

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

ROBERT A. BOLAND,

Respondent.

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Case No. SC01-944

TFB No. 1999-10,466(13A)

**AMENDED ANSWER BRIEF**  
**OF**  
**THE FLORIDA BAR**

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## **SYMBOLS AND REFERENCES**

In this Brief, The Florida Bar, Petitioner, will be referred to as “The Florida Bar” or “The Bar.” The Respondent, Robert A. Boland, will be referred to as “Respondent.”

“TT1” will refer to the excerpt of the transcript of the final hearing before the Referee in Supreme Court Case No. SC01-944 held October 12, 2001, which includes the testimony of Josue Jimenez only.

“TT2” will refer to the remaining transcript of the final hearing before the Referee in Supreme Court Case No. SC01-944 held October 12, 2001.

“RR1” will refer to the Report of Referee dated July 15, 2002.

“RR2” will refer to the Final Report of Referee dated October 8, 2002.

“TFB Exh.” will refer to exhibits presented by The Florida Bar at the final hearing before the Referee in Supreme Court Case No. SC01-944.

“Rule” or “Rules” will refer to the Rules Regulating The Florida Bar. “Standard” or “Standards” will refer to Florida Standards for Imposing Lawyer Sanctions.

**STATEMENT OF THE FACTS AND OF THE CASE**

**STATEMENT OF THE CASE**

The Florida Bar filed a one count Complaint in this matter May 1, 2001. By Order dated May 17, 2001, The Honorable Brandt C. Downey, III, Circuit Court Judge, in and for the Sixth Judicial Circuit, was appointed as Referee in this case. On or about May 25, 2001, Respondent filed a Sworn Motion To Disqualify And Affidavit In Support Thereof, in which he argued that the Referee should be disqualified from this case. On or about July 2, 2001, the Referee issued an Order denying Respondent's Motion to Disqualify as legally insufficient.

The final hearing was held October 12, 2001. On July 15, 2002, the Referee issued a Report of Referee finding Respondent guilty of violating the following Rules Regulating The Florida Bar: Rule 4-1.5(a) (an attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee); Rule 4-5.5(a)

(a lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction); Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and Rule 4-8.4(d) (a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice). (RR1, 3).

On July 26, 2002, a sanctions hearing was held in this matter. On October 8, 2002, the Referee issued a Final Report of Referee recommending that this Court issue an order disbarring Respondent from the practice of law in Florida for a period of seven (7) years, enjoining Respondent from using the term “Esquire” until he is reinstated as an attorney in Florida, and requiring Respondent to pay the cost of these proceedings. (RR2, 1).

The Respondent filed an untimely Petition for Review of the Referee’s final report with this Court December 24, 2002. On January 16, 2003, Respondent filed a Motion for Extension of Time to File Brief. On March 4, 2003, this Court granted Respondent’s Motion for Extension of Time to File Brief and allowed Respondent until April 3, 2003, to serve his Initial Brief on the merits. Respondent’s Initial Brief represents that a copy was served on The Florida Bar on April 12, 2003. On April 17, 2003, Respondent filed his Initial Brief with this Court. Respondent’s

Initial Brief did not comply with this Court's requirements for submission of briefs pursuant to Fla. R. App. P. 9.210. On April 25, 2003, the Bar filed a Motion to Strike Respondent's Initial Brief, To Oppose Any Further Extensions of Time for Respondent to File His Initial Brief, and to Dismiss Respondent's Petition for Review, With Prejudice. Respondent then filed an Affidavit in Opposition to Complainant's Motion to Strike and Motion to Dismiss, and he filed an Amended Initial Brief with this Court May 5, 2003. Pursuant to Rule 3-7.7, this Court has jurisdiction.

#### **STATEMENT OF THE FACTS**

By Florida Supreme Court Order No. 85,274 dated December 4, 1997, Respondent was suspended from the practice of law in Florida for a period of two (2) years followed by two (2) years' probation, with an effective date thirty days from the filing of the opinion. (TFB Exh. 7). On December 31, 1997, Respondent filed a Motion For A Limited Extension Of Time For Thirty Days To Close Out Four Cases, none of which involved Josue Jimenez. (TFB Exh. 8), (RR1, 1). On January 16, 1998, this Court granted Respondent's Motion For A Limited Extension Of Time For Thirty Days To Close Out Four Cases, extending the effective date of Respondent's suspension to

February 5, 1998. (TFB Exh. 10), (RR1, 1). Respondent remains suspended from the practice of law in Florida. (TT2, 83).

In or about July of 1997, Respondent was hired to represent Mr. Josue Jimenez, who had been arrested on drug trafficking charges in Columbia County, Florida in April 1997. (TT1, 6-7). On or about July 14, 1997, Mr. Jimenez made an initial payment of \$500.00 to Respondent. (TT1, 7). On or about September 1, 1997, Mr. Jimenez paid Respondent an additional \$1,200.00. (TT1, 7). Attorney Martin S. Page had been appointed on or about June 3, 1997, to represent Mr. Jimenez, and was the attorney of record in the case. (TT2, 91, 92). Respondent never filed a Notice of Appearance on behalf of Mr. Jimenez. (TT2, 89).

Shortly after being hired by Mr. Jimenez, Respondent drove to Lake City, Florida to go to the scene of Mr. Jimenez' arrest, and to review the arresting affidavit and other documents contained in the court file. (TT2, 89-90). On January 28, 1998, Mr. Page filed a Motion to Suppress on behalf of Mr. Jimenez. (TFB Exh. 5; TT2, 130). After the Motion to Suppress was filed, Respondent made a second trip to Lake City, Florida during which, according to his testimony and brief (page 6), he reviewed the Motion to Suppress contained in the court file.

(TT2, 128-129). Respondent also testified that he had reviewed deposition transcripts contained in the court file, affirming his initial written response to the Bar dated April 5, 1999, in which he stated that he “read the depositions that were taken as well as the suppression motions contained in the court file.” (TT2, 108-109, 128-129; TFB Exh. 11). Pursuant to the Columbia County Progress Docket, no deposition transcripts were ever filed in Mr. Jimenez’ case. (TFB Exh. 5).

After Mr. Jimenez’ April 1997 arrest in Columbia County, Florida, Respondent accompanied Mr. Jimenez to the Department of Motor Vehicles and spent an entire day with him in order to help him get his driver’s license reinstated. (TT1, 10; TT2, 111; TFB Exh. 11). According to Mr. Jimenez’ testimony, he obtained his reinstated driver’s license on the day that Respondent accompanied him to the Department of Motor Vehicles. (TT1, 10-11). The driver’s license record for Mr. Jimenez issued by the Florida Department of Highway Safety and Motor Vehicles Division of Driver Licenses reflects that Mr. Jimenez’ driver’s license was reinstated on February 26, 1998, after the effective date of Respondent’s suspension. (TFB Exh. 1; TT2, 113-114).

Subsequent to Mr. Jimenez’ arrest in Columbia County, Florida, Mr. Jimenez was arrested in Hillsborough

County, Florida. (TT1, 11). In March 1998, Respondent facilitated the collection of fees and the hiring of another attorney to represent Mr. Jimenez in court regarding a driver's license matter. (TT2, 94). Respondent collected \$500.00 from Mr. Jimenez' girlfriend in order to pay the attorney that he had hired. (TT2, 94). Respondent continued to have communication with Mr. Jimenez, and Respondent visited Mr. Jimenez on a couple of occasions at the jail after he was arrested in Hillsborough County. (TT1, 11, 13). Respondent never told Mr. Jimenez that he had been suspended from the practice of law in Florida. (TT1, 14).

In or about May of 1998, Respondent attempted to hire yet another attorney to represent Mr. Jimenez regarding an immigration matter, and Respondent attempted to collect fees from Mr. Jimenez' family to hire an immigration attorney. (TT1, 42-43; TT2, 97-98). Respondent specifically informed Mr. Jimenez' sister that Mr. Jimenez had an immigration hold, and that if she could obtain \$500.00, he would give her the names and addresses of some immigration attorneys, and she could hire one of them. (TT2, 98). Respondent never informed Mr. Jimenez' sister that he had been suspended from the practice of law in Florida. (TT2, 69).

At some point during 1997, Mr. Jimenez informed Respondent that his cousin, Juan Salazar, known as

“Tony,” was being held in jail on a \$5,000.00 bond, and he asked Respondent if he could help his cousin bond out of jail. (TT2, 100). Respondent arranged a meeting with bail bondsman Neil Rosenberg, whom he had known for quite some time, during which Mr. Rosenberg agreed to post a bond for Tony, and Tony agreed to pay a premium of \$500.00. (TT2, 100; TT1, 17). Tony failed to appear in court, and further failed to pay Mr. Rosenberg the \$500.00 premium, plus \$250.00 in costs incurred. (TT1, 18; TT2, 100-103).

Another individual named Juan Salazar, was arrested with Mr. Jimenez in Columbia County, Florida on drug charges. (TT1, 16). Mr. Jimenez’ mother gave Mr. Jimenez \$1,500.00 to post for Juan Salazar’s bond. (TT1, 18). Mr. Jimenez then posted Juan Salazar’s bond in the amount of \$1,500.00. (TT1, 18).

In or about June 1998, Respondent prepared an Affidavit to be signed by Mr. Jimenez, authorizing the release of the cash bond that Mr. Jimenez had posted for Juan Salazar in the amount of \$1,500.00, as Mr. Salazar was then in custody. (TFB Exh. 2; TT2, 101). This Affidavit was styled “State of Florida vs. Juan Salazar” and pertained to the pending case in the Circuit Court of Columbia County, Florida, in which Mr. Salazar was facing drug charges. (TFB Exh. 2). The Affidavit specifically authorized Respondent to receive a check from the Columbia County

Sheriffs Department for the cash bond that Mr. Jimenez posted for Mr. Salazar. (TFB Exh. 2; TT2, 101).

Respondent took the Affidavit he had prepared to the Orient Road Jail, where Mr. Jimenez executed the same in the presence of a notary public. (TFB Exh. 2; TT1, 9; TT2, 101). Respondent then took the Affidavit to Columbia County, Florida and secured possession of the \$1,500.00 check, which was made payable to Josue Jimenez. (TFB Exh. 2; TT2, 101). Respondent signed Mr. Jimenez' name to the back of the check, without having received Mr. Jimenez' authorization. (TFB Exh. 2; TT1, 9; TT2, 101). Mr. Jimenez never saw the \$1,500.00 check. (TT1, 8).

Mr. Jimenez understood that \$750.00 of the \$1,500.00 was to be used to pay Mr. Rosenberg the money that was owed to him for posting the bond for his cousin Tony, and that the remaining \$750.00 was to be given to Mr. Jimenez' mother to partially reimburse her for money she had given to Mr. Jimenez to post Juan Salazar's bond. (TT1, 18). Respondent gave the \$1,500.00 check to Mr. Rosenberg, and Mr. Rosenberg then deposited the check into his account. (TT2, 101-103). Mr. Rosenberg kept the \$750.00 he was owed, and gave the remaining \$750.00 to Respondent in cash. (TT2, 103). Respondent kept the \$750.00, and testified that this payment was for money

that Mr. Jimenez owed to him from 1997. (TT2, 103). Respondent failed to produce any documents or other credible evidence at the final hearing to demonstrate why he was owed certain monies from Mr. Jimenez from 1997. (TT2, 103-104; RR1, 1).

### **SUMMARY OF THE ARGUMENT**

Respondent engaged in the unauthorized practice of law while suspended by continuing to meet with his client, by advising him with regard to pending cases, by preparing a legal document for his signature, and by

soliciting and accepting legal fees on behalf of his client. Respondent's improper preparation of an Affidavit for his client's signature constitutes the unauthorized practice of law because the Affidavit was a legal instrument affecting his client's legal rights. Respondent also improperly took possession of the \$1,500.00 check made payable to his client after his suspension had begun, and improperly kept \$750.00 of the \$1,500.00. Respondent never informed his client that he had been suspended from the practice of law.

Competent and substantial evidence in the record supports the Referee's findings of fact, and they should be upheld. The Referee appropriately exercised his discretion to deny Respondent's Motion for Disqualification because the evidence in the record reflects that Respondent's allegations were previously considered and rejected by this Court. The evidence in the record also supports the Referee's findings that Respondent was untruthful regarding his statements about reviewing the Motion to Suppress and the deposition transcripts. The Referee was in the best position to assess credibility and to determine guilt, and his findings and recommendations should be approved because they are clearly supported by competent and substantial evidence.

Respondent committed multiple, intentional acts of the unauthorized practice of law. Additionally,

Respondent has an extensive history of prior disciplinary violations. The Referee recommended that Respondent be disbarred from the practice of law for a period of seven (7) years. The Referee's recommended sanction is supported by the record herein, the case law, and the Florida Standards for Imposing Lawyer Sanctions. This Court should approve the Referee's recommendation of disbarment.

## ARGUMENT

### I. The Referee's Findings of Fact Are Supported by Competent and Substantial Evidence in the Record and Should Be Upheld.

In attorney disciplinary proceedings “a referee’s findings of fact are presumed correct and this Court will not reweigh the evidence and substitute its judgment for that of the referee as long as the findings are not clearly erroneous or lacking in evidentiary support.” *Florida Bar v. Beach*, 675 So. 2d 106, 108 (Fla. 1996). In order to successfully challenge the Referee’s findings, Respondent must demonstrate “that there is no evidence in the record to support [the referee’s] findings or that the record evidence clearly contradicts the conclusions.” *Florida Bar v. Spann*, 682 So. 2d 1070, 1073 (Fla. 1996). The Respondent has not met his burden of demonstrating that the Referee’s findings in this case lack evidentiary support or are clearly erroneous.

#### A. Judge Downey appropriately exercised his discretion to deny Respondent’s request for recusal.

Respondent argues that it was a reversible error for Judge Downey not to recuse himself from this case after Respondent filed a Motion for Disqualification. This Court has not yet ruled on Respondent’s Motion to Take

Judicial Notice of Two Previous Supreme Court Cases, specifically, case numbers 85274 and 91361<sup>1</sup>. The Bar will address the issues raised in Respondent's Amended Initial Brief concerning those proceedings to correct misrepresentations, in the event this Court elects to consider these cases. In its opinion in 85274, issued December 4, 1997, this Court upheld the Referee's recommendations and suspended Respondent for two (2) years. (TFB Exh. 7). In his Initial Brief in case number 85274, Respondent raised both allegations that (1) Judge Downey had engaged in ex-parte conversations with Assistant Staff Counsel, Thomas E. DeBerg, and (2) that Judge Downey had applied the wrong standard of proof. By upholding the Referee's recommendations, this Court impliedly and expressly rejected Respondent's arguments. Although it did not specifically address the alleged ex-parte communications, this Court stated in footnote 1 of the opinion that "Although the referee stated at the sanctions hearing that the Bar had proven its case by 'more than a preponderance of the evidence,' his written report makes clear that he applied the clear and convincing evidence standard." (TFB Exh. 7).

Regarding case number 91361, Respondent has falsely stated that Judge Downy "signed ex-parte a

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<sup>1</sup> Respondent inaccurately referenced this case as 97,361 in his motion and in his brief.

Contempt and Pick-Up Order against Respondent Robert A. Boland.” (Respondent’s Amended Initial Brief, page 3). Judge Downey’s Order, issued October 27, 1998, showing service to Respondent, provides that “entry of an order adjudging Respondent in contempt is deferred until sixty (60) days form the date of this Order.” (Exhibit A). Although Respondent states that he was “forced to hire counsel to set aside the Order,” Respondent personally signed and filed his Motion to Strike Ex-Parte Order Of Contempt and to Set Hearing on or about December 4, 1998, which was granted, and he appeared *pro se* at the subsequent contempt hearing.

Finally, in footnote 4, at page 4 of Respondent’s Amended Initial Brief, he falsely accuses the undersigned counsel of filing a “secret” grievance against him. The Chief Branch Disciplinary Counsel of the Tampa Office of The Florida Bar exercised discretion to initiate an inquiry concerning Respondent’s conduct in stating that Judge Downey had “lied.” Another Bar counsel referred the matter to the Thirteenth Judicial Circuit Grievance Committee “E” to determine whether probable cause existed to pursue discipline for a violation of Rule 4-8.2(a). Rule 4-8.2(a) provides, in pertinent part, that a lawyer shall not make a statement that the lawyer knows to be false, or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. The grievance

committee voted not to pursue further disciplinary proceedings in that case.

Respondent's Motion for Disqualification in the instant case was properly denied by Judge Downey as the same allegations have been considered and rejected by this Court.

B. Judge Downey was in the best position to assess credibility and to determine guilt, and his findings and recommendations should be approved.

Respondent argues in his Initial Brief that he made his second trip to Lake City, Florida in November or December of 1997 for "a scheduled Motion To Suppress Hearing," and "to learn more about the case since discovery was completed, i.e. the depositions were taken in the fall of 1997." (Respondent's Amended Initial Brief, pages 18-19). Pursuant to the Columbia County Progress Docket, Mr. Jimenez' court appointed attorney, Martin S. Page, filed the Motion to Suppress January 28, 1998. (TFB Exh. 5). At the final hearing, Respondent testified that he read the Motion to Suppress from the court file during this same trip, yet the Motion to Suppress was not filed until January 1998. (TT2, 109-110, 129). Therefore, Respondent either did not review the Motion to Suppress as he has argued, or he misrepresented the date of his second trip and reviewed the Motion to Suppress in 1998, after he was suspended from the practice of law. Judge Downey found that, "Whichever is true, the

Respondent was untruthful on at least one of these occasions.” (RR1, 3).

Respondent has also argued in his brief that one purpose for his second trip to Lake City, Florida was to learn more about the case as discovery was completed, and depositions had been taken in the fall of 1997. In his initial response to the bar grievance, and during the trial, Respondent represented that he had reviewed deposition transcripts contained in the court file. (TFB Exh. 11, TT2, 110). Pursuant to the Columbia County Progress Docket, however, no deposition transcripts were ever filed in Mr. Jimenez’ case. (TFB Exh. 5). As Judge Downey stated in his Report of Referee, “In no event could the Respondent have reviewed any depositions in the court file since none were filed as part of the record.” (RR1, 3).

In his Initial Brief, Respondent further argues that he rendered competent legal services to Mr. Jimenez, however, the Bar did not allege, nor did Judge Downey address the issue of whether Respondent provided Mr. Jimenez with competent representation. Judge Downey did not find Respondent guilty of violating Rule 4-1.1, Rules Regulating the Florida Bar, for failing to provide a client with competent representation, therefore, this argument is outside the record on appeal. (RR2, 1).

The record is replete with clear and convincing evidence to support the Referee’s findings of facts and his recommendations of guilt. Respondent has failed to meet his heavy burden of establishing that the record is wholly lacking in evidentiary support for Judge Downey’s findings. This Court has consistently held that where a referee’s findings are supported by competent substantial evidence, it is precluded from reweighing the evidence and substituting its judgment for that of the referee. *Florida Bar v. Vining*, 721 So. 2d 1164, 1167 (Fla. 1998), quoting *Florida Bar v. MacMillan*, 600 So. 2d 457, 459 (Fla. 1992). Judge Downey was in the best position to assess credibility and to determine guilt, and his findings and recommendations should be approved because they are clearly supported by competent substantial evidence.

II. Respondent Engaged in The Unauthorized Practice of Law by Continuing to Assist His Client With Legal Matters Including The Preparation of an Affidavit While Suspended, And by Soliciting And Accepting Legal Fees While Suspended.

Rule 3-5.1(e), Rules Regulating The Florida Bar, specifically provides that “[d]uring . . . suspension the respondent shall continue to be a member of The Florida Bar but without the privilege of practicing.” The Florida Supreme Court has consistently imposed additional discipline upon already-disciplined attorneys for engaging in the

unauthorized practice of law, or for violating the terms of existing disciplinary orders. *Florida Bar v. Ross*, 732 So. 2d 1037, 1041-1042 (Fla. 1998).

The Respondent engaged in the practice of law while suspended in violation of his suspension order and Bar Rules. Respondent continued to meet with Mr. Jimenez, and advise him regarding his pending cases. Respondent also prepared a legal document for Mr. Jimenez to sign, and collected legal fees for Mr. Jimenez' representation, without disclosing that he had been suspended from the practice of law. (TT1, 14).

In *Florida Bar v. Gordon*, 661 So. 2d 295 (Fla. 1995), this Court identified a number of activities that constitute the practice of law, including:

...

3. Advising persons of their rights, duties, and responsibilities under Florida or federal law and construing and interpreting the legal effect of Florida law and statutes for third parties;
4. Giving legal advice and counsel to others;
5. Soliciting or accepting attorney's fees;

6. Giving advice and making decisions on behalf of others that require legal skill and a knowledge of the law greater than that possessed by the average citizen;

7. Advising and/or explaining legal remedies and possible courses of action to individuals that affect their procedural and substantive legal rights, duties, and privileges;

...

12. Preparing pleadings and any other legal documents for third parties;

...

*Gordon*, 661 So. 2d at 296; *see also Florida Bar v. Davide*, 702 So. 2d 184, 185 (Fla. 1997).

During his suspension, Respondent prepared an Affidavit to be signed by Josue Jimenez, authorizing the release of the cash bond that Mr. Jimenez had posted for Juan Salazar. (TFB Exh. 2; TT2, 101). The Affidavit was styled “State of Florida vs. Juan Salazar” and pertained to a case pending in the Circuit Court of Columbia County, Florida, in which Mr. Salazar was facing drug charges. (TFB Exh. 2). This Affidavit was a legal instrument affecting Mr. Jimenez’ legal rights to the funds he had posted.

The unauthorized practice of law includes the preparation of legal forms or legal documents affecting an individual’s legal rights. In defining the practice of law, this Court has stated:

[T]he practice of law also includes the giving of legal advice and counsel to others as to their rights and obligations under the law and the preparation of legal instruments, including contracts, by which legal rights are either obtained, secured or given away, although such matters may not then or ever be the subject of proceedings in a court.

*State ex rel. Florida Bar v. Sperry*, 140 So. 2d 587, 591 (Fla. 1962), vacated on other grounds, 373 U.S. 379, 83 S. Ct. 1322, 10 L. Ed. 2d 428 (1963).

This Court has enjoined non-lawyers from preparing legal forms or legal documents affecting an individual's legal rights. *Florida Bar v. Davide*, 702 So. 2d 184, 185 ( Fla. 1997). In *Florida Bar v. Howard*, 306 So. 2d 515 ( Fla. 1975), this Court held that it was the unauthorized practice of law for the respondents to prepare and execute affidavits and other documents authorizing respondents to receive or collect monies to which various property owners were entitled. The respondents had prepared affidavits of ownership and assignment in regard to tax deed sales. The affidavits, which appointed one of the respondents as attorney in fact, stated in part:

. . . I do hereby constitute and appoint F. V. Montez my true and lawful attorney for me in my place and stead to receive all monies to which I may be lawfully entitled to receive from the ownership of the above described real property, and I do authorize him personally to institute and maintain any and all legal proceedings in my name that may be necessary, proper, or advisable to collect same, and authorize him to take and receive said money in my name . . .

306 So. 2d at 517.

In *Florida Bar v. Columbia Title of Florida*, 197 So. 2d 3 (Fla. 1967), this Court held that it was the unauthorized practice of law for a land title company to prepare various affidavits as part of a real estate closing. These documents included an Affidavit regarding advance rents paid for the seller to execute a Mechanic's Lien Affidavit (by use of a form), and an Affidavit of Continuous Marriage and of Identity. *Id.* at 4.

In an advisory opinion, this Court analyzed various actions taken by a community association manager to determine whether these actions constituted the unauthorized practice of law, including the preparation of certain documents. *Florida Bar re Advisory Opinion—Activities of Community Association Managers*, 681 So. 2d 1119 (Fla. 1996). This Court, guided by the definition of the practice of law in *Sperry*, concluded that community association managers may take certain ministerial actions, including the completion of documents not requiring legal sophistication and training, such as notices of elections, meeting agendas, and affidavits of mailing. This Court held, however, that the preparation of documents affecting legal rights, such as drafting a claim of lien, constituted the unlicensed practice of law. “Because of the substantial rights which are determined by these

documents, the drafting of them must be completed with the assistance of a licensed attorney.” *Id.* at 1123.

This Court has disciplined attorneys for preparing legal documents while suspended. In *Florida Bar v. Jones*, 571 So. 2d 426 (Fla. 1990), while serving a 91-day suspension, Jones violated his suspension order by engaging in the practice of law. His actions included signing a summons, a supplemental Petition for Modification of Final Judgment, and a financial affidavit in a divorce case. In another case, he prepared a Notice of Appeal and Motion for Supersedeas Bond and delivered them to the client for signature. Jones also attended a legal proceeding and conferred with his client’s new attorney, handed him notes, and attempted to assist in argument. He did not notify clients of his suspension. *Id.* at 427. The Referee recommended that Jones’ suspension be extended for an additional two years, however, this Court agreed with the Bar that disbarment was the appropriate sanction. *Id.* at 428.

The Affidavit prepared by Respondent in the instant case was not merely a ministerial act, rather, by authorizing the Respondent to receive the bond money Mr. Jimenez had posted, it determined substantial rights of Mr. Jimenez, and clearly meets the definition of a legal instrument “by which legal rights are either obtained, secured

or given away.” *Sperry, supra*. By preparing an Affidavit affecting his client's legal rights, Respondent engaged in the unauthorized practice of law.

This Court has disciplined attorneys for accepting legal fees while suspended from the practice of law. In *Florida Bar v. Hirsch*, 359 So. 2d 856 (Fla. 1978), a suspended attorney met with a prospective client, received fees from the client, and failed to inform the client that he was suspended. Hirsch was disbarred for engaging in the unauthorized practice of law. *Id.* at 857. In *Florida Bar v. Golden*, 563 So. 2d 81 (Fla. 1990), the respondent continued to accept fees from a client after the effective date of his suspension. This Court found that while his practice was minimal, “counselling and attempting to assist his client in requesting two continuances constituted the unauthorized practice of law.” *Id.* at 82. This Court suspended Golden for an additional year. *Id.* In *Florida Bar v. Neely*, 675 So. 2d 592 (Fla. 1996), this Court permanently disbarred Neely for continuing to practice law after he was disbarred. Neely met with a prospective client and accepted fees for the representation. *Id.* at 593.

In the instant case, Respondent solicited and accepted legal fees while suspended from the practice of law. Respondent further took possession of the \$1,500.00 check made payable to Josue Jimenez after his suspension

had begun, and he improperly signed Mr. Jimenez' name on the back of the check without Mr. Jimenez' knowledge or authorization. (TT1, 9; TT2, 101). Respondent improperly kept \$750.00 of the \$1,500.00, claiming that this money was owed to him for prior legal services that he had performed for Mr. Jimenez in 1997. (TT2, 103). At the final hearing, however, Respondent did not specify the particular services he performed to justify his receipt of this money, and he did not have any documentation to demonstrate that he was owed this money. (TT2, 103-104; RR1, 1). Mr. Jimenez testified that the \$750.00 was to be paid to his mother, not to the Respondent, and he directly refuted Respondent's position that he was entitled to keep the money. (TT1, 18).

Respondent improperly solicited legal fees from Mr. Jimenez' friends and family members after his suspension. He solicited fees from Mr. Jimenez' girlfriend for the hiring of another attorney to represent Mr. Jimenez at a hearing in his Hillsborough County case. (TT2, 94). Respondent also asked Mr. Jimenez' sister for funds so that he could arrange for the hiring of an immigration lawyer on behalf of Mr. Jimenez. (TT2, 98). Mr. Jimenez' sister was never informed by Respondent that he had been suspended from the practice of law. (TT2, 69).

Respondent engaged in the unauthorized practice of law by continuing to assist his client with legal matters including the preparation of an Affidavit, and by soliciting and accepting legal fees while suspended. Respondent intentionally failed to inform his client and members of his client's family that he had been suspended. By continuing to practice law while suspended, Respondent violated his suspension order, the Rules Regulating the Florida Bar, and State law.

III. Disbarment Is the Appropriate Sanction Considering the Seriousness of Respondent's Misconduct, the Record Herein, the Relevant Case Law, and the Florida Standards for Imposing Lawyer Sanctions.

The Referee recommended that Respondent be disbarred from the practice of law for a period of seven (7) years. (RR2, 1). Disbarment is the appropriate sanction for Respondent's misconduct, as supported by the record herein, relevant case law, and the Florida Standards for Imposing Lawyer Sanctions.

While this Court has the ultimate responsibility to order a disciplinary sanction, cases previously decided by this Court have recognized that a referee's recommendation of discipline is to be afforded deference unless the recommendation is clearly erroneous or not supported by the evidence. *Florida Bar v. Niles*, 644 So. 2d 504, 506-

507 (Fla. 1994). “[A] referee’s disciplinary recommendation is presumed correct and will be followed if reasonably supported by existing case law and not ‘clearly off the mark.’” *Florida Bar v. Vining*, 721 So. 2d 1164, 1169 (Fla. 1998).

Generally speaking, this Court has held that it “will not second-guess a referee’s recommended discipline as long as that discipline has a reasonable basis in existing case law.” *Florida Bar v. Temmer*, 753 So. 2d 555, 558 (Fla. 1999). This Court has consistently held that disbarment is the appropriate sanction for an attorney who engages in the unauthorized practice of law. *See Florida Bar v. Weisser*, 721 So. 2d 1142 (Fla. 1998); *Florida Bar v. Brown*, 635 So. 2d 13 (Fla. 1994); *Florida Bar v. Greene*, 589 So. 2d 281 (Fla. 1991); *Florida Bar v. Jones*, 571 So. 2d 426 (Fla. 1990); *Florida Bar v. Bauman*, 558 So. 2d 994 (Fla. 1990).

In *Bauman*, Bauman engaged in at least five (5) acts of practicing law while suspended, and was disbarred. *Id.* at 994. This Court stated that “[w]e can think of no person less likely to be rehabilitated than someone like respondent, who wilfully, deliberately, and continuously, refuses to abide by an order of this Court.” *Id.* In the instant case, Respondent similarly engaged in multiple acts constituting the practice of law while suspended, and

likewise, he has “wilfully, deliberately, and continuously” failed to abide by this Court’s order of suspension. One example, is Respondent’s continued use of the designations “Esq.,” “Esquire,” and “Attorney,” which appear on the cover page of his Amended Initial Brief.

In *Florida Bar v. Brown*, 635 So. 2d 13 (Fla. 1994), Brown was disbarred for a period of six (6) years for continuing to practice law after a disciplinary resignation. This Court stated that “[c]lear violation of any order or disciplinary status that denies an attorney the license to practice law generally is punishable by disbarment, absent strong extenuating factors.” *Id.* at 13. In the instant case, Respondent violated the order of suspension, and there were no strong, extenuating factors present, therefore, disbarment is the appropriate sanction.

In *Florida Bar v. Greene*, 589 So. 2d 281 (Fla. 1991), Greene was disbarred for engaging in the unlicensed practice of law while suspended. This Court noted Greene’s long history of disciplinary violations, and stated that the respondent had completely disregarded the lesser forms of discipline that had been imposed, that he had failed to abide by conditions of probation, and that he had continued to practice law while suspended. *Id.* at 282. Based upon Greene’s prior disciplinary violations, his refusal to adhere to lesser forms of discipline, and his failure to

participate in this case, this Court held that disbarment was the appropriate sanction. *Id.* at 283.

In the instant case, the Respondent also has an extensive history of prior disciplinary violations. Respondent received a private reprimand in 1982, a public reprimand and probation in 1992, and a rehabilitative suspension for a period of two (2) years in 1997. Respondent's prior disciplinary history coupled with the unauthorized practice of law while suspended warrants disbarment.

In *Florida Bar v. Weisser*, 721 So. 2d 1142 (Fla. 1998), this Court held that a five-year disbarment was the appropriate sanction for a respondent who intentionally engaged in the unlicensed practice of law after a disciplinary resignation. The evidence demonstrated that Weisser had intentionally engaged in the unlicensed practice of law by representing his child in court. *Id.* at 1143. Weisser had prepared, signed, and filed various pleadings on behalf of his son, and had failed to inform both opposing counsel and the judge that he was not licensed to practice law, after having received notice that both the opposing counsel and the judge believed that he was licensed to practice law.

*Id.*

This Court found that Weisser had intentionally violated the disciplinary resignation order by initiating

litigation and engaging in extensive legal representation for over two and one-half years, and reasoned that the respondent's misconduct caused injury to the legal system and the profession. *Id.* at 1145. This Court also noted Weisser's prior disciplinary history, and that he had previously been disciplined for similar acts of misconduct, holding that disbarment was the appropriate sanction. *Id.*

Respondent, like Weisser, intentionally engaged in multiple acts of the unauthorized practice of law by continuing to advise Mr. Jimenez with regard to pending cases, by preparing an Affidavit for Mr. Jimenez' signature, by soliciting and collecting legal fees for Mr. Jimenez' representation, and by failing to inform both Mr. Jimenez and members of Mr. Jimenez' family that he had been suspended from the practice of law. Also like Weisser, Respondent has a history of prior disciplinary violations. Respondent's misconduct in the instant case has also caused injury to the legal system and the profession, because he violated a prior disciplinary order of this Court by continuing to engage in the practice of law while suspended. For the aforementioned reasons, Respondent's misconduct justifies disbarment.

In making a determination as to discipline, this Court considers not only case law, but also the Florida Standards for Imposing Lawyer Sanctions. *Florida Bar v. Forrester*, 818 So. 2d 477, 483 (Fla. 2002). The Standards provide a guideline

for determining the appropriate sanction in attorney disciplinary matters. The Referee's recommended sanction of a seven (7) year disbarment is consistent with these Standards.

Standard 5.11(f) provides that absent aggravating and mitigating circumstances, "[d]isbarment is appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice." Respondent engaged in dishonest and fraudulent conduct by failing to inform Mr. Jimenez that he had been suspended from the practice of law, and by signing Mr. Jimenez' name to the back of the check without Mr. Jimenez' knowledge or consent.

Standard 8.1(a) provides that absent aggravating and mitigating circumstances, "[d]isbarment is appropriate when a lawyer intentionally violates the terms of a prior disciplinary order and such violation causes injury to a client, the public, the legal system, or the profession." Respondent intentionally violated a prior disciplinary order by continuing to practice law while suspended, and this violation caused injury to Mr. Jimenez, the public, and the legal system.

Standard 9.21 defines aggravating circumstances as "any considerations or factors that may justify an increase in the degree of discipline to be imposed." The Referee found several aggravating factors in his Final Report Of Referee. (RR2,

2). The aggravating factors found by the Referee are as follows:

Standard 9.22(a) Prior disciplinary offenses. Respondent has a history of prior disciplinary offenses. Respondent received a private reprimand in 1982, a public reprimand and probation in 1992, and a rehabilitative suspension for a period of two (2) years in 1997.

Standard 9.22(b) Dishonest or selfish motive. Respondent's failure to inform Mr. Jimenez about his suspension exhibits dishonesty. Respondent's attempts to collect money from Mr. Jimenez and Mr. Jimenez' family after his suspension reflects a selfish motive.

Standard 9.22(e) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.

Standard 9.22(f) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process.

Standard 9.22(g) Refusal to acknowledge wrongful nature of conduct. Respondent denies that he practiced law after he was suspended.

Standard 9.22(h) Vulnerability of victim.

Mitigating circumstances defined in Standard 9.31 as "any considerations or factors that may justify a reduction in the degree of discipline to be imposed." The Referee did not find any mitigating factors in his Final Report of Referee. (RR2, 2).

Based on the seriousness of Respondent's misconduct, the relevant case law, and the Florida Standards for Imposing Lawyer Sanctions, the Referee correctly concluded that Respondent should be disbarred from the practice of law.

Respondent's multiple, intentional violations of his order of suspension coupled with his extensive disciplinary history justifies disbarment.

## CONCLUSION

Respondent engaged in multiple, intentional acts that constitute the unauthorized practice of law. While suspended, Respondent continued to meet with his client and to advise him regarding his pending cases. Respondent also prepared a legal document for his client's signature, which greatly affected the client's right to obtain funds to which he was entitled. Specifically, Respondent prepared an Affidavit that he used to obtain a check for \$1,500.00 made payable to his client. Respondent then, without his client's knowledge or consent, signed the client's name to the back of the check and presented it to a bail bondsman, who deposited the check, kept \$750.00, and gave \$750.00 in cash to Respondent. Although Respondent argues that the client owed him past legal fees, Respondent has produced no credible evidence to support that claim. Even if Respondent had been owed funds, he was not authorized to sign his client's name as an endorsement on the check, and to use client funds for an unintended purpose.

This Court should approve the Referee's findings of fact, which are supported by competent and substantial evidence. This Court should also approve the referee's recommended discipline of a seven (7) year disbarment, which sanction is warranted based on the evidence presented and existing case law. Respondent's unauthorized practice of law, dishonesty, fraud and deceit, combined

with his extensive disciplinary history justifies disbarment.

Dated this \_\_\_\_\_ day of May, 2003.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original and seven (7) copies of this Amended Answer Brief have been provided by Airborne Express, Airbill Number 5061987070 to **The Honorable Thomas D. Hall, Clerk**, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, FL 32399-1927; a true and correct copy by regular U.S. Mail and U. S. Certified Mail, Return Receipt Requested No. 7003 0500 0000 2963 8551 to **Robert A. Boland, Respondent**, at his record Bar address of P.O. Box 172431, Tampa, FL 33672-0431; and a copy by regular U.S. Mail to **John Anthony Boggs, Staff Counsel**, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300, all this \_\_\_\_ day of May 2003.

\_\_\_\_\_  
Debra Joyce Davis  
Assistant Staff Counsel

**CERTIFICATION OF FONT SIZE AND STYLE**  
**CERTIFICATION OF VIRUS SCAN**

Undersigned counsel does hereby certify that this Amended Answer Brief is submitted in WordPerfect 14 point proportionally spaced Times New Roman font, and the computer disk filed with this brief has been scanned and found to be free of viruses, by Norton Antivirus for Windows.

\_\_\_\_\_  
Debra Joyce Davis