IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 82,042

v.

TFB No. 93-11,247 (13E)

DAVID BALDWIN WEBSTER,

Respondent.

_____/

INITIAL BRIEF

OF

THE FLORIDA BAR

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SYMBOLS AND REFERENCES

In this brief, The Florida Bar, Petitioner, will be referred to as "The Florida Bar" or "The Bar". The Respondent, David Baldwin Webster, will be referred to as "Respondent".

"GT" will refer to the transcript of the evidentiary hearing before the grievance committee in TFB No. 93-11,247(13E), The Florida Bar v. David Baldwin Webster held on May 12, 1993.

"TR" will refer to the transcript, volumes I and II, of the final hearing before the referee in the disciplinary case styled The Florida Bar v. David Baldwin Webster, Supreme Court Case No. 82,042, held on October 7, 1994.

"DR" will refer to the disciplinary record in Supreme Court Case No. 82,042.

"RR" will refer to the Report of Referee in Supreme Court Case No. 82,043, dated March 31, 1995.

"TFB Exh." will refer to exhibits presented by The Florida Bar and "R. Exh." will refer to exhibits presented by the Respondent at the final hearing before the Referee in Supreme Court Case No. 82,042.

"Rule" or "Rules" will refer to The Rules Regulating The Florida Bar. "Standard" or "Standard" will refer to Florida Standards for Imposing Lawyer Sanctions.

STATEMENT OF THE FACTS AND OF THE CASE

David Baldwin Webster, Respondent, was admitted to the practice of law in the District of Columbia on or about December 12, 1968 (GT, p. 22), and practiced in that jurisdiction until approximately 1969. Respondent has retained his membership in the District of Columbia Bar until the present time.

On November 10, 1969, Respondent was admitted to practice law in the State of Florida. On September 3, 1987, Respondent received a private reprimand for professional misconduct in Florida Supreme Court Case No. 67,852.

By order of this Court in Case No. 73,302 dated November 18, 1988, Respondent was temporarily suspended on an emergency basis for trust account violations, effective thirty (30) days from the date of the order (TR, Vol. I, p. 32, TFB Exh. #1).

Subsequent to the issuance of the emergency suspension and pursuant to Rule 3-5.2(d), The Florida Bar filed Complaints against Respondent with this Court in Case Nos. 74,049, and 74,503. The Honorable Robert E. Beach was appointed as referee. On February 14, 1990, Respondent entered into a consent judgment wherein he admitted to commingling trust funds with his own funds, misapplying trust funds, failing to maintain and produce records concerning his trust accounts as required by Florida Bar rules, overdrawing his trust account by as much as $68,889.53, and writing several NSF checks on his trust account (TFB Exh. #2).

Pursuant to the consent judgment, Respondent agreed to an eighteen (18) month suspension from the practice of law and a two (2) year period of probation, to pay costs of the disciplinary proceeding, to submit to periodic trust account audits, to complete six (6) hours of continuing legal education in ethics and trust accounting, and to undergo substance abuse treatment as recommended by Florida Lawyer's Assistance, Inc.(F.L.A.)(TR, Vol. I, p. 46, TFB Exh. #2). Judge Beach approved the consent judgment as executed by the parties, and issued his Report of Referee.

On May 24, 1990, this Court issued an order approving Judge Beach's uncontested Report of Referee and suspending Respondent for eighteen (18) months, effective nunc pro tunc December 18, 1988, the date of Respondent's temporary suspension. By the terms of the Supreme Court Order, Respondent was also placed on two (2) years probation and ordered to comply with the terms of the consent judgment as adopted in the Report of Referee (TFB Exh. #3).

In a separate order also issued on May 24, 1990, this Court suspended Respondent for ninety (90) days in Case No. 72,029, effective nunc pro tunc December 18, 1988. This order arose out of Respondent's misconduct wherein he entered into a contingent fee agreement which was not in writing and signed by the client. The misconduct also included Respondent's failure to pay his client's medical provider out of the proceeds of a personal injury

settlement. The Florida Bar v. Webster, 564 So. 2d 490 (Fla. 1990),(TR, Vol. I, p. 49).

Rule XI, §11(b) of the District of Columbia Bar Rules, provides that:

> ... any attorney subject to the disciplinary jurisdiction of this Court, upon being subjected to professional disciplinary action by a disciplining court outside the District of Columbia or by another court in the District of Columbia, shall promptly inform Bar Counsel of such action. (TR, Vol. I, pp. 70-71; TFB Exh. #7).

Although Respondent was a member of the District of Columbia Bar at the time of his private reprimand, his emergency suspension, his eighteen-month suspension, and his ninety-day suspension, Respondent failed to notify the District of Columbia Bar of any of his discipline and suspensions from the practice of law in Florida until approximately November 2, 1992 (GT, p. 23). This was after the District of Columbia Bar had already learned of Respondent's disciplinary problems from The Florida Bar and had instituted disciplinary proceedings against Respondent for his failure to comply with Section 11(b) of Rule XI (TR, Vol. I, p. 129; TFB Exh. #14).

In or about March of 1990, Respondent interviewed on three (3) occasions, in person and by telephone, with Bill Mann, Attorney General for the Federated States of Micronesia, regarding a position as an assistant attorney general in Micronesia (TR, Vol. I, pp. 52-53). At no time during his interviews with Mr. Mann or thereafter did Respondent disclose to Mann or to other individuals

in the Attorney General's office, that he had been previously disciplined for professional misconduct in Florida or that he was under an order of suspension in that jurisdiction (TR, Vol. I, pp. 53-54).

As a prerequisite to his employment as an assistant attorney general for the Federated States of Micronesia, Respondent was required to become a member of the Micronesia Bar (GT, p. 12). Accordingly, Respondent applied for temporary admission to the Micronesia Bar until such time as he could take the Micronesia Bar Exam in August of 1990. In his Motion for Temporary Admission submitted to the Supreme Court of Micronesia on or about June 21, 1990, Respondent stated in paragraph three (3) that:

> "The undersigned is a member of The Washington D.C. Bar, The Florida Bar, The District of Columbia Court of Appeals, The Eleventh Circuit Court of Appeals and The Court of Custom and Patent Appeals."

In paragraph five (5) of his Motion for Temporary Admission, Respondent stated that:

> "The undersigned has no criminal charge or charge of violation of professional responsibility pending against him."

In paragraph six (6) of his Motion for Temporary Admission, Respondent stated that:

> "The undersigned is not under an order of suspension or disbarment from any authority. (TFB Exh. #5)

Respondent's failure to notify the District of Columbia Bar of his discipline and suspensions by The Florida Bar as required by Rule XI, §11(b) enabled him to remain in good standing with the

District of Columbia. Being unaware of Respondent's Florida discipline, the Clerk of the District of Columbia Court of Appeals issued to Respondent on May 8, 1990, a Certificate indicating that Respondent was a member in good standing of the District of Columbia Bar, and that Respondent was admitted to practice before that Court (TFB Exh. #10).

The Rules of Admission to practice before the Supreme Court of Micronesia required that an applicant provide a certificate of good standing from the applicant's other bar memberships (TFB Exh. #6). Respondent attached to his Micronesia Bar application, the Certificate of Good Standing he had obtained from the Clerk of the District of Columbia Court of Appeals, although he admittedly had not practiced in that jurisdiction for "twenty (20), thirty (30) years" (GT, p. 23).

At the time he submitted his Motion for Temporary Admission to the Micronesia Bar on or about June 21, 1990, Respondent was under an order of suspension from the Supreme Court of Florida and had not been reinstated to the practice of law in Florida. Respondent made a conscious decision not to disclose this important fact or to provide any information relative to his Florida suspension to the Micronesia Bar or to the Supreme Court of the Federated States of Micronesia (GT, p. 13; TR, Vol. I, p. 57).

Respondent was temporarily admitted to the Micronesia Bar and hired as an assistant attorney general for the Federated States of

Micronesia. Thereafter, Respondent passed the Micronesia Bar Exam and became a member of the Micronesia Bar on August 21,1990 (GT, pp. 13-14; TR, Vol I, p. 66; TFB Exh. #9).

During the spring of 1991, while serving as an assistant attorney general for Micronesia, Respondent learned of an available position with a much higher salary as interim special prosecutor for the Republic of Palau. Palau is a Trust Territory of the Pacific Islands, administered by the United States Department of the Interior. Respondent discussed the interim special prosecutor's position with William Stinnett, Law Enforcement Coordinator, Office of Territorial and International Affairs, United States Department of the Interior. During these discussions, Respondent failed to disclose to Stinnett the fact that he was a member of The Florida Bar, or that he was under an order of suspension in Florida and had not been reinstated to the practice of law (TR, Vol. I, pp. 88-89).

Respondent was interviewed for the interim special prosecutor position on April 5, 1991. Present at the interview were Mr. Stinnett; Stella Guerra, Assistant Secretary for Territorial and International Affairs, United States Department of the Interior; and Assistant United States Attorney Richard Pierce (TR, Vol. I, pp. 76-77). Respondent failed to disclose his Florida Bar membership or disciplinary suspensions to any of the individuals present at this interview (TR, Vol. I, pp. 78-79).

Respondent also failed to disclose his Florida Bar membership or disciplinary suspensions to J. Victor Hobson, Jr., Director of the Trust Territory of the Pacific Islands, Palau Office. Mr. Hobson was to become Respondent's immediate supervisor at the Department of the Interior should he be offered the interim special prosecutor's position (TR, Vol. I, p. 83; Vol. II, p. 19).

Additionally, although Respondent met with Mr. Stinnett subsequent to the April 5, 1991 interview, and at that time informed Stinnett of his previous substance abuse problem, Respondent did not disclose to Stinnett or anyone else at the Department of the Interior that he was a member of The Florida Bar or that he had current and prior disciplinary suspensions in Florida (TR, Vol, I, pp. 88-89; TFB Exh.#8).

On May 30, 1991, Respondent met with The Honorable Mamoru Nakamura, Chief Justice of the Supreme Court, Republic of Palau, and submitted to him an application for admission as an attorney and counselor at law in the courts of the Republic of Palau (GT, p. 16; TR, Vol. I, p. 99; TFB Exh. #9). As a part of his application for admission, Respondent executed a sworn affidavit under date of May 30, 1991, wherein Respondent stated that he was "admitted (or licensed) as an Attorney and Counselor at law in the state (sic) of Washington, D.C. on or about October 1, 1968, and is still a member in good standing of the bar or said courts, and that this Affidavit is made to supplement an application for admission as an Attorney

and Counselor at law in the Republic of Palau." (TFB Exh. #9).

At no time did Respondent disclose to Chief Justice Nakamura or to anyone else associated with the Palau Supreme Court or the Palau Bar, the fact that he was a member of the Florida Bar, that he had current and prior disciplinary suspensions in Florida, and that he had not been reinstated to the practice of law in that jurisdiction(TR, Vol I, p. 100). This omission was material and necessary for Respondent to be admitted to the Palau Bar, and thus be hired as interim special prosecutor, since the Palau Bar Admission Rules required an applicant to submit a certificate of good standing from <u>each</u> jurisdiction in which the applicant had practiced(TFB Exh. #12).

In order to support his application for admission in Palau, Respondent submitted a Certificate of Good Standing from the Clerk of the Supreme Court of the Federated States of Micronesia (TFB Exh. #9). At the time he obtained and submitted this document to the Supreme Court of Palau, Respondent had not disclosed his Florida disciplinary suspensions to Micronesia (TR, Vol. I, pp. 64, 72-73).

Respondent was admitted to practice in the Courts of Palau under Rule 3 of the Palau Rules of Admission (TFB Exh. #13). Under Rule 3, an attorney working for a government entity is allowed to practice in the Palauan courts without having to first pass the Palau Bar Exam (GT, p. 17; TFB Exh. #12). An attorney admitted

under Rule 3 is still required, however, to comply with all other rules of admission, including Rule 2(a), which obligates the applicant to inform the Court of any disciplinary proceeding current or prior, in all jurisdictions in which the applicant has been admitted (GT, p. 20; TFB Exh. #12).

On May 30, 1991, Respondent executed an Oath of Admission to Practice in the Republic of Palau (TR, Vol. I, p. 104; TFB Exh. #11). Thereafter, Assistant Secretary Guerra authorized Director Hobson to hire Respondent as interim special prosecutor, and on July 8, 1991, Respondent entered into a contract of employment with the United States Department of the Interior (TR, Vol. I, p. 83).

On July 12, 1991, Respondent executed an Oath of Office and began duties as the interim special prosecutor of the Republic of Palau (TFB Exh. #11).

On or about May 6, 1992, Respondent, through his attorney, filed a Petition for Reinstatement to the Practice of Law with the Supreme Court of Florida (GT, p. 26). In or about August, 1992, Respondent approached The Honorable Lawrence Sutton, Associate Justice of the Supreme Court of the Republic of Palau, and, for the first time, advised him of his Florida disciplinary suspensions and pending reinstatement petition. Respondent also requested that Justice Sutton execute and forward to The Florida Bar, an affidavit on his behalf attesting to Respondent's work as the interim special prosecutor in Palau (TR, Vol II, pp. 21-22).

Subsequent to this conversation with the Respondent, Justice Sutton received documents verifying Respondent's disciplinary status(GT, p. 28).

Respondent's immediate supervisor, Victor Hobson, also learned of Respondent's disciplinary suspensions in Florida. On September 8, 1992, Mr. Hobson, at the direction of Assistant Secretary of the Interior Guerra, terminated Respondent's contract as the interim special prosecutor for cause (TR, Vol. I, pp. 85-86).

Justice Sutton referred the Florida Bar documents verifying Respondent's disciplinary suspensions to the Acting Chief Justice of the Supreme Court of Palau. On August 31, 1992 the Acting Chief Justice appointed a disciplinary tribunal to investigate the matter, and also appointed Barrie Michelsen, Esquire, as disciplinary counsel. Mr. Michelsen commenced his investigation and on October 9, 1992, filed a formal complaint against Respondent with the Palau Supreme Court(TFB Exh. #13, p.3).

The Complaint charged that "by failing to divulge to the Supreme Court of Palau the Florida Bar suspension, Respondent misrepresented and concealed a material fact in his application for admission to practice law in this jurisdiction" (TFB Exh. #13, p. 6).

On November 13, 1992, the Supreme Court of the Republic of Palau issued its Findings, Conclusions, and Order of Disbarment in the case styled <u>In Re: David B. Webster, Esq., Respondent</u>. In

rendering their decision, the Court found no mitigating circumstances, but found numerous aggravating factors as stated in the Order of Disbarment:

> "1. Respondent knew at the time of his application and admission to practice law in this jurisdiction he concealed a material fact which would have prevented his admission.
>
> 2. Faced with the uncontradicted facts of his suspension and prior disciplinary record, he still denies any allegations of wrongdoing... and
>
> 3. Respondent has raised substantive 'defenses' which are patently without merit..." (TFB Exh. #13, p. 6).

Subsequent to the Order of Disbarment issued on November 13, 1992, Respondent filed a Motion for Rehearing and a Petition for a Writ of Certiorari to the Trust Territory of the Pacific Islands Territory High Court, claiming that the Palau Supreme Court had no jurisdiction to discipline him. Both of Respondent's requests were denied (TR, Vol. I, pp. 123-127; TFB Exh. #16 and #17; R. Exh. #1 and #3).

The District of Columbia Bar first learned of Respondent's Florida disciplinary suspensions when during The Florida Bar's background investigation pursuant to Respondent's Reinstatement Petition, Florida Bar counsel contacted the District of Columbia Office of Bar Counsel. By correspondence dated September 25, 1992, Florida Bar Counsel formally notified the D.C. Bar that the Respondent was under an order of suspension.

By letter dated October 2, 1992, Leonard Becker, Esquire, Bar Counsel for the District of Columbia, informed The Florida Bar that there was no record of Respondent ever having notified the District of Columbia Bar of his Florida suspensions. Mr. Becker also advised that the District of Columbia Bar Counsel's Office had commenced disciplinary proceedings against the Respondent for his failure to notify that Bar of his Florida suspensions (DR, TFB Complaint, Exh. #6).

By order dated November 16, 1992, Respondent was suspended from the practice of law in the District of Columbia pending final disposition of the disciplinary proceedings (TR, Vol. I, p. 132; TFB Exh.#15). The disciplinary proceedings are currently pending in that jurisdiction.

On April 29 and 30, 1993, hearings were held before The Honorable Marc H. Salton on Respondent's Petition for Reinstatement. Judge Salton, also the referee in the instant case, recommended that Respondent's petition for reinstatement be denied and that he be prohibited from reapplying for reinstatement for one (1) year. On November 17, 1994, this Court denied Respondent's reinstatement petition and prohibited him from applying for reinstatement for two (2) years from the date of the order in The Florida Bar re: Webster, 647 So. 2d 816, 818 (Fla. 1994).

On May 12, 1993, the Respondent testified before the Thirteenth Judicial Circuit Grievance Committee "E", and on June 9,

1993, the grievance committee found probable cause for further disciplinary proceedings.

The Florida Bar's Complaint based on the probable cause findings charged Respondent with violating Rules 3-4.3, 4-8.1(a), 4-8.1(b), and 4-8.4(c), Rules Regulating The Florida Bar. At a pre-trial hearing, Respondent's Motion to dismiss the alleged violations of Rule 4-8.1(a) and Rule 4-8.1(b) was granted.

A final hearing on the remaining matters was held on October 7, 1994. On April 12, 1995, The Florida Bar received Judge Salton's Report of Referee which recommended that Respondent be found guilty of violating Rule 3-4.3, but not guilty of violating Rule 4-8.4(c)(RR, p. 6). Judge Salton also recommended that Respondent receive a two (2) year suspension retroactive to November 17, 1994, and that the suspension run concurrent with this Court's order prohibiting Respondent from petitioning for reinstatement until November of 1996 (RR, p. 7).

The Florida Bar Board of Governors voted to seek disbarment in this matter. On June 1, 1995, The Florida Bar filed with this Court, a Petition for Review of Referee's Report, challenging the referee's findings of fact, recommendations of guilt, and recommended discipline.

The Florida Bar is not contesting the referee's recommendation of a finding of guilt regarding Rule 3-4.3.

SUMMARY OF ARGUMENT

The referee properly recommended that Respondent be found guilty of violating Rule 3-4.3. However, the record herein shows clearly and convincingly that Respondent is guilty of violating Rule 4-8.4(c) and the referee's recommendation to the contrary is clearly erroneous.

At a pre-trial hearing in this cause, the referee also dismissed the Bar's allegations that Respondent had violated Rules 4-8.1(a) and 4-8.1(b) when he submitted false and misleading information in his applications for bar admission to the Federated States of Micronesia and the Republic of Palau. Respondent may properly be disciplined under this rule for misconduct committed in a foreign jurisdiction.

The evidence in the record and the relevant case law establishes clearly and convincingly that Respondent was guilty of engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation when he executed and filed a Motion for Admission to Micronesia and a sworn affidavit in support of his admission to Palau and failed to disclose his Florida suspensions in either document, or in any other manner. Respondent also failed to disclose his Florida disciplinary status to the Attorney General's

Office, his employer in Micronesia, or to the United States Department of the Interior, his employer in Palau.

Additionally, the record shows that the Respondent failed to notify the District of Columbia Bar of his suspensions in Florida, as required by that bar's rules, until after the D.C. Bar had already learned of said suspensions and had instituted disciplinary proceedings against him. This allowed the Respondent to obtain a certificate of good standing from the District of Columbia Court of Appeals which he later used to support his admissions applications in Micronesia and Palau.

The referee recommended a two (2) year suspension to run concurrent with this Court's order of November 17, 1994, prohibiting the Respondent from petitioning for reinstatement to the practice of law until November of 1996. Based on the record and evidence, case law involving misconduct similar to that of Respondent, and the relevant Florida Standards for Imposing Lawyer Sanctions, disbarment is the appropriate discipline for Respondent's misconduct.

I. WHETHER THE FLORIDA BAR HAS PROVED BY CLEAR AND CONVINCING EVIDENCE THAT RESPONDENT HAS VIOLATED RULES 4-8.4(c), 4-8.1(a) AND 4-8.1(b).

A. The Florida Bar has shown by clear and convincing evidence that the Respondent has violated Rule 4-8.4(c), Rules Regulating The Florida Bar.

In denying Respondent's reinstatement petition, this Court discussed the issue of whether Respondent made a misrepresentation by omission when he failed to disclose his disciplinary suspensions when applying to the Micronesia and Palau Bars, and held as follows:

> "...we find that, by failing to tell those bars that he was suspended and was not a member in good standing of The Florida Bar, he engaged in a misrepresentation by omission. (Emphasis added) The Florida Bar re: Webster, *supra*, at 817.

The referee in the instant case found, nevertheless, that "Respondent did not make an actual misrepresentation when he stated in his applications to practice law in Micronesia and Palau that he was not under suspension or disbarment" (RR, p. 4).

However, the referee further found that by failing to notify the Washington, D.C. Bar of his suspensions in Florida, the Respondent:

> "...remained in good standing with the Bar under circumstances in which had he noticed the District of Columbia as required, he may very well not have been in good standing at the time of his application in Micronesia and Palau. His omission regarding his Florida suspension, though not an actual misrepresentation, fraud, or deceit, was contrary to honesty and justice.

(RR, p. 6)

Based on these findings, the referee recommended that Respondent be found not guilty of violating Rule 4-8.4(c), but guilty of violating Rule 3-4.3 (RR, p. 6).

There is clear and convincing evidence that the Respondent knowingly and intentionally concealed a material fact regarding his disciplinary suspensions in Florida from his employer, the United States Department of the Interior, the District of Columbia, Micronesia, and Palau Bars, and that he did so with a dishonest and/or selfish motive. Further, Respondent affirmatively misrepresented, in his motion for temporary admission to the Micronesian bar, that he was not under an order of suspension or disbarment from any authority.

Respondent has been continually suspended and ineligible to practice law in the State of Florida by order of this Court from the date of his emergency suspension on December 18, 1988 through the present time. Respondent claims that he believed his suspension expired at the end of the eighteen-month period on June 17, 1990 (GT, p. 10-12). This argument is disingenuous at best. Respondent's suspension continues unless and until he is reinstated to practice by this Court. If his suspension had expired as Respondent contends, he would presumably have been automatically authorized to practice law in Florida after June 17, 1990, and it would have been unnecessary for him leave Florida, as he did, and

apply for admission to foreign jurisdictions.

Rule 3-5.1(e), Rules Regulating The Florida Bar states in relevant part:

> "...upon the expiration of the suspension period and the satisfaction of all conditions accompanying the suspension, the respondent shall become eligible to all of the privileges of members in The Florida Bar. (emphasis added)

The expiration of the suspension period is certainly not the equivalent of the expiration of the suspension as the Respondent contends. The rule states only that the suspension period expires, not the suspension order.

Moreover, Respondent acknowledged that he first interviewed with Attorney General Mann for the position of assistant attorney general in Micronesia on or about March of 1990, and that he did not inform Mann of his Florida suspension (TR, Vol.I, pp. 52-53). Even if Respondent's erroneous argument that his suspension ended on June 17, 1990 were true, he would still have been under the eighteen-month period of suspension during March of 1990 when he concealed that fact from Attorney General Mann. Further, Respondent remained ineligible to practice in Florida after June 17, 1990 and failed to advise Mann or the Micronesian Supreme Court of the suspension and his ineligibility to practice law in Florida.

At the time he executed the consent judgment on February 14, 1990 wherein he agreed to the eighteen-month suspension and

subsequent probation, Respondent was aware that Rule 3-5.1(e) provided as follows:

> "A suspension of more than 90 days shall require proof of rehabilitation and may require passage of all or part of the Florida bar examination."

In a case such as this where the suspension is 91 days or more, the suspension remains in effect unless and until the suspended attorney files a petition for reinstatement, shows rehabilitation and fitness to practice, and is reinstated by order of this Court.

During testimony before the referee herein, Respondent admitted that he knew he would have to be reinstated prior to being allowed to practice in Florida (TR, Vol. I, p. 62). Furthermore, during his testimony before the grievance committee, Respondent was asked whether his decision not to disclose his Florida disciplinary suspensions to the Micronesia Bar was a conscious one. Respondent answered that question as follows:

> "Absolutely. I didn't disclose--I was not very proud of the fact that I was suspended. I was not very proud of the fact that I was bankrupt. I was not very proud of the fact that I was a cocaine addict. I didn't disclose any of those things." (GT, p. 13)

In his Motion for Temporary Admission to Micronesia executed and submitted to the Supreme Court of the Federated States of Micronesia on June 20, 1990, Respondent falsely stated that "The undersigned has no criminal charge or charge of violation of professional responsibility pending against him." In that same

document, Respondent also falsely stated that "The undersigned is not under an order of suspension or disbarment from any authority." (TFB Exh. #5).

Respondent attempted to justify those statements by asserting that he had no duty to disclose since the suspension had expired on June 17, 1990(GT, pp. 10-12). Not only was that assertion incorrect, it was designed to create a rationalization for not disclosing what Respondent knew to be the truth in order to accomplish his own selfish motive. Additionally, even if Respondent's suspension had expired on June 17, 1990, he would still have been under a two-year probationary period (TFB Exh. #3) when he applied for application to the Micronesia and Palau Bars. He failed to disclose this material fact to either bar, to his employers, or to the courts of those jurisdictions.

Paragraph 2(b) of the Federated States of Micronesia Bar Rules of Admission provides as follows:

> "MORAL AND CHARACTER REQUIREMENTS: Each applicant certifies that no criminal charge or charge of violation of professional responsibility is currently pending against the applicant, and the applicant has never been convicted of a crime or found guilty of a violation of professional ethics or responsibilities. Any such charges, convictions, or findings of violation of professional responsibility are pending or have been made against the applicant, they shall be certified and described in detail in the application, will be subject to further investigation by the Court. False or incomplete certification may be considered as grounds for disbarment. (TFB Exh. #6; TR, Vol. I, pp. 68-69)

While testifying before the grievance committee, Respondent

was questioned as to why he had failed to disclose his disciplinary suspensions to Micronesia when applying for the assistant attorney general position. Respondent answered that question as follows: "It wasn't relevant. It wasn't material to the job. It wasn't material to the application." (GT, p. 13.). In later testimony at the final hearing in this cause, Respondent again attempted to justify his failure to disclose his Florida disciplinary status to Micronesia by stating that "I didn't know of any legal duty to do so, and I did not do so." (TR, Vol. I, pp. 53-54). The plain wording of Paragraph 2(b) of the Micronesia Bar Rules of Admissions shows that Respondent clearly had a legal duty to disclose not only his disciplinary suspensions, but his other discipline and probation as well.

Respondent contends that his failure to comply with Paragraph 2(b) was because he was unaware of the Micronesia Bar Admission Rules at the time of his application to Micronesia, and that he never did any research or investigation to determine what rules he needed to comply with in order to be admitted in Micronesia (TR, Vol. I, p. 66). The only logical inference which can be drawn is that Respondent knowingly and purposefully failed to investigate Micronesia's requirements for Bar admission so that he could later assert that he was unaware of Paragraph 2(b) should his deception be discovered.

Respondent also had a motive to intentionally conceal his

Florida suspension from the Washington, District of Columbia Bar. Both the Micronesia and Palau Bars required a certificate of good standing from another jurisdiction in order the an applicant to be admitted to practice prior to passing their bar exams, and Palau required certificates of good standing from all jurisdictions in which the applicant had practiced.

Pursuant to the District of Columbia Bar Rules, timely notification by the Respondent of his Florida suspension would have resulted in Respondent's prompt reciprocal suspension in the District of Columbia, thereby preventing him from obtaining and submitting the certificate of good standing from the District of Columbia, which he, in turn later used to gain admission to the Micronesia Bar (TFB Exh. #7).

Respondent's justification for his failure to notify the District of Columbia of his Florida suspensions is likewise incredible and without merit. Respondent asserts that he had no duty to inform the District of Columbia Bar of his emergency suspension in Florida in 1988 because it was, in his words, a "temporary restraining order" and an "action to prevent imminent harm" rather than a disciplinary action (TR, Vol. I, pp. 71-73). Rule 3-5.2(a), Rules Regulating The Florida Bar regarding emergency suspensions, states in pertinent part:

> "On petition of The Florida Bar, authorized by its president, president-elect, or executive director, supported by 1 or more affidavits demonstrating facts personally known to the affiants that, if unrebutted,

> would establish clearly and convincingly that an attorney appears to be causing great public harm, the Supreme Court of Florida may issue an order imposing emergency conditions of probation on said attorney or suspending said attorney on an emergency basis. (emphasis added)

The order of this Court in The Florida Bar v. Webster, Case No. 73,302 is titled "Temporary Suspension". The order clearly states, " ... it is hereby ordered that respondent, DAVID B. WEBSTER, is suspended from the practice of law until further order of this Court ..."(TFB Exh. #1).

While it is true that a temporary suspension may indeed "restrain" a lawyer from practicing, and that the suspension imposed therein may be for the purpose of preventing imminent public harm, the plain and unambiguous language of Rule 3-5.2(a), and Respondent's Order of Temporary Suspension can leave no doubt that Respondent was suspended from the practice of law in Florida by the November 1988 order for disciplinary reasons. Respondent's attempts to circumvent the bar rules in other jurisdictions by characterizing his emergency suspension as a "temporary restraining order" or a "temporary injunction" is merely another example of the extent of deceit and dishonesty to which Respondent is willing to go to serve his own selfish purposes.

Respondent's sworn affidavit to the Supreme Court of Palau (TFB Exh. #9) in support of his application for admission to that jurisdiction was likewise misleading, deceptive, and improper. Respondent's rationalization for his failure here to disclose his

Florida Bar membership and suspensions, that "they didn't want to know" and "they didn't care frankly,"(TR, Vol. I, p.78) is totally without merit. The very actions of the individuals upon whom Respondent perpetrated his misrepresentation show just how ludicrous this explanation is.

On September 8, 1992, after learning of Respondent's disciplinary suspensions in Florida, Victor Hobson, upon orders from Stella Guerra, Assistant Secretary of the United States Department of the Interior, promptly terminated Respondent's contract of employment as interim special prosecutor for cause (TR, Vol. I, pp. 85-86).

William Stinnett, Law Enforcement Coordinator at the Department of the Interior, stated in a sworn affidavit submitted to The Florida Bar that:

> "I recommended Mr. Webster for the position of Interim Special Prosecutor. Had he revealed to me his suspension from the Florida State Bar, I could not have supported him for the position of Interim Special Prosecutor and would not have recommended him for that position. (TFB Exh. #8)

Respondent's argument that he would probably have been hired by Micronesia and Palau, even if those jurisdictions had known of his disciplinary suspensions in Florida (TR, Vol. I, pp. 62-63, 78) is likewise without merit, considering the sworn statement of Stinnett, and the actions of Hobson and Guerra in terminating Respondent's employment as interim special prosecutor after discovering his Florida suspensions.

In the sworn affidavit Respondent submitted to the Palau Supreme Court, he stated that he was admitted as an attorney and counselor at law in Washington, D.C. on or about October 1, 1968, and was still a member in good standing of that bar.(TFB Exh. #9). This sworn statement constituted a misrepresentation by omission in that it implies that Respondent had practiced in Washington, D.C. only, and that he had practiced there continuously since 1968. In fact, Respondent admittedly had not practiced in Washington, D.C. for "twenty, thirty years" (GT, p. 23; TR, Vol. I, pp. 31-32). Significantly, Respondent omitted any mention of his membership in The Florida Bar from this affidavit, the jurisdiction where he had last practiced prior to his emergency suspension in 1988, and in which he had practiced continuously for approximately twenty (20) years prior to the 1988 suspension. There can be no other reasonable explanation for Respondent's omission of his Florida Bar membership in his application to Palau than that he sought to conceal his disciplinary problems in Florida from that court.

Respondent was employed in Palau under a contract with the United States Department of the Interior, and as a government employee, had applied and was admitted to the Palau Bar under Rule 3 of the Palau Rules of Admission. (GT, p. 17) (TFB Exh. 13, p.1)This rule provides as follows:

> "...(a)ny attorney who is a salaried employee of ... the Trust Territory Government may practice law in Palau without complying with Rule 2(d) of these rules for a period of four (4) years, so long as the attorney is

> acting within the scope of his or her employment and maintains membership in good standing in the bar or any state, territory, or possession of the United States" (TFB Exh. #12).

Respondent was exempted only from complying with Rule 2(d), which requires the taking and passing of the Palau Bar exam. Respondent was not exempted from complying with Rules 2(a), (b), and (c) of the Rules of Admission.

Respondent failed to comply with Rule 2(a) of the Palau Rules of Admission which requires that:

> "Rule 2. Any person who is not admitted to practice law pursuant to Rule 1, shall be certified for admission to practice before the courts of the Republic of Palau if he or she satisfies the following requirements:
>
> (a) Must be able to demonstrate proof of good moral character in the form of certificate of good standing, issued within 30 days of the application for admission, from the bar of the jurisdiction(s) in which he or she practiced law prior to coming to Palau, said certificate to contain a statement that the applicant has not been the subject of original or reciprocal disciplinary proceedings in that jurisdiction, nor is the applicant currently under investigation in that jurisdiction for alleged violations of the canons of ethics or rules of admission. (TFB Exh. #12).

Rule 2(a) of the Palau Rules of Admission clearly required the Respondent to provide certificates of good standing from the bar of the jurisdiction(s) in which he practiced prior to coming to Palau and a statement that he had not been the subject of original or reciprocal disciplinary proceedings in that jurisdiction. Respondent intentionally failed to mention that he was a member of The Florida Bar, and had practiced in Florida continuously from

1969 to 1988, because he knew that it would be impossible to obtain a certificate of good standing from The Florida Bar. Respondent's intentional failure to inform the Palau Supreme Court of his Florida Bar membership and disciplinary status was dishonest and deceitful, a misrepresentation of the facts, and a violation of Paragraph 2(a) of the Palau Bar Rules of Admission.

In its order denying Respondent's Petition for Reinstatement issued on November 17, 1994, this Court found that in addition to Respondent's misrepresentation by omission in failing to notify the Micronesia and Palau Bars of his Florida suspensions, Respondent also, in the Referee's words, "played fast and loose with the facts" and that he additionally wrongfully failed to notify the Washington, D.C. Bar of his Florida suspension. The Florida Bar re: Webster, at 817.

This Court has ruled in numerous cases that failure to disclose a material fact is a violation of Rule 4-8.4(c). Respondent's misconduct in the instant case is similar to that found in The Florida Bar. v. Stillman, 606 So. 2d 360, 361 (Fla. 1992). Stillman, while acting as counsel for a mortgage company providing financing for a real estate transaction, was given specific instructions by his client that there could be no secondary financing. When the contract was made, the property was subject to an existing mortgage lien, and Stillman secured an assignment in favor of the seller. The purchaser then executed a

purchase money second note and mortgage prepared by Stillman. Stillman then issued a mortgage title insurance policy which failed to disclose the existence of the second mortgage.

Stillman engaged in similar conduct on at least three (3) other occasions, and this Court held that in each case, Stillman had violated Rule 4-8.4(c) when he perpetrated a deceit by failure to disclose. In mitigation, this Court found that Stillman's motive involved neither personal gain nor greed, and that the misconduct was not likely to be repeated. Id., at 363.

Stillman's failure to disclose material facts, that of the existence of the second mortgages, is analogous to Respondent's failure to disclose his Florida disciplinary status. Respondent's misconduct is more egregious than that of Stillman, however, in that Respondent cannot claim in mitigation that his conduct involved neither personal gain nor greed.

Respondent acknowledged during the final hearing before the referee herein, that one of his motivations in applying for the assistant attorney general position in Micronesia and the interim special prosecutor position in Palau was monetary gain. Respondent admitted that the reason he applied for the Micronesia position was because he was not making a sufficient salary as a law clerk, that he "was desperate", and that the Micronesia position was an answer to his dilemma (TR, Vol. II, p. 66). Respondent also admitted that the Palau position afforded him a salary double that which he was

earning in Micronesia(TR, Vol. I, p. 83). As discussed previously, Respondent would likely not have obtained either position had he not fraudulently misrepresented his Florida disciplinary status to Micronesia and Palau.

In The Florida Bar v. Feige, 596 So. 2d 433, 434 (Fla. 1992), an attorney who assisted his client in conduct he knew to be fraudulent and failed to reveal the fraud to an affected person, was disciplined for violation of Disciplinary Rule 1-102(A)(4), the predecessor to Rule 4-8.4(c). Feige represented a client who had previously entered into a property settlement agreement in a dissolution of marriage wherein the former husband was to pay the former wife, Feige's client, permanent periodic alimony until she either died or remarried. Eight (8) years after the execution of the property settlement agreement, the former wife remarried and Feige performed the marriage ceremony. Feige then instructed his client not to inform her former husband of the remarriage. The former husband did not learn of the remarriage until two (2) years later, and during that time continued making monthly alimony payments to Feige in trust for the former wife. Pursuant to an agreement with his client, Feige kept the alimony payments made during this time, totaling $4,200.00, as payment for his representation of her on matters related to the divorce.

The referee in Feige found that by continuing to accept the alimony checks, Feige had perpetrated fraud, and his conduct

amounted to theft by fraud. This Court further found Feige guilty of conduct involving dishonesty, fraud, deceit or misrepresentation, and, as an aggravating factor, that Feige refused to acknowledge the wrongful nature of his conduct. Id., at 435.

Feige is directly on point with the instant case in that Respondent, like Feige, perpetrated a fraud for his own monetary gain when he made actual and affirmative misrepresentations in the documents he submitted to Micronesia and Palau in an effort to obtain the financial rewards he would receive as assistant attorney general in Micronesia and as interim special prosecutor in Palau.

Respondent, like Feige, also refused to acknowledge the wrongful nature of his conduct. Respondent stated numerous times in his testimony before the grievance committee and the referee herein, and in his reinstatement proceedings, that he had done nothing wrong, that he had no duty to disclose (TR, Vol. I, pp. 71-72, 100; Vol. II, p. 70, GT p.13), that his disciplinary suspension was "not relevant" (TR, Vol. I, pp. 53-54), that he had no fraudulent intent (TR, Vol. II,p. 71), and that the documents he submitted to Palau were never acted or relied upon (TR, Vol. II, p. 114). Respondent even tried to assert that the Palau Supreme Court had no jurisdiction over him (TR, Vol. I, pp. 108-113, 124; Vol. II, pp. 26-28), and finally, that he was never a member of the Palau Bar (TR, Vol. I, pp. 103, 108-109; Vol. II, p. 26),

notwithstanding the Oath of Admission to that bar which he executed on May 31, 1991 (TFB Exh. #11).

In their Order of Disbarment, the Palau Supreme Court held that Respondent was a Rule 3 member of that bar, that that Court had jurisdiction over him, and noted that "... Respondent's defense of no jurisdiction is frivolous..." (TFB Exh.#13, p. 7). The Court further noted, as an aggravating factor, that " ... Faced with the uncontradicted facts of his suspension and prior disciplinary record, he still denies any allegations of wrongdoing." (TFB Exh. #13, p. 6).

In The Florida Bar v. Lancaster, 448 So. 2d 1019, 1022 (Fla. 1984), this Court found that an attorney, among other things, failed to act with complete candor about his unwitting involvement in suspicious activity. Lancaster's roommate had purchased a boat and Lancaster subsequently observed the seller of the boat placing a number on it. Although he admitted he was suspicious that something might be wrong or that the boat might be stolen, Lancaster disavowed any knowledge of the altered number when the state attorney began making inquiries, and later endeavored to secure the absence of a material witness from the resulting criminal proceeding. Lancaster was found guilty of violating Disciplinary Rule 1-102(A)(4), the predecessor to Rule 4-8.4(c).

In a separate opinion, Chief Justice Alderman noted that Lancaster's conduct was " ... the antithesis of the moral and

ethical conduct expected from those admitted to the practice of law in this state and warrants nothing short of disbarment." Id., at 1023.

Respondent's misconduct is just as egregious as that of Lancaster, and perhaps more so, in that Respondent perpetrated his deceit, dishonesty, fraud and misrepresentations on numerous occasions, not only upon his employers, but also on the Supreme Courts of Micronesia and Palau and on the bars of those jurisdictions, as well as on the District of Columbia Court and Bar. Respondent also made an active and continuing effort to perpetrate the misrepresentation. In a letter dated October 8, 1992, which Respondent faxed to Barrie Michelsen, Esquire, the Disciplinary Counsel in Palau, Respondent asserted that "My lawyer and I had an agreement with the [Florida] Bar attorney that no contact in Palau would be made, until after my contract was completed (January 1993)"(GT, pp. 25-28). The Palau Supreme Court, in its order disbarring Respondent, observed:

> "Respondent claims the concealment of the Florida Disciplinary action was not material. However, in his October 8th letter to Counsel ... Respondent concedes 'my lawyer and I had an agreement with the Bar attorney that no contact in Palau would be made until after contract was completed (January 1993).' This demonstrates not only how material the misrepresentation was but also it shows the active and continuous effort to conceal it from this Court (TFB Exh. #13, p. 8).

Furthermore, Respondent's claim that he and Florida Bar counsel had an agreement not to inform Palau of Respondent's

Florida discipline was, and is, untrue.

Respondent's misrepresentations by omission are also similar to those in The Florida Bar v. Williams, 604 So. 2d 447, 449-451 (Fla. 1992). Williams received a quitclaim deed on real estate as security for her fee in a criminal representation. She then recorded the deed and obtained a mortgage loan on the property, received the funds therefrom, and recorded the mortgage. In later testimony before the grievance committee, Williams indicated that she "had no money from that property and no mortgage on it, that I'm aware of." This Court found that Williams subsequent explanation that her answer before the grievance committee was in the context of a question concerning an earlier mortgage application on the same property was "incredulous", and found Williams guilty of violating Rule 4-8.4(c).

In a further comment on Williams' conduct, this Court observed that " ... dishonesty and a lack of candor cannot be tolerated in a profession built upon trust and respect for the law." Id., at 451.

Respondent's statements before the grievance committee and referee herein as explanations for his misconduct are equally as incredible. Respondent stated that he did not disclose his disciplinary suspensions because his prospective employers "didn't want to know"; that he was not under a suspension at all, but only a "temporary restraining order"; that he was never admitted to the

Palau Bar; that Palau had no jurisdiction to discipline him; that he was never properly served with the Palau Disciplinary Complaint; and that his suspension order in Florida expired on June 17, 1990. All of these arguments are frivolous and in no way justify Respondent's misrepresentations, just as Williams' explanation for her misconduct failed to prevent this Court from finding her guilty of violating Rule 4-8.4(c).

This Court has also held a statement to be deceptive, if that statement were true, but a material fact was omitted. In Wadhams v. Board of County Commissioners, 567 So. 2d 414, 416 (Fla. 1990), this Court found a proposal to be deceptive " ... because although it contained an absolutely true statement, it omitted to state a material fact necessary in order to make the statement not misleading."

Even if one were to accept Respondent's contention that he made no untrue statements on his bar applications to Micronesia and Palau, Respondent is, nevertheless, guilty of conduct involving deception under Wadhams, since he knowingly and affirmatively omitted the material fact of his Florida disciplinary status from those documents, and further concealed that status from the affected individuals.

In Attorney Grievance Commission of Maryland v. Gilbert, 307 Md. 481, 515 A. 2d 454, 457 (MD App. 1986), Gilbert, an applicant for admission to the Maryland Bar, was asked on his application to

list "all suits in equity, actions at law, suits in bankruptcy, matters in probate, lunacy, guardianship, and every other judicial or administrative proceedings of every nature and kind, except criminal proceedings, to which I am or have ever been a party." Gilbert answered "none" to this question, although he had been involved in civil litigation with Bankers Life Insurance Company over the proceeds of two life insurance policies he took out on his wife shortly before she was murdered. Gilbert was denied recovery on those policies because of evidence that he was involved in his wife's murder.

Shortly after Gilbert's admission to the Maryland Bar, the Attorney Grievance Committee discovered the non-disclosure and filed its petition for disciplinary action based on Gilbert's failure to disclose a material fact by his negative answer to the question on his application. Gilbert, like the Respondent herein, argued that the non-disclosure was not material. The Maryland Court of Appeals, citing Matter of Howe, 257 N.W. 2d 420,422 (N.D. 1977), a North Dakota Supreme Court decision which defined a material omission used in the context of a bar application as one that "has the effect of inhibiting the efforts of the bar to determine an applicant's fitness to practice law," found Gilbert's omission to be material. Id.,at 459. The Court further observed that "Gilbert's deliberate failure to disclose Bankers Life plainly reflects on his truthfulness and candor during the application

process and hence upon his present moral character fitness to practice law in this State". Maryland disbarred Gilbert. Id. at 462. The District of Columbia Bar, of which Gilbert was also a member, also disbarred Gilbert after learning of his failure to disclose material information on his Maryland Bar application. In re James H. Gilbert, 538 A. 2d 742 (DC 1988).

Again, in Attorney Grievance Commission of Maryland v. Keenan, 311 Md. 161, 533 A. 2d 278, 281 (MD App. 1987), Keenan failed the Maryland Bar Exam, but passed the Pennsylvania Bar Exam, and was admitted to practice in Pennsylvania. After his admission to that bar, Keenan shared a law office in York, Pennsylvania, but his law practice was minimal. All the while, he was employed full-time as an insurance adjuster. In his application for admission to the Maryland Bar approximately seven (7) years later, he disclosed his admission to the Pennsylvania Bar and indicated that he had regularly engaged in the practice of law for at least five (5) years as the principal means of earning his livelihood during the relevant seven-year period, and failed to disclose his principal employment during that period as an adjuster for USF & G Insurance Company. He was thus excused from passing the full Maryland Bar Exam, and was admitted to the Maryland Bar.

After the deception was discovered, Keenan insisted, as did Respondent, that he never intended to mislead the Bar. The Maryland Court rejected this argument and held that Keenan had acted

deliberately in failing to disclose the material information. Keenan was disbarred. Id., at 282.

In order to find that an attorney has acted with dishonesty, fraud, deceit, or misrepresentation, The Florida Bar must show the necessary element of intent. The Florida Bar v. Neu, 597 So. 2d 266, 268 (Fla. 1992). The Florida Bar has established by clear and convincing evidence that Respondent acted with a dishonest and selfish intent when he concealed his Florida discipline from the District of Columbia, Micronesia, and Palau bars. For the foregoing reasons, The Florida Bar has met its burden and the Respondent should be found guilty of violating Rule 4-8.4(c).

B. The Respondent may properly be disciplined under Rule 4-8.1, Rules Regulating The Florida Bar, for conduct committed in a foreign jurisdiction.

In a pre-trial hearing, the referee herein dismissed the Bar's allegations that Respondent had violated Rule 4-8.1(a) and (b) when he submitted false information and/or failed to disclose material facts to the bars of Micronesia and Palau (RR, pp. 3-4).

Rule 4-8.1, Rules Regulating The Florida Bar, states in its entirety as follows:

> "An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:
> (a) knowingly make a false statement of material fact; or
> (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary

authority, except that this rule does not require disclosure of information otherwise protected by rule 4-1.6."

Both parties in these proceedings agree that there is, as yet, no relevant case law in Florida, and this issue appears to be one of first impression (DR, Transcript of Motion Hearing, May 16, 1994, p. 6).

The Rules Regulating The Florida Bar clearly apply to conduct by attorneys within and without the State of Florida. The wording of Rule 4-8.1 provides that " ... an applicant for admission to the bar or a lawyer in connection with a bar admission application..." (emphasis added). The wording of the rule does not limit its application to applicants for admission to The Florida Bar only.

Additionally, Rule 4-8.1 refers to "an applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter". The Florida Bar would certainly have jurisdiction over a Florida lawyer already admitted to practice who applies to practice in a different jurisdiction. The comment to Rule 4-8.1 further explains that, "This rule also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware."

It is also noted that discipline may be imposed by The Florida Bar for "the commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in

the course of the attorney's relations as an attorney or otherwise, whether within or outside the State of Florida. (R. Regulating Fla. Bar 3-4.3) (emphasis added)

The evidence presented by The Florida Bar in the instant case has shown clearly and convincingly that Respondent knowingly omitted a material fact in applying for admission to the Micronesia and Palau bars, and that he further failed to disclose to those bars, the material fact of his Florida suspensions when such disclosure was necessary to correct what would be an obvious misapprehension by those bars that Respondent was a member in good standing of The Florida Bar.

Respondent should be found guilty of violating Rule 4-8.1(a) and 4-8.1(b), Rules Regulating The Florida Bar.

II. WHETHER DISBARMENT IS THE APPROPRIATE DISCIPLINE FOR RESPONDENT'S MISCONDUCT.

The referee herein recommended a two (2) year suspension to run concurrent with the Florida Supreme Court order prohibiting Respondent from petitioning for reinstatement until November of 1996. However, the recommended discipline falls short of the appropriate sanction of disbarment.

Respondent was dishonest and deceitful, made misrepresentations, failed to disclose material facts, and did so for his own personal gain. Additionally, Respondent continued the fraud upon the courts of Micronesia and Palau for an extended period of time, and never attempted to mitigate his misconduct by telling those courts or his employers the truth. He only advised the District of Columbia Bar of his Florida disciplinary status after that Bar had learned of his disciplinary suspensions in Florida, and had already instituted disciplinary proceedings against him. This conduct by an individual who is presumed to be an "officer of the court" and held to a higher standard of conduct is reprehensible and inexcusable and is deserving of disbarment.

Respondent also attempts to justify his misconduct by contending that his misrepresentations were immaterial and were never relied upon. The evidence simply does not support this position. After the Palau Supreme Court learned of Respondent's misrepresentations about his Florida disciplinary status, that Court promptly disbarred the Respondent. Likewise, upon learning of

Respondent's misrepresentations, the United States Department of the Interior promptly terminated Respondent's contract of employment for cause.

Perhaps most significantly, Respondent continues to insist that he has done nothing improper, and has failed to acknowledge the wrongful nature of his conduct.

In its recent order denying Respondent's petition for reinstatement to the practice of law, this Court noted:

> " ... (Respondent's) conduct, when taken as a whole, would cause a reasonable person to have substantial doubts about Webster's honesty, fairness, and respect for the law. That the Supreme Court of Palau disbarred Webster upon learning of his failure to disclose his Florida suspension is evidence of that fact. The Florida Bar re: Webster at 818.

In The Florida Bar v. Agar, 394 So. 2d 405, 406 (Fla. 1981), an attorney allowed a witness to falsely testify, either actively or passively arranged for such false testimony, and thereafter did nothing to reveal the fraud to the Court. Agar's argument that the false testimony did nothing to affect the outcome of the case in question is analogous to Respondent's spurious claim that his misrepresentations were not material or relevant, and that they were never relied upon. This Court noted in Agar that "it matters not, despite respondent's arguments to the contrary, whether the testimony is capable in and of itself, of affecting the outcome of the case in question. What is relevant is that respondent, by his own admission, allowed his client to perpetrate a fraud upon the

court." Agar was disbarred.

In The Florida Bar v. Delves, 397 So. 2d, 919, 920 (Fla. 1981), an attorney sold certain parcels of land which he owned without informing the purchasers of outstanding mortgages, or that the real estate was, in fact, not titled in his name due to outstanding judgments against him. Delves also borrowed $4,300.00 from a client, and gave the client an unrecorded "satisfaction of mortgage" which was, in reality, a worthless piece of paper. Delves was disbarred.

Respondent, like Delves, concealed material facts when he applied for admission in Micronesia and Palau, and when he applied for employment with the Republic of Palau Attorney General's Office and the United States Department of the Interior. Like Delves, Respondent submitted a certificate of good standing from the District of Columbia to the Micronesia Supreme Court, that was, in reality, a sham. As previously shown, that certificate was only issued because that bar was unaware of Respondent's Florida disciplinary suspensions. When the District of Columbia Bar learned of those suspensions, Respondent was promptly suspended.

Also, this Court has ruled that the falsification of a Florida bar admission application warrants revocation of the applicant's license to practice law. Florida Board of Bar Examiners v. Lerner, 250 So. 2d 852, 853 (Fla. 1971). In conduct strikingly similar to that of Lerner, Respondent submitted a Motion for Temporary

Admission to Micronesia in which he falsely stated that he had "no charge of violation of professional responsibility pending against him," and that he was "not under an order of suspension or disbarment from any authority" (TFB Exh. #5). Moreover, in his application to the Supreme Court of Palau, Respondent not only failed to mention his Florida disciplinary suspensions, but also failed to mention that he was a member of The Florida Bar.

The Florida Standards for Imposing Lawyer Sanctions support the Bar's position that disbarment is the appropriate discipline for Respondent's misconduct. Based on the facts of this case, absent aggravating and mitigating factors, the following sections of the Standards apply:

5.0 VIOLATIONS OF DUTIES OWED TO THE PUBLIC

5.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY

5.11 Disbarment is appropriate when: (f) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

6.0 VIOLATIONS OF DUTIES OWED TO THE LEGAL SYSTEM

6.1 FALSE STATEMENTS, FRAUD, AND MISREPRESENTATION

6.11 Disbarment is appropriate when a lawyer: (a) with the intent to deceive the court, knowingly makes a false statement or submits a false document; or (b) improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

6.21 Disbarment is appropriate when a lawyer violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious

or potentially serious interference with a legal proceeding.

7.0 VIOLATIONS OF OTHER DUTIES OWED AS A PROFESSIONAL

7.1 Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

The following aggravating factors apply in the instant case:

9.2 AGGRAVATION

(a) prior disciplinary offenses;
(b) dishonest or selfish motive;
(c) a pattern of misconduct;
(d) multiple offenses;
(g) refusal to acknowledge wrongful nature of conduct;
(i) substantial experience in the practice of law.

Based on the evidence presented herein, the case law, and the Standards as set forth above, The Florida Bar respectfully requests that the Respondent be disbarred from the practice of law in the State of Florida.

CONCLUSION

The Florida Bar has established by clear and convincing evidence that the Respondent knowingly and intentionally misrepresented his Florida disciplinary status when he applied for admission to the bars of the Federated States of Micronesia and the Republic of Palau, that he failed to inform the District of Columbia Bar of his Florida suspensions in violations of that bar's rules, that he intentionally concealed his Florida disciplinary suspensions from his employers in Micronesia and Palau, and that he has failed to acknowledge the wrongful nature of such conduct.

Respondent's misconduct is so egregious that it cannot be mitigated from disbarment. It is respectfully requested that this Court enter an order disbarring the Respondent from the practice of law in this state.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing Initial Brief of The Florida Bar has been furnished by regular U. S. mail to Sid J. White, Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, FL 32399-1927; a true and correct copy by hand delivery to David Baldwin Webster, Respondent; and a copy to John T. Berry, Esq., Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, this 30th day of June, 1995.

JOSEPH A. CORSMEIER
Assistant Staff Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

DAVID BALDWIN WEBSTER,

Respondent.

_____/

Case No. 82,042

TFB No. 93-11,247 (13E)

APPENDIX TO THE INITIAL BRIEF

OF THE FLORIDA BAR

INDEX TO THE APPENDIX