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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Case No.: SC05-1149

Complainant,

TFB: 2004-10,132(6A)

v.

MARK A. ADAMS,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On June 27, 2005, The Florida Bar filed its Complaint against Respondent in these proceedings. On December 1, 2005, a final hearing on liability was held in this matter. After finding numerous and significant violations, a final hearing on the recommended discipline was held on February 3, 2006. All of the aforementioned pleadings, responses thereto, exhibits received in evidence and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Louis Kwall, Esquire
Jodi Anderson Thompson, Esquire

For The Respondent: Mark A. Adams, Esquire

JTB
3/2/06

II. Findings of Fact:

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary of the Case. On June 30, 2005, the Chief Justice of the Florida Supreme Court ordered that a Referee be appointed to conduct the required Case Management Conference and Final Hearing in this matter. On July 8, 2005, the Honorable Gregory P. Holder, Circuit Judge of the 13th Judicial Circuit was appointed as Referee in this cause. On or about August 5, 2005, The Bar moved for a default against the Respondent, having received no Answer to the Complaint. On August 6, 2005, the Respondent filed a Response to the Florida Bar's Motion for Default. On August 18, 2005, the Referee conducted a telephonic conference with all parties and ordered the Respondent to Answer the Complaint within twenty days from August 18, 2005 (September 7, 2005). On September 6, 2005, the Respondent filed a Motion to Enlarge Time seeking additional time to file an Answer. The Referee denied the Respondent's Motion to Enlarge Time on September 8, 2005.

After conducting the mandatory Case Management Conference with the parties, the Referee executed a Uniform Order Setting Cause for Trial and Pre-Trial, setting the final hearing for December 1, 2005, and a pre-trial conference for November 22, 2005. On September 8, 2005, The Bar filed a Motion for Default as the Respondent had not timely filed an Answer as ordered by the Referee. On September 14, 2005, the Respondent filed a Motion to Dismiss the Complaint. On September 19, 2005, The Bar filed a Motion to Strike Respondent's Motion to Dismiss. On September 22, 2005, the Referee executed an Order denying the Respondent's

Motion to Dismiss and The Bar's Motion to Strike. Within this Order, the Referee found as follows:

(1) *On August 18, 2005, this Court entered an Order requiring the Respondent to file an Answer within 20 days of the date of the Order. At no time within the Order did the Court allow the Respondent to file any other paper within this cause other than the required Answer.*

(2) *On September 14, 2005, the Respondent, without leave of Court, filed a Motion to Dismiss the Complaint and Amended Notice of Probable Cause. The Respondent has failed and refused to comply with the Court's August 18, 2005, Order to file an Answer in this cause.*

(3) *On September 8, the Complainant filed a Motion for Default for Failure to Comply with Court Order and on September 14, 2005, the Complainant filed its Motion to Strike Respondent's Motion to Dismiss.*

(4) *The untimely Motion to Dismiss filed by the Respondent is in direct contravention and violation of the Court's Order of August 18, 2005, requiring that the Respondent Answer the Complaint and Amended Notice of Probable Cause. The Court can only conclude that the Respondent's actions are both willful and contumacious with respect to the required professional and timely compliance with lawful and valid orders of this Court.*

(5) *The Court, exercising its inherent discretion, has deemed the Respondent's Motion to Dismiss as a general denial to the allegations contained within the Complaint and Amended Notice of Probable Cause.*

Based upon the foregoing:

(1) *The Respondent's Motion to Dismiss is hereby denied.*

(2) *The Complainant's Motion for Default and Motion to Strike are hereby denied.*

(3) *This matter remains set for Trial during the week beginning December 1, 2005, with a pretrial conference set for November 22, 2005 at 10:00 a.m. before this Court. All other deadlines within the Uniform Order Setting Cause for Trial and Pre-Trial dated August 24, 2005, remain in effect and shall be strictly enforced.*

Discovery proceeded with various Motions for Protective Order having been ruled upon by the Referee. On October 7, 2005, virtually the day the Respondent was required to timely file his witness and exhibit lists, he instead filed an additional Motion to Enlarge Time. On October 11, 2005, the Referee executed an Order denying the Respondent's Motion to Enlarge Time to serve Witness List. In this Order, the Referee found as follows:

(6) *On August 24, 2005, this Court entered an Order setting this matter for trial beginning December 1, 2005. The Uniform Order requires that the Respondent file his witness list with the Court at least 45 days before the Pre-Trial Conference scheduled for November 22, 2005.*

(7) *The grounds advanced by the Respondent within the Motion are not well taken as the identities of persons allegedly making the statements set forth by the Respondent are known to the Respondent. As such, these persons can be listed by the Respondent without delay or extension.*

Based upon the foregoing, the Respondent's Motion to Enlarge Time is hereby denied.

This matter remains set for Trial during the week beginning December 1, 2005, with a pretrial conference set for November 22, 2005 at 10:00 a.m. before this Court. All other deadlines within the Uniform Order Setting Cause for Trial and Pre-Trial dated August 24, 2005, remain in effect and shall be strictly enforced.

On November 22, 2005, the Referee held the Pre-Trial Conference with all parties. Despite having been ordered to timely file both a witness and exhibit list pursuant to Order, the Respondent failed to ever file such lists prior to the Pre-Trial Conference. At all times, The Florida Bar, by and through Counsel, complied with each and every requirement of every Referee's Order.

On December 1 and 2, 2005, the matter proceeded to Final Hearing with the Referee having granted The Florida Bar's *Ore Tenus* Motion to Bifurcate the proceedings as to findings only on the Charge brought by The Florida Bar. The Respondent had no objection to The Bar's Motion to Bifurcate, and it was therefore granted by the Referee. Depending upon the Referee's ruling on findings, the matter could then be scheduled for final hearing on an appropriate recommended punishment.

C. Specific Findings.

1. On December 13, 2001, the Respondent filed a ten count Complaint on behalf of the Plaintiffs, styled Jeffrey S. Smith and Sharon P. Smith v. Corporate Sports Marketing Group, Inc., Christopher C. King, and Dwayne Martins, Case No. 01-9347CI-D15, Civil Division, Sixth Judicial Circuit in and for Pinellas County (hereinafter referred to as Smith v. CSM or the "underlying litigation").

2. The Complaint and the Amended Complaint in Smith v. CSM failed to allege sufficient ultimate facts to support the claims and failed to allege the basic elements of each cause of action. It is the finding of the Referee that the subject pleading was totally devoid of any factual or legal merit and constituted a frivolous pleading.

3. On January 9, 2002, Timothy W. Weber, counsel for the Defendants, filed a Motion to Dismiss or Strike the Complaint. On January 14, 2002, Attorney Weber filed a

Notice of Hearing on the Motion to Dismiss or Strike the Complaint, setting the motion for hearing on February 22, 2002 at 11:00 a.m. On February 22, 2002, the day scheduled for the hearing on the Motion to Dismiss or Strike, the Respondent filed an 11 count Amended Complaint. On March 14, 2002, Attorney Weber filed an Answer and Defenses to the Amended Complaint and filed a Counterclaim for Equitable Relief and Damages against the Respondent's clients, Jeffrey S. Smith, John D. Kerin, and Lafayette Marketing Group, Inc.

5. The Respondent entered an appearance on behalf of Kerin and Lafayette at a hearing held March 18, 2002, on Attorney Weber's Motion to Compel Compliance with Subpoenas Duces Tecum for Deposition. At the hearing of March 18, 2002, the Respondent objected to the subpoenas duces tecum for deposition on the basis of trade secrets and confidential business information. Each and every one of the Respondent's objections were overruled by Judge Farnell in the Court's Order of March 26, 2003.

6. On April 18, 2002, Kerin's deposition was held at the offices of Lafayette pursuant to the Court's Order. During Kerin's deposition, the Respondent encouraged his client to contemptuously disregard the Court's Order by raising the same objections previously overruled by Judge Farnell. Moreover, during Kerin's deposition, the Respondent repeatedly made improperly suggestive speaking objections.

7. On or about January 25, 2002, Attorney Weber served his clients' First Set of Interrogatories to the plaintiff/counter-defendant, Jeffrey S. Smith. On or about April 8, 2002, the Respondent filed Mr. Smith's answer to these interrogatories. The answers to interrogatories served by the Respondent were evasive, incomplete and contained spurious objections.

8. In response to the Respondent's filed answers to interrogatories, Attorney Weber sent three letters to the Respondent dated April 16, 2002, May 20, 2002, and June 13, 2002,

urging the Respondent to provide more complete and lawful responses to the discovery. Each of these letters was met with nothing but a contemptuous response from the Respondent.

9. On or about May 8, 2002, Attorney Weber served his clients' First Request for Admissions to Jeffrey S. Smith. The Respondent failed and refused to provide a response to the Request for Admissions by the proscribed deadline date of June 7, 2002. The Respondent did file an untimely objection to the Request for Admissions on June 19, 2002. As a result of the Respondent's failure to timely respond to the Request for Admissions, the matters contained therein were deemed by the Court to be admitted.

10. On or about May 17, 2002, Attorney Weber filed his clients' Second Set of Written Interrogatories upon Jeffrey S. Smith, as well as their First Set of Written Interrogatories to Sharon P. Smith. On June 13, 2002, Attorney Weber filed a Motion to Compel Compliance with Defendants' First Set of Interrogatories to Jeffrey S. Smith. On July 2, 2002, Attorney Weber agreed to grant the Respondent an extension until July 12, 2002, to answer the First and Second Set of Interrogatories. The Respondent never responded to the Second Set of Interrogatories.

11. On September 18, 2002, Attorney Weber filed a Motion for Summary Judgment as to Counts 3, 7, 9, 10, and 11 of Plaintiffs' Amended Complaint. On September 30, 2002, Attorney Weber filed a Motion to Compel Discovery Responses to Defendants' First Set of Written Interrogatories to Sharon P. Smith and a Motion to Compel Discovery Responses to Defendants' Second Set of Written Interrogatories to Jeffrey S. Smith.

12. The Respondent then moved to withdraw from the representation of the Smiths and on October 24, 2002, Judge Farnell issued an order permitting the Respondent to withdraw as counsel of record, effective October 1, 2002.

13. On October 2, 2002, Attorney Weber filed a Notice of Hearing setting the Defendants' Motion for Summary Judgment for hearing on November 21, 2002. At no time prior to the hearing on the Defendant's Motion for Summary Judgment did the Respondent file any deposition, affidavit, interrogatory answer, or response to the Request for Admissions in opposition to the Defendants' Motion for Summary Judgment.

14. On November 20, 2002, Judge Farnell entered orders granting Defendants' Motions to Compel Discovery Responses to Defendants' First and Second Set of Interrogatories to Jeffrey S. Smith and First Set of Interrogatories to Sharon P. Smith and ordered the Smiths to provide complete responses to this discovery within 10 days of the date of the order.

15. On November 21, 2002, approximately one hour before the scheduled hearing on Defendants' Motion for Summary Judgment as to Counts 3, 6, 7, 8, 9, 10, and 11 of the Plaintiffs' Amended Complaint, the Plaintiffs, by and through their successor counsel, Ricardo Roig, voluntarily dismissed all seven counts and dismissed Dwayne Martins as a defendant.

16. As a result of this voluntary dismissal, all of Sharon P. Smith's claims were voluntarily dismissed and she was no longer a party to the action.

17. The Respondent knowingly and in bad faith perpetuated totally frivolous and unsupportable claims resulting in the Defendants' incurring substantial attorneys' fees and costs, and wasting valuable judicial resources. The Respondents' conduct within this underlying litigation clearly proves beyond any reasonable doubt that he lacks any understanding or knowledge of even the most fundamental legal doctrines and procedures, and his conduct caused injury to his clients.

18. Moreover, during the discovery phase of Smith v. CSM, the Respondent engaged in obstructionist and dilatory tactics never before witnessed in the 24 years of legal experience of

this Referee. These tactics of the Respondent were deliberately designed to thwart both legitimate discovery and delay a final dispositive ruling in this matter.

19. On January 21, 2003, Attorney Weber filed Defendants' Amended Renewed Motion for Fees and Sanctions Against Plaintiffs, Jeffrey S. Smith and Sharon P. Smith, and Plaintiffs' Former Counsel, Mark A. Adams and Mark A. Adams, P.A. The hearing on this motions was duly scheduled for April 24, 2003, at 9:00 a.m. On the morning of the hearing, a person identifying herself as the Respondent's legal assistant, called the Court requesting a continuance of the schedule hearing due to the Respondent's unspecified illness. Almost contemporaneously with this telephone call, came notice that the Respondent was on his way and would arrive in approximately 45 minutes. Additionally, at the time of the hearing, the Respondent sent to Judge Farnell, a letter and two affidavits from Jeffrey S. Smith and Scott A. Dias. The Respondent requested that the Court treat his facsimile as a motion for continuance. Judge Farnell denied the motion for continuance.

20. The Respondent finally arrived for the hearing at approximately 10:25 a.m.; one hour and twenty-five minutes late. After Judge Farnell denied each and every one of the Respondent's grounds for delay, the Respondent made an *ore tenus* motion to disqualify Judge Farnell based upon the two affidavits he had faxed to the Court that morning. The Respondent's *ore tenus* motion to disqualify Judge Farnell was procedurally improper, untimely and legally insufficient. Judge Farnell then granted the Respondent an opportunity to obtain counsel during a recess in the proceedings. When the Court reconvened 34 minutes later, the Respondent had voluntarily departed the proceedings. The Respondent failed to advise the Court that he was departing despite the fact that Judge Farnell expressly granted the recess for the Respondent to obtain counsel. The hearing for sanctions then proceeded without the Respondent being present.

21. At the hearing, Jeffrey S. Smith testified that the affidavit submitted by the Respondent, had been prepared and filed without the knowledge of the Smiths' attorney, Ricardo Roig. Moreover, Jeffrey S. Smith testified that the Respondent discouraged Smith from consulting with Roig regarding the affidavit. The Respondent knew that Smith was represented by Roig when he contacted Smith regarding the affidavit, without the knowledge or consent of Roig. The Respondent also failed to obtain Roig's permission to speak with Smith.

22. Judge Farnell issued an Order Granting Defendants' Amended Renewed Motion for Fees and Sanctions Against Plaintiffs and a Judgment for Expenses on Motions to Compel on July 30, 2003.

23. On May 5, 2003, the Respondent filed Mark A. Adams' Verified Renewed and Supplemental Motion to Disqualify the Honorable Crockett Farnell. The Respondent failed to serve a copy of the Motion on Judge Farnell and failed to state legally sufficient grounds for the requested disqualification. Moreover, the Respondent made misrepresentations of fact within the Motion to Disqualify.

24. On May 23, 2003, Attorney Weber filed Defendants' Motion for Attorneys' Fees Against Adams for Unreasonably Delaying the Proceedings. Attorney Weber attempted to fax the motion to the Respondent but the Respondent failed to accept the fax and demanded that Attorney Weber mail the motion. On May 29, 2003, Judge Farnell issued an order denying the Respondent's Renewed and Supplemental Motion to Disqualify. On June 9, 2003, the Respondent filed a Motion for Reconsideration of Order Denying Motion to Disqualify and on June 11, 2003, the Respondent filed Mark A. Adams' Renewed and Amended Motion for Reconsideration of Order Denying Motion to Disqualify. Thereafter, on June 12, 2003, Respondent filed Mark A. Adams' Second Verified Motion to Disqualify the Honorable Crockett

Farnell. On June 17 and June 19, Judge Farnell issued Orders denying the relief requested by the Respondent in the various frivolous papers referenced above.

25. The relative insanity continued when on July 2, 2003, Respondent filed Mark A. Adams' Third Verified Motion to Disqualify the Honorable Crockett Farnell alleging virtually the same grounds set forth in the First and Second Motions to Disqualify as well as the various motions for rehearing and reconsideration. Then on July 7, 2003, Respondent filed Mark A. Adams' Fourth Verified Motion to Disqualify the Honorable Crockett Farnell alleging that the properly noticed hearing of April 24, 2003, constituted *ex parte* communications by Judge Farnell. Such allegations by the Respondent constitute flagrant misrepresentations of both fact and law proving that the Respondent fails to understand even the most fundamental legal doctrines and procedures.

26. On July 17, 2003, Respondent filed Mark A. Adams' Fifth Verified Motion to Disqualify the Honorable Crockett Farnell alleging virtually the same grounds contained within his Fourth Verified Motion to Disqualify. On July 17, 2003, Judge Farnell issued an order denying the Respondent's Third Verified Motion to Disqualify and on July 25, 2003, Judge Farnell issued an order denying the Respondent's Fourth and Fifth Verified Motion to Disqualify the Honorable Crockett Farnell.

27. On July 31, 2003, Respondent filed Mark A. Adams' Sixth Verified Motion to Disqualify the Honorable Crockett Farnell. There were no new, much less legal, grounds for such a motion.

28. This process continued for a series of eight Verified Motions to Disqualify filed by the Respondent with multiple motions for reconsideration all alleging the virtually identical

spurious grounds. The process finally ended on or about October 20, 2003, when the Court issued an order denying the Respondent's eighth motion to disqualify.

29. On June 10, 2003, Respondent filed a Complaint on behalf of himself and his professional association styled Mark A. Adams and Mark A. Adams, P.A., v. Christopher C. King, Corporate Sports Marketing Group, Inc. and others, UCN: 03-5426, Civil Division, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (hereinafter referred to as Adams v. King).

30. The Respondent's complaint failed to set forth a legally sufficient cause of action as to any of these named Defendants.

31. CSM's registered agent accepted service of the complaint on behalf of CSM. CSM's registered agent further advised the Respondent that Attorney Weber was authorized to accept service on behalf of Defendant King. Moreover, on June 13, 2003, Respondent sent Attorney Weber correspondence to confirm that Attorney Weber would accept service for Defendant King.

32. On June 17 and 19, 2003, Respondent communicated directly with CSM about this new lawsuit, without sending copies of correspondence to CSM's attorney, Timothy Weber. At no time did the Respondent obtain Attorney Weber's permission to speak directly with Attorney Weber's clients.

33. At a hearing on June 19, 2003, in the case of Smith v. CSM, Attorney Weber instructed Respondent not to communicate directly with his (Attorney Weber's) clients. Attorney Weber also forwarded correspondence to Respondent demanding that Respondent cease any direct communication with Weber's clients, CSM, King, and Martins.

34. On June 24, 2006, the Respondent, once again, knowingly communicated directly with Attorney Weber's clients.

35. On or about July 2, 2003, in the case of Adams v. King, Attorney Weber filed a Motion to Dismiss with Prejudice, Strike as Sham Pleading, and Sanction Plaintiffs. Attorney Weber also filed an Emergency Motion to Preclude Adams from Communicating Directly with Represented Parties in both the Adams v. King and Smith v. CSM cases.

36. On or about July 24, 2003, Respondent once again communicated directly with CSM concerning the subject matter of the litigation in the case of Adams v. King.

37. On July 30, 2003, Judge Farnell issued a Judgment for Expenses on Motions to Compel filed by Attorney Weber as a result of Respondent and his clients failing to provide answers to discovery. The judgment awarded \$1,182.50 to CSM and ordered the Smiths and Respondent to complete, under oath, the Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet) and serve it on Attorney Weber within 45 days of the Final Judgment.

38. On July 30, 2003, in the case of Smith v. CSM, Judge Farnell issued an Order Granting Defendants' Amended Renewed Motion for Fees and Sanctions Against Plaintiffs, Jeffrey S. Smith and Sharon P. Smith, and Plaintiffs' Former Counsel, Mark A. Adams and Mark A. Adams, P.A., Pursuant to Section 57.105, Fla. Stat. (2001) and the Trial Court's Inherent Authority to Sanction. In this order, Judge Farnell ruled that Counts 3, 7, 9, 10, and 11 of Respondent's Amended Complaint lacked factual and legal support and were maintained in bad faith, and that Count 9 lacked factual support and was maintained in bad faith. The order went on to state that "[t]he reckless pleading of fraud and intentional misconduct, the indifference to valid discovery obligations, and the clear design to trump up tort claims out of contractual or employment relationships, evinces bad faith and a knowing abuse of the courts by both Plaintiffs

and Adams.” Judge Farnell taxed attorneys’ fees in the amount of \$19,733.33 plus expert witness fees of \$562.50, for a total of \$20,295.83, against Respondent and attorneys fees in the amount of \$9,866.67, plus expert witness fees of \$562.50, for a total of \$10,429.17, against Plaintiffs, Jeffrey S. Smith and Sharon P. Smith. Once again, Judge Farnell ordered Respondent to complete the Fact Information Sheet and serve it upon Attorney Weber within 45 days of the entry of this Order.

39. On August 11, 2003, in the case of Smith v. CSM, Attorney Weber filed a Notice of Taking Videotaped Deposition Duces Tecum in Aid of Execution for the deposition of Respondent, which was scheduled for Monday, September 15, 2003 at 9:00 a.m. On Monday, September 15, 2003, at 12:07 p.m., Respondent filed a Motion to Vacate Order Granting Defendants’ Amended Renewed Motion for Fees and Sanctions Against Plaintiffs, Jeffrey S. Smith and Sharon P. Smith, and Plaintiffs’ Former counsel, Mark A. Adams and Mark A. Adams, P.A. The Respondent failed and refused to appear for his duly noticed deposition set that same morning.

40. On September 18, 2003, Respondent filed a notice setting his motion to vacate for hearing on October 29, 2003. On October 1, 2003, in the case of Smith v. CSM, Judge Farnell issued an Order to Show Cause why Mark A. Adams and Mark A. Adams, P.A. Should not be Held in Indirect Criminal Contempt for failing to comply with the Court’s July 30, 2002 Order and for failing to appear at the duly noticed deposition set for September 15, 2003. The Order directed Respondent to appear before Judge Farnell on October 29, 2003, the same date that Respondent had set his motion to vacate for hearing.

41. On or about October 10, 2003, in the case of Smith v. CSM, Respondent filed Mark A. Adams’ Motion for Sanctions against Corporate Sports Marketing Group, Inc.,

Christopher C. King, Dwayne Martins, Timothy W. Weber, and Battaglia, Ross, Dicus & Wein, P.A. Once again, the Respondent's motion is completely devoid of any factual or legal merit and is nothing short of a spurious and dilatory effort by the Respondent to obstruct justice. Moreover, Respondent served a copy of this motion directly upon opposing parties King, Martins, and CSM without the consent of Attorney Weber. Respondent also communicated directly with King, Martins and CSM regarding the subject matter of the litigation without the consent of Attorney Weber in correspondence dated August 14, 2003, August 18, 2003, September 16, 2003, September 18, 2003, September 25, 2003, and October 9, 2003.

42. On or about October 10, 2003, in the case of Smith v. CSM, Respondent filed Mark A. Adams' Motion for Sanctions Against Corporate Sports Marketing Group, Inc., Christopher C. King, Dwayne Martins, Timothy W. Weber and Battaglia, Ross, Dicus & Wein, P.A., in response to the Defendants' Emergency Motion to Preclude Adams from Communicating Directly with Represented Parties Concerning the Subject Matter of this Action. Respondent filed an unmeritorious claim that Weber and his firm were not attorneys of record because they failed to file a notice of appearance in the case, despite the fact that Attorney Weber had filed responsive pleadings on behalf of these clients. Once again, the Referee finds that Respondent's continued conduct demonstrates that he has absolutely no understanding of the most fundamental legal doctrines or procedures and his conduct has operated to cause injury to both his clients and his adversaries and their attorneys.

43. At the hearing on Attorney Weber's Motion to Preclude Respondent from Communicating with his clients, Judge Farnell ordered Respondent to stop communicating with Attorney Weber's clients, or face an order to show cause.

42. On or about October 10, 2003, in the case of Smith v. CSM, Respondent filed yet another Motion for Sanction and served a copy of this paper directly on Attorney Weber's clients, King, Martins, and CSM without the consent of Attorney Weber.

43. On or about October 13, 2003, in the case of Adams v. King, Respondent filed various motions for sanctions and other relief and served copies of these papers directly on Attorney Weber's clients, King, Martins and CSM without the consent of Attorney Weber in direct contravention of Judge Farnell's oral order to the Respondent.

44. On October 20, 2003, in the case of Smith v. CSM, Judge Farnell memorialized his oral ruling by executing an Order Granting Defendants' Emergency Motion to Preclude Adams from Communicating Directly with Parties Concerning the Subject Matter of the Action.

45. On October 27, 2003, in a case styled Adams v. Smith, Respondent filed a Petition for Writ of Prohibition with the Second District Court of Appeal of the State of Florida seeking to prohibit Judge Farnell from presiding over the underlying litigation. Respondent's Petition was procedurally improper and contained false statements of material fact. Respondent served a copy of the Petition on Attorney Weber's clients in direct violation of Judge Farnell's Order.

46. Once again, Respondent willfully and intentionally failed and refused to attend the hearing on Judge Farnell's Order to Show Cause hearing set for October 29, 2003.

47. On November 24, 2003, the Second District Court of Appeal denied the Respondent's Petition with prejudice.

48. On or about December 5, 2003, in the case of Adams v. King, Respondent filed an Amended Complaint in which he named Martin Richardson, Timothy W. Weber, and

Battaglia, Ross, Dicus, and Wein, P.A. as additional Defendants. The Amended Complaint was absolutely devoid of any factual or legal merit and constituted a spurious pleading.

49. On December 9, 2003, in the case of Adams v. Smith, Respondent filed a Motion for Rehearing, Request for Written Opinion, and Request for Rehearing En Banc with the Second District Court of Appeal. The Motion for Rehearing was devoid of any factual or legal merit given the appellate court's previous denial with prejudice.

50. On December 11, 2003, in the case of Smith v. CSM, Attorney Weber filed a Notice of Hearing on the Order to Show Cause Why Mark A. Adams and Mark A. Adams, P.A. Should not be Held in Indirect Criminal Contempt, set for January 7, 2004. Attorney Weber served the notice of hearing upon Respondent by both facsimile and by certified mail to both Respondent's post office box and Garrison Cove address. Respondent refused receipt of the notice at his Garrison Cove address and failed to appear at the January 7, 2004 hearing. However on this same date, January 7, 2004, in the case of Smith v. CSM, Respondent filed Mark A. Adams' Motion to Dismiss Order to Show Cause, as well as other motions. Each and every one of the Respondent's motions were devoid of any factual or legal merit and constitute dilatory tactics deliberately designed to cause opposing parties and counsel to expend time, energy and money.

51. On January 12, 2004, in the case of Smith v. CSM, Judge Farnell issued an Order for Arrest, Notice of Hearing and Notice of Right to Counsel based upon Respondent's failure to appear for proceedings on the Order to Show Cause scheduled for January 7, 2004. Judge Farnell properly noticed the hearing on the Order for Arrest for February 17, 2004. Respondent once again willfully failed and refused to attend this properly notice hearing set by the Court.

52. On January 27, 2004, in the case of Adams v. Smith, the Second District Court of Appeal denied Respondent's Motion for Rehearing.

53. Two days later, on January 29, 2004, in the case of Adams v. Smith, Respondent filed in the Second District Court of Appeal, Petitioner's Motion for Extraordinary Relief to Vacate Order of Arrest, to Vacate Judgments, to Quash Notices of Deposition, and to Issue Order to Show Cause why a Writ of Prohibition Should not Issue. Respondent's motion was totally devoid of any legal or factual merit and was deliberately designed to waste valuable judicial resources and inflict additional damage on the opposing parties and their counsel.

54. On or about March 16, 2004, in the case of Adams v. Smith, Respondent filed in the Second District Court of Appeal, Petitioner's Verified Motion to Disqualify Judges of the District Court of Appeal for the Second District of Florida. Respondent's verified motion was totally devoid of any factual or legal merit and was filed in bad faith for the sole purpose of delaying the proceedings and sanctions against the Respondent.

55. On August 13, 2004, the Second District Court of Appeal issued an order denying Respondent's Motion to Disqualify the Appellate Court.

After considering all of the pleadings, papers, and evidence before me, I find that The Florida Bar has proven the Charge and its various subparts, by clear and convincing evidence, as to violations of the following Rules Regulating the Florida Bar:

1. Rule 3-4.3 The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the State of Florida, and whether or not the act is a felony or misdemeanor.

2. Rule 4-1.1 A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
3. Rule 4-3.1 A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.
4. Rule 4-3.3(a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal; (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client; (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (4) permit any witness, including a criminal defendant, to offer testimony or other evidence that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer has offered material evidence and thereafter comes to know of its falsity, the lawyer shall take reasonable remedial measures.
5. Rule 4-3.3(b) The duties stated in subdivision (a) continue beyond the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 4-1.6.
6. Rule 4-3.4(a) A lawyer shall not unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a

document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonable foreseeable proceeding; nor counsel or assist another person to do any such act.

7. Rule 4-3.4(c) A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.
8. Rule 4-4.1 In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 4-1.6.
9. Rule 4-4.2 In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. Notwithstanding the foregoing, an attorney may, without such prior consent, communicate with another's client in order to meet the requirements of any statute or contract requiring notice or service of process directly on an adverse party, in which even the communication shall be strictly restricted to that required by statute or contract, and a copy shall be provided to the adverse party's attorney.

III. Recommendations as to Guilt.

I recommend that the Respondent be found guilty of violating each and every one of the aforementioned Rules Regulating The Florida Bar as set forth in paragraphs 1 through 9, above.

IV. Mitigating and Aggravating Factors:

A hearing on the disciplinary measures to be applied in this cause was conducted on February 3, 2006.

A. Aggravating Factors

Under Standard 3.0, the Referee should consider the following factors:

- a. the duty violated;
- b. the lawyer's mental state;
- c. the potential or actual injury caused by the lawyer's misconduct; and,
- c. the existence of aggravating or mitigating factors.

Standard 6.2 states that disbarment is appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding. The un rebutted evidence proves beyond any reasonable doubt that the Respondent has engaged in deliberate conduct resulting in financial damages of over \$150,000 to Attorney Timothy Weber and his law firm as well as additional financial damages to Mr. Weber's former clients in the underlying litigation.

Standard 9.22 lists the factors which may be considered in aggravation. I find the following factors to be pertinent under these facts as to this Respondent:

- a. The Respondent's pattern of misconduct in the underlying litigation and within these disciplinary proceedings;

- b. The Respondent's multiple offenses over a protracted period of time;
- c. The Respondent's bad faith obstruction of both the underlying litigation and these disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency;
- d. The Respondent's submission of false evidence, false statements, or other deceptive practices during both the underlying litigation and this disciplinary process and its hearings.
- e. The Respondent's absolutely uncooperative attitude and almost flagrant disregard for these disciplinary proceedings.

B. Mitigating Factors

Absence of a Prior Disciplinary Record. The Respondent is 43 years old and was admitted to the Florida Bar in April 2000. He has practiced law for five years with no prior disciplinary history.

There are no additional mitigating factors for this Referee to consider with respect to the Respondent's conduct.

V. Recommendation as to Disciplinary Measures to be Applied:

This Referee has considered that the recommended suspension must be "authorized under the Florida Standards for Imposing Lawyer Sanctions" and must have "a reasonable basis in existing case law." Florida Bar v. Spear, 887 So. 2d 1242 (Fla. 2004).

Of particular note with respect to this Respondent is the fact that this lengthy pattern of misconduct began shortly after the Respondent was admitted to practice law and continued for a period of three years in the underlying litigation, and throughout these disciplinary proceedings. In Florida Bar v. Springer, 873 So. 2d 317 (Fla. 2004), the Florida Supreme

Court upheld the Referee's recommendation for disbarment based on Springer's multiple instances of misconduct that occurred over the span of ten years. The Supreme Court in Springer noted that cumulative misconduct should be dealt with more harshly than isolated misconduct.

The Respondent's egregious cumulative conduct over a lengthy period of time warrants the punishment of permanent disbarment. Respondent knowingly failed to perform services for his client in the underlying litigation resulting in serious damages to his client in the form of a significant sanctions award [Standard 4.4 b]. Moreover, he engaged in a pattern of neglect with respect to client matters causing serious damages as noted above [Standard 4.4c].

The record of these disciplinary proceedings and the underlying litigation are replete with instances where the Respondent's course of conduct demonstrates that the Respondent has absolutely no understanding of the most fundamental legal doctrines or procedures which resulted in a sanction order against the Respondents' clients in the underlying litigation [Standard 4.51].

The Respondent engaged in protracted intentional conduct in the underlying litigation involving dishonesty, fraud, deceit or misrepresentation to both opposing counsel and the presiding Judge. This pattern of intentional misconduct seriously adversely reflects on his fitness to ever practice law [Standard 5.11f].

The Respondent intentionally made numerous false statements to the Honorable Crockett Farnell in the underlying litigation with the intent to deceive the Court. Moreover, the Respondent knowingly violated Court Orders in the underlying litigation with the intent to

obtain a personal benefit, which caused serious interference with a legal proceeding [Standard 6.21].

In this case, I find that the Respondent has engaged in a willful and contumacious pattern of misconduct designed to benefit both himself and his clients and frustrate the system of laws that govern each of us. Moreover, the misconduct has caused significant financial and emotional damage to other members of the Florida Bar and the Respondent's clients and adversaries.

Having reviewed Standard 2 with respect to sanctions, I find that with respect to this Respondent, the only appropriate sanction can be permanent disbarment, forever terminating his status as a lawyer. I recommend that this disbarment be permanent based upon not only the extended pattern of damaging misconduct, but also, the Respondent's announced intention on the record of the hearing held February 3, 2006, to continue to engage in similar activities which would constitute violations of the Rules Regulating the Florida Bar.

The present circumstances are distinguishable from the cases where lesser punishment was recommended by the Referee and approved by the Florida Supreme Court due to the existence of substantial aggravating circumstances and the lack of any rehabilitative efforts by the Respondent. I find that permanent disbarment is required by these unique circumstances and that this recommendation is consistent with the Florida Standards for Imposing Lawyer Sanctions and the purposes of discipline as set forth in Florida Bar v. Spear.

VI. Statement of Costs and Manner in Which Costs Should be Taxed: I find the following costs were reasonably incurred by The Florida Bar:

1. Administrative costs pursuant to

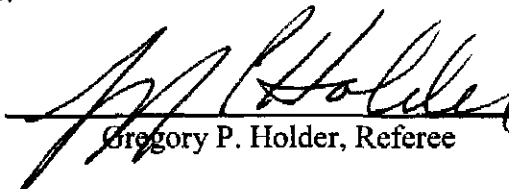
	Rule 3-7.6(q)(1)(I).....	\$1,250.00
2.	<u>Photocopies of Pleadings</u>	
	01/22/04 - Case Nos. 01-9347-CI and 03-5426.....	732.78
	10/07/03 - 03/24/04 (1,284 @ .15 per page).....	192.60
3.	<u>Ken Burke</u> , Clerk of Court	
	06/23/04 - Certified Copies	11.50
4.	<u>Karleen F. DeBlaker</u> , Clerk of Court	
	05/24/04 Photocopies	58.00
5.	<u>Staff Investigator Expenses</u>	
	a. <u>Ernest J. Kirstein, Jr.</u>	
	Time Expended (28.70 @ 24.00).....	688.80
	Travel 05/24/04 – 01/26/06.....	197.44
	b. <u>Walter B. Granger</u>	
	Time Expended (17.10 @ 22.50).....	383.85
	Travel 08/10/04 – 11/09/05.....	77.67
	c. <u>Jeffrey C. Satchwell</u>	
	Time Expended (11.8 @ 23.50).....	277.30
	Time Expended (8.3 @ 24.00).....	203.35
	Travel 02/02/04 – 05/26/05.....	78.55
	d. <u>Joseph P. McFadden</u>	
	Time Expended (.5 @ 25.00).....	12.50
	Travel 01/05/06.....	7.87
6.	<u>Assistant Staff Counsel Expenses</u>	
	Jodi Anderson - Travel/Parking	
	08/27/04 - Competency Hearing	16.25
	10/19/05 - Depositions	31.83
	11/22/05 - Pre-trial Conference	5.43

	12/01/05 - Trial	37.28
	12/02/05 - Trial.....	10.45
	12/22/05 - Hearing.....	9.78
	02/03/06 - Final Hearing	24.56
7.	<u>Kwall, Showers, Coleman & Barack, PA</u>	
	Copies- 436 @ .10 per page	43.60
	Postage.....	37.57
	Federal Express.....	8.00
8.	<u>Morgan J. Morey & Associates</u>	
	10/04/05 - Deposition of Judge Crockett Farnell	
	Copy of Transcript.....	167.50
9.	<u>Dial A Messenger, Inc.</u>	
	09/29/05 Delivery Service to Referee	19.07
10.	<u>Clark Reporting Service</u>	
	11/22/05 Pre-trial Conference	
	Appearance Fee	75.00
	Original and Copy of Transcript	192.00
	Delivery	20.00
11.	<u>Kinkos</u>	
	11/28/05 - 3 CDs of Internet Talk Show	21.24
12.	<u>Clark Reporting Service</u>	
	12/01/05- 12/02/05 Trial	
	Appearance Fee	645.00
	Original and One Copy of Transcript.....	1,944.00
13.	<u>Clark Reporting Service</u>	
	12/22/05 Hearing	
	Appearance Fee	75.00
	Original and Copy of Transcript:	58.50
14.	<u>Clark Reporting Service</u>	
	01/03/06 Transcript of "Truth Radio by Internet"	318.00

15. Clark Reporting Service
 02/03/06 Sanctions Hearing
 Appearance Fee 115.00
 Original and Copy of Transcript 810.00
 Delivery 6.00
16. Photocopies of Hearing and Trial Transcripts
 02/13/06 Copies for Mr. Adams (567 @ .15 per page)..... 85.05
- TOTAL ITEMIZED COSTS TO DATE.....\$8,948.32**

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses, together with the itemized costs, be charged to the Respondent and that interest at the statutory rate accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by The Florida Bar.

Dated this 15th day of February, 2006.


 Gregory P. Holder, Referee

Certificate of Service

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been sent via regular U.S. mail and electronic email to The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32301, and that copies were mailed by regular U.S. Mail to John Anthony Boggs, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32300-2300; Louis Kwall, Bar Counsel, Kwall, Showers, Coleman and Barack, 133 North Fort Harrison Avenue, Clearwater, Florida 33755; Jodi

Anderson Thompson, Bar Counsel, The Florida Bar, 5521 West Spruce Street, Suite C-49,
Tampa, Florida 33607; and, Mark A. Adams, Respondent, P.O. Box 1078, Valrico, Florida
33595 on this 15th day of February, 2006.