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IN THE SUPREME COURT OF FLORIDA

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THE FLORIDA BAR

Supreme Court Case Nos. 89,318

89,495

Complainant,

v.

PATRICK ROBERT SWEENEY,

Respondent.

_____ /

INITIAL BRIEF

OF

THE FLORIDA BAR

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SYMBOLS AND REFERENCES

"**RRRI**" will refer to the Report of Referee dated July 20, 1997, in which the referee made factual findings in Supreme Court Case Nos. 87,526, 89,318, and 89,495.

"**RRRII**" will refer to the Report of Referee dated August 13, 1997, in which the referee made a recommendation as to the discipline to be imposed in Supreme Court Case Nos. 87,526, 89,318, and 89,495.

"**TRRI**" will refer to the transcript of the final evidentiary hearing held on February 20, 1997 in Supreme Court Case No. 89,318.

"**TRRII**" will refer to the transcript of the disciplinary hearing held on April 28, 1997 in Supreme Court Case No. 87,526.

"**TRRIII**" will refer to the transcript of the hearing held on July 25, 1997 in Supreme Court Case Nos. 87,526, 89,318, and 89,495.

"**TFBI and Resp.I Exh. #**" will refer to exhibits submitted by The Florida Bar and Respondent and admitted into evidence at the evidentiary hearing held on February 20, 1997 in Supreme Court Case No. 89,318.

"**TFBII and Resp.II Exh. #**" will refer to exhibits submitted

by The Florida Bar and Respondent and admitted into evidence at the evidentiary hearing held on April 28, 1997 in Supreme Court Case No. 87,526.

"TFBIII and Resp.III Exh. #" will refer to exhibits submitted by The Florida Bar and Respondent and admitted into evidence at the evidentiary hearing held on July 25, 1997 in Supreme Court Case Nos. 87,526, 89,318, and 89,495.

"Rule or Rules" will refer to The Rules Regulating The Florida Bar".

"Standard or Standards" will refer to The Florida Standards for Imposing Lawyer Discipline.

"Stip.I" will refer to the Partial Stipulation and Rule Violation agreed to by the parties in Sup. Ct. Case No. 87,526, on December 24, 1997.

"Stip.II" will refer to the Partial Stipulation of Facts and Contested Issues agreed to by the parties in Sup. Ct. Case No. 89,318, on February 20, 1997.

"Stip.III" will refer to the Stipulation of Facts and Rule Violations agreed to by the parties in Sup. Ct. Case No. 89,495, on February 20, 1997.

STATEMENT OF THE CASE AND OF THE FACTS

STATEMENT OF THE FACTS

Supreme Court Case No. 87,526

In or about January of 1993, Respondent commenced representation of Sandy George (George) regarding her personal injury claim arising from an automobile accident in Tampa, Florida. (Stip. I, p. 1). On the date of her accident, George had a personal injury protection (PIP) insurance policy and agreement with Oak Casualty Insurance Company (Oak Casualty). (Id.) On or about May 25, 1993, Respondent filed a lawsuit on behalf of George against Oak Casualty, to secure payment of George's outstanding medical bills, pursuant to the insurance contract between those parties. (Id.)

George received medical treatment and/or service relating to her automobile accident from various providers, including, Shirnath Kamat, M.D. (Kamat), Physicians Scanning Associates, Tampa General Hospital, Jeffrey M. Tashman, D.C. (Tashmann), Ruffalo, Hooper & Associates, City of Tampa Fire and Rescue, Emergency Associates, and Diagnostic Labs, Inc. (Id. pp. 1,2.)

In August 1993, pursuant to a settlement reached between Respondent, on behalf of George, and Oak Casualty, Oak Casualty delivered the settlement checks to Respondent for payment to

George's health care providers. (Id. at 1-4).

Oak Casualty delivered nine checks to Respondent, which were bank check numbers 055113, 055114, 055116, 055117, 055118, 055119, 055120, 055121, and 055125. (Id.) Each of these checks were made jointly payable to George and a health care provider. (Id.).

On the back of each check, in the area reserved for the indorsement of the payee(s), Respondent improperly signed George's name and the name of a representative of the health care provider listed on the face of the check. (Id. pp. 2-4).

Respondent did not have the authorization or consent of George or any of the health care providers to indorse the checks on their behalf. (Id.) Respondent then deposited each of these checks into his law firm's trust account. (Id.) Subsequently, Respondent paid certain providers, but failed to notify the unpaid providers of his receipt of funds for payment of their services and treatment of George. (TRII, p. 48).

Respondent paid one of the providers, a Dr. Tashman, two thousand dollars (\$2000.00) as payment for medical treatment of George. (Stip.I, p. 3). The correspondence between Respondent and Tashman indicates that Respondent advised Tashman that he would be paid "in lieu of paying other health care providers". (TRII,

p. 49).

Sandy M. George did not sign or indorse or authorize the endorsement of her name on any of the checks which are referenced herein and which were made payable to her and the various co-payees, or payable to her as sole payee. (Stip.I, p. 4).

At no time did any employee or agent of Respondent sign or indorse any of the previously referenced checks either independently or at Respondent's direction. (Id.).

Pursuant to a stipulation executed by Respondent and filed with the Referee in December 1996, Respondent admitted to violating the following Rules Regulating The Florida Bar: Rule 3-4.3 (commission by a lawyer of any act that is unlawful or contrary to honesty and justice); Rule 4-1.15 (a lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation; upon receiving funds in which a third person has an interest, a lawyer shall promptly notify the third person); Rule 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct); Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 5-1.1 (a lawyer shall maintain trust accounts and the

integrity of same). (Stip I, p. 5).

Supreme Court Case No. 89,318

In or about 1993, Respondent began representing Maximo Guevara (Guevara) in a worker's compensation matter involving injuries which occurred on or about June 7, 1992. (Stip. II, p. 1).

In late summer 1993, Guevara moved to Puerto Rico. (Id.) Between late summer 1993 and late 1994, Guevara attempted to contact Respondent on numerous occasions to ascertain the status of the representation. (Id.) On or about December 16, 1994, a hearing on Guevara's entitlement to further benefits was held before a judge of compensation claims. (Id.) The judge found Guevara misrepresented his physical condition and was capable of performing normal work duties. Guevara's claim for benefits was denied. (Id.).

On or about July 12, 1995, a mediation was held in Tampa, Florida. (Id.) Both Guevara and Respondent attended the hearing. (Id.) A settlement was agreed upon with a single payment to Guevara of thirty-two thousand five hundred dollars (\$32,500.00) which included five thousand dollars in attorney's fees to Respondent (\$5,000.00). (Id.) On or about August 4, 1995, Guevara

and his spouse met Respondent at his office to review and sign the settlement stipulation. (Id. at 2) The stipulation was signed by Guevara and was filed with the judge of compensation claims. (Id.).

An affidavit was prepared by opposing counsel for Guevara to execute which supported Guevara's agreement to the settlement terms. (Id.) Guevara did not sign the affidavit (TRI p. 19). Respondent's employee, Andrea Karppe, did not sign the affidavit (TRI p. 82). Respondent states that he "could have signed the affidavit" (TRI p. 146). Respondent filed the stipulation and affidavit with the judge of compensation claims. (Id.) On or about August 16, 1995, Respondent received a settlement check from State Fire and Casualty Company in the amount of \$32,500.00. (Id.) Respondent signed Guevara's name on the back of the settlement check and placed it into his trust account. (Id.)

Prior to depositing the check into his trust account, Respondent failed or refused to inform Guevara that he had received the settlement check (TRI, p. 20.) or obtain consent or authorization to indorse Guevara's name on the back of the settlement check. (Id.)

On or about August 17, 1995, Respondent issued a check from his trust account to Guevara in the amount of \$27,500.00. (Stip.

II, p. 2). Respondent further issued a check to himself for attorney's fees in the amount of \$5,000.00. (Id.) This distribution was pursuant to the mediation agreement. (Id.)

Supreme Court Case No. 89,495

Pursuant to a duly executed and served subpoena issued by The Florida Bar, Respondent produced all trust account records for the years 1993-1995. (Id.) A trust account examination was conducted by the Branch staff Auditor for the Tampa office of The Florida Bar. (Id.) The examination was limited to the period from January 1, 1995 to December 31, 1995. (Id.) The Branch Staff Auditor produced a report dated April 24, 1996 stating his findings pursuant to the examination. (Id. at 2).

The audit showed that the trust account had shortages as reflected in the Bar's Complaint. (Id.) However, it was stipulated that the shortages were inadvertent, and in one instance appears to have resulted from an act of an insurance company which was unanticipated by Respondent, and thus, beyond his control. (Id.)

Respondent stipulated to the violation of Rules 5-1.1 and 5-1.2, Rules Regulating the Florida Bar.

STATEMENT OF THE CASE

Supreme Court Case No. 87,526

On March 5, 1997, The Florida Bar filed a Complaint after a grievance committee finding of probable cause and by order dated March 18, 1996, Judge David A. Demers was appointed as Referee in the above referenced disciplinary matter.

On December 24, 1996, the parties filed a Partial Stipulation of Facts and Rule Violations. On December 30, 1996, the Referee issued a Partial Report of Referee adopting the factual findings as set forth in the parties' Stipulation of Facts and Rule Violations. On April 28, 1997, a final hearing was held on the remaining contested issues and rules.

Supreme Court Case No. 89,318

On November 8, 1996, The Florida Bar filed a Complaint after Respondent executed a waiver of probable cause and by order dated November 27, 1996, Judge David A. Demers was appointed as Referee in this matter. On February 20, 1997, the parties filed a Partial Stipulation of Facts and Contested Issues in the above referenced disciplinary matter and a final hearing was held.

Supreme Court Case No 89,495

On November 6, 1996, The Florida Bar filed a formal

Complaint after Respondent entered a waiver of probable cause and by order dated January 8, 1996, Judge David A. Demers was appointed as Referee in this matter. On February 20, 1996, the parties filed a Stipulation of Facts and Rule Violations with the Referee.

Consolidated Matters

On February 20, 1997, pursuant to a Stipulation by the parties, the Referee issued an order consolidating Supreme Court Case Nos. 87,526, 89,318, and 89,495.

An initial Report of the Referee was executed by the Referee on July 20, 1997. After a disciplinary hearing held on August 13, 1997, the Referee issued a report recommending that Respondent be disciplined with a public reprimand and one-year probationary period with certain conditions as outlined in the report.

The Referee's report was considered by the Board of Governors of The Florida Bar on or about September 19, 1997, at which time the Board voted to file a petition for review of the Referee's report. The Florida Bar filed a petition for review with this Court on or about October 6, 1997.

SUMMARY OF THE ARGUMENT

The Referee's findings in Case No. 87,526, that The Florida Bar failed to prove by clear and convincing evidence that Respondent had the intent to defraud, is clearly contradicted by the record evidence, and is therefore, clearly erroneous.

The Referee's findings are inconsistent with the Respondent's stipulation of facts. Respondent stipulated in this matter that he violated Rule 4-8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. The Referee did not address whether Respondent made misrepresentations, whether he acted dishonestly, or whether he acted with deceit. The record and stipulation support a finding that Respondent had the intent to defraud, the intent to make misrepresentations, and/or the intent to act deceitfully and/or dishonestly.

Further, the evidence in Case No. 89,318 clearly contradicts the Referee's finding that Respondent did not act improperly in either signing or obtaining the signature of Guevara on the affidavit supporting Guevara's worker's compensation claim, and that Respondent did act improperly in indorsing Guevara's name to the settlement check and placing that check in his trust account.

Additionally, the discipline imposed by the Referee in this

matter, consisting of a public reprimand and one-year probation, is not appropriate after consideration of the serious misconduct of Respondent, as well as the Standards for Lawyer Sanctions and the case law.

In these matters, Respondent repeatedly displayed a callous disregard for the rights and interests of his clients, third parties, and the legal system. On numerous occasions, Respondent endorsed bank checks without permission and deposited those checks into his trust account. Further, the evidence shows that Respondent either fraudulently executed an affidavit and filed it with the Court of Compensation Claims, or instructed others to do so.

The discipline recommended by the Referee is not sufficient to deter others from the same or similar conduct, nor to rehabilitate Respondent, therefore a ninety-one (91) day suspension is the appropriate sanction in this case.

ARGUMENT

- I. **THE REFEREE'S FINDINGS THAT THE FLORIDA BAR FAILED TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT RESPONDENT HAD THE INTENT TO DEFRAUD, AND/OR THAT RESPONDENT MADE MISREPRESENTATIONS, ACTED DISHONESTLY, OR DECEITFULLY IN CASE NO. 87,526, IS CONTRARY TO THE RECORD EVIDENCE, AND STIPULATIONS, AND IS CLEARLY ERRONEOUS.**

Based on Respondent's acts of fraud, dishonesty, deceit, and misrepresentation, the Referee's findings in Case No. 87,526 that Respondent did not have the "intent to do anything other than carry out his client's lawful instructions" and that "there was a significant lack of evidence that [Respondent] intended any harm to come to anyone" are clearly erroneous and/or irrelevant, except in mitigation. (RR pp. 9,10).

Respondent stipulated to a violation of the following Rules Regulating The Florida Bar: Rule 3-4.3 (commission by a lawyer of any act that is unlawful or contrary to honesty and justice); Rule 4-1.15 (a lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation; upon receiving funds in which a third person has an interest, a lawyer shall promptly notify the third person); Rule 4-8.4(a) (a lawyer shall not violate or attempt to violate

the Rules of Professional Conduct); Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 5-1.1 (a lawyer shall maintain trust accounts and the integrity of same).

The record clearly shows that Respondent committed acts of fraud, deceit, misrepresentation, and/or dishonesty. Respondent violated Rule 4-8.4(c) by failing or refusing to advise his client and her health care and other providers that he had received separate settlement checks from the Oak Casualty Insurance Company (TRII, p. 48); by indorsing settlement checks on behalf of his client and the providers without advising them or obtaining their authorization (TRII, pp. 47-48); by unilaterally altering the distribution of the funds without the knowledge of his client or the providers (TRII, pp. 52-53); and by misrepresenting to the bank that he had the authority to deposit the checks into his trust account in presenting them for deposit (TRII, pp. 53-54).

In order to show that an attorney has acted with dishonesty, fraud, deceit, or misrepresentation, the evidence must show the necessary element of intent by clear and convincing evidence.

(The Florida Bar v. Cramer, 643 So.2d 1069 (Fla. 1994) and The Florida Bar v. Neu, 597 So.2d 266, 268 (Fla. 1992)). However, in

this matter, the Bar should not be required to prove the element of intent found in Rule 4-8.4(c) because of Respondent's own admission. (See, The Florida Bar v. Lancaster, 448 So.2d 1019 (Fla. 1984) (where an attorney stipulated to allegations that his actions were in violation of disciplinary rules, the Florida Bar was not obligated to produce any further evidence in support of the allegations and the attorney was precluded from challenging them.)).

The Referee erred in apparently failing to consider the fact that Respondent has admitted to committing acts of dishonesty, fraud, deceit, or misrepresentation in this disciplinary matter. Therefore, the Referee's findings are inconsistent with Respondent's admission that he had the intent to engage in conduct involving dishonesty, fraud, deceit, and/or misrepresentation and that he violated other Rules Regulating The Florida Bar, including the commission of an act that is unlawful or contrary to honesty and justice.

The Referee also failed to consider that Respondent potentially harmed his client by subjecting her settlement to challenges by the insurance company by failing to distribute the checks as issued by the insurance company. (TRII pp. 58-59).

II. THE REFEREE'S FINDINGS THAT THE FLORIDA BAR FAILED TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT RESPONDENT ACTED IMPROPERLY WITH REGARD TO THE AFFIDAVIT AND SETTLEMENT CHECK IN CASE NO. 89,318 IS CONTRARY TO THE RECORD EVIDENCE AND STIPULATIONS AND IS CLEARLY ERRONEOUS.

In his report, the Referee recommended that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3-4.3 (commission of an act that is unlawful or contrary to honesty and justice may constitute grounds for discipline); 4-8.4(a) (a lawyer shall not violate or attempt to violate the disciplinary rules); and 4-8.4(d) (a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice). Neither The Florida Bar nor Respondent have challenged these findings, however, the Bar does challenge the Referee's finding that Respondent's conduct did not violate Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Initially, the Referee's findings appear to be inconsistent because the Referee found that Respondent engaged in conduct that was unlawful or contrary to honesty and justice but found that the same misconduct did not involve dishonesty, fraud, deceit, or misrepresentation (RRI, p. 17). The Bar would submit that

Respondent's conduct violated both rules.

A. Respondent acted improperly in either signing or obtaining the signature of Guevara on the affidavit.

The evidence shows that Maximino Guevara (Guevara), Respondent's client, did not sign the affidavit which was prepared by opposing counsel to support Guevara's agreement to the settlement terms in his worker's compensation claim. (RRI, p. 12, and TRI, p. 19). The Referee found and the evidence shows that someone in Respondent's office knowingly signed Guevara's name to the affidavit, and submitted that affidavit to the worker's compensation judge. (RRI, p. 16 and TRI pp. 137-144). Guevara did not authorize or consent to have Respondent or anyone else sign the affidavit on his behalf. (RRI, p. 16 and TRI, p. 24).

The Referee's finding that The Florida Bar failed to prove by clear and convincing evidence that Respondent placed Guevara's signature on the affidavit, or that he ordered his staff to do it, is clearly erroneous. The Referee found that there were four possible candidates in Respondent's law office who could have fraudulently signed the affidavit. (RRI, p. 16). The Referee

found that these candidates were: (1) the Respondent, (2) Andrea Dawn Karppe, legal secretary/notary, (3) Michele Serito, the receptionist, and (4) Sheila Jenkins, a secretary. (Id.)

The Referee found that the two most likely candidates to have signed the affidavit were Respondent and Karppe. At the final hearing held on February 20, 1997, Karppe testified that Respondent asked her to notarize documents for Guevara. (TRI, pp. 78-79). Among these documents were a stipulation and an affidavit related to Guevara's worker's compensation claim. (TRI, pp. 78-82, EXH ##).

Karppe further testified that Guevara signed some documents in her presence, but she did not know what documents that Guevara was signing. (TRI, p. 80). In addition, Karppe stated under oath that Respondent told her that Guevara had signed the affidavit. (TRI, p. 81).

The Referee determined that The Florida Bar had not proven by clear and convincing evidence that Respondent knowingly signed the affidavit, partly because the Referee found Karppe to be a confused and uncertain witness. However, the record shows that Karppe was not confused and clearly stated that she did not sign the affidavit. When asked under oath whether she signed the affidavit, Karppe responded, "No. I did not." (TRI, p. 82).

Conversely, at the February 20, 1997 hearing, Respondent admitted that he could have signed the affidavit. (Id. P. 137).

Respondent stated under oath, that:

"I could have signed [the affidavit] without thinking, as a reflex action, having signed numerous documents, and to expedite resolution of the case, having signed my name on the check without thinking, without contemplating the effect of my action, other than to get my client's case forwarded and resolved as quickly as possible."

(Id. p. 146).

Despite Respondent's ambiguous, disingenuous, and self serving statements, the referenced testimony and the record are sufficient to show that Respondent signed the affidavit, especially in light of the circumstances in which Respondent was shown to have engaged in a common practice of indorsing clients' names on checks without their consent. (TRI, p. 137).

There is no basis beyond speculation for the Referee's finding that anyone other than Respondent or his agent could have or would have signed the affidavit. Karppe emphatically denied having signed the affidavit, and 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. There is insufficient basis for the Referee to conclude that Respondent's other two employees had the opportunity or the motive to forge Guevara name on the affidavit unless instructed to do so by Respondent. Further, Respondent admitted to improperly signing his client's name and the names of the providers on the insurance checks and concedes the possibility that he could have signed this affidavit. Therefore, this Court should find that the Referee's findings are clearly erroneous and should be overturned.

B. Respondent endorsed Guevara's name on the settlement check and placed it into his trust account without Guevara's permission.

The Referee found that Respondent was not guilty of engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation in indorsing Guerara's name to the settlement check and placing it in his trust account. However, the record shows that the Referee's finding was clearly erroneous.

Even though Respondent stipulated to indorsing Guevara's name on the settlement check from State Farm Insurance Companies

without Guevara's permission, and then depositing the check into his trust account, (Stip.II, p. 2) the Referee found that there was no evidence of an intent to defraud because Respondent distributed the correct funds to Guevara the day after receiving the check. (RRI, p. 18).

However, the Referee's finding of Respondent's lack of intent in this case is clearly erroneous because Respondent himself admitted that he did not have his client's permission to endorse the settlement check and deposit the check into his trust account. The Bar adopts the previously stated arguments in Case No. 87,526 regarding Respondent's improper indorsement of insurance checks with his client's name and depositing said checks into his trust account. Respondent's conduct was dishonest, fraudulent, deceitful, and/or a misrepresentation to the client and the bank. Therefore, the Referee erred in finding that Respondent's actions with regard to the settlement check were not in violation of Rule 4-8.4(c).

**III. A NINETY-ONE DAY SUSPENSION IS THE
APPROPRIATE SANCTION FOR RESPONDENT'S ACTS OF
FRAUD, DISHONESTY, DECEIT, AND/OR
MISREPRESENTATION BASED ON THE RECORD, CASE
LAW, AND STANDARDS FOR LAWYER SANCTIONS.**

This Court has stated on numerous occasions that discipline

must serve three purposes; the sanction must be fair to the attorney and the public, protect the profession and legal system, and must be sufficient to deter others from engaging in similar misconduct (The Florida Bar v. Clement, 662 So. 2d 690, 699 (Fla. 1995)). The Florida Bar submits that the recommended discipline of a public reprimand will not serve to protect the public and the legal system nor will it serve to deter Respondent and other attorneys from engaging in similar misconduct in the future. This Court should instead impose a ninety-one (91) day suspension based on the nature of Respondent's conduct, the Florida Standards for Imposing Lawyer Sanctions, and relevant case law.

The Florida Standards for Imposing Lawyer Sanctions (Standards) act as a model or guide in determining the appropriate discipline in Bar disciplinary matters. Under Standard 1.1, the purpose of lawyer discipline proceedings is "to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to discharge their professional duties to clients, the public, the legal system, and the legal profession properly."

The Standards state that the following should be considered in determining the ultimate discipline to be imposed: (1) duty or duties violated, (2) the lawyer's mental state, (3) the potential

or actual injury caused by the lawyer's misconduct and; (4) the existence of aggravating or mitigating factors or circumstances (See, Standards Preamble and Standard 3.0).

Standard 6.12 states that "suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court. . .and takes no remedial action." In this case, the evidence shows that Respondent signed or instructed another to sign Guevara's name on the affidavit. (See argument in part II.A. supra). Suspension is therefore appropriate because Respondent submitted the fraudulent affidavit to the worker's compensation court and took no remedial action with that court to correct the fraudulent affidavit.

It has been established that this Court will generally not overturn a Referee's recommended discipline as long as that discipline has a reasonable basis in existing case law. (The Florida Bar v. Laing, 695 So.2d 299 (Fla. 1997)). However, in the present case, the Referee has not recommended discipline that would be appropriate to deter others and to rehabilitate Respondent and is inconsistent with the case law.

This Court has previously issued opinions which impose serious discipline for acts of fraudulently signing another's name to legally significant documents, often imposing discipline

of disbarment against the attorney. (The Florida Bar v. Solomon, 589 So.2d 286 (Fla. 1991)(forgery may result in disbarment.)). (See also, The Florida Bar v. Spann, 682 So.2d 1070 (Fla. 1996) (authorizing of a signature and the subsequent notarization of the signature knowing it to be a forgery, constitutes serious misconduct; attorney disbarred); The Florida Bar v. De La Puente, 658 So.2d 65 (Fla. 1995) (where attorney used client trust funds for his own purposes, forged signatures on checks, misrepresented information to the court, fabricated evidence and told a witness to lie, this Court found that several of the attorney's actions, when considered alone could result in disbarment, and the attorney was disbarred for ten years.); and The Florida Bar v. Kickliter, 559 So.2d 1123, 1124 (Fla. 1990) (attorney disbarred for five years for forging a client's signature on a will and submitting the will for probate, even though the referee found substantial mitigating factors, such as absence of a dishonest or selfish motive, good character and reputation, and remorse.)).

Respondent's repeated acts of improperly signing legally significant documents are contrary to a basic, fundamental principle that an individual should not sign the name of another on such documents without the individual's knowledge or consent. In this regard, as an attorney and officer of the court,

Respondent should be held to an even higher standard than an ordinary citizen.

Standard 9.22 provides for aggravating factors to be considered in determining the appropriate discipline to be imposed. Aggravating Factors appropriate to these matters include Respondent's dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of his conduct, and substantial experience in the practice of law.

The facts as presented in the record and in this brief show a pattern of misconduct in which only a rehabilitative suspension will serve to protect the public, be fair to society and the attorney, and sufficiently deter others from similar misconduct. The Bar's position was, and is, that Respondent's multiple acts of misconduct show that he should be required to show his fitness to practice prior to reinstatement to the practice of law in this state.

The record shows the cumulative nature of Respondent's misconduct. In The Florida Bar v. Bern, 425 So. 2d 526 (Fla. 1983), the Court overturned a referee's recommendation of a public reprimand and imposed a ninety-one (91) day suspension stating: "The Court deals more harshly with cumulative misconduct

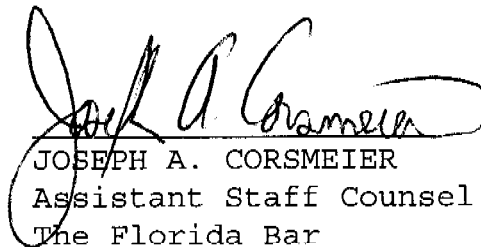
than it does with isolated misconduct. Additionally, cumulative misconduct of a similar nature should warrant an even more severe discipline than might dissimilar conduct" (Bern at 528). The misconduct in the instant disciplinary matters involves multiple instances of dishonesty, deceit, fraud and/or misrepresentation which are similar in nature. Respondent's repeated endorsing of checks and filing of a false affidavit involve a callous disregard of his obligations as an officer of the Court.

The seriousness of Respondent's conduct is not lessened by the fortuitous fact that no apparent injury has occurred to Respondent's clients or others. Respondent's misconduct seriously and adversely reflects on his character and fitness to practice and he should be disciplined appropriately.

CONCLUSION

Pursuant to the foregoing and the evidence, including the stipulations, the Standards for Imposing Lawyer Sanctions, and case law, Respondent should receive a ninety-one (91) day suspension and be required to prove his rehabilitation and fitness to practice before being reinstated to the practice of law. Upon reinstatement, Respondent should be placed on probation for one (1) year with the conditions recommended by the Referee and a judgment for costs should be entered.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph A. Corsmeier", is written over a horizontal line. The signature is fluid and cursive.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Initial Brief have been furnished by Regular U.S. Mail to Sid J. White, Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; and copies have been furnished by Regular U.S. Mail to Scott Tozian, Esq., Counsel for Respondent, at 109 Brush North, Tampa, Florida 33601; and to John T. Berry, Esq., Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 by Regular U.S. Mail all this 3rd day of November, 1997.



JOSEPH A. CORSMEIER
Assistant Staff Counsel