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APR 26 1991
CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

WALTER J. BELLEVILLE,

Respondent.

_____/

Case No. 75,116
[TFB Case No. 89-30,753 (18A)]

# INITIAL BRIEF

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

## TABLE OF AUTHORITIES
(Continued)

## TABLE OF OTHER AUTHORITIES

## SYMBOLS AND REFERENCES

In this Brief, the complainant, The Florida Bar, shall be referred to as "the Bar".

The Report of Referee, dated February 8, 1991, shall be referred to "RR", followed by the cited page number.

The transcript of the final hearing held on April 20, 1990, shall be referred to as "T", followed by the cited page number.

The transcript of the excerpt of stipulated facts from the final hearing on April 20, 1990, shall be referred to as "TS", followed by the cited page number.

## STATEMENT OF THE CASE

On October 5, 1989, the Eighteenth Judicial Circuit Grievance Committee "A" voted to find probable cause against the respondent. The Bar filed its formal Complaint on December 7, 1989. The respondent filed an Answer to the Bar's Complaint on January 5, 1990. On January 8, 1990, the respondent filed a Motion To Strike Portions Of Complaint claiming particular paragraphs of the Complaint were irrelevant and inflammatory in nature. The Bar filed it's Response to Respondent's Motion To Strike Portions Of Complaint on January 17, 1990, asserting that pleadings in Bar proceedings may be informal by rule and that the paragraphs in question contained factual background material necessary to the Bar's charges against the respondent. At the final hearing on April 20, 1990, the respondent submitted a Motion To Dismiss For Failure To State a Cause Of Action or Alternative Motion For Judgment On The Pleadings. The Referee denied the motion as well as the previous Motion To Strike. In lieu of testimony the parties offered a set of stipulated facts to the Referee. The Referee filed his Report on February 8, 1991, finding the respondent not guilty of the Rules of Professional Conduct charged, to wit: Rule 4-1.7(a) for representing a client when the representation will be directly adverse to the interests of another client without client consent; and Rule 4-1.7(b) for representing a client when the lawyer's exercise of independent professional judgment may be

materially limited by the lawyer's responsibilities to a client or to a third person or by the lawyer's own interests without client consent.

The Board of Governors of The Florida Bar considered this case at its March 19, 1991, meeting and voted to appeal the Referee's findings of fact with respect to The Florida Bar v. Teitelman, 261 So.2d 140 (Fla. 1972) and the recommendation of innocence. The Board believes the respondent had a duty and obligation to disclose to the seller in a real estate transaction the fact that he was representing the adverse interest, the buyer, despite the fact the seller was paying the attorney's fees and further, to disclose in advance what those fees would be. The Bar filed it's Petition For Review on March 26, 1991.

## STATEMENT OF THE FACTS

Pursuant to a stipulation entered into by the parties at the final hearing on April 20, 1990, the following constitutes the factual evidence:

In or around July, 1988, Mr. Bradley M. Bloch spoke to Mr. James F. Cowan about an apartment building located in Seminole County, Florida, which Mr. Cowan had for sale. Mr. Cowan had a "For Sale by Owner" sign posted on the property in question. On or about July 19, 1988, Mr. Bloch, as president of Galloway & Bloch, Inc., entered into a contract for sale and purchase with Mr. Cowan to purchase the property for a total of $125,000.00. (TS p.3).

Mr. Bloch executed an unsecured promissory note in the principal amount of $100,000.00 at ten percent interest amortized over an approximate twenty-five year period. An addendum to the contract signed by Mr. Cowan on or about July 19, 1988, provided that upon his death, the note would become void and unenforceable. Furthermore, the note granted the buyer deferred payment on the note for a period of four months and no mention was made concerning interest accrued during the four months. At the time he entered into the contract, Mr. Cowan was eighty-three years old and only had a third grade education. He has testified that he did not understand that the promissory was not the same as a

mortgage note and was unsecured, and further that it matured in twenty-seven rather than fifteen years. (TS pp.4-5). However, Mr. Cowan had sold many properties over the years. (RR p.2).

Shortly after obtaining a signed contract and an addendum, Mr. Bloch retained the respondent to handle the closing. Mr. Bloch and Mr. Cowan had agreed at Mr. Bloch's suggestion that the respondent would prepare the closing documents, including the promissory note, in an effort to expedite the closing and save money. The respondent had handled various legal matters for Mr. Bloch in the past and was then representing Mr. Bloch on other legal matters. Mr. Cowan did not retain an attorney to represent him in this matter, although Mr. Bloch would testify that he suggested to Mr. Cowan that Mr. Cowan obtain an attorney. However, it is the Bar's position that Mr. Cowan did not receive any such advice from Mr. Bloch, based upon Mr. Cowan's deposition of February 15, 1989, at pg. 114, where when asked "Let me ask you, do you recall that...whether or not Mr. Bloch said 'We'll have my lawyer close this deal'?" Answer, "Yes." (TS p.5).

Mr. Bloch discussed the terms of the contract, the addendum and the promissory note with the respondent and he provided the legal descriptions of the property to the respondent the next day. (TS pp.5-6). The legal descriptions were for both the apartment property as well as Mr. Cowan's residence although Mr. Cowan denies ever intending or agreeing to include his residence

in the deal. (TS p.4). The respondent's office prepared all the closing documents and a second addendum to the contract for sale. Information for the addendum was provided to the respondent by Mr. Bloch. The second addendum provided inter alia that Mr. Cowan would pay all closing costs. Further, the amortized period for the promissory note was twenty-five years, and that Mr. Seth Cohen became the purchaser. (TS p.6).

The closing occurred on July 25, 1988. The respondent did not attend the closing, which was held at Mr. Cowan's residence but the respondent's paralegal, Lauren Hooper, attended to act as a notary. The only other parties present for the closing were Mr. Bloch and Wendy Eaton, a personal friend of Mr. Bloch's. No explanation of the documents was made to Mr. Cowan by the respondent or any representative from the respondent's office, and he did not receive copies of the closing documents until some ten to twelve days after the closing. The respondent was paid a fee of $625.00, which was deducted from the sale proceeds of Mr. Cowan's pursuant to the contract between Bloch and Cowan. The closing statement prepared by the respondent indicated the fee on the seller's side of the closing statement, and it was designated in the line item "Attorney Fee (Closing Agent)". (TS pp.6-7).

After receiving the original promissory note and a copy of the closing statement from the respondent's office, Mr. Cowan noticed that the terms of the promissory note were not the ones

to which he had agreed. He thereafter contacted a local attorney who wrote a letter dated September 15, 1988, to the respondent outlining the areas which Mr. Cowan disputed. Mr. Cowan, who continued living in his residence after the sale, was served with an eviction notice on September 16, 1988. Mr. Cowan then retained another local attorney, Philip H. Logan, who filed a lis pendens. Mr. Cowan also wrote to Mr. Bloch by letter dated September 16, 1988, a copy of which was sent to the respondent, outlining his dispute with the terms of the sale. Mr. Cowan was not aware that the contract included his personal residence located across the street from the property he intended to sell. (TS pp.7-8). Mr. Cowan believed that the terms of the addendum were altered after he signed it and that he never agreed the note would become unenforceable upon his death. (TS p.4).

The respondent prepared all the paperwork necessary for the closing and also prepared the second addendum to the contract for sale and purchase. The respondent made no disclosure to Mr. Cowan that he represented an adverse interest, did not obtain Mr. Cowan's consent to any representation, and no fee was agreed upon between them prior to his undertaking the preparation of the closing documents. (TS pp.8-9).

## SUMMARY OF THE ARGUMENT

The Referee recommended the respondent be found not guilty of the rules charged. Specifically, he found that even though Mr. Cowan paid the respondent's attorney's fees pursuant to the terms of the contract, the respondent did not represent Mr. Cowan and therefore had no duty or obligation to him as an attorney. The referee found that The Florida Bar v. Teitelman, 261 So.2d 140 (Fla. 1972), which the grievance committee relied upon in making its recommendation of probable cause, did not apply in the instant case.

The Referee's conclusions are clearly erroneous and inconsistent. Based upon the Teitelman case, an attorney is required to disclose to the other party who is paying the attorney's fees in a real estate transaction the fact that he is representing the adverse party. Respondent admits he gave no disclosure to Mr. Cowan that the respondent was representing Mr. Bloch. By paying the respondent's fees for the legal work, Mr. Cowan had a reasonable basis to assume the respondent was guarding his interests. The Bar asserts that because the facts in the Teitelman case are so similar to the present matter, the findings and conclusions in the case should be controlling in this case.

## ARGUMENT

### ISSUE I

**THE REFEREE'S FINDINGS OF FACT AND CONCLUSIONS ARE INCONSISTENT WITH THE CLEAR AND CONVINCING EVIDENCE PRESENTED ON RECORD.**

In Bar disciplinary proceedings a referee's findings should be upheld unless clearly erroneous or without support in evidence. The Florida Bar v. Bajoczky, 558 So.2d 1022 (Fla. 1990); The Florida Bar v. Stafford, 542 So.2d 1321 (Fla. 1989). However, this Court has on occasion overturned referees' findings of fact, conclusions of law and recommendations of discipline. In The Florida Bar v. McKenzie, 442 So.2d 934 (Fla. 1983), an attorney received a public reprimand after the referee found him not guilty of representing both the heir to an estate and the personal representative of the same estate. This Court found the evidence clearly established the attorney received a retainer from the heir and accepted an appointment as attorney for the personal representative of the same estate. The referee's findings were found to be clearly erroneous.

In the present case, the Referee made inconsistent findings and conclusions with respect to the evidence presented. At the final hearing in this matter on April 20, 1990, the Referee was presented the Teitelman case and he heard argument from both sides regarding that case. After reviewing the Teitelman case during a recess the Referee stated: "I have reviewed the cases that were presented to me starting with Teitelman and going back

to Teitelman very carefully. I find that the language in Teitelman in this case is controlling and find that it does give the facts alleged in the Bar's Complaint." (T. p. 26).

Furthermore, later in the hearing when the Referee was ruling on the respondent's Motion to Strike, he stated: "I think under Teitelman, by accepting the fee or entering into the representation of Mr. Bloch in this case under terms where he would be seeking or receiving some payment for his services from Mr. Cowan, he became the attorney of Mr. Cowan." (Emphasis added) (T. p. 30). Therefore the logical conclusions from the Referee's findings would be that as the attorney of Mr. Cowan by virtue of the attorney's fee paid by Mr. Cowan pursuant to Teitelman, the respondent had the duty and obligation to advise Mr. Cowan he was representing Mr. Bloch, an adverse interest, and that Mr. Cowan would be paying the fee and what that specific fee was. But, in his report the Referee concluded:

> Teitelman does not stand for the proposition that if an attorney's fees are included in the closing costs of a contract pursuant to an agreement between the contracting parties, the attorney may be deemed to represent the party who agrees to pay the closing costs...I am quite satisfied that Mr. Cowan may very well have been taken advantage of in the present circumstances. Nevertheless, there was no evidence that the respondent had any contact or dealing with him whatsoever, much less any duty or obligation to him as an attorney. (RR p. 3).

It is apparent that at the final hearing the Referee found the Bar had proved its case by clear and convincing evidence and yet when he issued his report almost a year later, he

inexplicably found the opposite and recommended the respondent be found not guilty. It was the Teitelman case and the Referee's findings at the final hearing that the Bar has relied upon and therefore the Bar asserts that the Referee's findings and conclusions as stated in the Report of Referee are clearly inconsistent and erroneous.

## ARGUMENT

## ISSUE II

**THE RESPONDENT WAS REQUIRED TO DISCLOSE TO THE SELLER THE FACT THAT HE WAS REPRESENTING THE BUYER IN A REAL ESTATE TRANSACTION DESPITE THE FACT THAT THE SELLER WAS PAYING HIS FEES AND FURTHER, THE RESPONDENT SHOULD HAVE ADVISED HIM AS TO WHAT THOSE FEES WOULD BE PRIOR TO THE CLOSING.**

The Referee found the respondent not guilty, stating that The Florida Bar v. Teitleman, 261 So.2d 140 (Fla. 1972), does not mean that an attorney is automatically deemed to represent the party who pays the closing costs. The Florida Bar agrees that the Teitleman case does not stand for this.

What the Teitleman case does require, however, and what the Referee overlooked, is that the unrepresented seller can be charged NO fee by the buyer's attorney absent

1) a client-attorney relationship between such attorney and seller;

2) together with a full disclosure that the attorney also represents adverse interests in the closing of which full disclosure must be made to the seller of all circumstances, relationships AND interests involved; and

3) after such full disclosure the attorney obtains the consent of the seller for an agreed representation by the attorney and only then;

4) a fee which must be agreed upon between them prior to undertaking any services,

at p. 143, supra.

As this case further noted, "This is so basic to the practice of law and ethical considerations of the profession that

the present emphatic renunciation of it should place the matter at rest for all time." pp. 143-144 supra.

With respect to statement two above, there is no question the respondent did not advise Mr. Cowan he was representing adverse interests. (T p.30; TS p.8). Even though Mr. Cowan signed the contract effectively agreeing to pay the respondent's fees, Mr. Cowan was not advised of all the circumstances surrounding the transaction and the fee. (T p.24). Regarding statements three and four, by virtue of the lack of contact between the respondent and Mr. Cowan, there was no agreement as to representation and the amount of the fee was never discussed prior to closing. (TS pp.8-9). Therefore, with respect to statement one, since a fee was paid by the seller, there had to have been an attorney-client relationship between the respondent and Mr. Cowan. The respondent thus had an obligation to advise Mr. Cowan he was not representing him; that the respondent was representing an adverse interest; and the amount Mr. Cowan would be paying in attorney's fees.

The factual scenario of the Teitelman case, supra, is as follows:

Mr. Teitelman regularly represented a title insurance company and a mortgage company in residential real estate closings. He usually represented the buyer as well. Sometimes

the seller would not be represented by an attorney but in this instance he was. Whether or not the seller was represented, Mr. Teitelman required the seller to use fixed forms prepared by Mr. Teitelman in a package form. For this he charged $25.00 as attorney's fees for the preparation of legal documents and it was so listed on the closing statement. The seller usually had no notice prior to the closing that he would be responsible for certain documents or that a fee would be charged for them. Mr. Teitelman usually ignored any documents prepared by the seller's attorney and requested they use the documents that he had prepared instead. If there was any objection to the $25.00 charge for the documents, Mr. Teitelman would usually delete it. With respect to the complaint against Mr. Teitelman, the seller was represented by an attorney who prepared documents for the closing and sent the documents with closing instructions with a law clerk. At the closing Mr. Teitelman informed the law clerk that he wanted to use the forms he had prepared and the law clerk agreed to this but questioned that there should be a $25.00 charge for them. The seller also questioned the charge being levied in addition to that of her own attorney's fee. Mr. Teitelman advised this was a standard charge. The seller became angry at the additional charge and she understood that Mr. Teitelman had said at the closing that the FHA would not accept her attorney's papers and so she signed Mr. Teitelman's documents under protest.

The facts of the Teitelman case and the present case on appeal are very similar. The two cases only differ in that the respondent never personally met or spoke with the seller, Mr. Cowan and that the attorney's fees were paid by Mr. Cowan pursuant to a written contract. (T pp.24-25; TS pp.6-7). It is the respondent's position that because he had no direct contact with Mr. Cowan, there was no relationship where the respondent had to disclose anything to him and that Mr. Cowan agreed to pay the attorney's fees by virtue of his signing of the contract. However, the respondent prepared some of the legal documents in the transaction and was aware of the terms of the sale which were unquestionably unfair to Mr. Cowan. (T p.25; TS pp.5-6). At the very least, the respondent should have advised Mr. Cowan he was not representing him. In its opinion in the Teitelman case, the Court cited Pioneer Title Insurance and Trust Company v. State Bar of Nevada, 74 Nev. 186, 326 P.2d 408 (1958) which enjoined company stenographers from preparing deeds, mortgages, notes and other documents from printed forms previously approved and checked by the company attorney.

> The difficulty with the company's position is that it's services did not end with the clerical preparation of the instruments by the escrow officer and stenographer. It was the company itself which judged of the legal sufficiency of the instruments to accomplish the agreement of the parties. In the drafting of any instrument, simple or complex, this exercise of judgment distinguishes the legal from the clerical service." (Emphasis added). At page 411.

The respondent used his legal training and prepared documents for the transaction between Mr. Bloch and Mr. Cowan.

The respondent gave the appearance he was representing both parties. In The Florida Bar v. Kauffman, 517 So.2d 18 (Fla. 1987), an attorney was disciplined for representing the husband in a divorce action and designing a stipulation for custody without advising the wife that he was not representing her interests. The attorney was representing the husband in an uncontested dissolution of marriage and prepared a stipulation for the husband and wife. The attorney failed to advise the wife that he was not representing her interests.

It should also be noted that the respondent's participation in this transaction was extremely unfair to an elderly, uneducated man. Whether or not the respondent knew Mr. Cowan was eighty-three years old and had a third grade education is not really the issue. The contract would be unfair to anyone who happened to be the seller and this should have been obvious to the respondent. The respondent's conduct reflects poorly on himself as well as the rest of the Bar.

This Court has ordered discipline in a situation where there was no specific prohibition of the conduct in the rules but the attorney's conduct was so unbecoming a member of the legal profession and of the Bar that discipline was deserved. In The Florida Bar v. Colee, 533 So.2d 767 (Fla. 1988), an attorney was charged with attempting to sell information to an attorney who lost a personal injury case where the winning side had

perpetrated fraud upon the court. This court stated in its opinion: "Even though the Bar Rules do not expressly proscribe Collee's actions, it is incomprehensible to us that an attorney would seek to benefit financially from furthering the truth-seeking process in this manner." At p.769. Because the attorney's conduct reflected poorly on him as a member of the legal profession, a ninety day suspension was ordered with a one year period of probation and the attorney was to complete ten hours of courses in ethics. In the present case, the respondent's conduct reflects adversely on him and is a violation of the rules. Clearly, a finding of guilt and the imposition of discipline is warranted.

## ARGUMENT

## ISSUE III

**A THIRTY DAY SUSPENSION IS THE APPROPRIATE DISCIPLINE IN THIS CASE.**

If this Court finds that the Referee has erred in finding that the Teitelman case, supra, is not controlling in this matter and finds the respondent guilty of the rules charged, an appropriate discipline must be entered against the respondent. The Bar urges the recommendation of a thirty day suspension as discipline given the circumstances of this case and the respondent's past discipline of a public reprimand in The Florida Bar v. Belleville, 529 So.2d 1109 (Fla. 1988), for misconduct also involving conflict of interest with a client in connection with a business transaction. This Court has ordered short term suspensions in the past as discipline for cases with similar factual situations.

In The Florida Bar v. Barley, 541 So.2d 606 (Fla. 1989), an attorney was charged with failing to advise his client to seek independent counsel to enforce provisions of a divorce settlement agreement against her deceased former husband's estate. The attorney represented the wife in divorce proceedings and as part of her settlement the wife received $250,000.00 in cash with $200,000.00 of that sum to be placed in a trust fund under the control of three trustees. However, the attorney drafted a trust agreement naming himself as the sole trustee and prior to the

execution of the agreement, persuaded the wife to loan him $47,500.00 from the trust money. There was no written agreement or security for the loan. After the wife's former husband died, his estate refused to honor the settlement agreement. The former wife asked the attorney to bring an enforcement action and to obtain a modification of the original settlement. For this the attorney charged an hourly fee plus a contingent fee of one-third of all money recovered. The wife assumed that the attorney would be paid at the conclusion of the case but the attorney withdrew his fees from the client's trust fund which resulted in liquidity problems and forced the wife to borrow from a bank. Thereafter the wife settled with the former husband's estate and the attorney deducted hourly fees of over $40,000.00 and a contingent fee of over $21,000.00 from the settlement amount. The wife objected to being charged both fees and discharged the attorney. The wife then demanded written evidence of her loan to the attorney who then drafted three notes evidencing the debt. However, the terms of the notes were not what the wife had agreed to and she demanded acceleration of the notes and retained another attorney to collect on the loan. The attorney received a sixty day suspension and the Court stated that the attorney should have requested his client seek independent counsel and that the attorney's "conduct shows a lack of judgment which cannot be encouraged among other members of our profession." At p.608.

Although the following case is a Conditional Guilty Plea and therefore not binding, it is notable due to the similar factual pattern involved.

In The Florida Bar v. Lage, 529 So.2d 1099 (Fla. 1988), an attorney submitted a conditional guilty plea admitting that in two instances, persons who contracted for the services of a real estate and property management agency located next to the attorney's office and which was run by the attorney's son, came in contact with the attorney and received legal advice from the attorney. The attorney also drafted contracts and legal documents for these persons. The attorney failed to make clear that he was acting on behalf of the real estate agency and that there was a potential conflict of interest. The agreed upon discipline was a thirty day suspension. The Court accepted the guilty plea and approved the recommended discipline.

In The Florida Bar v. Ward, 472 So.2d 1159 (Fla. 1985), an attorney received a thirty day suspension for conflict of interest resulting from a foreclosure action on a piece of property filed on behalf of his client. A final judgment of foreclosure was entered by the court and the clerk of the court issued to the client a certificate of title for the property. However, the defendants in the foreclosure suit filed a notice of appeal in the case. Thereafter, the client entered into a written agreement to sell the property to a third person. The

signing of the agreement was accomplished at the attorney's law office and the attorney generally advised the third person to seek other counsel in the matter as there was a "nuisance suit" which involved the property. Sometime thereafter the attorney delivered an abstract of title covering the property to the third person's attorney. The abstract did not mention the appeal or include a copy of the notice of appeal. The attorney also forwarded copies of the defendant's pleadings to the third person's attorney and again the notice of appeal was not included. At the closing, despite the attorney's and the client's knowledge of the pending appeal, the client delivered to the third person a warranty deed and affidavit of ownership concerning the property. Both documents were prepared by the attorney and made no mention of the pending appeal. Subsequent to the closing, the third person discovered the appeal and made a demand for return of the funds and promissory notes delivered at the closing but said demand was refused. The third person then filed an action against the client, the attorney, and others seeking return of the funds and promissory notes. The attorney appeared as attorney for the client, himself and his professional association.

Although the following case is dissimilar to the present case with respect to discipline, the factual similarities should be noted. In The Florida Bar v. Clark, 513 So.2d 1052 (Fla. 1987), an attorney was charged with accepting employment when it

was likely to affect the representation given by another client, continuing with multiple employment when his independent professional judgment is likely to be adversely affected, and handling a matter without adequate preparation in connection with the sale of real property. A woman wished to purchase a condominium from a couple and the woman agreed to assume the obligations of first and second mortgages on the property. The parties met at the attorney's office for the closing and the woman had the impression that the attorney was advising the couple and herself. The attorney did nothing to discourage the impression. The closing statement reflected that both parties were charged half of the attorney's fee each for the transaction. The woman assumed the existing mortgages and was instructed not to contact the mortgagees. The woman then discovered that the mortgagees were under no obligation to allow her to assume the mortgages because neither the sellers or the attorney had sought consent for the assumption of the mortgages. The mortgagees then declared the loans due and the woman had to refinance in order to retire the pre-existing mortgages. The woman obtained a less favorable interest rate and had to pay arrearages. In addition, the woman had also signed a promissory note in favor of the couple who then sold the note to a third party. When the woman discovered her mortgages were not assumable, she suspended payment on the note. The purchaser of the note then filed suit against the woman to collect the amount due. The purchaser of the note was represented by the attorney. The referee

recommended that the attorney be disbarred due to his past disciplinary history which included a prior suspension from the practice of law for a felony conviction. The court approved the referee's report and disbarred the attorney.

The Bar submits that a thirty day suspension is the appropriate discipline in this case given the respondent's prior discipline of a public reprimand for similar misconduct. "Cumulative misconduct of a similar nature should warrant an even more severe discipline than might dissimilar conduct." The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1982). However, this Court has ordered the discipline of a public reprimand in cases similar to the instant matter where cumulative misconduct of a similar nature was not an issue.

In The Florida Bar v. Miller, 555 So.2d 854 (Fla. 1990), an attorney received a public reprimand for drafting a will for a client under which the attorney was a contingent beneficiary without advising the client to confer with other counsel before signing the will. The attorney drafted a will for a man who later became his friend as well as his client. The man later married a woman somewhat younger than himself and asked the attorney to draft a new will to make her the beneficiary. At the client's request, the attorney was named the contingent beneficiary. The wife died first and the client died a year

later, at age 99, and the attorney inherited $200,000.00. In its opinion, the court stated "At the very least, Miller should have advised his client to confer with another lawyer before signing the will so as to avoid the appearance of impropriety.", at p.855. If not for several mitigating factors, the attorney would have received a much harsher discipline.

In The Florida Bar v. Stone, 538 So.2d 460 (Fla. 1989), an attorney was charged with neglecting a legal matter and engaging in dual representation of clients with conflicting interests and representing clients with whom one has close personal relationships. The attorney represented a salvage company in which one party owned five shares of the company and had the lease in his name and one party had the remaining nine shares of the company and held the salvage license in his name. The party holding the salvage license wished to sell his shares to a third person and requested the attorney draw up a bill of sale. The attorney did so and a closing was held at the attorney's office. The third person paid the attorney no fee and the attorney did not tell the third person that he was representing him in the sale. The salvage company paid the attorney for arranging and conducting the transaction. The party holding the lease refused to sell his shares to the third person and filed a successful eviction suit against the third person and the salvage company since he held the lease. The attorney represented the salvage company in this suit. The referee in this case recommended the

attorney be suspended for six months. However, the Court found the attorney not guilty of neglecting a legal matter but that he was guilty of engaging in dual representation with clients with conflicting interests. The Court ordered the attorney receive a public reprimand and payment of costs.

In The Florida Bar v. Ethier, 261 So.2d 817 (Fla. 1972), an attorney represented a wife who was initiating divorce proceedings against her husband. Although the wife decided not to go through with the divorce proceedings, the attorney was not dismissed by the wife and he did not try to withdraw from representation. Approximately six months later, the attorney filed a divorce complaint against the wife as he was then representing the husband. The attorney did not withdraw from the wife's representation until after being notified that the wife had filed a complaint with The Florida Bar. The referee recommended the attorney receive a public reprimand and the Bar appealed that recommendation requesting a stronger discipline be imposed since the attorney had previously been given a private reprimand for similar conduct during the same time period. The Court agreed with the referee and ordered a public reprimand but admonished the attorney that any further offense on his part would subject him to discipline beyond a reprimand.

In another case involving dual representation, The Florida Bar v. Gattegno, 509 So.2d 927 (Fla. 1987), an attorney performed

legal work for two clients who then entered into a loan agreement with each other. The attorney prepared and the borrowers executed a promissory note and a confession of judgment. The borrowers and the lenders ultimately became involved in a suit as adverse parties. The attorney submitted a consent judgment admitting "that he improperly engaged in multiple representation when it was not clear that he could do so without becoming involved in a conflict of interest and without documenting any disclosure to and consent of the parties". The court publicly reprimanded the attorney and placed him on probation for a period of one year.

The Florida Standards For Imposing Lawyers Sanctions, adopted by the Board of Governors of The Florida Bar several years ago, supports the short term suspension for the type of conduct exhibited by the respondent. Standard 4.32 calls for a suspension when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. Standard 7.2 calls for a suspension when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public or the legal system. It is without question that Mr. Cowan received injury from the transaction he entered into with Mr. Bloch. Had the respondent advised him that he was not being represented by the respondent and specifically to obtain advice

from other counsel, the injury would most likely have been avoided. Therefore, a thirty day suspension is appropriate with respect to the Standards mentioned above.

In this case the respondent engaged in conduct that was clearly a dereliction of his duty to Mr. Cowan. He was representing Mr. Cowan by virtue of the attorney's fee listed in the closing statement which was paid by Mr. Cowan. Although the respondent had no direct contact with Mr. Cowan, he was or should have been aware Mr. Cowan was being taken advantage of. He should have, at the very least, advised Mr. Cowan he was not being represented at the closing. The Bar submits it is necessary to correct what are obviously erroneous findings of fact and conclusions of law by the Referee. The legal profession and the rest of the Bar need to be aware that conduct such as the respondent's will not be tolerated in the future. The respondent should be found guilty of the rules charged as the referee should have sustained from the final hearing and the discipline of a thirty day suspension should be imposed as well as payment of costs which now total $1,220.30.

## CONCLUSION

WHEREFORE, The Florida Bar respectfully requests this Honorable Court review the Report of Referee, the Findings of Fact and Conclusions of Law, and find the respondent guilty of the rules charged. The Bar further requests that this court impose as discipline a thirty day suspension as well as order payment of costs in this proceeding, currently totaling $1,220.30.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing Initial Brief and Appendix have been furnished by regular U.S. mail to the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, 32399-1925; a copy of the foregoing has been furnished by regular U.S. mail to Dennis F. Fountain, counsel for the respondent, at 1250 South U.S. Highway 17-92, Suite 250, Longwood, Florida 32750; and a copy of the foregoing has been furnished by regular U.S. Mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 24th day of April, 1991.

Jan Wichrowski

JAN WICHROWSKI
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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

Case No. 75,116
[TFB Case No. 89-30,753 (18A)]

WALTER J. BELLEVILLE

Respondent.

_____/

**APPENDIX TO**
**COMPLAINANT'S BRIEF**

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## INDEX