

**IN THE SUPREME COURT OF FLORIDA
(Before a Referee)**

THE FLORIDA BAR,

Complainant,

v.

PHILIP DAVID IRISH,

Respondent.

_____ /

**Supreme Court Case
Nos. SC08-1375, SC08-1552
SC08-1891, SC08-2398**

**The Florida Bar Files
Nos. 2008-70,457(17H)
2008-31,259(17H)
2008-70,993(17H)
2006-50,753(17H)FCC
2008-50,133(17H)
2009-70,113(17H)
2009-70,204(17H)**

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar filed its Notice of Determination or Judgment of Guilt in this cause with the Supreme Court of Florida on or about October 6, 2008. Thereafter, the undersigned was appointed to preside as referee in this proceeding by order of the Chief Judge of the Fifteenth Judicial Circuit. A final hearing in the case was held May 6, 2009. The pleadings, and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

During the course of these proceedings, respondent was represented by attorney Richard B. Marx and The Florida Bar was represented by bar counsel Juan Carlos Arias.

II. FINDINGS OF FACT AND RECOMMENDATIONS AS TO GUILT FOR EACH ITEM OF MISCONDUCT WITH WHICH RESPONDENT IS CHARGED:

AS TO ALL CASES

1. Respondent is, and at all times material to this action was, a member of The Florida Bar and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. The parties signed and submitted a Joint Stipulation agreeing to the facts of the cases and to the rule violations. A copy of the Joint Stipulation is hereby attached as Exhibit 1.

The Florida Bar File No. 2006-50,753(17H)FCC (SC08-1891)

3. On or about July 15, 2008, in the case styled State of Florida v. Philip Irish, in the 17th Judicial Circuit, Broward County, Florida, Case No. 05019059CF10A, respondent was adjudicated guilty of the following felony charges: 1) Trafficking in gamma butyrolactone; 2) Possession of a controlled substance without a prescription; 3) Possession of a controlled substance without a prescription; 4) Possession of cocaine; 5) Possession, sale, delivery of methenolone; and 6) Possession, sale, delivery of mesterolone.

4. Respondent was sentenced to 30 months incarceration in the Florida State Prison with a credit of 120 days time served.

5. By the conduct set forth above, respondent violated R. Regulating Fla. Bar 4-8.4(b) [commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects].

The Florida Bar File No. 2008-50,133(17H) (SC08-2398)
COUNT I

6. Benjamin Rodriguez had retained respondent to represent him in 5 lawsuits.

7. In June 2007, Rodriguez discovered that respondent had abandoned his cases after vacating his office.

8. Rodriguez alleged that respondent had missed scheduled court dates, hearings and a deposition.

9. Attempts by Rodriguez to communicate with respondent were unsuccessful and respondent failed to return case files.

10. By the conduct set forth above, respondent violated 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:(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.]; 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.]; 4-1.5(a)(1) [An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly excessive when:(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear

overreaching or an unconscionable demand by the attorney;]; 4-3.2 [A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.]; 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;].

COUNT II

11. Michael S. Mallor retained respondent for a civil matter.

12. Attempts by Mallor to determine the progress of the case and contact respondent were unsuccessful.

13. Respondent neglected the case and failed to file appropriate pleadings.

14. By the conduct set forth above, respondent violated 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:(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.]; 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.]; 4-1.5(a)(1) [An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly

excessive when:(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney;]; 4-3.2 [A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.]; 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;].

COUNT III

15. In June 2007, Matthew Ermovick retained and paid respondent \$1,000 to represent him as plaintiff in a civil matter.

16. Although a demand letter was allegedly sent by respondent to the defendant, the letter was never received by the defendant.

17. In October 2007, respondent advised Ermovick that a lawsuit would be filed.

18. Respondent failed to represent Ermovick and took no action to litigate the matter.

19. By the conduct set forth above, respondent violated 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:(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client

expects assistance not permitted by the Rules of Professional Conduct or other law.]; 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.]; 4-1.5(a)(1) [An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly excessive when:(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney;]; 4-3.2 [A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.]; 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;].

The Florida Bar File No. 2008-31,259(17H) (SC08-1375)

COUNT I

20. In 2007, Pierre M. Smith hired respondent and paid him \$1,000 to handle a judgment that had been entered against him.

21. Respondent had advised Mr. Smith that he had one year to reverse the judgment before any garnishment action could be taken.

22. After returning from a trip for several months, Mr. Smith discovered that his bank account had been garnished without his knowledge.

23. Mr. Smith's attempts to contact respondent were unsuccessful.

24. On January 28, 2008, Mr. Smith filed a complaint against respondent with The Florida Bar.

25. The Florida Bar required an explanation from respondent via letters dated February 21, 2008 and March 12, 2008 the latter sent certified mail.

26. Respondent failed to reply to these letters.

27. By the conduct set forth above, respondent violated 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:(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.]; 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.]; 4-1.5(a)(1) [An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly

excessive when:(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney;]; 4-8.1(b) [An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by rule 4-1.6;....]; and 4-8.4(g) [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made: (1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors; (2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors;].

COUNT II

28. In December 2006, Lionel Forbes hired respondent to represent him in immigration matters.

29. Mr. Forbes paid respondent \$1,000, but after February 2007, Mr. Forbes was unable to contact respondent despite several attempts.

30. On October 21, 2007, Mr. Forbs filed a complaint against respondent with The Florida Bar.

31. The Florida Bar required an explanation from respondent via letters dated November 5, 2007 and November 26, 2007 the latter sent certified mail.

32. Respondent failed to reply to these letters.

33. By the conduct set forth above, respondent violated 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:(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these

rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.]; 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.]; 4-1.5(a)(1) [An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly excessive when:(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney;]; 4-8.1(b) [An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter or knowingly fail to respond to a lawful demand for

information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by rule 4-1.6;....]; and 4-8.4(g) [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made: (1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors; (2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors;].

The Florida Bar File No. 2008-70,993(17H)(SC08-1552)
COUNT I

34. In March 2007, Aleksandr Mogulyan retained respondent and paid him \$900 to handle a landlord-tenant security deposit matter and to file an answer.

35. The suit had been filed against Mogulyan to seek return of a security deposit paid by a former tenant.

36. In addition to failing to research the legal issues properly, respondent waited over a month to file his appearance.

37. Respondent never filed an Answer to the lawsuit.

38. Respondent never filed any affirmative defenses or counterclaim.

39. Respondent never appeared at a hearing on plaintiff's summary judgment motion.

40. As a result, Mogulyan had a final judgment entered against him for damages.

41. By the conduct set forth above, respondent violated 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:(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client

expects assistance not permitted by the Rules of Professional Conduct or other law.]; 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.]; 4-1.5(a)(1) [An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly excessive when:(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney;]; and 4-3.2 [A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.].

COUNT II

42. On or about March 31, 2008, Aleksandr Mogulyan filed a complaint with The Florida Bar.

43. By letter dated April 8, 2008, The Florida Bar's Attorney Consumer Assistance Program (ACAP) requested an explanation from respondent and he failed to respond.

44. Respondent failed to reply to this letter.

45. Again, by letter dated May 5, 2008, ACAP requested a response to Mogulyan's complaint.

46. Respondent again failed to respond.

47. By the conduct set forth above, respondent violated R. Regulating Fla. Bar 4-8.4(g) [A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made: (1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors; (2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors;].

III. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that respondent be disbarred, effective nunc pro tunc to October 8, 2008, the date respondent was suspended by the Supreme Court of Florida. I also recommend that, as a condition precedent to readmission to The Florida Bar, respondent must pay restitution to the following clients: Matthew Ermovick, \$1,000; Pierre M. Smith, \$1,000; Lionel Forbes, \$1,000; Aleksandr Mogulyan, \$900. In arriving at the foregoing disciplinary recommendation, consideration was given to various factors which are set forth below:

A. Pursuant to Rule 3.0 of the Standards For Imposing Lawyer Sanctions I have considered the following factors before recommending appropriate discipline:

1. Duty Violated: Standards 4.0, 5.0, and 7.0 of the Florida Standards for Imposing Lawyer Sanctions, best fit the misconduct described. Standard 4.1, Failure to Preserve the Client's Property, states that disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury. Standard 4.4, Lack of Diligence, states that disbarment is appropriate when a lawyer abandons the practice and causes serious or potentially serious injury to a client. Standard 5.1, Failure to Maintain Personal Integrity, states that disbarment is appropriate when a lawyer is convicted of a felony under applicable law. Standard 7.1, Violation of Other Duties Owed as a Professional, 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.
2. Lawyer's mental state: Respondent presented evidence in mitigation of his addiction to gamma butyrolactone (also known as "GHB") and cocaine, arguing that his misconduct was directly related to drug

3. Potential or actual injury caused by the lawyer's misconduct:
Respondent's misconduct injured 6 clients in various degrees. In the case of Benjamin Rodriguez, respondent missed court dates, hearings, a deposition and failed to return the case files to the client. In Michael Mallor's case, respondent failed to file pleadings. In Matthew Ermovick's case, respondent received \$1,000 as legal fees but failed to file a lawsuit. In Pierre M. Smith's case, respondent received \$1,000 as legal fees but failed to oppose a judgment causing client's pay to be garnished. In Lionel Forbes' immigration case, respondent received \$1,000 in legal fees without performing any work. Finally, Aleksandr Mogulyan paid respondent \$900 in legal fees and due to his misconduct a summary judgment was entered against his client.
4. Existence of aggravating or mitigating factors: Respondent had a dishonest or selfish motive when he accepted payment for legal services never performed, engaged in a pattern of misconduct as

evidenced by the rule violations in the six cases, committed multiple offenses as evidenced by the rule violations in the 6 cases, and engaged in bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency when he failed to respond to bar counsels' letters requiring a response under Rule 4-8.4(g). Therefore, I find these aggravating factors pursuant to Florida Standards for Imposing Lawyer Sanctions 9.22 (b), (c), (d) and (e).

5. I also considered the following mitigating circumstances: absence of a prior disciplinary record, inexperience in the practice of law, physical or mental disability or impairment, imposition of other penalties or sanctions and remorse. Therefore, I find these mitigating factors pursuant to Florida Standards for Imposing Lawyer Sanctions 9.32(a), (f), (h), (k) and (l).
6. I specifically find that respondent failed to demonstrate interim rehabilitation. I have considered the opinions of Respondent's psychiatric and addiction expert, Doctor Richard B. Seely, but I find that his opinions relating to respondent's recovery are based primarily upon only 3 hours of telephonic conversations 10 days prior to the final hearing. Dr. Seely did not discuss respondent's recovery with his

treating professionals in prison and did not obtain copies of his treatment file from prison. In other words, respondent failed to show current and reliable evidence of respondent's rehabilitation program, addiction treatment, and progress. Moreover, I remain concerned about Respondent's propensity to abuse substances in the future. Respondent began his abuse of GHB, steroids and cocaine when he was fully aware of the illegality of those substances. In fact, most of his use of those substances occurred after he was already enrolled in law school or had been admitted to the Florida Bar. In addition after his arrest in 2005, on the felony charges of which he was eventually convicted, he continued to use and abuse steroids, GHB and cocaine. Between the time of his arrest and his eventual conviction in 2008, Respondent completed at least one drug rehab program in California and, according to the testimony of his ex girl friend Ms Carmona, two such programs locally. After each of those programs Respondent resumed abusing all three substances within a short period of time. It is entirely conceivable that he may resume that pattern of behavior upon his release from prison.

7. I also specifically find that respondent failed to show sufficient evidence of his good character and reputation. The testimony of good

character and reputation was given by respondent's father and former girlfriend. I find that testimony was insufficient in light of the severity, nature and duration of the misconduct. While Respondent may have been of good character in high school and college that seems to have changed in law school. As mentioned above it was while Respondent was in law school, presumably learning about the law and its importance within society, that he began obtaining and using substances that he knew were illegal. He continued that conduct after he was admitted to the Bar and even after he had been charged with five felonies in 2005. He was still using and abusing illegal substances three years later when he was arrested a second time. In 2006 and through 2007 Respondent committed the dishonest acts involving his clients outlined above. Thus, Respondent's misconduct in this case extended over at least a 3 year period and his use of illegal substances extended over a period of approximately 6 years.

B. In The Florida Bar v. Heptner, 887 So.2d 1036 (Fla. 2004), the Supreme Court held that it deals more harshly with cumulative misconduct than it does with isolated misconduct. As in Heptner, in the current cases respondent engaged in multiple acts of misconduct over an extended period of time. In fact, besides respondent's illegal use of controlled substances, most of the misconduct

which injured his clients occurred after November 2005, the date when respondent was arrested for the charges that resulted in his conviction.

C. As to respondent's felony conviction and Sanction 5.11, putting aside for a moment the other Standards violated by respondent, the case law is clear that disbarment is not automatic, and that respondent has to overcome the presumption that disbarment is the appropriate discipline for a felony conviction. The Florida Bar v. Jahn, 509 So.2d 285 (Fla. 1987) and The Florida Bar v. Bustamante, 662 So.2d 687 (Fla. 1995). Respondent presented considerable evidence of addiction to GHB and cocaine and directly related his misconduct to his drug addiction in order to overcome the presumption of disbarment. However, as explained in paragraph III (A)(2) of this report, I find that respondent failed to show that he was addicted to the 2 other illegal substances that were part of the charges that resulted in his conviction: methenolone and mesterolone. As a result, I find that respondent did not overcome the presumption of disbarment for his felony conviction for the charges of possession, sale, and delivery of methenolone and mesterolone. The Supreme Court has been consistent in ordering disbarment for attorneys convicted of felonies and who have also violated other Standards. In The Florida Bar v. Wilson, II, 643 So.2d 1063 (Fla. 1994), the Supreme Court held that disbarment was appropriate for an attorney convicted of two felonies because he used his position as an attorney to defraud clients of their money for a drug venture. In the

present cases, respondent acknowledged that he used the money received by his clients to purchase drugs. In The Florida Bar v. Martinez-Genova, 959 So.2d 241 (Fla. 2007), the Supreme Court held that disbarment was appropriate for an attorney who misappropriated client funds and was arrested for cocaine possession. In The Florida Bar v. Palmer, 588 So.2d 234 (Fla. 1992), the Supreme Court held that an attorney convicted of felonies for unlawful possession of cocaine and who received payment for legal acts never performed warranted disbarment. Finally, in The Florida Bar v. Insua, 609 So.2d 1313 (Fla. 1992), the Supreme Court held that disbarment was appropriate for an attorney convicted of a felony for a drug importation scheme. At the final hearing, respondent acknowledged that he ordered the illegal substance GHB from the country “Slovenia” and that the drug was mailed via “UPS”.

D. I find that the Supreme Court’s analysis contained in The Florida Bar v. Valentine-Miller, 974 So.2d 333 at 338 (Fla. 2008) is particularly apropos in this case. In Valentine-Miller the respondent had converted client funds and sought to avoid disbarment on the basis that “she [was] a fundamentally honest person who lost control of her life and her practice during a period of personal crisis” that included alcohol abuse. In rejecting this argument the Supreme Court noted:

“While we sympathize with the problems respondent had in her personal life, and understand the problems associated with substance abuse and what it can do to a person's life, we cannot condone respondent's behavior. We have a responsibility to the citizens of this state. There is

never a valid reason for taking client funds held in trust or for completely abandoning clients. Lawyers are required to have high ethical standards because members of the public are asked to trust lawyers in their greatest hours of need. Without such standards, the entire legal profession would be in jeopardy as public trust would dissipate.”

* * *

“Respondent should have recognized her own failings and her downward spiral from 2004 through 2006 and taken measures to correct matters before the Bar had to step in.

Although the referee found mitigating factors of substance abuse, personal problems, and rehabilitation, these factors do not overcome the presumption of disbarment here. Respondent intentionally misappropriated client funds and abandoned her entire practice. This Court has disbarred attorneys who misappropriated funds or abandoned their clients, despite the referee’s findings of substance abuse and rehabilitation, concluding that the mitigation was insufficient to overcome the seriousness of the misconduct.”

Just like Ms. Valentine-Miller, Mr. Irish should have recognized his downward spiral and taken steps to correct the problem before the Bar was forced to step in. This is particularly true where, as here, Mr. Irish was arrested and charged with the 5 felony counts over 2 years before he finally plead guilty to the charges and was incarcerated.

E. I am satisfied that the imposition of disbarment, effective nunc pro tunc to October 8, 2008, the date of respondent was suspended by the Supreme Court, is necessary to meet the Court’s criteria for appropriate sanctions: attorney discipline must protect the public from unethical conduct and have a deterrent effect while still being fair to respondents. The Florida Bar v. Pahules , 233 So.2d 130,132 (Fla. 1972).

IV. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

After finding respondent guilty but prior to making my disciplinary recommendation, I considered the following personal history and prior disciplinary record of respondent, to wit:

Age: 30

Date Admitted to The Florida Bar: September 19, 2003.

Prior disciplinary convictions and disciplinary measures imposed therein:

None.

V. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

I find the following costs were reasonably incurred by The Florida Bar:

A.	Grievance Committee Level Costs:	
1.	Court Reporting Costs	\$ -0-
2.	Bar Counsel Travel Costs	\$ -0-
B.	Referee Level Costs:	
1.	Court Reporting Costs	\$ 400.00
2.	Bar Counsel Travel Costs	\$ 69.02
C.	Administrative:	\$ 1,250.00
D.	Miscellaneous Costs:	
1.	Investigators Expenses	\$ 32.90
2.	Witness Fees	\$ -0-
3.	Copy Costs	\$ -0-
4.	Auditor Costs	\$ -0-
	TOTAL ITEMIZED COSTS:	<u>\$ 1,751.92</u>

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within 30 days of said judgment becoming final, respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this _____ day of _____, 2009.

JACK H. COOK, REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular mail to the following: STAFF COUNSEL, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and JUAN C. ARIAS, Bar Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 900, Fort Lauderdale, Florida 33309-2366; and to RICHARD B. MARX, Respondent's counsel, at his record bar address of 66 West Flagler St., 2nd Floor, Miami, FL 33130, on this _____ day of _____, 2009.

JACK H. COOK, REFEREE