IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
JUN 12 1992
CLERK, SUPREME COURT
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THE FLORIDA BAR,

Petitioner,

versus

WILLIAM A. BORJA,

Respondent.

_____/

CASE NO. 77,840

TFB NO. 90-11,351(06A)

ANSWER BRIEF OF RESPONDENT AND CROSS-PETITIONER'S INITIAL BRIEF

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SYMBOLS AND REFERENCES

In this Brief, the Appellee/Cross-Appellant, William A. Borja, will be referred to as "Respondent". The Appellant/Cross-Appellee, The Florida Bar, will be referred to as "The Florida Bar" or "The Bar". "Tr. 1" will refer to the transcript of the Final Hearing held on January 8, 1992. "Tr. 2" will refer to the transcript of the Final Hearing held on January 10, 1992. "Tr. 3" will refer to the transcript of the Final Hearing held on January 31, 1992. "RR" will refer to the Report of Referee dated February 27, 1992. "R" will refer to the record in this cause. "Tr. 0" will refer to the transcript of the Final Hearing held on December 15, 1988 in case number 72,962. "A" will refer to the Appendix to this brief.

STATEMENT OF THE CASE AND FACTS

Bill Borja deems it necessary to file a Statement of the Case and Facts in order to explicate those facts relevant to his Cross Petition.

In June or July of **1987**, the Florida Bar sent its auditor, Pedro Pizarro, to audit Bill Borja's records for the period of June, **1987** to September, **1987**. Tr. 2, pg. 125.

Pedro Pizarro opined that Borja's trust accounts were not in compliance. Tr. 2, pg. 126. Certain records were missing. Pizarro found commingling of a "few monies" in the trust account. There were some shortages in the trust account. There were negative balances on clients' accounts and Mr. Borja allowed earned attorneys' fees to remain in his trust account. Tr. 2, pg. 126.

Pizarro conducted a follow-up audit in June of 1988 which covered the period of July of 1987 through May of 1988. Tr. 2, pg. 126; pg. **128**. During the follow-up audit, Pizarro found that there were still no monthly comparisons prepared and he directed Mr. Borja's secretary, Carol Stephanick, to prepare the comparisons. Tr. 2, pg. 128.

After the comparisons were prepared by Ms. Stephanick, Mr. Borja was in compliance, excepting only approximately $3,000.00 in fees that remained in Mr. Borja's account. Tr. 2, pg. **128**.

Mr. Borja is a sole practitioner with "one girl office". Tr. 2, pg. 5. Carol Stephanik began working for Mr. Borja in October of **1987**. Tr. **2**, pg. 5. She did everything in the office. She

opened the mail, made the bank deposits, typed pleadings, answered the telephone, and so forth. Tr. 2, pg. 5; Tr. 2, pg. 75.

In 1988, the bar auditor, Pizarro, advised Stephanik how do to comparisons and how he wanted the matters set up. Tr. 2, pg. 7. Stephanik then prepared the reconciliations from July of 1987 through June of 1988. Tr. 2, pg. 8.

Pedro Pizarro advised Stephanik that Mr. Borja couldn't take money out of the trust account when there was no money in the account. That would be a negative client balance. Tr. 2, pg. 9. He also advised her that Mr. Borja could not leave his earned fees in the trust account. Tr. 2, pg. 16.

With regard to charging fees, Mr. Borja would usually quote an estimated fee for a case. Tr. 2, pg. 16. He did not keep time records. Tr. 2, pg. 17.

After the follow-up audit of June of 1988, carol Stephanik began stealing from Mr. Borja. Tr. 2, pg. 20. She stole approximately twenty-four checks from Mr. Borja's trust account from July of 1988 through March of 1989. Tr. 2, pg. 21. In all, Carol Stephanik stole in excess of $53,000.00 from Borja. Tr. 2; pg. 128; Tr. 2, pg. 82. She would prepare a check stub with the legitimate vendor or supplier, such as GTE, while the check itself would be paid to "Carol Bush", Ms. Stephanik's maiden name. She would then forge Bill Borja's signature and cash the check. Tr. 2, pg. 25; Tr. 2, pg. 30.

In order to further conceal her thefts from Borja's trust account, she began to transfer funds from the guardianship and

estate accounts to raise the balance in the trust account. Tr. 2, pg. 21.

During the same time frame, June of 1988 through March of 1989, two other significant events were occurring. Mr. Borja was in divorce litigation and the Florida Bar had brought a disciplinary proceeding against him, Florida Bar v. Borja, case number 72,962. In this earlier case, the Florida Bar charged Borja with failing to follow the regulations regulating trust accounts. The hearing was held before the referee, the Honorable Dennis Alvarez, on December 15, 1988. A:1-113.

Michael Lewis, a Clearwater C.P.A., was first engaged by Mr. Borja to aid him in his divorce litigation. Tr. 1, pg. 121. Lewis was retained to update or "fine tune" Borja's internal operating records to help prepare his financial affidavit and to testify at his divorce hearing regarding personal assets. Tr. 1, pg. 121.

One of the issues in the divorce litigation was whether Borja allowed earned fees to accumulate in his trust account. Tr. 1, pg. 127 Therefore, one of Lewis' tasks was to see whether withdrawals were being made from Borja's trust account to his operating account within a reasonable time. Tr. 1, pg. 121.

Mr. Borja was also concerned with his office accounting system. He had had some problems with his operating account and trust account and he questioned Lewis regarding what procedures he should use and how he could improve his accounting system. Tr. 2, pg. 122.

During this period of time, Mr. Lewis' office staff may have

prepared some reconciliations of Borja's trust account. Tr. 2, pg. 123-124.

Although Lewis was not engaged specifically to review all of Mr. Borja's trust account records:

> . . . in the process of trying to tie in the revenue being transferred, you know, we would have dealt with a good percentage of their records.
>
> Tr. 1, pg. 136.

During the December 15, 1988 disciplinary hearing, the following question was propounded to Borja by his counsel:

> Q. Are you willing to do anything that they say to try to keep this account in proper order?

Borja responded:

> A. Well, certainly I want to do that.
>
> * * *
>
> . . . but, what I have done is I have asked Mr. Lewis - he knows all about the problems that I have here -- whether it's too much responsibility for the secretary or what.
>
> I do not have as good a knowledge as maybe certainly an accountant would have. I understand basically in theory all of this. The day-in and out workings of it, I do not have, if you will, the time and the knowledge to really do it properly. Relying on secretaries, the present secretary that I have, I think that basically she can do a

> pretty good job, but I think as a safety precaution because I never want to go through this again, Mr. Lewis has been hired, and if for whatever reason he would quit or want to do something else, then I have somebody else to do this on a monthly basis.
>
> Tr. 0; pg. 88-89.

When Borja returned from the hearing, he told Ms. Stephanik:

> . . . to take whatever kind of journals and everything we had over to Mr. Lewis, but I think that was in regard to his wife's complaint. . .
>
> Tr. 2, pg. 65.

In the earlier **case**, the referee had found Borja not guilty of failing to comply with the trust accounting standards of the Florida Bar. The referee's decision was reversed by the Supreme Court of Florida on June **4**, 1990 and Borja was given a public reprimand and **was** put on two years of probation with instructions that he provide quarterly reports to the Florida Bar. Bar Exhibit 2. The Florida Bar v. Borja, **554** So.2d 514 (Fla. 1990).

In February of 1989, Michael Lewis first discovered the thefts from Borja's operating accounts. Tr. 1, pg. 132. Lewis needed a couple of weeks to verify that there was a problem because he kept calling Carol Stephanik to obtain cancelled checks. Tr. 1, pg. 132. Indeed, Michael Lewis had difficulty in getting in touch with Borja because Stephanik would not put his telephone calls through. Tr. 1, pg. 133.

In March of 1989, Borja and Michael Lewis confronted Stephanik. After showing her some cancelled checks, she admitted stealing from Borja's operating account. Tr. 1, pg. 133. Lewis specifically asked her if she had taken any money from the trust account and she denied it. Tr. 1, pg. 133.

Borja fired Carol Stephanik in late March of 1989. She then continued her career as a professional embezzler, stealing approximately $4,000.00 from an elderly couple named Conasses and then stealing approximately $20,000.00 from Mr. Horowitz. Tr. 2, pg. 55, 56.

Bill Borja reported Stephanik to the authorities in October of 1989. She was ultimately arrested, plead guilty to three counts of grand theft involving, respectively, Borja, the Conasses and Horowitz, and was sentenced to eight years in prison. Tr. 2, pg. 49. As part of her plea bargain, she admitted that she had stolen $53,526.83 from Borja. Tr. 2, pg. 61.

Stephanik reconciled the bank statements each month. Tr. 2, pg. 79. She started falsifying entries by making statements with respect to items still outstanding when they weren't outstanding and by falsifying ledger cards. Tr. 2, pg. 80.

After Stephanik left Borja's employ, he noticed that records were missing. Tr. 1, pg. 75. He was suspicious that Stephanik may have taken money from trust accounts and estate accounts, as well as the operating account. Tr. 1, pg. 75.

After Borja fired Stephanik, he repeatedly telephoned her and asked her to return his office records to repay the money that she

had stolen. Tr. 2, pg. 44.

At trial, Stephanik admitted that she had taken Borja's trust account records home with her. She had the ledger cards, the check stubs and "a lot of correspondence" that she thought was "important". Tr. 2, pg. 42. Stephanik never returned the cancelled checks that reflected the monies that she had embezzled. Tr. 2, pg. 42. But, she asserted that she eventually returned the other records by leaving them in a box near the back of the building where Borja had his offices early one Saturday morning. Tr. 2, pg. 46.

In order to replace the missing records, Borja ordered copies of cancelled checks and bank statements which he finally received six weeks later. Tr. 1, pg. 75.

He learned that Stephanik had stolen from his trust accounts and estate accounts in May of 1989. Tr. 1, pg. 80.

Borja then tried to rebuild his records to find out exactly what monies "might be out". Tr. 1, pg. 84.

Borja hired a C.P.A. named Ralph Donaldson in May of 1989. Tr. 1, pg. 150. Borja advised him that he suspected that a former secretary had embezzled funds and asked him to reconstruct his trust account records. Tr. 1, pg. 139; Tr. 1, pg. 150. Donaldson found that most of the ledger cards were missing. He testified that an embezzler invariably invalidates the accounting records. Tr. 1, pg. 140. In this case, all of the accounting records were missing. Tr. 1, pg. 140. The records were fairly good through November or December of 1988. The reconciliations were missing at

that point. The ledger cards were incorrect. Tr. 1, pg. 141.

Donaldson spent three or four weeks trying to reconstruct the records, but he could not do so. Tr. 1, pg. 147; Tr. 1, pg. 141.

Borja then hired Frederick Doolittle, a C.P.A. licensed in Maryland. Tr. 2, pg. 89. Borja asked Doolittle to do two things: check Donaldson's work for correctness and attempt to reconstruct the trust account for each month. Doolittle was given a printout prepared by the previous C.P.A., Donaldson. Tr. 2, pg. 90-91. He was also given some reconciliations prepared by a secretary named Jean Chancellor for late spring or early summer of 1989. Tr. 2, pg. 91. Doolittle had reconciled bank statements for 1989, but for 1987 and 1988, he only had photocopies. Tr. 2, pg. 92.

Doolittle ascertained that many checks were falsified and the entries on the stubs were falsified. Tr. 2, pg. 97.

Finally, in the latter part of October, 1989, after working fifteen hours a week for four or five weeks and going through every record he could lay his hands on, Doolittle told Borja that the audit trail had been broken. Tr. 2, pg. 112. There were simply not enough records available to rebuild Borja's records. Tr. 2, pg. 109-110.

Doolittle told Borja that the first thing to do was to start currently keeping proper records and he has done so until the present date. Tr. 2, pg. 112. After Doolittle prepared the records, they were forwarded to a C.P.A. firm in Clearwater and they were then forwarded to the Florida Bar. Tr. 2, pg. 112. That is what has been done since October of 1989.

In September of 1989, Borja filed his annual dues statement, wherein he stated that he had filed required trust accounting records and procedures, but noted on the statement "Exceptions for Florida Bar Audit/Comments".

Pedro Pizarro conducted his third audit of Borja's records for the time period of June 1, 1988 through April, 1990. Tr. 2, pg. 120. Following this audit, the Florida Bar filed a complaint against Borja in April of 1991.

The bar charged Borja with various violations of trust accounting standards and with presenting false testimony at the December 15, 1988 hearing before Judge Alvarez.

The matter was tried before the referee on January 8, January 10, and January 31 of 1992. Tr. 1, 2 and 3.

The referee, in her report, found:

* * *

> Respondent was so out of touch and unfamiliar with the bar rules and procedures, that he did not KNOWINGLY provide false testimony during the December, 1988 disciplinary proceeding before Judge Alvarez.
>
> RR., pg. 2.

The referee also found that from June 1, 1988 through April, 1990, Borja failed to maintain all required trust accounting records and to follow required trust account procedures. RR., pg. 2. The referee further found that Borja continued to commingle his earned fees with client funds. RR., pg. 2.

The referees also found that Borja misrepresented to the Florida Bar the status of his trust account in his 1989 Statement of Annual Dues. RR., pg. 2.

Borja was found guilty of violating Rule 4-1.15(a) for commingling his fees and client trust funds and for failing to maintain for six years or produce complete records regarding his trust accounts. He was found guilty of violating Rule 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation with respect to his 1989 Statement of Annual Bar Dues submitted to the Florida Bar. RR., pg. 2

He was found guilty of violating Rule 5-1.1 for using client trust funds for purposes other than the specific purpose for which they were entrusted to the respondent. RR., pgs. 2-3.

Borja was found guilty of violating Rule 5-1.2(b)(5) for failing to maintain and/or produce a cash receipts journal from June, 1988 to January of 1989 and a cash disbursements journal from July of 1988, September, 1988 to January, 1989 and July, 1989. RR., pg. 3.

He was also found guilty of violating Rule 5-1.2(b)(6) for maintaining ledger cards containing postings for both trust and operating accounts without proper segregation and by failing to include the unexpended balances and the reason for which all trust funds were received, disbursed or transferred. RR., pg. 3.

He was also found guilty of violating Rule 5-1.2(c)(1), (2) and (3) for failing to maintain or produce monthly bank reconciliations, monthly comparisons, and annual listings for the

period from June, 1988 to Jul , **1989. RR., pg. 3.**

However, Borja was found not guilty of violating Rule 4-8.1(a) which provides that a lawyer in connection with a bar disciplinary matter shall not knowingly make a false statement of material fact. He was also found not guilty of violating Rule 4-8.1(b) which provides that a lawyer in connection with disciplinary matters shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter. **RR., pg. 3.**

The referee took into consideration that Borja had an extensive prior disciplinary record, but also noted that no client was apparently injured, nor was there any benefit to the respondent. RR., pg. 4.

In light of these findings, the referee recommended that Borja be suspended for ninety days and thereafter be placed on probation for a period of two years with the condition that he submit to quarterly audits by the Florida Bar auditor. RR., **pg. 3.** In addition, Borja was required to submit to the Florida Bar's Law Office Management Advisory Service for a personal seminar regarding trust accounting records. RR., pg. 3. The Bar and Mr. Borja have petitioned this Court for review of the referee's decision.

SUMMARY OF THE ARGUMENT

Bill Borja is a sole practitioner in Clearwater, Florida. From October of 1987 until March of 1989, he had a single employee, Carol Stephanik. Unfortunately for Mr. Borja, Carol Stephanik was a skilled professional embezzler who stole $53,000.00 from his operating, trust, estate and guardianship accounts. Ms. Stephanik forged Mr. Borge's name on checks, deposited them, and converted the proceeds. She covered her trail by falsifying entries on client ledger cards and otherwise giving false and misleading information to Mr. Borja.

Mr. Borja's C.P.A., Michael Lewis, detected the theft in February of 1989 and, in March, when Lewis and Borja confronted Ms. Stephanik, she admitted that she had stolen from Borja's operating account. She denied stealing from his trust account. After Stephanik left Borja's employ, he noticed that same of his accounting records were missing.

Both Mr. Borja, and two of his accountants, Ralph Donaldson and Frederick Doolittle, testified that the majority of Mr. Borja's records were missing and many of the remaining records contained false entries.

After leaving Borja, Stephanik continued her career as a professional embezzler, first stealing $4,000.00 from an elderly couple named Conasses and then stealing $20,000.00 from a Mr. Horowitz. Tr. 2, pg. 55-56.

Borja had reported Stephanik to the authorities in October of

1989 and Stephanik xplained that she continued to steal because she needed funds to pay her criminal defense attorney! Tr. 2, pg. 49, lns. 9-14.

Stephanik eventually plead guilty to three counts of grand theft and was sentenced to eight years in prison. She is now out of prison and has emerged as The Bar's chief witness to support its charges that Borja has failed to comply with the trust accounting regulations.

The referee's finding of fact is entitled to a presumption of correctness which will be upheld absent a showing that the finding is clearly erroneous. The Florida Bar v. Aaron, 529 So.2d 685, 686 (Fla. 1988); The Florida Bar v. Scott, 566 So.2d 765, 767 (Fla. 1990).

The referee's ruling that Borja failed to maintain his trust accounting records, commingle funds, and otherwise failed to comply with the regulations governing trust accounts is not supported by substantial, competent evidence. Borja's accounting records were taken by Ms. Stephanik. She testified that she returned some of them by leaving them in a box outside the door of his office building early one Saturday morning. She gave contradictory evidence as to whether or not Borja ever acknowledged receiving these records, but Respondent hastens to add that this has been resolved against him by the referee. Nonetheless, the two accountants retained by Borja to reconstruct his records, Messrs. Donaldson and Doolittle, testified that they simply could not reconstruct Borja's records because too many records were missing.

They could not opine as to whether or not Borja had been retaining earned fees in his trust account for an unreasonable length of time because of a lack of records. In fact, Frederick Doolittle was surprised that The Bar's auditor, Pedro Pizarro, could render any opinion regarding Borja's records.

Pizarro did opine that Borja retained earned fees in his trust account for an unreasonable length of time. He reached this conclusion by assuming that Borja's fee was earned when the first cost expenditure was noted in his trust account. This is an unreasonable assumption where Borja did not consider his fees to be earned until the case was concluded.

The rulings of the referee regarding the trust account violations are supported largely by the testimony of Carol Stephanik, a repeated liar, a convicted embezzler, and the person who would surely have a motive to lie about the conduct of the man who had her put in jail. There is simply not clear and convincing evidence to sustain the ruling of the referee in this regard.

The Bar also charged Borja and/or his witness with providing false and/or misleading testimony during a prior disciplinary hearing before the Honorable Dennis Alvarez on December 15, 1988. Case number 72,962. The referee in this case found:

> . . . that the Respondent was so out of touch and unfamiliar with The Bar rules and procedures, that he did not KNOWINGLY provide false testimony during the December, 1988 disciplinary proceeding before Judge Alvarez.
>
> RR., **pg.** 2.
> (emphasis the referee's)

The Bar has failed to establish that the referee's finding of fact is clearly erroneous or lacking in evidentiary support. The Florida Bar v. Thomas, 582 So.2d 1177 (Fla. 1991).

The Bar contended that Borja testified falsely when he testified:

> . . . as a safety precaution because I never want to go through this again, Mr. Lewis has been hired, and if for whatever reason he would quit or want to do something else, then I would have somebody else do this on a monthly basis . . .
>
> Tr. 0, pg. 88-89.

Borja had **hired** Lewis in the summer or fall of 1988. In fact, it was Mr. Lewis that discovered Stephanik's embezzlement in February of 1989.

The Bar apparently contends that Mr. Borja testified falsely when he stated that Mr. Lewis had been hired to do something on a monthly basis, whatever that something may have been. The Bar offers no explanation for that **"something"** may have been.

It is undisputed that Lewis reviewed Borja's trust accounts to ascertain whether or not he was timely transferring earned fees from the trust account to his operating account. Lewis' firm may have done some reconciliations of the trust account and Lewis was available to advise Borja on proper procedures. The Bar has simply failed to establish that the referee erred when she ruled that Borja did not knowingly provide false testimony at the prior

disciplinary proceeding.

The referee's sanction of a ninety day suspension coupled with two years probation and the requirement that Borja attend a seminar on trust accounting procedures is consistent with the sanctions imposed by this Court in similar cases. The Florida Bar v. Aaron, 529 So.2d 685 (Fla. 1988); The Florida Bar v. Carter, 502 So.2d 904 (Fla. 1987). The Bar has failed to establish why this Court should enhance the sanction imposed by the referee, especially in light of the circumstances of this case, where Mr. Borja's problems were engendered by a clever and faithless employee.

In his Cross-Petition, Borja argues, for the reasons stated infra, that there is insufficient credible testimony to establish that he violated trust accounting regulations of The Florida Bar. The Bar's case rests upon the testimony of a convicted embezzler who had every motive for revenge and the ruling of the referee should be reversed.

ARGUMENT

THE RECOMMENDATION OF THE REFEREE THAT THE RESPONDENT BE FOUND NOT GUILTY OF VIOLATING RULE 4-8.1(a), WHICH PROVIDES THAT A LAWYER IN CONNECTION WITH A BAR DISCIPLINARY MATTER SHALL NOT KNOWINGLY MAKE A FALSE STATEMENT OF MATERIAL FACT IS AMPLY SUPPORTED BY COMPETENT CREDIBLE TESTIMONY AND EVIDENCE.

The Referee found in her report that the Respondent was:

> ...not guilty of violating Rule 4-8.1(a), which provides that a lawyer in connection with a Bar discliplinary matter, shall not knowingly make a false statement of material fact. In addition, [the Referee found] the Respondent not guilty of violating Rule 4-8.1(b), which provides that a lawyer in connection with a disciplinary matter, shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter.

In the predicate finding of fact which supportedthe recommendation of the Referee, the Referee noted:

> ...The Florida Bar alleged during the instant case that during the discplinary proceeding before Judge Alvarez, [a disciplinary proceeding before Judge Alvarez in December of 1988, stemming from the audit of the Respondent's trust account for the period from January, 1985 through June 1987], the Respondent and/or his witnesses provided false and/or misleading testimony which caused

> Judge Alvarez to make his ruling that the Respondent was not guilty of trust account violations. I find the Respondent was so out of touch and unfamiliar with the Bar Rules and procedures, that he did not KNOWINGLY [capitalization that of the Referee] provide false testimony during the December, 1988 disciplinary proceeding before Judge Alvarez.

In order for the Bar to find that the Referee's Recommendation and Finding of Fact should be rejected by this Court, the Bar must first establish that there is no competent credible evidence upon which the Referee's finding of fact could be predicated. The Florida Bar v. Thomas, 582 So.2d 1177 (Fla. 1991); The Florida Bar v. Scott, 566 So.2d 765, 767 (Fla. 1990). Moreover, the Bar must, alternatively, contend that even if there was some evidence before the Referee to support the finding of fact made by the Referee, that the evidence must be inherently incredible or so improbable as to be unworthy of belief, as a matter of law. Herzog v. Herzog, 346 So.2d 56, 57 (Fla. 1977); Shaw v. Shaw, 334 So.2d 13 (Fla. 1976); Howell v. Blackburn, 100 Fla. 114, 129 So.2d 341, 344 (Fla. 1930).

The following representation or statement of the Respondent made before Judge Alvarez in the December, 1988 proceeding was in response to the following question propounded by his counsel, at Tr. 1, pg. 88:

> Q. Are you willing to do anything that they say to try to keep this account

in proper order?

After answering the question initially by stating "...Well, certainly I want to do that. ...", Mr. Borja continued his response with the following language which the Bar contends in this proceeding was falsely made in the disciplinary proceeding before Judge Alvarez:

> A. ... - but, what I have done is I asked Mr. Lewis - he knows all about the problems that I have here - whether it's too much responsibility for the secretary or what.
>
> I do not have as good a knowledge as maybe certainly an accountant would have. 1 understand basically in theory all of this.. The day-in and out workings of it, I do not have, if you will, the time and the knowledge to really do it properly. Relying on secretaries, the present secretary that I have, I think that basically she can do a pretty good job, but I think as a safety precaution because I never want to go through this again, Mr. Lewis has been hired, and if for whatever reason that he would quit or want to do something else, then I have somebody else to do this on a monthly basis. ...

The critical language upon which the Bar relies has been inaccurately quoted. The response of Mr. Borja before Judge Alvarez, accurately quoted in this Brief, is not the same response as quoted by the Florida Bar, although even if the Florida Bar's quoted response were accepted as accurate, the result would

inevitably be th same, n mely, that the response was not false.

Although it is difficult to tell exactly what it is that the Florida Bar contends that Mr. Borja stated in December of 1988 in his proceeding before Judge Alvarez that was false, apparently the Florida Bar thinks that the following statement of Mr. Borja was false, and known by Mr. Borja at the time to be false, at Tr. 1, pg. 89, transcript of the proceedings before Judge Alvarez:

> ...Relying on secretaries, the present secretary that I have, I think that basically she can do a pretty good job, but I think as a safety precaution because I never want to go through this again, Mr. Lewis has been hired, and if for whatever reason that he would quit or want to do something else, then I have somebody else to do this on a monthly basis.

It is probably a fair inference that the Bar is not contending that Mr. Borja was lying when he said he thought his secretary could do a pretty good job.

It is probably true that the Bar does not contend that Mr. Borja intended to hire someone as a safety precaution.

The first positive assertion made by Mr. Borja in his response to the question, the first assertion which the Bar apparently contends is false, is that "Mr. Lewis has been hired...."

The Bar relies on the *ipse dixit* on page 30 of its Brief to state that this testimony "clearly established that the Respondent and his witness, Mr. Lewis, provided false testimony to Judge

Alvarez."

How?

Mr. Borja testified before Judge Alvarez in December of **1988** that he had hired Mr. Lewis.

In this proceeding, on January 8, 1992, Bar counsel asked Mr. Borja, at Tr. 1, pg. 43:

> Q. But Mr. Borja, you did not hire Mr. Lewis until January of 1990, is that correct?
>
> A. **No**, no, no. Mr. Lewis, I would say, was hired either in the Summer or Fall of **1988**. He has been my accountant, as I said before, to assist, to be there to answer questions, anything that we had with regard to any of my accounting.

The Referee thus had before her evidence from the transcript before Judge Alvarez that Mr. Borja testified before Judge Alvarez that he had hired Mr. Lewis before December of 1988.

The Referee also had testimony before her in this proceeding from Mr. Borja that he had hired Mr. Lewis before December of 1988.

The Referee thus disposed of the issue of credibility immediately, by accepting the testimony of Mr. Borja on when Mr. Lewis was hired, identically to the way that Judge Alvarez accepted that testimony in the proceeding of December, 1988.

The Bar has failed to establish its burden by offering any evidence that Mr. Lewis had not been hired in December of **1988** by Mr. Borja to assist Mr. Borja.

The Bar's mi quotation of the transcript of proceedings before Judge Alvarez may have been deliberate to enable it to strengthen its position before this Court as to the assertion made by Mr. Borja before Judge Alvarez.

In misquoting the transcript of proceedings before Judge Alvarez, the Bar at least now had the ability to argue that Mr. Borja may have been saying that Mr. Lewis had been hired "...to do this on a monthly basis." Tr. 1, pg. 89. In other words, the Bar may be contending that the falsity of the representation of Mr. Borja before Judge Alvarez lay in his assertion that Mr. Lewis had been hired to do something on a monthly basis, whatever that something may have been.

The Bar offers no explanation for what that "something" may have been. The Bar can only speculate as to what "this" was, and in speculating, the Bar suggests that Mr. Borja's statement embraced the concept that Mr. Lewis had been hired to do monthly reconciliations of the trust account, monthly comparisons of the bank balance in the trust account with the ledger cards. See Bar's Brief, p. 31.

The Bar cannot seriously contend that at the hearing before Judge Alvarez of December, 1988, Mr. Lewis had not been hired by Mr. Borja. Indeed, Mr. Lewis confirmed that during the course of his testimony in this proceeding. Tr. 1, pg. 126-127.

There is no Record support for the Bar's contention that the testimony of Mr. Borja before Judge Alvarez on December 15, 1988 was false in any material particular, or even, in any minor

particular. The Bar has the burden of showing at least by some evidence, perhaps not clear and convincing, but at least some evidence, that the Referee had no facts upon which to base her conclusion that Mr. Borja did not falsely or knowingly testify at the hearing before Judge Alvarez that he had not hired Mr. Lewis.

Under these circumstances, the Bar has failed to maintain its burden to show by clear and convincing evidence that the Recommendation and Finding of the Referee with respect to the issue of false testimony at the prior proceeding should be rejected. The Florida Bar v. McClain, 361 So.2d 700, 706 (Fla. 1978); see, The Florida Bar v. Aaron, 529 So.2d 685, 686 (Fla. 1988).

In fact, the Bar is obviously unhappy with what it perceives to be its loss in the prior proceeding. It has attempted to have Mr. Borja disbarred in the past, and continues to do so.

The Bar is improperly in this case trying to retry its loss in the preceding case. That attempt must be rejected by this Court, and the finding of the Referee affirmed, and her recommendation accepted that Mr. Borja did not knowingly offer any false testimony before a disciplinary board in the proceeding before Judge Alvarez.

The Bar also contends that Borja testified falsely at the hearing below when he stated that he physically reviewed the bank statements and cancelled checks. The Bar, with twenty/twenty hindsight, states that this testimony must be false because, if Borja had actually reviewed his bank statements, he would have discovered Ms. Stephanik's thefts.

The testimony of Michael Lewis directly refutes The Bar's

theory. Upon questioning by The Bar's counsel, Lewis testified that it would have been difficult to pick up Ms. Stephanik's stealing from the accounts because "she was very good". Tr. 1, pg. 129. Reconciling the bank balance would not necessarily have Ms. Stephanik's stealing. Tr. 1, pg. 130. The bank number itself would tie in, even though the payee would be different. The bank account would reconcile. Tr. 1, pg. 130.

Lewis then stated:

> . . . that's what I'm trying to stress to all of my attorney clients. It could happen to anyone, what happened to Bill.
>
> Q. [by Bar counsel] Oh, I'm not disagreeing with that.
>
> A. And the biggest problem is not with the system itself, it is the separation of duties. It is very difficult in a small office.
>
> * * *
>
> If you have a lack of separation and they have total control of the checking account and recording the records and doing back records, it is very difficult to catch it. I had one secretary that was with me for one month that stole from me. She happened, I thought she stole from a campaign fund for a judge. She did it and we caught her the next month because I am in the business of doing that. But the fact is she did it and she was an easier catch than this was.
>
> * * *
>
> Tr. 1, pg. 131.

In its continuing attempt to portray Bill Borja as a liar, The Bar makes much of the fact that Borja testified that an accountant

named Robert Bennett reviewed his books in 1988 when in fact, Bennett testified by affidavit that he had set up a trust accounting system for Borja in 1987. Borja admitted on cross-examination that he was "off one year" and that actually Bennett worked for him in 1987 and 1988. Tr. 3, pg. 198.

It cannot be gainsaid that all of the testimony and evidence that The Bar emphasizes was presented to the referee and the referee, who had the advantage of observing the demeanor of the witnesses, rather than the cold record presented to this Court, found that Borja did not KNOWINGLY provide false testimony during the December, 1988 disciplinary proceeding before Judge Alvarez. The Florida Bar v. Thomas, 582 So.2d 1177, 1178 (Fla. 1991); The Florida Bar v. Scott, 566 So.2d 765, 767 (Fla. 1990).

The Bar has simply failed to establish that this finding was clearly erroneous. The Florida Bar v. Aaron, 529 So.2d 685 (Fla. 1988).

ISSUE II
A SUSPENSION PLUS TWO YEARS PROBATION IS A SUFFICIENT DISCIPLINARY SANCTION

The referee's imposition of a ninety day suspension, plus two years probation is consistent with the sanctions imposed by this Court in similar cases. Florida Bar v. Aaron, 529 So.2d 685 (Fla. 1988).

As a starting point, the Bar's auditor, Pedro Pizarro, testified that none of Borja's checks were returned for insufficient funds. Tr. 3, pg. 167. There was no evidence of any client suffering any harm in this case. Tr. 3, pg. 167. The bar's auditor found no instance where Borja, without the authorization from his client, used funds that had been deposited by the client in the trust account and converted them to his personal use. That did not occur during this audit, nor during the previous two audits conducted by Pizarro. Tr. 3, pg. 172. These facts distinguish this case from The Florida Bar v. Whitlock, 426 So.3d 955 (Fla. 1982). Whitlock used trust funds for personal use, wrote at least twenty-seven overdrafts, and mishandled a real estate transaction.

There were negative client balances in Borja's trust account caused by the fact that costs would be paid from the account without a corresponding deposit. However, at no time were the client's negative balances in excess of $1,276.95. Tr. 3, pg. 154.

This Court's decision in The Florida Bar v. Aaron, 529 So.2d 685 (Fla. 1988) is on point. In Aaron, the Court upheld the finding that the Respondent was guilty of technical trust account violations and publicly reprimanded him. The Florida Bar v. Aaron,

490 So.2d 941 (Fla. 1986). Subsequent to the issuance of the order in that case, The Florida Bar reviewed Aaron's trust account records and determined that he was not in minimum substantial compliance with The Bar's rules governing trust accounting. The Bar further charged that Aaron testified falsely at his first disciplinary proceeding. The Florida Bar v. Aaron, 529 So.2d 685 (1988).

In the second case, the referee found that Aaron had failed to distinguish between trust and non-trust funds in his accounting, that he failed to keep separate trust ledgers, and that, on at sixty-five instances, he failed to deposit funds belonging in part to himself and in part to his trust account, constituting commingling per se. Id. The referee found Aaron guilty of improper trust account record keeping, but found not guilty as to the charge that he had testified falsely at his initial disciplinary proceeding. Id. at pages 685-686.

Specifically, the referee found that there was no competent evidence that Aaron understood the question he was being asked, which produced the allegedly false statement. This Court upheld the referee's finding of fact that there was a lack competent evidence to establish that Aaron understood the question as phrased. Id. at page 686.

This Court then imposed a public reprimand and placed Aaron on probation for a period of two years with instructions that his trust accounting records be produced to be reviewed quarterly by the staff of The Florida Bar. Id.

Similarly, in The Florida Bar v. Carter, 502 So.2d 904 (Fla. 1987), the referee found that Carter's office personnel maintained inadequate records and that Carter had exercised no meaningful supervision over his staff in connection with estate record keeping. Carter had twice received a public reprimand for prior misconduct and the referee recommended that he be suspended for a period of three months and thereafter until he proved his rehabilitation. The Florida Bar v. Carter, supra at pg. 905.

On appeal, this Court agreed with Carter that proof of rehabilitation was not necessary to teach him the importance of complying with the standards set forth under the code and eliminated that provision of the discipline.

The Florida Bar v. Ollinger, 489 So.2d 726 (Fla. 1986) is also helpful in determining the proper discipline in this case. In Ollinger, the Respondent had received a public reprimand for insufficient supervision of non-lawyer personnel and improper delegation of work to a non-lawyer. The Florida Bar v. Ollinger, 478 So.2d 1068 (Fla. 1985). The Florida Bar then audited Ollinger's trust accounts after the close of the previous disciplinary proceeding. As a result of this audit, Ollinger was charged and found guilty of charging excessive fees, failing to prepare, execute and retain closing statements, insufficient supervision of non-lawyer personnel, improper delegation of work to a non-lawyer, and failure to promptly pay to a client funds to which the client was entitled, as well as misapplication of funds held for a specific purpose. This Court upheld a sixty day

suspension, plus a three year probationary period, during which the Respondent was required to retain the services of a certified public accountant to review his trust account, contingency fee files, closing statements and disbursements. The Florida Bar v. Ollinger, supra.

Similar allegations, coupled with a delay in returning clients' funds, resulted in the imposition of a three month suspension and a two year probationary period in the case of The Florida Bar v. Neely, 502 So.2d 1237 (Fla. 1987).

This Court has determined that a public reprimand is an appropriate sanction for trust account violations resulting from poor supervision and poor record keeping, such as commingling of personal and trust funds, poor maintenance of books and records and lack of trust account reconciliations will result in a public reprimand. The Florida Bar v. Heston, 501 So.2d 597 (Fla. 1987); The Florida Bar v. Lumley, 517 So.2d 13 (Fla. 1987); The Florida Bar v. Hosner, 513 So.2d 1057 (Fla. 1987); The Florida Bar v. Suprina, 468 So.2d 988 (Fla. 1985).

However, when this violation is coupled with a prior disciplinary record, the discipline imposed by this Court has ranged from a public reprimand with two years probation, The Florida Bar v. Aaron, 529 So.2d 685 (Fla. 1988), to ninety days suspension, The Florida Bar v. Carter, 502 So.2d 904 (Fla. 1987).

The referee's recommended discipline was severe under the circumstances of this case.

The Respondent urges that this Court eliminate that portion of

the recommended sanction which imposes a ninety day suspension upon him, as many of the record keeping violations involved herein are a result of his victimization by a professional embezzler who he had unfortunately employed as his secretary.

The Bar's request for an enhanced sanction is clearly without merit and should be rejected.

CROSS PETITIONER'S INITIAL BRIEF

I. THERE IS NO COMPETENT CREDIBLE EVIDENCE TO SUPPORT THE FINDING OF THE REFEREE THAT BILL BORJA FAILED TO MAINTAIN MINIMUM TRUST ACCOUNT RECORDS.

The referee found Mr. Borja guilty of failing to maintain trust account records for six years. It is undisputed that Carol Stephanik took all of Bill Borja's trust account records home with her. She had the ledger cards, the check stubs, and a "lot of correspondence", which she thought was "important". Tr. 2, pg. 42. It is further undisputed that Ms. Stephanik kept all of the cancelled checks which establish that she had stolen from Mr. Borja. Tr. 2, pg. 43.

Borja telephoned Stephanik and repeatedly asked that she return his records. Tr. 2, pg. 46.

Borja testified that he never received the records. Tr. 1, pg. 75; Tr. 1, pg. 80.

At trial, Ms. Stephanik first testified that she left the records in a box in front of the Webbs office building (where Mr. Borja maintained his office) on a Saturday morning. Tr. 2, pg. 46. Then she testified that she left the box of documents near the back door of Webbs. Tr. 2, pg. 46; Tr. 2, pg. 59.

Ms. Stephanik admitted that anyone passing by could have picked up the records. Tr. 2, pg. 59.

Ms. Stephanik presented the only evidence that Borja had actually received these records, and that evidence was

contradictory:

> Q. [by Bar counsel] No, I'm talking about in regard to the records that you returned, did [Borja] ever advise you that he received the records?
>
> A. [Ms. Stephanik] No, just about the money.
>
> Q. Did he ever advise you that he received the records?
>
> Mr. Maney: I object she has answered -- that's been asked and answered. The answer was no, just about the money.
>
> A. What was the question? I'm sorry.
>
> Q. The question was did Mr. Borja ever confirm that he had received those records back that you had dropped off at his back door?
>
> A. Yes.
>
> Tr. 2, pg. 47.

The Bar did not like Ms. Stephanik's original response and so The Bar asked the question again in order to receive what it considered to be a proper response.

This type of contradictory testimony from a professional embezzler does not provide evidentiary support for the proposition that Mr. Borja ever received the return of his records.

The Bar takes an "absolutist" position with regard to the maintenance of the records. As The Bar auditor testified at Tr. 3, pg. 129:

> As to the specific records, there is no

interpretation needed. You either have them or you don't have them.

If this be the law, then every Florida lawyer will be in jeopardy from a disloyal employee. Does The Bar interpret this rule to provide that if an employee of a two-hundred attorney firm, such as Holland & Knight, absconds with the records, all of the attorneys are in violation of the trust accounting rules?

The Respondent asserts that the proper interpretation of this rule is that you must either have possession of the records or provide an adequate explanation for why you do not have possession of the records. Florida's bright line rule, "you either have the records or you do not" goes too far.

The ruling of the referee should be reversed.

II. THERE IS NO COMPETENT CREDIBLE EVIDENCE THAT BILL BORJA FAILED TO FOLLOW REQUIRED TRUST ACCOUNT PROCEDURES.

A. THE ABSENCE OF THE RECORDS HAS BEEN EXPLAINED.

B. THERE IS EVIDENCE OF NONCOMPLIANCE BY BILL BORJA WITH THE TRUST ACCOUNTING PROCEDURES, BUT YOU MUST CONSIDER THE EVIDENCE THAT NONCOMPLIANCE CAME FROM A SECRETARY WHO ADMITTED TO SIX OR SEVEN LIES, ADMITTED TO BEING A PERJURER, ADMITTED TO STEALING $53,000.00 FROM BILL BORJA, AND ADMITTED TO STEALING FROM OTHERS.

Bill Borja has given an adequate explanation for his lack of accounting records. Carol Stephanik took them and never returned them. Michael Lewis, the C.P.A. who discovered the theft,

testified that he did not remember any problem with the maintenance of Borja's records prior to the December 15, 1988 hearing. Tr. 1, pg. 134.

In May of 1989, after Stephanik's thefts were discovered, Borja retained a C.P.A. named Ralph Donaldson. Tr. 1, pg. 137-138. Donaldson confirmed that all of the accounting records were missing. Tr. 1, pg. 139. The only records available were some bank deposits and lists of clients, some ledger cards and some work papers. Tr. 2, pg. 140. The ledger cards were incorrect, obviously to cover up the embezzlement. Tr. 2, pg. 141.

It was impossible for Donaldson to draw any conclusions about the trust account because of the lack of records. Tr. 1, pg. 143; Tr. 1, pg. 146.

When Donaldson could not make any headway, Borja retained a C.P.A. named Frederick Doolittle. Tr. 2, pg. 90.

Doolittle confirmed that numerous records were missing.

He was engaged to try to rebuild Borja's records and he tried to do so for a month and a half, but he had to admit that the lack of records did not give him enough tools to work with. Tr. 2, pg. 109-110.

The Bar auditor, Pedro Pizarro, noted that many of the records were missing, incomplete and incorrect but, after August 31, 1989, Pizarro's accounting matched Mr. Borja's accounting. Tr. 3, pg. 67.

Mr. Borja testified that he had maintained the records required under the trust accounting regulations of The Florida Bar.

Tr. 3, pg. 208. After the June, 1988 audit, he had made changes in his procedures and, to the best of his knowledge, complied with the trust accounting requirements. Tr. 3, pg. 208-209.

The records which conclusively establish whether or not Borja had complied with the trust accounting rules were missing. Borja testified that he did comply. The only evidence to the contrary was that of Carol Stephanik.

Even Ms. Stephanik testified that she prepared ledger cards for each new client. Tr. 2, pg. 72-73. Indeed, to cover her defalcations, she started falsifying entries on the ledger cards. Tr. 2, pg. 79-80. The trust account statements were reconciled every month "to a point". Tr. 2, pg. 79. The point was that she falsified entries to cover what she had taken, Tr. 2, pg. 80.

Even Ms. Stephanik testified that, although she did not make a monthly reconciliation of the general operating account, she did make monthly bank reconciliations and did make a reconciliation of the trust account. Tr. 2, pg. 83-84.

The testimony of Carol Stephanik cannot be deemed a sufficient factual predicate to establish, by clear and convincing evidence, that Bill Borja failed to comply with the trust accounting rules.

Ms. Stephanik repeatedly lied, forged Borja's name, and stole $53,000.00 from him. She continued her career as a professional embezzler by embezzling $4,000.00 from an elderly couple named Canassis and an additional $20,000.00 from a Mr. Horowitz. The thefts continued for she needed money to pay her criminal defense counsel! Tr. 2, pg. 49.

It was Bill Borja who turned Stephanik into the authorities. She was arrested and charged with three counts of grand theft, plead guilty, and was sentenced to a term of eight years. As part of the plea agreement, a lien was placed against her for the $53,000.00 that she admitted stealing from Borja.

In other words, The Bar's case rests upon an individual who has lied repeatedly in the past and who has every motive to seek revenge upon the man who put her in jail.

Even if Stephanik's testimony is deemed not to be inherently incredible, it can hardly be the type of clear and convincing evidence which must be presented to sustain a violation of The Bar rules.

III. THERE IS NO COMPETENT CREDIBLE EVIDENCE THAT BILL BORJA USED CLIENT TRUST FUNDS FOR PURPOSES OTHER THAN FOR WHICH ENTRUSTED.

At the hearing before the referee, Bill Borja testified that he did not knowingly commingle his funds with client fees after June 1, 1988. Tr. 1, pg. 40. Borja testified that it was his instruction to his secretary, Carol Stephanik, that all of his earned fees were to come out of his trust account at the end of every month. Tr. 1, pg. 36-37. Mr. Borja testified at Tr. 1, pg. 39:

> Whenever I would complete a case [Stephanik] would be given instructions or told this case is finished, whatever fees there are can be transferred. We typically do that once a month.

Stephanik would assure Borja that that had been done. Tr. 1, pg. 55.

Borja tried to monitor his secretary's work regarding his trust accounts on a weekly basis. Tr. 1, pg. 54.

Ms. Stephanik represented to Borja that every month his earned fees were withdrawn from the trust account. Tr. 1, pg. 87. As Borja testified at the hearing at Tr. 1, pg. 87-88:

> Q. [by Bar counsel] Is it your position that you did not leave your earned fees in the trust account every month?
>
> A. [by Bill Borja] That is my position and that is the instruction she had, cases that were completed during that period of time were to be drawn out and placed in my operating account. She drew out fees and put them in my operating account, and she drew out other fees and put them in her own account.

Frederick Doolittle testified that Borja did not have any of his own funds or earned fees in his trust account. Tr. 2, pg. 100. There were no records that Doolittle had seen in his examinations which would establish that earned fees were kept in the trust account either too long or not long enough. Tr. 2, pg. 115.

Of course, Ms. Stephanik's testimony would support the proposition that earned fees could not remain in Borja's trust account because she was stealing his fees as rapidly as she could and falsifying entries to cover her tracks. Tr. 2, pg. 80; Tr. 2, pg. 24.

In order to support its theory that Borja retained earned fees

in his trust account for an unreasonable length of time, Pedro Pizarro uses the rather questionable assumption that the first time any costs appeared on the ledger card, the fee was earned. This is an unreasonable assumption where, in this case, it is undisputed that Borja would not deem his fees earned until the end of the case.

The Bar auditor found no instance where Borja, without authorization from his client, used funds that had been deposited by the client in the trust account and converted them to his personal use. That didn't occur during this audit, nor during the previous two audits conducted by Pizarro. Tr. 3, pg. 172.

Borja confirmed that he had never taken any money from a client that he was not authorized to take and, to the best of his knowledge, he had complied with the trust accounting requirements. Tr. 3, pg. 209.

The ruling that Mr. Borja used client funds for purposes other than that for which they were entrusted is not supported by credible evidence and should be reversed.

IV. THERE IS NO COMPETENT CREDIBLE EVIDENCE TO SUPPORT THE FINDING OF THE REFEREE THAT MR. BORJA MADE A MATERIAL FALSE STATEMENT IN HIS ANNUAL BAR DUES STATEMENT WHERE, AS HERE, HE MADE A NOTATION TO REFLECT THE EXISTENCE OF THE DIFFICULTY HE WAS ENCOUNTERING AT THE TIME.

With regard to this charge, the referee found:

> On or about August 21, 1989, the Respondent submitted his 1989 Statement of Annual Bar

Dues to the Florida Bar. Respondent certified as true in his statement that, from June, **1988** through June, **1989,** he kept all required trust accounting records and procedures and no shortages were in **his** account. The Respondent noted on the statement 'Exceptions for Florida Bar Audit/Comments' which refer to the June, 1988 follow-up audit. I find that the Respondent misrepresented to The Florida Bar, the status of his trust account **in his** 1989 Statement of Annual Bar Dues.

RR., **pg. 2.**

The relevant bar rule provides:

4-8.4 Misconduct.

A lawyer shall not:

* * *

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

* * *

A copy of The Bar dues statement is enclosed at page 114 of the Appendix.

Yes X No ___ During the last fiscal year I or the law firm with which I am associated had a trust account, kept all required trust records and followed all required trust accounting procedures and there were no shortages in any individual client account or the overall trust account. (Answer yes if

shortage happened only because of bank error.) [The following phrase was handwritten by Bill Borja.] Exceptions for Bar audit/comments.

Obviously, while Mr. Borja may not have been as articulate as might have been wished under the circumstances, Mr. Borja was of the opinion that any notation as to an exception concerning compliance with The Florida Bar Trust Rules would involve a proper representation that all was not well.

There can have been no other reason to make an exception to the Trust Accounting representation other than to communicate to the reviewers that all was not well with his records.

Whether or not that communication was sufficient to satisfy The Bar is quite another matter from deciding that there **was** a misrepresentation. There was no misrepresentation in this case **because** Mr. Borja did make an exception to the record.

CONCLUSION

The ruling by the referee is not supported by substantial, competent evidence and should be reversed with instructions that Mr. Borja be found not guilty of the charges brought by The Florida Bar.

Alternatively, if the Court affirms the rulings of the referee, the discipline recommended by the referee should be modified to eliminate the ninety day suspension.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. Mail, postage prepaid, this 10th day of July, 1992 on the following:

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