IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

THE FLORIDA BAR,

Complainant,

Case No. 79,347
(TFB Case No. 92-30,657 (09D))

v.

T. MICHAEL PRICE,

Respondent.

_____/

RESPONDENT'S BRIEF

T. Michael Price
3511 West Commercial Boulevard
Box 218
Fort Lauderdale, Florida 33309
(305) 485-5003
Florida Bar No. 255319

INTRODUCTION

Judge Roberts, the referee at trial, stated several times that the trial was an informal proceeding. Therefore, this appeal should also be informal, and if I have taken any liberties with the standard formalities of a brief, then I apologise and ask only that they be considered justified by the informalities with which we have already been confronted.

The Respondent will be referred to in the first person, singular. The complaining witness is Bankruptcy Judge C. Timothy Corcoran. Bankruptcy Judge George C. Proctor, judge of the Orlando Division for the years, 1979-1989, that I practiced there will be referred to as Judge Proctor. Richard (Dick) Palmer was for those years and later years the Chapter 13 Trustee with whom I also practiced.

Documents, statutes, and rules referred to in this brief will be noted by brackets, [ ], which referred to the page numbers of the appendix accompaning this brief.

This brief runs about 25 pages. If some matters complained about in this brief are not given extensive, if any, discussion, it is not because I believe them unimportant; rather, it is because I believe that they are so obvious, given the appendix, that further discussion would be presumptuous.

DISCUSSION OF ISSUES ON APPEAL

A. Procedural deficiencies

1. The use of the deposition of the complaining witness, when that witness was available within the meaning of the Florida Rules of Civil Procedure [1] and the Rules Regulating the Florida Bar [2] which make the former applicable to the latter.

2. The statement made by Judge Roberts, the referee, that she would recommend a reprimand, rather than a 91 day suspension if I submitted an evaluation; when that evaluation was submitted, she nevertheless recommended 91 day suspension [3].

3. The use of the aforesaid deposition prevented cross examination of Judge Corcoran (the complaining witness), which examination we believed would have severely hurt his credibility. As an offer of proof of what cross examination would have shown, the following is submitted:

   a. that he probably played a role in Judge Susan Black either "back dating" her order removing me from the Middle District of Florida or in having Judge Black sign the order and then not giving notice or service of that order for over three months **[4 A-C]**

   b. Judge Corcoran's motives in filing yet another grievance complaint against me and his role in the grievance complaint filed by the U.S. Trustee's office (with which he closely works)

and in the third grievance complaint filed against me [5 A-F]. All three of these grievances are still pending action by the committee in Orlando.

c. his role in having my lawyer associates investigated by the Bar and causing them to terminate their affiliation with me and my law firm.

d. his conversations with Chapter 13 trustee Richard Palmer about the "advisability" of Palmer testifying at the trial. It is Richard Palmer who, apart from me, has the most comprehensive knowledge of the events heard at trial, but he could not be forced to testify, being protected from subpoena by federal statute.

e. his motives and explanations for twice accusing me, from the bench and in open court, of committing crimes punishable under federal law by imprisonment.

f. his motives and explanations for refusing me a continuance on 22 hearings set for a certain day [6] despite my having filed a motion for continuance [7] stating that I had been called to Virginia on that day for testimony against a former client under a federal subpoena [8].

g. his justifications and motives in ordering refund of fees on 22 cases at those hearings, when it was unjustified to order 100% refunds when I had performed all the contracted for work for those 22 clients [9]

h. Whether he made certain reckless and imprudent statements from the bench in open court, such as (upon the entry into the courtroom of the attorney for I.R.S.) "the first rule of this court is that the government is alway right." His explanation for that remark and for others, and whether such remarks were made thoughtlessly or with a intent to intimidate the attorneys and their clients who were present in the courtroom.

i. his explanation of the motives of attorney Andrea Ruff, a 12+ year veteran of bankruptcy practice, in bringing the motion for blanket disqualification against him before the U.S. District Court; and whether he felt that other attorneys harbored the the same feelings or motives. [10]

j. his motives and legal justification for taking $7125.00 in fees payable to me in the Kinyon case and directing that they be paid to trustee James Orr in my own long prior bankruptcy case, when there is no provision of the Bankruptcy Code that allows a Judge to misdirect attorney fees in that way [11].

k. his legal justification for his putting me as the attorney in a case on the witness stand and then inquiring about my relationship with and the conversations between my clients and myself. (akin to his court order [12] for the U.S. Trustee's office to investigate relations with my clients and

associates in the 22 cases where he ordered fees refunded [9]

i. his justification and motives at the November 13, 1990 Biebel hearing for stating that the I.R.S.'s "Request for Administrative Allowance" was a proof of claim, rather than a "request for administrative allowance" and therefore using that rationale to deny confirmation of Mr. Biebel's Chapter 11 plan, resulting in the later dismissal of his case.

j. whether anyone at his direction investigated previous grievance complaints against me with the idea that the first grievance complaint he would file against me could also include similar allegations so as to increase any penalty in the grievance complaint he was to file.

k. whether he made oral orders from the bench, requiring absent clients to sign papers or take other actions within an arbitrary, unreasonable period of time, e.g. 2 working days, or else have their cases dismissed as in the Alicea, Montague, etc. cases [13 A-B]

l. whether concerning the fees diversion mentioned in subsection j above, he could be objective in making such a ruling, since that ruling occurred 3 months after his stated intention to file a grievance against me with the Florida and federal bars. Or whether that, and other rulingscited here, were malicious or due to prejudice or bias.

4. The delay in holding trial in this grievance proceeding, a delay not caused by me, resulted in David Biebel, the client at the November 13, 1990, hearing to be unavailable for trial; he had a couple of months before trial moved to North Carolina and could not located to appear at trial by telephone or in person. Since other disinterested persons testified in my favor concerning the other hearings mentioned in the complaint, Mr. Biebel's testimony concerning the November 13 hearing was crucial to establish a consistency over all the hearing dates cited and all disinterested witnesses who could in fact be subpoenaed.

B. The Merits

1. Bankruptcy Rule 9006 [14] requires that hearings noticed by mail give at least 5 days (excluding weekends) advance notice of the hearing. The notice of hearing [—] purports to have been mailed 7 calendar days before the emergency hearing, but my contention matches the courtroom statement of Argentine and the silent acquiesence of Richard Palmer, trustee, that none of us received the notice until Saturday, 4 days after the notice was certified to have been mailed. Therefore, it is unreasonable for an attorney to anticipate that mail received on Saturday would contain a notice for hearing for the following Tuesday.

2. Concerning emergency hearings, there is a written, published procedure of the Bankruptcy Court that states the procedure for requesting an emergency hearing and states that the hearing will normally be noticed by telephone. In every case where an emergency hearing had been set in the

past, in which I was involved, notice had in fact been given by telephone. The only exception was in the Argentine case, which gave rise to Judge Corcoran's grievance complaint.

3. This issue of "short notice" occurred before. In the Salesky case, the motion for rehearing was set for hearing on February 13, 1990 [15] by a notice dated (and mailed out, possibly) February 8, a clear violation of Rule 9006 since Saturday and Sunday were February 10 and 11 and Monday February 12 was Lincoln's birthday. Rule 9006 (b) requires service of the notice at least 5 days before the hearing, and 9006 (a) requires that weekends and holidays not be counted in those days. Because of this late notice, neither I or Salesky were prepared for the hearing, and his motion was denied.

Another notice [16] carried the same problem, although it gave even one less day of advance notice.

This notice issue occurred with reference to the 10 day appeal period allowed in bankruptcy, again in the Salesky case (which was a highly contested case). Judge Corcoran made a ruling at the conclusion of a hearing (a hearing at which I objected to opposing counsel testifying, not under oath, about matters which to him were hearsay, at least until Judge Corcoran stated to me that he would hold me in contempt of court unless I ceased those objections; the opposing counsel felt he had to in effect testify, since no one had brought

any witnesses to the hearing); I notified my client by telephone and letter [17] of that oral ruling. The written ruling [18] was entered January 5, but was not received by me until January 17-18, and according to my client Salesky he did not receive it until January 19 (understandable since he lived 2 mailing days from the Court) [19]. This effectively destroyed appeal rights on this order, since a notice of appeal must be filed within 10 days of entry of the order. Both of us felt that misconduct had occurred in the Court/Clerk's mailing of the notice, since the order was definitely subject to a meritorious appeal. So ended a case that had been going through the bankruptcy court for almost four years.*

4. In addition to these irregularities, the Clerk's office for years had had problems mailing out orders, notices, and other papers to attorneys. What had happened on a regular basis for years was that the Clerk mailed out papers to the wrong attorneys. I had written the Clerk several times about this problem [20], and for a long time I had remailed papers received by me to the correct attorney [21 A-B], but I eventually stopped doing so, and simply mailed the papers back to the Clerk's office with a note attached [22 A-B]. I had felt for a long time that these errors of the Clerk could cause problems, but as long as Judge Proctor was on the bench,

*Salesky's case turned out wonderfully, when upon conversion to Chapter 7 the Clerk/Court granted him a Chapter 7 discharge of his debts, when he had already received a Chapter 11 discharge which reduced his debts by 50%. This was sheer bungling by the Court, since a Chapter 11 partial discharge bars entry of a Chapter 7 discharge for 6 years. 11 U.S.C. §727(a)(8).

I did not believe any harm would be done. Annoyance, yes; but not harm, because Judge Proctor would not "go ballistic" if an attorney failed to show up at a hearing. At worst, he would simply rule against that attorney, who could then file for rehearing if he had not received notice. (I am now doing some legal work in the Southern District of Florida and the federal clerks down here have the same problem, only with a worse twist; whereas in Orlando filing a motion quickly results in a hearing notice being mailed so that a good attorney can inquire if the notice is not timely received [having been mailed to the wrong attorney], here in Ft. Lauderdale/Miami the Clerk routinely takes anywhere from 5 days to 3 months to mail out a notice; and they resent it when the attorney makes an inquiry.

5. On top of this situation, during the period September 1990 through August, 1991, the Clerk continually used erroneous addresses for me, resulting not only in delay in mail being forwarded to me, but also increasing chances of post office error since an extra mailing step is required in forwarding mail. The Bar has suggested I should have remedied this mis-mailing by contacting the clerk, but as seen above this would not likely make things better. I did try to budge them by putting my Texas address on one petition, but the Clerk ignored it and mailed the notice to my old, obsolete address (incidentally, Judge Corcoran complained to the Bar about

this use of a Texas address, and the Bar investigator spent a great deal of time (assessed to me in costs) following this false lead [23]. The Texas address was not, of course, used to practice law in Texas, but was simply a mailing address for another kind of business that I was going to set up. This type of inquiry by the Bar shows the kind of fishing expedition the Bar engages in to try to find an ethical infraction, however tenuous or minor.

After I openly complained in court about the Clerk using this obsolete Orlando address, I was assured by the Clerk's office that all mail would go to my Longwood address (220 Kettering Court, Longwood, FL). However, after making this complaint in February 1991 and being assured in February, 1991 that the Longwood address would be used henceforth, the Clerk continued to regularly (but not exclusively) to send notices to my obsolete Orlando address (425 W. Colonial Drive, Orlando, FL). I made copies of the Clerk's envelopes, which show a forwarding stamp dated by the Post Office which confirms these mis-mailings [**24 A-G**]

In case the point is not clear, I am stating that an attorney can hardly be held responsible for not attending a hearing, where he claims he did not receive the notice and can show the lapses, inconsistencies, and bungling the Clerk's office is subject to in mailing such notices.

One exhibit in the transcript [ ] is an envelope

mailed by the Clerk on August 16 to my obsolete Orlando address, and the post office forwarding sticker shows that it was re-routed to me August 20; this was a mailing that took 5 days; if the correct address had been used, it would have taken 1 day. More importantly, (since this mailing did in fact arrive), forwarded mail is more likely to "get lost" than correctly addressed mail.

Exhibit [25] in the transcript shows a mailing received by me on December 14, 1990; it was handed to me by my neighbor at 270 Kettering Court because it was addressed by the Clerk to 770 Kettering Court, and the Post Office, knowing that there was no 770, delivered it to 270 Kettering Court. Also note that this envelope shows no cancellation stamp showing the date of mailing; this is the case with over 90% of the Bankruptcy Court's mailings. Therefore, it is seldom that the recipient can tell when the mailing was actually put in the Post Ofice's hands. Thus, the Clerk's office can "hide" behind the "certificate of service" date even though the recipient does not receive it until days later.

Not to put down the Post Office, but exhibit [26] shows that even they can make mistakes. I mailed this envelope to Richard Palmer, the Chapter 13 trustee, and the Post Office returned it to me, even though it showed his correct, current mailing address. I was especially concerned about this because my clients mail money orders to him, and if he does not receive the money orders, the case is subject to dismissal. Therefore, I mailed a copy

of this envelope to Dick Palmer (who incidentally could explain everything relevant to this grievance if he had been able to testify; he did submit a very short written note to the grievance committee).

6. Judge Roberts found that I had advised Zindars and Spees that they did not have to, or should not, attend the December 11, 1991, hearing. There was no competant non-hearsay evidence of this; rather, I testified that this was completely untrue. The full story, which I did not testify to, because it was not asked what I did tell them and under what circumstances, is as follows:

After the 341 meetings, both Zindars and Spees came down with me to the first floor; Zindars complained about the order to show cause, saying that he could not afford to take time off from work to attend the hearings and asked if there was anything he could do. (He understood full well that the order required his attendance). I told him, look, this dispute is between me and the Judge, that the Judge was requiring me to sign papers in violation of Rule 9011 [ ] which forbids an attorney to sign a statement of executory contracts. Zindars said, "Well, what happens if I just don't show up?" I told him that it would not make any difference, that his bankruptcy would still go through, and that he would not get into any trouble. This was my prediction (and it turned out correct). I should have lied to him and not been honest in answering my client's questions. Spees overhead this, and then I repeated the same answer to Spees, after he asked for

clarification.

Of course, when both of these fellows were put on the spot by the Judge and asked what I told them, and with me not being there (not knowing about that hearing), they naturally responded that I told them something that was actually their own conclusion based on what I said, that is, that that I told them not to attend because they could not get into any trouble that way.

As for my stating the delay in filing the statements was due to the clients' procrastination, this, coupled with the usual delay in the mail between Orlando and Brevard County, was in fact responsible for the delay. Remember, Spees and Zindars were only 2 of about 8 clients for whom these statements were being required. The other 6 clients' statements were prepared, signed, and filed in time to stay out of the Judge's bad graces. My procedure in each of these cases was the same as shown in the note I wrote in Alicea [27], that is, an immediate note by mail with the document enclosed and request that they call me upon receipt. Single working men do not check their mail every day (sometimes not once a week) and do not open it and respond with the efficiency expected of a law firm.

In a similar vein, where the Judge ordered that petitions be amended [13] within 5 days (including a weekend) or the cases would be dismissed, I wrote immediate same day notes to the 4 clients affected, attempted (like Spees and Zindars) to follow up with phone calls (never too productive a way to communicate), and made myself available over the weekend to have them sign the amended petitions. 2 of 4 clients signed; 1 client was supposed

to come to my house after his church service on Sunday and then failed to make it (Mr. Montague), and the 4th client (Mr. Alicea, who incidentally testified at trial) just plain forgot to get with me.

The Judge's deadlines have always been unrealistically short, both in the absolute sense and in comparison with Judge Proctor's. Many of my clients have no workinig phones, many do not answer the phone (because of fear of bill collectors), and most use an answering machine to collect messages (again, to thwart bill collectors). The only reliable way to reach them is by mail.

Again, the allegation of me blaming clients for papers not being filed was made in the Gene Argentine matter. And again, it was Argentine's doing. This is exceedingly common! If only the cases where papers are not filed are examined, then one can get the wrong picture. However, in the vast majority of cases, the clients respond quickly, sign the papers, and they are filed in time to prevent consequences, even given Corcoran's short deadlines. In the Argentine matter, the issue was the filing of a delinquent tax return (he was a used car dealer). I told him before filing the case that he would have to prepare and file it; Richard Palmer told him at the 341 meeting he must prepare and file it. I told him in a later letter about another matter that he must prepare and file it if he had not done so. Then, under the convoluted general order on Chapter 13 confirmations [28 A-G], Richard Palmer refused to sign the certification because . . . yes, because

Argentine had failed to to prepare and file it. We know that it costs money, which is scarce to a Chapter 13 debtor, to pay an accountant to prepare a tax return, and accountants themselves are creatures of delay. So I would have let things lay and let the case be dismissed when Palmer refused to file the certification. But Argentine called me and stated (falsely it turned out, that he had filed it and sent Palmer a copy. Under the terms of the order, we were beyond the certification period and beyond the period under which Argentine could ask for a hearing on this matter. But I went out on limb and filed an unauthorized (under the terms of the order) motion for emergency hearing to show that Palmer was wrong in not filing the certification. Notice of the hearing was not done by telephone, as is the practice, but it was written notice, prepared on Tuesday, mailed on Friday, received by Palmer, Argentine, and me on Saturday, and setting the hearing for the following Tuesday. This is the hearing grieved about that I did not attend. That hearing was rescheduled, and it is at the rescheduled hearing that it is alleged that I said "this case should be dismissed for what [Mr. Argentine] did." I do not see anything wrong in saying this in Court, because we were talking about whether dismissal was justified **in terms of the general order**, which left no alternative but dismissal. We were asking that the case NOT be dismissed, that it be confirmed, but I knew that we had no legal basis for which to ask for an exception to the terms of the general order. The above quote by me was in the context of the terms of the general order. What

that quote actually means, in context, is "Under the terms of the general order, this case should be dismissed for what [Mr. Argentine] did, but of course we are here today to ask the Court's discretion to relieve us from the terms of the general order and not dismiss this case."

In paragraph 20 of the complaint, it is alleged that I left the courtroom when I was told by another attorney to all hearings on executory contracts were cancelled and that the Judge said, just get them filed. This was a common practice under Judge Proctor, where he would announce from the bench that certain hearings for later in the day were cancelled and expected the attorneys present to tell later arriving attorneys of such cancelled hearings. Many times, the posted docket outside of the courtroom would have an inked notation "cancelled," but when I or others would ask the Clerk's office if it actually had been cancelled (just to make sure), the Clerk would never know; they would keep you waiting about 15 minutes and then come back to tell you they could not confirm it.

Judge Proctor's oral procedure was efficient, simple, and always worked. We regular practitioners took care of each other and worked together. I still believe that what that attorney told me was correct: that given that the Court was running it's typical two hours behind, with attorneys, clients and witnesses jamming into an overflowing courtroom and spilling over outside into the hallways, that indeed the

Judge, seeing what a mess was being created, did state that all hearings concerning failure to file the statement of executory contracts (statements that we had not filed for years, since the 1985 bankruptcy amendments which deleted that filing) were cancelled, and the statements should be filed ASAP.

Reverting out of order, to the Argentine allegations, Argentine does not believe I tried to have his case dismissed. He said at trial that he was happy with my representation and would use me again if he needed an attorney. He in fact has used me again, about five months ago. This does not sound like a client whose case I am accused of sabotaging.

7. Paragraph 31 of the Bar's complaint alleges that I abandoned clients at the 341 meeting. I denied this at trial and thus this allegation was found not proven. But it is an example of what is really going on here. It is an effort to comb through all my representation on cases and try to nit-pick things in minor areas into a pattern that would justify discipline. At that 341 meeting, I did make an appearance, which is all the the general order and rules and statute requires, and then left the room for a while. This is in accordance with what Judge Corcoran had ordered several months before. On that prior occasion, being under court order to appear at the 341 meetings, I did so even though I also had a hearing scheduled in the courtroom about the same time. I believed Corcoran would do the same as Proctor used to

do; Judge Proctor, if an attorney was not there for a hearing, would set aside the hearing for a while and go on to another one, stating that perhaps the attorney was still on his way to the courthouse. Judge Corcoran, however, was angered when I did not appear, and when I later came into the courtroom and explained I had been downstairs at several 341 meetings, he became irritated and asked the Clerk if in fact 341 meetings were scheduled for the same time as hearings (of course, both are scheduled five days a week). When the Clerk told him, Judge Corcoran flat out told me that in the future, if I have 341 meetings that might conflict time-wise with attending hearings, that I was to forgo the 341 meetings and definitely attend the hearings. Therefore, he himself ordered the so-called "abandonment" of clients at 341 meetings.

(We have the situation where specific times are set for both hearings and 341 meetings, but the hearings start later, often much later, several hours, than scheduled, and this means that whole series of 341 meetings are unnecessarily missed, causing great anxiety with clients attending the 341 meetings.)

C. The Penalty/Sanction

1. The penalty of a 91 day suspension, proof of rehabilitation, and pre-payment of costs is harsh beyond the Florida Standards For Imposing Lawyer Sanctions. No client was harmed, the evidence shows, if not no violations at all, then negligence rather that deliberate behavior, and there is no evidence of dishonest intent in any of this. The Standards appear at [29 A-E] in the appendix.

2. Mitigation is shown by the order of Judge Black removing me, dispite my response, from the Middle District of Florida [4]. Judge Corcoran jumped on this back-dated or delayed service order by issuing an order of his own without delay [--] to examine fees paid in the cases where my representation was cut off without notice by Judge Black. He has not entered any follow-up order as of this date, 1½ years later, on this fee examination. After Judge Black's order, subsequent cases were handled by my associates, and I took no immediate action to be admitted to the Middle District since I felt I would soon lapse back into the retirement from law practice that I had started about one year before. In fact, I had only re-opened my practice in order to earn enough to pay a tax bill to I.R.S., but Judge Black's order

cut short this civic minded objective. Thereafter, I had no interest in being admitted to the Middle District and believed I could continue to operate for a few months through an associate. When that associate was ~~interfered~~ ~~with~~ and therefore resigned, I sought admission again to the Middle District, using the normal procedures. I was so admitted, and then the admission was revoked [**30**].

After this revocation, Judge Corcoran really did take some action. How he took this action really speaks for itself and should yield good insight into what is really going on here [**12 A-H**].

Under the aforesaid Standards, this constitutes "imposition of other penalties or sanctions."

3. Remoteness of prior offenses, under the Standards, apply since the I was found guilty concerning an incident that occurred in 1985.

4. Full and free disclosure did also occur toward the disciplinary board, and I took no action to impede its work or requests for documents (of which there was none).

5. Character or reputation evidence was not feasible, since it would have required calling muliple former clients or fellow attorneys to testify. I would not have put fellow attorneys at risk by calling them to testify, and calling former clients would have burdened them and been expensive.

6. Prejudice due to the unreasonable delay in the disciplinary proceedings exists and I did not contribute to this delay. Proceedings were not resisted by me nor

were we granted any delays or continuances (although I did ask for one). The prejudice consists of not being able to call David Biebel as a witness in my behalf. He was my client who attended the November 13 hearing, and he knows as much as trustee Dick Palmer knows about what is really going on, albeit only as to that particular hearing. He relocated to North Carolina about two months prior to the trial, and could not located, dispite my efforts to have him at least testify by telephone. I had discussed the November hearing with him two times.

He would have testified exactly as I testified at the trial. He would have further testified that the Judge appeared very hostile, almost in a controlled rage at that time of day (about 5:00 p.m.), and that he asked me afterward "does he always act like that?" Granted, Mr. Biebel only runs a moving company and is not a lawyer; but he has a reasonable expectation of how Judges should act in the courtroom. After that hearing, Mr. Biebel and I were so shaken that we discussed for almost two hours what had occurred in there. He decided to have his dismissed, and I agreed.

By now, every sophisticated person should know what this judge's problem is.

At that Chapter 11 confirmation hearing with Mr. Biebel the case was in perfect form for confirmation, with a majority of the creditors having voted in favor of the plan.

The I.R.S. had filed a Request For Administrative Expense, but it had failed to notice creditors and the debtor under Rule 2002; therefore, the Request did not have to be paid at that time and could be ignored. (I.R.S. therefore could not participate under the Plan and would have to use its normal collection avenues). The Judge asked me what I planned to do about the Request, and I stated the above rationale. The Judge then said this was not a Request For Administrative Expense, that it was a claim, and therefore had to be provided for in the Plan. He then stated that the case was "hopelessly messed up," I told him I took great exception to that, and then he said the case would have to be dismissed. When I said we would have to appeal such a decision, he said that we would not be able to appeal because he was "going to find as a fact that it was hopelessly messed up." Then he hesitated, apparently taken aback by what he himself had said, and still visibly angry, he asked the Clerk for the soonest continuation date on the calender.

As part of my following discussion with my client, I told him that there was no way the Judge was going to let this case be confirmed.

7. Recommendation of a 91 day suspension does not appear to be consistent discipline rendered in other cases. Granted that it is difficult to cite other cases since I do not have access to decisions in this area; all

that is available are the short notations in the Florida Bar News. However, there is one case of which I have personal knowledge; the attorney was Cecil Martin who had an office in the same building with me. He had for a long time altered Court files when he was assigned Judge Frank Kaney on his dissolution of marriage cases. Everyone wanted to avoid Judge Kaney, not because he was erratic or unfair, but because he was a stickler for details and often an attorney had to make two trips in order to get the judgment entered. Cecil Martin received only a 30 day suspension for his actions, which to me seem quite severe. He wanted to avoid inconvenience; but many attorneys would love to secretly get the judge they wanted in personal injury cases, in criminal cases, and in contested divorce cases. The ability to choose your specific judge in such cases would be worth tens of thousands of dollars in extra fees to an attorney. This seems no different that an attorney making alterations in an original court order or judgment.

D. Burden of Proof

I am given to understand that grievance allegations must to shown by clear and convincing evidence. I fail to see how any important allegations met this standard.

E. Policy of Encouraging Judge's to File Grievances

Rule 4-8.3, Reporting Professional Misconduct, states that a lawyer having knowledge that another lawyer has committed a violation of the rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate professional authority [31]. In the present instance, what Judge Corcoran's various complaints have done is to intimidate other attorneys who practice before him, and restrain them both in the arguments they make in court and the cases they undertake. I have seen this happen myself. A complaint to the Bar is much worse to an attorney, both in severity and in the time and work it is going to consume, than is a citation for contempt. It seems to me that anything known to a Judge that is worthy of a Bar complaint would be equally worthy of a contempt citation. But contempt can be swiftly fixed, if unjust; an appeal is all that is needed, and a quick, fair hearing by cool-headed District Judges is assured. A Bar complaint results in the long, drawn-out tortuous and indeed nebulous affair, in which the procedure is as bad as most outcomes.

To get Judges in the habit to filing grievances instead of using their summary contempt powers will have, and in fact

have had, noticeable effects in the quality and diligence of attorneys' representation.

F. Relief Requested

Respondent requests the following relief.

1. that Judge Roberts' findings against Respondent be overruled as not supported in the evidence or as not showing sufficient violations to be worthy of discipline.
2. that Judge Roberts' recommendation of a 91 day suspension by overturned or not imposed as not justified by any violations shown, and a public reprimand be substituted.
3. that the condition after suspension of pre-payment of the Bar's costs be overturned, since that condition is not specified in the Florida Standards.
4. that the costs sought to be assessed by the Bar be reduced on grounds that a great many of them turned out to be not relevant to anything sought to be proved at trial.
5. that the Supreme Court take jurisdiction of the several grievances and complaints now pending before the Florida Bar in its Orlando office and filed by the U.S. Trustee's office and Judge Corcoran; that it examine them for sufficiency and dismiss them or transfer them to another committee outside the Orlando area.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Respondent's Brief, and the Appendix In Support Of Respondent's Brief, has been furnished by private mail to The Clerk, Supreme Court of Florida, 500 S. Duval Street, Tallahassee, FL 32399, and a copy of both was furnished by regular U.S. Mail upon John B. Root, Jr., bar Counsel, The Florida Bar, 880 N. Orange Avenue, suite 200, Orlando, FL 32801 and Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399 this 15th day of June, 1993.

T. Michael Price, Respondent
3511 West Commercial Blvd
Box 218
Ft. Lauderdale, Florida 33309
(305) 485-5003
Fla Bar No 255319