

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

IN RE:

Supreme Court Case
No. SC22-1055

PETITION FOR REINSTATEMENT The Florida Bar File No.
OF NORWOOD SHERMAN WILNER, 2023-00,072(2A) NRE

Petitioner.

_____ /

ANSWER BRIEF OF NORWOOD SHERMAN WILNER

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PRELIMINARY STATEMENT

Mr. Wilner adopts the references used in The Florida Bar's Initial Brief with the following additions:

The Bar's initial brief shall be referred to as IB followed by the applicable page number(s).

Petitioner's exhibits shall be referred to as Pet. Ex. followed by the exhibit number.

NATURE OF THE CASE

The Bar's initial brief contains a section titled Nature of the Case. Mr. Wilner accepts the recitation by the Bar with the following exceptions:

The Bar asserts it "opposed Mr. Wilner's petition on two grounds." (IB, 2) At no time during the reinstatement proceedings before the Referee did the Bar assert any clear opposition to Mr. Wilner's petition for reinstatement. Bar counsel's opening statement to the Referee included the following comments:

"So while we believe Mr. Wilner has endeavored to make every effort to prove to the court that he is worthy of rehabilitation, we do feel that his efforts have fallen short and that **the Bar did not object to his reinstatement** but the Bar does have some questions regarding some actions of Mr. Wilner since his reinstatement (sic) **and the Bar would leave it up to Your Honor** to, you know, give whatever weight you deem necessary to the information that the Florida Bar will present today

regarding what we feel is questionable conduct.” (T:6-7)
(emphasis added)

The Bar states it “asserted that after this Court entered its order of suspension, Mr. Wilner’s firm disseminated a misleading closeout letter to clients that contained misleading statements regarding the underlying misconduct leading to his suspension.” (IB, 2) At no time during the proceedings before the Referee did the Bar raise this issue as a ground to deny Mr. Wilner’s petition for reinstatement.

During opening statement, after being asked by the Referee what she meant by “questionable conduct”, bar counsel replied, “There is some conduct that we feel falls short of qualifying Mr. Wilner for reinstatement. It isn’t specifically addressed in the rules so **it kind of falls in a gray area.**” (T:7) (emphasis added) When asked by the Referee to “summarize what that conduct is now” bar counsel made no mention about any language in a closeout letter sent by Mr. Wilner’s firm after his suspension. (T:7-8)

The bar’s closing argument to the Referee also made no mention of any opposition to Mr. Wilner’s petition to reinstatement based upon “a misleading closeout letter”. Bar counsel argued the following:

“First, Mr. Wilner sold the stock in his firm at a minimum price, which appears to be in name only, and he has put forth no concerted effort to convey that the practice is now owned by Mr. Acosta.” (T:100)

“Let’s see, second, there was no direct supervision of Mr. Wilner by Mr. Acosta, so Mr. Acosta, although he attested to this in his reports, there’s no way he can truthfully say that Mr. Wilner did not engage in the practice of law or did not have client contact.” (T:101)

“Third, Mr. Wilner’s own petition seemingly downplays the egregiousness of the conduct for which he was disciplined”. (T:101)

“Lastly, Mr. Wilner failed to strictly comply with the court’s order requiring the timely submission of his quarterly reports.” (T:101)

“And Your Honor, for these reasons the Florida Bar does not believe Mr. Wilner has met the burden to prove - - to prove he is worthy for reinstatement at this time.” (T:102)

STATEMENT OF THE CASE AND FACTS

Mr. Wilner accepts the Bar’s statement of the case and facts with the following exceptions:

The Bar asserts Mr. Wilner’s quarterly reports under Rule 3-6.1 “seemed to overstate his limited contribution to the law firm.” (IB 10) This

statement is argument. There is no factual basis for this statement and it is not found in the record.

STATEMENT OF THE ISSUES

1. The Referee properly determined that Mr. Wilner is fit to resume the practice of law.

STANDARD OF REVIEW

“Before this Court, “the party seeking review of the referee's recommendation has the burden to demonstrate that the report is erroneous, unlawful, or unjustified.” *Fla. Bar re Dunagan*, 775 So. 2d 959, 961 (Fla. 2000) (quoting *Fla. Bar re Grusmark*, 662 So. 2d 1235, 1236 (Fla. 1995)). With “regard to the referee's legal conclusions and recommendations, the Court's scope of review is wider because we have the ultimate responsibility to enter the appropriate judgment.” *Id.* (quoting *Grusmark*, 662 So. 2d at 1236). Here, since the referee is recommending that [Mr. Wilner] has met the criteria and should be reinstated, the burden is on the Bar to demonstrate that the referee's report is erroneous, unlawful, or unjustified.” *Florida Bar re Murtha*, 327 So. 3d 256, 259 (Fla. 2021).

SUMMARY OF THE ARGUMENT

A referee appointed to hear a petition for reinstatement to the practice of law “must decide the fitness of the petitioner to resume the practice of law.” R. 3-7.10(f), R. Reg. Fla. Bar. Judge Dempsey, sitting as the duly designated referee, determined that Mr. Wilner has shown he is fit to return to the practice of law.

The Referee, both aware of the underlying contentions and Mr. Wilner’s compliance with the Rules Regulating The Florida Bar during the period of suspension, recommends reinstatement. The Bar’s argument for denial of reinstatement raises no material issues of non-compliance nor does it reflect any new basis to further lengthen the 91-day suspension by denial of the petition for reinstatement.

The Florida Bar, as the party seeking review of Judge Dempsey’s recommendation, must “demonstrate that all or part of the referee report is erroneous, unlawful, or unjustified.” R. 3-7.7(c)(5), R. Reg. Fla. Bar. The Florida Bar has failed to meet this burden. The Bar raises issues which were never raised or argued to the referee. This Court should follow Judge Dempsey’s recommendation and reinstate Mr. Wilner to active membership in The Florida Bar.

ARGUMENT

This Court relies upon a duly appointed referee to consider the evidence, make findings based upon that evidence, and then make a recommendation to the Court. In a case arising from a petition for reinstatement to the practice of law, the referee's duty is to determine whether the petitioner is fit to resume the practice of law. (See R. 3-7.10, R. Reg. Fla. Bar)

The Referee in this case heard testimony from Mr. Wilner and several witnesses. The Bar did not produce a single witness. The Referee also considered evidence produced by both the Bar and Mr. Wilner. After hearing the testimony, reviewing the evidence, and hearing argument of counsel, the Referee found:

I find that Petitioner has met his burden for reinstatement by clear and convincing evidence. Although his compliance with the disciplinary order was not perfect, I believe it is sufficient to recommend reinstatement. The decision to characterize the case from Federal court in his letter to clients as a "disagreement" was not appropriate as it downplayed it to some extent. However, the order was attached. Although Mr. Wilner has some difficulty admitting what he did was wrong in the Federal court, I believe the suspension that has now lasted over a year is sufficient. Additionally, Mr. Acosta's testimony was very credible, as were the exhibits Petitioner submitted. (ROR at 3)

The Referee, in discharge of her duty, heard detailed testimony from Mr. Wilner, from Howard Acosta, to whom the law firm was sold and by whom

Mr. Wilner was supervised, and from Tracy Thompson, a full-time paralegal who had worked with Mr. Wilner for a decade or more. The Bar had ample opportunity to examine and cross-examine these witnesses.

The issue of adequate supervision was discussed by Mr. Wilner and Mr. Acosta in detail, each testifying that Mr. Wilner did very little during his suspension and that Mr. Acosta, the firm's new owner, talked to Mr. Wilner regularly. Mr. Acosta and Mr. Wilner had each been leaders in tobacco litigation and had known each other and worked together for over 30 years.

What constitutes adequate supervision is not defined in the Rules Regulating The Florida Bar and must be decided as a matter of fact that depends on the circumstances of the particular case. Having listened to the direct and cross-examination testimony, and considered the demeanor and credibility of the witnesses, their skill, experience, motive and intelligence, and the facts and circumstances surrounding Mr. Wilner's practice during the suspension, Judge Dempsey ruled that Mr. Acosta had adequately supervised Mr. Wilner.

The Bar appears to argue that Mr. Acosta, the *firm owner*, is not within the ambit of Rule 3.6(1)(f), requiring supervision by an attorney "employed full-time by the entity that employs the individual subject to [the] rule." This construction of 3.6(1)(f) would turn the rule on its head. An owner of a firm

has supervisory authority over the entire firm and all employees. This is why the Rules require that only members of the Bar may be owners of law firms. (See R. 4-8.6(b), R. Reg. Fla. Bar).

Mr. Acosta, as owner, could and did supervise all employees, including Mr. Wilner and the attorneys who were physically present in Jacksonville. In addition to his status as owner, Mr. Acosta, whose credibility was subject to a favorable comment by the Referee (T: 103), testified he talked with Mr. Wilner continually, at least once a week, commensurate with the small amount of work Mr. Wilner was doing. As the Referee found, Mr. Wilner has met all of the requirements for reinstatement. (ROR, p. 3)

The Bar's disagreement with the conclusions of the Referee on this question would forge new law on the duties and responsibilities of a referee. There is no way to specify what constitutes adequate supervision in a one-size-fits-all manner. The conclusion on adequate supervision must be reached by considering who is being supervised, their circumstances, their reliability and credibility, their sincerity, the nature of the practice, the experience and credibility of the supervisor, and other factors. These factors are subject to demeanor and credibility determinations by a referee. Those conclusions should not be ignored in this case.

Moreover, the testimony showed that Mr. Wilner had no motive nor need to engage in the practice of law during his suspension. The cases, virtually all tobacco cases, were well-handled by two long-term partners of Mr. Wilner. Mr. Wilner had no need or reason to contact any clients, all of whom were well known to and well-managed by the active attorneys at the firm. Mr. Wilner, who had practiced without blemish for over 40 years, was basically able to take a sabbatical from practice. Supervision of Mr. Wilner's sabbatical was accomplished without difficulty in both letter and spirit.

In addition, one purpose of the rule requiring supervision is to prevent the forbidden practice of law by the suspended attorney. The Bar produced no evidence that Mr. Wilner practiced law during his suspension. In fact, there was no evidence of, suggestion of, or even a hint of, any improper practice of law, client contact, misrepresentation of status, or any other forbidden action by Mr. Wilner during the suspension period.

Mr. Wilner testified clearly and credibly and was cross-examined thoroughly. The Referee heard Mr. Wilner's testimony and was in the best position to evaluate his credibility. In addition, no clients, attorneys, judges, or members of the public had anything contrary to say, or the Bar would have presented their testimony.

Now, in this appeal, the Bar argues Mr. Wilner should have been perfect. In addition, the Bar raises arguments which were never raised before the Referee. The Bar argues “Mr. Acosta was not involved in the day-to-day business of the Jax Litigation Group” and that this shows Mr. Wilner did not comply with Rule 3-6.1. (IB,16) The Bar’s argument fails for a number of reasons.

First, the Bar’s argument ignores the reality of the legal profession since at least the beginning of Covid-19. During Covid, many lawyers and “[i]ndividuals subject to this rule” [3-6.1] were working remotely from their own homes or other locations. There was no in-person supervision or contact.

As working remotely has become “the new normal” members of The Florida Bar will need to modify the way they supervise others under Rules 4-5.1 and 5.3 of the Rules Regulating The Florida Bar. Likewise, the Bar will need to change its view of how that supervision is done in today’s environment. The standard the Bar seeks to impose here would require that any supervising lawyer be required to observe a suspended lawyer 24/7 to be in a position to confirm the suspended lawyer’s testimony that he or she did not engage in any practice of law during the period of suspension.

Second, Rule 3-6.1 does not require Mr. Acosta, as a supervising lawyer, to be “involved in any of the firm’s cases” or for Mr. Wilner to “be under the supervision of a member of the Bar who was also a full-time employee of Jax Litigation Group.” (IB, 16) Rule 3-6.1 sets forth very specific requirements, all of which were met by Mr. Wilner.

First, the entity employing him had to “provide The Florida Bar with a notice of employment and a detailed description of the intended services to be provided ... before employment starts.” R. 3-6.1(c). There is no evidence Jax Litigation Group failed to comply with this requirement and the Bar makes no allegation it did.

Second, Mr. Wilner “must not have contact (including engaging in communication in any manner) with any client.” R. 3-6.1(d)(1). Mr. Wilner testified he has had no client contact during his suspension. (“A hundred times no. I’ve been so careful.”) (T: 22) The Bar makes no allegation and has no proof Mr. Wilner failed to comply with this requirement.

Third, Mr. Wilner “must not receive, disburse, or otherwise handle trust funds or property as defined in chapter 5 of [the Rules Regulating The Florida Bar] ... must not act as fiduciaries for any funds or property of their clients or former clients, their employers’ clients or former clients, or the clients or former clients of any entity in which their employer is a beneficial owner.” R.

3-6.1(d)(2). The Bar makes no allegation and has no proof Mr. Wilner failed to comply with this requirement.

Finally, Mr. Wilner “must not engage in conduct that constitutes the practice of law and must not hold [himself] out as being eligible to do so.” R.

3-6.1(d)(3). Again, the Bar makes no allegation and has no proof Mr. Wilner failed to comply with this requirement.

The Bar’s argument redefines the language in Rule 3-6.1(f). The Bar asserts “Mr. Acosta’s temporary ownership of the firm did not result in his full-time employment with the law firm”. (IB, 16-17) There is no evidence in the record to support this assertion. The rule does not define “full-time employment” and nowhere does the rule say the supervising lawyer must be *solely* employed “by the entity that employs the individual subject to this rule”. R. 3-6.1(f).

The evidence shows Mr. Wilner does very little that even requires supervision by Mr. Acosta. He comes “in twice a week” to “offer whatever experience” he can, but he doesn’t “stay long.” (T: 23-24) He will “talk to [Mr. Acosta] once a week or so” and “chat about how things are going. [Mr. Wilner’s] not actively involved with cases” so he doesn’t “have a whole lot to say”. (T:25)

The Bar acknowledges that “constant face-to-face supervision of the employee is not required”. (IB, 17) Since Covid that has been, and will continue to be, the case. What the Bar ignores is the reality of what Mr. Wilner has been doing at Jax Litigation Group since his suspension. In any case, one wonders why the Bar would complain about a report being over- as opposed to under-inclusive. Prudence would dictate the employee (Mr. Wilner) should include all possible areas of work rather than to risk omitting any task.

The Bar makes the serious allegation that Mr. Wilner and Mr. Acosta signed affidavits of compliance containing a “false statement”. (IB, 17) This allegation was never raised or argued to the Referee and has no merit.

Another issue the Bar raises is in regard to the timeliness of Mr. Wilner’s and Mr. Acosta’s quarterly reports under Rule 3-6.1. The Bar makes the false statement that “quarterly **reports**” were late. (IB, 18) (Emphasis added). Mr. Wilner and Mr. Acosta have been filing quarterly reports for approximately one year. As the Bar well knows, the only quarterly report that was purportedly “late” was for the quarter ending December 31, 2022.

Rule 3-6.1(e) says these reports “must be filed quarterly, based on the calendar year,” but the rule sets no deadline by which these reports must be filed. The evidence is clear, however, that Mr. Wilner submitted his quarterly

report for the quarter ending December 31, 2022, *prior* to the February 13, 2023, hearing before Judge Dempsey. The Bar even stipulated that the report was filed on February 6, 2023. (T: 95)

The Bar cannot produce any evidence Mr. Wilner engaged in the practice of law during his suspension, nor can it cite any cases in support of its argument that Mr. Wilner was not properly supervised, so it turns to cases that are totally inapposite. For example, the Bar cites *The Florida Bar v. Goldstein*, 38 So. 3d 771 (Fla. 2010) (Table) and *The Florida Bar v. Frederick*, 756 So. 2d 79 (Fla. 2000), and then notes both cases involve suspended lawyers who had direct client contact, (IB, 19), a key fact not present here.

It is unfair and disingenuous for the Bar to cite cases which lack any factual similarity to the conduct of Mr. Wilner. That this Court will deny reinstatement or discipline a supervising lawyer who permits improper client contact is not relevant to whether the Referee's recommendation here should be upheld. This red herring is particularly egregious since the Bar concedes and admits "there is no evidence of Mr. Wilner engaging in direct client contact". (IB, 19) The Referee heard Mr. Wilner's testimony, including his testimony that he has not engaged in the practice of law or had any client

contact. This evidence is uncontroverted and was properly accepted as true by the Referee.

Since the Bar has no evidence Mr. Wilner did anything improper, it next turns to another line of cases which are inapplicable. *The Florida Bar v. Abrams*, 919 So. 2d 425 (Fla. 2006), involved a “paralegal” who “was in fact the employer and [was] using the respondent’s license to engage in the practice of law in immigration matters.” (IB, 20) *The Florida Bar v. Beach*, 675 So. 2d 106 (Fla. 1996), arose from a non-lawyer utilizing “a licensed lawyer as a mere conduit for providing legal advice without supervision.” (IB, 20) *The Florida Bar v. Buck*, 2011 WL 6852200 (Fla. Nov. 16, 2011), involved an attorney “delegating the filing of all documents in an estate matter to a nonlawyer employee”. (IB, 20)

Again, there is not even a scintilla of evidence in the record to support the proposition Mr. Wilner engaged in the practice of law during the period of suspension. No matter how you stretch it, none of these cases have any application to Mr. Wilner.

Finally, the Bar concedes it “is not asserting that the referee erred in making a specific finding of fact.” (IB, 21) This concession alone should lead this Court to affirm the Referee’s recommendation. Mr. Wilner had the burden of proving that he did not engage in the practice of law during his

suspension, that he complied with the material requirements of a suspended lawyer, and that he is fit to resume the practice of law. The Referee found he met that burden. Now, the Bar, post hearing, wishes to raise issues and arguments that were never raised before the Referee.

This Court has for years pronounced that a referee's findings of fact enjoy a presumption of correctness that will be upheld unless the challenging party can show that the facts are unsupported by the evidence in the record or are clearly erroneous. *The Florida Bar v. Cox*, 718 So. 2d 788, 792 (Fla. 1998); *The Florida Bar v. McKenzie*, 442 So. 2d 934 (Fla. 1983). Also, the Court has repeated its respect for the work of a referee noting it will not reweigh the evidence and substitute its judgment for that of the referee if there is competent substantial evidence to support the referee's findings. *The Florida Bar v. MacMillan*, 600 So. 2d 457, 459 (Fla. 1992), cited in *The Florida Bar v. Lecznar*, 690 So. 2d 1284, 1287-1288 (Fla. 1997).

The Bar's additional argument against Mr. Wilner's reinstatement to the practice of law is unsettling. The Bar acknowledges that Mr. Wilner's "closeout letter" to clients, which is not even required by the Rules of Professional Conduct, "does not contain any patently false statement" (IB, 22), yet somehow supports the denial of Mr. Wilner's petition for reinstatement.

Rule 3-5.1(h), R. Reg. Fla. Bar, requires only that a suspended lawyer “immediately furnish a copy of [this Court’s suspension] order” to the persons and entities listed in subsections (1) through (4) of the rule. The Bar concedes “Mr. Wilner had no legal duty to explain the basis of his suspension to his clients”. (IB, 22)

After confirming these facts the Bar proceeds to nitpick a letter Mr. Wilner “had no legal duty to” write. A review of the letter will show it contains a four-sentence summary of years of litigation in the courts and with The Florida Bar.

The Florida Bar first opened a file against Mr. Wilner for events related to the federal court action in 2016. This resulted in a finding of no probable cause by a grievance committee. (T:41) Subsequently, in 2017, “the 200-plus page opinion and order came out from the Federal court” and the Bar opened a new case against him. (T:42)

Mr. Wilner’s letter references a “long-running disagreement” with the Bar. In its’ brief, the Bar says “Mr. Wilner’s actual misconduct first occurred ... in late 2007 and continued during the litigation of those cases until ... 2016.” (IB, 23)

The underlying case with the Bar which led to a consent judgment for a 91-day suspension was Florida Bar File No. 2018-00,183(2A). See case

no. SC21-373. The complaint was not filed with this Court until March 09, 2021, and the consent judgment was not filed until February 18, 2022. By any definition, fifteen years from 2007 and six years from 2016 is a “long-running” case. In addition, as noted in the Report of Referee in case no. SC21-373, “[t]he last act of Respondent which led to the Court imposing a reprimand and disgorgement of fees occurred nearly 10 years ago” [now over 10 years ago].

The Bar recites findings of the District Court order that led to the Bar prosecution of Mr. Wilner. (IB, 3-4) The same referee was presented with the District Court order when she approved of the Bar and Mr. Wilner’s stipulation for a 91-day suspension. Judge Dempsey was well-informed and apprised of the conduct described in the District Court order, as well as the points made by Mr. Wilner in his extensive filings in defense and justification for the long and complicated events. If the Bar had other issues with the events in the District Court, it had ample opportunity to refuse to stipulate to a suspension and present these issues before the Referee at the first instance. It chose not to.

Next, the Bar attempts to parse what Mr. Wilner meant when his letter mentioned the year 1995: “[t]he only purpose in referencing that year [1995]”. (IB, 23) Any argument about Mr. Wilner’s “purpose in referencing that year”

is pure speculation. Again, the Bar is trying to wordsmith a one-page letter sent to notify clients that Mr. Wilner had been suspended.

Judge Dempsey heard testimony about the multi-decades-long saga of the tobacco cases, beginning in or before 1995, and Mr. Wilner's early leadership and long involvement. She had the perspective to evaluate whether these unrequired statements made to clients were misrepresentations and, further, were sufficient to bar Mr. Wilner's reinstatement to the practice of law. Clearly, the Referee concluded the statements were truthful and the rule regarding disclosure had been met by enclosing the Florida Supreme Court Order on suspension. The Bar now appears to be requiring a vetting of all client communications to accompany a notice of suspension, which its rules do not mandate.

The statements did not minimize or disagree with the suspension. The Bar seems to argue with the characterization of the disciplinary proceedings as a disagreement. Again, given the facts and circumstances, which include: the long and protracted history during which the Bar apparently changed its position regarding the issue; Mr. Wilner's testimony to the effect that he disagreed strongly with any implication that clients had been harmed; and Mr. Wilner's further testimony that he was not at the hearing to contest the District Court's order (believing correctly that the issue was resolved and no

longer before the Referee), the Referee correctly concluded the use of the term disagreement, in context, was not fraudulent or misleading.

In support of its argument, the Bar cites a case (*The Florida Bar v. Rakusin*, 2023 WL 3300043 (Fla., May 8, 2023)) which is materially distinguishable from Mr. Wilner's case. Unlike the referee in *Rakusin*, the referee in Mr. Wilner's case made no finding that Mr. Wilner "downplayed the misconduct leading to his suspension" or that his closeout letter was "misleading to the point of dishonesty." (IB, 24)

The referee here, properly performing her function to weigh the evidence and determine if Mr. Wilner met his burden, found he did. In fact, Judge Dempsey discussed the letter and declined to find any dishonesty or a reason to deny reinstatement. The Referee's finding that Mr. Wilner's "decision to characterize the case from Federal court as a disagreement [wasn't] a good idea" and to "downplay it to some extent" (T:103) is a far cry from a finding the letter was dishonest.

Significantly, there has never been an allegation, either in the District Court proceedings or before the Referee, that Mr. Wilner harmed any clients. His uncontroverted testimony confirms "it was actually noted that everything I did was to protect clients but they went on in addition and said I had a

greater duty to protect the court from misfilings. And as I say, I'm accepting that. But no one challenged that I had filed to protect clients." (T: 47)

The Bar also likens Mr. Wilner's letter to clients, where he had no legal duty to provide any explanation at all, to cases where a disciplined attorney had an affirmative obligation to provide a detailed explanation. The suspended lawyer in *The Florida Bar re Webster*, 647 So. 2d 816 (Fla. 1994), was applying to other bars where an application requesting any prior bar discipline is pro forma. The respondent in *The Florida Bar v. Glueck*, 985 So. 2d 1052 (Fla. 2008), sent letters to the Bar "in an attempt to veil [i.e. conceal] [his] business relationship with others and minimize his own misconduct." (IB, 25) Finally, the lawyer in *The Florida Bar v. Phoenix*, 311 So. 3d 825 (Fla. 2021), "was deceitful towards lending institutions", conduct which may constitute a federal or state criminal offense. See 18 U.S.C. §1344; Fla. Stat. §655.0322.

Finally, the Bar ignores the evidence of good character presented by Mr. Wilner. Rod Smith, a well-known and respected member of The Florida Bar, opined he knew "of no reason that [Mr. Wilner] should not be reinstated to the Bar". (Pet. Ex. 3) Tyrie W. Boyer, "a recently retired Fourth Circuit Judge", says "Woody Wilner is a brilliant lawyer. When litigating, you can absolutely trust him at his word. I cannot imagine that anyone questions his

ability in a courtroom. He has the character, competence, and propriety to be reinstated with the Florida Bar.” (Pet. Ex 4)

The Bar cannot meet its burden to show the referee’s recommendation that Mr. Wilner be reinstated to practice is erroneous, unlawful, or unjustified. This Court should confirm the referee’s report and allow Mr. Wilner to resume the practice of law in Florida.

CONCLUSION

The Bar “did not object to [Mr. Wilner’s] reinstatement” at the hearing before the Referee. In addition, the Bar conceded at the hearing that any conduct it had concerns about “falls in a gray area.”

There is no support for any argument that the Report of Referee is erroneous, unlawful, or unjustified. Now, well over 15 months after the commencement of a 91-day suspension, this Court should follow the Referee’s recommendation and reinstate Mr. Wilner to the practice of law in Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed via Florida e-Filing Portal and served to the following, this 29th day of June, 2023.

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CERTIFICATE OF COMPLIANCE

I CERTIFY that this Brief complies with the applicable font and word count limitations pursuant to Florida Rule of Appellate Procedure 9.045(e), as this Brief was prepared using Arial 14-point font, and contains 4,763 words, excluding the parts of the Brief exempted by Rule 9.045(e).

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