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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant-Appellant,

v.

FRANK G. CIBULA, JR.

Respondent-Appellee.

_____/

Supreme Court Case No. 89,551

The Florida Bar Case No. 96-51,025(15B)

THE FLORIDA BAR'S INITIAL BRIEF

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PRELIMINARY STATEMENT

In order to ensure a clear record, the following terms of reference will be utilized by The Florida Bar: The Florida Bar, the complainant-appellant, will be referred to by its full name or "the bar" and Frank G. Cibula, Jr., the respondent-appellee, will be referred to by his full name, as "respondent" or "Cibula". References to the September 2, 1997 hearing transcript will be made by the designation "T (vol. 1)" followed by the transcript page number. References to the September 12, 1997 hearing transcript will be made by the designation "T (vol. 2)" followed by the transcript page number. References to the Report of Referee will be made by the symbol "RR" followed by the page number.

STATEMENT OF THE CASE AND OF THE FACTS

This is an original disciplinary proceeding brought in the Supreme Court of Florida pursuant to Article V, Section 15 of the Constitution of the State of Florida.

The Florida Bar filed its complaint on December 17, 1996. The referee conducted the final hearing on September 2, 1997 and September 12, 1997. The referee issued his report on October 10, 1997. The respondent, Frank G. Cibula, Jr., filed a motion for rehearing on October 20, 1997, which motion was denied on October 21, 1997.

The referee found Cibula guilty of three rule violations: **R. Regulating Fla. Bar 3-4.3** [The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the State of Florida, and whether the act is a felony or misdemeanor, may constitute a cause for discipline.]; **R. Regulating Fla. Bar 4-3.3(a)(1)** [A lawyer shall not make a false statement of material fact to a tribunal.]; and **R. Regulating Fla. Bar 4-8.4(c)** [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.]. The referee recommended that Cibula be suspended from the practice of law for sixty (60) days with

automatic reinstatement at the end of the period of suspension. Although the referee listed no factors specifically in aggravation or in mitigation, the referee considered Cibula's prior disciplinary history when making his recommendation. RR 11. This history consisted of a public reprimand by order dated April 21, 1994 for being held in contempt of court on four (4) separate occasions for his failure to pay court ordered alimony.

The referee's report was considered by the bar's board of governors at the meeting which ended November 21, 1997. The board determined to petition for review of the referee's recommendation of the disciplinary sanction to ask that in lieu of a sixty (60) day suspension, this Court impose a ninety-one (91) day suspension and further order withdrawal of Cibula's certification in the area of civil trial law.

ADMITTED FACTS

This matter concerns two separate instances of false testimony under oath by Cibula. The following facts were admitted by the pleadings. RR 2-5.

A final judgment of divorce in the case of Cibula v. Cibula, case number CD 87-7473 FB in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida was entered on July 7, 1988. As part of the final judgment of divorce, Frank G. Cibula, Jr. was ordered

to pay $2000 per month permanent alimony. On or about August 9, 1991, a hearing was held in front of Commissioner Larry Weaver in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, on the former wife's motion for contempt for Cibula's failure to make alimony payments. During said hearing, respondent testified under oath as to his monthly income and expenses and to other matters. The following quote appeared on page 34 of the hearing transcript:

> **Q:** How much money do you have available today to make that mortgage payment tomorrow?
>
> **A:** I'm hoping that I'll be able to continue what I've been squeezing out of my practice, which would be about $3000.

Later in the hearing (page 38 of the hearing transcript), the following quote appeared:

> **Q:** And earlier, you mentioned a $3000 figure for yourself. Is that a draw, a salary, or what?
>
> **A:** That's a draw. And that may not be accurate. It may actually be less than that. I recall that, sometimes I take in, like, $2,200 or $2,300, so I could at least make the mortgage payment, and that's it. And sometimes I take in $2,500. But I'm just saying, I haven't looked at the records but I can tell you it's probably -- it might average $3,000 a month. Probably averages, actually, a little bit less.

On or about November 25, 1991, another hearing was held in

front of Commissioner Larry Weaver in connection with respondent's alimony obligations. The following quote appeared on page 28 of the hearing transcript:

> **Q**: How much are you saying you made this year?
>
> **A**: I think I'm making like I said before probably a little less now. I think I have been taking about $3,000.00 a month so that I could make the mortgage payments on the house.
>
> **Q**: You are saying about $36,000 a year?
>
> **A**: If that's what it amounts to, hopefully I'll do better, but I may not.

According to Cibula's 1991 tax return, Cibula claimed net business income of $117,166.00 and a total gross income of $118,290.00 for the year 1991. Cibula's adjusted gross income for 1991, as shown on his 1991 tax return, was $86,408.00. Respondent's schedule C tax form shows that all business income came from respondent's law practice, Law Offices of Frank G. Cibula, Jr. Respondent's actual tax liability for the year 1991, as shown on his 1991 tax return, totaled $28,005.00.

Due to his overpayment of estimated tax payments, Cibula, as shown on his 1991 tax return, was entitled to a refund totaling $104,385.00. Respondent's 1991 tax return shows that respondent applied $30,000.00 to his estimated 1992 taxes, and received a

refund from the IRS in the amount of $74,385.00.

Further, on or about May 31, 1996 Judge Stephen A. Rapp entered a Final Order of Modification which order contained the following quote "The Former Husband misrepresented his income in 1991 in order to induce the Former Wife to agree to modify the alimony." The former wife, in fact, had agreed to a downward modification to $1,250.00 per month by stipulation on December 20, 1991 which was formalized by an agreed order on January 13, 1992.

FINDINGS OF FACT BY THE REFEREE

The referee found that the following facts were established by the evidence. RR. 5-7.

Cibula represented to the court in 1991 that he was receiving approximately $3,000 per month in income from his law practice when in truth and in fact, Cibula's income was greatly in excess of $36,000. Cibula's representations with respect to his 1991 income were material to the former wife's motion for contempt and material to the issues of modification. At the time that Cibula made his representations as to his 1991 income, the referee found that Cibula knew that said representations were false. By testifying that his income was approximately $36,000 per year when in fact his income for the year 1991 was considerably higher, Cibula was found to have made false statements of material fact under oath during

the August 9, 1991 and November 25, 1991 hearings.

Cibula testified extensively before the referee. T (vol. 1) 14-51 and T (vol. 2) 29-33, 39-59. Under questioning from his counsel, Cibula stated that when he testified in August and November of 1991, he had no intent to deceive the court. T (vol. 1) 40. None-the-less, the referee found that Cibula deliberately testified falsely in 1991. RR 5. The referee listed five areas of evidence that supported the referee's finding in this regard (RR 6-8):

> a. At the time respondent testified on or about November 25, 1991 that his income was only about $3,000.00 a month or $36,000.00 per year, respondent, by his own admission, had already taken more than $3,000 a month in draws and more than $36,000 per year. His own admission was that as of November 25, 1991, he had already taken draws amounting to $44,200 and on the next day, November 26, 1991, he took an additional $1,000 as well as $9,500 more during the month of December. According to respondent, December was usually expected by him to be a big month in terms of income.

b. Respondent's 1991 tax return establishes that he made estimated tax payments, including carryovers, for 1991 in the amount of $132,390. According to respondent, his accountant made estimated payments of about $30,000 during 1991 and the remainder was a carryover from prior years. The total estimated tax payments were over three times the amount of $36,000 that respondent testified to was his income.

c. The testimony of the bar's expert James E. Whiddon, Certified Public Accountant and Certified Fraud Examiner, established that:(1) from Mr. Whiddon's review of the respondent's 1991 tax return, respondent had available to him $118,290 in total income or $82,290 more than the $36,000 testified to by Mr. Cibula in 1991;(2) that the total draws of $54,700 admitted to by respondent and not supported by any back-up documentation did not reflect the total income but in any event the draws were still much more than the $36,000 testified to by respondent in 1991;(3) in Mr. Whiddon's opinion, there was no legitimate reason

for overpaying estimated taxes by over $100,000; (4) that such overpayment was a method of hiding income from creditors or an ex-spouse; and (5) the documentation produced by respondent showed income levels for other years never less than six figures and no year where respondent made only $36,000.

d. As established by the testimony of James Rich, counsel for respondent's ex-wife, respondent not only testified in court as to the $36,000 as his income figure but repeatedly represented to Mr. Rich that $36,000 was his income. Mr. Rich confirmed these representations to Mr. Cibula in letters dated November 6, 1991 and November 26, 1991. Respondent's testimony was, therefore, not made thoughtlessly or off the cuff but apparently was made deliberately. Moreover, respondent did not divulge his tax information to Mr. Rich or to Mr. Rich's client despite repeated requests for such information and did not include the overpayment of estimated taxes in any financial affidavit provided to Mr. Rich. Rather, respondent advised Mr. Rich in respondent's letter of

December 4, 1991 that respondent's accountant would charge between $10,000 to $15,000 to answer Mr. Rich's discovery.

e. Respondent had repeatedly been held in contempt for failing to make payments to and for the benefit of his former wife. Orders adjudicating respondent in contempt were entered as of 9/1/88, 10/6/88, 2/2/90 and 9/4/91. Additionally, an order of commitment was entered as of 3/20/90. Having engaged in a pattern of avoiding his responsibilities to his ex-wife, respondent's testimony was consistent with this pattern of attempting to evade his responsibilities.

Based upon the evidence, the referee concluded that Cibula was guilty of the three rule violations charged by the bar. RR 8.

SUMMARY OF ARGUMENT

Although misrepresentation or lying may result in any discipline from a public reprimand to disbarment, cases involving fraud on the court or false statements made while under oath generally result in greater discipline than other types of misrepresentation. There are a number of factors in this case that

warrant the additional safeguard of proof of rehabilitation rather than the sixty (60) day suspension ordered by the referee. One, Cibula's misrepresentations were made while testifying under oath in court. Such conduct has generally been held to warrant the harshest discipline in contrast to short term suspension cases that generally did not involve personal in court testimony under oath. *Compare, The Florida Bar v. Merwin,* 636 So.2d 717 (Fla. 1994) and *The Florida Bar v. O'Malley,* 534 So.2d 1159 (Fla. 1988) *with The Florida Bar v. Burkich-Burrell,* 659 So.2d 1082 (Fla. 1995) and *The Florida Bar v. Johnson,* 648 So.2d 680 (Fla. 1994). Two, Cibula's misrepresentations occurred on not one, but two separate occasions in court and he repeated them to counsel for the ex-wife outside of court. A respondent who on two occasions misrepresented facts to courts was sanctioned with a two year suspension in *The Florida Bar v. Rood,* 622 So.2d 974 (Fla. 1993). Third, Cibula engaged in a pattern of misconduct of avoiding his responsibilities to his former wife by being held in contempt on multiple occasions, and his lying under oath was consistent with this pattern. This pattern should be considered in aggravation. Fourth, Cibula's apparent motive for the misrepresentations was his own personal or financial gain. Suspensions requiring proof of rehabilitation have been ordered when the misrepresentations were made apparently for

the lawyer's own gain. *Eg., The Florida Bar v. Scott*, 566 So.2d 765 (Fla. 1990).

Additionally, the bar submits that this Court should order the withdrawal of Cibula's certification in the area of civil trial law. An attorney should not be allowed to hold himself out as possessing special skills and expertise in the area of civil litigation while having attempted to pervert the civil litigation process by lying to the court.

ARGUMENT

THIS COURT SHOULD INCREASE THE SUSPENSION FROM SIXTY (60) DAYS TO NINETY-ONE (91) DAYS TO REQUIRE PROOF OF REHABILITATION AND FURTHER ORDER THAT CIBULA'S CERTIFICATION IN THE AREA OF CIVIL TRIAL LAW BE WITHDRAWN.

The Court's review in this area is broad because it is this Court that bears the ultimate responsibility in attorney discipline cases. *The Florida Bar v. Spann*, 682 So.2d 1070, 1074 (Fla. 1996); and *The Florida Bar v. Anderson*, 538 So.2d 852, 854 (Fla. 1989). However, a referee's recommendation on discipline is afforded a presumption of correctness unless the recommendation is clearly erroneous or not supported by the evidence. *The Florida Bar v. Lipman*, 497 So.2d 1165, 1168 (Fla. 1968).

The bar candidly admits that there is existing case law where respondents have been given short term nonrehabilitative

suspensions for engaging in misrepresentation. In fact, the referee relied on the following cases supplied by the bar in making his recommendation of discipline (RR 10-11): *The Florida Bar v. Burkich-Burrell*, 659 So.2d 1082 (Fla. 1995) [30 day suspension for misrepresentations by omission to opposing counsel]; *The Florida Bar v. Johnson*, 648 So.2d 680 (Fla. 1994) [60 day suspension for submitting a false affidavit to a bank]; *The Florida Bar v. Morse*, 587 So.2d 1120 (Fla. 1991) [90 day suspension for neglect and misrepresentations to a client regarding status of personal injury claim]; *The Florida Bar v. Oxner*, 431 So.2d 983 (Fla. 1983) [60 day suspension for lying to trial judge to obtain a continuance].[1]

At trial, Cibula argued that a public reprimand was the appropriate discipline and cited the referee to *The Florida Bar v. Bratton*, 389 So.2d 637 (Fla. 1980) in closing argument, T (vol. 2)

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[1]To illustrate other cases where respondents have been given short term suspensions for misrepresentation, the bar notes the following: *The Florida Bar v. Corbin*, 701 So.2d 334 (Fla. 1997) [90 day suspension for misrepresentation to court in motion for summary judgment and to bar in resulting disciplinary proceeding]; *The Florida Bar v. Anderson*, 538 So. 2d 852 (Fla. 1989) [30 day suspension for failing to correct brief that misrepresented facts to court with less culpable co-counsel receiving a public reprimand]; *The Florida Bar v. Nuckolls*, 521 So.2d 1120 (Fla. 1988) [90 day suspension for submission of false affidavits about purchase price of condominiums in order to allow client to obtain 100% financing);The *Florida Bar v. Shapiro*, 456 So.2d 452 (Fla. 1984) [90 day suspension for filing false motion to dismiss with forged signature].

65.[2] There are numerous cases where respondents have been given public reprimands for misrepresentation including, for example, *The Florida Bar v. Glant*, 684 So.2d 723 (Fla. 1996), *cert. denied*, 117 S.Ct. 1334, 137 L.Ed.2d 502, 65 U.S.L.W. 3665 (1997) [knowing misstatement in employment application]; *The Florida Bar v. Fatolitis*, 546 So.2d 1054 (Fla. 1989) [forgery of signature of witness to will]; *The Florida Bar v. Sax*, 530 So.2d 284 (Fla. 1988) [uncontested report of referee where improperly notarized pleading submitted to court with false factual averment]; *The Florida Bar v. Batman*, 511 So.2d 558 (Fla. 1987) [uncontested report of referee where false testimony concerning practice of law during time of suspension for non-payment of bar dues].[3]

In contrast to the above cases, there is a line of cases where attorneys have been disbarred for lying to the court or participating in the presentation of false testimony. *See, The Florida Bar v. Kaufman*, 684 So.2d 806 (Fla. 1996) [After having had a large civil judgment entered against him, Kaufman hid his assets, lied to the court about where those assets were and took steps to

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[2]This case was incorrectly referred to in the trial transcript as *The Florida Bar v. Bradon* with an incorrect citation of 390 So.2d 627.

[3]Given that *The Florida Bar v. Sax* and *The Florida Bar v. Batman* were uncontested cases where neither side petitioned for review, these opinions do not contain an in depth analysis of any underlying issues nor a discussion of the rationale for the imposition of the sanction.

thwart the collection of assets and was accordingly disbarred]; *The Florida Bar v. Merwin*, 636 So.2d 717(Fla. 1994) [Disbarment warranted for lying under oath and failing to properly represent client where attorney had two prior public reprimands]; and *The Florida Bar v. Agar*, 394 So.2d 405(Fla. 1980) [Disbarment ordered for attorney who allowed client to perpetrate fraud upon court by introducing false testimony].

In *The Florida Bar v. Dodd*, 118 So.2d 17 (Fla. 1960), disbarment was ordered for urging and advising the use of false testimony with the following recognition of the impact of false testimony on our system of justice:

> In our system the courts are almost wholly dependent on members of the bar to marshal and present the true facts of each cause in such manner as to enable the judge or jury to cook the adversary contentions in a crucible and draw off the material, decisive facts to which the law may be applied.
> When an attorney adds or allows false testimony to be cast into the crucible from which the truth is to be refined and taken to be weighed on the scales of justice, he makes impure the product and makes it impossible for the scales to balance.

The Florida Bar v. Dodd, 118 So.2d 17 at 19.

What is apparent from the above cases is that misrepresentation or lying may result in anything from a public reprimand to disbarment. It is equally apparent that the cases

turn on their individual facts. While it is difficult to quantify the factors that distinguish a case resulting in lesser discipline from a case resulting in greater discipline, the bar suggests that the cases turn in part on the magnitude of the unethical conduct and the degree to which the conduct tends to corrupt the legal process. Also, the bar submits that there is authority for the proposition that attempts to perpetrate a fraud on the court or lying under oath warrant greater discipline than other types of misrepresentation. In *The Florida Bar v. Poplack*, 599 So.2d 116, 118 (Fla. 1992), this Court indicated that lying to a police officer warranted a lesser discipline than cases involving attempts to perpetrate a fraud on the court or false statements made while under oath. This court, in sanctioning Poplack with a thirty (30) day suspension and eighteen (18) months probation, distinguished Poplack's case from *The Florida Bar v. Lancaster*, 448 So.2d 1019 (Fla. 1984) and *The Florida Bar v. Colclough*, 561 So.2d 1147 (Fla. 1990) in which rehabilitative suspensions were ordered:[4]

> We find the cases that the Bar cites supporting a ninety-one-day suspension are factually different from the instant case.

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[4]In *The Florida Bar v. Lancaster*, this Court suspended an attorney for two years for lying to a state attorney investigating stolen property and in *The Florida Bar v. Colclough*, this Court suspended an attorney for six months for making misrepresentations to the court and to opposing counsel.

> Unlike our decisions in *Lancaster* and *Colclough*, the instant case does not involve an attempt to perpetrate a fraud on the court or a false statement made while under oath. However, the fact remains that Poplack lied to a police officer investigating a suspicious scene.

The Florida Bar v. Poplack, 599 So.2d at 118-119.

The bar's position is that Cibula's conduct in the instant matter most closely resembles those cases where rehabilitative suspensions have been ordered rather than cases where lesser discipline has been imposed. *See*, *The Florida Bar v. Norvell*, 685 So.2d 1296(Fla. 1996)[91 day suspension for making false statements of material fact to a tribunal among other misconduct]; *The Florida Bar v. Rood*, 622 So.2d 974 (Fla. 1993) [two year suspension ordered where respondent on two occasions, in two separate matters, misrepresented facts to courts, in one case by omission and in the other, by a false affidavit - one year suspension ordered for knowingly and intentionally encouraging clients to execute false documents, exacerbating wrongfulness of such action by filing the false documents with the probate court, and perpetrating fraud on probate judge by misrepresenting status of case and one year suspension ordered, consecutive to suspension in other matter, for knowingly assisting in fraudulent conveyance of real property]; *The Florida Bar v. Feige*, 596 So.2d 433 (Fla. 1992) [two year

suspension for assisting client with a fraudulent act, failing to reveal fraud to affected person, and accepting employment where attorney's judgment will be affected by his personal interest and where he will be a witness in pending litigation]. In *The Florida Bar v. Kleinfeld*, 648 So.2d 698 (Fla. 1994), the court suspended Kleinfeld for three years for conduct that included filing a false affidavit that impugned the fairness and honesty of a judge and noted the following which had originally been stated in *The Florida Bar v. Dodd*, 118 So.2d 17, 19 (Fla. 1960) and quoted in *The Florida Bar v. Rightmyer*, 616 So.2d 953,954 (Fla. 1993):

> No breach of professional ethics, or of the law, is more harmful to the administration of justice or more hurtful to the public appraisal of the legal profession than the knowledgeable use by an attorney of false testimony in the judicial process. When it is done it deserves the harshest penalty.

The Florida Bar v. Kleinfeld, 648 So.2d 698, 701 (Fla. 1995). Similarly, in suspending an attorney for three years for knowing misrepresentations in a probate proceeding, this Court recognized: "Making a knowing misrepresentation to a tribunal is a serious ethical breach." *The Florida Bar v. Segal*, 663 So.2d 618, 621 (Fla. 1995). See also, *The Florida Bar v. O'Malley*, 534 So.2d 1159 (Fla. 1988) in which a three year suspension was ordered when an attorney removed collateral from a safety deposit box, refused to

deliver it to another attorney, and lied under oath regarding its whereabouts.

The bar submits that the appropriate discipline for Cibula is a ninety-one (91) day suspension. This Court in *The Florida Bar v. Shramm*, 668 So.2d 585 (Fla. 1996) ordered a ninety-one day suspension for Shramm's misrepresentations to judges and failure to represent a client. This Court in *The Florida Bar v. Scott*, 566 So.2d 765 (Fla. 1990)ordered a ninety-one (91) day suspension for accepting conveyances of property from a friend to avoid creditors with understanding that the property would be returned upon the friend's request and subsequently concealing from the friend's heirs the existence of the property and claiming ownership for himself.

When this Court examines Cibula's conduct, the bar submits that there are a number of factors that warrant the additional safeguard of proof of rehabilitation rather than the short term suspension with automatic reinstatement ordered by the referee. First of all, Cibula's misrepresentations were made while testifying under oath in court. As previously cited by the bar, such conduct has been held to warrant much more than a short term suspension. *Eg., The Florida Bar v. Merwin*, 636 So.2d 717 (Fla. 1994) *and The Florida Bar v. O'Malley*, 534 So.2d 1159 (Fla. 1988).

By contrast, none of the short term suspension cases cited by the referee involved personal testimony in court by the respondent under oath.[5] Second, Cibula's misrepresentations occurred on two separate occasions in court (August 9, 1991 and November 25, 1991) and he repeated them to counsel for the ex-wife outside of court causing the referee to find that Cibula's testimony was not made thoughtlessly or off the cuff but deliberately. RR 7. As previously cited by the bar, a two year suspension was ordered where a respondent on two occasions misrepresented facts to courts. *The Florida Bar v. Rood*, 622 So.2d 974 (Fla. 1993). Third, the referee found that Cibula engaged in a pattern of avoiding his responsibilities to his ex-wife and his testimony was consistent with this pattern. RR 8. Although the referee did not list this finding specifically in aggravation, a pattern of misconduct is an aggravating factor under Fla. Stds. Imposing Law. Sancs. 9.22(c). Fourth, the apparent motive for the misrepresentation was Cibula's own personal and financial gain as evidenced by the Final Order of

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[5]Although none of the cases cited by the referee involved personal in court testimony under oath, *The Florida Bar v. Johnson*, 648 So.2d 680 (Fla. 1994) involved the submission of an affidavit to a bank and *The Florida Bar v. Oxner*, 431 So.2d 983 (Fla. 1983) involved misrepresentations to a trial judge in a telephone conversation where the respondent was not under oath. The remaining cases cited by the referee did not involve testimony or misrepresentations to the court. *See, The Florida Bar v. Burkich-Burrell*, 659 So.2d 1082 (Fla. 1995) (misrepresentation by omission to opposing counsel) and *The Florida Bar v. Morse*, 587 So.2d 1120 (Fla. 1991) (misrepresentation to a client).

Modification which stated "The Former Husband misrepresented his income in 1991 in order to induce the Former Wife to agree to modify the alimony." Suspensions requiring proof of rehabilitation were ordered in *The Florida Bar v. Scott*, 566 So.2d 765 (Fla. 1990)(attempted conversion of property belonging to the heirs of a friend) and *The Florida Bar v. Colclough*, 561 So.2d 1147 (Fla. 1990) (series of misrepresentations to obtain a costs judgment) when the misrepresentations were made apparently for the lawyer's own gain. *See also, The Florida Bar v. Segal*, 663 So.2d 618 (Fla. 1995) in which a three year suspension was ordered for an attorney who made misrepresentations in connection with the closing of a probate estate where the attorney stood to materially gain from the fraud.

All of the above factors suggest a degree of culpability that in the bar's view elevates this case to a suspension requiring proof of rehabilitation. The referee also noted that: "Some of the bar's cross-examination suggested that during the prior reprimand, some misconduct continued on the part of the respondent." RR 11. Although the existence of a prior record should not be dispositive of this case, the bar submits that when the Court views respondent's conduct as a whole, rehabilitation should be due.

Further, the bar submits that respondent's certification in

the area of civil trial law should be withdrawn. An attorney should not be allowed to hold himself out as possessing special skills and expertise in the area of civil litigation while having attempted to pervert the litigation process by lying to the court. The purpose of the certification "is to identify those lawyers who practice civil trial law and have the special knowledge, skills, and proficiency to be properly identified to the public as certified trial lawyers." R. Regulating Fla. Bar 6-4.1. Having been found to have lied to the court under oath on two separate occasions and having been previously disciplined for being held in contempt on multiple occasions, Cibula should be found to have forfeited the privilege of identifying himself to the public as board certified.

In attorney discipline matters, the discipline imposed must protect the public from unethical conduct and have a deterrent effect while still being fair to the respondent. *The Florida Bar v. Pahules*, 233 So.2d 130, 132 (Fla. 1970). The bar submits that imposition of a ninety-one (91) day suspension and withdrawal of Cibula's board certification would fit this criteria.

CONCLUSION

For the reasons stated, The Florida Bar submits that this Court should increase the suspension from sixty (60) days to ninety-one (91) days in order to require proof of rehabilitation and further order that Cibula's certification in the area of civil trial law be withdrawn.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was furnished to Robert H. Springer, Attorney for Respondent, Springer & Springer, 3003 S. Congress Avenue, Suite 1A, Palm Springs, FL 33461 by U.S. mail, two-day priority, on this 27th day of January, 1998.

RONNA FRIEDMAN YOUNG