

**IN THE SUPREME COURT OF FLORIDA**

THE FLORIDA BAR

Complainant,

v.

PETER DAVID TICKTIN,

Respondent.

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Supreme Court Case

No.: SC 07-369

The Florida Bar File

No.: 2005-50,263 (15F)

**RESPONDENT'S REPLY BRIEF  
(ON CROSS APPEAL)**

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**TABLE OF CONTENTS**

	Page(s)
ARGUMENT ON APPEAL .....	1
POINT I - - THE REFEREE WAS CORRECT IN RECOMMENDING THAT THE RESPONDENT RECEIVE AN ADMONISHMENT AS A DISCIPLINARY SANCTION .....	1
CONCLUSION .....	5
CERTIFICATE OF COMPLIANCE WITH FONT STANDARDS .....	5
CERTIFICATE OF SERVICE .....	5

## ARGUMENT

### **I. THE REFEREE WAS CORRECT IN RECOMMENDING THAT THE RESPONDENT RECEIVE AN ADMONISHMENT AS A DISCIPLINARY SANCTION.**

The Florida Bar states that the Referee's Findings of Fact regarding guilt have a presumption of correctness, and it pointed out that there was "competent substantial evidence" to support the Referee's finding.

Then, The Florida Bar found testimony that could be interpreted in different ways to show that the Findings of Fact did have some evidentiary support. In this regard, there were assumptions that Mr. Johnson was not in favor of taking some measure of shares to fully remove himself when his involvement was showing to be an impediment to any additional investment dollars. Also, there were assumptions that investing funds over a three year period meant that there had to have been investment at the time that the Respondent was dealing with Mr. Johnson.

If the evidence lends itself to two interpretations, surely, the benefit of any such doubt should belong to the Respondent. In any event, the factual issues are not of importance in regard to the Cross Appeal. The Cross Appeal is based on two issues of law.

The Referee's Findings of Fact do come with a presumption of correctness as far as the factual findings are concerned. However, the issues at law are to be determined by this Court de novo.

First, the Respondent was found to be guilty of failing to provide the written document that is required by Rule 4-1.8(a)(3). The Rule required the client to consent in writing to the business transaction.

Fundamentally, the transaction was very simple. The Respondent was to take over Silver State Vending Corporation as its new CEO. There were no other terms such as salary or length of the term. Mr. Johnson prepared a press release to the effect that the Respondent was to take over as CEO, and that he was resigning. Then, Mr. Johnson did provide a written resignation.

In making his decision that the Respondent was guilty, the Referee based his decision, at least in part, on the fact that Mr. Johnson, rather than the Respondent provided the written document.

The Respondent now asks that this Court reverse the Referee's decision, in that it was based on the Referee's incorrect belief that the written document by which Mr. Johnson was to consent to the arrangement had to have been produced by the Respondent.

This truly would make no sense.

In the event that an attorney were to enter into a business transaction with a sophisticated client, who prepared all of the documents, it certainly should make no difference that the client, rather than the attorney, drew up the document.

Here, Mr. Johnson was a sophisticated businessman who prepared a press release that clearly was tantamount to his consenting to the arrangement in writing.

As the Referee believed that the document necessarily had to be prepared by the attorney, the Respondent had to be found guilty, as it was always conceded that Mr. Johnson prepared the only document that showed his consent in writing.

This then raises one other issue that in fairness must be brought forth. The Referee not only found that the Respondent was guilty because he was not the one who prepared the document, but also because the document was insufficient. In the event that the Referee were to find the Respondent guilty for two reasons, one which is correct in law, and one that is not, then the question remains as to whether the finding that the writing was insufficient was a sufficient basis for a general finding of guilt. In this regard, the Respondent points out that where this could lead to a holding in the affirmative in some situations, in the present case, this Court should find that the Respondent is not guilty, as the facts are inextricably intertwined, and the fact that the Referee believed that the writing was insufficient due to the fact that it was authored by Paul Johnson, worked together with the

notion that it was insufficient in that it did not include every possible issue, such as his waiver of a conflict of interest.

The second point goes to the issue of whether the Respondent could have been found to act in a conflict of interest because he failed to protect Mr. Johnson.

Mr. Ticktin knew that he needed to back away from any involvement in canceling Mr. Johnson's shares in LWL, as he had a potential conflict of interest. Hence, he told Mr. Bee to do whatever Mr. Bee felt he needed to do, and to get other counsel.

That was the Respondent's duty. He was required to back out of representing either of his clients in the situation where they were conflicted.

Yet, the Referee found the Respondent guilty for not protecting Mr. Johnson's interests. This is simply not a correct legal position.

If the Respondent would have protected Mr. Johnson's shares for him, he would have been acting against Mr. Bee and Link Worldwide Logistics, Inc.

The fact is that the Referee incorrectly believed that the Respondent had a legal duty to protect Mr. Johnson, and in reality, the Respondent's duty was to do exactly what he did do, which was to back away and refuse to help either side.

With these two glaring mistakes in law, this Respondent, with his exemplary record, who did back away from the conflict of interest, should be now found to be not guilty of any ethical violations.

## CONCLUSION

The Respondent therefore asks that this Honorable Court reverse the finding of Guilt that was found by the Referee regarding the allegations that the Respondent acted in a conflict of interest. In the alternative, in the event that this Court should find that the Respondent is guilty, that the Court accept the Recommendations of the Referee as to punishment of an Admonition.

Respectfully submitted,

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Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE WITH FONT STANDARDS

In accordance with the requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure, this Brief is prepared in Times New Roman 14 point font.

## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY**, that a true and correct copy of the foregoing has been mailed this \_\_\_\_\_ day of December, 2008, to **MICHAEL DAVID SOIFER**,

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