IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR Complainant, v. KEITH M. KRASNOVE, Respondent.	CASE NO. *86,666* TFB NO. 95-50,144(17G)

INITIAL BRIEF OF RESPONDENT

RICHARD A. GREENBERG
325 West Park Avenue
Post Office Box 925
Tallahassee, Florida 32302
(904) 681-9848/fax (904) 224-9800
FL Bar No. 0382371

Counsel for Respondent KRASNOVE

A. TABLE OF CONTENTS

B. TABLE OF CITATIONS

1. Cases **Page**

2. Statutes

3. Other Authorities

C. PRELIMINARY STATEMENT

References to the transcripts of the final hearing will be by the designated volume number and page number. For example, Tr.I-31.

References to the report of referee will be by the designation RR.

The Florida Bar may be referred to as "the Bar."

D. STATEMENT OF THE CASE

On October 19, 1995, The Florida Bar filed a four count complaint against Respondent. All four counts of the complaint arose out of Respondent's representation of Candace Holiday in a products liability claim.

Respondent's answer to the complaint was filed on December 28, 1995. The answer admitted some factual matters set forth in the complaint, denied others, and specifically denied all allegations Respondent violated any of the Rules Regulating the Florida Bar.

The Honorable Karen L. Martin was appointed to serve as referee on November 1, 1995.

Upon completion of pre-trial discovery and motions, the case proceeded to final hearing on June 13-14 and June 17, 1996.

Subsequent to the final hearing, The Florida Bar filed a notice of withdrawal of partial exhibit on June 25, 1996. The notice of withdrawal conceded the Bar improperly attached a copy of the Respondent's prior private reprimand for minor misconduct to Bar's Exhibit 16.

On July 15, 1996, the referee issued a report of referee. As to all counts, the referee found Respondent effected a settlement of Ms. Holiday's personal injury claim in November 1993 for the sum of $13,460.00. Upon settling the claim,

Respondent and Ms. Holiday agreed that each of them would receive 33% ($4,441.80) of the gross settlement proceeds with the remaining 34% ($4,576.40) to be distributed to Ms. Holiday's health care providers. (RR, p.2).

On November 24, 1993, Respondent and Ms. Holiday deposited the settlement check into Respondent's operating account at Citibank of Coral Springs, Florida. Respondent then issued a check from the operating account in the sum of $4,441.80 to Ms. Holiday postdated November 26, 1993. Ms. Holiday cashed this check on November 26, 1993. (RR, p.2).

As to count I, the referee found that as of November 9, 1993, Respondent had not applied any of the 34% of the settlement proceeds deposited into his operating account towards payment of Ms. Holiday's health care providers. By December 9, 1993, Respondent had applied the entire $4,576.40 entrusted to him for the purpose of payment of Ms. Holiday's health care providers to his own personal uses. (RR, p.3).

As to count II, the referee found the agreement reached between Respondent and Ms. Holiday regarding distribution of the settlement proceeds was not reduced to writing by Respondent who neither prepared nor maintained a closing statement reflecting an itemization of the costs, expenses and legal fees nor the remittance to Ms. Holiday and the method of the determination thereof. (RR, p.4).

As to count III, the referee found that between November 24, 1993, and August 1994, Respondent initiated no communications to Ms. Holiday concerning the application of the $4,576.40. In addition, the referee found that between the aforementioned dates Ms. Holiday was dunned by the health care providers who were to receive payment from Respondent from the $4,576.40 entrusted to Respondent. (RR, p.4).

The referee then found that upon being dunned, Ms. Holiday communicated with Respondent's office in an attempt to ascertain the status of Respondent's payment of the $4,576.40. The referee found Respondent failed to respond to Ms. Holiday's request for status reports. (RR, pp.4-5).

According to the report of referee, it was only after August 9, 1994, the date Respondent received a copy of the complaint filed by Ms. Holiday, that Respondent made any distribution of the $4,576.40. The health care providers were all paid in full by December 20, 1994. (RR, p.5).

As to count IV, the referee found Respondent failed to properly maintain bank deposit slips, failed to keep a cash receipts and disbursements journal and failed to do monthly and annual reconciliations of his trust account maintained at First Union National Bank for the period November 1, 1993, to November 30, 1994. In addition, the referee found Respondent failed to keep complete records of Ms.

Holiday's settlement funds. (RR, pp.5-6).

In Section III of the report of referee, the referee made recommendations as to whether the Respondent should be found guilty. As to count I, the referee recommended Respondent be found guilty of violating Rules 4-1.15(a), 4-1.15(d), 4-8.4(c) and 5-1.1(a), R. Regulating Fla. Bar. (RR, pp.6-7).

As to count 11, the referee recommended Respondent be found guilty of violating Rules 4-1.5(f)(1) and 4-1.5(f)(5), R. Regulating Fla. Bar. (RR, p.7).

As to count 111, the referee recommended Respondent be found guilty of violating Rules 4-1.2(a), 4-1.4(a) and 4-8.4(c), R. Regulating Fla. Bar. (RR, pp.7-8).

As to count IV, the referee recommended Respondent be found guilty of violating Rules 4-1.15(a), 4-1.15(d), 5-1.2(b)(2), 5-1.2(b)(5), 5-1.2(c)(1)(B) and 5-1.2(c)(2), R. Regulating Fla. Bar. (RR, pp.8-9).

The referee then recommended Respondent be suspended from the practice of law for a period of three (3) years and thereafter until Respondent shall prove rehabilitation, pay the costs of the proceedings and pass the ethics portion of The Florida Bar examination. In arriving at this recommendation, the referee considered the aggravating factors of prior disciplinary offense; multiple offenses; and substantial experience in the practice of law. As mitigating factors, the referee

considered the factors of restitution having been made in full; full and free disclosure to the disciplinary board; character or reputation; and remorse. (RR, pp.9-10).

The report of referee concluded the mitigating factors rebut the presumption for disbarment which arises in a case of misuse or misappropriation of client funds. The referee was "satisfied that the recommended disciplinary measure is necessary to meet the Court's criterion for appropriate sanctions: attorney discipline must protect the public from unethical conduct and have a deterrent effect while still being fair to Respondent. *The Florida* Bar *v. Pahules*, 233 So.2d 130 (Fla. 1970). Any lesser discipline than that recommended would not sufficiently protect the public and have the necessary deterrent effect." (RR, pp. 10-11).

Subsequent to the issuance of the report of referee, Respondent filed *pro se* a motion for rehearing and motion for enlargement of time to file additional basis for motion for rehearing. The main thrust of the motion for rehearing was Respondent's contention he was denied due process of law based upon the failure of Bar counsel to provide any notice pre-trial that Ms. Holiday would give testimony regarding sexual indiscretions allegedly committed by Respondent with Ms. Holiday.

On August 2, 1996, The Florida Bar filed its objection to Respondent's

motion for rehearing and motion for enlargement of time to file additional basis for rehearing. The Florida Bar first pointed out "Respondent is correct that The Florida Bar did not charge him with inappropriate sexual contact with a client. The subject testimony was introduced at trial to show motive, and for purposes of impeachment. As such, the testimony is not subject to being stricken, nor is the matter subject to rehearing. "

The Florida Bar further argued Respondent had opened the door to testimony of an alleged sexual relationship with Ms. Holiday by "falsely testifying about his relationship with Ms. Holiday, as well as about the ***pro bono*** work he did for her." In addition, the Bar asserted "bar counsel had no obligation to advise respondent what Ms. Holiday's testimony might be as she had no knowledge that respondent would falsely testify as he did. "

Finally, the Bar asserted it "was compelled to impeach [Respondent] with Ms. Holiday's testimony" in light of Respondent raising the issue of his prior representations of Ms. Holiday.

On August 26, 1996, the referee granted Respondent's motion for enlargement of time to file additional basis for rehearing. Respondent then filed a second motion for rehearing. The second motion for rehearing raised three additional grounds.

The first ground raised was that the referee misapplied the aggravating factor of multiple offenses found in Florida Standards for Imposing Lawyer Sanctions, Standard 9.22, (Hereinafter "Standards") .

The second ground raised was that the referee had overlooked the exact language set forth by this Court as to the purposes to be served by imposing sanctions for unethical conduct. The report of referee failed to note that discipline for unethical conduct must not deny the public the services of a qualified lawyer as a result of undue harshness in imposing a penalty.

Finally, the motion for rehearing asserted the referee erroneously determined Respondent to be guilty of violating Rule 4-8.4(c) as to counts I and III of the complaint.

By order dated September 30, 1996, the referee denied Respondent's motions for rehearing. The referee did note, however, the report of referee needed to be clarified by noting "the Referee has disregarded allegations concerning alleged sexual misconduct with Candace Holiday finding the alleged misconduct not relevant to the Referee's decision,"

A petition for review was timely filed by Respondent and this appeal ensued.

E. STATEMENT OF THE FACTS

The final hearing began with the testimony of Respondent, Keith M. Krasnove. Mr. Krasnove testified he met Ms. Holiday somewhere around December 1990, at the Seminar (phonetic) Lounge where she was working as a topless dancer. (Tr. 1-25).

About six (6) weeks after meeting Ms. Holiday, Respondent began his first legal representation of her in a DUI case. Ms. Holiday signed a retainer agreement (Respondent's Exhibit 4) in which she agreed to pay Respondent $2,800.00 for his services. (Tr.I-33). Ms. Holiday made an initial payment of $500.00, but never paid any additional fees to Respondent. (Tr.I-34).

Shortly after beginning to represent Ms. Holiday in the DUI case, Respondent began to represent her in a child custody matter. Respondent agreed to handle this matter for Ms. Holiday on a *pro bono* basis. (Tr.I-35-36). (Respondent's Exhibit 1).

According to Respondent, he agreed to handle this matter for Ms. Holiday on a ***pro bono*** basis because he "liked Ms. Holiday a lot. I was very sympathetic to her. At that time, in January 1991, actually the end of 1990, my relationship with my first wife had been strained and ultimately we got divorced. She decided that she loved someone else. And basically I became almost a friend to Ms. Holiday, and I assumed that she was a friend to me. Despite that fact, we had a professional

relationship which I made sure that she knew exactly what our responsibilities were and made sure that we had retainer agreements made." (Tr.I-38). (See Respondent's Exhibits 1, 4, and 6).

The next matter Respondent handled for Ms. Holiday was representing her after she was injured when a staircase collapsed at Atlantic Vocational School. (Tr.I-44). Respondent's representation of Ms. Holiday in this matter began on March 18, 1993. (See Respondent's Exhibit 6).

In November 1993, the case was settled for $13,460.00. When Respondent received the settlement check, he met with Ms. Holiday in his office. At that time, he told her he would, need to deposit the check into his trust account and she would have to wait approximately five (5) working days to get her portion of the settlement proceeds. Ms. Holiday told Respondent she wanted the money immediately. (Tr.I-46-47). Ms. Holiday told Respondent she needed the'money because she had been out of work, she had no health insurance, she was behind in money for her kids, and she needed to get the money that day or soon after. (Tr.I-48).

Respondent then proceeded to go with Ms. Holiday to a Citibank office (the same bank on which the check was drawn) in order to give Ms. Holiday her portion of the settlement proceeds, (Tr.I-49).

According to Respondent, he went to the Citibank, as opposed to the First

Union Bank where he had his trust account, because "[i]f I had gone to the First Union and deposited it and I had written a check on my trust account, Ms. Holiday would be getting somebody else's funds." (Tr.I-50).

During Respondent's representation of Ms. Holiday in the accident case, he did not sign any letters of protection in favor of Ms. Holiday's health care providers. (Tr.I-26). When the settlement proceeds were received, Respondent had a conversation with Ms. Holiday about paying the medical providers. At that time, Ms. Holiday was insistent that the medical providers not be paid in full because she wanted to get at least as much as the doctors got. (Tr.I-53-54). Respondent discussed with Ms. Holiday her obligation to pay her medical providers. Respondent pointed out the retainer agreement signed by Ms. Holiday "specifically says that the medical bills are the responsibility of the client, not the attorney." (Tr.I-56). (See Respondent's Exhibit 6).

After paying Ms. Holiday her portion of the settlement proceeds, Respondent relied upon his office staff to negotiate settlements with the different medical providers. (Tr.I-60). A problem arose, however, when Doctor Merkle, who was owed the largest amount for medical services, refused to reduce his bill to a level which would allow payment of all the medical providers. (Tr.I-61).

Respondent himself became actively involved in trying to negotiate the doctor

bills when he received a copy of Ms. Holiday's complaint to The Florida Bar. (Tr.I-66). At that time, Respondent "put as much pressure as we could on Doctor Merkle's office and they ultimately agreed to take not seventy-five percent, but they agreed to take eighty percent or somewhere around a little in excess of twenty-seven hundred dollars. " (Tr.I-67). Once settlement was reached with Doctor Merkle at eighty percent of his bill, Respondent settled with the other health care providers as well. (Tr.I-68). In order to do so, Respondent was compelled to personally pay two hundred fifty-eight dollars and sixty-one cents out of the one-third contingency fee he received in the case. (Tr.I-68).

Respondent also discussed Ms. Holiday's allegation she called his office in excess of twenty (20) times regarding the bills she was receiving from the various health care providers and that he never responded to her calls, According to Respondent, "I don't have one [sic.] knowledge of even one call. If -- and it would be impossible for me to believe because whenever she wanted to contact me, she had all of my numbers that she could contact me and if it was any kind of emergency situation, she would always be able to get ahold of me." (Tr.I-81).

When the allegation was made regarding not returning phone calls, Respondent looked through the message books in his office and asked his office staff if Ms. Holiday had called. He was unable to find any record of Ms. Holiday calling

his office. (Tr.I-82).

According to Respondent, in December 1993, he took money out of his operating account and placed it into an account at Schwab Brokerage Company. (Tr.I-107). Respondent moved the money into this account because he was "afraid that the funds would be dissipated if [he] left it in [his] office operating account." (Tr.I-109). Specifically, on December 22, 1993, Respondent wrote out a $4,000.00 check from Citibank and deposited it into the Schwab account. (Tr.I-113). Based upon this transaction, Respondent *'had an ability throughout the month of November and throughout the month of December with the various accounts that [he] had under [his] control to settle with the health care providers on any day for the amount that we had agreed on." (Tr.I-114).

During re-direct examination, Respondent was asked to describe his relationship with Ms. Holiday throughout the term of his representation of her. Respondent responded as follows:

> A: Well, I would say that in the beginning I was a good friend of Ms. Holiday. Then I became a person that had done a very good job on her DUI case and family law cases. And then I had assumed that we still had a residual friendly relationship since I had done so good for her. And over the last couple of months, I would say perhaps year, because of the nature of this case I made sure that I did not contact her except for one occasion and except for the

occasions that you required me to respond to her and, for whatever reason, she is very hostile now.

Q: Isn't it true, Mr. Krasnove, that you had a sexual relationship with Ms. Holiday while you represented her?

A: Absolutely not true. In fact, in fact, I might say that during the time that I represented Ms, Holiday, she had a live-in boyfriend who was residing with her at all times and if you wanted to verify that, all you would have to do is check the statements that were made to the guardian, including the statement made by Ms. Holiday. (Tr.I-131-132).

Candace Holiday then testified for the Bar. According to Ms. Holiday, she has danced nude for a living since she was about sixteen or seventeen years old. At the time of the final hearing, she was thirty-two years old. (Tr.I-142).

According to Ms. Holiday, she met Respondent in one of the strip bars she was working in about five or six years ago. (Tr.I-143). She then had Respondent represent her in seeking custody of her son because he was the only attorney she knew. (Tr.I-144).

Ms. Holiday then testified as to what occurred after her personal injury case settled in November 1993. According to Ms. Holiday, Respondent called her and said that he had received a check and he needed her signature. She then went to Respondent's office and drove to the bank with Respondent where she signed the

check in front of the tellers. The testimony continued as follows:

> **Q:** What did you get, if anything?
>
> A: I believe that day I possibly received a check, if not, two to three days later. It's a long time ago, but I do remember that Mr. Krasnove had given me a check.
>
> **Q:** Was there a meeting in Mr. Krasnove's office before you went to the bank as to how this check would be distributed between you and him?
>
> A: Yes. He was to get one third of the full amount and he would take out eighty percent of the medical bills. He told me that the doctors would settle for eighty percent of what's due to them and that I would get the rest.
>
> **Q:** Did you ask him to settle with your health care providers for you?
>
> A: No, he told me that he wanted to guarantee the money to get paid to the doctors that he took the money because he didn't trust me to pay the doctor bills. **(Tr.I-150-151).**

According to Ms. Holiday, Respondent told her he would pay the medical bills "right away." (Tr.I-152). Ms. Holiday then received phone calls from bill collectors and bills in the mail from the hospitals and from the hospital collection agency and another collection agency and Dr. Merkle's office. **(Tr.I-152).**

Ms. Holiday testified she called Respondent's office on a few occasions "and

asked why my bills weren't paid and they would tell me that he was in court. I called several times. The bills still weren't paid, and I heard him say -- he's got a very distinct voice -- and I heard him say, "Tell her I'm in court." **(Tr.I-153).**

Ms. Holiday was then asked if she knew who answered the phone when she called. She testified she honestly did not know. **(Tr.I-155).** She also testified she contacted Respondent's office quite often and was never able to speak to Respondent. (Tr.I-155).

During cross-examination, Ms. Holiday acknowledged she started going to doctors in the personal injury case before she ever contacted Respondent. In addition, she acknowledged she was receiving medical bills before Respondent was retained. **(Tr.II-209).** Ms. Holiday had no health insurance and knew she was going to be personally liable for these medical bills. **(Tr.II-210).** In regard to the settlement itself, Ms. Holiday testified as follows:

> **Q:** Now, the fact is, is it not, that after Mr. Krasnove got you this incredible settlement -- by the way, it was a spectacular settlement, wasn't it?
>
> A: He got a lot more money than I did.
>
> **Q:** He did?
>
> A: Didn't he?
>
> Q: He got more money than you? What do you mean?

How did that happen?

A: I don't understand. From my understanding, he took a third of the money and then paid the medical bills and then I got what was left over. Isn't that what happened? (Tr . II-2 11).

Subsequently, Ms. Holiday testified she knew that if Respondent took his one-third of the settlement and if the doctors and other health care providers were paid their fees she wouldn't have very much money left. Ms. Holiday testified this bothered her because she needed the money. (Tr .II-223). Ms. Holiday then testified as follows:

Q: You knew that by accepting the amount of money you got, almost forty-five hundred dollars, that the doctors weren't going to get all their money; true or false?

A: True.

Q: Okay. Now, that didn't stop you from taking your money, did it?

A: Sir, I gave four thousand dollars of that money to my mother because I owed it to her --

Q: I'm sure you did --

A: -- to pay off my debt.

Q: -- but my question was: That didn't stop you from taking the four thousand, almost forty-five hundred dollars, did it?

A: No. (Tr.II-225-226).

In regard to her ability to contact Respondent, Ms. Holiday testified she knew Respondent's home phone number and had called him at his house. (Tr.II-244). She also testified she had Respondent's cellular phone number and his beeper number. (Tr .II-245).

Stephanie Tagland, the record custodian for patient billing for Dr. Peter Merkle, then testified for the Bar. According to Ms. Tagland, on November 12, 1993, she spoke with Respondent's office and learned they were trying to settle Ms. Holiday's case. (Tr.II-290). The next note in Ms. Tagland's file was August 15, 1994. On that date, she spoke with Respondent and was asked if her office would accept a percent of Dr. Merkle's bill. (Tr.II-291). Her office then received payment on September 14, 1994. (Tr.II-292).

During cross-examination, Ms. Tagland acknowledged that someone could call her office, leave a message and she might not receive the message. (Tr.II-293). She also testified that in the general course of her practice she would more often speak to the staff of an attorney's office than to the attorney. (Tr.II-294).

According to Ms. Tagland, the total bill of Dr. Merkle prior to settling the case with Respondent was $3,496.82. The actual amount accepted by Dr. Merkle

from Respondent was $2,722.68. (Tr.II-295).

Melody Hull, the supervisor of the Patient Accounting Department at Northwest Medical Center, then testified. According to Ms. Hull, in July and August 1994, she had communications with Respondent's office regarding Ms, Holiday's bill. Ms. Holiday's bill had been sent to collections prior to August 1994. (Tr.II-298-299). The total bill originally sent to Ms. Holiday was $1,720.70. (Tr.II-299).

During cross-examination, Ms. Hull indicated the only records still available in her office were the general release they signed and the posting of the account payment into the bad debt ledger. (Tr.II-300). Ms. Hull was unable to provide a date the matter was sent to collection. She did indicate the services were provided to Ms. Holiday on March 9, 1993. In addition, the amount which was accepted in final payment was $1,376.56. (Tr.II-301).

William Luongo, Branch Staff Auditor for The Florida Bar, then presented his findings. According to Mr. Luongo, the balance in Respondent's Citibank operating account on the date the $13,460.00 was deposited was $1,403.59. (Tr.II-309).

In addition to examining Respondent's Citibank operating account, Mr. Luongo conducted a compliance audit of Respondent's trust accounts. Mr. Luongo

did not find any shortages in the trust accounts, however, he did find some technical violations. (Tr . II-3 11).

Mr. Luongo next testified as to the contents of Bar's Exhibit 12. Mr. Luongo prepared the chart to reflect the balances in Respondent's Citibank operating account. According to Mr. Luongo, the balance in the account was a negative balance of $12.13 on December 9, 1993. (Tr.II-316).

When asked how the balance became a negative amount, Mr. Luongo stated a number of checks were written out of the account for a variety of personal and business expenses. Mr. Luongo did not have a copy of any of these checks. (Tr.II-317).

Mr. Luongo was then asked how much money Respondent should have been holding in trust. He responded Respondent should have been holding at least forty-seven hundred dollars based upon what was actually paid on Ms. Holiday's medical bills in August and September 1994. (Tr.II-320-321).

Mr. Luongo was also asked if he had examined the account records for Respondent's Schwab account. He testified he reviewed the November 1993 through September 1994 statements on this account and noted no deposits into the account in November 1993, which was when he would have expected to see a transfer if somebody was using this account to set aside those funds from the other

account. There was, however, a deposit made into the Schwab account on December 22, 1993, in the amount of four thousand dollars which was a check drawn on the Citibank operating account. (Tr.II-326). Mr. Luongo's review of the Schwab account records also indicated there were transfers made out of this account in late 1994, around the time the medical providers were paid. (Tr.II-330).

During cross-examination, Mr. Luongo testified he first went to Respondent's office on December 7, 1994. (Tr.III-394). At that time, Respondent had available for Mr. Luongo's review the records for the Citibank account. Mr. Luongo then learned Respondent had an operating account at First Union Bank and an operating account at Great Western Bank. He asked to see those bank records and made an appointment to come back at a later date to see the records. When he returned to Respondent's office, Respondent had all the records for these accounts available for Mr. Luongo's review. (Tr.III-395).

Subsequently, The Florida Bar subpoenaed Respondent's trust account records. These records were also promptly produced to The Florida Bar. (Tr.III-396). In addition to these records, Respondent also provided The Florida Bar with the records on the Schwab account even though they were not requested by The Florida Bar. (Tr.III-397).

Mr. Luongo testified that in reviewing Respondent's trust account records he

found absolutely no shortages. In addition, he found absolutely no misappropriation of money from the trust account for the period of time covered by his audit. (Tr.III-397). Finally, Mr. Luongo testified the interest for Respondent's trust account was properly paid to The Florida Bar Foundation. (Tr.III-408).

Barbara Tweedy, the records custodian for patient billing at Medical Practice Consultants, then testified. According to Ms. Tweedy, her company no longer had records for Ms. Holiday so they contacted their outside collection agency and confirmed payment had been received on Ms. Holiday's account. (Tr.II-333).

During cross-examination, Ms. Tweedy testified the original bill was two hundred seventy dollars and they received two hundred sixteen dollars in payment. Ms. Tweedy also testified she had no phone records regarding Ms. Holiday's account. (Tr.II-336).

After the Bar rested, Respondent first called Adrianna Smith, one of his paralegals, to testify. According to Ms. Smith, she knew Ms. Holiday as a client of Respondent. She had seen Ms. Holiday in the office a few times. (Tr.III-420). She also knew Ms. Holiday from a period of time in February 1994 when Ms. Holiday actually worked at Respondent's law office. (Tr.III-421).

Ms. Smith was questioned about the issue of Respondent allegedly failing to return Ms. Holiday's telephone calls. According to Ms. Smith, Respondent asked

both her and another member of his office staff if they recalled receiving any messages from Ms. Holiday. They both said no. Respondent then said "Bring me the phone message books, the carbon copies of the messages" and Respondent went through them. (Tr.III-430). A review of the message books revealed no calls from Ms. Holiday. (Tr.III-463). In addition, neither Ms. Smith nor Tara, the other staff member, remembered receiving any phone calls from Ms. Holiday. (Tr.III-463).

Ms. Smith was also asked about what happened in Respondent's law office after the Bar complaint came in and it was obvious to Respondent, to Ms. Smith and to Tara Cohen that the health care providers had not been paid. Ms. Smith responded as follows:

> We were all concerned, and I really wasn't involved in every single detail in personal injury cases, but I do remember overhearing that they were all concerned. Mr. Krasnove went up to Tara and asked her why they weren't resolved, and I remember Tara explaining that she had been trying to negotiate with the medical providers and she was in the midst of doing so, but she hadn't done it yet. (Tr.III-464).

According to Ms. Smith, immediately after the complaint was received, Respondent, "got right on it and he got right on top of Tara to make sure that every medical provider was dealt with. " (Tr.III-465).

Iris Morales, a former secretary of Respondent, also testified. In regard to

the allegation Respondent failed to return telephone calls from Ms. Holiday, Ms. Morales testified as follows:

> Q: Did she [Ms. Holiday] ever seem shy or retiring or the type of woman who was so naive that she really didn't know what was going on?
>
> A: No.
>
> Q: When she called the office, who would she routinely ask for regarding questions and other information?
>
> A: She would ask me. She knows me by name. She knew the whole staff, Tara and I, and I would assist her on the phone and so forth, and at times she asked to speak with Keith and, you know, we'd refer it to Keith, give it to Keith if he was in the office.
>
> Q: Did you ever notice Mr. Krasnove or observe or even hear about Mr. Krasnove trying to dodge calls from Ms. Holiday at any time?
>
> A: No, he doesn't dodge phone calls from any client. What happens is that if a client calls more than twice and Mr. Krasnove doesn't get back to them, what we do is we set up a phone conference or we have them come in for an appointment, whichever the client prefers to do. (Tr.III-446).

Ms. Morales also testified as to the events which occurred when Ms. Holiday's injury case was settled. Ms. Morales testified as follows:

> A: When she [Ms. Holiday] came into the office, she immediately thought that she was going to get the

proceeds that day for some reason. And when Mr. Krasnove told her the procedure, you know, that it's to be put in a trust account and wait three days, she said that she needed the money immediately. She was quite desperate and she needed the funds for Thanksgiving or some food or whatever, shelter. She was having some difficulty at that time, and that's what I recall at that time.

Q: Do you recall any conversations regarding the necessity of paying the doctors who had already provided services to Ms. Holiday?

A: Right. Mr. Krasnove told her, you know, that we would have to pay them the -- she would have to pay the doctors as soon as the check would clear. And she says that she didn't really -- you know, that wasn't important to her at that time. She wanted to just get her portion of it. And Mr. **Krasnove** said, "Well, then I'm going to insure that these doctors are paid. " (Tr.III-447-448).

Ms. Morales next testified as to the procedure she followed to attempt to pay Ms. Holiday's health care providers. According to Ms. Morales, "Mr. Krasnove told me to be sure to contact the doctors, all the medical providers, and to see if they would accept a discounted rate of their balance and let him know so that he could disburse a check."

THE REFEREE: When did he tell you to do that?
THE WITNESS: I would say the day after, you know, the client came in and he gave her the check. (Tr.III-448-449).

Ms. Morales then testified she "made about three or four calls and the response I got was they had to check with the administrator to approve a lesser amount and at that point I made notes of who I spoke to in the file in the notes portion of the file and their direct line, their direct phone number. And at the time I was training Tara Cohen who was a secretary with the firm because I was ready to leave for maternity leave, and I told her to be sure to contact and follow up on this because I have form letters in the computer that you just write out in whatever amount that they would accept." (Tr.III-449).

F. SUMMARY OF ARGUMENT

The recommended discipline in this case is excessively harsh to Respondent and does not serve the purposes of attorney discipline. Respondent admittedly made errors in judgment and mishandled payment of Ms. Holiday's health care providers, but Respondent was remorseful for his actions and promptly made payment to the health care providers upon receiving Ms. Holiday's complaint to The Florida Bar.

The record shows without contradiction that Respondent enjoys a good reputation for both his legal skills and his character, he is deeply committed to meeting the needs of his clients, and freely gives of his time in service to The Florida Bar and the National Association of Criminal Defense Lawyers.

The imposition of a three year suspension in this case will deprive the public of the services of a qualified lawyer and is unduly harsh to Respondent. When the totality of the facts and circumstances in this case are considered, the recommended discipline is also not fair to the Respondent.

The appropriate discipline in this case is a maximum suspension of ninety days from the practice of law. A period of probation with specified conditions may also be appropriate as this Court deems proper.

G. ARGUMENT

The referee's recommended discipline of a three year suspension from the practice of law is excessive.

This Court has broad latitude in reviewing a referee's recommendation for discipline. See ***The Florida Bar v. Anderson,*** 538 So.2d 852, 854 (Fla. 1989). A review of the entire record in this case, of pertinent caselaw, and of the Florida Standards for Imposing Lawyer Sanctions, reveals the referee's recommended discipline is excessive, Respondent concedes he made serious errors in judgment and mishandled the payment of Ms. Holiday's health care providers. Nevertheless, as found by the referee, Respondent is remorseful, has good character or reputation, and made full restitution after The Florida Bar was contacted by Ms. Holiday, but before any formal complaint was filed. (RR, p.10).

Respondent is well aware of the purposes to be served by discipline for unethical conduct. 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 a penalty. Second, the judgment must be fair to the Respondent, being sufficient to punish the 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. *The Florida Bar* v. *Neu*, 597 So.2d 266, 269 (Fla. 1992) (citing *The Florida Bar v. Lord, 433* So.2d 983, 986 (Fla. 1983).

The report of referee mentioned all three purposes set forth above with the exception of not denying the public the services of a qualified lawyer as a result of undue harshness in imposing a penalty. Respondent submits it is this purpose for imposing discipline which has not been served in the present case.

The Florida Bar has maintained throughout these proceedings that disbarment is the only appropriate sanction to be imposed in this case. For this reason, Respondent was compelled to proceed to a final hearing before the referee.

Respondent admitted throughout the proceedings he mishandled payment of Ms. Holiday's health care providers. Respondent placed the funds in his operating account instead of his trust account in order to accommodate Ms. Holiday's need for immediate funds. Respondent recognized this was improper, but as will be discussed below in reviewing the character witnesses presented by Respondent, this behavior by Respondent was typical of the way in which Respondent attempts to meet the needs of his clients.

Although it was not charged by the Bar in this case, Respondent also concedes he failed to properly supervise his office staff. As testified to by Iris Morales, in

particular, Respondent delegated the task of negotiating with Ms. Holiday's health care providers to his office staff. For the next several months, Respondent did not follow up to see if the health care providers had agreed to reduce their bills in order to "divide the pie" in the manner sought by Ms. Holiday.

The Court should be mindful of the fact Ms. Holiday was bothered by the fact that if Respondent took his one-third fee and the doctors and other health care providers were paid their fees she would have had little money left from the settlement. (Tr .II-223).

Respondent is not attempting to avoid the consequences of his actions. Respondent recognizes he has violated several provision of the Rules Regulating The Florida Bar and is subject to discipline. Nevertheless, a three year suspension under the facts of this case is clearly excessive.

Recently this Court considered the matter of ***The Florida Bar v. Lynn Joyce Barrett,*** No. 88,103 (Fla. Oct. 17, 1996). The respondent ***in Barrett*** tendered a consent judgment to the referee which was accepted. Respondent in the present case was not afforded that opportunity since The Florida Bar was consistently seeking disbarment.

As indicated in the report of referee in ***Barrett,*** the respondent therein received both cash and jewelry from her client which she did not properly maintain

in trust. The respondent in ***Barrett*** placed the jewelry in a safety deposit box owned jointly in respondent's name with her mother being an owner with equal access to the safety deposit box. Subsequent to placing the jewelry in the safety deposit box, the respondent sold four pieces of the jewelry, received a check in the amount of $1,100.00, and then endorsed this check over to her mother. Finally, the respondent in ***Barrett*** failed to keep and/or maintain any documentary evidence or record of these trust transactions.

The respondent in ***Barrett*** submitted a plea of guilty to the five counts contained in the complaint, The agreed upon disposition was imposition of a thirty day suspension from the practice of law to be followed by one year of probation, subject to several conditions.

Unlike the Respondent in the present case, the respondent in ***Barrett*** had been disciplined three times in just the past three years. In 1993, the respondent was publicly reprimanded and placed on FLA probation for neglect of client matters and for a personal DUI. In 1994, she received an additional public reprimand for charging a clearly excessive fee. Finally, in 1995, just one year prior to the discipline in Case No. 88,103, the respondent was suspended from practicing law for fifteen days for neglect and misuse of funds belonging to a roommate. In addition, the respondent had been placed on the inactive list from March 1994

through March 1995, for FLA probationary difficulties.

Despite this litany of horrors committed by the respondent in ***Barrett,*** this Court approved the imposition of the thirty day suspension and one year probation recommended by the referee.

Respondent in the present case has one prior disciplinary offense (which may be considered aggravating under the Standards) which occurred over ten years ago. In the interim, Respondent has provided exceptional service to his clients, to his community, to the local and state bar and to the National Association of Criminal Defense Lawyers.

A comparison of the present case to ***the*** case of ***The Florida Bar v. Barbone,*** 21 Fla. L. Weekly S402 (September 26, 1996), shows the recommended discipline in this case is excessive. The respondent in ***Barbone*** was found guilty of violating numerous provisions of the Bar's trust accounting rules. An audit of Barbone's trust account revealed several substantial shortages and overages.

Even though the respondent ***in Barbone*** had received a prior public reprimand with one year probation, a prior thirty day suspension, and was on probation during the time period when the violations occurred, this Court approved a six month suspension from the practice of law. 21 Fla. L. Weekly S402, 403.

As previously indicated, Respondent's trust account had absolutely no

shortages and absolutely no misappropriation of funds. In addition, it is significant Respondent provided The Florida Bar with all materials requested the Bar. As the referee found in the report of referee, Respondent made full and free disclosure to The Florida Bar. (RR, pp. 9-10). At no time has Respondent attempted to hide the fact he mishandled the moneys which were to be paid to Ms. Holiday's health care providers.

This Court should consider closely the testimony of the many character witnesses who appeared on behalf of Respondent at the final hearing. For example, the Honorable Leonard Fleet, who has served as a referee in several Florida Bar proceedings, **(Tr.II-282),** testified Respondent "has another idiosyncrasy which I find very favorable. He does not refer to his clients as though they were just persons to whom he took to make deposits in the bank. I feel that he has a genuine concern for the welfare of the persons whom he represents." **(Tr.II-283).** In addition, Judge Fleet testified he feels the citizens of the state of Florida would be deprived of the services of an ethical and competent attorney if Respondent were to be disbarred. **(Tr.II-284)**[1].

The remaining character witnesses on behalf of Respondent echoed this

[1] The question was posed to Judge Fleet in this manner due to the fact that The Florida Bar had vociferously indicated its position in this matter. (See Bar Counsel's Opening Statement, **Tr.I-8-13)**.

theme. Rabbi Friedman testified that if he has a person looking for a good lawyer who tells him they cannot afford regular legal fees, he will refer those individuals to Respondent. He has never found Respondent unwilling to accept these referrals. (Tr.II-340). In addition, Respondent has provided free legal services to Rabbi Friedman's congregation. (Tr .II-341). Also, Rabbi Friedman testified Respondent has a reputation as being '"honest, giving, and caring, and ready to help." (Tr.II-343) .

The Honorable J. Steven Merryday then testified as to Respondent's legal competence. Judge Merryday presided over a federal court trial in which Respondent obtained an acquittal for his client. According to Judge Merryday, Respondent was well prepared and it was apparent to Judge Merryday that Respondent "had thought through his presentation and had a plan which was calculated to draw attention to certain salient facts that were inconsistent with the premise of guilt." (Tr.II-351). Further, Judge Merryday testified Respondent "did nothing that was inconsistent with a high standard of professionalism and ethics while he was in my courtroom. The representations he made to me turned out to be correct and reliable. " (Tr . II-352).

The lengths to which Respondent will go in representing a client was then represented by the testimony of Nurit Elstein. Ms. Elstein agreed to appear by

telephone from the State of Israel on Respondent's behalf.

Ms. Elstein was involved in a child custody matter in which Respondent dropped everything else he was doing in order to assist her. (Tr.II-363). Respondent flew to New York from Florida to help Ms. Elstein obtain the immediate and emergency release of her children back to her custody. (Tr.II-364). Finally, Ms. Elstein testified Respondent was "very good, and I'm telling you not only as a professional man, as a lawyer, as a human being, because I don't know if anybody could fly to New York and assist me with that." (Tr.II-366).

Jeffrey Wasserman then testified as to Respondent's services to The Florida Bar. Mr. Wasserman, who previously served on a Florida Bar grievance committee, served on the rules committee of the family law section of The Florida Bar with Respondent. (Tr.II-373). According to Mr. Wasserman, Respondent was very active on the committee. Respondent served on the committee at a time when the rules committee was making recommendations to the executive council of the family law section proposing new family law rules. (Tr.II-374). Mr. Wasserman testified Respondent was always present at the meetings and "did an awful lot from the standpoint of suggestions and recommendations and was always very, very helpful. He was a good committee member." (Tr.II-375).

Members of Respondent's office staff also spoke to Respondent's generosity

with his professional services. Adrianna Smith testified Respondent is "a very professional attorney. I've known him for a few years 'and he's been nothing but professional with all of his clients and with his staff. He's very aggressive with his cases and he has a lot of pride in dealing with his cases and doing well for his clients. He has no problem about doing cases for people that he feels financially cannot afford an attorney, doing them ***pro bono.*** Ms. Holiday is not the only one. He's done many cases like that. And he deals with the case to the end until he gets a positive resolution to each case." **(Tr.III-465).**

Iris Morales echoed these sentiments. Ms. Morales testified "there were times where I would tell him, pull him aside and say, you know, "Keith, you're too generous. You do too many of these cases." And I just felt personally that it wasn't fair to -- I don't know -- to him because the people wouldn't pay him or anything he would go that extra mile and he would always, you know, represent them to the end, and he wouldn't withdraw as attorney of record at all which I feel most law firms would probably do.' **(Tr.III-441-442).** Ms. Morales personally appeared at the hearing to testify on behalf of Respondent even though she had a three week old son she was nursing and had to make last minute arrangements to have someone watch her two-and-a-half-year-old daughter. (Tr .III-442).

Kenneth Manfredi, a friend and former neighbor of Respondent's, also

appeared at the final hearing. Mr. Manfredi was the recent recipient of the , humanitarian award given by the National Italian-American Foundation. (Tr.III-480). Mr. Manfredi testified as to volunteer work Respondent had performed for a youth football club in Coral Springs, Florida, which included giving legal advice on various corporate issues. (Tr.III-481-482). Mr. Manfredi described Respondent as a very generous, giving person, who would do anything for a neighbor or a friend. (Tr.II-482). In addition, Mr. Manfredi described Respondent as "one of the most honest, trustworthy people I've ever known." (Tr.III-483).

Two other former clients of Respondent also testified at the final hearing. Sammy Perez testified he was referred to Respondent by the rabbi of his synagogue. (Tr.III-493). Respondent agreed to represent Mr. Perez for no charge. (Tr.III-493). Respondent successfully set aside a judgment which had been entered against Mr. Perez. (Tr.III-494).

Mr. Perez concluded his direct examination as follows:

> Q: During the time that Mr. Krasnove represented you, did you find him to be professional and ethical in his conduct?
>
> A: Oh, yes, defmitely , like any lawyer.
>
> Q: Would you hesitate to use Mr. Krasnove as your attorney again in the future?

A: I hope I never have problem, but God willing, in a split second I go again to him.

Q: Would you also recommend Mr. Krasnove to someone else if they told you that they needed an attorney?

A: Oh, absolutely, absolutely. (Tr.III-494).

During cross-examination, counsel for the Bar attempted to insinuate Mr. Perez had perhaps given Respondent some type of gift for Respondent's representation. Mr. Perez replied he had not given Respondent anything. (Tr.III-495).

Tara McIntosh also testified on behalf of Respondent. Respondent had represented Ms. McIntosh when she was a fifteen year old charged with first degree murder, robbery and kidnaping. (Tr.III-499). Although Respondent was retained to handle the initial trial of the case, Respondent handled Ms. McIntosh's appeal ***pro bono.*** (Tr .III-500).

While Ms. McIntosh was incarcerated awaiting the outcome of her appeal, Respondent visited her as often as he could. Ms. McIntosh testified Respondent was there for her and she considered him to be "a great person." (Tr.III-501).

Finally, Ms. McIntosh made one comment which may help explain Respondent's actions in this case. Ms. McIntosh testified she has "known Keith for

ten years and I can see him making a mistake, you know, making a big accident like that, you know, and goofing off, you know, not thinking, that's it." **(Tr.III-503).**

When asked by bar counsel to explain what she meant by the words "big accident," Ms. McIntosh responded as follows:

> Well, he's always busy and running around on all the cases and stuff and, you know, I can just see him, you know, I can just see him, you know, just doing that because, you know, you forget and don't think. **(Tr.II-**504).

Neal Sonnett, former president of the National Association of Criminal Defense Lawyers (NACDL), among other distinguished positions, then testified on behalf of Respondent. Mr. Sonnett testified Respondent has been very active in the legislative fly-in sponsored annually by the NACDL. Mr. Sonnett stated Respondent has been involved in the planning efforts as one of the people who has helped plan the seminar that precedes the legislative lobbying efforts. **(Tr.III-508-**510).

The Florida Bar may cite to this Court, as it did to the referee, cases in which attorneys have been disbarred for theft of client funds. Respondent submits that if these cases are analyzed closely the Court will see the present case does not fall into the category of those instances in which disbarment or even a lengthy suspension is warranted.

The present case is clearly an isolated instance of poor judgment, lack of diligence and failure to supervise office staff.

Respondent submits this case falls more appropriately into those category of cases in which a ninety day suspension has been imposed. For example, such cases as The ***Florida Bar v. Behrman, 658*** So.2d 95 (Fla. 1995); ***The Florida Bar v. Mitchell,*** 645 So.2d 414 (Fla. 1994); ***The Florida Bar v. Fine,*** 607 So.2d 416 (Fla. 1992); ***The Florida Bar*** v. ***Wilson,*** 599 So.2d 100 (Fla. 1992); and ***The Florida Bar v. Davis,*** 577 So.2d 1314 (Fla. 1991).

Although Respondent had technical violations in his trust account, there were no shortages and/or misappropriation from his trust account. In addition, all funds were paid to Ms. Holiday's health care providers upon notification to Respondent that he had failed to do so. Ms. Holiday herself acknowledged that when she signed Bar's Exhibit 2 and forwarded it to The Florida Bar she "didn't think that it [her complaint] needed to go any further because [her] medical bills were finally paid." (Tr.II-257).

H. CONCLUSION

For the reasons cited above, Respondent respectfully requests this Court to exercise its broad latitude and reject the referee's recommended discipline. This Court should instead impose a suspension of ninety days or less, along with any probationary conditions deemed appropriate.

I. CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished by US. mail to Lorraine Hoffman, Bar Counsel, The Florida Bar, 5900 North Andrews Avenue, #835, Ft. Lauderdale, Florida 33309; and to John A. Boggs, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 31st day of January, 1997.

RICHARD A. GREENBERG

R:\WPWIN\RAG-CLIE\KRAS-1K.IBAtk