IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

vs.

HENRY NISSIM ADORNO,

Respondent.
_____/

Supreme Court Case
No. SC09-1012

The Florida Bar File
No. 2006-71,062(11N)

ON PETITION FOR REVIEW

ANSWER AND REPLY BRIEF OF THE FLORIDA BAR

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SYMBOLS AND REFERENCES

For the purposes of this Brief, Henry Nissim Adorno will be referred to as "Respondent", The Florida Bar will be referred to as "The Florida Bar" or "the Bar", and the referee will be referred to as the "Referee". Additionally, the Rules Regulating The Florida Bar will be referred to as the "Rules" and Florida's Standards for Imposing Lawyer Sanctions will be referred to as the "Standards".

References to the Appendix will be set forth as "A" followed by the sequence number and the corresponding page number(s), if applicable. The final hearing before the Referee was held on January 12, 2010 and January 13, 2010. The January 12, 2010 transcript is numbered from pages 1 through 232. References to this transcript will be set forth as "TR. 1/12/10" followed by the corresponding page number(s). There are two separate transcripts from January 13, 2010. The first consists of testimony and argument by counsel and is numbered from pages 1 through 222. References to this transcript will be set forth as "TR. 1/13/10" followed by the corresponding page number(s). The second transcript from January 13, 2010 consists of the Referee's findings and is not cited in this Brief. Respondent's Answer Brief/Initial Brief shall be referenced as "Respondent's Brief" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

The Bar will rely primarily on its statement of the case and the facts as set forth in its Initial Brief; however, the Bar will address certain specific points raised by Respondent in his statement of the case and facts as warranted.

Although the Bar does not contest that Respondent offered numerous character witnesses at the final hearing regarding discipline, with the exception of Mitchell Bloomberg, Robin Campbell, and Jan Atlas (Respondent's partners who were also involved in the Underlying Litigation), none of these witnesses had direct knowledge of, or testified with respect to, the specific facts of this case. Respondent's suggestion that the testimony of these character witnesses negates the possibility that Respondent could have knowingly violated the Bar Rules is misplaced.

As set forth more fully in the Bar's Initial Brief, in the days between the mediation and the Refund Trial, Respondent deliberately sought out the City's "businessman", Arriola, to "structure a business deal" that would best serve the interests of the Named Plaintiffs and Adorno & Yoss. The class claims were set aside (or as the record demonstrates – completely abandoned) in favor of the Named Plaintiffs' claims and a $2 million guaranteed fee for Adorno & Yoss. Respondent's actions were knowing and constituted violations of the Rules as set forth herein.

Respondent states that the Referee's comments at the final hearing somehow belie the Bar's submission that the Referee's Summary Judgment Order reflects knowing, not negligent conduct. The Summary Judgment Order speaks for itself, but it bears reiterating that in part, the Referee stated as follows in the Summary Judgment Order: "It is the totality of the circumstances one must examine in determining Respondent Adorno's conduct. Settling with seven individual plaintiffs to the detriment of the undetermined/putative class -- under the facts of this case was prejudicial, illogical, and unexplainable. As a result of Respondent's prejudice to the class, it follows Respondent took an excessive and indefensible attorney fee." (A1. at 9.) In support of his ruling, the Referee cited Shelton v. Pargo, Inc., 582 F.2d 1298, 1305 (4th Cir. 1978) for the proposition:

> …by asserting a representative role on behalf of the alleged class, these appellees voluntarily accepted a fiduciary obligation towards the members of the putative class they thus have undertaken to represent. They may not abandon the fiduciary role they assumed at will or by agreement with the appellant, if prejudice to the members of the class they claimed to represent would result **or** if they have improperly used the class action procedure for their personal aggrandizement. This has been declared in repeated decisions. (emphasis in Summary Judgment Order.)

The Shelton case was also cited by the Third District Court of Appeals in the Underlying Litigation in Masztal v. City of Miami, 971 So.2d 803, 809 (Fla. 3d DCA 2008) along with other cases which expound upon the nature of a fiduciary relationship. The Third District opinion did not change the state of the law nor did

it impose new restrictions upon Respondent's conduct. Contrary to Respondent's assertion, his conduct was improper at the time it occurred and remains so today.

The Referee was correct that one must view Respondent's conduct in light of the totality of the circumstances. Respondent states that his involvement in the Underlying Litigation was limited to a three day period in May, 2004 and that the Bar's factual recitation is therefore in large part irrelevant to the issue of sanctions. (Respondent's Brief at 17.) First, Respondent's Brief is inaccurate. As is clearly delineated in the Bar's Initial Brief, Respondent was involved in the case at several different points outside of May, 2004. For example, Respondent was in attendance (and spoke) at the February 17, 2004 hearing in which Judge Lopez indicated that class certification was a "no-brainer". Respondent also spent significant time assisting with the Plaintiffs' damages model for the amount of the refund and corresponded with the City in June, 2004 regarding Adorno & Yoss' potential representation of the City. Nonetheless, an attorney's conduct cannot be viewed in a vacuum. The Bar's detailing of the events surrounding Respondent's involvement (events of which Respondent was fully aware) illuminates the egregious nature of the misconduct.

Although Respondent may not have been the lead counsel in the Underlying Litigation, Respondent was the key player in effectuating the windfall settlement for the Named Plaintiffs and in securing the resulting $2 million fee for Adorno &

Yoss. Respondent took advantage of the fact that the class claims were pending to broker a deal for just a handful of individuals (and Adorno & Yoss) and then neither Respondent nor his firm took any steps to pursue the class refund claims. This is precisely what the Shelton court was contemplating when it stated that counsel may not abandon the fiduciary role they assumed if prejudice to the members of the class they claimed to represent would result or if they have improperly used the class action procedure for their personal aggrandizement.

Respondent contends that his conduct could not have been "knowing". By his own admission, however, Respondent knew he was setting aside the claims of persons he himself claimed to represent. As is fully addressed by the Bar in its Initial Brief, Respondent testified that he was representing the entire class at the mediation, at the May 26, 2004 hearing and purportedly when he sought to represent the City of Miami in related litigation against the consultants who drafted the Assessment.

> Q: And at that point [mediation], even though the class wasn't certified, you were representing the interests of the entire class?
> A: No question about that. (A4. at 10.)
>
> ***
>
> Q: I'm a little bit confused, Mr. Adorno, perhaps it's just me. On May 24th, the date of the mediation, was the Adorno firm representing itself as the attorneys for the class?
> A: Yes, Sir.
> Q: On May 26th, at the time the settlement was announced to Judge Lopez, was the Adorno firm holding itself out as attorneys for the class, non-certified?

> A: The answer is no and yes. We didn't announce the settlement to Judge Lopez. The transcript speaks for itself. That wasn't the purpose of that hearing.
>
> And yes, we were still class counsel.
>
> Q: On June 8th, when the letter was sent to the manager, was the Adorno firm still representing itself as class counsel?
>
> A: Yes, Sir. (A4. at 24-25.)[1]

Respondent further states in his facts that the "contingent representation of the City that was spoken of between Adorno and the City Manager would have had value *only if the class was compensated.*" (emphasis in Respondent's Brief at 21). Contrary to Respondent's assertion in the Brief, however, Respondent's prior testimony demonstrates that the firm's attempted representation of the City was contemplated as a means to recover the $7 million which would be paid to the Named Plaintiffs and Adorno & Yoss. It was presented by Respondent as a means to entice the City Manager to agree to the individual settlement. See Respondent's testimony as follows with respect to his conversation with the City Manager:

> Q: So at this point with Mr. Arriola, the individual settlement concept still has not arisen?
>
> A: No. Not – we – we hashed. Initially we rehashed a class settlement. At some given point, you know, Joe looked at me and basically said, okay, is there anything we can do to avoid court today. I said, yeah, I guess, you know, I guess you could. I guess you can, you know, settle with the individual plaintiffs. I mean, you know the exposure that you have with that, but the answer is you can live to

[1] The Bar acknowledges Respondent's testimony at the final hearing that he "did not believe that the putative class was a client," however, this testimony stands in sharp contrast to Respondent's testimony that he was "representing the interests of the entire class" and that "we were still class counsel."

> fight another day. We can settle the individual plaintiffs. He said what's the number. I said it's $7 million. He may have said five; I said seven. He says, okay, but I got to have – I think he originally said three years. He originally said three years. I said, well, I don't have authority to do that, but I'm prepared to recommend it, but Joe, you know, I assume you need it for budgetary reasons. He said yes. I knew what that meant. I said, let's do it two years and I'll – and I'll tell you is I'll go recommend that to the client. And, I mean, that basically was it as to that. We then went off on discussing – I told him, I said and by the way, Joe, I think you can recoup those 7 – those 7 million. He said how. I said, the – I believe that the consultants had gave you advice on the fire – the fire fee had a conflict of interest and I think you have viable claim. He said, are you bullshitting me? And I said no. He says, are you -- feel strongly enough about it that you're willing to take it on a contingency? I said, subject to getting waivers from our clients to represent you, the answer is yes. Then I think we started talking about the Marlins. (A4. at 15-16.) (emphasis supplied.)

Respondent further testified that the firm may have prevailed on a breach of contract claim against the consultants, resulting in a substantial recovery for the City and a significant fee for Adorno & Yoss. Again, this was not contingent on any recovery for the class.

> Q: And based upon the consulting firm and any malpractice done by that firm and/or the attorneys involved in it rendering this advice in reference to the EMS fee, 25-percent agreement in reference to retainer would have spelled out to $1.75 million additional for the firm of Adorno & Yoss?
> A: Are we assuming a $7 million recovery?
> Q: Yes, because didn't you tell Mr. Arriola you felt it was a very good case?
> A: Still is.
> Q: Still is?
> A: Yes.
> Q: And 25 percent of that $7 million would be 1.75?
> A: If your math is correct, it is, but I actually thought we would recover more, because there was a breach-of-contract claim, I think

> that was there, and one of the other damages we would have recovered is: Give us the money back because you didn't give us anything of value, the actual damage would have been higher than 7 million. (A4. at 27-28.)

Respondent's own testimony belies the notion that the representation of the City would only have had value in the event of a recovery by the entire class. This is not evidence that Respondent intended to proceed on behalf of the class. There is no indication in the record that Respondent or anyone at Adorno & Yoss intended to pursue the class refund claims.

SUMMARY OF THE ARGUMENT

Respondent acted in violation of Rules 4-1.5, 4-1.7 and 4-8.4 when he set aside the class refund claims in favor of those of the Named Plaintiffs and a $2 million fee for Adorno & Yoss. Respondent acknowledged that he was representing the putative class throughout the course of the Underlying Litigation and further understood that he owed certain obligations to those class members. Respondent breached his duties to the class members. The $2 million fee which resulted from Respondent's misconduct was thus prohibited by Rule 4-1.5. Respondent's conduct was knowing; not merely negligent. A public reprimand is entirely inadequate as discipline for Respondent's misconduct. The Standards and the case law support a six (6) month suspension.

ARGUMENT

(On Answer to Cross Appeal)

RESPONDENT'S ACTIONS IN ABANDONING THE CLASS CLAIMS IN FAVOR OF A GROSSLY DISPROPORTIONATE SETTLEMENT FOR THE NAMED PLAINTIFFS AND A $2 MILLION FEE VIOLATED RULES 4-1.5, 4-1.7 AND 4-8.4.

Respondent seeks reversal of the Referee's recommendation as to the Rule violations, i.e., Rules 4-1.5, 4-1.7 and 4-8.4 for the following three reasons: (1) Respondent did not have a conflict with a current client because the putative class members were not Respondent's clients; (2) Respondent did not breach any duty, express or implied, to the putative class and the settlement for the Named Plaintiffs did not prejudice the class; and (3) the fee received from the Named Plaintiffs' settlement was not excessive and was to be credited against the final fee when the class was ultimately certified and a class-wide resolution accomplished. The Bar will address each of these points in turn.

Class Members Were Clients
Respondent Violated Rule 4-1.7

As stated by the Referee in his Summary Judgment Order, the Court must look at the totality of the circumstances in judging Respondent's conduct. Respondent argues that the class members were not clients of Respondent or Adorno & Yoss because the class had not yet been certified. Under the facts of this case, Respondent was acting as counsel to the class and the class was a client.

The Court must appreciate the entire relationship between the parties. Unlike in a typical class action case, the class here was an easily ascertainable group of persons, i.e., all City of Miami taxpayers who had paid the improper Assessment. Many of these class members had actually contributed funds to TTUFF for the sole purpose of securing legal representation from Atlas Pearlman (the firm that merged with Adorno & Yoss) to seek a refund of the Assessment. Judge Lopez had stated in open court and in the presence of Respondent that class certification was a "no-brainer" and the parties had simply agreed in the interest of judicial economy to deal with the issue of whether a refund was due before finalizing the certification. As stated by the Third District, "Class certification here was inevitable, and represented nothing more than a ministerial act, the failure of which cannot be used to circumvent or undermine a fiduciary relationship." Masztal at 808. Most importantly, however, is Respondent's own admission, quoted *supra*, that he was representing the class.

Respondent abandoned the class claims in favor of those of the Named Plaintiffs and a $2 million fee. Respondent thus put his personal financial interest and that of the Named Plaintiffs over that of his other clients, the class, in violation of Rule 4-1.7.

Respondent Breached a Duty to the Class
The Class Was Prejudiced

Respondent further argues that the Third District announced a new standard of conduct in Mazstal that was not extant at the time Respondent brokered the $7 million individual settlement. Contrary to Respondent's assertions, the Third District's opinion did not change the state of the law. The opinion does not announce any such change and nothing in the Mazstal decision created concepts which were unknown or unstated in Florida. Instead, the opinion relies only upon well established case law regarding the nature of a fiduciary relationship and concludes that the Named Plaintiffs and Adorno & Yoss breached a fiduciary duty to the class.

The Third District did not address the issue of whether an attorney-client relationship existed. Instead, the court stated that, "at the very least, there was an implied fiduciary relationship between the original plaintiffs, Adorno & Yoss, and the class." Masztal at 809 (emphasis supplied). The court did not need to reach the issue of an attorney-client relationship to render its conclusion that the trial court properly set aside the settlement and it did not find that no such relationship existed under these facts.[2]

The Third District did not hold that an implied fiduciary relationship exists

[2] In fact, the concurrence in the Third District opinion states that "…when advising the trial court of this settlement, Mr. Adorno, as attorney for the entire class, told the trial court…." Masztal at 810 (emphasis supplied).

between all class counsel and putative class members under all circumstances.[3] The court states that there was, at the very least, an implied fiduciary relationship "in this suit". Masztal at 809 (emphasis supplied). In addressing the specific set of circumstances in this case the court noted *inter alia* that class certification was nothing more than a "ministerial act" and that "it is undisputed…that everyone treated the case as though the class had been certified." Masztal at 806 and 808. Respondent's Brief completely disregards the undisputed fact that Judge Lopez had made it abundantly clear that he intended to certify the class once the refund issue had been resolved.

Respondent cites Formento v. Joyce, 522 N.E.2d 312, 317 (Ill.App. 1988) wherein the court held that the counsel for the individual plaintiffs owed no duty to the unnamed members of the uncertified class action. Formento is clearly distinguishable from the instant case. In reaching its decision, the Formento court examined the facts of that case and stated:

> Furthermore, in the present case, there is no clear indication that the representation by defendants [counsel for the individual plaintiffs] was intended to directly confer a benefit upon plaintiffs [unnamed class members]. Rather, the clear indication is to the contrary. Defendants, although originally filing the suit as a class action, never pursued certification of the class which is necessary to maintain a class action suit. (See Ill.Rev.Stat.1985, ch. 110, par. 2-801.) Moreover, defendants moved for dismissal of the class action

[3] Similarly, the ABA Opinion cited by Respondent at p. 36 of Respondent's Brief addresses the obligations of class counsel in general terms. The opinion does not contemplate the unique facts of this case.

> allegations which motion was granted. The act of originally filing a cause of action as a class action suit, without more, cannot be said to clearly indicate an intent to benefit the unnamed members of the purported class. As such, defendants in this case owed no duty to plaintiffs. Formento at 317 (emphasis supplied).

In contrast, Respondent and Adorno & Yoss actively pursued class certification and the court had stated unequivocally that the class would be certified.

The Bar maintains that for the reasons stated more fully above and in its Initial Brief (i.e., that the Retainer Agreement expressly stated that funding for the legal representation was to be supplied by TTUFF, through its solicitation of monies from the larger class, and that Respondent admitted that he represented the class) that the class was in fact a client at all material times. Nonetheless, even if the class were not a client, a fiduciary relationship existed by virtue of the circumstances presented by this case. Respondent breached that duty when he abandoned the class refund claims. Even were the Court to determine that the class was not a client for purposes of Rule 4-1.7, Rule 4-8.4 does not require an attorney-client relationship and a suspension remains the appropriate sanction.

Respondent argues that his partners advised that they could settle the Named Plaintiffs' claims so long as they did not prejudice the class and throughout Respondent's Brief, Respondent argues that the class was not prejudiced. First, Respondent cannot abdicate responsibility for his actions by stating that he relied upon the advice of others. See The Florida Bar v. St. Louis, 967 So.2d 108, 118

(Fla. 2007)(a lawyer is bound by the rules of professional conduct even if the lawyer is instructed otherwise by another person; defense based on advice of counsel is not available to respondents in Florida Bar discipline cases unless specifically provided for in a rule or considered as a matter in mitigation).

It is not the Bar's position in this discipline proceeding that the class was prejudiced by the running of a statute of limitations. To the contrary, the Bar has maintained throughout these proceedings that the class was prejudiced because their claims were abandoned in favor of those of the Named Plaintiffs and a guaranteed $2 million fee for Adorno & Yoss. Assuming *arguendo* that Respondent intended to pursue the class claims at all, at the very least, the class was prejudiced by the substantial delay in the pursuit of their claims. Per Respondent's testimony as cited in the Bar's Initial Brief, the class claims may have been delayed until after the City made the second installment payment to the Named Plaintiffs in December, 2005 (almost two years after the settlement was reached with the Named Plaintiffs in May, 2004 and over seven years since the inception of the class action lawsuit in May, 1998).[4]

[4] Respondent also argues that Shelton is distinguishable from this case because the settlement with the Named Plaintiffs did not involve a dismissal. The Bar concedes that the settlement did not require dismissal; however, the case could not have been dismissed until such time as the Named Plaintiffs received their second installment payment in December, 2005. Also, a second unrelated apportionment issue remained outstanding in the Underlying Litigation. This is not evidence that Respondent intended to pursue the class refund claims.

Prejudice is also not the only yardstick by which to measure Respondent's conduct. As cited *supra*, Shelton states that class representatives may not abandon the fiduciary role they assumed if prejudice to the members of the class they claimed to represent would result or if they have improperly used the class action procedure for their personal aggrandizement.

Regardless of prejudice to the class, the Named Plaintiffs, aided by Respondent, undeniably utilized the class action device for their personal aggrandizement. Respondent could never have achieved a $7 million settlement with the City without leveraging the strength of the class claims. Respondent and the Named Plaintiffs then conspired to keep silent about the settlement for *at least* the better part of 2004. Once other class members discovered the windfall settlement, Adorno & Yoss opposed their attempts to intervene to protect their own rights.

Respondent also attempts to refute the Referee's comment in the Summary Judgment Order that, "Settling with seven individual plaintiffs to the detriment of the undetermined/putative class -- under the facts of this case was prejudicial, illogical, and unexplainable" (A1. at 9) by explaining the City's reasoning for settling the individual claims. (Respondent's Brief at 39.) It is wholly irrelevant that the City had a logical reason for paying an exorbitant amount to settle just the claims of the Named Plaintiffs. The City's rationale has no bearing on

Respondent's misconduct.[5]

The $2 Million Fee Constituted a Violation of Rule 4-1.5

The Referee properly determined that, "As a result of Respondent's prejudice to the class, it follows Respondent took an excessive and indefensible attorney fee." (A1. at 9.) Indeed, any fee at all which resulted from the abandonment of one group of clients in favor of another and/or from the improper use of the class action procedure for one's own personal aggrandizement would be prohibited by Rule 4-1.5. Respondent states that, "Adorno & Yoss agreed that the [$2 million] fee would be credited for the benefit of the future class against any fee awarded by the Court after certification and the class claim satisfaction." (Respondent's Brief at 48.) Respondent argues that this is a clear indicator that Adorno & Yoss intended to pursue those claims; however, as the record demonstrates, there is not one piece of documented evidence that such an "agreement" existed. Mitchell Bloomberg testified at the final hearing:

> Q: Mr. Bloomberg, you testified that the two million dollar fee that Adorno & Yoss was to receive from the seven million dollar settlement with the named plaintiffs was to be credited to the putative class; is that correct?

[5] Quotations from Respondent's testimony from the final hearing outlined on pp. 41-42 of Respondent's Brief characterize the $7 million individual settlement offer as originating with the City Manager; however, it should be noted that Respondent initially offered the $7 million to settle the individual claims. See Respondent's testimony at TR. 1/13/10 at 165 and at A4. at 15-16 wherein Respondent stated, "He [the City Manager] said what's the number. I said it's $7 million."

A: That's correct.

Q: Is there any document that memorializes that agreement that expressly states that that two million dollars is going to be credited to a recovery, the class- -

A: I believe that the settlement disbursement schedule, when you read that in conjunction with the engagement letter, does.

Q: Okay. The engagement letter, if I am correct, you stated earlier does not contemplate the individual settlement or a contingency fee agreement; is that right?

A: It does not contemplate an individual settlement and it does not contemplate a contingency fee, correct.

Q: The only thing that the settlement disbursement schedule states, under the section attorneys' fees, two million dollars, and I'm quoting from it: Less to Adorno & Yoss, PA per attorney/client agreement of May 28th, 1998 and agreement of clients on May 26th, 2004.

A: That's what it says, yes, ma'am.

Q: So one would have to assume from that statement about the agreement of clients on May 26th, 2004, without further written proof, that that two million dollars was going to be credited to the class?

A: If you add the word further written proof, yes, that's written proof.

Q: That's written proof, but all it says is agreement of clients on 5/26/04.

A: That's what is says, yes, ma'am. (TR. 1/12/10 at 185-187.)

The Settlement Disbursement Schedule referred to by Bloomberg only states as follows with respect to the Adorno & Yoss fees: [6]

Attorneys' Fees	$2,000,000.00
Less to Adorno & Yoss, P.A. per Attorney-Client Agreement of May 28, 1998 and agreement of Clients on 5/26/04	

Nothing in the Schedule or the referenced Attorney-Client Agreement (the original Retainer Agreement with Atlas Pearlman) indicates that the $2 million fee was to be credited in the event of some future class recovery. Indeed, the class claims are not mentioned at all in the Schedule. One would need to extrapolate from the phrase "agreement of Clients on 5/26/04" that the firm intended to proceed on behalf of the class and that the fee would eventually be credited to the class. Certainly there is no language a class member could rely upon to enforce any such agreement even assuming *arguendo* that it was discussed with the Named Plaintiffs. Respondent's bald assertion that the fee was to be credited to the class is unsupportable and therefore has no bearing whatsoever with regard to Respondent's intention to pursue the class refund claims.

[6] The Settlement Disbursement Schedule is included as Exhibit "P" to the Bar's Appendix to its Consolidated Statement of Undisputed Facts in support of its Motion for Summary Judgment and is part of the record before the Court. The May 28, 1998 Retainer Agreement is also included therein as Exhibit "A".

(On Reply)

RESPONDENT'S MISCONDUCT WARRANTS A SIX (6) MONTH SUSPENSION.

The Bar cited several of this Court's prior discipline decisions in its Initial Brief which demonstrate that a suspension is the appropriate sanction for a knowing violation of Rules 4-1.5, 4-1.7, and 4-8.4. As demonstrated *supra* Respondent's conduct was knowing and thus requires a suspension under the Standards. The Bar will rely upon its arguments in its Initial Brief regarding the Standards and the applicability of each of the cited prior discipline cases. While the length of each suspension varies depending upon the individual facts of each case, the Bar urges that the appropriate sanction for Respondent's misconduct is a six (6) month suspension.

CONCLUSION

Based upon the foregoing reasons and citations of authority, The Florida Bar respectfully submits that the Referee's recommendation of discipline is too lenient and that Respondent should receive a six (6) month suspension.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the Answer and Reply Brief of The Florida Bar were sent via electronic mail to the Honorable Thomas D. Hall, Clerk, at e-file@flcourts.org, and via Federal Express Mail (809685807424) to Supreme Court Building, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399; and a true and correct copy was sent via electronic mail to Andrew Scott Berman, Attorney for Respondent, at aberman@ybkglaw.com, and via regular mail to 17071 West Dixie Highway, Miami, Florida 33160, and to Bruce S. Rogow, Attorney for Respondent, at brogow@rogowlaw.com, and via regular mail to 500 East Broward Boulevard, Suite 1930, Ft. Lauderdale, Florida 33394; and via regular mail only to Kenneth L. Marvin, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399, on this 25th day of June, 2010.

_____

KASEY L. PRATO
Bar Counsel

CERTIFICATE OF TYPE, SIZE AND STYLE

I HEREBY CERTIFY that the Answer and Reply Brief of The Florida Bar is submitted in 14 point proportionately spaced Times New Roman font in Microsoft Word format.

_____

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