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JAN 7 1987

CLERK, SUPREME COURT

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Chief Deputy Clerk

IN THE SUPREME COURT
OF FLORIDA

Supreme Court Case No.: 81,125

THE FLORIDA BAR,

Petitioner,

vs.

JOHN WESLEY ADAMS, (SOAP)

Respondent.

A PETITION FOR REVIEW OF
THE AMENDED REPORT OF REFEREE

RESPONDENT'S INITIAL BRIEF

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QUESTION PRESENTED

- I. WHEN AN ATTORNEY WRITES A LETTER WITH GOOD INTENTIONS AND FOR THE PURPOSE OF UPHOLDING THE INTEGRITY OF THE LEGAL SYSTEM, IS IT AN ABUSE OF DISCRETION FOR A REFEREE TO RECOMMEND THAT SAID ATTORNEY BE FOUND GUILTY OF UNETHICAL CONDUCT?..... 8

STATEMENT OF THE CASE AND FACTS

The Respondent has patiently refrained from filing a Federal lawsuit against the Florida Bar hoping that this Court will vindicate him. This case is a Petition for Review from the findings of facts and recommendations of Referee, Judge Susan Lebow, dated December 14, 1993.(A 16-18). The Respondent, John Wesley Adams, was previously known as Carlos Teplicki and R.W. Soap. This Court denied Respondent's Motion to Compel production of the Lower Court record.(A 1). The Respondent does not have a copy of the Lower Court record and has therefore included an Appendix and Index in support of his Brief.

On July 12, 1991, the Respondent filed suit against Mercy Hospital, Inc. and Dr. Pedro J. Alvarez on behalf of Mr. Manuel Geres.(A 19-26). The facts of the civil suit are as follows: Mr. Geres and Ms. Katherine Ornstein were engaged to be married and living together.(A 3). During that time, Katherine Ornstein became pregnant by Mr. Geres.(A 13). Unbeknownst to Mr. Geres, Katherine Ornstein was planning on giving the child up for adoption.(A 3). Ms. Ornstein contacted the Law Office of Helen Tanos Hope and arranged with Ms. Hope for the child to be adopted upon its birth.(A 3). Ms. Ornstein had planned on taking a vacation without Mr. Geres, two weeks before the birth, and in this manner deliver the child and have said child adopted without the consent of Mr. Geres.(A 12). She would then tell Mr. Geres that she went into labor while on vacation and falsely tell him that the pregnancy was

unsuccessful.

Ms. Ornstein went into labor earlier than she had anticipated. Contrary to what she had planned, Mr. Geres was present when she went into labor and he accompanied her to the hospital. Mr. Geres is noted on Ms. Ornstein's medical records as her fiancée. (A 27). Mr. Geres was in the delivery room during the birth of the child and there are pictures of Mr. Geres holding his baby immediately after the birth. (A 28).

Immediately after the birth of the child, Dr. Pedro J. Alvarez approached Mr. Geres and told him that the child had been born premature and would have to stay in the hospital, which was not true. (A 20-21). Dr. Alvarez made said statements to Mr. Geres so that the child would be left at the hospital and the adoption would proceed as planned. (A 21).

Mr. Geres was not informed that an adoption had been planned and his consent was never obtained for said adoption.(A 21). Additionally, Ms. Ornstein changed her mind about the adoption immediately after the birth, but she was pressured by Helen Hope's employees into finalizing the adoption. (A 12).

The Respondent filed suit on behalf on Mr. Geres against Dr. Pedro Alvarez for making fraudulent misrepresentations.(A 19-26). The Respondent filed suit against the Hospital based on joint liability.(A 19-26). Mr. McGrane undertook representation of Dr. Pedro J. Alvarez and Mr. Fishman represented Mercy Hospital.(A 4).

During litigation of the lawsuit, on October 7, 1991, Katherine Ornstein called the Respondent on the telephone. Ms.

Ornstein was very nervous and at the point of hysteria. She told the Respondent that she had just been threatened by Helen Hope. (A 12-13) Ms. Ornstein stated that Ms. Hope was demanding that she execute an affidavit that stated that Mr. Geres was not the father of the child. (A 12-13). Ms. Ornstein stated that Mr. Geres was the father and that she would not execute an affidavit that stated otherwise. (A 12-13).

The Respondent was sure that Ms. Ornstein was telling the truth and the Respondent was also convinced that Mr. Fishman and/or Mr. McGrane had participated in Ms. Hope's attempt to obtain said coerced affidavit. Mr. Fishman and Mr. McGrane's clients were the ones that would benefit if said affidavit been obtained because an essential element of the lawsuit filed against their clients was the fact that Mr. Geres was the father of the baby. (A 19-26).

Accordingly, the Respondent wrote a letter on October 7, 1991 to Helen Hope advising her that he was aware that she was attempting to coerce Katherine Ornstein into signing a false affidavit.(A 14-15). In the letter, the Respondent stated that he was advising both opposing counsels through the letter, that obviously one or both of them participated in the attempt to create the perjured testimony and that if the conduct did not cease, a Bar complaint would be filed by the Respondent and include both their names. (A 14-15). The Respondent mailed the letter to Helen Hope, Lewis Fishman, Miles McGrane, and Katherine Ornstein, only. (A 14-15). The letter was not published publicly by the Respondent.

On October 21, 1991, at a hearing held in front of Judge

Friedman, in the civil case involving the Geres baby, Mr. McGrane told the Court that the Respondent had accused him of attempting to create perjury. (A 31). The Respondent explained to the Court that apparently Mr. McGrane or Mr. Fishman, and Helen Hope, had engaged in unscrupulous tactics and that the matter was before the Florida Bar. (A 31-33). Mr. McGrane had brought the matter to the attention of the Miami office of the Florida Bar in a letter dated October 15, 1991 and they were investigating same. (A 34-35). The Respondent clearly explained everything to Judge Friedman and concluded by stating that he did not know which of the two defense lawyers had been involved. (A 33).

Respondent's letter of October 7, 1991 was factually correct. Katherine Ornstein verified by sworn affidavit that she was threatened by Helen Hope. (A 12-13). Doreen Christian testified by video taped deposition that she was on a three way telephone conversation with Ms. Ornstein and Ms. Hope on the night that Ms. Hope threatened Ms. Ornstein. (A 38-41). Doreen Christian testified that in fact Helen Hope tried to intimidate and coerce Katherine Ornstein into signing an Affidavit. (A 61-69).

The evidence also established that Helen Hope called Lewis Fishman numerous times prior to her telephone conversation with Katherine Ornstein. Southern Bell telephone records established that Ms. Hope spoke with Lewis Fishman only a few hours before she had threatened Katherine Ornstein. During examination of Mr. Fishman at the Lower Tribunal final hearing, Mr. Fishman initially did not recall ever having spoken to Helen Hope at any time prior

to the time Ms. Hope threatened Ms. Ornstein. Southern Bell telephone records evidencing telephone calls to his office from Helen Hope's office were then shown to him and he provided no adequate explanation. (A 74-82). In fact, Southern Bell telephone records introduced at the Lower Level established that Helen Hope spoke with someone at Lewis Fishman's office, at (305) 670-2100, for five minutes, several hours prior to threatening Katherine Ornstein. (A 79).

The testimony at the lower tribunal established all of the foregoing facts. Notwithstanding, the referee found against the Respondent wholly disregarding the affidavit of Katherine Ornstein, the testimony of Doreen Christian, and the Southern Bell telephone records.(A 16-18). The Lower Court also disregarded the uncontradicted testimony of the Respondent that established that he acted with good intentions at all times and for the purpose of stopping the coercion of a false affidavit.

SUMMARY OF ARGUMENT

The testimony at the Lower Tribunal established that Helen Hope threatened Katherine Ornstein. Katherine Ornstein's sworn affidavit verified that Helen Hope attempted to coerce her into signing a false affidavit that stated that Mr. Geres was not the father of the baby. The video taped testimony of Doreen Christian corroborated that Helen Hope attempted to coerce Katherine Ornstein into signing a false affidavit. Southern Bell telephone records established that Lewis Fishman spoke with Helen Hope many days prior to, and a few hours prior to the conversation in which Helen Hope threatened Katherine Ornstein.

The Respondent wrote the letter dated October 7, 1991, to stop the procurement of a false affidavit. It is the purpose of the adversarial system to permit a free adversarial atmosphere to flourish, which atmosphere is so essential to our system of justice. In fulfilling their obligations to their client and to the Court, it is essential that lawyers should be free to act on their own best judgment in prosecuting or defending lawsuits. The Respondent acted with good intentions at all times. The Florida Bar had the burden of proof by clear and convincing evidence to establish that the Respondent engaged in the alleged unethical conduct. The Florida Bar failed to meet that burden and it was an abuse of discretion for the Referee to recommend that the Respondent be found guilty of unethical conduct.

ARGUMENT

- I. WHEN AN ATTORNEY WRITES A LETTER WITH GOOD INTENTIONS AND FOR THE PURPOSE OF UPHOLDING THE INTEGRITY OF THE LEGAL SYSTEM, IS IT AN ABUSE OF DISCRETION FOR A REFEREE TO RECOMMEND THAT SAID ATTORNEY BE FOUND GUILTY OF UNETHICAL CONDUCT.

At the Lower Tribunal, Katherine Ornstein verified by sworn affidavit that she was threatened by Helen Hope. Doreen Christian testified by video taped deposition that she was on a three way telephone conversation with Ms. Ornstein and Ms. Hope on the night that Ms. Hope threatened Ms. Ornstein. Doreen Christian testified that in fact Helen Hope tried to intimidate and coerce Katherine Ornstein into signing an Affidavit.

Additionally, the evidence established that Helen Hope called Lewis Fishman numerous times prior to her telephone conversation with Katherine Ornstein. It was also established that Ms. Hope spoke with Lewis Fishman only a few hours before she threatened Katherine Ornstein. Mr. Fishman initially denied ever having spoken to Helen Hope prior to the time Ms. Hope threatened Ms. Ornstein. When Mr. Fishman was shown the Southern Bell telephone records, he provided no adequate explanation.

There was no evidence presented at the lower tribunal that the Respondent published the October 7, 1991 letter publicly. The testimony established that the letter was mailed only to those parties involved. The evidence at the lower tribunal also established that Mr. McGrane was the one that first mentioned the

events surrounding the October 7, 1991 letter to Judge Friedman first. It then became the Respondent's ethical responsibility to inform the Judge of everything that was transpiring.

The uncontroverted testimony at the Lower Tribunal established that the Respondent acted properly at all times and for the purpose of upholding the integrity of the legal system. The Referee was bound by the evidence presented and therefore abused her discretion in recommending that the Respondent be found guilty of violating the Rules of Discipline and Rules of Professional Conduct.

There was no evidence presented at the Lower Tribunal to establish that the Respondent engaged in any unlawful conduct. Nor was there any evidence presented to establish that the Respondent engaged in conduct contrary to honesty and justice. The Respondent did not knowingly make a statement of material fact or law to a third person in the course of representing a client. The Respondent did not use means which have no substantial purpose other than to embarrass, delay and burden third persons, nor did he engage in conduct that involved any dishonesty, fraud, deceit, or misrepresentation. The Respondent also did not engage in conduct prejudicial to the administration of justice. On the contrary, the Respondent's conduct was essential for the preservation of the administration of justice. It is proper and essential that attorneys not permit the coercion of false affidavit.

The evidence established that the purpose of the letter at issue and the statements made to Judge Friedman was to uphold the

integrity of the legal system. Had the Respondent not written the letter dated October 7, 1991, Helen Hope would have continued to try and obtain a false, coerced affidavit, from Katherine Ornstein. Additionally, there was nothing in the record to support the Referee's puzzling recommendation that the Respondent be evaluated by a licensed psychologist.

In disciplinary matters, the evidence presented by The Florida Bar must be clear and convincing before this Court may find that an attorney has engaged in unethical conduct. The Florida Bar v. McCain, 361 So.2d. 700 (Fla. 1978). The Bar failed to meet that burden. The Lower Tribunal was bound by the evidence presented and therefore abused it's discretion in recommending that the Respondent be found guilty of misconduct.

The evidence at the lower level established that the Respondent did not engage in any of the alleged unethical conduct. When uncontradicted testimony is presented, it should not be wholly disregarded, but should be accepted as proof of the issue. Bergh v. Bergh, 160 So.2d 145 (Fla. 1st DCA 1964). See also, Thompson v. Williams, 253 So.2d 897 (Fla. 3rd DCA 1971).

It is the purpose of the adversarial system to permit a free adversarial atmosphere to flourish, which atmosphere is so essential to our system of justice. In fulfilling the obligations to their client and to the Court, it is essential that lawyers be free to act on their own best judgment in prosecuting or defending a lawsuit, without fear of later having to defend a Bar complaint. A contrary rule might very well deter counsel from saying or

writing anything controversial for fear of antagonizing someone involved in the case and thus courting a Bar complaint, a result which would seriously hamper the cause of justice. When an attorney writes a letter with good intentions and for the purpose of upholding the integrity of the legal system, it is an abuse of discretion for a referee to recommend that said attorney be found guilty of unethical conduct.

Finally, it is puzzlingly that the Florida Bar has maintained at all times that Helen Tanos Hope and Lewis Fishman have not engaged in any wrongdoing.

CONCLUSION

For these reasons, the Respondent request that this Honorable Court not follow the findings of facts or recommendations of the Lower Tribunal and hold that the Respondent has not engaged in any unethical conduct.

Respectfully submitted,

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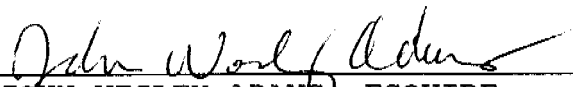
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JOHN WESLEY ADAMS, ESQUIRE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing, and Index to the Appendix and Appendix, was served this 5th day of January 1994 to Clerk of The Supreme Court of Florida, 500 South Duval Street, Tallahassee 32399-1925 by Certified Mail Return Receipt Requested No.: P 404 628 293 and a copy of the foregoing and Index and Appendix, to Jan Wichrowski, Esquire, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801-1085.

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