IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant-Appellee,

v.

FREEMAN KING,

Respondent-Appellant.
_____/

Supreme Court No. 84,623

The Florida Bar File No. 91-50,685 (17E)

ANSWER BRIEF OF THE FLORIDA BAR

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COUNTERSTATEMENT OF FACTS

In that respondent has used his statement of facts for argument, the bar respectfully submits the following counter-statement. All page and exhibit references herein are to the transcript of final hearing and the exhibits admitted at such hearing.

Lisa and Newton James commenced a civil action in the County Court, Eleventh Judicial Circuit, Dade County Florida, against one Charles S. Baldwin and CSB Construction, Inc., Mr. Baldwin's corporation. Respondent filed an answer on behalf of both defendants on January 20, 1993. The answer contained an affirmative defense and counterclaim. (98; see attachment to bar's exhibit 3 in evidence).

Prior to filing an answer in the litigation on behalf of both defendants, respondent, on January 6, 1993, had a telephone conversation with the James' attorney, Steven Ginsburg, Esquire, during which conversation Mr. Ginsburg informed respondent that an answer was overdue and that a motion for default had been filed (15, 16). Mr. Ginsburg agreed not to pursue the default if respondent were to file something prior to January 8, 1993 (16). Respondent confirmed the telephone conversation and extension by

letter to Mr. Ginsburg dated January 13, 1993 (Bar's exhibit 3 in evidence). Respondent's January 13, 1993, letter to Mr. Ginsburg, in which he enclosed the answer, was not post marked until January 15, 1993 (21). In the meantime, a default was entered upon the application filed by Mr. Ginsburg (21; bar's exhibit 6 in evidence).

Notwithstanding the fact that he had secured a default, Mr. Ginsburg caused notices of taking respondent's clients' depositions to be furnished to respondent on February 12, 1993 (23; bar's exhibit 5 in evidence). Neither respondent nor his clients attended the scheduled deposition (23).

Mr. Ginsburg caused a motion for summary judgment to be forwarded to respondent on January 20, 1993, which motion was returnable on February 22, 1993 (24; bar's exhibit 7 in evidence). Respondent neither filed any papers in opposition to the motion for summary judgment nor attended upon the return thereof. Upon the return, the trial judge waited for a period, whereupon he, *sua sponte*, observing the answer filed by respondent, vacated the prior default which had been entered and then entered summary judgment in favor of Mr. Ginsburg's clients against respondent's clients in the sum of $6,128.84 (25; bar's exhibit 9 in evidence).

Respondent made no further calls to Mr. Ginsburg after the initial January 6, 1993, telephone call, and at no time sought to withdraw from representation (26,28 - 29).

Successor counsel to respondent's clients unsuccessfully attempted to vacate the summary judgment (Bar's exhibit 10 in evidence). In denying the application to vacate, the trial judge noted:

> Neglect, if any by prior defense counsel, has not been shown to be excusable neglect, and no reason or cause has been shown for Defendants' prior privately retained counsel not attending the noticed hearing on Plaintiffs' Motion for Summary Judgment (Bar's exhibit 10 in evidence).

As of the date of the final hearing in the bar disciplinary matter, attempts were still being made by Mr. Ginsberg to collect the judgment entered against respondent's clients (28).

Respondent was unaware that the answer, affirmative defense and counterclaim filed by him on behalf of his clients constituted an appearance in the action (98,99). He conceded that he never filed a motion to withdraw after filing the referenced answer (101). As of February 19, 1993, three days prior to the return date of the motion for summary judgment, respondent had made no effort to prepare any papers in connection with such application (105). Respondent made no attempt to seek a continuance of the

motion for summary judgment upon finding that a check for a retainer he expected and received on February 19, 1993, three days prior to the return of the motion, was non-negotiable due to insufficient funds. He made no effort to reach Attorney Ginsburg. He made no effort to protect his client from a default summary judgment (107,108).

Respondent received a grievance committee minor misconduct and admonishment in 1991. He received a public reprimand in **The Florida Bar v. King**, 570 So. 2d 1307 (Fla. 1990). He received a ninety (90) day suspension in **The Florida Bar v. King**, 637 So. 2d 238 (Fla. 1994).

The referee, after hearing of respondent's discipline history and the bar's sanction recommendation, opined that:

> Your recommendation is 30 days. I look at this a great deal more seriously than that. One of the reasons we are in such disrepute with the public is we don't discipline our own (149).

The referee has recommended that respondent receive a five (5) year suspension (See report of referee, page 3, section IV). Respondent petitioned for review of the referee's findings and recommendations.

SUMMARY OF ARGUMENT

The musings of the referee regarding the seriousness of respondent's history of misconduct and the profession's "disrepute with the public" must, it is respectfully submitted, be afforded the most profound attention.

Over the span of five (5) years, in separate proceedings, respondent has been admonished, publicly reprimanded and suspended for a variety of violations including lack of diligence, inadequate communications with clients, incompetence, trust account shortcomings, and misrepresentation. Clients in those proceedings have suffered the loss of rights due to the respondent's misconduct. In the case at bar, respondent's client was defaulted, not once, but twice and suffered the entry of a money judgment against him due to respondent's violations. In the patois of the street, it would appear that respondent simply "doesn't have a clue."

Respondent's cumulative misconduct should result in a three year suspension with reinstatement conditioned upon his taking and passing the bar examination, which condition may serve to teach respondent what he did not learn prior to or upon his admission, or, which he subsequently forgot.

ARGUMENT

I. THE REFEREE'S FINDINGS OF FACT ARE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

"A referee's findings and recommendations will be upheld unless clearly erroneous or without support in the record." **The Florida Bar v. Lipman**, 497 So. 2d 1165, 1168 (Fla. 1986). The facts presented below are undisputed. Respondent undertook representation of Charles Baldwin and his corporation by filing an answer in litigation in which his clients were named as defendants (See answer attached to bar's exhibit 3 in evidence). He requested and received from the plaintiff's counsel an extension of time within which to file such answer but, nonetheless, did not comply with such extension, thereby causing a default to be entered against his clients (15,16; bar's exhibit 6 in evidence). He received notices scheduling his clients' depositions, ignored the same and did not advise his clients' thereof (52; bar's consolidated exhibit 5 in evidence). He ignored a motion seeking summary judgment against his clients permitting a default summary judgment to be entered against his clients (Bar's exhibits 7, 8 and 9 in evidence).

Respondent has demonstrated a total misapprehension of the special fiduciary relationship that arises once an attorney undertakes representation, arguing that there never was an

attorney/client relationship in the case at bar. Respondent's testimony is particularly revealing:

> Q. Mr. King, there's no doubt in your mind as you sit here today that, in fact, you did undertake representation of Charles Baldwin and his corporation in connection with the litigation that was commenced against him by Mr. and Mrs. James, is there?
>
> A. Only if he would have paid me the retainer that I requested.
>
> Q. Let me skin the cat from another direction. Do you deny that you undertook representation of him in this matter?
>
> A. I did not undertake representation without getting paid. There's a contract for both he and myself.
>
> Q. You filed an answer under your signature?
>
> A. Yes.
>
> Q. And asserted a counterclaim?
>
> A. Yes.
>
> Q. An affirmative defense?
>
> A. Yes.
>
> Q. Isn't that an appearance, sir, and in every case in the world and to the Court that, in fact, you were representing Mr. Baldwin and his corporation?
>
> A. I did not file an appearance. I filed an answer.

Q. Do you think that the Court upon receiving the filing of an answer bearing your signature block, sir, would consider that you had appeared in the action and were, in fact, representing both the named defendants or don't you think this would have that effect?

A. In some jurisdictions, yes; others no.

Q. Do you think that it had the effect of communicating to Mr. Ginsburg that you were representing Doctor Baldwin and his corporation in connection with that litigation?

A. It may have. (97 - 99).

. . .

Q. You didn't file a motion to withdraw from representation in the action after you filed your answer?

A. No, I did not. But I also on February 4th notified Mr. Baldwin that I would not proceed any further if I did not get any monies. Again, Mr. Baldwin did not even bring anything into me until February 19, which was before there was a final judgment, before there was a final judgment on the summary - on the motion for judgment. (101).

Consistent with his hearing testimony, respondent urges upon appeal that there never was an attorney/client relationship and that as a result, there could have been no violations committed by respondent. While the client, Mr. Baldwin, insists that he made a cash advance to respondent at the outset of the representation

(43), respondent disputes such assertion claiming that he never received a retainer. The lack of payment, urges respondent, totally relieved him from all responsibilities.

The evidence regarding payment is interesting and suggests that respondent may not have been forthcoming below. Respondent's client testified that when he delivered the $800.00 check to respondent on February 19, 1993, he explained that he had just made a deposit which might not immediately be disclosed on the bank records (41,42). Upon direct examination regarding his receipt of and attempt to cash the subject check, respondent testifed "I do have a particular statement from the bank that states there was [*sic*] no monies in that account with regards to this check" (96). When pressed, upon cross examination, for production of such statement, respondent finally produced his exhibit 8 in evidence, which purports to be a statment from the bank that at 1:26 p.m. on February 19, 1993, there were insufficient funds to permit the subject check to be cashed (111). An examination of the check [respondent's exhibit 5 in evidence] establishes that it was never processed through any bank. Respondent conceded that he made no attempt to protest the check for nonpayment until the day prior to the final hearing in this disciplinary proceeding. It is

respectfully submitted that one might well speculate whether or not the subject check would have been negotiable had it been presented at 2:00 p.m. rather than 1:26 p.m. and that respondent had determined that it was simply more convenient for him to bow out in that he had done nothing vis a vis the extant summary judgment motion. Even respondent was unprepared to state that he would have protected his client if he had received cash. The best that he could speculate regarding what his intention would have been under such circumstance was "If there would have been monies that were good, I *probably* would have done things to represent Mr. Baldwin" (115)(italics supplied).

Urging that he had received no fee, respondent, in his brief, embarks upon a dissertation regarding "consideration" and contract law. Respondent simply does not understand that having filed an answer in the action he assumed full responsibility for the representation and was obligated fully and competently to represent his client unless and until he withdrew, in an orderly fashion, following all proper procedures.

A lawyer's responsibilities to his clients vis a vis withdrawal are addressed in **Rule of Professional Conduct 4-1.16(d)** which provides that "Upon termination of representation, a lawyer

shall take steps to the extent reasonably practicable to protect a client's interest . . ."

In **Atilus v. United States**, 406 F. 2d 694 (5th Cir. 1969), the court was confronted with determining whether or not to permit a defendant to proceed with an appeal despite the fact that his privately retained lawyer had failed timely to perfect such appeal. Defendant's privately retained counsel had dunned his client for payment of his fee right up to and through the time that the time to appeal had expired, explaining, referring to the fee, "I cannot help you until you do this." Addressing such conduct, the court observed:

> Counsel, of course, is entitled to charge for his services, but if, for whatever reason, he permits his services to be used without compensation or security for compensation from his client until a critical stage of the proceedings arrives, he can't be permitted simply to bow out without notice either to court or client and thereby frustrate forever the right of the client to protect his vital interests. (696).

The referenced dictum appears to have become an axiom of Florida jurisprudence. See **4 Fla Jur 2d, Attorneys at Law § 297.**

Respondent, as did counsel in **Atilus**, *supra*, bowed out at a critical stage of the proceedings. On February 19, 1993, three (3) days before the return date of the summary judgment application,

respondent was still permitting his services to be used. He accepted a check from his client and upon finding out that the check could not be cashed, did not contact his client, did not contact adversary counsel and did not seek a continuance (107, 108). He simply bowed out. Unbeknownst to him, the trial judge was prepared to and did, *sua sponte*, relieve respondent's client from the initial default entered when respondent failed timely to file an answer despite having secured an extension. Such respite was short lived, however, when, due to respondent's abandonment, a default summary judgment was entered against his client.

II. RESPONDENT'S CUMULATIVE MISCONDUCT, COUPLED WITH HIS SEEMING IGNORANCE REGARDING A LAWYER'S FUNDAMENTAL RESPONSIBILITIES TO CLIENTS, WARRANTS IMPOSITION OF A THREE YEAR SUSPENSION WITH REINSTATEMENT CONDITIONED UPON RESPONDENT'S TAKING AND PASSING THE BAR EXAMINATION.

The bar agrees with respondent that the five (5) year suspension recommended by the referee is contrary to the express provision of ***Rule of Discipline* 3-5.1(e)** which rule limits suspensions to three (3) years.

In assessing the appropriate sanction to be applied, it is respectfully submitted that respondent's prior disciplinary history must be scrutinized, as it is axiomatic that the Court deals more harshly with cumulative misconduct than it does with isolated

misconduct. **The Florida Bar v. Neely**, 587 So. 2d 465 (Fla.1991). In **The Florida Bar v. King**, 570 So. 2d 1307 (Fla.1990), respondent was publicly reprimanded for neglect and placed on probation. In May, 1991, respondent received a grievance committee admonishment for neglect. In **The Florida Bar v. King**, 637 So. 2d 238 (Fla. 1994), respondent received a ninety (90) day suspension plus probation for a period of three (3) years in connection with numerous, separate bar grievances involving a wide variety of violations including lack of diligence, inadequate client communications, incompetent representation, trust account violations and misrepresentation. Clients were severely impacted and prejudiced including the loss of a client's rights due to the running of a statute of limitations, a dismissal of another client's claim for lack of prosecution and the failure to pay legitimate expenses from settlement proceeds. A copy of the report of referee is annexed hereto as Appendix A.

Coupled with respondent's latest encounter with the bar, a portrait is presented showing a lawyer who has demonstrated a propensity for leaving clients/victims in his wake. When addressed in light of ***Florida Standards for Imposing Lawyer Sanctions***, respondent's misconduct warrants imposition of a three (3) year suspension. ***Standard 4.41(b)*** provides that disbarment is

appropriate when 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.

***Standard* 4.42(a)** provides that suspension is appropriate when 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. Finally, ***Standard* 4.51** provides that disbarment is appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client. Each of the quoted standards is absent consideration of aggravating or mitigating circumstances.

Applying such standards to the instant case places respondent at the threshold of disbarment. His prior, extensive discipline history certainly acts as a most aggravating circumstance and magnifies the sanctions suggested by the standards absent such aggravating circumstance. Certainly, respondent has demonstrated a singular capacity for harming clients and an equally singular

capacity for a seeming oblivion to the rudiments of a lawyer's fundamental responsibilities to his clients and to the courts. Taking and passing the bar examination as a condition to his reinstatement will not only serve to re-educate respondent as to the basics of Florida jurisprudence and the canons of ethics, but perhaps will serve to protect the public from suffering further harm at respondent's hands. As observed by this Court in **The Florida Bar v. Dancu**, 490 So. 2d 40,41 (Fla. 1986):

> The very nature of the practice of law requires that clients place their lives, their money, and their causes in the hands of their lawyers with a degree of blind trust that is paralled in very few other economic relationships. Our primary purpose in the disciplinary process is to assure that the public can repose this trust with confidence.

CONCLUSION

Respondent has left a wake of clients/victims in his path. A three (3) year suspension with readmission conditioned upon his taking and passing the bar examination will present a fair judgment to society in terms of protecting the public from unethical conduct, will be fair to respondent in that it will offer him a reinstatement rather than readmission road back to practice and will demonstrate to other lawyers that cumulative misconduct simply will not be tolerated.

Respectfully submitted,

David M. Barnovitz, Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to James O. Walker, III, Esquire, attorney for respondent, by U.S. Mail addressed to him at The Clay Building, Suite 102, 1201 East Atlantic Boulevard, Pompano Beach, FL 33060 on this 2nd day of June, 1995.

David M. Barnovitz, Bar Counsel

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

FREEMAN KING,

Respondent.

_____/

Supreme Court Case
No. 81,946
The Florida Bar File
No. 93-50,460(17H)

Supreme Court Case No.
No. 82,075
The Florida Bar File
No. 93-50,883(17H)

Supreme Court Case
No. 82,464
The Florida Bar File
No. 93-50,932(17H)

Supreme Court Case
No. 83,129
The Florida Bar File
No. 93,50,308(17H)

REPORT OF REFEREE

I. Summary of Proceedings:

The undersigned was duly appointed to act as referee in the above referenced cases by orders entered by Jack H. Cook, Chief Judge, Fifteenth Judicial Circuit, upon designations by the Chief Justice/Acting Chief Justice of the Supreme Court of Florida. The pleadings and all other papers filed with the referee, which are forwarded contemporaneously to the Supreme Court of Florida with this report, constitute the entire record in these proceedings.

During the course of these proceedings, Ronald K. Dallas, Esq., represented respondent and Luain T. Hensel, Esq. represented The Florida Bar.

II. Findings of Fact as to Each Item of Misconduct with which Respondent is Charged:

By virtue of his unconditional guilty plea, respondent is deemed to have pled guilty to each and every allegation made in The Florida Bar's formal complaints. As a consequence, the referee's findings of fact are as follows:

As to all Complaints

Respondent is, and at all times hereinafter mentioned was, a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

As to Supreme Court Case No. 81,946

1. On or about April 6, 1984, respondent was retained by Ethel Morrison-Coleman to pursue a claim on her behalf for injuries she sustained from an accident which occurred on or about February 23, 1984.

2. On or about April 9, 1984, respondent directed a letter to Universal Casualty Insurance Company ("Universal"), the insurance company of the alleged at fault driver.

3. On or about September 28, 1984, Universal was declared insolvent and ceased doing business in the State of Florida.

4. On or about November 9, 1984, respondent notified Florida Insurance Guaranty Association ("FIGA") of Ethel Morrison-Coleman's pending claim against Universal and requested forms so that he could file a claim with FIGA on her behalf.

5. On or about February 22, 1988, respondent filed a complaint in circuit court on behalf of Ethel Morrison-Coleman against Dessillon Massilon (the alleged at fault driver), Universal, FIGA and State Farm Insurance (Ethel Morrison-Coleman's own insurance company).

6. Pursuant to Florida Statutes, the deadline for filing Ethel Morrison-Coleman's lawsuit against FIGA expired on or about December 28, 1986.

7. Respondent did not inform Ethel Morrison-Coleman that he did not file her complaint against FIGA within the statutory deadline.

8. On or about July 22, 1991, the circuit court, upon its sua sponte motion and notice of hearing for dismissal, issued an order dismissing Ethel Morrison-Coleman's complaint against FIGA for lack of prosecution.

9. Respondent, having notice that the complaint was dismissed, failed to inform Ethel Morrison-Coleman of the court's order of dismissal.

As to Supreme Court Case No. 82,075

1. In or near May, 1984, respondent was retained by Emmanuel Hunter to pursue a personal injury claim.

2. On or about Mary 15, 1984, respondent executed a doctor's lien in favor of Lane, Gelety, Woolsey & Centrone, P.A. ("LGW&C") and C.L.G. Neurodiagnostics ("C.L.G.") whereby he agreed to withhold funds from any recovery to pay, in full, bills for services rendered to Emmanuel Hunter by LGW&C and C.L.G.

3. Respondent settled Emmanuel Hunter's personal injury claim for $15,000 and deposited the settlement proceeds into his trust account on March 9, 1988.

4. On or about April 12, 1988, respondent disbursed the entire settlement proceeds to Emmanuel Hunter and himself.

5. Respondent, with knowledge that fees were owed to LGW&C and C.L.G. for services provided to Emmanuel Hunter, did not withhold and/or distribute any funds to L.G.W.&C and C.L.G. from Emmanuel Hunter's settlement proceeds.

6. Respondent, with knowledge that fees were owed to LGW&C and C.L.G. for services provided to Emmanuel Hunter, did not notify LGW&C and C.L.G. that respondent received proceeds from Emmanuel Hunter's settlement.

7. On or about September 15, 1992, respondent sent a letter to ABC Medical Recovery, Inc. ("ABC"), an entity attempting to collect payment of LGW&C's and C.L.G.'s bill for medical services provided to Emmanuel Hunter.

8. Respondent informed ABC that settlement might be made on behalf of Emmanuel Hunter and that the funds would not be available for disbursement for at least "a month and a half".

9. In his September 15, 1992 letter, respondent also informed ABC that Emmanuel Hunter had authorized him to pay all unpaid medical expenses incurred as a result of Emmanuel Hunter's accident and requested that, in order to protect payment of funds, ABC confirm the amount owed by Emmanuel Hunter to LGW&C and C.L.G.

10. On or about September 16, 1992, ABC returned respondent's September 15, 1992 letter to him with the notation at the bottom of the document that Emmanuel Hunter owed the sum of $6,257.50 for services provided.

11. Respondent did not disclose to ABC that he previously received settlement proceeds on behalf of Emmanuel Hunter and that, on or about April 12, 1988, he disbursed all the settlement proceeds.

As to Supreme Court Case No. 82,464

1. On or about September 7, 1984, respondent was retained by Rosa K. Royster to pursue her personal injury claim arising from an automobile accident which occurred on the same date.

2. On or about September 12, 1988, respondent filed a civil complaint on behalf of Rosa K. Royster.

3. The statute of limitations for filing Rosa K. Royster's complaint expired on September 7, 1988.

4. On or about January 5, 1989, the court granted defendant's motion to dismiss Rosa K. Royster's case with prejudice (defendant's motion to dismiss was predicated upon the statute of limitations having run prior to the complaint being filed).

5. Respondent did not inform Rosa K. Royster that the statute of limitations had expired on her claim prior to filing the civil complaint on her behalf.

As to Supreme Court Case No. 83,129

1. On or about July 28, 1988, respondent received a $24,000 settlement draft on behalf of Willie and LaConia Martin ("the Martins") which was deposited into his trust account.

2. On or about August 30, 1988, respondent made disbursements related to the Martins' settlement draft as follows:

Willie and LaConia Martin	$9,313.01
Freeman King (attorney's fees)	$8,000.00
Freeman King (costs)	$ 759.00

3. On or about October 15, 1992, the remainder of the funds related to the Martins' settlement draft were disbursed as follows:

Dr. Grafton Sieber	$1,742.60
Neuromuscular Diagnostician	$1,200.00
Broward Biofeedback	$ 80.65
Plantation Physical Therapy	$ 471.65
MRI of Plantation	$ 354.00
Willie Martin	$2,078.50

4. For the period June 1, 1988 through December 31, 1992, respondent failed to preserve required trust accounting records, maintain minimum trust accounting records, follow minimum trust accounting procedures and maintain an interest-bearing trust account for the benefit of The Florida Bar Foundation, Inc.

III. Recommendation as to Whether Respondent Should be Found Guilty:

By virtue of his unconditional guilty plea, respondent is deemed to have pled guilty to each and every rule violation alleged in The Florida Bar's formal complaints. As a consequence, the referee recommends that respondent be found guilty of the rule violations set forth below.

As to Supreme Court Case No. 81,946

1. By failing to file Ethel Morrison-Coleman's civil complaint against Florida Insurance Guaranty Association ("FIGA") within the statutory deadline, respondent did not provide competent representation to his client in violation of R. Regulating Fla. Bar 4-1.1 and 4-8.4(a).

2. By failing to inform Ethel Morrison-Coleman that her complaint against FIGA had been filed after the statutory deadline expired and the court had dismissed her complaint for lack of prosecution, respondent did not keep his client reasonably informed about the status of her matter and did not explain the matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation in violation of R. Regulating Fla. Bar 4-1.4(a), 4-1.4(b) and 4-8.4(a).

3. By failing to file Ethel Morrison-Coleman's complaint against FIGA within the statutory deadline, failing to promptly pursue her claim against FIGA, and failing to inform her that the complaint was dismissed for lack of prosecution, respondent did not act with reasonable diligence and promptness in representing a client in violation of R. Regulating Fla. Bar 4-1.3, and 4-8.4(a).

As to Supreme Court Case No. 82,075

1. By disbursing all of Emmanuel Hunter's settlement proceeds to Mr. Hunter and himself, thereby failing to honor the doctor's lien executed in favor of Lane, Gelety, Woolsey & Centrone, P.A. and C.L.G. Neurodiagnostics, respondent violated R. Regulating Fla. Bar. 4-1.15(a) [A lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients and third persons that are in a lawyer's possession in connection with a representation], 4-1.15(b) [Upon receiving funds or other

property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. 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], 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct], 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation] and 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].

2. By misrepresenting to ABC Medical Recovery, Inc. (in his September 15, 1992 letter) that, upon receipt of funds from Emmanuel Hunter's expected settlement, all unpaid medical expenses would be paid (when a settlement had already been achieved and all settlement funds disbursed on or about April 12, 1988), respondent violated R. Regulating Fla. Bar 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct] and 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation].

As to Supreme Court Case No. 82,464

1. By failing to file Rosa K. Royster's complaint within the statute of limitations and failing to inform her that the statute of limitations had expired on her personal injury claim, respondent violated R. Regulating Fla. Bar 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client[and 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].

As to Supreme Court Case No. 83,129

1. By delaying the disbursement of the remainder of Willie and LaConia Martin's settlement proceeds from August 30, 1988 to October 15, 1992, respondent did not promptly deliver to the client or third person any funds which the client or third person was entitled to receive in violation of R. Regulating Fla Bar. 4-1.15(b).

2. For the period June 1, 1988 through December 31, 992, respondent failed to comply with R. Regulating Fla. Bar 4-1.15(d) [A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts] n the following particulars:

> Rule 5-1.1(c) - A member of The Florida Bar shall preserve or cause to be preserved the records of all banks and savings and loan association accounts or other records pertaining to the funds or property of a client or a third party maintained in compliance with rule 4-1.15 for a period of not less than six (6) years subsequent to the final conclusion of the representation of a client relative to such funds or property. Such records shall include checkbooks, cancelled checks, check stubs, vouchers, ledgers and journals, closing statements, accountings or other statements of disbursements rendered to clients or third parties with regard to trust funds, or similar equivalent records clearly and expressly reflecting the date, amount, source, and reason

for all receipts, withdrawals, deliveries, and disbursements of the funds or property of a client or third party.

Rule 5-1.1(d) - Minimum trust accounting records shall be maintained and minimum trust accounting procedures must be followed by all attorneys practicing in Florida who receive or disburse trust money or property.

Rule 5-1.1(e)(2) - All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing from an office or other business location within the state of Florida shall be deposited into one or more interest-bearing trust accounts for the benefit of The Florida Bar Foundations, Inc.

Rule 5-1.2(b)(2) - A lawyer shall maintain original or duplicate deposit slips and, in the case of currency or coin, an additional cash receipts book clearly identifying the date and source of all trust funds received an the client or matter for which the funds were received.

Rule 5-1.2(b)(3) - A lawyer shall maintain the original cancelled trust account checks, all of which must be numbered consecutively.

Rule 5-1.2(b)(5) - A lawyer shall maintain a separate cash receipts and disbursements journal, including columns for receipts, disbursements, transfers, and the account balance, and containing at least the identification of the client or matter for which the funds were received, disbursed, or transferred; the date on which all trust funds were received, disbursed, or transferred; the check number for all disbursements; and the reason for which all trust funds were received, disbursed, or transferred.

Rule 5-1.2(c)(1)(A) - lawyer shall cause to be made monthly reconciliations of all trust bank or savings and loan association accounts, disclosing the balance per bank, deposits in transit, outstanding checks identified by date and check number, and any other items necessary to reconcile the balance per bank with the balance per the checkbook and the cash receipts and disbursements journal.

Rule 5-1.2(c)(1)(B) - A lawyer shall cause to be made monthly a comparison between the total of the reconciled balances of all trust accounts and the total of the trust ledger cards or pages, together with specific descriptions of any differences between the two totals and reasons therefor.

Rule 5-1.2(c)(2) - A lawyer shall prepare, at least annually, a detailed listing identifying the balance of the unexpended trust money held for each client or matter.

IV. Recommendation as to Disciplinary Measures to be Applied:

Having carefully considered respondent's unconditional guilty plea and conditional consent to discipline and The Florida Bar's approval thereof, it is recommended that respondent be suspended from the practice of law for a period of ninety (90) days (with automatic reinstatement) and be subject to the following terms and conditions following his suspension:

A. Probation for a period of three (3) years during which respondent agrees to employ a certified public accountant who is acceptable to The Florida Bar and at his own expense. Said certified public accountant shall review all of respondent's trust accounts on a monthly basis to ensure that monthly reconciliations of all trust account balances and liabilities are prepared and submit monthly reports to The Florida Bar stating whether respondent is in full compliance with all existing rules and regulations promulgated and adopted by the Supreme Court of Florida, or any successor agency, as they relate to trust accounting records, trust accounting procedures and utilization of trust funds;

B. Upon retaining the certified public accountant, respondent shall make an arrangements for a meeting between the certified public accountant and the branch staff auditor at the Fort Lauderdale office of The Florida Bar, or other person designated by The Florida Bar, for the purpose of ensuring that the certified public accountant retained by him is familiar with the requirements set forth in the Rules Regulating Trust Accounts and the terms set forth herein. This meeting shall occur prior to the certified public accountant's submission of the first monthly report;

C. Should respondent change certified public accountants during the period of his probation, respondent shall immediately notify The Florida Bar and make the appropriate arrangements for the new certified public accountant(s) to meet with the branch staff auditor of the Fort Lauderdale office of The Florida Bar, or other person designated by The Florida Bar, prior to the submission of any monthly report;

D. The work papers of respondent's certified public accountant(s) and all other requested documents shall be made available to the bar's auditor upon request of The Florida Bar;

E. Absent good cause, should respondent's certified public accountant fail to submit the monthly reports to The Florida Bar as aforesaid or fail to report that respondent is maintaining required trust accounting records, complying with minimum trust accounting procedures and properly utilizing trust funds, respondent shall be deemed to have failed to observe the conditions of probation and shall be subject to the provisions of Rule 3-5.1(c), Rules of Discipline. Respondent shall also be subject to all other provisions of the aforesaid rule during the period of his probation.

F. Respondent shall not be required to retain the services of a certified public accountant to accomplish the aforesaid requirements should he not maintain a trust account during his term of probation. In that event, respondent shall be required, during the term of his probation, to submit a monthly certification to The Florida Bar that he is not maintaining a trust account and that he has neither received nor disbursed client or third party funds during that month. Should

respondent fail to certify on a monthly basis that he is not maintaining a trust account and that he has neither received nor disbursed client or third party funds during that month, he shall be deemed to have failed to observe the conditions of probation and shall be subject to the provisions of Rule 3-5.1(c), Rules of Discipline. Respondent shall also be subject to all other provisions of the aforesaid rule during the period of his probation. Should respondent open a trust account at any time during the period of his probation, he will be required to thereafter abide by the terms of his probation as set forth in A through E above for the remaining term of his probation.

In arriving at the foregoing disciplinary recommendation, the referee was guided by the Florida Standards for Imposing Lawyer Sanctions. Standard 4.42(b) [Suspension is appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client] was found to be applicable with respect to Supreme Court Case Nos. 81,946 and 82,464. Standard 5.13 [Public reprimand is appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law] was found to be applicable with respect to Supreme Court Case No. 82,075. Standard 4.13 [Public reprimand is appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client] was found to be applicable with respect to Supreme Court Case No. 83,129.

The following mitigating actors apply: Standards 9.32(e) [cooperative attitude toward proceedings]; 9.32(j) [interim rehabilitation, as evidenced by consultations with The Florida Bar's Law Office Management Advisory Service and the resulting implementation of administrative systems which, if adhered to, should reduce the likelihood of future grievances]; and 9.32(l) [remorse].

The following aggravating factors apply: Standards 9.22(a) [prior disciplinary offenses]; 9.22(c) [a pattern of misconduct]; 9.22(d) [multiple offenses]; and 9.22(i) [substantial experience in the practice of law].

V. Personal History and Past Disciplinary Records:

In arriving at the foregoing disciplinary recommendation, the following personal history and disciplinary record of respondent were considered:

Age: 40

Date admitted to the Bar: October 23, 1980

Prior disciplinary convictions and disciplinary measures imposed therein: Public reprimand (with probation) for neglect, by order of the Supreme Court of Florida entered on September 13, 1990. Admonishment for neglect, March 26, 1991. Suspension for probation violation, by order of the Supreme Court of Florida dated June 3, 1991, effective July 3, 1991, and reinstated by order dated September 10, 1991.

VI. Statement of Costs and Manner in which Costs should be Taxed:

The Florida Bar has incurred $3,855.43 in costs as reflected in the statement of costs submitted by bar counsel. Respondent has agreed to pay such costs in his unconditional guilty plea and conditional consent to

discipline. Accordingly, costs in the amount of $3,855.43 should be taxed against respondent.

Dated this 23 day of Feb, 1994.

JAMES T. CARLISLE, Referee

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