IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

PETITIONER,

vs.

BRIAN NEIMAN, individually, and BRIAN NEIMAN, INC., A Florida Corporation,

RESPONDENTS.

SUPREME COURT CASE NO. SC94738

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ANSWER BRIEF OF THE FLORIDA BAR

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CERTIFICATE OF TYPE, SIZE AND STYLE and ANTI-VIRUS SCAN

Undersigned counsel does hereby certify that the Answer Brief of The Florida Bar is submitted in 14 point proportionately spaced Times New Roman font, and that the computer disk filed with this brief has been scanned and found to be free of viruses, by Norton Anti Virus for Windows.

PREFACE

For purposes of this brief, the Petitioner, The Florida Bar, will be referred to as The Florida Bar, Brian Neiman, will be referred to as Respondent Neiman, and Brian Neiman, Inc. will be referred to as Corporate Respondent. Brian Neiman and Brian Neiman, Inc. together will be referred to as Respondents. The following abbreviations will be utilized:

RR - refers to Report of Referee.

IR - refers to Referee's Index of Record.

TFB Ex - refers to Florida Bar Exhibits introduced at the final hearings.

RESP Ex - refers to Respondents' Exhibits introduced at the final hearings.

RIB - Respondents' Initial Brief

T - refers to transcripts of final hearings held on April 25, 26, 27, 28, 2000; May 18, 19, 2000; June 6, 7, 8, 15, 20, 21, 2000; July 5, 2000.

T July 6 - refers to the transcript of the final hearing held on July 6, 2000.

T July 7 - refers to the transcript of the final hearing held on July 7, 2000.

T July11 - refers to the transcript of the final hearing held on July 11, 2000.

T July 12 - refers to the transcript of the final hearing held on July 12, 2000.

T July 19 - refers to the transcript of the final hearing held on July 19, 2000.

T Aug. 2 AM - refers to the transcript of the final hearing held on August 2, 2000, beginning at 11:00 A.M.

T Aug. 2 PM - refers to the transcript of the final hearing held on August 2, 2000, beginning at 1:15 P.M.

T Aug. 3 AM - refers to the transcript of the final hearing held on Aug. 3, 2000, beginning at 10:00 A.M.

T Aug. 3 PM - refers to the transcript of the final hearing held on August 3, 2000, beginning at 1:30 P.M.

T Aug. 4 - refers to the transcript of the closing arguments held on August 4, 2000.

STATEMENT OF THE CASE AND FACTS

The Florida Bar is compelled to submit a statement of the case and facts as Respondents' Statement of the Case and Facts is incomplete and misleading. Moreover, Respondents make several "statements" without reference to the record in violation of Florida Rule of Appellate Procedure 9.210 (h)(3). A brief history of this case follows the facts will be more fully discussed in the arguments.

On January 21, 1999, The Florida Bar filed a twenty-two count Petition Against the Unlicensed Practice of Law against Respondents alleging cumulative and egregious acts of unlicensed practice of law. (IR.1) After the filing of the Petition, counsel for the parties entered into discussions in an attempt to settle this matter with a stipulated injunction. On or about March 30, 1999, the parties agreed to hold in abeyance all pending motions and any discovery in the cause as they were attempting to negotiate a settlement. (See The Florida Bar's letter dated March 30, 1999, to Sid J. White, Clerk, and Harris K. Solomon's letter dated March 31, 1999, attached hereto as Appendix I and II respectively). Contrary to Respondent's suggestion at page 1 of their brief, there was no unilateral request by The Florida Bar to abate this case during the pendency of Respondent Neiman's criminal prosecution, and no motion to abate was filed. Rather, there was an agreement entered into by both parties in this case which was unrelated to the

criminal case.

On September 22, 1999, the parties asked this Court to appoint a referee as they could not resolve the matter. (See The Florida Bar's letter dated September 22, 1999, to Debbie Causseaux, attached hereto as Appendix III). On January 5, 2000, the Honorable Robert W. Lee was appointed Referee. (IR.20). While Judge Lee was the judge who presided over Respondent Neiman's criminal prosecution, the two cases are unrelated and the criminal case in not at issue here.

On February 28, 2000, The Florida Bar filed its Amended Petition Against the Unlicensed Practice of Law. This is the petition upon which this matter was tried. (IR.60). (For the convenience of this Court, a copy of the Amended Petition without attachments is attached hereto as Appendix IV).

On March 6, 2000, Respondents filed a Motion to Dismiss The Florida Bar's Amended Petition. On March 8, 2000, the Referee entered an Order denying Respondents' Motion to Dismiss the Amended Petition. (IR. 61). Thereafter, on March 17, 2000, Respondents' filed an Answer to the Amended Petition. Respondents' Answer contained several affirmative defenses. Respondents' affirmative defenses were stricken by the Referee as being insufficient as a matter of law. (IR.109).

Numerous motions were filed by the parties and discovery continued.

Certain of Respondents' witnesses were excluded on Counts II, VIIB, VIII, IX and XVI of the Amended Petition due to Respondents' failures to comply with discovery and various orders of the Referee. (IR 90, 113, 143, 147).

Respondents' brief at page 7 states that Respondents were charged with the unlicensed practice of law for participating in settlement negotiations, the implication being that this was the only charge. Respondents' participation in settlement negotiations was just a portion of the allegations against Respondents. The Florida Bar's Petition and Amended Petition charged in count after count the unlicensed practice of law for conduct including, but not limited to, negotiating settlements, holding out to be an attorney, rendering legal advice and being the only contact person for the clients. The essence of The Florida Bar's allegations against Respondents is that they operated and controlled an enormously profitable legal practice, where Respondent Neiman convinced the clients to sign up with the firm, controlled and advised clients, took the lead in negotiating the settlements of civil cases (at times through the use of coercive tactics), and signed an attorney's name to pleadings and discovery filed in a federal lawsuit. (IR 1, 60, RR. 5-54).

After twenty days of trial on The Florida Bar's Amended Petition (IR. 60), the Referee entered a very thorough report finding that, based on the evidence, the Respondents had extensively engaged in the unlicensed practice of law (RR. 5-54).

The Referee found in favor of The Florida Bar on Counts II, III, IV, V, VI, VIIB, VIII, IX, XII, XIII, XV, XVII, XVIII, XXI, and made specific findings as to Count I. The Referee found in favor of Respondents on Count XVI. Counts X, XI, XIV, XIX and XX of the Amended Petition were not heard as the Referee struck them from the trial docket as being cumulative (IR. 288). After making his findings of fact, the Referee recommended that Respondents be enjoined from engaging in the unlicensed practice of law and listed 16 specific areas which should be included in the injunction. It is from this Report and Recommendation which the Respondents' appeal.

SUMMARY OF ARGUMENT

The Referee's findings and recommendations must be upheld as they are supported by the record. Respondents bear the burden to show that the Referee's findings are clearly erroneous and unsupported by the record. Respondents have not objected to the Referee's findings, and have not met this burden. Further, there is abundant evidence in the record to support the Referee's findings. The evidence shows and the Referee found that Respondent Neiman was a business man engaging in the unlicensed practice law as a lucrative business with a direct financial interest in the settlement of cases. Respondent Neiman held himself out to be an attorney, gave legal advice to clients, signed up clients, coerced clients to settle their cases, negotiated settlements of legal matters with opposing counsel/parties, was in charge of legal cases, and signed an attorney's name to pleadings and correspondence. These undisputed findings must be upheld.

Among the findings which must be upheld is a finding that Respondent Neiman negotiated settlements and that the negotiation of settlements by a nonlawyer constitutes the unlicensed practice of law. Case law supports this finding. When determining whether an activity constitutes the unlicensed practice of law, two questions must be addressed. First, whether the activity is the practice of law. Second, if the activity is the practice of law, whether it is authorized. If an

activity is the practice of law and is authorized, the activity will not be considered improper. Negotiating a settlement in a legal matter requires a knowledge of the law greater than that possessed by the average citizen, and therefore, constitutes the practice of law. There is no rule or law that authorized Respondent Neiman's acts. Therefore, as found by the Referee, Respondent Neiman engaged in the unlicensed practice of law when he negotiated the settlement of complex legal matters.

There is no merit to Respondents' argument that other nonlawyers perform the same type of activity engaged in by Respondent Neiman thereby authorizing the activity or deeming that it not constitute the practice of law. None of Respondents' examples were similar to the instant facts, wherein clients retain a law office to represent their interests. When a client retains a law firm, certain expectations come into play, including the expectation that a member of The Florida Bar will be handling or in charge of all aspects of the case. This expectation was not met in this matter and harm resulted.

Similarly, there is no merit to Respondents' claim that there is a violation of constitutional rights, particularly equal protection, in the regulation of the unlicensed practice of law or in the findings and recommendations in the instant matter. Once again, the examples cited by Respondents are distinct from the facts of this case. Moreover, case law has held that enforcing the prohibition against a

nonlawyer engaging in the practice of law does not violate the nonlawyer's constitutional rights.

Lastly, Respondents argue that the Referee's recommendations are overbroad. The relief recommended by the Referee is well supported by case law and the evidence in the record. Rule 10-7.1 (e)(2) of The Rules Governing The Investigation and Prosecution of The Unlicensed Practice of Law envisions the Court's entry of an order "appropriate" to the facts of the case. The Referee's recommendations are necessary for the protection of the public to prevent the Respondents from engaging in the egregious acts committed in this case. Accordingly, all of the Referee's findings and recommendations should be adopted and upheld by this Court.

ARGUMENT

I. THE REFEREE'S FINDINGS AND RECOMMENDATIONS MUST BE UPHELD

A referee's findings of fact are presumed correct and will be upheld unless clearly erroneous and lacking in evidentiary support. The Florida Bar v. Catarcio, 709 So. 2d 96, 99 (Fla. 1998); The Florida Bar v. Hughes, 697 So. 2d 501, 503 (Fla. 1997). The party seeking review in a proceeding concerning the unlicensed practice of law bears the burden of showing that the referee's findings are clearly erroneous and unsupported by the record. The Florida Bar v. Catarcio, supra. Unless, that burden is met, the referee's findings and recommendations must be upheld on review. The Florida Bar v. Hughes, supra. In this matter, Respondents' have not objected to the Referee's findings and, therefore, have not met this burden. (For the convenience of this Court, a copy of the Report of the Referee is included in Appendix V.).

Nonetheless, in an attempt to undermine the Referee's findings, Respondents , in their Statement of the Case and Facts, mischaracterize both the record below and the substance of the findings made by the Referee. Thus, Respondents disingenuously state, that, in Count I of the Petition, Respondent Neiman was merely charged with working for attorneys by discussing settlements with opposing counsel when the employing attorney was not available. (RIB 5).

They complain that no specific case is mentioned in Count I and that, although Respondent Neiman's income is discussed in the Count, fee splitting was not proved at trial. (RIB 5).

Count I contains general allegations regarding how Respondents operated their business. As to Count I, the Referee found that Respondent Neiman, a convicted felon (TFB Exs.18-22), had been working in the legal field for almost a decade and received hundreds of thousands of dollars for providing services in legal matters. (RR. 5). The facts of this matter show that at all times material herein, Respondent Neiman purportedly worked for the law office of Norman Ganz or Saul Smolar, members of The Florida Bar. (IR. 60, RR. 7-42, 51). While fee splitting was not charged and does not have to be proved to support a finding that Respondents engaged in the unlicensed practice of law, Respondent Neiman personally grossed over $1.4 million in salary in 1995 from the legal field and had a verbal agreement with attorney Norman Ganz to be paid six million dollars over a six year period. (RR 6-7, TFB Ex. 106, l07). The evidence showed, and the Referee found, that Respondent Neiman was a businessman trying to practice law as a lucrative business and had a direct personal financial interest in the settlement of the cases. (RR.6-7).

The Referee did not accept Respondent Neiman's attempt to excuse his

conduct as being merely the docile, passive relayor of information for an attorney and found that Respondent Neiman's explanations were not credible. (RR. 5-6, 27). The Referee found that Respondent Neiman went well beyond performing merely "mechanical, clerical or administrative duties, and merely transmitting [information] from and to the attorney." (RR.6). The Referee found that Respondent Neiman "called the shots", and that the attorneys associated with him did not remain "professionally responsible" for his work product. (RR. 49, 51, 52). Another finding of the Referee was that Respondent Neiman was not supervised by attorneys but that Neiman was the one exercising the "charge", direction and oversight of the matters which he worked on, that he was not generally receiving "careful" direction from anyone and that any attempts at supervision were grossly inadequate. (RR. 51). Also, the Referee found that Respondent Neiman frequently led people to believe that he was an attorney by his actions and by his failure to disclose his paralegal status. (RR. 50-51). The Referee found that Respondent Neiman's motivation throughout the cases was nothing more than his own monetary gain. (RR. 53-54). Further, the Referee found Neiman's conduct was quite harmful to some clients. (RR. 53). Nowhere do Respondents dispute these findings.

Respondents state that Count II concerned a personal injury action during

which Respondent Neiman engaged in settlement negotiations. (RIB 5). Again, Respondents "state" what the allegations of the count were but do not discuss or dispute the findings of the Referee. As to Count II, the Referee found that Respondent Neiman was the primary contact for Ms. Gould, the client in the personal injury action, in 1995 and 1996. Based on the evidence, the Referee found that Respondent Neiman advised Ms. Gould that she had a good case and engaged in settlement discussions with representatives of the defendant. (RR.7-8). The Referee also found that Donna Tingling, a paralegal formerly of the Ganz office, credibly testified that Respondent Neiman was "in charge of the office" at the time of this matter. (RR. 8).

Respondents appear to agree with the finding of unlicensed practice of law proven in Count III. Respondents state that Respondent Neiman attended a mediation with his employing attorney, presented the facts as he was more familiar with them and actively participated in the negotiation process. (RIB 5-6). The Referee found in Count III that Respondent Neiman in relation to this matter extensively argued issues of law with opposing counsel and handled a mediation for the client, arguing issues of liability, causation, and damages. (RR. 9). Respondents do not dispute these findings.

Counts IV, V, and VI concerned a lawsuit against the Broward County

Clerk's Office during the years 1995-1998. (RR. 9). The Referee found that clients were referred to Respondent Neiman by the NAACP. (RR. 9-11). The Referee further found that the clients believed Respondent Neiman was an attorney because he acted like one and was making decisions on the case. (RR. 9-11). Respondent Neiman was the main primary contact on the case because attorney Ganz was inaccessible. (RR. 12). The Referee further found that Respondent Neiman engaged in extensive settlement discussions and arguments with opposing counsel. (RR. 13-17). The case settled and the clients were not happy with their settlements. (RR. 19-20). In their brief, Respondents state that Respondent Neiman appeared at the settlement conference and participated in the settlement negotiations. (RIB 6). Once again, Respondents do not dispute the Referee's findings.

As to Counts VIIB and VIII, the Referee found that, in 1999, Respondent Neiman gave advice to clients involved in discrimination cases and pressured the clients to settle the cases and give a donation to the NAACP from their settlement proceeds. (RR. 21-24). The Referee also found that Respondent Neiman handled settlement discussions with opposing counsel. (RR. 21-24). In their Statement of the Case and Facts, Respondents do not dispute these findings but instead acknowledge that Respondent Neiman attended settlement meetings and participated in settlement negotiations. (RIB 6).

Count IX involved an employment discrimination case. As to this count, the Referee found that clients were referred to Respondent Neiman by the NAACP in 1996, that Respondent Neiman gave them advice, signed them up and presided over several meetings with them wherein strategies and settlements were discussed. (RR. 24-25). The Referee also found that Respondent Neiman allowed Janet Arvo, a client in this case, to introduce him to a third party as her attorney and he did not state that he was not an attorney. (RR. 25). Respondent Neiman discussed with clients their individual settlements and did not disclose the total amounts of the settlements. (RR. 25). The Referee found that Neiman had each claimant sign a receipt and after they had signed it, Neiman altered the document to make it look like a closing statement by adding waiver language and the amount of fees that each attorney received. (RR. 28-29, TFB Ex. 5). An engagement fee was demanded by Neiman from the claimants even though it had not been disclosed or agreed to. (RR. 27). As with the other counts of this matter, Respondents do not dispute the accuracy of these findings.

Respondents do not discuss Count XII in their brief. As to this count, the Referee found that during 1997 Respondent Neiman told Laura Starr, a paralegal for opposing counsel, that "I represent the Plaintiffs" and that he would negotiate for them. (RR. 28). Respondent Neiman admitted in his testimony that he told Ms.

Starr he had the authority to settle the case. (RR. 28).

Respondents do address Count XIII. In their brief, Respondents state that Respondent Neiman attended a mediation in the employment discrimination case and participated in settlement negotiations at the mediation. (RIB 6-7). The Referee found as to Count XIII that, in 1996, opposing counsel Haas Hatic attempted to contact Norman Ganz regarding the employment discrimination case and that Respondent Neiman responded, a familiar pattern from other counts. (RR. 29). In his report, the Referee states that Respondent Neiman attempted to argue issues of liability and told the opposing counsel that he was chief cook, bottle washer, and senior paralegal for the Ganz firm. (RR. 29, T. 1510). Respondent Neiman conducted the mediation for the plaintiff after Mr. Ganz introduced Respondent Neiman as the person most knowledgeable about the plaintiff's case. (RR. 29). When Mr. Hatic attempted to discuss settlement of the case with Saul Smolar, an attorney affiliated with the Ganz firm, Mr. Smolar told Mr. Hatic that settlement discussions would have to be handled by Respondent Neiman. (RR. 29). Norman Ganz, the alleged attorney on the case, also told Mr. Hatic that all settlement discussions had to occur with Respondent Neiman, and not him. (RR. 29). All of these findings were made by the Referee and have not been disputed by Respondents.

As to Count XV, the Referee found that, in 1991, Respondent Neiman gave advice to Stacy Koltun, a 19 year old who had been involved in an automobile accident. (RR. 30-34). Respondent Neiman further told Ms. Koltun and her father that he would negotiate a settlement for her. (RR. 31). Ms. Koltun believed Neiman was an attorney based on the way he held himself out, handled the meeting, accepted the case and hired associates. (RR. 31). The Referee's report also found that some employees with the insurance companies believed that Respondent Neiman was Ms. Koltun's attorney. (RR. 31, TFB Exs. 72, 89, Resp Exs. 81,82). Respondent Neiman negotiated the settlement with the insurance company with very specific and detailed arguments. (TFB Ex. 72). Respondent Neiman advised Ms. Koltun whether to accept or reject a settlement offer, and when the case settled several years later, he explained the closing statement to her. (RR. 33-34). Respondents do not discuss Count XV in their brief and the findings remain undisputed.

As to Count XVII, the Referee found that, in 1998, Respondent Neiman launched into a presentation of the case with opposing counsel and clearly advocated his client's position. (RR. 34-36). Respondent Neiman tries to explain away this count by stating he was appearing *pro se*. While it is true that a Federal District Court judge recently found that Respondent Neiman was in fact the owner

of the car in question, Respondent Neiman disputed that fact throughout the litigation and, at the time he was advocating the position on the case, he was doing so on another's behalf. (T. July 6, 35-44, 54).

As to Count XVIII, the Referee found that during 1998 Respondent Neiman spoke with opposing counsel in an employment discrimination case and did not disclose that he was not an attorney. William Davell, Esq., an attorney representing an opposing party, called the Smolar firm and asked to speak to the person responsible for the case. Respondent Neiman took the call and, speaking in the first person, said he was responsible for the case. (RR. 38). At a meeting in the case with opposing counsel, Respondent Neiman made a factual presentation of the case, argued the law and stated the firm would be bringing in a firm from Miami to try the case. (RR. 38). Respondents again appear to agree with this finding as they state that Respondent Neiman participated in the settlement conference as he was more familiar with the facts of the case than the attorney. (RIB 7).

As to Count XXI, the Referee found that in a sexual harassment claim in 1998, Respondent Neiman contacted Joan Young, an attorney for CBS, and argued the facts of the case. (RR. 39-40). Ms. Young believed Respondent Neiman to be an attorney. (RR. 40). A meeting was arranged at which Respondent Neiman advocated the client's position. (RR. 41). As with many of the other counts,

Respondents agree with this finding stating that Respondent Neiman participated in the settlement discussions. (RIB 7).

As to the case on the whole, the Referee found as follows:

> [T]he evidence established that Neiman performed services under a course of conduct which "affect[ed] important rights of a person under the law, and . . . the reasonable protection of the rights and property of those advised and served require[d] that [Neiman] possess legal skill and a knowledge of the law greater than that possessed by the average citizen." He also performed acts which are commonly understood to be the practice of law. This is demonstrated by his serving as a primary contact, for many of the discussions concerning these matters; his holding himself out as an attorney would do in his dealings with others; his attempts to argue and advocate various or all aspects of cases with opposing counsel, including the merits of the case, the applicability of the law, evidentiary issues, liability issues, discovery matters and settlement matters; his attempts to analyze statutory and case law and discuss it with clients and opposing counsel; his efforts at providing clients advice on the strengths and weaknesses of their cases and on how they should proceed; his appearance and active participation at mediation sessions including the presentation of the client's case and his extensive active participation on behalf of the complainants, including the presentation of the client's case; his appearance at settlement sessions and his extensive active participation on behalf of the complainants, including the presentation of the client's case; his extensive involvement with fee arrangements; his attempts to explain to clients their various obligations under retainer agreements and other legal documents; his drafting of detailed letters and legal documents; his signing of court filed documents; his attempts to discuss legal documents with clients without any attorney present; the complex legal and ethical issues involved in these cases; and the absence of credible evidence that Norman Ganz or any other attorney had any meaningful role in anything to do with the development or settlement of several of these cases. In light of the tight time frames involved, the extensive involvement of Brian Neiman, the illness of Norman Ganz, the other issues mentioned

above, and evaluating the demeanor of the witnesses, the Referee finds it implausible that Norman Ganz or any other attorney was, ahead of time, "clearing" everything for Neiman to do or say to others in these cases. Further, Ganz himself acknowledged that he would frequently give Neiman a "range" of settlement figures and then let Neiman negotiate directly with defense attorneys. Ganz and Smolar further acknowledged that they would often simply give Neiman no more than the "gist" of what they wanted done, and then Neiman would accomplish it using his own ideas and words.

Moreover, in his testimony at trial on Count XVII, Saul Smolar himself acknowledged that he gave Neiman no more than perfunctory instructions and then let Neiman negotiate directly by telephone with a licensed attorney representing the opposing party. Smolar further acknowledged that he allowed Neiman to handle this telephone discussion using his own ideas and words. In other words, it was left up to Neiman to use his own knowledge and judgment as to how to present the case to opposing counsel.

Further, during some of his involvement in these cases, Neiman, at a minimum, served as a conduit or intermediary for the obtaining of information for the preparation, consideration or evaluation of legal matters from claimants who never first consulted with any supervising attorney. Such conduct is clearly improper.

The Referee notes that the evidence did establish that other attorneys from the Ganz or other firms were in fact active in various aspects of several of these cases. Neiman places a great weight on this in attempting to establish that he did not practice law himself. However, Neiman's argument is misplaced. The fact that affiliated attorneys may also be practicing law does not entitle an unlicensed employee to practice law and then try to use the attorneys' involvement as a safe harbor. The evidence established that Neiman was practicing law himself, regardless of any of the activities of the other attorneys associated with the Ganz firm or other firms . . . Accordingly, the Referee finds in favor of The Florida Bar.

(RR. 44-47, citations omitted and footnote references to specific counts omitted).

All of the findings of the Referee are supported by competent and credible evidence. Based on the evidence, the Referee concluded that Respondents engaged in the unlicensed practice of law in all the Counts that were heard before him with the exception of Count XVI. (RR. 44). Further, the Referee found that Respondent Neiman caused harm to clients. (RR. 53-54) and gave testimony in this case lacking in credibility (RR. 5, 6, 27, 38, 39). As found by the Referee,

> Neiman's conduct in these cases, while perhaps helpful to a few, was quite harmful to others. For years Neiman lacked accountability to anyone. His harmful conduct in this case is more than ample ammunition to support a conclusion that Florida law should not be broadly construed to allow an expanded role for paralegals to perform functions traditionally performed by attorneys.

(RR. 53-54).

There is also ample ammunition in the Referee's Report to find that Respondents engaged in the unlicensed practice of law. The findings of fact made by the Referee are supported by the evidence and undisputed by Respondents. As Respondents have failed to meet their burden of proof, the Referee's Report must be upheld.

II. ENGAGING IN SETTLEMENT NEGOTIATIONS IS THE UNLICENSED PRACTICE OF LAW

Perhaps realizing the futility of the task, rather than arguing that the facts as found by the Referee are not supported by the record, Respondents argue that engaging in settlement negotiations is not the unlicensed practice of law. Respondents appear to be attacking the findings of law made by the Referee. These arguments were raised several times by Respondents and rejected by the Referee. (IR. 4, 11, 29, 42, 61, 63). They should also be rejected here.

The crux of Respondents arguments is that many nonlawyers engage in settlement negotiations, Respondent Neiman did not know that his activity was improper, and Respondent Neiman was working under the direction and supervision of a member of The Florida Bar. None of these arguments are supported by the record or the case law.

A. RESPONDENT NEIMAN WAS NOT WORKING UNDER THE DIRECTION AND SUPERVISION OF A MEMBER OF THE FLORIDA BAR

Respondents' argument on page 10 of its brief begins with incorrect facts stating that Respondent Neiman was working as a paralegal for an attorney and that the acts alleged were done at the instruction of, direction of, under the guidance of, and with his employing attorney's knowledge and consent. This

statement of Respondents' totally ignores the findings of the Report of Referee.

The Referee found that Respondent Neiman was a business man engaging in the unlicensed practice law as a lucrative business with a direct personal financial interest in the settlement of the cases. (RR. 6-7). The Referee found that Respondent Neiman's motivation throughout the cases was nothing more than his own monetary gain and that he was quite harmful to some clients. (RR. 53-54). The Referee also found that Respondent Neiman "called the shots" and that the attorneys associated with him did not remain "professionally responsible" for his work product. (RR. 49, 51, 52). Further, the Referee very clearly found that Respondent Neiman was not supervised by attorneys, but that Respondent Neiman was the one exercising the "charge", direction and oversight of the matters which he worked on, that he was not generally receiving "careful" direction from anyone, and that any attempts at supervision was grossly inadequate. (RR. 51). In other words, rather than working for the attorneys, the attorneys worked for Respondents. (RR. 52).

B. RESPONDENTS KNEW THE ACTIVITY WAS IMPROPER

Respondents also claim at page 10 of their brief that Respondent Neiman relied on an article published in 1991 by Lori S. Holcomb, then Assistant Director of the Unlicensed Practice of Law Department of The Florida Bar, as authorization

for the conduct. However, the Referee in his Report found:

> Neiman claims that he relied on Bar ethics decisions in proceedings as a "paralegal" in the specific cases described hereinafter. In particular, he cited a 1991 Florida Bar *News* article written by Bar counsel Lori S. Holcomb in which she states that "nonlawyer employees [such as paralegals] may be delegated mechanical, clerical or administrative duties" and "may transmit information from and to the attorney." (Resp. Ex. 84). However, the clear and convincing evidence in this case established that Neiman went well beyond performing merely "mechanical, clerical or administrative duties" and merely transmitting information "from and to the attorney." Moreover, the evidence established that Neiman committed conduct which Holcomb condemned in the very same article "[t] he employee cannot be given a range in which to settle," and "it must be made clear that the nonlawyer is merely transmitting information from the attorney." Far from being merely a paralegal, Neiman was a business man who was trying to practice law as a lucrative business.

(RR. 6)

The Referee also found that Respondent Neiman's primary employing attorney, Norman Ganz, disagreed with the part of the Bar's opinion regarding the prohibition to giving the paralegal a range in which to settle, and accordingly, Mr Ganz did not follow it. (RR. 6, ftn. 3). This finding is based on testimony of Respondent Neiman. Therefore, Respondent Neiman committed conduct which Ms. Holcomb condemned in the article he claims to have relied on. This certainly demonstrates that he knew his conduct was improper.

Respondents on page 11 of their brief incorrectly state: "years after the article was published, a complaint was filed with the Bar critical of Respondent

Neiman being involved in the negotiation process. The Bar did not seek to sanction Respondent Neiman. This reaffirmed his belief that he could participate in settlement negotiations." (RIB. 11).

Janet E. Bradford, Branch Unlicensed Practice of Law Counsel for the Florida Bar, closed the complaint referenced above with a letter dated August 7, 1995, to Respondent Neiman's attorney, H. Dohn Williams, Jr. This letter was introduced at the trial in this cause as The Florida Bar's Exhibit 110. (A copy of this letter is attached hereto as Appendix VI). Ms. Bradford's August 7, 1995, letter to Mr. Williams stated that the case was being closed based on a finding of no unlicensed practice of law as to the letter and insufficient evidence of the unlicensed practice of law as to the phone call. (TFB Ex. 110, Appendix VI). This letter further cautioned Mr. Neiman as follows:

> While the Committee found that a paralegal can, with the proper authorization of his employer, provide a factual recitation of damages or liabilities as dictated by the attorney-employer, <u>any application of law to the facts or any discussions of negotiations by the paralegal would not be permissible</u>. Because the phone conversation in this instance did not progress to this point, the Committee found insufficient evidence of unlicensed practice of law with regard to Mr. Neiman and Mr. Hendrick's telephone call.
> However, Mr. Neiman is strongly cautioned by the Standing Committee as to the content of any communications he may have in the future with regard to cases being handled by the law firm and advises him to educate himself with regards to Florida law and Ethics Opinions in this area. (Emphasis supplied) (TFB Ex. 110; Appendix

VI).

Ms. Bradford's letter warned Respondent Neiman not to apply law to the facts and that any discussion of negotiation would not be permissible. Therefore, Respondent Neiman could not have believed from this letter that he could engage in settlement negotiations in any fashion. A previous warning to an individual puts him on notice that the conduct is illegal or improper. *See* McGuire v. State, 489 So. 2d 729 (Fla. 1986) (a previous warning to a defendant that her conduct was illegal, countered her argument that she did not have knowledge that the conduct was illegal). Further, at trial, Respondent Neiman denied any knowledge of this complaint filed against him in 1995, until he was cross-examined about it and shown copies of Ms. Bradford's letters dated November 17, 1994, and August 7, 1994. (IR. 110, 111, T. Aug. 2 AM 14, T. Aug. 3 AM 14 - 18). Therefore, how could he have relied on the matter if he denied that it occurred?

C. WHEN NONLAWYERS SUCH AS RESPONDENTS CONDUCT SETTLEMENT NEGOTIATIONS, THE NONLAWYERS ARE ENGAGING IN THE UNLICENSED PRACTICE OF LAW

1. ENGAGING IN SETTLEMENT NEGOTIATIONS IS THE PRACTICE OF LAW

Respondents at page 11 of their brief incorrectly state that this Court has already declared that participating in settlement negotiations is not the unlicensed

practice of law. This Court never made such a declaration. In fact, this Court and other courts have found that a nonlawyer engages in the unlicensed practice of law when a nonlawyer negotiates a settlement for a third party. The Florida Bar v. Walzak, 380 So. 2d 428 (Fla. 1980) (nonlawyer was enjoined from, among other things, negotiating with an opposing party on behalf of a client); The Florida Bar v. Abraham & Christiansen, Inc., No. 90,568(Fla. Feb. 4, 1999) (nonlawyers enjoined from" . . .conducting settlement negotiations of filed lawsuits on behalf of debtors; negotiating, defending and/or setting legal actions on behalf of others; . . ."); The Florida Bar v. Goforth and Cavenaugh, et al, No. 84,697 (Fla. March 14, 1996) (nonlawyers enjoined from ". . . negotiating claims for bodily injury with an insurance company or insured; . . ."). (A copy of the Stipulation, Referee's Report and the Court's Order in Abraham & Christiansen and Goforth and Cavenaugh are attached hereto as Appendix VII.); The Florida Bar v. Cohen, 560 So. 2d 785 (Fla. 1990) (a lawyer while on suspension engaged in the practice of law when he negotiated with another attorney regarding the settlement of a case); The Florida Bar v. Florida One Stop Financial Services, Inc., No. SC00-1231 (Dec. 7, 2000) (nonlawyer enjoined from "... representing individuals or entities in negotiation with a plaintiff or plaintiff's counsel to resolve a pending lawsuit, including but not limited to negotiating to obtain a foreclosure agreement, or to reach a settlement, or

to reach a settlement in a foreclosure proceeding"). (A copy of this Court's Order is attached hereto as Appendix VIII). *See also* In re: Carlos, 227 B.R. 535, 539 (U.S. Bankr. Ct., C.D. Calif. 1998)(negotiation of a reaffirmation agreement in a bankruptcy matter by a nonlawyer employee of the law firm constitutes the unauthorized practice of law, even though the attorney reviewed the work product, an attorney may not delegate such functions to a nonattorney); Louisiana State Bar Association v. Edwins, 560 So. 2d 831 (LA. 1990); Duncan v. Gordon, 476 So. 2d 896 (LA. 1985), and Mays v. Neal, 327 Ark. 302, 938 SW. 2d 830 (Ark. 1997).

Even if this Court had not found that engaging in settlement negotiations constitutes the unlicensed practice of law, this Court has provided guidelines to determine whether an activity constitutes the unlicensed practice of law which support such a finding. As held by this Court in The Florida Bar v. Sperry, 140 So. 2d 587, 591 (Fla. 1962):

> In determining whether the giving of advice and counsel and the performance of services in legal matters for compensation constitute the practice of law it is safe to follow the rule that if the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

Respondent Neiman's conduct, engaging in settlement negotiations on

behalf of represented litigants with respect to filed complex lawsuits and unfiled claims, meets the Sperry definition and constitutes the practice of law. Each count states that the activities were taking place in relation to legal matters. When conducting the negotiations, Respondent Neiman was working in a law firm. In negotiating the settlements, Respondent Neiman had to take a position which involved knowing and applying the law to a particular set of facts. This requires a knowledge of the law greater than that possessed by the average citizen. The reasonable protection of the clients of a law office requires that the person conducting the settlement negotiations possess legal skill and a knowledge of the law greater than that possessed by the average citizen.

A lawyer is retained by a client to use all of the lawyer's legal training, skill and experience to work for the client. Settlement negotiations require knowing the strengths and weaknesses of the legal positions of the parties. One must have a thorough knowledge of the facts of the case and the applicable law in order to obtain a settlement that is appropriate for the client. It cannot be disputed that the settlement of litigation or pre-filed cases affects the important rights of a person under the law. Florida Professional Ethics Committee Opinion 74-35 states that participation in settlement negotiations by a nonlawyer "always involve the exercise of the lawyer's professional judgment. Therefore, as a practical matter, a

lawyer cannot delegate any responsibility for negotiations to lay employees and avoid the proscription on aiding the unlicensed practice of law." (A copy of the opinion is attached hereto as Appendix IX). Respondent Neiman engaged in the activity as a course of conduct and was greatly compensated. Therefore, Respondent Neiman's conduct is defined by case law as the practice of law.

While it is true that a nonlawyer employee of a law office may act as a conduit of information for the supervising attorney, the activity must be strictly limited to passing on information from the attorney. Passing on of information would not be negotiation. The Referee found that Respondent Neiman was not merely passing on information from an attorney, but that Respondent Neiman conducted settlement negotiations and that this activity, in addition to the others alleged in the petition, constitutes the unlicensed practice of law. (RR. 5-6, 42, 47).

2. THE CONDUCT ENGAGED IN BY RESPONDENTS IS NOT AUTHORIZED

In support for their argument that engaging in settlement negotiation is not the unlicensed practice of law, Respondents spend six (6) pages of their brief listing what they claim to be jobs that allow nonlawyers to negotiate. When determining whether an activity constitutes the unlicensed practice of law, two questions must be addressed. First, whether the activity is the practice of law. Second, assuming the activity is the practice of law, whether the activity is

authorized. The Florida Bar v. Moses, 380 So. 2d 412 (Fla. 1980). If an activity is the practice of law and is authorized, the activity will not be considered improper. There is no rule or law that authorizes Respondent Neiman's acts.

The fact that one individual may be authorized to engage in an activity does not require that every individual be authorized to engage in the activity. There are several areas where one class of individuals have been authorized to practice law while others have not. For example, real estate licensees may draft contracts for sale of real estate while nonlicensees may not. Keyes Co. V. Dade County Bar Assoc., 46 So. 2d 605 (Fla. 1950); The Florida Bar v. Keehley, 190 So. 2d 173 (Fla. 1966); and The Florida Bar v. Arango, 461 So. 2d 932 (Fla. 1984). Assuming that the activities of the nonlawyers cited in Respondents' examples are authorized, an assumption The Florida Bar is not prepared to make as their conduct is not at issue here, nowhere is there an authorization for a nonlawyer "employee" of a law office to conduct settlement negotiations.

The employees cited in the examples given by Respondents are working directly for the party settling the claim. In contrast to the examples given by Respondents, when an individual went to Respondent Neimans' law office, the individual was contracting for the provision of legal services by a member of The Florida Bar. When a client went to the law office, the client expected to see a

lawyer and have the service provided by a lawyer. It is highly unlikely that a similar expectation exists when a member of the public is dealing with the agencies named by Respondents. The law office where Respondent Neiman worked held itself out to the public as being in the business of practicing law, therefore, a member of the public would expect that the services would be provided by a member of The Florida Bar. On the other hand, the entities named by Respondent Neiman do not hold themselves out to the public as being in the law business so such an expectation does not exist. There is a fundamental difference between the entities named in Respondent Neiman's brief and a law office. This difference gives rise to certain expectations and obligations. In re: Carlos, 227 B.R. 535, 539 (U.S. Bankr. Ct., C.D. Calif. 1998) (When a client hires an attorney to perform services "the representation of the client's interests normally constitute the practice of law" and "the client expects and is entitled to the expertise of an attorney to assure that the client's legal needs are protected and advanced according to the standards of law practice in the community.") These expectations cannot be met by a nonlawyer. [1]

[1] As further argument that the conduct of Respondents is authorized, on pages 20-21 of their brief, Respondents reference an advisory opinion issued July 3, 1999 by this Court's Mediator Qualifications Advisory Panel. This opinion was issued at the request of Respondents' counsel as to the appropriate conduct for a certified court-appointed mediator and clearly stated that it only interpreted mediation rules and that The Florida Bar should be contacted regarding the appropriateness of such actions under their rules, specifically as to the unauthorized practice

Finally, Respondent Neiman points to a proposed amendment to the Rules Regulating The Florida Bar as support for his argument that engaging in settlement negotiations is not the unlicensed practice of law. [2] While the proposed amendment does contain the language quoted by Respondent Neiman, the proposed amendment also contains the following language in the comment:

> Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals such as paralegals and legal assistants. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client. The measures employed in supervising nonlawyers should take account of the level of their legal training and the fact that they are not subject to professional discipline. <u>If an activity requires the independent judgment and participation of the lawyer, it cannot be properly delegated to an nonlawyer employee</u>. (Emphasis supplied).

As stated in Florida Bar Professional Ethics Comm. Op. 74-35, engaging in settlement negotiations requires the independent judgment and participation of the lawyer, and cannot be properly delegated. (Attached hereto as Appendix VII).

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of law. It should be noted that Respondents excluded the last sentence from the opinion which dealt with the unlicensed practice of law issue from their brief. Clearly, the opinion addressed mediation rules, not the issue of unlicensed practice of law, and is not relevant to this case. (A copy of Ms. Posey's July 13, 1999 letter to Harris Solomon and the July 3, 1999 Advisory Opinion is attached hereto as Appendix X).

[2] The proposed amendment has not been filed with or approved by this Court although it will be filed with the 2001 rules package.

The conduct engaged in by Respondents is the unlicensed practice of law. Respondents were aware of this and chose to ignore the law. As found by the Referee, "[f]or years, Neiman lacked accountability to anyone." (RR. 53-54). The Referee's Report and Recommendations hold Respondents accountable and should be upheld by this Court.

III. IT IS NOT A VIOLATION OF EQUAL PROTECTION TO ENJOIN A NONLAWYER FROM ENGAGING IN THE UNLICENSED PRACTICE OF LAW

There is no merit to Respondents' claim that equal protection is violated by enjoining Respondent Neiman from participating in settlement negotiations with a tortfeasor's attorney or a tortfeasor's nonlawyer representative, while not enjoining a nonlawyer representative of a tortfeasor from doing the same thing. The regulation of the unlicensed practice of law serves the critical role of protecting the public from unqualified individuals who are attempting to perform legal services. The Florida Bar v. Moses, 380 So. 2d 412 (Fla. 1980) As has been held by this Court, there is no violation of constitutional rights, including equal protection, in the regulation of the unlicensed practice of law. The Florida Bar v. Miravalle, 761 So. 2d 1049 (Fla. 2000); The Florida Bar v. Schramek, 616 So. 2d 979 (Fla. 1993).

Further, the examples cited by Respondents are not similar to their situation. As stated previously, they differ in at least four different respects: first, there is no attorney-client relationship in the examples given whereas such relationship exists with the clients of the law firm involved in this matter; second, the individuals in the examples given are not acting as the representative of a third party; third, individuals with whom the employees in the example interact do not believe that the employees are attorneys; and fourth, individuals do not go to the employees

seeking legal advice. Therefore, the fact that one may be enjoined has no bearing on whether or not the other is enjoined.

Accordingly, for all of the reasons stated above, there is no violation of equal protection by enjoining Respondents from engaging in the unlicensed practice of law.

IV. THE REFEREE'S RECOMMENDATIONS ARE APPROPRIATE AND NECESSARY BASED UPON RESPONDENTS' EGREGIOUS AND CUMULATIVE MISCONDUCT

Respondents argue that the Referee's recommendations are overbroad. The Florida Bar disagrees. The relief recommended by the Referee is supported by case law as well as by the evidence developed in this record.

Rule 10-7.1(e)(2) of the Rules Governing The Investigation and Prosecution of The Unlicensed Practice of Law provides that when this Court reviews a Report of Referee and any objections, the Court must determine as a matter of law whether the Respondents engaged in the unlicensed practice of law and whether the Respondents activities should be enjoined by "appropriate" order. As such, the Rule envisions the Court's entry of any order "appropriate" to the facts of the case. In this case, the recommendations of the Referee are appropriate and the injunction as outlined in the report should be entered.

Based on the Referee's findings and Respondent Neiman's own admissions that as early as 1991 he knew he was not permitted to negotiate settlements, the Referee recommended that Respondents be restrained and enjoined from:

a. having direct contact with any client, opposing counsel or third party, unless it involves Neiman's own personal legal matters;

b. without limiting the above, discussing, construing or interpreting the applicability of any case law, statutory law or any other law with any opposing counsel or other third party;

c. speaking on behalf of third parties at settlement conferences, meetings, negotiations or meditations, even with an attorney present;

d. appearing on behalf of third parties at settlement meetings, negotiations or meditations without the attorney present for whom Respondent is employed;

e. without limiting the above, providing third parties advice on the strengths and weaknesses of any legal matter, or making decisions on behalf of others that require legal skill and a knowledge of the law greater than the average citizen;

f. without limiting the above, advising third parties as to various legal remedies available to them and possible courses of action;

g. preparing pleadings, motions or any other legal documents for others, and without limiting the above, explaining to third parties the legal significance of any document;

h. without limiting the above, having direct contact in the nature of consultation, explanation, recommendation, advice or assistance in the selection of any legal remedy or course of action;

i. suggesting, directing or participating in the accumulation of evidence supporting any legal claim;

j. holding themselves out to third parties in such a manner that a third party places some reliance on them to handle legal matters;

k. impliedly holding himself out as an attorney;

l. without limiting the above, serving as a conduit or intermediary for the obtaining or relaying of any information for the preparation, consideration or evaluation of any legal matter

from others who have never consulted with Respondents' supervising attorney;

m. soliciting or accepting attorney's fees;

n. without limiting the above, corresponding with parties or attorneys of parties as the representative of any client relating to legal matters;

o. signing any letter, pleading or other document on behalf of any attorney or under any attorney's signature, even with such attorney's consent;

p. and from otherwise engaging in the practice of law in the State of Florida until such time as Respondent Brian Neiman is duly licensed to practice in this state.

All of the above-referenced recommendations are necessary for the protection of the public to prevent Respondent Neiman from engaging in the acts committed in this case. While The Florida Bar acknowledges that the recommendations may not be appropriate in all cases, they are appropriate here based on the egregious and cumulative acts of the Respondents. The Florida Bar established that Respondent Neiman held himself out to be an attorney and controlled an enormously profitable legal practice. (RR. 12, 37, 46). Witness after witness testified to conduct -- such as advising clients, negotiating complex civil disputes and presenting cases at mediation -- that courts and practicing lawyers expect will be undertaken only by members of The Florida Bar because such activities involve the exercise of considerable discretion, judgment and specialized

knowledge beyond that possessed by lay persons. In other words, witness after witness for The Florida Bar established that Respondent Neiman engaged in the unlicensed practice of law and did so wantonly, willfully, and in the interest of personal gain and profit. As such, the relief recommended is warranted and necessary.

Respondents argue that if this Court adopts all of the Referee's recommendations, Respondent Neiman will be denied the right to work in the lawful occupation of a paralegal. This is not true. Respondent Neiman can work as a paralegal, but he cannot engage in the unlicensed practice of law. It is also important to keep in mind that in the cases presented to the Referee, Respondent Neiman was not working as a paralegal. He was running a law business for profit (RR. 6-7) and calling the shots (RR. 49). The attorneys associated with him did not remain professionally responsible for Respondent Neiman's work product (RR. 51-52). Rather, the Referee found that Respondent Neiman was not supervised by attorneys, but that he exercised the charge, direction and oversight. (RR. 51).

In their brief, Respondents cite several unlicensed practice of law cases and make the argument that the common theme in the cases is nonlawyers "hanging up their own shingle" and performing tasks for clients. (RIB 21). Not only is this an incorrect interpretation of unlicensed practice of law case law, even if it were

correct, Respondents effectively hung up their own shingle and performed tasks for clients. See The Florida Bar v. Pascual, 424 So. 2d 757 (Fla. 1982) (nonlawyer working for a law firm found to have engaged in the unlicensed practice of law). As found by the Referee, Respondent Neiman controlled the law office, not the lawyers.

Moreover, there is support in the case law for the issuance of an injunction with prohibitions similar to those recommended by the Referee. For example, in The Florida Bar v. Schramek, 616 So. 2d 979, 987 (Fla. 1993), the Respondent was permanently enjoined from "(e) having direct contact in the nature of consultation, explanation, recommendations, advice and assistance in the provision, selection and completion of preprinted legal forms; (f) suggesting directing, and/or participating in the accumulation of evidence to be submitted with the completed forms . . . [and] explaining legal remedies and options to individuals that affect their procedural and substantive legal rights, duties and privileges." These prohibitions are similar to the following recommendations in this case: (a) having direct contact with clients, (i) regarding the accumulation of evidence and (h) explaining legal remedies.

In The Florida Bar v. Warren, 655 So. 2d 1131, 1133 (Fla. 1995), the Respondent was enjoined from "F. Giving advice and making decisions on behalf

of others that require legal skill and a knowledge of the law greater than that possessed by the average citizen; J. corresponding with parties or the attorneys of parties as the representative of a client relative to legal matters . . ., L. preparing pleadings and any other legal documents for third parties..., [and] N. having direct contact in the nature of consultation, explanation, recommendations, advice and assistance in the provision, selection and completion of legal forms." These prohibitions are similar to the following recommendations in this case: (a) having direct contact with any client, opposing counsel, or third party, unless it involves Neiman's own personal legal matters; (b) discussing, construing, or interpreting the applicability of any case law, statutory law or any other law with any opposing counsel or other third party; (e) providing third parties advice on the strengths and weaknesses of any legal matter; (g) preparing pleadings, motions or any other legal document for others, and without limiting the above, explaining to third parties the legal significance of any document; and (n) corresponding with parties or attorneys of parties as the representative of any client relating to legal matters.

In The Florida Bar v. Eubanks, 752 So. 2d 540, 544 (Fla. 1999), this Court enjoined the Respondent from "(1) holding themselves out to the public in such a manner that the public places some reliance on them to properly prepare legal forms or other legal documents; (2) advising individuals as to various legal

remedies available to them and possible courses of action; (5) having direct contact in the nature of consultation, explanation, recommendations, advice, and assistance in the provision, selection and completion of pre-printed legal forms or other legal documents; (6) suggesting, directing or participating in the accumulation of evidence to be submitted with the completed forms, (7) & (12) giving advice and making decisions . . ., (8) preparing pleadings and any other legal documents for others, (10) explaining legal remedies and options..., (11) construing and interpreting the legal effect of Florida law and statutes for others, [and] (14) appearing in any Florida court, directly or indirectly, as a spokesperson or representative for litigants in any court proceeding" These prohibitions are similar to the following recommendations in this case: (a) having direct contact with any client, opposing counsel or third party; (b) discussing, construing, or interpreting the applicability of any case law, statutory law or any other law with any opposing counsel or other third party; (c) speaking on behalf of third parties at settlement conferences, meetings, negotiations or mediations, even with an attorney present; (d) appearing on behalf of third parties at settlement meetings, negotiations or mediations without the attorney present for whom Respondent is employed; (e) providing third parties advice on the strengths and weaknesses of any legal matter; (f) advising third parties as to various legal remedies available to them and possible

courses of action; (g) preparing pleadings, motions, or any other legal documents for others, and...explaining to third parties the legal significance of any document; (h) having direct contact in the nature of consultation, explanation, recommendation, advice or assistance in the selection of any legal remedy or course of action; (i) suggesting, directing or participating in the accumulation of evidence supporting any legal claim; and (j) holding themselves out to third parties in such a manner that a third party places some reliance on them to handle legal matters.

In The Florida Bar v. Martin, 432 So. 2d 54, 55 (Fla. 1983), this Court enjoined the defendant from "(b) corresponding, or causing an employee or business associate to correspond with parties or the attorneys of parties as the representative of a client relative to legal matters; [and] (c) holding himself out to the community as being able to render assistance with legal problems." These prohibitions are similar to the following recommendation in this case: (k) impliedly holding himself out as an attorney and (n) corresponding with parties or attorneys of parties as the representative of any client relating to legal matters.

The Florida Bar admits that some of the recommendations made by the Referee are unique to this case. However, this case is unique based upon the serious actions of the Respondents. As evidenced by the 57 page Referee Report,

Respondents engaged in a course of egregious activity over a period of several years. The recommendations are appropriate as to the activity in this case and are necessary to prevent Respondent Neiman from repeating his harmful and unlawful activities. Therefore, all of the recommendations of the Referee should be adopted.

CONCLUSION

For the foregoing reasons, The Florida Bar respectfully requests that this Honorable Court uphold the Report of the Referee in its entirety, find that the Respondents engaged in the unlicensed practice of law and enjoin the Respondents as set forth in the report. The Florida Bar also requests that this Court tax the costs of these proceedings against Respondents in the amount of $28,726.16 as reflected in the Corrected Final Supplemental Affidavit of Costs filed herein.

NOTICE AS TO COSTS

At the time the Referee's Report was issued, Respondent Neiman had filed for relief in United States Bankruptcy Court. The Florida Bar moved for and obtained relief from the automatic stay imposed in a bankruptcy matter. The relief allowed The Florida Bar to proceed for injunctive relief and allowed the Referee to quantify the damages that are appropriate. On December 23, 2000, Respondent Neiman moved to dismiss his bankruptcy case and the case was dismissed by the Bankruptcy Court on January 4, 2001. (A copy of The Florida Bar's Notice of

Filing dated January 23, 2001, and the attached items evidencing dismissal by the Bankruptcy Court are attached hereto as Appendix X.) Accordingly, no relief is required from the Bankruptcy Court for the taxation or collection of costs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Answer Brief of The Florida Bar was served upon H. Dohn Williams, Jr., Counsel for Respondents, via regular U.S. Mail, Hicks, Anderson & Kneale, P.A., New World Tower, Suite 2402, 100 North Biscayne Boulevard, Miami, Fl 33132, and true and correct copies were sent to Allan J. Sullivan, Co-Bar Counsel, Sullivan, Rivero et al, 201 South Biscayne Boulevard, Suite 1450, Miami, Fl 33131, and Lori S. Holcomb, Unlicensed Practice of Law Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Fl 32399-2300, on this _____ day of March, 2001.

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