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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Case Number 84,978

IN RE: PETITION FOR REINSTATEMENT
OF JOHN D. RUE

PETITIONER'S ANSWER BRIEF

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SYMBOLS AND REFERENCES

In this Answer Brief, John D. Rue shall be referred to as such or as Petitioner and The Florida Bar shall be referred to as The Florida Bar or the Bar.

The transcript of final hearing held on May 2, 1995 shall be referred to as TR followed by the appropriate page number(s).

The Report of Referee dated May 12, 1995 will be referred to as ROR followed by the appropriate page number(s).

The Bar's exhibits will be referred to as Bar Ex. followed by the appropriate page number. Petitioner's exhibits will be referred to as Pet. Ex. followed by the appropriate page number.

STATEMENT OF THE CASE

This Court has jurisdiction over these reinstatement proceedings pursuant to its exclusive power to regulate the practice of law in Florida. Article V, Section 15, Florida Constitution.

Mr. Rue seeks reinstatement to the practice of law pursuant to Rule 3-7.10 of the Rules Regulating The Florida Bar. He was suspended for 91 days by order of this Court dated October 20, 1994 for improperly sharing fees with a non-lawyer (bonuses to his paralegals), improperly entering into a business transaction with a client, improperly providing financial assistance to a client and charging an improper fee as to contingency fees on PIP recoveries. The Florida Bar v Rue, 643 So.2d 1080 (Fla. 1994).

Both Mr. Ziffra and Mr. Rue testified that the conduct for which Mr. Rue was disciplined had ceased by the final hearing on the initial disciplinary charges in February, 1993. TR 27, 52. The Bar has presented no evidence contradicting that fact.

At final hearing, The Florida Bar brought numerous unfounded charges of solicitation against Respondent and sought his disbarment. After final hearing, the referee dismissed all charges of solicitation and recommended a public reprimand. The Florida Bar appealed both the referee's factual findings and her recommendations. On appeal the Bar argued that the referee erred in finding Mr. Rue innocent of the solicitation charges and it asked for a three year suspension. In its opinion suspending Mr. Rue, this Court stated:

The Bar has failed to meet its burden as to the improper solicitation allegations.... Although the Bar points out evidence to support its version of the facts, it ignores contradictory evidence in the record. Id. p. 1082.

In addition to the 91 day suspension, and as a condition of rehabilitation, this Court ordered Mr. Rue to take and pass the ethics portion of The Florida Bar examination. He was to be placed on probation for two years following the suspension.

In its order of suspension, this Court further stated:

If Rue notifies this Court in writing that he is no longer practicing and does not need the 30 days to protect existing clients, this Court will enter an order making the suspension effective immediately. Rue shall accept no business from the date this opinion is filed. Id. p. 1083.

Because Mr. Rue was in France on vacation at the time the Court's order came down, the undersigned wrote the Court on October 26, 1994 (Bar Ex. 5) and stated:

On the date of the Court's order Mr. Rue was on vacation and he has not returned to his office since that date. He has not practiced law since October 20, 1994 and, accordingly, we request that the effective date of this suspension be the day the order was issued or the earliest date the Court sees fit to impose suspension thereafter.

This Court properly chose to honor Mr. Rue's request despite the written objections of The Florida Bar.

The 91st day after Mr. Rue's suspension began was January 19, 1995.

On January 10, 1995, Mr. Rue filed his Petition for Reinstatement and an accompanying Petition for Leave to File Early Petition for Reinstatement. This Court allowed the early petition. Subsequently, Mr. Rue filed a motion to expedite his final hearing. The Bar objected to the expedited hearing arguing that it needed months to investigate Mr. Rue's conduct during the 91 days that he had been suspended. The referee denied the motion for expedited hearing and set final hearing for March 8, 1995. Five days prior to final hearing, The Florida Bar sought a continuance. Over Petitioner's objections, the matter was continued until May 2, 1995.

On May 12, 1995, the referee filed his report finding that Mr. Rue had proven rehabilitation by clear and convincing evidence. The Bar, of course, petitioned for review. Mr. Rue's request that an expedited briefing schedule be followed was denied by this Court upon the Bar's objections to such a schedule.

STATEMENT OF FACTS

Mr. Rue objects to the Bar's statement of the facts as set forth in its brief. It is argument rather than an objective presentation of the evidence presented to the Referee.

Mr. Rue was suspended for 91 days effective October 20, 1994. A specific element of rehabilitation was to be passage of the ethics exam. Upon reinstatement, he was to be placed on probation for two years. (The Bar properly points out that the referee's report makes no mention of the two years probation. Mr. Rue acknowledges that upon reinstatement he will be on probation for two years).

The referee in the underlying disciplinary proceedings found, based on Mr. Rue's admissions,

That he advanced money to clients for living expenses and made automobile sales to clients without written disclosure and transmittal to the client and without written client consent. The Florida Bar v Rue, 643 So.2d 1080, 1081 (Fla. 1994).

The referee further found that Mr. Rue was guilty of entering into improper fee agreements with clients based on an improper "termination penalty" in his contract and his charging a contingent fee for recovery of PIP proceeds. She specifically found, however, that the objectionable provisions of Mr. Rue's contract "had not been used in a punitive or improper manner." Rue, p. 1081.

As mitigation, the referee found that Mr. Rue, who had been admitted to the Bar in 1974, had no previous disciplinary history and that he had a history of active participation in local charity and civic organizations. Rue, p. 1082. This Court also noted that

Mr. Rue promptly amended the objectionable clauses in his contract upon notification by the Bar. Rue, p. 1083.

The Bar appealed the referee's findings of fact and recommendations as to discipline. This Court found that the Bar failed to meet its burden of showing the referee's findings were improper. In so doing, this Court pointed out that the Bar ignored "contradictory evidence" to the Bar's position. Although the Bar asked for a three year suspension on appeal, this Court ruled that a 91 day suspension was the appropriate sanction.

On the date the Supreme Court's Order of Suspension came down, October 20, 1994, Mr. Rue was vacationing in France. He did not return to the United States until November 2, 1994. TR 55. There is no evidence in the record contradicting Mr. Rue's statements that he was out of the country until November 2, 1994.

On October 23, 1995, Mr. Rue sent by facsimile to Allan Ziffra, his partner in the firm of Rue & Ziffra, P.A. a facsimile notice in which he relinquished all of his stock in Rue & Ziffra P.A. Pet. Ex. 2. TR 54. As of the date of final hearing, that stock had not been returned. TR 30.

There is no evidence in the record indicating that after October 20, 1994 John D. Rue or the law office of Rue & Ziffra, P.A. represented any clients (other than filing substitutions of counsel). The evidence is unrebutted that no clients have been signed up by Mr. Rue or by the firm of Rue & Ziffra, P.A. since October 20, 1994. TR 16,22.

Shortly after the suspension commenced, Allan Ziffra, Mr. Rue's partner in the firm of Rue & Ziffra, P.A., set up his own law office, Allan L. Ziffra, P.A. Mr. Ziffra promptly ordered new stationery for his new firm and began using it when it arrived on October 30, 1994. Rue & Ziffra, P.A. stationery has not been used since October 30, 1994. TR 18.

Mr. Rue has no financial or ownership interests in Allan L. Ziffra, P.A. TR 31. Mr. Ziffra's firm is a new legal entity. The Rue & Ziffra, P.A. law firm, while not dissolved, has not engaged in the practice of law since October 24, 1994.

Immediately upon learning of his suspension, Mr. Rue asked Mr. Ziffra to stop all advertising activity. TR 54. Mr. Ziffra testified at Mr. Rue's reinstatement hearing that on October 24, 1994, the first Monday after this Court's order of suspension came down, he took steps to terminate all Rue & Ziffra advertising. TR 18-20. He made arrangements to replace the sign in front of the firm's offices on that date. A plastic cover was installed over the Rue & Ziffra, P.A. sign on November 2, 1994. TR 19. He took steps to cover all of the firm's billboards and to stop TV advertising. TR 20. Unfortunately, TV ads are run by computer and it takes approximately two weeks for all such advertising to cease. TR 20. There is no evidence that any Rue & Ziffra P.A. ads were run after the middle of November 1994. TR 119.

Prior to Mr. Rue's return to the United States, Mr. Ziffra ceased signing up clients on Rue & Ziffra P.A. contracts. TR 21,22. All clients signed up after that date were on a contract

with Mr. Rue's name blotted out. Only Allan L. Ziffra, P.A., has signed up clients since the suspension began. TR 34.

While Mr. Rue's name was not deleted from the Rue & Ziffra, P.A. trust account, Mr. Ziffra took steps to insure that Mr. Rue was denied access to the trust account. TR 23. Mr. Rue's name was blotted out on all trust account checks and his access to the computer (which generated the checks) was deleted. Mr. Rue has signed no trust fund checks since his suspension, has received no trust deposits and has disbursed no trust funds in any manner since October 20, 1994. TR 23,24,57.

Even the Bar's investigator acknowledged on cross examination that the Bar has no evidence indicating that Mr. Rue has handled trust funds in any manner since his suspension. TR 118.

With one exception, a client who came from out of town to meet with Mr. Rue, the evidence is unrebutted that Mr. Rue has met with no clients during his suspension. TR 17, 52,53. That one exception resulted in a meeting between Mr. Rue and his client for the limited purpose of his personally explaining his suspension to the client.

The evidence is unrebutted that Mr. Rue has not signed any pleadings other than substitutions for counsel. He has signed no letters indicating he is a lawyer and there is no evidence showing that he has personally told anybody that he is a member in good standing of The Florida Bar or that he is authorized to practice law since October 20, 1994.

On November 15, 1994, Mr. Rue filed with The Florida Bar the affidavit required by Rule 3-5.1(g) of the Rules of Discipline. That affidavit requires a suspended lawyer to furnish a copy of the order of discipline to all clients with matters pending and to provide The Florida Bar with the names and addresses of all clients so notified. Included with that list were the names of over 90 clients to whom Mr. Rue provided copies of the order. The Bar presented no evidence indicating misrepresentation on the affidavit. In fact, there was none.

In addition to sending copies of the order of suspension to all of Mr. Rue's clients, the law firm of Allan L. Ziffra, P.A. on its own letterhead, sent copies of Mr. Rue's order of suspension to 29 judges, constituting the entire judiciary for the Seventh Judicial Circuit, and notified them that Mr. Ziffra's firm was in the process of substituting as counsel for all of Mr. Rue's clients. That letter stated, in part, that:

Mr. Rue will not be reinstated until after a hearing is held on his fitness to practice law. The events that led to Mr. Rue's discipline, for which he accepts all responsibility, will have no effect on the firm's continued representation of our clients before the Court.

Mr. Ziffra sent a similar letter to eleven defense firms in the Daytona Beach area and to eighteen insurance companies with whom the firm had matters pending.

As specifically permitted by Rule 3-6.1 of the Rules Regulating The Florida Bar, Mr. Rue went to work for Allan L. Ziffra, P.A. as an office manager. TR 24. The requisite notices

were filed with The Florida Bar. There is no evidence before this Court that Mr. Rue, while acting as office manager for the law firm of Allan L. Ziffra, P.A. handled any trust funds, met with any clients, signed any letters announcing himself as counsel or signed any pleadings other than substitutions for counsel. He appeared in no courts during the suspension.

Mr. Rue promptly paid the \$8,992.50 in costs assessed against him on November 18, 1994.

At final hearing on his petition for reinstatement, Mr. Rue testified, his former partner and present employer, Allan Ziffra testified, and he presented the affidavits of six individuals attesting to his good character and excellent standing in the community. In addition, Mr. Rue presented evidence of his long-standing active involvement in community matters. Pet. Ex. 12. In the original disciplinary matter, the referee had noted with favor Mr. Rue's

History of active participation in local
charity and civic organizations. Rue, p.
1082.

The Bar presented no witnesses in opposition to Mr. Rue's reinstatement other than its own employee, Walter Taylor. This was true despite the fact that the Bar ran ads in The Florida Bar News announcing Mr. Rue's Petition for Reinstatement. Pet. Ex. 11, TR 64.

Mr. Taylor testified that he found no evidence of Mr. Rue signing, disbursing or receiving trust funds during his suspension; that he saw no billboards or TV ads advertising the law firm of Rue

& Ziffra, P.A. after November 2, 1994; that he had seen no pleadings signed by Mr. Rue or by Rue & Ziffra, P.A. subsequent to October 20, 1994; and that he had seen no letterhead designating John D. Rue as an attorney at law since his suspension began. Mr. Taylor further testified that although he interviewed about one dozen people no individuals had told him that they were aware of John D. Rue practicing law or holding himself out as a lawyer in good standing since October 20, 1994. He acknowledged that Mr. Rue had always been "cordial and accommodating" to him. He further acknowledged that reporter Charlene VanDyke never said anything about asking anyone whether Mr. Rue had been suspended or that she spoke to Mr. Rue. TR 118-121.

The Bar's stated objections to Mr. Rue's reinstatement, a position that was formulated prior to the hearing and before it had reviewed any of his evidence of rehabilitation, TR 9, was predicated upon advertising by the law firm of Rue & Ziffra, P.A. that went on for a very short time after Mr. Rue's suspension order became final; on Rue & Ziffra, P.A.'s telephone book advertising, some contracts for which were signed after the suspension began but were for telephone books that were to be published after the 91st day of Mr. Rue's suspension; on a newspaper article written by a reporter who did not talk to Mr. Rue; and on Mr. Rue's voice-over, without his face appearing or his name being identified, on an ad for Mr. Ziffra's law firm. The Bar also took issue with Mr. Rue remaining as a director in the Rue & Ziffra, P.A. law firm although there is no evidence indicating that the firm represented or signed

up any clients after October 20, 1994.

The evidence is unrebutted that the firm of Rue & Ziffra, P.A. on or before October 24, 1994 took steps to end all advertising campaigns (except telephone books). Orders were placed to terminate all television and radio ads, effective immediately, and to order a sign to cover up the firm's sign in front of its office (accomplished on November 2, 1994) and to cover over all billboards. Unfortunately, some TV ads were pre-programmed and ran for approximately two weeks after the October 24, 1994 cancellation order. TR 20,55.

The evidence is unrebutted that in November, 1994, Mr. Ziffra signed two or three contracts for telephone book advertisements for the law firm of Rue & Ziffra, P.A. The deadline for the 1995-1996 ads was November 20, 1994. TR 37. Had those contracts not been signed in November, the firm of Rue & Ziffra, P.A. would not have appeared in telephone books for the entire 1995-1996 year. The earliest of those books was to be disseminated on January 28, 1995, after Mr. Rue's suspension was scheduled to end. TR 37. Accordingly, with the expectation, now proven completely fallacious, that Mr. Rue would be reinstated in the not too distant future after his January 19, 1995 expiration of suspension date, Mr. Ziffra signed the contracts. He unsuccessfully tried to pull the phone book ads for New Smyrna and DeLand when it became evident that Mr. Rue would not be reinstated on time. TR 39.

Mr. Rue did not participate in the decisions regarding the phone books. TR 37.

The third contract objected to by The Florida Bar was entered into in March or April, 1994, six or seven months before the suspension began. It is clear that that contract could not be canceled. Mr. Taylor so testified. TR 118.

The Bar also objects to Mr. Rue's participation in an ad for Mr. Ziffra's firm (which is not a successor to the law firm of Rue & Ziffra, P.A. -- that firm has not been dissolved) in which his face did not appear and in which neither his name or the name of Rue & Ziffra, P.A., was presented to the public. Rule 4-7.2(b), captioned Single Voice Requirement; Employee of Lawyer or Law Firm, states that:

The voice may be that of a full-time employee of the firm whose services are advertised; it shall not be that of a celebrity whose voice is recognizable to the public. The lawyer or full-employee of the firm whose services are being advertised may appear on screen or on radio.

It is undisputed that Mr. Rue was a full-time employee of the law offices of Allan L. Ziffra, P.A., at the time the ad was run.

On March 11, 1995, a newspaper story was run which mentioned Mr. Rue, Bar Ex. 3. It is undisputed that the newspaper reporter that wrote the story did not speak to Mr. Rue TR 69, and that during her interview with Mr. Ziffra she never asked about Mr. Rue and Mr. Ziffra never mentioned him. TR 48. In fact, the reporter did state that Mr. Rue was the "founding partner of the Allan Ziffra law firm...." That misstatement cannot, however, be attributable to either Mr. Rue or Mr. Ziffra.

SUMMARY OF THE ARGUMENT

Mr. Rue has presented overwhelming evidence of his rehabilitation. He has complied with all of the requirements set forth in the Court's original order of discipline and in the seminal case of In re Petition of Dawson, 131 So.2d 472, 474 (Fla. 1961).

The referee properly recommended Mr. Rue's reinstatement to practice after finding that he met his burden of proving rehabilitation. The Florida Bar has the burden to prove that the referee's findings and conclusions are wholly without evidentiary support in the record. The Florida Bar v Vannier, 498 So.2d 896, 898 (Fla. 1986); The Florida Bar v Rue, 643 So.2d 1080, 1082 (Fla. 1994). The Bar, which presented no witnesses save its own staff investigator has not met its burden of proving that the referee's recommendations are improper.

Mr. Rue was in France at the time his suspension order came down on October 20, 1994. Three days later he assigned all of his stock in Rue & Ziffra, P.A., to his partner. He did not return to the United States until November 2, 1994. There is no evidence in the record rebutting his testimony that he has not represented any clients, or signed any clients up, since his suspension began.

On the Monday following Mr. Rue's suspension his then-partner, Allan Ziffra, took steps to cancel Rue & Ziffra, P.A. advertising on the airways and on the billboards. He ordered a cover for the sign in front of the office, which was installed on November 2, 1994, and he ordered new stationery for his new law firm, Allan L.

Ziffra, P.A. That stationery arrived on October 30, 1994 and has been used ever since. No clients have been signed up for the law office of Rue & Ziffra, P.A. since October 20, 1994. All new clients are in the firm of Allan L. Ziffra, P.A.

Upon his return to the United States, Mr. Rue promptly transmitted copies of his order of suspension to all clients whose matters he was handling. In addition to that, he had copies of the order sent to all the judges in the Seventh Judicial Circuit and to all defense firms and insurance companies with whom the firm of Rue & Ziffra, P.A. had been dealing. Sending copies of the order to judges, adverse counsel and insurance companies is not required by the Rules of Discipline.

Mr. Rue has been a full time employee of Allan L. Ziffra, P.A. since his return to the United States. With but one minor exception, he has complied with the rules and has not met with any clients since his suspension began. He has not handled trust funds or signed any trust account checks since his suspension began.

Mr. Rue's evidence that he has a good reputation in the community is unrebutted. He presented evidence of a good reputation for professional ability and showed that he is keeping abreast of current developments in the law by taking thirteen hours of CLE courses. His charitable works in the community are varied and plentiful.

Mr. Rue discontinued the conduct for which he was ultimately found guilty before final hearing in his original disciplinary case in February 1993. His steps to discontinue the conduct the Bar

found objectionable over two years ago is a sure sign of rehabilitation. Furthermore, there is no indication that any such conduct has been repeated. Mr. Rue clearly regrets his past conduct and there is no showing of any likelihood that it will be repeated.

The conduct the Bar points to is a series of unrelated de minimis acts some of which Mr. Rue is not even responsible for. They do not show a lack of good character.

ARGUMENT

THE REFEREE'S FINDINGS AND HIS RECOMMENDATION THAT MR. RUE SHOULD BE REINSTATED TO PRACTICE ARE SUPPORTED BY THE OVERWHELMING WEIGHT OF THE EVIDENCE, ARE NOT CLEARLY ERRONEOUS AND SHOULD BE ADOPTED BY THIS COURT.

After observing the testimony of the Petitioner and his ex-partner and current employer, Allan Ziffra, and after considering the 25 exhibits entered into evidence, some of which were composites, the referee made the following findings of fact:

Petitioner was suspended for 91 days by the Supreme Court of Florida effective October 20, 1994. The Florida Bar v. Rue, Case No. 79,522 and 80,207, as reported at 643 So.2d 1080 (Fla. 1991). He was also required to pass the ethics examination before reinstatement. Passage of the examination was accomplished on November 18, 1994.

Petitioner's disciplinary sanction was for various offenses including advancing living expenses to some clients, business transactions with clients without proper disclosure, sharing fees with his paralegals in the form of improper bonuses, and improper clauses in his contract.

At final hearing before the Referee, Petitioner testified and presented evidence through live testimony and through affidavits relating to his reputation and standing in the community.

In determining Petitioner's rehabilitation, I have been guided by the Supreme Court of Florida's decision in Petition of Dawson, 131 So.2d 472 (Fla. 1961). On page 474 of that decision, the Supreme Court listed six elements to consider in determining rehabilitation. The Court listed those factors as:

(1) strict compliance with the specific conditions of the disciplinary order, such as payment of costs;

(2) evidence of unimpeachable character and moral standing in the community;

(3) clear evidence of a good reputation for professional ability;

(4) evidence of a lack of malice and ill feeling by the Petitioner towards those who by duty were compelled to bring about the disciplinary proceedings;

(5) personal assurances, supported by corroborating evidence, revealing a sense of repentance, as well as a desire and intention of the Petitioner, to conduct himself in an exemplary fashion in the future;

(6) in cases involving misappropriation, restitution is important.

With the exception of point (6), which is inapplicable to the case at bar, I find that Petitioner has proven by clear and convincing evidence that he has met all of the criteria listed in Dawson. Petitioner has complied with the Supreme Court's regulations governing the closing of his practice and his employment while suspended. The evidence shows Petitioner is held in high esteem by the community in which he practices and that he has an excellent reputation for professional ability. Petitioner bears no malice or ill will towards the Supreme Court, the grievance committee or The Florida Bar. He sincerely regrets his misconduct and he has corrected the deficiencies that led to his suspension.

Based upon my observation of Petitioner, I find his testimony to be credible. I believe his assurances that the misconduct that occurred in the past will never be repeated.

He then recommended that Petitioner immediately be reinstated to the practice of law.

As this Court stated in The Florida Bar v Vannier, 498 So.2d 896, 898 (Fla. 1986)

A referee's findings of fact and recommendations come to us with a presumption

of correctness and should be upheld unless clearly erroneous or without support in the record. (Citations omitted).

In The Florida Bar v Rue, 643 So.2d 1080, 1082 (Fla. 1994)

this Court stated:

The party contending that the referee's findings of fact and conclusions as to guilt are erroneous carries the burden of demonstrating that there is no evidence in the record to support those findings or that the record evidence clearly contradicts the conclusions. (Citations omitted).

A referee's findings and conclusions are particularly important in subjective matters such as proof of rehabilitation. A referee's observations of an individual while they are testifying allows him to evaluate their credibility in a manner that is not available on appellate review. Here, the referee clearly opined that Mr. Rue had met the burden of proving rehabilitation and that he was a fit and proper person to be reinstated.

Mr. Rue's actions when compared with the Dawson criteria listed above gives ample support to the referee's conclusions. As soon as the Court's order suspending him came down, Mr. Rue assigned his stock in his former law firm, Rue & Ziffra, P.A. to Mr. Ziffra. He immediately ordered a cessation of all firm advertising. It was no fault of Mr. Rue's that it took approximately ten to twelve days for the stop orders to be completely implemented. Since the effective date of his suspension, October 20, 1994, Mr. Rue has met with but one client (and that to explain to her that he was suspended and could no longer represent her), has signed no pleadings (except

substitutions for counsel), has appeared in no court rooms, has negotiated with no adjusters or other counsel, has appeared at no depositions and has in no way practiced law. Mr. Rue has not signed up a single new client since his suspension began.

Mr. Rue's former law firm, Rue & Ziffra, P.A., is, for all intents and purposes defunct. Prior to his return to America, on October 23, 1994, Mr. Rue assigned his interest in the firm to Mr. Ziffra. Although it is still registered with the Secretary of State, it has no clients. It has signed up no clients since October 20, 1994 and all of its former clients are gone. The other partner in the firm, Allan Ziffra, has formed a new firm. All the new clients that he signed up are under his name. TR 34. Mr. Rue and Mr. Ziffra have not discussed what is going to happen to Mr. Rue when he is reinstated. TR 34.

Upon his return to the United States on November 2, 1994, Mr. Rue emphasized to the employees in the firm that he was suspended and that he should not deal with other individuals, Pet. Ex. 3. He has operated as an office manager for the law firm of Allan L. Ziffra, P.A. ever since.

As required by the Rules of Discipline, Mr. Rue timely submitted his Rule 3-5.1(g) affidavit to the Bar. Pet. Ex. 5 and 6. Mr. Rue promptly advised all of his clients, over 90 of them, of his suspension and sent them copies of this Court's disciplinary order. Mr. Rue did not stop there, however. To insure that there was no misunderstanding about his status with the Bar, he worked with Mr. Ziffra towards sending copies of the order of suspension

to all judges in the Seventh Judicial Circuit, to the defense firms with whom Rue & Ziffra, P.A. had been operating and to all insurance companies with whom the former firm had operated. The transmittal letters unequivocally put them on notice that Mr. Rue was suspended and that Allan L. Ziffra, P.A. would be taking over the clients' affairs.

Mr. Rue's respect for this Court and his adherence to the order of suspension is made evident by the letters that he sent out to the judges, defense counsel and insurance companies. He was not required to take that action; the fact that he was willing to publish his order of discipline to all who might be concerned emphasizes his good intentions. There is no evidence before this Court that any client has been harmed or inconvenienced by the transition from Rue & Ziffra, P.A. to Allan L. Ziffra, P.A.

Other than Mr. Rue's proper participation as a voice-over on a single ad for Mr. Ziffra's law firm, and Mr. Ziffra's placing of ads in three telephone books for 1995-1996 publications (the earliest of which was not to be published until January 28, 1995) TR 37, there is absolutely nothing that hints of unlicensed practice of law by Mr. Rue.

Mr. Rue promptly paid the \$8,992.56 in costs assessed against him in the underlying disciplinary proceedings. (Those costs constituted approximately one-half of the costs the Bar sought in the original disciplinary proceedings. In light of Mr. Rue's acquittal of the majority of charges brought against him, only half of those costs were assessed).

Mr. Rue, as allowed by Rule 3-6.1 of the Rules Regulating The Florida Bar, went to work for Allan L. Ziffra, P.A. as a full time office manager upon his return to the United States. He filed the requisite notices, Pet. Ex. 7, with the Bar in a timely fashion. As required by Rule 3-6.1, Mr. Rue has not handled trust funds in any fashion since his suspension began. He has not received or disbursed any trust funds. He has signed no trust account checks. Although his name was not stricken as a signatory from the trust account, his access to the computer that wrote those checks was deleted. His name was covered over on all trust account checks. Clearly, he complied with the Bar's rules on trust accounting.

Mr. Rue also complied with Rule 3-6.1's requirement that he not meet with any clients during his suspension. The single exception to that rule was his meeting with one client, who had traveled from out of town to visit the offices, to explain to her that he could not be her lawyer any more.

As required by the Supreme Court's order of suspension, Mr. Rue has taken and passed The Florida Bar ethics exam. Pet. Ex. 9.

There can be no doubt that Mr. Rue has strictly complied with this Court's order of temporary suspension. He has not practiced law, i.e., represented clients, for nine months.

The second and third elements in Dawson, evidence of unimpeachable character, moral standing in the community, and good reputation for professional ability, were easily met by Mr. Rue. Mr. Ziffra attested to his good standing in the community and Mr.

Rue presented the testimony of six witnesses, by affidavit, attesting to his good reputation for both character and legal ability. Furthermore, he presented evidence to the referee of his continued dedication to community service. Pet. Ex. 12. In fact, in the original disciplinary proceeding, the referee noted with favor Mr. Rue's "active participation in local charity and civic organizations" Rue, p. 1082.

The Florida Bar presented no witnesses to testify that Mr. Rue had a bad reputation in the community or that he was not held in high esteem by his fellow practitioners. This was true despite the fact that it ran ads announcing his petition and despite numerous interviews by its investigator. Pet. Ex. 11, TR 120.

It might be added that none of the allegations in the underlying disciplinary proceedings showed a lack of professional competence by Mr. Rue. While suspended, Mr. Rue participated in numerous CLER courses, Pet. Ex. 10, and estimated that he took approximately thirteen hours of continuing legal education courses during that span.

While Mr. Rue has expressed concern about the Bar's treatment of him during the initial disciplinary proceedings and its procrastination in his reinstatement proceedings, he has shown no malice or ill will toward the Supreme Court, the referee in the underlying disciplinary proceedings, the grievance committee or the Bar's investigator Walt Taylor. TR 73-76. Accordingly, he has met the fourth element.

Perhaps the most important facet of reinstatement proceedings is the lawyer's attitude toward his past misconduct and whether there is reason to believe that it will occur in the future. In the case at Bar, there can be no such concern. Prior to final hearing in Mr. Rue's original disciplinary case in February 1993, he discontinued the conduct that led to his disciplinary proceedings. In fact, this Court noted with favor Mr. Rue's cessation of using improper clauses in his personal injury contracts immediately upon notice of the Bar's concern. Rue, p. 1082, 1083. Mr. Rue regrets his misconduct and there is no likelihood that it will happen again. His witnesses so testified.

The Bar strains to find conduct to use in its pre-determined decision to keep him out of the practice of law for as long a period as possible. In these proceedings, despite the fact that they could present no witnesses from the community or the Bar at large to oppose reinstatement, they have put together a series of isolated incidents, or occurrences for which Mr. Rue was not at all responsible, and said that it shows a lack of rehabilitation. The referee properly rejected their position.

The evidence shows, in fact it is unrebutted, that Mr. Rue has not practiced law in any manner since his suspension began. Petitioner rejects the Bar's position that advertising by Rue & Ziffra, P.A., constitutes practicing law. If nothing else, there is no showing that Mr. Rue has benefited from those ads. All new clients are Mr. Ziffra's. TR 34.

Petitioner acknowledges that, were this case to be done all over again, it would have been better for Mr. Ziffra not to have run ads for the Rue & Ziffra law firm in the 1995-1996 telephone books for Daytona, DeLand and New Smyrna Beach. Mr. Ziffra was in a quandary; the deadline for the telephone books was November 20, 1994. If he did not place the ad by then, Rue & Ziffra, P.A. would be shut out of the telephone directories for those three communities for the entire year beginning January 28, 1995 (not January 1, 1995 as stated by the Bar). In light of the fact that the 91st day of Mr. Rue's suspension was January 19, 1995, and in the hope that reinstatement proceedings would not drag out forever, Mr. Ziffra, not Mr. Rue, made the decision to run the ads. TR 37. Once he realized that Mr. Rue would not be reinstated promptly, he tried to withdraw the ads from two of the telephone books, but was too late to do so. TR 38,39.

The Bar makes much of the fact that Mr. Rue signed contracts for 1995-1996 telephone book directories with Central California Directories back in April, 1994. In fact, as attested to by the Bar's investigator, there was no way that ad could have been canceled by October 20, 1994. TR 118.

The fact that The Florida Bar is grasping at straws in an effort to defeat Mr. Rue's reinstatement is made evident by its argument at the top of page thirteen of its brief. As it did in the statement of facts at the beginning of its brief, the Bar persists in characterizing the undersigned's October 26, 1994 letter as being a misrepresentation of Mr. Rue's status. That

letter stated as follows:

On the date of the Court's order Mr. Rue was on vacation and he has not returned to his office since that date. He has not practiced law since October 20, 1994 and, accordingly, we request that the effective date of the suspension be the day the order was issued or the earliest date the Court sees fit to impose suspension thereafter. Bar Ex. 5.

In fact, Mr. Rue was in France on October 20, 1994 and did not return to the United States until November 2, 1994. There is no evidence that since October 20, 1994, Mr. Rue has signed any pleadings, appeared in any courts, signed any letters on any letterhead indicating he is a lawyer, spoken to insurance companies or adverse counsel about any clients' cases, signed up any new clients, received, handled or disbursed any trust funds, given legal advice to any individual or entity, or done anything else that constitutes the practice of law. The October 26, 1994 letter clearly stated that "Mr. Rue was on vacation...." at the time of his request that the suspension be made effective on October 20, 1994. There was no deception to this Court. The fact that it took two weeks to completely terminate the existence of the firm of Rue & Ziffra, P.A., did not mean Mr. Rue lied to this Court.

The Florida Bar, in its zeal to deny Mr. Rue reinstatement, has forgotten the most elementary concepts of the law; that a corporate entity is distinguishable from the individuals holding stock in it. The Bar argues that Mr. Rue should be penalized because his firm, in which he relinquished all stock on October 23, 1994, was not able to immediately terminate its advertising campaign and was not able to immediately cover over the shingle in

front of its office. The Bar argues that a misrepresentation occurred because the firm, not Mr. Rue, took ten to twelve days to completely shut down its advertising campaign, to cover its shingle and to get new stationery. This is truly an argument of no substance.

Mr. Ziffra began using Allan L. Ziffra, P.A. stationery as soon as he obtained it on October 30, 1994. TR 18. He ordered a cover for his shingle on October 24th and it was delivered on November 2, 1994. TR 19. All television advertising was canceled on October 24th but it took, in some instances, about two weeks for the ads to cease being run. TR 20. Billboards were covered up even though the firm remained liable for their contract. All of this was accomplished before Mr. Rue returned to America.

On page six of its brief the Bar erroneously states that Rue & Ziffra, P.A., was in a "media blitz" on October 26, 1994. In fact, the testimony cited by the Bar shows that the blitz was going on when the order of suspension came down on October 20, 1994. TR 19.

The significance of the fact that it was the legal entity, Rue & Ziffra, P.A. that was advertising is lost on the Bar. Had the firm been named Doe and Roe, and had Mr. Rue's name not appeared on the advertising, there could have been no claims of impropriety. Because he was a named partner, however, and because advertising has some degree of momentum, the Bar argues deception to the Court. This argument should be rejected as frivolous.

The Bar confuses the practice of law by an individual lawyer with his firm's advertising. This argument is nothing more than an attempt to cloud the record when, in fact, there is no evidence, even the Bar's investigator agrees, that Mr. Rue has engaged in any of the acts that constitute the practice of law. The Bar's request that this Court find misconduct because Mr. Rue's firm took approximately two weeks to completely shut down its advertising campaign is duplicitous at best.

In retrospect, Mr. Ziffra made an error in judgment when he, not Mr. Rue, signed two contracts for yellow-page ads by the November 20, 1994 deadline. Because the earliest book was not to be disseminated until January 28, 1995, he assumed Mr. Rue would be back in practice soon after that date. TR 36,37. After all, the 91st day of his suspension was on January 19, 1995. Had Mr. Ziffra not signed the contract in November, and had Mr. Rue been reinstated in February or March, the resuscitated law firm would have not been in the yellow pages for ten or eleven months. We now know that the Bar has delayed Mr. Rue's reinstatement for the bulk of the 1995 calendar year.

The decision to place the ads was Mr. Ziffra's, not Mr. Rue's. TR 37,72. Mr. Rue did not participate in the decision because he was "apprehensive" about possible impropriety.

The Bar's complaints about Mr. Rue's doing a voice-over for one television ad during his suspension is a "straw-man". The Bar has set up this argument just so that it can knock it down and in so doing, cast dispersions upon Mr. Rue.

It is un rebutted that Mr. Rue's face did not appear on the ad. It is un rebutted that Mr. Rue's name did not appear in the ad. It is un rebutted that the firm of Rue & Ziffra, P.A., was not mentioned in the ad. The Bar's objection is to Mr. Rue's using the royal "We;" a situation that is commonplace in advertising. Mr. Rue's conduct, however, was clearly acceptable under the Bar's rules regulating advertising. Rule 4-7.2(b), reads in pertinent part as follows:

The voice [of the announcer] may be that of a full-time employee of the firm whose services are advertised; it shall not be that of a celebrity whose voice is recognizable to the public. The lawyer or full-time employee of the firm whose services are being advertised may appear on screen or on radio.

Mr. Rue did one voice-over on an ad for the law firm of Allan L. Ziffra, P.A. (Although the Bar insists on portraying that law firm as the alter-ego of Mr. Rue or Rue & Ziffra, P.A., it is a separate legal entity that was formed by Mr. Ziffra subsequent to Mr. Rue's suspension.) As a full time employee of Allan L. Ziffra, P.A., there was no impropriety in his doing so.

The Bar's argument that a newspaper interview, which did not even involve Mr. Rue, should be considered grounds to deny him reinstatement, is nothing more than a frivolous argument. In fact, the article was complimentary to Mr. Rue in that it pointed out that he was instrumental in forming a shelter for the homeless. While somebody may have told the newspaper reporter (who did not testify at final hearing) that Mr. Rue was a founding partner of the "Allan Ziffra law firm", it was neither Mr. Rue nor Mr. Ziffra.

Mr. Rue never spoke to the reporter. TR 69. Mr. Ziffra, while he spoke to her, testified that the reporter never asked about Mr. Rue and Mr. Ziffra never mentioned him. TR 48. While the Bar argues that "no one from the law firm ever advised the reporter that Mr. Rue was suspended from the practice of law...." on page fifteen of its brief, it ignores the fact that Mr. Rue's name never came up when she was interviewing Mr. Ziffra. If she didn't ask about Mr. Rue, since he was not a principal in the Allan L. Ziffra law firm, why should they mention him? Mr. Ziffra testified that, in actuality, he was interested in promoting "my law firm" and he wanted publicity for "myself." TR 48.

The Bar argues that Mr. Rue has violated Rule 4-8.6(e) of the Rules Regulating The Florida Bar. That Rule states that:

whenever a shareholder of a professional service corporation becomes legally disqualified to render legal services in the state, such shareholder shall sever all employment with and financial interests in such corporation immediately. For purposes of this rule the term "legally disqualified" shall not include suspension from the practice of law for a period of time less than 91 days.

The Bar acknowledges that in Petitioner's Exhibit 2 Mr. Rue assigned his stock to Mr. Ziffra on October 23, 1994. He has severed all interests in the corporation. The Bar argues that, because Mr. Rue was not removed as a director of the firm from the Secretary of State's records (ironically, a former partner now no longer with the firm, David Bush, has not been removed as a director of the firm either. That omission shows inattention and not malicious design) that Mr. Rue has violated 4-8.6(e). The Bar

then states that this evidence "makes it questionable as to whether or not an actual transfer" of the stock took place. The Bar is speculating here. This is not evidence presented to this Court; it is rank conjecture without basis.

As argued above, Rue & Ziffra, P.A. is no longer a viable firm. It has ceased to operate.

Finally, The Florida Bar argues on page sixteen of its brief that Petitioner "continues to feel malice" towards the Bar because, according to the Bar, he believes that he has been improperly targeted by the Bar for discipline. The Bar refers to page 75 of Mr. Rue's testimony before the referee as support for this statement. In fact, a review of Mr. Rue's testimony on this topic, covering pages 73 through 77, shows only concern about the manner in which his case has been handled. He acknowledged that discipline was appropriate and accepted this Court's enhancement of the initial discipline from a public reprimand to a 91 day suspension. TR 73. He wholeheartedly accepted the requirement that he take the ethics exam and in fact opined that it was something that all lawyers "should brush up on." TR 73, 74. He believed that Judge Halker, the original referee, treated him fairly. He felt it was appropriate for the Supreme Court to enter discipline. He has no hard feelings towards the grievance committee or grievance committee members. As to the Bar's investigator, Walt Taylor, Mr. Rue stated:

I like Walt. I think he's a fair man. I've never had any problem with Walt. TR 74.

Mr. Taylor characterized Mr. Rue's treatment of him as always

having "been cordial and accommodating". TR 121.

The only reference on page 75 of the transcript of proceedings to support the Bar's claim that Mr. Rue believes he has been "improperly targeted by The Florida Bar", was his response to a question on direct examination as to whether he has expressed concern that he is being treated differently than others. He responded to that question as follows:

Well, I don't know a lot about these procedures, but through my discussions with you and what I have experienced I have been concerned about it, yes.

This is a far cry from the claims by the Bar on page sixteen of its brief that he feels he has been "improperly targeted."

An accurate summation of Mr. Rue's feelings towards disciplinary proceedings appears on page 76 of his transcript. There he stated:

I don't personally have any animosity towards the Bar or have any bad feelings. I admitted what I did wrong. I knew I was going to get a sentence and I was willing to accept that, so, you know, why belabor the point?

As it did in the original disciplinary proceedings, the Bar has appealed the referee's findings of fact. The Bar does so even while properly acknowledging on page sixteen of its brief that this Court "gives great weight" to those factual findings. This Court stated in the original disciplinary action,

A referee's findings of fact regarding guilt carry a presumption of correctness that should be upheld unless clearly erroneous or without support in the record. The Florida Bar v Vannier, 498 So.2d 896, 898 (Fla. 1986). If the referee's findings are supported by competent, substantial evidence, this Court is

precluded from reweighing the evidence and substituting its judgment for that of the referee. The Florida Bar v MacMillan, 600 So.2d 457, 459 (Fla. 1992). Rue, p. 1082.

The referee's finding that Mr. Rue has met the burden of proving his rehabilitation by clear and convincing evidence is well-founded. As was true in its original appeal, The Florida Bar in the instant proceeding asks this Court to adopt its version of the facts and to ignore the referee's findings and evidence contrary to the Bar's opinion. Apparently, the Bar has ignored this Court's gentle admonition in the underlying case about appealing referee's findings of fact. The Court stated on page 1082 of its original opinion that:

Although the Bar points out evidence to support its version of the facts, it ignores contradictory evidence in the record. The Bar is essentially asking this Court to reweigh the evidence and reach different findings of fact, which we will not do. MacMillan. After reviewing the record, we conclude that the referee's findings are supported by competent, substantial evidence.

The Bar, not Mr. Rue, bears the burden of proving that the referee's findings of facts and conclusions are erroneous. In fact, on page 1082 this Court defined that burden unequivocally when it stated:

The party contending that the referee's findings of fact and conclusions as to guilt are erroneous carries the burden of demonstrating that there is no evidence in the record to support those findings or that the record evidence clearly contradicts the conclusions. The Florida Bar v Miele, 605 So.2d 866, 868 (Fla. 1992).

The Bar argues that the referee's failure to adopt as

misconduct its arguments is erroneous. Mr. Rue would argue to this Court that the referee properly disregarded the Bar's arguments because they are without basis or are frivolous. They were presented to the Bar during the presentation of evidence and at closing. They were presented to the referee in a proposed report. He chose not to adopt as misconduct the Bar's arguments. This was within the sound discretion given to him. He had evidentiary support for his findings and his conclusions and this Court should not reweigh the evidence leading to his decision.

It is not apparent that the referee misapprehended or overlooked the Bar's arguments. It is, however, apparent that he chose not to adopt the Bar's position.

On page 18 of its brief, the Bar argues that Mr. Rue has "effectively thumbed his nose" at this Court. As it did in the original case, The Florida Bar has ignored the facts before the referee. The Bar would have this Court, too, ignore the evidence favorable to Mr. Rue. That evidence includes a showing that: Mr. Rue has not represented any clients since October 20, 1994; Mr. Rue has not signed up any clients since October 20, 1994; that Mr. Rue has not appeared in any courts, signed any pleadings (except substitutions of counsel), written any letters on legal stationery or held himself out as a lawyer since October 20, 1994; Mr. Rue has not received, disbursed or handled trust funds since October 20, 1994; Mr. Rue discontinued the misconduct for which he was found guilty prior to February 1993; Mr. Rue promptly paid the costs assessed against him and immediately passed The Florida Bar's

ethics examination, as required by this Court's order of discipline; Mr. Rue sent copies of his order of suspension not only to all of his clients, but saw to it that they were provided to all judges in his circuit, to all insurance companies with which he deals and to all defense firms with whom his firm had cases pending.

The Bar primarily bases its assertion that Mr. Rue has acted in contempt of this Court upon Mr. Ziffra's signing two telephone book contracts in November 1994. The contracts were for calendar year 1995-1996 and it was anticipated that in both cases the telephone books would come out after January 28, 1995, over a week after Mr. Rue's suspension was to be over. (The Florida Bar states on page 18 of its brief that the telephone book ads would be released to the public on or about January 1, 1995. That statement is unsupported by the record before this Court. In fact, the testimony of Mr. Ziffra was that dissemination of the one contract was to begin on January 28, 1995. The other phone books in DeLand and New Smyrna were to come out "a couple of months later". TR 39.

Mr. Rue did not participate in Mr. Ziffra's decision to sign contracts for Rue & Ziffra P.A. for 1995 telephone books. TR 37, TR 72.

The dilemma that Mr. Ziffra faced in running ads for Rue & Ziffra, P.A. centered around the November 20, 1994 deadline for 1995-1996 telephone books. If no contract was signed by November 20th, Rue & Ziffra, P.A. would have no advertisement in the telephone books until January 28, 1996, over one year after Mr.

Rue's suspension was to end.

Had these proceedings been handled with dispatch, as a 91 day suspension should be, the Rue & Ziffra, P.A. ads would have run for a very short period of time before Mr. Rue's reinstatement. The Bar's resisting a motion to expedite and its moving for a continuance in March dragged out these proceedings an unnecessarily long time.

Petitioner asks this Court to take notice that the Bar can stretch out reinstatement proceedings, after the Bar has lost an appeal in underlying cases, for seemingly interminable periods of time. As of the date of the writing of this brief, July 31, 1995, Mr. Rue's 91 day suspension has lasted almost 300 days. And, there is no end in sight.

On page nineteen of its brief the Bar argues that Mr. Rue's failure to stop the ads shows a "failure to take responsibility" similar to his previous failures. In so doing, the Bar ignores the fact that all of the misconduct proven after five days of final hearing in February 1993 was conduct that Mr. Rue had admitted prior to the hearing and which had been discontinued before the hearing took place. Rue, p. 1081. Tr 27,52. In fact, this Court noted in mitigation on pages 1082 and 1083 that, in addition to having no prior disciplinary record, that Mr. Rue "removed the improper clauses from his contracts when questioned by the Bar."

Mr. Rue has never refused to accept responsibility for his missteps.

The Bar's reliance on this Court's decision in The Florida

Bar, in re Cohen, 560 So.2d 73 (Fla. 1990) is misplaced. On page nineteen, the Bar suggests that Mr. Cohen's failure to remove his name from his office building during a 91 day suspension was a material contribution to this Court's denial of his reinstatement. In fact, Mr. Cohen's failure to remove his shingle from his building was the least significant of the four stated reasons for denying reinstatement. This Court found that Mr. Cohen had attended a deposition and negotiated with another attorney concerning the settlement of a pending case while on suspension; failed to notify his clients that he had been suspended; and showed no remorse for the misconduct which led to his suspension. None of those three factors exist in the case at Bar. Mr. Rue has not practiced law since his suspension. He removed his name from his office building within twelve days of the suspension being effective. He not only notified his clients of his suspension but he saw to it that all judges, defense counsel and insurance companies were notified. Finally, he has acknowledged wrong-doing and he has shown a genuine sense of remorse for the misconduct that led to his suspension.

In denying Mr. Cohen's appeal of the referee's recommendation that he be denied reinstatement, this Court stated

To support reversal of the referee's report, Cohen must show that the report is unsupported by the evidence. In re Williams, 538 So.2d 836, 837 (Fla. 1989).

Similarly, in the case at Bar, this Court should deny the Bar's appeal. It has the burden of showing that the referee's report is unsupported by the evidence. It cannot do so. The referee's

findings and conclusions are overwhelmingly supported by the evidence in the record.

The Bar's reliance on The Florida Bar in re Janssen, 643 So.2d 1065 (Fla. 1994) and The Florida Bar re Jahn, 559 So.2d 1089 (Fla. 1990) is similarly misplaced. Mr. Janssen was denied reinstatement for a series of material misrepresentations and for financial irresponsibility. Mr. Janssen lied to a Bar investigator when he stated that he had not been arrested during the suspension when, in fact, he had been arrested the same day. Janssen, p. 1066. It further turned out that Mr. Janssen had lied to the arresting police officers at the time of his DUI arrest by stating that he was a former football player from FSU and that football injuries precluded his taking a field sobriety test. He also lied when he said that he had to be released from jail due to a meeting with a woman with a domestic violence matter. In fact, the meeting was to be with the Bar investigator. Id. 1066. It was also argued at final hearing that Mr. Janssen was \$14,200.00 behind in child support payments, having made no payments from January 1992 through October 1993, even though he had a fairly substantial income during that time period.

Notwithstanding the above matters, the referee recommended Mr. Janssen's reinstatement to practice. The litany of serious misrepresentations, coupled with the complete abdication of responsibility to his children, were facts not in dispute and which compelled denial of reinstatement. The seriousness of the offenses particularly when they involved lying to a Bar investigator,

mandated the reversal of the referee's recommendation in the Janssen case. There are no such egregious instances of misrepresentation in the case at Bar.

In The Florida Bar re Jahn, 559 So.2d 1089 (Fla. 1990), this Court overturned a referee's recommendation due to undisputed testimony in the record. Specifically, while suspended Mr. Jahn falsified his resume while seeking employment. After being refused interviews when employers learned of his past felony convictions, he purposely altered his resume to conceal his convictions, imprisonment and suspension from the Bar. In denying Mr. Jahn reinstatement, this Court specifically referred to his admitted lying in his quest for a new job. No such misconduct exists in the case at Bar.

The Florida Bar re Lopez, 545 So.2d 835 (Fla. 1989) does not support the Bar's position either. Mr. Lopez was denied reinstatement after two suspensions because it was shown that he had continued to engage in the pattern of deceit that had characterized the preceding 20 years of his life. When he had applied for the Bar in the late 60's, the Board of Bar Examiners recommended a denial of admission because he had lied on his application. This Court gave Mr. Lopez the benefit of doubt and admitted him. In 1981, he was suspended for one year for witness tampering. In 1983 he was convicted on a 22 count felony indictment for making false statements to the Immigration and Naturalization Service while representing aliens before that agency. At final hearing on his reinstatement, it was brought out

that he lied on his petition for reinstatement about prior arrests. He omitted an arrest for extortion that had taken place prior to the onset of his suspension. It also turned out that he had failed to file tax returns for five years. Finally, evidence was adduced that showed that during a two year period preceding his petition for reinstatement, Mr. Lopez had bounced 48 checks out of 444 written. Of those 444 checks, 199 created overdrafts on his account.

Mr. Lopez had a substantial problem with telling the truth.

It was clear that repeated misconduct by Mr. Lopez over a 20 year period necessitated a denial of his petition for reinstatement.

Finally, on page 21 of its brief, the Bar states that Mr. Rue's "greed" was the motivation for "Petitioner's continuing to advertise after his suspension." There is no support for this conclusion. All clients signed up by Mr. Ziffra subsequent to October 20, 1994, were his, not Mr. Rue's or Rue & Ziffra's. TR 34. In fact, as Mr. Ziffra stated, "things have changed,...." All of Rue & Ziffra's clients are "gone." TR 34.

The Bar has taken several isolated events, none of which are attributable to bad faith on Mr. Rue's part, and tried to weave a pattern of deception and contempt of this Court. In so doing, the Bar has pointed to no harm to any clients. It presented no lawyers, clients or other individuals other than its own investigator to speak against Mr. Rue's reinstatement.

The Bar's investigator testified that there was no evidence

that Mr. Rue handled trust funds during his suspension, TR 118, that he saw no billboards, signs or television ads after November 2, 1994, TR 119; that he saw no pleadings signed by Mr. Rue or submitted by Rue & Ziffra, P.A. subsequent to October 20, 1994; that he had seen no letterhead indicating John D. Rue as an attorney at law since his suspension began; and that he has heard of no individuals who stated that they were aware of Mr. Rue practicing law or holding himself out as a lawyer in good standing since October 20, 1994, TR 120. Mr. Taylor interviewed at least a dozen people and none testified against Mr. Rue. Despite ads in the Bar News, no witnesses testified for the Bar against the Petitioner.

The Florida Bar had taken its position that it would resist Mr. Rue's reinstatement before it heard a single word of testimony at final hearing. TR 9. Rather than pursuing justice and concerning itself with protection of the public, and rather than waiting for a full and fair hearing on the evidence, The Florida Bar determined before hearing that it was going to resist Mr. Rue's reinstatement with all the might that it could muster.

The preamble to the Rules of Professional Conduct state that our code of ethics are "rules of reason". This Court noted in In re Jahn, supra, at page 1090 that the Supreme Court "does not operate in a vacuum...." Mr. Rue asks this Court to recognize that he has done all that he can to prove rehabilitation. He accepted gracefully the 91 day decision handed down by this Court in October 1994 for misconduct that was terminated in late 1992 or in early


1993. That conduct visited no harm on any individuals. Notwithstanding the Bar's arguments, Mr. Rue has striven to abide by this Court's orders and he has scrupulously avoided the practice of law. Should this Court deny Mr. Rue's bid for reinstatement at this time, he will not be eligible to seek reinstatement until one year after this Court's decision. Should that be the case, the Bar will have succeeded in obtaining the three year suspension that it sought in its appeal of the referee's original decision. There is no basis for such a Draconian discipline being handed down in the case at Bar.

CONCLUSION

The referee's findings of fact that Mr. Rue has proven rehabilitation by clear and convincing evidence should be upheld and his conclusion that Mr. Rue should be reinstated to the practice of law should be adopted by this Court. The referee's failure to recommend a two year probation upon reinstatement should be incorporated into any order issued by this Court.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Answer Brief was mailed to Jan K. Wichrowski, Bar Counsel, The Florida Bar, 880 N. Orange Avenue, Suite 200, Orlando, FL 32801-1085 and to John A. Boggs, Esquire, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 this 31st day of July, 1995.



JOHN A. WEISS