IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,	Case No. SC03-151
	[TFB Case No. 2002-30,906(07B)]
Complainant,	Case No. SC03-1006
	[TFB Case Nos. 2002-31,564(07B);
v.	2002-31,944(07B);
	2003-30,244(07B)]
HANS CHARLES FEIGE,	Case No. SC03-1558
	[TFB Case No. 2003-30,541(07B)]
Respondent.	Case No. SC04-449
_______________________________/	[TFB Case No. 2003-30,886(07B)]

THE FLORIDA BAR'S INITIAL BRIEF

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
651 East Jefferson Street,
Tallahassee, Florida 32399-2300
(850)561-5600
ATTORNEY NO. 123390

JOHN ANTHONY BOGGS
Staff Counsel
The Florida Bar
651 East Jefferson Street,
Tallahassee, Florida 32399-2300
(850)561-5600
ATTORNEY NO. 253847

AND

FRANCES R. BROWN-LEWIS
Bar Counsel
The Florida Bar
1200 Edgewater Drive
Orlando, Florida, 32804-6314
(407)425-5424
ATTORNEY NO. 503452

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

TABLE OF OTHER AUTHORITIES iv

SYMBOLS AND REFERENCES vi

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 9

SUMMARY OF THE ARGUMENT 19

ARGUMENT 21

WHETHER THE REFEREE'S RECOMMENDATION OF A ONE YEAR SUSPENSION IS ERRONEOUS GIVEN THE FACTS OF THE CASE AND THE CASE LAW?

CONCLUSION 38

CERTIFICATE OF SERVICE 40

COMPLIANCE WITH RULE 9.201(a)(2) 41

APPENDIX 42

APPENDIX INDEX 4231.1

TABLE OF AUTHORITIES

PAGE

Petition of Wolf 19
257 So. 2d 547 (Fla. 1972)

The Florida Bar v. Boland 25
702 So. 2d 229 (Fla. 1998)

The Florida Bar v. Corbin 19
701 So. 2d 334 (Fla. 1997)

The Florida Bar v. Elster 27
770 So. 2d 1184 (Fla. 2000)

The Florida Bar v. Feige 34
596 So. 2d 433 (Fla. 1992)

The Florida Bar v. Feige 35
No. 74,742 (Fla. Nov. 15, 1990)

The Florida Bar v. Feige 36
TFB Case Nos. 1988-70,195(11I), 1998-71,401(17B) (July 20, 1989)

The Florida Bar v. Forrester 36
818 So. 2d 477 (Fla. 2002)

The Florida Bar v. Grosso 29
647 So. 2d 840 (Fla. 1994)

The Florida Bar v. Heptner 21
29 Fla. L. Weekly S495 (Fla. Sept. 15, 2004)

The Florida Bar v. Hmielewski 24
702 So. 2d 218 (Fla. 1997)

The Florida Bar v. Knowles 28
534 So. 2d 1157 (Fla. 1988)

The Florida Bar v. Lathe 19
774 So. 2d 675 (Fla. 2000)

The Florida Bar v. Leggett...34
414 So. 2d 192 (Fla. 1982)

The Florida Bar v. Peterman... 29
306 So. 2d 484 (Fla. 1975)

The Florida Bar v. Poplack... 24
599 So. 2d 116 (Fla. 1992)

The Florida Bar v. Shoureas 21
29 Fla. L. Weekly S429 (Fla. Aug. 19, 2004)

The Florida Bar v. Springer 24
873 So. 2d 317 (Fla. 2004)

The Florida Bar v. Wilder... 19
543 So. 2d 222 (Fla. 1989)

TABLE OF OTHER AUTHORITIES

PAGE

Rules Regulating The Florida Bar

4-1.1 .... 3, 4, 5, 7

4-1.2(a) 3, 4, 5, 7

4-1.3 .... 2, 3, 4, 5, 6, 7

4-1.4(a) 2, 3, 4, 5, 6, 7

4-1.4(b) 3, 4, 5, 6, 7

4-1.5(e) 6, 7

4-1.8(a) 6

4-1.15 6

4-1.15(a) 6

4-1.15(b) 3

4-3.2 4

4-8.4(c) 3, 7

4-8.4(d) 4, 5, 7

4-8.4(g)(1) 3, 4, 5

4-8.4(g)(2) 3, 4, 5, 6

5-1.1(a) 6

5-1.1(a)(1) 6

5-1.1(b) 6

Florida Standards for Imposing Lawyer Sanctions

4.12 29

4.42(a) 30

4.42(b) 30

4.52 31

7.2 32

9.22(a) 33

9.22(c) 33

9.22(d) 33

9.22(e) 33

9.22(i) 33

SYMBOLS AND REFERENCES

In this brief, the complainant, The Florida Bar, shall be referred to as "The Florida Bar" or "the bar."

The transcript of the final hearing held on February 4, 5, 6, 19, and 24, 2004, in Case Nos. SC03-151, SC03-1006, and SC03-1558, shall be referred to as "T" followed by the volume number and the cited page number (T Vol. ____ p. ___). The transcript of the final hearing in Case No. SC04-449 held on July 22, 2004, and August 3, 2004, shall be referred to as “T Willacy” followed by the volume number and the cited page number (T Willacy Vol. ____ p. ____).

The Reports of Referee dated September 23, 2004, will be referred to as "ROR" followed by the referenced page number(s) of the Appendix, attached (ROR p. A____).

The bar's exhibits in Case Nos. SC03-151, SC03-1006, and SC03-1558 will be referred to as B-Ex.___, followed by the exhibit number. The bar’s exhibits in Case No. SC04-449 shall be referred to as “B-Ex. Willacy” followed by the exhibit number.

Respondent's exhibits in Case Nos. SC03-151, SC03-1006, and SC03-1558 will be referred to as R-Ex. _____, followed by the exhibit number. The respondent’s exhibits in Case No. SC04-449 shall be referred to as “R-Ex. Willacy” followed by the exhibit number. Respondent’s exhibit that he provided to the referee after the final hearing shall be referred to as “letter dated August 24, 2004” followed by the

referenced page number of the Appendix, attached.

STATEMENT OF THE CASE

In Case No. SC03-151 [TFB Case No. 2002-30,906(07B)], the Seventh Judicial Circuit Grievance Committee "B" voted to find probable cause on August 30, 2002. The bar served its Complaint on January 28, 2003, and the referee was appointed on February 20, 2003. After this court granted the bar's motion for change of venue on June 6, 2003, a new referee was appointed on June 20, 2003. In Case No. SC03-1006 [TFB Case Nos. 2002-31,564(07B), 2002-31,944(07B), 2003-30,244(07B)], the Seventh Judicial Circuit Grievance Committee "B" voted to find probable cause on February 21, 2003. The bar served its Complaint on June 4, 2003. The referee was appointed on July 24, 2003. On October 7, 2003, the referee entered an order consolidating Case No. SC03-151 [TFB Case No. 2002-30,906(07B)], and Case No. SC03-1006 [TFB Case Nos. 2002-31,564(07B), 2002-31,944(07B), 2003-30,244(07B)] for purposes of the final hearing. In Case No. SC03-1558 [TFB Case No. 2003-30,541(07B)], the Seventh Judicial Circuit Grievance Committee "B" voted to find probable cause on May 23, 2003. The bar served its Complaint on September 3, 2003. The referee was appointed on September 23, 2003. On November 14, 2003, the referee entered an order consolidating Case No. SC03-1558 [TFB Case No. 2003-30,541(07B)] with the other two pending matters for purposes of the final hearing. On December 12, 2003, this court entered an order granting the bar's first motion for extension of time to file the report of

referee until March 8, 2004. The final hearing on the consolidated cases was held on February 4, 5, 6, 19, and 24, 2004. On March 5, 2004, this court entered its order granting the bar's second motion for extension of time to file the report of referee until June 1, 2004. On June 25, 2004, this court granted the bar's third motion for extension of time to file the report of referee until August 31, 2004.

In Case No. SC04-449 [TFB Case No. 2003-30,886(07B)], the Seventh Judicial Circuit Grievance Committee "B" voted to find probable cause on October 17, 2003. The bar served its Complaint on March 16, 2004, and the referee was appointed on April 7, 2004. The final hearing was held on July 22, and August 3, 2004. The hearing as to mitigation and argument as to the appropriate level of discipline in all the pending cases was held on August 19, 2004. The referee entered his reports on September 23, 2004, recommending respondent be found guilty in each case.

In Case No. SC03-151 [TFB Case No. 2002-30,906(07B)], the referee recommended respondent be found guilty of violating rules 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and for failing to comply with reasonable requests for information; 4-1.4(b) for failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; 4-1.15(b) for failing to promptly render to a

client upon request an accounting of funds held by the attorney; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; 4-8.4(g)(1) for failing to respond, in writing, within fifteen days to an official inquiry by Bar counsel when Bar counsel is conducting an investigation into the lawyer's conduct; and 4-8.4(g)(2) for failing to respond, in writing, within ten days of the date of any follow-up written investigative inquiries by Bar counsel when Bar counsel is conducting an investigation into the lawyer's conduct.

The referee in Case No. SC03-1006, recommended respondent be found guilty in Count I [TFB Case No. 2002-31,564(07B)] of violating rules 4-1.1 for failing to provide competent representation to a client; 4-1.2(a) for failing to abide by a client's decisions concerning the objectives of representation and for failing to consult with the client as to the means by which they are to be pursued; 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; 4-1.4(b) for failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; 4-3.2 for failing to make reasonable efforts to expedite litigation consistent with the interests of the client; 4-8.4(g)(1) for failing to respond, in writing, within fifteen days of the date of the initial written investigative inquiry by Bar counsel when Bar counsel is conducting an investigation into the lawyer’s conduct; and 4-

8.4(g)(2) for failing to respond, in writing, within ten days of the date of any follow-up written investigative inquiry by Bar counsel when Bar counsel is conducting an investigation into the lawyer's conduct. In Count II [TFB Case No. 2002-31,944(07B), the referee recommended respondent be found guilty of violating rules 4-1.1 for failing to provide competent representation to a client; 4-1.2(a) for failing to abide by a client's decisions concerning the objectives of representation and for failing to consult with the client as to the means by which they are to be pursued; 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and for failing to promptly comply with reasonable requests for information; 4-1.4(b) for failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; 4-8.4(d) for engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice; 4-8.4(g)(1) for failing to respond, in writing, within fifteen days of the date of the initial written investigative inquiry by Bar counsel, when Bar counsel is conducting an investigation into the lawyer's conduct; and 4-8.4(g)(2) for failing to respond, in writing, within ten days of the date of any follow-up written investigative inquiries by Bar counsel when Bar counsel is conducting an investigation into the lawyer's conduct. In Count III [TFB Case No. 2003-30,244(07B), the referee recommended respondent be found guilty of violating rules 4-1.1 for failing to provide

competent representation to a client; 4-1.2(a) for failing to abide by a client's decisions concerning the objectives of representation and for failing to consult with the client as to the means by which they are to be pursued; 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and for failing to promptly comply with reasonable requests for information; 4-1.4(b) for failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; 4-8.4(d) for engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice; 4-8.4(g)(1) for failing to respond, in writing, within fifteen days of the date of the initial written investigative inquiry by Bar counsel, when Bar counsel is conducting an investigation into the lawyer's conduct; and 4-8.4(g)(2) for failing to respond, in writing, within ten days of the date of any follow-up written investigative inquiries by Bar counsel, when Bar counsel or the agency is conducting an investigation into the lawyer's conduct.

In Case No. SC03-1558 [2003-30,541(07B)], the referee recommended respondent be found guilty of violating rules 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and for failing to comply with reasonable requests for information; 4-1.4(b) for failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding

the representation; 4-1.5(e) for failing to communicate the basis or rate of the fee before or within a reasonable time after commencing the representation; 4-1.8(a) for knowingly entering into a business transaction with a client, or for knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to the client; 4-1.15 for failing to comply with The Florida Bar Rules Regulating Trust Accounts, 4-1.15(a) [prior to April 25, 2002] for failing to hold in trust funds and property of a client that are in the lawyer's possession in connection with the representation 5-1.1(a) [prior to April 25, 2002] for failing to hold in trust funds and property of a client that are in the lawyer's possession in connection with the representation; 5-1.1(a)(1) for failing to hold in trust funds and property of a client that are in the lawyer's possession in connection with the representation; and 5-1.1(b) for using money or other property for purposes other than those for which they were entrusted.

In Case No. SC04-449 [TFB Case No. 2003-30,886(07B)], the referee recommended respondent be found guilty of violating rules 4-1.1 for failing to provide a client with competent representation; 4-1.2(a) for failing to abide by a client's decisions regarding the objectives of representation and for failing to consult with the client as to the means by which they are to be pursued; 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4(a) for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; 4-1.4(b) for failing to explain a matter to the

extent reasonably necessary to permit the client to make informed decisions regarding the representation; 4-1.5(e) for failing to communicate to the client the basis or rate of the fee either before or within a reasonable time after commencing the representation; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice.

In each of the aforementioned cases the referee recommended respondent be suspended for one year, with the suspension to run concurrently in each case, with reinstatement to be conditioned on respondent undergoing a physical examination to ensure he would have the physical capacity and stamina to maintain a law practice. Upon reinstatement, the referee recommended respondent be placed on a two year period of supervised probation, with said probation to run concurrently in each case.

The Board of Governors of The Florida Bar considered the reports of referee at its October, 2004, meeting and voted to seek an appeal of the referee's recommendation as to a one year concurrent suspension in each case and instead impose a two year period of concurrent suspension in each case with the same rehabilitation and probation requirements as set forth by the referee in his reports and payment of costs. The bar filed its petition for review on October 27, 2004, and moved to consolidate all pending cases for purposes of appeal.

STATEMENT OF THE FACTS

In Case No. SC03-151 [TFB Case No. 2002-30,906(07B)], Delia Iren hired respondent to represent her in various domestic relations matters, including a dissolution of marriage (ROR p. A2, Answer to bar's Complaint, T Vol. IV pp. 614-615, T Vol. V pp. 685-686). Ms. Iren paid respondent a total of $1,200.00 to handle the dissolution of marriage case (ROR p. A2, T Vol. III p. 491, T Vol. IV pp. 590, 617, T Vol. V p. 693, B-Ex. 79, R-Ex. 19). Ms. Iren requested respondent seek her husband's retirement benefit records from his employer but respondent failed to do so. He chose instead to rely on opposing counsel's assurances that the documentation that had been provided to him by Mr. Iren about this primary marital asset was accurate and complete (ROR pp. A2-A3, T Vol. II p. 378, T Vol. IV p. 622, T Vol. V pp. 713, 716). After Ms. Iren moved to Great Britain, respondent failed to maintain adequate communication with her (ROR p. A4, T Vol. III p. 516, T Vol. V p. 720) and, despite her instructions that he pursue settlement negotiations, he failed to do so until after she returned to Florida for a brief visit and met with him (ROR pp. A3-A4, B-Ex. 57, B-Ex. 85). Respondent failed to comply with the opposing party's discovery requests in a timely manner and took no steps to make sure Ms. Iren had completed the information and returned it so he could respond to the discovery requests within the required time frame (ROR pp. A6-A7, T Vol. IV pp. 620-622, T Vol. V pp. 701-703, 705-706, 708-709, B-Ex. 65, B-Ex. 66, B-Ex. 69, B-Ex. 90, R-

Ex. 23, R-Ex. 24, R-Ex. 41, R-Ex. 38). Respondent misrepresented to the court that he would be providing opposing counsel with Ms. Iren's discovery responses in the near future when in fact this was not true (ROR p. A8, B-Ex. 75). He also misrepresented to Ms. Iren that mediation had been scheduled when in fact he had not followed through with opposing counsel and the mediator to set a date (ROR pp. A8-A10, B-Ex. 50, B-Ex. 85, B-Ex. 97, B-Ex. 101, B-Ex. 102, R-Ex. 42, R-Ex. 46). Respondent also failed to provide Ms. Iren with a detailed billing statement until after she filed her bar grievance (ROR p. A6, T Vol. III pp. 496, 500-501, 509-510). Respondent failed to make timely responses to the bar's investigative inquiries (ROR p. A11, T Vol. IV p. 608, Answer to bar's Complaint, R-Ex. 47).

In Count I of Case No. SC03-1006 [TFB Case No. 2002-31,564(07B)], Melody Burgess hired respondent to represent her in a dissolution of marriage (ROR p. A20, Answer to bar's Complaint). Ms. Burgess paid respondent a fee of $500.00 but respondent failed to clarify in writing that he intended to charge her an hourly rate T Vol. II p. 327). He never provided her with a detailed billing statement (ROR p. A20, T Vol. II pp. 326-327, 338, 351, T Vol. V pp. 764, 766). After receiving a proposed marital settlement agreement, respondent failed to maintain adequate communication with Ms. Burgess and failed to conclude the case despite a verbal settlement (ROR pp. A21-A22, T Vol. II pp. 241-242, 256, 282-286, 300-304, 320-322, 324, 327-329, 350-351, T Vol. V pp. 772-773, B-Ex. 24, B-Ex. 27, B-Ex. 28, B-

Ex. 41). Ms. Burgess found it necessary to contact opposing counsel to ascertain the status of the matter (ROR p. A22, T Vol. II pp. 246-247, 249-250, 324, B-Ex. 31, B-Ex. 40). She thereafter contacted her former husband to obtain a copy of the marital settlement agreement so she could execute it and have it filed with the court (ROR pp. A22-A23, T Vol. II pp. 286, 327-328). Additionally, respondent failed to make timely written responses to the bar's investigative inquiries (ROR pp. A24-A25, T Vol. IV pp. 604-608, B-Ex. 114, B-Ex. 115, B-Ex. 117, B-Ex. 118, Answer to bar's Complaint).

In Count II of Case No. SC03-1006 [TFB Case No. 2002-31,944(07B)], Carolyn Clark hired respondent to represent her in a civil action against a Illinois-based moving van company for items that either were damaged or lost in transit (ROR p. A25, T Vol. I pp. 32, 34-35, 42, 75-77, R-Ex. 1). Ms. Clark paid respondent a fee of $150.00 but respondent never entered into a written fee agreement with her nor did he provide her with any detailed billing statements (ROR p. A25, T Vol. I p. 36, T Vol. IV p. 628, Answer to bar's Complaint). Respondent ultimately filed suit in Florida against the moving van company even though it was not registered to conduct business in the State of Florida (ROR p. A26, T Vol. I pp. 97-98, Answer to bar's Complaint). Respondent relied on the oral representations of an agent for a moving van company in Florida with the same name as the Illinois moving van company that he would transmit the suit information to the company in Illinois. Respondent did not obtain

written verification that the agent had the authority to accept service of process for the named business entity (ROR p. A26, T Vol. IV pp. 628, 633, T Vol. V p. 796, R-Ex. 5). Respondent obtained a default judgment and in October, 2001, had Ms. Clark execute the affidavit of damages needed to obtain the final judgment (ROR p. A26, T Vol. I pp. 11, 49-50, T Vol. IV pp. 575-576, Answer to bar's Complaint). He then delayed filing the affidavit with the clerk's office for almost three months (ROR pp. A26-A27, T Vol. IV p. 629, T Vol. V pp. 797-798, B-Ex. 5, R-Ex. 6). In late January, 2002, Ms. Clark went to the clerk's office to check on the status of her case as she was unable to contact respondent. She learned that a motion to dismiss for lack of prosecution was pending (ROR p. A27, T Vol. I p. 11, T Vol. IV p. 577). Ms. Clark found it necessary to execute another affidavit of damages that she filed on her own (ROR p. A27, T Vol. I pp. 44-45, 47-48, 66, 82, T Vol. V p. 797, B-Ex. 6). The final judgment was entered in Ms. Clark's favor in the amount of $2,250.00 (ROR p. A28, B-Ex. 8). Thereafter, Ms. Clark learned her final judgment was unenforceable against the Illinois-based moving van company (ROR p. A28, T Vol. I pp. 52, 62-63, 88-89, 97-98, 100-101) and she filed a complaint against respondent with the bar (B-Ex. 9). Respondent failed to make timely written responses to the bar's investigative inquiries (ROR pp. A28-A29, B-Ex. 10, B-Ex. 11, B-Ex. 12, B-Ex. 13, B-Ex. 107, B-Ex. 108, B-Ex. 109, Answer to bar's Complaint, Additional Responses to Requests for Discovery).

In Count III of Case No. SC03-1006 [TFB Case No. 2003-30,244(078B)], Charles R. Shaffer hired respond to represent him in a simple dissolution of marriage action and paid respondent a fee of $750.00 (ROR p. A29, T Vol. I pp. 15, 121, 142, T Vol. II pp. 390-391). Mr. Shaffer informed respondent he wanted the matter concluded quickly but that his wife, who had filed the petition for dissolution of marriage, did not want the divorce and would attempt to delay the case for as long as possible (ROR p. A30, T Vol. I pp. 125-126). Respondent failed to diligently handle the matter and other than filing a short, one page answer and counterpetition provided no significant legal service to Mr. Shaffer (ROR p. A30, B-Ex. 16). Respondent also permitted the opposing party to delay the case (ROR p. A30, T Vol. I pp. 137-139, T Vol. II pp. 392-396, B-Ex. 17) and he failed to maintain adequate communication with his client (ROR p. A30, T Vol. II pp. 393-395, B-Ex. 17). Ultimately, Mr. Shaffer hired new counsel to complete the matter (ROR p. A32, T Vol. I pp. 106-109, T Vol. II pp. 392, 395). Additionally, respondent failed to make timely written responses to the bar's investigative inquiries (ROR pp. A32-A33, Answer to Complaint).

In Case No. SC03-1558 [TFB Case No. 2003-30,541(07B)], Samuel W. Hall hired respondent to review a matter concerning municipal code violation enforcement liens that had been placed on his property by the city (ROR p. A43, T Vol. I p. 176, T Vol. IV p. 583, T Vol. V p. 801, Additional Responses to Discovery). Respondent took an undeterminable number of gold coins as collateral for his fee and did not give

Mr. Hall a receipt for the coins (ROR p. A43, T Vol. I pp. 20, 176-180, 183, 189, 192, 223-224, T Vol. IV pp. 581, 584, 627, T Vol. V pp. 803-804). He also did not enter into an agreement with Mr. Hall clarifying what legal services he would provide or the basis of the fee (ROR p. A43, T Vol. I pp. 183, 220, 223, T Vol. V p. 810). Respondent testified that he took the coins as collateral until Mr. Hall had the cash to redeem them as respondent preferred to be paid in cash (ROR p. A43, T Vol. V p. 804). Based upon this testimony, the coins clearly constituted trust funds or property that respondent was required to hold in trust (ROR p. A43). Respondent did not reduce to writing the agreed value to be assigned to the coins (ROR p. A43, T Vol. I pp. 183, 220, 223-224, T Vol. IV p. 586). He also did not advise Mr. Hall to seek the advice of independent counsel prior to agreeing to give him the coins and did not obtain Mr. Hall's written consent to the transaction despite the fluctuating nature of the coins' value (ROR p. A44, T Vol. I p. 220, T Vol. IV pp. 578-579). After a dispute arose between respondent and Mr. Hall as to whether respondent was entitled to keep all of the coins as payment, respondent sold the coins without first having resolved the dispute (ROR p. A45, T Vol. V p. 814, Response to Interrogatories). After six consultations with respondent, Mr. Hall was left with nothing tangible to show respondent had done any work. Respondent provided no appreciable benefit or services to Mr. Hall (ROR p. A45, T Vol. I p. 191, T Vol. IV pp. 586-587). Additionally, respondent failed to maintain adequate communication with Mr. Hall

(ROR pp. A45-A46, T Vol. I pp. 179, 186-187, Response to Request for Admissions).

In Case No. SC04-449 [TFB Case No. 2003-30,886(07B)], Annette M. Willacy hired respondent to represent her in a dissolution of marriage case for which she paid him a fee of $1,000.00 (ROR p. A55, T Willacy Vol. I pp. 96, 103, T Willacy Vol. II pp. 169, 172, 176). Respondent did not enter into a written fee contract with her and did not clarify whether the fee would be computed on an hourly basis or if it would be a flat fee (ROR p. A55, T Willacy Vol. I pp. 23, 102, 104, T Willacy Vol. II p. 175). Ms. Willacy advised respondent that her husband was seventy years old and that she was thirty-nine years old (T Willacy Vol. I p. 97, T Willacy Vol. II p. 197). The couple had two minor children and Mr. Willacy was the primary supporter of the household as Ms. Willacy was employed as a dishwasher (T Willacy Vol. I pp. 96, 100-101, 106, T Willacy Vol. II pp. 185, 197). Ms. Willacy told respondent that the majority of the assets were titled solely in her husband's name and that he intended to seek custody of the children and possession of the marital home (ROR p. A56, T Willacy Vol. I p. 134, T Willacy Vol. II pp. 184-185, 199, B-Ex. Willacy 10). Respondent never conducted an investigation into Mr. Willacy's assets despite the fact that it should have been clear to him, based upon his initial meeting with Ms. Willacy, that she knew little about her husband's assets (ROR p. A56, T Willacy Vol. I pp. 22, 50, T Willacy Vol. II pp. 183-184, B-Ex. Willacy 8).

Respondent failed to seek temporary relief for his client which would have been advisable given the great disparity in assets available to her and the fact that her husband, who continued to reside in the marital home, was subjecting her to mental abuse (ROR p. A57, T Willacy Vol. I pp. 19-20, 30, 111-112). After filing the answer and counterpetition for dissolution of marriage, respondent took no further appreciable action in Ms. Willacy's case (ROR p. A57, T Willacy Vol. I pp. 55-56, 111-112, B-Ex. Willacy 8). A few months later, Mr. Willacy died testate (ROR p. A57, T Willacy Vol. I p. 112, T Willacy Vol. II pp. 187, 203-205). Mr. Willacy's will named his sister as personal representative for his estate, co-trustee for one of his trusts, and residuary beneficiary of his estate (ROR p. A57, B-Ex. Willacy 2). Respondent advised Ms. Willacy that he could seek to have the estate substituted as a party to the dissolution proceeding and thus seek financial relief for her through the divorce. Respondent believed this was advisable because Mr. Willacy had placed most of his assets in trust leaving a probate estate of little value and a will that made no provision for either Ms. Willacy or their minor children (ROR pp. A57-A58, T Willacy Vol. I pp. 113, 148, T Willacy Vol. II pp. 184-185, B-Ex. Willacy 10, B-Ex. Willacy 12 p. 31). The attorney who Ms. Willacy hired to represent her in the estate matter wrote respondent stating his belief, based on respondent's prior statements to him, that it might be more advantageous for respondent to pursue the dissolution of marriage case for the purpose of seeking assets (ROR p. A58, B-Ex. Willacy 1). Respondent failed

to take action in the dissolution of marriage case and failed to maintain adequate communication with Ms. Willacy (ROR p. A58, T Willacy Vol. I pp. 41-42, 109-112, 115-116, B-Ex. Willacy 5, B-Ex. Willacy 6). After receipt of the objection to Ms. Willacy's claim to the estate, her estate counsel advised respondent to proceed with the dissolution of marriage case (ROR p. A59, B-Ex. Willacy 3). Other than filing a suggestion of death and a motion for substitution of party (T Willacy Vol. II p. 180, B-Ex. Willacy 4), which respondent did not set for hearing, respondent took no further action in the case (ROR p. A59, B-Ex. Willacy 7). Respondent misrepresented to Ms. Willacy that he set the motion for hearing and she learned the truth only after contacting the clerk's office (ROR p. A59, T Willacy Vol. I pp. 54-56, 119-125, B-Ex. Willacy 5). Respondent also did not refund any of the unearned fees (ROR p. A60, T Willacy Vol. I p. 54, B-Ex. Willacy 5, B-Ex. Willacy 6).

Throughout the applicable time period, respondent suffered from ongoing health problems commencing around November, 2001, and culminating in his suffering a heart attack in April, 2002 (ROR pp. A11-A12, A23-A24, A31, A46, T Vol. I p. 15, T Vol. IV p. 611, T Vol. V p. 818). Despite his declining health and ongoing medical difficulties, respondent did not advise any of his clients they should consult new counsel to complete their cases due to his illness nor did he advise the bar until after he returned to work that his illness had prevented him from timely responding to the grievances (ROR pp. A11-A12, A24, A30-A31, A46-A47, A60, T Vol. I pp. 59-60,

186-188, T Vol. II pp. 330, 393, 395-396, 398-400, T Vol. IV p. 612, T Willacy Vol. I pp. 93, 150).

SUMMARY OF THE ARGUMENT

The practice of law is a privilege, not a right. Petition of Wolf, 257 So. 2d 547, 548 (Fla. 1972). With this privilege comes responsibilities and duties owed to clients, the public, the court and the profession. Respondent failed to uphold his obligations to his six clients and to the court. Although respondent's ongoing neglect and inadequate communication in these cases may be explained, although not excused, by his health problems, his misrepresentations to the court and to his clients are a serious matter upon which his health status had no bearing. "A lawyer has the absolute responsibility of being truthful, candid, and aboveboard with his client. A failure in this regard should result in a heavy penalty to assure that other lawyers will be deterred from similar conduct and to protect the clients of lawyers." The Florida Bar v. Wilder, 543 So. 2d 222, 224 (Fla. 1989). Furthermore, attorneys who "make misrepresentations to a court create 'an erosion of confidence on the part of the judiciary and the public in lawyers' honesty.'" The Florida Bar v. Lathe, 774 So. 2d 675, 679 (Fla. 2000), quoting The Florida Bar v. Corbin, 701 So. 2d 334, 336 (Fla. 1997).

Although some of respondent's misconduct occurred after he suffered a heart attack on April 5, 2002, much of it occurred prior to that time. The six clients who hired respondent were not wealthy individuals with complex cases. These six clients, with legal matters unrelated to one another, experienced similar problems with respondent not moving their cases along and not communicating. He was as

unresponsive to other attorneys as he was to his own clients (T Vol. I pp. 108-109, T Vol. II pp. 237-238, 242-244, 271-273, 281-282, 406-407, T Vol. III pp. 443-445, 447-452). Also, respondent=s lack of communication extended to the bar and jeopardized the orderly handling of the disciplinary process. Respondent=s misconduct can be summed up thusly. Despite being paid to represent his clients, he performed only minimal services and failed to maintain meaningful and adequate communication with them. He failed to accurately document the monies paid to him for fees and he did not document the services allegedly rendered to justify those fees. Generally speaking, respondent abhorred putting anything in writing. He then lied to cover his neglect. The Bar submits respondent has evidenced a cavalier attitude toward the practice of law and has placed the blame for his shortcomings on everyone but himself.

ARGUMENT

THE REFEREE'S RECOMMENDATION OF A ONE YEAR SUSPENSION IS ERRONEOUS GIVEN THE FACTS OF THE CASE AND THE CASE LAW

This court's review of a referee's recommendation as to discipline is broader than that afforded to the factual findings because the ultimate responsibility for determining and imposing the appropriate sanction rests with this court alone. The Florida Bar v. Heptner, 29 Fla. L. Weekly S495 (Fla. Sept. 15, 2004). This court will revisit a referee's recommendation as to discipline if the case law and Florida Standards for Imposing Lawyer Sanctions do not support that recommendation. Heptner, 29 Fla. L. Weekly S495. In determining the appropriate sanction, this court considers the purposes of lawyer discipline: the sanction must be fair to society in terms of protecting the public from unethical conduct while not denying it the services of a qualified attorney; the sanction must be fair to the attorney, being sufficient to punish the ethical breach while at the same time encouraging reform and rehabilitation; and the sanction must be severe enough to act as a deterrent to other attorneys who might be prone to engaging in similar acts of misconduct. The Florida Bar v. Shoureas, 29 Fla. L. Weekly S429 (Fla. Aug. 19, 2004). The bar submits a two year suspension would best meet these objectives and is supported by the case law cited by the referee in his report and by the Florida Standards for Imposing Lawyer Sanctions. In fact, the referee cited no case law to support the lesser sanction of a one year

suspension. The case law he cited in his reports supports two and three year suspension periods.

The most disturbing aspect of respondent's misconduct in these cases is his propensity to misrepresent the facts in order to conceal his neglect. This behavior was particularly evident in his representation of Ms. Iren. At the hearing on opposing counsel's motion to compel discovery, respondent misrepresented to the court that Ms. Iren's discovery responses would be forthcoming (ROR p. A7, B-Ex. 75). In fact, respondent knew he was having considerable difficulty in obtaining the discovery responses from Ms. Iren as she did not want to disclose certain information concerning her inheritance (T Vol. V pp.701, 703-706, 708-709). Despite his representation to the court that discovery would be forthcoming, respondent took no steps to obtain the discovery responses from his client after this hearing (ROR p. A7, T Vol. IV pp. 620-622, T Vol. V pp. 701, 703, 708-709).

Respondent also misrepresented to Ms. Iren that mediation had been scheduled in her case for a day in September, 2001. In fact, respondent had no discussion with opposing counsel about even setting a mediation date until the end of that month let alone having set an actual date (ROR p. A8, B-Ex. 50, B-Ex. 101, B-Ex. 102). In addition, respondent misrepresented to Ms. Iren that the mediation scheduled for November 12, 2001, had been canceled at the last minute by the mediator due to the holiday. However, respondent was aware as early as September 28, 2001, that the

November 12, 2001, date needed to be rescheduled (ROR pp. A9-A10, B-Ex. 51). Opposing counsel's office faxed respondent a letter on September 28, 2001, advising him that the mediator's office would be closed on November 12, 2001, for the holiday (B-Ex. 51). Respondent also told Ms. Iren that the mediator was being uncooperative in scheduling another date for the mediation. In fact, it was respondent, not the mediator, who was being uncooperative in scheduling the mediation (ROR p. A9, B-Ex. 51, B-Ex. 75, B-Ex. 76). Respondent admitted this deception only after intense questioning at the final hearing (ROR p. A10, T Vol. III p. 548). At that time, respondent could not offer an explanation for his misrepresentation to Ms. Iren about the reason and timing of the mediation cancellation (ROR p. A10, T Vol. III pp. 547-549).

Respondent also made misrepresentations to Ms. Willacy, concerning his scheduling a hearing on her motion to substitute the estate for her deceased husband in the dissolution of marriage case (ROR p. A59, T Willacy Vol. I pp. 54-56, 119, 125, B-Ex. Willacy 5). He told Ms. Willacy that he had set the motion for hearing on October 29, 2002, but had cancelled it and rescheduled it for December, 2002 (ROR p. A59, T Willacy Vol. I pp. 54-55, 87-88, 119-120, 122-125, B-Ex. Willacy 5). In fact, the clerk's office had no record of respondent setting the motion for hearing (ROR p. A59, T Willacy Vol. I pp. 55-56, 119, B-Ex. Willacy 5).

Making misrepresentations to the client or to the court is a serious ethical

breach. This court has stated that it finds it "troubling when a member of the Bar is guilty of misrepresentation or dishonesty, both of which are synonymous for lying. Honesty and candor in dealing with others is part of the foundation upon which respect for the profession is based. The theme of honest dealing and truthfulness runs throughout the Rules Regulating The Florida Bar and The Florida Bar=s Ideals and Goals of Professionalism." The Florida Bar v. Poplack, 599 So. 2d 116, 118 (Fla. 1992).

In The Florida Bar v. Springer, 873 So. 2d 317 (Fla. 2004), an attorney was disbarred for engaging in multiple acts of neglect, incompetent representation, and misrepresentation to his client. Mr. Springer lied to his client to conceal his neglect and then lied to cover his deceit. The referee found that Mr. Springer evinced an absence of honesty, integrity and ethical judgment and that he did not meet the bar's standards of professional and ethical responsibility and thus was not qualified to practice law. Likewise, respondent neglected six clients and made misrepresentations to his clients and to the court to conceal his ongoing neglect.

In The Florida Bar v. Hmielewski, 702 So. 2d 218 (Fla. 1997), an attorney was suspended for three years for making misrepresentations to the court. Mr. Hmielewski's client, the plaintiff, told him that he had stolen certain medical records from the defendant medical clinic. Despite knowing this, Mr. Hmielewski sought production of these records through discovery and misrepresented to the court that

one of the material fact issues in the case was why the medical clinic failed to maintain these critical patient records. The attorney also submitted an expert witness' report based on the expert's erroneous belief that the medical clinic had failed to maintain these records. The referee found that Mr. Hmielewski allowed his perceived duty to his client to overshadow his duty to the judicial system. Likewise, respondent made misrepresentations to the court. However, his motive for doing so was not to further his client's cause but rather to conceal his neglect in providing the discovery responses in Ms. Iren's case. Thus, unlike Mr. Hmielewski, respondent's motive was strictly selfish.

A two year suspension is appropriate in light of this court's ruling in The Florida Bar v. Boland, 702 So. 2d 229 (Fla. 1997), where an attorney incompetently represented a client who was seeking to challenge an out-of-state child custody order, counseled a client to engage in fraudulent conduct, and converted funds. He had a prior disciplinary history, evinced a selfish or dishonest motive, was indifferent to making restitution, refused to obtain treatment for his admitted alcoholism, and the client was particularly vulnerable. Had it not been for the attorney's mitigation of alcoholism, this court noted it would have imposed a harsher sanction. Likewise, respondent failed to provide competent representation to his clients. The referee found he failed to take such basic measures as explaining the status of Ms. Iren's case to her in writing (ROR p. A11, T Vol. III pp. 510-511, 516, 520, T Vol. IV p. 633, T

Vol. V pp. 720, 723-724, 732-734, 736, B-Ex. 86, B-Ex. 91, R-Ex. 33, R-Ex. 37), despite being aware Ms. Iren was confused and dissatisfied with his handling of the case (ROR p. A10, T Vol. V pp. 723-724). The referee could not determine from the record whether respondent provided her with any worthwhile services (ROR p. A11) and found that his failure to diligently and competently represent her imposed an undue burden on the court, opposing counsel, and the opposing party (ROR p. A11). Respondent failed to conduct any meaningful discovery or take reasonable steps to obtain Mr. Iren's benefits records despite knowing these funds were the primary marital asset (ROR p. A3, T Vol. II p. 378, T Vol. IV p. 622, T Vol. V p. 716).

In Ms. Clark's case, respondent brought the action against a company not registered to do business in Florida resulting in Ms. Clark obtaining a final judgment that was not worth the paper it was written on because it was unenforceable (ROR pp. A26, A28, T Vol. I pp. 52, 62-63, 88-89, 97-98, 100-101). Respondent's lack of competence is also shown by his handling of Mr. Shaffer's case. Respondent failed to conduct any discovery, failed to move for default, and failed to compel the opposing party's answers to discovery (ROR p. A30, T Vol. I pp. 130, 133, 139). In Ms. Willacy's case, respondent attempted to have an estate substituted for a party in a dissolution of marriage case and then failed to set his motion for hearing (ROR p. A59, T Willacy Vol. I pp. 55-56, 119, T Willacy Vol. II p. 180, B-Ex. Willacy 4, B-Ex. Willacy 5).

In The Florida Bar v. Elster, 770 So. 2d 1184 (Fla. 2000), an attorney was suspended for three years for failing to accomplish any meaningful work on behalf of clients, for making misrepresentations to clients, and for issuing a misleading business card. The attorney=s misconduct occurred in four separate cases and the clients, who were foreign nationals, were particularly vulnerable. The attorney effectively abandoned his clients without advising them that he did not intend to continue representing them. Respondent treated his six clients in a similar matter, failing to advise them that due to his health problems he might be unable to complete their cases. This court cited Mr. Elster's multiple acts of similar misconduct involving several clients as the reason for imposing a longer term of suspension than might otherwise have been warranted. "Confidence in, and proper utilization of, the legal system is adversely affected when a lawyer fails to diligently pursue a legal matter entrusted to that lawyer's care. A failure to do so is a direct violation of the oath a lawyer takes upon his admission to the bar." Elster, 770 So. 2d at 1188. Respondent's ongoing neglect of his clients' cases violated the confidence reposed in him as an officer of the court.

This court ordered a three year suspension in The Florida Bar v. Knowles, 534 So. 2d 1157 (Fla. 1988), where an attorney misappropriated client funds by giving a client a check that was dishonored due to insufficient funds, neglected his work and was unavailable to his clients. This court found that the cumulative nature of the

attorney=s neglectful conduct and refusal to communicate with his clients warranted the imposition of a severe penalty. "The misuse or misappropriation of client funds is one of the most serious offenses a lawyer can commit." Knowles, 534 So. 2d at 1158. Likewise, in Mr. Hall's case, respondent took at least three gold coins as collateral for his fee and refused to return any of them to Mr. Hall, claiming they had been earned in full as payment for his fee, despite Mr. Hall's contention that respondent had not performed services warranting the payment of such funds. In fact, respondent has exhibited a pattern of taking client money for fees, performing services that were not commensurate with the fee paid, refusing to provide the clients with an accounting of their funds, and refusing to refund any of the unearned fees to them.

An attorney received a three year suspension in The Florida Bar v. Peterman, 306 So. 2d 484 (Fla. 1975), for withdrawing from employment without promptly refunding the unearned portion of his fee as ordered by a court, for refusing to keep clients informed as to the progress of their cases, for refusing to answer clients= telephone calls, and for misleading clients. This court found Mr. Peterman, like respondent, failed to carry out contracts for employment, refused to maintain communication with his clients, misled his clients, refused to refund the unearned portion of his fees, and showed a lack of interest in the bar's disciplinary proceedings and in his professional obligations as an attorney. Unlike respondent, Mr. Peterman

did not offer an explanation for his misconduct.

Failing to respond to the bar's investigative inquiries has resulted in a short term suspension even where other misconduct was not present. In The Florida Bar v. Grosso, 647 So. 2d 840 (Fla. 1994), an attorney was suspended for ten days, with reinstatement conditioned on his production of a certification from a psychiatrist that he was fit to resume the practice of law because he failed to respond to the bar's investigative inquiry concerning a grievance. Mr. Grosso had no prior disciplinary history.

The Florida Standards for Imposing Lawyer Sanctions also support a suspension in this case. Standard 4.12 calls for a suspension when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client (ROR pp. A14, A37, A49, A63). Respondent accepted an undetermined number of gold coins from Mr. Hall as collateral for his legal fee (ROR p. A43, T Vol. I pp. 19, 176-177, 181-182, 189, 192, 223-224, T Vol. IV pp. 581, 584, T Vol. V pp. 803-804). Respondent failed to provide Mr. Hall with a receipt (ROR p. A43, T Vol. I p. 183, T Vol. IV p. 627) and failed to account for the collateral (ROR p. A44, T Vol. IV p. 582, T Vol. V p. 810). Respondent resorted to self-help fee collection after a dispute arose with Mr. Hall concerning the fee. He sold the coins instead of treating them as trust funds to be held until the dispute was resolved (ROR pp. A44-A45, T Vol. V p. 814).

Standard 4.42(a) calls for a suspension when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client and Standard 4.42(b) calls for a suspension when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. Respondent undertook the representation of these six clients and failed to complete even one of the cases. The referee found that respondent's illness did not prevent him from informing his clients that he was unable to continue representing them and found that respondent failed to advise his clients that he could not complete their cases (ROR pp. A11-A12, A24, A28, A45-A46, A60).

Standard 4.52 calls for a suspension when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client. Although respondent has practiced family law for some thirty-two years (ROR A p. 33, T Vol. V p. 662, T Willacy Vol. II pp. 167-168), he failed to provide his clients with competent representation. In Ms. Iren's case, he failed to conduct independent discovery of the primary marital asset (ROR pp. A2-A3, T Vol. IV p. 622, T Vol. V p. 713). He placed the opposing counsel's discovery requests in Ms. Iren's client file without sending her copies (ROR p. A7, T Vol. V pp. 701-702). He filed a notice that the case was ready for trial despite being aware discovery had not been completed (ROR p. A7, T Vol. V p. 704, B-Ex. 67). He also never sought an extension of time to comply with opposing counsel's discovery

requests (ROR p. A8, T Vol. III pp. 435-44, 447-452, T Vol. IV pp. 620-622, T Vol. IV pp. 621-622, 708-709). In Ms. Burgess' case, he failed to pursue obtaining temporary support and rehabilitative alimony for her despite requesting same in his counterpetition for dissolution of marriage and being aware that Ms. Burgess was in need of financial support during the time period her former husband was maintaining he was the biological father of Ms. Burgess' child (ROR p. A20, T Vol. V p. 761, B-Ex. 33, B-Ex. 34, R-Ex. 51). In Ms. Clark's case, he filed suit against a business entity not registered to do business in Florida resulting in Ms. Clark obtaining a worthless judgment (ROR pp. A26, A28, T Vol. I pp. 52, 62-63, 88-89, 97-98, 100-101). In Mr. Shaffer's case, respondent's counterpetition for dissolution of marriage failed to comply with the rules of procedure governing family law cases (ROR p. A30, T Vol. I pp. 137-138). Furthermore, he never moved to compel an answer to the counterpetition and never sought a default (ROR p. A30). He conducted no discovery and never sought to compel discovery despite the fact opposing counsel did not file the mandatory disclosure of discovery within the time frame provided by the rules of family procedure (ROR p. A30, T Vol. pp. 130, 133, 139). In Ms. Willacy's case, he failed to seek discovery of Mr. Willacy's assets (ROR p. A56, T Willacy Vol. I pp. 22, T Willacy Vol. II pp. 183-184, B-Ex. Willacy 8) and failed to seek any temporary support for Ms. Willacy (ROR p. A57, T Willacy Vol. I pp. 111-112). After Mr. Willacy's death, respondent then attempted to have Mr. Willacy's estate substituted as

a party in the dissolution of marriage case (ROR p. A59, T Willacy Vol. II p. 180, B-Ex. Willacy 4) but failed to set the motion for hearing (ROR p. A30, T Willacy Vol. I pp. 55-56, 119, B-Ex. Willacy 5).

Standard 7.2 notes a suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. Respondent effectively abandoned his six clients after he began experiencing health problems. He could have arranged for alternate counsel to represent them or he could have advised them to seek new counsel. He did neither. Instead, he chose to do nothing.

In aggravation, the referee found that respondent had a prior disciplinary history [Standard 9.22(a)], engaged in a pattern of misconduct [Standard 9.22(c)] as clearly shown by the fact that these six clients had similar problems with respondent's handling of their cases, engaged in multiple offenses [Standard 9.22(d)], engaged in a bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules or orders of the disciplinary agency [Standard 9.22(e)] as shown by his ongoing failure to respond to the bar's investigative inquiries, and had substantial experience in the practice of law [Standard 9.22(i)] as shown by respondent's testimony that he has practiced law since 1972 (ROR p. A33, T Vol. V p. 662, T Willacy Vol. II p. 167) (ROR pp. A15, A38, A51, A64).

The referee found no mitigation because respondent failed to list any, including

his various illnesses, in his answer to the bar's Interrogatory concerning mitigation and provided no mitigation until after the final hearings were concluded (ROR pp. A15, A38, A51, A64). The referee did permit respondent to submit his argument as to mitigation (Letter of August 24, 2004, pp. A68-A69). Respondent=s ongoing health problems and his apparent state of denial concerning the serious adverse impact his health had, and may have in the future, on his ability to practice law are of particular concern (T Vol. V pp. 820-821). Respondent testified that he had not followed up with medical treatment for his heart attack due to his general dislike of going to a doctor, his stubbornness, and his lack of medical insurance (T Vol. V p. 820). This attitude mirrored the attitude he displayed toward his law practice. He did not follow through for his clients and expected them to wait for him to get to their cases despite their own personal needs, concerns and objectives. "The practitioner is expected to see to his clients' affairs even when disruptive external forces interfere." The Florida Bar v. Leggett, 414 So. 2d 192, 193 (Fla. 1982).

Furthermore, respondent has an extensive prior disciplinary history of engaging in similar misconduct. In The Florida Bar v. Feige, 596 So. 2d 433 (Fla. 1992), respondent was suspended from the practice of law for two years for assisting a client to engage in fraudulent conduct, failing to reveal the fraud to the affected person, accepting employment where his professional judgment was affected by his own personal interests, and accepting employment when he was a witness in pending

litigation. Specifically, respondent's client's alimony payments were made to her through respondent who held them in trust for her. The terms of the final judgment of dissolution of marriage provided that the client would continue receiving alimony until her death or remarriage. The client eventually remarried. This fact was known to respondent because he performed the ceremony. Unaware of his former wife's remarriage, the former husband continued sending the alimony payments to respondent. Respondent kept the money, pursuant to an agreement with his client, as payment for the legal fees she still owed to him. In effect, respondent resorted to self-help fee collection as he did in Mr. Hall's case. Respondent then represented his client in the resulting civil suit filed by her former husband after he learned of her remarriage.

Respondent received a public reprimand in The Florida Bar v. Feige, No. 74,742 (Fla. Nov. 15, 1990), for neglecting a legal matter resulting in dismissal and for failing to inform his client of the dismissal or its ramifications. Although respondent has insisted that this court's order was rescinded at some point in time (ROR p. A70) and the order does not appear in the Southern Reporter, a review of the bar's disciplinary file in this case does not reflect that this order was rescinded or modified. Rather, the file shows that the public reprimand was administered and that respondent paid the disciplinary costs. As evidence of his position, respondent produced a letter from the bar counsel who prosecuted the matter (ROR p. A70). Bar counsel advised

in the letter that he had no independent recollection as to the final disposition of the case. The referee therein found respondent guilty of neglecting a client's breach of contract case resulting in the matter being dismissed for lack of prosecution. Respondent failed to advise the client of the dismissal or that he could take action to refile the case. The client was prejudiced because the statute of limitations ran on the claim. Likewise, respondent here has neglected six different client matters and failed to maintain adequate communication with the clients.

In The Florida Bar v. Feige, TFB Case Nos. 1988-70,195(11I) and 1988-71,410(17B) (July 20, 1989), respondent was privately reprimanded for charging a clearly excessive fee and neglecting a client=s legal matters. Although respondent assured the grievance committee that he would submit the fee dispute to mediation, he failed to follow through after the committee dismissed the grievance conditioned on reopening the matter if the mediation did not occur.

In determining the appropriate level of discipline, this court considers both an attorney's prior disciplinary history and cumulative misconduct as relevant factors and deals more severely with cumulative misconduct than with isolated misconduct. The Florida Bar v. Forrester, 818 So. 2d 477, 484 (Fla. 2002). Respondent engaged in multiple acts of similar misconduct and has a prior disciplinary history of engaging in misconduct similar to that charged here. Therefore, the bar submits a two year suspension would be more appropriate than the referee's recommendation of a one

year suspension. Although the effective difference may seem minor, given the fact that respondent must apply for reinstatement and prove rehabilitation regardless of whether he is suspended for one year or two, public perception does differentiate between the two. Given the fact that attorneys have been suspended for more than one year for engaging in similar misconduct, the public could perceive a one year suspension as being a less harsh sanction. The bar submits that from a more practical stand point, the additional year would afford respondent more time to fully recover from his serious health problems.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's recommendation of a one year suspension, to run concurrent in each case, and instead impose a two year suspension, to run concurrent in each case, and a two year period of probation as recommended by the referee with reinstatement to be had only upon proof of rehabilitation and upon meeting the conditions recommended by the referee and payments of costs.

Respectfully submitted,

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
651 East Jefferson Street,
Tallahassee, Florida 32399-2300
(850) 561-5600
ATTORNEY NO. 123390

JOHN ANTHONY BOGGS
Staff Counsel
The Florida Bar
651 East Jefferson Street,
Tallahassee, Florida 32399-2300
(850) 561-5600
ATTORNEY NO. 253847

AND

FRANCES R. BROWN-LEWIS
Bar Counsel
The Florida Bar
1200 Edgewater Drive
Orlando, Florida, 32804-6314

(407) 425-5424
ATTORNEY NO. 503452

By:

____
Frances R. Brown-Lewis
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar=s Brief and Appendix have been sent by regular U.S. Mail to the Clerk of the Court, The Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by electronic filing to the Clerk of the Court; a copy of the foregoing has been furnished by regular U.S. Mail to the respondent, Hans Charles Feige, 2 Office Park Dr Ste D, Palm Coast, FL 32137-3850; and a copy of the foregoing has been furnished by regular U.S. Mail to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, this 29th day of November, 2004.

Respectfully submitted,

____
FRANCES R. BROWN-LEWIS
Bar Counsel

CERTIFICATE OF TYPE, SIZE AND STYLE

Undersigned counsel does hereby certify that the Brief of The Florida Bar is submitted in 14 point proportionately spaced Times New Roman font.

____

FRANCES R. BROWN-LEWIS
Bar Counsel
ATTORNEY NO. 503452

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,	Case No. SC03-151
	[TFB Case No. 2002-30,906(07B)]
Complainant,	Case No. SC03-1006
	[TFB Case Nos. 2002-31,564(07B);
v.	2002-31-944(07B);
	2003-30,244(07B)]
HANS CHARLES FEIGE,	Case No. SC031558
	[TFB Case No. 2003-30,541(07B)]
Respondent.	Case No. SC04-449
_______________________________/	[TFB Case No. 2003-30,886(07B)]

APPENDIX TO COMPLAINANT'S INITIAL BRIEF

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
651 East Jefferson Street,
Tallahassee, Florida 32399-2300
(850)561-5600
ATTORNEY NO. 123390

JOHN ANTHONY BOGGS
Staff Counsel
The Florida Bar
651 East Jefferson Street,
Tallahassee, Florida 32399-2300
(850)561-5600
ATTORNEY NO. 253847

AND

FRANCES R. BROWN-LEWIS
Bar Counsel
The Florida Bar
1200 Edgewater Drive
Orlando, Florida, 32804-6314
(407)425-5424
ATTORNEY NO. 503452

INDEX

PAGE

Report of Referee in SC03-151 ....A1

Report of Referee in SC03-1006 ....A19

Report of Referee in SC03-1558 ....A42

Report of Referee in SC04-449 ....A55

Letter dated August 24, 2004 ....
A68