IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant/Appellee

v.

MARK D. GREENSPAN,

Respondent/Appellant.
_____/

Supreme Court No. 88,384

The Florida Bar File No.
96-51,420(17A)

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ANSWER BRIEF OF THE FLORIDA BAR

On Appeal from
A Report of Referee

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TABLE OF CONTENTS

PAGES

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (continued)

STATEMENT OF THE CASE AND THE FACTS

The Florida Bar concurs with much of respondent's statement of the case and facts. However, as there are a few areas of disagreement, because some critical facts have been omitted, and because respondent has cited as fact his unsupported testimony which was offered as mitigation after the entry of a default final judgment, the bar is compelled to supplement respondent's statement as follows. Where applicable, the final hearing transcript is referred to with the abbreviation "T.", followed by the relevant page and line numbers.

This matter arose due to an advertisement which respondent caused to be published in the Bell South Yellow Pages in April, 1995. It is undisputed that this ad, which promoted respondent's law practice, had not been filed with The Florida Bar's Standing Committee on Advertising, as mandated by R. Regulating Fla. Bar 4-7.4 and 4-7.5. Accordingly, on or about November 15, 1995, assistant ethics counsel wrote to respondent, at his record bar address, and requested that he file the ad with the Standing Committee. Respondent did not respond. Thereafter, on December 22, 1995 and again on February 23, 1996, assistant ethics counsel wrote to respondent again, at his record bar address and by certified U.S. mail, requesting that he file his ad, as mandated by

the applicable Rules Regulating The Florida Bar. Respondent did not respond and the matter was forwarded to the bar's Fort Lauderdale branch office for disciplinary review.

On April 23, 1996, assistant staff counsel wrote to respondent, again at his record bar address and by certified U.S. mail, advising him that he was mandated, under R. Regulating Fla. Bar 3-4.8 and 4-8.4(d), to respond to the charges that he failed to file the subject advertisement, and also failed to respond to the bar's initial communications to him. Respondent again failed and refused to respond. The matter was considered by a grievance committee and probable cause was found. Respondent was advised of each of these developments, in writing, but filed no paper or response.

On or about July 2, 1997, the bar filed a formal complaint in the Supreme Court of Florida. When respondent failed and refused to file an answer, despite the two (2) month interval allowed him, The Florida Bar served a motion for default final judgement on September 4, 1996. Respondent was served via certified and regular U.S. mail at his record bar address, but filed no response. The referee entered a final judgment on the merits and the matter was set for final hearing on sanctions (only) on October 4, 1996. Not until the date and hour of this hearing did respondent provide any

answer to the investigative inquiries which The Florida Bar had directed to him over the preceding eleven (11) months.

During the course of the final hearing on sanctions, respondent did not attack the default final judgment. Instead, he admitted that he received the bar's investigative inquiries and that he had no adequate explanation for his failure to answer them [T. 5, l. 6-111. Respondent also testified (but produced no evidence to support such testimony) that he had suffered from social, physical and mental problems during this same period of time [T. 4, l. 9-231. He also admitted, under the bar's questioning, that these problems did not prevent him from continuing to practice law [T. 4, 1. 2-7].

Before the conclusion of the hearing on sanctions, The Florida Bar filed a memorandum of law and a statement of costs. Respondent called no witnesses, offered nothing into evidence, and advanced no legal argument. To the contrary, he admitted his misconduct and asked for mitigation of the sanction to be imposed in order to preserve his newly acquired job with a large and well-known law firm, addressing bar counsel as follows: "Let me say that you are well within your rights, that you have all the justification in the world for seeking sanctions and penalties. Let me also state that if I am suspended from the practice of law for thirty days, I will

no doubt lose my job." [T. 10, l. 5-9]. After the final hearing but before the referee signed his report, the parties conferred to determine whether they could reach an independent settlement agreement, to be forwarded to the referee for his review. They could not. The referee entered his report on October 9, 1996, recommending that respondent be compelled to file the subject advertisement, that he be taxed with the costs of the disciplinary proceedings, and that he be suspended from the practice of law for twenty (20) days[1]. Based on respondent's failure to respond to the bar and his mitigation testimony at the final hearing on sanctions, the referee also recommended that respondent obtain a psychiatric examination and any treatment that such evaluation would advise [T. 12, 1. 1-25, T. 13, l. 1-5, and Report of Referee, p. 6].

On or about November 6, 1996, respondent filed a motion to remand, in the Supreme Court of Florida. The Florida Bar filed a response and the motion was denied on February 27, 1997. In that same order, the Court approved the report of referee and ordered respondent suspended for twenty (20) days. In March of 1997, respondent filed a spate of pleadings: a motion for rehearing, a

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'Although The Florida Bar had originally requested a thirty (30) day suspension (when respondent had failed and refused to participate in the disciplinary process in any way), it conceded to a twenty (20) day suspension in light of respondent's appearance at the final hearing on sanctions.

motion to expedite consideration of motion for rehearing or motion to stay, and a petition for review. The Court entered an order on April 1, 1997, staying the effective date of respondent's suspension until disposition of the motion for rehearing. On or about April 25, 1997, respondent filed a motion to toll time. The Court entered an order on May 2, 1997 granting (what it considered to be) respondent's motion for reinstatement, vacating the suspension order, and setting forth a briefing schedule. On the same date, the Court entered an amended order with a revised briefing schedule, followed by a second amended order (which corrected the Court's language to reflect that it had, in actuality, granted respondent's motion as respondent had styled it (as a motion for rehearing), rather than as the Court had perceived, considered, and granted it - - as a motion for reinstatement), thereby permitting appellate review,

Respondent's brief was timely served on June 2, 997. In the statement of the case and facts contained therein, respondent presented much of his unsupported testimony from the final hearing on sanctions as fact upon which this appellate review should rest. [See respondent's initial brief, pp. 2-4.1 Indeed, footnote 1 on page 8 of respondent's statement of the case and facts refers to

matters which occurred *after* the final hearing, and which are completely outside of the record.

SUMMARY OF THE ARGUMENT

Respondent violated the Rules Regulating The Florida Bar by causing a print advertisement to be published in the Yellow Pages without filing the ad with the Standing Committee on Advertising. At the initial stages, the bar only sought to have him file the ad, as required. Toward this end, ethics counsel wrote to respondent three times over the course of three (3) months, simply asking him to do so. Respondent ignored all such communications from The Florida Bar. The matter was prosecuted, a complaint was filed in the Supreme Court of Florida, and respondent continued in his refusal to respond. A default final judgment was granted against him. At the final hearing on sanctions, eleven (11) months after his first communication from The Florida Bar, respondent presented no evidence, no documents, no witnesses, and no legal argument. He advised the referee that he had been ill and lonely, and so had grown depressed. He told the referee that he had been too depressed and ill to respond to the bar, even as he admitted that he had continued to practice law and had very recently interviewed for and obtained a new job. During the course of his testimony, respondent admitted that he was, in fact, deserving of discipline, but was fearful of the effect such discipline would have on his new position with a well-known local law firm (which, he testified, was

unaware of the health and mental problems he advanced as a bar to discipline). At no point, either during or after the final hearing, did respondent move to vacate the default final judgment for good cause, in order to present whatever evidence may exist of his illness, loneliness and/or depression. Nor did he timely file a motion for rehearing with the referee. Instead, having no record to rely upon, he filed a procedurally inappropriate motion to remand. This motion contained a shocking array of "facts" wholly outside of the record, and was denied. Thereafter, as he had no record to rely upon for purposes of an appeal, respondent filed a remarkable series of motions intended to obtain appellate relief without the need to pursue an appeal. To date, all of these motions and machinations have failed. The Court has correctly granted him the only remedy to which he is entitled: an appeal--which must fail, as respondent knew from the outset, because his case was determined by default. As respondent has no record upon which to rely, he cannot meet the burden of proof to establish legal error below.

The referee's findings of fact and recommendation as to discipline are well supported by the facts, the case law, the Florida Standards for Imposing Lawyer Sanctions and the record. Whatever respondent might have pled, had he participated in the

disciplinary proceedings against him, may not be considered when presented, for the first time, in the final hearing on sanctions -- when it **was** too late for the bar to test the veracity of the facts and the credibility of the witness/respondent. Having failed to timely participate in the disciplinary process, pursuant to the Rules Regulating The Florida Bar and the Florida Rules of Civil Procedure, respondent has forever waived his right to do. He should be suspended pursuant to the terms and conditions set forth in the Report of Referee.

ARGUMENT

I. THERE IS NO BASIS, ON APPEAL, TO DISMISS A DISCIPLINARY ACTION WHICH HAS BEEN DETERMINED BELOW BY A DEFAULT JUDGEMENT AGAINST RESPONDENT -- ESPECIALLY WHERE THE **DEFAULT HAS GONE UNCHALLENGED, NO TIMELY MOTION FOR REHEARING WAS FILED WITH THE REFEREE, AND RESPONDENT'S MOTION FOR REMAND HAS ALREADY BEEN CONSIDERED AND DENIED BY THIS COURT.**

Respondent has made the internally inconsistent argument that the disciplinary proceeding against him should be dismissed because the bar did not cite (to the referee) **a** certain case which respondent argues would support a recommendation that he receive a ***public reprimand - -*** with conditional probation for three years, Respondent's argument on this point is fatally flawed because it is nonsensical in structure, untrue in fact, and inaccurate as a matter of law.

The single case upon which respondent's tenuous argument rests is *The* ***Florida*** Bar v. Grigsby, 617 So. 2d 321 (Fla. 1993). Upon reviewing the Court's holding in ***Grigsby,*** it is clear that respondent's argument is misapplied. In ***Grigsby,*** the respondent failed to respond to a complaint and failed to produce **a** copy of **a** letter he had written to a complainant. Accordingly, the matter was set for probable cause hearing, at which time Mr. Grigsby complied with the grievance committee's requests. As no other

misconduct was found, Mr. Grigsby was disciplined solely for his failure to timely respond to the grievance committee's requests of him. Further, in the ***Grigsby*** case, the referee made a specific finding that the respondent suffered from "clinical depression." In the instant case, respondent failed to respond to all investigative inquiries of The Florida Bar for a period of eleven (11) months, beginning with those from ethics counsel (seeking his voluntary compliance with the advertising rules), and continuing through the time of the filing of the complaint in the Supreme Court of Florida. Respondent also failed to respond to motions filed with the duly appointed referee. At the final hearing, respondent acknowledged that he continued to practice law during this period of time and that he had actually received the bar's communications and motions, even ***after*** he began the new job which he feared a suspension would cost him [admitting, therefore, that he received at least some of the bar's notices ***after*** he was well enough to interview for and win the new job]. See final hearing transcript pages 3 (lines 19-21), 4 (lines 2-7), 5 (lines 6-16), and 10 (lines 5-9). Further, respondent (unlike Mr. Grigsby) was found to be guilty of additional rule violations. Finally, as respondent produced no evidence of mitigation, either before or on the day of final hearing, the referee could make no finding that

respondent suffered from any debilitating condition(s), nor could he find that any such conditions which may have existed had a sufficient nexus so **as** to mitigate respondent's misconduct. In considering the mitigating factors which respondent sets forth in his initial brief (see pp. 2-4), it is important to note that none of these factors is supported by the record. As other mitigation presented in respondent's initial brief (see p. 8) is completely outside the record, such mitigation is, therefore, outside the scope of appellate review. ***Agency for Health Care Administration v. Orlando Regional Healthcare, 517 So.*** 2d ***385*** (Fla. 1st DCA 1993); ***Arnowitz v. Equitable Life,*** 539 So. 2d 605 (Fla. 3rd DCA 1989); *Thornber* ***v. City of Fort Walton Beach, 534 So.*** 2d ***7.54*** (Fla. 1st DCA 1988). Accordingly, as ***Grigsby*** is inapposite to the case at bar, The Florida Bar was not remiss in failing to expressly bring said case to the referee's immediate attention. Of course, respondent could have done so, had he believed it to be relevant or persuasive, during the course of his testimony at final hearing.

Respondent's argument in favor of dismissal must also fail because it is inaccurate as a matter of law. In ***Kozel v. Ostendorf,*** 629 So. 2d 817, 818 (Fla. 1993), this Court stated that the dismissal of an action is "the ultimate sanction in the adversarial system. . . ." Accordingly, it should be utilized in

only the most extreme cases, with judicious reserve and great care. Indeed, in *Carr v. Dean Steel Buildings, Inc., 619 So.* 2d 392 (Fla. 1st DCA 1993), this Court stated that:

> Generally, courts have been reluctant to uphold a dismissal where there has been no finding of willful non-compliance or bad faith. An express written finding of willful disregard of an order of the court is essential to justify the severe sanction of dismissal.

Carr, at 394.

In light of the foregoing discussion of the non-applicability of Grigsby to the case at bar, respondent has not even made a remote showing of "willful non-compliance or bad faith," much less "an express written finding of willful disregard of an order of the court." This argument, very simply, is a red herring. Respondent has argued that the bar failed to cite to *Grigsby,* yet *Grigsby* is inapposite to the case before the Court. Respondent has argued that (by not citing to this case) the bar corrupted both the proceedings and the referee, yet he fails to point out that the referee made findings of fact which have not been effectively challenged or disturbed and should, therefore, be upheld on appeal. *See The Florida Bar v. Marable*, 645 *So.* 2d 438 (Fla. 1994); *The Florida Bar v. Niles*, *644 So.* 2d *504* (Fla. *1994); The Florida Bar v. Rue,* 643 So. 2d 1080 (Fla. 1994); and *The Florida Bar v. Pearce,* 631 So. 2d 192 (Fla. 1994). Finally, it should be noted that

respondent has argued for dismissal herein using much the same argument he advanced in his previously filed and denied motion for remand. If his argument could not prevail to obtain a remand, it must certainly fail when applied to the more strenuous task of obtaining a dismissal.

Respondent's final point, in the first argument of his brief, is that the referee was "under a misapprehension that he was required to recommend a minimum ten-day suspension as a disciplinary sanction in this case." See respondent's initial brief, p. 12. Again, respondent made essentially the same argument in his motion for remand, which this Court denied in February, 1997. To resolve this issue again, the Court need only consult the final hearing transcript, which plainly evidences the referee's expressly stated familiarity with respondent's case, his general familiarity with bar disciplinary cases, and his specific familiarity with the case law relevant to respondent's case. Indeed, the referee articulated his familiarity on page 12 of the transcript, as follows:

> THE REFEREE: Well, I think that, first of all, the Bar's position is, of course, totally correct within the law as to the sanction they've requested. Legally, I have no problem with that. Okay? I'm fairly familiar with these. I've heard a fair amount or fair number of Bar cases. I think they have a very valid point in

requesting a current psychological evaluation from a psychiatrist.

Further, respondent's characterization of the referee's comments is strained and presumptuous. In stating that a sanction was required, it is far more reasonable to understand (contrary to respondent's position that the referee was misguided as to the scope of his discretion) that the referee was referring to what he ***himself*** determined that justice required, based on his independent review of the pleadings, the Florida Standards for Imposing Lawyer Sanctions, and relevant case law. This interpretation was supported and indeed shared by respondent himself, who addressed bar counsel at the final hearing (page 10 of the transcript) as follows:

> MR. GREENSPAN: Let me say that you are well within your rights, that you have all the justification in the world for seeking sanctions and penalties. Let me also state that if I am suspended from the practice of law for thirty days, I will no doubt lose my job.

In conclusion, respondent's argument is not persuasive: the *Grigsby* case is not controlling, the bar committed no misconduct in failing to argue ***Grigsby,*** the referee was under no misapprehension, and respondent has advanced absolutely no legal basis to warrant a dismissal of this disciplinary proceeding.

11. THE REFEREE'S REPORT IS WELL SUPPORTED AND SHOULD BE APPROVED.

Respondent's initial argument is that the record does not support the referee's recommendation as to discipline. In presenting this argument, respondent examined and discussed a single case cited in the report of referee: *The Florida Bar v. Vaughn, 608 So.* 2d 18 (Fla. 1992). As the referee cited *Vaughn,* and because Mr. Vaughn only received a public reprimand, respondent argued that the "referee's report is, therefore, clearly erroneous." [Respondent's initial brief, p. 17]. In addition to being overly simplistic, respondent's argument is simply untrue. To the contrary, because the referee entered a default judgment on the merits (which has gone unchallenged) and because there has been no showing, on appeal, that the resulting findings of **fact are** clearly erroneous, they must be upheld on review. *The Florida Bar v. Marable,* 645 *So.* 2d 438 (Fla 1994); *The Florida Bar v. Niles,* 644 So. 2d 504 (Fla. 1994). Further, because these findings of fact gave rise to a *series* of rule violations, respondent's misconduct must be viewed from a cumulative perspective. Indeed, the referee viewed respondent's misconduct in just that **way,** as he explained on page 8 of his report of referee:

> Ordinarily, a violation of R. Regulating Fla. Bar 4-7.5(b) would warrant an admonishment by a grievance

> Committee. *The Florida Bar v. Doe, 634 So.* 2d 160 (Fla. 1994). However, given respondent's lack of responsiveness to the bar investigation, over these many months, coupled *with* his failure to respond to the formal complaint filed with this court, I believe that the recommended sanction set forth herein[2] is appropriate [citation omitted; emphasis added].

The concept of enhanced discipline for multiple rule violations was neither invented nor first implemented by this referee. This Court regularly imposes attorney discipline based upon the "totality of respondent's misconduct." *See The Florida Bar v. Williams,* 604 So. 2d 447 (Fla. 1992), and *The Florida Bar v. Mavrides,* 442 So. 2d 220 (Fla. 1983).

Next, respondent argued that the referee erred in failing to accept respondent's "unrebutted testimony . . . concerning his psychological condition and incapacity as an explanation for his failure to respond." [Respondent's initial brief, p. 19.] Indeed, respondent went so far as to assert that The Florida Bar accepted respondent's testimony as truth. Nothing could be farther from the truth. Pursuant to the Rules Regulating The Florida Bar and the Florida Rules of Civil Procedure, respondent had an opportunity to present a response and affirmative defenses upon receipt of The Florida Bar's complaint. He waived this opportunity. Respondent

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[2]A twenty (20) day suspension with conditions.

had another chance to advance his position via a challenge to the motion for default, and/or a motion to vacate the default once it was entered. Again, respondent stood mute. It was only on the date and hour of the final hearing that respondent came forward without benefit of documents, medical records or any other evidence which would support his position of incapacity and create a reasonable nexus between such alleged incapacity and the misconduct found. This unfounded mitigation testimony at the eleventh hour, without opportunity for testing by The Florida Bar, cannot be characterized, by any stretch of the imagination, as "unrebutted testimony." Similarly, bar counsel's comment that she had "no reason to doubt" respondent's recitations as to mitigation cannot, by any stretch of the most fertile imagination, be construed as a statement intended to communicate counsel's acceptance of respondent's comments as truthful.

In short, respondent may not use his alleged incapacity as both a sword and a shield. If he wished to be protected by it, he was compelled to disclose it, to produce evidence to support its existence, and to submit it to cross-examination by The Florida Bar ***before*** the hour of final hearing. Having elected not to do so, he has forfeited the right to now use that same alleged incapacity as

a sword to evade disciplinary process without withstanding the crucible of the bar's scrutiny.

The referee's report is well supported. His findings of fact are the function of a default final judgment, which is sufficient to establish respondent's guilt as to all charges. *The Florida Bar* v. Daniel, 641 So. 2d 1331 (Fla. 1994). The referee's recommendation as to sanctions is supported by the case law and the Florida Standards for Imposing Lawyer Discipline. Notwithstanding the foregoing, it is respondent's burden, on appeal, to demonstrate error by clear and convincing evidence. No such evidence has been presented, as none exists.

III. THE SANCTION RECOMMENDED BY THE REFEREE IS WELL JUSTIFIED BY RESPONDENT'S MISCONDUCT.

In arguing for a lesser sanction than that which has been recommended in this case, respondent correctly urges this Court's attention to several crucial factors: the purpose of attorney discipline, the substantive misconduct with which respondent has been found guilty, and the applicable case law.

Looking first at the purposes to be achieved by attorney discipline, and quoting from The *Florida* Bar v. *Pahules*, *233 So.* 2d 130 (Fla. 1970), respondent acknowledged that any sanction imposed must be fair to society, fair to the respondent, and sufficient to deter others from similar misconduct. In examining each of these three (3) prongs as they apply to the instant case, it is clear that respondent's argument, in support of an admonishment with probation, must fail. Respondent published an advertisement in one of the most widely distributed publications imaginable: the Yellow Pages. In so doing, he failed and refused to file the ad with the Standing Committee on Advertising, which is charged with the duty of screening all such ads to make certain that the public is not misled or defrauded by advertisements which do not meet the carefully constructed standards by which all Florida lawyers are governed. When respondent's omission was discovered, the bar

communicated with him on three (3) separate occasions, over a three (3) month period, seeking only his voluntary compliance with the bar's advertising rules. Respondent failed and refused to voluntarily comply and had to be prosecuted, nearly eight (8) months later, for his willful misconduct. A twenty (20) day conditional suspension for this behavior, which flies in the face of the bar's efforts to protect the public from prohibited advertising, cannot be construed as unfair to society. And, given the bar's many attempts to resolve this matter with the recalcitrant respondent, such a sanction is not unfair to him either. The final prong of the ***Pahules*** test, that dealing with the deterrence of similar misconduct, is the easiest to address in a case such as this. Reduced to its distillate, respondent has disobeyed and thereafter disregarded the bar and the referee, over and over again, over these eleven (11) months. He now argues that his misconduct should be excused and his punishment limited to an admonishment and probation. If respondent is successful in his argument, the final prong of *Pahules* will have been dismissed and ignored. In the competitive times in which we practice law, an attorney who engages in advertising does so because he hopes to gain a significant business advantage over his colleagues who do not. This advantage may be enhanced if the attorney's advertising

exceeds the limits provided by the Rules Regulating The Florida Bar. In order to protect the public and the profession, this Court has promulgated rules to regulate attorney advertising in this state. In order to both protect the public and keep the playing field level for all attorneys who elect to advertise, those rules must be enforced and violators must be punished. If the punishment imposed is too little to deter offenders, offenses will continue and multiply. In the instant case, respondent was given four (4) opportunities to comply with the rules, without the imposition of discipline. In that he had to be forced into compliance, he is deserving of a sanction which will address his misconduct and deter that of others. Respondent must suffer a suspension from the practice of law.

The next two (2) segments of respondent's argument focused on respondent's substantive misconduct, as measured by the applicable case law. In evaluating respondent's position, it is important to note that much of respondent's argument focuses on cases where lawyers have been found guilty of single violations, either relating to advertising or non-cooperation with the bar. In ***The Florida Bar*** v. ***Doe, 634 So.*** 2d 160 (Fla. 1994), the respondent received an admonishment for violations contained in a newspaper advertisement. Similarly, in ***The Florida Bar*** v. ***Vaughn, 608 So.*** 2d

18 (Fla. 1992), ***The Florida Bar*** *v.* ***Grigsby, 641 So.*** 2d. 1341 (Fla. 1994), **and** ***The Florida Bar v.*** *Grosso,* ***647 So.*** 2d. 840 (Fla. 1994), the respondents received a public reprimand(or in the case of ***Grosso,*** a ten day suspension) for violations relating to failure to respond to The Florida Bar. In the instant ***case,*** respondent is guilty of both types of misconduct: advertising violations ***and*** willful failure to respond to the investigative inquiries of The Florida Bar. Accordingly, his sanction must be more than what it would have been had his violations been fewer, This is especially so in light of respondent's failure to participate in this disciplinary action until the date and hour of final hearing on sanctions. The Court addressed this ancillary issue in ***The Florida Bar*** *v.* ***Bartlett,*** 509 **So.** 2d 287, 289 (Fla. 1987), stating as follows:

> Moreover, a lawyer's failure willful refusal to participate at all in the disciplinary process when he is accused of misconduct calls into serious question the lawyer's fitness for the practice of law. ***See, e.g., The Florida Bar v. Montgomery,*** 412 So. 2d 346 (Fla. 1982).

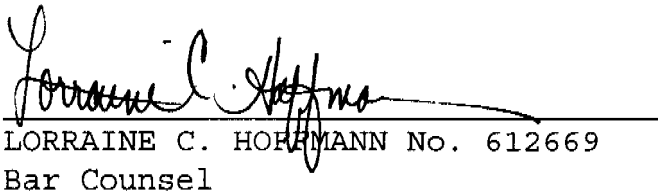
As respondent was found guilty of violating a series of advertising rules ***and*** failing to respond to the investigative inquires of The Florida Bar, neither an admonishment nor a public reprimand would be fair to him, fair to society, and sufficient to deter similar misconduct by others. Respondent should receive a twenty (20)

suspension from the practice of law, pursuant to the terms and conditions articulated in the report of referee.

CONCLUSION

A twenty (20) days suspension, subject to the terms and conditions set forth in the report of referee, is an appropriate sanction, well tailored to fit the measure set by the Supreme Court of Florida in *Pahules* and its progeny. A sanction less than a conditional suspension would not be sufficient to protect the public and would not have a deterrent effect on prospective misconduct of this kind. The regulation of attorneys and any advertising which they may disseminate is of grave concern to this Court. An attorney who violates the advertising rules, and then refuses, for nearly a year, to respond to the investigative inquires of The Florida Bar needs to be called to attention and to account. Respondent should be suspended from the practice of law for twenty (20) days, pursuant to the terms and conditions set forth in the report of referee.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Answer Brief of The Florida Bar have been furnished by regular U.S. mail to Patricia S. Etkin,Co-Counsel for Appellant, 8181 W. Broward Blvd, Suite 262, Plantation, FL 33324, Thomas F. Gustafson, Jr., Co-Counsel for Appellant, 4901 N. Federal Highway, Suite 440, Fort Lauderdale, FL 33308, and to John A. Boggs, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 on this 27th day of June, 1997.

LORRAINE C. HOFFMANN