

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. SC00-762

v.

TFB File No. 96-00,833(02)

ROBERT EDMOND SENTON,

Respondent

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**AMENDED REPLY BRIEF OF RESPONDENT**

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## **C. STATEMENT OF THE CASE**

### **1. Statement of the Facts**

The Bar's answer brief (hereinafter AB) states Ms. Putnal reported two sexual encounters to Sgt. Nellie Walker of the Perry, Florida Police Department on March 8, 1996. (AB at 8) Sgt. Walker's incident report (Bar's Exhibit 4) and deposition (Bar's Exhibit 5, pp. 13-14) both show Ms. Putnal only reported a December 1995 incident with Respondent.

## **D. ARGUMENT AND CITATIONS**

**1. The referee abused his discretion when he ordered Respondent to provide a blood sample for DNA testing.**

The Bar notes no cases have been found in Florida dealing with the issue of the propriety of examining DNA other than in a criminal or paternity case. Specifically, no cases have been found citing Section 760.40, Florida Statutes. (AB at 20-21) The Bar then proceeds to direct this Court's attention to out-of-state cases dealing with compelled DNA analysis. Respondent submits these out-of-state cases are neither applicable nor persuasive.

Section 760.40, Florida Statutes, specifically provides that DNA analysis may be performed only with the informed consent of the person to be tested except:

1. "for purposes of criminal prosecution",
2. "for purposes of determining paternity as provided in s. 742.12(1), and"
3. "for purposes of acquiring specimens from persons convicted of certain offenses or as otherwise provided in s.943.325."

Clearly, none of these statutory exceptions apply in this case.

The Bar also relied upon Rule 1.360, Rules of Civil Procedure, in seeking bodily fluids from Respondent. This rule permits examination of a party when the condition

that is the subject of the requested examination is in controversy. The Bar then asserts that “identity” is the condition in controversy in this case. (AB at 24) At the time the Bar filed its motion to compel blood, saliva or semen sample, however, the Bar asserted a sample was necessary to prove that a sexual act did, in fact, occur.

Respondent asserts identity is clearly not in controversy here. Ms. Putnal states that Respondent, and no other person, is the person with whom she had sexual relations. The real issue here is whether Respondent’s denials of having sex with Ms. Putnal are truthful. The DNA evidence submitted by the Bar does nothing to prove or disprove this issue. The Bar’s own expert witness, Chris Larsen, testified he did not examine any evidence which would either confirm or deny whether Respondent and Ms. Putnal engaged in sexual intercourse. (TI-102)

## **E. CONCLUSION**

For the reasons stated in the initial brief and this reply brief, this Court should reverse the referee's order compelling Respondent to submit a blood sample for testing (and the subsequent results thereof) and order a new hearing before a different referee without the introduction of such evidence. In the alternative, this Court should either enter an order dismissing the case against Respondent or reduce the sanction to be imposed.

## **F. CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Respondent has been forwarded by regular U.S. Mail to:

Edward Iturralde  
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John A. Boggs, Staff Counsel  
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this \_\_\_\_\_ day of December, 2003.

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**RICHARD A. GREENBERG**

xc: Robert E. Senton

**G. CERTIFICATE OF COMPLIANCE**

Undersigned counsel does hereby certify the Amended Reply Brief of Respondent is reproduced in the following point size and font: 14 point Times New Roman.