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CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Case No. 78,146

Complainant,

vs.

CHARLES G. DeMARCO, Jr.,

Respondent.

_____ /

RESPONDENT'S INITIAL APPELLATE BRIEF

The RESPONDENT CHARLES G. DeMARCO files this Intial Appellate Brief in his behalf whereby he appeals the Report of Referee Honorable James B. Balsiger dated January 24, 1992 on a disciplinary hearing hearing held in the Indian River County Courthouse on December 2, 1991 at 11:00 A.M.

DATED this 10th day of April, 1992.

CG De Marco
Charles G. DeMarco, Jr.
P.O. Box 8531
Reno, Nevada 89507
1-(702)-746-3554

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STATEMENT OF THE CASE AND FACTS

The Respondent was admitted to the Florida Bar in October, 1973 and had been a member in good standing from that date until the filing of this matter on or about June 19, 1991 by the Petitioner Florida Bar. The Respondent's Bar Number is 161396. The Respondent had a successful and active sole practitioner law practice in Altamonte Springs, Florida until the offices were closed on or about November 25, 1990. The Respondent has not practiced law since that date. The Respondent is now a resident of Reno, Nevada. The Respondent has no present plans to return to the practice of law in Florida but desires to remain a member in good standing. The Complaint filed by the Florida Bar alleged seven counts of breach of the Rules of Discipline by Respondent. The Respondent filed an Answer to the Complaint on July 31, 1991. The Case record shows that the Complainant filed Requests for Admission by Respondent on July 22, 1991. These Requests were sent by regular mail to the Respondent's Bar Address in Reno, Nevada but were not received by Respondent and therefore never answered. These Admissions were considered by the Referee in his Report. The Cause was set for final hearing on December 2, 1991 at the Indian River Courthouse. The Respondent made a request to appear telephonically which request was denied by the Referee. The Respondent was unable to appear personally at the final hearing.

ARGUMENT WITH REGARD TO
EACH ISSUE

1. The Counts that remain against Respondent are I,III, IV, V and VII. The Respondent's position in opposition to these Counts is stated in his Answer and more particularly in his Verified Answer and Objections to Report of Referee dated February 8th, 1992 a true copy of which follows immediately hereafter and which the Respondent requests be made part of this brief.

2. The Respondent argues that the Referee should have allowed the Respondent to appear telephonically. In this type of action the Respondent should be afforded every opportunity to present his position and if he chooses to appear telephonically which admittedly will diminish his arguement effectiveness he should at least be heard. The Respondent resides 2800 miles from Florida, is duly employed and has several personal obligations. After the denial the Respondent did attempt to fly to Florida for the hearing but was unable to do so mainly due to holiday traffic.

3. The Respondent if allowed to be heard by the Referee was prepared to present evidence in the alternative to his other defenses of physical illness pursuant to RPC 3-7.13.

4. The Requests for Admission in this type of action should have been sent Return Receipt Requested to assure receipt by the Respondent.

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

CHARLES G. DeMARCO,
Respondent.

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

VERIFIED ANSWER AND OBJECTIONS TO
REPORT OF REFEREE

Respondent CHARLES G. DeMARCO after being duly sworn submits the following Verified Answer and Objections to Report of Referee Honorable James B. Balsinger dated January 24, 1992 and states as follows:

1. That he received a copy of the report on February 3, 1992 without supporting affidavits by U.S. Mail.

2. That he has been a member in good standing of the Florida Bar since 1973 and has been attorney for at least 1,500 clients in various matters to their satisfaction.

3. That for reasons unknown to him the Requests for Admissions filed by The Florida Bar on July 22, 1991 were never recieved by him and therefore never admitted.

4. That on November 25, 1990 he was forced to close his sole practioner law practice due to severe mental stress and physical disability, to wit; a 4" wide by $\frac{1}{2}$ " deep laceration suffered to his right knee which prevented him from walking and later became infected. For health reasons he relocated to Sparks, Nevada where he has family. At this time he has fully recovered from these disabilities. It is his opinion that the charges herein are due to his sudden relocation which was beyond his reasonable control.

5. That he attempted to appear by telephone to defend himself at the final hearing but was denied by the Referee. He after such denial made a bona fide attempt to appear in person

but was unable to do so because of holiday air traffic on short notice. He telephonically requested a continuance from the Referee so he could personally appear but was denied same.

6. As to the specific Counts he states as follows:

A. Count I - Case No. 91-31,145 (18A) He has plead not-guilty to this charge for which he a meritorious defense. He was granted a continuance from the original trial date of December 7, 1990 to his aforementioned physical condition. He was never notified of the new trial date of February 4, 1991. He will face this charge when he returns to Florida and offer his defense.

B. Count III - Case No. 91-30,920 (18A) It was his office policy to submit copies of all pleadings and correspondence relevant to the case to the client which was done. This case including the original alleged contract is a matter of public record, copies of which are readily available. The fee paid by the client which to his recollection was less than \$980 was more than reasonable for services rendered.

C. Count IV - Case No. 91-30,937 (18A) Copies of all correspondence and original documents were given to client. A complaint was filed both in Tallahassee and Orange County pursuant to the Florida "Lemon Law".

D. Count V - Case No. 91-31,074 (18A) The client has all necessary information and paperwork to file this action with another attorney. The complaint drafted was proper but unacceptable to client therefore he is willing to refund the fee paid by client.

E. Count VII - Case No. 91-31,198 (18A) He expended numerous time on this divorce case well equal to the \$500 fee paid by the client. He was informed by the client that the parties had reconciled at which time he closed his file.

COUNTY OF WASHOE)

STATE OF NEVADA)

Personally appeared before me the undersigned authority Charles G. DeMarco who after being duly sworn testified and stated that the preceeding Verified Answer and Objections were true and correct.

Dated this 2nd day of February, 1992.

IS/
Notary Public

The Respondent Charles G. DeMarco therefore requests that he not be disbarred as recommended by the Referee and suggests the following disciplinary action subject to the approval of this Court.

- A. Suspension for a reasonable period of time.
- B. Appearance in person before a panel appointed by the Bar to ascertain his recovery from his mental and physical disabilities and fitness to practice law.
- C. Payment of his past due Bar dues plus penalties which have not been paid pending this matter.
- D. Payment of itemized costs of \$1117.25.
- E. Payment of a full refund of \$500.00 as to Count V to client Andrew Desario.
- F. Provide copies of the complete Court file to Robert McMaster as to Count III.

Dated this 8th day of February, 1992.

IS/
CHARLES G. DeMARCO
Respondent
P.O. Box 8531
Reno, Nevada 89507
1-(702)-746-3554
Bar # 161396

I HEREBY certify that a true copy of the foregoing was sent by U.S. mail on the 8th day of February, 1992 to Larry L. Carpenter, Esq., 800 North Orange Ave., Suite 200, Orlando, Fl. 32801 and Hon. James B. Balsiger, 224 Indian River County Courthouse, 2145-14th Ave., Vero Beach, Florida 32960.

IS/
CHARLES G. DeMARCO

CONCLUSION

The Respondent requests that either (a) the Report of the Referee be Overruled and the Complaint Dismissed (b) the Report of the Referee be remanded so that the Respondent can appear in person or otherwise in his defense including the Respondent to be allowed to respond to the Petitioner's Requests for Admissions, or (c) the Respondents suggestions for disciplinary action as stated on Page 30 of this brief be ordered in final resolution of this matter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Initial Appellate Brief of Respondent was sent by Federal Express to Sid J. White, Clerk of The Supreme Court of Florida Supreme Court Building, 500 South Duval Street, Tallahassee, Florida and a true copy thereof sent by U.S. Mail to Larry L. Carpenter, Esq., 800 North Orange Ave., Suite 200, Orlando, Florida this 10th day of April, 1992.



Charles G. DeMarco, Jr.
P.O. Box 8531
Reno, Nevada 89507
1-(702)-746-3554
Fl. Bar #161396