IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v

CASE NUMBER 80,117

WILLIAM F. LAWLESS,

Respondent.

_____/

RESPONDENT'S ANSWER BRIEF AND INITIAL BRIEF ON CROSS-APPEAL

John A. Weiss
Attorney Number 0185229
P. O. Box 1167
Tallahassee, Florida 32302-1167
(904) 681-9010
COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES — PAGE

TABLE OF AUTHORITIES (CONT.)

CASES — PAGE

PRELIMINARY STATEMENT

The Complainant/Appellant in these proceedings, The Florida Bar, will be referred to as such or as the Bar. The Respondent/Appellee/Cross-Appellant shall be referred to as the Respondent or as Mr. Lawless.

References to the transcript of the final hearing will be by the symbol T followed by the appropriate page number. The Bar's exhibits shall be referred to as BX and the Respondent's exhibits shall be referred to as RX.

STATEMENT OF THE CASE AND OF THE FACTS

Respondent accepts the Bar's statement of the case as written.

The Bar's statement of the facts, however, omits material evidence presented before the referee.

At their initial meeting, the Seguins advised Respondent that they had had problems with Revenue Canada (the Canadian equivalent of our IRS) which contributed to their desire to live in the United States. T-82,165.

After meeting with Respondent initially, they were introduced to Mr. Aboudraah at their second meeting with Respondent. The Seguins were advised that Mr. Aboudraah was a non-lawyer assistant. T-73. They knew full well that Mr. Aboudraah was not a member of Respondent's firm and, in fact, his offices were separate and apart from Respondent's. T-73,172.

On January 22, 1987, the Seguins signed a contract of employment with Respondent. BX-1. Enumerated paragraph three of that contract specifically required the Seguins to pay the sum of $5,000.00 to Mr. Lawless, not Mr. Aboudraah, for legal services. Enumerated paragraph five of that contract required the Seguins to pay Mr. Lawless, not Mr. Aboudraah, all costs incurred while representing them. Finally, the contract made the following statement regarding time frame:

> 6. That WILLIAM F. LAWLESS makes no commitment as to the exact time in which the above services can be performed; however, he suggests that such procedures could possibly be performed within one year; however, the suggestion is made with the recognition of all parties that the time for processing is generally beyond his control.

The testimony was uncontroverted that Respondent did not know of the payments by the Seguins to Mr. Aboudraah until April 1990 and that he received no benefit from those payments whatsoever. T-51,85. There is no evidence in the record contradicting Respondent's testimony that he received no portion of the funds paid to Mr. Aboudraah. T-180. At final hearing, Deborah J. Townsend, a past president of the local immigration bar and the only non-biased expert called by the Bar testified that Respondent's initial approach, seeking a labor certificate, while "aggressive" was not wrong and might be successful. T-116, 127. She further testified regarding Mr. Lawless' activities after he learned of Mr. Aboudraah's inappropriate conduct, that:

> I think the most appropriate avenue was what Mr. Lawless ultimately did. That was an E-2 application.
>
> I think that once that decision was made, that Mr. Lawless did a very competent job in securing a change of non-immigrant status for Mr. Seguin and then to proceed with contacting the U.S. Consulate in Toronto to arrange for visa issuance through the consulate.
>
> I think that once that decision was made, he did a fine job. T-117, 118.
>
> ....
>
> In looking through the file, it seems very clear that as soon as Mr. Lawless realized that Mr. Aboudraah was not performing and he was taking money on the side, which Mr. Lawless had no knowledge, that he immediately disassociated himself.
>
> In looking through this file, I see absolutely nothing to indicate that Mr. Lawless had any knowledge whatsoever that Mr. Aboudraah was incompetent and was taking money from people aside from the money that had been agreed to

> in the contract between, various contracts between Mr. Lawless and Mr. Aboudraah. T-119.
>
> ....
>
> Mr. -- I have very high regard for the fact that, a great deal of respect for Mr. Lawless in that as soon as he realized that Mr. Aboudraah was not performing, he did what he could to straighten out various clients' files, to seek the opinion of other immigration lawyers where needed and then to get out of the immigration practice.
>
> I think that as soon as he realized that he had associated himself with the wrong person, that he took the right steps to do what was right by clients, to try to straighten out their cases and then to get out of the practice. T-119, 120.

Ms. Townsend also testified about Mr. Aboudraah. She stated that in her opinion, Mr. Aboudraah was "the ultimate con artist." T-119. She further testified, upon questioning by the referee, that "unfortunately, it took many people a number of years to realize that [Aboudraah was a crook]". T-140. She further observed that

> In this area of law [immigration], attorneys rely quite heavily on paralegals. That's, you know, that's a fact. T-140.

Except for routine renewals of existing visas, Respondent no longer practices immigration law, T-120, 194, and he no longer has immigration law listed as a field of practice on his letterhead. T-205.

Mr. Lawless testified that he first started using Mr. Aboudraah as a paralegal in 1985 and that by the time the Seguins retained him in 1987 that he had had two years of very satisfactory experience with Mr. Aboudraah. T-179. It was not until 1989 that

Respondent learned that Mr. Aboudraah had sought an L-1 application and immediately called Mr. Aboudraah and demanded that he retract the application. T-185. In January 1990, that application was still pending. T-52.

It was not until April 1990 that Respondent learned of the Seguins' payments to Mr. Aboudraah. T-195. At that point in time it had been over two years since the Seguins had made their last payment to Mr. Aboudraah.

SUMMARY OF ARGUMENT

The referee improperly described each of Respondent's prior three disciplinary sanctions. His errors are conclusively shown by the disciplinary files appended to the Bar's initial brief. The referee's misapprehension as to the nature of the prior three disciplines may have resulted in his believing the present case involved repeated misconduct. Respondent submits that a review of his past disciplinary files necessitates this Court's modification of the referenced findings under paragraphs 1, 2 and 3 of Section IV of his report.

In Point II of his brief, Respondent argues that the referee had no authority under Rule 3-5.1 of the Rules of Discipline to require reimbursement to the Seguins of the money they improperly paid to Mr. Aboudraah. That rule only requires restitution of excessive fees or trust funds improperly handled.

In the case at Bar, the Respondent received none of the money the Seguins paid to Mr. Aboudraah (which payments were directly contrary to the specific terms of their contract with Mr. Lawless)

and, because he did not gain, he should not be required to reimburse the Seguins. They have brought a malpractice action against Respondent and that is the proper forum for the resolution of their dispute with Mr. Lawlesssin this regard.

In Point III, the Respondent argues that, once again, Rule 3-5.1 of the Rules of Discipline does not authorize the referee's recommendation that Respondent be permanently barred from using paralegals in his practice and that he be permanently barred from placing on any lawyer referral services. Such harsh remedies are not allowed by the Rules of Discipline and are completely unwarranted in the case at Bar.

In Point IV, Respondent argues that the referee's findings of fact to the extent that Respondent claimed to have no contact with Mr. Aboudraah in over two years is not supported by the evidence. The only testimony in this regard was Ms. Seguin's remark that Respondent stated, upon learning of their payments to Mr. Aboudraah in April 1990 (over two years after the last payment was made) that he had not "associated" with Mr. Aboudraah in two years. The Respondent also appeals the referee's failure to specifically find that it was Respondent who obtained an E-2 visa for the Seguins.

Finally, in Point V, the Respondent argues that the appropriate discipline for his misconduct is a public reprimand. His misconduct does not involve any actions subsequent to his past public reprimands and he immediately took steps to rectify the improper state of affairs upon learning of them.

A suspension requiring proof of rehabilitation, as argued by

the Board of Governors of The Florida Bar, is completely unwarranted where, as here, Respondent's misconduct involved no dishonest, fraud, deceit or misrepresentation and which did not involve any actions taken for Respondent's self-benefit.

ARGUMENT

POINT I

THE REFEREE'S DESCRIPTION OF RESPONDENT'S PRIOR THREE DISCIPLINES IMPROPERLY CHARACTERIZES RESPONDENT'S PAST GRIEVANCE HISTORY.

In Section V of his report, while discussing prior disciplinary measures, the referee improperly summarized each of Respondent's prior three disciplinary matters. In each instance, the referee made it appear that Respondent was disciplined for problems surrounding non-lawyers and for lapses in immigration matters. In each instance, he was wrong.

The significance of the referee's mis-characterization of Respondent's prior history is important in determining the discipline that he should receive in the instant case. Although the issue is argued below in Point V, if the referee was under a misapprehension as to the nature of Respondent's prior misconduct, it in all likelihood contributed to his recommendation that Respondent be disciplined for 90 days.

Bar Counsel attached copies of Respondent's three prior disciplinary cases to her Brief (pages A-8, A-15 and A-35 respectively). Those attachments include Respondent's May 17, 1989 private reprimand for conduct in 1983 and 1984; a public reprimand on October 5, 1990 for misconduct that happened in September 1988

and a public reprimand on January 23, 1991 for misconduct in 1988.

The most flagrant mistake by the referee regarding Respondent's disciplines was his characterization of Respondent's 1989 private reprimand as being one "for assisting a non-lawyer in the unlicensed practice of law". Nothing in Respondent's disciplinary file in this matter, as appended to the Bar's brief in pages A-8 through A-14, lends support for that characterization.

In fact, Respondent received his private reprimand for failing to prepare adequately in his representation of a client in a real estate transaction that closed in February 1984. Respondent was found guilty of engaging in conduct adversely reflecting on his fitness to practice and for handling a legal matter without adequate preparation.

Respondent's 1989 private reprimand had nothing to do with assisting a non-lawyer in the unlicensed practice of law.

On October 5, 1990, Respondent received a public reprimand (A-15) for asking a client to sign a general release of liability for Respondent and Mr. Aboudraah without first asking the client to consult with separate counsel. Neither the Bar's first amended complaint (A-24) nor its initial complaint (A29) charged Respondent with neglect of a legal matter. The first complaint did charge Respondent with failure to adequately supervise Mr. Aboudraah. However, that count was dropped in the second complaint.

The referee's characterization of Respondent's first public reprimand as being for neglect of an immigration matter is clearly erroneous. The reprimand was for obtaining a release without

referring the client to independent counsel.

The referee's description of Respondent's second public reprimand as being for "splitting legal fees with a non-lawyer" is also clearly erroneous. The report of referee in that case (A35) makes no mention whatsoever of splitting fees with a non-lawyer. Nor does Respondent's conditional guilty plea for consent judgment (A39). Even the Bar's complaint (A41) does not charge Respondent with splitting fees.

Respondent received his second public reprimand in January 1991 for handling a legal matter without the requisite competence and preparation.

POINT II

THE REFEREE'S RECOMMENDATION THAT RESPONDENT PAY TO THE SEQUINS $12,546.00 IS IMPROPER BECAUSE THE RULES REGULATING THE FLORIDA BAR DO NOT PERMIT RESTITUTION FOR MONEY PAID TO A THIRD PARTY, THAT WAS PAID WITHOUT RESPONDENT'S KNOWLEDGE OR CONSENT, AND WHICH WAS NEVER RECEIVED BY RESPONDENT EITHER DIRECTLY OR INDIRECTLY.

There is no authority for the referee's recommendation that Respondent be required to reimburse to the Seguins the $12,546.00 that they paid to Mr. Aboudraah. None of that money was paid to Respondent T-51,85,180 and the Seguins payments were directly contrary to enumerated paragraphs three and five of the contract of employment that they signed with Respondent. The issue of the Seguins entitlement to payment from Respondent is a civil matter that should be resolved in the courts, not in disciplinary proceedings, The Florida Bar v Wall, 491 So.2d 549, 551 (Fla. 1986).

The Seguins currently have a malpractice action pending against Respondent in which they are seeking a return of the monies paid to Mr. Aboudraas. T-63. That is the proper forum for the resolution of their financial dispute with Respondent.

This is particularly true when there has been no evidence adduced as to the validity of the payments to Mr. Aboudraah. It is possible that Mr. Aboudraah legitimately used some of the money he received for the benefit of the Seguins.

Another factor to be explored in the civil proceeding, that was not delved into at final hearing, is the relationship of the Seguins to Mr. Aboudraah. Mr. Seguin admitted that he had performed services for Mr. Aboudraah's business T-86. Clearly the Seguins had a close relationship with Mr. Aboudraah.

While Respondent is not here arguing an "assumption of risk" doctrine in regard to the Seguins, this Court should consider the fact that the Seguins gave Respondent no notice whatsoever of their payments to Mr. Aboudraah until two years after the final payment was made T-51,85. The last payment to Mr. Aboudraah was in February 1988. Yet, the Seguins did not tell Respondent of their payments, clearly in contradiction of their contract with Mr. Lawless, until April 1990. As Mr. Seguin said, Respondent was surprised when he learned of the payments T-84. Not only did Mr. Lawless not receive any of the $12,431.00 paid to Mr. Aboudraah, but he (quite properly) obtained the Seguins E-2 visa for them without requiring the payment of the final $2,500.00 of the $5,000.00 contract that they signed with him.

The referee's recommendation is not allowed by Rule 3-5.1 (Types of Discipline) of the Rules of Discipline. Paragraphs (h) and (i), captioned Forfeiture of Fees and Restitution respectively, set forth the circumstances under which a referee may order restitution. Neither of those circumstances appear in the case at Bar.

Rule 3-5.1(h) allows a referee to require the forfeiture of fees after a respondent has been found guilty of "entering into, charging, or collecting" an improper fee. The rule also allows a referee to order the return of the "excessive amount" of a "clearly excessive fee". There is no finding of any improper fee by Respondent in the case at Bar.

Rule 3-5.1(i) allows a referee to order restitution to a complainant only

> If the disciplinary order finds that the Respondent has received a clearly excessive, illegal, or prohibited fee or that the Respondent has converted trust funds or property.
>
> In such instances the amount of restitution shall be specifically set forth in the disciplinary order or agreement and shall not exceed the amount by which a fee is clearly excessive, in the case of a prohibited or illegal fee shall not exceed the amount of such fee, or in the case of conversion shall not exceed the amount of the conversion established in disciplinary proceedings.

Respondent has not been charged with or found guilty of charging a clearly excessive fee. He certainly has not converted any trust funds. Accordingly, there is no authority for the referee's ordering reimbursement to the Seguins of the money they

improperly paid to Mr. Aboudraah.

The Wall case, cited above, although it predated the aforementioned rules, supports the proposition that a civil action is the appropriate vehicle to determine the amount of money that a lawyer owes to a third party. In Wall, a title insurance company was required to pay off claims against policies issued by Mr. Wall in the amount of $161,000.00. The Bar demanded that Mr. Wall be required to make restitution to the title insurer. The Supreme Court agreed with the referee that restitution to that third party was inappropriate.

An analogous situation arose in The Florida Bar v Castle, 512 So.2d 162, 163 (Fla. 1987). There, the Supreme Court stated that

> We find no authority for, and do not approve, the referee's recommendation that Castle pay Vaccaro the amount of $345.00 as reimbursement for auto repair expenses alleged in the suit subsequently dismissed because of Castle's failure to appear at the pre-trial conference.

Even The Florida Bar has acknowledged that disciplinary proceedings are not a substitute for civil actions in instances involving failure to pay personal debts where there is no dishonesty. The Florida Bar v Cook, 567 So.2nd 1379, 1380 (Fla. 1990). There this Court noted that:

> The Bar now argues that disciplinary proceedings are not appropriate in cases such as this which do not involve misrepresentation, dishonesty, deceit, or fraudulent procurement and which involve a dispute over an attorney's failure to pay a personal debt. The Bar argues this dispute is more appropriately resolved through a civil action rather than through a Bar disciplinary proceeding.

In Cook, at the Bar's urging, this Court reversed the referee's finding of guilt.

If the Seguins are entitled to any reimbursement from Respondent, their civil suit will determine that issue. Disciplinary proceedings are not a substitute for civil proceedings. Rule 3-5.1 does not allow for reimbursement of payments made to a third party and, accordingly, the referee's recommendation in this regard should be rejected.

POINT III

THE REFEREE'S RECOMMENDATIONS THAT RESPONDENT DISASSOCIATE HIMSELF FROM SUPERVISING ANY PARALEGALS IN HIS PRACTICE IN THE FUTURE AND THAT HE REMOVE HIS NAME FROM LAWYER REFERRAL LISTS ARE NOT AUTHORIZED BY THE RULES REGULATING THE FLORIDA BAR AND ARE COMPLETELY UNJUSTIFIED BY THE FACTS OF THIS CASE.

The referee's recommendation that Respondent disassociate himself from supervising any paralegals in his practice in the future is not authorized by Rule 3-5.1 of the Rules Regulating The Florida Bar and is completely unjustified by the facts of this case.

Just as there is no authority in Rule 3-5.1 for the referee's recommendation that Respondent reimburse the Seguins for money paid to Mr. Aboudraah, there is no authority in the Rules of Discipline for the referee's recommendation that Respondent "disassociate himself from supervising any paralegals in his practice in the future" (Par. IV.2.) and that Respondent "remove his name from the list of lawyers maintained by any lawyer referral service" (Par. IV.5.). Not only is there no authority for these recommendations,

but they fly in the face of common sense. Had the referee limited his recommendations to prohibiting Respondent from supervising paralegals whose offices were separate and apart from his own, perhaps there might have been some justification (if authorized by the rules) for his recommendations. However, Mr. Aboudraah was a "con artist" T-119 whose offices were separate and apart from Respondent's T-172. There is no evidence that in-house paralegals supervised by Respondent have caused any harm to the public.

More importantly, if this Court allows referees to prohibit forever the supervision of paralegals, the next logical step is that it would be proper for a referee to recommend that a lawyer be prohibited from using legal secretaries. That sort of recommendation would be absurd. But it is the next logical step after that made by the referee.

Similarly, the referee's recommendation that Respondent remove his name from all referral service lists bears no nexus to the facts of the case at Bar. If authorized by the rules, perhaps the referee's recommendation that Respondent remove his name from lawyer referral lists for immigration matters might be appropriate. (Respondent is no longer practicing immigration law T-120,194). However, a removal from all lawyer referral lists is overbroad and should not be adopted.

Respondent submits that even if the referee had the authority to ban the use of paralegals and forbid placement on lawyer referral lists, that his prohibition could not exceed the three years probationary period allowed under Rule 3-5.1(c).

The referee's recommendations in regard to the use of paralegals and referral lists are overbroad, are without authority under the Rules of Discipline, and are unwarranted. These recommendations should be rejected.

POINT IV

THE REFEREE'S FINDINGS OF FACT, AS SET FORTH BELOW, ARE NOT SUPPORTED BY ANY EVIDENCE AND, THEREFORE, SHOULD NOT BE ADOPTED.

A. The referee's finding that Respondent claimed he had "no contact with Mr. Aboudraah in over two years...." is not supported by the evidence before the Referee.

In Paragraph II.21. the referee made the finding that the Respondent claimed he had had no direct contact with Mr. Aboudraah in over two years. There is no basis for that finding. Mr. Lawless did not so testify and neither did the Seguins. In fact, the evidence was to the contrary. T-31,32,33. (The referee's confusion stemmed from Ms. Sequin's single statement that Respondent allegedly said he had not been "associated" with Mr. Aboudraah for two years. T-39. The meaning of the word "associated" cannot be equated to mean "no contact":

B. The referee failed to find specifically that it was Respondent who obtained the Seguins' E-2 visa for them in February 1991.

In Paragraph II.24., the referee makes the following finding:

Due to the assistance of their new immigration attorney, the Seguins have obtained E-2 status and can legally live in the United States and operate their business.

The referee's finding gives the impression that the new attorney secured the Seguins' E-2 status. In fact, Respondent

obtained their E-2 status for them. T-90,95. The Bar's expert witness, Ms. Townsend, testified that Respondent did a "fine" job of obtaining their E-2 status once Aboudraah's mistake was learned. T-118.

Respondent recognizes the unusual posture he has taken on this point. Technically, the referee did not make an erroneous finding. However, the impact of his omission is material. Respondent argues it is significant because there must be no misunderstanding about Ms. Henin's role in this case. She merely obtained a renewal of the E-2 status for the Seguins.

POINT V
(Addressing the Bar's point on appeal)

THE APPROPRIATE DISCIPLINE FOR RESPONDENT'S CONDUCT IN THIS CASE, NOTWITHSTANDING HIS PRIOR DISCIPLINARY HISTORY, IS A PUBLIC REPRIMAND OR, AT MOST, A 90 DAY SUSPENSION AS RECOMMENDED BY THE REFEREE.

Respondent submits that the appropriate disciplinary sanction for failing to act with reasonable diligence and promptness and for failing to supervise a non-lawyer employee (who was technically not an employee) is a public reprimand. See, e.g., The Florida Bar v VanDeventer, 368 So.2d 48 (Fla. 1979) (failure to maintain complete records of trust funds, failure to render appropriate accountings regarding estate funds and failing to supervise legal secretary with the result that she was able to misappropriate estate funds); The Florida Bar v Armas, 518 So.2d 919 (Fla. 1988) (failure to supervise office manager resulting in mishandling of trust funds and, as a second count, failure to maintain proper trust account records); and The Florida Bar v Fields, 520 So.2d 272 (Fla. 1988)

(numerous counts including driving while intoxicated and battery and charging illegal interest on fees owed by clients due to failure to supervise his non-lawyer employees). The latter case involved a public reprimand despite the fact that Mr. Fields had been previously disciplined for the same improper billing offenses and he had not corrected those deficiencies by the second trial. See The Florida Bar v Fields, 482 So.2d 1354 (Fla. 1986).

Enhancement of Respondent's discipline is not appropriate in this case because none of his prior disciplines were for failure to supervise a non-lawyer employee. Even if this offense involved the same misconduct as before, a suspension in excess of 90 days would be completely inappropriate. For example, in The Florida Bar v Carter, 502 So.2d 904 (Fla. 1987), the accused lawyer was suspended for only three months for failing to supervise his office staff in their handling of estate records. Mr. Carter was permitted automatic reinstatement despite the fact that he had twice previously received public reprimands. The Florida Bar v Carter, 410 So.2d 920 (Fla. 1982) and The Florida Bar v Carter, 429 So.2d 3 (Fla. 1983).

In disciplining Mr. Carter for three months, the Court rejected the Bar's arguments that an additional day should be tacked on to his suspension so that he would be required to prove rehabilitation before reinstatement. In rejecting the Bar's position, the Court stated:

> We agree with Carter that proof of rehabilitation is not necessary to teach him the importance of complying with the standards set forth in the Code of Professional

> Responsibility and the Integration Rule of The Florida Bar. Under the circumstances, we feel a three month suspension is sufficient.

If this Court feels a suspension is appropriate for the instant Respondent's offenses, the Court's holding in Carter that rehabilitation is not necessary to teach the importance of complying with the Standards is equally applicable to the case at Bar.

In the second of Mr. Carter's prior two public reprimands, the Court made the following observation:

> The referee recommended a four month suspension. This Court has recently publicly reprimanded Carter, The Florida Bar v Carter, 410 So.2d 920 (Fla. 1982), and ordinarily a finding of guilt on additional charges would warrant a heavier and more substantial penalty. But the activities complained of in this case do not fall within the category cumulative misconduct since the instant misconduct occurred prior to our decision in the previous case. Prior discipline could not, therefore, have deterred misconduct in this case. (emphasis supplied)
>
> ....
>
> It is the duty of this Court to be fair to the respondent as well as just to the public. State ex rel. The Florida Bar v Murrell, 74 So.2d 221 (Fla. 1954).

Just as was true of Mr. Carter, Respondent's prior two public reprimands were administered subsequent to the misconduct in the instant case. Because Respondent did not learn of Mr. Aboudraah's misdeeds until April 1990, the two public reprimands administered in October 1990 and January 1991 should not be considered aggravating circumstances. The prior disciplines could not have deterred the instant misconduct.

The timing of Respondent's disciplines in relation to his public reprimands is very important. At first blush, it appears that repeated reprimands to the Respondent have had no effect on his practice. In actuality, Respondent had cured the deficiencies in his practice prior to the onset of the public disciplines that he previously received. (Respondent's private reprimand in 1989 was for, basically, insufficient handling a real estate transaction ten years ago).

Respondent's situation is completely unlike that in The Florida Bar v Dubbeld, 594 So.2d 735 (Fla. 1992) in which this Court imposed a public reprimand after two prior admonishments for minor misconduct. The incidents giving rise to Mr. Dubbeld's public reprimand in 1992 occurred in January and March 1990, subsequent to the administration of his prior disciplinary orders. In the third Dubbeld decision, the Court expressed its frustration over Dubbeld's pattern of misconduct with the following statement:

> The incidents giving rise to the instant complaint occurred in January and March 1990 and demonstrate a continuing pattern of misconduct upon which Dubbeld's prior admonishments appear to have had no effect. Cumulative misconduct will be dealt with more harshly than isolated incidents of misconduct. The Florida Bar v Coutant, 569 So.2d 442 (Fla. 1990). Dubbeld's continued misconduct warrants a public reprimand.

Unlike Mr. Dubbeld, Respondent's misconduct in the instant case occurred prior to the disciplinary orders previously administered. In other words, Respondent is not ignoring previous admonishments.

Just as Mr. Dubbeld did not receive a suspension for his third instance of discipline by the Court, Richard Kaplan received but a public reprimand for neglect, failure to communicate and improper withdrawal from a case despite the fact that there had been "three prior disciplinary proceedings" in which Mr. Kaplan "received private reprimands,...." The Florida Bar v Kaplan, 576 So.2d 1318, 1319 (Fla. 1991).

Respondent's misconduct did not involve any dishonesty, fraud, deceit or misrepresentation. He certainly has not benefited financially from his failure to supervise Mr. Aboudraah. He received none of the money that the Seguins improperly paid to Mr. Aboudraah and Respondent made no claim for the second half of the fees that he was permitted to charge for obtaining their E-2 visa. With none of those factors present a suspension requiring proof of rehabilitation is unjustified.

Drastic enhancement of discipline is appropriate when there has been a continuing pattern of the same misconduct or there have been previous disciplines that have had no remedial effect on the lawyers' practice. Such is not the case here.

Until 1989, the Respondent had no valid reason to doubt Mr. Aboudraah's work-ethic or integrity. In April 1990, when he learned that Mr. Aboudraah had acted improperly in his dealings with the Seguins, Respondent promptly took over the case and competently obtained the Seguins' E-2 visa. T-117.

Respondent submits that the referee, in recommending a 90 day suspension, misapprehended the nature of Respondent's past

misconduct. Respondent's private reprimand was for failure to adequately prepare in a real estate transaction -- it was not, as the referee believed, for assisting a non-lawyer in the unlicensed practice of law. Respondent's first public reprimand in October, 1990, was not for neglecting an immigration matter as found by the referee. It was for obtaining a release from a client without referring that client to independent counsel. Finally, Respondent's 1991 public reprimand was for failing to return a file to new counsel promptly. It was not for splitting legal fees with a non-lawyer as found by the referee.

The referee's misapprehensions as to Respondent's prior misconduct probably created the belief that Respondent had been previously disciplined for the same misconduct and now needed to be severely chastised. Such is not the case.

The Board of Governors of The Florida Bar demands an even more Draconian punishment -- a 91 day suspension requiring proof of rehabilitation before reinstatement. In other words, the Bar believes that Respondent should be suspended from six months to a year for misconduct that involved no dishonesty, no misrepresentation and no self-gain.

Respondent argues that proof of rehabilitation is not appropriate when there is no dishonesty, deceit or misrepresentation and where there is no self-benefit to the lawyer.

Contrary to the Bar's position, the purpose of disciplinary proceedings is not protecting the image of The Florida Bar. Its purpose, as stated in The Florida Bar v Pahules, 230 So.2d 133

(Fla. 1970) is:

> In cases such as these, three purposes must be kept in mind in reaching our conclusions. First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations.

There is no necessity for the Respondent to "prove" rehabilitation in order to allow him to practice law. After he learned of Mr. Aboudraah's misdeeds, he promptly and properly rectified Mr. Aboudraah's omissions and obtained the Seguins' E-2 visa for them. In so doing he did not insist on a return of the $2,500.00 owed on their contract (Respondent acknowledges that it would have been unfair for him to do so; however, his failure to ask for additional fees shows his comprehension of his professional responsibilities). He has practiced law for three years since he learned of Mr. Abdouraah's misconduct without any problems. Requiring proof of rehabilitation now is merely exacting a severe punishment upon Mr. Lawless.

The Florida Bar relies on The Florida Bar v Bern, 425 So.2d 526 (Fla. 1983) as support for its position that Respondent should be suspended for 91 days. Mr. Bern, did in fact, receive a suspension for three months and one day after having previously received a private reprimand for two separate counts of attempted solicitation, another private reprimand for cashing two checks

given to him by a client after he had agreed to hold on to them and a public reprimand for soliciting an investor to invest in a company. Mr. Berns' misconduct that resulted in the 91 day suspension involved numerous misdeeds. Among them was conflict of interest for entering into a partnership with a client (to Mr. Bern's financial benefit) for rendering an inadequate accounting and then, after a grievance was filed, rendering an incomplete one.

The important distinction between the instant case and Mr. Berns is that the latter, for his own financial gain, tried to take advantage of his client. The Court enhanced his discipline because his misconduct involved repeated instances of business dealings with his clients.

The Bar's reliance on The Florida Bar v Greene, 515 So.2d 1280 (Fla. 1987) is equally misplaced. Mr. Greene received a 91 day suspension for neglect of a legal matter and for failing to supervise his non-lawyer personnel. The primary distinction between Mr. Greene's last case and the case at Bar is that Mr. Greene was repeatedly put on notice of his past omissions and he ignored curing the defect for over two years. Mr. Lawless promptly rectified the situation upon learning of a problem.

Mr. Greene's prior disciplinary history was extensive. In 1970 he had received a public reprimand for failing to file income taxes. He was privately reprimanded in 1980 for neglect of a legal matter. In 1985 he received a public reprimand for neglecting another legal matter. Subsequently, he was held in contempt by the Florida Supreme Court for failing to observe the conditions of

his probation from the 1985 case. Greene, id., 1283. In Mr. Greene's case we have a clear case of a lawyer ignoring sanctions imposed upon him. The contempt citation for failing to comply with probation is a blatant disregard of a prior disciplinary order and warranted stern discipline. No such necessity is present here.

Were the Respondent at Bar to have engaged in conduct as egregious as Mr. Greene's, i.e., acting in contempt of this Court by ignoring a prior disciplinary order, a suspension requiring proof of rehabilitation would be appropriate. But he has not and, accordingly, rehabilitation is totally unnecessary.

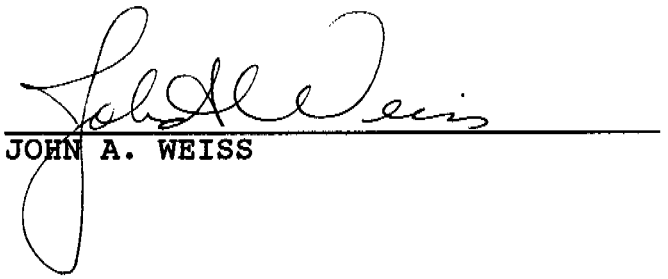
CONCLUSION

Respondent asks this Court to reject the referee's recommended discipline and to impose, instead, a public reprimand. Should this Court find that a public reprimand is not appropriate, a suspension not involving proof of rehabilitation before reinstatement, i.e., one of 90 days or less, is the appropriate sanction for his misconduct. This Court should reject the referee's recommendation that Respondent reimburse to the Seguins the money they paid to Mr. Aboudraah in contravention of their contract of employment. The Court should further reject the recommendations of the referee that Respondent be permanently prohibited from using paralegals and from having his name on lawyer referral lists.

John A. Weiss
Attorney Number 0185229
P. O. Box 1167
Tallahassee, Florida 32302-1167
(904) 681-9010
COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer Brief and Initial Brief on Cross-Appeal was mailed to Jan K. Wichrowski, Bar Counsel, The Florida Bar, 880 N. Orange Avenue, Suite 200, Orlando, FL 32801-1085 and to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 this 11th day of June, 1993.



JOHN A. WEISS