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SID J. WHITE

AUG 23 1996

CLERK, SUPREME COURT

By _____

Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant-Appellant,

Supreme Court Case No. 83,457

v.

The Florida Bar Case Nos.

ROBERT SCOTT LAING,

93-51,082 (15E), 93-51,095 (15E)

93-51,395 (15E), 93-51,564 (15E)

94-50,695 (15E) & 94-50,701 (15E)

Respondent-Appellee.

THE FLORIDA BAR'S INITIAL BRIEF

RONNA FRIEDMAN YOUNG, #563129
Bar Counsel
The Florida Bar
5900 North Andrews Avenue, Suite 835
Fort Lauderdale, FL 33309
(954) 772-2245

JOHN T. BERRY, #217395
Bar Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(904) 561-5839

JOHN F. HARKNESS, JR. #123390
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(904) 561-5839

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STATEMENT OF THE CASE AND OF THE FACTS

The bar filed its six count complaint against respondent on March 30, 1994. Trial was held on March 25, 1996 through March 28, 1996 and the referee issued his report on May 22, 1996.

The referee found the respondent guilty of five rule violations on count I of the complaint, one violation on count II, two violations on count III, three violations on count IV, and four violations on count V. On count VI of the bar's complaint, the referee found that respondent had engaged in deceitful acts in two instances in violation of Rule 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation] of the Rules of Professional Conduct.

Although the bar urged the referee to recommend disbarment, the referee recommended that respondent be suspended for ninety days. RR., p. 9. The referee further recommended that respondent be placed on a definite probation "during which time the respondent shall, at his expense, complete a Dale Carnegie course and one other course of the 'How to win friends and influence people' type and/or how to deal with clients; Perhaps an ethics course." RR., pp. 9-10. The referee, also, recommended that respondent be monitored by a practicing member of the bar for the first twelve months of respondent's resumption of practice. RR., p. 10.

The referee listed no facts that he considered specifically in aggravation or in mitigation. However, the referee noted that when making his findings and recommendations, he took into account the prior disciplinary history of the respondent. RR., p. 10. This history included the fact that respondent was suspended by order of this court on September 26, 1985 for sixty days and the fact that respondent received a private reprimand final on February 15, 1991. RR., p.10. This court's prior order of September 26, 1985 approved Mr. Laing's guilty plea acknowledging violation of Disciplinary Rule 6-101(A)(3) of the Code of Professional Responsibility [A lawyer shall not neglect a legal matter], four separate violations of Disciplinary Rule 1-102(A)(6) [A lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law], two separate violations of Disciplinary Rule 2-106(A) [A lawyer shall not enter into an agreement for, charge or collect a clearly excessive fee], violation of Disciplinary Rule 2-106(C) [A lawyer shall not enter into an arrangement for, charge or collect any fee in a domestic relations matter, the payment or amount of which is contingent upon the amount of support], violation of Disciplinary Rule 6-101(A)(2) [A lawyer shall not handle a legal matter without preparation adequate in the circumstances], violation of Rule 11.02(3)(a) of the Florida Bar Integration Rules,

article XI, [Commission by a lawyer of any act contrary to honesty, justice or good morals] and Rule 11.02(3)(b) of the Florida Bar Integration Rules, article XI [Misconduct constituting a misdemeanor]. The private reprimand was for violation of Rule 4-1.8(g), Rules of Professional Conduct [Failure to obtain client's consent to settlement] and Rule 4-1.15(b), Rules of Professional Conduct [A lawyer shall promptly notify a client of the receipt of funds, shall promptly deliver to the client funds which the client is entitled to receive, and upon request of the client, to render a full accounting regarding the property].

The bar's Board of Governors at the July 1996 meeting authorized this appeal to seek disbarment.

The particular facts of the current proceeding are necessary to highlight the nature of respondent's multiple violations and are as follows:

COUNT I

Respondent was retained by Luba Delaney and her company, Organizational Design Concepts, Inc. to represent them in a claim against Advertising Media Placement and related parties. RR., p. 1. Mr. Laing testified that he had Ms. Delaney sign two fee contracts, one for a contingent fee and one for an hourly fee. T., pp. 346-347; See, Bar Exhibits 33 and 34. In accordance with his

office practice, Mr. Laing did not sign either contract. T., p. 352. Mr. Laing testified that his arrangement with Ms. Delaney was for a contingent fee. T., p. 347 and 351. Ms. Delaney testified that he did not explain to her why she was signing more than one contract but she relied on Mr. Laing as her attorney that that's what she should do. T., p. 368.

Mr. Laing testified that he had Ms. Delaney execute the hourly rate contract for the purpose of showing the court what his hourly rate would be if the court awarded attorney's fees. T., p. 348. However, the hourly rate contract does not say it is only for the purpose of establishing what a reasonable hourly rate would be if the court awarded attorney's fees. Bar exhibit 33.

Mr. Laing began working on the matter by calling different people associated with the defendant while Ms. Delaney listened in Mr. Laing's office. T., p. 370. Ms. Delaney testified that Mr. Laing yelled and screamed and was "verbally abusive." T., p. 371-372. Joni Crane, who received some of Mr. Laing's calls, testified that he screamed at her and told her that he had been following her, knew where she lived, and what kind of car she drove. T., p. 205-206. Jennifer Lynch, who also received some of the calls, testified that Mr. Laing told her he knew where she lived, what she drove and where she went and he was loud and used curse words. T.,

p. 201-202. Because Joni Crane was concerned for her safety and for her children, she made a report with the Juno Beach Police Department. T., 209. She, also, wrote a letter to the bar and testified that the calls then stopped. T., p. 210.

Mr. Laing told his client, Luba Delaney, that Joni Crane had filed a bar grievance against him and asked for her assistance. T., p. 373. In fact, he prepared an affidavit for her to sign. T., pp. 373-374; Bar exhibit 35. She refused because the affidavit was not truthful. T., p. 374. Ms. Delaney testified that when she refused to sign the affidavit, Mr. Laing began threatening her. T., pp. 374-375. She was so scared that like Joni Crane, she also filed a police report. T., p. 375. Luba Delaney tried to get information on her case from Mr. Laing but could not. T., pp. 375-376. Mr. Laing refused to work on the case after she refused to sign the affidavit. T., p. 377. She then decided to terminate Mr. Laing's services and wanted to be reimbursed what she had paid to him. T., p. 377.

Mr. Laing wrote her a letter which stated Mr. Laing's intention to hold her to the hourly rate contract although Mr. Laing testified that his agreement with Ms. Delaney was for a contingent fee. This letter stated in pertinent part:

This letter is to confirm your decision to terminate my

services and request a refund. As you may remember, you signed an hourly rate contract providing for a \$2,500 nonrefundable retainer (copy enclosed) which retainer was to be applied against \$250 an hour. See, Bar exhibit 36.

Mr. Laing agreed to refund \$900 to Ms. Delaney. RR., pp. 1-2. He sent two payments of \$300 each and the remaining payment of \$300 just days before the hearing in front of the referee. RR., p. 2. Ms. Delaney testified that she believed she was entitled to be reimbursed the entire \$2,500 and did not agree to accept only \$900. T., p. 378.

With respect to Count I, the referee found Mr. Laing guilty of Rule(s) 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.], 4-1.4(a) [A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.], 4-1.5(f)(2) [Each participating lawyer or law firm shall sign the contract with the client... The client shall be furnished with a copy of the signed contract], 4-1.7(b) [A lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's own interest.], and 4-1.15(b) [A lawyer shall promptly deliver to the client or third person any

funds or other property that the client or third person is entitled to receive.], of the Rules of Professional Conduct.

COUNT II

Count II concerned respondent's arrest in Ohio for the charge of operating a motor vehicle under the influence of alcohol. RR., p. 2. A not guilty plea was entered and a trial date was set for September 6, 1991 with Mr. Laing's request for that date. T., p. 244. Just prior to the scheduled trial date, Mr. Laing's attorney withdrew the not guilty plea and entered a guilty plea. RR., p. 2. At that point, the original jury that had been summoned for September 6, 1991 was excused and the court called another jury for September 20, 1991 if Mr. Laing did not confirm the guilty plea. T., p. 247. A jury trial was convened on September 20 and Mr. Laing failed to appear. T., p. 2. Mr. Laing testified that after he had agreed in May to a trial date in September, he booked a trip to Africa. T., p. 455. He did not ask for a continuance before he booked the trip. T., p. 462. He arrived back in Florida before the trial but did not travel on to Ohio for trial because his luggage had been lost. T., pp. 462-463.

On Count II of the complaint, the referee found Mr. Laing guilty of Rule 4-3.4(c) [A lawyer shall not knowingly disobey an obligation under the rules of a tribunal.] RR., p. 6.

COUNT III

Count III concerned respondent's conviction in Florida of resisting an officer without violence. RR, p. 3. On October 1, 1992 at approximately 11:25 p.m., Mr. Laing was outside of Willie's Pub in unincorporated Palm Beach County, Florida and was observing a situation between Deputy Daniel Wood of the Palm Beach County Sheriff's Office and Alejandro Gonzalez. RR., p. 2. Deputy Wood made four requests for Mr. Laing to move and additionally informed Mr. Laing that the request was based upon Mr. Laing being within reach of the officer's weapon. Bar Exhibit 23. Deputy Wood further informed him that refusal to comply would result in his being arrested. Bar Exhibit 23. "The respondent apparently felt he had a legal right to stand in a public place but the Deputy, a trial court and the Fourth District [sic] of Appeal felt otherwise." RR., p.3. Mr. Laing was convicted on or about March 19, 1993 of resisting an officer without violence, which conviction was affirmed on appeal on or about March 24, 1994. RR., p. 3.

On Count III, the referee found Mr. Laing guilty of 3-4.3 [The commission by a lawyer of any act that is unlawful or contrary to honesty and justice... may constitute a cause for discipline.], and 3-4.4 [Whether the alleged misconduct constitutes a felony or misdemeanor, The Florida Bar may initiate disciplinary action

regardless of whether the respondent has been tried, acquitted, or convicted in a court for the alleged criminal offense.], of the Rules of Discipline.

COUNT IV

Mr. Laing represented John A. Notte in a personal injury lawsuit that had originally been started by Attorney Raymond Christian. T., p. 260. Mr. Notte's wife, Sandra, testified that Mr. Laing did not represent her and she did not sign a contract of representation with Mr. Laing. T., pp. 260, 261. As the personal injury case progressed, Mrs. Notte divorced Mr. Notte. RR., p. 3. In the divorce proceeding, the court ordered on or about April 2, 1993 that twenty-five percent of any recovery in the personal injury case be held in trust and not be disbursed pending the final hearing on the divorce. RR., p. 3; Bar exhibit 25.

A \$15,000 recovery was made in the personal injury lawsuit and Mr. Laing held \$1,750 pursuant to the court's order. RR., p. 3. A closing statement was prepared by Mr. Laing and signed by Mrs. Notte in April, 1993 showing that Mr. Laing was retaining the \$1,750. T., p. 262; Bar exhibit 26.

On or about July 28, 1993, Mr. and Mrs. Notte were divorced. T., p. 264; Bar exhibit 28. Incorporated in the final judgment was a marital rights settlement agreement which provided that the

\$1,750 would be disbursed directly to the wife on the date of the final judgment. RR., p. 3; Bar exhibit 28.

Mr. Laing did not disburse the \$1,750 on the date of the final judgment and did not disburse within a reasonable time thereafter despite the demands of Mrs. Notte that he do so. RR., p. 3.

Finally, Mrs. Notte received a check on September 14, 1993 in the amount of \$1,705.15 as opposed to the \$1,750 ordered by the court. RR., p. 3. Mr. Laing deducted \$44.85 for telephone calls charged to Mr. Notte. RR., p. 3. Mr. Laing did not have a court order authorizing him to deduct the \$44.85. RR., p. 4. Mr. Laing admitted in his testimony that he was wrong to deduct the \$44.85. RR., p. 4, T., p. 470. After the complaint was filed in these proceedings, Mr. Laing provided a check to Mrs. Notte in the amount of \$50.

On Count IV, the referee found that Mr. Laing had violated Rule 4-1.15(b) [A lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.], 4-4.4 [In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person.], and Rule 5-1.1(a) [Money or other property entrusted to an attorney for a specific purpose is held in trust and must be applied only to that

purpose.] of the Rules Regulating Trust Accounts.

COUNT V

On or about February 1, 1991, Karen Hall paid Mr. Laing \$720 as a retainer for legal services. RR., p. 4. Ms. Hall had signed a lease option agreement, paying \$10,000 for the option and an additional \$11,400 in prepaid rent for a year, and wished to be released from her obligation. Bar exhibit 2, RR., p.4.

Mr. Laing told his client that it was a nice house and he was interested in it. T., p. 32. Mr. Laing prepared an assignment of Ms. Hall's interest to him and had his client sign the assignment but he did not give his client a copy signed by him. T., p. 33; Bar exhibit 3. Mr. Laing did not recommend that Karen Hall seek the advice of independent counsel and she did not consult another attorney. T., p. 34. An assignment was also prepared between Mr. Laing, Ms. Hall, and the owner of the property, Barbara Sylvester. Bar exhibit 4. Karen Hall relied on Mr. Laing's advice that she should sign this document. T., p. 70. Mr. Laing took the original of this assignment, said he would sign it, moved into the property, and never signed it. T., p. 122. Mr. Laing thereafter disputed whether he was bound by the provisions of the assignment that had been executed by Ms. Hall and Ms. Sylvester. T., p. 124. During this period of time, which was subsequent to Mr. Laing's moving

into the property, he continued to represent himself as Karen Hall's attorney. T., 125, 34.

Instead of reimbursing Ms. Hall in full for what she had paid for the property, Mr. Laing told Ms. Hall that he would pay her \$5,000 immediately, \$950 a month (to reimburse her for the prepaid rent) and an additional \$5,000 when he closed on the property. T., p. 34. According to Ms. Hall, he paid the \$5,000, made the first month's payment of the \$950, then stopped making payments of the \$950. T., p. 35. Mr. Laing then sent her a check for \$550 with an explanation that he was having problems with the house and Ms. Sylvester and that he could not afford to pay her any more until it was resolved. T., p.36. Ms Hall, who still regarded Mr. Laing as her attorney, tried to call Mr. Laing to find out about the problem but he would not answer her telephone calls. T., p. 49. At the time she assigned her interest to Mr. Laing, he had not explained to her that she might not receive the full amount that was due to her. T., p. 54. In 1994, Ms. Hall retained an attorney to represent her against Mr. Laing and she recovered some of the money that he owed to her. T., p. 36-37.

The referee found that: "It is obvious that respondent took advantage of the monies previously paid by Karen Hall in his taking over the option and eventual occupancy and purchase of the

property." RR., p.4. The referee further concluded that: "It is obvious to the referee that there was conflict between Karen Hall and Scott Laing and that the respondent should have made certain disclosures to Karen Hall and should have advised in writing where the conflicts could arise." RR., pp. 4-5.

On Count VI, the referee found that Mr. Laing violated Rule(s) 4-1.8(a) [A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, ... unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client, (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and (3) the client consents in writing thereto.]; 4-1.4(a) [A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.]; 4-1.4(b) [A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.] and 4-1.7(b) [A lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation of that

client may be materially limited by the lawyer's...own interest.] .

Count VI

Count VI arose from the grievance filed by Barbara Sylvester, the owner of the property that was the subject of Karen Hall's lease option. RR., p. 5. After moving into the property, Mr. Laing began to jockey for certain positions favorable to him in the real estate matter and when litigation ensued, it was settled by stipulation which provided that respondent purchase the property. RR., p. 5. At the time of closing, Mr. Laing tendered a cashier's check to the closing agent for documentary stamp taxes in excess of what was necessary to pay. T., p. 154. Mr. Laing insisted on having more documentary stamp taxes than what was required. T., p. 155. An expert real estate witness testified that if improper documentary stamp taxes are on the document, it reflects an improper price. T., p. 181. There was, also, testimony from Antonia Hulme, Ms. Sylvester's attorney, that Mr. Laing requested that a new contract be drawn for a purchase price of \$160,000 instead of the agreed upon \$140,000 so that he could obtain financing for the full \$140,000. T., 126-127. Ms. Sylvester's attorney refused to use what she considered to be a fabricated selling price. T., p. 127; See also, bar exhibit 14. The closing agent testified that because Mr. Laing was paying by cashier's

check, they could not refuse it but they did refuse to put more documentary stamp taxes on than what was required and they refunded the excess payment. T., p, 154.

Mr. Laing testified that he did have a conversation with Ms. Hulme wherein he requested that the purchase contract be rewritten so that he could obtain "additional financing." T., p. 309. He, also, admitted that he was aware he was tendering more monies to the closing agent than what was required for the documentary stamp taxes and that he "expected some salutary [sic] consequences from overpaying." T., p. 314-315. When asked if he recognized that the additional documentary stamp taxes could be potentially misleading to a subsequent purchaser of the property or a subsequent mortgagee, he responded: "I suppose that I contemplated that possibility." T., p. 315-316.

After hearing all of the testimony on this issue, the referee stated: "The referee believes that this was a design so that respondent could obtain a higher mortgage." RR., p. 5. By demanding that more documentary stamp taxes be placed on the deed than the purchase price allowed and by tendering a check for the artificially inflated documentary stamp taxes, the referee found that respondent had engaged in a deceitful act in violation Rule 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty,

fraud, deceit, or misrepresentation.] RR., p. 9.

The referee found an additional violation of Rule 4-8.4(c) relating to Mr. Laing's request to his client, Karen Hall, that she lie for him to assist him in his dispute with Barbara Sylvester.

On October 2, 1991, Mr. Laing sent a letter to Karen Hall which stated in pertinent part:

Accordingly, I am not going forward to execute the option to purchase this property at this time; however, if, as [sic] when Barbara and/or her attorney become somewhat wizened to the fact that these are problems that they will, most probably, have to take care of and they, in fact, do so, I may at that point in time, exercise the option. In the meantime, I plan to stay in the property and, for the reason that there is a Florida Statute that provides that when someone "overstays" their tenancy under a Lease, that they may become obligated to pay 50% over the amount of rent that they contracted for, I would like to have you, in addition to writing me and/or Mr. Kingcade a letter authorizing his further representation, author a letter to me documenting that our agreed upon rent was, in fact, \$500 per month. Bar Exhibit 5., p. 1.

Karen Hall refused to write such a letter "because it wasn't true." T., p. 46. Karen Hall testified that their agreed upon rent was \$950 T., p. 46, and this fact was further evidenced by Mr. Laing's letter of May 7, 1991 to Ms. Hall which referred to the \$950/month obligation. See, bar exhibit 6.

The referee found that Mr. Laing had violated Rule 4-8.4(c) by requesting Karen Hall to falsely represent that their agreed upon rent was \$500 when it was in fact, \$950 per month, in order to avoid a penalty under the landlord tenant act. RR., p. 9.

SUMMARY OF ARGUMENT

The bar makes two arguments for purposes of this appeal. First, with respect to count I of the bar's complaint, the bar submits that the referee should have found an additional violation under Rule 3-4.3 and/or Rule 4-8.4(c) with respect to dishonesty on the strength of the respondent's admissions.

The bar submits that respondent's conduct was dishonest because: (1) having the client sign two fee agreements with the lawyer not signing either is dishonest since it gives the lawyer the option of holding the client to the agreement that the lawyer finds most advantageous and in fact, Mr. Laing wrote a letter to the client evidencing Mr. Laing's intention to hold the client to the hourly rate contract when, in truth and in fact, their agreement was for a contingent fee; (2) respondent's intended purpose with respect to the two contracts was to offer the hourly rate contract to the court as evidence that he was entitled to \$250 per hour when, in truth and in fact, he was entitled to a contingent fee; and (3) respondent's intended purpose was to offer

the hourly rate contract to the court as evidence that he was entitled to \$250 per hour when, in truth and in fact, his regular hourly rate was \$210 per hour.

Second, regardless of whether this court finds any additional violation, the bar submits that the cumulative nature of respondent's misconduct, including the 17 rule violations found by the referee in this case coupled with his prior record of suspension (11 violations) and private reprimand (two violations) warrants disbarment. Particularly in light of the two findings of deceitful conduct in this case, including his scheme to obtain a higher mortgage and his request to his client to lie, and his prior misconduct of lying to a police officer, which was one of the violations leading to his sixty day suspension, respondent has demonstrated that his character is such as to be incompatible with the practice of law.

ARGUMENT

I. THE REFEREE SHOULD HAVE MADE AN ADDITIONAL FINDING OF VIOLATION UNDER RULE 3-4.3 AND/OR 4-8.4(c) WITH RESPECT TO DISHONESTY ON THE STRENGTH OF RESPONDENT'S ADMISSIONS.

The referee found five rule violations with respect to Count I of the bar's complaint. In addition to the violations found by the referee, the bar had charged respondent with misconduct under Rule 3-4.3 [The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline.], and 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.] of the Rules of Professional Conduct. The referee did not make extensive factual findings with respect to this count. RR., pp. 1-2. However, the bar submits that on the strength of respondent's admissions, this court should find an additional violation under Rule 3-4.3 and/or 4-8.4(c).

These admissions were: (1) that respondent's agreement with his client was for a contingent fee, T., p. 347 and 351; (2) that respondent had his client sign two separate fee agreements, one for a contingent fee and one for an hourly rate, T., pp. 346-347; (3) that respondent, in accordance with his office policy, signed neither agreement, T., p. 352; (4) that respondent intended to

offer the hourly rate contract into evidence to establish his entitlement to an hourly rate of \$250 per hour if he was awarded attorney's fees T., p. 348; (5) that respondent's "regular hourly rate" at that time was \$210 not \$250 per hour, bar exhibit 36; (6) that respondent wrote a letter to his client stating she was obligated under the hourly rate contract, bar exhibit 36.

The first problem with respondent's conduct is that his failure to sign either contract leaves himself the option of holding the client to either contract.¹ In fact, respondent testified that his agreement was contingent, T., p. 347 and 351, but his letter of January 13, 1993 to Ms. Delaney evidenced Mr. Laing's intention to hold her to the hourly rate contract. Bar exhibit 36.

The next problem with the conduct is Mr. Laing's stated purpose in having the client sign two contracts. This purpose appears to amount to an intended fraud on a court. If the client is not paying an hourly rate but is, in fact, paying a contingent fee, how can the client agree to what the fictitious hourly rate would be? A client could conceivably agree to a fee of \$1,000 per

¹The court may wish to compare respondent's conduct in Count I with his conduct in Count V. With respect to Count V, Mr. Laing took the original of the lease option agreement, said he would sign it, moved into the property, never signed it, and disputed that he was bound by the provisions of the assignment. T., pp. 122 and 124.

hour, \$2,000 etc. if that is an amount that they are not really obligated to pay. Moreover, the hourly rate contract does not state that it is only for the purpose of establishing what a reasonable hourly rate would be but purports to be a real contract. Bar exhibit 33. How Mr. Laing could legitimately offer the hourly rate contract to a court as evidence of his entitlement to \$250 is beyond comprehension.

Third, Mr. Laing's letter of January 13, 1993 to Ms. Delaney, bar exhibit 36, stated that his "regular hourly rate" was \$210 not \$250. Mr. Laing testified that for the "majority of my clients", he charged \$210. T., p. 350. However, he further testified that he gets "a bump up or lode star of \$250 an hour when I'm seeking to obtain fees from other people..." T., p. 350. Query how Mr. Laing could purport to charge his own client \$250 in their contract and intend to submit that contract to a court as evidence of his reasonable hourly rate when that rate was in excess of what he regularly charged.

A referee's findings of fact regarding guilt carry a presumption of correctness that should be upheld unless clearly erroneous or without support in the record. *The Florida Bar v. Vannier*, 498 So. 2d 896,898 (Fla. 1986). However, in the instant case, the referee, although he did not find Mr. Laing guilty of

dishonesty on Count I, made no findings of fact that are at odds with the admissions made by Mr. Laing. The "bare-bones" nature of the referee's findings of fact on count I do not contain specific findings of fact that negate Mr. Laing's admissions. See, RR., pp. 1-2. The issue before this court is whether those admissions amount to a violation of Rule 3-4.3 and/or 4-8.4(c) and the bar submits that the admissions, taken as a whole, amount to a violation for dishonest conduct.

II. THE CUMULATIVE NATURE OF RESPONDENT'S MISCONDUCT WARRANTS DISBARMENT.

Regardless of whether this court finds any additional violation, the bar submits that the cumulative nature of respondent's misconduct, including the 17 rule violations found by the referee in this case coupled with his prior record of suspension (11 violations) and private reprimand (two violations) warrants disbarment. The court's review in this area is broad because it is this court that bears the ultimate responsibility in attorney discipline cases. *The Florida Bar v. Spann*, 21 F.L.W. S330 (Fla. 1996); and *The Florida Bar v. Anderson*, 538 So. 2d 852, 854 (Fla. 1989).

Disbarment is an appropriate punishment where multiple and serious disciplinary offenses have occurred. *The Florida Bar v.*

Spann, 21 F.L.W. at S330. Although separate instances of misconduct, standing alone, would not require disbarment, the cumulative effect of multiple violations has been held to warrant disbarment. See, *The Florida Bar v. Inglis*, 660 So. 2d 697 (Fla. 1995) (this court rejected the referee's recommendation of two public reprimands and a ninety-one day suspension and held disbarment was appropriate for cumulative misconduct of taking part in altercation with process server, misstating paternity law to clients, relying solely on information given by client before advising client to bring eviction proceedings and lying under oath as an aggravating factor); *The Florida Bar v. Williams*, 604 So. 2d 447 (Fla. 1992) (this court rejected the referee's recommendation of a public reprimand and ninety day suspension and held that cumulative misconduct in failing to preserve the client's property, showing lack of diligence, failing to maintain personal integrity and making false and misleading statements warrants disbarment); and *The Florida Bar v. Mavrides*, 442 So. 2d 220 (Fla. 1983) (attorney, who was found guilty of eight instances of violation of the Code of Professional responsibility was disbarred).

In a similar vein, Standard 8.1 of the *Florida Standards for Imposing Lawyer Sanctions* provides:

Disbarment is appropriate when a lawyer:

(b) has been suspended for the same or similar misconduct, and intentionally engages in further similar acts of misconduct.

Mr. Laing's misconduct in the instant case and his misconduct that formed the basis for his prior suspension bear some striking similarities.

In the instant case, the respondent was found guilty of failing to act with reasonable diligence and promptness in representing Luba Delaney. RR., p. 6. In the prior case, respondent was found guilty of neglect with respect to the collection matters of Glenn Wade.

In the instant case, there was testimony that respondent made verbally abusive telephone calls. T., pp. 371-372, 205-206, 201-202. Both the client and the opposing party made police reports because of Mr. Laing's calls. T., pp. 209, 375. Although the referee in the instant case did not predicate a finding of guilt on the basis of these calls, it should be noted that in Mr. Laing's prior suspension matter, he was found guilty of a violation of former Disciplinary Rule 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law) for making threatening and intimidating telephone calls to his client, Susan Wilson, among other misconduct.

In the instant case, respondent was found guilty of Rules 3-4.3 and 3-4.4 for commission of the criminal act of resisting an officer without violence. In the prior proceeding, respondent was found to have committed misconduct in connection with his criminal conviction for fleeing and eluding a police officer.

In the instant case, the referee found respondent guilty of two instances of deceit. In the prior proceeding, respondent was found guilty of having lied to Captain James A. Gabbard of the West Palm Beach Police Office.

Particularly in light of the two findings of deceit, including respondent's scheme to obtain a higher mortgage and his request to his client, Karen Hall, that she lie in order to assist Mr. Laing, and his prior misconduct of lying to a police officer, respondent has demonstrated that his character is such as to be incompatible with the practice of law. This court has recognized that: "Dishonesty and lack of candor cannot be tolerated in a profession built upon trust and respect for the law." *The Florida Bar v. Williams*, 604 So. 2d at 451.

This court has not hesitated to disbar attorneys for cumulative misconduct where dishonesty is present. In *The Florida Bar v. Knowles*, 572 So. 2d 1373 (Fla. 1991), this court held that an attorney's neglect and dishonesty constituted cumulative

misconduct which warranted disbarment. In *The Florida Bar v. McKenzie*, 581 So. 2d 53 (Fla. 1991), this court rejected a referee's three year suspension and held that disbarment was appropriate for charging an excessive fee, failing to investigate a probate estate, and submitting false testimony in light of respondent's prior record of two public reprimands and a ninety-one day suspension. In *The Florida Bar v. Golden*, 566 So. 2d 1286 (Fla. 1990), this court rejected a referee's two year recommended suspension and imposed disbarment for violation of duties as fiduciary and escrow agent involving dishonesty in light of Golden's prior suspension for insurance fraud where Golden had deleted a line from a physician's report.

Attorney discipline serves 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 services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. *The Florida Bar v. Lord*, 433 So. 2d 983, 986 (Fla. 1983) (emphasis omitted).

The bar submits that any penalty less than disbarment would not be sufficient to protect the public and not be severe enough to

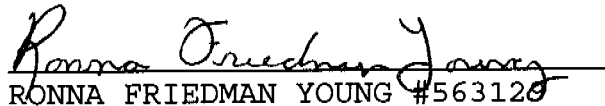
deter others from engaging in like misconduct. During Mr. Laing's career, he has violated the rules regarding diligence, client communication, conflict of interest, excessive fee, criminal acts, trust accounting, inadequate preparation, business transaction with a client, failure to obey an obligation under the rules of a tribunal, use of means that have no substantial purpose other than to embarrass, delay, or burden a third person, dishonesty, deceit, and other conduct that reflects adversely on his fitness to practice law. His record speaks for itself and the bar submits that this record warrants disbarment.

CONCLUSION

With respect to Count I of the complaint, the bar submits that in addition to the five rule violations found by the referee, Mr. Laing's admissions warrant an additional finding of violation for dishonesty under Rule 3-4.4 and/or 4-8.4(c). Regardless of whether this court makes an additional finding of violation on Count I, the bar contends that the cumulative nature of Mr. Laing's misconduct, particularly in light of the findings of dishonesty and deceit, warrants disbarment. The bar respectfully submits that this court

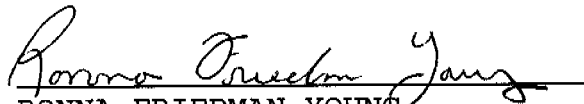
reject the referee's recommended sanction of ninety days and impose disbarment.

Respectfully submitted,


RONNA FRIEDMAN YOUNG #563120
Bar Counsel, The Florida Bar
5900 N. Andrews Ave., Suite #835
Fort Lauderdale, FL 33309
(954) 772-2245

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing initial brief has been furnished via regular U.S. mail to Robert Scott Laing, respondent, 224 Datura Street, Suite 900, West Palm Beach, FL 33401-5624 and to John A. Boggs, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Fl 32399-2300 on this 26th day of August, 1996. The service directly to Mr. Laing is being made based on written communication from Louis M. Jepeway, Jr., trial counsel for Mr. Laing, that he has not been retained to represent Mr. Laing for purposes of this appeal and that Mr. Laing should be served directly.


RONNA FRIEDMAN YOUNG