IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

PAUL JOHN DUBBELD,

Respondent.
_____/

Case No. 77, 340
[TFB Case No 90-30, 934 (07A)
and 90-31, 307 (07A)]

1-25-92

FIRST AMENDED ANSWER BRIEF

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SYMBOLS AND REFERENCES

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

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

The Report of Referee shall be referred to as "RR".

STATEMENT OF THE CASE

The Respondent accepts and adopts the Statement of the Case as established in the Florida Bar's Initial Brief.

The Respondent adds to the Statement of the Case that fact that he did not provide to the Florida Bar (hereinafter referred to as "the Bar") a monthly status report due to a lack of calendaring. The Bar and the Grievance Committee at no time contacted the Respondent to inquire as to a reason the status reports were not provided and the professional courtesy of a telephone call or the issuance of an abbreviated note or letter was not afforded the Respondent. As a result the Respondent was immediately thrust into a probable cause status.

The Respondent was unaware of a requirement for Answer Brief. The Respondent has filed contemporaneous herewith his Motion for Extension due to his ignorance of the requirement of an Answer Brief.

STATEMENT OF THE FACTS

The Respondent accepts and adopts the Statement of the Facts as issued by the complainant, the Florida Bar. Further, the Respondent accepts and adopts the findings of fact as issued by the Honorable William T. Seigert on August 13, 1991.

SUMMARY OF THE ARGUMENT

The Respondent agrees with the referee's findings of fact and his recommendations as to both guilt and punishment.

The Florida Bar has previously acknowledged that there are instances whereby the referee has recommended admonishment after a probable cause finding by a local grievance committee. Respondent by and through this, his Amended Answer Brief reinforces through argument that the Supreme Court of Florida has the inherent power and duty to prescribe standards of conduct for lawyers, and as such should heavily rely upon the factual finding of the instant referee.

ARGUMENT

POINT I

THE REFEREE'S CONSIDERED AND JUDICIOUS DECISION APPROPRIATELY REFLECTS THE PROPER SANCTIONS AGAINST THE RESPONDENT.

The Respondent agrees with the referee's findings of fact and his recommendations as to both guilt and punishment.

Rule 3-1.2 provides:

> The Supreme Court of Florida has the inherent power and duty to prescribe standards of conduct for lawyers, to determine what constitutes grounds of discipline of lawyers, to discipline for cause attorneys admitted to the practice of law in Florida and to revoke the license of every lawyer whose unfitness to practice law has been duly established.

It is noted that the referee acknowledged Bar Counsel in his notation for the record "that there are other instances where referees have recommended admonishments or private reprimands in probable cause cases and the Court as (sic) upheld these recommendations as to discipline." (RR-3). Respondent is somewhat stymied in his preparation in support of the referee's recommendations in that all matters pending before this Honorable Court presumably are confidential in nature; the Respondent has no meaningful access to the plethora of cases wherein a referee has recommended an admonishment after a probable cause finding by a local grievance committee. One cannot publish by and through this Answer Brief matters known to be true, and acknowledged by Bar Counsel and one is hard pressed to rely as a matter of

response on matters which have been published in view of the fact that those are now already a matter of public knowledge and are reported in the Southern Reporter. Cases relied upon by the Bar hereinafter will be distinguished but it is emphasized that these are matters of public discipline and/or suspension/disbarment and as such, are, ipso facto, distinguishable.

The referee acknowledged that all prior matters which have been attended to by the Bar in a grievance form were alcohol related. The Bar has failed to present any evidence as to the Respondent's lack of qualifications as a lawyer. Therefore, the Bar simply relies upon a pattern of conduct or "cumulative disciplinary history" which the Bar believes warrants a public reprimand. The referee in the case sub judice recognized the plain fact that the respondent voluntarily underwent in-house counseling for alcohol abuse. It is parenthetically noted that there are no indicators of any other substance abuse. The referee further noted that the Respondent had essentially already received at least two public notices regarding the subject DUI arrest. The initial arrest itself was reported in the local paper of significant publications, and the following conviction was likewise noted in the same said publication. In short, the referee noted not only the Respondent's affirmative steps towards his personal rehabilitation but further noted that the public reprimand as demanded by the Bar would be duplicious in nature and would unnecessarily republish the Respondent's

arrest and conviction. It was noted for purposes of establishing a factual basis that individuals arrested for driving under the influence are not reported other than for the "Court Docket"; it was further recognized by the referee that it was a rarity to have the subject DUI and conviction reported in detail. The Respondent is in an astonishingly difficult position in that the Bar apparently takes the position that the extensive coverage of the subject DUI arrest and conviction reflect badly upon lawyers as a whole. This bootstrap maneuver should not be permitted in view of the fact that there is no record establishing that the Respondent intentionally had the subject arrest/conviction published. Further, the argument by the Bar defies compassionate common sense and as such should be rejected in toto.

Clearly the Bar should not employ "cheap shot" artists and in that vein it is readily apparent that counsel for the Bar, in argument in support of Point I at page 8 (second paragraph), has taken a revolting stance. A record indication consumption of alcoholic beverages is geared simply to sway or prejudice this Court against the Respondent. Counsel for the Bar, of course, understands that there is no ultimate appeal on this issue and certainly no right of recusal, and has as such indulged in the questionable quality of gamesmanship.

The Bar cites a host of case law in support of its theory of appeal. The Respondent's exasperation at his legal

and factual inability to so contradict these matters on a more meaningful level has been previously noted. The Bar presumes as a matter of comparison that the Respondent should be compared to an individual with two previous DUIs who violated his probation, who appeared in court intoxicated and who was held in contempt of court for being late and drunk in violation of his probation, The Florida Bar v. Allen, 518 So.2d 916 (Fla. 1988); an individual who unethically and unprofessional mixed business with his personal problems and committed a fraud while acting as trustee, The Florida Bar v. Bennett, 276 So.2d 481 (Fla. 1973); comparing Respondent to an attorney who intentionally stole money from a client, The Florida Bar vs. McShirley, 573 So.2d 807 (Fla. 1991); an attorney who wanted his wife's attorney's car blown up and/or arms broken etcetera as discussed in numerous meetings with a confidential informant, The Florida Bar v. Patarini, 548 So.2d 1110 (Fla. 1989).

This Court has previously held that there is a three-fold purpose of Bar discipline, to wit:

> 1. Punishment of the offender;
> 2. Deterrent for those who might be tempted to emulate the wrongdoer;
> 3. Protection of the public.

The Florida Bar v. Musleh, 453 So.2d 794 (Fla. 1984). The nature of the allegations and the factual report of the referee reflect that the Respondent has been punished to a degree more so than any other citizen accused of a first offense DUI. The Respondent has been not only punished for the crime, but has been punished also in view of the repetition of publication of the arrest and conviction. All

parties would agree that a first offender typically is not reported in the newspaper other than by a diminimus notation of arrest record for the day and certainly few individuals have their arrest and conviction published in a significant fashion as did the Respondent. The referee has factually and legally held that the punishment of the Respondent has exceeded that of any other individual and in effect, public reprimand would serve to unnecessarily punish the Respondent again. It could hardly be considered that a public reprimand as demanded by the Bar would suffice as an additional deterrent to any other attorney who may be tempted to likewise commit the criminal offense of driving under the influence. Certainly the publication in the local media would serve as a strong and effective deterrent if a deterrent is available against the subject crime. Frankly, an attorney severely impaired more than likely would not recall that Respondent Dubbeld was severely damaged through media publications and more than likely would ignore past publication and on a speculative matter it is suggested they would simply take a chance. Certainly this is not a question of the Respondent being emulated. Finally, there is no further need for protection of the public. Respondent has not ever been accused of stealing, of fraud, of contempt of court, or any of the insidious allegations contained within all cases cited by the Florida Bar in the subject initial brief. Simply put, this is not a matter where protection of

the public is either necessary or required by the Bar's demand for public reprimand.

The referee in the instant case acknowledged that the respondent successfully completed probation (with all requirements satisfied upon demand) contrary to the facts as established in The Florida Bar v. Finkelstein, 522 So.2d 372 (Fla. 1988). The Respondent, having successfully completed all terms of probation and having satisfied all other requirements for punishment of the instant offense, does not maintain that he is now absolved from the Bar and any additional punishment. However, this court has well established its inherent power and duty to prescribe standards of conduct. Respondent is not proud of the immediate arrest and genuinely feels that his alcohol problem has been acknowledged and addressed. Further, while the Bar attempts to rely upon a cumulative nature of prior disciplinary history it is relatively clear that all of the said complaints were alcohol related. The referee, having fully considered every factual aspect relevant and material to the Bar's position has rejected the Bar's demand for public reprimand. Respondent likewise request this Honorable Court to reject this, the Florida Bar's Demand for Public Reprimand.

CONCLUSION

WHEREFORE, the Respondent prays this Honorable Court accepts the referee's finding of fact, recommendation of guilt and recommendation as to discipline. Further, the Respondent respectfully moves this Court to limit the costs on the instant cause to $1,414.58 and not allow any additional costs in view of the fatuous and improvident nature of the Bar's appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of this Respondent's Amended Answer Brief have been sent by U.S. mail to the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927; a copy by U.S. mail to David McGunegle, Bar Counsel, 880 North Orange Avenue, Suite 200, Orlando, FL 32801-1085 and a copy by U.S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 31st day of December, 1991.

Respectfully Submitted,

PAUL J. DUBBELD, ESQUIRE
Attorney Pro Se