

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT
----- X

In the Matter of GEORGE SASSOWER, an
attorney and counselor-at-law,

GRIEVANCE COMMITTEE FOR THE SECOND
AND ELEVENTH JUDICIAL DISTRICTS,

Petitioner,

GEORGE SASSOWER,

Respondent.

----- X

PETITIONER'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

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Preliminary Statement

By order dated June 3, 1985, the Appellate Division, Second Judicial Department, authorized the Grievance Committee for the Second and Eleventh Judicial Districts (hereinafter "Committee") to institute and prosecute a disciplinary proceeding against George Sassower (hereinafter "respondent"). A Petition, alleging seven charges of professional misconduct, dated November 12, 1985 was served upon respondent.*

Respondent filed an answer, dated November 16, 1985, denying the allegations and asserting several affirmative defenses.

*During the disciplinary proceeding an additional charge (designated "CHARGE TWO-A") was added to the Petition, at respondent's request.

By order of the Appellate Division, Second Judicial Department, dated January 11, 1986, the issues raised by the pleadings were referred to the Honorable Michael Potoker, "...as Special Referee, to hear and to report with his findings upon each of the issues."

Proceedings before Judge Potoker commenced with a pre-hearing conference on January 30, 1986. The hearing, totalling thirteen sessions, was held in Brooklyn, New York. It began February 20, 1986 and was concluded April 17, 1986.

The Respondent

Respondent was admitted to practice as an attorney and counselor-at-law in the State of New York, by the Appellate Division, Second Judicial Department on March 30, 1949. He maintained an office for the practice of law at 2125 Mill Avenue, Brooklyn, New York, during most of the period covered by the allegations, subsequently moving to his present office, 51 Davis Avenue, White Plains, New York.

A. RESPONDENT'S CRIMINAL CONTEMPT CONVICTIONS

As a result of his wilful and deliberate violations of court orders disqualifying, restraining and enjoining him from appearing in Puccini related matters, respondent was the subject of four criminal contempt of court convictions. Imposed by four different judges, these convictions formed the basis for Charges One, Two, Two A and Three of the Petition.

1. CHARGE ONE

Respondent has been guilty of professional misconduct prejudicial to the administration of justice and which adversely reflects on his fitness to practice law, as follows:

1. By order of Honorable Ira Gammernan, Justice of the Supreme Court, New York County, dated January 23, 1985, respondent was permanently enjoined and restrained from filing or serving any further lawsuits relating to Puccini Clothes, Ltd. ("Puccini") and from continuing to prosecute designated pending lawsuits against specified parties, without leave of court.
2. Respondent wilfully and deliberately violated said order.
3. By order of Honorable Alvin F. Klein, Justice of the Supreme Court, New York County, dated June 26, 1985 (a copy is annexed as EXHIBIT A), respondent was convicted of criminal contempt of court for having wilfully and deliberately violated the order of Justice Gammernan and was sentenced to a term of imprisonment of thirty days and to fines totalling \$1,250.00.
4. On September 17, 1985 the Appellate Division, First Judicial Department affirmed respondent's criminal contempt conviction.
5. By reason of the foregoing, respondent has been convicted of a serious crime as defined by Section 691.7(b) of the Rules of the Appellate Division, Second Judicial Department and has violated Disciplinary Rules 1-102(A)(5) and 1-102(A)(6) of the Code of Professional Responsibility.

The Evidence

The evidence establishing respondent's misconduct was

entirely documentary, consisting of the following exhibits:

- a.) P. Ex. 8*: Judge Gammerman's order, 1/23/85;
- b.) P. Ex. 15: Judge Klein's order, 6/16/85;
- c.) P. Ex. 16: Respondent's brief on appeal;
- d.) P. Ex. 17: Appellate Division, First Department Order, affirming respondent's conviction, 9/17/85;
- e.) P. Ex. 18: Dismissal of Appeal by Court of Appeals, 11/16/85

2. CHARGE TWO

Respondent has been guilty of professional misconduct prejudicial to the administration of Justice which adversely reflects upon his fitness to practice law, as follows:

1. By order of Honorable Ira Gammerman, Justice of the Supreme Court, New York County, dated January 23, 1985, respondent was permanently enjoined and restrained from filing or serving any further lawsuits relating to Puccini and from continuing to prosecute designated pending lawsuits, against specified parties without leave of court.

2. Respondent wilfully and knowingly violated said order.

3. By order of Honorable David B. Saxe, Justice of the Supreme Court, New York County, dated June 26, 1985 (a copy is annexed as EXHIBIT B), respondent was convicted of criminal contempt of court for having wilfully and knowingly disobeyed the order of Justice Gammerman and was sentenced to a term of imprisonment of ten days and to a fine of \$250.00.

4. On September 17, 1985, the Appellate Division, First Judicial Department affirmed respondent's criminal contempt conviction.

*References are to Petitioner's Exhibits, received in evidence.

5. By reason of the foregoing, respondent has been convicted of a serious crime as defined by Section 691.7(b) of the Rules of the Appellate Division, Second Judicial Department and has violated Disciplinary Rules 1-102(A)(5) and 1-102(A)(6) of the Code of Professional Responsibility.

The Evidence

The evidence establishing respondent's conviction consisted of the following:

- a.) P. Ex. 19: Notice of motion to punish for contempt, 4/3/85;
- b.) P. Ex. 20: Affirmation in opposition to motion, 4/13/85;
- c.) P. Ex. 21: Affirmation in opposition to motion, 4/22/85;
- d.) P. Ex. 22: Affirmation in opposition to motion, 5/1/85;
- e.) P. Ex. 23: Affirmation in opposition to cross-motion, 4/19/85;
- f.) P. Ex. 25: Judge Saxe's decision, 5/9/85;
- g.) P. Ex. 25: Schedules submitted pursuant to Judge Saxe's decision;
- h.) P. Ex. 26: Judge Saxe's order, 6/26/85;
- i.) P. Ex. 27: Appellate Division, First Department order affirming Judge Saxe's criminal contempt order, 9/17/ 85;
- j.) P. Ex. 28: Dismissal of appeal by Court of Appeals, 11/21/85.

3. CHARGE TWO-A

Respondent has been guilty of professional misconduct prejudicial to the administration of justice which adversely reflects upon his fitness to practice law, as follows:

1. By order of Honorable Martin Evans, Justice of the Supreme Court, New York County, a motion to punish respondent for criminal contempt of court was referred to Referee Donald Diamond.
2. In a report dated May 1, 1985, Referee Diamond found that 63 counts of criminal contempt, committed by respondent, had been sustained. Referee Diamond recommended that respondent be fined the sum of \$250.00 for each offense and confined for a period of thirty days.
3. In an order dated November 15, 1985, Justice Evans confirmed Referee Diamond's report and convicted respondent of criminal contempt of court for wilfully and deliberately violating court orders.
4. By reason of the foregoing, respondent has been convicted of a serious crime, as defined by Section 691.7(b) of the Rules of the Appellate Division, Second Judicial Department and has violated Disciplinary Rules 1-102(A)(5) and 1-102(A)(6) of the Code of Professional Responsibility.

The Evidence

The evidence with respect to this charge consisted of the following:

- a.) P. Ex. 29: Notice of Motion and accompanying exhibits, seeking to punish respondent for criminal contempt of court, 1/30/85;
- b.) P. Ex. 30: Respondent's notice of cross-motion, 2/1/85;

- c.) P. Ex. 31: Respondent's notice of cross-motion,
2/9/85;
- d.) P. Ex. 32: Raffe notice of cross-motion, 2/1/85;
- e.) P. Ex. 33: Affirmation of Lee Feltman, 2/15/85;
- f.) P. Ex. 34: Report of Referee Donald Diamond,
5/1/85;
- g.) P. Ex. 35: Order to Show Cause to Confirm Referee
Diamond's Report, 5/3/85;
- h.) P. Ex. 36: Respondent's papers in opposition,
6/3/85;
- i.) P. Ex. 37: Contempt Order of Judge Evans,
11/15/85.

4. CHARGE THREE

Respondent has been guilty of professional misconduct prejudicial to the administration of justice which adversely reflects upon his fitness to practice law, as follows:

1. By order of Honorable Eugene H. Nickerson, Judge of the United States District Court of the Eastern District of New York, dated May 28, 1985, respondent was ordered to appear at the United States District Courthouse in Brooklyn, New York for deposition on May 30, 1985.
2. Respondent wilfully and deliberately violated said order.
3. By order of Judge Nickerson, dated June 7, 1985 (a copy is annexed as EXHIBIT C), respondent was convicted of criminal contempt of court for violating Judge Nickerson's order of May 28, 1985.

4. On September 13, 1985, the United States Court of Appeals for the Second Circuit affirmed respondent's criminal contempt conviction.

5. By reason of the foregoing, respondent has been convicted of a serious crime as defined by Section 691.7(b) of the Rules of the Appellate Division, Second Judicial Department and has violated Disciplinary Rules 1-102(A)(5) and 1-102(A)(6) of the Code of Professional Responsibility.

The Evidence

Respondent's conviction of criminal contempt of court by Judge Nickerson and its affirmance by the United States Court of Appeals for the Second Circuit are a matter of record. Hyman Raffé v. Citibank, N.A., No. 84 Civ. 0305 (E.D.N.Y. June 7, 1985), aff'd 779 F.2d 37 (2nd Cir. 1985) (Decision without published opinion). Respondent admitted both the fact of the conviction and its affirmance, testifying to what he characterized as the "mitigating circumstances" (T. 1842-1848).*

A copy of Judge Nickerson's order of June 7, 1985, convicting respondent of criminal contempt was annexed to the Petition as Exhibit C but was not offered in evidence at the hearing.

5. ANALYSIS

Respondent's wilful and deliberate violation of court

*References to "T." are to the hearing transcript followed by the page numbers.

orders resulted in four criminal contempt of court convictions. Each conviction constitutes a "serious crime" as defined by Section 691.7(b) of the Rules of the Appellate Division, Second Department (22 NYCRR 691.7(b)):

(b) The term "serious crime" shall include...any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves...criminal contempt of court... (Emphasis added).

An attorney who commits a serious crime also commits serious professional misconduct. Thus, based upon a criminal contempt of court conviction, the Appellate Division, Second Department suspended an attorney from the practice of law for one year. Matter of Leeds, 87 A.D.2d 96 (1982). Respondent's behavior is remarkably similar to that involved in Leeds since he, too, refuses to acknowledge his wrongdoing and, rather than expressing remorse, continues to defy court decisions and orders.

That respondent's conduct was prejudicial to the administration of justice and adversely reflects on his fitness to practice is too apparent to require additional comment.

B. CHARGE FOUR

Beginning in or about May 1980, respondent knowingly and deliberately engaged in professional misconduct which abused the judicial process, interfered with, obstructed and was prejudicial to the administration of justice and which adversely reflected on his fitness to practice law, as follows:

1. Following the judicial dissolution of

Puccini and the appointment of a permanent receiver, beginning in or about 1982 respondent wilfully, knowingly and maliciously initiated, instituted, supervised and directed a continuing flow of vexatious, baseless, frivolous and repetitious litigation pertaining to Puccini.

2. Schedule I, annexed to and made part of this Petition, sets forth said litigation.

3. Respondent directed said frivolous and vexatious litigation against litigants, judges, referees, attorneys, public officials and other parties who participated in litigation involving the Puccini dissolution or who rendered decisions or rulings adverse or contrary to positions asserted by respondent.

4. Respondent engaged in said frivolous and vexatious litigation for the purpose of harassing, threatening, coercing and maliciously injuring those made subject to it.

5. By engaging in said conduct respondent violated Disciplinary Rules 1-102(A)(5), 1-102(A)(6), 7-102(A)(1) and 7-102(A)(2) of the Code of Professional Responsibility.

1. The Evidence

a. Testimony of Michael Gerstein

A partner in Kreindler and Relkin, P.C., Mr. Gerstein first became involved in litigation related to Puccini Clothes, Ltd., when his firm was retained by the Estate of Milton Kaufman. Mr. Kaufman was one of four equal shareholders of Puccini Clothes, Ltd. (T. 934-935).

Schedule I (P. Ex. 10 for identification) and Additions to Schedule I (P. Ex. 11 for identification), Sections A (lawsuits commenced), B (Article 78 proceedings

commenced) and C (motions made) are accurate, but incomplete lists of actions instituted by respondent (T. 936).

P. Ex. 56 lists 18 motions made by respondent for the same relief--to reargue a summary judgment decision in Barr v. Raffe (Index No. 16792), together with the corresponding documents.

P. Ex. 57 lists 16 motions made by respondent to vacate his disqualification. It includes the corresponding documents.

P. Ex. 58 lists 16 motions made by respondent, seeking the same relief--to remove Lee Feltman as receiver for Puccini or to appoint himself or Hyman Raffe as receiver. The corresponding documents are included in the exhibit.

P. Ex. 60 lists 12 motions in which respondent sought the same relief--to disqualify Kreindler and Relkin as attorneys for the Estate of Milton Kaufman. Included are the corresponding documents.

P. Ex. 61 lists five motions made by respondent, all seeking to vacate a summary judgment in Barr v. Raffe (Index No. 21208). It includes the corresponding documents.

On August 30, 1984 respondent made the same motion (to vacate a summary judgment against Hyman Raffe in Barr v. Raffe), returnable on the same day in six different courts--five parts of the Supreme Court, New York County as well as in the Appellate Division, First Department (T. 971).

P. Ex. 62 lists the six repetitions of that single motion and includes the corresponding documents.

b. Testimony of Donald Schneider

Schedule I, Section A (P. Ex. 10 for I.D.) and its additions (P. Ex. 11 for I.D.) are accurate, but incomplete lists of actions instituted by respondent.

P. Ex. 12 consists of the initiating papers in the 29 lawsuits listed in Section A of Schedule I and Additions to Schedule I (T. 36-39).

The documents which correspond to Schedule I, Section A, Nos. 1, 5, 8, and 10 were deleted from P. Ex. 12 at the hearing (T. 45).

Section B of Schedule I (P. Ex. 10) and Additions to Schedule I (P. Ex. 11) are accurate, but incomplete lists of Article 78 proceedings commenced by respondent in Puccini litigation.

P. Ex. 13 consists of the documents in the 17 Article 78 proceedings listed in Section B. The 17 documents were marked collectively as P. Ex. 13 (T. 53-57).

Section C of Schedule I (P. Ex. 10) and Additions to Schedule I (P. Ex. 11) are accurate, but incomplete lists of motions made by respondent (T. 58).

Respondent instituted Puccini litigation in the Counties of New York, Westchester, Nassau and Kings of New York State Supreme Court; the New York State Court of Claims; the United States District Courts for both the Southern and Eastern Districts of New York; the Appellate Division, First, Second and Third Departments; and the United States Court of Appeals, Second Circuit of New York (T. 68).

The repetitious litigation instituted by respondent placed tremendous burdens on Mr. Schneider and his law firm. Attorneys from his office spent between four and six thousand hours on this case since 1982. The fees awarded to Feltman, Karesh and the other law firms are paid out of the corpus of the Puccini Estate (T. 76-78). Awards of \$550,000.00 in attorneys' fees have exhausted Puccini's resources (T. 79-81).

Respondent repeatedly served motion papers late so that they would be received after the return date, precluding his adversaries from responding. Respondent made numerous repetitive motions--at least fifteen separate motions to remove Lee Feltman as receiver for Puccini. These were not motions to reargue or renew, but rather, a new motion every time. Respondent litigated in such a manner as to harass his adversaries continuously (T. 122).

Respondent makes defamatory and scandalous charges on a daily basis, continually accusing litigants, lawyers and judges of being "crooks, criminals with law degrees." Respondent uses the litigation process in an attempt to force his adversaries to submit and eventually give up. Each time a law firm is sued, they are required by their malpractice policy to file a claim with their insurance company, sending their insurance rates soaring (T. 122-125).

The legal system has been "utterly impotent to deal with this lawless man and he's wreaked unbelievable havoc on the parties in this case and on the judicial system." (T. 126).

2. ANALYSIS

The campaign of frivolous, vexatious litigation which respondent has continued to wage is unmistakable from the documents received in evidence.

Respondent used repetitious and baseless motions and claims as a means of attacking judges, referees, litigants, attorneys, public officials and virtually anyone else who crossed his line of fire. As noted by Judge Conner, respondent had no legitimate purpose. His only aim was to harass. This course of conduct constituted "blackmail by litigation" (P. Ex. 9, Page 19).

The evidence also demonstrates that respondent chose to employ tactics more suitable to political terrorism than to the practice of law. Disregarding numerous court orders and the interests and specific instructions of his client, respondent, for reasons known only to him, chose to pursue his own goals. In that pursuit he refused to recognize or abide by any rules which might hinder him and took no notice of the harm he was inflicting upon others, including his own client.

When his efforts were uniformly unsuccessful, respondent accused virtually every judge, litigant, lawyer or public official who became involved in the litigation of being part of a "conspiracy" against him. He also made repeated charges of fraud, deceit, larceny, perjury and corruption. Respondent's proclivity for particularly vicious "name-calling" is also evident from the documents received in evidence.

"Criminals with law degrees" and "moral lepers" were among his most frequently applied labels. In fact, it was this distinctive "style" which made it apparent that respondent was author of the documents purportedly filed by "Hyman Raffe, pro se."

In his Memorandum and Decision finding respondent guilty of criminal contempt of court (P. Ex. 24, P. 3), Judge Saxe noted that the respondent had a "documented history of flouting court orders" (citing Kelly v. Sassower, 78 A.D.2d 502 and Sassower v. Signorelli, 99 A.D.2d 358). Judge Saxe described the Puccini litigations as an "extensive campaign of harassment" and an "onslaught of legal outrage."

In his report (P. Ex. 34), Referee Diamond described respondent's "burdensome, vexatious, onerous acts" (P. 8) as a history of "never ending sham, frivolous and baseless lawsuits, motions and claims" and "common barratry as a form of economic duress" which constituted a "calculated attempt to make litigation so expensive that the receiver and petitioner will be compelled to submit" (PP. 69-70).

Disciplinary Rules 7-102(A)(1) and 7-102(A)(2) of the Code of Professional Responsibility provide:

A. In his representation of a client, a lawyer shall not:

1. File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

2. Knowingly advance a claim or defense

that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

It is respectfully submitted that respondent deliberately, wilfully and maliciously violated these provisions and that the voluminous documents authored by him and received in evidence at this hearing conclusively establish his misconduct.

C. CHARGE FIVE

Beginning in or about September 1980, respondent knowingly and deliberately engaged in professional misconduct which interfered with, obstructed and was prejudicial to the administration of justice and which adversely reflected on his fitness to practice law, as follows:

1. By order of Honorable Hilda E. Schwartz, Justice of the Supreme Court, New York County, dated September 11, 1980 (a copy is annexed as EXHIBIT D), respondent was relieved as counsel in certain proceedings pertaining to Puccini Clothes, Ltd. and was directed to turn over his legal files pertaining to the proceedings.

2. By orders of Honorable Thomas V. Sinclair, Jr., Justice of the Supreme Court, New York County, dated February 1, 1982 (copies are annexed as EXHIBITS E and F), respondent was disqualified as the attorney for Hyman Raffé (hereinafter "Raffé") in specified Puccini proceedings.

3. By order of Honorable Edward J. Greenfield, Justice of the Supreme Court, New York County, dated September 8, 1982 (a copy is annexed as EXHIBIT G), respondent was prohibited from representing Puccini unless expressly authorized by Lee Feltman (hereinafter "Feltman"), Puccini's court-appointed receiver.

4. By order of Honorable Xavier C. Riccobono, Administrative Judge of the Civil Branch of the Supreme Court, First Judicial District, dated March 26, 1984 (a copy is annexed as EXHIBIT H), the Puccini proceedings, including all discovery related motions and all factual issues in designated proceedings, were referred for assignment to a referee and all future applications were to contain an endorsement indicating the terms of Judge Riccobono's administrative order.

5. Donald Diamond was appointed Special Referee for specified Puccini proceedings, pursuant to Judge Riccobono's administrative order.

6. Referee Diamond directed that all applications to reargue and renew must be brought by order to show cause signed by the judge who had made the original determination and that all other motions must be preceded by a pre-motion conference with the Special Referee.

7. By a ruling of Special Referee Diamond, dated September 26, 1984 (a copy is annexed as EXHIBIT I), respondent was held to be in continuing violation of the previous orders disqualifying, enjoining and otherwise restraining him and was ordered barred from attending all proceedings conducted before Special Referee Diamond from which he had previously been removed as attorney.

8. By order of Honorable Thomas J. Hughes, Justice of the Supreme Court, New York County, dated December 7, 1984 (a copy of which is annexed as EXHIBIT J), respondent was enjoined and restrained, pending the determination of the motion for a permanent injunction, from instituting any additional proceedings or serving any additional claims or amended complaints pertaining to Puccini, without leave of court.

9. By order of Honorable Ira Gammerman, Justice of the Supreme Court, New York County, dated January 23, 1985 (a copy is annexed as EXHIBIT K), respondent was permanently enjoined and restrained from

prosecuting or initiating any proceedings pertaining to Puccini against specified individuals, without leave of court; was prohibited from making any motion to vacate, reargue, renew or modify this order except by order to show cause, presented to either Judge Gammernan or to the Administrative Judge of the Court; and was prohibited from making any application, motion or submission pertaining to Puccini without annexing a copy of this order and setting forth a statement as to its existence.

10. By opinion and order of Honorable William R. Conner, Judge of the United States District Court for the Southern District of New York, dated October 11, 1985 (a copy is annexed as EXHIBIT L), respondent was permanently enjoined and restrained from filing or initiating any action in any federal court or tribunal pertaining to Puccini against specified individuals.

11. Respondent knowingly and wilfully disobeyed, violated, and defied the aforementioned orders and rulings by instituting, initiating, filing, submitting and participating in, a continuing series of motions, suits, proceedings which are set forth in Schedule I).

12. Respondent knowingly and wilfully disobeyed, violated and defied said orders and rulings by making numerous appearances in which he purported to represent Puccini, Hyman Raffe, or both.

13. By engaging in the aforesaid conduct, respondent violated Disciplinary Rules 1-102(A)(5) and 1-102(A)(6) of the Code of Professional Responsibility.

1. The Evidence

a. Testimony of Donald Schneider

A partner in the law firm of Feltman, Karesh, Major and Farbman, Mr. Schneider became active in Puccini litigation when Lee Feltman, a partner of his firm, was appointed receiver on February 1, 1982 (T. 11).

Puccini Clothes, Ltd. had been owned by four equal shareholders--Milton Kaufman, Hyman Raffe, Eugene Dann and Robert Sorrentino. In 1979 Milton Kaufman died and his estate brought a proceeding in the New York State Supreme Court to dissolve Puccini Clothes. That proceeding resulted in a January 4, 1980 order of Judge Thomas Sinclair, dissolving the corporation. Respondent was the attorney for Puccini Clothes at that time (T. 9-10).

In reviewing the court files Mr. Schneider learned that respondent had been discharged as attorney for Puccini and for Puccini shareholders, Dann and Sorrentino, by Judge Hilda Schwartz of the New York County Supreme Court (T. 11-13). P. Ex. 1 is a copy of the September 11, 1980 order of Judge Schwartz, discharging respondent from representing Puccini, Dann and Sorrentino.

P. Exs. 2 and 3 are copies of two February 1, 1982 orders of Judge Thomas Sinclair, disqualifying respondent from appearing in Puccini litigation and from representing Hyman Raffe. Respondent continued to take legal action on behalf of Mr. Raffe in Puccini matters after the orders of Judge Sinclair were issued (T. 19).

P. Ex. 4 is a copy of the January 25, 1983 order of Judge Edward Greenfield which barred respondent from representing Puccini Clothes, unless expressly authorized by the receiver. Respondent continued to purport to represent Puccini on numerous occasions (T. 21).

P. Ex. 5 is a copy of the March 26, 1984 administrative order of Judge Xavier Riccobono, Administrative Judge of the Civil Branch of the Supreme Court, New York County, referring all Puccini related proceedings to Referee Donald Diamond.

P. Ex. 6 is a copy of the September 26, 1984 rulings of Referee Diamond, pertaining to the Puccini litigation. The Referee required motions for leave to reargue or renew to be brought on by an order to show cause, signed by the Judge required to pass upon the application. On all other motions, the movants were required to arrange for a pre-motion conference to resolve any possible disputed issues of fact in connection with the motion. Respondent "repeatedly" violated the Referee's rules by making motions to renew or reargue not brought on by order to show cause and by moving "tens of times" without a request for a pre-motion conference (T. 26-27).

P. Ex. 7 is a copy of the December 7, 1984 temporary restraining order of Judge Thomas Hughes, restraining respondent from acting on behalf of Hyman Raffe or Puccini Clothes. After the temporary restraining order was issued, respondent continued to act on behalf of Mr. Raffe and Puccini (T. 30).

P. Ex. 8 is a copy of the January 23, 1985 order of Judge Ira Gammerman, permanently enjoining respondent from acting in any matters relating to the following: Puccini Clothes or its shareholders; the dissolution or receivership of

Puccini; the receiver; the Estate of Milton Kaufman; the law firm of Kreindler and Relkin, P.C.; the law firm of Feltman, Karesh and Major, P.C.; the law firm of Nachamie, Kirschner, P.C. Respondent continued to bring actions against the above-named (T. 33).

P. Ex. 9 is a copy of the October 11, 1985 opinion and order of Judge William Conner of the United States District Court, Southern District of New York, enjoining respondent from acting in Puccini matters in federal court.

A number of judicial decisions recognized that despite respondent's being discharged as attorney for Puccini by Judge Schwartz, he continued to purport to represent Puccini Clothes, Ltd. (T. 665).

b. The Documentary Evidence

1. Order of Justice Hilda Schwartz, 9/11/80 (P. Ex. 1)

This order disqualified respondent as counsel to Puccini Clothes, Eugene Dann and Robert Sorrentino. In violation of the order respondent commenced the following actions on behalf of Puccini:

Schedule 1, Section A, Nos. 4, 6, 7, 9, 11, 12, 13, 15, 16, 17, 18, 24, 25 and 26 (corresponding to P. Ex. 12).

Respondent instituted the following Article 78 proceedings on behalf of Puccini, in violation of Judge Schwartz's order:

Schedule 1, Section B, Nos. 3, 4, 5, 6, 7, 8, 11 and 12 (corresponding to P. Ex. 13).

Respondent also violated the order by making the motion listed in Schedule 1, Section B, subsection b, No. 15 (No. 7 of P. Ex. 57).

2. Orders of Thomas Sinclair, 2/1/82 (P. Exs. 2 and 3)

These orders disqualified respondent as counsel for Raffae "in all other actions or matters where he represents an interest adverse to Dann, Sorrentino and Puccini." In violation of these orders respondent commenced the following actions on behalf of Mr. Raffae or by using the guise of "Hyman Raffae, pro se":

Schedule 1, Section A, Nos. 2, 3, 4, 6, 9, 10, 11, 12, 13, 15, 16, 17, 18, 20, 23, 24, 25 and 26 (corresponding to P. Ex. 12).

Respondent instituted the following Article 78 proceedings in violation of Judge Sinclair's orders:

Schedule 1, Section B, Nos. 1-17 (corresponding to P. Ex. 13).

As found by Referee Diamond and confirmed by Justice Martin Evans, respondent violated Judge Sinclair's orders on 37 occasions (Counts I-XXXVII, P. Ex. 34).

3. Order of Edward Greenfield, 9/8/82 (P. Ex. 4)

This order barred respondent from representing or purporting to represent Puccini in any legal action or proceeding. In violation of this order respondent commenced the following actions on behalf of Puccini:

Schedule 1, Section A, Nos. 4, 6, 7, 9, 11, 12, 13, 15, 16, 17, 18, 24, 25, and 26 (corresponding to P. Ex. 12).

Respondent instituted the following Article 78 proceeding in violation of Judge Greenfield's order:

Schedule 1, Section B, Nos. 3, 4, 5, 6, 7, 8, 11, 12 (corresponding to P. Ex. 13).

As found by Referee Diamond and confirmed by Justice Evans, respondent violated Justice Greenfield's order on 12 occasions (Counts XLI--LIII, P. Ex. 34).

4. Order of Justice Xavier Riccobono, 3/26/84 (P. Ex. 5)

This order provided, "All future applications with the Court shall contain an endorsement indicating the terms of this Administrative Order." The order appointed Referee Donald Diamond, requiring referral of all relevant proceedings to him. Respondent violated the order as follows:

Schedule I, Section C, subd. a, Nos. 26 (P. Ex. 60-10); 27 (P. Ex. 60-11); 29 (P. Ex. 58-11),; 39 (P. Ex. 58-12); 56 (P. Ex. 58-14); 57 (P. Ex. 58-15).

Schedule I, Section C, subd. b, Nos. 53 (P. Ex. 57-10; 35 (P. Ex. 56-8); 36 (P. Ex. 56-9); 37-42 (P. Ex. 62, 1-6); 43 (P. Ex. 57-11); 46 (P. Ex. 56-12); 47 (P. Ex. 56-13); 48 (P. Ex. 57-13); 49 (P. Ex. 57-12); 51 (P. Ex. 56-14).

5. Rules Promulgated by Referee Donald Diamond, 9/26/84 (Described in P. Ex. 6)

Upon his appointment, Referee Diamond promulgated two rules:

a.) All motions pursuant to CPLR 2221 must be brought on by order to show cause signed by the judge who must pass upon the application, and

b.) All other motions required a pre-motion conference.

In violation of these rules respondent brought the following motions:

Schedule I, Section C, subd. a: 39 (P. Ex. 56-12); 47 (P. Ex. 56-13); 48 (P. Ex. 58-13); 49 (P. Ex. 57-12); 51 (P. Ex. 56-14).

As found by Referee Diamond and confirmed by Justice Evans, respondent violated Referee Diamond's Rules on ten occasions (Counts LIV-LVIX, LXI-LXIV, P. Ex. 34).

6. Order of Justice Thomas Hughes, 12/7/84 (P. Ex. 7)

This order restrained respondent from instituting any additional proceedings or serving any additional Puccini claims or amended complaints. Schedule I, Section A. Nos. 15 and 16 (corresponding to P. Ex. 12) were instituted by respondent (purportedly Hyman Raffae, pro se) in violation of this order.

7. Order of Justice Ira Gammnerman, 1/23/85 (P. Ex. 8)

This order permanently enjoined respondent from all Puccini litigation. Respondent violated this permanent injunction by instituting the actions enumerated in Schedule I, Section A, Nos. 17-29 (corresponding to P. Ex. 12).

8. Order of Judge William Conner, 10/11/85 (P. Ex. 9)

No evidence of any violations of this order was received.

2. ANALYSIS

The documents received in evidence speak for themselves. They provide vivid proof of respondent's persistent defiance of the numerous orders designed to disqualify and restrain him. Even his clumsy attempts to hide some violations by use of the "Hyman Raffe, pro se" ruse were so poorly disguised that they fooled no one. As Mr. Raffe testified and respondent admitted, he never ceased or even diminished the flood of Puccini litigation.

Respondent displayed utter contempt for the law and for those judicial officers sworn to uphold it. It is difficult to conceive of attorney misconduct more destructive of our legal system.

D. CHARGE SIX

Respondent has been guilty of failing to seek the lawful objectives of a client and of prejudicing and damaging a client, as follows:

1. In or about 1979 respondent was retained by Hyman Raffe ("Raffe") to represent him with respect to the Puccini dissolution proceedings.
2. In or about January 1985, respondent was instructed by Raffe to commence no further litigation with respect to Puccini in Raffe's name or on his behalf.
3. Respondent deliberately and wilfully disregarded and violated Raffe's instructions by instituting, filing and submitting numerous actions, proceedings and appeals pertaining to Puccini on Raffe's behalf.

4. As a direct result of respondent's unauthorized behavior, Raffé was assessed costs, attorneys' fees, fines and penalties and was held to be guilty of civil and criminal contempt of court.

By engaging in the aforesaid conduct, respondent violated Disciplinary Rules 1-102(A)(5), 1-102(A)(6) and 7-101(A)(1) and 7-101(A)(3) of the Code of Professional Responsibility.

1. The Evidence

a. Testimony of Hyman Raffé

Following the death of one of its partners, Puccini became the subject of dissolution negotiations. There was a difference of opinion between Mr. Raffé and the two remaining partners. As a result, respondent was to represent only Mr. Raffé in proposed litigation pertaining to Puccini (T. 1118-1124).

After respondent was disqualified he continued to prepare papers for Mr. Raffé to sign "pro se" (T. 1124-1126).

Rather than recovering any money from the Puccini litigation, Mr. Raffé was assessed costs of "roughly a million dollars." He learned of these assessments when his bank accounts were attached. On each occasion that he learned of the attachments, Mr. Raffé would contact respondent, whose response was always the same--Mr. Raffé should not worry, ultimately he would get "double or triple" his money back. Mr. Raffé made notes pertaining to several of those conversations (T. 1126-1138).

Mr. Raffé signed P. Ex. 38, a letter addressed to

respondent, after reading it. Mr. Raffe placed the letter on respondent's desk. At that time respondent was in jail. His daughter was picking up his mail and delivering it to him. After Mr. Raffe left the letter, respondent's daughter visited the office and took the mail (T. 1138-40).

Six months earlier Mr. Raffe told respondent not to represent him "in anything where I was concerned with Puccini." Respondent said, "All right." But Mr. Raffe later learned from his new attorney, Ira Postel, that respondent had never stopped representing him in Puccini matters (T. 1140-1142).

Between the date of his conversation, in January 1985, and his letter, six months later, Mr. Raffe learned that he was about to be arrested. When he asked respondent about the arrest order, Mr. Raffe was told that it would be "straightened out," but that he should "leave town." Respondent did not straighten the matter out. P. Ex. 38 was written as part of Mr. Postel's efforts to keep Mr. Raffe out of jail (T. 1142-1143).

In August, after respondent was released from jail, he met with Messrs. Postel and Raffe at the latter's office. They discussed Puccini and the possibility of jail. When Mr. Raffe reiterated that Mr. Postel was representing him, respondent said nothing. Respondent knew that he was not representing Mr. Raffe in Puccini matters. Mr. Raffe needed someone to keep him out of jail and to stop the assessments against him (T. 1143-1146).

In November 1985 Mr. Raffe wrote to respondent (P. Ex. 65). Mr. Raffe usually communicated orally but felt compelled to write because respondent kept putting off their appointments. In his letter Mr. Raffe pleaded with respondent to stop the Puccini litigation (T. 1146-1150).

The only response to this letter was a telephone call from respondent in January or February 1986. He asked Mr. Raffe to meet him at the airport where respondent was scheduled to leave for Florida. Mr. Raffe refused (T. 1150-1151).

The litigation pertaining to Puccini and its shareholders has still not ended. As Mr. Raffe said, "If it did, I wouldn't be here" (T. 1151).

Mr. Raffe subsequently met respondent in court. Mr. Raffe refused to shake his hand saying, "You're trying to kill me and you want me to shake your hand?" (T. 1152).

During the course of approximately seven years of litigation, Mr. Raffe received "probably hundreds or thousands" of documents pertaining to it. When he received them, he gave them to respondent. After Mr. Postel came into the case, Mr. Raffe gave them to him. He retained only a few, those which were "strange" because respondent quoted Shakespeare or used "strong language" pertaining to judges (T. 1152-1153).

Sometimes Mr. Raffe read papers given to him by respondent but not very often (T. 1160-1161).

In January 1985 Mr. Raffe told respondent that he should not represent him "in anything that had anything to do with me and Puccini " (T. 1161). "I told you not to institute

any kind of legal matters on my behalf as far as Puccini was concerned." (T. 1168).

Mr. Raffe told respondent "not to represent me with anything as far as Puccini was concerned with my name on it. You said you had other things without my name on it, and, I couldn't talk about that, to tell you what to do or not to do." (T. 1176).

b. Testimony of Ira Postel

After some conversations with Hyman Raffe, Mr. Postel met and was retained by him in July 1985. Mr. Raffe engaged Mr. Postel "to get him out of the problem of the contempt order" and to end the Puccini litigation (T. 439-443).

Mr. Raffe told Mr. Postel that respondent had been disqualified and enjoined, but was continuing to bring lawsuits. A contempt order had resulted. Respondent kept telling him "Don't worry about it, I'll take care of it." (T. 443-446).

Mr. Postel reviewed some of the Puccini materials and spoke to Messrs. Schneider and Gerstein, explaining that he was now representing Mr. Raffe and wanted to put an end to the litigation. Mr. Postel was given a record on appeal with the full schedule of Puccini cases. Mr. Schneider also gave him a history of the past several years (T. 447-450).

Mr. Postel drafted and dictated a letter (P. Ex. 38) for Mr. Raffe's signature (T. 451-454).

Mr. Postel first spoke to respondent in Mr. Raffe's

office on July 15, 1985. Respondent said that the criminal contempt convictions were unconstitutional and the injunction invalid. Mr. Postel responded, "...if I have an order from a judge telling me not to do something, I don't do it." (T. 455-458).

Since July 1985 Mr. Postel had appeared in court 25-30 times on actions initiated by respondent or involving Puccini litigation. It was difficult to count the number of actions or appearances because "they come in sometimes four or five at a time in the office (T. 461-463).

Mr. Postel brought motions on Mr. Raffe's behalf to punish respondent for contempt for continuing violations of Judge Gammerman's order. He also brought cross-motions against respondent for his unauthorized representation of Mr. Raffe. Those motions have not yet been decided. The list of appeals contained in P. Ex. 11 (Schedule IA, sub-paragraph D) is accurate, although there are additional appeals (T. 464-469).

From July 15 to July 31, 1985, Mr. Postel was speaking to Mr. Raffe daily. Although respondent was already disqualified from representing him in Puccini matters, Mr. Raffe said he told respondent in January 1985 that he wanted him to "stop all the Puccini litigation" (T. 472-476).

After January 1985 respondent continued to institute actions, purportedly on behalf of Mr. Raffe (T. 477). P. Exs. 39-47 were received in evidence, demonstrating respondent's continuing actions with respect to Puccini (T. 477-517).

Mr. Postel had three or four conversations with respondent, beginning July 15, 1985. In August or September 1985, Mr. Postel was negotiating a settlement agreement which provided that Mr. Raffe would end all litigation, with the exception of respondent's rights with respect to his own contempt proceedings. Mr. Postel attempted to speak to respondent at Mr. Raffe's office. Respondent rebuffed him, saying, "The settlement is a criminal act. I don't want to take part of any criminal act." (T. 518-519).

At a subsequent unscheduled meeting in the Clerk's office of Special Term, Part I, New York County, Mr. Postel told respondent, "George, this has to stop...It's making Mr. Raffe sick already, this whole thing, this litigation has got to stop." Respondent said, "Well, have him put it in writing." On other occasions respondent refused to speak to Mr. Postel (T. 519-520).

Respondent knew that Mr. Postel was representing Mr. Raffe because he made court appearances and noted his appearance in respondent's presence. Respondent also served Mr. Postel with a summons for "tortious interference with a relationship between a client and attorney "in November 1985. Respondent also filed a grievance against Mr. Postel (T. 521-523).

Mr. Raffe has been assessed \$11,500.00, \$5,000.00, \$8,000.00, \$18,000.00 and \$464,000.00 in costs and attorneys' fees in connection with the Puccini litigation. Additional fee applications against him are pending (T. 523-528).

Beginning in July 1985 Mr. Postel devoted four or five hundred hours to Mr. Raffe's case. The litigation instituted by respondent interfered with Mr. Postel's practice of law, causing him to devote virtually total attention to Puccini litigation. Just reviewing the papers that came in on a daily basis had been "incredible" (T. 528-531).

Although he knew that Mr. Postel was representing Mr. Raffe, respondent never sent any documents to him (T. 532-533).

Respondent was present when Mr. Raffe retained Mr. Postel and said that he was "glad" because Mr. Raffe would be in "good hands." Respondent was present when Mr. Raffe said he had told respondent to "stop a long time ago." (T. 555-559).

Mr. Raffe only began to send copies of all Puccini materials to Mr. Postel in November 1985, when respondent began his "latest barrage of motions" (T. 584).

From the time that he was retained by Mr. Raffe, it was always Mr. Postel's understanding that respondent was disqualified from all Puccini litigation (T. 614).

2. ANALYSIS

An attorney is not free to use the attorney-client relationship as a device to serve his own ends. He must seek the lawful objectives of his client. See, Code of Professional Responsibility, DR 7-101, subd. A. He is also duty-bound to "act in a manner consistent with the best interests of his client." Id., EC 7-9. The attorney is obligated to advise and inform his client, but it is the client who has the exclusive authority to make the basic decisions. Those decisions are

binding on the lawyer. Id., EC 7-7.

When Hyman Raffé retained respondent, Mr. Raffé could reasonably expect, at worst, that he might not win his case. As a plaintiff, Mr. Raffé would have no reason to expect that his attorney would engage in behavior so outrageous that it would cause this case "to go down in legal history as a farce." (P. Ex. 65).

As the litigation continued to multiply and expand, Mr. Raffé began to learn, as a result of attachments levied on his bank accounts, that respondent was totally out of control. Despite respondent's assurances "not to worry," Mr. Raffé did worry. He knew that respondent had been disqualified. He also knew that respondent was circumventing those restrictions by preparing various documents to be signed by Mr. Raffé under the guise of being a pro se litigant. And Mr. Raffé knew that the costs he was being assessed were growing to staggering amounts. Finally, Mr. Raffé decided that he had had enough of respondent's false assurances and misleading "advice."

In January 1985 Mr. Raffé met with respondent and directed him to cease--to no longer represent Mr. Raffé "in anything where I was concerned with Puccini." (T. 1142). Although respondent agreed, Mr. Raffé learned later that respondent had never complied with those instructions.

In July 1985 Mr. Raffé learned that he was about to be arrested. Respondent told him not to worry, but to "leave town." However, Mr. Raffé, faced with imprisonment, sought other legal advice. After several meetings and conversations

with Ira Postel, Mr. Raffe retained him on July 15, 1985, at a meeting attended by respondent (T. 555).

When Mr. Raffe learned that respondent was still continuing to litigate Puccini on his behalf, Mr. Postel prepared a letter for Mr. Raffe's signature (P. Ex. 38). Mr. Raffe said:

I am again instructing you, that, you are no longer to bring any litigations with respect to the Puccini matter, or anyone connected with the Puccini matter, including the members of the New York State Judiciary.

I must implore you to heed these instructions.

Still, respondent continued to violate Mr. Raffe's instructions, causing Mr. Raffe to write to him again, by letter dated November 22, 1985 (P. Ex. 65). Mr. Raffe "implored" and "pleaded" with respondent to "put a stop to it."

Even as he was testifying at respondent's disciplinary proceeding, respondent was continuing to pursue Puccini litigation, purportedly on Mr. Raffe's behalf (T. 1151).

For reasons known only to him, respondent ignored Mr. Raffe's instructions, disregarded his decisions and acted contrary to his interests. In pursuing his own ends, respondent was totally unconcerned with the harm his actions were inflicting upon his client. Pleading and imploring respondent, Mr. Raffe wrote to him:

Nobody would believe what happened to me so far.

1. ...Well over \$2,000,000 paid so far and climbing every day.

2. ...My credit standing damaged, something that I guarded over 40 years.

3. ...My embarrassment to everyone that knows about Puccini.

4. ...So many people from my office that were involved...and so much time spent.

...On top of everything, do I have to keep paying an attorney to defend me against your actions!!!!!! (P. Ex. 65).

As a direct result of respondent's misconduct, Mr. Raffe suffered enormous financial penalties. He would also have suffered the ultimate indignity of arrest and imprisonment if not for the timely intervention of Ira Postel. An attorney who would inflict such injuries upon his own client in order to pursue his own ends can give no clearer signal of his own unworthiness.

E. CHARGE SEVEN

Respondent failed to cooperate with the Committee in its legitimate investigation of a complaint of professional misconduct made against him, as follows:

1. By letter dated December 5, 1984, respondent was provided with a copy of the complaint of Donald F. Schneider, Esq., was requested to provide a written answer to the allegations and was informed that an unexcused failure to respond constituted professional misconduct.

2. In a letter dated December 14, 1984, respondent acknowledged receipt of the complaint and stated that he had not read it and did not intend to do so.

3. Respondent failed to respond to the allegation of misconduct as requested.

4. By letter dated January 3, 1985, respondent was again informed that his written response to the complaint was required and was again advised that a failure to respond constituted professional misconduct.

5. In letters dated January 14, 1985 and January 22, 1985, respondent again failed to respond to the allegations of the complaint.

6. In letters dated January 28, 1985 and January 30, 1985, respondent made the deliberately false representation that a court order prohibited him from responding to the allegations of the complaint.

7. By engaging in the aforesaid conduct, respondent violated Disciplinary Rule 1-102(A)(6) of the Code of Professional Responsibility.

1. The Evidence

a. The Documents

By letter dated December 5, 1984, Robert Straus, Chief Counsel to the Grievance Committee provided respondent with a copy of Donald Schneider's 21-page complaint. Respondent was instructed to submit a written answer to the complainant's allegations within ten days and was advised that an unexcused failure to do so constituted professional misconduct, independent of the merits of the complaint (P. Ex. 49).

In a letter dated December 14, 1984 (P. Ex. 50), respondent acknowledged receipt of the complaint and stated, "I have not read it, do not intend to read it, plead 'not guilty,' and request, indeed solicit and demand, a public hearing."

Totally ignoring the allegations (of deliberate and continuing violations of court orders and a campaign of

harassment by means of frivolous and vexatious litigation) and his obligation to respond to them, respondent unleashed a barrage of verbal assaults against litigants, attorneys, judges and referees:

d. Thus, I must insist on an expeditious hearing, and respectfully request that it be held at a high floor, so that the Feltman entourage break more than a couple of legs jumping out of the window during cross-examination!...

In Supreme Court, New York County, the rape takes place in the courtroom, with the rapoe paying the rapors for the privilege, and receive the active and overt cooperation of Referee Donald Diamond...

c. Presently, my only remedy is to request that the Feltman firm take a copy of their charges against me, and shove it up the corporate rectum of Kreindler & Relkin, P.C., the archiects of this larceny of judicially entrusted funds!

Since I have no use for my copy of their charges, I (sic), if they wish, can have my copy of their 21 page complaint, and they can have it up Referee Diamond's rectum, for the 21 good reasons I have for such public interest proposal!

In a letter dated January 3, 1985, Mr. Straus again advised respondent that an unexcused failure to reply constituted professional misconduct and reiterated that respondent was required to submit a written response to the allegations of the complaint (P. Ex. 51).

Rather than responding to the allegations, as required, respondent escalated his attacks. In a letter dated January 14, 1985 (P. Ex. 52), respondent said that if there were any specifics that he had not answered, "I will take it

under advisement." Disputing that he was required to answer the allegations, respondent stated that he was entitled to advise the complainant "to take the complaint and shove it up his rectum."

While leveling more insults at some of his earlier "targets" and adding others, respondent made it clear that he understood the allegations but chose not to respond to them:

4a. Please Mr. Straus, do not request me to answer questions about violating disqualification provisions that do not exist!

b. Please Mr. Straus, do not request me to answer the statements of Referee Diamond. There have been others in the judicial system, in my presence, who have said that he is "crazy," "nuts," and words to that effect!

In another letter, dated January 22, 1985 (P. Ex. 53), respondent continued his bizarre war of words, alleging that papers had been switched and larceny and perjury committed. Again, respondent chose to ignore his own obligation to respond to the allegations of professional misconduct.

Respondent switched tactics in a letter dated January 28, 1985 (P. Ex. 54). Now he claimed that, at the urging of his daughter, he had read the complaint and had drafted a response, but that an order of January 24, 1985 prevented him from responding. With this letter respondent submitted copies of three pages numbered "9, 10, and 11."

By letter dated January 29, 1985 (P. Ex. 55), Mr. Straus again reminded respondent that an unexcused failure to

reply constituted professional misconduct. Respondent was directed to provide a copy of the order upon which he was purporting to reply.

Respondent's final position, typed on the bottom of P. Ex. 55 and dated January 30, 1985, was as follows:

There is no way for me to properly respond without violating the Order mentioned. If "wisdom is the ability to find alternatives," I suggest that you ask the complainant for the information you request.

b. Testimony of Robert Straus

Called as a witness by respondent, Mr. Straus testified to the following:

During two telephone conversations with respondent, Mr. Straus reiterated that respondent had an obligation to respond to the allegations and had failed to do so. He also reminded respondent that if his failure to cooperate continued, it would constitute professional misconduct (T. 1428-1432).

During another telephone conversation with respondent, Mr. Straus told him that it was clear the Gammerman order merely prohibited respondent from filing grievances against other attorneys. The order did not prevent respondent from answering when he was the subject of a complaint. Mr. Straus also told respondent that his reliance upon the Gammerman order as a basis for not answering was a "sham" since respondent had chosen not to comply with court restrictions when they did not serve his purposes (T. 1441-1442).

2. ANALYSIS

When an attorney is requested by a grievance committee to respond to allegations of professional misconduct, he has an obligation to do so. A failure to provide the required cooperation constitutes professional misconduct and is to be condemned. Matter of Wanderman, 100 A.D.2d 309 (2d Dept. 1984). See, also, Matter of Goerlich, 82 A.D.2d 608 (2d Dept. 1981); Matter of Lilli, 82 A.D.2d 602 (2d Dept. 1981); Matter of Leibowitz, 82 A.D.2d 646 (2d Dept. 1981); Matter of Kirschner, 79 A.D.2d 67 (2d Dept. 1981); Matter of Russo, 42 A.D.2d 122 (1st Dept. 1973).

The duty to answer allegations of professional misconduct is basic to one who is licensed to practice law. As the Appellate Division, First Department has stated:

Where an attorney, who is the subject of an investigation, deliberately refuses to assist the Committee on Grievances in the performance of its necessary task, it may be impossible for the Committee to determine the validity of the allegations of a complaint. This is so because in many instances, only the attorney in question possesses the evidence which is dispositive of the allegations.

Matter of O'Sullivan, 63 A.D.2d 553, 554 (1st Dept. 1978).

Provided with a lengthy complaint and repeatedly requested to respond to its allegations, respondent failed to do so. Instead, he engaged in tactics which have become his all too familiar trademark--verbal assaults and evasion. Respondent disputed that he was required to answer the

complaint and indicated, in language notable for its graphic physical detail, where both Referee Diamond and Mr. Diamond "could shove it."

Continuing to dodge his obligation to answer, respondent next claimed that he had drafted a response but was prohibited from sending it by a recent order of Judge Gammerman. Since respondent has steadfastly maintained that the Gammerman order was "invalid" as the product of "conspiracy" and, "paper-switching," the sincerity of his claim is hardly credible. Furthermore, the language of the order is clear and unambiguous. It prohibits respondent from subjecting other attorneys to additional complaints.

In his failure to cooperate, as in all his professional misconduct, respondent refused to acknowledge or accept any impediment--such as the plain language of a judicial order--in constructing his facade. For respondent's purposes "yes" apparently means "no" if that is what he requires. Finally, when counsel to petitioner refused to accept respondent's "interpretation" of the Gammerman order and again directed him to respond to the allegations, respondent said, "Get it from the complainant."

The variety, imagination and energy displayed by respondent in obstructing and avoiding the investigation into his misconduct were remarkable. They leave no doubt that his failure to cooperate with the petitioner Grievance Committee was knowing and deliberate.

CONCLUSION

The standard of proof required in a disciplinary proceeding is a fair preponderance of the evidence. See, Matter of Feola, 37 A.D.2d 789; Matter of Farrell, 237 App. Div. 678; Matter of Capoccia, 59 NY2d 549 (1983).

The evidence and testimony clearly establish respondent's guilt with respect to each of the eight charges of professional misconduct.

WHEREFORE, petitioner respectfully urges that each of the eight charges be sustained.

Dated: Brooklyn, New York
May 30, 1986

Respectfully submitted,

ROBERT H. STRAUS
Attorney for Petitioner