047

IN THE SUPREME *COURT* OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

Case No. 78,670
(TFB No. 91-30,906, 19A)

CURTIS A. LITTMAN,

Respondent,

_____/

REPLY BRIEF

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TABLE OF CONTENTS

PRELIMINARY STATEMENT

Throughout this Brief, the Respondent Attorney, CURTIS A. LITTMAN, shall be referred *to* as either "Respondent," or "Littman." The following symbols shall be used to refer to the record being reviewed: TR - Transcript of the Referee Hearing; RR - Report of the Referee.

TABLE OF CITATIONS

SUMMARY OF THE ARGUMENTS

THE REFEREE'S FINDINGS OF FACT THAT RESPONDENT ATTORNEY IS GUILTY OF A VIOLATION OF THE RULES REGULATING THE FLORIDA BAR IS CLEARLY ERRONEOUS IN LIGHT OF THE FACTS, EVIDENCE AND TESTIMONY,

Clearly, prior cases involving Bar disciplinary proceedings state that a referee's findings are presumed to be correct and will not be disturbed absent a clear showing that the findings are not supported by the evidence. Also, it is clear that Respondent has a heavy burden of showing the Referee's error. In the instant case, the Referee's findings of facts, even if undisputed, do not, under standards previously stated by this court, justify a finding of misconduct.

RESPONDENT'S ALLEGED VIOLATIONS OF THE RULES REGULATING THE FLORIDA EAR CANNOT JUSTIFY A DISCIPLINE AS HARSH AS A PUBLIC REPRIMAND

A survey of cases involving attorney misconduct clearly delineates the standards by which the appropriate discipline is ordered, Public Reprimands have been recommended and approved by this court in numerous discipline cases, however, in no cases were the Respondent attorney's offenses as minor as those alleged in the instant case, The Bar has cited many cases as justification for recommending a Public Reprimand for Respondent, however, Respondent had previously cited many of those same cases as involving more egregious offenses, and therefore as justification that a Public Reprimand was too harsh. Even if it were undisputed that Respondent's acts constitued incompetent representation, a Public Reprimand would still not be the appropriate sanction.

ARGUMENT

THE REFEREE'S FINDINGS OF FACT THAT RESPONDENT ATTORNEY IS GUILTY OF A VIOLATION OF THE RULES REGULATING THE FLORIDA BAR IS CLEARLY ERRONEOUS IN LIGHT OF THE FACTS, EVIDENCE AND TESTIMONY.

Respondent testified consistently that his primary objective at all times during his representation of his client, William Armes, was to procure custody of the minor child, Brandi. He was also consistent in his averment that he was trying to avoid an immediate custody suit so soon after the final judgment of dissolution. He filed a motion regarding the custody issue only in response to Mrs. Armes' demand that Brandi be returned to her. (Tr.94,95)

The crux of the Bar's case against Respondent involves his filing a "motion" rather than a "petition" and for failing to attach or incorporate certain statutorily required information to the document which he filed to initiate the custody action. In the Bar's Answer brief, there is substantial argument regarding whether Respondent filed a pleading at all. Respondent would submit that the document which he filed with the court was an application to the court for an order; was made in writing, and stated with particularity the grounds and the relief sought. Fla. R. Civ. P. 1.100. Technically, then, Respondent admits that he filed a motion when a petition was required. However, as Henry Trawick states regarding Motion practice, availabe motions are limited only by the facts of the action and the ingenuity of the attorney. Considering that Respondent had one specific goal in mind, that of scaring away the mother with an eye toward avoiding a protracted custody suit, his motion may fall more clearly into the "ingeneous" category than the "incompetent" category as opined by the Bar. H. Trawick, Trawick's Florida Practice and Procedure, (1990).

Additionally, in light of the apparently undisputed liberal construction of pleadings, afforded by the courts, it is clear that in the instant case, the Circuit Court Judge took jurisdiction over the custody matter, despite the incorrect filing, and issued a judgment based upon the evidence taken at a hearing on the matter. The rule which requires liberal construction of pleadings is especially applicable after judgment has been entered and all reasonable intendments should be indulged in support of the pleading. North American Accident Insurance Co. v. Moreland (Fla. 1910) 53 So. 635; Georgia F. & A.R.Co. v. Andrews, (Fla. 1911) 54 So. 461.

It is also clear that a judgment may not be reversed based on a defective pleading unless there is a miscarriage of justice. Walker v. Walker, 254 So. 2d. 832 (1st D.C.A. 1971.)

The Bar attempts to minimize the importance of the cases cited by Respondent which support his contention that failure to attach the required U.C.C.J.A. affidavit was not dispositive of his pleading (or motion). Clearly all of the cases previously cited by Respondent are directly applicable to this case because they underscore the courts' liberal construction of pleadings when the ends of justice are ultimately being met. To simply state that these cases, which generally refer to pleadings, do not apply because Respondent did not file a pleading, per se is a very narrow argument.

ARGUMENT

RESPONDENT'S ALLEGED VIOLATIONS OF THE RULES REGULATING THE FLORIDA BAR CANNOT JUSTIFY A DISCIPLINE AS HARSH AS A PUBLIC REPRIMAND.

The Bar has cited various cases to establish that a public reprimand would be the appropriate discipline in the case at hand. Respondent, however, had cited all of the same cases in his brief to indicate that in those cases, the lawyer's acts, omissions, or misconduct were significantly more serious, numerous or harmful to the client. The respondent would reiterate his position as stated in the Initial Brief, that in none of the cases cited was the respondent found guilty of only one Rule violation, nor were the facts in any of the cases analagous to this case.

Public reprimands would appear to be the discipline of choice in neglect cases. The Florida Bar v. Orr, 504 So.2d. 753. The Bar, in its Answer brief also prefaces its list of public reprimand cases with the reference to neglect. Respondent herein has not been accused of neglect, and in fact there has never been any reference to his neglecting Mr. Armes' case. In The Florida Bar v. Alford, 400 So.2d.458 (Fl.1981), the respondent attorney recieved a public reprimand in a custody action, however, that is the only similarity to this case. Alford completly failed to carry out his contract of employment and neglected an uncontested custody action. In addition, he was fired by the client, and still failed to timely refund the retainer to the client. In Respondent's case, he clearly was zealously representing his client with the goal of attaining custody of the minor child in what was clearly going to be a contested matter.

In The Florida Bar v. Price, 569 So.2d. 1261 **(Fl. 1990)** the attorney was guilty of dismissing an action without the knowledge or consent of his client; of failing to advise them that the action had been dismissed; and failing to consult with the clients prior to dismissing the action. He was found guilty of three separate violations of the Code of Professional Responsibility. His discipline **was** only a Public Reprimand. In justifying the discipline this court stated that respondent's conduct was not minor or insignificant, Had it been minor or insignificant, the discipline would have been a private reprimand. The Florida Bar v. Kirkpatrick, 567 So.2d. 1377 (F1.1990). It is Respondent's position that the acts on his part which precipitated this complaint and disciplinary action were minor and insignificant.

CONCLUSION

Respondent submits that the Referee's finding of Guilt of a violation of Rule of Professional Conduct 4-1.1 is erroneous and would ask this court to reject the Referee's finding and his recommendation of dscipline.

By: 

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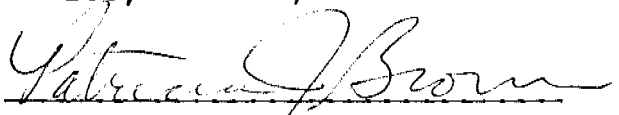
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of this Reply Brief were sent by overnight mail this 30th day of November, 1992, and a true and correct copy was sent by regular U.S. Mail *to* LARRY L. CARPENTER, Bar Counsel, The Florida Bar 880 N. Orange Avenue, Suite 200, Orlando, Florida 32801.



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