IN THE SUPREME COURT OF FLORIDA
CASE NO. SC 03-2041
Fla. Bar File No. 2004-50,550 (17J)

THE FLORIDA BAR,

Complainant,

-vs-

STEVEN EDWARD COHEN,

Respondent.
_____/

**RESPONDENT's AMENDED REPLY BRIEF**
**IN FURTHER SUPPORT OF PETITION FOR REVIEW**

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## PREFACE

The following citation forms will be used in this brief:

| | |
|---|---|
| (Tr. #). | Referee's Hearing Transcript, page number |
| (Sent. Tr. #) | Sentencing Transcript, page number |
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## REPLY ARGUMENT

## ISSUE

**Can The Florida Bar properly go behind a federal conviction upon which it relies for a presumption of guilt by using hearsay statements on the beliefs of a co-conspirator to establish a different and contrary crime for the purpose of seeking disbarment that the referee stated was not justified on the basis of the conviction alone?**

In this appeal, Respondent, Steven Cohen, accepts full responsibility for his actions, but asks this Court to review the recommended discipline with an eye to the particular facts of this case, which make a suspension appropriate. Because The Florida Bar chose to rely upon the one-count federal felony conviction against Steven Cohen as the proof of guilt that occasions discipline, most of the material facts concerning the nature of the offense were already adjudicated as part of the federal proceedings. However, the recommended discipline of a five-year disbarment flows from factual findings that departed from the adjudicated facts -- and did so erroneously and harmfully. This inescapable conclusion was established by the referee who stated "I'm not certainly finding that what he pled to alone is sufficient for disbarment. It isn't." (Tr. 44). The Florida Bar specifically admitted on the record that it was going a "step further" to introduce evidence on the issue of Mr. Cohen's knowledge of the source of the structured funds, which issue had already been conclusively adjudicated as part of the federal sentencing. (Tr. 25). In effect, The Florida Bar urged, and the referee accepted, that

discipline should be imposed upon facts contradictory to those adjudicated as part of conviction and sentencing **B** thereby effectively re-writing the very federal offense upon which The Florida Bar was relying.

Significantly for this case, the recommended discipline results from four key factual findings of the referee, three of which are contrary to the findings of the federal sentencing court and the fourth of which concludes that voluntarily surrendering all funds to the government was somehow not restitutionary. The key factual findings so depart from the adjudicated facts of the conviction that they resulted in the inaccurate determination of mitigating and aggravating factors. Another consequence is the paradox that the referee amended his report to sanction Steven Cohen for supposed untruthfulness simply because Steven Cohen had testified entirely consistent with the adjudicated facts of his federal plea, which the referee was now departing from. The only logical explanation is that the referee made findings and recommended discipline based upon a crime different from the federal offense, which Respondent, Steven Cohen, submits is erroneous.

This Court should not countenance such a result, but should instead exercise its ultimate role and authority in the disciplinary process to recognize the adjudicated facts of the single offense for which Respondent has accepted responsibility, been convicted, and served his time and is serving his time, after what had previously been an unblemished professional career accompanied by an exemplary family and community life.

Respondent humbly urges that discipline should be imposed consistent with the adjudicated facts of that offense, and when such facts are properly examined, that the appropriate discipline is a suspension effective *nunc pro tunc* to his automatic suspension during these proceedings.

**A. There is no presumption of correctness for recommendations of discipline, particularly when based upon erroneous findings by a referee.**

Rather than confront the essential argument in Respondent's appeal -- that is, The Florida Bar cannot both rely upon a conviction but then go behind it to re-write the adjudicated facts -- The Florida Bar appears to resort first to a presumption that is misplaced. Citing a 1986 case in its Answer Brief, The Florida Bar asserts the proposition that "a Referee's **recommendation on discipline** is afforded a **presumption of correctness** unless the recommendation is clearly erroneous or not supported by the evidence." (Answ. Brf. at 6) (emphasis supplied). However, in more recent years, the rule currently employed by this Court establishes no such analysis-avoiding presumption. During the last decade or so, this Court has repeatedly stated:

> In reviewing a referee's recommendation of discipline, the Court does not pay the same deference to this recommendation as we do to the guilt recommendation because this Court has the ultimate responsibility to determine the appropriate sanction.

The Florida Bar v. Feinberg, 760 So. 2d 933, 938 (Fla. 2000) (citing The Florida Bar v. Sweeney, 730 So. 2d 1269, 1272 (Fla. 1998)) (quotations omitted).

This modern standard of review for disciplinary recommendations is less deferential than The Florida Bar suggests, and it has been characterized as a "second-guess" standard where "this Court will not second-guess a referee's recommended discipline as long as that discipline has a reasonable basis in existing case law." Feinberg,

760 So. 2d at 939. Properly applied here, a second-guess is warranted, and perhaps even more scrutiny.

Applying this Court's modern rule gives even greater reason for scrutiny here because there is no "reasonable basis in existing case law", see Feinberg, supra, for going behind the conviction and re-writing the adjudicated facts of the federal offense in a contradictory manner so as to recommend discipline based upon such contrary facts. The Florida Bar has cited no modern case to support what appears to be its misguided technical argument that this Court should abdicate its ultimate role of examining whether the recommended discipline accords with the adjudicated facts. The Florida Bar could not do so because that argument is not consistent with this Court's precedent in recent years.

The premise of Respondent's appeal is that even cursory examination of the referee's four key factual findings shows them to be erroneous because they contradict the adjudicated facts of the very federal offense upon which The Florida Bar has based this disciplinary proceeding, and the record in this case. Thus, even if The Florida Bar's version of the standard of review were correct, which it is not, no presumption of correctness would attach to the recommended discipline because it is based on erroneous findings.

**B. The referee's four key findings erroneously contradict the adjudicated facts of the federal offense, thereby impermissibly and harmfully going behind the conviction as the basis for recommended discipline.**

Significantly, Steven Cohen's main issue on appeal is not a question of the credibility of the evidence, which question The Florida Bar inappositely argues is a matter of deference. Rather, this appeal first raises the fundamental question of whether The Florida Bar may seek, or the referee may make, findings of fact that necessarily impeach the adjudicated facts of a conviction upon which The Florida Bar has chosen to rely. Succinctly stated, the central issue is whether such evidence is even a proper subject of inquiry where the conviction is used conclusively to establish the nature of the offense for which discipline will be imposed. Certainly, The Florida Bar did not have to rely upon the conviction as the basis for its proof and could have undertaken independent proof of whatever chain of events it believed transpired. It is important to note that Respondent is not arguing here that some form of collateral estoppel *always* binds The Florida Bar to the findings of prior judicial proceedings. Rather, what Respondent is arguing to this Court is that, once The Florida Bar has chosen to rely upon a conviction as the basis for imposing discipline, then The Florida Bar (and consequently the scope of the referee's proper inquiry) became subject to the same prohibition against "going behind the conviction" that binds any party to a disciplinary proceeding.

It has been stated time and again by this Court that a party or a referee "is not empowered to 'go behind the convictions.'" The Florida Bar v. Vernell, 374 So. 2d 473,

475 (Fla. 1979). See The Florida Bar v. Kandekore, 766 So. 2d 1004, 1007 (Fla. 2000); The Florida Bar v. Horne, 527 So. 2d 816, 817 (Fla. 1988). From Horne, in particular, the import of this rule is that "the allegations included in the charges attached to the Complaint are proven facts." Id. Hence, a felony conviction introduced into a disciplinary proceeding is "conclusive proof of the criminal offense(s) charged for purposes of these rules." R. Regulating Fla. Bar 3-7.2(b). The Florida Bar cites no law to the contrary .

However, what transpired below directly violated this established legal principle. As noted above, The Florida Bar admitted that it's strategy was to go "a step further," even though the adjudicated facts of the offense giving rise to proof of guilt should not have been an issue in the disciplinary proceeding. (See Tr. 25). The referee likewise showed that if the proceedings had not in fact gone a step further then he would "certainly not find[] that what he pled to alone is sufficient for disbarment." (Tr. 44). Therefore, to justify a recommendation of disbarment it cannot be denied that The Florida Bar and the referee necessarily went "behind the conviction" to re-write the facts that the federal court had adjudicated as part of the plea and sentencing. The referee accepted this approach in making four key findings, the first three of which contradict the adjudicated facts of the conviction and the fourth of which unsupportably rejects the voluntary surrender of funds by Steven Cohen as proof restitution.

As the first of the four findings, the Amended Report incorrectly characterized the federal crime as one of "concealment" of funds. (Am. Report, at 4) ("personally received and concealed"); (Am. Report, at 13) ("helping to conceal drug money"). However, this characterization is contrary to the actual crime of structuring funds. Reference to "concealment" is not to be found in either the Plea Agreement or the Information; nor is it an element of the offense of structuring. There is no crime in merely holding funds, whether such possession is widely known, unknown, or even concealed -- which is presumably why the U.S. Attorney's Office did not charge any primary, substantive offense related in any way to the more easily provable notions of merely holding or even concealing funds. Such a mischaracterization re-writes the conspiracy offense to support the incorrect conclusion that multiple, repeat offenses were occurring **B** as opposed to overt acts, that were not illegal in and of themselves, in furtherance of a single offense of conspiracy. Notably, the object of the conspiracy was never accomplished because no actual structuring ever occurred. Yet from such mischaracterization, the referee concluded that the aggravator of "multiple offenses" of standard 9.22(d) was met. However, when the adjudicated facts are properly understood, that finding and the attendant conclusion are plainly erroneous.

As a second key finding, the referee concluded that Steven Cohen was untruthful and that he refused to acknowledge his wrongful conduct because he knew the funds were the "fruit of drug dealing" and totaling a "million" or even "millions" of dollars. (Am.

Report, at 14 & 6, 10, 15). This conclusion about Steven Cohen=s knowledge is an outright rejection of the adjudication by Judge Marra during sentencing in federal court that Steven Cohen lacked any knowledge of the source of the funds. The conclusion as to the amount of funds is also in direct contradiction to the facts of the federal conviction, which was based upon a stipulated amount in federal court of more than $500,000 but less than $800,000. (Plea Agreement, &4a). Although noting that Judge Marra had adopted the findings of the presentence investigation report "except as to any finding relating to the Defendant's knowledge of the illegal nature of the proceeds," the referee instead found knowledge. (Am. Report, at 10, 14). This contrary finding was based upon a presentence investigation report that was never in evidence before the referee and also based upon the double hearsay about what agent DeLena heard from the alleged co-conspirator, Taylor, who was attempting to curry favor with prosecutors and law enforcement in aid of his own sentence, and supposedly said "Respondent knew." (Am. Report, at 14). Nowhere in the record is there evidence that Taylor indicated to DeLena that he had ever "told" Respondent Steven Cohen. To the contrary, the only evidence on that point in the record is from the Assistant U.S. Attorney who proffered to the federal court that no witness had ever admitted to telling Steven Cohen of the sources of the funds. (Sentencing Tr. at 17:17 - 18: 3) (Tr. at 100).

Equally troubling as the existence of these findings that contradict the adjudicated facts, is their timing in the disciplinary proceeding. The referee indicated at the ***start*** of

the hearing itself that he already had these additional findings in mind concerning the knowledge of Steven Cohen about the source of the funds, despite Judge Marra having adjudicated the same issue. Before opening statements, the referee had concluded that "it's obvious that he [Steven Cohen] was more than just somebody who was serving as an escrow agent here. And the obvious knowledge is there." (Tr. 12.) The referee elaborated: "The simple fact is that **I'm inferring a great deal of knowledge and involvement** on his [Steven Cohen's] part in any event." (Tr. 15) (emphasis supplied).[1]

[1] As these statements show, The Florida Bar is entirely incorrect to suggest in its brief that somehow Respondent *invited* the error of going behind the pleadings. (Answ. Brf. 12-14). With such comments already on the record from the referee (Tr. 12, 15) and with The Florida Bar promising to go "a step further" and put knowledge

at issue (Tr. 25, 29), Respondent's counsel cannot be said to have opened the door by responding to the issue in opening argument (Tr. 33-34). Discussing the sentencing transcript in cross-examination of The Florida Bar's witness and his lack of recollection was not opening any door to change adjudicated facts. (Tr. 100). Moreover, the clear point of Respondent's counsel was to show that Judge Marra had considered and resolved the knowledge issue during the federal sentencing **B** thereby leaving nothing to resolve on that point. Id. It defies logic for The Florida Bar to suggest that, by following after The Florida Bar's opening, Respondent was the first to put the issue of knowledge in play. It is also illogical to suggest that Respondent introduced the issue as evidence of mitigation without identifying exactly what mitigating factor it might bear upon because knowledge itself is not an enumerated factor under standard 9.32. Moreover, it was not even considered as evidence of mitigation by the referee in the Amended Report. Rather, the record shows that the issue of knowledge of the source of the funds was first raised by the referee and then raised by The Florida Bar before Respondent addressed it in the sequence of the proceedings, and it appears in the Amended Report only as proof of rule violations and aggravators.

Regardless of exactly when the referee arrived at these findings as to knowledge and the amount of funds, he reached both of the foregoing findings contrary to the federal court, and he relied upon them to justify his own conclusion that Steven Cohen's voluntary plea and conviction still constituted a "refusal to acknowledge the wrongful nature of his conduct." (Am. Report, at 17). These findings also appear to be the referee's basis for concluding that such aggravating factors of the Fla. Stds. Imposing Law. Sancs. applied as dishonest or selfish motive, 9.22(b) and false evidence, 9.22(f).

In addition, because Steven Cohen testified at the disciplinary proceeding that he did not know the source of the funds and believed them to be from legitimate, cash-intensive business such as fireworks and ATM machines, which was entirely consistent with the federal adjudication of the absence of knowledge, the referee amended his report to add a violation of R. Regulating Fla. Bar 4-8.1(a) (making a false statement of material fact in a disciplinary matter) not previously charged by The Florida Bar. (Am. Report, at 11). In other words, the referee not only contradicted the factual adjudications by Judge Marra for the federal conviction upon which The Florida Bar had chosen to rely, but based upon that very contradiction, the referee effectively put Steven Cohen in the Hobbesian choice of being subject to an additional disciplinary violation, or else having to testify contrary to his own representations to the federal prosecutor; contrary to the resulting plea agreement; and contrary to the adjudicated facts in federal criminal court. That is but one unsalutary result of going behind the conviction here, and if allowed, it

will create problems for future cases involving lawyers who wish to come forward, admit responsibility and be adjudicated, if they know that professional discipline will ensue that would both rely upon the conviction to establish guilt, but then effectively re-write the adjudication in potentially contradictory ways for purposes of recommending discipline.

The fourth key finding in the Amended Report referred to an "unwillingness" to turn over funds. (Am. Rep. at 8; see Am. Rep. at 17). However, there is no such direct evidence in the record. The only witness of The Florida Bar, DEA Agent Jon DeLena, did not testify to the "unwillingness" of Steven Cohen. Rather, the evidence in record is to the contrary: the total willingness of Steven Cohen to produce the funds, subject only to the advice of counsel due to the legal consequence of the unconstrained admission that was potentially inherent in such production. (Am. Report, at 8, 17-18). The referee dismissed this advice of legal counsel as something that a "truly remorseful defendant" should ignore. (Am. Rep. at 18). However, to accept such a conclusion demeans the very profession and the legal system which these disciplinary proceedings are designed to protect and uplift.

Throughout these points, the referee also claimed that the sentencing Judge had a "great distaste for, and hesitation to go along with, the plea bargain" and that the sentencing Judge "very reluctantly went along with the very favorable plea bargain." (Am. Report, at 8, 9). In contrast, the evidence of record is, according to Judge Marra himself, that he has a policy of accepting plea agreements but scrutinized them for "some

reason brought out in the facts or in the evidence to cause me to be concerned...." (Sentencing Tr. at 51). Then Judge Marra expressly stated: **"In this case, I don't find any reason to deviate from that policy."** (Id.) (emphasis supplied). In other words, Judge Marra found no basis to be concerned about the facts underlying the plea agreement in federal court, and he adjudicated them accordingly.

Thus, there is simply no basis in this particular case for The Florida Bar or the referee violating the prohibition against "going behind a conviction" upon which The Florida Bar has chosen to rely to establish misconduct for disciplinary purposes. With The Florida Bar having so relied in pursuing its case, it was erroneous for the referee to make contrary findings and to recommend disbarment when, according to the same referee, the federal offense alone to which Steven Cohen pleaded was not sufficient to warrant disbarment. (Tr. 44).

**C. Suspension serves the purposes of attorney discipline in this case.**

The Florida Bar properly concedes that disbarment is not automatic when an attorney is convicted of a felony. In fact, this Court rejected such an automatic rule of disbarment in The Florida Bar v. Jahn, 509 So. 2d 285, 286 (Fla. 1987), out of a preference for "continu[ing] to view each case solely on the merits presented therein." Accordingly, section 3.0 of Florida's Standards for Imposing Lawyer Sanctions provides

for consideration of both the potential or actual injury caused by the lawyer's misconduct and the existence of aggravating or mitigating factors.

It is axiomatic that disbarment is the most severe sanction. R. Regulating Fla. Bar 3-5.1(f); The Florida Bar v. Clement, 662 So. 2d 690, 699 (Fla. 1995). "Lawyers are disbarred only in cases where they commit extreme violations involving moral turpitude, corruption, defalcations, theft, larceny or other serious or reprehensible offenses. Disbarment is an extreme penalty and should only be imposed in those rare cases where rehabilitation is highly improbable." The Florida Bar v. Davis, 361 So.2d 159, 162 (Fla. 1978) (citing In re LaMotte, 341 So. 2d 513 (Fla. 1977)). Disbarment "occupies the same rung of the ladder in these proceedings as the death penalty in criminal proceedings." The Florida Bar v. Summers, 728 So.2d 739, 742 (Fla.1999) (quoting The Florida Bar v. Hirsch, 342 So.2d 970, 971 (Fla.1977)). These principles were endorsed again by this Court in its recent case of The Florida Bar v. Shoureas, 2004 WL 1846215 (Fla. August 19, 2004), where suspension was found appropriate for an attorney who had repeatedly failed to be diligent and thereby injured actual clients.

As this Court has stated, what constitutes an appropriate sanction is one that serves the three purposes recognized by this Court of (a) fairness to society; (b) fairness to the attorney; and (c) deterrence of similar misconduct. See Clement, 662 So. 2d at 699. Applying this balancing test here, a suspension amply fulfills all purposes. Steven Cohen has already paid a substantial debt to society after accepting incarceration, a home

detention, supervised release, a significant fine, and suspension from his chosen profession of over twenty years. Second, it is fair to the attorney that he be held responsible for the conduct which he voluntarily admitted and of which he was convicted. As noted in the initial brief, the relevant precedent shows that far more egregious conduct than occurred here -- conspiring to deposit funds in a bank at some point in the future in a manner that avoids additional federal reporting -- warrants a suspension, rather than disbarment. See The Florida Bar v. Vining, 707 So. 2d 670, 672-73 (Fla. 1998) ("dishonest, fraudulent, and deceitful conduct," including before a judge, this Court found a three-year suspension appropriate); The Florida Bar v. Kleinfeld, 648 So. 2d 698, 699-700 (Fla. 1995) (even without evidence of mitigation, the "extraordinarily serious" offense of making a false statement to a tribunal warranted suspension). The third purpose of discipline **B** deterrence through precedent **B** is also well served by upholding the prohibition against "going behind a conviction" such that discipline is imposed consonant with the adjudicated facts of such conviction.

When the adjudicated facts of Steven Cohen's conviction are considered by this Court, several of the aggravating factors relied upon by the referee, as well as the violation of R. Regulating Fla. Bar 4-8.1(a) itself (for making false statements in the disciplinary process by testifying consistent with the adjudicated facts of the federal case), all fall away from this case. As noted above, among the four key findings relied upon by the referee, "concealment" was not the federal offense and was not a basis for finding

multiple offenses for purposes of standard 9.22(d). The finding of knowledge of the source of the funds, contrary to what the federal court adjudicated, is not a proper basis for submission of false evidence for purposes of standard 9.22(f) or indifference to making restitution for standard 9.22(j). It is also not a proper basis for proving dishonest or selfish motive for standard 9.22(b). It is also of note that there is no evidence that Steven Cohen gained personally or was motivated by any such gain for assisting his friend as he did. With the facts conformed to those adjudicated by the federal court, these aggravators are substantially reduced to approximately two **B** a pattern of misconduct for standard 9.22(c) and experience in the law for standard 9.22(I).

These two aggravating factors are balanced in the record below, if not outweighed, by the mitigating factors of "absence of a prior disciplinary record" under 9.32(a) and "very good character" in evidence under 9.32(g), as found by the referee. It should also be considered that the absence of knowledge of the source of the founds and the absence of personal gain from participation show that Steven Cohen satisfies the absence of a dishonest or selfish motive under 9.32(b). The Court is also asked to reassess the referee's conclusions that when Steven Cohen, with a lifetime in the same community and with a close family, voluntarily pleaded to a crime that resulted in jail time, supervised release, fines, loss of standing in his profession and his community, and public humiliation, he suffered a real measure of "other penalties and sanctions" under 9.32(k) and "lasting reason for remorse and regret" under 9.32(l), all in further mitigation. (His

statements of remorse and regret are set forth in detail in the initial brief and speak eloquently and anguishingly for themselves.)

Finally, this Court is asked to consider that Steven Cohen made restitution by surrendering all funds in his possession as part of his plea agreement. In addition to the fact that structuring is arguably a victimless crime and that Steven Cohen made no claim to, or profit from, the funds, it is undisputed in the record that he surrendered them as soon as the testimonial issues surrounding the act of surrender were resolved by the plea agreement. Under the comment to standard 9.4, it would be appropriate to consider restitution even if not made until in response to a complaint filed with the disciplinary agency. However, here Steven Cohen had already agreed fully and completely to turnover the funds to the U.S. government before disciplinary proceedings commenced, and he did so. Thus, Steven Cohen submits that the uncontradicted facts of record show that the mitigating factor of restitution under 9.32(d) has also been met.

On such a record, The Florida Bar's few cases urging disbarment are highly distinguishable. The Florida Bar v. Bustamante, 662 So. 2d 687 (Fla. 1995), involved a conviction for the substantive offense of wire fraud as part of fraudulently inducing an insurance company to issue over two million dollars in loans that enriched the attorney's firm by over a quarter of a million dollars. The resulting plea lead only to a probationary sentence and fine. Ultimately, discipline was recommended based upon a violation of four rules and upon the four aggravators of dishonest and selfish motive, a pattern of

misconduct; refusal to acknowledge wrongful nature of misconduct; and substantial experience in the practice of law. However, the Bustamante case holds little guidance for this Court in reviewing the present case where no primary, substantive offense was committed; no victim was deprived of funds or defrauded; no attorney was enriched; the conspiracy itself was un-consummated despite opportunity to do so; and the attorney accepted responsibility and went to jail among other sanctions.

Likewise, in The Florida Bar v. Eisenberg, 555 So. 2d 353 (Fla. 1989), the attorney pleaded guilty to two substantive crimes, including money laundering. Sentencing was deferred to allow cooperation with the prosecutors, and even with such cooperation, the two crimes were serious enough that the attorney in Eisenberg was sentenced to two years of incarceration, among other penalties. On appeal to this Court of his recommended disbarment, the attorney essentially wanted more credit in mitigation for his cooperation with government officials while under threat of sentencing, as well as other unspecified mitigation. This Court recognized in Eisenberg that mitigation evidence was appropriate to consider, but declined to change the recommendation.

Again, however, Eisenberg is not comparable to the present case. There the attorney actually laundered funds and pleaded guilty to two substantive offenses. It is apparent that not even the referee in Eisenberg could find the two mitigating factors present that the referee in the present case found, and the referee in Eisenberg was apparently not too impressed that the attorney's best evidence of mitigation was to

cooperate while sentencing loomed. Those facts are a far cry from the present case where Steven Cohen never committed a substantive crime or profited from the single offense charged -- and an even further cry when one considers the applicable mitigating factors and the few aggravating factors that are supported by the true, adjudicated facts of the conviction of Steven Cohen. Eisenberg holds little guidance for this Court for this particular case, and The Florida Bar's other cases where disbarment arose that are cited, but not discussed, in the Answer Brief are even further afield.

## CONCLUSION

Properly construed here, and with an eye to this Court's obligation of balancing fairness to the public, fairness to the attorney, and deterrence of future misconduct, the adjudicated facts of Steven Cohen's conviction make suspension a recognized and proper measure of discipline. Such a result also ensures that attorneys who come forward in the future to accept responsibility for a crime, as Steven Cohen has, can be reassured that, should The Florida Bar rely upon such conviction to impose discipline, then the discipline will redress the actual offense -- which standard should be the definition of fairness for all concerned. Accordingly Respondent suggests that the appropriate discipline under the facts and circumstances of this case is a suspension from the practice of law effective *nunc pro tunc* to his automatic suspension during these proceedings.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this

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## CERTIFICATION OF TYPESIZE

Undersigned counsel certifies that this brief employs proportionately spaced Times New Roman type in fourteen (14) points which typesize meets or exceeds the legibility standards set by Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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