IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,352

DIANE S. SEGAL,

Petitioner,

vs.

THE FLORIDA BAR,

Respondent.

PETITIONER'S REPLY BRIEF AND ANSWER BRIEF ON CROSS-PETITION FOR REVIEW

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STATEMENT OF THE CASE AND OF THE FACTS

The brief filed by The Florida Bar is simply another desperate, frenzied attempt to divert the Court's attention away from the serious misconduct of Randi Klayman Lazarus, James Kirtley, Paul Stokes, and Rodney Walton, which occurred throughout the duration of this case.

The brief is rife with blatant lies, misrepresentations, omissions, and distortions of the truth, and its contents are the same as the Kelley Drye & Warren court filings made in the Probate Division to which Diane S. Segal had been repeatedly responding during a six-year period. It is obvious that attorney Paul Stokes prepared the brief to which Randi Klayman Lazarus signed her name.

The brief contains blatant lies, misrepresentations, omissions, and distortions of the truth which have repeatedly been disproved by court documents -- Ms. Segal's 43 Exhibits, her transcript testimony and the transcript testimony of her expert witness, CPA, David R. Lawrence.

For Ms. Lazarus to continue her irrational obsession of repeating and perpetrating these lies upon the Court is a serious matter of misconduct, not only for herself, but also for Mr. Kirtley, Mr. Stokes and Mr. Walton. They are unable and unwilling to accept the truth as presented in Ms. Segal's overwhelming and exonerating court documentary evidence.

The Bar's brief is so totally garbled and twisted that it could only have come from a twisted mind.

The complaint filed by The Florida Bar contains material misrepresentations and omissions which are fully described in

Diane S. Segal's 83-page answer, the contents of which are incorporated herein by reference. The case came about as a result of the filing by Mr. Kirtley and his attorneys, Paul Stokes and Rodney Walton of Kelley Drye & Warren, of a Petition to Revoke the Order of Discharge and their preparation of an Order Revoking the Order of Discharge which contained false accusations against Diane S. Segal. Judge Newbold, who signed the revocation order, admitted on the record that there were no witnesses or documents to verify his recollection of the events of the brief ex parte encounter with Diane S. Segal and that his recollection was only from his memory. The entire record in this case proves that Judge Newbold has a faulty memory.

Ms. Lazarus omitted from her brief any mention of a hearing held before Judge Bloom on 4-8-94. This is a significant omission because the hearing transcript documents Ms. Lazarus' concealment of evidence and obstruction of justice.

Ms. Lazarus in her brief made reference to Judge Newman and the fact that he scratched out certain paragraphs in his Order Reinstating Order of Discharge and Order Providing Additional Information to The Florida Bar. It is critical to note that Judge Newman did not scratch out "an empty estate which was fully administered", "that the Order of Discharge dated March 2, 1992 is hereby reinstated nunc pro tunc and no further final accountings shall be required", and that "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". In the Agreed Order Terminating Litigation, which Judge Newman also

signed, Judge Newman did not scratch out the statements, "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." (emphasis added)

Obviously, the overwhelming effect of the three orders signed by Judge Newman was to reverse Judge Newbold. This is confirmed by Black's Law Dictionary which defines the term "reinstate" as "to place again in a former state or condition". Obviously, Judge Newman gave false testimony when he stated that the "estate was ready to be closed because the debts were settled". As indicated, his own order contradicts this -- the Trust, not the empty estate, paid the $95,000 to Kelley Drye & Warren solely to terminate the litigation. Judge Newman's intent was expressed in the clear and unambiguous language of his three orders which were derived exactly from the transcripts of hearings over which he presided and to which he signed his name. Ms. Lazarus refuses to accept or to abide by these three court orders.

Ms. Lazarus' statement in her brief that Diane S. Segal "alleg(ed) that she was not receiving income rapidly enough" is a blatant lie. The Estate and Trust financial records prepared by CPA, David R. Lawrence, confirm that no income was ever distributed by James Kirtley to Diane S. Segal, the income beneficiary named in the Will, during a 6-year period because of Mr. Kirtley's refusal to carry out his fiduciary duties.

Regarding the hearing before Judge Christie to remove Mr. Kirtley as a co-fiduciary for maladministration of the Estate and

Trust, Ms. Lazarus states in her brief, "Ms. Segal sought to continue the hearing having alleged that she had not received notice until four days before the hearing". That statement is a blatant lie. The only notice that Diane S. Segal received was a telephone call from Mr. Stokes 1½ days before the hearing, during law school final exam week and when Ms. Segal was unrepresented by counsel. Mr. Stokes even had the audacity to refuse to postpone the hearing when requested to do so by the dean of the law school. This tactic of Mr. Stokes was an attempt to gain a litigation advantage over Ms. Segal.

Ms. Lazarus states in her brief, "Judge Christie denied the Petition to Remove Mr. Kirtley and did not find that Mr. Kirtley had committed any misconduct." That statement is misleading. The order signed by Judge Christie on December 19, 1988 states, "That the said petition be and the same is hereby denied". There is no statement anywhere in the order making findings that Mr. Kirtley had not committed any misconduct.

Ms. Lazarus states in her brief, "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". This is a false statement. The transcript of the 6-26-89 hearing on the last page, page 28, indicates Judge Christie's final statement -- "Submit no orders at all to me until you get this straightened out here". (emphasis added) This does not reflect a settlement or a meeting of the minds. Mr. Stokes and Mr. Walton prepared three different drafts of a proposed settlement order, to which Mr. Segal had absolutely no input whatsoever. Each order

contained different terms and Ms. Segal never agreed to any of the proposed orders and made numerous objections in open court at multiple hearings.

Ms. Lazarus in her brief has omitted certain important facts regarding Judge Christie's recusal. Mr. Walton, in a court document, made a request for a specific judge, Judge Christie, to hear the case subsequent to his retirement. Ms. Segal indicated in her Motion for Recusal that Mr. Walton's request created an appearance of impropriety and for that reason Judge Christie recused himself. This recusal was not detrimental at all to Mr. Kirtley because the case continued in the Probate Division.

Ms. Lazarus states in her brief, "Ms. Segal sought to stay the order (enforcing settlement) to avoid paying Mr. Kirtley his fees". This is a false statement. As indicated, there was nothing in the record to indicate that there was any meeting of the minds or any settlement. At the time, Mr. Kirtley had already received some $51,000 in attorney's fees. The order was being appealed and a stay was sought in accordance with court rules. The appellate court did grant an emergency stay.

Ms. Lazarus states in her brief, "Judge Newbold, in a gesture of courtesy, did not require Ms. Segal to post a bond." This statement is misleading. Since Mr. Kirtley was a co-fiduciary with Ms. Segal, he was also a co-signator with Ms. Segal and if he did not want any funds to be disbursed, he had authority to withhold his signature. So, posting a bond would have been needless.

Ms. Lazarus refers to Ms. Segal's opposition to Mr. Walton's request for an extension of time. Appellate Rule 9.300(a) refers

to motions for extension of time and refers to opposing counsel who "will promptly file an objection." Thus, an objection is permitted by court rules and Ms. Segal complied with the court rule. It is incomprehensible why an individual would be admonished for complying with a court rule.

Ms. Lazarus in her brief refers to Kelley Drye & Warren correspondence regarding their appellate fees. Ms. Segal was aware that fees, if any, would be paid by the Trust, since only the Trust had previously paid their fees. It was Mr. Kirtley who had transferred the bulk of the Estate assets into the Trust in late 1987 and early 1988. All Kelley Drye & Warren fee petitions asked for fees from the Estate and/or Trust.

Ms. Lazarus states in her brief that Mr. Walton "rejected Ms. Segal's offer of $10,000 to settle the attorneys' fee claim". This statement is misleading. Co-fiduciaries, SunBank and Diane S. Segal, mailed to Kelley Drye & Warren a check from the Trust for $10,000. Mr. Walton retained the Trust check but refused to cash it because he was greedy for more money. This payment was mailed on 2-4-92. The Petition for Discharge was filed subsequently on 2-20-92. On 3-2-92 the Order of Discharge was signed. A fee hearing was held in May, 1992. The result was that on 5-26-92, the Trust paid Mr. Kirtley $52,145.25 and the Trust paid Kelley Drye & Warren $21,539.17 to be added to the previous $10,000 which Kelley Drye & Warren had retained. So whether the Estate was open or whether the Estate was closed, the Trust was paying Kelley Drye & Warren fees.

Ms. Lazarus and Kelley Drye & Warren have twisted the facts to suit their purpose and in so doing have made material misrepresentations

to this Court regarding Kelley Drye & Warren's ability to obtain payments regarding their fee petition filed on 9-3-92. The Court must consider the following facts: Page 35 of the "Response in Opposition to Petition by Kelley Drye & Warren for Order Authorizing Payment of Attorneys' Fees and Costs; and Counterclaim for Damages", filed on 10-1-92, by the Trust through Diane S. Segal, states, "Also to be taken into consideration is the fact that due to the previous court-ordered payments from Judge Newbold --

James D. Kirtley	--	$ 52,145.25
		72.17
Kelley Drye & Warren	--	45,428.59
Edward Golden	--	2,150.10
	TOTAL:	$ 99,796.11

the Trust has been greatly dissipated and now has insufficient funds to pay the amount of $89,274.50 plus 12% statutory interest now requested in the Kelley Drye & Warren fee petition. In addition, the Trust would be unable to pay its taxes." Pages 138, 139 state, "These fees add up to approximately a quarter of a million dollars ($240,666.18) for a Trust that is not worth much more than a million dollars". (emphasis added) As has been explained previously in open court during the proceedings, Ms. Segal distinguished between funds, referring to the account cash balance, and assets, which refer to the total value of the corpus which was clearly stated as more than a million dollars. The dissipation to which Ms. Segal was obviously referring to was the multiple fee awards totalling almost $100,000 from the Trust through Judge Newbold's court orders. Mr. Walton was well aware that there was a joint signature requirement of the two co-fiduciaries, Mr. Kirtley and Ms. Segal, and that no

funds or assets could be transferred anywhere without both signatures. The only funds which were transferred out were pursuant to court order. The same dual signature requirement applied when SunBank replaced Mr. Kirtley when he was removed as co-fiduciary.

Consider the following excerpts from Mr. Walton's testimony at the hearing held before Judge Bloom on 4-20-94: Tr. 112, 115, 118, 119, 121.

Q: "Did you state in open court at the December 18th, 1992 hearing, if the funds are there in the Trust or the Estate we really don't care where the fees come from?"

Mr. Walton: "... I did make the statement that as long as we got paid, we did not care where it came from, from either the Trust or the Estate."

Q: "Did you ever bother to get my explanation that the statement in the opposition response to the Kelley Drye & Warren fees regarding the Trust having insufficient funds pertained to the cash balance and not to the assets and that the reason the final payment of $95,000 had to be divided into two payments was because only $75,000 could come from the cash balance and the other amount for $20,000 had to come from invasion and partial liquidation of the Trust corpus?"

Mr. Walton: "No, I did not."

Q: "I presume you are not prepared to accuse SunBank of complicity in dissipating Trust assets?"

Mr. Walton: "I am not accusing anyone of doing any wrongdoing toward emptying the Trust. I know that we got paid, so obviously, there was enough money, more than sufficient funds to pay this $89,000, despite the statement that you had made and it appears to me that your statement was incorrect where you said that they have insufficient funds."

Thus, Mr. Walton's testimony is an admission confirming that this Bar matter is nothing more than a ruse and malicious prosecution. Thus, Ms. Lazarus' statement in her brief that "Ms. Segal's position (was that) there was no entity to recover assets from" is a blatant lie and clearly disproved by the court documents on the record.

Ms. Segal again repeats that Kelley Drye & Warren was not listed on the Petition for Discharge because they did not meet the statutory definition of "interested person".

Ms. Lazarus states in her brief that Mr. Walton "did not consult an accountant prior to filing the petition (to revoke the order of discharge dated March 2, 1992) because there was no need to do so." This failure on Mr. Walton's part constitutes malpractice. CPA, David R. Lawrence, testified that there would be serious adverse tax and accounting consequences involving monetary losses if Trust assets had to be transferred back to the Estate and then back again into the Trust. Kelley Drye & Warren fees and Mr. Kirtley's fees were paid from the Trust. There was no Kelley Drye & Warren fee petition for trial court fees pending at the time the Petition for Discharge was filed on 2-20-92. The Kelley Drye & Warren fee petition was filed 7 months later on 9-3-92.

Ms. Lazarus states in her brief, "The Estate, from the court records had $110,000". Ms. Lazarus conspicuously omits the material fact that the bulk of the Estate funds and assets were transferred into the Trust by Mr. Kirtley in late 1987 and early 1988 pursuant to the Will which had established a testamentary trust. Mr. Kirtley, Mr. Stokes, Mr. Walton, and Ms. Lazarus all were well aware that everything in the Estate was transferred into the Trust and that the Estate and Trust were identical.

Ms. Lazarus states in her brief that Ms. Segal did not take certain positions at the 10-22-92 hearing before Judge Newbold. The transcript is clear that Judge Newbold revoked the Petition for Discharge without allowing Ms. Segal to say even one word or to

submit any documentary evidence prior to his revoking the Order of Discharge. Ms. Segal made her constitutional due process objections on the record.

Ms. Lazarus states in her brief that "the trust is a private entity and they would not know what is going on." That statement is a blatant lie. The Probate Division was always the sole jurisdiction regarding all matters pertaining to the Trust and all court filings of Kelley Drye & Warren making the Trust a party to the litigation were filed with the Probate Division and are of public record in the clerk's office.

Ms. Lazarus states in her brief, "Ms. Segal represented that the Estate had no assets whatsoever." This was because all assets and funds were transferred into the Trust pursuant to the Will.

Ms. Lazarus states in her brief, "Since Respondent had previously said the Trust had no assets whatsoever, Kelley Drye & Warren feared that they had no solvent entity to recover from." That statement is a blatant lie. Ms. Segal never at any time said that the Trust had no assets. The record indicates that Ms. Segal stated that the Trust was worth approximately a million dollars. The record indicates that Mr. Kirtley, Mr. Stokes, Mr. Walton and Ms. Lazarus were well aware that the Trust was worth approximately a million dollars.

The Estate was fully administered and ready to be closed out because, as determined by CPA, David R. Lawrence, fee payments to Kelley Drye & Warren were an expense of the Trust, not the Estate. All Kelley Drye & Warren fees, $140,000 were in fact paid by the Trust.

The brief states, "Judge Newbold copied The Florida Bar with this order." This wording is the same unusual wording which Mr. Stokes has always used in his probate court filings and indicates that he prepared the brief for Ms. Lazarus.

The brief states "Mr. Walton did not turn Ms. Segal in." That statement is a lie because Mr. Walton drafted the petition to revoke the order of discharge and he drafted the order revoking the order of discharge containing the false accusations against Mr. Segal. Mr. Walton gave the revocation order to Judge Newbold to sign and even billed $4,000 for this. Mr. Walton and Mr. Stokes of Kelley Drye & Warren were the sole cause in instigating this false Bar complaint against Ms. Segal.

Ms. Lazarus states in her brief, "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." The reason for this is that Mr. Walton in open court at the 2-25-93 hearing before Judge Newman stated that he did not want a copy of it. See Exhibit "QQ", Tr. 2-25-93, Page 7:

> Mr. Walton: The findings are between you and the judge, so I don't need to see that, but I would like to see the settlement order, of course, and releases.
>
> Mr. Jacobs (attorney for SunBank, co-fiduciary): I will distribute the proposed order, releases to everyone, prior to submitting them to Judge Newman.

Ms. Lazarus states in her brief that "Mr. Kirtley was paid in the summer of 1992 and Kelley Drye & Warren ... was paid in March of 1993. They were paid from the Trust because that was where the money was by that time." That statement is misleading. It was

Mr. Kirtley who transferred the bulk of the Estate assets into the Trust in late 1987 and early 1988. The Trust came into existence in 1988. Kelley Drye & Warren first appeared on the case in 1988 to represent Mr. Kirtley's interests. Kelley Drye & Warren received its first payment of $13,889.42 from the Trust on 9-16-91 for the first appeal; $10,000 from the Trust on 2-4-92 for the second appeal and $21,539.17 from the Trust on 5-26-92 for the second appeal and $95,000.00 from the Trust on 3-29-93 to terminate the litigation. So, again, whether the Estate was open or whether the Estate was closed, the Trust paid Kelley Drye & Warren fees. (The Estate was closed on 3-2-92.)

Ms. Lazarus states in her brief, "Mr. Walton stated that Ms. Segal continuously fought every single issue and inundated the court with pleadings requiring a response." That statement is a lie. It was Kelley Drye & Warren and Mr. Kirtley who inundated the court with massive, frivolous court filings for the sole purpose of fee gouging and Ms. Segal was obligated to file responses. There is no Florida statute which prohibits the filing of objections to clearly exhorbitant fee petitions which took 17½% of the decedent's life savings.

Ms. Lazarus states in her brief, "Mr. Walton testified that this matter was no joy for Mr. Kirtley." Consider the following: It surely had to be a joy for Mr. Kirtley and his attorneys, Kelley Drye & Warren to vest 17½% of Clifford Segal's lifetime savings in themselves through clearly exhorbitant legal fees; it certainly must have been a joy for Mr. Kirtley to retain personal ownership of the Pillsbury stock, the Trust's most valuable asset, in excess of

one year, when he was fully aware that such conduct was highly improper. No doubt his joy evolved from knowing that Ms. Segal was concerned about this; at the hearing on October 22, 1992, after Judge Newbold revoked the Order of Discharge and Final Accounting, Mr. Kirtley, Mr. Stokes and Mr. Walton were so joyous that they left the judge's chambers laughing out loud.

Ms. Lazarus states in her brief, "Ms. Segal presented the judge (Newbold) with the petition and he asked her if she had the consent of all of the parties." That statement is a blatant lie. Judge Newbold asked Ms. Segal if everything was ready to be closed out.

Ms. Lazarus states in her brief, "He (Judge Newbold) 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." That statement is a blatant lie. Judge Newbold never made that statement to Ms. Segal.

Ms. Lazarus states in her brief, "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." These statements are blatant lies. Ms. Segal never told Judge Newbold she had the consent of the lawyers; she told him the Estate was ready to be closed out. In addition, Judge Newbold did not sign the Order of Discharge in the presence of Ms. Segal the same day she came in. The court date stamps on the documents verify this. See Exhibits "F" and "G". The Petition for Discharge was filed on 2-20-92 with Judge Newbold's ex parte clerk. 11 days later, on 3-2-92, Judge Newbold signed the Order of Discharge. He had 11 days to review the court files to verify that everything was in order. In fact, Judge Newbold's ex parte clerk, Ms. Alicia

Rodriguez, signed a Checklist which did find that the Estate was ready for closure. She checked the box "Claims filed - none", "time for filing claims expired". See Exhibit "O", a copy of which is attached hereto.

Ms. Lazarus states in her brief, "Ms. Segal neither admitted to making a misrepresentation to Judge Newbold or said she was sorry for making a misrepresentation." Ms. Segal has consistently maintained and will always maintain that the Bar matter was a false accusation and malicious and selective prosecution. Judge Newbold never said he was sorry for his false accusation.

Ms. Lazarus states in her brief, "He (Judge Newbold) did not reserve jurisdiction to determine whether or not fees should be awarded." See CPA, David R. Lawrence's testimony in the 5-7-94 transcript, Pages 287, 288, 310, 311, 318-320, 322, 359, where he makes the following statement regarding his preparation of the Final Accounting:

> Mr. Lawrence: 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.

Ms. Lazarus states in her brief, "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." The pleading to which Judge Newbold referred was the Kelley Drye & Warren Petition to Revoke Order of Discharge Dated March 2, 1992. See Exhibit "W". The Petition was dated 10-14-92 and was signed by Mr. Walton. Long before 10-14-92, both Kelley Drye & Warren and Mr. Kirtley had been paid.

Consider the chronology: Kelley Drye & Warren received its first payment of $13,889.42 from the Trust on 9-16-91 for the first appeal; $10,000 from the Trust on 2-4-92 for the second appeal and $21,539.17 from the Trust on 5-26-92 for the second appeal. Mr. Kirtley received $52,145.25 from the Trust on 5-26-92. See Exhibit "I", notarized Satisfactions. Kelley Drye & Warren filed its fee petition for trial court fees on 9-3-92. See Exhibit "S". This was seven months after the Petition for Discharge had been filed. Kelley Drye & Warren, in its fee petition, asked for fees to come from the "estate and/or trust of Clifford Segal". See Exhibit "K". Judge Newbold set the matter for hearing on 10-22-92. So the figures and dates of the various transactions confirm that the contents of the Kelley Drye & Warren Petition to Revoke Order of Discharge Dated March 2, 1992, constitute a serious fraud on the court because the statements contained therein are lies.

Ms.Lazarus states in her brief that Mr. Kirtley had been a "friend" of Clifford Segal. That statement is a misrepresentation.

Ms. Lazarus states in her brief, "The Respondent did not request that income be paid to her." That statement is a blatant lie. Court records, including correspondence and petitions clearly indicate Ms. Segal's multiple attempts throughout a 6-year period to compel Mr. Kirtley to distribute the income to which she was entitled in accordance with the Will.

Ms. Lazarus states in her brief, "Mr. Kirtley understood from the Respondent that she did not want any more money in 1987 because it would change her tax situation." That statement is a blatant lie which is clearly refuted by Ms. Segal's multiple court filings to

compel Mr. Kirtley to carry out his fiduciary duty which he failed and refused to do.

Ms. Lazarus states in her brief that "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". This statement needs correction. Mr. Kirtley was paid $40,000 in attorney's fees in February, 1987. In addition, he was also paid another $11,000 in attorney's fees on 8-12-86 for the sale of two properties in New Jersey. So Mr. Kirtley received $51,000. Since Mr. Kirtley had failed and refused to carry out his fiduciary duties as more fully described in Petitioner's Brief, there were unresolved issues as to the payment to Mr. Kirtley of another $40,000 for having maladministered the Estate, for having caused monetary losses, and for not taking into account the $11,000 he had previously received. Therefore, any further payment was improper until the resolution of these issues.

Ms. Lazarus states in her brief, "Mr. Smith (then attorney for Ms. Segal) requested Mr. Kirtley to voluntarily produce securities." This statement requires clarification. The facts indicate that Mr. Kirtley retained all of the Estate securities in his personal safe deposit box to which Ms. Segal was denied access. When he finally turned over the certificates for the securities to Ms. Segal's then attorney, Mr. Kirtley was still a co-fiduciary and still had a duty to correct the title to the Pillsbury stock and this he refused to to during an entire one-year period. See Exhibit "B".

Ms. Lazarus states in her brief, "Mr. Kirtley believed Ms. Segal was not honest and truthful since she made allegations which were

not founded in fact." That statement is a blatant lie. The Petition to Remove Mr. Kirtley as co-fiduciary for maladministration contains statements backed by tax returns, bank statements, securities, and court documents.

Ms. Lazarus states in her brief that "Mr. Stokes reviewed Fla. Stat. § 731.201(21) as to the definition of interested persons and opined that Kelley Drye & Warren was an interested person at the time Judge Newbold was presented with the Petition for Discharge". Since Kelley Drye & Warren was not in any way affected by the closing of the Estate because they had always been paid from the Trust, they could not possibly have been an interested person. Since Mr. Stokes conceded during his testimony (4-22-92, Tr. 18) that in this particular administration Kelley Drye & Warren could have been paid from the Trust, his statement that an order of discharge terminates the jurisdiction of the court is a lie. The Probate Division at all times had jurisdiction over the Trust and court records confirm this. The Notice of Administration referring to the time bar of three months of the first publication (See Exhibit "P") to file claims refers to an estate, not to a decedent. Kelley Drye & Warren was attempting to make a fee claim in the Probate Division against the Estate and/or Trust, not against the decedent.

The reference to Mr. Stokes as a co-worker is misleading. Consider Mr. Stokes' testimony during his deposition taken on 12-14-90, Tr. 29:

> Q: As I understand it, you were billing partner for this particular case. Is that correct?
>
> Mr. Stokes: That is correct.

Mr. Walton referred to Mr. Stokes as lead counsel. Mr. Walton is not

a probate attorney.

Ms. Lazarus states in her brief that "Kelley Drye & Warren's expenses were administrative expenses". That statement is a blatant lie. The Estate was administered from 1986 to 1988. The Trust was formed in 1988. Kelley Drye & Warren first appeared on the case to represent Mr. Kirtley's interests in 1988, the same year the Trust was formed. Kelley Drye & Warren could not possibly have incurred any Estate administrative expenses.

Ms. Lazarus states in her brief that "Ms. Segal stated that on February 20, 1992 she presented Judge Newbold with the Petition for Discharge". That statement is misleading because of the omissions. Ms. Segal presented to Judge Newbold not only the Petition for Discharge, but also the 41-page Final Accounting prepared by CPA, David R. Lawrence, the Waiver of Thirty-Day Period, and a proposed Order of Discharge. The exact description of what transpired is fully set forth in Petitioner's Brief. Judge Newbold told Ms. Segal to take the Petition for Discharge, the Final Accounting, Waiver and proposed Order to his ex parte clerk so the files could be reviewed and Ms. Segal complied. Ms. Lazarus' brief omits the fact that Ms. Segal was directed by Judge Newbold to submit <u>all</u> her documents to his ex parte clerk, not just the Petition for Discharge.[1]

Ms. Lazarus states in her brief, "The Respondent believed Judge Newbold had jurisdiction over the Trust." This was not simply a "belief"; Judge Newbold did in fact always have jurisdiction over the Trust; all his fee orders to Kelley Drye & Warren provide for fees to be paid from the <u>Trust</u>; in the Order Enforcing Settlement which he signed in 1991, 10 of the 20 paragraphs refer to the <u>Trust</u>

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[1] Records indicate that <u>each</u> closing document -- the Petition for Discharge, Final Accounting, and Waiver -- has the <u>2-20-92</u> filing date shown by the court date stamp that was placed on each document by Judge Newbold's ex parte clerk.

or to the co-trustees.

Ms. Lazarus states in her brief that "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". Obviously, there is a fiduciary duty to inspect any invoice to verify the nature and amount of the billing, if there is double billing, exhorbitant billing, billing fees to bill for fees, billing $60 to glance at a little green postal receipt card, billing attorneys' fees to do clerical work. All this was clearly apparent from the Kelley Drye & Warren fee petitions. In addition, Kelley Drye & Warren was responsible for causing enormous monetary losses. See Exhibit "GG", an Affidavit of CPA, David R. Lawrence regarding the damage report which he prepared.

Ms. Lazarus conspicuously omitted from her brief any reference to Ms. Segal's overwhelming and exonerating court documentary evidence -- her 43 Exhibits which contradict the false testimony given by all of Ms. Lazarus' witnesses. Ms. Lazarus never met the required clear and convincing evidence standard and never had a case, just a false accusation which she chose to obsessively and maliciously prosecute.

Ms. Lazarus states in her brief, "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." That is a false statement. Ms. Segal did not express a "desire"; she did in fact resign and stated that fact in clear and unambiguous languate -- "I am resigning from The Florida Bar effective as of the date of this letter (11-3-94)". The statement was made under oath and the Bar membership cards were enclosed and returned

to the Florida Supreme Court.

Ms. Segal filed court documents in her defense, including a Petition for Writ of Certiorari to the United States Supreme Court which set forth the true nature of these proceedings of malicious prosecution of a false complaint and raised the issue of violation of constitutional rights and civil rights. Ms. Segal filed court documents which prove that all of Ms. Lazarus' witnesses committed perjury. Ms. Lazarus' response was to attempt to thwart the truth from becoming known by threatening Ms. Segal with aggravating circumstances to enhance discipline when Ms. Segal is not even an attorney -- she voluntarily resigned from The Florida Bar almost one year ago, was never gainfully employed as an attorney, made clear on the record that she never will be, and permanently terminated payment of any further Bar membership dues.

None of Ms. Lazarus' or Judge Bloom's recommendations are applicable because 1) the most careful examination and analysis of the record does not show a scintilla of evidence to support findings of guilt and 2) Ms. Segal voluntarily resigned from The Florida Bar on 11-3-94, which is her constitutional right and, thus, jurisdiction over the matter terminated on 11-3-94.

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

Ms. Lazarus states in her brief, "Respondent prolonged the litigation as a result of her refusal to pay the personal representative and to pay his attorneys' fees." That statement is a blatant lie. It was Mr. Kirtley and his attorneys, Mr. Stokes and Mr. Walton, who deliberately prolonged their frivolous litigation in order to rack up exhorbitant attorneys' fees, billed fees to collect fees, and held Ms. Segal's rightful income distribution hostage by refusing to distribute what was legally hers.

Ms. Lazarus' reference in her brief to "outstanding fees" and the Petition for Discharge is false and misleading. Kelley Drye & Warren's total court-ordered appellate fees ($45,000) were paid from the Trust and not from the Estate because they were an expense of the Trust, not of the Estate. The record reflects that regarding Kelley Drye & Warren trial court fees, there was no pending fee petition at the time of filing the Petition for Discharge (2-20-92); the fee petition was filed 7 months later on 9-3-92. Kelley Drye & Warren knew that the bulk of Estate assets had been transferred by Mr. Kirtley into the Trust in late 1987 and early 1988 and that the Trust was the only source of their payments. Both Mr. Stokes and Mr. Walton conceded in their testimony that they knew the Trust could pay their fees. Therefore, there was absolutely no reason to file a petition to revoke the order of discharge except to gain a litigation advantage over Ms. Segal. Mr. Kirtley, Mr. Stokes and Mr. Walton used The Florida Bar to carry out their illegal motive.

What Ms. Lazarus refers to in her brief as a "personal writing rampage", in fact, constitutes Ms. Segal's constitutional right to

defend herself against a false accusation and malicious prosecution. In the process, Ms. Segal made known the acts of collusion and serious misconduct of Ms. Lazarus, Mr. Kirtley, Mr. Stokes and Mr. Walton, and that is what Ms. Lazarus is so desperate to cover up.

Judge Bloom's extreme bias and prejudice against Ms. Segal is clearly documented in the record so his false findings of guilt with nothing in the entire record to substantiate them are nothing but a product of his bias and prejudice and a desire to ingratiate himself with and to placate the Bar.

Since Ms. Segal voluntarily resigned under oath from The Florida Bar on 11-3-94, which she has a constitutional right to do, and in lieu of the exonerating court documentary evidence, Ms. Lazarus' continued harassment of Ms. Segal and bizarre requests for sanctions are not only unconstitutional and illegal, but are completely senseless.

ARGUMENT

I. THE REFEREE'S FINDINGS OF FACT ARE NOT SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE; ARE NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE WHICH IS THE REQUIRED LEGAL STANDARD IN A BAR PROCEEDING; ARE CLEARLY CONTRARY TO THE OVERWHELMING WEIGHT OF THE COURT DOCUMENTARY EVIDENCE; ARE CLEARLY ERRONEOUS.

The referee's findings are all in violation of the standard of review as set forth in Holland v. Gross,89 So. 2d 255, 258 (Fla. 1956) and 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.

The Bar rule (4-3.3(a)(1)) under which Diane S. Segal was falsely accused of violating sets forth a "subjective" standard through the use of the word "knowingly". Diane S. Segal testified and her expert witness, CPA, David R. Lawrence, testified; Diane S. Segal submitted into evidence 43 Exhibits of court documentary evidence proving through dates of various transactions and events, facts, and monetary amounts paid solely by the Trust, that she did not make any misrepresentations or intend to make any misrepresentations. Diane S. Segal proved that Ms. Lazarus' witnesses gave perjured testimony. Nevertheless, Judge Bloom as referee, whose biased and prejudiced conduct toward Ms. Segal is clear from the record, took it upon himself to impose arbitrarily his own "objective" standard of vicious personal attacks and denigrating remarks to Ms. Segal in order to justify his clearly erroneous and unconstitutional findings.

Ms. Lazarus states in her brief that Ms. Segal "fought paying personal representative fees to Mr. Kirtley and legal fees to Kelley Drye & Warren from the onset". Ms. Lazarus has conspicuously

omitted the fact that Mr. Kirtley, at the very beginning of the Estate administration, was paid $51,000. The record reflects that he refused to carry out the terms of the decedent's Will and maladministered the Estate causing enormous monetary losses. For those acts, Mr. Kirtley demanded another $40,000 in attorney's fees (not personal representative fees). Any average, reasonable person, not to mention a co-fiduciary who had a fiduciary responsibility to protect Estate/Trust assets, would have objected to such exhorbitant fee demands.

Mr. Kirtley's attorneys, Mr. Stokes and Mr. Walton, inundated the court during a 5-year period with massive, frivolous court filings for the purpose of fee gouging. This is evident through examination of their fee petitions -- double billing, billing fees to bill for fees, billing at an attorney rate to do clerical work, billing $60 to glance at a little green postal receipt card. In addition, they caused enormous monetary losses. Any average, reasonable person, not to mention a co-fiduciary who had a fiduciary responsibility to protect Estate/Trust assets, would have objected to such exhorbitant fee demands. There is no Florida statute which prohibits objections from being made to exhorbitant fee petitions.

Ms. Lazarus states in her brief that Ms. Segal "agreed to a settlement ... which would include payment to Mr. Kirtley and Kelley Drye & Warren." That statement is a blatant lie. Review of the 6-26-89 transcript and all transcripts and court filings thereafter indicates Ms. Segal's objections on the record. The order was put through over Ms. Segal's objections.

Ms. Lazarus states in her brief, "in a further effort to resist

payment, the Respondent moved to recuse the judge." That statement is a blatant lie. Ms. Walton, in his court filing, made a request that a specific judge, Judge Christie, preside over the case even after his retirement. Ms. Segal's motion for recusal was based on an appearance of impropriety where Mr. Walton chose a specific judge to hear the case.

When Ms. Segal filed for an appeal, she had a constitutional right to do so and exercised that right.

When Ms. Segal filed the Petition for Discharge to close out the Estate, she did so in compliance with Fla. Stat. § 733.901 and Fla. Probate Rule 5.400 because the Estate had been fully administered. Judge Newbold's ex parte clerk, Ms. Alicia Rodriguez, completed a Checklist after her review of the case files. On the Checklist she indicated that all required procedures were completed regarding the Estate administration process, including the fact that there were no pending claims and that the time for filing claims had expired. Ms. Lazarus has conspicuously omitted any reference to the ex parte's Checklist in her continuing effort to conceal evidence and obstruct justice.

An "interested person" under Fla. Stat. § 731.201(21) is "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, because that was where Mr. Kirtley had transferred the bulk of the Estate assets and funds pursuant to the Will, closing the Estate did not in any way affect Kelley Drye & Warren's fee requests. They could not possibly have been an "interested person". Only SunBank and Diane S. Segal were interested persons and any assertion otherwise is ludicrous.

Ms. Lazarus, in her brief, has demonstrated not only a complete lack of understanding of the accounting principle that is a critical element of this case, but also intentionally misrepresented the content of Mr. Lawrence's testimony by omitting his responses to Judge Bloom's questions. CPA, David R. Lawrence, who is professionally bound by accounting rules, relied on Financial Accounting Standards Board Statement No. 5 (FASB-5) and explained why the rule precludes the listing of any Kelley Drye & Warren fees in the Estate Final Accounting or Petition for Discharge. Ms. Lazarus only quotes Judge Bloom's question to Mr. Lawrence as to why Judge Newbold was not told of fee requests by Kelley Drye & Warren. The following testimony concerning Mr. Lawrence's accounting explanation was conspicuously omitted by Ms. Lazarus:

> Mr. Lawrence: I didn't from my part. 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.
>
> Judge Bloom: That goes back to what you said several times. If you felt it was a Trust obligation because the Trust had the assets and the Trust made all the payments previously?
>
> Mr. Lawrence: The Trust was also a party to everything that went on.
>
> Ms. Segal: What did Diane Segal tell you about such fee liabilities?
>
> Mr. Lawrence: Well, basically, you told me that you didn't think that they were entitled to fees, they certainly weren't entitled to the amount that they got, but, in any event, it was a Trust liability.
>
> Ms. Segal: What did Diane Segal ask you to do about such possible liability?
>
> Mr. Lawrence: Basically, what you said to me was prepare the final accounting and make sure it's correct and make sure, you know, check every number, so that what is in that document is absolutely correct, and that's what I did.

Ms. Segal: What documents did Diane Segal provide to you in connection with the possible liability for fees to Kelley Drye & Warren?

Mr. Lawrence: You gave me the May order enforcing settlement. I believe it was the May, '91 order enforcing settlement. You gave me copies of the correspondence that you had received from -- during the course of this Estate. You gave me copies of the pleadings, I basically had in my file, and looked at in connection with this everything that you had in your file.

Ms. Segal: What did you do after the time Diane Segal told you about the fees and provided you with the documents you described?

Mr. Lawrence: I started doing some research to figure out what I had to do with this and that entailed looking at FASB-5 and 13 which deals with contingency and looking at the interpretation under those two FASB's, reviewing the documents that had been provided to me and then came to my conclusion as to what I needed to do in the final accounting.

Ms. Segal: What was that conclusion?

Mr. Lawrence: That I was not going to make any provision or mention of those fees because I believe that they were a liability of the Trust.
(5-7-94 transcript, Pages 318-320)

Kelley Drye & Warren rejected the $10,000 payment from the Trust as a final payment for the second appeal because they were greedy for more money. They prolonged the litigation, litigating fees for fees, until they got another $21,000 from the Trust.

Ms. Lazarus states in her brief, "An emergency hearing was held before Judge Newbold to revoke the Petition." That statement is a blatant lie. The Notice of Hearing filed by Kelley Drye & Warren was dated 9-3-92 and scheduled a hearing for their fee petition, also dated 9-3-92, for 10-22-92 before Judge Newbold. This was the purpose for their calling the hearing. In that fee petition, they requested fees from the "Estate and/or Trust". At the last minute, to gain a litigation advantage, they threw in notices of hearing for

that same day, 10-22-92, for multiple additional issues, which included their Petition to Revoke the Order of Discharge dated 3-2-92.

Ms. Lazarus states in her brief, "it is no surprise that Judge Newbold did not want to hear from the Respondent, nor must he." That statement is appalling, outrageous, and should shock the conscience of anyone reading it. Article I, section 21 of the Florida Constitution guarantees access to the court; the due process clauses of the United States and Florida Constitutions guarantee that a court decision cannot be made based on hearing only one side of a case. Contrary to those constitutional provisions, Judge Newbold refused to allow Diane S. Segal to say even one word or present any documentary evidence whatsoever prior to his decision to revoke the Order of Discharge. It is extremely significant to note that Judge Newbold knew that he had closed out the Estate on 3-2-92, yet he continued to schedule fee hearings for Kelley Drye & Warren in May, 1992 and October, 1992. Obviously, Judge Newbold also knew that the Trust, not the Estate, would be the only entity that could make a fee payment.

The Kelley Drye & Warren fee petition for the trial court fees was filed on 9-3-92 , 7 months after the filing of the Petition for Discharge on 2-20-92. So Ms. Lazarus' statement in her brief that there was a pending fee petition is a blatant lie.

Diane S. Segal's Motion for Recusal of Judge Newbold was in response to misconduct on the part of Mr. Walton. Mr. Walton stated in a court document that Kelley Drye & Warren fees had been awarded even prior to the issue being heard at a court hearing. This constituted an appearance of impropriety as to improper ex parte

communications between him and Judge Newbold and how Mr. Walton would know in advance of a hearing what the ruling would be. The Order Enforcing Settlement, Paragraph 19, does not mention specifically that fees shall be awarded, does not list any dollar amount, and does not name any individual or entity to make a payment.

The Notice of Administration, published in 1986, makes clear that "within three months of the first publication of this notice all claims against the estate ... not so filed will be forever barred." Kelley Drye & Warren made its claim against the Estate on 9-3-92, 6 years late. Judge Newbold's ex parte clerk confirmed in her Checklist that no claims had been filed, and that the time for filing claims had expired. For Ms. Lazarus to state in her brief that Diane S. Segal's statement that Kelley Drye & Warren was time-barred from filing any claims against the Estate was "to avoid the payment of any attorneys' fees to Kelley Drye & Warren" is a clear indication of Ms. Lazarus' complete inability and unwillingness to comprehend or deal with the facts and issues in this case.

Another example of Ms. Lazarus' complete inability and unwillingness to comprehend or deal with the facts and issues in this case is her refusal to accept the effect and the meaning of Judge Newman's three orders -- the reinstatement nunc pro tunc of the Order of Discharge dated 3-2-92 of a fully administered estate, and the additional information regarding no fraudulent conveyance to cut off fees-- they reverse Judge Newbold's revocation order. Judge Newman's third order, the Agreed Order Terminating Litigation, makes clear that the Trust will pay $95,000 to Kelley Drye & Warren, Releases will be signed, and "The payment being made is to terminate

the litigation and shall not be an admission of liability by any party." Consider the following testimony given by Judge Newman at the 6-7-94 hearing before Judge Bloom: (Tr. 9)

> Q: Your crossing out Paragraphs 20 and 21 of the reinstatement order and Paragraph 4 of the Order Providing Additional Information to The Florida Bar was done not because you disbelieved them, you just felt they did not belong in the orders, correct?
>
> Judge Newman: Most certainly. I think I've indicated that in my testimony.

Judge Bloom's intentional campaign of well over 31 vicious personal attacks and denigrating remarks directed against Diane S. Segal throughout the proceedings in this case are well documented. The result was biased and prejudiced findings that are totally contrary to the overwhelming weight of the exonerating court documentary evidence. This was a violation of Diane S. Segal's right to due process as guaranteed by the 5th and 14th amendments to the United States Constitution.

II. DIANE S. SEGAL'S VOLUNTARY RESIGNATION UNDER OATH FROM THE FLORIDA BAR ON 11-3-94 BECAME EFFECTIVE ON 11-3-94, NOT ON JUDGE BLOOM'S ARBITRARILY CHOSEN DATE OF 7-31-95.

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 11-3-94 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 terminated payment of any further Bar membership dues. The record is clear: Diane S. Segal voluntarily resigned from The Florida Bar on 11-3-94 and NOT on 7-31-95. The arbitrary imposition of 7-31-95 as a resignation date is blatantly unconstitutional as a violation of the due process clause of the United States Constitution.

Ms. Lazarus states in her brief, "Respondent has presented no authority to support her position that she is entitled to a retroactive commencement of the resignation." That statement is a lie. Ms. Segal made it clear that her legal authority is the United States Constitution.

This is another example of Ms. Lazarus' inability and unwillingness to comprehend or to deal with the facts and issues. All actions taken by Ms. Lazarus subsequent to 11-3-94 are unconstitutional and illegal, as well as all her actions taken from the commencement of this non-case.

III. THE REFEREE'S RECOMMENDATIONS ARE CLEARLY ERRONEOUS, UNCONSTITUTIONAL, ILLEGAL, UNJUSTIFIED, AND TOTALLY CONTRARY TO THE OVERWHELMING WEIGHT OF THE EXONERATING COURT DOCUMENTARY EVIDENCE.

Ms. Segal voluntarily resigned under oath from The Florida Bar on 11-3-94 in a letter of resignation and returned her Bar membership cards. She made clear repeatedly on the record that she had never been gainfully employed as an attorney and never will be; that she no longer wished to be a member of such an organization as The Florida Bar; that she had permanently terminated any further Bar membership dues. All these acts meet the legal definition of a "resignation" which is defined by Black's Law Dictionary as follows: "Formal renouncement or relinquishment of an office. It must be made with intention of relinquishing the office accompanied by act of relinquishment."

Ms. Lazarus' attempt to have Ms. Segal disbarred when Ms. Segal is no longer a Bar member and hasn't been for nearly one year is totally senseless, irrational, and absurd and again calls attention to Ms. Lazarus' urgent need for a psychiatric examination.

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.

Therefore, Ms. Lazarus' statements in her brief that the letter of 11-3-94 was "an act of protest" and a "desire to resign" are another example of her misrepresentations to the Court and of her inability and unwillingness to deal with the facts or the issues.

The Florida Bar rule pertaining to disciplinary resignation (3-7.12) does not apply to Ms. Segal because she cannot and will not ever admit to guilt to something which she did NOT do in order to resign. Ms. Lazarus stated in her letter dated 11-8-94, "... she must comply with the requirements of Rule 3-7.12 of the Rules Regulating The Florida Bar in order to resign". Ms. Lazarus stated in her letter dated 11-10-94, "The only resignation that exists is pursuant to Rule 3-7.12". The Bar policy requiring an innocent individual to have to admit to guilt on a false accusation in order to resign from Bar membership is clearly unconstitutional as being a denial of due process under the 5th and 14th amendments to the United Stated Constitution.

The Florida Board of Bar Examiners thoroughly investigated Ms. Segal during the admission application process and was kept fully apprised by Ms. Segal through submission of thorough court documentation of the nature and progress of the Probate Court proceedings. The result was that the Florida Board of Bar Examiners concluded that there was nothing to disqualify Ms. Segal form being admitted to The Florida Bar.

Ms. Lazarus states in her brief that "This court has held that false testimony in the judicial process deserves the harshest penalty." That statement must be applied to Mr. Kirtley, Mr. Stokes, and Mr. Walton where there is documented evidence of their false testimony during this entire proceeding and to Ms. Lazarus who knowingly presented their false testimony in a court of law. Ms. Lazarus also made material misrepresentations in her court filings by stating that certain court documents had been mailed when, in fact,

they had not been mailed; she advised the Referee that the matter was "ripe" for his consideration when she knew that there were pending motions at the time; she did not prosecute any counsel for SunBank, even though SunBank had signed the same Estate closing documents along with Ms. Segal; she engaged in concealment of evidence and obstruction of justice and worked in collusion with Mr. Kirtley, Mr. Stokes and Mr. Walton; she filed a false, frivolous and malicious complaint against Ms. Segal and engaged in deceit, trickery, lies, threats and coersion throughout the 3-year duration of this non-case; she knowingly deprived Ms. Segal of her due process and equal protection rights guaranteed by the 5th and 14th amendments to the United States Constitution and of her civil rights.

Therefore, disbarment is the appropriate action to be taken against Ms. Lazarus, Mr. Kirtley, Mr. Stokes and Mr. Walton.

IV. THE REFEREE'S RECOMMENDATION THAT COSTS BE ASSESSED AGAINST MS. SEGAL IS NOT ONLY UNCONSTITUTIONAL, ILLEGAL AND UNJUSTIFIED, BUT IS ABSURD IN CONSIDERING THE ENTIRE RECORD OF OVERWHELMING AND EXONERATING COURT DOCUMENTARY EVIDENCE IN THIS CASE.

The most careful examination and analysis of the record does not show a scintilla of evidence to support findings of guilt. It is unconstitutional, illegal and unjustified for Ms. Segal to have to pay for the Bar's 3-year deliberate campaign of malicious prosecution.

In addition, Ms. Segal voluntarily resigned under oath from The Florida Bar on 11-3-94, which she has a constitutional right to do, and any subsequent proceedings against her were unconstitutional and illegal.

The perjured testimony of Mr. Kirtley, Mr. Stokes, and Mr. Walton, their inducing a false Bar complaint by their court filing of a Petition to Revoke the Order of Discharge when they knew that the Trust was paying them all along and was always the only source of their payments is what cannot and should not be condoned by this Court.

Ms. Lazarus knowingly and intentionally engaged in malicious prosecution of this false complaint and, therefore, the Bar should be required not only to pay its own expenses, but also should be required to pay all expenses of Ms. Segal who was compelled to defend herself against the false and frivolous matter during a 3-year period. The malice of Ms. Lazarus is evident from her continued obsession to prosecute even after Ms. Segal voluntarily terminated her Bar membership almost one year ago on 11-3-94.

CONCLUSION

WHEREFORE, for all the foregoing reasons, this Court should deny The Florida Bar's requests, grant Diane S. Segal her 5-point request as stated on Pages 40-41 of her initial brief previously filed, and with respect to Item No. 5, Diane S. Segal urges the Court to disbar Randi Klayman Lazarus, James Kirtley, Paul Stokes and Rodney Walton for their serious misconduct and collusion in this case.

Diane S. Segal

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CERTIFICATE OF SERVICE

I hereby certify that the original and seven copies of the foregoing Petitioner's Reply Brief and Answer Brief on Cross-Petition for Review were mailed by Express Mail 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:

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The Florida Bar
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this 14th day of September, 1995.

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APPENDIX