IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

Supreme Court Case No.
77,136; 77,351 & 78,243

ELLIS S. SIMRING,

Respondent.
_____/

REPLY TO ANSWER BRIEF ON CROSS-PETITION FOR REVIEW

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TABLE OF CONTENTS

ARGUMENT

A review of The Florida Bar's Reply Brief and Answer Brief on Cross-Petition for Review (hereinafter referred to as "Reply Brief") requires a short and brief response.

The Court presently has before it all of the case law necessary to determine the legal issues.

The Court has before it all of the arguments that can conceivably be made by any of the parties and, except for a few thoughts which will be expressed in this document, needs no further argument and discussion.

The Court has before it all documents in evidence necessary to determine the issues for both The Florida Bar on their claims and on behalf of the Respondent on his claim of impairment.

The Florida Bar's Reply Brief merely repeats and reiterates all arguments and misstatements previously made.

Kevin Tynan again has taken the opportunity of creating false conclusions from the facts as they were elicited during the trial and again is using his Reply Brief as a calculated attempt to mislead the Court to believe that certain admissions were made and that certain assumptions are obvious. All this was addressed by Respondent in previous documents.

There is nothing new contained in The Florida Bar's Reply Brief which requires a response except some comment should be made concerning The Florida Bar's position:

1. Respondent, contrary to the allegations in the last three lines on page 13 of The Florida Bar's Reply Brief, does not consider misuse of an attorney's trust account as trivial and minor. Respondent's position is that the misuse of the trust account by co-mingling of funds does not warrant the "death penalty."

2. On page 3 of The Florida Bar's Reply Brief reference is made to the fact that Respondent forgot that Respondent was a witness called by The Florida Bar and the deposition of Ronald Schain was introduced into evidence. It escapes Respondent why Mr. Tynan would make reference to this since there is no further reference in his document to any testimony given by Respondent or by Ronald Schain to support The Florida Bar's position.

3. On page 19 of the Reply Brief, Kevin Tynan states, "It is the Respondent's belief that this impairment absolves him of any wrongdoing whatsoever." Respondent submits to this Court that he has always admitted co-mingling and has always advised The Florida Bar and the Court that he should be in some manner punished for these activities. Respondent never in any document, in any conversation, or at anytime has claimed that the "impairment absolves him of any wrongdoing whatsoever."

4. It is statements, allegations, and assertions such as this which attempt to mislead the Court. To further compound the

tactics of Kevin Tynan and his personal attacks on Respondent's character, the Court will note that Mr. Tynan has used the word "theft" or "thief" more than 16 times in his Reply Brief, and has alleged to the fact that monies were stolen many more times. It is suggested that Mr. Tynan believes that repetition of untrue facts will create a cloud in the Court's mind so that the truth will be obscured.

5. Respondent has in many previous documents made unkind statements concerning the tactics of The Florida Bar, the condonation of those tactics by the Supreme Court, and in general of Mr. Tynan's lack of appropriate experience and ability in representing The Florida Bar. The purpose of these statements was informative and constructive rather than vindictive. Respondent attempted to advise the Supreme Court of the abuse of power of The Florida Bar, the lack of due process afforded Respondent and as presumptuous as it may sound, the statements were made so that the Supreme Court may in the future amend its procedures concerning situation such as this.

6. It must again be brought to the Court's attention that the Respondent's main and only defense to co-mingling was impairment. In Kevin Tynan's 23 page Reply Brief, I believe he refers to the defense of impairment in less than one half of a page

and in that space minimizes the effect that the impairment had on the Respondent. The Florida Bar appears to be evading and avoiding this issue.

7. Respondent would like to, if possible, simplify his position. If the monies remaining in the trust account, referred to as Schenck, Dauria/Accetturo, Alan Wilhelm, and others, were "client funds", then the fact is that the Respondent was guilty of writing checks against these funds. If these funds were not as Respondent alleges "client funds", then there are no paper shortages from which any inference can be made of theft.

8. The facts are that none of the monies in the trust account against which checks were written were "client funds". Respondent submits that the record is absolutely clear on this position and that no proof to the contrary was introduced at the trial.

9. Common sense would dictate as has previously been set forth that no client who was entitled to be paid would allow these funds to remain in the trust account unless the funds did not belong to the client and were in fact monies belonging to Respondent.

10. On page 7 of The Florida Bar's Reply Brief, he refers to "no credible testimony". It is respectfully submitted

that it is the Bar's obligation to provide testimony by a fair preponderance of the credible evidence which it has failed to do. It is also respectfully submitted that in the case of theft, the Bar should be required to provide evidence beyond a reasonable doubt.

11. "Sloppy and intentionally improper" bookkeeping as was found by the Referee caused by the impairment which was not disputed should require disciplinary action not inconsistent with the suggestions made previously of a short period of suspension.

12. The Respondent admitted in letters, orally, and in pleadings co-mingling of funds. If these admissions were admissions of additional acts of misconduct which overlap each other, it can then be assumed that Respondent admitted those acts. The fact is Respondent never denied these acts nor any of the findings of the Referee and should not be responsible for costs.

13. The Court has a choice. It can either review all documents before it including "character letters" to obtain a complete picture of this case or it can ignore the "character letters" which would deprive the Court of substantially necessary information referring to the Respondent's character. Respondent submits that the interest of justice would dictate reviewing the "character letters."

The Respondent submits this as his Reply Brief and further suggests that the Court has before it everything necessary to make a fair and appropriate determination of this case.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail this 20th day of March, 1992 to:

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