IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

DARYL JAMES BROWN

Respondent.
_____/

Case No. SC02-2563
TFB No. 2000-11,312(12A)

THE FLORIDA BAR'S ANSWER BRIEF AND INITIAL BRIEF ON CROSS PETITION FOR REVIEW

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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, Daryl James Brown, will be referred to as "Respondent" or "Brown."

"TR" will refer to the transcript of the final hearing before the Referee in Supreme Court Case No. SC02-2563 held on September 9, 10, and 11, 2003. "SH" will refer to the transcript of the sanctions hearing before the Referee in Supreme Court Case No. SC02-2563 held on October 13, 2003.

The Report of Referee dated November 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 No. SC02-2563.

"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

On August 22, 2001, the Twelfth Judicial Circuit Grievance Committee "A" found probable cause for violation of Rule 4-8.4(c). On September 9, 2002, the Grievance Committee issued a Supplemental Notice of Finding of Probable Cause for the violation of Rule 3-4.3. The Florida Bar filed a Complaint in this matter on December 5, 2002. By order dated January 2, 2003, the Honorable Leigh Frizzell Hayes, County Judge, was appointed as Referee in this case.

A final hearing was held on September 9, 10, and 11, 2003, and a sanctions hearing was held on October 13, 2003. On November 26, 2003, the Referee issued a Report of Referee recommending that this Court issue an order suspending Respondent from the practice of law for six months. The Referee recommended that Respondent be found guilty of violating Rule 3-4.3 (any act unlawful or contrary to honesty and justice) and Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

On January 9, 2004, Respondent filed a Petition for Review of the Referee's Report. On January 22, 2004, The Florida Bar filed a Cross-Petition for Review of the Referee's Report. Pursuant to Rule 3-7.7, the jurisdiction of this Court is invoked.

STATEMENT OF THE FACTS

The basic facts in this case are not in dispute. A copy of the Referee's Report, which contains extensive factual findings, is attached to this Brief as Appendix "A" for the Court's convenience.

The facts revolve around the Respondent, Daryl Brown's development of a luxury duplex in Colorado in the mid-1990's, and the ensuing construction litigation. During the course of the construction, a dispute arose between Brown and the contractor, J. L. Viele Construction Company ("Viele"), over payment for the work. On October 28, 1996, Viele filed a mechanic's lien in the amount of $279,700.81 against the property. The duplex property was titled in the name of Brown's corporation, Hillview Development Corporation ("Hillview"). Hillview and Viele sued each other in Colorado state court. (RR 2-3).

Brown contracted to sell "Parcel A" of the duplex property, but he could not sell the property with clear title until Viele's mechanic's lien was discharged. (RR 4). Colorado law allows the owner of property subject to a mechanics' lien to substitute a surety bond in its place, thereby clearing title to the property. See Colorado Statutes § 38-22-131(2). (TFB Exh. 14), (RR 4). On March 6, 1997, Brown called Pioneer General Insurance Company ("Pioneer"), a licensed surety company in Denver, seeking a mechanic's lien discharge bond. Brown told Robert

Warburton, Pioneer's President, that he owned a piece of property in Vail and needed a bond to discharge a lien filed by the contractor in order to sell the property. (TR 26, 31). Mr. Warburton told Brown the "only way" Pioneer would write the surety bond would be with full collateral. Brown offered to post a certificate of deposit as collateral, and Mr. Warburton agreed, on the condition that the CD was issued by a Colorado bank. (TR 31). On the same day, Brown wrote a letter to Mr. Warburton, confirming their telephone conversation, and outlining the terms they had discussed for Pioneer's issuance of a mechanic's lien transfer bond:

> My intent is to purchase a certificate of deposit or the equivalent at First Bank of Vail in the approximate amount of $420,000.00, so that the bank will, in turn, pledge the certificate of deposit or otherwise obligate itself directly to Pioneer General, as **full cash collateral** to Pioneer General for issuing the proposed bond in the amount of $420,000.00.

(TR 33; TFB Exh. 1) (emphasis added).

In reliance on his telephone conversation with Brown, and the March 6, 1997 letter, Mr. Warburton agreed that Pioneer would issue a discharge of mechanic's lien bond to Hillview. Mr. Warburton testified that he would not have agreed to issue the bond if Brown had not been able to post collateral in the form of a $420,000.00 certificate of deposit to be held by First Bank of Vail. (TR 37). In his experience as an underwriter, Mr. Warburton had never written a single stand-alone

lien transfer bond for a principal similar to Hillview without full cash collateral. (TR 38).

After Mr. Warburton received Brown's March 6, 1997 letter, Pioneer's Vice President, Bruce Lowdermilk, became involved in organizing the mechanics of the bond application and actual issuance of the bond. Mr. Warburton asked Mr. Lowdermilk to go to Vail to attend the closing, make sure the collateral was in place, and execute the bond. (TR 76-77). It was always Mr. Lowdermilk's understanding that the certificate of deposit was going to be held at the First Bank of Vail as full cash collateral for Pioneer's bond. Mr. Lowdermilk testified that Pioneer did not underwrite lien transfer bonds without full cash collateral. (TR 76, 91). "[T]hat was the only way we were going to write the bond for Mr. Brown is if we got that collateral." (TR 92).

On March 28, 1997, Brown, in his capacity as President of Hillview, signed an Application for Bond. (TFB Exh. 2). The Application contained an Indemnity Agreement, in which Hillview agreed to completely indemnify Pioneer from and against any liability it might sustain as surety on the bond. On the same date, Pioneer issued a bond in the amount of $419,551.21 to discharge Viele's mechanic's lien. (TFB Exh. 3).

Because a mechanic's lien transfer bond is a statutory bond, court approval is required in order to release the lien in exchange for the bond. (TR 122). On March 28, 1997, the court entered an Order for Substitution of Bond and Release of Lis Pendens, allowing Hillview to simultaneously sell Parcel "A" of the duplex property. (TFB Exh. 15, 16). Brown used a portion of the sale proceeds to purchase the $420,000.00 certificate of deposit from First Bank of Vail required to secure the bond. (RR 6). In a letter agreement, also dated March 28, 1997, between Hillview, Pioneer, and First Bank, the Bank agreed to hold the CD owned by Hillview. The Bank agreed not to release the CD without written permission from the president of Pioneer. (TFB Exh. 7).

After the closing on March 28, 1997, Brown returned to Florida. He approached his law partner, Donald Clark, about the firm representing Hillview in the Colorado litigation. Brown told his partner that he preferred to pay the legal fees at the conclusion of the case, and Mr. Clark agreed, on the condition that Hillview gave the firm a security interest. (TR 398). At the time, Hillview's only asset was the $420,000.00 CD which had been pledged to Pioneer as security for the lien discharge bond. (TFB Exh. 23, Exh. "B," p. 1).

On April 4, 1997, Brown, on behalf of Hillview, signed a Security Agreement, granting his law firm, Brown, Clark & Walters, P.A. ("Brown, Clark"),

a priority interest in the same $420,000.00 CD being held by First Bank as collateral for Pioneer's bond. The Security Agreement specifically stated that Brown, Clark's security interest shall have priority over all other claims. Paragraph 20 stated:

> Further, the undersigned officer [Brown] hereby personally represents and warrants that HILLVIEW is the sole owner of the CD and that HILLVIEW has good and marketable title to the CD free and clear of any claims, liens and encumbrances except liens and encumbrances granted to BC&W.

(TFB Exh. 23, Exh. "B," p. 11). Brown testified that he disclosed to Mr. Clark that First Bank was holding the CD as security for the lien transfer bond issued by Pioneer just one week earlier. (TR 537-38). But the 11-page Security Agreement makes no mention of Pioneer's interest. Brown did not notify Pioneer or First Bank that he had pledged the same collateral to secure payment of legal fees to his firm. (TR 88-89; 585).

Over the next year and a half, Brown renewed the CD and paid the annual premiums without informing Pioneer about the Security Agreement with Brown, Clark. On December 23, 1997, First Bank sent a letter to Pioneer, referencing the CD as collateral for the lien transfer bond that Pioneer issued on behalf of Hillview, and notifying Pioneer that the bond would mature on March 31, 1998. (TFB Exh. 10). On March 24, 1998, First Bank wrote to Pioneer and Mr. Brown, referencing

the renewal of the CD for six months and, again, referring to the CD as collateral for a lien transfer bond with Pioneer. (TFB Exh. 10). On June 17, 1998, Mr. Lowdermilk wrote to Brown requesting payment of the annual premium on the bond. (TFB Exh. 8). On June 30, 1998, Brown wrote to Pioneer's agent, Steve Walker, copying Mr. Lowdermilk. He enclosed a check for the premium payment and referred to his telephone conversations with Mr. Lowermilk concerning the premium. (TFB Exh. 9). Brown never informed Pioneer or First Bank that he had pledged the CD to Brown, Clark, and did nothing to correct Pioneer's belief that the CD was being held as full cash collateral for the bond.

The litigation between Hillview and Viele continued in Colorado state court. On August 12, 1998, Hillview filed a bankruptcy proceeding in Florida, automatically staying the state court action. On February 25, 1999, Brown filed an Affidavit in the bankruptcy court, in which he misrepresented his agreement with Pioneer, stating several times that he never intended Pioneer to have a security interest in the CD. (TFB Exh. 25). For example, on page 6 of the Affidavit, Brown swore that "the Debtor [Hillview] at no time ever executed any document in favor of Pioneer General Insurance Company that expressed an intent to pledge the subject funds or Certificate of Deposit as collateral to Pioneer General Insurance

Company. . . ." (TFB Exh. 25). The Affidavit clearly contradicted Brown's earlier representations to Pioneer.

Viele was successful in obtaining relief from the Bankruptcy, allowing the state court action to proceed in rem. (TR 131). On February 17, 1999, the court issued an Order, awarding a final judgment in favor of Viele in the total amount of $353,336.11. (TFB Exh. 17). The Order specifically ordered Pioneer to pay the judgment against Hillview, as follows:

> The Court orders that said judgment in the amount of $353,336.11 shall enter in favor of Viele and against bond number 21143 and Pioneer General Insurance Company is hereby directed to pay to the Defendant, J. L. Viele Construction, Inc. the sum of $353,336.11 forthwith.

(TFB Exh. 17, Exh. "A", p. 8).[1]

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[1] According to Brown, the trial judge "unilaterally" added Pioneer as a party to the judgment. However, under Colorado law, a surety, by undertaking to issue a lien transfer bond, submits to the jurisdiction of the court. The general mechanics' lien statute allowing for substitution of bond provides that if the lien claimant is adjudged to be entitled to recover on the claim of lien, "the principal or his sureties shall pay to such claimant the amount of his judgment. . . ." C.S. § 38-22-131. (TFB Exh. 14). Colorado Rule of Civil Procedure 65.1 provides that when a surety gives security in the form of a bond, "each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action." (TFB Exh. 19).

On March 5, 1999, Viele's attorney, Robert Meer, sent a letter to Pioneer demanding payment of the judgment. (TFB Exh. 20). Pioneer, in turn, made a demand on First Bank to turnover the CD proceeds based its agreement with Hillview, including the indemnity provision of the Bond Application executed by Brown, as President of Hillview. (TFB Exh. 24, p. 1). After discussions with Pioneer's attorney, Edgar Neel, concerning the inclusion of costs, Mr. Meer sent a corrected demand letter to Pioneer on May 7, 1999. (TR 141). The letter concluded with the statement: "Should you fail or refuse to pay the amount demanded within 5 days following the receipt of this letter, our client will have no choice but to commence such legal proceedings as may be necessary to effect payment." (TFB Exh. 21).

On May 12, 1999, Pioneer paid the judgment amount to Viele on the advice of its attorney, Edgar Neel. (TR 174). Mr. Neel advised Mr. Warburton that the court had ordered Pioneer to pay the judgment and no appeal had been filed. (TR 70). At the time Pioneer paid the judgment, Hillview had not filed an appeal. (TR 42). Neither Brown nor any other representative of Hillview ever made a demand on Pioneer to withhold payment of the judgment pending an appeal. (TR 42). Although Hillview filed a notice of appeal on June 16, 1999, (R. Exh. 5), it failed to post a supersedeas bond. (TR 42-43). It is not clear whether Hillview

even had sufficient assets to obtain a supersedeas bond in order to proceed with an appeal. In filing for bankruptcy in 1998, Hillview had claimed as its only asset the $420,000.00 CD. (RR 10).

After Pioneer paid Viele on the mechanic's lien judgment, multiple claims were made against the CD held by First Bank. Viele made a claim based on a separate judgment for attorney's fees that was not satisfied, and served a writ of garnishment on First Bank. (TR 137). Brown, Clark and Pioneer also claimed an interest in the CD. (TR 145). Because of the competing claims to the funds, First Bank filed an interpleader action and deposited the CD proceeds into the court registry. (TR 152).

Brown, Clark filed a claim to the interpleaded funds based on the Security Agreement Brown had executed in 1997 that granted the firm a priority security interest in the CD. (TFB Exh. 23). The firm asserted a perfected security interest[2] in the CD in the amount of $196,593.22, plus interest, attorney's fees and costs. (TFB Exh. 23, p. 4). Brown, Clark's claim was based on legal services billed to Hillview relating to representation of Hillview in the construction litigation. (RR 10).

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[2]Brown, Clark had filed and recorded a UCC-1 financing statement with the Colorado Secretary of State on May 7, 1999, against the proceeds of the CD held by First Bank. (TFB Exh. 23, Exh. "C"; TR 565), (RR 12).

Following settlement negotiations, the parties executed a Settlement Agreement resolving the competing claims against the CD proceeds deposited in the court registry. (TFB Exh. 24). Pursuant to the Settlement Agreement, Brown, Clark received $100,000.00 in proceeds from the CD, $227,254.98 went to Pioneer, $95,000.00 to Viele, and $2,476.66 to First Bank. (TR 589; Complaint, p. 11-12).

Pioneer suffered a total loss of $182,605.22, which included a $148,119.32 loss on the judgment, and legal expenses of $34,485.90. (TR 87; TFB Exh. 13), (RR 14). Because Brown had pledged the same collateral to his law firm that he previously pledged to Pioneer, Pioneer did not have full use of the collateral to pay the judgment. Pioneer would not have suffered a loss if it had had full use of the certificate of deposit. (TR 88). It was only after Hillview filed bankruptcy in August 1998 that Pioneer discovered that Brown had pledged the CD to his law firm. (TR 88-89).

SUMMARY OF THE ARGUMENT

The Respondent, Daryl Brown, has over 20 years experience in construction litigation. Brown sought a mechanic's lien discharge bond from an insurance company so that he could sell real property owned by his corporation, Hillview. Brown agreed to post "full cash collateral" in the form of a certificate of deposit to secure the bond. Pioneer relied on Brown's representations and the fact that he was an experienced construction litigation attorney. At the closing, Brown simultaneously sold the real property and used part of the proceeds to fund the certificate of deposit. One week after pledging the CD to Pioneer, Brown pledged the same CD to his own law firm to secure legal fees incurred by Hillview in litigating the mechanic's lien and other claims. The CD was Hillview's only asset. The security agreement granted to Brown's law firm a "priority" security interest in the CD and did not mention the existing interest of Pioneer. Brown failed to disclose the existence of the security agreement to Pioneer. Ultimately, the claims against the CD exceeded its value.

The Referee found that Brown's "double pledge," and his non-disclosure to Pioneer, was dishonest conduct that violated Rules 3-4.3 and 4-8.4(c) of the Rules Regulating The Florida Bar. The Referee's findings of fact and conclusions of

guilt are supported by competent, substantial evidence in the record and should be upheld by this Court.

Brown attempts to justify his actions by arguing that the "double pledge" was not prohibited by state law relating to commercial transactions. He further argues that Pioneer "unjustifiably" relied on his representations, and failed to take "commercially reasonable" steps to protect its interests. In making these arguments, Brown confuses legalities with ethics and attempts to shift the focus away from his own misconduct. The fact that Brown's conduct may not be prohibited by law does not preclude the conduct from being unethical.

Brown deliberately granted to his law firm a security interest in Hillview's sole asset, which he had already pledged as full cash collateral to Pioneer. Then, Brown made false representations in the security agreement, and failed to disclose the "double pledge." The Referee's recommendation of a six-month suspension is an insufficient sanction for Brown's misconduct. Given the numerous aggravating factors here, including Brown's history of prior discipline for dishonest conduct, a suspension of two years is a more appropriate sanction.

ARGUMENT

I. THE REFEREE CORRECTLY FOUND THAT RESPONDENT ENGAGED IN DISHONEST CONDUCT WHEN HE PLEDGED TO HIS LAW FIRM COLLATERAL ALREADY PLEDGED TO ANOTHER PARTY, FAILED TO DISCLOSE THE "DOUBLE PLEDGE," AND MADE FALSE REPRESENTATIONS.

Brown argues that the Referee erred in finding him guilty of violating Rule 4-8.4(c) and Rule 3-4.3. It is well established that a referee's findings of fact regarding guilt carry a presumption of correctness that should be upheld unless clearly erroneous or without support in the record. If the referee's findings are supported by competent, substantial evidence, this Court is precluded from reweighing the evidence and substituting its judgment for that of the referee. Florida Bar v. Rue, 643 So. 2d 1080, 1082 (Fla. 1994). The party contending that the referee's findings of fact and conclusions of guilt are erroneous "carries the burden of demonstrating that there is no evidence in the record to support those findings or that the record evidence clearly contradicts the conclusions." Id. (citations omitted). Brown has not met this burden.

A. The Referee correctly concluded that Respondent intended to act dishonestly.

Brown argues that, because he did not intend to deceive or cheat Pioneer, he cannot be found guilty of violating Rule 4-8.4(c). Brown claims that, at the time he

signed the Security Agreement granting his law firm a "priority" interest in the certificate of deposit ("CD") previously pledged to Pioneer, he thought the collateral was sufficient to cover both obligations. The Referee found that the Brown "believed at one time that the certificate of deposit was large enough to pay Viele after the conclusion of the lawsuit." (RR 11-12). Regardless of Brown's belief about the sufficiency of the CD to pay any adverse judgment to Viele as well as his firm's legal fees, he acted intentionally when he gave his law firm a priority security interest in the CD he had already pledged to Pioneer as full cash collateral as security for the issuance of a mechanic's lien discharge bond.

Brown is correct that in order to find that an attorney has acted with dishonesty, misrepresentation, deceit, or fraud, the Bar must show the necessary element of intent. Florida Bar v. Fredericks, 731 So. 2d 1249, 1252 (Fla. 1999). In Fredericks, however, the Court stated that "in order to satisfy the element of intent it must only be shown that the conduct was deliberate or knowing." Id. In a recent case, an attorney argued that she did not have the requisite intent to be found guilty of violating Rule 4-8.4(c) when she deposited a client's trust funds into her operating account, and spent the funds on unrelated expenses. Florida Bar v. Smith, 866 So. 2d 41 (Fla. 2004). Smith asserted that her financial misconduct was the result of sloppiness and negligence. Citing Fredericks, this Court found that

Smith's misconduct regarding her clients' funds was "deliberate or knowing," and approved the referee's recommendation of the Rule 4-8.4(c) violation. Id. at 46. This Court stated, "[i]n Fredericks, this Court noted that the motive behind the attorney's action was not the determinative factor. Rather, the issue was whether the attorney deliberately or knowingly engaged in the activity in question." Id.

Here, the record supports the conclusion that Brown's act of granting a security interest to his law firm was "deliberate or knowing." Brown is an experienced lawyer who has specialized in construction and commercial litigation for the past 28 years. (TR 577). The Referee therefore reasonably concluded that Brown knew what he was doing when he agreed to grant a security interest to his law firm for legal fees incurred in representing his alter ego corporation, Hillview, in the Colorado lawsuit. On April 4, 1997, when Brown executed the Security Agreement in favor of Brown, Clark, he knew he had pledged the CD to Pioneer one week earlier. He did not know (and could not have known) the amount of any potential future judgment against Hillview, or the amount of legal fees his firm would incur in representing him. Nevertheless, he knowingly pledged the CD as collateral for both obligations. The Security Agreement was a carefully crafted document that referred specifically to "a certain certificate of deposit in the amount of $420,000.00 which is being held by the First Bank of Vail." The Agreement

referenced the CD numerous times throughout the document. Although Brown testified at the final hearing that he did not read the Security Agreement before signing it, (TR 586), the Referee found this testimony "incredible and unworthy of belief." (RR 8).

Due to Brown's failure to honor the indemnification agreement in which Hillview agreed to "completely indemnify" Pioneer, Pioneer suffered a loss of approximately $180,000.00. Brown argues that the Referee improperly based her finding of a dishonest intent on the subsequent consequences to Pioneer rather than on Brown's intent at the time he signed the Security Agreement.

Brown relies on Florida Bar v. Marable, 645 So. 2d 438 (Fla. 1994), to support his argument that it is improper to base any finding of intent on subsequent conduct. Brown's reliance on Marable is, however, misplaced. Marable involves proof of **criminal** intent rather than proof of intent necessary to find a violation of Rule 4-8.4(c). The referee in Marable found that he had committed the crime of solicitation by encouraging a private investigator to break into someone's home to obtain incriminating photographic evidence. Id. at 441. One of the elements necessary to prove criminal solicitation is the intent that the other person commit the crime. In finding **criminal** intent, the referee relied on Marable's tone of voice on a tape, and his subsequent conduct in attempting to obtain the photographs.

This Court rejected the referee's finding of criminal intent, stating that Marable's conduct five weeks later did not shed light on his state of mind at the time of the comment. Id. at 443. This Court went on to state, "[h]owever, our rejection of the finding of criminal conduct does not compel the conclusion . . . that there was no ethical misconduct." Id. This Court approved the referee's recommendation that Marable be found guilty of violating Rules 3-4.3, 4-8.4(a), 4-8.4(c), and 4-8.4(d), holding that the referee's findings of misconduct were based primarily on Marable's **unethical** behavior and not on the proposition that Marable committed a criminal offense.

Here, the consequences to Pioneer are relevant to Brown's motive at the time he signed the Security Agreement. Brown was motivated by his own self-interest in seeking to secure for his own law firm fees incurred by his corporation Hillview. He attempted to accomplish this by granting his law firm a priority security interest in the CD already pledged to Pioneer as full cash collateral. Brown's efforts were successful to the extent that his firm ultimately was paid $100,000.00 at the expense of Pioneer. As a partner in Brown, Clark, Brown benefitted from the $100,000.00 settlement paid to his firm. Brown's conduct was "deliberate and knowing" and therefore satisfied the necessary element of intent in order to find a violation of Rule 4-8.4(c).

B. Respondent's "double pledge" was dishonest conduct in violation of Rule 4-8.4(c).

Brown argues that his "double pledge" was not dishonest conduct because it was not prohibited under Colorado common law relating to commercial transactions. According to Brown, the Uniform Commercial Code does not prohibit a debtor from pledging collateral to more than one party. Rather, argues Brown, it is the responsibility of the primary secured party to protect its interest in the collateral by perfecting a security interest. In making this argument, Brown attempts to shift the blame for his misconduct to Pioneer and confuses illegal conduct with unethical conduct. An attorney's conduct may comply with the law but still violate The Rules Regulating The Florida Bar.

Just because Colorado law did not prohibit Brown from pledging to his law firm the same CD he previously pledged to Pioneer as full cash collateral, this does not make the "double pledge" **ethical**. Similarly, Pioneer's failure to file a UCC financing statement to perfect its interest in the CD does not justify Brown's dishonest conduct. Brown, throughout his Initial Brief, attempts to shift the Court's focus to Pioneer's conduct, and away from his own. It is Brown's actions, however, and not Pioneer's, that are the focus of this disciplinary proceeding.

Brown describes his law firm as a "junior secured party" who "assumed the risk" that there would be sufficient collateral to cover the debt. He compares Brown, Clark's interest to a second mortgage in real property. This analogy flies in the face of the language of the Security Agreement. Brown, on behalf of Hillview, granted a "priority" security interest to Brown, Clark. The Security Agreement does not even mention Pioneer or recognize Pioneer's interest in the CD in any way. The Agreement states that Hillview owns the CD free and clear of any claims, liens, or encumbrances, and that Hillview intends Brown, Clark's security interest to "have priority over all other claims or interests to the CD by any other creditors of Hillview whatsoever." (TFB Exh. 23, Exh. "B"). The language of the Security Agreement, and Brown's failure to disclose its existence to Pioneer, support the Referee's conclusion that "it was the law firm's intent from the very beginning to protect its interests, even if it came at the expense of Pioneer." (RR 23). Brown may not have violated the law, but he took advantage of Pioneer to secure legal fees for his law firm. The Referee therefore correctly concluded that Brown's "double pledge" was dishonest conduct and violated Rules 3-4.3 and 4-8.4(c) of The Rules Regulating The Florida Bar.

C. Respondent violated Rule 4-8.4(c) by failing to disclose the second pledge to Pioneer.

Brown argues that he had no duty to disclose to Pioneer that he had pledged the CD to his law firm as security for legal fees, and therefore cannot be found guilty of violating Rule 4-8.4(c). Brown's failure to disclose the second pledge constituted a misrepresentation by omission.

Brown knew, based on his discussions with Pioneer representatives Robert Warburton and Bruce Lowdermilk, that Pioneer's issuance of a mechanic's lien transfer bond to Hillview was dependent upon obtaining full cash collateral. On March 6, 1997, based on his telephone conversation with Mr. Warburton, Brown drafted a letter outlining their agreement, wherein he stated that he would purchase a CD in the amount of $420,000.00 to be held by First Bank as "full cash collateral" to Pioneer. (TFB Exh. 1). On March 28, 1997, Brown signed a letter agreement with First Bank and Pioneer, agreeing that the Bank would hold the CD and would not release it without written permission from Pioneer. (TFB Exh. 7). Just one week later, on April 4, 1997, Brown signed the Security Agreement granting a priority interest in the CD to Brown, Clark.

Brown never informed Pioneer that he had pledged the CD to Brown, Clark, even though he had numerous opportunities to do so. (TR 585). First Bank wrote

several letters to Brown and Pioneer concerning renewal of the CD. The Bank's letters referenced the CD as collateral for the lien transfer bond that Pioneer issued on behalf of Hillview. In 1998, Pioneer wrote to Brown regarding payment of the annual premium. Brown, who did not realize the premiums were to be annual, spoke with Mr. Lowdermilk at Pioneer, and subsequently paid the premium. (TR 80). Throughout these subsequent dealings with Pioneer, Brown never informed Pioneer that he had granted a security interest in the CD to Brown, Clark.

Pioneer believed that the bond it had issued to Hillview was backed by the full amount of the CD held by First Bank. This belief was based on Mr. Warburton's initial telephone conversation with Brown, the March 6, 1997 letter, the March 28, 1997 letter agreement, and subsequent communications between Brown and Pioneer. Although Brown knew that Pioneer believed it had a priority security interest in the CD being held by First Bank, he did nothing to correct that belief. Brown's words and actions led Pioneer to believe that it had a security interest in the CD that it did not actually have. By failing to inform Pioneer that he had pledged the CD to Brown, Clark, Brown intentionally made a misrepresentation by omission of a material fact to Pioneer.

Brown claims that he had no ethical duty to disclose the security agreement to Pioneer because he was acting in a non-advocate role in his dealings with

Pioneer, as opposed to his role as a lawyer representing a client. This Court, however, has recognized that an attorney can be disciplined for failing to completely disclose essential matters in business transactions with non-clients. Florida Bar v. Schultz, 712 So. 2d 386, 388 (Fla. 1998), citing Florida Bar v. Adams, 453 So. 2d 818 (Fla. 1984) (attorney, acting as trustee for a group of investors, engaged in unethical conduct by failing to notify a business partner that he had sold certain property). Moreover, Rule 3-4.3 encompasses **any** act committed by a lawyer that is unlawful or contrary to honesty and justice, "whether the act is committed in the course of the attorney's relations as an attorney or otherwise." The Referee correctly found that Brown's "signing of the security agreement with his own law firm and the nondisclosure to Pioneer was dishonest and selfish." (RR 18).

Not only did Brown fail to disclose the second pledge to Pioneer, the Security Agreement itself misrepresented that the CD was unencumbered. In the Agreement, Brown personally represented and warranted that "Hillview is the sole owner of the CD" and that "Hillview has good and marketable title to the CD free and clear of any claims, liens and encumbrances except liens and encumbrances granted to BC&W." (TFB Exh. 23). This statement was untrue because the CD was not free of any claims, liens and encumbrances. The CD was held by First

Bank for the benefit of Pioneer as security for the issuance of a mechanic's lien transfer bond. On August 19, 1999, Brown's law firm filed the Security Agreement, which contained misrepresentations of material fact, with the Colorado court as an attachment to Brown, Clark's interpleader action.

Brown signed the Security Agreement, misrepresenting the CD as being unencumbered when, in fact, it was encumbered by the interest of Pioneer. In addition, Brown failed to disclose to Pioneer that he had pledged Pioneer's collateral to another party, his own law firm. These facts, which Brown does not dispute, support the Referee's finding that Brown violated Rule 4-8.4(c).

D. Pioneer reasonably relied on Respondent's representations that the CD would serve as "full cash collateral" for issuing the bond.

The Referee found that Pioneer issued the lien transfer bond based solely upon Brown's unequivocal representation that the CD would serve as "full cash collateral" for the bond. (RR 6). Brown made this representation in a March 6, 1997 letter to Pioneer's President, Robert Warburton, as well as in his telephone conversation with Mr. Warburton that same day.

Brown claims that Pioneer unjustifiably relied on his representation that the CD would serve as full cash collateral for the lien transfer bond. Brown appears to argue that, because Pioneer took him at his word that he intended to pledge the CD

as full cash collateral, Pioneer is at fault for relying on his representations. Therefore, he reasons, he could not have acted dishonestly when he later pledged the same collateral to his law firm. Once again, Brown is confusing legalities with ethics and attempting to shift the focus to Pioneer's actions and away from his own misconduct. Pioneer's misplaced trust does not absolve Brown of his obligation to comply with rules of ethics.

Brown claims that the March 6, 1997 letter was merely a "proposal," and not a binding contract. According to Brown, the parties were bound only by the Letter Agreement and Indemnity Agreement signed by the parties on March 28, 1997, and those documents did not prohibit Hillview from granting additional security interests in the CD. Brown reasons, he was not contractually bound to the March 6, 1997 letter, or by the principle of "promissory estoppel" because Pioneer's reliance on the March 6, 1997 letter was "commercially unreasonable."

Brown cannot justify his misconduct by arguing that Pioneer acted in a "commercially unreasonable" manner. Disciplinary proceedings are not controlled by contract law or the Uniform Commercial Code. In evaluating Brown's conduct, this Court looks to The Rules Regulating The Florida Bar and the case law interpreting the Rules. The Referee correctly concluded that Brown's actions were dishonest and violated both Rule 3-4.3 and Rule 4-8.4(c).

In accordance with Colorado law, Pioneer required collateral equal to one and one-half times the lien amount in order to issue a lien discharge bond. (TFB Exh. 14). Mr. Warburton discussed this requirement with Brown on the telephone. Brown confirmed the discussion in writing in his March 6, 1997 letter to Mr. Warburton. At the final hearing, Mr. Warburton testified that Pioneer would not have written the lien transfer bond if Brown had not posted full cash collateral in the form of a $420,000.00 CD. (TR 37). Bruce Lowdermilk, Vice President of Pioneer, also testified that "the only way we were going to write the bond for Mr. Brown is if we got that collateral." (TR 92). In the Bond Application executed on March 28, 1997, Brown agreed to completely indemnify Pioneer. Pioneer reasonably relied on its agreements with Brown. Brown did not honor either his agreement to provide full cash collateral or his agreement to completely indemnify Pioneer.

II. THE REFEREE'S RULING DOES NOT VIOLATE RESPONDENT'S CONSTITUTIONAL RIGHT TO EQUAL PROTECTION.

Brown argues that the Referee's finding that he acted dishonestly by failing to honor Hillview's obligation to indemnify Pioneer violates the Equal Protection Clause by infringing on his right to redress private disputes. He claims that the Referee's ruling violates his fundamental right of access to the courts by infringing

on his ability to raise a bona fide defense merely because he is a lawyer. According to Brown, he is being unfairly punished for raising the same defense available to non-attorneys.

As a member of the Florida Bar, Brown is held to a different, and higher, standard than other citizens. This Court recognized the unique position occupied by attorneys in DeBock v. State, 512 So. 2d 164 (Fla. 1987), stating:

> An attorney as an officer of the Court and a member of the third branch of government occupies a unique position in our society. Because attorneys are in a position where members of the public must place their trust, property and liberty, and at times even their lives, in a member of the bar, **society rightfully demands that an attorney must possess a fidelity to truth and honesty that is beyond reproach**. When an attorney breaches this duty, the public is harmed.

Id. at 166-67 (emphasis added).

In DeBock, an attorney argued that a grant of immunity from criminal prosecution extended to Bar disciplinary proceedings. DeBock argued that equal protection demanded that an attorney be treated the same as non-lawyer professionals. This Court rejected DeBock's equal protection argument and held that attorneys can be held to different standards than other regulated professions. This Court explained that the "rational basis" for holding attorneys to different standards is the protection of the public which mandates that attorneys be held to the highest of ethical standards: "This difference has been recognized by centuries

of jurisprudential thought and is manifested in article V, section 15 of our constitution." Id. at 168.

In rejecting DeBock's equal protection argument, this Court also emphasized that an attorney has no inherent right to practice law:

> [I]n order to dispell the implication nascent in DeBock's argument that he somehow has a "right" to practice law, we point out what should be obvious to all members of the bar: "[a] license to practice law confers no vested right to the holder thereof, but is a conditional privilege which is revocable for cause."

Id. at 168 (quoting Rule 3-1.1, Rules Regulating The Florida Bar). *See also* Florida Bar v. Jahn, 559 So. 2d 1089, 1090 (Fla. 1990) (practicing law is a privilege, not a right).

As an attorney, Brown is held to a higher standard of conduct than non-attorneys, and is subject to The Rules Regulating The Florida Bar in all his dealings, whether committed in the practice of law or otherwise. Brown's equal protection rights were not violated by the obligation to conduct himself in an honest and ethical manner in his business dealings with Pioneer.

III. A TWO-YEAR SUSPENSION IS THE APPROPRIATE SANCTION FOR RESPONDENT WHO WAS PREVIOUSLY SUSPENDED FOR DISHONEST CONDUCT.

It is well established 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). When imposing discipline, this Court takes into consideration the duty violated and the injury caused by the conduct. In making this determination, this Court considers not only case law but also the Florida Standards for Imposing Lawyer Sanctions. Id. at 1283.

The Referee recommended that Brown be suspended from the practice of law for six months. (RR 23). The Bar maintains that a six-month suspension is an insufficient sanction, in light of the facts of this case, the relevant Standards and case law, and the numerous aggravating factors, including Brown's history of prior discipline for similar misconduct. A rehabilitative suspension of at least two years is warranted for the dishonest conduct committed by Brown.

A. The Referee's recommended sanction of a six-month suspension is inconsistent with the Florida Standards for Imposing Lawyer Sanctions and the case law.

The Florida Standards for Imposing Lawyer Sanctions provide a format for Bar counsel, referees, and this Court to determine the appropriate sanction in attorney disciplinary matters. The Referee's recommended sanction of a six-month suspension is inconsistent with the applicable Standards. **Standard 5.1**, entitled "Failure to Maintain Personal Integrity," sets forth appropriate sanctions 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 any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice."

Standard 6.1, entitled "False Statements, Fraud, and Misrepresentation," lists sanctions applicable to cases involving conduct prejudicial to the administration of justice, or that involves dishonesty, fraud, deceit, or misrepresentation to a court. **Standard 6.11** provides that, absent aggravating or mitigating circumstances:

> Disbarment is appropriate when a lawyer:
> (a) with the intent to deceive the court, knowingly makes a false statement or submits a false document; or
> (b) improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

The referee found that Brown intentionally granted a security interest to his own law firm in collateral he had pledged to Pioneer just one week earlier. Brown did not disclose the second pledge to Pioneer, and ultimately, his law firm benefitted in the amount of $100,000.00 at Pioneer's expense. Brown's dishonest conduct falls squarely within the parameters of Standards 5.11 and 6.11.

Another Standard that applies in this case is **Standard 8.1(b)**, relating to prior discipline. It provides that disbarment is appropriate when a lawyer "has been suspended for the same or similar conduct, and intentionally engages in further similar acts of misconduct." In 2001, this Court suspended Brown for 90 days for engaging in a fraudulent campaign finance reimbursement scheme with a client. He was found guilty of violating several Rules Regulating the Florida Bar, including Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), the same rule he violated here. *See* Florida Bar v. Brown, 790 So. 2d 1081 (Fla. 2001).

Finally, **Standard 9.22** lists aggravating factors which may justify an increase in the degree of discipline to be imposed. The Referee found five aggravating factors: prior disciplinary offenses; a dishonest or selfish motive; refusal to acknowledge wrongful nature of conduct; substantial experience in the practice of law; and an indifference to making restitution. (RR 17-19). Pursuant to **Standard 9.32,** the Referee found only one mitigating factor--Brown's character or reputation. (RR 20). In addition to the aggravating factors found by the Referee, **Standard 12.1** lists additional factors which may be considered in aggravation, including **Standard 12.1(b)** actual harm to clients or third parties. Standard 12.1(b) applies here because Brown's misconduct caused actual financial harm to

Pioneer. Brown's double pledge of the certificate of deposit to his law firm resulted in the firm receiving $100,000.00 at Pioneer's expense. (RR 14).

The recommended sanction of a six-month suspension is also inconsistent with the case law of this Court in cases involving similar misconduct, especially given Brown's history of prior discipline. While no cases were found that are factually identical to the instant case, the following cases involve fraudulent or dishonest conduct committed by attorneys in connection with financial transactions.

In two cases, dishonest conduct analogous to the Respondent's resulted in 90-day suspensions where there was no history of prior discipline and no aggravating factors. Florida Bar v. Siegel, 511 So. 2d 995 (Fla. 1987), is a case in which two attorneys were suspended for 90 days for engaging in a deliberate scheme to misrepresent facts to a lender in order to secure full financing of the purchase their law office. Siegel and Canter misrepresented to the bank that they made a cash down payment when, in fact, they obtained secondary financing from the seller. The respondents did not record the second mortgage or disclose it to the bank. In fact, they submitted a personal financial statement misrepresenting that they had made a $20,000 down payment. Id. at 996. A year later, the respondents applied to the bank for a "second" mortgage, and again failed to disclose the

unrecorded secondary financing. The referee found them guilty of conduct contrary to honesty, conduct involving dishonesty or misrepresentation, and illegal conduct. This Court rejected the referee's recommendation of a public reprimand, and instead imposed a 90-day suspension. Id. There is no indication that the bank was actually harmed by Siegel and Canter's misrepresentations. Here, Brown's misconduct warrants a harsher sanction because the surety company, Pioneer, suffered a substantial financial loss as a result of his actions. Brown also deserves a harsher sanction because, unlike the attorneys in Siegel, he has a history of prior discipline for engaging in dishonest conduct.

In Florida Bar v. Nuckolls, 521 So. 2d 1120 (Fla. 1988), Nuckolls represented a real estate partnership in the sale of townhouse units. He prepared closing documents reflecting that the units would be sold for $45,000.00 each, with a $9,000.00 down payment. The purchasers actually paid only $36,000.00 and did not make any cash down payments. The lenders who provided mortgages relied on Nuckolls' written representations that the buyers would make the down payments. Id. at 1121. In another transaction, while acting as a land trustee for the buyer, Nuckolls closed a real estate transaction for the benefit of the sellers, who were his partners and clients. As a result of the transaction, Nuckolls freed his partnership, the sellers, of numerous mortgages that then became liens against the

property of the purchaser. As a consequence, the purchaser was forced to sue the partnership. Id.

Nuckolls was found guilty of engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; conduct reflecting adversely on fitness to practice law; knowingly making a false statement of law or fact; and assisting a client in illegal or fraudulent conduct. He had no record of prior discipline. This Court imposed a 90-day suspension. Like Nuckolls, Brown engaged in dishonest conduct, intentional misrepresentation, and a failure to disclose, resulting in injury to another party. Unlike Nuckolls, Brown has a record of prior discipline for dishonest conduct. Given the extensive aggravating factors here, Brown deserves a harsher sanction.

In Florida Bar v. Stillman, 606 So. 2d 360 (Fla. 1992), Stillman represented a lender who provided first mortgage loans to buyers of real property. The mortgage company's written instructions to Stillman specified that no secondary financing was allowed. Stillman misrepresented to the lender that the buyers were bringing cash to the closing. In actuality, Stillman arranged for the buyers to obtain secondary financing and did not disclose the second mortgages on the title insurance policies he issued to the lender. He was found guilty of four counts of violating Rule 3-4.3 (acts contrary to honesty); Rule 4-8.4(a) (acts contrary to the

Rules of Professional Conduct); and Rule 4-8.4(c) (acts of deceit or misrepresentation). The referee recommended a six-month suspension, the Bar requested two years, and this Court determined that a one-year suspension was the appropriate punishment given the overall pattern of misconduct. Id. at 363.

Brown, like Stillman, engaged in dishonest conduct and misrepresentation. While the Referee in this case found multiple aggravating factors, the referee in Stillman found no aggravating factors and a number of mitigating factors, including no prior disciplinary actions, and the lack of a selfish motive. Id. at 363. Also, there is no indication that Stillman's actions resulted in actual harm to any of the parties involved. Given Brown's selfish motive, his disciplinary history, and the harm suffered by Pioneer, a two-year suspension is appropriate.

Florida Bar v. Crabtree, 595 So. 2d 935 (Fla. 1992), is a disbarment case which bears some similarities to the instant case. The misconduct in Crabtree involved complex fiscal transactions in which Crabtree was employed to repatriate $1.5 million from Europe for a client in Florida without disclosing the source of the funds. Crabtree involved another client in accomplishing this task. He received a personal interest in the assets and failed to fully disclose to the clients his interest or the fact that they were all involved in the same transactions. He also wrote phony letters designed to mislead anyone who was looking into the transactions. Id. at

936. There was no allegation that Crabtree's actions were illegal. Id., note 2. The referee found Crabtree guilty of engaging in conduct involving dishonesty fraud, deceit, and misrepresentation; entering into a business transaction with a client without full disclosure and consent; and representing two clients at the same time who could have adverse interests without their knowledge or consent. Id. at 936. This Court disbarred Crabtree, noting that he had received a prior private reprimand for similar conduct.

Brown's misconduct is analogous to that of Crabtree because it involved dishonesty, misrepresentation, and the failure to disclose the attorney's personal interest in a financial transaction to all parties involved. While Crabtree's disciplinary record consisted of a private reprimand, Brown has already been suspended for similar misconduct.

B. Respondent's history of prior discipline for dishonest conduct warrants a harsher sanction in this case.

It is well established that in 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."

This Court's Order dated July 12, 2001 suspended Brown for 90 days for participating in a fraudulent campaign contribution reimbursement scheme. *See* Florida Bar v. Brown, 790 So. 2d 1081 (Fla. 2001). The scheme began in 1994 when a corporate client requested Brown's assistance in raising money for certain political candidates. The client agreed to reimburse these contributions by allowing Brown to "premium bill" on a matter the firm was handling for the corporate client. Id. at 1083. Brown solicited 37 contributions of $500.00 each from subordinate attorneys, their families, and his own family. Brown then reimbursed the employees with firm funds, and inflated the number of hours billed by the firm to the corporate client to recoup the reimbursements, roughly doubling his actual time worked. Id. at 1087. Brown was found guilty of violating Rule 4-1.2(d) for assisting his client in conduct that he should have known was criminal or fraudulent, and Rule 4-8.4(a)

for involving a client in his misconduct. Brown also violated Rule 4-8.4(c) for engaging in dishonest conduct by "premium billing" the client to reimburse the campaign contributions he had solicited. Id. at 1088. The referee found that Brown's motives were selfish ones–"he did not want to incur the ire of his most important client" by questioning the proposed scheme. Id. at 1087-88.

This Court imposed a 90-day suspension in light of the substantial mitigation found by the referee. In mitigation, the referee found that Brown had no prior disciplinary record, made a full and free disclosure, demonstrated a cooperative attitude and "deep remorse," and suffered additional negative consequences due to the misconduct. The referee also considered Brown's good reputation and character. Id. at 1088.

Brown is before this Court once again with a finding that he has engaged in dishonest conduct. In both cases, Brown acted with a selfish motive, and violated the Rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation. Brown has clearly demonstrated a propensity to engage in unethical conduct. In the prior case, the referee accorded substantial weight to Brown's character witnesses, concluding that Brown's reputation in the community was that of "'highly competent, ethical attorney'" and that his misconduct "'appears to be a true aberration in [his] otherwise unblemished twenty-plus year

legal career.'" Id. at 1088-89. It is now clear that Brown's misconduct was not an "aberration." Brown's actions in granting his law firm a security interest at the expense of Pioneer demonstrates the same dishonest motive that caused him to use his law firm to perpetuate a fraudulent campaign contribution reimbursement scheme.

In Brown, supra, this Court condemned Brown's conduct, but gave him the benefit of the doubt due to his lack of a disciplinary record and "significant" mitigating factors. This Court noted, however, that "in the context of more egregious rule violations that an attorney's character and good works do not operate 'as a credit' against misconduct." Id. at 1088, n. 5 (quoting Florida Bar v. Travis, 765 So. 2d 689 (Fla. 2000)).

Brown can no longer rely on character and reputation in mitigation of repeated dishonest conduct. Brown is an experienced attorney, who had practiced law for 24 years, and was the head of his law firm, when the conduct in the instant case occurred. While the Referee found Brown's character and reputation as the sole mitigating factor in this case, the Bar submits that this factor should be given little weight in determining the appropriate discipline for Brown's misconduct. Whatever credit for good works that Brown has performed was accorded in the

prior proceeding. Brown cannot expect that good works will continue to operate as a credit against repeated misconduct.

Brown suggests that a public reprimand is the appropriate sanction for his misconduct. In support, Brown cites In re Byrd, 511 So. 2d 958 (Fla. 1987), a case in which this Court approved the recommendation of the Judicial Qualifications Commission that a judge receive a public reprimand for misconduct committed while he was an attorney. While the conduct in the Byrd case may be factually similar to Brown's misconduct, the discipline imposed is of little precedential value. At the time discipline was imposed on Judge Byrd, this Court was limited to imposing only two sanctions against a judge: reprimand or removal from office. It was not until 1996 that the Florida Constitution was amended to broaden the sanctions to include reprimand, fine, suspension with or without pay, or lawyer discipline. Art. V, § 12, Fla. Const. and Commentary. Moreover, sitting judges are not subject to the same disciplinary process governing lawyers; rather they are subject to discipline by the Judicial Qualifications Commission for violating the Code of Judicial Conduct.

This Court has repeatedly recognized that engaging in conduct involving dishonesty, misrepresentation, fraud, or deceit warrants suspension. Florida Bar v. Schultz, 712 So. 2d 386, 388 (Fla. 1998). This Court has also held that "a public

reprimand should be reserved for isolated instances of neglect, lapses of judgment, or technical violations of trust accounting rules without willful intent." Id. Brown's misconduct in this case was not simply an "isolated instance of neglect" or "lapse of judgment." Brown deliberately granted a security interest to his law firm in collateral he had already pledged to another party, made false representations in the security agreement, and failed to disclose the "double pledge." Given Brown's history of prior discipline for dishonest conduct, the appropriate sanction is a suspension of at least two years.

CONCLUSION

Brown intentionally granted a security interest to his law firm in collateral he previously pledged to a surety company as full cash collateral. He did this with the selfish motive of securing for his law firm fees incurred by a corporation owned by himself and his wife. Brown failed to disclose the "double pledge" and made false representations in the security agreement he signed with his firm. Substantial evidence in the record supports the Referee's conclusion that Brown intentionally engaged in dishonest conduct in violation of Rules 3-4.3 and 4-8.4(c).

This Court has previously suspended Brown for engaging in dishonest conduct. Given Brown's history of prior discipline for similar misconduct, the Referee's recommendation of a six-month suspension is an insufficient sanction. In light of the facts of this case, the relevant Standards and case law, and the numerous aggravating factors, a suspension of two years is a more appropriate sanction.

Dated this _____ day of April, 2004.

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 7532239013 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 **Scott K. Tozian**, Attorney for Daryl James Brown, 109 N. Brush Street, Suite 200, Tampa, FL 33602; by regular U.S. mail to **John Anthony Boggs**, Staff Counsel, The Florida Bar, 661 E. Jefferson Street, Tallahassee, FL 32399-2300, all this _____ day of _____, 2004.

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Jodi Anderson
Assistant Staff Counsel

CERTIFICATION OF FONT SIZE AND STYLE
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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.

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Jodi Anderson