IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

GENEVA CAROL FORRESTER

Respondent.
_____/

Case No. SC01-1819
TFB No. 2000-11,503(6C)

REPLY BRIEF
OF
THE FLORIDA BAR

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SYMBOLS AND REFERENCES

In this Brief, The Florida Bar, Petitioner, will be referred to as "The Florida Bar" or "The Bar." The Respondent, Geneva Carol Forrester, will be referred to as "Respondent."

"TR" will refer to the transcript of the final hearing before the Referee in Supreme Court Case No. SC01-1819 held on February 11, 2002.

The Amended Report of Referee dated September 6, 2002 will be referred to as "RR."

"TFB Exh." will refer to exhibits presented by The Florida Bar and "R. Exh." will refer to exhibits presented by the Respondent at the final hearing before the Referee in Supreme Court Case No. SC01-1819.

"Rule" or "Rules" will refer to the Rules Regulating The Florida Bar. "Standard" or "Standards" will refer to Florida Standards for Imposing Lawyer Sanctions.

"AB" will refer to Respondent's Answer Brief in Supreme Court Case No. SC01-1819.

PREFACE

The Respondent's Answer Brief makes numerous references to testimony and documents which are not included in the record on appeal in this case. Respondent attached as Appendices to her Answer Brief 15 exhibits, all but one of which were not before the Referee and are not part of the record on appeal. Respondent made no motion to supplement the record prior to filing her Answer Brief. Respondent refers to matters not in the record throughout her entire brief and bases her arguments on evidence not properly before this Court.

In addition, Respondent argues that the Referee erred in finding her guilty of violating Rule 4-8.4(d). An Answer Brief is not the proper vehicle for Respondent to contest the Referee's finding that she violated Rule 4-8.4(d). If Respondent wished to appeal the Referee's finding of guilt, she should have filed a cross-petition for review of this issue in accordance with Rule 3-7.7(c), Rules Regulating The Florida Bar. The Bar has filed a motion to strike Respondent's Answer Brief, requesting that it be stricken in its entirety due to Respondent's failure to confine her argument to the record on appeal, and her failure to comply with the Rules of Appellate Procedure

and The Rules Regulating The Florida Bar. In the event that this Court decides to consider the Respondent's Answer Brief, the Bar submits this Brief in Reply.

STATEMENT OF THE FACTS AND OF THE CASE

The Respondent uses her "Statement of Case and of Facts" to make extensive improper arguments and to introduce facts and exhibits that are not part of the record on appeal in this case. The Bar suggests that the Statement of the Facts and of the Case contained in the Bar's Initial Brief more accurately reflects the record in this case. The arguments contained in the Respondent's "Statement of Case and of Facts" will be addressed in the Argument section of this Reply Brief.

ARGUMENT

I. A SHOWING OF "HARM" IS NOT REQUIRED IN ORDER TO FIND A VIOLATION OF RULE 4-8.4(C) OR (D).

Respondent makes numerous allegations of misconduct against The Florida Bar and Bar counsel for committing a fraud upon the Court by wrongfully prosecuting her in this disciplinary proceeding, and by misleading the Referee and this Court. Respondent repeatedly claims that she could not be found guilty of violating Rule 4-8.4(d) or Rule 4-8.4(c) because the Bar presented no evidence that Mr. Kenneth Ferguson was "harmed" or "damaged" by the motions she filed on February 4, 2000 in which she falsely asserted to the court that Mr.

Ferguson was a convicted felon. Respondent appears to be claiming that the Bar attempted to mislead the Referee by presenting Mr. Ferguson's testimony relating to two 1998 injunction hearings which predated the filing of the motions which were the subject of this disciplinary action.

As stated above, an Answer Brief is not the proper vehicle for Respondent to contest the Referee's finding that she was guilty of violating Rule 4-8.4(d). If Respondent wished to appeal the Referee's finding of guilt, the proper procedure was to file a cross-petition for review of this issue in accordance with Rule 3-7.7(c), Rules Regulating The Florida Bar.

Respondent's numerous unfounded allegations of misconduct by the Bar appear to be an attempt to deflect the Court's attention from her own misconduct. Respondent was provided an opportunity to be heard before a Referee in this proceeding and to present testimony and evidence in her defense. Respondent was represented by counsel during all of the proceedings before the Referee. Respondent had the opportunity to point out to the Referee any perceived misconduct by the Bar. She also had an opportunity to refute the evidence presented by the Bar and to cross-examine the complaining party, Mr. Ferguson, who testified at the final hearing on February 11,

2002. The Referee also questioned Mr. Ferguson regarding his testimony at the hearing. (TR 66-71). The Referee heard the evidence and argument presented by the Bar and by the Respondent, and found Respondent guilty of violating Rule 4-8.4(d). In addition, the Referee granted Respondent's motion for a re-hearing in this proceeding on May 10, 2002.

Respondent argues that she cannot be found guilty of violating Rule 4-8.4(d) by falsely labeling Mr. Ferguson as a convicted felon without a separate finding of "damage" to Mr. Ferguson. Respondent has cited no authority in support of her argument that a finding of subjective harm or damage is required in order to find a violation of either Rule 4-8.4(c) or Rule 4-8.4(d). Rule 4-8.4(d) prohibits conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis. The Rule is directed at the **attorney's** misconduct, and not the subjective feelings of the victim. Respondent is again attempting to deflect attention from her own misconduct by focusing attention on Mr. Ferguson. The Referee found that Respondent made statements in the Motion to Strike and Motion to Compel that Mr. Ferguson was a

convicted felon, and that "[t]hose statements, at the very least, exhibited callous indifference that disparaged Mr. Ferguson." (RR 2). Falsely labeling Mr. Ferguson as a convicted felon was "disparaging" regardless of the level of personal humiliation he felt or how widely the false statements were published. Applying a standard of reasonableness, a reasonable person would conclude that Respondent's false allegations were disparaging to Mr. Ferguson.

Respondent also argues that Mr. Ferguson was not harmed by being labeled a convicted felon in the February 4, 2000 motions because the motions were not heard in court, were not filed under Mr. Ferguson's name, and cannot be pulled up on the computer. She also suggests that Mr. Ferguson could not have been harmed by her motions because he had already been called a convicted felon and a pedophile in the Petition for Injunction filed by her client Persha Crider on October 15, 1998. These factors are not relevant to finding a violation of Rule 4-8.4(c) or (d) in this case. Again, Respondent is attempting to justify her own misconduct by citing a lack of "harm" to Mr. Ferguson. The primary issue in this case is whether Respondent knowingly made false statements that Mr. Ferguson was a convicted felon in two pleadings. Whether or not the motions were heard by the court, or can be

pulled up on the computer, does not change the fact that Respondent made the statements. The fact that Mr. Ferguson was previously labeled as a convicted felon in a Petition filed by Ms. Crider (and notarized by Respondent) on October 15, 1998 does not excuse Respondent's conduct on February 4, 2000. Rather, it highlights the egregiousness of Respondent's misconduct that, over two years later, she filed the same false allegations in the Motion to Strike and the Motion to Compel. The record shows that Respondent had been made aware on numerous occasions between October 1998 and February 2000 that the felony charge against Mr. Ferguson had been reduced to a misdemeanor and adjudication withheld.

Even if this Court were to require a finding of "harm" in order to prove a violation of Rule 4-8.4(c) or (d), the testimony presented at the final hearing supports the conclusion that Mr. Ferguson felt that he had been "harmed" by Respondent's false allegations.

> Q [Mr. Thompson] You had indicated that you had gone to your friends to assist you when these allegations came up. Were you just seeking counseling from your friends?
>
> A [Mr. Ferguson] Yes. That's basically what it was. I mean, I hadn't been faced with anything like this. I didn't know how to handle it. And you go talk to people, and they all give you their opinion and try to tell you everything will be okay and things like that.

Q Is it fair to say that you were frustrated by not knowing what to do, and you were seeking some guidance?

A Right.

Q You also said that Ms. Forrester calling you a pedophile had hurt you. Would you consider yourself a proud man?

A Yes, I would.

Q And being accused of being a convicted felon, would you say that that has affected your pride?

A Yes, it has.

(TR 65-66).

The basis of Mr. Ferguson's grievance to the Florida Bar was that Respondent had made allegations against him that were untrue, specifically that she falsely stated that he was a convicted felon. (TR 56). Mr. Ferguson filed his Complaint to the Bar on March 22, 2000, shortly after Respondent filed the two motions on February 4, 2000, in which she falsely labeled Mr. Ferguson as a convicted felon. He attached copies of the two motions to his

complaint. The fact that Mr. Ferguson filed a grievance with the Bar indicates how upset he was that Respondent had filed motions containing false statements about him.

Respondent has attached to her Answer Brief a number of documents relating to the underlying custody and injunction cases in which she represented the Criders. These documents are not part of the record on appeal and should not be considered by this Court. Respondent's purpose appears to be an attempt to bolster her argument that Mr. Ferguson was, in her opinion, a child molester and/or pedophile. This issue was expressly not addressed by the Referee, is not a part of the record, and is not relevant in any way to the findings of the Referee. At the commencement of the final hearing, the Referee made the following inquiry:

> THE REFEREE: Does the Bar plan to show or allege to attempt to show that the defendant made inaccurate statements relative to all three allegations, being a stalker, a convicted felon, and a child molester?
>
> MR. THOMPSON: The allegations that we're focusing on here, Your Honor, are those that we can definitively prove that Ms. Forrester knew about and that were untrue, and that is with regard to the convictions that at various points he had been called a convicted felon and he had been called--or it had been said that he was convicted of stalking--aggravated stalking. . . .

(TR 9).

The Florida Bar was not in a position to disprove the Respondent's allegation that Mr. Ferguson was a pedophile. According to what is known by the Bar, that allegation has never been presented to a tribunal, nor has there been a factual determination by any tribunal, either criminal or civil. Respondent claims that the Bar is improperly arguing on appeal that she besmirched the name of Mr. Ferguson by use of the word "pedophile." This term appears in the Bar's Initial Brief **only** because it is part of the quote taken from the two motions in which Respondent falsely stated that Mr. Ferguson was a convicted felon.

II. RESPONDENT VIOLATED RULE 4-8.4(C) WHEN SHE KNOWINGLY MADE FALSE STATEMENTS OF FACT IN TWO MOTIONS SHE FILED WITH THE COURT.

Respondent argues that she cannot be found guilty of violating Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation) because she did not intentionally state that Mr. Ferguson was a convicted felon in the two motions she filed in Ms. Crider's custody case. The evidence shows that Respondent **already knew** that the charge against Mr. Ferguson had been reduced to a misdemeanor and adjudication withheld by the time she filed the Motion to Strike and the Motion to Compel. The Referee found by clear and convincing evidence that Respondent "was advised" that the felony charge against Mr. Ferguson had been reduced to a misdemeanor and

adjudication withheld. (RR 2). The Referee also found that Respondent "was aware" of this because she made a specific inquiry of the clerk's office for verification of the conviction and sentence in Mr. Ferguson's case. *Id*.

The competent and substantial evidence in the record supports the Referee's findings. Mr. Ferguson's attorney, Charles Scott, questioned Respondents' clients, the Criders, repeatedly during their depositions regarding their knowledge of the disposition of the charge against Mr. Ferguson. (TR 17-19). The next day, Respondent wrote to the Clerk of Court to request a copy of the conviction and sentence in Mr. Ferguson's case. (TFB Exh. 4; TR 79). Respondent denies seeing the information sent by the Clerk, however, the evidence shows that the Respondent's request was fulfilled by the Clerk about a week after she sent her letter. (TFB Exh. 4). The evidence also shows that Mr. Blaylock's attorney, Elizabeth Richards, informed Respondent on several occasions that Mr. Ferguson was **not** a convicted felon because Respondent repeatedly referred to Mr. Ferguson as a convicted felon during the litigation of the custody case. (TR 28; 42-43).

Respondent admits she knew there was "an issue"as to the status of Mr. Ferguson's sentence. (AB 22). She states in her brief, "The issue had been raised more than once, that Mr. Ferguson, was charge[d] with or pled

to a misdemeanor." (AB 13). Respondent claims that she "double checked" the record by asking her paralegal, Peter Cardinal, to check the criminal disposition against Mr. Ferguson, but he twice gave her the wrong report, felony. (AB 22).

Mr. Cardinal's testimony conflicts with that of the Respondent. Respondent testified that she asked Mr. Cardinal to make sure Mr. Ferguson was guilty of a felony and to "see what happened with this charge because they're saying it was a misdemeanor." (TR 111). Mr. Cardinal testified that Respondent asked him to look up the **charge** against Mr. Ferguson to determine whether it was a felony or misdemeanor. According to Mr. Cardinal, it did not occur to him to look at the adjudication. (TR 95).

> A She wanted me to look up a criminal charge that he had received of aggravated stalking, and she wanted me to look up to see whether that was misdemeanor or a felony charge.
>
> Q And what did you do?
>
> A I looked up in the CJIS system, which was a separate link-up that we had to the criminal justice information system at the Pinellas County courthouse. I looked up the charge and found that it was aggravated stalking and relayed that to Mrs. Forrester.
>
> Q And did you find in that search any adjudication on that particular charge?

A Not to my recollection, no, of the adjudication. No, I did not.

(TR 93).

Mr. Cardinal also testified that Respondent asked him to look up the statute number corresponding to the charge. Mr. Cardinal did so, and found that the offense was a felony. (TR 94). Mr. Cardinal stated that it would have been "very easy" to look at the adjudication in the CJIS, but he did not do so because "it did not even cross my mind to look at it." (TR 95-96).

Mr. Cardinal's testimony, if considered in the light most favorable to Respondent, shows only that he informed her that Mr. Ferguson had been **charged** with a felony. Mr. Cardinal did not at any time look at the disposition of the case or inform Respondent of the disposition. Nevertheless, Respondent proceeded to make the statement in the Motion to Strike and the Motion to Compel that Mr. Ferguson "**was recently convicted of aggravated stalking in Florida**." (TFB Exh. 1). Respondent highlighted these words in bold type in order to emphasize them. In another paragraph, she called Mr. Ferguson a "convicted felon." She repeated the statements in the Motion to Compel. (TFB Exh. 2).

The substantial evidence in the record supports the Referee's finding that Respondent was already aware that the charge against Mr. Ferguson had been reduced and adjudication withheld before she filed the Motion to Strike and the Motion to Compel. Thus, Respondent acted knowingly when she included false allegations in the motions she filed on February 4, 2000. Respondent intentionally misrepresented that Mr. Ferguson was a convicted felon. The Referee erred in not finding Respondent guilty of violating Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

III. THE REFEREE ERRED BY FAILING TO CONSIDER AS PRIOR DISCIPLINE RESPONDENT'S RECENT 60-DAY SUSPENSION.

Respondent next argues that the Referee did not err by refusing to consider in aggravation this Court's order dated May 16, 2002 imposing a 60-day suspension in *Florida Bar v. Geneva Carol Forrester*, Case No. SC00-813. Respondent claims that the Order could not be considered by the Referee because a motion for rehearing in that case was pending at the Court. Respondent's argument is without merit. Respondent's motion for rehearing was stricken by this Court long before the Referee issued his Amended Report of Referee on September 6, 2002.

The May 16, 2002 Order imposing a 60-day suspension should have been considered as part of Respondent's disciplinary history.

Moreover, this Court made clear in *Florida Bar v. Wilson, III*, 714 So. 2d 381 (Fla. 1998), that subsequently imposed discipline may be considered as cumulative misconduct in determining discipline in the current case. This Court should properly consider the suspension imposed in *Florida Bar v. Forrester*, issued on May 16, 2002, in determining the appropriate discipline in the instant case.

IV. A ONE-YEAR SUSPENSION IS THE APPROPRIATE DISCIPLINE, GIVEN RESPONDENT'S EXTENSIVE DISCIPLINARY HISTORY.

Respondent argues that the Referee's recommended sanction of a public reprimand should be approved by this court because it is consistent with the case law and the Standards for Imposing Lawyer Sanctions. Respondent cites several cases in which attorneys received a public reprimand for making disparaging remarks or sending disparaging letters to litigants or other parties. Respondent conveniently overlooks the fact that only one of the attorneys in the cases cited had **any** disciplinary history, and that consisted of two admonishments. *See Florida Bar v. Buckle*, 771 So. 2d 1131 (Fla. 2000). None of the attorneys in the cases cited had a disciplinary history

comparable to that of the Respondent, consisting of four prior disciplines. As pointed out in the Bar's Initial Brief, these cases are factually distinguishable from the instant case. In none of these cases did an attorney file pleadings in a court case containing false and disparaging statements against a party. Respondent also argues that her conduct is less egregious than that of the attorneys in the cited cases because no evidence was presented that Mr. Ferguson was "harmed" by the false statements in her motions. As discussed previously, a finding of harm to the victim of an attorney's disparaging statement is not required in order to find the attorney guilty of violating Rule 4-8.4(d), or Rule 4-8.4(c) when the attorney knowingly makes a false statement.

Respondent makes no attempt to address the cases presented by the Bar in its Initial Brief in support of a harsher sanction than that recommended by the Referee. Nor does the Respondent address the Standards for Imposing Lawyer Sanctions relevant to her conduct in this case.

After considering the recently imposed Order of discipline in *Florida Bar v. Forrester*, 818 So. 2d 477 (Fla. 2002), the applicable Florida Standards for Imposing Lawyer Sanctions, and the principle of cumulative

misconduct, this Court should reject the Referee's recommended discipline of a public reprimand and impose a suspension of one year.

CONCLUSION

The Bar did not commit fraud on the court by misleading the Referee or this Court. A showing of "harm" or "damage" is not required in order to find a violation of Rule 4-8.4(c) or (d). Respondent violated Rule 4-8.4(c) because she acted knowingly when she made false statements in two motions filed in a civil case. Given the seriousness of Respondent's misconduct and her extensive disciplinary history, a one-year suspension is a more appropriate sanction than the public reprimand recommended by the Referee. The Respondent's recent 60-day suspension, which was not considered by the Referee, should be considered by this Court in imposing an appropriate sanction.

Dated this _____ day of _____, 2003.

Respectfully submitted,

_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of this brief have been provided by Airborne Express, Airbill Number 5061985972 to **The Honorable Thomas D. Hall**, Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, FL 32399-1927; a true and correct copy by regular U.S. Mail to **Geneva Carol Forrester**, P. O. Box 4001, St. Petersburg, FL 33743-0010; by regular U.S. mail to **John Anthony Boggs**, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, all this _____ day of _____, 2003.

_____

William Lance Thompson
Assistant Staff Counsel

CERTIFICATION OF FONT SIZE AND STYLE
CERTIFICATION OF VIRUS SCAN

Undersigned counsel does hereby certify that this brief is submitted in 14 point proportionally spaced Times New Roman font, and the computer disk filed with this brief has been scanned and found to be free of viruses, by Norton Antivirus for Windows.

_____

William Lance Thompson