IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

JOHN R. WEED,

Respondent.
_____/

Case No. 70,948

TFB File Nos. 86-15895-03, 86-15898-03, 86-15911-03, and 86-15918-03

COMPLAINANT'S ANSWER BRIEF

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PRELIMINARY STATEMENT

This is a case of original jurisdiction, pursuant to Article V, Section 15 of the Constitution of the State of Florida.

The Petition for Review was sought by the Respondent (hereinafter referred to as Petitioner) who was the accused attorney before the Referee. The Complainant, The Florida Bar (hereinafter referred to as Complainant), did not seek review before this Court.

References to the record are referring to the numbered paragraphs and transcripts in that letter to Mr. Sid White from the Honorable William L. Gary, Referee in this case, dated May 5, 1989. Documents will be designated with a capital R in parentheses followed by the paragraph number. The Complaint in this case is therefore noted as (R 1). References to the transcripts of the hearings held in this case will be as follows:

January 27, 1988 - (TR 1 - page number),
May 10, 1988 - (TR 2 - page number),
August 1, 1988 - (TR 3 - page number),
August 22, 1988 - (TR 4 - page number),
February 20, 1987 - (GC 1 - page number), (Grievance Committee transcript admitted into evidence)

Exhibits which were introduced into evidence at the final hearing will be referred to as (TFB Exhibit - number).

STATEMENT OF THE CASE

At the conclusion of the final hearing on August 22, 1988 the parties agreed that written memoranda as to closing argument and appropriate discipline would be submitted to the Referee, with the Petitioner having an additional seven days to respond to the Complainant's proposed discipline. (TR 4-129-132). With the above information added to Petitioner's statement of the case the Complainant believes it is accurate.

STATEMENT OF FACTS

The Petitioner's Statement of Facts is completely without reference to the record. This lack of reference to the record has the Complainant in the precarious position of choosing to move to either strike Petitioner's Brief for noncompliance with the Rules of Appellate Procedure thereby causing further delay in this case if approved or in making numerous additions to the Statement of Facts as is required by the Rules of Appellate Procedure. The Complainant has chosen the latter course of action.

The Complainant has not sought review by this Court of the Referee's recommendations and therefore in light of those recommendations, it will not dispute Petitioner's Statement of the Facts as they pertain to Counts **I** and **11.**

The Complainant must, however, set forth the following as specific areas in which it disagrees with Petitioner's Statement of the Facts.

1. Count III of the Complaint centers around the testimony of John Louie Houck (hereinafter referred to as Mr. Houck) and his relationship with the Petitioner. The Complainant acknowledged in its written Final Argument that the case centered around the testimony of Mr. Houck and his relationship with the Petitioner over a considerable period of

time. (R 16). The Complainant, however, did not state that the case centered around the "believability" of Mr. Houck, although his credibility, as with all witnesses, is always a subject for review by the trier of fact.

2. Mr. Murray Ronald Cornelius, Inspector, Division of Criminal Investigation, Florida Department of Law Enforcement (hereinafter referred to as Mr. Cornelius) , testified that he and Mr. Houck had worked on several cases where they went out and made contact and cases were made. (TR 1-15, 16). Mr. Cornelius also testified that Mr. Houck was a very knowledgeable man in the Taylor County area and seemed to be well aware of the situations that were going on down there with regard to smuggling. (TR 1-31).

3. Mr. Jeff Hudson (hereinafter referred to as Mr. Hudson) testified that he had taken an affidavit to Mr. Houck while he was in prison. That Mr. Houck signed it, and that he (Mr. Hudson) notarized it, and then took it back to Petitioner's law office. (TR 3-7). Mr. Hudson further testified that he went to the prison at Petitioner's direction. (TR 3-7, 12). It was Mr. Hudson's understanding that Petitioner was representing Mr. Houck when he went to the prison to get the document notarized. (TR 3-8). Mr. Hudson testified that he did not file the notice of appeal or affidavit with the court. (TR 3-8, 14). Mr. Hudson also

testified that Mr. Houck was in constant contact with Petitioner's office. (TR 3-12).

4. Mr. P. Douglas Brinkmeyer, Assistant Public Defender (hereinafter referred to as Mr. Brinkmeyer) did visit Mr. Houck in August 1982 when Mr. Houck was in prison and did discuss with him his appeal. (TR 1-76). During this meeting, Mr. Houck informed Mr. Brinkmeyer that Petitioner was representing him on appeal - that a brief had been filed and the case argued. (TR 1-76, 78). This contention is further supported by the fact that Mr. Houck instructed Mr. Brinkmeyer to file nothing on his behalf. (TR 1-81). Mr. Houck testified before the Third Circuit Grievance Committee that he believed Petitioner was representing him on appeal. (GC 1-107). That Petitioner had told Mr. Houck that "the appeal is going fine, we done argued the case and we are just waiting around for a decision." (GC 1-108). Petitioner also told Mr. Houck that the longer they (the appellate court) wait, the better it is. (GC 1-109). Mr. Houck further testified that he did not believe Mr. Brinkmeyer when he told him the appeal had not been properly filed. (GC 1-112). Mr. Houck stated that Petitioner told him that he would represent him to the end and that he did not owe him anything. (GC 1-102, 103). Mr. Houck testified he paid Petitioner over $10,000.00 to represent him with respect to all of his cases and that he had no written agreement with Petitioner. (GC 1-104-105). Petitioner agrees he was paid

$9,500.00 in cash to represent Mr. Houck in his trial but not on appeal. (TR 4-87).

5. The Complainant has been unable to locate in the record where Mr. Houck admitted that the Petitioner had told him that he did not have anything to appeal.

6. Mr. Brinkmeyer testified that he was contacted by a relative of Mr. Houck's who asked him in late 1985 if he would meet with Mr. Houck in prison. (TR 1-79). Mr. Houck met with Mr. Brinkmeyer in January 1986 and the facts surrounding his appellate case's dismissal were explained to him by Mr. Brinkmeyer. (TR 1-79). During the 1986 conversation, Mr. Houck told Mr. Brinkmeyer that he had been in constant contact with Petitioner throughout the period of his incarceration and that he had finally realized that he had not gotten his right to an appeal. (TR 1-80).

7. The Petitioner was retained by Mr. Boyd Hilton (hereinafter referred to as Mr. Hilton) to file an appeal with respect to a juvenile proceeding in which his two sons had been adjudicated to be delinquent. (TR 1-142). Mr. Hilton testified that he had been told that the conviction could be overturned based upon a conflict of interest on the part of one of the attorneys involved in the case. (TR 1-142). Mr. Hilton testified that Petitioner told him that he had filed a notice of appeal and taken steps to prosecute it. (TR 1-144). When

Mr. Hilton was served with a summons and complaint in the civil suit filed by the Pennsylvania National Mutual Casualty Insurance Company against him and his wife with respect to the vandalism charge that had been the basis of the juvenile matter, he carried it to Petitioner. (TR 1-144). Petitioner informed Mr. Hilton that they could not sue his wife and that with Petitioner filing an appeal on the children's behalf in the juvenile case, that that would kill it. (TR 1-145). Subsequently, there was a final judgment entered against Mr. Hilton and his wife in the civil suit. Mr. Hilton received a copy of the final judgment and took it to Petitioner's office. Petitioner told Mr. Hilton that he could not understand it. (TR 1-145). Petitioner, according to Mr. Hilton's testimony, never did pursue the appeal on behalf of his sons nor was the final judgment in the civil matter vacated. (TR 1-147). There is no question at all in Mr. Hilton's mind that Petitioner was representing him as to both the civil matter and his sons' juvenile matter. (TR 1-150). Mr. Hilton testified that he had had a problem getting in touch with Petitioner; most of the time Petitioner was out of town or unavailable and that when he would be able to talk with Petitioner, Petitioner would tell him that he was taking care of it and not to worry about it. (TR 1-150).

SUMMARY OF ARGUMENT

The Complainant argues that there was substantial and competent evidence which was presented to the Referee as to Counts III and IV to allow him to find Petitioner guilty of the violations cited in his report. Further, Complainant believes Petitioner should be found guilty of violating the disciplinary rules as cited in its Complaint against him in regard to Count II.

The Complainant argues that the evidence in mitigation which the Petitioner may or may not have, should not be heard at this point in time, that the Petitioner has waived his right in this regard and ignored his opportunity to present it to the Referee. As Petitioner states in his own Summary of the Argument, that his motion for hearing of mitigating evidence was denied nine days before the final report of the Referee was filed.

Cornplainant argues that the Referee acted appropriately in allowing the Complainant to introduce into evidence the sworn testimony of John Louie Houck before the Referee when Mr. Houck, a witness at the final hearing, had repeatedly stated under oath that he could not remember answers to questions which he had been able to answer before the Grievance Committee. The Complainant believes that the Referee, faced with a witness who could not remember facts and events as he

had approximately one year earlier, made the correct decision in allowing the sworn grievance committee testimony of Mr. Houck to come in as evidence.

Lastly, Complainant argues that the penalty recommended by the Referee is appropriate in light of the facts and circumstances of this case and based upon Petitioner's past disciplinary record.

ARGUMENT

ISSUE I.

THE REFEREE DID NOT ERR IN PERMITTING THE COMPLAINANT TO INTRODUCE THE SWORN TESTIMONY OF A WITNESS BEFORE THE THIRD CIRCUIT GRIEVANCE COMMITTEE INTO EVIDENCE WHEN THAT WITNESS CONTINUOUSLY TESTIFIED BEFORE THE REFEREE THAT HE COULD NOT REMEMBER OR RECALL ANSWERS TO QUESTIONS WHICH HE HAD ANSWERED APPROXIMATELY A YEAR BEFORE IN FRONT OF THE GRIEVANCE COMMITTEE.

The Complainant introduced into evidence the testimony of a witness, John Louie Houck, over the objection of Petitioner at the final hearing. (TR **1-69**). The witness, Mr. Houck, had been called by the Complainant to give testimony before the Referee and continuously stated that he either could not recall or remember the answers to questions he had been asked in front of the grievance committee. (TR **1-50-68**). Mr. Houck is an older man who was complaining at the hearing held January 27, **1988** about his age, illness, and loss of memory. (TR **1-37, 68**). Based upon Mr. Houck's inability to recall facts and events to which he had previously testified, the Referee allowed his sworn testimony into evidence. The Referee then ordered Petitioner be given a copy of Mr. Houck's testimony which had been entered into evidence for his review. (TR **1-68**). Mr. Houck's testimony was continued until a future date to give Petitioner the opportunity to review Mr. Houck's sworn testimony before the Grievance Committee and to prepare for his cross examination at some future time. (TR **1-69**).

On August 1, 1988 and August 22, 1988, Petitioner was given the opportunity to confront Mr. Houck and to cross examine him thoroughly as to all allegations which had been made against him. (TR 3, TR 4). Petitioner, being aware of the fact that he was given this opportunity to confront Mr. Houck and to cross examine him, graciously corrected the Referee as to the fact that that was what he had just accomplished in questioning Mr. Houck. (TR 4-60). Petitioner admits that he had notice of the Grievance Committee hearing at which Mr. Houck's sworn testimony was elicited and that he could have been present if he had chosen to do so.

Mr. Houck most certainly was compelled to be present at the final hearing before the Referee in this case. (R 7, 8, 10, 11). The Referee, however, does not have the power to compel a witness to remember that, which due to age and health, he simply cannot recall. Petitioner's argument appears to be that the Referee somehow should be able to make a person remember things they have forgotten.

The Petitioner next asserts that the witness (Mr. Houck) could be impeached as in cross examination. An attorney does not impeach his own witness because he cannot remember but he rather attempts to refresh his memory which is exactly what Bar Counsel did in this case. (TR 1-44).

Petitioner states in his Initial Brief that he was deprived of various, unspecified, Constitutional guarantees which resulted in the finding of guilt. The Complainant finds it somewhat difficult to respond to such a vague assertion on the part of Petitioner. Petitioner was afforded the opportunity on two separate occasions to cross examine Mr. Houck and to present any evidence that he had to refute the allegations against him. (TR 3, TR 4).

The Petitioner using the analogy of the entry of a deposition into evidence at a trial to the entry of the Grievance Committee transcript at a referee final hearing misconstrues the rules for the entry of such materials into evidence at either proceeding. Pursuant to Rule 1.330(a)(3), Florida Rules of Civil Procedure, "the deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: . . . (c) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment." As has been stated previously, Mr. Houck testified he was an older man in poor health and that he could not recall nor remember answers to questions he once knew. The Court has noted that it is up to the sound discretion of the trial court in admitting deposition testimony when a witness is present in court and called as a witness. Anderson v. Gaither, 162 So.2d 877 (Fla. 1935). Further, the Court has stated that a referee during a disciplinary proceeding is not bound by the technical rules of evidence. The Florida Bar v.

Vannier, 498 So.2d 896 (Fla. 1986) and The Florida Bar v. Dawson, 11 So.2d 427 (Fla. 1959).

Petitioner's comparison of the grievance committee function to that of a grand jury is appropriate as far as it goes. Both the grand jury and the grievance committee find probable cause to go further; however, the rights of the individual accused are quite different in both proceedings. The grievance committee procedure provides an opportunity for the accused to be present at the hearing, to present evidence, and to cross examine witnesses, all of which are not given in a grand jury setting. The comparison by Petitioner fails to appreciate the fundamental difference between a civil, criminal, and quasi-judicial proceeding. The nature of the proceeding dictates the methodology to be used in arriving at a result. This would appear to be the reason why, for example, hearsay evidence is admissible in a Bar disciplinary proceeding when it would not be in a civil or criminal proceeding absent some exception to the rule of evidence.

The question raised in this argument by Complainant does not come down to what do you do with a witness who changes his testimony, but rather, what do you do when the witness cannot remember. It is the Complainant's belief that the only acceptable course of action to follow is that chosen by the Referee in this case. To do otherwise is to endorse the view that sworn testimony given in front of a grievance committee is

valid at that proceeding and no other should the witness be available to testify although lacking in the ability to do so.

ISSUE 11.

THE RECOMMENDATION OF THE REFEREE THAT PETITIONER BE FOUND GUILTY OF COUNTS III AND IV IS SUPPORTED BY COMPETENT AND SUBSTANTIAL EVIDENCE.

The Referee's findings should be upheld unless clearly erroneous or without support in the evidence. The Florida Bar v. McKenzie, 442 So.2d 934 (Fla. 1983).

The burden of proof at the referee level is upon the Complainant and in order to sustain a charge of professional misconduct there must be clear and convincing evidence of the attorney's guilt. The standard of review by the Supreme Court is that the referee's findings must be sustained if supported by competent and substantial evidence. The Florida Bar v. Hooper, 509 So.2d 289 (Fla. 1987). Petitioner's contention is that the Complainant did not prove the guilt of Petitioner by clear and convincing evidence. What Petitioner is apparently requesting is a trial de novo which this Court has already stated is not within the nature of its review. The Florida Bar v. Hooper, 509 So.2d 289 (Fla. 1987).

The evidence presented to the Referee was both competent and substantial. Mr. Houck testified that it was his understanding that Petitioner was representing him with respect to his criminal appeal. (GC 1-107, TR 4-61). Mr. Houck testified that Petitioner had told him that his appeal had been

filed and argued. (GC 1-108). Mr. Houck's recollection of what took place in 1982 is supported by the testimony of Mr. Brinkmeyer who testified that when he went to visit Mr. Houck in 1982 in prison he told him that Petitioner was representing him on his criminal appeal. (TR 1-76). Mr. Hudson, an employee of Petitioner's, testified that he went to see Mr. Houck while he was in prison in 1982 at the direction of Petitioner to get an affidavit signed and notarized. (TR 3-7). It was Mr. Hudson's understanding that Petitioner was representing Mr. Houck at the time he went to the prison. (TR 3-8). Mr. Hudson further testified that Mr. Houck was in constant communication with Petitioner's law office once he was sent to jail. (TR 3-12). In a letter from Jean Stinson, Appeals Clerk, Alachua County, Florida (hereinafter referred to as Ms. Stinson), to Mr. Raymond Rhodes, Clerk, First District Court of Appeal, entered as The Florida Bar Exhibit 12. Ms. Stinson states that representatives of Petitioner's office travelled to Gainesville to file the notice of appeal and affidavits of the defendant's. Mr. Houck denies signing the notice of appeal. (GC 1-110). The testimony entered against Petitioner, the fact that Mr. Houck refused to allow Mr. Brinkmeyer to file anything in his behalf in regard to his appeal in 1982 all support Mr. Houck's contention that Petitioner was suppose to represent him in his criminal appeal.

In 1986, a belated appeal was filed and Mr. Houck's case was determined on its merits.

The Petitioner, in his Initial Brief, appears to be attempting to obtain a hearing ~~de novo~~ by this Court as to Count 111. Petitioner attempts to discredit Mr. Houck by use of statements without reference to the record or which pertain to matters not presently being reviewed as the basis upon which the Referee decided Petitioner's guilt or innocence. Such action by Petitioner supports Complainant's argument that Petitioner is seeking to retry his case.

Petitioner asserts that Mr. Houck's refusal to testify shows that he is unworthy of belief. Petitioner does not state that Mr. Houck could not remember the answers to the questions asked of him at the January **1988** hearing. Mr. Houck faced Petitioner on August **1, 1988** and August **22, 1988** and answered any and all questions Petitioner had.

Petitioner has not shown that the testimony or evidence produced at the final hearing has been discredited, he (Petitioner) merely makes the assertion that it has. Apparently the Referee did not concur with Petitioner on this point.

In regard to Count IV, Petitioner again asks this Court to review the record - basically a trial ~~de novo~~ to find for itself the falsity of the accusation against him. As was pointed out by Complainant, Mr. Hilton sought Petitioner's assistance in appealing the conviction of his sons based upon a

possible conflict of interest on the part of their attorney. It would appear that Petitioner now asserts the reverse of what Mr. Hilton testified took place. Mr. Hilton testified that he hired Petitioner to set aside (appeal) his sons' conviction and based upon that appeal the civil suit would be killed. Petitioner states that once the civil suit was resolved to the wife's satisfaction that there was no need to go further. Yet, if it is as Petitioner states, then why did he not merely show the wife's relationship to Mr. Hilton's sons in the beginning to the plaintiff's attorney in the civil suit and forget about the juvenile matter.

Petitioner's statement about what Mr. Hilton knew or did not know are not supported by the record and should be discarded by this Court.

The function of this Court is not to give Petitioner a forum to retry his case. His conclusion that Mr. Hilton's testimony is unsupported and his request to have this Court review the entire record is not appropriate when Petitioner fails to refer to the record or exhibits in his brief.

ISSUE 111.

THE REFEREE DID NOT ERR IN DENYING PETITIONER'S UNTITLED MOTION TO ALLOW HIM TO PRESENT EVIDENCE IN MITIGATION AFTER A FINDING OF GUILT BY THE REFEREE.

At the conclusion of the last hearing in this matter which was held on August 22, 1988, both parties agreed and the Referee concurred that written final argument and memoranda on discipline would be submitted to the Referee within a specified time. The Complainant agrees with Petitioner's chronology of the submission of the memoranda.

Petitioner did file a motion requesting the opportunity to present mitigating evidence after the Referee had determined his guilt or innocence. The Florida Bar opposed Petitioner's motion on the ground that Petitioner had previously agreed with the Complainant and the Referee on how closing argument and discipline would be argued and that it appeared that the request was filed solely for delay. The Petitioner in his brief argues that to not afford him the opportunity to offer mitigating evidence once his guilt or innocence has been determined is contrary to all of the rules of fair play and justice under our system. It is the Complainant's belief that the Petitioner was offered the opportunity to present mitigating evidence but chose not to do so. Petitioner asserts that he could not offer mitigating evidence when and how he had previously agreed but rather chose to file nothing in

mitigation and to seek by way of an untitled motion to request to present evidence in mitigation once his guilt or innocence had been determined. Petitioner filed his motion seeking to present his evidence at a future date on October 10, **1988** and never called it up for hearing. Petitioner's reasoning for his failure to call his own motion up for hearing was that it would in some way be improper. Why it would have been improper the Complainant does not know. Basically, the opportunity for Petitioner to seek to offer whatever mitigation he had, existed; he, however, chose not to avail himself of it. Petitioner's plea to equity by way of fairness and justice should be viewed in light of the equitable maxim that "equity aids one who has been vigilant, not one who has slept on his rights." cite omitted.

Further, Petitioner did nothing between April 24, **1989**, the date denying his motion, and May 4, **1989** when the Referee's report was made.

Petitioner has basically slept on his rights and now asks this Court to give back to him the opportunity to present mitigating evidence that he freely and knowingly failed to pursue.

It should be noted lest the Court believe the Complainant to be unattentive, that the Petitioner has provided this Court with a considerable amount of what he believes to be mitigation, by way of his Initial Brief.

ISSUE IV.

THE PETITIONER WAS FOUND GUILTY OF VIOLATING DISCIPLINARY RULE 1-102(A) (3) AND RTICLE XI, RULE 11.02 (3)(a) AND (b) OF THE INTEGRATION RULE OF THE FLORIDA BAR AS CHARGED IN THE COMPLAINT FILED AGAINST HIM BY THE FLORIDA BAR AND THE REFEREE DID NOT ERR IN HIS FINDINGS.

Petitioner admits that the allegations in the Complaint with respect to Count 11, except that said allegations constitute a violation of the disciplinary rules cited therein. Basically, it is the understanding of the Complainant that Petitioner denies that he has violated Disciplinary Rule 1-102(A)(3) (engaging in illegal conduct involving moral turpitude). In the case of The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983), the Court held that conduct entered into by an attorney similar to that of the Petitioner, ". . . constitutes a serious cumulative misconduct involving moral turpitude . . . moreover, this conduct present here reflects a flagrant and deliberate disregard for the very law which respondent took an oath to uphold." Id. at 986. Similarly, in the case of The Florida Bar v. Vernell, 374 So.2d 473 (Fla. 1979), Mr. Vernell, having been convicted in federal district court of the misdemeanors of failure to file income tax returns for the years 1967 through 1971, was found to have violated Florida Bar Integration Rule, article XI, Rule 11.02(3) (a) and (b), the Florida Bar Code of Professional Responsibility, DR 1-102(A)(3), (4), and (6). In light of

these two cases cited above, it would seem clear that a conviction on the misdemeanor charge of failing to file a federal income tax return is a violation of Disciplinary Rule 1-102(A)(3) (engaging in illegal conduct involving moral turpitude) of the Code of Professional Responsibility of The Florida Bar and article XI, Rule 11.02(3)(a) and (b) of the Integration Rule of The Florida Bar and therefore Petitioner should and was found guilty of violating these specific Disciplinary Rules cited in the Complaint against him.

Petitioner's assertion in his argument that he should be found guilty of violating Disciplinary Rule 1-102(A)(6) will not be addressed in that he was not cited in the Complaint with having violated said rule nor was he found guilty of same.

Petitioner, in his argument to the Court, basically states there are numerous mitigating factors that should be considered by the Court in this case and basically goes on to explain to the Court what they are.

Petitioner again asserts that other mitigating factors could have been placed before the Referee if the opportunity to do so had been afforded him. It is the opinion of the Complainant that the opportunity for Petitioner to place mitigating evidence in front of the Referee existed but the Petitioner voluntarily and knowingly chose not to do *so.*

ISSUE V.

THE RECOMMENDED DISCIPLINE BY THE REFEREE WITH REGARD TO HIS FINDINGS OF GUILT ON THE PART OF PETITIONER WITH REGARD TO THE COMPLAINT FILED AGAINST HIM ARE APPROPRIATE IN THIS CASE.

The Complainant believes that the discipline recommended by the Referee is appropriate in light of the circumstances surrounding this Complaint and Petitioner's disciplinary history. The Complainant in its "Memorandum in Support of Appropriate Discipline" outlined both the appropriate sections of Florida's Standards for Imposing Lawyer Sanctions and case law with regard to Petitioner's misconduct. (R 16). The Complainant further pointed out to the Referee that the Supreme Court deals more harshly with cumulative misconduct and where the cumulative misconduct is of a similar nature, the discipline imposed should be even more severe than for dissimilar misconduct. The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1982). The Petitioner herein has been found guilty of violating the same disciplinary rule as cited in the present matter. The Complainant in its Memorandum on Appropriate Discipline incorrectly put the date of Respondent's private reprimand as 1978 when it was in fact 1984; this, however, should have no mitigating effect as to Petitioner.

Petitioner, while making blanket statements that the discipline recommended by the Referee is too severe, presents

nothing to this Court to justify altering it. The statement by Petitioner that mitigating circumstances other than those put forth in his brief should be considered is without merit in that any such evidence which may or may not exist should have been presented a long time ago and was not.

The Complainant believes that to impose a suspension of six months as suggested by Petitioner would be too lenient in light of the violations of the Disciplinary Rules involved and his past disciplinary record.

CONCLUSION

The Complainant argues that the introduction of Mr. Houck's sworn testimony before the grievance committee was properly admitted into evidence and that based upon it and the other evidence presented to the Referee that Petitioner be found guilty with regard to the violations as listed in the Referee's report as to Count 111. That the Court find that there was substantial and competent evidence with regard to Counts III and IV and accept the Referee's recommendations with respect to them.

The Court, as it has in the past, should find that a violation of the law as alleged in Count II of Complainant's Complaint is a violation of the disciplinary rule involving moral turpitude and should accept the Referee's recommendation on this Count of the Complaint.

The Court should not return this matter to the Referee to hear mitigation because to do so would endorse Petitioner's apparent lack of action and concern and would in effect

encourage the very attitude which has led to some of the present complaints against him.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief has been forwarded by certified mail # P978505438, return receipt requested, to JOHN R. WEED, Petitioner/Respondent, at his record Bar address of 605 South Jefferson Street, Perry, Florida 32347-4114, on this 15th day of September 1989.

JOHN V. MCCARTHY