IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

ARTHUR JAMES SPRINGER

Respondent.
_____/

Case No. SC02-1687
TFB No. 2001-11,216(13F)
2001-10,820(13F)
2003-10,799(13E)

ANSWER BRIEF
OF
THE FLORIDA BAR

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TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS

CASES — PAGE

SYMBOLS AND REFERENCES

In this Brief, The Florida Bar, Petitioner, will be referred to as “The Florida Bar” or “The Bar”. The Respondent, Arthur James Springer, will be referred to as “Respondent.”

“TR” will refer to the transcript of the final hearing before the Referee in Supreme Court Case No. SC02-1687 held on January 27, 2003.

The Report of Referee dated February 6, 2003 will be referred to as “RR”.

“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

In TFB No. 2001-10,820(13F), on October 12, 2001, the Thirteenth Judicial Circuit Grievance Committee "F" found probable cause for further proceedings.

In TFB No. 2001-11,216(13F), on January 8, 2002, Thirteenth Judicial Circuit Grievance Committee F found probable cause for further proceedings.

In TFB No. 2003-10,799(13E), Respondent waived probable cause as to the following Rule violations: Rule 4-1.4(a)(communication - a lawyer shall keep a client reasonably informed about the status of a matter); Rule 4-1.3(a lawyer shall act with reasonable diligence and promptness in representing a client); and Rule 4-1.2(a)(a lawyer shall abide by a client's decision whether to make or accept an offer of settlement in a matter).

The Florida Bar filed a Complaint in this matter on July 30, 2002. By Order dated August 13, 2002, The

Honorable Mark I. Shames, Circuit Court Judge, in and for the Sixth Judicial Circuit, was appointed as Referee in the case.

A final hearing was held on January 27, 2003. On February 6, 2003, the Referee issued a Report of Referee recommending that this Court issue an order disbarring Respondent from the practice of law.

In TFB No. 2001-10,820(13F), the Referee recommended that the Respondent should be found guilty of violating the following Rules Regulating The Florida Bar:

Count I - *Centa matter (Georgia case)*: Rule 4-1.1(a lawyer shall provide competent representation to his client); Rule 4-1.3(a lawyer shall act with reasonable diligence in representing his 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 4-5.5(a lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction); Rule 8.4(a)(a lawyer shall not violate or attempt to violate the Rules of Professional Conduct); Rule 4-8.4(c)(a lawyer shall not engage in conduct involving dishonesty, deceit, fraud, or misrepresentation); and 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).

In TFB No. 2001-11,216(13F), the Referee indicated that Respondent should be found guilty of having violated the following Rules Regulating The Florida Bar:

Count II - *The Camelot Condominium Owner's Association, Inc. matter*: Rule 4-1.1(a lawyer shall provide competent representation to his client); Rule 4-1.3(a lawyer shall act with reasonable diligence in representing his 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 8.4(a)(a lawyer shall not violate or attempt to violate the Rules of Professional Conduct); Rule 4-8.4(c)(a lawyer shall not engage in conduct involving dishonesty, deceit, fraud, or misrepresentation); and 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).

Count III - *Cunningham matter*: Rule 4-1.1(a lawyer shall provide competent representation to his client); Rule 4-1.3(a lawyer shall act with reasonable diligence in representing his 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 4-8.4(c)(a lawyer shall not engage in conduct involving dishonesty, deceit, fraud, or misrepresentation);.

Count IV - *the Baron/Wall matter*: Rule 4-1.1(a lawyer shall provide competent representation to his client); Rule 4-1.3(a lawyer shall act with reasonable diligence in representing his 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).

Count V - *the C & D printing matter*: Rule 4-1.1(a lawyer shall provide competent representation to his client); Rule 4-1.3(a lawyer shall act with reasonable diligence in representing his 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 4-8.4(c)(a lawyer shall not engage in conduct involving dishonesty, deceit, fraud, or misrepresentation).

In TFB No. 2003-10,799(13E), the Referee indicated that Respondent should be found guilty of having violated the following Rules Regulating The Florida Bar:

Count VI - *the Baserap matter*: Rule 4-1.1(a lawyer shall provide competent representation to his client); Rule 4-1.3(a lawyer shall act with reasonable diligence in representing his client); Rule 4-1.2(a)(a lawyer shall abide by a client's decision whether to make or accept an offer of settlement in a matter).

The Referee's Report was considered by the Board of Governors of The Florida Bar at its meeting which ended April 5, 2003, at which time the Board voted to not appeal the recommendation of the Referee for disbarment.

The Respondent filed a Petition for Review of the Referee's Report with this Court on April 4, 2003. On May 22, 2003, Respondent filed his Initial Brief. Pursuant to Rule 3-7.7, this Court has jurisdiction.

STATEMENT OF THE FACTS

The Florida Bar and the Petitioner stipulated to detailed facts, which were adopted by the Referee as the facts of the case. The Stipulated Facts are attached to this Brief as an Appendix for ease of reference. The facts are

summarized below, and discussed in a more detailed chronological sequence in the Argument section of this Answer Brief.

COUNT I

TFB No. 2001-10,820(13F)

Georgia Centa equitable partition matter

In about December 1997, Howard E. Mitchell, Sr. retained Respondent to represent Howard E. Mitchell, Inc. in an equitable partition action concerning Harris County, Georgia property. The property had been transferred to Mr. Mitchell's corporation by Mr. Mitchell's daughter. At no time while retained by Mr. Mitchell in this case was Respondent licensed to practice law in Georgia, nor was he admitted pro hoc vice. The opposing attorney suggested that Respondent file a pro hac vice motion, and on about April 9, 1998, sent Respondent a sample Motion for Special Admission of Attorney From Another State. Respondent never filed a motion to appear in Georgia on behalf of his client, Howard E. Mitchell, Inc. (SF 2).

By court order dated April 22, 1998, Howard E. Mitchell, Inc. was added as a party defendant to the

equitable partition action, and in May the Plaintiff filed a Recast and Amended Petition for Equitable Partition naming Howard E. Mitchell, Inc. as a Defendant. In August, Respondent served on the defendant, through his counsel, a Notice of Service of Answers to Interrogatories. Respondent did not file the Notice with the Court. He had not filed a notice of appearance in the case. (SF 2).

In August 1998, the Court ordered that the Defendant Howard E. Mitchell, Inc. be served by publication. In September, Respondent sent an Answer to the Petition for Equitable Partition to opposing counsel, but did not file the Answer to the Petition with the Court. (SF 3).

The Georgia Clerk of the Court sent a notice of a January 11, 1999 docket call to the named defendants, Sharon Mitchell and Howard E. Mitchell, Inc. The Court did not send Respondent a notice, since he had not filed a notice of appearance. The day of the scheduled docket call, Respondent called opposing counsel's Georgia office and left a message that he would call again. Respondent did not call back, and did not attend the January 11 docket call. (SF 3).

On about January 21, opposing counsel faxed and mailed a letter to Respondent, informing him the case had

been placed on the trial docket for the week commencing January 25, 1999. Respondent does not recall receiving the letter, but does not contest that it was sent. On January 27, opposing counsel left specific instructions at Respondent's office that the trial was to take place the next day. This information was reconfirmed on the 27th with Respondent's legal assistant when she returned opposing counsel's call. The equitable partition action was tried before a Georgia jury on January 28, 1999. Respondent did not appear at the trial. The jury reached a verdict in favor of the plaintiff. (SF 3-4).

On January 29, Respondent faxed a letter to opposing counsel requesting that any and all future correspondence, pleadings, etc. in the case be sent to Respondent's office address. On February 25 the Georgia court entered a Judgment in favor of the Plaintiff, and the next day opposing counsel mailed a copy of that Judgment to Respondent as attorney for the defendant. A copy was also sent to the attorney for the co-defendant, Sharon Mitchell. (SF 4).

Respondent did not advise Mr. Mitchell of the February 25, 1999 judgment against him until after October 12, 1999. When Mr. Mitchell inquired prior to that time about the progress of the case, Respondent told Mr.

Mitchell "it's going to be fine." (SF 4).

Mr. Mitchell presented Respondent with a copy of the October 12, 1999 letter from opposing counsel. Respondent prepared a Motion to Set Aside Final Judgment, and provided a copy of the Motion to Mr. Mitchell. The Certificate of Service was dated November 12, 1999 and certified that a copy of the Motion was provided to opposing counsel on that date. Opposing counsel did not receive a copy of the Motion to Set Aside Final Judgment. The Motion to Set Aside Final Judgment was not served at that time, and was not filed until February 28, 2000. Nevertheless, Respondent informed his client that the Motion to Set Aside was set for hearing on February 9, 2000. About one week later, Respondent informed his client the hearing had been postponed. After Respondent filed the Motion on February 28, Respondent informed his client that a hearing on the Motion was set for April 21, and then that this hearing was postponed. In fact, no hearing on the Motion was scheduled for April 21. Next, Respondent informed his client that a hearing on the Motion was set for May 19, and subsequently that this hearing was postponed. In fact, no hearing on the Motion had been scheduled for May 19, 2000. Respondent then informed the client that a hearing on the Motion was set for October 16, and subsequently that this hearing was

postponed. No hearing had been scheduled for October 16, 2000. (SF 5-6).

Respondent set a hearing on the Motion To Set Aside Final Judgement for November 20, 2000. The Notice of Hearing was erroneously addressed to the State Attorney's Office in Hillsborough County, Florida. The Motion to Set Aside Final Judgment was not heard by the Harris County, Georgia Court. There was a judgment against the Respondent's client in the equitable partition action, and the client did not recover the claimed value of his interest in the Georgia real property, which he had alleged was approximately $29,000.00. (SF 6).

COUNT II

TFB No. 2001-11,216(13F)

Camelot Condominium Owner's Association, Inc. matter

Howard E. Mitchell, Sr. was the president of the Camelot Condominium Owner's Association, Inc. ("Camelot"). Camelot was the association for the timeshare condominium project, "Camelot By The Sea," located in Pinellas County, Florida. In about 1993, Camelot hired Respondent to handle the foreclosure of timeshare condominium units whose unit owners were delinquent in the payment of their maintenance and/or tax obligations. Camelot agreed to pay Respondent $200.00 for each foreclosure complaint filed and $300.00 upon completion of

each case. Between 1993 and 1998, Camelot periodically gave new foreclosure cases to Respondent to handle. (SF 6-7).

In about March 1998, Mr. Mitchell discovered that several of the foreclosure cases given to Respondent had not been finalized. In response to Mr. Mitchell's inquiries regarding several foreclosure cases, Respondent delivered to Camelot what he alleged to be photocopies of Certificates of Title for approximately 24 units. The alleged photocopies of Certificates of Title were all dated April 9, 1998. Respondent represented to Mr. Mitchell that the photocopied Certificates of Title demonstrated finalization of the foreclosure cases. Respondent told Mr. Mitchell that Respondent needed to retain the original Certificates of Title in order to obtain judgments against owners in default for moneys owed at time of foreclosure. (SF 7).

Mr. Mitchell offered for sale a number of the timeshare condominium units for which "Certificates of Title" had been provided by Respondent. When the units were sold, Mr. Mitchell signed warranty deeds "transferring" the units to new owners. (SF 7).

As of March 1999, Mr. Mitchell had not received original Certificates of Title from Respondent. The

photocopied Certificates of Title given to Mr. Mitchell by the Respondent did not contain the stamp of the Pinellas County Clerk showing the recordation information. They did have copies of seals of the County Clerk and of the Deputy Clerk's signatures, all of which were identical and placed in exactly the same location on every document. (SF 7-8).

In about April 1999, the client's spouse found from the public record that, regarding the 24 units for which Respondent had provided copies of Certificates of Title, the Certificates of Title had not been recorded and many of the foreclosure cases related to those units had been dismissed. In May 1, 1999, Respondent was confronted by the Association president regarding what seemed to be Respondent's failure to properly handle the foreclosures of condominium units. Respondent admitted that the photocopied Certificates of Title he had provided to Camelot were not legitimate. (SF 8).

On about August 1, Respondent met again with the new president of Camelot, the former president Mr. Mitchell, and another board member.

Respondent signed a memorandum addressed to Mr. Mitchell, dated August 1, 1999, promising to diligently resolve

"all of the matters involving Camelot Condominium Owners' Association, Inc. foreclosures that had been entrusted to me and that I have failed to pursue in a timely and proper judicial manner, thus causing financial harm." As of December 2000, Respondent had not finalized the foreclosure cases. (SF 8-9).

Respondent was paid by Camelot for handling the foreclosure cases in question, and failed to timely perform the legal services for which he was hired. (SF 9).

On January 14, 2002, the Thirteenth Judicial Circuit Grievance Committee "F" found probable cause for further disciplinary proceedings. (SF 9).

COUNT III

TFB No. 2001-11,216(13F)

Cunningham matter

In about December 1995, Mr. Mitchell hired the Respondent to bring an action for an alleged breach of an Agreement for Deed by Garland and Mary Cunningham. (SF 9). On about January 28, 1999, Mr. Mitchell signed an Affidavit in Proof of Claim prepared by Respondent. The Affidavit in Proof of Claim was never filed. Mr.

Mitchell spoke to Respondent periodically to inquire about the status of the case, and Respondent assured Mr. Mitchell that he was working on it. On about March 9, 1999, Respondent informed Mr. Mitchell that he had obtained a garnishment of the defendant's wages. (SF 9-10).

On about August 1, 1999, Respondent signed a memo to Mr. Mitchell in which he promised to diligently resolve "all of the matters involving Howard E. Mitchell, Sr. and Howard E. Mitchell, Inc. that had been entrusted to me and that I have failed to pursue in a timely and proper judicial manner, thus causing financial harm." On about April 24, 2000, Respondent faxed Mr. Mitchell a copy of a letter, dated April 24, 2000, addressed to the defendant's employer, Home Depot, from Respondent, demanding the immediate garnishment of the defendant's wages. In the April 24, letter, Respondent stated that he had previously forwarded documentation to Home Depot "which reflected that a payroll garnishment on the account of your employee Garland Cunningham was mandated as a result of legal action taken against him by my client." On April 24, 2000, Respondent had not filed a complaint against the Cunninghams, and had not obtained a judgment or an order mandating garnishment of Mr. Cunningham's wages. (SF 10).

In an undated memorandum to Mr. Mitchell regarding the status of the case, Respondent stated that he had called Home Depot on May 16, 2000 to follow up on the garnishment, and was informed that the matter had been forwarded to Home Depot's home office for documentation. On about October 6, 2000, Respondent filed a Complaint against the Cunninghams, styled Howard E. Mitchell, Sr. & Catherine F. Mitchell vs. Garland E. Cunningham & Mary E. Cunningham. On about December 18, 2000, Respondent filed a Motion to Withdraw as Counsel at the request of his client Mr. Mitchell, which was granted January 29, 2001. On about January 29, 2001, Mr. and Mrs. Mitchell filed a pro se Motion for Default, a Motion which had been drafted by Respondent. The Clerk of Court entered a Default against the Cunninghams on January 29, 2001. (SF 10-11).

On January 14, 2002, the Thirteenth Judicial Circuit Grievance Committee "F" found probable cause for further disciplinary proceedings. (SF 11).

COUNT IV
TFB No. 2001-11,216(13F)
Baron/Wall matter

In about January 2000, Howard E. Mitchell, Sr. hired Respondent to represent him in a lawsuit against Randy Baron and Jennifer Wall. Mr. Mitchell claimed that Mr. Baron and Ms. Wall breached a construction contract, as modified by subsequent oral representations, by failing to pay him for construction work he had completed on their home. (SF 11).

On about February 1, 2000, Respondent filed a Claim of Lien on behalf of Mr. Mitchell, and on about February 10, Respondent filed a Complaint in Hillsborough County Court. On about March 6, 2000, the Defendants filed a Motion to Dismiss the Complaint on the grounds that the plaintiff had not alleged certain elements necessary for proof of an oral contract. On March 30, 2000, the Court issued a Stipulated Order granting the Defendants' Motion to Dismiss, and giving Respondent 15 days in which to file and serve an amended Complaint. Respondent did not notify his client of the order of dismissal, and did not file an amended complaint within the specified time period. (SF 12).

On about April 26, the client received a copy of a Motion for Default, dated April 24, 2000, prepared by Respondent against the Defendants, for failure to serve or file any paper as required by law. In an undated

memorandum to his client regarding the status of the case, Respondent represented that he had filed the Motion for Default and that a hearing was scheduled for June 4, 2000. Respondent never filed the Motion for Default with the Court, nor was a hearing ever scheduled on the Motion. (SF 12).

On July 5, 2000, the case was dismissed for failure to file an amended complaint within 15 days as ordered on March 30, 2000. Respondent failed to inform his client that the case was dismissed, instead represented to him that the case was "moving along." Respondent represented that proceedings in the case were scheduled for October 2, 2000 when that was not true. (SF 13).

On about October 6, 2000, Respondent filed a new Complaint in Hillsborough County, Florida against the defendants, Baron and Wall. On about November 2, 2000, the Defendants filed an Answer, Affirmative Defenses and Counter Claim. On about December 1, 2000, the Clerk of Court entered a Default against Mr. Mitchell as to the defendants' counterclaim, for failure to serve or file any paper in response to the counterclaim. Then on about December 4, 2000, Respondent filed a Motion to Withdraw as Counsel in the case, and his motion to withdraw was granted. (SF 13).

On January 14, 2002, the Thirteenth Judicial Circuit Grievance Committee "F" found probable cause for further disciplinary proceedings. (SF 13).

COUNT V

TFB No. 2001-11,216(13F)

C & D Printing matter

Howard E. Mitchell, Sr. (Mitchell) hired Respondent to represent him in a lawsuit against C & D Printing for failure to pay for construction work. On about November 19, 1997, Mr. Mitchell instructed Respondent to prepare a lien to be filed against C & D, which Respondent did not do. On about January 28, 1999, Mr. Mitchell signed an Affidavit in Proof of Claim which Respondent indicated needed to be filed in the case. Respondent did not file a Complaint against C & D, nor the Affidavit, although he informed Mr. Mitchell that he had. Respondent informed Mr. Mitchell that a hearing was scheduled for February 8, even though he had not filed a Complaint against C & D. (SF 14).

On about August 1, 1999, Respondent signed a memorandum to Mr. Mitchell in which he promised to diligently resolve "in accordance with the rules of professional conduct regulated by the Florida Bar, all of the

matters involving Howard E. Mitchell, Sr. and Howard E. Mitchell, Inc. that had been entrusted to me and that I have failed to pursue in a timely and proper judicial manner, thus causing financial harm." (SF 14-15).

On about September 24, 1999, Respondent did file a Complaint against C & D, styled Howard E. Mitchell, Inc. vs. Cee & Dee Printing Company. On about February 21, 2000, the Clerk of Court issued a Notice of Intent to Dismiss the case for failure to obtain service on "Cee & Dee Printing Company." Then Respondent represented to Mr. Mitchell that he had obtained a judgment against C & D and was attempting to enforce collection from Huntington National Bank. In an undated memorandum to Mr. Mitchell regarding the status of the case, Respondent stated that he had forwarded a letter to Huntington National Bank on May 17, 2000. (SF 15).

On about October 10, 2000, Respondent filed an Amended Complaint in Howard E. Mitchell, Inc. vs. C & D Printing, Inc. . On October 23, the Amended Complaint was served on the Defendant, who on about October 31, filed a Motion to Dismiss. On about January 5, 2001, Respondent filed a Motion to Withdraw as Counsel, which was granted by Court order dated February 5, 2001. (SF 16).

On November 9, 2001, Defendant C & D Printing, Inc. filed a Motion to Dismiss for Lack of Prosecution.

The case was dismissed without prejudice by order of the Court dated November 26, 2001. (SF 16).

On January 14, 2002, the Thirteenth Judicial Circuit Grievance Committee "F" found probable cause for further disciplinary proceedings. (SF 16).

COUNT VI
TFB No. 2003-10,799(13E)
(Baserap matter)

Respondent waived probable cause on the Baserap matter, which was a complaint of The Florida Bar, on the following Rules Regulating The Florida Bar: Rule 4-1.4(a)(communication - a lawyer shall keep a client reasonably informed about the status of a matter); Rule 4-1.3(a lawyer shall act with reasonable diligence and promptness in representing a client); and Rule 4-1.2(a)(a lawyer shall abide by a client's decision whether to make or accept an offer of settlement of a matter). Respondent agreed to have the facts stipulated facts in Baserap considered in determining the discipline in the instant case. (SF 16).

While Respondent was representing Camelot Condominium Owners Association, Inc., Camelot filed, on behalf of the Association, a lien against the unit of Richard Baserap based on Mr. Baserap's delinquency in paying his maintenance fees and taxes for 1998. Mr. Baserap forwarded a check to Respondent's office to satisfy the lien, but the President of the Association would not accept the draft because it did not include the amount claimed for attorney's fees and costs. (SF 17).

On November 7, 1998, Mr. Baserap filed suit against Camelot, alleging illegal lock-out from his unit, denial of requested condominium records, and challenging the amount of the lien. Respondent filed an answer and affirmative defenses to the complaint. Respondent failed to provide properly requested discovery in a timely manner, and the court ordered that Respondent comply with the discovery request. Respondent provided the discovery, but did not do so timely. Due to the failure to comply with the court order timely, Camelot's pleadings were dismissed and a judgment for liability was entered on behalf of Mr. Baserap. Respondent filed a Notice of Appeal, but the Notice was dismissed as untimely. The case was set the for trial, and then settled by Respondent for $18,000.00. He settled without the approval of his client. Respondent paid the settlement amount from his own

funds and the advised the association of the settlement. (SF 17-18).

Additional Facts Which Were Not Stipulated

At the final hearing on January 27, 2003, The Bar acknowledged, in mitigation, that Respondent was remorseful for his misconduct, and that during Bar proceedings he had freely admitted his actions. As aggravating factors, the Bar stressed Respondent's pattern of misconduct and the multiple offenses and the period of time over which they occurred.

The Referee found that the mitigation stipulated was insufficient to warrant a discipline other than disbarment. He pointed out Respondent's incompetence and how it harmed Respondent's client, his lying to his clients to conceal his misconduct, and that he continued to lie to cover up his past lying.

SUMMARY OF THE ARGUMENT

The Respondent neglected legal matters on multiple occasions over a period of several years. Respondent's neglect caused serious harm to his clients, including the dismissal of cases, adverse judgments, and protracted litigation and expense to correct the resulting problems. In addition to his incompetent handling of numerous legal matters, Respondent engaged in an on-going pattern of deception to cover up his neglect. Respondent repeatedly lied to his clients, and repeatedly submitted false documents and letters intended to give the impression that he had completed the legal tasks he was hired to perform. Respondent's deception extended over a period of years, and continued even after his submission of false documents was discovered by his client and Respondent had promised to correct his errors.

Respondent does not dispute the Referee's factual findings and recommendations as to guilt. The issue before this Court is whether the Referee's recommended sanction of disbarment has a reasonable basis in existing case law. The Bar submits that, given the extensive pattern of Respondent's misconduct, its duration, and the detrimental effect on his clients, disbarment is the appropriate sanction. Disbarment is supported by the case law and the Standards for Imposing Lawyer Sanctions, and should be approved by this Court.

ARGUMENT

I. DISBARMENT IS THE APPROPRIATE SANCTION FOR RESPONDENT WHO, OVER A PERIOD OF THREE YEARS, HARMED HIS CLIENTS BY INCOMPETENCE AND ENGAGED IN MULTIPLE ACTS OF DECEPTION.

The record in this case demonstrates an ongoing pattern of incompetence and deception, and supports the Referee's recommendation of disbarment. A chronology of Respondent's neglect of legal matters, his dishonest acts, and his assurances to his clients that he would make amends highlights how extensive, protracted, and intransigent his conduct was. That chronology, considering all misconduct as a whole, follows:

1997

In November of 1997, Howard Mitchell retained Respondent to file a construction lien against C & D Printing. Respondent did not do so. (SF 14).

1998 to early 1999

Five months later, in April 1998, Respondent delivered falsified copies of Certificates of Title for 24 units in Camelot condominium complex to the President of the Camelot Condominium Association. (SF 7). He did so in

an attempt to conceal that he had not finalized foreclosures. When presenting the President with copies rather than originals, he claimed that it was necessary for him to retain the originals of the Certificates. Even though it was 13 months later when he was found out and confronted, at no time during those 13 months did Respondent go on his own initiative to the association or its President and admit his wrongdoing, In reliance on the falsified copies of the Certificates, the Association sold the units and provided purchasers with warranty deeds. (SF 7). Much of the litigation that arose out of the wrongful sale of the property was still pending at the time of the final hearing before the Referee in the grievance case--more than four years after Respondent's deceit. (TR 40-41)

Four months after providing the false Certificates of Title to the Camelot Association president, Respondent engaged in deceitful conduct in a Georgia partition case (*Centa)*. In August of 1998, he was retained to represent clients in the Georgia case. However, Respondent was not admitted to practice in Georgia. (SF 2). In August 1998, purportedly as counsel in the partition action, Respondent sent a Notice of Service of Answer to Interrogatories to opposing counsel, a Georgia attorney. He did not file that notice with the court - he was not authorized to appear pro hoc vice or otherwise. (SF 2). In September 1998, Respondent sent an answer to the

complaint in the Georgia case to opposing counsel, but again did not file it with the court. (SF 3). Since he was not admitted to practice in Georgia, he could not have filed a legitimate notice of appearance. Four months later, in January 1999, Respondent did not appear for a docket call in the Georgia case - he was still not admitted to practice in Georgia. Although he may not have received notice from the court of that docket call, he had been advised by opposing counsel that it was scheduled. (SF 3). In February 1999, a default judgment was entered against Respondent's clients, and Respondent did not advise them of the entry of the judgment. (SF 4).

Beginning in June 1998, Respondent had been retained to appear on behalf of Charles Mack, Sr. (Mack) on charges of Driving Under The Influence and Driving While License Suspended. Respondent appeared at a calendar call on February 12, 1999. On February 19, 1999, Respondent and the Assistant State Attorney assigned to the file discussed the fact that the case was set for trial March 22, 1999. Respondent advised the State Attorney that Respondent had a jury trial set for that date in another court room. Respondent did not file a motion to continue the Mack trial, nor did he advise the court in writing of his inability to appear for the trial on the 22nd. He also did not inform his client of the trial date. The trial judge issued a capias warrant for the client due to the failure of both

the client and his counsel to appear for trial. Respondent did not follow up to determine what had taken place with the proceeding on February 22, 1999, and in July 1999, the client was arrested for a different charge. He was unable to bond out at least in part due to the outstanding warrant. Respondent did not file a motion to set aside the capias, did not appear at his client's sentencing, and indicated that he did not understand that his client felt Respondent should do so. The client, on his own behalf, entered a plea to the charges of DUI and Driving While License Suspended. (Report of Referee, dated June 7, 2002, in SC01-2565).

1999

In March 1999, in the Cunningham case (breach of agreement for deed), around the time that Respondent failed to appear for the Mack trial, Respondent knowingly misrepresented to his client (plaintiff) that Respondent had obtained a garnishment of the defendant's wages. No complaint had been filed and no judgment obtained. (SF 10).

In May 1999, Respondent was confronted by members of the Camelot Condominium Board of Directors with the fact that the copies of certificates of title that were provided to them were falsified. (SF 8). Respondent

displayed great remorse, wept, and promised to correct the problems. The Board kept him as the Association attorney. In August 1999, Respondent sent a memorandum to Camelot promising to resolve the foreclosure problems. (SF 8-9).

In February 1999, Respondent had misrepresented to his client that he had filed the complaint in the C & D printing case, a case in which he had "been providing representation" since November 1997. He had been retained to file a construction lien. (SF 14). He also misrepresented that a hearing was scheduled in the case, and continued to give false assurances to his client regarding the case, engaging in a pattern of deceit that lasted in this instance until about August 1999. (SF 14). The misrepresentations during the three months after May are yet another example of his continuing to engage in deceit after his May 1999 showing of great remorse over the misrepresentations in Camelot. In September 1999, Respondent did finally file the Complaint in C & D printing, but used an incorrect corporate name. (SF 15).

His pattern of false assurances even after his great display of remorse over the Camelot deceit and misrepresentations also occurred in *Centa*. In October or November 1999, Respondent gave false assurances to

his client that the case was going fine. (SF 4). He prepared a Motion to Set Aside Final Judgment, with a certificate of service indicating service on opposing counsel, and gave a copy of the Motion to his own client. That Motion was not filed, nor had it been served. He first misrepresented to the client that a hearing was set, then later told the client that it was postponed. (SF 5). Misrepresentations that the matter was before the court went on well beyond his tearful meeting with the Camelot Board in which he displayed remorse.

During 1999, Respondent represented Camelot in a suit filed by Richard Baserap which alleged that Mr. Baserap had been illegally locked-out of his unit. Respondent failed to timely comply with discovery, failed to correct the problem after receiving a motion to compel, and had his pleadings dismissed. Respondent then filed a notice of appeal, but that was dismissed as untimely. Respondent settled the lawsuit against Camelot for $18,000, doing so without first getting client approval. (SF 17).

2000

In February 2000, about five months after the meeting with the Camelot board regarding the falsified titles, the Clerk of Court sent Respondent notice in the *C & D Printing* construction lien case that it was going to be

dismissed for failure to obtain service. Respondent then misrepresented to his client that he had obtained a judgment and was trying to enforce it. (SF 15). In *Centa* (Georgia partition case), his misrepresentations also continued. In 2000, Respondent misrepresented to his client on at least three occasions that a Motion to Set Aside the Final Judgment was set for hearing, then that the hearing was postponed. (SF 5). In March 2000, in the *Baron/Wall* breach of contract case, Respondent was given 15 days to serve an amended complaint after the defendant's motion to dismiss was granted. Respondent failed to file an amended complaint. Respondent then sent his client a copy of Respondent's Motion for Default, advising that he had a June hearing scheduled on the motion. The Motion for Default was never filed - a hearing never held. (SF 12).

In April 2000, in *Cunningham* (breach of agreement for deed), Respondent faxed his client a copy of a bogus letter advising Home Depot to garnish the defendant's wages. Although no complaint had been filed and there was no judgment or order allowing garnishment. (SF 10). He later sent his client a memorandum falsely representing that Respondent had called Home Depot on May 16 and the matter had been sent to the home office. (SF 10-11). This was a year after the tearful meeting between Respondent and the Camelot board of directors. It

was about 13 months after he first misrepresented to his client in *Cunningham* that he had obtained a garnishment.

The pattern of deceit continued. In May 2000, in *C & D Printing*, Respondent misrepresented to his client that a judgment had been obtained. (SF 15). Five months later, in October 2000, Respondent did file an amended complaint in the *C & D* case. The defendant filed a motion to dismiss. (SF 15-16). In July 2000, the *Baron/Wall* breach of contract case was dismissed, but Respondent told his client the case was moving along well. (SF 13). Respondent did eventually file an amended complaint in the *Cunningham* breach of contract case in October 2000. (SF 11). In *Baserap* (case against Camelot alleging illegal lockout), after settling the case without his client's approval, Respondent satisfied the settlement using his own funds. (SF 17-18).

In November 2000, in *Centa*, (Georgia case), Respondent filed a notice of hearing on a Motion to Set Aside Final Judgment, but erroneously sent it to the State Attorney's Office. The Motion was never heard, the judgment against Respondent's client stood, and the client lost his right to litigate his $29,000 claim against the property. (SF 6).

In November 2000, the Bar grievance regarding the falsification of titles in the Camelot Condominium matter was filed by Howard Mitchell. In December 2000, Respondent withdrew in the *Cunningham* matter at the client's (Howard Mitchell's) request. Before withdrawing, Respondent prepared a Motion for Default, which the client filed pro se, and that motion was granted. (SF 11).

As of December 2000, the problems created by the falsified copies of Certificates of Title in the Camelot foreclosure cases had still not been totally resolved. (SF 9). In December 2000, in the Baron/Wall matter, default was entered against Respondent's client on the defendant's counterclaim because no answer to the counterclaim had been filed. Respondent withdrew from the case. (SF 13).

As the foregoing facts demonstrate, there is more than adequate support for the Referee's conclusion that Respondent harmed his clients by incompetent action, that he expressly lied about cases to his clients, and that he continued to affirmatively lie and attempt to cover up the lies. (RR 3). There is also ample support for the Referee's conclusions that Respondent is not a competent lawyer, and that he has "a defect, if not an absolute absence, of honesty, integrity, and ethical judgment." (RR 3). The Referee concluded that Respondent has

displayed such an absence of competence and such a defect in ethical judgment, that to protect the public he should be disbarred. (RR 4). This Court should support the Referee's conclusion, based not only on the Referee's review of stipulated facts and the overall pattern of conduct, but also on his observations of Respondent's demeanor during live hearings, that disbarment is warranted.

II. THE REFEREE'S RECOMMENDED SANCTION OF DISBARMENT IS NOT INCONSISTENT WITH THE CASE LAW AND THE STANDARDS FOR IMPOSING LAWYER SANCTIONS.

It is a well established principle that while a referee's findings of fact are given deference, this Court's review of a referee's recommended discipline is more extensive, because the Court has the ultimate responsibility to determine the appropriateness of a recommended sanction. *Florida Bar v. Cox*, 794 So. 2d 1278, 1281 (Fla. 2001). However, the Court typically does not disapprove a referee's recommended discipline so long as the referee's recommendation has a reasonable basis in existing case law. *Florida Bar v. Lecznar*, 690 So.2d 1284, 1288 (Fla. 1977). As Justice Quince notes in her dissent in *Cox, supra*, this Court has very clearly articulated that the referee in a Bar proceeding occupies a favored vantage point for assessing key considerations - such as a respondent's degree of culpability and his or her cooperation, forthrightness, remorse, and rehabilitation (or

potential for rehabilitation). She notes that, accordingly, the Court will not second-guess a referee's recommended discipline as long as that discipline has a reasonable basis in existing case law. *Cox, supra*, at 1287 (quoting *Florida Bar v. Lecznar*, 690 So. 2d at 1288). Justice Quince opines that the standard is not whether the Court would have recommended the same discipline, but, on the contrary, whether that which has been recommended has a reasonable basis in existing case law. It is not solely a question of whether one may find implementation of different discipline in circumstances containing elements similar to those presented in the instant case, but whether one can also find reasonable authority upon which the referee would be permitted to rely. *Cox, supra*, 794 So. 2d at 1288.

A. Disbarment is not an inappropriate sanction given the seriousness of Respondent's misconduct, the detrimental effect on his clients, and the extended period over which the dishonesty occurred.

The purpose of discipline is threefold. First, the lawyer discipline must protect the public from unethical

conduct but at the same time not deny the public the services of a qualified attorney. *Florida Bar v. Pahules,* 233 So.2d 130, 132 (Fla. 1970). Second, the discipline must operate as an effective deterrent to other lawyers who might be prone to or tempted to become involved in like violations. *See Florida Bar v. Lord*, 433 So. 2d 983, 986 (Fla. 1983). Finally, the discipline must be fair to the attorney, with the object of correcting "the wayward tendency in the accused lawyer while offering to [the lawyer] a fair and reasonable opportunity for rehabilitation if such is apparently possible." *State ex rel Florida Bar v. Ruskin*, 126 So.2d 142, 144 (Fla. 1961). The Referee's recommended sanction of disbarment is not inconsistent with the Standards for Imposing Lawyer Sanctions or the relevant case law, and is warranted to protect the public.

While no cases were found which were very close factually to the instant case, the following cases provide reasonable authority upon which the referee could rely as a starting point from which the referee could begin when considering what effect the aggravating and mitigating circumstances should have on discipline.

In *Florida Bar v. Benton*, 157 So. 2d 420 (Fla. 1963), Benton was retained to obtain a dissolution of marriage for his client. He failed to file suit, but advised the client that his divorce was completed and presented

him with what purported to be a certified copy of his Final Decree. The document given to the client was a certified copy of a Final Decree in another divorce proceeding altered to show the names of the client and his wife. *Id*. at 421. The referee recommended probation, the Board of Governors appealed for a six month suspension, and this Court determined that a two year suspension was the appropriate penalty. *Id*.

Respondent, like Benton, lied to his client about having completed legal work, and then presented the client with what purported to be copies of legal documents evidencing that Respondent had completed the legal work. However, there is no indication in *Benton*, as reported, that Benton engaged in the vast number of misrepresentations made by Respondent, that they occurred in more than one case, that lies and neglect of legal matters extended over a period of more than three years, or that the dishonesty continued even after the client confronted him and he promised to make amends. Further, in *Benton*, there is no indication that, after observing the respondent's demeanor during hearings and the final proceeding, the referee concluded that Benton exhibited a defect, if not an absolute absence of honesty, integrity, and ethical judgment. In the instant case, the Referee stressed that Respondent acted incompetently, expressly lied about it to the clients, then continued to affirmatively

lie and attempt to cover up the lies. He expressly rejected Respondent's position that there was no issue of his legal competence, but only one of a defect in his personality. The Referee found that Respondent is not a competent lawyer, that there were multiple incidents of incompetence and misconduct. He considered the cooperation and remorse to which the Bar stipulated, but found that these factors did not rise to the level of a valid basis to outweigh the harm of Respondent's actions. (RR 3).

In light of the Referee's findings, and his observation of the need to protect the public from Respondent's conduct, and the fact that Respondent's misconduct exceeded that of Benton, the two-year suspension in *Benton* would provide no more than a reasonable starting point to which aggravating factors and the Referee's assessment of Respondent's overall demeanor and pattern of conduct would be added. The recommended sanction of disbarment in the instant case is reasonable.

Another instructive case is *Florida Bar v. Klausner*, 721 So.2d 720 (Fla. 1998). Klausner forged ten stipulations of settlement from debtors who had previously agreed to make monthly payments on their obligations. The forgeries were done in order to prevent abatement, and then the documents were submitted to the court during

two separate abatement proceedings. *Id*. at 720. When questioned by the court regarding the forged signatures, Klausner misrepresented that he had sent the stipulations to the debtor and that they were returned signed. *Id*. at 721. Later, when questioned under oath about the signatures by an investigator from the State Attorney's Office, he indicated that he did not know how the signatures came to be on the stipulations. Finally, when confronted with evidence that the signatures were forged, he admitted his misconduct. *Id*. Klausner was tried criminally, and adjudication was withheld on felony counts of forgery, uttering a forged instrument, and scheming to defraud. He pled no contest to misdemeanor charges of making a false statement and perjury when not in an official proceeding. *Id*. While noting that there was a strong case for disbarment, this Court noted that Klausner was sincerely remorseful, was young and relatively inexperienced, had been criminally sanctioned, and had no prior discipline. *Id.* at 722. Klausner was suspended for three years.

Respondent was not charged criminally for copying Certificates of Title, altering the title descriptions, and then providing them to his client as proof the foreclosures had been completed. He did not lie under oath to a representative of the State Attorney's Office, nor lie to a judge inquiring into his conduct. However, those

distinguishing facts do not dictate that since Klausner was not disbarred, Respondent should not be. Klausner's misconduct did not involve a repeated pattern of neglecting legal matters, lying over a several year period, and lying even after admitting to the client that documents had been falsified and after being given a chance by the client to make amends. There is no evidence in *Klausner* that his actions caused financial harm to a client, contributed to a client being embroiled in extended litigation, or caused or contributed to another client being arrested on a bench warrant. The referee in *Klausner* did not conclude that disbarment was necessary to protect the public from someone who was devoid of honesty. Klausner was suspended for three years. Respondent should be disbarred.

When imposing discipline, this Court takes into consideration the duty violated and the injury caused by the conduct. *Florida Bar v. Cox, supra,* at 1282. In making this determination, this Court considers not only case law but also the Florida Standards for Imposing Lawyer Sanctions. The Florida Standards provide a starting point, absent mitigating or aggravating circumstances, for determining an appropriate discipline based on the duty violated and the potential or actual injury caused by the violation. *Id.* at 1283.

The Florida Standards for Imposing Lawyer Sanctions provide a guideline to referees, and the Court when determining the appropriate sanction in attorney disciplinary matters. Standard 5.1 relates generally to sanctions appropriate in cases involving failure to maintain personal integrity, as in cases involving dishonesty, fraud, deceit, or misrepresentation. Standard 5.11(f) provides that, absent aggravating or mitigating circumstances, disbarment is appropriate when a lawyer engages in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice. Standard 4.41, relating to lack of diligence, provides that, absent aggravating or mitigating circumstances, disbarment is appropriate when (b) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client. Standard 4.51, relates to lack of competence, and indicates that, absent aggravating or mitigating circumstances, disbarment is appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client. Standard 4.61, relating to lack of candor, indicates that, absent aggravating or mitigating

circumstances, disbarment is appropriate when a lawyer intentionally or knowingly deceives a client with the intent to benefit the lawyer regardless of injury or potential injury to the client.

The Standards also require the consideration of aggravating and mitigating factors. Standard 9.21 defines aggravating circumstances as "any considerations or factors that may justify an increase in the degree of discipline to be imposed." The Referee found two aggravating factors in this case: a pattern of misconduct, and multiple offenses. Respondent's conduct in a prior disciplinary case, which led to a public reprimand in 2002, was considered by the Referee as part of an overall pattern of misconduct, but not as an aggravating factor. (TR 86). *See* Supreme Court Order dated July 11, 2002, *Florida Bar v. Arthur James Springer*, Case No. SC01-2565. The misconduct in SC01-2565 occurred during the same time period as the misconduct in the instant case, and also involved incompetence and neglect of legal matters with resulting harm to Respondent's client.

Mitigating circumstances are defined in Standard 9.31 as "any considerations or factors that may justify a reduction in the degree of discipline to be imposed." The Referee found two mitigating factors: a cooperative attitude, and remorse. In weighing the aggravating and mitigating factors, the Referee found that Respondent's

cooperation and remorse did not "rise to the level of a valid basis to outweigh the harm of Respondent's actions." (RR 3). Disbarment is a reasonable discipline under the Florida Standards for Imposing Lawyer Discipline.

Respondent points out that Bar counsel, at the final hearing before the Referee, recommended a two-year suspension as the appropriate sanction. Bar counsel also recommended extensive conditions to accompany the suspension, including a two-year probationary period with quarterly reports to the Bar, and a LOMAS review upon reinstatement to the practice of law. (TR 96-97). Bar counsel made it very clear, however, that his recommendation as to discipline was not binding on the Board of Governors. The Board of Governors supports the Referee's recommendation of disbarment.

B. Respondent's suggestion of a one-year suspension is inappropriate given the seriousness of Respondent's misconduct, its duration, and the damage to clients.

Respondent argues that a one-year suspension is the appropriate discipline in the instant case, coupled with a term of probation with supervisory conditions. Respondent notes that this Court has imposed longer non-rehabilitative sanctions for misconduct involving deceptive practices to hide lack of competence and diligence. While interesting, that point is not dispositive in the instant case.

The cases presented by Respondent in support of a one-year suspension are factually distinguishable from the instant case. Respondent cites cases such as *Florida Bar v. Varner*, 780 So.2d 1 (Fla. 2001) (attorney suspended for 90 days for misrepresenting to his client's insurance company that suit had been filed, then falsifying a Notice of Voluntary Dismissal to hide his lack of diligence); *Florida Bar v. Morse*, 587 So. 2d 1120 (Fla. 1991) (90-day suspension for deceitful conduct to hide missing a statute of limitations); and *Florida Bar v. Kravitz*, 694 So. 2d 725 (Fla. 1997) (30-day suspension for presenting false evidence to the court and opposing counsel, plus lying to a witness), and other cases which need not be distinguished for purposes of this Answer Brief. The cases cited simply do not involve the extensive deception over an extended period of time, and do not involve deception continuing after a meeting in which great contrition was displayed, along with promises to rectify the consequences of the deceptions.

Respondent cites *Florida Bar v. Centurion*, 801 So. 2d 858 (Fla. 2000), as a case with facts analogous to the instant case. As noted by Respondent, *Centurion* involved a five count complaint alleging violations in seven legal matters, including lack of diligence, competence, communication, and misrepresentations regarding case

progress. In one instance, Centurion reassured a client that her case was progressing, although it had been dismissed for failure to prosecute. *Id*. at 859. In another instance, he improperly filed a petition for adoption, and told the client the matter had been set for final hearing, and then forgot to inform the client that it had been canceled. The client ultimately completed the adoption. *Id*. at 860. Other misconduct included failure to file a complaint for at least four months; abandoning two matters for a client for whom he also got a default judgment, and then failing to set a final hearing; and in a bankruptcy case, failing to reschedule a bankruptcy hearing and having a client's case dismissed because no one appeared at the scheduled hearing. *Id*. at 860-61. Centurion certainly exhibited the neglect and misrepresentation aspects present in the instant case. Some critical differences between *Centurion* and the instant case are that Centurion did not falsify 24 copies of Certificates of Title, containing a purported Clerk of Court's seal; Centurion did not seek forgiveness of his clients after his malfeasance was detected, only to then fail to correct the problems he created and make further misrepresentations; and the facts related do not indicate that Centurion's pattern extended over a number of years. The reported case does not note any aggravating factors, nor relate any mitigation considered by the referee and/or this Court.

Respondent also cites *Florida Bar v. Cimbler*, 840 So. 2d 955 (Fla. 2002) as a case with facts similar to the instant case. In *Cimbler*, this Court imposed a one-year suspension for cumulative misconduct involving three clients over a four-year period during which the attorney neglected his cases by failing to file pleadings, failing to appear at a hearing or deposition, failing to record a warranty deed or pay taxes using funds that had been deposited into his trust account. Cimbler had a prior 90-day suspension for similar conduct. *Id*. at 958. If Respondent had done nothing in addition to such acts as neglecting clients cases for an extended period, missing a hearing or deposition, and failing to record a deed or disburse some trust money, the case might be analogous. *Cimbler* does provide some support for a position that those aspects of Respondent's conduct which are similar to Cimbler's would justify at least a one year suspension, perhaps if there were a prior non-rehabilitative suspension but no other major aggravating factors. However, Cimbler did not falsify Certificates of Title upon which his clients relied to their great detriment, he did not meet with clients and demonstrate remorse over his deeds and misrepresentations and promise to correct the problems only to then turn around and make further misrepresentations and not correct the problems. Certainly there is no indication that Cimbler advised the court that

he has a “defect in personality” and “lack of character” that cause misconduct. (TR 101). Curiously, one thing Respondent failed to present was some evidence that the alleged character disorder is correctable.

At the final hearing, Respondent presented the testimony of three character witnesses. Their testimony provided little or no evidence of mitigating factors, for reasons noted in the summaries below.

The first witness was Danene Trusner, Respondent’s secretary since December 1999. (TR 63). Ms. Trusner testified that she was not directly involved with any of the legal matters at issue in the instant case. (TR 64). However, the record indicates that Ms. Trusner was employed by the Respondent during a major portion of the period during which he lied to his clients and submitted fraudulent letters and documents to cover up his neglect. Ms. Trusner’s testimony that Respondent “holds the Bar high” and is someone who gives attorneys a good name (TR 64) shows a blinding bias on her part. Ms. Trusner’s statement that Respondent “always stands by people” (TR 65) is questionable in light of the Respondent’s repeated acts of deceit.

Respondent also presented the testimony of Shiran Jenkins, currently employed as the manager of Camelot by the Sea. (TR 67). Ms. Jenkins testified that she had worked for Camelot since 1994 and had direct knowledge

of the dealings between Respondent and Camelot that were stipulated to by the parties in this proceeding. (TR 67-68). Ms. Jenkins acknowledged that she was aware that Respondent presented false Certificates of Title to the President of Camelot to cover up the fact that he had not completed foreclosures, yet she testified that her impression of Respondent was "that he was a professional attorney taking care of Camelot's business" and was an honest man. (TR 75-76). Ms. Jenkins also testified that Respondent had entered into an agreement with Camelot to complete the unfinished foreclosure cases, and that to the best of her knowledge, those cases were completed. (TR 69). They were not. Her impression that Respondent is a professional attorney and honest man calls her judgment and objectivity into serious question.

John Predmoor, the current president of Camelot and successor to Howard Mitchell, was unable to provide any specific information about the false certificates of title or the action taken by Respondent to correct the problems created by Mr. Mitchell's reliance on the false certificates. Mr. Predmoor stated that, in situations where two parties claimed to own the same unit, the Association supplied the party who did not have good title with another unit. (TR 81). When asked why he permitted the Respondent to stay on as attorney for Camelot, Mr.

Predmoor responded that he liked working with Respondent and there were "things that had to be done, and I'm not an attorney, you know." (TR 79).

Finally, Respondent testified on his own behalf that he never intended to hurt anyone by his conduct. (TR 100). He admitted that his conduct was wrongful, and blamed it on a "defect in personality" and a "lack of character." (TR 101). Respondent claimed that his misconduct, although occurring over a long period of time, represented "an aberration" in the way he practices law. (TR 103).

The Referee recognized Respondent's remorse and cooperative attitude as mitigating factors, but found that they did not outweigh the harm of Respondent's actions. The Referee gave significant consideration to the fact that Respondent committed multiple instances of misconduct, involving more than one client. The Referee found that "[t]here is no way to interpret the Respondent's deliberate actions in a light favorable enough to him to accept his suggestion that he meant no harm," and concluded that Respondent was not qualified to continue the practice of law. (RR 3)

CONCLUSION

The Respondent engaged in an extensive pattern of incompetence, neglect, and deceit spanning a period of over three years. Respondent's misconduct extended to multiple legal matters, and caused significant harm to his clients. The record supports the Referee's conclusion that Respondent demonstrated "an absolute absence of honesty, integrity, and ethical judgment." The Referee's recommended sanction of disbarment accords with the

objectives of Bar discipline to protect the public and deter other attorneys from similar misconduct, and should be approved by this Court.

Dated this _____ day of June, 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 5061987372 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 **Gwendolyn Hollstrom Hinkle**, Attorney for Respondent, Smith & Tozian, P.A., 109 N. Brush Street, Suite 150, Tampa, FL 33602; by regular U.S. mail to **John Anthony Boggs**, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300, all this _____ day of _____, 2003.

_____
Thomas Edward DeBerg
Assistant Staff Counsel

CERTIFICATION OF FONT SIZE AND STYLE
CERTIFICATION OF VIRUS SCAN

Undersigned counsel does hereby certify that this brief is submitted in Word Perfect 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.

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Thomas Edward DeBerg