IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
FEB 5 1991
CLERK, SUPREME COURT
By _____ Deputy Clerk

THE FLORIDA BAR,

Complainant,

v.

HARVEY S. SWICKLE,

Respondent.
_____/

Supreme Court Case
No. 75,348

The Florida Bar File
No. 88-70,506(11G)

AMENDED

RESPONDENT'S BRIEF

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Citation References

References to Transcripts are "Grievance Committee" Transcript or "June 5, 1990 Tr." for the first day of the Referee Trial and "June 12, 1990 Tr." for the second day of the Referee Trial.

STATEMENT OF CASE AND FACTS

This is the initial brief seeking appeal and reversal of the Referee's Report in a Bar proceeding. The Report recommended disbarment.

This case arises out of a criminal trial that was conducted on acts and events that occurred many years ago. Both the Respondent and a Co-Defendant, former Judge Howard Gross, were found innocent of all charges by a Jury after a trial before the Honorable Judge Daniel Futch, who was specially appointed by the Chief Justice of the Supreme Court.

In order to procure wire taps which led to the first trial, Agent Flint of the Florida Department of Law Enforcement provided a lengthy Affidavit, upon which the Chief Justice of the Supreme Court relied. The Referee properly points out, as does the testimony of Agent Flint at trial, that approximately one-third of the Affidavit was uncorroborated and, in fact, false. The Referee in his report also found, like the Jury that acquitted both the Respondent and former Judge Gross, that no bribery of Judge Gross was involved.

The Respondent attended a Grievance Committee hearing, but properly objected to the notice. Respondent timely and frequently objected to apparent violations of State ex rel. Florida Bar v. Murrell, 74 So.2d 221 (Fla. 1954). Agent Flint was, in fact, on the losing side in the criminal litigation, but was allowed to make

a two and one half-hour presentation, where questions were sometimes posed as "please continue". He would continue for pages of transcript at a time with virtually no interruption. In fact, at page 172 of the transcript, The Bar Counsel even mirrors the presentation of Agent Flint. Similar procedural allegations were raised at the time of trial, especially with respect to the answer by The Florida Bar of certain Interrogatories concerning the question of whether or not any deal had been struck with former Judge Gross. Inquiry into the matter was not permitted by the Referee.

The facts in the light most favorable to The Florida Bar are that the Respondent allowed others to believe that money which they paid him might go to influence a Judge to obtain an early release of a fictitious defendant on bond. The facts in the light most favorable to The Florida Bar would also show that Respondent may have intentionally misinformed Judge Gross as to facts with regard to Defendant, and that these facts might have influenced Gross to the reduction of bond. In fairness, it cannot be said that the bond reduction would not have occurrred even if the correct facts had been stated by Swickle to Gross.

The Referee found Respondent guilty of giving false information to Judge Gross and of the implication of his ability to improperly influence the court system, but not of an actual bribe attempt. See the Report of the Referee. The Referee nevertheless recommended the disbarment of Harvey Swickle.

It is from this Order of the Referee that this appeal has been

filed.

SUMMARY OF ARGUMENT

The Grievance Committee proceedings below were seriously defective, both as to notice of the alleged charges and in the conduct of the proceedings. The proceedings were managed and controlled substantially by Agent Flint of the Florida Department of Law Enforcement. Agent Flint was the adversary in a criminal proceeding which was the basis of The Bar charges. Even the trial was tainted by tactics and by procedures designed to single out Respondent for harsh punishment. The Bar entered into a secret "deal" which it failed to honestly disclose, additionally depriving Respondent of his due process rights.

The combination of the above procedures and the lack of evidence of corrupt motive preclude disbarment. The evidence basically is that of "rain-making" and not inconsistent with innocent conduct. The Bar's evidence was insufficient to merit disbarment. By comparison with the The Florida Bar v.Saxon, 379 So.2d 1281 (Fla. 1980), an appropriate discipline would be a six-month suspension.

ARGUMENT

POINT I

THE GRIEVANCE PROCEEDINGS BELOW VIOLATE THE RIGHTS OF RESPONDENT AND MERIT DISMISSAL OF THIS CASE

The Grievance Committee proceedings and Bar Referee proceedings are an exercise of part of the jurisdiction of this Court pursuant to Article V, Section 15 of the Constitution of the

State of Florida. Regardless of whether these proceedings are called quasi-judicial-administrative proceedings or whether they are a form of delegation of some other authority of the Supreme Court, they affect the substantive right of the attorney for a license to practice a valuable occupation. This Court has rarely recognized due process defenses or arguments in Bar disciplinary cases, but this case requires careful scrutiny for such violations.

A timely objection, at the start of the Grievance Committee hearing was made in the accompanying confidential Letter Memorandum of June 8, 1989, delivered by the undersigned to the Grievance Committee. The argument in the Letter Memorandum (Appendix "A") is hereby adopted as part of this Brief. The undersigned respectfully is aware that this Court treats lawyer licensure in accordance with the DeBock v. State, 512 So.2d 164 (Fla. 1987). Nonetheless, the DeBock case, supra was not a Bar disciplinary case and the issue was not properly able to be raised in the format of a Bar disciplinary proceeding where an alleged violation of the rights of the Respondent was in fact occurring. We have such a violation occurring in this case and accordingly, the undersigned respectfully submits that the binding law should be In re: Ruffalo, 390 U.S. 544 (1968), which was cited by the dissent in the DeBock case, supra. There occasionally seems to be a dichotomy treatment of attorneys with respect to the law that is applied in disciplinary cases, and the law that is applied to attorneys in civil cases. It is submitted respectfully that in that context, the DeBock, case supra, should not be permitted to be the

controlling case for a Bar disciplinary proceeding in Florida. A similar instance seems to have occurred recently, with this Court apparently finding that an attorney's wife can make a claim for the attorney's good will of his law practice and be paid for it. Traditionally, had the lawyer tried to sell the good will of his law practice himself, the lawyer would have been subjected to discipline for the same. Compare Thompson v. Thompson, 16 F.L.W. S73 (Jan. 10, 1991) with the underlying problem in Ciravalo v. The Florida Bar, 361 So.2d 121 (Fla. 1978). In any event, it is respectfully requested that this Court look most carefully whether or not any violations of the Respondent's rights have occurred, and to require the absolute strictest of compliance by the prosecution with all appropriate rules and requirements to have accomplished the disciplinary proceeding without any such violation. The attached Letter of June 8, 1989 shows that the issue of the impropriety or vagueness of the notice was timely raised. Also see Grievance Committee transcript at 12-13. At the conclusion of the case, each of the Bar charges alleged in the notice was then discussed in closing argument by the undersigned and no rebuttal or refutation was given by the Committee at the time. (See Grievance Committee transcript at the following respective pages, 222 and 227, 229, 230, 231, 232 and 233, 233 and 234, 235 and 236 et seq.)

The substantive portions of the Grievance Committee proceeding began at 7:00 p.m. with the swearing in of Agent Flint of the Florida Department of Law Enforcement. This was the same agent

Flint from whom it was later learned at trial that the initial 1/3 of an Affidavit which he presented to the Chief Justice, in order to initiate the criminal investigation of both the Respondent and former Judge Howard Gross, was unsubstantiated and turned out to be false. See June 5, 1990 trial transcript at 41, 112 to 123 (Appendix, Exhibit "E). The dubiousness of this Affidavit is specifically commented upon in the Referee Report.

After Flint was sworn (see Grievance Committee Transcript at page 47) he continued until a short break at 8:35 p.m. and resumed testifying at 8:55 p.m. (See Grievance Committee Transcript at 118.) It appeared to the undersigned at the time of the hearing that Mr. Flint was going on for two and one half hours in a virtual narrative, like a frustrated would-be lawyer presenting the case to the Grievance Committee (Grievance Committee Transcript at 237 and 240). Timely objections were made based on State ex rel. Florida Bar v. Murrell, 74 So.2d 221 (Fla. 1954). See Grievance Committee Transcript at pages 49 and 71. Despite this objection, it is clear that Mr. Flint's prosecution of the case was mimicked by Mr. Stamm, the Bar prosecutor at the proceeding and was a continuation of the State's closing argument in the failed criminal prosecution. See lines 2 through 13 of page 72 of the Grievance Committee Transcript, which are as follows:

> "THE WITNESS: (Interjecting) I have representations for these boards, and that might be easier for --
> BY MR. STAMM:
> Q. (Interjecting) I think that visually it might be easier for all of us if --
> MR. FRIEDMAN: (Interjecting) May I ask a question?
> MR. DOWNS: Certainly

EXAMINATION BY MR. FRIEDMAN:
Q. Are those the same boards that were used by the attorneys for the State in closing arguments?
A. Yes, sir."

Despite the fact that Mr. Flint had given false information to the Florida Supreme Court to obtain a wire tap (see Appendix, Exhibit "E"), and despite the fact that he had no prior bribery experience whatsoever (Grievance Committee Transcript at 197), he was frequently told to please continue his presentation by the Staff Counsel of The Florida Bar. Page 95 through 97 of the Grievance Committee transcript; also see pages 135 through 139. Counsel for Howard Gross pointed out that this editorializing by the agent was not only inappropriate but was frequently wrong. (Grievance Committee Transcript at 141 through 142). Likewise, without the use of rank hearsay evidence The Florida Bar would have had no case whatsoever. The Florida Bar deliberately chose to use hearsay testimony by Agent Flint rather than put on a locally available witness. See objections made at Grievance Committee Transcript 144 through 146 and page 148.

The Grievance Committee procedure allowed, for all intent and purposes, Special Agent Michael Flint of the Florida Department of Law Enforcement ("FDLE") to act in the manner of an attorney for The Bar by setting out both evidence and argument at the same time during a two and one-half hour narrative type presentation. This was allowed even though Flint was unreliable. (See Appendix, Exhibit "E"). Such a procedure violates the Due Process Rights of the Respondent as those rights are set forth in State ex rel.

Florida Bar v. Murrell, 74 So.2d 221 (Fla. 1954). The Murrell case indicates that the prosecuting authority should be The Bar and that there is a danger in allowing prosecution of Bar matters by a group whose goals and objective is antagonistic to the Bar member being investigated. See Murrell at 222, supra. In the Murrell case, the Referee ruled that the evidence submitted by the Surety Company, which was conducting the investigation of an attorney engaged in a negligence and compensation case practice to be inappropriate under the circumstances and hence inadmissable. The same antagonistic relationship exists between FDLE and the investigated attorney here, Harvey Swickle, and as such the Grievance Committee should not have permitted both the prosecution and argument by the FDLE officer Flint. Such a procedure violated the due process rights of Mr. Swickle. As a result of these tainted proceedings, no probable cause should have been found, and the subsequent proceedings were tainted and should be dismissed.

Likewise, it appears that a possible serious procedural violation also occurred with respect to the conduct of the trial in the matter. The cases were originally heard at one time. A pre-trial conference on both matters was heard jointly. That hearing was also attended by a Court Reporter and was open to the Press. It is respectfully requested that a copy of the transcript of that hearing be included by the Clerk in the record of this proceeding.

Subsequent to that hearing, the attached Joint Motion to Stay Proceedings was filed in the Gross case, without notice to the

undersigned (see Appendix, Exhibit "B"). The Motion is dated April 18, 1990. An Order Staying the other proceedings was granted. The undersigned was not given notice of any of these matters and was not included in the service of the pleadings or orders pertinent thereto.

The Joint Motion contains the following representation by The Florida Bar: "that the undersigned counsel for The Florida Bar and Respondent have negotiated a conditional Guilty Plea and Consent Judgment for Discipline which is "subject to review and approval by this Court as Referee" (Emphasis added). No where in that pleading is there any representation at all precedent conditions with respect to the document have not in fact been approved by all appropriate entities at The Florida Bar, whether or not those approvals were withheld from being committed to writing. It was made clear that the plea would be intentionally withheld until after the trial of Harvey Swickle, see paragraph 4 of the Agreement. During the preparation for the trial, the undersigned sent Interrogatories to The Florida Bar (see June 12, 1990 Tr. at 33-53). Attached in Appendix as Exhibit "C" is a copy of the Interrogatories which were submitted to The Florida Bar and answered by them. The Interrogatories were answered on June 1, 1990, which was after the representations in the Joint Motion to Stay Proceedings. Interrogatories 4 and 5 were as follows:

> "4. State whether or not any deal, plea bargain or other agreement has been entered into orally, or in writing by The Florida Bar with Howard Gross, Esquire in the companion case to this matter.
>
> A. Objection. Settlement negotiations between The Florida Bar and a Respondent are privileged. No agreement (if

any) has been accepted or approved by The Florida Bar as of this date.

5. If any deal has been made, state what discipline, if any, The Florida Bar has entered into as a discipline acceptable to The Florida Bar for any alleged misconduct of Howard Gross in the companion case hereto.

A. Objection. Settlement negotiations between The Florida Bar and a Respondent are privileged. No agreement (if any) has been accepted or approved by The Florida Bar as of this date."

At the trial, the undersigned sought to pursue this line of questioning, but the Court did not dismiss the case. June 12 Tr., supra. It is respectfully submitted that in this respect, the Referee erred. The Respondent had in fact made numerous settlement proposals during the course of the trial, none of which were accepted by The Florida Bar, supra. Had The Florida Bar answered the Interrogatories in a manner more consistent with their own pleading of April 16, 1990, the Respondent would have had a better opportunity to defend himself, to tender other settlement proposals or to make any possible arrangements which would bring about a result less harsh than disbarment. June 12, 1990 Tr. at 86-87. Moreover, the Respondent might have called other witnesses or treated his examination of witnesses, including former Judge Gross, in a different manner. Coupled with the strenuous objections at the Grievance Committee proceeding, the undersigned respectfully submits that these proceedings were also tainted and that a disbarment based on these proceedings violates the procedural and equal protection rights of the Respondent under both the Florida and Federal Constitutions. June 12, 1990 Tr. at 88-89 and 98-99.

It is respectfully suggested that The Bar had entered into a

"deal" orally with Howard Gross prior to announcing to the Court the terms of that deal. The apparent purpose of the settlement was to allow The Bar to represent to Swickle that Gross had not entered into a settlement agreement with a much less harsh discipline. However, it is believed that the final terms of the settlement were exactly the same terms proposed to Gross in April and were identical to the ones eventually entered into by Judge Gross. The implication is obvious, at least to the undersigned. The Bar was seeking an unfair punishment of Swickle because it knew he would be unable to testify due to continuing FDLE threats of prosecution. June 12, 1990 Tr. at 33-53. The Supreme Court has consistently ruled that Lawyers are subject to the same Fifth Amendment protection as ordinary citizens. See Spevak vs. Klein, 385 U.S 511 (1967). In so holding, the Court set forth the following:

> ... the self incrimination clause of the Fifth Amendment has been absorbed in the 14th, that it extends its protection to lawyers as well as to other individuals, and that it should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it.

This Court has previously stated that The Florida Bar should cut square corners in dealing with a Respondent attorney. In that case, The Florida Bar v. Rubin, 362 So.2d 12 (Fla. 1978), this Court in effect dismissed all the proceedings against the Respondent, because of procedural violations dealing with merely the early disclosure of the result of a prior proceeding, in apparent violation of The Bar Rules. In this case, the procedural violations are substantive, occurred at the initiation of the

proceedings and continued during the Referee Trial. It is submitted that these are much more serious and harmful violations than occurred in the Rubin case. Rubin basically suffered the embarrassment of having his case publicized early. Accordingly, the proceedings against the Respondent are defective and should also be dismissed altogether. (See Appendix, Exhibit "D", Motion to Dismiss made at trial)

POINT II

THE EVIDENCE AND PROCEDURE BELOW DO NOT JUSTIFY DISBARMENT, AND A COMPARABLE DISCIPLINE IS A SIX MONTH SUSPENSION

The facts and violations alleged by The Florida Bar do not justify disbarment. There are numerous cases where felony conviction results in the disbarment of an attorney. See Florida Bar vs. Cruz, 490 So.2d 48 (Fla. 1986); The Florida Bar vs. McGuire, 529 So.2d 669 (Fla. 1988); The Florida Bar vs. Leon, 510 So.2d 873 (Fla. 1987) and The Florida Bar vs. Hosner, 536 So.2d 188 (Fla. 1988). However, unlike the case at bar, in each of the above mentioned matters the Respondent was convicted of a crime. In the case before this Court, there has not been a conviction of any crime. In fact there have been two acquittals. While this alone does not ipso facto justify a complete dismissal, it does not justify disbarment when taken in the context of the precedents set by the other cases where felony convictions result in less than disbarment. The Florida Bar v. Carbonaro, 464 So.2d 549 (Fla. 1985); The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983). The

cases which result in disbarment set forth, by implication, that a conviction, while not necessary, is desirable in order to have a basis for disbarment. This Respondent is innocent of an alleged crime and, therefore, this innocence should logically and fairly result in less discipline than was visited upon the Respondents guilty of felonies.

In a Motion to Dismiss the Complaint before the trial, the undersigned respectfully pointed out that the Supreme Court of Florida has by its own Rules stated that in the event a party is found guilty in a criminal proceeding, whether or not an appeal is pending, the Court will not look behind the results of that criminal proceeding and cannot find otherwise that the criminal result was correct. See The Florida Bar vs. Heller, 473 So.2d 1250, 1251 (Fla. 1985) and The Florida Bar vs. Vernell, 374 So.2d 475 (Fla. 1979). If a respondent is bound by this result, then equal protection and equal treatment of his rights should require the The Florida Bar would likewise be bound by these same results. This is particularly true where The Florida Bar did not bring the prosecution of the case until so many years after the event, and then only with the undue influence of the losing side in the underlying criminal case. Both the Florida and the Federal constitutions provide for equal protection. Such unequal treatment of The Bar and the Respondent should not be permitted by this Court.

It should be noted that the presiding Judge in the criminal trial was the Honorable Daniel Futch, who this Court might know

has a reputation as a stern and thorough Judge. The Respondent is sure that the former Chief Justice's selection of Judge Futch to be presiding Judge was not done for any purpose of disfavor to Defendants in that trial. In retrospect, however, the sterness and thoroughness of Judge Futch can only enhance the fairness of the result which was obtained by the criminal acquittals.

Likewise, the underlying facts as ultimately introduced before the Referee should not form the basis for disbarment. Disbarment should only lie in those rare cases where rehabilitation is highly improbable. The Florida Bar vs. Davis, 361 So.2d 159, 161 (Fla. 1978); see also The Florida Bar vs. Felder, 425 So.2nd 528, 530 (Fla. 1982). Each such case, moreover, is unique and must be assessed or determined individually. The Florida Bar vs. Breed, 378 So.2d 783 (Fla. 1979). In order to sustain its burden of proof that a Respondent attorney must be disbarred, **The Florida Bar must prove not only that a wrong has occurred but that the attorney was motivated by corrupt motive.** The Florida Bar vs. Thomson, 271 So.2d 758, 761 (Fla. 1972); Gould vs. State, 127 So. 309 (Fla. 1930). The burden of proof on The Florida Bar in this respect is a burden to prove its case by clear and convincing evidence. This is a burden higher than a mere preponderance, but less than proof beyond and to the exclusion of a reasonable doubt.

The underlying Referee's ruling basically found that no bribery attempt occurred. What it did find was that the Respondent was guilty of rain-making. There is no indication by evidence presented by The Bar that the fee itself was excessive for the

proceedings. The Florida Bar Referee appeared to be substantially influenced by the testimony of agent Caso. The excerpt below from the testimony of this agent specifically shows that the conduct of the Respondent was equally susceptible to an innocent interpretation and that nothing which Respondent said or did was actually incorrect or wrong:

> "By Mr. Friedman:
> Q. You also said something at the very beginning, that this thing also could have been taken as a legitimate sort of thing. You said you were involved in fishing and coffee. There is nothing inherently evil or suspect about fishing and coffee by themselves, is there?
>
> By Mr. Caso:
> A. Correct.
>
> Q. So the only tie-in to make it inherently bad is that the guy was obviously involved in drugs, so there was a criminal involvement to begin with. But nothing about you that was inherently criminal, about your status at that point?
>
> A. No, nothing about my status, only in the eye of the beholder.
>
> Q. That's fine, I agree with that. You were the one that was paying Mr. Swickle his fee. You said, "I have to get the money," but you were paying him his fee, is that correct -- to his knowledge? He didn't know that it came from the Florida Department of Law Enforcement?
>
> A. Right. I would assume that he must have known that the money was not coming from me, but from my organization that I represented. I always kept referring to my people, my organization and so forth, where the money was coming from.... June 5, 1990 Tr. at 187-188.
>
> "By Mr. Friedman:
> Q. In all of the statements that Mr. Swickle made to you, if you take them at face value, everything he told you was true, to the best of your knowledge? The statement that he might be able to reduce the bond, the statement that he would work, the statement that he would try to get information so he could give it to the judge -- all of those statements were true in and of themselves, weren't they?

A. I would assume so." June 5, 1990 Tr. at 191.

In reviewing the importance of the testimony of agent Caso, the disciplinary recommendation by the Referee is too harsh. This can readily be seen by comparison of two cases that have some reasonable similarity to the current case. In Saxon, supra,the Respondent attorney went to the office of a Federal Magistrate and offered him a gift of several hundred dollars in cash, rolled them up and stuffed them into the Judge's pocket. The result was a suspension of 6 months. See, Saxon, supra. While disbarment was found in The Florida Bar vs. Morales, 366 So.2d 431 (Fla. 1978), that disbarment was as a result of a circumstance where all actions were initiated by the attorney with improper intentions from the very beginning. In this case, Mr. Swickle was drawn into a "sting" operation in which he was found innocent an alleged bribery attempt. Likewise, Mr. Swickle in fact sought to discourage the efforts of the Government Agents to seek special relief for their fictitious defendant. Except for the payment back of indebtedness from Mr. Swickle to former Judge Gross, which the Referee and a Jury have specifically found was not a bribe, there are no other facts which support anything other than the possibility of "rain-making" which occurred in the Swickle case not by his personal statements, but by his possibly failing to refute the implications placed on his conduct by others. It is respectfully submitted that this is an inappropriate basis upon which to disbar Mr. Swickle, and that the finding of the Referee was, therefore, too harsh.

Even the testimony of Agent Flint admitted that Respondent

discouraged any attempt to obtain emergency special relief for the ficticious defendant. June 5, 1990 Tr. at 58-61. The Respondent did not even know in which county the defendant was allegedly located, much less the rotation of the respective judges. There is no doubt that Flint admits the Respondent was discouraging at some special emergency proceeding. Flint also admitted that some of the alleged misconduct was as a result of inferences drawn by others, rather than by any statements made by the Respondent. June 5, 1991 at 139-140. With respect to some of the actions, Flint also admitted he had wrongly identified an individual whom he thought was Swickle. June 5, 1990 Tr. at 141-142. Agent Caso also testified that the Respondent seemed intent in going forward with the case, and sought the type of information that would be necessary to continue to appear in the case and file an appropriate appearance June 5, 1990 Tr. at 185-187; it also appears, that despite pressure on crossexamination by The Florida Bar to have Judge Gross admit that any alleged misrepresentations by Swickle made a difference in the outcome, the best answer they could get was that "possibly" it might have made a difference. June 12, 1990 Tr. at 108 and June 12, 1990 Tr. at 116-117. Taken from the context of the entire balance of the testimony, it would not have made any difference, nor should it have in light of the intentional stacking of basically the identical charge in different forms, which was a common practice in criminal cases, and used for the sole purpose of increasing the bond amounts.

It is respectfully submitted that even if the Court believes

the Respondent to be guilty, a suspension of 6 months as in the Saxon case, or at maximum, a suspension of one year would be fair and appropriate. Disbarment is not fair and appropriate.

CONCLUSION

There were serious breaches of due process rights of the Respondent, both at the Grievance Committee level and at the trial level. For that reason, in keeping with the Rubin case, supra, these proceedings should be dismissed altogether. Even if the case is not dismissed altogether, the lack of clear and convincing evidence of a corrupt motive or anything other than "rain-making", precludes the discipline of disbarment. The case should be reversed and dismissed, or at least, the discipline reduced to suspension of no more than six (6) months to one (1) year.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express to The Honorable Sid J. White, The Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399 and served by U. S. mail to John A. Boggs, Esq., The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, and to Warren J. Stamm, Staff Counsel, The Florida Bar, Rivergate Plaza, Suite M-100, 444 Brickell Avenue, Miami, Florida 33131 this 4th day of February, 1991.

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BY: _____
Nicholas R. Friedman

APPENDIX

Exhibit A - Letter to Grievance Committee 11G from Nicholas R. Friedman, dated June 8, 1989

Exhibit B - Joint Motion to Stay Proceedings, The Florida Bar v. Howard Gross, Supreme Court Case No. 75,347, dated April 22, 1990

Exhibit C - Interrogatories to The Florida Bar propounded by Respondent Swickle filed on June 1, 1990

Exhibit D - Respondent Swickle's Motion to Dismiss Complaint, dated March 5, 1990

Exhibit E - Crossexamination of Agent Flint from June 5, 1990 trial transcript