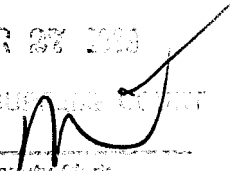


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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Supreme Court Case No. 72,255

v.

ELLIS S. RUBIN,

Respondent.

_____ /

THE FLORIDA BAR'S REPLY BRIEF

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PREFACE

In this brief, the Complainant, The Florida Bar, will be referred to as "The Florida Bar" or "the Bar." Ellis S. Rubin, the respondent, will be referred to as "Rubin" or "Mr. Rubin."

S M M A R Y O F M E N T

If a lawyer files a Motion to Withdraw because he believes his client will commit perjury, and permission to withdraw is denied, he must continue to serve.

The issue in this case is not perjury, it is whether a lawyer has the right to refuse a lawful order of the court.

@ The Florida Bar does not want to punish Mr. Rubin because he refused to represent a client who he believes will commit perjury. However, The Florida Bar wants to put the legal profession on notice that lawyers do not have the right to decide, which orders to obey or disobey, notwithstanding the lawyer's motives.

ARGUMENT

**THE ISSUE IN THIS CASE IS NOT PERJURY, IT IS WHETHER
AN ATTORNEY IS AUTHORIZED TO DISOBEY A COURT ORDER**

Ellis S. Rubin, in his Answer Brief, has given us an interesting history of the law, as it pertains to perjury. He discusses the Ten Commandments, Exodus, King Alfred the Great, George Washington, Abraham Lincoln, and other authorities--all of which denounced perjury. While Mr. Rubin is to be congratulated for his knowledge of the history of perjury, he has not cited proper authority to authorize his willfully disobeying a lawful order of the court.

In addition, this Court, the Third District Court of Appeal, the trial judge who found Mr. Rubin guilty of contempt and The Florida Bar all agree with the views concerning perjury as expressed by the Ten Commandments, Exodus, Alfred the Great, George Washington and Abraham Lincoln. Moreover, The Florida Bar is not attempting to punish Mr. Rubin, as he alleges, for refusing to permit his client to commit perjury. On the contrary, Mr. Rubin, in his Answer Brief, cites numerous cases and Florida Bar ethical rules, which denounce perjury.

The issue in this case is not whether a lawyer should permit a client to commit perjury, but whether a lawyer has the authority to decide which orders he should obey and which orders he should disobey.

Although the Rules Regulating The Florida Bar were not in effect at the time Mr. Rubin disobeyed the order of the trial judge, Rule 4-1.16(c), of these rules, does show the thinking of this Court and The Florida Bar, concerning this matter, to wit:

When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

While Rule 4-1.6(c) did not become effective until January 1, 1988, Disciplinary Rules of Code of Professional Responsibility were controlling at the time of Mr. Rubin's disobedience and said rules also proscribed Mr. Rubin's conduct, as follows:

Disciplinary Rule 1-102(A)(5) - A lawyer shall **not** engage in conduct that is prejudicial to the administration of justice.

Disciplinary Rule 2-110(A)(1) - A lawyer shall not withdraw from employment in a proceeding before tribunal without its permission.

Disciplinary Rule 7-106(A) - A lawyer shall not disregard ...a standing rule of a tribunal or a ruling of a tribunal.

In the case at hand, Mr. Rubin was the fourth attorney to represent the defendant. Also, Mr. Rubin made his motion to withdraw just prior to jury selection. Sanborn v. State, 474

So.2d 309 (Fla. 3d DCA 1985). What was the trial judge to do? If he allowed Mr. Rubin to withdraw, he would be transferring the same problem to the fifth attorney. Then he too could refuse to represent the defendant. With a situation such as this, there would "be a perpetual cycle of eleventh-hour motions to withdraw and an unlimited number of continuances for the defendant." Sanborn v. State, supra. Certainly, when a lawyer creates such a situation, he would be acting in a manner prejudicial to the administration of justice. In fact, this would create chaos in our judicial system. Moreover, if the lawyer were allowed to decide on his own, which orders to obey or disobey, the courts would become impotent, and the judiciary would become a mockery. See Seaboard Airline Ry, Co. v. Tampa Southern R. Co., 101 Fla. 468 at 476, 134 So. 529 at 533 (1931).

In this case, Rubin did appeal to the Third District Court of Appeal, which stated in part, if permission to withdraw is denied, counsel must continue to serve, Sanborn v. State, 474 So.2d 309 (Fla. 1985). Nevertheless, despite this, Mr. Rubin refused to continue to serve when so ordered.

Mr. Rubin, states in Argument II of his Answer Brief, that, "This Court can set the record striaight and can show the rest of the nation that Florida does not tolerate perjury nor punishment of lawyers who prevent perjury." The Florida Bar respectfully submits that this Court has already done this, as evidenced by

its numerous decisions concerning perjury. Mr. Rubin's Answer Brief is replete with Disciplinary Rules and Florida Supreme Court cases, which make it clear that this Court does not condone perjury in any form.

The Florida Bar respectfully requests that his Court make it clear that it does not tolerate attorneys willfully disobeying Court orders, even if it is under the guise of preventing perjury.

Although Mr. Rubin's arguments may seem very persuasive to many persons unlearned in the law, members of the legal profession should readily recognize that his actions, if condoned, would put the entire legal system in jeopardy. In short, the issue is not perjury, it is whether a lawyer may disobey a Court order.

The Bar respectfully submits that the respondent's arguments do not have merit. Furthermore, the Bar reiterates and stands on the arguments it presented in its Initial Brief.

CONCLUSION

WHEREFORE, THE FLORIDA BAR, respectfully requests this Honorable Court find Ellis S. Rubin guilty of violating the Disciplinary Rules, as shown in the Complaint and that he be given a Public Reprimand.

In addition, The Florida Bar requests that costs be taxed against the Respondent, as described in the Conclusion of the Initial Brief of The Florida Bar.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of The Florida Bar Reply Brief were mailed to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927, and copies were mailed to Ellis S. Rubin, 265 N.E. 26th Terrace, Miami, Florida 33137, and John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32399-2300 this 13 day of March, 1989.


PAUL A. GROSS, BAR COUNSEL