IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR, Complainant-Appellant, v. RONALD T. SPANN, Respondent-Appellee.	Supreme Court Case Nos. 79,345; 81,631; and 83,455 The Florida Bar File Nos. 89-52,306(17D), 90-50,701(17D), 93-50,112(17B), 93-50,228(17B), and 94-50,282(17B)

THE FLORIDA BAR'S REPLY AND ANSWER BRIEF

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SUMMARY OF ARGUMENT

At issue in this appeal is whether the referee's recommended sanction of two consecutive three year suspensions is warranted for a lawyer who engages in a serious pattern of misconduct, which wrongdoing includes the very serious charges of misrepresentation to a court, assisting in the forgery of a client's signature and then fraudulently notarizing same. The respondent contends that his conduct only warrants a public reprimand. The bar disagrees with both the referee and the respondent and has asked this Court to disbar the respondent.

Disbarment, in this case, is appropriate because of the breadth and magnitude of respondent's violations. This respondent comes before this Court having previously been disciplined twice and now awaits this Court's "final decision with regret" (Respondent's initial brief at 22) because he stands convicted of twenty counts of unethical activity spread over five client complaints. It is the bar's position that the Champagne matter, standing alone warrants disbarment and that all the other misconduct, coupled with the aggravation in this case, warrant this Court to enter an order of disbarment.

ARGUMENT

I. THE CUMULATIVE MISCONDUCT IN THIS CASE WARRANTS DISBARMENT.

As the bar stated in its initial brief, serious misconduct warrants serious sanction by this Court. The referee has recommended two consecutive three year suspensions and the bar has urged this Court that disbarment is the only appropriate sanction for this case. Incredulously, respondent on the other hand, asserts that he should only be publicly reprimanded for the twenty counts of misconduct found by the referee.

While the bar in its appeal only seeks the Court to impose a stronger sanction, respondent on his cross appeal seeks this Court to overturn the referee's recommended sanction and some or all of the referee's factual findings.[1] A referee's report caries a strong presumption of correctness and as such these factual findings "should be upheld unless clearly erroneous or without support in the record". The Florida Bar v. Wasserman, 654 So. 2d 905, 906 (Fla. 1995); The Florida Bar v. Wheeler, 653 So. 2d 391

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[1] The respondent, in his briefs, is unclear on which factual findings and recommendations of guilt that he takes issue with. However, respondent does provide a short list, at page 1 of his initial brief, of eleven paragraphs of the report of referee which he disagrees with, but he does not explain why he is contesting same.

(Fla. 1995). "Where the referee's findings are supported by competent, substantial evidence, this Court will not reweigh the evidence and substitute its judgement for that of the referee." The Florida Bar v. Garland, 651 So. 2d 1182, 1183 (Fla. 1995). The respondent has failed to demonstrate how the challenged factual findings of the referee are "clearly erroneous or without support in the record" and therefore his appeal must fail.

A. Champagne.

Respondent contends that his ethical misdeeds on the Champagne case were not intentional and based upon his misunderstanding of the appropriate course of conduct to follow when a client disappears prior to the conclusion of a settlement. Respondent's basic premise, that his acts were unintentional, is seriously flawed.

1. THE FORGERY.

The best evidence of an intentional act is respondent's instructions to Ganz, his employee, to sign Champagne's name to the release. He had Ganz do this not once but twice.[2] He also had Ganz do each signature slightly different, with the second signature revealing Ganz's initials next to Champagne's signature

[2] See PTS tabs H and I.

to indicate someone else signed Champagne's name. TT 185-187. Respondent told Ganz to sign Champagne's name as he knew he could not notarize his own signature. TT 188.

Respondent contends that he was able to execute the release because his retainer agreement contained a limited power of attorney to accomplish this task. However, all one need do is read the retainer agreement (PTS tab A)to see there is no such provision. In addition, upon examination by the referee, the following exchange was had on the record:

> THE COURT: I want you to look at that again and I want you to look at me and tell me you can consider that a limited power of attorney.
>
> MR. SPANN: I agree that it's not a full --
>
> THE COURT: That is not what I asked you. I want you to look at me and tell me if you truly believe that that is a limited power of attorney.
>
> MR. SPANN: Not in the standard form, no, I do not truly believe that it is . . . (94TT p.82, l.12-23).

Thus, during the trial, respondent admitted that his retainer agreement did not provide for a limited power of attorney.

Respondent contends that he (or more particularly Ganz) sought counsel from The Florida Bar's ethics hotline and that he relied upon same. But if one was to review respondent's (94TT 26-27) and

Ganz' (TT 173 & 178) testimony on this point, neither witness testified that the ethics hotline advised them that they could forge Champagne's name to the release.

Respondent attempts to liken his instructions to Ganz to forge Champagne's signature to the Fatolitis decision. The Florida Bar v. Fatolitis, 546 So. 2d 1054 (Fla. 1989). Respondent's reliance is misplaced. While the lawyer in Fatolitis was charged with forging the client's wife's signature as a witness to her husband's last will and testament, the referee ruled, and this Court found, that the client's wife was present at the time of the signing and that the lawyer signed on the wife's behalf because the woman had just recently burned her hand and was unable to sign. In the case at hand, Champagne was not present, had not given the respondent permission to sign on his behalf and in fact did not even know that his name had been signed to the release until well after the fact. This Court has consistently held that the forging of a signature on a document and the use thereof is a very serious offense. See for example The Florida Bar v. Dubow, 636 So. 2d 1287 (Fla. 1994) [Lawyer disbarred for, among other things, fraudulently notarizing and recording a deed that contained a negligently obtained forged signature.]; The Florida Bar v. Salnick, 599 So. 2d 101 (Fla. 1992) [Disbarment warranted for lawyer who used a judge's signature stamp

to create fictitious final judgement.]; The Florida Bar v. Gold, 203 So. 2d 324 (Fla. 1967) [Forging names to a satisfaction of mortgage, witnessing the forgery, securing another witness to the forgery, notarizing same and then converting $5,000.00 which was paid to satisfy the mortgage resulted in disbarment.].

2. FELONIOUS NOTARIZATION.

Respondent argues that it is improper for the referee or the bar to refer to his actions in notarizing a known forgery to be felonious. His basic premise is that since he plead nolo contendere to a misdemeanor in relation to this particular use of his notary seal, that the bar should not have been allowed to convince the referee that his actions were in fact felonious. To take it one step further, his argument is that absent a felony conviction[3], the bar should not be able to demonstrate the criminality of his knowing notarization of a forgery. This argument does not make sense. The grievance committee charged him with and the bar plead in its complaint that respondent's misdeeds constituted a violation of Fla. Stat. Sec. 117.09 (2)(1989). Based upon the evidence adduced at trial, the referee agreed. The mere

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[3] There has been no felony conviction and therefore respondent's reliance upon the provisions of R. Reg. Fla. Bar 3-7.2 [the felony conviction rule] is misplaced.

fact that respondent was able to secure a favorable plea bargain[4] from the state attorney's office in no way limits what the bar has charged and proven to the referee's satisfaction.

Respondent argues that his actions warrant only a public reprimand citing to The Florida Bar v. Bell, 493 So. 2d 457 (Fla. 1986) and The Florida Bar v. Day, 520 So. 2d 581 (Fla. 1988). But, as the bar points out in its initial brief, these cases stand for the proposition that when a lawyer notarizes a true signature outside the presence of that individual, they should be publicly reprimanded. Respondent's actions in notarizing a known forgery is extremely severe misconduct and not even close to the Bell and Day decisions.

3. FRAUD ON THE COURT.

The referee found that respondent perpetrated a fraud on the court because he sought court approval to deposit monies into the court registry, gave Judge Ross, the trial judge, the original release that did not have Ganz's initials thereon (PTS tab H) and did not reveal that respondent told his employee, Ganz, to affix Champagne's signature thereon. RR 8-9. Judge Ross, when answering

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[4] Respondent's comment that he plead to a now repealed misdemeanor statute does not change what the bar presented and proved.

the question of whether he would have approved of a lawyer signing his name to a release and then notarizing same, testified, through transcript: "Oh, I sure hope not, unless I had a total brain shut down, and obviously this sometimes occurs, but I sure hope not. The answer to your question is no." TFB 3 at 23-24[5].

Respondent contends that Judge Ross could not have been mislead as he gave the judge his whole file, but we truly do not know what was in that file. Judge Ross testified, while looking at the original court file, that the court file only contained the original of the release which does not bear Ganz's initials. See TFB 3 at 22. This is contrary to respondent's assertions in his brief that the referee had no support for this allegation.

Respondent argues that his petition to deposit Champagne's money into the court registry (PTS tab J) reveals that Champagne did not sign the release. Respondent points to paragraphs 5 and 6 of that pleading to show that he told the trial judge that the release came in on a certain date and that he had been unable to contact that client since that date. However, the pleading does not reveal that the respondent instructed his employee to forge

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[5] The total transcript of the proceedings held before the grievance committee on the Champagne matter was introduced as TFB exhibit 3. This includes the testimony of Keith Kochler, the attorney for Southern Bell.

Champagne's signature on the release and that respondent had notarized same to make the release look like the client had signed. Despite respondent's claim that the two orders entered by Judge Ross (PTS tabs K & L)"clearly indicate his knowing approval of what respondent did before he did it" (respondent's initial brief at 8), these two orders in no way ratify respondent's decision to have Ganz forge Champagne's signature and then feloniously notarize same.

4. EXCESSIVE FEE.

The referees has found that respondent collected a clearly excessive fee. RR 9-10. The most crucial element of this violation is that respondent's retainer agreement (PTS tab G) called for a 40% contingent fee "of the award under $1 million after a lawsuit is filed" in addition to the $1,000.00 he was paid as a nonrefundable retainer on this case. Respondent does not refute that he took the $1,000.00 and a 40% contingency fee. In order for respondent to prevail on this count, respondent must convince this Court that the uncontested petition for order to deposit funds into the court's registry (PTS tab J) is a "lawsuit" which would trigger the 40% contingency fee. The referee did not find that the petition was a lawsuit and neither should this Court. RR 9.

When you reach the inescapable conclusion that no suit was filed, you then must determine if any contingent fee would have been appropriate. This Court has consistently held that a fee agreement should be strictly interpreted and when there are ambiguities, those ambiguities are to be resolved against the drafter of the retainer agreement. Reid v. Johnson, 106 So. 2d 624 (Fla. 3rd DCA 1958). The plain language of this retainer agreement, however, reveals that the only time a contingent fee is allowed is when there is a lawsuit filed. As no such lawsuit was filed, respondent is only entitled to the $1,000.00 nonrefundable retainer that he previously accepted. The referee correctly points out, and the respondent does not refute, that respondent took $5,206.00 in fees on this case, while his client was tendered a check in the amount of $2,257.32.

Respondent contends, in his initial brief at page 10, that Champagne owed him fees on another case and that he therefore could not have taken an excessive fee on this case. Even if he was truly owed money from another matter, respondent can not now claim that his careful and precise calculation of a contingent fee on this case is merely to be accepted as an offset against unquantified fees from another matter.

The last point on fees raised by respondent is equally without

merit. Respondent in his initial brief states: "Notably, the bar counsel conceded that the check signing and the respondent fee arrangement with Champagne was not being 'challenged' any longer" and then makes reference to two different portions of the trial transcript. All one need do is review the trial transcript (TT 168-169 and 94TT 90) and it is clearly discernable that the bar never abandoned the excessive fee count and that the discussion with the referee focused on whether or not respondent had signed Champagne's name to the settlement draft. What the bar clearly said was that it was not pursuing any allegation related to that settlement draft.[6]

B. Amburgey.

Once agin respondent's theory of defense is that all of his misdeed are unintentional and that the misdeeds are either caused by his employees or by information imparted to him by his employees. Respondent first tries to blame everything on his associate, Steven Marks, Esquire. Yet, if one is to examine the documentary evidence in this case, it is evident that (1) Amburgey signed a retainer agreement (PTS tab A) with Spann & Associates and

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[6] This was primarily due to the bar's belief that the settlement funds were wired into respondent's trust account to avoid the need to sign a settlement draft. See PTS tab M which is Ganz's letter requesting such a wire transfer.

the respondent is the sole partner is said firm; (2) the court order approving the retainer agreement (PTS tab B) clearly denotes that said retainer agreement is approved and that all checks are to be made payable to and remitted to "Ronald Spann, Esquire, Attorney at Law, as representative of the claimant"; (3) the motions requesting payment of fees (PTS tab C and E) are executed by respondent; and (4) the orders related thereto are directed to respondent and discuss payment to respondent's firm. While respondent attempts to make a great issue out of the fact that Marks, the associate initially handling this file, was not called by the bar, the respondent chose not call him or even place him under subpoena to testify in this matter.[7]

1. VIOLATION OF COURT ORDER AND STATUTE[8].

The bar's initial brief carefully documents respondent's precise instructions for the handling of Amburgey's trust monies, which instructions flow from the various court orders and the relevant statutes. Respondent seems to claim in his briefs that he

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[7] Respondent also contends that he was not responsible for this file until May 15, 1989, but respondent's own letter of February 3, 1989 states that Marks left the firm on February 3, 1989.

[8] While the referee found respondent had violated the court's orders and the applicable statutes, he notes that the acts were "not punishable". In the bar's view these violations are sanctionable by this Court.

misunderstood the unambiguous language of the orders and the statutes. Respondent agrees with the bar that the crucial aspect of this case is what do the orders require. Thus, respondent's argument, taken to its logical conclusion, is that if the Court accepts the referee's ruling that the orders are clear (RR 2-3), then this Court must accept that he is guilty of the rule violations found by the referee.

2. FRAUD ON THE COURT.

The referee found that respondent committed a misrepresentation by omission by failing to tell the court that he had previously withdrew and later restored the monies that he was petitioning the court to remove from his trust account. As the referee noted (RR 3) this is not unlike the unethical activity found in The Florida Bar v. MacMillian, 600 So. 2d 457 (Fla. 1992).

Respondent argues that since he put the money back into a trust account after the bar informed him that it should not have been removed, he should not receive the suspension that was recommended in MacMillian. However, respondent fails to point out that in MacMillian, the lawyer removed trust monies, restored them, reported his unauthorized use of the trust monies to his client after he had returned same to trust. In the case at hand, our respondent did not do anything until he knew that the bar was

interested in his unauthorized withdrawals.

3. EXTORTION.

Respondent attempts to disavow his knowledge and authorship of his February 3, 1989 letter (PTS tab F) by claiming that the signature therein is not his. During the trial Amburgey testified (TT 20-22) that the respondent discussed the same issues (agree to respondent's demand for a power of attorney or no further checks would be sent to him) found in the February 3, 1989 letter with him prior to his receipt of the February 3, 1989 letter. Respondent does not challenge this testimony.

C. Jenkins.

The Jenkins complaint encompassed three distinct counts. The referee found respondent guilty of two counts of misconduct (having a penalty clause in his fee agreement and allowing a nonlawyer to engage in the unlicensed practice of law by sending a letter without revealing his nonlawyer status) and the bar abandoned a third count. Respondent claims in his brief that the bar abandoned all three counts. This is not accurate and is not supported by the report of referee (RR 11) or the record in this case.

D. Reese.

The Reese complaint encompasses four counts of misconduct, the gist of which is that Reese consulted with the respondent, but did

not retain him. RR 12. Notwithstanding this fact respondent rendered legal services on Reese's behalf and shared with third parties the facts and circumstances of Reese's potential wrongful termination case. RR 12. Respondent billed for these services and was even charging interest on the bill until the time that Reese filed a complaint with the bar. TT 106-109. Reese testified[9] that respondent and one of his staff members placed phone calls to his home and told him that unless he drops his bar complaint the respondent would continue to enforce his bill for services rendered and that if he dropped his complaint his bill would be written off. RR 12-13.

Respondent admits that he worked on Reese's case, that Reese never signed a retainer agreement and that Reese never called or responded to Spann in any way after the initial consultation. Respondent argues that he was retained and that any work he did was authorized by Reese. The referee most heartily disagreed and the level of this disagreement is evidenced by the referee's questioning of respondent in this regards. See TT 106-109.

The more serious aspect of this complaint is respondnet's

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[9] Respondent complains that summary judgement should not have been entered on the Reese complaint. Summary judgement was not entered and the case was tried, with Reese and respondent giving testimony on this matter.

unethical attempt to force Reese to drop his bar grievance. The respondent's only defense is that he had previously talked to a bar counsel and that bar counsel had informed him that there was no prohibition against a respondent and a complainant attempting to resolve the complaint amongst themselves. See TT 114 & 177. This is a far cry from carte blanche permission to force a complainant to drop a grievance or expect to be sued for past due fees that may not even have been owed. In The Florida Bar v. Fitzgerald, 541 So. 2d 602 (Fla. 1989), this Court found that an agreement between a lawyer and a client not to file a grievance was void as against public policy and presuamably found that it was unethical for an attorney to engage in these types of agreements. Respondent's conduct in his attempt to force Reese to drop his complain is much more egregious than that found in the Fitzgerald secrecy agreement.

E. Star Lite Pools.

The issue in this case is very simple. Respondent allowed two of his nonlawyer employees to write letters to one particular client in which they advised that client on the applicability of the statute of limitations to their cause of action, while also advising the client that respondent's firm was no longer pursing the client's matter. RR 13. The only matter in issue was the legal conclusion of whether these letters violated R. Reg. Fla.

Bar 4-5.3(a)&(c) and 4-5.5(b). Because there was no issue of material fact and there was only an issue of law to resolve, the referee granted summary judgement in the bar's favor. Respondent's argument on why he believes that summary judgement should not have been granted on the Star Lite Pool case includes references to facts and potential testimony that has nothing to do with the August 16, 1993 and August 18, 1993 letters at issue. For example, the letter sent by the paralegal Medrano concerns the Jenkins and Reese cases and respondent's reference to the author of these letters not disclosing their status is incorrect as both letters indicate that the author was a law clerk. It is the content of the letter and not the manner in which it was signed that results in the finding of guilt on this case.

F. Procedural issues.

1. LACHES.

Respondent opens his brief with a comment that the Bar has mislead this Court into believing that at least one of the cases covered by the referee was stayed at the respondent's request due to a then pending related criminal case. See respondent's reply brief at 1. However, all one need do is look at the orders and pleadings of record in this case and one would find the referee's orders of September 14, 1992, December 3, 1992 and October 1, 1993,

and respondent's motion to continue dated May 15, 1992. Of particular interest is the December 3, 1992 order in which the exact reason for the stay (respondent's ongoing criminal case) is discussed and that the stay is to prevent respondent from having a self incrimination dilemma. The stay was lifted on October 1, 1993, which is after the date that the criminal trial was finally resolved. The first day of trial was held two months later on December 3, 1993. The last case to be resolved is the Star Lite Pools matter in which summary judgement was granted in September of 1994.

The seminal case in bar laches is The Florida Bar v. McCain, 361 SO. 2d 700 (Fla. 1978). The Court in McCain ruled that:

> A suit is held to be barred on the ground of laches where, and only where, the following appear; (1) Conduct on the part of the defendant, or one under whom he claims, giving rise to the situation which complaint is raised; (2) delay in asserting the claimant's rights, the complainant having knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute the suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he basis his suit; and (4) injury or prejudice to the defendant in the even relief is accorded to the complainant. All these elements are necessary to establish laches as a bar to relief. Id., at 705-706.

Ignoring for the moment that at least a year of the delay in

this case is caused by the respondent[10], there still has been no showing by the respondent that he has met each of the elements of the laches defense. In truth and in fact he is unable to do so, because he is the source of at least one year of the delay and because he can not demonstrate that he lacked the requisite notice to preserve the testimony that he is allegedly unable to secure when the case was completely tried (within seven months of the stay being lifted). McCain; The Florida Bar v. Lipman, 497 So. 2d 1165 (Fla. 1986).

In any event, laches is an affirmative defense that must be plead in the answer and respondent has failed to do so. Cook v. Central Fla. Flood Control Dist., 114 So. 2d 691 (Fla. 1959). He can not raise this affirmative defense for the first time on appeal.

2. TESTIMONY.

Respondent's briefs are permeated with his claim that he was unable to present certain witnesses that he wanted to testify in this case and even goes so far as to bring this Court's attention to certain parts of the transcript where he makes reference to

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[10] If the delay is caused by the respondent, the defense of laches does not apply. The Florida Bar v. Marks, 492 So. 2d 1327 (Fla. 1986).

these witnesses. Some of the citations to the transcript name individual witnesses, while other references are vague and ambiguous. In any event, respondent misses the most important reference to the transcript from the May 6, 1994 trial date[11] wherein the following exchange occurs at the conclusion of that day's testimony:

> THE COURT: I just was concerned because either your letter or your client indicated that he didn't have a full opportunity to present everything. Are you finished with everything you wanted to present?
>
> RESPONDENT: Yes, you honor. 94TT 91, l.6-12.

Now that the referee has rendered his report wherein he recommends a significant sanction and the bar is seeking to increase that sanction, it is easy for respondent to complain. Perhaps, if he truly desired further testimony, he would have or should have made application to the referee somewhere between the time of the final hearing date and the rendition of the report of referee.

3. FIFTH AMENDMENT.

The respondent complains that the bar and the referee have

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[11] Which hearing was solely held to allow respondent to present the testimony he thought he was unable to present at the first hearing date.

sough to discipline him because at one time in this disciplinary process he decided to assert his fifth amendment privilege against self incrimination. During the discussion of this allegation, respondent makes reference to the count of the complaint wherein the bar alleged that he had failed to honor a grievance committee subpoena duces tecum by failing to appear for a grievance committee hearing and/or to produce the records covered by the subpoena and affirmatively asserts (like he did at the trial) that he was present before the committee on the date and time required under the subpoena[12]. The referee did not find respondent guilty of failing to honor the subpoena, so respondent's argument that he is now being disciplined for invoking his constitutional protections is erroneous.

4. COSTS.

The respondent next complains that the costs that have been assessed against him are inappropriate. The decision to award costs is solely in that referee's sound discretion with the limitation that the type of cost being awarded must be delineated in R. Reg. Fla. Bar 3-7.6(o). The referee's award of costs will

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[12] But see TFB exhibit 3, the transcript of the grievance committee hearing in question, and in particular the discussion between counsel on why respondent did not appear and was not going to appear.

not be reversed unless the referee abused that discretion. R. Reg. Fla. Bar 3-7.6(o)(2); The Florida Bar v. Chilton, 616 So. 2d 449 (Fla. 1993).

Respondent's attack on the costs awarded in this case does not challenge the dollar amount of the particular cost or claim that the types of costs awarded are not in R. Reg. Fla. Bar 3-7.6(o), rather he argues for various reasons that certain itemized costs should not have been awarded. The first such cost that respondent takes issue with is the award of audit costs. Respondent does not refute that an audit was done or that the amount is improper. Respondent's argument is that since the bar's auditor did not testify, the bar can not recoup this cost. Respondent cites to The Florida Bar v. Kyle, 530 So. 2d 918 (Fla. 1988), to support his position. However, in Kyle the Court affirmed the award of audit costs because they saw a nexus (as did the referee) between the audit and the violations proven at trial. The parties joint pretrial stipulation at pages two through four list certain disputed facts concerning the Amburgey trust account transactions. The Bar's auditor was prepared to testify on these disputed facts, but prior to the auditor's actual testimony, respondent agreed to stipulate to that testimony as an agreed fact. Thus respondent wants this Court to disallow a reimbursement for the bar's audit

solely because he decided to agree to stipulate that the auditor's work product as being accurate. The trial transcript at 94TT 88-89 reflects that the issue of the audit cost was presented to the judge and that his report, entered after the trial, properly awards the bar its audit costs.

The respondent next asserts that the $500.00 awarded as an administrative cost[13] for each case prosecuted by the bar should be disallowed, as he claims that he prevailed on some two of the cases. This is factually inaccurate. The Court is directed to the report of referee wherein the referee found respondent guilty of the bulk of the Amburgey complaint, all but one count of the Champagne complaint, two of the three Jenkins counts, and all of the Reese and Star Lite Pools complaints.

Since the respondent is factually incorrect on the administrative charges and since he has failed to demonstrate an abuse of discretion in the award of audit costs, this Court should affirm the award of costs in the bar's favor.

G. Sanctions.

The parties could not be farther apart on the issue of

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[13] The administrative cost figure at the time of trial was $500.00. This amount has since been changed to $750.00, but the bar deems it appropriate that the administrative charge be assessed at $500.00 for this matter.

sanction. The referee has recommended two consecutive three year suspensions, the bar is urging this Court to disbar the respondent and the respondent has the audacity to ask for a public reprimand. The bar, in its initial brief, sets forth its case for disbarment and will not restate it in its totality here. However, certain matters need to be highlighted.

As in every disciplinary action, it is important for a referee, and this Court to weigh the aggravation and mitigation present in the case against the severity of the ethical misdeeds.

1. AGGRAVATION.

The Bar in its initial brief pointed out that the referee found the following aggravating factors (RR 15):

> a. Prior disciplinary offenses (a 1987 private reprimand and a 1993 admonishment - both related to excessive fees and retainer agreements);
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> b. Selfish motive (collecting monies prior to his entitlement and overcharging Champagne);
>
> c. Substantial pattern of misconduct and multiple offenses, and
>
> d. Substantial experience in the practice of law (admitted in Florida in 1984 and in New York and Washington, D.C. in 1977).

The respondent attempts to minimize the fact that he has been disciplined twice, but otherwise makes no comment on this

aggravating factor. As to the selfish motive, he attempts to assert that everything he did was an attempt to benefit his client. The bar is at a loss to discern how the taking of excessive fees and the taking of other monies prior to any entitlement benefits his clients. The respondent ignores the bar's argument that the multiple rule violations and multiple client complaints establish another aggravating factor. Lastly, respondent attempts to argue that he was not an experienced Florida lawyer and therefore there should be a corresponding mitigating factor, rather than an aggravating factor. Respondent's argument misses the mark because he conveniently ignores that he was admitted in two other bars in 1977. TT 48. So at the time of his first ethical breeches he was already a lawyer for over ten years.

2. MITIGATION.

The referee's report finds no mitigating factors, but respondent urges this Court to accept certain things as mitigation. They are: (1) that he acted to benefit his clients; (2) that there was no significant misconduct; (3) that the charges against him are only minor and technical; (4) that he cooperated fully with the bar; (5) that no client was harmed; (6) that he lacked experience as a Florida lawyer; and (7) that he has remorse. The majority of his mitigation argument is based upon his view of the facts of this

case, which the referee has clearly refuted in his report and the bar will not belabor the point any further. However, two of these alleged mitigating factors merit some discussion.

Respondent claims he is remorseful. Yet, he continues to deny that what he did was wrong and he minimizes those acts that do him the most damage (i.e. the Champagne forgery and notarization). This appears to be totally inconsistent with his assertion of remorse and the bar strongly suggests that there is no remorse to be found in the record of this case, other than the remorse that respondent has been convicted of serious ethical violations and is about to receive a substantial disciplinary sanction.

Respondent asserts that no client has been harmed. However, all you need to do is look to the Champagne case and see that Champagne has been overcharged and has lost the use and enjoyment of the monies that respondent took from his settlement. In the Reese case, Mr. Reese testified to the embarrassment he suffered as the result of respondent breaching client confidences to the state attorney's office, as well as other governmental agencies. 94 TT 70-77.

3. DISBARMENT.

As the referee correctly points out, the respondent has demonstrated a severe lack of attention to the Rules of

Professional Conduct and has engaged in serious breaches of those rules. RR 14. However, the respondent has suggested that he receive only a public reprimand for his misconduct. The cases he cites for this proposition are not even close to the types of unethical activities found by the referee. For example he cites to The Florida Bar v. Hall, 521 So. 2d 1117 (Fla. 1988), in which a lawyer received a public reprimand for losing his client's check and failing to tell his client of that fact until after the client's opportunity to purchase a certain piece of real estate had expired. The client never lost any money and only lost the ability to buy the real estate. This type of neglect is not even remotely similar to the fraud, the forgery, the excessive fees and other unethical acts found in this matter.

CONCLUSION

The bar, in its initial brief, states a case for disbarment. The respondent has failed to provide this Court with any reason to overturn the referee's finding of facts. In addition, respondent has failed to demonstrate why he should not be disbarred, or for that matter why the referee's recommended consecutive three year suspensions should not be imposed.

WHEREFORE, The Florida Bar respectfully requests this Court to reject the referee's sanction recommendation and enter an order disbarring, respondent, Ronald T. Spann, ordering restitution to Champagne and awarding the bar its costs in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing reply and answer brief of The Florida Bar has been furnished via regular U.S. to Ronald T. Spann, respondent, at 1600 S.E. 17 Street Causeway, Suite 300, Fort Lauderdale, FL 33316; and to John A. Boggs, Director of Lawyer Regulation, at The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 on this 8th day of December, 1995.

KEVIN P. TYNAN