IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MARY ALICE GWYNN,

Respondent.
_____/

Supreme Court Case No. SC08-622

The Florida Bar Nos. 2004-51,111(15C) 2004-51,254(15C) 2006-51,409(15C)

THE FLORIDA BAR'S ANSWER BRIEF AND INITIAL BRIEF ON CROSS-APPEAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES REGULATING THE FLORIDA BAR

PRELIMINARY STATEMENT

Respondent is seeking review of a Report of Referee recommending that she be found guilty of a multitude of rule violations and recommending that respondent receive a 90 day suspension from the practice of law and that she pay The Florida Bar's costs in the proceedings. The Bar filed a Cross Petition for Review and the Supreme Court entered an Order wherein it has not yet determined whether or not the Bar waived its right to seek review. The Bar files this Answer Brief and its Initial Brief on Cross-Appeal. In its Initial Brief on Cross-Appeal the Bar seeks review only as to the sanction recommended by the referee, and not as to his factual findings. It is the Bar's position that based on the referee's findings of fact, the discipline imposed should have been at least a ninety one day suspension, as well as a recommendation that respondent be evaluated by Florida Lawyers Assistance, Inc. and produce the evaluation stating that she is competent to practice law as a condition of reinstatement.

Throughout this Answer Brief and Initial Brief on Cross-Appeal, The Florida Bar will refer to specific parts of the record as follows: The Report of Referee will be designated as RR ____ (indicating the referenced page number). The actual Report of Referee does not have page numbers, but for reference purposes the page referenced is the actual page in the Report of Referee. The five volume transcript of the final hearing conducted on August 9, 10, and 12, 2010 will

be designated as TT1, TT2, TT3, TT4 or TT5 (indicating transcript volume number), followed by ____ (indicating the referenced page number). The Florida Bar will be referred to as "the Bar." Respondent Mary Alice Gwynn will be referred to as "respondent." The Florida Bar's trial exhibits will be referred to as Bar Exhibit ____ (indicating the referenced exhibit number.)

THE STANDARD OF REVIEW

As to the facts in a Bar disciplinary case, the referee's findings are presumed to be correct unless the appellant demonstrates clear error or a lack of evidentiary support. Absent such evidence, the Court will not reweigh the evidence or substitute its judgment for that of the referee. *The Florida Bar v. Rose*, 823 So. 2d 727, 729 (Fla. 2002). The Court has more latitude with regard to the recommended discipline, however, and may disregard a referee's determination if the sanction recommended has no reasonable basis in the case law or in the *Florida Standards for Imposing Lawyer Sanctions*. *The Florida Bar v. Mason*, 826 So. 2d 985, 987 (Fla. 2002).

STATEMENT OF THE CASE AND FACTS

The instant case is in essence a very simple case involving respondent's blatant misconduct in two bankruptcy cases. Her conduct was so egregious that The Honorable Judge Paul Hyman, the federal bankruptcy judge that was handling the matter, entered three separate Orders sanctioning respondent for her misconduct. Specifically, in the first Order dated April 26, 2006 Judge Hyman found that respondent had acted in bad faith by the following acts or omissions:

A. Respondent filed frivolous claims to harass her opponent and opposing counsel;

B. Respondent failed to research and verify claims she advanced in motions she filed with the court;

C. Respondent engaged in willful abuse of the judicial system;

D. Respondent alleged that opposing counsel was "generally dishonest" and accused him of committing fraud on the court;

E. Respondent continually made allegations, both in pleadings filed with the court and in her testimony before the court, that were simply incorrect and/or false.

F. Respondent's conduct was "objectively unreasonable and vexatious" and such "conduct has been sufficiently reckless to warrant a finding of

conduct tantamount to bad faith. . . for the purpose of harassing her opponent." Bar Exhibit 1 pp. 32, 33, 34.

In the April 26, 2006 Order, Judge Hyman imposed a $14,000 sanction and referred respondent to The Florida Bar. TT1 p. 16; Bar Exhibit 1 p. 54.

Judge Hyman made specific findings in that Order that said "this continues to be the most highly litigious and acrimonious case over which this court has ever presided." TT1 p. 17; Bar Exhibit 1 p. 3. Judge Hyman further found that respondent's conduct was tantamount to bad faith, objectively unreasonable, and vexatious. TT1 p. 17; Bar Exhibit 1 pp. 24-32. The Judge also found that respondent engaged in abuse of process and had multiplied the proceedings "unreasonably, and vexatiously." TT1 p. 17; Bar Exhibit 1 p. 33. He noted that professional responsibility requires different conduct. Bar Exhibit 1 p. 37. He further noted that respondent had engaged in unsubstantiated, scurrilous attacks on opposing counsel and had filed emergency motions that were not emergencies. Bar Exhibit 1 pp. 39, 45.

The court's April 26, 2006 Order was affirmed by the United States District Court, Southern District of Florida, by Order dated March 14, 2007. RR 9; Respondent's Exhibit 37. The Bar charged in its complaint that, by virtue of the conduct described in that Order, respondent had violated numerous Rules Regulating The Florida Bar.

After entry of the April 26, 2006 Order in bankruptcy court, respondent continued to file pleadings and papers with the court, despite the fact that she was no longer representing any party in the case. This led to the entry of a second Order dated May 15, 2006, where the court entered its "Order Directing Mary Alice Gwynn, Esquire to Stop Filing Notices of Filing." TT1 p. 18; Bar Exhibit 2. In this Order the court found that respondent had filed hundreds of pages of documents pursuant to Notices of Filings or Notices to the Court. The court's Order directed respondent to stop filing Notices of Filing unless specifically ordered to do so by the court, or unless mandated by either the Bankruptcy rules or the Local Rules. Bar Exhibit 2 p. 3.

Thereafter, on June 7, 2006, the court entered a third Order styled as follows: "Order 1) Denying Mary Alice's Gwynn's Motion for Rehearing and Reconsideration of the Court's Sua Sponte Order Directing Mary Alice Gwynn, Esq. to Stop Filing Notices of Filing 2) Imposing Sanctions; and 3) Striking Court Papers Nos. 1529 and 1530." TT1 p. 18; Bar Exhibit 3. This Order found that even after the May 15, 2006 Order was entered prohibiting respondent from filing documents, respondent continued to file Notices of Filing in defiance of the court's Order. Bar Exhibit 3 p. 3.

In its June 7, 2006 Order, the court found that respondent "improperly attempted to influence this Court by filing numerous Notices of Filing containing

inappropriate hearsay documents that are unrelated to any pending contested or adversary proceedings. In so doing, Gwynn engaged in unprofessional conduct before this court." Bar Exhibit 3 p. 6. The court fined respondent $500 and ordered that she be fined $250 for each future document that she filed in defiance of the court Order. Bar Exhibit 3 pp. 7, 8.

Respondent's conduct in the instant Florida Bar action against her is eerily similar to the conduct she engaged in during the bankruptcy proceedings which led to the entry of the three Orders against her. As will be evident from a review of the record in this matter, respondent's many filings led to the Bar's case being unnecessarily delayed before it finally reached a final hearing in front of the referee, the fourth referee during the course of these proceedings.

The procedural history of the Bar case is as follows. Respondent was represented first by John Bruce Thompson and then by Brett Alan Geer. The Florida Bar filed its formal complaint against respondent on April 1, 2008. The first referee was appointed on April 8, 2008. The parties served a joint stipulation of settlement on January 22, 2009, and the referee entered an Order canceling the scheduled trial. On or about February 18, 2009, respondent withdrew her plea. On February 20, 2009, The Florida Bar served a Motion for Partial Summary Judgment and on February 28, 2009, the Bar served a Motion to Set Case for Trial on Expedited Schedule. Respondent also filed a Motion for Partial Summary

Judgment, on June 1, 2009. Both summary judgment motions were denied and the cause was set for final hearing on November 18-20, 2009. However, on November 6, 2009, the referee entered an Order of Disqualification of Judge. The November 2009 trial was cancelled and the second referee was appointed on November 12, 2009. On December 18, 2009, respondent filed a Request for Recusal/Motion to Disqualify Judge. The second referee granted respondent's motion and a third referee was appointed on January 7, 2010. An Order of Disqualification was entered on January 19, 2010, and the fourth and final referee was appointed on January 21, 2010. The final hearing was held on August 9, 10, and 12, 2010.

Count I of the Bar's complaint was dismissed by the referee. The Florida Bar does not appeal that finding. As to Count II, respondent was found to have violated R. Regulating Fla. Bar 4-1.1, 4-3.2, 4-8.4(a) and 4-8.4(d). RR 11. As to Count III respondent was found to have violated R. Regulating Fla. Bar 4-3.1, 4-3.3(a)(1), 4-4.4(a), 4-8.4(a), 4-8.4(c) and 4-8.4(d). RR 11, 12. As to Count IV respondent was found to have violated R. Regulating Fla. Bar 4-3.4(c), 4-3.5(a), 4-8.4(a) and 4-8.4(d). RR 12, 13. The referee recommended that respondent receive a 90 day suspension from the practice of law and that she be required to pay The Florida Bar's costs in these proceedings. RR 13. Respondent filed a Petition for Review in this matter dated December 17, 2010 and the Bar filed a

Cross Petition for Review dated January 6, 2011. The Bar does not appeal any of the factual findings made by the referee, and appeals only the recommended sanction.

SUMMARY OF THE ARGUMENT

It is well settled that a referee's findings of fact enjoy the presumption of correctness and may not be disturbed until and unless an appellant demonstrates clear error or a lack of evidentiary support. *The Florida Bar v. Rose*, 823 So. 2d 727, 729 (Fla. 2002). The thrust of respondent's appeal is that the referee's factual findings were flawed because he relied solely on three Orders entered by federal bankruptcy Judge Paul Hyman, specifically outlining misconduct by respondent during bankruptcy proceedings wherein he was the presiding judge. Respondent also argues that these findings by the referee against respondent recommending discipline should not stand because the three Orders entered against respondent by Judge Hyman were the result of Judge Hyman's disparate treatment of respondent.

Respondent's arguments are meritless and have no basis in law or in the facts. First, it is well settled that a referee can rely on an Order in making his findings. See *The Florida Bar v. Shankman*, 41 So. 3d 166 (Fla. 2010). Second, the referee did not solely rely on the three Orders entered by Judge Hyman against respondent when making his factual findings and disciplinary recommendation.

The referee in the instant case held a hearing over the course of three days. During those three days he heard testimony of not only the Bar's expert witness, Patrick Scott, Esq., supporting the reasons as to why Judge Hyman's Orders were proper, but he also heard the testimony of two witnesses called by respondent,

namely Carl Santangelo and Gary Rotella. Furthermore, the referee heard and considered the testimony of respondent herself, including her extensive testimony as to why she felt the Orders were unfair and biased against her. The referee considered the credibility of all of these witnesses including that of respondent and considered the weight and quality of the evidence. After taking all of this into account, the referee determined that "respondent's misconduct was intentional, serious and repeated, despite and in defiance of warnings issued to her, and sanctions imposed against her by a sitting federal judge." RR 17. Furthermore, the referee found that

> "It is clear that respondent acted, in this bankruptcy case, intentionally, out of personal animus, and without respect for the court. I have also considered the conduct of Respondent in these proceedings including false or reckless allegations against bar counsel during the pending of these proceedings including an unfounded charge that a mediation session was surreptitiously tape recorded, based on nothing more than respondent's notice of a flashing message light on a cell phone." RR 17.

Furthermore, respondent argues that Judge Hyman's three Orders against her cannot be relied upon because they are based on "disparate treatment." Respondent merely relies on the fact that the Orders entered by Judge Hyman were unfavorable to her to support her conclusion that they somehow involve disparate treatment. Again, the referee considered the arguments made by respondent during the course of the proceedings, and did not find this to be a credible argument.

Finally, respondent challenges the referee's recommendation that respondent pay the Bar's costs in these proceedings. She argues that the proceedings had to be bifurcated for this award to be proper and that she was not allowed to present mitigation testimony. There is simply no basis for this argument in that the Bar prevailed in its case thus the referee was allowed to award the Bar its costs. Furthermore, respondent testified in her own behalf and was given the opportunity to, and indeed, did offer mitigation testimony.

Because the referee's findings of fact are well supported by competent record evidence, this Court has no basis for overturning the same. Additionally, because The Florida Bar prevailed in this cause, this Court should approve the referee's recommendation of a cost award against respondent and in favor of The Florida Bar, in the amount set forth by the Bar.

In reviewing a referee's recommended discipline, however, this Court's scope of review is "somewhat broader than that afforded to findings of facts because, ultimately, it is [the Court's] responsibility to order an appropriate punishment. *The Florida Bar v. Anderson*, 538 So. 2d 852, 854 (Fla. 1989). In the instant case, the referee found that "respondent's misconduct was intentional, serious and repeated, despite and in defiance of warnings issued to her, and sanctions imposed against her, by a sitting federal judge." RR 17. Additionally, the referee stated that

> [Respondent] sat before me and testified that she did this because she believes that the judge was part of an "old boys' club" and because she believes the federal judge was, and is, wrong. Respondent was steadfast in this belief, even after her cause was reviewed, and rejected, on appeal. It is clear that respondent acted, in this bankruptcy case, intentionally, out of personal animus, and without respect for the court. I have also considered the conduct of Respondent in these proceedings including false or reckless allegations against bar counsel during the pending of these proceedings including an unfounded charge that a mediation session was surreptitiously tape recorded, based on nothing more than respondent's notice of a flashing message light on a cell phone. RR 17.

Despite the referee's damaging findings, he recommended only a ninety day suspension. The case law mandates that higher discipline be imposed on respondent. The Bar seeks review and cross appeals as to the discipline imposed seeking a ninety one day suspension and that respondent be evaluated by Florida Lawyers Assistance, Inc. and produce the evaluation stating that she is competent to practice law as a condition of reinstatement. The Florida Bar seeks this evaluation based on respondent's conduct in front of the bankruptcy judge, her conduct during the course of the referee proceedings, and based on her filings in this case.

ARGUMENT

I. THE REFEREE'S FINDINGS OF FACT ARE WELL SUPPORTED BY COMPETENT AND SUBSTANTIAL RECORD EVIDENCE

A referee's findings of fact regarding guilt carry a presumption of correctness that should be upheld unless clearly erroneous or without record support. *The Florida Bar v. Vining*, 761 So. 2d 1044 (Fla. 2000). This Court has the authority to review the record to determine whether "competent substantial evidence supports the referee's findings of fact and conclusions concerning guilt." *The Florida Bar v. Cueto*, 834 So. 2d 152 (Fla. 2002), citing *The Florida Bar v. Jordan*, 705 So. 2d 1387 (Fla. 1998).

In the instant case, respondent's basis for seeking appeal is that the referee made factual findings based solely on three Orders entered by federal bankruptcy Judge Paul Hyman sanctioning respondent. Respondent also argues that these Orders are somehow tainted by the fact that Judge Hyman is part of a "good ole boy club." RR 17. Both of these arguments lack merit.

First, a referee in a Florida Bar disciplinary proceeding may consider and rely upon a federal court's order and factual findings. In *The Florida Bar v. Shankman*, 41 So. 3d 166 (Fla. 2010), the respondent challenged the referee's ruling taking judicial notice of a federal district court judge's order and a magistrate's report and recommendation in the respondent's underlying civil

action. Additionally, the respondent contended that the facts in those documents "tainted" the instant proceedings and compromised the referee's independent review of the facts. In rejecting Mr. Shankman's claim, the Supreme Court of Florida noted that

> [t]he "case law unequivocally supports the referee's taking judicial notice of the federal report and recommendation and order in this bar disciplinary case. *See, e.g., Fla. Bar v. Head*, 27 So. 3d 1 (Fla. 2010); *Tobkin*, 944 So. 2d at 224; *Fla. Bar v. Vining*, 707 So. 2d 670, 672 (Fla. 1998*); Fla. Bar . Calvo*, 630 So. 2d 548, 549-50 (Fla. 1993); *Fla. Bar v. Rood*, 620 So. 2d 1252, 1255 (Fla. 1993); Thus, the referee could properly consider the federal district court's order and magistrate's report and, although not done here***, the referee could have relied "upon them as support for the disciplinary findings of fact"*** [Emphasis provided] *Head*, 27 So. 3d at 8. *Shankman*, at 2.

The referee was therefore justified in finding that "standing alone, the three sanctioning Orders entered by the federal bankruptcy judge on April 26th, May 15th, and June 7th 2006, are sufficient to meet The Florida Bar's burden of proof as to all charges related to the Walker bankruptcy." RR 15.

The referee, however, did not rely on Judge Hyman's Order alone, as respondent claims. The referee heard and considered the testimony of all of the witnesses in making his recommendation. This testimony consisted of the Bar's expert witness, respondent's two witnesses, and the testimony of respondent herself. After listening to all of this testimony, the referee found respondent guilty

of numerous rule violations. There is no evidence provided by respondent as to her allegations that the referee's recommendation was based solely on Judge Hyman's Order.

The referee considered the testimony of the Bar's expert, Patrick Scott, Esq. Mr. Scott testified that the kind of bankruptcy case respondent was involved in, a Chapter 7 bankruptcy, normally is a very simple proceeding with "no more than fifteen or twenty pleadings in the court papers." TT2 p. 109. Instead, respondent "presented obstacles – a great many obstacles" to the court. TT2 p. 114. Mr. Scott went on to state:

> I have never ever seen a case – and I've been involved in some pretty litigious situations over the years. Some extremely litigious situations involving some seriously bad people – I have never seen a situation that approaches this one for over-litigiousness. TT2 p. 115

Mr. Scott went on to testify that respondent, "in many instances filed papers with the court that were meant as ad hominem attacks upon parties and not upon the issues." TT2 p. 116. He later stated "I draw no different conclusion than Judge Hyman drew…as to the honesty, veracity or forthrightness of the statements made by Ms. Gwynn that Judge Hyman repeated in his order." TT2 p. 118.

A review of the transcript substantiates the fact that the referee did not rely solely on Judge Hyman's Orders, but also took into account the testimony of Mr. Scott, a bankruptcy lawyer with over twenty five years of experience. RR 23.

The referee also took into account the testimony of respondent's own two witnesses, Carl Santangelo and Gary Rotella. TT3 pp. 232, 256. Furthermore, the referee considered and took into account respondent's own testimony. Despite respondent testifying that the Orders were entered against her because he was biased against her, TT5 p. 546, the referee did not accept the testimony as a basis for defeating Judge Hyman's specific findings as to respondent's misconduct.

In order to prevail in overturning these findings respondent must demonstrate either a lack of record evidence to support the referee's findings and conclusions, or record evidence that clearly contradicts such findings and conclusions. *The Florida Bar v. Feinberg*, 760 So. 2d 933 (Fla. 2000), quoting *The Florida Bar v. Sweeney*, 730 So. 2d 1269, 1271 (Fla. 1998).

Additionally, the referee in his report clearly indicated the record evidence upon which he based his factual findings. Specifically the referee stated as follows:

> I have based my recommendation upon the evidence presented at trial and upon my review of the applicable case law and the applicable Florida Standards for Imposing Lawyer Sanctions. The most persuasive evidence presented at trial is that advanced by the federal bankruptcy judge, who conducted evidentiary hearings and thereafter, determined that respondent had engaged in the grave and repeated misconduct he carefully outlined in three separate orders. RR 13.

Finally, the referee was allowed to rely on Judge Hyman's Order in reaching his recommendation. See *The Florida Bar v. Shankman*, 41 So. 3d 166 (Fla. 2010);

The Florida Bar v. Behm, 41 So. 3d 146 (Fla. 2010); *The Florida Bar v. Head*, 27 So. 3d 1 (Fla. 2010).

Based on the foregoing and because respondent has failed to show any clear error, the referee's factual findings should be upheld in that they are based on competent record evidence.

II. THE REFEREE DID NOT ERR IN AWARDING THE BAR ITS COSTS FOR PREVAILING IN THE PROCEEDINGS

The Florida Bar prevailed in these proceedings. As the Bar prevailed, the referee ordered that respondent pay costs. Respondent argues that the referee erred by not conducting a bifurcated hearing, that she was not allowed to offer any evidence in mitigation, and that The Florida Bar should not have been awarded its costs for prevailing in the proceedings. Respondent's argument is without merit for several reasons. First, pursuant to R. Regulating Fla. Bar 3-7.6(q), a referee may award costs to the prevailing party unless "it is shown that the costs of the Bar were unnecessary, excessive, or improperly authenticated." The case law also supports this. See *The Florida Bar v. Brown*, 978 So. 2d 107 (Fla. 2008) [Requiring attorney to pay $1,000 in costs of state bar was not abuse of discretion following its successful appeal of referee's determination that attorney did not engage in conflict of interest and should receive public reprimand, rather than suspension.]; *The Florida Bar v. Committe*, 916 So. 2d 741 (Fla. 2005), rehearing

denied, certiorari denied 126 S.Ct. 1890, 547 U.S. 1098, 164 L.Ed.2d 569. [Florida Bar was entitled to an award of costs in attorney disciplinary proceeding since it prevailed.]; *The Florida Bar v. Carson*, 737 So. 2d 1069 (Fla. 1999) [Costs for attorney disciplinary proceeding could be assessed against attorney who improperly accepted referral fee, where state bar was at least partially successful in prosecuting attorney.].

There is nothing to indicate that the Bar brought a meritless claim against respondent. Second, the Bar prevailed in the majority of its case with the exception of count 1. Additionally, the record demonstrates that only after respondent was found guilty did the referee award the Bar its costs. Finally, respondent's assertion that she was denied the right to present mitigation testimony is false. The record reveals that respondent testified that during the relevant period, respondent was dealing with depression stemming from the prolonged illness and eventual death of both her parents. TT5 pp. 530-531. And, in fact, the referee listed certain mitigating factors in his report of referee. RR 20. There is simply no basis to overturn the referee's recommendation as to the Bar's costs.

CROSS-APPEAL

I. THE REFEREE ERRED IN ORDERING A NINETY DAY SUSPENSION

Despite the referee's damaging findings, he recommended only ninety day suspension. The case law, however, mandates a higher discipline.

The referee found that "respondent's misconduct was intentional, serious, and repeated, despite and in defiance of warnings issued to her, and sanctions imposed against her, by a sitting federal judge." RR 17. Additionally, the referee stated that

> [Respondent] sat before me and testified that she did this because she believes that the judge was part of an "old boys' club" and because she believes the federal judge was, and is, wrong. Respondent was steadfast in this belief, even after her cause was reviewed, and rejected, on appeal. It is clear that respondent acted, in this bankruptcy case, intentionally, out of personal animus, and without respect for the court. I have also considered the conduct of Respondent in these proceedings including false or reckless allegations against bar counsel during the pending of these proceedings including an unfounded charge that a mediation session was surreptitiously tape recorded, based on nothing more than respondent's notice of a flashing message light on a cell phone. RR 17.

This recommendation is contrary to the existing case law. In *The Florida Bar v. Head*, 27 So. 3d 1 (Fla. 2010), the referee recommended a sixty day suspension for conduct involving many of the same rule violations respondent was found guilty of: conduct involving fraud, deceit or misrepresentation; knowingly

making a false statement to a third person; conduct that was prejudicial to the administration of justice; and knowingly making a false statement to the tribunal. The Court rejected this discipline and imposed a one year suspension.

Similarly, other cases have upheld more severe discipline. For example, in *The Florida Bar v. Bloom*, 632 So. 2d 1016 (Fla. 1994), the Court imposed a ninety one day suspension against a lawyer who failed to comply with the rules of the tribunal and engaged in conduct prejudicial to the administration of justice. In *The Florida Bar v. Broida*, 574 So. 2d 83 (Fla. 1991), the Court determined that a one year suspension was necessary for a lawyer who made misrepresentations to a court, and engaged in ex parte communications with it.

In *The Florida Bar v. Germain*, 957 So. 2d 613 (Fla. 2007), the respondent received a one year suspension for filing frivolous pleadings in a dispute between himself and a business partner. Even harsher discipline was imposed in *The Florida Bar v. Hagendorf*, 921 So. 2d 611 (Fla. 2006), where Hagendorf was found guilty of filing a frivolous quiet title action and a number of lawsuits against the state bar in another jurisdiction. The Court determined that a two year suspension was necessary.

Despite relying on all of these cases in his report of referee, the referee did not explain why this same kind of discipline should not be imposed on respondent. There is simply no support in the report of referee (other than a few mitigators not

explained fully) as to why lesser discipline than that mandated by these similar cases should not be imposed.

The Court found that disbarment was appropriate for similar misconduct in *The Florida Bar v. Klein*, 774 So. 2d 685 (Fla. 2000). In *Klein*, the Court ordered that Klein be disbarred for failing to provide competent representation to a client, filing frivolous pleadings, and intentionally disobeying the obligation of a tribunal. The Court stated that "A lawyer must have the independent judgment to objectively advise his clients as to meritorious claims that may be pursued, and has a duty, once such claims have been pursued to the fullest extent allowed by law and defeated, to refrain from continuing to assert frivolous matters." *Klein*, at 685. Ms. Gwynn engaged in similar misconduct by continuing to file documents despite the order from the judge preventing her from doing so.

The instant case is also similar to *The Florida Bar v. Tobkin*, 944 So. 2d 219 (Fla. 2006). In that case, the Court considered a District Court of Appeals opinion wherein Tobkin's conduct was found to be contumacious and willfully disobedient. The Court found that the referee could take judicial notice of the opinion and ordered a ninety one day suspension *Tobkin*, at 219. In that case the Court stated that "Because Bar disciplinary proceedings are quasi-judicial rather than civil or criminal….the referee's consideration of the Fourth District's opinion nevertheless would have been proper." *Tobkin*, at 219.

Because of all of the findings made by the referee against respondent for her vexatious and contumacious conduct, the referee should have imposed a ninety one day suspension, as well as a recommendation that respondent be evaluated by Florida Lawyers Assistance, Inc. to ensure that she is fit to resume the practice of law after her rehabilitative suspension.

CONCLUSION

There is clear evidence to support the referee's findings that respondent engaged in misconduct. Respondent has failed to show that there is any evidence supporting overturning the referee's recommendation. As such, the factual findings of the report of referee should be upheld and the Bar should be awarded its costs. The referee, however, should have recommended higher discipline based on respondent's serious misconduct.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Florida Bar's Answer Brief and Initial Brief on Cross-Appeal regarding Supreme Court Case No. SC08-622, The Florida Bar File Nos. 2004-51,111(15C), 2004-51,254(15C), and 2006-51,409(15C) was e-filed and furnished by regular U.S. mail to The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 S. Duval Street, Tallahassee, FL 32399-1927; and true and correct copies have been mailed by regular U.S. mail to Brett Alan Geer, counsel for respondent, 3837 Northdale Boulevard, #350, Tampa, FL 33624; Mary Alice Gwynn, respondent and co-counsel, 805 George Bush Boulevard, Delray Beach, FL 33483; and to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300 on this _____ day of March, 2011.

_____
ADRIA E. QUINTELA

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

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

_____
ADRIA E. QUINTELA