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AUG 1 1991
CLERK, SUPREME COURT
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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,254

THE FLORIDA BAR,

Complainant,

vs.

JOSEPH P. CILLO,

Respondent.

On Review of Factual Findings and Recommended Discipline contained in Report of Referee from TFB Nos.: 88-10,252(6B)
88-10,335(6B)
88-10,336(6B)
88-11,451(6B)
89-10,588(6B)

ANSWER BRIEF OF RESPONDENT JOSEPH P. CILLO

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PRELIMINARY STATEMENT

Respondent Joseph P. Cillo will be referred to throughout this brief as Respondent or by name. The Petitioner, The Florida Bar, is referred to as The Bar. References to The Bar's brief are indicated by Florida Bar Initial Brief with the page number indicated. The final hearing in this case took place on March 13, 14, and 15, the transcript from which is contained in four volumes, I-IV. References to the transcript are indicated by "TR" with the volume, page number(s), and line number(s) indicated respectively. References to the Report of Referee are indicated by "RR" with the page number(s) indicated. References to the transcript from the hearing on discipline which took place on April 26, 1991, will be referred to by "DH", also with the page number(s) indicated.

STATEMENT OF THE FACTS AND OF THE CASE

I. (TFB No. 88-10,252(6B))

Joseph Cillo and John Lenoir were introduced in 1985 through a mutual friend. (TR I, **97, 11-13)** At the time of their meeting, Mr. Lenoir's understanding was that Mr. Cillo had legal experience with the FCC and the CFTC. Mr. Lenoir was interested in forming a corporation, Liberty **Limited,** which was to act as a sales operation of numismatic coins. (TR I, 99, 18-20) Accordingly, Lenoir met with Mr. Cillo at an office at Gulf-Tex Oil and Gas, a corporation for which Cillo was employed. (TR I, 98, **17-23; TR I, 170, 7-8, 21-25)**

Due to certain tax considerations, the corporation was eventually incorporated in the State of Texas. (TR **I, 171, 5-8; TR I, 100, 24)** Mr. Cillo assisted in this regard by contacting Prentice-Hall, a company specifically designed to incorporate businesses for a fee. (TR I, 173, 8-12) Mr. Cillo personally paid the fee for incorporation to Prentice-Hall and was, in turn, reimbursed by Mr. Lenoir. (TR I, **102, 1-4; TR I, 174, 12-14)**

It was contemplated that because Liberty Limited was a newly formed corporation, Mr. Cillo would have a participating ownership interest in the company in exchange for the benefit of his expertise. (TR I, 103, **8-12; TR I, 169, 20-22)** Due to undercapitalization, the corporation was eventually dissolved. **(TR I, 106, 5-9;** TR **I, 176,** 2-9)

Shortly after the corporation was dissolved, Lenoir and Mr. Cillo discussed Mr. Cillo's possible purchase of a diamond ring. (TR I, 110, 12-18) Because Mr. Lenoir was living in Nevada, he forwarded two (2) rings to his wife, Deborah Lenoir, in Texas, who would, in turn, show them to Mr. Cillo. (TR I, 111, 4-7) A check for the purchase of one (1) diamond ring was issued by Respondent, who believed that at that time, his account contained sufficient funds to cover the check. (TR I, 164, 7-11)

Deborah Lenoir was, at that time, in the process of moving to Mississippi. Having deposited Respondent's check at her Texas bank, she learned two to three weeks later that the check had been dishonored. (TR I, 112, 4-16) Mr. Cillo, prior to remitting initial payment to Ms. Lenoir, had deposited into his account, a check from a client in ***excess*** of the purchase price. (TR I, 164, 10-11) It was at that time, however, that his client's assets and/or accounts, were frozen by the State of Texas. (TR I, 164, 13-14) Upon learning that the original check had been dishonored, Mr. Cillo contacted the president of his client-corporation requesting that a replacement check be issued. (TR I, 164, **18-25)**

Having received and deposited the replacement check, Respondent then wrote a second check to Ms. Lenoir hoping to resolve the matter. (TR I, 165, 1-5) Respondent, however, did not date the check, wanting to be sure that the client check had first cleared. His client's check was received and deposited, but was subsequently dishonored. (TR I, 165, 10-11)

Due to certain financial hardships, Mr. Cillo was unable to make good on the check without the **funds** due him from his client. After numerous conversations between Respondent and the Lenoir's, Respondent eventually received notice that the Lenoir's had filed bankruptcy. Shortly after receiving this notice, Mr. Cillo sent a certified check to the Lenoir's for the payment of the ring. (TR I, 165, 12-13)

In connection with the foregoing, The Bar alleged the following violations:

> Article XI, Rule 11.02(3) (a) and (b) - A lawyer shall not engage in the commission of a felony or misdemeanor;
>
> Rule 1-102(A) (4) - A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
>
> Rule 3-101(B) - A lawyer shall not practice in a jurisdiction where to do so would be a violation of the regulations of the profession in that jurisdiction.

After considering all pleadings and evidence presented by the parties at the final hearing, the Referee concluded that Mr. Cillo, in connection with the incorporation of Liberty Limited, engaged in the unauthorized practice of law in violation of Rule 3-101(B). He further found that Mr. Cillo was not guilty of any misconduct as it pertained to the purchase of a diamond ring. (RR, 2-3, **9-10)**

II. (TFB No. 88-10,335(06B))

In 1984, Joseph Cillo and James Joyce met concerning Joyce's prospective purchase of properties then owned by Resources International, Ltd. ("RIL"). (TR III, 565, 15-18, TR III, 437, 13-24) Mr. Cillo was, at that time, President and CEO of the company. (TR 111, 572, 4) The company was in poor financial shape when Respondent became President, with the exception of two (2) major assets - 33,000 acres, as well as several leaseholds on non-producing wells in Hancock County, West Virginia. (TR III, 565, 24-25; TR 111, 566, 1-5) The company also owned property in Pennsylvania, known as the "Baker Field." (TR III, 566, 3-5)

As President of RIL, Mr. Cillo was of the opinion that the sale of the Hancock County leaseholds would yield sufficient capital to "re-work" the Baker Field project and also provide RIL with operating capital, such that the corporation could resume functioning. (TR 111, 567, 1-5) Joyce, President of Joyce Western Corporation and Mr. Cillo, met upon recommendation of Rick Bounds, a mutual business associate. (TR 111, 568, 11-15; TR III, 437, 4-5)

After their initial meeting, Mr. Cillo caused the drafting of a purchase agreement in the amount of $850,000.00. It should also be mentioned that Joyce had previously involved himself in negotiations for the same property with Mr. Cillo's predecessor, David Stearns. (TR III, 517, 7-25) In connection with Joyce's initial negotiations, pre-dating Mr. Cillo's employment with RIL,

Mr. Joyce was furnished with RIL's financial statements, together with schedules and geological reports pertaining to the property. (TR 111, **517, 23-25,** TR 111, **518, 1-12)**

During these earlier negotiations, Joyce was advised that there existed numerous deferred payment obligations, as **set** forth in the attachments to RIL's financial statements. (TR III, **520,** 1-**6)** (Fla. Bar **Exh. 14)** Additionally notable is that those encumbrances were incurred during the time of Stearns' presidency and, in turn, disclosed **in** toto to Joyce. (TR 111, **523,** 10-15) Due **to** the fact that Mr. Stearns learned, during the time of his negotiations with Joyce, that Joyce had attempted to acquire the property through Combustion Engineering, a company with ownership interest that would later sell to the corporation the leaseholds to RIL, Stearns terminated his discussions with Joyce. (TR III, **524, 3-17)**

With respect to the specific agreement reached between Mr. Cillo, acting on behalf of RIL and Joyce, it was understood by both parties that **$55,000.00** was due Combustion Engineering before Combustion Engineering would approve the necessary assignments. (TR III, **441, 3-6;** TR 111, **569, 15-25;** TR 111, **570, 9-25)** The parties then met at a Holiday Inn by the LaGuardia Airport, at which time the payment of $105,000.00 was discussed. (TR III, 570, **18-25) It** was **also** discussed and arranged that an RIL bank account would be opened at Chase Manhattan Bank for receipt of the funds. (TR 111, 570, 12-17) The monies were wired transferred on April 25, 1985, into the RIL account. (TR 111, **444, 21-24)** (Fla. **Bar**

Exh. 13) It was prior to Joyce transferring the $105,000.00, that Mr. Cillo sent him a list of outstanding deferred lease rental payments that would have to be satisfied from Joyce's income from the project. (TR 111, 573, 17-24) (Resp. Exh. 4)

Mr. Cillo also advised Joyce that RIL was broke and had no operating capital. Consequently, the money in excess of that owed to Combustion Engineering, was for purposes of providing the bare essentials, such as rent and secretarial help. (TR 111, 571, 5-20)

Pursuant to their negotiations, as well as the terms reduced to writing in the purchase agreement, Mr. Cillo anticipated additional monies from Joyce in consummation of the transaction, however, none were ever received. (TR 111, 572, 8-14) Joyce was aware, however, that the monies in excess of what was owed Combustion Engineering, were to be immediately expended for operations and as such, were not considered a refundable deposit or escrowed monies. (TR 111, 572, 11-25) Mr. Cillo, on behalf of RIL, subsequently made demand on Joyce for the balance of the contract price, but received no further payment. (TR 573, 5-11)

In connection with the foregoing, The Bar alleged the following violations:

> Article XI, Rule 11.02(3)(a) and (b) - A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
>
> Rule 1-106(A)(6) - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law:
>
> **Rule** 11.02(4) - Money or property entrusted to an attorney for a specific purpose shall be held in trust and applied only to that purpose;

Rule 9-102(A)(2) - Funds in dispute shall not be withdrawn until the dispute is resolved.

After considering all pleadings and evidence presented by the parties at the final hearing, the Referee found Respondent not guilty of all above-stated charges and as basis therefor, noted that Mr. Cillo was president of a corporation and at all times acted in its best interest for which he received no personal gain. (RR, 3-4, 10)

III. (TFB NO. 88-10,336(6B))

During Joseph Cillo's tenure as President of Resources International Ltd. ("RIL"), the professional association of Cillo, Williamson and Horowitz, was formed for the primary purpose of managing the business and legal affairs of RIL. (TR 111, 584, 1-25) With their office located in Newport Beach, California, the firm was not engaged in the practice of law, but rather looked after the business dealings between RIL and the FCC, as well as other outside agencies or entities. (TR IV, 595, 15-25; TR III 527, 3-21; TR II 224, 12-15)

Mr. Cillo was, at all times, licensed to practice law in the State of Florida. In fact, the letterhead used by the law firm during its existence listed Mr. Cillo as "Member Florida Bar Only." (TR IV, 597, 1-4) (Resp. Exh. 10) Sometime in 1983, Mary O'Connell began working for the firm as a secretary. Ms. O'Connell's duties consisted of answering phones for four (4) hours a day. She recalls that Mr. Cillo, in his capacity as President of RIL, engaged primarily in the sale of limited partnership units in RIL's wells. (Fla. Bar Exh. 4, Deposition Page 6) During the span of Ms. O'Connell's employment, she and her husband requested that Mr. Cillo draft a family trust document, for which Mr. Cillo received $250.00. (Fla. Bar Exh. 4, Deposition Pages 11-12) Respondent was, at that time, considered to be a friend of the family. (Deposition Page 36)

It was during this time that Mr. Cillo and Ms. O'Connell ingested cocaine together. Ms. O'Connell, in fact, was a supply source of the substance for Mr. Cillo. (TR **111,** 533, **11-14; TR IV, 611, 10-19;** TR **11, 225,** 9-15) There were also later occasions on which Respondent used cocaine with Mimi Williams, an employee of RIL/Cillo, Williamson & Dunham, as well as with her daughter, Cara. **(TR 11, 209, 1-6;** TR 11, **211, 2-3)** Mr. Cillo cited to the death of his wife in **1984** as the single and most notable event responsible for his having realized that recovery from the use of cocaine was essential. (TR **111, 561,** 1-25; TR **111,** 562, 1-3) **Mr.** Cillo then underwent, in **1985,** complete withdrawal from the use of cocaine and has not again ingested cocaine since that time, six years ago. **(TR III, 562, 17-19) In** fact, **no** evidence whatsoever has been presented to suggest otherwise. (RR, 6)

In connection with the foregoing, The Bar charged the following violations:[1]

> Article 11, Rule **11.02(3)** (a) and **(b) -** A lawyer shall not engage in a commission of a felony or misdemeanor;
>
> **Rule 1-102(A)(3) -** A lawyer shall not engage in illegal conduct involving moral turpitude;
>
> Rule 1-102(A)**(4) -** A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

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[1]It should be mentioned that The Bar, in its original and amended complaint in Count 111, set forth certain allegations pertaining to a supposed forgery committed by Mr. Cillo. No evidence was presented in support of this theory, other than the testimony of Mr. Williamson, who was found by the Referee to not be a credible witness. (RR, 5) Insofar as The Bar, in **its** recitation of the facts, failed to make mention of these previously asserted allegations, Respondent presumes that The Bar does not wish to challenge the Referee's findings in this regard.

Rule 1-102(A)(6) - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law;

Rule 3-101(B) - A lawyer shall not practice law in a jurisdiction where to do so would be in violation of the regulations of the profession in that jurisdiction.

After considering all pleadings and evidence presented by the parties at the final hearing, the Referee found that Respondent, in connection with the preparation of a trust agreement for the O'Connell's, engaged in the unauthorized practice of law in the State of California, in violation of Rule 3-101(B). In addition, the Referee acknowledged Respondent's admitted use of cocaine during the period 1983 through 1985. Because it was stipulated that said use was unlawful, the Referee found that Respondent's use constituted a violation of Article XI, Rules 11.02(3)(a) and (b).

IV. (TFB No. 88-11,451(6B))

Joseph Cillo represented in 1986, a client known as Gulf-Tex Oil and Gas. He was hired by Gulf-Tex for the specific purpose of assisting in securities-related matters. (TR I, 60, 6-12) While employed with Gulf-Tex, Mr. Cillo was provided office space of the company's offices on L.B.J. Freeway in Dallas, Texas. (TR I, 60, *20-25;* TR I, 61, 1)

It was during this time that Mr. Cillo agreed to meet with Matthew Schwartz, who was a friend and neighbor of another Gulf-Tex employee. (TR I, 61, 9-15) At their initial meeting, Schwartz discussed with Respondent, a problem he was having with a printing company concerning a bill for printing with which he was not satisfied. (TR I, 65, 24-25)

As a result of Schwartz' displeasure, Mr. Cillo telephoned the printing company and **told** them that Schwartz should not have been responsible for paying the bill. Consequently, the company released Mr. Schwartz from his payment obligations. (TR I, *66*, 1-21) For his assistance in this regard, Mr. Cillo received $250.00. (RR, 6)

Mr. Schwartz also discussed with Mr. Cillo, a dispute with a temporary secretarial agency known as Ad-A-Girl. (TR I, 72, 21-25) Schwartz described for Mr. Cillo, the facts surrounding the controversy and further explainedthat the outstanding bill was for approximately $800.00. (TR Vol. I, 77, 23-25) Mr. Cillo did, in fact, contact Plaintiff's counsel in that action at which time **he**

negotiated an extension on behalf of Mr. Schwartz. (TR I, 81, 12-20) However, because Mr. Cillo was of the opinion that the amount in controversy was de minimis and because the complaint was pending in Dade County, Florida, he explained to Schwartz that his legal representation in that matter was not economically feasible. Schwartz agreed. (TR I, 63, 8-25) Mr. Cillo was not retained, nor did he agree to take any further action on behalf of Schwartz. (RR, 6)

Mr. Cillo also had occasion to speak with Schwartz regarding a possible claim for lost baggage against American Airlines. (TR I, 64, 18-21) After having explained to Schwartz the process involved in advancing such a claim, Schwartz opted to handle the matter without Mr. Cillo's assistance and, therefore, did not retain him. (TR I, 65, 1-10) (RR, 7)

In connection with the foregoing, The Bar charged the following violations:[2]

> **Rule** 1-102(A)(4) - A lawyer shall not engage in conduct involving dishonesty, deceit, fraud or misrepresentation;
>
> Rule 1-102(A)(6) - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law;
>
> Rule 3-101(B) - A lawyer shall not practice law in a jurisdiction where to do so would be in violation of the regulations of the profession in that jurisdiction;
>
> Rule 6-101(A)(3) - A lawyer shall not neglect a legal matter entrusted to him;

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[2]The Bar, in its original and amended complaint, failed to charge violation of Rule 3-101(B) and consequently, submitted a motion to amend its amended complaint conformed to the evidence. That motion was granted. (RR, 7)

Rule 7-101(A)(2) - A lawyer shall not fail to carry out a contract;

Rule 7-101(A)(3) - A lawyer shall not prejudice or damage his client.

After having considered all pleadings and evidence presented by the parties at the final hearing, the Referee found that Respondent engaged in the unauthorized practice of law in Texas in connection with the printing dispute in violation of Rule 3-101(B). He further found no violations in connection with the other allegations advanced by The Bar. (RR, 6-7, 10)

V. (TFB. No. 89-10,588(6B))

Joseph Cillo and Clifford Jones met in 1982, while Mr. Cillo represented a company known as American Gold Dealers Association. Jones had been an employee of the corporation and had left to form a similar organization, First Federal Monetary, for which he sought Respondent's assistance. (TR 11, 326, 14-23) The primary focus of Mr. Cillo's representation was to review scripts that would be used in phone solicitations. (TR II, 327, 7-15)

During Mr. Cillo's representation of First Federal Monetary, Respondent issued invoices for his services to the corporation for which he would receive payment by corporate check. (TR 11, 328, 6-10) Contrary to Jones' allegations, never, during the course of this representation or any time thereafter, did Mr. Cillo receive $10,000.00 in cash from Mr. Jones. (TR II, 328, 19-21; TR 11, 329, 2-4) (RR, 7)

It was in 1985, that Mr. Jones was indicted in the State of California and subsequently pled guilty to mail and wire fraud. (TR 11, 259, 11-19) He was incarcerated for a year in connection with these offenses. (TR 11, 259, 20-23)

At the time he was arrested, Jones contacted Respondent requesting his representation. After having called the prosecutor, Mr. Cillo determined that such representation would very costly and, in turn, quoted Jones a fee of $30,000.00. (TR II, 332, 3-12). Mr. Jones subsequently called Respondent to tell him that he could not arrange to pay his fee. (TR II, 332, 15-23)

Clifford Jones was later convicted in the State of Florida again, as a result of his business operations. (TR 11, 285, 3-7) While appearing at indigency hearings held in connection with both criminal actions, Mr. Jones made no mention that he had paid an attorney (Respondent) $10,000.00 for representation in those matters. (TR 11, 293, 3-13; TR 11, 294, 18-25; TR II, 295, 7-17)

It was, however, around the time of his conviction in Miami, that Jones learned of the Client Security Fund and the procedure for making the claim on same. (TR 11, 293, 25; TR 11, 294, 1-17) On November 15, 1988, Jones filed the complaint with The Florida Bar. (TR 11, 262, 17-18) (Fla. Bar Exh. 4)

Upon learning of Jones' complaint, wherein he alleged that he had paid to Respondent $10,000.00 in cash, Mr. Cillo was upset. (TR 11, 334, 237) Within a week after having received notice from The Florida Bar, Mr. Cillo had a telephone conversation with Jones, during which Jones attempted to sell him a telephone long distance service. (TR 11, 334, 11-16) During this conversation, Jones explained to Respondent that an attorney had informed him about the Client Security Fund and that he was destitute. (TR II, 334, 20-22) Jones acknowledged that his claim was false, in response to which Mr. Cillo sent an affidavit requesting that Jones attest to the invalidity of the claim. Contemporaneously, he also sent Jones $250.00. (TR 11, 335, 1-10)

This, incidentally, was not the first time that Mr. Cillo had loaned or given money to Jones. Mr. Cillo, as early as 1985,

loaned Clifford Jones **$1,000.00** when he had no money. **(TR** III, 580, **7-17)** (Resp. **Exh. 7)**

After **having** sworn that his November **1988** complaint was false, Jones, nevertheless, persisted in calling Respondent, asking for employment. (TR II, 335, 15-17) Unbeknownst to Respondent, he also continued to complain to The Florida Bar while speaking with Mr. Cillo regarding **a** possible position with Centurion Financial. (TR 11, **336**, **19-21;** TR 11, **337, 7-8)** The company, at Mr. Cillo's request, agreed to give Jones a job, as well as a $1,000.00 advance. (TR 11, **336**, 18-25; TR **11, 337, 1)**

Recognizing that Jones had yet again asserted his claim with The Florida Bar while assuring Respondent that his claim was invalid, Mr. Cillo was uncomfortable with the prospect of an on-going business relationship unless the matter was resolved. (TR 11, **337, 7-20)** Accordingly, **Mr.** Cillo advised Jones that in order for there to be no misunderstanding, he would ask that Jones hand write and execute an additional affidavit declaring, again, that his complaint was false. (TR 11, **338, 11-16)** In fact, **Mr.** Cillo and Jones **agreed** upon the content of the declaration so that Jones could write the statement verbatim. (TR 11, **351**, 15-18; TR **11, 352, 14-21)**

In connection with **the** foregoing, The Bar charged the following violation:

> Rule 4-8.4(c) - A lawyer shall not engage in conduct involving dishonesty, deceit, fraud or misrepresentation.

After considering all pleadings and evidence presented by the parties at final hearing, the Referee found that Jones did not pay Respondent $10,000.00. (RR, 7) He further found that the two (2) signed statements of Jones' spoke the truth in that his Bar complaint was false. Accordingly, the Referee found no misconduct on Respondent's part by inducing Jones to tell the truth. (RR, 8, 10)

ISSUES PRESENTED

I. WHETHER THE BAR PRESENTED CLEAR AND CONVINCING EVIDENCE THAT RESPONDENT ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW IN TEXAS IN ASSISTING IN AN INCORPORATION AND WHETHER THE REFEREE'S FINDING THAT RESPONDENT'S ISSUANCE OF A WORTHLESS CHECK DID NOT CONSTITUTE ANY VIOLATION OF THE DISCIPLINARY RULES WAS CLEARLY ERRONEOUS?

II. WHETHER THE REFEREE'S FINDING THAT RESPONDENT'S INVOLVEMENT IN A BUSINESS TRANSACTION RELATED TO OIL AND GAS PRODUCTION WHERE FUNDS WERE RELEASED TO A CORPORATION OF WHICH RESPONDENT WAS PRESIDENT DID NOT CONSTITUTE ANY VIOLATION OF THE DISCIPLINARY RULES WAS CLEARLY ERRONEOUS?

III. WHETHER THE BAR PRESENTED CLEAR AND CONVINCING EVIDENCE THAT RESPONDENT ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW IN CALIFORNIA IN ASSISTING IN THE PREPARATION OF A TRUST?

IV. WHETHER THE BAR PRESENTED CLEAR AND CONVINCING EVIDENCE THAT RESPONDENT ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW WHEN HE ASSISTED IN RESOLVING A DISPUTE CONCERNING A PRINTING BILL AND WHETHER THE REFEREE'S FINDINGS THAT RESPONDENT DID NOT UNDERTAKE ANY FURTHER REPRESENTATION FOR THE CLIENT SUCH THAT NO DISCIPLINARY VIOLATION OCCURRED WAS CLEARLY ERRONEOUS?

V. WHETHER THE REFEREE'S FINDINGS THAT NO DISCIPLINARY VIOLATIONS OCCURRED AS A RESULT OF RESPONDENT'S PAYMENT OF MONEY TO A PERSON FILING A COMPLAINT WITH THE FLORIDA BAR WAS CLEARLY ERRONEOUS WHERE REFEREE FOUND THAT COMPLAINT WAS UNJUSTIFIED AND WITHOUT MERIT AB INITIO AND THAT SAID MONEY CONSTITUTED VALUABLE CONSIDERATION FOR INDUCING COMPLAINANT TO TELL THE TRUTH?

VI. WHETHER, GIVEN THE FINDINGS THAT RESPONDENT ENGAGED IN UNAUTHORIZED PRACTICE OF LAW AND THAT HE ADMITTED HAVING USED COCAINE PRIOR TO 1985, A PUBLIC REPRIMAND IS APPROPRIATE DISCIPLINE WHERE REFEREE CITED FIVE HEAVILY MITIGATING FACTORS RELATIVE TO RESPONDENT'S USE OF COCAINE AND FOUR SIMILARLY MITIGATING FACTORS RELATING TO RESPONDENT'S UNAUTHORIZED PRACTICE OF LAW?

SUMMARY OF ARGUMENT

In petitioning for review of the Referee's findings of fact and recommended discipline, The Bar would have this Court impose discipline commensurate with the severity of their naked allegations as advanced, instead of the discipline appropriate for the few allegations actually supported by clear and convincing evidence.

Where the Referee found that Respondent had engaged in the unauthorized practice of law, he cited three (3) isolated instances of such practice and went on to find that there existed several substantial mitigating factors to be considered in assessing discipline. With respect to Respondent's admitted use of cocaine, the Referee similarly relied on several mitigating factors and went to great lengths in articulating same in recommending a public reprimand for both violations. The aforestated violations are the sum total of that which was proven by The Bar.

It is patently clear that with respect to the violations alleged, The Bar would have this Court ignore the Referee's findings of fact and, instead, take the allegations of the Complaint as having been tried and proven. Rather than replacing the Referee's examination of the evidence, demeanor and credibility of the witnesses, with the unsubstantiated allegations of The Bar, Respondent would urge a practical application of case law on these various questions which requires that due deference be given to the findings and recommendations of the Referee where substantial mitigation is present.

ARGUMENT

I. THE BAR FAILS TO DEMONSTRATE THAT THE REFEREE'S FINDINGS WERE CLEARLY ERRONEOUS WHERE THE REFEREE FOUND THAT RESPONDENT'S ISSUANCE OF WORTHLESS CHECKS DID NOT CONSTITUTE A DISCIPLINARY VIOLATION.

"It is the function of the Referee to weigh the evidence and determine its sufficiency..." The Florida Bar v. Scott, 566 So. 2d 765, 767 (Fla. 1990) The court in Scott went on to state that it would not "re-weigh the evidence or substitute our [their] judgment for that of the referee unless it is clearly erroneous or lacking in evidentiary support."

Respondent would submit that with respect to the charges pertaining to the Lenoirs, as well as those Complainants discussed hereinafter, The Bar urges this Court essentially, to disbar Respondent based not on the evidence as presented, but rather, based on the case they had hoped to prove.

The Referee found that Mr. Cillo, in connection with Liberty Limited, assisted Mr. Lenoir and undertook to incorporate that corporation while acting as an attorney and, therefore, engaged in the unauthorized practice of law. (RR, 2) Mr. Cillo acknowledges having contacted Prentice-Hall in order to arrange for the incorporation, paying personally for the service, and in turn, receiving money from Mr. Lenoir. (TR I, 173, 8-12)

Respondent does not challenge the Referee's findings in this regard insofar as they were supported by competent evidence.

The Bar, however, asserts on appeal that Mr. Cillo engaged in misconduct relating to the purchase of a diamond ring from the Lenoirs. In furtherance of its position, The Bar suggests, in summary fashion, that the "record clearly shows that Respondent wrote two (2) separate checks with knowledge that there were insufficient funds in the account to cover the checks." (Florida Bar Initial Brief, page 24) The Bar then goes on to say that "[t]he evidence presented relating to Respondent's purchase of the diamond ring from Mr. Lenoir shows that Respondent engaged in dishonesty, fraud, deceit or misrepresentation in promising to repay the worthless check." (Id.) While this conclusion is certainly convenient, it is nonetheless ill-founded and lacking in support.

Where the Referee found that the checks were dishonored due to insufficient funds, this hardly supports The Bar's quantum leap from suspicion to conclusion that Respondent knowingly issued worthless checks. In fact, the Referee specifically stated in his findings that while Respondent's difficulty in paying for the ring was due to his personal financial problems at the time, it did not result from any dishonesty or other misconduct on his part. (RR, 3) (emphasis added)

Respondent candidly admitted that he failed to make good on the checks until quite some time later in 1988. In fact, evidence was presented that a check issued to him in excess of the purchase

amount had been dishonored, not once, but twice, while attempting to pay the Lenoirs. Subsequently, Respondent experienced financial hardships which precluded him from making payment until some time later. (TR I, **164, 18-25;** TR **I, 165, 10-11)**

It would appear that The Bar urges this Court to disregard Respondent's testimony and the Referee's findings based thereon. However, it must first be remembered that the Referee in this case, alone, **had** the unique ability to listen to the witnesses and observe their demeanor and access credibility.

The findings of fact on this count are presumed to be correct and must be upheld unless clearly erroneous. Scott, *566* So. 2d at 767; The Florida Bar v. Thomas, 16 FLW S451 (June 14, 1991) The Florida Bar has failed to demonstrate that the Referee's findings are contrary to the evidence in any material respect. Accordingly, Respondent requests approval of the recommended findings of fact on Count I.

II. THE REFEREE'S FINDING THAT NO DISCIPLINARY VIOLATION OCCURRED AS A RESULT OF RESPONDENT'S ACTIONS IN THE CONTEXT OF A BUSINESS TRANSACTION WERE NOT CLEARLY ERRONEOUS AND SHOULD, THEREFORE, GO UNDISTURBED.

With respect to Mr. Cillo's business negotiations while President of Resources International, Ld. ("RIL"), The Bar charged five (5) violations of the disciplinary rule ranging from engaging in the commission of a felony or misdemeanor to various violations having to do with client monies.

After hearing witness testimony and reviewing certain documentary evidence pertaining to these alleged violations, the Referee found no misconduct on the part of Mr. Cillo as a result of the transaction involving James Joyce. Specifically, his findings reflect that Mr. Joyce's company released monies to RIL knowing that a portion of that money would be used to satisfy an outstanding indebtedness to another corporation, Combustion Engineering. (RR, 3-4) The Referee's conclusion that Joyce knew of this pre-existing indebtedness was certainly supported by Mr. Cillo's testimony, as well as that of Mr. Joyce. It was clearly established that the transaction could not be consummated without first paying Combustion Engineering. (TR 111, 441, 3-6; TR III, 569, 15-25; TR III, 570, 7-25)

The Referee further found that the balance of the funds from Joyce's corporation were used in the day-to-day expenses of RIL and that Respondent received no personal gain from the transaction. (RR, 3) Moreover, the Referee concluded that the monies were used by RIL, as contemplated, and that the corporation had no ability as

was evident, to refund the money in the event the deal fell through. (RR, 4)

The Bar, in challenging these findings, argues that the Referee erred in finding that there was no misconduct and further, erred in finding no agreement to refund the $105,000.00. As grounds therefor The Bar cites to the testimony of Joyce where he stated that he was not informed of RIL's financial condition or of the extensive liens and encumbrances placed on the leaseholds. (Florida Bar Initial Brief, **Page** 26)

Respondent would submit that the mere existence of testimony inconsistent with the Referee's findings does not demonstrate error. Instead, the inquiry of this Court must be whether there existed competent evidentiary support to justify the Referee's findings. The Florida Bar v. Simmons, **16** FLW 5433 (June 14, 1991) citing **The** Florida Bar v. Scott, 566 So. 2d **765, 767 (Fla. 1990);** The Florida Bar **v.** Seldin, 526 So.2d 481 (Fla. 1988) In this regard, such testimony **was**, in fact, given as shown by Respondent's recitation of the facts on this count. supra, **4-6.**

The Bar asserts in conclusory fashion that "the facts and documentation presented at the final hearing in this cause clearly show that Respondent violated the alleged disciplinary rules and his actions towards James Joyce." (Florida Bar Initial Brief, page **27)**

The Rules of Professional Conduct, as well as applicable case law, place the burden on the petitioning party to demonstrate that the Referee's findings are erroneous. Rule **3-7.6** (c)(5) The Bar

has failed to demonstrate such error and for that reason, the Referee's findings pertaining to Count III should be upheld.[3]

3The Bar, in its initial brief at page 27, sets forth several attorney discipline cases for the proposition that an attorney who violates disciplinary rules while engaged in a business relationship shall be subject to discipline by this court. See, The Florida Bar v. Hosner, 520 So.2d 567 (Fla. 1988); The Florida Bar v. Bussey, 529 So.2d 1112 (Fla. 1988). Respondent agrees with this proposition and seeks not to refute its accuracy. However, its applicability herein is inappropriate insofar as The Bar has failed to demonstrate misconduct in the first instance.

III. THE REFEREE'S FINDINGS OF DISCIPLINARY VIOLATIONS ARE CONFINED TO RESPONDENT'S PREPARATION OF A TRUST AND RESPONDENT'S ADMITTED PERSONAL USE OF COCAINE WHICH OCCURRED PRIOR TO 1985.

The Bar, in addressing Count 111, first states that in 1983, Respondent established the law firm of Cillo, Williamson and Horowitz.[4] (Florida Bar Initial Brief, page 30) The Bar next states that Respondent engaged in the unauthorized practice of law in the State of California. (Id.) While presumably attempting to create the inference that Mr. Cillo was continuously and systematically practicing law in violation of the disciplinary rules, the record and findings of the Referee show otherwise.

As set forth in Respondent's recitation of the facts, the firm was formed for the primary purpose of managing RIL. In fact, Ms. O'Connell testified that Mr. Cillo, in his capacity as President, engaged primarily in the sale of limited partnership units in RIL's wells. supra, page 8.

Contrary to what The Bar suggests, the Referee's findings that Mr. Cillo engaged in unauthorized practice resulted only from his preparation of a Trust Agreement for the O'Connell's. (RR, 5) Respondent admitted having prepared the document for the O'Connell's who were, at that time, considered personal friends. Where the Referee found a violation based on this act, Respondent

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[4]The firm name was later changed to Cillo, Williamson and Dunham, as testified to by Respondent, as well as various witnesses.

asserts no challenge and, in fact, did not refute or deny his preparation of the Trust.

However, The Bar mischaracterizes the Referee's findings and departs from the articulated reasons contained in his report; instead, conveniently replacing same with self-serving conclusions. Respondent is in agreement with The Bar that the findings of the Referee should be upheld, but urges that the basis therefor should be given due deference, and not subjected to The Bar's expansive creativity.

with respect to the Respondent's admitted use of cocaine, the parties stipulated that such usage, in 1985, was unlawful. The Referee acknowledged this and accordingly, found that Respondent's act violated Article XI, 11.2(3) (a) and (b). The Referee noted that no commercial involvement in the use or delivery of cocaine has been shown. (RR, 5) In fact, the Referee goes on to state that "The evidence suggests that it was almost the thing to do in California in those times and places." (RR, 6)

More importantly, the Referee found that "Respondent has not used cocaine since 1985, and The Bar has not shown otherwise." (Id.) Mr. Cillo testified that his use of cocaine was the single most embarrassing and hardest thing for him to confront, both professionally and personally.

The Bar, irrespective of the Referee's findings, deems it necessary to focus upon the fact that others partook, along with Mr. Cillo, in the ingestion of cocaine and for that, The Bar wishes to blame and punish Mr. Cillo for their conduct as well.

In so doing, The Bar attempts to show similarity between the case at bar and The Florida Bar v. Beasley, 351 So. 2d, 959 (Fla. 1977), a case where this court recommended disbarment for respondent therein. Simply stated, Beasley was convicted for delivery of marijuana where he directed his client to a person who could supply her with the drug. The afore-described conduct took place on June 24, 1975, and he was subsequently found guilty of delivery of cannabis on August 20, 1975. This Court disbarred Beasley in September, 1977.

Clearly, Beasley involved conduct unbefitting a member of the legal profession. Beasley directed his client to a supplier - an act displaying total disregard for the most sacred of duties, that owed to your client in preserving and protecting their interest. Disciplinary proceedings ensued as a direct result of that conduct and within two (2) years from the time of his conviction, Beasley was disbarred. Much unlike the facts of Beasley, Mr. Cillo openly admitted his recreational use of cocaine while the target of a barrage of charged disciplinary violations. His use, as pointed out by the Referee, was confined to a period before 1985 - six Years ago. (emphasis added) As a result of this admission, the Referee found the violation commensurate with the evidence.

Respondent's complete rehabilitation was supported by the evidence and acknowledged by the Referee and now, six years later, The Bar urges this Court to impose a degree of discipline which would do nothing more than fly in the face of Mr. Cillo's successful recovery from the use of narcotics. The Referee, in recommending discipline, has not excused Mr. Cillo's conduct as The

Bar seems to suggest. A more detailed discussion of the appropriateness at the Referee's recommendation will follow. Infra, pages 37-41.

IV. THE BAR FAILS TO DEMONSTRATE THAT THE REFEREE'S FINDINGS WERE CLEARLY ERRONEOUS WHERE HE FOUND THAT RESPONDENT ENGAGED IN UNAUTHORIZED PRACTICE WITH RESPECT TO THE PRINTING DISPUTE BUT UNDERTOOK NO FURTHER REPRESENTATION.

As it pertains to the charges relating to Matthew Schwartz, Respondent notes that The Bar's argument amounts to, essentially, a re-recitation of their facts as set forth on pages 14, 15 and 16 of its initial brief. Rather than following suit, Respondent would respectfully refer this Court to the facts pertaining to this Count as previously set forth at pages 11, 12 and 13 of this brief.

In connection with Respondent's dealings with Mr. Schwartz, the Referee found that Mr. Cillo performed legal services for Mr. Schwartz in telephonically contacting a printing company on his behalf. (RR, 6) It was this representation for which Respondent received $250.00. (Id.) Mr. Cillo's assistance in this regard constituted a violation of Rule 3-101(B) according to the Referee. (RR, 10) Insofar as there exists competent evidence to support this findings, Respondent asserts no challenge pursuant thereto.

The Bar again, goes on to recite the direct testimony of Mr. Schwartz in suggesting that Respondent's representation of Schwartz was of a more expansive nature than that found by the Referee. Such, however, is not the case. The Referee specifically found that Respondent discussed another legal matter with Schwartz involving a lawsuit pending in a Florida court, for which

Respondent telephoned Plaintiff's attorney seeking an extension. (RR, 6)

Mr. Cillo testified that because the amount in controversy was so small, he and Schwartz agreed that legal representation was economically imprudent. No further action was undertaken on behalf of Schwartz, nor did Mr. Cillo receive any money. (TR I 63, 8-25) This testimony provides competent evidence in support of the Referee's finding that "Respondent did not undertake and was not retained to defend Mr. Schwartz in that lawsuit." (RR, 6)

As previously asserted in response to a similarly fashioned argument contained in The Bar's brief, this Court has recently made clear the fact that it cannot re-weigh the evidence or substitute its judgment for that of the Referee unless it is clearly erroneous or lacking in evidentiary support. See, The Florida Bar v. Simmons, 16 FLW S433 (June 14, 1991), citing, The Florida Bar v. Scott, 566 So.2d 765, 767 (Fla. 1990)

It is seemingly the case that where there exists competing testimony, The Bar contends that error has occurred unless, of course, the findings are in its favor. Fortunately, this is not the extent of The Bar's burden.

This Court has repeatedly underscored the importance of maintaining the integrity of the fact finding process due to the Referee's unique position to assess the credibility of witnesses. See, The Florida Bar v. Thomas, 16 FLW S451 (June 14, 1991) It is for this very reason that the Referee's findings should be adhered to absent demonstration that they are clearly erroneous. The Bar

urges this Court to conduct its own fact finding process based not on the facts as found by the Referee, but rather based on the facts as alleged and unproven by The Bar. Clearly, if this were the intended function of this Court, the review process would amount to nothing more than a hearing de novo. Accordingly, Respondent requests approval of the recommended findings of fact on Count IV.

V. THE REFEREE'S FINDINGS WERE NOT CLEARLY ERRONEOUS AND SHOULD BE UPHELD WHERE COMPLAINANT ADVANCED FALSE BAR COMPLAINTS AND WAS LATER INDUCED BY RESPONDENT TO TELL THE TRUTH.

The Bar continues to maintain that Clifford Jones paid to Joseph Cillo, $10,000.00 cash sometime in 1982 or 1983. Although Mr. Jones testified as to this alleged payment of cash, the Referee found that no such fee was ever paid to Mr. Cillo. (RR, 7) This conclusion is well supported by Respondent's testimony, as well as the two (2) previously sworn affidavits of Jones.

Mr. Jones, by testifying that he paid Respondent $10,000.00, admitted either that he had twice perjured himself through sworn affidavits or that no such monies were ever paid. In addition, Mr. Jones is a twice convicted felon for crimes involving fraud.

In his findings, the Referee recognized that there came a time when Jones learned of a fund (Client Security Fund) from which he might recover money if he filed a complaint; he did so, setting forth the allegations of payment to Respondent. (RR, 7) With the filing of said complaint, Respondent requested that Jones sign an affidavit attesting to the invalidity of these allegations, at which time he would also send Jones $250.00. (TR II, 335, 1-10)

Despite having sworn that he did not pay Respondent $10,000.00, Jones continued to make such complaints to The Florida Bar, while also speaking with Respondent regarding a possible position with a corporation known as Centurion Financial. (TR 11, 336, 19-21; TR 11, 337, 7-8)

The facts are undisputed that Jones received a $1,000.00 advance on this position at the time that he signed yet another affidavit attesting to the falsity of his allegations. (RR, 8)

In responding to The Bar's brief on this Count, it should first be noted that the arguments contained therein are premised on those allegations already rejected by the Referee and, without citation, The Bar goes on to embellish their argument with ill-founded conclusions. An example of The Bar's efforts in this regard might be found on page 40, where they opine: "The position with Centurion was merely a ruse to give legitimacy to Respondent's buying his way out of the Jones complaint." (Florida Bar Initial Brief, page 40)

Insofar as The Bar's brief is replete with such self-serving statements, their suggestion is quite clear that Mr. Jones' receipt of money is evidence of impropriety on the part of Mr. Cillo. Fortunately, it is not The Bar that is charged with the responsibility of resolving such evidentiary questions, but rather the Referee.

The Referee, in response to The Bar's allegation in this conduct, specifically acknowledged that Respondent's actions did, in fact, induce Jones to sign two (2) affidavits, wherein Jones admitted having falsely accused Mr. Cillo. Conveniently, The Bar would ignore the obvious perjurious and extortive nature of Mr. Jones' conduct and, instead, focus upon Jones' receipt of money from Mr. Cillo. The Bar does this, however, still basing their

argument upon the faulty premise that Jones paid Respondent $10,000.00 and, for that reason, their argument must fail.

The Bar also attempts to demonstrate wrongdoing on the part of Respondent where, in their brief, they discuss the testimony of Mr. Cillo's paralegal, Mark Lufriu, who described Jones' hesitancy to write "under penalty of perjury" on his declaration. (Florida Bar Brief, page 41) Where The Bar views this as an "indicator of the lack of truth and veracity of the declaration," this conclusion does nothing more than add to the plethora of unsubstantiated and unsupported theories repeatedly set forth therein. If anything, Mr. Jones' hesitancy demonstrates his intent to continue playing both ends against the middle, without regard for his obvious attempt to abuse not only The Bar grievance process, but also the Client Security Fund.

It is ironic and non-sensical that The Bar would rather sanction Mr. Cillo, than praise his efforts to bring the truth to the forefront - a concept with which they should be intimately familiar insofar as they are in a position of public trust.

Interesting, The Bar has charged Mr. Cillo with engaging in deceitful, dishonest and fraudulent conduct in violation of Rule 4-8.4(c). However, the Referee found no misconduct in that Mr. Cillo did nothing more than induce a witness to tell the truth. The Bar, on the other hand, has chosen to disregard the inescapable truth of the matter and, instead, aligns itself in a manner contrary to the spirit of its codified responsibilities. Because The Bar fails to demonstrate that the Referee's findings are contrary to the

evidence, the findings of fact on this Count are presumed to be correct and must be upheld. See, Scott, 566 So.2d at 767; supra. Accordingly, Respondent requests approval of the findings of fact on Count V.

VI. THE DISCIPLINE RECOMMENDED BY THE REFEREE SHOULD BE APPROVED WHERE THE REFEREE CITED SEVERAL HEAVILY MITIGATING FACTORS IN CONNECTION WITH RESPONDENT'S DISCIPLINARY VIOLATIONS.

In connection with the lengthy list of disciplinary violations alleged against Mr. Cillo by The Bar, the Referee concluded that the Respondent engaged in the unauthorized practice of law in violation of 3-101(B) and the unlawful use of a controlled substance in violation of Article XI, Rules 11.02(3) (a) and (b). The Referee recommended that as a result of the foregoing, the Respondent should receive a public reprimand and should be assessed costs in the amount of **$8,132.74.**

The law is well-settled that discipline for misconduct must serve three (3) purposes:

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

The Florida Bar v. **Lord,** 433 So.2d 983, 986 (Fla. 1983), citing, The Florida Bar v. Thue, 244 So.2d 424, 425 (Fla. **1971),** citins, The Florida Bar v. Pahules, 233 So.2d **130,** 132 **(Fla. 1970).**

In presenting its argument to this Court, The Bar seemingly asks this Court to ignore the purposes and the goals of attorney discipline as set forth in Lord. The Bar cites to the Standards

for Imposing Lawyer Sanctions, specifically, Standard 7.0, which addresses in what circumstances certain measures are appropriate. Without much surprise, The Bar sets forth Standard 7.1, which describes when disbarment is appropriate. In so doing, The Bar intimates that Mr. Cillo's conduct fits squarely within this category. Not only do the facts fail to rise to the level of misconduct contemplated by 7.1, but The Bar completely disregards the preliminary language referring to the applicability of these standards "absent aggrevating or mitigating circumstances." (emphasis added)

With respect to the findings that Respondent engaged in the unauthorized practice of law, the Referee specifically stated that Mr. Cillo's conduct did not establish a continuous pattern, but rather, isolated acts. (DH, 30, 107) The Referee further noted that these services were rendered for friends. (Id.) Where the Referee distinguishes isolated acts from a continuous pattern, this is consistent with the comment to Rule 4-8.5, which provides that if activity in another jurisdiction is substantial and continuous, it may constitute the practice of law in that jurisdiction.

Further mitigating these isolated instances according to the Referee, is that no harm was done to any of these people as a result of Mr. Cillo's services. (DH, 36, 19-21) In fact, testimony was adduced that Mr. Lenoir, Mr. Schwartz and Ms. O'Connell had no complaints regarding the services provided, i.e., the incorporation, the resolution of the printing dispute, and the drafting of the trust.

Also addressed were several mitigating factors relating to Mr. Cillo's use of cocaine. Specifically articulated was the fact that Mr. Cillo experienced the illness and death of his wife at an early age. In addition to his wife's death, the Referee found that Mr. Cillo was under substantial personal, business-related and financial pressure. The Referee's consideration of these personal hardships is entirely proper in his recommendation of discipline. In Lord, this Court commented:

> While personal difficulties should not be relied upon to excuse [respondent's] misconduct, the referee should not be restrained from considering hardships in recommending discipline which would be fair to society and to respondent in addition to being an effective deterrent to others.

Lord, at 986. (emphasis added) In addition to the mitigating factors pertaining to the time period in question (1983 through 1985), there also exists substantial mitigation arising during the interim period from the time of Respondent's conduct to the institution of disciplinary proceedings. As recognized by the Referee, Mr. Cillo admitted to having used cocaine six (6) years ago, but has since undergone complete rehabilitation in the interim by his own choosing. Such interim rehabilitation was not only supported by competent testimony, but The Bar has not produced a shred of evidence to the contrary. Mr. Cillo's rehabilitation, combined with the remoteness of his cocaine use constitutes substantial mitigation in the face of the decided disciplinary violations.

Added to the remoteness of the conduct, as well as unrebutted rehabilitation, the Referee concluded that Mr. Cillo was truly

remorseful for his actions during the period he used cocaine. Also noted was the fact that Mr. Cillo openly admitted this use and did not require The Bar to prove his conduct in this regard. All of the aforestated factors are appropriately considered according to the Standards for Imposing Lawyer Sanctions, Standard 9.3, Mitigation. See also, The Florida Bar v. Clark, 16 FLW S487 (July 19, 1991) (Where respondent was convicted for importation of marijuana, substantial mitigation was appropriately considered.)

The appropriateness of the recommended discipline is clearly demonstrated when considering the aforestated mitigation in conjunction with the purposes that discipline must serve as set forth in Lord. In keeping with the theory that the punishment must be fair to society, this Court must weigh the potential harm to Respondent's clients in denying them Mr. Cillo's services for conduct which essentially pre-dates their attorney/client relationships. Lord, at 986.

This Court has also **required** that the judgment be fair to Respondent, being sufficient to punish the breach and at the same time encourage reformation and rehabilitation. To harshly discipline Mr. Cillo in 1991, after he has undergone a painful and difficult recovery, would serve only to punish him for that which is **more** deserving of positive recognition and praise in the legal community. This Court has stated its desire to encourage reformation and rehabilitation. What **The** Bar urges here, instead, is wholly discouraging and amounts to a disincentive to those whose recovery is self-motivated rather than judicially mandated.

The proposed discipline also serves to achieve this Court's third enunciated purpose in that it is severe enough, in light of the facts, to deter others who might be prone or tempted to become involved in like violations. (Id.) Mr. Cillo, by receiving a public reprimand, will again be reminded of the most painful and trouble-ridden period in his life. Ironically, it is the remoteness of his conduct that has afforded him the opportunity to recognize the gravity of his mistakes, and it is also the remoteness, inter alia, that provides this Court with more than a substantial showing of mitigation in support of the recommended discipline.[5]

[5]Respondent notes that The Bar relies on the cases of The Florida Bar v. Shusack, 523 So.2d 1139 (Fla. 1988) and The Florida Bar v. Greene, 515 So.2d 1280 (Fla. 1987) for the proposition that because Respondent has before been disciplined, that this should be considered by this Court as an aggravating factor. These cases address situations where repeated instances of similar misconduct has occurred. (emphasis added) Respondent's conduct, contrary to The Bar's suggestion, is not cummulative in the nature contemplated by Shusack and Greene and should not be similarly treated by this Court.

CONCLUSION

In sum, The Bar would have this Court discipline Mr. Cillo based on a case they did not prove, Their request is that this Court adopt the mere allegations of its Complaint with total disregard for the evidence or lack thereof. The Referee's recommendation of a public reprimand is well-reasoned and supported by substantial mitigation. Accordingly, Respondent respectfully requests that the findings of fact and the discipline recommended therefor, be approved by this Court.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and seven (7) copies of the foregoing Answer Brief of Respondent Joseph P. Cillo, have been furnished by United Parcel Service, #N349-X85/1760 7500 155 to SID J. WHITE, CLERK, Supreme Court Building, 500 South Duval, Tallahassee, Florida 32399-1927; and by U.S. Mail to JOSEPH CORSMEIER, ESQUIRE AND DAVID RISTOFF, ESQUIRE, The Florida Bar, Suite C-49, Tampa Airport Marriott Hotel, Tampa, Florida 33607, this 31st day of July, 1991.

Attorney