

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Complainant-Appellant,  
v.  
WARREN H. JOHNSON,  
Respondent-Appellee.

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) TFB File No. 85-15,370 (20B)  
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) Case No. 68,596  
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MAR 9 1986  
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REPLY BRIEF OF WARREN H. JOHNSON,  
RESPONDENT-APPELLEE

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STATEMENT OF THE CASE AND FACTS

The relevant facts to be presented for review in this matter, at least at this stage of the proceedings, are to be found in the transcripts and exhibits now on file, together with the Report of Referee, Honorable Andrew D. Owens.

The brief of The Florida Bar, in its Statement of the Case and Facts, indulges in its own adversarial and interpretive version of the record in an effort to challenge certain findings of the Referee who conducted the hearing, heard all witnesses, including Complainant, and had available all records, transcripts and files herein.

## ARGUMENT AND CONCLUSION

The original grievance complaint in this matter was filed on or about June 10, 1985. Respondent-Appellee filed his response in a timely fashion and has cooperated fully and acted as his own counsel for over two and one-half years, throughout the investigation of the grievance committee, hearing before the grievance committee, hearing before the Referee, post-grievance proceedings, etc., all constituting a protracted, time-consuming, anxious and degrading experience.

The record will disclose that Respondent-Appellee from the outset was involved with an uncooperative, impaired and hostile client as Personal Representative of the subject estate, and problems were compounded by unharmonious relations between the heirs. These circumstances dictated special care and time and patience to be exercised in order to ultimately liquidate assets of the estate and effect a maximum distribution after payment of creditors' claims. These problems and explanations are detailed in the record.

With respect to Count VI of the Complaint of The Florida Bar, the Referee recommended that Respondent-Appellee be found not guilty of violating Disciplinary Rule 1-102(A)(4) of the Code of Professional Responsibility, and not guilty of violating Florida Bar Integration Rules, Article XI, Rule 11.02(3), prohibiting an attorney from engaging in

conduct contrary to honesty, justice or good morals. Disciplinary Rule 3-7.6(c)(5) provides: "Upon review the burden shall be upon the party seeking review to demonstrate that a report of a referee sought to be reviewed is erroneous, unlawful, or unjustified."

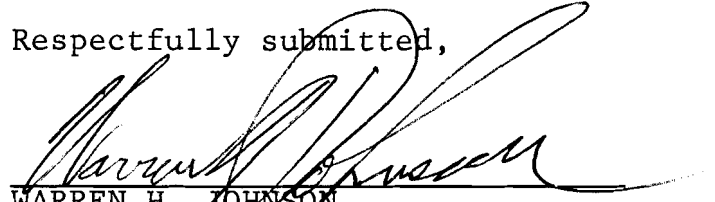
Bar Counsel's unyielding, zealous and dispassionate pursuit of harsh and totally disproportionate disciplinary measures throughout these lengthy and expensive proceedings seems to be without valid purpose.

The record and findings show absence of conduct involving "dishonesty, fraud, deceit or misrepresentation," but rather would show in real substance only a minor fee dispute--settled between the parties--and merely technical or procedural violations of trust account bookkeeping, with no showing of lack of accounting for all funds.

Because of my age (as Respondent-Appellee) and personal circumstances, any suspension as suggested by Bar Counsel, together with onerous reinstatement procedures, would be tantamount to a forced and untimely retirement from thirty-eight (38) years of practice and deprive my family and me of deriving a livelihood from any professional career for which I am adequately trained through education and experience. Therefore, I submit the consequences of a suspension would be unredeemable and extremely painful and

would in no way further the interests of the administration  
of justice or the public.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Warren H. Johnson", written over a horizontal line.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Warren H. Johnson, Respondent-Appellee, has been furnished by regular United States Mail to David M. Barnovitz, Esquire, Assistant Staff Counsel, The Florida Bar, 915 Middle River Drive, Suite 602, Fort Lauderdale, Florida 33304, this 7<sup>th</sup> day of March, 1988.

  
WARREN H. JOHNSON