IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant/Cross-Respondent,

v.

PETER DAVID TICKTIN

Respondent/Cross-Complainant
_____/

Supreme Court Case No. SC07-369

The Florida Bar File No. 2005-50,263(15F)

THE FLORIDA BAR'S REPLY BRIEF and ANSWER BRIEF ON CROSS APPEAL

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PRELIMINARY STATEMENT

The Complainant/Cross-Respondent, The Florida Bar, is seeking review of a Report of Referee recommending an admonishment.

Complainant/Cross-Respondent will be referred to as The Florida Bar, or as The Bar. Peter David Ticktin, Respondent/Cross-Complainant, will be referred to as respondent throughout this brief.

References to the Report of Referee shall be by the symbol RR followed by the appropriate page number.

References to specific pleadings will be made by title. Reference to the transcript of the final hearing are by the symbol TR, followed by the volume, followed by the appropriate page number. (e.g., TR III, 289).

References to Respondent's Answer Brief and Initial Brief on Cross Appeal shall be by the symbol BR followed by the appropriate page number. (e.g., BR 2).

References to bar exhibits shall be by the symbol TFB Ex. followed by the appropriate exhibit number (e.g., TFB Ex. 10). Reference to respondent's Exhibits shall be by the symbol R-Ex. followed by the appropriate exhibit number (e.g., R-Ex. 10). TFB Ex. 13 is respondent's affidavit, dated July 30, 2007, filed t6in the within matter and consisting of 44 paragraphs. References to TFB Ex. 13 will also include a reference to a specific paragraph. (e.g., TFB Ex. 13, par. 3).

SUPPLEMENT TO STATEMENT OF THE FACTS BY APPELLANT/CROSS-RESPONDENT

The Florida Bar relies on the Statement of the Case and Facts as set forth in its initial brief. As demonstrated by the extensive references contained in the Bar's initial brief, the facts set forth therein were culled from the record evidence and the Report of Referee. For his part, respondent concedes in his brief at BR 1, the accuracy of at least most points made by the Bar.

At BR 15, respondent states his differences with the Bar's Statement of Facts, but respondent does not find support for those differences in the record or the referee's findings. Respondent initially claims that there was no factual finding that his interest was adverse to Johnson's executive role in Silver State. In contrast, the referee specifically states in his findings of fact at RR 5:

> Inasmuch as the respondent's position in Silver State replaced Johnson's executive role in Silver State and respondent made it known that he did not intend to be Johnson's "puppet," respondent's interest thereby became adverse to that of Johnson … . The adverse positions between respondent and Johnson became stark by April of 2002, when respondent decided he needed Johnson to be completely out of the business if it was to succeed.

Respondent next takes issue with the Bar's statement that "Johnson's failure to take delivery of the shares provided a means for [respondent and Mr. Bee] to obtain

their mutual objective of getting Johnson out of the company." (BR 15). But this was also specifically found by the referee and he so states at RR 9:

> The evidence demonstrates that respondent and Bee both took the position that Johnson's failure to take delivery of the shares provided a means for each to obtain their mutual objective of getting Johnson out of the company.

Respondent also says in his Statement of Facts that he did not participate in the cancellation of Mr. Johnson's 14.5 million shares in LWL. (BR 15, 17, 18). The record evidence accepted by the referee does not support respondent's position. Further, the respondent's Statement of Facts in the answer brief contains numerous admissions to the contrary, including the following:

First, respondent admits that after he took over Mr. Johnson's companies, he visited Mr. Johnson in jail for the purposes of getting him to sign an agreement that would get Mr. Johnson completely out of Silver State. (BR 6-7). More accurately, the agreement prepared by respondent was for Mr. Johnson to relinquish his 14.5 million shares in LWL in exchange for some shares in Silver State. (TFB Ex. 4, 5 and 6).

Further, respondent admits (at BR 10) that he was aware of the conflict of interest he had with LWL. When Richard Bee, the sole remaining director of LWL, who was also respondent's employee at Silver State, asked respondent for advice as to how he should proceed to eliminate Mr. Johnson from LWL, respondent

recommended other attorneys for Mr. Bee to solicit advice. Respondent then admits Mr. Bee discussed with him the advice he received from the other attorneys and respondent told him to think about what he was going to do. (BR 15-16)

In fact, Mr. Bee was aware of the agreement that respondent had prepared for Mr. Johnson to relinquish his interest in 14.5 million shares in LWL because respondent had discussed it with Mr. Bee. (RR 9-10; TR II 262). Mr. Bee accompanied respondent on one of the trips to the jail and was told by respondent that "it wasn't a friendly meeting." (TR II 270). Furthermore, respondent's law firm, with respondent's knowledge and participation, prepared a letter for Mr. Bee's signature, which discussed the share cancellation and enclosed the agreement drafted by respondent for Mr. Johnson's signature. (TFB Ex. 6). The referee correctly found at RR 9-10:

> During the same period of time when respondent was attempting to have Johnson sign the agreement and waiver, Bee approached respondent for advice about how to deal with Johnson's 14.5 million shares in LWL with respect to removing Johnson from the company. Respondent professed to Bee that to give such advice would be a conflict of interest for him since he had no conflict or confidentiality waiver from Johnson respecting LWL. On respondent's suggestion, Bee sought advice as to how to cancel Johnson's shares from other attorneys. After the consultation, Bee informed respondent that he had received advice that Johnson's shares could be cancelled. Bee accompanied respondent to one of the visits to Johnson at the jail. Though Bee testified that the decision to cancel Johnson's shares was his own, he acknowledged discussing it with respondent who told Bee to do whatever Bee thought was

> necessary. Bee then took action to cancel Johnson's shares in LWL. Around the time those shares were cancelled, Bee sought counsel from Bruce Chaimowitz, who was an attorney employed by respondent and also the lawyer for Silver State. Chaimowitz prepared a letter on Pony Express letterhead, for Bee's signature, dated May 1, 2002. (Bar Exhibit 6). The letter, which enclosed the agreement and conflict waiver prepared by respondent, was sent to Dominic Grosso, who although an attorney, was not Johnson's attorney. The letter states that Johnson's shares in LWL have been nullified and gives Johnson one more chance to sign the agreement and waiver. Bee discussed the contents of the letter with respondent before it was sent. The latest version of the agreement enclosed with the letter lowered the Silver State shares offered to Johnson from 2.5 million to 1.7 million shares.

At BR 11, respondent admits that Mr. Bee's cancellation of Mr. Johnson's shares had an impact on Silver State because those LWL shares were to be converted to Silver State shares. As CEO of Silver State, respondent admits entering into an agreement with Mr. Bee and Mr. Scholl (the CFO of Silver State) for all of Mr. Johnson's cancelled shares in LWL to be converted to Silver State, and that those converted shares would then be used to honor promises Mr. Johnson had allegedly made. This is despite the fact that respondent knew the legal duty to honor the alleged promises was questionable and presented only a potential liability. Respondent stated this clearly in his letter to shareholders of May 16, 2002 (TFB Ex. 8), and this was set forth in the referee's report at RR 10-12:

> … That letter demonstrates that respondent was taking an adverse position against Johnson's shares of stock in LWL, notwithstanding his acknowledgement that Johnson had a claim to those shares. It also relates

the efforts to get Johnson to cooperate in relinquishing his shares in LWL and his failure to so cooperate, which resulted in Bee's action to cancel Johnson's shares. It also demonstrates that respondent's law firm prepared releases for the shareholders to sign in order to accomplish the stock transfer.

The referee also states at RR 12:

The evidence clearly demonstrated that Silver State and LWL were inextricably linked. Respondent was Bee's boss at Silver State, Bee was the boss at LWL, and respondent's law firm provided legal advice to Bee on LWL matters. Respondent was privy to confidential information of all the parties involved and owed a duty of loyalty and confidentiality to each of those parties. Respondent's letter of May 16, 2002, to shareholders clearly demonstrated that he was acting in concert with Richard Bee against Johnson's interests.

The referee found at RR 13:

I find that respondent's exercise of independent judgment in representing Johnson and LWL, was clearly limited by his own self interest, and the interests of Silver State. Instead of seeking appropriate legal means in which to act to protect Johnson's ownership interest in LWL as Johnson's attorney, respondent acted adversely against Johnson's interest. Respondent's own personal interest and his duty to Silver State was paramount to Johnson's interests as respondent tried to get him to sign the agreement to relinquish his shares, and when that failed, participated in the adverse action to extinguish Johnson's ownership interest in LWL, which ultimately was designed to extinguish Johnson's involvement in Silver State. Respondent could not reasonably believe that his representation of Johnson was not adversely affected by the actions in which he and his law firm participated.

The referee found respondent had a basis for self interest for several reasons, including the fact that he had also invested his own money in the company. (RR 5).

Although, respondent states at BR 17-18, he invested his money "long after all of the issues with Mr. Johnson had transpired," this is not supported by the record evidence. Respondent testified in his affidavit that after taking over the company, "It was not long before the AFFIANT started to put his own money into the company in order to keep it alive. Over the next 3 years, the AFFIANT put millions of dollars of his and his family's money into the company." (TFB Ex. 13, par. 20). Respondent's wife also testified that the money was not invested all at once, but "over the course of the life of the company." (TR V 662-663.) The referee's finding of fact that he was dealing in his own self interest is further substantiated by the letter respondent wrote to Pony Express shareholders on March 22, 2002 (TFB Ex. 3), where he states at page 3:

> The name and the business plan induced me to jump into this company. I saw the value of its assets and saw an opportunity for myself. That is why I am here. I want to make money, and I intend to do it through the shares I will ultimately own.

Respondent's statement (at BR 18) that respondent had his own attorneys at the time he was negotiating with Mr. Johnson at the jail to relinquish ownership of his shares is not supported by any evidence in the record. Instead, respondent references TR V, 678-680, which was part of his final argument to the referee at the final hearing on sanctions after the evidence was closed. The evidence is undisputed that throughout the course of the relationship, respondent dealt with Mr. Johnson directly.

SUMMARY OF ARGUMENT

The Bar hereby incorporates and repeats its Summary of Argument as set forth in its Initial Brief.

The respondent's cross appeal should be denied. As set forth in the Bar's Statement of Facts and Supplement thereto, the Referee's findings of fact concerning respondent's guilt to the rule violations in Count I of the complaint are supported by competent, substantial evidence and respondent does not argue that the findings are not so supported. Respondent does not support his argument with evidence in the record, but even if he could, he still would not satisfy his burden of showing that a referee's findings are clearly erroneous by simply pointing to contradictory evidence where there is also competent, substantial evidence in the record that supports the referee's findings. Respondent's argument that he should not be found guilty of Rule 4-1.8(a) solely because Mr. Johnson prepared the press release fails because the press release did not otherwise comply with the requirements of Rule 4-1.8(a). Furthermore, Rule 4-1.8(a) contemplates the attorney entering into the transaction should prepare or at least ensure the writing contains all the essential terms, which the respondent failed to do.

ARGUMENT

THE FLORIDA BAR'S ANSWER BRIEF ON CROSS APPEAL

THE REFEREE DID NOT ERR IN FINDING RESPONDENT GUILTY OF THE VIOLATIONS SET FORTH IN COUNT I OF THE COMPLAINT.

A referee's finding of fact regarding guilt carry a presumption of correctness that should be upheld unless clearly erroneous or without support in the record. The Florida Bar v. Vining, 761 So. 2d 1044 (Fla. 2000). This Court has the authority to review the record to determine whether "competent substantial evidence supports the referee's findings of fact and conclusions concerning guilt." The Florida Bar v. Cueto, 834 So. 2d 152 (Fla. 2002), citing The Florida Bar v. Jordan, 705 So. 2d 1387 (Fla. 1998). The party contesting the referee's findings of fact and conclusions as to guilt must demonstrate either a lack of record evidence to support such findings and conclusions, or that the record evidence clearly contradicts such findings and conclusions. The Florida Bar v. Feinberg, 760 So. 2d 933 (Fla. 2000), quoting The Florida Bar v. Sweeney, 730 So. 2d 1269, 1271 (Fla. 1998).

As set forth in the Bar's Statement of Facts and Supplement thereto, the Referee's findings of fact concerning respondent's guilt to the rule violations in Count I of the complaint are supported by competent, substantial evidence and respondent's argument does not claim that the findings are not so supported.

Initially, respondent argues that the referee improperly found a violation of Rule 4-1.8(a)(1) because the writing required under Rule 4-1.8(a)(1) should not be strictly interpreted to require that it be prepared by the respondent. But, in addition to the fact that respondent did not prepare it, the referee also found other reasons why the press release purportedly prepared by Mr. Johnson did not satisfy Rule 4-1.8(a)(1). The referee states at RR 6-7:

> 10. In considering the credible evidence, I did not find merit to respondent's claim that a press release purportedly prepared by Johnson satisfied the requirement of [former] Rule 4-1.8(a)(1), Rules Reg. Fla. Bar. At respondent's deposition on June 14, 2007, respondent testified there were no terms to the deal he made to take over Johnson's executive authority in the business. The press release was discovered the night before Richard Bee's deposition, which took place on July 26, 2007. Bee had found a copy of it on his computer hard drive. Respondent and Bee both testified that the December 17, 2001 date on the release was incorrect and that it was actually disseminated in early January. The relevant portions of the press release state that respondent accepted the position of Chairman and CEO, Scholl accepted the appointment of CFO, and Johnson, the founder and major shareholder was to remain as primary consultant. The press release did not state that Johnson was resigning the company. The press release also did not state that Johnson waived any conflict of interest. Furthermore, respondent testified that the portion of the press release pertaining to Johnson remaining as a primary consultant was not one of the terms of the deal.
>
> 11. I find that this "press release" does not satisfy the requirement of Rule 4-1.8(a)(1), Rules Reg. Fla. Bar. First, it was not prepared by the respondent and does not fully disclose the terms of the transaction to Johnson. Second, it does not contain the oral waiver of conflict and confidentiality respondent claims he obtained from Johnson at the January meetings. Respondent stated in paragraph 12 of his Affidavit (Bar Exhibit 13) that the waivers of confidentiality and conflict

were "two major concerns" he had in replacing Johnson. Thus, these major concerns were essential terms that were not disclosed in writing nor consented to in writing by Johnson or Silver State.

12. Respondent testified he obtained at the January meetings, an oral waiver of conflict and confidentiality from Johnson, only as it pertained to Silver State. Respondent admitted he did not have waivers of conflict or confidentiality from Johnson pertaining to LWL. Respondent also admits that he did not have a waiver of conflict or confidentiality pertaining to Johnson from Silver State (Pony Express). Rule 4-1.7(a), Rules Reg. Fla. Bar require that all the affected clients consent to the conflict of interests between them. There was no evidence to show that Johnson understood the meaning or extent of any oral conflict or confidentiality waiver claimed by respondent. The evidence showed that in April 2002, when respondent tried to set forth the extent of the purported oral waiver in writing, Johnson did not agree to such waiver because he refused to sign it….

With respect to the requirement of a writing, former Rule 4-1.8(a) provides:

> (a) Business Transactions With or Acquiring Interest Adverse to Client. A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, except a lien granted by law to secure a lawyer's fee or expenses, unless:
>
> (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;
>
> (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
>
> (3) the client consents in writing thereto.

One of the requirements of the rule is that the transaction and terms are not only fair and reasonable to the client, but that the terms be fully disclosed and transmitted in writing to the client. The rule contemplates that the attorney will prepare the written

document containing the terms of the transaction, or at the very least, ensure that if the written document is prepared by another, it contains all the terms, which the client will then have an opportunity for independent review before consenting thereto. This respondent failed to comply with the requirements of the rule. Respondent concedes that it would have been better to include the waivers of privilege and confidentiality in the writing. (BR 42). Respondent's claim that portions of the press release should be ignored disregards the requirements of the rules, and the evidence and factual findings made by the referee. The referee specifically found that respondent's claims concerning the terms of the press release were not credible. (RR 6).

Respondent next claims the referee committed error in finding him guilty of violating Rule 4-1.7, arguing he had no duty to protect Mr. Johnson's interests from being taken from him. Respondent makes the argument that there would be no violation of Rule 4-1.7 if this Court were to split respondent's conduct into distinct time frames to separate his own actions from Mr. Bee's action of canceling Mr. Johnson's 14.5 million LWL shares. But respondent has admitted that at all relevant times, Mr. Johnson was his client. (TR I, 29, 47; TR II, 192; TFB Ex. 11). The evidence in the record demonstrates that respondent's conduct cannot be separated or distinguished from the cancellation of Mr. Johnson's shares by Mr. Bee. The evidence also does not support respondent's claim that he helped neither Johnson nor LWL, or

that he isolated himself from Mr. Bee's actions. Respondent remained involved in the dealings between Johnson, LWL, and Silver State, and he even concedes in his brief that he offered Mr. Johnson a "quid pro quo" to get him out of the company and took action to effectuate the cancellation of Mr. Johnson's shares. (BR 42-43). Respondent's law firm drafted a letter for Mr. Bee's signature concerning the cancellation of the shares, which respondent reviewed. That letter enclosed the agreement prepared by respondent wherein Johnson would hold respondent, Mr. Bee, Silver State, LWL and others harmless for the cancellation of Johnson's LWL shares. (TFB Ex. 6). Further, respondent concedes that the share cancellation impacted Silver State and that he took action to facilitate the cancellation of Johnson's shares with the issuance of Silver State stock as a replacement. (BR 11) The referee found that respondent represented adverse interests when he simultaneously represented Johnson, LWL and Silver State. (RR 12). There is no question that these events were all interconnected.

Respondent does not support his argument with evidence in the record, but even if he could, he still would not satisfy his burden of showing that a referee's findings are clearly erroneous by simply pointing to contradictory evidence where there is also competent, substantial evidence in the record that supports the referee's findings. The

Florida Bar v. Senton, 882 So. 2d 997 (Fla. 2004); The Florida Bar v. Vining, 761 So. 2d 1044 (Fla. 2000).

This respondent has not satisfied his burden of demonstrating that there is a lack of record evidence to support the referee's findings and conclusions or that the record evidence clearly contradicts such findings and conclusions. The referee was correct in determining the respondent was guilty of the rule violations set forth in Count I of the Bar's complaint.

THE FLORIDA BAR'S REPLY TO RESPONDENT'S ANSWER BRIEF

THE REFEREE ERRED IN RECOMMENDING AN ADMONISHMENT. RESPONDENT'S MISCONDUCT WARRANTS THE IMPOSITION OF A SUSPENSION OF AT LEAST 60 DAYS.

Despite the factual finding by the referee that he knowingly engaged in a conflict of interest, respondent seeks to portray himself as the victim of Mr. Johnson so as to justify the referee's recommendation of an admonishment. Respondent depicts himself as "a well seasoned litigator with an exemplary record who was basically fooled or conned" into taking over as CEO in Johnson's company, Silver State. (BR 27). Actually, the referee stated the following at RR 4-5:

> Due to his imminent arrest, Johnson met with respondent on or about January 5, 2002, to discuss who could replace Johnson as CEO of Silver State. Johnson suggested some people he thought might be suitable, including Matthew Sosonkin, an attorney who was employed by respondent. Respondent told Johnson that he did not think Sosonkin was suitable. I do believe respondent's testimony that, **at this time**, Johnson tricked or conned respondent into suggesting himself to Johnson as a suitable replacement. Respondent discussed the opportunity with lawyer Harvey Scholl with whom he shared his legal business operation under the firm name of Scholl, Ticktin & Associates. Both respondent and Scholl viewed it as an opportunity. Respondent and Scholl met with Johnson and Bee on January 7, 2002, at respondent's law office where the announcement was made to Bee that respondent would replace Johnson as CEO and Chairman of Silver State. Scholl was named as Chief Financial Officer … [Emphasis added].

Although the referee believed respondent's testimony that at the specific time

he suggested himself to Mr. Johnson as the replacement he was tricked or conned, the referee also found that respondent thereafter discussed the matter with Harvey Scholl and both Scholl and respondent viewed it as an opportunity. Respondent should not be permitted to excuse himself for this misconduct. That respondent involved himself in a business, which did not turn out to be the opportunity he envisioned does not change the fact that he acted on his own volition to pursue and consummate this transaction with his client.

Further, as argued in the Bar's initial brief, respondent's failure to comply with the requirements of Rule 4-1.8(a) is not a mere technical violation. The record and the referee's factual findings are in total contradiction to a finding of no harm to Mr. Johnson. The referee specifically found that Mr. Johnson did not agree to waive conflicts of interest or client confidentialities with respondent. (RR 7). The record supports the referee's findings that respondent worked in concert with Mr. Bee to remove Johnson's ownership interest in companies that Johnson started, and facilitated the cancellation of Johnson's 14.5 million shares of LWL. Respondent was seeking to promote his own interests and the interests of Silver State at Mr. Johnson's expense and to his great injury and potential injury. Respondent's actions must be considered egregious, not mere minor misconduct.

As argued in the Bar's initial brief, the referee committed error in his application of mitigating and aggravating factors. Further, the case law argued in the Bar's initial brief support the imposition of a suspension. The case at bar is distinguishable from the two cases argued by the respondent in his answer brief. Neither of the cases he cites serves as a basis for the admonishment recommended in the instant case. This respondent's misconduct is much more egregious than what occurred in those cases.

In The Florida Bar v. Hagglund, 372 So. 2d 76 (Fla. 1979), relied on by respondent, Hagglund invested $7,500 in his client's auto tag agency in 1967, in exchange for an option to purchase it. Hagglund never exercised the option and the business closed with a loss to both Hagglund and the client after it was burglarized in 1969. Hagglund at p. 77. Hagglund initially forgave the $7,500, but more than four years later, filed suit against the client for the $7,500 when the client stood to inherit her deceased mother's house. The referee's findings in Hagglund demonstrated that the evidence in that case was lacking. For instance, it could not be proved or disproved that Hagglund was a business partner with his client. Hagglund at p. 77. And, although the referee found persuasive evidence for the conflict of interest created by the later lawsuit, he found only that a conflict of interest arising out of the business relationship "may have existed." Hagglund at p. 78. In the instant case, respondent was neither a

partner nor an option holder, rather he took over Mr. Johnson's business. Mr. Johnson lost his business interests, not to external forces as the burglary occurring in Hagglund, but to this respondent's actions, which were designed to take Mr. Johnson's business interests away from him and succeeded in doing so.

In The Florida Bar v. Kramer, 593 So. 2d 1040 (Fla. 1992), relied on by respondent, the court rejected the private reprimand, which was the equivalent of an admonishment, in favor of a public reprimand. The Kramer Court states at page 1041 that failure to comply with the rules concerning business dealings between lawyers and clients normally warrants a greater punishment than a reprimand. The reprimand was imposed in deference to the referee's evaluation of the evidence. In the instant case, the referee's findings of fact concerning respondent's guilt do not comport with his recommendation for an admonishment. A suspension is supported by the case law cited in the Bar's initial brief and the Florida Standards for Imposing Lawyer Discipline.

CONCLUSION

Respondent's cross appeal should be dismissed. The evidence of respondent's violations set forth in Count I is competent and substantial. The referee erred in recommending respondent receive an admonishment as the disciplinary sanction because his findings of fact pertaining to Count I demonstrated that respondent's interests and the interests of Silver State and LWL were adverse to his client Johnson, and respondent took adverse action against Johnson that was intended to benefit himself and Silver State. Respondent viewed replacing Johnson as CEO of Silver State as an opportunity and invested considerable sums of his own money in the company. Respondent acted adversely to Johnson's interests when he decided that Johnson needed to be completely out of the business for the business to succeed. In the process, Johnson's 14.5 million shares in LWL were cancelled, which resulted in serious injury or potential serious injury to Johnson. Standing alone, these actions warrant the imposition of a suspension of at least 60 days and payment of the Bar's costs. This court is free to impose a sanction greater than 60 days if it deems it appropriate.

Further, as set forth in the Bar's initial brief, respondent should be found guilty of the charges set forth in Count II for revealing confidential information to the Assistant U.S. Attorney, without his client's permission and to his client's detriment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing The Florida Bar's Reply Brief and Answer Brief on Cross Appeal regarding Supreme Court Case No. SC07-369, The Florida Bar File No. 2005-50,263(15F) has been sent by regular U.S. mail to Peter David Ticktin, Esq., The Ticktin Law Group, P.A., 600 West Hillsboro Boulevard, Suite #220, Deerfield Beach, Florida 33441; to Kevin P. Tynan, Co-Counsel for respondent, Richardson & Tynan, 8142 North University Drive, Tamarac, Florida 33321; and to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, on this _____ day of _____, 2008.

_____

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

Undersigned counsel does hereby certify that The Florida Bar's Reply Brief and Answer Brief on Cross Appeal is submitted in 14 point proportionately spaced Times New Roman font, and that the brief has been filed by e-mail in accord with the Court's order of October 1, 2004. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

_____

Michael David Soifer, Bar Counsel

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