IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,183

DAVID CERF,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

* * * * * * * * * * * * * * * * * *

ON APPEAL FROM THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR DADE COUNTY

* * * * * * * * * * * * * * * * * *

ANSWER BRIEF OF APPELLEE

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INTRODUCTION

The Appellant, David Cerf, Jr., was the Respondent in the disciplinary proceeding below. The Appellee, the State of Florida, was the Petitioner. In this brief, the parties will be referred to as they stood in the Circuit Court.

The symbol "A" will be used to refer to the Appendix supplied with the Respondent's brief. The symbol "T" will be used to designate the six (6) transcripts of Circuit Court proceedings (i.e., April 27, 1983; May 3, 1983; May 23, 1983; May 24, 1983; June 2, 1983 and June 13, 1983) which have been numbered sequentially as pages 1 through 517.

Petitioner is also submitting a Supplemental Appendix which will be referred to by the symbol "SA".

All emphasis is supplied unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The Respondent, acting with complete disregard for Fla.R.App.P. 9.210(b)(3), has not provided this Court with a proper statement of the case and of the facts. The Respondent's omission will now be remedied by the Petitioner.

It must be emphasized that there is and can be no dispute concerning the factual background of this case or the essential facts forming the basis for the disciplinary proceedings instituted against the Respondent. As pointed out by Judge Vann in his Order, it was the Respondent's pleading in the Third District Court of Appeal that were the main reasons the disciplinary proceeding was brought against him (A. 32).

The pleadings in question were filed by the Respondent, as attorney of record for one Melissa J. Vetterick, in a Mandamus proceeding brought against the Honorable Jon I. Gordon, Circuit Judge of the Eleventh Judicial Circuit of Florida. Judge Gordon was the trial judge in a contested child custody matter styled Vetterick vs. Vetterick, Circuit Court case number 78-6839. In that case, the mother, Melissa Vetterick had been awarded custody of a child. Later, due to some psychiatric problems that she had, the child was temporarily given to its father. Subsequently, the mother was released from hospitalization and sought to recover the custody of the child. During this period of litigation over the return of the child, Judge Gordon appointed an attorney, Paul Fletcher, to act as guardian ad litem for the child.

The Respondent was not the original attorney of record in this proceeding, but came into the case later, after orders that he thought were improper had been entered. When the Respondent entered the case he filed numerous motions attempting to have the order appointing the guardian ad litem vacated, as well as other orders vacated that had been entered prior to his entry into the case. During the course of hearings before Judge Gordon, there were heated and acrimoneous discussions between the Respondent and Judge Gordon.

On September 21, 1983, the Respondent, on behalf of his client, filed a Notice of Appeal from Judge Gordon's orders (SA 1). He subsequently filed a Petition for Writ of Mandamus in the Third District Court of Appeal, styled Vetterick vs. Gordon, case number 82-2169 (SA 2-13). On October 19, 1982, the District Court entered an order to show cause against Judge Gordon (SA 14-15) and an order consolidating the appeal with the Mandamus action and directing that all further pleadings be filed in the Mandamus action (SA 16).

On November 5, 1982, Judge Gordon, on his own motion, entered an order of recusal in the Vetterick case (A. 42). This was pointed out to the District Court of Appeal in the response filed on behalf of Judge Gordon by the Dade County Attorney (A. 38-42). The petition for Writ of Mandamus was denied on December 7, 1982 (A. 46).

On December 10, 1982, Judge Gordon wrote a letter to Chief Judge Phillip Hubbart of the Third District Court of Appeal

suggesting that the Respondent be admonished by the District Court for making, in his pleadings, inappropriate comments concerning the trial court's integrity (A. 14). This letter was circulated to the three judges on the panel, one of whom later called Judge Gordon and told Judge Gordon he thought Judge Gordon was being too sensitive (T. 115-118).

On December 22, 1982, the Respondent filed a Petition for Rehearing. In the petition, Respondent made the following, unsubstantiated charges against Judge Gordon:

> 10. This should have been the end of this case but that was not to be. Judge Gordon, on his own motion, made this case into a "federal case" and appointed Paul Fletcher as an Attorney ad Litem for the child. The judge also ordered the parties to pay Mr. Fletcher $1,000.00 within a week and whatever he chose to charge them. (A. 18-19). Judge Gordon later recused himself to avoid the appearance of impropriety and Paul Fletcher was removed by the new judge assigned to the case. (Exhibit Two attached).
>
> 11. The petitioner submits that <u>there can be no doubt that the only reason that Judge Gordon joined the grandparents in this action and appointed Paul Fletcher to be the attorney for the child was so Judge Gordon could give one of his cronies a political appointment and for no other reason</u>. This action by Judge Gordon does not reflect the actions of the vast majority of Circuit Judges and should be considered an abuse of his discretion by this Court.
>
> (A. 50)

In his own testimony, Respondent admitted that Judge Gordon's appointment of Paul Fletcher as guardian ad litem was not a political appointment (T. 389-390). Nevertheless, in his January 12, 1983, Response to Judge Gordon's Motion to Strike and impose sanctions (A. 54-56), the Respondent continued to make wholly unsubstantiated allegations of a similar nature:

> (B) The Respondent was the person who entered the order appointing the Attorney ad Litem and the Respondent was the person responsible for its content and whether or not it erodes the public confidence in the judiciary. Every knowledgeable person, including the press, knows that $1,000.00 is the maximum political contribution and that court appointed attorneys are only entitled to a reasonable fee. To order the mother and father of a child to pay a court appointed attorney the same amount as the maximum political contribution allowable to a judge, up front, and to order them to pay that attorney's fee without limitation is scandalous in itself.
>
> (C) The scandalous nature of the Respondent's order appointing the Attorney ad Litem is aggravated when the record before the lower court is examined. The father of the child is a retired police officer who is a house husband dependent on his stewardess second wife. He claims to have a negative income as set forth in his financial affidavit attached as Exhibit Five. The mother of the child is a housewife who is dependent on her telephone installer second husband as is set forth in her financial affidavit attached as Exhibit Six.

To order these people to make an indirect maximum political contribution to the Respondent and have them honor the blank check he gave to the attorney he appointed is outrageous!

* * * * *

(E) The Petitioner submits that the action of the Respondent in recusing himself is an example of Proverb 28:1:

"The wicked flee when no man pursueth..." Petitioner's counsel has known and liked the Respondent for many years and bears no hard feelings against the Respondent or the attorney ad litem he appointed as is more fully set forth in Exhibit Nine attached. This of course does not mean that Petitioner's counsel would sit idly by and watch his client get ripped off without trying to do something about it. To just sit idly by would be to enter into a conspiracy of silence and Petitioner's counsel has never been a part of that conspiracy. Rather, he tried to make the best of a bad situation and work around it. The motion to vacate the judge's order merely alleged that the Respondent was "unreasonable" in appointing the attorney ad litem. (See A-29 of the original petition). Petitioner's counsel also did not raise the issue of whether or not the lower court erred in appointing the attorney ad litem in the original petition partly due to his long acquaintence with the Respondent and partly due to the fact that he did not want to cloud the Besade issue concerning the granting of custody to grandparents with another issue. Once the Respondent raised the issue, Petitioner's counsel was duty bound to file his counter argument of why

the Respondent acted improperly in appointing an attorney ad litem. It was the Respondent who entered the order and it is his own fault that he was, as Shakespeare wrote, "hoisted with his own petard". Hamlet, Act III Scene 4. The Petitioner further submits that the reporting of a scandalous action by the Respondent to this Court does not make the report scandalous. If it was, then this Court would never be able to review a scandalous order entered by a lower court judge.

(F) Petitioner's counsel would also inform this Court that he is particularly knowledgeable and sensitive to the appointment of attorneys as attorney ad litem or guardian ad litem for children as he is a volunteer pro bono Guardian ad Litem in the Dade County Circuit Court Guardian ad Litem Project of the office of the State Courts Administrator and a consultant to that project as is more fully set forth in Exhibit Ten. He is also working with the Circuit Court to try to prevent another unfavorable Dade County Grand Jury Report as to the failure of the political spoils system to provide guardians ad litem for the elderly as is more fully set forth in Exhibit Eleven. He has been in contact with the press about problems concerning the appointment of attorneys but has not given the press the name of this case or the case number or the name of the judge. Suffice it to say that the press considers the action of any judge in ordering parents to pay a court appointed attorney $1,000.00 up front scandalous and newsworthy. Petitioner's counsel has, however, kept this out of the press. There has been enough negative publicity about former Circuit Judge Siegendorf and his appointments.

> The honest judges and honest lawyers do not need any more negative publicity about their brethern who stray from the path.
>
> (A. 60-62)

Again, in his own testimony, Respondent admitted that at the time he authored these pleadings he had no knowledge concerning the political affiliation or relationship between Mr. Fletcher and Judge Gordon and had no knowledge that Mr. Fletcher had ever made a campaign contribution to Judge Gordon (Tr. 392-393), and he freely conceded that he had no reason to doubt Judge Gordon's honesty or integrity (T. 444). In fact, Paul Fletcher testified that he had never made a political contribution to Judge Gordon (T. 126).

On its own motion, the District Court struck paragraphs ten and eleven of the Petition for Rehearing as being "impertinent and scandalous" (A. 77). Not content to leave well enough alone, and again without any evidence to support his allegations, the Respondent, on January 25, 1983, petitioned for rehearing of that order, stating:

> 7. The Petitioner further submits that, even if the lower court judge had entirely good intentions, the simple act of appointing an attorney ad litem, ordering the parents of a child to pay the attorney ad litem <u>the same amount as the maximum allowable political contribution to a judge</u> and ordering the parents to pay the attorney ad litem an attorney's fee without any limitation is an act that brings all judges and

attorneys into disrepute and lowers public confidence in the judiciary. The order, by itself, shows a callous attitude and insensitivity to public confidence in the judicial system.

8. Acts like the order entered by the lower court judge just add fuel to the fire of the public perception that the Dade County courts exist only for the rich - and those citizens unable to bribe a judge or make a maximum political contribution to his campaign can't get justice. This is especially acute when Dade County has been torn by repeated riots and scandals involving judges.

9. The Petitioner submits that to strike paragraphs 10 and 11 as scandalous, when anyone with any common sense knows that they are truthful and fair comment in response to the argument of the attorney ad litem that he was properly appointed, would not engender public confidence in the courts and require dedicated attorneys to be less than honest or to engage in a conspiracy of silence about corruption in the courts.

10. This is a situation where Jon Gordon has been hoisted with his own petard. Hamlet Act III. A petard was a bomb and this means that he has or will be blown up by his own bomb. There is no reason why other judges should be caught up in the blast.

(A. 80)

This Petition for Rehearing was, itself, stricken by the District Court of Appeal (A. 82).

Thereafter, Judge Gordon, pursuant to Fla.Bar.Integr.Rule, art. XI, Rule 11.14, directed the State Attorney for the Eleventh Judicial Circuit to file disciplinary proceedings against the Respondent. Such a motion was filed on February 9, 1983 (A. 1-5) and Judge Vann was assigned to try the case (SA. 20). Various motions filed by the Respondent were denied and the case went to trial. In his final order, Judge Vann noted that:

> It is primarily on the pleadings that Mr. Cerf filed more than the words spoken in proceedings before Judge Gordon that brought about this action.
>
> (A. 35)

Judge Vann detailed what pleadings he relied upon in his order (A. 32-35). He then made the following finding:

> In the testimony before me that encompassed six different hearings, there was much irrelevant testimony, as well as documents of no relevant value, admitted by me in these proceedings. The testimony of David Cerf was repetitious, rambling, and he apparently did not comprehend that most of his testimony was not pertinent to issues before this court. Cerf holds himself out to be an expert in appellate procedure and in particular the use of extraordinary writs, to attempt to force trial judges to rule favorably with him. He testified that he gives lectures in which he tells those in attendance that he uses colorful words to catch the attention of the appellate court.

The record of the pleadings filed and the appellate court's striking of certain portions of his pleading as being scandalous and impertinent, clearly shows that the conduct of David Cerf in filing such pleadings was irresponsible, impertinent, scandalous, and totally lacking in foundation for the truth or voracity (sic) of these pleadings.

Mr. Cerf attempted to create the impression that Judge Gordon had appointed Paul Fletcher because he was, as quoted from Cerf, "A political crony", and that Judge Gordon had awarded him a thousand dollars to repay him for a political contribution. The records shows that Mr. Fletcher had never contributed anything to Judge Gordon and that Judge Gordon had accepted no contributions from any lawyer. The record shows that Paul Fletcher had represented Judge Gordon at one time when Judge Gordon bought and sold a home and for that service Judge Gordon had paid him a fee of eight hundred dollars. In his testimony, Cerf stated that Judge Gordon as well as Judge Thomas Tester were not, "square shooters". Throughout the proceeding, Mr. Cerf referred to perception of the public and perception of the press as an excuse, an apparent excuse, for the use of some of the language that he used in the pleadings. However, there was no evidence of what the public perception was, or the perception of the press, except for Mr. Cerf and from a Reverend Thedford Johnson, a black minister, who felt that most black people think that white politicians including judges are dishonest.

It is my finding that the Respondent did violate Cannon 1 EC 1-5, D.R.1 - 2 (5) in his conduct

> before the trial court and in filing pleadings of such a nature before the appellate court, and in his testimony at the proceedings of this action.
>
> (A. 35-36)

It must be noted, that even after entry of the judgment, the Respondent has continued to make personal attacks on Judge Gordon in a Motion for Rehearing filed by him on September 14, 1983 (SA 17-19), which motion was abandoned when he filed his Notice of Appeal (A. 37) and in his brief before this Court.

Petitioner respectfully reserves the right to further amplify these facts in the argument portion of its brief.

ARGUMENT

I

THE RESPONDENT/APPELLANT HAS FAILED TO DEMONSTRATE ANY REVERSIBLE ERROR BASED UPON THE CIRCUIT JUDGE'S DENIALS OF HIS PRETRIAL MOTIONS.

At the outset, the Petitioner wishes to place the Respondent's contentions in their proper context by emphasizing that the Motion to Discipline the Respondent and the lower court's judgment finding the Respondent guilty of the charged disciplinary violations were primarily predicated upon statements made by the Respondent in pleadings filed in the Third District Court of Appeal on December 27, 1982 (A. 50), January 12, 1983 (A. 60-62) and January 25, 1983 (A. 80), statements which the Respondent later admitted he had made with knowledge that they were false or with reckless disregard of whether they were false or not (T. 389-393, 444).[1] In essence, there are no factual disputes with regard to the gravamen of the disciplinary violations charged against the Respondent. It is undisputed that in these pleadings he falsely accused Judge Gordon of acts of political corruption without any factual support for his allegations. In light of these facts, the Petitioner submits

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[1] Though not directly pertinent to bar disciplinary proceedings, the Petitioner notes that this is the standard by which a public official may prove "actual malice" so as to justify an award of damages in a libel action. See e.g. New York Times Co. v. Sullivan, 376 U.S. 254 (1964); Miami Herald Publishing Co. v. Ane, 423 So.2d 376 (Fla. 3d DCA 1982).

that the Respondent's pretrial motions were properly denied and that, in any event, he has failed to demonstrate any basis for this Court to reverse the final judgment.

MOTION TO DISMISS

The primary contention advanced by the Respondent is that Judge Gordon was somehow barred from referring this matter to the State Attorney for the purpose of filing disciplinary proceedings pursuant to Fla.Bar.Integr.Rule, art. XI, Rule 11.14 (hereinafter referred to simply as Rule 11.14), because the District Court of Appeal had declined to take similar action in response to Judge Gordon's letter of December 6, 1982. Unfortunately for the Respondent, his argument is fatally flawed, both legally and factually.

Factually, it must be noted that at the time Judge Gordon wrote his letter to the District Court of Appeal and was orally told by Judge Jorgenson that he was being "too sensitive", the Respondent had not yet falsely accused Judge Gordon of making political appointments for the purpose of extorting indirect campaign contributions from litigants. These scurrilous and totally false accusations were first made by the Respondent in his Petition for Rehearing filed on December 22, 1982 (A. 47-50) and in his response to the motion to strike and second Petition for Rehearing, filed on January 12, 1983 (A. 57-64) and January 26, 1983 (A. 78-81) respectively. The fact that the District Court chose not to publicly admonish the Respondent for making inappropriate comments reflecting upon the character

and integrity of Judge Gordon in his earlier pleading, see City of Hollywood v. Zinkel, 283 So.2d 581 (Fla. 4th DCA 1973), cannot serve to excuse his subsequent conduct.

It must be noted that the Judges of the District Court of Appeal obviously did not feel that they were being "to sensitive" when, on the Court's own motion, they struck paragraphs ten and eleven of the Respondent's Petition for Rehearing "as being impertinent and scandalous" (A. 77) or when they struck the entire Petition for Rehearing which had been filed by the Respondent on January 26, 1983 (A. 82). Apparently, the Respondent believes that the fact the District Court of Appeal declined to take more drastic action against him somehow barred the Circuit Court from acting. Such is not the law in this State.

The alternative means by which an attorney in this State may be disciplined were recently reiterated by this Court in Burns v. Huffstetler, 433 So.2d 964 (Fla. 1983) at 965:

> There are three alternative methods for the disciplining of attorneys, and the first two procedures derive directly from this Court's delegation of its power to regulate the practice of law in Florida, as conferred by article V, section 15, Florida Constitution. The first alternative is the traditional grievance committee-referee process in which an attorney is prosecuted by The Florida Bar under the direction of the Board of Governors. Under this procedure, sanctions are imposed by the Supreme Court after the Court

considers the referee's recommendations. See Fla.Bar.Integr. Rule, art. XI, Rules 11.02-11.13. The second alternative is a procedure initiated by the judiciary with the state attorney prosecuting. Judgment is entered by the trial court and is subject to review by the Supreme Court. See Fla.Bar.Integr.Rule, art. XI, Rule 11.14. The third alternative is the exercise of the inherent power of the courts to impose contempt sanctions on attorneys for lesser infractions, a procedure which this Court expressly approved in Shelley v. District Court of Appeal, 350 So.2d 471 (Fla. 1977). We stated in Shelley:

> [T]he imposition of a summary contempt sanction is a proper and necessary disciplinary tool to aid a judicial tribunal in carrying out its necessary court functions.... The contempt power is a proper and historical alternative to existing formal disciplinary proceedings. The Integration Rule of The Florida Bar, Article XI, Rule 11.14, providing for disciplinary proceedings in circuit courts, is no bar to the use of this summary power in cases of lesser infractions of the various rules governing the practice of law which affect the necessary operations of a court. Id. at 472-73 (emphasis by the court).

The utilization of these alternate methods of disciplining attorneys is not necessarily mutually exclusive. Thus, while the District Courts of Appeal have the authority to hold attorneys in contempt, Shelley v. District Court of Appeal,

350 So.2d 471 (Fla. 1977), or issue public reprimands, Mitchell v. State, 433 So.2d 632 (Fla. 1st DCA 1983); Ferrer v. State, 434 So.2d 15 (Fla. 1st DCA 1983), such action by the Court does not preclude the filing of formal disciplinary proceedings by the Florida Bar through the traditional grievance committee-referee process or by the Court through the use of Rule 11.14. Id.

The only limitation with respect to the election of what forum in which disciplinary proceeding should be instituted is contained in Rule 11.14 itself. Subsection (1) of the Rule provides:

> **(1) Disciplinary matters in district courts of appeal, circuit courts and county courts.** Whenever it shall be made known to any judge of a district court of appeal, a circuit court, or a county court in this state that a member of The Florida Bar practicing in any of the courts of his district, judicial circuit, or county has been guilty of any unprofessional act as defined by this Integration Rule or the Code of Professional Responsibility adopted by this Court, such judge may direct the state attorney for the circuit in which such attorney shall have his office to make in writing a motion in the circuit court in the name of the State of Florida to discipline such attorney setting forth in the motion the particular act or acts of conduct for which the attorney is sought to be disciplined.

Subsection (7) states:

> **(7) Concurrent jurisdiction of The Florida Bar.** The jurisdiction of the district courts of appeal and circuit courts created by this rule and the procedure herein outlined shall be concurrent with that of The Florida Bar under the preceding portions of these Rules of Discipline. The forum first asserting jurisdiction in a disciplinary matter shall retain the same to the exclusion of the other until the final determination of the cause.

Under these Rules, the judges of the District Courts of Appeal and the judges of the Circuit Courts have concurrent jurisdiction with the Florida Bar in disciplinary matters. The Florida Bar v. Tannenbaum, 240 So.2d 302 (Fla. 1970). Accordingly, it is apodictic that the mere fact that the District Court of Appeal declined to reprimand the Respondent or to, itself, refer the matter to the State Attorney cannot act as a bar to Judge Gordon invoking the provisions of Rule 11.14. Ample grounds existed for Judge Gordon to take the action he did in referring this matter to the State Attorney and Respondent's Motion to Dismiss was properly denied on this ground.

The Motion to Dismiss based upon vague allegations of a denial of procedural due process (A. 7-9) was also properly denied. The Motion to Discipline the Respondent was extremely specific as to what conduct and specific statements made by the Respondent in his pleadings formed the basis for the charged violation of the Code of Professional Responsibility (A. 1-5).

The making of false accusations far less reprehensible than those made by the Respondent in this case have been held to be prejudicial to the administration of justice and violative of D.R. 1-102(5). See e.g. The Florida Bar v. Saphirstein, 376 So.2d 7 (Fla. 1979); The Florida Bar v. Weinberger, 397 So.2d 661 (Fla. 1981). This Respondent certainly cannot claim that he was not put on notice as to what charges had been lodged against him and why.

MOTION TO STRIKE/MOTION FOR SUMMARY JUDGMENT

Petitioner will address the Respondent's contentions with regard to these two motions together and submits that the lower court quite properly denied them.

First, Petitioner submits that Judge Vann correctly recognized that this proceeding had not been instituted pursuant to Fla.Bar.Integr.R. Art. XI, Rule 11.06 (hereinafter referred to simply as Rule 11.06), but was brought under Rule 11.14, and that this latter provision did not provide that the Rules of Civil Procedure should apply (T. 10). Rule 11.14 provides only that the State Attorney must institute proceedings by filing a motion in the Circuit Court and that the accused attorney must file an answer within ten (10) days. Rule 11.14(1) & (2). The case then proceeds to trial before a designated circuit Judge. Rule 11.14(3). Judge Vann properly followed this procedure in this case.

Moreover, even if Respondent were correct in his assertion that the procedural provisions of Rule 11.06 should

apply, his motions still, properly were denied. Rule 11.06(3)(a) states as follows:

> A disciplinary proceeding is neither civil nor criminal but is a quasi-judicial administrative proceeding. The Florida Rules of Civil Procedure apply except as otherwise provided in the Integration Rule.

Rules 11.06(5)(b)(c) and (d) specifically enumerate what motions and other pleadings may be filed by a Respondent and the manner of their disposition:

> (b) Answer and motion. Respondent may answer the complaint and, as part thereof or by separate motion, may challenge only the sufficiency of the complaint, the jurisdiction of the forum, and the issue of confidentiality as provided in (d) below. All other defenses shall be incorporated in respondent's answer. All pleadings of the respondent must be filed within 20 days of service of a copy of the complaint upon him.
>
> (c) Reply. If respondent's answer shall contain any new matter or affirmative defense, a reply thereto may be filed within 10 days of the date of service of a copy upon bar counsel, but failure to file such a reply shall not prejudice The Florida Bar. All affirmative allegations in the respondent's answer shall be considered as denied by The Florida Bar.
>
> (d) Disposition of motions. Hearings upon motions may be deferred until the final hearing; and, whenever heard, rulings thereon

> may be reserved until termination of the final hearing, but a motion to maintain confidential status for the protection of a client which is filed within 20 days after the service of the complaint on the respondent shall be decided before trial and the proceedings shall remain confidential until an order is issued on the motion.

It is apparent that motions to strike and motions for summary judgment are specifically precluded by the above-quoted provisions and that all defenses which the Respondent sought to raise by these motions could only be asserted in his answer. Therefore, these motions properly were denied.

Finally, the above-quoted Rule also explicitly provides that the failure to reply to affirmative defenses shall not prejudice the moving party and that all affirmative defenses shall be considered as denied. Moreover, the referee is specifically authorized to defer hearing upon any motions filed until the final hearing. Under these provisions, assuming that they should be held applicable to a Rule 11.14 disciplinary proceeding, the State Attorney was not required to traverse or oppose either of the Respondent's motions, and it was not necessary for the State Attorney to file counter affidavits. Finally, the trial judge was eminently correct in electing to proceed to a final hearing at which all issues could be resolved.

MOTION FOR SANCTIONS

There is no constitutional right to discovery. Perry v. State, 395 So.2d 170 (Fla. 1980). Here the lower court

correctly ascertained that Rule 11.14 did not provide the Respondent with the right of discovery (T. 12-13).

Moreover, even if the Respondent was correct in his assertion that the discovery provision of Rule 11.06(3)(b) should be read into Rule 11.14, he still cannot show any abuse of discretion by Judge Vann. As pointed out earlier, there is and can be no dispute that the respondent made accusations of political corruption against Judge Gordon in his pleadings filed in the Third District Court of Appeal, and that, at the time these accusations were made, the Respondent had no factual basis for believing them to be true.

At the pretrial hearing in this case, Special Assistant State Attorney Norman Schwarz advised Judge Vann and the Respondent that the case had been filed at the direction of Judge Gordon (T. 28) and apprised the Court and Respondent as to what evidence he intended to introduce at trial (T. 28-30) and what witnesses he intended to call (T. 37-38). Thus, the Respondent was, in effect, given the discovery he demanded in paragraphs 1 through 6 and 8 through 12 of his demand for discovery (A. 22-24). With regard to the remainder of his demand, suffice to say that Judge Vann correctly ascertained the nature of these proceedings:

> It appears to me there's just a question of what was said orally and what was written; and I think that's all I'm -- my assignment is: to see whether or not these statements that were made were made and if the things that were set forth in pleadings were so.
>
> (T. 33)

Judge Vann perceptively concluded that what the Respondent was demanding -- lists of political contributors to Janet Reno and Jon Gordon, of "money, services or endorsements" of Janet Reno and Jon Gordon, and of court appointments of Paul Fletcher and Norman Schwarz -- were all irrelevant to the narrow issues he was appointed to hear (T. 24-25). In truth, the additional discovery sought by Respondent was calculated only to vex and harass the parties and the Court and was properly denied.

Lastly, it must be noted that the Respondent has not even alleged, much less cited to any portion of this record to show, how the trial judge's ruling could conceivably have prejudiced his ability to prepare a defense. As pointed out earlier, it is undisputd that he made the accusations against Judge Gordon in his pleadings and it is undisputed that, at the time he filed the pleadings, he knew these accusations were false or, at the very least, had no factual basis for believing them to be true. Even if he had gotten the additional discovery he requested, this would not have provided any defense. In fact, the testimony presented at the hearing conclusively established the actual falsity of his accusations. Accordingly, Respondent has not even come close to demonstrating a legally cognizible basis to reverse the judgment of the lower court.

JURY TRIAL

Respondent cites no authority in support of his argument that he was entitled to a jury trial. No such authority exists under the Integration Rules promulgated by this Court.

II

THE CIRCUIT COURT'S JUDGMENT FINDING THE RESPONDENT/APPELLANT GUILTY OF A VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY IS AMPLY SUPPORTED BY OVERWHELMING EVIDENCE.

In its statement of the case and facts, the Petitioner has related the acrimoneous and libellous accusations which were directed at Judge Gordon, by the Respondent David Cerf, Jr., in paragraphs ten and eleven of his December 23, 1982 Petition for Rehearing (A. 50), in his January 12, 1983 Response (A. 60-62), and in his January 25, 1983 Petition for Rehearing (A. 80), and there is no need to repeat them here. Suffice to say, without any factual basis for believing his charges to be true (T. 126, 389, 393, 444), the Respondent made wild and unsubstantiated claims that Judge Gordon had appointed Paul Fletcher Guardian ad Litem in the Vetterick matter for the sole reason of giving "one of his cronies a political appointment" (A.50), that the $1,000 fee for the Guardian ad Litem was set by Judge Gordon in order to extort an indirect political contribution from the litigants in the case (A. 60-62), and that the litigants were being forced to pay this fee because they were not rich and, therefore, were "unable to bribe a judge or make a maximum political contribution to his campaign" (A.80). Furthermore, the Respondent threatened to take his vicious and scurrilous charges to the press (A. 60-62).

If an attorney has evidence that a judge has engaged in acts which are violative of the State or Federal criminal laws or the Code of Judicial Conduct, then it is his responsibility, even his sacred duty, to present his evidence to the proper prosecuting authority and/or the Judicial Qualifications Commission. However, when a lawyer who has no such evidence elects to make absolutely false charges of political corruption against a Circuit Court Judge in his pleadings, this amounts to a grievous violation of the Code of Professional Responsibility. As this Court stated in State ex rel the Florida Bar v. Calhoun, 102 So.2d 604 (Fla. 1958) at 608:

> The conclusion which we here reach takes cognizance of the proposition that a judge as a public official is neither sacrosanct nor immune to public criticism of his conduct in office. However, the administration of the judicial process as an institution of government is a sacred proceeding. Webster suggested that "Justice is the greatest interest of man." Washington himself while laboring as an architect of our governmental structure laid out the specification that "The administration of justice is the firmest pillar of government." This concept could be supported by corroborating evidence that has accumulated over the years.
>
> Admitting, therefore, the human weakness of judges as individuals but affirming our belief in the essentiality of the chastity of the goddess of justice we are impelled to the inescapable notion that any conduct of a lawyer which brings into scorn and disrepute the administration of

> justice demands condemnation and the application of appropriate penalties.
>
> It would be contrary to every democratic theorem to hold that a judge or a court is beyond bona fide comments and criticisms which do not exceed the bounds of decency and truth or which are not aimed at the destruction of public confidence in the judicial system as such. However, when the likely impairment of the administration of justice is the direct product of false and scandalous accusations then the rule is otherwise.

No one would seek to curtail the Respondent's right to use "colorful language" in his appellate pleadings or to level appropriate criticism against the trial judge. The Respondent, however, does not possess a poetic license to falsely slander a circuit judge with untrue accusations of political corruption and bribery, for such accusations represent more than a personal attack upon that particular judge, but casts slur and insult upon the judiciary as a whole. The Florida Bar in re Shimek, 284 So.2d 686 (Fla. 1973). It demands condemnation and the application of appropriate penalties. The Florida Bar v. Weinberger, 397 So.2d 661 (Fla. 1981); The Florida Bar v. Saphirstein, 376 So.2d 7 (Fla. 1979), The Florida Bar v. Stokes, 186 So.2d 499 (Fla. 1966).

III

THE RECOMMENDATION OF THE TRIAL JUDGE THAT THE RESPONDENT/APPELLANT BE GIVEN A PUBLIC REPRIMAND IS FAR TOO LENIENT DUE TO THE FACT THAT HE HAS NOT EXHIBITED ANY REMORSE, BUT RATHER, HAS CONTINUED, IN HIS SUBSEQUENT PLEADINGS FILED IN THE LOWER COURT AND IN THIS COURT, TO ENGAGE IN A COURSE OF CONDUCT WHICH VIOLATES THE SAME PROVISIONS OF THE CODE OF PROFESSIONAL RESPONSIBILITY of WHICH HE WAS FOUND GUILTY.

One would think that after having been found guilty of a violation of the Code of Professional Responsibility due to his having made false accusations against Judge Gordon, the Respondent would exhibit some remorse for his conduct. In The Florida Bar v. Weinberger, supra., a case in which an attorney was disciplined for making similar irresponsible and intemperate attacks on the judiciary in various pleadings and public statements, this court held that a public reprimand was the appropriate discipline only because the attorney apologized to the judges involved and offered to take further action to exhibit his remorse. Based upon this and other authorities, had the Respondent exhibited any remorse, and if he made a public apology to Judge Gordon, then the petitioner would have agreed with Judge Vann's recommendation that the Respondent's punishment be limited to a public reprimand.

The Respondent, however, has not exhibited any remorse and has, to the contrary, continued to make false and scandalous

accusations against the judiciary. In his Petition for Rehearing of Judge Vann's order, which was later abandoned, the Respondent wrote:

> 6. The Respondent also notes that the action of Judge Gordon in writing the ex-parte letter to the Court of Appeal may have tied their hands due to the very serious nature of such a communication. This Court may recall that at least one judge was removed from office for making a telephone call to another judge about a case and that several judges were censured for their handling of ex-parte communications.
>
> 7. The Respondent also submits that the Court of Appeal may not have wanted to open this "Pandora's Box" in public in view of the actions of Judge Gordon and what Judge Gordon told Reverend Ted Place's wife about when he would return the child to its mother. The Court of Appeal is also in a better position than this Court to determine what is permissible in that court and what kind of a Judge Jon Gordon is or is not. According to them, Judge Gordon is "too sensitive".
>
> 8. According to Chief Judge of the Dade County Circuit Court, the proper solution to this complaint by Jon Gordon is for the Respondent to make a private apology to Judge Gordon, they should shake hands and go forward from there. A public reprimand will not serve that purpose.
>
> 9. The Respondent has learned a lesson from his experience before this Court and will no longer try to seek appellate remedy for a trial judge's outrageous actions as he

> has done in the past. It is now clear to him that the proper remedy is to take the judge to the JQC and let the chips fall where they may. This lesson will also not be lost on other attorneys throughout the state.
>
> 10. The Respondent has also done everything he can to keep this situation from public scrutiny. If this does come to the attention of the public through a public reprimand then someone, other than him, will be responsible if that leads to the removal of Judge Gordon from office for his actions, the censure of the judges of the Court of Appeal for the way they handled the ex-parte communication from Judge Gordon and a Grand Jury investigation of the way that local judges appoint guardian ad litems in domestic cases.
>
> (SA 18-19)

What is, sadly, even more astounding is that the Respondent has the intestinal fortitude[(2)] to write the following at pages 14 and 15 of his brief before this Court:

> The entire record shows that the Respondent was more than fair with Judge Gordon. It should be kept in mind that this entire record was created by Judge Gordon, who:
>
> 1. Told Pat Place that he would return the child to its mother when she was released from the hospital.

[(2)] Purely as a matter of personal taste, the present writer would have used the term "Chutspah". Cf. Mims v. Mims, 305 So.2d 787 (Fla. 4th DCA 1974), n. 1 at 789.

2. Did not return the child to its mother but did give her a legal services burden of at least $1,000.00 up front for the services of a Guardian ad Litem from Homestead, Florida where the judge had received $1,000.00 in political contributions. (Respondent's Exhibit "P").

5. Recused himself after the Respondent filed a motion for the Guardian ad Litem to produce records of any political contributions and other court appointments.

6. Recused himself after the Respondent was not intimidated by his threat of contempt if the Mandamus action was not dropped.

This is also the same Judge Gordon who bullied the Mayor of the City of South Miami, Florida for not filing a written motion for a continuance of an uncontested divorce when he had to be out of town on City business. (A. 83-85). Thereafter this same judge held his own criminal contempt hearing for Mayor Block and put him in jail for his crime. (A. 86-88). Thereafter, Mayor Block would, of course, have this judge recuse himself from any case that he was counsel in. (A. 89, 91). In the meantime this judge would try to buy off Mayor Block and try to regain his favor by appointing Mayor Block as Guardian Ad Litem in several cases! (A 90, 92).

> It should be noted that Mayor Block's opposing counsel in the criminal contempt fiasco was Sandor Genet who was counsel of record for the mother in this case until shortly after Mayor Block was put in jail. (Respondent's Exhibit "I").
>
> The Respondent is not proud of the fact that he stood up to this judicial bully but he is also not ashamed of what he did or wrote about this particular judge. Hopefully this will permit Judge Gordon to see the Fourth Man in the Fire. Daniel 3:25.

The Petitioner challenges the Respondent to show any evidentiary support in this record for the inference he again raises that Judge Gordon's appointment of Paul Fletcher as Guardian ad Litem was politically motivated or for his wild and scurrilous statements to the effect that Judge Gordon "bullied" Mayor Block and then later tried "to buy off Mayor Block and try to regain his favor."

In the Florida Bar v. Saphirstein, supra, this Court, in overruling as too lenient a referee's recommendation that an attorney be given a public reprimand for conduct similar to that involved in this case, stated:

> A disciplinary penalty must be fair to society and protect it from unethical conduct while not denying the public the services of a qualified lawyer by an unduly harsh discipline. It must be fair to a disciplined lawyer by punishing him for the misconduct while at the same time encouraging rehabilitation, and it should be severe enough to deter others from

> similar misconduct. The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970). With this view in mind, we find the appropriate discipline to be imposed in the present case is a sixty-day suspension.
>
> Id. at 8.

In light of the posture of this case, similar disciplinary action by this Court is warranted. See also The Florida Bar v. Weinberger, supra at 662-663 (Alderman, J. concurring in part, dissenting in part).

CONCLUSIONS

Based upon the foregoing reasons and citations of authority, this Court should approve the finding of Judge Vann that the Respondent has violated the Code of Professional Responsibility, but should also reject the recommended discipline because it is too lenient and impose a period of suspension from the practice of law which is commensurate with the gravity of the offense and the Respondent's continued offensive conduct.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was forwarded to David F. Cerf, Jr., Esquire, Suite 1011, City National Bank Building, 25 West Flagler Street, Miami, Florida 33130, on this 6th day of December, 1983.

IRA N. LOEWY
Assistant State Attorney