0c7 w/app

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Complainant,

vs. CASE NO. 75,906

PATRICIA GRAHAM WILLIAMS

Respondent.
_____/

ANSWER BRIEF OF PATRICIA GRAHAM WILLIAMS

ALCEE L. HASTINGS
Attorney for Respondent
1055 N.W. 183rd Street
Miami, Florida 33169
(305) 651-5400
FLORIDA BAR NO. 0034433

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PREFACE

In this brief, the Complainant, The Florida Bar, will be referred to as the Florida Bar. Patricia Graham Williams, Respondent, will be referred as "the Respondent". The following abbreviations will be utilized:

T - Transcript of final hearing held on December 13 and 14, 1990, followed by the appropriate page number.

STATEMENT OF CASE

On April 25, 1990, an eight-count complaint was filed against Respondent. The final hearing on said complaint was heard before the Honorable Geoffrey D. Cohen as Referee on December 13 and 14, 1990.

Respondent admitted Counts III, IV, V and VI of the compaint and the hearing proceeded on Counts I, II, VII and VIII.

The Report of the Referee was filed February 6, 1991 wherein the Referee found Respondent guilty on all counts and recommended a 90-day suspension.

The Florida Bare filed its Petition seeking Review of the Referee's recommendation of a 90-day suspension.

STATEMENT OF FACTS

The facts as to Count I are as follows:

1. On November 26, 1986, Melvin Cochran consulted with and retained Respondent to represent him in a custody matter. (T.31) Respondent agreed to file a Petition For Modification of Custody.

2. During the next month, Respondent contacted opposing counsel and learned that an order had been entered against Cochran finding that he had forged an agreement allegedly signed by the child's mother giving custody of the child to Cochran in exchange for money.

3. Respondent further learned that Cochran had had a conflict with his previous attorney and that he had become involved in fight in the courtroom.

4. Respondent called Cochran and discussed these findings. Cochran had an answer for everything and promised to provide further documentation and witness names.

5. Cochran never spoke of any upcoming hearing or divorce. He spoke always of getting custody of his child from his ex-wife (T.34), and he brought another child which he had raised to the office to show what a good father he had been and would be.

6. Respondent up to this time filed no appearance because the Retainer Agreement called for full payment of the Retainer's amount in order for representation to commence.

7. On January 20, 1987, Cochran sent a letter requesting a refund. Respondent informed him of the work done and reminded him of the terms of the Settlement Agreement. Cochran made another payment towards the retainer amount due and pleaded with Respondent to file an apperance in the case. He assured Respondent the fee would be paid. (T.201). Cochran did not mention a court hearing.

1. Respondent was retained to represent Melvin Judge on 14 three-count criminal cases in Broward County, Florida.

2. Respondent quoted a fee (modest) of $20,000.00.

3. Respondent was given $1,000.00 and when inquiry was made regarding the balance, friends and relatives of Melvin Judge offered to sign over a piece of property to secure the fee. On August 23, 1985, a quit-claim deed was signed by Jeannette Mann, girfriend of Melvin Judge.

4. On August 29, 1985, the deed was recorded.

5. In excess of a 18 months after the 14 cases were resolved and Melvin Judge was released as a result of Respondent's efforts, Melvin Judge had still not paid Respondent.

6. On or about 1987, Respondent applied for a mortgage with Metropolitan Mortgage Co. (T.228).

7. On January 1988, Respondent applied with United Mortgage for a loan in the amount of $25,000.00 (covering the fee due, the application fee to Metropolitan and to United).

8. On March 23, 1988, United Mortgage granted the loan application and funded the mortgage.

9. On or about April 20, 1988, Respondent appeared before the Eleventh Judicial Circuit Grievance Committee "J" in reference to the Metropolitan Mortgage Application.

10. The documents relative to Metropoitan were admitted and Bar counsel insisted that Metropolitan had funded a mortgage (P.229).

11. Respondent explained to the Grievance Committee that she informed Ms. Mann and Melvin Judge of her intentions to attempt to collect the outstanding fee via obtaining a

8. Respondent filed her appearance on January 30, 1987.

9. On February 2, 1987, Cochran called to inform Respondent of a hearing scheduled for February 5, 1987. (T.201). Respondent had notice of said hearing prior to January 20, 1987; at no time prior to February 2, 1987 did Cochran mention said hearing or the nature of same to Respondent.

10. Respondent informed Cochran that she would not be in the city on February 5th, that it was too late to set a hearing on a Motion for Continuance (T.202), but that Respondent would again speak to opposing counsel and Respondent believed that if it was possible to reschedule said hearing, opposing counsel would agree to do so (T.202, 203).

11. Respondent was unable to contact opposing counsel regarding continuance.

12. Respondent informed Cochran that if she were not successful in postponing the hearing, that Respondent should be present at the hearing.

13. Upon returning to the city, Respondent immediately contacted opposing counsel who explained that he would not have been able to postpone because his client and other witnesses had traveled to Miami for the hearing and had arrived a couple of days in advance. (T.203-204).

14. Opposing counsel further informed Respondent that the Court had ruled against Cochran and entered a Final Judgment of Dissolution of Marriage on February 5, 1987.

15. Respondent then file a Motion for Reconsideration.

The Referee found Respondent guilty of Disciplinary Rules 6-101(A)(3), 7-101(A)(1), 7-101(A) (2) and Rule 4-1.3 of the Code of Professional Responsibility.

The facts as to Count II are as follows:

mortgage with Metropolitan Mortgage Co. When Ms Mann learned about the application to Metropolitan, she filed a Lis Pendens against the property and the mortgage was not funded (P.229).

12. Respondent had the Lis Pendens dissolved and then filed a mortgage application with United Mortgage.

13. Ms. Mann was informed of the United Mortgage application just as she had been informed of the Metropolitan application.

14. Because of the importance of the evidence presented before the Referee on this Court, Respondent fully setsit out below:

"Q. --Line 20, question by Miss Etkin:

Did you place a mortgage on the property?

A. No. When you go in to make a loan with Metropolitan, all those papers that are part of Composite 13 are signed right there and then.

Q. Did you make that statement?

A. Yes.

Q. Okay. And you answered no to whether or not you placed a morgage on the property?

A. With Metropolitan.

Q. Okay. Turning to Page 185 --I think it's best if we start on 184 to have the complete answer and question.

Question on Page 184 by Miss Etkin, Line 20: "But an application for a mortgage doesn't create a lien."

Answer, Line 22: Mis Etkin, I cannot tell you exactly what Metropolitan did after I signed the application papers and whatever, what they filed which is proper and what they filed which was

improper. I don't know.

"I received an indication from someone in here that a mortgage was, in fact, filed against the property and I'm going, 'That's strange. Why don't I have some money?'

"When I called Metropolitan to check that out, I spoke with some legal division at Metropolitan, who told me there should be no mortgage against the property, simply a lien for foreclosure or the application, whatever it's called. I don't know.

"I have no money from that property and no mortgage on it that I'm aware of."

Did you give that answer?

A. I'm not certain. For instance, I spoke with - I'm sure I said I spoke with someone in the legal division. I do not believe I said I spoke with some legal division, but that's what is printed here.

Likewise, the Line 15, 16, reads: "I have no money from that property and no mortgage on it that I'm aware of."

I challenge that because I'm almost certain that I have no money from Metropolitan Mortgage.

Q. Okay. You did receive the private reprimand, the documents. In that the language reflects that there was an attempt to mortgage the property; is that correct?

A. I don't recall.

Q. Okay. This says when Judge refused to pay Respondent her fee of $20,000 --

A. May I see it?

Q. Yes. -- Respondent attempted to mortgage the property.

A. Yes, that's true.

Q. Although the mortgage documents were signed and the mortgage recorded, the mortgage was never funded because of the lis pendens placed on the property in connection with a civil action initiated by Mann to acquire title.

A. That's true. That's what I testified to in the hearing.

Q. Did you ever feel that you should advise the Committee that you had received another mortgage from United Mortgage Company?

A. No, and I still don't feel that I had to advise the Committee of that. I advised the client of it and to be very honest, to be very truthful with you, I felt that there would be another hearing regarding the United mortgage at the appropriate time.

Q. What made you think that the Florida Bar knew about the United Mortgage matter at the time the Grievance Committee heard it?

A. The same way you learned about the Metropolitan mortgage, I expected you would learn about the United mortgage and that was through Miss Mann.

And I kept her informed of every move that I made in regards to securing my fee from that property.

Q. Are you aware that in your answer to the Bar's request for admissions this testimony was admitted, the transcript was admitted?

A. In my testimony --

Q. In your answer to request for admissions, that this transcript was admitted?

A. The transcript was admitted?

Q. Yes.

A. No.

Q. You did not dispute the transcript in the

answers to request for admissions --

A. No, I'm -- Where --

Q. -- are you?

A. Where in the request? Show me to what you're referring --

Q. Okay.

A. -- in the admissions that admits the transcript. I don't know what you're talking about.

Q. Certainly.

THE COURT: Mr. Hastings, Mr. Hastings, I don't know that it's appropriate that you confer with your client right now.

MR. HASTINGS: All right, Judge.

BY MS. NEEDLEMAN:

Q. Okay. Question 9 of the request for admissions -- Do you have a copy?

A. I believe so. Question 9?

Q. Yes. It's on Page 11.

A. Uh-huh.

Q. Each of the following documents is genuine and properly admissible as evidence --

THE COURT: Each of the following documents is what?

MS. NEEDELMAN: Genuine.

THE COURT: Genuine.

BY MS. NEEDELMAN:

Q. -- and properly admissible as evidence: Subsection (J), copies of Pages 182 to 188 of your testimony given on April 20, 1988 before Grievance Committee 11J, a copy

attached hereto as Composite Exhibit P.

A. Uh-huh. (Positive response)

Q. Your answers, Paragraph 33 of your answers stated the allegations contained in 9(a) through (bb) are admitted.

A. Yes.

Q. Okay. Are you now disputing the testimony on Page 185?

A. Am I disputing the testimony?

Q. Yes. Are you disputing the testimony, the specific lines: I have no money from that property and no mortgage on it that I'm aware of?

A. I don't recall saying that. If that's a dispute, then yeah.

Q. Okay.

A. Other than I don't recall testifying regarding this mortgage in any context other than the Metropolitan mortgage context.

And to be quite frank with you, if you read the whole thing, even those two lines that you're trying to pull out and isolate in context refer to the Metropolitan mortgage.

Q. I read the whole answer.

A. Okay.

Q. I didn't isolate it.

A. But it doesn't say - it doesn't have the words Metropolitan mortgage there and I would think that I said that.

Q. Do you have any dispute that the transcript was not properly typed up?

A. Do I have any dispute as to whether --

Q. Whether or not the court reporter properly typed these words?

A. The time between when I testified in these proceedings and when I saw this transcript is so long that I can't tell you whether or not it was typed up properly or not.

I don't have that kind of recall to be able to recall each word, word for word, especially with the time span.

Q. I'm trying to determine if this was the answer you gave to the Committee at that time.

A. I gave an answer regarding the Metropolitan Mortgage papers and the fact that I had not even - though there appeared to be a recorded mortgage, that it was not true that I had received any monies from any - from Metropolitan on that property.

That's the only point that I was trying to make. Documents were being handed to me and statements were being made to me that there was a recorded mortgage and I'm going, you know, I don't care if there's a recorded mortgage, I did not receive any money from Metropolitan.

And that was the issue, that was the point. That was all we were talking about. We weren't talking about anything else.

Q. Is there a reason why you didn't say, however, there's a recorded mortgage from United Mortgage Company?

A. Is there any reason why I had to say that?

Q. Well, is your answer you didn't feel there was a reason?

A. I did not feel that that was the issue at this point in time.

Q. Okay. Thank you.

A. And I was not posed that question. Had I

been posed that question, I would have responded to that one. But nobody asked me that. We were talking about Metropolitan Mortgage Company.

Q. However, you had received the monies from United Mortgage Company just a month prior to your appearance before the Grievance Committee?

A. That is correct.

Q. Okay.

A. And had informed Mrs. Mann of same.

Q. When you received the monies, it appears from the check, correct me if you disagree, that the check was immediately cashed.

A. I'm sure it was.

Q. Okay. And at the time you testified before the Grievance Committee, the United mortgage was fresh in your mind?

A. Not particularly.

Q. You did recall that a month ago you had received funds from United Mortgage Company?

A. If I had been asked about any other mortgage, I would have responded to the question regarding any other mortgage.

What was on the table was Metropolitan and that's what I responded to and nothing else.

Q. Okay.

A. I wasn't trying to keep anything secret, you know, otherwise I wouldn't have told Miss Mann and Melvin Judge that I had the money on United Mortgage. I immediately informed them of that.

Q. At the time of the Grievance Committee hearing, did it appear to you that the

> Committee believed that the mortgage had not yet taken place on the property?
>
> A. No. It appeared to me that they were challenging my statement to the effect that I did not receive monies from the Metropolitan mortgage. That's what it appeared to me."

Ms. Needleman, counsel for the Bar, made it appear that the fact that the mortgage was not funded was pinvotal in the decision of the Bar to privately reprimand Respondent. A look at the reprimand indicates otherwise. It is the recording of the deed rather than a mortgage which was deemed by the Bar to be a violation. There were no mitigating factors, not even that the mortgage was not funded. Respondent questions the Bar's disciplinary action in this matter, but recognizes it is of no moment today.

The Referee found the Respondent guilty of Count II and of Rules 94-8.4(c), 4-8.4(d) of the Rules of Professional Conduct, and Rule 3-4.3 of the Rules of Discipline.

Respondent admitted Count III, which alleges that Respondent's Check Number 133 for $403.34 to United Mortgage was not paid for insufficient funds. When notified by United Mortgage, Respondent contacted her bank which said the check was good and should be resubmitted. Respondent so informed United and requested that the check be resubmitted. The next month, Respondent forwarded another check which was not

accepted by United since the previous check had not been redeposited. The following month United filed suit.

The Referee found Respondent guilty of Count III, of violating Rule 3-4.3 of the Rules of Discipline and Rule 4-8.4(b) and 4-8.4(c).

Respondent admitted to Count IV relative to trust account records and procedure, Count V charging a shortage in the Trust Account of $4,498.68 (no client was injured) from March 1984 to April, 1986, and Count VI relative to $566.75 interest earned on Trust Account.

The Facts as to Count VII are as follows:

1. Annie Ingraham retained Respondent to represent her and her minor son, Timothy in an action against the Dade County School Board for injuries Timothy sustained while at school.

2. Respondent treated the case as a regular personal injury case and Ms Ingraham signed a Personal Injury contract for 40% of any award or settlement recovered after suit was initiated.

3. Respondent was unaware of Section 768.28 limiting attorney's fees in cases against an agency of the State.

4. Since no settlement negotiations took place during Respondent's representation, the issue of attorney's fees was not revisited or discussed.

The Referee found Respondent guilty of charging clearly excessive fees.

The facts as to Count VIII are as follows:

1. After signing a Retainer Agreement with Annie Ingraham, Ms Ingraham was insistent that a lawsuit be filed against the Dade County School Board.

2. Respondent explained that certain notices had to be served. Ms Ingraham was not interested in notices. She demanded that the lawsuit be filed.

3. Respondent filed the lawsuit to keep Ms Ingraham, a very pushy, forceful person, at bay and delayed service of process until the appropriate notices were served.

4. Subsequently, the complaint was served on the appropriate person(s).

5. At the bar proceedings, for the very first time Respondent learned that the complaint had been dismissed for lack of prosecution. Respondent never had notice of said dismissal and proceeded with the prosecution of the case.

6. It appears that Defendant likewise had no notice of the Dismissal of February 5, 1986, for lack of prosecution as Defendant filed upon service of process of the Complaint and Summons a Motion to Dismiss based on technical grounds (School Board is not a subdivision of the County, but an agency of the State, problems with service on correct person) (T.149-150), Statute of Limitations on the 1981-1982 allegation, (T.150), and failure to allege sufficient facts to state a cause of action (T.152).

7. Respondent filed Second Amended Complaint and Defendant filed Motion to Dismiss Second Amended Complaint.

8. The Court granted Motion to Dismiss Second Amended Complaint, and Third Amended Complaint was filed.

9. Because Timothy Dean had reached the age of majority, Respondent filed a Motion to Voluntarily Dismiss Annie Ingraham in an attempt to substitute Timothy Dean as Party Plaintiff (T.157).

10. Counsel for Defendant called to indicate he felt that the Voluntary Dismissal of Annie Ingraham disposed of the case.

11. Respondent then filed a Motion for Relief from Voluntary Dismissal (T.158).

12. Respondent filed a Motion to Withdraw from the case (P.128), notifying counsel for Defendant that she would nevertheless appear to argue Motion fo Relief from Voluntary Dismissal.

13. At any rate, the statute had not run on the allegations of the Third Amended Complaint and the case could have been refiled.

14. Ms Ingraham complains about not being told of the dismissal of the two teachers from the lawsuit who had acted in their official capacity and could not be sued in their individual capacity. These individuals remained named in the suit, but not as party-defendants.

15. Ms Ingrahm says Respondent did not return her calls. Respondent testified that Ms Ingraham frequently called about many matters unrelated to her case. Respondent returned her calls regarding the unrelated matters as well as the case in litigation. Granted, Respondent did not like Ms Ingraham's abrasive personality, and found it difficult to explain matters to Ms Ingraham. But Respondent did return calls and did give "verbal" as Ms Ingraham refers to it (T.117).

The Referee found that Respondent violated Disciplinary Rule 6-101(A)(3) of the Code of Professional Responsibility and Rule 4-1.4(a) and (b) of the Rules of Professional Conduct.

SUMMARY OF THE ARGUMENT

I. During the proceedings which preceded the hearing before the Referee, the Bar never once mentioned Disbarment. The Bar should be estopped at this point from seeking the harshest penalty for the same allegations for which it sought a one-year suspension at the hearing before the Referee. Additionally, Respondent was afforded no opportunity to appear before the Board of Governors, which somehow without benefit of the evidence produced at hearing, became convinced that disbarment should be sought. This is a denial of Respondent's due process rights.

II. The evidence of wrongdoing of Respondent does not present a lawyer whose attitude or course of conduct is so wholly inconsistent with approved professional standards that she is one who should never be at the bar. Rather the evidence indicates that Respondent made full restitution, admitted her mistakes, is repentant and desires to be rehabilitated. The evidence wholly supports the recommendation of the Referee.

ARGUMENT I

THE FLORIDA BAR HAS VIOLATED RESPONDENT'S DUE PROCESS RIGHTS BY FAILING TO SEEK DISBARMENT IN ANY PROCEEDING IN WHICH RESPONDENT WAS AN ACTIVE PARTICIPANT AND BY SUBSEQUENTLY SEEKING DISBARMENT BEFORE THE BOARD OF GOVERNORS BEFORE WHICH RESPONDENT WAS NOT A PARTICIPANT.

An administrative bar procedure has been enacted to provide a means by which the Florida Bar charged with regulatory duties involving members of the bar may efficiently, economically and expeditiously adjudicate in accordance with procedural due process Bar members' legal rights, duties, privileges arising under law which the Bar is given the right and duty to administer. Respondent contends that the Bar has violated Respondent's Due Process Rights.

During the prehearing proceedings on the Complaint filed by the Bar against Respondent, settlement discussions took place. Not once did the Bar indicated that it sought disbarment; it spoke only in terms of suspension. At the hearing itself, during closing argument, Ms. Needelman began reciting a series of cases and the discipline imposed. The Court made inquiry:

> "THE COURT: I have no doubt that in each of the cases that you cite the discipline you indicate was imposed.
>
> I guess my question is is that discipline necessarily representative of the history of discipline imposed for similar violations?

> It seems like most of those - most of the cases you're citing, the discipline imposed was that of disbarment and lengthy suspensions." (T.P.268)

Ms. Needelman responded: "Well, we're not seeking disbarment. We're seeking a suspension for a period of at least one year." (T.P.269).

Respondent and the Referee relied on that representation. Indeed, it is conceivable that had Respondent thought disbarment was the likely result of the bar disciplinary proceeding against her, her response might have been very different. For instance, the character of her accusers might have been attacked in an effort to discredit them or there might have been no admissions of allegations.

No doubt the Referee may have looked at the evidence supporting the allegations with greater scrutiny and where the situation was close would have given the benefit of the doubt to Respondent.

Respondent contends that it is improper for the Board of Governors who did not hear the evidence or witness the demeanor of the witnesses, to go behind the Referee's recommendation and based on the Referee's findings which in great part track the bar complaint, increase Respondent's disciplinary exposure.

The concept of estoppel means that a party is prevented by his own acts from claiming a right to do detriment to another party who was entitled to rely on such conduct and has acted accordingly. Black's Law Dictionary, 5th Edition 1989. Both Respondent and the referee relied upon the acts of Bar counsel.

Respondent was afforded no opportunity to appear before the Board of Governors. Since decisions regarding Respondent's life were being made by said body, such an opportunity should have been provided. If Respondent or her representative had been allowed to argue against disbarment, this matter might not have come to this juncture.

This situation is reminiscent of Respondent's experience before the U.S. Senate:

The committee of twelve who heard the evidence and witnessed the demeanor of witnesses against the client for whom Respondent was one of a team of attorneys acquitted the client of the charges lodged against him. In the full Senate twelve other senators checked out videotapes of the trial proceedings. Ten of those twelve also voted for acquittal. The remaining senators who neither participated in the trial proceedings nor viewed the videotapes made available to them voted for impeachment, not on the basis of familiarity with the case but on the basis of whim, predisposition, race,

handshake, or who knows what? Politics overrode justice. Something similar appears to have occurred before the Board of Governors.

The Bar should be estopped by its own acts from seeking at the last stage of the proceedings, where Respondent was not present, disbarment when it never previously so indicated and in fact did indicate that it sought but one year.

ARGUMENT II

THE DISCIPLINE TO BE IMPOSED IN THIS CASE SHOULD BE THAT DISCIPLINE RECOMMENDED BY THE REFEREE.

A Referee's findings and recommendations will upheld unless clearly erroneous or without support in the record. The Florida Bar v. Lipman, 497 So.2d 1165,1168 (Fla. 1986); The Florida Bar v. Jackson, 490 So.2d 935 (Fla. 1986); The Florida Bar v. Fields, 482 So.2d 1354 (Fla. 1986).

Respondent's Statement of Facts are intended to give an overview of the evidence on which the Referee based his recommendation which was the same evidence which caused Bar counsel to seek "at least one year suspension." Respondent by no means wishes this Court to believe that she is not aware of the seriousness of the offenses charged against her. Additionally, Respondent accepts that discipline is appropriate and stands ready to weather whatever fair and

just discipline this Court may impose.

Respondent disagrees with the Bar that the Referee's recommended discipline is not severe enough. The recommended discipline has and will continue to cause Respondent extreme distress and embarrassment that her conduct has brought on the need for any Bar discipline. The recommended discipline will protect the public from further inappropriate acts on the part of Respondent and at the same time not deny the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. The recommended discipline punishes Respondent's breach while encouraging reformation and rehabilitation. The recommended discipline is severe enough (it will probably cost Respondent her practice) to deter others. The Florida Bar v. Harper, 518 So.2d 262, 264 (Fla. 1988).

The Bar suggests that Respondent's prior disciplinary history plus the instant charges require a harsher penalty. See Grievance Committee Report of Minor Misconduct. Appendix A. As has been pointed out, the Bar disciplined Respondent because she accepted a quit-claim deed rather than taking a mortgage on the property to secure her fee.

Counsel for the Florida Bar in her Initial Brief cites numerous cases and the discipline imposed, in much the same

way she did at the hearing before the Referee. None of the cited cases stand for the proposition that in this case under the facts presented Disbarment for a period of five years is the mandated discipline.

Research reveals that this Court has ordered suspension in numerous cases where the Bar has sought dismissal. One such case is The Florida Bar v. M. Pahules, 233 So.2d 130 (Fla. 1970). In that case the Court held:

> "[D]isbarment is the extreme measure of discipline and should be resorted to only in cases where the lawyer demonstrates an attitude or course of counduct wholly inconsistent with approved professional standards. It must be clear that he is one who should never be at the bar, otherwise suspension is preferable. For isolated acts, censure, public or private, is more appropriate. Only for such single offenses as embezzlement, bribery of a juror or court official and the like should suspension or disbarment be imposed, and even as these the lawyer should be given the benefit of every doubt, particularly where he has a professional reputation and record free from offenses like that charged against him." Ibid at 132.

CONCLUSION

THE FLORIDA BAR has denied Respondent her due process rights by conducting a proceeding before the Board of Governors relative to disciplinary proceedings against Respondent subsequent to the trial before the Referee, and doing so, without affording Respondent an opportunity to be heard at said proceeding. Further, The Florida Bar should be estopped from requesting this Court to consider disbarment of Respondent based on the proceeding before the Board of Governors because in all previous proceedings the Bar indicated that it sought suspension of at least one year and never mentioned disbarment thereby affecting Respondent's course of conduct in the proceedings as well as the Referee's recommendation.

Disbarment for five (5) years is unduly harsh and would only serve the purpose of ousting Respondent from the profession. Respondent is salvageable. Respondent is and can be an asset to her community in the legal profession.

Disbarment is unwarranted and the Referee's recommended action should be upheld for the following reasons:

1. A mistake in practicing law is not tantamount to an unethical violation. The facts reveal that Respondent

made a mistake when she voluntarily dismissed Annie Ingraham as a party-plaintiff after the minor son reached majority.

2. There has been no suggestion from the Bar that there was any intent on Respondent's part to overcharge Annie Ingraham. The evidence simply reflects that a personal injury contract was signed without benefit of familiarity with the statute limiting fees in the case of state agencies.

3. An unresolvable conflict created in part by a client does not translate into a negligent attorney. Had Michael Cochran informed Respondent of the true nature of the proceedings in which he was involved and had he informed Respondent of the February 5th hearing when he learned of it in January, there would be no allegations as to Cochran.

4. There was nothing to be gained by Respondent failing to volunteer to the Grievance Committee that the United Mortgage application had been funded when the inquiry centered on the Metropolitan application. From all appearances, it was the Metropolitan loan application which was under discussion. More importantly the Bar's

finding had to do with how the fee was secured, (deed v. mortgage) not how the security was collected.

5. Finally, the counts alleging money mismanagement, though serious, did not result in injury to any client and the total of shortages over a three year period was less than $5,000.00.

The cumulative effect of the eight counts should and did have some effect on the hearing Referee's recommendation.

That is why the Referee recommended a 90 day suspension instead of the 30 days Respondent sought.

The Referee's finding is supported by the evidence and should not be disturbed.

Respectfully submitted,

ALCEE L. HASTINGS, ESQUIRE
1055 N.W. 183rd Street
Miami, Florida 33169
(305) 651-5400
FLORIDA BAR NO. 0034433

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of PATRICIA GRAHAM WILLIAMS was furnished via Federal Express Overnight mail No. _____ to Jacquelyn P. Needelman, Esq., The Florida Bar, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131, and John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 3rd day of June, 1991.

Alcee L. Hastings

ALCEE L. HASTINGS, ESQ.