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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 85,109
[TFB Case Nos. 94-30,962(18C)& 94-31,229(18C)]

v.

ROBERT PAUL JORDAN,

Respondent.
_____/

THE FLORIDA BAR'S ANSWER BRIEF

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SYMBOLS AND REFERENCES

In this brief, the complainant, The Florida Bar, shall be referred to as "The Florida Bar" or "the bar."

The transcript of the final hearing held on May 19, 1995, shall be referred to as "T," followed by the cited page number.

The Report of Referee dated July 28, 1995, will be referred to as "ROR," followed by the referenced page number(s) of the Appendix, attached. (ROR-A-____).

The bar's exhibits will be referred to as B-Ex.___, followed by the exhibit number.

The respondent's exhibits will be referred to as R-Ex. _____, followed by the exhibit number.

STATEMENT OF THE CASE

The bar does not take issue with the respondent's statement of the case but would add the following for clarity.

The Eighteenth Judicial Circuit grievance committee "C" voted to find probable cause in these matters on September 26, 1994. Thereafter, the bar filed its complaint on February 2, 1995. By order dated February 10, 1995, this court directed the Chief Judge of the Nineteenth Judicial Circuit to appoint a referee to hear the combined matters. The referee was appointed on February 14, 1995. The final hearing was held on May 19, 1995, and the referee issued his report on July 28, 1995, recommending the respondent be found guilty of violating rules 4-1.4(a) for failing to keep his client, Mr. Thomas, reasonably informed as to the status of a matter and promptly comply with reasonable requests for information and 4-8.4(g) for failing to respond, in writing, to an inquiry by a disciplinary agency when the agency is conducting an investigation into the lawyer's conduct with respect to Count I and rule 4-1.3 for failing to act with reasonable diligence and promptness in representing a client

with respect to Count II. The referee made no recommendation as to rule 4-1.4(b) charged in Count I for failing to explain a matter to the extent reasonably necessary for his client to make an informed decision regarding the representation.

The respondent served his petition for review on August 28, 1995, and on October 11, 1995, sought an extension of time to file his initial brief which the bar did not oppose. This court on October 16, 1995, granted him until November 16, 1995, to serve his initial brief. The respondent served his initial brief on November 16, 1995.

The board of governors considered the referee's report at its September, 1995, meeting and voted not to seek an appeal of the referee's recommendations.

STATEMENT OF THE FACTS

The bar takes issue with the respondent's statement of the facts contained in his initial brief as being incomplete and submits the following, based upon the referee's report, unless otherwise noted.

On August 2, 1991, Charles E. Thomas, who was residing in Texas, contacted the respondent and wanted him to represent him in stopping a scheduled auction of his personal property by a moving company that was to take place the next day (ROR-A1). The respondent agreed to the representation but was not successful in stopping the sale (ROR-A1). Mr. Thomas then retained the respondent to sue the moving company and other defendants (ROR-A1). The respondent did not file the civil complaint until November 6, 1991, after Mr. Thomas inquired of him concerning the status of the matter (ROR-A1). Thereafter, the respondent incorrectly advised Mr. Thomas that a default would be entered against one of the defendants, North American Van Lines, for its failure to answer the complaint (ROR-A1). In fact, this defendant had answered the complaint (ROR-A1-2).

On or around June 16, 1993, the defendants were awarded a partial summary judgment dismissing the count for civil theft and the respondent failed to timely inform his client of this development (ROR-A2). The respondent also failed to provide Mr. Thomas with copies of significant motions and orders and Mr. Thomas had to obtain them from the clerk's office (ROR-A2). The respondent failed to timely inform his client of a court ordered deposition scheduled for June, 1993 (ROR-A2). Before traveling to Florida to be deposed, Mr. Thomas asked the respondent to do a search of outstanding warrants due to his prior criminal difficulties in Florida (ROR-A2). Due to an error in his birth date Mr. Thomas provided to the respondent, the respondent could find not outstanding warrants for his client's arrest, however, opposing counsel had already provided the respondent in an exhibit list for the civil trial a list of outstanding warrants for Mr. Thomas' arrest (ROR-A2). When Mr. Thomas appeared for his deposition, he was arrested (ROR-A2).

Mr. Thomas also retained the respondent to handle the criminal matters as well (ROR-A2). The court notified the respondent on December 10, 1993, that the trial had been set for

December 16, 1993 (ROR-A2). The respondent did not notify his client of the trial date until he sent a letter on December 13, 1993, by express mail to Mr. Thomas in Texas (ROR-A2). At the time Mr. Thomas was suffering from a medical condition that necessitated hip replacement surgery and in December, 1993, Mr. Thomas was walking with the aid of crutches ans was not able to attend the hearing in Florida (ROR-A2). The respondent withdrew from representing Mr. Thomas further on the day of the trial and the court appointed other counsel who later was able to clear up the matter concerning his failure to appear at the trial (ROR-A2).

The respondent relied on verbal contact with his client to keep him informed about his legal matters as opposed to keeping him updated by correspondence (ROR-A2). Mr. Thomas did contact the respondent's office frequently and discussed his cases with the office staff (ROR-A2). Over the two year period the respondent represented him, the respondent spoke to Mr. Thomas approximately 15 times (ROR-A2). The respondent only sporadically directed his secretaries to send copies of pleadings to Mr. Thomas (ROR-A2). The referee specifically noted that

despite the respondent's testimony he kept his client adequately informed, he produced only limited documentation to support his testimony (ROR-A2). The respondent ultimately dismissed Mr. Thomas' civil case and Mr. Thomas retained another attorney to continue pursuing it (ROR-A2).

On January 28, 1994, the bar wrote the respondent and requested he respond to Mr. Thomas' bar grievance within 15 days (ROR-A2). The bar wrote him again on March 9, 1994, repeating its request that he respond to the grievance (ROR-A3). The respondent failed to reply to either letter (ROR-A3). The respondent did not advise the bar of his position until March 3, 1994, after the case was forwarded to the grievance committee (ROR-A3).

In the second matter, the respondent was appointed by the court on March 18, 1993, to represent James B. Rooney in two criminal appeals and the respondent filed the notice of appeal the same day (ROR-A3). On May 14, 1993, the appellate court erroneously dismissed the appeals for failure to pay the filing fees when in fact the respondent had filed the affidavits of

indigency in a timely manner (ROR-A3). The respondent was successful in having the appeals reinstated on May 26, 1993 (ROR-A3). On or about September 30, 1993, the respondent received orders to show cause why the appeals should not be dismissed (ROR-A3). The respondent appeared before the appellate court and explained he had never received the notice reinstating the two appeals (ROR-A3). Thereafter, on October 13, 1993, the court ordered the respondent to file his initial briefs by November 12, 1993, and a failure to do so would result in a dismissal of the appeals without further notice (ROR-A3). The respondent failed to file the briefs and the appeals were dismissed on December 2, 1993 (ROR-A3). The respondent did not serve the initial briefs until December 27, 1993, nearly 9 months after having filed the notices of appeal and 25 days after the appeals had been dismissed (ROR-A3). The respondent filed a petition for writ of habeas corpus in one appellate case and another attorney filed a writ of habeas corpus in the other (ROR-A3). The respondent missed the appellate court's filing deadline for the briefs due to the heavy caseload in his office at the time (ROR-A3). Due to the respondent's inaction, Mr. Rooney's appeals were unduly delayed and may have been compromised (ROR-A4).

SUMMARY OF THE ARGUMENT

In bar proceedings, a referee's findings of fact are presumed to be correct and will not be revisited by this court unless the party challenging those findings proves they are erroneous or not supported by the evidence, The Florida Bar v. Poe, 20 Fla. L. Weekly S562 (Fla. Nov. 9, 1995). This is a heavy burden because the referee, as the trier of fact, is in the best position to judge credibility and resolve conflicts in the evidence, The Florida Bar v. Marable, 645 So. 2d 438, 442 (Fla. 1994). The bar submits the evidence and testimony in this case clearly show the respondent's communication with Mr. Thomas was not adequate given the fact that the client lived in another state and could not easily keep track of his case's progress himself. He was in a position of having to rely on the respondent not only to keep him abreast of the important developments, but also to timely advise him of hearings he would need to personally attend. There is no good reason why the respondent could not routinely send copies of pleadings, motions and orders to his client nor is there any good reason why he could not have advised him of the trial in the criminal case the

same day he learned of it in light of the fact that his client would have to travel some distance to attend.

The 30 day suspension with automatic reinstatement is appropriate given the respondent's prior disciplinary history, the pattern of neglecting client cases, the existence of multiple offenses and his substantial experience in the practice of law. In both matters, the respondent had clients who could not come to his office, either due to distance or incarceration, and were placed in a position of relying on the respondent to keep them informed and handle matters expeditiously. Clearly there was a potential for injury in both cases. Mr. Thomas failed to appear for a criminal trial and it is fortuitous that another attorney, not the respondent, was able to have the matter cleared up. In Mr. Rooney's case, the referee found that his appeals were unduly delayed may in fact have been compromised due to the respondent's inaction (ROR-A4).

In bar proceedings, the taxation of costs is discretionary, The Florida Bar v. Chilton, 616 So. 2d 449, 451 (Fla. 1993), R. Regulating Fla. Bar 3-7.6(o)(2), and the referee's recommendation

will not be disturbed unless it can be shown the referee abused that discretion, The Florida Bar v. de la Puente, 658 So. 2d 65, 70 (Fla. 1995), R. Regulating Fla. Bar 3-7.6(o)(2). The bar submits there has been no abuse of that discretion. The referee recommended the respondent be found guilty of all but one of the rules charged and the respondent has failed to show any of the bar's costs were unreasonable.

ARGUMENT

POINT I

THE REFEREE'S FINDING OF FACT CONCERNING THE RESPONDENT'S FAILURE TO ADEQUATELY COMMUNICATE WITH HIS CLIENT WAS SUPPORTED BY THE EVIDENCE.

It is well settled in bar disciplinary proceedings that a referee's findings of fact are presumed to be correct and if those 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). The burden of proving the findings are clearly erroneous or not supported by the evidence rests with the party seeking review, Poe, supra. This is a heavy burden to meet because the referee, as this court's fact finder, is in the best position to evaluate the evidence and credibility of the witnesses, Marable, supra. The bar submits the respondent has failed to prove the referee's findings were clearly erroneous or without support in the record. The referee merely chose not to believe the respondent's

testimony he adequately communicated with Mr. Thomas. In fact, in his report, the referee stated " Although Respondent testified that he kept Mr. Thomas advised as to the status of his case, he provided limited documentation to support his claim" (ROR-A2). The referee clearly stated on this same page of his report that the respondent did have communication with his client, it just was not sufficient to keep the client reasonably informed as to the progress of the matter. After all, if the respondent's communication with Mr. Thomas was adequate, it is doubtful Mr. Thomas would have contacted the clerk's office and paid for copies of filed documents (T. p.p. 21, 23).

According to Mr. Thomas' testimony at the final hearing, he had no difficulty in contacting the respondent during the first one or two months after he hired him but, thereafter, it became almost impossible to reach him by telephone (T. p. 14). He estimated that for every twenty contacts with the respondent's office, he would get one reply from the respondent (T. p. 15). Normally, Mr. Thomas was only able to speak to the respondent's secretaries, who repeatedly assured him that the respondent was getting his messages (T. p. 16). Additionally, he testified the

respondent sent him copies of documents for a period of time but thereafter ceased doing so (T. p. 23). Whenever Mr. Thomas would call the respondent's office and inquire about obtaining copies of new documents, he would be advised by a secretary that the respondent had sent him copies of everything there was (T. p. 23). He asked the respondent for a copy of the civil complaint he believed the respondent had filed in October, 1991, but received nothing other than the faxed copy that was not very legible and that, at the time it was faxed, had not been filed (T. p.p. 18-21). The respondent did not give him a copy of B-Ex. 3, the order awarding a partial summary judgment in favor of the defendants (T. p. 24) and he could not recall if the respondent had informed him of the results of the hearing on the defendants' motion for summary judgment (T. p. 52) but believed that he had learned of the order awarding it only after contacting the clerk's office and obtaining copies of all the documents the respondent had not sent him (T. p.p. 22-23). Respondent could produce no proof he had informed his client of this order other than his own testimony (T. p. 64). He did not produce any letter advising Mr. Thomas of the hearing's result. Mr. Thomas also testified the respondent never sent him a copy of the defendants'

answer to the civil complaint (T. p. 48) despite the respondent's testimony he mailed it to him on January 13, 1992, (R-Ex. 11) after opposing counsel filed it on December 27, 1991 (T. p. 85).

Mr. Thomas originally was scheduled to be deposed in the civil case on February 28, 1992, but the respondent admittedly did not send the notice of the deposition to Mr. Thomas until March 4, 1992, when he faxed it to him (T. p. 86). The respondent testified that for reasons he could not recall, Mr. Thomas did not show for the deposition and it was rescheduled for a later date (T. p.p. 87-88). The referee noted that the respondent's proposed exhibit showing he faxed the notice of the taking of Mr. Thomas' deposition after the event occurred indicated there was an untimely notice of the deposition (T. p. 91). The respondent withdrew this proposed exhibit (T. p. 91). Mr. Thomas testified he was made aware by the respondent of his deposition set for at least one week before the trial period that commenced on June 7, 1993 (T. p. 24), but the respondent never provided him with a copy of the court's order directing his appearance (T. p. 31, B-Ex. 5). Whether or not Mr. Thomas intended to attend either the deposition or the trial is

irrelevant. The issue is whether or not the respondent adequately communicated with him throughout the entire period of the representation. In his brief, the respondent, on page seven, admits that Mr. Thomas did not receive copies of orders concerning the defendants' motion for summary judgment and setting his deposition prior to the events noted in the orders and offers no explanation as to why the respondent was unable to send these documents in a timely manner to his client.

In Mr. Thomas' criminal case, it is clear from the evidence that the respondent knew as of December 3, 1994, that the trial would be held on December 16, 1994, (R-Ex. 3 p. 2) but did not see fit to call his client, who he knew would have a difficult time attending, and did not write to him until December 13, 1993, which letter he sent by express mail and which Mr. Thomas did not receive until the day before the trial (B-Ex. 4, B-Ex. 8). The respondent never explained why he waited to notify his client of the trial date. Instead, he apparently believes that because Mr. Thomas suffered no harm, this should absolve him from being disciplined. Further, although the respondent states on page seven of his brief that he disputes that he represented Mr.

Thomas in this matter, the docket sheet (R-Ex. 3) clearly shows that the respondent was attorney of record. He filed his notice of appearance on June 8, 1993, and entered a plea of not guilty on Mr. Thomas' behalf. The respondent did not file his motion to withdraw until December 3, 1993, and Gina Lauf did not file her notice of appearance until December 16, 1993, the day of the trial.

Mr. Thomas wrote the respondent on November 11, 1993, (B-Ex. 6) and complained that he had been unable to contact the respondent at the office by telephone and was reluctant to call him at home. He stated he had repeatedly tried without success to obtain from the respondent's office copies of documents filed in his case since October, 1992. Since October, 1992, he had tried to get a copy of the default judgment the respondent had told him had been entered against one if the defendants and learned shortly before writing this letter that no such judgment had been entered. At the final hearing, the only rebuttal the respondent could offer to Mr. Thomas' complaint about his lack of communication, directed to him long before Mr. Thomas filed his

bar grievance in January, 1994, (T. p. 32), was that he knew Mr. Thomas had copies of everything, he spoke to his client himself (T. p. 105) and he introduced into evidence a few letters to Mr. Thomas (R-Ex. 4, R-EX. 10, R-Ex. 11, R-Ex. 13, R-Ex. 14, R-Ex. 15). He claimed to have spoken to his client frequently during June, 1993, and the reason for less communication thereafter was because the case had been voluntarily dismissed and there was nothing to tell Mr. Thomas (T. p.p. 108-109). He submitted into evidence a letter indicating he was sending Mr. Thomas copies of documents created between September, 1992, and October, 1992. There was no indication he sent Mr. Thomas the documents after that date which he repeatedly requested. Clearly, Mr. Thomas felt the communication was inadequate or he would not have written the November 11, 1993, letter complaining about a lack of communication over a period of approximately one year. Mr. Thomas had no difficulty contacting the respondent's secretary, the problem was that she could not answer the questions, only the respondent could (T. p. 16) and he did not make himself available to answer Mr. Thomas' queries. In addition, at least one item the respondent did send to Mr. Thomas, the pretrial compliance statement (R-Ex. 7), was incomplete so when the respondent

discussed it with him by telephone, Mr. Thomas had no way of knowing it listed the outstanding criminal warrants for his arrest (T. p.p. 50-51).

POINT II

THE APPROPRIATE LEVEL OF DISCIPLINE IS A SUSPENSION OF AT LEAST THIRTY DAYS GIVEN THE RESPONDENT'S PRIOR DISCIPLINARY HISTORY AND THE AGGRAVATING FACTORS.

Discipline in bar proceedings must serve three purposes: the judgement must be fair to society in terms of protecting the public from unethical conduct and in not denying them the services of a qualified lawyer (the latter of which the bar submits is no longer a special concern in most areas of this state given the explosive growth in the bar's membership in recent years); the judgement must be fair to the lawyer, being sufficient to punish the errant conduct while at the same time encouraging reform and rehabilitation; and the judgement must be severe enough to deter others who might be prone or tempted to engage in similar misconduct, The Florida Bar v. Niles, 644 So. 2d 504, 507 (Fla. 1994). The respondent is charged with two counts of what amounts to poor management. He has failed to adequately communicate with his client in one case and neglected an appeal in a second case. It appears the respondent's office procedures and workload management skills are lacking. He

testified at the final hearing that he did not file Mr. Rooney's brief in a timely manner because of his heavy workload (T. p.p. 143, 158). Neglect and lack of communication are among the most common grievances the bar receives from the public concerning their attorneys. Not only is it bad business for the individual practitioner, it is bad for the image of the profession as a whole. Had there only been an isolated incident, then a public reprimand would be warranted. However, there is a pattern of neglect here and the respondent has a prior disciplinary history for engaging in similar misconduct. The bar submits that given these aggravating factors, the case law and the Standards for Imposing Lawyer Sanctions, a suspension of no less than thirty days would best suit the purposes of discipline.

In 1992, the respondent was admonished for improperly engaging in a business transaction with a client in The Florida Bar v. Jordan, TFB Case No. 92-30,198(18C). During the time he was representing a client in a mortgage foreclosure matter, he asked the client if she would assist him in setting up and operating a nightclub he owned. She agreed and understood her services were to be in exchange for the respondent's legal

services rendered in her case. She also agreed to front the money needed to set up the business with the understanding that it would be considered as "escrow" funds for her mortgage dispute matter and the respondent would repay her once her case was settled. The respondent never reduced their agreement to writing. The respondent did reimburse her for some of the funds she paid out to establish the business but a dispute arose as to the amount she was owed. The respondent never advised his client to seek the advice of independent counsel prior to becoming involved in the arrangement.

One year later, in 1992, the respondent was publicly reprimanded in The Florida Bar v. Jordan, 617 So. 2d 321 (Fla. 1993), for inadequate communication and neglect reminiscent of the charges contained in count two of the bar's complaint concerning Mr. Rooney's case. In 1990, the respondent was appointed by the court to represent an indigent criminal defendant at the trial level. After the defendant was found guilty, he advised the respondent he wanted to seek an appeal. The respondent filed the necessary documents and asked that the public defender be appointed. The court, however, failed to

enter an order appointing the public defender for purposes of appeal and the respondent failed to follow up on his motion. Therefore, he remained the attorney of record. He filed nothing further in the case and the appellate court issued an order directing that the defendant either pay the filing fee or file a certified copy of the trial court's order of insolvency. The respondent was sent a copy of this order but he did not respond or take any action. As a result, the client's appeal was dismissed. Despite receiving a copy of the dismissal order, he took no action to have the appeal reinstated. The client, who was incarcerated, made inquiries of the respondent concerning the appeal, but got nothing from him. The public defender's office finally brought the dismissal to the respondent's attention after it received an inquiry from the inmate about the status of the matter. The respondent did file a motion to have the appeal reinstated but it was denied as being untimely.

Cumulative misconduct warrants the imposition of more severe discipline than would otherwise be warranted, The Florida Bar v. Lawless, 640 So. 2d 1098, 1101 (Fla. 1994). The Florida Standards for Imposing Lawyer Sanctions, standards 9.22(c) and

9.22(d), also provide that discipline may be increased based on a pattern of misconduct or multiple offenses, The Florida Bar v. Inglis, 660 So. 2d 697, 700 (Fla. 1995). The respondent has a prior history of engaging in similar misconduct and there exists in this case multiple instances of wrongdoing and a pattern of improper behavior.

In Florida Bar v. Daniel, 626 So. 2d 178 (Fla. 1993), an attorney was suspended for 30 days for failing to obtain court approval of a settlement reached with an insurance company for personal injuries sustained by a minor and for failing to effect a public sale after obtaining a judgment in foreclosure for his clients. In the first case, the attorney failed to schedule a court date for his petition to approve the settlement and never took any action to obtain court approval of the settlement before having the clients execute the settlement and release documents. He then proceeded to disburse the funds without returning the executed release to the insurance company's attorney. In a second case, he had filed a complaint to foreclose a mortgage that resulted in a final judgment in default of foreclosure being entered in favor of his clients. He then failed to perfect the

public sale ordered by the court and did not pay the sums due on the mortgage. He later filed a motion for an amended final judgment but failed to ascertain the existence of certain liens nor did he name any of the outstanding lien holders. He did not advise his clients as to the consequences of not taking the property to public sale. The clients eventually sought the assistance of other counsel to complete the matter.

An attorney's negligent handling of a medical malpractice suit resulted in his being suspended for 90 days and placed on a one year period of probation in The Florida Bar v. Golden, 530 So. 2d 931 (Fla. 1988). In the civil matter he undertook, he failed to timely file an amended complaint as requested by the court. The court admonished him to file a second complaint in a timely manner but he again failed to do so. He filed the second complaint late and the defendants were successful in having it dismissed. The appellate court upheld the dismissal and criticized the attorney for disregarding the lower court's order. The trial court later dismissed one of the defendants and the accused attorney took an appeal of that order. Three weeks after his brief was due, he sought an extension of time, which the

court granted. He then requested, and received, yet another extension. After he finally filed his brief, the court upheld the lower court's order. In its opinion, this court noted that the attorney was also considerably late in filing his brief in his own defense of the bar action. This court stated that "All lawyers have an obligation to pursue diligently matters they undertake. Rule 4-1.3, Rules Regulating the Fla. Bar. A separate obligation arises to comply with a court order. Failure to do so demonstrates a lack of zealousness or dedication to one's professional responsibilities."

An attorney was suspended for 30 days in The Florida Bar v. Sapp, 526 So. 2d 908 (Fla. 1988), for failing to clear title to real estate and failing to communicate with the client resulting in the rescission of the land sale contract. The attorney had been paid to perform the services. In another case, the attorney had been retained to clear the title to land held by an estate. There was a time limit in which the work had to be completed. The attorney caused delays and later demanded an additional fee to complete the matter. In a third case, he was retained to provide legal services but failed to return telephone calls, keep

appointments or pursue the matter. The attorney had already been suspended in a separate proceeding and his 30 day suspension was to run concurrent with the prior suspension.

In The Florida Bar v. Weed, 513 So. 2d 126 (Fla. 1987), a 60 day suspension was imposed on an attorney who failed to timely file appellate briefs. After filing notices of appeal in three cases, the attorney took no further action until the district court ordered him to appear personally and show cause why the appeals should not be dismissed. The court allowed all three appeals to go forward but did discipline the attorney by ordering a public reprimand. In a second case, the attorney failed to file a brief. He responded to the court's order to show cause by alleging the court reporter had not filed a transcript. The district court found this reply was insufficient. The attorney then asserted that he could not find the court reporter and supported his position by filing the unsigned affidavits of two judicial assistants. The attorney was found guilty of engaging in dishonest conduct that was unintentional. In another matter, the attorney filed a notice of appeal but did not file a brief and failed to timely respond to an order to show cause why the

appeal should not be dismissed. His defense was that much of his time was spent tending to the affairs of his secretary who became ill and ultimately died. This court found that although the attorney's conduct was not intentional, it was habitual.

In The Florida Bar v. Neale, 432 So. 2d 50 (Fla. 1983), a lawyer was suspended for 60 days and placed on a 3 year period of probation for neglect and inadequate communication. The attorney accepted a retainer but took no action to further his client's best interests. There was no evidence of a corrupt motive. In mitigation, he had been a member of the bar for many years and his health was not good.

A 2 month suspension for neglect was ordered in The Florida Bar v. Mike, 428 So. 2d 1386 (Fla. 1983). The attorney failed to file a change of custody on behalf of his client after having received a fee to do so. Additionally, the attorney failed to refund the fee, offered to have a notary notarize a signature outside the presence of the person whose signature was to be acknowledged and demonstrated incompetence in performing the task for which he had been retained. In a second case, the attorney

neglected a client's affairs by failing to take complete action toward obtaining a dissolution of marriage. In a third matter, the attorney gave the clerk of the court a check drawn on his account that was returned due to insufficient funds. The final count alleged that the attorney failed to pay his annual bar dues and was automatically suspended but continued to practice law. The attorney had a prior disciplinary history.

In The Florida Bar v. Fath, 368 So. 2d 357 (Fla. 1979), an attorney was suspended for three months and ordered to make restitution to his client where he agreed to handle a legal matter, was paid, but performed no services. He was retained to represent a client in connection with three traffic citations, including trial upon the charges. The attorney was paid $460.00 up front. Thereafter, he failed to advise his client of the trial date and as a result the client failed to appear and a bench warrant was issued for his arrest. The attorney did appear for the trial and was aware of the action taken by the court against his client but failed to advise his client of the issuance of the warrant nor did he take any action to make the court aware of the reasons for his client's nonappearance. After

the client learned of the warrant on his own, he asked the attorney to have the matter cleared up. He agreed to attempt to pursue whatever legal remedies were available to correct the default action taken against the client. Predictably, the attorney did nothing except continue to accept money from the client for legal services. The client thereafter was unable to contact him. The attorney also did not participate in the bar proceedings against him. In mitigation, he had no prior disciplinary history.

Failing to respond to bar investigative inquires alone, without the existence of any other misconduct, has resulted in the imposition of a public reprimand, The Florida Bar v. Vaughn, 608 So. 2d 18 (Fla. 1992), and The Florida Bar v. Grigsby, 641 So. 2d 1341 (Fla. 1994). In The Florida Bar v. Grosso, 647 So. 2d 840 (Fla. 1994), the attorney was suspended for 10 days with the requirement that prior to resuming the practice of law he provide the bar with a report from a psychiatrist attesting to the attorney's ability to resume the active practice of law. There was no other misconduct present other than the failure to respond to the bar's inquiries. Therefore, it stands to reason

that the respondent's case, where the referee recommended he be found guilty of neglect, inadequate communication and failure to respond to the bar, warrants far more than a public reprimand or very short term of suspension. Additionally, his failure to communicate with the bar fits his pattern of not responding to his client's inquiries.

The Florida Standards for Imposing Lawyer Sanctions also indicate a suspension is warranted.

Standard 4.42(a) calls for a suspension when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. Standard 4.42 (b) calls for a suspension when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Standard 7.2 calls for a suspension when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

In aggravation, the respondent has a prior disciplinary history [standard 9.22(a)], has engaged in a pattern of misconduct [standard 9.22(c)], has committed multiple offenses [standard 9.22(d)], has shown bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules of the disciplinary agency in that he refused to respond to the bar's investigative inquiries until after the matter was referred to the grievance committee (standard 9.22(e)], and has substantial experience in the practice of law because he has been a member since 1980 [standard 9.22(i)].

The bar submits that a suspension of at least 30 days would emphasize to the respondent his responsibilities as a lawyer without being unduly harsh. It takes into account the duties he violated, his mental state, the potential or actual injury caused by his misconduct, and the existence of aggravating factors, The Florida Bar v. Helinger, 620 So. 2d 993, 995 (Fla. 1993). Most importantly, it will serve to protect the public from an attorney who clearly needs to improve the manner in which his practice is run.

> The single most important concern of this Court in defining and regulating the practice of law is the protection of the public from incompetent, unethical, and irresponsible representation. (Citation omitted). The very nature of the practice of law requires that clients place their lives, their money, and their causes in the hands of their lawyers with a degree of blind trust that is paralleled in very few other economic relationships. Our primary purpose in the disciplinary process is to assure that the public can repose this trust with confidence.
> The Florida Bar v. Dancu, 490 So. 2d 40, 41 (Fla. 1986).

POINT III

THE REFEREE'S RECOMMENDATION AS TO THE COSTS TAXED AGAINST THE RESPONDENT IS APPROPRIATE.

In bar proceedings, the discretionary approach is used in awarding costs, Chilton, supra. Absent a clear showing the referee has abused his or her discretion in awarding costs, this court will uphold the referee's recommendation in this respect, The Florida Bar v. Segal, 20 Fla. L. Weekly S577 (Fla. Nov. 22, 1995). Respondent bases his entire argument for the imposition of lesser costs on his position that he should have been found not guilty of violating rule 4-1.4(a) in count I of the bar's complaint. The referee did recommend he be found guilty of not adequately communicating with Mr. Thomas and therefore he correctly assessed those associated costs against the respondent. There was absolutely no abuse of discretion and the bar's costs were reasonable and fully supported by documentation. In fact, had the referee not awarded the bar its costs incurred in connection with count I, he would have abused his discretion, The Florida Bar v. Lehrman, 485 So. 2d 1276, 1278 (Fla. 1986). Respondent's argument that he should not have been assessed the costs associated with count I of the complaint is devoid of any

merit.

The cost items listed in the referee's report mirror those listed by the bar in its affidavit of costs, all of which are authorized by R. Regulating Fla. Bar 3-7.6(o)(1). The respondent did not raise an objection to the items listed by the bar in its affidavit of costs at the time it was sent to him and does not specify in his brief which costs should not be included. In de la Puente, supra, an attorney raised a similar argument on appeal that some of the bar's costs were unreasonable but did not specify which ones he felt were unnecessary nor had he raised any objection to the costs at the trial level. This court found his argument failed to show the referee abused his discretion in anyway with respect to the cost amount awarded.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendation of a thirty day suspension and approve said findings and recommendation and impose a suspension of at least thirty days and payment of costs now totaling $1,900.54.

Respectfully submitted,

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(407) 425-5424
ATTORNEY NO. 381586

By: _____
Jan Wichrowski
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Answer Brief and Appendix have been sent by regular U.S. Mail to the Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by regular U.S. Mail to the respondent, Robert Paul Jordan, II, 1501 Robert J. Conlan Boulevard, N.E., Suite 100, Palm Bay, Florida 32905-3559; and a copy of the foregoing has been furnished by regular U.S. Mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 6th day of December, 1995.

Respectfully submitted,

Jan Wichrowski

Jan Wichrowski
Bar Counsel

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

Case No. 94-30-962 (18C)
Case No. 94-31, 229 (18C)

ROBERT P. JORDAN, II,

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 Regulating the Florida Bar, hearings were held on the following dates: May 19, 1995.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: JOHN B. ROOT, ESQUIRE
For the Respondent: PRO SE

II. **Findings of Fact as to Each Item of Misconduct of which the Respondent is Charged:** After considering all of the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

As to Count I

On August 2, 1991, Charles E. Thomas was residing in Dallas, Texas. He contacted the Respondent to represent him in stopping a scheduled auction of his property by North American Van Lines taking place the following day in Florida. The Respondent was unable to stop the subject auction.

The Respondent was subsequently retained by Mr. Thomas to bring a civil suit against North American Van Lines and other defendants. The Complaint for that suit was filed by the Respondent on November 6, 1991 after inquiry by Mr. Thomas on the status of the suit.

The Respondent erroneously advised Mr. Thomas that a default would be entered against North American Van Lines for failure to answer the Complaint when the Complaint was

actually answered. The Court subsequently denied the Motion for Default.

The Respondent failed to timely inform Mr. Thomas that the Defendants had been awarded a partial summary judgment on or around June 16, 1993 dismissing the Count for civil theft. The Respondent failed to submit significant Motions and Orders to Mr. Thomas during the case. Mr. Thomas had to obtain copies of pleadings from the Clerk of the Court. The Respondent failed to timely inform Mr. Thomas of the Court Ordered deposition scheduled for June of 1993. Prior to coming to Florida for his deposition, Mr. Thomas requested the Respondent to do a search of outstanding warrants due to his prior criminal difficulties in Florida. There was an error given in the birth date provided by Mr. Thomas and no outstanding warrants were discovered. However, defense counsel in the civil case had previously listed outstanding warrants on Mr. Thomas on the exhibit list for trial purposes. Mr. Thomas was arrested in Florida for the outstanding warrants when he showed up at his deposition.

The Respondent then represented Mr. Thomas involving criminal matters in Florida. On December 10, 1993, the Respondent was notified by the Court that trial had been set for the criminal matters involving Mr. Thomas on December 16, 1993. The Respondent did not send notice of the trial to Mr. Thomas in Dallas, Texas until December 13, 1993 by Express Mail. At that time, Mr. Thomas was suffering from a condition known as a vascular necrosis requiring replacement of his left hip twice and a bilaterial cord decompression performed on the right side and was at that time walking on crutches and was unable to attend. The Respondent withdrew from the case on the day of trial and other counsel was appointed for Mr. Thomas and was able to clear up his non-attendance for the trial.

Mr. Thomas contacted the Respondent's office frequently and discussed the status of his case with the secretaries. He spoke to the Respondent approximately 15 times during two-year period.

The Respondent relied upon verbal contact with Mr. Thomas to keep him updated on the status of his case as opposed to keeping him informed through correspondence. The Respondent had his secretaries submit various pleadings to Mr. Thomas sporadically. Although Respondent testified that he kept Mr. Thomas advised as to the status of his case, he provided limited documentation to support his claim. The case had to be voluntarily dismissed by the Respondent. Mr. Thomas has retained subsequent counsel to proceed with his civil litigation.

I find that the Respondent did not keep his client reasonably informed as to the progress of his case.

On January 28, 1994, the Florida Bar sent correspondence to the Respondent requesting that he respond directly to Mr. Thomas' Bar Complaint within fifteen (15) days with a copy to their office advising of his position. The letter advised that the Respondent was obligated to

provide the Florida Bar with a written response pursuant to Rules Regulating the Florida Bar 3-4.8. The Respondent did not reply at that time.

On March 9, 1994, the Florida Bar submitted additional correspondence referring to the correspondence dated January 28, 1994 again requesting response to the Bar Complaint. The Respondent was again advised that he was obligated to provide the Florida Bar with a written response pursuant to Rules Regulating the Florida Bar 3-4.8. If the Respondent did not reply within ten (10) days from the date of the letter, the matter was going to be forwarded to the Grievance Committee for disposition. The Respondent did not reply to that correspondence.

The matter was subsequently turned over to the Grievance Committee for disposition since there was no reply by the Respondent to the January 28, 1994 and March 9, 1994 inquiries.

On May 3, 1994, the Respondent finally submitted a reply to Dr. Lance Jarvis of the Grievance Committee.

As to Count II

The Respondent was appointed by the Court on or around March 18, 1993 to represent James B. Rooney in two criminal appeals. The Respondent filed a Notice of Appeal on March 18, 1993.

On May 14, 1993, both appeals were dismissed in error for no filing fee when in fact, Indigency Affidavits had been filed in a timely manner. The Respondent successfully sought reinstatement of the appeals on May 26, 1993.

On or about September 30, 1993, the Respondent received Orders to Show Cause why the appeals should not be dismissed. Respondent appeared and stated that he never received notice of reinstatement. The Appellate Court followed up with an Order on October 13, 1993 that Respondent shall file and serve the initial Briefs on or before November 12, 1993 and that failure to timely comply with that Order would result in a dismissal of the appeals without further notice. The Respondent failed to timely file the initial Briefs and the appeals were again dismissed on or about December 2, 1993.

The Respondent did not serve the intial briefs until December 27, 1993, nearly nine (9) months after having filed the Notices of Appeal and twenty-five (25) days after the appeals had been dismissed. The Respondent subsequently filed a Petition for Writ of Habeas Corpus in one appeal and another counsel filed a Writ of Habeas Corpus in the other appeal.

The Respondent missed the Appellate Court's time requirements due to a heavy work load at his office.

Mr. Rooney's right to appeal was unduly delayed and may have been compromised due to the Respondent's inaction.

III. **Recommendation as to whether or not the Respondent should be found guilty**: As to each Count of the Complaint, I make the following recommendations as to guilt or innocence:

As to Count I

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of Rules Regulating the Florida Bar, to wit:

a. 4-1.4(a) - for failing to keep his client reasonably informed about the status of the matter and promptly comply with reasonable requests for information;

b. 4-8.4(g) - for failing to respond, in writing, to an inquiry by a disciplinary agency when such agency is conducting an investigation in the lawyer's conduct.

As to Count II

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of Rules Regulating the Florida Bar, to wit:

a. 4-1.3 - for failure to act with reasonable dilligence and promptness in representing the client.

IV. **Recommendation at to Disciplinary measures to be applied:** I recommend that the Respondent be suspended from the practice of law for a period of one (1) month with automatic reinstatement at the end of period of suspension as provided in Rule 3-5.1(e), Rules of Discipline.

V. **Personal History and Past Disciplinary Record:** After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(D), I considered the following personal history and prior disciplinary record of the Respondent, to wit:

Age: 40
Date admitted to the Bar: April 11, 1980
Prior Disciplinary convictions and disciplinary
measures imposed therein: Admonishment for minor misconduct 6-29-92
Public reprimand for professional misconduct 3-25-93

VI. **Statement of costs and manner in which costs should be taxed.** I find the following costs were reasonably incurred by The Florida Bar:

A.	Grievance Committee Level Costs		
	1. Transcript Costs	$	- 0 -
	2. Bar Counsel Travel Costs	$	18.06
B.	Referre Level Costs		
	1. Transcript Costs	$	643.10
	2. Bar Counsel Travel Costs	$	78.16
C.	Administrative Costs	$	750.00
D.	Miscellaneous Costs		
	1. Investigator Expenses	$	401.60
	2. Copy Costs (78 copies @ .25/copy)	$	19.50

TOTAL ITEMIZED COSTS: $ 1,900.54

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the Respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the Judgment in this case becomes final, unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 28 day of July, 1995.

Robert A. Hawley,
Referree

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has served on Bar Counsel, JOHN B. ROOT, JR., ESQUIRE, 800 North Orange Avenue, Suite 200, Orlando, Florida 32801; Respondent, ROBERT P. JORDAN, II., ESQUIRE, 1501 Robert J. Conlan Boulevard, N.E., Suite 100, Palm Bay, Florida 32905 and Staff Counsel, JOHN T. BERRY, ESQUIRE, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300.

Robert A. Hawley,
Referree