

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Supreme Court Case NO.: SC03-1714

Complainant,

The Florida Bar File Nos.

v.

2001-70,598 (11N), 2001-70

599 (11N), 2001-70-611 (11N),

2003-70,688 (11N), 2003-70,

FRANCISCO OSVALDO LORIGA, 689 (11N), & 2003-71-339

Respondent,

RESPONDENT'S AMENDED INITIAL BRIEF

FRANCISCO O. LORIGA
Respondent, appearing *Pro Se*
6482 SW 39th Street
Miami, Florida 33155
Tele: (305) 666-3261
Florida Bar No.:0081418

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	iii
SYMBOLS AND REFERENCES.....	1
STATEMENT OF THE CASE AND OF THE FACTS.....	2
SUMMARY OF THE ARGUMENT.....	13
STANDARD OF REVIEW.....	17
ARGUMENTS	18
1. THE REFEREE’S FINDINGS OF FACT REGARDING COUNT II ARE CLEARLY ERRONEOUS OR LACKING IN EVIDENTIARY SUPPORT.....	18
2. THE REFEREE’S FINDINGS OF FACT REGARDING COUNT III ARE CLEARLY ERRONEOUS OR LACKING IN EVIDENTIARY SUPPORT. THE REFEREE ERRED IN NOT GRANTING LORIGA’S MOTION FOR A DIRECTED VERDICT AS TO COUNT III.....	22
3. THE REFEREE’S RECOMMENDATION OF A REHABILITATIVE SUSPENSION IS CLEARLY EXCESS IN LIGHT OF LORIGA’S CLEAR AND CONVINCING EVIDENCE OF REHABILITAION.....	24
4. THE REFEREE ERRed IN BASING HIS RECOMMENATION OF A 6 MONTH SUSPENION ON LORIGA NOT SUBMITTING TO THE REFEREE’S DEMAND FOR AN IN COURT DRUG TEST AFTER THE CLOSE OF ALL THE EVIDENCE.....	36
CONCLUSION.....	37

TABLE OF CONTENTS (continued)

	<u>Page</u>
REQUEST FOR ORAL ARGUMENT.....	38
CERTIFICATE OF SERVICE.....	38
COMPLIANCE WITH RULE 9.201(a)(2).....	39

TABLE OF AUTHORITIES

<u>Constitution</u>	Page
Article V, Section 15, Florida Constitution.....	17
 <u>Cases</u>	
<u>Florida Bar vs. Anderson</u> , 538 So. 2d 852, 854 (Fla. 1989).....	17
<u>Florida Bar vs. Bastisa</u> , 28 Fla. L. Weekly S 388 (Fla. 2003).....	37
<u>Florida Bar vs. Brown</u> , 790 So. 2d 1081, 1089 (Fla. 2001).....	17,
35	
<u>Florida Bar vs. Fredericks</u> , 731 So. 2d 1249 (Fla. 1999).....	18
<u>Florida Bar vs. Hayden</u> , 583 So. 2d 1016, 1017 (Fla. 1991).....	17
<u>Florida Bar vs. Price</u> , 478 So. 812 (Fla. 1985)	17
<u>Florida Bar vs. Temmer</u> , 753 So. 2d 555, 558 (Fla. 1999).....	17
<u>Florida Bar vs. Stillman</u> , 401 So. 2d 1306 (Fla. 1981).....	18
<u>Florida Bar vs. Vernell</u> , 721 So. 2d 705 (Fla 1998)	18
 <u>Florida Rules Regulating The Florida Bar</u>	
3-4.3.....	1
4-8.4(b).....	1
 <u>Florida Standards for Imposing Lawyer Sanctions</u>	
Standard 9.3(g).....	15
Standard 9.3 (j).....	15
 <u>Florida Rules of Appellate Procedure</u>	
9.201(a)(2).....	39

SYMBOLS AND REFERENCES

In this brief, the complainant, The Florida Bar, shall be referred to as "The Florida Bar" or "the Bar". The Respondent shall be referred to as "Loriga".

The Report of Referee dated June 10, 2004, will be referred to as "ROR" followed by the referenced page number(s) and paragraph number(s).

The Transcript of the hearings held on March 11th, 2004, and May 27, 2004, will be referred to as "T" followed by the page number "P" and/or line number(s) "L".

STATEMENT OF THE CASE AND THE FACTS

On September 23rd, 2003, The Florida Bar filed a four count complaint against Loriga. *See Complaint of the Florida Bar* [hereinafter “CFB”). The CFB is predicated on Loriga being arrested numerous times and on illicit drug use. *See CFB*. The CFB charges Loriga with violating Rules 3-4.3 (Criminal misconduct), and 4-8.4(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects) of the Rules of Professional Conduct. *See CFB, P 5, 7, 9, & 10*. The CFB does not charge Loriga with any theft of client money, any lack of professional ability, nor any other type of wrongdoing relating to Loriga’s client involvement. *See CFB*. The crimes for which Loriga was charged did not result in any monetary gain to Loriga nor did they further any self-motivation. *See CFB*. Loriga admitted most of the allegations in the CFB. *See Answer to Complaint* [hereafter “ATC”]; T 148 L 14-18. Loriga admits a substance abuse problem. *See ATC ¶54; T 25 L 11-15*. In November 2000, Loriga started to voluntarily attend Florida Lawyer’s Assistance meetings. *See T 91 L 7-10*. Loriga to this day attends Florida Lawyer’s Assistance meetings and is under a Florida Lawyer’s Assistance Contract. *See T 98 L 2 – 7*. Additionally, on January 10, 2003, Loriga successfully completed a 30 day residential treatment program at St.

Luke's Addiction Recovery Center in Miami-Dade County. *See* T 108 L 7-9; T 124 L 23- 24; T 157 L 18-25, T 158 L 1 –18.

On March 11, 2004, the first part of Loriga's trial took place before the Honorable Lawrence Schwartz. *See* T Volume 1 cover page. Law Enforcement Officers Michael Rojas (T P 31-41), Jose Gonzalez (T P 44-52), Wanda Millian (T P 59-72), and (T P 208 – 223) Rafael Jimenez testified on behalf of the Bar and against Loriga. All four officers testified about Loriga criminal acts and the testimony was basically that Loriga did not comport himself in a lawful manner. Mr. Myer Cohen (T L 86- 112), Director of the Florida Lawyers Assistance, Inc., also testified on behalf of the Bar. Mr. Cohen's testimony was not favorable to Loriga; however, Mr. Cohen did not give an opinion as to whether Loriga had internalized a program of recovery. *See* T L 10-16 (Q: Now, Mr. Cohen, has Mr. Loriga internalized this program from your perspective? A: As I just told the Judge, I can't – a lot of times, I'm called to express that opinion and I usually can do it. In this case, I really don't feel comfortable doing that one way or the other.). Mr. Cohen testimony is in direct contradiction to the ROR at page 14 section (C)(2)(a), which claims that Mr. Cohen testified that Loriga had not internalized a program of recovery. Mr. Cohen also testified about the subjective nature of his opinion in the field of recovery. *See* T 116 L 17. Mr.

Cohen only interacts with Loriga one hour per week, and that is when Mr. Cohen actually attends the meetings. *See* T 113 L 3.

Seven witnesses testified on March 11, 2004, on Loriga's behalf. Ms. Priscilla Bakes, a Certified Associate Addiction Professional and Coordinator of Continuing Treatment Services at South Miami Hospital Addiction Treatment Program, testified that Loriga is doing excellent in recovery. *See* T 123 L 11-12. Ms. Bakes has been Loriga's facilitator/coordinator of Aftercare Treatment Services at South Miami since January of 2002. *See* T 123 L 6-7. Ms. Bakes interacts with Loriga for an hour and a half per week per week, and since November 2003 two days per week for an hour and a half. *See* T 123 L 15-18. Ms. Bakes testified that Mr. Loriga has internalized a program of recovery. *See* T 124 L 10-13. Ms. Bakes testified that Loriga demonstrates humility and honesty. *See* T 124 L 19-22. Ms. Bakes is aware that Loriga has relapsed on more than one occasion. *See* T 125 L 11-17. Yet, Loriga's relapse in May 2003 did not change her professional opinion that Loriga is in recovery based on Loriga's honest and open progressive in a very positive way. *See* T 128 L 3-8. Ms. Bakes testified that she meets occasionally one-one-one with Loriga. *See* T 131 L 14-15. Furthermore, Ms. Bakes testified that recovery is progressive. *See* T 125 L 20-23.

Steven D. Pinkert, M.D., J.D., M.B.A., also testified in favor of Loriga. See T 196 L 191-197. Dr. Pinkert is a psychiatrist as well as a lawyer. See T 192 L 16. Dr. Pinkert and Loriga attend the Florida Lawyers Assistance meetings together on a regular basis and have done so for about the last two years. See T 191 L 21 – 23, T 193 L 1 - 10. Dr. Pinkert testified that Loriga has exhibited a gradual movement from clearly no recovery and not embracing recovery to over time what appears to be a serious involvement with recovery. See T 196 L 21-24. Dr. Pinkert testified that Loriga is a serious participant in the group and an active participant in the group. See T 193 L 1 – 2.

Brian M. Sturgill, R.N., B.S.N., R.T., also testified in favor of Loriga. See T 131-138. Mr. Sturgill is a nurse at the V.A. Hospital. See T 133 L 9 – 11 Mr. Sturgill has been in the program of recovery for nine years. See T 136 L 21. Mr. Sturgill testified that he attends N.A. meeting with Loriga and that Mr. Sturgill has been attending South Miami Aftercare with Loriga for approximately one year. See T 133 L 20; T 138 L 17-19. Mr. Sturgill testified that he is aware of Loriga's relapse history and Loriga's relapse in May 2003. See T 139 L 2 – 8. Mr. Sturgill is also aware of Loriga's arrests. See T 139 L 9- 14. Mr. Sturgill testified that Loriga is in recovery. See T 133 L 21- 25, T 134 1-2. Mr. Sturgill testified that Loriga is part of the

program now, and that Loriga has embraced the doctrine of NA and AA. *See* T 134 L 19 – 21. Mr. Sturgill testified that it is his opinion based on Loriga's recovery plans, good meeting doctrine, faith in God, and fear of relapse, that Loriga will not relapse. *See* T 137 L 6 – 16.

Brad Alexander Esq., Loriga's N.A. Sponsor, testified in favor of Loriga. *See* T 200-202. Mr. Alexander testified that Loriga completed the 12 steps of recovery in the 12 step program under Mr. Alexander's sponsorship. *See* T 200 L 18-22. Mr. Alexander also testified that he and Loriga regularly attend N.A. meetings together. *See* T 200 L24-25, T 1-4. Additionally, Mr. Alexander testified that he and Loriga regularly attend Florida Lawyer Assistance meeting together. *See* T 201 L 4- 7. Mr. Alexander is aware of Loriga's relapses. *See* T 201 L 8-10. In Mr. Alexander's opinion, Loriga has manifested significant progress in recovery. *See* T 202 L 7-9.

Gary S. Glasser, Esq., testified in favor of Loriga. *See* T 153-162. Mr. Glasser operates a three quarter way house in Miami for women for over 13 years. *See* T 161 L 8-12. Mr. Glasser has been around recovery over 20 years. *See* T 157 L 9-10. Mr. Glasser and Loriga have attended the Florida Lawyers Assistance meeting together over the course of the last two years. *See* T 153 L 18-19. Mr. Glasser is fully aware of Loriga arrests and past

misconduct. *See* T 153 L 12-20. Mr. Glasser testified that Loriga is doing a very good job in recovery. *See* T 155 L 17-19. Mr. Glasser also testified that he saw Loriga at St. Luke's Recovery Treatment Center in December 2002. *See* T 157 L 19-21. Mr. Glasser testified that he has seen a dramatic change in Loriga (T 159 L 24-25) and a genuine change. *See* T 154 L 23 – 24.

The Honorable Judge Roberto Pineiro, Circuit Court Judge, Eleventh Judicial Circuit of Florida, also testified in favor of Loriga. *See* T 153-147. Judge Pineiro was the presiding judge in Loriga's felony cases. *See* T 140 L 21, T 141 L 1. Loriga sent 30 days in jail because of his felony arrests. *See* T 141 – 21. Judge Pineiro testified that he became aware that Loriga had a substance abuse problem. *See* T 141 L 11-12. Judge Pineiro testified that as condition of probation on the felony cases that Loriga was required to go a 30 residential program and attend a treatment program sponsored by the Bar. *See* T 141 L 22-25. Judge Pineiro wanted Loriga to show that Loriga had taken control of Loriga's life. *See* T 142 L 22-23. Judge Pineiro testified that Loriga is one of his success stories. *See* T 143 L 22. Loriga appeared before Judge Pineiro after being a criminal defendant in Judge Pineiro's division. *See* T 144 L 1-10. Judge Pineiro testified that Loriga handled himself appropriately, and has gotten good results in court for his clients.

See T 144 L 10-16. Judge Piniero knew of Loriga's relapse before testifying. *See* T 145 L 2-8. Judge Piniero testified that Loriga is salvageable. *See* T 145 L 11-15. Judge Piniero testified that Loriga's problems did not affect Loriga's ability to represent clients that came before Judge Piniero. *See* T 145 L 18-20. Judge Piniero testified that Loriga conducted himself professionally in front of Judge Piniero. *See* T 145 L 22-24. Judge Piniero also testified that Loriga accepted responsibility for his acts. *See* T 148 L 17-18.

Ms. Marisa Pares was under subpoena by the Florida Bar as a witness in the Bar's case in chief. *See* T 132 L 6 – 17, T 173 L 1-19. Ms. Pares is the only lay witness to the charges listed in Count II and Count III of the FBC. *See* FBC P 5-9. Ms. Pares testified that Loriga did not commit any criminal acts. *See* T 173 – 180; T 180 L 12-13. The Referee did not allow Loriga to cross-exam Ms. Pares during the first day of trial. *See* T 189 L 15-21. The Referee advised Ms. Pares about the potential for perjury. *See* T 187 L 10 – 17. Ms. Pares testified that Loriga had a key to the house that Loriga was accused of having burglarized, that Loriga lived at that same house, and that Loriga had authority to be in the house. *See* T 177 L 8-9. Ms. Pares also testified that she never called the police on Loriga. *See* T 175 L 2 – 13. Ms. Pares testified that the police tried to coerce Ms. Pares into

making statements against Loriga relative to the events that are the basis of Count II. *See* T 176 L 5 – 8. Moreover, Ms. Pares specifically testified that Loriga did not punch out any windows at her house. *See* T 178 L 10-15. Ms. Pares did testify that Ms. Pares and Loriga were having an argument. *See* T 180 L 18.

Towards the end of the first day of trial, Loriga moved for a dismissal of Count III. *See* T 234 L 19 – 25. The Florida Bar did not put any live testimony to support Count III. *See* T 235 L 1 –3. The arresting officer was on sick leave, and did not come to court. *See* T 235 L 7 – 25. The Referee denied Loriga's motion. *See* T 249 L 6-8.

At the close of the first day of trial, Loriga moved into evidence certified copies of three jury trial verdicts which Loriga has won for clients. *See* T 244 L 21- 24. The three certified docket sheets demonstrating three jury verdicts which Loriga won in the last 12 months were admitted into evidence as Defense Exhibit 1, as a composite. *See* T 246 L 6 –8.

On the second day of trial held on May 27, 2004, Ms. Pares was allowed to continue her testimony. *See* T 257- 261. During the second day of trial, the Referee again made comments to Ms. Pares to dissuade her from testifying, and so did the Bar counsel. *See* T 257 L 19- 25, T 258 L 1 –25, T 259 L 1-2. On the second day of trial, Ms. Pares testified regarding the

events that are the predicate of Count III which took place at her house on April 2002. *See* T 260 L 4- 25, T 261 L 1 – 19. Count III charges Loriga with possession of a straw which law enforcement claimed to be drug paraphernalia. *See* FBC P. 8. Ms. Pares testified that Loriga found the straw at her house which had been ransacked by her estranged husband, and who had apparently been sorting cocaine from a table at her house. *See* T 260 L 7 –19. Ms. Pares testified that Loriga placed the straw in his pocket to give to the police as evidence that her estranged husband had been using her house to consume drugs. *See* T 260 L 7 – 19. Ms. Pares testified that she was almost arrested for being inside her own house. *See* T 260 L 23-25. Additionally, Ms. Pares testified that she saw Loriga pick up the straw from a table inside her house for the purposes of preserving evidence (T 261 L 4- 10), and Loriga did not use the straw for any illegal purpose. *See* T 261 L 12- 18. Bar counsel did not ask any questions of Mr. Pares on the second day of trial. *See* T 261 L 19- 22.

John E. Tengbald, C.L.U., ChFC, a facilitator at South Miami Hospital's Addiction Treatment Program Aftercare-Continuing Treatment, testified in favor of Loriga. *See* T 251 – 256. Since 1992, Mr. Tengbald has been a facilitator at South Miami. *See* T 252 L 2. Mr. Tengbald has interacted with Loriga in his capacity as a facilitator since February 2002 for

one and half hours per week. *See* T 252 L 3- 9. Mr. Tengbald testified that Loriga's was adhering to a program of recovery. *See* T 254 L 7-11.

Joseph A. Chambrot, Esq, Loriga Florida Lawyer's Assistance Monitor, was the last witness to testify on the second day of trial. Mr. Chambrot testified in Loriga's favor. *See* T 262-265. Mr. Chambrot has known Loriga for approximately six years. *See* T 262 L 23. Loriga performs work for Mr. Chambrot law firm on an independent contractor basis. *See* T 263 L 2-5. Loriga disclosed to Mr. Chambrot that Loriga has a substance abuse problem. *See* T 263 L 6-9. In response to Loriga's disclosure, Mr. Chambrot contacted Florida Lawyer's Assistance, Inc., and made arrangements for Loriga to get help. *See* T 263 L 18-23. Mr. Chambrot is Loriga's Florida Lawyers Assistance, Inc. Monitor. *See* T 263 L 263 L 24-25. Mr. Chambrot has entrusted Loriga with both keys to Mr. Chambrot's office and client funds. *See* T 264 L 12 – 17. Mr. Chambrot testified that Loriga is trustworthy. *See* T 264 L 16-17. Furthermore, Mr. Chambrot testified that he has never had a complaint from any client regarding Loriga's legal representations of Mr. Chambrot's clients. *See* T 264 L 12. Mr. Chambrot did testify that he had complaints from prosecutors who found Loriga to be a little bit aggressive and abrasive. *See* T 264 L 8- 11. Mr. Chambrot testified that he has never seen Loriga intoxicated nor

impaired. *See* T 264 L 20- 25, T 265 L 1 – 4. Additionally, Mr. Chambrot testified that he is satisfied with the work that Loriga has performed for his office (T 264 L 18), and that Loriga has done everything that Mr. Chambrot has asked him to do. *See* T 265 L 4.

Loriga renewed his motion for a directed verdict as to Count III of the FBC. *See* T 265 L 17- 21. The arresting officer did not give any live testimony before the Referee. *See* T 265 L 22-23. Loriga objected to not have an opportunity to confront the arresting officer. *See* T 265 L 24-25, T 266 L 1 - 4. Ms. Pares testified live and contradicted the arresting officer's arrest affidavit. *See* T 260 – 261. The Referee denied Loriga renewed motion regarding Count III. *See* T 267 L 23-24.

The Bar was allowed more than 27 minutes to make its closing argument. *See* T 291, L 23-24. The Bar misrepresented that Mr. Cohen had testified that Loriga had not internalized a program of recovery. *See* T 293 L 10- 11.

Loriga was allowed to make a closing argument. *See* T 294 – 296.

After Loriga's closing argument, the Referee told Loriga, “[g]o with the bailiff into the jury room because we’re going to do a urine test right now.” *See* T 296 L 12 – 14. The Referee further said that “[i]f it comes back clean, I am going to make the recommendation that you have requested

me to make and that a 90 day suspension followed by a period of probation.”
See T 298 L 11 – 17. In addition, the Referee said that “[t]he last thing I
anticipated was being told ‘No. I have too much pride. I’m not taking a
urine test.’” *See* T 301 L 10 – 13. Loriga requested one hour to consider the
Referee’s order that he under go a urine test, which the Referee denied. *See*
T 297 L 25, T 298 1 – 4.

On June 10, 2004 the Referee signed a Report of Referee exactly as
submitted to the Referee by the Florida Bar. The Referee found Loriga
guilty of all four Count of the FBC, and has recommended a Rehabilitative
Suspension of 6 months, probation, and other conditions, all of which are
objected to by Loriga.

This instant appeal follows from the Referee’s Finds of Fact and
Recommendation in the ROR.

SUMMARY OF THE ARGUMENTS

I. The ROR findings of fact relative to Count II and III are clearly
erroneous and are lacking in evidentiary support. The ROR finding of fact
are not supported by competent, substantial evidence, and, in fact, are
contradicted by the testimony of Ms. Pares who was present during the two
arrests in question. Furthermore, the Referee acting improperly when he
intimidated and attempted to dissuade Ms. Pares from proving any testimony

in Loriga's favor. As to Count III, Ms. Pares provided testimony that Loriga did not commit any criminal acts. Loriga did not hit Pares. Loriga did not punch out any windows. As to Count IV, Ms. Pares testified that Loriga was assisting her in cleaning her house which had been ransacked by her estranged husband and came upon a "straw" which had, apparently, been used to consume powder cocaine by her estranged husband. According to Ms. Pares' testimony, Loriga placed the straw in Loriga's pocket for safe keeping. Ms. Pares testified that at no point did she witness Loriga engaging in any criminal activity. Therefore, all of the ROR findings that pertain to Ms. Pares are clearly erroneous and not supported by the record in this case.

II. The ROR findings of fact relative to Count III are clearly erroneous and are lacking in evidentiary support. Loriga moved for a directed verdict at the close of the Bar's case in chief. Additionally, Loriga moved for a directed verdict at the close of Loriga's case in chief. The arresting Officer did not come to court. Loriga's right to confrontation was violated. The basis of Count III is that Loriga had a straw in his pocket. Ms. Pares testified that she and Loriga had found the straw on a table inside her house, which house had been ransacked by her estranged husband. Apparently, Mr. Pares estranged husband had been consuming powder cocaine on a table at her house and had left the straw behind. Loriga placed the straw in his

pocket to give to the police. Ms. Pares testified to these facts before the Referee. Therefore, the Referee's denial of the Motion for Directed Verdict and findings of facts that are contradicted by Ms. Pares' testimony are erroneous and should be overturned by this Court.

III. The Referee's recommendation of a Rehabilitative Suspension is excessive and improper based on the facts of this case and the mitigating factors. The Referee disregarded the live testimony of seven witnesses that Loriga is in recovery. The ROR is clearly wrong in stating that Myer Cohen testified that Loriga has not internalized a program of recovery. Mr. Cohen did not take a possession on this issue of Loriga's internalization of a program of recovery. However, Priscilla Bakes, an expert in the field of drug addiction, did take the possession that Loriga has internalized a program of recovery, and is, in fact, in recovery. The Referee did not consider Loriga's character and reputation and interim rehabilitation. *See Florida Standards for Imposing Lawyer Sanctions Rule 9.3 (g) & (j)*. The ROR used facts not in evidence to recommend a Rehabilitative Suspension; for instance, the ROR alludes to comments allegedly made outside of court to a Sergeant Rafael Jimenez (*See ROR P 14 Section 2(b)*), the fact that on March 11, 2004 the Referee did not allow Loriga to cross examine Ms. Pares (*See ROR P 14 Section 2(c)*), and a false claim that Mr. Cohen said that Loriga had not

internalized a program of recovery (*See* ROR P 14 Section 2(a)). The Referee disregarded the fact that Loriga had more than 12 months of documented clean time, from May 2003 to the present. The recommended Rehabilitative Suspension is not fair to Loriga. The recommended Rehabilitative Suspension will send out the wrong message to other attorney relative to recovery efforts. Moreover, in light of Loriga's good standing a competent lawyer, the judgment will not be fair to society.

IV. The Referee committed reversible error when the Referee demanded that the Loriga submit to urine test in court on the last day of trial. There are no grounds on the record that would create a concern that Loriga was under the influence of any drug during the two days of hearings. There are no reported cases in a Bar proceeding where a Referee has demanded that a Respondent submit to a drug test. The Referee exceeded his authority and role as a "Judge", and basically, the Referee assumed the role of Bar prosecutor. The Referee stated if Loriga would have submitted to a Referee ordered drug test, and if the test could have come back clean, the Referee would have recommended a 90 days suspension. The Referee's recommendation relative to Loriga not submitting to the Referee's demand for a drug test is analogous to a new rule violation without notice. The

Referee did not base his recommendation on the evidence before him but on his displeasure with Loriga not submitting to his will.

STANDARD OF REVIEW

I and II. A referee's findings of fact are presumed correct and will not be overturned unless they are clearly erroneous or lacking in evidentiary support. *See Florida Bar v. Hayden*, 583 So. 2d 1016, 1017 (Fla. 1991).

III. A referee's recommended discipline is reviewed under a somewhat broader scope of review than that afforded to finding of fact. *See Florida Bar vs. Anderson*, 538 So. 2d 852, 854 (Fla. 1989); *see also Art. V, § 15, Fla. Const.* The referee's recommendation will be upheld as long as it has a reasonable basis in existing case law and the Florida Standards for Imposing Lawyer Sanctions. *See Florida Bar vs. Temmer*, 753 So. 2d 555, 558 (Fla. 1999). The judgment must be fair to society, it must be fair to the attorney, and it must sufficiently deter other attorneys from similar misconduct. *See Florida Bar vs. Brown*, 790 So. 2d 1081, 1089 (Fla. 2001).

IV. Loriga was unable to find any scope of review for the issue regarding the referee's demanding that Loriga take a drug test on the last the of trial. This is an issue of first impression before the Court. The closest case law that Loriga was able to find concern new rule violations. These cases are the following: *Florida Bar v. Price*, 478 So. 812 (Fla. 1985) (rejecting, based on

due process concerns, a referee's finding that an attorney committed perjury during disciplinary proceedings because the conduct was not charged); Florida Bar v. Vernell, 721 So. 2d 705 (Fla 1998) (similar); Florida Bar v. Stillman, 401 So. 2d 1306 (Fla. 1981) (similar). Basically, a new rule violation cannot be prosecuted during the same trial unless it is within the allegations of the Bar's Complaint. *See* Florida Bar v. Fredericks, 731 So. 2d 1249 (Fla. 1999); Florida Bar v. Vernell 721 So. 2d at 706. Research on Lexis did not produce any reported cases which address a referee's request for an in-court drug test.

ARGUMENTS

1. **THE REFEREE'S FINDINGS OF FACT REGARDING COUNT II ARE CLEARLY ERRONEOUS OR LACKING IN EVIDENTIARY SUPPORT.**

Count II is about Loriga's arrest at Ms. Marisa Victoria Pares' mother's house. It is undisputed that Loriga and Ms. Pares were having an argument over lost jewelry. Ms. Pares testified on both days of trial in favor of Loriga despite the fact that she had been subpoenaed by the Florida Bar. Ms. Pares testified that Loriga lived with her at her mother's house, that Loriga had keys to the house, and that Loriga did not commit any criminal acts.

Officer Jose Gonzalez testified that he did not witness any criminal acts. *See* T 53 L 20 – 24 (Q: Did you witness any of these events take place that you have described, all these breaking of things, breaking of windows? Did you witness any of these? A: No. I did not.)

Officer Rojas testified that he did not witness any criminal acts. *See* T 37 L 12- 15 (Rojas: “I didn’t see anything occur.”) In fact, Officer Rojas testified that Loriga was calm when Officer Rojas arrived on the scene. *See* T 42 L 25 (Rojas: “...[T]he only thing I remember is you [Loriga] were (sic) calm.” Officer Rojas mentioned an Alama Martinez (T 48 L 20), a Gema Ruiz (T 50 L 9 –20), a Josefina de Miranda (T 50 L 7), and a Belinda Ruiz (T49 L 24-25). However, the Bar did not subpoena the alleged witnesses to come to the trial. Therefore, Officer Rojas was allowed to give testimony in open court about statements allegedly made by Martinez, Gema Ruiz, Miranda, and Belinda Ruiz made outside of court and used at trial for the truth of the matter asserted in open court against Loriga’s objections. *See* T 50 L 21-24.

Ms. Pares, the only person who was the scene on the day of Loriga arrest, testified on the first day of Loriga’s Bar trial. Her testimony is clear that Loriga did not commit any criminal acts. *See* T 173 – 180; T 180 L 12- 13. Ms. Pares did not call the police. *See* T 175 L 2 – 13. Ms. Pares

testified that she should have been arrested instead of Loriga. *See* T 175 L 22 – 23. Ms. Pares was under subpoena by the Florida Bar as a witness in the Bar case in chief. *See* T 132 L 6 – 17, T 173 L 1-19. Ms. Pares is only witness to the charges listed in Count II who was actually on the scene of the events prior to the police arriving. *See* FBC P 5-9. The Referee did not allow Loriga to cross-exam Ms. Pares during the first day of trial. *See* T 189 L 15-21. The Referee advised Ms. Pares about the potential for perjury. *See* T 187 L 10 – 17. Ms. Pares testified that Loriga had a key to the house that Loriga was accused of having burglarized, that Loriga lived at that same house, and that Loriga had authority to be in the house. *See* T 177 L 8-9. Ms. Pares testified that the police tried to coerce Ms. Pares in to making statements against Loriga relative to the events that are the basis of Count II. *See* T 176 L 5 – 8. Moreover, Ms. Pares specifically testified that Loriga did not punch any windows at her house. *See* T 178 L 10- 15. Ms. Pares testify that Ms. Pares and Loriga were having an argument. *See* T 180 L 18. Clearly, Ms. Pares testimony contradicted the testimony provided by Officers Rojas and Gonzalez. Ms. Pares also testified that Loriga and Ms. Pares are no longer personally involved. *See* T 173 L 24-25, T 174 L 1-3.

During Ms. Pares' testimony, the Referee took extreme measures to intimidate and attempt to dissuade Ms. Pares from proving testimony that

would be favorable to Loriga. When it was time for Loriga to cross-examine Ms. Pares on the first day of trial, the Referee embarked on a series of statement to Ms. Pares that would have created in any reasonable person a fear of the judicial system. *See* T 181 – T 191. The Referee went on for 10 pages of the trial transcript about perjury, criminal charges, and perjury during proceedings. The Referee told Ms. Pares “...The law says that if the State Attorney’s Office makes a determination that what you’re testifying to today is not accurate and is a lie, you could be facing up to five years in State prison. Your testimony that you gave is in direct controversy with the testimony of two police officers and apparently a written police report.” *See* T 185 L 17 – 25. The Referee apparently had made up his mind about Ms. Pares’ testimony without allowing Loriga to cross-examine her on the first day of trial.

By the time that Ms. Pares testified, Loriga and her were no longer romantically involved. Ms. Pares had no reason to lie. Ms. Pares contradicted the testimony given by both officers. Therefore, the factual findings as to Count II that totally disregard Ms. Pares’ testimony are clearly erroneous or lacking in evidentiary support.

2. THE REFEREE’S FINDINGS OF FACT REGARDING COUNT III ARE CLEARLY ERRONEOUS OR LACKING IN EVIDENTIARY SUPPORT. THE REFEREE ERRED IN NOT GRANTING LORIGA’S MOTION FOR A DIRECTED VERDICT AS TO COUNT III.

Count III is about a straw. The Bar did not put on any Law Enforcement Officer to testify about the straw. Instead, the Bar relied on “paper.” The Bar claims that Loriga admitted to having the straw in Loriga’s pocket. What the Bar neglected to take in to account, as did the Referee, was the uncontroverted reason why Loriga had the straw in his pocket. In Loriga’s Answer To Complaint at ¶¶ 40 &41, and in Loriga’s Response to Request for Admission, Loriga explained that Loriga had found the straw inside of Ms. Pares’ house on top of a table which had been used by her estranged husband to sort powder cocaine. Loriga put the straw inside of his pocket for safe keeping to give to police. Ms. Pares testified and provided testimony that collaborated Loriga’s statements.

On the second day of trial, Ms. Pares testified regarding the events that are the predicate of Count III which took place at her house on April 2002. *See* T 260 L 4- 25, T 261 L 1 – 19. Count III charges Loriga with possession of a straw which law enforcement claimed to be drug

paraphernalia. *See* FBC P. 8. Ms. Pares testified that Loriga found the straw at her house which had been ransacked by her estranged husband, and who had apparently been sorting cocaine from a table at her house. *See* T 260 L 7–19. Ms. Pares testified that Loriga placed the straw in his pocket to give to the police as evidence that her estranged husband had been using her house to consume drugs. *See* T 260 L 7 – 19. Ms. Pares testified that she was almost arrested for being inside her own house. *See* T 260 L 23-25. Additionally, Ms. Pares testified that she saw Loriga pick up the straw from a table inside her for the purposes of preserving evidence (T 261 L 4-10), and Loriga did not use the straw for any illegal purpose. *See* T 261 L 12- 18. Bar counsel did not ask any questions of Mr. Pares on the second day of trial. *See* T 261 L 19- 22. More importantly, there are no allegations that Loriga was under the influence of cocaine or any other drug during the arrest that form the basis of Count III. There are no allegations that Loriga had a runny nose, of a white powder colored nose, of aggressive agitated behavior, or any other type of behavior characteristic of power cocaine use. In other words, there are no allegations that Loriga had used the straw to engage in any unlawful act.

Loriga moved for a Direct Verdict as to Count III, which was denied. The Referee basically stated that based on Loriga's admissions, the Referee

had legal grounds to deny the motion. Consequently, the Referee made findings of fact that are contrary to Ms. Pares' live uncontroverted testimony and based on qualified partial admission by Loriga. Therefore, the findings as to Count III are clearly erroneous or lacking in evidentiary support. Moreover, the referee erred in not granting Loriga's motion for a directed verdict.

**3. THE REFEREE'S RECOMMENDATION OF A
REHABILITATIVE SUSPENSION IS CLEARLY EXCESS IN
LIGHT OF LORIGA'S CLEAR AND CONVINCING EVIDENCE
OF REHABILITATION.**

The Referee disregarded all the testimony from competent witnesses which demonstrated by clear and convincing evidence that Loriga is in recovery. The Referee's statement in the ROR at page 14 Section IV C (2)(a) that attributes to Myer Cohen the testimony that Mr. Cohen testified that Loriga has not internalized a program of recovery is not supported by the transcript. In fact, Mr. Cohen did not testify that Loriga had not internalized a program of recovery. Loriga had painstakingly read, and re-read, the transcript, and Mr. Cohen never took a possession on the issue whether Loriga had internalized a program of Recovery. Mr. Cohen's testimony can be found at pages 86 to 112 of the transcript from the first day

of trial. No where in these pages is there any such testimony. On the contrary, Mr. Cohen took the possession that he could not say one way of the other. The transcript reads as follows:

BY MR. MULLIGAN:

Q: Now, Mr. Cohen, has Mr. Loriga internalized this program from your perspective?

A: As I just told the Judge, I can't – a lot of times, I'm called to express that opinion and I usually can do it. In this case, I really don't feel comfortable doing that one way or the other.

Q: And why can't you say that you feel like he has internalized the program? What is specific about Mr. Loriga that you have seen that tells you you can't say whether he's internalized the program?

A: Well, as I say, there have been at least two other instances where he has gone through the motions, said the right things, said the right expressions, and he clearly not

internalized it because there were subsequent arrest and relapses.

So I don't know. I really don't know on this one.

(See T 110 L 12- 25, T 1-4)

Given Mr. Cohen live testimony – under oath – it is disingenuous and a misstatement to attribute to Mr. Cohen the statement that he said that Mr. Loriga had not internalized a program of recovery. Mr. Cohen testified that he simply did not know!

On the other hand, 6 witnesses did provide clean and convincing testimony that Loriga is in recovery. Specifically, Ms. Priscilla Bakes, an expert in the field of drug addiction and treatment, unequivocally testified that based on her interactions with Loriga for over 1 and a half hours a week (since November 2003 two time a week) over the course of more than two years, that Loriga has internalized a program of recovery. Ms. Bakes testified as follows:

BY LORIGA:

Q:... Do you have an opinion whether I [Loriga] have internalized the program of recovery or not?

A: Yes, I do.

Q: What opinion is that, Miss Bakes?

A: I believe that you have, in fact,
internalized the program of recovery as
demonstrated by a change in behavior I've seen
you demonstrate.

Q: Mr. Cohen's opinion was that I am not
humble, that I don't show any sort of humility in
my program of recovery. Do you have any opinion
as to my humbleness and my acceptance of my
addiction?

A: In my opinion, I have seen you
demonstrate humility and I have seen you
demonstrate honesty, especially since January of
2003.

(See T 124 L 6 – 22)

Ms. Bakes was asked about Loriga's relapses. The following testimony
was provided:

BY MR. LORIGA:

Q: Now, I unfortunately am a constant
relasper. I have relapsed numerous times.

Is relapse part of the addiction
disease?

A: Unfortunately, relapse is a hallmark
of addiction. Addiction is a brain disease of
which relapse is one of the recurring symptoms.

Q: Addiction is progressive, but is
recovery progressive as well?

A: Recovery is progressive if the
individual continues to work at it and is
diligent at following all the steps at working at
it.

Q: I relapsed 10 months ago. I have had
three relapses in the last four years. I have
been clean for 10 months.

MR. MULLIGAN: Objection. It sounds
like Mr. Loriga is testifying, Your Honor.

THE REFEREE: The objection is
sustained.

Ask a question.

BY MR. LORIGA:

Q: In your opinion, would 10 months of clean time in light of years at attempted recovery show that I am on the way to being finally rid of my active addiction?

A: Yes. That would be true, and the quality of your behavior is more important indicator of the quality of your recovery during that time.

(See T 125 L 24 – 25, T 126 L 1 – 15.)

Further, on the issue of relapse, the following testimony was provided by

Ms. Bakes:

BY MR. LORIGA:

Q: Miss Bakes, the concern here is that I will fall back into active addiction.

Do you have any opinion as to the likelihood based on my recovery patterns whether in your opinion I am in a solid path toward recovery?

A: I can only say that I have seen you progress in an honest and open way since – as I said, in the last 10 months and I have seen the progression in a very positive way. As I have said, this is a relapsing disease and I have no opinion other than that.

(*See* T 127 L 22 – 25, T 128 L 1 – 8).

Aside from Ms. Bakes, six other individuals familiar with Loriga recovery provided testimony.

Steven D. Pinkert, M.D., J.D., M.B.A., also testified in favor of Loriga. *See* T 196 L191-197. Dr. Pinkert testified that Loriga exhibited a gradual movement from clearly no recovery and not embracing recovery to over time what appears to be a serious involvement with recovery. *See* T 196 L. 21-24.

Brian M. Sturgill, R.N., B.S.N., R.T., also testified in favor of Loriga. *See* T 131-138. Mr. Sturgill testified that he attends N.A. meeting with Loriga, and that he has been attending South Miami Aftercare with Loriga for approximately the last 12 months. *See* T 133 L 20; T 138 L 17-19. Mr. Sturgill testified that he is aware of Loriga's relapse history and Loriga's relapse in May 2003. *See* T 139 L 2 – 8. Mr. Sturgill is also aware of

Loriga's arrests. *See* T 139 L 9- 14. Mr. Sturgill testified that Loriga is in recovery. *See* T 133 L 21- 25, T 134 L 1-2.

Brad Alexander Esq., Loriga N.A. sponsor, testified in favor of Loriga. *See* T 200-202. Mr. Alexander testified that Loriga completed the 12 steps of recovery in the 12 step program under Mr. Alexander's sponsorship. *See* T 200 L 18-22. Mr. Alexander also testified that he and Loriga regularly attend N.A. meetings together. *See* T 200 L24-25, T 1-4. Additionally, Mr. Alexander testified that he and Loriga regularly attend Florida Lawyers Assistance meeting together. *See* T 201 L 4- 7. Mr. Alexander is aware of Loriga's relapses. *See* T 201 L 8-10. In Mr. Alexander's opinion, Loriga has manifested significant progress in recovery. *See* T 202 L 7-9.

Gary S. Glasser, Esq., testified in favor of Loriga. *See* T 153-162. Mr. Glasser has been operating a three quarter way house in Miami for women for over 13 years. *See* T 161 L 8-12. Mr. Glasser has been around recovery over 20 years. *See* T 157 L 9-10. Mr. Glasser and Loriga have attended the Florida Lawyers Assistance meeting together over the course of the last two years. *See* T 153 L 18-19. Mr. Glasser is fully aware of Loriga arrests and past misconduct. *See* T 153 L 12-20. Mr. Glasser testified that Loriga is doing a very good job in recovery. *See* T 155 L 17-19. Mr.

Glasser also testified that he saw Loriga at St. Luke's Recovery Treatment Center in December 2002. *See* T 157 L 19-21. Mr. Glasser testified that he has seen a dramatic change in Loriga. *See* T 159 L 24-25.

The Honorable Judge Roberto Pineiro, Circuit Court Judge, Eleventh Judicial Circuit of Florida, also testified in favor of Loriga. *See* T 153-147. Judge Pineiro was the presiding judge in Loriga's felony cases. T 140 L 21, T 141 L 1. Judge Pineiro testified that he became aware that Loriga had a substance abuse problem. *See* T 141 L 11-12. Judge Pineiro testified that as a condition of probation on the felony cases that Loriga was required to go a 30 residential program and attend a treatment program sponsored by the Bar. *See* T 141 L 22-25. Judge Pineiro wanted Loriga to show that Loriga had taken control of Loriga's life. *See* T 142 L 22-23. Judge Pineiro testified that Loriga is one of his success stories. *See* T 143 L 22. Loriga appeared before Judge Pineiro after being a criminal defendant in Judge Pineiro's division. *See* T 144 L 1-10. Judge Pineiro testified that Loriga handled himself appropriately, and has gotten good results in court for his clients. *See* T 144 L 10-16. Judge Pineiro knew of Loriga's relapse before testifying. *See* T 145 L 2-8. Judge Pineiro testified that Loriga is salvageable. *See* T 145 L 11-15. Judge Pineiro testified that Loriga's problems did not affect Loriga's ability to represent clients that came before

Judge Piniero. *See* T 145 L 18-20. Judge Piniero testified that Loriga conducted himself professionally in front of Judge Piniero. *See* T 145 L 22-24. Judge Piniero also testified that Loriga accepted responsibility for his acts. *See* T 148 L 17-18.

John E. Tengbald, C.L.U., ChFC, a facilitator at South Miami Hospital's Addiction Treatment Program Aftercare-Continuing Treatment, testified in favor of Loriga. Since 1992, Mr. Tengbald has been a facilitator at South Miami. *See* T 252 L 2. Mr. Tengbald has interacted with Loriga in his capacity as a facilitator since February 2002 for one and half hours per week. *See* T 252 L 3- 9. Mr. Tengbald testified that Loriga's was adhering to a program of recovery. *See* T 254 L 7-11.

Joseph A. Chambrot, Esq, Loriga's Florida Lawyers Assistance Monitor, was the last witness to testify on the second day of trial. Mr. Chambrot testified in Loriga's favor. *See* T 262-265. Mr. Chambrot has known Loriga for approximately six years. *See* T 262 L 23. Loriga performs work for Mr. Chambrot on an independent contractor basis. *See* T 263 L 2-5. Loriga disclosed to Mr. Chambrot that Loriga has a substance abuse problem. *See* T 263 L 6-9. In response to Loriga's disclosure, Mr. Chambrot contacted Florida Lawyer's Assistance, Inc., and made arrangements for Loriga to get help. *See* T 263 L 18-23. Mr. Chambrot is

Loriga's Monitor. *See* T 263 L 24-25. Mr. Chambrot had entrusted Loriga with both keys to Mr. Chambrot's office and client funds. *See* T 264 L 12 – 17. Mr. Chambrot testified that Loriga is trustworthy. *See* T 264 L 16-17. Furthermore, Mr. Chambrot testified that he has never had a complaint from any client regarding Loriga's legal representations of Mr. Chambrot's clients. *See* T 264 L 12. Mr. Chambrot testified that he has never seen Loriga intoxicated nor impaired. *See* T 264 L 20- 25, T 265 L 1 – 4. Additionally, Mr. Chambrot testified that he is satisfied with the work that Loriga has performed for his office (T 264 L 18), and that Loriga has done everything that Mr. Chambrot has asked him to do. *See* T 265 L 4.

This Court has stated in many reported opinions that it is ultimately the Court's responsibility to order an appropriate punishment for a lawyer's misconduct. In light of the clear and convincing evidence of Loriga being in solid recovery, the 6 month suspension recommended is too harsh. The Referee disregarded all evidence of recovery and based his recommendation on the Referee's demand that Loriga submit to a drug test in court after the close of all the testimony. Such a request is not authorized by law. The Referee did not base his recommendation on the testimony before the Referee but, instead, on the Referee's desire that Loriga submit to the Referee's "authority". Therefore, based on the clear and convincing

evidence of rehabilitation, Loriga respectfully prays that this Court reject the Rehabilitative Suspension, and impose a punishment justified by Loriga's admitted misconduct and his efforts towards recovery.

This Court has held that the purposes of discipline are as follows: (i) the judgment must be fair to society, (2) it must be fair to the attorney, and (3) it must sufficiently deter other attorneys from similar conduct. *See Florida Bar v. Brown*, 790 So.2d 1081, 1089 (Fla. 2001). The harass punishment of a 6 months suspension concurrent with 3 years of probation, and a contract with Florida Lawyers Assistance, Inc., will not further the purposes of sanctions. In the case at bar, society was not harmed. Lawyers will be dissuaded from making striving toward recovery if the lawyer's efforts are not taken into account. Most importantly, the recommended sanction is not fair to Loriga in light of his effort towards recovery and, at this writing, Loriga's 14 months of clean time . This Court has the ultimate responsibility of ordering the appropriate sanction. Given the record before this Court, the more than 30 days that Loriga was in jail (T 141 L 5 – 21), the 30 days that Loriga was in a residential treatment, the more than 4 years attending meeting, the more than 2 years attending South Miami Hospital Aftercare, and the lack of any harm to client interest, Loriga respectfully request that he be suspended for no more than 90 days.

IV. THE REFEREE ERR IN BASING HIS RECOMMENATION OF A 6 MONTH SUSPENION ON LORIGA NOT SUBMITTING TO THE REFEREE’S DEMAND FOR A DRUG TEST AT THE CLOSE OF ALL THE EVIDENCE.

The last issue raised by Loriga for decision by the Court has to do with the Referee’s demanding that Loriga submit to a drug test after the close of all the evidence, and the Referee basing his recommendation of a 6 month suspension on Loriga’s not submitting to the Referee’s will. This is an issue of first impression before this Court. Loriga was not able to find any authority from the Court on whether a Referee in a Bar Disciplinary Proceeding has the authority to demand that a respondent submit to a drug test. There is no evidence in the transcript that Loriga was impaired during the two days of trial. Loriga acted as his own attorney. The transcript speaks for itself whether Loriga is competent as an attorney. According to this Court’s published opinion, a Referee is to make recommendations and finding based on the evidence presented. In the case at bar, the Referee exceeded his authority, and basically put on the “hat” of the Bar prosecutor.

The only case law that the Loriga was able to find that might shed light on the Referee’s demand for a drug test are found in cases where a new rule violation is alleged during trial. It is clearly established that a new rule

violation cannot be made without reasonable notice. Attorneys must be given reasonable notice of the charges they face before the referee's hearing on those charges. *See Florida Bar vs. Bastisa*, 28 Fla. L. Weekly S 338 (Fla. 2003). In the case at bar, if the Referee had grounds to consider that Loriga was impaired, the Referee had to give Loriga reasonable notice.

Based on the fact that the transcript is devoid of any indication of any impairment or behavior which would be indicative of drug use, the Referee acted arbitrarily and capriciously in demanding that Loriga submit to a drug test. The Referee partly based his recommendation of a rehabilitative suspension on Loriga's refusing to submit to a demand which the Referee, most likely, did not have the authority to make. Consequently, Loriga would pray that his Court impose an appropriate sanction on Loriga for his misconduct in light of this positive showing of rehabilitation, and not based on the Referee's demand that Loriga submit to the Referee's will. Additionally, Loriga would respectfully request that the Court clarify this issue of first impression presented for the sake of clarity for future litigants in Bar proceedings.

CONCLUSION

Based upon the foregoing arguments and authority, the Referee's Report and recommendation should be rejected by this Court, and this Court

is urged to impose a term of suspension not to exceed 90 days based on Loriga's showing of rehabilitation.

REQUEST FOR ORAL ARGUMENT

Respondent hereby requests oral argument before this Court, and submits that oral argument will assist the Court in its decision making process.

Dated: September 15, 2004

FRANCISCO O. LORIGA
Respondent, appearing *Pro Se*
6482 SW 39th Street
Miami, Florida 33155
Telephone (305) 666-3261
Florida Bar No. 0081418

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing Amended Brief have been sent via UPS, overnight delivery, to Thomas D. Hall, Clerk, The Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927 on September 15, 2004; a true and correct copy of the foregoing hand delivered to Mr. William Mulligan, Bar Counsel, The Florida Bar, 444 Brickell Avenue, Ste. M-100, Miami, Florida, September 15, 2004; copy of the foregoing was sent and regular U.S. Mail to; John Anthony Boggs, Esq., Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 15 day of September, 2004.

FRANCISCO O. LORIGA
Respondent, appearing *Pro Se*

COMPLIANCE WITH RULE 9.210(a)(2)

The undersigned hereby certifies that the foregoing brief complies with Fla.R.App.P. 9.210(a)(2) in that it was prepared using 14 point Times New Roman.

FRANCISCO O. LORIGA
Respondent, appearing *Pro Se*