

**IN THE SUPREME COURT OF FLORIDA**

**THE FLORIDA BAR,**

Complainant,

vs.

**LIJYASU KANDEKORE,**

Respondent.

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**Supreme Court Case  
No. SC 00-2611**

Lower Tribunal No.:  
2000-70,574(11A-OSC)

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**FIRST BRIEF FOR THE RESPONDENT**

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**LIJYASU KANDEKORE**

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**STATEMENT OF ISSUES PRESENTED**

**WHETHER THE FINDINGS OF FACT RELIED UPON TO CONCLUDE THAT THE RESPONDENT ENGAGED IN THE UNLICDENSED PRACTICE OF LAW ARE SUPORTED BY THE RECORD;**

**I. WHETHER THE REFEREE’S RECOMMENDATION OF GUILT OF THE UNLICENSED PRACTICE OF LAW WAS CLEARLY ERRONEOUS WHERE THE RESPONDENT’S CONDUCT WAS INCIDENTAL TO A CLAIM OF RIGHT GRANTED UNDER A FEDERAL LICENSE;**

**II. WHETHER THE DRAFTING OF THE SUMMONS AND COMPLAINT WAS THE UNLICENSED PRACTICE OF LAW WHERE THE RESPONDENT NEVER MET WITH OR GAVE ANY ADVISE TO THE CLIENT AND GAVE HIS WORK PRODUCT TO AN ATTORNEY AND NOT TO THE CLIENT;**

**III. WHETHER THE REFEREE'S RECOMMENDATION AS TO DISCIPLINARY MEASURE WAS INAPPROPRIATE WHERE THE RESPONDENT'S CONDUCT WAS NOT WILLFULL DISOBEDENCE OF THIS COURT'S ORDER BUT BASED UPON A CLAIM OF RIGHT GRANTED UNDER A FEDERAL LICENSE;**

**IV. WHETHER THE REFEREE'S RECOMMENDATION AS TO COSTS WAS AN ABUSE OF DISCRETION WHERE THE RESPONDENT'S CONDUCT WAS NOT WILLFULL DISOBEDENCE OF THIS COURT'S ORDER BUT DONE UNDER A CLAIM OF A FEDERAL RIGHT AND WHERE THE ERRORS WERE DUE TO THE BAR'S VIOLATION OF LAW AND OF THE DISCOVERY RULES AND WHERE THE REFEREE ERRONEOUSLY ACTED UPON A DESIRE TO BE POLITICALLY CORRECT.**

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## **STATEMENT OF THE CASE**

The party seeking review, **Lijyasu Kandekore**, was the Respondent in the disciplinary proceedings before the Referee and will be referred to as the Respondent or by name. The Florida Bar was the Complainant before the Referee and will be referred to as the Bar. References to the record will be made by Tr. --- for references to the transcript and by naming the document itself as it appears in the appendix.

**(i) Statement of the Proceedings before the Referee:**

The Respondent was the subject of a petition to show cause filed by the Bar in the Florida Supreme Court and dated December 18, 2000. (Appx. 1). The petition requested from this court an order to show cause why the Respondent should not be held in contempt for engaging in the practice of law in violation of the court's order of disbarment dated June 1, 2000. (Appx. 2).

The Bar's petition alleged that:

- a. the Respondent made a telephone call to an attorney, Richard Marx, and identified himself as an attorney;
- b. the Respondent advised Marx of his representation of Dianne and Ray Lantz;
  
- c. the Respondent stated that that he was sending original promissory notes and documents concerning the case of Lantz against Wyche; and

d. the Respondent sent Marx a fax signed “L. Monty Kandekore, Esq.” on the stationary of “L. Monty Kandekore, Esq.”

(Appx. 1). The Bar’s petition further requested that the Respondent be permanently disbarred. *Id.*

The Respondent timely filed a motion to dismiss but that was denied by the court by order dated April 10, 2001.

Pursuant to the Bar’s petition this court issued an order to show cause dated January 22, 2001 directing the Respondent to show cause why he should not be held in contempt. (Appx. 3).

On February 20, 2002 there was a hearing before a Referee who filed a Report and Recommendation (R&R) dated March 13, 2002. That R&R reported that the Respondent put himself out as an attorney at law authorized to practice in Florida when [1] he sent correspondence to Richard Marx, Esq., [2] by having signage indication that he is an attorney at law, and [3] when he assists persons who come to his office in filling out immigration forms. (Appx. 4).

The Referee recommended that the Respondent be found in contempt and that he be permanently disbarred. (Appx. 4).

The Respondent timely filed an objection and the instant review follows.

**(ii) Statement of the Facts:**

Both the Respondent and the Bar made a request for admissions, a request for production of documents and demand for interrogatories. In its response to

the Respondent's interrogatories the Bar stated *inter alia* that it would call Deanna Lantz as a witness and that she would testify that, "[the Respondent] was retained to represent her, was paid monies and never advised that [the Respondent] was disbarred." (Appx. 5, ¶ 2a).

In the same response to interrogatories the Bar also stated that it would call Vincent P. Medina and that he would testify that, "He paid monies to [the Respondent] to do work for Miss Lantz." (Appx. 5, ¶ 2b).

The Bar never called either witness nor advised the Respondent that it would not do so nor did the Bar present either of them at the proceedings before the Referee for examination. (Tr. 144).

The Bar by a motion filed on September 21, 2001 sought summary judgment and in support thereof exhibited an affidavit by Deanna Lantz in which the affiant stated that she hired the Respondent on the

recommendation of Vincent Medina to handle her case and the Respondent never said he was not licensed to practice law in Florida and that he said he turned her case over to Nashid Sabir, Esq. to whom she paid in excess of \$5,000 and that the Respondent asked her for monies. (Appx. 6).

The Referee denied the motion for summary judgment because there were unresolved questions of fact. (Appx.7).

The matter proceeded to a hearing before the Referee when by stipulation the Bar submitted into evidence the following documents:

- a. a facsimile coversheet and a letter dated October 27,2000 written by

- the Respondent to Richard Marx, Esq. (Bar's Exhibit 1; Tr. 60);
- b. a letter from the Bar to the Respondent dated June 21, 2000 (Bar's Exhibit 2; Tr. 60);
  - c. an order of disbarment of the Respondent from the U.S. district court in the Southern District of Florida (Bar's Exhibit 3; Tr. 61);
  - d. the Respondent's affidavit in response to the affidavit of Deanna Lantz dated November 21, 2001 (Bar's Exhibit 4; Tr. 61);
- 
- e. a Referee's report and this court's order in an earlier case (Bar's Composite Exhibit 5; Tr. 62);

## **The Testimony of Marx**

The Bar called Richard Marx, Esq., who testified that he was a member of the Florida bar and that in October of 2000 he received a telephone call from the Respondent who said he was attorney Monty Kandekore and that he was calling about a case that Marx had [with] Deana Lantz and someone else. (Tr. 65). The Respondent said he wanted some documents and asked for some original instruments that were in his file and inquired if any legal fees were owed to Marx. (Tr. 65). Subsequently he received a letter from the Respondent which stated that, “ Re: Deanna and Ray Lantz: As you are aware the case of the above-mentioned plaintiffs has been dismissed. I am directed to retrieve the file with all the relevant documents, pleadings and in particular the original of the notes in favor of the plaintiffs. Kindly let me have these and advise me if there is any outstanding sum due to you for attorney’s fees.” (Tr. 65-66; Bar’s Exhibit 1). Marx got the impression that the Respondent was representing the Lantzes. He had a prior dealing with the Respondent in which he took over a case that the Respondent had filed and there might have been another

instance in which he and the Respondent had a client in common but he that “he really didn’t have any dealings with [the Respondent].” (Tr. 66).

On October 30, 2000 Marx wrote a letter to the Respondent in which he acknowledge receipt of the fax from the Respondent and said that, “I presume by your letter that you’re now representing Mr. And Mrs. Lantz and I would appreciate confirmation of that fact. . .” Marx’s letter also requested to be

informed when he can expect payment. (Tr. 67). He wrote that letter because he wanted to get paid for the money he was owed and this was the first contact he had from any body concerning the file. (Tr. 67).

After those communications Marx testified that he vaguely remembered seeing the Respondent's name in the Florida Bar News and noted that according to his belief the Respondent had been disbarred in New York and he was kind of curious so he called according to his belief, the Bar's attorney in the instant case [Klayman-Lazarus] to inquire if there was some way that a lawyer who had been disbarred in a foreign jurisdiction could be practicing here because he thought it was automatic disbarment here based upon his knowledge of the rules. (Tr. 68-69). Marx then learned that there was an order of disbarment against the Respondent and then prepared an affidavit for the Bar and which is exhibited to the petition

in the instant case. The Respondent never said he was simply gathering documents on behalf of someone. (Tr. 69).

Over the Respondent's objection the Referee permitted the Bar to ask and Marx to explain what he meant by "I presume" in his letter to the Respondent. Marx could not tell what his thought process was but he just assumed that the Respondent was the lawyer. (Tr. 70-71).

Under cross-examination Marx admitted that he did not know when he read that the Respondent was disbarred in New York and as to where he read it that

might have been in a newspaper or the Florida Bar News or the Miami Herald but he did not know and he was not sure. (Tr. 71-73). On the day when he received the telephone call from the Respondent he was not sure whether he or his assistant answered the phone. He never got a response to his letter from the Respondent and he never called him to find out what happened to his money. (Tr. 74). He admitted that in his letter to the Respondent he never said that his letter was a confirmation of a prior conversation with the Respondent. (Tr. 80). Marx also admitted that although his letter to the Respondent was subsequent to the “conversation with the Respondent” his letter said “I presume you represent [the Lanzas].” (Tr. 83). He had no idea of what time of the day he received the call. (Tr. 84). He also admitted that when he wrote the letter on the 30<sup>th</sup> of October he already was aware of the New York disbarment. (Tr. 86). The Referee then led Marx as follows:

REFEREE: . . . There could be another alternative, if I could pose it. Might it be, Mr. Marx, that you are a responsible lawyer who has a confidentiality agreement with the Lantzes and would not send documents to anybody who was not a lawyer representing them?

Marx then promptly said, “That’s absolutely correct.” (Tr. 87). He then said because of his concern for confidentiality that he did not send the Respondent anything but when showed his letter admitted that his letter to the Respondent did say he was enclosing a copy of the last statement. (Tr. 88-89). He further admitted that he never confronted the Respondent about his suspicions that he was

not qualified [to practice law in Florida]. (Tr. 93).

### **The Testimony of Sabir**

The Bar next called Nashid Sabir, Esq. who testified that the Respondent never contacted him and arranged for him to represent the Lanzes. He said it was Vincent Medina who contacted him. He never asked the Respondent to collect a retainer from Mr. Medina and that the Respondent never gave him any monies towards a retainer. (Tr. 96-97).

Under cross-examination he admitted that a summons and complaint were prepared and that three persons were served but that it was his office that prepared those documents. (Tr. 97-98, 101, 103, 104, 106). He assumed that one of his secretaries did it. He had one secretary and when she is away he usually use another lady. He did not know what type of printer he had in his office. (Tr. 98). He identified a pleading (Resp.'s Exhibit 1) which said was generated by his office. (Tr. 101). He denied that that type of document is the only type generated by his office machine the fonts can be changed and when things are typed outside the office the typists fonts are different from his. (Tr. 103). He was shown the summons (Resp.'s Exhibit A) and he said it was possibly generated by his office because he signed it and he therefore would assume it was generated by his office. (Tr. 106). Upon a direct question by the Referee he admitted that he can neither confirm or deny that the summons and complaint were made by him. (Tr. 107). He did not recall drafting the complaint but whether or not he drafted it, it was

similar to the one filed by Marx. (Tr. 117). He got a copy of a complaint (Resp.'s Exhibit C) in the prior action from the Respondent and one from the Lantzes in which the Lantzes were two of the named plaintiffs but he could not remember the occasion on which the Respondent gave it to him nor the reason why the Respondent gave it to him.

(Tr. 118-19). He did not know where in the complaint by Marx (Resp.'s Exhibit C) is there any reference to the information contained in the one he claimed to have generated (Resp.'s Exhibit B). (Tr. 119). Mr. Medina told him that the filing fees were left in the office for him and he used it to file the documents. (Tr. 120).

Sabir admitted that he had done three cases for Mr. Medina but he could not remember the names. (Tr. 121). He was shown (Resp.'s Exhibit D-1) but he could not remember seeing it before. (Tr. 122). He was then shown (Resp.'s Exhibit D-2) which he recognized as a document signed by him noticing a hearing for the motion calendar. (Tr. 125). He assumed that the document was generated by his office. He signed it. He noticed that the prints in Resp.'s Exhibit D-1 and Resp.'s Exhibit D-2 are different but he did not remember if he prepared the affidavit. He knew he represented one of the parties but he did not remember which one. (Tr. 126). He admitted that in that case he represented the interest of Vincent Medina and that he was told by Mr. Medina that the Respondent recommended him to Medina. (Tr. 127). He did not know where the documents in Resp.'s Exhibit D-1 and Resp.'s Exhibit D-2 were generated but it was possible that one or some of the documents were generated by the Respondent. (Tr. 128). Eventually Sabir admitted to the judge that it was

possible that the documents in the Lantz case were generated by the Respondent. (Tr. 132-33).

Sabir was then shown Resp.'s Exhibit E-1, 2 and 3 and Resp.'s Exhibit D-2 but he did not know if the documents were generated by him. (Tr. 133, 135). He admitted that all three were from different printers. (Tr. 135).

Sabir denied ever receiving money from the Respondent on behalf of the Lantz's but admitted that he received \$240 from the Respondent but he did not

know if it was cash or check and it was paid over to Mr. Silverio on behalf of the Lantz's. (Tr. 141-42).

### **Testimony of the Respondent**

The Respondent testified that he had a long relationship with Mr. Medina over the years he was a close friend and also a client for whom he did a lot of work. When he lost his license he passed a lot of that work to Mr. Sabir. Mr. Medina was aware of it. Mr. Medina called him and told him that a lady friend of his had a case with an attorney by the name of Marx and the case was dismissed because Marx did not handle it right and that the Respondent should just take the papers from him draft a summons and complaint and find a lawyer to do it. The Respondent told Mr. Sabir and he agreed to accept the case. (Tr. 150-52).

The Respondent next called Mr. Marx's office and spoke to a person who said Mr. Marx was not there but that the Respondent should just fax a letter and Mr. Marx would respond to it. (Tr. 152). The Respondent drafted a letter and was very careful not to say he represented the Lanzas and faxed it to Mr. Marx's office. (Tr. 152-53; Bar's Exhibit 1). The following week the Respondent received a letter from Mr. Marx (Respondent's Exhibit F) he never had a telephone conversation with Marx. (Tr. 153). The Respondent told Medina that he could not do what Marx is asking him to do so he had better go and get it from Marx so Medina got the summons in the original action filed by Marx and gave it to the Respondent. (Tr. 155; Respondent's Exhibit C).

Based upon the Marx complaint and what Medina told the Respondent he drafted the summons and complaint. Mr. Sabir signed it and held on to it. Mr. Medina kept calling and asking how is the case going and the respondent told him that it cannot go on until they got the money because the documents have to be filed and served and Mr. Sabir has to get some money. (Tr. 156-57).

Eventually Medina told the Respondent he did not have the money but that he was going to get the lady to call the Respondent and what the Respondent would have to do is to get somebody to take her credit card and

give you the money because she has some money on the card. The Respondent got a merchant who was willing to do it and called Medina and told him. Medina then said he would get the lady to call the Respondent. A lady then called the Respondent and identified herself as Mrs. Lantz. (Tr. 157).

The Respondent explained that the reason he asked Medina for the Money is that Medina kept calling him and inquiring what was happening to the case because he said that when he called Sabir he could never get him and even when the Respondent told Medina to call him now because he was there Medina would say, "Monty, you are BS'ing me. You know that man does not return my calls." (Tr. 158).

The Respondent then received a call from Mrs. Lantz who said that Medina said the Respondent knew somebody who would do it and the Respondent gave Mrs. Lantz the merchant's name and phone number. Later the merchant called the

Respondent and said Mrs. Lantz told him to give the Respondent \$750 which the Respondent used to stamp and file the documents and to serve them on the defendants and the remainder for his drafting and research work. The Respondent then had nothing further to do with the case. (Tr. 159-60).

Mr. Sabir then came to the Respondent and said that the case cannot go forward because he received a motion to dismiss unless the cost in the previous action was paid. The Respondent then called Medina and told him and Medina came to the office and paid the defendant \$240 cash to give Sabir which he did. (Tr. 160-61).

The Respondent further testified that Medina had a number of little cases for which he asked the Respondent to do drafting and research and then pass on to Sabir for representation. Every single case was discussed and done with Sabir. (Tr. 162). For example Medina would call and say he somebody got a judgment against him and he wants me to do an affidavit and you will represent him in court. Mr. Sabir then agreed to accept the case. The Respondent would then ask Mr. Sabir what would be his fees and he would then say since all I have to do is to go to court my fee would be so and so and the Respondent would tell Medina who would then pay the Respondent to pay Mr. Sabir. This would be done in the form of a paralegal. (Tr. 163-64).

The Respondent recommended Mr. Sabir to Medina to help him in a

bankruptcy matter in which Medina filed for himself. Medina paid Sabir \$500 and asked the Respondent to prepare an affidavit or a motion and to give it to Sabir but Sabir refused to sign it. (Tr. 164-65, 167-68). A

dispute developed between them and Medina filed a complaint against Sabir and started putting extortion-like pressure on the Respondent to get Sabir to assist him in his bankruptcy case. (Tr. 165-66, 170).

Under cross-examination the Respondent testified that he has never filed an employee report pursuant to Rule 3-6.1 nor has any attorney filed any report on his behalf. (Tr. 171-72). The Respondent testified that he was never disbarred by the Bankruptcy Court. (Tr. 172, 176). He never tried to find out who was the person he spoke to at Marx's office and that his letterhead does not disclose that he is only a member of the Bankruptcy bar. (Tr. 177). The context of his letter would indicate if he was licensed to practice moreover he is a member of many different bars only one of which is the bankruptcy bar. He never wrote Marx in the capacity of representing anyone. (Tr. 178). He denied wanting Marx to believe that he was a member in good standing of the Florida bar. He admitted that in communicating with the bar he used the same letter head and fax sheet that he sent to Marx and that his envelopes say attorney at law. He admitted having spoken to Medina many times since his disbarment and that he accepted the money from Mrs. Lantz but he never represented her or anyone else. (Tr. 179-81). In the office he maintains he does research and drafting mainly appellate briefs for other attorneys and that he also complete

immigration forms and for this he receives a fee. (Tr. 181-83). The lawyers for whom he works know that he is disbarred. (Tr. 183-84). As a freelance person he does not think Rule 3-6.1 applies to him. (Tr. 184). At the present time he has been suspended from the Immigration Bar and so he is prevented from representing person before the Immigration [Appeals] Court and INS but not from filling out forms. (Tr. 187-88). He denied making a false statement that he gave Mr. Sabir his portion as a retainer fee and explained that he is now not sure that he gave Mr. Sabir because Mr. Sabir is saying he did not get it. (Tr. 191-94). The Respondent is not a member of any state bars but is a member on the Southern and Eastern Districts Courts [bar] in the state of New York. The sign outside his office states that he is an attorney on the third floor which is difficult to be removed but the one on the ground floor does not say attorney at law. (Tr. 195-96). He did not change his letterhead or fax sheet and envelopes because he is entitled to refer to himself as an attorney. (Tr. 196-197).

The Referee made a finding that the Respondent prepared the documents [the summons and complaint] because “Mr. Sabir is giving me a lot of I don’t know. It was two years ago. It’s possible,” and your [the Respondent’s] testimony was clear. “I prepared those documents, and this is why I did it.” (Tr. 207).

The judge noted that he had to be politically correct in making his decision.  
(Tr. 218).

## SUMMARY OF ARGUMENT

Although the Respondent wrote a letter on his letterhead to an attorney he was authorized to do so because he was licensed as an attorney by the federal government bars as well as overseas bars. Sperry v. Florida, 373 U.S. 379, 83 S.Ct. 1322 (1963).

The Bar's petition made no allegation that the respondent engaged in conduct other than the writing of a letter on his letterhead. Accordingly the Referee's findings of fact beyond that allegation exceeded the authority of the order to show cause because this court has held that allegations must be made in the petition for order to show cause and the Bar must present evidence in support thereof.

Florida Bar v. Kelly, \_\_\_ So.2d \_\_\_, 27 Fla. L. Weekly S205, S206 (Fla. March 7, 2002). The Referee's findings as to the preparation of a summons and complaint and the preparation of immigration forms are beyond the scope of the order to show cause.

Even if the Respondent was engaged in assisting persons to complete immigration forms he is entitled to do so and in any event one need not be a member of the Florida bar to be authorized to do so. Moreover it is improper for the state court to interfere with the regulation of federal agencies in the face of federal regulations to the same effect. *See Sperry*

*supra*. Additionally the Respondent is a member of the Immigration bar and this bar has its own regulatory system. *See, e.g.*, 8 C.F.R. § 292.3 et seq.

There was no testimony from the Respondent or anyone else that the Respondent ever met Deanna Lantz or gave her any advise. Accordingly the Referee's findings in this regard are not supported by evidence.

This court has never held that an attorney who is licensed to practice law in federal jurisdictions or in overseas bars but not so licensed in Florida may not write a letter on his attorney's letterhead while he is in the state of Florida. A holding by this court to the contrary would violate the holding in Sperry supra.

The essence of the restriction against non-lawyers is that they do not **represent** or **advise** clients but there is no prohibition against such persons doing research and drafting if such work product is passed to an attorney who represents the client and not the client himself. *See e.g., Petition of Supreme Court Special Committee, 373 So.2d 1 (Fla. 1979); The Florida Bar v. Thompson, 310 So.2d 300 (Fla. 1975).* The Bar by its own published opinions concedes that a non-lawyer may contact and interview clients and do legal drafting and research providing he is not **representing** the client. *See e.g., Professional Ethics of the Florida Bar, Third Edition, Opinion 88-6;*

and Opinion 62-26 (Reconsideration). *See also* ABA Informal Opinion 998.

This court has found that contempt of its orders occurs when one "willfully disobeys its lawful orders." The Florida Bar v. Ross, 732 So.2d 1037 (Fla. 1999) quoting with approval *Black's Law Dictionary* 319 (6<sup>th</sup> ed. 1990). It is therefore unwarranted where the conduct is based upon a claim of right. *Cf. Sperry* supra.

It was an abuse of discretion to awarded costs against the Respondent when the litigation was the fault of the Bar and the errors of the Referee were the direct consequence of the improper conduct of the Bar in violating the discovery rules and knowingly using false testimony.

The Referee made his findings and recommendations erroneously because he wanted to be politically correct. (Tr. 218).

## **ARGUMENT**

### **I. THE FINDINGS OF FACT ARE NOT SUPORTED BY THE RECORD**

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This court reviews a referee's findings of fact in the unlicensed practice of law (UPL) cases to determine whether those findings are supported in the record by competent substantial evidence. Florida Bar v. Jordan, 705 So.2d 1387, 1390 (Fla. 1998). The record includes transcripts and all pleadings. Rule 3-7.7.

In the instant case the Report failed to identify a specific set of findings of fact but under item delineated, "III RECOMMENDATIONS AS TO CONTEMPT" the Referee implicitly made findings of fact as follows:

- a. the Respondent sent correspondence [on his attorney letterhead] to Marx, Esq.;
- b. the Respondent has signage indicating he is an attorney at law;
- c. the Respondent assists persons to complete immigration forms;
- d. the Respondent drafted a summons and complaint for the Lantze's;
- e. Nashid Sabir, Esq., never agreed to employ the Respondent;
- f. the Respondent met with Deanna Lantz;
  
- g. the Respondent collected trust money for costs and retained a portion for unsupervised legal research and drafting services.

Although these findings are set out as recommendations they are in effect findings of fact and are acted upon by the Referee as such but as set out in the formal objections filed herein these findings are unsupported by the record and should be rejected.

With respect to (a) above, that the Respondent wrote a letter on his letterhead to Marx, Esq., there is no dispute of this fact between the parties and only the legal significance of that fact is challenged. *See below.*

With respect to (b) above, that the Respondent has signage indicating he is an attorney at law, the finding goes beyond the terms of the order to show cause

because there was no allegation to that effect either in the Petition or the Order to Show Cause. (*See also Kelly* below). However even if it were true the Respondent was authorized to do so by virtue of his federal licenses as well as his overseas licenses.

With respect to (c) above, that the Respondent assists persons to complete immigration forms, the Bar made no such allegation in its petition nor did the Order to Show Cause made any reference to this allegation. (See, Petition and Order to Show Cause). The finding therefore goes beyond the terms of the order to show cause.

This court has held that failure to make an allegation and produce evidence in support thereof warrants disapproval of a finding of guilt with respect thereto. Florida Bar v. Kelly, \_\_\_ So.2d \_\_\_, 27 Fla. L. Weekly S205, S206 (Fla. March 7, 2002). There this court observed that, “A rule 4-8.4(g) violation was never pled in the complaint and no evidence was presented on such a violation. Therefore we disapprove the recommendation of this rule violation.” *Id.* It is respectfully submitted that a similar treatment should be given to those findings.

With respect to (d), (e), (f) and (g) above there is absolutely no evidence in the record to support those findings as set out in the Objections filed herein all of which are incorporated in this brief. Indeed those findings contradict the actual evidence in the record as set out below.

The record shows that with respect to (d) above, that the Respondent drafted a summons and complaint for the Lantz's, the Respondent never met with nor worked for the Lantz's and that the research and drafting he did was requested by Medina (a client of no one) and was presented to Sabir on Medina's instructions. (Tr. 150-52; 156-57).

Although Sabir testified that the summons and complaint were "generated" by his office (Tr. 97-98) upon a direct question by the Referee he admitted that he can neither confirm or deny that the summons and

complaint were made by him. (Tr. 107). He did not recall drafting the complaint but whether or not he drafted it, it was similar to the one filed by Marx. (Tr. 117).

In finding that the Respondent drafted the summons and complaint the Referee implicitly rejected Sabir's testimony as false. It is therefore not open to the Referee to say that the Respondent worked for Lantz because the only evidence accepted was that of the Respondent and he said that he did not work for the Lantz's but for Medina. The finding was therefore contrary to the evidence and should be rejected.

The record further shows that with respect to (e) above, that Nashid Sabir, Esq., never agreed to employ the Respondent, this finding contradicts the evidence because neither party contended that Sabir ever employed the Respondent. The Respondent said he worked for Medina and he never worked for nor ever met Lantz. (Tr. 150-52; 156-57). Sabir testified that the Lantz's retained him and he did not know how the respondent could be doing work in the case. (Tr. 107).

The Referee having rejected Sabir's testimony that his office "generated" the pleadings as false (Tr. 207) then proceeded to find that Sabir never agreed to employ the Respondent. Such a finding is unsupported by the evidence. Indeed the Respondent contended that Sabir expressed a willingness to accept the case but that the actual acceptance took place only after the money was paid by the merchant to the

Respondent and not before, and by which time the Respondent acting on the directions of Medina had already done the research and drafting work which was subsequently passed to Sabir who is an attorney licensed to practice in Florida. (Tr. 150-52; 156). It is respectfully submitted that none of this evidence permits a finding that Sabir “never agreed to employ the Respondent” not only because it was a non-issue, which was neither alleged by the Bar nor contended by the Respondent or by Sabir but even more so because there is no scope for the accommodation of such a finding. It is obvious from such a finding that the Referee misconstrued the flow of evidence. This error is of particular significance because the Referee used that erroneous and unsupported finding as a basis for his conclusion that the defendant engaged in UPL by doing things not authorized by Sabir. The chronology of the events as revealed by the evidence at the hearing is that Medina contacted the Respondent and asked him to draft the summons and complaint and then get a lawyer to do the case. The Respondent asked Marx for the pleadings of the dismissed case. Medina gave the Respondent a copy of the complaint in the dismissed case. The respondent used that complaint to draft the summons and complaint. The Respondent then gave the drafted documents to Sabir. Subsequently the merchant gave the Respondent the money and the Respondent gave Sabir his portion to file and

serve the documents and retained a portion for himself in payment of the work he did. Sabir was never into the matter until he was given a drafted summons and complaint by the Respondent and once that was done the Respondent had nothing

further to do with the matter. On such a record it was erroneous to conclude that Sabir “never agreed to employ the Respondent” and indeed neither party said Sabir did.

The record further shows that with respect to (f) above, that the Respondent met with Deanna Lantz, there is a total absence of any evidence in the record that the Respondent ever met Deanna Lantz or received any money directly from Deanna Lantz. The record shows that a merchant gave the money to the Respondent and said that Lantz said to give him the money. (Tr. 157; 159-60). Indeed this is the money the Respondent had been expecting from Medina but which never came and eventually Medina told the Respondent that Lantz needed a merchant who would charge her credit card for the money. (Tr. 157). There was no testimony from anyone that the Respondent ever met Deanna Lantz nor did the Bar make any such allegation. Indeed the Respondent testified without contradiction that he has never met Deanna Lantz in his entire life.

The damage done to the proceedings before the Referee by the Bar in its breach of the discovery rules<sup>1</sup> is now revealed in its alarming detail. The Bar in response to the Respondent’s interrogatories stated positively that it would call Lantz as a witness and that she would testify that she retained the Respondent, paid him money and was never advised that he was disbarred. (Bar’s Answer to First Interrogatories, 2, ¶ 2). In the same response to interrogatories the Bar also stated

that it would call Vincent P. Medina and that he would testify that, “He paid monies to [the Respondent] to do work for Miss Lantz.” (Appx. 5, ¶ 2b). However the Bar never called Lantz or Medina and never presented either of them for examination by the Respondent before the Referee. If they were called by the Bar as they said they would or if the Bar had notified the Respondent that they would not call them the Respondent would have been able to call them to testify and the erroneous evidence would have been disclosed and the Referee’s finding of fact would have been resolved in the Respondent’s favor.

Instead of calling Lantz and Medina to testify in support of its case that Lantz retained the Respondent, the Bar called Sabir and knowingly presented his false testimony to the Referee in violation of law. It is beyond doubt that the Bar knew that Sabir’s testimony was false because its

investigators interviewed Lantz as well as Medina and the later told them that the Respondent only did research and drafting for him to be presented to Sabir.

(Resp. Affidavit in Response to Deanna Lantz, 3, ¶ 7). The Bar never contradicted this evidence that they interviewed both Lantz and Medina nor could they in the face of the affidavit from Lantz which was taken and witnessed by the Bar’s investigator in Lantz’s house and the conversation between the Bar’s investigator to which Medina permitted the Respondent to listen. (Resp. Second Demand for Interrogatories, 4, ¶¶ 14-15; Bar’s Answer to Second Demand for Interrogatories, 3, ¶¶ 14-15). The Bar’s failure to call Lantz and Medina after

saying they would and instead calling Sabir to give testimony they know to be false is a serious violation of law.

### **The Bar Tendered False Testimony**

The Bar's knowing use of perjured evidence violates the Respondent's rights to due process under both the Florida and U.S. Constitutions. The Supreme Court has repeatedly "condemn[ed] the knowing use of perjured testimony" by the government as a violation of due process. Strickler v. Greene, \_\_\_ U.S. \_\_\_, 119 S.Ct. 1936, 12 Fla. L. Weekly Fed. S361, S365, n.19 (U.S. June 17, 1999), *citing* Mooney v. Holohan, 294 U.S. 103, 112 (1935) (*per curiam*) (judgment obtained on perjured testimony

violates due process); Pyle v. Kansas, 317 U.S. 213, 2167 (1942) (use of perjured testimony and suppression of favorable evidence by state violates due process); Napue v. Illinois, 360 U.S. 264, 269-270 (1959) (judgment of conviction obtained through use of false testimony, known to be such by representative of state is a denial of due process).

The record shows that with respect to (g) above, that the Respondent collected trust money for costs and retained a portion for unsupervised legal research and drafting services, this finding is contrary to the evidence and betrays the Referee's misunderstanding of and inability to recall the essence of the evidence presented at the hearing. The Respondent testified without contradiction that the \$750 he received as aforesaid from the merchant was designated by Medina as

money to file the action, serve the summons and complaint and payment for the Respondent's research and drafting work. (Tr. 159-60).

That money did not include any amount for "the cost [\$240] awarded to the firm representing the defendant in the dismissed action" as erroneously stated in the report. This error shows that the Referee misunderstood or did not accurately the evidence. The uncontroverted testimony of the Respondent was that the amount for costs awarded in the previously dismissed action was the separate and distinct amount of \$240

which Medina gave to the Respondent on February 7, 2001 to be handed over to Sabir for the purpose of paying the court ordered cost in the previously dismissed action without the payment of which the new action for Lantz could not be prosecuted by Sabir. (Tr. 160-61). Sabir confirmed that he received the money and paid it over to the opposing attorney. (Tr. 141-42). Further the evidence was that the said sum of \$240 was the amount represented by the Respondent's receipt to Medina for \$240 (cash) dated February 7, 2001 which was an Exhibit to the Affidavit of Deanna Lantz filed by the Bar in support of its allegations against the Respondent. (Appx. 6; Resp. Affidavit in Response to Deanna Lantz, 5-6, ¶¶ 17-18).

The Respondent's response to the affidavit of Lantz clearly showed that the \$240 came from Medina on that date and that it was given to Sabir the same day and he paid it out by his check to the opposing attorney dated February 15, 2001. (Tr. 141-42). The Respondent also testified that, "Medina, after a number of promises came and gave me that money, that \$240 in cash to give to Mr. Sabir. I gave Mr. Sabir the cash and the action went on." (Tr. 160-61). Sabir, Testified that, "I know the money [\$240] came from you [the Respondent] and it was deposited in my trust account. . . ." (Tr. 142). The Referee therefore misconstrued the evidence with respect to his finding that the Respondent collected trust money for costs and retained a portion for unsupervised legal research and drafting services. It cannot reasonably be said that the summons and complaint that was given to Sabir and which he signed and filed was unsupervised legal research and drafting.

## **II. THE REFEREE'S RECOMMENDATION OF GUILT IS CLEARLY ERRONEOUS**

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This court reviews a referee's recommendation of guilt to determine if "competent substantial evidence supports the referee's findings of fact and conclusions concerning guilt." Florida Bar v. Kelly, \_\_\_ So.2d \_\_\_, 27 Fla. L. Weekly S205, S206 (Fla. March 7, 2002). The evidence must be clear and convincing. Florida Bar v. Pellegrini, 714 So.2d 448, 23 Fla. L. Weekly S357 (Fla. June 18, 1998) reaffirming Florida Bar v. Marable, 645 So.2d 438, 442 (Fla. 1994) and Florida Bar v. McClure, 575 So.2d 176, 177 (Fla. 1991).

In Kelly where the referee erroneously misapprehended the relevant law in finding that the attorney had a duty to deliver client funds in a timely manner this court disapproved of the referee's recommendation as to guilt and concluded that the relevant rule was not violated. At S206. In the

instant case the Referee has similarly erred in applying the relevant law and his recommendation should be similarly disapproved.

Under item "III RECOMMENDATIONS AS TO CONTEMPT" the Report stated that, "KANDEKORE put himself out as an attorney at law authorized to practice in Florida when [1] he sent correspondence to Richard Marx, Esq., and [2] by having signage indication that he is an attorney at law, when [3] he assists persons who come to his office in filling out immigration forms."

The fact that the Respondent wrote to Marx is not in dispute but the Respondent challenges the legal conclusion that such writing amounts in law to "putting oneself out as an attorney at law authorized to practice in Florida." Significantly the Referee did not rely upon the false testimony of Marx to the effect that the Respondent told Marx that he [the Respondent] represented Lantz. It is therefore clear that the testimony of Marx in this respect was discredited and rejected by the Referee. Even more significant is the fact that the Referee failed to give appropriate weight to the letter of Marx in response to the Respondent's letter and in which Marx requested of the Respondent that he advise him if he [the

Respondent] represented Lantz. This letter by itself negates Marx's claim that the Respondent told him that he represented Lantz's. The record shows that the Respondent never

responded to Marx's letter nor did Marx or the Respondent make any further contact with each other. It is therefore clear that the Referee did not rely upon the contents of Marx's letter but relied solely upon the finding of fact (which was never in dispute) that the Respondent wrote a letter to Marx and thereby determined that the Respondent was engaged in the practice of law. This is a clear error of law as set out below.

**A. Use of Attorney's Letterhead**

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The Referee did not cite any authority for his proposition of law that the Respondent by writing a letter on his attorney's letterhead held himself out to be an attorney *licensed to practice law in Florida*. It seems clear that the Referee concluded that the mere fact that the Respondent wrote such a letter was conclusive of the issue of whether the Respondent held himself out to be an attorney *licensed to practice law in Florida* without regards to the contents of the letter or the fact that the defendant was licensed to practice law in other jurisdictions both federal and overseas.

There is no reported decision of this court which holds that an attorney who is licensed to practice law in a federal and overseas jurisdictions but not so licensed in Florida may not write a letter on his attorney's letterhead while he is in the state of Florida whether or not the contents of such letter discloses that the writer was in fact a person authorized to practice law under the auspices of the Florida state court system.

The Referee relied upon Florida Bar v. Sperry, 140 So.2d 587 (Fla. 1962) for his definition of what constitutes the practice of law without apparently realizing that the cited decision of the Florida Supreme Court was *vacated* by the United States Supreme Court in Sperry v. Florida, 373 U.S. 379, 83 S.Ct. 1322 (1963). There the Supreme Court said that the state of Florida could not enjoin a non-lawyer registered to practice before a United States agency from engaging in activities within the state of Florida even if such activity constituted the practice of law under Florida's law. At 1326. The Court made it clear that anything incidental to the federal authority may not be prohibited even if the state court considers such activity to be the practice of law. *Id.* at 1325. The Court clearly stated that the state exercise of its powers must yield to federal authority. *Id.* citing Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 211, 6 L.Ed. 23 (1824).

The Referee's reliance on Sperry in this court is erroneous because the meaning of the Supreme Court's decision is lost without an appreciation that any proper definition of the practice of law must accommodate

circumstances in which the federal authority may be exercised without infringing state law.

Moreover this court's definition referred to in the Report encompasses the representation of a person in the capacity of an attorney under the state court system or the giving of legal advise to a person as an attorney under the state court system or the preparation of legal documents for a person as an attorney under the state court system. None of that applies in the instant case where the Respondent never said to anyone that he represented Lantz, he never met Lantz and the work he did was passed to an attorney and not to either Lantz or Medina. The Referee failed to take this into consideration and to explain how a person authorized to practice in a federal court or an overseas jurisdiction is not authorized to write a letter on his own letterhead which describes him as an attorney.

It is respectfully submitted that it is self-evident that the writing of a letter on an attorney's letterhead is certainly incidental to the federal law license and especially in circumstances where the letter does not claim authority under the state's laws or say such attorney represented anyone. On the authority of the U.S. Supreme Court's decision in Sperry the writing of such a letter does not amount to the practice of law because it is incidental to the federal bar license. It is the unchallenged position of the Respondent

that he was a member of federal bars as well as oversees bars. The Respondent therefore as such was entitled to refer to himself as an attorney and use his

letterhead as such so the recommendation that by writing a letter without more constitutes the practice of law is erroneous and should be disapproved.

**B. The Use of Signage was Neither Alleged nor Proven**

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The Referee's finding of guilt is also based upon his finding of fact that the Respondent had signage indicating that he is an attorney at law but that was neither alleged in the petition nor supported by evidence and is therefore an erroneous finding of guilt as set out in Kelly, *infra*.

There were two signs involved – one on the ground floor which does not identify the Respondent as an attorney<sup>2</sup> but only as “Monty Kandekore” and another on the third floor which identified him as “L. Monty Kandekore, Esq.” (Tr. 195-96). There was no evidence that this nameplate was

advertisement and all the evidence was that the Respondent only worked for other attorneys doing research and drafting so no one was misled.

However the foregoing notwithstanding the Respondent is entitled to identify himself as an attorney in accordance with his status in other bars.

### C. Immigration Forms

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Neither the Petition nor the Order to Show Cause made pursuant thereto made any allegation that the Respondent was engaged in “assisting persons to complete immigration forms” and therefore as set out above there can be no disciplinary measure imposed in respect thereto. (*See* Petition and Order to Show Cause). This court has held that failure to make an allegation and produce evidence in support thereof warrants disapproval. Florida Bar v. Kelly, \_\_\_ So.2d \_\_\_, 27 Fla. L. Weekly S205, S206 (Fla. March 7, 2002).

Even accepting *arguendo* that the Respondent assists persons to complete immigration forms it is erroneous to apply a state standard to determine whether such conduct amounts to the practice of law under the state court system when the federal government has its own legal procedures to regulate such conduct concerning members of the immigration bar of which the Respondent is one such member.

The Referee again erroneously relied upon Florida Bar v. Sperry, 140 So.2d 587 (Fla. 1962) [*vacated*] for the proposition that state licensing requirements are only pre-empted by federal law specifically authorizing the activity. The Referee reasoned that by federal law a disbarred attorney [under the Florida state system] may not assist others in the completion of Immigration and Naturalization forms (citing C.F.R. § 1.1(FIRPO), (i) and (m)). The Report further reasoned that because immigration forms are not approved by the Florida Supreme Court a

disbarred attorney is not authorized to assist others to complete those forms (citing Rules Regulating the Florida Bar - Approval of Forms, 581 So.2d 902 (Fla. 1991)) [Amended Frequently thereafter]. (*Citation and comment as in original*).

The Referee failed to give cognizance to the legal doctrine of federal preemption which holds that when the federal government legislates about a matter a state is preempted from regulating the same matter. *See e.g., Pennsylvania v. Nelson*, 350 U.S. 497 (1956) cited in Howard v. Uniroyal, 719 F.2d 1552 (11<sup>th</sup> Cir. 1983). The Nelson Court held that where there is pervasive Congressional legislation on a particular matter it is improper to infer state supplementation of the same matter and where federal interest is paramount enforcement of state law on the same matter is precluded. At 502-505.

The federal government maintains an extensive legislative scheme by which it regulates members of the immigration bar thereby preempting state regulation of the immigration bar for conduct with respect to immigration matters. *See* 8 CFR 292.3 et seq. Moreover this court has made it clear that it will not intervene in matters concerning the federal bars. *See The Florida Bar v. Penn*, 421 So.2d 497, 500 (Fla. 1982) citing In re Ruffalo, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117, rehearing denied, 391 U.S. 961, 88 S.Ct. 1833, 20 L.Ed.2d 874 (1968) (Florida regulations do not extend to matters outside of Florida state law).

In any event the Referee's interpretation of the federal law is erroneous because he cites a provision that describes how one becomes a member of the

immigration bar but which is applicable only to legal representatives who are *appearing* before the INS or the EOIR and not to persons *not so appearing*. See 8 C.F.R. § 1.1(i). There was no allegation or evidence that the Respondent was *appearing* before the INS or the EOIR and there was no proof thereof tendered at the hearing nor could there be because it never occurred. Moreover the citations made by the Referee are properly confined to the method by which one becomes a member of the Immigration Bar and is inapplicable to the instant case since the Respondent

is a member of the immigration bar and the fact that one is not a member of the state bar does not without more terminates membership in a federal bar. See Thread v. United States, 354 U.S. 278, 281 (1957) where the Supreme Court held that, “While a lawyer is admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route.” See also Penn, supra, “[S]uspension or disbarment by a state does not result in automatic suspension of disbarment by the federal court without some affirmative action by the federal court.” At 500 citing In re Ruffalo supra.

The Referee's recommendation is therefore based upon an erroneous interpretation of the law and should be disapproved.

**III. THE DRAFTING OF THE SUMMONS AND  
COMPLAINT WAS NOT THE UNLICENSED  
PRACTICE OF LAW**

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The Referee's finding that the Respondent drafted a summons and complaint for the Lantz's and thereby engaged in the unlicensed practice of law is an erroneous conclusion of law. Significantly it was not alleged in the petition and accordingly is beyond the scope of the order to show cause.

This court has held that failure to make an allegation and produce evidence in support thereof warrants disapproval. Florida Bar v. Kelly, \_\_\_ So.2d \_\_\_, 27 Fla. L. Weekly S205, S206 (Fla. March 7, 2002).

The Referee recommends a determination that the Respondent be found to have engaged in the unlawful practice of law by preparing the summons and complaint relying on this court's decision in Sperry supra. Such reliance is misplaced however because not only has that decision been vacated by the Supreme Court but the facts there are decidedly different from those of the instant case. Sperry was not a lawyer anywhere and this court reasoned that because the conduct in which he engaged could only be performed by a lawyer he therefore engaged in the unlicensed practice of law. Additionally, those acts performed by Sperry were done for the clients *themselves* personally, *i.e.*, in a representative capacity. Those circumstances are markedly different from the circumstances of the instant case where the Respondent was in fact licensed in other jurisdictions and did the drafting and presented it to an attorney not to a client. His conduct was therefore that of a legal clerk or a paralegal and not as a lawyer in the state system.

There is no evidence that the Respondent gave any advise or counsel to Lantz or anyone else nor did he advise Lantz or anyone else of their rights and obligations under law. The Referee therefore erred in

making the conclusion that preparing a summons and complaint and presenting it to a lawyer was practicing law.

The Bar by its own published opinions concedes that a non-lawyer may contact and interview clients and do legal drafting and research providing he is not **representing** the client. *See e.g.*, Professional Ethics of the Florida Bar, Third Edition, Opinion 88-6 (it is not impermissible per se for a non-lawyer to conduct the initial interview with a new client); Opinion 62-26 (Reconsideration) (same). *See also* ABA Informal Opinion 998 (same). This court has consistently rejected the Bar's attempt to prohibit a disbarred attorney (in the state court system) from doing legal work for other attorneys. *See e.g.*, Petition of Supreme Court Special Committee, 373 So.2d 1 (Fla. 1979); The Florida Bar v. Thompson, 310 So.2d 300 (Fla. 1975); *see also*, The Florida Bar Re Advisory Opinion - Nonlawyer Preparation of Living Trusts, 613 So.2d 426, 428 (Fla. 1993) (gathering information for trust not practice of law and nonlawyers may properly perform this activity); In re The Joint Petition of The Florida Bar and Raymond, James, 215 So.2d 613, 614 (Fla. 1968) ("soliciting specific facts" and "assist with specific factual information" may properly be done by nonlawyers). Indeed it is very common place for non-lawyers to draft legal documents for attorneys and it is big business not only in the Florida but also

throughout the United States. For example, Technical Advisory Service for Attorneys (TASA) routinely advertises such legal drafting services without breaking the law. (See “Exhibit 1”). Similarly National Legal Professional Associates regularly and routinely draft appellate briefs, post-conviction habeas motions and petitions for persons incarcerated for presentation to their attorneys for review and filing without running afoul of the law. (See “Exhibit 2”). The essence of the restriction against non-lawyers is that they do not *represent* or *advise* clients but there is no prohibition against their doing research and drafting if such work product is passed directly to an attorney who *represents* the client. All the cases decided by this court holding that a non-lawyer engages in the practice of law by preparing documents involve instances where the work is done directly for the client and never where the work product is given to an attorney who represents the client. *E.g.*, In The Florida Bar v. Neely, 675 So.2d 592 (Fla. 1996) the disbarred attorney “met with a would-be client and accepted \$1,000 to prepare a legal malpractice suit against another lawyer.” He also “filed a complaint in circuit court on behalf of a corporation and represented the corporation in a legal capacity.” Similarly, in The Florida Bar v. Catarcio, 709 So.2d 96, 23 Fla. L. Weekly S80 (Fla. 1998) the non-lawyer met with the client, advised him of his eligibility for bankruptcy, advised the client’s

ex-wife to file for joint bankruptcy and prepared the documents for them. Again in The Florida Bar Re Advisory Opinion - Nonlawyer Preparation of Living Trusts,

supra, this court noted that it is the giving of advise that can only be done by a lawyer because “a lawyer must make the determination as to the client’s need.” Also in The Joint Petition of The Florida Bar and Raymond, James, supra, giving legal advise concerning the application can only be done by a lawyer.

In the case at bar the Respondent did not meet with Lantz, he gave her no advice and handed over what he did to the attorney who agreed to represent her and in circumstances where it was clear that the Respondent was not *representing or advising* Lantz.

Accordingly the Referee's recommendation is erroneous and should be disapproved.

#### **IV. THE REFEREE'S RECOMMENDATION AS TO DISCIPLINARY MEASURE IS INAPPROPRIATE**

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This court reviews a referee's recommendation of discipline to determine if it is reasonably supported by existing case law. Florida Bar v. Centurion, \_\_\_ So.2d \_\_\_, 25 Fla. L. Weekly S344, S345 (Fla. May 4, 2000) reaffirming Florida Bar v. Fredericks, 731 So.2d 1249, 1254 (Fla. 1999).

The Referee recommends that the Respondent be found in contempt and that he be permanently disbarred but cites no case law as authority for his recommendation. This court has found that contempt of this court's orders occurs when one "willfully disobeys its lawful orders." The Florida Bar v. Ross, 732 So.2d 1037 (Fla. 1999) quoting with approval *Black's Law Dictionary* 319 (6<sup>th</sup>

ed. 1990).

In The Florida Bar v. Larkin, 298 So.2d 371 (Fla. 1974) this court held that an Illinois attorney not licensed to practice in Florida engaged in the unlawful practice of law by drafting wills and preparing ante-nuptial agreements and represented to the party that such documents conformed to Florida law. Although the court found that such acts amounted to the practice of law in the face of the attorney's admission of the facts, his averment that he did not intend to engage in the practice of law *inter alia* this court held that a finding of contempt was inappropriate. At 373.

In The Florida Bar v. Neely, 675 So.2d 592 (Fla. 1996) this court found permanent disbarment appropriate where the disbarred attorney met with a would-be client accept \$1,000, filed a complaint in the circuit court on behalf of a corporation and represented the corporation in a legal capacity for nearly two months. There the findings of fact were supported by documentary and oral testimony of witnesses and although there was no specific finding of contempt this court found that in light of the offenders extensive disciplinary record permanent disbarment was appropriate.

Similarly this court found contempt were a disbarred attorney deliberately engaged in the UPL by representing a person at a deposition and at a pretrial conference and expressly represented to the court reporter that he was an attorney licensed to practice in Florida. The Florida Bar v. Riccardi, 304 So.2d 444 (Fla. 1974).

There is no decided case in which an attorney disbarred in Florida but was a

member of federal an overseas bars and acting under a claim of right has been found in contempt for exercising that claimed right. Where a federal agency, the Commissioner of Patents, authorized a person to practice before the United States Patent Office although such person was not an attorney and the Florida Supreme Court found his activities constituted the practice of law and accordingly enjoined his conduct the United States Supreme Court vacated the order because a state court may not restrain conduct incidental to the exercise of a federally granted license. Sperry v. Florida, 373 U.S. 379, 83 S.Ct. 1322 (1963) vacating the state court's decision in Florida Bar v. Sperry, 140 So.2d 587 (Fla. 1962).

The instant case is decidedly different from the cases in which this court has found contempt and ordered disbarment as appropriate. The case

at bar is more akin to Sperry. Here the Respondent's conduct complained of, *viz.*, writing a letter on his attorney letterhead is based upon a legal claim of right as distinct from willful disregard of this court's order as was the case in both Neely or Riccardi. The Respondent is in fact a member of federal bars as well as oversees bars and is therefore entitled to refer to himself as an attorney. Incident to that right is the authority to write a letter on his own letterhead. The other findings of fact exceed the scope of the order to show cause issued by this court and based upon the Bar's petition but even if they may be considered none of them amounts to UPL. The Respondent never met with the client or gave her any advise (see above) or represented her and the work he prepared was given to an attorney not to the client. The remaining acts none of which were alleged by the Bar were done

under a claim of right based upon the decision of the Supreme Court. A finding of contempt is therefore unwarranted and equally permanent disbarment has never been imposed in any circumstance where a Respondent's conduct is based upon a claim of right as in the instant case.

It is respectfully submitted that in light of the previously cited authorities the Referee's recommendation is unsupported by law and therefore should be disapproved.

**V. THE REFEREE'S RECOMMENDATION AS TO  
COSTS WAS AN ABUSE OF DISCRETION**

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This court reviews a referee's recommendation of costs for an abuse of discretion. Bar Rule 3-7.6(o)(2). The record shows that the Bar made sworn allegations based upon the affidavit of Marx but which the Referee has discredited and rejected. The only part of the affidavit accepted by the Referee is that portion which was not in dispute, to wit, that the Respondent wrote a letter to Marx. (*See above*). The Bar then sought summary judgment which the Referee denied. The Bar then violated the discovery rules and the court procedure by deceiving the Respondent into believing that they would call both Medina and Lantz to testify at the hearing but failed to do so and thereby prejudiced the proper progress of the deliberations with the result that the court made serious errors which would have been avoided if the named witnesses were called or the Respondent was advised

that they would not be called so that he could call them. If the Respondent was able to place before the Referee the testimony of Lantz and Medina he would have been exonerated. Not to be forgotten is the Bar's knowing use of the perjured testimony of Sabir resulting in the deception of the Referee. The ultimate error in the Referee's findings is the direct result

of the Bar's improper conduct and the Referee making his findings and recommendations erroneously because he wanted to be politically correct.

In these circumstances it was an abuse of discretion on the part of the Referee when he awarded costs against the Respondent and accordingly this court should not approve it.

### **CONCLUSION**

The errors in the comprehension of the evidence, the unsupported findings of fact and conclusions of law warrant rejection of the Referee's findings of fact.

The Referee exceeded the scope of his authority when he made findings of fact and made recommendations concerning matters which were not in the petition or order to show cause issued pursuant thereto.

The recommendations are unsupported by any decisions of this court or other authority and indeed are contrary to this court's decisions and should therefore be disapproved.

The errors made by the Referee are properly laid at the feet of the Bar and costs were therefore improperly awarded against the Respondent.

The Referee's report should therefore be rejected in its entirety.

Respectfully submitted,

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**LIJYASU KANDEKORE**

On his own behalf  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing was sent by U.S.  
mail on February \_\_8\_\_, 2003 to the following:

The Florida Bar  
444 Brickell Avenue  
Rivergate Plaza, Suite M-100  
Miami, FL 33131

The Clerk  
Supreme Court of Florida  
500 South Duval Street  
Tallahassee, FL 32399

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**LIJYASU KANDEKORE**  
**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing brief complies with the font requirement of Fla.R.App.P. 9.210(a)(2) in that the Respondent uses Times New Roman 14-point font throughout.

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**LIJYASU KANDEKORE**

<sup>1</sup>..... See Fla.R.Civ.P. 1.280(b) and 1.340 providing for answers to interrogatories to be made in writing under oath and use thereof at trial.

<sup>2</sup>..... In fact the Respondent erroneously believed that at the time of his testimony the nameplate identified him as “L. Monty Kandekore, Esq.” on a metal [late among a list of other attorneys but this had been removed in accordance with the Respondent’s prior instructions out of an abundance of caution. Accordingly the Respondent erroneously testified that the third floor sign was still there when it had been removed. In any event the Respondent is no longer in those facilities.