IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

KAYO ELWOOD MORGAN,

Respondent.
_____/

Supreme Court Case No. SC04-1438

The Florida Bar File No. 2004-50,354(17E)

THE FLORIDA BAR'S ANSWER BRIEF

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PRELIMINARY STATEMENT

Throughout this Answer Brief, The Florida Bar will refer to specific parts of the record as follows: The Report of Referee will be designated as RR ____ (indicating the referenced page number). The transcript of the Final Hearing on Guilt held on January 19, 2005, will be designated as TT1: ____, (indicating the referenced page number). The transcript of the Final Hearing on Sanctions held on April 13, 2005, will be designated as TT2: ____, (indicating the referenced page number). The Appendix attached to this brief will be designated as A ___ (indicating the referenced page number). The Florida Bar will be referred to as "the Bar." Kayo Elwood Morgan will be referred to as "respondent".

STATEMENT OF THE CASE AND FACTS

In the interest of accuracy, and to ensure the record is complete, The Florida Bar offers the following supplement to respondent's statement of the case and facts.

Assistant State Attorney Hager Simmons, the prosecutor in the criminal matter, testified that after the relevance objection was sustained, respondent stepped away from the podium and started to walk towards the bench, and began speaking to the judge in a raised voice. The tone of respondent's voice during the exchange was upset and getting louder by the minute, and he seemed angry (TT1: 19-21). After the jury was excused, the exchange continued and respondent was pacing back and forth from behind the podium to the middle of the room and he seemed very angry. At one point, a deputy moved to behind the respondent (TT1: 21-22). During the course of respondent's conduct, Judge Collins admonished respondent at one point that if he continued with the conduct, there would be a contempt hearing (A 40). At a later point, Judge Collins threatened respondent with arrest (A 44). As a result of respondent's conduct, Judge Collins ultimately declared a mistrial and recused himself from the case (A 48). Since the incident, Judge Collins has recused himself *sua sponte* when respondent has appeared before him. According to respondent, Judge Collins has instructed the clerk to automatically recuse him from cases involving the respondent (TT1: 89).

The referee recommended that respondent be found guilty of violating R. Regulating Fla. Bar 4-3.5(c) [A lawyer shall not engage in conduct intended to disrupt a tribunal]; and Rule 4-8.4(d) [A lawyer shall not engage in conduct in connection with the

practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis…] (RR 6-7).

The referee, in determining that respondent's conduct was sufficiently egregious to warrant a 91-day rehabilitative suspension, considered four aggravating factors. These were respondent's prior discipline; a pattern of misconduct; refusal to acknowledge wrongful nature of conduct; and substantial experience in the practice of law (RR 9-10). The Referee also considered respondent's character or reputation as a mitigating factor (RR 10).

The referee considered the respondent's prior disciplinary history as the most serious aggravating factor because of two prior occasions involving disrespectful conduct towards the judiciary (RR 7-8). At the final hearing on the issue of sanctions, respondent's prior disciplinary history was introduced. In Case No. 92,301, respondent was sanctioned in 1998, with a public reprimand administered by personal appearance before the Board of Governors of The Florida Bar (A 63). In that case, respondent made several intemperate and/or derogatory remarks to and about the judiciary in or about 1995 and 1996. Pursuant to a consent judgment, he was found guilty of violating R. Regulating Fla. Bar 4-8.4(d) [A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice.] (RR 8, 10; A 63-67). The transcript of the hearing on September 26, 1995, in the case of State of Florida vs. Robert M. Jackson, wherein some of the intemperate and/or derogatory remarks occurred, was

introduced into evidence (A 68). That transcript demonstrates that the Honorable Ilona Holmes, the presiding judge in the matter cautioned respondent that his demeanor with the Court was "very flippant, very rude, and very disrespectful," and that respondent had "yelled at the Court" (A 71-72). Further, the transcript revealed the following exchange (A 73, lines 10-21):

> The Court: We'll resume 8:30 in the morning. I'll hear whatever motion you want to make. I realize that, you know, you have to zealously represent Mr. Jackson.
>
> Mr. Morgan: I'm not laying down. I'll never lie down with a client. I won't be admonished by you. You're admonishing me.
>
> The Court: I expect you to have respect for the Court.
>
> Mr. Morgan: I don't respect you. Don't talk to me as if I'm contemptuous. When you do, you deal with me later…

In Case No. SC01-555, respondent was again sanctioned in 2001 with a ten day suspension and probation requiring attendance at The Florida Bar's Ethics School. In that case, respondent was found guilty of violating R. Regulating Fla. Bar 4-8.2(a) for making statements that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge (RR 8, 9-10; A 51-56).[1] This

[1] While reviewing the sanction hearing transcript in conjunction with the preparation of this Answer Brief, Bar Counsel discovered that during closing argument, the record shows he incorrectly stated (at TT2: 38, lines 11-14) that respondent had been previously found guilty of Rule 4-3.5(c) in Case No. SC01-555. The Report of Referee approved by this Court in Case No. SC01-555, and which was in evidence before the referee in the instant matter as part of Exhibit S2 (A 52-56) states in pertinent part, "In consideration of respondent's Consent to Sanction, the bar has withdrawn its claim that respondent

occurred during his appearance as attorney of record on or about January 6, 2000, in the case of State of Florida vs. Shawn Langbaum, wherein respondent engaged in the following exchange with the Court (A 59, line 20 to A 61, line 14):

> Mr. Morgan: What is it Judge? Educate me, 15 years practicing trial attorney, criminal law. I can read. I know more law than you ever forgot. Tell me about what it is.
>
> The Court: Mr. Morgan, I don't need to hear your disrespect.
>
> Mr. Morgan: Just educate my client why you're denying him his defense.
>
> The Court: Okay, I don't need you to raise your voice; I don't need you to disrespect my anymore. Okay. Okay.
>
> Mr. Morgan: Let me ask you something. Do you know what it's like to defend somebody's liberty and have a Court close itself off, entirely, to an obviously arguable defense.
>
> The Court: Mr. Morgan, I've considered your defense; I made my ruling. Please.
>
> Mr. Morgan: Judge, I'm asking you to listen.
>
> The Court: No. I've made my ruling.
>
> Mr. Morgan: Well, then order me not to say anything anymore.
>
> The Court: Okay.
>
> Mr. Morgan: All you got to do is order me not to say anything, anymore.

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violated R. Reg Fla Bar 4-3.5(c)." The Honorable Susan R. Lubitz, in her Report of Referee in the instant matter, considered the correct violation from Case No. SC01-555. This footnote is intended make the record complete.

The Court: Are we ready for the charge –

Mr. Morgan: Can I please get an order, from you, to not further argue on this?

The Court: Please do not speak when I speak. Okay? Can I ask that of you?

Mr. Morgan: Well, I wish you'd just order me not to argue on this point, anymore, so I don't –

The Court: I am just going to tell you to please be respectful. And, when I ask you to not speak anymore and I make a ruling, just abide by the Court's ruling. Can you do that?

Mr. Morgan: Yes, sir. Will you order –

The Court: You're not going to do that?

Mr. Morgan: Yes, as soon as you tell me not to –

The Court: Okay. You just want to continue arguing with the Court. In the presence of all these people, you want to continue arguing with me?

Mr. Morgan: No.

The Court: Okay. Do you want to go forward with your trial?

Mr. Morgan: I want an order, from you, not to argue on this point anymore.

In the instant case, the referee determined that Standards 6.22 and 7.2 of the Florida Standards For Imposing Lawyer Sanctions applied to Respondent's conduct, noting that 6.22 recommends a suspension when a lawyer knowingly violates a court order or rule and interferes with a legal proceeding, and Standard 7.2 recommends a

suspension when a lawyer knowingly engages in conduct that violates his professional duty and causes injury to the legal system (RR 7). The referee also considered relevant case law as well as the four aggravating factors and one mitigating factor and determined that a 91-day rehabilitative suspension was warranted, especially in view of respondent's prior disciplinary record (RR 7-10).

SUMMARY OF THE ARGUMENT

The Bar provided the referee with a transcript of respondent's heated exchange with the Honorable Robert Collins and the testimony of Hager Simmons, the Assistant State Attorney prosecuting the case against respondent's client, which established the conduct exhibited by respondent toward Judge Collins in violation of the Rules of Professional Conduct. The respondent has conceded the findings of fact and conclusions concerning guilt.

This Court has held a bar disciplinary action must serve three purposes: the judgment must be fair to society, it must be fair to the attorney, and it must sufficiently deter other attorneys from similar misconduct. Furthermore, the discipline must have a reasonable basis in existing case law or The Florida Standards for Imposing Lawyer Sanctions. The recommendation by the referee in this case adheres to the purposes of lawyer discipline because it is fair to society, it is fair to respondent, and would deter other attorneys from engaging in similar conduct. Moreover, existing case law dictates that an attorney who is disruptive toward the judiciary and challenges the authority of the judge, and has previously been disciplined for the same type of misconduct, be suspended for a period longer than 90 days. The single mitigating factor found by the referee does not overcome the presumption of a rehabilitative suspension as the appropriate discipline. Given this respondent's misconduct and his prior disciplinary history, the aggravating factors found by the referee, the discipline given in similar cases, and The Florida

Standards for Imposing Lawyer Sanctions, the referee in this case appropriately recommended a 91-day rehabilitative suspension.

ARGUMENT

I. A 91-DAY REHABILITATIVE SUSPENSION IS THE APPROPRIATE SANCTION FOR AN ATTORNEY WHO REPEATEDLY ENGAGES IN DISRESPECTFUL CONDUCT TOWARD THE JUDICIARY.

Respondent's initial brief at page 13 states that the main issue on appeal concerns the appropriateness of the disciplinary sanction recommended by the Referee in this case. As this is the only issue raised and argued by respondent in his initial brief, The Florida Bar will restrict argument in its answer brief to the appropriateness of the sanction. The respondent has conceded the findings of fact and conclusions concerning guilt because he has not argued or demonstrated that the record either contradicts or does not support those findings. The party contesting the referee's findings of fact and conclusions as to guilt must demonstrate either a lack of record evidence to support such findings and conclusions, or that the evidence in the record clearly contradicts such findings and conclusions. The Florida Bar v. Feinberg, 760 So.2d 933 (Fla. 2000), quoting The Florida Bar v. Sweeney, 730 So.2d 1269, 1271 (Fla. 1998).

While a referee's findings of fact should be upheld unless clearly erroneous, this Court is not bound by the referee's recommendations in determining the appropriate level of discipline. The Florida Bar v. Rue, 643 So.2d 1080 (Fla. 1994). Furthermore, this Court has stated the review of the discipline recommendation does not receive the same deference as the guilt recommendation because this Court has the ultimate authority to determine the appropriate sanction. The Florida Bar v. Grief, 701 So.2d 555 (Fla. 1997);

The Florida Bar v. Wilson, 643 So.2d 1063 (Fla. 1994). In The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970), this Court held three purposes must be in mind when deciding the appropriate sanction for an attorney's misconduct: 1) the judgment must be fair to society; 2) the judgment must be fair to the attorney; and 3) the judgment must be severe enough to deter others attorneys from similar conduct. This Court has further stated a referee's recommended discipline must have a reasonable basis in existing case law or the standards for imposing lawyer sanctions. The Florida Bar v. Sweeney, 730 So.2d 1269 (Fla. 1998); The Florida Bar v. Lecznar, 690 So.2d 1284 (Fla. 1997). In the instant case, existing case law and the Florida Standards for Imposing Lawyer Sanctions support the referee's recommendation of a 91-day suspension as the appropriate discipline while conforming to the purposes of lawyer discipline.

The transcript which the Bar introduced into evidence during the final hearing on guilt, demonstrates the disruptive conduct and challenge to the court's authority which the respondent engaged in with the Honorable Robert Collins. In addition, the Bar presented testimony from Assistant State Attorney Hager Simmons who prosecuted the case against respondent's client. Ms. Simmons stated respondent's conduct occurred both in and out of the presence of the jury (TT1: 20-21). In the presence of the jury, Respondent stepped away from the podium and started to walk towards the bench and began speaking to the judge in a raised voice. As he was engaging the judge, respondent seemed angry, and the tone of his voice was upset and becoming increasingly louder (TT1: 19-21). After the jury was excused respondent's conduct continued, he was pacing between the podium and the

middle of the room, and at one point, the deputy moved to behind the respondent (TT1: 21-22). Respondent acknowledged he went over the line in his heated exchange with Judge Collins (TT1: 89). During the exchange with respondent, Judge Collins stated he was recusing himself from the case because respondent was out of control in the courtroom and he did not want to fight with respondent (A 47, lines 21-23). Moreover, Judge Collins felt respondent's actions needed to be addressed (A 46, lines 5-7). Since the heated exchange with respondent, Judge Collins *sua sponte* recuses himself from any case in which respondent is the attorney (TT1: 89). It is clear from the transcript of the exchange, and the testimony provided by Ms. Simmons, that respondent directly challenged the authority of Judge Collins, and intentionally engaged in obstreperous conduct which disrupted the court and was prejudicial to the administration of justice.

In The Florida Bar v. Wasserman, 675 So.2d 103 (Fla. 1996), this Court consolidated 2 complaints against an attorney. In the first complaint, an attorney lost his temper after a ruling from a judge. The attorney stood and shouted his criticism, waved his arms, challenged the judge to hold him in contempt and displayed his arms as if to be handcuffed. The attorney stated his "contempt" for the court, banged on the table and generated such a display of anger that the bailiff who was present felt it necessary to call in a backup bailiff. The attorney also stated, outside of the hearing room, that he would advise his client to disobey the court's ruling. In the second complaint, the attorney received an unfavorable response to a question asked over the telephone and proceeded to use profane language with the judicial assistant. The referee found the attorney guilty

in both cases. This Court found respondent's misconduct warranted a 6 month suspension in each of the 2 cases to run consecutively. This Court took into consideration the egregious nature of the attorney's misconduct and his prior discipline before deciding the appropriate discipline. Similar, though not identical to the instant case, the referee in Wasserman cited the lawyer's pro bono legal services as well as his other charitable work as a mitigating factor.

In The Florida Bar v. Price, 632 So. 2d 69 (Fla. 1994), this Court upheld a 91-day suspension for an attorney who engaged in conduct intended to disrupt a tribunal and failed to act with reasonable diligence in representing a client. That attorney appeared in court under the influence of alcohol and became hostile, abrasive and belligerent to the court, his clients and other attorneys. The referee in that case considered the attorney's prior discipline in recommending the attorney be publicly reprimanded and suspended for 91 days or thereafter until completion of a substance abuse program.

The respondent, like the attorney in Wasserman, presented a direct challenge to the authority of the presiding judge. Although, it is arguable whether the respondent's misconduct was as egregious as the misconduct in Wasserman, the nature of the Wasserman misconduct is similar to the instant case so as to provide a guideline of the appropriate discipline for this respondent's misconduct. The 91-day rehabilitative suspension recommended by the referee in this case, which is less than the six month suspension that Wasserman received, takes into account the severity of this respondent's conduct, factoring in his previous discipline.

It should be noted that although the attorney in Wasserman had 4 prior instances of discipline, there is no mention in the Court's opinion that those instances were similar in nature to the misconduct for which he was then being disciplined. In the instant case, respondent has been disciplined on 2 prior occasions for similar misconduct. This respondent has been required to personally appear before the Board of Governors to receive a public reprimand for making several intemperate and derogatory remarks to and about the judiciary. Subsequently, this respondent was given a ten-day suspension and required to attend Ethics School for making statements he knew were false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. The similarity of respondent's conduct in the present case with the conduct that resulted in the two prior disciplines is apparent. In both prior cases, the presiding judge had to admonish the respondent for raising his voice and for being disrespectful (A 59-60; 71-72). The transcripts of the relevant court proceedings which led to respondent's prior disciplines clearly demonstrate the repeated pattern of respondent's misconduct in going beyond a legitimate challenge to a court's ruling, and instead engaging in intemperate, inappropriate and disrespectful challenges to the legitimate authority of the respective presiding judges in the courtroom.

Underlying Case No. 92,301, respondent's first disciplinary proceeding, respondent had engaged in the following exchange with the Honorable Ilona M. Holmes, the presiding judge in a criminal proceeding (A 71, line 23 to A 72, line 23):

The Court: Mr. Morgan, I'll let record speak for itself. But I would caution you, your demeanor with this Court has been very flippant, very rude and very disrespectful. I expect you to be an advocate for your client and zealous. You have yelled at the Court - -

Mr. Morgan: I move to recuse.

The Court: I'm not going to recuse myself.

Mr. Morgan: You accused - -

The Court: The appropriate way to do that is to put it in writing, pursuant to the rule, and the Court will review it for legal sufficiency and we'll make a determination once you put it in writing. The only thing I'm admonishing you to do, you don't yell and scream at the Court. I'm trying to hear your side, but when you're yelling and screaming and the State starts objecting and it makes - -

Mr. Morgan: I'm making - -

The Court: Wait a minute, I'm not finished.

Mr. Morgan: I don't want to be admonished by a judge. You want to hold me in contempt, cite me. We'll deal with that later. I'm going to make - -

The Court: I'm not going to hold you in contempt. I'm putting you on notice today that you have yelled at the Court several times. At this point, I've asked you not to yell at me.

(At A 73 lines 10-21):

The Court: We'll resume 8:30 in the morning. I'll hear whatever motion you want to make. I realize that, you know, you have to zealously represent Mr. Jackson.

Mr. Morgan: I'm not laying down. I'll never lie down with a client. I won't be admonished by you. You're admonishing me.

The Court: I expect you to have respect for the Court.

Mr. Morgan: I don't respect you. Don't talk to me as if I'm contemptuous. When you do, you deal with me later…

Underlying Case No. SC01-555, respondent's second case of discipline, respondent engaged in the following exchange with the Honorable Jay S. Spechler, the presiding judge in a criminal proceeding (A 59, line 20 to A 61, line 14):

Mr. Morgan: What is it Judge? Educate me, 15 years practicing trial attorney, criminal law. I can read. I know more law than you ever forgot. Tell me about what it is.

The Court: Mr. Morgan, I don't need to hear your disrespect.

Mr. Morgan: Just educate my client why you're denying him his defense.

The Court: Okay, I don't need you to raise your voice; I don't need you to disrespect my anymore. Okay. Okay.

Mr. Morgan: Let me ask you something. Do you know what it's like to defend somebody's liberty and have a Court close itself off, entirely, to an obviously arguable defense.

The Court: Mr. Morgan, I've considered your defense; I made my ruling. Please.

Mr. Morgan: Judge, I'm asking you to listen.

The Court: No. I've made my ruling.

Mr. Morgan: Well, then order me not to say anything anymore.

The Court: Okay.

Mr. Morgan: All you got to do is order me not to say anything, anymore.

The Court: Are we ready for the charge –

Mr. Morgan: Can I please get an order, from you, to not further argue on this?

The Court: Please do not speak when I speak. Okay? Can I ask that of you?

Mr. Morgan: Well, I wish you'd just order me not to argue on this point, anymore, so I don't –

The Court: I am just going to tell you to please be respectful. And, when I ask you to not speak anymore and I make a ruling, just abide by the Court's ruling. Can you do that?

Mr. Morgan: Yes, sir. Will you order –

The Court: You're not going to do that?

Mr. Morgan: Yes, as soon as you tell me not to –

The Court: Okay. You just want to continue arguing with the Court. In the presence of all these people, you want to continue arguing with me?

Mr. Morgan: No.

The Court: Okay. Do you want to go forward with your trial?

Mr. Morgan: I want an order, from you, not to argue on this point anymore.

Underlying the instant disciplinary matter, respondent engaged in the following exchange with the Honorable Robert Collins, the presiding judge in a criminal matter (RR 3-6, A 39, line 10 to A 40, line 25; A 43, line 21 to A 45, line 12):

The Court: Mr. Morgan, I want you both to-

Mr. Morgan: I am moving for a mistrial.

The Court: Mr. Morgan, I am not going to-

Mr. Morgan: Don't treat me like that in front of a jury

The Court: I sustained the objection, and you-

Mr. Morgan: No Judge treats me like that, in front of a jury.

The Court: I heard the way you treat other Judges, and I don't appreciate it.

Mr. Morgan: I don't care how you think I treat other Judges. You don't treat me- -you treat me with respect. I treat you with respect. I don't care what you think about other Judges.

The Court: Please come up, kindly. Please come up, sir.

Mr. Morgan: No, I'm staying right here.

The Court: I think you are out of line, sir.

Mr. Morgan: I think you are out of line. That's what I think. You don't talk to me like that in front of a jury.

The Court: You don't have to talk any further. Are you going to continue? I sustained the objection, for the record.

Mr. Morgan: Wait a minute.

The Court: If you continue we will have a contempt hearing. I don't want to go through this, again.

Mr. Morgan: I object.

The Court: You are not going to pull stuff in my court without being-receiving-

Mr. Morgan: So you think I am pulling something on you, Judge Glare?

The Court: I think you are not respectful. I've never heard anyone-

Mr. Morgan: You are not respectful to me.

The Court: I have sustained an objection. I don't want you to talk for one moment. I am controlling this courtroom. I am the Judge here.

(At A 43, line 21 to A 45, line 12):

Ms. Simmons: Judge, now it's gone beyond the proffer. It's gone beyond the item of clothing.

The Court: I don't know what he is doing.

Mr. Morgan: Now, wait a minute.

The Court: I have already ruled.

By Mr. Morgan:
Q. Were you dressed properly for the inside of that bar?

The Court: Hold it, one second.

The Witness: Yes.

The Court: Hold it. I have ruled.

By Mr. Morgan:
Q. How do you know?

The Court: I want you to stop now. What's the matter with you?

Mr. Morgan: She answered something.

The Court: I am the Judge here. Now, you continue, I am going to have you arrested.

Mr. Morgan: Go ahead and have me arrested. What are you threatening me for? I want a mistrial. Take me to jail and let's go with it. I want my mistrial. You don't talk to me like this. It's not going to happen.

The Court: Mr. Morgan?

Mr. Morgan: No, I am not going to be talked to like that, by you or anyone else, when I'm defending somebody in a felony case. It's not going to happen.

The Court: You are out of line. I don't want to hear anything further, here.

Mr. Morgan: Well, I move for a mistrial.

The Court: What you want to do?

Mr. Morgan: You are prejudice.

The Court: And you are obnoxious.

Mr. Morgan: So what?

The Court: You can't be obnoxious in a courtroom to a Judge.

Mr. Morgan: You are obnoxious to me.

The Court: I don't want to talk with you any further. You are not going to get me excited, sir.

This Court has held that in assessing discipline, it considers prior misconduct and cumulative misconduct as relevant factors and deals more severely with cumulative misconduct than with isolated misconduct. Additionally, cumulative misconduct of a similar nature should warrant even more severe discipline than might dissimilar conduct. The Florida Bar v. Williams, 753 So.2d 1258 (Fla. 2000); The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1982).

As set forth in the Report of Referee, the Florida Standards for Imposing Lawyer Sanctions Standard 6.22 suggests a suspension as the appropriate discipline when a lawyer knowingly violates a court order or rule or causes interference or potential interference with a legal proceeding. Furthermore, Standard 7.2 recommends a

suspension when a lawyer knowingly engages in conduct that violates his professional duty and causes injury to the legal system (RR 7).

When considering the discipline delineated in The Florida Standards for Imposing Lawyer Sanctions, any applicable mitigating or aggravating factor must be considered. In aggravation, the referee found the prior discipline the most serious. In addition, the referee found a pattern of misconduct, respondent's refusal to acknowledge the wrongful nature of his conduct, and respondent's substantial experience in the practice of law as aggravating factors.

In the Initial Brief, respondent takes issue with the referee's finding of respondent's refusal to acknowledge the wrongful nature of his conduct as an aggravating factor. In support thereof, he cites his agreement to enter into a consent judgment for a suspension in a prior disciplinary case. However, the referee correctly found in support of this aggravating factor, that the respondent excused his wrongful conduct by claiming that he was forced to object to improper judicial rulings in order to protect his client's right to a fair trial (RR 8). This is conceded by respondent in his Initial Brief at page 15, wherein respondent admits that his testimony was that "he had to make a proffer to protect the record for Appellate review, and was attempting to so do, outside the presence of the jury." Respondent refuses to acknowledge that there are appropriate methods to accomplish his stated objectives on behalf of his clients which do not include yelling at the presiding judge and otherwise demonstrating his disrespect for the authority of the court. Thus, respondent continues to try to excuse his improper conduct.

The referee in the instant case found in mitigation the evidence of good character and reputation. This single mitigating factor in this case does not overcome the presumption of a rehabilitative suspension as the appropriate discipline. Furthermore, the referee can use the aggravating factors to justify an increase in the degree of discipline to be imposed. The referee found this case needed an increase in the degree of discipline due to the aggravating factors present (RR 7-9).

The Honorable Alfred Horowitz, a Circuit Judge in the Seventeenth Judicial Circuit, testified on behalf of respondent at the sanctions hearing. Judge Horowitz stated that when he had a murder case in which respondent was involved, some judges had approached him to forewarn him that he would have problems, not with the case, but with respondent as the attorney on the case (TT2: 10, lines 4-9). This echoes the statement made by Judge Collins during the exchange with respondent that he heard the way respondent treats other judges and did not appreciate it (A 39, lines 18-19).

The Honorable Ilona Holmes, a Circuit Judge in the Seventeenth Judicial Circuit, also testified on behalf of respondent at the sanctions hearing. Judge Holmes referred to the incident where she was the presiding judge in the matter which led to the prior discipline imposed in Case No. 92,301 and stated that she accepted respondent's apology for the incident he had with her. Judge Holmes also stated that respondent gets "wound up", and that there are certain judges that know how to deal with him, which is to allow respondent to do "his thing" without running over (TT2: page 6, line 25 to page 7, line 5).

It is obvious that respondent's reputation for this wrongful conduct now precedes him at the Seventeenth Circuit Court. With all due respect to Judges Holmes and Horowitz, it is submitted that respondent should not be permitted to govern his conduct under a different set of rules from those governing other attorneys. The judicial system provides appropriate methods of redress for respondent when he disagrees with a ruling by the court. However, respondent did not challenge these rulings in an appropriate manner. Instead, he engaged in angry, disrespectful and obstreperous behavior, and in so doing, he directly challenged the legitimate authority of the judge in the courtroom, which at its very core, is a challenge to the judicial system itself. In this instance, respondent's behavior resulted in Judge Collins automatically recusing himself from further presiding in respondent's cases. The injury to the legal system, the profession, and ultimately the public is apparent when one attorney is permitted to continue to act with such disrespect and defiance. Despite having received a public reprimand before the Board of Governors and a suspension, respondent has continued to engage in this wrongful behavior, and in doing so, he acted at his peril. Given this respondent's prior discipline and the cumulative and similar nature of his misconduct, the referee was correct in recommending a 91-day rehabilitative suspension.

CONCLUSION

This Court should approve the referee's report in this case and suspend respondent for 91-days because the discipline is consistent with existing case law and The Florida Standards for Imposing Lawyer Sanctions while adhering to the purposes of attorney discipline.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY true and correct copies of The Florida Bar's Answer Brief have been furnished by regular U.S. mail to Fred Haddad, counsel for respondent, One Financial Plaza, Suite 2612, Fort Lauderdale, Florida 33394 and to Staff Counsel, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 on this _____ day of _____, 2005.

_____
MICHAEL DAVID SOIFER

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

Undersigned counsel hereby certifies The Florida Bar's Answer Brief is submitted in 14 point, proportionately spaced, Times New Roman font, and the computer file has been scanned and found to be free of viruses by Norton Anti-Virus for Windows.

_____
MICHAEL DAVID SOIFER

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