IN THE SUPREME COUKT OF FLORIDA

THE FLORIDA BAK,

Complainant,

v.

JEFFREY EVAN COSNOW,

Respondent.
_____/

Case No. SC96262

TFB No. 1999-10,250(6A)

REPLY BRIEF

AND ANSWER TO CROSS-APPEAL OF

THE FLORIDA BAR

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SYMBOLS AND REFERENCES

In this Brief, 'TheFlorida Bar will be referred to as "The Florida Bar," or "the Bar." The Respondent, Jeffrey Evan Cosnow, Esq., will bc referred to as "Respondent."

"TR-1" will refer to the Transcript of Proceedings (regarding the motions for summary judgment) conducted November 8, 1999 in Supreme Court Case No. SC96262.

"TR-2" will refer to the Transcript of Proceedings (regarding the arguments for appropriate sanction) conducted December 2, 1999 in Supreme Court Case No. SC96262.

SIJMMARY OF THE ARGUMENT

Respondent's position on appeal hinges on the sophistic distinction he makes between whom he says his client was, and whom he says his client was not. That distinction makes no difference in whether he engaged in conflicts of interest through incompetence, as the Bar alleged and the referee has found.

Further, on appeal Respondent now contends that genuine issues of material fact preclude entry of a summary judgment. However, Respondent admitted all the material averments in this case, except where he maintained the distinction between client and non-client, referenced supra. Apart from that issue, the referee, the Bar, and Respondent all agreed that the underlying facts were uncontroverted. Indeed, Respondent himself moved for summary judgment, implying that no genuine issues of material fact were present. His argument on appeal that material factual issues now arc present is inconsistent and unavailing.

ARGUMENT

Throughout this case, Respondent's argument has hinged on the distinction he himself draws between a client who cannot legally speak for himself (or itself) and the person who speaks on that client's behalf. In the underlying matter this scenario occurs twice: in the first respect the case involved an infant, incompetent at law, and the person who must properly speak for the infant; secondly, the case involved a deceased person's estate and the person who must properly speak for the estate. For the sake of clarity and convenience, these two clients of Respondent shall be referred to as his "infant client" and his "estate client."

In the case *sub judice*, Respondent represented the infant client (through a next friend), and represented the estate client (through a personal representative) even though the crux of the litigation involved whether the infant client was the child of the decedent, and therefore was entitled to take under the estate. Paternity would have to be judicially established in favor of the infant against the estate, through appropriate legal action. Through contracts for representation, Respondent created professional relationships with the infant and the infant's guardian, Sharon Robinson, and he attempted to create such relationships with the Estate of Ronald Swango and the personal representative (for which Respondent nominated his infant client). As is evident, these representations compete with one another and

include adverse parties in the same contemplated legal action.

Despite the circularity of this representation, Respondent's argument on appeal rests on his assertion that he represented the infant and not Ms. Robinson. Respondent demarcates his loyalty between "clients" and people who are "non-clients." See Respondent's Verified Motion for Summary Judgment, para. 61. The Bar contends that such a distinction is without a difference under the facts of this case. That is because there is absolutely no evidence that Sharon Robinson was in any unfit to serve as the infant's next friend, or that Respondent relied on any such evidence of misfeasance by Ms. Robinson in refusing to quit the representation of the infant after she had terminated that representation.

In any legal action involving Respondent and his infant client, Sharon Robinson presumably pursued the infant's best interests. She is the natural person from whom Respondent received confidential information, she is the person to whom Respondent rendered legal advice, and she is the person with whom Respondent contracted. In such capacity Ms. Robinson assumed the mantle of the client for any and all purposes by which the Respondent may be involved as attorney for the infant. She is the person from whom Respondent must obtain consent; she is the person to whom Respondent must impart information; she is the person by whom decisions regarding the representation must be made. Thus, for

Respondent to callously classify Ms. Robinson as a "non-client" and to take actions antithetical to her expressed wishes in reliance on that classification is to engage in mere semantics for no good purpose. As stated, he did not rely on any perceived or actual deficiency on Ms. Robinson's part in refusing to abide by her determination to fire him. He simply did not agree with her decision. He wanted to retain the case for his own purposes.

When Kespondent became informed of his termination, he began asserting and relying on the semantic distinction to which hc yet clings. Respondent rationalizes that the infant was his client and not Ms. Robinson, implying that any termination by her could not be valid. Accordingly, Respondent determined to stay on the case by finding a new person through whom his client might speak, i.e., a new "next friend." Respondent's logic in this regard is elegantly circular, and it goes essentially like this: Ms. Robinson could properly initiate the legal representation by executing contracts; indeed it had to occur this way since any contract the infant signed would be void, and of no force or effect. However, once Respondent became the infant's legal counsel through those written Coilti-acts, Ms. Robinson could not properly terminate the representation, because she was not the client. The inference is that only Respondent's client-- the infant -- could fire Respondent. However, the infant is incompetent as a matter of law to hire or fire a

lawyer. Thus, under Respondent's reasoning, his representation could never be terminated, once initiated -- unless or until the client attained the age of majority, and fired the Respondent himself; as such, Kespondent could rightly disregard the expressed intent of the infant's legal guardian and next friend, Sharon Robinson, regarding his own termination. Under his logic, Respondent felt he had a duty to replace Ms. Robinson as "next friend" of the infant once she -- the present next friend -- had fired him. Thus, the logic goes, Kespondent must find and use another "non-client" to make all the decisions regarding, and speak for, the child -- while at the same time Respondent is free to contend that he doesn't really have to consider or abide by that "non-client's" objectives or directives, precisely because it is not his "client."

Respondent's position is not only sophistic, it is arrogant. In making his argument Respondent implies that Ms. Robinson's actions were not prompted by the minor child's best interests; lie further implies that only he could be trusted to protect the interests of the child. See Respondent's Verified Motion for Summary Judgment, para. 62. Respondent's position seems to be that, if Ms. Robinson wanted him off the case, well, there must be something wrong with her motives, or her decision-making ability. Froni this premise Respondent imagined it was now up to him to secure for his client a new "next friend", i.e., the child's mother,

Stephanie Reed, so that his legal representation could continue uninterrupted. He goes and accomplishes this despite knowing that he originally had sued Ms. Reed as a named defendant in the same paternity action in which he now presumes to substitute her in as the child's next friend. Respondent asserts that in doing so he has not engaged in a conflict of interest through incompetence. The Bar contends that he has so engaged in unethical conduct.

Respondent now contends that genuine issues of material fact preclude summary judgment. However, Respondent admitted all the material averments in this case, except where he maintained the sophistic distinction between client and non-client, discussed supra. See generally Answer, and Respondent's Answers to Request for Admissions. Apart from that issue, the referee, the Bar, and Respondent all agreed that the underlying facts were uncontroverted. See TR-2, p. 4. Indeed, Respondent himself moved for summary judgment, which implied that Respondent felt no genuine issues of material fact were present. His argument at trial was that his client / non-client distinction should carry the day. That, however, is not a factual issue but a legal one. His argument on appeal that a factual issue is present is inconsistent with the legal arguments he put forth at the hearing on summary judgment.

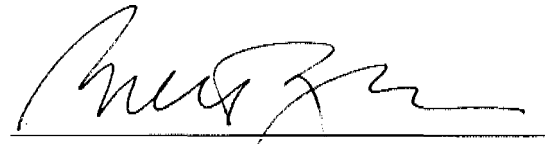
Respondent also highlights the fact that the Bar inaccurately contended in a

motion hearing that Kespondent had attempted to substitute Stephanie Reed as next friend in the *guardianship* proceeding, as opposed to the paternity action. At that hearing, Respondent pointed out this inadvertent error, and the Bar confessed the error. See TR-1, p.10, line 12 et seq. At a subsequent hearing, Respondent again drew attention to this error, and the referee specifically recognized that the Bar had conceded the error and that the issue did not change the court's ruling in favor of the Bar's Motion for Summary Judgment. TK-2, pp. 3-4. This error by the Bar was immaterial to the case then, and it remains immaterial.

CONCLUSION

For the reasons stated herein, Respondent's Cross-Petition arguments should be rejected as insubstantial and unavailing, and the grant of summary judgment for the Bar should be affirmed. For the reasons expressed in the Bar's Initial Brief, the recommended sanction should be disapproved, and the sanction proposed in the Bar's Tnitial Brief' should be imposed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Initial Rricfhavc been furnished by regular U.S. Mail to Thomas D. I-Tall, Clerk, The Supreme Court of Florida, at 500 South Duval Street, Tallahassee, Florida 32399; a copy by regular U.S. Mail to Jeffrey Evan Cosnow, Respondent, at 3450 East Lake Road, Suite 301, Pain Harbor, Florida 34685-2411; and a copy by regular U.S. Mail to John Anthony Boggs, Staff Counsel, The Florida Bar, at 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 17th day of July, 2000.

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CERTIFICATION OF FONT SIZE AND STYLE

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