IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

SUSAN K. GLANT,

Respondent.
_____/

Case No. 81,757
[TFB Case No. 92-30,837 (07B)]

ANSWER BRIEF

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SYMBOLS AND REFERENCES

In this brief, the Appellant, Susan K. Glant, shall be referred to as "the respondent".

The Appellee, The Florida Bar, shall be referred to as "The Florida Bar" or "the bar".

The transcript of the final hearing held on October 4, 1993, shall be referred to as "T.Vol.I" or "T.Vol.II", followed by the cited page number(s).

The Report of Referee dated November 15, 1993, shall be referred to as "RR", followed by the cited page number(s).

The respondent's Amended Initial Brief shall be referred to as "RB", followed by the cited page number(s).

STATEMENT OF THE CASE

The Florida Bar views the respondent's statement of the case in her Amended Initial Brief, beginning on page 1, as inaccurate and/or incomplete. Therefore, the bar submits the following statement of the case:

On or about October 9, 1991, the respondent filed a complaint with The Florida Bar against Jonathan Hewett, the managing attorney of Central Florida Legal Services (hereinafter referred to as "CFLS") in Palatka, Florida, where the respondent had been employed as a staff attorney. Mr. Hewett had terminated the respondent's employment from CFLS on July 31, 1991, and she had subsequently filed for unemployment which was denied. The respondent appealed the denial of employment benefits. The respondent had initiated a complaint with The Florida Bar against Mr. Hewett alleging that during a hearing before an unemployment compensation appeals referee he had divulged attorney-client information.

A file was opened by The Florida Bar on the respondent's complaint against Mr. Hewett and an investigation ensued. Bar counsel determined, pursuant to R. Regulating Fla. Bar 3-7.3(a), that there was no evidence of a breach of attorney-client privilege on the part of Mr. Hewett. However, upon reviewing the information and documentation supplied by the respondent concerning Mr. Hewett, bar counsel determined that it appeared the respondent's conduct which resulted in her termination from CFLS may have violated the

Rules Regulating The Florida Bar. A file was opened on the respondent and the matter was forwarded to the Seventh Judicial Circuit Grievance Committee "B" on June 11, 1992, for review. Originally, a probable cause vote, pursuant to R. Regulating Fla. Bar 3-7.4(h), was scheduled for October 23, 1992, to which the respondent objected. A full hearing before the grievance committee was then set for January 15, 1993, at which time the respondent appeared and gave testimony. Subsequent to the grievance committee hearing, the committee unanimously voted to find minor misconduct against the respondent with the admonishment to be administered by letter from the chair of the grievance committee. The committee found the respondent had violated R. Regulating Fla. Bar 4-1.2(a) for failing to abide by a client's decisions regarding the objectives of representation.

In accordance with The Florida Bar policy and under R. Regulating Fla. Bar 3-7.5(b), the grievance committee's findings were forwarded to the Board of Governors of The Florida Bar for review. During its March, 1993, meeting, the board voted to overturn the grievance committee's finding of minor misconduct against the respondent. Pursuant to R. Regulating Fla. Bar 3-7.5(c), the board entered a finding of probable cause against the respondent.

The bar's formal complaint against the respondent was filed on May 13, 1993. On June 1, 1993, the respondent filed her Answer,

Affirmative Defenses and Request For Attorney's Fees regarding the bar's complaint. The respondent asserted there were no justiciable issues of law or fact in the bar's complaint against her as the basis for her request for attorney's fees.

Discovery commenced beginning with the respondent's filing on June 1, 1993, of a motion to compel the bar to respond to interrogatories she had submitted prior to the filing of the bar's complaint. On June 4, 1993, the respondent again served interrogatories on The Florida Bar and filed a Notice Of Filing A Transcript Of The Hearing Before The Grievance Committee and a Request For Production Of Documents. On June 29, 1993, the bar filed a response to respondent's affirmative defenses, a motion to strike the respondent's first and second affirmative defenses, and a motion to strike the respondent's request for attorney's fees. The bar further filed a Response To Respondent's Motion To Compel indicating the respondent's first set of interrogatories had been filed prematurely but that the bar was in the process of answering them. In the bar's Response To Respondent's Request For Production Of Documents, it was reiterated to the respondent that the bar did not possess a copy of the file from CFLS concerning the Ricks family which the respondent was seeking. On June 29, 1993, the bar also filed a Notice Of Filing The Transcript Before The Seventh Judicial Circuit Grievance Committee "B" and served responses on the respondent to her interrogatories.

On July 12, 1993, the respondent filed another motion to compel in which she was still seeking a copy from The Florida Bar of the Ricks file from CFLS. The bar filed it's Response To Respondent's Motion To Compel And Partial Compliance By Complainant on July 22, 1993, in which it was again stated that the bar did have possession of the Ricks file from CFLS, that the bar did not intend to introduce said file into evidence at the final hearing, and that the respondent was provided with copies of all documentation considered by the grievance committee with the exception of the CFLS file. On August 27, 1993, a hearing was conducted on the respondent's motion to compel and the referee issued her order on August 31, 1993, in which the respondent's motion was granted with respect to the Ricks file from CFLS. The bar was directed to obtain a copy of said file and produce it to the respondent which The Florida Bar did.

The bar served it's Requests For Admission on the respondent on July 21, 1993, to which the respondent filed her responses on August 2, 1993. On August 13, 1993, the bar filed a Motion For Summary Judgment and the respondent responded to same on August 27, 1993. A hearing was conducted on August 27, 1993, on the bar's motion for summary judgment which was denied pursuant to an order by the referee dated September 17, 1993.

The final hearing was conducted on October 4, 1993, during which time the respondent represented herself, gave testimony and

cross-examined the witnesses. Also on October 4, 1993, the bar filed a Preliminary Affidavit Of Costs. On October 15, 1993, the bar filed it's Final Affidavit Of Costs and then on October 25, 1993, filed it's Amended Affidavit Of Costs. The respondent submitted her objections to the bar's affidavits of costs on November 10, 1993, stating that the bar had not cited any authority entitling it to a claim for costs. The bar filed it's response to the respondent's objections to the affidavits of costs on November 17, 1993.

The referee submitted her report on November 15, 1993, in which she found the respondent guilty of violating R. Regulating Fla. Bar 4-1.2(a) and recommended that she receive a public reprimand and a six (6) month period of probation. As conditions of probation, the referee recommended the respondent provide proof of successful completion of a course in legal ethics and proof of payment of the bar's costs. If the respondent satisfactorily complied with the terms of probation, the referee recommended the respondent's probation be terminated earlier than the six (6) month period. During it's December, 1993, meeting the Board of Governors of The Florida Bar approved the referee's findings and recommendations. On November 26, 1993, the respondent filed a Petition For Review in which she sought review of sections II, III, IV, and VI of the referee's report.

The respondent filed her Initial Brief on December 15, 1993,

which, including the appendix, exceeded 1,000 pages. Initially, the bar chose not to object to the length of the respondent's brief and instead filed on December 29, 1993, a Motion For Extension Of Time To File Answer Brief. The bar indicated an additional ten (10) days to answer the respondent's initial brief was required due to the length of her brief. The respondent indicated she had no objection to an extension of time in her response to the bar's motion filed on January 6, 1994. However, upon thoroughly reviewing the respondent's initial brief, it became apparent to the bar that the respondent was rearguing the same case she had presented to the referee and had included documents in her appendix that were not part of the record. Therefore, the bar filed a Motion To Strike Respondent's Initial Brief to which the respondent responded on January 10, 1994. The Court issued an order on January 14, 1994, in which the respondent was given until January 31, 1994, in which to serve a brief not to exceed sixty (60) pages in length. The Court specifically stated the respondent's appendix could contain matters in the record but not argument. On January 28, 1994, the respondent filed her Amended Initial Brief and this brief is submitted by The Florida Bar in response.

STATEMENT OF THE FACTS

The respondent has included in her Amended Initial Brief a statement of the facts which is approximately 24 pages in length. The bar submits that almost the entire statement of the facts is a reargument of the respondent's case as she presented it to the referee during the final hearing and in the various pleadings submitted in this case. According to Fla. R. App. P. 9.210(b)(3), a statement of the case and of the facts "shall include the nature of the case, the course of the proceedings, and the disposition in the lower tribunal" (emphasis added). In her Amended Initial Brief the respondent has not included the disposition in the lower tribunal, or the referee's findings of fact, and instead has presented her case for this Court to review based upon her own perceptions of the evidence. The bar strongly objects to this attempt by the respondent to reargue her case for this Court. Therefore, the bar presents the following statement of the facts based solely upon the transcript of the testimony taken at the final hearing on October 4, 1993, and the referee's report of November 15, 1993:

Robin Ricks, k/n/a Robin Elworthy, obtained legal representation from Central Florida Legal Services (hereinafter referred to as "CFLS") in or around November, 1990, concerning a pending dependency action involving her four minor children. (RR p. 1; T.Vol.I pp. 58-59). Ms. Ricks wanted to obtain custody and terminate supervision of her children by the Department of Health

and Rehabilitative Services (hereinafter referred to as "HRS"). (RR p. 1; T.Vol.I p. 18). The children, two boys and two girls, had been removed from their father's home due to allegations by an anonymous informant that the father had sexually abused one or more of the children. (RR p. 1; T.Vol.I pp. 13-14). The sexual abuse allegations against the father were not ultimately litigated by HRS due to HRS' belief that there was insufficient evidence to prove the sexual abuse allegations. (RR p. 1; T.Vol.I pp. 79-81; T.Vol.II p. 149-150).

Ms. Ricks was originally represented by Jonathan Hewett of CFLS and in January, 1991, an agreement was reached whereby Ms. Ricks would have custody of the two daughters and Mr. Ricks would have custody of the two sons. (T.Vol.I pp. 11-12, 60-62). In May, 1991, Mr. Hewett assigned Ms. Ricks' case to the respondent. (RR p. 1; T.Vol.I p. 67-68). When Mr. Hewett assigned the case to the respondent, he provided her with information about the case through a memo regarding the respondent's purpose in the representation of Ms. Ricks. The respondent was to attend a court hearing in June, 1991, and present to the court a recommendation and proposed order to terminate jurisdiction, to terminate HRS' supervision and retain custody status per the agreement of January, 1991, regarding Ms. Ricks' custody of the two girls and Mr. Ricks' custody of the two boys. (RR p. 2; T.Vol.I pp. 67-68).

The respondent was aware of her client's desires and the

purpose for which CFLS represented Ms. Ricks. (RR p. 2; T.Vol.II pp. 145, 179). Ms. Ricks wanted HRS supervision over her and her children to be terminated. (RR p. 1; T.Vol.I pp. 12, 18, 43, 52-54). However, on July 22, 1991, the respondent sent to Bob Williams, the Executive Director for HRS in Tallahassee, Florida, a letter requesting further investigation into the Ricks case. With her letter, the respondent included a copy of an unfiled motion she had prepared which sought custody of all four children for the natural mother, Robin Ricks, which also included a summary of the case that the respondent thought would be helpful in HRS' review. (T.Vol.II p. 165). The respondent also sent copies of her letter to the United States Attorney General's Office in Washington, D.C., Governor Lawton Chiles, the Judicial Qualifications Commission, and the State Attorney's Office for the Eighth Judicial Circuit. (RR p. 2; T.Vol.II p. 173). The respondent never advised her client she intended to send the letter and motion to HRS nor did she advise Mr. Hewett or CFLS. (RR p. 2; T.Vol.I pp. 17-18, 53-54). Mr. Hewett received a copy of the respondent's letter from the local HRS attorney. (T.Vol.I pp. 68-69; T.Vol.II p. 117). Ms. Ricks would never have authorized the respondent to send such a letter and motion to HRS because she wanted HRS out of the case involving her family. (T.Vol.I p. 54; T.Vol.II p. 145).

The respondent believed she was obligated to send the letter and motion to HRS pursuant to R. Regulating Fla. Bar 4-1.2(d) which

states, "a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent". (RR p. 2; T.Vol.II pp. 182, 195-196). The respondent also believed she had that obligation under R. Regulating Fla. Bar 4-1.6(b)(2) which states, "a lawyer shall reveal such information to the extent the lawyer believes necessary to permit a death or substantial bodily harm to another". (RR p. 2; T.Vol.II pp. 161, 179). However, the respondent could not identify what criminal or fraudulent conduct she would have assisted her client in engaging in or what criminal conduct her client had or was about to engage in. The respondent could not articulate how she believed mailing the letter and motion to HRS and various governmental offices could have prevented death or substantial bodily harm to the Ricks children, except to the extent she personally believed continued supervised visitation with the two girls by the father would avoid sexual abuse. (RR p. 2; T.Vol.II pp. 180-181, 185-187).

The respondent admitted that she could have withdrawn from representing Ms. Ricks pursuant to the Rules Regulating The Florida Bar but chose not to do so. (RR p. 2; T.Vol.II pp. 158-159). Further, the respondent admitted that she would engage in the same conduct today under the same circumstances. (RR p. 3; T.Vol.II p. 185).

SUMMARY OF THE ARGUMENT

Throughout these proceedings the respondent has attempted to obscure the real issue in this case which is that her conduct was contrary to the objectives of the representation of her client and as such violated R. Regulating Fla. Bar 4-1.2(a). The respondent has consistently admitted that she sent the letter and motion to the Executive Director of the Department of Health and Rehabilitative Services, that she knew such an action was against her client's wishes, and that she knew her conduct was a violation of the Rules Regulating The Florida Bar. The respondent has admitted to the misconduct for which she has been charged. The respondent simply believes she was justified in violating the rules.

It is readily apparent from the respondent's Amended Initial Brief that she has appointed herself judge and jury and has determined that Robert Ricks was guilty of sexually abusing his children and that her client, Robin Ricks, was guilty of assisting him in his alleged crime. However, the respondent's findings in that regard are based solely upon her own personal perceptions of the evidence. No court of law or any prosecutorial authority has agreed with the respondent's view of the evidence. The respondent is accusing the Department of Health and Rehabilitative Services, the attorneys involved in the case, the guardian ad litems, and the entire judicial system of wrongdoing. The respondent is the one person responsible for her actions and placing the blame on

everyone else does not change the fact that what she did was unethical and violated the Rules Regulating The Florida Bar. While the respondent's motivation may be commendable, her actions were improper. In this case, the end does not justify the means.

During the final hearing in this disciplinary action, the referee heard all the evidence concerning the sexual abuse allegations against Robert Ricks and the respondent's defenses for her conduct. The referee listened to the testimony of all the witnesses, including the respondent, and judged their demeanor and credibility. The referee found the respondent guilty by her own admissions and testimony and did not accept the respondent's justifications as sufficient mitigation of guilt. There was no error in the referee's findings of fact or recommendations. The respondent is just unhappy that the referee did not agree with her personal opinions and evaluation of the Ricks case. It is the position of The Florida Bar that a disciplinary proceeding is not the proper forum to prosecute a sexual abuse case as the respondent has been attempting to do. The only issue to be considered by this Court is the respondent's misconduct for which she has admitted her guilt.

The rules provide for an assessment of costs against a respondent should a finding of guilt be entered. The same rules and recent case law provide that should a respondent prevail, costs can be awarded against The Florida Bar. In this case, the referee

recommended that the respondent be found guilty and, pursuant to the rules, recommended costs be assessed against the respondent. Further, the bar served upon the respondent preliminary, final, and amended affidavits of costs and therefore, the respondent was well aware of the costs the bar was seeking against her. There was nothing improper about the assessment of costs against the respondent or the amount or nature of the costs imposed.

ARGUMENT

ISSUE I

THERE IS SUBSTANTIAL COMPETENT EVIDENCE IN THE RECORD TO SUPPORT THE REFEREE'S FINDING OF GUILT WITHIN THE MEANING OF R. REGULATING FLA. BAR 4-1.2.

The respondent admits that she sent a letter and a copy of an unfiled motion entitled "Natural Mother's Motion For Custody of All Children" to the Executive Director of HRS in Tallahassee, Florida, without notifying her client, Robin Ricks. (RB p. 30; T.Vol.II p. 179). The respondent knew her client would not have permitted her to send the letter and motion to HRS because her client "just wanted HRS off her back and out of the case". (T.Vol.II pp. 145, 184). The respondent has admitted that in sending said letter and motion to HRS she was violating the code of conduct for attorneys. (T.Vol.II p. 185). Therefore, based in part upon the respondent's own admissions, it was proven by clear and convincing evidence that the respondent violated R. Regulating Fla. Bar 4-1.2(a) for failing to abide by a client's decisions regarding the objectives of representation.

The respondent argues that it was the bar's burden to show by clear and convincing evidence that she was guilty of violating Rule 4-1.2(a) subject to the provisions of Rule 4-1.2(d) which states, "a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent". The respondent claims that the bar failed to address Rule 4-1.2(d) during the final hearing and in doing so

the referee's finding in paragraph five of the referee's report regarding that rule are in error. However, it is the respondent's argument that is in error. During the final hearing, the following question was asked of the respondent by bar counsel:

> Q - Thank you ma'am. What criminal conduct was Ms. Glant (sic) asking you to assist her in the commission of?
>
> A - None. (T.Vol.II p. 176).

Bar counsel had inadvertently used the name "Glant" instead of "Ricks" as his question was, what criminal conduct was Ms. Ricks asking you (the respondent) to assist her in the commission of? The respondent claims at page 34 of her Amended Initial Brief that there was no mistake in the names as bar counsel was asking, what criminal conduct was the respondent assisting her client in the commission of? By using that context the respondent claims that was why she responded "None". Therefore, the respondent argues, the referee's reliance on that testimony is in error. It appears the court reporter understood that an incorrect name had been used and apparently, so did the referee. The respondent is again attempting to obscure the real issue in this case by providing her own interpretation of the testimony. Regardless, the respondent clearly stated her position to the referee regarding Rule 4-1.2(d):

> Your honor, I have only one sentence to say. Legal representation in the State of Florida and elsewhere does not equal to committing any crime your client tells you to. It's very specific in the Rules of Professional Conduct. If my client told me that she knew the sexual abuse was going on, I was the only person in a position to step in and help those children, I am bound by the Rules of Professional Conduct to do it, and I am not bound by my client's opinion, when in my opinion, she is

committing a crime. (T.Vol.II pp. 195-196).

It was the respondent's opinion that her client was engaging in criminal conduct and the referee appeared to find the respondent's reliance on Rule 4-1.2(d) to be misplaced. The referee also found that the bar had proven, by clear and convincing evidence, that the respondent violated Rule 4-1.2(a). The referee did not accept the respondent's opinions as fact and found that Rule 4-1.2(d) was not applicable in this case.

The respondent next disputes the referee's findings in paragraph two (2) of her report that "the sexual abuse allegations were not ultimately litigated by HRS due to HRS' belief of insufficient evidence to prove the sexual abuse allegations". The respondent argues that the referee only relied upon Jonathan Hewett's opinion of the sexual abuse evidence as the bar failed to have anyone from HRS who was involved in the Ricks case testify at the final hearing. Frankly, the bar felt testimony concerning the sexual abuse allegations and/or alleged evidence would be irrelevant in that the respondent had already admitted the misconduct for which she had been charged. The sexual abuse allegations were a part of the respondent's defense so, therefore, she could have subpoenaed individuals from HRS who were involved in the case to testify as to their perceptions of the evidence. In any event, the respondent herself testified during the final hearing as to what she learned about the reasons HRS did not pursue

Mr. Ricks for allegedly sexually abusing his children:

> And I recall as we were waiting for that hearing to occur that the HRS investigator who was an elderly man with white hair, heavy set--he was talking to the HRS attorney. He was saying, well, I don't know how we're ever going to prove this case because Michelle can't talk. It's like they had disregarded all the Child Protection Team evidence, all the testimony of the girl's foster parents, the bus driver, the medical evidence, everything. They just had it in their mind that they could not prove the case because Michelle was deaf and could not talk, and the child at this point in time was six years old, and when the attacks started, she was five. So they're saying they can't prove a case because a child under the age of six can't talk in court...(T.Vol.II p. 149).

Concerning a conversation the respondent had with Maureen Sullivan, the attorney for HRS, on July 16, 1991, the respondent testified:

> The first time I got ahold of her was 7-16, and I asked her if we could set the hearing for August. Okay? So I'm trying to set the hearing as quickly as I can, and she told me on our July 16th conversation that she did not want to hold a hearing, that the judge told her that he did not think there was enough evidence of sexual abuse and that he didn't--basically didn't want to hear it, so she did not want to set the hearing for August. She didn't want to do it. (T.Vol.II p. 150).

Based upon the testimony the referee accepted that HRS had chosen not to pursue the sexual abuse allegations against Mr. Ricks due to insufficient evidence. Clearly, the respondent was the only person who believed there was substantial evidence against Mr. Ricks of "rape and sexual torture of children under six". (T.Vol.II p. 182). This was the respondent's opinion based upon her own evaluation of the documents and records. If the respondent

believes the referee should not accept Mr. Hewett's opinions of the sexual abuse evidence, then why should the referee accept the respondent's opinions about the same evidence?

The respondent also takes issue with the referee's findings with respect to a memo she received from Jonathan Hewett in May, 1991, in which he forwarded Ms. Ricks' case to the respondent and explained the purposes of the representation. The respondent claimed during the final hearing that the memo in the CFLS file provided by Mr. Hewett was not the same memo she saw in May, 1991. It is her position the substance of the memo had been changed one or more times and that her testimony is unrebutted by the bar that the memo in the CFLS file was not the same memo she received when she was assigned the Ricks case. Thus, according to the respondent, the referee's finding with respect to the contents of that memo are based only on Mr. Hewett's testimony and are clearly erroneous or lacking in evidentiary support. The referee heard the respondent's position regarding the memo but the respondent did not have a copy of the original memo she claimed she saw. The respondent had no evidence that the memo had been changed or altered other than her own testimony. As a result, the referee apparently relied upon the memo as it was presented in the CFLS file. There was no error in the referee doing so. "The referee, as the finder of fact, properly resolves conflicts in the evidence". The Florida Bar v. Herzog, 521 So. 2d 1118 (Fla. 1988). The referee's findings of fact regarding the May, 1991, memo cannot be

said to be erroneous or lacking in evidentiary support given the respondent's total lack of evidence to support her claim. While the respondent asserts the bar did not present any evidence to rebut her claim about the memo, the respondent did not present any evidence in support of her claim.

In defending her conduct, the respondent has cited R. Regulating Fla. Bar 4-1.6(b)(2) which states, "a lawyer shall reveal such information to the extent the lawyer believes necessary to prevent a death or substantial bodily harm to another". The respondent has continually stated that her client, Robin Ricks, told her that she knew her children were being sexually abused by their father. That, together with the documentation, supposedly convinced the respondent the Ricks children, particularly the two girls, were in danger of being attacked by their father. (T.Vol.II pp. 181-182). However, Ms. Ricks never testified either before the grievance committee or during the final hearing that she knew her children were being abused by Mr. Ricks. During the grievance committee hearing on January 15, 1993, Ms. Ricks testified concerning her daughter Michelle:

> I believe that it's--anything's possible, you know, yeah. I believe something was happening. She was drawing lewd pictures. You know, I mean, she had to see it somewhere, I mean, but, you know, I can't say that I know because I don't know, you know". (T.Vol.I p. 38).

Grievance committee member Whiteman asked Ms. Ricks if she believed the sexual abuse allegations were true and whether she

communicated that belief to the respondent. Ms. Ricks replied, "More or less, yes". (T.Vol.I p. 38). However, during the final hearing, Ms. Ricks testified regarding her prior grievance committee testimony:

> A - Well, still, at that--you know, I mean, I didn't remember saying yes, but right now at this time do I think that it was happening or it's happening, no, I don't. And at that time, I may have told you during the hearing process that maybe I did think it was happening, but that was--didn't that just say Michelle, right?
>
> Q - You said she was drawing lewd pictures.
>
> A - Right. Michelle, right. That wouldn't have had anything to do with Charles or Johnny, would it? (T.Vol.I pp. 39-40).

Ms. Ricks testified that she did not seek custody of her two boys because she did not feel capable of taking care of all four children, her husband was threatening to "drag out" the custody proceedings if she did not agree to the custody arrangement, and she thought it was possible she could lose custody of the two girls if she sought custody of the two boys as well. (T.Vol.I pp. 35, 42-43). Apparently, those reasons were not sufficient for the respondent. Regardless, Ms. Ricks was not sure if Robert Ricks or anyone else had or was sexually abusing any of the children. Ms. Ricks testified that she did not believe the custody arrangement, with her having custody of the two girls and Mr. Ricks having custody of the two boys, would place any of the children in danger. (T.Vol.I p. 15). The custody arrangement for her children was Ms. Ricks' decision to make, not the respondent's.

In her brief, at page 39, the respondent lists seven reasons why she sent the letter and motion to HRS and the other governmental agencies. However, those reasons do not indicate why her doing so would prevent death or bodily harm to the children consistent with Rule 4-1.6(b)(2). The fact remains that the referee considered the respondent's position that under Rule 4-1.2(d) there could be no violation of Rule 4-1.2(a) in her case. The referee also weighed the respondent's defense under Rule 4-1.6(b)(2). However, the referee determined that the respondent's arguments in regard to those rules were insufficient, based upon the evidence, to absolve her of the misconduct for which she was charged. The respondent is asking this Court to retry this case. This is evident throughout her Amended Initial Brief where she continually reargues her case under the guise of addressing specific issues from the referee's report.

> This Court's review of a referee's findings of fact is not in the nature of a trial de novo in which the Court must be satisfied that the evidence is clear and convincing. The responsibility for finding facts and resolving conflicts in the evidence is placed with the referee. The Florida Bar v. Hoffer, 383 So. 2d 639 (Fla. 1980); The Florida Bar v. Hooper, 509 So. 2d 289 (Fla. 1987).

There was no error in the referee's findings of fact regarding Rules 4-1.2(d) and 4-1.6(b)(2) because they were based upon the respondent's own admissions and testimony as well as other substantial, competent evidence.

ISSUE II

THE REFEREE WAS NOT IN ERROR AS A MATTER OF FACT AND LAW IN REFUSING TO DIRECT A VERDICT IN FAVOR OF THE RESPONDENT.

During the final hearing, the respondent moved for a directed verdict. The referee heard the respondent's arguments and the bar's response and found that the bar had made a prima facie case and had met the burden of clear and convincing evidence with respect to the rule charged against the respondent, Rule 4-1.2(a). The referee denied the respondent's motion. (T.Vol.II p. 134). During closing arguments, the respondent renewed her motion for directed verdict. The referee ruled that having heard all of the evidence, she was denying the respondent's motion. (T.Vol.II p. 195). The respondent obviously disagrees with the referee's ruling on her motion for directed verdict and has decided to reargue it for this Court under Issue II of her brief. Again, the respondent wants this Court to substitute it's judgment for that of the referee's concerning the facts of this case.

> A referee's findings of fact are presumed correct and will be upheld unless clearly erroneous. The standard on review is whether those findings are supported by competent substantial evidence, and this Court will not substitute its judgment for the referee's. The Florida Bar v. Della-Donna, 583 So. 2d 307 (Fla. 1989).

The referee considered the respondent's arguments concerning her motion for directed verdict and heard the bar's response and determined there were insufficient grounds for granting the motion. This was similar to the bar's motion for summary judgment which,

earlier in this proceeding, the referee also denied after hearing both the bar's and the respondent's positions in the matter. In both instances, the referee rendered her decision based upon the evidence. It is the referee's responsibility to evaluate the evidence and rule on the pleadings and motions submitted. Inevitably, one party will not prevail. The respondent simply does not like the fact the referee denied her motion. In that regard, it is inappropriate for the respondent to, in effect, reargue her motion for a directed verdict before this Court.

ISSUE III

THE REFEREE WAS NOT IN ERROR AS A MATTER OF LAW IN FINDING THE RESPONDENT GUILTY OF VIOLATING R. REGULATING FLA. BAR 4-1.2(a).

In her amended initial brief, the respondent cites the comment sections to Rule 4-1.2 and 4-1.6 as well as case law in support of her position that she was justified in sending the letter and motion to HRS because Robert Ricks was sexually abusing his children and she was trying to prevent further harm to the children at the hands of their father. She has also condemned her own client as participating in criminal acts because Ms. Ricks did not want to request custody of her two boys and was going to allow visitation by Mr. Ricks with the two girls. However, the referee made specific findings of fact based, in large part, upon the respondent's own testimony that 1) the respondent sent the letter and motion to HRS; 2) that the respondent knew her client only wanted HRS supervision over her family to be terminated; and 3) that the respondent knew by sending the letter and motion to HRS that she was not abiding by her client's objectives of the representation in violation of Rule 4-1.2(a). Although the respondent has admitted she is guilty of the misconduct charged, she asserts that the referee has committed some error in her findings that the respondent is guilty of the misconduct charged.

Pursuant to R. Regulating Fla. Bar 3-7.5(k)(1)(A), the referee's findings of fact "shall enjoy the same presumption of

correctness as the judgment of the trier of fact in a civil proceeding".

> The presumption of correctness of the judgment of a trier of fact in a civil proceeding prohibits the appellate court from reweighing the evidence and substituting its' judgment for that of the trier of fact. Hooper, supra. (At p. 291).

Despite the respondent's admissions that her conduct violated Rule 4-1.2(a), she does not believe that what she did was wrong. The respondent wants this Court to change the facts and find that she was justified in her conduct.

In a recent bar disciplinary case, another attorney was found guilty of engaging in conduct against his client's wishes. In The Florida Bar v. Hayden, 583 So. 2d 1016 (Fla. 1991), the attorney was representing the wife in an uncontested dissolution of marriage action. Despite his client's instructions to the contrary, the attorney pursued a contempt action against the former husband for non-payment of an alimony judgment. His client had specifically told him not to pursue a contempt action. The referee found that the attorney had used the contempt action as leverage against them in order to force them to pay his attorney's fees. The divorce judgment did not include a provision for payment of his fees. The Court found that the attorney had a prior disciplinary record and together with the intentional nature of the attorney's conduct and his selfish motivation, the Court ordered that the attorney receive a six (6) month suspension.

It could be argued that the Hayden case should be distinguished from the instant matter in that the respondent in this case was not acting selfishly as she was only concerned about the welfare of the children. However, the bar asserts that the respondent's motivation may tend to mitigate her misconduct but does not excuse it.

In its prosecution of this case, the bar has tried to prevent these proceedings from being turned into an indictment of Central Florida Legal Services, the Department of Health and Rehabilitative Services and the entire judicial system. However, the respondent has attempted to do just that by having the referee and this Court make a determination of guilt concerning the sexual abuse allegations against Robert Ricks. Such a finding is beyond the scope of a bar disciplinary proceeding. At page 47 of her brief, the respondent surmises that there have been no other cases concerning whether an attorney should disclose information to prevent the crime of sexual battery on children because "everyone in the legal universe, with the exception of The Florida Bar and the referee in this case, recognizes that sexual assault of children is a crime which is to be prevented". The Florida Bar agrees that sexual assault of children is a crime which is to be prevented but the fact is, no court of law or any authority has charged or convicted Robert Ricks of sexually abusing any of his children. No one, other than the respondent, has suggested that Robin Ricks is guilty of a crime by allowing her husband to

sexually abuse their children. Only the respondent, based upon her own evaluation of the documents and records, believes there is "overwhelming evidence against the father". (RB p. 28). Surely if the evidence was so overwhelming, at least one of the many people involved in the Ricks case would have agreed with the respondent and pursued prosecution of Robert Ricks for sexually abusing his children. The respondent could not explain why she was the only one who thought the evidence showed Mr. Ricks had been sexually abusing his children other than to suggest "federal corruption" or some sort of conspiracy by the persons involved in the Ricks case. (T. Vol. II pp. 183, 187).

Again, the real issue in this case is not whether Robert Ricks should be prosecuted for sexually abusing his children. The issue is whether the respondent's conduct violated the Rules Regulating The Florida Bar. The respondent admitted that her conduct did violate the rules and the referee made that finding. Because the respondent has violated the rules, a discipline should be imposed. The referee recommended the respondent receive a public reprimand and the bar agrees that such a discipline would be in accordance with the purposes of attorney discipline. Those purposes were enumerated in The Florida Bar v. Lord, 433 So. 2d 983, 986 (Fla. 1983) and its progeny which state that the judgment should be fair to society, fair to the attorney, and that it will sufficiently deter other attorneys from engaging in similar misconduct. There are no errors by the referee in fact or law for this Court to

remedy in that the referee's findings and recommendations were based upon clear and convincing evidence.

ISSUE IV

THE REFEREE RECOMMENDED THAT COSTS BE ASSESSED AGAINST THE RESPONDENT PURSUANT TO THE RULES REGULATING THE FLORIDA BAR AND THEREFORE, THE FLORIDA BAR DID NOT FAIL TO PLEA ENTITLEMENT TO COSTS NOR DID THE FLORIDA BAR WAIVE SAID COSTS.

ISSUE V

IT WAS WITHIN THE REFEREE'S DISCRETION TO ASSESS COSTS AGAINST THE RESPONDENT IN THE AMOUNT OF $3,310.18.

At the conclusion of the final hearing on October 4, 1993, the referee brought up the subject of the assessment of costs. The referee specifically stated that she was reserving ruling on the violation charged against the respondent but that if a violation was found, the cost issue would have to be addressed. The referee stated:

> I do not believe it would be judicial economy or economic for anyone to come back to address that matter, and I would like to know if we can address what would be the cost to be assessed in the event the Referee finds a violation--guilty of a violation here. (T.Vol.II pp. 196-197).

Bar counsel advised the referee that he had provided the respondent with a preliminary affidavit of the bar's costs which would need to be updated and finalized. Bar counsel submitted to the referee the preliminary affidavit of costs "in an effort of judicial economy". (T.Vol.II pp. 197-198). On October 15, 1993, bar counsel submitted to the referee and the respondent a final affidavit of costs and on October 25, 1993, submitted an amended affidavit of costs. In the referee's report, she recommended costs be assessed against the respondent and she utilized the costs as

listed in the bar's amended affidavit of costs.

The respondent was provided with copies of three separate affidavits of costs which kept her apprised of the costs the bar intended to seek against her. The referee indicated that she did not want to conduct another hearing to decide costs and accepted the bar's affidavits of costs as the costs to be assessed should a guilty recommendation be entered against the respondent. R. Regulating Fla. Bar 3-7.5(k)(1)(E) states that the report of referee shall include "a statement of costs incurred by The Florida Bar and recommendations as to the manner in which such costs should be taxed". In this case, the referee recommended that costs be taxed against the respondent in the amount of $3,310.18.

The respondent cites several civil cases to support her claim that because the bar did not specifically include a plea for costs in the complaint or affirmatively plea for costs before the referee rendered her decision, then the bar has waived entitlement to costs. The respondent's reliance on the civil case law is misplaced. In The Florida Bar v. Davis, 419 So. 2d 325 (Fla. 1982), the Court stated in addressing whether costs were to be assessed in favor of the bar:

> We have set no hard or fast rules relative to the assessment of costs in disciplinary proceedings. In civil actions the general rule in regard to costs is that they follow the result of the suit, and in equity the allowance of costs rests in the discretion of the court.
>
> We hold that the discretionary approach should be used in

disciplinary actions. (At p. 328).

The discretionary approach is the standard established by this Court for assessing costs in bar disciplinary cases. This Court has also held that while the referee has the discretion to recommend assessment of costs, the Court has the final authority to assess costs and only those costs specifically identified in the Rules Regulating The Florida Bar may be assessed against either the respondent or The Florida Bar. The Florida Bar v. Bosse, 609 So. 2d 1320 (Fla. 1992); The Florida Bar v. Chilton, 616 So. 2d 449 (Fla. 1993). The respondent claims that The Florida Bar has made no plea for costs and that there is no "statute, rule or case cited for the basis of respondent's liability for The Florida Bar's costs". (RB p. 48). The Rules Regulating The Florida Bar and recent case law provide that either the respondent or The Florida Bar may be held liable for costs in a bar disciplinary matter. It is left to the discretion of the referee and the Court to determine against which party costs will be assessed.

In this case, the referee received the bar's three affidavits of costs and the respondent's objections to The Florida Bar's affidavit of costs filed by the respondent on November 8, 1993. In her discretion, the referee determined that the costs as enumerated by the bar should be assessed against the respondent. The respondent argues that the bar only provided a summary of the costs without records that detail "each cost, the description of the

service requiring the costs, the subject matter of the service, the day, month, and year the service was rendered, and the individual performing the service". (RB p. 51). The bar has only charged the costs allowed by R. Regulating Fla. Bar 3-7.5(k)(1)(E) which specifically limits costs to:

> Investigative costs, including travel and out of pocket expenses, court reporter's fees, copy costs, witness and traveling expenses, and reasonable traveling and out of pocket expenses of the referee and bar counsel, if any. Costs shall also include a $500.00 charge for administrative costs.

In her objection to the bar's affidavits of costs, the respondent determined what costs she felt were too vague, not itemized properly, excessive or unnecessary. Apparently, the referee did not agree with the respondent because she assessed costs against the respondent pursuant to the bar's affidavits of costs. It was well within the referee's discretion to determine the bar's entitlement to costs, the type of costs and amount assessed. Therefore, the respondent's arguments in that regard are without merit.

CONCLUSION

Under the Rules Regulating The Florida Bar an attorney shall abide by a client's objectives of the representation. However, attorneys, as officers of the court, have a duty not to assist a client in conduct that the attorney knows or reasonably should know is criminal. Attorneys are also obligated to protect their clients' interests and respect their wishes so long as it is within the bounds of the law. Whether a client's conduct is within the parameters of the law is a determination the attorney must reasonably make based upon his or her evaluation of the circumstances. One must question the reasonableness of the respondent's conclusions in this case inasmuch as no court or prosecutorial authority has concurred with her findings. In this case, the respondent took it upon herself to determine that her client's wishes regarding the representation were not within the bounds of the law and that Robert Ricks was guilty of sexually abusing his children. The respondent's motivation of preventing child abuse is admirable and a worthwhile cause. The problem is, the respondent effectively abandoned her client to pursue what had apparently become her own personal vendetta against Robert Ricks. The bar suggests that perhaps the respondent lost her objectivity and her ability to distinguish between being an advocate for a cause and an advocate for her client. Regardless, the respondent has admitted her misconduct and should be appropriately disciplined. Just because the respondent believed she was justified in her conduct, does not excuse it nor does it make it

right.

WHEREFORE, The Florida Bar respectfully requests that this Honorable Court approve the referee's findings of fact and recommendations as to guilt and order the respondent receive a public reprimand, a six (6) month period of probation with the conditions of probation as recommended by the referee, and that the respondent pay the bar's costs in prosecuting this case.

Respectfully submitted,

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BY: _____
LARRY L. CARPENTER
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing Answer Brief and Appendix have been sent 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 regular U.S. mail to respondent, Susan K. Glant, at 4118 N.W. 69th Street, Gainesville, Florida, 32606; 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 18th day of February, 1994.

LARRY L. CARPENTER
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

SUSAN K. GLANT,

Respondent.
_____/

Case No. 81,757
[TFB Case No. 92-30,837 (07B)]

APPENDIX TO COMPLAINANT'S ANSWER BRIEF

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INDEX

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,

Complainant, CASE NO. 81,757

v.

Susan K. Glant,

Respondent

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 dates: August 27, 1993; October 4, 1993.

The following attorneys appeared as counsel for the parties:
For the Florida Bar: Larry L. Carpenter, Esquire - Bar Counsel
For the Respondent: Susan K. Glant, Esquire - Pro Se

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 Count I

1. That in May 1991, Respondent, who had been a Staff of Attorney for Central Florida Legal Services in Palatka, Florida, for approximately one month, was assigned to represent Mrs. Robin Elwarthy, formerly Mrs. Robin Ricks, in a juvenile dependency action involving the four minor children of Mr. and Mrs. Ricks. [Transcript October 4, 1993, Pgs. 9, 59]

2. Mrs. Elwarthy procured the services of Central Florida Legal Services to assist her in terminating supervision of her children by the Department of Health and Rehabilitative Services (HRS) and to retain custody of her two girls, after all four children had been removed from the father's home, due to allegations by anonymous informant of sexual abuse of one or more of the children. The sexual abuse charges were not ultimately litigated by HRS due to Hrs' belief of insufficient evidence to prove the sexual abuse allegations. [Transcript October 4, 1993, P 59, 60, 67, 80, 97-114]

3. When Respondent was assigned the case, she was provided information by memo regarding the purpose of her

representation, which was to attend a court hearing in June 1991, and to present to the Court a recommendation and proposed Order for a closure to terminate jurisdiction, to terminate HRS' supervision and retain current custody status per agreement, the two girls with mother and the two boys with father. [October 4, 1993, Transcript pgs. 67-68; Respondent Exhibits 1 & 6]

4. Respondent was aware of her client's desires and the purpose for which Legal Services represented this client. Further, Respondent concedes she did not consult with her client prior to mailing a letter to HRS in Tallahassee requesting further investigation of its case, with a copy of an unfiled the motion for custody modification. Further, the Respondent concedes that she mailed a copy of this letter to the United States Attorney General's Office in Washington, D.C., Governor Lawton Chiles, and State Attorney's Office of the Eighth Judicial Circuit. [Transcript October 4, 1993, Pgs. 5, 131, 145, 173, 179, 184] [See also, Complainants Exhibits 1, 2 & 3]

5. The Respondent believed she was obligated to send the letter and motion to HRS pursuant to Chapter 4, Section 1.2(d) Rules and Regulating The Florida Bar and Chapter 4, Section 1.6(b)(2). However, Respondent could not identify what criminal or fraudulent conduct she would have assisted her client in engaging or what criminal conduct her client had or was about to engage. The Respondent could not articulate how she believed mailing the letter and motion to HRS and the various governmental offices could have prevented death or substantial bodily harm to the Ricks' children, except to the extent she personally believed continued supervised visitation of the girls by the father would avoid sexual abuse. [Transcript October 4, 1993, pgs. 158, 176, lines 11-14, 80, 97-114, 162- 164, 179-183, 185-188. See also Respondent's Exhibits 2-5]

6. The Respondent conceded she could have withdrawn, and terminated her representation of the client pursuant to Rule 4-1.16,, Rules Regulating The Florida Bar, but chose not to do so. [Transcript October 4, 1993, pgs. 158, 159]

7. The Respondent requested this Referee take Judicial Notice of Court Juvenile Dependency cases 89-654, 655, 656, and 657 CJ, and Complainant having posed no objections to the request. The Referee in reviewing the files in reference to Respondent's defense for her conduct in this matter, attaches the Motion For Review of Placement filed December 17, 1990, Dependency Review, Minutes of Clerk, January 23, 1991, Order on Judicial Review, February 27, 1991, Dispositional Order on Judicial Review, March 28, 1991, and Circuit Court Order of October 1, 1991.

III. Recommendation as to Whether or Not the Respondent Should Be

Found Guilty:

As to Count I (Violation of Rule 4-1.2(a))

I recommend that the Respondent be found guilty and specifically that she be found guilty of Rule of Professional Conduct 4-1.2(a) for failing to abide by her client's decision regarding the objections of Respondent's Representation. Although Respondent's motives are acceptable and understandable, her conduct was in contradiction to conduct required under Rule 4-1.2(a). Additionally, Respondent unequivocally states that she would engage in the same conduct under the same circumstances.

IV. Recommendations as to Disciplinary Measures to be Applied: I recommend that the Respondent receive a public reprimand and be placed on probation for a period of six (6) months as provided in Rule 3-5.1(c) and 3-5.1(d), Rules of Discipline. Terms of probation recommended are as follows: The respondent shall provide proof of successfully completing a course in legal ethics, and respondent shall provide proof of payments of costs as set forth herein. Upon satisfactory compliance with the terms of probation it is recommended that respondent's probation be terminated.

It is further Ordered that any and all portions of this report, along with any and all documents filed in this cause which relate to the minor children referred herein, their identities, and allegations of sexual misconduct be sealed.

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)(d), I considered the following prior disciplinary record of the respondent, to-wit:

Prior disciplinary convictions and disciplinary measures imposed therein: None

Age: 43

Date admitted to Bar: 1984

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

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

1.	Transcript Costs	$ 371.50
2.	Bar Counsel Travel Costs	$ 56.00

Costs incurred at the referee level as reported by bar counsel:

1.	Transcript Costs	$ 982.20

2. Bar Counsel Travel Costs	$ 56.00

Costs incurred at the referee level as reported by bar counsel:

1. Transcript Costs	$ 982.20
2. Bar Counsel Travel Costs	$ 246.43
Administrative Costs	$ 500.00
Miscellaneous costs	
Investigator Expenses	$1,154.05
TOTAL ITEMIZED COSTS	$3,310.18

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 November 15, 1993.

Referee

Certificate of Service

I hereby certify that a copy of the above report of referee has been served on Larry L. Carpenter, Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801; Susan K. Gant, at 4118 N.W. 69th Street, Gainesville, Florida 32606; and Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 15th day of November, 1993.

Judicial Assistant