IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ALAN B. FIELDS, JR.,

Respondent.

CONFIDENTIAL

CASE NO. 65,650

(07B84C04 - Vicky Lindley)
(07B84C08 - Mr. & Mrs. Price)
(07B84C13 - Dede Sharples)

RESPONDENT'S REPLY BRIEF

FRANK M. GAFFORD
P. O. Box 1780
Lake City, Florida 32056-1789
904-752-5468

and

DOWDA AND FIELDS, CHARTERED
Alan B. Fields, Jr.
P. O. Drawer F
Palatka, Florida 32078
904-325-2041

Attorneys for Respondent

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PRELIMINARY STATEMENT

Attached hereto is an Appendix which will be referred to by the abbreviation App. followed by the numbered page wherein the reference appears.

The Bar's Response Brief mistakenly assumes three basic premises:

1. That a member of The Florida Bar has no constitutional rights in disciplinary hearings.

2. Staff Counsel for The Florida Bar can usurp The Rule Making powers of The Florida Supreme Court.

3. A Public Reprimand is an appropriate penalty for unintentional violation of vague ethical considerations.

By its brief and appendix, The Florida Bar Staff Counsel makes it abundantly clear there are no rules, regulations nor rights available to Florida Bar members.

By the transcript and proceedings below it is clear that there are no evidentiary rules and there is no necessity for Bar prosecutors to follow the rules established by this Court in the conduct of disciplinary proceedings.

A Respondent in Bar Disciplinary Proceedings is prohibited from obtaining information as to disciplinary proceedings against a Bar witness and others, yet the Staff Counsel may at will attach copies of Reports of Referees to which the Respondent has not equal access or from utilizing usual discovery procedures including Fla. R. Civ. P. 1.370 (1984) Requests for Admissions when utilizing The Florida Bar's procedures.

The mantle of protection provided citizens generally has been extended to attorneys in disciplinary proceedings. Zauderer v. Office of Disciplinary Counsel of The Supreme Court of Ohio, _____ U. S. _____; 53 LW 4587 (Case No. 83-2166, May 28, 1985); Bates v. Arizona, 433 U. S. 350 (1977); In Re Ruffalo, 390 U. S. 544, 88 S. Ct. 1222 (1968).

Although in no manner prohibited by The Fla. Bar Code of Prof. Resp., The Florida Bar promulgated and The Referee accepted the proposition that the Respondent committed an unethical act by litigating issues with clients.

In Zauderer, Supra, 53 LW 4592, Mr. Justice White stated:

> But we cannot endorse the proposition that a lawsuit, as such is an evil. Over the course of centuries, our society has settled upon civil litigation as a means for redressing grievances, resolving disputes, and vindicating rights when other means fail. There is no cause for consternation when a person who believes in good faith on the basis of accurate information regarding his legal rights that he has suffered a legally cognizable injury turns to the Courts for a remedy: "We cannot accept the notion that it is always better for a person to suffer a wrong silently than to redress it by legal action. Bates v. State Bar of Arizona, 433 U. S. at 376.

The rate of $85.00 per hour charged the Respondent's clients is not excessive among Florida Lawyers (App. 1).

Even the Florida Bar recognizes the problem of collecting fees and sponsors seminars on the subject (App. 2). Apparently The Florida Bar in some instances attempts to "clear up confusion" in some instances of fee misunderstanding (App. 3) but it chose not to do so when it had an opportunity to prosecute the Respondent.

Some areas of Florida have Florida Bar approved Fee Arbitration Committees but there is none available to the Respondent who has accepted the recommendations promulgated by The Florida Bar and The American Bar Association and has conducted his law practice as

a business (App. 4) and when necessary to prevent a fraud or gross imposition, assigned collection to an outside attorney. (App. 6).

The Respondent's 1984 income slightly exceeded $16,000.00 and he has received no income from the complaintants upon whom The Florida Bar's Complaint is founded. (App. 7). The sole possible violation of a disciplinary rule as to Dede Sharples was resolved on a basis (App. 7) offered to her eighteen months prior to her acceptance and following information provided by Bar Staff Counsel (App. 7) to her attorney during pendancy of these proceedings.

In each instance of the complaining parties, the Respondent's law firm had established a legitimate judgment against the complaining parties and the amount of same, by decisions of this Court are conclusive. Gendzier v. Bulecki, 97 So. 2d 604 (Fla. 1957).

The Respondent has served his Country, State and Profession well and The Florida Bar considering that litigating disputes with clients is an unethical act. If such were to be so, then this Court should adopt the standard upon petition, notice and opportunity to be heard before this Court:

> Because "[a] relevant inquiry in appraising a decision to disbar is whether the attorney stricken from the rolls can be deemed to have been on notice that the Courts would condemn the conduct for which he was removed". In Re Ruffalo, 390 U. S. 544, 554 (1968)(White J. concurring in result,).

There is no indication in Fla. Bar Code of Prof. Resp. EC 2 - 23 that a lawyer litigating with one or two hundred clients would be subject to public censure for so doing.

> Good name in man and woman, clear my Lord,
> Is the immediate jewel of their souls:
>
> Who steals my purse steals trash; .....
> But he that filches from me my good name
> Robs me of that which not enriches him,
> And makes me poor indeed.

Shakespeare, Othello, III, 3.

A lawyer's reputation is his good name and the proposed solution of Public Reprimand for innocent activities not expressly prohibited by The Fla. Code of Prof. Resp. Disciplinary Rules constitutes an unusual punishment prohibited by U. S. Const. Amend. V; VIII; XIV and Fla. Const. Art. 1 § 9; 17 and 23.

Public Reprimands are generally utilized where there are intentional violations and direct violations of Disciplinary Rules. The Florida Bar v. Suprina, 468 So. 2d 988 (Fla. 1985); The Florida Bar v. Chase, 467 So. 2d 983 (Fla. 1985).

The costs herein are also excessive pursuant to The Statewide Uniform Guidelines for Taxation of Costs in Civil Actions approved by this Court as well as the recent opinion of this Court in Fla. Patients Comp. Fund v. Row, Case No. 64,459, (May 2, 1985).

The Respondent, the sole support of five (5) dependents who earned $16,000.00 in 1984 was taxed costs of $2,064.49, including travel expenses for a law clerk, investigator, staff counsel, transcripts not utilized in proceedings and long distance telephone calls. The law clerk now having appeared as Special Assistant Bar Counsel herein.

In discussing the purpose of disciplinary proceedings, The Fourth District Court of Appeals recently stated, citing federal opinions in State v. Rendina, 467 So. 2d 734, 737 (Fla. 4th DCA 1985):

> They are not for the purpose of punishment, but rather seek to determine the fitness of an officer of the Court to continue in that capacity and to protect the Courts and the public from the official ministration of persons unfit to practice. Thus the real question at issue in a disbarment proceeding is the public interest and attorney's right to continue to practice a profession imbued with public trust.

In Re Echeles, 430 F. 2d 347, 349-50 (7th CCA 1970) See also Ex Parte Wall, 107 U. S. 265, 288 [17 OTTO 265[2 S. Ct. 569, 27 L. Ed. 552 (1882).

SUMMARY OF ARGUMENT

The Florida Bar's Brief assumes that the Respondent has no Constitutional rights; that it may impose new and innovative rules of discipline and public reprimand is a valid punishment.

The report of the Referee should be rejected with instructions to find the Respondent not guilty or in the alternative the most severe punishment to be assessed to be a private reprimand and no costs.

CONCLUSION

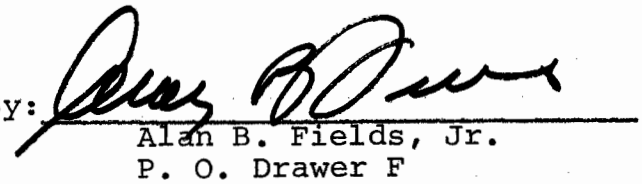
The complaint against the Respondent is vague - he violated no distinct rule of conduct established by this Court.

The punishment of public reprimand is excessive for unintentional acts.

The Report of the Referee should be rejected or in the alternative, the most severe punishment imposed should be a private reprimand with no costs assessed against the Respondent.

Respectfully submitted,

DOWDA AND FIELDS, CHARTERED

By: 

Alan B. Fields, Jr.
P. O. Drawer F
Palatka, Florida 32078
904-325-2041

and

FRANK M. GAFFORD
P. O. Box 1780
Lake City, Florida 32056-1789
904-752-5468

Attorneys for Respondent

CERTIFICATION

I HEREBY CERTIFY that copy of the foregoing Brief has been furnished by U. S. Mail to: DAVID G. McGUNEGLE, ESQUIRE, Bar Counsel, The Florida Bar, 880 N. Orange Avenue, Suite 102, Orlando, Florida 32801, this 9 day of July, 1985.

Alan B. Fields, Jr.