IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,	:	
Complainant,	:	
v.	:	CASE NO. 66,596 and 68,771
JOHN H. KEANE,	:	
Respondent.	:	
	:	

CROSS APPEAL REPLY BRIEF

Charles J. Cheves
CHEVES & RAPKIN
341 Venice Avenue, West
Venice, FL 34285
(813) 485-7705
Attorney for Respondent

TABLE OF CONTENTS

	Page
CITATION OF AUTHORITIES	ii.
SUMMARY OF ARGUMENT	1.
ARGUMENT	2.
I. THE REFEREE'S FACT FINDINGS AND RECOMMENDATIONS WHETHER RESPONDENT SHOULD BE FOUND GUILTY ARE NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.	2.
II. THE REFEREE'S RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE IMPOSED IS EXCESSIVE, AND IS CONTRARY TO ESTABLISHED PRECEDENT.	5.
CONCLUSION	5.
CERTIFICATE OF SERVICE	6.

CITATION OF AUTHORITIES

	Page
Statutes:	
Sec. 812.014, Fla. Stat.	6.
Other Authorities:	
Article XI, Integration Rule 11.03(2)(c)(1)	4.
Rule 3-7.5(c) Rules Regulating The Florida Bar	4.

SUMMARY OF ARGUMENT

I.

THE REFEREE'S FACT FINDINGS AND RECOMMENDATIONS WHETHER RESPONDENT SHOULD BE FOUND GUILTY ARE NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

The Bar has not challenged respondent's fact statement relating to referee findings, and has not rebutted respondent's argument that the findings are largely unsupported by clear and convincing evidence.

Counter arguments by the Bar are irrelevant or mistaken.

II.

THE REFEREE'S RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE IMPOSED IS EXCESSIVE, AND IS CONTRARY TO ESTABLISHED PRECEDENT.

The Bar's argument is mostly to the effect that respondent should acquiesce in all charges without regard for the facts and submit docilely to whatever punishment the Bar deems appropriate.

ARGUMENT

I.

THE REFEREE'S FACT FINDINGS AND RECOMMENDATIONS WHETHER RESPONDENT SHOULD BE FOUND GUILTY ARE NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

The Bar's premise in answer to respondent's cross appeal is: "The findings and recommendations of the referee have ample support in the record and therefore cannot be overturned."

The Bar, which has not yet cited the record, has not challenged a single word of respondent's well documented fact statement, which shows a lack of clear and convincing evidence of impropriety as to most of the charges, and a lack of clear and convincing evidence of theft with respect to any of the charges. The Bar has chosen not to actually rebut respondent's argument on this point. Instead, The Bar simply presents to this Court a bald conclusion that the findings are supported by the record, as though The Bar is somehow entitled to make it so by merely saying it is so.

The Bar makes four points relating to the facts, not citing the record for any of them, and these points are either irrelevant or mistaken.

Ignoring the undisputed proposition that The Bar's charges and the Referee's multiple findings relating to travel vouchers are limited to per diem allegedly falsely recovered on travel vouchers, The Bar speaks of "travel...certified as being

in one manner yet actually occurring in an altogether different way, generally as a subterfuge for personal trysts." This deliberately inflammatory irrelevancy has no bearing on the per diem issue.

The Bar says respondent "defends [the furniture sale] as having been for fair value." Respondent profusely acknowledged the impropriety of the furniture transaction as well as the necessity of punishment for it. He argued correctly, and with no rebuttal by The Bar, that The Bar failed to present clear and convincing evidence that respondent was paid more than his furniture was worth. That relates only to the finding of theft, as The Bar must certainly understand.

The Bar says "respondent admits Ms. Taylor' (sic) gasoline was charged to the state." The allegation and finding were that respondent "knowingly authorized Ms. Taylor to purchase gasoline for her personal use through the use of credit accounts for the Public Defender's office." (2, 31) That was not proved. It did not happen. It was proved that respondent occasionally put gas in Ms. Taylor's car to replace gas consumed when he had used her car for official business. The Bar says "respondent admits that at least some of the gasoline went to her personal purposes." Respondent candidly acknowledged that "potentially" he might not have used for business all the gas he put in Taylor's

car. For example, what if her tank were not quite full when he borrowed the car. There "was a possibility" that she might get back a little more gas than respondent used. (250, 251) Respondent never admitted that she did, nor did The Bar prove that she did, and there was no proof by a preponderance, much less by any clear and convincing standard, that Taylor benefitted.

Finally, The Bar chooses to tell this Court that "Ms. Taylor's testimony is largely directly supported by independent documentary evidence...."

What documentary evidence is that? Why did The Bar not elaborate and cite the record? Because there is no such documentary evidence!

The Bar's references to respondent's comments relating to the unchallenged admission of the ex parte grievance proceedings conducted 500 miles from Key West as being tardy challenges, misses the point that respondent has raised a mitigating question relating to his entitlement to fundamental fairness in disciplinary proceedings.

The Bar correctly states that Rule 3-7.5(c) deals with venue in referee proceedings. The Bar does not challenge respondent's position that there was no basis under former Rule 11.03(2)(c)(1) for recusal of the members of the Sixteenth Circuit Grievance Committee, and no basis in the rules for a

transfer to a committee in a county 500 miles from the indigent respondent's home.

II.

THE REFEREE'S RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED IS EXCESSIVE, AND IS CONTRARY TO ESTABLISHED PRECEDENT.

The referee, says The Bar, has recommended a two and one half year suspension.

That is not so. The referee recommended two and one half years from October 19, 1987, at which point respondent already had been "temporarily" suspended for over two and one half years. That totals over five years.

The Bar says respondent did not address the cases cited in The Bar's initial brief. Bar counsel apparently did not reach pages 28 - 30 of respondent's brief.

The Bar then closes with a suggestion that respondent is blaming everybody else for his unfortunate situation. This is repetitious of The Bar's inappropriate argument in its main brief that by defending himself respondent is showing contempt for the disciplinary process.

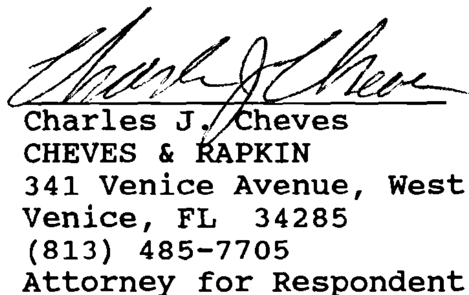
CONCLUSION

The Bar has yet to cite the record, and did not challenge the accuracy or logic of respondent's well documented analysis of

the record. Findings 1 through 10, 13, 14 and 15 were not supported by clear and convincing evidence and should be reversed. So much of finding 11 (stereo) and finding 12 (furniture) as refer to F.S. 812.014 and use the word "unlawful" are not supported by clear and convincing evidence and should be reversed. Respondent acknowledges that the stereo and furniture incidents were acts contrary to Disciplinary Rule 1-102(A)(6), but urges that the suspension already served since the formal order of this Court dated March 4, 1985, exceeding thirty-eight months as of the filing of this brief, should suffice as punishment.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished, by mail, to John A. Boggs, Bar Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399 this 20th day of May, 1988.



Charles J. Cheves
CHEVES & RAPKIN
341 Venice Avenue, West
Venice, FL 34285
(813) 485-7705
Attorney for Respondent