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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Supreme Court Case
No. 84,641

v.

EDWARD C. VINING, JR.,

Respondent.

ON PETITION FOR REVIEW

INITIAL EF OF THE FLORIDA BAR

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I

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INTRODUCTION

The parties will be designated herein in the same manner as they were designated before the Referee. The Florida Bar was the Complainant and Edward C. Vining was the Respondent.

References to the transcript will be identified by dates and pages. The Referee's Report is provided as Exhibit "A".

STATEMENT OF THE CASE AND OF THE FACTS

The Florida Bar served a complaint upon the Respondent, Edward C. Vining, Jr., on November 2, 1994. The complaint alleged ethical violations pertaining to fees, stemming from Respondent's representation of Eva Martyn in a dissolution proceeding in Martin County, Florida. Judge Robbie Barr was initially appointed as Referee, but was replaced by Judge Victoria Sigler subsequent to recusal by Judge Barr.

This matter was heard on December 15, 1995, May 22, 1995, March 18 and 19, 1996 and December 13, 1996. Respondent served a Motion for Judgment of Acquittal which was denied on December 13, 1996. The Referee's report was submitted on February 11, 1997 and a Motion for New Trial, Reconsideration and Rehearing **was** denied on March 7, 1997.

The Referee recommended that Respondent be found guilty of violating Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and Rule 4-8.4(d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice) of the Rules of Professional Conduct. Based upon the foregoing rule violations the Referee recommended a three year suspension.

The Florida Bar served a Petition for Review on April 2, 1997 directed solely toward the recommendation concerning discipline. The Respondent served a Petition for Review on April 3, 1997 directed toward the entire proceeding.

The facts which support the Bar's position are, of course, set forth in the Referee's Report (Exhibit "A").

The Referee's report itemizes the series of events which culminated in Respondent's ethical violations. The events began in 1980 when Respondent was retained to represent Eva Martyn. Respondent and his client had an oral contingency agreement for, 25% initially, and later, one third of the judgment (plus costs). The client paid a \$36,000.00 contingency fee which was based upon an award of marital assets in the amount of \$108,578.80. No alimony or attorney's fees were awarded. However, those omissions were successfully appealed.

At a hearing held around April 1983, Judge Vocelle awarded the wife a lump sum of \$104,000.00 and attorney's fees in the amount of \$35,222.11. (See Referee's Report paragraphs 1 9 regarding the foregoing facts).

Paragraphs 10-14 of the Referee's Report describe additional events culminating in Respondent's subsequent unethical (and illegal) conduct. That conduct pertained to the deposit of

\$160,000.00 by the husband (Charles Martyn) as a supersedeas bond. Respondent, acting as the wife's attorney, entered into a stipulation with the husband's attorney to disburse a check for that portion of the funds pertaining to attorney's fees. A check was subsequently issued jointly payable to Respondent and Eva Martin. Eva Martin declined to sign it for Respondent's benefit insofar as she had paid Respondent his fees, Respondent, nevertheless, sought to obtain additional attorney's fees.

During the first few months of 1994, Respondent was discharged and Eva Martyn hired Richard Katz as his attorney. (These and related events are designated in paragraphs 15 ff. of the Referee's Report). An order substituting Katz as counsel was entered as well as an order attaching any proceeds (\$104,000 and \$35,222.11) received due to the order awarding same. The disbursal of proceeds was prohibited, in part, until such time as legal proceedings in Dade County between Eva Martyn and Respondent were concluded. In the Dade County suit, Respondent sought additional fees in the amount of \$75,000.00. The jury awarded him \$8,000.00.

Subsequent to an appeal of that award, Eva Martyn satisfied the judgment for \$8,000.00 and Respondent executed a release of lien, which stated:

A check in the amount of \$35,222.11 previously

delivered to me, which is payable to Edward C. Vining, Jr., and Eva H. Martyn may be reissued payable only to Eva H. Martyn, I hereby withdraw from any further proceedings in this matter and do not require that any further pleadings, motions, notices, or orders be served upon me. (Paragraph 22).

Respondent subsequently sought to obtain funds contained in the Martin County Registry held by Florida National Bank. Respondent did not advise the bank's attorney, Mr. Catlin, that he no longer represented Eva Martyn and that she also claimed an interest in those funds.

Respondent obtained the funds based upon the stipulation. Subsequent to the release of those funds, attorney Katz successfully brought an action against Respondent for conversion and civil theft, and Eva Martyn was awarded \$60,700.00 in compensatory damages and \$60,000.00 in punitive damages. (Paragraphs 27 and 28).

The essence of the Respondent's ethical violations is set forth in paragraphs 8, 14, 20 and 25 through 30 of the Referee's Report. Those paragraphs focus upon the following acts:

1. Respondent submitted a motion for release of funds to himself in his behalf and in behalf of his client. At that time Respondent knew that his client was disputing his right to those funds. No notice of the motion was provided to the client

(Referee's Report paragraph 14).

2. At a hearing on attorneys fees, Respondent did not inform the court that his client, Eva Martyn, had paid him attorneys fees for the original proceeding (Referee's Report, paragraph 8).

3. The Respondent **ultimately obtained the disputed funds by** filing a suit against **the bank holding the funds.** Respondent failed to apprise the bank's attorney that he no longer represented Eva Martyn, thereby obtaining a stipulation with the bank resulting in an order for the release of the funds, The Judge who issued the order, Judge Cianca, of Martin County, was likewise, never apprised of the circumstance that Eva Martyn **was** no longer his client.

(Referee's Report, paragraphs 25, 26).

Additional litigation was required as a result of Respondent's conduct in obtaining the funds. Eva Martyn obtained a judgment against Respondent based upon a jury's findings that Respondent was guilty of conversion and civil theft and awarded \$60,700.00 in compensatory damages and \$60,000.00 in punitive damages. The Judge wrote that Respondent had "committed extrinsic fraud on the court when he submitted to the court a stipulation for payment dated March 28, 1988 together with a proposed Order on stipulation)

(Referee's Report paragraph 29).

In regard to discipline, the Bar asserted that disbarment **was**

the appropriate sanction. The Bar cited several cases in support of its position at the hearing on December 13, 1996. Standards 5.11(f) and 6.11 of The Florida Standards for Imposing Lawyer Sanctions were presented as authority in support of disbarment as the appropriate discipline.

There were also a number of aggravating factors identified in Florida Standards for Imposing Lawyer Sanctions, which the Bar brought to the attention of the Referee. These included:

1. Prior discipline; a private reprimand resulting from ex parte communications with a Judge regarding the merits of a controversy and including a proposed Order (Standard 9.22(a); T. December 13, 1996, page 12).
2. Dishonest or selfish motive (Standard 9.22(b); T. December 13, 1996, page 14).
3. A pattern of misconduct (Standard 9.22(c); T. December 13, 1996, page 14).
4. Multiple offenses (Standard 9.22(d); T. December 13, 1996, page 15).
5. Refusal to acknowledge the wrongful nature of the conduct (Standard 9.22(g); T. December 13, 1996, page 15).
6. Vulnerability of the victim (Standard 9.22(H); T. December 13, 1996, page 15).

7. Substantial experience in the practice of law (Standard 9.22(h); T. December 13, 1996, page 15).

The Respondent relied upon Standard 9.32(g), character or reputation, in mitigation.

SUMMARY OF ARGUMENT

The Referee recommended that Respondent be found guilty of violating Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and Rule 4-8.4(d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice) of the Rules of Professional Conduct. Based upon those violations, the Referee recommended a three year suspension.

The rule violations were based upon conduct of the Respondent which deceived his client, several judges and other attorneys, The violations stemmed from a fee dispute with Respondent's client.

The Referee found that the Respondent had submitted a motion in his behalf and in the name of his client for release of disputed funds. No notice of the motion was provided to the client and the existence of the dispute was not revealed to the presiding judge. That attempt was, fortuitously prevented.

However, undaunted, the Respondent pursued another path to obtain the funds. The funds were being held in the Court Registry by Florida National Bank. Respondent induced the bank's attorney to enter into a stipulation for release of the funds. Respondent's former client's claim to those funds was not revealed, in order to facilitate the stipulation. The Judge who received the stipulation was, likewise, not apprised of the former client's claim, and

neither individual was told that Respondent no longer represented Eva Martyn. As a result of being misled, the Court entered an order releasing the funds to Respondent.

In order to recover her funds, Respondent's former client had to engage in litigation. Eventually, she recovered compensatory and punitive damages in an action based upon civil theft and conversion. The judge held that Respondent committed extrinsic fraud.

Each of Respondent's two rule violations independently merits disbarment in accordance with Standards 5.11(f) and 6.11(a) of Florida Standards for Imposing Lawyer Sanctions. In addition, the appropriate discipline should have reflected the seven aggravating factors, identified by the Standards, which the Bar cited. Several cases were cited by the Bar with comparable conduct which called for disbarment. Disbarment should be the discipline imposed upon the Respondent.

ISSUE FOR REVIEW

I

WHETHER THE REFEREE CLEARLY ERRED BY NOT
DISBARRING THE RESPONDENT?

**THE REFEREE CLEARLY ERRED BY
NOT DISBARRING THE RESPONDENT.**

This Court's scope of review over disciplinary recommendations is broader than that of findings of fact, because it is this court's responsibility to order the appropriate discipline. The Florida Bar v. Anderson, 538 So.2d 852, 854 (Fla. 1989) . A recommendation will not be given deference if it is clearly erroneous. The Florida Bar v. Niles, 644 So.2d 504 (Fla. 1994). The Bar would submit that in this case, suspension is insufficient and a clearly erroneous recommendation.

The Respondent's unethical conduct was of a most serious nature. In his dealings with the courts, Respondent's failure to apprise the courts of the true facts undermined the integrity of the judicial process. Perhaps no conduct is more reprehensible than that which would lead the public to doubt the integrity of the justice system.

Respondent, as pointed out in the Statement of the Case and Facts was repeatedly deceptive. He filed a motion to obtain funds in his client's name when his client opposed the release of those funds. He neglected to advise the court that he had been paid attorney's fees. Ultimately, he obtained funds which had been

placed in the Court Registry without advising Mrs. Martyn that he was seeking to do so, and by concealing his former client's opposition from the court.

The type of violations in which Respondent engaged expressly calls for disbarment in accordance with Florida Standards for Imposing Lawyer Sanctions. Standard 5.11(f) provides:

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

Standard 6.11(a) provides:

Disbarment is appropriate when a lawyer with the intent to deceive the court, knowingly makes a false statement or submits a false document.

Note that each of those standards calls for disbarment based upon a single violation without regard to aggravating factors involved herein are two distinct violations. In addition, the Bar submitted seven aggravating factors which apply to this case. The applicability of those factors is undisputed. Those factors are, a prior disciplinary history, dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge wrongful conduct, vulnerability of the victim, and substantial experience. (Standard 9.22).

As this court has stated:

"It is our responsibility to safeguard the right of the public to secure adequate representation by attorneys and to maintain the image and integrity of The Florida Bar as a whole."

In Re The Florida Bar, 301 So.2d 448 (Fla. 1974). The single most important concern in Supreme Court's defining and regulating the practice of law is protection of the public from incompetent unethical or irresponsible representation. The Florida Bar v. Moses, 380 So.2d 412 (Fla. 1980).

Respondent's conduct must be considered in the context of the foregoing goals. It must also be considered from the standpoint that the legal profession involves the attorney's relationship to the administration of justice as an officer of the court, and his relationship to his client which demands the highest degree of fidelity, and his relationship to his colleagues which must be characterized by candor and fairness. The Florida Bar v. Dawson, 111 So.2d 427 (Fla. 1959).

An examination of Respondent's behavior inevitably leads to the conclusion that he was extremely persistent in violating each of the foregoing obligations as an attorney. He repeatedly misled judges. He repeatedly concealed his activities from his client.

He lacked candor in relation to his colleagues.¹ Furthermore, Respondent's corrupt motive meets the test for disbarment set forth by the court in The Florida Bar v. Thomson, 271 So.2d 758 (Fla. 1973) .²

In The Florida Bar v. Maynard, 672 So.2d 530 (Fla. 1966) that Respondent was guilty of similar violations. The decision encompassed two different cases of attorney misconduct. In one, the attorney made a false statement of fact to the court. In the second one, Respondent engaged in conduct involving fraud, dishonesty, deceit or misrepresentation. Maynard is clearly analogous to the case before this Court, and the discipline of disbarment in Maynard is, therefore, appropriate in this instance as well.

Likewise, fraudulent claims to an insurance company were submitted by the Respondent in The Florida Bar v. Simons, 521 So.2d 1089 (Fla. 1988). The fraudulent claim constituted theft. Respondent was disbarred for twenty years. Simons, is similar to

¹ Respondent's failure to tell Florida National Bank's counsel of Ms. Martyn's opposition to release of the funds in the registry, and the resulting stipulation and order seriously affected the relationship of the attorney with the bank. (T. 165, March 18, 1996).

² The Bar recognizes that fairness to the attorney (Respondent) is one of the considerations pertaining to discipline, as stated in Thomson and other cases. a p p e a r from these facts that no unfairness to the attorney Respondent can be established.

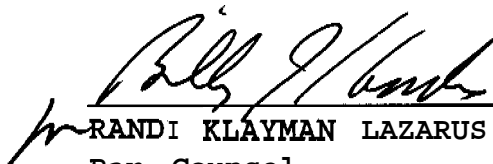
the civil theft and fraudulent claims made by Respondent. Therefore, disbarment is supported by Simons.

The Bar would submit that this Court's ruling in The Florida Bar v. Garland, 651 So.2d 1182 (Fla. 1995), a suspension case, is also supportive of the Bar's position. Garland made a false statement of a material fact and engaged in conduct involving honesty, fraud, deceit or misrepresentation. Garland was also responsible for some trust account violations. In addition to the fact that this Court held that some of the ethical misconduct could be attributed to improper trust procedures, suspension was held to be appropriate because of "isolated ethical breaches."

The Respondent in this case, however, has committed far more than an isolated ethical breach. Since Respondent has committed a number of ethical breaches, disbarment and not suspension is the appropriate discipline.

CONCLUSION

Based upon the foregoing reasons and citations of authority, The Florida Bar respectfully submits that the Referee's recommendation to suspend Respondent for thirty six (36) months is erroneous and would urge this court to disbar the Respondent.

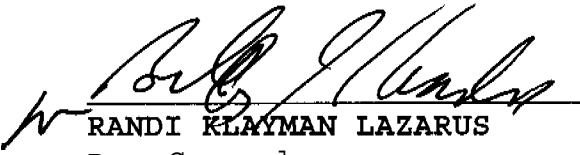

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of this Complainant's Initial Brief on Petition for Review was forwarded Via Airborne Express to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927, and a true and correct copy was mailed to Louis Jepeway, Jr., Attorney for Respondent, at 407 Biscayne Building, 19 West Flagler Street, Miami, Florida 33131, on this 5th day of June, 1997.


RANDI KLAYMAN LAZARUS
Bar Counsel

INDEX TO APPENDIX

Exhibit "A" Report of Referee dated February 12, 1997.

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. 84,641

vs.

The Florida Bar File

EDWARD C. VINING, JR.,

No. 94-70,839(11B)

Respondent.

REPORT OF REFEREE

I. **Summary of Proceedings:** Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, hearings were heard on the following dates: December 15, 1995, May 22, 1995, March 18 and 19, 1996 and December 13, 1996.

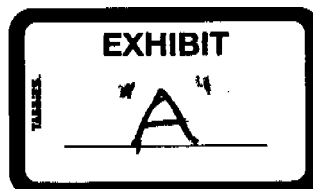
The following attorneys appeared as counsel for the parties:

For the Florida Bar Randi Lazarus
For the Respondent Louis Jepeway, Jr.

II. **Findings of Fact as to the allegations contained in the Complaint alleging misconduct of which the Respondent is charged:** After considering all the pleadings and evidence before me, pertinent portions of which are contained below, I find:

1. The Respondent Edward C. Vining, Jr. was a member of the Florida Bar and subject to its jurisdiction and disciplinary proceedings. (Transcript of hearing 3/19/96 p. 297).

2. In 1980 the Respondent was retained by Eva Martyn, (hereinafter referred to as "E. Martyn"), to represent her in Martin County (In Re: Marriage of Charles P. Martyn and Eva Martyn, Case No. 80-816), (hereinafter referred to as the divorce



case). (Transcript 3/18/1996 hearing p. 181).

3. Sometime around 1981, the court in the divorce case entered a final judgment of dissolution of marriage between E. Martyn and Charles P. Martyn and awarded E. Martyn \$108578.80 in marital assets. That court did not enter an award of alimony or attorneys fees. (Transcript 3/18/1996 hearing p. 182).

4. The Respondent and E. Martyn had entered into an oral contingency agreement for attorney's fees for at first 25% and then one third of the amount of the judgment plus costs. (Transcript of 3/18/1996 hearing, p. 181 to 182).

5. The Respondent received from E. Martyn the payment of the one third contingency fee in the amount of \$36,000. (Transcript 3/18/1996 hearing p. 183).

6. The Respondent filed notice of appeal on the issue of denial of alimony and attorney's fees on behalf of E. Martyn. (Transcript of 3/18/1996 hearing p. 183).

7. The appellate court issued an order directing the trial court to award alimony and reasonable attorney's fees. (Transcript of 3/18 1996 hearing p. 183).

8. A hearing on attorneys fees was conducted around April of 1983, before Judge Vocelle. At the hearing on attorney's fees, the Respondent did not inform the trial court that E. Martyn had paid attorney's fees to the Respondent for the original proceeding. (Transcript of 3/18/1996 hearing p. 183 to 184).

9. Following the hearing on attorney's fees, the trial court entered an order awarding E. Martyn lump-sum in the amount of \$104,000 and attorneys fees in the amount of \$35,222.11. (Transcript of 3/18/96 hearing p. 68 and Florida Bar exhibit E).

10. Charles Martyn deposited the sum of \$160,000 in Florida National Bank (FNB) as a supersedeas bond pending his appeal of the trial court's award. (Transcript of 3/18/96 hearing p. 68 and Florida Bar exhibit F).

11. The parties then reached a stipulation between attorneys for Mr. Martyn and Mr. Vining on behalf of Eva Martyn, that a portion of the money which related to the appeal of the award of attorney's fees and costs, be disbursed in a check made payable jointly to Edward Vining and Eva Martyn. That stipulation was confirmed by

Order of Judge Sharpe. (Transcript of 3/18/96 hearing, p. 69).

12. In November of 1983, FNB issued a check payable jointly to the Respondent and E. Martyn in the amount of \$37,264.00. (Transcript of 3/18/96 hearing p. 72).

13. E. Martyn refused to endorse the check when Respondent made a demand for her signature. E. Martyn told the Respondent that she did not feel that he was entitled to those monies and that she felt that she had already paid him for his services for the dissolution. (Transcript of 3/18/1996 hearing p. 184).

14. On February 24, 1984, the Respondent filed a motion before the trial court for exchange and reissue of the check made out to the Respondent and E. Martyn. (See bar exhibit F) That motion was filed without notice to E. Martyn. That motion was filed stating that "Respondent/wife move this court for its order directing the bank..." This motion was filed at a time that the Respondent knew that E. Martyn was disputing the Respondents entitlement to those sums. (Transcript 3/18/1996 hearing p. 75 and 185 and Court exhibit 1.).

15. E. Martyn discharged the Respondent and hired new counsel in this matter around February March, 1984. (Transcript 3/18/1996 hearing p. 187).

16. In June 1984, new counsel Richard L. Katz made an appearance on behalf of E. Martyn. (Transcript of 3/18/96 hearing p. 59 and 77).

17. Katz then made an appearance on behalf of E. Martyn in the dissolution matter and an order of substitution of counsel was approved by the court, substituting Katz for the Respondent- (Transcript of 3/18/96 hearing p. 78).

18. The court further entered an order stating that:

a, any proceeds either received or receivable pursuant to the Order awarding attorneys fees and suit monies entered April 23, 1983, (\$35,222.11) and the order awarding lump sum alimony per appellate opinion entered on April 29, 1983, (\$104,000), be attached pursuant to the charging lien filed by Vining;

b. any funds paid or payable pursuant to either of the above-described orders

should not be disbursed until such time as any balance due to Vining for attorney's fees and suit monies had been determined. The court upon ore tenus motion of Katz for E. Martyn stayed it's order "pending the determination of the proceedings between Vining and Eva Martyn pending in Dade County." (See Florida Bar Exhibit G and Transcript of 3/18/96 hearing p. 78 and p. 137).

19. The Respondent filed suit against E. Martyn in Dade County in June of 1984 seeking \$75,000.99 in additional attorney's fees over those fees received under the contingency agreement for his efforts in the E. Martyn dissolution case. (Transcript of 3/18/96 hearing p. 79).

20. During the pendency of the Vining v. Martyn suit in Dade County, the Respondent also filed for reissuance of the cashier's check and at a hearing before the trial judge in Martin County, at which Eva Martyn was represented by counsel Katz, that request was denied. (Transcript of 3/18/96 hearing, p. 80).

21. At the conclusion of the Dade County suit, the jury awarded Mr. Vining the sum of \$8,000 in attorneys fees. (Transcript of 3/18/96 hearing p. 83).

22. Subsequent to an appeal of that award, E. Martyn satisfied that judgment and the Respondent executed a release of lien on February 17, 1987, which stated "I hereby release all claim of lien or other interest in any funds held in escrow for the benefit of Eva H. Martyn in the above referenced case. A check in the amount of \$35,222.11 previously delivered to me, which is payable to Edward C. Vining, Jr. and Eva H. Martyn, may be reissued payable only to Eva H. Martyn. I hereby withdraw from any further proceedings in this matter and do not require that any further pleadings, motions, notices or orders be served upon me." (Transcript of 3/18/96 hearing, p. 90 and 91).

23. At a subsequent date, Mr. Katz approached the Respondent and asked him to sign a release of satisfaction of the Martin County judgment in his name, which represented the same moneys that were being held in the supersedeas bond, which the Respondent refused to do. (Transcript of 3/18/96 hearing, p. 94 and 95).

24. In the pendency of this action, Charles Martyn had passed away and attorneys for the estate contacted Mr. Katz about disbursing money from the estate in light of the attorney fee dispute and it was agreed that the disputed funds

(approximately \$60,791.15) would be deposited in the Martin County Court Registry. (Transcript of 3/18/96 hearing, p. 95 and 96).

25. The Respondent then filed an action against Florida National Bank, represented by James Caitlin, to secure a release for recovery of the funds in the Martin County Registry. In conversations with Mr. Caitlin, the Respondent did not tell Mr. Caitlin, that he no longer represented E. Martyn and that E. Martyn also claimed an interest in those monies. (Transcript of 3/18/96 hearing, p. 160).

26. A stipulation for payment was entered into by the Respondent and FNB for payment. Based upon that stipulation an order was entered by Judge Cianca on March 30, 1988, ordering disbursement of the funds to the Respondent. (Transcript of 3/18/96 hearing on p. 98).

27. Subsequent to the release of those monies, E. Martyn and her attorney Katz, learned of the release and filed a lawsuit against the Respondent and FNB, alleging fraud on the court, fraud, civil theft, conversion, negligence, gross negligence and a constructive trust action. (Transcript of 3/18/96 hearing, p. 100).

28. That action was tried before Judge Kenney, in September, 1993, and the jury found the Respondent liable to E. Martyn for acts of conversion and civil theft and awarded \$60,700 in compensatory damages and \$60,000 in punitive damages. (Transcript 3/18/96 hearing, p. 104 to 106.).

29. In that action, Judge Kenney wrote a final judgment finding that the Respondent "committed extrinsic fraud on the court when he submitted to the court a stipulation for payment dated March 28, 1988, together with a proposed order on stipulation, which order was entered by Martin Circuit Court Judge Mark A. Cianca, on March 30, 1988. The submission was done with the purpose of deceiving the court and to fraudulently conceal material facts from the court, including without limitation, that (A) Defendant Vining had previously executed a release of any interest he had in the very same funds which the March 30, 1988 order allowed to be disbursed to Defendant Vining and (B) Plaintiff Martyn had an interest in the subject funds and was then represented by another attorney who had previously vigorously opposed disbursement of said funds to Defendant Vining. Moreover, Defendant Vining intentionally failed to give proper notice to either Mrs. Martyn or her counsel of his application to the court to have the funds disbursed to him, as was required, so that

Defendant Vining could conceal his receipt of moneys, perpetrated by and through his fraud on the court. By virtue of Defendant Vining's wrongful conduct, Plaintiff Martyn was improperly precluded from asserting her opposition to the disbursement of her funds to Defendant Vining. By failing to inform either Plaintiff Martyn and her new counsel of Defendant Vining's efforts to remove the subject funds from this court's registry for the Defendant's sole benefit, Defendant Vining deliberately precluded Plaintiff Martyn from participating in the judicial process and wrongfully precluded her from objecting to the release of the funds to Vining as she had consistently done in the past. " (Transcript of 3/18/96 hearing, p. 107 to 110).

III. Recommendation as to Whether of Not the Respondent Should Be Found Guilty:

As to the Complaint filed by the Bar alleging that the Respondent committed acts of Misconduct I make the following recommendations as to guilt or innocence:

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating Rule 4-8.4 (c); and guilty of violating Rule 4-8.4 (d). The Respondent filed a Motion for Release of Funds on February 24, 1984 on behalf of both the Respondent and the wife, when clearly the Respondent knew that the "wife" Eva Martyn, opposed the release of the funds and that the Respondent's act was in clear opposition to Eva Martyn and furthermore that act was done without noticing Eva Martyn as was required.

Further, the Respondent on March 30, 1988 submitted a proposed order on stipulation with counsel for FNB to Judge Mark A. Cianca, without noticing Eva Martyn or her attorney, thereby precluding Martyn from asserting any position she might have in relationship to the monies secured in the registry. Specifically these acts and those facts found in this opinion constituted dishonest, fraudulent, and deceitful conduct. While the Respondent testified that it was a "secretarial mistake" on the pleading which stated "on behalf of Respondent/wife", this referee finds that an attorney is responsible for the pleading he or she signs. The subsequent actions taken by the Respondent, in this matter quickly evaporate the film of "secretarial error" in the style of those pleadings. Courts and attorneys, must be able to rely upon the veracity of pleadings in litigation affecting the rights and responsibilities of the parties.

This referee recognizes that upon the award of attorneys fees Charles Martyn placed monies in the form of a supersedeas bond and that sometime after the appeal of the award of attorney's fees and costs a check was made payable jointly to the Respondent and Eva Martyn. I am further aware that the Respondent felt that he had a legitimate claim in these monies. It is not so much the fact that he sought to collect the monies, as the way he went about it, without noticing Eva Martyn and counsel she retained to oppose the Respondent in his effort to collect those monies. Courts need to be able to rely on having all interested parties before them in adjudicating matters or finality of adjudication may never occur. This is the essence of notice.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the respondent be suspended for a period of 36 months and thereafter until respondent shall prove rehabilitation as provided in Rule 3-5.1(e), Rules of Discipline. I find that the Respondent violated his duty to his client in his effort to collect his fee. There was actual financial injury to the client as well as protracted litigation for the client which resulted from the fee dispute and collection efforts by the Respondent. In mitigation, this referee considered the fact that the check for attorney's fees from Charles Martyn was made out jointly to the Respondent and Eva Martyn thereby giving the Respondent an "indicia of entitlement" to the monies. Additionally, the referee considered in mitigation the award by the jury in Martin County to Eva Martyn against the Respondent, and the fact that the Respondent paid that judgment.

V. Personal History and Disciplinary Record:

After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6 (k)(l) (D), I considered the following personal history and prior disciplinary record of the Respondent, to wit:

Age: unknown

Date Admitted to the Bar: 1959

Prior disciplinary convictions and disciplinary measures: No convictions.

Other personal data: The Respondent has been having health problems, which

were sufficiently serious to have required hospitalization and postponement of the trial

VI. Statement of Costs and Manner in Which Cost Should be Taxed: I find
the following costs were reasonable incurred by the Florida Bar.

Administrative fee.....\$750.00

Court reporter's attendance at
referee hearing on January 18, 1995\$100.00

Court reporter's attendance at
referee hearing on February 17, 1995\$ 50.00

Court reporter's attendance of
Richard Katz' deposition taken on
March 16, 1995 and transcript of
proceedings\$ 94.43

Court reporter's attendance at
referee hearing on March 24, 1995 \$102.50

Court reporter's attendance at
referee hearing on May 22, 1995 and
transcript of proceedings\$240.50

Court reporter's attendance at referee
hearing on July 17, 1995\$ 50.00

Court reporter's attendance at
Richard Katz's deposition of
August 22, 1995 and transcript
of proceedings......81\$00

Court reporter's attendance at
hearing on December 19, 1995
and transcript of proceedings\$106.08

Court reporter's attendance at telephone conference of February 1, 1996.....\$ 50.00

Court reporter's attendance at depositions held on March 12, 1996 and March 13, 1996..... \$277.30

Court reporter's attendance at trial on March 18 and 19, 1996.....\$1,718.35

Court reporter's attendance at referee hearing on September 27, 1996.....\$ 50.00

Court reporter's attendance at referee hearing on December 13, 1996 and transcript of proceedings..... \$135.94

Mediation Services.....\$1,078.13

Witness expenses.....\$939.46

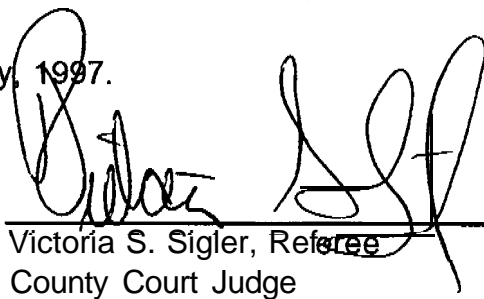
Staff Investigator's fee.....\$882.25

Bar Counsel's costs.....\$166.75

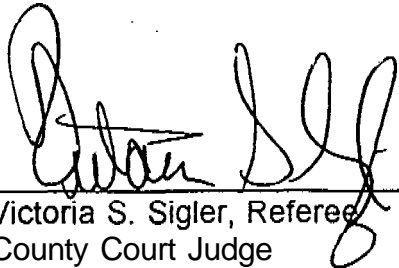
TOTAL.....\$6,872.69

It is recommended that all such costs and expenses be charged to the Respondent.

Dated this 4 of February, 1997.


 Victoria S. Sigler, Referee
 County Court Judge

I HEREBY CERTIFY that a copy of the above report of referee has been served on Randi Klayman Lazarus at 444 Brickell Avenue, Suite M-100, Rivergate Plaza, Miami, Florida 33131, Louis Jepeway, Jr., Attorney for Respondent, at 19 West Flagler Street, Suite 407, Biscayne Blvd., Miami, Florida 33130 and Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 12th day of February, 1997.



Victoria S. Sigler, Referee
County Court Judge