IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. 81,125
[TFB Case Nos. 92-70,515 (11A);
92-70,587 (11A);
92-70,683 (11A)]

v.

JOHN WESLEY ADAMS, SOAP

Respondent.
_____/

ANSWER BRIEF AND INITIAL BRIEF ON CROSS APPEAL

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SYMBOLS AND REFERENCES

The report of referee dated December 2, 1993, shall be referred to as "ROR".

The amended report of referee dated December 13, 1993, shall be referred to as "AROR".

All bar exhibits entered at the final hearing shall be referred to as "B-Ex".

All respondent's exhibits entered into evidence at the final hearing shall be referred to as "R-Ex"

The transcript of the final hearing dated August 30, 1993, shall be referred to as "T".

The transcript of the motion hearing held on February 23, 1993, shall be referred to in full.

The respondent's answers to the bar's requests for admission shall be referred to as "ARFA".

The grievance committee transcript dated September 9, 1992, produced by Personal Touch Reporting, Inc. which was attached as exhibit 4 by the respondent to his motion to dismiss the bar's complaint shall be referred to as "GCT".

STATEMENT OF THE CASE

The Eleventh Judicial Circuit Grievance Committee "A" voted to find probable cause in this matter on September 9, 1992. The bar filed its complaint on January 25, 1993. This court appointed the referee on or around February 4, 1993. After discovery, the final hearing was held August 30, 1993. The referee issued the report on December 2, 1993. It was amended on December 13, 1993. In the initial report, the referee recommended the respondent be found guilty of violating Rules Regulating The Florida Bar 4-4.1(a) for knowingly making a false statement of material fact or law to a third person in the course of representing a client; 4-4.4 for using means which have no substantial purpose other than to embarrass, delay, or burden a third person; 4-8.4(a) for violating the Rules of Professional Conduct; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice. In the amended report, the referee corrected the respondent's name and further recommended the respondent be found guilty of violating Rule Regulating The Florida Bar 3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice.

The respondent petitioned for review on December 9, 1993. The Executive Committee of The Florida Bar considered the referee's report because the Board of Governors of The Florida

Bar would not be meeting until February, 1994. The Executive Committee voted to seek an appeal of the referee's report. Therefore, the bar cross petitioned for review on December 17, 1993. Because the referee later amended the report, both the respondent and the bar petitioned for review of said report on December 21, 1993, and December 29, 1993, respectively.

STATEMENT OF THE FACTS

The respondent represented Manuel Geres in a civil suit against a hospital obstetrician wherein it was alleged the defendants had improperly placed Mr. Geres' child, who had been born out of wedlock, for adoption (GCT pp. 69-70). The mother of the child was Kathryn Ornstein (ARFA No. D). Attorney Helen Hope acted as an intermediary in the adoption (ARFA No. H). Miles McGrane represented the obstetrician and Lewis Fishman represented the hospital in the civil action (ARFA No. O).

During the pendency of the suit, the respondent was told by Ms. Ornstein that the intermediary attorney, Ms. Hope, had tried to coerce her into signing an affidavit stating that Mr. Geres was not the natural father of the child (ARFA No. X). This event prompted the respondent to write Ms. Hope on October 7, 1991, and accuse her of attempting to suborn perjury from Ms. Ornstein (ARFA No. AA). He further accused Messrs. Fishman and McGrane of attempting to suborn perjury. The letter was copied to Messrs Fishman, McGrane and Ms. Ornstein (B-Ex. 2). The respondent was aware that Ms. Ornstein admitted making contradictory statements concerning the identity of the child's biological father (R-Ex. 1). Further, a witness, Doreen Christian, denied that Ms. Hope had improperly coerced Ms. Ornstein, as did Ms. Hope. The referee found that although it was somewhat understandable the respondent would suspect Ms. Hope of engaging in improper

conduct, the evidence failed to substantiate his claims (AROR p. 1).

At no time, however, did Ms. Ornstein state or imply that Messrs. Fishman and/or McGrane had threatened her or had any contact with her (R-Ex. 1; T. p. 107; GCT p.85). The referee found there was no evidence from which the respondent could have reasonably suspected that either Mr. Fishman or Mr. McGrane orchestrated any attempt to suborn perjury from anyone (ROR p. 1; AROR p. 1). The respondent reiterated his baseless allegations before the judge presiding over the civil case during an October 21, 1991, hearing (AROR p. 2; B-Ex. 5 pp. 13-15).

During the pendency of these proceedings, the respondent further made baseless and unproven accusations against the hospital at which the child was born, The Florida Bar, court reporters, and the referee's judicial assistant (T. pp. 99-100).

SUMMARY OF THE ARGUMENT

The respondent has failed to prove the referee's findings of fact are either clearly erroneous or unsupported by the evidence. There is no evidence whatsoever that the respondent's actions in accusing opposing counsel of attempting to suborn perjury had any possible reasonable basis. Respondent's actions in making false and frivolous accusations in an attempt to improperly influence the underlying civil case have violated the rules governing attorney conduct. As the referee found, there is clear and convincing evidence of the respondent's guilt. The referee's findings of fact should be upheld.

The respondent has demonstrated a pattern of making baseless accusations against any who oppose him. He draws conclusions based upon supposition and in relaying those assumptions to others he asserts them as being factual and truthful. It is especially egregious that the respondent's allegations cast aspersions upon the integrity of officers of the court, the judiciary and judicial system. This, combined with the respondent's inability to recognize the inappropriateness of his misconduct, warrants a ninety-one (91) day suspension so that the respondent will be required to prove his rehabilitation. Such proof of rehabilitation is required to carry out the purposes of discipline.

ARGUMENT

IN ANSWER TO RESPONDENT'S INITIAL BRIEF

POINT I

THE REFEREE'S FINDINGS OF FACTS ARE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

In bar disciplinary proceedings it is well settled that a referee's findings of fact must be upheld unless clearly erroneous or unsupported by the evidence, The Florida Bar v. Gross, 610 So. 2d 442 (Fla. 1992). The party seeking review of said findings carries a heavy burden of showing the referee's report is erroneous, The Florida Bar v. Miele, 605 So. 2d 866 (Fla. 1992). The bar submits the respondent has failed to meet this requirement.

As the fact finder, it is the referee's responsibility to resolve the conflicts in testimony and evidence, The Florida Bar v. Della-Donna, 583 So. 2d 307 (Fla. 1989). It is the referee who is best able to evaluate the credibility of witnesses. Clearly, the referee found the evidence supported the bar's position that the respondent made unsubstantiated allegations against opposing counsel which he published to nonparties and the court. In fact, the respondent does not contest that his allegations that Messrs. McGrane and Fishman conspired to suborn perjury were based upon his own conclusions (T. pp. 88, 90). No independent evidence exists to support his opinion (AROR p. 1). The respondent makes the same arguments to this court that he

made, without success, to the referee that his evidence clearly shows not only that he made his accusations in good faith and thus should be exonerated, but also that it supports his suspicions about the activities of Messrs. Fishman and McGrane. The referee considered the telephone records entered as respondent's exhibit two, which serve to establish only that Mr. Fishman's office spoke with Ms. Hope's office during the time in question. There is no evidence that Mr. Fishman told Ms. Hope to pressure Ms. Ornstein into swearing someone other than Mr. Geres was the child's father. In fact, Mr. Fishman testified that because he was routinely represented Mercy Hospital and Ms. Hope routinely acted as an adoption intermediary, he had occasion to speak with her about a number of cases (T. p. 72). Further, the respondent's letter to Ms. Hope dated October 7, 1991, (B-Ex. 2) clearly shows it was copied to Ms. Ornstein, a nonparty to the suit. Further, Ms. Hope was not involved in the suit in any way at this time. Although the respondent seems to believe the letter was published only to involved parties, clearly it was not.

Additionally, the respondent advised the civil trial court during a hearing on October 21, 1991, (B-Ex. 5 pp. 12-15) that either Mr. Fishman or Mr. McGrane apparently had engaged in "...unscrupulous tactics in this case and that matter is before the Florida Bar and I'm in the process of gathering affidavits, and additional information to show what transpired." He

reiterated his allegations and defended his actions as having been based upon the truth, a position the respondent continues to assert.

The respondent has made serious but baseless allegations of misconduct against opposing counsel in an on-going civil matter and continues to insist that not only did they attempt to suborn perjury but that they have manipulated these proceedings as well just so they could "get him in trouble" with the bar (T. pp. 136, 137; R-Ex 4, p. 31). The bar submits that by making such unsubstantiated allegations to nonparties and the court, the respondent has brought disrepute and scorn upon the judicial system and its officers. The respondent's actions cannot be described as being any less than outrageous. Without any basis whatsoever, the respondent has publicly accused opposing attorneys of engaging in serious criminal violations, actions which are untenable to the judicial system.

Throughout the handling of both the civil case and the bar proceedings, the respondent has shown a propensity for "jumping to conclusions". Such conduct took place in the process of civil litigation. The judicial system relies upon the integrity of attorneys. Actions such as respondent's denigrate the system. The respondent has repeatedly made inflammatory and conclusory statements in pleadings, letters, testimony and statements to the court during appearances. During an October 31, 1991, hearing in

the civil case, Mr. Fishman complained to the court that the respondent's use of conclusory statements in his pleadings made it difficult for him to formulate a response. One paragraph of the respondent's complaint was found by the trial judge to be a conclusion of law to be determined by the court and thus struck it from the complaint (B-Ex. 5, p. 9-12).

During the deposition of Helen Hope, bar counsel found it necessary to object to the respondent's line of questioning as being conclusory. The respondent stated that the deposition of Doreen Christian indicated Ms. Hope had threatened Ms. Ornstein and she had tried to coerce Ms. Ornstein into signing an affidavit (B-Ex. 4, p. 17). Indeed, throughout both the civil and bar proceedings, the respondent interjected his own baseless conclusions and opinions on occasions too numerous to cite. The respondent appears to have become so personally involved in Mr. Geres' case that he believes others must be engaging in fraud if the respondent finds information which is contrary to his client's position. It is the nature of litigation that contrary positions are present in every case. This does not lead to the conclusion that fraud is present.

During the final hearing, Mr. McGrane testified that the respondent had a history of making unsubstantiated allegations. The respondent accused him of having mental lapses secondary to alcoholism (T. p. 24). In reality, no evidence of alcoholism was

present (B-Ex. 4, p. 6). Mr. McGrane believed the respondent had acted irrationally throughout the civil proceedings because he had made threats over the telephone, made repeated baseless accusations, and made misrepresentations (R-Ex. 4, pp. 19-20). He believed the respondent consistently misused the legal process (R-Ex. 4, pp. 25-26).

During his testimony at the final hearing, the respondent admitted his allegations against Messrs. Fishman and McGrane were based upon his conclusion that only their clients would benefit from an affidavit stating that Mr. Geres was not the child's father (T. pp. 88, 90, and 107). Even though the civil proceedings have not been concluded, the respondent assumes Mr. Geres must be the father because the medical records and birth certificate so state, he was present for the delivery and supported Ms. Ornstein through her pregnancy (T. pp. 85-86). According to the respondent, Mr. Geres is entitled to money damages and return of the child based upon these facts and "what happened is a horrible tragedy that in America somebody clearly known as the father is given no prior knowledge whatsoever that his baby is going to be given in adoption" (T. p. 86). The respondent made these assumptions despite the fact that Ms. Ornstein, in her affidavit, clearly put the respondent on notice that initially she believed the father to have been another man (R-Ex. 1), thus injecting doubt into the child's parentage which could only be resolved through a blood test.

The respondent believes these bar proceedings are a result of a conspiracy against him. According to the respondent, the bar grievance system is crooked (Transcript of the February 23, 1993, hearing, p. 4); the bar tampered with the transcript at the grievance committee hearing (Transcript of the February 23, 1993, hearing, pp. 4 and 7); the witnesses at the grievance committee hearing committed perjury (Transcript of the February 23, 1993, hearing, p. 4); and his act of writing the letter of October 7, 1991, (B-Ex. 2), was correct and the bar is attempting to make him look bad (T. p. 95). The respondent is certain that Messrs. Fishman, McGrane, and the bar have acted improperly (T. p. 99). He also asked the referee to investigate her judicial assistant because he believed a pleading he had filed had been intentionally lost (T. p. 100).

Without any factual basis, the respondent accused the bar of arranging for a court reporter to become employed by the reporting service the respondent normally used so that the bar could assure the transcript would be altered in its favor (T. pp. 101-103). When the referee inquired as to the respondent's proof of this serious allegation, he indicated he arrived at this conclusion based on the fact that the two transcripts produced at the committee hearing differed and his transcript was "totally altered with every error and deletion in favor of The Bar, Your Honor. There wasn't one mistake in my favor, it was all in favor of The Bar. That's not coincidental, Your Honor" (T. p. 103).

The respondent relied on his memory to "prove" that the transcripts were in error (T. p. 102). He believes the bar dropped of some its "false charges" at the grievance committee level because his defense would have revealed the alleged fraud committed against him by Mr. Fishman, Mr. McGrane, and Ms. Hope (T. pp. 104-105). None of these accusations were substantiated and all were brought to the attention of the referee for consideration in imposing the appropriate discipline. Apparently this was the referee's basis for recommending psychological counseling as part of the respondent's probation.

Although the respondent argues that in his representation of his client he must have the freedom to use his best judgment in prosecuting or defending a suit without fear of being subjected to a bar grievance, this court has placed limits on the advancing of frivolous arguments. In The Florida Bar v. Clark, 528 So. 2d 369, 372 (Fla. 1988), this court stated that "It is most certainly admirable to be a persistent, aggressive and innovative practitioner. It is not admirable, however, to advance frivolous claims where simple mandatory rules of procedure are disobeyed." The respondent never thought to investigate Ms. Ornstein's allegations before leveling serious accusations against three attorneys and making his assumptions public to nonparties to the lawsuit. The bar submits it is not admirable for an attorney to draw conclusions based on unsubstantiated information and make those allegations public then argue his actions were permissible

because they were based on good faith and done in the best interest of his client.

It is well settled that such conduct calls for discipline. In The Florida Bar v. Perlmutter, 582 So. 2d 616 (Fla. 1991), an attorney entered into a consent judgment for a public reprimand for engaging in vituperative correspondence on behalf of a client, entering into an agreement for payment of an excessive referral fee, and entering into an agreement for payment of legal fees to a nonlawyer. Mr. Perlmutter wrote a letter to a couple, on behalf of his clients, which was not in connection with an pending litigation. In the letter, he threatened the couple with multiple law suits, narrowed their standing in the community, and impugned their motivation and standing in the community without just cause. He also threatened to retaliate against them if they filed a complaint with the bar. The statements made by him in his letter were based upon information provided to him by his clients without any independent knowledge or investigation of the true facts.

With respect to making public statements denigrating the courts and the administration of justice, an attorney was publically reprimanded in The Florida Bar v. Weinberger, 397 So. 2d 661 (Fla. 1981). There was no misrepresentation to the court involved. The attorney was newly admitted to practice law and represented himself in two civil suits. After suffering adverse

rulings in those cases, he filed various pleadings and made public statements denigrating the courts and the administration of justice. The remarks were characterized as being irresponsible and intemperate attacks on the judiciary. The referee perceived the attorney to have an "extremely intemperate personality". Because of the attorney's psychological makeup and acts of misconduct, the referee recommended a one year suspension. This court deemed a public reprimand would be more appropriate because in mitigation the attorney had apologized to the judges involved, offered to take further action to exhibit his remorse, and retained counsel to continue representing him in the on-going civil matters. In his dissent, Justice Alderman opined that a ninety-one (91) day suspension would have been more appropriate because it appeared that at the time he committed the acts of misconduct and at the time of the final hearing in the bar proceeding, the attorney either did not understand or was unwilling to accept the principle that more is expected of a lawyer than is expected of a layman and that any conduct of a lawyer which brings into scorn and disrepute the administration of justice demands condemnation in the application of appropriate penalties. He noted that the referee found in his report that although the attorney stated his regrets and apology, he was without contrition because he persisted in believing the proper limits of his behavior as being those that apply to a nonlawyer. The referee believed that the attorney would continue his "crusade against the judicial system" in the same manner as he

was alleged to have acted previously. The referee pointed out in his report that the attorney was not being tried for what he thought or believed, but rather for what he acted out.

The bar submits the evidence in this case clearly supports the referee's findings of fact. This court's review of said findings is not in the nature of a trial de novo in which it must be satisfied the evidence was clear and convincing, The Florida Bar v. Hooper, 509 So. 2d 289 (Fla. 1987). If the findings are supported by competent, substantial evidence, this court is precluded from reviewing the evidence and substituting its own judgment for that of the referee, The Florida Bar v. MacMillan, 600 So. 2d 457 (Fla. 1992).

The referee's findings of guilt should be upheld.

ARGUMENT

IN ANSWER TO RESPONDENT'S INITIAL BRIEF AND AT ISSUE IN COMPLAINANT'S INITIAL BRIEF

POINT II

THE REFEREE'S RECOMMENDATION OF A PUBLIC REPRIMAND AND SIX MONTH PERIOD OF PROBATION IS INAPPROPRIATE GIVEN THE FACTS OF THIS CASE.

Although this court is bound to uphold the referee's findings of fact and recommendations unless clearly erroneous, the court has wide latitude in overturning a referee's recommended discipline, The Florida Bar v. Anderson, 538 So. 2d 852 (Fla. 1989). The bar submits the level of discipline recommended by the referee, a public reprimand, is inadequate given the serious nature of the respondent's misconduct and the aggravating factors present. While the respondent seeks more lenient treatment, the bar seeks more substantial discipline than that recommended by the referee.

Florida case law upholds stronger sanctions. A case on point with the misconduct engaged in by the respondent is The Florida Bar v. Mueller, 351 So. 2d 960 (Fla. 1977). Of interest here is the misconduct outlined on pages 964 and 965 of the opinion. The referee found Mr. Mueller had submitted a sworn affidavit to the bar stating that his former law partner had asked a witness if she would agree to have sexual relations with him. This charge was vigorously denied by the witness. At the

hearing, Mr. Mueller testified he had no personal knowledge of the allegations but rather based his conclusions on differences and innuendos he perceived in his conversations with the witness. In another count, Mr. Mueller telephoned a bar complaining witness and stated to her that he had heard she hated his former law partner. He then asked if his former partner had ever made any advances toward her. The complainant answered no to both questions. Mr. Mueller then filed an affidavit with The Florida Bar making these allegations against his former partner. The referee found that in both instances Mr. Mueller had no reasonable basis whatsoever to make such charges and "it was strictly a figment of his imagination." Mr. Mueller was disbarred for this and the other counts of misconduct.

The most serious aspect of the respondent's misconduct is the fact that he stated to the trial judge that either Mr. Fishman or Mr. McGrane, or both, along with a third attorney, had attempted to suborn perjury (B-Ex. 5, pp. 13-15). The respondent made this intemperate remark without any evidence to support the allegations. In fact, the bar submits the respondent has never produced any evidence to substantiate his allegations. Therefore, he misrepresented to the court that opposing counsel had engaged in serious misconduct when in fact he had no evidence to support his statement.

In The Florida Bar v. Colclough, 561 So. 2d 1147 (Fla. 1990), an attorney was suspended for six months after making misrepresentations to the court and opposing counsel in connection with a lawsuit. The attorney fraudulently represented that a hearing on costs had already been held, a money judgment for costs had already been obtained, and an upcoming hearing, which in fact was for costs, was for another subject. The hearing at which the attorney made these representations was attended by two substitute counsels for the opposing party. Because neither of the substitute counsel was entirely familiar with the case, they could not dispute the attorney's representations to the court regarding the money judgment for costs. In mitigation, the attorney had no prior disciplinary history and the record contained evidence which confirmed that he had never before given cause to question his credibility or honesty. Chief Justice Ehrlich, concurring in part and dissenting in part, pointed out that such misconduct undermines the very foundation of the legal profession. Members of the bench and bar as well as the public have the right to expect that a lawyer's representations are truthful and that the lawyer can be trusted. The legal profession can operate only if its individual members conform to the highest standards of integrity in all dealings within the legal system.

An attorney was suspended for thirty days and his co-counsel publically reprimanded in Anderson, supra, 538 So. 2d 852 (Fla.

1989), for misrepresenting the facts of a case and making extended arguments based thereon in a brief. Despite exposure of the inaccuracy by opposing counsel, neither attorney acknowledged the misrepresentations and maintained instead in a written response to a motion for sanctions that the opposing party was attempting to obfuscate and deceive the court. The attorneys finally acknowledged the misleading nature of their representations when personally confronted and closely questioned by the court in a hearing on the motion of the opposing party for sanctions. This court upheld the referee's recommendation that the attorneys be found not guilty of intentionally misstating the facts. This court, however, was concerned that the attorneys failed to correct the misrepresentation when they were brought to their attention.

One reason substantial discipline is warranted in this case is the fact that the respondent has no recognition whatsoever of his wrongdoing. It is apparent the respondent's temperament, as demonstrated by his conduct in the pending case at hand as well as the underlying misconduct, is presently incompatible with the practice of law. A mere public reprimand followed by a probation period requiring a psychological evaluation and counseling is insufficient. The bar requests that the respondent be suspended for a period of greater than ninety-one (91) days and that he prove his rehabilitation before he is allowed to resume the practice of law. The respondent's conduct in this case is a

relevant part of the disciplinary proceedings pursuant to The Florida Bar v. Vaughn, 608 So. 2d 18 (Fla. 1992). It is appropriate for the court to take into consideration all aspects of this case. The respondent has made frivolous and wholly unsubstantiated accusations against Messrs. McGrane and Fishman. Since the initiation of the bar proceedings, the respondent has accused the bar of being part of a conspiracy against him. Once again, this accusation is wholly unsubstantiated. Further, the respondent has accused the grievance committee court reporters of intentionally altering the transcripts in the bar's favor. Once again, this accusation is wholly unsubstantiated. The respondent also has suggested that the referee's own judicial assistant should be investigated because of perceived misconduct on her part. Once again, this accusation is wholly unsubstantiated. Moreover the respondent has engaged in this conduct as a counsel in judicial proceedings. Clearly, something is wrong here. Allowing the respondent to practice law before he has rehabilitated himself from whatever it is that leads him to make frivolous and unsubstantiated allegations in judicial proceedings is required for the protection of the public and the judicial system. A mere public reprimand and probation is insufficient in this regard.

The Florida Standards for Imposing Lawyer Sanctions further support a suspension. Standard 6.12 calls for a suspension when a lawyer knows that false statements or documents are being

submitted to the court or that material information is improperly being withheld, and takes no remedial action. As the referee found, the respondent had no reasonable basis to conclude that either Mr. Fishman or Mr. McGrane had attempted to force Ms. Ornstein into swearing that a man other than Mr. Geres was the father of her child. In aggravation, there is a clear pattern of misconduct and a refusal by the respondent to acknowledge the wrongful nature of his action. See Standards 9.22(c) and 9.22(g). In mitigation, the respondent has no prior disciplinary history, Standard 9.32(a).

The bar submits the referee's recommendation with respect to the terms of the respondent's probation, requiring a general evaluation by a licensed psychologist and engaging in any counseling that may be recommended, is inadequate. From the respondent's behavior throughout the civil and bar proceedings it is apparent that he is unable to behave in a manner conducive to the ethical practice of law. The respondent should not be allowed to practice law again until he has demonstrated rehabilitation from these problems.

The bar submits that a six month period of suspension followed by the probation recommended by the referee would best serve the purposes of discipline as enumerated by this court in The Florida Bar v. Carswell, 624 So. 2d 259 (Fla. 1993): The judgment in a bar disciplinary proceeding must be fair to

society; must be fair to the attorney; and must sufficiently deter other attorneys from similar misconduct. The respondent's current behavior calls into to question whether or not he can adequately represent clients without becoming personally involved in their legal matters and thus having his judgment clouded. The suspension period would provide the respondent with an opportunity to correct this inappropriate behavior and protect the legal system and the public by preventing the respondent's further practice of law until rehabilitation has been achieved.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will uphold the referee's findings of fact and impose a sanction of a ninety-one (91) day suspension, requiring proof of rehabilitation prior to reinstatement, and payment of The Florida Bar's costs, currently totalling $3,220.61.

Respectfully submitted,

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By: Jan Wichrowski
JAN WICHROWSKI
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing answer brief and appendix have been furnished by regular U.S. mail to The Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927; a copy of the foregoing has been furnished by certified mail No. P 232 495 121, return receipt requested, to Mr. John Wesley Adams, respondent, at 435 Douglas Avenue, Suite 1505 - B, Altamonte Springs, Florida 32714; and a copy of the foregoing has been furnished by regular U. S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 24th day of January, 1994.

Jan Wichrowski

JAN WICHROWSKI
Bar Counsel

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[TFB Case Nos. 92-70,515 (11A);
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Respondent.
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APPENDIX TO COMPLAINANT'S INITIAL BRIEF ON CROSS APPEAL

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complaint,

vs.

R. W. SOAP,

Respondent.
_____/

Supreme Court No. 81,125

Case Nos. 92-70,515 (11A)
92-70,587 (11A)
92-70,683 (11A)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, hearings were held on the following date(s):

August 30, 1993.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: Jan Wichrowski
For the Respondent: John Wesley Adams

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

As to Paragraphs 28 and 29 of the Complaint

I find that the Respondent Mr. Adams, formerly known as Carl Teplicki, sent the letter dated October 7, 1991 to attorney Helen Hope which was admitted into evidence as a Bar exhibit and attached to the Bar's Complaint. In this letter, Mr. Adams set forth accusations against Helen Hope, Lewis W. Fishman, and Miles McGrane, all members of the Florida Bar.

Although I do not find the allegations against Ms. Hope of unethical behavior to be true, I acknowledge that the Respondent, although over zealous in his approach, did have some reason to suspect Ms. Hope's communication with Katherine Ornstein. The accusations set forth against Mr. Fishman and Mr. McGrane were not only false, but there was absolutely no evidence from which the Respondent could have reasonably suspected that type of conduct. I find the Respondent reiterated the baseless allegations against Mr. Fishman and Mr. McGrane before Judge Friedman during a hearing on October 21, 1991.

III. Recommendations as to Whether or Not the Respondent Should Be Found Guilty:

As to Paragraphs 28 and 29 of the Complaint

I recommend that the respondent be found guilty and specifically that he be found guilty of the following violations of the Rules of Professional Conduct, to wit:

4-4.1(a) knowingly making a false statement of material fact or law to a third person in the course of representing a client; 4-4.4 for using means which have no substantial purpose other than to embarrass, delay, or burden a third person; 4-8.4(a) for violating the Rules of Professional Conduct; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the Respondent received a public reprimand and be place on probation for a period of six (6) months. The terms of probation recommended are as follows: A general evaluation by a licensed psychologist and engage in any counseling that may be recommended.

V. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age:
Date Admitted to the Bar: 1988
Prior disciplinary convictions and disciplinary measures: none

VI. Statement of Costs and Manner in Which Cost Should be Taxed: I find the following costs were reasonable incurred by The Florida Bar.

A.	Costs incurred at the grievance committee level as reported by bar counsel:	
	1. Transcript Costs	$ 596.70
	2. Bar Counsel Travel Costs	$ 307.04
B.	Referee Level Costs as reported by bar counsel:	
	1. Transcript Costs	$ 999.04
	2. Bar Counsel Travel Costs	$ 275.93
	3. Transcript Costs - Final Hearing	$ 541.90
C.	Administrative Costs	$ 500.00
	TOTAL:	$3,220.61

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the Respondent.

Dated this 2nd day of December, 1993.

SUSAN LEBOW

Susan Lebow, Referee

Certificate of Service

A TRUE COPY

I hereby certify that a copy of the above report of referee has been served on Jan Wichrowski, Bar Counsel, at 880 North Orange Avenue, Suite 200, Orlando, Florida 32801, and on John Wesley Adams at 435 Douglas Avenue, Suite 1505-B, Altamonte Springs, Florida 32714, and Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 2nd day of December, 1993.

SUSAN LEBOW

Susan Lebow, Referee

A TRUE COPY

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Supreme Court No. 81,125

Case Nos. 92-70,515 (11A)
92-70,587 (11A)
92-70,683 (11A)

vs.

JOHN WESLEY ADAMS,

Respondent.
_____/

AMENDED REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, hearings were held on the following date(s):

August 30, 1993.

The following attorneys appeared as counsel for the parties:

For The Florida Bar Jan Wichrowski
For The Respondent John Wesley Adams

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent Is Charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented on below, I find:

As to Paragraphs 28 and 29 of the Complaint

I find that the Respondent Mr. Adams, formerly known as Carl Teplicki, sent the letter dated October 7, 1991 to attorney Helen Hope which was admitted into evidence as a Bar exhibit and attached to the Bar's Complaint. In this letter, Mr. Adams set forth accusations against Helen Hope, Lewis W. Fishman, and Miles McGrane, all members of the Florida Bar.

Although I do not find the allegations against Ms. Hope of unethical behavior to be true, I acknowledge that the Respondent, although over zealous in his approach, did have some reason to suspect Ms. Hope's communication with Katherine Ornstein. The accusations set forth against Mr. Fishman and Mr. McGrane were not only false, but there was absolutely no evidence from which the Respondent could have reasonably suspected that type of conduct. I find the

Respondent reiterated the baseless allegations against Mr. Fishman and Mr. McGrane before Judge Friedman during a hearing on October 21, 1991.

III. Recommendations as to Whether or Not the Respondent Should Be Found Guilty:

As to Paragraphs 28 and 29 of the Complaint

I recommend that the respondent be found guilty and specifically that he be found guilty of the following violations of the Rules of Discipline and Rules of Professional Conduct, to wit:

3-4.3 for engaging in conduct that is unlawful or contrary to honesty and justice; 4-4.1(a) knowingly making a false statement of material fact or law to a third person in the course of representing a client; 4-4.4 for using means which have no substantial purpcse other than to embarrass, delay, or burden a third person; 4-8.4(a) for violating the Rules of Professional Conduct; 4-8.4(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

IV. Recommendation as to Disciplinary Measures to Be Applied: I recommend that the Respondent received a public reprimand and be place on probation for a period of six (6) months. The terms of probation recommended are as follows: A general evaluation by a licensed psychologist and engage in any counseling that may be recommended.

V. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 33
Date admitted to the bar: 1988
Prior disciplinary convictions and disciplinary measures: none

VI. Statement of Costs and Manner in Which Cost Should be Taxed: I find the following costs were reasonably incurred by The Florida Bar.

A. Costs incurred at the grievance committee level as reported by bar counsel:

1.	Transcript Costs	$ 596.70
2.	Bar Counsel Travel Costs	$ 307.04

B. Referee Level Costs as reported by bar counsel:

1.	Transcript Costs	$ 999.04
2.	Bar Counsel Travel Costs	$ 275.93
3.	Transcript Costs - Final Hearing	$ 541.90
C.	Administrative Costs	$ 500.00
	TOTAL:	$3,220.61

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the Respondent.

Dated this 13 day of Dec., 1993.

Susan Lebow, Referee

A TRUE COPY

Certificate of Service

I hereby certify that a copy of the above report of referee has been served on Jan Wichrowski, Bar Counsel, at 880 North Orange Avenue, Suite 200, Orlando, Florida 32801, and on John Wesley Adams at 435 Douglas Avenue, Suite 1505-B, Altamonte Springs, Florida 32714, and Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 14 day of Dec., 1993.

Susan Lebow, Referee