IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ANDREW MICHAEL KASSIER,

Respondent.
_____/

Supreme Court Case
No. 90,325

Complainant's Answer Brief and Initial Brief

On Cross Petition for Review

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INTRODUCTION

For the purposes of this brief, The Florida Bar will be referred to as "The Florida Bar," "the Bar" or complainant". Michael Andrew Kassier will be referred to as "respondent" or "Mr. Kassier."

Abbreviations utlized in this Brief are as follows:

As to the Appendix:

A-1 will refer to the complaint of The Florida Bar filed on April 14, 1997.

A-2 will refer to the report of referee dated August 13, 1997.

A-3 will refer to the report of referee dated October 15, 1996 (which was attached to and incorporated in the report of referee dated August 13, 1997)

A-4 will refer to a letter to The Florida Bar submitted by respondent's counsel on behalf of rRespondent dated August 29, 1996.

A-5 will refer to respondent's deposition dated July 7, 1997, which was filed in this proceeding by The Florida Bar.

STATEMENT OF THE CASE AND OF THE FACTS

The Florida Bar adopts the findings of fact in referee's report with the following relevant additions and reiterations.

During the course of an investigation initiated as a result of complaints concerning trust and operating account checks which were returned for insufficient funds, The Florida Bar discovered irregularities in Respondent's trust and operating accounts. There were also allegations that the respondent failed to perform work. That investigation resulted in the first case tried before Judge Simon. (A-2 p.2-4) In that case, respondent's counsel wrote a letter to The Florida Bar representing that respondent had hired an experienced, college-degreed businessman/paralegal to manage his office and co-sign his checks to prevent further problems with respondent's bank accounts. (TR 350) This letter, written on behalf of the respondent by his counsel, misrepresented the new office manager to The Florida Bar by omitting several material facts. The letter did not inform The Florida Bar that respondent had represented the manager in a plea bargain in which he admitted guilt to multiple counts of fraud, that the manager had a previous criminal history for fraud and violence convictions in another state, or that respondent had personally represented the manager in changing his name after his criminal representation. The letter

did detail a proposed plan of checks and balances to prevent further irregularities in respondent's checking accounts. That plan included the fact that respondent and the office manager would co-sign checks. The testimony and evidence on the checks in question in the case sub judice do not reflect that any of the checks were co-signed by both the respondent and his office manager, as promised to The Florida Bar.

On October 15, 1996, The Honorable Stuart M. Simons issued a report of referee recommending that respondent be found guilty of violating Rules 3-4.8 and 4-8.4(g) (Failure to respond to investigative inquiries); Rule 4-1.3 (Diligence); Rule 4-1.4(a) (Communicating status of representation); Rules 4-8.4(b) and 4-8.4(c) (Dishonesty); and Rule 5-1.1 (misusing trust funds). The referee recommended a one year suspension with numerous conditions (A-2). That case remains pending on appeal with respondent seeking a lesser discipline and The Florida Bar seeking disbarment.

The complaint at issue contained eight counts[1]. The complaint charged respondent with failure to timely comply with an order of The Supreme Court of Florida requiring respondent to comply with a

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[1] On February 14, 1997, The Florida Bar obtained respondent's emergency suspension as a result of the same matters charged in the instant complaint.

subpoena duces tecum, and responsibility for nine checks which were dishonored because of insufficient funds and respondent's complicity in obtaining the body work of an automobile by issuing a worthless check, and/or because the account was closed. (A-1) After the final hearing, the referee recommended that respondent be found guilty of Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and Rule 4-8.4(d) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice) for respondent's failure to comply with The Supreme Court Order in a timely manner; and one count of Rule 4-8.4(d) (Conduct that is prejudicial to the administration of justice) and two counts of Rule 4-8.4(c) (Fraud) based on three of the dishonored checks. (A-2) The referee found that respondent's "continuous practice of giving insufficient funds checks will continue unless safeguards are put into effect". (A-2 p. 8)

Although the referee recommended that respondent be found "not guilty" of the remaining check charges based on respondent's arguments that his office manager had used checks respondent had signed in blank and given to the manager for other purposes, issued checks which respondent believed would be honored, issued checks for his own purposes, and signed respondent's name to other checks,

the referee also found that respondent placed the office manager who the referee found "not credible or worthy of belief" in a position to use the checks in an inappropriate manner; that respondent inappropriately placed his trust and confidence in the office manager; and that third parties were, in fact, damaged as a result. (A-2 p. 8-9)

The referee further found that respondent's misconduct involved cumulative misconduct on similar matters and warranted an enhanced penalty, warning that respondent will continue to engage in this conduct without intervention. (A-2 p.9)

The referee recommended that respondent receive a six (6) month suspension, a three year probation period, and that respondent should bear The Florida Bar's costs of the disciplinary proceeding. The Florida Bar appeals the discipline as being excessively lenient and asks the Court to disbar the respondent due to the cumulative nature of his pattern of misconduct, which includes multiple offenses of dishonest conduct of a similar nature and behavior evidencing an extreme lack of judgment proving respondent's unfitness to practice law. Respondent appeals seeking to reduce his liability for The Florida Bar's costs.

SUMMARY OF ARGUMENT

Respondent should be required to pay all the costs associated with this disciplinary action, since his acts and omissions created the necessity of this complaint - even on those counts on which the referee recommended that he not be found guilty.

The respondent, an experienced criminal attorney, has continued, despite a previous disciplinary proceeding involving issuing dishonored trust account checks, to write bad checks to other attorneys and employees. Additionally, he has failed to diligently obey an order of this Honorable Court.

The respondent was found guilty of writing three more bad checks. Since these checks were written during the pendency of, and shortly after, his prior disciplinary proceeding, obviously neither the scrutiny of the Court or the previously recommended one year suspension awakened the respondent to his responsibilities and/or deterred him from continuing his fraudulent conduct.

The respondent's conduct is repetitive in nature, warranting enhanced discipline. Further, respondent's character and fitness to practice law should be viewed cumulatively. His misconduct which was proven in the first proceeding, his new violations, the similarity of many of his offenses, and the evidence of uncharged misconduct which respondent presented should all be considered in determining the appropriate discipline.

Respondent testified that he knowingly hired a felon convicted of fraud to run his office, presented him to The Florida Bar as the solution to his bookkeeping inadequacies, gave him checks signed in blank, made him a signatory on other bank accounts, and gave him access and vested him with actual and/or apparent authority to issue checks on those accounts. Evidence reveals that at least one person harmed by the felon would not have accepted the check in question if it had not been issued on an attorney's account.

Although the referee recommended that respondent be found "not guilty" of the checks written by the felon because, in relation to those particular counts, he found that the respondent himself had not engaged in any dishonest act, he did find that members of the public were damaged as a result of respondent's actions and inactions. The respondent knowing took the proverbial fox and put him in charge of the henhouse. Respondent's actions in this regard reveal such a thorough lack of judgment that respondent has proven that he is unfit to practice law.

Respondent has engaged in the dishonest issuance of checks and failure to comply with a court order. He has committed multiple offenses and has a history of writing bad checks. He has displayed what, at best, can be characterized as gross neglect. His acts, omissions, history, and lack of judgment show that he is unfit to

practice law. The respondent should be disbarred.

POINTS ON APPEAL

I

WHETHER THE REFEREE ERRED IN RECOMMENDING THAT RESPONDENT BEAR THE TOTAL COSTS OF THIS PROCEEDING WHERE THE REFEREE RECOMMENDED THAT HE BE FOUND GUILTY ON ALL OF THE COUNTS? (RESTATED)

II

(COMPLAINANT'S ARGUMENT ON CROSS PETITION)

WHETHER THE REFEREE ERRED WHEN HE RECOMMENDED THAT THE APPROPRIATE DISCIPLINE FOR RESPONDENT'S MISCONDUCT WAS SIX MONTHS SUSPENSION FOLLOWED BY THREE YEARS PROBATION RATHER THAN DISBARMENT?

I

WHETHER THE REFEREE ERRED IN RECOMMENDING THAT RESPONDENT BEAR THE TOTAL COSTS OF THIS PROCEEDING WHERE THE REFEREE RECOMMENDED THAT HE BE FOUND GUILTY ON SOME OF THE COUNTS? (RESTATED)

The respondent argues, without reference to precedent, that since the referee did not recommend that he be found guilty of all of the charges in The Florida Bar's complaint, that the referee erred in imposing all of the costs of the proceeding against him. This argument is in direct opposition to recent precedent. The assessment of costs in a disciplinary proceeding is within the discretion of the referee and should not be reversed unless the referee has abused that discretion. The Florida Bar v. Miele, 605 So.2d 866 (Fla. 1992) citing The Florida Bar v. Carr, 574 So.2d 59 (Fla. 1990).

In reviewing the case at bar for a possible abuse of this discretion, it should be noted that the charges at issue are the same charges which resulted in this Court's entry of an order suspending the respondent on an emergency basis. This suspension remains in effect. The referee made no recommendation that the suspension be dissolved.

The respondent in The Florida Bar v. Miele, 605 So.2d 866 (Fla. 1992) also urged this Court to reduce the liability for the

costs incurred by The Florida Bar in the disciplinary proceeding against him, since he had been partially vindicated. The Court refused, holding that, "but for Miele's misconduct, there would have been no complaint and, thus no costs". This Court cited policy from The Florida Bar v. Gold, 526 So.2d 51 (Fla. 1988) in explanation: "Where the choice is between imposing costs on a bar member who has misbehaved and imposing them on the rest of the members who have not misbehaved, it is only fair to tax the costs against the misbehaving member."

Similarly, in the case at bar respondent's misconduct in giving a non-lawyer employee and convicted felon access to checks signed in blank, his bank books, checks; making his employee a signatory on his bank account; and failing to adequately supervise the employee are the misconduct which resulted in the particular charges for dishonored checks for which the referee recommended a finding of not guilty. Respondent cannot expect the members of the bar to pay for his gross negligence in creating the situation which led to the charges filed by the Bar.

This Court in The Florida Bar v. Wilson, 616 So.2d 953(Fla. 1993), found that the Referee's recommendation was not an abuse of discretion because the auditor's and court reporter's fees were not charges that could be "readily segregated" between the proven and

unproven charges. The administrative fee and court reporter's fee in this case also cannot divided. The Florida Bar v. Miele, 605 So.2d 866 (Fla. 1992), the court refused to reduce the costs in the disciplinary proceeding because of the unproven charges where it found that the respondent's misconduct caused the initiation of both of the charges. The same reasoning applies herein.

II

(COMPLAINANT'S ARGUMENT ON CROSS PETITION)

WHETHER THE REFEREE ERRED WHEN HE RECOMMENDED THAT THE APPROPRIATE DISCIPLINE FOR RESPONDENT'S MISCONDUCT SHOULD BE SIX MONTHS SUSPENSION FOLLOWED BY THREE YEARS PROBATION RATHER THAN DISBARMENT?

If the respondent were before the Court for the first time as a new attorney having been found guilty of one or two acts of issuing dishonored checks, The Florida Bar would merely be seeking a suspension, hoping to correct aberrant behavior. Unfortunately, that is not the case herein. The respondent, a highly experienced criminal trial attorney, is before the Court with the finding by a referee of three violations of Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and two violations of Rule 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice) for his failure to timely comply with an Order of this Court requiring him to produce records, another count of violating Rule 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice)for putting his client files in jeopardy by giving a dishonored check and failing to pay for their storage, as well as two violations of

Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) for giving a dishonored check to a colleague and two dishonored checks to a former employee. The factual nature of the violations is discussed below.

A. THE DISOBEYED ORDER

The respondent moved to quash The Florida Bar's subpoena duces tecum. This Court denied the motion and issued an order requiring the respondent to comply with the subpoena within seven (7) days. The respondent did not comply in a timely fashion and the referee found the respondent guilty of violating Rule 4-8.4(c) and Rule 4-8.4(d) for that failure.

In The Florida Bar v. Mims, 501 So.2d 596 (Fla. 1987), an attorney was suspended for one year for his failure to comply with court orders and two other violations. The Court has even ordered disbarment in cases involving failure to comply with court orders where the "composite conduct is gross", despite evidence of clinical depression. The Florida Bar v. Horowitz, 697 So.2d 78 (Fla. 1997).

Similarly, this respondent failed to comply with the Court's order. His misconduct involved so many other violations, including recurrent problems, and improperly allowing a convicted felon to

harm members of the public, that the composite of his misconduct is also gross and, like Horowitz, he should be disbarred despite his claims of depression.

B. DISHONORED CHECKS

"Routinely writing bad checks, even if eventually made good, burdens the recipients and is fundamentally dishonest. It brings disrepute on the writer and the profession. It is inconsistent with fitness to practice law." The Florida Bar Re: Lopez, 545 So.2d 835 (Fla. 1989).

Respondent has, among other things, been found to have issued three worthless checks. He has previously been found to be in violation of Bar rules for writing several other worthless checks. This routine practice is fundamentally dishonest and inconsistent with fitness to practice law.

In The Florida Bar v. Dubow, 636 So.2d 1287 (Fla. 1994), the Court warned that issuing worthless checks, misappropriating client funds, and check kiting will not be tolerated and that those acts justified the most severe penalty. The referee found Dubow guilty of violating Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation) and Rule 4-8.4(d) (conduct prejudicial to the administration of justice), as well as 4-8.4(b) and 5-1.1. Dubow was disbarred for the

cumulative nature of his misconduct, ongoing pattern of misconduct, failure to pay amounts which were the subject of Bar complaints, and disregard for the rules even after the Bar had filed its complaints, although he had no prior disciplinary record. See also The Florida Bar v. Solomon, 589 So.2d 286 (Fla. 1991).

Like Dubow, respondent has been found guilty of violating Rules 4-8.4(c) and 4-8.4(d), among others. He exhibits a pattern of ongoing misconduct including writing multiple bad checks, unpaid victims, and his misconduct in relation to writing bad checks and failing to respond to requests for information by the Bar even after disciplinary proceedings were initiated. He issued a bad check to a colleague within months of the adverse Referee's Report in the first case. Respondent was also found guilty of misusing monies entrusted to him in his previous disciplinary proceeding. Since the referee found that "[t]he respondent will continue to engage in this conduct unless counter measures are imposed", and the respondent has proven that the two disciplinary proceedings against him for multiple rule violations have not resulted in his reformation; his disbarment is warranted.

An attorney was also disbarred in The Florida Bar v. Diaz-

Silveira, 557 So.2d 570 (Fla. 1990), for similar acts of misconduct. Diaz-Silveira wrote numerous bad checks after being placed on probation for similar misconduct. The referee stated:

> It is hard to fathom why someone who in essence was given "one free bite" could be so utterly unaware. . . .[H]e was aware for some period of time that checks were bouncing. Notwithstanding this knowledge, respondent persisted in allowing this practice to continue. Consequently, claims of lack of knowledge or intent cannot be justified.
>
> Diaz-Silveira, at 571

Despite good character testimony in behalf of Diaz-Silveira from "several illustrious members of the community," the Court approved the Referee's finding that "although such evidence usually shows an amenability to rehabilitation through corrective measures, corrective measures would be futile here since the respondent's acts were intentional and respondent had previously been disciplined for similar misconduct".

The same reasoning applies to this respondent who created many of the existing problems by his negligent supervision of his employee and intentionally issuing some of the worthless checks.

C. NEGLIGENCE IS NOT A DEFENSE TO MISCONDUCT

The respondent would have this Court diminish his punishment for the violations for which he has been found guilty, claiming that someone else is responsible, namely his office manager.

Respondent's own testimony as to his knowledge of his office manager's history (TR 73), his suspicions as to his office manager's actions handling of his professional accounts,(A-5 p.60) his failure to follow the plan for correcting his accounting problems which he gave to the Bar (TR 60), and his failures to maintain his own bank records, review his monthly bank statements (TR 58) and/or supervise his very dubious employee should be considered in determining his fitness to practice law, pursuant to The Florida Bar v. Stillman, 401 So.2d 1306 (Fla. 1981).

In The Florida Bar v. Dingle, 235 So.2d 479 (Fla. 1970), the Court noted:

> A careful examination of the record reveals a general lack of concern about financial matters on the part of respondent. He admits issuing worthless checks repeatedly. He says he is honest but a poor bookkeeper. This explanation may well be true but does not excuse respondent's misconduct. . . . Financial insecurity coupled with utter economic irresponsibility as shown here creates potential danger to the public.
>
> Dingle, at 480

Dingle's one prior disciplinary proceeding in eighteen years as a member of the Bar was for an unrelated violation. Dingle was suspended for three years and thereafter until he was capable of demonstrating both rehabilitation and economic solvency for co-

mingling client funds and bouncing two checks.

Respondent's cumulative misconduct is far more egregious than Dingle's. Unlike Dingle, respondent has a prior history of issuing worthless checks and committing trust violations. He has now personally issued three more bad checks and testified to a pattern of neglect.

Attorneys have received severe discipline before for allowing non-lawyers to injure members of the public. In The Florida Bar v. Hunt, 441 So.2d 618 (Fla. 1983), an attorney endorsed checks from a client in blank and someone deposited the funds in a business account. The referee found that the respondent failed to properly supervise the bookkeeping and that "[a]lthough respondent was not shown to have personally converted client funds, his gross neglect . . . has caused equally serious harm to the public". Since Hunt's misconduct was cumulative too, and of a similar nature to part of his previous misconduct, the Court ordered enhanced discipline and disbarred him for his gross neglect. The same reasoning applies to this respondent.

A similar situation occurred in The Florida Bar v. Graham, 605 So.2d 53 (Fla. 1992), when an attorney was disbarred for, among other violations, making his non-lawyer wife a signatory on his operating account, which allowed the wife to write checks for

personal expenses from the account, creating shortages in his operating account and causing checks to bounce. Graham was found to be in violation of Rule 4-1.15(a) (a lawyer shall not commingle personal or firm funds with a client's funds), although the act was actually performed by his wife. There is no indication that Graham had any reason to believe that his wife had a tendency to misuse checks. Here the respondent knew of his employee's criminal background.

D. OTHER FACTORS TO CONSIDER IN DETERMINING DISCIPLINE

The particular violations for which the referee found the respondent guilty did not occur in a vacuum. Pursuant to The Rules Regulating The Florida Bar and The Florida Bar v. Stillman, 401 So.2d 1306 (Fla. 1981) and its progeny, many other factors must be considered in determining the adequate level of discipline for the respondent's conduct.

1) EVIDENCE OF MISCONDUCT NOT CHARGED

This Court stated in The Florida Bar v. Stillman,401 So.2d 1306 (Fla. 1981) "The Referee's report includes not only findings regarding the conduct charged by the Bar, but also other matters reflecting upon respondent's integrity." This Court also found that it was proper for the referee to do so, and stated:

"It was proper for the referee, in making his

> report, to include information not charged in The Florida Bar's complaint. Evidence of unethical conduct, not squarely within the scope of the Bar's accusations, is admissible, and such unethical conduct, if established by clear and convincing evidence, should be reported because it is relevant to the question of the respondent's fitness to practice law and thus relevant to the discipline to be imposed.
>
> Stillman, at 1307 (emphasis supplied)

The referee in this case made the following finding among others:

> Although I have recommended "not guilty" on the charges involving dishonesty which have not been substantiated, I do find that the respondent did, in fact, in many instances place his employee, T. Jonathon Turner, in a position to use the checks of the law firm in an inappropriate manner and that third parties were, in fact, damaged as a result. However, I do not find as to these specific charges that the respondent engaged in any dishonest act and that T. Jonathon Turner did, in fact, mislead the respondent and abused the trust and confidence inappropriately placed in him by the respondent. I find the testimony of T. Jonathon Turner is not credible nor worthy of belief.
>
> (A-2, p.8)

The record is uncontradicted to the effect that Jonathon Turner, who had free access to the checks, was a convicted felon who had a history of fraudulent conduct concerning checks.

Certainly that factor was considered by the referee in arriving at his findings.

Neither Stillman, nor The Florida Bar v. DeSerio, 529 So.2d 1117 (Fla. 1988), which reiterated the Stillman holding, nor this Court's more recent restatement of the same holding in The Florida Bar v. Nowacki, 697 So.2d 828 (Fla. 1997), requires that the Referee's additional findings of misconduct appear among the aggravating factors or any other specific section of the report. The most equitable interpretation of the rule would be that the Referee's finding of additional misconduct can be considered on review by this Court regardless of where it appears in the report.

The Referee's finding of additional misconduct would not have been included unless it met the clear and convincing test which is required for Bar proceedings. The Florida Bar v. Quick, 279 So.2d 4 (Fla. 1973). The evidence supporting the Referee's finding is ample. In fact, the respondent was the witness who testified as to the facts pertaining to Turner. He knew of Turner's criminal background (TR 73) and became suspicious of his handling of the accounts and his failure to follow accepted procedures (TR 60). The respondent, however, failed to maintain his own bank records or review his monthly statements (TR 58).

2) FACTORS IN AGGRAVATION

This Court has great latitude when considering discipline recommendations.

> In rendering discipline, this Court considers the respondent's previous disciplinary history and increases the discipline where appropriate. . . . The Court deals more harshly with cumulative misconduct than it does with isolated misconduct. Additionally, cumulative misconduct of a similar nature should warrant an even more severe discipline than might dissimilar conduct.

The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1982).

This Honorable Court has affirmed the aforestated priciple in many instances. The Florida Standards for Imposing Lawyer Sanctions enumerate three aggravating factors which operate on the concept that, while any single incident of misconduct might require a lesser penalty, the totality of a respondent's misdeeds must be considered in arriving at the appropriate sanction. These Standards are 9.22(a) (Prior disciplinary offenses), Standard 9.22(c) (A pattern of misconduct), and Standard 9.22(d) (Multiple offenses). Respondent Kassier was previously found guilty of two violations of Rule 3-4.8 (Obligation to respond to inquiries), one violation of Rule 4-1.3 (Diligence), two violations of Rule 4-1.4(a) (Communication), one violation of Rule 4-8.4(b)

(Criminal act) and Rule 4-8.4(c) (Dishonesty) based on several bounced checks and trust account shortages, two violations of Rule 4-8.4(g) (Failure to respond), and one violation of Rule 5-1.1 (Property held in trust).

Despite a pending disciplinary proceeding and, eventually, a referee's report recommending respondent be found guilty of the aforementioned list of rule violations, respondent continued to write bad checks. The referee found the respondent guilty of issuing three more bad checks, two of which respondent issued during the pendency of the previous case and one of which was issued within three months of the referee's report recommending finding the respondent guilty of the aformentioned rule violations. The referee found this to be a "continuous practice of giving insufficient checks [which] will continue" absent intervention(A-3 p. 8). It was only a matter of a months after the previous referee's report that the respondent failed to comply with an order of the Supreme Court of Florida requiring compliance with a subpoena duces tecum. The referee also recommended he be found guilty of two rule violations for failure to respond to The Florida Bar in the first action. The referee found respondent's failure to respond to requests for information by the Bar to be an aggravating factor. (A-3 p. 9) Therefore,

respondent's discipline should also be enhanced, pursuant to Standard 9.22(a), for prior disciplinary offenses, Standard 9.22(d), for multiple offences, and Standard 9.22(c), for his pattern of misconduct.

Multiple instances of attorney misconduct warrant disbarment. In The Florida Bar v. Mavrides, 442 So.2d 220 (Fla. 1983), an attorney was disbarred for eight instances of misconduct. The Court opined that "none of Mavrides' derelictions, standing alone, would require disbarment". The court went on to state, "[t]he cumulative demonstration of his acts . . .shows that he is unfit to practice law".

The referee found the respondent guilty of five violations of the Rules Regulating The Florida Bar in the case at bar. He was previously found guilty of an additional nine offenses, almost twice the number of offenses for which Mavrides was disbarred.

Another attorney was disbarred for cumulative misconduct involving dishonored checks, violations of trust, and a prior disciplinary history. In The Florida Bar v. Solomon, 589 So.2d 286 (Fla. 1991), the Court found that issuing worthless checks constituted unethical conduct subjecting the attorney to professional discipline, even where the checks were drawn on the

bank accounts of businesses in which the attorney was involved, rather than the attorney's operating account.

Respondent Kassier's cumulative conduct also involves dishonored checks and a prior history involving violations in trust monies. As in Solomon, some of Kassier's worthless checks were drawn on businesses in which he was involved. Further, respondent should be held accountable, when the cumulative nature of his misdeeds is examined, for checks which the convicted felon he knowingly hired issued or told the respondent to issue, some of which were drawn on businesses in which they were both involved. (See The Florida Bar v. Lawless, 640 So.2d 1098 (Fla. 1994)(Suspension based on cumulative misconduct where attorney was found guilty of rule violations based on actions taken by his non-lawyer employee, as well as for failure to supervise said employee.)

Additionally, respondent failed to make restitution to the secretary/receptionist or the Clerk of the Court. This justifies further enhancement of the discipline, pursuant to Standard 9.22(j)(Indifference to making restitution).

FAILURE TO COOPERATE

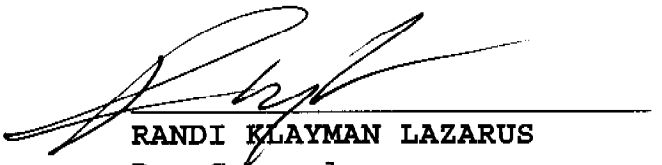
Despite previous findings of guilt for failure to cooperate with The Florida Bar in connection with multiple complaints which

formed the basis of respondent's previous disciplinary proceeding, the referee found that respondent had again failed to respond to requests for information by The Florida Bar. This Court has suspended an attorney with an unblemished fifteen year record and mandated psychiatric evaluation for this violation alone, without the need for a finding on the validity of the underlying complaint for which the response was requested. The Florida Bar v. Grosso, 647 So.2d 840 (Fla. 1994). This also qualifies for aggravation of the disciplinary sanction, pursuant to Standard 9.22(e).

As a forty-year-old-attorney with sixteen years of experience, the respondent has fallen far below the acceptable standards of conduct; his cumulative acts of misconduct and aggravating factors warrant disbarment.

CONCLUSION

Based upon the foregoing reasons and citations of authority, The Florida Bar respectfully submits that the Referee's recommendation for a six month suspension and three year probation is erroneous and would urge this court to disbar the respondent. The Florida Bar additionally submits that the Referee's award of the total costs to The Florida Bar is not error and the full costs should be awarded to The Florida Bar.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of this Complainant's Answer Brief and Initial Brief on Cross-Petition for Review was forwarded Via Airborne Express to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927, and a true and correct copy was mailed to Louis M. Jepeway, Attorney for respondent, at 19 West Flagler Street, Suite 407, Miami, Florida 33130, on this 11th day of March, 1998.

RANDI KLAYMAN LAZARUS
Bar Counsel