IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Complainant,

v.

HANS CHARLES FEIGE

Respondent.

_____/

Case No.: SC 03-151

SC 03-1006

SC 03-1558

SC 04-449

RESPONDENT'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

SUMMARY OF ARGUMENT

The referee erred in admitting the written complaint of Mrs. Iren.

The written complaint was not notarized. It contains hearsay and double hearsay. Its admission denied the respondent of his fundamental right of cross-examination.

The Referee's findings of law are erroneous.

The refusal to permit the testimony of Dawn Nichol's assistant, Christy was clearly an abuse of discretion.

The finding that a counter petition in a divorce case must be verified is just plain wrong.

The finding that Ms. Willacy could not at least argue for additional relief in her divorce case after her husband's death is wrong.

The Referee's findings of fact are clearly erroneous.

The fundamental findings of fact are clearly erroneous. The record testimony and exhibits contradict the conclusions.

The disciplinary measures imposed are not warranted.

The record does not support the discipline imposed, in light of the facts.

ARGUMENT

The Florida Bar is required to prove each and every element of their complaint by **clear and convincing evidence**. Contrary to the Bar's implied argument, the burden of proof never shifts to the Respondent. The Respondent is not required to present any evidence and is presumed innocent of all of the charges.

The standard for review is found in Rule 3-7.6 (c)(5):

> "(A) report of a referee sought to be reviewed is **erroneous unlawful, or unjustified**."

I

The referee erred in admitting the written complaint of Mrs. Iren.

Ms. Iren's statement is not under oath, not notarized, and has no evidentiary standing. It was not an affidavit. Its admission is unlawful and clearly erroneous. The testimony of the other witnesses (Conner, D'Amico, and Goodge) does **not** support her statements.

The respondent in a Bar proceeding has a right to cross-examine any and all witnesses presented by the Florida Bar. ***Petition For Revision***, 103 So.2d 873 (Fla. 1956); ***The Florida Bar v Grant***, 85 So.2d 232 (Fla., 1965). This particularly true of a complaining witness. See Rule 3-7.6(j).

In this case the complaint letter in question is not only hearsay but also double hearsay, which is never properly admitted into evidence, even under the most relaxed rules of evidence.

II

The Referee's findings of law are erroneous.

Rulings and findings of law are not afforded the same weight as findings of fact. They are not clothed with the presumption of correctness. ***The Florida Bar v Trazenfeld***, 833 So.2d 734 (Fla., 2002).

The finding that an answer in a divorce action (Shaffer) needs to be verified is not supported by the law. Bar counsel is misleading this Court when she states that Respondent did not submit any rules of procedure or statutes to refute Dawn Nichols's testimony. (See Respondent's Brief). More important was the referee's refusal to allow the testimony of Dawn Nichols' assistant, Christy, after the Respondent was clearly surprised at the hearsay testimony of the content of his discussion with that person.

Bar Counsel now argues that these were not important issues. Clearly they were, since it commented on by the Referee, and clouded his judgment.

Two attorneys decided that Mrs. Willacy had a "long shot" argument that survived her husband's death.

A. We had several course of action.

Q. That is the day after your fax to me of May 7,2002, where you asked me to proceed ?

A. Right. Shelly Deposition Pages 35 and 36.

The referee had no evidentiary basis to decide that this argument had no merit as a matter of law. The question is not whether counsel would prevail, but was it an arguable position. The Bar presented no expert testimony on this issue.

III

The Referee's findings of fact are clearly erroneous.

Most of the Referee's controlling findings of fact are not supported by evidence, as set forth in the Statement of Facts in Respondent's main brief. Almost all of the facts sets forth are from the Bar's own witnesses and evidence. The referee's findings are clearly erroneous in light of the testimony and exhibits presented by the Bar.

It is not unethical conduct not to reduce communications to writing and not return every phone call the same day. ***The Florida Bar v Vernell***, 374 So.2d 473 (Fla., 1979).

Mr. Hall clearly got the representation he requested, except for the filing of a frivolous lawsuit. The Bar does not address the clear facts concerning the fee issues.

In Clark it is clear that the proper entity was in fact sued, in accordance with the laws of this state.

In Willacy, the Bar was furnished the information and name of the Judge's legal assistant (Pruny) long before the hearing. Respondent's testimony was not in contradiction to Ms. Willacy. She talked to the Clerk, not Pruny. There was nothing to "rebut" (assuming that Respondent had an obligation to do so). Note that the Motion was filed right after Respondents heart attack in April of 2002, which the client was well aware of. Shelly Deposition Page 36.

Ms. Iren had no right to expect more than nominal communications before she paid a retainer to Respondent. Whether the communications were "effective" is subjective, and does not form the basis for discipline. Certainly after she "hired" the Respondent there were numereous phone calls back and forth as well as face to face meetings.

Ms. Burgess failed to contact Respondent on one particular day and then settled her own case (which had stalled over a dispute about $250.00), hardly a basis for complaint.

Ms. Clark got her judgment, which was all Respondent agreed to do, for a nominal fee of $150.00. Ms. Clark testified that she did not expect Respondent to collect the money for her.

Mr. Schaffer's representation did not last for "over a two and one-half year period. Once again this is a bold face misrepresentation by the Bar.

Mr. Shaffer was served on May 5, 2001 with a Petition for Dissolution seeking alimony. Respondent was hired thereafter. (T 780; Bar Exh. 15). On May 1, 2002, Mr. Schaffer terminated the services of Respondent. Note that

the referee refused to permit full testimony as to the normal timing in divorce matters in Flagler County.

There were at least four face-to-face meetings, together with numerous phone calls with Mr. Schaffer and his girlfriend.

Mr. Hall complaints surfaced after Respondent refused to file a lawsuit for declaratory relief, which was unwarranted.

The Bar apparently concedes the balance of the factual arguments presented by the Respondent.

IV

The disciplinary measures imposed are not warranted.

There is no authority for the Court to require a physical examination at this time. The Bar presented no evidence to support this requirement. Respondent was not required to present any proof on this issue. If reinstatement were in consideration, the Respondent's health would be a matter to be determined at that time.

There is no basis to require the refund of **all** fees paid by the various clients. Respondent provided services to each and every client, and is entitled to be paid for the same.

Where is the finding that Respondent received a clearly excessive, illegal, or prohibited fee? Certainly the evidence does not support that conclusion. Nor does the evidence support the Bar's arguments concerning Mr. Hall. In fact Mr. Hall's own testimony is to the contrary.

The Bar had full knowledge that Respondent was going to argue that his heart attack was a mitigating factor in these matters. The Court should not have ignored the same in Iren as to the timing of the response to the Bar, when there was full disclosure in the other companion cases. To suggest that it is "bad faith obstruction" by responding late to the Bar's investigation by a man who is in bed recovering from a heart attack, is, at best, outrageous. In fact, except for the Iren matter, every request was responded to in accordance with Rule 3-7.11 (c).

Considering all the relevant facts, the discipline imposed is not justified and should, if the Court finds wrongdoing, be reduced to a reprimand.

CONCLUSION

The facts, even from the Bar's own witnesses and exhibits, do not support the conclusions drawn by the referee. His findings are clearly erroneous.

The Bar has failed to prove each and every element of their case by clear and convincing evidence, and counsel has resorted to misrepresentations to support her case.

At best, the Respondent got sick, had a heart attack, and some matters got delayed. This should not result in a suspension.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Respondent's Brief was mailed this 21st day of March, 2005 to Francis Lewis-Brown, Esq., Attorney for the Florida Bar.

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CERTIFICATE OF COMPLIANCE OF TYPE, SIZE AND STYLE

I hereby certify that this brief is submitted in 14 point proportionately spaced Times New Roman font.

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Hans Charles Feige, Pro Se