IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

MARK JOHN RANDAZZA,

Respondent.

_____/

Supreme Court Case
No. SC19-188

The Florida Bar File No.
2015-00,718(2B)

**CLOSING ARGUMENT REGARDING RECOMMENDED DISCIPLINE**

COMES NOW, The Florida Bar and files the instant Memorandum of Law Regarding Recommended Discipline in the above-captioned matter.

The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to discharge their professional duties to clients, the public, the legal system, and the legal profession properly. Fla. Stds. Imposing Law. Sancs. 1.1.

FACTORS TO BE CONSIDERED:

The Florida Standards for Imposing Lawyer Sanctions make it clear that bar counsel, the referee, and the Supreme Court of Florida should consider the following factors prior to recommending and/or imposing lawyer discipline: 1) duties violated; 2) the lawyer's mental state; 3) the potential or actual injury caused

by the lawyer's misconduct; and 4) the existence of aggravating or mitigating circumstances.

The Standards define injury as "harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from 'serious' injury to 'little or no' injury; a reference to 'injury' alone indicates any level of injury greater than 'little or no' injury." Potential injury is defined as "the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct." Intent is defined as "the conscious objective or purpose to accomplish a particular result." The Court has found that "in order to satisfy the element of intent it must only be shown that the conduct was deliberate or knowing." The Florida Bar v. Fredericks, 731 So. 2d 1249, 1252 (Fla. 1999). The motive behind the action is not the determinative factor; rather the issue is whether the attorney deliberately or knowingly engaged in the activity. And, knowledge is defined as "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result."

The Court has indicated that the sanction recommended and imposed must be (1) fair to the disciplined attorney, being sufficient to punish while at the same

time encouraging rehabilitation; (2) fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness; and (3) severe enough to deter others who might be tempted to engage in like violations. The Florida Bar v. Liberman, 43 So. 3d 36, 39 (Fla. 2010) citing criteria enunciated in The Florida Bar v. Pahules, 233 So. 2d 130, 132 (Fla. 1970). However, the Court has moved toward stronger sanctions for attorney misconduct in recent years. The Florida Bar v. Adler, 126 So. 3d 244, 247 (Fla. 2013); The Florida Bar v. Herman, 8 So. 3d 1100, 1108 (Fla. 2009) citing The Florida Bar v. Rotstein, 835 So. 2d 241, 246 (Fla. 2002).

Further, in reciprocal discipline cases, the Supreme Court is free to impose a sanction greater than that imposed in other states. The Florida Bar v. Tipler, 8 So. 3d 1109 (Fla. 2009); citing Fla Bar v. Hegendorfer, 921 So. 2d 611, 614 (Fla. 2006).

**Facts:** Respondent admitted to the facts in the Nevada Conditional Plea that was subsequently approved by the Nevada Supreme Court. These facts are not in dispute. Respondent loaned money and went into business with his client, Excelsior, without informing his client in writing, of the desirability of obtaining independent counsel. Next, while in contentious litigation and representing Excelsior against Oron, respondent executed a $75,000 non-refundable, earned

upon receipt retainer to represent Oron. Respondent then lent his own funds to Excelsior, ($25,000), along with $25,000 contributed by Excelsior, to fund further litigation against Oron, who was by then, also his client. Pursuant to the Rules Regulating The Florida Bar, respondent violated Rule 4-18(a) and Rule 4-5.6(b).

Shockingly, respondent made the argument that he violated the Rules Regulating The Nevada Bar, not The Florida Bar so he was free to negotiate against his own client. Tr. Vol. II, Page 257, Lines 6-10. This argument is complete rubbish. See, Rule 3-4.6(a) and (b).

Respondent was employed as Excelsior's general counsel from 2009 until August 2012. Excelsior is a sister company to various entities including Liberty Media Holdings and Corbin Fisher. Corbin Fisher is a homosexual, pornographic website and a brand name whose intellectual property is owned by Liberty Media Holding ('Liberty"). Excelsior is a film production company that creates videos for Corbin Fisher and other homosexual pornography websites. Liberty owns the copyrights of videos created for Corbin Fisher.

In February 2011, Excelsior relocated its headquarters to Las Vegas, Nevada. Respondent also relocated to Las Vegas, Nevada at approximately the same time to continue as general counsel for Excelsior.

Excelsior and respondent became acquainted while respondent was an associate at a firm specializing in First Amendment work, located in Tampa,

Florida. In June, 2009, Excelsior decided to hire respondent as general counsel to Excelsior.

Respondent drafted, and the parties subsequently executed an employment contract that memorialized their intentions and agreement. As part of his duties, respondent was charged with protecting Excelsior and its sister companies, including Corbin Fisher and Liberty Media for their intellectual property and copyrights.

Pursuant to the employment agreement, respondent was to wind down his private practice during his first 90 days of employment and become Excelsior's full-time General Counsel employed on an at-will basis. The Employment Agreement permitted respondent to continue to provide professional services to a "limited number of outside clients," during non-working hours, if such work did not present a conflict of interest to Excelsior. Regardless of the employment agreement, respondent worked for seven direct competitors of Excelsior, while in suit on behalf of Excelsior, with more than one of these competitors. Tr. Vol. II, Page 282-283. Respondent would have the referee believe that he performed First Amendment work for these competitors of Excelsior, but that statement flies in the face of the fact that respondent never advised Excelsior that he was performing this outside work for its competitors, nor asked for his client's consent to perform these legal services, in direct violation of his employment contract. Tr. Vol. II, pages

203-204, lines 2-24. The employment contract for Outside Projects reads as follows:

> Insofar as such activities do not violate any professional ethical standards or the Confidentiality and Inventions Assignment Agreement attached hereto as Addendum B, Excelsior agrees Randazza may, without breaching such duties and agreement, provide professional services to a limited number of outside clients on an ongoing basis, as long as such services are rendered without legal or professional conflict with Excelsior, and such projects are rendered through a separate legal entity, such as Marc J. Randazza, P.A. or another outside law firm. Under no circumstances shall Randazza represent, allow the perception to exist, that such services are being rendered as part of his duties with Excelsior.

Further, Brian Dunlap testified that it was not until Excelsior uncovered the depth of respondent's unethical behavior that they realized the extent of the deception. Tr. I, page 67, lines 2-4; Tr. II, page 282-283, lines 3-18.

Brian Dunlap was correct. "I mean, your lawyer, your priest, and your doctor are the three people I think you would like to think that you can trust entirely. And I think the whole premise of your relationship with them is that you can disclose most anything and take trusting in them for granted." Tr. I, page 66, lines 10-14; Tr. II, page 285, lines 5-15. Respondent violated not only the trust of Excelsior, but his other client, Oron, as well. Respondent needs to be held accountable.

Respondent's compensation as an employee of Excelsior was $208,000 per year plus a nondiscretionary 25% bonus of any settlement funds paid to Excelsior.

The parties contemplated that respondent would be handling all of Excelsior's legal matters, independently.

The Employment Agreement also required that Excelsior provide a laptop and PDA/phone, which was primarily to be used for Excelsior business only. The Employment Agreement further provided that such equipment was not to be used for professional services rendered to other clients.

At some point in 2012, Excelsior and respondent became aware that Oron was illegally distributing Excelsior's copyrighted product. In June 2012, suit was filed in Nevada Federal Court.

Later in June 2012, Excelsior wired $25,000 to Hong Kong attorneys to secure their representation. On August 21, 2012, respondent entered into a Promissory Note as the lender, and Liberty Media Holdings L.L.C. (Excelsior) as the borrower in the amount of $25,000. Randazza wired his loan of $25,000 to the Hong Kong attorneys in late August 2012. Tr. II, pages 280-281, lines 25-8.

As of August 6, 2012, respondent had been retained by Oron. His retainer agreement with Oron, executed on August 6, 2012, states that the retainer agreement of $75,000 is "non-refundable and earned on receipt." Tr. II, page 258, lines 8-14.

While in the throws of ongoing litigation against Oron on behalf of Excelsior, on August 6, 2012, respondent executed a retainer agreement to

represent Oron. Then in late August he utilized his own money to freeze Oron's oversees accounts. Respondent would have this referee believe that he thought this was permissible in Nevada, but that he was simply mistaken. This assertion is unbelievable and untenable. The Florida Supreme Court adopted jury instructions to address such an absurd assertion:

> In some cases, the issue to be determined is whether the defendant had knowledge of a certain fact. Florida law recognizes a concept known as willful blindness, which is sometimes referred to as "deliberate avoidance of positive knowledge." Willful blindness occurs when a person has his or her suspicion aroused about a particular fact, realized its probability, but deliberately refrained from obtaining confirmation because he or she wanted to remain in ignorance. A person who engages in willful blindness is deemed to have knowledge of that fact. Pattern Jury Instructions 3.39(h). See Desilien v. State, 595 So. 2d 1046 (Fla 4th DCA 1992).

Further, the Florida Pattern Jury Instructions offer insight into evaluating a respondent's testimony. Instruction 3.9 regarding weighing the evidence states as follows: "(4) Did the witness have some interest in the outcome of the case? (5) Does the witness testimony agree with other testimony and other evidence in the case?" Pattern Jury Instruction 3.9 (2019). It is clear that there is no greater incentive to color testimony than to have an interest in the outcome of the case.

Moving forward, in July 2012, counsel for Oron and respondent entered into a settlement agreement in the amount of $550,000 to be paid by Oron to Excelsior and into the Randazza Law Group trust account.

In the meantime, Nevada Judge Gloria Nevarro found that the settlement agreement was enforceable. Pursuant to the settlement agreement, $550,000 was to be transferred to the Randazza Law Group's trust account and respondent agreed to be personally liable if the funds were prematurely disbursed (before all terms were complied with). Tr II, page 254, lines 7-16. This agreement included respondent being responsible for a 10% penalty.

Thereafter, respondent engaged in further settlement negotiations with Oron's counsel to resolve both the Hong Kong proceedings and address the Nevada Judgment/Order issued by Judge Navarro. In August 2012, respondent presented Excelsior's CEO, Jason Gibson, with a new Oron Settlement Agreement. The Settlement Agreement provided for a payment of $600,000 to Excelsior to be held in trust until various provisions of the Settlement Agreement were complied with. The Settlement Agreement, however, now contained a "bribe" of $75,000 to respondent to never sue Oron again. This is precisely the same amount of money that respondent negotiated with Oron to represent them.

On August 6, 2012, respondent signed and executed the Legal Services Agreement with Oron. In the agreement, respondent specifically stated: "Client fully resolves all matters, without limitation, with respect to Liberty Media Holdings, LLC, including without limitation performance of the settlement agreement ordered to be enforced by the U.S. District Court for the State of

Nevada in Case No. 2;12-cv-01057." When respondent executed the retainer with Oron, he was well aware of his duties to Excelsior. He just thought he could get away with the double-dealing, but he got caught.

The payment to respondent immediately raised questions for the president of Excelsior, Jason Gibson.

When confronted, respondent terminated his employment agreement with Excelsior. When Gibson pursued the $550,000 held in respondent's trust account, the parties could not agree on how much should be released by respondent's firm. It became clear, however, that respondent had already gone into business with his client by lending Excelsior $25,000 to pursue the matter in Hong Kong against Oron. At this time, respondent demanded $137,500, representing his 25% commission of the disputed trust account funds, held by respondent, which were paid by his client Oron to his employer, Excelsior, which now only respondent controlled.

Thereafter, respondent left his employment with Excelsior and filed suit against them. The case was referred to arbitration and both parties selected retired Federal Judge Haberfeld. After contentious litigation, Judge Haberfeld ruled in Excelsior's favor and ordered respondent to pay substantial sums of money to Excelsior in his Interim Arbitration Award. (See TFB Ex. 1).

Respondent's reaction was to file for Bankruptcy protection and hire Matthew Zirzow as his attorney. The Bankruptcy proceedings were contentious, and Excelsior continued to attempt to collect on Judge Haberfeld's Interim Arbitration Award.

On June 8, 2017, the Honorable August B. Landis denied Excelsior's attempt to collect on the Interim Arbitration Award (See respondent's Exhibit 7), but Judge Landis did not find that the award was illegal or legally insufficient. He found that the award could not be enforced due to the very protections bankruptcy provides. After millions of dollars in legal fees and substantial ongoing litigation, Excelsior chose to settle the matter for $40,000. Tr. II, pages 274-275, lines 22-15.

Respondent wants this referee to believe that all of the arbitration issues were substantively litigated and resolved before the bankruptcy court, but no evidentiary hearing was ever conducted. Tr. II, page 274, lines 7-15. Further, the substantive rulings of another judge's award are not something within the purview of the bankruptcy court. The Interim Arbitration Award was ultimately stricken because Judge Haberfeld agreed to withdraw it pursuant to Judge Landis' Order.

Most of the rest of respondent's exhibits indicate that he has either remained in compliance with Nevada's disciplinary order or another jurisdiction imposed similar discipline as Nevada. Although interesting, these rulings are not binding

on Florida and are irrelevant. See The Florida Bar v. Tipler, 8 So. 3d 1109 (Fla. 2009); citing Fla Bar v. Hegendorfer, 921 So. 2d 611, 614 (Fla. 2006).

Prior to calling any witnesses, respondent presented the referee with character letters. Simply stated, this was inappropriate, and all these letters must be deemed as irrelevant to these proceedings.

In The Florida Bar v. Prior, 330 So. 2d 697 (Fla. 1976), the Florida Supreme Court stated, "In asserting his claim of good character, respondent filed with his brief character letters from twelve Palm Beach County officials consisting of six circuit judges, four county court judges, the state attorney, and the sheriff. Character letters are not proper evidence in any court proceeding. Further, this Court's directive to file briefs is not a license to submit evidence." Id. at 703. The Florida Bar has no ability to cross examine these letters and they serve no purpose. To unilaterally file letters, some of which were sent directly to the referee, are completely irrelevant, and inappropriate. As the referee will remember, at the January 8, 2020 Final Hearing, The Florida Bar took a hard line on this issue when Mr. Retzlaff sought to introduce a letter that the Bar deemed inappropriate and inflammatory. Unfortunately, when respondent provided the referee with his myriad of letters, there was no way to un-ring the bell because respondent had already submitted the letters in violation of The Florida Supreme Court's ruling in

Prior. All of respondent's composite character letters of Exhibit 2 and Exhibits 5 and 6 should be deemed irrelevant.

Respondent's Exhibit 6 has its own life. This is an alleged sworn character letter from Matthew Zirzow, respondent's bankruptcy attorney. It explains his client's position throughout the bankruptcy proceedings and the ultimate settlement between Excelsior and respondent in the amount of $40,000. Pursuant to the arbitration case, when retired Federal Judge Haberfeld ruled in Excelsior's favor and ordered respondent to pay Excelsior substantial sums of money, respondent filed for Chapter 11 Bankruptcy and hired Mr. Zirzow. "What lawyers say is not evidence." Section 918.19 Fla. Stat., (2019).

Nonetheless, this character letter is irrelevant and, although purported to be under oath, it is, interestingly, not notarized and not subject to perjury.

It should also be noted that respondent's Exhibits 8-13, which were comprised of over 100 pages, were presented to counsel the morning of the hearing on January 8, 2020. Tr. Vol. II Page 180, Lines 6-7.

Exhibit 13 is another example of an irrelevant document that has no bearing on this case. It is simply argument of counsel in his underlying bankruptcy case. "What the attorneys say is not evidence." Section 918.19 Fla. Stat., (2019). Respondent is asking this referee to rely on the argument that his lawyer made to the bankruptcy court, as substantive evidence in his bar discipline case. Not only

is it inappropriate, it is irrelevant. Further, it's the same lawyer that entered an unverified character letter on respondent's behalf. (respondent's Exhibit 6).

Respondent called three witnesses. The first was Alexis Lambert. She is an attorney with The Florida Lottery and, when questioned, knew nothing about respondent's unethical conduct in 2012, other than from a few pleadings provided by respondent's counsel. Tr. Vol, I. page 118-120, lines 21- 1. Her testimony, albeit interesting, is completely irrelevant and can be discounted as a form of nepotism.

The second witness was Trey Rothell, a first year law student (1-L) at Florida State University. Mr. Rothell knew very little about the underlying facts in which respondent had already pled guilty, but he went on to say that he is an employee of respondent and hopes to obtain a position with respondent's firm upon graduation. Tr. Vol. I, page 150, lines 23-24. His testimony is also irrelevant and can also be discounted as a form of nepotism.

The third was respondent. Respondent took umbrage with the rulings of Judge Haberfield during his arbitration case. See TFB 1. One only need to look at the judge's rulings to see why. Judge Haberfield ruled against respondent on every substantive issue before him. It is startling that respondent now impugns the integrity of a retired federal judge, in spite of the fact that he chose Judge to hear his arbitration case. Tr. II, page 272, lines 7-24.

The respondent chose to become a witness in his case. His credibility must be weighed against his interest in receiving a favorable ruling. His credibility can be weighed in the small falsehoods as well as the large ones. By example, respondent stated that he was appalled to find out that a pornographic scene had been filmed in his office. Not only did Judge Haberfeld find this assertion untenable, so did Excelsior, and so should this court because respondent asked for and received a couch used in a different pornographic scene. Tr. Vol. II, Pages 276-278, Lines 3-13 and Tr. Vol II, Page 278, Lines 7-24. Further, respondent offered up his own residence as a possible shoot location for Excelsior. Tr., Vol. II, Page 278, Line 10. Only after respondent was in litigation with Excelsior did this allegation of being appalled that his office was used by Excelsior to film a scene become an issue. Tr. Vol. II, Page 278, Lines 7-24.

Respondent made a point of saying that he really did not choose Judge Haberfeld. The following question was asked, and respondent gave the following answer:

> Q - All right, sir. Was he selected by both sides?
>
> A - That's not entirely accurate. We were given a list to rank them. I don't remember where he ranked on either party's list. I don't think that he was anyone's first choice. Tr. Vol II, Page 194, Lines 9-13.

The fact remains that they were all pleased with Judge Haberfeld as the arbitrator. Tr. Vol. II, Page 272-, Lines 14-24. Judge Haberfeld only became a problem after his ruling(s) came out. Tr. Vol II, Page 273, Lines 2-5.

In his testimony, respondent asserted that his employment contract negotiations with Excelsior did not limit his capacity to represent others. Tr. Vol II, page 198, Lines 23-25. This assertion flies in the face of the employment agreement that respondent signed to become Excelsior's general counsel on June 9, 2009. The agreement specifically states that "… as long as such services are rendered without legal or professional conflict with Excelsior…" Tr. Vol II, Page 245, Lines 12-19. It is simply not believable that respondent's work for direct competitors such as IO Group, Kink, Porn Guardian, XBiz, Expensify, Bang Bros., and X Videos is not in direct conflict with his employer, Excelsior, and its sister corporations. Further, respondent's conduct in becoming Oron's counsel on August 6, 2012, speaks to respondent's motive: greed. TFB Exhibit 3.

Also telling, is that respondent unilaterally decided which legal work would or would not be a conflict. If it truly was no conflict with his employer's (Excelsior's) interests, why did respondent not just tell Excelsior and specifically Jason Gibson? Tr. Vol II, Page 245, Lines 20-23. The answer is clear, Excelsior would never allow it, and respondent knew this.

The depths of respondent's fraud and subterfuge committed upon his employer cannot be overstated. Interestingly, on cross examination, when asked the following question, respondent gave the following answer:

Q - "What was the nature of the work that you did for Kink?

A – "Advice, probably – I mean, this was a long time ago, but advice – it was certainly advice on either trademark matters, copyright matters, or First Amendment matters." Tr Vol. II, Page 13-18.

This testimony is in direct contradiction to Mr. Dunlap's testimony. It is clear that respondent did more than copyright advice and First Amendment work for IO Group, Kink, Porn Guardian, XBiz, Bang Bros., and X Videos.

Respondent became XVideo's attorney to settle a dispute for them that Excelsior was supposed to be a party to, and then for years prevented Excelsior from taking legal action against them by advising them on how to shield themselves from it. Tr. Vol II, Page 282, Lines 24-25, Page 283, Lines 1-2. (Also see Tr. Vol II, Page 283, Lines 3-18 and Tr. Vol II, Page 284, Lines 4-10).

There is no doubt that respondent became the attorney for IO Group and did more than copyright and First Amendment law for them. IO Group and Excelsior had a licensing agreement in which a sister company of Excelsior would distribute some of IO Groups' material. When they executed the agreement, respondent

represented both IO Group and Excelsior simultaneously. Tr. Vol II, Page 284, Lines 16-23.

The bottom line is respondent got caught. Respondent became general counsel for Excelsior on June 10, 2009. In February, 2010, respondent was already performing legal work for Bang Bros. From February, 2010, until August, 2012, when respondent was confronted by Jason Gibson of Excelsior with the "$75,000 bribe," respondent had 213.2 hours of legal work for seven of Excelsior's direct competitors without the knowledge or consent of his employer, Excelsior.

PERSONAL HISTORY TO BE CONSIDERED:

Age: 50 Years of Age.

Date of Bar Admission: March 3, 2003

Prior Discipline: None

FACTORS FOR IMPOSING LAWYER DISCIPLINE

The following aggravating factors are relevant in this matter:

Dishonest or Selfish Motive – Unbeknownst to respondent's client, Excelsior, respondent negotiated a "bribe" to himself or his firm in the amount of $75,000 as part of a settlement with Oron. Only after being caught did respondent begin to disclose the nature of the "bribe." Respondent not only violated his client's trust, but also his fiduciary duty to his client.

Further, respondent enjoyed a salary of $208,000 per year, plus expenses, plus a 25% commission on all settlements that he achieved on Excelsior's behalf. In the Oron negotiations alone, respondent sought to gain an additional $137,500. In spite of this, respondent sought to personally gain an additional sum of $75,000 without his client's knowledge or consent. Then, on August 6, 2012, while employed as general counsel of Excelsior and in litigation against Oron, respondent became Oron's counsel for a retainer amount of $75,000, and then utilized $25,000 of his own money to continue litigation against them.

Much like the court held in The Florida Bar v. St. Louis, 967 So.2d 108 (Fla. 2007), "Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or himself, and causes serious or potentially serious injury to a client, the public or the legal system." St. Louis at 123.

Further, when respondent entered into the agreement with Oron, he violated Rule 4-5.6(b) by restricting his right to practice. Attorneys who engage in such engagement agreements receive severe sanctions. St. Louis citing In re; Hager, 812 A.2d 904 (D.C. 2002) (suspending for one year a lawyer who, while representing fifty clients in claims against a manufacturer, secured a side agreement with the manufacturer involving restricting his right to practice, dropping the pending case, and maintaining confidentiality about the side

agreement); St. Louis citing In re: Brandt, 331 Or. 113, 10P.3d 906 (2000), (imposing thirteen-month and twelve-month suspensions on two lawyers, one with a prior disciplinary record and the other without, for entering into a side agreement with the adversary to act as legal counsel). In light of the severe sanctions imposed on attorneys who have engaged in secret engagement agreements and respondent's extensive acts of deceit, disbarment is the appropriate sanction. *[9.12(a)]*.

Dishonest or Selfish Motive – The testimony of Brian Dunlap is uncontroverted. "It was discussed during the hiring process, and when the offer letter was exchanged, that he also hoped to do some pro bono work, which would be done on our behalf, in a sense, to generate good publicity and public relations for us." "He would put our name on the pro bono work, in First Amendment cases and such, so we could be seen as doing some good to help especially offset any potential negative from copyright suits, which were not particularly popular at the time." Tr. I, Page 32, lines 5-13.

Mr. Dunlop went on to say, "He [respondent] expressed a number of times that the outside clients would be primarily pro bono clients, done for our benefit, and for the sake of positive public relations for us." "He also stated -- I think this is a quote -- the occasional pro bono First Amendment case would help me keep my legal knives sharpened, as he put it, network with attorneys, and keep his face before judges. That was essentially what we understood it to be." Tr. I, Pages 36-

37, lines 19-1. Further, the Employment Agreement itself permitted respondent to continue to provide professional services to a "limited number of outside clients" during non-working hours if such work did not present a conflict of interest to Excelsior. *[9.22(b)]*.

A Pattern of Misconduct - It is clear that the fraud committed by respondent on Excelsior is not limited to the $75,000 "bribe," but also that he negotiated with Oron in direct violation of the fiduciary duty owed to his client and in direct conflict with his client. The pattern did not stop there. Only after he was caught, and the level of corruption uncovered, did Excelsior discovery that, while the general counsel for Excelsior, respondent was also the attorney for seven of Excelsior's competitors. *[9.21(c)]*.

Multiple offenses – Respondent violated multiple Rules Regulating The Florida Bar when he negotiated the "$75,000 bribe" from Oron, but then also when he agreed to go into business with Excelsior in freezing Oron's assets in Hong Kong, after he had become Oron's attorney. To exacerbate the situation, respondent then personally paid the Hong Kong attorneys $25,000 to freeze Oron's assets to facilitate the scheme and secure a "$75,000 bribe" for himself. *[9.22(d)]*.

Refusal to Acknowledge the Wrongful Nature of Conduct - Throughout these proceedings, respondent has attempted to avoid responsibility for the multiple ethics rule violations by unnecessarily delaying this case. Respondent

defrauded his client, Excelsior, in his Employment Agreement, his negotiating a bribe from Oron and his misrepresentations to Excelsior. There is no doubt because he admitted to it pursuant to the Nevada Order of Discipline. After years of litigation and, millions of dollars, nowhere in the record does it indicate that respondent is contrite. Further, rather than acknowledge his wrongdoings, pay the arbitration award and move on, respondent filed an appeal of the Arbiter's Initial Award and then proceeded to file for Bankruptcy protection.

Any apology now must be attributed as a "foxhole conversion." Respondent found God, only after the bullets were whizzing overhead. [*9.22(g)]*.

Vulnerability of Victim - The victim in this case is the client, Excelsior. Jason Gibson as the CEO of Excelsior, trusted respondent to be his General Counsel, so much so that Mr. Gibson paid him the sum of $208,000 per year plus a 25% commission. Just as important, however, is the betrayal of trust between Jason Gibson and Brian Dunlap and respondent. They thought that they were friends. They worked closely, with each occupying office space and sharing comradery. Respondent took complete advantage of this trust by attempting to accept a secret "bribe" from Oron without Gibson's consent. Respondent took complete advantage of this trust when, on August 6, 2012, he became Oron's attorney. Respondent developed the trust and then took complete advantage of that trust that he developed. *[9.22(h)]*.

Substantial Experience in the Practice of Law – Respondent has been licensed to practice law in Florida for 16 years. Respondent is charged with knowing and complying with the rules we all share, but this is particularly important for a lawyer who has been practicing for as long as respondent. *See Rule 3-4, R.Reg. Fla. Bar. [9.22(i)].*

The following mitigating factors are relevant in this matter:

Absence of a prior disciplinary record *[9.32(a)].*

It appears that respondent has no prior discipline.

It must be pointed out that any unreasonable delay in these disciplinary proceedings does not apply and delay at all is directly attributable to respondent. Respondent, for whatever reason, stopped working for Excelsior in August, 2012. Thereupon, respondent filed a Wrongful Termination Claim. The case was eventually referred to arbitration and retired Federal Judge Stephen Haberfeld heard the case. In June, 2015, the Arbiter filed his Interim Arbitration Award. Respondent appealed the award and thereafter, filed for Bankruptcy protection. The case languished in Bankruptcy court until Arbiter Haberfeld, agreed to withdraw and dismiss his arbitration award to Excelsior.

On October 10, 2018, the Nevada Supreme Court issued its Order and Recommended Discipline. On February 6, 2019, The Florida Bar filed its Complaint in this case.

On May 3, 2019, the Final Hearing was commenced, but not concluded as respondent requested a continuance. The ore tenus motion was granted.

Another Final Hearing was requested by respondent, but due to the impending landfall of Hurricane Dorian, was continued.

The next date that respondent was available to conclude this case is today, January 8, 2020. No delay, whatsoever, can be attributable to The Florida Bar.

STANDARDS FOR IMPOSING LAWYER SANCTIONS:

Standard 4.1 Failure to Preserve the Client's Property

4.11 Disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury.

4.12 Suspension is appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

Standard 4.3. Failure to Avoid Conflicts of Interest

4.31 Disbarment is appropriate when a lawyer, without the informed consent of the client(s):

(a) engages in representation of a client knowing that the lawyer's interests are adverse to the clients with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or

(b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or

(c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the

representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

4.32 Suspension is appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

Standard 4.6 Lack of Candor.

4.61 Disbarment is appropriate when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another regardless of injury or potential injury to the client.

4.62 Suspension is appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

6.1 False Statements, Fraud and Misrepresentation

6.11 Disbarment is appropriate when a lawyer:

(a) with the intent to deceive the court, knowingly makes a false statement or submits a false document; or

(b) improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

6.12 Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action.

Standard 7.0 Violations of Other Duties Owed as a Professional

7.1 Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

7.2 Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

RULES VIOLATED

Respondent admitted to the facts in Nevada Conditional Plea that was subsequently approved by the Nevada Supreme Court. These facts are not in dispute. Respondent loaned money to his client, Excelsior, without informing his client in writing, of the desirability of obtaining independent counsel, and by negotiating with opposing counsel to receive, as part of the settlement, a retainer for future legal services of defendant, Oron. Pursuant to the Rule Regulating The Florida Bar, respondent violated Rule 4-18(a) and Rule 4-5.6(b).

CASE LAW TO BE CONSIDERED:

The following case law should be considered:

The Florida Bar v. St. Louis, 967 So.2d 108 (Fla 2007) – disbarment was appropriate for attorney, whose law firm entered into a secret engagement agreement with opposing party in underlying litigation, wherein firm agreed, for a fee, not to bring future cases against that party, violated bar rule governing the representation of interests adverse to a client; attorney entered into the agreement with op-posing party, forming a lawyer-client relationship with the party, while still representing his clients in the underlying litigation.

The Florida Bar v. Doherty, 94 So.3d 443 (Fla. 2012) - disbarment was appropriate sanction for attorney's failure to disclose in writing to elderly client his financial interest in the annuity transactions, in violation of rule of professional conduct prohibiting a lawyer from engaging in a business transaction with a client unless lawyer makes specific written disclosures to client; attorney's misconduct was egregious, in that he advised his client to take specific actions that would earn him a financial benefit and failed to disclose this personal interest to client.

Attorney had prior disciplinary history, he acted with a selfish motive, and he refused to acknowledge the wrongful nature of his actions.

The Florida Bar v. Swann, 116 So.3d 1225 (Fla. 2013) - Disbarment of attorney was appropriate sanction for his egregious misconduct, which included his use of his father's estate funds while serving as personal representative of the estate for various real estate transactions and structuring transactions to obscure the true ownership of money and property, aiding his girlfriend in exploiting an elderly client by convincing client to transfer his home and his nursery property from himself to both attorney and attorney's girlfriend jointly, and his conduct during his divorce proceedings, including taking deliberate actions to conceal marital assets from his wife; attorney had a dishonest or selfish motive, he engaged in a pattern of misconduct, and he had substantial experience in law practice.

The Florida Bar v. Kane, 202 So.3d 11 (Fla. 2016) - Disbarment was appropriate sanction for three attorneys who engaged in misconduct in reaching settlement with insurer while representing clients with personal injury protection (PIP) claims; attorneys secretly negotiated an aggregate settlement that created conflicts of interest between lawyers and clients and left other attorneys bringing bad faith claims against insurer with no compensation for their significant work, attorneys abandoned their PIP clients' bad faith claims in favor of a greater fee for themselves when allocating the settlement funds, and attorneys withheld from clients nearly all the material information about the settlement, entirely to further their own interests

THE FLORIDA BAR'S RECOMMENDED DISCIPLINE:

The Bar's recommendation of disbarment satisfies the three purposes of discipline: (1) to be fair to the respondent, (2) to protect the public, and (3) to be severe enough to deter others from committing similar conduct. Further, in fairness to the other members of the bar, who have not engaged in misconduct, respondent should be taxed the costs of this proceeding.

Based upon the gravity of respondent's conduct, the Florida Standards for Imposing Lawyer Sanctions, and the existing case law, respondent must be disbarred and ordered to pay The Florida Bar's costs.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that the foregoing document has been furnished via E-Service to The Honorable Dawn Caloca-Johnson, Referee, at LauraO@leoncountyfl.gov, with copies to John A Weiss, at jweiss@rumberger.com, Alittlefield@rumberger.com, and to Staff Counsel, The Florida Bar, at psavitz@floridabar.org, on this 3rd day of January, 2020.

James Keith Fisher, Bar Counsel