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JUN 13 1997

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

DAVID WILSON, III,

Respondent.

Case No. 89,066

[TFB Case No. 96-31,129 (10B)]

CLERK, SUPREME COURT

By

Chief Deputy Clerk

THE FLORIDA BAR'S ANSWER 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 February 28, 1997, shall be referred to as "TI^{II}" followed by the cited page number. The transcript of the disciplinary hearing held on March 31, 1997, shall be referred to as "TII" followed by the cited page number.

The Report of Referee dated April 3, 1997, will be referred to as "ROR" followed by the referenced page number(s) of the Appendix, attached. (ROR-A____)

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

STATEMENT OF THE CASE

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For clarity, the bar will set forth a statement of the case in this matter.

On July 11, 1996, the Tenth Judicial Circuit Grievance Committee "B" voted to find probable cause. The bar filed its complaint on October 2, 1996, and on October 11, 1996, this court issued an order directing that the Chief Judge of the Ninth Judicial Circuit appoint a referee. The referee was appointed on October 21, 1996. The final hearing was held on February 28, 1997. The referee considered arguments as to the appropriate discipline at the disciplinary hearing held on March 31, 1997. The referee served his report on April 3, 1997, in which he recommended the respondent be found guilty of violating Rules Regulating The Florida Bar 4-1.9 for formerly representing a client in a matter and then representing another client in a substantially related matter in which that client's interests were materially adverse to the interests of the former client or for using information relating to the representation of a client to the disadvantage of the client; and 4-8.4(d) for engaging in conduct in connection with the practice of law that was

prejudicial to the administration of justice. The referee recommended the respondent be suspended for a period of 90 days and, after reinstatement, be placed on a two year period of supervised probation with the conditions that the respondent be assigned a monitoring attorney, submit quarterly case reports to the monitoring attorney for that lawyer's review to determine whether or not any potential conflicts of interest exist, develop and maintain a system for conflict avoidance (including the use of retainer/fee contracts), and pay all disciplinary and probation costs. In making his recommendation, the referee considered the respondent's substantial experience in the practice of law, his prior disciplinary history and his minor children who require substantial financial commitment.

The respondent served his petition for review and his initial brief on April 29, 1997. The bar was granted an extension of time until June 13, 1997, to file its answer brief and petition for review because the Board of Governors of The Florida Bar would not meet to consider the referee's report until May 29, 1997. At its **May**, 1997, meeting, the board voted not to seek an appeal.

STATEMENT OF THE FACTS

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For clarity, the bar is including a statement of the facts.

In 1990, Betty Wells won approximately 8 million dollars in the lottery and she wished to share her winnings equally with her husband, Edward H. Wells (ROR-A3). So as to accomplish this objective, they retained the respondent's services and he prepared and filed a joint petition to ensure that the couple obtained an equal interest in the money (ROR-A3). The respondent also represented the Wilsons in their purchase of a home (ROR-A3). Later, after the Wilsons encountered problems with making the mortgage payments in a timely manner, the respondent interceded on their behalf with the mortgage holder (ROR-A3). In 1993, the respondent represented Mr. Wells in a criminal matter and in 1994 represented Ms. Wells in a criminal matter (ROR-A3).

After the couple began experiencing marital problems, Mr. Wells contacted the respondent about filing a petition for dissolution of marriage, but the respondent declined to accept the representation due to his past involvement in the couple's legal problems (ROR-A3). Thereafter, Mr. Wells retained another

lawyer and filed the petition (ROR-A4). The respondent then filed an answer and counter petition on Ms. Wells' behalf (ROR-A4). The respondent then filed a motion seeking to set aside the declaratory judgment he had obtained for the couple giving them an equal interest in the lottery winnings (ROR-A4). Opposing counsel moved to disqualify the respondent from further representation of Ms. Wells, which the court orally granted on December 1, 1995, after an evidentiary hearing (ROR-A4-5). Thereafter, the respondent filed a motion to stay pending review, a motion for rehearing on the disqualification issue and a motion to disqualify the trial judge (ROR-A5). The court entered its written order of disqualification on December 12, 1995 (ROR-AS).

SUMMARY OF THE ARGUMENT

A referee's findings of fact are presumed to be correct and the party seeking to challenge them must show the findings to be clearly erroneous or without basis in the record. The Florida Bar v. Benchimol, 681 So. 2d 663, 665 (Fla. 1996). The respondent has failed to carry this burden. The referee's findings are supported by the evidence and the testimony and his recommendation as to a 90 day suspension is supported by the case law and Florida Standards for Imposing Lawyer Sanctions.

ARGUMENT

THE REFEREE'S FINDINGS OF FACT AND RECOMMENDATION AS TO
DISCIPLINE ARE SUPPORTED BY THE EVIDENCE **AND** CASE LAW.

A referee's findings of fact regarding guilt are presumed to be correct and will be upheld unless shown to be clearly erroneous or without support in the record. Benchimol, supra. If the referee's findings are supported by competent, substantial evidence, this court is precluded from reweighing the evidence and substituting its judgment for that of the referee. Benchimol, supra. The party who is arguing a referee's findings of fact and conclusions of guilt are erroneous must prove there is no evidence in the record to support the findings or that the record evidence clearly contradicts the referee's conclusions. Benchimol, supra. The bar submits the respondent has failed to carry this burden.

The referee's report, with its citations to the record supporting his factual findings, is well reasoned and shows he carefully weighed all the evidence and testimony (TII p. 4). The respondent's arguments in his initial brief clearly show he fails to appreciate the main issue in these disciplinary proceedings - his failure to recognize that he had a conflict of interest that

precluded him from accepting the representation of Ms. Wells in the dissolution action. The respondent has been admitted to the practice of law in this state since 1977 (TI p. 83). He certainly should have recognized at the outset of the representation there was a potential for a conflict to develop should his client advise him she wished to have the declaratory judgment, which the respondent had obtained for both Mr. and Ms. Wells several years earlier (B-Ex. 1; TI p. 66), set aside so that she would no longer have to share one-half of her lottery winnings with Mr. Wells.

In his initial brief, the respondent attempts to reargue the trial court's order of disqualification. The issue here is whether or not the respondent's actions violated the Rules Regulating The Florida Bar and not whether the trial court entered a legally sufficient order. A lawyer must zealously represent a client within the framework of the Rules Regulating The Florida Bar. The respondent's argument that he did not act improperly by filing a motion to recuse the trial judge after the court entered its oral order of disqualification because the order had not been reduced to writing is a distinction without a difference from the perspective of the respondent's ethical

obligations. He was on notice that the trial court believed he had a conflict of interest warranting his disqualification from any further representation of Ms. Wells. The respondent had no valid reason to seek disqualification of the trial judge.

The referee also considered the respondent's arguments in mitigation, namely that a suspension of six months, which the bar originally was seeking, would in effect put him out of business (TII p.p. 30-31) and he has three young children to support, one of whom is disabled (TII p. 31).

The purposes of bar disciplinary proceedings are threefold: the judgment must be fair to society, it must be fair to the respondent and it must be severe enough to deter other attorneys from engaging in similar misconduct. The Florida Bar v. Spann, 682 So. 2d 1070, 1074 (Fla. 1996). The bar submits that a suspension of at least 90 days followed by a two year period of conditional probation would best serve these purposes and is supported by the case law and the Standards for Imposing Lawyer Sanctions.

A lawyer was suspended for six months in The Florida Bar v.

Mastrilli, 614 So. 2d 1081 (Fla. 1993), for representing clients with conflicting interests in the same matter. Mr. Mastrilli was retained by two women who had been injured in an automobile accident where one had been the driver and the other the passenger. When the driver's insurance company denied payment, Mr. Mastrelli filed suit against the driver on the passenger's behalf while still counsel for both. This court found Mr. Mastrilli's argument that he was merely negligent in not discovering the obvious conflict of interest, and that neither person was harmed by his actions, to be unpersuasive.

The respondent's conflict in representing Ms. Wells was as obvious as the one in Mastrilli, supra. The respondent, as an experienced practitioner, should have known a potential conflict of interest existed due to the fact that the lottery winnings were a significant marital asset by virtue of the declaratory judgment the respondent had obtained for the Wells. He did advise Mr. Wells that he could not represent him in filing the petition for dissolution of marriage (ROR-A3). The bar submits that if the respondent knew it was improper for him to represent Mr. Wells, then he knew, or should have known, it would be improper for him to represent Ms. Wells.

Disbarment was warranted due to several aggravating factors in The Florida Bar v. Katz, 491 So. 2d 1101 (Fla. 1986). Although more egregious than the respondent's misconduct here, the facts of Katz are similar. Mr. Katz represented clients with conflicting interests, coerced a former client to agree to pay damages on a meritless claim, and made misrepresentations in a pleading filed with the court. With respect to the conflict issue, he had been retained to represent a wife in a divorce and obtained a final judgment that provided for child support as well as other relief on her behalf. He continued to represent her in postdissolution proceedings concerning child support arrearages. Thereafter, he undertook representation of the former husband who was seeking a reduction of the child support awarded to the former wife in the final judgment Mr. Katz had obtained. The former wife had not given her consent to this representation. Mr. Katz' explanation for undertaking the former husband's case was that the former wife knew the former husband was not able to maintain the child support payments and she knew that Mr. Katz was trying to obtain a stipulation for reducing the support amount. Mr. Katz insisted he was trying to negotiate a compromise that would be fair to both parties. Neither the referee nor this court found Mr. Katz' argument to be persuasive. In aggravation,

there were multiple counts of misconduct, and Mr. Katz' prior disciplinary history, and his conduct, indicated a complete disregard for the Code of Professional Responsibility.

The Florida Standards for Imposing Lawyer Sanctions also support a suspension as the appropriate level of discipline in this case.

Standard 4.32, Failure to Avoid Conflicts of Interest, calls for a suspension when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. The respondent knowingly undertook the representation of Ms. Wells in the divorce, after telling Mr. Wells he could not represent him due to a conflict of interest (ROR-A3), and then found it necessary to seek a reversal of the declaratory judgment that he had years earlier obtained for the Wells. Even if the respondent did not believe he had a conflict of interest at the outset of the representation, he certainly knew, or should have known, such a irreconcilable conflict arose once he was asked by Ms. Wells to seek to have declaratory judgment reversed.

Standard 6.22, Abuse of the Legal Process, calls for a suspension when a lawyer knows that he is **violating** a court order or rule and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding, The respondent knew that the trial judge had orally entered an order disqualifying him from further representation of Ms. Wells due to the conflict of interest. Instead of ceasing the representation, he prepared and filed various motions, including a motion to recuse the trial judge, on Ms. Well's behalf, apparently relying on the fact the court had not yet reduced its oral order to writing. An attorney with the respondent's years of experience should have known this was not proper.

In aggravation, under standard 9.22, the respondent has a prior disciplinary offense [9.22(a)]. He was privately reprimanded in 1992 for repeatedly turning his back on the court while addressing it, despite having been warned by the presiding judge to cease his show of disrespect. ~~The Florida Bar v. Wilson,~~ No. 71,277 (Fla. July 20, 1989). He has refused to acknowledge the wrongful nature of his misconduct [9.22(g)] and instead has insisted that he merely did as his client directed, with no

apparent understanding of his obligations as an officer of the court. He has substantial experience in the practice of law [9.22(i)]. In mitigation, under standard 9.23, the respondent suffers from personal or emotional problems [9.23(c)].

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendation of a 90 day suspension followed by a two year period of probation subject to the conditions set forth in the Report of Referee and uphold his findings and recommendations and tax costs against the respondent currently totaling \$1,886.10.

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 Answer Brief and Appendix have been sent by regular U.S. Mail 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 regular U.S. Mail to the respondent, David Wilson, III, 1852 First Street, N.E., Post Office Box 3154, Winter Haven, Florida, 33881, and 927 Goldwyn Avenue, Post Office Box 555253, Orlando, Florida, 32855-5253; and a copy of the foregoing has been furnished by regular U.S. Mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 11th day of June, 1997.

Respectfully submitted,



Eric M. Turner
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 89,066

[TFB Case No. 96-31,129(10B)]

v.

DAVID WILSON, III,

Respondent.

APPENDIX TO COMPLAINANT'S INITIAL BRIEF

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,
Complainant,

Case No. 96-3 1, 129 (1 OB)

v.

David Wilson, III,
Respondent.

Report of Referee

I. Summary of Proceedings:

On October 2, 1996, The Florida Bar (the "Bar") filed a complaint against member David Wilson, III ("Wilson") in the Florida Supreme Court. Subsequent to the filing of the Complaint, the undersigned was duly appointed as Referee to conduct disciplinary proceedings according to the Rules Regulating The Florida Bar. An evidentiary hearing was held on February 28, 1997.

The Complaint filed by the Bar alleges, in material part, that Wilson violated Rule 4-1.9 of the Rules Regulating the Florida Bar by representing Betty Wells in a dissolution of marriage action against Edward H. Wells, Jr., after Wilson had represented both Betty Wells and Edward H. Wells, Jr. in other legal matters, including, but not limited to, a declaratory judgment action against the Florida Department of the Lottery - an action wherein the Wells sought to have a lottery prize of approximately 8 million dollars declared as a joint asset to be shared equally between them. The Complaint further alleges that in representing Betty Wells in the dissolution action against Edward H. Wells, Jr., Wilson used information obtained during his representation of both of the Wells to the advantage of Betty Wells, and to the disadvantage of the former client, Edward H. Wells, Jr., or that Wilson represented Betty Wells in an action where her interests

were materially adverse to the interests of former client Edward H. Wells, Jr. Finally, the Bar complains that Wilson violated Rule 4-8.4(d) of the Rules Regulating the Florida Bar for engaging in unprofessional conduct during the course of the Wells' divorce action. It is alleged that Wilson, among other things, filed pleadings after the trial court entered an oral order of disqualification; failed to communicate with substituted counsel for Edward H. Wells, Jr.; and, conducted himself in an inappropriate manner when dealing with opposing counsel.

In his Answer, Wilson denied having represented Edward H. Wells, Jr., in the declaratory judgment action, He alleged that he represented Betty Wells in that case and that Edward H. Wells, Jr. was a joint beneficiary of that action. With regard to the dissolution of marriage action, Wilson alleges that there was no conflict between the Wells since he represented Betty Wells and that she wanted a 50/50 distribution of assets. Wilson also denied that he engaged in unprofessional conduct during the Wells' divorce.

The pleadings, notices, motions, transcripts and exhibits, all of which are furnished to the Florida Supreme Court with this report, constitute the record in this case.

The following appeared as counsel for the parties:

For the Florida Bar: Eric M. Turner

For the Respondent: David Wilson, III

II. Findings of Fact:

After considering the pleadings and evidence in this case, I make the following findings of fact:

1. Wilson was and is a member of The Florida Bar subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating The Florida Bar. (Complaint Paragraph 1; Answer Paragraph 1)

2. In June 1990, Betty Wells won approximately 8 million dollars in the Florida lottery. It was the desire of Betty Wells to share the lottery prize equally with her husband, Edward H. Wells, Jr. (Bar Exhibit 1) In order to effectuate this desire, the Wells contacted Wilson who filed a Petition for Declaratory Judgment against the Florida Department of the Lottery. The case number is **CI90-10035** and the petitioners in that action are identified on the pleadings as “Edward Wells and Betty Wells, his wife.” The final judgment declares that the Wells would share equally in the prize money. (Bar Exhibit 1) According to Edward H. Wells, Jr., Wilson indicated to him that he, Wilson, would represent both of the Wells in the declaratory judgment action. (TR 65-66)
3. At some point subsequent to Betty Wells winning the lottery, the Wells became involved in the purchase of a home. (TR 71) Wilson assisted both of the Wells in the purchase of the home. (TR **68,87**) There were problems with the Wells making mortgage payments in a timely fashion and Wilson interceded with the mortgage holder on behalf of the Wells regarding these problems. (TR **69,87**) (Bar Exhibit 3) The mortgage issues were active in April of 1995, after the dissolution action had been filed on March 29, 1995. (TR 47)
4. In 1993, Wilson represented Edward H. Wells, Jr. on criminal charges of disorderly conduct and carrying a concealed weapon. (Complaint Paragraph 5; Answer Paragraph 5)
5. In 1994, Wilson represented Betty Wells on a criminal charge of aggravated assault after Edward H. Wells, Jr. had called the police alleging that his wife had battered him. (Complaint Paragraph 6; Answer Paragraph 6)
6. Edward H. Wells, Jr. approached Wilson for the purpose of representing him in a dissolution of marriage action against Betty Wells. Wilson refused due to his past representation. (TR 66) (Bar Exhibit 2)

7. On March 29, 1995, Edward H. Wells, Jr. filed a dissolution action against Betty Wells. Mr. Wells was represented by Attorney Robert J. Nesmith. (Complaint Paragraph 7; Answer Paragraph 7) (Bar Exhibit 1)

8. Wilson filed an answer and counterpetition for dissolution on behalf of Betty Wells. (Complaint Paragraph 9; Answer Paragraph 9) (Bar Exhibit 1)

9. On June 23, 1995, as part of the dissolution action, Wilson, on behalf of Betty Wells filed a motion to set aside the declaratory judgment award which had given a 50% interest in the lottery prize to Edward H. Wells, Jr. (Bar Exhibit 1) The action taken by Wilson in representing Betty Wells against Edward H. Wells, Jr. in the dissolution action was a clear conflict of interest. Wilson had represented Mr. Wells in the declaratory judgment action and had obtained for him an award of 50% of the lottery prize. In the dissolution action, Wilson, on behalf of Betty Wells, sought to have that award taken **from** Mr. Wells. This motion was denied so no actual harm **was** done to Mr. Wells.

10. Wilson did not present any retainer agreements or contracts of employment for any services rendered by him for the Wells. (TR 91-93, 95-96) Nor did he produce any "waiver of conflict" **documents.**(TR 93)

11. Between November 10 and **13, 1995**, Paul D. Newnurn prepared and filed a number of documents which reflected that he was being substituted as counsel for Edward H. Wells, Jr. (Bar Exhibit 1) The certificate of service on the "Husband's Authorization for Substitution of Counsel" reflects a copy of the notice by mail and fax to Wilson. (Bar Exhibit 1)

12. Newnurn also filed a motion to disqualify Wilson which was called up for hearing before Judge Lawrence R. **Kirkwood** on November **13, 1995**. (Bar Exhibit 1)

13. On November 13, 1995, the Court did not take action on the motion to disqualify. **The**

Court ordered a full evidentiary hearing on the issue. Newnum appeared on November 13 in person. Wilson appeared by phone. (TR 38)

14. Newnum attempted to contact Wilson between November 13, 1995 and December 1, 1995 - the date set for the hearing on the motion to disqualify - without success. (TR 38-40)

15. On November 14, 1995, the day following the November 13 hearing, Wilson set a **final** hearing in the dissolution matter for December 1, 1995. Wilson did not include Newnum in the certificate of service. (Bar Exhibit 1) (TR 41-42)

16. The hearing on the motion to disqualify was held on December 1, 1995. The motion to disqualify Wilson was granted via oral order from the bench. A written order was entered on December 12, 1995. (Bar Exhibit 1)

17. On December 8, 1995, Wilson filed a motion to stay pending review and a motion for rehearing on the disqualification issue. (Bar Exhibit 1) He also filed on behalf of Betty Wells a motion to recuse the trial judge. (Bar Exhibit 1) Because he had been disqualified by the Court on December 1, 1995, Wilson had no standing to file the motion to recuse. The filing of the **recusal** motion constitutes a violation of Rule 4-8.4(d).

18. Other than the determinations set forth above, the conduct of Wilson during the course of the dissolution about which the Bar complains reflects poor judgment on Wilson's part, but does not rise to the level of conduct which is prejudicial to the administration of justice. For example, it would have been better practice for Wilson to copy Newnum on notices of hearing after Newnum filed a notice of appearance even if the Court had not formally entered an order allowing Newnum to be substituted as counsel for Mr. Wells. Similarly, it would have been better practice for Wilson to communicate with Newnum prior to the formal order of substitution. The fact that Wilson had contact with Betty Wells after he was disqualified in the

dissolution action was cause for concern for Newnum. However, Wilson had the right to represent Betty Wells on matters other than the dissolution and there has been no showing that he was interfering in the dissolution case at the time he had the discussion with Betty Wells outside of Judge Kirkwood's courtroom. Thus, as to these issues, there is not sufficient evidence to support a finding that Wilson violated Rule **4-8.4(d)** - engaging in conduct prejudicial to the administration of justice.

III. Recommendation as to Whether or Not the Resngndent Should **Be Found Guilty**:

As to the Complaint, I make the following recommendations as to guilt or innocence:

I recommend that Wilson be found guilty of violating Rule **4- 1.9** of the Rules Regulating the Florida Bar for representing a client - Edward H. Wells, Jr. - in a matter (declaratory judgment action and criminal case) and then representing another person - Betty Wells - in a substantially related matter (dissolution) in which the-interests of Betty Wells were mutually adverse to the interests of Mr. Wells. In the dissolution action, Wilson, acting for Betty Wells, tried to overturn the **fifty** percent lottery award to Mr. Wells which Wilson had obtained for Mr. Wells in the declaratory judgment case.

I also recommend that Wilson be found guilty of violating Rule **4-8.4(d)** of the Rules Regulating the Florida Bar for filing a motion on behalf of Betty Wells to **recuse** Judge **Kirkwood** in the dissolution action after Wilson had been disqualified **from** representing Mrs. Wells.

IV. Recommendation as to Disciplinary Measures to be **Applied**

I recommend that Wilson be suspended from the practice of law for a period of 90 days with automatic reinstatement at the end of the period of suspension as provided in Rule **3-5.1(e)**, Rules of Discipline.

Upon reinstatement to the practice of law, I recommend that Wilson be placed on probation for a period of 2 years. The terms of probation are as follows:

(1) That Wilson be assigned to a 'monitoring attorney' to be approved by the Florida Bar; and

(2) That Wilson submit quarterly case reports to the monitoring attorney for that attorney's review for possible conflicts of interest; and

(3) That Wilson develop and maintain a system for conflict avoidance (including the use of fee/retainer contracts for all clients) that is satisfactory to the Florida Bar; and

(4) That Wilson pay all fees and costs associated with the work of the monitoring attorney.

V. Personal History and Past Disciplinary Record:

After my **findings** of guilt and prior to recommending discipline pursuant to Rule **3-7.6(h)(1)(D)**, I considered the following personal history and prior disciplinary record of the Respondent, to wit:

Age: 44

Date admitted to Bar: 1977

Prior disciplinary convictions and disciplinary measures imposed therein:

-
1992 Private Reprimand

I believe that the discipline recommended herewith is sufficient to punish Wilson for his offending conduct and sufficient to deter others **from** committing similar violations, yet it takes into account his many years of practice and limited disciplinary record. Wilson has been a member of the Bar for twenty years and his only prior discipline **was** a private reprimand. This history played a significant part in my not recommending a more severe penalty. Wilson may

have rationalized away **the** conflict which occurred in the dissolution action because of Mrs. **Wells'** position **that** the assets of the parties be divided fifty/fifty with Mr. Wells. Aside from the fees to be gained for representing Mrs. Wells, there was no other personal gain to Wilson arising from the conflict. But, an attorney of Wilson's experience should have easily recognized the conflict and taken steps to avoid it. He clearly should not have filed the motion to **recuse** Judge **Kirkwood** after he, Wilson, had been disqualified. There was no excuse for such behavior. For Wilson, a sole practioner, a 90 day suspension will have a significant impact on his practice, an impact which I believe to be sufficient punishment, given the facts and circumstances of this case. Due to Wilson's limited disciplinary history, I believe automatic reinstatement is appropriate.


VI. Statement of Costs and Manner in Which Cost Should be Taxed:

I **find** the following costs were reasonably incurred by The Florida Bar (see attached Affidavit of Costs):

Administrative costs	\$750
Rule 3-7.6(k)(1)(E)	
Bar counsel copy costs	\$191.00
Court reporter costs	\$692.00
Bar counsel travel and out-of pocket costs	\$27.89
Investigator Costs	\$43.66
TOTAL ITEMIZED COSTS	\$1704.55

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.

Dated this 3 day of APRIL, 1997.


Referee

Certificate of Service

I hereby certify that a copy of the above Report of Referee has been served on Eric M. Turner, Esq., 880 N. Orange Avenue, Suite 200, Orlando, Florida, 32801; David Wilson, III, Post Office Box 3 154, Winter Haven, Florida, 33885-3 154; and Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 3 day of APRIL, 1997.



Referee