IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant-Appellant,

vs.

TERENCE T. O'MALLEY, SR.,

Respondent-Appellee.

_____/

TFB File No. 87-26,936 (17D)

Supreme Court Case No. 70,495

ANSWER AND CROSS-BRIEF OF TERENCE T. O'MALLEY, SR.

Respectfully submitted,

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STATEMENT OF CASE AND FACTS

The Respondent respectfully disagrees with the expression of the statement of the case and facts by The Florida Bar which are formulated in an argumentative fashion, and contain opinion and argument of Bar Counsel. Therefore, the Respondent respectfully submits this Statement of Case and Facts.

These are Bar disciplinary proceedings arising out of a trial conducted before the Honorable Mary E. Lupo, County Court Judge, on October 19, 1987, in West Palm Beach, Florida. Thereafter, on October 30, 1987, Judge Lupo conducted a conference telephone call with David M. Barnovitz, Assistant Staff Counsel, and Nicholas R. Friedman, attorney for the Respondent.

Attached hereto are pages 14 through 22 of the transcript of the hearing of October 30, 1987. (Appendix A1 - A9). The hearing dealt with the fact that The Florida Bar had by ex parte communication sent to Court additional evidence after the trial had been concluded and contrary to prior statements made by the Court. (Tr. of October 30 at pg. 16, lines 14 through pg. 17, line 5).

As a result thereof, Judge Lupo granted a mistrial and disqualified herself. (Appendix B-1).

On November 10, 1987, this Court entered an Order of Termination, terminating the appointment of Judge Lupo, and on the same day appointed the Honorable Steven D. Levine, County Court Judge, to hear and try the matter. (Appendix B2 and B3).

On January 26, 1988, proceedings were had before Referee Steven Levine. In the course of those proceedings, it was determined that notwithstanding a motion by Defendant to dismiss the proceedings due to The Bar's misconduct, the matter would proceed. (Transcript of January 26, 1988 at pg. 37. See Appendix pg. C-1). At those same proceedings, it was also decided that the matter would be heard by the Court in the form of reviewing the transcript of the proceedings taken before Judge Lupo in order to preclude the time and expense of having the trial of Respondent held in full a second time.

At the conclusion of the proceedings, the Court entered a Report of Referee, a copy of which is reproduced as Exhibit "D" in the Appendix hereto.

The facts, as found by the Referee, were that on January 13, 1984, Respondent entered into a written Escrow Agreement and simultaneously therewith was entrusted with $57,500.00 in cash together with some specific items of gold and silver. [The Bar conceded that at all material times that this was not a trust account violation and that these funds were not required to be kept nor designated to be part of Respondent's trust account.] After receipt of the funds and the other items, Respondent transferred the entire $57,500.00 cash portion thereof directly to Pioneer Bonding and Insurance Agency, Inc., a surety company, who was Respondent's client and for whom he had been acting as agent. This conduct was contrary to the written terms of the Escrow Agreement. (See Appendix D).

Sometime subsequent thereto, Respondent also removed all of the gold and silver items, retaining possession of them, but not in a safe deposit box as had been specified by the Escrow Agreement in question. (See Appendix D).

The money and other items, according to the terms of the Escrow Agreement, had been provided to Respondent to hold in escrow in connection with a bond provided in a criminal case entitled State of Florida vs. Kersten which was pending in Martin, County, in the 19th Judicial Circuit of Florida. According to the written portions of the Escrow Agreement, the surety company was entitled to claim the money as its own, in the event of estreature of the bond if Paul E. Kersten, the Defendant in that case, failed to comply with the terms and conditions of his bond. On the other hand, if the bond were vacated or released, the money and property were supposed to be returned to Sam D. Pendino, who was at that time a practicing attorney in Tampa, Florida. At some time later, the bond of Mr. Kersten was in fact vacated or released. When demand was made upon the Respondent to return the money and the other property, the Respondent did not initially do so. A lawsuit was commenced by Sam D. Pendino against Mr. O'Malley and the surety company. In the civil case, Mr. O'Malley was questioned about the location of collateral and whether or not he had transferred any of the funds to Mr. Ted Aubuchon, who was one of the officers and principals of both the surety company and several other insurance carriers, whom Mr. O'Malley represented. Mr. O'Malley testified the collateral was in his "care, custody and control" and that it was in his "possession". When asked if

he had turned over any of the collateral to Mr. Aubuchon, Mr. O'Malley stated "No." (See Appendix D).

Mr. O'Malley testified that he had used the terms "care, custody and control" in an effort to protect his client, Mr. Aubuchon, in order not to be the last link in the chain of criminal prosecution of Mr. Aubuchon, when it appeared that Mr. Aubuchon had in fact stolen the money. (See Referee's Report, pg. 6). The Bar, over the objection of counsel, constantly referred to the discrepancies of testimony as perjury. (Transcript of October 19, 1987 at pg. 152). The Bar continues to maintain this is "perjury."

During the course of the proceedings before the Referee, (transcript of October 19, pg. 110, et seq.), Mr. O'Malley testified that at the time these matters occurred he had had a drinking problem, and that through the recommendation of a friend, he contacted The Florida Bar and was in turn referred to an alcoholic anonymous chapter which met in Ft. Lauderdale on Wednesdays at a church on Oakland Park Boulevard. Mr. O'Malley testified that he attended over 30 meetings and also presented collaborative testimony of Joseph Robert Boyd, an attorney practicing in Tallahassee, Florida with respect to his prior alcoholic problem. (Testimony beginning at pg. 139 through 145 of transcript of October 19, 1987). The Referee found this to be a mitigating factor. (See Appendix D).

The Referee found the Respondent guilty and ordered a 90-day suspension, together with an added period of probation requiring

the taking of The Bar's Ethics examination and participation in an alcoholic rehabilitation program. (See Appendix D).

The Florida Bar filed a Petition for Review to ask for disbarment and the Respondent filed a Crosspetition for Review to reduce the discipline and questioning the findings of fact adduced by the Court below.

SUMMARY OF ARGUMENT

In its Brief for disbarment, The Florida Bar has exaggerated and been argumentative with its statement of facts, rather than presenting the facts as found by the Referee. The Florida Bar largely ignores the facts of this case and argues by posing rhetorical questions not based on the evidence adduced below or how the Referee interpreted that evidence.

The Bar presented little or no competent evidence in support of its own case. Bar counsel (and therefore The Bar itself) was not even aware until testimony at trial that the Escrow Agreement upon which its own case was based was not executed by all of the parties at one time. The Bar in fact has sought to place Respondent in precisely the same position that was forbidden by In re Ruffalo, notwithstanding that Respondent in his Answer, Response to Request for Admissions, and testimony at the trial stated that many of the matters testified to were not out of his personal knowledge, but only believed to be true. The Bar also erroneously and contrary to the findings below charges the Respondent with "perjury."

The conduct of Respondent, even if in violation of the rules does not require the stern discipline meted out by the Referee,

but would be satisfied with an even lesser discipline. Certainly, in no event is disbarment the appropriate discipline. In trying to disbar the Respondent, Bar counsel has stretched the conduct permitted of attorneys for following the wishes of its client, its Board of Governors, while at the same time seeking to disbar Respondent for having engaged in similar trust and protection of his client. Respondent should be entitled to the same of benefit of doubt which The Florida Bar uses as both a sword and a shield.

I

THE FLORIDA BAR HAS FAILED TO SHOW THAT THE COURT BELOW ABUSED ITS DISCRETION AND THAT DISBARMENT OR ANY RAISING OF THE DISCIPLINE RECOMMENDED BY THE REFEREE BELOW IS REQUIRED OR APPROPRIATE.

The Florida Bar has challenged the findings of the Referee and asks that Respondent be disbarred. At the same time, Respondent has requested that the Court review the discipline of a 90-day suspension and additional factors of probation, and asks that they be reduced. This Brief has tried to fairly set forth the facts in the case, in the light most favorable to The Florida Bar.

In its zeal to prosecute the Respondent for the discipline of disbarment, The Florida Bar has already caused one mistrial by conducting ex parte communications with the Court, has sought to enhance discipline by introducing charges not presented at trial, and now continues to overzealously and unfairly make statements of fact to support its argument, when those facts were not proven by competent substantial evidence in the Court below. In its statement of the facts, The Florida Bar talks about the Escrow

Agreement as though it were a completed document at the time executed by the Respondent. (See pg. 2 of The Florida Bar's Brief). The Florida Bar follows this by later pointing out that "a certified copy of the discharge order was furnished to Respondent" in September, 1985. (See The Florida Bar's Brief at the bottom of pg. 3). Furthermore, in what is also supposed to be a statement of facts, The Bar argues that Respondent "knowingly and brazenly converted the collateral entrusted to him, . . . and embarked upon a course of perjury to conceal his misconduct." As evidence of this perjury they gave, among other things, the following example:

> "Q Have you ever turned over and of the collateral to Mr. Aubuchon?
>
> "A No."

In its statement of facts, The Florida Bar argues that is wrong of Respondent to point out that these statements were "technically correct." (See The Florida Bar's Statement of Facts in its Brief at pg. 6).

Not only reading the statement of facts and the reference to perjury in The Florida Bar's Brief, but also the comments and objections thereto at the various hearings show that The Florida Bar considers all of these comments to be the criminal offense of perjury and wishes to use that as a basis for disbarment. (Transcript of October, 1987 hearing at pg. 152 and the transcript of March 3, 1988 at pgs. 55 through 59). We believe that the Referee put the matter in more proper perspective in the hearing of March 3, 1988 at pgs. 59 and 60. The Referee stated that the

testimony was not exactly frank and full of candor, but was probably not perjurious. Mr. O'Malley was trying to answer in the narrowest form possible to protect his client, who was admittedly at that time under criminal investigation for stealing the funds. Transcript, supra. While Mr. O'Malley perhaps should have invoked his client's Fifth Amendment privilege, or taken other action to protect the client, his answers frequently were technically correct, or unresponsive, as opposed to being false.

As the Referee properly pointed out at pg. 52 of the March 3, 1988 transcript, Mr. O'Malley's testimony that the collateral was in his possession was explained by saying that he was an agent of Mr. Aubuchon and that Mr. O'Malley, rightly or wrongly, believed that he would be able to get the collateral back.

These comments may not serve to entirely excuse the conduct of the Respondent, but they provide both a reasonable and fair basis for Respondent's responses and conduct.

More persuasive than the Bar's rhetorical questions are the actual words of the Referee as found on pgs. 9 through 11 of his Report. In those pages, the Referee in its own words evaluates both the Respondent and his deeds. The Court found that Respondent acted as a result of a mistake in belief, and that while his responses in civil proceedings (as opposed to later Bar proceedings, when his client was no longer the subject of criminal investigation) may have been misleading or false, they were merely intended to be evasive and narrow. The Referee further found that the conduct of Respondent was not for his own financial benefit, nor from any dishonest or selfish motives. (Referee's

Report at pg. 9). The Florida Bar has had the burden of proof in this cause to show that the findings of the Referee below, were not supported by the evidence below, in order to disturb the findings of the Referee. The Florida Bar vs. McKenzie, 442 So.2d 934 (Fla. 1983); The Florida Bar vs. Hawkins, 444 So.2d 961 (Fla. 1984); The Florida Bar vs. Lancaster, 448 So.2d 1019 (Fla. 1984).

The arguments of The Bar are not based on showing that the Referee abused his discretion or could not have found as he found, rather The Bar impunes both Respondent and the Referee by comments such as that on pg. 11 of its Brief that "the referee obviously agrees that Respondent had license to give false testimony because his motive was to protect a client." The Bar then bootstraps its own argument by continual references to the offense of perjury, which is contrary to what the Referee actually found. The Bar's use of cases to support disbarment, such as The Florida Bar vs. Altman, 465 So.2d 514 (Fla. 1985) are vastly different on their facts from the case below. In the Altman case, Mr. Altman misappropriated to his own benefit trust account funds in a continual pattern of misconduct. In its other citation, The Florida Bar v. Lancaster, 448 So.2d 1019 (Fla. 1984), Mr. Lancaster was himself a participant in criminal activity which he knowingly sought to continue. This is contrary to the case below, where Respondent's client committed a crime, and then Respondent was in a position where he was required to protect the client for this past criminal act. There was not even a hint of the type of conspiracy or continuing act that underlys the Lancaster case, nor

was Respondent below tried on criminal charges as was Mr. Lancaster.

This is not a case that shows any pattern of misconduct or multiple trust account violations. See The Florida Bar vs. Newman, 513 So.2d 656, 658 (Fla. 1987). Quite the contrary, this is a case that shows one single, understandable transaction and its related consequences. The Referee also specifically did not find either perjury or intentional lying on the part of Mr. O'Malley. This case, in that respect, is clearly distinguishable from The Florida Bar vs. Lancaster, 448 So.2d 1019, 1023 (Fla. 1984), upon which The Florida Bar apparently seeks to rely. It is also in contrast with The Florida Bar's reliance on the Knowles case in which an attorney apparently lined his own pockets and committed eight counts of grand theft. The Florida Bar vs. Knowles, 500 So.2d 140, 141 (Fla. 1986).

Even The Florida Bar's own cases cited to this Court generally show that disbarment, or even suspensions of 91 days or longer which require proof of rehabilitation, are the sanctions when an attorney converts money to his own use, or genuinely engages in a pattern of theft or misappropriation. That is precisely the opposite of what happened in this case. Indeed, as the Whitley case, infra, shows, an escrow violation can properly be handled with the discipline of a public reprimand.

II

THE BAR FAILED TO PRESENT COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT A FINDING OF GUILT AGAINST RESPONDENT.

It is with caution that the Respondent respectfully asks this

Court to consider whether there was competent substantial evidence supporting the finding of the Court that the Respondent breached the Escrow Agreement by delivery of $57,500.00 by Terence O'Malley to Pioneer Bonding and Insurance Agency, Inc. Judge Lupo pointed out, before granting mistrial, that if answers to questions are beneficial to The Bar and harmful to the defense, then it would seem logical that The Bar would have presented this evidence during its prosecution, rather than waiting until afterwards or waiting for the Court to ask if such evidence existed. (Transcript of October 30, 1987, at pg. 19 through 20). The undersigned dutifully acknowledges that this Court, in Debock vs. State, 512 So.2d 164 (Fla. 1987) has held that Bar proceedings are "remedial" and not punitive. Debock, at 166. With due respect to the Court, the Debock case, supra, was not per se a discipline case, and perhaps therefore the same standing did not exist for Mr. Debock in that case as for the Defendant in the matter of In re Ruffalo, 399 U.S. 544, 550, 88 Sup. Ct. 1222, 1226, 20 L.Ed.2d 117 (1968). This case, however, more approximately follows the Ruffalo decision in that the Respondent below has in fact been asked to convict himself, where The Bar has failed to meet its burden. The Respondent's candor in the proceedings with the Referee and the Grievance Committee is the base upon which The Bar has built its charges.

For example, it was not until the moment of trial that The Bar learned that the Escrow Agreement in question had not in fact been completed by all of the parties on the date on which Mr. O'Malley first signed it. (See Mr. Barnovitz's closing argument

at pg. 149, lines 19 and 20). Sam Pendino, the witness, testified at pg. 55 that Mr. Aubuchon was not present at the signing of the document and that he does not know on what date or basis Mr. Aubuchon (the third party to the agreement) actually signed it. He also testified at pg. 57 that he himself made false demands on Mr. O'Malley to deliver over collateral, at times when he himself was not entitled to have received the collateral. (Transcript of October 19, 1987 at pg. 57). Mr. Pendino testified that he was not aware of any other conversations that occurred between the Respondent and Mr. Aubuchon, nor did he know what Mr. Aubuchon had advised Mr. O'Malley prior to the execution of the Agreement by Mr. Aubuchon. (Id. at 56). Therefore, the testimony of Mr. O'Malley was unrebutted that notwithstanding the apparent language of the Agreement, there was a statutory requirement that the surety actually hold the funds. In fact, this is born out by Florida Statutes Section 648.442, as was in effect at the time the Agreement was executed. (See transcript of October 19, 1987 at pg. 105).

In fact, there was reason to believe that the statute required the surety to hold the money and that it might be a criminal offense for a person other than the surety to hold the money.

It is the unrebutted testimony of Mr. O'Malley that the signature of Mr. Aubuchon and the insurance carrier on the document was required by Mr. Aubuchon as a precondition of the execution of the document. Mr. Pandino did not and could not know these facts. (See excerpts from his testimony as set forth

above). While Mr. O'Malley undoubtedly exercised poor judgment in failing to apprise Mr. Pandino of these facts, his conduct in this regard cannot be said to have been out of self-interest or motive, but rather an act of negligence as opposed to an act of dishonesty as alleged by The Bar.

Likewise, the testimony of Mr. O'Malley is unrebutted that he was assured that he would exercise control over the collateral, even though it was being held by the surety company. (October 19, 1987 transcript at pg. 105). The subsequent testimony of Mr. O'Malley, all given in the context of civil proceedings at a time when Mr. O'Malley's client was the focus of a criminal investigation was based on trying to protect the client who at this time apparently had stolen $57,500.00. (See pg. 110 of October 19, 1987 transcript).

In his answers to the Complaint and then his responses to the Request for Admissions, Respondent demanded that The Florida Bar provide strict proof of numerous of its allegations. While the Respondent admitted that he believed many of the statements were true, and had testified at a Grievance Committee hearing before, on the assumption that many of these were true, he demanded The Bar to meet the burden of proving these at trial. For whatever reason, The Bar did not present such evidence. We respectfully suggest that when the Respondent puts The Bar on notice that they must prove things which, for the purposes of talking to the Grievance Committee he assumed to be true, then The Bar has the burden of putting on that evidence, and not going back to the Grievance Committee proceeding in the manner that is expressly

forbidden by The United States Supreme Court in the Ruffalo case. In re Ruffalo, supra.

Sometimes it is more difficult to show in a Brief what was not proven in the Court below. However, after 13 years of conducting Bar trials, the undersigned honestly believes that the comments of Judge Lupo on pgs. 19 through 20 of the transcript of October 30, 1987 accurately reflect the feeling that The Bar did not present an adequate case to its jury, the Referee. Therefore, the findings of fact should not support a finding of guilt of the Respondent in this action.

The constant reference by Bar Counsel to "perjury" is particularly troubling, and undoubtedly has done its intended damage in the trial below and perhaps with this Court. However, it is a false argument, and even an unfair one to make where it is so blatantly contrary to the findings of fact by the Referee below. Perhaps Bar Counsel has not had an opportunity to read Chapter 837 of the Florida Statutes, which defines perjury. It is absolutely clear from the reading of the statute that perjury does not exist where the maker of the statements believes that the statements were true, even if they are proved to be untrue. Fla. Stat. Chapter 837 (1987). Indeed, the Referee found that although the statements may have been false or misleading, they were thought by the Respondent to be true. (See Appendix D, particularly pgs. 9 through 11). The Florida Bar, notwithstanding the findings of the Referee and the language of the statute, continues to use the term "perjury" as though it had been a proven fact at trial. It is unfortunate that The Florida Bar in claiming

that it proved the commission of perjury is continuing its inappropriate conduct toward the Respondent by alleging offenses which were not proven, just as it did by presenting ex parte evidence to the first Referee below. The Florida Bar vs. Rubin, 362 So.2d 12 (Fla. 1978). Like in the Rubin case, supra, Respondent should be discharged due to the Bar's misconduct.

III

BASED ON THE FINDINGS OF THE COURT BELOW, A DISCIPLINE OF A PUBLIC REPRIMAND, WITHOUT THE ELEMENTS OF RETAKING THE ETHICS EXAMINATION OR RE-ENTERING AN ALCOHOL REHABILITATION PROGRAM IS ADEQUATE.

The Referee in the hearing below made findings of fact, which if not overturned, very closely parallel those in the case of The Florida Bar vs. Whitley, 515 So.2d 245 (Fla. 1987). The Whitley case, upon which the Court specifically relied, found that escrow violations can properly be handled with a public reprimand.

The Referee also weighed mitigating factors of marital problems and alcohol problem and the fact that Respondent repaid nearly $70,000.00 as restitution, more than making Mr. Pendino whole. Indeed, the Referee found that there was no actual financial loss to anyone, and no evidence of such loss presented. (Referee's Report at pgs. 9 and 10). The Court also recognized Respondent's remorse, and recognition of the wrongfulness of his behavior. (Referee's Report at pg. 10). Given what the Referee found, in his own words, and his reliance upon the Whitley and McClosky cases, it honestly appears that his ultimate finding of discipline is too stern. The Florida Bar vs. Whitley, 515 So.2d

245 (Fla. 1987) and State ex rel The Florida Bar vs. McClosky, 130 So.2d 596 (Fla. 1961).

Indeed, the Whitley case appears to be the most directly analogous case to the situation in which Mr. O'Malley found himself. In the Whitley case, there was not even an acknowledgment of sufficient mitigating factors, except perhaps the same mistaken belief that entitlement to disburse funds existed. See Whitley at pg. 226. The McClosky case is also fairly similar factually, but is a case in which restitution had not been made, but merely promised to be made. See McClosky at pg. 598. The mitigating factors mentioned by the Referee in the case of Mr. O'Malley appear no where in the McClosky decision. On the other hand, even in serious drug-related matters, this Court has refused to overturn even a three-year recommended suspension for disbarment. The Florida Bar vs. Jahn, 509 So.2d 285, 287 (Fla. 1987).

The Bar's own cases cited to the Court allegedly support disbarment show that generally disbarment or lengthly suspension are appropriate only in those cases where there is a pattern of misconduct or where the attorney converts money to his own use. Neither of these is the fact pattern of the case below. Indeed, as the Whitley case, supra, shows, an escrow violation can properly be handled with a discipline of a public reprimand.

Given the testimony of Respondent that this case was isolated, and constituted his only dealing with a surety company, as opposed to his insurance company clients, and given the restitution he has made and his testimony about his

rehabilitation, there is no remedial benefit in requiring him to take an ethics examination or to re-enter an alcohol rehabilitation program. These events occurred four years ago, and his probation has been his subsequent practice of law for four years.

Considering all of the factors, the conduct that Respondent, does not require the stern discipline meted out the Referee, but would be satisfied with a lesser discipline as imposed in the Whitley case. Certainly, disbarment is wholly inappropriate, and any suspension longer than that recommended by the Referee is inappropriate. Given the length of time that has passed, and the lack of any evidence before the trial of the continuation of an alcoholic problem, or the lack of ethics in Respondent's continuing day to day practice, the probation is also unnecessary.

The testimony of the Respondent is also supported by the testimony of attorney Joseph Robert Boyd, who states that Respondent's personality was such that at that time he was professionally naive and would in fact have been likely to have relied on an individual such as Mr. Aubuchon, given the circumstances of the matter. (See pgs. 141 through 143). Notwithstanding all of these things, and even on cross-examination by The Bar, Mr. Boyd characterized Mr. O'Malley as someone whom he trusts in business relationships and not someone whom he believes has ever had a taint in his heart. Mr. Boyd also confirmed the nature of Mr. O'Malley's problems with alcohol at that time as well as Mr. O'Malley's relative inexperience in the practice of

law at that time. (Pgs. 140 through 141 of October 19, 1987 transcript).

CONCLUSION

Perhaps this Court will not go so far as to reverse the findings of the Referee, with respect to the elements of proof which The Bar did not adduce at trial, but even with everything that was adduced at trial, Respondent's conduct from four years ago and its isolated and unique nature barely warrant the strong disciplines imposed by the Referee, and certainly do not warrant disbarment. Indeed, if anything, the aggregious conduct of The Bar in ex partying the Referee in order to try to obtain a disbarment in this matter are the same type of mistake of which the Respondent stands accused, namely zealously believing and protecting one own's client. Respondent should be given the broadest leniency for his misconduct even as The Bar was allowed to continue its prosecution of the Respondent without knowing the facts of how the single most important document was executed until the conclusion of the trial, (transcript of October 19, 1987 at pg. 149), and apparently without knowing to this day what constitutes perjury (see The Bar's Brief) or ex parte communications with the Court (transcript of October 30, 1987 at pgs. 16 and 17).

Lawyers can make honest mistakes, both those that work for The Florida Bar and Respondent. Not all mistakes require suspensions.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to David M. Barnovitz, Bar Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 835, Ft. Lauderdale, Florida 33309; John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; John F. Harkness, Jr., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 28 day of June, 1988.

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