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FILED
SID J. WHITE
JAN 24 1994
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JOEL E. GRIGSBY,

Respondent.
_____/

Case No. 81,980
[TFB Case No. 93-30,446 (10A)]

INITIAL BRIEF

JOHN F. HARKNESS, JR.
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SYMBOLS AND REFERENCES

In this brief, the complainant, The Florida Bar, shall be referred to as "The Florida Bar" or "the bar".

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

The Report of Referee dated November 24, 1993, will be referred to as "ROR", followed by the appendix page number(s). (ROR-A-____)

The bar's exhibits attached to this brief will be referred to as "Bar Ex." followed by the exhibit number and the appendix page number(s) (Bar Ex. ___-A___).

STATEMENT OF THE CASE

On April 13, 1993, the Tenth Judicial Circuit Grievance Committee "A" voted to find probable cause against the respondent. The bar filed its formal complaint on June 24, 1993. The respondent did not file an answer to the bar's complaint. The bar propounded a requests for admission on August 16, 1993, and the respondent filed his response on August 20, 1993.

The final referee hearing was held on August 24, 1993. On November 24, 1993, the referee issued a report recommending the respondent be found guilty of the following R. Regulating Fla. Bar: 4-8.1(b) for failing to respond to a lawful demand for information from a disciplinary authority; and 4-8.4(a) for violating the Rules of Professional Conduct. The referee made the following disciplinary recommendations: public reprimand; payment of costs incurred by The Florida Bar; three (3) year conditional probation subject to the respondent's participation in therapy with a licensed mental health counselor and supervision by an attorney acceptable to the bar; and payment of the bar's monthly monitoring costs.

The Board of Governors of The Florida Bar considered this case at its meeting which ended December 8, 1993. The board voted to appeal the referee's recommendations as to discipline and to seek a 90 day suspension in addition to the discipline already recommended by the referee in view of the respondent's significant prior discipline history. The bar filed its petition

for review on December 21, 1993. The respondent did not file a cross petition for review specifying any additional portion of the report that he desired reviewed.

STATEMENT OF THE FACTS

Unless otherwise indicated, the following was taken from the Report of Referee dated November 24, 1993 (ROR-A-1 to 4).

The respondent was appointed by the Public Defender's Office in or around April, 1992, to represent an indigent inmate in an appeal of a criminal conviction. The inmate became dissatisfied with what he perceived to be a lack of communication with the respondent and complained to The Florida Bar in September, 1992. On October 7, 1992, and again on November 16, 1992, the bar wrote the respondent and asked him to reply to the inmate and to copy the bar. The respondent failed to do so and was advised by the bar that due to his lack of response, the matter had been forwarded to the grievance committee. The investigating member of the grievance committee wrote the respondent on or about November 18, 1992, asking that the respondent contact him regarding the investigation. The respondent failed to do so. The investigating member telephoned the respondent on or about December 3, 1992, and asked him to make a written response to the bar concerning the inmate's allegations. The respondent assured the investigating member he would do so but did not follow through. Sometime thereafter, the investigating member saw the respondent at the county courthouse and again reminded him to make a written response to the bar. An assistant staff attorney with The Florida Bar also talked with the respondent by telephone and asked him to make a written response to the bar. The

respondent made no reply to the bar. The respondent also failed to provide the bar with a copy of the letter he had written to the inmate on October 5, 1992, prior to being made aware of the inmate's having filed a grievance, until he attended the grievance committee hearing on April 13, 1993. Had the respondent timely provided to the bar a copy of his letter to the inmate, it would have obviated the need for a grievance committee hearing because the respondent's evidence showed there was no merit to the inmate's allegations of neglect and inadequate communication. The respondent testified under oath before the grievance committee on April 13, 1993, and admitted he had not responded to the bar despite repeated requests that he do so.

The Florida Bar charged the respondent for failing to respond to a lawful demand for information from a disciplinary authority and for violating the Rules of Professional Conduct. The referee found the respondent suffered from clinical depression for which he had voluntarily sought treatment and although the respondent's illness explained his conduct, it did not excuse it. The referee determined that responding to the bar's request for information consisted of doing nothing more than mailing a copy of a previously written letter and it was contradictory that the respondent was unable to mail a letter but was able to attend the grievance committee hearing thus incurring additional costs for himself and the bar. The referee also commended the respondent for voluntarily seeking treatment for his depression and having the problem under control.

The referee found the respondent guilty of the following R. Regulating Fla. Bar: 4-8.1(b) for failing to respond to a lawful demand for information from a disciplinary authority; and 4-8.4(a) for violating the Rules of Professional Conduct.

SUMMARY OF THE ARGUMENT

The respondent failed to respond to the bar's multiple requests for information in connection with the disciplinary investigation of the respondent's own conduct. The respondent has a significant prior discipline history. One of the two prior instances of discipline involved the same repeated failures to cooperate with the bar in a disciplinary proceeding as in this matter. The respondent's continuing pattern of disregarding Florida bar proceedings and his significant prior disciplinary history deserve the imposition of more serious punishment than his misconduct considered in isolation might seem to warrant. Nothing less than a 90 day suspension, in addition to the three (3) year conditional probation already recommended by the referee, is sufficient in this case.

ARGUMENT

THE REFEREE'S RECOMMENDATION OF A PUBLIC REPRIMAND IS INAPPROPRIATE GIVEN THE FACTS OF THIS CASE

Ninety (90) days suspension followed by three (3) years of conditional probation is required discipline where over the past three and one-half years the respondent has received an admonishment for minor misconduct, suspension for three (3) months, and been placed on probation for one (1) year, especially when the instant case involves yet another instance of failing to cooperate with the bar. Bar disciplinary proceedings must serve three purposes: 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 service of a qualified lawyer; 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; and third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. The Florida Bar v. Jasperson, 625 So. 2d 459 (Fla. 1993); The Florida Bar v. Poplack, 599 So. 2d 116 (Fla. 1992). If these principles are to be addressed adequately in this case, it is the position of The Florida Bar that nothing less than a 90 day suspension in addition to the three (3) year conditional probation already recommended by the referee will be sufficient.

The referee's recommended public reprimand and three (3) years conditional probation are inadequate because the respondent has previously received significant discipline, all within the last three and one-half (3.5) years. One of the two prior instances of discipline involved the same failure to respond to a complaint as in this matter. In early 1991, the respondent received an admonishment for minor misconduct with an appearance before the board of governors for his failure to keep a client reasonably informed about the status of a matter and failure to respond to the bar's inquiries concerning the client's grievance, The Florida Bar v. Grigsby, TFB Case No. 90-31,406 (10A) (ROR-A4, Bar Ex.3-A5 to 6). In The Florida Bar v. Grigsby, 617 So. 2d 321 (Fla. 1993), (ROR A-3, Bar Ex.4-A7 to 14), the respondent was suspended for three (3) months effective April 18, 1993, and placed on probation from July, 1993, to July, 1994, because in three separate instances he failed to act with reasonable diligence and promptness in representing his clients. He also failed to keep them reasonably informed about the status of their respective cases and promptly reply to reasonable requests for information or sufficiently explain matters so the clients could make informed decisions. The respondent's failure to respond to a lawful demand for information from a disciplinary authority, which is the subject of the present proceedings, is not considered by the bar to constitute a violation of his one (1) year probation. The respondent's probation started on July 18, 1993, and is effective until July 18, 1994. The requests for

information in the present case took place between October 7, 1992, to approximately March 9, 1993. The bar's request for information in the present case predated this court's March 18, 1993, decision imposing the one (1) year probation effective July 18, 1993.

Although it is to his credit that the respondent has voluntarily sought treatment for his clinical depression and has favorably responded to medication and counseling (ROR A2), the fact of his extensive disciplinary history and cumulative misconduct is untenable.

The Florida Bar recommended 90 days suspension followed by three (3) years conditional probation to the referee. The referee's recommendation of a reprimand and three (3) years conditional probation without any suspension is too lenient in view of the respondent's significant discipline history. It is well settled that this court deals more severely with cumulative misconduct than isolated misconduct, The Florida Bar v. Rosen, 608 So. 2d 794 (Fla. 1992); The Florida Bar v. Dubbeld, 594 So. 2d 735 (Fla. 1992); The Florida Bar v. Coutant, 569 So. 2d 442 (Fla. 1990). As this court noted in The Florida Bar v. Bartlett, 509 So. 2d 287 (Fla. 1987) and The Florida Bar v. Bern, 425 So. 2d 526 (Fla. 1982), repeated instances of similar misconduct should be treated cumulatively so that a lawyer's disciplinary history can be considered as grounds for more serious punishment than his present misconduct, considered in isolation, might seem to warrant. Mr. Bern was suspended for a period of three (3)

months and one (1) day requiring proof of rehabilitation where he had a disciplinary history of two private reprimands and one public reprimand. Only one of Mr. Bern's previous cases directly involved the same misconduct as his suspension case. Mr. Bartlett was disbarred after having been suspended for the practice of law for similar misconduct twice in the two and one-half years preceding the disbarment case.

In The Florida Bar v. Vaughn, 608 So. 2d 18 (Fla. 1992), this court imposed a public reprimand rather than the 30 day suspension recommended by the referee where the attorney had a disciplinary history of one private reprimand and one public reprimand. However, none of Mr. Vaughn's previous reprimands directly involved the same misconduct as in his last case involving his continuing pattern of not cooperating or participating in disciplinary proceedings. As this court stated in its opinion, if Mr. Vaughn had cooperated with the bar inquiry and presented his defense, it was quite possible that the matter would never have reached the referee level as it was clear that Vaughn's case was only before this court because he failed to cooperate with the disciplinary process and to provide information which he had in his possession.

In The Florida Bar v. Dubbeld, 594 So. 2d 735 (Fla. 1992), this court imposed a public reprimand rather than merely an admonishment of minor misconduct as recommended by the referee where the attorney had two prior admonishments for minor misconduct on his record. As this court noted, the incidents

which gave rise to yet another complaint demonstrated a continued pattern of misconduct upon which the respondent's prior discipline appeared to have had little effect.

Standard 7.2 of The Florida Standards for Imposing Lawyer Sanctions states that a suspension is appropriate when a lawyer knowingly engages in conduct which is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. This is enhanced by aggravating factors 9.22(a), existence of prior disciplinary offenses, 9.22(c), existence of a pattern of misconduct, and 9.22(i), substantial experience in the practice of law. The incidents giving rise to this matter demonstrate a pattern of misconduct upon which Mr. Grigsby's prior two disciplines appear to have had no effect. Considering the respondent's previous discipline history and the fact that this case involves another instance of failing to cooperate with the bar, the respondent should be suspended. The respondent has clearly failed to take heed of the importance of strict ethical adherence and the importance of his active participation in the disciplinary process when he is accused of misconduct. Therefore, nothing less than a 90 day suspension and three (3) years conditional probation will serve the purposes of attorney discipline in this case.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendations and impose a 90 day suspension on the respondent followed by the three (3) year conditional probation already recommended by the referee and require the respondent to pay costs in these proceedings currently totalling $1,137.37.

Respectfully submitted,

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By: 

CARLOS E. TORRES
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing initial brief and appendix have been furnished by Airborne overnight mail to The Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927; a copy of the foregoing has been furnished by certified mail No. P 381 853 905, return receipt requested, to Kevin K. Broderick, counsel for respondent, at P.O. Box 8759, Lakeland, FL 33806; 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 21st day of January, 1994.

Carlos E. Torres
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 81,980
[TFB Case No. 93-30,446 (10A)]

v.

JOEL E. GRIGSBY,

Respondent.
_____/

APPENDIX TO COMPLAINANT'S INITIAL BRIEF

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JOEL E. GRIGSBY,

Respondent.

_____/

Case No. 81,980
[TFB Case No.93-30,446(10A)]

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 Regulating The Florida Bar, a hearing was held on August 24, 1993. The pleading's, notices, orders, transcripts and and exhibits, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - Carlos E. Torres

For The Respondent - Kevin K. Broderick

II. Rule Violations Found: 4-8.1(b); and 4-8.4(a)

III. Findings of Fact as to Each Item of Misconduct of Which the Respondent Is Charged: After considering all the pleading's and evidence before me, pertinent portions of which are commented on below, I find:

1. The respondent was appointed by the Public Defender's Office in or around April, 1992, to represent an indigent inmate in an appeal of a criminal conviction. The inmate became dissatisfied with what he perceived to be a lack of communication with the respondent and complained to The Florida Bar in September, 1992.

A1

2. On October 7, 1992, and again on November 16, 1992, the bar wrote the respondent and asked him to reply in writing to the inmate and copy the bar. The respondent failed to do so and the matter was forwarded to the grievance committee.

3. Although the respondent had written to the inmate in October, 1992, prior to being made aware of the inmate having filed a grievance, the respondent failed to provide a copy of said letter to the bar.

4. The investigating member of the grievance committee wrote the respondent in November, 1992, asking that he contact him regarding the bar's investigation, telephoned the respondent in December, 1992, and asked him to make a written response to the bar concerning the allegations, and verbally reminded the respondent to make a written response after seeing him at the county courthouse. Although the respondent repeatedly assured the investigating member he would do so, he did not follow through. An assistant staff attorney with The Florida Bar also spoke with the respondent by telephone and asked him to make a written response to the bar.

5. The respondent did not reply to the bar or provide it with a copy of his letter to the inmate of October 5, 1992, until he attended the grievance committee hearing on April 13, 1993.

6. Had the respondent timely provided to the bard a copy of the aforementioned letter, it would have obviated the need to hold a grievance committee hearing because the respondent's evidence showed there was no merit to the inmate's allegations of neglect and inadequate communication.

7. The respondent testified under oath before the grievance committee on April 13, 1993, and admitted he had not responded to the bar despite repeated requests that he do so.

8. According to the evidence presented by the respondent at the final hearing, it is clear he suffers from clinical depression for which he has voluntarily sought treatment. I find that although the respondent's illness explains his conduct, it does not excuse it. Responding to the bar's request for information consisted of doing nothing more than mailing a copy of a previously written letter. It is contradictory that the respondent was unable to mail a letter but was able to attend the grievance committee hearing, thus incurring additional costs for himself and the bar.

9. I do find it commendable that the respondent sought treatment for his depression on his own and now appears to have the problem, under control.

IV. Recommendations as to Whether or Not the Respondent Should Be Found Guilty: As to each county of the complaint I make the following recommendations as to guilt or innocence:

I recommend the respondent be found guilty and specifically that he be found guilty of the following violations of the Rules of Professional Conduct: 4-8.1(b) for failing to respond to a lawful demand for information from a disciplinary authority; and 4-8.4(a) for violating the Rules of Professional Conduct.

V. Recommendation as to Disciplinary Measures to Be Applied:

I recommend the respondent receive a public reprimand and be placed on a three year period of conditional probation pursuant to Rule of Discipline 3-5.1(c) during which time he shall continue to actively participate in therapy with a licensed mental health counselor. The respondent shall ensure that his counselor submits quarterly reports to The Florida Bar during the probationary period. The reports shall confirm the respondents active participation in counseling for the preceding period and shall evaluate the respondent's ability to engage in the active practice of law.

I further recommend that the respondent be supervised by an attorney who is a member in good standing with The Florida Bar and who is acceptable to the bar to act as a supervisor. The supervising attorney shall provide continuous monitoring of the respondent's client case files and provide quarterly reports to the bar regarding the status of the respondent's client files. The respondent shall be responsible for submission of the quarterly reports to the bar's headquarters for submission of the quarterly reports to the bar's headquarters in Tallahassee. I further recommend as a condition of the respondent's probation that he shall reimburse the bar for the monthly monitoring of his probation. All monthly monitoring costs must be remitted not less than five days from the end of each respective month in which the monitoring expense is due. All costs should be paid to the bar's headquarters in Tallahassee. I make this recommendation based upon the respondent's prior disciplinary history which is set forth below.

VI. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(D), I considered the following personal history and prior disciplinary record of the respondent:

Age: 42
Date admitted to bar: November 16, 1978
Prior disciplinary convictions and disciplinary measures imposed therein:

The Florida Bar v. Grigsby, Supreme Court Case No. 80,118; 617 So.2d 21 (Fla. 1993). Three months suspension because on three separate cases he failed to act with reasonable diligence and promptness in representing his clients and failed to keep his clients reasonably informed.

The Florida Bar v. Grigsby, TFB case No. 90-31,406 (10A). An admonishment administered by an appearance before the Board of Governors of The Florida Bar for inadequate communication with a client and failure to respond to the bar's inquiries concerning the client's grievance.

VII. Statement of costs and manner in which costs should be taxed:

I find the following costs were reasonably incurred by The Florida Bar.

A.	Grievance Committee Level Costs	
	1. Transcript Costs	$ 100.50
	2. Bar Counsel Travel Costs	$ 19.66
B.	Referee Level Costs	
	1. Transcript Costs	$ 352.40
	2. Bar Counsel Travel Costs	$ 51.71
C.	Administrative Costs	$ 500.00
D.	Miscellaneous Costs	
	1. Investigator Expenses	$ 60.60
	2. Copies	$ 52.50
	TOTAL ITEMIZED COSTS:	$1,137.37

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, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 24th day of November, 1993.

JOSÉ R. RODRIGUEZ
Referee

Copies to:

Mr. Carlos E. Torres, Bar Counsel, The Florida Bar, 880 North Orange Ave. Suite 200, Orlando, Florida 32801.

Mr. Kevin K. Broderick, Counsel for Respondent, P.O. Box 8759, Lakeland, Florida 33806.

Mr. John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300.

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

THE FLORIDA BAR,

Complainant, Case No. 90-31,406 (10A)

v.

JOEL A. GRIGSBY,

Respondent.
_____/

REPORT OF MINOR MISCONDUCT

I. Committee Recommendation: Pursuant to Rule 3-7.4(1), the committee recommends, after the hearing on December 11, 1990, that the respondent receive an admonishment. The respondent should be required to appear before the Board of Governors of The Florida Bar for administration of the admonishment.

II. Summary of Additional Charges: The additional charges, if any which will be dismissed if this report is accepted are summarized as follows: N/A

III. Comment on Mitigating, Aggravating or Evidentiary Matters: The committee believes that the following comment on mitigating, aggravating and evidentiary matter will be helpful in considering acceptance of the report:

Mr. Grigsby was retained on or about April 18, 1989, by Michael Schultz to assist him in handling his father's estate. Mr. Schultz is a blind diabetic dialysis patient. Due to his ill health, Mr. Schultz is dependent upon telephone communications to carry out the majority of his business affairs. Mr. Schultz made numerous attempts to reach Mr. Grigsby by telephone to inquire about the status of the estate. Mr. Schultz was unable to reach Mr. Grigsby for a period of approximately twelve (12) months. Mr. Schultz was forced to retain the services of another attorney to handle his father's estate.

A complaint was filed with The Florida Bar by Mr. Schultz against Mr. Grigsby on April 25, 1990. Although The Florida Bar provided Mr. Grigsby with two (2) opportunities to respond in writing to Mr. Schultz regarding his complaint, he failed to do so. The matter was forwarded to the grievance committee due to Mr. Grigsby's lack of response.

At the hearing before the grievance committee, Mr. Grigsby testified that he didn't communicate with Mr. Schultz because he

was abrasive. Further, he felt that Mr. Schultz had not been harmed by his conduct during this period.

Nature of Violations: Rule 4-1.4 of the Rules of Professional Conduct for failing to keep a client reasonably informed about the status of a matter and failing to promptly comply with reasonable requests for information.

IV. The cost of these proceedings in the amount of $605.44 are assessed against the respondent.

V. Committee Vote: A quorum of not less than three members of the committee being present, two (2) of whom were lawyers, the committee by affirmative vote of a majority of the committee present voted in favor of the committee recommendation stated in Item I above. In accordance with Rule 3-7.4(f), the committee reports the number of committee members voting for, or against, this report as follows:

In favor of the report 7

Against the report 0

Dated this 14 day of January, 1991.

TENTH JUDICIAL CIRCUIT GRIEVANCE COMMITTEE "A"

BY _____
RICHARD A. MCKINLEY
Chairman

Supreme Court of Florida

THURSDAY, MARCH 18, 1993

THE FLORIDA BAR,

Complainant,

v.

JOEL E. GRIGSBY,

Respondent.

CASE NO. 80,118

TFB No. 92-30,832(10A)

The uncontested report of the referee is approved and respondent is suspended for three (3) months effective thirty (30) days from the filing of this order so that Respondent can close out his practice and protect the interests of existing clients. If Respondent notifies this Court in writing that he is no longer practicing and does not need the thirty (30) days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall accept no new business from the date this order is filed. Upon reinstatement, Respondent is further placed on probation for one (1) year.

Judgment for costs in the amount of $1,120.23 is entered against respondent for which sum let execution issue.

Not final until time expires to file motion for rehearing and, if filed, determined. The filing of a motion for rehearing shall not alter the effective date of this suspension.

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

KBB
cc: Hon. Lawrence R. Kirkwood,
Referee
Jerry Hill, Esquire
Kristen M. Jackson, Esquire
John A. Boggs, Esquire
Joel E. Grigsby, Esquire

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,

Complainant,

v.

JOEL E. GRIGSBY,

Respondent.

CASE NOS. 92-30, 832 (10A);
92-30, 956 (10A);
and 92-31, 080 (10A)

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, hearings were held on the following date:

November 13, 1992 at 1:35 p.m.

The following attorneys appeared as counsel for the parties:

For The Florida Bar, Kristen M. Jackson, Assistant Branch Staff Counsel, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801

For the Respondent, Appearing on his own behalf, Joel E. Grigsby, 210 Lake Shore Way, P. O. Box 557, Lake Alfred, Florida 33850-0557

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, including Complaint filed with The Supreme Court, July 7, 1992, Request for Admissions received by Referee on July 27, 1992, and Order Deeming Complainant's Requests For Admission To Be Admitted, signed September 25, 1992, and pertinent portions of which are commented upon below, I find:

As to Count I

1. In or around mid 1988, Geoffrey H. Schuck was referred to Respondent by attorney Stephen Watson. Mr. Watson had been handling a suit Mr. Schuck had filed against Commando Baits, Inc. and Joseph Avalvi in May, 1988. Mr. Watson could no longer continue handling the case and Respondent agreed to take the referral.

2. On or around October 31, 1988, the defendant filed a Motion to Dismiss to which Respondent responded. The Court denied the Motion.

3. Respondent advised Mr. Schuck that he was going to make a request for production of the corporate documents from the corporate defendant and that Respondent would issue the necessary subpoenas.

4. When Mr. Schuck failed to receive any further information from Respondent, he repeatedly called Respondent's office. He was successful in contacting Respondent only about one-half of the time.

5. On one occasion, Mr. Schuck was advised by Respondent's secretary that the order to produce would be filed the following Monday.

6. Respondent had prepared the subpoenas but never served them.

7. After there was no record activity for a period of one year, an order to show cause was issued.

8. At the hearing on the order to show cause, Respondent advised the court that he had been engaged in ongoing discovery of the corporate records and books of the defendant. This discovery involved the subpoenas which Respondent had never served as well as negotiations with the defendant's counsel to try and obtain the books in the individual defendant's possession so Respondent's accountant could examine them.

9. Following the hearing, Respondent took no further action on the case.

10. After no record activity occurred for another period of one year, another order to show cause was generated. Respondent had not spoken to his client since March 13, 1992, despite the fact that Mr. Schuck had left repeated telephone messages.

11. Respondent now wishes to withdraw as counsel of record in Mr. Schuck's case.

Therefore, by reason of the foregoing, Respondent has violated the following Rules of Professional Conduct:

a) 4-1.3 - for failing to act with reasonable diligence and promptness in representing a client;

b) 4-1.4 - for failing to keep his client reasonably informed about the status of a matter and promptly reply to reasonable requests for information or explain matters reasonable to permit the client to make informed decisions regarding the representation; and

c) 4-8.4(a) - for violating the Rules of Professional Conduct.

As to Count II

1. Respondent was retained by Michael J. Allor in January, 1991, to assist him in seeking a modification of his child support payments.

2. Mr. Allor's income had diminished and one of his children had reached the age of majority.

3. Respondent advised Mr. Allor that his retainer would be $650.00 and upon payment in full, he would file the Petition to Modify Child Support. By April, 1991, Mr. Allor had paid Respondent in full.

4. Although Respondent prepared a draft of a Petition to Modify Child Support and Financial Affidavit, Respondent never filed anything with the court.

5. Mr. Allor was unable to contact Respondent by telephone and only met with Respondent one more time, in July, 1991, at which time Respondent assured him that he was working on the case.

6. On or around November, 1991, Mr. Allor was arrested because he was behind in his child support payments.

7. After he was arrested, he called the clerk's office to determine whether or not Respondent had filed the Petition to Modify Child Support. He was advised that Respondent had filed nothing on his behalf.

8. Thereafter, Mr. Allor terminated Respondent's services and hired attorney Glenn Brock to represent him.

9. Mr. Brock made repeated attempts to obtain Mr. Allor's file from Respondent without success. He finally obtained copies of the documents he needed from the clerk's office and filed the Petition to Modify Child Support in January, 1992.

10. Mr. Brock received nothing from Respondent until thirty minutes before the Grievance Committee Hearing held on May 12, 1992.

Therefore, by reason of the foregoing, Respondent has violated the following Rules of Professional Conduct:

a) 4-1.3 - for failing to act with reasonable diligence and promptness in representing a client;

b) 4-1.4 - for failing to keep his client reasonably informed about the status of a matter and promptly reply to reasonable requests for information or explain matters reasonable to permit the client to make informed decisions regarding the representation; and

c) 4-8.4(a) - for violating the Rules of Professional Conduct.

As to Count III

1. On or around November, 1990, Wendell McCoy, a resident of California, retained Respondent for $500.00 to represent him as the defendant in a modification of child support action filed by HRS on behalf of Mr. McCoy's former wife. Mr. McCoy had been referred by his previous attorney who had become a Circuit Court Judge and was unable to represent Mr. McCoy.

2. Mr. McCoy paid Respondent $500.00 by check dated November 26, 1990.

3. Because Mr. McCoy lived in California, he never met Respondent face-to-face and all contacts were by telephone.

4. Respondent drafted a response to the petition for modification of child support and mailed a copy to Mr. McCoy.

5. Respondent was late in filing the response so he contacted opposing counsel who agreed not to seek a default against Mr. McCoy.

6. A Hearing was set for March 15, 1991. Respondent called Mr. McCoy approximately one week before the hearing and advised him that based upon the guidelines used in Florida, his support payments would be approximately $300.00 per month.

7. On the day of the hearing, Respondent was late arriving at the courthouse and the hearing had been concluded. Respondent proceeded to the Judge's chambers where he was advised by the Judge that she had ruled along the guidelines and had ordered Mr. McCoy to pay the sum of $300.00 per month as support and an additional $40.00 of the arrears which totaled $1,114.15 as of February 28, 1991.

8. The judge signed the order on April 8, 1991. A copy was forwarded to Respondent.

9. Respondent called Mr. McCoy in or around mid-April, 1991, and advised him of what the judge had ruled. Mr. McCoy inquired as to whether or not a rehearing would be possible and Respondent advised him that there were no grounds for granting one.

10. Respondent advised Mr. McCoy that he would forward copies of the court documents to him as soon as possible.

11. By letter dated August 12, 1991, the Department of Revenue Child Support Enforcement Division in Massachusetts advised Mr. McCoy that due to an arrearage of $443.33 in his child support payments as of July 1, 1991, it would intercept any income tax refunds he was due unless the arrearages were paid in full.

12. In November, 1991, Mr. McCoy received a letter from the Florida Department of HRS advising him that as of October 28, 1991,

he was $653.26 in arrears. Mr. McCoy immediately called Respondent and advised him that he had never received any documents from him. Respondent assured him that he would send the documents.

13. After Mr. McCoy still failed to receive any documents from Respondent, he attempted repeatedly without success to call Respondent between November, 1991 and December, 1991.

14. On December 20, 1991, Mr. McCoy received a letter from Santa Clara County, California, enclosing a lien which had been filed by the District Attorney against Mr. McCoy for the past due child support payments.

15. On December 21, 1991, Mr. McCoy learned from his former wife that Respondent had failed to attend the March 15, 1991 hearing.

16. When Mr. McCoy spoke to Respondent in mid-April, 1991, he was left with the impression that Respondent had appeared at the hearing.

17. On December 23, 1991, Mr. McCoy called Respondent's office and advised the receptionist of what he had learned from his former wife. He again asked for the documents. He never received anything from Respondent's office.

18. By letter dated April 19, 1992, the Massachusetts Child Support Enforcement notified Mr. McCoy that it would take action if his child support arrearage of $3,554.00 was not paid in full within thirty days.

Therefore, by reason of the foregoing, Respondent has violated the following Rules of Professional Conduct:

a) 4-1.3 - for failing to act with reasonable diligence and promptness in representing a client;

b) 4-1.4 - for failing to keep his client reasonably informed about the status of a matter and promptly reply to reasonable requests for information or explain matters reasonable to permit the client to make informed decisions regarding the representation; and

c) 4-8.4(a) - for violating the Rules of Professional Conduct.

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

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of Rule 4-1.3, 4-1.4 and 4-8.4(a), Rules of Professional Conduct.

As to Count II

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of Rule 4-1.3, 4-1.4 and 4-8.4(a), Rules of Professional Conduct.

As to Count III

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of Rule 4-1.3, 4-1.4 and 4-8.4(a), Rules of Professional Conduct.

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the respondent be suspended from the practice of law for a period of three (3) months with automatic reinstatement at the end of period of suspension as provided in Rule 3-5.1, Rules of Discipline. Upon completing suspension, Respondent shall complete one (1) year probation monitored by The Florida Bar. Respondent has requested that attorney Roy Wilkes, practicing in Lake Placid, Highlands County, Florida, supervise his probation.

V. Personal History and Past Disciplinary Record: After finding of 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: Not in the record

Date admitted to Bar: November 16, 1978

Prior disciplinary convictions and disciplinary measures imposed therein:

a. "minor misconduct admonishment already for a similar type of conduct, neglect and failure to communicate", Ms. Jackson, page 5, Transcript of Hearing, November 13, 1992.

b. Respondent also appeared before Grievance Committee "A", May 12, 1992, which indicates that he had appeared 120 days prior with previous complaint, page 41, Transcript of Hearing, Grievance Committee "A".

Other Personal data: Respondent stated that a series of personal problems had caused him emotional distress, page 9, Transcript of Hearing, November 13, 1992. This was also mentioned at the Grievance Hearing (page 41) and apparently the reason given for previous admonishment. No time frame was given for the personal problems but they must have occurred prior to January, 1992. While the Respondent indicated that these problems were not an excuse, the Referee agrees that they were remote in time with reference to these cases.

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

Administrative costs Rule 3-7.6(k)(1)(5)	$500.00

No other costs submitted to Referee. 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 this 30th day of December, 1992.

/s/ LAWRENCE R. KIRKWOOD

LAWRENCE R. KIRKWOOD
REFEREE

Certificate of Service

I hereby certify that a copy of the above report of referee has been served by mail this 31st day of December, 1992, to:

For The Florida Bar, Kristen M. Jackson, Assistant Branch Staff Counsel, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801

For the Respondent, Appearing on his own behalf, Joel E. Grigsby, 210 Lake Shore Way, P. O. Box 557, Lake Alfred, Florida 33850-0557

/S/ Gail Robinette
Judicial Assistant

Judicial Assistant

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