

IN THE SUPREME COURT OF FLORIDA

CASE NO. 86,777

TFB FILE NO. 96-00016-02

THE FLORIDA BAR

COMPLAINANT/APPELLEE

VS.

ARRON E. BUDNITZ

RESPONDENT/APPELLANT

APPELLANT'S BRIEF

Arron E. Budnitz (0289620)
65 Williams Road
Lexington, Massachusetts 02173-3235
telephone: 617-863-2808

TABLE OF CONTENTS

COVER PAGE.....1

TABLE OF CONTENTS.....2

TABLE OF AUTHORITIES.....3

QUESTIONS PRESENTED.....4

INTRODUCTION.....4

STATEMENT OF FACTS.....4

SUMMARY OF ARGUMENT.....7

ARGUMENT.....8

 I. WERE THERE ERRONEOUS, UNLAWFUL OR UNJUSTIFIED PROCEDURAL
 ERRORS IN PURSUING THE CASE SUCH AS TO NEGATE ADHERENCE TO THE
 REPORT OF THE REFEREE DERIVED THEREFROM?.....8

 II. ARE THERE ERRONEOUS, UNLAWFUL OR UNJUSTIFIED FINDINGS
 OR CONCLUSIONS IN THE REPORT OF THE REFEREE SUCH AS TO NEGATE
 ADHERENCE TO SAID REPORT?.....12

CONCLUSION.....16

WAIVER OF ORAL ARGUMENT.....17

CERTIFICATE OF SERVICE.....17

TABLE OF AUTHORITIES

CASES

Baird v. State Bar of Arizona, 401 U.S. 1 (1971).....16

The Florida Bar v. Rightmyer, 617 So.2d 953 (Fla. 1993).....15

Ibanez v. Florida Department of Business and Professional Regulation, Board of Accountancy (No. 93-639, June 13, 1994).....15

Sands v. Cunningham, 617 F. Supp. 1551 (D.N.H. 1985).....14

Office of Disciplinary Counsel v. Tumini, 453 A. 2d 310 (Pa. 1982).....15

State v. Inselburg, 114 N.H. 824 (1974).....14

State v. Sands, 123 N.H. 570 (1983).....14

United States v. Slawik, 548 F. 2d 75 (3rd Cir. 1977).....14

CODE OF JUDICIAL CONDUCT.....9

RULES OF PROFESSIONAL CONDUCT OF THE FLORIDA BAR

Rule 4-3.3(a) (1).....5, 7, 11, 13

Rule 4-3.3(a) (3).....5, 9, 13

Rule 4-8.1(a).....5, 7, 13, 15

Rule 4-8.4(c).....5, 6, 7, 13

RULES OF DISCIPLINE OF THE FLORIDA BAR

Rule 3-7.2(j) (2).....11, 12, 13

Rule 3-7.6(g) (6).....9

Rule 3-7.6(k) (A).....9

Rule 3-7.11(a).....8

Rule 3-7.11(i) (3) (D).....8

Rule 3-7.16(a).....11

Rule 3-7.16((c).....11

NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT

Rule 8.1(a).....5, 11, 12, 14, 15

QUESTIONS RAISED

The questions raised by the case are as follows:

I. WERE THERE ERRONEOUS, UNLAWFUL OR UNJUSTIFIED PROCEDURAL ERRORS IN PURSUING THE CASE SUCH AS TO NEGATE ADHERENCE TO THE REPORT OF THE REFEREE DERIVED THEREFROM?

II. ARE THERE ERRONEOUS, UNLAWFUL OR UNJUSTIFIED FINDINGS OR CONCLUSIONS IN THE REPORT OF THE REFEREE SUCH AS TO NEGATE ADHERENCE TO SAID REPORT?

INTRODUCTION

NOW COMES THE UNDERSIGNED RESPONDENT/APPELLANT (APPELLANT, RESPONDENT or RESPONDENT/APPELLANT individually or in any combination thereof hereinafter), Arron E. Budnitz, pro se, and does timely and in good faith, pursuant to procedural instructions received by the Office of the Clerk of this COURT, submit this BRIEF in support of his May 10, 1996 PETITION FOR REVIEW (FLAREVUE) of the May 2, 1996 REPORT OF THE REFEREE (FLREFREP hereinafter which, as amended on May 9, 1996, is submitted as EXHIBIT X-TWO of the APPENDIX TO RESPONDENT/APPELLANT'S BRIEF - EXHIBITS) in the above referenced case. In the event that the materials submitted require modification pursuant to any local rules, RESPONDENT/APPELLANT requests the return of the materials with appropriate instructions as well as an appropriate extension of time of not less than 15 days to revise the same accordingly.

STATEMENT OF FACTS

1. On or about November 2, 1995, the Florida Bar filed a COMPLAINT (SEE EXHIBIT X-ONE which is the COMPLAINT less its EXHIBITS A, B and C) and REQUEST FOR ADMISSIONS against the undersigned RESPONDENT/APPELLANT.

2. Said EXHIBIT X-ONE relied on its EXHIBITS A and B which respectively were a PETITION FOR DISBARMENT published by the New Hampshire Supreme Court

Professional Conduct Committee and FINDINGS of the New Hampshire Referee as well as EXHIBIT C which was the final adjudication of the matter in New Hampshire.

3. Said **COMPLAINT** was based on certain disciplinary matters which had taken place in New Hampshire which had resulted in a singular final finding (SEE **EXHIBIT X-THREE**) by the New Hampshire Supreme Court of a New Hampshire Rule 8.1(a) (**NHRULE**) violation. Which **NHRULE** states:

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

4. Said **COMPLAINT** alleged on page 3 paragraph 7 (**EXHIBIT X-ONE**) that the **RESPONDENT/APPELLANT** had violated Rules 4-3.3(a)(1), **4-3.3(a)(3)**, 4-8.1(a) **and** 4-8.4(c) of the Rules of Professional Conduct of The Florida Bar (emphasis added). Said Rules state the following:

Rule 4-3.3(a)(1)

A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal.

Rule 4-3.3(a)(3)

[A lawyer shall not knowingly:] (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

Rule 4-8.1(a)

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: (a) knowingly make a false statement of material fact; or

Rule 4-8.4(c)

A lawyer shall not: (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

5. **RESPONDENT/APPELLANT** timely responded to the **COMPLAINT** found in **EXHIBIT X-ONE** and **REQUEST FOR ADMISSIONS** raising various defenses including a. lack of subject matter jurisdiction (**EXHIBIT X-FOUR**), lack of facts to support accusations, statute of limitations and others - including defenses based on the conjunctive nature of the alleged violations indicated in paragraph 3 herein above (**EXHIBIT X-FOUR**).

6. On or about November 16, 1995 by **ASSIGNMENT ORDER NO 95-09**, the Honorable N. Sanders Sauls was appointed **REFEREE** in the matter. Said **ASSIGNMENT ORDER** gave the **REFEREE** 90 days from November 9, 1995 to complete his tasks with regard to the matter. Said 90 day period ended on or about February 8, 1996.

7. As of February 16, 1996, the **REFEREE** had failed to make any findings or reports in the matter.

8. On or about February 16, 1996 **RESPONDENT/APPELLANT** filed a **MOTION TO DISMISS FOR LACK OF FINDINGS**. To the best of **RESPONDENT/APPELLANT'S** knowledge said **MOTION** has not been ruled on to date. Said **MOTION** has not been withdrawn (regardless of the extension granted in the case as mentioned below, because, regardless of said extension, the **REFEREE** still had failed to report within the 90 day period).

9. On February 27, 1996 this **COURT** granted **COMPLAINANT'S** undated **MOTION FOR EXTENSION TO FILE REFEREE'S REPORT**.

10. Said **MOTION FOR EXTENSION TO FILE REFEREE'S REPORT** contained various misrepresentations regarding potential prejudice to the **RESPONDENT/APPELLANT**.

11. Said **MOTION FOR EXTENSION TO FILE REFEREE'S REPORT** was made **after** the lapse of applicable time limits and renders the **MOTION** a **MOTION TO REOPEN**, the grant of which placed **RESPONDENT/APPELLANT** in double jeopardy.

12. Said **MOTION FOR EXTENSION TO FILE REFEREE'S REPORT** was untimely and improperly granted on February 27, 1996 in that **RESPONDENT/APPELLANT** was given inadequate time to respond to it. Said **MOTION FOR EXTENSION TO FILE REFEREE'S REPORT** being mailed to **RESPONDENT/APPELLANT** on or about February 22, 1996.

13. On or about February 29, 1996, **RESPONDENT/APPELLANT** timely filed a **RESPONSE TO AND MOTION TO DENY MOTION FOR EXTENSION TO FILE REFEREE'S REPORT**. Said **RESPONSE** was received by all parties on March 4, 1996.

14. On or about March 2, 1996 **RESPONDENT/APPELLANT** filed a **MOTION FOR EXTRAORDINARY WRIT** seeking to have the **COURT** review and vacate the grant of the **MOTION FOR EXTENSION TO FILE REFEREE'S REPORT**.

15. To the best of **RESPONDENT/APPELLANT'S** knowledge the **MOTION FOR EXTRAORDINARY WRIT** has not been addressed to date.

16. On May 2, 1996 the **REFEREE** issued **FLREFREP** which, as amended on May 9, 1996, is **EXHIBIT T-TWO** and, while relying, in part, on the New Hampshire **PETITION FOR DISBARMENT** and the Report of the New Hampshire Referee, based his decision only on findings concerning Rules 4-3.3(a)(1), 4-8.1(a) **and** 4-8.4(c) - emphasis added.

17. On May 10, 1996 **RESPONDENT/APPELLANT** timely filed a **PETITION FOR REVIEW** of **FLREFREP** as amended and presented in **EXHIBIT X-TWO** and the matter.

SUMMARY OF ARGUMENT

It is the objective of this **BRIEF** to show that certain findings or rulings of the **FLREFREP** as presented in **EXHIBIT X-TWO** are erroneous, unlawful or unjustified and that it should not be adopted or followed. It is also the

objective of this **BRIEF** to raise certain procedural issues which should also argue against adoption of **FLREFREP**.

ARGUMENT: QUESTION I

I. WERE THERE ERRONEOUS, UNLAWFUL OR UNJUSTIFIED PROCEDURAL ERRORS IN PURSUING THE CASE SUCH AS TO NEGATE ADHERENCE TO THE REPORT OF THE REFEREE DERIVED THEREFROM?

As noted previously, the **REFEREE** failed to timely make **FLREFREP** and relied upon a **MOTION** by the **COMPLAINANT** for an "extension" to do so. At no time did the **REFEREE** seek an "extension" and his reliance upon **COMPLAINANT'S** efforts places him in concert with the **COMPLAINANT** and removes his impartiality thereby tainting **FLREFREP** and the decision contained therein.

Rule 3-7.11(i)(3)(D) which states:

An employee of The Florida Bar shall not represent any party except The Florida Bar while an employee of The Florida Bar and shall not thereafter represent such party for a period of 1 year without the express consent of the board.

prohibited Florida Bar Counsel from representing the **REFEREE** and said Bar Counsel otherwise lacked standing to raise the issue of extension. **RESPONDENT/APPELLANT** is unaware of any relevant consent by the board in this matter such as to allow Bar Counsel to represent the **REFEREE** or the **REFEREE'S** interests.

The **REFEREE'S** failure to timely file **FLREFREP** also is respectfully believed to place him in contempt of **COURT** pursuant to Rule 3-7.11(a) which states:

(a) Time is Directory. Except as provided herein, the time intervals required are directory only and are not jurisdictional. Failure to observe such directory intervals may result in contempt of the agency having jurisdiction or of the Supreme Court of Florida, but will not prejudice the offending party except where so provided.

A party in contempt of an institution should not be followed by said institution.

With all due respect, the conduct of the **REFEREE** is also believed to violate various provisions of the **CODE OF JUDICIAL CONDUCT** which is mentioned in passing.

Furthermore, Rule 3-7.6(k) (A) states:

[The referee's report shall include:] (A) a finding of fact as to each item of misconduct of which the respondent is charged, which findings of fact shall enjoy the same presumption of correctness as the trier of fact in a civil proceeding;

The RULE requires "a finding of fact as to each item of misconduct of which the respondent is charged. **FLREFREP** contains no finding of fact as to the Rule 4-3.3(a) (3) allegation and therefore the **REFEREE** and **FLREFREP** are accordingly in violation of Rule 3-7.6(k) (A).

RESPONDENT/APPELLANT is not aware of any efforts by the **COMPLAINANT** to amend the **COMPLAINT** per Rule 3-7.6(g) (6) which states:

(6) Amendment. Pleadings may be amended by order of the referee, and a reasonable time shall be given within which to respond thereto.

Nor is **RESPONDENT/APPELLANT** aware of any order of the **REFEREE** with regard to any attempted amendment, if any. Time for amendment has lapsed and proof of any prior timely amendment would, with all due respect, be fraudulent and irrelevant in that **RESPONDENT/APPELLANT** had no time to respond to any such amendment, if any.

The **REFEREE'S** representation that he has considered "all of the pleadings, evidence, arguments and submissions" is therefore erroneous, unjustified and unlawful. Said representation is believed, with all due respect, to be fraudulent and the use of postal services to pursue the matter

over state lines is believed to constitute interstate mail fraud. Absent a timely full, complete and adequate explanation of this matter from the **REFEREE**, including evidence of timely relevant notice of amendment to the **RESPONDENT/APELLANT** and timely relevant receipt thereof, the **REPORT OF THE REFEREE** should not be adhered to. Any party relying upon the **REPORT OF THE REFEREE** is hereby respectfully put on **notice** that said **reliance is unreasonable** and will be regarded as willful complicity in the misconduct, respectfully, alleged of the **REFEREE**. Said complicity will be regarded as making any such reliant party an accessory with, accomplice to or conspirator with the **REFEREE** in the misconduct respectfully alleged herein. This **COURT** is respectfully reminded that fraud consists of some deceitful practice or willful device resorted to with the intent to deprive another of his right or in some manner to do him an injury. It is a generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to get advantage over another by false suggestions or suppression of truth.

The foregoing is believed to establish the there were erroneous, unlawful and unjustified procedural issues concerning the **REPORT OF REFEREE (FLREFREP)** which should render adherence to it unreasonable.

It should be additionally noted that the **REFEREE'S** additional representations in paragraph number 1. and 2. of the **REPORT OF REFEREE** addressing "jurisdiction" and consideration of **RESPONDENT/APELLANT'S** "Response to and Motion to Dismiss Complaint" additionally, deceitfully ignore, the fact that issues of subject matter jurisdiction which were raised (**EXHIBIT T-B**) with regard to having to determine that a New Hampshire grand jury is a "tribunal" appear to have not been addressed nor have Statute of Limitations defenses (**EXHIBIT X-FOUR**) been addressed.

The Statute of Limitation provisions are prescribed as follows by Rules 3-7.16(a) and (c). Rule 3-7.16(a) states:

(a) Time for Inquiries and Complaints. Inquiries raised or complaints presented by or to The Florida Bar under these rules shall be commenced within 6 years from the time the matter giving rise to the inquiry or complaint is discovered or, with due diligence, should have been discovered.

Rule 3-7.16((c) states:

(c) Tolling based on Fraud, Concealment or Misrepresentation. In matters covered by this rule where it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the matter giving rise to the inquiry or complaint, the limitation of time in which to bring an inquiry or complaint within this rule shall be tolled.

RESPONDENT/APPELLANT engaged in no conduct which would have tolled the 6 year provision of Rule 3-7.16(a) and the facts which gave rise to the Rule 4-3.3(a)(1) allegation transpired in excess of seven years prior to the commencement of the Florida action. Any prior determination on those facts did not take place for at least 7 years after the events by New Hampshire authorities and **RESPONDENT/APPELLANT** had no reason to know of any determination of impropriety prior to said determination by New Hampshire on those events which determination itself was not addressed or sustained on final review by the New Hampshire Supreme Court.

Finally, as to said final review by the New Hampshire Supreme Court, it should be noted that the **REFEREE'S** reliance on findings by the New Hampshire Professional Conduct Committee or the New Hampshire Referee are unwarranted and unjustified [except as to the New Hampshire Rule 8.1(a) allegation] because said findings or rulings were not sustained upon final review by the New Hampshire Supreme Court (**EXHIBIT X-THREE**). In fact, said reliance appears to be prohibited by RULE 3-7.2(j)(2) which states:

(2) Adjudication or Discipline by a Foreign Jurisdiction. In cases of a final adjudication by a court or other authorized disciplinary agency of another jurisdiction, such adjudication of misconduct shall be sufficient basis for the filing of a complaint by The Florida Bar and assignment for hearing before a referee without a finding of probable cause under these rules.

The above cited Rule 3-7.2(j)(2) looks to a "final" adjudication. The New Hampshire Professional Conduct Committee Petition and the Report of the New Hampshire Referee were not "final" adjudications. They were appealed to the New Hampshire Supreme Court and many of the issues raised in them were not addressed by the New Hampshire Supreme Court (SEE **EXHIBIT X-THREE**) or sustained including all allegations of violations except those made under New Hampshire Rule 8.1(a). Therefore the **COMPLAINT** in this case (**EXHIBIT X-ONE**) and the **REPORT OF REFEREE** (**EXHIBIT X-TWO**) are erroneous and unjustified in their reliance on the New Hampshire Professional Conduct Committee Petition and the Report of the New Hampshire Referee because these were not "final" adjudications.

WHEREFORE it is respectfully submitted that procedural irregularities, erroneous, unjustifiable and unlawful conclusions, rulings and conduct as well as double jeopardy issues argue against adherence to the **REPORT OF REFEREE** in this matter.

ARGUMENT: QUESTION II

II. ARE THERE ERRONEOUS, UNLAWFUL OR UNJUSTIFIED FINDINGS OR CONCLUSIONS IN THE REPORT OF THE REFEREE SUCH AS TO NEGATE ADHERENCE TO SAID REPORT?

As indicated in the **ARGUMENT** presented on **QUESTION I** above herein, reliance on any findings of the New Hampshire Professional Conduct Committee or the New Hampshire Referee as to any matters other than the New Hampshire Rule 8-1(a) is unjustified because the findings of the New Hampshire

Professional Committee and the New Hampshire Referee were **not** sustained upon final appeal by the New Hampshire Supreme Court (**EXHIBIT X-THREE**).

As also noted previously, representation by the **REFEREE** that he has considered all pleadings, evidence, arguments and submissions is also erroneous.

The **REFEREE'S** discussion of personal jurisdiction ignores the issues of subject matter jurisdiction with regard to the necessity of determining whether a New Hampshire grand jury is a tribunal. which is an element of the Rule 4-3.3(a)(1) allegation and which was raised pursuant to **EXHIBIT X-FOUR**.

Findings in paragraph number 6 of violations concerning Rule 4-3.3(a)(1), 4-8.1(a) and 4-8.4(c) are inadequate, unjustified and unlawful because of Statute of Limitations provisions [even as to Rule 4-8.1(a) based on the New Hampshire Bar Counsel's identification of the bases for the allegation - **EXHIBIT X-FIVE**], because they do not address the Rule 4-3.3(a)(3) allegation and because they violate Rule 3-7.2(j)(2) as to the Rule 4-3.3(a)(1) and 4-8.4(c) allegations.

Paragraph 8 of the **REPORT OF REFEREE** unjustifiably suggests that there are aggravating factors of 1. dishonest motive, 2. a pattern of misconduct, 3. multiple offenses, 4. submission of false evidence, 5. false statements or other deceptive practices during the disciplinary process, 6. refusal to acknowledge wrongful nature of conduct and 7. substantial experience in law.

With regard to these suggested aggravating factors, this **COURT** is urged to take into account the following:

As regards factor 1., note should be made of **EXHIBIT X-SIX** which was included in the **COMPLAINT**, being part of the New Hampshire Referee's Report, in which the New Hampshire Referee states, "The referee is unable to determine the motivation which fueled the respondent's behavior throughout these

events." If the New Hampshire referee was unable to make any such determination then there is no basis for the Florida **REFEREE** to have done so.

As regards factors 2. and 3., note should be made that the only sustained violation by the New Hampshire Supreme Court was as to a Rule 8.1(a) allegation (**EXHIBIT X-THREE**). One act of misconduct does not create a pattern of misconduct nor does it constitute multiple offenses.

As to factors 4. and 5., because the Rule 8.1(a) allegation was the only sustained allegation by the New Hampshire Supreme Court (**EXHIBIT X-THREE**) and because the New Hampshire Bar Counsel has identified the basis of that allegation to have been statements made prior to the commencement of the New Hampshire disciplinary process (**EXHIBIT X-FIVE**) and because no other statements have been identified as being the basis thereof, then the factors are irrelevant. If the Florida Bar or **REFEREE** feel to the contrary then they should be required, pursuant to relevant case law including United States v. Slawik, 548 F. 2d 75 (3rd Cir. 1977), Sands v. Cunningham, 617 F. Supp. 1551 (D.N.H. 1985), State v. Inselburg, 114 N.H. 824 (1974), and State v. Sands, 123 N.H. 570 (1983) to specifically identify the offensive language stating what was said, verbatim, when and where it was said, and how the statement made was material. Absent which the **REFEREE'S** suggestion as to the applicability of factors 4. and 5. is unjustified.

As to factor 6., note **EXHIBITS X-SEVEN** and **X-EIGHT** wherein **RESPONDENT/APPELLANT** concurs with an opposing witness concerning relevant matters. Wherefore, it is believed that it is unjustified to suggest that there has been refusal to acknowledge error.

As to additional mitigating factors, it should be noted that, prior to the incident involved herein, no prior disciplinary complaints had ever been

filed against **RESPONDENT/APPELLANT** nor did the conduct alleged impact in any fashion on a client.

The application of Standards discussed in paragraph 9. of the **REPORT OF REFEREE** assumes that the **REPORT** and the findings contained therein have been lawfully, justifiably and properly arrived at. Where, as has been shown here, that is not the case, then the application of the Standards is, itself, unjustified and hypocritical - especially where the **REPORT (FLREFREP)** Is itself respectfully believed to be fraudulent.

Reliance on the cases cited in paragraph 10. of the **REPORT OF REFEREE**, to wit: The Florida Bar v. Rightmyer, 617 So.2d 953 (Fla. 1993) and Office of Disciplinary Counsel v. Tumini, 453 A. 2d 310 (Pa. 1982) is erroneous and unjustified. Bear in mind that the only allegation sustained by the New Hampshire Supreme Court was as to the RULE 8-1(a) allegation (**EXHIBIT X-THREE**). New Hampshire Rule 8.1(a) makes no reference to "lying under oath" therefore Rightmyer is distinguishable and not applicable. Tumini is based on various disciplinary rules which have no relevance to either New Hampshire Rule 8.1(a) or its Florida equivalent [Rule 4-8.1(a)] and its reference to "judicial proceedings" in addition to being irrelevant is also a question involving subject matter jurisdictional issues as hereinbefore discussed concerning the need to determine if the New Hampshire grand jury is a "tribunal".

Finally, because the alleged offensive language is acknowledged by the New Hampshire Decision to be a statement of "belief" (**EXHIBIT X-NINE**) and because only the New Hampshire Rule 8.1(a) finding was subject to a final adverse determination by the New Hampshire Supreme Court (**EXHIBIT X-THREE**) it is believed to be subject to the holdings of Ibanez v. Florida Department of Business and Professional Regulation, Board of Accountancy, (No. 93-639, June (FLBRIEF) - PAGE 15 OF 17

13, 1994) and Baird v. State Bar of Arizona, 401 U.S. 1 (1971), in which The Supreme Court of the United States has held that State(s) are prohibited from excluding a person from a profession or punishing him solely because ... he holds certain beliefs Baird, supra at page 6. These cases also raise the issue of there being Federal questions in the case and a lack of jurisdiction by this **COURT** to determine the same, which issue is not waived.

WHEREFORE, it is believed that there were erroneous, unlawful or unjustified findings or conclusions in the **REPORT OF REFEREE (FLREFREP)** such as to require the negation of adherence thereto in this matter.

CONCLUSION

WHEREAS, erroneous and unjustified conclusions are made in the May 2, 1996 **REPORT OF REFEREE**, as amended on May 9, 1996 (**FLREFREP**);

WHEREAS, inadequate, erroneous, unjustified and unlawful procedures, engaged in by the **REFEREE**, are evidenced by the May 2, 1996 **REPORT OF REFEREE (FLREFREP)** as amended on May 9, 1996 and other conduct of the **REFEREE** and the **COMPLAINANT**; and

WHEREAS, there are Federal questions involved in the matter over which the **REFEREE** and this **COURT** lack jurisdiction,

Said May 2, 1996 **REPORT OF REFEREE (FLREFREP)** as amended on May 9, 1996 should not be followed by this **COURT**.

WHEREFORE. RESPONDENT/APPELLANT requests that this **COURT**:

A. Reject the May 2, 1996 **REPORT OF REFEREE (FLREFREP)** as amended on May 9, 1996;

B. Dismiss the matter with prejudice against the **COMPLAINANT**;

C. Order an investigation into the conduct of the **REFEREE** and the **COMPLAINANT** in this matter;

D. Order such disciplinary sanctions as are warranted by the results of the investigation requested in C. against said **REFEREE** and **COMPLAINANT**; and


E. Grant such other relief for the benefit of the **RESPONDENT/APPELLANT** as it deems just including, without limitation or limiting, an award of costs.

WAIVER OF ORAL ARGUMENT

RESPONDENT/APPELLANT hereby waives personal appearance and oral argument on the review of this matter and rests upon **APPELLANT'S BRIEF (FLBRIEF)** and the **APPENDIX TO RESPONDENT/APPELLANT'S BRIEF - EXHIBITS (APINTEXS)** as well as all other materials submitted by him in this matter which are incorporated herein by reference thereto.

Respectfully submitted

DATED: June 7, 1996

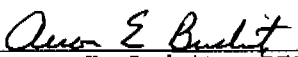


Arron E. Budnitz, **RESPONDENT/APPELLANT**
Attorney Number: 0289620
65 Williams Road
Lexington, Massachusetts 02173-3235
telephone: 617-863-2808

CERTIFICATE OF SERVICE

The undersigned respectfully submits the foregoing and certifies on the date below 1. that he did timely mail an original and seven copies of the attached **APPELLANT'S BRIEF (FLBRIEF)** along with **APPENDIX TO RESPONDENT/APPELLANT'S BRIEF - EXHIBITS (APINTEXS)** to the Office of The Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, by Certified Mail: Z-122-182-827 and Certified Mail: Z-122-182-828 on June 7, 1996 along with seven stamped #10 envelopes (submitted to facilitate distribution to relevant interested parties) 2. that he did mail an original of the attached **APPELLANT'S BRIEF (FLBRIEF)** and **APPENDIX TO RESPONDENT/APPELLANT'S BRIEF - EXHIBITS (APINTEXS)** to The Honorable N. Sanders Sauls, Gadsden County Courthouse, 10 Jefferson Street, Quincy, Florida 32351, by Certified Mail: Z-122-182-829 on June 7, 1996, 3. that he did mail a copy to staff counsel at The Office of Bar Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee Florida 32399-2300 by First Class Mail on the same date, and 4. that he is uncertain as to the identity of any other interested parties.

DATED: June 7, 1996



Arron E. Budnitz, **RESPONDENT/APPELLANT**
Attorney Number: 0289620
65 Williams Road
Lexington, Massachusetts 02173-3235
telephone: 617-863-2808