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SID J. WHITE
NOV 8 1995
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

ROBERT B. MORRISON, JR.,

Respondent.

_____/

CASE NO.: 85,179

TFB NO.: 94-10,655 (13F)
94-11,021 (13F)

AMENDED INITIAL BRIEF

ATTORNEY FOR THE RESPONDENT:

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STATEMENT OF THE CASE AND OF THE FACTS

This Brief is in support of reviewing the sanctions seeking suspension for one (1) year and thereafter until he can prove rehabilitation, restitution in the amount of $32,500.00, and payment of the Bar's costs in the proceeding.

Given the facts and circumstances, the one (1) year suspension from MR. MORRISON's practice and thereafter until he can prove rehabilitation, is unreasonable, unwarranted, unlawful and an unjustified sanction for MR. MORRISON's conduct.

MR. MORRISON is a practicing attorney for over 16 years, and in that time, he has made significant contributions to the practice of law and to the community. He has been sanctioned previously in 1993, for failure to communicate with one client and failure to keep another client informed regarding the progress of the case. MR. MORRISON was placed on one year probation, given a public reprimand and had to pay costs of the proceedings. MR. MORRISON stipulated to this in his *Conditional Guilty Plea for Consent Judgment* on April 27, 1993.

On February 16, 1995, The Florida Bar filed with the Supreme Court of Florida a two-count Complaint against MR. MORRISON. The Complaint was based on grievances filed by Virginia C. Bates, D.S.S. (Bates) and Shelley Von Newkirk Tavernier (Tavernier).

MR. MORRISON undertook the representation of Bates in her civil suit pending in Federal District Court against the State of Florida Department of Business Regulation. MR. MORRISON did not file timely responses to the defendant's Motion to Dismiss and

Motion to Compel Discovery. Consequently, the complaint was dismissed without prejudice. MR. MORRISON refiled the lawsuit, but he did not actively pursue the case, and after one and a half years, the defendant filed a Motion to Dismiss for failure to prosecute, and the District Court issued an Order to Show Cause why the case should not be dismissed. MR. MORRISON failed to respond to the Order to Show Cause and the suit was dismissed without prejudice. Despite the dismissal being without prejudice, the statute of limitations had expired, thus precluding Bates from pursuing her claim.

During the course of the representation, MR. MORRISON did not on a regular basis keep Bates informed on the status of her case, return her telephone calls, or answer her correspondence within a reasonable time period. MR. MORRISON also, failed to refund Bates the attorney fees collected from her for the representation.

MR. MORRISON also undertook the representation of Tavernier in her personal injury claim for damages suffered in an automobile accident. MR. MORRISON did not actively pursue Tavernier's claim for almost four (4) years which resulted in Tavernier receiving no compensation for her injuries or assistance with her outstanding medical bills during that period of time. MR. MORRISON did not, in a timely manner, return Tavernier's phone calls nor update her on the status of the case.

This Court entered an Order granting the Bar's Motion to Deem Matters admitted predicated on MR. MORRISON's failure to respond to the Bar's Request for Admissions. MR. MORRISON was found guilty of

failing to act with reasonable diligence and promptness in representing a client; of failing to keep a client reasonably informed about the status of a matter and promptly complying with a client's request for information; of violating or attempting to violate the Rules of Professional Conduct; and of failing to respond, in writing, to an inquiry by a disciplinary agency which is conducting an investigation into a lawyer's conduct.

This Petition for Review of Sanctions was timely filed.

SUMMARY OF ARGUMENT

The sanction seeking suspension for one (1) year and thereafter until prove rehabilitation is an unfair, unwarranted and severe sanction imposed on MR. MORRISON for only his second disciplinary proceeding.

The potential for bias and prejudice is great when the Court imposes sanctions that are inconsistent with other sanctions by this Court and inconsistent with the objectives of Bar discipline as outlined in The Florida Bar v. Lord, 433 So. 2d 983 (Fla. 1983).

The Supreme Court in Lord, defined the objectives of Bar discipline as:

> "Discipline for unethical conduct by a member of the Florida Bar must serve three purposes: First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations."

Id. at 986.

The cases cited by the Bar, in its *Memorandum of Law For Sanctions*, are easily distinguishable. The Court in these cases, sought to discipline attorney's who had exhibited a long history or pattern of misconduct, and conduct that was more egregious than in the instant case. For example, The Florida Bar v. Provost, 323 So. 2d 578 (Fla. 1975); The Florida Bar v. Pincus, 327 So. 2d 29 (Fla. 1975); and The Florida Bar v. Grant, 514 So. 2d 1075 (Fla. 1987). (Neglecting the affairs of numerous clients, negative judgments

being imposed against clients, making several inaccurate and misleading statements about the status of the case, with less than one (1) year suspensions).

Given the severity of some of the conduct disciplined in the cases cited by the Bar, and that the Court did not impose severe sanctions as given MR. MORRISON, and given that some of the conduct cited by the Bar was more egregious than MR. MORRISON's, and yet the same sanction imposed in those instances was the same as given MR. MORRISON is unfair, unreasonable and unwarranted.

The imposition of the one (1) year suspension for MR. MORRISON would be an error, and is unsupported by the record, case law, or the objectives of Bar discipline.

ARGUMENT

I. THE ONE-YEAR SUSPENSION IMPOSED BY THE COURT IS INCONSISTENT WITH OTHER SANCTIONS BY THIS COURT, AND THE OBJECTIVES OF BAR DISCIPLINE AND AS SUCH IS AN UNREASONABLE, UNWARRANTED, UNLAWFUL AND UNJUSTIFIED SANCTION FOR MR. MORRISON'S CONDUCT.

MR. MORRISON is seeking review only of the one (1) year suspension from his practice and thereafter until he can prove rehabilitation. The imposition of the one-year suspension is unreasonable and unwarranted sanction for MR. MORRISON's conduct, is contrary to the objectives of Bar discipline, and is supported by the record herein and the relevant case law.

The Supreme Court in The Florida Bar v. Lord, 433 So. 2d 983, 986 (Fla. 1983), defined the objectives of Bar discipline as:

> "....**First**, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. **Second, *the judgment must be fair to the respondent***, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. **Third**, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations." Emphasis added.

The Bar, in its *Memorandum of Law For Sanctions*, cites a few cases in support of its position for a one-year suspension. The cases cited, are however, distinguishable. In The Florida Bar v. Bern, 425 So. 2d 526, 528 (Fla. 1982), the Supreme Court recognized that in rendering discipline, previous disciplinary history **may** increase the penalty where appropriate; that the Court deals more harshly with cumulative misconduct than it does with isolated misconduct; and that similar cumulative misconduct should warrant more severe discipline than dissimilar conduct. Even though the

respondent was privately reprimanded on two counts of improper solicitation in 1975, received a private reprimand for cashing client checks he agreed to hold in 1978, and was publicly reprimanded for violations involving solicitation in 1980, the respondent received only a suspension of three months and one day, for not providing an accounting of fees already received, and not returning to the client money owed from the proceeds of property sales.

In the instant case, MR. MORRISON, on one previous occasion, had two counts against him for failure to communicate, and had received a public reprimand and one year probation. In Bern, the respondent had several counts against him, and was reprimanded privately on two separate occasions for similar offenses, and the Court regarding the present similar offenses, imposed only a three month suspension. The Court looked at the respondent's previous pattern of misconduct, and deemed that the sanction imposed was reasonable. Here, MR. MORRISON has only been sanctioned once before, therefore to move from probation to suspension for the second offense is unreasonable and severe.

Similarly, in The Florida Bar v. Provost, 323 So. 2d 578, 579 (Fla. 1975), the respondent failed to competently protect a client's secured claim in a bankruptcy matter, falsely advised his client concerning his non-action, failed to complete the administration of two estates, and failed to properly represent a client in a child support matter. The respondent was given a private reprimand and a one year suspension prior to the Court

finding that a three year suspension was proper.

Unlike this case, however, the respondent failed to comply with Court orders and directions of a trial judge on at least two occasions, in addition to that he misled his clients. The facts in Provost are more egregious than in the instant case, therefore, for the Court to rely on this as dispositive on sentencing for subsequent offenses would be an error and unfairly hold MR. MORRISON to a more stringent sanction than his offenses warrant.

In The Florida Bar v. Pincus, 327 So. 2d 29 (Fla. 1975), the respondent was found guilty of unethical conduct on three occasions. The respondent's conduct resulted in an order disallowing his clients' discharge in bankruptcy, allowing a default judgment to be taken against another client in a civil suit, and allowing over four years to elapse without collecting an overdue promissory note, and then refusing to return the note to the client. The respondent was suspended for one year.

In Pincus, like Provost, the respondent was sanctioned for egregious conduct. MR. MORRISON's conduct does not rise to the level of egregiousness that the respondents in Provost and Pincus exhibited. MR. MORRISON did not neglect the affairs of three clients, neither did his actions result in negative judgments being imposed upon multiple clients. Therefore, if Provost and Pincus are to be used as guides for the Court on imposing sanctions, then the sanctions imposed on MR. MORRISON should be reviewed, as MR. MORRISON's conduct as previously sated, do not rise to the level of deplorable and flagrant conduct undertaken by the respondents in

Provost and Pincus.

Likewise, in The Florida Bar v. Valantiejus, 355 So. 2d 425, 426 (Fla. 1978), the Florida Supreme Court held that the respondent failed to properly perform his duties as a guardian, that he consistently ignored his ward's needs, and that he ignored the pleas of other parties, including a circuit court judge, to take action on behalf of the ward. The respondent exhibited the same pattern of conduct for nine other cases, and the Court suspended the respondent from practice for twelve months.

Here, the Bar refers to only two incidents of neglect by MR. MORRISON, which are the subject of these sanctions, as opposed to ten incidents of neglect in Valentiejus. Thus, to suspend MR. MORRISON for one year, the same sanction given Valentiejus, would be unfair, and would serve to punish MR. MORRISON more severely for less incidents of misconduct than the Court has allowed in previous grievance matters for more flagrant repetitive misconduct.

The Florida Bar v. Kaplan, 576 So. 2d 1318 (Fla. 1991), is analogous to the case at hand. In Kaplan, the respondent agreed to represent a client in a personal injury suit. Throughout the course of the suit, the client made numerous unsuccessful attempts to communicate with the respondent. Later the client retained the services of another attorney, who made numerous demands on the respondent to turn over the files, but with no success. The referee found that the respondent violated rules relating to neglect, communication, and improper withdrawal. The Court noted that the respondent had previously received three private

reprimands, and ordered a public reprimand and one year probation.

The misconduct in Kaplan is similar to that in the instant case. They both violated rules relating to neglect and communication with their clients, and both were involved in prior disciplinary actions. However, MR. MORRISON has only been involved in one disciplinary hearing prior to this, and has been reprimanded once and given a year probation. The respondent in Kaplan, after three sanctions was put on probation, the same sanction MR. MORRISON was given after only one disciplinary action. Therefore to suspend MR. MORRISON after only the second violation is unfair and would be a more severe punishment and violate the objectives outlined in The Florida Bar v. Lord, *supra*.

Similarly, in The Florida Bar v. Grant, 514 So. 2d 1075 (Fla. 1987), the respondent was sanctioned for refusing to answer client's calls, and making several misleading and inaccurate statements about the status of the case. The Court noted that the respondent had received public reprimands for neglecting legal matters on two prior occasions, and the Court imposed suspension for four months and until proof of rehabilitation.

Here, this is MR. MORRISON's second disciplinary action, and he is suspended for one year because he has exhibited a pattern of misconduct. If in Grant, the Court recognizing the respondents pattern of misconduct, and at the third disciplinary action imposed only suspension for four months, it would be extremely prejudicial and unfair that MR. MORRISON, would be suspended for one year after only two incidents of misconduct.

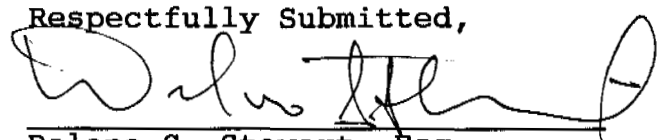
CONCLUSION

The one year suspension for MR. MORRISON is not consistent with other sanctions by this Court, nor is it consistent with the objectives of Bar discipline as outlined in The Florida Bar v. Lord, 433 So. 2d 983 (Fla. 1983). Therefore, this Court should carefully review the sanctions imposed on MR. MORRISON, and impose less severe sanctions that are in keeping with prior rulings while still adhering to the precepts stated in The Florida Bar v. Lord. Id.. To impose the one (1) year suspension would be a denial of justice and contrary to the objectives of Bar discipline.

ORAL ARGUMENT REQUESTED

MR. MORRISON and his attorney, Delano S. Stewart, Esquire, kindly request oral argument on the petition to review and the accompanying Brief.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail to **Stephen C. Whalen, Esq.** Bar Counsel, The Florida Bar, Suite C-49, Tampa Airport, Marriott Hotel, Tampa, Florida 33607, **John A. Boggs**, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, and **John T. Berry, Esq.**, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, **The Hon. W. Lowell Bray, Jr.**, Referee, at Pasco County Courthouse, 7530 Little Road, New Port Richey, Florida 34654-5598, this 6th day of November, 1995.

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