IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Appellant,

v.

MICHAEL HOWARD WOLF,

Appellee.
_____/

S.Ct. Case No: SC08-250
Fla. Bar File No: 2008-51,119(17C)

ANSWER BRIEF OF THE APPELLEE, ATTORNEY MICHAEL HOWARD WOLF

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PRELIMINARY STATEMENT

The Appellant, The Florida Bar was the Respondent below before Circuit Judge Katherine Kroll, Chief Judge of the Fifteenth Judicial Circuit for Palm Beach County, acting as a Referee. The Appellee, attorney Michael Howard Wolf, was the Petitioner seeking reinstatement to the practice of law. They will be referred to in this brief as Appellant or Bar, and the Appellee or Wolf.

Citations to the record will be in the following form: (Tr. Vol 1, p. 126), (Exhibit 4) Report and Recommendation (R.R., p.3) or (Appendix p. 1-6).

STATEMENT OF THE CASE

Michael Howard Wolf, was suspended from the practice of law by this Court for a period of two (2) years (reduced from three) in the Florida Bar v. Michael Howard Wolf, SC 04-1374; 930 So. 2d. 574 (Fla. 2006), effective May 1, 2006. (Exhibit 1).

On February 11, 2008, Attorney Wolf filed his formal Petition for Reinstatement to the Practice of Law with voluminous attachments and exhibits, Soon after, Wolf filed his Amended Petition, simply attaching additional 2005 and 2006 tax return information, as Exhibit 19.

NOTE: Wolf's Trial Exhibit List (Appendix p. 1-6) listed the original exhibit numbers and the source of subsequent disclosures, i.e. "Exhibit 25, see Disclosure letter to Bar of July 8, 2008." (Appendix, p. 3).

Wolf made efforts to enter into an agreed disposition with the Bar for reinstatement with certain probationary safeguards, as well as offers to "streamline" the proceedings with stipulations to certain aspects, i.e. competency and legal ability. These offers continued even after the Referee's recommendation. (R. Tr. Vol. 1, p. 7, 8, 79-80, 101; Exhibits 52, 53, 59).

Virtually no formal discovery took place, as the Bar's several letters or informal requests for documents, answers or information (R. Exhibits 62-66; R. Tr. Vol. 1, p. 6-7, 12-13) were completely complied with by Wolf, with even more documents, checks, bank records, tax returns, etc. disclosed and supplied, (R. Exhibits 51-61). The Bar acknowledged these requests and admitted there's "no question that lots of documents were provided and, upon questioning by the Court, admitted receiving the documents, they were not claiming to be ill prepared, and were not alleging Wolf was somehow "secretive" about his disclosure. (R. Tr. Vol. 1, p. 12-13; Vo. 2, p. 263-4; R.R., p. 4).

On July 21, 2008, the final hearing was conducted and Wolf presented Hundreds of documents through the agreed admission of the sixty six (66) exhibits listed on his trial exhibit list, (Appendix, page 1-6; R. Tr. Vol. 1, p. 52) and presented fourteen (14) witnesses plus his own testimony in support of his petition. (R. Tr. Vol. I, p. 51, 159, 164, 165, 166). The Bar presented no witnesses, as noted by the Court (R. Tr. Vol. 2, p. 200, 341, 350; R.R., p. 4).

Closing arguments were presented on July 24, 2008, and Judge Kroll took the matter under advisement until her request for an extension of time filed on September 29, 2008, granted on November 5, 2008. During this lengthy delay, Wolf filed his Emergency Petition for Leave to Engage in the Limited Practice of Law, which the Bar opposed.

On November 7, 2008, over three (3) months after the case was presented and over six (6) months after Wolf's two (2) year suspension was completed, Judge Kroll issued her opinion recommending that Respondent Wolf be reinstated to the practice of law.

UNDERLYING CASE, FLORIDA BAR V. WOLF

In the underlying case leading to Wolf's suspension the Bar filed a complaint "alleging that Wolf engaged in trust accounting violations. A Bar audit revealed that Wolf had deposited funds into his operating account, which should have been held in trust. During the investigation, Wolf cooperated with the Bar. He waived a probable cause hearing, admitted he placed the funds into his operating account, and admitted he failed to comply with the trust account requirements of the Rules Regulating the Florida Bar." The Florida Bar v. Wolf, 930 So. 2d 547 (Fla. 2006), p. 575; (R. Exhibt 1).

Judge Kroll, the referee found that Wolf violated the Rules Regulating the Florida Bar, but that:

he did so without the requisite intent. When Wolf discovered that the check to the client exceeded the balance in the operating account, he promptly covered the shortage. During the investigation, Wolf cooperated with the Bar. Further, he admitted that he violated the trust account requirements of the Rules Regulating the Florida Bar. Id., p. 577

Reducing the suspension to two (2) years this Court held:

The instant misconduct occurred over the course of one year, beginning in October 2001. During that time, Wolf was undergoing psychotherapy. He has conducted himself appropriately for the last four years. We conclude the record supports the referee's finding that Wolf did not have the requisite intent. Because Wolf's misconduct was due to negligence, and he did not intentionally use the funds for personal purposes, suspension is the appropriate sanction. Id., p. 577.

STATEMENT OF THE FACTS

Wolf sent out the required notices and copies of the Court's opinion (R. Tr. Vol. 1 p. 84; Exhibits 44, 45, 46), told people he was suspended and could no longer give legal advice or take fees for legal service (R. Tr. Vol. 1 p.45, 60, 64-5, 104, 141, 166, 171, Vol. 2 p. 194), closed his trust account (R. Tr. Vol. 1 p. 141-2, 144, Exhibit 28) and looked for a job.

Wolf started working as a paralegal for Attorney Arthur Cohen soon after the May 1, 2006 suspension date for a $1,000.00 per week salary, but not before Cohen contacted the Florida Bar and learned what a suspended lawyer could and could not do, including no client contact, attorney supervision and quarterly reports. (R. Tr. Vol. 1 p. 106). Wolf became tired of the disorganization and of

waiting weeks for his pay and he left Cohen to go to work for Attorney Bernace DeYoung in November 2006. (R. Tr. Vol. 2 p. 206, 330). Wolf has worked for DeYoung, at the same salaried paralegal situation to the present time.

In the interim, the Florida Arcade and Bingo Association, tried to help Wolf by creating the position of "compliance officer" for the association, to consult on arcade-related business matters – not legal matters, and no legal advice. (R. Tr. Vol. 1 p. 174, 175). An agreement was signed by Wolf as an independent contractor and bills were sent out by Wolf. (Exhibits 26, 27). DeYoung took over as the attorney representing the Association (R. Tr. Vol. 1 p. 175-6, 181, 187).

Also, to supplement his income during the suspension, Appellee Wolf did "consulting", in the arcade and gaming field (separate from his salaried position with the Arcade Association), billing such clients separately by invoice. (R. Tr. Vol. 2 p. 243-4, 250-1, 253; Exhibits 26, 27; R.R. p. 5). Appellee Wolf also taught aerobics classes at L.A. Fitness. (Exhibit 36).

All of Wolf's income was documented, disclosed to the Bar and reported to the I.R.S. as were the sources of income. (See Petition for Reinstatement and Exhibits 9, 12, 19, 20, 21, 22, 22a, 24, 24a, 25, 25a, 27, 29,30, 31, 35, 36, 37, 38; Appendix p. 1-6, 7-8, 9-10, 11, 12, 13; R.R. p. 5).

Wolf was also very active in the community, with Temple Beth Orr, and as coach and athletic director of two (2) different youth basketball leagues, one for underprivileged children (Exhibit 48; R.R. p.3).

More specifically, the facts relied upon by Judge Kroll, are as follows:

Attorney Steven Klitzner

An "A.V. Rated" attorney for thirty years, Klitzner shared space with Wolf in 1994 and knows Wolf to be an excellent and very knowledgeable attorney. (R. Tr. Vol. 1, p. 18-19). He know that Appellee Wolf is very involved in the community, and with his own children, coaching a local basketball team, (Exhibit 48) and Wolf has an excellent reputation in the community for his legal ability, his integrity and his character. (R. Tr. Vol. 1, p. 20-1).

Attorney Klitzner, who does tax resolution work, represents Wolf on his tax problems, and readily acknowledges the tax liens filed against Wolf from 1993, with a current balance owed to the I.R.S. over one hundred thousand dollars, and possibly much more, although Wolf is current on filing his Federal tax returns. (R. Tr. Vol. 1, p. 22, 23-4, 28). **NOTE:** As was pointed out to the Court, all of these liens were previously disclosed, and copies supplied by Wolf in his initial Petition for Reinstatement, the Private Investigator Report attached thereto, and the various disclosures as part of "Exhibit 18". (R. Tr. Vol. 1, p. 24, 27); (See Exhibit 11 [report], Exhibit 12 [affidavit of financial liabilities listing "I.R.S. lien

$220,000.00] and Exhibit 18 [liens]). Klitzner saw no indications of wild or irresponsible spending or financial dealing by Wolf. (R. Tr. Vol. 1, p. 32-3).

Attorney Thomas Fricke

An attorney since 1973, Fricke, like Wolf, specializes in Gaming and Amusement law, "an arcane little field" in which there aren't many experienced attorneys, and where even the best lawyers are at a disadvantage if they have no experience in the field- it's necessary to "tutor" them. Fricke got to know Wolf by working on cases with him before the suspension, acting as an expert witness for Wolf on four (4) different cases. (R. Tr. Vol. 1, p. 37-8, 41).

Fricke knows Wolf's good reputation for competence and legal ability, he is well thought of by clients, and Fricke was impressed by Wolf's competence and legal ability through his personal experience with Wolf. (R. Tr. Vol. 1, p. 38-40). Wolf's integrity has never been questioned. (R. Tr. Vol. 1, p. 38-9).

Fricke is personally aware of the fact that Wolf has not practiced law or given legal advice as he was an expert witness at the Workman trial during Wolf's suspension, conducted by DeYoung. (R. Tr. Vol. 1, p. 40-1). Wolf was present at the trial (and on other matters) but Attorney DeYoung was always present, Wolf never addressed the Court or spoke to the witnesses. (R. Tr. Vol. 1, p. 41, 43-4).

Fricke testified that Wolf never showed any malice or ill will over his suspension and that it impacted Wolf, it "hurt him a lot." (R. Tr. Vol. 1, p. 45-6).

Eugene Liebowitz

Gene Liebowitz, a local dry cleaner, knows Wolf from his years of participation with the Coral Springs Basketball Club, an all volunteer organization of which Wolf is an active member as a Coach and Athletic Director. (R. Tr. Vol. 1, p. 47, 51). Wolf was "hands on" as a coach and "absolutely cared about the kids", teaching sportsmanship while keeping kids off the street, at the cost of a "huge commitment of time". (R. Tr. Vol. 1, p. 50-1).

Gene knows Wolf's reputation in the community for good character and integrity is excellent, and Wolf never complained or held a grudge over his suspension. (R. Tr. Vol. 1, p. 48-9). This testimony was un- challenged as he was not cross examined.

Honorable Andrew Siegel

Broward Circuit Judge Siegel met Wolf years ago when they were both representing clients in the arcade and amusement area, and they did a number of cases together. (R. Tr. Vol. 1, p. 53-4). Judge Siegel knows Wolf's reputation in the community and in the legal community for character and integrity to be very good, "always 100% proper, 100% responsible and 100% truthful in every situation". (R. Tr. Vol. 1, p. 56). Similarly, the Judge knows Wolf's good reputation and ability as an attorney, doing a nice job for his clients, always

responsible, including to opposing counsel. (R. Tr. Vol. 1, p. 56-7). Wolf never expressed any ill will or a grudge over the suspension. (R. Tr. Vol. 1, p. 56-7).

Additionally, both the Judge and Wolf have autistic children, so they had a mutual interest and bond, a bond Wolf also shared with other such families. (R. Tr. Vol. 1, p. 55, 61).

Andrew Soowal

Andy Soowal, a landscape architect, met Wolf through their sons, at the Jewish Community Center and they became best friends as Wolf became active at Temple Beth Orr, helping with fund raising. (R. Tr. Vol. 1, p. 63-4). Wolf is a "great guy with a good heart" with a great reputation for honesty and integrity in the community. (R. Tr. Vol. 1, p. 65-6). He is absolutely committed to helping kids, and coaches basketball for kids with broken homes, and he takes care of them, paying out of his pocket and being a second father to them – while winning two State Championships. (R. Tr. Vol. 1, p. 67-8).

The suspension severely impacted Wolf, he was "crushed" as he loves to be a lawyer, likes to help people. (R. Tr. Vol. 1, p. 67). Wolf was "absolutely remorseful" after his suspension, but he told people and he "took his medicine like a man" with no grudge and no ill feelings about it. (R. Tr. Vol. 1, p. 69).

Wolf did legal work for Soowal before the suspension, but told Soowal that he could no longer advise him because of the suspension, recommending Arthur

Cohen (who first employed Wolf as a paralegal after the suspension). Soowal had no open cases with Wolf at the time of the suspension. (R. Tr. Vol. 1, p. 70).

On one occasion, Attorney Cohen did some work for Soowal (Top Branch Environmental) and submitted a bill, but told Soowal to pay Wolf directly, as Cohen owed Appellee Wolf back salary – he was going to pay Cohen but was instructed by Cohen to pay Wolf directly and he or his bookkeeper did so. (R. Tr. Vol. 1, p. 73, 76; Exhibits 38 and 39a). Soowal was not certain of the details, but was certain that Cohen owed Wolf back salary and that it was Attorney Cohen that told him or his business to pay Wolf directly. (R. Tr. Vol. 1, p. 73, 76-7; Exhibit 39).

Alfred Ezekiel

Mr. Ezekiel, a semi-retired business man, administers the Ezekiel Foundations, charitable organizations that support parochial institutions, Rabbis, schools, etc. as a 501(c)(3) not for profit. (R. Tr. Vol. 1, p. 81-2). He met Wolf in the 80's and they became friends as Wolf represented him and his entities. Mr. Ezekiel knows Wolf's reputation in the community for truthfulness and honesty is good, and Wolf was active with the foundations. (R. Tr. Vol. 1, p. 83-4). Several years ago, Wolf made a pledge to support the foundation, and he has lived up to the commitment since, despite difficulties. (R. Tr. Vol. 1, p. 84).

Since there were open cases at the time of the suspension, Mr. Ezekiel received a notice of Wolf's suspension and was advised he could no longer represent him. (R. Tr. Vol. 1, p. 84-5). Wolf recommended Arthur Cohen, but Mr. Ezekiel was not impressed with his skills ("he was not Mike Wolf"). Later, Attorney DeYoung represented Ezekiel. (R. Tr. Vol. 1, p. 85).

As with Soowal/Top Branch, Attorney Cohen told Ezekiel that he owed Wolf back salary, and, upon billing Ezekiel, Cohen asked Ezekiel to send the check directly to Wolf, which he did – on Art Cohen's invoice. (R. Tr. Vol. 1, p. 87-8, 94; Exhibits 67, invoices and checks).

Ezekiel made it clear that he did not owe Wolf money and that he was not paying Wolf legal fees, as Wolf made it very clear that he could no longer do legal work and could not accept money for legal work. (R. Tr. Vol. 1, p. 86-7). As a friend, Ezekiel continued to speak to Wolf but never about case – he gave all of his legal work to Attorney DeYoung. (R. Tr. Vol. 1, p. 100).

Attorney Arthur Cohen

An attorney since 1984, Cohen knew Wolf for years through Wolf's work with the Coral Springs Basketball League when Attorney Michael Shane recommended Wolf as a paralegal since Wolf was suspended. (R. Tr. Vol. 1, p. 104-5). Cohen was very hesitant as he recognized that hiring a suspended lawyer was a "tricky situation" (R. Tr. Vol. 1, p. 106, 156) – a concern echoed by Judge

Kroll at the hearing. (Vol. 2, p. 341-2, 346). He called the Florida Bar, learned the requirements and agreed to hire Wolf as a paralegal, at a net of $1,000.00 per week, staying in regular contact with the Bar for any questions or problems. (R. Tr. Vol. 1, p. 106-7, 108, 153).

As Wolf came to Cohen's office right after the suspension, he brought some open cases with him that Cohen, of course, took over, and Cohen verified with the Bar that Wolf could be paid for his work already completed before the suspension, (the Patakos file) but not for cases that Cohen had to work up and settle (the Smith and Twitty files) – he could not pay Wolf a referral fee and he did not. (R. Tr. Vol. 1, p. 110-11, 156; Exhibits 40, 47, 49). Cohen gave Appellee Wolf W-2 and 1099 forms for all income paid. (R. Tr. Vol. 1, p. 117-8, 154).

Attorney Cohen, a sole practitioner, saw his business volume increase but his finances were "up and down… a rollercoaster" and he soon fell behind in his salary payments to Wolf by thousands of dollars. (R. Tr. Vol. 1, p. 108-9, 117, 121, 155-6).

Cohen acknowledged candidly and repeatedly that he owed Wolf money, his earned salary and Cohen, to get the funds to Wolf quickly, advised two (2) of his clients Soowal/Top Branch and Ezekiel, to pay the money that they owed to Cohen, for Cohen's legal work, directly to Wolf – never thinking that there was anything wrong with this procedure, as he was not paying Wolf for legal work or a

portion of the fee, but was simply applying the fees he earned to pay his debt to Wolf. (R. Tr. Vol. 1, p. 109-10, 120-1, 122; Exhibits 39, 67). Cohen would send out a bill for his services and then contacted the clients: "do me a favor, just send the check to Mike". (R. Tr. Vol. 1, p. 122, 126). Attorney Cohen didn't think this was unusual and in fact, "thought it was okay", as he repeatedly explained, "I just wanted Wolf to get his money"; "I owed the man money and I wanted to start getting square with him"; "I owed Mr. Wolf money. I got behind on his weekly salary. I made the income. I paid money to him to make up for back salaries." (R. Tr. Vol. 1, p. 110, 121, 122, 135, 136, 155, 156).

Cohen knew Wolf couldn't practice law and Wolf never did practice law -- he was "very careful about this", speaking to Wolf about it often (R. Tr. Vol. 1, p. 112-13). He got calls from people and clients who knew Wolf couldn't practice and they were referred to Cohen. (R. Tr. Vol. 1, p. 115).

Attorney Cohen was clear, unshakable (and unimpeached) that he never paid Wolf on a file, for legal work, or a percentage on a settled case – just his salary as a paralegal. (R. Tr. Vol. 1, p. 133, 135, 152, 154, 156; Exhibits 22, 40, 47, 49).

Unfortunately, Cohen was careless or sloppy in his bookkeeping and mistakenly noted "fees" or "prior fees earned" on a few of the checks written to Wolf (R. Tr. Vol. 1, p. 133, 151). However, to Cohen's credit he clearly took the responsibility, repeatedly stating that it was "my mistake", an "honest mistake" (R.

Tr. Vol. 1, p. 133, 134, 151, 156) – his intent was to cover Wolf's weekly salary as he hadn't paid him for several weeks. He should have noted on the checks "back salary" or "salary owed". (R. Tr. Vol. 1, p. 134, 153).

Cohen spoke of Wolf's exceptional competency and ability as an attorney, as well as Wolf's reputation for honesty and passion in his work (R. Tr. Vol. 1, p. 113-14). He also testified how devastated Wolf was by the suspension, how it impacted his family, but yet, he handled it well, admitted his mistakes, and was very remorseful, with no ill-will, malice, grudge or hard feelings. (R. Tr. Vol. 1, p. 114-15). Wolf left Attorney Cohen after about five (5) months and Cohen does not owe Wolf any money. (R. Tr. Vol. 1, p. 157-8).

Gwendolyn Abell

Gwen Abell is and has been the Vice President and Manager of City National Bank for over twenty (20) years, and has known Appellee Wolf for 21-22 years, handling his accounts. (R. Tr. Vol. 1, p. 140-1). Wolf has handled his accounts properly and there has been no indication of irresponsible banking. (R. Tr. Vol. 1, p. 141, 150-1). Wolf had an arrangement with the bank to protect against overdrafts or insufficient funds checks, so the checks can be paid and the bank assesses a fee, as Wolf occasionally had a negative balance. (R. Tr. Vol. 1, p. 147-8, 149).

Abell told of learning of Wolf's suspension from him, and closing his IOTA trust account. (R. Tr. Vol. 1, p. 141-2; Exhibits 28, 32, 34, 35, 37, 38). She never heard anything detrimental in the community about Wolf's character, integrity or financial responsibility. (R. Tr. Vol. 1, p. 143).

Beverly Wolf

Appellee's wife verified his taking responsibility for the suspension, but noted that the suspension "crushed him" as it was embarrassing and it hurt him. (R. Tr. Vol. 1, p. 161, 163). He talked to their kids about it, and he knows that he must pay better, closer attention in the office, to be more astute and detail oriented – "this will never ever happen again". (R. Tr. Vol. 1, p. 163-4). Although a "wife of twenty (20) years doesn't want to say anything nice about her husband", Mrs. Wolf described Appellee as a great guy, great lawyer and great dad with the highest integrity she ever saw. (R. Tr. Vol. 1, p. 162). There was no cross.

Gale Fontaine

Fontaine runs three (3) senior arcades, is Chairperson of the Aging and Disability Resource Center of Broward County, sits on the Board of the Alzeimers Family Center, and is President of the Florida Arcade and Bingo Association – which Wolf helped to put together, including their Code of Ethics. (R. Tr. Vol. 1, p. 168-9). Wolf was their attorney for four (4) years and has a good reputation for integrity, and everyone was happy with him and his work. (R. Tr. Vol. 1, p. 170).

When Wolf was suspended, he told her, then came to meetings of the Board and the members to announce his suspension and to explain that he could not practice law, could not give legal advice and they would need to find a new attorney. (R. Tr. Vol. 1, p. 171-2). The association hired a new Miami attorney but were dissatisfied, and eventually, they hired Bernace DeYoung, who came to the meetings and did the legal work for them. (R. Tr. Vol. 1, p. 173, 175-6).

Because of their respect and affection for Wolf, and in attempt to help him (since he could no longer earn money as a lawyer) the Association literally created a position for Wolf: "compliance officer" as an independent contractor to assure compliance with the Ethics Code and to consult on non-legal business matters, at a salary of $1,000.00 per month. (R. Tr. Vol. 1, p. 174-5, 180; Exhibit 26, 27). Fontaine made it clear to the members and to the Referee that this was not a legal job, and that Wolf did not do legal work – if a legal question arose, attorney DeYoung was called, and the members knew this. (R. Tr. Vol. 1, p. 174-5, 187).

Ms. Fontaine told of Wolf's remorse and repentance, that he felt terrible about the suspension, and that it "took a lot" to stand up in front of the meetings and tell of his wrongdoing and suspension. (R. Tr. Vol. 1, p. 176-7).

Isaac Baumfeld

The Bar stipulated that Baumfeld was part of the Broward Fury Basketball League (separate from the Coral Springs League), a league for underprivileged

children, and that Wolf as a perennial Board member and coach, got Isaac's kids involved with the team, and that Wolf paid for a lot of the kids from his own pocket. (R. Tr. Vol. 1, p. 158). Wolf has shown remorse over the suspension and Wolf's character and reputation in the community is very good (if not "untouchable"). (R. Tr. Vol. 1, p. 159).

Attorney Alvin Entin

The Bar stipulated that Entin, an attorney for thirty eight (38) years, represented Wolf on his past criminal problem, and that Wolf is a "hell of a lawyer", who "works wonderfully". (R. Tr. Vol. 1, p. 165). However, Wolf "screwed up", he used the money and, though he "made it good in five hours", he knows he screwed up and never denied it. Wolf has a good reputation, has no ill will and just wants to get back to work. (R. Tr. Vol. 1, p. 165).

Jeffery Zwirn

The Bar stipulated that Zwirn, a forensic security expert and instructor for the N.Y.P.D. testifies as an expert around the country as a forensic fraud examiner, and has worked with Wolf as an expert witness. (R. Tr. Vol. 1, p. 166). Zwirn has worked with lawyers around the country but was so impressed with Wolf's competence that he hired Wolf to handle some of Zwirn's personal cases.

Wolf made it clear that Wolf was no longer an attorney during his suspension, and, therefore, there could be no dealings as an attorney, no fee

sharing, no commissions, no legal advice – Wolf was always very clear that he could not give legal advice. (R. Tr. Vol. 1, p. 166).

Bernace DeYoung

A lawyer since 1979, Ms. DeYoung worked with Wolf in the early 1980's, and after his suspension she hired Wolf as a paralegal and office manager at $1,000.00 per week plus bonuses. (R. Tr. Vol. 2, p. 193-4; Exhibit 22a). Like Attorney Arthur Cohen before her, Ms. DeYoung contacted the Florida Bar with questions "about a half dozen times" to make she understood the duties and obligations, and she filed the required forms with the Bar. (R. Tr. Vol. 2, p. 194-5; Exhibit 43).

Wolf has outstanding legal abilities, and is an excellent researcher and strategist who could explain things well. (R. Tr. Vol. 2, p. 195). She discussed the suspension with Wolf and found him to be very regretful, with no evidence of malice or grudge. (R. Tr. Vol. 2, p. 205).

Attorney DeYoung made it clear that Wolf did not practice law, he did not have client contact, he did not do any prohibited acts, and he was not paid for legal services. (R. Tr. Vol. 2, p. 195).

Wolf did sit with her in court during trials and proceedings, as a paralegal, but did not participate, (she used a second paralegal as well) and being handicapped/wheelchair bound she needs help with mobility issues. (R. Tr. Vol. 2,

p. 196). **NOTE:** Ms. DeYoung often consulted with the Florida Bar and specifically received approval to have Wolf sit at counsel table and to speak to and consult with her during proceedings. (R. Tr. Vol. 2, p. 196). DeYoung and Wolf knew they were "under the microscope" and were very concerned about staying in compliance with Bar restrictions and regulation, so DeYoung "established this contact with Mr. Adam Stetson at the Florida Bar, and every time I had a question, I called him". (R. Tr. Vol. 2, p. 204).

Attorney DeYoung explained to the Referee that her daughter and namesake was an Assistant State Attorney heading up the Capital Crimes Division in Orlando, and that Ms. DeYoung was "overly cautious not to do anything that would reflect badly…overly cautious about the parameters of what Wolf could do". (R. Tr. Vol. 2, p. 205).

As further support for her comfort level, Ms. DeYoung mentioned that two (2) separate Bar complaints were made against Mr. Wolf, generated by disgruntled attorneys on the losing side of their cases – both claiming that Wolf's actions constituted practicing law. (R. Tr. Vol. 2, p. 203). When both of those complaints were dismissed for insufficient evidence (R. Tr. Vol. 2, p. 204; Exhibits 23, 42), Ms. DeYoung testified that, with her calls and questions and with the dismissal of the complaints, "my understanding is that Mr. Wolf was acting within the

parameters of a suspended attorney that are allowed by the Florida Bar". (R. Tr. Vol. 2, p. 204).

Michael Howard Wolf

Respondent, Michael Wolf gave details regarding his community participation, with the basketball leagues, mentioning the two State championships. (R. Tr. Vol. 2, p. 209-14; Exhibit 48).

Wolf testified about how the suspension was devastating to him personally, and how it was his fault, that he took responsibility, and that he has learned from his mistakes, with no grudge or ill will. (R. Tr. Vol. 2, p. 215-19, 226, 245). He talked of his efforts with LOMAS and with accountants regarding his trust account skills, his reading of the ethics code and rules and of passing that part of the Florida Bar Exam. (R. Tr. Vol. 2, p. 220-2; Exhibit 7). Answering the Referee's questions, Wolf told of his compliance and completion of all other conditions of the suspension order, including the payment of $5,900.00 costs, payment of the $500.00 cost deposit, passing the ethics portion of the Bar exam, and referring to the first nineteen exhibits attached to his Petition for Reinstatement. (R. Tr. Vol. 2, p. 333; R.R. p. 3). Wolf also mentioned hiring private investigator Larry Mabsen to do an exhaustive background and financial investigation, to attach the report to his Petition for Reinstatement. (R. Tr. Vol. 2, p. 229; Exhibit 11).

Wolf testified regarding his efforts to earn a living while under suspension, taking a paralegal job with Attorney Cohen, doing pleadings, discovery, research and strategizing for one thousand dollars ($1,000.00) per week. (R. Tr. Vol. 2, p. 223-4). Wolf had money to live on from an insurance settlement from Hurricane Wilma, and this helped when Cohen fell several weeks behind in his salary. (R. Tr. Vol. 2, p. 224-5). DeYoung paid regularly. (R. Tr. Vol. 2, p. 333.).

Wolf testified, consistent with Attorneys Cohen and DeYoung, that it is difficult to figure out what a suspended lawyer can and can't do, and that's why Cohen and DeYoung stayed in contact with the Bar, "to protect themselves and me". Additionally, Wolf explained that he realized it was important for his reinstatement to carefully comply with the suspension order. (R. Tr. Vol. 2, p. 232). **NOTE**: This vagueness and resultant fear was echoed by the Referee: "If I was a lawyer I'd be scared as you-know-what to hire you." (R. Tr. Vol. 2, p. 346); "Is this all you give these guys who get suspended [Rule 3-6.1] this and say 'good luck, figure it out for yourself?'" (R. Tr. Vol. 2, p. 342). Wolf repeatedly mentioned his awareness of his restrictions and the fact that his actions were being scrutinized by the Bar, as two (2) complaints had bee filed against him during the suspension, claiming he was practicing law. Wolf wore a suit and tie, and sat at counsel table with both Cohen and DeYoung, wrote notes, whispered comments to the lawyers, and strategized, but did not address the Court and did not speak to

clients, and complaints about these actions were dismissed. (R. Tr. Vol. 2, p. 231, 233, 236; Exhibits 23, 42).

He felt that the fact that both complaints had been dismissed as insufficient was a verification of his (and the employing attorneys') being within the realm of proper activity. (R. Tr. Vol. 2, p. 233, 337-8). In fact, the Referee directly questioned Wolf about the basis for his assumption:

> **Court**: …Why did you believe not sufficient evidence and that you could do act [sic]?
> Wolf: Because I knew I was under the microscope…there were very specific acts that they complained about that I did…
> Court: When someone is found not guilty, it doesn't mean – it means the State didn't prove the case. It doesn't mean they didn't do it…
> Wolf: No. There was no dispute that I did the acts that they complained that I did…I agreed that I did what they said I did.
> Court: I see.
> Wolf: The issue was whether or not that constituted practicing law when I was suspended. (R. Tr. Vol. 2, p. 339-40).

Wolf acknowledged the fact that some of Cohen's checks mistakenly said "fees", but usually the checks went to the secretary and he sometimes he didn't even see them. (R. Tr. Vol. 2, p. 223-4, 226). Additionally, regarding the few checks received directly from Soowal/Top Branch and Ezekiel (as instructed by attorney Cohen) Wolf answered the Court's direct question "why would you take checks written directly to you from clients of his":

Because I knew if they gave it to Arthur, I would never see it. And the guy hadn't paid me for six or seven weeks on a couple of occasions…And if Arthur says I'm going to have these clients pay you directly, I wasn't going to argue with him… (R. Tr. Vol. 2, p. 331.).

Wolf explained that he did business consulting for the Arcade Association and independent, private business consulting for other clients (R. Tr. Vol. 2, p. 237-8, 240-2, 243-5, 250-1, 270-2, 279-81; Exhibits 12, 24, 24a, 25, 29; Appendix p. 7, 9, 11, 12, 13) and was paid by those clients, separate from his salary with Cohen and DeYoung. (R. Tr. Vol. 2, p. 243, 253-4, 267). More importantly, in response to the Court's questioning, Wolf testified without contradiction, that the money he made in his consulting for the Arcade Association and from his private consulting was deposited, along with his salary checks, into his business account – opened in the 1990's, and not an attorney account, (R. Tr. Vol. 2, p. 252) and his "consulting" income was disclosed to the Bar and to the I.R.S. as was income as an Aerobics instructor for L.A. Fitness. (Exhibits 12, 24, 24a, 25, 29, 36; Appendix p. 7, 9, 11, 12, 13).

Despite repetitious cross examination based on innuendo and speculation, Wolf was clear that he did not give these consulting clients legal advice, did not tell them how to follow the law or statutes, did not handle cases, did not analyze cases or comment on them. (R. Tr. Vol. 2, p. 242).

Similarly, Wolf testified directly that he did not practice law during his suspension (R. Tr. Vol. 2, p. 230) and that he took no legal fees, referral fees or kick-backs during the suspension. (R. Tr. Vol. 2, p. 233). Wolf was well aware that he could not practice law, give legal advice, and when legal questions arose, he immediately referred the person to an attorney, explaining that he could not practice law and could not answer legal questions, could not speak to clients or address the court. (R. Tr. Vol. 2, p. 215, 223, 230, 240, 244). Similarly, he could not and did not prepare or supply legal documents or forms. (R. Tr. Vol. 2, p. 276).

Additionally, he did not "portray" himself as an attorney, sitting next to the secretaries in the respective law offices in which he worked. (R. Tr. Vol. 2, p. 243).

The Florida Bar

The Florida Bar presented no witnesses and no testimony, as was also noted by the Referee (R. Tr. Vol. 2, p. 199-200, 341; R.R. p. 4), and did not object to the introduction of the sixty seven (67) defense exhibits consisting of several hundred pages of documents, checks, deposit slips, bank statements, correspondence, etc. which were entered into evidence, and, were made part of the record by the Referee (R. Tr. Vol. 1, p. 52, 89). More importantly, the Bar did not contest (upon specific questioning by the Court) the fact that Wolf supplied all such documents including all of his checks deposit slips, etc. (R. Tr. Vol. 2, p. 263-4). NOTE: Every so-called Bar Exhibit used at the hearing was culled from the Appellee

Wolf's exhibits – having been previously disclosed and provided to the Bar. (Tr. Vol. 1, p. 74-5, 131-2, 136, 152; Vol. 2, p. 282-3, 292-3, 296, 324; Appendix p. 1).

Other facts will be cited in the Brief as appropriate.

STANDARDS OF REVIEW

In a reinstatement proceeding, the party seeking review of the referee's recommendation has the burden to demonstrate that the report is "erroneous, unlawful, or unjustified". Florida Bar re Inglis, 471 So. 2d 38, 39 (Fla. 1985); The Florida Bar v. Grusmark, 662 So. 2d 1235 (Fla. 1995); R. Reg. Fla. Bar 3-7.7.

Where "the recommendation of reinstatement has a basis in existing case law, [the Court] will not second-guess the referee Fla. Bar re Hernandez-Yanks, 690 So. 2d 1270, 1272 (Fla. 1997); The Florida Bar v. Hochman, 944 So. 2d 198 (Fla. 2006) P. 201.

A referee's findings of fact and recommendations come to this Court with a presumption of correctness and should be upheld unless clearly erroneous or without support in the record. The Florida Bar v. Lipman, 497 So.2d 1165 (Fla. 1986); The Florida Bar v. McCain, 361 So.2d 700 (Fla. 1978); The Florida Bar v. Hirsch, 359 So.2d 856 (Fla. 1978), The Florida Bar v. Vannier, 498 So. 2d. 896, 898 (Fla. 1986); The Florida Bar v. Tauler, 775 So.2d 944, 946 (Fla. 2000); The

Florida Bar v. Smith, 866 So.2d 41, 46-7 (Fla. 2004); The Florida Bar v. Senton, 882 So.2d 997, 1002 (Fla. 2004).

Of course, the objecting party [in this case The Florida Bar] carries the burden of showing that the Referee's findings of facts are clearly erroneous. The Florida Bar v. Miele, 605 So.2d 866, 868 (Fla. 1992); The Florida Bar v. Barrett, 897 So.2d 1269 (Fla. 2005), p. 1275. The Florida Bar cannot satisfy this burden by simply pointing to contradictory evidence when there is also competent substantial evidence in the record that supports the Referee's findings. The Florida Bar v. Vining, 761 So.2d 1044, 1048 (Fla. 2000); Barrett, p. 1275.

Where findings of fact are adequately supported, this Court is precluded from re-weighing the evidence and substituting its judgment for that of the Referee, The Florida Bar v. Jordan, 705 So.2d 1387, 1390 (Fla. 1998); The Florida Bar v. Barley, 831 So.2d 163 (Fla. 2002).

The Court's standard of review for evaluating a referee's recommendation concerning reinstatement "is broader than the standard applicable to our review of the referee's factual findings because it is ultimately our responsibility to enter an appropriate judgment". See Fla. Bar re McGraw, 903 So. 2d 905 (Fla. 2005); Inglis, Supra, Grusmark. Specifically, With regard to the referee's legal conclusions and recommendations, the Court's scope of review is wider because

"we have the ultimate responsibility to enter the appropriate judgment". Inglis; Grusmark; The Florida Bar v. McFall, 863 So.2d 303, 307 (Fla. 2003); Barrett.

Determining the propriety of a petition for reinstatement and a suspended lawyer's fitness to resume the practice of law is to be evaluated using the following criteria: The petitioner must show: (1) full compliance with conditions imposed in the previous disciplinary judgment; (2) unimpeachable character; (3) a reputation for professional ability; (4) lack of malice toward those responsible for the previous disciplinary action; (5) a repentant attitude concerning the earlier wrongdoing and a strong resolution to adhere to principles of correct conduct; and (6) restitution to persons harmed by the earlier misconduct. Florida Bar re Timson, 301 So. 2d 448, 449 (Fla. 1974); Inglis, Grusmark, P. 1235-6.

SUMMARY OF THE ARGUMENT

The Florida Bar failed to present evidence or testimony at the hearing in this case, and failed to mount a significant or meaningful challenge to the overwhelming evidence of Appellee Wolf's rehabilitation. The Bar now makes the naked allegation that the Referee's recommendation should be overturned, as rehabilitation was not established. There is no support in the record, or in the existing case law for such an unsupported claim by The Bar.

The Referee's findings in this case supporting her conclusions of strict compliance and rehabilitation are factual findings, and as such, they are clothed

with the presumption of correctness, which would prevent this Court from substituting its judgment or overturning such findings without The Florida Bar sustaining their burden of showing such finding are "clearly erroneous or lacking in evidentiary support". Of course, mere disagreement or even a claim of conflicting evidence or testimony is insufficient to sustain this burden.

The Referee faithfully followed the purposes of the Rules and their Standards, under Rule 3-7.10, when the Referee considered all relevant factors in recommending reinstatement, she considered the appropriate weight of such factors, in light of the goal of the Rules and Standards, and made her recommendation consistent with similar cases, and under existing case law.

The Referee took the detailed facts, exhibits and testimony into consideration, contrasted with the total lack of witnesses and testimony presented by the Bar, and from Judge Kroll's "unique vantage point", she assessed not only the credibility of the Respondent Wolf's testimony, but the credibility of his witnesses (all found to be "impressive"). The Referee also used her "favored position" to assess key considerations in her recommendation, including Wolf's level of skill and competence as an attorney, his work in the community, his cooperation, his forthrightness, his remorse, his lack of malice or ill will and, ultimately, his rehabilitation. When the Referee applied all of these factors, considerations and Standards to the existing case law from this Court, she made a

thoughtful, reasonable and appropriate recommendation that Wolf be reinstated to the practice of law, giving due consideration of his sincere remorse and his dogged efforts at reformation and rehabilitation – efforts which this Court has held should be encouraged and recognized.

The Bar has shown no reason and no cause for this Court to reject the Referee's recommendation that Attorney Wolf be reinstated to the practice of law, and the recommendation of reinstatement is supported by the uncontradicted record (and concessions of The Bar), by the Standards, and by the existing case law. The Recommendation should be accepted and adopted by this Court.

ARGUMENT

THE REFEREE'S RECOMMENDATION FOR REINSTATEMENT IS REASONABLE, APPROPRIATE, AND OVERWHELMINGLY SUPPORTED BY THE RECORD ON APPEAL (RESTATED).

In determining reinstatement, the criteria by which a suspended lawyer's fitness to resume the practice of law is to be evaluated have been discussed in numerous opinions of this Court. *E.g.*, The Florida Bar In Re Inglis, 471 So.2d 38 (Fla. 1985); The Florida Bar In re Timson, 301 So.2d 448 (Fla. 1974); In re Dawson, 131 So.2d 472 (Fla. 1961):

The petitioner must show: (1) full compliance with conditions imposed in the previous disciplinary judgment; (2) unimpeachable character; (3) a reputation for professional ability; (4) lack of malice toward those responsible for the previous disciplinary action; (5) a repentant attitude concerning the earlier wrongdoing and a strong resolution to adhere to principles of correct conduct; and (6) restitution to persons harmed by the earlier misconduct. See Bar Rule 3-7.10;

Judge Kroll specifically and diligently cited and followed these very standards in fashioning her recommendation for reinstatement of the Appellee Wolf. (R.R., p. 2-3). As appropriate, and required of this experienced Referee, she carefully considered and weighed all the facts and circumstances before making her final recommendation.

In the case before this Court, The Florida Bar contested Wolf's "full compliance with the conditions imposed" in the suspension order, essentially claiming and accusing Wolf of practicing law. Of course this claim by the Bar was carefully considered and addressed in the Referee's Report, and rejected as having no proof or support. (R.R. p. 5, 6).

The Florida Bar, as the objecting party, carries the burden of showing that the Referee's findings of fact are clearly erroneous, as they deal with the existence and support in the record for the rehabilitation of Wolf. The Florida Bar v. Tauler, 775 So.2d 944, 946 (Fla. 2000); See also Bar Rule 3-7.7. (5) "Upon review, the burden shall be upon the party seeking review to demonstrate that a report of a referee sought to be reviewed is erroneous, unlawful,

or unjustified". The Bar "cannot satisfy this burden by simply pointing to contradictory evidence when there is also competent substantial evidence in the record that supports the Referee's findings". The Florida Bar v. Barrrett, 897 So.2d 1269, 1275 (Fla. 2005); The Florida Bar v. Senton, 882 So.2d 997, 1001 (Fla. 2004). In reality, The Bar presented no evidence (and did no or limited cross-examination on most witnesses), nor did The Bar challenge the sixty seven (67) defense exhibits entered into the record and considered by the Referee – so there is no "contradictory or inconclusive testimony" that the Bar can even point to in their attempt to challenge "rehabilitation".

Under Rule 3-7.10 (f) *Determination of Fitness by Referee Hearing*, the Referee determines "the fitness of the petitioner to resume the practice of law", considering "whether the petitioner has engaged in any disqualifying conduct, the character and fitness of the petitioner, and whether the petitioner has been rehabilitated" (in addition to the above quoted elements of 3-7.10 (3) (A -G):

(2) *Determination of Character and Fitness.* In addition to other factors in making this determination, the following factors should be considered in assigning weight and significance to prior conduct:

> …
> (H) positive social contributions since the conduct;
> (I) candor in the discipline and reinstatement processes; and
> (J) materiality of any omissions or misrepresentations.

These factors, particularly Wolf's candor, have singular significance in this case as Judge Kroll was very active during the hearing, and often addressed Wolf directly demanding answers and explanations about the three (3) areas of challenge by the Bar (R.R., p. 4): alleged practice of law, (R. Tr. Vol. 2, p. 338-9, the supposed omission of his "consulting" or "L.A. Fitness" income from his disclosures (R. Tr. Vol. 2, p. 251-2) and the receiving and handling of money (R. Tr. Vol. 2, p. 331-2). The Judge questioned Wolf, demanded answers, considered the candor and logic and reasonableness of the answers in light of other testimony and evidence, and found Wolf's explanations sufficient, his character unimpeached and his rehabilitation complete: "Mr. Wolf is obviously well liked and a contributing citizen to our society. He is very knowledgeable and respected in the legal field. He is everything one would want of a bar member except he is horrible at financial management. There is no evidence of Mr. Wolf acting with any malicious intent. He appeared remorseful. He likes to help people. (R.R., p. 6).

Regarding the Bar's claim that Wolf was practicing law, the referee heard the innuendo (and nothing more) from the Bar and rejected it as unsupported (R.R., p. 5) weighing and accepting the testimony and explanations of Wolf and the witnesses – and rejecting the Bar's conspiracy theory and concomitant claim that the witnesses, particularly attorneys Cohen and DeYoung (and, of course, Wolf) are unreliable, not credible and not worthy of belief:

Court: I haven't heard your side of the case yet other than implications and one of the things it seems like you are trying to say is sort of, he really was doing legal work anyway as a paralegal and it's all kind of a fraud, etc. type of thing. Is this one of your contentions?

Bar: Yes

Court: So if you are going to try to go the other way and say all of this stuff is a set up, why can't they show that there were a lot of people who thought things looked pretty bad but you didn't prosecute…are you going to present any witnesses?

Bar: No. (R. Tr. Vol. 2, p. 199-200).

Also, the Court addressed the Bar's lack of witness to dispute clear and logical and persuasive testimony from attorneys Cohen and DeYoung:

Court: The testimony at least actually from both lawyers that employed him are they called the Bar to get advice. DeYoung says I'm told he can talk to me during a hearing…Are you disputing – you didn't bring any evidence to dispute those things…(R. Tr. Vol. 2, p. 341).

Also: "You haven't dragged a client in here who was out to get blood, unlike other cases." (R. Tr. Vol. 2, p. 350).

The Bar tried to rely on Rule 3-6.1, which allows suspended attorneys, subject to the exceptions set forth, to "perform those services that may ethically be performed by non-lawyers employed by authorized business entities." The "exceptions"are found in 3-6.1(d), *Prohibited Conduct:*

(1) *Direct Client Contact.* --Individuals subject to this rule shall not have direct contact with any client. Direct client contact does not include the participation of the individual as an observer in any meeting, hearing, or interaction between a supervising attorney and a client.

(2) *Trust Funds or Property.* --Individuals subject to this rule shall not receive, disburse, or otherwise handle trust funds or property.

(3) *Practice of Law.* --Individuals subject to this rule shall not engage in conduct

that constitutes the practice of law and such individuals shall not hold themselves out as being eligible to do so.

The vagueness and uncertainty of this section was obvious to Judge Kroll: "Is this all you give these guys who get suspended [Rule 3-6.1] this and say 'good luck, figure it out for yourself?'" (R. Tr. Vol. 2, p. 342). **NOTE:** It is crucial for this Court to note that Judge Kroll spoke of recently sitting on a Supreme Court Committee on Practice and Accountability, mentioning that there was "heated debate" among the judges on the panel as to what is acceptable activity, what constitutes practicing law. (R. Tr. Vol. 2, p. 342).

Along with the un-remarkable premise that a suspended attorney can't practice law (Bar's brief p.18-22), The Bar repeatedly emphasized three matters in which Wolf was involved: M and W/"the key west case", the Dudley Hardy case, in Starke, and the Global Games/Gravaman matter (Bar's brief, p. 6-8, 24-27). It is critical for this Court to understand what the Bar didn't grasp: in all three of these cases, Wolf was paid by his consulting customers to "tutor" their lawyers (and in Gravaman, to assisted in finding lawyers for the defense team being assembled) in this complex "arcane little field" of Arcade and Gaming law in which Wolf is "extremely well versed". (R.R. p. 5; R. Tr. Vol. 1, p. 41-2, Vol. 2, p. 287-8, 298). Again, the Bar relies upon speculation or suspicion, not evidence or testimony, and Wolf's actions cannot reasonably be viewed as "practicing law".

The Judge went further to flatly state and echo the fear and uncertainty expressed by the attorneys and Wolf: "If I was a lawyer I'd be scared as you-know-what to hire you." (R. Tr. Vol. 2, p. 346). The referee's recommendation was well explored and is well supported.

Regarding the Bar's claim that Wolf didn't disclose all of his income sources, specifically, the "consulting" and the L.A. Fitness, this Court's attention is initially directed to those documents filed, disclosed and supplied by Wolf, but which were apparently overlooked by the Bar and which were later examined and understood by Judge Kroll: Wolf's exhibit 12, 24, 24a

Rule 3-7.10(l) *Petitions for Reinstatement to Membership in Good Standing* requires, in subsection (3), authorization to the I.R.S. for the past five years returns (which was given by Wolf, along with copies of the actual returns, See Exhibits 6, 9, 19, 20, 21, 24, 24a, 25, 25a,), as well as:

…

(D) the nature of the petitioner's occupation in detail since suspension or incapacity, with names and addresses of all partners, associates in business, and employers, if any, and dates and duration of all such relations and employments;

(E) a statement showing the approximate monthly earnings and other income of the petitioner and the sources from which all such earnings and income were derived during said period.

The Referee rejected the Bar's baseless though insistent reliance on the Bar's perception that Wolf failed to disclose, nay, tried to hide his consulting

activities, by supposedly omitting these activities from his Petition for Reinstatement and the supporting documents. Although these accusations are simply not true and were easily debunked with Wolf's explanation and a quick reading of the documents in question, the initial toxic effect of this innuendo was evident as the Referee seemed to accept the truth of the claims:

> **Court:** Why didn't you mention it on the form?
> **Wolf:** …I should have added a paragraph, "Do private consulting". (R. Tr. Vol. 2, p. 251-2, 254).

And later:

> **Court:** There are a lot cases here for your consulting…not mentioned here. What's the story with that? That is not mentioned anywhere to the Bar… I want an explanation.
> **Wolf:** Let's start with the negative. Were we trying to hide something? No. My income was my income. I supplied the Bar with every single check that went into my account. The Bar, once they got copies of all those checks talked to by phone or in person every single one of those people that got a check to find out what it was for, all right. They are not bringing any witnesses here.
> …There would be no reason for me to intentionally hide something from the Bar. They are entitled to know what my income is. …Why that was omitted from the language of the petition, if you want to consider it that way, I considered my consulting through the Florida Arcade Association as I explained before …So other than a negligent omission, it couldn't be an intention to hide something because everything had to be out in the open to them. They got my tax returns, they got my bank statements, they got copies of all of the checks so they knew what I was doing and how much I was making. (R. Tr. Vol. 2, p. 320-1).

This Court must realize the accuracy and truthfulness and credibility of Wolf's explanation, as the Bar was actually confronted by the Referee about the implications that Wolf failed to disclose information or documents:

Court: Is it the Bar's position that you did not receive the documents?
Bar: No, I'm just trying to show the timing…
Court: Is it your position that you were ill prepared to proceed today because of the timing?
Bar: No…Mr. Gelety's argument was they have been fully cooperative with the Bar and given us a ton of documents, so I'm going through what he produced and when he produced it.
Court: Are you trying to imply that they are being somewhat secretive about it?
Bar: No…
Court: Are you implying that you did not receive the documents?
Bar: Your Honor, I'll leave that area. (R. Tr. Vol. 2, p. 263-4).

Similarly, the Referee questioned the Bar's unfamiliarity with exhibits and documents "I hope you did discovery before today" (R. Tr. Vol. 1, p. 149) and the undersigned complained about the Bar's unfamiliarity with the exhibits and documents provided "We have been here for two hours. I showed you our list" (R. Tr. Vol. 1, p. 34) and complained as well at the Bar's innuendo that exhibits or documents may be missing:

Bar: Is it in there?
Gelety: You know it is. You know it is…I resent every time he looks at a document, 'I don't know if it's in there'. Yes, he does know it's in there. He's trying to do innuendo that it might not be in there. It's in there. You know it's in there. I'll find it. I have been shouting out names and exhibit numbers because you won't read my exhibit list. So don't try to tell the judge or give the judge the wrong impression.

Referee: Wait…But you clearly had a good hour or hour and a half with nothing to do here, and I was under the impression that these were agreed to exhibits going in.

Bar: They are agreed-to exhibits, your Honor. I was really asking Mr. Gelety's help to locate it…

Gelety: Then say that. Don't pretend that it's not there. (R. Tr. Vol. 2, p. 277-8).

Obviously, the Referree went back and looked at Wolf's submissions and exhibits and noted that Wolf did, as he said, specifically and repeatedly reveal "consulting" as well as the "L.A. Fitness" income: see Exhibit 12, non-required financial affidavit, filed with Wolf's original petition, indicating "consultant, paralegal, aerobics instructor," under occupation, (with "L.A. Fitness" designated); (Appendix p. 7-8,); Exhibits 24, 24a, 25, 29, tax returns indicating occupation as "consultant" (Appendix, p. 9-10, 11, 12, 13); Exhibit 36, W-2 from L.A. Fitness. Additionally, Wolf supplied all checks, deposits, billing statements and statements including every check for every client mentioned by the Bar in their argument and brief. (Exhibits 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 47, 49, 67; Appendix, p. 1-6).

This Court is reminded that a Referee occupies a favored vantage point for assessing key considerations – such as the candor, credibility and believability of the witnesses, as well as Wolf's cooperation, forthrightness, remorse, and, ultimately, his rehabilitation. The Florida Bar v. Lecznar, 690 So.2d 1284 (Fla. 1997). Further, this Court is reminded, most respectfully, that:

> Because the Referee is in the best position to judge the credibility of witnesses, this Court defers to the Referee's resolution of the conflicting testimony, and the Referee's judgment regarding credibility should not be overturned absent clear and convincing evidence that his judgment is incorrect. The Florida Bar v. Batista, 846 So.2d 479, 483 (Fla. 2003); The Florida Bar v. Senton, 882 So.2d 997, 1001 (Fla. 2004).

There is no question, no contradiction, and no doubt that the record supports the Referee's finding of rehabilitation in this matter, and the Florida Bar's challenge to these findings must necessarily fail.

For comparison, and to finally show that the Referee's recommendation has substantial, virtually overwhelming support in the case law (to go along with the identical type of factual and evidentiary support found in the record), this Court's attention is called to the following decisions:

In Florida Bar v.Grusmark, 662 So. 2d 1235 (Fla. 1995) this Court approved the referee's recommendation of reinstatement, in a factually similar case to Appellee Wolf's situation, as "the referee concluded that Grusmark's disordered financial situation would be the only reason to deny Grusmark's petition for reinstatement." Id., p. 1236. At the time of the hearing, in addition to owing numerous creditors in excess of $ 268,000, Grusmark owed The Florida Bar $ 1,410 in dues, late fees, and reinstatement fees, and the Client Security Fund $ 3,900. Moreover, the referee found that many of Grusmark's previous

disciplinary actions were directly connected to his financial difficulties. While the referee found that most of Grusmark's debt resulted from his previous lavish lifestyle, Grusmark had, prior to the hearing, taken steps to improve his financial problems by living within his means and indicated at the hearing his intent to file promptly for personal bankruptcy.

The Bar challenged the referee's recommendation, claiming that the petition for Grusmark reinstatement should have been denied on two bases. First, the Bar asserted error in recommending reinstatement because Grusmark failed to make complete restitution to the Client Security Fund until after the reinstatement hearing. Second, as with Wolf, the Bar asserted "that since the referee found that money is at the root of Grusmark's problems, this petition should be denied until Grusmark has the ability to start practicing law with a clean financial slate." P. 1236.

Noting that the Bar, in that reinstatement proceeding, failed in their burden to demonstrate that the "report is erroneous, unlawful, or unjustified, See Inglis; R. Reg. Fla. Bar 3-7.10(j)", this Court considered the fact that with "his more modest lifestyle, by filing for personal bankruptcy Grusmark has significantly lessened his financial burdens. We find that in light of the evidence presented about the steps Grusmark has taken to organize his affairs, the Bar has failed to carry its burden."

P. 1237. Certainly Wolf's case was much more compelling and his financial straits much less daunting, and Wolf's reinstatement should be approved.

In Florida Bar v. Hernandez-Yanks, 690 So. 2d 1270 (Fla. 1997) (cited and followed by Judge Kroll) Hernandez worked as a secretary/paralegal during her suspension. During that time she wrote 5 insufficient funds checks which were returned, and the Bar presented the testimony of lawyer witnesses contesting Hernandez's character and rehabilitation – unlike the instant case where Wolf's witnesses and evidence went unchallenged. In approving the referee's recommendation for reinstatement, this Court reminded us that:

> in Bar disciplinary proceedings "the party contending that the referee's findings of fact . . . are erroneous carries the burden of demonstrating that there is *no evidence* in the record to support those findings." Florida Bar v. Spann, 682 So. 2d 1070, 1073 (Fla. 1996) (emphasis added). In the present case the Bar, as the challenging party, has failed to meet this burden. In fact, our review of the record shows that competent substantial evidence supports each of the referee's findings. Accordingly, this Court is precluded from reweighing the evidence and substituting its judgment for that of the referee." Florida Bar v. MacMillan, 600 So. 2d 457, 459 (Fla. 1992). We approve the referee's findings of fact. P. 1272.

As was the case with Wolf, each of the grounds cited on appeal by the Bar for denial was before the referee when he formulated his report:

> Because the referee's findings are supported by competent substantial evidence and because the recommendation of reinstatement has a basis in existing caselaw, we will not second-guess the referee on this matter. *See* Florida Bar re Rue, 663 So. 2d 1320 (Fla. 1995) (referee's recommendation of reinstatement approved under more onerous, i.e., "troubling," circumstances). P. 1272.

In Fla Bar v. Rue, 663 So. 2d 1320 (Fla. 1995), this Court reviewed and adopted the referee's findings and recommendation that Rue should be reinstated. Rue was suspended for various offenses including: “advancing living expenses to clients, conducting business transactions with clients without proper disclosure, sharing fees in the form of improper bonuses with his paralegal and investigators, and seeking and collecting prohibited fees”. P. 1320.

At the final hearing and on Appeal, the Bar opposed Rue's reinstatement, asserting that Rue had engaged in a number of improper activities during his suspension, including:

> (1)obtained an immediate suspension from this Court by misstating the status of his wind-down from practice; (2) engaged in advertising holding himself out to the public as a practicing attorney in good standing; (3) remained a member of the board of directors of Rue and Ziffra, P.A., which continued on file with the Secretary of State; (4) remained on the title of Rue and Ziffra's bank accounts until shortly before the final hearing… and … Rue failed to correct an erroneous newspaper article identifying Rue as a founding partner of the newly-formed law firm of Allan L. Ziffra, P.A. P. 1320-1.

Certainly, these blatant actions by Rue were much closer to “practicing law” than any actions alleged by the Bar against Wolf. In rejecting the Bar’s attacks on the referee’s report, including the claims of practicing law and failure to demonstrate strict compliance with the terms of his suspension (as alleged against Wolf in the case at bar) this Court reminds us again that:

"A referee's findings of fact carry a presumption of correctness that should be upheld unless clearly erroneous or without support in the record." Florida Bar re Janssen, 643 So. 2d 1065, 1067 (Fla. 1994). Upon a review of the record, we find that the decision of the referee below is supported by competent substantial evidence." Id., P. 1321.

Further, this Court went on to note that the Bar's contentions were "not entirely without merit", and, while Rue's actions did not warrant overturning the referee's findings, "his actions are nonetheless troubling":

While we disagree with the Bar's assertion that Rue has "thumbed his nose at this Court's rules," we find evidence in the record suggesting that Rue has been less than zealous in his efforts to comply with our disciplinary order. This evidence further suggests that Rue has failed to exhibit the level of commitment and initiative that this Court expects of a suspended attorney seeking reinstatement. It is apparent that the referee gave Rue the benefit of the doubt in spite of this evidence. P. 1321.

NOTE: The Bar's accusations against Wolf regarding finances and perceived "trust account violations" for helping an old friend hire unrelated lawyers for third party criminal defense, for paying Wolf's old secretary Debbie Carter, and for accepting payment from consulting clients (Bar brief, p.4, 5, 10, 18, 31-2) are illusory, unreasonable and unsupported – and do not approach the alleged violations in Rue or Grusmark.

In Florida Bar v. Janssen, 643 So. 2d 1065 (Fla. 1994) the referee recommended reinstatement despite an almost unbelievable array of intentional deceptions and omissions – contrasted with Wolf's near fanatical efforts to co-

operate and disclose everything. During a meeting with the Bar staff investigator, Janssen represented that he had no pending judgments or arrests although he was arrested for driving under the influence (DUI) shortly after midnight that same day. Janssen did not file an amendment to the petition, nor did he contact the Bar regarding the arrest, and the Bar investigator discovered the DUI arrest during a search of police records years later. Janssen finally admitted the DUI arrest during a later deposition by the Bar.

During an inquiry concerning the arrest, the Bar also discovered that Janssen made several misrepresentations to law enforcement officers. Janssen advised the officers that he was unable to perform the field sobriety tasks because of injuries sustained playing varsity football yet Janssen never played football. Janssen also advised the officers that he had to be released from jail in order to be in court or attend a meeting that morning relating to a woman with a domestic violence problem. Janssen's meeting that morning was actually with the Bar investigator and his attorney.

Finally, at the hearing, the Bar also presented evidence that Janssen made similar misrepresentations regarding his involvement in FSU varsity sports to his former employer, his physicians, and his defense attorney in a driver's license reinstatement proceeding. The record also shows that Janssen was $ 14,200 in arrears in child support payments, having failed to make payments from January

1992 to the October 1993 hearing even though he had a fairly substantial income during this time. Janssen also failed to include this financial obligation in his petition for reinstatement.

The referee found that Janssen attempted to mislead others about his sports involvement, that he misled the officers about the nature of his meeting on the morning of his arrest, that his failure to meet his child support obligations was not reasonable, and that he withheld information about his DUI arrest from the Bar investigator. Unbelievably, however, the referee discounted this conduct because none of its "was in the course of the practice of law and none of it was for the purpose of financial gain to Petitioner or to defraud anyone" and recommended that Janssen be reinstated to the practice of law and be placed on probation for eighteen months. Clearly, Jansen's egregious and purposeful and cumulative deception supports this Court's decision to reject the referee's illogical recommendation – unlike the situation in the case at bar with Wolf. Also distinguishing theses case is the fact that the referee's factual conclusions were patently erroneous und unsupported, unlike those of Judge Kroll which are beyond challenge or reasonable dispute.

PREJUDICIAL DELAY EXTENDING THE SUSPENSION

As an additional factor supporting the approval of the Referee's recommendation of reinstatement, Wolf emphasizes the delay in this proceeding,

specifically, in the Referee's decision, as a mitigator as found by this Court in Appellee's underlying case, The Florida Bar v. Wolf, 930 So. 2d 547 (Fla. 2006). In this case, the long period leading to the final hearing (Petition filed February 11, 2008, final hearing conducted July 21 and 24, 2008) and the extreme delay between the hearing and the Report and Recommendation (July 24, 2008 to November 7, 2008) essentially and actually increases the Appellee Wolf's suspension by nearly fifty per cent (50%) – adding another year, for a total suspension nearly identical to the original term which was reduced by this Court.

Rule 3-7.10 (h) addresses this matter, requiring a "prompt hearing" and "at the conclusion of which the referee shall make and file … a report that shall include the findings of fact and a recommendation as to whether the petitioner is qualified to resume the practice of law."

Regarding delays in the proceedings as a mitigator this Court held :

> Another critical factor is the referee's finding that Wolf's case was subject to unreasonable delay, which was not caused by Wolf and which caused Wolf prejudice. We consider this factor in determining the appropriate sanction. See Fla. Stds. Imposing Law. Sancs. 9.32(i) (providing that an "unreasonable delay in [the] disciplinary proceeding" may be considered in mitigation "provided that the respondent did not substantially contribute to the delay and provided further that the respondent has demonstrated specific prejudice resulting from that delay"); see also Fla. Bar v. Micks, 628 So. 2d 1104 (Fla. 1993) (examining delay as a mitigating factor); Fla. Bar v. Marcus, 616 So. 2d 975 (Fla. 1993) (same). Wolf, Supra, p.

Additionally, as noted by this Court in Rue, Supra: “While the Bar's contentions are not entirely without merit, we do not agree that they warrant overturning the referee's findings to further prolong these proceedings. In light of the deference that this Court extends to a referee's findings and considering that the 91-day suspension imposed by this Court has effectively become a one-year suspension, we are inclined to defer to the referee's determinations”. Id., P. 1321

The failure to adopt the Referee’s recommendation to reinstate Attorney Michael Howard Wolf to the practice of law would truly be a sanction of “undue harshness” which effect would be to deny “the public the services of a qualified lawyer”. The Florida Bar v. Dove, 985 So. 2d 1001 (Fla. 2008) (R.R. p. 6).

CONCLUSION

The Florida Bar has not sustained their burden of overcoming the presumption of correctness of the Referee’s factual findings supporting “rehabilitation” by the Appellee Wolf. The Referee’s findings and, ultimately, her recommendation for reinstatement, must be adopted by this Court. The recommendation is well supported by the record and interpretive case law from this Court, and the Appellant Bar has not been able to demonstrate that the report of the referee is “erroneous, unlawful, or unjustified”.

The recommendation of the Referee should be adopted by this Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Respondent was mailed this ___ day of February, 2009 to Michael David Soifer, Bar Counsel, Lakeshore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, FL 33323, Kenneth Lawrence Marvin and John F. Harkness, Jr., The Florida Bar, 651 E. Jefferson Street, Tallahassee, Fl 32399-2399.

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CERTIFICATE OF TYPE SIZE AND STYLE

COMES NOW the Respondent, MICHAEL HOWARD WOLF, and certifies that the type size and style used in this Brief is within the requirements of this court's internal operating system, specifically, Times New Roman 14-Point.