IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR ,

Complainant,

Case No. 84,495
[TFB Case No.94-31,375(09E)]

v.

HAROLD G. UHRIG,

Respondent.
_____/

ANSWER BRIEF

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SYMBOLS AND REFERENCES

In this brief, the complainant, The Florida Bar, shall be referred to as "the bar."

The transcript of the motion hearing held on December 19, 1994, shall be referred to as "T. 12/19/94" followed by the cited page number(s).

The transcript of the motion hearing held on February 16, 1995, shall be referred to as "T. 2/16/95" followed by the cited page number(s).

The report of referee dated April 17, 1995, will be referred to as "RR." followed by the referenced page number of the appendix, attached.

The bar's exhibits shall be referred to as "B-Ex." followed by the exhibit number or letter. If a cited exhibit is included in the appendix to this brief, the citation shall be followed by the appropriate appendix page number.

The respondent's exhibits will be referred to as "R-Ex." followed by the exhibit number or letter.

STATEMENT OF THE CASE

The Ninth Judicial Circuit grievance committee "E" voted to find probable cause in this matter on August 5, 1994. The bar filed its complaint with this court on October 11, 1994. On October 13, 1994, this court directed the Chief Judge of the Tenth Judicial Circuit, Randall G. McDonald, to appoint a referee within fourteen days of its order. On October 17, 1994, Judge McDonald assigned the case to the Honorable J. Tim Strickland, Circuit Court Judge.

A hearing was held on December 19, 1994, on the respondent's first motion to dismiss and at that time the parties discussed venue for the final hearing. The respondent agreed to waive venue and have the final hearing in Bartow rather than Orlando (T. 12/19/94 p.p. 42-43). The final hearing was set for March 10, 1995, in Bartow, Florida, which is located in the Tenth Judicial Circuit. The respondent set his second motion to dismiss for hearing on February 16, 1995. At that hearing, the respondent stipulated to the factual allegations contained in the bar's complaint (T. 2/16/95 p.p. 10-13) and the referee concluded that no evidentiary hearing was warranted and requested the parties submit

written final arguments (T. 2/16/95 p.p. 27-28). After consideration of the parties' written final arguments, the referee issued his report on April 17, 1995, recommending the respondent be found guilty of violating rule 4-8.4(d) for knowingly, or through callous indifference, disparaging, humiliating or discriminating against a litigant on any basis in connection with the practice of law. The referee granted the respondent's motion to dismiss with respect to rule 4-4.4. The referee made no recommendation as to rule 3-4.3. The referee recommended the respondent be publicly reprimanded by a personal appearance before the board of governors and write a letter of apology to the complaining witness, Dr. Carlos J. Carrera.

On May 5, 1995, the respondent filed with the referee a petition for review of his report that the referee treated as a motion for reconsideration. The referee entered his order denying the respondent's petition/motion on May 23, 1995. On June 13, 1995, the respondent filed a notice of withdrawal of his petition for review without prejudice that this court granted on June 21, 1995.

The board of governors considered this case at its meeting

that ended on July 20, 1995, and voted not to seek an appeal. The respondent filed his amended petition for review on August 4, 1995, and his initial brief in support of his petition on August 29, 1995.

STATEMENT OF THE FACTS

At the motion hearing held on February 16, 1995, the respondent stipulated to the factual allegations of the bar's complaint (T. 2/16/95 p.p. 10-13). The following facts, unless otherwise noted, are contained in the referee's report that adopted the bar's complaint with respect to the factual allegations.

Prior to March 7, 1994, the respondent was retained by Maritza Torres to file a petition to domesticate her foreign judgment of divorce nisi, seek a modification of child support and seek payment of past due child support allegedly owed by her former husband, Dr. Carlos J. Carrera (see the bar's complaint). On March 7, 1994, the respondent drafted a letter to Dr. Carrera and served a copy of it on him on March 24, 1994, along with the summons and petition to domesticate and modify the parties' foreign divorce. The tone of the letter was demeaning, disparaging and humiliating to Dr. Carrera (T. 2/16/95 p.p. 10-11).

Previously, on February 22, 1994, the respondent received a notice of no probable cause and letter of advice in Florida bar case number 94-30,538(09E) where the committee advised him regarding the requirements of rule 4-8.4(d).

SUMMARY OF THE ARGUMENT

On February 22, 1994, the respondent received a notice of no probable cause and letter of advice from the chair of the Ninth Judicial Circuit Grievance Committee "E" concerning a letter he had written that, in the committee's opinion, contained unnecessarily hostile and demeaning language directed toward the opposing party in a legal matter (B-Ex. 1 A.p. 4). Therefore, at the time the respondent wrote to Dr. Carlos Carrera (B-Ex. 4 A.p. 8), he was on notice that similar such conduct would not be tolerated by the bar. Yet he wrote Dr. Carrera a letter he admitted was disparaging, offensive and humiliating (T. 2/16/95 p.p. 10-11). The respondent now seeks to justify his conduct by attacking the validity of rule 4-8.4(d). He also argues the referee abused his discretion in denying his first motion to dismiss and in considering B-Ex. 10, the referee was not properly appointed and Dr. Carrera was not among the class of persons protected by rule 4-8.4(d). The bar submits the respondent's various arguments are without merit.

The respondent offers no evidence to show the referee abused his discretion in denying the first motion to dismiss and in considering B-Ex. 10. No final hearing was held and the parties submitted their evidence with their written closing arguments. The

parties stipulated to what evidence was available at the time of the February 16, 1995, motion hearing. Some of the bar's evidence was not available at that time because the bar intended to call witnesses and B-Ex. 10 contained information not known to the bar at the time of said motion hearing.

The bar submits the Rules Regulating The Florida Bar clearly authorize this court to delegate its authority to appoint a referee to a chief judge of a judicial circuit and the only restriction is that the final hearing must be held where venue rests unless the accused attorney waives it. At any rate, the respondent's argument is moot because no final hearing was held and he effectively waived venue at the February 16, 1995, hearing (T. 12/19/94 p.p. 42-43).

The referee's legal conclusion that Dr. Carrera was a litigant and thus was protected by the rule was correct and supported by the evidence. He was both an actual litigant because the letter was served on him with the summons and he was also a litigant in the sense that the Massachusetts court continued to exercise jurisdiction over him in the domestic relations matter. The petition filed by the respondent was connected to the original dissolution action.

The respondent has not shown that rule 4-8.4(d) is in any way unconstitutional or vague. The proscription applies only to conduct in connection with the practice of law where an attorney's actions are disparaging, humiliating, or discriminating toward persons connected with the legal action "on any basis, including, **but not limited to**, on account of race, ethnicity, gender, religion, national origin, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic," (emphasis added). The clear meaning of the rule is to prohibit behavior that amounts to "school yard bullying."

ARGUMENT

POINT I

THE REFEREE CORRECTLY EXERCISED HIS DISCRETION IN DENYING THE RESPONDENT'S FIRST MOTION TO DISMISS AND THE REFEREE WAS PROPERLY APPOINTED.

The respondent served his first motion to dismiss on October 18, 1994, which, although not properly and timely filed, was considered by the referee at a hearing on December 19, 1994. The motion challenged the jurisdiction of the referee and venue. The referee denied the motion. The referee has the authority to exercise his or her sound discretion in ruling on motions, The Florida Bar v. Vernell, 520 So. 2d 564 (Fla. 1988). The bar submits the respondent has failed to show the referee abused his discretion in any way with respect to denying the respondent's first motion to dismiss.

Further, the respondent misinterprets rule 3-7.6(a) of the Rules Regulating The Florida Bar and his reliance on it as the basis for his argument that the referee was improperly appointed is misplaced.

Pursuant to the clear and unambiguous terms of R. Regulating Fla. Bar 3-3.1, referees in bar disciplinary proceedings are

designated as agents of the Supreme Court of Florida and "shall have such jurisdiction and powers as are necessary to conduct the proper and speedy disposition of any investigation or cause..." Therefore, an appointed referee is, in effect, a representative of this court rather than of the judicial circuit where the referee normally performs his or her judicial duties. Rule 3-7.6(a) provides that the chief justice of the supreme court shall delegate to the chief judge of a judicial circuit the power to appoint referees for duty in the chief judge's circuit. Venue is the county where the alleged offense occurred, where the accused attorney resides, or where the accused attorney practices law. When there is more than one county involved, the court shall designate the county in which the final hearing will be held. See R. Regulating Fla. Bar 3-7.6(c). Although the respondent interprets a different meaning from the rule, the bar submits that when the rules are read together in context it becomes clear the intent is that the chief judge will appoint a referee from the chief judge's circuit to hold a final hearing in whichever county venue lies even if the county is in a different judicial circuit than the one where the referee routinely carries out his or her daily judicial functions. It would be senseless for a chief circuit judge to appoint a referee from a different judicial circuit or for a referee, who is an agent of this court, to lack

the authority to hold a final hearing in another county or judicial circuit.

The bar would further submit the respondent's argument is moot because at the motion hearing of February 16, 1995, held in the Tenth Judicial Circuit, the respondent not only did not raise the venue issue again, he effectively waived venue (T. 12/16/94 p.p. 42-43). Because he stipulated to the factual allegations of the bar's complaint at the February 16, 1995, motion hearing, the parties and the referee were in agreement no final hearing was necessary and the matter was presented to the referee by written argument (T. 2/16/95 p.p. 29,39). Therefore, the referee was acting within his powers when he issued his report.

POINT II

THE REFEREE CORRECTLY EXERCISED HIS DISCRETION IN CONSIDERING BAR EXHIBIT NUMBER 10.

The respondent is mistaken in his assertion that the parties stipulated to the entire factual basis and all the exhibits the parties would submit. The parties stipulated to some of the exhibits. The hearing of February 16, 1995, was a motion hearing and was not intended to be a final evidentiary hearing. As matters developed, the need for a live final hearing was obviated by the respondent's stipulation to the factual allegations of the bar's complaint. The only matters in dispute were issues of law and not fact and therefore a "paper" hearing was a better use of judicial economy and represented a substantial savings to the bar and potentially to the respondent in the event he was found guilty. The bar advised the referee that the documentary exhibits were ready for submission but the bar did not have the evidence it had planned to introduce through witness testimony (T. 2/16/95 p. 36). The referee directed the parties to submit written arguments as to law and include their exhibits with the written arguments (T. 2/16/95 p. 40). The exhibits the parties had in their possession at that time were then marked (T. 2/16/95 p.p. 41-43). At no time did the referee say he was closing the evidentiary portion of the

hearing. The referee's statement "Well, gentlemen, if you want to stipulate with the court reporter here - and I want all evidentiary exhibits" concerned his desire to mark those exhibits then available and did not indicate he intended not to accept further exhibits. Clearly, if this had been his intention, the referee would have rejected the bar's submission of B-Ex. 10.

The respondent's arguments that he was denied due process with respect to not being afforded his "right to confrontation" of Dr. Carrera concerning B-Ex. 10 and with respect to the bar's exhibit being in the nature of hearsay, are, the bar submits, without merit. In bar disciplinary proceedings there is no right to confront a witness face to face and hearsay evidence is admissible, The Florida Bar v. Vannier, 498 So. 2d 896, 898 (Fla. 1986). Further, an attorney's due process rights are not violated when a referee admits into evidence hearsay evidence, The Florida Bar v. Richardson, 591 So. 2d 908,910, (Fla. 1992). The referee and this court are not bound by the rules of evidence in the quasi-judicial bar disciplinary proceedings and any evidence may be deemed relevant in resolving the factual questions at issue, The Florida Bar v. Jasperson, 625 So. 2d 459, 463 (Fla. 1993). The referee had the discretion to give Dr. Carrera's affidavit the weight he deemed appropriate with respect to judging its credibility versus the

respondent's statement at the February 16, 1995, motion hearing that he mailed the latter "prior to the filing of supplemental pleadings..." (T. 2/16/95 p. 11). It was not until the bar checked with Dr. Carrera concerning the accuracy of the respondent's statement that the bar learned the respondent had served the letter on Dr. Carrera with the summons on March 24, 1994, rather than having mailed it to him on March 7, 1994. Dr. Carrera's assertion was further supported by the respondent's own letter of March 17, 1994, to the New Mexico Sheriff's department enclosing, among other items for service, a letter to Dr. Carrera (B-Ex. 10 A.p. 21). Therefore, even if the respondent had mailed the letter on March 7, 1994, he resent it with the summons and thus when Dr. Carrera received it at that time, he was a litigant in every sense of the word because he was served with the summons and the action had been filed by the respondent in Orange County, Florida, on March 18, 1994 (B-Ex. 8).

The respondent was provided with a copy of B-Ex. 10 when the bar served on him a copy of The Florida Bar Arguments In Support Of Its Case Against The Respondent And Recommendation For Discipline on March 20, 1995. He had ample opportunity to seek a live hearing at that point to either challenge Dr. Carrera's statement or offer rebuttal testimony but chose not to do so. The respondent was

given reasonable notice with respect to this exhibit and reasonable notice is all that is necessary in bar disciplinary proceedings to afford due process, The Florida Bar v. Daniel, 626 So. 2d 178, 183 (Fla. 1993). The respondent had ample opportunity to submit any documentary evidence to the referee the respondent wished for the referee to consider in rebuttal to B-Ex. 10. The respondent did not submit any rebuttal evidence to B-Ex. 10 at the referee level and instead has sought to argue the matter at the appellate level.

POINT III

THE REFEREE WAS CORRECT IN FINDING DR. CARRERA WAS A MEMBER OF THE CLASS PROTECTED BY RULE 4-8.4(d).

Although a referee's findings of fact enjoy a presumption of correctness, absent a clear showing otherwise, the referee's legal conclusions are subject to closer scrutiny, The Florida Bar in re Inglis, 471 So. 2d 38, 41 (Fla. 1985). What the respondent seeks to attack is the referee's legal conclusion that Dr. Carrera was a litigant at the time he received the respondent's disparaging letter and thus was a member of the class of persons protected by rule 4-8.4(d). The bar submits that Dr. Carrera was a litigant at the time he received the letter because it was served on him with the summons and therefore the referee's legal conclusion was correct.

Contrary to the respondent's statement at the hearing held on February 16, 1995, that "the letter was sent prior to the filing of supplemental pleadings" (T. 2/16/95 p. 11) and that it was sent during a "period of hiatus between a final judgment and new supplementary proceedings" (T. 2/16/95 p. 11), the verified petition to domesticate the foreign judgment and to modify the judgment of divorce nisi was stamped by the clerk's office as

having been filed on March 18, 1994 (B-Ex 8). The executed return of service in Torres v. Carrera, case number DR-94-3468, shows that Dr. Carrera was served on March 24,1994, in New Mexico, and the return of service was filed on March 31, 1994 (B-Ex. 9 A.p. 13). According to Dr. Carrera, he received the respondent's letter along with the summons. It was among the documents served on him by the Sheriff's department in New Mexico on March 24, 1994 (B-Ex. 4 A. p.p. A6-A7 and B-Ex. 10 A.p. 20). Therefore, at the time Dr. Carrera received the letter, he was a litigant in the support action. According to B-Ex. 10, the cover letter to the Sheriff's department enclosing, among other things, the letter, was written on March 17, 1994. It was received by the Sheriff's department in New Mexico on March 21, 1994. There is no way to know if the cover letter was mailed the same day as it was signed by the respondent. When the respondent sent the letter to the Sheriff to be served with the summons, he knew at the very least that Dr. Carrera was a prospective litigant because the respondent knew he would be filing the petition very shortly. In fact it was filed the next day, long before Dr. Carrera received the letter. As further evidence that the respondent never intended to mail the letter to the doctor separate from the summons is the absence from the letter of Dr. Carrera's address. A recipient's address is normally included above the salutation line of professional correspondence. By

including the letter with the summons, the respondent assured that Dr. Carrera would be a litigant by the time he read the letter. The respondent had to have known that the summons would be served immediately prior to Dr. Carrera having an opportunity to read any of the attached documents, including the letter.

In the context of The Rules Regulating the Florida Bar, the word "litigant" includes not only persons or legal entities already involved in actual court litigation but also those reasonably expected to litigate in court. In its opinion ratifying the rule amendment, this court specifically limited the rule's application to "situations involving the practice of law in order to ensure that the First Amendment rights of lawyers are not unduly burdened." See The Florida Bar Re Amendments to Rules, 624 So. 2d 720, 721 (Fla. 1993). The rule is a prohibition against abusive conduct generally. The commentary to the rule states that it applies to any characteristic or status that is not relevant to the proof of any legal or factual issues in dispute. The respondent could have put forward his client's position without engaging in demeaning behavior. It was not necessary to call Dr. Carrera names in order to convince him to settle the dispute out of court, if in fact this is what the respondent intended. The language of the letter appears to be at odds with the respondent's testimony at

the grievance committee hearing (B-Ex. 6 at page 28). The respondent testified before the committee that he hoped the letter would cause the doctor to telephone him to discuss the matter and possibly resolve the child support issue without his client, who did not have a lot of money, having to go to court and litigate. Yet in the last paragraph of his letter, the respondent stated "[r]ather than inviting a continuing dialogue, I invite you to direct your responses to our pleadings and resolve this issue in Court." The bar submits such language is not conducive to opening a settlement negotiation dialogue. Rather than simply pointing out to the doctor that his position was erroneous, the respondent's letter, especially in view of the light that it accompanied the summons that was served on him by the Sheriff, served only to put the doctor in a defensive posture.

It is commonly accepted that where a court, in its final order, retains jurisdiction to modify provisions of the final order of dissolution of marriage, a subsequent petition to modify the terms of the final order is merely a supplemental step in the original domestic relations case, Fowler v. Fowler, 112 So. 2d 411 (Fla. 1st DCA 1959). A court does not automatically retain jurisdiction to modify a final judgment of dissolution of marriage, Diette v. Diette, 471 So. 2d 1372 (Fla. 5th DCA 1985). Petitions

seeking a modification of child support provisions are, by their nature, supplemental to the original dissolution proceedings and therefore are merely a continuation of them, Sikes v. Sikes, 286 So. 2d 210 (Fla. 1st DCA 1973). Further, when state law so authorizes, the court's reservation of jurisdiction over the parties continues as long as the effectiveness of the final order of dissolution of marriage, West v. West, 301 So. 2d 823 (Fla. 2d DCA 1974). According to the Martindale-Hubbell Law Digest, (P. Venezia, ed. 1993), for the state of Massachusetts, pages MA-23 through MA-24, the state where the Carreras were divorced, a court's award of alimony remains subject to revision. The court also retains jurisdiction to enforce its orders through contempt proceedings. Therefore, the Massachusetts court retained jurisdiction over Dr. Carrera with respect to the dissolution of marriage action and as a result he continued to be a litigant despite the fact that Florida initially did not have personal jurisdiction over him. In other words, the venue of the modification action was not determinative of whether or not Dr. Carrera was a litigant at the time the respondent wrote the letter, delivered the letter to the Sheriff's department and Dr. Carrera was served with it. Dr. Carrera was a litigant throughout the time period involved because the respondent, as attorney for the petitioner, knew at the time he authored the letter that he would

be filing the petition in the near future in what would merely be a continuation of the same family law action that had been commenced in Massachusetts, the doctor received the letter with the summons served on him by the Sheriff's department and due to the nature of its delivery could not read it until after he was served. At the time the doctor read the letter, the action had already been filed in the Florida circuit court and the Massachusetts court had retained jurisdiction over the parties for the purpose of making future modifications to its decree.

The bar submits that Dr. Carrera was, in every sense of the word, a litigant during the time in question. The rule does not use the word litigant in a restrictive sense. The rule provides that the misconduct must occur in connection with the practice of law. The rule does not say that it must occur during the course of active litigation. The practice of law involves much more than just the conduct of litigation. The practice of law includes not only representing another before the courts, but also the rendering of legal advice, counseling others as to their rights and obligations under the law, and preparing legal instruments, State v. Sperry, 140 So. 2d 587 (Fla. 1962).

POINT IV

THE REFEREE CORRECTLY CONSTRUED RULE 4-8.4(d)

The bar would address at the outset the respondent's concern expressed at page twenty-four of his initial brief where he stated he had been unable to locate certain language of this court quoted by the bar in its Motion For Rehearing Or Clarification contained in B-Ex. 2. The court's opinion adopting the rule amendment was not included as a part of this exhibit and perhaps this is why the respondent could not locate the quoted language. It may be found in The Florida Bar re Amendments to Rules, 624 So. 2d 720, 723 (Fla. 1993).

The language of the rule is clear that the proscribed misconduct is applicable not only to conduct or actions directed toward another's race, ethnicity, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, employment, or physical characteristics, but any other matter that a person might find offensive. The items listed in the rule are not intended to be all inclusive, as the use of the term "including, but not limited to" clearly shows. Rather, the list is intended to aid the practitioner in interpreting the rule. The

history of this rule's emergence makes this clear. A copy of the history was submitted into evidence at the February 16, 1995, hearing as B-Ex. 2. As discussed beginning at page six of the brief in support of the joint petition to amend the rules, contained in B-Ex. 2, a major concern was the existence of disparaging, humiliating and discriminatory conduct that judges often must identify in a host of civil and criminal contexts. Furthermore, this court considered arguments against the proposed rule amendment based on First Amendment rights infringements. See the brief in support of proposed rules 4-8.4 and 4-8.7 contained in B-Ex. 2. When this court, sua sponte, amended the proposed rule to include the term "on any basis," a motion to strike that term was made by several members of the bar. One of the arguments made was that the term was ambiguous. The bar also objected to the inclusion of the term because it was redundant given the use of the phrase "including, but not limited to" in the rule and because the inclusion of the phrase might lead to confusion. The court disagreed with both the bar and the members who filed their own motion (B-Ex. 2 p. 1). In its opinion enacting the rule amendment, this court discussed the reason for the change. The amendment sought to ensure "the fair administration of justice and to preserve the public's confidence in our judicial system...A system

of justice that tolerates expressions of bias by lawyers cannot maintain public confidence in the discharge of its responsibilities to assure equal justice," The Florida Bar re Amendments to Rules, supra at page 721. The commentary to the rule, which is intended to provide some guidance in interpreting it, states that the prohibited conduct extends to characteristic or status that is not relevant to proving any legal or factual issue in dispute. That the disparaging actions may be based on anything is the only reasonable interpretation of the term "on any basis." For example, it would be inappropriate to curse at or make an obscene gesture toward a witness who is testifying. As officers of the court, attorneys enjoy a conditional privilege that in some instances constrains their free speech rights, The Florida Bar re Amendments to Rules, supra at page 721. It is a generally accepted principle that states have a compelling interest in the practice of the professions within their boundaries and as a part of the states' powers to protect the public health, safety and other valid interests they have broad power to establish standards for licensing professionals and regulating the practice of the professions, The Florida Bar v. Went For It, Inc., 515 U.S. __, 115 S. Ct. 2371, 132 L. Ed. 2d 541 (1995). The bar has a substantial interest in both protecting litigants from disparaging conduct by

attorneys and in preventing the erosion of confidence in the profession such behavior engenders. All of the Rules Regulating The Florida Bar touch on constitutional rights. The respondent enjoys no greater rights than any other attorney in a disciplinary action. Constitutional rights must always be safeguarded, although because lawyers and judges are members of a privileged profession, obedience to ethical rules may require abstention from what in other circumstances would be constitutionally protected behavior, American Civil Liberties Union of Florida, Inc., v. The Florida Bar, 744 Fed. Supp. 1094, 1097 (N.D. Fla. 1990). The rule is sufficiently clear here to put all attorneys on notice that conduct intended to disparage, humiliate, or discriminate against a litigant in connection with the practice of law is professionally unethical and will result in a violation of the Rules Regulating The Florida Bar. The rule seeks to regulate coercive conduct and not speech.

A fundamental principle of statutory construction is that an enactment should be interpreted in favor of its constitutionality, so long as the interpretation is consistent with constitutional rights, Falco v. State, 407 So. 2d 203 (Fla. 1981). The courts also must not vary legislative intent with respect to the meaning

of a statute in order to achieve this result, State v. Keaton, 371 So. 2d 86 (Fla. 1979). The bar submits that rule 4-8.4(d) should be interpreted in favor of its constitutionality. It does not impede any of the respondent's constitutional rights and it is consistent with the intent of this court to regulate the conduct of attorneys in connection with their practice of law in a manner that protects the public while not unduly infringing on the first amendment rights of the attorneys.

In The Florida Bar v. Clark, 528 So. 2d 369 (Fla. 1988), an attorney made repeated frivolous claims in his own appeal from a simple traffic violation and, in another matter, alleged a judge, who made an unfavorable ruling in a case where the attorney represented a party, was involved in racketeering activity and thus was corrupt. The assertion was made without any evidence. In appealing the referee's recommendation of guilt, the attorney asserted the bar was seeking to violate his first amendment rights and right to access the court system. This court found his arguments to be without merit. Curtailing his abuse of the court system did not deny the attorney access to the court system or violate his constitutional rights. The court went on to explain he was not being sanctioned for exercising his right to criticize the

judiciary but for making false and unsubstantiated charges against the judiciary. Similarly, the respondent's attacks on Dr. Carrera's character were made without any evidence of their validity.

POINT V

THE REFEREE'S RECOMMENDED DISCIPLINE OF A PUBLIC REPRIMAND AND LETTER OF APOLOGY IS THE APPROPRIATE LEVEL OF DISCIPLINE GIVEN THE FACTS OF THIS CASE.

The bar submits that based on the available case law, the Florida Standards for Imposing Lawyer Sanctions and the fact that the respondent was put on notice by the bar in a letter of advice dated February 22, 1994, (B-Ex. 1 A.p. 4) that future offensive correspondence would not be tolerated, the appropriate level of discipline would be, as a minimum, a public reprimand administered by a personal appearance before the board of governors and a letter of apology to Dr. Carrera with said letter to be reviewed and approved by bar counsel prior to the respondent delivering it to the doctor. This is the discipline recommended by the referee.

In The Florida Bar v. Perlmutter, 582 So. 2d. 616 (Fla. 1991), an attorney was publicly reprimanded for engaging in conduct very similar to the respondent's. Although the case has little precedential value because the attorney entered into a conditional guilty plea for a consent judgment, it is included here due to the factual similarity. Because this court's opinion is brief, a copy of the bar's complaint, conditional guilty plea for consent

judgment and report of the referee were included as B-Ex. 11 to provide the referee with a fuller understanding of the underlying facts. The attorney was retained to represent a couple in a possible action for slander and malicious prosecution against another married couple. Prior to filing any type of action, the attorney mailed the accused couple a letter in which he stated that the accused couple and their children caused the initial problem between the parties and that if they did not cease taking further actions against his clients, he would file suit and they would be subjected to extensive discovery. He advised them not to contact him. He mailed copies of this letter to the schools the couple's children attended. The couple were members of the school advisory board at one of the schools. After the accused couple complained to the bar about the attorney's letter, the attorney again wrote them a disparaging letter where he characterized their children as "ungovernable" and "wimpy," referred to the couple as "idiots," their letter of complaint to the bar as "stupid" and threatened to sue them. He further belittled their standing in the community and attacked their motivation in the underlying civil matter as well as their motivation in filing the bar grievance. He described the couple as being "troublemakers." The attorney was found guilty of failing to abstain from all offensive personality,

in violation of the Oath of Admission, by engaging in vituperative correspondence on behalf of his clients and by making threats without independent knowledge or investigation of the true facts. The attorney also was found guilty of entering into an agreement for an excessive referral fee. The attorney had a prior disciplinary history.

In a Judicial Qualifications Commission action, a sitting judge was publicly reprimanded for using inappropriate language while presiding over legal matters. In Inquiry Concerning Golden, 645 So. 2d. 970 (Fla. 1994), the accused judge entered into a stipulation wherein she admitted to having engaged in intemperate behavior by making sexist and racist remarks and using crude, profane and inappropriate language in connection with the exercise of her judicial duties and failing to diligently perform her duties. She also engaged in other conduct, both verbal and nonverbal, that was demeaning to litigants.

In The Florida Bar v. Hooper, 507 So. 2d 1078 (Fla. 1987), an attorney was suspended for ninety days due to his improper conduct while representing himself in a civil dispute over a bill and for making misrepresentations to a utility company when seeking a

rebate. The attorney had contracted for the installation of equipment then refused to pay the bill because he alleged the installation work was not satisfactory. The company hired an attorney to pursue the collection of payment. Despite being aware of this, the attorney directly contacted an agent for the company and told him that if the company filed suit, he would hold the suit in litigation for years. The attorney then applied for a rebate from the utility company based upon the installation of the equipment and misrepresented himself as being the dealer and salesman of the equipment. The referee found the attorney then "gloatingly" sent the company's attorney a thank you card and a copy of the rebate check after the court granted his motion for summary judgment. He further threatened to file numerous actions against the company if it did not dismiss another suit it had filed against him. The court found the violations stemmed from the attorney's overzealous attempts to represent himself and that attorneys have a duty to avoid tarnishing the profession's image even in personal transactions. The attorney had no prior disciplinary history.

The Florida Standards for Imposing Lawyer Sanctions were adopted by the board of governors several years ago. Although the

supreme court has not officially adopted them, it has referred to them in a number of published opinions over the years.

Standard 7.3, Violations of Other Duties Owed as a Professional, calls for a public reprimand when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public or the legal system. The standards define "negligence" as a failure to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard care that a reasonable lawyer would exercise in the situation. The respondent should have known the effect his action in sending the letter to Dr. Carrera would have on the doctor.

The standards also define several aggravating and mitigating factors that should be considered. The respondent has been a member of The Florida Bar since May 27, 1975. He is certified in the area of family law. Although he has no prior disciplinary history, it is significant that the respondent was warned by the grievance committee in February, 1994, not to disparage and humiliate recipients of his correspondence. See B-Ex 1. The bar

submits this prior letter of advice concerning substantially similar conduct as that at issue here shows a pattern of behavior where either the respondent does not understand how to communicate in a professional manner or he simply does not care. Therefore, the bar submits that standards 9.22(c), a pattern of misconduct, and 9.22(i), substantial experience in the practice of law, are pertinent aggravating factors to be examined in determining the appropriate level of discipline to be recommended. Of the mitigating factors, the only applicable one appears to be 9.31(a), absence of a prior disciplinary history.

The bar submits that although the respondent has no prior disciplinary history, the fact that he was cautioned by the grievance committee not to engage in further acts of misconduct similar to his act of writing a demeaning and disparaging letter to a party in a legal proceeding should be considered in aggravation because the respondent wrote a similar letter to Dr. Carrera despite being on notice that the rules prohibited such conduct. It appears the respondent either does not appreciate that his actions are improper and a violation of the rules or he simply does not care.

CONCLUSION

WHEREFORE, The Florida Bar requests this Honorable Court to approve the referee's findings of fact and recommendations as to guilt and discipline, uphold the constitutionality of the Rules Regulating The Florida Bar, and impose, at the minimum, as a discipline a public reprimand to be administered by an appearance before the Board of Governors of The Florida Bar, a letter of apology to Dr. Carrera to be approved by bar counsel prior to being delivered to the doctor and payment of costs now totaling $1,552.20.

Respectfully submitted,

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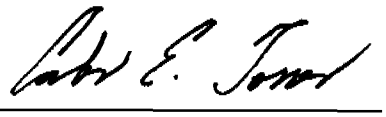
By: 

CARLOS E. TORRES
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing answer brief and appendix have been furnished by regular U.S. mail to The Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927; a copy of the foregoing has been furnished by certified mail No. P 917 722 086, return receipt requested, to respondent, Harold George Uhrig, 1099 West Morse Blvd., Suite 1000, Winter Park, Florida 32789-3752, and a copy of the foregoing has been furnished by regular U.S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 21st day of September, 1995.

CARLOS E. TORRES
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR ,

Complainant,

Case No. 84,495
[TFB Case No.94-31,375(09E)]

v.

Harold G. Uhrig

Respondent.
_____/

APPENDIX TO COMPLAINANT'S ANSWER BRIEF

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