IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,	**Supreme Court Case No. SC06-1101, SC07-1**
Complainant	
v.	**The Florida Bar File Nos. 2005-51,065(17J)**
	2005-51,354(17J)
ALAN S. GLUECK,	**2005-51,440(17J)**
	2005-51,469(17J)
Respondent.	**2006-50,254(17J)**
	2006-50,780(17J)
	2006-51,397(17J)
_____/	**2006-51,490(17J)**

THE FLORIDA BAR'S INITIAL BRIEF

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PRELIMINARY STATEMENT

Throughout this Initial Brief, The Florida Bar will refer to specific parts of the record as follows: The Report of Referee dated March 29, 2007, will be designated as RR ___ (indicating the referenced page number). The Florida Bar will be referred to as "the Bar." Alan S. Glueck will be referred to as "respondent."

STATEMENT OF THE CASE AND FACTS

This case arises from respondent's participation in a business venture with a non-lawyer that included the practice of law, assisting the non-lawyer in the violation of an injunction from the Supreme Court of Florida, neglecting clients, and lying to the Bar during an official investigation. The 2 consolidated Supreme Court cases involve 8 different clients whose immigration cases were neglected by the respondent.

The referee found clear and convincing evidence that respondent violated the 28 counts of misconduct contained in the complaint. The referee concluded that the respondent: 1) entered into an improper "partnership" or "business relationship" with a non-lawyer that included the practice of law [RR 18]; 2) that the respondent "intentionally violated the UPL injunction" ordered by the Supreme Court of Florida [RR 3]; and 3) that the respondent "intentionally mislead The Florid[sic] Bar and knowingly concealed his relationship" with the non-lawyer. [RR 12]

The final hearing focused on respondent's knowledge of an injunction that prohibited a non-lawyer from advising persons on legal and immigration matters. The evidence showed that respondent represented the non-lawyer in the 1997 Unlicensed Practice of Law action that concluded with an injunction from the Supreme Court prohibiting the non-lawyer from advising persons on immigration

matters. The referee found that the respondent "knowingly assisted" and "intentionally violated the UPL injunction." [RR 3]

The final hearing also focused on the respondent's business relationship with the non-lawyer and the quality of the legal service provided by the partnership. The uncontroverted evidence showed that respondent entered into an inappropriate partnership with the non-lawyer's translation and accounting business that "blended together into one operation sharing the same office manager, location, employees, and sharing control over bank accounts." [RR 48]. The referee concluded that this partnership included the practice of law. [RR 48]

As to the quality of legal service provided by the respondent and the non-lawyer partner, the evidence showed that respondent never personally met with most of the complainants, did not properly communicate or explain legal matters to them, and failed to diligently represent the clients. The referee found that the respondent visited the legal operation "every two to three weeks" [RR 5] and that the non-lawyer was responsible for the day to day operation, serving as the "conduit for factual and legal information." [RR 9]

In her report the referee concluded that during the Bar's investigation, the respondent misrepresented and failed to reveal his inappropriate partnership with the non-lawyer. The referee found that respondent "intentionally mislead The

Florid[a] Bar and knowingly concealed his relationship" with the non-lawyer. [RR 12]

The bar recommended disbarment but the referee, even though she found respondent guilty of all the alleged violations, recommended only a 3 year suspension. The Florida Bar does not challenge the referee findings but instead asserts that the referee recommended a sanction too lenient considering the severity of the cumulative misconduct.

SUMMARY OF THE ARGUMENT

The referee correctly found respondent guilty of the 11 rule violations contained within the Bar's complaint but erred in failing to recommend an appropriate sanction against respondent. In her 87 page-long report, the referee found that the Bar presented clear and convincing evidence of respondent's 28 counts of ethical rule violations affecting 8 different complainants, but only recommended a 3 year suspension instead of disbarment.

Beyond the specific facts of the 8 individual cases, the referee described in her report the inappropriateness of respondent's general conduct. The referee found that: 1) the respondent entered into an improper "partnership" or "business relationship" with a non-lawyer that included the practice of law [RR 18]; 2) that the respondent "intentionally violated the UPL injunction" ordered by the Supreme Court of Florida [RR 3]; 3) and that the respondent "intentionally mislead The Florid[sic] Bar and knowingly concealed his relationship" with the non-lawyer. [RR 12]

The referee found that the following ethical violations were proven through clear and convincing evidence: R. Regulating Fla. Bar **3-4.2** [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; **3-4.3** [The commission by a lawyer of an act that is unlawful or contrary to honesty and justice, whether the act is committed in the

course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; **4-1.1** [A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.]; **4-1.3** [A lawyer shall act with reasonable diligence and promptness in representing a client.]; **4-1.4(a)** [A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.]; **4-1.4(b)** [A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.]; **4-5.4(c)** [A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.]; **4-8.1(a)** [An applicant for admission to the bar, or a lawyer in connection with a bar admission application or on connection with a disciplinary matter shall not knowingly make a false statement of material fact.]; **4-8.1(b)** [An applicant for admission to the bar, or a lawyer in connection with a bar admission application or on connection with a disciplinary matter shall not knowingly fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter.]; **4-8.4(a)** [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so

through the acts of another.]; **4-8.4(c)** [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.].

The Bar also provided the referee with case law and the appropriate Florida Standards for Imposing Lawyer Sanctions warranting disbarment based on respondent's serious pattern of ethical misconduct. The Bar requests that this Court order respondent's disbarment based on the severity of the overwhelming evidence found in the record, the Florida Standards for Imposing Lawyer Sanctions, and relevant case law.

ARGUMENT

THE REFEREE ERRED BY RECOMMENDING A 3 YEAR SUSPENSION INSTEAD OF DISBARMENT BASED ON FLORIDA STANDARDS FOR IMPOSING LAWYER SANCTIONS AND FLORIDA CASE LAW.

While a referee's findings of fact should be upheld unless clearly erroneous, this Court is not bound by the referee's recommendations in determining the appropriate level of discipline. *The Florida Bar v. Vannier*, 498 So.2d 896 (Fla. 1986); *The Florida Bar v. Rue*, 643 So.2d 1080 (Fla. 1994). Furthermore, this Court has stated the review of the discipline recommendation does not receive the same deference as the guilt recommendation because this Court has the ultimate authority to determine the appropriate sanction. *The Florida Bar v. Grief*, 701 So.2d 555 (Fla. 1997); *The Florida Bar v. Wilson*, 643 So.2d 1063 (Fla. 1994). In *The Florida Bar v. Pahules*, 233 So.2d 130 (Fla. 1970), this Court held three purposes must be held in mind when deciding the appropriate sanction for an attorney's misconduct: 1) the judgment must be fair to society; 2) the judgment must be fair to the attorney; and 3) the judgment must be severe enough to deter others attorneys from similar conduct. This Court has further stated a referee's recommended discipline must have a reasonable basis in existing case law or the Standards for Imposing Lawyer Sanctions. *The Florida Bar v. Sweeney*, 730 So.2d 1269 (Fla. 1998); *The Florida Bar v. Lecznar*, 690 So.2d 1284 (Fla. 1997). The

Court will not second guess a referee's recommended discipline "as long as that discipline has a reasonable basis in existing case law." *The Florida Bar v. Laing*, 695 So.2d 299, 304 (Fla. 1997).

In the instant case, while the referee found respondent guilty of all the allegations raised by the bar and found various aggravating factors present, the referee did not disbar respondent. This is contrary to existing case law. This Court has ruled that it "deals more harshly with cumulative misconduct than it does with isolated misconduct." *The Florida Bar v. Williams*, 604 So.2d 447 (Fla. 1992). The *Williams* decision follows the line of cases such as *The Florida Bar v. Mitchell*, 385 So.2d 96 (Fla. 1980), where this court upheld the referee's recommendation for disbarment and his finding that "the totality and frequency of the different complaints evidence to me a reckless and wanton disregard by the Respondent for the rights and needs of his clients."

The case before the Court also involves cumulative misconduct, as described in the 28 counts of the complaint, which demonstrates respondent's disregard for the profession and his unfitness to practice law. The referee recognized the principle of "cumulative misconduct" outlined in *Mitchell* and *Williams* when she explained in her report that:

> The Supreme Court held in *The Florida Bar v. Abrams*, 919 So.2d 425 (Fla. 2006) that an attorney who allowed his name and title to be used by a non-lawyer in a corporation doing immigration work violated the prohibition against conduct involving dishonesty, fraud,

> deceit or misrepresentation, warranting a one-year suspension. The Court in *Abrams* found that the paralegal was the person in control of the corporation's day-to-day operations, met with the clients, conducted the client interviews, and made the decisions as to the appropriate course of action for the clients, and that the lawyer himself visited the office several times a month. The present case involves similar facts as in *Abrams*, but is more egregious in that Respondent participated in creating a "store front" for the Law Office of Alan S. Glueck and received the benefits of a free location, utilities, employees, secretarial and bookkeeping services. Furthermore, the current case involves eight cases of misconduct and not just one as in the *Abrams* case. [RR 84]

The referee's recommendation of a 3 year suspension is not appropriate given the severity of the respondent's misconduct.

This case bears some similarities to the case of *The Florida Bar v. Elster*, 770 So.2d 1184 (Fla. 2000), where an attorney received a 3 year suspension for failing to accomplish any meaningful work on behalf of immigration clients, misrepresentation to clients, and issuance of misleading business cards. This Court upheld the referee's findings and explained that:

> "[F]irst, '[c]onfidence in, and proper utilization of, the legal system is adversely affected when a lawyer fails to diligently pursue a legal matter entrusted to that lawyer's care. A failure to do so is a direct violation of the oath a lawyer takes upon his admission to the bar.' Second, the gravity of Elster's misconduct is heightened by one very important aggravating factor not present in any other case involving a pattern of conduct as serious as that in which Elster has engaged; vulnerability of the victims. The facts of these four cases, considered together, clearly show a pattern of egregious exploitation by Elster of a very vulnerable class of individuals."

The case before this court is more egregious than *Elster* and requires the imposition of a more severe sanction. While both cases involve complainants who were immigrants seeking the legalization of their status in the United States, in the instant case, as a direct result of respondent's misconduct, several complainants had to return to their country of origin and 1 was detained for several months after missing an immigration hearing because of respondent's failure to inform her of the hearing date. In this particular case, the referee found that:

> Respondent did not transfer Nakad's case to Attorney Kimmel until 2004 but still attempts to blame Attorney Kimmel for the deportation order being enforced. The referee finds this the most egregious case out of all that has been plead and heard. Nakad was arrested and detained for seven months with the threat of the loss of custody of her daughter. She expended thousands of dollars to get her Immigration status clarified and to retain her rights to raise her daughter in the United States. The emotional distress caused by the process was abundantly clear by her testimony and demeanor at the final hearing. Respondent's blame of the subsequent counsel is unfounded and unacceptable." [RR 70]

Put simply, the referee's recommendation of a 3 year suspension, in light of these circumstances, is not consistent with the prior rulings of this court.

Not only did this respondent exploit a very vulnerable class of individuals and failed to perform meaningful work on behalf of his clients, but he also intentionally assisted a non-lawyer in violating an injunction ordered by the Supreme Court of Florida [RR 11], entered into an inappropriate business relationship or partnership with the non-lawyer [RR 16], and intentionally mislead the Bar in an official

investigation. [RR 12]. This additional aggravating misconduct demonstrates "a reckless and wanton disregard by the Respondent for the rights and needs of his clients." *The Florida Bar v. Mitchell*, 385 So.2d 96 (Fla. 1980.

Not only is Mr. Glueck's disbarment supported by existing case law coupled with the aggravating factors, but The Florida Standards for Imposing Lawyer Sanctions provide a reasonable basis for this Court to impose disbarment. Standard 4.41(a) states that disbarment is appropriate when a lawyer abandons the practice and causes serious or potentially serious injury to a client. The referee in this case found that respondent in essence abandoned some of his clients by not notifying them of the closure of his office in Aventura and by failing to transfer the mail service from the closed location to his other office. [RR 14, 27, 28, 29, 36, 37, 45, 46, 61, 63, 64, 73, and 76]

Standard 4.61 is also applicable and warrant disbarment. This standard states that disbarment is appropriate when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another regardless of injury or potential injury to the client. After respondent closed his office in Aventura, he told one of the complainants that he was not retained by him to handle the client's legal matter when in fact the opposite was true. The referee found, however, that respondent "told Ramos that he contracted with Millennia and that he paid Millennia. Respondent blamed Millennia for the problems with the application and

refused to return money to Ramos." [RR 15]. It is uncontroverted that respondent mislead his client by blaming Millennia, his business venture with the non-lawyer, in order to protect himself financially.

Disbarment is also warranted here pursuant to Standard 6.11 which states that disbarment is appropriate when a lawyer (a) with the intent to deceive the court, knowingly makes a false statement or submits a false document; or (b) improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding. The referee found that respondent violated 8 counts of Rule of Professional conduct 4-8.1(a), a lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter; 7 counts of Rule of Professional conduct 4-8.1(b), a lawyer shall not knowingly fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in a disciplinary matter; and 7 counts of Rule of Professional conduct 4-8.4(c), a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. The referee concluded that "the Bar has proven by clear and convincing evidence that Respondent intentionally mislead The Florid[sic] Bar and knowingly concealed his relationship with Betchinger and Millennia." [RR 12]

Finally, under Standard 7.1 disbarment is also appropriate. Standard 7.1 states that disbarment is appropriate when a lawyer intentionally engages in

conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system. It is uncontroverted that respondent, for his personal financial gain, entered into a partnership with a non-lawyer and assisted him in violating an injunction ultimately injuring several clients in the process. [RR 3]

Based on the foregoing, the Bar respectfully requests that this Honorable Court reject the referee's recommendation of a 3 year suspension and disbar the respondent based on his egregious cumulative misconduct. Disbarment is warranted given the ethical misconduct involved in this case, is supported by The Standards for Imposing Lawyer Sanctions, and has a reasonable basis in similar cases brought before the Court.

CONCLUSION

The referee erred in failing to recommend disbarment. The Bar proved by clear and convincing evidence 28 counts of misconduct. Respondent's conduct in forming a partnership or business relationship with a non-lawyer; assisting the non-lawyer in violating an injunction from the Supreme Court of Florida; his failure to communicate and diligently represent clients; intentionally misleading the Bar in an official investigation; and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, warrant disbarment.

The Bar respectfully requests that this Court disbar respondent from the practice of law based on the Florida Standards for Imposing Lawyer Sanctions and relevant case law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY the original and 7 copies of The Florida Bar's Initial Brief has been furnished via regular U.S. mail to The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399-1927 and has been electronically filed; a true and correct copies have been furnished by regular U.S. mail to Kevin P. Tynan, attorney for respondent, 8142 N. University Drive, Tamarac, FL 33321, and to Staff Counsel, The Florida Bar 651 East Jefferson Street, Tallahassee, Florida 32399-2300, on this _____ day of _____, 2007.

JUAN CARLOS ARIAS

CERTIFICATE OF TYPE, SIZE STYLE AND ANTI-VIRUS SCAN

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

JUAN CARLOS ARIAS

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