IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

HANS C. FEIGE,

Respondent.

Case No. 76,408

REPLY BRIEF

HANS C. FEIGE, #146666
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JB
2/13/92

"A lawyer shall not knowingly use a confidence ... of his client for the advantage... of a third person unless the client consents after full disclosure. CONFIDENTIALIT IS SACRED."

TRIAL, Clifford Irving, at 189
(Dell, 1990)

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STATEMENT OF CASE AND FACTS

The Bar's version has numerous errors and omissions.

The Respondents pleadings were never struck nor any default entered. The record fails to disclose any such order but only the warning to do so. The discovery was two days late. The court order was received in Respondents office four hours before the court deadline while respondent was in trial.

The alimony was modified by court order in that Gale was ordered to pay an additional $50.00 in support which was not terminated by remarriage.

While Feige at Mrs. Gale's instructions did not notify Mr. Gale of her remarriage, she did! Whether he read the invitation or threw it out unopened is unknown.

Note that the Bar's Brief fails to draw issue with the Brief of Respondent, but instead reformats the argument. Respondent will reply within the framework of his original Brief.

ARGUMENT

Point I

The Bar suggests that the other finds of the Referee are not contested. How absurd since they all rest on the same facts and conclusions. If the conflict can be consented to, Count II is without any merit.

The Bar argues without any case support that Mrs. Gale could not have counsel of her choice in this case, and could not waive the conflict. That has never been the law of this State and should not be now. A lawyer, as long as he protects the client, should be permitted to represent both in order to reduce the expense and burden on the client.

Judge Orlando found no problem with the representation and so ruled. He found no anticipated need to testify for the client.

Both the Bar and the Referee suggested a thirty day suspension for the violation of a rule that does not even exist yet, much less in 1984. If we are to be punished for Rules that the Bar want to put into effect in the future we are indeed doomed because all of our actions will have to be based not only on what we know to be ethical, but also what changes we can predict.

Count II is erroneous, unlawful, and unjustified on its face. It shows the danger of allowing the Bar to give prepared reports to Referee. The Bar comes in these matters on unequal and superior footing as a agency representing all lawyers and the public. While they have the burden of proof (clear and convincing), they also have the upper hand. That has been made clear in this case.

Point II

The "salient" facts relied on by the Bar are incomplete and not accurate.(Page 9 of Bar's Brief).

1) Gale's obligation to pay alimony did not cease upon remarriage, at least as to the additional $50.00.

3) Whalen sent notice to Gale,. which he denies seeing.

4) Gale denies seeing the notice given by Whalen.

Exhibit "D" which is a letter from Roderman to Frumkes, shows that psychological fees were incured and that the$50.0 payments were not being made. What is a proper showing has never been clear, but that is not for the referee to decide. The Bar must prove by clear and convincing evidence that Whalen was not entitled to the money, nor had any legal argument to present in support of any such claim. The outcome is immaterial.

The referee ruled without any evidence that Whalen had no claim to the funds in question, which is clearly wrong. The Roderman letter sets forth the claim. Whalen could accept any payment towards the claim whether to pay for monies claimed to be due, or for future advances. This is basic contract law.

The Bar concedes by omission that DR 7-102(B)(1) was misstated in the report. The other rule violations all rest on this one including DR 1-102(A)(4). The clear information of a fraud relies on the Bar's position that Whalen and her father lied to Respondent, which is unsupported by any evidence. The evidence supports only the contrary. Why would a woman fighting to see her son send the invitation? Because she hoped it would end the conflict. Did I doubt my client. No. Should I have as a matter of law? No! Was there any evidence of fraud. No!

An attorneys fiduciary obligation to his client is at the heart of our system of justice. We discuss exceptions to the rule, not greater duties. The lawyer as a whistle-blower has been a heated topic for years. The Bar and the Referee recommend a two year suspension for not being a whistle-blower in this case. Telling Gale of the remarriage or sending his checks back are the same and both violate the express instructions of the client. She had a right to give these instructions and an absolute right to have those instructions followed under the facts of this case.

If Whalen complains to the Bar upon Respondent telling Gale against her orders, and proves she was owed money and that the notice was sent, she has a clear case for misconduct. The defense that there might have been a fraud only goes to mitigation of punishment. The lawyer must show clear information that a fraud has been committed before he has any right to tell. The Bar has the same burden here by clear and convincing evidence. That burden has not been and cannot be met.

CONCLUSION

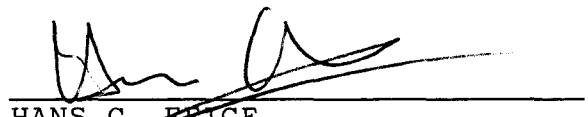
The findings of the referee cannot stand in face of the stipulated facts and exhibits that prove that Respondent was told that a notice was sent, monies were owed, and he was ordered to continue to accept payment on the open account. Nobody was cheated or robbed. Whalen paid what he owed and still owes more today to Whalen.

Respectfully submitted,

HANS C. REIGE, #146666

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply Brief has been furnished to Kevin P. Tynan, 5900 N. Andrews Ave., Ft. Lauderdale, Fl 33309, by mail, this 25 day of Nov.,1991.



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