IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,352

On Appeal From The Circuit Court
Of The Eleventh Judicial Circuit
In And For Dade County, Florida

DIANE S. SEGAL,

Petitioner,

vs.

THE FLORIDA BAR,

Respondent.

BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR REVIEW

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Pro se

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STATEMENT OF THE CASE AND OF THE FACTS

Petitioner's uncle, Clifford Segal, died on April 21, 1986. His Will was written by attorney, James D. Kirtley. The Will named Diane S. Segal and James D. Kirtley as co-personal representatives of the Estate and as co-trustees of the testamentary Trust.

The Will establishes a simple passive trust and provides a sole life estate in only income to Petitioner, the beneficiary. There are no other beneficiaries. The other simultaneous life estate in income pertaining to the testator's sister terminated upon her death in 1989.

Mr. Kirtley distributed income to the testator's sister until her death in accordance with the Will, but refused during a six-year period, from 1986 through 1991, to distribute any income to Petitioner. Petitioner was only able to obtain her rightful income distribution through court orders.

In addition, Mr. Kirtley engaged in numerous other acts of maladministration -- he retained personal title for over one year of the Trust's most valuable asset; he refused to prepare a correct final accounting; he refused to cause payment of Estate and Trust taxes; he refused to cause the release of certain Trust securities to the transfer agents for mandatory redemptions; he charged clearly excessive fees.

Petitioner filed for removal of Mr. Kirtley as co-fiduciary in 1988. In that same year Mr. Kirtley hired Paul Stokes and Rodney Walton of the law firm Kelley Drye & Warren to represent his interests. They never represented the Estate or the Trust. The

probate court (Judge Christie, later recused) and the state appellate court allowed Mr. Kirtley to retain his co-fiduciary status. Court-ordered appellate fees in the amount of $13,000 were paid to Kelley Drye & Warren from the Trust.

Kelley Drye & Warren drafted three different versions of a proposed settlement order to which Petitioner had no input, and to which she continuously objected. Nevertheless, the trial and appellate court put through an Order Enforcing Settlement dated 5-15-91. Court-ordered appellate fees in the amount of $31,000 were paid to Kelley Drye & Warren from the Trust.

In late December, 1991, pursuant to court orders, SunBank/Miami, N.A. became successor co-fiduciary, replacing Mr. Kirtley and currently serves with Petitioner as continuing co-fiduciary.

The May, 1991 order required a payment of $40,000 plus interest "while maintained in its banking account". Bank account interest was calculated and some $41,000 was paid from the Trust but, suddenly, Mr. Kirtley wanted more money through prejudgment and statutory interest. The probate court, Judge Edmund Newbold, awarded prejudgment and statutory interest to Mr. Kirtley even though no such amounts were specified in the order. The court-ordered amount of $52,000 was paid to Mr. Kirtley from the Trust.

A certified public accountant, David R. Lawrence, who prepared all Estate and Trust tax returns from 1988 to 1991 also prepared a damage report. He calculated that the damages caused by Mr. Kirtley, Mr. Stokes and Mr. Walton to the Estate, to the Trust, and to the income beneficiary exceeded $950,000.

Between 1988 and 1992, Mr. Kirtley's interests were represented

by Kelley Drye & Warren. During that five-year period, Mr. Stokes and Mr. Walton inundated the court with massive, frivolous court filings to rack up clearly excessive fees. In 1992, they filed another fee petition, and the outcome after four days of hearings was an Agreed Order Terminating Litigation, signed on 3-15-93, whereby the Trust voluntarily made an additional payment of $95,000 to Kelley Drye & Warren.

By the end of the five years of litigation, Mr. Kirtley had received $103,000 and Kelley Drye & Warren had received $140,000, or approximately a quarter of a million dollars in fees from the testator's life savings which were not more than a million dollars.

During the course of the probate court proceedings, Petitioner graduated from law school and in 1991 was admitted to The Florida Bar. Petitioner has never at any time been gainfully employed as an attorney and does not ever intend to practice law. The only case she was involved in was the probate proceeding of her deceased uncle because she was named in his Will as co-fiduciary and income beneficiary.

The event which led to this proceeding occurred in 1992. C.P.A., David R. Lawrence, prepared a 41-page Final Accounting for the Estate of Clifford Segal which covered the period from 4-21-86 through 12-31-91. A final accounting is required by Fla. Stat. § 733.901 and Florida Probate Rule 5.400 to close out an estate. Mr. Lawrence and Petitioner held a conference with the Vice President and Manager of SunBank on 2-13-92 to fully apprise SunBank of the contents of the Final Accounting and to answer all inquiries regarding the Final Accounting. The Final Accounting was then left

with SunBank for its review. Six days later, on 2-19-92, the Vice President and Manager, who was satisfied as to the accuracy of the Final Accounting, signed the Final Accounting, the Petition for Discharge (also required by Fla. Stat. § 733.901 and Florida Probate Rule 5.400), and the Waiver of Thirty-Day Period, along with Petitioner, as co-personal representatives of the Estate.

On February 20, 1992, Petitioner went to the probate court during regular ex parte hours to see Judge Newbold to present the Petition for Discharge, Final Accounting, Waiver of Thirty-Day Period and proposed Order of Discharge. Judge Newbold looked at these documents to ascertain what was being filed but did not read through every page. He told Petitioner to get on with her life and mentioned that he was going to retire. He asked if everything was ready to be closed out. Petitioner indicated that the Estate was ready to be closed out. He stated that any ex parte conversation concerning the case would be improper and told her to take the Petition for Discharge, Final Accounting, Waiver and proposed Order of Discharge to his ex parte clerk so the files could be reviewed. No other statements were made to Petitioner. Judge Newbold did not sign the Order of Discharge in Petitioner's presence that day. Petitioner followed Judge Newbold's instructions and went to his ex parte clerk who date-stamped the Petition for Discharge, Final Accounting, and Waiver on February 20, 1992. She retained the documents and Petitioner went home. On March 2, 1992, Petitioner received at her home a telephone call from the ex parte clerk who advised her that Judge Newbold had signed the Order of Discharge. Petitioner went to see the ex parte clerk to pick up

the order and then proceeded to the clerk's office to obtain a certified copy of the order. The Order of Discharge was signed by Judge Newbold on March 2, 1992, 11 days after the Petition for Discharge was filed. Petitioner did not see Judge Newbold at all on March 2, 1992.

Kelley Drye & Warren called a hearing for 10-22-92 for the purpose of considering their fee petition which covered the period from 1988 to 1992. Several days prior to the hearing, they inundated Petitioner with multiple court filings, one of which was a Petition to Revoke the Order of Discharge Dated March 2, 1992. At the 10-22-92 hearing, Judge Newbold relied entirely on Mr. Walton's in-court statements and on his Petition to Revoke and, before Petitioner could make any response at all, ruled that the Order of Discharge should be revoked. The 10-22-92 transcript, Page 13 states the following:

> Mr. Jacobs (attorney for SunBank): Your Honor, we also have -- excuse me, an order of discharge was entered by Your Honor in this case on March 2nd, and in that particular order the Court's finding was that the estate has been properly distributed.
> The Court: And that was presented to me by Ms. Segal with the idea everybody had approved it.
> Mr. Walton: And it was never served on us. There was no petition for discharge that was served on us.
> The Court: It was presented to me on that basis.
> Mr. Walton: We were never even given a copy of the order. Should I proceed to argue the --
> The Court: I will sua sponte on my motion, I will go ahead, set aside that order of discharge because that was presented to me on the basis everybody had agreed to this thing and the case was over with.

Hilliard v. Scully, 537 F. Supp. 1084, 1087 (S.D.N.Y.), although a criminal case, requires that an individual be

> entitled to call witnesses and submit documentary evidence ... and the body which conducts the hearing must be sufficiently impartial to satisfy the due process clause.

Petitioner advised the Court of her constitutional objections: "I object on the grounds of denial of due process and denial of access to the court". 10-22-92, Tr. 15. The Kelley Drye & Warren fee petition was not heard that day.

Mr. Walton then drafted an Order Revoking the Order of Discharge which also incorporated false accusations against Petitioner and never sent her a copy of the order until after Judge Newbold had signed it on 10-30-92. The order was sent to The Florida Bar. The false accusation was that the Estate was not ready to be closed out and referred to Florida Bar Rule 4-3.3(a)(1) which states, "A lawyer shall not knowingly make a false statement of material fact or law to a tribunal".

Several days later Judge Newbold recused himself and transferred the case to Judge Robert Newman, also in the Probate Division. Petitioner then filed a Petition for Reconsideration under Fla. Stat. § 38.07 which provides that the successor judge shall reconsider orders entered prior to the disqualification of the previous judge and authorizes modification or vacation of the orders.

Four days of hearings were held before Judge Newman during which all issues were presented -- the Kelley Drye & Warren fee petitions, opposition responses, the Petition for Reconsideration. The outcome was the signing of three orders by Judge Newman:

1. The Agreed Order Terminating Litigation (signed 3-15-93), whereby the Trust agreed to pay Kelley Drye & Warren $95,000 and all parties signed Releases (Kelley Drye & Warren, James Kirtley, SunBank and Diane Segal).

2. Order Reinstating Order of Discharge Dated March 2, 1992

(signed 4-13-93), which reversed Judge Newbold and states:

> In fact, the Estate cannot be further administered because it has no assets to administer. No purpose is served by keeping open indefinitely an empty estate which was fully administered. No purpose is served by transferring Trust assets back into the Estate after 6 years only to have to transfer them back again into the Trust in accordance with the Will. In the past, payments for fees have been made by the Trust and the final Kelley Drye & Warren fee payment in accordance with the Agreed Order Terminating Litigation was paid from the Trust.

3. Order Providing Additional Information to the Florida Bar (signed 4-15-93) stating:

> Such findings were that, based upon the evidence, there was no fraudulent conveyance of assets by Diane S. Segal from the Estate so as to dissipate the funds to the exclusion of any fee claim by Kelley Drye & Warren. The evidence indicated that Estate assets were transferred into the Trust in accordance with the Will provision and the Trust previously paid court-ordered fees to Kelley Drye & Warren and its client, James D. Kirtley, Esq. Subsequently, the Trust made the final payment to Kelley Drye & Warren in compliance with the Agreed Order Terminating Litigation.

There had been 28 hearings held in the probate court. All three orders were taken from the court transcripts and were sent to The Florida Bar as directed by Judge Newman.

The Florida Bar's response, instead of dismissing the case, was to schedule a grievance committee hearing on 11-3-93. Similar to the proceeding before Judge Newbold, Petitioner was also not provided the means to get a fair hearing before the grievance committee, as provided by Hilliard v. Scully, 537 F. Supp. 1084, 1086, 1987 (S.D.N.Y. 1982). The following examples from the 11-3-93 transcript demonstrate this: (Tr. 8, 44, 91)

> Ms. Wolasky: So I'm going to have to stop your opening statement and ask Miss Lazarus to bring in her witness.
> Ms. Segal: Well, there are significant things --
> Ms. Wolasky: Look, I've made a ruling now. You don't have the prerogative to disagree, and if you refuse to go along

with it, then we can continue this meeting without your testimony.
Ms. Segal: I would like to request that my expert witness, Mr. Lawrence, be able to testify because --
Ms. Wolasky: That request is denied.

Petitioner submitted into the record a 34-page statement and 29 Exhibits. Such Exhibits included but were not limited to the following:

The Petition for Discharge and Order of Discharge indicating the 11-day filing difference; the Kelley Drye & Warren fee invoice indicating that they first appeared on the case to represent Mr. Kirtley in 1988; 5 notarized Satisfactions indicating that Mr. Kirtley and Kelley Drye & Warren had been paid fees for the two appeals from the Trust; the Kelley Drye & Warren fee petition with the statement requesting fees from the Estate and/or Trust; an opposition response from the Trust; a transcript excerpt wherein Mr. Walton stated that he did not care if the payment came from the Estate or the Trust; the Checklist from Judge Newbold's ex parte clerk which states "Claims filed - none", "time for filing claims expired"; Notice of Administration and Proof of Publication in The Miami Review which state, "All interested persons are required to file with the court within three months of the first publication of this notice all claims against the estate ... All claims and objections not so filed will be forever barred"; the certificate of service of the Kelley Drye & Warren fee petition dated 9-3-92, 6 years after the death of the testator and after publication of the Notice; Page 13 of the 10-22-92 hearing transcript indicating Judge Newbold's decision to revoke the Order of Discharge without allowing any response, testimony or documentary evidence to be

submitted; the Kelley Drye & Warren Petition to Revoke the Order of Discharge; Notice of Objections to the Petition (filed after the order had been revoked); the three aforementioned orders signed by Judge Newman and the Releases; letter from SunBank attorney, Mark Jacobs, stating "Fees and expenses were previously paid from the Trust rather than from the Estate, so that the fee award would be distributed from the Trust, even had the Estate not been previously closed"; Affidavit of CPA, Mr. Lawrence that an accounting rule (FASB No. 5) precluded the listing of Kelley Drye & Warren fees in the Final Accounting and that extreme adverse tax and accounting consequences could occur as a result of the revocation of the Petition for Discharge and Final Accounting.

The following are excerpts from the testimony of Judge Newbold, the Bar's only witness, at the grievance committee hearing:

> Q: So if an attorney comes in and tells you they have gotten the oral consent of all interested parties, that satisfies you?
> Judge Newbold: I don't think it would have satisfied me in this case, because I knew of the problems that were involved in it.
> Judge Newbold: If it were oral, I would ask her to supplement the file.
> Judge Newbold: I don't know if it was oral or wasn't oral. I wasn't informed. I was told the file was ready for discharge. (Tr. 21, 22)
> Q: Did you ever inform Mr. Jimenez that your ex parte clerk, Ms. Alicia Rodriguez, found the estate was ready for closure and had signed a Checklist?
> Judge Newbold: I don't think I did. Sure, I didn't.

Contrary to Petitioner's substantial court documentation and Judge Newbold's conflicting testimony, the grievance committee made a finding of probable cause with no explanantion as to how it arrived at its decision. The committee consisted of three attorneys, an investigating member and Bar assistant staff counsel, Randi Klayman

Lazarus. The findings authorized the Bar to file a complaint with the Florida Supreme Court against Petitioner regarding Bar Rule 4-3.3(a)(1). Ms. Lazarus filed a Complaint on March 15, 1994. In her Complaint, she concealed from the court any reference to Petitioner's 29 Exhibits of exonerating court documentary evidence, which included Judge Newman's three orders reversing Judge Newbold. Also, the Bar concealed the fact that a grievance hearing had taken place and that a transcript existed. Petitioner has taken the position that these actions constituted concealment of evidence and obstruction of justice.

Petitioner filed an 83-page Answer to the Bar's Complaint, attaching 35 Exhibits which included those aforementioned. On Page 76 of the Answer, Petitioner set the record with her constitutional objections: "There has been a chain of constitutional due process violations from the inception of the matter before Judge Newbold up to and including the Bar Grievance Committee hearing".

The Florida Supreme Court assigned the matter to a referee, Circuit Court Judge Philip Bloom of the 11th judicial circuit in and for Dade County, Florida. Judge Bloom held seven hearings from 4-8-94 to 6-7-94. During the course of the proceedings, Petitioner submitted into evidence 43 Exhibits ("A" through "QQ"), including those aforementioned and which added Kelley Drye & Warren invoices which billed approximately 20 hours, or $4,000, for their preparation of the revocation petition and order which instigated the Bar proceedings. Petitioner consistently maintained the position that Mr. Kirtley, Mr. Stokes and Mr. Walton made a false accusation in order to gain a litigation advantage regarding their

fee petition.

Regarding Petitioner's Exhibits, Ms. Lazarus stated to Judge Bloom at Page 452 of the 5-7-94 transcript: "There's an Exhibit 31 that's part of that package and that is the Grievance Committee transcript and I would ask the court not to consider that".

A summary of Petitioner's testimony at the 5-7-94 and 5-12-94 hearings is as follows: It was Mr. Kirtley who contacted the transfer agents of the securities comprising the Estate and effectuated the change of title from the Estate to the Trust in late 1987 and early 1988. The certificates of the securities corroborate these dates. Petitioner opened a Trust bank account on 4-19-88. The bulk of the assets were in the Trust which came into existence in 1988. The only assets which remained in the Estate were residual amounts in two bank accounts. The Estate and Trust filed separate tax returns. By the end of 1991 and early 1992 the remaining two bank accounts of the Estate were transferred into the Trust by Petitioner and SunBank, the co-fiduciaries at that time. By transferring the balance from the Estate into the Trust, there would be a consolidation to eliminate separate tax filings, duplication of effort, additional expenses and the need for additional accountings. Also, the Will required the Estate assets and funds to be transferred into the Trust because it established a testamentary trust. Estate and Trust assets are identical. In 1988, the same year the Trust came into existence, Kelley Drye & Warren was engaged by Mr. Kirtley to protect his interests. Kelley Drye & Warren was never on the case during any of the Estate administration period from 1986 to 1988 and, therefore, could not possibly have incurred any Estate administrative expenses.

Petitioner never had any intent to cut off any fee claims by transferring the residual balance of the Estate into the Trust in late 1991 and early 1992. The dates of the various transactions confirm this. A few days after the transfer, on 1-8-92, Petitioner paid Mr. Kirtley from the Trust $41,163.83 ($40,000 fees plus bank account interest) pursuant to the May, 1991 court order. Mr. Kirtley was greedy for more interest and for that reason refused to accept the payment and began to litigate for more. On 5-26-92 the Trust paid the court-ordered amount of $52,145.25. On 2-4-92 a check for $10,000 from the Trust was tendered to Kelley Drye & Warren for the second appeal. Kelley Drye & Warren was greedy for more fees and began to litigate for more. On 5-6-92 the Trust paid Kelley Drye & Warren an additional court-ordered amount of $21,539.17 for that second appeal. Petitioner timely complied with all court orders and the fees were paid from the Trust. All Kelley Drye & Warren fee petitions and fee orders provided that payments be made from the Trust. Petitioner was aware that Kelley Drye & Warren was going to file a fee petition for trial court fees in addition to the payments they already received. Petitioner knew that the trial court fee request would be litigated under the Trust and not under the Estate.

The Trust paid the following amounts:

Kelley Drye & Warren: $13,889.42 - 9-16-91 - first appeal;

Edward Golden (fee witness for Kelley Drye & Warren): $1,248.92 - 9-16-91;

Kelley Drye & Warren: $31,539.17 - 5-26-92 - second appeal;

Mr. Kirtley: $52,145.25 - 5-26-92;

Mr. Kirtley: $72.17 - 5-26-92;

Mr. Golden: $901.18 - 5-26-92;

Total: $99,796.91 - court-ordered payments by Judge Newbold.

Because of these payments, the Trust bank account balance diminished to $82,087.42. The Kelley Drye & Warren fee petition, filed on 9-3-92, was for $85,053.25 and a supplemental fee petition, filed on 12-8-92 was for $24,534.04, bringing their total claim to $109,587.29. For this reason, Petitioner stated that there were insufficient funds to make a full payment. She distinguished cash funds which were insufficient from assets which approximated one million dollars.

Petitioner made clear that she believed that Kelley Drye & Warren 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 Kelley Drye & Warren had always been paid from the Trust, she believed that closing the Estate did not affect their fee claim in any way. They were still paid from the Trust. Petitioner also believed that Kelley Drye & Warren was time-barred form filing any claim against the Estate.

Paragraph 19 of the May, 1991 order stated that "the court reserves jurisdiction to award attorneys fees and costs to Mr. Kirtley's attorneys". Petitioner made clear that she believed the paragraph was a jurisdictional provision and not an automatic and specific fee award, since no amount was listed and no entity or person was named to make a payment. Also, there was no statement that fees shall be awarded.

CPA, Mr. Lawrence testified before Judge Bloom that at the multiple hearings he attended before Judge Newbold (where he was not permitted to testify), Judge Newbold was only willing to listen to Mr. Kirtley, Mr. Stokes and Mr. Walton and constantly cut off Petitioner's statements before she could get her point across (5-7-94, Tr. 349, 350). Mr. Lawrence also testified regarding Financial Accounting Standards Board Opinion No. 5 regarding the three categories of loss contingencies -- remote, reasonably possible and probable, as they pertained to his preparation of the Final Accounting for the Estate. He stated:

> I read the paragraph in the order where Judge Newbold reserves jurisdiction. ... this is a liability of the Trust, not the Estate. It doesn't fall in the category of probable. There's no award of fees, no petition for fees, and there was no way for me to determine what that amount would be. There's two parts to the test. The first part, from an accounting standpoint is, what is the likelihood that there's going to be a liability of the estate and I looked at that and I said, that's remote. I did not feel that it was appropriate to put it in the final accounting because it was not a liability, in my opinion. It was not a liability of the estate. (5-7-94, Tr. 287, 288, 310, 311, 318-320, 322, 359)

In reliance on Mr. Lawrence's accounting expertise in preparing the Final Accounting, Petitioner did not list Kelley Drye & Warren in the Petition for Discharge as to any liability. The statement in the Petition for Discharge, "disposition of all claims", recognizes that any claim of Kelley Drye & Warren would be disposed of through the Trust because the Trust had all the assets and was always a party to the litigation.

Petitioner attempted to raise the federal question of due process violations before Judge Bloom but Judge Bloom refused to hear it.

> Ms. Segal: What transpired at the Bar committee hearing is relevant because it was -- who authorized the Bar to file the formal complaint.
> Judge Bloom: I don't want to hear what went on.
> (5-7-94, Tr. 452)

Judge Bloom requested a copy of Petitioner's narrative testimony and on 5-10-94 Petitioner delivered a copy to the Court. The following statement was contained therein: "On November 3, 1993, the Bar scheduled a hearing before the grievance committee. The hearing was rife with constitutional due process violations".

Throughout the case Petitioner has consistently maintained that she never violated the Bar rule. The following statement (6-7-94 Tr. 76, 77) was one of many made by Petitioner:

> I did not make, nor did I ever intend to make any false statements of material fact or law, nor did I omit any material facts when I presented the Petition for Discharge, Final Accounting, Waiver of Thirty-Day Period and proposed Order of Discharge ex parte to Judge Newbold on February 20, 1992. When I stated to Judge Newbold during that extremely brief ex parte encounter on February 20, 1992 that the estate was ready for closure, it was because I believed that the estate was, in fact, ready for closure. I still believe that the estate was ready for closure and that I closed out a fully administered estate in accordance with the Florida statutes. The facts of this case, the overwhelming documentary evidence and the dates of the various transactions clearly demonstrate this.

Ms. Lazarus, Assistant Staff Counsel for The Florida Bar called as her witnesses, Judge Newbold, Judge Newman, Mr. Kirtley, Mr. Stokes and Mr. Walton. Each witness presented perjured testimony which was contradicted by the court documentary evidence presented by Petitioner. The following are only several examples of the perjured statements given:

Judge Newbold testified that Petitioner told him she had the consent of the parties and that was why he would sign (4-20-94, Tr.6-8).

Petitioner's response: (Exhibit II)

> I categorically state that I never told Judge Newbold that I had the consent of the other attorneys in this case. I could not possibly have made such a statement because in my Notice of Objections to Petition to Revoke Order of Discharge, I made clear that I did not notify Kelley Drye & Warren about the Petition and Order of Discharge because they did not meet the legal requirement of "interested person" and, therefore, were not entitled to notice. Since I did not notify Kelley Drye & Warren, I obviously did not obtain their consent and I did not state otherwise to Judge Newbold.

The Petition for Discharge, paragraph 7, lists as interested persons only SunBank and Diane S. Segal and, therefore, does not indicate that consent was obtained from Kelley Drye & Warren.

Judge Newbold testified that he did not have jurisdiction over the Trust. (4-20-94, Tr. 17)

Petitioner's response was that all Kelley Drye & Warren fee petitions were directed to the co-trustees and the Trust was a party to the litigation. All fee orders which Judge Newbold signed provided that fees come from the Trust. Notarized Satisfactions filed with the court confirm that payments to Mr. Kirtley, Kelley Drye & Warren and Mr. Golden came from the Trust.

Judge Newbold's perjured testimony was that Paragraph 19 of the May, 1991 order says that the Estate pays Kelley Drye & Warren fees (4-20-94, Tr. 17) when, in fact, Paragraph 19 actually states in its entirety: "The court reserves jurisdiction to award attorneys fees and costs to Mr. Kirtley's attorneys".

Judge Newbold testified: "I don't know what your intent was. I can't tell you what your intent was, ma'am. I can't go into your mind". (4-20-94, Tr. 27)

Petitioner's response: The Bar Rule contains the word

"knowingly" so intent is a critical element of the rule under which the complaint was made. Finding out the intent was an essential prerequisite for compliance with due process requirements.

Judge Newbold was asked: "You have stated that there's no corroborating witnesses for your recollection of the events of that day, and you have not produced any documents that will verify that what you are saying today is correct?"

Judge Newbold responded: "Only my memory, ma'am". (4-20-94, Tr. 29)

Mr. Stokes testified that at the time Petitioner filed the Petition for Discharge, there was an outstanding matter of Kelley Drye & Warren fees and Mr. Kirtley's $40,000 plus interest. (4-20-94, Tr. 15)

Chronology: 1-8-92: a check for over $41,000 was paid to Mr. Kirtley and was listed in Schedule "A" of the Petition for Discharge since it was an Estate administration expense.

2-4-92: a check for $10,000 was tendered to Kelley Drye & Warren for appellate fees for the second appeal. This was a Trust litigation expense, did not meet the accounting criteria of Financial Accounting Standards Board Opinion No. 5 and so was not listed in the Final Accounting or Petition for Discharge.

2-20-92: Petition for Discharge was filed.

9-3-92: Kelley Drye & Warren filed its trial court fee petition seven months after the Petition for Discharge was filed.

Mr. Stokes testified that an Order of Discharge terminated the jurisdiction of the court and that there was no forum to litigate the fee issue. (4-22-94, Tr. 16, 19, 20)

Petitioner's response: The Order Enforcing Settlement has 20 paragraphs and 10 of them make reference to the Trust and to the co-trustees. Kelley Drye & Warren had always litigated its fees in the Probate Division and the Trust always paid their court-ordered fees. There was no need to reopen the Estate or to commence an action in the general jurisdiction division.

Mr. Stokes conceded that the Trust in the context of this particular administration could properly have paid the fee. (4-22-94, Tr. 18)

Mr. Walton contradicted Judge Newbold's testimony and Mr. Stokes' testimony when he testified: (4-18-94, Tr. 13)

> Judge Newbold was not setting any amount of attorneys' fees. He was not even specifically saying that attorneys' fees would be entered, but he was saying that the issue of attorneys' fees is open, you have the right to come back to me and make the request for attorneys' fees against the Trust and against the Estate of Clifford Segal.

Mr. Walton testified that had the Estate remained closed, there would have been a drastic effect on his ability and Mr. Kirtley's ability to get paid. (4-18-94, Tr. 50) Mr. Kirtley testified that the Estate was not ready for closure until Kelley Drye & Warren was paid. (4-20-94, Tr. 35)

Petitioner's response was to submit a letter dated 7-2-93 (Exhibit BB) written by Mark Jacobs, counsel for SunBank, co-fiduciary, which letter states:

> Fees and expenses were previously paid from the Trust rather than from the Estate so that the fee award would be distributed from the Trust even had the Estate not been previously closed. (emphasis added)

Judge Newman testified on 4-18-94 (Tr. 17) that he was not reinstating the Order of Discharge but was saying that the Estate

was ready to be closed because the debts were settled.

The Agreed Order Terminating Litigation which Judge Newman signed states: "The Trust created under the Will of Clifford Segal shall pay to the firm of Kelley Drye & Warren the total sum of $95,000. ... The payment being made is to terminate the litigation and shall not be an admission of liability by any party".

Judge Newman testified repeatedly on 4-18-94 (Tr. 16, 17) and on 6-7-94 (Tr. 6, 7, 11) that what he did had no reference to what Judge Newbold did at an earlier time.

The Order Reinstating Order of Discharge Dated March 2, 1992, signed by Judge Newman on 4-13-93, states "Ordered and Adjudged that the Order of Discharge Dated March 2, 1992, is hereby reinstated nunc pro tunc and no further final accountings shall be required". The Order of Discharge signed by Judge Newbold on March 2, 1992 states "... the court finding that the estate has been properly distributed, that claims of creditors have been paid or, otherwise disposed of ..."

The Bar's Exhibits consisted mainly of Kelley Drye & Warren fee petitions, the Order Enforcing Settlement, Petition for Discharge, Petition and Order Revoking the Order of Discharge, Judge Newman's three orders, 10-22-92 transcript and correspondence.

Petitioner has maintained that the Bar's presentation of perjured testimony to Judge Bloom constituted obstruction of justice. Petitioner has also maintained that the Bar did not meet its required burden of proof, which is that of clear and convincing evidence.

At the 6-7-94 hearing (Tr. 82), Petitioner made the following

objection: "I hereby go on record as objecting to all personal attacks and denigrating remarks to which I have been subjected throughout these proceedings". The following statements were made by Judge Bloom to Petitioner and constitute only several examples of well over 31 such statements made during the eight hearings he conducted:

> It's irrelevant, but you are an irrelevant person, so I listen to you.
> 4-20-94, Tr. 177
> I understand more why -- you are not irritating me, I'm smiling, but I can see how people could be irritated by the way you do things. You are not helping yourself in this life, really. Please let us do what we are supposed to do now. Do not make a nudge of yourself, please. ... I have a boiling point which is higher than anybody else in this courthouse.
> 4-20-94, Tr. 236.
> Now, Ms. Segal, based on what I am hearing, she is going to take a long time because she is basically irrepressible and I say that with a smile on my face.
> 4-20-94, Tr. 242.
> And as a lawyer, you have learned absolutely nothing from this whole experience. That, to me, is remarkable.
> 5-12-94, Tr. 545.
> You don't intend to practice law, do you, after this? I mean, should -- I don't mean it in a bad sense. Do you intend to make law a career -- you don't have to answer that -- the way you read things and do things?
> 5-12-94, Tr. 560.
> I don't know how you are going to practice law in the future, if you do, if you don't want to read the English language the way it's supposed to be read, or practice law the way it's supposed to be practiced.
> 6-7-94, Tr. 46.

Judge Bloom made findings of guilt against Petitioner in his report, which findings were totally contrary to the overwhelming weight of the evidence consisting of the court documents entered into the record by Petitioner. Judge Bloom scheduled a hearing on sanctions for 11-9-94.

On November 3, 1994, Petitioner filed a detailed 62-page Notice

of Objections to Referee Philip Bloom's Report enumerating each false and misleading statement made, and gave exact page references to the record and to the aforementioned 43 Exhibits as verification; Petitioner enumerated the extreme bias of Judge Bloom by listing each of his 31 personal attacks against her; Petitioner included charts comparing the perjured testimony of each of the Bar's five witnesses with the court documents; Petitioner explained why the Bar did not meet its burden of proof of clear and convincing evidence; Petitioner objected to Judge Bloom setting a precedent by not taking appropriate action against Mr. Kirtley, Mr. Stokes and Mr. Walton for their unethical conduct in this case; Petitioner indicated that SunBank was a joint signator on the Petition for Discharge and Final Accounting but that the Bar was only prosecuting Petitioner and that such action was "discriminatory prosecution". (Page 17, 18)

Judge Bloom in his report conspicuously omitted any reference to the Trust being the sole source of the fee payments or to the amount of those payments. He omitted any reference to Petitioner's exonerating court documentary evidence. A few examples of Judge Bloom's biased statements contained in his report are as follows:

> She never practiced law, yet she believes she has a full understanding of probate law. Customary phrases used in court orders have no meaning to her.
> Respondent's understanding of the law, of procedure, of the role of a lawyer and the role of a judge in the legal system, or even of these proceedings, is somewhat misplaced.

Also, on November 3, 1994, Petitioner filed a letter of resignation with the clerk of the Florida Supreme Court. The letter states:

> This letter will serve to advise you that I am resigning from The Florida Bar effective as of the date of this letter. Attached please find my two (2) Bar membership cards which I am returning herewith. Under penalties of perjury, I declare that I have read the foregoing letter of resignation and that the facts stated in it are true.

Upon receipt of the 11-3-94 letter of resignation, Judge Bloom cancelled the 11-9-94 hearing making an oral ruling during a telephone conference call with Ms. Lazarus of The Florida Bar and Petitioner that the issue was moot and should filter out.

The Bar refused to accept that ruling, filing repeated requests to reset the hearing, and finally influenced Judge Bloom to do so. Judge Bloom signed an order dated 12-8-94. In it he stated the following:

> The Florida Bar has advised that a resignation from the Bar can only take place pursuant to Rule 3-7.12, Rules of Conduct, and refuses to accept Ms. Segal's resignation. Ms. Segal's letter of November 19, 1994 to the Clerk of The Supreme Court (Sid J. White) states: "I no longer wish to be a member of The Florida Bar and I cannot be coerced or compelled to continue that membership. This would deny me my constitutional due process rights in a democracy. Please be advised that Rule 3-7.12 is NOT APPLICABLE to me and I categorically refuse to be coerced into complying with an inapplicable rule". Again, Ms. Segal refuses to abide by existing rules and regulations ... Ordered and Directed that a hearing be had ... for purposes of a hearing on sanctions.

Judge Bloom in his order also overruled Petitioner's Notice of Objections to his report. Bar Rule 3-7.12 requires a petition for a disciplinary resignation, which is an admission of guilt and an individual who complies with this rule will be listed in the disciplinary action page of The Florida Bar News, a bi-monthly Bar publication disseminated to all members. Judge Bloom, in his order, ordered Petitioner to plead guilty and, thus Petitioner set the record with her constitutional due process objections.

The Bar has refused Petitioner's request to refund her Bar membership dues prorated from 11-3-94 to 6-30-95, the end of the Bar's fiscal year, and has refused to reimburse Petitioner for her expert witness fee and expenses which she incurred in defending this frivolous and malicious action.

Petitioner proceeded to file a Complaint for Writ of Prohibition with the Florida Supreme Court against Judge Bloom referring to the 11-3-94 letter of resignation which makes the issue moot because Petitioner is no longer a Bar member. Petitioner also made reference to the Florida Supreme Court order dated 3-22-94 which states, "... the referee's report shall be filed within 180 days of the date of this order, unless there are substantial reasons requiring delay". Judge Bloom's report was due on 9-18-94. Subsequent to the expiration of the 180 days, Judge Bloom filed a Motion for Extension of Time requesting until 10-31-94. It was not until 7-20-95 that Petitioner was notified by the Clerk of the Florida Supreme Court that the Court "did grant an extension of time to Judge Bloom to file his report to and including October 31, 1994". Judge Bloom filed a report on 10-27-94, never having held a hearing on sanctions or making any recommendations regarding sanctions.

In addition to the aforementioned issues, Petitioner raised the federal question in the Complaint for Writ of Prohibition on Page 4, Paragraph 14, which states:

> Respondent (Judge Philip Bloom) in his order is attempting to ignore Petitioner's November 3, 1994 resignation by indicating that Petitioner cannot resign from The Florida Bar unless she complies with Bar Rule 3-7.12 which calls for an admission of guilt. Thus, Respondent is attempting to hold Petitioner hostage as a member of The Florida Bar unless

> she admits to guilt for something she did NOT do. Rule 3-7.12 is NOT APPLICABLE and Petitioner cannot and will not ever comply with this inapplicable rule. It is clear that Respondent, who no longer has jurisdiction over this case, is now engaging in extreme coersion and such action is a violation of Petitioner's due process rights under ... Amendment V of the United States Constitution in addition to being a violation of Petitioner's civil rights.

Judge Bloom never responded to the Complaint for Writ of Prohibition.

The Florida Supreme Court then issued an order dated 12-22-94 which stated in its entirety: "The Florida Bar is directed to serve a response to Diane S. Segal's Complaint for Writ of Prohibition on or before January 6, 1995".

On January 10, 1995, Petitioner filed with the Florida Supreme Court and with Ms. Lazarus of The Florida Bar a "Notice to Court, Transmittal of 43 Exhibits and Renewed Request for Relief", in which Petitioner gave notice to the Court and to the Bar that she never received a response from the Bar regarding her Complaint for Writ of Prohibition. In spite of this notice, the Bar still did not send Petitioner any response and the Florida Supreme Court did not order the Bar to send Petitioner any response. However, the Florida Supreme Court proceeded to make a ruling.

On February 6, 1995, the Florida Supreme Court issued an order denying the Complaint for Writ of Prohibition and Renewed Request for Relief (refund of bar dues, reimbursement of expenses), thus, expressly passing upon the federal question.

On February 10, 1995, Petitioner filed a "Motion to Issue Default Judgment Against The Florida Bar and to Vacate Order Dated 2-6-95". A federal question was raised. Paragraph 8 states:

> Diane S. Segal also renews her objections as to the erroneous decisions made as to the federal question of the constitutional violation of her federal due process rights, equal protection rights (14th amendment to the Constitution of the United States), the violation of her civil rights ... The record indicates clear conflicts between the decisions and the court documentary evidence regarding all proceedings in this matter. This statement shall serve to set the record for appeal to the federal jurisdiction should this become necessary since a federal question has been raised.

Petitioner filed an opposition response on 2-24-95 (Paragraph 8), a notice of supplemental evidence on 3-20-95 (Paragraph 8), and a notice of objection on 4-5-95 (Paragraph 5) which contain the same statement raising the federal question. These documents indicate that 48 days after the Bar was directed to file a response to the Complaint for Writ of Prohibition, Ms. Lazarus sent Petitioner a response that was pre-dated to January 5, 1995, and which stated that she had mailed Petitioner the response on 1-5-95 and had sent the response to the Florida Supreme Court by "Express Mail" on 1-5-95. Since Petitioner never received any prior response, she apprised the Court that Ms. Lazarus' certificate of service was a deliberate misrepresentation to the Court. In addition, the United States Postal Service confirmed in a letter dated 3-16-95 that no record of any delivery to the Florida Supreme Court could be located. Ms. Lazarus never furnished a signed receipt from the Florida Supreme Court, but instead produced only an invoice from a different courier, which was not proof of a timely filing.

The Bar's late-filed response to the Complaint for Writ of Prohibition was to refer to Judge Bloom's report and to state that "The Rules Regulating The Florida Bar, however, do not provide for a non-disciplinary resignation".

While these issues were still pending before the Florida Supreme Court regarding default, Ms. Lazarus proceeded to send a letter dated 4-3-95 to Judge Bloom stating that "this matter is now ripe for your Honor's consideration" regarding his holding a hearing on sanctions.

Petitioner filed on 4-5-95 a "Motion to Preclude Randi Klayman Lazarus From Filing Further Court Documents Until the Completion of an Investigation of her Serious Misconduct in This Case". In this motion, the Court was directed to the false complaint that was filed by Ms. Lazarus, her concealment of court documentary evidence, her material misrepresentations to the Court, her false statements that certain court documents were mailed when no such mailings ever occurred, her continuous failure to address the issues in this case and that the Bar has a duty to investigate such misconduct. On 4-11-95, Petitioner filed an objection regarding the issue of Ms. Lazarus' misconduct and raised the federal question by stating in Paragraph 6: "Any failure to conduct such an investigation shall be considered a violation of Diane S. Segal's constitutional rights (due process and equal protection rights guaranteed by the United States Constitution) and her civil rights. This statement shall set the record for appeal to the United States Supreme Court".

On May 11, 1995, the Florida Supreme Court issued an order denying Petitioner's Motion to Issue Default Judgment Against The Florida Bar and to Vacate Order Dated February 6, 1995 and Motion to Preclude Randi Klayman Lazarus from Filing Further Court Documents Until Completion of an Investigation of her Serious Misconduct in This Case.

Diane S. Segal then filed a Petition for Writ of Certiorari with the United States Supreme Court regarding the Florida Supreme Court's orders dated 2-6-95 and 5-11-95. Ms. Lazarus, as counsel for The Florida Bar, failed and refused to file any brief in the United States Supreme Court objecting to Diane S. Segal's Petition for Writ of Certiorari and, therefore, agreed to all statements contained in the petition pertaining to the acts of wrongdoing of the Bar, all of the Bar's witnesses, and to Judge Bloom's conduct.

Diane S. Segal filed a motion for recusal with an affidavit for the recusal of Judge Bloom relying on Fla. Stat. § 38.10 which states:

> Whenever a party to any action or proceeding makes and files an affidavit stating that he fears he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further. (emphasis added)

Judge Bloom signed a Notice of Hearing on June 2, 1995, and scheduled a hearing for Monday, June 19, 1995, at 4:00 P.M. He stated in his Notice of Hearing that the hearing is called "upon request of the Supreme Court to complete the matter". (emphasis added) Mr. Sid White, Clerk of the Florida Supreme Court, stated in correspondence dated 7-7-95, "Our records show that this court did not issue any order to hold a hearing on Monday, June 19, 1995 at 4:00 P.M." (emphasis added) These documents indicate that Judge Bloom lied to the Florida Supreme Court.

During the 6-19-95 hearing, Judge Bloom, in direct violation of Fla. Stat. § 38.10, denied Petitioner's Motion for Recusal even though he was the first and only judge assigned to this Bar matter

and was required by law to recuse himself because of his extreme bias, prejudice and animosity toward Petitioner, as indicated throughout the record. Judge Bloom on the record indicated that he would sign an order denying recusal because Petitioner indicated that she would pursue an appeal of that issue. Petitioner never received any order from Judge Bloom denying recusal and, thus, Judge Bloom effectively cut off Petitioner's right to appeal in violation of Art. I, sec. 21 of the Florida Constitution -- access to the court.

Judge Bloom conceded in open court on 6-19-95 that doing anything further on this case would constitute a "useless effort" but, nevertheless, proceeded to waste scarce judicial resources.

At the 6-19-95 hearing, Ms. Lazarus demanded that Judge Bloom consider that Petitioner's filing of a Petition for Writ of Certiorari with the United States Supreme Court, that Petitioner's objections to the malicious prosecution of a false complaint, that Petitioner's Motion for a Court-Ordered Psychiatric Examination of Randi Klayman Lazarus should be considered aggravating circumstances for the imposition of greater discipline on Petitioner who is not even an attorney.

Petitioner filed a motion that such threats denied her access to the court in violation of Art. I, sec. 21 of the Florida Constitution. Judge Bloom denied that motion, and by doing so denied Petitioner her constitutional rights.

Subsequently, Judge Bloom submitted a second report and recommendations on 7-27-95, which he filed 9 months after the final Florida Supreme Court ordered deadline of October 31, 1994. In this report Judge Bloom far surpassed his previous vicious personal attacks and denigrating remarks against Petitioner and added dozens

more. In addition, Judge Bloom's report was rife with lies, misrepresentations, and omissions.

Diane S. Segal, on 7-31-95, filed her "Notice of Objections to Judge Philip Bloom's Late-Filed Report and Recommendations" in which she refuted Judge Bloom's lies, misrepresentations, and omissions. The Court has deemed the Notice of Objections a Petition for Review.

STANDARD OF REVIEW

> When the appellate court is convinced that an express or inferential finding of the trial court if without support of any substantial evidence, is clearly against the weight of the evidence or that the trial court has misapplied the law to the established facts, then the decision is 'clearly erroneous' and the appellate court will reverse because the trial court has 'failed to give legal effect to the evidence' in its entirety. (emphasis added)
> Holland v. Gross, 89 So. 2d 255, 258 (Fla. 1956)

The most careful examination and analysis of the entire record does not show a scintilla of evidence to support the findings of the referee.

ISSUES ON APPEAL

I. WHETHER THERE IS A DEPRIVATION OF DUE PROCESS RIGHTS GUARANTEED UNDER THE UNITED STATES CONSTITUTION

A) WHEN A STATE BAR ASSOCIATION MAKES A VOLUNTARY RESIGNATION CONDITIONAL ON AN ADMISSION OF GUILT TO A FALSE ACCUSATION;

B) WHEN A JUDGE MAKES AN ADVERSE DECISION AGAINST AN INDIVIDUAL WITHOUT ALLOWING THE INDIVIDUAL ANY OPPORTUNITY TO PRESENT ANY REBUTTAL TESTIMONY OR ANY DOCUMENTARY EVIDENCE;

C) WHEN A JUDGE MAKES AN ADVERSE FINDING WHICH IS CONTRARY TO THE OVERWHELMING WEIGHT OF THE COURT DOCUMENTARY EVIDENCE;

II. WHETHER THERE IS A DENIAL OF EQUAL PROTECTION GUARANTEED UNDER THE UNITED STATES CONSTITUTION WHEN THERE ARE TWO CO-FIDUCIARIES, JOINT ACTION IS REQUIRED BY STATUTE FOR ANY ADMINISTRATIVE MATTERS, AND THE STATE BAR PROSECUTES ONLY ONE CO-FIDUCIARY;

III. WHETHER THERE HAS BEEN INTENTIONAL, PURPOSEFUL AND ARBITRARY VIOLATION OF DUE PROCESS AND EQUAL PROTECTION RIGHTS UNDER 42 U.S.C. § 1983.

SUMMARY OF ARGUMENT

I. There was insufficiency of the evidence for the Court to arrive at its judgment and such judgment conflicts with a decision of the United States Supreme Court. The United States Supreme Court issued the following opinion in Washington v. United States, 357 U.S. 348 (1958):

> The petition for writ of certiorari is granted. The judgment ... is reversed because of the insufficiency of the evidence and the case is remanded ...

When Judge Newbold signed his order dated 10-30-92 falsely accusing Diane S. Segal of knowingly making a false statement of material fact, the following must be considered:

1. Judge Newbold admitted there were no witnesses to the encounter and no documentary evidence to support his claim, only his memory.

2. Judge Newbold admitted he had no recollection of his ex parte clerk preparing a Checklist which indicates that no claims had been filed against the Estate and that the time for filing claims had expired.

3. Judge Newbold refused to allow Diane S. Segal to say even one word to make known the facts or describe her intent or present any documentary evidence prior to his revoking the Order of Discharge and making the complaint. The Bar did not submit any evidence to prove otherwise.

4. Kelley Drye & Warren appeared on the case to represent Mr. Kirtley after the Estate had been administered and could not possibly have incurred Estate administration expenses. The Bar

did not submit any evidence to prove otherwise.

5. A certified public accountant, who stated that he is professionally bound by an accounting rule, determined that Kelley Drye & Warren fees could not be classified as an expense of the Estate or be listed in the Final Accounting of the Estate because the fees were an expense of the Trust. The Bar did not submit any evidence to prove otherwise.

6. Court documents indicate that all payments to Kelley Drye & Warren were made by the Trust. The Bar did not submit any evidence to prove otherwise.

7. Probate court date stamps indicate an 11-day difference in the filing of the Petition for Discharge and the signing of the Order of Discharge by Judge Newbold. This was a sufficient period of time for Judge Newbold to determine if the Estate was ready for closure. The Bar did not submit any evidence to prove otherwise.

8. The Petition for Discharge was filed on 2-20-92 and the Kelley Drye & Warren fee petition was filed on 9-3-92, 7 months later. The Bar did not submit any evidence to prove otherwise.

9. Estate and Trust funds and assets are identical and all Kelley Drye & Warren fee petitions asked for payments to come from the Trust. The Bar did not submit any evidence to prove otherwise.

10. The Probate Division was at all times the sole jurisdiction regarding all matters pertaining to both the Estate and the testamentary Trust. The Bar did not submit any evidence to prove otherwise.

11. Shortly after the transfer of the residual amount from the Estate to the Trust, pursuant to the Will provision, the Trust

made substantial payments to Mr. Kirtley and Kelley Drye & Warren. The Bar did not submit any evidence to prove otherwise.

12. The substance of Judge Newman's three orders was taken directly from court transcripts made from hearings over which he presided. The Bar did not submit any evidence to prove otherwise.

13. The Petition for Discharge states that SunBank and Diane S. Segal are the only interested persons. The Bar did not submit any evidence to prove how the statement can be construed as indicating that Kelley Drye & Warren was an interested person and their consent was obtained.

The most careful examination and analysis of the record does not show a scintilla of evidence to support findings of guilt. The findings and decisions in this case are directly at odds with the United States Supreme Court's ruling in Washington v. United States, 357 U.S. 348 (1958), whereby a judgment based on an insufficiency of the evidence cannot stand.

II. The Florida Bar's policy of refusing to allow its members to voluntarily resign unless there is an admission of guilt on a false accusaiton is an unconstitutional policy. The Florida Bar does not have any Rule or policy to provide for an voluntary resignation if an attorney no longer wishes to remain a member. This policy is set forth repeatedly in Bar letters and court filings. For example, Bar letter dated 11-8-94 states, "... she must comply with the requirements of Rule 3-7.12 of the Rules Regulating The Florida Bar in order to resign". Bar letter dated 11-10-94 states, "The only resignation that exists is pursuant to Rule 3-7.12". For that reason, the Bar's policy is to make a termination of membership

contingent upon an admission of guilt to a false accusation through filing for a disciplinary resignation.

Constitutional due process guarantees "liberty". Attorneys must have the liberty of not pursuing a legal career if they become disillusioned with the legal system and of not being held hostage as a member of a Bar association unless they plead guilty to a false accusation.

The Florida Bar's policy of reckless disregard for basic constitutional due process rights makes a mockery of the judicial system and further erodes the public's confidence in the legal system.

The Bar's unconstitutional policy must be abolished.

ARGUMENT

I. THE ADVERSE FINDINGS AND RECOMMENDATIONS OF THE BIASED REFEREE, JUDGE PHILIP BLOOM, WERE TOTALLY CONTRARY TO THE OVERWHELMING WEIGHT OF THE EXONERATING COURT DOCUMENTARY EVIDENCE AND DENIED DIANE S. SEGAL HER DUE PROCESS RIGHTS AND EQUAL PROTECTION RIGHTS GUARANTEED BY THE UNITED STATES CONSTITUTION AND DENIED DIANE S. SEGAL HER CIVIL RIGHTS AS GUARANTEED UNDER 42 U.S.C. § 1983.

All statements contained in Petitioner's Notices of Objections dated 11-3-94 and 7-31-95 are incorporated herein by reference.

In Johnson v. Mississippi, 91 S. Ct. 1778, 403 U.S. 14 (1971), the Court emphasized, "Trial before 'an unbiased judge' is essential to due process". As indicated, Petitioner's due process rights guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution were violated when Judge Newbold made an adverse decision against Petitioner without allowing her any opportunity to present any rebuttal testimony or documentary evidence. These due process rights were violated when Judge Bloom made an adverse finding which was contrary to the overwhelming weight of the evidence which he completely ignored as a consequence of his bias and prejudice where the record indicates he made well over 31 vicious personal attacks, insults and denigrating remarks to Petitioner during the course of eight hearings. In addition, Judge Bloom has violated constitutional due process requirements by refusing to accept Petitioner's voluntary resignation on 11-3-94 from The Florida Bar unless she admits to guilt to something which she did not do. Petitioner has been denied the "liberty" of voluntarily terminating her Bar membership without the imposition of unlawful conditions.

Omni Group Farms, Inc. v. County of Cayuga, 766 F. Supp. 67, 73

(N.D.N.Y. 1991), concerns violations of the equal protection clause of the United States Constitution. The Court states:

> In addition to proving purposeful discrimination, a plaintiff alleging selective enforcement as the basis for an equal protection cause of action must specify instances in which he has been singled out for unlawful oppression in contrast to others similarly situated.

In the instant case, SunBank was Petitioner's co-personal representative and co-trustee, pursuant to court order dated 1991. Fla. Stat. § 733.615(1) provides:

> If two or more persons are appointed joint personal representatives, and unless the will provides otherwise, the concurrence of all joint personal representatives ... is required on all acts connected with the administration and distribution of the estate.

As indicated, SunBank was a joint signator with Petitioner on the Petition for Discharge, Final Accounting, and Waiver of Thirty-Day Period; SunBank's counsel, Mark Jacobs, attended the hearing before Judge Newbold on 10-22-92 and argued against revocation of the Order of Discharge dated 3-2-92; Mr. Jacobs wrote a letter dated 7-2-93, which by his wording authorized its use at grievance committee proceedings and in which he made the same legal argument as Petitioner by stating, "Fees and expenses were previously paid from the Trust rather than from the Estate so that the fee award would be distributed from the Trust even had the Estate not been previously closed". The Bar did not instigate grievance proceedings against Mr. Jacobs or any other attorney representing SunBank, the co-personal representative even though closure of the Estate was brought about through joint action as required by statute. Since the Bar chose not to prosecute any SunBank attorneys, the Bar should not have prosecuted Petitioner. These facts meet the criteria set

forth in Fedorov v. United States, 600 A. 2d 370 (D.C. App. 1991), which states that there must be

> a prima facie showing that (1) others similarly situated were not prosecuted, and (2) the selective prosecution being complained of was improperly motivated, i.e., it was based on an impermissible consideration such as ... a desire to prevent the exercise of constitutional rights.

Consideration of all relevant circumstances as fully set forth herein, indicates a pattern of denial of the exercise of constitutional rights.

There has also been a violation of Petitioner's civil rights under 42 U.S.C. § 1983. In interpreting this provision, the Court in Omni Group Farms, Inc. v. County of Cayuga, 766 F. Supp. 69, 73 (N.D.N.Y. 1991), stated:

> In order to prevail on a claim alleging a violation of 42 U.S.C. § 1983, a plaintiff must demonstrate that the conduct complained of was committed by a "person" acting under color of state law and that such conduct deprived the plaintiff of a right, privilege or immunity secured by the Constitution or laws of the United States.

Article V, section 15 of the Constitution of the State of Florida states that "The Supreme Court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted". The Florida Supreme Court, under a doctrine of "inherent" power, created the "integrated" Florida Bar in 1949, whereby attorneys must join in order to practice law. The Florida Bar was created as a means for the Florida Supreme Court to implement its regulatory authority over attorneys. The Florida Bar is a state agency. The Florida Bar instigated this case through its paid employee, Assistant Staff Counsel, Randi Klayman Lazarus. Ms. Lazarus signed all court filings, all correspondence on Florida Bar

letterhead, and represented The Florida Bar at all 9 hearings in this case. Ms. Lazarus exercised full authority over every single aspect of this case since its inception, almost 3 years ago in 1992. Therefore, Ms. Lazarus was acting under color of state law; there was significant state involvement and state action. The aforementioned conduct of Ms. Lazarus deprived Petitioner of her due process and equal protection rights guaranteed by the United States Constitution.

II. THERE IS A DEPRIVATION OF DUE PROCESS RIGHTS GUARANTEED UNDER THE UNITED STATES CONSTITUTION WHEN THE FLORIDA BAR MAKES A VOLUNTARY RESIGNATION CONDITIONAL ON AN ADMISSION OF GUILT TO A FALSE ACCUSATION.

Constitutional due process guarantees "liberty". Attorneys must have the liberty of <u>not</u> pursuing a legal career if they become disillusioned with the legal system and of <u>not</u> being held hostage as a member of a Bar association unless they plead guilty to a false accusation.

Judge Bloom states in his late-filed report "That Diane S. Segal be permitted to resign from The Florida Bar and that The Florida Bar be directed to accept the resignation of Diane S. Segal from The Florida Bar effective <u>July 31, 1995</u>" (emphasis added). Judge Bloom does not have any legal right to arbitrarily choose when Diane S. Segal can or cannot resign from The Florida Bar. The word "resignation", as defined in Black's Law Dictionary, means "formal renouncement or relinquishment of an office. It must be made with intention of relinquishing the office accompanied by act of relinquishment". As the record indicates, Diane S. Segal filed

with the Florida Supreme Court a letter of resignation dated November 3, 1994 under oath and returned her Bar membership cards to the Florida Supreme Court. When the cards were sent back, she returned them again to the Florida Supreme Court and they have been retained by the Court. Repeatedly in numerous court filings and in open court Diane S. Segal made statements that she had never been gainfully employed as an attorney and never would be; that she no longer wished to be a member of such an organization as The Florida Bar; that she permanently ceased payment of any further Bar membership dues. The record is clear: Diane S. Segal voluntarily resigned from The Florida Bar on November 3, 1994 and NOT on July 31, 1995. The arbitrary imposition of July 31, 1995 as a resignation date is blatantly unconstitutional. The voluntary, unconditional resignation date should be effective as of November 3, 1994 in accordance with the due process clause of the United States Constitution.

Is this case a game or a search for the truth?

WHEREFORE, Petitioner respectfully requests that this Court

1. accept Diane S. Segal's voluntary and unconditional resignation from The Florida Bar effective as of November 3, 1994, and that Diane S. Segal be deemed to have permanently terminated her Bar membership effective as of November 3, 1994;

2. find that reports and recommendations of the referee were unconstitutional, unlawful, clearly erroneous, and unjustified because they were totally contrary to the overwhelming weight of the exonerating court documentary evidence;

3. dismiss this case with prejudice;

4. direct The Florida Bar to reimburse Diane S. Segal for her expenses incurred in this case, including her expert witness fee and her out-of-pocket expenses, and to refund her prorated Bar membership dues from 11-3-94 to 6-30-95;

5. take appropriate action against Randi Klayman Lazarus, James D. Kirtley, Paul Stokes and Rodney Walton for their serious misconduct and collusion in this case.

CONCLUSION

For all the foregoing reasons, this Court should decide in favor of Petitioner.

Diane S. Segal

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CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Brief of Petitioner in Support of Petition for Review was mailed by certified mail (Z 083 142 920) to Mr. Sid White, Clerk, The Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399, and a true and correct copy of the aforementioned was mailed to the following:

The Florida Bar
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The Florida Bar
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Director of Lawyer Regulation
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this 21st day of August, 1995

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