047

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

PATRICK ROBERT SWEENEY,

Respondent.

CASE NOS: 87,526
89,318
89,495

12/30

RESPONDENT'S ANSWER BRIEF

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PRELIMINARY STATEMENT

The following abbreviations are used in the brief:

Comp. In. Br.	=	Initial Brief of The Florida Bar
R.R.I.	=	Report of Referee dated July 20, 1997
Supp. R.R.	=	Supplementary Report of Referee dated August 13, 1997
Resp. Ex.	=	Exhibit of Respondent introduced at final hearing
TFB Ex.	=	Exhibit of The Florida Bar introduced at final hearing
Stip.	=	Partial Stipulation of Facts executed between the parties
Tr.I.	=	Transcript of final hearing conducted February 20, 1997
Tr.II.	=	Transcript of final hearing conducted April 28, 1997
Tr.III.	=	Transcript of final hearing conducted July 25, 1997

STATEMENT OF THE CASE AND OF THE FACTS AS TO CASE NO. 89,318

Respondent represented Maximino Guevara in a worker's compensation case arising from injuries sustained on the job on July 7, 1992. [Stip. at 1, Tr.I. 4, 5]. At the time Mr. Guevara retained Respondent, he did so by telephone, as he then lived in Puerto Rico. [Tr.I. 34]. Mr. Guevara recalled that Respondent sent him papers indicating that Respondent would represent Mr. Guevara. [Tr.I. 34]. However, he could not recall if he received and/or signed a contract of representation. [Tr.I. 34]. Respondent's file which had been purged shortly after the case settlement contained only portions of the file and had no contract. [Tr.I. 124-26].

In July 1993, Mr. Guevara's physician, Dr. Baker, opined that Mr. Guevara had reached maximum medical improvement. [Tr.I. 36]. In or about December 1993, State Farm Fire and Casualty Company ceased paying Mr. Guevara's lost wages. [Tr.I. 36, 37].

Mr. Guevara returned from Puerto Rico in the summer of 1994. [Tr.I. 9]. Thereafter, on December 16, 1994, he attended a hearing with Respondent concerning his entitlement to wage loss benefits before Judge William D. Douglas, a judge of compensation claims. [Tr.I. 10, 45; Stip. at 1]. Judge Douglas found that Mr. Guevara "intentionally misrepresented" his physical condition and "that he intentionally did not seek employment with any intent of securing same, that he did not attempt to find employment in good faith, and that he voluntarily limited his income during this period". [Resp. Ex. 3 at 6]. Judge Douglas therefore denied and dismissed Mr.

Guevara's claim for lost wages. [Id. at 6].

Thereafter, on July 12, 1995, a mediation was conducted wherein the issue of Mr. Guevara's entitlement to past, present and future indemnity and medical benefits was at issue. [Stip. at 1, Tr.I. 58]. At the mediation, Mr. Guevara agreed to a settlement of $32,500.00 to cover the benefits referenced above as well as attorney's fees. [Tr.I. 14, 132; Stip. at 1; TFB Ex. 1 and 2].

Shortly after the mediation Respondent received a stipulation and affidavit from Attorney Repaal, counsel for the carrier, State Farm. [Tr.I. 132]. After reviewing the documents to ensure that they conformed with the mediation agreement signed by his client, Respondent contacted Mr. Guevara to review and sign the documents. [Tr.I. 133].

Thereafter, on August 4, 1995, Mr. Guevara went to Respondent's office and signed a Stipulation In Support of Joint Petition for Order Approving a Lump-Sum Settlement under F.S. 440.20 11(b). [Tr.I. 64, Stip. at 2, TFB Ex. 2]. However, the affidavit prepared for his signature was apparently signed by someone other than Mr. Guevara. [Tr.I. 19, 137]. Respondent did not know who signed the affidavit but did not recall signing the referenced affidavit on behalf of his client. [Tr.I. 137]. Ms. Karppe, the employee who notarized the affidavit testified that she witnessed Mr. Guevara sign papers, but could not remember the content of the document. [Tr.I. 79]. However, Ms. Karppe denied either signing Mr. Guevara's name to the affidavit or knowing who else may have signed his name. [Tr.I. 82].

In addition to Ms. Karppe, Respondent also employed Michele Serito, as receptionist and Ms. Jenkins, as a secretary at the time of the signing. [Tr.I. 135, 140]. However, neither employee was called to testify or otherwise contacted by The Florida Bar concerning whether they had signed or had knowledge of who signed Mr. Guevara's name to the affidavit.

At or about the time of signing the stipulation, Mr. Guevara inquired as to when he would receive his money. [Tr.I. 142]. Mr. Guevara admitted he was anxious to receive his money so that he could pay bills. [Tr.I. 66]. As a result, Mr. Guevara called Respondent's office often to inquire about receiving the proceeds. [Tr.I. 92]. Upon contacting opposing counsel, Respondent was advised that both the client's funds and the agreed upon attorney's fees were contained within a single check. [Tr.I. 143]. When Respondent advised Mr. Guevara that the settlement check bore both of their names, Mr. Guevara indicated he wanted his money as soon as possible and he did not want to make two trips to Respondent's office. [Tr.I 143, 144, 152].

Based upon Mr. Guevara's wishes as set forth above, Respondent believed that Mr. Guevara did not desire to come down to his office to sign the check. [Tr.I. 153]. Additionally, although Respondent was not able to produce Mr. Guevara's contract of representation at final hearing, the standard worker's compensation contract utilized by Respondent at that time in every worker's compensation case conferred upon Respondent a limited power of attorney. [Tr.I. 126 - 29]. This limited power of attorney authorized Respondent "to

negotiate the employee's workers' compensation benefit checks or drafts only for the purposes of this contract". [Tr.I. 129, Resp. Ex. 5]. At final hearing, Respondent could not recall if Mr. Guevara had signed such a contract. [Tr.I. 127].

Moreover, during that time, Respondent commonly received dozens of worker's compensation checks weekly, which, based upon the power of attorney referenced above, Respondent routinely signed and deposited into his trust account. [Tr.I. 131].

It was against this backdrop that on August 16, 1995, Respondent signed Mr. Guevara's name to the insurance draft and deposited it into his trust account. [Stip. at 2]. Mr. Guevara was given his share of the proceeds the following day. [Stip. at 2].

Based upon the evidence adduced at final hearing, the referee found that Mr. Guevara "has credibility problems". [R.R.I. at 13]. Because of Mr. Guevara's credibility problems, inter alia, the referee found that Respondent did reasonably communicate with Mr. Guevara. He further found Mr. Guevara's claim that he signed a blank mediation agreement to be unbelievable. [R.R.I. at 12, 13]. Moreover, based upon the testimony of Ms. Karppe and because again, Mr. Guevara was not a credible witness, the referee rejected Mr. Guevara's claims and the complainant's allegations that Respondent had Mr. Guevara sign the stipulation without proper explanation. [R.R.I. at 14, 15].

The referee thus found no rule violation by virtue of Respondent placing Mr. Guevara's name on the settlement draft for

deposit or in the manner that Mr. Guevara came to sign the stipulation. [R.R.I. at 18].

As to the unknown signature on the affidavit, the referee found that the Complainant failed to prove by clear and convincing evidence that Respondent placed it there. [R.R.I. at 16]. The referee noted that at least two other employees not called by The Florida Bar were candidates for placing the signature on the affidavits. [R.R.I. at 16]. The referee stated that "it cannot be ignored" that these employees could have placed Mr. Guevara's signature on the affidavit. [R.R.I. at 16]. The referee, nevertheless, found that Respondent was guilty of "negligent supervision and negligent submission of the affidavit to the judge. [R.R.I. at 17]. As a result, the referee recommended a finding of guilty as to Rules 3-4.3, 4-8.4(a) and (d). [R.R.I. at 17].

AS TO CASE NO. 87,526

Respondent represented Sandy George as a result of injuries sustained in an automobile accident on January 4, 1993. [Tr.II. 22, 33; TFB Ex. 1 and 2]. Respondent settled Ms. George's third party claim in or about August 1993. [Tr.II. 26, 34]. However, at the time of the settlement none of Ms. George's medical bills had been paid by her personal injury protection (PIP) carrier, Oak Casualty, though a PIP suit had been filed on May 25, 1993, by Respondent. [Tr.II. 23, 24, 34, 35; Stip. at 1]. At the time of the settlement Respondent pledged to Ms. George to attempt to get all of her medical bills paid by pursuing the PIP suit. [Tr.II. 24, 25, 34]. The medical providers were Shrinath Kamat, M.D.; Jeffrey M. Tashman, D.C.; Physicians Scanning Associates; Tampa General Hospital; Ruffalo, Hooper and Associates; City of Tampa Fire Rescue; Emergency Associates and Diagnostic Labs, Inc.

Thereafter, Respondent had communication with Jodi Rothenberg, Esquire who was representing Oak Casualty. [TFB Ex. 3 and 4]. However, in tendering Ms. George's medical bills to Ms. Rothenberg, Respondent inadvertently omitted the bill from Shrinath S. Kamat, M.D. [Tr.II. 36, TFB Ex. 4].

Respondent subsequently received nine checks from Oak Casualty. Seven of the checks constituted 80% payment for the medical providers. The eighth check to Dr. Tashman was only for $224.00 although Ms. George's total indebtedness was $2,956.00. This difference was owing to Ms. George's $2,000.00 deductible PIP policy. The ninth check was to cover Ms. George's lost wage

claim. [TFB Ex. 5 - 13]. These nine checks were accompanied by a letter of transmittal from Attorney Rothenberg dated August 19, 1993. [Tr.II. 36, TFB Ex. 3]. The checks were written out to both the medical providers and Ms. George. [TFB Ex. 5 - 13].

Subsequently, on or about August 27, 1993, Respondent signed each check with the client's and medical providers' names and deposited them into his trust account. [Stip. at 2 - 4]. Shortly thereafter, Respondent paid each medical provider the amount to which it was entitled per the PIP check, except Dr. Kamat, Tampa General Hospital and Dr. Tashman. These providers were paid other than the amounts listed on their respective checks for the following reasons.

Dr. Kamat was not promptly paid due to Respondent's oversight as reflected in the evidence below. [Tr.II. 39, TFB Ex. 4]. Tampa General Hospital was not initially paid the $2,010.00 tendered by Oak Casualty because Ms. George told Respondent that Medicaid would, or did, satisfy that obligation. [Tr.II. 28, 37, 39, 50; TFB Ex. 12]. In an affidavit introduced at final hearing, counsel for Tampa General Hospital confirmed that these bills were submitted to Medicaid. [Resp. Ex. 6].

Furthermore, although Oak Casualty paid only $224.00 towards Dr. Tashman's bill of $2,956.00, Respondent negotiated and paid Dr. Tashman $2,000.00 in full and final settlement. [Tr.II. 38, TFB Ex. 11, 14]. Respondent used the surplus from the funds earmarked for payment to Tampa General Hospital in order to satisfy Dr. Tashman's bill. Respondent also used these surplus funds to pay

the 20% balance not covered by PIP of several of the other medical providers. [Tr.II. 37, 38]. Ms. George's PIP wage loss recovery was also used to fully satisfy these bills. [Tr.II. 38, TFB Ex. 5].

In February 1995, Respondent spoke to Dr. Kamat and then realized he had not been paid. Subsequently, Respondent sent Dr. Kamat his trust account check in the amount of $384.00 on February 22, 1995. [Resp. Ex. 1, 2]. Thereafter, Respondent paid Dr. Kamat the 20% balance of his bill not covered by PIP insurance with Respondent's own funds. [Tr.II. 42, Resp. Ex. 3].

After Dr. Kamat's inquiry, Respondent contacted Marvin Solomon, Esquire who is responsible for collections for Tampa General Hospital to ensure Ms. George's bill had been paid. [Tr.II. 43]. Although, Respondent was provided with a Satisfaction of Lien dated May 1, 1995, he nevertheless paid Tampa General a total of $2,513.00 in June 1995 to ensure that his client was protected and that all bills were paid. [Tr.II. 45, 46, 51; Resp. Ex. 4, 5]. Once again, Respondent used a substantial amount of his own money for the benefit of his client and her creditors. [Tr.II. 42].

Not a single creditor appeared at final hearing to complain of Respondent's handling of the PIP checks. Conversely, representatives of two of the referenced medical providers testified and/or provided an affidavit on behalf of Respondent. Charles Sull, former president of Physicians Scanning testified that he would have given Respondent authority to sign his name had

he requested such permission. [Tr.II. 17]. Mr. Sull also stated that Respondent always protected his interest and that he never had a problem receiving payment from Respondent's clients. [Tr.II. 17, 19].

Furthermore, Marvin Solomon provided an affidavit confirming that the Tampa General Hospital bill had been paid in full by Respondent. He further related that while he did not recall whether or not he gave Respondent permission to sign his name to the check in question, he has given such permission to others in the past and did not feel aggrieved by Respondent's actions. [Resp. Ex. 6].

The Referee found Respondent not guilty of Rule 3-4.4 (criminal misconduct) and Rule 4-8.4(b) (a lawyer shall not commit a criminal act), finding that the Complainant's claim of forgery lacked the necessary element of intent. [R.R.I. at 9]. In fact, the Referee noted that Respondent had the intent only to carry out his client's lawful instructions to pay her creditors; sometimes using his own money. [R.R.I. at 9]. The only rule violations recommended by Respondent were those stipulated to in the Partial Stipulation of Facts and Rule Violations; to wit: Rules 3-4.3, 4-1.15(a) and (b), 4-8.4(a) and (c) and 5-1.1.

AS TO CASE NO. 89,495

Subsequent to Dr. Kamat's complaint in Case No. 89,526, The Florida Bar undertook an audit of Respondent's trust account. [Tr.III. 18]. This audit reflected a few trust accounting errors. These errors were contained in a Stipulation of Facts and Rule Violations which reflected the errors were inadvertent. No further evidence of trust problems was presented by Complainant at final hearing.

Respondent presented evidence that his trust account was in substantial compliance with The Florida Bar's trust accounting requirements. [Resp. Ex. 1, Tr.III. 16]. The Complainant conceded that the trust problems were not major problems. [Tr.III. 18]. In fact, the partial stipulation of facts entered into on the record on February 20, 1997, reflects that the Complainant was not requesting any enhanced discipline over and above what the court would impose in the other two cases. [Partial Stipulation of Facts, February 20, 1997, at 5, 6]. The Referee noted this stipulation in his supplementary report of August 13, 1997, and recommended no further discipline on this count. [Supp. R.R. at 2].

SUMMARY OF THE ARGUMENT

The Referee's findings of fact were supported by competent, substantial evidence in Case No. 89,318. The evidence establishes that Respondent signed his client's name to the settlement check to accommodate the client and expedite the client's receipt of funds. Further, while someone other than Mr. Guevara signed his name to an affidavit, it was not established by clear and convincing evidence that Respondent was responsible. The evidence below supports the finding that Respondent was merely guilty of negligent submission of the document to the court.

As to Case No. 89,526, the Referee correctly concluded Respondent had no intent to defraud anyone. Respondent was attempting to ensure that all of his client's medical bills were paid from her PIP proceeds as she requested without further cost to the client. Respondent accomplished this by satisfying all medical providers' bills at significant personal cost. There was simply no evidence of intent to defraud anyone. Instead, the evidence reflected Respondent acted improvidently in his effort to comply with his client's wishes.

The Referee's recommendation of discipline is appropriate to the facts of this case based upon the Florida Standards for Imposing Sanctions in Disciplinary Cases and the prior decisions of this Court.

THE REFEREE'S FINDINGS AS TO CASE NO. 89,318 ARE CONSISTENT WITH THE EVIDENCE BELOW AND SHOULD NOT BE DISTURBED.

The Complainant challenges the Referee's recommendation of a not guilty finding as to Rule 4-8.4(c). (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation). The Complainant's objection to this finding is predicated on several theories, none of which can withstand objective scrutiny.

First, the Complainant points out that the Referee found a violation of Rule 3-4.3 which Complainant feels is inconsistent with a not guilty finding on Rule 4-8.4(c). [Comp. In. Br. at 15]. However, no such inconsistency exists on close examination.

The text of Rule 3-4.3 reads as follows:

> The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline. (emphasis added).

It is clear from a review of the entire text of Rule 3-4.3 that the rule is a "catch all" rule intended to put attorneys on notice that the Rules of Professional Conduct do not solely define the conduct for which one may be disciplined. It is thus clear that any conduct that is "contrary to ... justice" is violative of Rule 3-4.3.

The learned Referee below found that the "negligent submission of the affidavit to the judge" was violative of Rule 4-8.4(d). (Conduct prejudicial to the administration of justice). Therefore, it is consistent for the referee to find the conduct was both "contrary to" and "prejudicial to" the administration of justice in violation of Rule 3-4.3 and Rule 4-8.4(d). Each finding (3-4.3 and 4-8.4(d)) stands for the same proposition. However, the Complainant's insistence that a violation of Rule 4-8.4(c) logically follows from a violation of Rule 3-4.3 (or 4-8.4(d)) is erroneous.

In fact, in The Florida Bar v. Roth, 693 So.2d 969 (Fla. 1997), upon which the Referee relied in his findings, this Court concluded that a violation of Rule 4-8.4(d) does not compel a finding of a violation of Rule 4-8.4(c).

In Roth, the facts are remarkably similar to the case below. Roth was accused by complainant of creating a fraudulent document. This Court, adopting the recommendation of the referee, found the document in question was fraudulent, but found insufficient evidence to establish Roth manufactured or directed the manufacture of the document. The Court noted that, as here, additional witnesses could have been called to bolster complainant's allegations. Id. at 971, 72.

As a result, Roth was found to have violated Rule 4-8.4(d) but not Rule 4-8.4(c) by reason of his negligent submission of the fraudulent document. The Roth court felt no violation occurred in the absence of personal involvement or intent. [Id. at 971, 72].

Accordingly, it does not follow that the Rule 3-4.3 violation recommended by the referee, compels a finding of guilty on Rule 4-8.4(c) as urged by Complainant, in the absence of intent to defraud.

Complainant next insists that the evidence establishes that Respondent either signed or had someone sign Mr. Guevara's name to the affidavit in question. [Comp. In. Br. at 16, 17]. Complainant brazenly suggests the Referee's finding to the contrary is "speculation". [Comp. In. Br. at 18].

In support of this contention, Complainant insists that (a) Ms. Karppe was not a confused and uncertain witness; (b) Respondent commonly endorsed clients' names on checks without their consent; (c) "it would be inappropriate to place the burden on The Florida Bar to produce every individual who may have been around Respondent's office at the time". [Comp. In. Br. at 17 - 19]. None of these arguments are persuasive.

First, an analysis of Ms. Karppe's testimony reveals that she was uncertain and confused. She was uncertain as to what Mr. Guevara signed and could not recall what was on the page. [Tr.I. 79, 80]. She did not recall if she asked Mr. Guevara for identification. [Tr.I. 80]. She further did not know if she notarized the stipulation and affidavit at the same time. [Tr.I. 82]. Yet, Ms. Karppe admitted the documents were placed on her desk together by Respondent. [Tr.I. 90]. Thus, there was obvious uncertainty in Ms. Karppe's testimony concerning the signing of the referenced documents.

The Referee as finder of fact in this proceeding "is in the unique position to assess the credibility of witnesses and appraise the circumstances surrounding alleged violations." ... As long as the Referee's findings are supported by competent, substantial evidence in the record, 'this Court is precluded from reweighing the evidence and substituting its judgment for that of the referee'". The Florida Bar v. Lecznar, 690 So.2d 1284, 1287 (Fla. 1997), quoting The Florida Bar v. MacMillan, 600 So.2d 457, 459 (Fla. 1992). Moreover, on review of a referee's findings of fact, this Court presumes the findings to be correct. The Florida Bar v. Marable, 645 So.2d 438, 442 (Fla. 1994).

Given the nature of Ms. Karppe's testimony and the Referee's unique opportunity to assess this testimony, his finding that her testimony was confused should not be substituted with the Court's judgment.

Second, Complainant's claim that Respondent had a "common practice" of signing clients' names to checks without authority is contrary to the testimony below and a distortion of the evidence.

Respondent testified that he used the same standard worker's compensation contract for every worker's compensation client. [Tr.I. 126, 127]. This form was the only one Respondent submitted for approval to the worker's compensation judges. [Tr.I. 127]. That contract empowered and authorized Respondent to sign his clients' names to their benefit checks. [Tr.I. 129, Resp. Ex. 5]. It was on this specific written consent that Respondent routinely signed clients' names to their checks. No where in the record can

the Complainant point to evidence that supports the contention that Respondent had a "common practice" of signing clients names to checks without their consent.

Third, the Complainant feels it is unfair or "inappropriate" to require it to call any and all witnesses necessary to prove the allegations it brings. In making this claim, Complainant appears to be contesting the burden of proof long ago established by this Court. The burden of proof in a disciplinary proceeding is upon the Bar to prove the allegations of misconduct by clear and convincing evidence. Marable at 442.

As recently as the decision in the Roth case, this Court has continued to hold the Bar to this burden. In Roth, the Court found that the Bar failed to prove respondent guilty of perpetuating a fraud and recognized the Bar's failure to call three (3) witnesses critical to that issue. The Roth court obviously felt that it is not inappropriate to place the burden on The Florida Bar to produce those witnesses necessary to prove the allegations it levels.

Finally, the Complainant urges that Respondent signed Mr. Guevara's name to the settlement check without his permission which constitutes conduct involving dishonesty, fraud, deceit or misrepresentation. [Comp. In. Br. at 19]. Yet, the Referee rejected this argument due to the absence of intent to defraud. [R.R.I. at 18].

The Complainant's position is that the intent to defraud is evinced by Respondent admitting that he did not have his client's permission to endorse and deposit the check. [Comp. In. Br. at

20]. This argument fails miserably for two reasons.

First, the issue of permission is unclear. While Mr. Guevara claimed to have given no such permission, the Referee dismissed much of his testimony due to credibility problems. Second, Respondent did not admit he did not have his client's permission. To the contrary, Respondent testified he believed Mr. Guevara wanted him to endorse the check to expedite the client's receipt of funds and to avoid a second trip to Respondent's office. [Tr.I. 143, 144, 152]. Ms. Karppe confirmed that Mr. Guevara was calling often for these funds. [Tr.I. 92]. Even Mr. Guevara admitted he was anxious to get his money to pay bills. [Tr.I. 66]. Further, Respondent was not sure if he had a contract with Mr. Guevara, but if a contract was signed, it included a power of attorney which authorized Respondent to sign his client's name. [Tr.I. 126, 130].

Given Mr. Guevara's credibility problems and his admitted anxiety to receive his money, it is difficult to conclude that Respondent signed the settlement check without consent. Assuming arguendo that no consent was given there is still no intent to defraud proven by these circumstances as Mr. Guevara received his funds the following day. Therefore, there is no evidentiary support for a violation of Rule 4-8.4(c).

THE REFEREE'S FINDING THAT RESPONDENT LACKED THE INTENT TO DEFRAUD IS SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE IN CASE NO. 87,526 AND SHOULD NOT BE DISTURBED.

The Referee below found that Respondent lacked the intent to defraud anyone and therefore found Respondent not guilty of violating Rule 3-4.4 (criminal conduct) and Rule 4-8.4(b) (a lawyer shall not commit a criminal act . . .). [R.R.I. at 9].

The Complainant takes issue with this finding claiming it should not be required to prove intent due to Respondent's admission of a violation of Rule 4-8.4(c) which reads "a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation". Complainant's reliance on this stipulation is misguided.

Respondent, on advice of counsel, did stipulate to a violation of Rule 4-8.4(c). However, such a stipulation is not tantamount to Respondent admitting an intent to defraud. Rule 4-8.4(c) says "a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation". (emphasis added). The language of the rule is disjunctive and provides alternatives. Thus, Respondent's stipulation does not necessarily reflect that his conduct touches on or implicates each alternative.

In fact, Respondent does not deny that signing the medical providers names to the PIP checks was a technical misrepresentation; that is, the signatures were not what they purported to be. However, Respondent emphatically denies he intended to defraud anyone, deceive anyone or be dishonest with anyone. As the Referee noted, the circumstances surrounding the

payment of the medical bills do not reflect Respondent had any intent to defraud.

Interestingly, Complainant does not argue that the facts establish intent to defraud. The reason Complainant makes no such argument is that it is wholly without merit. Instead, Complainant unpersuasively argues that Respondent admitted to committing a fraud. As shown above, this argument unsupported by the record and the stipulation.

THE REFEREE'S RECOMMENDATION OF DISCIPLINE IS APPROPRIATE UNDER THE CIRCUMSTANCES OF THESE CASES, THE STANDARDS FOR IMPOSING LAWYER SANCTIONS AND THE PRIOR DECISIONS OF THIS COURT IN SIMILAR CASES.

The Referee below recommended that Respondent be publicly reprimanded and be placed on one year probation. Additionally, the Referee recommended that Respondent be required to contact The Florida Bar's Law Office Management Advisory Service and implement any recommendations of that service relative to the organizational needs of his office. Further, the Referee recommended the Respondent be required to not sign any clients' or other persons' signature to any checks without a written power of attorney, and that the costs of these proceedings be taxed against him. [Supp. R.R. at 2].

The Complainant argues that this sanction is insufficient and urges a 91 day suspension. The Complainant's argument for suspension is predicated upon a finding that Respondent knowingly submitted false documents to the court. [Comp. In. Br. at 22]. As seen above, the record does not support such a finding.

Additionally, the Complainant relies upon a series of cases involving conduct far more serious than the conduct below. For instance, one case cited by Complainant, The Florida Bar v. Spann, 682 So.2d 1070 (Fla. 1996), concerned an accused who was disbarred for a multitude of offenses including authorizing a forgery, notarizing a forgery, improper or illegal charging of fees, trust account violations, assisting in the unauthorized practice of law and an assortment of other transgressions in violation of 22 separate disciplinary rules involving three clients. In addition, the court cited Spann's prior disciplinary as well as other

aggravating factors including Spann's insistence that he had done nothing wrong. Thus, the Complainant's reliance on Spann is incorrect.

Also cited was The Florida Bar v. Solomon, 589 So.2d 286 (Fla. 1991). There the accused was disbarred for forging his deceased parents' names to homestead tax exemption applications, deposited his employer's clients' checks into his personal account, as well as check kiting and issuing worthless checks.

Moreover, Solomon had previously been disciplined by The Florida Bar on four occasions, two cases which resulted in suspensions from which he never sought reinstatement. The other cases cited by Complainant are also dissimilar.

Yet, several opinions issued by this Court have addressed conduct similar to that of Respondent below. In The Florida Bar v. Roth, 693 So.2d 969 (Fla. 1997), the accused was found to have negligently submitted a false document to a tribunal and further found to have threatened to file a sexual molestation suit and criminal charges against an opposing party if certain trust litigation was not settled. Although, Roth claimed he did not intend a threat by discussing these matters at once, the Referee found his testimony "disingenuity of the first order". Id. at 971. The Court imposed a public reprimand for each violation. In refusing to impose a suspension the Court distinguished Roth's conduct from similar conduct which resulted in a 15 day suspension in The Florida Bar v. Mitchell, 569 So.2d 424 (Fla. 1990). The Roth court recognized that in Mitchell the negligent supervision

and submission of documents happened in a number of cases and resulted in neglect of the client's best interest. Roth at 972. Since the submission by Roth was an isolated circumstance the court imposed a public reprimand.

Respondent respectfully suggests that the facts herein compare favorably with those in Roth. As in Roth, the negligent submission of the affidavit was an isolated incident and the client's best interest was not neglected.

A public reprimand was also imposed in The Florida Bar v. Day, 522 So.2d 581 (Fla. 1988), wherein the accused attorney, who was also a notary, improperly notarized numerous documents without requiring the affiants to personally appear.

The Florida Standards For Imposing Lawyer Sanctions also provides that a public reprimand is the appropriate discipline. Standard 6.13 states that a public reprimand is appropriate "when a lawyer is negligent ... in determining whether statements or documents are false ...". Respondent's misconduct as set forth by the Referee's finding falls squarely within this standard without consideration being given to aggravation and mitigation.

As noted by the Referee, Respondent established five mitigating factors recognized by the Referee including:

1) Absence of a dishonest or selfish motive.

2) Timely good faith effort to make restitution or to rectify consequences of misconduct.

3) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

4) Character or reputation.

5) Interim rehabilitation.

Respondent provided reputation evidence through the testimony of Attorney Brad Drummond who testified he has known Respondent since 1988 during which he had ten to twelve cases opposing Respondent. [Tr.III. 10]. Mr. Drummond opined that Respondent was a fine lawyer to work against, who single-mindedly pursues his clients' rights in every case. [Tr.III. 10, 11].

The Honorable Donald Evans also testified on behalf of Respondent. Judge Evans has been on the bench for sixteen years, thirteen of which were as a circuit judge. [Tr.III. 4]. Judge Evans testified Respondent previously represented him as well as appeared in front of him as a judge. [Tr.III. 6]. Judge Evans stated that Respondent did a good job both on his behalf and on the behalf of other clients. He further testified that Respondent had a reputation as a "very straight-up person whose work can be relied upon". [Tr.III. 6].

Finally, Respondent established interim rehabilitation by modifying the manner in which documents are notarized in his office and further by employing past Florida Bar Auditor, Pedro Pizarro to review his trust accounting records and make any suggestions he deemed appropriate. [Tr.III. 12 - 14].

Accordingly, based upon the facts adduced below as well as the Florida Standards and the prior cases of this Court, a public reprimand along with one year probation and all conditions set-forth by the Referee in the Supplemental Report is appropriate in

this cause.

CONCLUSION

The Referee's findings were based upon competent and substantial evidence. As such, the findings of the Referee should be upheld and this Court should impose a public reprimand as well as one year probation with all conditions recommended by the Referee.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail delivery this 15 day of December, 1997, to: Joseph A. Corsmeier, Esquire, Assistant Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport, Marriott Hotel, Tampa, Florida 33607.

SCOTT K. TOZIAN, ESQUIRE