097

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

FRANK THOMAS, 11,

Respondent.
_____/

Supreme Court No. 87,351

Florida Bar File No.
96-50,589(17I)

FILED
SID J. WHITE
NOV 8 1996
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

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RESPONDENT'S ANSWER BRIEF

FRANK THOMAS, ESQ.
Florida Bar No. 165679
1917 Harrison Street
Hollywood, Florida 33020
(954) 920-4283

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RESPONDENT'S STATEMENT OF FACTS

The case at bar involves respondent's representation of a client in two simultaneous and inseparable claims for personal injuries. The client originally signed two separate, but identical, contingent fee agreements with respondent's brother. Subsequently, with the permission of the client, respondent took over representation of her with regard to both accident claims. Client's first claim involved an automobile accident that occurred on January 6, 1992; the other accident was a slip and fall that occurred three months later on March 30, 1992.

The client failed to seek any form of medical treatment for the auto accident that occurred in January until after the slip-and-fall accident that occurred some three months later. There were two treating physicians who simultaneously treated the client for her injuries sustained in both accidents. The medical treatments, procedures, and charges for both accidents ran concurrently and were inseparably intermixed in the medical records.

Further complications with the case were caused by the client's maintenance of two names which made the circumstances appear as if the client were attempting to alter or conceal her injuries. According to Dr. Yehudian's records, the patient's name is reflected as Helene Rottblatt; at Dr. Muransky's office, she was known as Helene Roth.

Several insurance companies were involved in these claims. The liability insurer for Home Savings Bank (where the slip-and-fall accident occurred), the liability insurer for the driver of the

other vehicle in the auto case, and the client's own insurance company, AMICA Mutual Insurance Company, which refused to pay PIP benefits.

For over three years, the respondent futilely devoted considerable time and effort in attempting to separate and obtain accurate medical records from the two treating doctors setting forth the injuries, treatments, and charges for each of the two separate accidents. Volumes of medical records and countless pages of itemized medical statements and bills were reviewed by respondent, item by item. The records were also reviewed by the client, both doctors, and the three respective insurance companies in an unsuccessful attempt to sort and separate the medical information. The medical bills for both accidents proved to be totally inseparable. Even two weeks prior to the settlement of the slip-and-fall case, the respondent sent a handwritten letter to the client still attempting to divide and separate the medical bills. This letter was dated June 1, 1995, 3-1/2 years after the date of the accident and **appears** as Respondent's Exhibit 3 in the record.

Not only did the problem with the separability of medical information affect the liability insurers for both the slip-and-fall as well **as** the auto accident case, but the client's own *insurance* company refused to pay any PIP benefits whatsoever to Dr. Yehudian, basing its refusal not only upon the inseparability of the medical bills **and** treatments, but also the inexplicable reason that the client never sought treatment for the auto accident injuries until three months later after the slip and fall had

occurred. The client's own insurance company further based a portion of its defense upon the client's maintenance of two separate identities in the offices of the two treating physicians which made it appear as though she were hiding the occurrence of the slip-and-fall accident. With regard to the PIP claim alone, respondent prepared countless affidavits, letters, and other documents, and had them signed by both doctors as well as the client in an effort to convince the client's own insurer that the claim for auto accident benefits was a legitimate one. Reams of itemized medical bills were submitted for payment to the client's PIP insurer, but payment was refused. On March 25, 1995, respondent sent a letter to the client's PIP insurer demanding payment of PIP benefits and threatening suit in the event the insurer refused to pay [Respondent's Exhibit 2]. A copy of that letter was sent both to Dr. Yehudian as well as the client as shown in the record [Respondent's Exhibit 2].

Finally, in or about May of 1995, the respondent and client met and a lengthy discussion was had. The complexities of both claims as well as the inseparability of the medical bills and treatments were discussed. Client and respondent agreed that the only possibility of concluding client's slip-and-fall claim was through the use of a "package settlement" between the client's PIP insurer as well as the slip-and-fall liability insurer. With the client's approval, negotiations between respondent and the two respective insurance companies were had. Simultaneously with those discussions, the respondent had many discussions with the two

treating doctors. With the statute of limitations rapidly running, respondent and client knew that it was totally impossible to prove in a court of law which medical bills, treatments and problems were caused as a result of the auto case as opposed to those caused by the slip-and-fall case. After much negotiation, the client's own PIP insurer offered $4,900.00 and Home Savings Bank's liability insurer offered $5,000.00 in med pay and $16,000.00 in liability benefits.

Respondent communicated these offers to the client who agreed to accept those offers. At the time, the client knew and understood, by virtue of her contingency fee agreements and the various discussions she had had with the respondent, that attorney's fees were in the amount of 1/3 of the total amount recovered. It was respondent's idea at that time to negotiate with both doctors with regard to the unpaid balances owed each and to utilize a portion of the amount saved on medical bills for the payment of a portion of client's attorney's fees. The client and respondent fully discussed this, and the client agreed that if she received at least $10,000 and all medical bills for both accidents were paid in full and the attorney's fees were paid in full for both the slip-and-fall recovery as well as the PIP recovery, she would be delighted with the recovery and consented to it. It was reasoned that since the med-pay recovery and PIP recovery inured as much in the doctors' benefit as the recovery did to the client's, the doctors should be responsible for payment of a portion of the work required in order to recover those amounts. In fact, the

client admits in the record that a discussion was had wherein this was discussed *prior* to the settlement [page 94, line 11].

Consistent with respondent's agreement with the client, respondent negotiated with both doctors in order to reduce their outstanding medical obligations until Dr. Yehudian's outstanding medical bill of $11,600.00 was reduced by agreement to $8,000.00, and Dr. Muransky (who had been paid most of his medical bills by the PIP carrier) agreed to accept $360.00 as payment in full of the $4,700.00 outstanding.

Respondent communicated these negotiations and the results to the client who expressed concern that the doctors might later file suit against her with regard to medical bills owing on the auto case. Respondent assured client that agreements with both doctors would by confirmed by facsimile and that *all* of client's medical bills for both cases were paid in full and, further, that respondent did not charge client 1/3 of the total recovery, but in fact reduced it to a total of $7,233.00. The client, therefore, would net at least $10,000 after payment of all of the attorney's fees and all of the medical bills for both the auto case as well as the slip-and-fall case. Consistent with the client's discussion with respondent, respondent sent by facsimile written confirmations to both doctors of the settled amounts and copies were sent by mail to the client. The facsimile to Dr. Yehudian appears as Exhibit 8.

The client knew and consented to all aspects of the settlement, and the settlement was concluded. When respondent subsequently prepared the settlement statement, respondent

negligently failedto reference the $4,900.00 recovered and did not specifically break down payment of the $5,000.00 recovered as medical pay. At the time, respondent, looking forward and not back, emphasized more the net recovery to the client of $10,000, rather than a total breakdown of all amounts recovered. The client's PIP insurer's drafts showing payment of the $4,900.00 sent pursuant to the "package settlement''on July 11, 1995, appears as Exhibits 9 and 10 in the record. Any omissions in the settlement statement were not in any way intentional, and since respondent charged less than 1/3 of the amount recovered, certainly was not being done to cheat or deceive the client.

Subsequently, the case was fully settled and distributions were made in accordance with the entire settlement agreement, every individual receiving exactly the amount agreed to.

Several weeks after settlement and distribution of the proceeds, the client came into respondent's office, stating to respondent that although she agreed to payment to the respondent for the PIP benefits as well as the med-pay benefits recovered, the client had spoken to "other attorneys" and been informed that it is illegal for an attorney to charge a fee for any amounts recovered and used for payment of medical bills. Respondent attempted at the time to explain to her that if payment is contested by the insurance company, any amounts recovered fall within the contingent fee agreement, and, further, that it is not illegal for attorneys to charge fees for services rendered in recovering sums used for payment of the client's medical obligations. The client

steadfastly insisted she was entitled to the $1,900.00 paid as attorney's fees from the medical recovery and told the respondent that if those monies were given to her, "this matter would *go* no further" [page **84**, line 17; page 56, line 19; page 138, line 6]. In fact, the client, throughout the record, states again and again that attorneys are not permitted to charge fees for recoveries of medical bills [page 48, line 21; page 69, line 19; page 70, line **23**; page **74**, line 1; page 74, line 12; page 77, line 20; page **93**, line 17; page 109, line 20]. Respondent, knowing that attorneys ethically and legally may charge for recoveries of contested medical bills, refused to refund the agreed upon fees to the client.

The client left respondent's office and subsequently filed a complaint with The Florida Bar, but this *time* she had been "coached" by a friend attorney and *changed* the basis of her complaint to a new theory, the failure to disclose and intentional misrepresentation. Since the filing of the original complaint, The Florida Bar has charged the respondent with various acts of *intentional* concealment, fraud, and dishonesty.

RESPONDENT'S STATEMENT OF THE CASE

The Florida Bar filed its complaint on February 7, 1996, alleging several counts, all of which charged the respondent with intentional misrepresentation to the client, intentional misappropriation of funds, and other intentional acts of fraud and dishonesty. During the entire proceeding, The Florida Bar has taken the position that the $4,900.00 recovered, since it was recovered from the client's auto insurer, was totally unrelated to the slip-and-fall case and, therefore, has nothing whatsoever to do with the slip-and-fall recovery.

After full hearing and consideration of all the facts, the trier of fact ruled that respondent's actions were the result of negligence in combining the two distinct cases and were *not the* result of intentional acts of dishonesty. The referee recommended that respondent receive a public reprimand, make restitution of the $1,900.00 with interest thereon to the client, and pay The Florida Bar's costs.

Respondent thereafter filed a petition for review, but withdrew it, sending a letter to The Florida Bar dated September 27, 1996, stating that respondent was willing to comply with the terms of the referee's order. A copy of that letter has been attached to this brief. The Florida Bar's only response was the filing of its Petition for Review and the Brief filed approximately five (5) days later.

RESPONDENT'S ARGUMENT

ISSUE

1. WERE THE FINDINGS OF FACT ARRIVED AT BY THE TRIER OF FACT SUFFICIENTLY SUPPORTED BY THE EVIDENCE?

Findings of fact arrived at by the referee enjoy the same presumption of correctness as a judgment of a trier of fact in a civil proceeding [Rule 3-7.6(k)(1)(A)]. The referee's findings should be upheld unless there is a total lack of evidence to support the findings [The Florida Bar v. McCain, 361 So. 2d 700 (1978 Fl.]. The trier of fact in the case under advisement found that the respondent did not engage in conduct contrary to honesty and, therefore, could not have been guilty of engaging in conduct constituting dishonesty, fraud, deceit or misrepresentation [page 235, line 2]. The trier of fact further concluded that respondent's problems were caused by the mixing of the auto accident case with the slip-and-fall [page 232, line 8]. The referee acknowledged the confusing and complicated nature of the case [page 234, line 20] and found that any violations that may have been committed by the respondent were the result of *negligence* and not of an intentional act of dishonesty [page 245, line 12]. The trier of fact stated, "I have stated that I don't think that the facts warrant disbarment in this particular case. I think this is more of a negligence type of situation, , . ." [page 245, line 9].

The findings of fact arrived at by Judge Roger B. Colton that respondent did not intentionally deceive the client are

substantially supported by the evidence. Judge Roger B. Colton based his findings of fact upon the testimony and all *of the evidence in its totality* [page 34, line 20]. A responsibility of the trier of fact is to decide which of the witnesses testifying is telling the truth and which is not. Although client did an excellent job of repeatedly parroting instructions she learned from her "coach," she stated material facts that were later shown to be contrary to the truth. In attempting to learn why client changed her story, the respondent asked client, with regard to the complaint filed:

Q.	Who typed this for you, by the way?
A.	What relevance is that?
Q.	Because I asked you. Did somebody type this for you or did you type it?
A.	Somebody typed it for me.
Q.	Who?
A.	Am I obligated to answer that?
Ms. Quintela.	Yes, sure you can answer that.
The witness.	An attorney.
Mr. Thomas.	who? What's his name.
A.	A friend.
Q.	Well, that wasn't the question. I mean, who typed this for you?
A.	In an attorney's office, I had it typed.
Q.	What's the attorney's name?
A.	Am I obligated to answer that?

Ms. Quintela. Yes. I don't represent you. So, I can't . . ., you know. I really can't tell you. But that's a reasonable question.

The witness. Neil Milestone. [page 99, line 2]

Additionally, the client making an extra effort to convince the bar that respondent intentionally embezzled the funds, set forth in her original sworn complaint to The Florida Bar and later testified under oath that she only received the settlement statement from the respondent *long after the proceeds of the settlement had been distributed* [page 87, line 25]. In fact, this was a lie. She signed the settlement statement and *she* inserted the date on it a full month *before* the settlement proceeds were distributed [page 89, line 1; also, Florida Bar Exhibits 5, 6 and 7]. Again, in her complaint, she attempted to convey the idea to the bar association that she was kept in the dark as to the terms of the settlement.

With regard to the PIP recovery, she testified that she only learned of the $4,900.00 PIP recovery when she visited Dr. Yehudian's office *long after the settlement had been concluded* and all disbursements had been made (page 118, line 1; page 120, line 22; page 121, line 1). In reality, not only was she told about the PIP recovery by the respondent prior to the settlement, she was also sent a letter *directly from her own insurance company* advising her of the payment of the $4,900.00 [Respondent's Exhibit 1]. After being shown the letter, she reluctantly admits that she did, in fact, receive it [page 121, line 18]. Notwithstanding the battle with her PIP carrier that continued for

3-1/2 years, prior to making the $4,900 recovery, the client *denies* under oath **that the benefits recovered were** recovered by the respondent [page 72, line 5; page 74, line 12]. However, client was sent a copy of Respondent's formal demand for payment of PIP benefits dated March 29, 1995. In that letter demand was made for payment of PIP benefits (some 3-1/2 years after the accident) and suit was threatened if not paid [Respondent's Exhibit 2; page 76, line 19].

The client again lied to the bar association in her complaint when she complains of the $360.00 used to pay Dr. Muransky. She alleges this to be improper, since the payment was for the "auto case" and not the slip and fall. However, the client signed the settlement statement [Florida Bar's Exhibits 5 and 6] which unequivocally shows that she knew of and consented to the payment of "all medical obligations for both claims."

The client further, again under oath, denied that she maintains two separate identities. On page 126, line 25 of the record, she states, "I never have maintained two separate identities. I'm only one person." Thereafter, "My name is Helene Rottblatt" [page 127, line 4], but after being faced with numerous documents showing this to be untrue, the client finally admits that she uses both identifies [page 130, line 16] and, in fact, uses the name Helene Roth in her apartment lease in the state of New York [page 131, line 20], as well as her bank accounts at Home Savings.

These inconsistencies and outright lies were, no doubt, considered and weighed by Judge Colton in arriving at his factual findings.

The Florida Bar has cited Florida Bar v. Schiller, 537 So. 2d 992 (Fla. 1989), as authority supporting its position that the respondent in this case should be disbarred; that a public reprimand is not enough. However, in the Schiller case, the facts were entirely different from the facts presented in this case. In the Schiller case, the attorney, over a five-year period, committed numerous multiple and intentional acts of embezzlement. The violations were intentional and he knew he was committing an offense when he took the funds. Notwithstanding those facts, the court *refused* to disbar attorney Schiller, since he proved to the court that he would not commit further offenses in the future.

In the case at bar, there was a genuine *fee dispute* that, had the client been honest, would have been resolved as such in a court of law. Instead, the client received assistance from a friend attorney [page 118, line 10] who not only told her *what to say* in order to have the bar association pursue the matter for her, but also took the time and trouble to type the complaint to The Florida Bar for her. In fact, as previously pointed out, the client was extremely uncooperative in furnishing that attorney's name despite being told to do so twice by The Florida Bar's attorney. If the client truly believed in her original position that attorneys are not allowed by law to charge a fee for recoveries made and utilized for payment of medical obligations, then why was it necessary for

her to change her "story?" If the incident occurred the way the client stated it did, wouldn't the respondent have given the money back to the client when given the opportunity by the client and, according to the client's testimony, "the matter would have ended there" [page 119, line 23; page 138, line 6; page 194, line 1; page 195, line 1]. Isn't it strange that the client knew exactly what to say in her complaint and knew of the existence and procedure for filing a claim with the Client Security Fund [page 217, line 1]? The trier of fact, furthermore, reasoned that a thief usually steals "more" than he is entitled to rather than less.

The total recovery in this cause was $25,900.00. No one disputes that that amount was recovered. The Florida Bar has taken the position that since $4,900.00 was *paid for by the auto insurance company,* it must, therefore, have nothing whatsoever to do with the slip-and-fall case. This is totally untrue and has as much to do with the slip-and-fall case as the medical pay paid for by the bank's liability insurance company. The Florida Bar contends, on page 6 of its Brief:

> The two checks totaling the $4,900.00 (Bar's Exhibits 9 and 10 in evidence) received by Dr. Yehudian were remitted as PIP payments in connection with the auto accident, not the slip-and-fall case.

This has consistently been The Florida Bar's position which is totally contrary to the evidence as well as to the facts in the case. There is absolutely no evidence whatsoever that of the medical bills outstanding, exactly $5,000.00 represented an outstanding balance owed for the slip-and-fall injuries and $4,900.00 was owed for the outstanding auto case medical bills.

The medical bills, even up to the date of settlement, were never so conveniently "packaged." The client knew and understood that when she signed and dated the settlement statement agreeing that the medical bills for both cases were paid in full [Florida Bar Exhibit 2].

ISSUE

2. WAS THE REFEREE'S DISCIPLINARY RECOMMENDATION OF PUBLIC REPRIMAND JUSTIFIED IN A COMPLICATED CASE OF THIS NATURE WHERE RESPONDENT'S OMISSIONS WERE NEGLIGENT AND UNINTENTIONAL?

The trier of fact found that respondent did *not* act intentionally and dishonestly and further that respondent's problems were the result of mixing together two cases. Respondent respectfully suggests that separating the two cases was an impossible expectation. Furthermore, as evidenced by the closing statement, client consented to the payment of all medical obligations for both claims. The reason for it was the inseparable nature of the cases from a medical viewpoint.

The bar association throughout this proceeding has been severely critical of the respondent (and to a certain extent justifiably so) for failing to set forth each and every aspect of the settlement in the settlement statement. Respondent admits this should have been done, but admitted this at the hearing and throughout this proceeding. The Florida Bar concludes, therefore, that since the respondent failed to do this, it must be the product of "conduct constituting dishonesty, fraud, deceit, or

misrepresentation." But if "mistakes" do not happen and all deviations from propriety are the product of intentional dishonesty and fraud, why would the bar association in this very proceeding file a document with this court *certifying* that it was served upon the respondent when, in reality, it was "mailed" [Florida Bar's First Request for Production and answer 15 to Respondent's First Set of Interrogatories]? These documents are attached hereto. A mistake, or an intentional act of dishonesty7 Strictly speaking, it certainly is a violation of Ethical Rules 4-3.4(c), 4-4.1(a), 4-3.3(a), 4-3.3(c), 3-4.3, and 3-4.1. The Rules of Procedure specifically provide that certification by mail shall be so specified. The time within which respondent had to respond to discovery items is dependent upon how the documents are served. Was the omission on the part of the bar an intentional act in order to gain a time advantage? I'm sure bar counsel's certification of service was only an unintentional error. The point is errors occur that are not "intentional acts of dishonesty."

RESPONDENT's SUMMARY OF ARGUMENT

The case at bar was extremely complicated from the first day of Respondent's involvement until the day it was settled, over three years later. The medical bills were so intertwined that it was impossible to separate them into the two separate distinct cases that The Florida Bar believes they should have been handled as.

Although the settlement statement was inadequate and incomplete, the respondent, in fact, explained every aspect of the settlement to the client and obtained the client's consent to the settlement prior to concluding it. Respondent placed more emphasis upon protecting the client than in protecting himself. Every individual from the client to the doctors received everything respondent represented to them they would receive. The trier of fact concluded that the respondent in no way acted dishonestly.

Considering all aspects of this case, including its inseparable nature, a private reprimand would be more than sufficient penalty for the respondent's errors. The respondent certainly has learned the importance of accuracy and completeness in the preparation of settlement statements and the appearance of impropriety that can surface when this is not done. Respondent trusted the wrong person, failed to confirm everything in writing, and undertook a complicated case -- none of which will occur in the

future. Respondent has an unblemished record after 23 years of practice and is rated BV by Martindale-Hubbell.

FRANK THOMAS, Respondent
Florida Bar No. 165679
1917 Harrison Street
Hollywood, Florida 33020
(954) 920-4283

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Answer Brief was mailed by United States Mail, postage prepaid, on November 6th, 1996, to:

DAVID M. BARNOVITZ,
Assistant Staff Counsel
THE FLORIDA BAR
5900 North Andrews Avenue
Suite 835
Fort Lauderdale, Florida 33309.

FRANK THOMAS

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

FRANK THOMAS II,

Respondent.

Supreme Court Case
No. 87,351

The Florida Bar File
No. 96-50,589(171)

THE FLORIDA BAR'S FIRST REOUEST FOR PRODUCTION

Pursuant to Rule 1.350, Florida Rules of Civil Procedure, complainant requests Frank Thomas, II, Respondent, to produce the original or copies for inspection and/or copying at the Fort Lauderdale branch office of The Florida Bar, 5900 N. Andrews Avenue, Suite 835, Fort Lauderdale, Florida 33309 within thirty (30) days after service of this request, the following items:

1. All documents of any kind which the respondent intends to offer as evidence at trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Florida Bar's First Request for Production was served upon Frank Thomas, II, Esq., at 1917 Harrison Street, Hollywood, Florida 33020 on this 11 th day of June, 1996.

Adria E. Quintela

Adria E. Quintela
Florida Bar No. 897000
The Florida Bar
5900 North Andrews Avenue - Suite 835
Fort Lauderdale, FL 33309
(954)772-2245

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

FRANK THOMAS, II,

Rcspondenl.

Supreme Court Case
No, 87,351

The Florida Bar Case
No. 96-50,589(17I)

RESPONDENT'S FIRST SET OF
INTERROGATORIES TO THE FLORIDA BAR

TO: The Florida Bar
5900 North Andrcws Avcnuc
Suite 835
Fort Lauderdale, Florida 33309

Respondent propounds the following Intcrrogatorics to The Florida Bar pursuant to the F.R.C.P. 1.340, and you are required to answer the Intcrrogatorics, in writing and under oath, **within thirty (30) days** from the date of service hereof.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to the above addressee this 24th day of June, 1996.

Frank Thomas, Esquire
Florida Bar No. 165679
1917 Harrison Street
Hollywood, Florida 33020
(954) 920 - 4283

INTERROGATORIES

1. State your name, address and position with The Florida Bar.

Adria E. Quintela

Fort Lauderdale, FL 33309
Assistant Staff Counsel

2. Dcscribc in detail each act committed by respondent that you allegc was a violation of The Florida Bar Canons of Ethics:

See Complaint filed by The Florida Bar

3. Set forth the number, paragraph and subparagraph of each of the Canons of Ethics which you allegc the respondent violated.

See Complaint filed by The Florida Bar

4. Givc the names and addresses of all persons having knowledgc of the facts set forth in your complaint.

Helene Rottblatt -
Frank Thomas II - Respondent
Dr. Yehudian - address unknown
Aetna Claim Representative

5. For each witness you plan to have testify at the final hearing, state his/her name and address and give a brief description of what you expect each witness to testify to.

a.. Helene Rottblatt (via deposition since she is unavailable) knowledge of facts mentioned in complaint)

b. Frank Thomas II (knowledge of facts mentioned in complaint)

6. At the time your complaint against respondent was filed, state all sources of information you considered in framing the factual allegations of the complaint.

Complaint of Helene Rottblatt to The Florida Bar; response of Frank Thomas II; Helene Rottblatt's rebuttal to Thomas' response; Thomas' further response to Rottblatt's rebuttal. All documents provided by both Ms. Rottblatt and Mr. Thomas to the bar.

7. Describe in detail all exhibits you plan to enter into evidence or offer into evidence at the final hearing.

a. Any and all documents provided to the Bar by either Ms. Rottblatt or Mr. Thomas.

b. Any and all documents made a part of the deposition of Helene Rottblatt.

c. Any and all documents referred to in any discovery had in this matter.

8. Are you contending that respondent violated any of the Canons of Ethics by paying the medical obligations of both the auto case and the slip-and fall-case from the proceeds recovered that is the subject or your complaint?

Objection - vague

9. Are you contending that respondent appropriated funds? If so, state:

a. The amount misappropriated.

See Complaint

b. The name of the person those funds belonged to.

See Complaint

c. The proof you intend to offer in support of your position.

See Complaint

See complaint

d. What facts you arc relying upon in alleging misappropriation.

See Complaint

10. With regard to the two contingent fee agreements signed by Hclcnc Rottblatt and/or Hclcnc Roth, please state The Florida Bar's position as to the amount of fee respondent was to bc paid.

See each agreement

11. Is it The Florida Bar's position that the contingent fee agreements signed by Hclcnc Rottblatt and/or Helene Roth setting forth an attorney's fee of one-third of the recovery is to bc construed as one-third of the amounts that the client netted?

No

12. Is it The Florida Bar's position that the contingent fee agreements signed by Helene Rottblatt and/or Helene Roth do not provide for payment of attorney's fees for amounts recovered and used for payment of client's outstanding medical obligations?

See complaint

13. What total amount did The Florida Bar's investigation reveal respondent "recovered" for a Helene Rottblatt and/or Helene Roth that would allow a fee being paid to the respondent of one-third?

$16,000 plus $5,000 med pay

14. Based upon the written fee agreements respondent entered into with Helene Rottblatt and/or Helene Roth, what total fee should the respondent have received as computed strictly in accordance with those agreements?

The fee provided for in authority to represent contracts signed by Ms. Rottblatt.

15. With regard to The Florida Bar's First Request for Production, please state in detail how service of that document was effectuated upon Frank Thomas.

By mail

Under penalties of perjury, I declare that I have read the foregoing responses to interrogatories and the facts stated in them are true.

Adria E. Quintela

STATE OF FLORIDA)
: SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 22nd day of JULY, 1996, by ADRIA E. QUINTELA, who is personally known to me or produced PERSONALLY KNOWN as identification and who did take an oath.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the County and State last aforementioned.

Holly Carullo
Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
OFFICIAL NOTARY SEAL
HOLLY CARULLO
COMMISSION NUMBER
CC234764
MY COMMISSION EXP.
NOV. 5,1996

Thomas & Thomas
Attorneys al law

THOMAS A. THOMAS, SR.
FRANK THOMAS

1917 Harrison Street
Hollywood, FL33020
(954) 920-4283

September 27, 1996

David M. Barnovitz, Esq.
Branch Staff Counsel
The Florida Bar
5900 North Andrews Avenue
Suite 835
Fort Lauderdale, Florida 33309

Re: **Florida Bar File No. 86-50,589 (171)**

Dear Mr. Barnovitz:

The above referenced case has been heard and decided by Judge Coltorl. Although I disagree with Judge Colton's ruling, I am willing to comply with his recommendations. I made several mistakes in that file in failing to document everything in writing. That is a mistake I shall never make again.

Sincerely yours,

FRANK THOMAS

FT/ab