IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ALAN S. GLUECK,

Respondent.
_____/

Supreme Court Case Nos.
SC06-1101 & SC07-1

The Florida Bar File Nos.
2005-51,065(17J); 2005-51,354(17J);
2005-51,440(17J); 2005-51,469(17J);
2006-50,254(17J); 2006-50,780(17J);
2006-51,397(17J) &2006-51,490(17J)

RESPONDENT'S ANSWER BRIEF

and

INITIAL BRIEF ON CROSS APPEAL

KEVIN P. TYNAN, #710822
RICHARDSON & TYNAN, P.L.C.
Attorneys for Respondent
8142 North University Drive
Tamarac, FL 33321
954-721-7300

TABLE OF CONTENTS

Page(s)

TABLE OF CASES AND CITATIONS

PRELIMINARY STATEMENT

The Florida Bar, Appellee, will be referred to as "the Bar" or "The Florida Bar." Alan S. Glueck, Appellant, will be referred to as "Respondent." The symbol "RR" will be used to designate the report of referee. The symbol "TT" will be used to designate the transcript of the final hearing held in this matter. Exhibits introduced by the parties will be designated as TFB Ex. __ or Resp. Ex. __.

STATEMENT OF CASE AND FACTS

The statement of the case and facts set forth by The Florida Bar is sparse and fails to adequately describe the true merits of this case. Therefore, of necessity, the Respondent sets forth the following recitation of the facts of this case.

While the Bar's complaint alleged certain acts of misconduct related to the Respondent's representation of eight distinct clients, the true focus of this case was the Respondent's relationship with a non-lawyer and how this relationship created potential ethical violations. RR2. This nonlawyer was Elayne Bechtinger.

The Respondent met Bechtinger in 1998, when he was introduced to her as someone who could provide an entrée into the Brazilian community. RR2. The Respondent had been advised that Bechtinger owned a company that provided a variety of services such as bookkeeping, translating, preparation of tax returns and other services, primarily for Brazilians. TT521-522; 531-532. The Referee found that the business relationship that was ultimately created between Bechtinger and the Respondent was unethical and amounted to a partnership between a lawyer and a nonlawyer. RR3. While the Respondent has consistently contended that the relationship was not a partnership, he admitted that the relationship was flawed and created systemic ethical problems concerning the sharing of fees. RR3

Contemporaneously with the establishment of a business relationship between the Respondent and Bechtinger, the Respondent also agreed to represent

her concerning a then ongoing Unlicensed Practice of Law ("UPL") investigation of Bechtinger and her then company, B & L Business Legal, Inc., ("B & L"). RR3. The UPL investigation was resolved by a Stipulation for Permanent Injunction and a Supreme Court Order approving same. See TFB Ex. 3. The Referee found that the Respondent assisted Bechtinger in violating this injunction. RR3-4. The Respondent has steadfastly disagreed that he knowingly allowed Bechtinger to violate this injunction and presented testimony that, while he now understands that the business model that ultimately developed could have been better thought out, he did not intentionally violate the provisions of the injunction and believed, especially at the onset of the relationship that they had taken the appropriate steps to insure compliance with the injunction. TT 523-530.

The last major theme of the Bar's case concerned allegations that the Respondent knowingly and intentionally made misrepresentations to the Bar in his responses to the various individual grievances filed by former clients and in sworn statement taken by the Bar during the course of its investigation of these grievances. The Respondent testified that he did not knowingly make any misrepresentations to the Bar in his correspondence or statement and further testified that each of the questioned statements were true and factually accurate. Of necessity each such letter and questioned statement will be discussed below. Notwithstanding this testimony, the Referee found that the Respondent had

attempted to mislead the Bar by trying to conceal his relationship with Bechtinger and her new company Millenia Consulting Services, Inc. RR11-12.

The Referee also found the Respondent guilty of a variety of issues related to the Respondent's representation of eight clients. In a repetitive fashion, the Bar alleged, and the Referee found, that the Respondent neglected certain client matters, failed to properly communicate with clients and failed to provide competent representation. While the Respondent defended each of these charges below for purposes of this appeal and in light of the page constraints, the Respondent will only address certain important matters related to these individual client complaints.

Running through each of the individual complaints is an allegation that the Respondent failed to adequately communicate with his clients. However, the testimony at trial was that the failed communication occurred at a time when the Respondent had already withdrawn from representing these clients. It is uncontroverted that there came a point in time that the Respondent discovered that Bechtinger was not following the Respondent's instructions relative to her role as a nonlawyer, that he terminated his relationship with her and transitioned, with client approval and after consultation with The Florida Bar, all clients that were serviced through the Millenia office to a new lawyer. Notwithstanding the change in counsel, the Referee, in several instances has found the Respondent guilty of

failing to adequately communicate with clients who tried to reach him at the Millenia office after it was closed and he no longer had a relationship to Millenia or their case because they had new counsel. The Referee has also found the Respondent guilty of a lack of competence and or a lack of diligence relating to his representation of certain clients, even though the task for which he was retained was successfully completed.

The Referee has also found the Respondent guilty of a variety of charges regarding the Lucena Nakad complaint. RR60-64. It is undisputed that at a time when Ms. Nakad went to the Miami office of the Department of Homeland Security to check on the status of her case, as suggested by her then lawyer, Mr. Kimmel, she was detained for several months based upon an outstanding deportation order. RR62. Notwithstanding that the Respondent did not represent Ms. Nakad at the time of her detention, the Referee found that the detention was caused by the Respondent's failure to communicate with Ms. Nakad. RR60-61. The Referee also blames the Respondent of failing to inform Nakad of an immigration hearing which resulted in an order of deportation. RR 61. The documentation that was admitted into evidence regarding this charge showed that the Respondent had not filed a notice of appearance in the immigration case, that the pleadings and orders showed that Nakad was unrepresented and that each order

or notice was mailed to Nakad and not the Respondent. See for example TFB Ex. 11.

After considering all of the testimony and evidence in the case, the Referee found the Respondent guilty of all charges set forth in the Report of Referee and is recommending a three year suspension from the practice of law as an appropriate sanction. The Bar has appealed seeking disbarment and the Respondent has filed a cross-appeal seeking to overturn certain findings of guilt, and on that basis request the Court impose a lesser sanction than that recommended by the Referee.

SUMMARY OF THE ARGUMENT

A Referee is recommending that a lawyer be suspended from the practice of law for three years and The Florida Bar appeals seeking to convince this Court that the ultimate sanction (disbarment) should be imposed upon a lawyer who has never been disciplined and for actions that primarily occurred prior to 2003 and 2004. The Respondent has filed a cross appeal, wherein he points out to this Court the Referee's erroneous findings as to several significant factual matters which impact the severity of this case, warranting a lesser sanction than that recommended by the Referee.

The Bar and the Referee in this case have painted with a broad brush and have reached conclusions without the proper factual underpinnings. In this appeal the Court must analyze the details because it is these details that show that the Respondent herein is not the ogre the Bar tries to portray him as. Rather, he is a good lawyer, who had good intentions and desired to have a professional and ethical business relationship with a nonlawyer who he trusted and believed would act in the same manner. For a significant period of time, it appeared that this trust was well placed and at the first moment that it was discovered that the trust was misplaced, the lawyer terminated the relationship. Despite his best efforts to protect each and every person he had a shared business relationship with by transitioning all shared clients to a new lawyer, difficulties arose after the

nonlawyer unexpectedly closed her office and returned to her Brazil office (well after the time that the Respondent had already withdrawn from representation and a new lawyer was representing the affected clients).

Also in this appeal the Court gets to analyze an important legal issue – is the completion of a labor certificate application the practice of law? It is respectfully contended that due to the nature of the application, which requests simple factual information (name, address, educational background, nature of employment and the like) that this is not the practice of law. This decision is pivotal. If this is not the practice of law, there can be no valid claim (at least as to the labor certification cases that form the bulk of the Bar's case) that the Respondent assisted a nonlawyer in the practice of law or that he assisted this nonlawyer in violating an injunction which enjoined her from practicing law without a license.

It is the Respondent's position that after the Court fully reviews this case, that the Court will find him not guilty of many of the charges set forth in the Report of Referee and impose a suspension of much lesser magnitude than that recommended by the Referee.

ARGUMENT

I. THE REFEREE'S FACTUAL FINDINGS OF GUILT ARE CLEARLY ERRONEOUS AND LACKING IN EVIDENTIARY SUPPORT.

A Referee has found a lawyer guilty of each and every allegation and rule violation plead by the Bar over twenty eight counts between two distinct formal complaints.[1] The Referee even finds the Respondent guilty of a lack of communication as to one former client, Ruben Sanchez, when the only testimony adduced at trial was the Respondent's denial of the charge and the documentary evidence introduced by the Bar fails to even raise the issue of a failure to communicate with the client.[2]

It is well settled that a referee's findings of fact and guilt are presumed to be correct and the appealing party has the burden to demonstrate that these findings are "clearly erroneous and lacking in evidentiary support." *The Florida Bar v. Canto*, 668 So.2d 583 (Fla. 1996); *The Florida Bar v. Porter*, 684 So.2d 810 (Fla.

---

[1] However, ten counts of misconduct are repetitive and allege the same core facts and rule violations. See (Case 1) Counts II, X, XV, XXIII and (Case 2) III which all charge the Respondent with having a partnership with a nonlawyer and (Case 1) Counts III, VII, XI, XVI and XXI of assisting in the violation of an injunction

[2] The Bar claims that Respondent failed to inform Sanchez that his 1-140 visa application was approved. However, Mr. Sanchez's only sworn testimony is contained in his grievance (TFB Ex. 28) and there is no mention of this claim therein.

1996). It is evident that the Report of Referee in multiple instances fails to meet this test.

A. The alleged partnership.

The testimony at trial revealed that the Respondent met Bechtinger in late 1998 for the stated purpose of establishing a business relationship, at least to the extent that the Respondent could be introduced into the Brazilian community in the hopes of expanding his immigration practice. At the time that the Respondent met Betchinger he had an office in Hollywood, Florida, through which he practiced a combination of criminal law and immigration matters. At all times material he maintained this Hollywood office as his main office and record Bar address.

The initial discussions between Bechtinger and the Respondent resulted in the Respondent renting an office on Brickell Avenue in Miami.[3] While the Respondent was the only person to testify at trial about the creation of the initial business relationship, Bechtinger's 1997 testimony before the UPL committee was introduced during the final hearing. See TFB Ex. 2. Of particular interest was Bechtinger's testimony at page 43 of that transcript that she had sold her company (B & L) to two friends and that included in the sale were all of her business clients.

[3] Bechtinger's testimony before the UPL committee was that she would be working in the same building as the Miami Branch office of The Florida Bar.

The two friends renamed the business Millenia.[4] See TFB Ex. 2, p.43. More importantly she testified about her intentions to work for the Respondent and that she would be directly employed by him (p.44) and that she will be paid a salary for such employment (p.45) but that she was currently only being paid for the work that she was doing. Interestingly, Bechtinger's testimony before the UPL committee about correctly setting up a satellite office was not only in the presence of the Respondent but also did not appear to raise any objections by the committee or the Bar counsel who was present for the hearing. Bechtinger was also questioned about why she would not be working in the Respondent's Hollywood office and she responded that it was too far away. See TFB Ex. 2, p. 45.

The Respondent's trial testimony was that at the outset of the relationship he tried to set things up appropriately and believed that he did so. The Brickell office had his name on the door, he was directly employing a paralegal, Bechtinger, and he would meet with all clients and he would secure the fees that were being charged. It was also anticipated that Bechtinger would be allowed to continue to provide services wholly unrelated to the practice of law (i.e. bookkeeping) and that these other services would not be related to the Respondent's practice of law.

[4] The full name of the corporation was Millenia Consulting Services, Inc., and the corporate records introduced at trial (Resp. Ex. 3) show that the Respondent and Bechtinger were not officers or directors of Millenia.

The Respondent testified that there came a point in time that the Brickell office was closed as there was very little business generated out of this office. Further, Bechtinger had advised him that since the Brazilian community seemed to be migrating to the northeastern portion of Miami-Dade County, Millenia and Bechtinger would be setting up an office in the Aventura area. As the Respondent wanted to continue his professional relationship with Millenia, he also began working out of the Millenia office located in Aventura, but continued to keep his main office in Hollywood.[5] While the main signage for the office was for Millenia, there was a smaller sign for the Law Offices of Alan S. Glueck. The Respondent did not maintain an individual office, but used the conference room to work and meet with clients or others. The only space that was specifically segregated for the Respondent was a small file room where his files were stored separate and apart from Millennia's files.

The Respondent testified at length about how he practiced law from the Aventura office. He was the only witness to testify in this regards. It was the Respondent's testimony that a client would come to the Millenia office for a variety of services and when it was discovered that they came for an immigration

[5] For ease of reference this location will be referred to as the "Aventura office."

matter or a labor certification matter,[6] the potential client would be screened by Bechtinger who would complete intake forms prepared by the Respondent. These intake forms would then be shared with the Respondent on a weekly, bi-weekly or as needed basis during a personal conference with the Respondent and Bechtinger. The Respondent would direct what action was necessary on a file and would request Bechtinger to follow up with the client and secure the information that he needed to complete the service that was requested. In the more complicated cases, the Respondent would schedule a meeting with the client, but since the majority of the clients, especially in the labor certification process, were simple form work, he did not normally personally meet these clients.

The Respondent used a variety of form checklists that he prepared and had Bechtinger gather the information that he needed to properly represent the client and further advised Bechtinger what needed to be drafted for his later approval. Bechtinger would secure the needed information and draft the appropriate form(s) for the Respondent's review and approval. If the completed work met with the Respondent's approval he would sign it by either filing a G-28 (a notice of appearance in an immigration case) along with the appropriate immigration forms or execute the labor certification forms as the individual's agent. If the work that

[6] While the Respondent testified to a proficiency at several languages, including Portuguese, he testified that he had limited knowledge of Portuguese at the time he commenced his relationship with Bechtinger and needed translation assistance, especially with technical terminology.

was presented to him for signature was not complete or not properly prepared the Respondent would give instructions on what needed to be done in order for the document to get completed and filed. Bechtinger would complete the necessary steps in typing, copying, serving and filing the documents that were needed.

For all work completed at the Aventura office, the Respondent used the Aventura office as his mailing address for the documents that were served through this office. All mail on these cases was sent to the Aventura office, which mail was reviewed by Bechtinger and brought to the Respondent's attention when necessary.

The difficulty in this case comes in two areas. The first is how fees were paid and how the Respondent paid for the services that were provided to him by Bechtinger and/or Millenia. The second area of concern, the blurring of the lines between the Respondent's practice of law at the Aventura location and the business being run by Millenia, is really a subset of how monies were collected. The documentation and evidence presented at trial shows that a client would come to the Aventura office and would either execute a retainer agreement with Millenia or the Respondent and fees would be paid to both, apparently without any real pattern. The Respondent testified that he did not fully understand why this occurred, but did admit that if monies were paid to him directly by a client these

funds would be deposited in an account that he managed through the Aventura office.

Other than the introduction of certain retainer agreements with either Millenia or the Respondent and copies of checks made payable to the Respondent or Millenia, the Bar introduced no financial records to support its claim of a financial partnership between the Respondent and Millenia. As the Bar must prove all elements of its case by clear and convincing evidence, this lack of documentation is surprising. While the Bar seems to argue that it was the Respondent's obligation to rebut this claim by the production of documentary evidence, it was the Bar's burden to prove this element and not the Respondent's to disprove same.

The Respondent testified that at the beginning of his relationship he collected all the fees and paid the bills related thereto. However, over time and as the volume of the work being performed in the Aventura office increased, he lost track of how monies were being collected from clients. It was the Respondent's uncontroverted testimony that his financial deal with Bechtinger was that he would be paid a certain sum for each type of case that he worked on in the Aventura office and that the remaining monies collected from the Client would go to Bechtinger and/or Millenia for the services that they were providing to him in processing these clients. These services included secretarial services (typing,

copying and the like), translating services not only for documents but to communicate with clients when needed, receptionist services for the clients he represented through the Aventura office and more importantly for the paralegal services being supplied by Bechtinger. Also factored in to the monies being paid to Bechtinger and/or Millenia should be the value of any rent that would have been charged to the Respondent for his use of the office to work and meet with clients, as well as to store client files.

The Respondent testified that in theory if he received a fee he would deposit same in his account, keep his portion of the fee, pay the associated costs for the file and then remit the remainder to Millenia[7] for the services that they provided. If the fee was paid to Millenia, according to the Respondent, he was to be paid a small sum (ranging from $150.00 to $300.00) with Millenia keeping the balance of the funds and paying the appropriate costs of the file. During the final hearing the Respondent candidly admitted that this financial arrangement was flawed and inappropriate as all monies should have initially been paid to him and then the costs for the Millenia/Bechtinger services should have been paid in an identifiable manner.

The Referee has made a specific finding that there was a "partnership" between the Respondent and Millennia/Bechtinger. It is the Respondent's position

[7] The Respondent did not know how much was directly paid to Bechtinger by Millenia, but he assumed that she was paid for her services to him.

that there was no outright partnership, however, there was a cooperative business relationship. In *The Florida Bar v. Chase*, 492 So. 29 1321 (Fla. 1986) a lawyer was sanctioned for allowing a nonlawyer to hold himself out as a partner of the lawyer and knowingly allow the nonlawyer to meet with clients and render legal advice. The evidence in this case is different. The Respondent did try to keep his law practice separate and apart from Millenia. There were signs indicating two businesses at the location and the use of separate retainer agreements.

R. Regulating Fla. Bar 4-5.4(c) states that a "lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law." Of necessity to reach a conclusion on whether this rule was violated one must find that the "activities" conducted by the nonlawyers are the practice of law.

There is a distinct difference between the activities related to immigration and labor certification. It is respectfully contended that the completion of the form for labor certification applications is not the practice of law. In fact there is testimony in the record that there are nonlawyer companies that provide labor certification services as well as nonlawyer employees directly employed by larger corporations that is unchallenged by The Bar. You do not have to be a lawyer to represent an individual applying for a labor certification. You only need to be that person's "agent." The term "agent" is defined as someone who has "been

designated in writing to act on behalf" of the person seeking a labor certification. See 20 C.F.R. § 656.3. As The Bar has presented no contrary authority on whether a nonlawyer who submits labor certification applications is engaged in the unlicensed practice of law, the Referee should not have found the completion of the labor certification forms as the practice of law. 20 C.F.R. § 656.3

There is no dispute that services provided in the immigration field can be considered the practice of law as you need to be a lawyer to represent clients in immigration matters. In fact the first document filed in an immigration case is called a G-28, which is the lawyer's notice of appearance.

Several cases provide guidance in resolving the question of practice of law in immigration matters. In *The Florida Bar v. Beach*, 675 So. 2d 106 (Fla. 1996), the Supreme Court held that it was improper for a lawyer to allow a nonlawyer who is not directly in the employ of a lawyer to: "act as a conduit for giving legal advice by obtaining and relaying, without supervision, case-specific information to persons whom (the lawyer) had never actually met or consulted." *Id* at 109. Further, in *The Florida Bar v. Abrams*, 919 So. 425 (Fla. 2006) the Court found that a lawyer should be sanctioned, when he held himself out as the "managing attorney" of a nonlawyer corporation but allowed that nonlawyer to conduct all client interviews, make all the decisions on which immigration forms were needed and the appropriate course of action for clients and only appeared at the office

"several times a month" to sign the forms and collect his check. The testimony in that case also revealed that the paralegal had made several attempts to make the lawyer more involved in the practice but he declined. *Id.* at 429. In comparing *Beach* and *Abrams* to the case at hand there are multiple differences. Bechtinger did not act as a conduit to provide legal advice to a client. Rather, she was the conduit for factual information so the Respondent could provide a legal service where he appeared and represented the client.[8] Further, the testimony at trial was that the factual information was compiled under the lawyer's direction and on his forms and that only when he had sufficient information would the forms be completed, signed and served. Lastly, there was specific unchallenged testimony that he actively supervised Bechtinger to make sure she understood that she could not render legal advice and needed to disclose she was a paralegal and not a Florida lawyer.[9] In light of the foregoing, there is no violation of R. Regulating Fla. Bar 4-5.4(c). However, the Respondent will concede here, as he did at trial, that the overall relationship appears to violate R. Regulating Fla. Bar 3-4.3.

There came a point in time that the Respondent discovered an issue that made him terminate his relationship with Bechtinger. The Respondent testified

---

[8] In fact the lawyer in *Beach* would only appear in a case if he received an extra fee.

[9] The first witness presented by the Bar, Francisco Ramos, testified that Bechtinger was the Respondent's paralegal and her business card, given to Ramos by her, clearly delineated this fact. See TFB Ex. 4.

that he discovered on a weekend when he was in the office and the office was closed for business that Bechtinger had written a letter on law firm stationary that he had no knowledge of and had not approved. He immediately advised Bechtinger that their business relationship was over and that he no longer wanted to represent any client that came to him through Bechtinger and Millennia. Accordingly, a new lawyer was located and all open files were transitioned, with client consent, to the new lawyer – Scott Kimmel, Esquire. At the time of this transition and Mr. Kimmel's appearance as agent or attorney, the Respondent ceased having an obligation to represent these clients.

B. The UPL Injunction.

On December 4, 1998, Bechtinger executed a Stipulation for Permanent Injunction from engaging in acts that could be considered the unlicensed practice of law in Florida. See TFB 3. The Respondent, who acted as her counsel to resolve the then pending UPL investigation, signed the Stipulation as her lawyer and had full knowledge of the content of same at the time it was signed and later ratified by the Supreme Court of Florida.

The Florida Bar focuses on one paragraph of the injunction which reads as follows:

> (B) Advising persons and entities of their rights, duties, and responsibilities under Florida Law, or Federal Law, as those laws relate to any legal matters and immigration and naturalizations matters, including

> advising persons and entities as to various immigration benefits or statuses and the INS forms and procedures which are required to obtain these benefits and statuses, except to any limited degree permitted under the Code of Federal Regulations or other law.

In particular the Bar alleges that the Respondent allowed Bechtinger to violate the injunction as she was "advising persons . . . as to various immigration benefits . . . and the INS forms . . . to obtain these benefits." See for example paragraph 20 of the first complaint. The Respondent testified that to his knowledge this did not occur and that he had repeatedly advised Bechtinger over the years that this could not occur and that she could not render any legal advice.

It is respectfully contended that there is no violation of the UPL injunction by any of the work completed in the labor certification process, as Bechtinger did not need to be a lawyer to help these clients as the injunction specifically excludes those limited matters permitted by the Code of Federal Regulation or other law.

C. The alleged misrepresentations to the Bar.

At issue in each misrepresentation count is the claim by The Bar, that the Respondent, in his correspondence to The Bar made misrepresentations concerning his relationship to certain clients and to their legal matters, as well as his relationship with Millennia. In order to properly resolve these allegations and to test if The Bar met its burden in proving that the Respondent intentionally tried to mislead The Bar, a careful analysis of each response is necessary as well as the

issues that were being responded to at that particular time. While the Respondent must concede that the Respondent's letters did not reveal the total relationship that the Respondent had with Millennia and Bechtinger,[10] the standard that must be applied is whether or not The Bar has proven by clear and convincing evidence that he intentionally tried to mislead The Florida Bar.

FRANCISCO RAMOS

In Count IV, the Bar asserts that the Respondent attempted to mislead the Bar in his various responses to Mr. Ramos's complaint and follow up correspondence from the Bar. A resolution of this claim is based upon not only the Respondent's comments, but on the correspondence or question that triggered such correspondence.

The first document that needs to be reviewed is the grievance filed by Mr. Ramos. See TFB Ex. 5. In this grievance Mr. Ramos incorrectly complains that that he paid $4,000.00 for a green card and not a labor certificate and demands his money back as his file is now closed. In his May 26, 2005 response to the Bar's letter of inquiry (TFB Ex, 23) related to Mr. Ramos request for a refund, Respondent correctly states that Mr. Ramos "contracted with Millennia Consulting Services, Inc.," and that "he paid $4,000 to Millennia for the work…."

[10] This relationship was not at issue in many of the complaints that were filed against the Respondent. The difficulty here is not whether the Respondent was making a true statement (he was), it is whether he should have revealed more at that moment in time.

Furthermore in this particular letter the Respondent states that Ramos had "no legal relationship with me" but admits in the last paragraph of page one of the letter that he did agree to serve as the legal agent for the labor certification process and that he had signed the appropriate documentation to that affect. The Bar takes issue that this letter did not discuss that he operated a law office from the same suite used by Millennia Consulting Services, Inc., and "that he was the attorney of record." Firstly, he was not the attorney of record; he was the agent for the potential employer and therefore represented the employer, with Mr. Ramos as an intended beneficiary of that representation. Additionally, there was no real need to discuss the fact that he maintained an office in the same Aventura suite as this fact did not appear to have a reasonable nexus to the claim for a full refund from the Respondent when the money had been paid to Millennia.

The Bar next takes issue with the Respondent's July 5, 2005, letter (TFB Ex. 23) wherein he states that he "was presented this case for review by Millennia Inc., who contracted with Mr. Ramos and prepared the paperwork." The evidence in this case reveals that this is a true statement. Notwithstanding the truthfulness of this statement the Bar contends he made a misrepresentation to the Bar by not disclosing that he operated a law office from the same suite used by Millennia Consulting Services, Inc and had a business relationship with Bechtinger and Millennia. Again this fact does not appear to be germane to the topic being

addressed. As the Respondent explained during his testimony, he wished he had been more descriptive in his correspondence with The Bar so he could have avoided any misunderstandings. However, he further explained that he was merely trying to answer the questions/claims that were being made and did not believe that his relationship with Bechtinger and Millennia was responsive to these questions and claims.

Without making reference to where the particular quoted text is drawn from The Bar next takes issue with the Respondent's comments that he described Millennia as a company that "apparently provided various services," that he used Millennia's "conference room at times to see various clients," and that when Millennia needed an attorney to review immigration applications Millennia "presented me the files to review…." One needs to take the correspondence as a whole, and not just portions of sentences in an attempt to make it seem that the Respondent was trying to hide the fact that he had an office in Aventura at the same location as Millennia. At the time that Mr. Ramos filed his grievance he gave the Bar a copy of an invoice from Millennia with their address clearly delineated on the invoice (TFB 5) and they also had the correspondence from AWI (TFB 8) addressed to the Respondent at the very same address.

The Bar next makes reference to Respondent's counsel's letter dated March 3, 2006 and the notation that "he had a legitimate satellite office located in the

office suite used by Millennia Consulting Services, Inc." TFB Ex. 36. However, this is a true statement and not contrary to previous letters sent by the Respondent to the Bar.

It is clear that the better practice would have been to include more detail in his correspondence to avoid any allegation that he was withholding information from The Bar. The Respondent admitted as much during his testimony. However, based upon all of the evidence presented it is clear the Respondent did not intentionally try to mislead The Bar regarding the Ramos complaint.

AUGUSTO DE MENEZES

The Bar has alleged that the Respondent attempted to mislead The Bar regarding his relationship with Millennia concerning the grievance filed by Mr. De Menezes. This Count is similar to Count IV above, and as such we will only address the correspondence or issues that are different from the other misrepresentation counts.

Mr. De Menezes complaint (TFB 19) was very simple and straight forward. He asserted that he hired the Respondent, paid him fees and then had to hire another lawyer who charged more money, and that the Respondent had "disappeared." The Respondent's letter of June 26, 2005 (TFB Ex. 26) which was in response to this complaint was also straightforward. The Respondent informed the Bar that he was retained and paid to provide certain services and that he

performed those services. There is no mention of Millennia in this letter or is one necessary as the Respondent fully agreed that he had been retained, paid and had done the work.

The Bar claims that the Respondent's June 26, 2005 letter attempts to mislead the Bar investigation by distancing himself from Bechtinger and Millennia Consulting Services, Inc. Further, the Bar takes issue with the fact that the letter does not mention Millennia by name and does not disclose the fact that he had a law office in the same suite used by Millennia Consulting Services, Inc. However, as is explained above there was no need to reference Millennia in this correspondence.

The Bar also raises concerns that the response to De Menezes' allegation that Respondent "disappeared," was Respondent's statement that his law office was always in the City of Hollywood, Florida. While it is true that Mr. De Menezes' point of contact was where he hired the Respondent (Aventura office), the information about his Hollywood office was completely true and accurate. The Bar next tries to parse the phrase "disappeared" even further, by explaining that De Menezes thought the Respondent had disappeared because the Aventura office was closed. While Mr. De Menezes might have thought the Respondent disappeared, he testified that he did not contact The Florida Bar or the telephone information operator to see if there was a "new" phone number.

Respondent stated in his sworn statement that his business relationship with Millennia consisted of reviewing and signing immigration applications for fees "in the nature of one hundred dollars" or "one hundred fifty dollars." The Bar claims that this statement is contradicted by documentary evidence that shows that he received and deposited in his law firm's Bank Atlantic account retainer checks from clients visiting the Aventura location. In the De Menezes case, Respondent deposited $2,560 in retainer checks. See TFB Ex. 19(C)]. Further, the Bar correctly points out that De Menezes' retainer contracts clearly state that the payments were made to "Law Office of Alan S. Glueck," not Millennia. However, the Bar's claim misses the mark and ignores the testimony that some fees were paid directly to the Respondent and that when this occurred he would keep his portion (the one hundred or one hundred and fifty dollar fee) and then remit the remaining portions (less advanced costs) to Millennia. These two positions are not mutually exclusive.

Based upon the evidence presented, The Bar failed to meet its burden of a knowing and intentional misrepresentation to The Bar.

RUBEN SANCHEZ

Mr. Sanchez' grievance was introduced as TFB Ex. 28. In his grievance, Sanchez states that the Respondent was "presenting in (his) behalf a petition for adjustment of status" and that he paid $3,000.00 for fees to Millennia as he was

directed to do so. Attached to his grievance form were two invoices from Millennia evidencing payment to Millennia for certain services. See TFB Ex. 28. Included in the Sanchez grievance was a request that he be refunded $3,000.00 of the fees that he had paid to Millennia.

The Bar takes issue with the Respondent's letter of July 5, 2005 (TFB 30) which letter responds to Mr. Sanchez's grievance. In particular The Bar takes issue with the fact that this letter does not disclose the fact that he operated a law office from the same suite used by Millennia Consulting Services, Inc. It was the Respondent's trial testimony that this fact did not appear germane to him when he drafted his July 5, 2005 letter. What he believed was important was the only issue raised in the grievance – a request for a refund. As the paperwork submitted by the Respondent clearly shows billing by Millennia and payment to Millennia, it was and is the Respondent's position that since the monies were paid to Millennia, then Mr. Sanchez should look to Millennia and not him for repayment of any fees. Further, since it appeared that Sanchez was seeking a refund for work that was not done and the Respondent had not been retained to do this particular matter, then it was unfair to have him reimburse a fee paid to a third party under those circumstances.

The Bar next takes issue with a statement in the Respondent's September 4, 2005 letter to the Bar wherein he states that Sanchez' paperwork "was prepared by

the Millennia Corporation who billed him for their work." See TFB Ex. (A). The Bar believes that this statement was made by the Respondent to "distance himself from Sanchez and Millennia." However, a fair reading of the whole letter reveals that the Respondent admitted that he worked on Mr. Sanchez' Labor Petition and an I-140 visa and that he secured both for Sanchez and that he used the Aventura address for the correspondence related to these matters.

The remainder of Count XIII is similar to the remaining misrepresentation counts. While the Respondent's July 5, 2005 letter to The Bar could have been clearer about his relationship with this particular client, this lack of clarity does not establish, by clear and convincing evidence, that he made a knowing misrepresentation to the Bar.

FABIONO DA SILVA

In Count XVII the Bar asserts that the Respondent attempted to mislead the Bar regarding his relationship with Millennia concerning the grievance filed by Mr. Da Silva. There is very little difference in this Count from the other similar charges.

The Bar first takes issue with the Respondent's initial response to the Bar. See TFB 32. However, this response must be taken in context with Mr. Da Silva's grievance. See TFB 31. The grievance, written in a bullet format, does not really explain what Mr. Da Silva is upset about but it does include some documents

relative to the representation. The Respondent's letter of July 5, 2005 at the outset notes that he is not sure what the grievance is about, but admits to having been retained by this client and having prepared and filed a labor certification application. The Bar asserts that this letter attempted to distance himself from Bechtinger and Millennia. However, the documentation attached to the grievance (and in the Bar's possession at the time of the July 5, 2005 letter) included the Respondent's retainer, a bill from Millennia and a letter to the Respondent which was addressed to him at the shared Aventura office.

The Bar also takes issue with the next letter sent by the Respondent which letter is dated September 4, 2005. See TFB Ex. 34. This letter taken as a whole describes the Respondent's relationship with Millennia and Bechtinger. The Bar in its complaint and proposed order takes phrases from the letter and then argues that since the Respondent did not reveal that he had a law office sign on the door, that he intentionally lied to the Bar. In order to find a misrepresentation there must be a knowing misstatement and this letter taken in its totality clearly demonstrates (especially in the 2nd paragraph of the 2nd page) that Milennia and the Respondent had some form of relationship at the Aventura office and that it had been ongoing for some time.

MARCIO OLIVEIRA

In his grievance, Mr. Oliveira seeks a full refund of the fees he paid for his labor certification application as he claims that it was fraudulent (even though he also signed same). The documentation attached to this grievance included the retainer with Respondent's law firm (TFB Ex. 16) and the checks made payable to his office (TFB 14). This documentation also included a copy of a letter written to the Respondent at the Aventura office (TFB Ex. 13) and the retainer for Millennia.

The Respondent in his letter of October 12, 2005, responds to the request for a refund and that there was fraud involved in the application. See TFB Ex. 27. The Bar claims that this letter attempted to distance the Respondent from his client, Mr. Oliveira, but this response clearly admits to being retained and to doing the work for this particular client.

While the Bar, at paragraph 133 of its complaint, made a reference to certain language in this letter it is taken out of context or was not in the letter. The first quoted passage "based on paperwork provided to him" is different than the language of the letter that states that the work was completed "based on the information and documents provided to me." Further, the second quoted passage "at no time did I personally speak with him . . ." omitted that this comment was related to the fact that a particular conversation on the topic of a potential fraud had not occurred. See TFB Ex. 27.

On the evidence presented the Bar has failed to prove by clear and convincing evidence that the Respondent made a knowing misrepresentation to the Bar.

LUCENA NAKAD

In Count XXV, the Bar asserts that the Respondent made misrepresentations in his communications with the Bar. While the majority of the allegations were similar to those found in the other misrepresentation counts, there were some allegations directed specifically to Ms. Nakad.

The first response written by the Respondent is dated January 23, 2006 and was admitted into evidence as TFB Ex. 24. The Bar takes issue with a comment made by the Respondent that Ms. Nakad's labor certificate had been approved, when this was not accurate. However, the Respondent's next letter, dated February 28, 2006 and admitted as TFB Ex. 24, explains that he must have been mistaken in his belief that the labor certificate had been approved and that he had no file to review prior to his response, as the client file had been given to her new lawyer, Mr. Kimmel. The Respondent specifically apologized for his misunderstanding and incorrect statement.

The Bar at paragraphs 162 and 163 next asserts that the Respondent made misstatements regarding his responsibility for Ms. Nakad's detention. However, the facts of this case did not support the Bar's contention that the Respondent

represented Ms. Nakad on these other matters or even that the Respondent knew that Ms. Nakad was subject to being deported.

On the issues set forth above that are particular to his correspondence with The Bar on the Nakad matter, the Respondent did not make a knowing and intentional misstatement of fact to The Bar.

D. INDIVIDUAL CLIENT COMPLAINTS.

The Referee has found the Respondent guilty of multiple counts of a lack of diligence, a lack of competence and a failure to properly communicate with a client. However, the Referee's findings in this regards is not supported by testimony or the evidence that was introduced at trial. The best example of each claimed violation is contained within Marclileia Da Silva complaint. The Bar charged that in April 2001 Respondent was hired by Da Silva to assist her in applying for a labor certificate and further alleged that the Respondent failed to diligently pursue Ms. Da Silva's case, that he failed to provide competent representation and that he failed to communicate with this client. However, the testimony and documents introduced regarding the representation reveal that Ms. Da Silva was paying for two labor certifications (herself and a friend). See TFB Ex. 37(B), (C) & (D). Further it is clear that Ms. Da Silva's Application for Alien Employment Certification was filed and on the way to being approved when the case was transferred to new counsel (Mr. Kimmel). See TFB Ex, 37(E). The

Referee took issue with the Respondent for not notifying her that he closed his law office at the Aventura location and her claim that she unsuccessfully attempted to contact Respondent from Massachusetts to discuss the status of her case; that she currently did know the status of her application and had never spoken with the Respondent. However, as this file was transferred to Mr. Kimmel prior to the Aventura office being closed, there was no obligation to inform her of the closure of the Aventura office and Mr. Kimmel and not the Respondent should have been updating her on the current status of her case.

Yet another example of the Referee's findings having no support in the record is the Ruben Sanchez grievance, wherein the Referee finds that the Respondent failed to inform Sanchez that his 1-140 visa application was approved. However, Mr. Sanchez did not testify at trial and his only sworn testimony is contained in his grievance to The Bar (TFB Ex. 28) but there is no mention of this claim therein. The Referee also found that the Respondent failed to provide competent legal service to Mr. Sanchez, yet The Bar's own complaint shows that the Respondent was retained to secure a labor certification and an I-140 visa and he did so.

E. The Nakad Representation.

Both parties agree that Ms. Nakad first hired the Respondent in 1998 to assist her in applying for a replacement I-94. See TFB Ex. 9. The testimony at

trial was that the I-94 is the white card you are given upon entry into the United States. The Respondent successfully secured a replacement I-94. See Resp. Ex. 4.

Both parties also agree that on April 24, 2001, Ms. Nakad signed a retainer agreement hiring Respondent to prepare a "Labor Certificate" and that Ms. Nakad paid $4,000.00 for that service. See TFB Ex. 10. The Respondent submitted the required paperwork for the labor certificate and gave the Aventura location as the address of record for the Law Office of Alan S. Glueck. See TFB Exhibit 12(A).

Additionally, in or about December 17, 2003, Respondent requested that Nakad's petition for Alien Employment Certification be withdrawn. See TFB Ex. 12(B). Ms. Nakad testified that the Respondent never informed or obtained her consent before withdrawing her Alien Employment Certification application. The Respondent testified that it was his recollection that the labor certificate process was ceased at the client's request as she was getting married to a U.S. citizen[11]

After withdrawing her application, Respondent notified Nakad that he could no longer represent her and referred her case to attorney Kimmel. The testimony at trial was that Mr. Kimmel agreed to represent Ms. Nakad and that he filed the appropriate paper work for a change of status based upon her marriage. A point conceded by Nakad.

---

[11] This was Ms. Nakad's second marriage in the US and the timing of her remarriage fits the timing of the withdrawal of the labor certificate application. Further, Ms. Nakad testified that she in fact did get remarried.

Subsequent to transferring her case to attorney Kimmel, Nakad was detained by the Department of Homeland Security based upon the deportation order entered against her in 2002 when Respondent was not the attorney of record. Nakad's trial testimony was that Mr. Kimmel sent her to the Miami office of the Department of Homeland Security to check on the status of her case and while there it was discovered there was an outstanding deportation order and she was arrested.

The Referee blames the Respondent for Ms. Nakad's detention. The Respondent strongly disagreed with that claim and the documentary evidence supports his position. It was the uncontested trial testimony that for every type of application filed with the immigration service, a lawyer is required to file a G-28 (a notice of appearance) and when that lawyer files a G-28 the lawyer and not the client receives all notices relative to that particular case. The filing of a G-28 does not make a lawyer the attorney of record for all subsequent immigration matters. It only makes them the attorney of record for the matter which the G-28 was filed. When a matter is successfully concluded, the file is closed and the lawyer is relieved from any further obligation, just like it would be at the conclusion of a litigation file. In the case at hand, the Respondent successfully secured a replacement I-94 card and he had no further responsibilities regarding immigrations matters, unless he was retained on a new one. While the Respondent admits that he was working for a time on a labor certification, this type of case is

filed with a different administrative agency, the Department of Labor, and not the Department of Homeland Security. It was the Respondent's trial testimony that during the course of his representation on the labor certification, that there was no need to check with the Department of Homeland Security because he had not been retained to pursue any new immigration matters and that he could not begin to pursue a change of status based upon a labor certification until such time as he actually secured the labor certification from the Department of Labor.

There are a series of Notices and other documents that show the government sought to deport Ms. Nakad. See TFB Ex. 11. Each such notice or order was addressed to Ms. Nakad at her then record address. The reason these notices were addressed to Ms. Nakad and not the Respondent or another attorney was because no lawyer had filed a G-28. While Ms. Nakad claimed that she had hired the Respondent to represent her on other immigration matters, she produced no cancelled check, no retainer agreement or any other document evidencing that the Respondent had filed or had agreed to file any documents on her behalf related to an immigration matter other than the I-94. The most telling document in TFB composite Ex. 11 was the January 5, 2006 Decision on a Motion which clearly explained that all notices were sent to Ms. Nakad at the address she had provided

to the government and that she never updated her address[12] as required by the applicable statutes and that therefore her deportation order would stand. While the order was not in evidence, Ms. Nakad was ultimately released from custody.

It is clear from the documentary evidence presented that Ms. Nakad's detention was not the Respondent's fault. He did not receive any of the notices as he was not her lawyer on these other matters and therefore the notices were sent directly to Ms. Nakad. Accordingly, the Referee's findings that the Respondent failed to act with reasonable diligence or failed to provide competent representation are not supported by the record.

The Referee has also found that the Respondent failed to adequately communicate with Ms. Nakad. Two claims are made in this regard. The first is the claim that the Respondent failed to advise Ms. Nakad of the deportation proceedings and the second claim is an allegation that the Respondent never informed Ms. Nakad that he had withdrawn the labor certification in December of 2003.

The Respondent was not aware of the deportation proceedings because he did not represent Ms. Nakad on any immigration matters other than the I-94. As such, he could not share what he did not know. It was the Respondent's testimony

[12] The January 2002 Notice to Appear clearly shows that Ms. Nakad was more than nine years past the time when she was supposed to have left the country on her original tourist visa. See TFB Ex. 11.

at trial that the dismissal of the labor certification was done at Ms. Nakad's request because she was getting remarried. If this is true Ms. Nakad would have known about the dismissal but she denies that she did know until after the file was transferred to Mr. Kimmel. However, the timing of her remarriage fits the timing of the dismissal supporting the Respondent's position in this regards.

F. The Geovani Oliveira representation.

In December 2001 Respondent was hired by Geovani Oliveira to assist him in applying for permanent residence in the United States since he planned to purchase a restaurant in the State of Florida. This is commonly referred to as an L-1 visa. Significant work needs to be done on L-1 visa applications. It was the Respondent's testimony that he was very hands on in this application process as they tend to be more complicated and time consuming. Mr. Oliveira testified that he personally met with the Respondent to discuss his case and the issues raised therein. Oliveira paid Respondent $7,870 for his services. See TFB Ex. 14.

Oliveira furnished Respondent with all requested documents and Respondent filed Oliveira's visa application thereafter. The testimony at trial was that the application had been approved and that Oliveira retained the Respondent to secure a renewal of his L-1 visa, which renewal application was pending at the time Mr. Oliveira's case was transferred to Mr. Kimmel.

On these facts the Referee found a violation of a lack of diligence and a lack of competence. However, the Respondent clearly successfully secured the L-1 visa and had completed all of the work to secure an extension of same by the time the case was transferred to Kimmel. Thus, there is no support in the record that the Respondent failed to act with reasonable diligence or competence.

II. The referee's sanction recommendation should not be upheld.

This Court has consistently held that it has broader discretion when reviewing a sanction recommendation because the responsibility to order an appropriate sanction ultimately rests with the Supreme Court. *The Florida Bar v. Thomas*, 698 So. 2d 530 (Fla. 1997). However, the Court does not second-guess a referee's recommended discipline as long as it has a reasonable basis in existing case law and The Florida Standards for Imposing Lawyer Sanctions. See for example *The Florida Bar v. Temmer*, 753 So. 2d 555,558 (Fla. 1999).

The Respondent in this case had an improper relationship with a nonlawyer and this improper relationship impacted his representation of clients. This improper relationship, no matter how well intended at the beginning, clearly grew out of control and became something that the Respondent did not immediately correct. To his credit when Respondent discovered that Bechtinger had done something (use his letterhead for a non-approved purpose), he immediately

terminated their relationship and made sure all the affected clients had an opportunity to be transitioned to new counsel with no additional fees.

In this case, The Florida Bar seeks to impose the highest penalty possible – disbarment, and the Referee has recommended the second harshest sanction available – a three year suspension. It is the Respondent's position that a much shorter suspension is warranted under the circumstances and under existing case law.

In evaluating a proper sanction, this Court always looks to the mitigation or aggravation that is present in a case. While the Referee has found various aggravating factors, she failed to discuss any mitigation. In this case there is compelling mitigating factors from Standard 9.32. They are as follows:

a. Absence of a prior disciplinary record spanning a 31 year legal career;

b. Timely good faith effort to rectify consequences of misconduct by making sure new counsel was retained to represent the client;

c. Otherwise good character and reputation [corroborated by two witnesses that have known the Respondent for a significant period of time];

d. Remorse.

The closest precedent to the facts of this case are the *Beach* and *Abrams* decisions which are discussed in some detail above. Both of these cases relate to a

systemically bad relationship between a lawyer and a nonlawyer resulting in findings that the lawyer assisted that nonlawyer in engaging in the unlicensed practice of law. The lawyer in *Beach*, who allowed the nonlawyer to act as a conduit for the rendering of legal advice was suspended from the practice of law for 90 days. In *Abrams* the lawyer was suspended for one year when he allowed a nonlawyer to practice law under his name without any supervision whatsoever.

In *The Florida Bar v. Stein*, 916 So. 2d 774 (Fla. 2005), a Florida lawyer allowed a disbarred New York lawyer to use her name in litigating a probate matter resulting in a 90 day suspension.

As the Referee has found that the Respondent has made misrepresentations to the Bar, comment should be made on the range of sanction for this type of offense. While this offense can result in suspension, the suspension ranges from 30 to 90 days. For example, in *The Florida Bar v. Walker*, 672 So. 2d 21 (Fla. 1996), the lawyer was suspended for 30 days for failing to disclose the fact that he was no longer representing a client, when that fact was pivotal to resolution of the grievance. A sixty day suspension was handed down when a lawyer filed a knowingly false response to a grievance (and falsely accused a judge of misconduct). *The Florida Bar v. Saphirstein*, 376 So. 2d 7 (Fla. 1979). Lastly, a lawyer made material misstatements to the court (a charge not present herein) and

then submitted a misleading response to the Bar and was suspended for ninety days for this misconduct.

Interestingly, a lawyer was only suspended for a year when he was found guilty of lying under oath in connection with ongoing legal disputes he had with his former paralegal and another attorney, inclusive of making a false statement of material fact to a tribunal, and engaging in conduct intended to disrupt a tribunal. *The Florida Bar v. Germain*, 957 So. 2d 963 (Fla. 2007).

The Bar, in its brief, cites to certain authorities that they rely upon to support its argument that the Respondent should be disbarred. However, it is evident that this reliance is misplaced. For example the Bar argues that this court should look to *The Florida Bar v. Elster*, 770 So. 2d 1184 (Fla. 2000), for guidance. However, in *Elster*, the lawyer was suspended for three years after he was found guilty of multiple rule violations relating to his representation in immigration matters with a specific finding by the Court that the lawyer "failed to accomplish any meaningful work" on behalf of the affected clients. *Id*. at 1185. Basically, *Elster* took the client's money and did no work. In the case at hand however, the Respondent provided many useful services to his clients and secured most of what they asked for from the representation.

Similarly, *The Florida Bar v. Mitchell*, 385 So. 2d 96(Fla. 1980), an uncontested appeal, is factually distinguishable. In *Mitchell*, the lawyer was found

guilty of eleven counts of misconduct which included taking fees from clients, failing to file their claims or go to court on their behalf. *Id*. The court noted that the totality of the case showed "a reckless and wanton disregard" of the "rights and needs of his clients" without any known mitigation. *Id*. at 97. In the case at hand, there is substantial mitigation (as set forth above). Further, the Respondent performed useful services for the clients that filed grievances against him and in most instances completed the tasks for which he was retained.

The Bar has also pointed the Court to several of the Standards for Imposing Lawyer Sanctions. The first was Standard 6.11 which states, in part, that disbarment is appropriate when an attorney "with the intent to deceive the court" makes a knowingly false statement. However, this Court has previously held that a violation of state bar rule prohibiting an attorney from knowingly making false statements of material fact or law to a tribunal applied to lack of candor to a court, not to state bar's grievance committee. *The Florida Bar v. Rotstein*, 835 So.2d 241 (Fla. 2002).

The Bar also tries to contend that Standard 7.1 applies, but this requires a finding that the Respondent's violation of his duties as a professional was done with the intent to receive a personal benefit. While The Bar continues to allege that the Respondent received a large "personal financial gain" (Initial Brief at p.

14) the Bar presented no financial evidence during the trial to show that the Respondent received any financial gain except a reduced fee for representation.

The Supreme Court of Florida has consistently held that disbarment, urged by the Bar in this case, is an extreme measure of discipline that should be used only when that lawyer "has demonstrated an attitude or course of conduct that is wholly inconsistent with approved professional standards" and therefore there must be a showing that this person "should never be at the bar." *The Florida Bar v. Moore*, 194 So. 2d 264, 271 (Fla. 1967). In fact, this Court has even stated that disbarment is reserved for those individuals who are "beyond redemption." *The Florida Bar v. Turk*, 202 So. 2d 848 (Fla. 1967). This Respondent is not "beyond redemption" and at least two character witnesses corroborated the Respondent's testimony that he has been a good lawyer, who takes pride in his work, and is a valuable member of not only the legal community, but also the community as a whole.

The Supreme Court in *The Florida Bar v. Pahules*, 233 So. 2d 130 (Fla. 1970), stated that in selecting an appropriate discipline certain precepts should be followed. They are:

> First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of

> ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. Id.

Based upon all of the relevant precedent and authorities, it is respectfully submitted that the Respondent be suspended from the practice of law for ninety (90) days.

CONCLUSION

The lawyer in this case comes before the Court having never been disciplined over a 31 year legal career. He has fully acknowledged that he engaged in an improper, but well intentioned, business relationship with a nonlawyer, who he thought was behaving in an ethical manner and ceased the relationship when he discovered that she was not doing so. This relationship was not the financial bonanza suggested by the Bar. Rather, the Respondent accepted a minimal fee to complete the tasks that he was retained to do. When faced with adversity (discovery of unethical conduct by Bechtinger), he did not cut and run from his obligations, but instead made sure the clients secured new counsel and helped transition the clients to that new counsel. This is not the type of lawyer that needs to be disbarred. Instead the facts and circumstances of this case require a suspension from the practice of law for ninety days.

WHEREFORE the Respondent, Alan S. Glueck, respectfully requests that the Court find the Respondent not guilty of several charges set forth in the Report

of Referee, impose a ninety day suspension from the practice of law and grant any other relief that this Court deems reasonable and just.

Respectfully submitted,

RICHARDSON & TYNAN, P.L.C.
Attorneys for Respondent
8142 North University Drive
Tamarac, FL 33321
954-721-7300

By: _____
KEVIN P. TYNAN, ESQ.
TFB No. 71082

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via U.S. mail on this 7th day of September, 2007 to Juan Carlos Arias, Bar Counsel, The Florida Bar, 5900 N. Andrews Avenue, Suite 900, Fort Lauderdale, FL 33309 and to Kenneth Marvin, Staff Counsel at 651 E. Jefferson Street, Tallahassee, FL 32399-2300.

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

Undersigned counsel does hereby certify that this Brief is submitted in 14 point proportionately spaced Times New Roman font, and that the computer disk

filed with this brief or the e-mail submission of same has been scanned and found to be free of viruses, by McAfee.

By: _____
KEVIN P. TYNAN, ESQ.