IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JULIO V. ARANGO,

Respondent.
_____/

Supreme Court Case
No. 88,254

The Florida Bar File
No. 96-70,369(11N)

On Petition for Review

ANSWER BRIEF AND REPLY BRIEF OF COMPLAINANT

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STATEMENT OF THE CASE AND FACTS

The Bar has discussed the record in this case in detail in its Initial Brief.[1] The Respondent's statement of the case and particularly the facts, creates some sources of confusion.

First, Respondent states:

> "The Referee's findings and conclusion as to Respondent's guilt of minor misconduct are undisputed."

One must inquire as to what the foregoing statement means. It is apparent that Respondent believes that some facts are undisputed. Does the Respondent contend that only some of those facts in the record would support a minor misconduct? If so, which factual findings is the Respondent conceding?

Also, Respondent inappropriately sets forth a number of arguments in the Statement of Case and Facts. For example, he argues (incorrectly as discussed in the Argument portion of this brief) that factual findings and subsequent comments are "in direct conflict." In order to support that assertion, Respondent dwells at length, not upon the actual and specific findings, but upon some "comments" and other language inserted in the Referee's report. He argues in the Statement of the Case and Facts that the findings did "not rise to a sufficient level of proof" and that "obviously" ... the findings did not become the basis of his final result ..." (Respondent's brief, p. 2).

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[1] Respondent, the Cross-Petitioner incorrectly identifies his brief as a "Reply Brief". It will be referred to as the "Answer Brief" herein.

The Bar rejects those statements not only as argumentative and inappropriate in the statement of facts, but as incorrect and not supported by the record. The appropriate facts will be discussed in the context of the argument portion of this brief.

The remainder of the Respondent's statement of the Case and Facts, pps. 3-8, consists of the equivalent of an argument regarding the sufficiency of the evidence. That issue, to the extent that it is applicable, will be discussed in the Argument portion of this brief, with appropriate citations to the record.

SUMMARY OF THE ARGUMENT

The Referee specifically found that Respondent had engaged in a pattern of negligent. The Referee also specifically and unequivocally found that Respondent committed six fraudulent acts.

The Respondent has provided no authority to support his assertion that the Referee's findings of fact should be modified. The Referee's findings of fact are clear, definite and unequivocal. They enjoy a presumption of correctness under well settled principles governing review of the sufficiency of evidence. Furthermore, the Report should be given its full legal effect based upon findings that obviously met the clear and convincing standard.

Suspension is the appropriate discipline for Respondent's conduct. Suspension is the discipline which is required based

upon the purposes of discipline and the existence of cumulative misconduct. The law is clear that neither admonishment nor public reprimand is appropriate for multiple wrongful acts. Suspension is required for multiple acts of neglect, and even more so when those acts are combined with multiple fraudulent acts.

Respondent does not address the foregoing principles of law. He merely provides meaningless factual distinctions. The foregoing holdings by this Court are not altered by any subsequent holdings. The principles regarding cumulative misconduct, the purposes of discipline, and the requirement of suspension for multiple negligent acts remain in force.

Furthermore, the Bar did present a number of cases which were factually analogous. Respondent, in an effort to distinguish those cases, has seriously mis-interpreted the facts or holdings of some of those cases.

Further, Respondent has failed to provide meaningful distinctions regarding the remainder of the cases advanced by the Bar as governing authority.

ARGUMENT

THE REFEREE ERRED BY RECOMMENDING AN ADMONISHMENT AND SUSPENSION IS THE APPROPRIATE DISCIPLINE[2]

Both the Bar and the Respondent have addressed the same issues. First, what are the factual findings which should be sustained on appeal and, second, what is the appropriate discipline?

The Bar moved to strike the second issue of the Respondent's brief which raised factual questions in view of the Cross-Petition for Review which stated:

> COMES NOW, Julio Arango ("Arango"), by and through undersigned counsel, files this Response and Cross-Petition for Review and states that Arango opposes the Petition for Review filed by the Florida Bar and ask (sic.) that the recommended discipline of admonishment be upheld with some modifications(s).

The Bar's Motion to Strike was denied and, therefore, the argument contained herein will be considered in that context.

THE FACTUAL FINDINGS

The Respondent presents an argument which essentially addresses the sufficiency of some of the Referee's findings of fact and therefor the sufficiency of some of the evidence. The

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[2] This argument will encompass the Bar's reply to Respondent's Answer brief and the Bar's Answer to Respondent's Initial brief.

argument is limited to the possible effect of Dr. Herdocia's conduct upon Respondent's neglect, and to language of the recommendations concerning discipline insofar as it pertains to intentional, i.e., fraudulent conduct. The real issue of sufficiency of the evidence is somewhat obscured by Respondent's argument for "minor modifications, deletions or lack of acceptance." (p.23, Respondent's Answer Brief). Part of his argument deals with the Referee's findings of fact regarding fraudulent conduct. Note that the Referee is unequivocal and definite in that regard:

> As a part of his defense Respondent presented evidence and documents which were false or fabricated. Respondent submitted during these proceedings the following false or fabricated evidence:
>
> a. the medical authorization (Bar's Exhibit 30), which was falsely notarized;
>
> b. respondent's letter of October 20, 1994 to Dr. Herdocia (Bar's Exhibit 6), which was fabricated;
>
> c. respondent's letter of February 21, 1995 to Dr. Herdocia (Bar's Exhibit 7), which was fabricated;
>
> d. respondent's letter of March 21, 1995 to Dr. Herdocia (Bar's Exhibit 8), which was fabricated; and
>
> e. various entries in Respondent's log (Bar's Exhibit 10), which were fabricated.
>
> (Report of Referee. p.7)

Note at that outset that Respondent's mistates the recitation of an aggravating factor in the Referee's Report. He quotes the Referee to the effect that he had a mere "suspicion" of intentional misconduct (Respondent's brief, p. 23). The Referee does not use the word "suspicion".

The Referee made the following statements under the heading "Recommendation as to Disciplinary Measures to Be Applied":

> The Referee finds that Respondent's conduct falls within the conduct described in Standard 4.42 (sic.) Of the Florida Standards for Imposing Lawyer Sanctions (hereinafter Standard). Under Standard 9.22, I find the following aggravating factors: (f) submission of suspected false evidence, suspected false statement or other deception practices during the disciplinary process ...

This Section of the Referee's Report clearly constitutes general conclusion of law containing incorrect language, i.e., "suspected" which does not actually appear in Standard 9.22.

Respondent's fraudulent conduct arose during the course of the hearing and therefore, was not part of the Bar's pleadings. Respondent suggests that the findings are unjustified based upon that factor alone. No authority is offered to support that claim and, in fact, there is direct authority to the contrary. The Florida Bar v. Solomon, Nos. 86914, 87667, and 88762 (Fla. February 26, 1998); The Florida Bar v. Stillman, 401 So. 2d 1306 (Fla. 1981); and The Florida Bar v. Nowacki, 697 So.2d 828 (Fla. 1997).

Respondent also offers no authority to support the claim that the Referee's language relating to a general conclusion of law requires re-interpretation of the unequivocal factual findings of fraudulent conduct. If the Referee inserted the word "suspected" in order to justify modified findings of fact, his findings of fact would not have been stated unequivocally; as quoted above.[3]

Respondent essentially contends that the Referee's use of the term "suspected" manifests the Referee's failure to believe that Respondent had fabricated certain documents. Such a conclusion is belied by the sheer fact that the Referee included such misconduct by Respondent in the findings of fact in the case in chief (per Stillman, supra) as well as in the disciplinary recommendation as an aggravating factor. Respondent's reliance on the use of the word "suspected" is a red herring and much to do about nothing. Interpretation or modification of the Referee's findings of fact is not appropriate for several reasons.

First, as pointed out above, the findings of fact as to fraud were unequivocal. Those findings are obviously reviewed by this Court in a manner which is substantially different from consideration of the disciplinary recommendation. This Court's

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[3] The Referee was equally unequivocal as to the neglect, stating: "Nonetheless, the Referee believes the Respondent Mr. Arango could have, indeed should have been more diligent." (Report of Referee, p. 7).

standard of review for factual findings is whether there is competent substantial evidence to support said findings. Niles, infra.

The recommendation as to discipline, including the aggravating factors, is a conclusion of law and this Court's standard of review is of course much broader. The Florida Bar v. Rue, 643 So. 2d 1080, 1082 (Fla. 1994). It is a separate area of evaluation from the findings of fact and does not modify the findings of fact.

The use of the work "suspected" in the section of the report recommending discipline does not relate back to the factual finding because a recommendation of guilt is based upon clear and convincing evidence. The Florida Bar v. Quick, 279 So. 2d 4 (Fla. 1973).

The Referee has submitted a finding of guilt and a recommendation of discipline. The Referee is obviously stating that the evidence of suspected fraud has, in his view, reached the level of clear and convincing evidence.

Second, the Referee's recommendation of discipline is a general recommendation. The factual findings are quite specific. The specific factual findings should prevail by applying the concept that the specific prevails over the general. Cypress

Gardens Citrus Products v. Bowen Bros., 223 So. 2d 776 (Fla. 2nd DCA 1969).

Third, the principles of law pertaining to judgments and decrees demonstrates that the Referee's choice of words in respect to the disciplinary recommendations is not significant. In construing the legal effect of a judgment or decree the legal effect governs, rather than the mere language used. Boynton v. Canal Authority, 311 So. 2d 412 (Fla. 1st DCA 1975). The Referee has submitted to this Court a recommendation of discipline based upon a finding of guilt. If the language is unclear, the record is the best evidence of the true import of the decree. Tilton v. Horton, 137 So. 2d 801 (Fla. 1931); Boyton, supra. This record and the applicable standards for review are amply discussed in this brief.

Furthermore, a judgment should be construed so as to give effect to every portion of it. Alegre v. Motor Sales Corp., 228 F. 2d 713 (5th Cir. 1964), and not to reduce its effect. One would assume that the same standard which applies to a judgment or decree should be applied to the Referee's recommendation, since a judgment or decree is the document which adjudicates the law or facts necessary to determine the rights of the parties. 32 Fla. Jur. 2d, "Judgments and Decrees," § 1.

Furthermore, the Referee's "Comments" and use of the word "suspected" are immaterial in regard to this appeal. The Referee

is responsible for findings of fact and resolving conflicts in the evidence. The Florida Bar v. Niles, 644 So. 2d 504, 506 (Fla. 1994). The burden of proof before this Court is upon the Respondent who has Cross-Petitioned for Review of the Referee's Report. The Florida Bar v. McLure, 575 So. 2d 176 (Fla. 1991). The Report is, of course, presumed to be correct as to factual conclusions and will be upheld unless clearly erroneous or lacking competent substantial evidence. The Florida Bar v. Winderman, 614 So. 2d 484 (Fla. 1993); The Florida Bar v. Smiley, 622 So. 2d 465 (Fla. 1993).

The competent substantial evidence in the record will be summarized below. However, since the fraud is intertwined with the findings of neglect, Respondent's position in regard to those findings also requires a response in the context of the record as it applied to both matters.

The Respondent presents a very brief argument based upon the Referee's "Comments" (Respondent's brief, p. 23). He suggests that the conduct of Dr. Herdocia's office has some application to some of the delays. He does not dispute the delays regarding the checks. Presumably that is the "minor misconduct" which he concedes.

Dr. Herdocia's office had nothing to do with the nine month delay in obtaining the information pertaining to ownership of the automobile. Therefore, the brief argument regarding alleged

confusion in the Doctor's office does not take issue with the findings concerning that delay.

In addition, Respondent makes a brief reference to comments concerning Ms. Morales' credibility[4]. However, he does not explain what effect, if any, those comments could have on the findings or record regarding this appeal.

Only the findings of delay in obtaining dental records relates to the Referee's "Comments" regarding Dr. Herdocia's office. However, competent substantial evidence exists to establish that the fault rested with the Respondent.

In regard to the delay in obtaining dental records, there is substantial evidence to support the conclusion that the delay was properly attributed to the Respondent by the Referee. On March 23, 1994 Geico Insurance Co., (Geico) first requested, by letter, that Respondent deliver Morales' pre-accident dental records to Geico (Bar's Exh. 22). Geico also requested that Respondent obtain and deliver these same records on April 28, 1994 (by letter), June 9, 1994 (phone call) (Bar's Exh. 28), January 25, 1995 (by phone call) and May 25, 1995 (by letter). Respondent's single response to Geico was a June 15, 1995 hand written memo telling Geico to obtain the dental records directly from Dr.

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[4] Respondent asserts that the Bar called Morales as a witness. Such assertion is categorically false. Respondent called Morales as a witness in his case in chief.

Herdocia. It is uncontradicted that after February, 1993 Dr. Herdocia's office did not receive a single written request from Respondent for Morales' pre-accident dental records. While Respondent attributed the delay to some problems in the office of the dentist, Dr. Herdocia, the evidence established without contradiction that mistakes were corrected by August, 1993 (Bar's Exh. 5). On June 15, 1995, Respondent abdicated his responsibility and asked Geico to get the records (Bar's Exh. 25). There are no entries in Respondent's log that Dr. Herdocia's office was called (T. 433-4), there are no letters to Dr. Herdocia, and there are no staff memos in Respondent's files advising him that Dr. Herdocia's office was not cooperating. In short there is no verifiable evidence that Respondent did anything to obtain the requested pre-accident dental records from early April 1994 through the date he was discharged in late August, 1995. Also, all of Dr. Herdocia's staff members testified that he had not spoken to them, contrary to Respondent's assertion. (T. 37, 38, 53, 262, 264, 265-268, and 529).

There is more than ample evidence to support the Referee's findings of fraud. The Referee found that Respondent failed to act with due diligence by failing to obtain and submit a medical authorization. An authorization was produced which was allegedly notarized by someone in Respondent's office on October 20, 1994.

(T. 250-1, 441) However, the signature of Morales could not have been notarized on that date since she was out of the country (T. 670-674) and an employee of the Respondent admitted to having the authorization on October 5, 1994 (T. 438).

On October 20, 1994, a hand-written memo-letter was sent to Dr. Herdocia (Bar's Exh. 6). However, this alleged communication was never seen by any members of the Doctor's office. (T. 69-70, 268-269).

Respondent produced copies of all letters that were allegedly sent to Dr. Herdocia requesting the dental records. (Bar's Exhs. 6, 7 and 8). According to several members of the dentist's staff and the dentist, none of the letters were received and no one had complained at any time that the dentist's office lost records (T. 38, 69, 70, 268-69, and 271). The successor attorney for Ms. Morales stated that no copies of the letters appeared in the file that was furnished to her. (T. 111-112)

There is also ample evidence that Respondent's log entries (Bar's Exh. 10) from October 20, 1994 through September 6, 1995 were entered well after the date next to each entry and they are false entries. The entry on October 20, 1994 stating "Requested medical records from Dr. Herdocia" is false, in that no request was made from the dentist on that date, or any other date. In fact, from July 6, 1992 through September 6, 1995, there were

only two written communications logged, one being this October 20, 1994 entry and the other a February 21, 1995 entry regarding sending the medical authorization, which entry is false, as the evidence demonstrates. (Bar's Exh. 10).

Geico's log for February 21, 1995 has no entry reflecting a claimed phone call with Respondent's office on that date. (Bar's Exh. 10, and 28, T. 415-418 and 437-440). Likewise, Geico's log reflects no phone call with Respondent's office on March 21, 1995. (Bar's Exh. 28)

Entries from October 20, 1994 through September 6, 1994 were entered well after the date referenced in the Respondent's activity log. There is an entry of a conversation with Morales. The date of this purported conversation is entered as "8/95 (last two weeks in August) (Bar's Exh. 10, T. 430) Lastly, on September 6, 1995 an entry was purportedly made indicating a phone conversation with Todd Hutchens. (Bar's Exh. 10). Later, the name "Todd Hutchens" was scratched out and replaced with the name "Phyllis Allen @ Geico." The entry goes on to state "he told me..." and "... but he asked me..." Clearly, the writer (Marlene Arce) wanted to create the general appearance that the file was being diligently monitored. Ms. Arce also wanted to give the specific appearance that she actually spoke with Todd Hutchens on September 6, 1995, when in fact she did not. Todd

Hutchens was replaced by Phyllis Allen in May 1995 and thus was not employed by Geico on September 6, 3.995. (T. 441-443)

There is competent substantial evidence to support the Referee's findings of fact. No logic or authority has been provided by Respondent to prove that any "modification" of the Referee's findings is warranted.

SUSPENSION IS THE APPROPRIATE DISCIPLINE

The Referee's findings of fact reflect not one, but multiple acts of lack of diligence. These included the failure to obtain some critical information, i.e., ownership of a vehicle, failure to notify the client of the arrival of checks, failure to deliver the checks, repeated failure to respond to requests for dental records, and failure to deliver a medical authorization to GEICO. As the Referee concluded; "Respondent engaged in a pattern of neglect in this matter." (Report of Referee, p.6, emphasis supplied). Respondent also committed multiple fraudulent acts as set forth in the Report of Referee and quoted on page 4 of this brief.

Respondent seeks to direct this Court's attention from repeated prior holdings by meaningless distinctions between cases cited by the Bar and this case. The Bar incorporated in its brief, cases which hold that, inter alia that (1) cumulative misconduct calls for enhanced discipline, (2) discipline must, among other purposes, serve as a deterrent and (3) even public

reprimand is limited to isolated instances of neglect or lapses of judgment.

In regard to the several unethical acts committed by the Respondent, the Bar has cited The Florida Bar v. Vernell, 374 So. 2d 473 (Fla. 1979) for the legal principle that cumulative misconduct deserves more severe discipline. Verne11 is one of several cases wherein the Respondent is unable to dispute the legal principle cited by the Bar. Therefore, he attempts to distinguish the facts despite the fact that the Bar has not argued that the facts are analogous.

Respondent has also ignored the legal principles set forth in The Florida Bar v. Poplack, 599 SO. 2d 116 (Fla. 1992), The Florida Bar v. Lord, 433 So. 2d 983 (Fla. 1983); The Florida Bar v. Kleinfeld, 648 So. 2d 698 (Fla. 1994) and The Florida Bar v. Price, 569 So. 2d 1261 (Fla. 1990). Respondent has simply argued that the facts are not analogous.

Again, the Bar has not contended that the facts are analogous. The Bar relied upon Poplack for this Court's reference to the three fold purpose of discipline; which also is incorporated in the Florida Standards for Lawyer Sanctions as Standard 1.1.

Respondent's discussion of Poplack[5] does not negate the fact that one purpose of discipline, in addition to being fair to the public and Respondent is:

> ... third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in the like violations. The Florida Bar v. Lord, 433 So. 2d 983,986 (Fla. 1983). (Emphasis in the original).

Kleinfeld appears as footnote 15 in the Bar's brief. Respondent is attempting to construct another straw man by distinguishing the facts in that case. Kleinfeld received a 36 month suspension which the Bar did not claim to be appropriate to this case. The suggestion that the Bar has argued that the violations are comparable is non-sensical. The Bar merely discussed applicable rule violations in the context of Kleinfeld.

The Bar referred to Price in footnote 14. The Respondent fails to address the principle set forth in Price, wherein this Court stated clearly and unequivocally that:

> Public reprimand is the appropriate discipline for isolated instances of neglect or lapses of judgment. (At 1263, emphasis supplied).

In this matter, public reprimand is not appropriate since Respondent's misconduct did not constitute an "isolated instance of neglect," but instead a "pattern of neglect." Since public

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[5] Lord was merely a case relied upon by this Court for the above proposition, and the citation to Lord merely appears in the above quote. The Bar has not contended that the facts in Lord are pertinent to this appeal.

reprimand is not appropriate, simple logic and common sense dictate that admonishment is also not appropriate.

Respondent seeks to magnify the violations in ~~Price~~ by alluding to three rule violations. However, contrary to Respondent's posturing, this Court determined that the violative conduct fell within the category of "isolated" conduct, namely interrelated acts. Thus, Respondent's attempt to suggest that the lesser discipline of admonishment is appropriate for multiple violations fails in view of this Court's holding, quoted above.

This Court in The Florida Bar v. Harper, 518 SO. 2d 262, 263 (Fla. 1988) stated the following as to one case (No. 69053) which was a partial basis of Harper's disciplinary hearing:

> ...we adopt the referee's report and find that Harper is guilty of violating Disciplinary Rules 1-102(A)(4), for conduct involving deceit and misrepresentation and 6-101(A)(3), for neglecting a legal matter. We also adopt the referee's recommendation that Harper be suspended for a period of three months.

Harper is obviously directly on point insofar as it involves (a) neglect and (b) deceit and misrepresentation.

Respondent's discussion of ~~Harser~~ is totally incorrect, irrelevant and misleading. Respondent addresses the result of a different case which was part of the disciplinary hearing, case #69,504 which involved trust account problems. The determination of discipline in that case has nothing to do with this appeal or the Bar's reference to the above quoted portion of the opinion.

The discipline related to case #69,054 isnotmaterial or relevant to this appeal.

In our initial brief the Bar also relied upon The Florida Bar v. Jones, 543 So. 2d 751 (1989). Our brief stated:

> In The Florida Bar v. Jones, 543 So. 2d 751 (Fla. 1989), Respondent was found to be in violation of several rules relating to diligence and/or neglect. An additional act resulted in a separate violation, namely the failure to cooperate with the Bar investigation. Based upon the aggravating factors, this case, like Jones includes two different types of violations which axe similar to those in Jones. This case involves more acts which were violative of the rules and/or constituted aggravation, including the very serious transgression of submitting false evidence. Jones received a ninety one day suspension.
>
> (Bar's brief, p. 11)

Respondent presents the bland assertion that "the Jones case is totally distinguishable", by reciting the number of rule violations (six). All of those rules violations are a result of acts of neglect. The Referee found that there were several acts of neglect in this case. The Referee found that Respondent, in this case, was also responsible for several fraudulent and dishonest acts. Clearly quantitatively and qualitatively the Respondent's misconduct in this case was more offensive. While this Court noted Jones' lack of defense at any stage of the proceedings, there was no statement to the effect that the lack of defense increased the discipline.

As stated in the Initial Brief, The Florida Bar v. Fath, 368 so. 2d 357 (Fla. 1979) also supports the Bar's, position. Fath received a reprimand and a ninety day suspension for neglect. The consequences of his neglect were admittedly more severe than the instant case. However, Fath received a ninety day suspension based upon neglect alone. Certainly the existence of neglect and several reprehensible acts of submitting false evidence should produce discipline as severe as that which was imposed in Fath. Respondent cannot sustain the distinction that the behavior in Fath was worse than Respondent's violations in this case.

In The Florida Bar v. Schilling, 485 So. 2d 551 (Fla. 1986) the Respondent received a six month suspension for two cases of neglect. The mere fact that Schilling had prior discipline obviously does not exclude the case from consideration, as the Respondent contends. The absence of prior discipline could reduce the length of a suspension, but not the suspension. Respondent ignores the fact that this case involves several acts of neglect and several fraudulent acts. The Respondent also argues that The Florida Bar v. Jones, 457 So. 2d 1384 (Fla. 1984) is inapplicable on the same basis i.e., by simply disregarding the existence of the fraudulent acts. Both cases, contrary to Respondent's contention include both neglect and fraudulent misrepresentation.

Additional cases cited by the Bar were The Florida Bar v. Gunther, 390 So. 2d 1192 (Fla. 1980) and The Florida Bar v. Segal, 441 So. 2d 624 (Fla. 1983); and The Florida Bar v. Hotaling, 470 So. 2d 689 (Fla. 1985). The first two involved neglect. Hotaling included misrepresentation as well as neglect. Discipline in the foregoing cases ranged from a twelve month suspension to an eighteen month suspension.

Respondent argues that the conduct was more serious in those cases. Obviously that is a meaningless argument since the length of suspension was much greater than that which is urged by the Bar in this case.

Respondent suggests that The Florida Bar v. Lecznar, 22 Fla. Law Weekly 5168, 169 (Fla. 1997) is of significance regarding this Court's review of discipline. The argument is somewhat surprising insofar as this Court held that the recommended discipline must have "a reasonable basis in current case law," and reversed the Referee. The Respondent has not cited any case that is closely analogous in which an admonishment was held to be the appropriate remedy.

Equally untenable is Respondent's reference to Rule 3-5.1(a) and (b) of the Rules of Professional Conduct. The Rule merely identifies certain types of conduct which will not constitute misconduct and/or admonishment. The Rule does not say that every other form of misconduct will constitute minor misconduct, an

absurd suggestion, indeed. Furthermore, the Rule states that "misconduct shall not be regarded as minor if";

> (E) The misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the Respondent.

The Referee specifically found that Respondent's misconduct involved fraud.

Furthermore, the Referee's recommendation of an admonishment pursuant to "Standard 4.44" (Report of Referee, p. 9) is wrong as a matter of law. That standard is limited to a case wherein the lawyer is guilty of a lack of "reasonable diligence." That Standard does not include consideration of the findings of three aggravating factors, the most serious of which involved fraudulent conduct.

CONCLUSION

Based upon the foregoing, the Referee's factual findings should be adopted in their entirety by this Court, the Referee's recommendation of an admonishment as appropriate discipline should not be followed and Respondent should be suspended for a period of ninety-one (91) days.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing was mailed to Sid J. White, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927 and a true and correct copy was mailed to Jerome H. Shevin,

Esquire, Attorney for Respondent, 100 North Biscayne Blvd., 30th Floor, Miami Florida 33132 and to John A. Boggs, Staff Counsel, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 on the **9th** day of March, 1998.

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