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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

Case No. 76,250
[TFB Case No. 89-30,750 (07C)]

ROBERT E. KRAMER,

Respondent.
_____/

INITIAL BRIEF

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SYMBOLS AND REFERENCES

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

The Report of Referee, dated December 3, 1990, will referred to as "RR".

The transcript of the final hearing will be referred to as "T".

STATEMENT OF THE CASE

The Seventh Judicial Circuit Grievance Committee "C" voted to find probable cause on January 31, 1990. The Bar filed its complaint on June 28, 1990. The respondent filed his answer and affirmative defenses on July 26, 1990. The Bar made a reply to the respondent's affirmative defenses on July 24, 1990, and the final hearing was held on October 30, 1990. The Report of Referee was filed on December 6, 1990, wherein he recommended the respondent receive a private reprimand, although such a recommendation was not authorized by the Rules. The referee recommended the respondent be found guilty of violating the following Rules of Professional Conduct: 4-1.7(b)(1) for representing a client when his exercise of independent professional judgement was materially limited by his responsibilities to another client or to a third person or by his own interests; 4-1.7(b)(2) for failing to receive the client's consent, after consultation, to the multiple representation, 4-1.7(c) for failing to explain to his client the advantages and risks involved in the representation of multiple clients in a single matter; 4-1.8(a)(1) for entering into a business transaction with a client and failing to reasonably disclose the transaction and terms and transmit them in writing to the client in a manner which could have been reasonably understood by the

client; 4-1.8(a)(2) for failing to give the client a reasonable opportunity to seek the advice of independent counsel in the transaction; and 4-1.8(a)(3) for failing to receive the client's consent in writing thereto. The referee made no findings as to Rules 4-1.7(a)(1) for representing a client when the representation would adversely affect the lawyer's responsibilities to and relationship with the other client; 4-1.7(a)(2) for failing to receive the consent of each client after consultation regarding the representation; and 4-1.9(a) for representing another person in the same or substantially related matter in which that person's interests were materially adverse to the interests of the former client unless the former client consented after consultation.

This case was considered by the Board of Governors of The Florida Bar at its January, 1991, meeting. The Board voted to approve the referee's findings of fact and recommendations as to guilt but to appeal his recommendation as to discipline. The Board believes the referee's recommended discipline of a private reprimand was erroneous under the Rules and unjustified given the grievance committee's finding of probable cause and the seriousness of the misconduct. The Florida Bar filed its petition for review on January 22, 1991.

STATEMENT OF THE FACTS

The Bar does not take issue with the referee's findings of fact. Therefore, except as otherwise noted, the following facts are taken from his Report of Referee dated December 3, 1990.

The respondent represented Elmer L. Flanary [a.k.a Rod Flanary (T.p. 16)] in October of 1986 regarding a loan of approximately $22,000.00 to Fred Hill in a transaction generally referred to as the "Shanklin deal". Mr. Flanary was actually acting on behalf of Helen Binder and Alice Bahery via their powers of attorney. Mr. Flanary purchased the rights to twenty-two mortgage payments on five lots located in Trigg County, Kentucky. Davis Hamilton, a mortgage broker, led Mr. Flanary to believe that this was a good investment based upon an appraisal of the property. Because Mr. Flanary only had a fourth grade education, he looked to respondent to protect his legal interests. The respondent had also represented Mr. Flanary in in other matters in the past.

The Shanklin deal was documented by an assignment of mortgage dated October 23, 1986, naming Fred Hill as assignor and Elmer Flanary, Helen Binder and Alice Bahery as assignees. The Shanklin Family Trust was named as the mortgagor. At that time,

however, the Shanklin Family Trust did not own the properties described in the mortgage. The lots were not transferred to the trust until on or about November 8, 1986, for the purchase price of $42,500.00. The respondent failed to advise Mr. Flanary that the trust did not own the property at the time the assignment of the mortgage was signed.

Mr. Flanary failed to receive any payments in return for his $22,000.00 loan. The only check he received from the mortgagor was unnegotiable. Mr. Flanary contacted the respondent and requested that he begin foreclosure proceedings on the properties. The respondent, in turn, contacted a law firm in Kentucky to handle the foreclosure. He did this in his capacity as attorney for Mr. Flanary. Eventually, a default was obtained against the Shanklin Family Trust. Correspondence between the Kentucky law firm and the respondent indicated that the respondent was acting as Mr. Flanary's Florida counsel in this action. Mr. Flanary bid the sum of $14,740.00, to successfully obtain the property in default. On December 28, 1987, Mr. Flanary was advised that the property transfer could not be finalized until a Kentucky master commissioner's fee of approximately $756.20 had been paid. Mr. Flanary could not afford to pay this sum. (T.p. 32). On or about January 15, 1988, Mr. Flanary contacted the respondent and asked to borrow

$2,500.00 from him. (T.p. 32). The respondent agreed to loan Mr. Flanary the money in order to pay the fees and costs of the foreclosure litigation and finalize the transfer by paying the master commissioner's fee.

On the same date Mr. Flanary received the $2,500.00, the respondent had Mr. Flanary execute a deed to the Kentucky lots naming the respondent as the grantee. The respondent also prepared an option contract giving Mr. Flanary the option of repurchasing the properties from the respondent for $2,500.00 at eighteen per cent interest, within six months. The option contract provided that it became null and void upon the default of any payments. In actuality, this transaction was not a loan because Mr. Flanary conveyed the properties to the respondent in exchange for the sum of $2,500.00. Mr. Flanary's reading ability was very limited and the respondent failed to disclose the terms of the business transaction to him. Mr. Flanary believed he was obtaining a mortgage when such was not the case. The respondent failed to disclose this nor did he reveal in writing to Mr. Flanary in a manner which Mr. Flanary could reasonably understand, his conflicting interests. The respondent took attorney's fees of $125.00 out of the $2,500.00 amount. Mr. Flanary was not given a reasonable opportunity to seek the advice of independent counsel because the transaction was closed on the

same day that Mr. Flanary had requested the loan. The respondent never advised him of any conflicting interests nor did he tell his client to seek the advice of independent counsel prior to entering into the transaction. Furthermore, Mr. Flanary did not consent to the transaction in writing as is also required by Rule 4-1.8.

On February 5, 1988, Mr. Flanary received a check from respondent for $49.87. The respondent's trust account check for this payment contained a notation that the check was for sale proceeds of the Kentucky property. Sometime thereafter, Mr. Flanary defaulted in his payments to the respondent. (T.p. 132). The respondent had transferred his interest in the property to another party for $3,000.00. Mr. Flanary did not realize that a default in his payments would result in an immediate loss of any potential interest he had in the Kentucky properties because he thought it was a mortgage. In the past he had often become delinquent in other mortgages associated with the respondent and had been allowed to bring his payments up to date without substantial prejudice.

After Mr. Flanary received the respondent's check for $49.87 he consulted with another attorney who explained the transaction to him. After Mr. Flanary retained other counsel, the respondent

contacted Mr. Flanary's new attorney and offered to help in collecting on the Shanklin judgment if Mr. Flanary agreed to pay off debts he owed to the respondent's other clients.

SUMMARY OF ARGUMENT

The referee has recommended the respondent be privately reprimanded for engaging in a business transaction with a client wherein they had conflicting interests.

A private reprimand is clearly inappropriate in this case for two reasons. First, the seriousness of the respondent's misconduct calls for at least a public reprimand. It is inexcusable that he should take advantage of a client for his own personal gain and attempt to excuse his misconduct because he believed he was doing Mr. Flanary a favor. The respondent's "generosity" amounted to nothing more than his buying Mr. Flanary's property for $2,500.00 at a time that he believed it might have been worth $4,000.00. (T.p. 169). He failed to explain to Mr. Flanary that the documents he, the respondent, prepared were not in the nature of a mortgage as Mr. Flanary understood the term. The respondent failed to adequately explain to Mr. Flanary that his interests conflicted with those of Mr. Flanary nor did he advise him to consult with another attorney before signing any of the documents. As an attorney, the respondent occupied a position which enabled him to exploit Mr. Flanary's unfortunate position for his own personal gain.

A private reprimand is also inappropriate in this case for procedural reasons. The case at bar is based upon a finding of probable cause by the Seventh Judicial Circuit Grievance Committee "C" which resulted in the Bar filing a formal, public complaint. The Committee could have chosen to find minor misconduct but declined to do so after fully considering all of the evidence and testimony. Rule 3-7.5(k)(1)(3) of the Rules Regulating The Florida Bar provides that a referee may recommend an admonishment (formerly termed private reprimand) only in cases based upon a finding of minor misconduct. Similarly, Rule 3-5.1(b) states that minor misconduct is the only type of misconduct for which an admonishment is an appropriate discipline.

Although this Court may impose whatever level of discipline it deems appropriate, the Rules clearly impose certain restrictions on referees. The Bar submits a referee may no more recommend a private reprimand or admonishment in probable cause cases than he may recommend a period of suspension in excess of three years or permanent disbarment. See Rule 3-1.5(e) and The Florida Bar v. Mattingly, 342 So.2d 508 (Fla. 1977). The referee, in making his recommendations as to discipline, should defer to the Grievance Committee in cases where the Committee has chosen not to find minor misconduct. The Bar submits minor misconduct findings should be made at the local level subject to approval by the Board of Governors.

ARGUMENT

POINT ONE

A PUBLIC REPRIMAND AND PAYMENT OF COSTS IS A MORE APPROPRIATE DISCIPLINE GIVEN THE NATURE OF THE MISCONDUCT.

The Bar does not take issue with the referee's findings of fact but it does submit that his recommendation of a private reprimand is inappropriate in this case because of the nature of the respondent's misconduct. His client desperately needed a loan and could never have qualified for conventional financing. The respondent knew Mr. Flanary was, in effect, between a "rock and a hard place" and he took advantage of the situation to, in his own words, stand a chance of "[making] money, so to speak, on Flannery (sic)." (T.p. 168).

The respondent's characterization of this loan as a favor he was doing for his client does not excuse his noncompliance with the requirements of Rule 4-1.8(a)(1) which admonishes an attorney to ensure that not only are the terms of the business transaction fair and reasonable to the client but that they be made known to him in writing and in a manner which the client can understand. The referee found the terms of the transaction to be unfair to Mr. Flanary. (RR p. 3). The respondent admitted that he did not

advise his client to seek the advice of another attorney before signing the documents nor did he reduce the terms of the transaction to writing. (T.p. 147) Mr. Flanary requested the loan on January 15, 1988, and the respondent prepared the paperwork and Mr. Flanary signed everything all in the same day. (T.pp. 143-144). In fact, the whole transaction appears to have been a "rush deal" to get Mr. Flanary's signature on the paperwork as soon as possible. The respondent admits his interests conflicted with those of his client but apparently he believes his actions were acceptable because, in his opinion, he was fair in his dealings with Mr. Flanary. (T.pp. 13-14 and 166). The respondent fails to recognize the fact that all the requirements of Rule 4-1.8(a) must be met. Compliance is not discretionary. The respondent's argument at the final hearing reveals that he has failed to fully grasp this concept. An attorney suffered from a similarly myopic viewpoint in The Florida Bar v. Dunagan, 565 So.2d 1327 (Fla. 1990). The attorney referred his financially beleaguered clients to a mortgage broker. The clients were facing foreclosure proceedings, which the attorney was representing them in, and still owed the attorney for past due legal fees incurred over a long period of time for numerous other legal matters. The clients believed the attorney was representing their interests when he attended the loan closing. They intended to use the proceeds only to pay off

the mortgage loan. The attorney, however, took the opportunity to obtain payment in full for his past due fees. The amount, which had been in dispute, was deducted from the settlement statement which the clients saw for the first time at the loan closing. The attorney never told them he intended to do this, never told them to seek the advice of another attorney prior to signing the documents, nor did he advise them of any conflicting interests. The clients, although angered, elected to proceed with the closing rather than risk incurring liability for broker's fees and other closing expenses. The court order the attorney suspended for sixty days in part due to his failure to understand, even after the Bar began disciplinary proceedings, that a conflict of interest existed between himself and his clients in representing them at the closing while failing to tell them that he intended to deduct his past due legal fees from the loan proceeds. The attorney had a prior disciplinary history but it was not considered an aggravation because the misconduct occurred prior to the issuance of the court's order on July 2, 1987, in The Florida Bar v. Dunagan, 509 So.2d 291 (Fla. 1987). In that earlier case the attorney received a public reprimand and six month period of probation for entering into a business transaction with a client without advising her to obtain independent legal counsel and where they had conflicting interests.

In The Florida Bar v. Dougherty, 541 So.2d 610 (Fla. 1989), an attorney was publicly reprimanded and placed on a two year period of probation for investing substantial trust account funds, without disclosure to the lifetime beneficiary, in ventures in which the attorney had potentially conflicting interests. The attorney was acting as trustee of an account created under the will of a former client. He invested trust funds in a corporation in which he and some of his other clients were involved as principals and officers. A mortgage secured the investments but he failed to record it for a little more than one year. The attorney failed to keep appropriate trust records and as a result it was difficult for the Bar to determine whether or not the lifetime beneficiary had received all of the money she was due. The attorney had also neglected to tender for exchange stock held by the trust, and failed to provide accurate and timely accountings. There was no attorney-client relationship involved and the lifetime beneficiary did eventually receive all of the money she was due. In mitigation, there was no evidence of any intentional misappropriation and the attorney had been an active and respected member of his community for many years. The referee classified the attorney's actions as minor misconduct and recommended a private reprimand. The court, however, found his actions did not constitute minor misconduct because he invested substantial trust funds without disclosure in ventures in which

he had potentially conflicting interests. The court went on to state that this constituted serious misconduct warranting substantial discipline because the potential for self- dealing was too great.

An attorney was suspended for ninety-one days in The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1982), for entering into a partnership arrangement with a client while acting as attorney for the partnership, failing to provide her with an accounting of fees already received, and failing to return to her money owed from the proceeds of the sale of property. The attorney had been retained by the client because she was facing several mortgage foreclosure actions. Initially, she was going to file a Chapter 7 bankruptcy but the attorney suggested that she enter into a partnership agreement with himself and a third party whereby she would deed title to the properties to the attorney and other investor. They would then pay off the judgment creditors, sell the properties, and split the profits between the three of them. The attorney never advised his client to seek the advice of independent counsel and he was the only attorney involved in the negotiations. He told her that she had the choice of either bankruptcy or the agreement. Naturally, the client chose to enter into the agreement. Although the attorney was successful in saving his client's properties from foreclosure, the referee

found that it was "evident that the Respondent either was unaware of or chose to ignore the fiduciary responsibilities placed on an attorney entering into a business transaction with a client." At page 527. The court imposed a higher level of discipline because the attorney had prior disciplinary history.

In The Florida Bar v. White, 368 So.2d 1294 (Fla. 1979), an attorney received a two month suspension for engaging in a conflict of interest transaction and charging a clearly excessive fee for handling the estate of a former client. In the first count, the attorney and two other investors purchased real property from a client for a price that may have been less than the land's true market value. The attorney never advised his client that the land might be worth more than what the client was asking and should seek either an independent appraisal or independent legal advice prior to entering into the sale. The attorney also failed to disclose to his client the identity of the other two purchasers. The evidence indicated that the value of the land at the time in question was uncertain and speculative. The referee found that the reasonable value was close to the price paid by the attorney. The referee found that the attorney was oblivious to the fact that he had any ethical or legal obligations to his client once the purchase and sale contract had been entered into other than to pay the price and live up to the terms of the agreement. There was no evidence of

any intent to defraud or existence of a dishonest motive. The real conflict arose with respect to the financing terms. The attorney recommended an installment sale with twenty-nine percent down and the balance to be paid in five equal annual installments for income tax purposes. At the same time, however, the attorney inserted a prepayment clause in the purchase money note which allowed the attorney and his two investors to prepay the note at any time. This was contrary to the best interests of his client because it could have resulted in adverse tax consequences. In the second count, the attorney was found guilty of charging a clearly excessive fee for handling a small estate in which there were no probate assets.

An attorney was suspended for three months in The Florida Bar, 334 So.2d 23 (Fla. 1976). The attorney became involved with two clients in a business venture. The attorney formed two corporations for the purpose of marketing a patented process known as "Colorflame" which had been invented by one of the two clients. One corporation licensed the patent to the other corporation but an addendum to the agreement gave the licensing corporation an option to terminate the license agreement if marketing of the process did not begin before a certain date. The attorney assisted his clients in selling stock in the corporation that had bought the license but failed to disclose to

the purchasing investor the existence of the addendum. In addition, one of the clients began misappropriating funds from the corporate escrow account. The attorney, however, continued turning funds over to the client even after he knew or should have known of the misappropriation. At the time this client owed the attorney money and on at least one occasion used corporate assets which he had misappropriated to purchase a cashier's check made payable to the attorney. The attorney was also involved in a sham transaction in which one of the corporations appeared on paper to have acquired a piece of real estate from the other corporation for a certain sum of money. In reality, no money passed hands and no papers were filed in the public records. There were no other lawyers involved in the transaction. Eventually, the third investor to whom the stock had been sold took control of the corporation and removed the attorney and his two clients. The referee found no evidence of any dishonesty, fraud, deceit, or misrepresentation. The attorney had no prior disciplinary history.

The case of The Florida Bar v. Israel, 327 So.2d 12 (Fla. 1975), which involved a fact pattern similar to the case at bar, resulted in a consent judgment for a public reprimand. The attorney entered into a business transaction with a client wherein they had differing interests. Although this case has no

precedential value for disciplinary purposes, its factual similarity to the respondent's case makes it worth noting. The attorney was retained by his client because she was being threatened with mortgage foreclosure proceedings. The attorney entered into an agreement with her whereby he agreed to advance sufficient money to her or to her mortgage company to bring her payments up to date. As a part of this agreement, the client agreed to sign over to the attorney a quitclaim deed for her property as security for the attorney's fees and advances. She also agreed to pay the attorney a set sum of money per month to be applied to the attorney's fees and the advance. Sometime thereafter, the client became delinquent in her payments to the attorney and he recorded the quitclaim deed she had given him. He then filed a complaint and ejectment against her despite the fact that he knew or should have known a quitclaim deed held as security for funds advanced was a mortgage and the proper procedure to be followed was a foreclosure suit. The attorney entered into a conditional guilty plea for a public reprimand.

The Florida Standards for Imposing Lawyer Sanctions, which were adopted by the Board of Governors several years ago, also support the discipline of a public rather than a private reprimand.

Standard 4.33 calls for a public reprimand when a "lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client." (emphasis added). Standard 4.34 calls for an admonishment when a "lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no injury or potential injury to a client." (emphasis added). Clearly in this case the potential for injury to Mr. Flanary was great and therefore a public reprimand is called for by the Standards.

The Bar does not argue that it is always inappropriate for an attorney to enter into a business transaction with his client. Because of the nature of their profession, however, the Rules and case law promulgated by this Court have imposed certain duties upon lawyers to ensure that the client's best interests are protected. As this Court stated in The Florida Bar v. Bennett, 276 So.2d 481 (Fla. 1973),

> ...attorneys can seldom cast off completely the mantle they enjoy in the profession and simply act with simple business acumen and not be held responsible under the high standards of our profession. It is not often, if ever, that this is the case. In a sense, "an attorney is an attorney is an attorney", much as the military

> officer remains "an officer and a gentleman" at all times. We do not mean to say that lawyers are to be deprived of business opportunities; in fact we have expressly said to the contrary on occasion; but we do point out that the requirement of remaining above suspicion, as Caesar's wife, is a fact of life for attorneys. They must be on guard and act accordingly, to avoid tarnishing the professional image or damaging the public which may rely upon their professional standing. At p.482.

Clearly, the respondent has failed to live up to this standard. Because of the nature of their work, attorneys are often presented with enticing business ventures which may involve clients. When business dealings go smoothly and all parties realize a profit they are rarely, if ever, brought to the Bar's attention. Any conflicting interests usually fail to surface unless a venture goes awry, as it did in this case. This Court stated in The Florida Bar v. Price, 569 So.2d 1261 (Fla. 1990), that public reprimands are appropriate for isolated instances of neglect or lapses of judgment. Private reprimands, or admonishments, are appropriate only for the most insignificant of offenses. The Bar submits that the respondent's misconduct is not an insignificant offense because the potential for harm to the client was great.

A public reprimand would also best serve the three purposes of discipline as recently reiterated in The Florida Bar v. Anderson and McClung, 538 So.2d 852, 854 (Fla. 1989). It would be fair to society, both in terms of protecting the

public from unethical conduct and at the same time not denying them the services of a qualified attorney. The judgment would be fair to the respondent. It would be severe enough to punish his misconduct while at the same time encouraging reform and rehabilitation. It would also serve to deter others who might be prone or tempted to become involved in similar business transactions with clients. An admonishment in this case would fail to satisfy the third purpose.

POINT TWO

THE REFEREE'S RECOMMENDATION FOR DISCIPLINE OF A PRIVATE REPRIMAND, IN A PUBLIC PROBABLE CAUSE CASE, IS ERRONEOUS IN LIGHT OF RULE 3-5.1(b) OF THE RULES OF DISCIPLINE WHICH PROVIDES THAT MINOR MISCONDUCT IS THE ONLY TYPE OF MISCONDUCT FOR WHICH A PRIVATE REPRIMAND IS AN APPROPRIATE DISCIPLINARY SANCTION; AND RULE 3-7.5(k)(1)(3) WHICH PROVIDES THAT A REFEREE MAY ONLY RECOMMEND A PRIVATE REPRIMAND IN CASES OF MINOR MISCONDUCT.

The Rules Regulating The Florida Bar divide misconduct into two separate categories: findings of minor misconduct which are to be handled and disposed of at the grievance committee level subject to the approval of the Board of Governors of The Florida Bar and probable cause findings which are to be handled by the filing of a formal complaint with this Court and appointment of a referee. Minor misconduct is a term of art which refers to a specific type of discipline that results in an admonishment (formerly known as a private reprimand). The Rules of Discipline define minor misconduct in a negative sense. The term normally refers only to offenses of minor significance. The criteria in Rule 3-5.1(b) state what types of cases will not be considered minor misconduct absent unusual circumstances.

The dichotomy created by the drafters of the Rules of Discipline clearly shows that minor misconduct is a finding made

by the local circuit grievance committees and ratified by either the Designated Reviewer or the Board of Governors subject to rejection by the accused attorney. In the event an attorney rejects minor misconduct, then, after trial before a referee, the matter is reviewed by this Court. In that case, the Rules specifically empower the referee to impose any discipline ranging from an admonishment to disbarment.

A referee has certain constraints imposed uopn him by the Rules. He is authorized to recommend a private reprimand only when a complaint of minor misconduct has been filed. See Rule of Discipline 3-5.1(b)(4). Allowing a referee to recommend a private reprimand in a probable cause case in direct contravention to the Rules of Discipline is no different than allowing a referee to recommend an indefinite period of suspension, or a suspension in excess of ninety days with automatic reinstatement, a suspension of more than three years, or permanent disbarment. The Rules do not allow recommendations of such disciplines and this Court should correct the referee's erroneous recommendation in this case as it has done in the past when other referees have made disciplinary recommendations that were erroneous. See for example The Florida Bar v. Musleh, 453 So.2d 794 (Fla. 1984). The Bar recognizes that this Court may choose to exercise its discretion and impose any level of

discipline it deems appropriate under the circumstances of this case. See The Florida Bar v. Doe, 550 So.2d 1111 (Fla. 1989).

In the case at hand, the grievance committee, after hearing all of the testimony and reviewing the evidence, voted to find probably cause rather than minor misconduct. Under the Rules, therefore, the Bar submits the referee, in making his recommendations as to discipline, should have deferred to the grievance committee with respect to its decision not to find minor misconduct in this case. The Bar submits it is necessary to correct what is an obviously erroneous recommendation under the Rules and that a public reprimand is the appropriate discipline to impose along with payment of costs now totaling $2,616.52.

CONCLUSION

WHEREFORE, The Florida Bar respectfully requests this Honorable Court to review the Report of Referee, the findings of fact and recommended discipline, and impose a public reprimand as well as order payment of costs in this proceeding, currently totalling $2,616.52.

Respectfully submitted,

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BY: 

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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 Robert E. Kramer, respondent, at Post Office Box 2356, Daytona Beach, Florida 32115; 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 12th day of February, 1991.

David G. McGunegle

DAVID G. McGUNEGLE
Bar Counsel