IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,	Case No.	SC01-1298 and SC02-1118
	TFB No.	1998-11,287(13C)
Complainant,		2000-11,485(13C)
		2001-11,428(13C)
vs.		2001-11,655(13C)
		2002-10,208(13C)
JAMES MANUEL HEPTNER		2001-11,791(13C)
Respondent.		

_____/

INITIAL BRIEF
OF
THE FLORIDA BAR

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SYMBOLS AND REFERENCES

In this Brief, The Florida Bar, Petitioner, will be referred to as "The Florida Bar" or "The Bar." The Respondent, James Manuel Heptner, will be referred to as "Respondent."

"TR1" will refer to the transcript of the final hearing before the Referee in Supreme Court Case Nos. SC01-1298 & SC02-1118 held on April 4, 2003. "TR2" will refer to the transcript of the continuation of the final hearing before the Referee in Supreme Court Case Nos. SC01-1298 & SC02-1118 held on August 8, 2003.

The Report of Referee dated August 26, 2003, will be referred to as "RR."

"TFB Exh." will refer to exhibits presented by The Florida Bar and "R. Exh." will refer to exhibits presented by the Respondent at the final hearing before the Referee in Supreme Court Case Nos. SC01-1298 & SC02-1118.

"Rule" or "Rules" will refer to the Rules Regulating The Florida Bar. "Standard" or "Standards" will refer to Florida Standards for Imposing Lawyer Sanctions.

STATEMENT OF THE CASE

By Order of this Court dated March 29, 2001, in Florida Bar v. James Manuel Heptner, Supreme Court Cases Nos. SC00-920 and SC00-2570, Respondent was suspended from the practice of law for 60 days, effective 30 days from the date of the Order. (TFB Exh. 1). On June 13, 2001, The Florida Bar filed a Petition for Order to Show Cause why Respondent should not be held in contempt and suspended from the practice of law, or disbarred, for practicing law while under an Order of Suspension. On October 18, 2001, the Bar filed an Amendment to the Petition for Order to Show Cause to include information not known at the time the initial Petition was filed. The Bar alleged additional facts concerning Respondent's arrest on August 6, 2001, for soliciting the purchase of cocaine from a client on two occasions, including during his suspension. By Order dated March 13, 2002, the Honorable Peter Ramsberger, Circuit Court Judge for the Sixth Judicial Circuit, was appointed as Referee in the case.

On May 10, 2002, The Florida Bar filed a five-count Complaint in Florida Bar v. James Manuel Heptner, Supreme Court Case No. SC02-1118. By Order dated June 6, 2002, the Honorable Peter Ramsberger, was

appointed as Referee in that case. On July 3, 2002, this Court entered an Order in Florida Bar v. James Manuel Heptner, Supreme Court Case No. SC01-1744, suspending Respondent for 91 days to be followed by two years probation. Case No. SC01-1744 is not a part of this appeal except as it relates to Respondent's disciplinary history.

On July 18, 2002, the Referee entered an Order consolidating The Florida Bar's Petition for Order To Show Cause, SC01-1298, and The Florida Bar's Complaint, SC02-1118. A pretrial hearing on the two consolidated matters was held on August 21, 2002. At that time, a request for additional time to submit the final referee's report was submitted due to the consolidation of the two matters. On August 29, 2002, this Court entered an Order granting the request and extending the date for filing the referee's report until December 20, 2002. A final hearing was scheduled for October 22 and 23, 2002. On October 15, 2002, the Bar filed its Motion to Continue Final Hearing, which was granted. At that time, a second request for additional time to file the referee's report was submitted and granted by this Court on November 26, 2002.

A final hearing was set for April 4, 2003. William L. Walent, a witness who had been subpoenaed by The Florida Bar failed to appear and give testimony at the final hearing on April 4, 2003. On April 4, 2003, the Referee submitted a third request for an extension of time to file the referee's report. On April 10, 2003, this Court granted the request and extended the time to file the report until July 7, 2003. On April 16, 2003, the Referee issued an Order To Show Cause directing William Walent to appear and show cause why he should not be held in contempt for failure to respond to the subpoena. A hearing on the Order to Show Cause was scheduled for June 23, 2003, and the conclusion of the final hearing was scheduled for June 24, 2003. William Walent did not appear in the courtroom at the appointed time on June 23, 2003, for the hearing on the Order to Show Cause. Also, the appointed Referee, Judge Ramsberger, was unavailable to preside over the hearings scheduled for June 23 and 24, 2003. On June 30, 2003, Judge Logan, substituting for Judge Ramsberger, issued an Order continuing both hearings until August 7 and 8, 2003. Mr. Walent appeared before Judge Ramsberger on August 7, 2003, and promised he would appear at the final hearing the next day. The conclusion of the final hearing in this matter was held on August 8, 2003.

On August 26, 2003, the Referee issued his Report. The Referee adopted as his findings of fact, the facts set forth in the Bar's Complaint, and the Petition for Order to Show Cause, as amended. The Referee found that Respondent admitted to the allegations in Counts I, II, III, and IV of the Complaint, and that the Bar proved by clear and convincing evidence the allegations in Count V. The Referee also found that the Bar proved by clear and convincing evidence the allegations contained in the Petition for Order to Show Cause and Amendment thereto. (RR 2). The Referee recommended that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rule 4-1.1 (a lawyer shall provide competent representation to a client which requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation); Rule 4-1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Rule 4-1.4(a) (a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information); Rule 4-1.4(b) (a lawyer shall explain a matter to the extent reasonable necessary to permit the client to make informed decisions regarding the representation); Rule 4-8.4(g) (a lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, when bar counsel or the agency is conducting an

investigation into the lawyer's conduct); Rule 3-4.4 (criminal misconduct); Rule 4-8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); Rule 4-1.16(a)(1) (a lawyer shall not represent a client or where representation has commenced shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct); and Rule 3-5.1(g) (regarding notice of suspension by failing to notify clients and courts where listed as attorney of record). The Referee also found Respondent guilty of contempt for intentionally violating the terms of an order of suspension and by engaging in the practice of law while suspended.

As to disciplinary measures, the Referee recommended that Respondent be suspended from the practice of law for two years, to run retroactive to July 3, 2002, the date of his 91-day suspension in Supreme Court Case No. SC01-1744, followed by two years of probation to ensure continuation and successful completion of substance abuse treatment and counseling along with random urinalysis. Probation was also to require that Respondent abide by the terms and conditions of his Florida Lawyer's Assistance, Inc., rehabilitation contract signed on April 3, 2003. (RR 3).

The Referee's Report was considered by the Board of Governors of The Florida Bar at its meeting which ended on October 3, 2003, at which time the Board voted to file a Petition for Review of the Referee's Report. The Board voted to petition for review of the Referee's recommendation that the Respondent be suspended for two years followed by two years of probation, and voted to seek disbarment. The Florida Bar filed a Petition for Review of the Referee's Report with this Court on November 3, 2003. Pursuant to Rule 3-7.7, the jurisdiction of this Court is invoked.

On October 16, 2003, the Referee amended his Report to delete any reference to a violation of Rule 4-1.1.

STATEMENT OF THE FACTS

The Referee adopted as his findings of fact all of the allegations in the Bar's Complaint (SC01-1298) and Petition for Order to Show Cause, as amended (SC02-1118). (RR 1-2). The Bar's Complaint contains five counts

of misconduct. The Respondent admitted to Counts I, II, III, and IV. (RR 2). In Counts I and III, Respondent failed to act with diligence in handling client matters and failed to communicate with clients. In all five Counts, Respondent failed to respond to inquiries by the Bar and/or the Grievance Committee. As to Count V of the Complaint, alleging criminal misconduct, the Referee found that the Bar proved the allegations by clear and convincing evidence. The Referee also found that the Bar proved, by clear and convincing evidence, the allegations contained in the Petition for Order to Show Cause, as amended. The facts of the first four Counts of the Complaint are summarized as follows.

Count I: In July 1996, Ms. Vicki Kaster hired Respondent to represent her in a dissolution of marriage case. Respondent failed to attend a scheduled mediation, after instructing Ms. Kaster to arrive early so that he could discuss the case with her before the mediation. Respondent attended the final hearing, and a Final Judgment of Dissolution of Marriage was entered on March 5, 1997. On March 7, 1997, Ms. Kaster called Respondent to ask why her requested name change was not included in the original paperwork. Respondent promised Ms. Kaster he would take care of the name change by filing a motion to amend. Between April and October of 1997, Ms. Kaster

repeatedly contacted Respondent to follow up on the status of the name change. Respondent finally filed a Petition for Change of Name on October 21, 1997, and a hearing was set for mid-November 1997. Because Respondent did not properly prepare Ms. Kaster for the hearing, she was unable to provide satisfactory answers to the judge's questions and was unable to receive her name change that day. The Judgment for Change of Name was signed December 17, 1997. Ms. Kaster filed a Bar grievance against Respondent on March 4, 1998. Respondent failed to respond to two letters from the Bar asking him to respond to Ms. Kaster's complaint within 15 days, and failed to contact the grievance committee investigating member.

Count II: On March 22, 2000, The Florida Bar received an Inquiry/Complaint from James Cabler. Respondent failed to respond to two letters from the Bar asking him to respond to Mr. Cabler's complaint within 15 days, and failed to provide requested information to the grievance committee investigating member.

Count III: Respondent represented Jose Pizarro in a personal injury claim arising out of an automobile accident. On July 30, 1999, Mr. Pizarro's claim was settled with the defendant's insurance company, Safeco Property & Casualty Insurance Companies (Safeco), for $9,000.00. On August 2, 1999, Jeffrey Smith, the claims

adjuster for Safeco, mailed a $9,000.00 settlement check to Respondent, enclosing a Release and Indemnity Agreement to be signed by Mr. Pizarro and returned to Safeco. Respondent disbursed to Mr. Pizarro his portion of the settlement funds, however, he failed to provide Safeco with the signed release which was a condition of the settlement. Respondent failed to respond to Mr. Smith's repeated attempts to contact Respondent by telephone and by correspondence to obtain the executed release. Safeco's attorney, Michael Gabel, also made repeated attempts to contact Respondent in an effort to obtain the Release. Respondent failed to respond to Mr. Gabel's telephone calls, or to Mr. Gabel's letters dated June 26, 2000 and February 5, 2001. Respondent never provided Safeco with a release signed by his client. On March 23, 2001, Mr. Smith filed a grievance against Respondent with the Bar. Respondent failed to respond to two letters from the Bar requesting his response within 15 days to Mr. Smith's complaint.

Count IV: On May 11, 2001, The Florida Bar received an Inquiry/Complaint from Edgar F. Starr against Respondent. Respondent failed to respond within 15 days to the Bar's letter asking him to respond to Mr. Starr's complaint.

Count V and Petition for Order to Show Cause: (Because the factual basis for Count V is related to that of the Petition for Order to Show Cause, these cases will be discussed together.) On March 29, 2001, this Court issued an Order suspending Respondent from the practice of law for 60 days in Florida Bar v. James Manuel Heptner, Supreme Court Case Nos. SC00-920 and SC00-2570. (TFB Exh. 1). The effective date of Respondent's suspension was April 30, 2001. At the time Respondent was suspended, he was already ineligible to practice law due to his failure to comply with the Continuing Education Requirements (CLER) of The Florida Bar. On November 30, 2000, the Bar had sent Respondent a letter informing him that he was in noncompliance with CLER and was deemed a delinquent member of the Bar. The letter also informed Respondent that "a delinquent member shall not engage in the practice of law in this state . . . ." (TFB Exh. 2). Respondent did not correct his CLER delinquency until approximately June 28, 2001, two days before the end of his 60-day suspension. (TR1 47:23-25 to 48:1-4).

On April 12, 2001, the Bar sent Respondent a letter informing him that, pursuant to Rule 3-5.1(g), he was required to submit to the Bar an affidavit verifying that he had furnished a copy of the suspension order to his active

clients, to opposing counsel, and to all courts before which Respondent was counsel of record, within 30 days of receipt of the order. (TFB Exh. 3). The letter also informed Respondent of the need to "eliminate the appearance of being a lawyer in good standing," including the removal of his office signs.

Respondent failed to submit the affidavit required by Rule 3-5.1(g) within 30 days, and in fact, submitted it only **after** the Bar filed its Petition for Order to Show Cause. Throughout his suspension, Respondent remained listed as the attorney of record on more than 100 cases in the U. S. Bankruptcy Court for the Middle District of Florida, and did not notify the Clerk of the Bankruptcy Court of his suspension. (TR1 30:6-16).

On May 2, 2001, a Florida Bar investigator visited Respondent's law office, and found him dressed in business attire standing outside his office door. Signs on the window and door indicated that the office was occupied by two attorneys, James M. Heptner and Joel E. Treuhaft. (TR1 19:3-10). When the investigator returned on May 21, 2001, the signs containing Respondent's name had been removed. (TR1 19:22-24). Respondent's telephone was answered by a machine with the following message: "Law Office of James Heptner. We are unable to take your call at this time . . . . Please leave a message." (TR1 24:18-20).

During the period of his suspension, Respondent continued to represent William Walent, his client in a dissolution of marriage case. Respondent was scheduled to appear at a case management conference in Mr. Walent's case on May 14, 2001. (TFB Exh. 5). When neither Respondent nor his client appeared at the scheduled conference on May 14th, Judge Robert Foster dismissed the case. (TR1 56:11-15). On May 15, 2001, Respondent appeared at Judge Foster's chambers for the case management conference. Donna Julian, the Judicial Assistant, informed Respondent the conference had taken place the previous day. (TR1 70:14-18). Respondent indicated that he was representing Mr. Walent and did not inform either Ms. Julian or the Judge that he was suspended from the practice of law. (TR1 71:8-14).

On May 15, 2001, Respondent called Mr. Walent and told him that he (Respondent) had appeared at the case management conference on May 14, 2001, and had scheduled the case for final hearing in August. (TFB Exh. 8). Respondent did not inform Mr. Walent that he was suspended from the practice of law. (TR2 213:14-19). On May 22, 2001, Mr. Walent called Judge Foster's office to inquire about his trial date. (TR1 67:24-25). He told Ms. Julian that his attorney had appeared at the case management conference on May 14, 2001, and told him the

trial was set for August. Ms. Julian told Mr. Walent the case was not set for trial in August and had, in fact, been dismissed. Mr. Walent was very upset when he learned that his case had been dismissed. (TR1 68:2-12; 21-25).

On May 24, 2001, Respondent went back to Judge Foster's chambers to file an "Emergency Motion for Rehearing or to Reinstate Case" and a Notice of Hearing. (TFB Exh. 6 & 7). The signature block on both documents contained Respondent's name, address, and Florida Bar number, but the documents were signed by attorney Joel S. Truehaft, who shared office space with the Respondent. (TR1 141:17-25). Again, Respondent made no mention of his suspension to Judge Foster or Donna Julian. Judge Foster suspected that Respondent was suspended because he had seen Respondent's name on a list of disciplinary actions sent by the Bar each month to all judges in the State. Judge Foster confirmed the information by having his Judicial Assistant call the Bar. (TR1 60:18 to 61:14). After receiving the phone call from Mr. Walent and the emergency motion filed by Respondent, it appeared to Judge Foster that Respondent was representing Mr. Walent while suspended. (TR1 61:23 to 62:1-9). Judge Foster, on his own motion, set aside the Order of Dismissal and reinstated the Walent case. (TR1 57:7-15;

TFB Exh. 8). Respondent remained the attorney of record in the Walent case until January 11, 2002, when Joel Truehaft was substituted as counsel. (TR1 73:1-10).

On June 13, 2001, the Bar filed a Petition for Order to Show Cause, petitioning this Court for entry of an order compelling Respondent to show cause why he should not be disbarred for practicing law while under an Order of Suspension. On June 28, 2001, Respondent submitted to the Bar the Affidavit required by Rule 3-5.1(g), attesting that he had furnished a copy of the suspension order to all of his clients, and attaching a list of their names and addresses. (TFB Exh. 4). The list did not include the names of at least three clients, including William Walent, Danny Nova, and Lisandra Rios.

At the time the initial Petition for Order To Show Cause was filed, the Bar was not aware that Respondent continued to represent another client (other than Mr. Walent) during his suspension. Respondent represented Daniel Nova Rosario (Danny Nova) in a dissolution of marriage case beginning in mid-2000. (TR1 119:14-16; 121:12-16). Mr. Nova, who was a large scale drug dealer, compensated Respondent for legal services by supplying him with cocaine. (TR1 120:10-19; 122:17-22). Mr. Nova also referred his girlfriend, Lisandra Rios, to

Respondent, to handle her divorce. Mr. Nova paid Respondent $273.00 for Ms. Rios' court costs and agreed to cover the rest of the fee by supplying Respondent with cocaine. (TR1 87:5-7; 122:12-18). In addition to receiving cocaine in exchange for legal services, Respondent also purchased cocaine from Mr. Nova on a regular basis. (TR1 97:14-17). Respondent continued to represent Mr. Nova while he was suspended and never informed Mr. Nova of the suspension. (TR1 123:3-11).

In 2001, Mr. Nova became the target of a drug trafficking investigation by the Tampa Police Department. (TR1 95:11-23). During the course of the investigation, the Tampa Police Department conducted a court-authorized wire intercept of Danny Nova's telephone calls. The police intercepted two telephone calls from Respondent to Mr. Nova on May 30, 2001. During these calls, Respondent arranged to meet Mr. Nova to purchase cocaine. (TR1 96:13-25 to 97:1-3). On May 30, 2001, Respondent met with Mr. Nova outside the auto dealership where Mr. Nova worked and purchased an "eight ball" (approximately 3.5 grams) of cocaine from him.

On June 1, 2001, Danny Nova was arrested on drug charges involving distribution of heroin and cocaine, and became a cooperating defendant. (TR1 97:4-9). He advised the Tampa Police Department that Respondent was

representing him in divorce proceedings. Mr. Nova also stated that Respondent was a "customer" who purchased cocaine from him, usually in the quantity of an "eight ball" or an eighth of an ounce. (TR1 97:14-25).

After Danny Nova became a cooperating witness, he advised the police that he was scheduled to meet with Respondent on July 18, 2001, to discuss his divorce case. Mr. Nova agreed to wear an audio recording device during the July 18, 2001 meeting at Respondent's law office. (TR1 98:3-15). According to the transcript of the conversation recorded on July 18, 2001, Respondent asked Mr. Nova if he could get an "eight ball" of cocaine for that night. Mr. Nova told Respondent he did not have any cocaine at that time, but would check and call Respondent back. Respondent promised Mr. Nova he would prepare the documents necessary to finalize Mr. Nova's divorce. (TFB Exh. 10).

On August 6, 2001, the Tampa Police Department obtained a warrant for Respondent's arrest from Judge Gregory Holder. That same day, Respondent appeared before Judge Holder in a civil matter. The Judge called a recess and went into chambers to telephone the Tampa Police. Shortly thereafter, Respondent was arrested in the Judge's chambers on charges of Solicitation to Deliver Cocaine. (TR1 101:16-23). On August 21, 2001, the

Hillsborough County State Attorney's office filed an information charging Respondent with Solicitation to Deliver Cocaine, a third degree felony. (Exh. "N" to Complaint).

On August 7, 2001, the Bar filed a Motion to Amend Petition for Order to Show Cause which was granted by this Court on September 28, 2001. On October 18, 2001, the Bar filed its Amendment to supplement the Petition for Order to Show Cause with information concerning Respondent's solicitation of cocaine from his client and subsequent arrest. On August 20, 2001, the Bar sent Respondent an inquiry letter enclosing the Tampa Police Department offense report relating to Respondent's arrest for solicitation of cocaine, and requested his response. Respondent failed to respond to the Bar's inquiry until November 6, 2001.

On September 17, 2001, Respondent voluntarily entered into a residential drug rehabilitation program with Health Care Connections and remained there for five months. (TR2 245:6-23). Respondent subsequently signed an 18-month contract to enter into the Drug Court Pre-Trial Intervention Program. He entered into the program on March 4, 2002. While he was in the program, Respondent attended treatment through the Drug Abuse Comprehensive Coordinating Office (DACCO), a substance abuse treatment program. (TR1 165:3-20). On the

recommendation of Respondent's probation officer, the Court terminated his supervision about six months early, on February 25, 2003. (TR1 166:1-14). On April 3, 2003, Respondent signed a three-year rehabilitation contract with Florida Lawyers' Assistance, Inc. (FLA). (R. Exh. 4).

SUMMARY OF THE ARGUMENT

Respondent engaged in criminal misconduct by purchasing cocaine from a client and exchanging legal services for cocaine. He admitted to purchasing cocaine from his client while he was under an order of suspension in a prior disciplinary case. Respondent was subsequently arrested and charged with Solicitation to Deliver Cocaine, a third degree felony. Respondent violated the suspension order by continuing to engage in the practice of law, and by holding himself out as an attorney during the suspension period. Respondent also neglected client matters and failed to respond to inquiries from the Bar, resulting in multiple rule violations in five separate cases. Respondent has been disciplined by this Court on four prior occasions.

In recommending a two-year retroactive suspension rather than disbarment, the Referee assigned considerable weight to Respondent's drug use and subsequent rehabilitation as mitigating factors. The record shows that Respondent's cocaine use did not impair his ability to practice law sufficiently to outweigh the seriousness of his misconduct, and, therefore should not have been considered as mitigation. Respondent committed multiple rule violations, engaged in criminal misconduct involving a client, and continued to practice law in violation of an order of suspension. The Referee's recommended sanction is not consistent with the Standards for Imposing Lawyer Sanctions and the case law of this Court. Given the seriousness of Respondent's offenses and his extensive history of prior discipline, disbarment is the appropriate sanction.

ARGUMENT

I. DISBARMENT IS THE APPROPRIATE SANCTION FOR THE RESPONDENT WHO ENGAGED IN FELONY CRIMINAL CONDUCT INVOLVING A CLIENT, PRACTICED LAW WHILE UNDER AN ORDER OF SUSPENSION, AND HAS BEEN DISCIPLINED ON FOUR PRIOR OCCASIONS.

This Court has held that "'[i]n reviewing a referee's recommendation of discipline, this Court's scope of review is somewhat broader than that afforded to findings of facts because, ultimately, it is [the Court's] responsibility to order an appropriate punishment.'" Florida Bar v. Forrester, 818 So. 2d 477, 483 (Fla. 2002) (quoting Florida Bar v. Maier, 784 So. 2d 411, 413 (Fla. 2001)). When imposing discipline, this Court takes into consideration the duty violated and the injury caused by the conduct. Florida Bar v. Cox, 794 So. 2d 1278, 1283 (Fla. 2001). In making this determination, this Court considers not only case law but also the Florida Standards for Imposing Lawyer Sanctions. *Id*. The Referee's recommended sanction of a retroactive two-year suspension is inconsistent with the Standards for Imposing Lawyer Sanctions and the relevant case law.

A. Disbarment is the appropriate sanction for the Respondent who solicited the purchase of cocaine from a client.

The Florida Standards for Imposing Lawyer Sanctions provide a format for bar counsel, referees, and the Court to determine the appropriate sanction in attorney disciplinary matters. Pursuant to the relevant Standards and the case law, Respondent's criminal misconduct warrants disbarment. Standard 5.0 relates to sanctions that are appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty,

trustworthiness, or fitness as a lawyer in other respects. Standard 5.11 provides that, absent aggravating or mitigating circumstances,

> Disbarment is appropriate when:
>
> > (c) a lawyer engages in the sale, distribution or importation of controlled substances; or
> > . . . .
> > (e) a lawyer attempts or conspires or solicits another to commit any of the offenses listed in sections (a)-(d).

On August 6, 2001, Respondent was arrested for soliciting the purchase of cocaine from his client, Danny Nova. In two telephone calls recorded by the police, Respondent arranged to meet Mr. Nova to purchase cocaine. Respondent admits that he purchased cocaine from Danny Nova on May 30, 2001, during the suspension period. Respondent also met with Mr. Nova at his law office on July 18, 2001, and solicited the purchase of cocaine. At the time, Respondent was handling Mr. Nova's divorce case, and the divorce of Mr. Nova's girlfriend, Lisandra Rios. The audiotape from the July 18, 2001 meeting clearly indicates that Respondent had been working on Mr. Nova's divorce case for some time. (TFB Exh. 10).

The case law supports disbarment as the appropriate sanction for criminal misconduct involving the purchase or sale of controlled substances. In Florida Bar v. Beasley, 351 So. 2d 959 (Fla. 1977), an attorney represented a client in a dissolution of marriage case. The client approached Beasley and asked him to supply her with quaaludes. Beasley advised her that he could arrange for the delivery of a quantity of quaaludes to her. Id. at 960. Two days later, Beasley met with the client at his office and advised that he could arrange for the delivery of marijuana. He made a telephone call to someone who did eventually supply her with four pounds of marijuana. Beasley was subsequently found guilty of delivery of cannabis. The Referee recommended a suspension of two years, and the Bar urged disbarment. This Court agreed with the Bar and disbarred Beasley, finding that a two-year suspension was "too lenient since a lawyer who is willing to forsake his client for his own personal goals demonstrates a lack of moral character and fitness required of a member of the Bar." Id. While Respondent's arrest for solicitation to deliver cocaine did not result in his conviction, his misconduct is similar to that of the attorney in Beasley. Like Beasley, the Respondent involved his client in a drug deal.

Florida Bar v. Wilson, 425 So. 2d 2 (Fla. 1983), is another case in which an attorney was disbarred for engaging in a drug deal with a client. Wilson pressured a client who was incarcerated to make arrangements to have delivered to him one and one-half pounds of cocaine. Subsequently, the cocaine was delivered to Wilson and he was arrested by undercover agents. Wilson was convicted of two felonies, Solicitation to Traffic in Cocaine and Attempted Trafficking in Cocaine. Id. at 3. The Referee recommended a three-year suspension. This Court disagreed, holding that a suspension would not serve the purposes of attorney discipline. This Court stated:

> Respondent was engaged in illegal drug trafficking, a troublesome and serious crime. We have not hesitated to disbar an attorney for similar acts even though a referee recommended less severe discipline. See Florida Bar v. Beasley, 351 So. 2d 959 (Fla. 1977). Illegal behavior involving moral turpitude "demonstrate[s] an intentional and flagrant disregard for the very laws Respondent is bound to uphold, the well-being of the members of society, and the ethical standards applicable to members of the Bar of this State." In re Gorman, 269 Ind. 236, 240, 379 N.E.2d 970, 972 (1978).

425 So. 2d at 4.

Like Wilson, Respondent solicited drugs from his own client. In Wilson, the only mitigating factor was the absence of a prior disciplinary record, which was discounted by the Court because Wilson had only been a member of the Bar for six months. No aggravating factors were found. In the instant case, the Referee found a number of

mitigating factors as well as a number of aggravating factors. The mitigating factors in this case do not justify departing from the presumptive sanction of disbarment for engaging in criminal misconduct involving the purchase or sale of a controlled substance, especially when the transaction is with the attorney's own client.

The fact that Respondent was not convicted of the crime with which he was charged is not dispositive in imposing discipline. Respondent was charged with Solicitation to Deliver Cocaine, a third degree felony. The criminal charge was dismissed after Respondent successfully completed the Drug Court Pre-Trial Intervention Program. In Florida Bar v. Marks, 492 So. 2d 1327 (Fla. 1986), this Court disbarred an attorney who participated in a scheme to import marijuana. Marks was charged with trafficking in marijuana, but entered a plea bargain of nolo contendere to the lesser charge of delivery of cannabis. This Court stated: "An attorney cannot avoid discipline for wrongdoing simply because he pleads nolo contendere to a crime in order to avoid a formal adjudication of guilt." Id. at 1328. This Court overruled the referee's recommendation of a three year suspension and disbarred Marks. Rule 3-4.4, Rules Regulating The Florida Bar, relating to criminal misconduct, provides that a lawyer charged with a criminal offense is subject to disciplinary proceedings regardless of whether he has been

tried, acquitted, or convicted in court. Also, the acquittal of the respondent in a criminal proceeding is not a bar to disciplinary proceedings. Id.

Engaging in the sale, distribution or importation of a controlled substance, or soliciting another person to do so is, in itself, a criminal act warranting disbarment. *See* Standard 5.11. Involving a client in misconduct is especially egregious, and is an additional factor to be considered in aggravation. Standard 12.1, which lists factors which may be considered in aggravation in addition to the factors listed in Standard 9.22, includes (a) "[i]nvolvement of client in the misconduct, irrespective of actual harm to the client." When Respondent's criminal misconduct is considered in conjunction with his violation of the suspension order and the aggravating factors, a two-year retroactive suspension is an insufficient sanction.

B. Disbarment is the appropriate sanction for the intentional violation of a disciplinary order.

Standard 8.1 relates to prior discipline orders and provides that, absent aggravating or mitigating factors, Disbarment is appropriate when a lawyer:

> (a) intentionally violates the terms of a prior disciplinary order and such violation causes injury to a client, the public, the legal system, or the profession; or

(b) has been suspended for the same or similar misconduct, and intentionally engages in further similar acts of misconduct.

The record shows that Respondent violated the order of suspension by holding himself out as a lawyer, by continuing to represent clients, and by failing to notify his clients and the courts of his suspension. At the time Respondent's suspension became effective on April 30, 2001, he was **already** ineligible to practice law due to his failure to comply with Continuing Legal Education Requirements. Respondent admitted that he received a letter from the Bar dated April 12, 2001, prior to the effective date of the suspension, instructing him to remove all indicia of practicing law, including his office signs, and to notify his clients of his suspension and file the affidavit required by Rule 3-5.1(g). He did not file the affidavit until after the Petition for Order to Show Cause was served, and even then he failed to list the names of all of his clients. During his suspension, Respondent was observed at his office dressed in business attire, and his office signs still indicated he was a practicing attorney.

Respondent continued to represent William Walent during his suspension. He appeared at Judge Foster's office twice on behalf of Mr. Walent, without informing the Judge or the Judicial Assistant that he was suspended. Both Judge Foster and Ms. Julian believed Respondent was the attorney of record for Mr. Walent. On May 24,

2001, Respondent filed a Motion to reinstate Mr. Walent's case and a notice of hearing, both bearing his name, address, and Bar number. Respondent dictated the contents of the motion to his friend, attorney Joel Truehaft, who typed and signed the motion "for James Manuel Heptner." Respondent remained attorney of record in Mr. Walent's case throughout the 60-day suspension period. Respondent also continued to represent Danny Nova and Lisandra Rios while he was suspended and did not inform them of the suspension. Respondent met with Danny Nova to purchase cocaine from him during his suspension.

This Court has consistently imposed additional discipline upon already-disciplined attorneys for violating the terms of existing disciplinary orders. Florida Bar v. Ross, 732 So. 2d 1037, 1041-42 (Fla. 1998). This Court has held that "[c]lear violation of any order or disciplinary status that denies an attorney the license to practice law generally is punishable by disbarment, absent strong extenuating factors." Florida Bar v. Brown, 635 So. 2d 13 (Fla. 1994). Brown continued to practice law after his disciplinary resignation, in violation of this Court's order granting his petition to resign.

In Florida Bar v. Greene, 589 So. 2d 281 (Fla. 1991), the Florida Bar filed a petition for an order to show cause, alleging that respondent Greene engaged in the practice of law while under suspension. The referee found that Greene had engaged in the practice of law while he was under suspension despite the fact that he did not charge a fee for his services and was a personal friend of those for whom he performed the services. Id. at 282. This Court rejected the referee's recommendation that Greene's current suspension be extended for two years, stating:

> **We agree with the Bar that further suspension of Greene would be fruitless. Greene has a long history of disciplinary violations.** He has completely disregarded lesser forms of discipline imposed by this Court. He has failed to abide by conditions of probation. **He has continued to practice law despite his suspension**. . . . Given Greene's past disciplinary violations, his refusal to adhere to lesser forms of discipline, and his failure to participate in this case, we find that disbarment is warranted.

Id. at 282-83. (citations omitted) (emphasis added).

Like the attorney in Greene, the Respondent has completely disregarded prior disciplinary measures, and has shown a complete disregard for the authority of this Court by failing to abide by the terms of the suspension order. He has also committed multiple rule violations, including criminal misconduct. Respondent has an extensive history of prior discipline, having been before this Court on disciplinary matters on four prior occasions, all consolidated

matters representing multiple clients. Further suspension would be fruitless. Respondent's intentional violation of the Order of Suspension, when considered in light of the aggravating factors present in this case, warrants disbarment.

C. The Referee assigned too much weight to Respondent's drug use as mitigation.

1. **Respondent's participation in drug rehabilitation should not be considered as mitigation where Respondent has committed a felony drug offense and involved a client in his misconduct.**

In recommending a retroactive two-year suspension, the Referee stated that: "But for the Respondent's successful completion of residential treatment and counseling, successful completion of the Pretrial Intervention program, and the fact that he is currently doing well with his aftercare, the Respondent's disciplinary history would have warranted disbarment." (RR 3). Respondent argued before the Referee that, pursuant to Standard 10.0, the presumed penalty for his misconduct should be a 90 or a 91-day suspension. Standard 10.0 specifically addresses the disposition of disciplinary cases involving "personal use and/or possession for personal use of controlled substances," when no criminal conviction is obtained. Standard 10.3 provides that, absent the existence of

aggravating or mitigating factors, the appropriate discipline for an attorney found guilty of felonious conduct involving the personal use and/or possession of a controlled substance who has sought and obtained assistance from F.L.A., Inc., or a treatment program approved by F.L.A., Inc., would be a suspension from the practice of law for a period of 91 days or 90 days if rehabilitation has been proven, followed by a three-year probation. Respondent argued that he had proven rehabilitation, and therefore a suspension would be appropriate.

Respondent failed, however, to point out the **exceptions** to the sanctions provided for in Standard 10.0, which in Standard 10.4 states:

> The provisions of discipline enumerated in paragraphs two and three above would not be applicable to:
>
> (a) an accused attorney who has allegedly violated other disciplinary rules, *i.e.*, theft of trust funds;
>
> (b) an accused attorney involved in conduct covered by Standard 5.11; and/or
>
> (c) an accused attorney where aggravating factors as defined below are found to exist.

One of these additional aggravating factors is 12.1(a): "Involvement of client in the misconduct, irrespective of actual harm to the client." Respondent's conduct satisfies **all three** of the exceptions contained in Standard 10.4:

(1) he has violated numerous other disciplinary rules; (2) he was involved in conduct covered by Standard 5.11 (his arrest for solicitation to deliver cocaine from Mr. Nova); and (3) an applicable aggravating factor exists (Respondent involved his client in the misconduct). Therefore, Respondent clearly cannot rely on the provisions of discipline enumerated in Standard 10.0 because those provisions do **not** apply to his misconduct. Standard 12.0 lists aggravating factors which may be considered **in addition** to the factors listed in Standard 9.22.

2. **Respondent's drug abuse did not impair his ability to practice law to the extent that it outweighed his misconduct.**

Respondent argued before the Referee that all of his misconduct was related to his use of cocaine. He even blamed his prior discipline on his "on and off" use of cocaine over a period of years. Respondent has argued that he was rehabilitated, and therefore should be given another chance to demonstrate that he can successfully practice law. (TR2 286:13-22). The Referee considered Respondent's drug use in mitigation, listing "personal or emotional problems," "physical or mental disability or impairment," and "interim rehabilitation"as mitigating factors in his Report. (RR 4).

It is the Bar's position, however, that Respondent's drug use should not have been considered as mitigation by the Referee because he continued to work effectively during the period in issue. This Court has held that while a substance abuse problem may explain misconduct, it does not excuse it. Florida Bar v. Wolfe, 759 So. 2d 639, 644 (Fla. 2000). For drug abuse to serve as a mitigator, "the addiction must impair the attorney's ability to practice law to such an extent that it outweighs the attorney's misconduct." Id. In Wolfe, the attorney had a long-term cocaine addiction, and was participating in an F.L.A., Inc. drug rehabilitation program. The referee considered these factors in mitigation. Wolfe blamed his misconduct (improper in-person solicitation of disaster victims) on his addiction. Id. at 645. This Court concluded that Wolfe's misconduct did not demonstrate such a level of impairment that his cocaine addiction should serve as a substantial mitigator, or overshadow the seriousness of his violations, in assessing discipline. Id. In reaching this conclusion, this Court relied on its decision in Florida Bar v. Shuminer, 567 So. 2d 430 (Fla. 1990), in which an attorney with a substance abuse problem misappropriated client funds. This Court concluded that disbarment was a more appropriate sanction because, even though Shuminer had a substance abuse problem, he "failed to establish that his addictions rose to a sufficient level of impairment to

outweigh the seriousness of his offenses." Id. at 432. In so holding, this Court noted that Shuminer "continued to work effectively during the period in issue." Id.

Similarly, in Florida Bar v. Horowitz, 697 So. 2d 78 (Fla. 1997), this Court upheld the referee's recommendation of disbarment and found that Horowitz' claimed mental health problems failed to sufficiently mitigate his misconduct. Horowitz was found guilty of multiple rule violations demonstrating a pattern of neglecting clients and failing to respond to the Bar. He claimed that his misconduct resulted from severe depression and that the referee failed to give the mental health evidence sufficient consideration as mitigation. Id. at 83. Horowitz had a disciplinary record consisting of a public reprimand, an admonishment, and a suspension. Id. This Court agreed with the referee's recommended sanction, holding that Horowitz' pattern of wrongdoing and prior disciplinary history required disbarment. This Court stated:

> Where the composite conduct of a lawyer is gross, disbarment is warranted. Florida Bar v. Setien, 530 So. 2d 298, 300 (Fla. 1988). In Setien, we upheld a referee's recommendation of disbarment after finding that allegations of drug and alcohol dependency, for which Setien was said to be recovering, helped to explain Setien's behavior but did not excuse it. . . . **As in Setien, we find that evidence of Horowitz' clinical depression helps to explain but not to excuse his pattern of neglect of his clients and his failure to respond to communications from the Bar**. . . .

697 So. 2d 78, 83-84 (emphasis added).

Respondent's drug use may help to explain his misconduct, but it does not excuse it. There is no evidence in the record to indicate that Respondent's law practice was impaired by his cocaine use. On the contrary, the record shows that Respondent had a thriving law practice. Respondent testified that between 2000 and early 2001, he opened 40 new cases a month. (TR2 253:2-9). During the time he was suspended, Respondent remained the attorney of record in over 100 bankruptcy cases. In July 2001, he bragged to his client, Danny Nova, about how well things were going for him. (TFB Exh. 10).

Respondent testified that he was only a "periodic user" of cocaine and would go as long as a month without the drug. (TR2 253:12-18). Timothy Sweeney counseled Respondent at Health Care Connections, the residential treatment center Respondent attended. Mr. Sweeney testified in an earlier disciplinary proceeding that Respondent identified himself as a "binge user" who "often goes months without using cocaine." (R. Exh.1, 18:6-11). Respondent informed Health Care Connections that he had a "period of sobriety" from January 2000 to June 2001, and used cocaine only once a month. (TR2 252:12-23). Joel Truehaft, the attorney who shared office space with

Respondent, was not even aware that Respondent had a drug problem until his arrest. (TR2 255:9-14). Mr. Truehaft had the opportunity to observe Respondent practicing law on close to 200 occasions, and had a very high regard for Respondent's abilities. (TR2 253:19-25 to 254:1-9). The character witnesses Respondent presented in an earlier disciplinary proceeding, on December 10, 2001, all testified that Respondent always provided competent representation to his clients, and none of them testified that he was debilitated by drug use. (TR2 254:21-25 to 255:1-8).

The evidence in the record demonstrates that Respondent's drug use did not impair his ability to practice law to such an extent that it outweighed his misconduct. Wolfe, *supra*, at 644. On the contrary, the record shows that Respondent "continued to work effectively during the period in issue." Shuminer, *supra*, at 432. Respondent cannot now rely on his recreational use of cocaine to excuse his misconduct. Respondent violated numerous rules in multiple cases, committed criminal misconduct involving a client, and violated the terms of a disciplinary order. Respondent's cocaine use does not excuse his misconduct and should not be considered as a substantial mitigator

in assessing discipline. The Referee assigned too much weight to Respondent's drug use as mitigation in recommending a retroactive two-year suspension rather than disbarment.

3. **A retroactive two-year suspension does not serve the purposes of attorney discipline.**

The Referee recommended that Respondent be suspended for two years **retroactive** to July 3, 2002, the effective date of Respondent's 91-day suspension in Case No. SC01-1744, a separate and unrelated disciplinary proceeding. The Referee's recommendation of a retroactive suspension is inappropriate given the circumstances of this case. Separate misconduct warrants separate discipline. The Respondent is not entitled to a "volume discount" for repeated violations of the Rules Regulating The Florida Bar. The 91-day suspension imposed by this Court in SC01-1744 arose from facts completely unrelated to those underlying the current proceeding.

In SC01-1744, Respondent was found guilty of violating Rule 4-8.4(g) for the **third** time by failing to respond to the Bar and failing to respond to inquiries by the grievance committee concerning a complaint filed against him. As of August 8, 2003, the date of the final hearing in the current proceeding, Respondent had not

petitioned this Court for reinstatement to the practice of law from the prior suspension. He argued before the Referee that any suspension should be nunc pro tunc to July 3, 2002. (TR2 297:4-21).

This Court addressed a similar situation in Florida Bar v. Larkin, 447 So. 2d 1340 (Fla. 1984). In Larkin, the respondent was suspended for 91days in 1982. In 1983, he came before the Court on another disciplinary matter involving mishandling of trust funds and neglect of a client's case. Larkin attributed his violations to alcohol abuse, but claimed he had conquered his drinking problem and had not had a drink in over a year. According to Larkin, he delayed filing his petition for reinstatement from the 91-day suspension until he could be certain he had conquered his drinking problem. Larkin requested that any disciplinary measures be imposed retroactively to run concurrent with the prior rehabilitative suspension. This Court disagreed and imposed another 91-day suspension effective from the date of the order, stating that "Respondent's delay in applying for reinstatement was his own decision." Id. at 1341. This Court also found that while "alcoholism explains the violations, it does not excuse them," and stated:

> Protection of the public, punishment, rehabilitation of an attorney who commits ethical violations are three important purposes of disciplinary measures. Equally important purposes, however, are a

> deterrence to other members of the Bar and the creation and protection of a favorable image of the profession. **The latter will not occur unless the profession imposes visible and effective disciplinary measures when serious violations occur.** . . .

447 So. 2d at 1341 (emphasis added).

The retroactive two-year suspension recommended by the Referee in this case does not serve the purposes of attorney discipline as enunciated by this Court. A two-year suspension, especially one retroactive to 2002, would be an ineffective punishment for the serious violations committed by the Respondent, and would not serve as a deterrent to others. It would also send the wrong message to the public that an attorney who exchanged legal services for cocaine, who practiced law while suspended, and who has already been disciplined on four prior occasions, would remain suspended for only a few months before becoming eligible to petition for reinstatement to the practice of law. Disbarment is a more appropriate sanction and better serves the purposes of attorney discipline.

D. Respondent's extensive history of prior discipline warrants disbarment.

The Referee found three aggravating factors: prior disciplinary offenses, substantial experience in the practice of law, and a pattern of misconduct. The Respondent is an experienced attorney who has been practicing law since 1983. He has been disciplined on **four** prior occasions. Three of the Respondent's four prior disciplinary proceedings have consisted of multiple cases. On August 29, 1990, Respondent received a private reprimand pursuant to a Report of Minor Misconduct in TFB Nos. 89-10,600(13B) and 89-10,092(13B) for neglecting a legal matter in and violating trust accounting rules. Respondent's second discipline was on April 14, 1994, when he received a public reprimand and 18 months probation in Supreme Court Case Nos. 82,209 and 83,292. The misconduct in Case No. 82,209 arose out of Respondent's representation of a client in 1991 in a dissolution of marriage case wherein he failed to explain a matter to a client to the extent necessary to permit the client to make informed decisions, and failed to supervise a non-lawyer employee. In Case No. 83,292, Respondent represented two clients in separate bankruptcy proceedings in 1991-92. He failed to provide competent representation, and accepted an impermissible fee. The bankruptcy judge issued an order imposing sanctions on Respondent and directing him to reimburse the clients' bankruptcy estates. Also in 1991-92, in connection with another bankruptcy

representation, Respondent failed to provide competent representation, failed to act with reasonable diligence, and failed to keep his client reasonably informed about the status of a matter.

On March 29, 2001, this Court issued its Order in SC00-920 and SC00-2570, suspending Respondent for 60 days. (TFB Exh. 1). Respondent, however, failed to abide by the suspension order and the Referee in the instant case found him in contempt for violating the Order. In SC00-920, Respondent filed a complaint on behalf of his client in a personal injury lawsuit, but failed to perfect service on the defendant, resulting in dismissal of the case for lack of prosecution. The client's case was barred by the statute of limitations. Respondent also failed to timely respond to two letters from the Bar regarding this grievance. Pursuant to a consent judgment, Respondent admitted to violating Rules 4-1.1(competence); 4-1.3(diligence), and 4-8.4(g) (failure to respond to disciplinary agency). In Case No. SC00-2570, Respondent failed to advise a client charged with capital sexual battery that the offense carried a mandatory life sentence. The client turned down the State's plea offer of five years in prison, and was convicted at trial and sentenced to life. Respondent also failed to respond to two letters from the Bar regarding the grievance, and failed to comply with a subpoena issued by the grievance committee. Pursuant to a consent

judgment, Respondent admitted to violating Rules 4-1.1 (competence); 4-1.4(b) (explain matter to client); and 4-8.4(g) (failure to respond to disciplinary agency).

Finally, on July 3, 2002, while the instant proceedings were pending, this Court issued its Order in SC01-1744, suspending Respondent for 91 days to be followed by two years of probation. In 2000, The Florida Bar received a complaint against Respondent from Vicente De la Vega. Respondent failed to respond to two letters from Bar counsel in 2000 regarding Mr. De la Vega's complaint. Respondent also failed to contact the grievance committee investigating member regarding Mr. De la Vega's complaint in 2000 and 2001. A Referee found Respondent guilty of violating Rule 4-8.4(g) (failure to respond to disciplinary agency).

Given the Respondent's extensive disciplinary history, the Referee's recommendation of a two-year retroactive suspension is an insufficient sanction and does not accord with the Standards for Imposing Lawyer Sanctions or the case law of this Court. As discussed above, Standard 8.1, relating to prior discipline, provides that, absent aggravating or mitigating circumstances, disbarment is appropriate when a lawyer intentionally violates the terms of a prior disciplinary order. Standard 8.1 further provides that disbarment is appropriate when a lawyer

has been suspended for the same or similar misconduct, and intentionally engages in further similar acts of misconduct. Respondent's misconduct in this case satisfies both prongs of Standard 8.1. He not only violated the terms of a prior disciplinary order by engaging in the practice of law while suspended, he has continued to engage in similar acts of misconduct. Despite the numerous disciplinary proceedings he has been involved in since approximately 1990, Respondent continues to ignore official inquiries by Bar counsel and grievance committees into his conduct. Respondent has been found guilty of violating Rule 4-8.4(g) three times in two prior disciplinary proceedings, resulting in two suspensions. The Referee in this case found Respondent guilty of violating Rule 4-8.4(g) in five additional and separate cases spanning a four-year period from 1998 until 2001. This proceeding represents Respondent's **eighth** violation of Rule 4-8.4(g).

Respondent violated several additional rules for which he was previously disciplined. This Court has disciplined Respondent twice previously for violating Rule 4-1.3 (SC00-920 and SC83,292), twice for violating Rule 4-1.4(b) (SC00-2570 and SC82,209), and twice for violating Rule 4-1.4(a) (SC 82,209 and SC 83,292).

It is well established that "[i]n rendering discipline, this Court considers the respondent's previous disciplinary history and increases the discipline where appropriate." Florida Bar v. Bern, 425 So. 2d 526, 528 (Fla. 1982). "The Court deals more harshly with cumulative misconduct that it does with isolated misconduct. Additionally, cumulative misconduct of a similar nature should warrant an even more severe discipline than might dissimilar conduct." Id. Cumulative misconduct can be found when the misconduct occurs near in time to the other offenses, regardless of when discipline is imposed. Florida Bar v. Golden, 566 So. 2d 1286, 1287 (Fla. 1990). As this Court recognized in Florida Bar v. Williams, 753 So. 2d 1258, 1263 (Fla. 2000), "enhanced discipline is permissible when multiple violations occur or the attorney has a prior history of misconduct."

It is apparent that Respondent has failed to respond to lesser forms of discipline. Respondent has a history of prior discipline dating back to 1990. Nevertheless, while on suspension in one case, and with another disciplinary case pending before this Court, Respondent deliberately violated the terms of the suspension order by continuing to engage in the practice law. In addition, he committed criminal misconduct by soliciting the purchase of cocaine from a client during his suspension. Five months **prior** to the order of suspension, Respondent became ineligible

to practice law due to his CLER delinquency. Respondent's record of prior discipline, and his continued inability to comply with this Court's orders and the Rules Regulating The Florida Bar, warrant disbarment.

CONCLUSION

In recommending a two-year retroactive suspension rather than disbarment, the Referee accorded substantial weight to Respondent's cocaine use as a mitigating factor. The record shows, however, that Respondent was able to maintain a thriving law practice despite his claimed cocaine addiction. Respondent's drug use did not impair his ability to practice law sufficiently to outweigh the seriousness of his misconduct. Respondent cannot rely on his drug use to excuse his numerous ethical violations, his solicitation of cocaine from a client, or his contempt of this Court's order of suspension. Given the severity of Respondent's misconduct, his multiple offenses, and his history of prior discipline, disbarment is the appropriate sanction.

Dated this _____ day of_____, 2003.

Respectfully submitted,

_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of this brief have been provided by Airborne Express, Airbill Number 5061987770 to **The Honorable Thomas D. Hall**, Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, FL 32399-1927; a true and correct copy by regular U.S. Mail to **James Manuel Heptner**, 2715 Via Capri, Unit 720, Clearwater, FL 33764-3988; by regular U.S. mail to **John Anthony Boggs**, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, all this _____ day of _____, 2003.

_____
William Lance Thompson
Assistant Staff Counsel

CERTIFICATION OF FONT SIZE AND STYLE
CERTIFICATION OF VIRUS SCAN

Undersigned counsel does hereby certify that this brief is submitted in 14 point proportionally spaced Times New Roman font, and the computer disk filed with this brief has been scanned and found to be free of viruses, by Norton Antivirus for Windows.

_____
William Lance Thompson