IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

ROBERT JOSEPH RATINER,

Respondent.
_____/

Supreme Court Case
Nos. SC08-689

The Florida Bar File
No.: 2008-70,084(15A)

RESPONDENT'S REPLY BRIEF

AND

ANSWER BRIEF ON CROSS APPEAL

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PRELIMINARY STATEMENT

The Florida Bar, Appellee, will be referred to as "The Bar" or "The Florida Bar." Robert Joseph Ratiner, Appellant, will be referred to as "Respondent." The symbol "RR" will be used to designate the report of referee and the symbol "TT" will be used to designate the transcript of the final hearing held on September 11, 2008 and the symbol "SJT" will be used to designate the hearing which was held on August 12, 2008 to resolve both parties' motions for summary judgment. Exhibits introduced by the parties will be designated as TFB Ex. __ or Resp. Ex. __.

SUMMARY OF THE ARGUMENT

This Court has adopted a simple and well balanced system for resolving complaints filed against members of The Florida Bar. The Rules of Discipline provide the framework for insuring that each grievance is carefully considered and only those cases that merit prosecution are prosecuted and that they are prosecuted in a fundamentally fair process in accordance with due process. This case, however, has the opportunity to turn this framework upside down in that a referee has considered matters well outside the Bar's complaint in an attempt to reach a resolution that fit the referee's view of professionalism, rather than follow this Court's precedent regarding ethical breaches.

The Bar, in its complaint alleged that a lawyer engaged in unethical conduct relative to his overreaction to opposing counsel's second attempt to place an exhibit sticker on that lawyer's personal lap top computer. Summary judgment was granted on this point in the Bar's favor[1] and therefore a sanction is warranted. The long standing precedent for the violation found in this case is the imposition of a public reprimand. Notwithstanding this precedent, the referee recommended two alternative sanctions (disbarment or a two year suspension). Both sanctions are not supported by precedent and should not be accepted by this court.

[1] Summary judgment was granted in the Respondent's favor regarding the alleged battery and the claimed rule violations related thereto.

It is evident that the referee's decision to recommend these two alternative sanctions is based upon the referee's decision to accept into evidence matters that were specifically rejected by the Bar's own grievance committee and matters which were deemed by a different grievance committee not to warrant disciplinary action as they recommended diversion to a Practice and Professionalism Enhancement Program. It was improper for the referee to consider these matters as aggravation and to give these other matters greater weight than the charge that was advanced by the Bar in its complaint.

The Respondent in this case fully understands that his actions at the deposition in question warrant a disciplinary sanction. However, the sanctions being recommended by the referee are grossly excessive for the actual conduct that was at issue in the Bar's complaint and as these proposed sanctions are both not supported by existing case law and precedent, the referee's proposed sanctions should be rejected.

ARGUMENT

I. WHETHER A LAWYER, WITH NO PRIOR DISCIPLINARY HISTORY, SHOULD BE DISBARRED BASED UPON PERSONAL CONDUCT AT ONE DEPOSITION?

In this case a referee is recommending that a lawyer be disbarred for a serious overreaction to opposing counsel's two attempts to place the Respondent's personal laptop computer into evidence at a deposition. The actions at issue cover less than three pages of transcript and three minutes of elapsed time on the DVD that was introduced into evidence by the Bar. Resp Ex. 1 (May 17, 2007) p. 153. l. 17 through p. 156, l. 22; TFB Ex. 1. The referee granted partial summary judgment in the Bar's favor concerning the conduct related to the lap top and this is the charge that warrants a disciplinary sanction. See SJT p.62, l.5-11.

A. A PUBLIC REPRIMAND IS THE APPROPRIATE SANCTION, NOT THE REFEREE'S RECOMMENDATION OF A DISBARMENT OR A TWO YEAR SUSPENSION.

The referee and the Bar urge this Court to impose a sanction that is admittedly not supported by existing case law or other precedent. See RR 29-30 and the Bar's brief where it fails to cite to any case law indicating that a two year suspension is the appropriate sanction in this case. This Court has held that a referee's sanction recommendation must have a "reasonable basis" in existing case law and in the Florida Standards for Imposing Lawyer Sanctions. *The Florida Bar*

v. Dove, 985 So. 2d 1001, 1009(Fla. 2008). Both sanctions being recommended by the referee fail to meet this test.

The Bar, while urging this Court to impose a two year suspension, makes reference to the referee's analogy between the theft of client monies and "robbing" a person of their dignity.[2] The Bar points to two theft of client fund cases which resulted in disbarment. *The Florida Bar v. Brownstein*, 953 So. 2d 502 (Fla. 2007); *The Florida Bar v. Travis*, 765 So. 2d 689 (Fla. 2000). These cases are clearly unrelated to an attorney engaging in a verbal confrontation with an opposing counsel during a deposition – which is the charge the Bar, in its complaint, in its argument on summary judgment and in the final hearing, argues is the action that warrants discipline.

The Bar also discusses a dissenting opinion from *The Florida Bar v. Dove*, for the proposition that Justice Lewis saw no difference between the loss of material wealth and the potential loss of a child. In *Dove*, the Court suspended an attorney for knowingly and purposefully engaging in fraudulent conduct relative to the adoption of a minor child resulting in the termination of parental rights. This conduct is totally unrelated to the facts of this case. While one point the Bar is trying to make (a lawyer's misconduct can have more than monetary impact)

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[2] At the core of any theft case is a dishonest act and the referee has specifically found that this Respondent has not engaged in any dishonest act. See RR 33. Thus his analogy, set forth above, fails due to his specific finding that there was no dishonest act in this case.

certainly is valid, its application to the issue raised in its complaint (the lap top incident) is not as dramatic or significant as the potential loss of a child or the battery referenced in *The Florida Bar v. Schreiber*, 631 So. 2d 1081 (Fla. 1994). However, just like in the final hearing, the Bar focuses its arguments not on the lap top incident but on matters specifically rejected by the Bar's own grievance committee or contained in a diversion report that is not considered a disciplinary sanction.[3]

The Bar does discuss the laptop incident at pages 7 and 8 of its brief and in particular sets forth the referee's version of Mr. Ratiner's reaction to Mr. Sherouse's attempt to place Mr. Ratiner's personal lap top computer (inclusive of any attorney client privileged materials that were on that computer) into evidence as an exhibit to the deposition.[4] The Bar, in its brief, never discusses the referee's finding that Mr. Sherouse's actions "were deliberately provocative" and "in

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[3] Interestingly, the majority of the Bar's brief is devoted to alleged aggravating factors and not the lap top incident set forth in its complaint, which incident is the factual basis for the Bar seeking to impose a disciplinary sanction.

[4] The Bar tries to argue in its brief that the Court should compare Mr. Sherouse's reaction (or lack thereof) to the Respondent's decision to require that the deponent's lap top computer be made an exhibit to the deposition. However, a quick examination of the deposition transcript reveals that there was clearly evidence that the "searchable index" given to the Respondent was vastly inferior to that being used by the deponent and which was yet another indication of a "documented . . . pattern and practice of DuPont's deliberate discovery abuse." *The Florida Bar v. St. Louis*, 967 So. 29 108 (Fla. 2007). There was no indication that the deponent's lap top computer contained the type of attorney client privileged material that could be found in the Respondent's personal lap top.

retaliation for Respondent's placing Ms. Naylor's computer into evidence" (RR17-18) or the fact that four distinct hearings were held during the course of the deposition concerning, for the most part, Mr. Sherouse's conduct during the deposition, but not the lap top incident.[5] The Bar also fails to discuss the fact that the deposition moves forward after a short break, even though the Respondent wanted to conclude for the day. Resp. Ex. 1 (May 17, 2007) p. 160. Mr. Sherouse, contrary to his subsequent charges of fear and intimidation, refused to allow the deposition to be concluded for the day and stated right after the laptop incident "We're either going forward with the deposition now or you have terminated it." Resp. Ex. 1 (May 17, 2007) p. 161, l. 1-2.[6] Notwithstanding any of the foregoing, the Respondent realizes his reaction to Mr. Sherouse's second attempt to place an exhibit sticker on his lap top was wrong, inappropriate and deserving of sanction.

The Respondent's initial brief fully explains the existing case law for the type of misconduct charged by the Bar in its complaint and it is evident that a public reprimand and not a two year suspension is warranted in this case.

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[5] Transcripts of these hearings are found in Resp. Ex. 1 [May 14, 2007 at 176-184; May 15, 2007 at 119-129; May 16, 2007 at 87-97 and May 16, 2007 at 183-189].

[6] There were no objections or comments made on the record by the witness, the court reporter or the videographer, requesting that the deposition be stopped for the day as a result of the Respondent's reactions to the lap top incident. In fact, it is the Respondent who is the only person that suggests the deposition should be concluded for the day.

The Bar, in its brief, does not contradict that this Court has consistently imposed public reprimands for the type of conduct found in this case and only when the lawyer continues to be sanctioned for the same type of misconduct does the Court impose a rehabilitative suspension. See for example *The Florida Bar v. Morgan*, 938 So. 2d 496 (Fla. 2006) [91 days suspension after a public reprimand and a ten day suspension for the same conduct.].

In the only direct precedent relied upon by the Bar, it cites to Florida Standard For Imposing Lawyer Sanctions, Standard 7.2 which states that a suspension is appropriate when an attorney "knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public or the legal system." Unfortunately, the Standards do not explain the length of the suspension that should be applied. As such we turn to the case law referenced in the Respondents initial brief. *Morgan*; *The Florida Bar v. Abramson*, 3 So.3d 964 (Fla. 2009).

As the Respondent's initial brief points out, the lawyer in *Abramson*, who already was publicly reprimanded on two distinct occasions and received a ninety one day suspension for the following conduct:

> Abramson's misconduct was egregious. He was disrespectful and confrontational with the presiding judge in an ongoing courtroom proceeding in the presence of the pool of prospective jurors in a criminal case. Regardless of any perceived provocation by the judge, Abramson responded inappropriately by engaging in a protracted challenge to the court's authority.

The Bar, in its brief at page 17, tries to convince the Court that this Respondent's conduct was "much worse" than that found in *Abramson*. However, the Bar simply ignores the fact that Abramson had already been disciplined twice and the Respondent in this case has never been disciplined. The Bar's argument[7] in support of its claim that this Respondent engaged in "much worse" conduct is devoted almost entirely to matters that were dismissed by the Bar's own grievance committee and/or resulted in a non disciplinary diversion. The Bar's comparison must therefore fail.

The Bar admits at page 16 of its brief that: "There has not been any case similar to this one, in which an attorney received a long term suspension or disbarment without a prior disciplinary record." Yet, the Bar still argues that a two year suspension is warranted in this case after admitting that the referee's sanction recommendation has no "reasonable basis" in existing precedent. *Dove*. As this Respondent has never been disciplined, a public reprimand is the appropriate sanction in this case as a public reprimand is the sanction that has been imposed by this Court for this type of conduct where there is no prior disciplinary record. See *The Florida Bar v. Morgan* 717 So. 2d 540 (Fla. 1998); *The Florida Bar v. Uhrig*,

[7] In fact the Bar even engages in speculation about facts not in evidence that others "were too frightened to file grievances" against the Respondent. See the Bar's brief at page 16-17.

666 So. 2d 887 (Fla. 1996); *The Florida Bar v. Buckler*, 771 So. 2d 1131 (Fla. 2000); *The Florida Bar v. Sayler*, 721 So. 2d 1152 (Fla. 1998).

B. THE REFEREE IMPROPERLY FAILED TO CONSIDER MITIGATING FACTORS.

At page 21 of the Bar's brief, the Bar acknowledges that the referee found four mitigating factors (absence of a prior disciplinary record, absence of a dishonest motive, emotional problems and that the Respondent has an intelligent understanding of the law and facts surrounding his cases and believes strongly in the justness of his cause.) However, it is evident that the referee ignored these mitigating factors in weighing the appropriate nature of the disciplinary sanction, especially the lack of a disciplinary record. If the referee had followed the existing case law he would not have recommended more than a public reprimand or short term suspension, because, as the Bar points out in its own brief at page 16: "(t)here has not been any case similar to this one, in which an attorney received a long term suspension or disbarment without a prior disciplinary record."

The Bar takes issue with the Respondent's statement of remorse relative to the lap top incident that is found in the record. TT 169. The Bar claims that this statement of remorse[8] was really an expression of regret for "not having been able to move more quickly to enable him to strike Mr. Sherouse." Bar's Brief at page

[8] "I am sorry I reacted that way, but I'm very glad I reacted that way because quite frankly the - - it could have been worse." TT 169.

23. This is a tortured analysis of the Respondent's testimony. It is clearly evident that the Respondent was trying to convey that he fully realized that if he had attempted to strike Mr. Sherouse that his misconduct would have been much worse and not that he wished he was faster so he could have struck Mr. Sherouse. In this case the Court has the luxury of being able to review the conduct for themselves because it is on videotape[9] and in the record as TFB Ex. 1. An examination of the tape clearly shows two quick steps to the head of the table and then a quick return to the original position after a realization that placing himself on the other side of the table was not appropriate.

On the remorse issue, the Bar cites to the referee's comments found at page 7 of his report wherein he explains why he believes that the Respondent did not express remorse. However, an examination of this explanation reveals that the referee was discussing all the other topics that he allowed into evidence in aggravation rather than the lap top incident.

The cited passage of Respondent's testimony clearly indicates that he stated that he was sorry for the way he reacted to Mr. Sherouse's second attempt to make his lap top an exhibit and this is the incident that the Bar charged in its complaint.

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[9] It is on videotape because the Respondent asked that the videographer turn the recorder back on after Mr. Sherouse made his first attempt to place an exhibit sticker on his lap top. See Resp. Ex 1 (Naylor deposition -May 17, 2007) at 154 and TFB Ex. 1.

C. THE REFEREE IMPROPERLY CONSIDERED CERTAIN MATTERS AS AGGRAVATION.

There are two categories of aggravation that were improperly considered by the referee. They are evidence concerning matters that were specifically rejected by a grievance committee and specifically not included in the Bar's complaint and matters that were referenced in a diversion report. The Bar's argument on this point encompasses a page and a half in its brief at pages 26 and 27. In its brief the Bar basically asserts that a referee should be able to consider anything in aggravation and it appears that the Bar's argument places no limitation on the relevance of the issues, the timeliness of the issues or even double jeopardy considerations.[10] Further, the Bar fails to respond to the argument that matters that were specifically rejected by the grievance committee with a finding of no probable cause should not have been introduced as aggravation. See Initial Brief at 30-32.

Interestingly, over the last several years the Bar has begun pleading in each of its complaints, as it did in this case, the following: "Prior to the filing of this complaint, there has been a finding of probable cause by a grievance committee as required by Rule 3-7.4, Rules Regulating The Florida Bar." See Complaint at

[10] The Bar's reliance upon *The Florida Bar v. Jasperson*, 625 So. 2d 459 (Fla. 1993), is misplaced in that the argument in that case was whether a referee properly accepted "evidence deemed relevant in resolving the factual questions at issue" and not whether certain evidence could be considered in aggravation.

paragraph 2. If a finding of probable cause was not important – why does the Bar plead it? Transversely, a finding of no probable cause should be limiting on The Florida Bar. Admittedly, a finding of no probable cause is not final and can result in further proceedings before a grievance committee or, under certain circumstances, the Board of Governors of The Florida Bar. However, there have been no further proceedings in this case (regarding the matters raised in aggravation) and the matters raised by the Bar in aggravation were specifically rejected by the grievance committee.

The Respondent's initial brief addressed the only known case that is somewhat on point. In *The Florida Bar v. Trazenfeld*, 833 So. 2d 734 (Fla. 2002), a grievance committee entered a finding of no probable cause with a letter of advice as to certain potential rule violations. *Id.* at 736. Two years later the Bar filed a complaint on the same core facts but with different rule violations. *Id*. at 735. While a referee entered summary judgment in Trazenfeld's favor on *res judicata* grounds, the Court reversed finding that the original grievance committee finding of no probable cause was not a final determination[11] and therefore the Bar's prosecution could go forward. *Id.* The difference between this case and *Trazenfeld* is that there was a finding of probable cause from the grievance committee that formed the predicate of the issues raised by the Bar and in this case

[11] See R. Regulating Fla. Bar 3-7.4(j)(3).

there is no probable cause finding on the issues the Referee and the Bar used as aggravating factors. While the Bar cites to *Trazenfeld* for the proposition that the role of a grievance committee is to determine probable cause, the Bar never attempts to set forth a rationale for why the Bar should be able to present evidence of certain issues in a referee proceeding that were specifically found by a grievance committee to be lacking merit or at least at a minimum were insufficient to support a finding of probable cause or require any disciplinary action.

Of necessity, we must discuss the issues raised by the Bar but that were rejected by its own grievance committee. Prior to doing so, it is important to note that each of these issues, which the Bar and the referee used as aggravating factors, were also considered by the trial judge in the case, Amy Steele Donner, as they were brought to her attention via a motion for protective order filed by Mr. Sherouse. While she did not approve of some of the things that occurred during the Naylor deposition, she declined to sanction either attorney.

The referee summed up these other allegations as follows: ". . . it was very inappropriate and unprofessional for Mr. Ratiner to make rude comments to and about opposing counsel and the witness . . ." RR16. In support of its claim of aggravation, the Bar introduced excerpts of the Naylor deposition (TFB Ex. 4, 5,

and 7)[12] as well as an excerpt from a totally unrelated deposition. The Respondent testified about these issues on direct and cross examination. On one of the incidents the Respondent freely admitted that one particular exchange between the two lawyers was "almost childish" and from his viewpoint his commentary about a "bugger" was "inappropriate" and "a poor decision". TT 137, l17-23. This hardly supports the Bar and the referee's claim that the Respondent did not appreciate that some of his commentary during the Naylor deposition was unprofessional.

The Bar and the referee also make mention of the comments made by the Respondent about Ms. Naylor when they had just taken a break from the deposition and Ms. Naylor had walked out of the room. The Naylor deposition clearly reflects that there was a break and that the Respondent had covered his mike to talk to Dr. Haupt. See Resp. Ex 1 (May 16, 2007) 182. Also see TT 138-139. The Respondent has also consistently stated that he did not mean for his comment about Ms. Naylor scratching her crotch to be heard by anyone other than Dr. Haupt. TT p140-141. Further, during his direct testimony he apologized for having made the comment. TT 141, l.2-3. Lastly, during cross examination the Bar counsel asked the Respondent if he felt justified in committing any of the acts the Bar was attempting to use in aggravation and the Respondent answered an

[12] It is from these short snippets of a five day deposition that the referee bases his whole opinion. In essence the referee ignores the totality of the deposition transcript (See Resp. Ex. 1) and instead only views Ms. Naylor through the portions of the deposition that the Bar wanted the referee to see.

unequivocal "No." TT 167, l. 17-21. Notwithstanding this concession, the Court must still look at the proof that was available to the referee concerning each instance alleged by the Bar and the testimony related thereto, because the Bar and the referee paint with a broad brush, ignoring all of the side issues that lead up to the questioned aggravating factor. For example, the Bar and the referee discuss that the Respondent made a comment about "torturing" Ms. Naylor. However, the deposition and the record in this case clearly demonstrate that this comment only came about after Mr. Sherouse purposefully took a break in the deposition causing the Respondent to miss his flight home. See Resp. Ex. 1(May 17, 2007) 148; TT146-147. Was it professional to have said that – no – but it must be placed in its context of a lawyer who was nearing the end of a frustrating multiple day deposition and who, through the deliberate actions of opposing counsel who knew he needed to leave to catch his flight home, now realized that he was going to be unable to travel home that evening.

The Bar and the referee also put great weight on the issues set forth in the September 2006 Grievance Committee Recommendation of Diversion which was introduced at TFB Ex. 8. The initial brief, at pages 26 through 30, fully explains why the diversion recommendation should not have been considered as an aggravating factor. A point not made in the initial brief to support this position is

found in the diversion recommendation on page 2, paragraph V which reads as follows:

> EFFECT OF DIVERION: Diversion to a practice and professionalism enhancement program shall close these disciplinary files without the imposition of a disciplinary sanction and ***diversion shall not constitute a record of professional misconduct***. If the Respondent successfully complete the diversion recommended hereunder, these disciplinary files shall remain closed. (emphasis supplied).

If the diversion recommendation is not considered "a record of professional misconduct," why is the Bar using it as aggravation. The only justification provided by the Bar was that in one prior disciplinary action a reference was made to a diversion recommendation. *The Florida Bar v. Germain*, 957 So. 2d 613 (Fla. 2007). The opinion in discussing why Germain could not claim the mitigating factor of remoteness of prior offenses, as of that date, noted that:

> On June 28, 2001, the Court ordered Florida Bar diversion in Case No. SC96944. this case was resolved one year before Germain became embroiled with Norvell as a co-owner of the building and only three years before most of the misconduct at issue here. Four years before the Florida Bar diversion, this Court publicly reprimanded Germain.

This is distinctly different than being considered as an aggravating factor as part of a lawyer's disciplinary history. Thus, the Bar's reliance on *Germain* is misplaced.[13]

The Bar, in its brief, also discusses an encounter with another lawyer at a children's basketball game at page 14 of its brief. The Bar's description of this event takes great license regarding the actual commentary in the diversion recommendation. In fact, the Bar's own document indicates that there was a "verbal exchange" after this other lawyer "stopped" the Respondent on his way to a seat in the bleachers. Yet, the Bar describes this event as a verbal attack by the Respondent. Further, the diversion recommendation clearly states that the Respondent denied that he was harassing this other attorney.

More importantly, this Court must consider a lawyer's motivations to accept or reject a recommendation of diversion. The lawyer is specifically told in the recommendation that if it is accepted the disciplinary file will be closed without the imposition of any disciplinary sanction. Further, pursuant to The Florida Bar's record retention policy the physical file is destroyed within one year of the closure of the file. In fact, the Bar admitted that it had difficulty in producing the correct version of the diversion recommendation in this case as its file had already been destroyed. TT 22-23.

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[13] A second distinction can be found in that the diversion at issue in *Germain* was imposed after a trial before a referee and not before a grievance committee.

If the Court chooses to accept as aggravation the matters rejected by the grievance committee and the matters set forth in the diversion recommendation, the issue becomes what weight to give them. While these matters certainly create issues of professionalism, when taken individually and as a whole, did not result in sanctions by the trial court and did not even warrant a finding of probable cause by the grievance committee that had all of the operative facts and evidence before it. As such these additional matters should not be given great weight.

D. THE REFEREE'S RECOMMENDED PROBATIONARY TERM REQUIRING ALL FUTURE DEPOSITIONS BE VIDEOTAPED IS NOT AUTHORIZED BY THE RULES REGULATING THE FLORIDA BAR.

The referee, in his probationary terms, recommends that **all** future depositions, wherein the Respondent is a participant, be videotaped even though it appears that the referee is also requiring the Respondent to secure a co-counsel for these very same depositions. These recommendations appear to be duplicative. Further, there is no time frame or methodology for determining when this probationary term would end. As proposed by the referee, this probationary term would last the length of the Respondent's legal career.

The Respondent's initial brief also raised the issue that the requirement to videotape all depositions might create a conflict of interest between the Respondent and his client's in determining whether or not he would have videotaped the particular deposition, absent the probationary term, and whether or

not he could or should bill the client for such cost. The Bar's blanket assessment that the Respondent should be responsible for all costs of videotaping does not necessarily resolve this conflict dilemma or take into account the possibly hundreds of thousands of dollars this requirement might cost over the length of the Respondent's legal career.

CONCLUSION

The Respondent in this case engaged in conduct that this Court has consistently found warrants a public reprimand unless the lawyer had a previous disciplinary record. This Respondent has no prior disciplinary record, yet the Bar and the referee seek to impose at least a two year suspension from the practice of law. At the final hearing, recognizing the existing case law, the Bar sought a ten (10) day suspension. At the sanction hearing, the referee asked by the Bar whether more severe sanctions were supported by precedent and the Bar could point to no precedent to support a disbarment or a long term suspension. It was only when the referee opened the door that the Bar now contends that a long term suspension should be ordered in this case. The referee's sanction recommendations, which are based in part on aggravating factors that should never have been considered, should not be adopted by this Court as they do not have a reasonable basis in existing precedent. Rather, this Court should follow its long standing precedent, affirmed this year in *Abramson*, and impose a public reprimand.

WHEREFORE the Respondent, ROBERT JOSEPH RATINER, respectfully requests that the referee's sanction recommendations be rejected, that the sanction imposed in this case be a public reprimand and that the Court grant any other relief that is deemed reasonable and just.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via U.S. mail on this ___ day of August, 2009 to Randi Klayman Lazarus, Bar Counsel, The Florida Bar, 444 Brickell Avenue, Suite M100, Miami, FL 33131 and to Kenneth Marvin, Staff Counsel at 651 E. Jefferson Street, Tallahassee, FL 32399-2300.

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

Undersigned counsel does hereby certify that this Brief is submitted in 14 point proportionately spaced Times New Roman font, and that the e-mail forwarded to the Court has been scanned and found to be free of viruses, by McAfee.

Respectfully submitted,

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