IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. **74,422**
[TFB Case No. **89-31,449 (18C)**]

v.

ERIC R. JONES,

Respondent.
_____/

INITIAL BRIEF

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SYMBOLS AND REFERENCES

The Florida Bar shall be referred to as the Bar.

The Report of Referee shall be referred to as RR.

The transcript of the final hearing held December 15, 1989, shall be referred to as T.

Bar exhibits will be referred to as B–Ex.

Respondent's exhibits shall be referred to as R–Ex.

STATEMENT OF THE CASE

The Respondent was suspended by this Honorable Court effective May 30, 1989. The Florida Bar filed a Petition for Order to Show Cause an or around July 14, 1989. Respondent filed his reply on or around August 2, 1989. The Florida Bar filed its Reply to Respondent's Response to Order to Show Cause on or around August 11, 1989.

The hearing on the Order to Show Cause was held on December 15, 1989. The Referee mailed his report on January 24, 1990. The Board of Governors of The Florida Bar considered the Referee's report at its March, 1990, board meeting which ended on March 17, 1990. The Board approved the Referee's findings of fact and recommendation of guilt but voted to seek a review of his recommended discipline. The Florida Bar filed its Petition for Review on or around March 23, 1990.

STATEMENT OF THE FACTS

The Florida Bar does not take issue with the Referee's findings of fact. Except as otherwise noted, the following facts are taken from the Report of Referee.

By order dated April 27, 1989, this Court suspended the respondent for a period of ninety-one days for his neglect of a legal matter and failure to cooperate with the Bar's investigation. The effective date of the respondent's suspension was May 30, 1989. The Florida Bar v. Jones, 543 So.2d 751 (Fla. 1989). The Florida Bar filed a Petition for Order to Show Cause on July 14, 1989, alleging that the respondent continued to engage in the practice of law after his suspension became effective. The Referee found the respondent engaged in the practice of law when he attended a motion hearing on June 7, 1989. Prior to his suspension, the respondent had been representing the defendant in a mechanic's lien action. The hearing was being held on several motions filed by the respondent prior to the effective date of his suspension and the matter was being handled by attorney Patrick Deese. (T. pp. 15-16). The respondent accompanied Mr. Deese and conferred with him by handing him notes, prompting him and attempting unsuccessfully to assist in argument until the presiding judge reminded him that he

was suspended. In addition, the respondent wrote to the presiding judge the following day and provided additional case law on behalf of his client.

The respondent also prepared and signed legal documents as attorney for the Petitioner in Marilyn Carter v. Gary Lee Mitchell, Case No. **80-2631-FD-0.** The documents consisted of a summons directing Gary Lee Mitchell to serve defenses on the respondent as attorney for the petitioner, a supplemental petition for modification of the final judgment and a financial affidavit, all dated June **13, 1989.** The respondent's office produced a notice of appeal and a motion for supersedeas bond in the case of Building Management Systems, Inc. v. Moyer-Brownson, Inc., Case **No. 89-02371-CA-N** and delivered same to client Charles C. Brownson on June **21, 1989.** The documents were prepared for Mr. Brownson's signature and the respondent continued giving Mr. Brownson legal advice on numerous occasions during June, **1989.**

The respondent did not discontinue the use of stationery letterhead indicating his attorney status until after the need to do so was brought to his attention by Bar counsel. Despite receiving a letter from Bar counsel dated June **16, 1989,** advising him that he would need to remove or cover his attorney sign, the

respondent failed to do so until after it was brought to his attention again by Bar counsel in a subsequent letter dated July 20, **1989**.

The respondent failed to comply with the requirements of Rule of Discipline 3-5.1(h) by failing to furnish a copy of the suspension order to all of his clients and by failing to provide a sworn affidavit listing the names and addresses of all clients to whom he had furnished copies of the court's order to The Florida Bar within thirty days after the service of the suspension order itself. Affidavits provided by five of the respondent's clients indicated that he failed to properly notify them of his suspension and provide them with a copy of the order of the Supreme Court of Florida as required by Rule of Discipline 3-5.1(h) of the Rules Regulating The Florida Bar.

After this Court issued an Order to Show Cause on July 26, **1989**, the respondent filed his Reply to Petition to Show Cause dated August 2, **1989**. Therein he falsely represented to this Court that he had informed all of his clients of his suspended status and had otherwise complied with the order of suspension. He further asserted that on several occasions he had sought assistance and guidance from The Florida Bar as to the appropriate steps to take in order to fully comply with this

Court's order of suspension. He falsely represented that his inquiries met without any response. In fact, Bar counsel provided the respondent with guidance by letter dated June 16, 1989. The respondent admitted receiving this letter.

The respondent admitted during the final hearing that at the time he filed his Reply to the Bar's Petition to Show Cause he had not read the Rules of Discipline, had not advised his clients of his suspension, had not provided them with a copy of the court order, nor had he advised them to seek alternate counsel despite making these assertions in his reply.

SUMMARY OF ARGUMENT

The Florida Bar does not take issue with the Referee's findings of fact but it does believe that his recommended discipline of an extension of the respondent's existing suspension is insufficient given the fact that the respondent made misrepresentations to this Court, the seriousness of which he apparently fails to understand, and he continued to practice law while suspended. Rather than taking responsibility for his own actions, the respondent attempts to place the blame upon the Bar for failing to promptly provide him with information that was readily available to him in the Rules Regulating The Florida Bar. The respondent's failure to comprehend the seriousness of his misconduct is a clear indication of his unfitness to continue practicing law. His current suspension has done nothing to encourage him to reform his ways except in that he was more cooperative in the instant proceeding than he was in The Florida Bar v. Jones, 543 So.2d 751 (Fla. 1989).

ARGUMENT

WHETHER THE REFEREE ERRED IN NOT RECOMMENDING DISBARMENT AS THE APPROPRIATE DISCIPLINE WHERE THE RESPONDENT VIOLATED BOTH THE LETTER *AND* THE SPIRIT OF THE LAW BY CONTINTJING TO ENGAGE IN THE PRACTICE OF LAW IN DIRECT CONTRAVENTION AND VIOLATION OF THE SUPREME COURT OF FLORIDA'S ORDER OF SUSPENSION *AND* MADE MISREPRESENTATIONS TO THE COURT CONCERNING CERTAIN FACTS IN A WRITTEN DOCUMENT,

A referee's findings of fact should be upheld unless clearly erroneous. The Florida Bar v. Vannier, **498** So.2d **896** (Fla. **1986)**. This Court, however, is not bound by the referee's recommendations in determining the appropriate level of discipline. The Florida Bar v. Padgett, **481** So.2d **919** (Fla. **1986)**. The Florida Bar does not take issue with the Referee's findings of fact but believes his recommended discipline of an additional two years' suspension is inappropriate given the seriousness of the respondent's misconduct in misrepresenting certain facts in a document filed with this Court, by continuing to engage in the practice of law while suspended and by his apparent failure to appreciate the importance of fully complying with orders of this Court and the Rules Regulating The Florida Bar.

The respondent was suspended from the practice of law effective May 30, 1989, by order of this Court dated April 27, 1989, in the case of The Florida Bar v. Jones, 543 So.2d 751 (Fla. 1989). The respondent was ordered suspended for a ninety-one day period for neglecting a legal matter entrusted to him and failing to cooperate in the Bar's investigation. After the effective date of the respondent's suspension, it came to the Bar's attention that he was continuing to engage in the practice of law. Investigation bore this out. The respondent admitted at the final hearing that he caused a summons to be served in the case of Marilyn Carter v. Gary Lee Mitchell, in the Circuit Court for the Eighteenth Judicial Circuit, Case No. 80-2631-FD-0, on or around June 14, 1989. (T. pp. 9-10; RR p. 3; See also Exhibit A of The Florida Bar's Petition for Order to Show Cause). The respondent signed a supplemental petition for modification of the final judgment in his capacity as attorney for the petitioner and prepared and signed, as attorney, a financial affidavit on or around June 13, 1989, in the same case. (RR p. 3; See also Exhibit A of The Florida Bar's Petition for Order to Show Cause).

On or about June 22, 1989, the respondent prepared and delivered to another client, Karen V. Hedrick, interrogatories for use in her law suit against her former husband. (RR p. 5). Ms. Hedrick picked up the interrogatories at the respondent's law

office on or around June 22, 1989. (T. p. 22). The respondent advised her to sign the interrogatories because he could no longer represent her in the case. (T. p. 22). The respondent testified that he did not give Ms. Hedrick any legal advice at that time. (T. p. 22).

After his suspension, the respondent continued providing legal advice to another client, Charles C. Brownson, in connection with his civil case styled Building Management Systems, Inc. v. Moyer-Brownson, Inc., Case No. 89-02371-CA-N. (RR p. 5). During the month of June, 1989, the respondent produced a notice of appeal and a motion for supersedeas bond for Mr. Brownson. (B-Ex 4; RR p. 5). The respondent instructed his client on how to file the documents himself. (B-Ex 4; RR p. 5).

Around the time that he was suspended, the respondent advised Mr. Brownson he could no longer represent him. (T. p. 23). The respondent did not tell Mr. Brownson that he had been suspended or provide him with a copy of the order until November 28, 1989. (T. p. 24). Mr. Brownson retained attorney Patrick Deese to handle the civil case. A hearing was scheduled for June 7, 1989, on several motions filed by the respondent prior to the effective date of his suspension. (T. pp. 15-16). The respondent attended the hearing. In his Reply to Petition to

Show Cause the respondent asserted that he attended for the sole purpose of presenting certain evidentiary matters as to which only he had personal knowledge. According to testimony presented by attorney David Dugan, who represented the plaintiffs, while Mr. Deese was making an argument to the court the respondent either passed case law to him or pointed out provisions of the case or section in the pleading concerning the argument. (T. p. **16).** On at least one occasion the respondent also gave Mr. Deese verbal instructions. (T. p. **16).** Toward the end of the hearing, the respondent attempted to emphasize a point for the judge that Mr. Deese had either made or responded to. The judge advised the respondent that he could not participate due to his suspension. (T. pp. **17** and 20). The following day, on June **8, 1989,** the respondent wrote the judge and enclosed a copy of a case that he considered to be on point. (T. p. **18).** The letterhead used by the respondent indicated his attorney status despite the fact that he was suspended at the time. (T. p. **19).** The Referee specifically found that the respondent attempted to engage in legal argument at the hearing. (RR p. **4).** He further found that the respondent's assertion in his Reply to the Bar's Petition to Show Cause that he attended solely for the purpose of presenting certain evidentiary matters was a false statement. (RR p. 2). The Referee found that the respondent's Reply to Petition to Show Cause contained other significant misrepresentations. In paragraph

two of his Reply to Petition to Show Cause, the respondent stated that he had advised all of his clients to seek and retain alternate counsel and had otherwise complied with the order of suspension. In paragraph five he stated that he had in good faith attempted to comply with the order of suspension. In fact, these statements were not true. The respondent admitted at the final hearing that he had not told all of his clients about his suspension nor had he provided them with copies of this Court's order. (T. pp. 26-27). The respondent did not inform clients J.B. Conn, Charles C. Brownson, Michael C. Desch, George G. Kahl and Karen Hedrick of his suspension nor did he provide them with a copy of this Court's order. (B-Ex 3 - 7). Mr. Brownson learned of the respondent's suspension only after reading a newspaper article. (B-Ex 4). The remaining clients, with the exception of Ms. Hedrick, were not advised until November, **1989,** by the respondent about his suspension. (T. p. 12). As of the date of the final hearing on December 15, **1989,** the respondent had neither advised Ms. Hedrick of his suspension nor provided her with a copy of this Court's order. (T. p. 12). The respondent did not in fact make a good faith effort to attempt to comply with the provisions of Rule 3-5.1(h) of the Rules of Discipline despite his representations to this Court to the contrary. In fact, the respondent admitted at the final hearing that at the time of his suspension, and even at the time when he

mailed his Reply to Petition to Show Cause, he had not read the applicable rules. (T. p. 37). He further admitted that at the time he replied to the Bar's Petition for Order to Show Cause he had not provided his clients with copies of his suspension order. (T. pp. 36-37). He made no attempt to comply with the rule until November, 1989. In fact, as of the date of the final hearing, he still had not provided The Florida Bar with a sworn affidavit listing the names and addresses of all clients who have been furnished copies of the order. (T. p. 57).

The respondent also was knowingly untruthful with this Court when he stated that he had sought assistance and guidance from the Bar with respect to the appropriate steps he needed to take to comply fully with the order of suspension but received no response. The respondent testified he wrote to The Florida Bar requesting assistance in complying with the Court's order on June 19, 1989, June 27, 1989, June 28, 1989, July 4, 1989, and August 8, 1989. (T. p. 27; R-Ex 4 - 8). Further testimony, however, revealed that the contents of the respondent's letters concerned advising the Bar of changes he had made in his office procedure in order to comply. (T. pp. 28-29). The respondent admitted receiving Bar counsel's letter of June 16, 1989, which advised him of the steps to take in order to comply with the Court's

order. (T. pp. 25 and 27). The only item the respondent asked for and did not receive was a letter referred to by Bar counsel that is normally sent to suspended and disbarred attorneys by the Bar's headquarters in Tallahassee advising them of what steps to take in order to comply with suspension and disbarment orders. In the respondent's case he did not receive such a letter from Tallahassee although Bar counsel's letter of June 16, 1989, contained virtually the same information. (T. pp. 29-30). He was advised to remove or cover his attorney sign. (B-Ex 3). Despite receiving the letter and reviewing it, the respondent failed to cover his attorney at law sign. Bar counsel viewed the sign on June 26, 1989. (See Exhibit D of The Florida Bar's Petition for Order to Show Cause). The need to cover the sign was brought to the respondent's attention again by Bar counsel in a letter dated July 20, 1989. (RR p. 3). Despite this fact, the respondent testified at the final hearing that as of June 26, 1989, he had not been advised by The Florida Bar to cover his attorney at law sign. (T. pp. 24-25).

It appears that the respondent's sole excuse for not having complied with the suspension order and for having knowingly made untruthful statements to the Court was the Bar's alleged failure to respond to his inquiries for information. As the evidence clearly indicates the Bar did in fact respond to the respondent's

inquiries and his assertions to the contrary are nothing more than an ill conceived attempt to excuse his continued practice of law.

This Court most recently dealt with a similar instance of an attorney engaging in the authorized practice of law while suspended in The Florida Bar v. Bauman, **15** FLW **113** (Fla. March **1, 1990).** The attorney was found guilty of engaging in at least five distinct acts of practicing law while suspended. On one of these occasions he was held in contempt by a circuit judge for holding himself out as an attorney. Despite this fact, he continued representing clients in court. The referee recommended that the attorney be suspended for a period of three years. This Court found, however, that the attorney's willful, deliberate and continuous refusal to abide by a court order indicated a person who was unlikely to be rehabilitated and for this reason disbarment was found to be the appropriate level of discipline.

In The Florida Bar v. Winter, **549** So.2d **188** (Fla. **1989),** an attorney was found to be in indirect criminal contempt of court for continuing the practice of law after the effective date of his resignation. The attorney had been representing that he resigned from the Bar for health reasons when in fact he was granted leave to resign permanently in the face of pending

disciplinary action. The Court ruled the attorney would be permanently disbarred *so* that the stigma of disbarment would be attached to his record. The Court declined to order the attorney incarcerated for a period of thirty days pursuant to the contempt of court powers.

In The Florida Bar v. Dykes, 513 So.2d 1055 (Fla. 1987), an attorney was disbarred for a period of ten years for misappropriation of estate funds, three instances of failing to notify clients of his suspension or to include their names on the required affidavit provided to the Bar and continued communication with a client concerning pending legal business after his suspension.

In The Florida Bar v. Greene, 485 So.2d 1279 (Fla. 1986), an attorney was held in contempt of court and suspended for a period of ninety days for failing to observe the conditions of his one year period of Bar supervised probation. The attorney was not charged with practicing law while suspended.

In The Florida Bar v. Hartnett, 398 So.2d 1352 (Fla. 1981), an attorney was disbarred for willfully engaging in the practice of law during his two year period of suspension. The Court attempted service of six different Rules to Show Cause before

successfully serving one on the attorney. On at least some occasions he avoided service of process. The Court found that his conduct and clear disrespect for the Court could not be tolerated. He was found in contempt for willfully violating his suspension order and the discipline imposed earlier was modified to disbarment effective immediately.

In the case of In re The Florida Bar, 279 So.2d 292 (Fla. 1973), an attorney was found to be in contempt of court for practicing law while suspended. He was suspended for an additional period of sixty days.

The Florida Standards for Imposing Lawyer Sanctions also indicate that the respondent should receive stronger discipline. Standard 6.11(a) calls for disbarment when a lawyer, with intent to deceive the court, knowingly makes a false statement or submits a false document. The Standards define intent as "the conscious objective or purpose to accomplish a particular result." The Bar submits that the evidence and testimony clearly indicate that the respondent intentionally made statements to this Court in his Reply to Petition to Show Cause that he knew were untruthful or misleading.

St ndard 7.2 calls for a suspension when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. The Bar submits the evidence and testimony clearly show that the respondent knowingly, intentionally and with malice aforethought engaged in the practice of law after the effective date of his suspension.

In aggravation, the respondent has a prior disciplinary history, although it should be noted that the present proceeding grew out of his prior suspension. In addition, there may be dishonest or selfish motives involved in that the respondent did not want his clients to know of his discipline problems. There were multiple instances where he failed to advise clients of his suspension. His Reply to Petition to Show Cause submitted to this Court contained false statements. In addition, the respondent has substantial experience in the practice of law.

A license to practice law is a conditional privilege which is revocable for cause. See Rule 3-1.1 of the Rules of Discipline and Petition of Wolf, 257 So.2d 547 (Fla. 1972). The respondent, through his actions, has clearly indicated that he is not worthy of being a member of The Florida Bar. He could not even be bothered to take the time to read the rules after his

suspension. (T. p 37). It is inconceivable that an officer of the court would neglect to familiarize himself with the Rules of Discipline and the Rules of Professional Conduct during his own disciplinary proceedings. It is even more inconceivable that he would file a document with a court containing statements he knows to be false or misleading. To be effective as both a sanction to punish and as a deterrent, attorneys who deliberately violate suspension orders should face disbarment.

CONCLUSION

WHEREFORE, The Florida Bar respectfully requests this Honorable Court to review the Report of Referee, approve his findings of fact and impose nothing less than a disbarment as well as order payment of costs in this proceeding, currently totalling $1,042.60.

Respectfully submitted,

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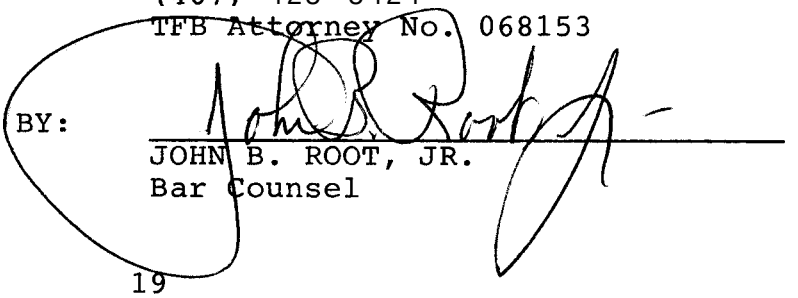
BY: 

JOHN B. ROOT, JR.
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing have been furnished by ordinary U.S. mail to the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, 32399-1925; a copy of the foregoing has been furnished by ordinary mail to Eric R. Jones, Respondent, at 307 East New Haven Avenue, #3, Melbourne, Florida 32901-4576; and a copy of the foregoing has been furnished by ordinary mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, on this 5th day of April, 1990.

JOHN B. ROOT, JR.
Bar Counsel