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**FILED**  
DEBBIE CAUSSEAU

IN THE SUPREME COURT OF THE STATE OF FLORIDA JUN 14 1999

CLERK, SUPREME COURT  
By \_\_\_\_\_

BARBARA MOAKLEY,  
Appellant/Former Wife,

CASE NUMBER: 95,471  
3rd DCA CASE NUMBER: 98-398

v.

W. SHERI SMALLWOOD, Esq.,  
Appellee/Former Attorney for Former Husband

**APPELLANT'S AMENDED BRIEF TO INVOKE  
DISCRETIONARY JURISDICTION**

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June 11, 1999

## TABLE OF CONTENTS

Table of Contents	I
Table of Authorities	ii
Statement of the Case	1
Summary of Argument	2
Argument	3
Conclusion	6
Certificates of Font Size and Service	7

## TABLE OF AUTHORITIES

### CASES:

Behr v. Bell, 665 So.2d 1055 (1996) . . . . .	3, 4
Chambers v NASCO, Inc. 501 U.S. 32, 111 S.Ct. 2123, 115 L.Ed.2d 27(1991)	5
Israel v Lee, 470 So.2d 86 (Fla. 2DCA 1985) . . . . .	5
Miller v Colonial Baking Co., 402 So.2d 1365 (Fla. 1DCA 1981) . . . . .	5
Patsy v Patsy, 666 So.2d 1045 (Fla. 4DCA 1996) . . . . .	1, 3
Sanchez v Sanchez, 435 So.2d 347, 350 (Fla. 3DCA 1983) . . . . .	1
State v Harwood, 488 So.2d 901 (Fla. 5DCA 1986) . . . . .	3, 5
The Florida Bar v. Smania, 701 So.2d 835, 836 (Fla. 1997) . . . . .	4, 5

### FLORIDA CONSTITUTION:

Article V, Section 15 . . . . .	4, 5
Article V, Section 5(b) . . . . .	5

### RULES:

Fla. R.App.P. 9.030(a)(2)(B)(ii) . . . . .	3, 4
Bar Rule of Discipline 3-1.2, 605 So.2d 252 (Fla. 1992) . . . . .	3
Disciplinary Rule 3.3-5 . . . . .	4
Disciplinary Rule 3-3.1 . . . . .	4
Disciplinary Procedure, Rule 3-7 . . . . .	4

## STATEMENT OF THE CASE

Appellant/Former Wife, Barbara Moakley, invokes the discretionary jurisdiction of the Supreme Court to review the March 24, 1999, per curiam decision of the Third District Court of Appeals. This decision upheld the trial court's sanctions against Appellant and her attorney--payable to Appellee--a fact witness. The trial court sanctioned the attorney for **subpoenaing a fact witness, without a "reasonable explanation"**.

The decision cited the trial court's "inherent powers" to discipline attorneys under Sanchez v Sanchez, 435 So.2d 347, 350 (Fla. 3DCA 1983) and Patsy v Patsy, 666 So.2d 1045 (Fla. 4DCA 1996), and other cases decided by the Third and Fourth District Courts of Appeal.

## SUMMARY OF ARGUMENT

- I. THE DECISION AFFECTS A CLASS OF CONSTITUTIONAL OFFICERS--CIRCUIT COURT JUDGES. P.3
- II. THE DECISION GIVES TO THE TRIAL COURT, THE SUPREME COURT'S "INHERENT POWER" TO DISCIPLINE ATTORNEYS, WITHOUT REQUIRING THE TRIAL COURT TO FOLLOW THE DISCIPLINARY RULES. P.3
- III. THE ACTION SANCTIONED, UNREASONABLY EXPANDS SANCHEZ. P.3
- IV. THIS APPROACH LACKS STANDARDS AND PROCEDURES, VIOLATING DUE PROCESS. P.4
- V. THIS DECISION CONFLICTS WITH THREE OTHER DISTRICT COURTS OF APPEAL. P.5
- VI. THIS DECISION HAS A CHILLING EFFECT ON LAWYERS' DUTY TO ZEALOUSLY REPRESENT THEIR CLIENTS. P. 6

## ARGUMENT

### I. THE DECISION AFFECTS A CLASS OF CONSTITUTIONAL OFFICERS--CIRCUIT COURT JUDGES.

This decision expressly affects the “inherent powers” and jurisdiction of a class of constitutional officers--Circuit Court Judges. Behr v. Bell, 665 So.2d 1055 (1996).

### II. THE DECISION GIVES TO THE TRIAL COURT, THE SUPREME COURT'S “INHERENT POWER” TO DISCIPLINE ATTORNEYS, WITHOUT REQUIRING THE TRIAL COURT TO FOLLOW DISCIPLINARY RULES.

The Supreme Court's “Inherent Powers”. This decision directly conflicts with a decision of this Court on the same question of law--Bar Rule of Discipline 3-1.2, 605 So.2d 252 (Fla. 1992):

The Supreme Court of Florida has the **inherent power** and duty to prescribe standards of conduct for lawyers, to determine what constituted grounds for discipline of lawyers, [and] to discipline for cause attorneys admitted to practice law in Florida....

There is no similar grant of “inherent powers” to the trial court. Delegating that power to the trial court has “a great effect on the administration of justice,” under Fla. R.App.P. 9.030(a)(2)(B)(ii).

### III. THE ACTION SANCTIONED, UNREASONABLY EXPANDS SANCHEZ.

Expansion of Sanchez' “Inherent Powers” to a Subpoena Without a

“Reasonable Explanation”. None of the cases cited by the Third DCA sanctioned an attorney for subpoenaing a fact witness. Appellee’s Answer Brief conceded that the trial court was not justified by the court’s inherent powers, and that Sanchez did not apply to this case. The trial court made no finding of “bad faith”, and neither Appellee’s pleadings, nor the Record on Appeal, support such a finding.

Jurisdiction. Article V, Section 15, Florida Constitution, gives “exclusive jurisdiction” over discipline. Rule 3-3.1, quoted by The Florida Bar v. Smania, 701 So.2d 835, 836 (Fla. 1997), provides:

The exclusive jurisdiction of the Supreme Court of Florida over the discipline of persons admitted to the practice of law shall be administered in the following manner, subject to the supervision and review of the [Supreme] court. The following entities are hereby designated as agencies of the Supreme Court of Florida for this purpose and with the following responsibilities, jurisdiction and powers. The board of governors [of The Florida Bar], grievance committees and referees....

Although Rule 3.3-5 gives Circuit Courts concurrent jurisdiction over disciplinary matters, this is the only grant of disciplinary jurisdiction to the Circuit Courts in the Rules. Rule 3.3-5 does not permit the Circuit Courts to bypass disciplinary Procedures in Rule 3-7, or disregard the Florida Standards for Imposing Lawyer Sanctions. To discipline lawyers under Rule 3.3-5, Circuit Courts must follow the disciplinary Rules and Procedures.

#### IV. THIS APPROACH LACKS STANDARDS AND PROCEDURES, VIOLATING DUE PROCESS.

No Standards. In this case, the trial judge--Chief Judge Sandra Taylor--is an excellent judge, but not all judges are as impartial. The action sanctioned violated no ethical or professionalism rule. Because the "inherent powers" doctrine provides no standards or guidelines to a trial court, it could use this power arbitrarily--without notice to lawyers of what the rules are, or where the lines are drawn.

Lack of Due Process. Appellee served pleadings for sanctions the day before the hearing, which was called for other matters. The trial court gave no warning, no time to reply, and no separate hearing on sanctions, all required by Chambers v NASCO, Inc., 501 U.S. 32, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991), for due process. The trial court gave Appellant none of the rights provided in the disciplinary Rules or Procedures.

#### V. THIS DECISION CONFLICTS WITH THREE OTHER DISTRICT COURTS OF APPEAL.

Contrary to Sanchez and Patsey, The First, Second and Fifth District Courts of Appeal have ruled that a trial court has no such "inherent power" to sanction lawyers: Miller v Colonial Baking Co., 402 So.2d 1365 (Fla. 1DCA 1981); Israel v Lee, 470 So.2d 86 (Fla. 2DCA 1985); and State v Harwood, 488 So.2d 901 (Fla. 5DCA 1986).



Article V, Section 5(b), Fla. Constitution, provides that “Jurisdiction of the circuit court shall be uniform throughout the State.” This is not uniform.

**VI. THIS DECISION HAS A CHILLING EFFECT ON LAWYERS’ DUTY TO ZEALOUSLY REPRESENT THEIR CLIENTS**

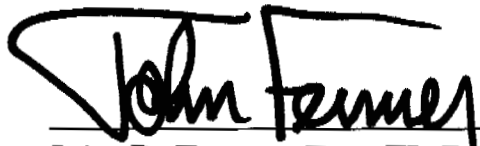
Most importantly, this decision has a chilling effect on the duty of lawyers to zealously represent their clients, within the rules. Lawyers cannot prepare for trial if they face sanctions for every subpoena they issue. This decision not only affects lawyers. It impairs the right to the assistance of counsel, and access to the Courts, under Article I, Section 21, Florida Constitution.

**CONCLUSION**

This Court should resolve these conflicts, to insure that discipline of the Bar is uniform throughout the State of Florida. This Court should reaffirm that only it has the “inherent power” to discipline lawyers.

**CERTIFICATE OF FONT SIZE**

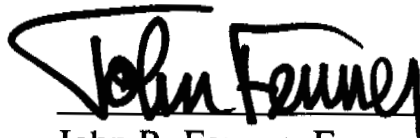
I hereby certify that the forgoing Brief was typed in 14-point CG Times typeface (but does not exceed the 10-page limit of Fla. R.App.P.9.210(a)(5)), with one-inch margins.



John P. Fenner, Esq. FL Bar No. 0762938

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was furnished by hand delivery to W. Sheri Smallwood, Esq., 1016 Eaton Street, Key West, Florida 33040, on this 11th day of June, 1999.



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