IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. SC05-205
[TFB Case No. 2004-31,666(05A)]

v.

HANS CHARLES FEIGE,

Respondent.
_____/

THE FLORIDA BAR'S ANSWER BRIEF

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SYMBOLS AND REFERENCES

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

Because the bar did not petition for review in this case, the transcript of the sanction hearing held on April 28, 2005, was not ordered by the bar and respondent has not provided a copy of the transcript to the bar. Therefore, no citations to the transcript will be made.

The Report of Referee dated July 13, 2005, will be referred to as "ROR" followed by the referenced page number(s) of the Appendix, attached. (ROR A____). All other documents contained in the Appendix will be referred to by the name of the document and the referenced pate number(s) of the Appendix. (_____ A___).

The bar's exhibits will be referred to as B-Ex.___, followed by the exhibit number. Respondent's exhibits will be referred to as R-Ex. _____, followed by the exhibit number.

STATEMENT OF THE CASE

The Fifth Judicial Circuit Grievance Committee "A" voted to find probable cause in this matter on November 19, 2004. The bar served its Complaint on February 2, 2005, by certified mail, return receipt requested, at respondent's record bar address. After three delivery attempts, the United States Postal Service returned the Complaint as being unclaimed. The referee was appointed on February 15, 2005. Because respondent failed to serve an answer to the Complaint, the bar served respondent at his record bar address with a motion for default on March 2, 2005. Respondent did not file an objection or otherwise respond to the bar's motion. The referee granted the bar's motion for default on March 7, 2005, and served respondent with said order at his record bar address. By virtue of the default, respondent was found guilty of violating the Rules Regulating The Florida Bar as alleged in the bar's Complaint and a hearing only as to sanctions was scheduled for April 20, 2005. The bar served the notice of the sanction hearing on respondent on April 13, 2005. On April 19, 2005, respondent served a Notice of Special Appearance; Objection to Hearing which included language to set aside the order of default. The sanction hearing was rescheduled for April 28, 2005, and at that same time, the referee heard respondent's motion to vacate the default. On July 13, 2005, the referee entered his order on respondent's Notice of Special Appearance; Objection to Hearing and therein denied respondent's motion to vacate the default. The referee served his Report of

Referee on July 13, 2005, finding respondent guilty of violating rules 4-1.3 for failing to act with reasonable diligence and promptness in representing a client; 4-1.4 for failing to keep a client reasonably informed about the status of a matter, for failing to comply with reasonable requests for information, and 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(a) for entering into an agreement for, charging, or collecting a clearly excessive fee; and 4-8.4(g) for failing to respond, in writing, to an official inquiry by Bar counsel or a disciplinary agency when Bar counsel or the agency is conducting an investigation into the lawyer's conduct. The referee recommended respondent be suspended from the practice of law for a period of 1 year to run concurrent with any term of suspension ordered in The Florida Bar v. Feige, Case Nos. SC03-151; SC03-1006; SC03-1558; and SC04-449 [The Florida Bar File Nos. 2002-30,906(07B); 2002-31,564(07B), 2002-31,944(07B), and 2003-30,244(07B); 2003-30,541(07B); and 2003-30,886(07B)] currently pending before this Court and to make restitution in the amount of $1,000.00 to Kevin Kirkland with respondent's reinstatement being conditioned on his making this restitution. The Board of Governors of The Florida Bar voted at its August 2005 meeting not to seek an appeal. On September 9, 2005, respondent served his petition for review and request for oral argument. On October 6, 2005, respondent requested an extension of time until December 15, 2005, to file his initial brief, which this Court granted on

October 14, 2005. Respondent served his initial brief on December 14, 2005.

STATEMENT OF THE FACTS

Because a default was entered in this matter, the allegations in the bar's Complaint were deemed admitted. Although a court reporter attended the sanction hearing, the bar did not order a transcript because the bar did not seek an appeal in this matter. The bar has not received a transcript from respondent. Therefore, all citations are to the Report of Referee.

Kevin Kirkland hired respondent in or around November 2002 to represent him in a child custody matter and paid respondent a fee of $1,000.00. (ROR A3). Respondent advised Mr. Kirkland that initially he would attempt to resolve the dispute with Karen Ellis, the mother of Mr. Kirkland's minor child, without filing a legal action. (ROR A3). Respondent wrote Ms. Ellis but thereafter failed to take any further action in the matter. (ROR A3). Respondent failed to provide Mr. Kirkland with a copy of the letter he wrote to Ms. Ellis. He also did not maintain adequate communication with Mr. Kirkland and did not respond to Mr. Kirkland's repeated telephone calls and letters. (ROR A3). Mr. Kirkland wrote respondent on September 3, 2003, by certified mail, return receipt requested, and advised respondent that he was dissatisfied with respondent's lack of communication and lack of action in the case. Mr. Kirkland requested return of his original documents, a refund of the unearned portion of the fee, and a detailed billing statement of the services provided. (ROR A3). Although respondent signed the return receipt card for Mr. Kirkland's

September 3, 2003, letter on October 2, 2003, he did not respond, nor did he return Mr. Kirkland's original documents, refund any of the unearned fee, or provide an itemized billing statement. (ROR A3).

The Florida Bar served respondent at his record bar address on April 22, 2004, with notice of Mr. Kirkland's grievance and advised him of the requirement that he respond in writing within fifteen days. (ROR A4). Respondent failed to make a written response. (ROR A4). The Florida Bar again served respondent at his record bar address by certified mail, return receipt requested on June 8, 2004, and advised him of the requirement that he make a written response within ten days. (ROR A4). Respondent signed the return receipt card on June 10, 2004. (ROR A4). Respondent's only written response was on June 17, 2004, when he stated that the bar had failed to include a copy of Mr. Kirkland's grievance. (ROR A4). The Florida Bar served respondent at his record bar address on June 22, 2004, again enclosing the bar's letter of April 22, 2004, and requesting that if he still needed a copy of Mr. Kirkland's grievance that had been included with the April 22, 2004, letter, to so advise. (ROR A4). The Florida Bar served respondent at his record bar address on August 4, 2004, by certified mail, return receipt requested, and advised him of the requirement that he respond in writing within ten days. (ROR A4). The United States Postal Service returned the bar's August 4, 2004, letter marked as being unclaimed by respondent. (ROR A4).

SUMMARY OF THE ARGUMENT

At the outset, the bar would note that respondent's statement in his Initial Brief that he requested a copy of the transcript of the sanction hearing from the bar is incorrect. Respondent made no requests for transcripts in this particular case. Even if he had, he would have been advised the bar did not order a copy of the transcript because it was not intending to seek review in this matter. Pursuant to R. Regulating Fla. Bar 3-7.7(c)(2), it is the party seeking review who "shall be responsible for, and pay directly to the court reporter, the cost of preparation of transcripts." Because respondent sought the review in this matter, it was his responsibility to obtain the transcript and to provide a copy to the bar. He did not do so.

Respondent refused to participate in these proceedings until the eleventh hour and then, only to file an objection to the referee's entry of a default against him rather than filing an Answer to the bar's Complaint. Respondent's lack of responsiveness in both this disciplinary proceeding and in his representation of his client, Kevin Kirkland, is a pattern of long standing. Respondent did not respond to his client, thus giving rise to the grievance. Respondent did not respond to the bar's investigative inquires at the grievance committee level. Respondent did not file an Answer to the bar's Complaint. Respondent did not file a response to the bar's Motion for Default. Respondent did not respond to the Order of Default. Respondent did not participate in any form until he received notice of the sanction hearing. The bar cannot force respondent to claim his mail. Because the bar

fully complied with the service requirements of R. Regulating Fla. Bar 3-7.11(b), respondent's arguments that he was denied due process are without merit. Respondent knew a complaint had been filed against him by virtue of the motion for default and order. The referee did not abuse his discretion in denying respondent's motion to set aside the default in this matter. Respondent was afforded a reasonable opportunity to argue his motion to set aside the order of default.

Respondent's argument that venue for this hearing should have been Flagler County rather than Duval County is also without merit. Rule 3-7.6(d) of the Rules Regulating The Florida Bar pertains to venue for a final evidentiary hearing and no such hearing was held in this case as a result of the default.

The referee's consideration of respondent's prior public reprimand entered in The Florida Bar v. Feige, No. 74,742 (Fla. Nov. 15, 1990), was also correct. The bar's official records reflect a public reprimand (Affidavit of Mary A. Stevens A13) and respondent presented no objective, substantiated evidence to show that an order had been entered rescinding the reprimand or finding respondent not guilty. Based upon the case law, Florida Standards for Imposing Lawyer Sanctions, and the aggravating factors present in this case, the referee's recommendation of a 1 year suspension and restitution to the client is appropriate.

ARGUMENT
POINT I
THE REFEREE'S RULING ON THE BAR'S MOTION FOR DEFAULT WAS CORRECT

In bar disciplinary proceedings, a referee has the discretion to decide whether to grant or deny motions. The Florida Bar v. Roth, 693 So. 2d 969, 972 (Fla. 1997). Absent a clear showing of an abuse of that discretion, the referee's ruling will not be disturbed by this Court. The Florida Bar v. Kandekore, 766 So. 2d 1004, 1006 (Fla. 2000).

The bar's Complaint was served on respondent by certified mail, return receipt requested, at his record bar address. Rule 3-7.11(b) provides that service in a bar disciplinary proceeding may be effected by registered or certified mail to the accused attorney's record bar address. The rule further requires every member of The Florida Bar to notify the bar of a change in the member's record bar address. According to the bar's records, respondent's address at the time the bar served its Complaint was 2 Office Park Drive, Suite D, Palm Coast, Florida 32137-3850, which is the same address the bar used to serve its Complaint. (ROR A1-A2). After three unsuccessful delivery attempts, the United Postal Service returned the Complaint to The Florida Bar as unclaimed. (ROR A2).

After respondent failed to file his answer, the bar moved for default. Defaults are appropriate in a bar disciplinary proceeding where an accused attorney fails to file an answer to the bar's complaint. The Florida Bar v. Shoureas, 892 So. 2d 1002,

1005 (Fla. 2004). A copy of the Motion for Default was served on respondent at his record bar address by regular First Class Mail. (ROR A2). Pursuant to Fla. R. Civ. P. 1.080(b), service by mail shall be complete upon mailing. In a disciplinary proceeding, the Florida Rules of Civil Procedure apply except as otherwise provided in the Rules Regulating The Florida Bar. The Florida Bar v. Nunes, 734 So. 2d. 393, 397 (Fla. 1999); R. Regulating Fla. Bar 3-7.6 (f)(1). Respondent filed no pleading in response to the Motion for Default. (ROR A2). As a result, on March 7, 2005, the referee entered an order of default finding respondent guilty of violating the Rules Regulating The Florida Bar alleged in the bar's Complaint. (ROR A2). A copy of the order of default was served on respondent at his record bar address by regular U. S. mail. Respondent failed to participate in these proceedings until April 19, 2005, when he served a notice of special appearance objecting to the date of the sanction hearing and arguing that because he had not received the Complaint, the default should not have been entered. (ROR A2). He also argued that he had received insufficient notice of the sanction hearing set for April 20, 2005, and that because he was suffering from an attack of gout, it was impossible for him to appear. (ROR A2). The hearing on respondent's motion was set for April 28, 2005, and the sanction hearing was reset for that same day. (ROR A2).

The referee denied respondent's motion to vacate the default in accordance with The Florida Bar v. Porter, 684 So. 2d 810 (Fla. 1996), where this Court stated

that it would not endorse Mr. Porter's knowing decision to ignore his mail in an attempt to thwart service. (ROR A2). Notice of the proceedings, the bar's motion for default, and the order of default were served on Mr. Porter in accordance with the Rules Regulating The Florida Bar but Mr. Porter failed to claim them. This Court found that service was valid despite the fact the mail went unclaimed. Thus, the entry of the default against Mr. Porter was deemed to be appropriate. The referee found respondent also showed the same lack of concern as Mr. Porter showed in his case. (ROR A2). Further, the referee found that respondent's explanation for not participating in these proceedings prior to the sanction hearing was not credible. (ROR A2; Order on Respondent's Notice of Special Appearance; Objection to Hearing A11).

Rule 3-7.11(b) of the Rules Regulating The Florida Bar does not require the bar to use any additional methods to effect service on an accused attorney. The bar was not required to call respondent. The bar submits respondent's argument that this Court found service was effected only after the bar also notified Mr. Porter of the existence of the complaint by telephone is mistaken. The court found that the bar had properly served Mr. Porter by serving the complaint by certified mail to his last registered bar address. Florida Bar v. Porter, 684 So. 2d at 813. This same situation was presented in The Florida Bar v. Daniel, 626 So. 2d 178 (Fla. 1993). This Court rejected an attorney's claim that the referee's summary judgment against him should be set aside because the bar had not effected proper service of its complaint, requests

for admission, motion to deem the requests for admission to be admitted and motion for summary judgment. All had been served on the attorney by certified mail, return receipt requested, at his record bar address. The bar's motions were returned as being unclaimed. This Court found the only requirement to effect proper service under the Rules Regulating The Florida Bar was for the bar to serve Mr. Daniel by certified mail at his record bar address. As the referee found in The Florida Bar v. Bergman, 517 So. 2d 11, 13 (Fla. 1987), "it would be unduly burdensome to expect The Florida Bar to find every respondent who chooses to move and not notify The Florida Bar of his whereabouts. Further, if actual notice was made mandatory, a respondent could avoid prosecution simply by making himself unavailable to The Florida Bar service, presenting an obvious threat to the protection of the public."

Respondent had reasonable notice of these proceedings but chose not to pick up his certified mail or respond to documents sent by regular U. S. mail. The bar cannot force an attorney to participate in disciplinary proceedings. What is most disturbing is respondent's pattern of not communicating with either his client or the bar and neglecting not only his client's legal matter but his own disciplinary proceedings as well. Mr. Kirkland deserved competent and diligent representation, not excuses. If respondent could not represent him, he should have referred him to another attorney rather than ignoring Mr. Kirkland's efforts to communicate.

POINT II
VENUE WAS PROPER

Venue for a final evidentiary hearing, had one been held, would have been Flagler County, Florida, where respondent practices law. Because respondent did not file an answer or any pleading, however, a default was entered against him and a hearing only as to disciplinary recommendations was held. Rule 3-7.6(d) of the Rules Regulating The Florida Bar provides that the "*trial* shall be held in the county in which an alleged offense occurred or in the county where the respondent resides or practices law or last practiced law in Florida, whichever shall be designated by the Supreme Court of Florida . . . ." Emphasis added. The bar submits that rule 3-7.6(d) does not apply here because no trial was held by virtue of the default.

POINT III
RESPONDENT WAS AFFORDED DUE PROCESS

In a disciplinary proceeding, the Florida Rules of Civil Procedure apply except as otherwise provided in the Rules Regulating The Florida Bar. The Florida Bar v. Nunes, 734 So. 2d. at 397; R. Regulating Fla. Bar 3-7.6 (f)(1). Defaults are appropriate in a bar disciplinary proceeding where an accused attorney fails to file an answer to the bar's complaint. The Florida Bar v. Shoureas, 892 So. 2d at 1005. An accused attorney cannot argue that a default should not be entered because he thwarted service by failing to retrieve his mail or by failing to advise the bar as to a change in his record bar address. The Florida Bar v. Porter, 684 So. 2d at 813.

Rule 3-7.11(b) of the Rules Regulating The Florida Bar provides that service in bar disciplinary proceedings may be effected by registered or certified mail to the attorney's record bar address. Pursuant to R. Regulating Fla. Bar 3-7.11(b), every member of The Florida Bar is charged with notifying the Bar of a change in the member's record bar address. The bar is required to serve an attorney at the address shown by the official records in the office of the executive director of The Florida Bar. R. Regulating Fla. Bar 3-7.11(b). According to those records, respondent's record bar address, at the time the Complaint was served on February 2, 2005, was 2 Office Park Drive, Suite D, Palm Coast, Florida, 32137-3850. (ROR A1-A2). Respondent did not inform the bar of any change in his address prior to service of the Complaint. The Complaint served on respondent at his record bar address was returned by the

United States Postal Service as unclaimed after three delivery attempts. (ROR A2). Respondent did not file an Answer to the Complaint (ROR A2) and, thereafter, the bar moved for a default in this matter on March 2, 2005. (ROR A2). A copy of the bar's Motion for Default was served on respondent at his record bar address by regular United States Mail on March 2, 2005. (ROR A2). Respondent failed to file an objection to the entry of default or otherwise respond to the bar's motion. (ROR A2). On March 7, 2005, the referee granted the bar's Motion for Default and copied respondent with said order at his record bar address. (ROR A2).

The bar is not required to take physical custody an accused attorney to ensure notification of disciplinary proceedings. The Florida Bar v. Santiago, 521 So. 2d. 1111, 1112 (Fla. 1988). Clearly respondent was given adequate notice of these proceedings and an opportunity to be heard. The bar cannot force respondent to pick up his mail from his post office box and read it. Respondent cannot intentionally thwart service attempts then accuse the bar of violating his due process rights.

Respondent's argument that the bar still must present a *prima facie* case is misdirected as the entry of a default in this matter resulted in the allegations contained in the bar's Complaint being deemed admitted. The Florida Bar v. Porter, 684 So. 2d at 813. Herein, the referee's findings are presumed correct unless lacking in evidentiary support. The Florida Bar v. Garland, 651 So. 2d 1182, 1184 (Fla. 1995). If the referee's findings are supported by competent, substantial evidence, then this

Court is precluded from reweighing the evidence and substituting its judgment for that of the referee. Florida Bar v. Charnock, 661 So. 2d 1207, 1209 (Fla. 1995). Thus the inquiry is whether the referee's findings are supported by competent, substantial evidence.

Herein, based on the pleadings and other documents filed in the case, the referee filed a report and recommended respondent be found guilty of violating the rules set forth in the bar's Complaint. Because respondent did not contest the factual allegations in the bar's Complaint, the referee entered a default against him and that default stands as a formal stipulation by respondent as to the correctness of the factual allegations contained in the Complaint. The bar submits that the referee's findings of fact and recommendation as to guilt are reasonably supported by the factual allegations in the Complaint and the default constitutes competent, substantial evidence supporting the referee's factual findings and recommendations as to guilt. The Florida Bar v. Shoureas, 892 So. 2d at 1005. Therefore, the bar submits it has met its burden.

POINT IV
THE REFEREE'S RECOMMENDATION AS TO DISCPLINE WAS CORRECT

Respondent argues that the bar improperly presented the referee with evidence that he 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 the client of the dismissal or of its ramifications. Although respondent has insisted that he was not disciplined in that matter, he failed to present any evidence to support his allegation. A review of the bar's disciplinary records by the records custodian in this case did not reflect that this order was rescinded or modified. (Affidavit of Mary A. Stevens A13). The bar submits, therefore, that the referee was correct in considering this as a part of respondent's prior disciplinary history.

In addition, the bar submits even not taking into account the discipline in The Florida Bar v. Feige, Case No. 74,742 (Fla. Nov. 15, 1990), the case law and the Florida Standards for Imposing Lawyer Sanctions support the referee's recommendation of a 1 year suspension.

In The Florida Bar v. Roberts, 770 So. 2d 1207 (Fla. 2000), an attorney was suspended for 91 days as a result of neglect. Mr. Roberts agreed to represent a client in a divorce but then referred her case to another attorney without the client's knowledge or permission. The client became dissatisfied with the other attorney's representation and complained to Mr. Roberts. Mr. Roberts advised the client that she

needed to hire new counsel and attempted to return the fee to her but she protested. She wanted Mr. Roberts to complete the case. Mr. Roberts agreed but thereafter neglected the case and failed to maintain communication with the client. In aggravation, Mr. Roberts had a prior disciplinary history and he was suffering from personal or emotional problems at the time that led him to decide to close his law practice.

In The Florida Bar v. Rolle, 661 So. 2d 296 (Fla. 1995), an attorney was suspended for 6 months, to run concurrent with a 91 day suspension already ordered, for neglect. Mr. Rolle undertook the representation of a client on criminal charges in federal court. Mr. Rolle's notice of appearance was returned by the clerk's office because he no longer was admitted to practice before the federal court in that district. He was instructed to file a petition to appear *pro hac vice*. He failed to do so prior to the trial date and failed to appear for the trial. As a result, the trial was continued at the request of the federal public defender until it could be determined if Mr. Rolle intended to continue representing the client. Mr. Rolle ultimately did file a petition for permission to appear *pro hac vice* and the court granted it. However, the night before the trial, he contacted the client and advised him that he would not be present at the trial the next day. The trial went forward as scheduled and the client was convicted. Mr. Rolle never sought permission of the court to withdraw. Additionally, he charged his client for the time he spent obtaining his *pro hac vice* admission from the court.

Mr. Rolle had a prior disciplinary history.

In The Florida Bar v. Bartlett, 509 So. 2d 287 (Fla. 1987), an attorney was disbarred for neglect and failure to participate in the bar's disciplinary proceedings. Mr. Bartlett was hired and paid a fee to address a property encroachment issue. Thereafter, he took no action on the matter and refused to refund the unearned fee. He refused to participate in the bar's disciplinary proceedings. Due to the cumulative nature of the misconduct, the harsher sanction was warranted. Additionally, this Court expressed concern about Mr. Bartlett's willful failure to participate in the disciplinary proceedings, finding that it "call[ed] into serious question the lawyer's fitness for the practice of law."

In The Florida Bar v. Netzer, 462 So. 2d 1103 (Fla. 1985), an attorney was suspended for 1 year for neglect. Mr. Netzer was hired to defend a client in a suit seeking damages based on a promissory note. Mr. Netzer neglected the case but led the client to believe it was progressing. Because he failed to file any responsive answer or defenses on the client's behalf, the court entered a default judgment against the client. Mr. Netzer failed to advise his client of the default. Mr. Netzer entered into a conditional guilty plea for consent judgment. In mitigation, he was undergoing dissolution of marriage at the time and did not believe he had agreed to represent the client in the civil suit. At the time of the disciplinary proceedings, Mr. Netzer was residing out of state and was not practicing law.

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. Here, respondent took a $1,000.00 fee from Mr. Kirkland, wrote one letter and did nothing further. (ROR A3). He would not respond to the client's letters or telephone calls. (ROR A3). Respondent effectively abandoned his client.

Standard 4.42(b) calls for a suspension with a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. Respondent has a prior disciplinary history of neglecting clients. In The Florida Bar v. Feige, TFB Case Nos. 1988-70,195(11I) and 1988-71,410(11I), respondent was privately reprimanded for neglecting a client's legal matters and for charging a clearly excessive fee.

Standard 7.2 calls for a suspension 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 ceased representing Mr. Kirkland without communicating this fact to him, without refunding any of the unearned portion of the fee, and without taking any steps to protect Mr. Kirkland's interests. Respondent merely ceased working on Mr. Kirkland's case and ceased communicating with him. Whatever the reason for not continuing to handle Mr. Kirkland's case, respondent could, and should, have referred Mr. Kirkland to another attorney.

In aggravation, the referee considered standard 9.22(a), prior disciplinary

offenses. (ROR A5). In The Florida Bar v. Feige, 596 So. 2d 433 (Fla. 1992), respondent was suspended from the practice of law for 2 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. In The Florida Bar v. Feige, TFB Case Nos. 1988-70,195(11I) and 1988-71,410(17B) (July 20, 1989), 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. Subsequently, respondent was privately reprimanded.

The referee considered Standard 9.22(e), bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, due to respondent's failure to participate in these proceedings in a meaningful way. (ROR A5-A6).

The referee also considered Standard 9.22(f), submission of false evidence, false statements, or other deceptive practices during the disciplinary process. Respondent asserted in his Notice of Special Appearance; Objection to Hearing dated April 19, 2005, that the Complaint was never delivered to him. Service could not be perfected due to respondent's refusal to retrieve his mail. Further, respondent argued there was no authority for entry of a default despite the fact that such case law does

exist which would have been discovered by him had he properly researched the issue. (ROR A6).

Under Standard 9.22(i), respondent has substantial experience in the practice of law, having practiced law in Florida since 1972. (ROR A6, A7).

Lastly, the referee found that under Standard 9.22(j), indifference to making restitution, respondent made no effort to refund any of the unearned fee to Mr. Kirkland or otherwise account for any alleged legal services rendered to Mr. Kirkland. (ROR A6).

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendation of a 1 year suspension to run concurrent with any term of suspension ordered in The Florida Bar v. Feige, Case Nos. SC03-151; SC03-1006; SC03-1558; and SC04-449 [The Florida Bar File Nos. 2002-30,906(07B); 2002-31,564(07B), 2002-31,944(07B), and 2003-30,244(07B); 2003-30,541(07B); and 2003-30,886(07B)] currently pending before this Court.

Respectfully submitted,

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By:

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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 South Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by regular U. S. Mail to the respondent, Hans Charles Feige, P ost Office Box 354701, Palm Coast, Florida 32135-4701; 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 _____ day of January, 2006.

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.

_____

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