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IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____

Chief Deputy Clerk

THE FLORIDA BAR,

Petitioner,

v.

DAVID BALDWIN WEBSTER,

Respondent.

Case No. 82,043

TFB No. 93-11,247(13E)

REPLY BRIEF

OF

THE FLORIDA BAR

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
SYMBOLS AND REFERENCES.....	iii
SUMMARY OF ARGUMENT.....	1
ARGUMENT.....	2
I. THE FLORIDA BAR HAS SHOWN BY CLEAR AND CONVINCING EVIDENCE THAT THE RESPONDENT HAS VIOLATED RULE 4-8.4(c), RULES REGULATING THE FLORIDA BAR.	
II. DISBARMENT IS THE APPROPRIATE SANCTION FOR THE RESPONDENT'S MISCONDUCT.	
CONCLUSION.....	10
CERTIFICATE OF SERVICE.....	11

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>In Re Gilbert,</u> 538 A. 2d 742 (D.C.), cert. denied 488 U.S.828 (1988)...	6
<u>In Re David Baldwin Webster, Respondent,</u> No. 92-BG-1337, 93-BG-43, slip op. at 1358 (D.C. App. June 22, 1995).....	3
<u>The Florida Bar v. Knowles,</u> 500 So. 2d 140 (Fla. 1986).....	7
<u>The Florida Bar v. Neu,</u> 597 So. 2d 266 (Fla. 1992).....	2,3
<u>The Florida Bar v. Shuminer,</u> 567 So. 2d 430 (Fla. 1994).....	7
<u>The Florida Bar re Webster,</u> 647 So. 2d 816 (Fla. 1994).....	3,5,6
<u>The Florida Bar v. Webster,</u> 564 So. 2d 490 (Fla. 1990).....	5
 <u>RULES REGULATING THE FLORIDA BAR</u>	
Rule 4-8.1(b).....	1
Rule 4-8.4(c).....	1,2,3

SYMBOLS AND REFERENCES

In this brief, The Florida Bar, Petitioner, will be referred to as "The Florida Bar" or "The Bar". The Respondent, David Baldwin Webster, will be referred to as "Respondent".

"TR" will refer to the transcript, volumes I and II, of the final hearing before the referee in the disciplinary case styled The Florida Bar v. David Baldwin Webster, Supreme Court Case No. 82,042, held on October 7, 1994.

"AB" will refer to the Respondent's Answer Brief filed on August 9, 1995 in Supreme Court Case No. 82,043.

"TFB Exh." will refer to exhibits presented by The Florida Bar at the final hearing before the Referee in Supreme Court Case No. 82,042.

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

SUMMARY OF ARGUMENT

The Respondent knowingly and intentionally concealed his Florida disciplinary suspension when he applied for employment and admission to the bars of Micronesia and Palau. He also knowingly and intentionally failed to disclose his Florida disciplinary suspension to the District of Columbia Bar in order to obtain a certificate of good standing from that jurisdiction to facilitate his employment in Micronesia and Palau. By those actions, Respondent has engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 4-8.4(c), Rules Regulating The Florida Bar.

The Respondent has not presented any evidence or legal argument to refute the Bar's position that Respondent may be disciplined under Rule 4-8.1(b) for his failure and refusal to advise Palau and Micronesia of his Florida suspension. The Bar has presented clear and convincing evidence that the Respondent engaged in a misrepresentation by omission in his Bar applications to Micronesia and Palau, and thus has violated Rule 4-8.1(b), Rules Regulating The Florida Bar.

Respondent failed to present any mitigation evidence at the final hearing in this matter, that his judgment was impaired by his alcohol or cocaine abuse when he committed the misconduct cited herein. His belated show of remorse does not mitigate that misconduct from the level of disbarment.

I THE FLORIDA BAR HAS SHOWN BY CLEAR AND CONVINCING EVIDENCE THAT THE RESPONDENT HAS VIOLATED RULE 4-8.4(c), RULES REGULATING THE FLORIDA BAR.

The Respondent admits in his Answer Brief that he is guilty of dishonesty (AB, p.4), and that he made a conscious decision not to disclose his Florida disciplinary status to his prospective employers or to the bars of Micronesia and Palau.

Respondent further admits that when applying for the position of Special Prosecutor in the Republic of Palau:

"I did not disclose (to my employer or the Palau Court) the fact of my suspension, the nature of my conduct (in Florida) or my status with The Florida Bar. Again, in my heart I knew this was wrong, it was dishonest, and I exercised extremely poor judgment." (AB, p.2)

In order to find that an attorney has acted with dishonesty, fraud, deceit, or misrepresentation, The Florida Bar must show the necessary element of intent. The Florida Bar v. Neu, 597 So. 2d 266, 268 (Fla. 1992). By his own admission, Respondent knowingly and intentionally concealed his Florida disciplinary status in order to facilitate his employment in Micronesia and Palau.

After learning from The Florida Bar of Respondent's disciplinary suspension, the District of Columbia Bar suspended the Respondent and instituted reciprocal disciplinary proceedings, which resulted in the Respondent's disbarment in that jurisdiction.

In their Order of Disbarment, the District of Columbia Court of Appeals noted that in viewing Respondent's conduct:

" ... the evidence demonstrates that his conduct was deliberate and calculated. As characterized by the

Board, respondent cleverly manipulated the flow of information between the District of Columbia, Florida, and Palau in order to practice law."

In re David Baldwin Webster, Respondent, No. 92-BG-1337, 93-BG-43, slip op. at 1358 (D.C. App. June 22, 1995).

This Court has previously found that by failing to advise the bars of Micronesia and Palau that he had been suspended and was not a member in good standing of The Florida Bar, the Respondent engaged in a misrepresentation by omission. The Florida Bar re Webster, 647 So. 2d 816, 817 (Fla. 1994).

By reason of the foregoing, The Florida Bar has met its burden of showing the element of intent as required under The Florida Bar v. Neu. The evidence in the record herein and the relevant case law establishes clearly and convincingly that the Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation when he concealed his Florida disciplinary status from his employers and the bars of Micronesia and Palau, and from the District of Columbia Bar. The Respondent should be found guilty of violating Rule 4-8.4(c), Rules Regulating The Florida Bar.

**II. DISBARMENT IS THE APPROPRIATE SANCTION FOR THE
RESPONDENT'S MISCONDUCT.**

In an attempt to convince this Court that he is now rehabilitated, the Respondent makes a belated show of remorse and an impassioned plea for forgiveness when he states in his Answer Brief that he now recognizes the error of his ways, that he has now become active in the church, that he has overcome his cocaine addiction and that he is now active in Alcoholics Anonymous (AB, p.3).

As evidence of his rehabilitation, the Respondent points out that in June 1994, he entered into a contract with Florida Lawyer's Assistance, Inc. (F.L.A.) (AB, p.3). While it is commendable that Respondent has finally taken steps to overcome his alcohol and cocaine addictions, the fact that he has, at this late date, finally complied with this Court's May 24, 1990 order by agreeing to cooperate with F.L.A. does little to mitigate his prior misconduct.

In a previous disciplinary matter, the Respondent freely and voluntarily executed a consent judgment wherein he agreed to submit to an evaluation by F.L.A. and any treatment or after care recommended by F.L.A. during the two (2) year term of probation, agreed to pay costs of the disciplinary proceeding, and agreed to complete six (6) hours of continuing legal education (CLE) courses (TR, Vol.I, p.46; TFB Exh. #2). This Court adopted the report of referee which incorporated that consent judgment, and on May 24,

1990, issued its order suspending the Respondent, placing him on probation under the terms and conditions contained in the consent judgment, and assessing the disciplinary costs against him. The Florida Bar v. Webster, 564 So. 2d 490 (Fla. 1990).

The Respondent intentionally violated this Court's order and the consent judgment when he failed and refused to sign an F.L.A. contract, failed to undergo F.L.A. evaluation, and failed to follow F.L.A. recommendations.

Respondent would now like this Court to believe that he has overcome his addiction and has voluntarily entered the F.L.A. program as evidence of his rehabilitation. Respondent finally complied with this Court's May 24, 1990 order when he entered into an F.L.A. contract on June 6, 1994, more than four (4) years after he had agreed to do so.

It is apparent that the Respondent's late compliance with the F.L.A. requirements of his probation was, however, primarily an attempt to bolster his position with regard to his Petition for Reinstatement. Significantly, the Respondent filed his Motion to Reopen Record on August 31, 1994, wherein he requested and was granted leave from this Court to enter evidence of his F.L.A. contract more than six (6) months after the referee had rendered his report recommending a denial of the Respondent's Reinstatement Petition.

In rejecting the Respondent's Petition for Reinstatement, this Court reiterated the referee's finding that Respondent, at a minimum, had "played fast and loose with the facts" when he concealed his Florida discipline from the Washington, D.C., Micronesia, and Palau bars. The Florida Bar re Webster, supra, at 817.

This Court further noted that:

"This conduct, when taken as a whole, would cause a reasonable person to have substantial doubts about Webster's honesty, fairness, and respect for the law. That the Supreme Court of Palau disbarred Webster upon learning of his failure to disclose his Florida suspension is evidence of that fact. Id. at 818.

The District of Columbia Court of Appeals also disbarred Respondent after learning of his failure to disclose his Florida suspension as required by Palau and Micronesia bar rules. The District of Columbia Court of Appeals relied on In re Gilbert, 538 A. 2d 742 (D.C.), *cert. denied*, 488 U.S. 828 (1988), a case also cited in the Bar's Initial Brief herein, in holding that Respondent's misconduct rose to the level of disbarment.

It is apparent from his prior conduct in Florida, the District of Columbia, Micronesia, and Palau, that the Respondent is willing to take whatever action he deems necessary to promote his own self interests.

In the instant case, the Respondent has failed to present any viable legal argument which would justify or mitigate his misconduct, and now tries to place the blame on his prior alcohol

and cocaine abuse. In his Answer Brief, the Respondent states as follows:

"The only excuse I can offer is the alcoholic (in me) was grasping at straws and doing everything (by leaving Florida) in order to avoid the treatment (F.L.A./A.A.) Which I (obviously) needed" (AB, p.1).

This Court has addressed the issue of alcohol or substance abuse impairment in connection with attorney misconduct. In The Florida Bar v. Knowles, 500 So. 2d 140, 142 (Fla. 1986), this Court disbarred the respondent despite significant mitigation, finding that although alcoholism was the underlying cause of Knowles' misconduct, it did not constitute a factor sufficient to mitigate the misconduct from disbarment. The Court noted that "Knowles had continued to work regularly and his income did not diminish discernibly as a result of his addiction."

In The Florida Bar v. Shuminer, 567 So. 2d 430, 432 (Fla. 1990), the respondent had been diagnosed as being a drug abuser since the age of ten years, had presented evidence of treatment for addiction and an excellent prognosis for recovery, full compliance with his F.L.A., Inc. contract, as well as excellent moral character and competence as an attorney. This Court disbarred Shuminer, noting among other things, that Shuminer had "failed to establish that his addiction rose to a sufficient level of impairment to outweigh the seriousness of his offenses."

Both Knowles and Shuminer indicate that alcoholism and cocaine addiction should only be considered as significant mitigation when

there is a showing that judgment is impaired. Respondent has presented no evidence which would indicate that his intentional misrepresentations to the bars and Courts of the District of Columbia, Micronesia, and Palau were due to impairment from his alcohol or cocaine dependency.

On the contrary, the Respondent has stated that although he was in denial of his alcoholism, he ceased using drugs by the Spring of 1990 (AB, p. 1). Respondent also testified that in or about April of 1991, he informed William Stinnett, Law Enforcement Coordinator for the United States Department of the Interior in Palau, that he had once been addicted to cocaine, but had overcome that addiction (TR, Vol I., p. 90).

Moreover, the Respondent has stated that he was offered the position in Palau partially due to his success in Micronesia (AB, p.2). The Respondent also admitted that his income increased in Micronesia from his income in Florida, that his salary increased again in Palau, and that he continued to work regularly in both jurisdictions.

Respondent has not shown any evidence of impairment which would mitigate his misconduct from disbarment.

In testimony before the referee herein, the Respondent stated that he believed he had no moral or legal obligation to disclose his Florida suspensions to Micronesia or Palau (TR, Vol. I, p. 100). In his answer brief, Respondent finally admits that his

actions were dishonest (AB p. 2). He now asks this Court to rely on his statement that "(i)f this Court allows me to return to the practice of law, I promise to remain in recovery, use good judgment (in all matters) and **follow** (not just the letter but) **the spirit of the law.**"(emphasis in original) (AB, p.5).

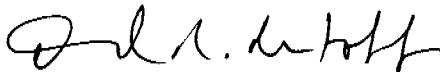
After all of his other defenses have been rejected by various courts as frivolous and totally without merit, the Respondent now asks this Court to trust and rely on in his assertions that he is now reformed and will act ethically in the future.

Based on the evidence presented in the record herein, the relevant case law, and the applicable Standards for Imposing Lawyer Sanctions, disbarment is the only appropriate sanction for the Respondent's misconduct.

CONCLUSION

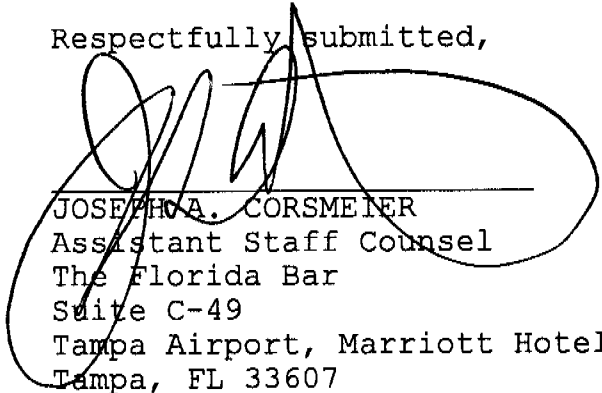
The Florida Bar has established by clear and convincing evidence that the Respondent knowingly and intentionally concealed his Florida disciplinary status when he applied to the bars of Micronesia and Palau, and that he knowingly and intentionally failed to disclose his Florida suspension to the District of Columbia Bar in order to facilitate his employment in those jurisdictions. By doing so, the Respondent committed a misrepresentation by omission in violation of Rules 3-4.3, 4-8.1(b), and 4-8.4(c), Rules Regulating The Florida Bar.

Respondent has failed to show impairment of judgment due to his alcohol and cocaine abuse which would mitigate his misconduct from the level of disbarment. It is respectfully requested that this Court enter an order disbarring the Respondent from the practice of law in this state.



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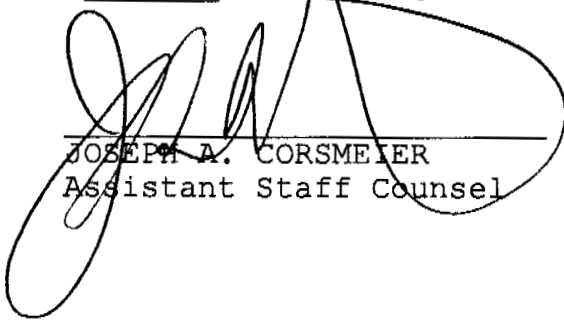
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and seven (7) copies of The Florida Bar's Reply Brief has been furnished by Airborne Express to Sid J. White, Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, FL 32399-1927; a true and correct copy by U. S. certified mail No. Z056308207, return receipt requested, and by regular U. S. mail to David Baldwin Webster, Esq., Respondent, at his record Bar address of 1100 North Florida Avenue, Suite 300, Tampa, FL 33629; and a copy by regular U. S. mail to John T. Berry, Esq., Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, all this 22nd day of August, 1995.



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