

FILED

SID J. WHITE

OCT 19 1990

CLERK, SUPREME COURT  
BY  
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Complainant,

v.

MARVIN S. DAVIS,  
Respondent.

CASE NO. 74, 219

[TFB CASE NO.88-31,041(18A)]

REPLY BRIEF

Marvin S. Davis  
P.O. Box 2015  
Sanford, Florida 32771-2015  
The Florida Bar No. 198511

The respondent respectfully files this Reply Brief to the Answer Brief filed by the complaintant as follows:

POINT ONE

**THE REFEREE'S FINDING OF FACT AND RECOMMENDATION  
OF GUILT ARE NOT CLEARLY AND CONVINCINGLY  
SUPPORTED BY THE EVIDENCE NOR ARE THEY PROPER UNDER THE LAW**

In the first point raised by the complaintant, The Florida Bar contends that this Court on review will not reweigh the evidence as to matters of fact. Respondent would agree. However the complaintant does not contend that this Court has delegated the power of this Court to a referee to make final interpretations of the law.

The respondent has set forth in his Main Brief a factual situation and, as is his right, petitioned this Court to review the interpretation of the law as it pertains to the facts. If the contention of the complaintant were valid, there would be no need for a provision for review by this Court and the decision of the referee in every case would be final.

The second point raised by the complaintant is the impossibility of locating the "missing" money in the amount of \$1323, which Respondent in his Main Brief has demonstrated wasn't missing at all, but the result of a clerical error on the part of the respondent which created a fictitious \$1323. Having created this fictitious shortage of \$1323, complaintant proceeds to invoke all the appropriate rules in an attempt to show that not only is the respondent liable under the rules and subject to disciplinary sanctions

for the clerical error, but also must pay back the fictitious money with "real money". Respondent contends that the findings of the referee on this point are erroneous, unlawful or unjustified within the meaning of The Florida Bar v. Scott, 15 FLW 448(Fla.Sept 6, 1990)

**THE REFEREE'S RECOMMENDATION OF A NINETY DAY  
SUSPENSION AND TWO YEARS OF CONDITIONAL PROBATION IS  
NOT THE APPROPRIATE LEVEL OF DISCIPLINE IN THIS CASE**

Complainant sets forth the criteria for sanctions set forth in The Florida Bar v. Lord, 433 So.2d 903(Fla.1983), cites nine cases which are not on point, and then relies on The Florida Standards for Imposing Lawyer Sanctions, 4.12, all allegedly supporting this penalty, for penalty it is, for a clerical error in a client receipt.

Respondent respectfully submits that this sanction is inappropriate under the Lord guidelines in this situation considering that respondent's offense was clerical error on a receipt which created a fictitious shortage. The client was not injured or deprived of money or property in any way. Nor did the client ever face any potential injury, except in the pleadings of the complainant.

With respect to The Florida Standards for Imposing Lawyer Sanctions, this sanction is inappropriate.

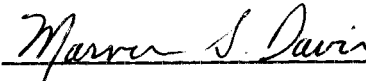
The nine cases cited by the complainant are not on point for two reasons, The first is that all nine cases are situations where real money, not fictitious money was concerned. The second reason is that these nine case involve situations of unauthorized use of trust funds, issuing trust fund checks on insufficient funds, commingling of funds,

improper record keeping because of alcoholism or neglect, and are not appropriate for the instant case.

### CONCLUSION

The respondent respectfully prays this Honorable Court to disapprove the referee's finding of fact and recommendation and issue such judgment as it deems just and proper.

Respectfully submitted,



Marvin S. Davis

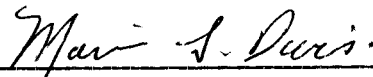
P.O. Box 2015

Sanford, Florida 32772-2015

The Florida Bar No. 198511

### Certificate of Service

I HEREBY CERTIFY that a true and correct copy was furnished by depositing the same in the United States Mail, first class postage prepaid, to: John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; David G. McGunegle, Branch Staff Counsel, The Florida Bar, 880 North Orange Avenue Suite 200, Orlando, Florida 32801, all this 16<sup>th</sup> day of October, 1990.



Marvin S. Davis