Petitioner's Initial Brief

SUPREME COURT OF FLORIDA

No. 73,214

THE FLORIDA BAR,

Complainant

vs.

T. CARLTON RICHARDSON,

Respondent

Petition for Review of Report of
The Honorable Thomas E. Penick, Jr., Referee

T. Carlton Richardson, J.D., LL.M.
Petitioner, Pro Se
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ISSUES FOR REVIEW

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STATEMENT OF CASE

This Review involves the recommendation by the Referee that the Respondent be found guilty of charging a "clearly excessive fee" in violation of disciplinary rule 4-1.5 ("Fees for Legal Services"). This is actually a fee dispute case by dissatisfied clients against their former attorney claiming an overpayment for services rendered by the attorney.

Overview

In November, 1982, Mrs. Perry Jones, the principal complaining client, consulted with Respondent regarding the preparation on an estate plan. Respondent's practice concentrates in estate planning for working and middle income individuals, a subject on which he is published and is a frequent lecturer to lay and professional groups. In March, 1983, Mrs. Jones and her husband, Roosevelt Jones, Sr., the co-complainant, consulted with Respondent regarding preparation of their estate plan. While collecting information regarding the financial condition of the clients, it was discovered that Mr. Jones owned an undivided 1/3 interest in unimproved land whose title was not clear and that Mrs. Jones had an interest, the nature of which was unclear, to some improved property.

During the initial consultation and subsequent conferences with the clients, the services were extended to include: (1) verification of ownership interest of Mrs. Jones' one-third interest to real estate in Key West, Florida, which she had inherited, (2) clearing the title to approximately three (3) acres owned in common by Mr. Jones as an intestate co-beneficiary

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of a one-third (1/3rd) interest as a result of the death of his aunt, Leula King, for the purpose of acquisition at below appraised value and further small scale real estate development of the parcel after acquisition, (3) resolving a consumer problem regarding the repair of the clients' automobile, (4) arranging partial financing of the client's acquisition costs of the said 3 (three) acre tract, and (5) handling the administration and settlement of the Leula King Estate in the Probate Division ("probate court") of the Circuit Court of Hillsborough County, Florida involving determination of homestead, sale of the 3 (three) acre tract to the Jones' son, collection of taxes paid by the Joneses' on the 3 (three) acre tract. (Estate administration was chosen instead of quiet title action and partition suit.)

The fee arrangement provided for a base or minimum fee plus costs but when the nature, extent and scope of services rendered exceeded the base or minimum fee converted to hourly rates per the arrangement and clients understanding. See, Transcript at 224, line 20 to 225, lines 1, 10-13. [Cited: TR (page):(line)] The clients were advised of the fee agreement which involved a minimum fee of $1,250. Fee contracts were signed regarding the estate planning and administration (Estate of Leula King). While the contracts were separate it was really all one transaction because the sole purpose of the estate administration ("title clearing") contract was to assure that the clients received some contribution from the King Estate for their legal fees in clearing the title to the unimproved land. See, TR 249:10-13 The clients were advised that should the base (minimum) fee be ex-

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ceeded that the standard hourly rates would apply and that they were the guarantors of any fee in estate administration and would be reimbursed from the King Estate whatever the court awarded. At the first visit the client received, in addition to copies of the fee contract, a statement of fee policy and "You and Your Lawyer", a pamphlet that explains the reciprocal duties and responsibilities of the attorney/client relationship. It is the policy of the Respondent to make a full and complete disclosure of the fee arrangement and nature and extent of services to be rendered.

During the period of representation, the services rendered went beyond estate planning and administration and involved consumer problems regarding an automobile repair, assistance in obtaining a bank loan part of which was used by clients to buy a car and pay their legal invoices, land planning and development of the unimproved land, and some financial planning. See, TR 233:8-234:18 The Attorney's purpose is commencing probate of the King Estate was to clear title to the land without filing a quiet title/partition action and to obtain the land for the clients at below market value since the clients had managed the property for over 50 years and paid taxes and received very little rent off of the land.

The Billing Process

Respondent issued invoices on account of services under the King Estate/Title Clearing contract (i.e. probate related services) dated March 19, August 14, September 26, 1984, and February 2, March 27, May 5, and June 26, 1985; and invoices on

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account of services under the Estate Planning contract (i.e. non-probate services) dated February 23 and July 3, 1984. Payments were made on both accounts from the personal funds of the Perry L. and/or Roosevelt Jones with checks executed by Perry L. Jones from bank accounts at Freedom Savings or Community Federal S&L.

The payments made and allocations to costs and fees for services rendered by Respondent to the Jones(s) for services related to the administration and settlement of the King Estate were as follows:

TABLE OF PAYMENTS

Date	Check No.	Payment Amount ($)	Allocation Fees ($)	Allocation Costs ($)	Total YTD Payments ($)
3/31/83	141a/	500.00	500.00	-0-	500.00
4/20/84	95b/	1,425.00	1,300.00	125.00	1,925.00
8/20/84	101	1,380.07	1,213.20	166.87	3,305.07
9/28/84	103	695.93	562.25	133.68	4,001.00
3/04/85	106	956.24	628.85	327.39c/	4,957.24
4/18/85	156	261.07	261.07		5,218.31
7/05/85	177	1,525.09	1,243.62	281.47	6,734.40
TOTALS	---	6,734.40	5,708.99	1,034.41	6,734.40

Notes to Table

a--Actual amount of check was $1,335. There was a split allocation of the amount, $500 went to this account, and the remainder ($835.00) went to the other account #42-183 for estate planning/general services.

b--Actual amount of check was $1,934.93. There was a split allocation of the amount, $1,425 went to this account, the remainder ($509.93) went to the other account #42-183 for estate planning/general services.

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c--$250 of costs constituted a direct payment to Henry Shell for appraisal fee, the remainder ($77.93) were case costs invoiced on February 2, 1985.

The time consumed under standard billing guidelines was 55.22 hours of attorney services and 58.47 hours of support staff (paralegal and clerical). The billing guidelines were established by the Respondent and constitutes a part of the Office Manual. On account for services rendered by Respondent to the Jones(s) for estate planning and other services were in summary, as follows:

A/	Total payments received.....	$ 2,718.90
B/	Total payments applied to service fees.....	2,268.11
C/	Total payments applied to costs.....	450.49

The time consumed was 25.33 hours of attorney servic s and support staff services of 5.85, paralegal, and 24.25 clerical.

On March 31, 1983 the Jones(s) made a payment to Respondent in the amount of $1,335.00 (One Thousand Three Hundred and Thirty-Five Dollars) by check # 141 from Freedom Savings which was applied to their two legal services accounts as follows:

A/ $500 to Case # 43-183 (King Estate/Title Clearing)

B/ $835 to Case # 42-183 (Estate Planning)

On April 20, 1984 the Jones(s) made a payment to Respondent in the amount of $1,934.93 (One Thousand Nine hundred and Thirty-Four and 93/100 Dollars) by check #95 from Community Federal S&L which was applied to their two legal services accounts as follows:

A/ $1,425 on Case # 43-183 (King Estate/Title

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Clearing)

B/ $509.93 on Case # 42-183 (Estate Planning)

The total amount of payments made to Respondent by the Jones(s) on account of all legal services was 9,462.30 (Nine Thousand Four Hundred and Sixty-Two and 30/100 Dollars) consisting of total service fees in the amount of $7,977.10 (Seven Thousand Nine Hundred Seventy-Seven and 10/100 Dollars) and total costs in the amount of $1,485.20 (One Thousand Four Hundred and Eighty-Five and 20/100 Dollars), which includes a $250.00 direct payment of Henry Shell as an appraisal fee. These total payments were made as follows:

Schedule of Payments

Check No.	Probate (Case #43-183)	Non-Probate (Case #42-183)
141 (3/31/83)	$ 500.00	$ 835.00
548 (3/23/84)		100.00
95 (4/20/84)	1,425.00	509.93
97 (7/17/84)		1,273.97
101 (8/20/84)	1,380.07	
103 (9/29/84)	695.93	
106 (3/04/85)	956.24	
156 (4/18/85)	261.07	
177 (7/05/85)	1,525.09	
Totals	$ 6,743.40	$ 2,718.90

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GRAND TOTAL.....$ 9,462.30

Over the two year period of representation from March, 1983 to June, 1985, the clients were rendered eight (8) invoices for the services rendered. A few months prior to the termination of services, Mrs. Jones became concerned at the cost of the legal services. An office visit was arranged and she came along with her pastor (and maybe their son since he was also involved with the clients in the matter). At that visit the Respondent explained to both the pastor and the clients the services and charges and what was and would be involved to complete the matter. The client appeared satisfied with the explanation and the services continued.

When the next (and final bill was rendered May 5, 1985 the client called and stated that the services were terminated and that they would satisfy the final bill and collect their file records. This they did. The Respondent throughout the representation because of the continuing nature of the relationship discounted some of the charges as the some invoices show. At the time of service termination, however, the Respondent was not aware that the clients had obtained other counsel, although they were advised to do *so,* nor that they had contracted with the other counsel on an oral contingent fee arrangement of 25% to collect for overpayments they felt were made under the legal services contract. At no time prior to the filing of this complaint with the Bar did the clients raise the issue of overpayment. The Respondent always maintained an open, caring and accommodating relationship with the clients.

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Land Acauisition and the Probate Process

Up to time of discharge in June, 1985, the Respondent had obtained the clients objectives. When discharged, a draft of the petition for sale of real estate to the client's son and proposed ordered was prepared which was turned over the the clients and transmitted to their new counsel, Charles Wilson, Esq., who used them to obtain the sale to the clients. Attorney Wilson received as fees for his services from the King Estate the amount of $750.00, he also received an additional amount of $300 to handle the transactions from the clients to their son. See, TR 371:7-13 The Respondent's procedure would have been a direct sale in probate to the son. The probate land sale occurred in November, 1985, for $18,000 bringing cash into the Estate for the first time, and then in the sale to the client's son in February, 1986 who in turn sold the land in February, 1987 for $22,000, a $4,000 profit in only 13 months or a 22% profit. See, TR:270:20-25, 271:1-6.

Attorney Wilson testified that he had a contingent fee arrangement with the clients for collection of any fee refund but did not recall if it were oral or written, further that he used the workproduct of the Respondent in preparing the petition for sale, and made no mention of the additional $300 received as compensation for the real estate transaction from the Joneses to their son. TR 167:14 to 170:13; 175:6-15. The clients' offered to settle their claim against the Attorney for $3,000. See, TR 179:6-7.

The final account filed in the King Estate failed to include

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the clients' claim for back taxes nor did it include the rents collected off the property. See, TR:192:8-21, 172:18 to 173:14. The Respondent never received any fees from the estate. See, TR 173:19-25.

The Probate Court of Hillsborough County, Judge F. Dennis Alvarez, presiding, on February 6, 1986 considered objections to the fees proposed to be paid under the Final Account of the personal representative, Roosevelt Jones, to Respondent. On February 3rd, 1986, Judge Alvarez entered an order determining that the sum of $2,500 constituted a reasonable fee for the services of Respondent to the Estate of Leula King and that the Estate was to be responsible to pay that amount only. The Estate of Leula King has paid no fees to Respondent and Respondent as sought to collect no fees from the Estate of Leula King. The Probate Court record shows no summons or complaint being issued against the Respondent only notice of hearings. The Probate Court record further reveals that the Respondent was denied a hearing on his counterclaim filed in the proceedings and was not accorded a jury trial. Respondent was not called to testify in support of fee charged the clients at that hearing on objections to discharge and for reimbursement of attorney fees paid by the personal representative to Respondent out of estate funds. Respondent received no compensation out of estate funds, but was paid exclusively by checks signed by Perry Jones, the personal representative's wife, from a joint account with her husband, Roosevelt Jones, with Freedom Federal Savings and individual account at Community Federal S&L.

The Grievance Process

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Four months after discharge in October 1985, the clients filed a grievance with The Florida Bar. A hearing was held before a panel of the Bar's Grievance Committee for the 13th Judicial Circuit. "The grievance committee is the Bar's 'grand jury'...and proceedings before [it] are nonadversarial in nature. *** If the grievance committee finds probable cause, then formal adversarial proceedings, which ordinarily lead to disposition by the Supreme Court of Florida, will be commenced..." See, Notice, Grievance Procedures, The Florida Bar. The grievance committee hearing is not a part of the investigatory process, but is the preliminary adjudicatory proceeding. During the deliberations of the Attorney's grievance committee panel, an assistant Bar Counsel was present and did participate to some extent. Further, the entire grievance committee has no members of the Afro-American community and thus the Respondent's panel could not have included such members either as lay or attorney members. During the show cause hearing, the grievance committee panel received evidence of the probate refund proceedings.

Proceedings Before Referee

The Florida's Bar's case consisted, in part of, testimony and documentary evidence of the probate court's proceedings, and testimony of John A. Jones, Esq., a member of the law firm of Holland and Knight. Judge Alvarez was the chief witness for the former evidence who stated that he considered all services rendered by the Respondent, whether probate or not, and included that in his determination of a reasonable fee:

> "(I)n reviewing the whole matter I ruled that all services provided by Mr. Richardson were

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> in fact related to the estate and were not related to estate planning. And I felt that the $2,500.00, notwithstanding the fact that there was a contract, was sufficient to provide services in this estate and also for any services that he might have provided for estate planning." TR 65:12-19

Judge Alvarez further acknowledged that the Respondent never received any compensation from estate funds. See, TR 78:17-25, 79, 80:1-16.

Attorney Jones testified that the hourly rates of the member of his firm with the professional training and experience of the Attorney would range from $125 to $200 per hour. TR 110:8-14. He further testified that time was not a factor in his determination that the fee charge was excessive:

> "...I looked at what appears to have been done and accomplished. And how much time or effort was, how much time you spent on it is not necessary to the way that I would gauge my judgement as to the reasonableness of the services performed." TR 114:21 to 115:1

See, also, TR 120:2-15. and that the costs charged "do not seem to be unreasonable". See, TR 117:23-24. Attorney Jones testified that as to the estate planning services this was "in a field of law which I must admit I'm not familiar with". See, TR 126:7-8

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SUMMARY OF ARGUMENTS

1. USE OF TAINTED OR ILLEGAL EVIDENCE.

That the 13C Grievance Committee an Referee relied upon incompetent and/or improper documentary and testimonial evidence from void and illegal proceedings in the Probate Division of the Hillsborough County Circuit Court, Hon. F. Dennis Alvarez, presiding dealing with probate court's judgment ordering the Respondent to refund to the Estate of Leula King compensation that did no come from the Estate received by Respondent under an attorney fee contract with the Estate's personal representative and his wife, who initially filed a grievance with the Florida Bar, for estate and non-estate services. The Respondent contends the probate court's proceedings, being by statute "in rem" (Fla. Stat. 731.105), could not be had since the Respondent received no funds from the Estate, his fee contract being an arrangement between he Respondent and his clients which the Estate had no interest, the fee contract being no asset of the Estate nor obligation of the Estate. The Respondent further contends that the proceedings are violative of his 14th Amendment (U.S. Constitution) rights to due process and equal protection of the laws, since the Respondent was never summoned before the probate court according to law, was denied a hearing and was unable to prosecute a counterclaim in the probate proceedings, and was denied a right to trial by jury. Further, having been denied a "full and fair" opportunity to litigate the issues before the probate court, the Committee and the Referee were not precluded from disregarding the judgment and the evidence presented in support

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thereof.

That the testimonial and documentary evidence at the Final Hearing before the Referee was unreliable (1) since the Florida Bar's attorney witness should have been disqualified on grounds of a conflict of interest since the attorney's partner serves on the Florida Bar's Board of Governors and, further, the attorney's testimony revealed serious deficiencies in the attorney's legal knowledge of the subject of representation by the Respondent in estate planning, application of appropriate legal standards, and background preparation that formed the predicate for the attorney's opinion; (2) since Judge Alvarez's testimony was inaccurate and patently false, demonstrated an abuse of judicial discretion, and showed that the Judge relied upon false and misleading court documents (e.g. a final account with unreported estate income) in making his rulings; and (3) since the complaining client's testimony revealed she testified incorrectly at the probate court proceedings regarding the number and source of payments for estate services made to the Respondent out of the client's personal funds and that she and her new attorney(s) had a oral contingent fee arrangement to collect the claim for alleged overpayment.

2. INSUFFICIENT EVIDENCE AND FINDINGS.

The Referee had insufficient "clear and convincing" evidence of professional misconduct, failed to make specific findings applying the factors under the Bar Rule governing excessive fee claims, and failed to apply his findings to the legal concepts of overreaching and/or unconscionability. This omission was an

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abuse of discretion and demonstrated a manifest disregard of the law.

3. LACK OF DUE PROCESS--THE GRIEVANCE PANEL PROCEEDINGS.

First, The Grievance Committee excluded Blacks and thus did not represent a cross-section of the legal and lay community of the 13th Judicial Circuit. Respondent does not claim an entitlement to have a Black on his panel ==, but that the likelihood of a Black was nil since none were on the Committee at large. This denied Respondent, and any other lawyer, whether Black or non-Black, the opportunity to have a hearing panel representative of a cross-section of the legal and lay community which Respondent is entitled to under the Federal and State constitutions. Secondly, the Grievance panel considered incompetent evidence of the illegal probate court proceedings. And, third, Bar counsel was present and participated in the post-hearing adjudicatory phase of the show cause hearing and the Respondent and his counsel were excluded from the deliberations. Each of foregoing, jointly and severally, violates due process rights of the Respondent.

4. ENTIRE PROCEEDINGS UNCONSTITUTIONAL.

The Bar Rule regulating legal fees insofar as it deals with excessiveness is vague since there is no ascertainable standard to which the Respondent can govern his conduct and is arbitrary since a "lawyer of ordinary prudence" must conclude that the fee is excessive, and promotes anti-competitive tendencies among lawyers to set fees so as not to run afoul of the Bar's vague disciplinary rule.

5. SANCTIONS IMPROPER.

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In no case where a public reprimand was imposed as discipline was restitution ordered. The remedy of restitution has been specifically rejected by this Court unless there is showing of fraud, disceit, or misappropriation of client's funds. Neither has a public reprimand been coupled with probation or remedial education, since this is an isolated incident of bad judgment or neglect. The only dispute is as to the "price for services rendered" to clients who are lower middle or working class since the Referee concluded that the fee charged was "alright" for a wealthy individual to pay, a private reprimand with or without binding arbitration or binding arbitration alone would be preferable especially in view of the professional training, experience, and standing of the Respondent and his contributions to the community and profession lecturing frequently on estate planning and law office economic subjects. The costs were imposed with an opportunity to object to the items allowed to Bar counsel, i.e. meals and investigation services, and further the whole concept of costs allowance to the Bar counsel violates the due process and equal protection of the Federal and State constitutions since there is no reciprocity, i.e. if the Bar loses costs are not assessed against it, and other professionals (e.g., doctors) do not pay such costs if disciplined.

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ARGUMENTS

1. USE OF TAINTED OR ILLEGAL EVIDENCE.

Probate Court Records: Preclusion. The Bar Grievance Committee panel's and Referee's receipt of evidence that was from an illegal proceeding denies the Respondent due process. The probate judge of the Hillsborough County Circuit Court "probate court"] improperly exercised jurisdiction. The probate court's statutory jurisdiction is "in rem". Fla. Stat. 731.105 If anyone receives funds or property of an estate, the probate court's jurisdiction attaches, otherwise any judgment over res which the court has no jurisdiction, i.e. non-estate assets, is void and a nullity. Spitzer v. Branning, 184 So. 770 (Fla., 1938). As relates to attorney fee contracts for services in an estate proceeding, the estate cannot be bound by the contract and it is a personal obligation of the contracting client, whether beneficiary, personal representative or disinterested third-party. Fla. Stat. 733.619 [Attorney fee contract not enforceable against estate]; Fla. Stat. 733.6175 ["Any person who is determined to have received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds." (Emphasis Supplied)] In re Estate of Lieber, 103 So.2d 192, 200 (Fla., 1958). The Respondent received payment for services rendered to the Estate of Leula King of which one of the complaining clients (Mr. Jones) was co-beneficiary and personal representative from Mr. Joneses' wife, Perry Jones, the other complaining client. No estate funds were used. Perry Jones is not a person interested in the Estate as beneficiary or personal

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representative. Since the compensation received by the Respondent did not come "from an estate" no refund can be ordered by the probate court and furthermore, the payments under the legal service contract with the complaining clients are not assets of the Estate nor is an obligation of the Estate under which payment from the Estate has been made. The probate court clearly lacked jurisdiction over the "res" (i.e. attorney fee contract) and thus its proceedings were null and void.

Additionally, the Respondent never was properly brought before the probate court since no summons was ever served upon him at anytime during the proceedings and the Respondent has never consented to the court's jurisdiction. In the classic U.S. Supreme Court case of Pennover v. Neff, 95 U.S. 914 (1877), the Court stated, inter alia:

> "Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations off parties over whom that court has no jurisdiction doe not constitute due process of law. ... To give such proceedings any validity, there must be a tribunal competent by its constitution--that is by ~~the law of its~~ creation--to pass upon the subject matter of the suit: and, if that involves merely a determination of the personal liability of the defendant, & must ~~be~~ brousht within its jurisdiction by ser~~vice of~~ process within the State or his voluntary appearance." (Emphasis Supplied).

Subsequently, the U.S. Supreme Court held in Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950), inter alia:

> "An elementary and fundamental requirement of due process in any proceeding which is

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> to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of pendancy of the action and afford them an opportunity to present their objections. The notice must be of such a nature as reasonably to convey the required information, and must afford a reasonable time for those interested to make their appearance..." (Emphasis Supplied)

As to preclusion under the doctrine of collateral estoppel, an exception to the rule is if the litigant had a "full and fair opportunity" to litigate the issues. See, Montana v. United States, 440 U.S. 147, 153 (1979). Contract actions are litigated in the general civil division of the Circuit Courts of Florida where litigants are accorded a right to trial by jury. Fee disputes between attorneys and clients in probate proceedings are simple contract actions which are to be tried in the general civil division. See, Estate of Sacks, 300 So.2d 706, 708 (Fla., 3rd DCA, 1974). See also, The Florida Bar v. Wynn, 208 So.2d 800, 811 (Fla., 1968) A full and fair opportunity was not accorded the Respondent in the probate proceedings because (1) the Respondent, a non-party to the probate proceedings who had long since been allowed to withdraw after the clients discharged him, was never summoned [See, Beck v. Beck, 383 So.2d 268, 271 n. 6 (Fla. 3rd DCA, 1980) (Attorneys who received compensation from an estate must be noticed and "joined in the proceedings" in order to make appropriate refunds under Fla. Stat. 733.6175)], (2) the Respondent does not have the right to jury trial on fact issues surrounding his fee contract with his clients which is accorded in the general civil division, (3) the probate court failed to accord a hearing on the Respondent's counterclaim

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against his clients, one of which was a non-party to the probate proceedings and (4) discovery is restricted on to the matters related to estate administration. No full and fair opportunity in fact was accorded the Respondent to litigate the issue to whether his clients overpaid compensation under the fee contracts they had with him, the King Estate having no interest in the fee contracts, having paid no part of the fee contract's consideration nor was it obligated in anyway to do so nor did the Respondent seek compensation from the Estate for payment under his fee contracts. Neither the grievance panel nor the Referee should have given preclusive effect to the judgment of the probate court under these circumstances and it was reversable error to do so.

Bar's Attorney Witness Disqualified. The Bar rule requires that a "lawyer of ordinary prudence.." must conclude that the fee charged is excessive. FBR 4-1.5(A)(1) Attorney John A. Jones is a member of the firm of Holland and Knight which has a member on The Florida Bar Board of Governors. Further the firm may have represented The Florida Bar in proceedings before this Court, other courts, or the Florida Legislature. Attorney Jones is therefore disqualified to testify as a witness for The Florida Bar. See, FBR 3-710(i). The prohibition against representation also applies to testimony for an attorney with equal force. The fundamental fairness and public policy is obvious, to assure undivided loyalty to a client, to assure that the testimony would not be unduly influenced by any relationships, and to assure that the decisions of those in administrative or quasi-judicial positions not unduly influenced by any relationship. The Referee erred in permitting this witness to testify.

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Bar's Witnesses Unreliable. The Florida Bar's principal witnesses were unreliable and thus the evidence is neither "clear and convincing":

As to Judge Alvarez, not only was his testimony false, but demonstrated an abuse of judicial discretion regarding his determinations. First, the Judge testified that he considered the $2,500 legal fee to be reasonable for both estate and non-estate services which were evidenced by two contracts. See, TR 64:14 to 67:13. That could not be the case since the contracts came into evidence after his initial determination at a hearing on February 3, 1989 (order entered February 24th, 1986), at the hearing on the personal representative's Motion for Reimbursement of Excess Attorney's Fee filed March 10, 1986 and heard on March 18, 1986. Not until the second hearing on March 18th, did the Judge have before him the evidence of payments by Mrs. Jones to the Respondent for services rendered. Here the testimony is in direct conflict with the documentary evidence and the time frame in which events occurred, which either shows confusion on the part of the Judge or a attempt to ex post facto justify his ruling. Whatever the reason, this testimony if false. Second, the Judge testified that he considered non-estate work in considering the fee for estate work,

> "(t)hat anything else that [Respondent] charged them, whether he called it estate planning or whether he called it fees of the personal representative and so forth, that all came der the $2,500; that I did not feel he should be paid any other sums." TR 67:8-13

and added interest on a loan made by Mrs. Jones to pay personal expenses and the Respondent's legal fee [TR 239:21 to 240:12].

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According to Fla. Stat. 733.6175 , "..(a)ny person who is determined to have received excessive compensation from estate for services rendered may be ordered to make appropriate refunds" (emphasis supplied), there was no showing that "compensation [was received by Respondent] from an estate" and thus consideration by Judge Alvarez of non-estate services and sources of payment was patently erroneous and exceeded the statutory grant of authority. Concominantly, the Judge in ordering refund of fees paid to the Respondent from non-estate sources exceeded the "in rem" jurisdiction of the probate court granted by statute. See, Fla. Stat. 731.105. One appellate court, in the very similar case, Tomsky v. Superior Court, 63 P 1020 (Cal., 1901), to this, in denying the right of the probate court to enforce a refund of fees via its contempt power that an attorney had received from a personal representatives stated:

> "It is true he is an attorney of the court and an officer thereof, but that does not deprive him of the equal protection of the law. The judge of the court could not arbitrarily order him to refund a retainer received by him, for the mere reason that ~~in the~~ opinion of the judge, it had not been earned. The court would have the power to allow or reject the items so paid when the account of the [personal representative was presented for settlement, but its protecting arm does not extend so far ~~that it can~~ order all parties to refund money which, in the opinion of the judge, ~~has been~~ wrongfully obtained from the [personal representative1 of the estate. *** 'It is a principle that underlies all institutions and forms of government that no man can be deprived of his property, except in proceedings according to law, unless it be confiscated for the necessities or good of the public.'" at 1021 (Emphasis Supplied)

See also, Jackson v. Superior Court, 290 P. 448 (Cal., 1930).

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Accord, Sheffield v. Dallas, 417 So.2d 796, 798 Fla. 5th DCA, 1982):

> "..[I]t is the statutory (and inherent) obligation of the [probate] court to review and determine the reasonable amount of compensation to be paid to an attorney for a personal representative in probate proceedings. *** [And] to monitor (the) estate and protect it from what is factually determined to be an excessive claim for an attorney fee."

In this instance, the probate court exceeded its in rem jurisdiction and thus these proceedings are null and void and any evidence presented therein invalid and its use in collateral proceedings inadmissable.

Furthermore, Judge Alvarez's final ruling [See, Exhibit "B": Amended Order on Refund of Attorney Fees, Fla. Bar Exhibit #17, annexed] requiring the refund of attorney fees by the Respondent to the King Estate in the amount of $10,550.99 (Ten Thousand Five Hundred Fifty and 99/100 Dollars) gross and $7,970 (Seven Thousand Nine Hundred Seventy and 00/100 Dollars) net exceeds the amount stipulated to have been actually received by the Respondent, i.e. $6,743.40 (Six Thousand Seven Hundred and Forty-Three and 40/100 Dollars) including costs, from Mrs. Jones and is contrary to the actual evidence presented (cancelled checks, invoices). The Second District Court of Appeals reversed this Judge on the issue of amount when the Judge's findings was less than the subsequent amount, the original amount to be refunded was $8,018.49 (Eight Thousand Eighteen and 49/100 Dollars). See, Richardson v. Jones, 508 So.2d 739, 740 (Fla. 2nd DCA, 1987).

Attorney John A. Jones, the attorney witness for the Bar,

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testified that his opinion was not based upon review of the case record maintained by the Respondent. In the case of In re Estate of Lieber, supra, this Court held, inter alia that review of the case record of an attorney is required to testify as to the reasonableness of fees since the court's record does not often reflect the nature and extent of work performed. Such inadequate preparation, coupled with the witness's acknowledgment of his unfamiliarity with estate planning shows that testimony could be neither "clear" nor "convincing" and was unreliable and should not have been received or given any weight by the Referee.

The complaining client, Perry Jones, as a witness had a interest in seeking conviction for purposes of obtaining a refund or restitution as was recommended by the Referee. Her testimony revealed that, although having previously testified in probate court proceedings that all the checks paid the Respondent were for probate work [See, TR 235:5 to 240:3; 245:22 to 246:5], that this was in fact untrue, that she had offered to settle the case with the Respondent and withdraw he Bar complaint for $3,000 [See, TR 245:9], that she had entered into some contingent fee arrangement with her Attorney, Charles R. Wilson, for collection of any refunds ordered by the probate court from the Respondent possibly oral since no written agreement was ever produced [See, TR 243:2 to 245:8], that loan funds were used for payments other than the legal services of the Respondent (e.g. purchase of $2,200 automobile) [See, TR 239:21-25 to 240:1-4], that rentals were received from tenants on the Estate's land which were never reported on the "final" account in the Estate [See, TR 231:9-25 to 232:1-12], and that those rentals were used to pay all or part

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of real estate taxes for which the client had sought assistance from the Respondent to make a claim with the Estate for reimbursement. See, TR 230:25 to 245:21.

The filing of inaccurate probate papers, i.e. a final account with unreported rents (and possible deductions for real estate taxes paid), the nature of the contingent fee arrangement with the client's new attorney and the profit motive of the witness, raising serious questions of reliability or credibility and whether these Bar disciplinary proceedings are really being use as disciplinary tool or to resolve a contested fee dispute between the Respondent and his clients or force or coerce the Respondent into refunding fees paid under his employment contract which were rightfully earned. Such a use of the Bar grievance proceedings would constitute an abuse of process. Her testimony being erroneous in many material aspects could not be considered "clear" or "convincing" save for the sympathy the witness may have generated because she and her husband are elderly, such sympathy being unjustied and impermissable.

2. INSUFFICIENT EVIDENCE AND FINDINGS

The evidence is not "clear and convincing" and does not support a finding of guilt as to the charging of an "clearly excessive fee". In the Referee's oral and written ruling he concluded that the amount charged was beyond the client's ability to pay which is not factor to be considered, the Referee stated:

> "Tragically, I find that the attorney, ... applied practice and a professional approach that if the Joneses had been a corporate client or somebody of means... everything would have been alright."

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TR 462:16-22

> "..(A)ttorneys...fail when they attempt to extract fees that exceed 10-15 percent of their client's net worth. *** You can perform the same detailed service for a rich man and a man of meager means, but you cannot bill them at the same rate." Exhibit "C": Report of Referee at 2, annexed.

> "The question becomes at what point did the services rendered, even if they were excellent and superb services, without question, ... at some point there has to be a determination for the value of the product. Certainly the value has ~~to be~~ judged on the market for which it's aimed, and in this case in (sic: it) was the Joneses that came to the attorney and asked for services not Mr. Steinbrenner *** you can't apply the same standards that you'd use for Mr. Steinbrenner to Mr. and Mrs. Jones." TR 460:18-24; 461:11-13

> "(T)his case is about the right to an attorney, how much should that attorney be paid, what should the professional expect as return for his service, and what can every American...expect in the way of legal representation and the cost they's going to have to pay for ~~it~~.." TR 458:23 to 459:3. [Emphases Supplied]

The Bar rule states that "(a)ll factors set forth in this rule should be considered" (emphasis supplied). Fla. Bar R. 4-1.5(C); See, generally, In re Estate of Lieber, supra; Fla. Patients Comp. Fund v. Rowe, 472 So.2d 1145 (Fla., 1985). Amount charged alone cannot be grounds for discipline, it must be coupled with "overreaching" or "unconscionbility" when applying the standards. Fla. Bar R. 4-1.5(A)(1), (2). See, The Fla. Bar v. Moriber, 314 So.2d 145 (Fla., 1975). The Referee failed to cite one instance of overreaching, to the contrary the Referee concludes that the

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Respondent's fee resulted not from a "knowing malice aforethought" (TR 465:14-15), not because of wasteful practices stating that "there was no indication of sloppiness or laziness" (TR 460:5), the services "were excellent and superb services, without question" (Transcript at 460: 15-16), but "aggressive business practices" (Transcript at 465:16). As to unconscionability, the Referee fails to find that the fee arrangement itself or any item of it "affonts the sense of decency", or that the terms were "so extreme as to appear unconsionable according to the mores and business practices of the time and place", only that the Respondent's standard billing guidelines, practices and policies in charging when calls are made but unanswered after several attempts [a dollar charge at attorney rate of 20 minutes or $28.05, at staff rates of $14.85 (clerical) or $21.45 (paralegal)] or fixing a standard charge for preparation of legal documents (including forms) at 45 minutes [a dollar charge at attorney rate of $63.75, clerical of $33.75, and paralegal of $48.75] were improper. See, Urban Investments, Inc. v. Branham, 464 A.2d 93, 101 (D.C. App., 1983) [A contract is unconsionable and void if "the contract is the result of egregious overreaching or by its terms, is extreme and thus unconscionable relative to the mores and business practices of the time and place the contract was executed.] It would be noted that billing guidelines are standard in the profession, like mechanics, lawyers do not charge at a "clock rate" but a "book or billable" rate. See, Exhibit "D": Copies of Commercial Time Guidelines and excerpt from "Timekeeping" section of Law Office Manual for The Richardson Law Offices. Considered in the context of the commercial setting,

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purpose and effect of the fee contract, it was not unconscionable. The benefits conferred or to be conferred were numerous: collection of back taxes paid on the Estate real estate either directly or as a credit against the sale price over a 50 year period, acquisition of the Estate realty for $4,000 less than appraised value which the client's son later sole at a $4,000 or 22% profit, the clients received over $2,750 (consisting of $2,500 attorney's fee and $250 appraisal fee) [See, TR 261:20 to 262:4] from the King Estate in reimbursement for fees paid the Respondent personally for legal services in the estate administration and settlement, and assistance in developing the property either through subdividing and selling lots or housing. See, TR 230:11-24, 241:21 to 242:15 Since the legal fees dealt with business ventures primarily, they are substantially tax deductible, another benefit. Furthermore, the parties operated under the fee arrangement for over two years and the client received some 8 billings statements which averaged out to about $300 per month for legal services. The Referee failed to take into consideration in the amount of the attorney fee that part of the amount 10-20% was for costs.

The Referee's findings were rendered in "'manifest disregard' of the law" and the "facts of the case fail to support it" and therefore, the recommendation of guilt should be reversed. See, Koch Oil, SA v. Transocean Gulf Oil Co., 751 F.2d 551, 554 (2nd Cir., 1985). Furthermore, the Referee failed to make appropriate findings of fact which is in itself an abuse of discretion. See, Pope v. Noble, 525 A.2d 190, 196 (D.C., 1987) citing

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Johnson v. United States, 398 A.2d 354, 363-364 (D.C., 1979). Accord, In re Estate of Lieber, supra at 198 ["...(I)nadequacy of the record would ... warrant reversal..."]

3. LACK OF DUE PROCESS--THE GRIEVANCE PANEL PROCEEDINGS.

The Respondent alleges that the Grievance Committee panel was either biased, prejudiced or lack impartiality because: (1) the panel excluded members of the Afro-American (Black) community and under no circumstances would such members be selected since the entire Grievance Committee lacked any Afro-American members; (2) the Bar Counsel attended and participated in the deliberations of the Grievance Committee in its findings of "probable cause" and Respondent, nor his attorney, was allowed to observe these proceedings; and (3) the panel received evidence which may have substantially influenced its finding of "probable cause" in the nature of judgments and opinions which were void because the probate court had no jurisdiction. The questions presented are: Whether the "special facts and circumstances" presented by the Respondent regarding the racial composition of the Grievance Committee panel, or the presence and participation by Bar Counsel in the "probable cause" phase of the hearing without Respondent or his counsel being present, or the receipt by the panel of evidence from probate proceedings which are jurisdictionally defective, are such that "the risk of unfairness is intolerably high" as to deny Respondent his due process?

~~Use of~~ Illegal Evidence. As previously discussed, prejudice results from the admission of incompetent evidence and violates the Respondents due process rights under the 5th Amendment of the

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U.S. Constitution. The criteria to be applied is whether the challenge to the evidence admissability, the tribunal's racial composition, or any other aspects of the grievance process on balance permits an "inaccurate determination":

> "Determination of constitutionally required due process for a particular situation is essentially a balancing test involving consideration of governmental interests in efficiency and accurate determinations, private concerns at stake in the case, the complexity of the issues, the nature of the proceedings and its other safeguards, and an assessment of the danger to society from inaccurate determinations in direction." Arnett v. Kennedy, 416 U. S. 134, 164, 94 S.Ct. 1633 (1974).

Exclusion of Blacks. That a "fair trial in a fair tribunal is a basic requirement of due process" goes without argument. In re Murchison, 75 S. Ct. 623, 625 (1955). This applies to administrative agencies which adjudicate as well as to courts. Gibson v. Berryhill, 93 S.Ct. 1689, 1698 (1973). "Not only is a biased decision maker constitutionally unacceptable but 'our system of law has always endeavored to prevent even the probability of unfairness.'" In re Murchison, **supra,** at 625; Withrow v. Larkin, 95 S.Ct. 1456, 1464 (1975).

It goes without argument that the 5th and 6th Amendments of the Federal Constitution assures that the Respondent be indicted by a grievance committee panel or "grand jury" that is a fair "representat(ion) of a valid cross-section of the community". See, State v. Porro, 377 A.2d 950 (N.J. Super., 1977); Neal v. Delaware, 103 U.S. 370, 26 L.Ed. 567 (1881); Peters v. Kiff, 407 U.S. 493, 92 S.Ct. 2163 (1972). "The Constitution protects [Respondent] from consideration by a [grievance committee panel]

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selected as a result of systematic exclusion, intentional design or scheme which excludes any indentifiable class of persons solely because of that classification. This rationale extends to the situation where a [grievance panel] will be absent or proportionately lacking members of a cognizable class." Virginia v. Rives, 100 U.S. 313, 25 L.Ed. 667 (1880); State v. Smith, 262 A.2d 868 (N.J., 1970); Porro, supra. "There is no constitutional tolerance for the systematic and deliberate exclusion of members of any cognizable class, notwithstanding the underlying motive of good faith of those entrusted with the selection process." Dow v. Carneaie-Illinois Steel Corp., 224 F.2d 414 (3rd Cir., 1955); Crawford v. Bounds, 395 F.2d 297 (4th Cir., 1968).

The exclusion of minorities per se from a decision-making process creates a "risk of actual basis" or "probability of unfairness". We do no live yet in a society that is classless or color-blind, although that is an acknowledged public policy goal. If Blacks were excluded from jury pools, as opposed to a particular jury panel, surely that would be considered prejudicial to a party, whether the party is Black or non-Black. "For racial discrimination to result in the exclusion...of otherwise qualified groups not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society..." Smith v. Texas, 311 U.S. 128, 130 (1940). The same applies to the an administrative panel. The exclusion of Blacks from the Grievance Committee from which the Respondent's panel was selected "creates an unconstitutional risk of basis in administrative adjudication *** (and) *** the practice

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must be forbidden if the guarantee of due process is to be adequate y implemented." Withrow, Id.

Bar Counsel's Ex Parte Contact. The determination of "probable cause" is the "grand jury" phase of the grievance process in Florida Bar proceedings against attorneys whose client(s) have alleged conduct violations of the Code of Professional Responsibility. Can the Bar Counsel participate or advise the Grievance Committee in a closed session after presentation of evidence upon which the Committee must determine if there is probable cause? The Respondent says, no! Under Florida Bar disciplinary procedures, the investigatory and adjudicatory functions are separate. "Upon request of a grievance committee, staff counsel may appoint a bar counsel or an investigator to assist the committee in an investisation. Staff counsel shall assist each grievance committee in carrying out its investisative & administrative &= ties..." (Emphasis Supplied) [Fla. Bar Rule 3-7.39(e)], not adjudicatory functions, i.e. deliberations when finding probable cause is being considered.

Does the failure to permit the Respondent to be present during the deliberations which are adjudicatory and not investigatory, represent a "special fact or circumstance" that "poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." Withdrow, supra at 1464. In Matter of Beck, 252 N.W.2d 795 (Mich., 1977), the state supreme court rejected the argument of bias since "(t)here is no evidence, however, that (the bar counsel) took part in, or was even present during the Board's deliberation of the case. *** Because there is no

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evidence that the (bar counsel) was present during the Board's deliberation of (the accused attorney's) case, and because there is a plausible explanation for the (bar counsel's) presence at the meeting (bar counsel merely entered the room 'after hearing argument' on accused attorney's case and nothing more), we do not find 'special facts and circumstances' which give rise to the inference that (the attorney) was denied a fair and impartial hearing before the...Board." Cf., Withrow, supra at 1460-61 [Accused professional or his counsel could attend closed probable cause hearing without right to cross-examine. Investigative hearings were held and "(the accused professional's) counsel was present throughout the proceedings." (Emphasis Supplied)] It is clear from the reading of these two cases that if the prosecuting attorney (bar counsel) has any ex parte contact with the hearing committee their is created a "risk of actual basis" or "probability of unfairness".

4. ENTIRE PROCEEDING UNCONSTITUTIONAL

Rule Regulating Legal Fees Vaque. The Fla. Bar R. 4-1.5 regulating fees for legal services provides, in part:

> "An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee when: (1) After view of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee exceeds a reasonable fee for services provided to such degree as to constitute clear overreaching or an unconscionable demand by the attorney; *** (D) Contracts or agreements for attorney's fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreement, unless found to be illegal, prohibited by this rule, or clearly excessive as defined by the rule." (Emphasis Supplied)

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"A lawyer's interest in pursing his calling is protected by the Due Process Clause of the 14th Amendment" of the Federal Constitution. Leis v. Flynt, 439 U.S. 438 (1979)

> "In a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed....Although the boundaries of the 'liberty' protected by the 14th Amendment have never been conclusively surveyed, it is clear that they encompass 'not merely [the] freedom from bodily restraint' and the rights conferred by specific provisions of the Constitution,... but also the 'privileges long recognized at common law as essential to the orderly pursuit of happiness.' Among those privileges is 'the right to hold specific private employment and to follow a chosen profession,' including 'the practice of law'." Leis, Id., at n. 17.

The U.S. Supreme "*** Court has long held that laws so vague that a person of common understanding cannot know what is forbidden are unconstitutional on their face." Coates v. City of Cincinnati, 402 U.S. 611, 91 S.Ct. 1686 (1971); Anzetta v. New Jersey, 305 U.S. 451 (1939); United States v. L. Cohen Grocery Co., 255 U.S. 81 (1921). "On the other hand, laws which plainly forbid conduct which is constitutionally within the power of the State to forbid but also restrict constitutionally protected conduct may be void either on their fact or merely as applied in certain instances." Coates, Id. The Bar rule regulating legal fees is unconstitutional on its face or as applied because:

> "(I)t subjects the right to [contract for legal services] to an unascertainable standard [i.e. 'a lawyer of ordinary prudence'].. ." Coates, Id.

and is "unconstitutionally board because it authorizes punishment of constitutionally protected conduct." Coates, supra. "(T)he [Bar regulation on legal fees] is vague not in the sense that it

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requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in sense that no standard of conduct is specified at all. As a result, 'men of common intelligence must necessarily guess at its meaning.'" Coates, supra.; Connally v. General Construction Co., 269 U.S. 385, 391 (19--). This Court has taken judicial notice of the fact that "opinions of reputable lawyers concerning what constitutes a reasonable fee in any given situation often are far apart as the poles." Wynn, supra at 811. Further the Bar rule regulating attorney fee contracts and voiding them violates an attorney's right to practice law and contract for services compensation the attorney feels is adequate and competitive by continually subjecting the attorney to the possibility of discipline by the Bar "through good-faith enforcement" of the regulation and invites "discriminatory enforcement". See, Coates, supra.

Rule Regulating Legal Fees Violates Anti-Trust Laws. The Rule voiding legal fees which are "clearly excessive" in the "definite and firm conviction" of "a lawyer of ordinary prudence" violates Sec. 1 of the Sherman Act, 15 U.S.C. Sec. 1 because it fosters anticompetitive practices . The standard is *so* imprecise that the "threat of sanctions" substantially impairs the freedom of the consumer to obtain services at competitive prices because attorneys would seek to charge fixed fees *so* as not to depart "from professional norms, and perhaps (betray) their professional oaths." Goldfarb v. Virginia State Bar, 421 U.S. 773, 791 n. 21 (1974) See also, Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116 (1965).

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5. SANCTIONS ARE IMPROPER.

The Referee recommends public reprimand, probation, restitution, remedial education and payment of costs.

In no case, except where the attorney is found to have charged an exorbitant or extortionary fee, deceived the client or misappropriated client funds, has restitution been ordered. See, Wynn, supra. [Restitution if money converted. Exacting extortionate fee from client warrants suspension]; Moriber, supra [Contingent fee arrangement "manifestly improper" in case. Overreaching or constructive fraud requires restitution.] Fla. Bar v. Mirabole, 498 So.2d 428 (Fla., 1986) [Charging a client 8 times, i.e. $24,000, value of asset ($3,000 mechanic's lien) involved was clearly excessive and public reprimand imposed.]; The Fla. Bar v. Lowe, 508 So.2d 8 (Fla., 1987) [Attorney deceived client, restitution of excess fee ordered.]; The Fla. Bar v. Orr, 504 So.2d 753 (Fla., 1987) [Public reprimand is appropriate discipline for isolated instances of lapses of judgment]. This Court has left fee disputes to the civil courts for determination since the attorney discipline proceeding is in the public interest and not a forum for adjudication of the rights between private individuals. Thus restitution and the procedure for determination of the amount to be paid was erroneous, the Referee abdicating his duty to determine facts to another individual which he has no authority to do. See, Wynn; Mirabole, supra. [Note: Recently, Judge Alvarez has withdrawn from any matters involving the Respondent since a Federal lawsuit was filed naming him in his representative capacity as a defendant. He has also filed a complaint with the Florida Bar for violations of the Code

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of Professional Responsibility by the Respondent by filing the Federal law suit. See, Exhibit "E": Letters of Judge Alvarez to Respondent and Florida Bar, annexed.]

The imposition of a public reprimand and probation are inconsistent since restitution is not appropriate and the alleged misconduct was considered an isolated incident in view of the Respondent's professional education, experience, training, community and bar contributions. See, Mirabole, supra. See also, Testimony of Judge Alvarez [TR 72:23 to 73:19]:

> Q If you recall...you asked me [Respondent] did I have any guardianship experience, as you were heading the committee. I was assuming you were going to invite me to join on the committee?
>
> A*** That's correct
>
> A*** I think you do good work, Mr. Richardson.
>
> A Nothwithstanding my testimony today, notwithstanding what happened in this case. I just think this case may be an exception...
>
> THE COURT: If I understand your testimony to be, then, sir, that its not a question of the quality of the work but the price for the quality?
>
> THE WITNESS: In this particular case, that's correct, Judge.

The Referee imposed costs for "investigatory services" and other expenses unrelated to the actual hearing (i.e. transcript, etc.) without an opportunity to be heard regarding the nature and extent of the services rendered and whether those services were appropriate and just accepted the Bar's statement. This violates the Respondent's due process since he had no prior notice of the request for costs making the hearing thereon merely a formality,

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one in form and not in substance. This was erroneous and should be reconsidered by the Referee. Further, the imposition of costs does not equally apply to the Bar should they not prevail and to other professionals in similar proceedings regarding sanctions for professional misconduct which denies the Respondent equal protection under the laws in violation of the 14th Amendment of the U.S. Constitution. Further, it is unfair to impose a deadline for payment of the costs since it does not take into consideration the current financial condition of the Respondent and thus his ability to pay.

The Respondent's resume shows that he by far one of the most educated and well trained attorneys within the State or for that matter this Country. He has participated as student or instructor in over 200 hours of continuing legal education over the past 10 years demonstrating no lack of attention to continuous education which involves in many programs today, ethics. A certification that he has read the rules governing professional standards should be sufficient in this case or a paper on the subject, he having be a former law professor.

To impose upon this member of the Bar public reprimand for such minor misconduct is not appropriate under the circumstances since the Referee concluded that if the client's would have been wealthy the fee charged would have been alright, thus the fee was excessive only because the client's were lower middle class, there being no showing of deceit, misrepresentation, fraud, overreaching or unconscionability. Fee disputes of this nature, if brought before the Bar where amount is at issue and no illegal conduct is alleged, would be handled by arbitration. Clearly,

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the appropriate remedy, when balancing the public interest and the private interest of the Respondent whose professional development, training, standing, and community contributions for the betterment of the legal profession and society is beyond question, that a private reprimand alone or coupled with remedial education by ethics coursework or paper, or mandatory fee arbitration, or certain hours of pro bono community service with a disadvantaged group would serve as an adequate penalty to this solo practioner and still preserve his professional and community standing and possibility of a future judicial appointment.

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CONCLUSION AND RELIEF

This Court is requested to (1) disapprove the recommendations of the referee because the proceedings failed to provide the Respondent with the due process required under the Bar Rules, and Federal and State constitutions and laws protecting such due process rights; (2) dismiss the Complaint with prejudice since the errors cited involving evidentiary and other matters so numerous and meaningful that reversal and remand could not correct them, and grant Respondent's costs and extraordinary expenses of travel; (3) Alternatively, disapprove of the recommendation of discipline only, and impose either a private or public reprimand, or order binding fee arbitration by the Respondent without reprimands; and remand for further consideration of the Bar costs; and (4) grant such further relief as the Court deems necessary and proper.

Request for Oral Argument. Oral hearing on the Petition for Review is requested with consideration of the fact that Respondent is a Florida non-resident solo practitioner and arrange the argument conveniently on a Friday or Monday to reduce travel expense and out-office time.

Certificate of Service

THIS CERTIFIES that a copy of the Respondent's Initial Brief was delivered by mail/hand to: THE FLORIDA BAR, c/o B.L. Mahon, Esq., Marriott Hotel, Suite C-49, Tampa Airport, Tampa, FL 33607 on this 8TH day of November, 1989.

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