IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

KELSAY DAYON PATTERSON,

Respondent.

_____/

Supreme Court Case
No. SC16-1438

The Florida Bar File
No. 2015-10,669 (13F)

INITIAL BRIEF

Matthew Ian Flicker, Bar Counsel
The Florida Bar
Tampa Branch Office
4200 George J. Bean Parkway
Suite 2580
Tampa, Florida 33607-1496
(813) 875-9821
Florida Bar No. 87241
mflicker@floridabar.org

John F. Harkness, Jr.
Executive Director
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600
Florida Bar No. 123390
jharkness@floridabar.org

Adria E. Quintela, Staff Counsel
The Florida Bar
Lakeshore Plaza II, Suite 130
1300 Concord Terrace
Sunrise, Florida 33323
(954) 835-0233
Florida Bar No. 897000
aquintel@floridabar.org

Joshua E. Doyle
Executive Director Designate
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600
Florida Bar No. 25902
jdoyle@floridabar.org

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF CITATIONS ii

SYMBOLS AND REFERENCES 1

STATEMENT OF THE FACTS AND OF THE CASE 3

SUMMARY OF ARGUMENT 9

STANDARD OF REVIEW 15

ARGUMENT 16

I. THE EVIDENCE SUBMITTED BY THE FLORIDA BAR SHOWS THAT RESPONDENT ENGAGED IN A CONFLICT OF INTEREST IN VIOLATION OF RULE 4-1.7. 16

II. THE EVIDENCE SUBMITTED BY THE FLORIDA BAR SHOWS THAT RESPONDENT ENGAGED IN MISCONDUCT IN VIOLATION OF RULES 4-8.2(a), AND 4-8.4(d). 21

III. A SUSPENSION OF AT LEAST NINETY (90) DAYS IS THE APPROPRIATE SANCTION FOR RESPONDENT'S MISCONDUCT 26

A. EXISTING CASE LAW SUPPORTS A SUSPENSION OF AT LEAST NINETY (90) DAYS. 27

B. THE STANDARDS FOR IMPOSING LAWYER SANCTIONS SUPPORT A SUSPENSION OF AT LEAST NINETY (90) DAYS 32

CONCLUSION 36

CERTIFICATE OF SERVICE 37

CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN 38

TABLE OF CITATIONS

Cases

Florida Bar v. Abramson, 3 So. 3d 964 (Fla. 2009) 10, 25
Florida Bar v. Brown, 978 So. 2d 107 (Fla. 2008) 10, 11, 27, 28, 29
Florida Bar v. Brownstein, 953 So. 2d 502 (Fla. 2007) 15
Florida Bar v. Cosnow, 797 So. 2d 1255 (Fla. 2001) 15, 28
Florida Bar v. Cox, 794 So. 2d 1278 (Fla. 2001) 15
Florida Bar v. Kossow, 912 So. 2d 544 (Fla. 2005) 15
Florida Bar v. Lecznar, 690 So. 2d 1284 (Fla. 1997) 15
Florida Bar v. Martocci, 791 So. 2d 1074 (Fla. 2001) 10, 25
Florida Bar v. Norkin, 132 So. 3d 77 (Fla. 2013) 11, 22, 25, 26
Florida Bar v. Pape, 918 So. 2d 240 (Fla. 2005) 15
Florida Bar v. Ratiner, 46 So. 3d 35 (Fla. 2010) 11, 25
Florida Bar v. Tobkin, 944 So. 2d 219 (Fla. 2006) 10, 11, 27, 30, 31, 32

Rules

R. Regulating Fla. Bar 3-4.3 ..... 6, 7, 9, 10, 14, 21, 27, 31, 36
R. Regulating Fla. Bar 4-1.3 28
R. Regulating Fla. Bar 4-1.4 28
R. Regulating Fla. Bar 4-1.7 ..... 6, 7, 9, 14, 15, 16, 17, 18, 19, 20, 36
R. Regulating Fla. Bar 4-3.4(a) 30
R. Regulating Fla. Bar 4-3.4(c) 30
R. Regulating Fla. Bar 4-3.4(d) 30
R. Regulating Fla. Bar 4-8.2(a) 6, 7, 9, 10, 14, 15, 21, 22, 24, 26, 32, 36
R. Regulating Fla. Bar 4-8.4(c) 28
R. Regulating Fla. Bar 4-8.4(d) 6, 7, 9, 10, 14, 15, 21, 22, 24, 26, 30, 32, 36

Florida Standards for Imposing Lawyer Sanctions

Fla. Stds. Imposing Law. Sancs. 2.7 ..... 12, 32
Fla. Stds. Imposing Law. Sancs. 2.8 ..... 12, 32
Fla. Stds. Imposing Law. Sancs. 4.32 33
Fla. Stds. Imposing Law. Sancs. 4.34 ..... 12, 32
Fla. Stds. Imposing Law. Sancs. 6.3 ..... 12, 32, 33
Fla. Stds. Imposing Law. Sancs. 6.32 34
Fla. Stds. Imposing Law. Sancs. 6.34 ..... 13, 33, 34
Fla. Stds. Imposing Law. Sancs. 7.2 35
Fla. Stds. Imposing Law. Sancs. 7.4 ..... 12, 13, 32, 34

Other

Oath of Admission to the Florida Bar 35

SYMBOLS AND REFERENCES

For the purposes of this Brief, The Florida Bar, will be referred to as "The Florida Bar" or "the Bar." Respondent, Kelsay Dayon Patterson, will be referred to as "Respondent."

"TR" will refer to the transcript of the final hearing before the Referee in Supreme Court Case No. SC16-1438, held on March 23, 2017, followed by the appropriate page number and line number (e.g., TR 10, L 1).

"SH" will refer to the transcript of the sanctions hearing before the Referee, followed by the appropriate page number and line number (e.g., SH 10, L 1).

"IR" will refer to other items such as correspondence and other pleadings filed with the referee as noted in the Index of Record.

"TFB Exh." will refer to the stipulated exhibits presented at the final hearing by The Florida Bar and Respondent, and which were made part of the record in the index of record no. 34.

"ROR" will refer to the Final Report of Referee dated June 2, 2017, followed by the appropriate page number (e.g., ROR 1). References to specific pleadings will be made by title.

"Rule" or "Rules" will refer to the Rules Regulating The Florida Bar. "Standard" or "Standards" will refer to Florida Standards for Imposing Lawyer Sanctions.

STATEMENT OF THE FACTS AND OF THE CASE

Respondent represented Johanna Faddis ("Faddis") in a civil action against The City of Homestead, its individual city council members, and a private investigation firm. Faddis' suit raised allegations of invasion of privacy resulting from the City's retrieval and disclosure of Faddis' personal text messages during an internal workplace investigation. ROR 2; TFB Exh. 3; TR 32, L 5-17, TR 33, L 3-9, TR 54, L 8-25, TR 55, L 1, TR 69, L 14-25, TR 70, L 1-2. On November 14, 2012, the Honorable Jorge E. Cueto struck Faddis' pleadings after finding that Faddis committed perjury and fraud upon the court by providing inconsistent deposition testimony. ROR 2; TFB Exh. 25; TR 33, L 15-25, TR 34, L 1-3, TR 35, L 23-25, TR 36, L 1-5, TR 77, L 10-25, TR 78, L 1. Respondent represented Faddis and was present at her deposition. ROR 2; TFB Exh. 25; TR 71, L 11-14, TR 77, L 10-25, TR 78, L 1-8. On May 31, 2013, Judge Cueto entered a subsequent order granting attorneys' fees and sanctions against Faddis and Respondent, finding evidence that they acted in bad faith and engaged in vexatious conduct. ROR 2; TFB Exh. 36; TR 36, L 17-25, TR 37, 10-12; TR 140, L 1-5, TR 142, L 9-10. On June 17, 2013, Respondent appealed the May 31, 2013, order on Faddis' behalf. ROR 2; TFB Exh. 37; TR 37, L 24-25, TR 38, L 1, 10-16, TR 138, L 1-13, TR 139, L 9-16. On September 4, 2013, the district court issued a written

opinion, affirming the trial court's November 12, 2012, final judgment and stating, in part, that Faddis' perjury constituted a deliberate scheme to subvert the judicial process and amounted to fraud upon the court. ROR 2; TFB Exh. 40; TR 43, L 4-12, TR 35, L 23-25, TR 36, L 1-11.

Respondent also filed a Federal § 1983 civil rights action on behalf of Faddis in U.S. District Court. ROR 3; TFB Exh. 6; TR 46, L 6-11, TR 70, L 12-17. The Honorable Jose E. Martinez, U.S. District Court Judge, Southern District of Florida, presided over the matter. TFB Exh. 6. On September 20, 2013, during the pendency of both the state and federal actions, Respondent sent a letter to Judge Martinez. ROR 3; TFB Exh. 41; TR 70, L 18-22, TR 101, L 15-20. Respondent also sent copies of this letter to opposing counsel as well as judges in the Eleventh Judicial Circuit and the Third District Court of Appeals. ROR 3; TFB Exh. 41; TR 46, L 4-25, TR 47, L 1-3; SH 31, L 3-12. In this letter, Respondent expressed his discontent over the outcome of Faddis' case, likened the alleged injustice to Faddis to the "Bible story involving Susanna as found in the Book of Daniel." ROR 3, TFB Exh. 41; TR 109, L 6-25, TR 110, L 1. Additionally, Respondent alleged that influential "elder" members of the community had manipulated the outcome of the case, and implied that another district court judge was biased in favor of opposing counsel. ROR 3; TFB Exh. 41; TR 114, L 7-25, TR 115, L 1-20. Respondent

acknowledged that a letter was not a "normal vehicle for addressing matters that pertain to litigation", but explained this was "… a rare situation when a case starts to become eclipsed by politics and local undue influence." TFB Exh. 41, P 1-2. In this letter, Respondent explained that he was deprived of an evidentiary hearing to show that he personally did not engage in fraudulent conduct toward the tribunal. ROR 3; TFB Exh. 41; TR 21, L 20-25, TR 22, L 1, TR 132, L 12-18, TR 141, L 9-11, 21-25, TR 142, L 1-8, TR 149, L 18-21; SH 28, L 7-17.

On December 18, 2013, Judge Cueto entered a final judgment in favor of the defendants and imposed attorneys' fees against both Faddis and Respondent. ROR 3; TFB Exh. 48; TR 85, L 9-17. On January 15, 2014, Respondent appealed the December 18, 2013, final judgment on Faddis' behalf, but spent the majority of her appeal arguing against the imposition of attorneys' fees against him. ROR 3; TFB Exh. 50, 57; TR 38, L 23-25, TR 39, L 1-22, TR 128, L 15-25, TR 129, L 1-2. On September 18, 2014, the district court dismissed Respondent's appeal for lack of jurisdiction, and ordered Faddis and Respondent to show cause why they should not be sanctioned pursuant to Fla. Stat. § 57.105. ROR 3; TFB Exh. 58; TR 129, L 17-23. On October 13, 2014, Respondent filed a response to the order to show cause, arguing the imposition of attorneys' fees on his own behalf was unfair, but failed to make an argument on Faddis' behalf. ROR 3; TFB Exh 59; TR 129, L

24-25, TR 130, L 1, TR 146, L 18-25, TR 147, L 1-5, TR 148, L 3-14, TR 150, L 6-25, TR 151, L 1. In this response, Respondent also implied that certain influential individuals could supersede the law, and he continued to make incendiary and disparaging comments. Respondent stated, "We cannot all be judges, politicians, wealthy business men, or local big named law firms with tremendous influence who can supersede all laws on the books." ROR 3; TFB Exh. 59; TR 130, L 14-25, TR 131, L 1-4. On February 11, 2015, the district court issued an opinion on the order to show cause, and noted Respondent's response made no mention of Faddis. ROR 3; TFB Exh 61; TR 131, L 10-21. The district court noted Respondent engaged in an inherent conflict of interest in representing both himself and Faddis. TFB Exh. 61, P 9. Ultimately, the district court ordered Respondent alone to pay the appellate attorneys' fees, and remanded the matter back to the trial court to determine the appropriate amount. ROR 3; TFB Exh. 61, P 11; TR 44, L 23-25, TR 45, L 1-4.

On August 4, 2016, the Bar filed its formal complaint against Respondent, charging him with violating the following Rules Regulating The Florida Bar: Rule 3-4.3 (Misconduct and Minor Misconduct); Rule 4-1.7 (Conflict of Interest); Rule 4-8.2(a) (Impugning Qualifications and Integrity of Judges or Other Officers); and Rule 4-8.4(d) (Misconduct – A lawyer shall not engage in conduct in connection

with the practice of law that is prejudicial to the administration of justice). ROR 1; IR 1. Respondent filed his answer to the Bar's complaint on September 6, 2016. IR 4. The Referee conducted the final hearing to determine guilt on March 23, 2017. ROR 1. The Referee found Respondent guilty of Rule 3-4.3, and not guilty of Rule 4-1.7; Rule 4-8.2(a); or Rule 4-8.4(d). ROR 1, 5; TR 180, L 17-23, TR 183, L 8-11, TR 187, L 1-6.

The Referee conducted a separate sanctions hearing on April 21, 2017. ROR 2. At this hearing, Respondent had the opportunity to present character and mitigation evidence.

Following the sanctions hearing, the Referee issued a Report of Referee on June 2, 2017. The Report of Referee recommended the following discipline: 1) Respondent receive an Admonishment for Minor Misconduct, 2) awarded costs in the amount of $2,827.09 to the Bar, and 3) recommended that Respondent be placed on a rehabilitative probation for a period of one year, subject to the following conditions: (a) Respondent shall become an active member of the George Edgecomb Bar Association; (b) Respondent shall submit to monitoring by Erik R. Matheney, an attorney consultant, and meet with him every two weeks to obtain assistance in reconnecting with the active professional life and in effectively advocating for a client; (c) Respondent shall prepare quarterly caseload reports and

shall review the same with the attorney consultant; (d) Respondent shall attend The Florida Bar's Ethics School, a Practicing with Professionalism Workshop, and the Annual Ethics Update legal education program. ROR 9-10.

The Bar filed a Notice of Intent to Seek Review of the Report of Referee on July 28, 2017. The Bar seeks review of the Referee's findings of guilt and recommended sanction of Admonishment of Minor Misconduct. The Bar instead seeks the imposition of a 90-day suspension as well as rehabilitative probation for a period of one year with all conditions recommended by the Referee.

SUMMARY OF ARGUMENT

The referee recommended that Respondent be found guilty of Rule 3-4.3 of the Rules Regulating the Florida Bar. ROR 1, 5; TR 180, L 17-23. The referee did not find Respondent guilty of violating Rule 4-1.7, 4-8.2(a), or 4-8.4(d) of the Rules Regulating the Florida Bar. ROR 5; TR 183, L 8-11, TR 187, L 1-6. The Bar submits that this recommendation is in error as a matter of law, and that Respondent's conduct violated all above referenced rules.

Specifically, the referee did not find that Respondent's act of utilizing his client's appeal to argue against the imposition of attorney's fees against himself to be a conflict of interest in violation of Rule 4-1.7. ROR 5-6. The Bar contends that Respondent used his client's appeal as a platform for raising his defense to the attorney's fee sanction against him at the expense of his client. TFB Exh. 50, 57, 59. The imposition of attorney's fees against Respondent and his client resulted in Respondent obtaining a personal interest adverse to his client. The Bar suggests that the referee erred by not finding that Respondent violated Rule 4-1.7.

Respondent does not dispute that he authored the Reply Brief of Appellant dated July 8, 2014, or the Appellant's Response to Court's Order to Show Cause dated October 13, 2014. TFB Exh. 57, 59; TR 146, L 18-25, TR 147, L 1-6. The appellant in these documents was Respondent's client, Johanna Faddis, not

Respondent. TFB Exh. 50, 57, 59; TR 38, L 23-25, TR 39, L 1-22, TR 128, L 24-25, TR 129, L 1-2. It is through these very documents that Respondent makes a lengthy, impassioned plea for relief from attorney's fee sanctions against himself personally. TFB Exh. 57, 59; TR 148, L 3-21, TR 149, L 18-25, TR 150, L 1-25, TR 151, L 1.

Further, the referee erred by not finding Respondent violated Rules 4-8.2(a) or 4-8.4(d) when he sent his letter to Judge Jose Martinez, filed the Reply Brief of Appellant dated July 8, 2014, and filed Appellant's Response to Court's Order to Show Cause dated October 13, 2014. The referee simply found Respondent's Letter to Judge Martinez to be in violation of Rule 3-4.3. ROR 1, 5; TR 180, L 17-23. In both the letter to Judge Martinez and the pleadings he filed, Respondent's statements impugned the judiciary and the legal system, as well as were prejudicial to the administration of justice by disparaging various members of the legal profession. TFB Exh. 41, 57, 59.

The recommended discipline of an admonishment is not supported by existing case law. The Florida Bar suggests that this Court's decision in *Florida Bar v. Brown*, 978 So. 2d 107 (Fla. 2008) and *Florida Bar v. Tobkin*, 944 So. 2d 219 (Fla. 2006) support at least a ninety day suspension in this matter. Also this Court's decision in *Florida Bar v. Martocci*, 791 So. 2d 1074 (Fla. 2001), *Florida*

Bar v. Abramson, 3 So. 3d 964 (Fla. 2009), *Florida Bar v. Ratiner*, 46 So. 3d 35 (Fla. 2010), and *Florida Bar v. Norkin*, 132 So. 3d 77 (Fla. 2013), set forth this Court's position regarding attorney's engaging in unprofessional conduct.

In *Brown*, the attorney was suspended from practicing law for ninety (90) days after engaging in multiple acts of misconduct stemming from her representation of two clients injured in the same accident. The Court found Brown engaged in an impermissible conflict of interest as her client's interests were directly adverse and [Brown's] representation of both of them . . . was improper. *Id.* at 112. When determining the appropriate discipline, this Court determined the referee's recommendation of a public reprimand was not reasonably supported by the Standards for Imposing Lawyer Discipline. Rather, this Court determined a ninety (90) day suspension to be the appropriate discipline. The court explained that "a public reprimand might have been appropriate if Brown had engaged in only one of the different types of misconduct in which she engaged, but not when all of the rule violations are considered together." *Id.* at 113.

In *Tobkin*, the attorney was suspended from practicing law for ninety-one (91) days after engaging in multiple acts of misconduct stemming from his representation of two clients. This Court determined that Tobkin's unprofessional and willful conduct was prejudicial to the both his client and the opposing party.

When considering the appropriate discipline, this Court determined that the referee's recommendation of a ten day suspension had no basis for support in case law or under the Florida Standards for Imposing Lawyer Discipline. This Court determined a ninety-one (91) day suspension to be the appropriate discipline. This Court determined that a ten day suspension was too "light" in consideration of Tobkin's unwillingness to comprehend that his conduct was inappropriate.

Lastly, the recommended discipline of an admonishment has no reasonable basis of support in the Standards for Imposing Lawyer Discipline. The Referee considered Standards 2.7, 2.8, 4.34, 6.3, and 7.4 in making her recommendation. ROR 7. Standard 4.34 states "[a]dmonishment is appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little to no injury or potential injury to a client." The Referee's report concludes Respondent's conduct was negligent. The Bar submits that a review of the evidence proves that Respondent's conduct was knowing and intentional.

The referee also considered Standard 6.3 – Improper Communications with Individuals in the Legal System, but did not delineate a particular discipline under this standard. ROR 7. Based on the discipline recommended, the Bar infers that

referee considered Standard 6.34 which states "[a]dmonishment is appropriate when a lawyer negligently engages in improper communication with an individual in the legal system, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with the outcome of the legal proceeding." The Bar submits that a review of the record proves Respondent's communications were far from negligent. Respondent admits to sending and filing several documents which contained unprofessional statements regarding a certain private law firm and the decision-making ability of certain members of the judiciary. Accordingly, Respondent's conduct was knowing and intentional, not negligent.

Lastly, the referee considered Standard 7.4 which states that an "[a]dmonishment is appropriate when a lawyer is negligent in determining whether the lawyer's conduct violates a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system." ROR 7. The Bar submits that a review of the record shows that Respondent was not merely negligent in his duties as a professional. Respondent knowingly and intentionally composed a letter to Judge Martinez, as well as filed responsive pleadings before the Third D.C.A., which were found by that Court "to have no basis in reality."

ROR 3; TFB Exh. 41, 57, 59, 61; TR 101, L 15-20, TR 129, L 24-25, TR 130, L 1, TR 134, L 15-25, TR 135, L 1-22, TR 146, L 18-25, TR 147, L 1-6.

Accordingly, the Bar urges this Court to find that Respondent violated Rules 3-4.3, 4-1.7, 4-8.2(a), and 4-8.4(d), and impose a suspension of ninety (90) days as a sanction. The case law and standards for Imposing Lawyer Sanctions support a suspension of at least ninety (90) days as the appropriate sanction for Respondent's misconduct.

STANDARD OF REVIEW

The determination of whether a referee's findings of fact support a finding that Respondent violated Rules 4-1.7, 4-8.2(a), and 4-8.4(d) is subject to de novo review. "[W]here there are no genuine issues of material fact and the only disagreement is whether the undisputed facts constitute unethical conduct, the referee's findings present a question of law that the Court reviews de novo." *Florida Bar v. Brownstein*, 953 So. 2d 502, 510 (Fla. 2007) (quoting *Florida Bar v. Pape*, 918 So. 2d 240, 243 (Fla. 2005)). Whether an attorney's admitted actions constitute unethical conduct is a question of law subject to de novo review. *Florida Bar v. Cosnow*, 797 So. 2d 1255, 1258 (Fla. 2001) .

As to discipline, although a referee's recommendation may be persuasive, this Court does not pay the same deference to recommendations as it does to the findings of fact because this Court has the ultimate responsibility to determine the appropriate sanction. *Florida Bar v. Kossow*, 912 So. 2d 544, 546 (Fla. 2005). Generally speaking, this Court will not disapprove a referee's recommended discipline a long as that discipline has a reasonable basis in existing case law or in the Florida Standards for Imposing Lawyer Sanctions. *Florida Bar v. Cox*, 794 So. 2d 1278, 1281-1282 (Fla. 2001) (citing *Florida Bar v. Lecznar*, 690 So. 2d 1284, 1288 (Fla. 1997)).

ARGUMENT

I. THE EVIDENCE SUBMITTED BY THE FLORIDA BAR SHOWS THAT RESPONDENT ENGAGED IN A CONFLICT OF INTEREST IN VIOLATION OF RULE 4-1.7.

The Referee recommended that Respondent be found not guilty of violating Rule 4-1.7 of the Rules Regulating the Florida Bar. ROR 5; TR 183, L 8-11, TR 187, L 1-6. The Bar submits that this recommendation is in error, as a matter of law, and that Respondent's conduct violated this Rule. Specifically, the Referee found Respondent's position that he was simultaneously advocating against court-imposed sanctions for both himself and his client to be credible. ROR 6. The Bar contends that Respondent used his client's appellate rights to advance his own personal interests in violation of Rule 4-1.7. In multiple pleadings filed before the Third D.C.A., Respondent urged the court to reconsider the imposition of attorney's fees against him personally. ROR 2, 3; TFB Exh. 50, 54, 57, 59; TR 38, L 23-25, TR 39, L 1-22; TR 146, L 18-25, TR 147, L 1-25, TR 148, L 1-21, TR 149, L 18-25, TR 150, L 1-25, TR 151, L 1. Respondent insinuated that the court was knowingly aware of a wrong that had been perpetuated on him exclusively. TFB Exh. 57, 59.

In Respondent's Reply Brief dated July 8, 2014, Respondent states "[n]o, the best part is that Kelsay Patterson, Esquire has to depend on the spirits that live

deep inside the judiciary in order to deliver him from this 'peril'." TFB Exh. 57, P 3. Within the same pleading, Respondent elected to divulge his client's internal marital struggles as well as his own personal theory for why his client offered inconsistent testimony in the underlying civil proceeding. TFB Exh. 57, P 6. Respondent further utilized his client's Reply Brief to offer up a treatise on the inequities faced by the African Americans in the United States. TFB Exh. 57, P 12. As a point of reference, Respondent spent six pages of his client's Reply Brief talking about the plight of African Americans, the peril of the schoolyard bully, and his personal theories on who really makes the laws in this country. TFB Exh. 57, P 2, 3, 9, 12, 13, 15.

Respondent concluded his Reply Brief from the African American perspective by inquiring of the court, "[w]ill the weak, Minority, with no political connections who had a MONSTER case taken from him who wanted the opportunity to fairly compete against them and all of their prowess to make a better life himself be helped . . ." TFB Exh. 57, P 15. These statements stand as clear evidence of Respondent's substitution of his personal agenda in place of his client's interests. Respondent's appealing to the court to help him after losing a "MONSTER" case is a clear acknowledgment of Respondent's personal financial interests in this litigation and a clear violation of Rule 4-1.7.

Further evidence of Respondent's effort to use his client's appellate rights to advance his own interest is found in the Appellant's Response to the Order to Show Cause. TFB Exh. 59. Respondent fails to advance any arguments on his client's behalf and reminds the court of their inherent power to relieve him of sanctions. TFB Exh. 59; TR 148, L 3-21, TR 149, L 18-25, TR 150, L 1-25, TR 151, L 1. Respondent notes that the "[c]ourt has the power to relieve the undersigned of the sanctions placed against me especially when this Court considers its broad range of powers . . ." TFB Exh. 59, P 4-5; TR 150, L 10-25, TR 151, L 1. Respondent then goes on to explain that he is hopeful that the court "recognizes the need to have people with spirits like mine out there trying to make sure that justice and fairness can be achieved . . . TFB Exh. 59, P 6. In Respondent's final line he states, "If you would help me, I would appreciate it." TFB Exh. 59, P 7. These statements provide clear evidence of Respondent's violation of Rule 4-1.7. Respondent used his client's appellate remedy as an opportunity to advance his own personal appeal of the sanction entered against him.

These pleadings provide an invaluable glimpse into Respondent's efforts to appeal the portion of attorney's fee sanction imposed against him. TFB Exh. 57, 59, 61. While, Respondent does acknowledge his client's wish to have the

attorney's fees sanctions against her removed, those efforts are limited to Respondent's Initial Brief. TFB Exh. 54. Once the appellate litigation was underway, Respondent's advancement of his client's plight was limited to a brief explanation regarding her change in testimony. TFB Exh. 57, 59. Respondent argued that the appeal was being brought for his client's best interests, but this argument ignores Respondent's constant reference to himself, as "undersigned" and his need for the court's assistance to provide him with relief. TFB Exh. 57, 59. Respondent's efforts to use his client's appeal for his own interest were cited by the district court. Chief Judge Frank Shepherd twice raises specific concern for Respondent's failure to name himself as the appellant. TFB Exh. 61, P 8, 9. In his Order, Judge Shepherd, states "[c]uriously, Patterson's response to our order to show cause makes no argument on behalf of his client. Rather it is a screed following hard upon his reply brief filed in this appeal, where he insinuates that he is 'being bullied' by parties, their counsel, or the court in this case . . ." TFB Exh. 61, P 9. The Order also contains a cautionary footnote: "Unless waived in writing, Patterson had an inherent conflict of interest in representing both himself and Faddis in this matter. See R. Regulating Fla. Bar. 4-1.7." TFB Exh. 61, P 9.

Respondent's does not dispute that he authored the Reply Brief or the Appellant's Response to Order to Show Cause. TFB Exh. 57, 59; TR 129, L 24-

25, TR 130, L 1, TR 146, L 18-25, TR 147, L 1-17. Respondent's own words provide clear acknowledgement of the overall value this case held for him. Respondent used his client's appellate remedy to seek personal financial relief from the court as well as advance discussions of racial and economic inequality which bore no relevance to the facts underlying Ms. Faddis' case. TFB Exh. 57, 59; TR 148, L 3-21, TR 149, L 18-25, TR 150, L 1-25, TR 151, L 1. Respondent's position that his interests were invariably linked to his client is incorrect. Respectfully, to take this position, Respondent would need to ignore the very relief Respondent was seeking. If the court had provided Respondent with the personal relief he sought in his Reply Brief, the outcome would have been tantamount to imposing additional sanctions on his own client. Nowhere in Respondent's appellate pleadings, does he advance an argument that the fee award should be reduced overall to remove half of all fee liability.

Based on the aforementioned reasons, Respondent engaged in conduct in violation of Rule 4-1.7. The Bar submits that Respondent should be found guilty of violating Rule 4-1.7.

II. THE EVIDENCE SUBMITTED BY THE FLORIDA BAR SHOWS THAT RESPONDENT ENGAGED IN MISCONDUCT IN VIOLATION OF RULES 4-8.2(A), AND 4-8.4(D).

The Referee recommended that Respondent be found not guilty of violating Rule 4-8.2(a) and Rule 4-8.4(d) of the Rules Regulating the Florida Bar. ROR 5; TR 187, L 1-6. The Bar submits that this recommendation is in error, as a matter of law, and that Respondent's conduct violated these Rules. Rule 4-8.2(a) states:

> "A lawyer shall not make 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 of the venire, or candidate for election or appointment to judicial or legal office."

Rule 4-8.4(d) states a lawyer shall not "engage 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 against litigants, jurors, witnesses, court personnel, or other lawyers on any basis . . ." While the Referee made a specific finding that Respondent's misconduct was a violation under Rule 3-4.3, the Bar contends that Respondent's letter and pleadings, prove he knowingly engaged in conduct which served to impugn the judicial system and its officers as well as make unprofessional statements regarding the legal profession in violation of Rules 4-8.2(a) and 4-8.4(d). This Court has made it clear that it is profoundly concerned with the lack of civility and

professionalism demonstrated by some Bar members. *Florida Bar v. Norkin*, 132 So. 3d 77, 89 (Fla. 2013). The Bar suggests that the Referee erred in not considering the impact and implications of Respondent's letter and pleadings in the aggregate or its cumulative effect on the legal community. In this case, Respondent clearly violated Rules 4-8.2(a) and 4-8.4(d).

Respondent's misconduct under Rules 4-8.2(a) and 4-8.4(d) is best exemplified through the following documents: (a) Respondent's Letter to Judge Martinez, (b) Respondent's Reply Brief of Appellant, and (c) Appellant's Response to the Court's Order to Show Cause. It is through these various documents, that Respondent disparages opposing counsel, explains the fundamental bias of judges as well as the shortcomings of our legal system. TFB Exh. 41, 57, 59.

In Respondent's letter to Judge Martinez, Respondent refers to opposing counsel, Weiss Serota, as "elders" who have brought pain and strife into his client's life. TFB Exh. 41, P 6. Respondent explains that his client's "voice is of no importance against the voices of the elders who have caused all of this mayhem." TFB Exh. 41, P 6. Respondent states "[n]icely put, the town's influential elders have used the legal system to manipulate an outcome that leaves them completely insulated." TFB Exh. 41, P 10. Respondent inquires of Judge

Martinez why "[i]t is so difficult for learned judges who hear malicious, hurtful, and unprovoked attacks on the lives of people all over South Florida to understand [his client's] situation?" TFB Exh. 41, P 9. Respondent cautions Judge Martinez that "[j]udges must recognize that in deciding to elevate people like these elders to a status of being above the law, they are complicit in further corroding any remaining sense of justice and fair play left within these elders." TFB Exh. 41, P 11. These inflammatory statements provide clear evidence of Respondent's unprofessional conduct and disparaging comments about members of the legal community. These statements are a personal, disparaging attack on opposing counsel and a cautionary reminder to a seated district court judge of the responsibilities of the judiciary.

Respondent admits to writing the letter to Judge Martinez. TFB Exh. 41; TR 101, L 15-20. While Respondent testified that he wished he never sent this letter, he also testified that he received the advice to write a letter of this type from a former judge, and maintained that "it's been the best advice. It's made the difference in my career." TR 98, L 4-5. Respondent testified that he believes everything that he wrote in this letter and stated that "Weiss Serota, they're the ones that - - they're the ones that did everything." TR 102, L 8-25, TR 103, L 1-2,

TR 110, L 2-6, 21-22. Respondent's own testimony at trial proves that Respondent still believes that his statements in the letter are appropriate.

Respondent's Reply Brief offers yet another example of Respondent's unprofessional statements regarding the legal system in violation of Rule 4-8.2(a) and Rule 4-8.4(d). TFB Exh. 57. Respondent uses his client's Reply Brief to explain "No, the best part is that Kelsay Patterson, Esquire has to depend on the spirits that live deep inside the judiciary in order to deliver him from this 'peril'." TFB Exh. 57, P 3. More troubling, Respondent states "Here is the funny thing: Law is not science or math. It does not depend on true holdings and reasons that will allow you to successfully chart a path to Mars or create a molecule of water. Law is whatever the judge or judges that day say it is." TFB Exh. 57, P 9. These statements, stand as clear evidence of Respondent's conduct of impugning the judiciary by questioning the very integrity of the legal process.

Appellant's Response to Court's Order provides an additional example of Respondent's unprofessional and disparaging remarks regarding the legal system. Alluding to his inability to receive equal treatment before the court, Respondent states "[t]his court sees, knows, and appreciates the wrong that has been perpetuated upon the undersigned that is contrary to the prevailing law . . ." TFB Exh. 59, P 3. Respondent explains "[w]e cannot all be judges, politicians, wealthy

business men, or local big named law firms with tremendous influence who can supersede all laws on the books." ROR 3; TFB Exh. 59, P 5. These statements are not only prejudicial to the administration of justice, they are unprofessional and disparaging.

This Court has repeatedly ruled that unprofessional behavior is unacceptable. *See* generally *Florida Bar v. Ratiner*, 46 So. 3d 35 (Fla. 2010); *Florida Bar v. Abramson*, 3 So. 3d 964 (Fla. 2009); and *Florida Bar v. Martocci*, 791 So. 2d 1074 (Fla. 2001). This Court has explained "it is crucial to recognize that the Court and The Florida Bar have been advocating professionalism and civility for over twenty years." *Florida Bar v. Norkin*, 132 So. 3d 77, 89 (Fla. 2013).

Respondent does not dispute that he authored the above referenced letter or pleadings. TFB Exh. 57, 59; TR 129, L 24-25, TR 130, L 1, TR 146, L 18-25, TR 147, L 1-17. Respondent's own words at trial provide further acknowledgement of his disparaging views toward opposing counsel. TR 107, L 21-25, TR 108, L 1, TR 109, L 2-25, TR 110, L 1-25, TR 111, L 1-25, TR 112, L 1-25, TR 113, L 1-5. This Court in *Norkin* explained that "[a]ttorneys should focus on the substance of their cases, treating judges and opposing counsel with civility, rather than trying to prevail by being insolent toward judges and purposefully offensive toward

opposing counsel." *Norkin* at 92. Respondent's words are not only disturbing; they paint a picture of a judicial system flawed by inherent bias that is otherwise incapable of providing fair review. The final comment to Rule 4-8.2(a) states "[t]o maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized." Respondent's statements amount to a continued effort to criticize and disparage the judicial system and members of the legal community.

Based on the aforementioned reasons, Respondent's conduct is a violation of Rules 4-8.2(a) and 4-8.4(d) . The referee erred in not finding that Respondent's conduct in impugning the judiciary, opposing counsel, and the integrity of the legal process was a violation of Rules 4-8.2(a) and 4-8.4(d). The Bar submits that a guilty finding as to Rules 4-8.2(a) and 4-8.4(d) is appropriate.

III. A SUSPENSION OF AT LEAST NINETY (90) DAYS IS THE APPROPRIATE SANCTION FOR RESPONDENT'S MISCONDUCT

The Referee recommended an admonishment as a sanction. ROR 9. Based on the evidence presented and the factual findings made by the Referee, the Bar submits that case law and the Standards for Imposing Lawyer Sanctions support a suspension of at least ninety (90) days.

A. EXISTING CASE LAW SUPPORTS A SUSPENSION OF AT LEAST NINETY (90) DAYS.

The recommended discipline of an admonishment is not supported by existing case law. The Florida Bar suggests that the Supreme Court's decisions in *Florida Bar v. Brown*, 978 So. 2d 107 (Fla. 2008) and *Florida Bar v. Tobkin*, 944 So. 2d 219 (Fla. 2006) were not followed by the Referee. The Referee found that Respondent violated Rule 3-4.3. ROR 1, 5; TR 180, L 17-23. Respondent's counsel presented *Brown* to the Referee, but it was found not to be factually similar nor directly on point. ROR 6. While the Bar agrees that the facts of *Brown* are not factually similar to Respondent's case, the Bar submits that this Court's analysis in *Brown* of a conflict of interest coupled with multiple acts of misconduct is worthy of consideration in the present case. The Bar presented *Tobkin* to the Referee who found the case directly on point with the factual allegations of Respondent's case, but stated that the conduct was more extreme and harmful than Respondent's conduct in this case. ROR 6. The Bar contends that while Respondent's conduct is distinguishable from *Tobkin*, its cumulative impact is just as harmful to the legal system. Respondent, unlike Tobkin, also made unprofessional and disparaging statements regarding opposing counsel and the judiciary.

In *Brown*, the responding attorney was suspended from practicing law for ninety (90) days after engaging in multiple acts of misconduct stemming from her representation of two clients injured in the same accident. The Referee in *Brown* recommended a public reprimand after finding several forms of misconduct which included violations of Rule 4-1.3 (lack of diligence), Rule 4-1.4 (failure to communicate) and Rule 4-8.4(c) (conduct involving dishonesty). It is noteworthy, that the Referee in *Brown* did not find that the responding attorney engaged in a conflict of interest. The Bar petitioned for review of the findings and recommendation of not guilty on the conflict of interest claim and on the recommendation of a public reprimand.

On review, this Court found the attorney engaged in an impermissible conflict of interest as her client's interests were directly adverse and [respondent's] representation of both of them . . . was improper. *Brown* at 112. This Court explained that "[a]n attorney engages in unethical conduct when she undertakes a representation when she either knows or should know of a conflict of interest prohibiting the representation." *Id.* at 113 (citing *Florida Bar v. Cosnow*, 797 So. 2d 1255, 1257 (Fla. 2001)). When determining the appropriate discipline, this Court determined the Referee's recommendation of a public reprimand was not reasonably supported by the Standards for Imposing Lawyer Discipline. Rather,

the Court determined a ninety (90) day suspension to be the appropriate discipline. This Court explained that "a public reprimand might have been appropriate if Brown had engaged in only one of the different types of misconduct in which she engaged, but not when all of the rule violations are considered together." *Florida Bar v. Brown*, 978 So. 2d 107, 113 (Fla. 2008).

Applying the reasoning in *Brown* to Respondent's case, a suspension of at least ninety (90) days is appropriate. Respondent knowingly engaged in a conflict of interest when he elected to intertwine his client's appeal with his own personal agenda. Respondent discussed the loss of his MONSTER case and used his client's Reply Brief and Response to Order to Show Cause to make personal appeals for help to the Third D.C.A. TFB Exh. 57, 59. Respondent also made unprofessional and disparaging statements regarding opposing counsel and the judiciary in violation of the Rules Regulating the Florida Bar. If Respondent had been successful in his quest to rid himself of personal liability of attorney's fee sanctions, he would have undoubtedly placed his client in the untenable position of facing the attorney's fee sanction on her own. Further, Respondent was placed on notice of his conflict of interest by Judge Shepherd, who twice in the Order on the Order to Show Cause highlighted Respondent's inherent conflict. TFB Exh. 61.

In *Tobkin*, the responding attorney was suspended from practicing law for ninety-one (91) days after engaging in multiple acts of misconduct in connection with his representation of two clients in a medical malpractice action. This Court found Tobkin engaged in egregious, unprofessional and willful conduct in two separate lawsuits. In one case, Tobkin frustrated opposing counsel's efforts to engage in discovery and improperly referred to defenses that were the subject of a pending motion in limine. Tobkin's pleadings were dismissed as a sham after he elected to file a second action in a different venue against the same plaintiff and several of the same defendants. In a second case, Tobkin caused a disturbance at a local medical center by snatching records from opposing counsel. Tobkin took the position that his conduct in these cases was nothing more than zealous advocacy. As a result of this conduct, the Referee found that Tobkin's actions violated Rule 4-3.4(a) (unlawfully obstructing another party's access to evidence), Rule 4-3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), Rule 4-3.4(d) (making a frivolous discovery request or failing to comply with a legally proper discovery request), and Rule 4-8.4(d) (engaging in conduct prejudicial to the administration of justice). As for discipline, the Referee recommended a ten-day suspension. The Bar and Tobkin petitioned for review of the findings and recommendation of the Referee.

On review, this Court approved the Referee's factual findings, but disapproved of the Referee's recommended sanction of a ten-day suspension. This Court explained that Tobkin's actions were intentional and egregious, and noted Tobkin's unwillingness to comprehend the inappropriate nature of his conduct. This Court found that Tobkin's pleadings were more than frivolous; finding that the misconduct occurred in two cases and resulted in harm to his client.

Applying this Court's reasoning in *Tobkin* to Respondent's case, a suspension of at least ninety (90) days is appropriate. The Referee found Respondent's act of sending the Letter to Judge Martinez to be a clear violation of Rule 3-4.3. ROR 1, 5; TFB Exh. 41; TR 180, L 17-23. The Bar submits that the letter to Judge Martinez, the Reply Brief, and the Response to Order to Show Cause provide clear evidence of Respondent's continued effort to impugn the judiciary and disparage opposing counsel. TFB Exh. 41, 57, 59. Respondent admitted to his authoring of these documents and through his testimony at trial continued to blame opposing counsel. TR 101, L 15-20, TR 107, L 21-25, TR 108, L 1, TR 109, L 2-25, TR 110, L 1-25, TR 111, L 1-25, TR 112, L 1-25, TR 113, L 1-5, TR 129, L 24-25, TR 130, L 1, TR 146, L 18-25, TR 147, L 1-17. Through these documents, Respondent disparaged members of the judiciary and opposing counsel, as well questioned and criticized the validity of the legal process.

Respondent's inflammatory statements offered no benefit to his client's case nor advanced her cause in any way. Like *Tobkin*, Respondent intentionally engaged in improper conduct and was found by the Referee to have refused to acknowledge his improper communication with a judge. ROR 7. The Bar submits that these documents provide clear evidence of misconduct in violation of Rule 4-8.2(a) and Rule 4-8.4(d).

B. THE STANDARDS FOR IMPOSING LAWYER SANCTIONS SUPPORT A SUSPENSION OF AT LEAST NINETY (90) DAYS

The recommended discipline of an admonishment has no reasonable basis of support in the Standards for Imposing Lawyer Discipline. The referee considered Standards 2.7, 2.8, 4.34, 6.3, and 7.4 in making her recommendation. ROR 7. Standard 4.34 states "[a]dmonishment is appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no injury or potential injury to a client." Based on the report issued by the Referee, it appears that she concluded Respondent's conduct was negligent. The Bar submits that a review of the record evidence shows that Respondent's conduct was knowing and intentional.

Respondent admitted to drafting the Reply Brief and Response to the Order to Show Cause. TFB Exh. 57, 59; TR 129, L 24-25, TR 130, L 1, TR 146, L 18-25, TR 147, L 1-17. In these documents, Respondent advanced his own basis for why he should not be sanctioned with attorney's fees and made a personal appeal for help from the District Court. TFB Exh. 57, 59; TR 148, L 3-21, TR 149, L 18-25, TR 150, L 1-25, TR 151, L 1. Respondent's conduct was far from negligent – It was intentional. The Bar submits that the Referee erred in not considering Standard 4.32. Standard 4.32 states "suspension is appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client."

The referee also considered Standard 6.3 – Improper Communications with Individuals in the Legal System, but did not delineate a particular discipline under this standard. ROR 7. Based on the discipline recommended, the Bar infers that referee considered Standard 6.34 which states "[a]dmonishment is appropriate when a lawyer negligently engages in an improper communication with an individual in the legal system, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with the outcome of the legal proceeding." The Bar submits that a review of the record shows that Respondent's communications were far from negligent but instead intentional.

Respondent admitted to drafting and sending several documents which contained unprofessional and disparaging statements regarding a specific private law firm and the decision-making ability of the judiciary. TFB Exh. 41, 57, 59; TR 101, L 15-20, TR 107, L 21-25, TR 108, L 1, TR 109, L 2-25, TR 110, L 1-25, TR 111, L 1-25, TR 112, L 1-25, TR 113, L 1-5, TR 129, L 24-25, TR 130, L 1, L 14-25, TR 131, L 1-4, TR 146, L 18-25, TR 147, L 1-25, TR 148, L 3-25, TR 149, L 1-25, TR 150, L 1-25, TR 151, L 1. There can be no dispute that Respondent intended to send his letter to Judge Martinez or make the statements contained within his client's appeal. Accordingly, Respondent's conduct strikes at the heart of Standard 6.34. The Bar submits that Respondent knew that his communications with Judge Martinez were improper and were designed to purposefully affect the outcome of the underlying legal proceeding. The Bar contends that Standard 6.32 is appropriate. Standard 6.32 states "[s]uspension is appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding."

Lastly, the referee considered Standard 7.4, which states that an "[a]dmonishment is appropriate when a lawyer is negligent in determining whether

the lawyer's conduct violates a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system." ROR 7. The Bar submits that a review of the record shows that Respondent was not merely negligent in his duties as a professional.

Respondent chose to compose a letter to Judge Martinez as well as file responsive pleadings before the Third D.C.A., which were found by that Court to have no basis in reality. TFB Exh. 41, 57, 59, 61. Respondent failed to acknowledge the wrongful nature of his conduct and blurred the line between his passion as a civil rights advocate and the needs of his client. ROR 7. Respondent breached his obligations as a professional through his intentional disparagement of opposing counsel and his unprofessional statements regarding the integrity of the judicial process. The Bar submits that Referee erred in failing to consider Standard 7.2. Standard 7.2 states "[s]uspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system." This Court has made clear that civility and professionalism are no longer aspirational goals for Florida attorneys. Since 2011, this Court has even revised the Oath of Admission to the Florida Bar to include a pledge of "fairness, integrity, and civility" to opponents, not only in court, but also "in all written and oral communications."

Respondent has failed to adhere to the standards of professional conduct that are required of members of the Florida Bar.

CONCLUSION

The evidence presented at trial before the referee support a finding that in addition to Rule 3-4.3, Respondent has violated Rules 4-1.7, 4-8.2(a), and 4-8.4(d). The Bar submits that the Referee's findings and conclusions that Respondent did not violate Rules 4-1.7, 4-8.2(a), and 4-8.4(d) be disapproved. As to discipline, the Bar submits that Respondent should be suspended from practicing law for at least ninety (90) days. The Respondent should be assessed the costs of this proceeding.

Respectfully submitted,

Matthew Ian Flicker, Bar Counsel

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Initial Brief has been electronically filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-Filing Portal; and that true and correct copies have been furnished via certified U.S. mail, return receipt no. 7016 0750 0000 5391 3669, to Kelsay Dayon Patterson, Respondent, c/o Russell Scott Prince, Counsel for Respondent, to his official Bar address of 3433 Lithia Pinecrest Road, Suite 146, Valrico, Florida 33596-6302, and via electronic mail to his official Bar email address of rprince@princepa.com; and via electronic mail to Adria E. Quintela, Staff Counsel, The Florida Bar, to her designated email address of aquintel@floridabar.org, on this 25th day of August, 2017.

Matthew Ian Flicker, Bar Counsel
The Florida Bar - Tampa Branch Office
4200 George J. Bean Parkway, Suite 2580
Tampa, Florida 33607-1496
(813) 875-9821
Florida Bar No. 87241
mflicker@floridabar.org – primary
pmcbride@floridabar.org – secondary
tampaoffice@floridabar.org – secondary

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

Undersigned counsel does hereby certify that this Brief is submitted in 14 point proportionately spaced Times New Roman font, and that this 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.

Matthew Ian Flicker, Bar Counsel