

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. SC04-859

v.

TFB File No. 2004-00,743(2B)

WAYNE A. HAGENDORF,

Respondent

REPLY BRIEF OF RESPONDENT

RICHARD A. GREENBERG
Fla. Bar No. 0382371
325 West Park Avenue
Post Office Box 925
Tallahassee, Florida 32302
(850) 681-9848

(850) 224-9800 fax

Attorney for the Respondent **HAGENDORF**

B. TABLE OF CONTENTS

	Page
A. TITLE PAGE	i
B. TABLE OF CONTENTS	ii
C. ARGUMENT AND CITATIONS.....	1
1. This Court should impose reciprocal discipline consistent with the discipline imposed by every other jurisdiction in which Respondent is licensed to practice law	1
D. CONCLUSION	4
E. CERTIFICATE OF SERVICE	5
F. CERTIFICATE OF COMPLIANCE6

C. ARGUMENT AND CITATIONS

1. This Court should impose reciprocal discipline consistent with the discipline imposed by every other jurisdiction in which Respondent is licensed to practice law.

The Bar asserts Respondent has not carried the burden of demonstrating the referee's recommended discipline is "erroneous, unlawful, or unjustified." (Answer Brief at 3 and 10). Respondent submits the record, the discipline imposed by Nevada and California (and recommended in New York and the District of Columbia), and case law all show the referee's recommendation is unjustified.

In considering the discipline to be imposed in this case, this Court should consider the following:

Respondent's actions all took place in either Nevada or California.

The Supreme Courts of Nevada and California imposed non-rehabilitative suspensions.

No Florida attorneys (other than Respondent) or Florida judges were involved in the cases which lead to Respondent's discipline.

Both Nevada District Court Judge Mark R. Denton and Dennis Duban supported the discipline imposed in Nevada.

The Bar points out that Standard 6.12, Florida Standards for Imposing Lawyer Sanctions, calls for a suspension in this case. (Answer Brief at 9).

Respondent has never taken the position a suspension is inappropriate. Rather, Respondent submits any suspension should be a non-rehabilitative suspension.

All of the Standards include the language “absent aggravating or mitigating circumstances” in their preface. As pointed out in the initial brief, Respondent submits the referee’s consideration of two aggravating factors is not supported by the record. (Initial Brief at 16-17). The Bar’s answer brief does not dispute Respondent’s argument.

Finally, the Bar states it is ultimately this Court’s task to determine the appropriate sanction. (Answer Brief at 6). Respondent submits in doing so, however, this Court should give great weight to the decisions of the Supreme Courts of Nevada and California. As pointed out in the initial brief, this Court has often imposed similar discipline to that imposed by a foreign jurisdiction. (Initial Brief at 12).

Recently, this Court accepted a consent judgment which imposed discipline similar to that imposed in New York. In *The Florida Bar v. Alan E. Fielitz*, SC04-602, the respondent resided in and practiced law in New York. The respondent, in the New York proceeding, admitted he prepared and mailed to opposing counsel fictitious income tax returns purporting to be returns prepared by his client knowing that the returns would be filed. The respondent failed to disclose to the

court, opposing counsel, or his client that he falsified the returns and he made misrepresentations to his client to conceal that fact. For this misconduct, the respondent received a one-year suspension in New York.

The Florida Bar charged Mr. Fielitz with violating Rules 3-4.3, 4-8.4(c) and 4-8.4(d), Rules Regulating The Florida Bar. This Court ordered a one-year suspension *nunc pro tunc* the date of the New York suspension. The only additional sanction imposed was the requirement the respondent take and pass The Florida Bar examination prior to reinstatement. Respondent submits the admitted misconduct in this case is clearly not as egregious as the misconduct in *Fielitz*.

D. CONCLUSION

For the reasons stated in the initial brief and this reply brief, this Court should reverse the referee's recommendation for a two-year suspension and impose a non-rehabilitative suspension.

E. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Respondent has been forwarded by regular U.S. Mail to:

Tiffany Collins
Bar Counsel
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300

John A. Boggs, Staff Counsel
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300

this _____ day of August, 2005.

RICHARD A. GREENBERG

xc: Wayne A. Hagendorf

F. CERTIFICATE OF COMPLIANCE

Undersigned counsel does hereby certify the Reply Brief of Respondent is reproduced in the following point size and font: 14 point Times New Roman.