IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Complainant,

vs.

HARRY JAY KLAUSNER,

Respondent.
_____/

Supreme Court Case No. 90,855
TFB No. 97-11,875 (20A)

ANSWER BRIEF

OF

THE RESPONDENT

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STATEMENT OF THE CASE AND OF THE FACTS

The Florida Bar's "Statement of the Facts and of the Case" appearing at pages ***iv*** through ***ix*** of the "Initial Brief of The Florida Bar" (hereinafter simply referred to as The Bar's brief) is generally accurate. The undersigned counsel for Respondent respectfully points out that at page ***v*** of The Bar's brief The Bar cites page 33 of the transcript as supporting the factual contention that at all material times Respondent "was fully aware that he was not authorized to sign their [certain collection case defendants'] names to the documents [stipulations that the defendants agreed that they owed the debt and agreeing to a payment schedule]." Bar's brief at ***v***. That statement is not supported by page 33 of the transcript. See copy of Tr. 33 attached as Appendix A of this brief.

In fact, the Respondent's testimony being referenced by The Bar was merely that he signed only names that he knew had already in fact been signed by the actual person and further qualified on page 37 of the transcript that this was only those limited cases where he was not permitted to see the court files which were to be wrongfully abated, and because he did not know what to do. Tr. 37, lines 5-17. The Bar later lists this among other facts on page ***viii*** of its brief without reference to the transcript (see the first full paragraph on page ***viii,*** Bar's brief). This accurately reflects the record of the proceeding below. Also see Tr. 32.

The undersigned does not believe that The Bar intended to misstate the record below, but merely that The Bar unintentionally included an argumentary conclusion as if it were a fact or admission. The remaining facts as presented by The Bar reasonably appear in the record of the Bar's evidence as presented at page 11, line 4, through page 44, line 17, where The Bar rested its case for disbarment. They are therefore adopted by the Respondent.

The Bar has, however, omitted from its statement of the facts the majority of the record and witnesses adduced before the Referee at the final hearing.

The facts omitted by The Bar are virtually all favorable to the Respondent. Some of the facts omitted were questions asked by the Referee on his own volition and matters he later commented upon in the Report of Referee. Tr. 130, line 2 through Tr. 132, line 25; Tr. 88, line 16 through Tr. 89, line 6; see also Report of Referee.

The Bar has also omitted much of the procedural part of the statement of the case. Again the parts of the record omitted from The Bar's brief are favorable to the Respondent. The undersigned therefore augments The Bar's "Statement of the Facts and of the Case" with the remainder of the record.

The Respondent was initally charged by The Florida Bar pursuant to the filing of a "Determination or Judgment of Guilt" in this Court's Case No. 90-774. This followed his plea of nolo contendere and withhold of adjudication in multiple criminal charges based on the same facts charged by The Bar in the instant case. The Respondent filed his Response to The Florida Bar's Determination or Judgment of Guilt, indicating that he had done the following:

1. Voluntarily notified The Florida Bar upon first being charged, this having been many months prior to any other notice to The Bar.

2. Effective June 20, 1997 (prior to the issuance on June 24, 1997 of this Court's order, prior to notice or receipt of the order, and more than one month prior to the effective date thereof) he had voluntarily ceased to practice law.

3. Began voluntarily winding down his practice upon first being charged, including early removal of his name from the telephone directories under the attorney classification.

4. Removed voluntarily all public indicia of his maintaining a law practice and ceasing the use of legal stationery.

5. Retained independent legal counsel for his own business.

6. Was preparing to send the required notice of suspension to his remaining clients in anticipation of this Court's granting of a temporary suspension.

7. Publicly and expressly stated his deep personal remorse for the acts which led to the charges and to all involved.

The Respondent voluntarily undertook these actions without objection to the temporary suspension although he was specifically aware of his right to challenge the effective loss of his license to practice by this temporary procedure and had a legitimate constitutional basis for such a challenge. Specifically, The Bar relied on the language of Rule 3-7.2(3) that even a withheld adjudication on unadmitted felony charges was "conclusive proof" of guilt of those charges, thereby permitting a "determination" of guilt and consequently a temporary suspension. *Id.* He acted in full and early cooperation with The Bar as a demonstration of his remorse and in the hope that his acts would be accepted as part of his initial efforts to rehabilitate himself. See The Florida Bar v Pincket, 398 So. 2d 802 (Fla. 1981)

He was prosecuted by The Bar on these same charges, for the sole purpose of The Bar exclusively demanding disbarment. The bar chose to call no witnessses other than Respondent. Tr. 11, line 4-Tr. 44, line 17. The Bar chose to rely on the admission of documents and the language of Rule 3-7.2(3). Respondent continued his cooperation at the final hearing by stipulating to all of the Bar's exhibits (Tr. 3, lines 12-24; Tr. 5, line 4 through Tr.9, line 19) and by

testifying fully and completely when called by The Bar as its only witness. Tr. 11, line 4 through Tr. 44, line 7.

Seven independent witnesses not mentioned by The Bar testified before the Referee below. Their testimony favorable to Respondent is on 81 pages of the record which the Referee heard and which he clearly included in his decision making process. These seven independent witnesses were attorney Peter Ringsmuth (referred to in the record as Rindsmuth), Tr. 56, line 14 through Tr. 78, line 5, attorney Mark Smith, Tr. 78, line 15 through Tr. 91, line 6, attorney David McElrath, a former local Bar president,Tr. 91, line 21 through Tr. 98, line 11, attorney Thomas Smoot, who continues to trust Respondent as a non-lawyer business fiduciary(Tr.104, line 11-Tr. 105, line 2), Tr. 98, line 22 through Tr. 113, line 15, Dr. Ronald Castellanos (referred to in the record as Casdellanos), Tr. 114, line 7 through Tr. 118, line 20, attorney James L. Goetz, who volunteered to act as a mentor for Respondent if that were to be a condition of future reinstatement(Tr. 125, line 21-Tr. 126, line 4), Tr. 119, line 9 through Tr. 133, line 10, and credit manager Robert Ross, Tr. 133, line 18 through Tr. 137, line 8, who would continue to retain Respondent as an attorney despite Respondent's actions in this case (Tr. 135, line 14-Tr. 136, line 2). The Referee also heard from Respondent's mother (Tr. 137-139) and mitigating testimony from Respondent. Tr. 140-153. The Referee accepted and considered a memorandum of law from Respondent in opposition to disbarment.

The above case procedure and facts (omitted by The Bar) favorable to Respondent and adduced before the Referee in the instant case as mitigation were unrebutted.

In legal argument to support its demand for exclusively disbarment, The Bar below "argue[d] only one case to the Court." Tr.175, lines 20-21. The Referee, after hearing the entire record of the proceeding and reviewing all of

the applicable case law found the Respondent guilty of all of the charges, but nonetheless did not recommend disbarment. The Referee recommended a three year suspension, a retaking and passing of the ethics portion of the Bar examination, and appended a chart personally prepared by the Referee of the many cases which he had reviewed and considered in reaching his recommendation (in addition to the only case relied upon by The Bar). See Report of Referee.

The Bar has petitioned for review to this Court to reject the recommendation of the Referee and to instead use exclusively the discipline of disbarment. This brief is in oppositon to The Bar's petition for review.

SUMMARY OF THE ARGUMENT

The Report ofreferee comes before this Court with a presumption of correctness. As to the disciplinnary recommendation, it is considered persuasive, and will be review by well established case law guidelines and standards. The Florida Bar, as petioner for review has the burden to demonstrate why the recommendation of the referee fails to meet the standards of persuasiveness.

While purporting to demonstrate why the referee's report should not be followed as to discipline. The Florida Bar did not fully set forth to this court the well established standards by which a referee's recommendations of discipline would be reviewed by this court. Perhaps due to this lack of setting out the standards, The Bar did not address any of the dozens of cases which the referee summarized in his report and upon which he expressly relied. Instead The Bar simply reargued to this court the only case which it argued to the referee below.

Likewise in setting out the facts, The Bar only addressed its own direct examination of Respondent and stipulated documents, its case in chief before

the referee below. The Bar has not in any fashion dealt with the bulk of all the evidence and testimony adduced before the referee below which included substantial mitigation, strong supportive grounds for a suspension, and issues which the referee raised on his own. By doing so The Bar further failed to meet its burden.

Assuming that this matter had come before the court with no recommendation of discipline, the record in the court below and **all of the case law** would have led to the same conclusion as was drawn by the referee. Namely, in this instant case a three-year suspension with conditions is a sufficiently severe discipline to meet the threefold purposes of Bar discipline.

ARGUMENT

I. WHETHER, BASED ON THE RECORD BELOW,THE BAR HAS CARRIED ITS BURDEN TO HAVE THE REFEREE'S RECOMMENDATION OF A THREE YEAR SUSPENSION WITH ADDITIONAL CONDITIONS OVERRULED.

The often stated standard of review for findings by a referee in a Bar proceeding is that "[a] referee's findings of fact regarding guilt carry a presumption of correctness that should be upheld unless clearly erroneous or without support in the record. If the referee's findings are supported by competent, substantial evidence, this Court is precluded from reweighing the evidence and substituting its judgment for that of the referee. Florida Bar v. Bustamonte, 662 So. 2d 687 (Fla. 1995) ." As recently cited in The Florida Bar v. Solomon, Nos. 86,914, 87,667, and 88,762 (Fla. February 26, 1998). As to the sanction to be imposed, "a referee's recommendation for discipline is

persuasive, [but] this Court has the ultimate responsibility to determine the appropriate sanction. Florida Bar v. Reed, 644 So. 2d 1355 [1357](Fla. 1994)." Solomon, *supra.*

The Bar in its brief at page one properly cites Florida Bar v. Reed, *supra,* but fails to include the companion citation which this Court most regularly appends immediately after Reed, *Id.,* to explain the standards upon which this Court reviews the weight of the referee's persuasiveness. Those standards are that the overruling of a referee's recommendation is guided by the principles that "[a} bar disciplinary action must serve three puposes: the judgment must be fair to society, it must be fair to the attorney, and it must be severe enough to deter other attorneys from similar misconduct. Florida Bar v. Lawless, 640 So. 2d 1098 [1100] (Fla. 1994)." Solomon, *supra.* Also see The Florida Bar v. Gertsen, No. 87,248 (Fla. March 5, 1998).

Admittedly the facts found by the Referee in this case are serious and could without regard to mitigating factors have led this Referee to make a recommendation of disbarment. Indeed, the Bar argues that it even has an aggravating factor of cummulative misconduct. However, what The Bar asks on the record before this Court does not carry the burden of showing how this referee erred or overlooked the law, but it is a naked reagument of the single case precedent it presented unsuccessfully to the Referee, below.

Assuming for the purposes of The Bar's argument that The Bar had persuaded the Referee below that there was truly cummulative misconduct, rather than aberrant acts of bad judgment by Respondent, such an argument would still not carry The Bar's burden to overrule the Referee's recommendation. In The Florida Bar v. McShirley, 573 So. 2d 807 (Fla. 1991) this Court dealt with another serious charge, namely with an extensive pattern of misappropriation over many years. This Court admitted that the decision whether to disbar

McShirley was a close one, since he knowingly converted client funds for his personal use over a period of several years, and the misappropriations were not isolated but instead showed a pattern of repeatedly "dipping into" the trust account. McShirley, at 808-809. This Court went on to say that "[t]o disbar ... without considering the mitigating factors involved, however, would be tantamount to adopting a rule of automatic disbarment .... Such a rule would ignore the threefold purpose of attorney discipline ...." *Id.* The threefold purpose expressed there was drawn from The Florida Bar v. Pahules, 233 So. 2d 130,132 (Fla. 1970) and was as follows:

> "First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations." McShirley, *supra* at 808.

The time frame of many years and the frequency of the misconduct in McShirley, *supra,* are greater in all respects than the worst picture that could be drawn in this Respondent's case. The Referee simply did not find or believe The Bar's position that Respondent requires discipline greater than a three year suspension.

There would be no purpose to even asking a referee's recommendation if the The Bar's current position were a correct reflection of the law. Moreover, The Bar's decision to rely solely on one case below, Tr. 175 lines 20-21, as repeated in it brief to this Court fails to address the standards this Court has established in light of the facts that came out at trial. The Bar has simply argued that the charges are egregious and that the case of The Florida Bar v. Kickliter,

644 So. 2d 1123 (Fla. 1990) should automatically result in the disbarment of this Respondent. The Referee heard The Bar' s legal argument, but he also received argument and a memorandum of law from the Respondent.

The Referee in this case then did something extraordinary with respect to law and the various case precedents. He compiled a table of dozens of case precedents dealing with similar acts, and he made that part of his order. He selected those findings and factors which persuaded him to recommend precisely the sanctions of a three year suspension and a retaking and passing of the ethics portion of the Bar examination. He took the concise phrases from the various cases which he recognized in judging the accused who stood before him. Clearly he put tremendous effort and time reading and excerpting these precedents. It was the facts and persons before him that led him to reject The Bar's contention that this Respondent fit a "general rule" that was tantamount to automatic disbarment.

The Bar has not met its burden of argument before this Court as to why this Court should disregard such an extraordinarily thorough effort and meticulously documented legal precedents by a very experienced judge sitting as its referee . Curiously, The Bar has not even mentioned this extensive review compiled by the Referee, nor has is distinguished a single listed case or fact in the Referee's dozens of cases and facts with which the Referee supported his recommendations for discipline.

On the other hand, The Bar's complete reliance on the Kickliter case, *supra,* is not sufficient to carry its burden before this Court any more than it was sufficient to convince the Referee below.

There are some similarities between the instant case and Kickliter. One similarity is the presentation of the law upon which the parties rely. In that respect, namely the guidance, information, and provision of all applicable case

law to this Court, the roles of the parties are totally reversed. In Kickliter the Respondent basically argued a single prior precedent, The Florida Bar v. Betts, 530 So. 2d 928 (Fla. 1988) which had also been handled by Mr. Kickliter's attorney. The essence of Mr. Kickliter's argument was the same as The Bar's argument now. It was a narrow and incomplete argument that this Court should be bound by one single precedent, if it is similar and fairly recent, and that the Court should not look beyond that one precedent.

No matter how similar two cases might be (Kickliter's attorney seemed to be arguing that the only difference between Betts and Kickliter was that in Kickliter the client was deceased), our whole legal system as well as a good dose of common sense requires a look at **all the applicable case law** and not just the one case deemed most favorable to one of the parties. Indeed, there are similarities between Kickliter, *supra,* and the case at bar. **Many of these same similarities also exist in the dozens of cases cited by the Referee and not distinguished or even mentioned by The Bar.**

The Bar's chief reliance on Kickliter, *supra*, in its brief is for the "general rule of strict discipline against attorneys who deliberately and knowingly perpetrate a fraud on the court." Bar's brief at p. 4, quoting Kickliter. And that central point of reliance on its lone precedent is repeated in the first full paragraph at page 7 of the Bar's brief where it argues as follows:

> "The Respondent in the instant case has not shown a sufficient justification for not applying the general rule of strict discipline against an attorney who commits a fraud upon the court. Further, Respondent has not overcome the presumption of strict discipline against an attorney who is convicted of a felony." Bar's brief at 7.

With due respect to The Florida Bar, this paragraph totally reverses the burdens of the litigants before this Court and to some degree mistakes the facts below as

well as simply ignores the persuasive authority given to a referee's recommendation of discipline.

First, the Respondent does not have a burden to overcome. **The burden of proof** was on The Bar at the final hearing, and it is on the party now seeking to overrule the Report of Referee. The **burden of argument** in this review is on The Bar. Second and similarly, it is not the burden of argument of the Respondent to show a sufficient justification for not imposing the strictest discipline of disbarment. To the extent that duty may have ever exisited, this Respondent already shown that justification through evidence and precedents before the Referee, below. It is incumbent upon The Bar to overcome the persuasive authority of the Referee who found that a three year suspension an a retaking of the Bar examination ethics portion was a sufficiently strict discipline for this Respondent. Third, this Respondent is not convicted of a felony. Although this Respondent unquestionably was charged with criminal conduct, he neither pleaded guilty to nor was he convicted of criminal conduct. Bar's Exhibit 3, at pages 11, 12 and 14. Adjudication of all counts was withheld on a plea of nolo contendere. Id. Fourth, this Respondent was not commiting a fraud upon the court but was, albeit misguidedly and wrongly, trying to prevent a wrongful abatement from being entered by the court.

This last point also factually distinguishes the very heart of the documents which the Respondent signed from thr non-existing will in Kickliter, *supra*. The documents in this case all existed in the respective court files prior to Respondent recreating them to prevent a wrongful abatement. Tr. 147, lines 22-25. Mr. Klausner did not try to stop the abatement of numerous other cases in which the stipulations of settlement did not already exist. Tr. 147, lines 2-21. By contrast, Mr. Kickliter created a document which never existed and which materially altered other people's rights. Moreover, Mr. Kickliter solicited the aid

of two of his employees to help in the scheme and even sought to involve some of the benficiaries of his non-existing document. Kickliter, *supra.* Mr. Klausner misguidedly was trying to simply confirm what already existed. The parties involved had actually signed the identical documents and they were in the court files, Tr. 27, lines 16-23, but Mr. Klausner was led to believe they were not in the files, Tr. 37, he was not permitted to examine the files prior to hearing, *Id.,* and he was trying to prevent an error from being made. Tr. 148. Unlike Kickliter, Mr. Klausner's admittedly inappropriate acts were from gross inexperience and failing to know what to do. Tr. 37, lines 16-17.

At the final hearing, Bar Counsel even conceded that the signing of other poeple's name was not an effort to falsely duplicate their signatures. Tr. 32, lines 15-21. This also is clearly distinguished from Kickliter, *supra.* On the other hand what this Respondent did that was truly wrong and for which he has already accepted a suspension from the practice of law and acknowledges responsiblitiy is that he lied about what he had done. His lies, however, came not out of some venal motive or scheme for personal gain, but from what the Referee clearly recognized as as naive and child-like nervousness. Tr. 36, lines 3-15. It was this same childishness that he appeared without an attorney on three occasions and still did not admit the obvious even when it was clear that everyone else was on to him. Tr. 35, lines 8-25; Tr. 149, line, line 5 through Tr. 150, line 8. In making his recommendation of discipline, the Referee below clearly recognized this further factual disinguishment from the kind of calculated and planned conspiracy which Kickliter, *supra,* represents. In other cases similar to this case, but not distinguished by The Bar, this Court has also not disbarred the offending attorney. The Florida Bar v. Kravitz, 694 So. 2d 725 (Fla. 1997), The Florida Bar v. Schramm, 668 So. 2d 585 (Fla. 1996), The Florida Bar v. Gelman, 504 So. 2d 1228 (Fla. 1987), and other cases cited in

Respondent's Memorandum of Law in Opposition to Disbarment and filed with the Referee at the hearing below.

The Bar has also not addressed what his court has often expressed in various formulations as the better view not to needlessly blur the distinction between suspension and disbarment, that

> [D]isbarment is the extreme measure of discipline that can be imposed on any lawyer. It should be resorted to only in cases where the person charged has demonstrated an attitude or course of conduct that is wholly inconsistent with approved professional standards. To sustain disbarment there must be a showing that the person charged should never be at the Bar. It should never be decreed where punishment less severe, such as reprimand, temporary suspension, or fine will accomplish the desired purpose. The Florida Bar v. Blessing, 440 So. 2d 1275, 1277 (Fla. 1983; citing The Florida bar v. Moore, 194 So. 2d 264, 271 (Fla. 1966), *rehearing denied.*

Moreover, as a general rule, lawyers are only disbarred where they commit extreme violations involving moral turpitude, corruption, defalcations, theft, larceny or other serious or reprehensible offenses. In re LaMotte, 341 So. 2d 513, 517 (Fla. 1977). In approving a 12-month suspension for an attorney who engaged in multiple misconduct, this Court previously stated that disbarment was only for acts of moral turpitude, which it defined as "[a]n act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men or society in general. Unless the offense is one which by its very commission implies a base and depraved nature, the question of moral turpitude depends not only on the offense, but also on the attendant circumstances ...." The Florida Bar v. Davis, 361 So. 2d 159, at 159, 162, and 161 (Fla. 1979). His cooperation in his temporary suspension is one such attending circumstance. See The Florida Bar v Pincket, *supra.*

"The cases generally regard a judgment of disbarment as one reserved for the most infamous type of misprision and as justifiable in those instances where the possibility of a lawyer's rehabilitation and restoration to ethical practice are least likely." This is because this Court has always regarded disbarment as involving an element of finality which precludes the likelihood of reinstatement of the offending lawyer. State ex rel. Florida Bar v. Ruskin, 126 So. 2d 142,143 (Fla. 1961). This Court further recognized in Ruskin, at 143, that in addition to the stigma attached to disbarment, there is also a delay of many years simply due to the procedural roadblocks that such an individual encounters with the Florida Board of Bar Examiners. Even where a lawyer should be severely sanctioned, this Court has reversed a referee's recommendation of disbarment where many of the same mitigating factors found in this case were likewise present. The Florida Bar v. Ward, 559 So.2d 650, 651(Fla. 1992). In Ward, at 652, this Court said there was a need to weigh the duty violated, whether it was towards the client, the courts, other attorneys, or the public, as well as the aggravating and mitigating factors.

Finally, the testimony of the many witnesses not addressed by The Bar in its brief also give rise to virtually every factor of mitigation. The testimony of the witnesses alone would preclude the overruling of the Referee's recommendation The testimony includes the Respondent's relative inexeperience, compounded by what the Referee learned was a refusal of the local court clerks to use the Florida Supreme Court approved forms, Tr. 130-132, Respondent's Exhibits A and B. There is the genuineness of Respondent's remorse and the torment his actions have caused him. Tr. 101, line 24 Tr. 102, line13; Tr. 134, lines 15-21. There was testimony that this misconduct by Respondent was an aberration, even under vigorous cross examination. Tr. 101 lines 5- 21; Tr. 111, lines 8-24. There was testimony from a former local bar president that Mr. Klausner can be

rehabilitated and that if reinstated he would without a doubt refer him clients. Tr. 95, lines 1-23. Similarly, testimony from another laywer that there was no doubt that Mr. Klausner could be rehabilitated and should not be refused the opportunity to practice in the future. Tr. 125, lines 10-20. There is the willingness of his clients to rehire him, notwithstanding his misconduct. Tr. 134, lines 5-14. There is a reasonable degree of legal probability that the most serios of the charges simply could not have been proven. Tr. 65, lines 12-19. There was testimony that Respondent is not in the least way a future danger to society. Tr. 68, lines 21-23. In fact, testimony showed that Respondent had already shouldered full responsibility for his conduct, apprehended that he was wrong and had confessed to his wrong with genuine remorse. Tr. 75, lines 3-24. There was evidence of Mr. Klausner's outstanding reputation, Tr. 81, lines 3-17, and that lawyers would still feel able to refer clients to Respondent's collection agency for non-lawyer collection work, notwithstanding that they would disclose to their clients that Mr. Klausner had previously had a law license which had been suspended. Tr. 81, line 18 through Tr. 83, line 5. The testimony shows how meaningful the loss of his license is to Mr. Klausner, Tr. 83, line 23 through Tr. 84, line 11. There was also testimony of confusing local court rules which seemed only likely to further confuse a young and relatively inexperienced sole practitioner like Respondent. Tr. 88, line 16 through Tr. 89, line 6.

In short, not only has The Bar not carried its burden, but the record and witness testimony are so supportive of a suspension instead offisbarment that if there had been no recommendation, this Court should in any event have found suspension the only appropriate discipline.

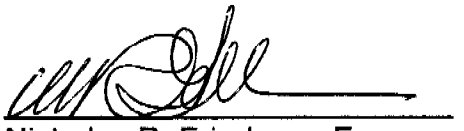
CONCLUSION

The Florida Bar had the burden of demonstrating why this Court should not approve the recommendation of a three year suspension with conditions, but

has not done so. The Bar relied solely on one case, and it did not address dozens of other similar cases relied upon by the Referee which also resulted in suspension and not disbarment. Even if The Bar succeeded in calling into question the recomendations of the referee, the recommendation of discipline came with a persuasive presumption of correctness. The standards for obtaining disbarment are have not been met by the facts of this case. The unrebutted testimony of the witnesses and the impressive case precedents which the Referee himself cited and appended to his report firmly support approving the referee's report, including the recommended discipline of suspension as opposed to disbarment. Based on the **all of the case law** the discipline which best meet the threefold purposes of lawyer sanctions is that of a suspension. The Bar's petition for review should be denied and the Report of Referee should be approved.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U.S. mail to Sid J. White, Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, Thomas DeBerg, Esq., Assistant Staff Counsel, Suite C-49, Tampa Airport, Marriot Hotel, Tampa, Florida 33607, and John A. Boggs, Staff Counsel, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 13th day of May, 1998.



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APPENDIX A TO

ANSWER BRIEF OF

THE RESPONDENT

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results from an FDLE handwriting expert Bruce DeKraker, D-E-K-R-A-K-E-R; isn't that true?

A Yes.

Q And until that time, you had persisted in denying --

A Yes.

Q But on that occasion, you admitted that you had, in fact, forged all of the documents, placed the signatures thereon?

A Yes.

MR. FRIEDMAN: I didn't catch that one. I move to strike on the word "forged" again.

THE COURT: Overruled. Denied.

MR. FRIEDMAN: Thank you, your Honor.

BY MR. DEBERG:

Q Now, if we might go back to the proceeding on March 4th, 1996 before Judge Sturgis, had you been sworn in by the Court prior to those proceedings?

A Yes.

Q And the Court pointed out to you there concerns about the Shirley Kaiser signature, isn't that accurate?

MR. FRIEDMAN: That's Exhibit 6?