IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

CYRUS ALAN COX,

Respondent.

Case No. 88,888
[TFB Case No. 96-31,346 (09A)]

Case No, 89,010
[TFB Case No. 95-31,525 (18A)]

THE FLORIDA BAR'S AMENDED INITIAL BRIEF

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SYMBOLS AND REFERENCES

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

The transcript of the final hearing held on March 12, 1997, shall be referred to as "T," followed by the cited page number(s).

The transcript of the disposition hearing held on June 5, 1997, shall be referred to as "TD," followed by the cited page numbers(s).

The Report of Referee in Case No. 88,888 dated June 25, 1997, will be referred to as "RR1," followed by the referenced page number(s).

The Report of Referee in Case No. 89,010 dated June 25, 1997, will be referred to as "RR2," followed by the referenced page number(s).

The bar's exhibits will be referred to as "Bar Ex.___," followed by the exhibit number.

The respondent's exhibits will be referred to as "Resp. Ex. _____," followed by the exhibit number.

STATEMENT OF THE CASE

In TFB Case No, 96-31,346 (09A), probable cause was found against the respondent by the Ninth Judicial Circuit Grievance Committee "A" on May 29, 1996. The bar's formal Complaint was filed on September 6, 1996, and was assigned Florida Supreme Court Case No. 88,888. The Honorable William T. Swigert, Circuit Judge, was appointed as referee on September 10, 1996.

With respect to TFB Case No. 95-31,525 (18A), the Eighteenth Judicial Circuit Grievance Committee "A" found no probable cause. During its March, 1996 meeting, the Board of Governors of The Florida Bar considered the grievance committee's recommendation of no probable cause and, instead, entered a finding of probable cause. The bar's formal Complaint was filed on September 23, 1996, and was assigned Florida Supreme Court Case No. 89,010. On October 3, 1996, The Honorable William T. Swigert was appointed as referee.

For purposes of the final hearing, Case Nos. 88,888 and 89,010 were consolidated. The final hearing was conducted on March 12, 1997 and a disposition hearing was held on June 5, 1997. On May 22, 1997, the referee filed with the Court a Motion for Enlargement of Time to File Report, wherein he requested an additional thirty (30) days from May 21, 1997 in which to submit his reports in both cases. The referee's motion was granted on May 27, 1997, and he was permitted to and including June 26, 1997 within which to file his reports. The referee submitted his

reports in both cases on June 25, 1997.

In Case No. 88,888, the referee found the respondent guilty of violating R. Regulating Fla. Bar 3-4.3, 4-4.1, 4-8.4 (c) and 4-8.4(d) and recommended the respondent receive a ninety (90) day suspension, consecutive to any other disciplinary measures imposed by the Court, and that the respondent pay the bar's costs. In Case No. 89,010, the referee found the respondent guilty of violating R. Regulating Fla. Bar 4-1.1, 4-1.3, 4-1.4 and 4-8.4(c) and recommended the respondent receive a ninety (90) day suspension, consecutive to any other disciplinary measures imposed by the court, and that the respondent pay the bar's costs.

At its July, 1997 meeting, the Board of Governors of The Florida Bar considered the referee's findings and recommendations in Case Nos. 88,888 and 89,010 and voted to seek review of the referee's recommendations as to discipline and seek disbarment. The bar filed its Petition for Review on August 6, 1997 and the respondent filed a Petition for Review on August 7, 1996. This brief is in support of the bar's petition.

STATEMENT OF THE FACTS

Unless otherwise noted, the following facts are derived from the referee's reports in Case Nos. 88,888 and 89,010:

Case No. 88,888
TFB Case No. 96-31,346 (09A)

On October 4, 1993, the respondent received a letter from a Dr. Mopo Jah of the Nigerian National Petroleum Corporation wherein the respondent was asked to assist in obtaining $40,500,000.00 for a refinery built in Nigeria [Bar Ex. 2]. The letter offered the respondent 30% of the funds, if collected, and allowed 10% for expenses related to the collection. On November 2, 1993, the respondent generated a facsimile coversheet to Dr. Jah indicating his interest in the offer [Bar Ex. 1].

Thereafter, the respondent received further information from Dr. Jah and requests to produce documents for submission to the Nigerian National Petroleum Corporation in order to receive the money. On March 2, 1994, the respondent produced, signed and sent a number of documents with false information including a certificate of incorporation indicating Cyrus A. Cox, Esquire, was incorporated on April 20, 1980. At that time, the respondent had not entered law school and was working as a paramedic in Denver, Colorado [Tl, p. 24]. The respondent also produced and sent a back-dated letter with an application for payment, a fund release form listing Cyrus A. Cox, Esq. as the beneficiary of the

contract, a letter indicating Cyrus A. Cox was the original beneficiary, and an income tax clearance certificate indicating he was a contractor and had paid $1,500,000.00 in taxes for the years 1990, 1991, and 1992.

Although this was a significant legal matter in size and scope of potential renumeration, the respondent never mentioned it to any member of his law firm with whom he practiced. The respondent was given various information concerning the individuals involved in the transaction, including the names of attorneys. The respondent did not attempt to contact any of the entities or persons to determine whether the individuals who contacted him were legitimate nor whether their requests were appropriate. The respondent claimed he discussed the situation with an Interpol agent purportedly named Niko Mossinkoff, but the respondent could not provide any other information about the agent or any evidence of his contacts with same [Ti, pp. 31, 58, 68, 70]. Further, the respondent later asserted that the Royal Clearing House did not exist and that the entire transaction was a scam.

The respondent testified at the final hearing that on March 22, 1994, he realized that a fraud was being perpetrated on him and that the person identified as Dr. Mopo Jah was attempting to obtain $30,000 from the respondent. However, the referee found the respondent's actions prior to March 22, 1994, through the Completion of the fraudulent documentation and the forwarding of

same indicated the respondent's willingness to break the law and his failure to grasp the most basic concepts of the rules of the profession.

Case No. 89,010
TFB Case No. 95-31,525 (18A)

The respondent was retained by Timothy Jittu to represent his company, Jeffrey Daniels International Services, Inc. (hereinafter referred to as "Daniels") in a dispute with Borg-Warner Protective Services, Inc. (hereinafter referred to as "Borg-Warner"). The dispute concerned Borg-Warner's breach of contract with Daniels' security details for highway rest areas. After an attempt by the respondent to get Borg-Warner to allow Daniels to return to work under the contract failed, the respondent advised Mr. Jittu he would file suit in October, 1994. Mr. Jittu requested a copy of the complaint, but the respondent did not provide it. The respondent advised Mr. Jittu that he was setting depositions in November, but the complaint had not actually been filed.

On December 12, 1994, Borg-Warner sent a check to Daniels in an attempt to settle the claim for breach of contract. Upon receipt of the check, Mr. Jittu contacted the respondent for advice. The respondent advised Mr. Jittu he could strike the language on the check indicating it was a full release of Borg-Warner and endorse the check as accepted "under protest" and this

would not jeopardize his claim. The referee found that the respondent's advice was clearly incorrect under applicable statutes and case law.

After the respondent was terminated from his law firm in January, 1995, Mr. Jittu called to inquire about his case. David Lenox of the firm advised him that the file did not contain any pleadings or documents relating to depositions. Mr. Jittu was given the name of another attorney who could assist him if he did not want the respondent to continue to represent him. At that time, Mr. Jittu did not indicate whether he would continue with the respondent's representation when he obtained his file.

The respondent testified at the final hearing that he had filed the lawsuit, but after a couple of months had passed he did not notice he had not received an answer, nor did the respondent attempt to seek a default. It was the referee's finding that the respondent's failure to notice the complaint was not filed was clearly a violation of R. Regulating Fla. Bar 4-1.3 as the respondent failed to take the necessary steps to ensure the complaint was filed. The referee further found that had the respondent filed the complaint in October, 1994 as he represented to Mr. Jittu, he should have followed up with a motion for default or discovery had Borg-Warner answered. The respondent failed to calendar his actions and did not discover the complaint was not filed until January 1995 when he should have discovered it as early as October 1994.

Mr. Jittu decided to continue with the respondent's representation and gave the respondent the file and a refund of the retainer he received from the respondent's former firm, Mr. Jittu continued to request a copy of the complaint after the respondent advised he would have it refiled. Unable to obtain a copy Of the complaint, on March 9, 1995, Mr. Jittu consulted with attorney Berry J. Walker, Jr. about the case due to the respondent's inaction. Mr. Walker contacted a number of courts to determine if the complaint had been filed. With Mr. Jittu in his office, Mr. Walker contacted the respondent's office and left a message advising that he would be taking over Mr. Jittu's case and he requested the file be delivered to him immediately. On March 12, 1995, the respondent spoke with Mr. Walker and confirmed that he would have the file delivered. The respondent did not tell Mr. Walker that he had filed the complaint in Mr. Jittu's case earlier that day with a cover sheet dated February 1, 1995.

SUMMARY OF THE ARGUMENT

In both cases, the respondent has been found guilty of engaging in several ethical violations, including neglect, conduct prejudicial to the administration of justice and misrepresentations to a client. Of graver concern is that in Case No. 88,888, the respondent attempted to participate in a fraudulent scheme to obtain over forty million dollars of which the respondent would receive a substantial portion. In order to achieve this, the respondent produced a number of fraudulent documents. Clearly, the referee's recommended discipline of ninety (90) day suspensions in each case are not sufficient for the serious nature of the violations. In addition, the respondent received a prior thirty (30) day suspension wherein the court found he had engaged in a pattern of intentional misconduct and deception in engaging in legal employment without the authorization of his firm. As the present cases demonstrate, the respondent has not learned from his prior discipline and has continued to engage in deceptive and fraudulent behavior. Case law supports disbarment under the circumstances of these cases and considering the respondent's prior discipline.

ARGUMENT

DISBARMENT IS WARRANTED IN THESE CASES GIVEN THE SERIOUS AND CUMULATIVE NATURE OF THE CHARGES AND THE RESPONDENT'S PRIOR DISCIPLINE.

In Case No. 88,888, the referee found the respondent guilty Of violating R. Regulating Fla. Bar 3-4.3 (engaging in conduct that is unlawful or contrary to honesty and justice); 4-4.1 (knowingly making a false statement of material fact or law to third persons in the course of representing a client; 4-8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and 4-8.4(d) (for engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice). Specifically, the respondent was found guilty of attempting to assist another in obtaining $40,500,000.00, of which the respondent would receive 30% of the funds, if collected [RR1, p. 1]. In order to accomplish this substantial windfall, the respondent produced, signed, and mailed a number of fraudulent documents, including a certificate of incorporation indicating Cyrus A. Cox, Esquire, was incorporated on April 20, 1980 when the respondent had not even entered law school at that time [RR1, p. 2; T1, p. 24]. It is not difficult to see that the respondent's generation of these fraudulent documents was intended to "legitimize" the transaction should anyone question it. The referee found that the respondent's

testimony that he attempted to smoke out the perpetrators of the fraud was not credible due to the respondent's activities in producing the fraudulent documents which occurred over a several week period, and his failure to verify with any persons involved that the transaction was legitimate [RR1, p. 21. Clearly, the referee found that the respondent was a willing participant in a fraudulent scheme and that he took certain actions in furtherance of the fraud.

In other disciplinary cases involving fraudulent conduct by attorneys, disbarment has been the appropriate discipline. In The Florida Bar v, Crabtree, 595 So, 2d 935 (Fla. 1992), the attorney was hired to repatriate $1.5 million from Europe for a client in Florida without disclosing the source of the funds. The attorney involved another client in numerous transactions in order to accomplish that task, and in doing so, he received a personal interest in the assets. The attorney failed to fully disclose to the clients his interest or the fact that they were all involved in the same transactions. Further, the attorney wrote phony letters in order to mislead anyone who was looking into the transactions. The attorney had a prior private reprimand for similar misconduct.

In The Florida Bar v. Cramer, 678 So. 2d 1278 (Fla. 1996), the attorney's perpetration of a fraud upon a financial institution warranted disbarment. The attorney signed another

individual's name on leases in order to obtain financing for computer and office equipment. The court found that the attorney's use of another's name and misrepresentations regarding the equipment were fraudulent acts and it did not matter if others were also guilty of fraud as the attorney's conduct clearly violated the Rules of Professional Conduct. The attorney had two prior disciplinary offenses of a private reprimand and a ninety (90) day suspension both involving "subterfuge in money matters."

The attorney in The Florida Bar v. Spann, 682 So. 2d 1070 (Fla. 1996), was found guilty of numerous ethical violations including disbursing funds to himself from a client's worker's compensation fund without court authorization, failing to inform the court that the funds had been disbursed, neglect, failing to respond to a client's repeated inquiries, failing to render competent representation to a client in a workers' compensation case, instructing a nonlawyer employee to sign a client's name to a settlement release and then notarizing the forgery, and failing to inform the court that his employee had signed the client's release. The court found that the attorney's failure to inform the court of his or his employee's fraudulent actions constituted misrepresentations to the court. Like the instant matters, the referee in Spann recommended the attorney receive two consecutive suspensions. The court found that due to the attorney's prior disciplinary history, the severity and number of violations, and

the lengthy period in which the violations occurred, the referee's recommendation of consecutive suspensions was inadequate as disbarment was the most appropriate punishment,

In The Florida Bar v. Calvo, 630 So. 2d 548 (Fla. 1993), the attorney was employed as counsel to persons involved in the sale of federally regulated securities, an area of law in which the attorney possessed special expertise. The attorney either participated in or became aware that his clients had arranged to obtain very short-term loans in order to create the appearance that the minimum number of shares were being sold within a certain time period. Other securities violations were also involved in the scheme. The court specifically Sound that it was incumbent upon the attorney to use his legal expertise "to discourage rather than further the type of flagrant fraud on the public involved in this case." The case was substantially aggravated by the great potential for public harm where the attorney and his colleagues fraudulently sold securities to potentially hundreds of thousands of people which may have been worthless from the moment they were purchased. In the instant matter the respondent's willingness to participate in a scheme to obtain over forty (40) million dollars, without ever verifying whether the transaction was appropriate, was reckless misconduct similar to that in Calvo.

In his report in Case No. 88,888, the referee found that the respondent's attempt at fraudulently obtaining over forty (40)

million dollars, his completion of documents containing false information, and his forwarding of the documentation indicate the respondent's willingness to break the law and his failure to grasp the most basic concepts of the rules of the profession [RR1, p. 2]. The Court has held that where an attorney's conduct evidences a total lack of understanding of his responsibilities as an attorney and to other members of the bar, disbarment is warranted. The Florida Bar v. McGovern, 365 So. 2d 131 (Fla. 1978).

With respect to Case No. 89,010, the referee found the respondent guilty of violating R. Regulating Fla. Bar 4-1.1 (failing to provide competent representation to a client); 4-1.3 (negligence); 4-1.4 (failing to provide adequate communication to a client); and 4-8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). In this case, the respondent misrepresented to a client, Timothy Jittu, that he had filed a civil complaint, and the client did not find out until approximately four (4) months later when he retained other counsel that the respondent never filed the complaint, It was not until his services were terminated and Mr. Jittu's new counsel was demanding the file that the respondent filed the complaint with a cover sheet back-dated to the prior month. In addition, the respondent gave incompetent advice to Mr. Jittu about cashing a check tendered by the opposing party "under protest" where a

review of the statutes and case law would have indicated it was not permissible.

Of particular concern in this case is that the respondent has again engaged in misrepresentations, where this time it was to his client. In other cases involving neglect, inadequate communication with clients, and misrepresentations to clients, disbarment was the appropriate discipline. In The Florida Bar v. Barenz, 500 So. 2d 1344 (Fla. 1987), the attorney accepted money from a client without taking any action on behalf of the client, made false representations to the grievance committee, and accepted a retainer from another client in an adoption matter but did not appear on the client's behalf and was not adequately prepared to represent the client. In addition, the attorney failed to record instruments in a real estate transaction and failed to issue a title insurance policy for almost two years after the closing. Eventually, the attorney issued the title insurance policy but without clearing the mortgages which constituted liens on the property. Both the referee and the court found disbarment was warranted.

In The Florida Bar v. Maichack, 516 So. 2d 259 (Fla. 1987), the attorney was retained to prepare an income tax return for a client and represented to the client that the tax return had been filed when, in fact, it had not. The client learned the tax return had not been filed upon receiving a letter from the Internal Revenue Service: The attorney was also retained to

defend a client against a civil suit, for which he received a substantial fee. The attorney took no steps to defend the client and failed to communicate with the client about the case. A final judgment was entered against the client who only learned of it when the creditor effected execution of the judgment. The attorney was to appeal the judgment but took no action to effect an appeal. The attorney had been suspended for three years for non-payment of bar dues and the disbarment order was effective immediately.

In The Florida Bar v. Bartlett, 509 So. 2d 287 (Fla. 1987), the attorney was retained regarding an encroachment on an easement for which he was paid a fee. The attorney failed to communicate with the adverse party about the encroachment and failed to take any action on behalf of the client, and he retained the money paid to him as a fee by the client. The attorney did not participate in the disciplinary proceedings. The attorney had received two prior suspensions. The court held that repeated similar instances of misconduct should be treated cumulatively so that the lawyer's disciplinary history can be considered as grounds for more serious punishment than his misconduct, considered in isolation, might seem to warrant. Under the circumstances, disbarment was warranted.

The respondent's prior discipline in The Florida Bar v. Cox, 655 So. 2d 1122 (Fla. 1995), consisted of a thirty (30) day

suspension for engaging in legal employment not authorized by his law firm, continuing to engage in such employment after being warned by his firm, willfully deceiving his firm about his "moonlighting", keeping some of the fees earned through the unauthorized employment, and initially denying that he represented outside clients or collected fees from those clients. This Court found that the facts reflected a pattern of intentional misconduct and deception. It is clear that in the present cases, the respondent has continued to engage in deceptive and fraudulent behavior. When considering the appropriate penalty in attorney discipline matters, the Court considers prior misconduct and cumulative misconduct as relevant factors. The Florida Bar v. Adler, 589 So. 2d 899 (Fla. 1991). An attorney's cumulative misconduct of a similar nature should warrant even more serious discipline than might dissimilar conduct. The Florida Bar v. Rolle, 661 So. 2d 296 (Fla. 1995). The respondent's conduct in the present cases and in his prior disciplinary matter is cumulative and warrants a severe sanction.

The Florida Standards for Imposing Lawyer Sanctions support disbarment. Under Standard 5.11(f), Failure to Maintain Personal Integrity, disbarment is appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice. The respondent in this case

knowingly attempted to participate in a scheme to obtain over forty million dollars and willfully produced deceptive documents in furtherance of the fraud. In addition to the aggravating factor of a prior disciplinary offense, under Standard 9.22(a), these cases are further aggravated by the respondent's dishonest or selfish motive, Standard 9.22(b); the pattern of misconduct, Standard 9.22(c); the respondent's refusal to acknowledge the wrongful nature of his conduct, Standard 9.22(g); and the respondent's substantial experience in the practice of law, Standard 9.22(i). There are no mitigating factors present.

The respondent, in the past and in the present, is guilty of making misrepresentations and engaging deceptive and fraudulent behavior. As this Court held in The Florida Bar v. Poplack, 599 So. 2d 116 (Fla. 1992):

> We find it troubling when a member of the Bar is guilty of misrepresentation or dishonesty, both of which are synonymous for lying. Honesty and candor in dealing with others is part of the foundation upon which respect for the profession is based. The theme of honest dealing and truthfulness runs throughout the Rules Regulating The Florida Bar and The Florida Bar's Ideals and Goals of **Professionalism.** [At p. 1183.

Clearly, the respondent has not learned from his past discipline as he has continued to engage in similar deceptive and fraudulent behavior. Such conduct evidences a lack of understanding of the rules and goals governing the profession. The respondent should

not be further permitted the privilege of practicing law and Should be disbarred.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will approve the referee's findings of fact and recommendations as to guilt, but impose disbarment as the appropriate discipline in these matters and require the respondent to pay the bar's costs which total $2,561.98.

Respectfully submitted,

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By: _____
ERIC M. TURNER
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Initial Brief and Appendix have been hand delivered to the Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by overnight mail to the respondent's counsel, Scott K. Tozian, 109 North Brush Street, Suite 150, Tampa, Florida, 33602; and a copy of the foregoing has been furnished to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this Wednesday day of February 11, 1998.

Respectfully submitted,

Eric M. Turner
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

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v.

CYRUS ALAN COX,

Respondent.

Case No. 88,888
[TFB Case No. 96-31,346 (09A)]

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APPENDIX TO COMPLAINANT'S AMENDED INITIAL BRIEF

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APPENDIX INDEX

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

Case No. 89,010

THE FLORIDA BAR,

TFB No. 95-31,525(18A)

Complainant,

v.

CYRUS ALAN COX,

Respondent.
/

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar, a hearing was held on March 12, 1997. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: Eric M. Turner

For the Respondent: Scott K. Tozian

II. Findings of Fact as to each item of misconduct of which the Respondent is charged: After considering all of the pleadings and evidence before me, pertinent portions of which are commented on below, I FIND:

As to Count I

1. Respondent was retained by Timothy Jittu to represent his company, Jeffrey Daniels International Services, Inc., in a dispute with Borg-Warner Protective Services, Inc.

2. The dispute concerned Borg-Warner's breach of contract with Jeffrey Daniels' security details for highway rest areas.

3. After an attempt by the Respondent to get Borg-Warner to allow Jeffrey Daniels to return to

A 5

work under the contract failed, the Respondent advised Mr. Jittu that he would file suit in October 1994. (T-125). Mr. Jittu requested a copy of the Complaint, but the Respondent did not provide it.

4. The Respondent advised Mr. Jittu that he was setting depositions in November, yet the Complaint had not actually been filed. (T-125).

5. On December 12, 1994, Borg-Warner sent a check to Jeffrey Daniels in an attempt to settle the claim for breach of contract. Upon receipt of the check Mr. Jittu contacted the Respondent for advice. The Respondent advised Mr. Jittu he could strike the language on the check indicating it was a full release of Borg-Warner and endorse the check as accepted "under protest" and this would not jeopardize his claim. The Respondent's advice was clearly incorrect as a review of the statutes and case law would indicate. (T- 120).

6. After the Respondent was terminated from Greenspoon Marder in January 1995, Mr. Jittu called to inquire about his case. Mr. Jittu spoke with David Lenox, who advised him that the file did not contain any pleadings or documents relating to depositions. Mr. Jittu was given the name of another attorney who could assist him if he did not want the Respondent to continue to represent him, Mr. Jittu did not indicate whether he would continue with the Respondent when he obtained his file. (T-87).

7. The Respondent testified he had Ned the lawsuit, but after a couple of months had passed he did not notice that he failed to receive an answer nor did he attempt to seek a default. Clearly, the Respondent's failure during this period of time to notice the complaint was not filed was a violation of Rule 4-1.3, as the Respondent failed to take the necessary steps to ensure the complaint was filed. Had the Respondent filed the complaint as he had told Mr. Jittu in October 1994, he should have followed up with a motion of default or discovery had Borg-Warner answered. The Respondent failed to calendar his actions and did not discover the complaint was not filed until January 1995, when he should have discovered it as early as October 1994.

8. Mr. Jittu decided to continue with the Respondent and turned over the file he received from the Greenspoon firm. Mr. Jittu also gave the Respondent the refund of the retainer received from the Greenspoon firm. (T- 12 1).

9. Mr. Jittu continued to request a copy of the complaint after the Respondent advised he would have it refiled.

10. On March 9, 1995, Mr. Jittu consulted with attorney Berry J. Walker, Jr. about the case due to the Respondent's inaction.

11. Mr. Walker contacted a number of courts to determine if the complaint had been filed. With Mr. Jittu in his office, he contacted the Respondent's office to advise that he would be taking over Mr.. Jittu's case. The message also requested the file be delivered immediately. (T-92).

12. On March 12, 1995, the Respondent spoke with Mr. Walker. At that time he confirmed he would have the file delivered. The Respondent did not advise he had filed the complaint earlier that morning with a cover sheet dated February 1, 1995. (T-98).

III. **Recommendations as to whether or not the Respondent should be found Guilty:** As to each count of the complaint, I make the following recommendations as to guilt or innocence:

GUILTY

IV. **Rule Violations Found:** 4-1.1, 4-1.3, 4-1.4, 4-8.4 (c).

V **Recommendation as to Disciplinary Measures to be applied:**

Ninety (90) days suspension, consecutive to any other disciplinary measures imposed by the court.

VI. **Personal History and Past Disciplinary Record:** After the finding of guilt and prior to recommencing discipline to be recommended pursuant to Rule 3-7.6 (k) (1) (D), I considered the following personal history and prior disciplinary record of the Respondent, to wit:

Age: 41
Date admitted to Bar: October 16, 1990

Prior Disciplinary convictions and disciplinary measures imposed therein: June 1, 1995, Case No 83,582 (TFB File No. 93-3 1770(09A)) - 30 day suspension.

VII. **Statement of Costs and manner in which costs should be taxed:** I find the following costs were reasonably incurred:

A.	Grievance Committee Level Costs:		
1.	Transcript Costs	$	-0-
2.	Bar Counsel Travel Costs	$	-0-
B.	Referee Level Costs:		
1.	Transcript Costs	$	372.10
2.	Bar Counsel Travel Costs	$	-0-
3.	Referee Travel Costs	$	92.39 *
	* Represents ½ of total travel costs, with other ½ shown on costs of trial-consolidated case #88,888		
4.	Referee Copy Costs	$	15.00
5.	Referee Postage Costs	$	3.00

C.	Administrative Costs		$	750.00
D.	Miscellaneous Costs:			
	1. Investigator Expenses	$	9.00	
	2. Witness Fee		$	-0-
	3. copy costs		$	21.50
	4. Telephone Charges		$	-0-
	5. Translation Service Fees		$	-0-
	TOTAL ITEMIZED COSTS:		$	1,262.99

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses, together with the foregoing itemized costs, be charged to the Respondent, and that interest at the statutory rate shall accrue and be payable beginning thirty (30) days after the judgment in this case becomes final, unless a waiver is granted by the Board of Governors of The Florida Bar.

DATED this 25 day of June, 1997.

The Honorable William T. Swigert
Referee

Original to: The Supreme Court of Florida with Referee's original file/record;

Copies of this Report of Referee only to: Eric M. Turner, Bar 'Counsel The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, FL 32801; and to Scott K. Tozian, Counsel for Respondent, 109 N. Brush Street, Suite 150, Tampa, FL 33602; and to Mr. John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300.