IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ROBERT PAUL JORDAN, II,

Respondent.
_____/

Case No. 86,271
[TFB Case No. 95-30,223(18C)]

THE FLORIDA BAR'S INITIAL BRIEF

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SYMBOLS AND REFERENCES

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

The transcript of the final hearing held on December 5, 1995, shall be referred to as "T" followed by the cited page number.

The Report of Referee dated January 24, 1996, 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 Eighteenth Judicial Circuit Grievance Committee voted to find probable cause in this matter on May 22, 1995. The bar filed its complaint on August 15, 1995. On August 24, 1995, this court entered an order directing the chief judge of the Nineteenth Judicial Circuit to appoint a referee to hear the matter. The referee was appointed on August 28, 1995. The parties entered into a joint stipulation as to the facts on December 5, 1995 (due to a typographical error the certification is incorrectly dated December 8, 1995). The final hearing was held on December 5, 1995.

The referee entered his report on January 24, 1996, wherein he recommended the respondent be found guilty of violating Rules Regulating The Florida Bar 4-1.1 for failing to provide competent representation to a client, 4-1.3 for failing to act with reasonable diligence and promptness in representing a client, 4-1.4 for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information, and for failing to explain a matter to the

extent reasonably necessary to permit the client to make informed decisions regarding the representation, 4-3.2 for failing to expedite litigation consistent with the interests of the client and 4-8.4(g) for failing to respond, in writing, to any inquiry by a disciplinary agency when such agency is conducting an investigation into the lawyer's conduct.

The board of governors considered the referee's report and recommendations at its March, 1996, meeting. The board voted not to seek an appeal. The respondent served his notice of appeal on March 29, 1996. On April 9, 1996, the respondent moved for a thirty day extension of time to file his initial brief, which the bar did not oppose. On April 16, 1996, this court granted the respondent's motion and directed the initial brief be filed on or before May 31, 1996. The respondent served his initial brief on May 31, 1996.

STATEMENT OF THE FACTS

Except as otherwise noted, the following facts are derived from the Report of Referee, appended hereto.

The respondent was retained on or about June 25, 1991, by Jacob and Isabelle Flowers to represent their son, Lawrence Flowers, Sr., with respect to a post-conviction relief hearing. Because Mr. Flowers' original appeal had been unsuccessful, he filed, pro se, a motion for post conviction relief under Fla. R. Crim. P. 3.850. Prior to the respondent being retained, the court had set the motion for an evidentiary hearing. However, on October 29, 1991, the court issued a written order denying the motion. The respondent was listed on the October 29, 1991, order as having been copied with it.

On November 20, 1991, the respondent filed a notice of appeal for Mr. Flowers. However, the respondent failed to promptly take additional action to prosecute the appeal. Through an appellate court order issued on August 27, 1992, Mr. Flowers was ordered to show cause in writing on or before September 11,

1992, why his appeal should not be dismissed for failure to timely prosecute. On September 11, 1992, the respondent filed a response in which he advised the appellate court that the trial court had failed to enter a written order and, therefore, he asked the appellate court to direct the trial court to issue same citing its reasons for having denied the 3.850 motion so the appellant could prosecute the appeal. On September 25, 1992, the appellate court, based upon the respondent's representations, abated the appeal and relinquished jurisdiction for 30 days so the trial court could issue a written final order.

The Attorney General's Office filed a motion to dismiss the appeal on November 9, 1992, and advised the court that the trial court had entered a written final order on October 29, 1991, denying the 3.850 motion, which was contrary to the respondent's response to the appellate court. Therefore, the Attorney General's Office argued the appeal should be dismissed for lack of prosecution. In the respondent's November 30, 1992 response, he indicated that, although the certificate of service showed he had been copied with the written order on the 3.850 motion, the respondent failed to receive the order. Additionally, the

respondent noted that copies of the transcript were ordered so they could be sent to the appellate court and the appeal could be prosecuted. On December 15, 1992, the appellate court denied the Attorney General's motion to dismiss and directed the respondent to file the initial brief within 30 days. Although the order showed the respondent was sent a copy, he testified at the final hearing in the bar matter that he never received this order. The respondent neither filed an initial brief on behalf of his client nor took any other action to perfect the appeal.

On April 29, 1991, the appellate court ordered the respondent to show cause why the appeal should not be dismissed within 15 days. The order showed a copy was sent to the respondent, however, the respondent testified he never received it. On May 27, 1993, the appellate court dismissed the appeal. Again, the order showed a copy had been sent to the respondent but the respondent testified that he never received it.

During the relevant time period, the respondent's record bar address did not change.

During the pendency of the appeal, the respondent neither adequately communicated with Mr. Flowers or his family nor visited with Mr. Flowers in jail despite repeated requests that he do so. The respondent never informed his client the appeal had been dismissed. Additionally, the respondent failed to return documents to his client that Mr. Flowers had supplied for the appeal despite repeated requests by Mr. Flowers and his family that he return them.

After Mr. Flowers complained to the bar about the respondent's representation, the bar wrote the respondent on August 19, 1994, and September 26, 1994, asking that the respondent provide a written response to Mr. Flowers' allegations. The respondent failed to respond to the bar's letters.

SUMMARY OF THE ARGUMENT

The respondent admitted guilt as to one rule violation. Rule 3-7.6(k)(1)(D) allows a referee to consider evidence as to prior discipline once he or she makes a finding of guilt. Obviously, where an accused attorney admits to a violation, the implication is that the referee automatically makes a finding of guilt. The rule does not require a finding as to all the allegations be made before the disciplinary history may be presented. In the respondent's case, there was no procedural error committed that would warrant dismissal.

The introduction of the nonfinal report of referee (B-Ex. 42), if an error, was a harmless one. The referee makes a disciplinary recommendation to this court and that recommendation is presumed to be correct. The responsibility for making the final decision rests with this court, which is already aware of the existence of the case referenced by B-Ex. 42 because it is pending on appeal before this court. Further, it is clear from the referee's report that B-Ex. 42 was only one of many factors he considered in making his recommendation as to discipline. It

was not a determining factor. Moreover, there is no indication that the referee would have recommended a lesser discipline had he not been made aware of B-Ex. 42.

A one year suspension is appropriate in this case. The respondent neglected to ensure that his client's appellate rights were preserved. The respondent's lackadaisical attitude is disturbing. He apparently saw no need to communicate with his client. Additionally, the respondent apparently saw no need to communicate with the clerk's office when it should have been clear to him that he had not received important court orders. Instead, the respondent placed his professional responsibility to manage his client's case on the shoulders of other persons, namely, his office staff, who apparently he did not adequately supervise, the clerk's office, and his client's parents. It appears the respondent either cannot or will not accept the responsibility every attorney must assume as an officer of the court.

ARGUMENT

POINT I

THE REFEREE'S ACTIONS IN CONSIDERING ARGUMENTS AS TO THE APPROPRIATE LEVEL OF DISCIPLINE WERE APPROPRIATE GIVEN THE FACT THE RESPONDENT HAD ADMITTED GUILT AS TO ONE RULE VIOLATION.

The parties entered into a joint stipulation as to the facts in this case on December 5, 1995, which substantially reiterated the facts contained in the bar's complaint (B-Ex.1). In the joint stipulation and at the trial, the respondent admitted he violated rule 4-8.4(g) for failing to respond to the bar's repeated requests that he make a written reply to the client's allegations of misconduct (T p.p. 74-75). The referee took a considerable amount of testimony and evidence, despite the stipulation as to the facts, and entertained arguments as to mitigation from the respondent to the effect that he has since changed at least some of his office procedures (T p. 109).

Bar counsel advised the referee at the outset that bar discipline cases are normally bifurcated (T p. 10). After the closing arguments, the referee indicated his preference to hold the disciplinary portion that same day and decided that because

the respondent had already admitted guilt as to one of the charged rule violations, it would not be improper to do so (T p.p. 111-114). Pursuant to Rule 3-7.6(k)(1)(D), there is no prerequisite that the referee must find a respondent guilty of all the alleged violations, or even a majority of the alleged violations, before the referee may properly consider the respondent's prior disciplinary history. Rather, the Rules Regulating the Florida Bar require only that a referee "make a finding of guilt" before considering evidence concerning a respondent's prior disciplinary history, R. Regulating Fla. Bar 3-7.6(k)(1)(D). Consequently, the bar submits that because the respondent admitted violating 4-8.4(g), the referee properly moved on to the disciplinary stage of the proceedings.

The referee afforded the respondent ample opportunity to present mitigating evidence and inquired of the respondent as to his experience in handling appeals (T p.p. 100-101). The respondent testified that he was not very experienced in handling appellate cases (T p. 101), a mitigating factor. The respondent put forth further mitigating factors during the presentation of arguments as to the appropriate level of discipline to be

recommended. He argued that his failure to receive copies of certain court orders could have been due to poor office procedures and, assuming that to be the case, his conduct would have been negligent and not intentional (T p. 128). He also presented arguments to explain the circumstances surrounding his prior discipline (T p.p. 129-131). He presented to the court several mitigating factors from the Florida Standards Imposing Lawyer Sanctions he believed were applicable to his case, namely, lack of experience in handling appellate cases, desire to protect the client's best interests by filing the notice of appeal, and lack of any permanent prejudice to the client (T p.p. 132-135).

Dismissal of these proceedings is not warranted. The referee proceeded to the disciplinary hearing pursuant to the rule, after "a finding of guilt," after the respondent admitted guilt as to one rule violation. The admission of guilt as to the one violation resulted in an automatic finding of guilt by the referee. A referee is not a jury that may be unduly swayed. The referee, who was experienced in handling bar disciplinary proceedings (T p. 111), understood that he had to make a determination as to guilt or innocence before considering the

aggravating factors (T p. 111).

The referee considered the respondent's prior public reprimand for engaging in similar behavior in a case where the respondent failed to respond to an Order to Show Cause which led to the dismissal of an appeal before the Fifth District Court of Appeals. Additionally, the referee based his conclusion that the respondent did not testify truthfully concerning his alleged failure to receive orders from the appellate court (RR-A p. 3) upon the respondent's testimony in these proceedings, as he clearly stated in paragraph 15 of his report.

The referee determined that the respondent lacked credibility because he had no explanation as to why he never received the more important court orders when he seemed to have had no trouble with receiving the less important documents from the clerk's office (T p.p. 62-64, 67, 70-71, 79-80, 96-99). Additionally, the respondent had no explanation as to why he failed to respond to the motion on the rule to show cause (T p. 81) or why he failed to file the initial brief (T p. 82). Furthermore, the respondent could not explain why he failed to

respond to the bar's inquiries (T p.p. 82, 102). Finally, the respondent showed a lack of understanding as to appellate law concepts (T p.p. 87, 92-93).

The respondent's reliance on The Florida Bar v. Catalano, 651 So. 2d 91 (Fla. 1995), as authority for dismissing the respondent's case is misplaced. In Catalano, the bar's complaint for minor misconduct was dismissed because the grievance committee that considered the matter had only one voting attorney, not two as is needed pursuant to the disciplinary procedural rules. Because of this, the complaint was dismissed as being fatally flawed from a procedural perspective. In contrast, the respondent's case contains no such procedural error that would warrant a dismissal of these proceedings.

POINT II

THE REFEREE'S CONSIDERATION OF EVIDENCE CONCERNING A NONFINAL REPORT OF REFEREE IN A SEPARATE CASE INVOLVING THE RESPONDENT WAS NOT UNDULY PREJUDICIAL.

This court has held that a referee's recommendations as to findings of fact and recommendations of guilt are presumed correct. Specifically, this court, in The Florida Bar v. Benchimol, 21 Fla. L. Weekly S226, 227 (Fla. May 23, 1996), has stated:

> 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. Florida Bar v. Vannier, 498 So. 2d 896, 898 (Fla. 1986). If the findings of the referee are supported by competent, substantial evidence, this Court is precluded from reweighing the evidence and substituting its judgement for that of the referee. Florida Bar v. MacMillan, 600 So. 2d 457, 459 (Fla. 1992). 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. Florida Bar v. Miele, 605 So. 2d 866, 868 (Fla. 1992).

If this court has entered an order in the case that was the subject of B-Ex. 42, this court will be aware of this decision in rendering its opinion in this case and give it due consideration

in determining the appropriate level of discipline to impose here. The bar submits that providing the referee with the nonfinal report of referee, if an error, was a harmless one. In fact, it is not uncommon for the same referee to be appointed to hear more than one disciplinary case against an accused attorney. At times, a referee will hear a second case against a respondent before a final order has been issued by this court in the first case. In these instances, the referee clearly knows the facts and his or her recommendations in the first case while considering what those recommendations will be in the second case. Similarly, in bar cases involving criminal convictions, recommendations are often made where the underlying criminal case is still pending on appeal.

In the present case, the referee was aware that B-Ex. 42 was not a final ruling and that the matter was still pending before this court and admitted it into evidence over the respondent's objection with this understanding (T p. 115). Granted, the nonfinal report of referee did not constitute cumulative misconduct because such cannot exist until after this court issues its ruling, The Florida Bar v. Inglis, 660 So. 2d 697, 700

(Fla. 1995). However, a review of the referee's report shows that the referee considered many factors in arriving at his recommendation for a one year suspension, and the respondent's nonfinal case, (B-Ex. 42), was only one of those factors considered.

Specifically, the referee considered several aggravating factors as noted in 9.22 of the Florida Standards for Imposing Lawyer Sanctions. The referee considered the respondent's two prior discipline cases which constitute cumulative misconduct. First, in The Florida Bar v. Jordan, TFB Case No. 92-30,198(18C), the respondent was admonished after entering into an improper business transaction with a client. Second, in The Florida Bar v. Jordan, 617 So. 2d 321 (Fla. 1993), the respondent was publicly reprimanded for neglecting a legal matter and incompetently representing a client. These cases alone would warrant the imposition of a harsher discipline than the respondent's present misconduct, considered in isolation, might otherwise warrant, The Florida Bar v. Bartlett, 509 So. 2d 287 (Fla. 1987). "...[C]umulative misconduct can be found when the misconduct occurs near in time to the other offenses, regardless

of when the discipline is imposed," The Florida Bar v. Adler, 589 So. 2d 899, 900 (Fla. 1991), citing Florida Bar v. Golden, 566 So. 2d 1286, 1287 (Fla. 1990).

Also in aggravation, the referee considered the pattern of the respondent's misconduct by repeatedly failing to comply with requests that he: (1) return documents to his client; and (2) provide status updates. Moreover, the referee noted the respondent's pattern of misconduct in that the respondent had failed to respond to the bar in another disciplinary matter and had similarly also failed to respond to an appellate court's Order to Show Cause. By failing to comply with several ethical obligations, the referee found the respondent triggered, as further aggravation, the "multiple offense" factor. Furthermore, the referee noted in additional aggravation that the respondent falsely testified before the referee that he had not received various court orders. The referee's acknowledgment that the respondent had substantial experience in the law as he had practiced law since 1980, was yet another aggravating factor. Finally, an accused attorney's failure to participate in the disciplinary process when he or she is accused of engaging in

misconduct, such as the respondent's failure to respond to this matter, calls into serious question the lawyer's fitness to practice law, Bartlett, supra, especially when, as here, one of the allegations is the attorney's failure to communicate with a client and his or her neglect of the client's case. These numerous aggravating factors (RR-A p. 5), combined with the case law, strongly support a suspension requiring proof of rehabilitation as the most appropriate recommendation.

POINT III

THE REFEREE'S RECOMMENDATION OF A ONE YEAR SUSPENSION IS APPROPRIATE GIVEN THE FACTS AND THE RESPONDENT'S PRIOR DISCIPLINARY HISTORY.

The bar submits the case law and the Florida Standards for Imposing Lawyer Sanctions support a one year suspension in this case. The respondent's negligent conduct could have resulted in prejudice to Mr. Flowers who, as an inmate, was not in a position to easily supervise the respondent's handling of his case. The client could only rely on what the respondent told him and the respondent was not communicating with him. In fact, the respondent was so out of touch with his client and the case that he was not even aware Mr. Flowers had hired another attorney to handle the appeal (T p. 80).

The respondent admitted he failed to preserve his client's appellate rights because he could not prove he had filed the initial brief with the clerk's office (T p. 73). It was fortunate that the new attorney was able to have the appeal reinstated (T p. 80). "...[A]s a general rule a suspension is appropriate when an attorney is found guilty of misconduct that

causes injury or potential injury to the legal system or to the profession and that misconduct is similar to that for which the attorney has been disciplined in the past," The Florida Bar v. Grigsby, 641 So. 2d 1341, 1343 (Fla. 1994).

In The Florida Bar v. Fussell, 474 So. 2d 210 (Fla. 1985), a lawyer was suspended for one year for neglecting a legal matter and divulging confidential information concerning the representation of a client. The bar filed a three count complaint against Mr. Fussell. In the first count, Mr. Fussell was found to have undertaken the representation of a client in a motion for post conviction relief. He failed to timely file the motion despite the grievance committee investigation conducted after the client complained of the neglect. Mr. Fussell promised the committee he would immediately file the motion but he failed to do so. Only after the client terminated his services did Mr. Fussell file the motion for which the client had already paid him.

In the second count, Mr. Fussell was found to have undertaken the representation of a client in a criminal case.

During the course of the representation, he learned his client had cooperated with the authorities and, without his client's consent, Mr. Fussell divulged this information to a third person. In the third count, which was based on the attorney's representation of the same client in the same matter as count two, Mr. Fussell promised the client he would file a motion for reduction of sentence but failed to so. The client eventually filed his own motion and terminated the lawyer's services because he had taken no substantial action on the case. The attorney had a prior disciplinary history and substantial experience in the practice of law. In mitigation, the referee considered the number of years that passed between past disciplinary violations, the attorney's health problems, and his character and years of service. Additionally, there was a delay in the bar's proceedings that was not the fault of the accused lawyer.

A lawyer was suspended for one year in The Florida Bar v. Sheldon, 446 So. 2d 1081 (Fla. 1984), for neglect and misrepresentation in a two count complaint. In the first count, the attorney received a sum of money from a client and advised her he would deposit it into a bank account he would open for the

estate of the deceased. Mr. Sheldon failed to open the account or deposit the funds in a trust account but he did return the money to the client upon demand. Mr. Sheldon also held two checks made payable to the estate for over one year without depositing or cashing them. In the second count, Mr. Sheldon agreed to draw a new will for the same client after he was unable to locate the ones he had previously drafted for her and her deceased husband but he then failed to do anything further for a period of eight months. Mr. Sheldon finally found the old wills and returned them to her.

A one year suspension was ordered in The Florida Bar v. Gunther, 390 So. 2d 1192 (Fla. 1980), due to a lawyer's inaction in completing the incorporation of a business. Mr. Gunther had been hired by the client to form a corporation and was paid his fee in advance. He drafted and filed the articles of incorporation naming himself the sole director and incorporator. Mr. Gunther failed to notify his client that the Secretary of State had granted the charter and he failed to return his client's repeated calls. Additionally, Mr. Gunther failed to issue the required shares of stock or name the client as

president of the corporation as he was directed to do.

In The Florida Bar v. Seidler, 375 So. 2d 849 (Fla. 1979), a lawyer was suspended for one year for neglecting multiple client matters. The lawyer admitted all the allegations contained in the bar's one count and five count complaints filed in two matters that were not consolidated until the appellate stage. In the first case, Mr. Seidler and the grievance committee agreed that his admission of guilt would be based upon a recommendation of a six month suspension. Mr. Seidler had failed to appear on a client's behalf, failed to turn over documents requested by the client, failed to account for trust funds regarding a real estate matter, and issued a worthless check that he failed to pay upon demand.

In the second case, Mr. Seidler had been retained to handle a bankruptcy case but took no action. He agreed to represent a client in a county court action that was connected to a personal injury matter he had handled for the client but he failed to appear at the county court trial. As a result, a judgment was entered against the client. Mr. Seidler was retained to

represent a client in a divorce matter but failed to attend a calendar call resulting in the client's pleadings being struck and then failed to attend the final hearing. When the client finally learned from her former husband, rather than from Mr. Seidler, that the final judgment had been entered, she called Mr. Seidler and he advised her for the first time that he had turned her case over to another attorney. The client then retained other counsel who requested Mr. Seidler to turn over the file which he refused to do. Mr. Seidler also received funds from the client for the purpose of deposing the opposing party but he never held the deposition and he failed to return the cost deposit.

The referee recommended a one year suspension to run concurrent with the agreed to six month suspension in the first case. Because Mr. Seidler had voluntarily ceased the practice of law, his term of suspension commenced on the date he had ceased practicing law rather than the date of this court's final order. In mitigation, Mr. Seidler was suffering from marital and psychiatric problems. He also argued, without success, that the two matters should have been consolidated at the referee level so

that one referee could have considered them and possibly entered a lesser term of suspension. In rendering his report, the referee noted that he was aware of the first case and had considered it in making his recommendation.

A one year suspension was imposed on an attorney who neglected two appeals in The Florida Bar v. Reed, 299 So. 2d 583 (Fla. 1974). In the first case, Mr. Reed was retained by a client who had been convicted of a criminal charge in municipal court. The client wanted to appeal the judgment but there was little time remaining to file the notice of appeal because the client did not seek his services right away. Mr. Reed assured the client the time period for filing the notice of appeal was longer than the client believed. However, Mr. Reed was incorrect and, as a result, he filed an untimely notice of appeal that was dismissed. In defense of the bar proceeding, Mr. Reed argued that the money the client had paid him was not for the appeal but for the incorporation of a business. The referee, similar to the referee's determination regarding the respondent in the case at bar, found the lawyer's testimony to be noncredible.

In another matter, Mr. Reed was hired to handle a criminal matter concerning the same client in municipal court. The client was convicted and the attorney filed a timely notice of appeal. Mr. Reed then failed to file instructions to the clerk of the municipal court to perfect the appeal and he also failed to file the initial brief. As a result, the appeal was dismissed. The referee found that the evidence presented at the bar's final hearing indicated the attorney was not competent to handle appellate matters.

In The Florida Bar v. Zokvic, 216 So. 2d 208 (Fla. 1968), a lawyer was suspended for two years after he failed to secure the entry of a final judgment in a dissolution of marriage case in which the trial judge advised the attorney he would enter his judgment after the testimony was transcribed. The attorney had a prior disciplinary history for engaging in similar misconduct.

The Florida Standards for Imposing Lawyer Sanctions also call for a suspension in this case. Standard 4.42(a), Lack of Diligence, calls for a period of 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) also calls for a suspension when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. The referee found that the respondent failed to use due diligence in representing Mr. Flowers.

Standard 4.52, Lack of Competence, states that a suspension is appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client. The referee found that the respondent in this matter failed to competently preserve his client's appellate rights.

Additionally, pursuant to Standard 6.22, Abuse of the Legal Process, the respondent's conduct merits a suspension as he knowingly violated a court order or rule, e.g., the referee found the respondent's testimony that he did not receive the Order to Show Cause to be untruthful, which caused injury or potential injury to the client. Moreover, as described in Point II above, the referee determined that the respondent triggered several aggravating factors. In contrast, the referee found that there

were no mitigating factors which could be used to offset the gravity of the respondent's misconduct.

The respondent's prior disciplinary history consists of an admonishment for minor misconduct in The Florida Bar v. Jordan, TFB Case No. 92-30,198(18C). There, the respondent entered into a business relationship with a client without first advising her in writing to seek the advice of independent counsel. The client agreed to advance to the respondent money for the expenses of his non-law related business. A dispute later arose as to how much the client was owed for reimbursement of this loan. In The Florida Bar v. Jordan, 617 So. 2d 321 (Fla. 1993), the respondent was publicly reprimanded for like misconduct in the case at bar, for neglecting an appeal in a criminal case.

The purposes of lawyer discipline consists of three objectives: it must protect the public in a manner that is fair to society, it must be fair to the accused lawyer, and it must serve to deter other like-minded attorneys from engaging in similar acts of misconduct, The Florida Bar v. Benchimol, 21 Fla. L. Weekly S226 (Fla. May 23, 1996). The bar submits that a one

year suspension with proof of rehabilitation would best serve these purposes. It would protect the public from a lawyer who does not appear to fully appreciate the importance of communicating with his clients, supervising his office procedures, and ensuring that he has in effect measures to guarantee that his workload is manageable so that no client's case is neglected. The public would not be denied the services of a qualified attorney because of the rapid growth in the bar's membership in recent years. Additionally, it would encourage the respondent to resolve the problems that have led him to neglect client matters by forcing him to prove to a referee in a separate hearing that he has taken the appropriate steps to correct his poor office, communication and management skills. Finally, it would put other bar members on notice that an attorney will suffer sanctions if he or she fails to: (1) use due diligence; (2) expedite the client's litigation; (3) adequately communicate with the client; (4) provide competent representation; and (5) respond to the bar in writing when required to do so.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendation of a one year suspension and approve same and tax costs against the respondent currently totaling $1,910.04.

Respectfully submitted,

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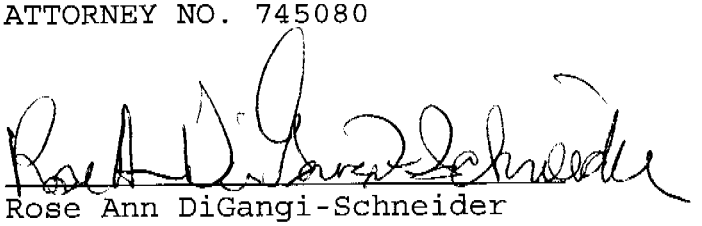
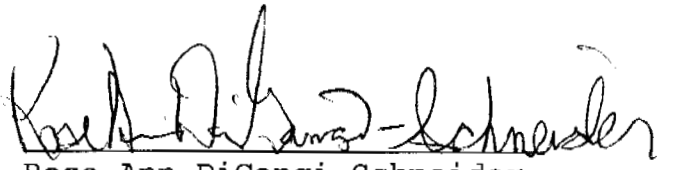
By: 

Rose Ann DiGangi-Schneider
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Initial 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's counsel, Patricia S. Etkin, Weiss & Etkin, 8181 West Broward Boulevard, Suite 262, Plantation, Florida 33324-2049; 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 25th day of June, 1996.

Respectfully submitted,



Rose Ann DiGangi-Schneider
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 86,271
[TFB Case No. 95-30,223(18C)]

v.

ROBERT PAUL JORDAN,

Respondent.
_____/

APPENDIX TO COMPLAINANT'S INITIAL BRIEF

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 86,271
[TFB Case No. 95-30,223 (18C)]

v.

ROBERT PAUL 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, a hearing was held on December 5, 1995. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar — Rose Ann DiGangi

For The Respondent — In pro se

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

1. The Respondent, Robert Paul Jordan, II, is and at all times hereinafter mentioned, was a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating The Florida Bar.

2. The Respondent resided and practiced law in Brevard County, florida, at all times material. The Respondent's record Bar address has not changed since before he filed his Notice of Appeal in this case in 1991.

3. On or about June 25, 1991, Jacob and Isabelle Flowers retained the Respondent to represent their son, Lawrence Flowers, Sr., who was incarcerated in prison. The Flowers paid the Respondent $1,500.00 to represent their son at a post-conviction relief hearing scheduled by the trial court.

4. Mr. Flowers' original appeal had been unsuccessful and he subsequently filed, on his own, a motion for post conviction relief under Fla. R. Crim. P. 3.850. An evidentiary hearing on Mr. Flowers' motion had been granted prior to the respondent being retained in the case.

5. At a hearing on or about October 23, 1991, the trial court verbally denied Mr. Flowers' motion for post conviction relief. On October 29, 1991, the trial court issued a written order reflecting the denial of Mr. Flowers' motion. The Respondent was listed on the order as being forwarded a copy of same. Mr. Flowers was given thirty (30) days to appeal the order.

6. The Respondent filed a Notice of Appeal on Mr. Flower's behalf on November 20, 1991. However, the Respondent did not take any immediate steps to further prosecute Mr. Flowers' appeal.

7. On August 27, 1992, the Forth District Court of Appeal issued an order directing Mr. Flowers to show cause in writing, on or before September 11, 1992, why his appeal should not be dismissed for lack of timely prosecution. The Respondent filed a response dated September 11, 1992, to the appellate court's rule to show cause and stated that no written order had been issued by the lower court. The Respondent requested the appellate court to direct the lower court to issue an order setting forth the reasons for the denial of the post conviction relief motion so that the appellant could properly prosecute the appeal.

8. The Fourth District Court of Appeal accepted the Respondent's representation that the trial court had not issued a written order and, by order dated September 25, 1992, the appellate court abated Mr. Flowers' appeal and relinquished jurisdiction for thirty (30) days in order to allow the lower court to issue its final written order.

9. On November 9, 1992, the Attorney General's office filed a motion to dismiss Mr. Flowers' appeal for lack of prosecution. The motion stated that, contrary to the Respondent's representation, the trial court's written order of denial was signed and filed on October 29, 1991. Therefore, there was no valid reason why the appeal should not be dismissed for lack of prosecution.

10. The Respondent filed a response to the motion to dismiss on November 30, 1992. The Respondent stated in his response that he never received a copy of the trial court's written order despite the certificate of service showing it was forwarded to the appellant's attorney. The Respondent indicated that copies of the transcript were ordered to be forwarded to the appellate court so that the appeal could be prosecuted.

11. By order dated December 15, 1992, the Appellate Court denied the Attorney General's Motion to Dismiss and directed Mr. Flowers to file his initial brief within thirty (30) days of the order. The Respondent was listed on the order as being forwarded a copy of same. The Respondent testified he did not receive this order.

12. The Respondent did not file an initial brief on Mr. Flowers' behalf as directed by the Appellate Court nor did he take any other action to prefect the appeal.

13. By order dated April 29, 1991, the Appellate Court directed Mr. Jordon to show cause, within fifteen (15) days, why the appeal should not be dismissed. The order indicated a copy was forwarded to the Respondent, however, he failed to respond to the appellate court's show cause order. The Respondent testified that he did not receive this order.

14. On May 27, 1993, the Fourth District Court of Appeal ordered, sua sponte, that Mr. Flowers' appeal be dismissed. The written order indicated that a copy of same was forwarded to the respondent. The Respondent testified that he did not receive this order.

15. In this case, as in all non-jury matters, the trial court must evaluate the credibility of the witnesses. Mr. Jordan, the Respondent, has testified that he received various orders from the District Court including the Acknowledgement of Appeal, the court's Order to Show Cause dated August 27, 1992, and the court's order of September 25, 1992, relinquishing jurisdiction to the trial court. He testified that all of these orders were sent to him at his office address. He further testified that he did not receive the District Court's order of December 15, 1992 which denied the Attorney General's Motion to Dismiss and ordered him to file his initial brief within thirty (30) days, the court's Order to Show Cause of April 29, 1993, and the court's order dismissing the appeal on May 27, 1993. Each of these orders indicate that they were sent to the Respondent and the evidence shows that his Florida Bar address has remained consistent throughout these proceedings. The evidence reflects that although the Respondent received the two requests from the Florida Bar concerning Mr. Flowers' complaints that he failed to respond to these requests. In a prior disciplinary case against the Respondent, The Florida Bar v. Robert P. Jordan, II, Case No. 79-1999, the report of the referee shows that the Respondent acted in a similar manner by failing to respond to an Order to Show Cause which resulted in a dismissal of an appeal before the Fifth District Court. The referee has had the opportunity to observe the Respondent while testifying and having considered all the evidence presented finds that the Respondent is not being truthful when he states that he did not receive the trial court's order of October 29, 1991, denying the motion for post conviction relief, the District Court's order of December 15, 1992, the District Court's Order to Show Cause dated April 29, 1993, and the District Court's Order of Dismissal dated May 27, 1993.

16. The Respondent did not inform Mr. Flowers of the dismissal of his appeal. Mr. Flowers first learned of the dismissal after he filed a request for information and copies of documents on August 12, 1993, with the Fourth District Court of Appeal.

17. Mr. Flowers and his family made numerous requests for the Respondent to visit with Mr.

Flowers in jail and/or inform him as to the status of the appeal. The Respondent did not adequately communicate with Mr. Flowers or his family concerning the appeal nor did he meet with his client in jail to discuss the case. On July 1, 1991, Lawrence Flowers, Sr. provided the Respondent, Robert Paul Jordan, II, with various documents from his appeal. After that time both Mr. Flowers and his parents made various requests to have these documents returned to them including a letter from Lawrence Flowers, Sr. to Respondent dated November 4, 1992, requesting in part a return of the documents; a letter from Jere Spearman to the respondent dated November 12, 1992, requesting a return of the documents; a letter from Jacob and Isabelle Flowers dated July 8, 1993, requesting in part a return of the documents; a meeting between Jacob and Isabelle Flowers and the Respondent on or about July 13, 1993, in which they requested the return of the documents; and a letter of August 10, 1993, from Jacob and Isabelle Flowers in part requesting return of the documents. Although continuous requests have been made, as of the date of the hearing, Mr. Jordan had not returned the documents to Mr. Flowers, his parents, or his sister.

18. The Respondent failed to timely and diligently perfect Mr. Flowers' appeal, to adequately communicate with his client, or to otherwise take steps necessary to protect his client's appellate rights.

19. As part of it's investigation and inquiry the Florida Bar wrote to the Respondent on August 19, 1994 and again on September 26, 1994. The Respondent failed to respond in writing to Mr. Flowers' complaints despite these two requests by the Bar.

III. **Recommendations as to Whether or Not the Respondent Should Be Found Guilty:** As to each count of the complaint, I make the following recommendation as to guilt or innocence:

As to the Rule 4-1.1, I recommend that the Respondent be found guilty for failing to provide competent representation to a client.

As to Rule 4-1.3, I recommend that the Respondent be found guilty for failing to act with reasonable diligence and promptness in representing a client.

As to Rule 4-1.4, I recommend that the Respondent be found guilty for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information, and failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

As to Rule 4-3.2, I recommend that the Respondent be found guilty for failing to expedite litigation consistent with the interests of the client.

As to Rule 4-8.4(g), I recommend that the Respondent be found guilty for failing to respond, in writing, to any inquiry by a disciplinary agency when such agency is conducting an investigation into the lawyer' s conduct.

IV. Rule Violations Found:

See Section III above.

V. Recommendation as to Disciplinary Measures to be Applied:

I find Standards 4.42, 4.52, 6.22, and 7.2 of the Florida Standards for Imposing Lawyer Sanctions are applicable in this matter. I have considered in aggravation the following subsections of Standards 9.22 of the Florida Standards for Imposing Lawyer Sanctions:

(a) an Admonishment for Minor Misconduct in 1992, a Public Reprimand in 1993, and a proposed suspension in Cases 94-30,926 and 94-31,229 which is now pending before the Florida Supreme Court;

(b) a pattern of misconduct in that the Respondent was asked several times to return copies of documents to his client and to provide status up-dates which the Respondent failed to do. In addition, a review of the Respondent's prior disciplinary actions shows a pattern of failing to reply to inquires from the Florida Bar and prior failure to comply with a District Court's order requiring him to show cause why an appeal should not be dismissed;

(c) multiple offense in that the Respondent failed to meet more than one ethical obligation;

(d) bad faith in that the Respondent intentionally failed to respond to the disciplinary agency;

(e) submission of false statements during the hearing before the referee on the issues of whether he received the various court's orders; and

(f) substantial experience in the practice of law in that the Respondent has been a member of the bar since 1980.

I find there are no mitigating factors in this case.

After review of The Florida Bar v. Neely, 471 So.2d 957 (Fla. 1982); The Florida Bar v. Rolle, 661 So.2d 301 (Fla. 1995); The Florida Bar v. Rolle, 661 So.2d 296 (Fla. 1995); The Florida Bar v. Grosso, Case No. 82,776 (Fla. 1994), a copy of which is attached hereto as Appendix "A"; The Florida Bar v. Barley, 541 So.2d 606 (Fla. 1989); The Florida Bar v. Golden, 566 So.2d 1286 (Fla. 1990), and Petition of Wolf, 257 So.2d 547 (Fla. 1972); and in view of the above standards, I recommend the Respondent receive a one (1) year suspension and that he be required to pay all costs associated with this proceeding. Additionally, I believe that it is essential that the Respondent be required to show of rehabilitation before being readmitted to the Florida Bar and if and when he is remitted that he be required to practice under another attorney's supervision to insure that his office practices and record keeping are appropriate.

VI. **Personal History and Past Disciplinary Record**: After the finding of guilt 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: 41
Date admitted to the Florida Bar: April 11, 1980
Prior Disciplinary convictions and disciplinary measures imposed therein:

The Florida Bar v. Jordan, TBF Case No. 92-30,198 (18C) - Admonishment for entering into an improper business transaction with a client.

The Florida Bar v. Jordan, 617 So.2d 321 (Fla. 1993) - Public reprimand for neglect and incompetent representation.

The Florida Bar v. Jordan, Case No. 94-30,962 and 94-31,229 (1994) - This case is currently pending before the Court and there has been a recommendation of one month suspension.

VII. **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	$203.00
	2. Bar Counsel Travel Costs	53.84
B.	Referee Level Costs	
	1. Transcript Costs	$801.80
	2. Bar Counsel Travel Costs	88.90
C.	Administrative Costs	$750.00
D.	Miscellaneous Costs	
	1. Investigator Expenses	$ 0.00
	2. Copy costs	12.50
	TOTAL ITEMIZED COSTS:	$1,910.04

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 thirty (30) days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Date this 24 day of January, 1996.

PAUL B. KANAREK, Referee

Original to Supreme Court with Referee's Original File.

Copies of this report of Referee only to:

Ms. Rose Ann DiGangi, Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida, 32801

Mr. Robert Paul Jordan, II, 1501 Robert J. Conlan Boulevard, N.E., Suite 100, Palm Bay, Florida, 32905

Mr. John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300