IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. SC11-1136
[TFB No. 2010-31,479(09B)]

v.

CLINT JOHNSON,

Respondent.
_____/

THE FLORIDA BAR'S INITIAL BRIEF

PATRICIA ANN TORO SAVITZ
Bar Counsel
The Florida Bar
1000 Legion Place, Suite 1625
Orlando, Florida 32801-1050
(407) 425-5424
Attorney No. 559547

KENNETH LAWRENCE MARVIN
Staff Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600
Attorney No. 200999

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600
Attorney No. 123390

TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS iii

SYMBOLS AND REFERENCES v

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 4

SUMMARY OF THE ARGUMENT 10

ARGUMENT 12

POINT I 12

THE REFEREE ERRED BY FINDING RESPONDENT NOT GUILTY OF VIOLATING RULE 4-8.4(c) IN LIGHT OF THE FINDINGS IN THE REPORT OF REFEREE AS WELL AS THE RECORD EVIDENCE.

POINT II 25

THE REFEREE ERRED IN HIS FINDINGS CONCERNING AGGRAVATION AND MITIGATION.

POINT III 32

THE APPROPRIATE SANCTION IN THIS MATTER IS AT LEAST A THREE YEAR SUSPENSION BASED ON THE FINDINGS, CASE LAW, AND THE STANDARDS FOR IMPOSING LAWYER DISCIPLINE.

CONCLUSION 39

CERTIFICATE OF SERVICE 41

COMPLIANCE WITH RULE 9.210(a)(2) 42

APPENDIX 43

INDEX TO APPENDIX 44

TABLE OF CITATIONS

PAGE

Cases

The Florida Bar v. Barrett, 897 So.2d 1269 (Fla. 2005) 12
The Florida Bar v. Bennett, 276 So.2d 481 (Fla. 1973) 38
The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1979) 33
The Florida Bar v. Brown, 905 So.2d 76 (Fla. 2005) 38
The Florida Bar v. Burke, 578 So.2d 1099 (Fla. 1991) 13
The Florida Bar v. Diaz-Silveria, 557 So.2d 570 (Fla. 1990) 33
The Florida Bar v. Fredericks, 731 So.2d 1249 (Fla. 1999) 15, 16
The Florida Bar v. Herman, 8 So.3d 1100 (Fla. 2009) 26, 33
The Florida Bar v. Korones, 752 So.2d 586 (Fla. 2000) 33
The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983) 38
The Florida Bar v. Mason, 826 So.2d 985 (Fla. 2002) 36
The Florida Bar v. Mirk, 64 So.3d 1180 (Fla. 2011) 32, 33
The Florida Bar v. Neu, 597 So.2d 266 (Fla. 1992) 37
The Florida Bar v. Riggs, 944 So.2d 167 (Fla. 2006) 10, 13, 16, 34, 39
The Florida Bar v. Rotstein, 835 So.2d 241 (Fla. 2003) 33
The Florida Bar v. Spear, 887 So.2d 1242 (Fla. 2004) 32, 38
The Florida Bar v. Stanton, SC06-408 (July 17, 2007) 37
The Florida Bar v. Valentine-Miller, 974 So.2d 333 (Fla. 2008) 38
The Florida Bar v. Watson, SC09-2022 (Dec. 8, 2011) 16
The Florida Bar v. Weiss, 586 So.2d 1051 (Fla. 1991) 37
The Florida Bar v. Whigham, 525 So.2d 873 (Fla. 1988) 34
The Florida Bar v. Whitlock, 426 So.2d 955 (Fla. 1982) 35
The Florida Bar v. Wolf, 930 So.2d 574 (Fla. 2006) 35

Rules Regulating The Florida Bar

4-1.15 2
4-8.4(c) 2, 10, 12, 13, 14, 15, 16, 25, 33
5-1.1(a)(1) 2
5-1.1(b) 2
5-1.2(a) 2
5-1.2(b) 2
5-1.2(c) 2

5-1.2(d) 2

Florida Standards for Imposing Lawyer Sanctions

4.12 37
7.2 37
9.22(b) 8, 10, 26, 31
9.22(e) 8, 10, 26, 31
9.32(b) 26, 32
9.32(e) 26, 32

SYMBOLS AND REFERENCES

In this brief, The Florida Bar shall be referred to as "The Florida Bar" or "the bar."

The transcript of the final hearing held on September 1, 2011, September 2, 2011, September 7, 2011, and September 13, 2011, shall be referred to as "T" followed by the cited page number(s). (T-__)

The Report of Referee dated September 19, 2011, shall be referred to as "ROR" followed by the referenced page number(s). (ROR-_)

The bar's exhibits will be referred to as "B-Ex." followed by the exhibit number. (B-Ex.__)

The respondent's exhibits will be referred to as "R-Ex." followed by the exhibit number. (R-Ex.__)

The trust account previously referred to as "trust account ending in 4380" shall be referred to as the "TA-1 account."

STATEMENT OF THE CASE

This matter originated as a result of The Florida Bar filing a Petition for Emergency Suspension against respondent on March 31, 2011, in Supreme Court Case Number SC11-622. The bar's petition, which was supported by the affidavit and attachments of Clark V. Pearson, Certified Public Accountant and Chief Auditor of The Florida Bar, alleged that respondent was causing great public harm by misappropriating trust funds. The Court entered an Emergency Suspension Order on April 11, 2011. Respondent filed a Motion for Dissolution and The Honorable Terence R. Perkins was assigned to hear the matter. Subsequent to the hearing held on April 28, 2011, the referee filed his report recommending modification of the emergency suspension. The Florida Bar filed a Petition for Review of the Report of Referee. On November 3, 2011, the Court disapproved the Report of Referee and ordered that the emergency suspension order remain in full force and effect until further order of the Court.

On June 10, 2011, the bar filed its complaint against respondent, which was subsequently assigned Supreme Court Case No. SC11-1136. The Honorable Terence R. Perkins was appointed as referee on June 20, 2011. The final hearing as to the evidence and sanction was held on September 1, 2011, September 2, 2011, September 7, 2011 and September 13, 2011.

The referee entered his final Report of Referee on September 19, 2011, finding respondent guilty of violating the following Rules Regulating The Florida Bar: 4-1.15 [Safekeeping Property]; 4-5.3(b)(2) [Responsibilities Regarding Nonlawyer Assistants]; 5-1.1(a)(1) [Trust Account Required; Commingling Prohibited]; 5-1.1(b) [Application of Trust Funds or Property to Specific Purpose]; and, 5-1.2(a), (b), (c), and (d) [Trust Accounting Records and Procedures]. Due to the referee's finding that respondent's actions were negligent rather than intentional, he found respondent not guilty of violating Rule 4-8.4(c), which states that an attorney shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. The referee further recommended that respondent receive a six month suspension, *nunc pro tunc* to April 11, 2011; a one year period of probation involving monitoring of respondent's trust account, LOMAS, Trust Accounting Workshop, and Ethics School; and payment of the disciplinary costs. (ROR-46-47).

At its October 2011 meeting, the Board of Governors of The Florida Bar considered this case. The Board voted to petition for review of the Report of Referee and to seek at least a three year suspension from the practice of law. Thereafter, the bar filed its Petition for Review on or about November 10, 2011.

Throughout this proceeding, respondent filed several motions requesting an order to allow him to continue disbursing or withdrawing funds from his frozen

trust and operating accounts. On August 31, 2011, this Court denied respondent's Supplemental Emergency Motion Requesting the Florida Supreme Court to Relinquish Jurisdiction to the Referee in the above Captioned Cases to Enter Orders on an Interim Basis Solely Relating to Financial Disbursement and Withdrawals from Respondent's Trust and Operating Accounts. On November 3, 2011, this Court granted respondent's Unopposed Motion for Entry of an Order Allowing Transfer of all Bank of America Accounts Under the Johnson Law Group PLLC From Bank of America, N.A. to M&I Bank.

STATEMENT OF THE FACTS

Respondent is the sole managing attorney and owner of The Johnson Law Group, located in Orlando, Florida. Respondent is only licensed to practice law in the State of Florida. Respondent's firm, The Johnson Law Group, had at one point approximately 13,200 debt management clients (B-Ex. 26, p. 41). Respondent maintained multiple trust accounts, all of which contained client funds (B-Ex. 22). In addition, respondent maintained multiple operating accounts (B-Ex. 22).

The Florida Bar received an Attorney Trust Account Overdraft Report from Bank of America dated May 4, 2010 regarding trust checks respondent issued to clients representing settlement proceeds from his TA-1 account (B-Ex. 7). As a result, the bar initiated a compliance audit. As part of the audit, respondent was served with a subpoena duces tecum issued by the grievance committee which required respondent to produce complete trust records for all his accounts. Despite having numerous trust accounts, respondent failed to produce complete trust records for all his accounts. Due to respondent's failure to fully comply with the subpoena duces tecum, the bar's auditor was only able to conduct a compliance audit on respondent's trust account involving the NSF trust checks, referred to as the TA-1 account (B-Ex. 22; T-97). The only compliance audit to be completed on any of respondent's trust accounts was performed by the bar's auditor (ROR-6).

The bar's audit revealed that there were numerous and ongoing shortages in respondent's TA-1 trust account for 22 of the 23 months of the audit period of January 1, 2009 through November 30, 2010 (B-Ex. 22; T-106). The shortages in the TA-1 trust account were based on respondent's own trust records and ranged from $5,066.60 up to $153,912.03 (B-Ex. 22; T-107). Respondent's records also revealed at least 14 separate occasions in which there was a negative daily balance, as reflected in respondent's bank statements for the TA-1 account (B-Ex. 14, 22). Based on respondent's records, his TA-1 account did not contain sufficient funds to meet the obligations to respondent's clients (B-Ex. 13, 22). The audit also established that there were multiple instances of misappropriation by respondent from his TA-1 account. Respondent took funds to which he was not entitled and there were instances in which respondent took funds in advance of the deposit of proceeds and instances in which respondent removed funds twice on behalf of the same client (B-Ex. 22; T-144, 155).

The audit further revealed that respondent made more than 30 improper and unauthorized transfers from his TA-1 trust account in order to cover shortages in his main operating account (OA-1) (B-Ex. 22; T-142-143). According to the records, once the trust funds were in the OA-1 account, respondent used the funds on multiple occasions for personal expenses such as payments for luxury cars and a

$20,000.00 transfer into his personal money market account (B-Ex. 16; T-148-154). The bar's audit also revealed that there were large undocumented transfers from respondent's numerous other trust and operating accounts (B-Ex. 22).

Respondent maintains that all the shortages in his TA-1 trust account were due to the theft and mismanagement committed by his trusted long-time former employee, Deanna Cintron (T-480, 482-483, 487, 490-491, 496). It was respondent's position that there was no intentional or knowing misuse of client funds and that no clients were harmed as a result of the mismanagement and theft by respondent's employee (T-495). During Ms. Cintron's testimony at the final hearing, she admitted to stealing money from respondent's OA-1 account by using an ATM card for that account and to concealing bank statements and information regarding trust transfers concerning the respondent's various bank accounts (T-260; 277, 278). Respondent also admitted in his testimony that he failed to maintain the required trust records and failed to perform the required trust procedures (T496-499).

Respondent hired a former bar auditor to bring the records for the TA-1 account into compliance with Chapter 5 regarding trust accounts (R-Ex. 5). Respondent also deposited funds into this trust account to cover the shortages (T-118). The TA-1 account was in balance and in compliance as of March 31, 2011

(T-118).

The referee's report states that the bar's auditor was the only expert to complete a full compliance audit of respondent's TA-1 account, which was the subject of the overdraft reports (ROR-5-6). The referee found that respondent's trust records and procedures were woefully inadequate (ROR-27). In addition, the referee cited respondent's failure to regularly and directly supervise his trust accounts as well as respondent's failure to strictly comply with the requirements of Chapter 5 regarding trust accounts as the basis for the situation in which respondent's employee was able to steal money (ROR-27). The referee specifically found that the responsibility for full compliance with Chapter 5 regarding trust accounts rests solely with the lawyer (ROR-27). The referee further found that respondent's actions with his trust account were negligent rather than intentional and that there was no evidence that respondent had the intent to misappropriate trust funds (ROR-29).

At the same time, the referee found that respondent committed technical misappropriation by taking his fees from trust prematurely (ROR-9). The referee's report cited the expert opinion of the bar's auditor that there was misappropriation by respondent by taking fees prior to the corresponding deposit (ROR-6-7, 29; B-Ex. 22; T-154). Respondent, as the "captain of the ship," allowed transfers to occur

into and out of his trust account. The transfers permitted the balance in respondent's trust account to fall below the required balance necessary to pay all his clients all of their money (ROR-26). The opinion of the bar's auditor, as referenced in the referee's report, was that the shortages in the trust account created a situation in which there were insufficient funds to satisfy respondent's obligations to his clients (ROR-7). The referee found that in such a situation, even during a short period of time, shortages would have to be covered by relying on deposits from other clients (ROR-26). The referee acknowledged the sanctity of trust accounts, stating that they cannot rely on this type of "ponzi scheme" funding (ROR-26). The referee also specifically found respondent fully responsible for the transfers which occurred on his watch (ROR-26).

The referee fully accepted the testimony of respondent and Ms. Cintron, despite evidence which established numerous contradictions in their testimony concerning the details of the theft and mismanagement (B-Ex. 27, p. 32; T-312, 313; B-Ex. 27, p. 38; T-310-312; B-Ex. 26, p. 223-225; T-485, 493-496). The referee found respondent to be negligent in his supervision of Ms. Cintron (ROR-42).

The referee also failed to find certain aggravating factors [9.22(b) dishonest or selfish motive and 9.22(e) bad faith obstruction of the disciplinary process by

intentionally failing to comply with rules or orders of the disciplinary agency] presented by the bar. This was contrary to the evidence and testimony, which included numerous examples of respondent's personal use of trust funds and his failure to fully comply with the bar's subpoena to produce complete trust records. The evidence and testimony also included respondent's failure to comply with the Court's order of emergency suspension by not promptly notifying his clients of the suspension (ROR-36-37; B-Ex. 22; T-154).

SUMMARY OF THE ARGUMENT

The referee in this matter erred by finding respondent not guilty of violating Rule 4-8.4(c) (for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). This finding should not be upheld as it is clearly erroneous and without support in the record. Further, the referee's report contains numerous findings which clearly establish violations of Rule 4-8.4(c) and intent as set forth in applicable case law. In The Florida Bar v. Riggs, 944 So.2d 167, 171 (Fla. 2006), the Court held that knowingly or negligently engaging in sloppy bookkeeping amounts to intent under Rule 4-8.4(c). The facts and findings in this matter support respondent's gross negligence and misappropriation and this Court should carefully examine the record in regard to respondent's violation of Rule 4-8.4(c).

The bar maintains that the referee, contrary to the evidence and testimony in the record, failed to find certain aggravating factors [9.22(b) dishonest or selfish motive; and 9.22(e) bad faith obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the disciplinary agency]. There was extensive testimony and evidence to clearly establish respondent's personal use of trust funds on multiple occasions as well as his failure to fully comply with the bar's subpoena and numerous requests to produce full and complete trust records as required by Chapter 5 regarding trust accounts. The evidence and testimony also

clearly supported respondent's failure to comply with the Court's order of emergency suspension by not promptly notifying his clients of the suspension. Finally, the bar maintains that the case law and Standards for Imposing Lawyer Discipline support at least a three year suspension for respondent's admitted misconduct in this matter.

ARGUMENT

POINT I

THE REFEREE ERRED BY FINDING RESPONDENT NOT GUILTY OF VIOLATING RULE 4-8.4(c) IN LIGHT OF THE FINDINGS IN THE REPORT OF REFEREE AS WELL AS THE RECORD EVIDENCE.

The Court has stated that a referee's findings of fact regarding guilt carry a presumption of correctness that should be upheld unless clearly erroneous or without support in the record. The Florida Bar v. Barrett, 897 So.2d 1269, 1275 (Fla. 2005). The referee in this matter erred by finding respondent not guilty of violating R. Regulating Fla. Bar 4-8.4(c) (for engaging in conduct involving dishonesty, deceit, fraud, or misrepresentation) as there is competent, substantial evidence and testimony in the record, including respondent's own admissions, to support respondent's misconduct with his trust account involving knowingly or negligently engaging in sloppy bookkeeping. Further, the Report of Referee specifically contains numerous examples of respondent's negligent conduct with his trust accounts. Thus, the referee's finding should not be upheld as it is clearly erroneous.

Intent is a required element to support a violation of Rule 4-8.4(c) regarding dishonesty, fraud, deceit or misrepresentation. This element may be established by showing that an attorney knowingly or negligently engaged in sloppy bookkeeping.

It may also be established by showing that an attorney knowingly assigned his trust account responsibilities to a nonlawyer employee and subsequently failed to supervise the employee. In The Florida Bar v. Riggs, 944 So.2d 167, 171 (Fla. 2006), the Court held that an attorney's failure to supervise his employee constituted intent because he knowingly assigned his trust account responsibilities to the employee and then failed to manage her activities. The Court specifically stated that "[k]nowingly or negligently engaging in sloppy bookkeeping amounts to intent under Rule 4-8.4(c)." Id. at 171.

The referee failed to consider this Court's holdings as found in Riggs regarding respondent's intent. Instead, the referee cited The Florida Bar v. Burke, 578 So.2d 1099 (Fla. 1991). Despite specifically finding that respondent was the "captain of the ship" and "unquestionably responsible" for the sanctity of his trust accounts (ROR-26), the referee failed to find that respondent had the requisite intent to misappropriate trust funds (ROR-29). In addition, the referee's report repeatedly emphasized that respondent improperly relied on his employee, Deanna Cintron, to manage his trust accounts. Respondent failed to properly supervise Ms. Cintron after delegating authority to her to manage and balance his trust accounts (ROR-27).

The referee also found that respondent failed to regularly and directly

supervise his trust accounts and failed to require strict compliance by his staff with the provisions in Chapter 5 regarding trust accounts. The referee's report referenced that respondent's trust records and procedures were "woefully" inadequate (ROR-27-29). Respondent engaged in the same conduct as Riggs wherein he knowingly assigned his trust account responsibilities to a nonlawyer employee and subsequently failed to supervise the employee. Respondent's conduct was ongoing and not isolated in nature. Thus, the findings in the Report of Referee in this matter clearly establish intent and support a violation R. Regulating Fla. Bar 4-8.4(c) by respondent.

The referee's report also found that respondent committed technical misappropriation by prematurely taking his fees from trust (ROR-9). As the "captain of the ship," respondent allowed transfers to occur into and out of his trust account for which he, not his employee, was fully responsible. The transfers caused the balance in respondent's trust account to be insufficient to cover all his trust obligations to all his clients (ROR-26). Even during a short period of time, such shortages would have to be covered by relying on deposits from other clients (ROR-26). The referee acknowledged the sanctity of trust accounts, stating that they cannot rely on this type of "ponzi scheme" funding (ROR-26). This "ponzi scheme" funding establishes the requisite intent under the applicable case law.

In addition to the Report of Referee, the evidence and testimony in the record also supports a finding of intent and a violation of R. Regulating Fla. Bar 4-8.4(c) by respondent. There is no dispute that shortages existed in respondent's TA-1 account. There is also no dispute that for an extended period of time, respondent failed to follow trust accounting procedures, failed to maintain adequate records, and engaged in sloppy bookkeeping. Respondent's misconduct was therefore intentional, whether he personally caused the trust account violations or whether he grossly neglected the supervision of his trust accounts.

In The Florida Bar v. Fredericks, 731 So.2d 1249 (Fla.1999), the Court specifically stated that "in order to satisfy the element of intent it must only be shown that the conduct was deliberate or knowing." Id. at 1252. Respondent's own admissions clearly establish that respondent knowingly or negligently engaging in sloppy bookkeeping (ROR-21). Respondent admitted that he was the "captain of the ship" for his law firm, that he failed to maintain the proper trust records and procedures during the audit period, and that he failed to continually and directly supervise his trust accounts. Such acknowledged conduct, especially over an extended period of time, clearly amounts to intent under Rule 4-8.4(c). Based on the foregoing analysis alone, the bar submits that respondent should be found guilty of violating Rule 4-8.4(c).

In The Florida Bar v. Watson, Supreme Court Case Number SC09-2022, opinion issued December 8, 2011, rehearing time not yet expired, the Court disapproved the Report of Referee recommending a 90-day suspension for intentional trust violations and imposed a three year suspension. The Court held that an attorney's conduct is intentional if the record shows that the attorney deliberately or knowingly engaged in the activity at issue. Consequently, such intentional conduct would support a finding of guilt regarding rule 4-8.4(c). The Court reaffirmed its holdings regarding intent in Fredericks and Riggs.

In the present matter, respondent knowingly engaged in activity involving negligent and sloppy bookkeeping with his trust accounts over a long period of time. This also included respondent's delegation of trust account responsibilities to a nonlawyer employee and subsequently failing to supervise the employee. Respondent's intentional conduct is supported by his own admissions as well as the evidence and testimony in the record, all of which support the violation of 4-8.4(c), consistent with the holding in Watson.

In further support of the violation of 4-8.4(c), the bar points to the expert opinion of Clark V. Pearson, Certified Public Accountant and Chief Auditor for The Florida Bar. Mr. Pearson was the only expert in this matter to complete a Chapter 5 compliance audit pursuant to the provisions regarding trust accounts

(ROR-6). It was Mr. Pearson's opinion that, based on the respondent's own records, there were multiple instances of misappropriation by the respondent from the TA-1 account (B-Ex. 22; T-94-95). The records provided to the bar in order to conduct the compliance audit were reviewed and prepared by Pedro Pizarro, Certified Public Accountant and former bar auditor who was hired by respondent to bring the records for the TA-1 account into compliance with Chapter 5 regarding trust accounts (R-Ex. 5).

Respondent misappropriated client funds by taking funds from the trust account to which he was not entitled and using the funds for his own personal uses (B-Ex. 16; T-148-154). Respondent also misappropriated client funds by taking funds from the trust account as fees for a particular client's matter prior to the corresponding deposit (B-Ex. 15, 18, 22; T-155). Respondent was, in fact, taking another client's funds held in trust and using the funds for his fees (B-Ex. 15, 18, 22). Respondent's misappropriation also involved instances in which he took funds from the trust account more than once on behalf of the same client (B-Ex. 15, 18, 22; T-144). The second disbursement was larger than the first disbursement and occurred when there were no funds being held in trust on behalf of the client (B-Ex. 22).

The potential for client harm existed due to the fact that respondent took

funds from his TA-1 trust account that belonged to his clients when he was not entitled to do so. Mr. Pearson testified that client harm existed even though there were no complaints filed by any client with The Florida Bar (T-204). The insufficient funds notices from respondent's TA-1 account issued by the bank also represented client harm (B-Ex. 7). In addition, Ms. Cintron testified that one of respondent's clients called respondent's office stating that her trust check could not be cashed (T-337). The preceding examples illustrate client harm and potential client harm as a result of respondent's trust account misappropriation.

Mr. Pearson prepared a Summary Comparison Chart based on respondent's monthly comparisons for the TA-1 account (B-Ex. 13). Pursuant to the provisions of Chapter 5, the monthly comparisons are required to be based on the reconciled bank balance for the trust account and not the ending balance as reflected on the bank statement (T-545-547). Respondent's monthly comparisons were prepared with the assistance of Mr. Pizarro (T-116). The monthly comparisons clearly reflected shortages in the TA-1 account which ranged from $5,066.60 up to $153,912.03, and the account had shortages in 22 months of the 23 month audit period (B-Ex. 13; T-107-108). As a result of the shortages in the TA-1 account, there were insufficient funds to satisfy respondent's obligations to his clients (B-Ex. 13, 22; T-107-108). Mr. Pearson's expert opinion that the balance in respondent's

trust account was insufficient to pay all clients all of their money was part of the referee's findings regarding respondent's misconduct with his trust accounts (ROR-26).

Mr. Pearson reviewed the bank statements for the TA-1 account (B-Ex. 22). The bank statements contained daily negative balances on more than 14 separate days during the audit period (B-Ex. 14). In one particular instance, the trust check issued by respondent to a client created a negative daily balance in the account (B-Ex. 14; T-123, 127-128). It was Mr. Pearson's opinion that this was further evidence of misuse of trust funds as the TA-1 account failed to contain a sufficient balance to cover the liabilities owed to respondent's clients (B-Ex. 14; T-123, 127-128).

Respondent's records also included a Wire Transfer Activity Report, prepared by Ms. Cintron, regarding the transfers to and from the TA-1 account (B-Ex. 17). Mr. Pearson reviewed the report in conjunction with respondent's other trust records, including the client ledger cards. According to respondent's records, there were 37 total transfers from the TA-1 account to respondent's operating account, referred to as the OA-1 account in the complaint (B-Ex. 15, 17, 18). However, 31 of the 37 total transfers from the TA-1 account to the OA-1 account were improper and unauthorized (B-Ex. 15, 17, 18). Respondent failed to produce

any documentation to establish that the transfers were properly made to his OA-1 account from the TA-1 account. Moreover, during his testimony respondent failed to provide any evidence to refute Mr. Pearson's findings regarding the improper transfers into the OA-1 account from the TA-1 account.

Mr. Pearson testified that the transfers established that respondent misappropriated trust funds from the TA-1 account for his own personal use (T-136-137, 140-141, 147). In addition to taking improper withdrawals on specific client ledger cards (T-140-141; B-Ex. 15, 18), respondent's trust records specifically showed notations of "ZZZZ LawFirm" (B-Ex. 15, 18). This notation illustrated trust withdrawals charged to respondent's own ledger card, indicating there was no client for which the monies were taken out of trust. Mr. Pearson testified that respondent did not produce records to support the afore-referenced withdrawals from trust (T-136-137; B-Ex. 15).

According to respondent's own records, the afore-referenced transfers were made to avoid an overdraft in the OA-1 account (B-Ex. 17). Mr. Pearson identified numerous months in which there would have been a negative balance in the OA-1 account without the improper transfer of trust funds from the TA-1 account (B-Ex. 16, T-148, 154). Mr. Pearson was able to identify instances of personal use by respondent of the improperly transferred trust funds (B-Ex. 16, T-148-152). These

uses included $20,000.00 transferred into the respondent's personal money market account and payments for luxury cars, including $1,674.03 regarding a Mercedes Benz, $1,378.45 for a Jaguar, and $8,000.00 to Porsche of Orlando (B-Ex. 16, T-149, 151, 154). Respondent also used transferred trust funds to make charitable donations to One Hundred Black Men in the amount of $1,500.00 and Empowerment Ministries in the amount of $500.00 (B-Ex. 16; T-152). At no time during the proceedings did respondent produce evidence or testimony to refute Mr. Pearson's findings regarding respondent's personal uses of the trust funds improperly transferred into his OA-1 account.

Mr. Pearson specifically testified that theft of $50,000.00 by Ms. Cintron from the OA-1 account, by using an ATM card, would not account for all of the shortages in the TA-1 account (T-208, l. 21; T-209, l. 4-11). Mr. Pearson, who prepared the affidavit to support respondent's emergency suspension and who testified extensively throughout this matter, has been employed with The Florida Bar as an auditor since 1978, responsible for the completion of compliance audits pursuant to Chapter 5 regarding trust accounts (T-91). Mr. Pearson clearly testified that his analysis revealed theft from the TA-1 account for personal use (T-154, l. 17-23).

The record in this matter clearly reflects that Mr. Pearson was the only expert

to complete a full compliance audit of respondent's TA-1 account (ROR-5). This particular trust account was found to have significant shortages during the entire audit period. None of respondent's experts performed a compliance audit of respondent's TA-1 account or any of respondent's other trust accounts. Nevertheless, the referee in this matter did not accept Mr. Pearson's expert opinion that there was theft from respondent's TA-1 account for personal uses, despite receiving no evidence or testimony to the contrary.

Rather than giving significant weight to the opinion of the bar's experienced Chief Auditor, the referee relied heavily on the testimony of Ms. Cintron and respondent (ROR-9, 11, 14, 15, 22-25). At the final hearing, Ms. Cintron testified that she had stolen funds from respondent's OA-1 account in the amount of $50,000.00 using an ATM card for the account (T-259-261). Ms. Cintron was terminated from her employment with respondent's firm in or around January 2011. At that time, she signed a promissory note to respondent regarding repayment of the funds taken from the OA-1 account (R-Ex. 36).

Ms. Cintron testified that she was not responsible for performing the required trust procedures for any of respondent's trust accounts (T-301). Her responsibilities included opening the bank statements, making deposits and writing trust checks (T-258, 275, 301, 306-307, 337). Ms. Cintron testified that respondent and Ingrid

Valdez were responsible for the records and procedures for the respondent's TA-1 account (T-302).

Ms. Cintron's testimony at the final hearing regarding transfers to and from respondent's accounts was in direct contradiction to her deposition testimony regarding her authorization to make such account transfers. (It is important to note that Ms. Cintron's deposition was conducted only one week prior to her testimony at the final hearing in this matter). In her deposition, Ms. Cintron stated that she only had authorization to make transfers for the TA-1 and OA-1 accounts (B-Ex. 27, p. 32). At the final hearing, Ms. Cintron testified that she had authorization to make transfers for all of respondent's accounts (T-312, 313). Ms. Cintron also testified that she did not inform respondent of the transfers (T-320-321).

It was Ms. Cintron's deposition testimony that she did not intentionally hide bank statements from respondent (B-Ex. 27, p. 38). However, at the final hearing, Ms. Cintron testified to the contrary and admitted to hiding bank statements from respondent (T-310, 312). Ms. Cintron stated that respondent was able to view the bank statements online from the computer in his office (T-308). She stated that respondent never asked about the bank statements at the regular staff meetings (T-309). Ms. Cintron admitted to being disorganized and overwhelmed with her duties and responsibilities for respondent's firm (T-277, 278). In addition, she testified

that she told respondent on two separate occasions that she was overwhelmed (T-317). Ms. Cintron was unable to clearly describe the training and/or supervision provided to her by respondent pertaining to his trust accounts (T-301, 309-310).

Respondent testified that the shortages in his TA-1 account were due to the admitted theft by Ms. Cintron from his OA-1 account (T-483, 500, 551). This was despite Ms. Cintron's admissions that her theft was from the OA-1 account, and not the TA-1 account, and was committed by using an ATM card for the OA-1 account (T-259-261). At the final hearing, respondent testified that he saw the TA-1 account bank statements containing the negative daily balances (T-485, 493-496). This testimony was in direct contradiction to respondent's admissions from the April 28, 2011, hearing in which he stated that he had not viewed the bank statements with negative balances. (B-Ex. 26, p. 223-225).

Respondent did not present any documentary evidence to refute the misappropriation from his TA-1 account or the improper transfers from the TA-1 account. Respondent also failed to provide any clear evidence or testimony to refute his personal uses of funds which were improperly transferred from the TA-1 account to the OA-1 account (T-474-493). Despite discussion of a notebook, which allegedly contained a breakdown of all of Ms. Cintron's unauthorized ATM withdrawals from the OA-1 account, respondent did not enter said notebook into

evidence (T-261, 335-336).

The referee adopted the testimony of respondent and Ms. Cintron to support his findings that respondent had no intent to misappropriate trust funds and was not guilty of violating Rule 4-8.4(c). In his report, the referee failed to address the contradictions within the testimony of respondent and Ms. Cintron. The referee failed to fully address the implication of Mr. Pearson's expert opinion regarding the existence of theft from the TA-1 account. The referee also failed to specifically address the trust shortages which were unrelated and not contributed to Ms. Cintron's $50,000.00 theft. The referee relied heavily on the opinions of respondent's experts, none of whom performed a compliance audit of the TA-1 account (ROR-6, 15-21). The bar submits that the abovementioned evidence supports the position that the referee's finding that respondent was not guilty of a violation of Rule 4-8.4(c) was clearly erroneous and not supported by the evidence and testimony in the record.

POINT II

THE REFEREE ERRED IN HIS FINDINGS CONCERNING AGGRAVATION AND MITIGATION.

Findings of mitigation and aggravation, like other factual findings, carry a presumption of correctness that will be upheld unless clearly erroneous or without

support in the record. Therefore, a referee's determination that an aggravating factor or mitigating factor does not apply is due the same deference. The Florida Bar v. Herman, 8 So.3d 1100, 1106 (Fla. 2009). The Florida Bar maintains that the referee in this matter erred by not finding the following aggravating factors: 9.22(b) dishonest or selfish motive; and 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. Consequently, the referee erred in finding the following mitigating factors: 9.32(b) absence of a dishonest or selfish motive; and 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

In aggravation, Mr. Pearson testified that, based on respondent's own records, it was clearly established that respondent continued to make withdrawals and disbursements from his trust accounts subsequent to the effective date of the emergency suspension order entered by the Court on April 11, 2011 (T-196-199; B-Ex. 47; R-Ex. 30). Mr. Pearson specifically stated that "[respondent] was withdrawing funds from the trust account to himself when he wasn't supposed to, when the Supreme Court ordered him not to" (T-198, l. 11-13). Respondent's expert witness, Mr. Pizarro, also testified that based on a review of respondent's records, there were disbursements after the effective date of the Court's Emergency Suspension Order (T-424-426).

Respondent made disbursements from a trust account he opened subsequent to the emergency suspension order dated April 11, 2011, referred to as the "CTA-1 account" (B-Ex. 47). According to respondent's bank statement for the CTA-1 account for the month ending June 30, 2011, respondent made 31 withdrawals (B-Ex. 47). In the month ending May 31, 2011, respondent made one withdrawal after the effective date of the Court's order (B-Ex. 47). All the disbursements are contrary to the Court's order dated April 11, 2011.

In further support of aggravation, The Florida Bar submitted evidence to establish that respondent failed to notify any of his debt management clients of his suspension until on or around August 1, 2011 (B-Ex. 29-43). This was despite the Court's order of April 11, 2011, requiring immediate notification to all clients. In his August 2011 notification letter, respondent unilaterally transferred his debt management clients to another law firm (B-Ex. 41).

Respondent's conduct with the grievance committee's subpoena duces tecum for all his trust account records was also evidence in support of aggravation (B-Ex. 22). Respondent, while obligated to do so, failed to fully comply with the subpoena. His own admissions included statements that he provided the bar everything he had, despite the evidence to the contrary (B-Ex. 8-12, 22, 24, p. 4, l. 7-10, p. 37, l. 17-25, p. 38, l. 1-13). The bar repeatedly requested that respondent

provide full and complete records as set forth in the subpoena. On at least five separate occasions, the bar sent written notification to respondent requesting full and complete records. These requests began with the service of the subpoena on July 6, 2010 and continued until December 21, 2010 (B-Ex. 1-44). In his audit report, Mr. Pearson emphasized that respondent failed to produce the required records for all respondent's trust accounts and failed to disclose all his trust accounts to The Florida Bar (B-Ex. 22). The Florida Bar discovered additional trust accounts that were not disclosed by respondent (B-Ex. 8-12). As a result of respondent's failure to fully comply with the subpoena and produce the required records, a compliance audit was only able to be completed on respondent's TA-1 account.

Walter Tuller, Staff Investigator for The Florida Bar, testified in the case in chief as well as part of the sanction hearing. Mr. Tuller's testimony clearly established that respondent did not fully disclose to the bar the nature or status of his law firm's debt management practice in other states (T-70-90). Mr. Tuller spoke with the Attorney General's Offices in Florida, Georgia, South Carolina, and Colorado regarding the debt management practices of The Johnson Law Group. Mr. Tuller received copies of court documents from each of these states indicating that respondent's firm was not in compliance with the state requirements regarding

debt management services (B-Ex. 3-6). Respondent was required to refund consumers in South Carolina, Georgia, and Florida and was the subject of a lawsuit in Colorado regarding these same issues (B-Ex. 3-6). In an affidavit dated September 6, 2011, Mr. Tuller confirmed that respondent owed Colorado consumers approximately 1.5 million dollars (B-Ex. 45). Mr. Tuller also confirmed that respondent owed South Carolina consumers $1,197,074.00 and had refunded only $342,229.00 (B-Ex. 45).

The record in this matter also contains respondent's admissions from his depositions taken in The Florida Bar matter and a bankruptcy proceeding in Nevada (B-Ex. 23, 24, 25). Throughout the deposition testimony, respondent provided evasive answers concerning the number of trust accounts he had and the number of debt management clients he had (B-Ex. 23, p. 12, l. 21-25; B-Ex. 25, p. 26-27). During his depositions, respondent also gave inconsistent answers as to whether he had contacted The Florida Bar for ethical guidance regarding his debt management practice. On August 19, 2010, during the bar's deposition, the following exchange took place:

> Q. Did you at any time contact the ethics hotline to find out if, under the Rules of Professional Conduct, you're permitted to have this type of relationship with these four companies and also have any type of relationship with the marketing company?

A. No, I did not. (B-Ex. 24, p. 21, l. 22-25, p. 22, l. 1-2).

The previous exchange is contradictory to respondent's deposition testimony in the Nevada bankruptcy proceeding, which was held only 11 days later, on August 30, 2010, as follows:

Q. All right. Have you ever talked to the state Bar of Florida with regard to this arrangement that you have with the marketers and processors to get their okay on the procedure?

A. Well, I've spoken to them about it.

Q. And who did you talk to there?

A. I'd have to get her name.

Q. Somebody in the Bar Counsel's office?

A. I can't remember which branch they were with.

Q. Do you remember what city they were in?

A. It would have been Tallahassee or Orlando. (B-Ex. 25, p. 60, l. 14-24).

Following the above exchange in the Nevada case, respondent gave another misleading and evasive answer, as follows:

Q. Do you have any bar complaints pending against you today?

A. Not that I'm aware of. (B-Ex. 25, p. 60, l. 25, p. 61, l. 1-2).

Merely 11 days prior to respondent's above statement, he had been deposed in a

bar proceeding concerning his alleged trust account violations. Considering bar counsel's request that respondent provide further trust account records (B-Ex. 24, p. 83-86), the bar matter was obviously pending and under investigation when he provided contrary testimony in the Nevada case.

The preceding evidence clearly supports respondent's ongoing lack of cooperation by failing to comply with rules or orders of the disciplinary agency and his selfish or dishonest motive. It is clear that respondent has little regard for this Court's orders and The Rules Regulating The Florida Bar. Thus, based on the evidence and testimony in the record, the referee erred by failing to find that respondent displayed a dishonest or selfish motive [9.22(b)] and that respondent intentionally failed to comply with rules or orders of the disciplinary agency [9.22(e)]. In addition to respondent's gross misuse of his trust accounts and inconsistent testimony, his overall conduct was uncooperative and selfish in that he failed to promptly inform his debt management clients about his suspension, he unilaterally transferred his clients to another law firm, and he continued to disburse trust money in violation of the Court's emergency suspension order. Respondent also owes significant sums of money to consumers in connection with his debt management practice. Likewise, there is ample evidence in the record to sufficiently challenge the referee's findings in mitigation that respondent had the

absence of a dishonest or selfish motive [9.32(b)] and that respondent provided free and full disclosure to the disciplinary board [9.32(e)]. Thus, the referee's findings of mitigation and aggravation in these areas are clearly erroneous and should not be upheld.

POINT III

THE APPROPRIATE SANCTION IN THIS MATTER IS AT LEAST A THREE YEAR SUSPENSION BASED ON THE FINDINGS, CASE LAW, AND THE STANDARDS FOR IMPOSING LAWYER DISCIPLINE.

"When reviewing a referee's recommended discipline, this Court's scope of review is broader than that afforded to the referee's findings of fact because, ultimately, it is the Court's responsibility to order an appropriate sanction." The Florida Bar v. Spear, 887 So.2d 1242, 1246 (Fla. 2004). As a general rule, the Court will not second-guess a referee's recommendation of discipline as long as the discipline is authorized under the Florida Standards for Imposing Lawyer Sanctions and has a reasonable basis in existing case law. Id. at 1246. The discipline recommended by the referee, a six month suspension, *nunc pro tunc* to April 11, 2011, is not supported by the most recent case law.

The Court has a long standing policy that disbarment is the presumptive discipline in misappropriation cases. Recently, in The Florida Bar v. Mirk, 64

So.3d 1180, 1185 (Fla. 2011), the Court stated as follows: "This Court has long held that attorney misconduct involving the misuse or misappropriation of client funds is unquestionably one of the most serious offenses a lawyer can commit. Indeed, disbarment is presumed the appropriate discipline when an attorney engages in this type of misconduct." The Court has repeatedly held that disbarment remains the appropriate sanction for misuse of client funds, even when an attorney reimburses the trust account shortages and when no client suffers a financial loss. The Florida Bar v. Diaz-Silveira, 557 So.2d 570, 572 (Fla. 1990), citing The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1979). Furthermore, in The Florida Bar v. Herman, 8 So.3d 1100 (Fla. 2009), the Court emphasized that it "has moved towards stronger sanctions for attorney misconduct" in recent years. See The Florida Bar v. Rotstein, 835 So.2d 241, 246 (Fla. 2003). In Rotstein, where there was a violation of Rule 4-8.4(c), the Court further held that "basic, fundamental dishonesty…is a serious flaw which cannot be tolerated," Id. at 246, because dishonesty and a lack of candor "cannot be tolerated by a profession that relies on the truthfulness of its members." Id. at 246, quoting The Florida Bar v. Korones, 752 So.2d 586, 591 (Fla. 2000).

If this Court, based on the evidence in the record and the referee's findings, fully adopts the bar's arguments concerning respondent's violation of Rule 4-8.4(c)

and respondent's additional aggravation, disbarment would be appropriate in this matter. Focusing solely on the referee's finding of negligent misappropriation and the rule violations contained in the report of referee, the appropriate disciplinary sanction based upon relevant case law would be a three year suspension from the practice of law.

In The Florida Bar v. Riggs, 944 So.2d 167 (Fla. 2006), an attorney was suspended for three years for commingling trust funds, for trust shortages, for failing to keep adequate trust records, and for failing to supervise his employee's maintenance of the trust account. The Court determined that Riggs presented sufficient mitigation to support a three year suspension rather than disbarment. As stated previously in this brief, the Court in Riggs held that an attorney's failure to supervise his employee constituted intent because he knowingly assigned his trust account responsibilities to the employee and then failed to manage her activities. Id. at 171. In this matter, the bar submits that respondent was, at the very least, grossly negligent in his supervision of Ms. Cintron.

In The Florida Bar v. Whigham, 525 So.2d 873 (Fla. 1988), an attorney was suspended for three years for gross negligence of his trust account absent the willful misappropriation of funds. Whigham had previously received a public reprimand and probation for negligently commingling trust funds and personal funds.

In The Florida Bar v. Whitlock, 426 So.2d 955 (Fla. 1982), an attorney was suspended for three years, in part, for failing to reconcile his trust account records, for transferring trust funds to his general office account, for trust account shortages, and for allowing a nonlawyer to manage trust and general accounts without adequate supervision. The Court chose not to disbar the attorney because the shortages were promptly reimbursed when discovered, the misconduct caused no economic loss to others, and the attorney cooperated fully with the bar in its investigation and audit of his accounts and made all of his books and records available. Unlike Whitlock, there is evidence herein that the shortages went undetected until the bar began its investigation. In addition, respondent has not fully cooperated with the bar, nor with Court orders.

In The Florida Bar v. Wolf, 930 So.2d 574 (Fla. 2006), an attorney was suspended for two years for sloppy bookkeeping resulting in misappropriations unaccompanied by any intent to steal. A bar audit revealed Wolf had deposited funds into his operating account that should have been held in trust. He did this to cover shortages. Wolf claimed this was done negligently as a result of an employee incorrectly making the deposits. The accounting irregularities covered a period of a year. The Court noted that because Wolf's misappropriation conduct had been rooted in negligence, as opposed to intentional misconduct, his case warranted

suspension rather than disbarment. Wolf had prior disciplinary offenses. In recommending a suspension, the Court stated that "[a]ccounting for client funds is a serious responsibility. Thus, the Court has imposed lengthy rehabilitative suspensions when attorneys were grossly negligent in the management of trust accounts." Id. at 577.

In The Florida Bar v. Mason. 826 So.2d 985 (Fla. 2002), an attorney was suspended for two years after making 82 transfers of funds from her trust account to her operating account which caused shortages in her trust account based on poor recordkeeping. At least some of the transfers were used intentionally to cover shortages in the operating account. In aggravation, the attorney engaged in a pattern of misconduct, and, through gross negligence, she submitted statements to the bar concerning her trust account that were false. In mitigation, she had no prior disciplinary history, she was experiencing severe marital problems at the time, she made a timely good faith effort to correct the problems, she was inexperienced in the administrative responsibilities of handling a sole law practice, she had a good reputation, and she was remorseful. There was no evidence the attorney intentionally stole client funds. Rather, her errors were due to mistakes in accounting practices and no clients lost any funds.

In recommending a six month suspension, the referee relied on The Florida

Bar v. Neu, 597 So.2d 266 (Fla. 1992) and The Florida Bar v. Weiss, 586 So.2d 1051 (Fla. 1991), which are both older Court decisions. The only recent case the referee relied upon to support his recommendation is an unpublished disciplinary matter, The Florida Bar v. Stanton, Case No. SC06-408. In Stanton, the attorney self-reported the trust account violations to the bar, the employee theft was reported to the authorities, and the embezzling employee was criminally prosecuted. Herein, Ms. Cintron's alleged theft was never reported to the authorities, and the trust account violations were revealed by an Attorney Trust Account Overdraft Report from Bank of America (B-Ex. 7). Furthermore, in this matter, the bar's auditor testified that Ms. Cintron's $50,000.00 theft from the OA-1 account would not account for all of the shortages in the TA-1 account (T-208, l. 21; T-209, l. 4-11). The referee emphasized that Stanton merely received an admonishment, but there was no significant aggravation found in that matter.

A suspension herein is further supported by the Florida Standards for Imposing Lawyer Sanctions. Suspension is appropriate pursuant to Standard 4.12 when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. Suspension is also appropriate pursuant to Standard 7.2 when a lawyer 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.

A judgment must be fair to society, fair to the respondent, and severe enough to deter others who may be tempted to become involved in like violations. Spear, 887 So.2d at 1246, citing The Florida Bar v. Lord, 433 So.2d. 983, 986 (Fla. 1983). To support the recommendation of at least a three year suspension, the bar has considered the serious nature of respondent's misconduct in this matter in conjunction with the following cases: The Florida Bar v. Bennett, 276 So.2d 481, 482 (Fla. 1973); The Florida Bar v. Brown, 905 So.2d 76, 82 (Fla. 2005); and The Florida Bar v. Valentine-Miller, 974 So. 2d 333, 338 (Fla. 2008), which uphold the proposition that attorneys are held to the highest ethical standards not only because the Rules of Professional Conduct mandate such a level of conduct but more importantly so as to not damage the public's trust in the legal profession.

CONCLUSION

It has long been held by the Supreme Court of Florida that misuse of client funds held in trust is one of the most serious offenses an attorney can commit and that disbarment is presumed to be the appropriate sanction. Riggs at 171. The findings as set forth in the Report of Referee as well as the evidence in the record support the imposition of a lengthy rehabilitative suspension. The referee's recommendation of a six month suspension, *nunc pro tunc* to April 11, 2011, is clearly erroneous and not supported by the relevant case law.

WHEREFORE, The Florida Bar submits that respondent should receive at least a three year suspension from the practice of law and be required to pay the bar's disciplinary costs.

Respectfully submitted,

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600
Attorney No. 123390

KENNETH LAWRENCE MARVIN
Staff Counsel
The Florida Bar
651 East Jefferson Street

Tallahassee, Florida 32399-2300
(850) 561-5600
Attorney No. 200999

AND

PATRICIA ANN TORO SAVITZ
Bar Counsel
The Florida Bar
1000 Legion Place, Suite 1625
Orlando, Florida 32801-1050
(407) 425-5424
Attorney No. 559547

By:

_____

Patricia Ann Toro Savitz
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Initial Brief have been sent by First Class Mail to the Clerk of the Court, The Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by electronic filing to the Clerk of the Court; a copy of the foregoing has been furnished by First Class Mail to Chandler R. Muller, Counsel for Respondent, at Law Offices of Muller & Sommerville, P.A., Post Office Box 2128, Winter Park, Florida 32790-2128; and a copy of the foregoing has been furnished by First Class Mail to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, this _____ day of December, 2011.

Respectfully submitted,

_____
Patricia Ann Toro Savitz
Bar Counsel

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

Undersigned counsel does hereby certify that the Initial Brief is submitted in 14 point proportionately spaced Times New Roman font, and that the brief has been filed by email in accord with the Court's order of October 1, 2004. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

_____

Patricia Ann Toro Savitz
Bar Counsel
Attorney No. 559547

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. SC11-1136
[TFB No. 2010-31,479(09B)]

v.

CLINT JOHNSON,

Respondent.
_____/

APPENDIX TO THE FLORIDA BAR'S INITIAL BRIEF

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850)561-5600
Attorney No. 123390

KENNETH LAWRENCE MARVIN
Staff Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850)561-5600
Attorney No. 200999

PATRICIA ANN TORO SAVITZ
Bar Counsel
The Florida Bar
1000 Legion Place, Suite 1625
Orlando, Florida 32801-1050
(407) 425-5424
Attorney No. 559547

INDEX

PAGE

Report of Referee 1