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FILED
SID J. WHITE
MAY 4 1992
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

CHARLES G. DeMARCO,

Respondent.
_____/

Case No. 78,146
[TFB Nos. 91-30,901 (18A);
91-30,920 (18A);
91-30,937 (18A);
91-31,074 (18A);
91-31,129 (18A);
91-31,198 (18A);
and 91-31,145 (18A)]

ANSWER BRIEF

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SYMBOLS AND REFERENCES

In this brief, the Appellant, Charles G. DeMarco, Jr., shall be referred to as "the respondent".

The Appellee, The Florida Bar, shall be referred to as "The Florida Bar" or "the Bar".

The transcript of the final hearing held on December 2, 1991, shall be referred to as "T".

The Report of Referee dated January 24, 1992, shall be referred to as "RR".

The respondent's Initial Appellate Brief shall be referred to as "RB".

STATEMENT OF THE CASE AND FACTS

The Florida Bar adopts the facts as enumerated in the Bar's Requests for Admission which were deemed admitted at the final hearing and the Referee's Report in this matter dated January 24, 1992. The statement of the facts in the Respondent's Initial Brief is incomplete. The Bar also asserts that the respondent's statement of the case is incorrect and submits the following statement as to the proceedings in this case:

On April 4, 1991, the Eighteenth Judicial Circuit Grievance Committee "A" found probable cause that there had been violations of the Rules Regulating The Florida Bar in six cases brought against the respondent, to wit: Case No. 91-30,901 (18A) - Rules of Professional Conduct 4-1.16(d) for failing to take reasonable steps to protect the client's interest upon termination of representation; and 4-8.4(a) for violating the Rules of Professional Conduct. Case Nos. 91-30,920 (18A); 91-30,937 (18A); 91-31,074 (18A); and 91-31,198 (18A) - Rule of Discipline 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; Rules of Professional Conduct 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; 4-1.5(a) for charging a clearly excessive fee; 4-1.16(d) for failing to take

reasonable steps to protect a client's interest upon termination of representation; 4-3.2 for failing to make reasonable efforts to expedite litigation consistent with the interests of the client; 4-8.4(a) for violating the Rules of Professional Conduct; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice. (In Case No. 91-30,937 (18A) the grievance committee found the respondent had also violated Rule of Professional Conduct 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.) Case No. 91-31,129 (18A) - Rule of Discipline 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; Rules of Professional Conduct 4-4.1(a) for making a false statement of material fact or law to a third person; 4-4.4 for using means that have no substantial purpose other than to embarrass, delay, or burden a third person; 4-8.4(a) for violating the Rules of Professional Conduct; and 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

On May 2, 1991, the Eighteenth Judicial Circuit Grievance Committee "A" found probable cause that there had been a violation of the Rules Regulating The Florida Bar in Case No. 91-31,145 (18A), to wit: Rule of Discipline 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; Rules of Professional Conduct 4-8.4(a) for violating the Rules of Professional Conduct; 4-8.4(b) for committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or

fitness as a lawyer in other respects; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

On June 19, 1991, the Bar filed it's formal Complaint which was served on the respondent by certified mail to his mailing address in Reno, Nevada and to his record Bar address which was then located in Altamonte Springs, Florida. On July 22, 1991, the Bar served it's Requests For Admission on the respondent by certified mail to the respondent's new mailing address in Deerfield Beach, Florida, and to the respondent's new record Bar address in Reno, Nevada. The Bar received the respondent's answer to the complaint on August 8, 1991. On October 3, 1991, the Bar filed it's Motion For Admission of Complainant's Requests For Admission which was served on the respondent by certified mail. The basis for the Bar's motion was the respondent's failure and/or refusal to serve any written answer or objection to the Requests. The Referee issued an order on October 9, 1991, deeming the Bar's Requests For Admission to be admitted. On that date, copies of the Notice of Final Hearing scheduled for December 2, 1991, were also sent by certified mail to both the Deerfield Beach, Florida, address and the Reno, Nevada, address. On November 7, 1991, the respondent filed a Request For Telephonic Appearance At The Final Hearing.

The final hearing was held on December 2, 1991, during which

time the Bar voluntarily dropped the charges in Count II, Case No. 91-30,901 (18A). The Referee submitted his report on January 24, 1992, in which he found the respondent guilty in Counts I, III, IV, V, and VII and found the respondent not guilty as to count VI. The Referee recommended that the respondent be disbarred from the practice of law. On February 8, 1992, the respondent filed a Verified Answer And Objections To Report Of Referee. The Court deemed this to be a Petition For Review. On March 25, 1992, the respondent filed a Motion For Extension of Time to File Review Brief and the court allowed the respondent up to and including April 10, 1992, in which to serve his initial brief on the merits. On April 10, 1992, the respondent filed his Initial Appellate Brief. This brief is an answer to the respondent's Initial Brief.

SUMMARY OF THE ARGUMENT

Upon review of the respondent's Initial Brief, it appears that the respondent is seeking a rehearing in this matter as he is attempting to present a defense to the charges against him. The Bar asserts that the appellate process is an improper forum for the respondent to be presenting his defenses to the disciplinary charges.

All pleadings and notices by the Bar were sent certified mail to the respondent's record Bar address. Further, all pleadings and notices were also sent to other mailing addresses as provided to the Bar by the respondent. Therefore, the respondent had ample opportunity to submit responses and/or pleadings and to be present at the final hearing. Almost all of the documents forwarded to the respondent by certified mail were returned to the Bar by the Post Office as unclaimed. Pursuant to Rules of Discipline 3-7.11(b) and (c), service of pleadings by certified mail to the respondent's record Bar address and/or last known address is sufficient notice and service. Thus, it is the Bar's position that the respondent was given every opportunity to submit his defense to the charges against him, but that he chose not to participate in these proceedings until he received the Referee's report recommending he be disbarred.

The Bar further submits that the Referee's recommendation of

disbarment is warranted in this matter given that the respondent has engaged in multiple instances of abandoning his clients. In these cases, the respondent retained documents that were necessary for his clients to utilize in pursuing their legal matters with other counsel. Further, the respondent is currently a fugitive from the State of Florida having left the State with a DUI charge pending against him and an outstanding warrant for his arrest still pending. Based upon the above, it is apparent that the respondent's total disregard for the laws of this State and for his clients is serious misconduct which warrants disbarment.

ARGUMENT

ISSUE I

THE RESPONDENT WAS DULY NOTICED OF THE DISCIPLINARY PROCEEDINGS AGAINST HIM AND WAS GIVEN SUFFICIENT OPPORTUNITY TO PARTICIPATE IN THE PROCEEDINGS.

The respondent seems to believe that because he left the State of Florida, he should be afforded greater consideration in this disciplinary proceeding than those attorneys who stay in Florida and participate in the disciplinary process. In his Initial Brief, the respondent attempts to introduce his reasons for leaving Florida and moving to Nevada. (RB p. 3A). The Bar submits that the respondent's reasons behind his conduct are irrelevant to this proceeding. Had the respondent chosen to file pleadings or attend the final hearing, he could have presented such explanations to the Referee. The fact remains that the respondent left Florida with criminal charges pending against him while also abandoning his law practice and his clients.

Further, the respondent argues that because he never received the Bar's pleadings and was therefore unable to respond, he should be allowed to respond at this late date. (RB p. 4). However, it is the Bar's position that great efforts were made to locate the respondent and provide him with the notices and pleadings, particularly the Bar's Requests for Admission as the

following demonstrates:

On or about June 19, 1991, the Bar forwarded two copies of the formal Complaint filed in the Supreme Court of Florida to the respondent. One copy was sent certified mail to the respondent's mailing address at Post Office Box 8531, Reno, Nevada, 89507; and the other copy was sent certified mail to the respondent's record Bar address which was then 445 Douglas Avenue, Suite 2005-13, Altamonte Springs, Florida, 32714. The respondent apparently received one of the copies because he submitted his Answer to the Complaint on July 31, 1991. The respondent listed his address on his Answer to the Complaint as Post Office Box 1117, Deerfield Beach, Florida, 33433. Accordingly, on July 22, 1991, the Bar forwarded two copies of its Requests for Admission to the respondent. One copy was sent certified mail to the respondent's new record Bar address in Reno, Nevada. The other copy was sent certified mail to the respondent's new mailing address in Deerfield Beach, Florida. Both documents were returned to the Bar stamped "Unclaimed" by the Post Office. The Bar resent two additional copies of the Requests for Admission by certified mail to the respondent at his Deerfield Beach, Florida, address using the different zip code of 33441. Both documents were returned to the Bar stamped "Unclaimed" by the Post Office.

On October 3, 1991, the Bar forwarded copies of its Motion for Admission of Complainant's Requests for Admission to the

respondent by certified mail to both the Deerfield Beach, Florida, address and the Reno, Nevada, address. Copies of the various envelopes containing the Requests for Admission which were returned to the Bar stamped "Unclaimed" by the Post Office were attached as exhibits to the Motion for Admission of Complainant's Requests for Admission. On October 9, 1992, copies of the Notice of Final Hearing scheduled for December 2, 1991, were sent by certified mail to both the Deerfield Beach, Florida, address and the Reno, Nevada, address. The respondent apparently received at least one of the notices since he filed his Request for Telephonic Appearance at the Final Hearing on November 7, 1991.

It is apparent from the above that the Bar gave the respondent every opportunity to present his defense to the charges brought against him. Rule of Discipline 3-7.11(b), at page 64 of the Florida Bar Journal (September, 1991), states:

> Every member of The Florida Bar is charged with notifying the Florida Bar of a change of mailing address or military status. Mailing of registered or certified papers or notices prescribed in these rules to the last known mailing address of an attorney as shown by the official records in the office of the Executive Director of The Florida Bar shall be sufficient notice and service unless this Court shall direct otherwise.

Further, section (c) of Rule 3-7.11 states that actual service of process is not required to obtain jurisdiction over

respondents in disciplinary proceedings:

> [D]ue process requires the giving of reasonable notice and such shall be effective by the service of the complaint upon the respondent by mailing a copy thereof by registered or certified mail, return receipt requested, to the last known address of the respondent according to the records of The Florida Bar or such later address as may be known to the person effecting the service.

This Court has also given some direction as to whether the Bar's service of pleadings and notices on respondents is sufficient. In The Florida Bar v. Bergman, 517 So.2d 11 (Fla. 1987), a referee found the accused attorney guilty of neglecting legal matters and recommended a six month suspension. The referee also found that the Bar had effected proper notice and service of the complaint and other pleadings on the attorney. The court approved the referee's recommendation. Although no petition for review was filed by the attorney, he did file a motion for rehearing claiming that he had not received sufficient notice of the disciplinary proceedings. The attorney argued that had he known of the disciplinary charges against him, he would have presented a defense. The Court remanded the matter back to the referee to determine whether the Bar had provided sufficient notice to the attorney. The referee found, upon rehearing, that the Bar had effected proper service on the attorney by sending pleadings to his record Bar address pursuant to Integration Rule 11.01(2). (Subsequent to 1987, the Integration Rules were

amended to the Rules of Discipline, specifically Rule 3-7.11). Further, the referee found that the Bar had attempted to locate the attorney when it was learned that he was no longer at his record Bar address, but the attempts were unsuccessful. The attorney contended that the Bar should have made a more diligent attempt to locate him to which the referee offered the following opinion:

> It would be unduly burdensome to expect The Florida Bar to find every respondent who chooses to move and not notify The Florida Bar of his whereabouts. Further, if actual notice was made mandatory, a respondent could avoid prosecution simply by making himself unavailable to The Florida Bar's service, presenting an obvious threat to the protection of the public. (At p. 13).

The Court approved the Report of Referee on remand and ordered the attorney be suspended for six months and that he pay restitution to his clients.

Thus, it is the Bar's contention that everything required under the Rules has been done to forward copies of the pleadings and notices to the respondent. The respondent was put on notice in June, 1991, pursuant to his receipt of the Bar's Complaint containing the charges against him. The Bar went even further by remailing copies of documents in the hope that at least one would reach the respondent. However, it is not the Bar's responsibility to see that the respondent picks up his mail.

ISSUE II

THE REFEREE'S DENIAL OF THE RESPONDENT'S REQUEST TO APPEAR TELEPHONICALLY AT THE FINAL HEARING OR FOR A CONTINUANCE WAS WITHIN THE REFEREE'S DISCRETION.

The respondent states in his Initial Brief that he "should be afforded every opportunity to present his position and if he chooses to appear telephonically which admittedly will diminish his argument's effectiveness he should at least be heard". (RB p. 2). After the respondent received the formal Complaint in June, 1991, the Bar spent the following four months attempting to locate the respondent to serve further pleadings on him. Ultimately, the respondent received notice that the final hearing would be held on December 2, 1991. Thus, the respondent had advance notice of the final hearing date and he had sufficient time to make arrangements to be present in Florida for the final hearing.

The respondent did not file his Request For Telephonic Appearance At The Final Hearing until November 7, 1991, which the Referee denied by Order dated November 22, 1991. The respondent claims he was then unable to obtain a flight to Florida "because of holiday traffic on short notice". (RB p. 3B). It appears the respondent failed to make advance arrangements and just assumed the Referee would grant his request to appear at the final hearing by telephone. The Bar would also submit that the

respondent was not given short notice of the final hearing date as he had, at the very least, one month advance notice.

If, in fact, the respondent experienced difficulties in obtaining a flight due to holiday traffic, it would have been perhaps better for the respondent to request a continuance from the Referee in order to make timely travel arrangements. Although the respondent did ultimately request a continuance, it was not until the morning of the final hearing. The Referee, after conferring with Bar Counsel, denied the respondent's request because the respondent had not given the Referee sufficient reason why the matter should be continued. (T pp. 4-5). The Bar supports the Referee's opinion that the respondent had not given a good enough reason to continue the final hearing and submits it was well within the Referee's discretion to deny the respondent's last minute attempt to stay the disciplinary proceedings.

The respondent also argues that the Referee should have granted his request to appear at the final hearing telephonically because he "resides 2,800 miles from Florida, is duly employed, and has several personal obligations". (RB p. 2). The Bar further submits that it was also within the Referee's discretion to require the respondent to appear personally before him at the final hearing, particularly since the respondent voluntarily left Florida with criminal charges pending against him and he had

abandoned his clients who still needed his assistance. The respondent cannot justify why he left Florida and why he was unable to return for the final hearing. Therefore, the Referee should not have to conduct the final hearing at the respondent's personal convenience. The Bar would also suggest that perhaps the reason the respondent did not want to appear in Florida before the Referee was due to the outstanding arrest warrant still pending against him. That, in itself, should not warrant any special consideration by the Referee.

In summary, the fact that the Referee denied the respondent's requests to appear at the final hearing by telephone or for a continuance, did not deny the respondent a chance to defend himself against the disciplinary charges. The respondent gave up that ability himself by failing to file responsive pleadings or attend the final hearing and he cannot now remedy the situation he has placed himself in by attempting to present a defense at this late date.

ISSUE III

DISBARMENT IS THE APPROPRIATE DISCIPLINE GIVEN THE RESPONDENT'S FLEEING CRIMINAL CHARGES AND HIS MULTIPLE OFFENSES OF ABANDONING HIS CLIENTS.

Should this Court approve the Referee's findings of fact in this matter, then the next consideration would be whether the Referee's recommendation of disbarment as discipline is warranted. It is the Bar's position that the respondent engaged in egregious misconduct by leaving Florida with a DUI charge pending against him. Pursuant to an affidavit from a staff investigator with The Florida Bar, which was attached to the Referee's Report, that as of November 26, 1991, a warrant was still outstanding for the respondent due to his failure to appear and answer the DUI charge. The respondent states in his brief that "he will face this charge when he returns to Florida and offer his defense". (RB p. 3B). However, it does not appear the respondent has any intention of returning to Florida given that he states, "the respondent has no present plans to return to the practice of law in Florida, but desires to remain a member in good standing". (RB p. 1). All this aside, it is evident that although the respondent's alleged offense occurred on September 28, 1990, he has done nothing regarding the charge over the past year and a half and it does not appear he plans to do anything about it in the future. It should also be noted that the respondent has a prior disciplinary offense of a private reprimand in January, 1988, resulting from criminal charges. The

respondent was charged with resisting an officer without violence, a first degree misdemeanor and corruption by threat against a public servant, a felony. The respondent pled guilty to the resisting arrest charge and adjudication was withheld. The felony corruption charge was dismissed.

It is also the Bar's contention that the respondent's multiple incidents of abandonment of his clients is serious misconduct. Many of the clients who complained against the respondent need documents that were in the respondent's possession in order to proceed with their cases with other counsel. However, the respondent has done little if anything to return the documents to his clients. Although the clients paid him retainers, he has done little or no legal work on their behalf.

This Court has previously addressed the issue of lawyers who abandon their clients. In The Florida Bar v. Murray, 489 So.2d 30 (Fla. 1986), the accused attorney was charged in a five-count complaint with neglecting legal matters of clients thereby forcing the clients to seek other counsel. The referee found that the attorney had abandoned his law practice and had moved out of the State of Florida. Although evidence was presented that the attorney suffered from drug and alcohol problems, he was given the opportunity by the Bar to seek help for his addictions

and he failed to do so. The Court approved the referee's recommendation of disbarment. See also The Florida Bar v. Ribowski-Cruz, 529 So.2d 1100 (Fla. 1988).

In The Florida Bar v. MacPherson, 534 So.2d 1156 (Fla. 1988), the attorney was suspended for six months for abandoning his law practice and causing injury to his clients. The difference between this case and the instant matter is that MacPherson participated in the disciplinary proceedings. The referee found several mitigating factors on the attorney's behalf including his absence of a prior disciplinary record, lack of a dishonest or selfish motive, and that the attorney had experienced personal and emotional problems. The Court approved the referee's recommendations and as part of his rehabilitation, the attorney had to reimburse his clients and pay the Bar's costs in prosecuting the matter.

In The Florida Bar v. Tato, 435 So.2d 807 (Fla. 1983), the attorney was disbarred for accepting fees to perform legal work for clients and then doing little or no work on their behalf. The referee found the attorney had received actual notice of the disciplinary proceedings against him and failed to file responsive pleadings or attend the final hearing. Further, the referee considered the fact that the attorney had failed to participate in the disciplinary proceedings as an aggravating

factor. The Court approved the referee's findings and recommendations.

In another disbarment case, The Florida Bar v. Friedman, 511 So.2d 986 (Fla. 1987), the attorney was charged in a five count complaint with neglecting legal matters, trust account violations, and complete abandonment of his law practice causing neglect of many of his clients' cases. The attorney failed to respond to the Complaint or to the Bar's Requests for Admission and he did not appear at the final hearing. The referee, in recommending disbarment, offered the opinion that the attorney's "abandonment of his law practice evidenced a total disregard of the most fundamental obligation a lawyer owes to his client". (At p. 987). The Court approved the referee's findings of fact and recommendations.

The Referee in this case found the respondent guilty of five of the six counts against him. The Bar submits that the multiple offenses of the respondent make his misconduct even more egregious and this Court has stated that it will deal more harshly with cumulative misconduct than it does with isolated misconduct. See The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1982).

In The Florida Bar v. Mitchell, 385 So.2d 96 (Fla. 1980), the attorney was found guilty in eleven counts of failing to make

court appearances on behalf of clients, file claims, or prosecute appeals. In recommending disbarment, the referee indicated his recommendation was based upon:

> [T]hat each of the separate offenses and complaints proven by the Bar, were it [sic] an isolate incident, would perhaps justify only a public reprimand or suspension by the Supreme Court. But the totality and frequency of the different complaints evidence to me a reckless and wanton disregard by the respondent for the rights and needs of his clients without any mitigating or exculpatory circumstances. (At p. 97).

In approving the disbarment recommendation, the Court indicated that "the public has been seriously harmed by [the attorney's] unprofessional conduct". (At p. 97).

It appears from the above case law that disbarment is the appropriate discipline for the respondent in the instant matter. Additionally, under the Florida Standards for Imposing Lawyer Sanctions, Standard 4.41(a), a disbarment is appropriate when a lawyer abandons the practice and causes serious or potentially serious injury to a client; or Standard 4.41(b) which states disbarment is appropriate when a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client. Standard 4.41(c) which also pertains to this case states a disbarment is appropriate when a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

The Bar submits that the respondent's misconduct falls within the perimeters of the above standards.

In conclusion, it is the Bar's position that the respondent received notice of the disciplinary charges against him and failed to do anything until just before the final hearing. He is now improperly seeking to present his defenses to this Court in his Initial Brief. The Bar submits that the respondent was given every opportunity to submit his defenses prior to the final hearing, but he chose not to do so. The respondent was given ample notice of the final hearing date and he chose not to make arrangements to return to Florida to be present before the Referee. The respondent is presently a fugitive from the State of Florida and that fact, combined with the multiple disciplinary offenses he has been charged with warrants that he be disbarred from the practice of law.

It appears that although the respondent does not intend to practice law in Florida, he is seeking to avoid the stigma of a disbarment on his law career record. The Bar would further submit that it is now too late for the respondent to attempt to demonstrate that he has some concern for his career. It is unfortunate that the respondent does not have the same care or concern for his clients or for the laws of the State of Florida.

CONCLUSION

Based upon the foregoing, The Florida Bar respectfully requests that this Court approve the Referee's findings of fact and recommendations as to guilt and order the respondent be disbarred from the practice of law and that he be required to pay the Bar's costs in prosecuting this matter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Answer Brief and Appendix have been sent by regular U.S. mail to the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by regular U.S. mail to respondent, Charles G. DeMarco, at record Bar address, Post Office Box 8531, Reno, Nevada, 89507; a copy of the foregoing by regular U.S. mail to respondent, Charles G. DeMarco, at Post Office Box 1117, Deerfield Beach, Florida 33441; and a copy of the foregoing has been furnished by regular U.S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 30th day of April, 1992.

Respectfully submitted,

LARRY L. CARPENTER
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

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Respondent.
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APPENDIX TO COMPLAINANT'S ANSWER BRIEF

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

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Case No. 78,146
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REPORT OF REFEREE

I. **Summary of Proceedings**: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, a hearing was held on Monday, December 2, 1991, at the Indian River County Court House at 11:00 o'clock A. M.

Chronology of Pleadings:

June 19, 1991	Complaint filed by The Florida Bar
July 31, 1991	Petitioner's Answer filed
July 22, 1991	Request for Admissions filed by The Florida Bar
October 3, 1991	Motion for Admission of Complaintant's Request for Admission
October 9, 1991	Cause Set for final hearing on December 2, 1991
October 10, 1991	Order of Admissions for Respondent's failure to file answer of objection
November 22, 1991	Respondent's request to appear at final hearing by telephone
November 22, 1991	Order Denying Request to appear at final hearing telephonically
December 2, 1991	Respondent's request by telephone

for a continuance denied and the matter proceeded to final hearing on Counts I, III, IV, V, VI and VII, The Florida Bar announcing it was voluntarily dismissing Count II.

December 18, 1991 Final Affidavit of Costs

The following attorneys appeared as counsel for the parties:
For the Florida Bar - Larry L. Carpenter
For the Respondent - no appearance

II. **Findings of Fact as to Each Item of Misconduct of Which the Respondent is charged:** After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

As to Count I - Case No. 91-31,145 (18A)

1. That at all times relevant to Count I that the Respondent, Charles G. DeMarco, was a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating the Florida Bar, and that he resided in and practiced law in Seminole County, Florida.

2. That on September 28, 1990, Respondent was arrested in Osceola County, Florida, and charged with the crime of Driving While Under the Influence of Alcohol, a violation of Florida Statute 316.193 (1); Seminole County Court Case No. 90-TT-03-8891.

3. That the trial on the charge was set on February 4, 1991, and Respondent failed to appear resulting in the issuance of a warrant for his arrest.

4. That Respondent has fled the jurisdiction of the Court and is currently a fugitive from the State of Florida.

5. The affidavit of Assistant State Attorney, Walter E. Taylor, establishing these facts is attached hereto as page 1 of Florida Bar composite Exhibit #1.

As to Count III - Case 91-30,920 (18A)

6. That all times relevant to Count III the Respondent, Charles G. DeMarco, was a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the

Rules Regulating the Florida Bar, and that he resided in and practiced law in Seminole County, Florida.

7. That on about May, 1990, Respondent was retained by Robert McMaster to represent him as Plaintiff in a civil law suit, and Respondent received a $980.00 retainer.

8. That Respondent left town with the original paperwork turned over to him by the client, and the Client cannot proceed with his lawsuit with other counsel because he cannot afford to pay a new attorney and lacks his original documents which Respondent still has.

9. The uncontested affidavit of Robert McMaster is attached hereto as page 2 of Florida Bar Composite Exhibit #1.

As to Count IV - Case No. 91-30,937 (18A)

10. That all times relevant to Count IV that the Respondent, Charles G. DeMarco, was a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating the Florida Bar, and that he resided in and practiced law in Seminole County, Florida.

11. That on or about August 1, 1990, Respondent was retained by Joseph Boch to represent him in a controversy involving a vehicle purchased from Action Nissan, Kissimmee, Florida, and the Respondent received a $300.00 retainer from the client.

12. That in mid-October of 1990 Respondent misrepresented to the Client that his case was accepted to be heard under the Florida Lemon Law, when in fact no complaint had been filed by Respondent.

13. Respondent left town, and the client's paperwork is gone and the client received nothing of value for his $300.00 retainer.

14. The uncontested affidavit of Joseph Boch is attached hereto as page 3 of Florida Bar Composite Exhibit #1.

As to Count V - Case No. 91-31,074 (18A)

15. That all times relevant to Count V that the Respondent, Charles G. DeMarco, was a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating the Florida Bar, and that he resided in and practiced law in Seminole County, Florida.

16. That on or about November 10, 1990, Respondent was retained by one Andrew Desario to recover property taken from him, and Respondent was paid a $500.00 retainer.

17. Respondent drafted a complaint that contained incorrect information. When the Client attempted to contact Respondent about the errors, he discovered that Respondent had left town with his $500.00 retainer and has heard nothing from Respondent since.

18. The uncontested affidavit of Andrew Desario is attached hereto as page 4 of Florida Bar Composite Exhibit #1.

As to Count VI - Case No. 91-31,129 (18A)

19. That all times relevant to Count VI that the Respondent, Charles G. DeMarco, was a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating the Florida Bar, and that he resided in and practiced law in Seminole County, Florida.

20. There was no testimony offered by affidavit or otherwise that support the allegations against Respondent. The only basis upon which the Referee could make a finding would be from the Request for Admissions, Nos. HH through MM, and these form no basis upon which Respondent could be found guilty. There is no showing that the statements made by Respondent to Mr. Hurst were false or misleading, and Respondent owed no duty to keep his office open to Mr. Hurst. It is specifically noted that no attorney-client relationship existed between Respondent and Mr. Hurst.

As to Count VII - Case No. 91-31,198 (18A)

21. That all times relevant to Count VII that the Respondent, Charles G. DeMarco, was a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating the Florida Bar, and that he resided in and practiced law in Seminole County, Florida.

22. That on or about April 3, 1990, Respondent was retained to represent one Yvonne Jacobs in a dissolution of marriage action, and he was paid $500.00 to represent her.

23. That Respondent failed to diligently represent this client, and he closed his office and left for whereabouts unknown retaining several of his client's documents.

24. The affidavit of Yvonne Jacobs is attached hereto as page 5 of Florida Bar Composite Exhibit #1.

III. **Recommendation as to Whether or Not the Respondent Should Be Found Guilty:** As to each count of the complaint I make the following recommendations as to guilt or innocence:

As to Count I - Case No. 91-31, 145 (18A)

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations: Rule of Discipline 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; Rules of Professional Conduct 4-8.4(a) for violating the Rules of Professional Conduct; 4-8.4(b) for committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

As to Count III - Case No. 91-30,901 (18A)

I recommend that the Respondent be found guilty and specifically that he found guilty of the following violations: Rule of Discipline 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; Rules of Professional Conduct 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable request for information; 4-1.5(a) for charging a clearly excessive fee; 4-1.16(d) for failing to take reasonable steps to protect a client's interest upon termination of representation; 4-3.2 for failing to make reasonable efforts to expedite litigation consistent with the interest of the client; 4-8.4(a) for violating the Rules of Professional Conduct; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

As to Count IV - Case No. 91-30,937 (18A)

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations: Rule of Discipline 3-4.3 for engaging in conduct

that is unlawful or contrary to honesty and justice; Rules of Professional Conduct 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; 4-1.5(a) for charging a clearly excessive fee; 4-1.16(d) for failing to take reasonable steps to protect a client;s interest upon termination of representation; 4-3.2 for failing to make reasonable efforts to expedite litigation consistent with the interest of the client; 4-8.4(a) for violating the Rules of Professional Conduct; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

As to Count V - Case No. 91-31,074 (18A)

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations: Rule of Discipline 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; Rules of Professional Conduct 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; 4-1.5(a) for charging a clearly excessive fee; 4-1.16(d) for failing to take reasonable steps to protect a client's interest upon termination of representation; 4-3.2 for failing to make reasonable efforts to expedite litigation consistent with the interest of the client; 4-8.4(a) for violating the Rules of Professional Conduct; and 4-8.4(d) for engaging conduct that is prejudicial to the administration of justice.

As to Count VI - Case No. 91-31,129 (18A)

I recommend that the Respondent be found not guilty.

As to Count VII - Case No. 91-31,198 (18A)

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations: Rule of Discipline 3-4.3 for engaging in conduct unlawful or contrary to honesty and justice; Rules of Professional Conduct 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for filing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; 4-1.5(a) for charging a clearly

excessive fee; 4-1.16(d) for failing to take reasonable steps to protect a client's interest upon termination of representation; 4-3.2 for failing to make reasonable efforts to expedite litigation consistent with the interest of the client; 4-8.4(a) for violating the Rules of Professional Conduct; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

IV. **Recommendation as to Disciplinary Measures to be Applied**:

A. As to Counts I, III, IV, V, VII, I recommend that Respondent be disbarred pursuant to Rule 3-5.1(f), Rules of Discipline.

B. As to Count VI, having found Respondent not guilty no discipline is recommended.

V. **Personal History and Past Disciplinary Record**: After finding the Respondent, Charles G. DeMarco guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(4), I considered the following personal history and prior disciplinary record of the Respondent, to-wit:

Age: 45 years

Date Admitted to the Bar: October 18, 1973

Prior disciplinary convictions and disciplinary measures: On January 29, 1988 Respondent received a private reprimand after he plead guilty to Resisting an Officer and Officer Without Violence, a first degree misdemeanor. Adjudication was withheld on this charge and a felony charge of Corruption by Threat Against a Public Servant was dismissed.

Other personal data: No other personal data was determined because of Respondent's failure to appear before the Referee and be heard.

VI. **Statement of Costs and Manner in Which Cost Should be Taxed**: I find the following costs were reasonably incurred by The Florida Bar.

A. Costs incurred at grievance committee

	level as reported by bar counsel	$ .00
B.	Referee Level Costs	
	1. Transcript Costs	$ 80.65
	2. Bar Counsel/Branch Staff Counsel Travel Costs	$ 64.05
C.	Administrative Costs	$ 500.00
D.	Miscellaneous Costs	
	1. Investigator Expenses	$ 472.55
	TOTAL ITEMIZED COSTS	$1117.25

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent.

Dated the 24th of January, 1992.

S/ JAMES B. BALSIGER

Referee

Certificate of Service

I hereby certify on the _____ day of January, 1992 that a copy of the above report of referee has been served on:

Larry L. Carpenter, Bar Counsel, at 800 North Orange Avenue, Suite 200, Orlando, FL, 32801.

Charles G. DeMarco, Respondent pro se, at P.O. Box 1117, Deerfield Beach, FL, 33433 and at P.O. Box 8531, Reno, NV, 89507.

Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL, 32399-2300.

S/ JAMES B. BALSIGER

Referee