Referee. This term of suspension

would be fair to Respondent, being sufficient to punish the misconduct and would, at the same time, encourage reformation and rehabilitation. A ninety-day (90) suspension would likewise be severe enough to deter other attorneys who might be prone or tempted to become involved in like violations.

This Court has in the past considered a number of cases involving the issue of neglect of client matters by attorneys. In a recent opinion, this Court suspended an attorney for ten days and placed the attorney on probation for a period of one year for delay in handling an appeal and failure to timely file a brief in the appeal. The Florida Bar v. Morrison, 496 So.2d 820 (Fla. 1986). In the Morrison case, the attorney was charged with mishandling one legal matter and had received no previous discipline from The Florida Bar.

In The Florida Bar v. Schilling, 486 So.2d 551 (Fla. 1986), this Court suspended an attorney for six months for failure to diligently pursue a legal matter. The facts in the Schilling case, approved by this Court and adopted by reference in the report of the Referee, indicate that the attorney had, in one instance, failed to pursue a client's claim and to respond to repeated inquiries; in another instance, the attorney had neglected to pursue a claim and communicate with a client. The attorney in Schilling had previously been privately reprimanded.

In The Florida Bar v. Hendrickson, 222 So.2d 1 (Fla. 1969), this Court suspended an attorney for one year for abandoning clients' cases, neglecting and refusing to communicate with clients, and ignoring court orders requiring his action on behalf of a client.

An attorney was suspended for six months for neglecting a legal matter where the attorney had a previous disciplinary matter. The Florida Bar v. Hunt, 417 So.2d 967 (Fla. 1982). This Court rejected a referee's recommendation of a public reprimand and six months probation for another attorney who failed to diligently pursue a divorce action where the attorney had previously been disciplined. The Florida v. Fath, 391 So.2d 213 (Fla. 1980). The attorney in Fath was suspended for an additional six month period to run consecutively with his previous suspension.

The American Bar Association has promulgated Standards for Imposing Lawyer Sanctions, Black Letter Rules. It is the present policy of the Board of Governors of The Florida Bar to cite these standards in all cases involving discipline of attorneys. Section 3.0 of these standards sets forth the factors to be considered in imposing sanctions after a finding of lawyer misconduct. These factors are: (a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. Applying these factors to the instant case, it is clear that Respondent has violated a duty to his clients to diligently pursue the matter

entrusted to him. Respondent exhibited a willful disregard for rules of procedure and for court orders. The potential for injury to his clients was great in that the District Court of Appeal could have dismissed his clients' appeals, leaving the clients with no further legal redress. Finally, Respondent's prior disciplinary offenses, the pattern of misconduct exhibited, the fact that Respondent has been found guilty of multiple counts of misconduct, that he has practiced law for 16 years, and his refusal to appreciate the wrongful nature of his misconduct, constitute aggravating factors which should enhance the level of discipline.

Section 6.0 of the ABA Standards deals with violations of duties owed to the legal system. Section 6.13 states, "a public reprimand is appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action where material information is being withheld." Applying these standards, Respondent could receive a public reprimand for his misconduct in Count III alone, where he tendered to the District Court of Appeal, unsigned, unverified, undated affidavits which contained false and misleading information.

Section 4.42 of the ABA Standards state that, "for misconduct involving lack of diligence on the part of an attorney, suspension is appropriate when an attorney engages in a pattern of neglect and causes injury or potential injury to a client." Respondent's misconduct in the instant case clearly indicates a pattern of neglect

with a potential for injury to his clients.

Section 9.22 of the ABA Standards sets forth factors which may be considered in aggravation. Among those factors listed are prior disciplinary offenses, a pattern of misconduct, multiple offenses, refusal to acknowledge wrongful nature of conduct, and substantial experience in the practice of law. All of these aggravating factors are present in the instant case. Respondent has been disciplined in the past by private reprimand for the same type of misconduct with which he is charged in the instant case. A pattern of misconduct is exhibited wherein the three counts against Respondent allege misconduct which is almost identical in nature, and which constitutes multiple offenses. At no point in these proceedings has Respondent acknowledged the wrongful nature of his conduct; in fact, Respondent's testimony at the final hearing indicates that at the time of the final hearing he still had not come to appreciate the gravity of his consistent and willful failure to follow rules of appellate procedure. Respondent was admitted to the practice of law in 1979 and testified at the final hearing that he has been engaged in the practice of law for sixteen years (TR 131).

In The Florida Bar v. Moxley, 462 So.2d 814 (Fla. 1985), this Court stated that public reprimands should be reserved for isolated instances of neglect. Respondent's conduct in the instant case is clearly more than an isolated instance of neglect. Respondent has exhibited a pattern of misconduct in the form of neglecting client

matters and in failing to comply with rules of appellate procedure and court orders. A public reprimand in this case is therefore wholly inadequate as discipline for the misconduct involved.

This Court has, in the past, dealt more seriously with multiple offenses in disciplinary matters. The Florida Bar v. Greenspahn, 396 So.2d 182 (Fla. 1981). Where the offenses involved were of a similar nature, the level of discipline should be even more severe. The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1982). Respondent not only has been found guilty of multiple offenses of similar misconduct but has previously been disciplined for similar misconduct.

Based upon similar cases decided by this Court, and in light of the pronouncements cited from the ABA Standards, a suspension of at least ninety days, followed by a period of probation as recommended by the Referee, would be appropriate. Such a suspension would also be consistent with the purposes of discipline as set forth in Pahules.

CONCLUSION

The evidence presented at the final hearing, including testimony and exhibits, is clear and convincing that Respondent's misconduct in Count III of The Bar's complaint is in violation of Disciplinary Rule 7-106(C)(7) in addition to being in violation of Disciplinary Rule 1-102(A)(4); and that Respondent's misconduct in Counts IV and V constitutes a violation of Disciplinary Rule 7-106(C)(7), in addition to being in violation of Disciplinary Rules 1-102(A)(1) and 6-101(A)(3).

A public reprimand, which was recommended by the Referee, is not strong enough for the type of misconduct involved here and the number of offenses, especially in light of the aggravating factors present in this matter.

WHEREFORE, The Florida Bar respectfully requests this Court to reject the Referee's recommendation of not guilty in Counts III, IV and V of the Bar's complaint for violation of Disciplinary Rule 7-106(C)(7) and that this Court impose a discipline of at least ninety days, together with the conditions of probation as recommended by the Referee.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by certified mail # P 676 195 518, return receipt requested, to JOHN R. WEED, Respondent, at his record Bar address of 605 South Jefferson Street, Perry, Florida 32347, this 1st day of May, 1987.

SUSAN V. BLOEMENDAAL