IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JEFFREY ALAN NORKIN,

Respondent.
_____/

Supreme Court Case
No. SC11-1356

The Florida Bar File
No. 2010-51,662 (17F)

ON PETITION FOR REVIEW

INITIAL BRIEF OF THE FLORIDA BAR

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INTRODUCTION

For purposes of this brief, The Florida Bar will be referred to as "The Florida Bar," or as "The Bar." Jeffrey Alan Norkin, Respondent, will be referred to as Respondent, or as Mr. Norkin. Other persons will be referred to by their respective surnames.

References to the Appendix which contains the Report of Referee shall be set forth as A. followed by the page number. Reference to the transcript of the final hearing will be set forth as TR. followed by the page number.

STATEMENT OF THE CASE AND OF THE FACTS

On July 11, 2011, The Florida Bar filed its complaint charging Jeffrey Norkin with violating The Rules Regulating The Florida Bar. The allegations concerned the respondent's conduct toward Gary Brooks, an opposing attorney in litigation, his misconduct in the courtroom, his false accusations against David Tobin, a retired judge appointed as a provisional director of his client's corporation, and his misrepresenting the contents of an order issued by Judge Daryl Trawick.

On July 25, 2011, the Honorable Bronwyn C. Miller, a circuit court judge in Miami-Dade County, was appointed as referee. Judge Miller granted in part and denied in part the Bar's Motion for Partial Summary Judgment on November 10, 2011. The referee found on summary judgment that the allegations concerning the misconduct in the courtroom and misrepresentation of the court order had been established. A final hearing was held on January 5, 2012, January 6, 2012, January 10, 2012, January 11, 2012 and January 12, 2012. The referee issued a 36-page report on February 17, 2012. The referee found that Mr. Norkin had violated Rules 4-3.5(c), 4-8.2(a), 4-8.4(a) and 4-8.4(d) of The Rules Regulating The Florida Bar with regard to his behavior toward Mr. Brooks and accusations against Judge Tobin. The referee reversed the original finding in favor of The Bar as reflected in

the order on summary judgment as to whether Mr. Norkin had misrepresented the findings in Judge Trawick's order on summary judgment. The referee found Mr. Norkin not guilty of any rule violation regarding Judge Trawick's order. The Bar is not appealing that finding. As such, there are not any references to testimony concerning that aspect of the case in the statement of the case and of the facts.

The Florida Bar presented Attorney Gary Brooks as its first witness. Mr. Brooks was the original complainant in this matter. Mr. Brooks graduated from the University of Florida in 1962 with honors. He was awarded a full scholarship to Harvard Law School, from which he graduated in 1965. He served in the Army in Korea and Vietnam and was awarded the Bronze Star for meritorious service. (TR. 15). Thereafter, he was an Assistant Dade County Attorney and a member of several prominent Miami law firms as a commercial litigator. (TR. 16-17). He was AV rated in Martindale-Hubbell. (TR. 18). During his lengthy and unblemished career as a member of The Florida Bar since 1965, he had taken on causes for the underprivileged and minority groups. (TR. 18-21).

Mr. Brooks represented Gary Ferguson in a lawsuit against David Beem, who were in business together. Mr. Ferguson believed that Mr. Beem had taken approximately one million dollars from a corporate account without justification. (TR. 22). After interviewing the Fergusons and reviewing documents and bank records, Mr. Brooks filed a seven-count civil complaint on behalf of the Fergusons.

He attached a motion in which Mr. Ferguson swore that the allegations were valid and true. Mr. Beem was represented by Attorney Alan Fertel from October of 2007 until July of 2008. Mr. Brooks' dealings with Mr. Fertel were cordial and professional. (TR. 23, 95, 122). The respondent, Jeffrey Norkin, appeared on behalf of Mr. Beem in July of 2008. Mr. Norkin was cordial for the first month of his representation and thereafter was continually problematic throughout the duration of his representation, according to Mr. Brooks. (TR. 24). On January 7, 2009, Judge Daryl Trawick entered an order of summary judgment against Mr. Brooks' client, Ferguson. (TR. 51) That order is currently being appealed in the Third District Court of Appeals. (TR. 60).

Testimony was elicited from Mr. Brooks concerning a series of e-mails received from Mr. Norkin, all of which were attached as exhibits to the Bar's complaint. In an August 27, 2008, e-mail from Mr. Norkin to Mr. Brooks, Mr. Norkin described Mr. Brooks as incompetent, unethical, ludicrous, having engaged in improper litigation tactics and one who bilked his clients for fees. (TR. 25). Mr. Brooks denied each accusation and noted that he was particularly offended by being accused of "bilking" clients since he had written a paper on how clients could save money. He actually under billed his clients. (TR. 26). Mr. Brooks found Mr. Norkin's statements to be "highly insulting, offensive, and false …" (TR. 27). In another e-mail from Mr. Norkin to Mr. Brooks on the same day, Mr.

Norkin accused Mr. Brooks of being a liar. (TR. 28). In an e-mail dated September 22, 2008, Mr. Norkin accused Mr. Brooks of submitting motions that were laughable and scurrilous and described Mr. Brooks as disingenuous. (TR. 29). In a September 22, 2008 e-mail, Mr. Brooks was accused by Mr. Norkin of being unprofessional, ludicrous and downright unintelligent. (TR. 31). In a September 23, 2008 e-mail from Mr. Norkin to Mr. Brooks, Mr. Norkin accused Mr. Brooks of being dishonest. (TR. 32).

According to Mr. Brooks, during a hearing before Dade County Circuit Court Judge Daryl Trawick, Mr. Norkin referred to his client as an honest man and while pointing at Mr. Brooks, referred to Mr. Brooks as a dishonest man. (TR. 35-36). Judge Trawick apologized to Mr. Brooks as a result of Mr. Norkin's actions. Mr. Brooks was embarrassed. (TR. 36). In a letter dated February 4, 2009, from Mr. Norkin to Mr. Brooks, Mr. Norkin advised of his belief that Mr. Brooks had committed malpractice and would be sued by his own client. Mr. Norkin threatened Mr. Brooks by stating that he would have to produce certain evidence or he was about to have "a very massive problem." Mr. Brooks reacted with extreme indignation and offense. (TR.37-38). In another letter dated April 16, 2009, written by Mr. Norkin to Mr. Brooks, Mr. Norkin accused Mr. Brooks of deceiving the court and again stated that Mr. Brooks' client had a malpractice action against him. (TR. 38). Mr. Brooks was not sued by his client, but instead had been the

recipient of praise. (TR. 38). Mr. Brooks did not know whether any of the e-mails received were provided by Mr. Norkin to anyone else. He did believe that Mr. Norkin gave everything to his client, Mr. Beem. (TR. 92).

While attempting to set a hearing with a judicial assistant in the courthouse, Mr. Norkin shouted at the top of his lungs and in the presence of others that Mr. Brooks was a liar. Mr. Brooks was humiliated. (TR. 40). Outside of the judge's chambers in the Dade County Courthouse on September 20, 2010, Mr. Norkin approached Mr. Brooks in the presence of his client and several other attorneys and loudly said "I have spoken to other lawyers; you are underhanded and a scumbag." This effrontery occurred after Mr. Brooks had filed a grievance with The Bar. (TR. 41-42, 86).

This was the first grievance that Mr. Brooks filed against a member of The Bar since his admission in 1965. It was filed in September of 2010. (TR. 61). He waited a year to file it, but did so after he could no longer tolerate Mr. Norkin's conduct. Mr. Brooks did not have a personal dislike of Mr. Norkin. Mr. Brooks believed that the Bar rules required the filing of a grievance. (TR. 42, 66). Mr. Brooks described his experiences with other aggressive litigators and noted that outside of the courtroom, they would shake hands, smile and have lunch. His experience with Mr. Norkin rose to a level that he had never experienced before. (TR. 43). It was intolerable. Despite dealing with the most aggressive, roughest

lawyers in his career, none compare to what Mr. Norkin did to him. (TR. 47).

Mr. Brooks suffered from diabetes and Parkinson's Disease which he believed was acquired from exposure to Agent Orange while serving in the military in Vietnam. (TR. 44-45). He was diagnosed with cancer in 2004 and was taking medication to stall its progression. The medication raised his blood pressure, for which he took additional medication. His blood pressure was affected with each of his dealings with Mr. Norkin, including his testimony before the referee due to having to recall events concerning Mr. Norkin. (TR. 46). His blood pressure rose when he was reviewing documents prior to his testimony before the referee and he ceased the review. (TR. 90).

Despite misconduct before Judges Dresnick and Manno Schurr, neither sanctioned Mr. Norkin to that date, according to Mr. Brooks. (TR. 63). There is a pending motion before Judge Manno Schurr. (TR. 70). Although Mr. Norkin was never sanctioned, he was admonished on the record constantly by the three presiding judges. (TR. 65). During a hearing held on April 17, 2009, Mr. Brooks was present when the judge said that Mr. Norkin was yelling in court. Mr. Norkin would speak in an ordinary, moderate tone of voice when he won. When Mr. Norkin would start to lose or became frustrated by Mr. Brooks' argument or by the judge, he would start shouting. (TR. 69).

The Bar's second and final witness was Retired Judge David L. Tobin. Judge Tobin attended the naval academy in Annapolis from 1946 to 1949 and obtained an engineering degree from the University of Miami in 1949. He graduated from the University of Miami Law School 50 years ago and was admitted to The Florida Bar in 1961. He practiced law for 25 years and was either a sitting or senior judge for the past 25 years. (TR. 134). A senior judge is not permitted to practice law, but may take jobs from the court, such as the one in this case – as a provisional director. Judge Tobin was appointed by Judge Dresnick as the provisional director of Floors to Doors, the Ferguson/Beem enterprise, in June of 2009. A provisional director makes decisions for a deadlocked corporation in an effort to prevent it from going into receivership, pursuant to Florida Statute 607. At the first meeting, he made decisions in favor of each party. (TR. 134-135, 147, 148). Judge Tobin's role was limited to breaking deadlocks and not to determine credibility or what happened with the rest of the case. (TR. 150). Mr. Norkin expressed his dissatisfaction with Judge Tobin's role. Judge Tobin presented a bill to Ferguson and Beem. Mr. Norkin, on behalf of Mr. Beem, advised Judge Tobin that he would not pay his fee and he did not do so. Judge Tobin moved for payment before Judge Dresnick and fees were ordered to be paid. (TR. 136-137).

Judge Tobin received a letter dated October 27, 2009 from Mr. Norkin and stated that he had never gotten a letter like that before in his life. In the letter, Mr.

Norkin advised Judge Tobin that the "cozy, conspiratorial nature" of his relationship with Mr. Ferguson and/or his counsel would be fully investigated in any lawsuit filed against him. Mr. Norkin further accused Judge Tobin of misuse of the law which was unbecoming of a former judge, that would be addressed fully in court. (TR. 139). Mr. Norkin further threatened in that letter that if Judge Tobin did not withdraw a writ of garnishment that had been filed, he would sue him. (TR. 140). Judge Tobin denied that he had a "cozy, conspiratorial" relationship with Mr. Ferguson or with Mr. Brooks. (TR. 139). He also viewed the letter as a threat and improper. Judge Tobin stated that if either attorney, meaning Mr. Brooks or Mr. Norkin, disagreed with Judge Dresnick's order awarding him fees, they could seek appellate relief from the Third District Court of Appeals. Writing a threatening letter in lieu of the proper procedure was contrary to the Oath of Admission to The Florida Bar, which provides that judicial officers should be shown respect, according to Judge Tobin. (TR. 140, 166) The letter was an attack on his integrity and no lawyer's integrity should be attacked without having a basis. (TR. 169). Judge Tobin testified during cross examination by Mr. Norkin that if he was going to accuse a judge of a conspiracy, he should have stated facts which constituted a conspiracy. (TR. 164). While cross examining Judge Tobin, Mr. Norkin stated that his threat of civil litigation, since he thought Judge Tobin acted improperly was unpleasant, but not illegal. (TR. 164). Judge Tobin testified

that although he is no longer sitting on the bench full-time, he is still a senior circuit judge and a judicial officer. (TR. 141). Judge Tobin also testified about the motion to recuse Judge Dresnick which Mr. Norkin filed on January 20, 2010. In it, Mr. Norkin stated that Judge Tobin exclusively acted at the "beck and call" of Ferguson. Judge Tobin denied that accusation. (TR. 141).

Judge Tobin was insulted by Mr. Norkin's statements and would have turned him in to the Bar had he been on the bench. (TR. 142). Moments prior to Judge Tobin's testimony before the referee, Mr. Norkin apologized to the judge if he offended his feelings with his e-mail. (TR. 143). In the midst of cross examining Judge Tobin, Mr. Norkin claimed that the Bar advised him and his co-counsel that Judge Tobin would not testify and that his appearance was a surprise. The Bar advised that an e-mail was sent to counsel months before the hearing advising him of Judge Tobin's testimony. The Bar provided a copy of an e-mail dated November 14, 2011 to the referee the following day. It established that an e-mail was sent to Mr. Norkin, who appeared as co-counsel, to Mr. Davis and to his secretary, advising them that Judge Tobin would be testifying. (TR. 204) . Counsel for Mr. Norkin, Mr. Davis, apologized to the referee. (TR. 205). Cross examination by Mr. Norkin continued with a flurry of questions insinuating that Judge Tobin was biased and did not fairly and properly fulfill his appointment as a

provisional director. Judge Tobin stated that he never took any side in the dispute. (TR. 163).

Jeffrey Norkin testified in his own behalf. Mr. Norkin graduated from Cornell University in 1986. He graduated from the University of Miami Law School in 1992 with honors and was admitted to The Florida Bar in 1992. (TR. 178, 542). Since becoming a sole practitioner in 1994, he has represented 220 clients. He has tried at least 30 trials on his own, and prevailed in 24 of them. (TR. 179, 543, 555). He has recovered millions of dollars for his clients over the years. (TR. 556). Mr. Norkin practices primarily as a commercial civil litigator. (TR. 181). David Beem's wife is his former wife's best friend. He has known the Beems since 1999. He learned of the Ferguson v. Beem case in June of 2007. (TR. 181). In July of 2008, Mr. Norkin began representing Mr. Beem since he could no longer afford to pay his attorney. (TR. 183, 543). At that time, Mr. Norkin was working out of his apartment, having recently been divorced and without funds himself. Although the separation was amicable, it was a depressing time in Mr. Norkin's life since he was unable to spend as much time with his two young daughters as he would have liked. (TR. 186, 546). Months before that, he had three federal jury trials in six weeks. One was the most difficult and traumatic trial of his career. (TR. 544). In the Ferguson v. Beem case, Mr. Norkin filed a counterclaim and a motion for summary judgment on December 16, 2008. (TR.

187, 195). He testified that Judge Trawick had seen a year and a quarter of Mr. Brooks lying to him and producing fake numbers. (TR. 188).

Mr. Norkin testified about the August 27, 2008 e-mail that he sent to Gary Brooks in which he stated that Mr. Brooks would join the other attorneys who lived to regret their incompetent, unethical and improper litigation practices. He sent it to let Mr. Brooks know that he was up against an attorney who would do everything possible to end the matter immediately, including moving for sanctions. Mr. Norkin testified that he never drafted a 57.105 Motion for Sanctions against Mr. Brooks and therefore never served the motion on Mr. Brooks. Mr. Norkin testified that his 57.105 motion was denied on that basis. (TR. 212). Mr. Norkin did not care about hurting Mr. Brooks' feelings when he wrote the e-mail, but rather he wanted to end his client's nightmare. (TR. 212).

Mr. Norkin also testified concerning his e-mail to Mr. Brooks of August 27, 2008, in which he stated that Mr. Brooks must really lie a lot. Mr. Norkin explained that he did not intend to call Mr. Brooks "a liar," but rather he was reacting to his belief that Mr. Brooks was accusing him of dishonesty, since Mr. Brooks requested a copy of a trial notice in another case. (TR. 216). That made Mr. Norkin start to get the idea that Mr. Brooks may lie a lot. (TR. 340). As to the e-mail of September 22, 2008 in which Mr. Norkin stated that he had never litigated with an attorney as disingenuous as Mr. Brooks and further thanked Mr.

Brooks for the fun, Mr. Norkin said that throughout his career, he enjoyed catching people in their dishonesty. He loved "getting them." Mr. Norkin explained that even though the case was a nightmare for Mr. Beem and had consumed his practice, the e-mail was a source of enjoyment for him. (TR. 217-218). His purpose was to get Mr. Brooks to abandon the case against Mr. Beem. (TR. 218). Mr. Norkin also stated that he is being prosecuted for calling Mr. Brooks dishonest when Mr. Brooks' dishonesty was proven in the record. (TR. 223). He stated that Mr. Brooks made material misstatements of fact and law in nearly every single hearing. (TR. 228). By September of 2008, Mr. Norkin was of the opinion that Mr. Brooks was as dishonest a human being that he had ever come across. (TR. 229). He testified that Mr. Brooks should be prosecuted by the Bar. (TR. 255).

Mr. Norkin testified that his comment during the hearing in front of Judge Trawick, in which he referred to Mr. Brooks as a dishonest man, was directed at Mr. Ferguson, rather than at Mr. Brooks. (TR. 231)

Mr. Norkin characterized his September 23, 2008 e-mail to Mr. Brooks in which he called him unprofessional, ludicrous, and downright unintelligent as his First Amendment right and a private letter which Mr. Brooks did not have to disclose. Mr. Norkin stated that if Mr. Brooks was embarrassed by Mr. Norkin's statements, he should not have provided them to anyone, including the Bar, and that no damage was done to Mr. Brooks as a result of the e-mail. (TR. 223-224).

With regard to the September 23, 2008 e-mail in which Mr. Norkin said he did not say many kind words to those he considered as dishonest as Mr. Brooks, Mr. Norkin testified that he was not ashamed of those opinions whatsoever. (TR. 237).

Mr. Norkin testified that there was nothing wrong with his February 4, 2009 letter to Mr. Brooks in which he stated that Mr. Brooks had committed malpractice and would be sued by his own client. (TR. 246). He wrote a letter to Mr. Brooks on April 16, 2009 accusing him of deceiving the court and advising him to put his malpractice carrier on notice due to Mr. Brooks' poor advice to his own client. Mr. Norkin wrote that letter in an effort to stop Mr. Brooks from moving forward with his case and committing a fraud on the court. Mr. Norkin described Mr. Beem's poor financial state, his own impoverished state and the fact that he was not seeing his children due to divorce proceedings as further justifications for writing the letter to Gary Brooks. (TR. 258). He regrets writing the letters and e-mails to Gary Brooks since they gave Mr. Brooks ammunition to file a Bar complaint. (TR. 557, 569).

Concerning the incident in which Mr. Brooks testified that he was called a liar by Mr. Norkin in front of Judge Manno Schurr's judicial assistant, Mr. Norkin did not remember saying that and denied making that statement. (TR. 268). Mr. Norkin went on to testify that if he did make that statement, he did not understand how doing so is a violation of the Rules Regulating The Florida Bar. (TR. 269).

Mr. Norkin likewise did not recall shouting that Mr. Brooks was a underhanded and a scumbag outside of the judge's chambers and did not believe he had said that. (TR. 270).

Mr. Norkin addressed Mr. Brooks' health issues. He stated that in 2008, Mr. Brooks was not in bad health and was perfectly spry. Mr. Norkin testified that Mr. Brooks brought up his health in each hearing to get sympathy by mentioning his ailments every five minutes. By the same token, Mr. Norkin acknowledged that Mr. Brooks was very sick and he did have sympathy for that. (TR. 229).

The testimony of Jeffrey Norkin continued and addressed his statements concerning Judge Tobin. He testified that his motion to remove Judge Tobin was granted when Judge Dresnick acknowledged that Judge Tobin was not legally appointed. (TR. 273). Mr. Norkin testified that he did not accuse Judge Tobin of anything, being very precise in the language that he chose. (TR. 276). Mr. Norkin explained the statements he made in his motion to recuse resulted from the fact that Judge Dresnick had appointed Judge Tobin as provisional director and Judge Tobin seemed to him to be biased toward Mr. Ferguson. (TR. 280). He questioned why he would care about hurting Judge Tobin's feelings, given Judg Tobin's experience. (TR. 280).

Mr. Norkin addressed the allegations concerning his conduct at the December 22, 2009 hearing before Judge Dresnick in which the judge refers to Mr.

Norkin screaming constantly in court. At that hearing, Judge Dresnick had denied a motion and Mr. Norkin was trying to get the Judge to listen to him. (TR. 283-284). Sometimes his voice got a bit louder and Judge Dresnick was intolerant of that, according to Mr. Norkin. (TR. 286). Mr. Norkin explained that each time he went to a hearing, he would use his entire effort to be quiet and calm, but could not avoid angering Judge Dresnick. (TR. 286-287). He did not intend to disrupt the tribunal, but instead was trying to get relief for his client. (TR. 287). With regard to the September 20, 2010 hearing before Judge Manno Schurr, Mr. Norkin explained that he was frantic and "flipped out" since the case was not going to proceed to trial as originally planned. (TR. 292, 295). Mr. Norkin further explained that he was a desperate man trying to save his client's future and took some extreme efforts, while denying that he had yelled. (TR. 298). Mr. Norkin stated that he had apologized at that time and a week later to Judge Manno Schurr. (TR. 300). Mr. Norkin stated that nothing he did caused any damage to the case. (TR. 563-564).

Mr. Norkin estimated that he has been told approximately 1,500 times that he speaks loudly in court and loses control over his voice when he gets upset. He demonstrated his new voice and his previous voice for the referee. He explained that he was a very successful actor because of his enormous voice. (TR. 310). Mr. Norkin started treatment with Jonathan Hoffman, a behavioral therapist,

approximately six months before the hearing to address his demeanor and professionalism. (TR. 311, 559). He realized that his behavior caused judges to rule against him. (TR. 558). Dr. Hoffman videotaped Mr. Norkin. Mr. Norkin did not see anything wrong with how he was arguing, but Dr. Hoffman did point out areas of needed improvement. (TR. 212, 560). Mr. Norkin has now taken steps to improve the tone of his voice based on advice from Dr. Hoffman. (TR. 313). The tone of voice he now uses in hearings has been successful with judges. He no longer causes chaos in hearings. (TR. 552-553). He continues to be treated by Dr. Hoffman. (TR. 563).

Dr. Hoffman testified on behalf of Mr. Norkin. He is a licensed psychologist in Florida with two Masters Degrees in psychology and a dual doctorate in clinical and school psychology. He is board certified in cognitive and behavioral psychology. (TR. 627). He began to treat Jeffrey Norkin on June 20, 2011. (TR. 630). After many tests, he diagnosed Mr. Norkin with attention deficit hyperactivity disorder, issues with fluency in reading and a generalized anxiety disorder. (TR. 632). Mr. Norkin was extraordinarily cooperative with treatment since he is interested in learning about himself. (TR. 635). Dr. Hoffman was working with Mr. Norkin on his eye contact, the level of his voice, his posture and the way he was presenting information, with the use of a video camera. (TR. 636). Dr. Hoffman testified that Mr. Norkin did not realize how the volume of his voice

affected others. (TR.638). Dr. Hoffman recommended continued treatment with him and a psychiatrist for medication. (TR. 642). Dr. Hoffman concluded that Mr. Norkin is fit to practice law. (TR. 643).

The respondent stated that he has been diagnosed with and treated for mild clinical depression for the past seventeen years by Dr. Leonard Deutsch. None of the prescribed antidepressants help. He takes Dextrin for ADHD and occasionally takes Xanax for anxiety. (TR. 551-552).

Mr. Norkin testified that it is his belief that the reason he does not fit in well with people, is seen as an outsider and weird, is due to his eyes. (TR. 548). He does not live in a world that all normal people live in. He did not realize until the last few weeks before the final hearing that he was "like a blind person in a subliminal world." He does not see how others react to him. (TR. 549).

The respondent also testified that the Bar matter is grossly unfair and his conduct does not constitute rule violations. Mr. Norkin stated that he should not be in a position in which he has to make his mental treatment public. He stated that there are other people with his personality traits that have not sought treatment to better themselves as he has done. (TR. 553, 565).

On cross examination, the Bar questioned Mr. Norkin about his testimony that attorneys rarely behave as dishonestly as Mr. Brooks, in the face of the findings against Mr. Norkin in the matter in which he was public reprimanded.

(TR. 320). Mr. Norkin stated that those attorneys, referred to as the Tallahassee case, were not honest and "flat out lied." (TR. 322, 325). Mr. Norkin also testified that Federal Judge William Stafford from North Florida, who found Mr. Norkin in contempt of court in 1999, deprived him of due process. (TR. 325, 571). Mr. Norkin's appeal of that contempt finding was deemed untimely by the Eleventh Circuit Court of Appeals. (TR. 326). Mr. Norkin felt hostility throughout the trial since he is Jewish, represented a Jewish client and is from New York. (TR. 571). Mr. Norkin testified that "it's so blatantly obvious that I was completely innocent in the Northern District of Florida." He further swore that the Bar's prosecutor in the disciplinary action that arose out of that contempt finding, told him that he did not want to win the case. According to Mr. Norkin, the referee in that proceeding found him guilty, did not fine him and did not specify one act of misconduct but only said that he was found in contempt. (TR. 573-574). The respondent was presented with the report of the referee which found violations of Rules 3-4.6, 4-3.5(c), 4-8.4(a) and 4-8.4(d) of the Rules Regulating The Florida Bar. The report of the referee also attached the contempt finding and exhibits from the trial. Mr. Norkin nonetheless maintained that the referee made no findings against him. (TR. 577-579, 680). Mr. Norkin also testified that he appealed the referee's report recommending a public reprimand, which was administered by the Board of Governors, and it was per curiam affirmed without an opinion. As to that decision,

Mr. Norkin stated the following as this Court's intention:

> In other words, they didn't want to put in the public record what I was found guilty of, probably because they couldn't figure what I was found guilty of either … But the Supreme Court affirmed without decision, no decision. So, therefore, never in the public record is there a statement as to what I did wrong.
>
> (TR. 581)

Mr. Norkin believed he was wrongfully prosecuted by the Bar in that proceeding. (TR. 588). Mr. Norkin did not recall attending ethics school as a result of that September 24, 2003, decision and being asked to leave by Kenneth Marvin, Staff Counsel for The Florida Bar, for being disruptive. (TR. 582). Mr. Norkin did not recall attending anger management school. (TR. 583). The Bar introduced a composite exhibit containing all documents from that disciplinary action. (TR. 609). Mr. Norkin objected by stating that the Bar acted in bad faith since the underlying misconduct from the 2003 discipline case occurred in 1999. The exhibit was accepted into evidence and the referee stated the following to Mr. Norkin:

> THE COURT: Temper your language. Please don't accuse bar counsel of not acting in good faith.
>
> (TR. 611)

During a discussion on applicable case law, the referee again admonished Mr. Norkin as set forth below:

> THE COURT: All right. Don't disparage opposing counsel. I have told you not to do it. Don't do it. We are in a Florida Bar referee hearing. Can you make an argument without disparaging counsel?
>
> (TR. 666)

Additionally, testimony revealed that Mr. Norkin was sued for malpractice by the client in the case he was defending in North Florida which resulted in discipline by this Court. The malpractice case, according to Mr. Norkin's testimony, was frivolous, but was settled. (TR. 589-590). Another client also sued Mr. Norkin. (TR. 591). Although Mr. Norkin did not want it settled, as in the other suit as well, it was settled. (TR. 598).

Mr. Norkin also stated that "lawyers have suffered the consequences of their dishonesty in fighting me. Severe consequences." (TR. 340). During the Bar's cross examination, Judge Miller admonished Mr. Norkin not to shout. He apologized. (TR. 351).

Mr. Norkin testified on cross examination that he believed that Mr. Brooks was underhanded, a liar and a scumbag. (TR. 355-356). Mr. Norkin also asserted that he was being prosecuted for "a couple of poorly chosen words and a couple of raised voices." (TR. 357).

Testimony also revealed that in 1994 or 1995, a judge in North Miami asked Mr. Norkin whether he liked baloney sandwiches. Although the judge did not directly state that he intended to imprison Mr. Norkin, Mr. Norkin believed that the

intent was to cease whatever behavior was objectionable. (TR. 358). United States District Court Judge James Lawrence King threatened to jail Mr. Norkin if he did not stop talking and take his seat. He did not formally sanction Mr. Norkin. (TR. 360-361, 599). During an exchange after this testimony, Judge Miller admonished Mr. Norkin to cease shouting at Bar Counsel and behave respectfully. (TR. 362-363).

The Bar asked Mr. Norkin whether Judge Tobin had requested to be discharged as provisional director, rather than being ordered discharged. Mr. Norkin was insistent that Judge Tobin was removed and that Judge Tobin had recalled the events incorrectly. (TR. 365). The Bar presented the referee with a transcript of a July 13, 2009 hearing in front of Judge Dresnick in which he denied Mr. Norkin's request to discharge Judge Tobin and did grant Judge Tobin's request to be discharged. The transcript was admitted into evidence as The Florida Bar's Exhibit 3. (TR. 402).

The respondent presented his client, David Beem, as a witness. They have known each other for fifteen years. (TR. 503). Mr. Beem attended at least 30 hearings in his case with Mr. Norkin. (TR. 380). He testified that Mr. Norkin spoke in his normal voice, which is very loud. He did not view it as yelling. (TR. 301, 515). Mr. Beem stated that Mr. Norkin was very respectful in court. (TR. 382). The times that judges criticized Mr. Norkin, he apologized, according to Mr.

Beem. (TR. 382-382, 515). Mr. Beem stated that Mr. Norkin raised his voice because he was not allowed to talk and that Mr. Brooks would ramble on. (TR. 511). Mr. Beem was very grateful to Mr. Norkin, who did a tremendous amount of work for a small fee. (TR. 506). Mr. Beem testified that the respondent is completely honest and passionate about his case. (TR. 512).

Subsequent to closing argument, the referee revisited her question to Mr. Norkin concerning his failure to file a motion pursuant to F.S.§57.105 given his repeated assertions that Mr. Brooks' positions were frivolous. Mr. Norkin acknowledged that he had not filed the motion, but gave no real explanation for that failure. (TR. 459-461).

Mr. Norkin presented Adam Friedman as a witness in mitigation. He is an accountant and has been Mr. Norkin's friend since they were thirteen years old. (TR. 479). He described Mr. Norkin as a person who always fights wrongs done to others and conducts himself with honesty and integrity. (TR. 480). According to Mr. Friedman, Mr. Norkin is very boisterous, very loud, has a zest for life and is a frustrated actor, since acting in college. (TR. 483). Mr. Norkin is louder than most people and, as a result, Mr. Friedman has had to tell him to calm down numerous times. (TR. 485). Mr. Norkin's honesty is of the highest order and nothing bothers Mr. Norkin more than dishonesty in other people. (TR. 489).

The respondent's father, Murray Norkin, testified. The respondent was born with congenital optic atrophy and other conditions known as hystagmus. He could not see for the first nine or ten months of his life. (TR. 521). His eyesight has always been a condition for him, having had surgery twice at Bascom Palmer Hospital. Although his vision is okay, he has trouble visualizing facial expressions of a judge or the way a judge's eyes may appear. Jeffrey Norkin also has a voice that is louder than a normal voice. (TR. 522). In the last three or four years, the respondent's separation from his wife was traumatic for the Norkin family. (TR. 523). Those events effected the respondent's mood and behavior. (TR. 524). The respondent began treatment with Dr. Hoffman, a psychologist. Murray Norkin has seen changes in his son as a result of the treatment. He is much calmer and now has a better understanding of how he has to relate to people. (TR. 527). Murray Norkin testified that his family does not lie or cheat. The family is comprised of educated professionals, who have the highest ethical and moral standards. (TR. 528). Murray Norkin testified that Jeffrey Norkin is a wonderful son and a great father, brother and uncle. (TR. 530).

Attorney Jonathan Drucker appeared as a character witness. He met Mr. Norkin in 1995. They were law partners from 1998 to 2002. They have remained friends. (TR. 533). Mr. Drucker has known between fifty and one hundred and fifty lawyers that also know Mr. Norkin. Mr. Norkin has a reputation for being

honest, abrasive and confrontational. Those same people believe that the core of Mr. Norkin's problem is that he works only for his clients and does not worry about making money and how he is perceived by others, including judges. (TR. 534-535, 536). Mr. Drucker testified that the respondent is respectful to judges. (TR. 539). Mr. Drucker has observed that due to Mr. Norkin's vision problems, he cannot perceive facial expressions or see common physical cues. (TR. 540-541).

The Bar introduced several e-mails sent by Mr. Norkin during the pendency of the Bar proceedings as evidence in aggravation. (TR. 612-617). In an e-mail dated February 23, 2011 after probable cause findings by the grievance committee, Mr. Norkin wrote the following to Bar Counsel:

> If the Bar files this action against me, it will be met with a countersuit and against you personally. I know and am very close friends with some of the most powerful and respected lawyers in this state, and all will know of your and your chairman's malicious prosecution of me. I think this will be a landmark case, a real feather in your cap. Ms. Lazarus, I don't know what your agenda is, but you really should consider prosecuting bad lawyers, not good ones.
>
> (TR. 612-613)

In an e-mail dated December 29, 2011, after many proceedings had been held before the referee, Mr. Norkin wrote to Bar Counsel that he would be reporting Bar's Counsel's conduct to her superiors and that Bar Counsel is obstructing justice. (TR. 615). Mr. Norkin also sent an e-mail to a court reporter

prior to the final hearing, accusing him of inaccurately transcribing hearings in the Ferguson v. Beem litigation, among other things. (TR. 615).

As the final hearing was concluding, Mr. Norkin revisited the allegations concerning his accusation that Judge Tobin was involved in a cozy, conspiratorial relationship. He said the following:

> MR. NORKIN: I did apologize to Judge Tobin, which he acknowledged on the stand, for using the word conspiratorial. I did not say he was in a conspiracy. I did not say he took money. I did not say anything.
>
> Even though I have massive amounts of reasons to believe that that's possible because of how the Fergusons have been in other – in so many cases, and I have so much information on this, but I never would have written that to him accusing him of that. And I apologized to him. I do regret that I used those words.
>
> THE COURT: So you're telling the court now that you have evidence that there was a conspiracy?
>
> MR. NORKIN: Oh, no, not at all.
>
> THE COURT: Okay.
>
> MR. NORKIN: Just circumstantial evidence which could have led me to think that. Circumstantial evidence that these people have used the courts, you know.
>
> And, also, Judge Tobin did – it is a fact – in my view, the law says that you cannot obtain a judgment without filing a lawsuit.
>
> (TR. 684-685).

On February 17, 2012, the referee issued a report finding the respondent guilty of violating Rules 4-3.5(c), 4-8.2(a), 4-8.4(a) and 4-8.4(d) of The Rules Regulating The Florida Bar concerning all of the Bar's charges with the exception of rule violations concerning misrepresenting Judge Trawick's order. The referee

found both aggravating and mitigating factors. The referee recommended that Mr. Norkin receive a 90-day suspension, evaluation by a licensed and Bar approved mental health professional and that he undergo any recommended treatment, eighteen months of probation upon reinstatement, and apology letters to Mr. Brooks,[1] retired Judge Tobin, Judge Dresnick and Judge Manno Schurr and costs to The Florida Bar.

The Florida Bar petitioned for review on April 12, 2012 seeking a one year suspension and a public reprimand. Mr. Norkin filed a cross petition on April 16, 2012. The Florida Bar's brief follows.

[1] Mr. Brooks passed away on April 27, 2012.

SUMMARY OF ARGUMENT

Jeffrey Alan Norkin sent a flurry of vitriolic e-mails and letters to his opposing counsel in litigation. He accused him of dishonesty and incompetence, among many other things. He shouted obscenities at him in the courthouse and repeatedly disrupted court hearings with screaming tirades and other disrespectful conduct. He accused a retired judge of conspiracy and threatened to sue him.

In the disciplinary proceedings, Mr. Norkin made misrepresentations and continued to send threatening e-mails to Bar Counsel and others. Mr. Norkin had committed similar misconduct and previously received a public reprimand. He has no regrets and showed no remorse. The referee found emotional problems in mitigation of the 90-day suspension and imposed other conditions.

The Bar appeals only the sanction on the basis that it is too lenient and has the effect of sending the wrong message to the legal community. This position is especially significant in light of this Court's many efforts to improve the perception of the Bar and professionalism.

ARGUMENT

A 1-YEAR SUSPENSION AND PUBLIC REPRIMAND IS APPROPRIATE GIVEN THE REFEREE'S FINDINGS OF INSULTING AND DISPARAGING CONDUCT TOWARD OPPOSING COUNSEL, FALSE ACCUSATIONS AGAINST A RETIRED JUDGE, AND BELLIGERENT CONDUCT CALCULATED TO DISRUPT THE TRIBUNAL.

This Court's scope of review over disciplinary recommendations is broader than that of findings of fact because it is this Court's responsibility to order the appropriate discipline. The Florida Bar v. Anderson, 538 So.2d 852 (Fla. 1989). See also art. V §15, Fla. Const. "The Supreme Court shall have exclusive jurisdiction to regulate … the discipline of persons admitted [to the practice of law]." The Court usually will not second guess a referee's recommended discipline as long as that discipline has a reasonable basis in existing case law and in the Florida Standards for Imposing Lawyer Sanctions. The Florida Bar v. Temmer, 753 So.2d 555 (Fla. 1999). A 90-day suspension, evaluation by a licensed and Bar approved mental health professional and undergoing any recommended treatment, eighteen months of probation upon reinstatement, and written apology letters to Mr. Brooks, Judge Tobin, Judge Dresnick and Judge Manno Schurr and payment of costs to The Florida Bar was recommended by the referee. The recommended discipline is too lenient given the extent of the misconduct and aggravating circumstances in combination with this Court's move

toward professionalism. A 1-year suspension and public reprimand is the appropriate sanction.

The referee in these proceedings sat through five days of a final hearing and heard extensive testimony from both parties. The referee found Jeffrey Norkin guilty of violating Rules 4-3.5(c), 4-8.2(a), 4-8.4(a) and 4-8.4(d) of the Rules Regulating The Florida Bar.

During the course of Mr. Norkin's representation of his client, David Beem in litigation with Mr. Beem's partner, Ferguson, the presiding judge deemed it necessary to appoint a provisional director of their existing business. He appointed a well-respected retired judge, David Tobin. Mr. Norkin did not agree with certain recommendations made, as well as Judge Tobin's request for payment of his fees. Instead of seeking appropriate judicial relief, Mr. Norkin wrote a letter to Judge Tobin threatening him with litigation, accusing him of being in a cozy, conspiratorial relationship with one of the parties and the presiding judge, and conduct unbecoming a judge. The referee found no merit to these scandalous accusations. (A.1, pg. 7, 9). The referee further found that Mr. Norkin knew that his accusations were false and that he did so in an effort to berate the judge into withdrawing his request for payment of his fees and to improperly obtain the disqualification of the presiding judge. (A.1, pg. 9).

The referee also found "relevant bouts of unprofessional conduct" concerning Mr. Norkin's behavior in the courtroom. Mr. Norkin was repeatedly admonished by judges for being angry, loud, raising his voice, screaming, yelling, making groundless accusations of judicial bias, and making untoward insinuations. The referee specifically found that Mr. Norkin's behavior was calculated. When Mr. Norkin was not prevailing with a request or argument "he would raise his voice and behave in an angry, disrespectful manner." (A.1, pg. 16). The referee pointed out that the issue was not simply a loud voice but rather Mr. Norkin's antagonistic style. This conduct was so severe that court hearings were disrupted and terminated.

The final area in which the respondent was found to have committed misconduct involved Mr. Norkin's vitriolic conduct toward his opposing counsel, now deceased attorney, Gary Brooks. Mr. Brooks, a member of The Florida Bar since 1965, a Harvard Law School graduate, a veteran and recipient of the Bronze Star, had never filed a Bar complaint until this one. The referee found that Mr. Norkin had shouted at the top of his lungs in the courthouse that Mr. Brooks was lying, was underhanded and was a scumbag. The referee also found that Mr. Norkin had called Mr. Brooks a dishonest man in a courtroom during a hearing before Circuit Court Judge Trawick. All of this behavior was found to be violative of Rule 4-8.4(d) of the Rules Regulating The Florida Bar.

As a result of the epidemic of unprofessional conduct by members of The Florida Bar, the Supreme Court of Florida recently added new language to the Oath of Admission, which this respondent fell woefully below. It states:

> **To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.**

In 1994, Attorney Adams, with no prior discipline, was suspended for 90 days after he sent one letter with false allegations to the opposing attorney and repeated the same in court. The Florida Bar v. Adams, 641 So. 2d 399 (Fla. 1994).[2] Mr. Norkin sent many improper communications with false accusations and was previously disciplined for similar misconduct. In The Florida Bar v. Morgan, 938 So.2d 496 (Fla. 2006), one disrespectful exchange with a judge coupled with two prior disciplines warranted a 91-day suspension. Mr. Norkin's misconduct exceeded the one exchange in Morgan. In The Florida Bar v. Ratiner, 46 So.3d 35 (Fla. 2010), that attorney had one violent outburst during a deposition, with no prior discipline.[3] He was suspended for 60 days, publicly reprimanded, and other conditions were imposed. The case sub judice is far more egregious and **warrants a one-year suspension and public reprimand**.

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[2] In The Florida Bar v. Herman, 8 So.3d 1100 (Fla. 2009), this Court stated that it has moved toward stronger sanctions for attorney misconduct in recent years. Adams was decided 18 years ago.

[3] Mr. Ratiner was previously sent to anger management as a result of a diversion.

This Court's emphasis on professionalism was aptly stated in The Florida Bar v. Ratiner, 46 So.3d 35 (Fla. 2010):

> Respondent's unprofessional, belligerent conduct during the laptop incident is an embarrassment to all members of The Florida Bar.
>
> Ratiner, at 41.

This Court went so far as to make a practice of law students viewing this behavior as a "glaring example of how not to conduct oneself in a legal proceeding." Ratiner, at 41(footnote 4).

In this case, Mr. Norkin, like Mr. Ratiner, claimed that the unprofessional conduct was justified by their adversaries handling of their clients' matters. Despite Mr. Norkin's accusations of dishonesty and criminal conduct by Mr. Brooks, Mr. Norkin never filed a motion pursuant to F.S. §57.105 or sought any sanction for filing of frivolous litigation. Mr. Norkin not only repeatedly contended that Mr. Brooks deserved the treatment, but Mr. Norkin stated that he enjoyed retaliating.

> MR. NORKIN: … And it's just the greatest joy of my career. And part of me, even though this is a nightmare for Dave and a nightmare for me because I knew I wouldn't get paid and I knew it was just going to consume my practice, despite that, reading through these transcripts and looking at this – the way this case had gone and looking at the evidence that Dave had of Brooks' misconduct, you know, it just kind of – I just was like, you know, it kind of is a source of enjoyment for me.
>
> (TR. 217-218).
> (emphasis supplied)

There was not a single point through the five day referee trial that Mr. Norkin had any recognition that sending e-mails and letters to opposing counsel describing him as "a liar, unprofessional, ludicrous, downright unintelligent, dishonest" and screaming that he is a liar, underhanded and a scumbag in the Dade County Courthouse was a glaring example of how not to conduct oneself as a lawyer.

In addition to the extent of the underlying misconduct, the referee found extensive aggravation. Mr. Norkin received a public reprimand in 2003 after being found in contempt by U.S. District Court Judge William Stafford involving misconduct in the courtroom and false accusations against opposing counsel and the court. Not only should this prior discipline be considered in aggravation, but this Court must take respondent's reaction toward it into account. Despite the referee's findings in that proceeding, Mr. Norkin refuses to acknowledge that findings were made against him. (TR. 577-579). Additionally, the respondent holds the belief that since this Court issued an order approving the Report of Referee, rather than an opinion, this Court did not believe the respondent had committed misconduct.

> In other words, they didn't want to put in the public record what I was found guilty of, probably because they couldn't figure what I was found guilty of either … But the Supreme Court affirmed without decision, no decision. So, therefore, never in the public record is there a statement as to what I did wrong.
>
> (TR.581).

The referee considered other consistent problematic behavior by the respondent in the courtroom. A judge in North Dade County asked Mr. Norkin if he liked baloney sandwiches, which resulted from him "pressing a point beyond which [the judge] thought [respondent] should press the point." (TR. 358). U.S. District Court Judge James Lawrence King threatened to place Mr. Norkin in jail for his misconduct. The referee relied on The Florida Bar v. Ratiner, 46 So.3d 35 (Fla. 2010) as precedent. There, a grievance committee found no probable case as to the other misconduct by Mr. Ratiner and the Court considered it. Here, there was never any finding by a grievance committee and it should be weighted more heavily.

The respondent's behavior during the proceeding was found as another factor in aggravation by the referee. The referee referenced threatening e-mails sent by Jeffrey Norkin to Bar Counsel, e-mails sent by Jeffrey Norkin to a court reporter which not only insulted and accused the court reporter of inaccurate transcription due to bias but reiterated the accusations against Mr. Brooks.

Additionally, the referee also found that the respondent was "not always straightforward and cooperative during the proceedings:

> For example, he contended that Bar Counsel did not notify him that she intended to call retired Judge Tobin as a witness. An e-mail was produced by Bar counsel evincing that Respondent was indeed notified on November 14, 2011 of the Bar's decision to call Tobin as a witness. Respondent also testified that Judge Dresnick removed retired Judge Tobin as a provisional director from the *Ferguson v. Beem* case because: "…I moved to remove him. And that motion was granted when Judge Dresnick acknowledged that he was not legally appointed." Trial Tr. vol. 2, 273. The actual record of proceedings before Judge Dresnick revealed the following ruling by the court: "So, I'm going to deny your request to discharge him but I'm going to grant Tobin's request to be discharged." July 13, 2009, H'rg Tr., 26.
>
> (A.1, pg. 29-30)

The most significant finding in mitigation is the following:

> Significant emotional problems based upon diagnoses and inability to properly medicate his depression due to issues relating to antidepressants. The Referee believes that Respondent's mental and emotional issues are the primary cause of his inability to conform to professional standards and gives tremendous weight to this mitigation in assigning an appropriate disciplinary message.
>
> (A.1, pg. 33)

In The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983), this Court held that a referee "should not be restrained from considering hardships in recommending a discipline which would be fair to society and to respondent in addition to being an effective deterrent to others." It is the Bar's position that although the referee's findings are extensive and extremely well reasoned, too much weight was given to

this one mitigating factor. Doing so was neither fair to society nor an effective deterrent to others. Mr. Norkin testified to being treated for psychiatric disorders for the past 17 years. Yet, in reality and by his own admissions, it is his personality and strong opinions that have caused the misconduct in question. His behavior, resulting in discipline by this Court in 2003, is no different than it was in the proceedings before Judge Miller. Mr. Norkin stands firm in his view that if he believes in a position, there are no limits to the extent of his reaction. He can write poisonous letters and e-mails, he can scream at judges, he can hurl obscenities at lawyers in the courthouse and he can accuse court reporters of being corrupt in their duties. Mr. Norkin has damaged attorneys, judges, court reporters, the Bar, and the entire judicial system with the misconduct found. To mitigate the appropriate discipline to the extent done here is not an effective deterrent to others.

Interestingly, the referee found Mr. Norkin was quite deliberate in his misconduct. For instance, he berated Judge Tobin in an effort to get him to dissolve a writ of garnishment and accused Judge Dresnick of improper conduct in order to have him disqualified, without any basis for any of the accusations. (A.1, pg. 9). He raised his voice, behaved angrily and disrespectfully in court when he was not winning. (A.1, pg. 16). As such, the referee did not find that Mr. Norkin's emotional problems "impaired his judgment so as to diminish his culpability." The Florida Bar v. Shanzer, 527 So.2d 1382 (Fla. 1991). On the contrary, the referee

found that Mr. Norkin exercised judgment, but in a negative way. Thus, the mitigating circumstance found, given the findings of deliberate conduct, should be given minimal weight.

A one-year suspension coupled with a public reprimand is the appropriate discipline, given the foregoing.

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 the respondent should receive a 1-year suspension and a public reprimand.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief of The Florida Bar regarding Supreme Court Case No. SC11-1356, The Florida Bar File No. 2010-51,662(17F) has been mailed by regular U.S. mail to Respondent's Counsel, Kevin P. Tynan, Esq., at Richardson & Tynan P.L.C., 8142 N. University Dr., Tamarac, FL 33321-1708, on this _____ day of _____, 20____.

_____

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

Undersigned counsel does hereby certify that the Initial Brief of The Florida Bar is submitted in 14 point proportionately spaced Times New Roman font, and that the brief has been filed by e-mail 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.

_____

Randi Klayman Lazarus, Bar Counsel

INDEX TO APPENDIX