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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

CASE NO. 83,582
[TFB Case No. 93-31,770 (09A)]

CYRUS ALAN COX,

Respondent.
_____/

RESPONDENT'S REPLY TO THE FLORIDA BAR'S ANSWER BRIEF

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ARGUMENT

THE REFEREE'S RECOMMENDATION OF A THIRTY (30) DAY SUSPENSION IS NOT APPROPRIATE GIVEN THE FACTS OF THIS CASE.

The Bar, in its Answer Brief, recounts the admitted to facts and violations of the Rules Regulating The Florida Bar. For his transgressions, Mr. Cox should receive a public reprimand, not a thirty (30) day suspension.

It should be made clear to the Court that Mr. Cox admitted he engaged in moonlighting while he was employed with the law firm and in initially denying representation and collecting some fees from his clients. See Answer to Complaint, Answer to Requests for Admission, Respondent's Brief at 10, 18. However, the question is whether a thirty (30) day suspension satisfies the three-prong test set forth by this Court in The Fla. Bar v. Pahules, 233 So. 2d 130 (Fla. 1970) and its progeny.

A thirty (30) day suspension will deny the public the services of a qualified lawyer and there is no indication that the public needs to be protected by a thirty (30) day suspension from Mr. Cox performing services for clients during that period of time. Then too, the imposition of a public reprimand on Mr. Cox is more than fair to punish his admitted breach of ethics and at the same time to encourage his reformation and rehabilitation. The record indicates that Mr. Cox has no prior disciplinary record. Finally, a public reprimand is severe enough to deter others who might be prone or tempted to become involved in like violations. A public reprimand sends a message to The Bar that moonlighting under the

circumstances presented, without the consent of fellow partners or employers, may warrant disciplinary action.

In support of its recommendation, The Bar urges that a suspension is appropriate in light of cited case law and, in particular, in light of Standard 7.2 of the Florida Standards for Imposing Lawyer Sanctions (West 1994). Answer Brief at 12-13. "Absent aggravating or mitigating circumstances, and upon application of the factors set out in Standard 3.0," "[s]uspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system." Id. There is no evidence that Mr. Cox "caused injury" to a client, the public, or the legal system. "'Potential injury' is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct." Fla. Stds. Imposing Law. Sancs. "Introduction" (West 1994). (emphasis added). The record does not indicate harm was caused to a client, the public, the legal system, or that harm "would probably have resulted from [Mr. Cox's] misconduct" but for the law firm's discovery of the moonlighting.

In summary, Mr. Cox acknowledges his mistakes and is prepared to pay the penalty of receiving a public reprimand which is fair under the circumstances.

CONCLUSION

Based upon the foregoing, Mr. Cox requests this Court to impose a public reprimand in lieu of a thirty (30) days suspension.

Respectfully submitted this 2nd day of December, 1994.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by hand delivery this 2nd day of December, 1994, to Sid White, Clerk of the Supreme Court, with a copy furnished by U.S. Mail to Mr. John B. Root, Jr., Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801 and John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300.

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