

SUPREME COURT OF FLORIDA

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THE FLORIDA BAR,
Petitioner,

CASE NOS. 83,457 and
87,048

vs.

ROBERT SCOTT LAING,
Respondent.

RESPONDENT'S AMENDED BRIEF BY ROBERT SCOTT LAING
ON REVIEW OF REPORT OF THE REFEREE

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THE STATEMENT OF THE CASE AND FACTS

This is an attorney discipline case. The Florida Bar has petitioned for review of a report by the judicial referee of May 22, 1996. The referee was Circuit Judge John A. Miller and the hearing on the six counts charged by the Bar occurred March 25 through March 28, 1996.¹ The referee found various violations and recommended a 90 day suspension along with other requirements. (R.9). The Bar now seeks to overturn some of the factual findings and further to disbar Mr. Laing.

The referee generally found that the violations of various rules by attorney Scott Laing were of an extremely technical nature. The referee concluded "that none of the findings rose to the level of a criminal act, fraud, a willful violation of the law or deceitful practice to the level requiring disbarment." (R.5). The referee considered all aggravating and mitigating evidence including Mr. Laing's previous infractions and recommended discipline in the form of suspension for 90 days followed by probation during which time Mr. Laing would be required to take at least two described courses, and thereafter Mr. Laing's practice would be monitored by another practicing member of the Bar for 12 months. Mr. Laing called several character witnesses, including County Court Judge Paul Moyle. (T.399,419,424,488 and 574). The Bar also presented a single character witnesses against Mr. Laing, but the referee announced that he gave this particular testimony

¹The Report of Referee is designated (R.__) and the transcript of testimony is designated (T.__). The various exhibits are in the record, but are not assigned page numbers.

very little credence. (T.730).

The referee concluded:

Because the referee finds that many of the violations alleged were more technical than unlawful, and that when one listens to these entire proceedings and takes them as a whole, that consideration should be given to both sides, and that neither side is a clear winner, the referee recommends that the respondent be suspended for 90 days. (R.9).

There was a great deal of conflict in the evidence presented during the four day hearing. The referee made specific factual findings and the Bar has simply disregarded those findings and instead provided this Court with a Statement of Facts having no relationship whatsoever to the findings by the referee. The Bar has totally disregarded its burden before this Court of demonstrating that the report of the "Referee sought to be reviewed [was] erroneous, unlawful, or unjustified" pursuant to Rule 3-7.7(c)(5). Instead, the Bar simply states the facts in accordance with the Complaint as filed by the Bar rather than in accordance with the findings as found by the referee. In addition, the Bar has left out numerous facts supporting the conclusions reached by the referee. In short, the Bar has interpreted all of the facts in the light most favorable to the Bar, rather than in the light most favorable to the report by the referee.

As an example, the referee (Judge John Miller) did not find that Mr. Laing engaged in loud and verbally abusive phone calls. The Judge concluded that the Bar had not proved these allegations and despite this finding, the Bar recites as facts that Mr. Laing called the particular witness (Joni Crane) and threatened her and

in doing so that "he screamed at her and told her he had been following her, knew where she lived and what kind of car she drove". The Bar asserts that it presented a witness who stated that Mr. Laing "used curse words" in these telephone calls. (Brief 4,5).

Each one of the telephone calls in question occurred when the client in Count I, Luba Delaney, was present listening in on a conference hook-up. Luba Delaney owned a business which had a contract with an advertising company run by Joni Crane. Crane had taken \$12,500 from Delaney, and according to Delaney, Crane had not performed the advertising services. Attorney Laing was hired by Delaney to collect a portion of the \$12,500 payment previously made to Crane's company. Mrs. Delaney contacted Mr. Laing about collecting this money and he immediately began making telephone calls and was told that the advertising company owned by Joni Crane was not at this location or was moving. (T.370). When Laing asked for their address so he could serve process, he got a run-around. (T.355-357). The advertising company personnel suggested to Laing that he would be unable to find them. (T.355-357).

While this conversation was going on, Mrs. Delaney was frantically gesturing and whispering to Laing that the people on the phone were misrepresenting who they really were. (T.355). Delaney told Laing to say that they knew where they lived, knew what cars they drove and that he would be able to find them. (T.355-357). Laing merely repeated what Delaney told him to say, and it was these conversations in the presence of Delaney, that

formed the entire basis for the Bar's arguments about abusive phone calls.

As indicated, the referee did not find abusive phone calls had actually occurred and there was certainly an issue of fact based upon conflicting testimony as to the content and nature of these phone calls. Indeed, the Bar presented Mrs. Delaney, who swore that Mr. Laing used no curse words or profanity and also presented Jennifer Lynch, the daughter of Joni Crane who testified that Laing had used curse words. (T.372). Based on such conflicting testimony, the referee chose not to find that verbally abusive phone calls had been made. The referee certainly had the discretion to reach this conclusion and the facts now before this Court are as stated in the referee's order rather than as stated by the Bar.

Attorney Laing Accepts the Order of the Referee

Attorney Laing does not agree with all of the facts found by the referee, but will accept them for purposes of this proceeding. Mr. Laing will also accept the recommended discipline of a 90 day suspension followed by specific course work and ongoing supervision. Although Mr. Laing does not agree that these steps are absolutely necessary, Mr. Laing is extremely remorseful and definitely wishes to change his conduct and remain an active and productive member of the Florida Bar.

Scott Laing is an aggressive, forceful and occasionally tactless attorney who fights for the rights of his clients and indeed for his own rights in a very forceful manner. One of Mr.

Laing's character witnesses was County Judge Paul Moyle. Although this Judge did not voluntarily appear, his testimony was very noteworthy. He gave his personal opinion after years of knowing Mr. Laing, that he is an honest individual. Judge Moyle and Mr. Laing had initially been in the state attorney's office together. Judge Moyle testified as to Mr. Laing's general reputation as follows:

I've heard over the years and I want to state clearly that Mr. Laing is a friend of mine. I have always trusted him, but yes, to all general points he has been discussed, and that had been in the terms of being aggressive, very aggressive, no nonsense, very abrupt with people, not pretentious in any way, very rough around the edges, very direct in his attitude toward people, lack of tact, things of that nature, yes, I have. And that hurts me to say that." (T.498).

In response to Judge Moyle's testimony, Judge Miller pointed out that he had already been told that this was a correct description of Mr. Laing's personality and approach to the practice of law. In short, Mr. Laing was an aggressive, intelligent and often impolite attorney. Another character witness, attorney Gordon Harris of Orlando had known Laing for years and again echoed the "rough around the edges" sentiment, but pointed out that he was "very bright", "a good lawyer" and had a good reputation for truthfulness. (T.578-9). Laing's conduct often resulted in extreme reactions, including numerous hurt feelings and complaints to The Florida Bar, along with definite client loyalty in many situations. Mr. Laing is obviously a very controversial individual -- but the issue here is whether this kind of conduct mandates his disbarment over the recommendation and factual findings of the judicial

referee.

Judge Miller, announced his findings at the conclusion of the hearing and thereafter filed his signed Report of Referee which also detailed the facts. (R.1-11). The Judge specifically responded to Bar counsel's questions when she suggested that he had not made a finding on a particular alleged violation in regard to Count I (T.719). The Judge stated as follows:

I made a finding of what I thought he was guilty of. If I don't quote anything else, it's because I didn't find him guilty of that.

The Bar tendered a proposed 35 page Report, but the Judge's actual report is 11 pages in length. Obviously, the Judge rejected a great deal of what the Bar suggested.

COUNT I

The Bar has charged Mr. Laing with six different counts and has devoted 18 pages of its brief to a count by count restating of the alleged facts. It is, therefore, unfortunately necessary to deal with each count separately. In the oral announcement of the rulings, Judge Miller stated that his conclusion was that Mr. Laing had not threatened Joni Crane with criminal fraud on the telephone. (T.733). Indeed, the only factual findings made by the Judge in regard to Count I are on the first and second pages of the Report where he concluded that Laing had agreed to refund Ms. Delaney a total of \$900 and that after paying \$600 he delayed sending the remaining \$300 payment until just days before the hearing. The Judge thus concluded that he did not "promptly refund the monies owed to Ms. Delaney". (R.2). There was no finding of abusive phone

calls.

There was a great deal of conflict about the precise nature of the telephone calls between Laing, Joni Crane, and the other employees of Crane's advertising service. (T.355-357). All of these phone calls were made when Mrs. Delaney was present and all of the phone calls were on a speaker phone. Even Mrs. Delaney testified that Laing had not used profanity and the Bar now tries to convince this Court that its own witness was wrong and that he did use profanity. Laing agreed that he had been very forceful in his telephone conversations because Crane and her employees were trying to hide their location and were not telling the truth about their own personal identities as they spoke on the phone. (T.355-357). It was Mrs. Delaney who pointed this out to Laing while the conversations were going on. Obviously, it was up to the trial referee to decide who was telling the truth as to the content, loudness and nature of the phone calls. The Bar's own evidence on this point was conflicting and the Judge rejected it.

Thus, the only actual finding of fact was that Laing delayed in making the last \$300 refund payment to his former client Delaney. (R.2). There can be absolutely no question but that Laing's attempts to contact the anticipated defendant and to put pressure on that entity to repay Mrs. Delaney was prompt and expeditious. These phone calls were made on the first day Mrs. Delaney arrived at Laing's office. Thus, the referee's finding under Count I as to Laing's lack of "diligence and promptness" was an obvious reference to the late \$300 rather than the initial phone

calls and services which were a total of 8 1/2 hours which Laing charged at \$210 per hour and refunded \$900 from the \$2,500 "non-refundable" retainer. (T.349-351).

COUNT II

The referee's findings regarding Count II are contained on pages 2, paragraph 5, and on page 6 of the Report. This Count concerned a DUI charge against Laing personally in a very "small town" municipal Court in the state of Ohio. Laing was eventually acquitted by a jury. Referee Miller found Laing "technically in violation of the rule requiring an attorney not to knowingly disobey an obligation under the rules of a tribunal". The referee stated that although Laing had not initially appeared for his owned scheduled trial in Ohio on September 20, 1991:

"there are sufficient mitigating circumstances and other explanations which, in the Referee's opinion, would bring this matter below that of one requiring severe sanctions against the respondent. This particular count smacks more of bad blood in small town politics than a wilful violation of a court order that required the severe sanction that the Ohio Judge wanted to impose."

The "severe sanction" which Judge Miller was talking about was the fact that the municipal Judge in Ohio became incensed at Laing when he did not appear at his trial. Laing was always represented by counsel and the municipal Judge then ordered that Laing would have to spend two weeks in jail before he would allow Laing to proceed to a trial on the DUI charge. (T. 427,461). The Ohio Judge then stated he would recuse himself, but as it turned out, the Judge contradicted himself and showed up at the next hearing. (T.431,432,461). Eventually, Mr. Laing was imprisoned by the

municipal Judge without a trial and a superior court in Ohio issued an immediate writ of habeas corpus. (T.437,438,439). Finally, after spending a few hours in jail after his pretrial hearing, Mr. Laing was tried before a jury and immediately (after 13 minutes) acquitted of the DUI charge. (T.440).

Mr. Laing was not even functioning as a lawyer when he failed to appear at his own trial. Laing had counsel in Ohio and Laing was simply a defendant. Laing had sought a continuance due to a trip to Africa and the municipal Judge intentionally set trial in Ohio the day after Laing returned to Florida after the trip. Mr. Laing said it became impossible for him to get to the trial because of last moment travel difficulties and he called and gave this information to his Ohio counsel who tried to relay it to the Judge. (T.459). Instead of simply going forward with the trial, presenting the evidence and attempting to get a conviction, the Ohio municipal Judge chose not to proceed with the trial and instead engaged in what the referee Judge Miller characterized as "bad blood in small town politics". Although Judge Miller found a technical violation in Laing's failure to attend the trial, he concluded that this was not "a wilful violation of a court order". (R.6).

COUNT III

On March 19, 1993, Scott Laing was convicted in the Palm Beach County Court of the misdemeanor of resisting arrest without violence. Mr. Laing was an innocent passerby who witnessed a sheriff's officer investigating the report of a crime. The deputy

sheriff told Laing to move on and Laing responded with comments to the effect that it was a public sidewalk and he had the constitutional right to remain there. The comments escalated into a verbal contest between Laing and the officer and he was arrested and eventually convicted of resisting arrest without violence. The referee recognized that Laing was an activist in free speech protection causes and that his arrest was the result of his own misguided constitutional interpretation of his rights to free speech and assembly. Again, referee Miller found that Laing had "technically violated" a rule because he had been convicted of having committed an unlawful act. referee Miller commented that under the rules, the Florida Bar seems to have the discretionary power to discipline an attorney for any law violation whatsoever, but that under such circumstances the referee also had discretion "to come down [hard] on the respondent or to take all things into consideration".

The extensive final judgment issued by the county court in this protracted legal controversy over free speech will be further discussed in the argument section herein. After listening to all of the evidence and reviewing in detail the county court judgment, Judge Miller clearly sided with Mr. Laing's interpretation of the events surrounding his arrest. Again, the referee found a technical violation, but no grounds for disbarment.²

²The Referee's report states that the conviction was affirmed by the "Fourth District [Court] of Appeal". This was an obvious unimportant misstatement. The trial was in the county court and Laing appealed to the Circuit Court which affirmed when Laing abandoned the appeal. The orders are in the record before this

COUNT IV

Laing erroneously deducted \$44.85 as an expense item on a disbursement of a recovery to a client. The \$44.85 represented long distance charges for the client's husband who was in prison during some period of the representation. Laing admitted his error in making this deduction and reimbursed the sum to the client. The referee heard all the evidence the Bar offered as to the \$44.85 deduction and then announced: "It [Rule 4-4.4] says knowingly. I didn't think he did it knowingly." (T.727). Again, the referee found a technical violation.

COUNT V

This count concerned a complex property matter between Laing's client Karen Hall, Laing himself, and the owner of a home that Hall had contracted to rent and buy. (T.30-31). Karen Hall was from Maine and had recently moved to Florida. She prepaid \$10,000 on a non-refundable option and \$12,000 in prepaid rent on a home owned by Ms. Sylvester. She decided she made a very bad deal, wanted to return to Maine and hired Laing to extricate her from the contract and get her out of the "bad deal". Sylvester objected to Hall's boyfriend living in the house and Sylvester's son entered the house and harassed Hall on several occasions. (T.56-57). Laing was also hired to stop the harassment. (T.57). Laing eventually stepped into the shoes of Hall personally and signed a contract to buy the house himself. A simple written contract to this effect was signed by Hall. (R. See Complaint, Exh. J). Basically, Laing bought

Court. There was no appeal in the District Court.

Hall's interest for \$5,000 plus the remaining unpaid rent. (T.69). Hall was actually very happy with this new deal and got out of a very bad deal and got most of her money back. Laing's purchase of the home also became embroiled in litigation with the owner Ms. Sylvester, but Hall was not a party to that suit. Hall paid Laing a total of \$720 and also eventually filed a civil suit against him that was settled by her new lawyer.

The referee concluded that Laing had technically violated the rule which prohibits a lawyer from acquiring an ownership interest adverse to his client. Laing pointed out that his interest was not adverse to Hall and Laing was actually found guilty of only failing to adequately advise his client concerning her rights in seeking independent counsel. The referee concluded that Laing did inform Karen Hall of the facts, but that he "did not strictly conform with the rule" as to advise on possible conflicts and by putting everything in writing. (R.8). The referee also concluded that Hall actually benefited from Laing's services because Laing personally buying the property got Hall out of a very bad deal and Laing's conduct "accomplished for her what she might not have been able to win in a court of law." (R.9). Basically, the referee found that Laing's only violation was his failure to "put this stuff in writing". (R.9).

COUNT VI

Laing's purchase of the home that Karen Hall initially contracted to lease/purchase ended up in bitter litigation with the owner of the home Ms. Sylvester. Eventually, the actual closing on

the home purchase took place before a circuit Judge in a courtroom as a result of that litigation. Laing ended up paying cash for the house under these rather bizzare circumstances. At some point in these multi-issue proceedings Laing was found to have violated Rule 4-8.4(c) by requesting Sylvester's counsel's paralegal, acting as a real estate closing agent, to put more documentary stamps on the deed than the actual purchase price and by asking Karen Hall to represent that the rent on the house as between Hall and Laing was \$500 per month when in fact it was \$950 per month. There was a great deal of dispute over what the amount of the rent should have been. In any event, the referee found deceit in the form of an attempted misrepresentation to avoid a penalty under the landlord tenant act and to obtain a higher mortgage. (R.9). (The referee's ruling as to a "higher mortgage" is very curious since Laing paid cash in a court supervised closing in the courtroom and therefore, obviously, there was no mortgage in the transaction). Laing totally prevailed in this litigation with Sylvester. As to the documentary stamps, Laing requested an ethics opinion on that issue and said that after he received a negative direction he refrained from any further use of excess stamp value.

Recommendations by the Referee

The judicial referee concluded that the violations were more technical than unlawful and that neither side was the clear cut winner. At page five Judge Miller stated: "The Referee concludes that none of the findings rose to the level of a criminal act, fraud, a willful violation of the law or deceitful practice to the

level requiring disbarment." The referee concluded that Mr. Laing should be suspended for ninety days and then placed on probation during which time he would be required to complete courses which can best be describe as psychological in nature concerning tactful dealings with clients and adversaries. The referee also suggested an ethics course. After the completion of these courses the referee suggested that probation should be terminated but that Mr. Laing should be monitored by a practicing member of the bar for the first twelve months of the resumption of his practice. A respected member of the local bar had appeared at the hearing and offered to monitor Mr. Laing's practice for this twelve month period. The referee also considered the previous 11 year old suspension order of this Court of September 26, 1985 in which Mr. Laing had been suspended for sixty days along with a private reprimand of February 15, 1991. This past record did not sway the referee from his conclusions as to the technical nature of the violations in question. The referee also concluded that any future violations by Mr. Laing should result in his absolute disbarment. (R.10).

The Bar now appeals asserting that the facts were wrongly found under count I and that the cumulative nature of Mr. Laing's misconduct requires disbarment. The Bar's brief devotes 18 pages to the facts and 9 pages to the two issues on review.

SUMMARY OF THE ARGUMENT

This is an attorney discipline case. The referee found various technical violations and recommended suspension along with other supervision and course work. The Florida Bar appeals arguing that it disagrees with both the facts and the penalty as found by the referee.

The Bar now disregards the facts found below and substitutes a different version before this Court. In the face of sharply conflicting evidence, the Bar argues that the respondent made abusive telephone calls. The referee chose not to find respondent guilty of abusive telephone calls. The referee generally found unintentional and technical rule violations and the Bar now suggests that the violations were intentional and major. As to Count I, the Bar now demands a finding of dishonesty despite the referee's decision not to find a dishonesty violation.

The facts are as found by the referee because there was competent and substantial evidence to support his view of the evidence and because it is the referee's duty to listen to the evidence and resolve the conflicts which were abundant in this case. The Bar simply disregards this appellate principle. A dishonesty violation under Count I would have required that the Bar prove actual intent and no such proof existed.

The Bar also contends that the cumulative effect of the respondent's past and current violations mandates disbarment instead of suspension. This argument again suffers from the same defect as the Bar's first argument regarding the facts. The Bar

wants to compare the version of the facts which it tried unsuccessfully to prove to the referee's satisfaction. The referee did not find the facts as now suggested by the Bar, so there is actually nothing to compare. The Bar also argues that there were striking similarities between the past and present violations. In fact, there were no similarities whatsoever. The Bar tries to compare the fact that Laing made a late repayment of \$300 to a client with the fact that he missed a scheduled hearing some 16 years before. There were no similarities.

Even though Scott Laing may well be an aggressive and combative attorney, these characteristics simply do not mandate his disbarment. The referee's recommendation of a three month suspension is a more than adequate penalty. Mr. Laing has expressed his remorse and his desire to reform his personal conduct and remain an active and productive member of the Florida Bar. The Bar has demonstrated no compelling reason for this Court to override the facts and recommendations of the referee.

ARGUMENT

I. THE REFEREE ERRONEOUSLY FAILED TO MAKE MADE AN ADDITIONAL FINDING OF DISHONESTY AS TO COUNT I.

The Bar argues that the referee's findings are wrong and that this Court should correct them. The Bar totally disregards the standard of review and the burden it has in attacking the findings of the referee. In The Florida Bar v. Spann, 21 Fla. L. Weekly S330 (Fla. 1996), this Court again stated the governing law as to the findings of a referee in a Bar discipline matter. This Court stated:

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. *Florida Bar v. Vannier*, 498 So. 2d 896, 898 (Fla. 1986). Absent a showing that the referee's findings are clearly erroneous or lacking in evidentiary support, this Court is precluded from reweighing the evidence and substituting its judgment for that of the referee. *Florida Bar v. MacMillan*, 600 So. 2d 457, 459 (Fla. 1992). The party contending that the referee's findings of fact and conclusions as to guilt are erroneous carries the burden of demonstrating that there is no evidence in the record to support those findings or that the record evidence clearly contradicts the conclusions. *Florida Bar v. Miele*, 605 So. 2d 866, 868 (Fla. 1992).

The Bar does not even make a pretense of actually demonstrating error in the findings by the referee.

Under Count I, the referee found five different rule violations, but chose not to find dishonesty. The Bar now argues that Mr. Laing should have been convicted of dishonesty because of what he might have done in the future and that the referee was in error in not accepting this argument below. The Bar argues that Laing had his client Delaney sign two contracts which the Bar

chooses to characterize as a contingency fee contract and an hourly contract. The Bar suggests that Laing could have therefore picked the one contract he liked best to enforce against his client in the future. The Bar also argues that Laing intended to commit a fraud on the trial court in the future by presenting the \$250 per hour contract to show an hourly rate and that his real hourly rate was only \$210 per hour.

The Bar turns a blind eye to the actual facts. In fact, both contracts provided for a \$2,500 non-refundable retainer, but Mr. Laing accepted only one \$2,500 retainer. There was certainly no attempt to enforce both contracts and the contracts were not simply for a contingency fee nor for a pure hourly rate. When Laing took the case, he was told by Delaney that the prospective defendant might well be uncollectible. (T.350). Laing also thought there was a chance that based on fraud and other theories, he might be able to recover attorney's fees for Delaney directly against the defendant and for that reason he wanted a contract establishing an hourly rate in place. (T.347-348). Laing testified directly that although he charged \$210 per hour for most of his clients, in this particular case he chose to charge \$250 per hour. (T.350). Indeed, every lawyer is free to set his own reasonable hourly rates and it is certainly not an ethical violation for that lawyer to eventually go to court with such an hourly fee contract and explain the whole situation to the Court. We have not the vaguest idea what Mr. Laing might have done in the future and the Bar simply cannot convict Mr. Laing today based upon evidence which the Bar thinks

shows that he might have been attempted to exaggerate his hourly rate before a court in the future. Those events simply never occurred.

In fact, Mr. Laing chose not to move forward with the case after he discovered that the advertising agency was really bankrupt and judgment-proof. At that point, he charged his client for 8 1/2 hours and charged her at the rate of \$210 per hour and then refunded \$900 of the "non-refundable" \$2,500 deposit. (T.349-351). This is what actually happened in this case and the referee chose to find various technical violations, but not a "dishonesty" violation as now demanded by the Bar.

It is not as though the referee found the use of the two contracts entirely proper and it would certainly have been more appropriate to have included all terms in a single document with alternative provisions. However, the violations actually found were supported by the evidence and there was no error in not also finding a dishonesty violation.

Again, the Bar has disregarded the law. The standard of proof in a Bar disciplinary matter is that of clear and convincing evidence. The Florida Bar v. McCain, 361 So. 2d 700, 706 (Fla. 1978) and The Florida Bar v. Rayman, 238 So. 2d 594, 598 (Fla. 1970). When the Bar charges dishonesty, misrepresentation, deceit or fraud, the Bar has the burden of showing the actual intent of the actor. This Court has expressly so ruled in The Florida Bar v. Neu, 597 So. 2d 266 (Fla. 1992):

The Florida Bar is seeking to overturn the referee's finding that Neu did not act with dishonesty,

misrepresentation, deceit, or fraud. 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. (emphasis supplied)

Further, in The Florida Bar v. Burke, 578 So. 2d 1099 (Fla. 1991), this Court stated:

The Bar has the burden of proving by clear and convincing evidence that Burke is guilty of specific rule violations. Intent is a major and necessary element in a finding of guilt for dishonesty, fraud, deceit or misrepresentation.

The Bar does not even make an argument that it proved intent to defraud in the future by clear and convincing evidence. The only argument is that the Bar can think of a way in which the hourly rate contract might have been used in the future as a misrepresentation. First of all, there was no misrepresentation because Mr. Laing testified that \$250 per hour was the hourly rate in this case if the hourly rate was to be relied upon in an attempt to collect the fees from the defendant. In fact, Mr. Laing used \$210 per hour rather than \$250 per hour when he collected the fee from his own client. The Bar has totally failed in its burden to demonstrate intent to commit fraud. There was no error by the referee.

II. WHETHER THE CUMULATIVE NATURE OF RESPONDENT'S MISCONDUCT MANDATES DISBARMENT.

This argument in the Bar's brief is contained at pages 22-27. Of course, we recognize that this Court has the responsibility and discretion to impose appropriate penalties in Bar discipline matters. This Court has broad discretion as to an appropriate penalty. The Florida Bar v. Anderson, 538 So. 2d 852 (Fla. 1989).

However, the job of recommending an appropriate penalty initially rests with the referee who hears all of the evidence and finds the facts. Here, the referee chose to find only technical violations and imposed suspension and rejected the Bar's request for disbarment. In this state, there has never been a case of disbarment based upon the cumulative effect of various technical rule violations. Indeed, the Bar's approach in this case is to take every act and divide it into as many possible technical rule violations as can be fathomed. Judge Miller found five separate rule violations based upon the single factual conclusion that Laing had delayed in sending client Delaney the last \$300 payment. Of course, it was Laing who agreed to reimburse the client from a "non-refundable" retainer of \$2,500. Laing stated that he simply did not have the cash available for the full \$900 payment in his January 13, 1993 letter. Further delay was caused by the fact that Laing asked his client for a release of all claims upon the last payment, but the client refused to provide the release. (T.365). As indicated, the referee found five separate violations as a result of this single act. It is simply not fair to "count up" the total number of violations of a technical nature and then conclude that the "cumulative total" warrants disbarment. No case has ever so held.

The supposed "striking similarities" between the present violations and Mr. Laing's past infractions are detailed at page 24 and 25 of the Bar's brief. In fact, there was nothing similar concerning the past and present infractions and there was certainly

no indication that Mr. Laing had intentionally engaged in further similar acts as is contemplated by standard 8.1 of the Standards for Imposing Lawyer Sanctions.

The first supposedly similar incident was that Laing was found guilty of failing to act with sufficient "diligence and promptness" in representing Mrs. Delaney and that he had previously been found guilty of "neglect" with respect to certain collection matters for a client Mr. Glen Wade. When Delaney contacted Laing he made numerous telephone calls from his office with Delaney listening in on the very first day of the representation. He then followed up with aggressive attempts to collect the amount in question from the advertising agency which was giving him the run-around. There was certainly nothing lacking in the diligence and promptness of Mr. Laing's services; in fact, he was criticized for being too aggressive by the Bar. The diligence and promptness ruling by Judge Miller related solely to Laing's delay in sending back the last \$300 payment. The Glen Wade case was a very simple situation which occurred in October of 1980 some sixteen years earlier when Laing was handling various collection cases for Mr. Wade and he failed to appear at a single scheduled hearing. His non-appearance was caused by a misunderstanding with the Broward County Attorney's office and a conflict in Mr. Laing's own scheduling. (R. See Affidavit of May 5, 1994). Mr. Laing agreed that he was guilty of having neglected a legal matter entrusted to him in regard to the Wade case non-appearance. This admission constituted missing one hearing 16 years before. There is no similarity whatsoever between

the Delaney matter and the Wade matter.

The Bar's next argument concerns the supposedly abusive telephone calls. The Bar is violating its own rules and the rules of this Court. The referee did not find abusive telephone calls, and now the Bar wants this Court to assume that such calls were made and that they were similar to calls made in a previous case. In short, there were no abusive telephone calls found in this case so there is nothing to compare. The Susan Wilson case was a situation where Wilson hired Laing on a contingency fee contract and then fired him and settled the case directly with the defendant. Laing got angry at his former client in various telephone conversations where he demanded payment. The telephone calls in the present case were not even made to the client, but were instead made to a prospective defendant, a corporation which was attempting to hide its identity and whereabouts. Also, these calls were made at the urging and direction of Mrs. Delaney, the client. Mrs. Delaney sat in Laing's office, listened to the calls, and told him what to say. (T.355-357). It was only much later that Delaney decided she did not like the tone and volume of Laing's voice.

The next argument is that Laing was previously convicted of resisting an officer without violence. It is worthwhile looking closely at the final judgment entered in this county court misdemeanor conviction because this judgment demonstrates the kind of person and attorney which Mr. Laing is. This judgment was placed in evidence and is in the unpaginated record before this

Court.

Laing was a disinterested bystander who happened to be in the wrong place at the wrong time. A deputy sheriff told him to leave the sidewalk. As the Judge said, the deputy sheriff requested Laing "to step away" and Laing answered "no". The conversation between the deputy and Laing escalated. Laing testified that he had been a practicing lawyer for 16 years and was an active member of an organization devoted to advocating the public's privilege to exercise first amendment rights. Laing took the position that he was rightfully standing on a public sidewalk and Laing was of the honest opinion that he could not be arrested for "resisting arrest" unless and until he was faced with a lawful underlying arrest. The county court Judge concluded that this was an "erronious [sic] belief" by Mr. Laing as to the elements of the offense. Laing argued that Wilkerson v. State, 556 So. 2d 453 (Fla. 1st DCA 1990) and cases such as Moccia v. State, 331 S.E. 2d 99 (Ga. App. 1985) gave him the right to remain on the sidewalk and exercise his constitutional rights to free speech. The county court Judge concluded that Laing was guilty of the misdemeanor of resisting arrest without violence and in doing so relied specifically on the fact that a Palm Beach County sheriff's officer had been killed recently when an individual grabbed the officer's gun. The county Judge even went so far as to state that he had been influenced because the family of that officer "paid the ultimate price". The county Judge further recognized that he wanted to protect the fundamental right to free speech, but that First Amendment behavior

must be restrained under circumstances such as this.

Scott Laing is without question a combative and controversial individual and attorney. However, his conduct does not warrant disbarment. It should be noted that Scott Laing appealed the county court's judgment and then abandoned the appeal. Without question Mr. Laing was guilty of poor judgment to a large degree. However, Mr. Laing's conduct in insisting on his right to remain on a public sidewalk under a very respectable view of the law simply does not mean that he should not be allowed to practice law in this state.

Scott Laing asked the referee to be allowed to speak on his own behalf at the conclusion of the hearing and at the referee's suggestion he reduced "the most important closing argument of my life . . . to a minute or two." (T.716). He said:

I am remorseful for that conduct that has been presented before you today that has the appearance of impropriety, and I suggest to you that these protracted proceedings have given me great pause for reconsideration of my lifestyle and my demeanor and the way I interact with other people, and I suggest to you that should you choose not to disbar me, and maybe provide for some guidance to me as to how to go forward in my life and my career, that you won't regret that determination and I'll make you proud.

CONCLUSION

The Bar has failed to demonstrate that the report of the referee should be overturned in any way.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to **Ronna Friedman Young**, Bar Counsel The Florida Bar, 5900 N. Andrews Avenue, Suite 835, Fort Lauderdale,

Florida 33309 and **John A. Boggs**, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 24th day of October, 1996.



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