047

IN THE SUPREME COURT OF FLORIDA

FILED 10/3
SID J. WHITE
SEP 11 1995
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

THE FLORIDA BAR,

Complainant,

v.

DIANE S. SEGAL,

Respondent.
_____/

Supreme Court Case
No. 83,352

Complainant's Answer Brief and Initial Brief

On Cross-Petition for Review

RANDI KLAYMAN LAZARUS
Bar Counsel
TFB #360929
The Florida Bar
444 Brickell Avenue
Suite 211
Miami, Florida 33131
(305) 377-4445

JOHN T. BERRY
Staff Counsel
TFB #217395
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 222-5286

JOHN F. HARKNESS, JR.
Executive Director
TFB #123390
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 222-5286

ORIGINAL

TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS	i-ii
TABLE OF AUTHORITIES	iii-iv
INTRODUCTION	v-vi
STATEMENT OF THE CASE AND OF THE FACTS	1-24
SUMMARY OF ARGUMENT	25
POINTS ON APPEAL	26
ARGUMENT	27-46
I **THE REFEREE'S FINDINGS OF FACT ARE SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE (RESTATED)**	27
II **THE REFEREE ABUSED HIS DISCRETION WHEN HE RECOMMENDED THAT RESPONDENT'S "RESIGNATION" BECOME EFFECTIVE ON JULY 31, 1995 RATHER THAN ON NOVEMBER 3, 1994 (RESTATED)**	36
III **(Complainant's First Argument on Cross-Petition)** **THE REFEREE'S DISCIPLINARY RECOMMENDATION THAT RESPONDENT SHOULD BE PERMITTED TO RESIGN FROM THE FLORIDA BAR IS ERRONEOUS AND RATHER THE RESPONDENT SHOULD BE DISBARRED**.....	37
IV **(Complainant's Second Argument on Cross-Petition)** **THE REFEREE'S FAILURE TO AWARD THE FLORIDA BAR COSTS SUBSEQUENT TO THE DATE RESPONDENT SUBMITTED A LETTER OF RESIGNATION TO THE FLORIDA SUPREME COURT WAS ERROR**	45

CONCLUSION 47

CERTIFICATE OF SERVICE 48

APPENDIX 49

INDEX TO APPENDIX 49

TABLE OF AUTHORITIES

	PAGE
Obanion v. State, 504 So.2d 768 (Fla. 3rd DCA 1986)	35
Richard v. Kaney, 490 So.2d 1299 (Fla. 5th DCA 1986)	34
The Florida Bar v. Isis, 552 So.2d 913 (Fla. 1989)	38
The Florida Bar v. Kleinfeld, 648 So.2d 698 (Fla. 1995)	40
The Florida Bar v. McShirley, 573 So.2d 807 (Fla. 1991)	45
The Florida Bar v. Rightmyer, 616 So.2d 953 (Fla. 1993)	40
The Florida Bar v. Thomas, 582 So.2d 1179 (Fla. 1991)	27
The Florida Bar v. Weinstein, 624 So.2d 261 (Fla. 1993)	40
The Florida Bar v. Winderman, 614 So.2d 484 (Fla. 1993)	27
Wilson v. Renfroe, 91 So.2d 857 (Fla. 1957)	34

Other Authorities:

Rules Regulating The Florida Bar

Rule 1-3.2(c)	38
Rule 1-3.5	38
Rule 3-7.12	20, 37
Rule 4-3.3(a)(1)	20, 37
Rule 4-3.4	20

Florida Standards for Imposing Lawyer Sanctions

Standard 5.11(f) 41
Standard 6.11 40
Standard 9.22(b) 23, 43
Standard 9.22(f) 21, 43
Standard 9.22(g) 23, 43

Florida Statutes

Section 733.710(1) 14, 19, 31, 32
Section 731.201 Subdivision (21) 14, 19, 31, 32

Probate Rules

Rule 5.400(c) 32

Rules of Supreme Court relating to Admissions to the Bar

Article 1, Section 1 39

The Florida Bar Journal

Year 1994 45

INTRODUCTION

For the purposes of this brief, The Florida Bar will be referred to as "The Florida Bar", "the Bar" or "Complainant". Diane S. Segal will be referred to as "Respondent" or "Ms. Segal" or "Diane Segal".

Abbreviations utilized in this Brief are as follows:

As to the Transcripts:

Tr.1 will refer to the transcript of the final hearing held on April 18, 1994;

Tr.2 will refer to the transcript of the final hearing held on April 22, 1994;

Tr.3 will refer to the trasncripts of the final hearing held on May 7, 1994 and May 12, 1994.

Tr.4 will refer to the transcript of the final hearing held on June 7, 1994.

Tr.5 will refer to the transcript of a hearing on sanctions held on June 19, 1995.

As to the Appendix:

A-1 will refer to the Complaint of The Florida Bar filed on March 16, 1994.

A-2 will refer to the Report of Referee dated October 27, 1994.

A-3 will refer to the Respondent's resignation letter submitted to the Florida Supreme Court dated November 3, 1994.

A-4 will refer to the Florida Supreme Court's letter dated November 8, 1994 regarding non-compliance with Rule 3-7.12 of the Rules Regulating The Florida Bar.

A-5 will refer to Respondent's letter dated November 10, 1994 directed to the Florida Supreme Court.

A-6 will refer to The Florida Bar's letter dated November 10, 1994 directed to Respondent advising of aggravating recommendations.

A-7 will refer to Respondent's Notice of Supplemental Evidence Reconfirming the Default of The Florida Bar dated March 20, 1995.

A-8 will refer to Respondent's Motion to Preclude Randi Klayman Lazarus from filing Further Court Documents until The Completion of An Investigation of her Serious Misconduct in this Case dated April 5, 1995.

A-9 will refer to Respondent's Petition for A Writ of Certiorari to the United States Supreme Court dated June 15, 1995.

A-10 will refer to The Florida Bar's Response to Diane S. Segal's Emergency Motion for Recusal of Judge Bloom dated June 15, 1995.

A-11 will refer to the Referee's Report and Recommendation(s) on Sanctions dated July 27, 1995 and Report of Referee.

STATEMENT OF THE CASE AND OF THE FACTS

On March 16, 1994, The Florida Bar filed its Complaint charging Respondent with misconduct which arose from Respondent's representations to the Court in a Sworn Petition to Discharge in the Estate of Clifford Segal, as well as to the presiding Probate Judge, the Honorable Edmund Newbold. (A-1) The matter was initiated as a result of Judge Newbold's filing with The Florida Bar. (Tr.3 281) A final hearing was held before the Honorable Philip Bloom, Referee, on April 18, 1994; April 20, 1994; April 22, 1994; May 7, 1994; May 12, 1994 and June 7, 1994.

The Florida Bar presented the Honorable Robert Newman, as its first witness. Judge Newman was recalled at the conclusion of the Respondent's case. (Tr.4 5) Judge Newman has been a member of The Florida Bar since 1951. He served as a Circuit Court Judge for the previous fifteen and one half (15 1/2) years in the guardianship division and as a County Court Judge for three (3) years before that. (Tr.1 11). The Florida Bar showed the witness his April 13, 1993 Order Reinstating Order of Discharge dated March 2, 1992; Order Providing Additional Information to The Florida Bar, dated April 15, 1993 and an Agreed Order Terminating Litigation dated March 13, 1993. (Tr.1 12-13) Judge Newman testified that prior to signing the Order Reinstating Order of Discharge he crossed out and initialed two paragraphs which concluded that the Respondent did not commit fraud on the Court and that the

Respondent did not violate the Rules Regulating The Florida Bar. (Tr.1 13) The witness would not comment as to matters conducted by another Judge. (Tr.1 14) Judge Newman also crossed out and initialed a paragraph in the Order Providing Additional Information to The Florida Bar which stated that there was no reason to question the veracity of some statements. (Tr.1 14-15) The Judge also stated he had no opinion whatsoever what The Florida Bar should do. (Tr.4 6) It was not the Judge's intent to vindicate Ms. Segal from anything that may have occurred before Judge Newbold. (Tr.4 30) Judge Newman further testified that the reason he signed the Order Reinstating Order of Discharge dated March 2, 1992 was because the parties were able to reconcile their differences. (Tr.1 16) He was closing out the Estate after all issues had been taken resolved. (Tr.4 17) The Florida Bar advised the witness that the Respondent was taking the position that he had reversed Judge Newbold's previous action revoking an order of discharge. Judge Newman responded as follows:

> By Ms. Lazarus:
>
> Q. Judge Newman, Ms. Segal is taking the position that you reversed Judge Newbold's previous action of revoking an order of discharge, is that correct?
>
> A. No. I made it clear on the record and to everyone else what I am doing has no reference to what the Judge did on an earlier time.
>
> Q. So in essence, you are not reinstating the order of discharge from a year earlier, but you are now saying that the Estate was ready to be closed because the debts were

settled, is that correct?

A. That was my feeling and my thinking and still is now.

(Tr.1 16-17. See also Tr.4 7)

Judge Newman added that if Ms. Segal felt the effect of his Order Reinstating Order of Discharge was to reverse Judge Newbold, it was not his intention. (Tr.4 16)

The Florida Bar's second witness was Rodney Earl Walton, a member of The Florida Bar since 1976. He has a college degree in Economics and History, served in the United States Army and graduated from Cornell Law School. (Tr.1 55) Mr. Walton was employed by the firm of Kelley, Drye & Warren from 1987 until 1993. James Kirtley, the co-personal representative with Diane Segal in her Uncle's Estate, retained that law firm in 1988. Mr. Kirtley hired them since Diane Segal had threatened to file a petition to remove him as personal representative and co-trustee of the Estate of Clifford Segal. (Tr.1 56) Ms. Segal made allegations against Mr. Kirtley concerning the transfer of Pillsbury stock as well as alleging that she was not receiving income rapidly enough. The Petition to Remove was heard in December of 1988 before Probate Judge Christie. Ms. Segal sought to continue the hearing having alleged that she had not received notice until (4) four days before the hearing. The request was denied and the hearing was held. Judge Christie denied the Petition to Remove Mr. Kirtley and did not find that Mr. Kirtley had committed any misconduct. (Tr.1 57)

In March of 1989, Ms. Segal appealed Judge Christie's ruling. Mr. Walton began his involvement in the matter at that point in that he handled the appeal on behalf of Kelley, Drye & Warren. Paul Stokes, a partner with Kelley, Drye & Warren, handled the matter up until that point. (Tr.2 9) Ms. Segal lost the appeal. On June 26, 1989, a hearing was held before Judge Christie during which a settlement was made on the record with the exception of attorney's fees for Paul Stokes. Judge Christie awarded the firm $17,500 in attorney's fees. Ms. Segal was represented by attorney Feuerman. (Tr.1 58) Thereafter, Ms. Segal refused to agree to the proposed order settling the case and Mr. Walton was called on to move the court to enforce the settlement. He additionally obtained an award of attorney's fees for prevailing on the appeal of Judge Christie's Order from the appellate court, the amount of said award to be determined by the trial court. A hearing on the Petition to Enforce the Settlement was held before Judge Christie in January of 1991. (Tr.1 60) Kelley, Drye & Warren requested that Judge Christie preside over that hearing even though he was going into retirement, in light of his previous involvement and presence during the settlement. He was continuing to handle a few cases. As a result of that request, Ms. Segal requested and obtained Judge Christie's recusal. The recusal was detrimental to Mr. Kirtley since experts who were present and lined up could not testify. The $17,500 attorney's fee award had never been reduced to writing and the successor Judge, the Honorable Edmund Newbold, required them to

start anew. (Tr.1 60)

Judge Newbold heard the Attorney's Fee Petition in April of 1991 and the Motion to Enforce Settlement in May of 1991. Ms. Segal additionally requested an award of $1,000,000 in damages against Kelley, Drye & Warren in those proceedings. On May 15, 1991, Judge Newbold issued his Order Enforcing the Settlement, as well as rejecting Ms. Segal's damage request. (Tr.1 61-62) On page 6, paragraph 19 of that Order, Judge Newbold provided that the Court reserved jurisdiction to award attorney's fees and costs to Mr. Kirtley's attorneys. (Tr.1 63; A-1, Ex. A) Ms. Segal sought to stay the Order to avoid paying Mr. Kirtley his fees. (Tr.1 65) Mr. Kirtley had been awarded $40,000. Judge Newbold, in a gesture of courtesy, did not require Ms. Segal to post a bond. (Tr.1 65) In May or June of 1991, Ms. Segal sought her second appeal from the award of appellate attorney's fees as well as the Order Enforcing Settlement. (Tr.1 66) Ms. Segal filed her brief early. Mr. Walton requested an extension of time to respond since he had a previously planned vacation. Ms. Segal opposed the extension. Florida's Third District Court of Appeals granted Mr. Walton's request and issued an order admonishing this Respondent for failing to agree to the requested extension. (Tr.1 67) On appeal Ms. Segal argued, among other things, that Judge Newbold had denied her constitutional access to the Court. In November of 1991, Florida's Third District Court of Appeals ruled against Ms. Segal on both aspects of her appeal. (Tr.1 70)

On November 19, 1991, Mr. Walton wrote to Ms. Segal advising that Kelley, Drye & Warren was seeking appellate attorney's fees and approximately $100,000 in trial attorney's fees and would she require them to produce time slips, at an additional cost to her. Ms. Segal wrote back on November 22, 1991, a letter which was in the court file, and addressed this matter. Mr. Walton stated that Ms. Segal's November 21, 1991 response evidenced her awareness of outstanding fees both on appeal and for the trial court. (Tr.1 71-72) Mr. Walton wrote the Respondent on November 27, 1991, and again reminded her of the attorney's fees. (Tr.1 73) On January 27, 1992, Mr. Walton served a Petition to Order Authorization of Payment of Attorney's Fees on both aspects of the second appeal in the amount of $33,000 on the bank and on Ms. Segal. (Tr.1 74-75) A notice of hearing on the Petition was served on the Respondent on February 12, 1992. The hearing was set for March 20, 1992. (Tr.1 75) On February 10, 1992, Mr. Walton wrote to David Graul, Vice-President of Sun Bank, rejecting Ms. Segal's offer of $10,000 to settle the attorney's fee claim. Mr. Walton also reiterated in that letter that a hearing was set for March 20, 1992. (Tr.1 79-80) In February of 1992, Rodney Walton was not aware that the Respondent had petitioned to discharge the Estate. Respondent had never sought to discharge the Estate previously. (Tr.1 80) A hearing was held in March of 1992 to litigate appellate fees and neither Mr. Walton or his co-worker Paul Stokes was aware that the Estate had been closed. (Tr.1 81)

The hearing concluded in May of 1992. On September 3, 1992, Mr. Walton filed a separate Petition for Attorney's Fees. The Respondent filed a one hundred and forty (140) page document with exhibits, in response. On page thirty five (35) of that document Ms. Segal stated that the Trust had been "greatly dissipated and now has insufficient funds to pay the amount of $89,274.50." Nothing in the document suggested that Ms. Segal was referring to a temporary liquidity crisis. (Tr.1 119) This surprised Mr. Walton since Ms. Segal had told Judge Newbold in 1991 that there was $600,000 in the Trust. (Tr.1 120) Ms. Segal was also saying that the Estate was closed. That statement concerned Mr. Walton since after all of those years of litigation, and Ms. Segal's position that the Estate was closed and not subject to recovery, there was no entity to recover assets from. (Tr.1 83-85)

Prior to reviewing that document, Mr. Walton had no prior notification that the Estate was closed. He stated, "so in October, I made a trip to the courthouse and low and behold, much to my surprise, I found an Order." Mr. Walton discovered that the Estate had been closed. (Tr.1 86) He had not been notified and was not present at any hearings. He was "plenty worried." Mr. Walton subsequently reviewed the Petition for Discharge and noted that the only person on the Certificate of Service was David Graul of Sun Bank, the co-personal representative. Rodney Walton was not listed. (Tr.1 87) On October 14 or 15, 1992, Mr. Walton filed a Petition to Revoke Order of Discharge of March 2, 1992. (Tr.1 89) He did

not consult an accountant prior to filing the Petition because there was no need to do so. (Tr.1 123) Mr. Walton alleged it was improper to close the Estate since there were outstanding appellate fees for the second and third appeal, the trial court attorney's fees and Mr. Kirtley's fees and interest. (Tr.1 90) Although he did not care whether Kelley, Drye & Warren and Mr. Kirtley were paid from the Estate or the Trust, he sought to reopen the Estate since Ms. Segal advised that the Trust assets had been dissipated. (Tr.1 115) The Estate, from the court records had $110,000.

A hearing was held before Judge Newbold on October 22, 1992. In probate litigation the first target is the estate because it is publicly administered and the party can keep better track of it. The trust is a private entity and they would not know what is going on. (Tr.1 116) Ms. Segal represented that the Estate had no assets whatsoever (Tr.1 91) Since Respondent had previously said the Trust had no assets whatsoever, Kelley, Drye & Warren feared that they had no solvent entity to recover from. Ms. Segal also maintained that the case was ready for discharge since there was no pending fee petition, when in fact the appellate fee petition was pending. (Tr.1 92, 155) At that hearing Ms. Segal did not take the position that Kelley, Drye & Warren was not an interested person to the Estate. (Tr.1 93) Ms. Segal did not take the position that the claims were time barred either. (Tr.1 175)

Ms. Segal also sought Judge Newbold's recusal. Judge Newbold

subsequently recused himself on his own motion. (Tr.1 94) The Judge was upset at the Respondent's conduct and commented that he had taken her word as a member of The Florida Bar that the matter was settled. (Tr.1 94) On October 30, 1992, Judge Newbold issued his Order Setting Aside the Order of Discharge dated March 2, 1992. Judge Newbold copied The Florida Bar with this Order. Mr. Walton did not turn Ms. Segal in and in fact testified under subpoena. (Tr.1 95)

A hearing was then held before the third Judge, the Honorable Robert Newman. He did not reverse Judge Newbold. (Tr.1 96) Mr. Walton was not provided with a copy of the Order Reinstating the Order of Discharge dated March 2, 1992 signed by Judge Newman either before it was submitted to the Court or after it was submitted. Kelley, Drye & Warren had already been paid (Tr.1 137). Ms. Segal prepared the Order Reinstating Order of Discharge dated March 2, 1992, for Judge Newman's signature. (Tr.1 139) Mr. Walton testified that there was no doubt whatsoever that Kelley, Drye & Warren was an interested person with fees pending. Mr. Kirtley was paid in the summer of 1992 and Kelley, Drye & Warren reached a settlement and was paid in March of 1993. (Tr.1 97-98) They were paid from the Trust because that was where the money was by that time. (Tr.1 117).

Mr. Walton stated that Ms. Segal continuously fought every single issue and inundated the court with pleadings requiring a response. (Tr.1 99). Mr. Kirtley was never removed but agreed to

be replaced by a corporate fiduciary during the June 26, 1989 settlement. Mr. Walton testified that this matter was no joy for Mr. Kirtley who had an excellent reputation as an attorney in Dade County for forty (40) years and on the verge of retirement was assaulted by accusations. (Tr.1 100) Mr. Walton stated that the Respondent did not behave honestly and truthfully and should not hold the privilege of practicing law. (Tr.1 101)

The Florida Bar presented another Circuit Court Judge as its third witness. The Honorable Edmund Newbold has been a member of The Florida Bar since 1948. He was a Judge for twenty (20) years and is now retired. (Tr.1 179) Judge Newbold recalled an ex-parte encounter with Ms. Segal regarding the Petition for Discharge. (Tr.1 180) Ms. Segal presented the Judge with the Petition and he asked her if she had the consent of all of the parties. Judge Newbold was referring to the lawyers, since he was familiar with the case. He had been appealed several times. He also informed her that when he practiced law and the Judge asked him a question, they believed him. He would give lawyers the same courtesy and believe them. (Tr.1 181) Ms. Segal informed Judge Newbold that she had the consent of the lawyers and that is why he signed the Order. He recalled signing the Order the same day, which was March 2, 1992. (Tr.1 188) Judge Newbold specifically remembered Ms. Segal's response. (Tr.1 182) She did not express to Judge Newbold any misunderstanding of his question. (Tr.1 183)

After the Petition to Revoke, Judge Newbold felt that Ms.

Segal had lied to him when she said she had everyone's consent. (Tr.1 185) Ms. Segal neither admitted to making a misrepresentation to Judge Newbold or said she was sorry for making a misrepresentation. Instead, she filed a complaint against Judge Newbold with the Judicial Qualifications Commission because she believed he had made a false accusation against her by filing a complaint with The Florida Bar and that he had given mistaken testimony at The Florida Bar's Grievance Committee hearing. (Tr.1 186, 196).

Judge Newbold also testified that the import of his March 15, 1991 Order Enforcing Settlement was that the Court reserved jurisdiction to award attorney's fees and costs to Mr. Kirtley's attorneys. He did not reserve jurisdiction to determine whether or not fees should be awarded. (Tr.1 193, 194; A-1, Ex. A)

Judge Newbold based his decision to revoke the discharge on that fact that interested persons had not received notice of discharge, Ms. Segal did not have their consent and the Estate was not ready for discharge. (Tr.1 196) Judge Newbold had a pleading under oath from the attorneys alleging that they had not received the fees for which he had reserved jurisdiction, that monies were due and that Mr. Kirtley had not been paid. (Tr.1 197, 201)

The Florida Bar presented James Kirtley, Respondent's former co-personal representative and co-trustee in the Estate of Clifford Segal as its fourth witness. (Tr.1 206, 209) Mr. Kirtley, a member of The Florida Bar since 1946 was never the recipient of a Bar

complaint. (Tr.1 206) The witness had been a friend of the Respondent's father, Harold Segal and his brother, Clifford for thirty five (35) years. He handled many legal matters for both brothers over those years including the preparation of Clifford Segal's Will. (Tr.1 207) The Will provided income to the Respondent for life and to her issue, if any, at her death. Otherwise, to the heirs of Clifford Segal. May Horowitz, Clifford Segal's sister was to receive $4,000 a year during her lifetime. The Respondent did not request that income be paid to her. The Respondent received $100,000 in 1986 from the sale of her Uncle's residence. In 1987, she was paid $67,500 as co-personal representative fees. Mr. Kirtley understood from the Respondent that she did not want any more money in 1987 because it would change her tax situation. (Tr.1 212, 228) Mr. Kirtley was paid $40,000 in 1988 with the understanding that he would be paid the remaining $40,000 due him as attorney's fees and co-personal representative fees in January of 1988. Mr. Kirtley forwarded checks for that purpose to Ms. Segal in January of 1988 and she did not sign them. (Tr.1 212) Instead, he received a letter from attorney Sam Smith, who had been retained by Ms. Segal. Mr. Smith requested Mr. Kirtley to voluntarily produce securities. Mr. Kirtley telephoned Mr. Smith in order to cooperate. (Tr.1 213) Clifford Segal had approximately twenty five (25) issues of stocks. (Tr.1 213) Mr. Kirtley also testified that in the end of 1987 he attempted to transfer one (1) of the issues, 4,000 shares of

Pillsbury stock from the name of Clifford Segal to Diane S. Segal and James D. Kirtley, as co-trustees. Although the correct paperwork was completed by the Respondent and the witness, on December 23, 1987, the stocks were returned by Pillsbury with a designation of the witness and the Respondent as "co-owners" rather than as "co-trustees". (Tr.1 215) All other issues of stock were returned correctly. (Tr.1 215, 217) On January 4, 1988, Mr. Kirtley resubmitted the certificates for correction. The certificates were returned to Mr. Kirtley with the same erroneous designation. (Tr.1 216) Since Ms. Segal retained counsel the stock certificates were turned over to her counsel by Mr. Kirtley on January 15, 1988. (Tr.2 18)

Thereafter, Mr. Kirtley was served with a Petition to Remove him as Personal Representative filed by attorney Stephen Zukoff, on behalf of Ms. Segal. The Petition was a character assassination. (Tr.1 212) Ms. Segal had fired Sam Smith because Ms. Segal accused him of conspiring with Mr. Kirtley. Mr. Kirtley then hired Paul Stokes of Kelley, Drye & Warren to represent him because he found Respondent's attorney, Stephen Zukoff impossible to deal with. (Tr.1 221) Mr. Kirtley believed Ms. Segal was not honest and truthful since she made allegations which were not founded in fact. Mr. Kirtley felt Ms. Segal's conduct was inappropriate as a lawyer. He is not familiar with lawyers who go to a deposition and make outbursts and lawyers accusing people of being liars and calling other lawyers liars. (Tr.2 22)

Paul Stokes was The Florida Bar's final witness. He became a member of The Florida Bar in 1971. He clerked for a Federal Judge and became a litigator in trust and estates. (Tr.2 4) He is Board Certified in Wills, Estates and Trusts; teaches Estate Planning at the University of Miami; is AV rated by Martindale Hubbel and is a fellow of the American College of Trust and Estates Counsel. (Tr.2 5) He is currently employed by Kelley, Drye & Warren and represented Mr. Kirtley through the first Petition to Remove. (Tr.2 9)

Mr. Stoke's reviewed Florida Statute §731.201 subdivision (21) as to the definition of interested persons. Mr. Stokes opined that Kelley, Drye & Warren was an interested person at the time Judge Newbold was presented with the Petition for Discharge. (Tr.2 7) This was because they reasonably expected to be affected by the termination of the probate proceedings, which is what an order of discharge does. Kelley, Drye & Warren had an outstanding fee Petition and outstanding fees to Mr. Kirtley. (Tr.2 15) An order of discharge terminates the jurisdiction of the Court. An estate can be reopened at any time if there is a showing of fraud. (Tr.2 16) Mr. Stokes examined Florida Statute §733.710 entitled "Limitations on Claims against the Estates." Mr. Stokes testified that Kelley, Drye & Warren was not barred from obtaining their fees, since the statute pertains to the claims against the decedent. (Tr.2 21) Kelley, Drye & Warren's expenses were administrative expenses. (Tr.2 22)

Mr. Stokes attested that Ms. Segal's filings were so verbose and detailed that they required a significant amount of attorney's time. (Tr.2 26) The Florida Bar rested its case.

The Respondent presented David Lawrence, a Certified Public Accountant since 1968, as her first witness. (Tr.3 252) Mr. Lawrence has an undergraduate degree in accounting, a Juris Doctor degree, has published several articles and served as an expert between forty (40) and fifty (50) times. (Tr.3 254, 328) Mr. Lawrence was engaged by the Respondent in 1989. He prepared the 1988, 1989, 1990 and 1991 fiduciary tax returns and the intangible tax returns for the Estate of Clifford Segal and the Trust. (Tr.3 258, 327) The witness did a report dated May 1, 1991, concerning damages caused to the Estate and Trust and Diane Segal, by James Kirtley. (Tr.3 260) He also prepared the final accounting for the Estate which went from April 26, 1986 through December 31, 1991. (Tr.3 261, 262, 264) It was completed on February 7, 1992. (Tr.3 261, 355) He is familiar with all financial and tax related aspects of the Estate. (Tr.3 261) He used the Will and Mr. Kirtley's final accounting which he felt was only correct as to the name of the Estate and Court number. (Tr. 264) He took a listing of the dividends for all securities and computed the interest that should have been received, he compared the amounts deposited in the bank accounts to what should have gone into the bank, he reviewed all disbursements made by the Estate and whether they should have been made, he had discussions with the Respondent and reviewed the Court

pleadings. He used the Financial Accounting Standards Board, Pronouncement 5 which governs contingencies. The final accounting for the Estate did not reflect legal fees to Kelley, Drye & Warren. (Tr.3 265-266) The witness did a final accounting of the Trust which covered April 19, 1988 through December 31, 1988. It reflected one payment to Kelley, Drye & Warren for $13,889.42 in legal fees. (Tr.3 267) Mr. Lawrence stated that there were no voluntary distributions of income by Mr. Kirtley to the Respondent. (Tr.3 268) Income was distributed by court order to the Respondent pursuant to her requests on March 8, 1990 and March 5, 1991 since the witness advised the Respondent that she would suffer adverse tax consequences otherwise. (Tr.3 271)

Mr. Lawrence testified that from an accounting standpoint, the Estate assets and the Trust assets are identical. Kelley, Drye & Warren did not receive any payments from the Estate. (Tr.3 273) The Trust was funded on April 19, 1988. (Tr.3 274) Mr. Lawrence's "damage report" showed damages to the Respondent for approximately $1,053,000. (Tr.3 276) According to the witness, the damages were comprised of income the Respondent did not receive, federal income taxes the Respondent had to pay since Mr. Kirtley refused to sign checks, paying the income tax and lost interest on income the Respondent did not get. (Tr.3 277-278) The witness did not believe that Mr. Kirtley knew anything about finances or the administration of an estate. (Tr.3 279) Mr. Lawrence testified that the Kelley, Drye & Warren's fees, according to Financial Accounting Standards

Board Opinion 5, FASB-5, were not a probable contingency and were properly not listed on the final accounting. (Tr.3 309-310) He determined they were a remote contingency. (Tr.3 314) The witness and the Respondent had discussions at length about the potential legal fees, when the witness was preparing the final accounting. (Tr.3 317) Mr. Lawrence did not believe the legal fees were a liability of the Estate but were rather a liability of the Trust. (Tr.3 318, 322) Diane Segal told Mr. Lawrence that she did not believe "they" were entitled to fees. (Tr.3 319) Mr. Lawrence believed the fees were obscene. (Tr.3 336) He did not work with Ms. Segal in preparing the Petition for Discharge. (Tr.3 320)

Mr. Lawrence also stated that the term "funds" is the same as cash. He makes a distinction between funds and assets. To him, one can have alot of assets, but no funds. (Tr.3 329) He further stated that the Respondent had made no misrepresentations to him. (Tr.3 330) Mr. Lawrence testified that he has earned between $65,000 and $100,000 for working on the Estate. He had been paid for all of his court appearances. (Tr.3 381)

The Respondent testified on her own behalf in narrative form. Ms. Segal stated that on February 20, 1992 she presented Judge Newbold with the Petition for Discharge. He told her to get on with her life and asked if everything was ready to be closed out. She indicated that the Estate was ready to be closed out. He told the Respondent any ex-parte conversation would be improper and that she should take the Petition for Discharge to the ex-parte clerk.

Ms. Segal contended that Judge Newbold did not sign the Order of Discharge in her presence. (Tr.3 387-388) Ms. Segal went to the ex-parte clerk and then went home. On March 2, 1992, the Respondent received a telephone call from the ex-parte clerk advising her that Judge Newbold had signed the Order of Discharge. (Tr.3 388) Ms. Segal picked up the order. (Tr.3 389)

Mr. Kirtley commenced the administration of the Estate. (Tr.3 390) He handled the sale of two properties in New Jersey, and he contacted transfer agents of the securities to successfully transfer changes of title. The only exception was the Pillsbury stock. (Tr.3 391) Mr. Kirtley failed to open a trust account. (Tr.3 392) On December 24, 1991, pursuant to Court Order, Sun Bank became successor co-fiduciary, replacing Mr. Kirtley. (Tr.3 393) By the end of 1991 and early 1992, the two remaining bank accounts of the Estate were transferred into the Trust. (Tr.3 393) Mr. Kirtley hired Kelley, Drye & Warren in 1988 without Respondent's consent or knowledge. They did not render service to the Estate, the Trust or to the Respondent. (Tr.3 394-395) It was not Respondent's intent to transfer the balance of the Estate assets to the Trust to cut off any Kelley, Drye & Warren claim. (Tr.3 395) All fees awarded to Kelley, Drye & Warren were paid from the Trust. (Tr.3 402) The Respondent believed Judge Newbold had jurisdiction over the Trust. (Tr.3 402) The Respondent was aware that Kelley, Drye & Warren was going to file a fee petition for trial court fees. (Tr.3 405)

Respondent then asserted the applicability of Florida Statute

§733.710(1) which provides that all claims against the decedent must be made within two years of the date of the decedent's death. Ms. Segal interpreted that statute as time barring all claims against the Estate. (Tr.3 410-412) When the Respondent stated in the opposition response to Kelley, Drye & Warren's fee petition that the Trust had insufficient funds, the Respondent distinguished between cash balance and assets. There was insufficient cash to make the full payment. (Tr.3 412-413) Respondent also maintained that Kelley, Drye & Warren did not meet the legal definition of interested persons according to Florida Statute §731.201(21). (Tr.3 428) Ms. Segal still believed and continues to believe that Kelley, Drye & Warren were not interested persons. (Tr.3 484)

Ms. Segal also believed and continues to believe that paragraph 19 of Judge Newbold's Order Retaining Jurisdiction to Award Attorney's Fees is a jurisdictional provision and not an automatic and specific fee award. (Tr.3 432,476) Ms. Segal maintained that Judge Newman signed two orders which reversed Judge Newbold's rulings. (Tr.3 438) Ms. Segal also stated that if Mr. Stokes had simply written her a letter requesting $100,000 in fees she would not have simply handed him a check. (Tr.3 534)

The Referee asked the Respondent if she would still file the same Petition for Discharge with the same clauses. She said yes, she would do it the same way. (Tr.3 541-545) The Respondent stated that the affect of the disciplinary proceedings is that she has been falsely accused and that it was improper for Kelley, Drye &

Warren to file a Petition to Revoke. (Tr.3 542, 545) Respondent felt then and now that what she had done is correct. (Tr.3 543, 544, 546) The Respondent also stated that the undersigned and The Florida Bar was guilty of violating Rule 4-3.4 of the Rules Regulating The Florida Bar which provide that a lawyer shall not counsel or assist a witness to testify falsely since each witness presented gave different and conflicting testimony from the other witnesses. (Tr.3 550-551).

On October 27, 1994, the Referee issued a Report of Referee wherein findings of fact and a finding that Rule 4-3.3(a)(1) of the Rules Regulating The Florida Bar were made. (A-2) The Referee found that The Florida Bar had proven by clear and convincing evidence that the filing of the Petition for Discharge constituted a rule violation; whereas, the ex-parte encounter with Judge Newbold did not. On November 3, 1994, the Respondent submitted a letter to the Florida Supreme Court in which Respondent stated that it was her desire to resign from The Florida Bar. Respondent enclosed her membership cards. (A-3) The Florida Supreme Court on November 8, 1994, through its Clerk, Sid J. White, advised the Respondent that any resignation must comply with Rule 3-7.12 of the Rules Regulating The Florida Bar which provides for the submission of a "disciplinary resignation." The Court returned the Respondent's membership cards and provided her with a copy of Rule 3-7.12 of the Rules Regulating The Florida Bar. (A-4) Respondent once <u>again</u> forwarded a letter to the Florida Supreme Court which

again stated that it was her desire to resign from The Florida Bar and again enclosed her membership cards. (A-5) The Court neither returned the cards to the Respondent nor did they take any action on Respondent's request.[1]

On June 19, 1995, a hearing was held on sanctions. At the time Judge Bloom denied the Respondent's Emergency Motion for Recusal. (Tr.5 4) The Florida Bar recommended that the Respondent be suspended for two years with the condition that she retake the Bar examination and that the Respondent obtain a psychiatric evaluation prior to petitioning for reinstatement. (Tr.5 29-30) The Respondent argued that the Bar's recommendation was irrelevant since she had resigned pursuant to her November 3, 1994 letter to the Florida Supreme Court. (Tr.5 31; see A-3) The Florida Bar argued that the Referee should consider as aggravation the Respondent's conduct in the proceeding subsequent to the Referee's Report finding the Respondent guilty. The Florida Bar relied on Florida Standard for Imposing Lawyer Sanctions 9.22(f) which provides that submission of false evidence, false statements, or other deceptive practices during the disciplinary process is an aggravating circumstance as well as case law to substantiate that position. (Tr.5 30, 35, 53, 54, 63) The Florida Bar referred to the accusations and allegations against the undersigned, and all of The

---

[1] Many other documents were filed both to the Referee and this Court subsequent to this event. They have not been detailed, in light of their irrelevance to the issues now before the Court.

Florida Bar's witnesses in the United States Supreme Court and in The Florida Supreme Court. (Tr.5 32,60) The Bar sought to introduce its letter to the Respondent dated November 10, 1994, which put the Respondent on notice that The Florida Bar would seek to enhance the disciplinary recommendation if frivolous accusations continued. (Tr.5 33; A-6) The Florida Bar also sought to introduce Respondent's Notice of Supplemental Evidence Reconfirming the Default of The Florida Bar filed in this Court on March 20, 1995 and particularly paragraphs 2, 5 and 6, as evidence in aggravation. (Tr.5 48, A-7) Respondent responded that she stood by her statements because they are true. (Tr.5 50-52) Ms. Segal added that the undersigned should be sanctioned for filing a false complaint, engaging in malicious prosecution and violating her constitutional rights. (Tr.5 53) The Respondent continued by saying that it is the undersigned's conduct that should be questioned. (Tr.5 57)

The Florida Bar then sought to introduce Respondent's Motion to Preclude Randi Klayman Lazarus from Filing Further Court Documents until the Completion of an Investigation of her Serious Misconduct in this Case, particularly paragraphs 3, 4 and 7. (Tr.5 58-60; A-8) The Florida Bar also sought to introduce Respondent's Petition for Writ of Certiorari filed in the United States Supreme Court, particularly paragraph 28 which stated that "each witness presented perjured testimony," which includes Judge Newbold, Judge Newman, Mr. Kirtley, Mr. Stokes and Mr. Walton. (Tr.5 60, A-9) Ms. Segal responded; "Which is true, it is substantiated by the

record." (Tr.5 61) The Florida Bar made reference to paragraph 39 which accuses the Referee of ordering her to plead guilty. (A-9, page 39) The Respondent had no objection to the consideration of The Florida Bar's documents in aggravation. They were then accepted into evidence by the Referee. (Tr.5 65-66; 71)

The Florida Bar also argued that Florida Standards for Imposing Lawyer Sanction 9.22(b) and (g) are applicable. (Tr.5 77, 79)

On July 27, 1995, the Referee issued a Report and Recommendation(s) on Sanctions wherein he recommended that The Florida Bar accept Respondent's resignation effective July 31, 1995, prohibit Respondent to be reinstated or readmitted for a period of two (2) years, take all parts of the bar examination, and be evaluated by a licensed psychiatrist of the State of Florida and affirmatively show that Respondent is mentally fit and capable of being an attorney. (A-11)

On July 31, 1995, Respondent filed with this Court a Notice of Objections to Referee Philip Bloom's Report. On August 11, 1995. this Court issued its Order stating that Respondent's Notice of Objections would be treated as Respondent's Petition for Review. Respondent served her Brief in Support of Petition for Review on August 21, 1995, wherein Respondent maintains that the Referee is biased and erred in finding any rule violation and that the resignation, as submitted, should be accepted but should run from November 3, 1994. The Florida Bar filed its Cross Petition for

Review on August 23, 1995 pursuant to the Board of Governor's directive to seek disbarment. The Bar does not oppose the Referee's findings of fact and rule violation, but disagrees with the imposition of discipline and seeks disbarment. The Florida Bar further disagrees with the Referee's failure to award costs to The Florida Bar subsequent to November 3, 1994, the date Respondent submitted a letter to the Florida Supreme Court indicating her desire to resign from The Florida Bar. (See A-3) This brief follows.

SUMMARY OF ARGUMENT

The Respondent was a co-personal representative and co-trustee of her Uncle's Estate. She became embroiled in a heated dispute with the co-personal representative and co-trustee, retained counsel and sought his removal. A treacherous legal entanglement ensued. Respondent prolonged the litigation as a result of her refusal to pay the personal representative and to pay his attorney's fees. Despite there being outstanding fees, Respondent Petitioned to Discharge the Estate and asserted, under oath, that the only interested persons were herself, and the successor personal representative. The probate Judge revoked the discharge and reported the Respondent to The Florida Bar.

The Referee found the Respondent guilty. The Respondent then sent a letter to the Florida Supreme Court stating that she no longer wanted to be a member of The Florida Bar, but was not submitting a "disciplinary resignation". Thereafter, the Respondent went on a personal writing rampage against the Referee, Bar Counsel and all of the Bar's witnesses to the Florida Supreme Court, as well as to the United States Supreme Court.

Although the Referee specifically found that Respondent's venomous statements had no basis in fact he failed to find the existence of any aggravating circumstances. The Referee recommended that Respondent's resignation, as tendered, should be accepted since she is unfit to practice law. The Florida Bar contends that the Respondent should be disbarred.

POINTS OF APPEAL

I

WHETHER THE REFEREE'S FINDINGS OF FACT ARE SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE? (RESTATED)

II

WHETHER THE REFEREE ABUSED HIS DISCRETION WHEN HE RECOMMENDED THAT RESPONDENT'S "RESIGNATION" BECOME EFFECTIVE ON JULY 31, 1995 RATHER THAN ON NOVEMBER 3, 1994? (RESTATED)

III

(Complainant's First Argument on Cross-Petition)
WHETHER THE REFEREE'S DISCIPLINARY RECOMMENDATION THAT RESPONDENT SHOULD BE PERMITTED TO RESIGN FROM THE FLORIDA BAR IS ERRONEOUS AND RATHER THE RESPONDENT SHOULD BE DISBARRED?

IV

(Complainant's Second Argument on Cross-Petition)
WHETHER THE REFEREE'S FAILURE TO AWARD THE FLORIDA BAR COSTS SUBSEQUENT TO THE DATE RESPONDENT SUBMITTED A LETTER OF RESIGNATION TO THE FLORIDA SUPREME COURT WAS ERROR?

I
THE REFEREE'S FINDINGS OF FACT ARE SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE (RESTATED)

It is well established that a Referee's findings of fact in an attorney disciplinary case are presumed correct and will be upheld on appeal unless clearly erroneous and lacking in evidentiary support. The Florida Bar v. Winderman, 614 So.2d 484 (Fla. 1993). Respondent's brief ignores the foregoing and simply sets forth the facts as Respondent sees them. It was the Referee who observed the Respondent and her witness and the Bar's witnesses. He rejected each and every one of Respondent's defenses or contentions as being an afterthought or rationalization of her conduct and thus found the Respondent guilty of knowingly making a false statement of material fact to a tribunal. A Referee is in a unique position to assess the credibility of the witnesses and his judgment regarding credibility should not be overturned absent clear and convincing evidence that the judgment is incorrect. The Florida Bar v. Thomas, 582 So.2d 1179 (Fla. 1991).

The Referee summarized his findings as follows:

> In summary, Respondent's contentions clearly show that Ms. Segal was fully aware of the import of her conduct relating to closing out her uncle's estate; that Respondent was intentionally blind to simple probate laws, procedure or practice in the Probate Court. Respondent refused, until this hearing, to acknowledge that there were interpretations other than hers in probate law and practice. Respondent rejected any "knowing" deception and adhered to the "subjective" rather than

> "objective" theory of conduct in that whatever her interpretation of the law was, it was correct. And, when the third probate judge (Newman) was assigned to the case (after Ms. Segal requested recusal of the first two judges) Ms. Segal even sought to purge her recriminatory conduct by having the third judge sign two (2) most unusual Orders whose main purpose was to absolve Respondent from any wrongdoing!
>
> (A-2, page 10)

The Referee had ample testimony and documentary evidence upon which to base his conclusion. Rodney Walton, the attorney who represented James Kirtley, the original object of the Respondent's wrath testified. His testimony was crucial since it set the stage for the Referee's ultimate conclusion, which was that the Respondent knew exactly what she was doing. In fact, the evidence clearly establishes that the Respondent has fought paying personal representative fees to Mr. Kirtley and legal fees to Kelley, Drye & Warren from the onset. The first accusation thrown at Mr. Kirtley occurred in January of 1988 when he forwarded checks to the Respondent for her signature to pay his personal representative fees. (Tr.1 212-213) Thereafter, on June 26, 1989, Ms. Segal, while represented by counsel, and on the record, agreed to a settlement. Naturally, the settlement would include payment to Mr. Kirtley and Kelley, Drye & Warren. (Tr.1 58) Instead of paying Mr. Kirtley and paying Kelley, Drye & Warren, Ms. Segal <u>again</u> embarked on a course of refusing to make payment. Ms. Segal would not agree to any proposed orders on the settlement. Mr. Walton was therefore compelled to seek enforcement of the settlement. A hearing was set

before Judge Christie and in a further effort to resist payment, the Respondent moved to recuse the Judge. The recusal set back the process since another Judge was assigned and had to be completely versed in what had transpired previously. (Tr.1 60)

The second Judge, the Honorable Edmund Newbold, heard the Motion and ruled against the Respondent. The Respondent, undaunted by all of her previous defeats, moved for a stay and filed yet another appeal, which she lost. (Tr.1 70) These actions are important, since they establish the Respondent's intent, which was not to pay the money. At this point, the Respondent had exhausted all of her legal avenues of resort. In a final act of desperation, and with malice aforethought, the Respondent Petitioned for Discharge of the Estate and did not list Kelley, Drye & Warren and Mr. Kirtley as interested persons. That aforethought is established by the Respondent's own witness, her accountant, David Lawrence. The Respondent and Mr. Lawrence discussed in great detail whether or not to list Mr. Kirtley and Kelley, Drye & Warren as "interested persons" on the Petition for Discharge. After careful deliberation and much research, they decided against it. (Tr.3 317-318) The Referee's response to this testimony is most illuminating:

> THE COURT: Here you two discuss this before the order, Petition for Discharge, right?
>
> THE WITNESS: Right.
>
> THE COURT: Put it on the Petition for Discharge. If you're already discussing it,

> it shows that you were concerned over it. You knew about the outstanding fees by Kelly, Drye. You got letters from them. A letter of February 10th, 1992, Exhibit 15. The two of you were discussing it and you don't put it in any way and tell the Judge about it. That's nice of the two of you to discuss it. Don't you think you ought to tell the Judge? If there's full disclosure to the Judge then --
>
> (Tr.3 318)

Surely, the Respondent could not allege that she was unaware of the outstanding claims since she knew that there were outstanding Petitions for Appellate Fees for the second and third appeal, the trial court attorney's fees and Mr. Kirtley's fees and interest. (Tr.1 90) In fact, Ms. Segal attempted to tender less than the amount owed to Kelley, Drye & Warren and received their rejection prior to the Respondent filing a sworn Petition to Discharge in which she stated that only she and Sunbank were the only persons having an interest in the Estate. (A-1, Ex. 3)

Once Kelley, Drye & Warren discovered that the proverbial wool had been pulled over their eyes, the Respondent began to scramble. An emergency hearing was held before Judge Newbold to revoke the Petition. He was furious, and rightfully so. (Tr.1 94) The Respondent has maintained that Judge Newbold did not want to let her speak once he discovered her deceptive conduct. Judge Newbold was not a stranger to the litigation and thus was aware that Kelley, Drye & Warren and Mr. Kirtley would remain interested, if not paid. Thus, it is no surprise that Judge Newbold did not want to hear from the Respondent, nor must he, given these

circumstances. At the hearing, the Respondent never mentioned that Kelley, Drye & Warren were not interested persons nor did she mention that the claims were time barred. (Tr.1 93, 175) Ms. Segal's defense at that time was that there was no pending fee petition, when in fact there was, and that Judge Newbold's May 15, 1991 Order Enforcing Settlement and reserving jurisdiction to award attorney's fees did not mean that he will award fees.[2] (Tr.1 92-93) When that failed, the Respondent moved to recuse Judge Newbold. (Tr.1 94)

The Respondent before the Referee and the Grievance Committee advanced new defenses. They were that Florida Statutes time bar the claims. The Referee repeatedly asked the Respondent to abandon this nonsensical position. She refused and clung to the proposition that different interpretations are possible. (Tr.3 538-541) The Florida Bar's expert, Paul Stokes, testified that Florida Statute §733.710 is inapplicable to this situation, since it unequivocally applies to the debts of the decedent, Clifford Segal. In this case the legal fees were administrative expenses. (Tr.2 21-22)

The Respondent's next ludicrous defense was that Kelley, Drye & Warren were not interested persons under Florida Statute §731.201 subdivision (21). The Referee likewise asked the Respondent to

---

[2] Judge Newbold testified that the import of that Order was that the Court reserved jurisdiction to award attorney's fees and costs. He did not reserve jurisdiction to determine whether or not fees should be awarded since he had already made that determination. (Tr.1 193, 194)

abandon this position. Additionally, Paul Stokes testified that they clearly were interested persons since they reasonably expected to be affected by the termination of the proceedings. (Tr.2 7) The Referee maintained in his Report of Referee, the following:

> 4. According to the Respondent, attorneys Kelley, Drye & Warren were the personal attorneys for the co-personal representative and not for the Estate since they were not employed by the Estate, but were solely protecting personal interests in generating a fee of some $100,000 for the co-personal representative, and attorneys fees for itself of some $145,000. As such, the attorneys were not "interested persons" under Probate Rule 5.400(c). Additionally, under §731.201(21), Florida Statutes, Kelley, Drye & Warren was not a person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. See p17(a) of the Respondent's Narrative:
>
> > "I believed that KDW did not meet the legal definition of "interested person" and, therefore, was not entitled to notice regarding closing the Estate. Fla. Stat. §731.201(21) defines "interested person" as "any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved". Since KDW had always been paid from the Trust, I believed that closing the Estate did not affect their fee claim in any way. There were still paid by the Trust. As I previously testified, I believed that KDW was time-barred from filing any claim against the Estate when it received notice regarding the filing of claims and the statutory time limit expired." (Emphasis added)

The emphasized portion of the above narrative clearly shows a mind set on Respondent's part to avoid the payment of any attorney's fees to Kelley, Drye & Warren. Simply put, Ms. Segal refuses to understand who or which entities are deemed "interested persons," or "affected by the outcome" of proceedings in probate matters.

5. According to the Respondent, §733.710(1), Florida

> Statutes, barred any claims against the estate made two (2) years after death, and therefore, Kelley, Drye & Warren were barred from any attorney's fees.
>
> This argument by Ms. Segal shows a complete lack of comprehension of probate practice. Reference to this statute also shows an attempt or an intent by Respondent to avoid the payment of any attorney's fees to Kelley, Drye & Warren. Or it may also show a lack of ability by an attorney to understand the plain language of a statute thereby questioning the attorney's ability to practice law. Obviously, the statute does not apply to administration of the estate, but rather, only to "a claim or cause of action against the decedent."
>
> With respect to Items 1, 2, 4 and 5 above, the evidence before the Referee is that Respondent knew and understood the meaning of the applicable Probate Statutes and customs, but sought to shield herself from them by her "intentional ignorance" of them. Such a position is so distorted and so inapplicable that it cannot be considered as a defense to the subject charge.
>
> . . .
>
> Each and every one of Respondent's defenses or contentions is rejected as being an afterthought or rationalization for her conduct. They are excuses not reasons for improper conduct. Respondent refuses to take responsibility for her own conduct.
>
> (A-2 9-10; 11)

Respondent's having exhausted all possible legal, non legal and personal avenues attempted to convince the Referee that the successor Judge, the Honorable Robert Newman, had reversed Judge Newbold. To accomplish this task the Respondent, knowing full well that the Estate was ready to be closed since a settlement had been reached after the aborted discharge, prepared an order entitled "Order Reinstating Order of Discharge dated March 2, 1992[3] for

---

[3] Amazingly, the Respondent maintains that this Order, together with the Order Providing Additional Information to The

Judge Newman's signature. Judge Newman crossed out paragraphs which set forth findings that did not correspond with the hearing, which essentially absolved the Respondent of misconduct in regard to the Petition for Discharge. (Tr.1 13) Judge Newman did not change the title of the Order. He testified that it was not his intent to reverse Judge Newbold nor was it his intent to vindicate the Respondent. (Tr.1 16-17; Tr.4 7; see A-2, page 10)

It is based on the exhaustive testimony and case history as set forth herein that the Referee found evidentiary support for his findings.

Additionally, Respondent maintains that the Referee is biased since he ruled against her. It has been repeatedly held that disqualification of a Judge is not mandated even where the Judge has ruled adversely against a party in the past. Richard v. Kaney, 490 So.2d 1299 (Fla. 5th DCA 1986); Wilson v. Renfroe, 91 So.2d 857 (Fla. 1957). Further, on December 13, 1994, the Respondent filed a Complaint of Writ of Prohibition with this Honorable Court. Part B of that document is entitled "Extreme Bias on the Part of Judge Bloom." The Respondent's argument was the same then as it is now. This Court denied that Petition on February 6, 1995. Therefore, the denial of the Writ constitutes a ruling on the merits of the

---

Florida Bar, absolve her. She has further accused The Florida Bar of "concealing overwhelming exonerating evidence" which is an obstruction of justice. Respondent has steadfastly maintained that position despite the fact that no one, including the Judge who executed the order has taken any action to either vindicate or exonerate the Respondent.

claim and therefore establishes the law of the case. Obanion v. State, 504 So.2d 768 (Fla.3rd DCA 1986)

In reality, not only did the Referee give Respondent fair consideration but rather the Referee bent over backwards to afford the Respondent latitude, which is equal to none, as fully set forth in The Florida Bar's Response to Diane S. Segal's Emergency Motion for Recusal of Judge Bloom. (A-10)

II

ON ANSWER BRIEF

WHETHER THE REFEREE ABUSED HIS DISCRETION WHEN HE RECOMMENDED THAT RESPONDENT'S "RESIGNATION" BECAME EFFECTIVE ON JULY 31, 1995 RATHER THAN ON NOVEMBER 3, 1995. (RESTATED)

The fact that Respondent will argue a point on which she prevailed is no wonder. The Referee has recommended that the Respondent be permitted to withdraw her membership from The Florida Bar for two years effective July 31, 1995. Respondent squabbles with the date and argues that the resignation should be effective from November 3, 1994, the date of her letter to Mr. White. (A-3) Respondent has presented no authority to support her position that she is entitled to a retroactive commencement of the resignation.

III

WHETHER THE REFEREE'S DISCIPLINARY RECOMMENDATION THAT RESPONDENT SHOULD BE PERMITTED TO RESIGN FROM THE FLORIDA BAR IS ERRONEOUS AND RATHER THE RESPONDENT SHOULD BE DISBARRED.

On October 27, 1994, the Referee issued his Report which found as follows:

> Respondent Diane S. Segal knowingly and with conscious awareness of the nature of her conduct which was designed to accomplish a particular result, intentionally made a false statement or misrepresentation to the Probate Court when she prepared and submitted to the Probate Judge a written Petition for Discharge on or about February 19, 1992. Accordingly, the Respondent, Diane S. Segal, is deemed guilty of violating Rule 4-3.3(a)(1) of The Florida Bar Rules of Professional Conduct.
>
> (A-2, page 11)

On November 3, 1994, in what is clearly an act of protest, the Respondent wrote to the Florida Supreme Court and stated her desire to resign from The Florida Bar. (A-3) The Court wrote the Respondent and advised that she had not complied with Rule 3-7.12 of the Rules Regulating The Florida Bar which governs Disciplinary Resignations. (A-4) The Respondent did not submit a disciplinary resignation pursuant to Rule 3-7.12 of the Rules Regulating The Florida Bar in that she maintains she had committed no wrongdoing. (A-5) Further, Respondent attempted through her Complaint for Writ of Prohibition filed on December 13, 1994, to contend that the Referee was without jurisdiction, as a result of her "resignation" and could not recommend discipline. On February

6, 1995, this Court denied the request that the Writ issue.

A hearing on sanctions was held on June 19, 1995. The Florida Bar requested that the Court consider in aggravation Respondent's filings in the Florida Supreme Court and United States Supreme Court. (See A-8 and A-9) The Respondent did not object to the consideration of these filings. (Tr.5 65-66) A recommendation of a two year suspension was made. On July 27, 1995, the Referee issued a Report and Recommendation on Sanctions.

The Referee has recommended that The Florida Bar accept Respondent's "resignation" as tendered. The Rules Regulating The Florida Bar do not provide for a Resignation, which is not disciplinary. The Rules provide that a member of The Florida Bar may become inactive or that they may retire, given the appropriate circumstances. Rule 1-3.2(c) and Rule 1-3.5 of the Rules Regulating The Florida Bar. The Rules do not contemplate a withdrawal from membership where a Referee has determined that infractions have been committed. Although the Respondent has repeatedly asserted that she does not intend to ever practice law, there is no certainty or safeguard in this regard. Conceivably, Respondent could apply for membership to The Bar of another State and advise that she has received no discipline if the Respondent was permitted to withdraw from membership.

In The Florida Bar v. Isis, 552 So.2d 913 (Fla. 1989) that Referee recommended that the Respondent be disciplined at a minimum of a three year suspension and a maximum of a five year disbarment.

This Court found the recommendation of a "range" of discipline improper. The Court disbarred Isis on the basis of the serious nature of the misconduct. This Court is left with the same task of imposing discipline in this case since the Referee's recommendation is impermissible.

Although The Florida Bar recommended that Respondent be suspended for two years, the Referee's conclusions and sentiments must be accorded great weight.

> However, the sanctions phase of this matter has conclusively shown that Respondent should not be accorded or permitted the right or the privilege to practice law in the State of Florida. Respondent has time and again attempted to resign from the legal profession, and The Florida Bar wants her suspended from the legal profession. This sanctions' hearing has served a number of beneficial purposes and also some deleterious ones. The sanctions hearing has confirmed that Respondent is unfit to practice law whether through inability or temperament or unwillingness, and in that regard it has also confirmed many of this Referee's original findings.
>
> •••
>
> The sanctions hearing has also been deleterious in exposing and in elongating a dangerous situation which should never have been permitted to exist in the first place, namely the granting of a license to practice law to the Respondent. The Florida Bar[4] is at fault in its licensure procedures for not uncovering and preventing this semi-nightmare to occur and by not resolving it earlier when the prime purpose of prohibiting Respondent from practicing law would have been accomplished by Respondent's attempt to resign from The Florida Bar. As

---

[4] The Referee is mistaken in his designation that The Florida Bar is the responsible party for Respondent's admission to The Florida Bar. It is Florida's Board of Bar Examiners that oversees the admission to The Florida Bar. Rules of the Supreme Court Relating to Admissions to the Bar, Article 1, Section 1 et. seq.

> an unfortunate byproduct, almost everyone who has come in contact with the Respondent in this matter is the recipient of her baseless, improper and destructive charges due in part from her inability or refusal to understand even the most elementary nature of a hearing.
>
> •••
>
> 4. That in the event Diane S. Segal desires reinstatement or admission to The Florida Bar, she start ab initio including the taking of all bar examinations(s) and parts thereof, without waiver from any other jurisdiction; and
>
> (A-11, page 9; 12-13; 14 emphasis added, with the exception of paragraph 9)

There is no doubt that the Referee believes that the Respondent should never have been admitted to practice law, is presently unfit to practice law and should start "ab initio" if seeking reinstatement or admission. Without saying the words, the Referee believes that the Respondent should be disbarred.

Disbarment is the appropriate discipline in these circumstances. The Referee found that the Respondent knowingly made a written misrepresentation to a Judge in a Petition for Discharge, under oath. This Court has held that false testimony in the judicial process deserves the harshest penalty. The Florida Bar v. Kleinfeld, 648 So.2d 698 (Fla. 1995); The Florida Bar v. Weinstein, 624 So.2d 261 (Fla. 1993); The Florida Bar v. Rightmyer, 616 So.2d 953 (Fla. 1993). Rule 6.11 of the Florida Standard for Imposing Lawyer Sanctions states the following:

> Disbarment is appropriate when a lawyer:
>
> (a) with the intent to deceive the court, knowingly makes a false statement, or submits

a false document.

Rule 5.11(f) of the Florida Standards for Imposing Lawyer Sanctions provide that:

> Disbarment is appropriate when:
>
> (f) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Further, the Referee ruled that he would not take Respondent's aggravating conduct into consideration.

> The Referee is compelled to conclude that the conduct exhibited by Respondent in this matter and in the papers she submitted to the Referee, is bizarre, irrational, irrelevant, irreverent, unjustified, legally insufficient, duplicative and vicious toward those who have come in contact with her and who have opinions differing from hers. However, the Referee no doubt to the chagrin of The Florida Bar, shall not, and need not, take Respondent's conduct into consideration with respect to increasing the sanctions toward Respondent. Rather, that conduct will be considered only as to Respondent's fitness to practice law.
>
> (A-11, page 5-6)

It is evident that the Referee has recognized the existence of aggravating conduct by the Respondent. The Referee has, however, determined that such conduct should be considered if Respondent attempts to return to the practice of law. That premise is faulty. As previously stated, there is no provision for this type of resignation. A Referee cannot simply refuse to consider evidence in aggravation without any basis in law. The Referee did not find that the evidence was without merit or that it was not established. In fact, on the contrary, he stated:

> The sanctions hearing also referred to

other motions and attacks by Respondent in Supreme Court of Florida or in the United States Supreme Court, but the Referee may not have any direct knowledge of the contents of those filings. Many, if not all, of these attacks and/or criticisms are completely uncalled for, are baseless, and do not have a scintilla of fact or law to support them.

•••

This Referee would be remiss as a human being, as a Judge and as Referee here, in the performance of his duties, if he did not comment occasionally on matters which come before him, but which may be deemed somewhat collateral to the hearing(s). One of such matters is the vicious attack by Respondent upon The Florida Bar counsel, Randi Klayman Lazarus. (The Referee does not comment upon the item by Respondent entitled "Notice of Judge Philip Bloom's Lie to This Court and Request for His Removal From This Case" since the same among other reasons is legally insufficient.)

The papers forwarded by Respondent to the Referee which require response are: Motion to Court Ordered Psychiatric Examination of Randi Klayman Lazarus; Motion to Grant Diane S. Segal Constitutional Access to the Court Without Being Submitted to Threats From Randi Klayman Lazarus; and Motion to Impose Sanctions Against Randi Klayman Lazarus. At the sanctions hearing other charges were made by Respondent against Bar counsel such as concealment of evidence and obstruction of justice and reference was made to similar type charges in papers apparently filed by Respondent in the Supreme Court of Florida and in the United States Supreme Court.

•••

One of the prime objects of Respondent's affliction is The Florida Bar counsel, Ms. Randi Klayman Lazarus. While these proceedings are certainly not the proper forum for any attacks against Ms. Lazarus, the

> Referee is compelled to respond where there is no one else to do so, and a non-response could mistakenly be deemed an admission or an acceptance of the Respondent's charges.
>
> This Referee directly and unhesitatingly rejects the charges made by Respondent toward Ms. Lazarus. Those charges are totally uncalled for, are without factual or legal basis, do not exist except in Respondent's mind, ...
>
> (A-11, page 5; 8-9; 13) (Emphasis added)

Thus, the Referee has found, "in essence," that the Respondent has engaged in deceptive practices, in the disciplinary process through presentation of baseless and false accusations. (Rule 9.22(f)) Florida Standards for Imposing Lawyer Sanctions.

The Referee has also "essentially" found the existence of Rule 9.22(b) of Florida Standards for Imposing Lawyer Sanctions a dishonest and selfish motive in that in his Report of Referee he concluded that the Respondent had a "mind set to avoid payment," and an "attempt or intent by the Respondent to avoid payment of any attorney's fees to Kelley, Drye & Warren." (A-2, page 9) Thus, the Referee finds that the Respondent's actions were motivated by money.

The Referee has also "in essence" ruled that Rule 9.22(g) of the Florida Standards of Imposing Lawyer Sanctions, a refusal to acknowledge the wrongful nature of conduct, exists.

> Indeed, even a simple "I'm sorry," or any other expression made by Respondent at any time during the underlying proceedings or here that a mistake may have been made, would, I

> believe have helped to clear an otherwise polluted atmosphere. There was no remorse shown by Respondent to her clearly improper written conduct before the probate judge. Instead, as shall be referred to hereinafter, Respondent went on a rampage to attempt to destroy all who were involved with these proceedings.
>
> (A-11, page 3-4)

It is the Bar's contention that given the egregious underlying act of lying to a court under oath, together with Respondent's outrageous aggravating conduct, in combination with the Referee's findings, that Diane S. Segal is deserving of the harshest, sanction, disbarment.

IV

THE REFEREE'S FAILURE TO AWARD THE FLORIDA BAR COSTS SUBSEQUENT TO THE DATE RESPONDENT SUBMITTED A LETTER OF RESIGNATION TO THE FLORIDA SUPREME COURT WAS ERROR.

The Referee awarded all requested costs to The Florida Bar, up until November 3, 1994, the date Respondent wrote to the Florida Supreme Court and "resigned." The resignation was neither acknowledged or accepted by this Honorable Court. In fact, on the contrary, by denying Respondent's Writ of Prohibition which alleged, in part that the Referee had no jurisdiction to sanction the Respondent, this Court was mandating that the process continue. The Florida Bar should not be penalized for going forward.

Additionally, the Courts have noted that one of the primary purposes of lawyer discipline is to demonstrate to all members of the profession the seriousness of their ethical obligations as well as to deter others who might be tempted to become involved in like violations. The Florida Bar v. McShirley, 573 So.2d 807 (Fla. 1991) The imposition of costs upon an attorney found guilty of ethical violations, serves to hold misbehaving lawyers accountable for their misconduct rather than holding the entire membership of the Bar responsible for the payment of costs for investigating their misconduct. Over 50% of Bar membership dues during the 1994-1995 fiscal year, will be used to absorb the costs of investigating attorney misconduct. (The Florida Bar Journal 1994) Costs for

investigating misconduct should be imposed on the misbehaving member when that member is found guilty.

The Florida Bar should be awarded costs subsequent to November 3, 1994.

CONCLUSION

Based upon the foregoing reasons and citations of authority, The Florida Bar respectfully submits that the Referee's recommendation to accept Respondent's resignation is erroneous and would urge this court to disbar the Respondent. The Florida Bar additionally submits that the Referee's failure to award costs to The Florida Bar subsequent to the date that the Respondent submitted a letter of resignation to the Florida Supreme Court was error and costs should be awarded to The Florida Bar.

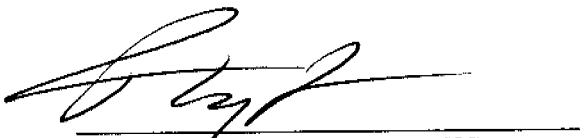
RANDI KLAYMAN LAZARUS
Bar Counsel
TFB No. 360929
The Florida Bar
444 Brickell Avenue, Suite M-100
Miami, Florida 33131
Tel: (305) 377-4445

JOHN F. HARKNESS, JR.
Executive Director
TFB No. 123390
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
Tel: (904) 561-5600

JOHN T. BERRY
Staff Counsel
TFB No. 217395
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
Tel: (904) 561-5600

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of this Complainant's Answer Brief and Initial Brief on Cross-Petition for Review 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 Diane S. Segal, Respondent, at her record Bar address of 190 Shore Drive South, Miami, Florida 33133-2616, on this 8th day of September, 1995.



RANDI KLAYMAN LAZARUS
Bar Counsel

INDEX TO APPENDIX

A-1 Complaint of The Florida Bar filed on March 16, 1994.

A-2 Report of Referee dated October 27, 1994.

A-3 Respondent's resignation letter submitted to the Florida Supreme Court dated November 3, 1994.

A-4 Florida Supreme Court's letter dated November 8, 1994 regarding non-compliance with Rule 3-7.12 of the Rules Regulating The Florida Bar.

A-5 Respondent's letter dated November 10, 1994 directed to the Florida Supreme Court.

A-6 The Florida Bar's letter dated November 10, 1994 directed to Respondent advising of aggravating recommendations.

A-7 Respondent's Notice of Supplemental Evidence Reconfirming the Default of The Florida Bar dated March 20, 1995.

A-8 Respondent's Motion to Preclude Randi Klayman Lazarus from filing Further Court Documents until The Completion of An Investigation of her Serious Misconduct in this Case dated April 5, 1995.

A-9 Respondent's Petition for A Writ of Certiorari to the United States Supreme Court dated June 15, 1995.

A-10 The Florida Bar's Response to Diane S. Segal's Emergency Motion for Recusal of Judge Bloom dated June 15, 1995.

A-11 Referee's Report and Recommendation(s) on Sanctions dated July 27, 1995 and Report of Referee.