IN THE SUPREME COURT OF FLORIDA

64,333

THE FLORIDA BAR, re:

Petition to Amend Florida Bar Integration Rule, Section 11.02(4)(f) (Trust Fund Disbursements)

Case No

RESPONSE TO PETITION

Respondent HENRY P. TRAWICK, JR. answers the petition and alleges:

1. Respondent admits paragraphs 1, 2 and 3.

2. Respondent admits that the proposed amendment is as alleged in paragraph 4, and further answering the paragraph alleges that the proposed rule is vague, ambiguous and defective for the following reasons:

(a) Subparagraph (b) does not specify whether the check must be issued by a domestic institutional lender or can be issued by a foreign institutional lender although the distinction between the two is carefully drawn in each other subparagraph.

(b) The distinctions attempted to be made in the instruments described in subparagraphs (c) and (d) become irrelevant in the light of the last paragraph of the proposed amendment.

(c) Under existing Florida law both certified and cashiers checks are treated as cash. While payment can be stopped on either, it requires an indemnity agreement with the bank and considerable financial status to do so. Cashiers and certified checks are treated by reasonable and prudent businessmen as cash in business transactions. There is no reason why members of The Florida Bar should not do likewise. For this reason the limitation in the last paragraph on these two types of instruments is unreasonable and unnecessary.

(d) If the Supreme Court feels that the last paragraph of the proposed amendment is necessary in order to properly make disbursements from a trust account, then any of the exceptions to which it is applicable should be omitted from the amendment. The last paragraph destroys the effect of the amendment. It will be a rare lawyer who could replace the proceeds from a $1,000,000 closing in his trust account within two working days after notice, assuming for the sake of argument that the lawyer could replace it at all. The effect of the last paragraph is to negative

everything else that has been granted in the preceding lettered subparagraphs of the amendment.

(e) The last paragraph is unreasonable in its application because the only funds that need to be replaced in the trust account would be those of any other clients whose funds might have been withdrawn to cover the dishonored instruments. A member of The Florida Bar should be in a position to exercise whatever rights flow to him as a result of the dishonored instrument and should not be made a guarantor of the dishonored instrument to any person connected with the closed transaction merely because the member is acting as the closing agent and passing the funds represented by the dishonored instrument through his trust account. For example, if the only funds in the trust account at the time the instrument is dishonored are those credited, but not collected, on the dishonored instrument, no one is adversely affected, except the parties to the transaction and any persons to whom incidental expense checks have been made. The effect of the last paragraph is to make the lawyer a guarantor of those checks rather than the primary obligor--the maker of the check. It is an unreasonable burden and not necessary in order to preserve the integrity of The Florida Bar.

(f) If the integrity of lawyers' trust accounts are to be fully implemented, other lawyers should be able to accept their trust account checks without further inquiry.

(g) The last paragraph of the proposed amendment is defectively written because it does not say from whom the notice is to come nor does it say to whom the notice will be given although the latter may be inferred from what is said.

(h) The last sentence of the amendment makes a violation of the amendment an offense punishable by disciplinary proceedings. Assuming that the lawyer is an innocent party in the transaction, it is the only instance that respondent knows of when a lawyer is automatically guilty of an offense, regardless of the facts. It puts The Florida Bar in the untenable position of asserting that a lawyer, alone among the regulated professions and occupations, is guilty of an offense when he relies in good faith on something that he is permitted to do. Of course, the effect is to destroy the entire amendment.

3. Respondent will not file a brief in support of this response unless requested by this Court.

4. Respondent admits paragraph 6.

The undersigned certifies that a copy of the foregoing has been furnished to William O. E. Henry as president, Gerald F. Richman as president-elect, John F. Harkness, Jr. as executive director and Stanley A. Spring as staff counsel of The Florida Bar and to Walter

Beales as chairman of the Real Property Section of The Florida Bar.

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