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SUSAN K. GLANT,

Petitioner/Respondent,

vs.

THE FLORIDA BAR,

Respondent/Complaintant.

IN THE SUPREME COURT OF FLORIDA

Case No. 81,757

PETITIONER'S REPLY BRIEF

The Florida Bar vs. Susan K. Glant
(Before A Referee)
TFB No. 92-30,837 (07B)

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS.....i

TABLE OF CITATIONS.....i

STATEMENT OF THE CASE.....1

ARGUMENT.....2

CONCLUSION.....9

CERTIFICATE OF SERVICE.....9

TABLE OF CITATIONS

CASES

Altchiler vs. State of Florida Department of Professional Regulation, 442 So.2d 349 (Fla. 1st DCA 1983).....1

The Florida Bar v. McClure, 575 So.2d 176 (Fla. 1991).....7

The Florida Bar v. Davis, 419 So.2d 325 (Fla. 1982).....8,9

Stockman v. Downs, 573 So.2d 835 (Fla. 1991).....9

STATUTES

Florida Statutes §57.105.....4,7

RULES REGULATING THE FLORIDA BAR

Rule 4-1.16.....4

Rule 4-1.2(a).....5

Rule 4-1.2(c), (d) and (e).....5,6

Rule 4-1.6(b)(2).....4,8

Rule 4-3.3(a)(1).....1,5,7,8

STATEMENT OF THE CASE

THE FLORIDA BAR stated that"on August 13, 1993, the bar filed a Motion For Summary Judgment and the respondent responded to same on August 27, 1993", page 4 of the Answer Brief. This statement is erroneous.

THE FLORIDA BAR did file a Motion For Summary Judgment on August 13, 1993 (Appendix 19, pages 680-708). The Petitioner filed her Response To Motion For Summary Judgment on August 25, 1993 (Appendix 20, pages 709-716). The Respondent's memorandum of law on the Motion For Summary Judgment, incorrectly titled "Respondent's Memorandum Of Law On Motion To Dismiss" was filed on August 27, 1993. The error in the title on the memorandum of law was corrected at the hearing on the motion for summary judgment (Appendix 21, page 763) and by written memo to the Court on August 28, 1993 (Appendix 21, page 721).

THE FLORIDA BAR states that the Petitioner/Respondent has included "documents in her appendix that were not part of the record", page 6 of the Answer Brief. THE FLORIDA BAR does not cite to a single document in the Appendix prepared by the Petitioner which is not part of the record. Furthermore, THE FLORIDA BAR's Motion To Strike Respondent's Initial Brief does not state that the Petitioner included in the appendix documents that were not part of the record. Therefore, this statement in the brief would be clearly erroneous, except that if a brief is stricken based on an appendix which contains material outside the record, and the amended brief contains the same material, the attorney is subject to criminal contempt of court, Altchiler vs. State of Florida Department of Professional Regulation, 442 So.2d 349, 350 (Fla. 1st DCA 1983). THE FLORIDA BAR has intentionally made a false statement of material fact to the tribunal in violation of Ethics Code, rule 4-3.3(a)(1), in order to subject the Petitioner to criminal contempt of court.

ARGUMENT

The Petitioner/Respondent, SUSAN K. GLANT, represented the natural mother in a single juvenile dependency hearing on June 27, 1991. The Petitioner first talked with the mother on June 12, 1991, regarding the custody of her four children. During the course of the office conferences prior to the final hearing on June 27, 1991, the natural mother confided in her attorney, the Petitioner, that she knew her ex-husband had sexually molested her children:

> my client told me that she basically knew it was going on, but that the abuse would stop since her ex-husband had gotten himself a new woman. (Appendix 11, page 500). Testimony before the Grievance Committee on January 15, 1993.

See also Appendix 24, pp.923-4, 935-6, 937-8, 954-5, 958-9, 962-3, 966.

The natural mother told the Grievance Committee that she had communicated this fact to her attorney (Appendix 11, page 441):

MR. WHITEMAN: Did you ever tell Ms. Glant that you believed that the sexual allegations were true?

MS. ELWORTHY: 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.

MR. WHITEMAN: I'm not asking you whether---

MRS. ELWORTHY: Right.

MR. WHITEMAN: ---it's true or not, I'm asking whether---

MS. ELWORTHY: Yeah.

MR. WHITEMAN: ---you believed that it was true and you communicated that to your attorney, your belief.

MS. ELWORTHY: More or less, yes.

The natural mother testified at the Grievance Committee hearing that she allows her daughers to visit her ex-husband (Appendix 11, page 417):

MS. ELWORTHY: Oh, okay. Well, my husband has custody of the two boys, my ex-husband, and I have custody of the two girls, and they just, like, rotate visits and stuff like that.

In preparing for the hearing on June 27, 1991, and in the two 1/2 weeks following, it became apparent to the Petitioner that the Department of Health & Rehabilitative Services (herein after referred to as "HRS") intended never to present evidence to the court regarding the sexual abuse of the children while at the same time placing the children in a "high risk" category for further abuse, and was aware of death threats that the father had made if HRS took the children away from him (Appendix 11, page 464, 466, 479; App.24,p.148; App.24,p.1028, 1050). As quoted by THE FLORIDA BAR in their brief on page 17:

> 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 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...(Appendix 24, page 927).

Michelle Ricks (D.O.B. 10-7-84) was four years old when HRS received the first report that she was sexually acting out in shelter on 8/22/89 (Appendix 16, page 583). At that time she was "not able to communicate verbally because she is severly hearing impaired" (Appendix 16, page 583). At the time of the second attack in October 1990, Michelle had "only achieved sign language comparable to the communications skills of a hearing child of fourteen to sixteen months of age. Therefore, she was not capable of understanding or communicating except on a very rudimentary level" (Appendix 16, page 605). At the final hearing on the case on October 11, 1991, Michelle Ricks was the sole witness called by HRS to testify regarding the sexual abuse allegations against the father (Appendix 24, pages 855-856). By this time she had achieved sign language skills of the "approximate language level of a two-to-three year old child" (Appendix 27, page 1002). This Court may choose to ignore the fact that the mother told her attorney that she knew her husband had sexually assaulted her children, and the HRS documents, Child Protection Team Reports, eye witness reports, etc. in the case file as THE FLORIDA BAR has done, but the one fact that this Court may not

ignore is that HRS intentionally called the one witness they knew who could not testify to prove a case of sexual assault: Michelle Ricks, age 6, the profoundly deaf child who was unable to communicate even in sign language. The reason that "no court of law or any authority has charged or convicted Robert Ricks of sexually abusing any of his children" as THE FLORIDA BAR contends on page 26 of their brief: HRS has intentionally and knowingly covered up the evidence in this case.

The issue in this case is not the Petitioner's personal vendetta for a change of child custody as THE FLORIDA BAR states on pages 20 and 33 of their brief, but rather what action is an attorney to take when he or she realizes that their client is either assisting or complacent in allowing their children to be exposed to further sexual abuse and the local authorities are doing nothing to prevent it (by filing for a termination of parental rights). As stated by the Petitioner at trial, the attorney can either withdraw as the client's counsel pursuant to Rule 4-1.16 (Appendix 24, page 936) or reveal such information to the extent the lawyer believes necessary to prevent a death or substantial bodily harm to the children pursuant to Rule 4-1.6(b)(2). THE FLORIDA BAR has succinctly stated their position in this matter: if the attorney blows the whistle on the local HRS authorities by reporting the obvious manipulation of the case to their superiors, that attorney faces prosecution and possible disbarment. This case has progressed far beyond the complete lack of justicible issue of law or fact standard in Florida Statutes 57.105. THE FLORIDA BAR is actively assisting in HRS's cover up of a child sexual abuse case.

THE FLORIDA BAR repeatedly states in their Answer Brief that the Petitioner has admitted that she is guilty of an ethics violation, "the respondent has admitted that in sending said letter and motion to HRS she was violating the code of conduct for attorneys", Answer Brief page 14, see also pp. 11, 12, 16,

24, 27, 33. The only support THE FLORIDA BAR cites in the record for the Petitioner's admission of guilt is T. Vol.II p.185 (Appendix 24,page 963):

> THE COURT: All right. And in sending the letter, you realized it could have subjected you to a violation or alleged violation--
>
> MS. GLANT: Certainly.
>
> THE COURT: --of the Code of Conduct for Attorneys.
>
> MS. GLANT: Certainly.

The Petitioner has never admitted that she is guilty of a violation of the codes of professional conduct (Appendix 10, p.289; Appendix 11, p.469-70; Appendix 19, p.691). THE FLORIDA BAR knows this fact, yet deliberately misleads the Court by citing to a portion of the testimony which does not state what THE FLORIDA BAR quotes it for.

The Petitioner's admission that she sent the letter, documents and a copy of the unfiled Natural Mother's Motion For Custody Of All Children to Bob Williams, Executive Director of HRS, without notifying the client is not an admission to a violation of Rule Regulating The Florida Bar 4-1.2(a) since Rule 4-1.2(a) is subject to Rules 4-1.2(c), (d) and (e). THE FLORIDA BAR admits that it considers Rules 4-1.2(c), (d) and (e) to be irrelevant, Answer Brief page 16. This is a material mistake of the law since Rule 4-1.2(a) explicitly states that "a lawyer shall abide by a client's decisions regarding the objectives of representation, SUBJECT TO PARAGRAPHS (c), (d) and (e), emphasis added. But, once again, a clearly erroneous statement of the law rises to an intentional false statement of material fact to the tribunal in violation of Rule 4-3.3(a)(1). THE FLORIDA BAR has repeatedly stated that the Petitioner believed that she was obligated "to sent the letter and motion to HRS pursuant to R. Regulating Fla. Bar 4-1.2(d)", Answer Brief, pp.9-10, 15, 16, 21. THE FLORIDA BAR has represented to this Court that "the respondent clearly

stated her position to the referee regarding Rule 4-1.2(d), emphasis added, and then cites the Petitioner's closing argument on T.Vol.II pp.195-196 (A.24,p.973-4) Answer Brief p.15. THE FLORIDA BAR did not address Rule 4-1.2(d) during the trial and never asked either the Petitioner or any other witness to state their position regarding Rule 4-1.2(d) (Appendix 24, pp.908-911, 970-973).

Paragraph #16 of THE FLORIDA BAR's Complaint reads"the court was aware of the allegations that the father had sexually abused his children but the charges were never proven due to inconclusive evidence" (Appendix 8, p.267). The Court never testified in this case:

> MR. CARPENTER: Your Honor, if I might, Ms. Glant has brought it to my attention the Florida Bar was served with Interrogatories, and the Interrogatories were responded to prior to my deciding to call Judge Mathis, and in asmuchas I did not amend the Interrogatories or advise Ms. Glant that I would be calling the judge, I think it is more prudent if the Florida Bar foregoes calling Judge Mathis as a witness (Appendix 24, p.892).

At trial this material allegation of THE FLORIDA BAR's Complaint evolves into "the sexual abuse allegations were not ultimately litigated by HRS due to HRS's belief of insufficient evidence to prove the sexual abuse allegations" (Appendix 30, page 1019). THE FLORIDA BAR called no witness from HRS at the trial of this cause to testify why or why not the sexual abuse allegations were not brought. There is no direct evidence on the record to support either the original allegation in paragraph #16 of the Complaint or the finding of the referee as to what HRS believed regarding the sufficiency of the evidence. In response to the Petitioner's argument that THE FLORIDA BAR failed to prove a material allegation of their Complaint, THE FLORIDA BAR informed this Court that it was the Petitioner's burden of proof to show why HRS did not bring the case to trial:

> 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 subpoened individuals from HRS who were involved in the case to testify as to their perceptions of the evidence (emphasis added), Answer Brief page 16.

This patently ridiculous statement by THE FLORIDA BAR rises tothe level of a a complete lack of justicible issue of law or fact, Fla. Stat. 57.105. It is THE FLORIDA BAR's burden of proof to show by clear and convincing evidence the material allegations of their Complaint, The Florida Bar v. McClure, 575 So.2d 176, 177-8 (Fla. 1991). THE FLORIDA BAR has failed to present any evidence as to paragraph #16 of their Complaint.

In arguing that the charges were never pursued by HRS due to inconclusive evidence, THE FLORIDA BAR states (Answer Brief page 27):

> 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) (Appendix 24, pp. 961, 965).

Again, THE FLORIDA BAR's argument on this point transcends a complete lack of justicible issue of law or fact and becomes an intentional false statement of material fact to the tribunal in violation of Rule 4-3.3(a)(1). The Petitioner expressly testified that she did not think a conspiracy was involved (Appendix 24, pp.965-966):

> Q Let me ask a question -- one last question and then I'll quit, Your Honor. Based on the number of people you have just included in this conspiracy, for lack of a better term --
>
> A I can't explain their behavior, Mr. Carpenter.
>
> Q Okay.
>
> A I cannot explain the Court's behavior. I can't explain Jonathan Hewett's behavior who sat there and told you that everything I listed to him was no evidence whatsoever.

Q Did you personally consider this a conspiracy?

A No. Why would I? I had no idea. I was here for two weeks. How would I know it was going on? All I know is that I stood up in court, and there was no one -- HRS, the judge -- no one who had access to these documents who took up or said anything in behalf or those children. There was no one. How would I -- I mean, I had just come to Central Florida Legal Services, and I was gone within a week after this happened.

In arguing for the referee's finding that the Petitioner could not articulate how mailing the letter and motion to HRS and the various government offices could have prevented death or substantial bodily harm to the Rick's children, except that supervised visitation by the father would avoid sexual abuse (Appendix 30, page 1030, paragraph 5), THE FLORIDA BAR states on page 21 of their Answer Brief:

> 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).

If termination of the parental rights of John Ricks by HRS and prosecution (and incarceration) by the State Attorney's Office would not prevent further abuse of the children at the hands of their father, then no reason can be listed under Rule 4-1.6(b)(2). THE FLORIDA BAR's argument that the reasons listed by the Petitioner on page 39 of her brief do not indicate how her actions would prevent death or substantial bodily harm is an intentional false statement of material fact to this Court in violation of Rule 4-3.3(a)(1). It is consistent with THE FLORIDA BAR's position that Rule 4-1.2(d) is irrelevant to this case, and that child sexual abuse is not a crime. Otherwise, THE FLORIDA BAR would not advance material misrepresentations of law and fact "to sufficiently deter other attorneys from engaging in similar misconduct", page 27 of the Answer Brief.

THE FLORIDA BAR's reliance on The Florida Bar v. Davis, 419 So.2d 325 (Fla. 1982) for the proposition that THE FLORIDA BAR did not fail to plea entitlement to costs is misplaced, page 30 of the Answer Brief. Davis holds that the referee may use discretion regarding the amount of costs to be assessed against an attorney

in a discliplinary proceeding, not whether THE FLORIDA BAR is absolved from including a pleas for costs in their Complaint. THE FLORIDA BAR's waiver of costs by failing to plea them is governed by Stockman v. Downs, 573 So.2d 835, 837-8 (Fla. 1991).

CONCLUSION

The Petitioner requests that this Court reverse the recommendation of the referee and the Board of Governors of the Florida Bar, and dismiss the Complaint and assessment of costs as a matter of law, and for the fact that THE FLORIDA BAR has failed to prove by clear and convincing evidence that the Petitioner is guilty of a violation of the Rules Regulation the Florida Bar.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief has been furnished by U.S. Mail to Larry Carpenter, THE FLORIDA BAR 880 North Orange Avenue, Suite 200, Orlando, Florida 32801; and to John Harkness, Executive Director, THE FLORIDA BAR, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 28th day of February 1994.

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