IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,	**Supreme Court Case No. SC04-1433**
Complainant,	
v.	**The Florida Bar File No. 2002-51,779(15E)**
DANIEL EVERETT ABRAMS,	
Respondent.	

________________________________/

THE FLORIDA BAR'S ANSWER BRIEF

LILLIAN ARCHBOLD, #163996
Bar Counsel
The Florida Bar
5900 N. Andrews Avenue, Suite 900
Fort Lauderdale, FL 33309
(954) 772-2245

JOHN ANTHONY BOGGS, #253847
Staff Counsel
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5600

JOHN F. HARKNESS, JR., #123390
Executive Director
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5600

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

PRELIMINARY STATEMENT iv

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 8

ARGUMENT 10

I. THE REFEREE DID NOT ERR IN FINDING RESPONDENT GUILTY OF VIOLATING R. REGULATING FLA. BAR 4-8.4(C) AND R. REGULATING FLA. BAR 4-1.1 10

II. THE REFEREE DID NOT ERR IN IMPOSING A 1-YEAR SUSPENSION FOR RESPONDENT'S MISCONDUCT BECAUSE THE SANCTION IS SUPPORTED BY EXISTING CASE LAW AND THE FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS. 15

III. THE REFEREE DID NOT ERR IN THE COSTS HE ASSESSED AGAINST RESPONDENT OR IN ORDERING RESTITUTION. 21

CONCLUSION 23

CERTIFICATE OF SERVICE 24

CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN 24

TABLE OF AUTHORITIES

Cases

The Florida Bar v. Beach, 675 So.2d 106 (Fla. 1996) 13, 14, 15, 17, 18, 19, 20
The Florida Bar v. Carr, 574 So.2d 59 (Fla. 1990)..23
The Florida Bar v. de la Puente, 658 So.2d 65, 68 (Fla. 1995)..............................11
The Florida Bar v. Fredericks, 731 So.2d 1249, 1251 (Fla. 1999). 11
The Florida Bar v. Grief, 701 So.2d 555 (Fla. 1997)...17
The Florida Bar v. Lawless, 640 So.2d 1098 (Fla. 1994)...................... 17, 18, 19, 20
The Florida Bar v. Lecznar, 690 So.2d 1284 (Fla. 1997).......................................17
The Florida Bar v. Miele, 605 So.2d 866, 868 (Fla. 1992)....................................11
The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970)...17
The Florida Bar v. Schultz, 712 So.2d 386, 388 (Fla. 1998) 11
The Florida Bar v. Spann, 682 So.2d 1070, 1073 (Fla. 1996) 11
The Florida Bar v. Sweeney, 730 So.2d 1269 (Fla. 1998) 17
The Florida Bar v. Wilson, 643 So.2d 1063 (Fla. 1994) 17

Rules Regulating The Florida Bar

4-1.1...13, 15, 16
4-5.3(b) 5
4-8.4(c)..9, 12, 13, 15, 19, 21

Florida Standards For Imposing Lawyer Sanctions

Standard 4.5...22
Standard 4.52...22
Standard 4.6...22
Standard 4.62...23
Standard 7.0...21
Standard 7.2...21

PRELIMINARY STATEMENT

Throughout this Answer Brief , The Florida Bar will refer to specific parts of the record as follows: The Report of Referee will be designated as RR ____ (indicating the referenced page number). The transcript of the Final Hearing held on December 13, 2005, will be designated as TT ____, (indicating the referenced page number). The Florida Bar will be referred to as "The Bar." Daniel Everett Abrams will be referred to as "Respondent."

STATEMENT OF THE CASE AND FACTS

The Referee in this case heard testimony, reviewed case law, and considered the arguments of counsel (RR 2). The Florida Bar filed a 2 count complaint against Respondent (RR 2). Count I of the complaint involved the relationship between a nonlawyer, Suzanne Akbas, of U.S. Entry, Inc. ("U.S. Entry, Inc."), and Respondent (RR 2). Count II of the Bar's complaint involved Respondent's negligence and the injury caused by his negligence (RR 2).

The Referee found overwhelming and compelling evidence that Respondent, a member of The Florida Bar since 1997, albeit a member of the New Jersey Bar since 1988, practiced in Palm Beach County and formed an association with Ms. Akbas, a paralegal (RR 2). Ms. Akbas formed U.S. Entry, Inc., to provide legal services to people with immigration problems who wanted to enter the United States (RR 2). Respondent was the Managing Attorney of U.S. Entry, Inc. (RR 3), but he only visited the office once or twice a month (TT 90). The agreement between the parties was for piecemeal legal work (RR 3). Ms. Akbas filed numerous immigration documents using Respondent as counsel of record and she would pay him a fee of $100 (RR 3).

In the Spring of 2000, a husband and wife, Abdullah Ziya and Olga Ulershperger, sought Ms. Abkas' assistance in obtaining lawful status (RR 3). Mr. Ziya and Ms. Ulershperger entered the United States in November 1999 with tourist visas and both desired to remain in the United States (RR 3). Both Mr. Ziya and Ms. Ulershperger informed Ms. Akbas that Ms. Ulershperger was a gymnast, she worked for a gymnastics

studio, and that they were both educated (RR 3).

Mr. Ziya told Ms. Akbas that he was a Turkish Kurd who personally suffered substantial persecution (RR 3). When Mr. Ziya later petitioned and was granted asylum, he proved he was tortured, beaten, and suffered greatly at the hands of the Turkish authorities (RR 3). The Referee reviewed Mr. Ziya's asylum petition which states in part:

> "My family members and I were persecuted in Turkey because we are Kurdish. My family and I lived in Batman, Turkey. My father eventually moved to Istanbul to work in construction. It was the only way he could provide for us, his family. While my father was in Istanbul, Turkish policemen came into our house in Batman, Turkey. They searched our house without permission and arrested me and interrogated my mother. The Turkish police took me and my mother to jail. We spent one night in jail. I was interrogated by the Turkish police regarding my father and my uncles. Whenever I did not know the answer to one of their questions, the Turkish police beat me. While in jail, I learned that my father had been arrested in Istanbul. One week after this incident, my father returned to Batman. He had been beaten by the Turkish police so badly that we did not even recognize him. He was arrested for just being Kurdish. In March of 1988, over ten Turkish policemen raided our house in Batman. They searched our house, but did not find anything illegal in our house. The Turkish policemen arrested me and my father. The Turkish policemen blindfolded us and transported us somewhere where they kept us for days. When I arrived at this place, the Turkish police made me undress and I spent the night completely naked. The Turkish police tried to trick me into giving them the names of my father's closest friends. When I would not name my father's closest friends, they beat me. The Turkish police imprisoned and tortured me for six days. When the Turkish police were done with me, they blindfolded me and took me home. Later that same day, the Turkish police brought my father back home. He was also blindfolded for the trip home. Neither my father nor I could walk for weeks afterwards (RR 3-4).

Ms. Akbas became aware of some of this information (RR 4). In her opinion, a claim for asylum was not appropriate (RR 4). Instead, Mr. Ziya would obtain derivative

status through his wife's gymnastics skills (RR 4). Respondent signed a G-28 form representing Cindy Anderson, the owner of Dreamworks Gymnastics Studio (RR 4). Thereafter, the claim was rejected, according to the testimony of Mr. Ziya and Ms. Ulershperger (RR 4).

The Referee found that Mr. Ziya and Ms. Ulershperger were not notified of the status of their claim or the lapse of their lawful status (RR 4). As a result, Respondent's actions substantially injured and affected them (RR 4). There was no follow through by Respondent (RR 4). There were no telephone calls, no letters to INS, and no time records to support telephone calls made on behalf of his clients (RR 4). Mr. Ziya and Ms. Ulershperger were Respondent's clients and he was personally and professionally responsible for representing them (RR 4). The evidence demonstrated that while an extension of status was completed, nothing else was done resulting in the expiration of Mr. Ziya's and Ms. Ulershperger's lawful status in May of 2001 (RR 4). The Referee found that no letters were sent to Mr. Ziya and Ms. Ulershperger informing them of the status of their case (RR 5). They did not know of their unlawful status until March or April of 2002, when they obtained their file from Ms. Akbas (RR 5).

The Referee found that Respondent violated a number of disciplinary rules (RR 5). U.S. Entry, Inc. used checks to pay Respondent for his work (RR 5). Instead of Respondent employing and supervising Ms. Akbas, it was the other way around (RR 5). Ms. Akbas was the employer and she used Respondent's license to practice law, or obtained his signature, in order to practice law (RR 5). That evidentiary finding was

absolutely clear and there was no contradictory evidence (RR 5). The checks support the fact there were consultation and management fees paid to Respondent (RR 5). The payments are not even broken down by case or client names (RR 5).

The Referee further found it compelling that Respondent did not meet with Mr. Ziya and Ms. Ulershperger (RR 5). Respondent had no client file, whether dictated or hand-written, and there was no basis to dispute the attorney-client relationship because there is no lawyer file (RR 5). Nothing was presented to the Referee and he found it telling (RR 5).

The Referee made a clear finding that Mr. Ziya and Ms. Ulershperger went to U.S. Entry, Inc. to obtain legal entry into the United States (RR 5). After Respondent found out about their difficulties, he did nothing to help his clients and was only concerned with how the situation affected him (RR 5). Respondent allowed Ms. Akbas to have the benefit of his name as Managing Attorney (RR 5). The Referee found that Respondent's conduct involved fraud, dishonesty, and misrepresentation (RR 5-6). The court rejected Respondent's statement that he only found out about his name being on the U.S. Entry, Inc., letterhead after the Bar notified him (RR 6).

Respondent did not make reasonable efforts to ensure that Ms. Akbas' conduct was compatible with that of a lawyer and made no efforts to ensure that her actions were compatible with the professional obligations of the lawyer in accordance with Rule 4-5.3(b) (RR 6). Respondent also failed to supervise Akbas and he was ultimately responsible for her conduct (RR 6). Respondent's gross negligence regarding the

representation of the couple is clear when reading the transcript of the telephonic deposition taken on November 29, 2004, of Ms. Elisa Brasil, a California attorney who restricts her work solely to immigration matters (RR 6). Page 8 of the deposition transcript reads as follows:

> "Well, the initial intake is really the most important step in the whole process when the client comes in, because it is where you do all the issue spotting to try to determine what kind of claim, if any, the client will have, immigration claim, to determine their eligibility for any of the different number of defenses they will have, either affirmative or in court, and it is so important that only an attorney can do it. It is going to be the basis of the entire claim, and it is where you rule out what the client is eligible for and is not eligible for. So if you miss something, then you could potentially miss a deadline, which would be disastrous for the client. That is why only the attorneys will do it in the office." (RR 6)

In this case, Respondent took no part in the interview. Therefore, he did not have any notes (Ms. Akbas did not take any notes during the interview), and had no information about the status of his clients (RR 7).

Ms. Brasil's deposition goes on to talk about an employment claim versus an asylum claim and status:

> "But to file for asylum, it has to be within one year of last entering the United States. If I could just – the reason asylum is important, withholding of removal and restriction of removal are – the standard of proof is higher, and it is much more difficult to win a claim than it is to win an asylum claim, where this standard of proof is a little bit lower. So it is always best to apply for asylum if you are able to than rely on the other form of relief.
>
> What happened when I got this case is obviously Mr. Abdullah and Ms. Ulershperger had been in the United States since November 4, 1999, and it was April of 2002. What is clear from examining the file and conversations with them is that when they had gone to U.S. Entry that

Abdullah had said that he had been persecuted in Turkey.

> And because there was absolutely no follow-up to that, no consultation, no questions about what type of harm, who had harmed him, when had it happened, that that had been a very vital part of his possible asylum claim that had been missed." (RR 7)

Mr. Ziya and Ms. Ulershperger were in this country since November 1999 (RR 7). The statute of limitations had long since run and a lawyer practicing immigration law knew or should have known this. Ms. Brasil's deposition transcript on Page 38 goes on to read:

> "Because during the initial consultation Abdullah had actually said that he had been persecuted in Turkey. There was no action taken on that. He was actually told that that wouldn't work. The person who conducted the initial interview in my opinion should not have been a paralegal.
>
> But regardless, the paralegal should have been trained or should have known to ask more questions about asylum, specifically because of the one year rule of filing asylum, if you miss that claim and you don't file it, then the person could be statutorily barred from ever receiving a grant of asylum." (RR 7-8)

Mr. Ziya and Ms. Ulershperger were fortunate, and lucky, to find Mr. Capeci and Ms. Brasil to represent them (RR 8). The benefits of their good work should not inure to Respondent (RR 8). These were people who needed help (RR 8).

This husband and wife were horribly taken in and they were very vulnerable. They came to Miami because it was the destination on their airline tickets (RR 8). They had no friends or family in South Florida (RR 8). They went to Ms. Akbas for assistance and Respondent allowed Ms. Akbas to hold herself out as knowledgeable in the area of immigration law (RR 8).

At the final hearing, the Referee found Respondent's conduct violated the Rules Regulating The Florida Bar. The Referee made detailed and extensive findings at the final hearing, which are contained in the transcript. In addition, he assessed costs against Respondent and ordered him to pay restitution to Mr. Ziya and Ms. Ulershperger in the amount of $2,400.

SUMMARY OF THE ARGUMENT

The Respondent in this case assisted Suzanne Akbas, a nonlawyer, in committing the unlicensed practice of law by allowing U.S. Entry, Inc. to use his name on their letterhead, signing legal documents prepared by Ms. Akbas without meeting with the clients, and by hanging his diploma in their offices. The Referee found Respondent knew that U.S. Entry, Inc. was using his name on their letterhead as the Managing Attorney. The conduct was dishonest because Respondent knew he was not supervising Ms. Akbas. Respondent could not and did not properly supervise the nonlawyer as he only visited the office once or twice a month. The visits consisted of signing immigration documents prepared by Ms. Akbas, with no input from him, and receipt of payment for his services to her. Furthermore, Respondent never met nor communicated with the clients he obtained through U.S. Entry, Inc. In fact, the clients discovered Respondent was the attorney of record only after they obtained a copy of their file from Ms. Akbas. Since Respondent never met with his clients and Ms. Akbas did not take notes at the initial interview, he could not thoroughly and properly prepare a legal analysis, a critical component of competent representation. After the clients inquired about the status of their immigration matter and discovered there were problems, Respondent failed to take any meaningful or significant action on behalf of his clients. Respondent's clients were forced to hire new counsel in order to obtain legal status in the United States.

This Court has held that a bar disciplinary action must serve three purposes: the judgment must be fair to society, it must be fair to the attorney, and it must sufficiently

deter other attorneys from similar misconduct. Furthermore, the discipline must have a reasonable basis in existing case law or The Florida Standards for Imposing Lawyer Sanctions. The recommendation by the Referee in this case adheres to the purposes of lawyer discipline because it is fair to society, fair to Respondent, and it would deter attorneys from engaging in similar conduct. Moreover, existing case law dictates that an attorney who assists a nonlawyer in committing the unlicensed practice of law, and fails to supervise the nonlawyer adequately, receive a suspension. Respondent in this case also violated R. Regulating Fla. Bar 4-8.4(c), which on its own calls for a rehabilitative suspension. Given Respondent's conduct, the discipline given in similar cases, and The Florida Standards for Imposing Lawyer Sanctions, the Referee in this case properly recommended a 1-year rehabilitative suspension.

The Referee in his Report of Referee also assessed costs against Respondent and ordered Respondent to pay restitution to his clients. The Referee in a disciplinary case can assess costs against a respondent as long as he does not abuse his discretion. The Referee in this case did not abuse his discretion. In addition, this Court has held that a referee can order a respondent to pay restitution even if the fees were paid to a nonlawyer and not the attorney, if the attorney was responsible for the conduct of the nonlawyer. The Referee in this case found that Respondent was responsible for Ms. Akbas' conduct and properly recommended Respondent pay restitution in the amount of $2,400.

ARGUMENT

I. THE REFEREE DID NOT ERR IN FINDING RESPONDENT GUILTY OF VIOLATING R. REGULATING FLA. BAR 4-8.4(C) AND R. REGULATING FLA. BAR 4-1.1.

A referee's findings of fact regarding guilt carry a presumption of correctness that should be upheld unless clearly erroneous or without support in the record. Absent a showing that the referee's findings are clearly erroneous or lacking in evidentiary support, this Court is precluded from reweighing the evidence and substituting its judgment for that of the referee. The Florida Bar v. Spann, 682 So.2d 1070, 1073 (Fla. 1996). The objecting party carries the burden of showing that the referee's findings of fact are clearly erroneous. The Florida Bar v. Miele, 605 So.2d 866, 868 (Fla. 1992). A party does not satisfy his or her burden of showing that a referee's findings are clearly erroneous by simply pointing to the contradictory evidence where there is also competent, substantial evidence in the record that supports the referee's findings. See The Florida Bar v. Schultz, 712 So.2d 386, 388 (Fla. 1998); The Florida Bar v. de la Puente, 658 So.2d 65, 68 (Fla. 1995). The referee is in a unique position to assess the credibility of witnesses, and his judgment regarding credibility should not be overturned absent clear and convincing evidence that his judgment is incorrect. The Florida Bar v. Fredericks, 731 So.2d 1249, 1251 (Fla. 1999).

The record contains competent substantial evidence to support the Referee's finding of Respondent's violation of R. Regulating Fla. Bar 4-8.4(c) and the requisite

intent needed to violate the rule. The Referee in his findings stated that Respondent allowed Ms. Akbas to have the benefit of his name as Managing Attorney. The Referee found that Respondent's conduct involved dishonesty, fraud, deceit, or misrepresentation because he allowed Ms. Akbas to list his name on her letterhead as Managing Attorney, he knew she was utilizing his name for this purpose, but he was not supervising her work. Respondent also had a diploma on the wall at U.S. Entry, Inc., which allowed Ms. Akbas and members of the public to rely on his credentials and involvement with U.S. Entry, Inc. The Referee did not find credible Respondent's testimony that he did not know Ms. Akbas was using his name on the letterhead until the Bar began its investigation. In addition, the Referee did not find credible Respondent's testimony when he called the Bar and they informed him there was nothing wrong with his arrangement. It is clearly violative of the Rules Regulating The Florida Bar to engage in the type of relationship Respondent had with Ms. Akbas. The Referee found that Respondent violated R. Regulating Fla. Bar 4-8.4(c) based upon the Bar's competent substantial evidence that Respondent knowingly and intentionally allowed Ms. Akbas to use his credentials and status as a member of the Bar to engage in the unlicensed practice of law.

Furthermore, the Referee did not err in finding that Respondent violated R. Regulating Fla. Bar 4-1.1 because the Bar presented competent substantial evidence to demonstrate that Respondent was not competent in his handling of Mr. Ziya's and Ms. Ulershperger's immigration cases. Respondent never met with the clients and completely relied on Ms. Akbas' advice regarding the best course of action to obtain lawful residence

status for the clients. Ms. Akbas did not take notes during the initial interview, so Respondent was completely dependent on Ms. Akbas to inform him of the clients' situation. Respondent testified that Mr. Ziya and Ms. Ulershperger were never his clients, arguing instead that Dreamworks Gymnastics ("Dreamworks") was his client because he signed the G-28 Notice of Appearance for them in order to pursue an H-1 visa for Ms. Ulershperger. Ms. Akbas decided that it was the best course of action. Therefore, Respondent permitted her to direct or regulate his professional judgment in rendering legal services. The Bar presented evidence that Dreamworks never paid a fee to U.S. Entry, Inc. Mr. Ziya and Ms. Ulershperger paid all of the fees. Therefore, the clients were Mr. Ziya and Ms. Ulershperger, and not Dreamworks. Further, Respondent completely relied on Ms. Akbas' decisions on which course of action to take, thereby allowing her to make legal decisions. Ultimately, the Referee found the Bar's evidence more credible than Respondent's testimony.

Respondent relies on The Florida Bar v. Beach, 675 So.2d 106 (Fla. 1996) in his brief for the proposition that Respondent did not violate Rule 4-8.4(c) and states the facts in Beach are identical to the facts in the case at bar. Beach was an independent contractor to King and King Paralegals ("King and King"). Beach discussed King and King's clients' legal issues and reviewed pleadings and other documents prepared by King and King. King and King paid the attorney a $75 flat rate per case for his services. King and King had their clients sign a contract, which stated that they would receive a 30-minute consultation with the attorney, but he would not represent them unless they

entered into a separate contract with him. Further, Beach provided legal advice to King and King and they in turn would give the advice to the clients. This Court found that Beach allowed King and King to act as his conduit for giving legal advice by obtaining and relaying, without supervision, case-specific information to persons whom the attorney never actually met with or consulted. The Court held that Beach's conduct warranted a 90-day suspension from the practice of law.

Respondent's reliance on Beach is misplaced because the facts are distinguishable from the instant case. This Respondent did not allow Ms. Akbas to act as a conduit for his legal advice. Rather, he failed to give any legal advice at all. Respondent merely signed documents for Ms. Akbas whenever she needed him to and relied on her legal interpretation of the facts as presented by the clients. This Respondent's misconduct is more egregious than the misconduct in Beach due to his total disregard for the clients. Further, the paralegal service in Beach informed their clients that they would need to hire Beach separately if they wanted representation from an attorney. Here, Ms. Akbas never informed the clients that there was any distinction between U.S. Entry, Inc. and Respondent. Respondent filed a Notice of Appearance thereby becoming the clients' attorney. This Referee found that Respondent had an attorney-client relationship with the clients whereas the Referee in Beach found no such relationship between the attorney and the client.

Additionally, this Court in Beach found that there was no evidence in the record that Beach's violation of the rules was willful or deliberate. However, in this case, the

Referee found Respondent did willfully enter into an agreement with U.S. Entry, Inc., which was violative of the Rules Regulating The Florida Bar. Respondent testified that he was uncertain whether the arrangement with U.S. Entry, Inc. was appropriate. He stated he called the Bar and was transferred to many departments. Finally, someone at the Bar purportedly told him that this arrangement was appropriate. However, he provided no proof he ever called the Bar and the Referee did not find his testimony credible. The arrangement was profitable and advantageous to Respondent. He never met with clients in spite of Ms. Akbas' insistence that he do so. He provided no legal advice, relied on the legal conclusions of a nonlawyer, and ratified her legal decisions by signing documents prepared by her. This case is not identical to Beach in that the underlying facts are different and Respondent's conduct in this case is more egregious than the attorney's conduct in Beach. Consequently, the Referee did not err when he found Respondent guilty of violating Rule 4-8.4(c).

The comment to R. Regulating Fla. Bar 4-1.1 states, "Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners." In this case, Respondent made no inquiry into the facts of the case. He relied solely on Ms. Akbas for his information. The record reflects that she did not take notes at the initial client interviews. The clients stated that they informed Ms. Akbas of their need for political asylum due to the husband's persecution in Turkey. The Referee found this testimony credible. Ms. Akbas was the one who decided that the asylum claim

was not worth pursuing. That is a legal conclusion, which required a detailed analysis by Respondent. Respondent made no inquiry as to the facts of the clients' case. Therefore, he could not make an analysis of the factual elements. Since Respondent did not make an analysis of the factual elements, he could not make an analysis of the legal elements of the clients' problem. Respondent allowed Ms. Akbas to make the analysis of the factual and legal elements of the clients' problem thereby allowing her to commit the unlicensed practice of law. Furthermore, the comment continues on to state that adequate preparation is also included within the definition of competence. Respondent could not adequately prepare anything about the clients' case because he had no knowledge of the facts surrounding their legal problem. Respondent left all of the lawyering to Ms. Akbas and he simply ratified her decisions by signing documents she prepared without his input. Therefore, Respondent is guilty of violating Rule 4-1.1.

II. THE REFEREE DID NOT ERR IN IMPOSING A 1-YEAR SUSPENSION FOR RESPONDENT'S MISCONDUCT BECAUSE THE SANCTION IS SUPPORTED BY EXISTING CASE LAW AND THE FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS.

This Court has stated that the review of the discipline recommendation does not receive the same deference as the guilt recommendation because this Court has the ultimate authority to determine the appropriate sanction. The Florida Bar v. Grief, 701 So.2d 555 (Fla. 1997); The Florida Bar v. Wilson, 643 So.2d 1063 (Fla. 1994). In The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970), this Court held three purposes must

be held in mind when deciding the appropriate sanction for an attorney's misconduct: 1) the judgment must be fair to society; 2) the judgment must be fair to the attorney; and 3) the judgment must be serve enough to deter others attorneys from similar conduct. This Court has further stated a referee's recommended discipline must have a reasonable basis in existing case law or the Florida Standards for Imposing Lawyer Sanctions. The Florida Bar v. Sweeney, 730 So.2d 1269 (Fla. 1998); The Florida Bar v. Lecznar, 690 So.2d 1284 (Fla. 1997).

This Court has held that a suspension is the appropriate discipline when an attorney assists a nonlawyer in the unlicensed practice of law and fails to supervise the nonlawyer properly. The Florida Bar v. Beach, 675 So.2d 106 (Fla. 1996); The Florida Bar v. Lawless, 640 So.2d 1098 (Fla. 1994) . In The Florida Bar v. Beach, 675 So.2d 106 (Fla. 1996), Beach worked as the supervising attorney for a paralegal firm. The paralegals paid him a flat fee for reviewing pleadings and other documents they prepared and offering a 30-minute consultation to its clients. The referee found Beach guilty of sharing a fee with a nonlawyer and assisting a person who is not a member of the Bar to perform activities that constitute the practice of law. The referee recommended a 3-month suspension from the practice of law given the attorney's misconduct and his prior instance of discipline, which was a 28-day suspension. This Court held the recommendation of a 90-day suspension adequately fulfilled the 3 purposes of lawyer discipline.

An attorney represented a Canadian couple attempting to obtain permanent residency status in The Florida Bar v. Lawless, 640 So.2d 1098 (Fla. 1994). Lawless

charged the couple a flat fee of $5,000. Later, Lawless had a meeting with the couple and a paralegal with whom Lawless had a prior professional relationship but was not currently in his employ. At the meeting, Lawless advised the couple that he would supervise the case, but they were to contact the paralegal if they had questions. The couple paid the paralegal a total of $12,546. However, the paralegal never completed any work on their case. The attorney attempted to rectify the problem by submitting visa applications for the couple, but they eventually hired new counsel. The referee found the attorney failed to adequately supervise the paralegal's handling of the case and recommended a 90-day suspension followed by 3 years probation. The referee also ordered respondent had to pay $12,546 in restitution to the couple, the amount the couple paid to the paralegal. The referee in Lawless did not find the attorney guilty of violating R. Regulating Fla. Bar 4-8.4(c) , which the Bar pled in its complaint. Lawless had prior discipline of a private reprimand and 2 public reprimands. This Court affirmed that the 90-day suspension followed by 3 years probation served the purposes of lawyer discipline and the recommendation to pay restitution was appropriate.

The circumstances in Beach, Lawless, and the case at bar are slightly different, but the cases are still analogous. Thus, the discipline in this case should be a suspension. However, given this Respondent's egregious conduct and his violation of R. Regulating Fla. Bar 4-8.4(c), he should receive a rehabilitative suspension. The respondent in Lawless had prior discipline where this Respondent does not, but the respondent in Lawless attempted to rectify the problems he created. Respondent in the instant case did

not attempt to remedy his clients' problems. This Respondent would not meet with the clients he obtained through U.S. Entry, Inc. and would nevertheless sign documents Ms. Akbas prepared based upon her legal interpretation of the facts presented by the clients. This Respondent was found guilty of violating 8 of the Rules Regulating The Florida Bar[1] where the respondent in Lawless was found guilty of violating 3 of the rules.[2] The discipline in this case should be more severe than the discipline in Lawless, even after considering the differences. Although the respondent in Lawless had prior discipline and Respondent in this case does not, Respondent's misconduct in the instant case was more egregious than the respondent's misconduct in Lawless. This Respondent was found to have engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, which by itself warrants a suspension.[3] Therefore, a rehabilitative suspension is the appropriate sanction in the instant case.

Yet again, the Referee in this case found Respondent guilty of violating 8 of the Rules Regulating The Florida Bar[4], unlike the respondent in Beach who was found guilty of violating 2 of the Rules Regulating The Florida Bar.[5] Beach had a prior disciplinary

---

[1] Respondent was found guilty of violating R. Regulating Fla. Bar 3-4.3, 4-1.1,4-5.3(a), 4-5.3(b), 4-5.3(c), 4-5.4(a), 4-5.4(d), and 4-5.5(b).

[2] This court found Lawless guilty of violating R. Regulating Fla. Bar 4-1.3, 4-5.3, and 4-8.4(a).

[3] *See* The Florida Bar v. Schultz, 712 So.2d 386 (Fla. 1998); The Florida Bar v. Siegel, 511 So.2d 995 (Fla. 1987); The Florida Bar v. Vernell, 502 So.2d 1228 (Fla. 1987); The Florida Bar v. Fogarty, 485 So.2d 416 (Fla. 1986).

[4] *See* Footnote 1.

suspension where this Respondent does not have any prior discipline. This Court held in Beach that he did not have an attorney-client relationship with the client because the client specifically sought assistance from a paralegal instead of an attorney and the contract clearly stated that she was not represented by the attorney. However, the clients in this case believed they hired an attorney who could help them with their immigration needs. They did not know, and Ms. Akbas never informed them, that she was providing legal services and advice, which only an attorney is supposed to provide. This Respondent allowed U.S. Entry, Inc. to hold him out as their Managing Attorney and assisted in perpetrating this fraud by displaying his diploma on the wall of U.S. Entry, Inc.'s offices. The Referee found that Ms. Akbas was in fact the employer and she used Respondent's law license and signature to herself practice law. Furthermore, Respondent in this case was the attorney of record with the court so there was no question Respondent was the clients' attorney even though they were not aware respondent was the attorney of record. Therefore, the discipline in this case should be a suspension. However, given this Respondent's violation of Rule 4-8.4(c) , the suspension should be a rehabilitative suspension

The Florida Standards for Imposing Lawyer Sanctions Standard 7.0 deals with the proper sanctions for an attorney involved in the unlicensed practice of law. Here, Respondent was assisting a nonlawyer in committing the unlicensed practice of law by allowing the nonlawyer to make legal conclusions. Respondent then ratified her conduct

---

[5] This court found Beach guilty of violating R. Regulating Fla. Bar 4-5.4 and 4-5.5

by signing documents she prepared without any independent analyses. Moreover, Standard 7.2 suggests that 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.

Standard 4.5 deals with cases involving the failure of an attorney to provide competent representation to a client. In this case, Respondent did not inquire into or analyze the factual and legal elements of the clients' problems, which is a component of competent representation. Standard 4.52 states that a suspension is appropriate when a lawyer engages in an area of practice in which the lawyer knowingly lacks competence, and causes injury or potential injury to a client. This Respondent knew or should have known that he was not providing competent representation. He refused to meet with the clients he obtained through U.S. Entry, Inc. He failed to apprise himself of the factual elements of the clients' problem. He failed to apprise himself of the legal elements of his clients' cases because he did not have sufficient factual information in order to determine the proper legal course of action. Instead, he relied on a paralegal to analyze the factual and legal elements of the clients' problem.

Finally, Standard 4.6 outlines the sanctions appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client. Respondent in this case allowed his name to appear on U.S. Entry, Inc.'s letterhead as Managing Attorney and displayed a diploma on the wall of the office, thereby giving the public the semblance of involvement with U.S. Entry, Inc. This conduct gave the illusion that Respondent was

supervising Ms. Akbas' work when he was not supervising her work, but rather simply signing the legal documents she prepared without question. Respondent allowed Ms. Akbas to give the appearance he was supervising her work when he knew he was not supervising her work. Standard 4.62 states that a suspension is appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client. Respondent in this case knew he was deceiving the clients of U.S. Entry, Inc. into believing an attorney was supervising Ms. Akbas' legal work when in reality he was not supervising her work.

When considering the discipline delineated in The Florida Standards for Imposing Lawyer Sanctions, any applicable mitigating or aggravating factor must be considered. The Referee in the instant case found in mitigation only the absence of a disciplinary record. In aggravation, the Referee found a dishonest or selfish motive, a pattern of misconduct, the vulnerability of the victim, and Respondent's substantial experience in the practice of law. The aggravating factors in this case far outweigh the mitigating factors. Therefore, the consideration of the mitigating and aggravating factors in this case warrant a rehabilitative suspension as opposed to a suspension of 90 days or less.

III. THE REFEREE DID NOT ERR IN THE COSTS HE ASSESSED AGAINST RESPONDENT OR IN ORDERING RESTITUTION.

The taxation of costs is a matter within the discretion of the referee, and should not be reversed absent an abuse of discretion. The Florida Bar v. Carr, 574 So.2d 59 (Fla. 1990). The Bar submitted an Interim Affidavit of Costs to the Referee at the end of

presentation of evidence at the Final Hearing. The Interim Affidavit clearly stated that these were estimated costs. Respondent's counsel stated at the Final Hearing that there was certainly a lot left to be filled in, but there are court reporters' bills and they will be what they are (TT 202). The fact that the Bar filed an Interim Affidavit of Costs as opposed to a Final Affidavit of Costs, which the Bar filed on December 28, 2004, demonstrates that the costs presented at the Final Hearing were not complete. Therefore, the Referee in this case did not abuse his discretion upon receipt of the Final Affidavit of Costs and assessing these costs to Respondent in his Report of Referee.

In ordering an attorney to pay restitution for money paid to a paralegal, this Court in Lawless held whether the attorney received the money paid to a paralegal was not the issue, but rather whether the attorney was responsible for the conduct of his nonlawyer employee. The attorney was ordered to reimburse the clients for the fees they paid to a nonlawyer who was not the attorney's employee. In this case, Respondent assisted U.S. Entry, Inc. in committing the unlicensed practice of law thereby subjecting Mr. Ziya and Ms. Ulershperger to Ms. Akbas' misconduct. Respondent's name as Managing Attorney appeared on U.S. Entry, Inc.'s letterhead and his diploma on the wall gave the semblance of his involvement. Respondent received a $100 fee for his supposed work on this case. That is not to say his liability for his misconduct should be limited to $100. Thus, the Referee's finding that Respondent should pay restitution to his clients is proper.

CONCLUSION

This Court should approve the Report of Referee in this case and Respondent should be suspended for a period of 1 year because the Referee's recommendation as to discipline is consistent with existing case law and The Florida Standards for Imposing Lawyer Sanctions. Moreover, the Referee's recommendation as to the costs assessed against Respondent and the payment of restitution to the clients should be approved.

Respectfully submitted,

LILLIAN ARCHBOLD, #163996
Bar Counsel
The Florida Bar
Cypress Financial Center
5900 N. Andrews Avenue, Suite 900
Ft. Lauderdale, FL 33309
(954) 772-2245

CERTIFICATE OF SERVICE

I HEREBY CERTIFY true and correct copies of The Florida Bar's Answer Brief have been furnished by regular U.S. mail to Howard Poznanski, Counsel for Respondent, 33 Southeast 4th Street, Suite 102, Boca Raton, Florida 33432, and to Staff Counsel, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300 on this _______ day of ___________________, 2005.

____
LILLIAN ARCHBOLD

CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN

Undersigned counsel hereby certifies The Florida Bar's Answer Brief is submitted in 14 point, proportionately spaced, Times New Roman font, and the computer file has been scanned and found to be free of viruses by Norton Anti-Virus for Windows.

____
LILLIAN ARCHBOLD