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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

CLERK, SUPREME COURT

Complainant,

Case No. 84,435

By _____
Chief Deputy Clerk

vs.

MILTON KELNER,

Respondent.

_____ /

RESPONDENT'S REPLY BRIEF

JOHN D. KELNER, ESQUIRE
FL BAR NO: 296252
LAW OFFICES OF JOHN D. KELNER
1200 Courthouse Tower
44 West Flagler Street
Miami, Florida 33130
Tel. No. (305) 374-4466

Forty-Four West Flagler Street Law Offices of John D. Kelner Miami, Florida 33130

(305) 374-4466

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ARGUMENT

There is no Referee's finding of fact that Respondent intentionally violated the Court's order. Such a conclusion, by the attorney for the Florida Bar (and not by the Referee) (Bar's Brief - pg 12), is not supported by competent, substantial evidence. The Florida Bar v. Garland, 651 So.2d 1182 (Fla 1995). The Florida Bar's Answer Brief, at page 12, states "However, it is clear from the Referee's report that the Respondent intentionally disobeyed the court's order in limine."

The Florida Bar's Answer Brief has pole vaulted to the conclusion and finding of fact that Respondent intentionally disobeyed the Court's order. This is not a finding of fact by the Referee. There is no competent, substantial evidence to support any such conclusion or finding of fact.

The Florida Bar's Answer Brief (pg 14) states that "Attorneys have received serious discipline for violations similar to those the Respondent has been found to have committed in this case."

None of the cases cited or discussed by the Florida Bar (pgs. 14-17) reflect "violations similar to those the respondent has been found to have committed in this case." There are no Florida cases separating permissible loss of consortium claims from alienation of affection claims. Respondent owed a duty to present to the jury his client's damages for loss of consortium (Florida Standard Jury Instruction 6.2(e). Respondent would have been derelict in the duty he owed to his client had he not done so.

CONCLUSION

The Referee made no finding of fact that Respondent intentionally violated the trial court's order. Such a finding, if inferred, is erroneous and lacking in evidentiary support and is not supported by clear and convincing, competent substantial evidence, and should not be accepted by this Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing Respondent's Reply Brief have been sent via U.S. Mail to the Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1927, on this 13th day of September, 1995, and true and correct copies to: Jan Wichrowski, Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801 and John A. Boggs, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300.

LAW OFFICE OF JOHN D. KELNER
1200 Courthouse Tower
44 West Flagler Street
Miami, Florida 33130
Tel. No. (305) 374-4466

BY: 

John D. Kelner, Esquire
FL BAR NO: 296252