IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

MARK EVAN FREDERICK,

Respondent/Appellant,

vs.

THE FLORIDA BAR,

Petitioner/Appellee.
_____/

Case Nos.: 90,007 and 90,387
TFB File Nos.: 96-00987-01B and 97-00094-01B

APPELLANT'S REPLY BRIEF

ON APPEAL FROM
THE FLORIDA BAR REFEREE,
HONORABLE ALLEN REGISTER,
COUNTY JUDGE OF WASHINGTON COUNTY'S
REPORT AND DISCIPLINE RECOMMENDATION
DATED MAY 28, 1998

HARRELL, WILTSHIRE, P.A.

W.H.F. WILTSHIRE
201 East Government Street
PO Box 1832
Pensacola, Florida 32501
(850) 432-7723
Florida Bar No.: 88803
Attorney for Respondent/Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

RULES REGULATING THE FLORIDA BAR

OTHER CITATIONS

STATUTES

RESPONDENT'S REPLY BRIEF

I. THE BARNES CASE
A. THE PAROL EVIDENCE RULE

1. THE WRITTEN FEE CONTRACT

The written contract which Frederick prepared and executed on August 31, 1994, was clear, complete and unambiguous. It was not challenged as vague or incomplete, either before the Referee or on this appeal. (A 3, pp 1-3) As such it is entitled to the dignity afforded by the parol evidence rule, which is the substantive law of this state, and not merely a rule of evidence. *Atkins v. Bianchi*, 162 So.2d 694 (Fla. 1st DCA 1964) ("this rule is not a rule of evidence but of substantive law"). In *J.M Montgomery Roofing Co. v. Fred Howland, Inc.*, 98 So.2d 484,486 (Fla. 1957) this Court held that: "the terms of a valid written contract or instrument could not be varied by a verbal agreement or other extrinsic evidence where such agreement was made before or at the time of the instrument in question.... The rule inhibits the use of parol evidence to contradict, vary, defeat of modify a complete and unambiguous written instrument, or to change, add to, or subtract from it, or affect its constructions."

2. FREDERICK COMPLIED WITH, BUT THE BAR AND REFEREE IGNORED RULE 4-1.5(f) REQUIRING CONTINGENT FEE AGREEMENTS TO BE IN WRITING

After the August 17 initial meeting and the August 18 proposal letter, Frederick met with the 9 potential clients and prepared the August 31, 1994, written fee agreement. It was executed, along with the Statement of Clients Rights, as required by Rule 4-1.5(f).

Had Frederick not complied with this rule, he would have been subject to prosecution for its violation. It is therefore difficult to understand how strict compliance with Rule 4-1.5(f), and the dignity afforded the written agreement by the parol evidence rule as substantive law, could have been ignored and disregarded by the Bar in prosecuting, and the Referee in finding Frederick guilty of violating trust Rules 4-1.5(a) and 5-1.1(a).

3. ORAL MODIFICATION OF COST ADVANCE–MOOTS THE COST ISSUE

The facts are undisputed that, at the clients' request and insistence, the written fee contract was orally modified in two respects, several weeks after it was executed. First, Frederick agreed to proceed with nine (9), instead of the minimum ten (10) clients, with each paying a $2,000 non-refundable retainer. Second, Frederick agreed at the clients' insistence, that the $5,000 cost advance requirement be eliminated. Frederick in reliance on that oral agreement, filed suit and advanced all costs and substantial expenses over the next fourteen (14) months. This included the salary of his paralegal, Tammy Tikel, who was assigned exclusively to this and two (2) other cases. An oral modification of a written contract is enforceable, *Spann v. Baltzell*, 1 Fla. 301 (1847), especially where it is accepted and one of the parties, acts in reliance upon it, to his detriment. *Tussing v. Smith*, 125 Fla. 578, 171 So. 238 (1936).

4. NO OBLIGATION AROSE AND NO BREACH OF TRUST RULES

OCCURRED UPON ELIMINATION OF THE COST ADVANCE

Florida Bar Opinion 93-2, October 1, 1993 (A 9), makes it indelibly clear that a non-refundable retainer is earned when paid, and it is unnecessary and inappropriate to deposit any of that money into a trust account.

The facts are without dispute. The oral modification eliminated any requirement for a cost advance payment, and nothing more than the $18,000 non-refundable retainer was ever paid. Whether the *parol* evidence of the August 17 discussions; the *extrinsic* evidence of the August 18 proposal letter; or the written agreement are considered as the agreement---the cost issue becomes moot and immaterial upon the oral modification eliminating the cost advance requirement.

The non-refundable retainer was earned when paid; it was neither necessary or appropriate to be placed in trust; no duty arose, and a violation of trust Rules 4-1.5(a) or 5-1.1(a) never occurred, as a matter of law. *Id*. Even disregarding the parol evidence rule, and considering only the pre-contract parol and extrinsic evidence as constituting the agreement, the cost advance requirement was totally eliminated by the oral modification. Elimination of advancement of costs, when none was ever paid, simply makes the cost-trust issue moot. Frederick, thereafter incurred substantial costs during the next 14

months to his serious financial detriment.[1]

5. INCLUDING A "NO BAR COMPLAINT" PROVISION IN A RELEASE IS NOT A RULE VIOLATION

The Referee found that including a no complaint to the Bar provision in the release was a violation of Rule 4-8.4(d). This is not a violation of any rule, and clearly Rule 4-8.4(d) is patently inapplicable. This Court in *The Florida Bar v. Fitzgerald*, 541 So.2d 602, 605 (Fla. 1989) stated: "We caution the public and the Bar that any such agreement is *unenforceable.*" (emphasis ours) Yet, at the Bar's urging, the Referee found a violation of Rule 4-8.4(d).

Rule 4-8.4(d) proscribes conduct that "knowingly or through callous indifference disparages, humiliates or discriminates a litigant, juror, witness, lawyer or any court personnel...in the practice of law that is prejudicial to the administration of justice." Rule 4-8.4(d), therefore, is not remotely designed to fit this case.

We find no rule that applies. Even should such a rule exist, as stated in *The Florida Bar v. Hosner*, 513 So.2d 1057, 1058 (Fla. 1987): "Misconduct not charged may not provide a basis for punishment."

---

[1] Frederick had a strict accounting system in place. However, the only records he kept were reconstructed from his file. Since he didn't have his file which had been delivered to the clients who delivered it to Sadie Stewart, Esq. (follow up counsel), be could not account for his costs. Over one-third of his paralegal's annual salary alone was a significant cost.

6. MISCONDUCT OF CLIENTS

Fourteen (14) months into the federal lawsuit, Frederick was considering withdrawal from some cases he was handling for reasons of health. He had prepared drafts of letters he was considering sending to some of his clients. Tammy Tikel ("Tikel"), his paralegal, in November 1995 who was angry over a salary dispute and was leaving Frederick to work for Sadie Stewart, Esq., intercepted an unsigned letter addressed to the group. Without Frederick's knowledge, Tikel presented the unsigned letter to the clients who became angry. She thereafter guided them through the fraudulent and extortionate activities that followed. The record is devoid of any misconduct on his part. The clients had "confidence" in Frederick, whom they described as "the best," and he and his staff as "fantastic." (A 3, p 9) In the discharge letter typed by Tikel, she threatened Frederick with complaints to the Bar and malpractice (A 6) knowing he was very sensitive to Bar complaints, having just been admonished in June, 1993.

The threats worked and under Tikel's guidance, Barnes was able to get Frederick to agree to settle for $12,500. Frederick included a provision in the release that the clients would not to complain to the Bar or file a malpractice complaint. (A 3, p 8-10) The clients had, however, been told by Tikel and outside counsel[2] that the release was

[2] One outside counsel was the sister of one client, who practiced law in Virginia.

not enforceable. They then proceeded with Tikel's plan, repudiated the release, and persisted in their threats to extract the remainder of Frederick's fee of $5,500. Failing to do so they then filed the Bar complaint to recover this amount in what they considered to be their malpractice action, the claim against the Client's Security Fund. (A 3, p 11-14).

The clients made candid admissions that they knew the release was invalid; used it to get the $12,500 with no intent to honor the release; and used the release and cost advance claim, as a basis for their Bar and malpractice complaints to obtain the $5,500 remainder of Frederick's non-refundable retainer. Their ultimate fraudulent purpose was accomplished, when Tikel was able to carry the new $12,500 retainer to her new employer Sadie Stewart, Esq., along with the clients' case.

7. MISUSE OF BAR PROCEEDINGS

The Bar filed a complaint alleging that Frederick received money intended as a cost advance, but failed to deposit it in trust, in violation of Rules 4-1.5(a) and 5-1.1(a). It is difficult to understand why the Bar focused on pre-contractual *parol* discussions and *extrinsic* evidence (proposal letter) to establish a trust violation. This is particularly true in the face of the clear and complete written fee agreement which was executed in strict conformance with Rule 4-1.5(f). It is even more alarming when considering the

applicability of the centuries of parol evidence rule.[3]

This anomaly becomes absolutely confounding, considering the Bar's attempt to fit Rule 4-8.4(d) (disparaging or discriminating remarks) to the "no Bar complaint" provisions in a release, which was never honored by the clients. Indeed, the release was used to extract Frederick's remaining earned fee, on the pretext it was somehow an advancement of costs.

B - STANDARDS FOR REVIEW

1. IN DISCIPLINARY PROCEEDINGS

Rule 3-7.7(c)(5) establishes the standards for review in disciplinary matters. The burden is on the appellant to demonstrate that the Referee's report is "erroneous, unlawful or unjustified." Although we find no definition of this standard, we assume that it is not inconsistent with the three basic standards for civil appellate review. A Referee's opinion is also advisory in nature, and the final decision as to conduct and discipline is solely vested in the Court. It would appear, therefore, that the Court has more flexibility on review of Bar disciplinary matters, than in other appellate matters involving final adjudications by lower tribunals.

---

[3] [C]ourts of America and England have for centuries recognized and applied what has come to be known as the parol evidence rule..." *Atkins v. Bianchi*, 162 So.2d 694, 697 (Fla. 1st DCA, 1964).

In his recently published *Florida Appellate Practice*, second edition (1997), Judge Phillip Padovano added a very useful chapter entitled, "Standards of Review," Chapter 9. In this chapter at page 141, he states that:

> Although there are certain exceptions, nearly all trial level decisions can be classified within the following three general types: (1) decisions of law; (2) discretionary decisions; and (3) decisions of fact.

We submit that Frederick has met all three standards, any one of which requires a rejection of the Referee's report.

2. THE REPORT IS ERRONEOUS

This standard would appear to be similar to that in civil appeals relating to decisions of fact, or the "*reasonableness*" standard to determine if the recommendations and discipline are supported by "*competent, substantial* evidence." **"**Competent substantial evidence is such evidence as will establish a substantial basis of fact from which the fact, which is at issue, can be inferred (or)... such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *Duval Utility Company v. Florida Public Service Commission*, 380 So.2d 1029, 1031 (Fla. 1980). The Bar apparently agrees. (Ans. Brief p.14).

The facts upon which the Bar relies are, the *parol* discussions and *extrinsic* proposal letter involving discussions of 14 clients at $2,000 retainer each, for a total of $28,000, $5,000 of which was designated as costs (A 2). Concluding that this evidence

constituted the agreement, is totally contrary to both the clear written agreement (A 4) and the undisputed oral modification that followed, which totally eliminated any cost requirement.

This parol and extrinsic evidence, is neither "*competent*" nor "*substantial*." It is not "competent" because it is inadmissible under the parol evidence rule, and rendered irrelevant by the oral modification. It is not "substantial," because it conflicts with the clear terms of the written agreement, and the undisputed later oral modification, which totally eliminated any cost advance. The report is also not reasonable, because there was no obligation to deposit any money into trust (Fla. Bar Opin. 93-2) -- yet a trust violation was found.

3. THE REPORT IS UNLAWFUL

We believe the "unlawful" standard is akin to the civil standard applicable to decisions of law. The pivotal and obvious decision of law in this case is application of the parol evidence rule as the substantive law of Florida. The Bar specifically contended that: "The parol evidence rule is not applicable to the Barnes case because a disciplinary action is a quasi-judicial fact-finding inquiry. Rule 3-7.6 that governs procedures before a Referee does not require adherence to any rules of evidence including the parol evidence rule." (Ans. Brief p.14)

The death knell to any factual contention that a cost payment was required, was

tolled by the oral modification that eliminated costs, after the contract was signed. Interestingly, one of the few cases cited by the Bar, *F.M.W. Properties, Inc. et al v. Peoples First Financial Savings and Loan Assoc.*, 606 So.2d 372 (Fla. 1st DCA 1991), stands for that proposition. As stated in the Bar's brief at page 33 "(Evidence of a subsequent oral modification is admissible even where the writing contains a merger clause. *Id*. at 375)."

Judge Padovano notes that: "Decisions of law are reviewed by the *de novo* standard of appellate review." *Florida Appellate Practice (1997)* @ p 141 He also states that: "De novo review simply means the appellate court is free to decide the question of law, without deference to the trial judge, as if the appellate court had been deciding the question in the first instance." Citing *Walter v. Walter*, 464 So.2d 538 (Fla. 1985). *Id*. @ p.147. Although a trier of fact is entitled to wide discretion in determining issues of fact, it has been held that: "As great as the trial court's discretion is, it is not given the discretion to disregard the law." *Kennedy v. Kennedy*, 622 So.2d 1033, 1034 (Fla. 5th DCA 1983)(*en banc*), *rev. dism.* 641 So.2d 408 (Fla. 1994).

We also think the conclusion of the Bar that its disciplinary proceedings are immune from the rules of evidence, is seriously misplaced. First, the parol evidence rule

is substantive law, and not a mere rule of evidence.[4] Second, Rule 3-7.4(d), applicable only to Grievance Committees, provides that "the proceedings of grievance committees may be informal in nature and the committees shall not be bound by the rules of evidence." However, Rule 3-7.6 entitled "Procedures Before A Referee" has no similar provision. Subsection (e)(1) of that rule provides that:

> A disciplinary proceeding is neither civil or criminal, but is a quasi-judicial administrative proceeding. The Florida Rules of Civil Procedure apply except as otherwise provided by rule.

The Rule also provides that discovery will be conducted in accordance with the Florida Rules of Civil Procedure.

We submit that expressly excluding the rules of evidence from "informal" grievance proceedings, but not doing likewise with more formal quasi-judicial Bar disciplinary proceedings, at the very least implies application to Bar disciplinary proceedings. If it were otherwise, we fall into the quagmire of conflicting applications of the rules of evidence to a variety of different quasi-judicial proceedings. These range from the extremes of workers' compensation proceedings, *Alford v. G. Pierce Woods Memorial Hospital*, 621 So.2d 1380, 1382 (Fla. 1st DCA 1993) (the rules are

[4] The parol evidence rule is not listed or stated in most treatises on evidence such as Erhardht's Florida Evidence. Its only mention is in the Florida Evidence Code, but not as a rule of evidence. Fla. Stat. §90.103(3) merely provides that "Nothing in this act shall repeal or modify the parol evidence rule."

applicable),-- to *Odom v. Wekiva Concrete Products*, 443 So.2d 331, 332 (Fla. 1st DCA 1983) (the hearsay rule may be relaxed)-- to a land use hearing by a County Commission which is "not controlled by the *strict rule* of evidence." *Jennings v. Dade County*, 589 So.2d 1337 (Fla. 3rd DCA 1991), *rev. den.* 598 So.2d 75 (Fla. 1992).

It is also difficult professionally, to accept an argument that in a proceeding where lawyers are tried by lawyers and judged by judges for professional misconduct, that substantial deference isn't paid to the rules of evidence, much less the substantive law under which we all live and operate.

4. THE REPORT IS UNJUSTIFIED

We identify this standard as being comparable to the civil appellate standard applicable to discretionary decisions. This standard would be one of "reasonableness", to determine whether the Referee abused his discretion. As stated by this Court in *Canakaris v. Canakaris*, 382 So.2d 1197, 1203 (Fla. 1980):

> In reviewing a true discretionary act, the appellate court must fully recognize the superior vantage point of the trial judge and should apply the "reasonableness" test to determine whether the trial judge abused his discretion. If reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion. The discretionary ruling of the trial judge should be disturbed only when his decision fails to satisfy this test of reasonableness.

Also as noted in *Canakaris*, *id.* at 1202:

> In order to properly review orders of the trial judge, appellate courts must recognize the distinction between the incorrect application of an existing rule of law and an abuse of discretion...The appellate court in reviewing such situation is correcting an erroneous application of a known rule of law.

We submit that clearly, the Referee's disregard of the parol evidence principle as one of substantive law, was fatal to his understanding of the facts. Alternatively, even if the Referee accepted the pre-contractual premise that $5,000 of the $28,000 was to serve as a cost advance, two undisputed factual issues solidly remain. First, only the $2,000 non-refundable retainer was paid by each client, and second, the cost advance requirement was eliminated at the clients' insistence after the written agreement was executed. Even if $5,000 was intended as a cost advancement, $12,500 had been returned as a result of the fraud perpetrated. There simply is no logical way to justify an award of $5,500 (the balance of the fee) and somehow connect it to an advance payment of $5,000 as costs.

Based on the overall record, the Referee clearly abused his discretion finding the violations and recommending discipline of 91 days suspension; with proof of rehabilitation; followed by 3 years probation; payment of $5,500 to the Clients' Security Fund; and $8,282.86 in costs to the Bar.

The Referee's function is to recommend findings of fact and discipline to the Court. While these findings should be accorded deference, because of the Referee's first

hand exposure to the witnesses, the finding should not carry the dignity of "finality" that accompanies final decisions of most administrative agencies.

Mark Frederick has pursued his life long ambition of practicing law for over two decades which is his sole source of income (A 1). He has lost $12,500 of his earned fee through blatant fraud and extortion, as was admitted by his former clients with apparent pride. (A 3, p 12-16) The Florida Bar Disciplinary Proceedings were then used to extract the remainder of the earned fee joined by a spurious claim that Frederick misused money intended for costs and expenses. We submit this also constitutes an abuse of process. The only loss in this case in this case is Frederick's of cost and expense money which amounts to the thousands of dollars in unrecovered cost and expense he advanced in this litigation and the expense and cost of these proceedings.

It is for this reason that, despite the provisions of Rule 3-7.6(o), attorneys fees and costs should be awarded to Frederick. Fees are not sought under the Bar rule, but are sought pursuant to Fla. Stat. §57.105(1) and the inherent power of this Court. The Bar incorrectly indicates that *The Florida Bar v. Chilton*, 616 So.2d 449 (Fla. 1993), is authority for the proposition that attorneys fees are not taxable against the Bar under §57.105(1), Fla. Stat. (1997). *Chilton* does not address the availability of a fee under that statute, but only under Rule 3-7.6.

II. THE MC CORVEY CASE

A. WHAT CONSTITUTES "DIRECT CONTACT" BETWEEN A DISCIPLINED ATTORNEY EMPLOYEE AND A CLIENT?

Respondent acknowledges his violation of Rules 4-5.3(a) and (b) requiring him to make a reasonable effort to familiarize himself with the acceptable parameters of work to be performed by disciplined attorney in his employment. The Court recently amended Rule 3-6.1(c) prohibiting "direct contact with any client," however, we respectfully submit it deserves further clarification.

We submit the Bar's contention that the Rule, as enlightened by the 1998 amendment prohibits "unsupervised" contact is reasonable. It does not, however, address what "unsupervised" means. Because of McCorvey's verbal abuse and the refusal of all ladies in the office to accept the vulgarity used in his calls, a unique but serious communications[5] dilemma created by McCorvey in Frederick's absence. Only Barrow was available to take the calls and abuse. In doing so he simply served as a clerical conduit, by writing down the messages and conveying them to Frederick as any secretary would. We submit that while this might be a violation, it does not justify punishment beyond a public reprimand.

B. FAILURE OF REFEREE TO CONSIDER ANY MITIGATING

[5] Rule 4-1.4.

FACTORS

The Referee found no mitigating factors that would be applicable or available to Frederick. (A 1, §9.32) We submit, with the record in this case, this was an abuse of discretion and unjustified. Frederick submitted a list of proposed mitigating factors, which were ignored or rejected by the Referee. These included the following §9.3 "Mitigating Factors":

(b) absence of dishonest/selfish motive;
(c) personal problems (parents serious illnesses);
(d) no harm or prejudice to clients (to the contrary, they benefitted);
(e) cooperative attitude toward proceedings;
(f) character and reputation (stipulated to in 1996 proceedings);
(g) delay in proceedings (the events occurred in 1994 and 1995, before the 1996 discipline);
(h) remorse; and
(i) interim rehabilitation (Frederick has: completed 30 plus hours of CLE credit since Fall, 1997, although he wasn't due to report his hours until 2001; dramatically reduced his case load; has declined numerous new cases; arranged with two firms to run his office if necessary, and; discharged Barrow to avoid any potential problems)

We are also concerned, with the tenor of the Referee's expression of serious concern over Frederick's failure to terminate Barrow until after the Referee issued a rough draft of his report finding violations. In the Report (A 1) under §9.22 "Aggravating Factors"

the Referee wrote:

> (g) Refusal to acknowledge wrongful nature of conduct. The Referee has serious concerns that even though the Respondent was placed on notice by the Bar's filing of a complaint against him based on William Barrow's office practices, Respondent failed to take any corrective measures in this matter until after receiving a rough draft of the Referee's report finding Barrow's practices to be in violation of Rule 3-6.1(c). Respondent had, previous to receiving the above rough draft, been placed on notice of the impropriety of Barrow's practices not only by the Bar's complaint, but also by a pre-hearing ruling on this matter filed by this Referee on March 13, 1998. Respondent, by his own admission, took no corrective action in this matter until mid to late April, 1998.

This comment almost reflects anger, or at least a serious misconception of Frederick's intent in not terminating Barrow. Frederick retained Barrow on advice of undersigned counsel. Frederick was penalized by supporting Barrow in his effort toward rehabilitation, which we believe goes against the very grain of the Bar's program to rehabilitate disciplined attorneys. *The Florida Bar v. Fitzgerald*, 541 So.2d 602, 605 (Fla. 1989) "The judgment must be fair to the respondent, being sufficient to punish a breach of ethics and *at the same time encourage reformation and rehabilitation*."

We see no justification for increasing Frederick's discipline because he did not immediately terminate Barrow, a disciplined lawyer, when he came to the aid of his employer and office staff in these circumstances. Frederick's retention of Barrow, despite

the arguments and criticism of Bar Counsel, was simply loyalty to an employee who had *knowingly* done nothing wrong. Frederick's fault lay, in not adequately researching the rules himself. The Referee's reaction to this fact alone, constitutes a misconception of the purpose of the Bar's rehabilitative program.

III. CONCLUSION

The Referee's report in McCorvey shoud be rejected and Rule 3-6.1(c) clarified. We submit that this Court's opinion would serve as an appropriate punishment if the rule was violated in either letter or spirit.

The Referee's findings, and recommendations in *Barnes* should be rejected in its entirety. The parol evidence rule is applicable and the standards for review of disciplinary matters, "erroneous, unlawful and unjustified" have all been met.

Trawick's warning bears repetition:

> A recent disturbing development is the increase of grievance complaints by litigants during the lawsuit in an effort to exert disciplinary pressure to obtain relief. The Florida Bar actively participates with litigants and their lawyers in this form of pressure. It is a reprehensible practice and should not be condoned. A lawyer who is subjected to a grievance complaint must obtain independent counsel. The disciplinary department of The Florida Bar (1) deems every lawyer to be unethical; . . . (3) will use the lawyer's explanation to find him unethical if possible while his attorney's responses cannot be used; and (4) are not ashamed to use the prejudiced testimony of fired or disgruntled employees. In short, the lawyer is guilty until he proves otherwise.

> (footnote 20) . . . Many times a party threatens a lawyer with a grievance unless he does something the party wants. *The Florida Bar eagerly cooperates in what would be extortion in any other case. A more unfair proceeding than a grievance, does not exist.* (Emphasis ours)
>
> Trawick, *Fla. Prac. and Proc*. 4-14 (1998 Edition).

The problem, demonstrated in *Barnes*, begs for the attention and comment of this Court. While public criticism of the lawyers and our system of justice demands the attention of all, disciplinary proceedings and punishment should be administered with even-handed balance, care and consideration. Otherwise, the criticism would seem justly deserved.

IV. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided to Olivia Paiva Klein, Asst.Staff Counsel, The Florida Bar, 650 Appalachee Parkway, Tallahassee, FL 32399-2300 by Overnight Express Mail this __day of March, 1999.

HARRELL, WILTSHIRE, P.A.

_____

W.H.F. WILTSHIRE
Florida Bar No.: 088803
201 East Government Street
Pensacola, Florida 32501
(850) 432-7723
Attorney for Respondent-Appellant