IN THE SUPREME COURT OF FLORIDA

Supreme Court Case No. 97,019

THE FLORIDA BAR,

Florida Bar File No. 2000-50,426(17C)

Complainant,

vs.

STEVEN EVAN WOLIS,

Respondent.

_____/

INITIAL BRIEF OF RESPONDENT, STEVEN E. WOLIS

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TABLE OF CONTENTS

TABLE OF CITATIONS

PRELIMINARY STATEMENT

This is a Petition filed by Steven Evan Wolis, Esq. ("Wolis"), to review the May 9, 2000 Report of Referee recommending his disbarment. The transcript of the hearing before the Referee will be denoted by the symbol "(T.__)" and the Appendix filed with this brief by the symbol "(A.__)." All *emphasis* is ours unless otherwise indicated.

The sole issue in this case is discipline. The Florida Bar ("The Bar") seeks disbarment. Wolis contends that a three year suspension satisfies the salutary purposes for discipline. The Referee recommended disbarment.

Wolis was charged along with his former boss, Hugh Keith, in a 64 count federal indictment. He entered a plea of guilty to only one count. We will show that the Referee misperceived and misapprehended the evidence by basing his recommendation of the extreme penalty of disbarment upon the **unsubstantiated** allegations in the indictment. The Referee only had the right to consider that to which Wolis plead guilty and the facts relating to it. The Bar offered no other evidence and proved no other misconduct. A correct reading of the evidence in conjunction with the mitigating factors justifies a long term suspension, not disbarment.

STATEMENT OF THE CASE

In December 1996, a superseding indictment was returned against Wolis charging him with securities law and obstruction of justice violations in connection with an SEC investigation of his employer, The Keith Group of Companies, Inc. ("The Keith Group" or "the company"). Wolis served as in-house counsel to The Keith Group since his admission to The Bar in 1987. It was his only job since his admission.

Wolis ultimately plead guilty to one count of obstruction of justice (the details of which will be outlined in the facts below). He was sentenced to one year probation on November 23, 1998, which included a 60 day home detention program.

On November 15, 1999 The Bar filed a two page, one count Complaint against Wolis. On December 20, 1999, Wolis filed his Answer and Affirmative Defenses. He admitted the allegations of the Complaint and raised defenses in mitigation.

On March 30, 2000 the Referee took testimony solely on the issue of discipline, as Wolis previously agreed that his conviction constituted a violation of The Rules Regulating The Florida Bar. The Bar offered no witnesses. Wolis testified, as did Burton Young, Esq. and Daniel Nall, CPA. The latter two primarily as character witnesses.

On May 9, 2000, the Referee issued his Report recommending that Wolis be

disbarred. This Petition followed.[1]

STATEMENT OF THE FACTS

Wolis began working for The Keith Group in 1987, before he was admitted to The Bar. That company was a real estate investment and management firm which owned and operated a number of trailer parks. (T.22). He began as an administrative assistant and then after his admission to The Bar he was "like an executive assistant to the president. I would assist other lawyers a little bit in terms of preparing documents for what they were doing, if it was like involving real estate transactions or any kind of litigation." (T.47).

The character testimony (discussed below)was legion that Wolis was a naive person who, as it turned out, was easy prey for Hugh Keith, founder of The Keith Group, who was convicted of securities fraud for his misdeeds, discussed below.

Before Wolis was employed the company doled its legal work to several outside attorneys. After his arrival and admission to The Bar, Keith elected to keep all legal matters in house. When he started work as a lawyer, Wolis handled simple landlord-tenant matters for the company, which owned a series residential rental properties and trailer parks. Wolis had never handled the kinds of cases he received

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[1]The trial transcript makes numerous references to the "FCC." In fact, all the testimony was about the "SEC." The FCC had nothing to do with this case and is a transcription error.

and he plodded through them as best he could "from documents prepared by other lawyers and watching the other lawyers in the time that I was with the company." (T.62). "And I was in well over my head. But I gave it my best shot because I wanted to impress the company, I wanted to impress the president." (T.62).

When Wolis arrived at the company in March 1987 it was in the process of going public. It had a lawyer, Lenny Bloom, who did all of the work necessary to take it public. After the public offering the company did not continue with Bloom. Instead it turned the SEC work over to Wolis at the time of its first annual report in 1987. (T.63). When Wolis told Keith that he needed guidance (after all, he was less than a one year lawyer), Keith told him, "the auditors, we're paying them enough money, they'll help you along the way." (T.64). The auditors were accountants at Deloitte Touche. (T.64).

Wolis filled out his first 10k by reading a "how to" publication from the SEC. (Wolis had taken no courses or seminars in securities law). (T.66). He then retrieved several 10k's from other companies in the real estate business and used them as templates. He gave his draft 10k to the accountants at Deloitte Touche who marked it up and returned it to him to make the changes. (T.65). In short, Wolis didn't know how much he didn't know about securities law. (T.66, 68).

In or about 1991, Wolis handled several real estate closings on properties that

were at the center of what was to be the SEC investigation which gave rise to the federal indictment. The company was ostensibly selling trailer parks to a third party and recording a profit from the sales. Previously, the company used outside lawyers for such closings, which approximated several million dollars. Wolis had absolutely no idea that the transactions were sham. He believed that they were legitimate. (T.69, 73). So did Deloitte Touche, who, we can fairly say, had far more experience and expertise than Wolis in the financial intricacies of the transactions. In fact, the transactions, deemed by the SEC to be illegal, were used by Keith to show positive earnings for the company to shareholders even though it was not an accurate reflection of the company's true state of financial condition.

In 1993 Wolis was called to testify before the SEC regarding these real estate transactions. Appearing without counsel (T.92), he testified that he believed the transactions to be legitimate (and he did at that time). (T.73). He was also aware that Keith had signed the names of his children to several stock certificates, but he did not volunteer that information to the SEC. (T.74). "They [the SEC] basically just focused on the real estate transactions and why the company reversed them." (T.74).

Later, the SEC was critical of him, *inter alia*, for failing to volunteer his knowledge about the children. "They thought I should have been more assertive in volunteering that information, even though I didn't know that information was

important, because I had no idea how they operated." (T.74).

When asked by the Referee what trouble he got into, Wolis described it as follows:

> The president of the company was – he had given stock certificates to his children, his stock certificates that he owned. He transferred them into the children's names.
>
> And then what he would do is basically he would sign their names to the stock certificates, send them off to the brokerage firms and sell the stock and then basically do with the money whatever he wanted to do with the money.
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> * * *
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> I should have basically asked or found out, did more due diligence, had an ethical responsibility to the company, to the [SEC] and to my profession to do more due diligence in making sure that this person was doing this, that that was a legal act.
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> And I never received – I never got a power of attorney. I never confronted him about it. I just really looked the other way thinking it was just something in the normal course and it was just more of an administration thing.
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> And because of my negligence and my unprofessionability [sic], I suffered. And that would be the obstruction of justice charge [not volunteering this information to the SEC]. (T.49-50).

Civil litigation erupted when the company was forced to revise its SEC filings to reflect losses instead of positive earnings as a result of the real estate transaction reversals. Wolis settled his liabilities for $15,000, which was the lowest settlement accepted by the plaintiffs. (T.75, 90). He currently makes payments of $550 per

month toward his obligation, which is almost retired. (T.76). Wolis is also cooperating with the plaintiffs to help them recoup their losses. (T.80).

Wolis never profited from any of the deceptions of Keith. He was given 35,000 shares in a bonus plan, but never sold any; they are now worthless. (T.79). He did, however, sell several thousand shares that he purchased with his own funds. He made that sale "back in 1990, before any of the problems developed." (T.79). Curiously, the Referee referenced his ownership of 35,000 shares as an aggravating factor.

In 1995, amid the company's collapse, Wolis left to work for Merrill Lynch earning about $3,000 a month. (T.76). He is now employed by a start up internet company making in the $40,000 per year range.

In late 1996 Wolis was indicted for SEC violations and obstruction of justice. He plead guilty to the last count, for obstruction of justice, and agreed to cooperate with the government in exchange for favorable treatment. As Wolis explains it,

> They asked me, basically, "If you're going to plead guilty to obstruction of justice, what is the obstruction that you believe you committed?" (T.96).

So he defined his obstruction of justice as failing to advise the SEC of Keith's forgery of his children's signature on some stock certificates. (T.93-94).

> And I didn't - and at that particular time, I didn't think that was a material matter. I knew their main focus was the real

estate transactions.

> It was – if I could do it all over again, I would have told them everything that I knew, whether it involved that company or anything else that I could possibly think of that would basically been forthright and lawyer-like. (T.94).

Wolis testified that he elected to plead guilty because he didn't want to place his family and himself in further jeopardy by putting his life in the hands of people he didn't know. (T.52). He had "bitten off more than he could chew" by accepting and continuing in a job that was over his head. That was wrong and he recognized it.

As part of his case to show good character, Wolis testified that for two (2) years he coordinated an effort to donate unused food in adult retirement centers run by the Keith Group in Port Charlotte to homeless shelters. (T.55).

The Bar stipulated before trial that the absence of prior discipline against Wolis, his cooperative attitude in this case, his otherwise good character and reputation, the imposition of other penalties (criminal sentence) against him and his remorse were all established or presumed.

In support of his case, Wolis offered the testimony of Burton Young[2] together

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[2]Young is a senor shareholder of the firm representing Wolis, but testified, with The Bar's consent, because of his personal knowledge of the character of Wolis.

with the testimony of Bruce Nall, a CPA at the Coral Gables accounting firm of Becher, Yeager, Nall, Sherbern, Bernard and Company.

Young had been Wolis's former next door neighbor for many years. He watched Wolis grow up. He would frequently discuss "life" with Wolis. Young described Wolis as very naive. He went so far as to illustrate that if Wolis "went into a room filled with a lot of horse manure, he would turn around and look for the Shetland Pony." (T.32). Young offered that Wolis is a good person who should not be disbarred.

During cross-examination of Young, The Bar focused upon his former position as Bar president. He was asked whether felony convictions fit the category of instances where disbarment is appropriate. He replied, in part, as follows:

> You know, I can give you a litany of cases where a person was convicted of a felony and was reinstated.
>
> There was one case where a man was reinstated the following day after he got out of jail by the Supreme Court. So it depends upon the type of individual you're dealing with. (T.37).

The Referee then quizzed Young about the details of this case and whether Wolis should be disbarred in view of the conviction. Young responded:

> I believe he should be suspended, but not disbarred, because I'm a firm believer, you don't dig up a dead person and shoot him twice.

> This man made a mistake, albeit a grievous mistake, by following somebody he trusted. He's been out of the practice of law for a couple of years now, he had undergone the price of being held up in his community. He is now a convicted felon.
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> And I gave this an awful lot of thought. And on top of that, on the other side of the ledger, this is a good human being. I've seen this human being. I saw him grow up. He's a naive – was a naive young man.
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> If he was engaged in the practice of law before he went and was – got in back of the Pied Piper, which I think this guy who he worked for was, I don't think that would have ever happened to this kid. (T.41).

Similarly, Mr. Nall, a CPA for 25 years, also testified to Wolis's naivete. (T.20). He also knew Keith for 20 years. (T.22). He believed that Wolis was easy prey for Keith, whom he described as "a typical con man" who conned not only Wolis, but the accountants at Deloitte Touche as well. (T.23-24). Nall testified as follows:

> He [Wolis] wasn't a sophisticated businessman. He had to feel his way through the books in that he had no sophistication with regard to public companies except what he had in school. He had to learn from that. (T.17).

Nall, who is still Wolis's accountant, testified that he always found Wolis to be honest and forthright and would have nothing to do with Wolis if he believed him to be untrustworthy. (T.16).

The Referee's Report recites a number of supposed "facts" which were actually

mere allegations lifted from the indictment. While the **authenticity** of the indictment was not disputed, Wolis was never asked about the truthfulness of the allegations pertaining to him, nor did The Bar offer any proof to the Referee beyond Wolis' guilty plea to Count 64, which, according to the unrefuted testimony of Wolis, was limited to only the issue of not disclosing Keith's forgeries of his children's signatures to the SEC. In fact, when the Referee asked Wolis about the broad allegations in Count 64, he stated that, "I didn't lie to them [the SEC]." (T.93). "The way they explained it to me is that all of the previous counts that were applied to me [incorporated into Count 64], they were just being dismissed." (T.89).

An indictment is nothing more than a charging document. It is a laundry list of claims against a defendant. In this case Wolis denied the charges, except part of Count 64, and those charges were dismissed as part of the plea agreement and plea colloquy.

In truth and in fact, Wolis testified that he plead guilty to failing to disclose information regarding Keith's forging his children's names on stock certificates, a matter he deemed non-material and uneventful until the SEC raised the issue directly with him. That's it! His testimony went unchallenged. The low sentence he received - 60 days house arrest and one year probation - speaks volumes that his plea was as to a matter at the lower end of the culpability spectrum.

There was **no evidence in this record** to support several material finding by the Referee. Specifically paragraphs 8 (to the extent it concludes that Wolis was responsible for administrative operations), 15 (to the extent the Report suggests that the allegations in paragraphs 1-66 and 122-135 of the indictment were admitted) and 17 (the portion concluding that Wolis lied under oath during the SEC investigation) are factual findings without factual support in the record. While Wolis plead guilty to the catch-all count 64 which reincorporated paragraphs 1-667 and 12-135, he explained, as outlined above, that the discrete matter covered by his guilty plea was limited to the issue of forgeries by Keith of his children's signatures.

Based upon the supposed facts recited in his Report and legal conclusions bases thereon, the Referee recommended disbarment.

SUMMARY OF ARGUMENT

The only issue in this case is discipline. The standard of review for that issue is broader than for a Referee's findings of fact. We submit that the recommendation of disbarment is not justified on this record.

Our principal argument is that the Referee misperceived the evidence by not recognizing that Wolis plead guilty to one count of obstruction of justice, defined as failing to advise the SEC of his knowledge of Keith's forgeries. The Referee mistakenly took the allegations in the indictment as true, even though there was no

evidence to support the allegations, other than the count to which Wolis plead guilty and his explanation of the nature of his guilty plea to that charge. That mistaken premise tainted not only the factual findings, but the findings concerning aggravation and mitigation as well.

Moreover, this case is quite similar to *The Florida Bar v. Schwed,* (A.12) where a lawyer, about the same age as Wolis, plead guilty to one count of obstruction of justice in connection with an SEC investigation. Schwed received a two (2) year suspension. Actually, a comparison of the facts suggests that due to Wolis's naivete and Schwed's sophistication, Schwed was far more culpable. Schwed knew that witholding two audio tapes from the SEC after being served with a subpoena was wrong. In contrast, Wolis did not know of the significance of the information he did not volunteer until it was explained to him after the fact. Yet, Wolis is amenable to accepting a three year suspension.

We believe that a three year suspension discharges the salutary purposes for lawyer discipline and that disbarment is unjustified.

ARGUMENT

I. WOLIS SHOULD RECEIVE A THREE (3) YEAR SUSPENSION FOR HIS ADMITTED MISCONDUCT, NOT DISBARMENT.

A. This Court Has Greater Latitude to Reject a Referee's Recommended Discipline Than its Factual Findings.

The only issue before the Referee and this Court is discipline. This Court has stated on multiple occasions that since it is responsible for ordering appropriate discipline, the scope of its review of attorney disciplinary recommendations is broader than that afforded to findings of fact. See eg. *The Florida Bar v. Grief,* 701 So. 2d 555 (Fla. 1997); *The Florida Bar v. Anderson,* 538 So.2d 852, 854 (Fla. 1989). Accordingly, the Referee's recommendation that Wolis be disbarred may be rejected if it is clearly erroneous or not supported by the evidence. *See The Florida Bar v. Niles,* 644 So.2d 504, 506-7 (Fla. 1994). Moreover, the facts here are undisputed, thus further pushing the standard of review into the broader range.

B. The Referee Misperceived and Misapprehended the Evidence

We first acknowledge, as we must (and as we did before the Referee), the presumption of disbarment for felony convictions. *Grief.* But it is a **rebuttable** presumption. Disbarment is far from automatic. See *Grief; The Florida Bar v. H. Bustamante*, 662 So.2d 687 (Fla. 1995); *The Florida Bar v. Wilson II*, 643 So.2d 1063

(Fla. 1994). Were it automatic, there would be little need for this proceeding.[3]

The primary and most glaring defect in the Referee's Report is that he misperceived and misapprehended the evidence. Wolis did not plead guilty to securities fraud. He did not plead guilty to lying under oath. Rather, he testified that he plead guilty to obstruction of justice, predicated upon his failure to volunteer information to the SEC concerning Keith's forgery of his children's signatures on certain stock transfer certificates, even though Wolis was unaware of the significance of such information at the time he testified. After recognizing its significance, Wolis admits that he was wrong, took full responsibility and the Bar stipulated to his remorse. Wolis's recount of the essence of his plea colloquy went unchallenged. If the Bar felt that Wolis's obstruction of justice plea was more serious than as he testified, it certainly had every opportunity to offer proof . It didn't because it too knew that Wolis was not so deeply involved. The lower tribunal's error was in viewing the guilty plea as an admission of all the allegations in count 64 and of all paragraphs incorporated therein, which it wasn't.

Wolis was a pawn. For lack of a better word, he was duped. Keith used his

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[3] In fact, this Court previously rejected The Bar's position in an earlier case that disbarment should be automatic in all cases of a felony conviction. This Court stated, "We reject this suggestion and will continue to view each case solely on the merits presented therein." *The Florida Bar v. Jahn,* 509 So.2d 285, 286 (Fla. 1987).

law license to further Keith's untoward and illegal goals. Wolis was too naive and inexperienced to understand he was being "had." We remind, too, that Deloitte Touche, which was far more experienced in these matters than Wolis, was duped as well.

Frankly and sadly, this case is as much an indictment of our system of turning out new lawyers as it is anything else. For there is no required mentoring system in place to teach law school graduates how to practice law. The evidence was undisputed that Wolis was naive and inexperienced. The Referee found that after several years he became experienced. At what? Malpractice? Bad lawyering? Following orders?

This lawyer was turned loose without any understanding of how much he truly didn't know – or could be expected to know about the practice of law. Securities law in particular is one of the more intricate domains, fraught with subtle issues that most assuredly eluded Wolis. Keith, the ever clever con man, used Wolis's inexperience and trusting character to his advantage. The record is clear on that point because when he got his license, Keith ceased to further use his securities and real estate lawyers. That's all this case is about. A young lawyer victimized by a con man.

The lower tribunal, however, considered the allegations in the indictment to paint Wolis as someone who knowingly assisted in filing false SEC reports and

making false statements to the SEC. He didn't and there is no evidence to support the erroneous conclusion that he did because Wolis's recitation of the exact nature of his guilty plea was unrefuted.

The focus of the Referee's analysis should have been **the facts** and the crime to which Wolis plead guilty. He plead guilty to failing to voluntarily reveal information he knew about forgeries by Keith of his children's signatures on stock certificates.[4]

We also take issue with the findings of aggravation made by the Referee. Page 7 of the Report lists the predicate acts of Wolis's guilty plea as 1) perjury and 2) the filing of fraudulent reports. Respectfully, he is absolutely wrong. The only predicate act in this record is failing to disclose the forgeries to the SEC. Nothing else. Thus, the basic premise of the Referee's recommendation is fatally flawed. The Referee's reliance on cases involving perjury and lying under oath to support his recommendation of disbarment is misplaced.

The Referee found dishonest or selfish motive. Where is that evidence? Wolis

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[4] We wonder aloud whether Wolis actually acted properly in not volunteering such information obtained in the course of his possible attorney-client relationship with Keith. After all, if the forgeries were revealed to Wolis after the fact, he was under an ethical obligation not to disclose the information absent a court order based upon the crime-fraud exception to the attorney-client privilege. Regardless, he plead guilty based upon this issue.

did not profit from his failure to advise the SEC of the forgeries, nor could he have formed a selfish intent because he didn't know the legal significance of the forgeries until much later.

The Referee found that Wolis had substantial experience in the practice of law. Where is that evidence other than the passage of time? Even to the extent the Referee mistakenly relied upon the unproven allegations in the indictment, the suspect SEC filings occurred from 1987 through 1993 (the first six years of Wolis's membership in The Bar) and primarily in 1991. Wolis started work knowing little and there was no evidence that he became any more proficient as the years passed. On the other hand, the actual evidence in this record, which remained undisputed, is that Wolis was naive and unskilled at the complex arena that is securities law.

The Referee next found multiple offenses as another aggravating factor. Where is that evidence? Wolis plead guilty to only one count involving a single failure to disclose information to the SEC. Again, this finding is based upon the flawed view that the indictment was proven. It wasn't.

C. A Three Year Suspension is the Appropriate Discipline in this Case

When the actual proven and undisputed facts in the record are correctly and appropriately considered, it is manifest that disbarment is too severe a discipline for Wolis. The case that is most close to this one is *The Florida Bar v. Schwed,* Case No.

91,471, (1998) (A.12) which also involved an issue of obstruction of an SEC investigation. The lawyer there was about the same age as Wolis, but far more seasoned and sophisticated. He was found to have committed a single act of misconduct. There were a number of mitigating circumstances present in *Schwed* and the referee recommended a two (2) year suspension. Wolis offered a three (3) year suspension.

The common factors in each case were an isolated act of misconduct, remorse and cooperation with the government. In a sense, Schwed's case was more serious because he wilfully intended, at the behest of his client, to conceal two of the eight audio tapes subpoenaed by the SEC, whereas Wolis was unaware of the significance of the information he withheld from the SEC. Schwed clearly had more "criminal intent" than did Wolis. It would seem incongruous, therefore, to disbar Wolis, while suspending Schwed for only two years.[5]

Similarly, in *The Florida Bar v. Stahl,* 500 So.2d 540 (Fla. 1987), a lawyer's conviction of obstruction of justice warranted a three year suspension and not disbarment. While the facts there are not entirely clear, Stahl plead guilty to

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[5] While Wolis's was not an Alford plea, it does not appear to be too far removed from one. See *North Carolina v. Alford,* 400 U.S. 25, 37, 91 S.Ct. 160, 167 (1970)(a plea containing a protestation of innocence when a defendant intelligently concludes that his interests require entry of a guilty plea).

submitting false real estate documents to a grand jury to conceal true ownership of property.

Like the lawyer in *The Florida Bar v. Pavlick,* 504 So.2d 1231 (Fla. 1987), Wolis testified he plead guilty because he wanted to spare his family the grief of a trial. Pavlick was suspended for two years based on the evidence surrounding his Alford plea. Again, we do not suggest that Wolis made an Alford plea. We do suggest, however, that his motivations were similar to those of Pavlick and his overall culpability was in the lower range.

This case is distinguishable from *The Florida Bar v. Levine,* 571 So.2d 420, relied upon by the Referee to support disbarment. Levine was sentenced to concurrent 30 months in jail and three years probation after pleading guilty to organized fraud and unlawful operation of a boiler room, both securities fraud violations. Here, Wolis received 60 days of house arrest and one year probation for failing to disclose. Without minimizing the misconduct to which Wolis plead guilty, the comparison to *Levine* is akin to comparing a Mary Jane to a Bloody Mary.

In sum, the discipline imposed should be fair to the public, the lawyer involved, and must be sufficient to deter other lawyers from engaging in similar conduct. A three year suspension fully and fairly satisfies the salutary purposes for lawyer discipline given the inexperience of Wolis and the fact that those with far

more sophistication than he also got conned by Keith.

CONCLUSION

Wolis respectfully requests that the Court determine that a three year suspension is the appropriate discipline in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail to: John Anthony Boggs, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; John F. Harkness, Jr., Executive Director, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, and Eric Turner, Esquire, Bar Counsel, The Florida Bar, Cypress Financial Center, Suite 835, 5900 North Andrews Avenue, Fort Lauderdale, Florida 33309, on this 14 day of August, 2000.

By: _____
ANDREW S. BERMAN