ORIGINAL

IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,183

DAVID CERF, :

Appellant, :

vs. :

STATE OF FLORIDA, :

Appellee. :

:

FILED
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REPLY BRIEF OF APPELLANT

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REPLY TO STATEMENT OF THE FACTS

The Appellant presented his facts in the argument section of his brief as he was taught to in a recent seminar put on by the Dade County Bar Association and the judges of the Third District Court of Appeal at the court of appeal. A complete statement of the facts in this case would take up about fifty pages and only be confusing.

The Appellant objects to the Appellee's submitted statement of the facts as being incomplete and inaccurate as is more fully set forth in the reply brief in great and specific detail.

ARGUMENT ONE

THE LOWER COURT ERRED IN DENYING THE RESPONDENT'S PRE-TRIAL MOTIONS

The Appellant presented five arguments under this section in its Initial Brief of Appellant. The Appellant will reply to the Appellee's arguments, if any, in the following numbered sections:

I. MOTION TO DISMISS

The Appellant argued on page 7 of its brief that the use of the word "or" in Rule 11.14 means that there was a choice between alternatives and that Judge Gordon and his attorney having chosen to ask the Third District Court of Appeal to discipline David Cerf for his actions in the district court of appeal had chosen between asking the district court to discipline David Cerf rather than asking the circuit court to discipline David Cerf.

The Appellee did not respond directly to this argument and did not try to distinquish the Appellant's authority. The argument set forth by the Appellee is that since the jurisdiction of the Florida Bar is concurrent with the jurisdiction of the alternative set of judges listed in Rule 11.14 that it is "apoditic" that there is concurrent and consecutive jurisdiction among the listed judges.

The Appellant replies to that argument by stating that this is not what Rule 11.14 states and that argument carried forward to its apoditic conclusion would lead to a ridiculous result where a disgruntled judge could ask the district court of appeal to discipline an attorney and after failing in the district court the same disgruntled judge could ask a circuit judge to discipline the same attorney and after failing in the district court and the circuit court the same disgruntled judge could ask a county judge to discipline the same attorney under Rule 11.14. Further, none of the cases cited by the Appellee even comes close to supporting such a ridiculous argument.

The Appellee also conveniently forgets to include in his argument that after Judge Gordon wrote an ex-parte letter to the district court that his attorney Roy Wood filed a formal motion for the district court to discipline David Cerf. (A 54-56). The Appellee also conveniently forgets to include in his argument that Judge Gordon asked the district court not to embarrass him by formally denying his motion to discipline David Cerf. (A -14).

The Appellant therefore submits that his motion to dismiss should have been granted. Judge Gordon made his choice to try to have the district court discipline David Cerf and, having failed in the court of appeal, should have been man enough to accept his failure. Rule 11.14 should not be used for a personal vendetta.

II. MOTION TO STRIKE

The Appellant argued on page 8 of his brief that the lower court (Judge Vann) should have granted his untraversed motion to strike the complaint. The Appellee argued on page 20 of its brief that since Rule 11.06 enumerates certain motions that this precludes any other type of motions such as a motion to strike sham pleadings and a motion for summary judgment. This would be a strict interpertation of the rules which would seem to be contrary to the liberal sense of justice involved in bar proceedings. Further all courts have the inherent power to strike sham pleadings. Guaranty Life Insurance Company of Florida v. Hall Brothers, 189 So.243 (Fla. 1939) Rhea v. Hackney, 157 So. 190 (Fla. 1934).

III. MOTION FOR SUMMARY JUDGMENT

The previous argument would also apply to the motion for summary judgment. The Appellant submits that the Florida Bar has used a similar procedure concerning requests for admissions in Florida Bar v. Hollingsworth, 376 So.2d 394 (Fla. 1979). Since the Bar can use this procedure it stands to reason that the accused may also use a similar procedure.

For these reasons and the citation of authorities in the Initial Brief of Appellant the Appellant submits that his motion to strike and motion for summary judgment should have been granted and the lower court erred in denying same.

IV. MOTION FOR SANCTIONS

The Appellant argued on page 10 of his brief that the lower court should have granted his motion for sanctions for failure to make discovery. The Appellee argued on page 21 of his brief that there is no constitutional right to discovery and cited a case pertaining to failure to allege a predicate for production of police reports in a criminal case. The Appellee also argues that the Appellant admitted that he made false statements about Judge Gordon which he knew were false when he made them. Nothing could be farther from the truth and the record before this Court!

The Appellee states on page 8 of his brief that the Appellant admitted on T 392-393 that he made false statements about Judge Gordon knowing that they were false. The transcript reveals that on cross-examination the Appellant stated that he did not check the records in Tallahassee, Florida for political contributions but did check the Dade County records and found that Judge Gordon had received $1,000.00 in political contributions from Homestead, Florida where his court appointed Guardian ad Litem had law offices and he wanted to inquire into the contributions.(T-393). The Appellant had previously made a request for discovery as to any contributions in cash or kind by Paul Fletcher to Judge Gordon and any other court appointments. (A-23 ¶¶12-14). The lower court judge denied all discovery to the Appellant about this.

The Appellant also noticed Judge Gordon and Paul Fletcher for their deposition and they were to bring these documents with them to their depositions. (A-25) They failed to appear at their depostions (A-29) without any motion made for a protective order and the Appellant moved for sanctions. (A 22-29). The lower court clearly erred in denying the Appellant discovery and sanctions for failure to make discovery on matters that the Appellee, himself, inquired about at the hearing.

The Appellant has always contended that the circumstances around the appointment of Paul Fletcher and the rulings and actions by Judge Gordon indicate the appearance of impropriety by the judge and support his argument. This is nothing more than the judge did admit when he recused himself on his own motion on A-17:

"... in order to avoid the appearance of impropriety..."

Judge Gordon also recused himself after a motion was made for the production of any records of political or other contributions to the judge. (A-89). Judge Gordon can hardly try to hide the truth and then complain about something not being true. The purpose of discovery is to get to the truth and discovery denied is truth denied. When a judge, or anyone else, causes a lawsuit to be filed against anyone else he should submit to discovery as to the truth or drop his lawsuit. If he won't let the truth be known or drop his lawsuit it should be dismissed. This is 1984 it is not the days of the reign of Henry VIII when there was a Star Chamber. It is also not the days of the Inquisition. Modern methods of discovery protect anyone from an abuse of discovery and the lower court judge should have permitted same.

V. DEMAND FOR JURY TRIAL

The Appellant argued on page 10 that a jury trial of his peers should have been granted. The Appellee merely argued that the Integration rules do not provide for same. It is also true that the rules do not prevent same. These are modern times when jury trials are granted for minor offenses and matters of little value. The Federal Constitution provides for jury trial for amounts over $25.00. Is the privilege of practicing law of any less value? What is wrong with having a jury of laymen determine whether or not a lawyer has lowered public confidence in the judiciary. The Appellant submits that the failure of justice in this case due to the actions of Judge Gordon and the Appellant's attempts to right the wrong done to this mother and her child would earn him one of the quickest "not guilty" verdicts ever recorded.

SUMMARY

The Appellant submits that the lower court erred in denying his pre-trial motions. The Appellant further submits that the Rule 11.14 procedure is so fundamentally unfair and unnecessary that this Court should abolish it as the Star Chamber was abolished. There is no good reason for the rule to exist since the Florida Bar has a professional disciplinary staff. There are only bad reasons for this rule which has been used in this case as a shield to protect a cowardly judge and a sword against a brave attorney.

ARGUMENT TWO

THE LOWER COURT'S JUDGMENT WAS ERRONEOUS, UNLAWFUL, UNJUSTIFIED AND UNFAIR

The Appellant argued on page 11 of his brief that the lower court erred in entering its final judgment because the lower court ignored relevant testimony and misconstrued and misinterperted the legal effect of the evidence in the case. The Appellee contends that the Appellant's arguments in the Third District were made without any factual basis for believing them to be true. The Appellee relies on T 126, 389, 393 and 444 for his contention. A review of the 517 page transcript and the other exhibits show that the Appellee is clearly mistaken.

The Appellant did not testify on T-126: that testimony belonged to Paul Fletcher. The Appellant testified on T-389 and 390 that to call Mr. Fletcher's appointment a "political" appointment was a poor choice of word and a more accurate choice of word would have been to call Mr. Fletcher's appointment a "court" appointment. The Appellant, however, stated on T-390 on Line 19 "I will stand by the word." He also stated why he stood by the word "political" during his testimony beginning at T-304.

The Appellant testified on T-393 that he had not found any direct contribution by Paul Fletcher to Judge Gordon but that he would like to inquire as to the $1,000.00 that Judge Gordon received from Homestead, Florida where Paul Fletcher's law office was located.

The Appellant also testified time and time again throughout his testimony that his argument was based on the record in the child custody case from the first time that Judge Gordon told Pat Place that he would return the child to its mother when she got out of the hospital until Judge Gordon recused himself rather than go into the issue of the production of any record of direct or indirect political contributions by Paul Fletcher. He would, of course, preferred to have been able to take the deposition of Judge Gordon and Paul Fletcher but the trial court did not permit him to do so and inquire into their political connections, if any.

The Appellant testified on T-444 that nothing before the child custody case had caused him to question Judge Gordon's integrity or honesty. This the Appellant candidly admitted. The record also is clear that even during the contested child custody case and the appeal that he and Judge Gordon were on a friendly basis until the Appellant filed for a writ of mandamus and the District Court ordered Judge Gordon to show cause why the child should not be returned to its mother.

The Appellee also contended on page 24 of its brief that the Appellant threatened to take his arguments to the press and cited A 60-62. This is contrary to the record cited by the Appellee. The Appellant, in fact, stated that he had kept Judge Gordon's failings out of the press. (A-62). He has further stated that if the press does find out about this situation that someone, other than himself, will have to bear the responsibility for Judge Gordon's fate in the press as well as any other judge that is involved in these proceedings.

This situation is as transparent as the Emperor's new clothes. It is the naked truth that the reason for the Rule 11.14 proceeding is the Order to Show Cause that was entered against Judge Gordon and the excuse is the wording of the Appellant's pleadings.

The Appellee also contends that an attorney who attacks a judge should do so before the JCQ. The Appelllant has no problem with that statement. The problem is that the Appellant did not attack Judge Gordon.

The Appellant was hired to try to get a child returned to its mother. That is what he did. The Appellant filed for a writ of mandamus but did not even mention Judge Gordon and Paul Fletcher's cosy cosy arrangement.

Paul Fletcher, for reasons only known to himself and Judge Gordon chose to raise the issue of his appointment before the court of appeal and asked to intervene in the pending mandamus action to raise that issue. Paul Fletcher argued that he was properly appointed and David Cerf then presented the counter argument that he was improperly appointed. He also said why he thought the appointment was improper. This is hardly an attack, it is a defense of a client's position on appeal.

The Appellant also is mistaken about the target of an attack or defense during a petition for rehearing. The proper target in a petition for rehearing is the ruling of the appellate court. The argument is, in essense, how could you guys do such a stupid thing based on this record. What is wrong with you? You should follow the highest ideals of the law. You are the supervisor of the trial courts.

The Appellant has, for 15 years, filed strongly worded petitions for rehearings in the Third District. Respondent's Exhibit "N" concerning the Evergaldes Deer lawsuit is an example of what has passed muster in that court. The Court of Appeal for the Third District knows David Cerf and knows his pleadings. It has never before struck any of his pleadings and probably would not have struck any pleadings in this case except for Judge Gordon's ex-parte letter. Be that as it may, the court of appeal did strike two paragraphs out of about one hundred or so but did not choose to impose even the slightest discipline on David Cerf.

The Appellant considers the practice of law to be his ministry. State v. Dawson, 111 So.2d 427 (Fla. 1959). The Exhibits that were entered into evidence show that the Appellant:

1. Worked his way through law school, earned a tuition scholarship and graduated with honors in 2 and 1/2 years.
2. Served as an Assistant State Attorney General and participated in Continuing Legal Education programs.
3. Served with Reverend Ted Place on the Miami Mayor's Committee for Decency and earned the Mayor's praise.
4. Served as a Pro Bono Guardian ad Litem and received awards from the Dade County Bar Association for his service.
5. Is active in the Black Community and has received awards for his efforts to bring equal justice to all citizens.
6. Donates his legal services to local churches such as Reverend Ted Place's Faith Bible Church.

The testimony before Judge Vann of retired Circuit Judge Henry Balaban and others revealed that the Appellant is known as a fighter for justice and a defender of the poor and a friend to young attorneys who tries to set a good example for them and help them. He is also willing to work nights and weekends to win a case even while in the process of recuperating from a heart attack.

The Appellee lastly contends in his Section III that Judge Harold Vann was too lenient in givng the Appellant a public reprimand. If Judge Vann ever hears this he may sue counsel for the Appellee for libel. Judge Vann is a highly respected but tough judge who still chooses to wear a WWII crew cut haircut.

Judge Vann ran a tight ship when he was an active Circuit Judge and still does as the record before this Court reveals. To know Judge Vann is to respect and love the man even though he is a judical tyrant , loveable as he is. You always know where you stand with Judge Vann.

Judge Jon Gordon is also a judicial tyrant but not a loveable tyrant. He is more the sadistic type as Mayor Jack Block found out. The Appellant hopes that this modern day Nebuchadnezzar will reform after he sees how the Fourth Man in the Fire protects the Appellant but, even if the Appellant should get burned he will not bow down to this tyrant. This is, hopefully, also what the Florida Supreme Court expects of its members of the bar who are supposed to be men and women of character and integrity. False statements of remorse do not serve any public interest and are not warranted under the facts of this case.

The Appellant lastly submits the following decisions as to the degree of discipline, if any, that should be meted out to Appellant:

1.	Chief Judge Phillip Hubbart of the Third District Court of Appeal	NO DISCIPLINE
2.	Judge Natalie Baskin of the Third District Court of Appeal	NO DISCIPLINE
3.	Judge James Jorgenson of the Third District Court of Appeal	NO DISCIPLINE*
4.	Judge Daniel Pearson of the Third District Court of Appeal	NO DISCIPLINE
5.	Chief Judge Gerald Wetherington of the 11th Judicial Circuit	PRIVATE APOLOGY
6.	Retired Judge Harold Vann of the 11th Judicial Circuit	PUBLIC REPRIMAND

*Judge Jorgenson told Judge Gordon he was "too sensitive".

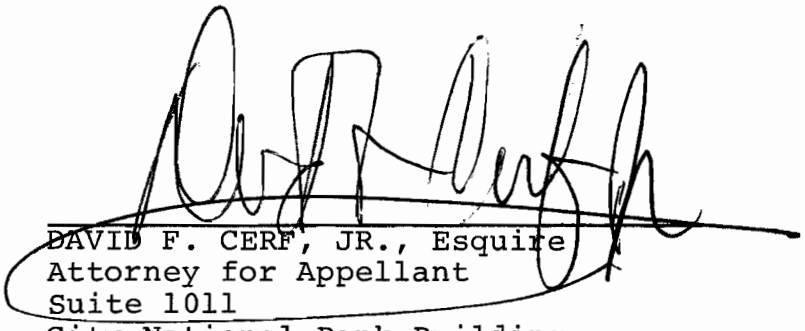
The truth of the matter is that the only thing that David Cerf is guilty of is doing the very best that he can for his clients. The Supreme Court of Florida should expect no more and no less of any member of the Florida Bar.

CONCLUSION

For the foregoing reasons the Appellant submits that the lower court erred and the public reprimand should be vacated and the motion to discipline the Appellant should be dismissed.

CERTIFICATE OF SERVICE

I certify that a copy of this reply brief was served on Ira Loewy, Assistant State Attorney, Attorney for Appellee, 1351 N.W. 12th Street, Miami, Florida 33125 on this the 3rd day of January 1984.



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