IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

EDITH BROIDA,

Respondent.
_____/

Supreme Court Case
Nos. 74,378 and 74,825

The Florida Bar File
Nos. 87-24,748(11G)
89-71,156(11G)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings pursuant to Rules 3-7.2 and 3-7.9 of the Rules Regulating The Florida Bar, a final hearing was held on February 16, 1990 (Supreme Court Case No. 74,378) and March 2, 1990 (Supreme Court Case No. 74,825) in North Miami Beach, Dade County, Florida.

All of the pleadings, notices, motions, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The following attorneys acted as counsel for the parties:

Warren Jay Stamm and Jacquelyn P. Needelman appeared as counsel for The Florida Bar. Respondent, Edith Broida, appeared pro se.

After a finding of probable cause at grievance committee level on April 17, 1989 [Supreme Court Case No. 74,378; The Florida Bar File No. 87-24,748(11G)] a complaint was filed on July 7, 1989 wherein it was alleged that, among other things, that Respondent, Edith Broida, argued ex parte motions for change of venue before the Honorable Judge Mary Ann MacKenzie and the Honorable Judge Irwin Berkowitz and made material misrepresentations of fact and law to County Court, Circuit Court and Appellate Court judges.

After a finding of probable cause at grievance committee level on September 12, 1989 [Supreme Court Case No. 74,825; The Florida Bar File No. 89-71,156(11G)] a complaint was filed on October 9, 1989 wherein it was alleged that, among other things, that Respondent, Edith Broida, in responsive/defensive pleadings in a pending Dade County Circuit Court action stated that the opposing counsel for

plaintiff was incompetent, unable to read and comprehend documents and is not qualified to conduct discovery. Additionally, the judge assigned to hear the underlying circuit court action, the Honorable Judge Stuart Simons, questioned the competency of Respondent, Broida.

Respondent, Broida, filed in these Bar proceedings multiple pleadings and motions seeking to disbar Bar Counsel, disqualify the Referee for prejudice and incompetency and petitioned the Chief Justice of the Supreme Court of Florida to take control of the grievance system. There were 11 motions filed in total by Respondent.

Case No. 74,378 proceeded to hearing on February 16, 1990 and both The Florida Bar and Respondent presented evidence in support of their complaint and defenses thereto.

With respect to Case No. 74,825, Respondent failed to respond to the Complaint and Request for Admissions and the matters were deemed admitted. Each side argued recommended discipline and aggravating and mitigating factors to be considered by this Referee.

Having reviewed the record of these proceedings, I find the Respondent guilty as to each count charged in the respective complaints and the position and recommendation of The Florida Bar as to the term of discipline for a one year suspension and the imposition of conditions is supported by the evidence and is in the best interest of the public.

II. SPECIFIC FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT WITH WHICH RESPONDENT IS CHARGED:

I hereby accept and adopt as the findings of fact the following:

Supreme Court Case No. 74,378

That Robert M. Klein (hereinafter referred to as "Klein") represented Samuel Smith in a legal malpractice case filed by Respondent in Edith Broida v. Samuel Smith, Case No. 84-27693 CA-10, Dade County, Florida.

That on or about September 24, 1985, Respondent argued an ex parte Motion for Change of Venue before the Honorable Judge MacKenzie.

That Respondent failed to serve Klein with either a copy of such Motion or notice of hearing and gave Klein no prior notice of the hearing, mailing the Motion for Change of Venue to Klein on September 24, 1985.

That on or about September 24, 1985, the Honorable Judge MacKenzie entered an Order Granting Change of Venue.

That although the case was transferred to Broward County on or about October 28, 1985, Respondent's failure to pay the transfer fees deferred assignment of this case to a Broward County judge for two months.

That on or about April 16, 1986, Honorable Judge Paul Marko, III ordered the case transferred back to Dade County Circuit Court.

That on or about October 22, 1986, the Fourth District Court of Appeal in Case No. 4-86-1121 affirmed Judge Marko's decision and transfer of the case back to Dade County Circuit Court.

That on or about December 12, 1986, the Fourth District Court of Appeal in Case No. 4-86-1121 denied Respondent's Motion for Sanctions, Motion for Rehearing and Motion for Rehearing en banc.

That on or about March 3, 1987, the Fourth District Court of Appeal issued a Mandate on this matter remanding the case back to Dade County.

That on or about March 10, 1987, Respondent secured an ex parte order from Broward County Judge Berkowitz returning the files to Broward County since Respondent represented to Judge Berkowitz that the return of the file to Dade County was premature since there were pending motions and hearings before the Broward County Court.

That Respondent failed to serve Klein with a copy of the Motion or notice of hearing on Respondent's Motion for Return of File to Broward County.

That in fact, there were no legally pending motions or hearings before Broward County Courts.

That Respondent led Judge Berkowitz to believe that such Order was an agreed order between the parties and that all parties agreed to the transfer back to Broward County.

That as a result of Respondent's misrepresentations to the Court, on or about March 27, 1987, Klein had to file a Petition to Enforce Mandate or in the Alternative Petition for Writ of Mandamus, Petition for Writ of Certiorari and Petition for Writ of Prohibition with the Fourth District Court of Appeal.

That on or about December 18, 1987, the Fourth District Court of Appeal granted Klein's Petition to Enforce Mandate, directing the Clerk of Broward County to transfer the file to the Clerk of Dade County pursuant to the Mandate issued on March 3, 1987.

That this case proceeded forward in Dade County.

Supreme Court Case No. 74,825

That Respondent represented Marion D. Sherrill and Dorothea E.

Sherrill in that matter styled Professional Savings Bank, Plaintiff, v. Marion D. Sherrill and Dorothea E. Sherrill, Defendants, Circuit Court Case No. 88-28230 CA 03, Dade County, Florida.

That counsel for the plaintiff in the Circuit Court action was Julie Feigeles, Esquire.

That the Circuit Court action was a suit on an unsecured promissory note.

That at all times material hereto, said action was being heard by the Honorable Judge Stuart M. Simons, Eleventh Circuit, Dade County, Florida.

That also pending in the Eleventh Circuit, General Jurisdiction Division, was an action styled Professional Savings Bank, Plaintiff v. Sanbar Arabians, Inc., Marion D. Sherrill, Dorothea E. Sherrill, etc., Defendants, Circuit Court Case No. 88-24792 CA 17, Dade County, Florida, in which Respondent was also counsel for the Defendants, Sherrill.

That said action was for the foreclosure of a mortgage.

That at all times material hereto, said action was being heard by the Honorable Judge George Orr, Eleventh Circuit, Dade County, Florida.

That incident to the underlying action on the unsecured promissory note then pending before Judge Simons (Circuit Court Case No. 88-28230 CA 03) Respondent, on December 27, 1988, filed a Request for Production of Documents requesting numerous documents unrelated to the claim on the unsecured note.

That Plaintiffs filed a Response to Request for Production objecting to the request on grounds that the requests were over-broad, made for the purpose of harassing and burdening Plaintiff and were irrelevant.

That Plaintiff did produce those documents which were in fact relevant and properly discoverable in this action.

That prior to argument on Plaintiffs' objections, Respondent filed a subpoena duces tecum for deposition requesting Plaintiffs' agents to produce at deposition the same documentation as originally requested and objected to in the Request for Production and Objections to Request for Production.

That said subpoena for deposition was issued February 2, 1989 setting the deposition for February 8, 1989, six days later.

That Plaintiff timely filed on February 3, 1989, a Motion for Protective Order stating that the requested documentation as set out in the subpoena duces tecum was identical to that requested

and objected to in the Defendant's Request for Production. Additionally, Plaintiff stated that the requested documents were not relevant to the underlying action.

That said Motion for Protective Order was set down for hearing February 16, 1989.

That in response to Plaintiffs' Motion for Protective Order, Respondent filed, on February 15, 1989, a Motion by Defendant for Judgment, for Sanctions and Costs on Obdurate refusal by Plaintiffs to permit Discovery alleging that:

A. Plaintiffs objected to the taking of Plaintiffs' agents deposition with no valid reason other than as a delaying tactic.

B. That attorney for Plaintiffs lacks the legal ability to understand what is transpiring or expects the Court to support her wrongdoing.

C. That the reason for Plaintiffs' attorney's deception to the Court is to generate fees.

D. That Plaintiffs' attorney is incompetent and unable to read and understand documents or is not qualified to conduct a deposition.

E. That Plaintiffs and their attorney are engaged in collusion, fraud, deliberate delaying of the cause and an unwarranted refusal by Plaintiffs to produce themselves for deposition.

That Plaintiffs' Motion for Protective Order was heard on February 16, 1989. At hearing, Judge Simons expressed his concern about the competency of Respondent stating:

> "Because I have developed a certain mindset having nothing to do with this particular case but because of certain conversations concerning you [Respondent Broida] long before I had this case, I have developed a certain feeling about your competence and about your trustworthiness and other matters and your ability to properly function before the Court and it's really not fair for your clients for me to hear the matter, particularly now in the view of the fact that I will refer this matter to The Florida Bar for an investigation in terms of whether there has been a breach of [the] canon of ethics by you or Plaintiffs' attorney in terms of the allegations of fraud. That being so, I don't think it is fair for me to hear the case any longer. I am going to recuse myself and refer the matter to The Florida Bar for such actions they feel appropriate in such actions made by the movant and see whether there is any violations of the canon of ethics by either attorney in this case."

In accordance with the above statements made by Judge Simons, he

recused himself from presiding over the remainder of the case.

That in the case of Professional Savings Bank, Plaintiff v. Sanbar Arabians, Inc., Marion D. Sherrill, Dorothea E. Sherrill, etc., Defendants, Case No. 88-24792 CA 17, Judge Orr was also forced to recuse himself based on statements and allegations made by Respondent about the Judge and Plaintiffs' counsel.

That Respondent has engaged in the following activity:

A. Raised and filed frivolous claims and counter claims against Plaintiffs in the underlying civil action which are not supported by Florida law or the Rules of Civil Procedure.

B. Noticing depositions of non-parties without following the appropriate rules of Civil Procedure.

C. Providing insufficient notice for hearings.

D. Filing of an Amended Counter Claim which was dismissed by Judge Simons as a "rambling discourse of narration".

E. Continuously misrepresenting facts to the Court.

F. Personally attacking the integrity of multiple lawyers and judges with whom Respondent has come in contact.

G. Unnecessarily delaying court actions and proceedings by filing frivolous pleadings.

III. RECOMMENDATION AS TO GUILT:

I find Respondent guilty of all violations as charged by The Florida Bar. I find that Respondent has violated Rules 4-1.1 (Competence), 4-1.3 (Diligence), 4-3.3 (Candor toward the tribunal), 4-3.4(d) (Making a frivolous discovery request or intentionally failing to comply with a legally proper discovery request by an opposing party), 4-3.5 (Impartiality and decorum of the tribunal), 4-4.1 (Truthfulness in statements to others), 4-8.2(a) (A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge) and 4-8.4(a) (A lawyer shall not violate or attempt to violate the Rules of Professional Conduct), 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and 4-8.4(d) (Conduct that is prejudicial to the administration of justice) of the Rules of Professional Conduct of The Florida Bar.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED:

Sitting in judgment of another human being is a difficult and

responsible obligation. Judging a fellow attorney increases that obligation. The Florida Supreme Court has asked me to review the alleged misconduct of attorney Edith Broida. It is my task to determine whether the allegations are supported by the evidence and if so, what discipline should be imposed. The findings of fact contained within this report clearly establish that I believe the Bar has proven their case.

I recommend the imposition of the following disciplinary terms:

> That Respondent be suspended from The Florida Bar for a period of one year. Further, Respondent shall meet all of the requirements for rehabilitation as set out in the Rules Regulating The Florida Bar.

In making this recommendation, I would like to specifically comment on Respondent's continuing pattern and course of conduct in engaging in ex parte communications with the courts. We are an adversary system but one in which each party shall be afforded the opportunity to advocate their respective positions equally. There are rules of civil and appellate procedure which have been adopted, codified and must be followed to be sure that justice and fairness applies to each and every one of us.

I have also taken into account Ms. Broida's past reputation in the community and her outstanding contribution to our community and legal profession. She has been a member of our legal profession and trial bar for almost four decades.

It is precisely this experience and knowledge that she has that makes her actions and inactions inexcusable. Her tenure in the legal profession does not afford her the privilege or right to unilaterally decide when the rules should apply and when they should not; that is within the province of the court.

Her disregard for the profession is further compounded by the fact that as of June, 1989, Ms. Broida was suspended from membership in The Florida Bar for her failure to pay her Bar dues and comply with mandatory Continuing Legal Education (CLE) requirements.

V. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:

I find that the following costs were reasonably incurred by The Florida Bar and should be assessed against Respondent to be payable within 30 days after the Supreme Court's acceptance of this report:

Administrative Costs:	Amount
Rules 3-7.5(k)(1), Rules of Discipline	
Supreme Court Case No. 74,378	500.00
Supreme Court Case No. 74,825	500.00

Court Reporter	
Final Hearing held on 3/2/90	
Appearance Fee	60.00
Transcript	515.90
Final Hearing held on 2/16/90	
Appearance Fee	100.00
Transcript	793.95
Pretrial Hearing held on 2/15/90	
Appearance Fee	50.00
Transcript	67.00
Pretrial Hearing held on 11/6/89	
Appearance Fee	50.00
Transcript	123.95
Pretrial Hearing held on 11/3/89	
Appearance Fee	50.00
Transcript	83.75
Grievance Committee Hearing 9/12/89	
Appearance Fee	75.00
Transcript	201.00
Grievance Committee Hearing 4/17/89	
Appearance Fee	135.00
Transcript	576.45
Bar Counsel costs for Hearings	
Mileage	105.66
Parking	28.25
Miscellaneous	39.51
TOTAL	$4,055.42

It is recommended that the foregoing costs be assessed against Respondent. It is further recommended that execution issue with interest at a rate of twelve percent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order, unless the time for payment is extended by the Board of Governors of The Florida Bar.

Dated this 27 day of April, 1990.

M. DANIEL FUTCH, JR.

M. DANIEL FUTCH, JR., Referee

Copies furnished to:

Warren Jay Stamm, Esquire
Edith Broida, Esquire