IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR

Complainant,

vs.

ARTURO DOPAZO, III,

Respondent.
_____/

Supreme Court Case No.
SC15-1305

The Florida Bar File No.
2012-70,885(11k)

MOTION FOR REHEARING

Respondent, ARTURO DOPAZO, III, moves for rehearing and states:

1. The Court misapprehended Respondent's argument. The Opinion erroneously states Respondent argued that because Jones' testimony was contradictory, she was not a credible witness and therefore the Bar did not prove its case of solicitation. (Slip Op. at 5.) He never argued that. In fact, that would be a losing argument every time. It is the Referee's job to weigh evidence and determine credibility based upon record evidence. This Court will not reweigh evidence and Respondent did not ask it to.

2. As background, Respondent did point out in his brief the contradictions in Jones' testimony, but conceded that because the Referee believed her testimony that she never asked for a lawyer, that fact was incontestible. Page 17 of the Initial

Brief reads: "the Referee believed and accepted her [Jones'] testimony that she never reached out to anyone for a lawyer. But establishment of that 'fact' alone was not enough, as a matter of law, to prove a knowing improper solicitation under the Bar's theory."

3. What Respondent did argue was that solicitation is not a strict liability offense and that there are two elements to a violation: (1) the client did not ask for a lawyer and (2) the cognitive element that the lawyer knew she didn't. Respondent conceded that the first element was established by Jones' testimony. The second, however, was not established with any record testimony or evidence. *Florida Bar v. Shoureas,* 913 So.2d 554, 557-8 (Fla. 2005)(party challenging referee findings of fact and conclusion as to guilt has burden to demonstrate there is no evidence in the records to support those findings).

4. In fact, the Referee pointed out the lack of any such record testimony or evidence by admitting he had to speculate that the lead to Respondent was dirty and he knew it.[1] But it is black letter law that speculation is not clear and convincing

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[1]The Referee said:

> I'm missing pieces. I can only speculate that if there was a call, it was from somebody that shouldn't have been referring cases. Either he was hanging out at the hospital totally unsolicited [which is inconsistent with the Bar's theory of the case] or, and this is speculation, somebody at

evidence, *K.L.R. v. Dep't of Children & Fam. Serv.,* 83 So.3d 936, 939 (Fla. 3d DCA 2012), which is the minimum quantum required to support a finding of guilt in a bar disciplinary case. *Florida Bar v. Marable,* 645 So.2d 438, 442 (Fla. 1994). The Referee's comment that the Bar's case was "missing pieces" and that he had to "speculate" to fill the evidentiary void shows beyond doubt that his findings did not meet the definition of clear and convincing evidence to support a conviction.

5. As the Bar conceded in its opening statement at trial, its case was circumstantial. Therefore, satisfaction of this key "knowledge" element on the Bar's solicitation claim hinged on its [ultimately failed] claim of a conspiracy between Respondent and Rodriguez to broker cases (only the conspiracy would impute such "knowledge" to Respondent). Its counsel argued:

> I will bring into this courtroom Penny Jones, a victim of this [illegal referral] scheme who [will] ultimately testify how she was ultimately directly solicited by Mr. Dopazo.

(T. Vol. I at 14.)(emphasis added). The failure of proof of the referral scheme portends, as a matter of law, a failure of the solicitation claim, because there was then no record evidence, let alone clear and convincing evidence, to support the

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> the hospital, which happened in the other case, contacted his office and said we have someone here. Maybe you should come see. It's a bad injury. (T. Apr. 21, 2016, pp. 4-5.)

knowledge element of the solicitation claim, by imputation or otherwise.

6. Respondent briefed every other conceivable question that could arise, from the fact that the circumstantial evidence was consistent with a reasonable hypothesis of innocence (requiring acquittal), to the fact that the contradictions in Jones' testimony may have been the result of her being approached by several people who, upon realizing she had virtually no insurance, referred the matter legitimately to Respondent. But the fundamental problem with the Bar's case is that, in the end, it was devoid of any evidence or testimony indicating, let alone proving by clear and convincing evidence, that Respondent had knowledge that the lead was tainted.

WHEREFORE, Respondent moves for rehearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via email to: Patrick Russell, prussell@flabar.org Bar Counsel, The Florida Bar, 444 Brickell Ave., Ste. M - 100, Miami, Florida 33131and Adria Quintela, aquintel@flabar.org Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323 this11th day of October, 2017.

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