IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant/Appellee,

vs.

BILL A. CORBIN,

Respondent/Appellant.
_____/

Case No. 88,276

TFB File No. 96-00076-14

THE FLORIDA BAR'S ANSWER BRIEF

LUAIN T. HENSEL
Bar Counsel, The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 561-5600
Attorney Number 822868

JOHN T. BERRY
Staff Counsel, The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 501-5600
Attorney Number 217305

JOHN F. HARKNESS, JR.
Executive Director, The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 561-5600
Attorney Number 123390

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PRELIMINARY STATEMENT

In order to ensure a clear record, the following terms of reference will be utilized throughout this brief: The Florida Bar , the appellee herein, will be referred to as "The Florida Bar" or "the Bar". Bill A. Corbin, the appellant herein, will be referred to by his full name, as "respondent" or as "Corbin". References to the November 20, 1990, final hearing transcript will be made by utilizing the symbol "FH" followed hy the transcript page number. Exhibits entered into evidence at the final hearing will be referred to as "Exhibit ". References to the transcript of the December 2, 1996, hearing at which the referee announced her findings of respondent's guilt will be made by utilizing the symbol "GH" followed by the transcript page number. References to the Report of Referee will be made utilizing the symbol "RR" followed hy the page number.

STATEMENT OF THE CASE AND OF THE FACTS

I. STATEMENT OF THE CASE

Final Hearing of this matter was scheduled for November 26, 1996, pursuant to a telephonic case management conference held on September 18, 1996. Respondent was not represented by counsel at the final hearing. On December 2, 1996, the referee announced her findings of respondent's guilt of violation of **Rules 4-3.3 (a)(1)**[A lawyer shall not knowingly make a false statement of material fact or law to a tribunal]; **4-8.1 (a) [An** applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not knowingly make a false statement of material fact]; **and 4-8.4 (c) [A** lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation], Rules of Professional Conduct. During the December 2, 1996, hearing, respondent requested an opportunity to submit additional evidence and/or argument as to appropriate discipline. A Notice of Appearance as Co-Counsel was served by John **A.** Weiss on December 5, 1996.

On December 6, 1996, counsel served a Motion To Supplement Record of Dispositional Hearing and thirty-two affidavits as well as a Memorandum As To Discipline. The Bar's Response to the Respondent's Motion To Supplement Record was served December 9, 1990. The Bar's Reply to Respondent's Memorandum of Discipline **and** three affidavits were served December 10, 1996. **A** telephonic hearing was held December 10, 1996. **A** final dispositional hearing was held before the referee on January 21, 1997. The Report of Referee was served February 20, 1997.

The Report of Referee recommends that respondent be suspended from the practice of law for a period of six (6) months and taxes costs against the respondent. The Report of Referee was considered by the Board of Governors of The Florida Bar at its March, 1997 meeting. By letter dated March 21, 1997, the parties were notified that the Bar would not seek review. Respondent's Petition for Review was served April 7, 1997.

II. STATEMENT OF THE FACTS

On December 6, 1993, **Respondent** filed a complaint on behalf of his client against Kathryn M. Register, aka Kathryn M. Williams, arid Arthur Lee Williams, TTT, in Jackson County Court, Case No. 93-954CC. [RR 2; Exhibit 2]. In the complaint, Respondent alleged the defendants had failed lo pay rent from September 1990 lo Septcmbcr 1991. [RR 2; Exhibit 2]. Respondent deposed thc defendants on February 4, 1004.[RR 2]. Thc dcfcndants were not represented by counsel . [RR 2]. At their depositions, the defendants tcstificd that somc rent payments liad bccn paid with cash and othcrs had been paid by checks. [RR 2]. At thc deposition, respondent represented to them that if they produced documents proving their payment of rent, they would be given credit for those payments [RR 2].

On March 1, 1004, the defendants provided rcspoiidcnt with copies of cancclled cliccks showing rental payments as follows:

Check No. SO29 dated 11/14/00 for $357.56
Chcck No. 5030 dated 12/12/90 for $358.00
Chcck No. 5046 dated 01/14/91 for $360.00
Check No. 5048 dated 02/10/91 for $357.00
Check No. 5077 dated 04/06/91 for $350.00

[Exhibit 3; RR 3]. All of thc cancelled checks provided lo the respondent by the defendants were madc payablc to Ann Crum [Exhibit 3; RR 3].

On Junc 17, 1994, respondent filed ***a*** Motion for Summary Judgment reiterating the allegation that

no rent had been paid from September 1990 to September 1991. [RR 3; Exhibit 4]. Respondent prepared and attached to the Motion for Summary Judgment an affidavit signed by his client's mother, Ann T. Crum, which stated that the last payment made by the defendants was in August 1990. [RR 3; Exhibit 4]. Attached to Crum's affidavit and incorporated by reference was a handwritten record of the defendants' payments to Crum which showed the last payment as being *made* in August 1990. [RR 3; Exhibit 4].

Respondent did not disclose to the court the existence of the cancelled checks [RR 3; Exhibit 4]. At the time respondent prepared the Motion for **Summary** Judgment in which he represented to the court "There is no issue of any material fact in this cause ...", he knew there was a genuine issue of material fact, i.e., payments made after August 1990. [RR 3]. At the time respondent prepared the Affidavit of Ann T. Crum, he knew the information contained therein was untrue. [RR 3].

In his response to The Florida Bar's request that he **respond** to Mr. Williams' complaint against him, respondent stated as follows:

> ...the three-page attachment to Ms. Crum's Affidavit clearly shows the payments by those checks and thus credit for them. Paragraph 4 of the Affidavit clearly states that payments were made by the Defendants. [Emphasis in original]. [Exhibit 5; RR 3].

Neither the attachment nor the affidavit reflects those payments or credit for them [Exhibit 4].

SUMMARY OF ARGUMENT

In Bar disciplinary proceedings, the party seeking review of a referee's findings and recommendations must demonstrate that the referee's findings are clearly erroneous or lacking in evidentiary support, and unless that burden is met, the referee's findings and recommendations are upheld on review. Because the record is replete with clear and convincing evidence to support the referee's factual findings and disciplinary recommendation, respondent has failed to meet his burden.

Notwitlistanding his assertion that he had a right to rely on tlie information provided to him by liis client and licr mother, at tlie time respondent filed the Motion for Summary Judgment and affirmatively represented to tlie court that there was no issue of any niatcrial fact, he had in his possession copies of five negotiated checks bearing the endorsement of his client's mother. He knew his client and her mother denied receipt of the checks; he also knew from the defendants' sworn deposition testimony that they were claiming rent had been paid by those checks. Tlie existence of the checks and their validity were issues of material fact to be determined by the trier of fact.

Respondent's assertion that his response to Tlie Florida Bar was a mistake rather than a misrepresentation is not supported by tlie evidence. He claimed the "mistake" was made because he did not review the file prior to responding. However, he never explained why he did not mention an alleged forgery of Crum's signature between July 1995 and February 1990 or how he was able to attach copies of documents contained in the file to his response.

The referee's findings of fact are supported by clear and convincing evidence and should be upheld by this court. The referee's disciplinary recommendation is supported by Florida's Standards for Imposing Lawyer Sanctions, by the evidence, and by case law and should likewise be approved by this court.

ARGUMENT

I. THE FLORIDA BAR PROVED BY CLEAR AND CONVINCING EVIDENCE THAT RESPONDENT INTENTIONALLY MISREPRESENTED FACTS TO THE COURT DURING HIS REPRESENTATION OF MS. REED.

A referee's findings are presumed correct and will be upheld on review unless the party seeking review shows them to be clearly erroneous or lacking in evidentiary support. TFB v. McClure, 575 So. 2nd 176 (Fla. 1991). While The Florida Bar must prove its allegations by clear and convincing evidence, "this court's review of a referee's findings of fact is not in the nature of a trial de novo. The responsibility for finding facts and resolving conflicts in the evidence is placed with the referee." TFB v. Niles, 644 So. 2nd 504, 506 (Fla. 1994). R. Regulating Fla. Bar 3-7.0 (k)(1)(A) provides that the referee's findings of fact "shall enjoy the same presumption of correctness as the judgment of the trier of fact in a civil proceeding."

"Upon review, the burden shall be upon the party seeking review to demonstrate that a report of a referee sought to be reviewed is erroneous, unlawful, or unjustified." R. Regulating Fla. Bar 3-7.7 (c)(5). The Florida Bar has met its burden; the respondent has not and cannot.

Respondent's assertion that the referee erred by finding that Corbin knew Ms. Crum's affidavit contained untrue information is not supported by the facts, evidence, or the record. At the time respondent prepared and submitted the Motion for Summary Judgment and Crum's affidavit [Exhibit 4], he had in

his possession copies of five cancelled cliccks madc payablc to and apparently endorsed by Crum [Exhibit 3]. Both tlic motion and the affidavit clearly stated that no rental payments had bccn madc after August, 1990; all fivc checks were negotiated subsequent to that date.

Ms. Mary Lynell Morris, a bookkeeper at tlie Bank of Jackson County for more than twenty ycars, testified at the final hearing that shc rcscarchcd the bank's records and obtaincd copics of thc checks in qucstion. [FH 92-93]. Ms. Morris testified that she, her supervisor Joyce West, and Mr. Heisler, thc hank's executive vice-president, physically compared **Ann** Crum's signature on the back of the cancelled cliccks with the bank's signature card signed by Ann Crum. **All** of them concluded that tlic signatures appeared to be tlie same. [FH 95-96]. Ms. Morris further testified tliat thc signaturc of **Ann** Crum on her affidavit [Exhibit 4] also appeared lo be the same. [FH 96]. Finally, Ms. Morris tcstifiecl that no one ever contacted the bank to dispute either Ann Crum's signature or to claim that anyone otlicr than Ann Crum ncgotiated thc cliccks. [FH 97]. In thc normal coursc of thc bank's operations, such an allegation would havc bccn brought to her attention. [FH 97].

Joyce Wcst, hcad bookkccpcr and cmployee of the Bank of Jackson County for thirty ycars also tcstifiecl on bchalf of the Bar. She compared Ann Crum's signature on thc backs of the checks with Crum's signature on a note and concluded they were tlie same. [FH 104]. She also testified that tlie signature on Crum's affidavit was the same as tlie one on the backs of the checks. [FH 104-105].

Ms. Wcst also testified that bank policy rcquircs that a chccle presented for cash rcquircs tlic

signature of the person who receives the cash [FH 105]. Check No. 5029 dated November 19, 1990, was cashed by Ann Crum [FH 107]. Check No. 5030 was also cashed by Ann Crum [FH 108]. On the same day check No. 5030 was cashed, Ann Crum endorsed a payroll clicck payable to Ann T. Crum, which was also endorsed by Martha E. Thomas, her mother. [FH 101; 109; Exhibit 6]. The endorsement of Martha Thomas indicates that she received the cash despite the fact that the signature of Martha Thomas on the check does not appear to be hers. [FH 111]. Tlie cash ticket [Exhibit 6] indicates that Mr. Williams' check No. 5030 was cashed on tlie same day as the payroll check from Marianna Inns payable lo Ann T. Crum. [FH 114-115].

Check No. 5046 dated January 14, 1991, was endorsed and caslicd by Ann Crum on January 18, 1991. [FH 111]. Check No. 5048 dated February 10, 1991, was endorsed by **Ann** Crum and her mother Martha Thomas and was caslicd on February 12, 1991. [FH 112]. Check No. 5077 dated April 6, 1991, was endorsed and cashed by Ann Crum on April 9, 1991. [FH 112]. Finally, Ms. West testified that if **an** allegation or fraud or forgery had been made concerning tlie checks in question, she would have known about it. No such allegation was ever made. [FH 115-116].

The Florida Bar respectfully submits that a comparison of Ann Crum's signature on the backs of the checks in question [Exhibit 3], on the affidavit [Exhibit 4], and on the payroll check [Exhibit 6] does not require tlie expertise of a handwriting expert.

In the affidavit prepared by respondent, Ms. Crum states in pertinent part that "their [the defendants]

last payment was made during August of 1990." The affidavit incorporated by reference a handwritten record of payments indicating the last payment was in August 1990. [Exhibit 4]. At the time respondent prepared the motion and affidavit, he had in his possession five cancelled checks reflecting payments after August 1990.

The mere existence of the checks created a disputed issue of material fact. However, in the Motion for Summary Judgment, respondent did not disclose the existence of the checks and affirmatively stated "There is no issue of any material fact in this cause ...".

Elizabeth Reed, **Anti** Crum's daughter, had sued Ms. Crum over the ownership of the house rented by the Williamses and alleged that Ms. Crum had forged Reed's signature on a deed. [FH 145; ISO]. When shown the checks by respondent, Ann Crum denied their receipt but did not report the alleged forgery of her endorsement on them to the bank or the State Attorney's office. [FH 153-154]. Elizabeth Reed also did not report the alleged forgery to the bank or the State Attorney's office. [FH 169].

Finally, in a letter to Mr. and Mrs. Williams dated October 21, 1990, Ann Crum made no mention of the allegedly missing rent payments for September **and** October. Rather, she was trying to get them to purchase the house. [Exhibit 1].

On the day of the hearing of the Motion for Summary Judgment, the court reserved and granted the

defendants ten days to file opposing affidavits. Judge Hatcher explained that "The only reason I would do that since the rule really doesn't provide, they [the Williamses] came as pro se parties and they simply were not aware of their responsibility." [FH 175]. Respondent never re-noticed the hearing on the Motion for Summary Judgment after the Williamses retained counsel and provided the checks with an affidavit in opposition to the motion. [FH 184]. Respondent's Motion stating that "there is no issue of any material fact in this cause" without revealing the existence of the checks is a clear misrepresentation to a court.

As stated by the referee:

> Paragraph Fourteen. At the time Respondent prepared the Motion for Summary Judgment in Crum's affidavit, he knew the information contained therein was not true. This addresses two issues: Ms. Crum's affidavit and the Motion for Summary Judgment.
>
> I find that by clear and convincing evidence, The Florida Bar has proved the first part of that, that he knew that there was a genuine issue of material fact, which was payments after August of 1990. He knew that, because Mr. and Mrs. Williams had told him in deposition that they had made payments. Further, Mr. Williams provided copies of checks that obviously were negotiated made payable to Ann Crum for those dates indicated after August of 1090.
>
> Now, the other part becomes a little more problematic, and that is, whether or not he knew that Crum's affidavit was not true. I'm going to make these findings in support of my ruling on that particular portion.
>
> Essentially, this turns on the credibility of his defense that these clients were-- and although he doesn't phrase it quite this way, that the checks made payable to **Ann** Crum that were negotiated and obviously paid by the bank, were paid to someone else, because Ann Crum represented to him that the signature on the back of those checks was a forgery.
>
> Now, this is, in essence, an issue of credibility of his defense and I suppose it could be a valid defense if certain things ***had*** been done. But he never represented that issue to the Bar when the Bar

> inquired of him by letter last September what had happened. He never raised that. In fact, he stated clearly that the Williamses had been given credit for those checks.
>
> I appreciate that there was ***an*** allegation somewhere in the Complaint about what he said at the Grievance Committee hearing, but all that was presented at this hearing was that he did not raise that defense **and** he stated he did not know why he did not raise it. That was his language. To come over a year later and now raise this as ***a*** defense undermines the credibility of that.
>
> Further undermining the credibility of that defense is that he solely took his client's word for it, when he had obviously negotiated checks. He made no check with the bank to determine whether or not these checks **had** been cashed, who might have received the money, whether there'd been any complaints made.
>
> So this is a weighing and balancing, and the Court finds that based upon what I have just stated here, that that particular allegation in full has been proved by clear and convincing evidence.

[GH 6-81.

Respondent was attempting to take advantage of pro se litigants who were unaware of the need to file an opposing affidavit as evidenced by the fact that he filed the false motion rather than setting the matter for final hearing. Judge Hatcher testified that the Williamses appeared at the hearing prepared to argue the motion, at which time he explained the necessity of ***an*** affidavit **and** that this was not a small claims case [FH 175].

In finding that respondent violated Rule 4-3.3 **(a)**(1) **[A** lawyer shall not knowingly make a false statement of material fact or law to ***a*** tribunal], Rules Regulating the Florida Bar, the referee stated as follows:

> The defense that Mr. Corbin raises was that he was satisfied **in** his own mind that these checks had been forged and therefore had not been paid to Ms. Crum. But he filed ***a*** Motion for Summary Judgment. A Motion for Summary Judgment has a different standard

and therefore a different responsibility for an attorney than a final hearing.

In a Motion for Summary Judgment, an attorney must represent that there is no genuine issue as to any material fact. The Court fully appreciates that attorneys and judges have no responsibility to pro se litigants to assist them in preparing their cases. At the same time, the Court and the Bar have a responsibility not to mislead or undermine the efforts of pro se litigants to represent themselves. This is a critical issue, critical for the future of our Bar.

It is true that Mr. Corbin had no responsibility to litigate the Williams' case for them. But on a Motion for Summary Judgment, he, as an officer of the Court, represents to the Court that there is no genuine issue as to any material fact, and he knew there was a genuine issue as to a material fact, and that was the payment of rent for those five months.

The issue of whether that was Ms. Crum's signature or not was an issue for the trier of fact to determine, not for the person representing the plaintiff who claimed those signatures were forgeries to determine without presenting it to the trier of fact.

This is a little different situation than the landlord stating I never received the payments and the tenant under oath testifying, well, I paid you in cash on such and such a date. This was an issue where the Williamses had obviously cancelled checks. They looked real. They had the stamps of the various banks on them, and Mr. Corbin now at trial says that his client said they were forged. He had not said that up to this point.

That undermines the credibility of that particular defense. He knew there was an existence of a genuine issue and took no steps to ensure the Court knew that. He could have set it for a final hearing rather than a Motion for Summary Judgment and he didn't do that. He set it for a Motion for Summary Judgment.

Judges rely upon attorneys as officers of the Court representing to the Court that they've investigated the case. They have a greater responsibility than just as an advocate for their client; they have a responsibility to the Court to represent there were defenses raised but there was no true evidence to support them, something o f that sort.

He knew there was a genuine issue here and he did not represent that. Specifically, he said there was not. I find his inconsistency in responding to the official examination of his behavior supports that he knowingly made a false statement of

material fact to a tribunal in the filing of this Motion for Summary Judgment.

[GH 9-11].

II. THE REFEREE'S FINDING THAT RESPONDENT MADE A KNOWJNC MISREPRESENTATION IN A DISCIPLINARY MATTER IS CORRECT AND IS SUPPORTED BY CLEAR AND CONVINCING EVIDENCE

In his initial response to The Florida Bar, [Exhibit 5] respondent stated that "3 pages of attachments showing partial payments by Defendants as supported by their faxed transmittal [copies of the five checks] mentioned above. A copy of the Motion, Affidavit, and attachments are enclosed herewith." In the next paragraph, respondent claims "the 3-page attachment to Ms. Crum's Affidavit clearly shows the payments by those checks and thus credit for them." [Emphasis in original]. The three-page attachment does not show payments by those checks or any credit for them. Of more significance is the fact that the response does not mention any alleged forgery of the endorsement on the back of the checks. Between July 1995, when he received Mr. Williams' Bar complaint and the grievance committee hearing on February 8, 1996, respondent never raised the issue of an alleged forgery of Crum's endorsement on the checks. [FH 75-76].

At the final hearing, Corbin testified that his response was "a mistake" because the Bar complaint was received in his Calhoun county office and that the actual file was in his Jackson county office. He testified that he relied on his memory **and** a conversation with his secretary without looking at the file when he drafted his response. [FH 83-86]. What Corbin did not explain was how, if he did

not have access to his file at the time he responded, lie was able to attach copies of the Motion, Affidavit and attachments to his response. [Exhibit 5]. Respondent also failed to explain why between July 1995 when he received a copy of Mr. Williams' complaint and the Bar's request that he respond, and September 14, 1995, tlic date of his response, he was unable to review his office file. [FH 88-89; FII 203-2041.

In making her finding that respondent was untruthful in his response, the referee considered the totality of the evidence presented. [GH 8]. As respondent correctly notes in his brief, whether the defendants paid rent or not was not tlic issue in this disciplinary case. Whether respondent made a misrepresentation to the court when he stated there was no issue of any material fact when he knew there was **and** whether he made **a** misrepresentation to the Bar in his response are the issues. The existence and validity of the checks created an issue of fact which was known to Corbin when he filed the Motion for Summary Judgment. Respondent's very clear misrepresentation of material facts to the court and to the Bar cannot be viewed as immaterial.

111. THE REFEREE'S RECOMMENDATION THAT RESPONDENT BE SUSPENDED FROM THE PRACTICE OF LAW FOR A PERIOD OF SJX (6) MONTHS AND PAY COSTS SHOULD BE APPROVED BY THIS COURT

Respondent's effort to shift blame away from himself by claiming wrongdoing by the Williamses, while understandable, is clearly misplaced. Even Judge Hatcher acknowledged that he continued the hearing because the defendants appeared at the motion hearing prepared to argue their case

unaware of the need to submit an affidavit in opposition of the motion.

Before making her disciplinary recommendation, tlic referee was presented with case law, Florida's Standards for Imposing Lawyer Sanctions, and appropriate mitigating and aggravating factors. While this court has wider discretion in reviewing disciplinary recommendations, it should not substitute its judgment for that of the referee when the referee's recommendation is so clearly supported by the evidence.

Mr. and Mrs. Williams were pro se litigants who presented documentary evidence to Corbin which created a disputed fact. The deposition testimony of Mr. and Mrs. Williams and tlic cancelled checks put respondent on notice that tlicy were claiming they liad paid rent after August 1990. He also knew prior to filing the Motion for Summary Judgment that his client and lier mother Ann Crum were denying receipt of the checks and further claiming that Ms. Crum's signature had been forged. That respondent, who has practiced law for 27 years, could conclude tliose two positions do not create a disputed issue of material fact is incomprehensible and unworthy of belief. Respondent could have just as easily set the Motion for Final Hearing.

As the referee recognized:

> The Court, through tlic years sitting on the bench, has had to deal with large numbers of pro se cases. Mr. and Mrs. Williams, that is Ms. Register then, were pro se. Oftentimes, pro se defendants or plaintiffs do not understand tlic procedure, and I make a specific finding that even though Mr. Williams was employed as a deputy

> sheriff, apparently, and was in law enforcement within the system, he essentially was in the same position that all pro se litigants are, not understanding the processing of a civil case. He had more presence of mind, perhaps, than others may have, because of his involvement in the system.
>
> But pro se litigants oftentimes mishear or hear what they want to hear, and so those of us who are involved in the judicial system in a more regular way have, I believe, a greater responsibility to ensure that pro se litigants hear what we say or at least we say things as clearly as we possibly can.

[GH **3-41.**

The referee's disciplinary recommendation is supported by the case law. **As** this court is well aware, discipline in misrepresentation cases ranges from public reprimand to disbarment. Each case appears to be decided on its facts and counsel is able to find a case to support any position he/she may wish.

Keeping in mind the purposes of discipline articulated by this court in TFB v. Pahules, 233 So. 2nd 130 (Fla. 1970), as well as relevant case law and Florida's Standards for Imposing Lawyer Sanctions, The Florida Bar recommended that the facts in the case at bar warranted a suspension of at least six months. The referee agreed.

Corbin's misrepresentation to the court in the Motion for Summary Judgment was a blatant attempt to subvert the judicial process and an attempt to take advantage of pro se litigants in order to obtain a favorable judgment in favor of his client. When confronted with Mr. Williams' complaint to The Florida Bar , Corbin again lied by saying the payments had been reflected and credit had been given. The evidence belies his position. He then tried to claim his response was ***a*** "mistake" rather than a misrepresentation to the Bar. The referee was uniquely situated to assess the demeanor and the

credibility of the witnesses and the evidence. She rejected Corbin's position, as should this court. Corbin, as an officer of the court, has grave responsibilities to be perfectly candid with the court. He failed to live up to those responsibilities.

In TFB v. Scott, 566 So. 2nd 765 (Fla. 1990), an attorney received a 91-day suspension for accepting a transfer of property to avoid the creditors of the owner of the property. The respondent paid no consideration for the property because tie was to return tlic properties upon request. When the true owner died, the respondent represented to the heirs that there were no assets with which to open an estate. Rather, he concealed tlic existence of the property coiivcycd to him and claimed ownership for himself. As stated by Justice Ehrlich in his dissent, "Cupidity arid dishonesty have no proper role in the affairs of *an* attorney." Scott at 767. Anything less than the six months suspension recommended by the referee would be the "proverbial slap on the wrist" and an "affront to those lawyers who take seriously and abide by their oath of office." Scott at 767.

In TFB v. Niles, 644 So. 2d 504 (Fla. 1994), the respondent received a one-year suspension for, among other things, lying to prison officials and his client about an interview with the media *as* well as his receipt of $5000 for the interview.

In TPB v. Oxner, 431 So. 2d 983 (Fla. 1983), the respondent was suspended for sixty days for lying to a judge in order to obtain a continuance. Respondent's conduct was more far more egregious. Rather then seeking a mere continuance, Corbin sought a judgment against pro se litigants. This court recognized that Oxner's conduct had tarnished all members of the Bar and emphasized, as did

the referee in the case at bar, the importance ofjudgcs being able to rely on representations made to them by counscl.

This court approved a 01-day rehabilitation suspension in TFB v. Schramm, 668 So. 2d 585 (Fla. 1996) for the lawyer's misrepresentation lo judges and failure to represent his client. Tlircc disciplinary cases wcrc involved. In onc casc, tlic lawycr represented to a judge that he **had** discussed the basis for that judge's recusal with other attorneys when in fact hc had not and had madc no cffort to vcrify thc assertions sct forth in his motion. **In** the second, he lied about a calendar conflict in order to obtain a continuancc. In tlic third case, he simply failed to represent his client.

This court approved a six-month suspension in TFB v. Colclough, 561 **So.** 2d 1147 (Fla. 1990) when tlic attorney madc falsc rcprcscntations to thc court and counsel that a cost judgment had been obtained when in fact it had not.

Corbin, as did the attorney in TFB v. Segal, 603 So. 2d 618, 620 (Fla. 1995), "knowingly and with conscious awarcncss of thc naturc of hcr conduct which was designed to accomplish a particular result intentionally made false statements or iiiisrepresentation." In Segal, a young lawycr closcd hcr uncle's cstatc when fccs and monics wcrc contcstcd. She filed ***a*** petition for discharge in which she stated all claims and debts had been paid and provisions had been made for paying tlic costs of administration. Finally, shc falscly claimcd she was thc only person having ***an*** interest in the estate and failed to notify her co-personal representative. That attorney was suspended for three years with special conditions.

In TFB v. Merwin, 636 So. 2d 717 (Fla. 1994), this court disbarred a lawyer for lying under oath and failing to properly represent a client. The attorney failed to appear or return phone calls to the judge and opposing counsel and then lied to them about the reasons for his failure return the calls. In that case, the attorney had two prior public reprimands. Corbin *has* three prior private reprimands.

In TFB v. Jones, 457 So. 2d 1384 (Fla. 1984), the atlorney was suspended for six months for misrepresenting the amount of his client's personal injury settlement to a hospital. In TFB v. Palmer, 504 So. 2d 752 (Fla. 1987), the attorney was suspended for eight months and required to take the ethics exam lor lying to his client about her case. Unlike Corbin, Palmer had no prior disciplinary history, made restitution to the client, and was remorseful.

Perhaps most factually similar to the case at bar is TFB v. Salnik, 591 So. 2d 101 (Fla. 1992), in which this court disbarred an attorney for using a judge's stamp to forge a judgment which he then sent to the unrepresented opposing party in an eviction proceeding in order to intimidate them. Salnik then attempted to cover up his wrongdoing by lying to the Judge and The Florida Bar. Notwithstanding a referee's recommendation of a 91-day suspension and the ethics exam as well as substantial mitigation, i.e., respondent's good character, the fact that respondent was under a lot of stress and having health problems, his inexperience in the practice of law, and no prior discipline, none of which are applicable to Corbin, this court disbarred him even though no one was injured. As this court recognized, the potential harm was substantial.

The referee's disciplinary recommendation that respondent should be suspended for six months is clearly supported by the case law. The Florida Bar respectfully submits that an even harsher disciplinary recommendation would have been justified predicated upon the egregious nature of Corbin's misconduct.

The referee's disciplinary recommendation is further supported by Florida's Standards for Imposing Lnwycr Discipline. Fla. Stds. Imposing Law. Sancs. 6.12 provides: "Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action." This standard is precisely on point. Respondent knew there was a disputed issue of material fact when he filed the Motion for Summary Judgment and withheld that information. He also knew the defendants had not been given credit for the cliccks when he replied to Tlic Florida Bar.

Fla. Stds. Imposing Law. *Sancs.* 7.2 provides: "Suspension is appropriate wlicn a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system." This standard is also on point. Corbin knew his conduct was a violalion of his duty owed as **a** professional and officer of the court. The potential injury to the public and legal system was great. But for Judge Hatcher's decision to allow the defendants additional time to comply with rules with which they were not familiar, Corbin would have obtained a judgment against them. If Corbin was as certain as he claimed that the checks had not been received by his client **and** her mother, lie could and should have set the matter for final hearing. The issue of the receipt and/or the validity of tlic checks was an issue to be determined by

the trier of fact; it was not an issue appropriate for unilateral determination by Corbin.

Fla. Stds. Imposing Law. Sancs. 6.13 [Public reprimand is appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld] cited by respondent is relevant only for "negligent" conduct. As proven by clear and convincing evidence and as found by the referee, respondent's misrepresentations to both the court and The Florida Bar were not "negligent"; they were intentional. A public reprimand would serve none of the purposes of lawyer discipline.

Respondent's reliance on the thirty-two (32) affidavits he submitted as evidence that the referee erred in failing to acknowledge respondent's good character is misplaced. Even a cursory review of the affidavits submitted by both Corbin and the Bar support the referee's decision to consider them a neutral factor.

Of the thirty-two (32) affidavits submitted by respondent, one was his own, two were from his employees, twenty-six were from lay persons, and only three were from attorneys. Two of the three affidavits from attorneys were carefully worded to avoid any mention of Corbin's reputation in the legal community. The best that Richard Ogburn could say was that Corbin has never made any misrepresentations to him or a court "in the affiant's presence." None of the 32 affidavits directly addresses the misconduct at issue. While it may be true that Corbin has participated in civic work and that he is liked by some members of the community, it remains clear that the Bar proved by clear and convincing evidence his misrepresentation to the court and the Bar. His misconduct cannot and

should not be tolerated. Protecting the public and restoring the public's confidence in the integrity of our profession is essential. A public reprimand or short term suspension, perceived by many as a slap on the wrist, is inadequate and would be an affront to those honest and ethical lawyers who are guided and abide by the solemn oath they took when admitted to the practice of law.

The three affidavits submitted by the Bar from lawyers specifically address respondent's poor reputation in the legal community for ethics, professionalism, **and** character, and state specific instances demonstrating the reasons for his poor reputation. If the referee erred in considering the conflicting affidavits as a neutral factor, she erred in Corbin's favor.

Respondent's claim that the referee erred when she found his dishonest or selfish motive to be an aggravating factor is likewise refuted by the evidence. The referee specifically found a dishonest motive to advance the cause of his client at the expense of an unrepresented opposing party [KR h]. The record is replete with evidence to support the referee's finding.

Finally, respondent claims the referee erred in finding as an aggravating factor his refusal to acknowledge the wrongful nature of his conduct. Corbin went far beyond merely asserting his innocence; he repeatedly tried to justify and rationalize his misconduct without ever recognizing that he may have been wrong. Respondent's failure to acknowledge the wrongful nature of his conduct is consistent with his reputation for never admitting to being wrong on any legal issue even when he plainly is. [Affidavit of Douglas L. Smith]. If this court were to accept respondent's argument

on this point, it would have to ignore the inclusion of that factor in the list of aggravating factors set forth in Fla. Stds. Imposing Law. Sancs. 9.22 in every case which is disputed before a referee. It is patently apparent from the record that the referee's disciplinary recommendation did not turn on this one aggravating (actor.

Corbin clearly crossed the line between the zealous representation of his client and engaging in misrepresentation **and** deceit. Corbin's misconduct is particularly reprehensible because he attempted to utilize his unfair and dishonest tactics against pro se litigants. As aptly stated by the referee in her letter to counsel dated February 5, 1997:

> Mr. Corbin made ***an*** intentional misrepresentation to the legal system: the trial judge and The Florida Bar. The actual and potential injury from his conduct is an erosion of confidence on the part of the judiciary and the public in lawyer's honesty. There is no more serious impact upon the integrity of our judicial system.

CONCLUSION

Because the referee's findings of fact arc supported by clear and convincing evidence, thcy should be upheld by this courl. In making her recommendation that respondent bc suspcndcd from tlic practicc of law for a pcriod of six (6) months and that costs be assessed against him, she considered Florida's Standards for Imposing Lawyer Sanctions, thc cvidcncc and affidavits submitted at the sanctions hcaring, and thc mcmoranda and casc law provided by counsel. The rcferee properly rejected respondent' s argument that a public rcprimand is the appropriate sanction. So should this court.

Respectfully submitted,

Luain T. Hensel

LUAIN T. HENSEL, Bar Counsel
The Florida Bar
050 Apalachcc Parkway
Tallahassee, Florida 32399-2300
(904) 501-5600
Attorney Number 822868

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correcl copy of the forcgoing The Florida Bar's Answer Brief rcgarding Supreme Court *Case* No. 88,276 (TFB File No. 96-00076-14) has been mailed by certified mail # P 265 276 130, return receipt requested, to BILL A. COKBIN, Respondent, c/o John A. Weiss, Counsel for Respondent, at his record Bar address of-2937 Kerry Forest Parkway, Suite R-2, Tallahassee, Florida 32308, on this 22 d day of June, 1007.

Luain T. Hensel

LUAIN T. HENSEL, Bar Counsel

cc: John T. Berry, Staff Counsel, c/o John A. Boggs, Director of Lawyer Regulation