047

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JOSEPH P. CILLO,
Respondent.
_____/

CASE NO. 76,254
(TFB No.: 88-10,252 (6B)
88-10,335 (6B)
88-10,336 (6B)
88-11,451 (6B)
89-10,588 (6B)

THE FLORIDA BAR'S INITIAL BRIEF

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SYMBOLS AND REFERENCES

In this Brief, the Appellant, The Florida Bar, will be referred to as "The Florida Bar" or "The Bar". The Appellee, Joseph P. Cillo, will be referred to as the "Respondent". "TR I" will denote Volume I of the Transcript of the Final Hearing held on March 13th, 14th, and 15th, 1991. "TR II" will denote Volume II of the Transcript of the Final Hearing held on March 13th, 14th, and 15th. "TR III" will denote Volume III of the Transcript of the Final Hearing held on March 13th, 14th, and 15th. "TR IV" will denote Volume IV of the Transcript of the Final Hearing held on March 13th, 14th, and 15th. "R" will refer to the Record. "RR" will refer to the Report of Referee.

STATEMENT OF THE CASE

On December 4, 1989, the Sixth Judicial Circuit Grievance Committee "B" found probable cause for further disciplinary proceedings. The Florida Bar filed a formal Complaint with the Supreme Court of Florida on June 27, 1990. Respondent filed an Answer to the Complaint on July 19, 1990.

On August 9, 1990, Judge Vernon Evans was assigned as Referee by Court Order.

Final Hearings were scheduled and held on March 13, 14, and 15, 1991.

An Order granting leave to The Florida Bar to file said Complaint was entered on January 11, 1990 and an Amended Complaint was filed on February 5, 1991.

A Disciplinary Hearing was held on April 26, 1991. A Motion by The Florida Bar to Amend the Amended Complaint to conform to the evidence was granted on April 26, 1991.

The Report of Referee was served on or about May 9, 1991. The Florida Bar Board of Governors voted to seek review of the Report of Referee as to the findings of fact, conclusions of law and the discipline imposed at its meeting which ended May 31, 1991, seeking disbarment. A Petition for Review has been filed.

STATEMENT OF FACTS

COUNT I

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

In or about 1985, John D. Lenoir was introduced to Respondent. (TR I, p.97, L.3-5). Respondent held himself out as an attorney licensed to practice law in Texas. (TR I, p.100, L.22-25, p.101 1-3, p.144, L.7-25, p.145, L. 1-25, p.146, L.1-12). Respondent, at all times relevant to this Count, was licensed to practice law only in the State of Florida. (R. Amended Complaint, paragraph 4, Answer paragraph 4).

Respondent agreed to represent John Lenoir in creating a corporation known as Liberty Limited, Inc. to market and sell precious metals. The corporation was to be based in Nevada. (TR I, p.100, L.22-25, p.101, L.1-19). The corporation was eventually incorporated in the State of Texas. (TR I, p. 101, L.11-14). Mr. Lenoir testified that Respondent charged a fee for this representation. (TR I, p. 101, L.20-25, p.102, L.1-12).

Respondent also agreed to represent the corporation to insure compliance with various federal "blue sky" regulatory requirements. Respondent was to receive a percentage of the profits of the corporation as compensation for his legal services. The regulatory requirements were never fulfilled. (TR I, p.102, L.16-25, p.103, L.1-19, p.104, L.5-23).

Sometime after May, 1986, Respondent approached Mr. Lenoir to purchase a diamond ring. Mr. Lenoir had moved from Dallas to Nevada but his wife, Deborah Lenoir remained in Dallas. Mr. Lenoir arranged for Deborah Lenoir to show the two rings to Respondent at the bank in Dallas where she was employed. Respondent examined both rings and purchased one ring for $4,200.00. (TR.I, p.110, L.12-25, p.111, L. 1-22). Deborah Lenoir had resigned her position as manager of the bank and was moving to Mississippi. Respondent wrote a personal check for the diamond ring which was dishonored for insufficient funds, As a result of the dishonored check, fifteen (15) to twenty (20) checks written by the Lenoirs on their checking account were dishonored. (TR I, p.112, L.10-22, p. 152, L.17-22). Both Mr. and Mrs. Lenoir made numerous attempts to contact Respondent by telephone. (TR I, p.114, L.23-25). Respondent initially stated that his secretary had stolen money from his business and personal bank accounts and his home had been burglarized. Respondent assured Mrs. Lenoir that he would pay the money back with client funds that he anticipated receiving. (TR I, p.113, L.2-25, p.114, L.1-5). After making numerous attempts to contact Respondent, Deborah Lenoir drove from Mississippi to Dallas, Texas at the end of August, 1986. Respondent gave Mrs. Lenoir a check for $5,000.00 to cover the original check, plus expenses. Respondent directed Mrs. Lenair to hold the check for a week to ten days and that he

would call when the check could be deposited. (TR I., p. 154, L.5-24, p.157, L.2-6). The Respondent never called and the check was never made good. The account on which the check was written was eventually closed by Respondent. (TR I, p.157, L.7-20). After determining that there were insufficient funds in Respondent's account, Mrs. Lenoir went to Dallas from Mississippi a second time. (TR I, p.159, L. 4-25, p.160, L.l-14). After an argument with Respondent, Mrs. Lenoir left Dallas without payment from Respondent. Respondent then moved his office without providing notice or any forwarding address to the Lenoirs. (TR I, p.158, L.13-21). Respondent sent a certified check to the Lenoirs for $4,200.00 in the Summer of 1988 after receiving notice that the Lenoirs had listed him as a debtor in the bankruptcy proceedings. (TR I, p.121, L.24-25, p.22, L. 1-21). Respondent paid $4,200.00, the face amount of the dishonored check, two (2) years after writing the worthless check. The $4,200.00 check from Respondent in the Summer of 1988 was submitted one (1) year after the filing of the Lenoir complaint with The Florida Bar. (TR I, p.121, L.14-16).

COUNT II
(TFB No. 88-10,335 (6B))

In 1984 and 1985, Respondent served as president, chief executive officer, and corporate legal counsel for Resources International, Ltd. (RIL). Respondent was also a stockholder in RIL. (R. Amended Complaint paragraph 16, Answer paragraph 16).

Sometime in 1984, James Joyce, President of Joyce Western Corporation, received a telephone call from Rick Bounds, an employee of RIL. (TR 111, p.435, L.14-25). Rick Bounds contacted Mr. Joyce on behalf of RIL and wanted Mr. Joyce to meet with a David Sterns. (TR III, p.435 L. 24-25 and p.436, L.1-4). Mr. Joyce agreed to meet with Mr. Sterns to discuss financing the completion of a pipeline near Chester, West Virginia. After meeting with Mr. Sterns and Mr. Bounds, Mr. Joyce decided not to participate in financing the pipeline. (TR. 111, p.436, L.6-25 and p.437, L.l).

Mr. Joyce was again contacted by Mr. Bounds in 1984. Mr. Bounds asked Mr. Joyce to meet with Respondent, who had succeeded Mr. Sterns as the president of RIL. Mr. Joyce met with Respondent in Pittsburgh, Pennsylvania in 1984. Respondent told Mr. Joyce that he was an attorney. (TR 111, p.437, L.2-25, TR 111, p.446 L.11-16). Respondent represented at that time that there were various leaseholds for mineral rights in Chester, West Virginia, that all

obligations on the leaseholds were "completely clear", and that there was only one outstanding obligation to Combustion Engineering. Respondent further stated that payment of the obligation to Combustion Engineering would extinguish all outstanding obligations on the property. (TR **111, p.441, L. 3-8).** After the meeting in Pittsburgh, Respondent created a purchase agreement (R. Bar Exhibit #12) and forwarded the proposed agreement to Mr. Joyce. Mr. Joyce did not sign the purchase agreement. (TR **111, p.439 L.2-23).** The purchase agreement states that each party

> "will afford, and have afforded any representative so designated reasonable access during normal business hours to all of the properties, books, contracts, and records of RIL cancerning the assets to be purchased, and will, when the other party reasonably requests, furnish and have furnished the other party and their counsel with all the information, including copies of books, contracts and records, concerning the asset to be purchased." (R. Bar Exhibit #12, p.5-6).

Neither Mr. Joyce nor his representatives received any documents or company records or notice of liens filed against the property by numerous individuals and entities at the time the sale was to be consummated. (TR III. p.439, L. 15-21). Respondent later told Mr. Joyce that the records were available in Chester, West Virginia, but when Mr. Joyce sent a representative to review the records in Chester, the representative was told that an employee had taken the records as collateral. (TR **111, p.448,** L.l-24).

Sometime in March, 1985, Respondent and Mr. Joyce met and reached an agreement in principal for Mr. Joyce to purchase the leaseholds. (TR 111, p.442, L.14-20). No final price was agreed upon at that time. (TR 111, p.443, L.15-17). Respondent made representations that Mr. Joyce could immediately have all records relating to the purchase. (TR 111, p.443, L.11-17). After reaching the agreement in principal, Mr. Joyce wire-transferred $105,000 to an RIL account at Chase Manhattan Bank in New York City on March 3, 1985. (TR 111, p.442, L.21-25). No written contract was ever executed. (TR 111, p.439, L.2-23). Mr. Joyce understood that the $105,000.00 was a refundable deposit if the purchase was not consummated. (TR 111, p.446, L.17-24). The records were never delivered to Respondent. (TR 111, p.448, L.1-24).

After transferring the $105,000.00 to the RIL account, Mr. Joyce employed an attorney in Chester, West Virginia to check on the status of any liens or encumbrances on the property. The attorney researched the public records and prepared and forwarded a list of liens and encumbrances dated April 30, 1985. (R. Bar Exhibit #14). According to Mr. Joyce, the encumbrances on the property totalled approximately 30% of all potential income from the property. (TR 111, p.453, L.3-15, R. Bar Exhibit #14). Mr. Joyce was not informed of these encumbrances at any point during the negotiations. (TR 111, p.441, L.3-8).

Cordon Williamson, an attorney and former employee of RIL who was involved in the Joyce transaction, testified that he was present when Respondent and Mr. Joyce discussed the nature of the $105,000.00 deposit by telephone conference call. Respondent told Mr. Joyce that the down payment was to be placed in an escrow account and, if the purchase was not consummated, the money would be refunded. (TR III, p.411, L.8-25, p.412, L.1-23, p.413, L.1-8).

Jeffrey Dunham, an associate of Respondent and secretary of RIL during this time period, testified that he was present during a meeting between Respondent and Mr. Joyce in New Yark City. The purpose of the meeting was for preliminary discussions relating to the purchase by Mr. Joyce of the leaseholds in Chester, West Virginia. Mr. Dunham testified that he and Respondent were aware of substantial encumbrances on the property totaling several hundred thousand dollars. (TR 11, p.369, L. 9-25, p.370, L. 1-25, p.371, L.1-16.). Mr. Dunham stated that his understanding of the terms of the sale were that, if the purchase was not consummated, the money would be refunded to Mr. Joyce. (TR 11, p.375, L.10-22).

Mr. Dunham further testified that "the entire structure of RIL was basically one large scam to be able to create a company that looked like it was profitable on the surface, for the purposes of manipulating the stock ... (TR 11, p.389, L.14-21).

Mimi Williams testified that she was employed by Respondent during 1984 and 1985 and recalled the attempted sale of the leaseholds to Mr. Joyce. Ms. Williams testified that $49,000.00 was transferred to the law firm account of Cillo, Williamson, and Horowitz. (TR II, p.215, L.9-13). A portion of these funds were used as payroll for Respondent's law firm. (TR 11, p.216, L.24-25).

COUNT III
(TFB No. **88-10,336** (6B))

In **1983,** Respondent established the law firm of Cillo, Williamson, and Horowitz, which later became Cillo, Williamson, and Dunham. (R. Bar Exhibit #4, Deposition, p.6). Respondent opened the law office in Newport Beach, California. (R. Bar Exhibit **4,** Deposition, p.7, **L.12-15).** Respondent was admitted to practice law in Florida but not California. (R. Amended Complaint, Count 111, paragraph 37, Answer, paragraph 37).

In **1983,** Mary O'Connell began working as a secretary for Respondent. (R. Bar Exhibit **#4,** Deposition, p.6, **L.8-12).** Ms. O'Connell believed that Respondent was licensed to practice law in the State of California. (R. Bar Exhibit **#4,** Deposition, p.9, **L.l-4).** Respondent had no diplomas or certificates on his office walls. (R. Bar Exhibit **4,** Deposition, p.9, **L.18-20).**

In May **1985,** Respondent prepared a trust agreement for Mary O'Connell and her husband John O'Connell. (R. Bar Exhibit #4, Deposition, p.11, L.10-13). The O'Connells paid Respondent $250.00 for the preparation of the trust agreement. (R. Bar Exhibit #4, Deposition, p.12, **L.18-20).** On May **2,** 1985, Respondent then recorded the Trust Agreement at the Orange County, California Recorder's Office. (R. Bar Exhibit **4,** Deposition, p.11, **L.12-13).**

Respondent also represented the O'Connells in reference to a lease car dispute. (R. Bar Exhibit 4, Deposition, p.14, L.8-25). Respondent also provided legal advice to Ms. O'Connell and drafted proposed pleadings relative to an action against Ms. O'Connell's ex-husband. (R. Bar Exhibit 4, Deposition, p.16, L.3-15, and p.18, L.14-15).

During the course of her employment with Respondent, Ms. O'Connell observed Respondent use cocaine. Respondent provided Ms. O'Connell with cocaine. Ms. O'Connell also observed Respondent provide cocaine to Mimi Williams, who later became Respondent's secretary. (R. Bar Exhibit 4, Deposition, p.30-31).

After Ms. O'Connell terminated her employment with Respondent in 1985, she began receiving threatening telephone calls from Respondent. Respondent believed that Ms. O'Connell had taken his cats. Respondent told Ms. O'Connell to keep her children close and not let them out of her sight. (R. Bar Exhibit 4, Deposition, p.32, L.l-20).

In September 1984, Mimi Williams went to work for Respondent as his secretary and administrative assistant. (TR 11, p.203, L.23, and p.204, L.l). Ms. Williams worked for Respondent until April of 1985. (TR 11, p.204, L.2-3). During her employment with Respondent, Ms. Williams observed Respondent use cocaine and quaaludes. (TR 11, p.208, L.19-25).

Ms. Williams observed Respondent use cocaine both at the law office and at Respondent's home. (TR 11, p.209, L.5). Respondent provided cocaine and used cocaine with Ms. Williams. (TR II, p.209, L. 10). Ms. Williams also observed Respondent provide cocaine to Mary O'Connell and to Ms. Williams' daughter Cara Lehman. (TR II, p.211, L.2).

Respondent used Ms. Williams to make Respondent's cocaine deliveries. Respondent provided Ms. Williams with cash and sent her to pick up packages of cocaine. Ms. Williams delivered the packages to Respondent. (TR 11, p.209, L.21-25).

Cara Lehman testified as to her use of cocaine with Respondent. (TR 11, p.236, L.16). Ms. Lehman observed Respondent use cocaine both at the law office and at his home. (TR 11, p.236, L.21). Ms. Lehman also testified that while she was employed as Respondent's receptionist, some individuals came into the law office looking for Respondent. The individuals told Ms. Lehman that Respondent owed them money for cocaine, and that they were there to collect. (TR II, p.239, L.7-23).

Two (2) of Respondent's former associates testified relative to his use of cocaine. Jeffrey Dunham, Respondent's former partner in the law firm of Cillo, Dunham, and Williamson testified that he observed Respondent use cocaine on a number of occasions. (TR II, p.363, L.1-7). Mr. Dunham also recalled an instance where Mr. Schute, a supplier of cocaine to Respondent, was arrested

for possession of cocaine. A vial of cocaine was found by one of the staff members of Mr. Schute's office. After being contacted, Respondent advised them that he would retrieve the vial and dispose of it for them. Instead of disposing the vial, Respondent used the cocaine. (TR **11**, p.391, L.16-24, and p.209, L.19-25).

Gordon Williamson, a former associate of Respondent, also testified **as** to Respondent's drug use. Mr. Williamson worked for Respondent from approximately August of 1984, through January, 1985. Mr. Williamson observed Respondent **use** cocaine on a number of occasions during the time he worked for Respondent. (TR **111**, **p.413**, L.12-17). Mr. Williamson first observed Respondent use cocaine in their third year of law school. Mr. Williamson and Respondent graduated from California Western School of Law in 1978. (TR **111**, p. **399**, **L.17-23).** Mr. Williamson first observed Respondent use cocaine in the school newspaper office. (TR III, p.414, L.l-3).

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

In 1986, Respondent represented Gulf Tex Oil and Gas. Respondent was provided with an office by Gulf Tex Oil and Gas in Dallas, Texas. (TR I, p.60, L.6-23).

In 1986 Respondent met with Matthew Schwastz. Mr. Schwartz had been referred to Respondent by Mr. Schwartz' neighbor. (TR I, p.11, L.25, and p.12, L.1-6). Mr. Schwartz retained Respondent regarding a dispute with a printer. The printer was located in the Dallas, Texas area. (TR I, p.13, L.16). Respondent submitted an invoice to Mr. Schwartz for $250.00. (TR I, p.15, L.7-21, and R. Bar Exhibit 1 and RR. p.6). Mr. Schwartz provided Respondent with a $250.00 retainer regarding the dispute with the printer.

Mr. Schwartz inquired about Respondent's conspicuous lack of diplomas and professional licenses. Respondent explained to Mr. Schwartz that he had just moved. (TR I, p. 17, L.l-17). Respondent was not licensed to practice law in the State of Texas. (TR I, p.74, L.25, p.75, L.l).

Respondent telephonically contacted the printer in the presence of Mr. Schwartz. Respondent advised the printer that he was an attorney for Mr. Schwartz and representing him regarding the printing dispute. Respondent resolved the dispute to the satisfaction of Mr. Schwartz. (TR I, p.18, L.7-24).

Respondent subsequently discussed three (3) other legal matters with Mr. Schwartz. (TR I, p.19, L.2). Mr. Schwartz had a dispute with American Airlines for approximately $6,000.00 regarding lost luggage. Respondent agreed to pursue the collection of this dispute on a contingency basis. (TR I, p.20, L.2-18).

Mr. Schwartz also sought Respondent's assistance regarding a dispute with Federal Express. There was no fee agreement discussed regarding the Federal Express dispute. Respondent did not pursue any resolution regarding the Federal Express matter. (TR I, p.23, L.15-24).

Mr. Schwartz also sought Respondent's assistance regarding a dispute with the Ad-A-Girl employment agency. Mr. Schwartz hired a typist whose services he had previously used while she was retained by the Ad-A-Girl temporary services. Ad-A-Girl then sought payment for those services rendered by the typist subsequent to her temporary assignment on the basis of a restriction in the temporary employment contract. (TR I, p.25). Respondent agreed to represent Mr. Schwartz in this dispute.

Ad-A-Girl brought suit in Dade County, Florida. (TR I, p.27, L.7). In the presence of Mr. Schwartz, Respondent telephonically contacted the attorney for Ad-A-Girl in Florida. (TR I, p. 29, L.13-18). During the telephone conversation, Respondent sought an extension to respond to the lawsuit.

(TR I, p.30, L.7). Respondent advised Mr. Schwartz that he wanted to seek a change in venue to Dallas. (TR I, p.30, L. 24).

After a period of about six (6) weeks subsequent to the last meeting with Respondent, Mr. Schwartz was served with a Judgment after his failure to appear in the Ad-A-Girl matter. (TR I, p.32, L.2-9). Mr. Schwartz then attempted to contact Respondent, and was advised that Respondent was no longer at that address. (TR I, p.32, L.18-24). Respondent did not provide Mr. Schwartz with a forwarding address, nor any notice of his move. (TR I, p.34, L.6-13). After learning of the Ad-A-Girl Judgment, Mr. Schwartz satisfied the Judgment. (TR I, p.35, L.l-4).

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

Clifford Jones met Respondent while both individuals worked for American Gold Dealers Association. (TR II, **p. 254, L.10-12).** In **1982, Mr.** Jones left American Gold Dealers and created First Federal Monetary Corporation of Davie, Florida. (TR 11, p.254, **L.12-19).** In **1982,** Mr. Jones retained Respondent as corporate legal counsel. (TR 11, p.326, **L.7-9).** Respondent assisted **Mr.** Jones in the establishment of the business. (TR 11, **p.326,** L.21). Respondent **was** also initially retained by the corporatian to review scripts to be used in telephone solicitations. (TR 11, p.327, **L.7-8).**

Sometime in **1982 or 1983, Mr.** Jones provided a **$10,000** cash retainer to Respondent. (TR **II,** p.260, **L.13-18).** The retainer **was** provided for whatever legal problems arose in the future. (TR 11, p.261, **L.12-15).** Respondent and **Mr.** Jones maintained regular communication from **1982** through **1986.** (TR II, p.260, **L.19-22).**

In **1985,** Mr. Jones **was charged** with wire and mail fraud. (TR **II, p.259, L.9-19).** Mr. **Jones** sought Respondent's assistance regarding these criminal charges. (TR 11, **p.260, L.7-10).** Respondent requested $30,000.00 for his services. (TR 11, p.260, **L.10,** and p.332, **L.12).** Mr. Jones **was** not able to meet the requested sum and received a court appointed attorney. (TR 11, p.260, L.11-12, and p.261, **L.18).** Mr. Jones later pled guilty to the charges.

On November 15, 1988, Mr. Jones filed a complaint against Respondent with The Florida Bar. (TR 11, p.342, L.10). Respondent was advised of Mr. Jones' complaint by a letter from The Florida Bar on January 4, 1989. (TR 11, p. 343, L.4-7). Within days after receipt of Mr. Jones' complaint, Respondent contacted Mr. Jones. (TR 11, p.343, L. 20-22). Respondent offered Mr. Jones $2,500.00. (TR 11, p.263, L.7-10). Respondent told Mr. Jones that in order to receive the $2,500.00 a declaration had to be signed and returned. (TR 11, p.264, L.22-23). Respondent prepared a declaration dated January 11, 1989. (TR 11, p.345, L.20-21). Mr. Jones then signed the declaration and returned it to Respondent. Instead of the $2,500.00 promised, Mr. Jones received $250.00 from Respondent. (TR II, p.265, L.21-25).

The January 11, 1989, declaration stated, in part, that the Complaint against Respondent was "without basis and was erroneously filed". It further stated that Mr. Jones had "no complaints and or disputes" between Mr. Jones and Respondent. (R. Bar Exhibit #6).

After receiving only $250.00, Mr. Jones became angry. (TR 11, p.266, L.3). Thereafter, The Florida Bar inquiry concerning Mr. Jones allegations against Respondent continued.

In May 1989, Respondent was contacted by Florida Bar Staff Investigator Joseph McFadden regarding the Jones complaint. (TR 11, p.348, L.13-16). In August of 1989, Mr. Jones was invited to Respondent's law office in Tampa. (TR II, p.266, L.6-8). Respondent was not present at the meeting. (TR II, p.338, L.17-19). Mr. Jones was met by Respondent's paralegal and office administrator. (TR II, p. 266, L.12-13, and p.314, L.23-24).

Respondent presented a prepared text to his staff for Mr. Jones to handwrite the script verbatim. (TR II, p.319, L.16-20, and p.351, L.22-25).

Prior to the August 18, 1989 meeting, Respondent advised Mr. Jones that he had secured a position for Mr. Jones with Centurion Financial Services. (TR 11, p.268, L.17-20). Respondent was the corporate attorney for Centurion Financial Services. (TR II, p.354, L.l-3). Respondent offered Mr. Jones a position with Centurion Financial Services after discussing the matter with the president of the company. (TR 11, p.354, L.9-10). Centurion Financial Services then wire-transferred $1,000.00 into Respondent's account. (TR 11, p.355, L.12-13). Respondent advised Mr. Jones that Centurion Financial Services would advance $1,000.00 to Mr. Jones.

At the August 18, 1989 meeting, Mr. Jones was required to handwrite the prepared text prior to receiving the

$1,000.00. (TR II, p.266, L.18-20 and p.309, L.19-20). Mr. Jones was required to re-draft the prepared text at least two (2) or three (3) times until it was verbatim to the text presented by Respondent. (TR 11, p.320, L.9-10).

On August 18, 1989, after Mr. Jones prepared the second declaration, he was presented with a cashier's check for $1,000.00. (TR II, p.270, L.11-13, and R. Bar Exhibit #8). The second declaration dated August 18, 1989 stated, in part, "I have no complaint with or against Joseph P. Cillo, Esquire". (R. Bar Exhibit #77).

SUMMARY OF ARGUMENT

Respondent used cocaine and quaaludes on numerous occasions both at his law office and at his home. Respondent provided other individuals with cocaine including members of his office staff. In addition to the use and distribution of cocaine, Respondent involved his secretary in the delivery of cocaine. Respondent provided his secretary with money and instructed her to return packages of cocaine to him. Respondent's exposing his secretary to criminal liability for his own selfish needs is alone worthy of disbarment.

In addition to Respondent's involvement with cocaine, clear and convincing evidence was presented to establish that Respondent engaged in the unauthorized practice of law. Respondent intentionally engaged in the unauthorized practice of law in both Texas and California. The Referee found that Respondent engaged in the practice of law in Texas and California, and that finding should be upheld.

Respondent also entered into a business transaction relating to the proposed sale of oil and gas leases. Respondent's proposed sale was a scam. Respondent represented to the proposed buyer that the property would be transferred free and clear of any liens. Respondent disclosed only one of numerous liens to the proposed buyer.

Respondent convinced the proposed buyer to wire transfer $105,000.00 to Respondent. Respondent promised the

proposed buyer that in the event the deal was not consummated that the $105,000.00 would be returned. The deal was not consummated. The proposed buyer discovered that the property had several hundred thousand dollars in liens, and demanded the return of his earnest money. Respondent refused to return the money, and used a portion of the proceeds for payroll.

The Respondent also made payments of money and promises of job opportunities to convince a complainant to withdraw his complaint with The Florida Bar. The money and promises of a job were made to a complainant Respondent knew was financially desperate for funds and employment.

Based upon the facts herein,, The Florida Bar respectfully requests that Respondent be disbarred.

ARGUMENT

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

WHETHER RESPONDENT'S UNAUTHORIZED PRACTICE OF LAW AND ISSUANCE OF A WORTHLESS CHECK IS A VIOLATION OF THE DISCIPLINARY RULES OF THE FLORIDA BAR.

" A Referee's findings of fact are presumed to be correct and should be upheld unless clearly erroneous or lacking evidentiary support." The Florida Bar v. Stalnaker, 485 So.2d 815, 816 (Fla.1986); The Florida Bar v. McCain, 361 So.2d 706 (Fla. 1978), The Florida Bar v. Wagner, 212 So.2d 770, 772 (Fla. 1968). Further, Rule 3-7.6(c)(5), Rules of Discipline, specifically states that, "Upon review, the burden shall be upon the party seeking review to demonstrate that a Report of Referee sought to be reviewed is erroneous, unlawful, or unjustified".

Respondent, in representing Mr. Lenoir in incorporating Liberty Limited in Texas practiced law in the State of Texas without a license. The Referee found that Respondent undertook to act as an attorney for John Lenoir in the incorporation of Liberty Limited, received compensation for the legal services, and was to receive an interest in the business. The Referee further found that Respondent's conduct and activity reasonably caused Mr. Lenoir to

conclude and believe that Respondent was an attorney licensed to practice in Texas. (RR, p.2). The record supports the Referee's findings and they should be upheld.

Respondent also engaged in misconduct in his actions relating to the purchase of a diamond ring from John Lenoir. The record clearly shows that Respondent wrote two separate checks with knowledge that there were insufficient funds in the account to cover the checks. The testimony from both Mr. and Mrs. Lenoir showed that Respondent continuously avoided any contact with the Lenoirs, wrote two checks on an account with insufficient funds, and made false representations to Mrs. Lenoir that the check for $5,000.00 would be made good. Respondent did not make the check good until after receiving notice in 1988 from the bankruptcy court that the Lenoirs were claiming the $4,200.00 as a debt owed by Respondent. Respondent paid the $4,200.00 more than one (1) year after the Lenoirs filed a complaint with The Florida Bar. Respondent testified that the reason he did not pay the Lenoirs for the ring was because of burglaries to his home and the fact that clients wrote him bad checks. (TR I, p.164, L.7-25, p.165, L.l-14, p.177, L.20-25).

The 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. The evidence also shows that Respondent wrote the

$4,200.00 check knowing that there were insufficient funds in the account and thus engaged in the commission of a felony or misdemeanor of issuing a worthless check.

ARGUMENT

Count II
(TFB No. 88-10,335 (6B))

WHETHER RESPONDENT'S FRAUDULENT REPRESENTATIONS TO JAMES JOYCE *AND* IMPROPER USE OF THE 5105,000.00 DEPOSIT IS A VIOLATION OF THE 'DISCIPLINARY RULES OF THE FLORIDA BAR.

The Referee found that Respondent did not engage in misconduct in his dealings with James Joyce. The Referee found that Respondent and Mr. Joyce were negotiating at arms length, that it was, or should have been evident to everyone involved that RIL had absolutely no ability to refund the $105,000.00 transferred to RIL by Mr. Joyce; and that there was no agreement to refund the $105,000.00.

The Referee erred in finding no misconduct on the part of the Respondent. The Referee further erred in finding that there was no agreement to refund the $105,000.00 to James Joyce if the purchase was not consummated. The Referee's findings on this issue should not be upheld and are clearly erroneous.

The Referee also erred in finding that it was, or should have been evident to everyone involved that RIL had absolutely no ability to refund the $105,000.00 in the event the deal fell through for whatever reason. James Joyce testified that he was not informed of the poor financial shape of RIL or of the extensive liens and encumbrances placed on the leaseholds. He further testified that, as

soon as he learned of these extensive liens he demanded the return of the $105,000.00. He further testified that he was forced to hire an attorney to check the status of title to the leaseholds. This testimony was unrebutted. The failure of the purchase was directly a result of the dishonesty and misrepresentations of Respondent during the negotiations.

The facts and documentation presented at the Final Hearing in this cause clearly show that Respondent violated the alleged disciplinary rules in his actions toward James Joyce.

An attorney who violates disciplinary rules of The Florida Bar while engaged in a business or other relationship with another is subject to discipline by the Supreme Court of Florida. The Florida Bar v. Hosner, 520 So.2d 567 (Fla. 1988), The Florida Bar v. Bussey, 529 So.2d 1112 (Fla. 1988). In Hosner, the attorney engaged in dishonesty, fraud, deceit, or misrepresentation when he failed to turn over the title to a motor vehicle which had been purchased by a client of a business entity controlled by him. The attorney had used the title as collateral for loans to himself during the 11 month period of time in which he held it after receiving full payment from the client. Hosner argued that he should not be disciplined because his conduct, even if improper, was not related to the practice of law.

This Court, in rejecting this argument, stated that

> lawyers are necessarily held to a higher standard of conduct in business dealings than are non-lawyers. The Florida Bar v. Bennett, 276 So.2d 481 (Fla. 1973) were to follow Hosners argument, we would be powerless to discipline attorneys who engage in conduct that is illegal but not related to the practice of law, such as dealing in cocaine, or securities fraud. Obviously we may discipline attorneys who engage in such conduct, just as we discipline Hosner for engaging in conduct that is improper, though no necessarily related to the practice of law.

In The Florida Bar v. Bennett, 276 So.2d 481, 482 (Fla. 1973), this Court disciplined Mr. Bennett for his involvement in a business transaction. In determining whether an attorney could be disciplined for conduct in a business transaction outside the practice of law, it was held that "an attorney is an attorney is an attorney." Even in personal transactions and when not acting as an attorney, attorneys must "avoid tarnishing the professional image or damaging the public which may rely on their professional standing." Id. page 482; The Florida Bar v. Hooper, 507 So.2d 1078 (Fla.1987). The Florida Bar v. Della Donna, No. 69,324, (Fla.June 22, 1989).

Respondent made false representations and fraudulently withheld information relating to the status of liens and encumbrances on the leaseholds in question. Respondent also accepted the $105,000.00 from Mr. Joyce to be held in trust until the consummation of the purchase, used part of those funds to make payroll, and failed to hold the funds in trust.

Although Mr. Joyce informed Respondent that the $105,000.00 was in dispute within two months of the wire transfer, Respondent failed to hold the funds until the dispute was resolved. Respondent received funds in trust for a specific purpose and used those funds for another purpose. Respondent used a portion of those funds to finance his payroll. Respondent's actions violated Disciplinary Rule 9-102(A) and Integration Rule 11.02(4).

ARGUMENT III

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

WHETHER RESPONDENT'S UNAUTHORIZED PRACTICE OF LAW IN CALIFORNIA AND USE AND DISTRIBUTION OF COCAINE IS A VIOLATION OF THE DISCIPLINARY RULES OF THE FLORIDA BAR.

In 1983, Respondent established the law firm of Cillo, Williamson, and Horowitz, which later became Cillo, Williamson and Dunham. (R. Bar Exhibit 4, Deposition, p.6). Respondent opened the law office in Newport Beach, California. (R. Bar Exhibit 4, Deposition, p.7, L.12-15). Respondent was admitted to practice law in Florida, but not California. (R. Amended Complaint, Count III, paragraph 37, Answer, paragraph 37).

Respondent engaged in the unauthorized practice of law in the State of California. Respondent practiced law in the State of Texas without a license regarding the Lenoir (Count I) and Schwartz (Count IV) matters. This pattern of deliberate and intentional legal representation without a license in California and Texas illustrates Respondent's lack of respect for the legal system.

The Referee found that Respondent engaged in the unauthorized practice of law in both states. The Referee's finding is clear, uncontroverted, and should be upheld.

The evidence at the Final Hearing established that Respondent used cocaine and quaaludes. (TR 11, p.208, L.19-25; R. Bar Exhibit 4, Deposition, p.30 and p.31; TR 11, p.236, L.21; TR III, p.413, L.12-17; TR 11, p.363, L.1-7).

Respondent openly used cocaine in his law office and in his home. The Referee found Respondent "used cocaine with friends and particularly business associates". (RR p.5-6). In fact, Respondent involved his office staff in the illegal use of drugs.

Respondent's illegal possession of cocaine and quaaludes alone merit suspension. Moreover, Respondent's use of a secretary to purchase and deliver cocaine to him warrants disbarment. Respondent sent his secretary Mimi Williams to get cocaine for him from different sources. Ms. Williams testified to a typical transaction as follows:

> There was a gentleman who ... that he was working with that was .... he was supposed to be representing in some way. His name was Michael Schute. I was sent to his office to ... it was ... again, never saw the money taken out or the cocaine put in, but I arrived, took the money over there and came back and when Joseph opened up the package it had cocaine in it. (TR II, p.209, L.19-25).

Ms. Williams also testified that she was instructed by Respondent to deliver money to a woman named Megan that supplied cocaine. (TR 11, p.210, L.3-5). Whenever Ms. Williams voiced concern to Respondent regarding her delivery of cocaine, Respondent advised her "not to worry" about it, that if anything happened he would take care of it". (TR 11, p.210, L.18-22).

In The Florida Bar v. Beasley, 351 So.2d 959 (Fla.1977), Mr. Beasley represented a Mrs. Van Landingham in a dissolution of marriage proceeding. Mrs. Van Landingham requested that Ms. Beasley supply her with quaaludes. Mr. Beasley made a phone call to arrange for the introduction of Mrs. Van Landingham to a certain person who would supply her with drugs. Relying on Mr. Beasley's information, Mrs. Van Landingham made contact with the source and purchased marijuana. Mr. Beasley was subsequently found guilty of delivery of cannabis.

The Referee recommended that Mr. Beasley be suspended from the practice of law for 24 months. This Court disbarred Mr. Beasley and stated:

> The Bar suggests that, under the circumstances, the recommended penalty is too lenient since a lawyer who is willing to forsake his client for his own personal goals demonstrates a lack of moral character and fitness required of a member of The Bar. We would agree with The Bar and find that disbarment is warranted. (emphasis added). Id. 960.

In Beasley, the misconduct involved the giving of a telephone number for a client to obtain drugs. In the instant case, Respondent selfishly sent out his secretary to pick up cocaine for his own use. This clearly shows that Respondent was willing to forsake his employee for his own personal goals, which demonstrates a lack of moral character and fitness required of a member of The Florida Bar.

Respondent sent his secretary to purchase cocaine to insulate himself from felonious activity.

The Referee herein found "no commercial involvement in the use or delivery of cocaine has been shown by the evidence". The Referee further stated that "it was stipulated that such use would have been unlawful in California during that time period". (RR, **p.5).** The Referee was correct only in that no evidence was shown that Respondent sold cocaine for profit. However, it was clearly shown by the testimony of Mary O'Connell, Mimi Williams, and Cara Lehman that Respondent delivered or provided cocaine to each of them. California Statutes, Section 11352. (1984). titled Transportation, Sale, Distribution, provides that the giving away of cocaine was a felony. (R. Bar Exhibit 18). Further, Respondent stipulated that the use of cocaine was unlawful, but refused to acknowledge his delivery of cocaine constituted a felony.

The Referee categorized Respondent's involvement in cocaine as "almost the thing to do in California in those times and places". (RR, **p.6).** The Referee further listed as a mitigating factor that "others used cocaine in California during this time period, and it appeared to be the thing to do". (RR, **p.**12). Surely, using cocaine and quaaludes; providing cocaine to other individuals; and using a secretary to act as a cocaine courier is not the "thing to do" for attorneys licensed by the State of Florida.

ARGUMENT IV

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

WHETHER RESPONDENT'S UNAUTHORIZED PRACTICE OF LAW IN THE STATE OF TEXAS ON BEHALF OF MATTHEW SCHWARTZ IS A VIOLATION OF THE DISCIPLINARY RULES OF THE FLORIDA BAR.

In **1986** Respondent represented Gulf Tex Oil and Gas and was provided with an office by Gulf Tex Oil and Gas in Dallas, Texas. (TR I, p.60, **L.6-23).** In 1986 Respondent met with Matthew Schwartz. Mr. Schwartz had been referred to Respondent by Mr. Schwartz' neighbor. (TR I, p.11, **L.25,** and p.12, **L.l-6).** Mr. Schwartz retained Respondent regarding a dispute with a printer. The printer was located in the Dallas Texas area. (TR 1, p.13, L.16). Respondent submitted an invoice to Mr. Schwartz for $250.00. (TR I, **p.15, L.7-21,** and R. Bar Exhibit **1, and** RR **p.6).**

Mr. Schwartz noted the conspicuous absence of any diplomas or professional licenses at his visit to Respondent's Dallas Office. (TR I, p.16, **L.22** and p.17, **L.1-2).** Respondent explained to Mr. Schwartz that Respondent had just moved. (TR I, p.17, **L.10-11).** Mr. Schwartz believed Respondent was an attorney licensed to practice law in the State of Texas. (TR I, p.17, **L.21-23).**

Respondent was not licensed to practice law in the State of Texas. (TR I, p.74, L.25, and p.75, L.1). Respondent acknowledged at the Final Hearing that he had no

recollection of ever advising Mr. Schwartz that he was not a member of the Texas Bar. (TR I, p.80, L.15-17).

Respondent telephonically contacted the printer in the presence of Mr. Schwartz. Respondent advised the printer that he was an attorney for Mr. Schwartz representing him regarding the printing dispute. Respondent resolved the dispute to the satisfaction of Mr. Schwartz. (TR I, p.18, L.7-24).

Respondent accepted the representation of Mr. Schwartz in the printing dispute aware that the cause of action took place in Texas, and that the parties were in Texas. Further, Respondent intentionally accepted a case involving the practice of law in Texas without a license in that state. The Referee summed up the argument in this case by stating, "well, since you weren't admitted to practice law in Texas why were you... what were you thinking about when you were making telephone calls and writing letters on Mr. Schwartz' behalf?". (TR I, **p.82,** L.5-8).

Respondent's unauthorized practice of law was a conscious disregard of the laws of the State of Texas. This disregard is corroborated by Respondent's unauthorized practice of law in regard to his representation of John Lenoir and the incorporation of Liberty Limited in Count I herein (RR p.9); and the unauthorized practice of law in California in regard to the O'Connell trust agreement in Count 111, herein. (RR p.5).

Respondent subsequently discussed three (3) other legal matters with Mr. Schwartz. (TR I, p.19, L.2). Mr. Schwartz had a dispute with American Airlines for approximately $6,000.00 regarding lost luggage. Respondent agreed to pursue the collection of this dispute on a contingency basis. (TR I, p.20, L.2-18).

Mr. Schwartz also sought Respondent's assistance regarding a dispute with Federal Express. There was no fee agreement discussed regarding the Federal Express dispute. (TR I, **p.23, L.15-24).** Respondent did not pursue any resolution regarding the Federal Express matter.

Mr. Schwartz also sought Respondent's assistance regarding a dispute with Ad-A-Girl employment agency. **The** Ad-A-Girl case was the most serious in the perception of Mr. Schwartz. (TR I, p.24, L.2). Mr. Schwartz hired a typist whose services he had previously used while she was retained by Ad-A-Girl temporary services. Ad-A-Girl then sought payment for those services rendered by the typist subsequent to her temporary assignment on the basis of a restriction the temporary employment contract. (TR I, p.25). Respondent agreed to represent Mr. Schwartz in this dispute.

Ad-A-Girl brought suit in Dade County, Florida. (TR I, p.27, L.7). In the presence of Mr. Schwartz, Respondent telephonically contacted the attorney for Ad-A-Girl in Florida. (TR I, **p.29, L.13-18).** Respondent sought an

extension to respond to the lawsuit. (TR I, p.30, L.7). Respondent advised Mr. Schwartz that he wanted to seek a change of venue to Dallas. (TR I, p.30, L.24).

After a period of about six (6) weeks subsequent to the last meeting with Respondent, Mr. Schwartz was served with a Judgment for his non-appearance in the Ad-A-Girl matter. (TR I, p.32, L. 2-9). Mr. Schwartz then attempted to contact Respondent, and was advised that Respondent was no longer at that address. (TR I, p.32, L.18-24). Respondent did not provide Mr. Schwartz with a forwarding address, nor any notice of his move. (TR I, p. 34, L.6-13). After learning of the Judgment, Mr. Schwartz satisfied the Judgment. (TR I, p.35, L.1-4).

The Referee made no specific finding regarding the Federal Express dispute. The evidence established that Mr. Schwartz had no viable defense to that action, therefore, the Referee's failure to find a violation in that matter is justifiable.

The Referee's finding that Respondent was not retained regarding the dispute regarding the lost baggage and the Ad-A-Girl matter is contrary to the evidence established at the Final Hearing.

ARGUMENT V

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

WHETHER RESPONDENT'S PAYMENT OF MONEY AND OFFERS OF EMPLOYMENT TO SECURE THE WITHDRAWAL OF A FLORIDA BAR COMPLAINT IS A VIOLATION OF THE DISCIPLINARY RULES REGARDLESS OF WHETHER THE UNDERLYING COMPLAINT WAS MERITORIOUS.

In 1982, Respondent was retained by Clifford Jones as corporate legal counsel. (TR 11, p.326, L.7-9). Sometime in 1982 or 1983, Mr. Jones provided a $10,000.00 cash retainer to Respondent. (TR 11, p.260, L.13-18). The retainer was provided for whatever legal problems arose in the future. (TR 11, p.261, L.12-15). Respondent and Mr. Jones maintained regular communication from 1982 through 1986. (TR 11, p.260, L.19-22).

In 1985, Mr. Jones was charged with wire and mail fraud. (TR 11, p.259, L.9-19). Mr. Jones sought Respondent's assistance regarding these criminal charges. (TR 11, p.266, L.7-10). Respondent requested $30,000.00 for his services. (TR 11, p.260, L.10 **and** p.332, L.12). Mr. Jones was not able to meet the requested sum and received a court appointed attorney. (TR 11, p.260, L.11-12, and p.261, L.18). Mr. Jones later pled guilty to the charges.

On November 15, 1988, Mr. Jones filed a complaint against Respondent with The Florida Bar. (TR 11, p.342, L.10). Respondent was advised of Mr. Jones' complaint by letter from The Florida Bar on January 4, 1989. (TR 11, p. 343, L.4-7).

Within days after the receipt of Mr. Jones' complaint, Respondent contacted Mr. Jones. (TR 11, p.343, L.20-22). Respondent was upset. (TR 11, p.334, L.7). Respondent offered Mr. Jones $2,500.00. (TR 11, p.263, L.7-10). Respondent told Mr. Jones that in order to receive the $2,500.00 a declaration had to be signed and returned. (TR 11, p.264, L.22-23). Respondent prepared a declaration dated January 11, 1989. (TR 11, p.345, L.20-21). Mr. Jones then signed the declaration and returned it to Respondent.

Respondent was clearly aware of Mr. Jones' severe financial problems. (TR 11, p.334, L.20-23, and p. 336, L. 20, and p.344, L.20-25). Instead of the $2,500.00 promised, Mr. Jones received $250.00 from Respondent. (TR 11, p.265, L.21-25). Apparently, Respondent believed that Mr. Jones was so destitute that $250.00 would make his complaint go away.

In May 1989, Respondent was contacted by Florida Bar Staff Investigator Joseph McFadden regarding the Jones complaint. (TR 11, p.348, L. 13-16). In August of 1989, Mr. Jones was invited to Respondent's law office in Tampa. Respondent was aware from his May 1989 meeting with Investigator McFadden that The Bar complaint was still being investigated.

Respondent then concocted a job offer for Mr. Jones. Respondent acted as corporate counsel for Centurion Financial Services. (TR II, p.354, L.l-3). Respondent offered Mr. Jones a position with Centurion Financial Services. (TR II, p.354, L.9-10). Centurion Financial Services then wire-transferred $1,000.00 into Respondent's account. (TR II, p.355, L.12-13). Respondent advised Mr. Jones that Centurion Financial advanced $1,000.00 to Mr. Jones. The position with Centurion Financial Services never materialized. (TR 11, p.353, L.17-19). The position with Centurion was merely a ruse to give legitimacy to Respondent's buying his way out of the Jones complaint.

The purpose of the August 18, 1989 meeting, was for Mr. Jones to sign a second declaration withdrawing his complaint and to receive $1,000.00. Respondent was not present at the meeting. (TR II, p.338, L.17-19). Mr. Jones was met by Respondent's paralegal and the office administrator. (TR II, p. 266, L.12-13, and p.314, L.23-24). Respondent presented a prepared text to his staff for Mr. Jones to handwrite the script verbatim. (TR 11, p.319, L.16-20, and p.351, L.22-25).

At the August 18, 1989 meeting, Mr. Jones was required to handwrite the prepared text prior to receiving the $1,000.00. (TR 11, p.266, L.18-20, and p.309, L.19-20).

Mr. Jones was required to re-draft the prepared text at least two (2) to three (3) times until it was verbatim to the text prepared by Respondent. (TR 11, p.320, L.9-10).

Respondent's paralegal Mr. LuFriu, testified at the Final Hearing that Mr. Jones advised him at the August 18, 1989 meeting that Mr. Jones had never paid Respondent $10,000.00. (TR 11, p.315, L.6-9). However, Mr. LuFriu's testimony and recollection were seriously impeached at the Final Hearing. Mr. LuFriu testified that Mr. Jones redrafted the declaration because he had left out "minor words". (TR 11, p.320, L.15-16). Mr. LuFriu was asked by Bar Counsel whether Mr. Jones showed hesitation about the words "under penalty of perjury'' on the declaration.

> Q: And in particular what did Mr. Jones want to put in his declaration?
>
> A: It was basically just minor words that he had left out or he had added, and it just wasn't verbatim.
>
> Q: Isn't it true that he didn't want to put "under penalty of perjury"?
>
> A: No.
>
> Q: Thats not true?
>
> A: No.
>
> Q: Do you recall testifying at a grievance committee hearing on December 4, 1989?
>
> A: I do.

Q: All right. Specifically do you recall making this statement, on page 169, line 17:
Mr. Lufriu, on the last line it says, " I have no complaints with or against Joseph P. Cillo. He left out "with or". That was one time, and he left out "penalty of perjury" on the first line: "I, Cliff Jones, under penalty of perjury, He wanted to omit that"

Do you recall making that statement?

A: If it's on the record I ....

(TR 11, p.320, L. 15-25, and p.321, L. 1-9).

Mr. Lufriu should have been placed on notice that Mr. Jones' hesitancy in using the words "under penalty of perjury" was an indicator of the lack of truth and veracity of the declaration.

Mr. Lufriu also testified at the Final Hearing that Mr. Jones never asked far the $1,000.00. (TR 11, p.322, L.19-23). Mr. Lufriu also testified that he was never instructed to withhold the check unless Mr. Jones signed the declaration. (TR 11, p.322, L.15-18). Mr. Lufriu's testimony was inconsistent with the profile of a financially desperate individual.

On August 18, 1989, after Mr. Jones prepared the second declaration withdrawing his complaint he was presented with a cashier's check for $1,000.00. (TR 11, p.270, L.11-13, and R. Bar Exhibit #8).

The Bar alleged that Respondent was guilty of misconduct in attempting to pay off Mr. Jones. The Bar charged that Respondent violated Rules of Professional

Conduct, Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, deceit, fraud, or misrepresentation). The Referee found that "Respondent did, in fact induce Jones to sign both statements by payment of money to him and/or accompanied by the prospect of a job opportunity". (RR, p. 8). The Referee further found that Mr. Jones' "Bar Complaint against the Respondent was, in the first place, unjustified and without merit. (RR, p.8). The Referee then concluded that it was not misconduct to "induce a witness to tell the truth by offering and giving money or some other valuable consideration". (RR, p.9).

The position taken by the Referee allows Respondent and not the trier of fact to determine which cases lack merit and simply pay off complainants to make **Bar** cases go away. Inducing witnesses with money and or prospective job opportunities is contrary to the administration of justice. Inducing complainants by false promises of money, i.e., $2,500.00 promised **and** $250.00 sent, and job opportunities that never materialize is dishonest, deceitful, fraudulent, a misrepresentation and a violation of Rule 4-8.4(c).

Respondent used Mr. Jones' desperate financial situation to secure the withdrawal of Mr. Jones' complaint. In fact, the Referee asked the Respondent, "you mean the money that you provided him was not a leverage or the job you secured for him was not a leverage?" (TR 11, p.356, L. 13-15). The Respondent used the leverage of money and a job offer to secure the withdrawal *of* Mr. Jones' Bar complaint.

ARGUMENT VI

WHETHER A DISBARMENT RATHER THAN THE RECOMMENDED PUBLIC REPRIMAND IS THE APPROPRIATE SANCTION.

The Referee recommended that Respondent be disciplined by a public reprimand and assessed a portion of the disciplinary costs.

Respondent engaged in the unauthorized practice of law in two (2) states. Absent aggravation or mitigation, the following Standards for Imposing Lawyer Sanctions are appropriate.

> Standard 7.0, Violation of Other Duties Owed As A Professional, specifically addresses forth the unauthorized practice of law. Pursuant to Standard 7.1, Disbarment is the appropriate discipline when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system. (emphasis added).

Respondent also used cocaine and quaaludes. Respondent provided cocaine to other individuals and used his secretary to obtain cocaine for him. According to Standard 5.11(c), Disbarment is appropriate when a lawyer engages in the sale, distribution or importation of a controlled substance." (emphasis added).

The Referee found the following mitigating factors relative to Respondent's use of cocaine.

> (1) The illness and death of Respondent's wife; substantial personal and financial pressures during the years he was in California in connection with R.I.L. (RR p.12).

The Bar had anticipated that Respondent would offer the death of his wife as mitigation for his drug use. Accordingly, The Bar began to inquire of a witness regarding the Respondent's mental state and his drug use. Respondent's statement relative to his counsel's sustained objection was that "she wasn't dead at that time". (TR p.238, L.3-18). Therefore, Respondent's own statement should be conclusive as to the lack of evidence supporting his use of cocaine because of his wife's death.

The Referee found that Respondent had not used cocaine since 1985. Respondent offered the testimony of Dr. Leimbacher. Dr. Leimbacher testified that Respondent appeared at the emergency room on December 22, 1990, and requested a drug screen. (TR 11, p.243, L.19-25). The sample test was not a random test. (TR 11, p.250, L.16-18). In fact, Dr. Leimbacher testified that in his expert medical opinion the test conducted on Respondent was not conclusive to establish Respondent was clear of cocaine usage. (TR 11, p.251, L.6-16). Dr. Leimbacher testified that metabolites reflecting cocaine are eliminated within three (3) or four

(4) days. (TR 11, p.246, L.12-14). Therefore, an announced visit to the emergency room shows only that Respondent was clear of cocaine on that given day.

The witnesses presented by The Bar that established Respondent's cocaine use were individuals who had known Respondent during the time period from 1978 through 1985.

The Referee also found as mitigation Respondent's open admission of using cocaine; remorse; and the fact that others used cocaine in California during that time period, and "it appeared to be the thing to do". (RR, p.12).

The Referee also found several mitigating factors relating to Respondent's unauthorized practice of law. The Referee found no continuous unauthorized practice of law; no serious efforts to hold himself out as an attorney; no harm to anyone; and that Respondent wasn't sure whether he wanted to be a lawyer or businessman.

The Referee's findings regarding the above mitigating factors are clearly erroneous. Respondent engaged in the unauthorized practice of law in Texas an more than one Occasion, i.e., Mr. Schwartz and the Lenoirs. Respondent also provided a number of different legal services to the O'Connells in California.

The Referee found as a mitigating factor that no harm was done to anyone. As stated in Standard 7.1, the injury can be to a client, the public, or the leqal system.

(emphasis added). Respondent's intentional practice of law in two (2) separate states without a license is an affront to the legal system.

The Referee's finding that Respondent wasn't sure whether he wanted to be a lawyer OF a businessman should be totally disregarded as an improper mitigating factor.

The Referee found no aggravating factors, however, in 1986, Respondent was disciplined by a private reprimand. In a separate proceeding, this Court placed Respondent on probation for a period of six (6) months. The Florida Bar v. Cillo, 535 So.2d 265 (Fla. 1988). Respondent was placed on probation pursuant to his suspension before the Commodity Futures Trading Commission for a period of five (5) years.

It is well established that prior disciplinary history should be considered when determining the appropriate discipline for an attorney. The Florida Bar v. Shupack, 523 So.2d 1139 (Fla.1988), and The Florida Bar v. Greene, 515 So.2d 1280 (Fla. 1987). Prior discipline is also an enumerated aggravating factor set forth in Standard 9.22(a), Florida Standards for Imposing Lawyer Sanctions. Therefore, even though the Referee noted the Respondent's prior disciplinary record, (RR, p.11), it was not reflected as an aggravating factor.

In addition to Respondent's prior disciplinary record, the Referee should have also found other aggravating factors. Standard 9.22(b) enumerates dishonest or selfish motive as an aggravating factor. Clearly, Respondent's

sending his secretary out to purchase cocaine and deliver it to him was selfish. Respondent was dishonest in holding himself out as an attorney and engaging in the unauthorized practice of law in Texas and California. Respondent was dishonest in taking the Lenoir's diamond ring in exchange for a worthless check and promises to pay. Respondent was dishonest in accepting $105,000.00 from Mr. Joyce knowing that the property in question was heavily encumbered, and then refusing to return the money. Respondent was dishonest to Mr. Jones and The Florida Bar in attempting to buy his way out of Mr. Jones' complaint.

Respondent's unauthorized practice of law both in Texas and California constitutes an aggravating factor pursuant to Standard 9.22(c) (pattern of misconduct). Respondent's repeated use and delivery of cocaine to others is an aggravating factor according to Standard 9.22(d) (multiple offenses).

While, the Referee's findings of fact are presumed to be correct unless clearly erroneous, this Court is not bound by the Referee's recommendations for discipline. The Florida Bar v. Weaver, 356 So.2d 797 (Fla.1978).

Accordingly, the aforementioned Standards For Imposing Lawyer Sanctions call for disbarment, absent aggravating or mitigating circumstances. The aggravating factors herein substantially outweigh the mitigating factors. Some of the Referee's mitigating factors such as "others used cocaine in California" and "it appeared to be the thing to do", and the fact that "Respondent wasn't sure whether he wanted to be a businessman or lawyer" should be totally disregarded.

CONCLUSION

Respondent engaged in the unauthorized practice of law in two (2) states. Respondent perpetrated a scam in a business transaction to deprive a proposed buyer of $105,000.00 in earnest money. Respondent used and delivered cocaine to other individuals. Respondent used his secretary to deliver cocaine to him. And, Respondent induced a financially destitute complaint to withdraw his complaint with payments of money and offers of a job opportunity. Disbarment is the appropriate discipline.

Wherefore, it is respectfully requested that Respondent be disbarred from practice in the State of Florida.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing THE FLORIDA BAR'S INITIAL BRIEF has been been furnished to the Supreme Court of Florida, Sid J. White, Clerk, Supreme Court Building, 500 South Duval, Tallahassee, Florida 32399-1927 by Airborne Express, #729 658 554; a copy to HUGH N. SMITH, ESQ., and LORI BROWN, ESQ., Attorneys for Joseph P. Cillo, Respondent at their record Bar address of Post Office Box 3288, 101 E. Kennedy Boulevard, Suite 1800, Tampa, Florida 33602, and a copy to John T. Berry, Staff Counsel, The Florida Bar, Legal Division, 650 Apalachee Parkway, Tallahassee Florida 32399-2300, this 12th day of July, 1991.

David R. Ristoff

DAVID R. RISTOFF