IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, Complainant vs.	Supreme Court Case **No. 94,727** Florida Bar File No. 1999-70,788(11N)

DAVID CARLTON ARNOLD,

Respondent,
_____/

ON PETITION FOR REVIEW FROM REPORT OF REFEREE

ANSWER BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

The Referee made a thorough and correct recitation of the facts in his Report of Referee. Said Report contains additional facts which must be considered but which are not contained in The Florida Bar's (hereinafter referred to as the Bar) limited and incomplete statement of the case and facts. Respondent would, therefore, rely and adopt the Referee's recitation of facts as if fully set forth herein. While adopting the Referee's recitation of the facts, Respondent would also emphasize certain facts within that Report.

In this case, the Bar filed a Notice of Determination of Guilt as to the original 1993 conviction and an automatic felony suspension for that conviction was imposed effective July 19, 1993. (T.17) That conviction, however, was reversed and vacated on July 27, 1997. Subsequent to the reversal, on March 26, 1998, Respondent entered a guilty plea for time served as to one count of the original indictment, a violation of 18 U.S.C. §1957(a) on November 17, 1986. The Bar never filed a Notice of Determination of Guilt as to the 1998 conviction. The Bar, however, stipulated that the sole and only basis for the present disciplinary hearing was Respondent's conviction as to the one count on March 26, 1998. (Referee's Report, page 7, paragraph 12)

Respondent's relevant conduct, which formed the basis for his conviction under 18 U.S.C. §1957(a), was one isolated incident, which occurred on November 17, 1986

or 21 days after the enactment of the aforesaid statute. (T.86) The conduct consisted of the deposit of a check into a federally insured institution. (T.86) The check was received from a yacht broker and represented the closing proceeds from the sale of a sailboat. (T.264). As part of the plea colloquy, Respondent agreed that he deliberately avoided knowing that a portion of the funds used by his client to originally purchase the sailboat in 1985 were derived from a specified unlawful activity. Respondent was able to accept the term "deliberately avoided" as part of the plea colloquy because he did fail to fully investigate the source of the funds used by his client to originally purchase the sailboat. (T.266) When the client sold the sailboat in 1986 through a yacht broker, Respondent failed to investigate the source of the funds used by his client to originally purchase the sailboat because he thought he knew the source of the funds, a verified inheritance and a mortgage foreclosure. (T.266, 267)

18 U.S.C. §1957(a) was first enacted on October 27, 1986. (T.85) Prior to that date, the conduct attributed to Respondent was not illegal. (T.86, 87) If Respondent had received and deposited the closing proceeds 3 weeks earlier, there would have been no crime.

In addition to the ten Mitigating factors acknowledged by the Bar in it's brief at page 5, the Referee also: (1) made a specific finding that the conduct attributed to Respondent did not reflect on his honesty, trustworthiness or fitness as a lawyer in other respects. (Referee's Report, page 8); (2) found that "there is no need to protect

the public and the administration of justice from the respondent". (Referee's Report, page 10); and (3) the Referee also considered the favorable and uncharacteristic remarks by the District court judge concerning the Respondent. (Referee's Report, pages 16 and 17). The Referee also took particular note of the number and variety of Respondent's credible character witnesses and character letters and the high regard in which they held Respondent. The Referee summarized some of the descriptive testimony on pages 12 through 15 of his report.

The Referee found no aggravating factors. (Referee's Report, page 11) The Florida Bar has not contested any of the findings of fact or conclusions derived from those facts. The only issue raised by the Bar is the length of the suspension recommended by the Referee.

SUMMARY OF ARGUMENT

Pursuant to R. Regulating Fla. Bar 3-7.7(c)(5), "Upon review, the burden shall be upon the party seeking review to demonstrate that a report of a referee sought to be reviewed is clearly erroneous, unlawful, or unjustified." This court has consistently held that a party contending that the referee's findings of fact and conclusions are erroneous must demonstrate "that there is no evidence in the record to support those findings or that the record evidence clearly contradicts the conclusions. The Florida Bar v. Dubbeld, No. 92,892 (Fla. Aug. 26, 1999). In this case, the Bar has failed to meet or even come close to meeting that burden.

The Bar has not contested any of the Referee's findings of fact or his conclusions derived from those facts, including his findings of thirteen mitigating factors. It simply claims that the recommended suspension should be 3 years instead of 60 days. The few cases cited by the Florida Bar are simply inapplicable to the case at bar and are clearly distinguishable.

The totality of the mitigating factors, the penalties already suffered by Respondent, the Bar's conduct during these proceedings and the case law makes the Referee's recommendation just and equitable.

The Referee's Report and Recommendation is presumed correct and should be followed if reasonably supported by existing case law and not "clearly off the mark". The Florida Bar v. Vining, 721 So.2d 1164, 1169 (Fla.1998). Indeed, the Referee's disciplinary recommendation is supported both by the evidence and existing case law and should be approved and affirmed.

ARGUMENT

ISSUE PRESENTED:

This case presents an unusual set of facts. The Referee, after personally observing Respondent and after considering all the evidence, made specific findings of fact and conclusions based on those facts. The Bar has not contested those findings of fact or the conclusions based on those findings. This case is not a case about dishonesty, fraud or untrustworthiness. The Referee's uncontested findings found that

Respondent was not guilty of such conduct. (Referee's Report, page 8). This is not a case where the Respondent requires rehabilitation. The Referee determined and found that Respondent was fit to practice law. (Referee's Report, page 8). This is not a case about prolonged misconduct over a period of time. This case arose out of one transaction, which occurred on November 17, 1986, almost 14 years ago. This is not a case where the Respondent is waiting for the discipline to be imposed. Respondent has already been suspended for over six years. (T.17) The Bar simply claims that a, "Reasonable discipline in this case would be a three year suspension nunc pro tunc rather than [the] sixty (60) days" suspension recommended by the Referee, nunc pro tunc to July 19, 1993. (Bar Brief, page 6). The sole issue presented for review is the discipline to be imposed based on the Referee's uncontested findings of fact and conclusions derived therefrom.

STANDARD OF REVIEW:

The law regarding the standards of review of discipline recommended by the Referee is unambiguous. "The Supreme Court has a broader scope of review regarding discipline than referee's finding of fact, in attorney discipline proceedings…. But a referee's recommendation is presumed correct and will be followed if reasonably supported by existing case law and not 'clearly off the mark'". The Florida Bar v. Vining, 721 So.2d 1164, 1169 (Fla.1998). The Florida Bar v. Weisser, 721 So.2d 1142, 1144 (Fla.1998), The Florida Bar v. Vernell, 721 So.2d 705, 708 (Fla.1998),

The Florida Bar v. Cox, 718 So.2d 788, 794 (Fla. 1998). Many of the cases regarding attorney discipline use even stronger language and hold that a Referee's recommendation will be followed unless it can be shown that it is "clearly erroneous or not supported by the evidence". The Florida Bar v. Grief, 701 So.2d 555, 556 (Fla.1997), The Florida Bar v. Barcus, 697 So.2d 71, 74 (Fla. 1997), The Florida Bar v. Niles, 644 So.2d 504, 506-07 (Fla.1994). This Court has refused to second guess a referee's recommended discipline as long as that discipline has a reasonable basis in existing case law. The Florida Bar v. Lacznar, 690 So.2d 1284 (Fla.1997), The Florida Bar v. Laing, 695 So.2d 299, 304 (Fla.1997).

CASES CITED BY BAR DISTINGUISHED:

In support of its request to override the Referee's recommendation and to impose a longer suspension, the Bar cites The Florida Bar v. Porter, 684 So.2d 810 (Fla.1996), which sets forth the three purposes of sanctions. Id. at 813. The Bar claims the sixty-day suspension is not fair to society nor an effective deterrent. First, this court has held that, "the vast weight of judicial authority recognizes that bar discipline exists to protect the public, and not to 'punish' the lawyer." De Bock v. State, 512 So.2d 164, 167 (Fla.1987). In this case the Referee specifically found, "that there is no need to protect the public and the administration of justice from the Respondent". (Referee's Report, page 10). Secondly, the Bar has completely lost sight of the fact that Respondent, as a result of this one act, has already been suspended from the

practice of law for over six years. Respondent was also imprisoned for 53 months due to the government's wrongful suppression of critical exculpatory evidence favorable to him, during which he suffered extensive separation from his family and financial ruin. To claim Respondent has not been sufficiently penalized rings hollow. One of the three purposes of sanctions also requires that the sanction be fair to the attorney. Porter, Supra at 813. In The Florida Bar v. Pellegrini, 714 So.2d 448 (Fla.1998), the court, after citing the three purposes of attorney discipline set forth in Porter, supra at 813, stated; "Because the referee was in the best position to assess both the guilt and punishment, based on the totality of the circumstances in this case we decline to overturn the referee's recommendation. Pellegrini, supra. at 453. The same should be done in this case.

The Bar next cites The Florida Bar v. Horne, 527 so.2d 816 (Fla.1988), claiming the case was similar to the case at bar. That is simply incorrect. Horne was convicted of four felonies involving tax fraud and money laundering. Based on the facts surrounding that conviction the Referee found Horne guilty of violating six disciplinary rules involving moral turpitude, dishonesty, misrepresentation, fraud and conduct prejudicial to the administration of justice. The Referee recommended disbarment and the recommendation was uncontested. The court followed the Referee's recommendation. That factual situation is simply not present in the case at bar.

The Bar next claims that, "the Referee in this case was presented with conclusive proof of a violation of a federal felony statute whereby the respondent sought to mask the income of a client…" (Bar's brief, page 9) It is respectfully submitted that staff counsel is making an unwarranted and incorrect speculation not supported by the evidence and that he does not understand 18 U.S.C. §1957(a). That statute does not involve the masking of funds or concealment. "18 U.S.C. §1957 is similar to 18 U.S.C. §1956, but does not require that the recipient exchange or 'launder' the funds, that he have knowledge that the funds were proceeds of a specified unlawful activity, nor that he have any intent to further or conceal such an activity." United States. v. Baker, 19 F.3d 605, 615 (n. 45) (11th Cir.1994). In Baker, the "defendants were convicted of…. 18 U.S.C. §1957 ….Defendant's were neither indicted for nor convicted of 'laundering of monetary instruments'…." id. Attorney Bruce Rogow, an experienced trial and appellate lawyer and professor at Nova University, and Michael Tarre, a practicing federal criminal defense attorney, both testified (T.118 to 120 and 152) that 18 U.S.C. §1957 is sometimes referred to as money laundering, but such reference is incorrect. "Once you're into 1956 and 1957 for the purpose of the Court of Appeals, it's just a shorthand, but under the statue, 1957 is a different statute, engaging in a monetary transaction." (T.152)

The relevant conduct of Respondent, which formed the basis of the conviction, was that he received a check from a yacht broker during a closing and deposited that

check into his trust account on November 17, 1986. The depositing of that check into a federally insured institution was the crime. (T.86). There was no masking of income or concealment nor was it even alleged as a basis for the conviction. 18 U.S.C. §1957(a) was a newly enacted statute, which took effect on October 27, 1986. If the deposit had been made 22 days earlier, there would have been no crime. (T.86, 87) The closing proceeds were later disbursed pursuant to the directions of the client. (T.264)

The Bar next cites The Florida Bar v. Eisenberg, 555 So.2d 353 (Fla. 1989), claiming Respondent committed a similar crime. Eisenberg was convicted of two felonies involving the concealment of funds. Respondent's conduct, on the other hand, did not involve concealment and the Referee made the uncontested finding that Respondent's conduct did not involve dishonesty, untrustworthiness or fitness as a lawyer in other respects. In addition thereto, the Bar concedes that Eisenberg had no significant mitigating factors while Respondent has shown and the Referee has found thirteen separate mitigating factors. In fact, the undersigned counsel has not found a disciplinary case which involved more mitigating factors than were shown by Respondent and found by the Referee to exist in the case at bar.

The Bar next claims the referee was overly influenced by The Florida Bar v. Marable, 645 So.2d 438 (Fla.1994). First, government misconduct was only one of thirteen mitigating factors considered and found by the Referee. Second, it is

respectfully submitted that staff counsel misread or misunderstood the import of the government misconduct in Marable. The Referee did not consider the government's misconduct in Marable when deciding Marable's guilt or innocence in regards to the violation of a disciplinary rule. It is well established that a guilty plea and conviction are conclusive proof and can not be attacked by a Respondent in a disciplinary hearing when determining guilt or innocence. The determination of guilt or innocence in a disciplinary hearing, however, is only the first phase of a disciplinary hearing. In both Marable and in the case at bar, the Referee found a violation of a disciplinary rule based upon the plea and conviction. In fact, Respondent never contested the conviction. (T.28, 55 and 267) The Referee then considered the appropriate sanction to be imposed. It was only during the penalty phase of the disciplinary hearing that the Referee and the court considered the government's misconduct as a mitigating factor. The Referee followed Marable, in the case at bar.

The Florida Bar further contends that the issue of the Brady material had been eliminated by the time Respondent entered his guilty plea. Again staff counsel misses the point. First, the damage done to Respondent by the government's suppression of critical exculpatory evidence, the failure of the government to give Respondent a fair trial envisioned by the Constitution, 53 months of imprisonment, prolonged separation from family and financial exhaustion and ruin and suspension from the practice of law for over 6 years was not eliminated by a simple reversal and new trial. Second,

Respondent did not attack the guilty plea or the conviction in these proceedings. (T.28, 55 and 267) He only claimed the gross misconduct employed by the government should, as was done in Marable, be considered during the penalty phase of the disciplinary hearing.

Next staff counsel somehow compares the case at bar to The Florida Bar v. Golub, 550 So.2d 455 (Fla.1989). Golub embezzled and stole $23,608.34 from an estate he was handling over a three-year period. His mitigating factors were extreme alcoholism, his cooperation and the lack of a prior disciplinary record. Stealing from a client, however, is one of the worst offenses in the hierarchy of offenses and involves a multitude of ethical violations. Neither the conduct nor number and type of mitigating factors in Golub are similar to the case at bar.

THE FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS;

The Florida Standards for Imposing Lawyer Sanctions, Standard 3.0, sets forth the factors to be considered in imposing sanctions:

(a) The duty violated; It is respectfully submitted that the duty violated in this case is not definitively set forth in the Lawyer Sanction Standards. Although not mentioned in the Bar's brief, the bar at the disciplinary hearing claimed the applicable standard for sanctions was Standard 5.1, Failure to Maintain Personal Integrity. That Standard provides:

> Absent aggravating or mitigating circumstances, and upon application of the factors set out in Standard 3.0, the **following sanctions** are generally **appropriate in cases involving** commission of a criminal act **that** reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, **or** in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation: (emphasis added)

The Referee found that the criminal act of which Respondent was convicted, did not reflect adversely on Respondent's honesty, trustworthiness or fitness as a lawyer in other respects nor did it involve dishonesty, fraud, deceit or misrepresentation. By definition, Standard 5.1 is simply inapplicable.

(b) The lawyer's mental state; The Referee found there was an absence of a dishonest or selfish motive.

(c) The potential or actual injury caused by the lawyer's misconduct; The Referee found that there was neither an actual or potential injury to a client, nor was one alleged.

(d) The existence of aggravating or mitigating factors; Standard 9.3 list 14 different mitigating factors. Of those 14 factors, 5 of them are inapplicable by their terms to this case. The Referee found all remaining 9 mitigating factors to be present and applicable to this case along with 4 other mitigating factors derived from case law. The Referee found no aggravating factors.

CASE LAW REGARDING SUSPENSIONS OF 90 DAYS OR LESS:

In The Florida Bar v. Helinger, 620 So.2d 993 (Fla.1993) the court

> …. recognized that misconduct occurring outside the practice of law or in which the attorney, violates no duty to a client may be subject to lesser discipline…. Thus, in some cases, a ninety-day suspension or less might be the appropriate discipline for a conviction that does not relate to the practice of law or involve fraud or dishonesty. (Emphasis added) id. at 995, 996.

In the case at bar, there were thirteen substantial mitigating factors found to apply to Respondent and his conduct did not involve dishonesty, fraud, deceit or misrepresentation nor did it violate a duty to a client.

There are many examples of disciplinary cases, which resulted in 90-day suspension or less. In The Florida Bar v. Daniel Barry Bass, No. 89,253 (Fla. April 10, 1997)[1], Bass was convicted of first-degree felony battery. He was suspended from practicing law for 15 days.

In The Florida Bar v. Allen Daniel Holland, No. 93,193 (Fla. Dec. 17, 1998), Allen plead guilty to felony battery. Although the Bar summary does not state it was a felony, Holland's criminal sentence exceeded 1 year and therefore it must have been a felony. He was found to have violated Bar rules by committing criminal acts that

[1] Cases sited herein simply by name, Supreme Court Case No. and date refer to unpublished opinions obtained from The Florida Bar Internet web site: FlaBar.org. under Public & Media Info., Discipline News Releases. The News Releases only go back to April 24, 1997 and represent the Bar's summary.

reflected adversely on the lawyer's honesty, trustworthiness or fitness to practice law. Holland was only reprimanded.

Even in felony cases involving fraud, suspensions of 90 days or less have been imposed. In The Florida Bar v. Jan K. Moncol, No. 92,061 (Fla. April 30, 1998), Moncol was convicted of a felony involving fraud. Moncol only received a reprimand. This disciplinary action was not tempered by the special rules that apply to drug cases under Standards, section 10.0 because Moncol was convicted of a crime and the special rules do not apply in that situation.

In The Florida Bar v. John David Gable, III, No. 92,724 (Fla. July 13, 1998), Gable was convicted of six felony counts for obtaining a controlled substance by fraud and received a two year probation as to each count in criminal court. Gable was suspended from the practice of law for 90 days.

In The Florida Bar v. Bodiford, 518 So.2d 265 (Fla.1988), Bodiford received a 90 day suspension after he admitted to violating trust account rules and to misconduct constituting a felony or a misdemeanor although he was neither charged nor convicted of the offense.

In The Florida Bar v. Weintraub, 528 So.2d 367 (Fla.1988), Weintraub was convicted of a felony for distributing cocaine. The Florida Bar suspended him from the practice of law for 90 days.

In The Florida Bar v. Michael Barry Rubin, No. 90,737 (Fla. Jan. 8, 1998), Rubin was suspended from practicing law in Florida for 90 days. Rubin mailed pornographic photographs to an assistant state attorney at her job. He violated a Bar rule that prohibits an attorney from committing a criminal act regardless of whether the attorney has been tried, acquitted or convicted in a court for the alleged criminal offense.

In The Florida Bar v. Gordon Shuminer, No. 90,565 (Fla. Jan. 8, 1998), Shuminer was suspended from practicing law for 90 days after being arrested and charged with purchasing and possessing cocaine.

In The Florida Bar v. Gail B. Trenk, No. 91,341 (Fla. April 14, 1998), Trenk was suspended from practicing law in Florida for 90 days for making false statements of material fact to a tribunal, engaging in fraudulent and deceitful conduct and assisting a client to commit a criminal act when she knew the act was fraudulent or criminal.

In The Florida Bar v. Jeffrey Robin Edwards, No. 92,296 (Fla. Aug. 20, 1998), Edwards was suspended from practicing law for 90 days after pleading no contest to possession of cocaine, possession of methamphetamine and unlawful possession of cannabis and drug paraphernalia.

In The Florida Bar v. Charles David Fantl, No. 92,213 (Fla. Aug. 20, 1998), Fantl was suspended from practicing law for 60 days after being found guilty of

committing a criminal act that reflected adversely on his honesty, trustworthiness and fitness to practice law.

In The Florida Bar v. Ronald Lee Book, No. 90,805 (Fla. July 10, 1997), Book was suspended from practicing law for 75 days after pleading guilty to four misdemeanor charges involving excessive campaign contributions and making campaign contributions in the name of another.

In The Florida Bar v. Keith Allen Seldin, No. 87,565 (Fla. May 29, 1997), Seldin was suspended from practicing law for 30 days after being found guilty of engaging in dishonest, fraudulent and deceitful conduct. Seldin issued 31 checks from his operating account that were dishonored between January 1992 and May 1995. He also failed to timely file with the Internal Revenue Service required documents and failed to timely remit federal tax deductions to the proper governmental agency.

In The Florida Bar v. Dolan, 452 So.2d 563 (Fla. 1984), Dolan was not charged with a felony because he was given immunity for giving testimony against his client but Dolan was guilty of a felony but for the immunity. He received a 90-day suspension.

The Florida Bar v. Fertig, 551 So.2d 1213 (Fla. 1989), is particularly relevant. In 1986 Fertig plead to a felony violation of the RICO Act by laundering money for a drug smuggling scheme between 1978 and 1983. The Bar, however, did not file charges against Fertig until 1988. The Referee found Fertig guilty of committing a

felony and an act contrary to honesty, justice, or good morals and recommended that Fertig be suspended from the practice of law for twelve months with no proof of rehabilitation required. "The Board of Governors of the Florida Bar…. approved all but the proposed sanction. Because of the amount of time since the illegal acts occurred (the conspiracy ran from 1978 to 1983) and because the referee found Fertig to be rehabilitated, the Bar…" petitioned the Court for a ninety-day suspension. Id. at 1214. The court noted that his disciplinary record had been spotless before and since that time and approved a 90-day suspension. In the case at Bar, Respondent's conduct was a singular incident not involving dishonesty, which occurred over 13 years ago.

THE DISCIPLINARY RECOMMENDATION:

In this case the Referee recommended a 60 day suspension nunc pro tunc and the Bar claims a reasonable sanction would be suspension for 3 years nunc pro tunc. Under either recommendation, the period of suspension would have expired over 3 to 6 years ago. The only practical effect is that under the Referee's recommendation, Respondent would automatically be reinstated. Under the Bar's recommendation, Respondent would have to apply for reinstatement pursuant to R. Regulating Fla. Bar 3-5.1(e) and 3-7.10(b). At a hearing for reinstatement before a Referee, the sole issue to be decided, "shall be the fitness of the petitioner to resume the practice of law." R. Regulating Fla. Bar 3-7.10(g). That issue has already been litigated for the last 15 months.

The Respondent notified the Bar of the conviction 22 months ago. During that 22-month period the Bar substantially delayed resolution of these proceedings by waiting 10 months until it filed the complaint. After it filed the complaint it further delayed a final resolution another 12 months by requesting and receiving two separate continuances of the final hearing claiming its witness, AUSA Allan Kaiser, was unavailable even though his office was only two blocks from where the final hearing was held. The Bar never called him as a witness, nor sought to take his deposition in lieu of his live appearance at the hearing. At least for the past 15 months, the Bar took the implacable position that disbarment was the only sanction without regard to the substantial and unrebutted mitigating circumstances. The Bar now takes the position that a reasonable discipline in this case would be a three year suspension nunc pro tunc. (Bar brief, page 6).

At the time of Respondent's conviction on March 26, 1998, he had already been suspended from the practice of law for over 6 years. Any suspension imposed at that time, nunc pro tunc, would have already expired. If the Bar had acknowledged the obvious 22 months ago, this past year's litigation would have been avoided. Respondent, based upon the present Referee's findings, most likely would have been reinstated and practicing law well over a year ago. The Supreme Court in The Florida Bar v. Marcus, 616 So.2d 975 (Fla.1993), looked with disfavor upon the Bar when it

took contrary positions during a disciplinary proceeding. The same principles should apply and the Bar should be held to a higher standard in this case.

CONCLUSION

This case presents an usual set of facts. This was an isolated incident, which occurred over 13 years ago. Respondent was convicted of a felony which arose from conduct which took place on November 17, 1986, conduct which would have been legal if it had only occurred 3 weeks earlier. Respondent was and is an immensely well respected attorney who practiced law before November 17, 1986 and for over 7 years thereafter with an unblemished record.

The Referee found and the evidence showed that Respondent lacked a dishonest or selfish motive; that there was neither an actual nor potential injury to a client; that Respondent was cooperative toward the proceedings; that a variety of credible character witnesses who have know Respondent for many years testified in person and by letter as to Respondents outstanding reputation for honesty, his excellent legal ability, his impeccable character and outstanding reputation in the community; that actions taken by the Bar caused an unreasonable delay which was prejudicial to Respondent; that Respondent demonstrated interim rehabilitation including the restoration of his civil rights; that the underlying offense was a singular incident remote in time; that Respondent has an unblemished prior record; that the sentencing judge gave Respondent a favorable recommendation; that there was

extensive government misconduct in the underlying criminal case; that there were no aggravating factors; that Respondent's conduct did not reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects; that Respondent has already been penalized excessively by a suspension which has already exceeded 7 years, 53 months of unwarranted incarceration, financial ruin and the denial of basic constitutional rights; that Respondent devoted a large portion of his life to public service by being active as an adult leader in the Boy Scouts of America, by 25 years service in the U.S. Coast Guard Reserve from which he was honorably retired at the rank of Captain and by providing substantial pro bono legal services and lastly that there was no need to protect the public and the administration of justice from the Respondent.

The Bar has failed to demonstrate that the Referee's report was clearly erroneous, unlawful, or unjustified. The Referee has recommended that Respondent be suspended for a period of 60 days, nunc pro tunc to July 19, 1993, with automatic reinstatement at the end of the period of suspension as provided in R. Regulating Fla. Bar 3-5.1(e). It is respectfully suggested that under the unusual circumstances of this case, no reasonable person could differ with the Referee's well-documented and thoughtful recommendations. It is sincerely requested that this court reach the same determination and affirm the Referee's report and the recommendations set forth therein.

Dated this 4th day of February 2000.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of this Answer Brief was mailed to Debbie Causseaux, Acting Clerk, Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927 and a true copy was mailed to: William Mulligan, Esq., Bar Counsel, The Florida Bar, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131, John F. Harkness, Jr., Executive Director, and John Anthony Boggs, Staff Counsel, The Florida Bar, 650 Appalachia Parkway, Tallahassee, Florida 32399-2300, this 4th day of February, 2000.

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