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JUL 15 1994
CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

SHARON LEA KLEINFELD,

Respondent.
_____/

Supreme Court Case
No. 81,464

Complainant's Reply Brief

and

Anwer Brief on Cross-Petition

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INTRODUCTION

For the purposes of this brief, The Florida Bar will be referred to as "The Florida Bar", "the Bar" or "Florida Bar". Sharon Lea Kleinfeld will be referred to as "Respondent" or "Ms. Kleinfeld" or "Sharon Kleinfeld".

Abbreviations utilized in this Brief are as follows: "TR" will refer to the transcript of the final hearing held on September 22, 1993, October 6, 1993 and October 20, 1993.

DISBARMENT RATHER THAN A THREE YEAR SUSPENSION IS THE APPROPRIATE SANCTION

Respondent, in her answer brief, states that certain mitigating factors, as set forth in standard 9.3 of the Florida Standards for imposing Lawyer Sanctions, are present. (Respondent's Answer Brief, page 7). Respondent includes the existence of personal (medical) or emotional problems, and physical or mental disability or impairment of the Respondent, as factors in mitigation. The record, however, does not support that assertion. The Respondent did not present evidence of any disability. On the contrary, the Respondent presented the testimony of psychiatrist, Michael Rose who stated that the Respondent is "neurologically intact." (TR. 578). Further, the Referee did not find the existence of impairment or the existence of a disability as a mitigating circumstance.

Respondent maintains that a lawyer should not be disbarred on the "first offense." (Respondent's Answer Brief, page 9). There is neither any case law or rule which supports a "one bite" rule for attorneys. This Court has stated time after time that certain acts warrant disbarment, even withstanding mitigation far more significant than a lack of a prior disciplinary history. In The Florida Bar v. Golub, 550 So.2d 455 (Fla. 1989), the attorney misappropriated money from an estate, while having a severe alcohol problem and no disciplinary history. The Court noted that stealing from a client is at the top of the hierarchy of offenses and disbarred him. This court likewise noted in The Florida Bar v. Weinstein, 624 So.2d 261 (Fla. 1993) and The Florida Bar v.

Rightmyer, 616 So.2d 953 (Fla. 1993) that false testimony in the judicial process deserves the harshest penalty. The Court did not state that the attorney has one chance to give false testimony in the judicial process before being disbarred.

Further, Respondent's contention that the submission of the false affidavit was an "unintentional first offense," is belied by the circumstances. Respondent prepared the document, executed it, had it notarized, and filed it in court for the sole objective of having Judge Cohen disqualified. There is nothing unintentional about the foregoing.

Respondent also asserts that "there are no indicators to show that this was her conduct in other cases handled by the Respondent." (Respondent's Answer Brief, page 9). In fact, the evidence is quite to the contrary. Judge Thomas O'Connell testified that Respondent had appeared before him as early as 1989. He attested to various unethical actions by Respondent, as fully set forth in The Florida Bar's initial brief. (p. 15-17). Judge O'Connell stated that Respondent was a liar and would say anything to gain her purpose (TR. 795). Judge Murray Goldman also testified that the Respondent had appeared before him for a number of years. The Judge believed Respondent was dishonest and also stated that Respondent had failed to appear in court on numerous occasions (TR. 872-874, 877). Consequently, Respondent's actions before Judge Cohen, were in fact typical and indicative of Respondent's manner of handling cases.

The Respondent should be disbarred.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of this Complainant's Reply Brief and Answer Brief on Cross-Petition was forwarded Via Airborne Express to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927, and a true and correct copy was mailed to Nicholas R. Friedman, Attorney for Respondent, at 100 North Biscayne Boulevard, New World Tower, 30th Floor, Miami, Florida 33132, on this 14th day of July, 1994.

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Bar Counsel