IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant, **CASE NO.: SC07-713**

v. **Fla Bar File No.: 2006-51, 004(15F)**

WILLIAM ABRAMSON

Respondent.

_____/

RESPONDENT'S ANSWER BRIEF

ORAL ARGUMENT REQUESTED

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PRELIMINARY STATEMENT

Respondent requests that this Court uphold the recommendations of the referee.

The Florida Bar will be referred to as Complainant and William Abramson will be referred to as Respondent.

References to the trial transcript before the referee will be referred to as TT.

The referee's report will be referred to as RR. The trial that was the basis for this complaint will be referred to as TRT.

STATEMENT OF THE CASE AND FACTS

Respondent agrees with the facts as outlined in Complainant's brief. Respondent, however, has not included important facts. First, prior to the probable cause determination, Judge Wennet sent his complaint, referred to hereafter as "the e-mail", to every judge and hearing officer in the Fifteenth Judicial Circuit. The e-mail is apart of the record. In the e-mail, which the Fourth District Court of Appeal found to be "troubling," Judge Wennet made several unsubstantiated and defamatory allegations regarding respondent. Judge Wennet stated in the e-mail that respondent's clients suffer as a result of his representation and assistant state attorneys will not deal with respondent. The circulation of this e-mail was a violation of Rule 3-7.1(m), of Rules Regulating the Florida Bar. Judge Wennet did not even realize that the e-mail would become public record. TT Vol II, p. 190, 216. No judge or hearing officer ever responded to his e-mail. TT Vol II, p. 192.

Judge Wennet testified that Assistant State Attorneys Dan Funk and Craig Williams would substantiate his claim. TT Vol II, p. 193-194. Mr. Funk denied making such statements and Craig Williams was not called by Complainant as a witness. TT Vol IV, p. 462. Mr. Funk testified that Respondent's questioning of prospective jurors was "aggressive," not unprofessional. TT Vol IV, p. 449.

Four days prior to the trial of the cause that led to this complaint, Judge

Wennet agreed to hear a dispositive motion to dismiss for speedy trial violation prior to trial. TT Vol V, p. 501, 513. Also, Respondent's testimony that he informed Judge Wennet's bailiff, Neil Cascone, prior to Judge Wennet's arrival, that he needed to bring the motion and a possible plea prior to jury selection, was uncontroverted. TT Vol II, p. 152, 221.

At the outset of jury selection, Respondent sought to remind Judge Wennet of his previous rulings in the case. TTR 3. In response, Judge Wennet, in the presence of the jury, stated "I don't care." TTR 3. Much of the proceedings continued without any interruption. Respondent attempted to comply with Judge Wennet's order not to interrupt the proceedings by submitting a note at 9:29 a.m. TT Vol II, p. 176. Judge Wennet does not deny receiving the note, yet there is no record of the note. Id. Because there was no recess at 9:29 a.m., Judge Wennet denied Respondent and his client a courtesy that he has extended to others. TT Vol II, p. 273. Judge Wennet testified that he ignored what he deemed unprofessional conduct, which he could have stopped, and allowed respondent to continue his questioning of the jury so that he could later complain to the Florida Bar. TT Vol II, p. 216; TT Vol V, p. 505-506. Furthermore, Judge Wennet testified that a jury could have been impaneled and Respondent's client could have received a fair trial. TT Vol II, p. 182. At no time did Respondent direct the jury to disregard the law. Vol IV, p. 480.

Additionally, Judge Wennet requires attorneys to stand while speaking in his courtroom. TT Vol V, p. 518. Complainant throughout its brief uses Respondent's repeated standing when speaking as support for its requested discipline.

The referee found that both Judge Wennet and Respondent "fueled the fire" and that the facts and circumstances of this case were "unique." RR 8. In his recommendations, the referee found that there was prior discipline, but not that it was similar in nature. In SC 00-848, Respondent was disciplined for a lack of diligence. Complainant's assertion that Respondent was "rude" was in reference to his wholesale school elections on behalf of his clients, rather than any statement or conduct directed at the traffic court hearing officer. In SC 01-2813, Respondent failed to timely file briefs, and in one case, failed to respond to the order that required an explanation of the failure to file timely briefs. In that case, this Court found that some of the *en banc* findings of the Fifteenth Judicial Circuit were erroneous. Specifically, Respondent was alleged to have failed to respond. In fact, Respondent was represented by counsel. The *en banc* findings that Respondent's actions were in violation of a court order should have been directed at the attorney of record, not respondent. The *en banc* court never retracted, corrected, or apologized for its erroneous findings. What was worse, when the *en banc* ruling was entered, the attorney for Respondent **had** responded. Finally, the referee did not, in fact, find that that there was an *en banc* ruling. The referee found that it

was not clear that all of the judges involved had actually agreed to the ruling. RR 8. It appeared from the *en banc* order that several judges merely acknowledged receipt of the order without ever agreeing to its contents. The *en banc* order was not found to be an *en banc* order at all. RR 8.

SUMMARY OF ARGUMENT

Complainant cannot meet its burden. The referee considered the facts and circumstances of this case after a trial that lasted the better part of five days. Although inappropriate, Respondent's actions warranted the sanction imposed by the referee and is supported by both the standards and existing case law.

ARGUMENT

THE REFEREE'S RECOMMENDED DISCIPLINE SHOULD NOT BE DISTURBED ON APPEAL.

Complainant has the burden of proving that the referee's recommended discipline is "erroneous, unlawful, or unjustified." Rules Regulating the Florida Bar 3-7.7(c)(5). This Court does not second-guess referee's recommendations that have a reasonable basis in the case law and the Florida Standards for Imposing Lawyer Sanctions. See Florida Bar v. Glueck, 985 So. 2d 1052, 1057 (Fla. 2008). Recommended sanctions have been upheld when its is supported by the existing case law or the standards for imposing sanctions. Florida Bar v. Sweeney, 730 So. 2d 1269 (Fla. 1998); The Florida Bar v. Lecznar, 690 So. 2d 1284 (Fla. 1997).

The referee's recommendations have a firm basis in existing case law. In The Florida Bar v. Graham, the conduct that resulted in a public reprimand for six rule violations were upheld. In that case, Judge Graham disregarded instructions of the court, intentionally delayed the proceedings, and made demeaning remarks. Id. This Court, in upholding the discipline, found that Judge Graham's motives were acceptable although his methods were not. Id. The Court, like the referee in this case, found there was no dishonest or selfish motive. In fact, Respondent's actions in this case did not even rise to the level of the conduct of Judge Graham. Respondent's actions were not designed to delay the proceedings, but to streamline

and eliminate the need for a hearing altogether. Further, Judge Graham was not dismissed by the JQC during the presentation of his case. Finally, Judge Graham was representing himself, not a client.

Furthermore, this Court upheld a reprimand of an attorney who was previously reprimanded for similar past conduct in The Florida Bar v. McLawhorn, 535 So. 2d 602, 603 (Fla. 1988). In McLawhorn, the attorney was found guilty of four rule violations, including dishonesty. The attorney's conduct on McLawhorn was far more serious than Respondent. Respondent was not accused of dishonesty nor conduct designed solely to harass another. Again, a sincere desire to protect his client was the sole motivation in Respondent's actions.

Next, in The Florida Bar v. Martocci, 791 So. 2d 1074 (Fla. 2001), this Court upheld a reprimand of an attorney that engaged in conduct that was far more egregious than Respondent's. In Martocci, the attorney made threats in open court, belittled and humiliated his client's wife, and made racist and sexist comments. Id. Respondent's conduct in this case cannot even be compared to the attorney's conduct in Martocci.

Finally, there are a line of cases in which this Court found a reprimand to be the appropriate sanction when the attorney or judge engaged in dishonesty and attempts to mislead the court or thwart the interests of justice. See The Florida Bar v. Anderson, 538 So. 2d 852 (Fla. 1989) (Misconduct designed to mislead and

deceive appellate court); The Florida Bar v. Batman, 511 So. 2d 558 (Fla. 1987)(Attorney's production of false statements to the court); The Florida Bar v. Hagglund, 372 So. 2d 76 (Fla. 1979)(Attorney filed a sham affidavit); In re Frank, 753 So. 2d 1228 (Fla. 2000)(Judge initiated legal proceeding and proffered false and misleading testimony, resulting in an injurious effect on the integrity of the legal system). Again, Respondent's actions were designed to protect the legal interests of his client and not for personal gain or selfish motive.

Complainant's reliance on The Florida Bar v. Morgan, 938 So. 2d 496 (Fla. 2006), is misplaced. In Morgan, the attorney personally attacked the judge by calling him names, made statements such "No judge treats me like that," "Don't treat me like that," disobeyed the judge's order to approach, and attempted to take the judge to task. Also, the attorney's conduct was designed solely to humiliate, not protect the legal interests of his client. Next, the judge in Morgan, as found by Justice Wells in his dissent, did not do anything to bring about the attorney's conduct. Id at 501, fn 3 (No provocation on the part of the judge.). In this case, the referee specifically found that the judge and respondent "fueled the fire." RR 3. Finally, the attorney in Morgan had been suspended previously for similar conduct and had engaged in similar conduct on **three** prior occasions and disciplined twice for the same behavior. Respondent has never engaged in similar conduct, has never been suspended, and did not engage in conduct anywhere near as egregious

as Mr. Morgan. Finally, it was Mr. Morgan who appealed the 91 day suspension, not the Florida Bar.

Complainant's reliance on The Florida Bar v. Wasserman, 675 So. 2d 103 (Fla. 1996), is misplaced. In Wasserman, the attorney was facing two complaints and had three previous findings of misconduct. The attorney lost his temper, stated his "contempt" for the court, banged on the table, advised his client to disobey an order of the court, and directed profane comments towards a judicial assistant. Respondent never engaged in such outrageous conduct. Respondent never lost his temper, never advised his client, or the jury, to disobey orders of the court, never stated that he did not respect the court, nor did he engage in the use of profane language. The attorneys actions were not designed to protect the interests of his client as in this case, but to embarrass and harass. Wasserman is clearly not applicable to this case.

In none of the cases cited by Respondent was the judge's conduct called into question, nor did any judge violate the attorney's right to confidentiality. Respondent's actions, unlike those of the attorneys cited by Complainant in its brief, were designed to protect the interests of the clients and none of the attorneys had their clients subjected to disparate treatment. The referee was correct to find that there were "extreme and highly unusual facts and circumstances in this case, which do not excuse or justify respondent's conduct, but do constitute mitigating

circumstances." RR 8. Finally, the referee found Respondent to have good character and reputation, and evidenced remorse. RR 8.

The referee's recommendations is also supported by the The Florida Standards for Imposing Lawyer Sanctions, as cited in his report. Contrary to the assertions of Complainant, the referee did refer to specific Standards in support of his recommendation. Specifically, the referee considered Standard 9.22(a), 9.22(d), 9.22(i), 9.32(b), 9.32(g), and 9.32(i). RR 9, 10. The conduct in this case was not similar to past misconduct; was not done for selfish motive or personal gain; was designed to protect the client, not embarrass the court; was done by one who was remorseful; had engaged in *pro bono* representation; and had good character and reputation.

In none of the cases cited by the Florida Bar did the judge involved unsuccessfully attempt to elicit support from other judges, violate rules of confidentiality, slander the attorney, allow misconduct to continue so that it could later be used as a basis for a complaint, subject the attorney's clients to disparate treatment, and "fuel the fire." Respondent's decision not to appeal the referee supports the findings of remorse and appreciation for the misconduct described herein and be upheld.

CONCLUSION

This Court should approve the findings and recommendations of the referee. Clearly, the referee gave great thought and consideration to this case. The discipline imposed was serious and substantial. A reprimand, probation, a professionalism and ethics class, and over $7000 in costs is severe, sufficient and should be accepted by this Court.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer Brief was sent via e-mail and U.S. Mail to: Michael David Soifer, Bar Counsel, The Florida Bar, 5900 N. Andrews Avenue, Suite 900, Fort Lauderdale, FL 33309; Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300; Thomas D. Hall, Clerk, Florida Supreme Court, 500 S. Duval Street, Tallahassee, FL 32399-1927; this 3d day of November, 2008.

_____

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

The undersigned counsel does hereby certify that the Answer Brief is submitted in 14 point proportionately spaced Times New Roman font, and that the brief has been filed by e-mail in accord with the Order of this Court, and that there are no viruses detected by the program installed on the Mac used to send the brief.

_____
William Abramson
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