IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

| | |
|---|---|
| THE FLORIDA BAR,<br>Complainant-Appellee,<br><br><br>v.<br><br>JOHN T. CARLON, JR.,<br>Respondent-Appellant. | Case No.: 95.539<br>TFB No.: 99-50,838 (17H) |

# AMENDED REPLY BRIEF OF RESPONDENT-APPELLANT

JOHN T. CARLON, JR.
Respondent-Appellant
2737 East Oakland Park Blvd.
Suite 202
Post Office Drawer 9237
Fort Lauderdale, FL 33310-9237
Tel. (954) 563-2250
Florida Bar No. 011846

TABLE OF CONTENTS

TABLE OF CASES AND CITATIONS

CERTIFICATION OF TYPE, SIZE, STYLE AND ANTI-VIRUS SCAN

Undersigned counsel hereby certifies that the Brief of John T. Carlon, Jr., is submitted in 14 point, proportionately spaced, Times New Roman font, and that the computer disk filed with this brief has been scanned and found to be free of viruses by McAfee Anti Virus for Windows.

# ARGUMENT

## PREFACE

Although Appellee has responded to the issues presented in this appeal in a different order, Appellant submits that the order of treatment in his Main Brief is more logical, and will continue to be followed in this reply brief.

Several points presented by Appellant were adequately and fully presented in his Main Brief and will not be unnecessarily repeated here, but the failure to repeat a point or proposition is not intended, and should not be construed to be an abandonment.

Finally, Appellant has not commented on the numerous typographical errors in Appellee's Main Brief inasmuch as none appear crucial to a determination of the issues.

POINT I - WHETHER REFEREE AND BAR COUNSEL WERE GUILTY OF ETHICAL VIOLATIONS INDELIBLY TAINTING THESE PROCEEDINGS

The Administrative Order of Chief Judge Colbath dated May 18, 1999, appointing the Referee herein specifically mandated that the Referee's report "shall be filed within 180 days of the date of this Order, unless there are substantial reasons requiring delay." (Emphasis added). This mirrors language in the earlier referral Order of the Supreme Court of Florida.

The existence of that language, if nothing else, removes the extension application process from the realm of the routine administrative for all the reasons set forth in Respondent's Main Brief.

To accept that argument of The Florida bar with respect to this point would require a determination that the plain language of the prior Orders is meaningless surplusage. Contrary to the Appellee's position, this should not be done lightly since doing so necessarily erodes the authority and prestige not only of this court, but of courts everywhere, as well as diminishing the legal profession even more in the eyes of the public.

The relevant facts are not in dispute. Clearly the Referee used abysmal judgment in turning to Bar Counsel for assistance in this matter, and Bar Counsel used even worse judgment in providing it.

Accepting Appellee's assertion of the presence of some sixty-thousand (60,000) lawyers in Florida, it is, at best, difficult to imagine placing any undue burden on the Referee by requiring strict adherence to the Canons of Judicial Conduct and requiring her to select independent counsel to provide her the assistance she requested in writing a three or four line letter.

This is a most unfortunate factual situation from the standpoint of the legal profession at a time when concern increases over appearances of impropriety and their cumulative effect upon the entire legal process. Nothing less than the highest standards from the judiciary and those charged with enforcement of law and rules should be demanded. If it is, the instant case should be forthwith dismissed for the reasons specified in Appellant's main Brief.

POINT II - WHETHER THE REFEREE'S FAILURE TO SCHEDULE A PRE TRIAL CONFERENCE CONSTITUTED ERROR

POINT III - WHETHER REFEREE'S RULINGS SUSTAINING APPELLEE'S OBJECTIONS TO RESPONDENT'S CROSS EXAMINATION QUESTIONS OF COMPLAINING WITNESS WERE PROPER

Appellant's position is amply stated in his Main Brief with respect to both Point II and Point III. Appellee's apparent defense of failure to follow up by Appellant after the errors complained of is not supported by any authority cited.

POINT IV - WHETHER THE REFEREE'S FINDINGS OF FACT AND RECOMMENDATIONS SHOULD BE SUSTAINED

The primary problem presented in this case is one of interpretation of undisputed facts, and sustaining the Referee's findings here would require the reviewing court to ignore the substantial body of documentary evidence irreversibly pointing to the opposite conclusion, and to accept the testimony of WOODBURN that she only entered into the contract with Appellant because of the alleged assertion by Appellant that she "had to comply with Florida law". Further, that she would continue that course for six months without even inquiring about what she purportedly did not understand defies reason and common sense even more especially when one examines the written material she provided Appellant at their initial meeting. (Appellant's Main Brief Appendix - page 15-19). Clearly there was no "hook" applied to the Complaining Witness as Appellee urges and as the Referee found after denying Appellant the right to inquire into her specific degree of sophistication.

Appellee attempts (unsuccessfully) to equate the non-recurring administrative fee charged by Appellant at the beginning of this case with the monthly cover charge condemned in the Richardson case.[1]

[1] The Florida Bar v. Richardson, 574 So. 2d 60 (Fla. 1990).

The economic justification of non-recurring administrative fees is totally different from that of the so-called "cover charge". Indeed, the administrative fee concept has been embraced by The Florida Bar, if not by Bar Counsel, for some period of time. See R. Regulating Fla. Bar 3-7.6 (o)(1)(I). Since Appellant's administrative fee is one third less than the one currently employed by The Florida Bar, it is respectfully submitted that Appellant's administrative charge can hardly be termed clearly excessive.

Appellee admits in its Brief that no evidence exists of any improper imposition of charges outside the scope of the written contract between Appellant and WOODBURN.

Nor is there any evidence that the $250.00 hourly rate called for by the contract was a clearly excessive hourly rate.

## CONCLUSION

Under all these circumstances, a new trial would be counterproductive if one could be granted, and this cause should be forthwith dismissed.

Alternatively, this cause should be reversed and a new trial ordered under such corrective conditions as the Court may direct.

Respectfully submitted,

JOHN T. CARLON, JR.
Respondent-Appellant
2737 East Oakland Park Blvd.
Suite 202
Post Office Drawer 9237
Fort Lauderdale, FL 33310-9237
Tel. (954) 563-2250
Florida Bar No. 011846

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

| | |
|---|---|
| THE FLORIDA BAR, Complainant-Appellee, | Case No.: 95.539<br>TFB No.: 99-50.838 (17H) |
| v. | |
| JOHN T. CARLON, JR., Respondent.-Appellant. | |

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY I have furnished a copy of Respondent-Appellant's Amended Reply Brief by U.S. Mail to each of the following:

David M. Barnowitz, Trial Counsel
The Florida Bar
5900 N. Andrews Avenue, Suite 835
Fort Lauderdale, FL 33309

Billy Jack Hendrix, Esquire
Director of Lawyer Regulation
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300,

this _____ day of July, 2000.

_____
JOHN T. CARLON, JR.
Respondent-Appellant
2737 E. Oakland Park Blvd., #202
Post Office Drawer 9237
Fort Lauderdale, FL 33310-9237

Tel. (954) 563-2250
Fla. Bar No. 011846