**IN THE SUPREME COURT OF FLORIDA (Before a Referee)**

**THE FLORIDA BAR,**
**Complainant,**
**v.**

**JEFFREY ALAN NORKIN,**
**Respondent.**
**_____/**

**Case No. SC11-1356**

**TFB File No. 2010-51, 662 (17F)**

# REPORT OF REFEREE

## I. SUMMARY OF PROCEEDINGS

The genesis of these proceedings lies in Respondent's representation of the defendant, David Beem, in the case of *Gary Ferguson, individually, and derivatively on behalf of Floors to Doors, Inc., a Florida Corporation, Plaintiffs v. David Beem and Floors to Doors, Inc., a Florida Corporation, Defendants*, Circuit Court Case Number: 07-34790 CA 20 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

In Case No. SC11-1356, the Florida Supreme Court issued its order on July 12, 2011, directing the Chief Judge of the Eleventh Judicial Circuit to appoint a Referee within 14 days with the Report of Referee to be filed within 180 days of the order appointing the Referee, or January 23, 2012. The Referee was appointed on July 25, 2011 to conduct disciplinary proceedings in this matter. *See* R. Regulating Fla. Bar 3-7.6. The Referee meets the minimum qualifications as set forth in Rule 3-7.6, Procedures Before a Referee. The relevant procedural history follows.

On August 15, 2011, Respondent filed Respondent's Motion to Dismiss. A hearing was held on the motion and it was denied by the Referee. On September 29, 2011, Respondent filed his Answer and Affirmative Defenses. Thereafter, The Florida Bar filed The Florida Bar's Motion for Partial Summary Judgment. The Referee held a hearing and granted The Florida Bar's Motion for Partial Summary Judgment, in part. The matter was then set for a Final Hearing.

The Final Hearing in this matter commenced on January 5, 2012 and concluded on January 12, 2012. It consisted of five days of testimony, evidence, and argument by the counsel for the parties. During the final hearing, the Referee received sworn testimony from the following witnesses on behalf of The Florida Bar: (1) Gary Brooks, Esquire, a partner at Brooks and Alayon, Coral Gables, Florida; and (2) retired Circuit Court Judge David Tobin. The Referee also received sworn testimony from the following witnesses on behalf of the Respondent: (1) Jeffrey Alan Norkin, Esquire; (2) Adam Michael Friedman; (3) Murray Norkin; (4) Jonathan Drucker, Esquire; (5) David Beem; and (6) Jonathan Hoffman, Ph.D.

All pleadings, notices, motions, orders, transcripts, and exhibits have been forwarded to the Supreme Court of Florida with this report and constitute the record in this case.

After the five day final hearing, the parties requested that the Referee consider all transcripts in conjunction with its findings in this matter, and sought additional time to file memoranda regarding the imposition of discipline. On January 13, 2012, The Florida Bar filed a Motion for Extension of Time to File Report of Referee. The Supreme Court of Florida granted the Motion for Extension of Time and extended the time for filing the Report of Referee until and including February 23, 2012.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Randi Klayman Lazarus, Esquire.

For the Respondent: Steven Davis, Esquire and Jeffrey Alan Norkin, Esquire.

## II. FINDINGS OF FACT

This Referee finds, by clear and convincing evidence,[1] that:

### A. Jurisdictional Statement

Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules cited in this report.

### B. Narrative Summary of Case

Respondent, Jeffrey Alan Norkin, a member of the Florida Bar for nineteen (19) years, assumed representation of defendants, David Beem and Floors to Doors, Inc., a Florida corporation, in *Gary Ferguson, individually, and derivatively on behalf of Floors to Doors, Inc., a Florida Corporation, Plaintiffs v. David Beem and Floors to Doors, Inc., a Florida Corporation, Defendants*, Circuit Court Case Number: 07-34790 CA 20 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida in July, 2008 (hereinafter "*Ferguson v. Beem*"). Gary Brooks, a thirty (30) year member of

[1] In a referee trial of a prosecution for professional misconduct, the Bar has the burden of proving its accusations by clear and convincing evidence. *The Florida Bar v. Rayman*, 238 So. 2d 594 (Fla. 1970). The referee is responsible for finding facts and resolving conflicts in the evidence. *The Florida Bar v. Hoffer,* 383 So. 2d 639 (Fla. 1980). In bar discipline proceedings, in order to find that there has been misconduct, the referee must find that the accusations were proven by clear and convincing evidence. *The Florida Bar v. McClure*, 575 So. 2d 176 (Fla. 1991); *The Florida Bar v. Neu,* 597 So. 2d 266, 268 (Fla. 1992).

The Florida Bar, represented the plaintiffs in the litigation.[2] The essential facts giving rise to the litigation between Ferguson and Beem were described during the course of Mr. Brooks' testimony before the Referee during the final hearing, and are set forth in a summary form. Essentially, Ferguson and Beem went into business together, forming a corporation. Trial Tr. vol. 1, 21. Under the terms of the corporate agreement, Beem was the active partner and Ferguson, was, effectively, a one-third owner. *Id*. After approximately ten years of this business arrangement, Ferguson went to the bank, pulled bank records, and concluded that Beem had made an unauthorized withdrawal of approximately one million dollars out of the corporate account. *Id*. at 22.

Ferguson's wife performed much of the accounting work, so was essential to the issues. *Id*. Ferguson filed suit against Beem alleging improper taking of the money, breach of contract with respect to the record keeping, and dissolution of the corporation. *Id*. Beem was initially represented by attorney Alan Fertel, but Respondent assumed representation in July, 2008. *Id*. In the beginning, Respondent was very cordial in his interaction with Brooks. *Id*. at 23. However, in August, 2008, Respondent's demeanor changed and he became combative with Brooks. *Id*. at 24. What followed, shortly thereafter, was a course of well-documented interactions between Respondent and his opposing counsel, the bench, and a court-appointed provisional director of the corporation tasked with overcoming the corporate stalemate in the underlying litigation. Brooks took issue with Respondent's behavior and filed a Bar Complaint. The matter proceeded before a grievance committee, a probable cause determination was made, and the instant action ensued.

[2] Mr. Brooks testified he was a trailblazer in promoting the rights of women and minorities within the legal profession and was awarded the Bronze Star for his service in the Vietnam War. Trial Tr. vol. 1, 17-20.

## III. RECOMMENDATION AS TO GUILT

I recommend that the Respondent be found guilty of violating Rules 4-3.5(c), 4-8.2(a), 4-8.4(a), and 4-8.4(d) of the Rules of Professional Conduct.

*1. Violation of Rule 4-8.2(a) and 4-8.4(a):*

The clear and convincing evidence supporting the violation of these rules is set forth in detail below.

The first relevant bout of conduct surrounds the appointment of retired Judge David Tobin as a provisional director of *Floors to Doors, Inc.* In June, 2009, during the course of the exceedingly acrimonious *Ferguson v. Beem* litigation, Judge Ronald Dresnick conducted a hearing where both Respondent and Mr. Brooks were present. Trial Tr. vol. 1, 134; Hr'g Tr. July 13, 2009, 9-15. At that time, Judge Dresnick appointed retired Judge Tobin as a provisional director of *Floors to Doors, Inc.* in order to "break the tie for any vote on which [the two existing directors didn't] agree." Trial Tr. vol. 1, 134. Respondent vigorously opposed Judge Dresnick's decision to appoint retired Judge Tobin in this capacity. Hr'g Tr. July 13, 2009, 9-15. A record of a July 13, 2009 proceeding before Judge Dresnick reveals the following:

> The Court: Was that one of the times that you were on the phone?
>
> Mr. Norkin: Yes.
>
> The Court: It seems to me I recall you being on the phone. *You had unpleasant things to say about Mr. Tobin.*

*Id.* at 15 (emphasis supplied). Notwithstanding his displeasure at the appointment of a provisional director, Respondent did not seek appellate review of Judge Dresnick's decision. Retired Judge Tobin called the first meeting at *Floors and Doors*. Trial Tr. vol. 1, 135. Both Beem and Ferguson handed retired Judge Tobin motions they were unable to agree upon. *Id*. Tobin listened

to them, and made decisions on each motion. *Id*. After the first meeting, Respondent complained to Tobin via telephone, claiming that Tobin should require Ferguson to put more money in the corporation. *Id*. at 136. Tobin explained to Respondent that this was not the function of a provisional director. *Id*.

Under the terms of Judge Dresnick's appointment, Beem and Ferguson were both required to pay half of Tobin's fee. *Id*. at 137. Ferguson paid, but Beem did not. *Id*. Tobin withdrew from the case. *Id.* at 136. Tobin hired counsel to represent him for the purpose of collecting his unpaid fee. *Id.* 136-138. A writ of garnishment was served in conjunction with the unpaid fee. *Id*. In a letter dated October 27, 2009, Respondent wrote the following:[3]

> I hereby demand that you rescind, vacate and withdraw the writ of garnishment or I will file suit against in one week from today's date . . .
>
> Further, I wonder why it is Gary Ferguson who delivered or had any part in delivering or any role whatsoever related to this writ of garnishment. The cozy, conspiratorial nature of your relationship with Mr. Ferguson and/or his counsel will be fully investigated in any lawsuit filed against you.
>
> Again, Mr. Tobin, your misuse of the law is unbecoming of a former judge and it will be addressed fully in the courts if you do not await the conclusion of this case and the order requiring Mr. Ferguson to pay you as a non-prevailing party.

*See* Bar Ex. S.

[3] Copies of the letter were sent to Gary Brooks and David Beem. *See* Bar Ex. 5.

The Referee finds that per his credible testimony,[4] retired Judge Tobin did not have a cozy, conspiratorial relationship with Ferguson or his attorney, contrary to Respondent's written assertions.[5] *Id*. at 139.

On January 20, 2010, Respondent filed Defendant's Motion to Recuse Judge, seeking the removal of Judge Dresnick. Respondent stated the following:

> At a hearing on December 22, 2009, FTD submitted incontrovertible proof that Ferguson had directly and egregiously violated a court order by effectively stealing $16,000 from FTD's operating account, Judge Dresnick again focused his anger on undersigned, stating among other things that FTD should move to recuse him if they are unhappy with how he has presided over the case and that every time undersigned appears before him, he repeats the "Same crap." Judge Dresnick ordered Ferguson to return the money but denied all requests for sanctions despite the clear, criminal violation of the Court's order. The act was likely criminal despite the existence of the order it violated.
>
> ***
>
> In the one instance Judge Dresnick did provide this assistance, it was to appoint Ret. David Tobin. Mr. Tobin's efforts did nothing whatsoever to help the company and he, like Judge Dresnick, exclusively acted at the beck and call of Ferguson, whom the court has found filed this lawsuit solely to injure the company and Beem. Judge Dresnick then sanctioned FTD for not paying Tobin despite

[4] Respondent stated the following upon cross-examination of retired Judge Tobin: "Your Honor . . . first of all, I would like to just state for the record that we were advised that Judge Tobin was not going to be testifying by Ms. Lazarus, so this has come as a surprise to us." *Id.* at 144. The record reflects that Respondent was indeed provided with requisite notice. Ms. Lazarus produced an e-mail dated November 14, 2011 to both Respondent and co-counsel for Respondent indicating the following: "I have, determined that I will call Judge David Tobin as a witness. He was listed as one of your witnesses."

[5] Respondent has consistently maintained during the course of the proceedings that his actions do not violate any of the Rules of Professional Responsibility, as evinced by the fact that no judge has filed a complaint with The Florida Bar against him. Retired Judge Tobin testified: "If I had been on the bench at the time, I would have turned him into the [B]ar myself." *Id*. at 142.

> the fact that every hearing Tobin attended he did not give notice to undersigned.[6]
>
> At all times, Judge Dresnick's rulings and demeanor have been favorable to Ferguson, who has, in fraudulent and criminal manner, used this Court as an instrument of destruction. He has accomplished this exclusively through the conduct of the case by Judge Dresnick.
>
> ***
>
> [I]t seems apparent that Judge Dresnick has known and been well-acquainted with opposing counsel, Gary Brooks, Esq. They exchange personal information and are very friendly with each other. On the other hand, there have been no such pleasantries between Judge Dresnick and this attorney. Obviously, based on the foregoing, Judge Dresnick's treatment and demeanor toward undersigned has been quite opposite: hostile, impatient, and highly critical and disapproving.
>
> Based on his own words at the December 22, 2009 hearing, FTD and this attorney can only surmise that Judge Dresnick has other reasons for recusing himself because he stated that he would gladly recuse himself. He would not make such a statement if he did not feel there were adequate grounds for recusal.

*See* Bar Ex. T.

Rule 4-8.4(a) provides that a lawyer shall not violate or attempt to violate the Rules of Professional Conduct. Rule 4-8.2(a) prohibits a lawyer from making "a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member

[6] An exchange regarding the failure to provide notice occurred between Judge Dresnick and Respondent at the July 13, 2009 hearing, wherein the Court concluded: "The Court: When you say a hearing without notice, you were there and he was there." *Id*. at 10. Thus, even if technically correct, Respondent's statements in this regard are inflammatory and subject to misinterpretation.

of the venire, or candidate for election or appointment to judicial or legal office."

Respondent's correspondence to retired Judge Tobin contained an improper threat and without supporting facts, alleged that retired Judge Tobin was involved in a conspiracy.[7] Per the credible evidence adduced at the evidentiary hearing, there was no conspiracy and Respondent made the statement with reckless disregard. Additionally, it should be noted that Respondent published the groundless allegation to third parties, to wit: Mr. Brooks and Mr. Beem. It appears that his sole purpose in making the statement was to berate retired Judge Tobin into dissolving the writ of garnishment. Finally, Respondent improperly threatened retired Judge Tobin with a personal lawsuit.

Respondent's Motion to Recuse Judge, as well, contained statements alleging that Judge Dresnick acted at the "beck and call" of the plaintiff, and insinuated an improper relationship between counsel for the plaintiff, Mr. Brooks, and the court. Respondent's motive was to obtain the disqualification of Judge Dresnick, thus a more favorable forum for the litigation of his client's claim. However, his statements were devoid of any basis in the record. Thus, his statement violates Rules 4-8.2(a) and 4-8.4(a).

*2. Violation of Rule 4-3.5(c)*

The clear and convincing evidence supporting the violation of this rule is set forth in detail below.

The relevant bouts of unprofessional conduct arise out of behavior and demeanor exhibited by Respondent in numerous hearings in the matter of

[7] Retired Judge Tobin testified: "I never got a letter like that before in my life." Trial Tr. vol. 1, 138.

*Ferguson v. Beem* conducted before both the Honorable Ronald Dresnick and the Honorable Valerie Manno Schurr.

During a hearing on April 17, 2009, before Judge Dresnick, Judge Dresnick commented, "I am finding these hearings with you extremely difficult. You talk very loud. I am telling you at every hearing. You are very angry, you make me angry. I don't like angry lawyers. There is no point in it." Hr'g Tr. 14:23-25, 15:1-2, Apr. 17, 2009. Later in the same hearing, Judge Dresnick commented, "I have told you three times already. I'm telling you, I am different than the last judge and so you are going to modify your behavior when you come in here. I am a low-volume, low-key guy until I get pissed off. You know what pisses me off? People coming in here and raising their voices at me." *Id*. at 19:10-16.

At a hearing before Judge Dresnick on December 22, 2009, Judge Dresnick remarked, "You come in like a bull in a china shop. You do it every time. I don't know if you are trying to piss me off or what but you do it." Hr'g Tr. 15:12-15, Dec. 22, 2009. Later on in the hearing, Judge Dresnick commented, "I remember you coming in here and screaming the way you are doing consistently, I remember that. I tried to forget it but I remember it. You came in, you're the one that started talking. You're the one that raised your voice." *Id*. at 22:19-25.

During a hearing held on July 13, 2009 before the Honorable Ronald Dresnick, the record reveals the following exchange:

> Mr. Norkin: That means that you're guessing that my client said something false.
>
> The Court: I wasn't there but the best way to do it is to at least try to read it. If you don't want to transcribe it, maybe the court reporter can read it to you.

> Mr. Norkin: They won't Judge, they will never do that. That's dreaming.
>
> The Court: I've had court reporters do that for me.
>
> Mr. Norkin: As a judge?
>
> The Court: As a lawyer.
>
> Mr. Norkin: Maybe that was back in a more gentle era.
>
> The Court: Maybe that's because *I'm* more gentle.
>
> Mr. Norkin: Perhaps. Perhaps it was a more gentle era where court reporters were less interested in making a buck than they are now.

*See* Bar Ex. 3 at 17:2-19. Judge Dresnick then explained:

> The Court: [N]ow, you don't like Tobin because he doesn't agree with your client. If Tobin were going the other way, you'd be happy as can be. If your client was named Ferguson or if Tobin was saying whatever he's saying to Ferguson to Beem, you would be tickled to death. But what you are is unhappy with the result. You're not happy about it because he doesn't agree with you. *You get very unhappy when someone doesn't agree with you. I've seen that. You get unhappy with me when I don't agree with you*, but I don't take it personal.

*Id.* at 24:11-21 (emphasis supplied). The exchange continued with the following:

> The Court: Any suggestions?
>
> Mr. Brooks: If you're not going to have a provisional director, then they should both sign the checks.
>
> The Court: Mr. Norkin?

> Mr. Norkin: No, I suggest you reject this entire report. He should have known-
>
> The Court: I'm not rejecting the entire report, that's overruled. I'm accepting the report.
>
> Mr. Norkin: What –
>
> The Court: As a practical matter how do I deal with D?
>
> Mr. Norkin: You ignore it. My client is not going to change the signatory on any of these checks. My client asked this Court to make him the 51 percent voting shareholder so he can run the company the way he has been doing for 15 years. You rejected that. Now the Court is going to change the bank accounts, is going to order that the bank accounts' signatories be changed, what's good for the goose is good for the gander.
>
> The Court: What's good for your goose is good for your gander. It's only good for your goose –
>
> Mr. Norkin: I haven't –
>
> The Court: Excuse me, sir. *I've had enough with you.* You only like it when it's going *your way* and *you don't see it any other way.*

*Id.* at 30-31 (emphasis supplied).

After Judge Dresnick granted Defendant's Motion to Recuse Judge, the Honorable Valerie Manno Schurr was assigned to the case. During a hearing held on September 20, 2010 before Judge Manno Schurr, the following exchange occurred:

> Mr. Norkin: If this trial doesn't go, this company is finished.
>
> The Court: You keep saying that to me.
>
> Mr. Norkin: Your Honor, but that's true. This counterclaim has been pending and we won summary judgment on it –

The Court: Don't yell at me.

Mr. Norkin: I don't mean to, Judge. We won summary judgment –
The Court: You yell at me every time we have a hearing.

Mr. Norkin: I'm sorry, Your Honor. You know, Your Honor –

The Court: I never yell at anybody.

***

The Court: [addressing Mr. Norkin] That's what litigation does.

Mr. Norkin: That's what litigation does?

Mr. Brooks: You should have settled.

The Court: Sometimes it does.

Mr. Norkin: I won this case in January of 2009 –

Mr. Brooks: This case was set for trial –

The Court: I'm done. You do this to me every single time you are in front of me, whether it is in motion calendar, in my office or it's a special set or today. You yell at me and you scream at me and I'm asking you to please stop. I'm done.

Mr. Norkin: I just don't understand, Your Honor, why we are not getting equal treatment as the other cases.

The Court: Have a nice day.

*See* Bar Ex. C at 6-7; *see also* Bar Ex. D at 11-12.

Just over a week after having been admonished by the court, the transcript of a hearing held on September 28, 2010 before Judge Manno Schurr reveals the following:

The Court: I don't remember having this issue in front of me.

Mr. Norkin: Your Honor, there is the docket with the order overruling his objections.

The Court: I don't remember that. Did I do that?

Mr. Brooks: The problem with this –

Mr. Norkin: Your Honor, why are you asking Mr. Brooks? Do you believe him more than me?

The Court: No. Listen, do me a favor. I'm going to ask you to leave, you're doing it again.

Mr. Norkin: I just wonder why it is –

The Court: Oh my god, I'm done. Good-bye. Not doing this. Not going to be questioned by you. You do this to me every single time. All I did was ask him a question. I was going to ask him for the order if he had it. What do I get, I get rudeness and I get you asking me questions and insinuating things. I already make one ruling … Tell me what I'm going to do. I'm going to send you to the general magistrate and I don't care if you don't want to go. You're going to go anyway. You don't have to pay for it. I want an order referring them to Judge Schwabedissen for these discovery matters. Maybe she'll have better luck with you because you're very rude to me, sir.

Mr. Norkin: Your Honor, you seem to question my word every single time I say something to you.

The Court: Not something – sir, I'm finished.

Mr. Norkin: Remember that seems like you're questioning my work every single time like I'm lying to you.

The Court: I've had 30 hearings today I don't get this from any lawyers, I don't understand.

*See* Bar Ex. E at 12-13.

Respondent presented evidence that his voice is naturally loud, he is theatrical, he speaks loudly when he feels he is not being heard, and he is working with a behavioral therapist to correct his behavior. During his testimony regarding his raised voice in hearings, Respondent stated the following:

> I was trying to get my piece heard. It was my belief and feeling that Mr. Brooks' tactic in these hearings, in virtually every hearing, he high-jacked (sic) hearings. He has this persistent, calm way of speaking as if he were Moses himself. Because he speaks in this calm-you know what I'm saying? Maybe I will use this tone, this calm and slow way of speaking. And judges just listen to him.
>
> And when I would try to say, judge, he's taking up the whole hearing, they would say don't interrupt. And I would be so frustrated, I was never able-I felt like I was never able to speak . . .
>
> And sometimes maybe my voice got a little bit louder.

Trial Tr. vol. 2, 285-86.

The Referee finds Mr. Brooks' testimony on this issue to be enlightening:

> Normally [Respondent] would speak in an ordinary tone of voice, particularly when he won. He did win certain hearings. He did make points and he won on those points. On those occasions, he was an ordinary lawyer, you know, he spoke in a moderate tone of voice. He made arguments. When he started to lose or he got frustrated either by something I –by an argument I would make, or the judge, that's when he would like start getting very excited and he would start shouting.

Trial Tr. vol. 1, 69.

The Referee concludes that Respondent's behavior was calculated. When Respondent felt he was not winning a particular hearing, he would raise his voice, and behave in an angry, disrespectful manner.[8] As a result of this behavior, Judge Manno Schurr was forced to terminate proceedings and refer all discovery matters to a general magistrate. Moreover, on multiple occasions, Judge Dresnick had to warn Respondent regarding his behavior. This is a violation of Rule 4-3.5(c). *See The Florida Bar v. Morgan*, 938 So. 2d 496, 498-499 (Fla. 2006) (upholding a violation of Rule 4-3.5(c) premised upon an attorney's inappropriate courtroom behavior, including antagonism toward the bench); *The Florida Bar v. Abramson*, 3 So. 3d 964, 966 (Fla. 2009) (upholding a violation of Rule 4-3.5(c) premised upon discourteous and disrespectful behavior towards a judge).

Further, it is important to note that the transcripts reveal that both Judges Dresnick and Manno Schurr were not merely concerned with Respondent's voice level, but rather his antagonistic style towards the bench, which made it difficult for each judge to continue the proceedings.

In the September 28, 2010 hearing, Respondent's questions to Judge Manno Schurr interrupted the proceeding, and the transcript began to read like an interrogation. Both Judges Dresnick and Manno Schurr indicated Respondent was "screaming" at them. Judge Dresnick specifically indicated that Respondent came across as angry, and that his being so angry made it difficult for Judge Dresnick not to get angry. Respondent was warned by both judges numerous times to stop this behavior, but he persisted until the proceedings were effectively disrupted.

[8] Mr. Brooks testified as to this behavior: "I'm not a doctor, but I don't feel [Respondent] has the psychological makeup to be able to handle what is necessary to handle litigation." Trial Tr. vol. 1, 67.

As the direct result of Respondent's lack of professionalism and self-control, both judges were forced to admonish Respondent. Respondent's actions made it impossible for the judges to conduct hearings. Judge Manno Schurr was forced to terminate a hearing and to refer all discovery matters for consideration to a general magistrate. It is clear that Respondent was unable to manifest appropriate courtroom demeanor during multiple court appearances.

The Referee previously entered partial summary judgment in favor of the Florida Bar with regard to Respondent's violation of Rule Regulating the Florida Bar 4-3.5(c). This Rule prohibits a lawyer from engaging in conduct intended to disrupt a tribunal. However, the Referee permitted Respondent to present additional evidence as to the relevant incidents. Despite Respondent's explanations during the course of the final hearing concerning the natural volume of his voice, the Referee remains convinced that Respondent engaged in conduct intended to disrupt the tribunal by exhibiting rude behavior and yelling during courtroom hearings.[9]

This Referee finds that Respondent has violated R. Regulating Fla. Bar 4-3.5(c). His explanation concerning his volume of voice was patently unbelievable. It is clear in the context of the transcripts and through the testimony of Mr. Brooks that each time Respondent felt the tribunal was not persuaded by his argument, he began to shout and behave in a disrespectful, belligerent manner. This resulted in the termination of proceedings as the tribunal was unable to conduct court.

*3. Violation of Rule 4-8.4(d)*

The clear and convincing evidence supporting the violation of this rule is set forth in detail below.

[9] Respondent was able to modulate his voice at will during the course of the final hearing.

In an e-mail dated August 27, 2008 from respondent to opposing counsel, Gary Brooks, Respondent stated: "You will join the many attorneys who have done so and lived to regret their incompetent, unethical and improper litigation practices." *See* Bar Ex. F. In an e-mail dated August 27, 2008 from Respondent to Gary Brooks, Respondent stated:

> Again, I would not write I have a trial period if I did not. You must really lie a lot to even think I would. Liars, in general, not you necessarily, are so suspicious of others lying. Just an observation I have come to.

*See* Bar Ex. G.

In an e-mail dated September 22, 2008 transmitted electronically to Mr. Brooks, Respondent stated:

> By the way, I found your recent letters to the judge to be improper and your motions to be laughable and scurrilous. I look forward to litigating the issues you highlight and recovering the fees I bill my client from you PERSONALLY. I think I have never litigated with an attorney who is as disingenuous as you. This really is fun, and so from that standpoint, I thank you.
>
> See, emailing might not be the most productive way to go. If you continue to refuse to speak with me to deal with these issues, I am going to file a motion compelling you to do so. Things don't get worked out with emails. They just go on and on and on. No compromises are reached via email.
>
> Let me know if you'll chat with me on the phone. I so want to.

*See* Bar Ex. H.

In an e-mail dated September 22, 2008 transmitted electronically to Mr. Brooks, Respondent stated: "When is your unprofessional, ludicrous, downright unintelligent conduct going to stop? Before or after you are directed to pay my bills?" *See* Bar Ex. I.

In an e-mail dated September 23, 2008 transmitted electronically to Mr. Brooks, Respondent stated:

> Your motions re: discovery should be discussed over the phone. Other than that and similar issues, I'll agree to keep the emails. I'm sure I'd be more polite over the phone. If I'm going to criticize your professionalism and honesty, I prefer to do it in writing anyway. I don't want my words considered kind out of context. I don't say many kind words to those I consider dishonest such as yourself.

*See* Bar Ex. J. In a letter dated February 4, 2009 and mailed to Mr. Brooks, Respondent stated:

> This is to formally notify you that a motion for sanctions against you personally and your firm will be filed in three weeks. I believe that you committed malpractice by allowing your client to file this lawsuit and judging by your client's nature, I have no doubt he will be suing you in the near future … you have committed malpractice … Show the evidence or you are about to have a very massive problem.

*See* Bar Ex. L. In a letter dated April 16, 2009 and mailed to Mr. Brooks, Respondent stated:

> I also believe that you should be very worried about this situation. By deceiving the Court so many times and prolonging the matter, which has been formally declared an abuse of process, your client might have a suit against you, for your poor advice and other misconduct … I would respectfully suggest you put your carrier on notice.

*See* Bar Ex. M.

In addition to his vitriolic writings, Respondent had several outbursts regarding Mr. Brooks during the course of the litigation. On January 7, 2009, during a hearing before the Honorable Daryl E. Trawick in *Ferguson v. Beem*, Respondent stated: "What more do we have to do, your honor, to show you this

is the honest man and this is a dishonest man?" *See* Bar Ex. K at 45:9-11. Mr. Brooks testified, credibly, that Respondent looked at him and pointed to him while making the statement.[10] Trial Tr. vol. 1, 35. In July, 2010, in Judge Manno Schurr's chambers while trying to set a hearing, Respondent shouted "at the top of his lungs" in the presence of several lawyers and an assistant, "[Mr. Brooks] is a liar. He's lying."[11] Trial Tr. vol. 1, 40. On September 20, 2010, Respondent approached Gary Brooks in the hallway of the Dade County Courthouse and, in the presence of "at least four to six [other] attorneys," said very loudly that he had spoken to other attorneys and that Mr. Brooks was "underhanded and a scumbag." [12] *Id*. at 41.

Rule 4-8.4(d) prohibits an attorney from *engaging in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate.* Respondent's conduct in shouting at Mr. Brooks while attempting to set a hearing was prejudicial to the administration of justice. Moreover, his letters, e-mails, and public insults disparaged and humiliated Mr. Brooks, in clear violation of Rule 4-8.4(d). *See The Florida Bar v. Martocci*, 791 So. 2d 1074 (Fla. 2001) (finding attorney in violation of Rule 4-8.4(d) for making insulting facial gestures at opposing counsel, making sexist comments, and disparaging opposing counsel's competence in the practice of law); *The*

[10] Respondent testified that the comment was directed at the plaintiff in the litigation, Mr. Ferguson. Trial Tr. vol. 2, 231. The Referee finds Mr. Brooks testimony credible on this point when considered in conjunction with the hearing transcript.

[11] Respondent stated, "I do not remember saying that and I deny that I said that," but the Referee rejects that testimony. Trial Tr. vol. 2, 268.

[12] Respondent stated "I don't recall saying that. And I don't believe I said that. I do admit, however, that I have asked other lawyers. Whenever I am tortured by a lawyer, I start asking about them. And every time that I would ask people about Mr. Brooks, it was the same thing." *Id*. at 270. The Referee concludes the statement was made.

*Florida Bar v. Uhrig*, 666 So. 2d 887 (Fla. 1996) (finding that Rule 4-8.4(d) requires that practitioners refrain from knowingly humiliating litigants on any basis whatsoever, and that attorney was in violation for mailing insulting letter to opposing party who was member of a minority group); *The Florida Bar v. Adams*, 641 So. 2d 399 (Fla. 1994) (finding a Rule 4-8.4(d) violation arising out of a letter accusing opposing counsel of suborning perjury without basis).

*4. Violation of Rule 4-3.3(a)(1)*

I recommend that the Respondent be found not guilty of violating Rule 4-3.3(a)(1) of the Rules of Professional Conduct.

The Florida Bar has failed to establish a violation of this rule by clear and convincing evidence, as detailed below. The Florida Bar argues that during the course of two hearings, Respondent misrepresented the content of a summary judgment order entered by the Honorable Daryl Trawick. Judge Trawick entered summary judgment on Respondent's counterclaim, but did not make factual findings. Additionally, he struck proposed language in the order, as follows:

> The only competent evidence in the record is the testimony and report of Mr. Steinberg, the Court appointed forensic accountant, and the evidence submitted by the Defendants in support of this motion and contradicting all allegations of such theft. That evidence shows that Mr. Beem has stolen nothing [from] Floors to Doors and that, as alleged in the Counterclaim, Mr. Ferguson has engaged in acts, including the [filing] of this lawsuit, intended to disable the company and force it into liquidating its real property as set forth in the Motion at bar.

The Bar contends Respondent made misrepresentations before Judge Ronald Dresnick on February 27, 2009, as to the contents of the summary judgment order. Respondent stated, in relevant part:

> … Mr. Brooks is very good at muddying the waters with a whole bunch of procedural arguments which frankly I think are frivolous because summary judgment has been entered. Summary judgment finding to be of malicious prosecution, summary judgment finding corporate espionage, summary judgment finding harassment of this man and his life for the last year and a half, summary judgment throwing out a case alleging $1 million in damages. He didn't just do that lightly.

Hr'g Tr. 33:4-14, Feb. 27, 2009.

The Bar further contends that Respondent made misrepresentations to Judge Jennifer Bailey in a hearing on April 6, 2010, concerning the content of the Judge Trawick's order. Respondent stated, in relevant part:

> Mr. Norkin: -- and counterclaimant – yes. And I have the order granting summary judgment where Judge Trawick found there was no evidence whatsoever to support any claims of theft. Also, Judge Trawick entered summary judgment – and this has to be almost unique in juris[]prudence – granting our summary judgment, granting summary judgment to us finding that this entire complaint was an abuse of process and filed purely for the purpose of destroying this company.

Hr'g Tr. 5:15-25, Apr. 6, 2010 (emphasis added). Judge Bailey, in response, pointed out to Respondent that she was aware this language was not part of the order, and that Judge Trawick clearly struck and excised it from the order. *Id*. at 8:2-6 ("The Court: Contrary to what you just told me, Judge Trawick struck the findings that there was no evidence of any theft from Floors to Doors. He just says there was no evidence of theft. So he struck all that.").

Respondent does not dispute that the language does not explicitly appear in the order. Respondent advances the position that when Judge Trawick granted the order on the grounds set forth in the motion, the order implicitly adopted the allegations in the motion, and that Respondent was arguing his

"good faith belief" of what was contained in the order. Respondent contends that, as the counterclaim alleged defamation and abuse of process, and Judge Trawick granted summary judgment on the counterclaim, he was advancing a proper legal argument.

Although Judge Trawick's order is devoid of factual findings regarding the counterclaim, the language contained within the counterclaim asserts that Ferguson's acts were "malicious and intended to coerce or force Beem to agree to sell…" Counterclaim at 17. The counterclaim further alleges that Ferguson filed "a sham, abusive suit . . . purely to damage the company." *Id*. at 12.

Thus, as Judge Trawick granted summary judgment on the counterclaim in the underlying case, which alleged malicious prosecution, and his order was devoid of findings, Respondent's arguments were zealous but not clear and convincing violation of Rule 4-3.3(a)(1). Moreover, Respondent testified that during each hearing wherein he represented the contents of the summary judgment order, he contemporaneously handed the actual order to the tribunal, and the record supports this assertion. Thus, the Referee finds no violation as to 4-3.3(a)(1).

## IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I respectfully recommend that Respondent be found guilty of misconduct justifying disciplinary measures and that he be disciplined by:

A. A ninety (90) day suspension from the practice of law in Florida.[13] *See The Florida Bar v. Ratiner*, 46 So. 2d 35 (Fla. 2010) (sixty day suspension and public reprimand appropriate for attorney who had single violent outburst

[13] The Bar sought a longer suspension, but the Referee gives great weight to the mitigation presented regarding Respondent's mental and emotional issues. With proper treatment, it is the hope of the Referee that Respondent will be able to rehabilitate himself.

and no prior discipline); *The Florida Bar v. Morgan*, 938 So. 2d 496 (Fla. 2006) (ninety-one day suspension appropriate for attorney with two prior disciplines following disrespectful exchange with judge); *The Florida Bar v. Adams*, 641 So. 2d 399 (Fla. 1994) (ninety day suspension appropriate for attorney's baseless charges of criminal and unethical conduct against opposing counsel in letter and in court); *The Florida Bar v. Glick*, 397 So. 2d 1140 (Fla. 1981) (suspension appropriate when attorney engages in the same or similar misconduct for which he or she was previously disciplined when misconduct causes injury or potential injury to the public, the legal system, or the profession).

B. As a condition of his suspension, Respondent must submit to an evaluation by a licensed and Bar-approved mental health professional and undergo any recommended counseling.

C. Upon reinstatement, Respondent shall be placed on probation for a period of eighteen months, during which time any recommended counseling will continue.

D. During the probationary period, Respondent shall prepare and mail letters of apology to Mr. Brooks, retired Judge Tobin, Judge Dresnick, and Judge Manno Schurr. *See The Florida Bar v. Ratiner*, 46 So. 3d 35 (Fla. 2010) (ordering letters of apology during probationary period).

E. Costs, as supported by affidavit of The Florida Bar and detailed below.

## V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS

Prior to recommending discipline, pursuant to Rule 3-7.6(m)(1), I considered the following:

## A. Personal History of Respondent:

1. Date of Birth: Not supplied in record
2. Education: Respondent graduated *cum laude* from the University of Miami School of Law (May, 1992). Trial Tr. vol. 4, 542.
3. Military Experience: N/A
4. Employment: Sole Practitioner since 1994 (Civil Litigation, Civil Rights, Civil Trial, Commercial Litigation, Medical Malpractice, Personal Injury, Trial); Previously in a partnership with Jonathan Drucker. Trial Tr. vol. 4, 543.
5. Date Admitted to Bar: January 23, 1993.
6. Medical History: Born with an atrophied optic nerve. Trial Tr. vol. 4, 548-552.
7. Mental Health History: Clinical depression (diagnosed 17 years ago); attention deficit disorder (diagnosed 17 years ago); Anxiety. Trial Tr. vol. 4, 552-553.
8. Addictions: N/A
9. Treatment: Currently prescribed Dextrin and Xanax. Stopped taking Lexapro. Behavioral Therapy with Dr. Jonathan Hoffman. Trial Tr. vol. 4, 552-553.

## B. Duties Violated:

1. The duties violated by Respondent to the public: Respondent yelled insults to Mr. Brooks in the presence of Judge Manno Schurr's assistant and called Mr. Brooks names in a public

area. This denigrated not only Mr. Brooks, but also the profession as a whole.

2. The duties violated by Respondent as a professional: Respondent injured the public by failing to maintain civility in his communications with opposing counsel, in his characterization of the bench, and in his failure to maintain proper demeanor.

**C. The Potential or Actual Injury Caused by Respondent's Misconduct:**

"Here, [R]espondent's misconduct caused injury to the legal system, itself . . . His unprofessional behavior occurred in the presence of . . . others." *Ratiner,* 46 So. 3d at 41. "Respondent's unprofessional, belligerent conduct . . . is an embarrassment to all members of The Florida Bar. *Id.* "[Respondent's] disrespectful and abusive comments cross the line from that of zealous advocacy to unethical misconduct." *Martocci,* 791 So. 2d at 1077.

**D. The Existence of Aggravating or Mitigating Circumstances:**

**1. <u>Aggravators</u>:** The Referee finds the following in reference to aggravating factors:

a. Prior Disciplinary Offense: Respondent was publicly reprimanded for "disrespectful, accusatory, argumentative, and rude behavior" on September 24, 2003.[14]

b. Dishonest or Selfish Motive: N/A

[14] It is noteworthy that the conduct that culminated in Respondent's prior discipline occurred after Respondent forgot his medication in Miami. Trial Tr. vol 4, 588.

c. Pattern of Misconduct: In April, 1996, Respondent represented Sean Greenberg in a 42 U.S.C. § 1983 civil rights claim alleging police brutality by a member of the Leon County Sheriff's Department. The case proceeded to trial in April, 1999, in the United States District Court in the Northern District of Florida with the Honorable William Stafford presiding. At the conclusion of the trial, Judge Stafford found Respondent in civil contempt, citing his disrespectful, accusatory, argumentative, and rude behavior which "[fell] below the professionalism expected of attorneys of the Florida Bar and . . . [the] Court." As a sanction, the Court offered Respondent the option of 30 hours of continuing legal education courses or suspension for one year from practice from the United States District Court of the Northern District of Florida. Notably, Respondent chose not to take the courses and was suspended. Respondent appealed the contempt order and his appeal was dismissed as untimely. Bar Ex. 4 at 1-3. Opposing counsel noted Respondent's ". . . repeated slanderous statements . . . in arguments and elsewhere, about the attorneys of record and about parties. He personally accused me of illegal conduct."April 16, 1999 at 3. Respondent stated "Lawyers have different personalities. Mr. Cooper is gifted with a calm temperament. I am not so gifted. I have a psychological makeup which at times does not permit me to constantly stay steady and cool and calm. If that's the only way a lawyer can act professionally, then I am going to have

a difficulty in this profession." *Id*. at 7. Ultimately, Judge Stafford stated: "I have observed. . . [Respondent] is constantly accusatory in tone and by choice of words. He has been consistently disrespectful to the court, to the lawyers, to the parties, to the witnesses. He has accused counsel of spoliation of the evidence, of illegal conduct, of unprofessional behavior, of lying. He has demeaned the justice system, law enforcement, and his own profession, and my profession. He has refused to accept the court's rulings. He has constantly argued about rulings once I've made them … He has called not just one attorney incompetent, but almost every attorney that has appeared here either as a witness or as counsel of record, and even his own client's prior counsel . . . He has berated the court . . ." *Id*. at 20-21. On November 22, 2002, the Honorable Amy N. Dean, acting as Referee, entered a recommendation that Respondent should be publicly reprimand. Respondent was publicly reprimanded on September 24, 2003 and ordered to attend an ethics class. In 1994 or 1995, Respondent was asked by a judge in North Dade whether he "liked baloney sandwiches," after having "pressed a point beyond which [the judge] thought [Respondent] should press the point." Tr. Tr. vol. 2, 358. On another occasion, the Honorable James Lawrence King threatened to place Respondent in jail for "arguing for [Respondent's] client." *Id*. at 359. Finally, there is a pattern of misconduct within the context of the instant case. *See The Florida Bar v. Ratiner*, 46 So. 3d 35 (Fla. 2010) (Upholding

findings of a referee as to pattern of misconduct based upon various acts for which the grievance committee found no probable cause and for which respondent was not charged).

d. Multiple Offenses: Respondent has committed multiple offensive acts, but all arise out of his representation in the same litigation.

e. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency: N/A

f. Submission of false evidence, false statements, or other deceptive practices during the disciplinary process: N/A

g. Refusal to acknowledge wrongful nature of misconduct: Applicable throughout the proceedings.

h. Vulnerability of victim: Mr. Brooks is 71 years old. He suffers from Type II Diabetes, Parkinson's Disease, Renal Cancer, and High Blood Pressure. Trial Tr. vol. 1, 44.

i. Substantial experience in the practice of law: Respondent has been a member of the Florida Bar for 19 years. He has represented 220 different clients, tried 30 cases, 24 of which were jury trials. Trial Tr. vol. 4, 543.

j. Indifference to making restitution: N/A.

k. Obstruction of fee arbitration award: N/A

l. Any other factors: Behavior toward counsel for The Bar and other individuals during the disciplinary process.[15] In an e-

[15] 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

mail dated February 23, 2011, Respondent sent an e-mail to counsel for The Bar, Randi Klayman Lazarus, stating: "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." *See* Bar Ex. Composite 5. In an email dated February 23, 2011 from Respondent to Gary Brooks, Rick Levy, court reporter of Network Reporting Corporation, and counsel for The Bar: "I am not paying the standard copy rate, Mr. Levy. If the Bar wants to prevent the full from public view as the prosecuting agency, and since it chose not to demand them in its investigation, we will move to compel their production as standard copy charges – that is 10 cents per page, no 2.75 per page. Had Mr. Brooks not filed a Bar complaint against me, not that it should ever have been made any of your business, I would have no need of these transcripts. They are evidence in an administrative complaint. They should have been demanded by the Bar during its investigation. Only because Mr. Brooks concealed them from the Bar and the Bar did not demand them as it should do I not have them now. We will

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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.

seek redress from the court with an emergency motion to be filed tomorrow. I do not believe court reporters have the right to control evidence. Ms. Lazarus, again you are aiding Mr. Brooks in obstructing justice just like you did prior to the grievance committee hearing." *See* Bar Ex. 5. In an e-mail dated February 23, 2011 to counsel for The Bar, Respondent wrote: "I'm going to put this another way so that you will come to agree with my position over Mr. Brooks. If not, I will simply file the motion to compel tomorrow as an emergency motion …. I will be moving for sanctions against you if you persist in blocking the production of this subpoenaed evidence. I will also be reporting your misconduct to your superiors. You prevented me from presenting evidence to the grievance committee, allowing Mr. Brooks to benefit by having concealed if from Judge Trawick. Now you aid Mr. Brooks in benefiting from hiding essential evidence the Bar should have demanded from him. You also blocked my witness, Mr. Beem from testifying at the grievance committee hearing. All of this will be brought out in the hearing, but it will be brought out tomorrow if you persist in obstructing this production." *See* Bar Ex. 5. In an email dated December 29, 2011 to Mr. Brooks, Rick Levy, a court reporter of Network Reporting Corp, and Ms. Lazarus in the present case, Respondent wrote: "I will not discuss this with your court reporter. He has been rude and offensive to me on numerous occasions and I will not speak with him on any subject. And he can spare me the denials he has

offended me. He has uttered outright insults to me in the past and he is fully aware we have a very bad rapport and in my view it is due to his loyalty to you. The errors in his transcripts also reflect that bias, which, by the way, are far more numerous and obvious than are found in most other reporters' transcripts. The fact is that Mr. Levy, not another of his court reporters, cover most of the hearings in this case and I find that most unusual and dubious." *See* Bar Ex. 5. Finally, Respondent acknowledges that he committed many of the acts, as alleged, but fails to recognize the wrongful nature of his conduct.[16] In short, he is devoid of insight as to the lack of professionalism he exhibits.[17]

2. **Mitigation:** The Referee finds the following as mitigating factors:
   a. Absence of prior disciplinary record: N/A
   b. Absence of dishonest or selfish motive: However delusional, Respondent truly believed he was acting on behalf of his client in a zealous and appropriate manner.

[16] The record of Respondent's testimony before this Referee regarding this is as follows: "Well, I certainly regret having written those letters to Mr. Brooks and Mr. Tobin. Not necessarily because I, even to this day, think that I was immoral or unjust in doing so, but because it gave Mr. Brooks ammunition to file this bar suit, bar complaint against me . . ." Trial Tr. vol. 4, 570.

[17] This is corroborated by Respondent's statement during the final hearing: "Why would I care about hurting a man of Judge Tobin's experiences, feelings, how would I ever think that I could do that? This is-you know litigation is not about hurting people's feelings. It's about representing your client the best you can." Trial Tr. vol. 2, 280.

c. Personal or emotional problems: Marital problems, financial problems, substantial mental health history, untreated mental health issues.
d. Timely good faith effort to make restitution or to rectify consequences of misconduct: N/A
e. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings: Despite Respondent's unprofessional interaction with Bar Counsel and a court reporter, he was very cooperative toward the Referee.
f. Inexperience in the practice of law: N/A
g. Character or reputation: At the highest levels, per Jonathan Drucker. Scrupulously honest, per Murray Norkin.
h. Physical or mental disability or impairment: Significant physical impairment relating to atrophied optic nerve, which prevents him from identifying nonverbal cues. Significant emotional problems based upon diagnoses and inability to properly medicate his depression due to issues relating to antidepressants. The Refereee 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.
i. Unreasonable delay in disciplinary proceedings: N/A
j. Interim rehabilitation: Respondent has worked with Dr. Jonathan Hoffman to try to modify his behavior.
k. Imposition of other penalties or sanctions: N/A

l. Remorse: Remorse for use of term "conspiracy" relating to ret. Judge Tobin. Trial Tr. vol. 4, 565. Remorse for raising voice in court. Trial Tr. vol. 4, 570.

m. Remoteness of prior offense: The prior public reprimand occurred in 2003.

n. Prompt compliance with a fee arbitration award: N/A

o. Any other factors that may justify a reduction in the degree of discipline to be imposed: None of the relevant judges took action against Respondent. Respondent contends he tendered an apology to Judge Manno Schurr. Respondent contends he tendered an apology to retired Judge Tobin while awaiting the Referee proceedings.

## VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

The Court is hereby awarding partial costs pursuant to 3-7.6(q) and (o)(3) of the Rules of Discipline, as The Bar was the prevailing party on some, but not all of the allegations. *See, The Florida Bar v. Williams*, 734 So. 2d 417 (Fla. 1999).

The Bar submitted an affidavit alleging the following costs are properly taxable and reasonable:

| | |
|---|---|
| **Administrative Fee** | $1,250.00 |
| **Court Reporter** | |
| 12/8/10 Appearance fee & transcript-Grievance Committee hearing | $543.00 |
| 8/23/11 Appearance fee – Status hearing | $95.00 |
| 9/8/11 Appearance fee – Motion to Dismiss | $95.00 |
| 10/4/11 Appearance fee and transcript – Motion to Extend the Discovery Period and Postpone and Lengthen Final Hearing | $335.00 |
| 10/26/11 -Appearance fee – Motion for Partial Summary | $95.00 |

| | |
|---|---|
| Judgment | |
| 11/15/11 Appearance fee- Respondent's Motion for Leave to Serve In Excess of 30 Interrogatories & Requests for Admissions, Nunc Pro Tunc | $95.00 |
| 11/17/11 Appearance fee and Transcript – Deposition of Dr. Jonathan Hoffmann | $409.10 |
| 12/15/11 Appearance fee – Motion for Rehearing and Reconsideration Re: Order Partially Granting Complainant's Motion for Partial Summary Judgment | $95.00 |
| 1/5, 1/6, 1/10, 1/11 and 1/12/12 Appearance fee and transcript – Final Hearing | $5,839.50 |
| **Expert Witness Fee** – Dr. Jonathan Hoffmann | $375.00 |
| **Bar Counsel Travel** | $718.86 |
| **Investigative Costs** | $681.92 |
| **TOTAL** | **$10,627.38** |

Reasonable fees are hereby awarded in the amount of $7970.53.

DONE and ORDERED in Miami-Dade County, Florida this _____ February, 2012.

_____
BRONWYN C. MILLER
Circuit Court Judge/Referee
Richard E. Gerstein Justice Building
1351 N.W. 12th Street
Suite 413
Miami, Florida 33125

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee was mailed to the **Honorable Thomas D. Hall**, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399; and a true and correct copy was mailed to, **Randi Klayman Lazarus**, The Florida Bar, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323; **Steven Davis**, Boies, Schiller & Flexner, LLP, 100 SE 2d Street, Suite 2800, Miami, Florida 33131; **Jeffrey Alan Norkin**, 511 SE 5th Avenue, Apartment 1205, Fort Lauderdale, Florida 33301; **Staff Counsel**, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399 on this___ day of February, 2012.

_____

BRONWYN C. MILLER
Circuit Court Judge/Referee
Richard E. Gerstein Justice Building
1351 N.W. 12th Street
Suite 413
Miami, Florida 33125