

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

Supreme Court Case

No. SC13-1382

The Florida Bar File No.

2010-31,481 (09A)

JAMES NEWELL CHARLES,

Respondent.

\_\_\_\_\_ /

**ON PETITION FOR REVIEW**

**RESPONDENT'S AMENDED INITIAL BRIEF  
(Correcting Certificate of Service)**

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## **PRELIMINARY STATEMENT**

The Florida Bar, Appellee, will be referred to as "The Bar" or "The Florida Bar." James Newell Charles, Appellant, will be referred to as "Respondent." The symbol "TI" will be used to designate Volume I of the transcript of the Final Hearing, and "TII" will be used to designate Volume II of the transcript of the Final Hearing. Exhibits introduced by the parties will be designated as TFB Ex. \_\_ or Resp. Ex. \_\_. In respect to the Bar's exhibits, those in its binder (TFB Exhibit 17 on the Index) will be referenced as TFB Ex. 17-\_\_, with the number following the hyphen reflecting the tab number in the Bar's binder. Similarly, the Respondent's binder Exhibits (TFB Exhibit 18 on the Index) will reflect Resp. Ex.18-\_\_.

## **STATEMENT OF CASE AND FACTS**

Beginning in 1998, Respondent represented Michael C. DuPont (hereinafter “DuPont”) in a federal civil rights action. (TFB Ex. 17-1)<sup>1</sup> The primary defendant, Sebastian Tanguoso (hereinafter “Tanguoso”) had been an investigator for the Department of Business and Professional Regulation in an undercover operation investigating unlicensed building contractors in Volusia County, Florida. In order to secure an arrest warrant, Tanguoso prepared a false affidavit asserting that Dupont had improperly advertised contracting services in the *Pennysaver* newspaper and had engaged in such services. DuPont was arrested based on the false affidavit, and his arrest was played on a local television station. He was subsequently taken into custody a second time because of an erroneously docketed outstanding warrant. The Office of the State Attorney prosecuted DuPont, and he was acquitted at trial.

During the pendency of the federal civil rights case, Tanguoso died. His death was on December 18, 2000, and on June 11, 2001, the Estate of Sebastian Tanguoso was substituted as party defendant in the federal case. Although the Office of the Attorney General had initially defended Tanguoso, upon his death the Office of the Attorney General determined that it no longer had a duty to defend his estate. This became an issue of contention between the Respondent and the

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<sup>1</sup> The Final Judgment entered by the Honorable William Parsons contains an accurate recitation of the case procedural history.

Office of the Attorney General. Due to the lack of a response to the federal Complaint, Respondent obtained a clerk's default on December 10, 2001. (TFB Ex. 17-1).

During this period of time, the Respondent located and made contact with Leonard Alterman (hereinafter "Alterman") the attorney for the estate of Tanguoso. The Respondent wrote a letter to Alterman on December 17, 2001, providing background on the federal case and advising Alterman at the Office of the Attorney General was refusing to defend. (TFB Ex. 17-20).

Though the clerk's default had been entered, Respondent knew that he would need to establish damages, his attorney's fees, and costs in order to secure a judgment. Respondent assumed that an evidentiary hearing would be required, and he scheduled such a hearing before the Honorable John Antoon on February 15, 2002. Respondent had his client DuPont present, and Respondent had sent notice of the hearing to the Office of the Attorney General. (Resp. Ex. 18-1).

At that hearing, the Office of the Attorney General disputed its obligation to defend the estate. When he learned from Respondent that he had located an attorney for the estate, Judge Antoon raised questions about whether that attorney, Alterman, should have received notice of the hearing. The Respondent knew that he did not have experts at hand for all aspects of the evidentiary hearing, and he intended to request the Court to reserve on issues requiring expert testimony. For

these myriad reasons, the evidentiary hearing did not go forward on February 15, 2002. (Resp. Ex. 18-1).

The Respondent realized that Alterman would have to be involved in the case in some fashion, and February 20, 2002, Respondent wrote to Alterman a second time. Respondent stated that he believed that the personal representative and Alterman had an obligation to protect the estate, that he had a duty to determine if Tanguosso was a party to ongoing litigation, and that he may have breached that duty. Respondent suggested that Alterman consider entering into a settlement, and that if this was not done, Respondent would engage in significant discovery, including depositions of Alterman and the personal representative. (TFB Ex. 17-20).

After some negotiation, Respondent and Alterman entered into an agreement which provided for damages of \$300,000.00, attorney's fees in the amount of \$225,000.00, and costs in the amount of \$2,670.70; the total of the settlement was \$525,670.70. (TFB Ex. 17-9). Such an agreement, when there is a failure to defend by an insurer, is typically referred to as a "*Coblentz* agreement" pursuant to the case of *Coblentz v. American Surety Company of New York*, 416 F.2d 1059 (5th Cir. 1969).

Though Respondent made clear his contention that the Office of the Attorney General was obligated to defend Tanguosso's estate, that office filed a



Memorandum of Law and Motion to Withdraw on April 2, 2002. On April 19, 2002, the federal court granted the Attorney General's Motion to Withdraw. Having reached a verbal agreement with Alterman, on that same date, Respondent filed a Notice of Settlement with the federal court. (Resp. Ex. 18-28).<sup>2</sup>

Over the ensuing few months, Respondent prepared the necessary paperwork to formalize the *Coblentz* agreement, including the submission of required motions and orders to the federal court. Respondent supported the amount of the *Coblentz* agreement in his federal court filings by references to jury instructions, case law, and materials he had received in relevant seminars. (Resp. Ex. 18-12). Respondent, believing he would need an expert, had spoken with Michael Roper (hereinafter "Roper"), an opposing counsel in a civil rights case in early 2002 about being such an expert. Roper agreed to be an expert for Respondent's purposes, and Respondent used his name in the *Coblentz* agreement.<sup>3</sup> A judgment in favor of DuPont was entered by the federal court on September 13, 2002. On December 12, 2002, a writ of execution was issued. (Resp. Ex. 18-28).

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<sup>2</sup> Respondent's Exhibit consisting of the DuPont v. Tanguosso federal court docket, should be found at Tab 28 of Respondent's binder of exhibits. The docket was referenced at trial and provided as a supplemental to the Referee by agreement.

<sup>3</sup> It is not disputed that the Respondent and Roper discussed Roper serving as an expert. Their respective recollections part ways on the extent to which information was provided to Roper and whether the Respondent had the authority to use Roper's name.

Because Dupont resided in Volusia County and the underlying acts took place in Volusia County, Respondent initiated a state court action in the Seventh Judicial Circuit to execute on the judgment. This suit named Alex Sink as CFO and the State Risk Management Trust Fund as defendants, and was assigned Case Number 2002-32888-CICI. (TFB Ex. 17-1).

At that juncture, the Office of the Attorney General became involved in earnest. The matter was assigned to James Peters (hereinafter “Peters”), the senior attorney for the Office of the Attorney General. (TI, 62). Early settlement communications between the Respondent and Peters were fruitless, and it became apparent to the Respondent that Peters had a personal interest in prevailing against Respondent. (TI, 95).

The Attorney General’s Office initially was successful in securing a summary judgment in its favor in the state court action. Respondent appealed, and the 5<sup>th</sup> District Court of Appeal overturned the summary judgment in an opinion that set forth the standards for evaluating a *Coblentz* agreement. *Gallager v. DuPont*, 918 So. 2d 342 (Fla. 5<sup>th</sup> DCA 2005). Bolstered by a favorable ruling and directives from the 5<sup>th</sup> DCA that supported Respondent’s theory of his case, Respondent began preparing for the case that he believed would result in a ruling that the judgment of the federal court would be upheld and enforced.

Instead, Respondent found himself the focus and the target of the state court litigation. After the initial appeal, Peters began looking for ways to attack the *Coblentz* agreement. He reached out to Roper and, after some initial miscommunication, made contact. This was approximately five years after Roper had agreed to be the Respondent's expert. Roper had no recollection of the *Dupont* matter or reviewing Respondent's file. (TI, 32). Peters suggested to Roper that Roper had derived the numbers in the *Coblentz* agreement. Placed on the defensive by the senior attorney of the Office of the Attorney General, Roper put as much distance as possible between himself and the *Coblentz* agreement and, despite the passage of time and an unclear recollection, signed an affidavit prepared by Peters asserting that he had not reviewed the amounts of the settlement figures in the *Coblentz* agreement or agreed that his name could be used in such an agreement. (TFB Ex. 17-11; TII, 107).

Seizing upon this inconsistency, Peters began a full-on assault on the Respondent himself, including accusations that Respondent improperly inflated his resume. (TII, 103) Despite the clear directive of the 5<sup>th</sup> DCA in its first ruling in *Dupont*, the case became about the conduct of the Respondent. Respondent had previously recused a predecessor judge. Respondent felt compelled to seek review of the rulings of the subsequent judge, Judge Parsons, on more than one occasion. Though Respondent knew that Judge Parsons was displeased with the appeals,

Judge Parsons sent no signals to Respondent that he believed the DuPont claims to be grossly exaggerated. (TII, 64). However, due to the acrimony, Judge Parsons did express his intention to conduct a sanctions hearing against both counsel. (TFB Ex. 17-8).

After protracted proceedings and two days of hearings, during which Judge Parsons declined to allow the Respondent's state court expert Clay Parker testify, ultimately the state court litigation resulted in a Final Judgment being entered on November 26, 2008 in favor of the State. (TFB Ex. 17-1). The judgment can only be described as an excoriation of the Respondent. Judge Parsons subsequently sanctioned the Respondent by entering a Costs and Attorney's Fee Judgment in the total amount of \$407,363.95 against DuPont and the Respondent. (TFB Ex. 17-2).

Though Judge Parsons had indicated that he intended to conduct a sanctions hearing on both attorney's conduct (TFB Ex. 17-8), after the appeal of the state court Final Judgment, Judge Richard Orfinger of the 5<sup>th</sup> DCA referred the matter to The Florida Bar. (TFB Ex. 17-7)Disciplinary proceedings ensued, and this matter was tried before the Honor William Bruce Smith in the 10<sup>th</sup> Judicial Circuit. A trial was conducted on January 13 and 14, 2014. (TI, TII) The Report of Referee was entered on February 20, 2014. Judge Smith recommended that the Respondent be found guilty of violating Rules Regulating The Florida Bar 4-3.1, 4-8.4(c), and 4-8.4(d). Judge Smith recommended that the Respondent receive a

suspension of 91 days. The Respondent filed a Notice of Intent to Seek Review on April 18, 2014. An unopposed extension of time for filing the Initial Brief was granted through and including June 18, 2014.

### **SUMMARY OF THE ARGUMENT**

The state court judgments from Judge Parsons clearly did not comport with the mandate of the 5<sup>th</sup> DCA in *DuPont v. Gallagher*. This is apparent from the face of the judgments. Furthermore, the issue which the Office of the Attorney General used to undo the *Coblentz* agreement was the disputed role of the referenced expert Michael Roper. Taken in a light least favorable to Respondent, he did not follow through and formally engage Mr. Roper or allow him to review file materials. This does not render inclusion of his name in the *Coblentz* agreement a fraudulent act. The evidence from the federal court did not support the contention of either Judge Parsons or the Referee that the federal court relied on that portion of the *Coblentz* agreement. Therefore, as a matter of law, Respondent should not be found guilty of a Rule 4-8.4(c) violation.

As to discipline, the Respondent concedes that if a 4-8.4(c) violation is allowed to stand, case law supports a suspension. However, based on the Respondent's years of practice without discipline and the passage of time since the *Coblentz* agreement in question, a non-rehabilitative suspension is appropriate.

## **ARGUMENT**

### **I. THE TRIAL COURT JUDGMENTS ON WHICH THE REFEREE RELIED WERE FLAWED AS A MATTER OF LAW AND CANNOT FORM THE BASIS FOR A FINDING THAT THE FEDERAL COURT RELIED ON THE SETTLEMENT AGREEMENT IN ENTERING THE FINAL JUDGMENT IN FAVOR OF DUPONT**

Respondent contends that his conduct did not rise to the level of a misrepresentation to federal Judge Antoon. Though the reference to Roper was contained in the *Coblentz* agreement, the actual motion requesting the judgment made no reference to Roper. (Resp. Ex. 18-12). Instead, Jeff Liggio was the referenced expert. In addition, Respondent submitted jury verdicts and other information to support his damages and attorney's fees. (Resp. Ex. 18-12). The record below is devoid of testimony, or even an affidavit or letter, from Judge Antoon indicating that impropriety took place in the federal court proceedings. Furthermore, the Office of the Attorney General took no action in federal court claiming fraud upon that court. (TI, 115).

Rather, it was Judge Parsons, who ultimately presided over the state court proceedings brought by Respondent to execute on his judgment, who determined that there was deception of the federal court. Respondent contends that the records below, both in the state court proceedings or in the disciplinary proceedings, do not support the accusation of deception.

In light of Judge Parson's Final Judgment and subsequent order on attorneys' fees, an important issue is placed before this Court, which undersigned counsel respectfully requests that this court address for the benefit of The Florida Bar disciplinary system. In *The Florida Bar v. Shankman*, 41 So. 3d 166 (Fla. 2010), the Court considered discipline of an attorney. The Court noted that the referee could have properly taken judicial notice of a federal court order imposing sanctions. See also *The Florida Bar v. Head*, 27 So.3d 1 (Fla. 2010) and *The Florida Bar v. Gwynn*, 94 So.3d 425 (Fla. 2012). In both *Head* and *Gwynn*, the Referee relied on an order from a bankruptcy court sanctioning the attorney.

It is well established in Florida disciplinary law that if there is any competent substantial evidence in a record before the Referee, then the Referee's findings of rule violations will not be disturbed. *The Florida Bar. v. MacMillan*, 600 So.2d 457 (Fla. 1992).

The question which must be addressed is, when a trial court has issued an order finding attorney misconduct, does that order constitute competent substantial evidence *per se* of a violation of The Rules Regulating The Florida Bar? The Florida Bar regularly argues that such an order is decisional law based on this Court's opinions such as *Head*, *Shankman*, and *Gwynn*. But can a Referee reject the findings of another court's sanctions order? It is hereby respectfully submitted that when an underlying court order on which a Referee relies is fundamentally

flawed as a matter of law, the Referee is allowed to reject such an order and if the Referee does not, this Court has the authority to *de novo* review and reject that underlying trial court order. Respondent does not believe, even though he took appeals unsuccessfully, that the Parsons judgments are the law of the case.<sup>4</sup> Respondent implores the Court to do so in this case, and to remand the matter back to the Referee for an appropriate determination.

Respondent urges this Court to review the opinion of the 5<sup>th</sup> DCA in *Gallagher v. DuPont*, 918 So. 2d 342 (Fla. 5<sup>th</sup> DCA 2005). In light of the directive from that Court, it is clear that the mention of Roper in the *Coblentz* agreement was not an aspect which the Attorney General should have been allowed to question; the *Coblentz* agreement, the court said, was a “private contract” between DuPont and the Tanguosso estate. *Gallagher* at 347.

While the *Gallagher v. DuPont* opinion did reflect that the state court could assess whether the agreement was reached through fraud or collusion, Respondent submits that clearly, and subject to this Court’s authority for review, the inclusion of Roper’s name in the *Coblentz* agreement could not, as a matter of law, render the *Coblentz* agreement subject to challenge by the State. Therefore, the proceedings which led to the sanctions against Respondent were not conducted

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<sup>4</sup> Upon information and belief, the law of the case doctrine, as discussed in this Court ruling in *Delta Property Management v. Profile Investments, Inc.*, 87 So.3d 765 (Fla. 2012), would only be binding on lower courts. However, Respondent maintains that the doctrine was not applied by Judge Parsons.



properly, and the judgments from that case are tainted such that the must not be allowed to form the basis for discipline against the Respondent.

At that trial of this matter, undersigned counsel argued from the dissent of Justice Wells in the case of *Moakley v. Smallwood*, 826 So.2d 221 (Fla. 2002). (TII, 182). Justice Wells noted the hazards of trial courts exercising their jurisdiction to discipline attorneys. Unpopular causes, he suggested, would lead to harsh results.

This is what the Respondent clearly faced in this case. He was up against the power of the Office of the Attorney General, headed by its senior attorney, who had a personal agenda against the Respondent. (TII, 95). As a civil rights case based on a false arrest, the Plaintiff was an unpopular claimant. Respondent felt compelled to take multiple appeals, and he was litigating after a prior recusal, thus essentially being bound to see the case through with Judge Parsons. (TI, 74). Judge Parsons' order is, for lack of a better phrase, over the top. Respondent testified that he simply did not see it coming, as if Judge Parsons was awaiting his opportunity to wreak havoc on Respondent. (TII, 104). Effectively, this is what took place. The Office of the Attorney General expended an incredible amount of time fighting the Respondent (TI, 93), and Judge Parsons, despite Respondent's multiple pleas for case management throughout the litigation, did not drop the proverbial hammer until the end. (TII, 104).

Therefore, in the first place, the Respondent argues that evidence of the Rule 4-3.1 and 4-8.4(c) violations does not exist absent Judge Parsons' judgments.<sup>5</sup> In the second place, Respondent urges this Court to review the Parsons judgments against the *Gallagher* opinion and find that the Parsons judgments reflect inappropriate *Coblentz* enforcement proceedings. Finally, the Respondent respectfully requests this Court to set forth the parameters under which a trial court order constitutes competent substantial evidence of a rule violation *per se*, when a Referee may reject such an order, and when the Bar still must, in addition to such an order, prove by clear and convincing evidence that a rule violation occurred.

## **II. A REHABILITATIVE SUSPENSION IS AN EXCESSIVE SANCTION FOR A MISSTATEMENT IN A COBLENTZ SETTLEMENT AGREEMENT**

It cannot be said that the Referee adopted The Florida Bar's Report of Referee without substantial changes. However, the case law adopted by the Referee is the case law submitted by The Florida Bar. Those cases, in which the attorney in question received a rehabilitation suspension of ninety-one days or more, are distinguishable from the case at hand. Respondent submits that in each

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<sup>5</sup> Because Respondent does not dispute that the broadly-worded Rule 4-8.4(d) could reasonably be applied to the overall course of the underlying litigation, he does not challenge that finding of a rule violation. However, Respondent requests that the Court consider that the Office of the Attorney General set the tone for the matter, first with its wrongful refusal to defend the Tanguoso matter, and then with the manner in which it assailed the *Coblentz* agreement by attacking the Respondent personally.

of the cases upon which the Referee relied, the respondent engaged in a calculated, deliberate plan of deception.

In *The Florida Bar v. Adler*, 126 So. 3d 244 (Fla. 2013), the respondent completed an application for an apartment purchase. In his application he deliberately and expressly misrepresented his employment status, his income, and the source of funds he would be using. Adler had sought and secured a letter from his law firm with false information in respect to his position with the firm and his financial status. Clearly, he set forth a plan that required forethought and action to carry out. This Court imposed a ninety-one day suspension on Adler.

In *The Florida Bar v. Head*, 27 So. 3d 1 (Fla. 2010), the respondent had received a \$10,000.00 payment from clients in a Chapter 13 bankruptcy that was not disclosed properly. The respondent went on to file his own suggestion of bankruptcy, yet had not actually filed bankruptcy. This was an expressly false statement which the court found abused the judicial process. Head received a one year suspension.

In *The Florida Bar v. Miller*, 863 So. 2d 231 (Fla. 2003), the respondent withheld material information in an EEOC case. The lower court sanctioned Miller for concealing critical evidence. At a subsequent hearing Miller testified falsely regarding these facts. Miller received a one-year suspension.

In *The Florida Bar v. Rotstein*, 835 So. 2d 241 (Fla. 2002), an attorney received a one-year suspension for creating a fraudulent letter to submit to The Florida Bar in disciplinary proceedings. This was done to conceal his neglect in allowing a statute of limitations to run. Again, the respondent in that case engaged in a calculated and deliberate act.

In the present case, Respondent, by all accounts, spoke with Roper in respect to serving as an expert. (TI, 17). By the time the surrounding circumstances were questioned, five years had passed and the Respondent had no paper trail to verify what had taken place. Respondent contends that the situation at hand is more akin to a line of cases in which, though a 4-8.4(c) violation was found, the suspension imposed was a less than a rehabilitative suspension.

Before the Referee, the Respondent, contending that that matter did not involve dishonesty, submitted the case of *The Florida Bar v. Cocalis*, 959 So.2d 163 (Fla. 2007), in which the Respondent received a public reprimand. It is not the job of the Referee to seek out additional case law, but as a result of the two somewhat extreme positions as to the sanctions (the Respondent arguing for a public reprimand and the Bar arguing for a rehabilitative suspension), the Referee was not presented with cases in support of a suspension of less than ninety-one days. Several such cases exist and support a shorter suspension.

In *The Florida Bar v. Varner*, 780 So.2d 1 (Fla. 2001), the Respondent made a representation to an insurance company representative that he had filed suit on his client's behalf. At the time, Varner believed this to be true. The case settled for very little money, and upon instructing his secretary to prepare a notice of voluntary dismissal, Varner discovered that the case had never been filed. To cover up the situation, Varner inserted a fictitious case number in the notice of voluntary dismissal and sent it to the insurance company. The deception was ultimately discovered. In the disciplinary proceedings, the Referee recommended a thirty day suspension, and the Bar requested a ninety-one day suspension. This Court, relying on *The Florida Bar v. Morse*, 587 So.2d 1120 (Fla. 1991) imposed a ninety day suspension, despite the willful and deliberate actions of Varner.

In *Morse*, the respondent had allowed a statute of limitations to run on an auto accident case. The client had rejected a \$2,500.00 offer from the insurance company. To cover up the error, Morse sent the client a check for \$2,500.00 and indicated that it was the most the insurance company would pay. This deception was also discovered, and disciplinary proceedings resulted. The Referee recommended a suspended ninety day suspension and probation. The Florida Bar requested that the respondent be required to serve a ninety day suspension. This Court agreed, and it imposed a ninety day suspension with costs, again despite the deliberately deceptive actions of respondent Morse.

In *The Florida Bar v. Myers*, 581 So.2d 128 (Fla. 1991) the respondent had represented a husband in a dissolution of marriage action. A settlement agreement proving primary parental responsibility to the Husband was executed by the wife, but it appeared that a reconciliation may occur. In fact, the parties did live together for approximately a year after the execution of the settlement agreement. At that point, respondent learned that the wife had retained counsel. This new counsel for the wife prepared a settlement agreement which gave the wife primary residential responsibility. The wife then relocated out of state.

Despite knowing that the wife's attorney had prepared a new settlement agreement with different terms, Myers moved forward and secured a final judgment based on the settlement agreed that he had prepared, knowing that the wife was represented and was requesting different timesharing for the child. He was able to accomplish this through a previously executed Answer, Waiver of Notice of Final Hearing, and Consent to Enter a Final Judgment.

The Referee recommended that Myers receive a public reprimand and two years of probation. The Bar initially sought disbarment, but conceded that mitigation could reduce the sanction to a six month suspension. The Court imposed a ninety day suspension followed by two years of probation.

Myers is another example of a respondent engaging in a calculated scheme of deception. That simply does not exist in this case. The Respondent properly

and aggressively represented his client. The evidence does not support that the federal court relied on the *Coblentz* agreement. There is no question that it was filed. There is no question that it contained the reference to Roper having reviewed the amounts of damages, fees, and costs. But the evidence put forth in the motion for entry of the Final Judgment referenced a different expert and provided jury verdict examples in support of the damages claim.

Mr. Roper, a defense attorney, became reticent after being accused by the Office of the Attorney General of having come up with the Respondent's damages and attorney's fees figures. Yet the Respondent procured another expert, Clay Parker, who was prepared to testify before Judge Parsons, who did testify before the Referee, and who expressly opined that the values in the *Coblentz* agreement in this case were reasonable. (TII, 25).

It was completely fortuitous that there was no evidentiary hearing held in the federal court. Similarly, it was fortuitous that Roper never had reason to encounter the Respondent again or independently follow up on the status of his serving as expert. Instead, the Office of the Attorney General abandoned the case in federal court and successfully withdrew despite Respondent's contention that they needed to provide the defense, as ultimately agreed even by Judge Parsons. (TFB Ex. 17-1). And at that juncture Mr. Alterman realized that there was no particular benefit involved in litigating on behalf of the estate. In essence, all of the blocks fell in a

direction different than originally anticipated by the Respondent such that expert testimony was not needed in the manner he had anticipated. Respondent submits that as the case played out, the inclusion of Roper's name in the agreement wasn't even sufficiently material to trigger a duty to correct under Rule 4-3.3(a).

More recently, this Court found that less than a rehabilitative suspension was appropriate for a 4-8.4(c) violation in *The Florida Bar v. McNamara*, 132 So.3d 165 (Fla. 2013). In *MacNamara*, the respondent had failed to file a probate tax return. He sent the IRS an unsigned copy that he represented as a duplicate return, knowing that he had not filed the initial return. During the Bar's investigation, the Respondent represented that he had in fact filed the estate tax return. Despite these deliberate and knowing deceptions, this Court imposed a ninety day suspension followed by probation.

As this Court well knows, a ninety-one day suspension is equivalent to a minimum six month suspension, simply as a result of the reinstatement process. In the present case, the Respondent is a twenty-seven year member of The Florida Bar. Twelve years have elapsed since the date of the *Coblentz* agreement, without discipline to the Respondent. The Respondent has suffered other sanctions at the hands of Judge Parsons. A rehabilitative suspension simply is not warranted in this matter.



## **CONCLUSION**

Respondent asks this Court to address the issue of whether a Referee is bound to follow a trial court order imposing sanctions on an attorney. Furthermore, Respondent asks the Court to review the judgments from Judge Parsons against the directive of the 5<sup>th</sup> DCA in *Gallagher v. Dupont*. Finally, Respondent contends that even if the Referee's findings as to rule violations stand, the totality of the circumstances do not support a rehabilitative suspension. Respondent asks this Court instead to impose a suspension of thirty days or less.

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I furnished a copy of the Initial Brief (with a typographic date error in the Certificate of Service) by email to Patricia Ann Toro Savitz, Esq., Bar Counsel for The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-5200, [psavitz@flabar.org](mailto:psavitz@flabar.org), to Adria E. Quintela, Esq., Staff Counsel for The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, FL 33323, [aquintel@flabar.org](mailto:aquintel@flabar.org) on June 18, 2014. The foregoing Amended Initial Brief has been furnished to the aforementioned persons via e-portal email service on July 28, 2014.

Respectfully submitted,

/s/ Barry Rigby

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

Undersigned counsel does hereby certify that this Brief is submitted in 14 point proportionately spaced Times New Roman font, and that e-mail forwarded to the Court has been scanned and found to be free of viruses, by Avast.

Respectfully submitted,

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