

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant/Appellee

Supreme Court Case No.  
SC03-453

v.

The Florida Bar File No.  
2003-51,093(17E)OSC

KEITH DOUGLAS BARON,

Respondent/Appellant.

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**ANSWER BRIEF OF THE FLORIDA BAR**

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## STATEMENT OF THE CASE AND FACTS

Respondent seeks review of the recommendation of permanent disbarment in the Report of Referee for violating Rule Regulating The Florida Bar 3-6.1 and practicing law while under suspension. The Report of Referee is attached to respondent's initial brief as Appendix A.

The petition for order to show cause was filed by The Bar on March 14, 2003. The Court ordered respondent to show cause on or before April 14, 2003, as why he should not be permanently disbarred. Respondent filed a response on April 9, 2003, with The Bar filing its reply on April 11, 2003. The Court permanently disbarred respondent by order of June 26, 2003. On July 7, 2003, respondent filed a motion for rehearing. On September 29, 2003, the Court granted the motion for rehearing without response from The Bar as it had not been not served upon The Bar. The Honorable Barry M. Cohen was appointed as referee. A motion for summary judgment was filed by The Bar on November 24, 2003, and noticed for hearing on December 23, 2003. The Bar made filed a transcript to supplement its motion on December 8, 2003. After hearing the motion the referee issued a report on February 23, 2004.

In section III of the Report of Referee entitled *Recommendation as to Whether Respondent Should be Found Guilty* the Referee found clear and

convincing evidence of respondent's violation of Rule 3-6.1 which pertains to the employment of suspended attorneys by virtue of respondent's admissions as set forth in his Answer to the Bar's Petition for Order to Show Cause. The Referee found respondent's admissions of guilt were buttressed by the affidavits he submitted in support of his assertions denying culpability. (Appendix A, p.5, Sect. 3). The Referee specifically determined the admissions by respondent that he : (1) had direct contact with, imparted legal advice to, and prepared pleadings for a client: (2) continued to accept new business: (3) hold himself out as a licensed attorney; (4) and otherwise engage in the practice of law despite being under two distinct Orders suspending him from the practice (June 8, 2000, in SC96938 and August 30, 2001, in SC 01-191), constituted admissions of the conduct of which The Bar had complained. (Appendix A, p. 6, pp. 1&2).

## **SUMMARY OF THE ARGUMENT**

The Report of Referee is complete, accurate and correct. The discipline recommended by the referee is reasonable and follows precedent set by this Court. Respondent should be disbarred.

**ISSUE**  
**DISBARMENT IS WARRANTED FOR CONTIN-  
UING TO PRACTICE AFTER SUSPENSION**

The referee recommended permanent disbarment after granting the motion for summary judgment. Respondent did not challenge the motion by presenting counter affidavits or other evidence to show an issue of material fact existed.

*Landers v. Milton*, 370 So. 2d 368 (Fla. 1979). Respondent does not challenge the factual findings of the referee. The factual findings should not be disturbed.

*The Florida Bar v. Rose*, 823 So.2d 727 (Fla. 2002).

In this case, the referee asked the parties to submit a proposed report. Respondent chose not to present his proposal or request any mitigation. The Court has found the respondent's failure to present proposed findings where the referee does not hold a hearing on the discipline to be imposed is not in violation of any due process rights. *The Florida Bar v. Baker*, 810 So. 2d 876 (Fla. 2002).

In *Baker*, the Court reviewed the due process requirements regarding disciplinary proceedings as a result of Baker's claim that the referee denied him the opportunity to a separate hearing to offer mitigation. *Baker* at 879. After testimony by Baker and closing argument by his counsel, Baker declined to submit proposed findings to the referee. *Baker* at 879. The Court held the respondent was on notice of the charges and the sanction The Bar sought, but chose not to present the referee with

mitigation to allow the referee to consider a different recommendation other than that of The Bar, therefore no due process violation occurred. *Baker* at 880. The same result should occur here.

This Court has stated the review of the discipline recommendation does not receive the same deference as the guilt recommendation because this Court has the ultimate authority to determine the appropriate sanction. *The Florida Bar v. Grief*, 701 So. 2d 555 (Fla. 1997) and *The Florida Bar v. Wilson*, 643 So. 2d 1063 (Fla. 1994). This Court has further stated it will not second guess a referee's recommended discipline if it has a reasonable basis in law in the standards for imposing lawyer sanctions. *The Florida Bar v. Feinberg*, 760 So. 2d 933 (Fla. 2000), *The Florida Bar v. Sweeney*, 730 So. 2d 1269 (Fla. 1998), *The Florida Bar v. Lecznar*, 690 So. 2d 1284 (Fla. 1997).

In prior cases, the Court has found disbarment is appropriate when a lawyer violates a suspension order. *The Florida Bar v. Greene*, 589 So. 2d 281 (Fla. 1991) and *The Florida Bar v. Jones*, 571 So.2d 426 (Fla. 1990). It is undisputed that respondent violated the prior suspension order. In *The Florida Bar v. Bauman*, the Court stated, "We can think of no person less likely to be rehabilitated than someone like respondent, who wilfully, deliberately, and continuously, refuses to abide by an order of this Court." *The Florida Bar v. Bauman*, 558 So. 2d 994

(Fla. 1990). The Court should apply the same principle here where the respondent has clearly demonstrated he will not abide by orders of the Court.

The Florida Standards of Imposing Lawyer Sanctions 8.0, Prior Discipline Orders suggest an attorney should be disbarred when a lawyer intentionally violates the term of a prior discipline order or has been suspended for same or similar misconduct and intentionally engages in further similar acts of misconduct. Respondent was suspended by this court on for violating a prior suspension order. Rather than comply with the two orders of suspension, respondent admits he violated the order. He asks for this Court to consider additional mitigation which the referee did not find in his favor. Respondent has had one bite of the forbidden fruit, returned for a second and now asks this court to allow him a third opportunity. This court should emphatically deny his request by permanently disbaring him.

### **CONCLUSION**

As the referee in this cause made findings of fact based on competent, substantial evidence, and because his recommendation as to discipline is appropriate under the case law and the Florida Standards for Imposing Lawyer Discipline, the referee's report should be approved and the respondent should be permanently disbarred.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of the foregoing Answer Brief of The Florida Bar have been furnished by regular U.S. mail to Bruce Rogow and Beverly A. Pohl, Attorneys for Respondent/Appellant, Bruce S. Rogow, P.A. Broward Financial Centre, Suite 1930, 500 East Broward Boulevard, Fort Lauderdale, Florida 33394 and to Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 on this 14th day of September, 2004.

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ERIC MONTEL TURNER

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

Undersigned counsel does hereby certify that The Florida Bar's Answer Brief is submitted in 14 point proportionately spaced Times New Roman font, and that the computer disk filed with this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

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ERIC MONTEL TURNER