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IN THE SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

DEC 4 1995

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

THE FLORIDA BAR,  
Complainant,

v.

ROBERT JOHN SCHRAMM,  
Respondent.  
\_\_\_\_\_ /

Case Nos. 84,493 and 85,243

TFB File Nos. 94-00728-03,  
94-00933-03 and 94-01105-03

ANSWER BRIEF

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**PRELIMINARY STATEMENT**

Appellant, **Robert J. Schramm**, will be referred to as Respondent, or as Mr. Schramm throughout this brief. The appellee, **The Florida Bar**, will be referred to as such, or as the Bar.

References to the Report of Referee shall be by the symbol RR followed by the appropriate page number.

References to the transcript of the hearing before the Referee on June 30, **1995**, shall be by the symbol TR followed by the appropriate page number.

References to the transcript of the grievance committee hearing that was admitted **into** evidence will be by symbol **GTR** followed by the appropriate page number.

References to Respondent's closing argument will be made by symbol RC followed by the appropriate page number.

References to Respondent's initial brief will be made by symbol **IB** followed by the appropriate page number.

References to specific pleadings will be made by title.

**STATEMENT OF THE CASE AND FACTS**

The Florida Bar would augment Respondent's statement of the facts by the following:

**TFB File No. 94-00933-03**

Respondent represented Ronald Alan Fleming in Civil Case No. 93-173-CA in the circuit court, Third Judicial Circuit, in and for Taylor County, Florida. On February 28, 1994, Respondent argued a Motion for Disqualification of Trial Judge before Judge Paul S. Bryan, in Civil Case No. 93-173-CA. The basis of the motion to disqualify Judge Bryan was that opposing counsel Mike Smith's brother had once shared offices with Judge Bryan.

During the course of the hearing in Civil Case No. 93-173-CA, Respondent informed Judge Bryan that he discussed (presumably with his client) at length, the former husband's allegations contained in the Motion for Disqualification and had made a good faith effort to verify all of these allegations and to the best of his knowledge, the allegations were true. The Court granted Respondent's Motion for Disqualification and then informed Respondent that the allegations were not true.

After Judge Bryan informed Respondent and his client that the allegations were untrue, Respondent stated, "I did make an

effort to verify that from other sources who told me the same thing. In fact, practicing--a few attorneys--"

The Respondent had not discussed the basis for his Motion to Recuse with any attorneys. Respondent had not called Mike Smith's brother to find out if the allegations made in his Motion to Recuse Judge Bryan were accurate.

**TFB File No. 94-00728-03**

Respondent represented Kathi Evans with respect to a Petition for Modification filed in Civil Case No. 95-574-CA, in the Fifth Judicial Circuit, in and for Hernando County, Florida. A hearing on Respondent's Petition for Modification was scheduled for January 31, 1994.

On January 26, 1994, Respondent filed a Motion for Continuance dated January 21, 1994. Subsequently, Respondent had a telephone conversation with the presiding Judge, Hale R. Stancil and discussed the content of the Motion for Continuance. Respondent discussed a divorce case which was being held the same day as the hearing on the Petition for Modification.

In fact, there was no divorce hearing involving Respondent scheduled for the same day as the hearing on the Petition for Modification in Case No. 85-574-CA.

Respondent lied to the court with respect to his assertion that he had a calendar conflict in his Motion for Continuance in Case No. 85-574-CA. Respondent lied to Judge Stancil during a

subsequent telephone conversation regarding the Motion for Continuance.

**TFB File No. 94-01105-03**

On or about April 22, 1994, Respondent was retained by Ms. Barbie Ann Powell to represent her in a foreclosure action which had been brought against her with respect to her home. The Respondent was paid \$75.00 at the initial interview and Ms. Powell subsequently forwarded approximately \$105.00 to him. Respondent had been informed by Ms. Powell that a final hearing in her case had been set for June 2, 1994.

Ms. Powell had received a certified money order from her brother to pay off the loan on her home. Ms. Powell had been informed that the certified money order was unacceptable to the local banks and unacceptable to the holder of the note. Respondent took no steps to find out if the certified money order Ms. Powell had presented to the holder of the note and mortgage was negotiable or if there was some other procedure which had to be followed with respect to it.

During the period of April 22, 1994 to June 2, 1994, Ms. Powell made several telephone calls to Respondent's office but was never able to get in contact with him. Respondent never returned any of Ms. Powell's telephone calls. During the period of April 22, 1994 to June 2, 1994, Respondent did not send any correspondence to Ms. Powell regarding her case.

Respondent did not file a notice of appearance in Ms. Powell's civil case. Respondent did not file any pleadings in Powell's civil case. Respondent did not correspond with opposing counsel in any way indicating that he was representing Ms. Powell. During the last week of May and the first week of June 1994, Respondent was representing an individual in a first degree murder trial. According to Respondent, he attempted to have his secretary arrange for a continuance of the civil case involving Ms. Powell.

Respondent thought that his secretary had gotten a continuance in Ms. Powell's case. Respondent did not notify Ms. Powell that he was trying to get a continuance in her civil case. There is no court order granting a continuance in Ms. Powell's case.

On June 2, 1994, a final hearing was held before Judge Paul Bryan in Ms. Powell's civil case. Ms. Powell informed the court that Respondent had been retained to represent her and that he was not present. Judge Bryan, noting that Respondent had filed nothing in the court file indicating that he was in fact representing Ms. Powell allowed the hearing to continue. Ms. Powell subsequently lost her home. After the June 2, 1994 hearing, Respondent did not communicate with Ms. Powell.

Based upon the testimony at the final hearing, Respondent did not know if he would get a continuance in Ms. Powell's case having not received a message from his secretary regarding her efforts to contact opposing counsel until after the actual hearing had taken place.



The apparent basis of Ms. Powell's defense in her foreclosure case was that she had given the note holder a certified money order she had received from her relative. The note holder had refused to accept the money order, believing it to be invalid, and proceeded to file a foreclosure action. Respondent told Ms. Powell at their first meeting that the note holder wouldn't accept the certified money order. The Florida Bar is not asserting within these proceedings that the money order Ms. Powell had was valid or that it would have prevented the foreclosure action on her home. The Florida Bar is asserting that we will never know what the results of Ms. Powell's case would have been if she had been represented by Respondent.

Respondent, at the final hearing, attempted to show that Ms. Powell was trying to defraud the note holder, a fact Ms. Powell denied.

Respondent failed to represent Ms. Powell and did not return the fee he was paid. Respondent failed to communicate with Ms. Powell in any manner after the initial meeting.

(RR-1-5)

SUMMARY OF ARGUMENT

The function of the Referee in a disciplinary matter is to determine the weight and sufficiency of the evidence and based on it, make a recommendation to the court as to any possible rule violations committed by Respondent and recommend what discipline should be imposed, which is exactly what took place in this case.

ARGUMENT I

The allegation that the Referee did not make independent findings and recommendations is specious and should be disregarded by this court. Respondent admitted in his responsive pleadings his violation of Rule 4-8.4, of the Rules of Professional Conduct, with respect to Case No. 84,493, TFB File No. 94-00728-03. Therefore, all of Respondent's allegations with respect to this point are without merit.

ARGUMENT II

The Florida Bar's position with respect to the case law and Standards for Imposing Lawyer Sanctions is correct. The Referee had before him both the closing argument of The Florida Bar, as well as a copy of the case law The Florida Bar used for his review. Respondent ignores the fact that he has been found

guilty of three unrelated counts of misconduct involving multiple rule violations, some of similar nature.

The Referee was presented all of the aggravation and mitigation in this case and having weighed the evidence before him, made his recommendation to this court. The findings of fact and recommendation as to rule violations and discipline to be imposed are supported by the record in this case and should be adopted by this court.

## ARGUMENT I

The Referee, having considered the case law presented to him, the recommendation of the parties as to appropriate discipline, the aggravation and mitigation present in this case, and having determined the weight and sufficiency of the evidence, recommended that Respondent be suspended for a period of ninety-one (91) days; thereafter, until Respondent shall prove rehabilitation and for an indefinite period until Respondent shall pay the costs of these proceedings and make restitution to his client, Ms. Barbie Ann Powell, in the amount of one-hundred eighty dollars (\$180.00), as provided in Rule 3-5.1(i) of the Rules of Discipline of The Florida Bar. (RR-7, 8) This recommendation should be upheld in light of the Referee's findings in this case.

Respondent is requesting through his brief that this court re-weigh the evidence in this case and relitigate the question of whether he committed a criminal act, in violation of Rule 4-8.4(b) of the Rules of Professional Conduct of The Florida Bar. The Florida Bar, in its initial complaint filed against Respondent in Supreme Court Case No. 84,493, in paragraph 17 clearly alleges that Respondent violated Rule 4-8.4 (Misconduct) of the Rules of Professional Conduct of The Florida Bar. Surely Respondent was on notice, based upon the allegation within the Bar's complaint, that the Bar was alleging that he violated Rule 4-8.4, of the Rules of Professional Conduct of The Florida Bar.

The Referee found that Respondent had violated Rules 4-8.4(a), 4-8.4(c), and 4-8.4(d), in addition to Rule 4-8.4(b) in Supreme Court Case No. 84,493 involving Judge Stancil, and yet he does not classify any of these rule violations as belated or unfounded. In addition to what is obviously an attempt by Respondent to somehow shift the blame to someone else, be it The Florida Bar, the Referee or Ms. Powell, the fact remains that Respondent, in his responsive pleadings filed with respect to both the complaint filed against him involving Judge Stancil and the Request for Admissions, **admits** that he violated Rule 4-8.4 in Supreme Court Case No. 84,493, TFB File No. 94-00728-03. The Referee was certainly well founded in agreeing with Respondent that he did in fact violate the very rule he admitted to violating in his pleadings.

To suggest to this Court that somehow The Florida Bar put an extremely detrimental rule violation **into** its closing argument, that the Referee then ~~relied~~ solely on the Bar's argument and found Respondent guilty of violating that rule is both preposterous and unwarranted. If, as Respondent claims, the fact that the Referee found that he violated Rule 4-8.4(b) is so detrimental to him, why didn't he argue the point before the Referee at the final hearing or in his closing argument? Respondent did not ask the Referee to allow him to rebut anything in the Bar's closing argument ~~after~~ it was filed. Respondent did not ask the Referee for a rehearing with respect to any phase of the disciplinary proceeding. Respondent did not suggest to this Court in his Petition for Review that the

Referee had made an error with respect to his findings of fact or guilt with respect to this case. Respondent's Petition for Review states: "The nature of the recommendation which this honorable Court is petitioned to review is with regard, not to the findings of fact and the offenses committed, but as to the sanctions recommended; ..."

The Florida Bar did not argue within its closing argument or at any other time that Respondent was some heinous felon, the elements of his crime justifying some stringent sanction. Rather, The Florida Bar set forth the facts before the Referee and allowed him to decide what was appropriate. **As** Respondent most accurately points out, there is no discussion of whether or not his actions constituted a crime because that determination was not pivotal to what discipline should be imposed in this case. In some disciplinary cases, every possible rule violation is argued extensively and the outcome based on disputed facts. In the case presently before this Court, there was no argument about rule violations as to Supreme Court Case No. **84,493** and only minimal argument regarding Supreme Court Case No. **85,243**, involving Ms. Powell. (TR-6, 7; RC-1) The real issue in this case was what is the appropriate discipline to be imposed.

Respondent attempts to portray Ms. Powell, the complainant, in Supreme Court Case No. **85,243**, as some bad person who really didn't hire Respondent because she needed representation. It is inconceivable that Respondent can take this position having been retained by Ms. Powell in April **1994** and never again talking to or communicating with her before the final hearing in her case

in June 1994. (RR-3) The Referee had the opportunity to hear the testimony of Ms. Powell and to hear her responses to Respondent's belated accusations. (TR-51-67) The Referee, however, did not accept Respondent's position with respect to Ms. Powell. The question before the Referee and this Court centers around Respondent's complete lack of representation of his client, Ms. Powell, and not her civil case or the merits thereof. The Referee specifically found that "the Respondent failed to represent Ms. Powell and did not return the fee he was paid. Respondent failed to communicate with Ms. Powell in any manner after their initial meeting." (RR-5) The facts supporting the Referee's finding of the violation of the Rules of Professional Conduct of The Florida Bar by Respondent in this count of The Florida Bar's complaint are not contested by Respondent within Respondent's brief, and form a sufficient basis upon which to find that he has violated the Rules of Professional Conduct of The Florida Bar with respect to this count. (IB-7)

Respondent points to the Referee's report at Page 3 and suggests that the statement "Respondent lied to Judge Stancil during a subsequent telephone conversation regarding the Motion for Continuance" is incorrect and not supported by the record. During Respondent's testimony at the final hearing, he stated:

- A. I've -- I've admitted that I made false statements to Judge Stancil. I believe I wrote -- I -- I filed a pleading in which I said that there was a divorce case. And then I spoke with him on the phone, and I admitted I had a divorce -- I told him I had a

divorce case over in front of Judge Murphy, which I did not. (TR-35)

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Q. Okay. With respect to the Stancil matter--I want to make sure this is clear--you filed a motion in which you lied to the Judge--

A. Yes.

Q. --about a conflict. You subsequently talked to the Judge--

A. And I lied to him then.

Q. So you lied to the Judge twice.

A. That's correct. (TR 41, 42)

Surely if there is some confusion as to which lie came first, the one contained in the motion for continuance or what was said to the Judge on the telephone, the Referee had a valid basis for making the statement that was made within his report. It is the position of The Florida Bar that the order of Respondent's misrepresentations as they relate to Judge Stancil are immaterial. (TFB File No. 94-00728-03)

All of the above being said, it is important for the Court to understand that the main issue before the Referee on the day of the final hearing centered around the explanation Respondent wanted to make regarding his actions and to allow him to introduce whatever mitigation he would have in the case. Any portrayal of this case as a hotly contested case regarding the count involving Judge Stancil (TFB File No. 94-00728-03) is inaccurate and should not be accepted by this Court because



neither the pleadings in this case nor the facts support such a proposition.

The record in this case is replete with supporting evidence in the form of testimony and pleadings that substantiate the findings of the Referee in this matter and accordingly, his recommendation should be adopted by this court.

## ARGUMENT II

The Referee, having reviewed the pleadings and testimony in this case had counsel prepare written closing argument. The Referee considered the material before him and made his recommendations as to discipline to be imposed. (RR-1) Respondent now claims, that based upon the case law presented, he should be suspended for less than ninety days. (IB-22) Respondent completely ignores the Standards for Imposing Lawyer Sanctions within his brief, as well as the fact that he has been found guilty of violating the Rules of Professional Conduct with respect to three unrelated cases containing multiple rule violations. (RR-5, 6, 7)

A review of the applicable Standards for Imposing Lawyer Sanctions outlines the following as the appropriate course of review in this disciplinary matter:

### **3.0 - Generally**

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors.

A. **The duty violated:**

**4.4 - Lack of Diligence**

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

**4.41 - Disbarment is appropriate when:**

- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

**4.42 - Suspension is appropriate when:**

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

**6.1 - False Statements, Fraud, and Misrepresentation**

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

**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.

**6.12 - Suspension is appropriate when** a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action.

**6.13 - Public reprimand is appropriate when** a lawyer is negligent either in determining whether statements or

documents are false or in taking remedial action when material information is being withheld.

**B. The Lawyer's Mental State:**

There is no indication from the material presented to the Referee in this case that supports the proposition that Respondent's mental state was anything but normal and unimpaired at the time he committed the violations of the rules listed in the Bar's complaint.

The introduction of a letter from Respondent's doctor of possible side effects from some drugs that were prescribed for him does not support any form of mitigation or explanation of Respondent's actions. Respondent offered no testimony from his physician that he was in fact suffering from the side effects of the drugs he had been taking. In fact, Respondent, through counsel at the final hearing during a discussion with the Referee regarding the letter from Respondent's doctor states:

"...And we definitely are not offering as an affirmative offense to these charges that he [Respondent] was emotionally, physically, medically impaired in any way." (TR. 128)

**C. The potential or actual injury caused by the lawyer's misconduct:**

The potential or actual injury caused by Respondent's misconduct is very hard to quantify in this type of case because the harm both to the legal system and the individual client involved is so potentially far reaching. Respondent failed to act with respect to Ms. Powell's case and The Florida Bar cannot say that Ms. Powell would have been able to keep her home in the foreclosure suit in which she was involved. However, based upon the fact that Respondent failed to represent Ms. Powell in any way, we will never know what the outcome of her case might have been if she had the zealous representation that she was entitled to, having retained Respondent to represent her.

**D. The existence of aggravating or mitigating factors:**

It is the position of The Florida Bar that the following aggravating factors exist in this case:

1. Dishonest or selfish motive -- Respondent lied to Judge Stancil regarding a continuance. (RR-3) Respondent lied to Judge Bryan when he was questioned regarding the information contained in his Motion to Recuse. (RR-2) Respondent swore to his good faith effort to make sure that the basis upon which he filed his Motion to Recuse Judge Bryan was correct, when in

fact, he did very little, if anything in that vein.  
(RR-2, TR-21)

2. A pattern of misconduct -- Respondent lied on a number of occasions to two different judges in two different cases and failed to represent Ms. Powell at all in her civil case. (RR-2, 3, 5)
3. Multiple offenses -- the Referee has found that Respondent has violated a number of the Rules of Professional Conduct. (RR-5, 6, 7)
4. Vulnerability of victim -- Ms. Powell is an unsophisticated homeowner who needed a lawyer to protect her rights. Ms. Powell has a 12th grade education and certainly was not equipped to defend herself with respect to the foreclosure suit that had been filed against her. (GTR-9)
5. Substantial experience in the practice of law -- 25 years in the practice of law. (RR-8)
6. Indifference to making restitution -- Respondent has not refunded any of the legal fees Ms. Powell paid to him. (RR-5)

#### **Possible Mitigation**

1. No prior disciplinary record.
2. Character or reputation.

The next step in evaluating the appropriate discipline to be imposed in this case should be to review the case law in light of the facts of the case.

The Florida Bar v. Merwin, 636 So. 2d 717, 718 (Fla. 1994) the Court held "We find Merwin's conduct of lying under oath and failing to properly represent a client warrants sanctions. In light of the severe nature of these transgressions and Merwin's failure to file a brief after the Referee's report was issued, we approve the recommendation of the Referee. We hereby disbar William R. Merwin from the practice of law in the State of Florida."

In the case presently before the Court, Respondent was not under oath with respect to his conversation with Judge Stancil. Respondent was sworn in to testify regarding the certificate of good faith supplied to the Court in regard to his Motion to Recuse before Judge Bryan. (TR-21) The Respondent's misrepresentation to Judge Bryan took place after the Judge had recused himself in the case. (RR-2)

The Florida Bar v. Oxner, 431 So. 2d 983, 986 (Fla. 1983) held that lying to a trial judge in order to obtain a continuance warrants a 60 day suspension. The Court stated that "We would emphasize the importance of a judge's being able to rely on representations made by counsel. A lawyer should never mislead the Court. This lawyer's image in the eyes of all judges is tarnished for a long time. All attorneys should take heed to avoid making the mistakes he did."

In The Florida Bar v. Colclough, 561 So. 2d 1147 (Fla. 1990) an attorney was suspended from the practice of law for six months based upon his making misrepresentations in a lawsuit to the Court and to opposing counsel. The Court reduced the Referee's recommended 12 month suspension to six months, based upon the fact that Respondent had no prior disciplinary record and because the record showed he had never before given any reason to question his honesty or credibility.

In Colclough's case, the Court took note of the mitigation present and reduced the recommended discipline accordingly.

It is The Florida Bar's position that the aggravation in this case would appear to outweigh the mitigation to a great extent.

The Florida Bar v. Poplack, 599 So. 2d 116 (Fla. 1992) an attorney who lied to a police officer received a thirty day suspension

followed by 18 months probation. The Respondent in this case had no prior disciplinary record and was under emotional stress from the dissolution of his marriage. Mr. Poplack had stolen a car and lied to a police officer about it. Mr. Poplack had a psychiatrist testify that he had some psychological problems and that at the time of the incident, his judgment was clouded by alcohol and depression.

The Court distinguished this case from Colclough by noting that it did not involve an attorney who perpetrated a fraud on a court. In the case before the Court, Respondent did, in fact, perpetrate a fraud on the court, both in filing his Motion for Continuance and then in lying to the judge. Respondent **also** lied to Judge Bryan in telling him he had spoken with a few attorneys regarding his Motion to Recuse albeit after the Motion to Recuse was granted. (RR-2)

In **The Florida Bar v. Kickliter**, 559 So. 2d 1123 (Fla. 1990) the Court held that forging a client's signature on a will and submitting the same for probate and resulting criminal convictions, warrants disbarment for five years, notwithstanding absence of dishonest or selfish motive.

The Bar contended in Kickliter's case that disbarment is appropriate for a lawyer who, with intent to deceive the Court, knowingly submits a false document to a Court. The Court stated that "the preamble to chapter 4 of the Rules Regulating the Florida Bar states: 'Lawyers are officers of the court and they are responsible to the judiciary for the propriety of their professional activities.' In taking the oath of admission to the bar one must swear to 'never seek to mislead the Judge or Jury by any artifice or false statement of fact or law'," **The Florida Bar v. Kickliter**, 559 So. 2d 1123, 1124

(Fla. 1990) and then went on to explain how Mr. Kickliter had committed fraud on the court. Surely the Respondent's actions in lying to Judge Stancil regarding his calendar conflict constitutes fraud on the court. The Florida Bar believes Respondent's conduct in this case deserves a lesser sanction than did Mr. Kickliter's conduct, based upon the conduct involved and his unblemished years as a member of The Florida Bar.

In The Florida Bar v. Grant, 514 So. 2d 1075 (Fla. 1987) the Court held that neglecting legal matters warrants suspension for four months and thereafter until proof of rehabilitation is furnished, in light of two prior public reprimands for the same disciplinary violations.

In the case before the Court, the Respondent has violated the same Rule(s) of Professional Conduct in at least two of the counts against him. In both instances, the Respondent was representing clients before the Court when the violations of the Rules of Professional Conduct took place.

In The Florida Bar v. Sax, 530 So. 2d 284 (Fla. 1988) the court held submitting a notarized pleading to a court when the Respondent knew or should have known that the pleading contained a factual averment that was not true, and that the document presented as having been notarized was signed by the Respondent outside the presence of the notary and subsequent to their affixing of the jurat by the notary warranted a public reprimand.

This case is distinguishable from the case of The Florida Bar v. Sax, based upon the number of times Respondent lied to court and his complete failure to represent his client in the third count.



There is no case directly on point as to the combination of all three counts presently pending against Respondent in this matter. There are cases as cited above where attorneys have been disciplined by suspension or disbarment based upon conduct that is similar to the Respondent's. The Respondent was not under oath with respect to his dealing with Judge Stancil. The Respondent, however, did lie to the Court on three separate occasions. (RR-2, 3)

Finally, the Court should consider the purpose of Bar disciplinary proceedings as outlined in the case of The Florida Bar v. Pahules, 233 So. 2d 130 (Fla. 1970):

In cases such as these, three purposes must be kept in mind in reaching our conclusion. 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.

Id. at 132. A 91 day suspension or longer in the instant case will meet all three of the enunciated purposes.

The Referee, having found Respondent guilty of violating the Rules of Professional Conduct in the three counts of the consolidated case should then consider the cumulative effect of Respondent's conduct on his recommendation regarding discipline.

The Court has held in the case of The Florida Bar v. Bern, 425 So. 2d 526, 528 (Fla. 1983) that "the Court deals more harshly with cumulative misconduct than it does with isolated misconduct. Additionally, cumulative misconduct of a similar nature should warrant an even more severe discipline than might dissimilar conduct." In the case before the Referee, the Respondent has cumulative misconduct of a similar nature.

Respondent violated the Rules of Professional Conduct in three cases involving multiple rule violations of a similar nature in two of the counts. (RR-5, 6) The cumulative effect of Respondent's misconduct and the fact that this conduct is similar in nature **was** properly considered by the Referee and should be affirmed by this court.

## CONCLUSION

Respondent lied to Judge Stancil in order to get a continuance. He filed a false pleading with the Court and then compounded his lie by repeating it to the Judge during a telephone conversation. There is no question as to the fact that Respondent intended to mislead the Court with respect to the pleading he filed or the conversation he had with Judge Stancil.

Respondent filed what now appears to be an ill advised Motion to Recuse Judge Bryan in a civil case. When it was discovered that the Motion to Recuse filed by Respondent was defective, the Judge allowed Respondent to cure the defects by way of testimony. After the Judge had recused himself, Respondent informed him that he had checked the facts supporting the Motion to Recuse with a few attorneys--a statement which is untrue. Surely the Respondent's Motion to Recuse, when based upon the information Respondent had, should not have been filed. Respondent's subsequent untrue statement to the Judge was again a willful attempt to deceive the Court.

Respondent, in the third case filed by The Florida Bar, was retained to represent a woman in a foreclosure action. The Respondent failed to communicate with his client at all after the first meeting and failed to do anything with respect to her case. Eventually, although Respondent knew when the final hearing was scheduled, he failed to appear and represent his client because he was involved in a criminal trial. Respondent did not file anything

with the Court in his client's case and did not check with his client regarding the need for a continuance in her case. Respondent has failed to make any form of restitution to his client by way of returning the fees he was paid or in reimbursing her for any loss she may have suffered.

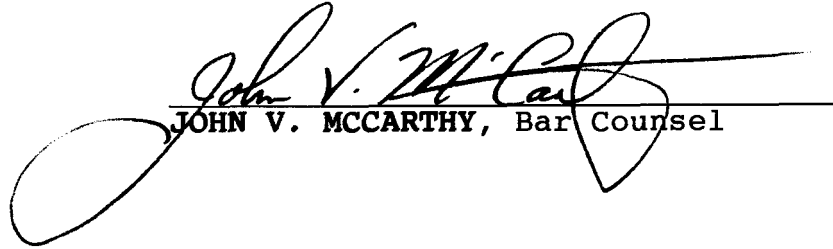
"A Referee's findings of fact are presumed correct unless they are clearly erroneous or lacking in evidentiary support. Where the Referee's findings are supported by competent, substantial evidence, this Court will not reweigh the evidence and substitute its judgment for that of the Referee. Florida Bar v. MacMillan, 600 So.2d 457 (Fla. 1992); Florida Bar v. Stalnaker, 485 So. 2d 815 (Fla. 1986)" **The Florida Bar v. Garland**, 651 So. 2d 1182, 1884 (Fla. 1995).

There is no doubt that the record before this Court contains competent and substantial evidence to support the Referee's findings in this case.

Based upon the findings of fact by the Referee and the case law presented, it is The Florida Bar's position that the Referee's recommendations should be accepted by this court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Closing Argument regarding Supreme Court Case Nos. 84,493 and 85,243, TFB File Nos. 94-00728-03, 94-00933-03 and 94-01105-03, has been mailed by certified mail #Z 392-928-251, return receipt requested, to **BAYA HARRISON, 111**, Counsel for Respondent, at his record Bar address of Post Office Box 656, Monticello, Florida 32344-0656, on this 4th day of December, 1995.

  
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JOHN V. MCCARTHY, Bar Counsel