IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

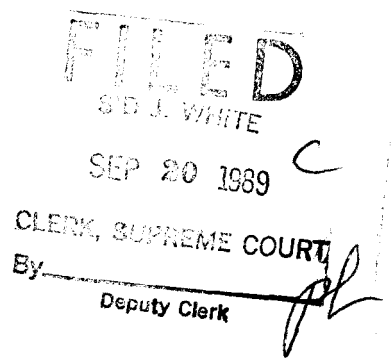
Case No. 73,404
TFB No. 87,25,562(06A)

vs.

THOMAS COLCLOUGH,

Respondent.

_____/



COMPLAINANT'S ANSWER BRIEF

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PR[illegible] STATEMEN

Complainant will use the same symbols utilized by respondent in his Initial Brief.

STATEMENT OF THE CASE

A preliminary Report of Referee was issued on May 4, 1989, recommending respondent be found guilty of violating those disciplinary rules set forth in paragraph 27 of the Complaint.

STATEMENT OF THE FACTS

Respondent's Motion to Assess Costs in the Holmes v. Hustin matter was filed on August 12, 1986, not August 14, 1986. (Bar Ex. 3).

The events leading up to Ms. Barr filing a Motion to Stay Execution and Notice of Hearing on Friday, August 15, 1986, was explained by Ms. Barr as follows:

> "During the week of August the 11th to the 15th I talked with Mr. Colclough two times, one of them would have been on Monday and the other would have been, I believe, on Wednesday. It's possible that the second telephone call my [sic] have been on Thursday, but it was a Wednesday or Thursday. And I think it was on Wednesday. So that would have been on August the 13th.
>
> And he had--the reason that I called was the sheriff's deputies were out knocking on the door for execution and we had just learned of it. They were not knocking on his home door they were on a rental property. (T-110).
>
> So I talked to him to say we needed to get a stay on the execution. And I had gotten a couple of times from Judge Bryson's secretary, Peggy, for Thursday or Friday when we could go in and both of those days he said no, no, he could not go in.
>
> And I said I'm going to be out of town the next week Monday, Tuesday, Wednesday because we have a family reunion scheduled and it's been scheduled for a year. I can't be there Monday, Tuesday or Wednesday of next week, but if you'll hold off on the execution until I get back Thursday and any time thereafter, any time after that would be fine, we can do it at your convenience. (T-110-111).

Q. Mr. Colclough agreed that August 18 would be an acceptable time for the hearing?

A. He agreed on August the 18th, Monday August 18 knowing that I was going to be out of town. (T-111) (Report of Referee, II-E).

Ms. Craig was asked to attend the hearing on August 18, 1986 by Ms. Barr for the sole purpose of handling Ms. Barr's Motion to Stay Execution. (T-28, Line 19).

On the morning of August 18, 1986, Ms. Craig and Ms. Mansfield appeared at Judge Bryson's chambers for the purpose of attending the hearing on the Motion to Stay Execution. Neither Ms. Craig (T-32, lines 14 and 16; page 36, line 8) nor Ms. Mansfield (T-80, line 10) received any documents from respondent prior to the hearing on August 18, 1986.

Prior to the commencement of the hearing on the Motion to Stay Execution on August 18, 1986, respondent entered Judge Bryson's chambers without the presence of Ms. Craig or Ms. Mansfield. Respondent told Ms. Craig and Ms. Mansfield he was meeting with the Judge "about another matter". (T - 33, lines 1 through 7 and page 81, lines 3 through 9) (Report of Referee, II-H). After this brief meeting between respondent and Judge Bryson, the hearing on the Motion to Stay Execution began.

During the hearing on the Motion to Stay Execution, when the respondent interrupted Ms. Craig to advise her of the figures he felt should be the subject of the Stay, Ms. Craig questioned

respondent as to his figures. Ms. Craig's testimony in this regard was as follows:

> And at some point during that Mr. Colclough interrupted and said, well, the figure that the interest has to be computed on is twenty-eight thousand and something.
>
> And I had picked the twenty-three thousand out of the Final Judgment that was in Ms. Barr's file that she had highlighted. And I asked him where the other money came from. And he said this was all done in the courtroom. And he said that it was from a judgment that they had gotten for costs in the amount of **$4,666.50.**
>
> Q. Did Mr. Colclough show you any judgment at that time?
>
> A. No, I don't--in all fairness I don't remember whether I asked to see a copy of it. I just--the figure jumped had out [sic] at me because it was the one on the affidavit for the September 24 hearing. And I had looked at that and we had mentioned it in the hall.
>
> And I said, "That hearing--that hearing is not supposed to take place until September." He said, "That's a different cost hearing. <u>This one is one we're already done.</u>" (T-37, line **13** through page **38**, line 10). (Emphasis supplied).

Ms. Mansfield's testimony in regard to this issue was as follows:

> When Meredith mentioned the amount of the judgment Mr. Colclough said something to the effect that the amount in question is--was not twenty-three thousand and some dollars but was I think twenty-eight thousand because he also had a cost judgment of four thousand six hundred and sixty some dollars. (T-82, lines 11 through **16).**
>
> Yes, Ms. Craig asked him what cost judgment he was

talking about, where that four thousand and some thousand dollars came from. That she--she thought there was a hearing on that scheduled in September. And he said, no, this was something else that he had already gotten a cost judgment for this amount. I was also thinking too--wondering where this amount came from, and was, I think, looking through the file trying to locate something. **(T-83**, lines **2** through 10) (Report of Referee, II-K,L & M). (emphasis supplied).

Both Ms. Craig and Ms. Mansfield testified that Judge Bryson signed no documents during the hearing of August **18, 1986.** **(T-40**, lines **21** through **24;** and page **84,** line **21** and page **104,** line **16).** The respondent also did not give any documents to either Ms. Craig or Ms. Mansfield during the hearing on August **18, 1986.** (T-32, line **14,** page **36,** line **8,** page **41,** line **2;** and page **84,** line **24)** (Report of Referee, II-P).

Neither Ms. Craig nor Ms. Mansfield ever consented to hearing respondent's Motion to Assess Costs (Bar Ex. 3) on August **18, 1986.** Ms. Craig's testimony in this regard was as follows:

Q. Okay. At any time on the day of August **18** did you consent to having a hearing on Mr. Colclough's Motion to Assess Costs?

A. No, not on having the hearing or any of the other things you would normally consent to to do that.

Q. Would you have agreed if that had been brought up by Mr. Colclough?

A. To have that hearing on that date, no. **(T-44,** line 21 through page **45,** line **3).**

Ms. Mansfield's testimony in regard to this matter was as follows:

Q. Okay. At any time during the hearing on August 18, 1986 were you aware that the previously filed Motion to Assess Costs was being heard at that same time?

A. Absolutely not. (T-86, lines 15 through 19).

After Ms. Barr returned from her family reunion and learned of the fraud perpetrated by the respondent in the August 18, 1986 hearing, she immediately contacted Ms. Craig and Ms. Mansfield and filed Respondent's Motion to Vacate Money Judgment for Costs with supporting affidavits. (Bar Ex. 11(A),(B) and (C)).

Ms. Craig did not voice any objection to respondent's representation that he had "previously obtained a cost judgment" because:

> "The only thing that I found more unusual than that would be an attorney looking me in the eye and telling me that he had gotten a judgment for $4,666.50 before. That was so unreal that I believed it. Because I never believed anyone would tell me something like that if it had not happened." (T-52, line 22 through page 53, line 2).

Ms. Mansfield explained her failure to register an objection to respondent's request for inclusion of the $4,666.50 in the supersedeas bond as follows:

> Naively as I realize now, I relied on Mr. Colclough's representation. (T-97, lines 7 and 8).

Since respondent has gratutiously included in his Statement of Facts respondent's testimony in regard to an offer for a public reprimand prior to the final hearing, it is appropriate for this Court to consider the explanation which was offered by

counsel for complainant at the referee hearing:

> Mr. Greenberg: Well, I object to that, your Honor. That's not an accurate statement and I'd like to be able to explain that, if I may.
>
> The Referee: Sure.
>
> Mr. Greenberg: What happened, your Honor, the week before this trial I had contacted Mr. Woodworth and I told Mr. Woodworth that if Mr. Colclough was willing to plead guilty to the charges set forth in the complaint, I would attempt to seek approval from the Board of Governors for a consent judgment for a private [sic] reprimand. In my capacity a5 a staff counsel, I am not authorized to make a binding offer for the Florida Bar. I have to take a proposal first to the local designated reviewer for the Board of Governors, and if the Board of Governors' member approves of the proposal and staff counsel, John Berry, for the Florida Bar also approves, then the Florida Bar can enter into a consent judgment. I've never seen--approached either Mr. Berry or the designated reviewer to seek their consent. It was merely an offer from me, which was not binding on the Florida Bar in any way. (Tr-33, line **18** through page 34, line **11).**

SUMMARY OF ARGUMENT

I. This case involved a pure credibility contest between complainant's witnesses and respondent and his witnesses. The referee, as the trier of fact, was in the best position to judge the credibility of the witnesses. There has been no showing that the referee's findings are clearly erroneous or lacking in evidentiary support.

II. Prior decisions of this Court and, particularly, the Florida Standards for Imposing Lawyer Sanctions support a one (1) year suspension in this case.

ARGUMENT

I. THERE HAS BEEN NO SHOWING THAT THE REFEREE'S FINDINGS ARE CLEARLY ERRONEOUS OR LACKING IN EVIDENTIARY SUPPORT.

The referee's findings of fact are entitled to the same presumption of correctness as the judgment of the trier of fact in a civil proceeding. (Rule 3-7.5(k)(1), Rules of Discipline). In The Florida Bar v. Hooper, 509 So.2d 289,290 (Fla. 1987), this Court stated the standard by which it will review a referee's findings of fact:

> ...this Court's review of a referee's findings of fact is not in the nature of a trial de novo in which the Court must be satisfied that the evidence is clear and convincing. The responsibility for finding facts and resolving conflicts in the evidence is placed with the referee.- The Florida Bar v. Hoffer, 383 So.2d 639 (Fla. 1980). The referee's findings "should not be overturned unless clearly erroneous or lacking in evidentiary support." The Florida Bar v. Wagner, 212 So.2d 770, 722 (Fla. 1968).

The present case involved a pure question of credibility between complainant's witnesses and respondent and his witnesses. The presumption of correctness of the trier of fact in resolving matters of credibility should preclude this Court from reweighing the evidence and substituting its judgment for that of the referee. Hooper, at 291.

A reading of respondent's argument in Issue I indicates

respondent is only attacking certain findings of fact made by the referee, as opposed to the entire findings contained in Section II of the Report of Referee. The paragraphs specifically addressed by respondent in his Initial Brief are paragraphs M,N, P,R,S,and Z.

The referee's finding in II-M, Report of Referee, that respondent fraudulently represented that a hearing on costs had already been held, that a money judgment for costs had already been obtained, and that the cost hearing scheduled for September **24, 1986,** was for something else is clearly supported by the testimony of Ms. Craig and Ms. Mansfield. Ms. Craig testified as follows:

> "And I asked him where the other money came from. And he said this was all done in the courtroom. And he said that it was from a judgment that they had gotten for costs in the amount of **$4,666.50.**
>
> Q. Did Mr. Colclough show you any judgment at that time?
>
> A. No, I don't--in all fairness, I don't remember whether I asked to see a copy of it. I just--the figure jumped had out [sic] at me because it was the one on the affidavit for the September **24** hearing. And I had looked at that and we had mentioned it in the hall.
>
> And I said, "That hearing--that hearing is not supposed to take place until September." He said, "That's a different cost hearing. This one is one we've already done.'' (T-37, line **19** through page **38,** line 10).
>
> Q. What did Mr. Colclough say when you brought up the

forty-six hundred dollars again?

A. He said that's a cost--twice he said that that has already been adjudicated. That is a cost we already have and that was done before. I did at some point lean over and ask Ms. Mansfield if she knew about any cost hearing. At that point in time she had not seen the court file herself or gone through it carefully and she did not know. **(T-39,** lines **13** through **21).** (Emphasis supplied).

The foregoing testimony of Ms. Craig is consistent with the affidavit she executed on August **22, 1986,** four **(4)** days after the hearing on the Motion to Stay Execution. (Bar Ex. 11-B).

Ms. Mansfield's testimony also supports the referee's finding of fact in paragraph II-M:

> When Meredith mentioned the amount of the judgment Mr. Colclough said something to the effect that the amount in question is--was not twenty-three thousand and some dollars but was I think twenty-eight thousand because he also had a cost judgment of four thousand six hundred and sixty some dollars. **(T-82,** lines 11 through **16).**
>
> Q. Okay. Were you aware of any prior cost judgment having been entered for that amount?
>
> **A.** No, it was not.
>
> Q. All right. Was any question asked of Mr. Colclough in reference to that judgment?
>
> A. Yes, Ms. Craig asked him what cost judgment he was talking about, where that four thousand and some thousand dollars came from. That she--she thought there was a hearing on that scheduled in September. And he said, no, this was something else that he had already gotten a cost judgment for this amount. I was also thinking too--wondering where this amount came from, and was, I think, looking through the file trying to locate something. (T-82, line

22 through page 83, line 10). (emphasis supplied).

The foregoing testimony of Ms. Mansfield is consistent with the affidavit she executed on August 22, 1986. (Bar Ex. 11-C).

As shown above, the finding that respondent fraudulently represented that a prior cost hearing was held and a judgment was obtained is consistent with both Ms. Craig's and Ms. Mansfield's testimony. Since both attorneys had merely reviewed Ms. Barr's file in preparation for attending the hearing on the Motion to Stay Execution, they relied upon the representation by respondent that he had already obtained a cost judgment in the amount of $4,666.50. Ms. Craig relied upon respondent's representation because she "never believed anyone would tell me something like that if it had not happened.'' (T-53, lines 1 and 2). Ms. Mansfield also "naively" relied on respondent's representations. (T-97, line 7).

Respondent argues that the finding of the referee that Ms. Craig and Ms. Mansfield were unfamiliar with the Holmes v. Hustin case is inconsistent with the record and those attorneys professed familarity with that record. In fact, Ms. Craig's and Ms. Mansfield's unfamiliarity with the case is not inconsistent with the review of the file undertaken by these attorneys. Ms. Craig had only reviewed Ms. Barr's file, and not the court file, in preparation for the hearing on the Motion to Stay Execution.

(T-26, line 19 and page 27, line 18). Ms. Mansfield had only reviewed the file to assist in appealing the final judgment. (Bar Ex. 1). (T-39, lines 19 through 21).

The whole point is that respondent fraudulently represented that he had already obtained a cost judgment and that the hearing scheduled for September 24, 1986 would be for "something else". As shown above, both Ms. Mansfield and Ms. Craig relied upon that representation and accepted respondent's statement. There was no evidence presented before the referee that the court file in Holmes v. Hustin was reviewed by Ms. Craig or Ms. Mansfield during the hearing on August 18, 1986 to verify the respondent's representation.

Respondent next argues that the finding in paragraph II-R of the Report of Referee raises the question as to why Ms. Craig and Ms. Mansfield did not object after the August 18, 1986 hearing. Both Ms. Craig and Ms. Mansfield clearly stated the reason they did not voice any objection to respondent when he gave them copies of a money judgment for costs and execution. Ms. Craig testified as follows:

> "And while we were doing that he handed me some papers.
>
> Q. And did you look at them at that time?
>
> A. Not at that time. I believe he said please give these to Margaret or something. And I was still reading and I handed them to Elizabeth who was standing next to me to hang onto. (T-41, lines 11 through 17). (emphasis supplied).

Q. After the hearing did you in fact look at the documents--

A. Yes.

Q. --that you had been handed?

A. I know I had looked at them by the time we were in the elevator because I remember the discussion was initiated--I remember--1 don't know if it was initiated but I know we discussed them in the elevator, I remember that, prior to that I don't remember. (T-41, line 23 through page **42**, line 6).

I didn't think that much about it at the time. And I didn't take them with me. And I gave them all to Elizabeth so I didn't have them that long to really study them afterwards.

Q. At any point after the hearing did you realize that there was something wrong that happened at the hearing?

A. Yes, we had--1 discussed that with Elizabeth and Mr. Hustin. I was asking both of them again if they could recall any prior hearing on judgment--requesting a judgment in that amount for costs. Mr. Hustin did not remember, but I don't think he understood what I was asking him.

And Ms. Mansfield said at that point, "I'll go through the court file and I'll go through Margaret's things again but I don't recall any prior hearing."

And the thing that--the thing--the only thing that we thought was odd at the time in addition to the Amended Notice of Hearing on the costs, which we didn't understand, was why it had that day's date on it, and why there would be an execution on something that was only reduced to judgment on that date at that time.

But we assumed there had been a hearing some place. At the time that we parted we both assumed that there had been a hearing on costs at some point in the past prior to the time that I saw the final

judgment in the file I didn't go back prior to that time. (T-43, line 10 through page 44, line 13). (emphasis supplied).

It was only after Ms. Barr returned to town and discussed the events of August 18, 1986, with Ms. Craig that Ms. Craig realized "something slimy went down." (T-63, line 7).

Ms. Mansfield testified as follows:

> Q. All right. At any time during the hearing did you object to the judge considering the $4,666.50 as part of the total amount of money to be bonded?
>
> A. I personally did not object. Ms. Craig repeatedly asked where this figure came from. However, since Mr. Colclough said he already had a judgment for that amount, and the judge ordered that he would be computing the bond based on a total amount of twenty-eight thousand. That was the end of it. (T-83, line 19 through page 84, line 2).
>
> Q. You did not object at any time to the inclusion of the forty-six six fifty into the total amount?
>
> A. Did I say I object, no.
>
> Q. And why is that or is there any reason why you did not object?
>
> A. Because at the time I assumed that Mr. Colclough would not say that if it were not true. (T-84, lines 11 through 18). (emphasis supplied).

It is interesting that the respondent now argues it would be reasonable for either Ms. Craig or Ms. Mansfield to "immediately and indignantly revisit Judge Bryson for correction and clarification" after the hearing of August 18, 1986. As the record shows, both Ms. Craig and Ms. Mansfield filed affidavits

which were attached to Respondent's Motion to Vacate Money Judgment for Costs which clearly accused respondent of fraud, misrepresentation and other misconduct. (Bar Ex. 11(A),(B),and (C). Respondent did not "immediately and indignantly" contact either Ms. Mansfield or Ms. Craig to voice any objection to their affidavits. In fact, respondent never contacted either Ms. Craig or Ms. Mansfield **(T-90**, line **8)**. In addition, the respondent never contacted Ms. Barr to complain about her allegations of fraud. **(T-116**, line **10** and lines **14** and **15)**.

While it is true that the testimony of Judge Bryson and the respondent is consistent with Bar Exhibits **6,7,8** and **9** which show that a cost issue was raised at the August 18, **1986** hearing, the sole issue is exactly what costs were discussed at the hearing. The referee obviously believed the testimony of Ms. Craig and Ms. Mansfield and did not believe the respondent and Judge Bryson.

Respondent's chief witness, Judge Bryson, was impeached on a key point. In his affidavit (Resp. Ex. **1)** Judge Bryson testified in paragraph **7** as follows:

> "At that time, I inquired as to whether there was any reason why a judgment in the amount of **$4,666.50** should not be entered and, there being no objection, I signed the money judqment affording Mr. Hustin a stay of execution for five **(5)** days in order to post Supersedeas bond...which was the subject of the Motion for Stay of Execution scheduled for that morning". (emphasis supplied).

During the hearing before the referee, however, the following exchange occurred between counsel for complainant and Judge Bryson:

> Q. So is it your recollection that on the morning of August 18, 1986 you signed a motion granting the stay of execution?
>
> A. For five days.
>
> Q. I'd like to show you Bar's Exhibit Number 10, and if you will note it's dated August 21, 1986, so does that affect your recollection of whether or not you signed that order on the morning of August 18 or three days later?
>
> A. Well, if it's dated the 21st chances are I signed it the 21st, which probably ended up giving them eight days as opposed to five. (T-157, line 17 - page 158, line 3).

The referee was in the best position to observe Judge Bryson's appearance and demeanor.

The bias of Judge Bryson was also evident during the hearing. Judge Bryson testified as follows:

> "If he [referring to respondent] tells me something is in a pleading I don't bother reading it." (T-149, lines 1 and 2).
>
> If Mr. Colclough told me that there was a hurricane raging outside I wouldn't bother looking out the window. (T-149, lines 14 through 16).

Judge Bryson was further impeached by his inability to recall the events of the August 18, 1986 hearing in December 1986 (Bar Ex. 14, page 6) versus his recall of events in his affidavit

(Resp. Ex. 1) versus his testimony before the referee wherein he was able to recall certain events which occurred on the morning of August 18, 1986 and was unable to recall other events. (T-153, line 2).

The respondent's testimony consisted of a pure denial of committing fraud or misrepresentation. The referee judged respondent's credibility versus the credibility of Meredith Craig and Elizabeth Mansfield. The referee's decision to believe the testimony of Meredith Craig and Elizabeth Mansfield cannot be considered clearly erroneous or lacking in evidentiary support.

Respondent argues the referee's finding in paragraph II-P, Report of Referee, that no orders were signed by the judge during the hearing is not supported by clear and convincing evidence. The testimony of the complainant's two main witnesses, however, clearly supports the referee's finding. The respondent has cited a portion of Ms. Craig's testimony in regard to this issue, but has conveniently omitted the remainder of Ms. Craig's testimony wherein she stated:

> I did not preview any order for him to sign, for one thing, which would normally happen. (T-40, lines 22 through 24).

Respondent has also omitted a significant portion of Ms. Mansfield's testimony in regard to the issue of whether Judge Bryson signed any orders during the August 18, 1986 hearing. Ms. Mansfield testified:

Q. Did you see Judge Bryson execute any documents or orders during the hearing?

A. No, I did not. (T-84, lines 19 through 21).

The respondent next argues that the referee did not make a specific finding that Judge Bryson was not to be believed. While it is true that the referee did not make a specific finding in this regard, it is implicit from the findings which were made by the referee that he rejected Judge Bryson's testimony. Judge Bryson supported the respondent's testimony. The referee rejected the respondent's testimony. As noted above, the referee was in the best position to observe the demeanor and judge the credibility of the witnesses. It is also significant that Judge Bryson had no recall of the August 18, 1986 hearing just a few months after the incident (Bar Ex. 14, page 6), yet three years later he supposedly has a clear recall of the events which took place in a short, routine hearing.

The remaining referee findings challenged by the respondent are also supported by clear and convincing evidence.

Paragraph II-R is supported by both Ms. Mansfield's testimony (T-42, lines 9 through 12) and by Ms. Craig's testimony. (T-85, lines 17 through 20).

Paragraph II–S is supported by Bar Ex. 6,7 and 8.

Finally, paragraph II–Z of the Report of Referee is supported by Bar Ex. 14, page 6.

ARGUMENT

11. A ONE YEAR SUSPENSION AND THEREAFTER UNTIL RESPONDENT SHALL PROVE REHABILITATION IS THE APPROPRIATE SANCTION FOR CONDUCT INVOLVING DISHONESTY, DECEIT, OR MISREPRESENTATION, CONDUCT THAT IS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE AND CONDUCT THAT ADVERSELY REFLECTS ON RESPONDENT'S FITNESS TO PRACTICE LAW.

A one year suspension and thereafter until respondent shall prove rehabilitation is the appropriate sanction for engaging in conduct involving dishonesty, deceit or misrepresentation, conduct prejudicial to the administration of justice and conduct that adversely reflects on respondent's fitness to practice law. This sanction is necessary to protect the public and the administration of justice from an attorney who failed to discharge his professional duties. Standard 1.1, Florida Standards for Imposing Lawyer Sanctions.

The Florida Standards for Imposing Lawyer Sanctions, which were cited to the referee at the hearing on recommendations as to disciplinary measures, support the referee's recommended discipline. Standard 6.11 provides: Disbarment is appropriate when a lawyer: (a) with the intent to deceive the court, knowingly makes a false statement or submits a false document: and causes serious or potentially serious injury to a party, or

causes a significant or potentially significant adverse effect on the legal proceeding.

Complainant submits the aforementioned Standard would apply but for the mitigating factors set forth below. In light of those mitigating factors, Standard 6.12 applies: Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action.

The only remedial action which was taken subsequent to respondent's submission of false statements or documents to the court was taken by Ms. Barr when she filed her Motion to Vacate.

The following aggravating factors under Standard 9.22 are present in this case: (b) dishonest or selfish motive; (c) a pattern of misconduct; (f) submission of false evidence, false statements or other deceptive practices during the disciplinary process; and, (g) refusal to acknowledge wrongful nature of conduct. (See Tr.- 36, lines 5 through 8).

Standard 9.22 (f) is supported by the referee finding contrary to respondent's testimony on every contested point in this case.

The following mitigating factors apply in this case: Standard 9.32 (a) absence of a prior disciplinary record; and, arguably, (g) character or reputation.

In The Florida Bar v. Snow, 436 So.2d 48 (Fla. 1983), this Court imposed a six-month suspension on the respondent for obtaining evidence for his clients by the use of false representations. The respondent in the present case obtained a court order through his false representations. While the respondent in Snow had a prior public reprimand, this Court pointed out that the circumstances could have justified a more severe punishment. Id. at 49.

As pointed out above, one purpose of attorney discipline is to protect the public and the administration of justice. In addition, the disciplinary sanction must be severe enough to deter others from similar misconduct. The Florida Bar v. Saphirstein, 376 So.2d 7,8 (Fla. 1979). The aforementioned principles support a one year suspension in this case. The public and the administration of justice must be protected from attorneys like respondent who deceive both opposing counsel and the court. This Court must send a message to members of the Bar that such conduct will result in a severe sanction.

Most of the cases cited by respondent were decided prior to the adoption of the Florida Standards for Imposing Lawyer Sanctions. As such, the discipline imposed in those cases generally did not take into account all the factors mentioned above. In addition, there is some inconsistency between the cited cases which the Standards seek to eliminate. Standard 1.3(3).

Respondent's cases also generally involve factual situations less egregious than the present case. For example, in The Florida Bar v. Anderson, 538 So.2d 852 (Fla. 1989), the referee recommended that the respondents be found guilty of violating The Florida Bar Integration Rule and several provisions of the Code of Professional Responsibility for submitting a brief to an appellate court which misrepresented the facts of a case and for making extended argument based on the inaccurate facts. As opposed to the present case, the respondents in Anderson acknowledged the misleading nature of their representations when confronted and questioned by the court. Id. at 852. In addition, the respondents in Anderson argued that the evidence did not show that they intentionally misstated facts. This Court approved the recommendation of the referee in regard to this argument. Id. at 853.

The case of Hodkin v. The Florida Bar, 293 So.2d 56 (Fla. 1975), can only be considered an aberration. In Hodkin, the referee recommended that the respondent be disbarred for misrepresentation on the court and other misconduct. This Court imposed a public reprimand.

Respondent has cited The Florida Bar v. Kauffman, 498 So.2d 939 (Fla. 1986), as an example of a case in which a respondent received a thirty (30) day suspension for misrepresentation to a court. In Kauffman, the respondent had forged another attorney's

signature to documents filed with the court. Id. at 940. While it is certainly a serious offense to forge another attorney's name to documents filed with the court, it is submitted that it is far more serious to have a Circuit Court Judge sign cost judgments and executions based upon fraudulent representations made by an attorney. Kauffman is also distinguished by the mitigating factors presented. Id. at 940.

The Florida Bar v. Oxner, 431 So.2d 983 (Fla. 1983), is also distinguishable from the present case. In Oxner, the respondent was found to have deliberately lied to a Circuit Court Judge in order to obtain a continuance. Id. at 985. In the present case, the respondent lied not only to a Circuit Court Judge, but also to opposing counsel.

In The Florida Bar v. Milin, 517 So.2d 20 (Fla. 1987), unlike in the present case, the respondent had entered into a consent judgment with The Florida Bar for a ninety (90) day suspension and, upon reinstatement, probation for a period of one (1) year. Id. at 21. In addition, it appears that the respondent in Milin suffered from psychological problems. Id. at 21.

In The Florida Bar v. Batman, 511 So.2d 558 (Fla. 19871, the respondent received a public reprimand for testifying falsely concerning his practice of law while suspended for nonpayment of dues. While it is obviously a serious matter for any attorney to testify falsely at any time, the situation in Batman is a far cry

from the conduct engage in by respondent. In addition, neither parties sought review of the referee's report in Batman. Id. at 558.

The respondent has also cited The Florida Bar v. Anderson, 515 So.2d 224 (Fla. 1987), in support of his argument that a one (1) year suspension is unwarranted in the present case. The facts of The Florida Bar v. Anderson are totally distinct from the present case and the Court's ruling in Anderson is therefore totally inapplicable to the present case.

Respondent also relies upon the case of The Florida Bar v. Saphirstein, 376 So.2d 7 (Fla. 1979). The respondent in Saphirstein engaged in the outrageous conduct of attempting to influence a referee's decision in a disciplinary matter and filing a false response accusing the referee whom he sought to influence of lying about what happened. Id. at 8. This Court reversed the referee's recommendation of a public reprimand and imposed a sixty (60) day suspension on the respondent. Id. at 8. Unlike the present case, however, the respondent in Saphirstein admitted his guilt. Id. at 7. As shown above, the respondent in the present case refuses to acknowledge the wrongful nature of his conduct.

Finally, the respondent has cited The Florida Bar v. Waller, Case No. 73,111. Waller was a case in which The Florida Bar entered into a consent judgment for a sixty (60) day

suspension. The respondent in Waller was not charged with personally committing fraud or misrepresentation or engaging in conduct prejudicial to the administration of justice.

Respondent argues he obtained no material or personal gain as a result of his fraudulent actions. While this may be true, it is only because Ms. Barr took immediate steps to vacate the cost judgment and prevent respondent from proceeding to execution.

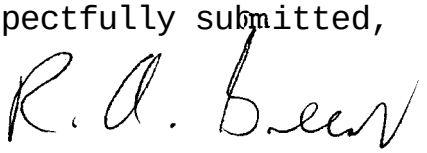
Finally, respondent argues that there was a mere misunderstanding on the part of Ms. Craig and Ms. Mansfield. As the Statement of Facts and the Argument in Section I show, there was not a mere misunderstanding or failure to comprehend in the present case. There was instead a blatant misrepresentation by the respondent.

CONCLUSION

The referee resolved the factual disputes in favor of complainant. There has been no showing that the referee's findings are clearly erroneous or lacking in evidentiary support.

A one (1) year suspension and thereafter until respondent proves rehabilitation is the appropriate sanction in this case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Complainant's Answer Brief has been furnished by U. S. Regular Mail to Alan C. Sundberg, counsel for respondent, Post Office Box Drawer **190**, Tallahassee, Florida, **32302**; Joseph F. McDermott, counsel for respondent, 501 First Avenue North, Suite **701**, NCNB Building, St. Petersburg, Florida, **33701**; and a copy to John T. Berry, Staff Counsel, The Florida Bar, Ethics and Discipline Department, 650 Apalachee Parkway, Tallahassee, Florida, **32399-2300**, this 19th day of September, **1989**.

R. A. Greenberg

RICHARD A. GREENBERG