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CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,
vs.
JAMES R. McATEE,
Respondent.

Case No. 77,967

TFB File Nos. 89-00323-01A
and 90-01274-01A

COMPLAINANT'S REPLY BRIEF
ON CROSS-PETITION FOR REVIEW

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ARGUMENT

This Cross-Reply Brief is submitted for the purposes of rebuttal to those arguments made by Respondent in his Reply to The Florida Bar's Brief on Cross-Petition.

In his Reply Brief, Respondent asserts that "a conflict of interest can only exist if the attorney is representing two clients at the same time." Consequently, Respondent argues that this Court would have to find that Respondent represented both Clinicare and David Page for there to be a violation of conflict of interest rules in the instant case. Respondent's argument in this regard, however, is without merit.

While The Bar maintains that Respondent indeed represented adverse parties in a single matter, thereby violating Rule 4-1.7(a), The Bar would also respectfully point out that a second conflict of interest existed by virtue of Respondent's own financial interest in the case. This interest arose from the fee arrangement between Respondent and Clinicare whereby Respondent would receive 28 percent of monies collected by Clinicare from David Page, Respondent's client. Since the higher the amount collected, the greater Respondent's fee from Clinicare, Respondent's representation of Mr. Page with respect to Clinicare's lien was materially limited by Respondent's own interest regardless of whether an attorney-client relationship

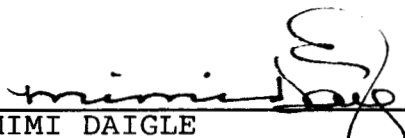
existed between Respondent and Clinicare. Thus, the Referee correctly found that Respondent violated, inter alia, Rule 4-1.7(b) of the Rules of Professional Conduct of The Florida Bar by representing David Page on the lien matter without fully disclosing to him the nature of Respondent's relationship with Clinicare.

The remainder of Respondent's arguments on the first issue are based on the irrelevant, as far as Respondent's ethical duty is concerned, distinction between certain legal and equitable principles. Accordingly, such arguments are inapposite.

CONCLUSION

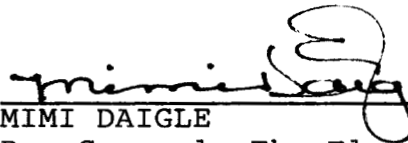
In conclusion, The Florida Bar respectfully submits that this Court should uphold the Referee's findings of fact and recommendations as to guilt but order that Respondent be suspended from the practice of law for 91 days rather than merely reprimanded; be required to repay David Page the excessive portion of the fee collected; be placed on probation for three years; be required to successfully complete the ethics portion of The Bar examination; and be required to pay the costs of these proceedings.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief on Cross-Petition for Review regarding TFB File Nos. 89-00323-01A and 90-01274-01A (Supreme Court Case No. 77,967) has been forwarded by certified mail #P981-962-662, return receipt requested, to JAMES R. MCATEE, Respondent, at his record Bar address of 3004 North Ninth Avenue, Pensacola, Florida 32503-5519, on this 6th day of January, 1992.


MIMI DAIGLE
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