IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

WILLIAM ABRAMSON,

Respondent.
_____/

Supreme Court Case No. SC07-713

The Florida Bar File No. 2006-51,004(15F)

THE FLORIDA BAR'S REPLY BRIEF

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THE FLORIDA BAR'S REPLY TO RESPONDENT'S ANSWER BRIEF

AS SET FORTH IN THE BAR'S INITIAL BRIEF, A 91-DAY REHABILITATIVE SUSPENSION WITH REQUIRED ATTENDANCE AT THE FLORIDA BAR'S PROFESSIONALISM WORKSHOP IS THE APPROPRIATE SANCTION

Respondent does not dispute the Bar's Statement of Facts set forth in its initial brief. (Respondent's Brief page 4). The transcript of December 19, 2005 (TFB Ex. 1) and the record clearly demonstrate the havoc created by respondent's misconduct in the courtroom. In his answer brief, respondent does not address his own conduct in Judge Wennet's courtroom that day because his conduct cannot be excused. His actions deliberately and knowingly disrupted the tribunal. (RR 5).

Instead, respondent, in his brief (pages 4-6) assigns fault to others for his actions. Despite the referee's finding that Judge Wennet properly exercised his judicial discretion (RR 3-4), respondent faults Judge Wennet for refusing to hear his motion when respondent wanted it to be heard. And he faults Judge Wennet for sending an E-mail to other judges after respondent's misconduct in the courtroom on December 19, 2005, had already occurred.

The referee recognized respondent's penchant for blaming others for his misconduct, stating at RR 3-4:

> But, what respondent fails to fully realize is that the issue is not Judge Wennet's exercise of his discretion or his tone of voice or

> conduct, but the conduct and the actions of respondent himself. I do not find fault with Judge Wennet's exercise of his discretion in deciding to set respondent's motions for after the selection process and not wanting to interrupt that process.
>
> The evidence shows that because of the conduct of respondent, the jury was focused on respondent instead of the court and that respondent's conduct interrupted the proceedings. The respondent was discourteous and not respectful to Judge Wennet in the presence of the jury.

The referee correctly determined in his report that respondent does not fully realize that the proper issue in this case is his conduct. Respondent's brief demonstrates that he still fails to accept this truism. At page 5 of his brief, respondent even insinuates that Judge Wennet is at fault for allowing respondent to continue his outrageous misconduct so that it could be reported to The Florida Bar. In fact, the transcript (TFB Ex. 1) is replete with Judge Wennet's attempts to reign in respondent. This included Judge Wennet's excusing the jury at one point so that he could warn respondent in no uncertain terms to cease his misbehavior. (TFB Ex. 1, pp. 36-37; See Excerpt 3 to the Bar's Appendix). Judge Wennet testified that he acted as he deemed appropriate based upon respondent's actions and conduct. (TTR III, 273.) A rehabilitative suspension is appropriate in this case because it is clear that two prior reprimands have not served to deter respondent from this behavior.

The cases relied on by respondent in his brief are distinguishable and do not support the referee's recommendation of a public reprimand. The Florida Bar v.

Graham, 679 So. 2d 1181 (Fla. 1996), concerned a former judge's conduct during hearings before a Judicial Qualifications Committee, where the substantive charges of judicial misconduct against him were dismissed and there was no prior disciplinary history. Additionally, the public reprimand pursuant to a consent judgment was accepted by the Court in Graham based upon the previous sanction of removal from the bench imposed on Graham.

In the instant case, there was significant prior discipline, which the referee considered serious, (RR 8), and the misconduct occurring in front of the jury was such that in addition to the other rule violations, respondent was found guilty of Rule 4-3.5(a) for improperly seeking to influence the jurors. (RR 6). Respondent's misconduct in this case resulted in far more injury to the public's confidence in the judicial system than the conduct occurring in Graham. The damage caused by respondent to the jurors' perception of the judicial system is plainly set forth throughout the transcript. At one point, it was even expressed to respondent that his actions in the courtroom were akin to what the jurors were accustomed to seeing on a dramatic television show. (TFB Ex. 1, pp. 75-76, See Appendix Excerpt 10).

The Florida Bar v. McLawhorn, 535 So. 2d 602 (Fla. 1988), relied on by respondent, did not involve disrespectful conduct towards the judiciary. In that case, the attorney made a false statement concerning ownership of property, but the Court

found that there was no intent to accomplish an improper purpose or violate an ethical canon and reduced the referee's recommended suspension to a reprimand. In the instant case, there were specific findings that respondent acted intentionally to disrupt the tribunal, improperly made false statements knowingly or in reckless disregard of the truth about Judge Wennet's integrity and qualifications, and that his actions were prejudicial to the administration of justice.

The Florida Bar v. Martocci, 791 So. 2d 1074 (Fla. 2001), relied on by respondent, also did not involve disrespectful conduct towards the judiciary. Further, Martocci's conduct did not occur in open court. The conduct in question occurred during a recess and a deposition and was directed at the opposing party, not the presiding judge. There was a finding of guilt on only one rule violation, Rule 4-8.4(d), and no finding of prior discipline. Although Martocci's misconduct was egregious, it should not be compared with respondent's extremely egregious misconduct which was directed at the judge, was intended to disrupt the judicial process and improperly sought to influence the jury.

The Florida Bar v. Anderson, 538 So. 2d 852 (Fla. 1989), relied on by respondent, involved misrepresentation of facts in a brief submitted to the appellate court, but not disrespectful conduct to the judiciary in the presence of a jury. Further, there is no discussion of prior discipline and the lead counsel in Anderson was given a

suspension. Similarly, in The Florida Bar v. Batman, 511 So. 2d 558 (Fla. 1987); The Florida Bar v. Hagglund, 374 So. 2d 76 (Fla. 1979); and In re Frank, 753 So. 2d 1228 (Fla. 2000), as relied on by respondent, none of those cases involved disrespectful and disruptive conduct towards the judiciary as occurred in the instant matter.

The Florida Bar v. Morgan, 938 So. 2d 496 (Fla. 2006), and the other cases cited by the Bar in its initial brief, involve substantially the same misconduct committed by respondent. At page 11 of his brief, respondent differentiates the instant case from Morgan by claiming his actions were not designed to humiliate Judge Wennet but rather to "protect the legal interests of his client." Respondent ignores the fact that he was found guilty of Rule 4-8.2(a) for making disparaging statements about Judge Wennet to the jury. Further, respondent's rationale was rejected in Morgan, as the Court stated:

> Like the attorney in *Wasserman*, Morgan admits his conduct was inappropriate, but seems to believe it is his obligation as a zealous advocate to take a judge "to task" if he comes to believe he or his client is being treated unfairly. Morgan at page 500.

In fact, respondent's misconduct in the instant matter was more egregious than what occurred in Morgan. Much of Morgan's misconduct took place outside the presence of the jury. Morgan at p. 497. In the instant case, nearly all of respondent's misconduct occurred in the presence of the jury. Further, respondent was found guilty

of the same rule violations as Morgan plus two additional ones; Rule 4-3.5(a) [A lawyer shall not seek to influence a judge, juror, prospective juror …] and 4-8.2(a) [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 …].

Further, in the instant case, respondent's prior misconduct was considered by the referee as a serious aggravating factor. (RR 8). The prior misconduct is part of the record and speaks for itself. Notwithstanding respondent's attempts in his brief to minimize it, respondent signed a consent judgment to the findings made in both cases of prior discipline.

As set forth in the Bar's initial brief, respondent's conduct improperly served to undermine the public's confidence in the integrity and effectiveness of the judicial system, and caused great injury or potential injury to the public and the legal system, and potential injury to his client, who discharged him that day. The mitigating factors in this case do not support reducing the sanction to a public reprimand.

The respondent, like the attorneys in Morgan and Wasserman, presented a direct challenge to the authority of the presiding judge. The similar nature to respondent's misconduct in those cases provides a guideline to the appropriate discipline for this respondent. As argued in the Bar's initial brief, a 91-day rehabilitative suspension with

required attendance at The Florida Bar's Professionalism Workshop should be imposed in the instant case, taking into account the severity of this respondent's conduct, and factoring in his previous discipline and the other aggravating factors found by the referee.

CONCLUSION

This Court should disapprove the referee's recommended disciplinary sanction of a public reprimand with probation and, instead, suspend respondent for 91 days with required attendance at The Florida Bar's Professionalism Workshop, and payment of the Bar's costs because the discipline is consistent with existing case law and The Florida Standards for Imposing Lawyer Sanctions while adhering to the purposes of attorney discipline.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief regarding Supreme Court Case No. SC07-713, The Florida Bar File No. 2006-51,004(15F) has been mailed by regular U.S. mail to William Abramson, Respondent, 324 Datura Street, Suite 100, West Palm Beach, FL 33401-5415, on this ___ day of _____, 2008.

_____

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

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

_____

Michael David Soifer, Bar Counsel