

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

CHRISTOPHER RUMSEY QUALMANN

Respondent.

Case No. SC06-8

[TFB Case Nos. 2004-32,079(18A),
2005-31,231(18A),
2005-31,336(18A),
2006-30,024(18A)]

Case No. SC06-1602

[TFB Case No. 2006-31,784(18A)]

THE FLORIDA BAR'S ANSWER BRIEF AND CROSS INITIAL 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."

The transcript of the final hearing held on March 23, 2007, shall be referred to as "T 3/23/07" followed by the cited page number. The sanction hearing held on April 27, 2007, shall be referred to as "T 4/27/07" followed by the cited page number.

The Amended Report of Referee dated June 27, 2007, 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 Appendix page (A____).

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

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

STATEMENT OF THE CASE AND FACTS

The Eighteenth Judicial Circuit Grievance Committee voted to find probable cause in Case Number SC06-8 [TFB Case Nos. 2004-32,079(18A), 2005-31,231(18A), 2005-31,336(18A), and 2006-30,024(18A)] on October 6, 2005. The Florida Bar served its Complaint on December 29, 2005. The referee was appointed on January 18, 2006. A default was entered against respondent on January 31, 2006. Thereafter, respondent hired counsel only moments before the scheduled case management conference on February 13, 2006. On May 31, 2006, respondent's counsel moved for a continuance of the final hearing scheduled for June 5, 2006, because he had not yet received respondent's medical and mental health evaluations. The referee granted respondent's motion for continuance and re-scheduled the final hearing for August 9, 2006. As a result, on June 15, 2006, the bar moved this Court for an extension of time for the referee to file his report. On June 21, 2006, this Court granted an extension to and including August 31, 2006. On August 7, 2006, respondent moved for a second continuance of the final hearing because he had not yet received his mental health evaluation and treatment plan and because the bar anticipated filing a second case in the near future, which the referee granted on August 10, 2006. The bar moved this Court, on behalf of the referee, for a second extension

of time for filing the report of referee which this Court granted on August 14, 2006, allowing the referee until November 30, 2006, to file his report.

In Case No. SC06-1602 [TFB Case No. 2006-31,784(18A)], the Eighteenth Judicial Circuit Grievance Committee "A" voted to find probable cause on July 6, 2006. The bar served its Complaint on August 9, 2006. The referee was appointed on August 22, 2006, and this matter was consolidated for purposes of final hearing with Case No. SC06-8 at the case management hearing on September 11, 2006.

Respondent did not file a motion to vacate the default in Case No. SC06-08 until October 7, 2006. During the hearing on respondent's Motion to Vacate Default, conducted on October 11, 2006, the respondent served his proposed answer to the Complaint. On October 27, 2006, the referee issued an order vacating the default and deemed the proposed answer filed during the hearing would stand as respondent's answer to the Complaint.

On October 16, 2006, the bar served its first motion for continuance in the consolidated cases in order to conduct discovery necessitated by respondent's answer filed in Case No. SC06-8. The referee granted the bar's motion on October 18, 2006, and re-scheduled the final hearing for January 24, 2007. As a result, on October 23, 2006, the bar filed a third motion for extension of time to file the report of referee. This court granted the bar's motion on October 31, 2006, and granted the referee until

February 19, 2007, to file his report. On January 17, 2007, counsel for respondent served his motion for permission to withdraw, which the referee granted on January 19, 2007. As a result, on January 18, 2007, respondent moved for a continuance of the final hearing, which the referee granted, re-scheduling the final hearing for March 16, 2007. After a critical witness was unable to appear for the scheduled hearing date, on January 24, 2007, the bar moved for a continuance which the referee granted, rescheduling the final hearing for March 23, 2007. As a result, on February 2, 2007, the bar filed a fourth motion for extension of time to file the report of referee. On February 8, 2007, this Court granted the bar's motion and extended the time for filing the Report of Referee to May 22, 2007. At the final hearing on March 23, 2007, respondent and the bar orally stipulated to specific allegations and rule violations contained in the bar's two Complaints which the referee memorialized in his April 10, 2007, Findings and Order for Sanction Hearing. The sanction hearing was held on April 27, 2007.

The initial Report of Referee was entered on May 11, 2007. On June 27, 2007, the referee entered his amended report correcting a scrivener's error and finding that respondent admitted to substantially all of the bar's allegations set forth in the two Complaints. In Count I of Case No. SC06-8, respondent admitted he misappropriated a fee belonging to his employing law firm (ROR A2) in violation of rule 4-8.4(c)

(ROR A8). In Count II, he admitted he made a misrepresentation to the federal court in a suit in obtaining an extension of time to respond to opposing counsel's motion for summary judgment by forging his secretary's initials to a letter indicating she had followed his instructions to deliver it without his signature in order to avoid delay due to his absence from the office (ROR A2-A3). Respondent admitted this conduct violated rules 4-3.3 and 4-8.4(d) (ROR A8). In Count III, respondent admitted he made misrepresentations to a client in periodic status reports that indicated matters were progressing (ROR A3). Respondent admitted this conduct violated rule 4-1.4 (ROR A8). In Count IV, respondent admitted he failed to respond to the bar's investigative inquiries despite making assurances to the bar that he would do so (ROR A4). He admitted this conduct violated rule 4-8.4(g)(2) (ROR A8). In Count V, he admitted he failed to provide competent and diligent representation to a client in a civil suit filed in federal court where the suit was dismissed in 1999 after the court found it lacked subject matter jurisdiction (ROR A4). Although the order provided respondent with the opportunity to refile the action and he attempted to do so, his motion to file an amended complaint was denied because respondent failed to comply with certain requirements prior to filing his motion (ROR A4-A5). Respondent failed to advise his client of the dismissal and misled her into believing the matter was still progressing (ROR A5). Although respondent filed a new action in federal court on

behalf of his client in 2002, it too was dismissed in 2003 after respondent again failed to respond to the court's order requiring him to identify all interested persons and the court's subsequent order to show cause why the case should not be dismissed due to respondent's failure to prosecute the case and failure to identify all interested persons as required (ROR A5). Respondent admitted he again failed to advise his client of the order to show cause and of the dismissal and led her to believe the case was progressing (ROR A5). Respondent admitted his conduct violated rules 4-1.1, 4-1.3, 4-1.4(a), 4-1.4(b), 4-3.4(c), and 4-8.4(c) (ROR A8-A9). In Count VI, respondent admitted he agreed to represent a client in writing letters to the school board and police department concerning the interrogation of the client's minor son but failed to take any action or provide any services after being paid a fee of \$500.00 (ROR A5). Respondent admitted he misrepresented to the client that he had prepared and mailed the letters (ROR A5). Respondent also admitted he failed to respond to the bar's investigative inquiries despite making assurances to the bar that he would do so (ROR A6). Respondent admitted his conduct violated rules 4-1.3, 4-1.4(a), and 4-8.4(g) (ROR A9). In Count VII, respondent admitted he agreed to represent a client in a patent application matter without advising the client that he was not a registered patent attorney (ROR A6). After the Patent Office advised respondent the application he submitted on behalf of the client was incomplete, respondent failed to file an amended

application nor did he respond to the Patent Office (ROR A6). The client's application was rejected because it was deficient (ROR A6). Respondent admitted he failed to maintain adequate communication with his client and that he failed to respond to the bar's investigative inquiries despite assurances he would do so (ROR A6-A7). Respondent admitted his conduct violated rules 4-1.1, 4-1.3, 4-1.4(a), 4-8.4(c), and 4-8.4(g) (ROR-A9).

In Case No. SC06-1602 [TFB Case No. 2006-31,784(18A)], respondent admitted he made a misrepresentation to opposing counsel in a civil case as to a calendar conflict in order to obtain a continuance (ROR A7-A8). Respondent advised opposing counsel he had a hearing scheduled in a dependency case and, to support his claim, sent opposing counsel a copy of a court order in the dependency case showing a case plan conference set for a time near the time set for the hearing on opposing counsel's motion for summary judgment in the civil case (ROR A7). Respondent altered the time shown in the dependency court's order to reflect an earlier start time (ROR A7). When opposing counsel obtained a copy of the original dependency court order showing the later start time, he confronted respondent about the alteration in the copy respondent sent to him (ROR A7-A8). Only then did respondent advise him he was in the process of changing the hearing time to the earlier start time (ROR A7-A8). Respondent admitted his conduct violated rules 4-8.4(c) and 4-8.4(d) (ROR A9).

The referee recommended a one year suspension with proof of rehabilitation including respondent's continued participation in Florida Lawyers Assistance, Inc., payment of restitution to his former employing law firm in the amount of \$500.00, payment of restitution to client Gary Duke (Count VI) in the amount of \$500.00, payment of restitution to client Rodney Congreaves (Count VII) in the amount of \$1,500.00, and payment of the bar's costs (ROR A9-A10). The referee based his recommendation on the respondent's admissions, case law, Florida Standards for Imposing Lawyer Sanctions, and the mitigation respondent presented (ROR A10-A11), namely respondent's absence of a prior disciplinary history, mental health, physical and substance abuse problems, his interim efforts at rehabilitation from those problems, remorse, and his admission at the final hearing to many of the allegations pending against him rather than requiring the bar to prove its case against him (ROR A10). In aggravation, the referee recognized respondent's dishonest or selfish motive, pattern of misconduct, multiple offenses, substantial experience in the practice of law, and indifference in making restitution (ROR A10).

On May 21, 2007, respondent moved for rehearing or for modification of the referee's recommended discipline of a one year suspension with proof of rehabilitation which the referee denied on June 27, 2007. On August 27, 2007, respondent served his petition for review. The Board of Governors of The Florida Bar considered the

Report of Referee at its meeting ending June 1, 2007, and voted not to file a petition for review in this matter but reserved the right to file a cross-petition for review if respondent filed a petition for review. By letter dated June 1, 2007, which was copied to respondent and docketed by this Court on June 4, 2007, The Florida Bar advised this Court and respondent of the bar's position (A14). Respondent incorrectly summarized The Florida Bar's position regarding the filing of a cross-petition for review in this matter.

On September 14, 2007, the bar served its cross-petition for review of the referee's recommendation as to discipline. On September 26, 2007, respondent sought an extension of time to file his initial brief. On October 1, 2007, this court granted respondent until October 17, 2007, to file his brief. On October 23, 2007, this Court entered an order noting that it had not received respondent's initial brief or the transcripts and that his petition for review was subject to dismissal for want of prosecution. This Court granted respondent 15 days to file a proper initial brief and transcripts.

Because The Florida Bar had not received its copy of the respondent's initial brief; on November 15, 2007, the bar filed its petition to dismiss these appellate proceedings due to respondent's failure to serve an initial brief. This Court's docket, however, reflects that respondent filed his initial brief with this Court on November

13, 2007. On November 14, 2007, this Court issued an order striking respondent's initial brief for failure to comply with the Florida Rules of Appellate Procedure and granting him until December 4, 2007, to file an amended initial brief.

On December 4, 2007, respondent filed his amended initial brief and moved this Court to allow the late filing of his amended initial brief. On February 12, 2008, this Court entered orders granting respondent's motion to permit late filing of his brief, striking respondent's amended initial brief for failing to comply with the Florida Rules of Appellate Procedure, and denying the bar's motion to dismiss these appellate proceedings. This Court granted respondent until March 3, 2008, to serve his second amended initial brief. Respondent filed his second amended initial brief on March 3, 2008.

SUMMARY OF ARGUMENT

Respondent engaged in numerous of acts of serious misconduct over many years. His first act of neglect occurred in 1999 with the dismissal of Connie Kunkle's federal case (ROR A4-A5). His neglectful actions continued until after these proceedings were commenced against him and he failed to respond to the bar's inquiries after assuring the bar he would do so (ROR A4, A6, A7). Respondent made numerous misrepresentations to clients, the courts, the bar, and opposing counsel. Misrepresentation is synonymous with lying and is a very serious act of misconduct in a profession where an attorney's statements should be truthful and reliable. Respondent stole fees from his employing law firm (ROR A2). Respondent admitted to 20 rule violations encompassing 8 different matters spanning a period of 6 years. Many of the rules he violated are the most serious offenses an attorney can commit, namely misrepresentation and misappropriation. Respondent did not seek help for his various health, emotional and substance abuse problems until July 2005 (R-Ex. 1) and failed to actively participate in any treatment program until March 2006, after the final hearing was scheduled in this matter (R-Ex. 1). It was respondent's evaluations that necessitated the first continuance in this matter (see Respondent's Motion for Continuance dated May 31, 2006). Although respondent made progress in addressing his complex and diverse issues (R-Ex. 1), it does not lessen the severity of his

misconduct. Respondent's ongoing treatment is, understandably, prone to set backs from time to time. Whether respondent has suffered such a set back is of concern given the ongoing delays in these appellate proceedings and respondent's statement in his motion to allow late filing of his amended initial brief on the merits dated December 4, 2007, that "the aggregate effects of ongoing issues of professional and personal nature (including recent treatment . . . for injuries suffered in an automobile accident) affected his ability to file the Brief earlier than November 13th." Respondent's continued failure to make any attempts at restitution in these matters tempers the mitigation because it demonstrates a lack of accountability and a lack of full and knowing acceptance of his wrongdoing. Simply put, respondent needs time without the additional stress of private law practice (T 4/27/07 p. 11) to fully address his complex issues in order to assure that he will not repeat his well established pattern of engaging in professional misconduct when he encounters the set backs that routinely occur in the treatment of most, if not all, mental health and substance abuse illnesses. It is for these reasons the bar submits a 3 year suspension would be a more appropriate sanction than a 1 year suspension.

ARGUMENT

ISSUE I

THE REFEREE'S CONCLUSIONS OF LAW AND FINDINGS OF GUILT ARE SUPPORTED BY RESPONDENT'S ADMISSIONS AND THE EVIDENCE.

Although respondent couches his argument in terms of an attack on the correctness of the referee's conclusions of law, his argument is a thinly veiled attempt to challenge the referee's findings of fact, all of which, including the rule violations, were based on respondent's stipulation entered into at the hearing on March 23, 2007 (T 3/23/07 pp. 11-16; A15). A referee's findings of fact are deemed to be correct and will not be revisited by this Court absent a clear showing they were without support in the record. *The Florida Bar v. Nicnick*, 963 So.2d 219, 222 (Fla. 2007). The best evidence of respondent's admitted conduct are his answers to the bar's Complaints, his testimony at both hearings, and the Findings and Order for Sanction Hearing entered by the referee on April 10, 2007 (A15).

Nevertheless, it now appears respondent wishes to rescind his stipulation as to certain paragraphs of the bar's Complaints and the rule violations. In support of his position, respondent improperly included in the Appendix to his second amended initial brief his summary of his admitted conduct (Respondent's Appendix p. 1) which was not placed into evidence at the final hearing.

Rule 9.200(a)(1) of the Florida Rules of Appellate Procedure provides that the record in an appeal shall consist of the original documents, exhibits, and transcripts of the proceedings filed in the lower tribunal. Respondent did not seek to supplement the record pursuant to Fla. R. App. P. 9.200(f). That an appellate court may not consider matters outside the record is so elemental that there is no excuse for an attorney to attempt to bring such matters before the court and doing so constitutes a flagrant violation of Fla. R. App. P. 9.200(f). *Poteat v. Guardianship of Poteat*, 771 So. 2d 569, 572-573 (Fla. 4th DCA 2000). Therefore, The Florida Bar requests this Honorable Court to strike respondent's summary of his admitted conduct from his Appendix.

Respondent made no unintended admissions. He stated at the March 23, 2007, hearing that he understood the terms of the settlement (T 3/23/07 p. 14). He acknowledged that the terms as recited in open court were correct (T 3/23/07 p. 15). He stated that he was not under the influence nor was he suffering from a mental defect at the time (T 3/23/07 p. 16). Clearly, respondent knowingly admitted to engaging in acts of misconduct and knowingly admitted to having committed the rule violations set forth in the Report of Referee. If he believed there was an error in some of his admissions, he could have brought it to the referee's attention at any time but he failed to do so.

At the hearing on April 27, 2007, the referee permitted respondent to testify, at great length, as to his mitigation (T 4/27/07 pp. 13-63, 82-96). Respondent could have challenged the stipulation at that time, but he failed to do so. Likewise, respondent failed to raise the issue in his motion for rehearing. Now, for the first time, respondent raises the issue in his appeal.

The referee based his conclusions of guilt on respondent's admissions as to certain rule violations. Respondent cannot now argue the referee's conclusions as to guilt are not supported by the evidence. Respondent's explanations, considered by the referee at the April 27, 2007 hearing, served to mitigate, not obviate, his misconduct. The severity of respondent's misconduct was self-evident from his admissions and the lack of a discussion about it in the Amended Report of Referee is not an error and certainly does not warrant remanding the matter to the referee for further proceedings. The bar's failure to present evidence on an issue to which the parties stipulated precludes respondent from challenging the accuracy of the finding. *The Florida Bar v. Broome*, 932 So. 2d 1036, 1040 (Fla. 2006).

ISSUE II

THE REFEREE'S FINDINGS AS TO AGGRAVATION WERE SUPPORTED BY THE EVIDENCE.

A referee's findings as to aggravation carry a presumption of correctness and this Court will not disturb them unless they are clearly erroneous or without support in the record. *The Florida Bar v. Valentine-Miller*, 33 Fla. L. Weekly S29 (Fla. Jan. 10, 2008). The referee found in aggravation that respondent displayed a dishonest or selfish motive [Florida Standards for Imposing Lawyer Sanctions 9.22(b)], engaged in a pattern of misconduct [Florida Standards for Imposing Lawyer Sanctions 9.22(c)], engaged in multiple offenses [Florida Standards for Imposing Lawyer Sanctions 9.22(d)], had substantial experience in the practice of law [Florida Standards for Imposing Lawyer Sanctions 9.22(i)], and displayed indifference to making restitution [Florida Standards for Imposing Lawyer Sanctions 9.22(j)]. The referee's findings were well supported by the evidence. The referee gave full consideration to respondent's evidence and testimony at the April 27, 2007, hearing and clearly found that respondent's numerous excuses did not eliminate the existence of the aggravating factors in this case. The referee is in the best position to weigh credibility and this Court will not disturb it absent a

showing of abuse of discretion. *The Florida Bar v. Maurice*, 955 So. 2d 535, 539 (Fla. 2007).

Respondent had a dishonest or selfish motive. Although he attempted to excuse his actions as being mere lapses in judgment, he knew what he was doing was wrong. Respondent testified that he knew Nancy O'Dell, a client with a lucrative case who he brought with him when he was hired by the law firm of Fortiz and Dogali (T 4/27/07 p. 17), owed respondent and the law firm fees (T 4/27/07 p. 19). When Ms. O'Dell asked respondent to whom she should make her fee payment, respondent told her to make the check payable to him (T 4/27/07 p. 19). Although respondent testified that he believed he was owed the money from the representation he provided to her prior to being hired by the law firm (T 4/27/07 p. 19), he could have made an inquiry of the firm manager as to how to handle the payment. He did not. Rather, respondent attempted to excuse his conduct by explaining his judgment was clouded by his heavy drinking, depression and personal problems (T 4/27/07 p. 19). Even if the respondent is to be believed, that does not change the fact that taking the fee payment from Ms. O'Dell served to put money in his pocket, certainly a selfish motive, without the knowledge of the law firm, a dishonest motive. The firm could not lay claim to money it did not know had been paid.

In John Piccione's case, respondent forged his secretary's initials to a letter he sent to the court. Again, respondent attempted to excuse his conduct by explaining he was absent minded and prone to making poor choices when panicked and stressed (T 4/37/07 p. 21). Respondent knew that forging his secretary's initials to a letter was wrong (T 4/27/07 p. 22). Respondent, however, attempted to minimize his dishonest conduct by asserting that the misuse of his assistant's initials was not a misstatement of substance and that it had no impact on the outcome of the litigation (T 4/27/07 p. 23). Forging anything in a legal matter, even if not substantive, is patently dishonest. His selfish motive for doing so was his fear of looking like he had lied to the judge or having the judge believe he had forgotten to dictate the letter memorializing his conversation with the judicial assistant that day concerning the extension of time (T 4/27/07 p. 22). Respondent apparently feared looking foolish more than he feared committing a dishonest act. Respondent's conduct is more than poor judgment; it is the essence of poor character.

In the American Express collection matters, respondent admitted that he misrepresented to American Express, in periodic status reports, that matters were progressing when, in fact, they were not (ROR A3; T 3/23/07 p. 11). The selfishness of respondent's motivation for misleading his client was obvious. His

services may have been terminated if American Express learned he was not diligently representing its interests.

In Connie Kunkel's case, respondent pursued a suit that, by his own admission, was not a good case (T 4/27/07 pp. 33-34). He admitted he should have told her this at the outset, but did not (T 4/27/07 p. 35). Respondent was not honest with Ms. Kunkle about the validity and/or quality of her claim.

In Gary Duke's case, respondent led a client to believe he could deliver legal services without actually having any ability to do so. Mr. Duke paid respondent \$500.00 (ROR A5). Respondent admitted that, after researching the matter, he determined he could not provide the services Mr. Duke wanted, namely, a letter to the school regarding the alleged improper interrogation of their son (T 4/27/07 pp. 37-38). Rather than refunding at least a portion of Mr. Duke's fee because he could not provide him with any meaningful assistance, respondent selfishly kept the money and still believes he was entitled to the entire fee because of the time he spent investigating the claim (T 4/27/07 p. 39).

In Rodney Congreaves' case, respondent took a matter he quickly came to realize he was not qualified to handle (T p. 41). Respondent admitted he never should have undertaken the representation (T 4/27/07 p. 41). Respondent took a \$1,500.00 fee despite knowing he could not represent Mr. Congreaves in a patent

application (T 4/27/07 pp. 40-41). Rather than refunding at least part of the fee once he determined he was not qualified to handle the matter, and referring Mr. Congreaves to a patent attorney, respondent forged ahead (T 4/27/07 p. 41).

Moreover, respondent led Mr. Congreaves to believe he would be able to prepare a patent application for Mr. Congreaves to file despite not being well versed in this unique area of law and not being a licensed patent attorney (T 4/27/07 p. 40).

Respondent's motive was clearly both dishonest and selfish. Respondent selfishly refused to refund any of the fee, despite Mr. Congreaves' request that he do so, because respondent believed he had provided services in excess of the fee paid (T 4/27/07 p. 42), despite the fact he was never successful in having Mr. Congreaves' patent application accepted (T 4/27/27 p. 41).

In the matter involving attorney William Jonathan Denius, respondent misrepresented to Mr. Denius the start time for a case plan conference in a dependency case and misled Mr. Denius into believing there was a calendar conflict that necessitated Mr. Denius agreeing to a continuance of his scheduled hearing on a motion for summary judgment in his civil case (ROR A7).

Respondent admitted that the original start time of the hearing in the dependency case did not conflict with the hearing in Mr. Denius' case (T 4/27/07 p44).

Respondent had been attempting to arrange for an earlier start time in the

dependency case at his client's request (T 4/27/07 p. 44). At the time respondent spoke with Mr. Denius about the calendar conflict, he had not yet secured a new start time for the dependency proceeding (T 4/27/07 pp. 44-45). Respondent could have been honest, conduct that is expected of officers of the court, with Mr. Denius and told him he was attempting to change the start time of the dependency proceeding, and, if successful, a calendar conflict would exist. Instead, respondent presented it to Mr. Denius as a *fait accompli* and sent him an altered copy of the court minutes to support his misrepresentation (T 4/27/07 p. 45). Sending the altered court minutes was a clear intentional misrepresentation, no matter how respondent would like to characterize it. Again, this is more than poor judgment, it is the essence of poor character. Respondent's actions were nothing short of manipulative and dishonest.

Respondent's pattern of misconduct and the existence of multiple offenses are abundantly clear in these matters. Throughout these cases, respondent was dishonest with his former law firm, his clients, opposing counsel, the courts, and, most importantly, himself. He repeatedly took money to provide legal services, failed to diligently and competently represent the clients, led clients to believe he could produce results that were not realistic, lied to cover up his inaction, failed to maintain adequate communication with his clients, and refused to make any

refunds. Respondent engaged in a pattern of taking money, whether from clients or from his law firm, based upon his belief of entitlement. While respondent's multitude of personal, physical and emotional problems may explain his misconduct, they do not excuse it. *The Florida Bar v. Golub*, 550 So. 2d 455, 456 (Fla. 1989).

Respondent's argument that the referee incorrectly considered his experience in the practice of law as an aggravating factor is incorrect and respondent's reliance on *The Florida Bar v. Broome*, 932 So. 2d 1036 (Fla. 2006) is misplaced. *Broome* does not hold that an experienced attorney suffering from depression is exempt from the aggravating factor of substantial experience in the practice of law. Respondent's situation is not similar to that of Ms. Broome. Respondent knew that forging his secretary's initials to a letter was wrong. Likewise, respondent knew that altering the date on the court order/minutes he sent to Mr. Denius was wrong. While a less experienced attorney might have failed to appreciate the gravity of such an offense, an experienced practitioner knows better.

With respect to restitution, respondent has not made any effort, despite agreeing to repay the funds at issue. Although respondent blamed his financial problems for his failure to make any efforts at reimbursement, (T 4/27/07 p. 43), he offered no documentary evidence to support his assertion. Furthermore, he

tempered his offers with repeated statements that he believed he was entitled to the money he was paid (T 4/27/07 pp. 19, 39, 42, 87). Respondent's acknowledgement that he owed restitution was self-serving and sounded insincere in light of his ongoing protestations as to his entitlement to the money. The referee was in the best position to judge respondent's credibility and sincerity and clearly found it to be suspect at best.

ISSUE III

THE REFEREE PROPERLY CONSIDERED THE MITIGATION PRESENTED IN THIS CASE.

A referee's findings as to mitigation carry a presumption of correctness and this Court will not disturb them unless they are clearly erroneous or without support in the record. *Valentine-Miller*, 33 Fla. L. Weekly S29. The referee found the following mitigating factors after considering respondent's testimony and evidence: 9.32(a) absence of prior disciplinary record; 9.32(c) personal or emotional problems; 9.32(h) physical or mental disability or impairment; and 9.32(l) remorse. Respondent apparently believes his misconduct was the result of poor judgment and therefore he should be excused. As the late Justice Ehrlich stated in his partially dissenting, partially concurring opinion in *The Florida Bar v. Seldin*, 526 So. 2d 41, 45 (Fla. 1988), "All theft and dishonest acts can be characterized as poor judgment, but that does not excuse the act, and especially so, when committed by a lawyer against a client."

The referee clearly considered respondent's arguments as to mitigation, allowing him to testify at great length on April 27, 2007, and weighed them accordingly. Respondent clearly does not accept the consequences of his admitted misconduct. His testimony on April 27, 2007, and his brief are replete with excuses. Respondent paid lip service to accepting responsibility for his actions but

followed each and every admission with an explanation that his conduct was due to circumstances beyond his control, i.e., clouded judgment due to personal issues (T 4/27/07 p. 19), panic driven misstatements (T 4/27/07 pp. 21, 47), alcohol induced neglect and depression (T 4/27/07 p. 38), and emotional “freezing” due to stress (T 4/27/07 p. 29). Respondent presented no credible evidence that he lacked a selfish or dishonest motive and the facts clearly indicated otherwise. The clients paid respondent for services that were substandard or inadequate. His former law firm lost money it was due for a fee. Thus, respondent’s clients and former law firm suffered harm because of the respondent’s misconduct.

Respondent’s claim that he is rehabilitated (T 4/27/07 p. 92) rings hollow given the inordinate amount of delay he has caused in this appeal. Respondent continues to explain away his actions with a litany of excuses, but, at the end of the day, his conduct has not changed.

ISSUE IV

THE REFEREE'S RECOMMENDATION AS TO DISCIPLINE IS NOT SUPPORTED BY THE CASE LAW AND FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS IN LIGHT OF THE AGGRAVATION PRESENT IN THIS CASE.

This Court's scope of review for a referee's recommendations as to discipline is broader than that afforded the findings of fact because, ultimately, it is this Court's responsibility to impose the appropriate level of discipline. *Valentine-Miller*, 33 Fla. L. Weekly S29. This Court does not, however, second-guess a referee's disciplinary recommendation so long as it is supported by the case law and the Florida Standards for Imposing Lawyer Sanctions. *Valentine-Miller*, 33 Fla. L. Weekly S29. The case law supports a longer period of suspension than the one year recommended by the referee given the seriousness of respondent's misconduct, the cumulative nature of his misconduct, the aggravating factors, and respondent's continuing inability to timely and competently represent himself in these proceedings.

Respondent's initial brief originally was due in this case on or before September 26, 2007. Respondent sought an extension of time, which this Court granted, giving respondent until October 17, 2007, to file his initial brief. However, respondent failed to file his initial brief timely and only filed same after this Court issued its order of October 23, 2007, advising the appeal was subject to dismissal if the brief was not filed within 15 days. Respondent's brief not only was untimely; it failed to comply

with the Florida Rules of Appellate Procedure, resulting in its being rejected for filing.

By order dated November 14, 2007, this Court directed respondent to re-file his initial brief on or before December 4, 2007. Respondent filed his amended initial brief on December 4, 2007, and filed a motion to allow late filing of same as directed by this Court. In his motion, respondent continued to offer similar excuses to this Court for his lack of diligence in the instant appellate proceeding as he had offered during the final hearing to excuse his years of neglect, namely, ongoing issues of a professional and personal nature, including medical treatment for a recent automobile accident. Respondent admitted that he “grossly” underestimated the time required to research, draft and assemble a 50 page brief.

Like his initial brief, respondent’s amended initial brief also failed to comply with the Florida Rules of Appellate Procedure and was not accepted for filing. Consequently, this Court issued a subsequent order on February 12, 2008, giving respondent until March 3, 2008, to file a second amended initial brief that complied with the Florida Rules of Appellate Procedure. While respondent filed his second amended initial brief on March 3, 2008, it has taken him five months from the date his initial brief was due to file a brief that complies with the Florida Rules of Appellate Procedure. The bar finds it troubling that, despite his testimony at the final hearing as to the progress respondent believed he was making in addressing the issues involved

in the underlying disciplinary case, (T 4/27/07 pp. 47-52; 63), his handling of this appeal displays some of the same problems that gave rise to the allegations of misconduct in these cases.

The Florida Standards for Imposing Lawyer Sanctions clearly support a term of suspension in this case. 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. Respondent knowingly neglected multiple legal matters over a period of years. That respondent felt emotionally overwhelmed does not change the fact that he knew he was neglecting client matters. Respondent could have reduced his stress by referring these clients to other attorneys but did not do so, even when he realized, or reasonably should have known, he was not competent to render legal services, such as in Mr. Congreaves' case involving the patent application.

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. There is no question there was a pattern of misconduct in this case.

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. In Ms. Kunkle's case, Count V of the bar's Complaint, respondent filed a suit in federal court that was dismissed due to lack of subject matter

jurisdiction (ROR A5). Respondent admitted that her suit was not a good case (T 4/27/07 pp. 33-34) and, even if Ms. Kunkle prevailed, respondent was aware the defendant company might not have the ability to pay the judgment (T 4/27/07 p. 34). In Mr. Congreaves' case, Count VII of the bar's Complaint, respondent clearly was not able to prepare a properly complete patent application (ROR A6) and he knew he could not sign the patent application because he was not a licensed patent attorney (T 4/27/07 p. 40). Rather than referring Mr. Congreaves to a competent attorney, respondent forged ahead.

Standard 4.62 calls for a suspension when a lawyer knowingly deceives a client, and causes injury or potential injury to a client. In Ms. Kunkle's case, respondent continually misled her into believing she had a valid claim, despite being aware it was questionable at best (T 4/27/07 pp. 33-34, 35), misled her into believing her case was progressing when, in fact, it was not (ROR A5). Similarly, he misled Mr. Congreaves into believing he could handle a patent application matter despite being aware he was not authorized to do so because he was not a registered patent attorney (ROR A6; T 4/27/07 p. 41).

Standard 6.22 calls for a suspension when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. In the

matter concerning Mr. Denius, respondent did not follow proper procedures for changing the hearing time in the dependency case and did not follow proper procedures for obtaining a hearing continuance in the case where Mr. Denius was opposing counsel. Respondent altered the court order/minutes in the dependency case to achieve respondent's objective of having Mr. Denius agree to a continuance of his hearing in his civil case. There is no excuse for such misconduct. Had Mr. Denius not taken it upon himself to double check the accuracy of respondent's claim, respondent's blatant misrepresentation would have gone undiscovered. Of all the charges against respondent, this act best displays his manipulative nature. Respondent attempted to mitigate the seriousness of making a misrepresentation to opposing counsel by explaining he did not submit the altered document to the court (T 4/27/07 p. 86). It matters not whether an altered document is submitted to opposing counsel or to the court. An attorney is an officer of the court. As this Court stated in *The Florida Bar v. Poplack*, 599 So. 2d 116, 118 (Fla. 1992), "We find 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 case closest to being on point with the present matter is *The Florida Bar v. Broome*, 932 So. 2d 1036 (Fla. 2006), where an attorney received a 1 year suspension for engaging in 33 separate rule violations of 18 different rules spanning a period of almost 7 years. The attorney failed to obey court orders, engaged in conduct involving fraud, dishonesty, deceit or misrepresentation, engaged in a pattern of neglect and conduct prejudicial to the administration of justice. This Court found the sanction could have been disbarment but for the substantial mitigating evidence in her case. The attorney was suffering from clinical depression during the time period involved in the proceedings. Although respondent also presented significant mitigation, much of it similar to Ms. Broome's, respondent's misrepresentations and manipulation of the legal system constituted more serious ethical breaches than Ms. Broome's misconduct. While Ms. Broome's misconduct was largely the result of her clinical depression, respondent's misrepresentations cannot be explained away by his various mental, emotional, and physical problems. Respondent understood what he was doing when he forged his secretary's initials on a letter to the court and sent opposing counsel an altered court order/minutes to support his request for a continuance. As this Court mentioned in *Broome*, a violation of R, Regulating Fla. Bar 4-8.4(c) is a serious matter that warrants the imposition of greater sanctions.

Broome, 932 So. 2d at 1043. Ms. Broome violated the rule only once. Respondent violated it four times, thus establishing a pattern of being dishonest.

In *The Florida Bar v. Gross*, 896 So.2d 742 (Fla. 2005), the attorney was disbarred for misappropriating trust funds from numerous clients, failing to comply with a bar subpoena, failing to defend a client in a lawsuit resulting in a judgment against his client, failing to communicate with his client, forging a judge's signature, forging his client's signature, failing to disclose all trust accounts to the bar and failing to repay the misappropriated funds. The attorney presented substantial evidence regarding a serious drug and alcohol addiction and his efforts at rehabilitation. This Court found the mitigation was tempered by the attorney's failure to enter a rehabilitation facility until the day before this Court entered an order of emergency suspension. Although Mr. Gross' misconduct clearly was more egregious than respondent's, the conduct engaged in by Mr. Gross and respondent with respect to their efforts at rehabilitation was similar. Like Mr. Gross, respondent presented substantial evidence and his own testimony, as opposed to that of his treating health professionals, concerning his numerous emotional problems, substance abuse problems, and health problems. Like Mr. Gross, respondent's real efforts at rehabilitation did not begin until after these proceedings were commenced against him. Probable cause was found in Case No. SC06-8 in October 2005. Respondent did

not enter treatment until March 2006 (B-Ex. 1; R-Ex. 1), only three months before the originally scheduled final hearing, resulting in a continuance in this case. While respondent's efforts at addressing his various problems is commendable, it is clear from his testimony and his initial brief that he has not accepted full responsibility for his misconduct.

In *The Florida Bar v. Horowitz*, 697 So.2d 78 (Fla. 1997), the attorney was disbarred from the practice of law. The referee granted the bar's motion for default and the respondent was found guilty of violating more than 20 rules governing attorney conduct. This Court found that his clinical depression did not sufficiently mitigate his pattern of neglecting his clients and failing to respond to the bar's communications. Unlike respondent, Mr. Horowitz did not submit evidence to substantiate his claim of depression. However, like respondent, Mr. Horowitz was unable to show any improvement in his psychological state. This Court found that where the "composite conduct of a lawyer is gross, disbarment is warranted." At page 83. Like Mr. Horowitz, respondent's misconduct was gross. However, unlike Mr. Horowitz, respondent's conduct was tempered by significant mitigation which serves to lessen the sanction from disbarment to a long term suspension.

In *The Florida Bar v. Springer*, 873 So.2d 317 (Fla. 2004), the attorney was disbarred for engaging in multiple instances of misconduct. In six separate matters,

Mr. Springer failed to provide competent representation, failed to act with reasonable diligence, failed to keep his clients reasonably informed and misrepresented to the client the status of the client's matter. Like respondent, Mr. Springer failed to perform his legal duties in a reasonably competent and diligent manner. Mr. Springer, like respondent, then attempted to cover up his shortcomings by resorting to misrepresentations and lies. Mr. Springer repeatedly misrepresented the status of his clients' claims to disguise the fact that he had failed to act or had mishandled their matters. Respondent did the same thing. Only respondent's significant mitigation warrants the imposition of a three year suspension rather than disbarment.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendation of a 1 year suspension continued participation in Florida Lawyer's Assistance, Inc., and restitution to the law firm of Forizs & Dogali, P. L., in the amount of \$500.00, to Gary Duke in the amount of \$500.00, and to Rodney Congreaves in the amount of \$1,500.00 and instead impose as a sanction a 3 year period of suspension, continued participation in Florida Lawyer's Assistance, Inc., and restitution to the law firm of Forizs & Dogali, P. L., in the amount of \$500.00, to Gary Duke in the amount of \$500.00, and to Rodney Congreaves in the amount of \$1,500.00.

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 Christopher Rumsey Qualmann, Respondent, at 2700 Westhall Lane, Suite 215, Maitland, Florida 32751-7475; 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 March, 2008.

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

Undersigned counsel does hereby certify that the Initial Brief is submitted in 14 point proportionately spaced Times New Roman font, and that the brief has been filed by e-mail in accord with the Court's order of October 1, 2004. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

JoAnn Marie Stalcup
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

CHRISTOPHER RUMSEY QUALMANN

Respondent

Case No. SC06-8

[TFB Case Nos. 2004-32,079(18A),
2005-31,231(18A),
2005-31,336(18A),
2006-30,024(18A)]

Case No. SC06-1602

[TFB Case No. 2006-31,784(18A)]

APPENDIX TO ANSWER BRIEF AND CROSS INITIAL BRIEF

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