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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant/Petitioner

vs.

Case No. 68,866

(TFB File Nos. 03-83N21 and 03-85N16)

JOHN R. WEED,

Respondent

_____/

RESPONDENT'S REPLY BRIEF

and

RESPONDENT'S INITIAL BRIEF ON CROSS-PETITION

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TABLE OF CITATIONS

STATEMENT OF CASE

The Statement of the Case as presented in the initial brief of the Petitioner is correct and is adopted by the Respondent in this his reply brief. The Florida Bar will be referred to in this brief as the Petitioner, since they are the party seeking review and the Respondent will be referred to as the respondent.

STATEMENT OF FACTS

The Statement of Facts set forth in the initial brief by the Petitioner are essential correct and no further facts need be elaborated here except as developed in the brief.

ARGUMENT I

"The Referee's findings, conclusions and recommendation that the Respondent be found not guilty of violating Disciplinary Rule 7-106(C)(7) was correct."

The findings of facts and conclusions of the Referee are to be presumed correct, accorded substantial wight and are not be be overturned unless they are not supported by the evidence and are thus clearly erroneous. Richardson v. State (1940), 192 So. 876; The Florida Bar v. Wagner, (1968) 212 So.2d 302. This presumption presist even if the Board of Governors do not agree with the findings or the recommendation of the Referee. The Florida Bar v. Abramson (1967), 199 So.2d 457.

It is therefore the burden of the party seeking review to clearly show that the Referee erred and that the findings which he made, the conclusions which he reached and the recommendations he made were erroneous, unlawful, or unjustified. State ex rel. Florida Bar v. Roberts (1959) 110 So.2d 653.

The Petitioner seeks to have the Referee's finding of not guilty of violations of Disciplinary Rule 7-106(C)(7) set aside as contrary to the evidence. A review of the facts of this case will conclusively show that the Referee was correct in his finds and conclusions as to this particular violation.

The Petitioner asserts that there was deception and deceit on the part of the Respondent because of this having presented to the District Court two unsigned affidavits. These affidavits were prepared for the signature of two persons in the case involved in Count III of the Complaint. These persons, Mrs Pittman and Mrs Nydam, were called to testi-

fy at the hearing before the Referee.

It is imperative that we examine the testimony of these witnesses since the Petitioner appears to place great reliance in their testimony. Mrs Pittman, after examining the affidavit, said that she did not recall having seen it until the day that this matter was presented to the Grievance Committee. Counsel for the Petitioner then suggested on the record that the date of that hearing was in June, 1985. Upon cross examination Mrs Pittman testified that when she was approached by Mrs Cook, the Respondents secretary, she discussed it with her boss, Judge Declan O'Grady, and decided not to sign it because sh did not wish to be involved and would just wait for the hearing.

On further cross examination Mrs Pittman admitted that Judge O'Grady left office in December, 1984 and was succeeded by Judge Murphy. Judge O'Grady left office six months prior to the hearing that Mrs Pittman referred to and it would have been impossible for this to have taken place in the sequence as recalled by Mrs Pittman. The request to sign the Affidavit had to have taken place prior to January 1, 1985 and prior to the hearing before the First District Court of Appeal. It should have been clear to the Petitioner that Mrs Pittman's memory was faulty on this point and required greater investigation.

Certainly under the Rules of Juvenile Procedure it can not be denied that in both delinquency and dependency hearings a record of the proceedings is to be made. It is not the duty of the child or his attorney to insure that a record is made. This duty is one that is required of the Court.

Mrs Nydam brought with her to the hearing her records which indicated that Juvenile Court was scheduled in Perry on the date of this trial and according to her records the proceedings were taped by Judge O'Grady. She could not recall if the matter had been discussed with her, whether she had seen the affidavit or whether she had received the Disignation to the Court Reporter, although she did not believe that she had. Mrs Nydam stated that she could not have signed the affidavit because she was aware that the hearing had been taped. She also recalled a conversation with Mrs Pittman that a tape had been ruined because the recorder malfunctioned, but she was not sure that it was in this case. Mrs Pittman did not recall this conversation.

Mrs Pittman did recall that a search for a tape of this hearing had been made and that no tape of the proceedings had been located. Mrs Pittman also found that the matters stated in the affidavit were truebut contended that she had refused to sign it because she decided to wait until the hearing.

The affidavits were attached to a response filed in compliance with and Order issued by the Court of Appeal on June 15, 1984. From Mrs Pittman's testimony it is obvious that it had been presented to her prior to June 15, 1984 when the response was filed. After all she remembered distinctly that she had gone in and discussed it with her boss, Judge O'Grady. She was very certain that she had not discussed it with Judge Murphy who had taken office on January 2, 1985.

The Petitioner implies that the affidavits were prepared but not presented to the individuals because they were untrue. However, an ex-

amination of the record before this Court demonstrates that beyond a doubt this is an erroneous assumption. One witness says the proceedings were taped but the custodian of the tapes says that no tape could be found. One witness remembers seeing the affidavit but only in June 1985, a time which by her own testimony could not be correct. The other witness simply does not remember the affidavit.

It is contended that the Respondent did not attach all of the correspondence in his possession to the response to the First District Court of Appeal and therefore was practicing some sort of deception. The Respondent testified that efforts were made by his secretaries to obtain the identy of the Court Reporter and that he additionally filed with the First District Court of Appeal a motion that the case be remanded to the trial court so that a transcript of the proceedings could be made. The Respondent was directed to attach copies of what he had done in order to obtain a transcript of the proceedings. The unsigned affidavits were sent with the response as this was in accord with the directions of the Order. Certainly it was not implied or inferred that the affidavits had been signed and this was fully discussed and expanded on at the hearing before the District Court of Appeal on January 14, 1985.

The Petitioner asserts that the Respondent is guilty of misconduct for failing to file a motion for extension of time, a motion to withdraw or a motion to dismiss. Certainly there was no reason for the Respondent to file a motion to dismiss since he did not wish to have the appeal dismissed, but wished to have it remanded to the trial court so that an exact transcript of the proceedings could be made. When the decision of a trial court is appealed upon the grounds that the evidence is not

sufficient to uphold the conviction it is most important to the appellant that an exact transcript of the proceedings be before the Court of Appeal. It is not generally an argument of law that is essential in such an appeal but the facts upon which the verdict or judgment rest. It is impossible for the appellate court to adequately and properly consider an appeal on the sufficiency of the evidence without a verbatum record before it. It is very detrimental to the appellant if this record is not present. By the same token the Respondent had no desire to withdraw from the representation of the Juvenile either at that point or any point thereafter. The Respondent was in constant contact with the juvenile and with his parents and they were aware of what was transpiring in the case and were as insistent as the Respondent on the necessity of a complete record in this cause. The First District Court of Appeal finally required the Respondent to submit stipulated facts on the case that were not sufficient for the appeal and the decision was per curum affirmed. If there had been a transcript of the trial presented, the Respondent believes that the decision would have been different.

It is important to understand that so far as the Respondent can find this is a case of first impression as to an attorney being discipled by the Bar for failure to file briefs within the time provided in the Rules of Appellate Procedure. The Respondent has also been unable to locate any cases where the Bar filed to discipline any attorney for violating the Rules of Civil Procedure or the Rules of Criminal Procedure Certainly there are numerous cases where the trial courts and appellate courts have disciplined attorneys by holding them in contempt, expelling

them from the court or taking other action against them for violating the rules. However, if the Bar has previously taken any action it is not reported and we are therefore left without guide in this matter.

It will be argued later in this brief that Counts III, IV and V of the Complaint should have been dismissed. However, for the moment let us respond to the assertions and argument set forth by the Petitioner in its brief.

The Petitioner did in fact call Mr Rhodes, the Clerk of the First District Court of Appeal, to testify in this matter before the Referee. Mr Rhodes was requested to bring the files with him that are covered by the charges in these three counts of the Complaint. Mr Rhodes was questioned about two previous cases, filed in 1978 and 1982, which had resulted in him being placed on the Culpa list.

The Clerk stated that the files reflected that the Respondent had been directed to show cause why an appeal should not be dismissed for failure to prosecute. The Respondent filed his response, which evidently contained good cause, and the Court gave him an extension of time in which to file a brief. The second case filed in October, 1982 required the Respondent to file a brief within a specified time or face sanctions by the Court. The Respondent filed the brief within the required time and no sanctions were imposed. As the Petitioner points out these two instances were not the subject of any disciplinary proceedings but were cited to demonstrate a pattern of habitual violation of the rules of procedure.

It should be noted that the Petitioner's assertion that the conduct

found in this record demonstrates an habitual violation of the rules and an intentional and willful disregard of them is faulty and without a basis in fact. An examination of the record reveals that the Respondent has practiced before the First District Court of Appeal for some sixteen years and had handled, accoding to his testimony, hundreds of cases before the Court. He has been cited twice as noted above for violating the rules of procedure and did in both of those cases show good cause for his failure to abide by the rules. Therefore any habitual and intentional violation had to arise because of the three cases outlined herein and to which the Respondent has consistently given an explanation concerning an illness in his office.

It is important to not that Mr Rhodes was not questioned by the Petitioner concerning these consolidated cases or the action which took place before the Court of Appeal on January 14, 1985. The Petitioner has consistently neglected to seek information concerning that hearing and has instead preferred to rely upon its assumptions, inferences and presumptions. Why has the Bar failed to seek the record? Is the record contrary to their contentions herein and therefore damaging to their position? It would have logically been assumed that the full record would have been presented to the Referee for his consideration. At the very least it would appear that Mr Rhodes would have been questioned concerning the events of January 14, 1985.

The position which the Petitioner asserts here is totally contrary to the opinion filed by the First District Court of Appeal, a copy of which

is attached to Petitioner's initial brief. While the Court did find that there had been "a repeated disregard for the Appellate Rules and the Court's Order", it did not find that there was an intentional and willful disregard for the rules. As a matter of fact the Court found instead, "we do not feel counsel's violation rise to the level of contempt, nor do we consider dismissal appropriate". Therefore the Petitioner's reliance upon the Appellate Court's findings to sustain it in this cause is misplace. It is also interesting to note that although the Court found that the Respondent had violated the rules in these three consolidated cases and the two previous cases cited above, it did not find that these constituted a pattern of habitual violation.

The Petitioner appeared before a three judge panel of the Court of Appeal on January 14, 1985 and give a full and complete explantion for his failure to timely file the briefs in these three cases. That explanation concerned an elderly secretary who became very ill in August of 1984 and required continuous and lengthy care until her death. Everyone appears to accept that this occurred and was not a fabrication by the Respondent. Surely if the Petitioner believed that it was false it would have said so and produced witnesses to say that the Respondent was not away from his office for this reason. The events are will known to the general public in the Perry, Florida area and are easily verifiable. The Court of Appeal accepted this explanation but found that it was not good cause since there was another lawyer in the office as well as other secretaries that should have attended to these appeals. The Referee found that the "Respondent has expressed remorse for his actions and has

admitted that his overinvolvement with the illness and personal affairs of his elderly secretary, now deceased, contributed greatly to his neglected approach to handling the cases."

It must also be noted that the First District Court of Appeal, which was much more familar with these cases and had much more information, did not find that the Respondent had deliberately and willfully violated the Appelate Rules or neglected his clients business. Admittedly they found that his explanation was not sufficient but they did not find any deliberate or willful misconduct on the part of the Respondent. They found that the cases should not be dismissed because of the shortcomings of the Respondent. The words of the District Court are important and if it had been warranted, certainly the Court would have used stronger and more forceful language.

The Referee was correct in his finding that the Respondent had not violated Disciplinary Rule 7-106(C)(7).

ARGUMENT II

"The Referee erred in recommending that the Respondent be found guilty of violating DR 1-102(A)(1), DR1-102(A)(4) and DR6-101(A)(3)."

The Code of Professional Responsibility, Canon 1, DR1-102(A)(1) provides:

> "A lawyer shall not violate a disciplinary rule"

Therefore this is the basic rule that underlies any charge brought by the Petitioner against any lawyer charged with any violation of the Code. In and of itself it is not a substantive charge but is the foundation upon which the other violations are based.

The substantive violations of which the Respondent is charged and upon which the Referee recommends a finding of guilt are DR1-102(A)(4) and DR6-101(A)(3). It is recommended that the Respondent be found guilty of violating DR1-102(A)(4) in Count III and of violating DR6-101(A)(3) in Counts IV and V.

Let us deal first with Count III and the recommendation of a finding of guilt concerning DR1-102(A)(4) which states:

> A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

Clearly this charged was based upon the filing of two unsigned affidavit with the Court. This has been discussed at length in the first argument and will not be repeated here. However, the statements and argument made there are adopted into this argument. The arguments set forth in the third argument concerning the dismissal

of Count III are adopted as a part of this argument.

It is evident that the Respondent did not engage in any intentional misconduct. The Report of the Referee states:

> The Florida Bar has demonstrated that Respondent is guilty of violating DR1-102(A)(4), although said violation may have been unintentional. (emphasis added)

It is clear that the Referee was not convinced of the Respondent's intentional violation of this Rule. In order to sustain a charge of misconduct, there must be clear and convincing evidence of the attorney's guilt. The Florida Bar v. Rayman (1970) 238 So.2d 594 The Petitioner has failed to prove by clear and convincing evidence that the Respondent violated DR1-102(A)(4) and by the wording of his Report the Referee was not convinced that there had been an intentional violation.

As to Count IV and V the Referee recommended that the Respondent be found guilty of DR6-101(A)(3) which states:

> "A lawyer shall not neglect a legal matter entrusted to him."

The Referees finds are again based solely upon the failure of the Respondent to file the briefs on time. Again it must be emphasized that the record from the First District Court of Appeal was not presented to the Referee for his consideration. The Petitioner did not bring forth any witnesses or clients to said that the legal matters covered by Counts IV and V had been neglected.

As a matter of fact the evidence is to the contrary. The clients

were aware of what was transpiring and no complaint was forth coming from them. It is important to remember that in each of these cases the Respondent was representing a client that had lost in the trial court. None of these clients were imprisoned or had a great desire for a quick decision in their case, especially if the decision was adverse to them. Neglect of legal matters are best determined by the client which this rule is promulgated to protect. If the client does not feel that the matter has been neglected, then how can the Petitioner assume that for them?

The Referee was requested to and did base his decision upon accusation not proven, inferences not presented, facts not established and assertions without foundation. The Petitioner failed to investigate and to determine if the clients matters had been neglected. Instead they relied upon assumption which could not be drawn. The District Court did not find that the matters of the clients had been neglected. Certainly, if there had been neglect the Court would have so found and its opinion would have so stated. There was no willful or deliberate neglect and no testimony of any knd was presented to estabish such conduct.

While it was stated above, it bears repeating, the Petitioner is not required to prove the guilt of the Respondent beyond a reasonable doubt. However, it must prove with relevant and competent evidence and clear and convincing proof that the Respondent is guilty of the conduct charged. The degree of proof required is less than that in a criminal case but greater than that in a civil case. There

was absolutely no proof presented on this question and the Petitioner simply sought a conviction built upon innuendo and by drawing an inference upon an inference.

The Referee's recommendation that the Respondent be found guilty as to these counts should not be followed by the Court since they are not supported by the record.

ARGUMENT III

"The Referee erred in not dismissing Counts III, IV and V of the Complaint upon the Motion of the Respondent."

The Integration Rule of the Florida Bar, Article XI, Rule 11.06(3)(a) states:

> A disciplinary proceeding is neither civil nor criminal but is a quasi-judicial administrative proceeding. The Florida Rules of Civil Procedure apply except as otherwise provided in the Integration Rule.

If these were truly criminal proceedings then it would be very easy to conclude that the "double jeopardy" clause of the Constitution would preclude any further action. If they were truly civil proceedings a plea of res judicata would dispose of them.

Counts III, IV and V of the Complaint dealth with the failure of the Respondent to properly and timely file briefs within the provisions of the Rules of Appellate Procedure. The First District Court of Appeal required the Respondent to "show cause" and after a full hearing before the Court found that although the actions of the Respondent did not raise to the level of contempt they were deserving of a public reprimand. This public reprimand was published in the Southern Reporter in the case of Gentry v. Gentry, 463 So.2d 511.

The same factual basis asserted by the Petitioner in its Complaint against the Respondent formed the basis of the action in the First District Court of Appeal. The Respondent is in effect, and in fact, being punished twice for the very same act. There is no precedent for such action to be

found in our system of jurisprudence. It is certainly not conceivable that this was the intent of the Rule nor is it within the spirit of the Rules. The First District made certain findings of fact and administered the punishment which it found was sufficient to rectify the situation. Yet, now the Petitioner seeks to have this Court again punish the Respondent for the very same action in the very same case. Nothing new has been added nor is this case in any way distinguishable from the case as presented before the District Court of Appeal. It is inconceivable under our system of jurisprudence, with its sense of fairness and equity, that such action could be taken.

Under the Integration Rules cited above, Rule 11.14(7) states:

> "The jurisdiction of the district courts of appeal and circuit courts created by this rule and the procedure herein outlined shall be concurrent with that of the Florida Bar under the preceding portions of these Rules of Discipline. The forum first asserting jurisdiction in a disciplinary matter shall retain the same to the exclusion of the other until the final determination of the cause."

The Respondent asserted that the Referee should dismiss Counts III, IV and V because the First District Court of Appeal had asserted jurisdiction in the matter and had in fact disciplined the Respondent. The Petitioner asserted that because the District Court had, in its opinion, referred the matter to the Florida Bar then the Referee could proceed upon the very same grounds. Certainly, the District Court did not refer the matter to the Bar for the purpose of relitigating the same facts. What is to prevent the Bar from bring the same action again and again

until it obtains the sesired results? The Petitioner had every right and opportunity to bring forth additional facts that would have distinguished the case presented by them from the District Court case. They chose not to do so and they are therefore bound.

It should be noted that the District Court ordered that the clients be notified of the action which had been taken and that the matter be referred to the Florida Bar. Yet, even though this was done, no client came forward to complain and the Bar failed to produce even one such client that would say that their case had been neglected. The Respondent would contend, and the Bar would have known if it had taken to time to obtain a transcript of the proceedings, that the matter was referred to the Bar because of the potential for complaints being filed as a result of the clients being notified. This was the clear implication of this action and was not intended as a signal for the Petitioner to bring the same charges which the District Court had disposed of and entered its order so stating.

Although the legal profession is governed by the Integration Rule and the disciplinary proceedings are quasi-administrative they are still governed by fundamental fairness and due process. A lawyer has a very high standard which he is required to uphold. However, he should not be denied the clear protection of the law nor the protection of these rules which have been promulgated by the Bar and approved by the Supreme Court of this state. In any other action cognizant in our courts the Petitioner would not be permitted to sustain these counts of the Complaint.

When the Petitioner failed to come forward with any additional evidence of misconduct, the Referee should have dismissed Counts III, IV and V of the Complaint.

ARGUMENT IV

"The Referee did not err in his recommendation of the punishment to be administered to the Respondent for the violation of which it was recommended he be found guilty."

The Referee's recommendation as to the punishment to be administered comes to this Court on a presumption of correctness. He has heard the testimony in the case and has had to weigh the credibility of the witnesses. He was the trier of fact in the present case.

The Referee recommended a public reprimand and a period of probation. The Respondent has contended that because the First District Court of Appeal has already administered this punishment for the very same acts which are charged here that there should be no public reprimand. The Petitioner has contended, and continues to do so, that the punishment is not severe enough and should be increased to a suspension of ninety days.

The discipline to be imposed upon an attorney for misconduct is determined by the facts of each case. The Florida Bar v. Pink (1970) 236 So. 2d 97 The primary purpose of any discipline imposed is to protect the public while being fair to the attorney. The Florida Bar v. Pahules (1970) 233 So. 2d 130. This Court in the case of The Florida Bar v. Thomson (1972) 271 So.2d 758 stated:

> "The penalty assessed should not be made for the purpose of punishment, The Floria Bar v. King, 174 So.2d 398 (Fla. 1965), and neither prejdice nor passion should enter into the determination. State ex rel. Florida Bar v. Bass, 106 So.2d 77 (Fla. 1958). The purpose of assessing penalties is to protect the public interest

> and to give fair treatment to the accused attorney. State ex rel. Florida Bar v. Ruskin, 126 So.2d 142 (Fla.1961). The discipline should be corrective and controlling considerations should be the gravity of the charges, the injury suffered, and character of the accused. Holland v. Flournoy, 142 Fla. 459, 195 So. 138 (1940).

The Petitioner contends, and cites a number of cases, that the punishment recommended by the Referee is not harsh enough. However, the Petitioner neglects to provide the Court with citations of cases in wich the conduct that the attorney was convicted of was more severe than that here but the punishment was a public reprimand. See: The Florida Bar v. Golden (1981) 401 So.2d 1340 (Trush fund violation and borrowing money from a client and failing to repay it.); The Florida Bar v. Murrell (1982) 411 So.2d 178 (Backdating a deed); The Florida Bar v. Montgomery (1982) 418 So.2d 267 (Misconduct in handling of trust fund); The Florida Bar v. Finta (1983) 427 So. 2d 721 (Trust fund violation); The Florida Bar v. Baker (1983) 431 So.ed 601.

The Petitioner seeks to have the Respondent suspended upon grounds which are not supported by the record in this cause. Suspension is one of the most severe penalties that can be imposed upon an attorney and should never be imposed lightly, but only in a clear case for weighty reasons on clear proof. The Florida Bar v. Wendel (1971) 254 So.2d 199.

Again in an attempt to ustain its contentions the Petitioner makes accusations which are not supported by the record and in fact are clearly contrary to the findings of the Referee. The Petitioner

claims that there was a violation of duty to the client because of the failure to file the briefs. However, the Petitioner, though it asserts this has failed to produce any evidence to substantiate its charge. The Petitioner asserts that there was a great potential for injury to the client because the appeals could have been dismissed leaving them with no further legal redress. This did not happen nor is it the state of the law that the clients would have been left with no legal redress if it had occurred. The client would have been left with more than one avenue of legal redress and the Petitioner is well aware of that fact. This is a complete misstatement of the law and is stated only for the purpose of trying to increase the penalty imposed. The Petitioner again ignore the clear wording of the decision of the First District Court of Appeal which found that the conduct in these appeals did not warrant dismissal.

The Petitioner alleges that the Respondent has willfully disregarded the rules and procedure of the Court. This allegation is contrary to the findings of the First District and of the Referee and is an attempt by the Petitioner to substitute its opinion for the facts.

The Petitioner further asserts that because of Respondents prior disciplinary offenses and his pattern of misconduct the penalty should be enhanced. There have not been prior offenses. There has been one prior offense to which the Respondent entered a plea and accepted the sanctions imposed without question. There has not been established a pattern of misconduct as is evident from the findings of the Referee

and the First District Court of Appeal. The assertions of the Petitioner are clearly contrary to the facts in this case.

The Petitioner talks of the multiple offenses committed by the Respondent as a reason for enhancing the recommended punishment. However, the Respondent was found not guilty on most of the offenses charged in the Complaint and the Petitioner concurred in that finding with the exception of one instance. The Respondent was found guilty by the Referee of a violation of three of the Disciplinary Rules, all related to the same act, the failure to file the briefs in three consolidated cases. This does not amount to a pattern of misconduct that would require the severe sanctions of suspension. The assertion here again is not backed up by the facts.

Perhaps the most blatant misstatement of fact concerns the assertion by the Petitioner that the Respondent has failed and refused to appreciate the wrongful nature of his misconduct. There is absolutely nothing in the record to support this contention and the Petitioner fails to point out one line of the transcipt to support this contention. The record is replete with evidence to the contrary. Certainly in the hearing before the First District Court of Appeal no such finding was made nor even hinted at. The Referee made a finding that the Respondent had express remorse. The assertion of the Petitioner is incorrect and is not support by the record. It is an attempt to create a fact which is baseless and should be disregarded by the Court and given no weigh.

While the Petitioner asserts that there were aggravating factors

which should require the Court to enhance the penalty recommended by the Referee, it neglects to mention the mitigating factors which the transcript and record showed existed and which the Referee found to exist. The factors are outlined in other parts of this brief and will not be repeated here.

If the Court finds that the Respondent should be convicted of any of the charges then the recommendation of the Referee should be followed since it is supported by the record.

CONCLUSION

The Referee's findings and recommendations come before this Court upon the presumption of correctness and the recommended punishment upon a presumption of fairness.

The Referee found that the Respondent was not guilty of violating Disciplinary Rule DR7-106(C)(7) and the evidence supports that finding. The petition and arguments of the Petitioner concerning the incorrectness of that finding should be rejected by this Court.

The Petitioner request the Court to enhance the punishment recommended by the Referee but fails to bring forth any evidence to support the naked allegations which it asserts. The record does not support the contentions of the Petitioner and this request should also be rejected.

The Respondent by cross-petition request the Court to reject the findings of guilt by the Referee on the two substantive violations of the Disciplinary Rules. The evidence does not support the findings and conclusions of the Referee and the Court should find the Respondent not guilty of the alleged violations.

The Respondent argues, and the Court should accept, that the Referee should have dismissed any action on Counts III, IV and V since they were exactly the same charges that the Respondent had previously answered to before the First District Court of Appeal. The Respondent has already been punished for the acts of failure to file briefs

within the time provided by the rules and therefore should not be again punished for that.

The Respondent was found not guilty on Counts I and II and the Petitioner concurred in that finding. Therefore, this Court is confronted only with the action before the First District Court of Appeal and therefore the remainder of the case should be dismissed.

Respectfully submitted,

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