IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR, CASE NO. SC 04 700

Complainant, TFB CASE NO. 202-51,684(15B)

vs.

SHELLY GOLDMAN MAURICE,

Respondent.
_____/

RESPONDENT'S INITIAL BRIEF

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INTRODUCTION

Throughout this Brief, Shelley Goldman Maurice ("Maurice") shall be referred to as Respondent or Maurice when not identified by name. The Florida Bar ("Bar") shall be referred to as The Florida Bar or the Bar or the Petitioner when not identified by name. Eric Spelker will be referred to as "Mr. Spelker" "R" refer to the record on appeal.

Abbreviations utilized in this brief are as follows:

"TR" refers to transcript of proceedings before the referee

"RR" refers to the report of referee

"R.Ex" refers to Respondent's Exhibits introduced into evidence in the proceedings before the Referee

STATEMENT OF CASE AND FACTS

The Respondent, MAURICE, is an attorney practicing law in the State of Florida having been admitted in September of 1984.

This Court has jurisdiction under Article V, Section 15 of the Florida Constitution.

On or about August 2003, a complaint to the Florida Bar was filed against Maurice by a child of the deceased and the daughter in law of the deceased alleging that the Respondent Maurice held up a sale of property and transfer of assets belonging to their child, a minor. (It should be noted that the Complaining parties were not heirs nor interested parties to the estate of the deceased, but parents to the minor child named in the deceased's will). Maurice provided the Bar with her response to Spelker's complaint and stating she never held anything up, but was in fact trying to protect the heirs from possible claims by disgruntled children who did not receive any assets of the deceased upon her death. The Bar is not alleging that any false statements were made to anyone and further not stating that Maurice misappropriated any funds.

The local grievance committee provided probable cause that Maurice violated the following Regulating the Florida Bar: 4-1.1, 4-1.3, 4-1.4, 4-1.5(a) (illegal, prohibited or clearly excessive fees and costs), 4-1.7(a), 4-1.7(b), 4-3.2, 4-8.4(c) (engage in conduct inolving dishonest, fraud, deceit or misrepresentation) and 4-8.4(d) (misconduct engaging in

conduct in connectin with the practice of law that is prejudicial to the administration of justice).

The Bar filed a one count disciplinary complaint against Maurice alleging she violated the above Rules of Professional Conduct

A referee was appointed by Court Order.

A hearing was held on August 11, 2004. The referee recommended that Maurice be found guilty of violating 4-1.1, 4-1.3, 4.1.4(a) and (b), 4-1.5(a), 4-1.7(b), 4-3.2, 4-8.4(a), 4-8.4(c) and 4-8.4(d) of the Rules of Professional Conduction of the Florida Bar.

During the Bar's case in chief and at the conclusion of the Bar's case in chief and prior to the entry of findings of guilt as to the violations charged, the Referee was presented evidence and argument relating to discipline from the Respondent (TR-4-67). The referee filed a Report and Recommendation recommending that Maurice be suspended from the practice of law for two years, attend the following CLE programs before petitioning for reinstatement,: Practiciting with Professionallism, Basic Probate and Guardianship and Ethics School and pay the Bar's costs in theese proceedings.

Maurice petitioned for review of the referee's report, challenging the referee's finding of guilt and the referee's recommendation of two year suspension.

Facts In 1998, Maurice served as legal counsel for Helen Spelker, the mother and mother in law of the complainants and drafted numerous estate planning documents for her. (Tr-6)

Maurice was named the personal representative under the two Wills of Mrs. Spelker and during her last years of illness also assisted in acting as her power of attorney. In 1999, Mrs. Spelker prepared a will which specifically directed that even though her property was in a Quit Claim Deed, she wanted all her property to go through probate. (Tr-10-11). There are no allegations that Maurice misappropriated any funds by the Bar. Maurice and a neighbor cared for Mrs. Spelker the last year of her death. Not until the death did the children appear and request Maurice to handle the sale of the property and assist them in transferring of the funds which named the grandson and another son, as direct beneficiaries. [FN1] Mrs. Spelker died on April 2, 2001. (Tr-8).

A guardianship had to be created for the minor grandchild and for several months after the death of Spelker, Maurice was assisting the natural guardian of the minor child in setting up the guardianship and not until six months after the death of the deceased was the guardianship set up. The guardianship was necessary since the real property had to be sold through the guardian.

The additional assets of the estate consisted of a South Trust Bank Account (TR-14) and an U.S. Personnel Management life insurance policy (TR-15) which insurance proceeds went to the deceased's friend and a Social Security underpayment (TR-14) as well as a pending malpractice action (TR-14). All other assets of the deceased named direct beneficiaries. The Condominium was directed to go through probate in the Will

since the Will specifically stated that the condominium was placed in the Quit claim Deed for convenience only and the condominium was placed in the probate to protect the property from claims of creditors and because the will directed it to be placed in probate (TR-15). The conflicts of the Will and the Quit Claim Deed were discussed with the deceased, Mrs. Spelker and she understood the possible conflicts, but she wanted the specific language in her will anyway. (TR-18). Mrs. Spelker wanted specific language in the will because she wanted to make sure that the property would be protected at all costs and from claims of any of her two children who were left out of the will. (TR-18). The Respondent was asked from the daughter in law of the deceased and the son who was left out of the will what was normally charged for a probate estate and was sent a retainer agreement for probate of $225.00 an hour and with a retainer to be paid. (TR-20). The retainer was not paid nor were any monies collected from the family members of the deceased (TR-20). The respondent even laid out all costs associated with the estate (TR-21).

The Bar contends that there was no necessity for a probate of the estate since the deceased Spelker already transferred her home to her son and her minor grandson by virtue of a "Lady Bird" deed prior to her death. Maurice contended the probate was set up to protect the assets mostly from the disgruntled children who were not named in the will and to transfer the insurance policy, the Sun Trust Account, continue with the Social Security matter and the malpractice

case.

The Bar argues that it does not matter how much or even if payment was made, Maurice sent a retainer agreement to the complainant to have the probated started. [FN2]

The Bar further alleges that Maurice held up providing the keys to the apartment to the son. Maurice contends that the key was always accessible since she allowed the potential buyer who was named in the will as having the option to purchase the property and who the heirs were offering the property for sale, look after the property. In addition, Maurice presented evidence that the key was federal expressed to the son afew weeks after he requested same.

The owners of the property of the deceased were the son and a minor grandchild. At first, they were going to list the property with a realtor and respondent did tell them that it was their choice if they wanted to list the property. (TR-21), but a guardianship had to be set up first. Maurice tried to work with the daughter-in-law to set up trusts and the guardianships. (TR-21-22).

Maurice also contends that she laid out $600.00 in costs and expended approximately 18 hours on the probate matter and assisting in the sale of the property and packing and shipping the personal belongings belonging to the decedent, all at the request of the daughter in law and son. (TR-24-25). The closing statement presented by Maurice at the hearing also evidenced that no payments were made to her from the estate. (TR-26). Maurice only received $784.19 from the Buyer of the

property as payment for title insurance, reimbursement for estoppels and federal express fees (TR-32-TR-33). There is a dispute in the record of whether or not the keys upon request were given to the daughter in law and the son in a timely fashion. (TR-28). Maurice admitted without objection a copy of the closing statement evidencing the payments to her at the closing. (TR-35). In addition, the closing statement evidenced that the daughter in law received reimbursement from the sale of the home for the guardianship (TR-35) and in addition the son, who was left out of the will received from the sale of the home reimbursement for the funeral and other expenses totalling over $3,000.00. (TR-34.) (FN3 there was no objection from the son that actually owned the home that his brother who was left out of the will and out of the ownership of the home receive reimbursement from the proceeds of sale of the home for estate expenses). The daughter in law and son asked Maurice to watch the condominium and consented to the neighbor who was also the buyer in watching the condominium. (TR-29). The key was sent to the son before June (TR-29) since he had the key to gain access in July. All payments made from the sale of the home were charged to the Buyer of the home and the complainants paid nothing to Maurice (TR-36-37). Maurice testified at the hearing and presented evidence that an estate was necessary in order to resolve the issue of the Social Security underpayment (TR-38 Respondent's Exhibit Two). Maurice further testified at the hearing and presented evidence that letters and keys were sent to the

complainants by federal express during the course of the probate and the sale of the home. (TR-41 Respondent's exhibit 5). Maurice even hand delivered on a weekend documentation with instructions and explanations to the hotel room of the complainants. (TR-43 Exhibit 8). Maurice testified that checks for annuities which the beneficiaries asked Maurice to assist in getting payments made were sent immediately upon receipt. (TR-44-45). In June 2002, the buyer of the property finally agreed to pay all the closing costs of the purchase even though it was not customary in Palm Beach County for a Buyer to pay all closing costs. The owners of the property hired an attorney to oversee that the closing statement was correct. (TR-46. EX-11)

The bar only argued at the hearing that Maurice violated Rule 4-1.1 in regards to competent representation (TR-56) based upon the inability to account for any estate assets and 4-4.8 stating that Maurice wanted to go through probate in order to collect a fee through the estate.

There was no further argument at the hearing regarding any other ethical violation and no case law presented by the Bar. Maurice argued at the hearing that she was protecting the estate from creditors, that there was a potential malpractice action, there was a Social Security dispute, an insurance policy and a Sun trust account which had to go through probate and which were timely distributed once received after probate. The malpractice case had been discontinued by the malpractice attorney since the nursing

home had gone into bankruptcy.

Maurice argued at the hearing that as far back as May 21, 2001, less than two months after the death of deceased, she communicated with the complainants (TR-62) and never advised them other than the issue of guardianship that there was an obstacle in selling the property or listing the property. (TR-62). Maurice's argued during the hearing, if she had told them they could not sell the property and did not have the ability to sell why were contracts sent to them (TR-63), Maurice contended at the hearing, she was the one who was asked to protect the property and gather the assets of the estate in order to determine whether or not there was a probate and what kind of probate was necessary. (TR-66).

In considering a disciplinary recommendations the referee found the following aggravating factors: No prior discipline, 9.22(b) dishonest or selfish motive, 9.22(h) vulnerability o the victim, 9.22(i) substantial experience in the practie of law. Further the referee did not find any mitigating factors.

There is no prior disciplinary history found nor aggravating factors of (1) not keeping the client informed (2) misadvising the client that probate was necessary on the home when it was not. Since the recommendation, Maurice has taken many title insurance courses and probate courses which included ethics and paid the Bar in full two weeks after the referees report, the total sum of $1,399.00.

Maurice petitioned the Court for review of the referee's decision as to the violations and disciplinary recommendation,

arguing that the violations did not occur and if they did occur, that two year suspension is an inappropriate sanction.

FN1 The deceased left her estate to her grandson and one son, having left out her other son and a daughter who Maurice claims she was protecting the heirs from since immediately after the deceased death, the daughter who was left out of the will broke into the home and stole personal property of the deceased.

FN2 The retainer agreement was of record, however, payment was never made and Maurice nor was a billing made to the son or daughter in law, respondent paid out of her own pocket all expenses of opening the probate and at no time was she reimbursed or ever requested reimbursement.

SUMMARY OF ARGUMENT

The referee's findings of fact and recommendations as to guilt of Maurice was in error. Assuming arguendo that the Referee was correct in finding of guilt as to the violations, the disciplinary recommendation of two year suspension is inappropriate.

Maurice did not misappropriate funds nor did Maurice cost the complainant's any hardship other than to attempt to follow her client's (the deceased wishes) which was to protect her estate and assets from the children that she left out of her will and out of inheriting any monies after her death and gather the assets of the estate. Maurice paid the heirs from the estate assets and assisted in selling the property at the request of the complainants.

ARGUMENT

ISSUE I: THE REFEREE FAILED TO FIND FROM CLEAR AND CONVINCING EVIDENCE THAT SHELLEY GOLDMAN MAURICE COMMITTED MISCONDUCT AND VIOLATED THE ETHICAL RULES.

In bar discipline proceedings, the referee must find the evidence of a lawyer's misconduct proven by clear and convincing evidence. **The Florida Bar v. McClure**, 575 So. 2d 176 (Fla. 1991). Further, the party seeking to overturn a referee's findings and recommendations of guilt has the burden of showing that the referee's report is clearly erroneous or

lacking in evidentiary support. **The Florida Bar v. Wagner**, 212 So.2d 770, 772 (Fla.1968).

The Bar ailed to introduce any case law to support their argument of the proposed discipline nor any proposed standrard for imposing lawyer sanctions. In the instant case, Maurice is seeking to overturn the referee's findings that Maurice misrepresented to her client that a probate was necessary and that Maurice caused a delay in the closing of the real estate owned by the deceased and which automatically passed to the minor grandson of the deceased and the one son of the deceased. The Florida Bar must show the necessary element of intent. **The Fla Bar v. Burke**, 578 So.2d 1099, 1102 (Fla. 1991) whereby the lack of finding that the attorney intended to deprive, defraud or misappropriate a client's funds supported a finding that the attorney's conduct did not constitute dishonesty, misrepresentation, deceit or fraud. Thus, the Florida Bar must establish that Maurice' actions were intentional. The record fails to establish that Maurice's actions were intentional.

At the hearing, Maurice established that she was only doing what was in the best interest of the estate and following the deceased's intent in making sure the inheritances of the deceased were protected against the children who were left out of the will. The Bar failed to refute these contentions made by Maurice.

At the hearing the bar only contention was that Maurice violated two codes of misconduct Rule 4-1.1 and 4-1.8 and they

were unable to prove by clear and convincing evidence that these rules were violated.

Maurice further contests the referee's finding of fact. Although a referee's findings of act carries a presumption of correctness and should be upheld unless they are clearly erroneous or there is no evidence in the record to support them. **See Florida Bar. v. Vannier**, 498 So.2d 896, 898 (Fla. 1986). If a referee's findings are not supported by competent, substantial evidence, the Court must reweigh the evidence and can substitute its judgment for that of the referee **See Florida Bar v. MacMillan,** 600 So.2d 457, 459 (Fla. 1992). A party challenging the referee's findings carries the burden of demonstrating that the record clearly contradicts those conclusions. **See Florida Bar v. Spann**, 682 So. 2d 1070, 1073 (Fla. 1996).

The referee herein failed to find that Maurice failed to keep the complainant advised and failed to provide the complainant with appropriate information regarding the probate of the estate. The testimony of Maurice established the reasons why she started the probate and that probate was necessary. Maurice states also she protecting the interests of the complainant and the other property owner. The referee failed to consider the evidence of Maurice presented at the hearing which included the federal express slips sending the keys to the complainant and the closing statements evidencing that the only fees that Maurice received was at the closing and the fee was not from the complainant, but from the buyer

to conduct the closing.

The violations as alleged in the complaint were not proven by clear and convincing evidence at the time of hearing and do not support the finding of the referee.

ISSUE II: TWO YEAR SUSPENSION OF ATTORNEY FOR INCLUDING NON PROBATE PROPERTY IN A PROBATE ESTATE IS CLEARLY EXCESSIVE EVEN ASSUMING ARGUENDO THAT THE ETHICAL VIOLATIONS WERE COMMITTED.

In reviewing a referee's recommended discipline, the Supreme Court's scope of review is broader than that afforded to the referee's findings of fact because ultimately it is the Court's responsibility to order the appropriate sanction; however, generally speaking the Supreme Court will not second guess the referee's recommended discipline as long as it has reasonable basis in existing case law and the Florida Standards for Imposing Lawyer Sanctions. West's F.S.A. Const. Art. 5 Section 15. **The Florida Bar vs. Mark W. McFall**, 863 So.2d 303, (Fla. 2003). **See Florida Bar v. Anderson 538 So.2d 852,854 (Fla. 1989)**. Also see **Florida Bar v. Temmer, 753 So.2d 555,558 (Fla. 1999)**.

In this instant case, the referee did not cite to case law or the Florida Standards for Imposing Lawyer Sanctions in recommending a two year suspension for Maurice's action.

The Standards for Imposing Lawyer Sanctions are used by the Florida Bar to determine recommended discipline to

referees and the court and to determine acceptable pleas. The standards are designed for the use in imposing a sanction or sanctions following a determination by clear and convincing evidence that a member of the legal profession has violated a provision of the rules Regulating the Florida Bar to the applicable standard under the laws of the jurisdiction where the proceeding is brought. Descriptions in the standards of substantive disciplinary offenses are not intended to create grounds for determining culpability intended of the rules. The standards constitute a model to create grounds for determining culpability independent of the Rules. The standards constitute a model setting forth a comprehensive system for determining sanctions permitting flexibility and assigning sanctions in particular cases of lawyer misconduct. See, **Florida Jurisprudence Section Edition V. Misconduct by Attorneys**.

In imposing a sanction after finding of lawyer misconduct, a court should consider the following (a) the duty violated; (b) the lawyers's mental state (c) potential or actual injury caused by the lawyer's misconduct and (d) the existence of aggravating or mitigating factors. See Florida Jurisprudence , Second Edition V. Misconduct by Attorneys Professional Discipline.

The referee's recommendation of two years suspension for attorney's action in the instant case did not have a reasonable basis in existing case law and in State Standards for Imposing Lawyer Sanctions. West's F.S.A. Bar Rule 4-

1.5(a). The **Florida Bar v. Kavanaugh**, 915 So. 2d 89 (Fla. 2005).

Mitigating factors may be considered when deciding disciplinary action. The **Florida Bar vs. Mark W. McFall**, 863 So.2d 303 (Fla.2003). Herein mitigating factors to be considered (1) Maurice has no prior disciplinary history (2) Maurice is a self starter having put herself through law school while working in a law firm for a period of nine years and setting up her own practice two years out of law school (3) the complainant's did not pay any monies to Maurice and did not lose any money during the course of her representation (4) restitution was paid to the Bar association within two weeks of the referees decision (5) Maurice has since the recommendation completed all required CLE credits during her reporting cycle and has never been in violation of non completion (6) Maurice has in fact has always taken more credits than necessary for completion within her cycle.

Additional mitigating factors to be considered in imposing sanctions is that any alleged misconduct was not due to an intentional act on the part of Maurice. See **Florida Bar v. Neu**, 597 So.2d 266 (Fla. 1992) (suspending attorney for six months for negligently commingling personal and trust funds accounts) **Florida Bar v. Weiss**, 586 So.2d 1051 (Fla.1991) (suspending attorney for six months for gross negligence in failing to properly supervise accountant's work in handling trust accounts). The referee's recommended discipline does not have a reasonable basis or support in case law.

In cases when the length of suspension need to be considered, if a bar member is found guilty and suspension is recommended, the referee needed to consider aggravating factors. In the referees decision no aggravating factors were considered in deciding on the length of suspension.

The Courts have utilized a broad scope of reivew in reviewing a referee's recommendations for discipline in order to ensure aht punishment is appropriate. **The Florida Bar v. Anderson**, 538 So.2d (Fla. 1989). **The Florida Bar v. Pahules**, 233 So. 2d 130 (Fla. 1970) sets forth the purposes of disciipline and establishes teh standards used to evaluate a disciplinary sanction: Discipline for unethical conduct must serve three purposes first, judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying public services of qualified lawyers as a result of undue harshness in imposing penalty. Second, the judgment must be fair to respondent, being sufficient to punish breach of ethics and at the same time encourage reformation and rehabilitation; and third; the judgment must severe enough to deter others who might be prone or tempted to become involved in like violations. **Id.** at 32. Applying the purposes of disciplie set forth in **Pahules** to the instant case, it is apparent that the discipline recommened by the Referee is clearly excessive. See **Florida Bar v. Neu**, 597 So.2d 266 (Fla.1992). **See also**, **The Florida Bar v. Lord**, 433 So. 2d 983. 986 (Fla. 1983).

There is no evidence in the referees finding of fact

that Maurice engaged in conduct that involves any type of dishonesty, fraud, deceit or misrepresentation and further there is no evidence which reflects adversely on Maurice's fitness to practice law. In the instant case, the testimony of Maurice does not show that Maurice acted intentionally. **The Florida Standards for Imposing Lawyer Sanctions**, Section 4.12 (Fla. Bar Bd.Governors (1986), states that "suspension is appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client." In considering the appropriate penalty, Maurice has shown mitigating factors in her conduct in protecting the property. Moreover, this is Maurice's first disciplinary conviction in over twenty one years of practicing law. Weighing the mitigating circumstances, suspension is not warranted.

It is ultimately the Court's task to determine the appropriate sanction; however a referee's recommendation will be followed if reasonably supported by existing case law. **See, Florida Bar vs. Fredericks**, 731 So.2d 1259, 154 (Fla. 1999). In the instant case, suspension of two years is too severe. The alleged violations, even assuming guilt, did not result in prejudice to the clients and did was not an egregious and intolerable breach of trust. The referee failed to cite in the report and recommendation or at the hearing similar disciplinary actions being upheld in cases of this type. All case law which supports a finding of two year suspension have constituted cases involving egregious and

intentional actions of the attorney.

The referee failed to look to the Florida Standards for Imposing lawyer Sanctions when imposing the sanction itself. Further failed to cite any elements of aggravating factors, there was no disciplinary offenses, there was no dishonest or selfish motive, there is no pattern of misconduct. Additionally, there are mitigating factors in that Maurice made a timely good faith effort to make restitution or to rectify the consequences and there was no monetary loss to the complainants. Maurice further argues that even cases of egregious misconduct (which this is not), the recommended punishment was merely one hundred eighty (180) day suspension due to finding of aggravating circumstances as enumerated in **Florida Standards for Imposing Lawyer Sanctions** including submission of false statements during the disciplinary process. **See The Florida Bar v. Wilder**, 543 So.3d 222 (Fla. 1999). (falsely advising the client that cases were filed, when they were not) **See**, **The Florida Bar v. Jordan**, 682 So.2d 548 (Fla. 1996) (Suspension of 91 days was appropriate sanction for attorney's misconduct in failing to provide competent representation or act with reasonable diligence in postconviction relief proceedings, in failing to keep client reasonably informed, in failing to respond in writing to inquiry by disciplinary agency, aggravated by four other instances of disciplinary action). In **Jordan**, the referee found that Jordan violated five Rules Regulating the Florida Bar, including failing to respond to the disciplinary action.

Maurice in the instant case timely responded to the Bar disciplinary inquires. The referee in **Jordan**, further proceeded to find six elements of aggravation in accordance with **9.22 of the Florida Standards for Imposing Sanctions**. Further the referee in **Jordan** found no mitigating factors and still based on the foregoing the Court approved the recommendation of the referee of a ninety-one (91) day suspension. Further, even more egregious misconduct than the subject of this matter before the court only warranted public reprimand. **See, The Flordia Bar v. Neely**, 417 So. 2d 957 (Fla. 1982) involving the failure to file a brief on behalf o a client in a cirminal matter, teh dismisal of the appeal and subsequent actions of respondent which ultimately led to a judgment of contempt and a finine. **Neely** received a pulbic reprimand and was placed on six months probation. **The Florida Bar v. Rolle**, 661 So.2d 301 (Fla. 1995) involving several instances of neglect of client matters and inadequate client communicationtion and the resondent had prior disciplinary history and virtually ignored the discsiplinary proceeds including failing to appear at several hearings before the referee and the court imposed a sanction of six months suspension. **See The Florida Bar v. Whitaker**, 596 So. 2d 672 (Fla. 1992), wherein the Court approved a public reprimand for neglect of client matters and inadequate commuunication. In addition, the respondent in **Whitaker** was placed on probation for 24 months during which time he was erquired to perodically review his caseload with a designated grivance committee

member, to submit a plan of procedure and policy to facilitate adequate communication with clients and to implement a tickler system. **The Florida Bar v. Riskin**, 594 So. 2d 178 (Fla. 1989), the respondent received a pulbic reprimand for neglect of a legal matter and imcompetence inolving allowing the stautet of limiations to expire. In addition, **Riskin** failed to oppose a Motion for Summary Judgment based upon the expiration of the statute of limiations. **Riskin** had prior disclipline, which resulted in privvate reprimand for neglect. Analysis of these cases indicates that similar conduct indicates that the range of appropriate discipline for the neglect and inadequate communication is between a public reprimand and one year probation and support a finding that the Referee's recommended discipline is clearly excessive.

In his report, the referee failed to cite any cases which he considered in recommending discipline.

Again, addressing the excessiveness of the suspension recommendation, there is no doubt that suspension is not warranted.

Based upon the entire record and findings of fact the recommendation of the referee is not reasonable in light of the alleged misconduct and there is no justification for the referee's recommendation for a two year suspension.

CONCLUSION

According and for all the foregoing reasons as stated within this Brief, Shelley Goldman Maurice should not be found guilty of the violations and should not be suspended from the practice of law in Florida for two years. The referee's disciplinary recommendation should not be approved including the five conditions specified in the report.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished by regular U.S. postage prepaid mail and hand delivery on this 4th day of March 2006 to:

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