IN THE SUPREME COURT OF FLORIDA

Supreme Court Case No. SC04-1918

The Florida Bar File No. 2004-0,040(17E)

THE FLORIDA BAR,

Complainant,

vs.

RITA STEIN,

Respondent.

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RESPONDENT=S ANSWER BRIEF

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INTRODUCTION

The Respondent, RITA STEIN, submits this Answer Brief to address the

issues and arguments raised by the Complainant, THE FLORIDA BAR, in its Initial Brief.

<u>RESPONSE TO ASTATEMENT OF THE CASE AND FACTS@</u>
(pp. 6 - 9)

Respondent RITA STEIN would object to THE FLORIDA BAR=s Statement of the Case and Facts to the extent that it omits or ignores aspects of the record favorable to the Respondent. Most notably, it fails to portray the Respondent, RITA STEIN.

<u>WHO IS RITA STEIN?</u>

RITA STEIN is 77 years old. She became an attorney later in life than most, having been a school teacher and auditor for the New York State Department of Insurance. MS. STEIN was admitted to the New York Bar in 1979 at the age of 52 and to the Florida Bar in 1980 (T. 46-47[1]). For the last twenty-five years she has practiced law as a solo practitioner. She has no specialty, and characterizes her practice as Avery, very general@ (T. 66) MS. STEIN=s practice in Florida was even more limited and consisted mainly of probate, preparing powers of attorney, healthcare proxies, trusts and some real estate (T. 52).

RITA STEIN testified to her numerous contributions to the legal community. She

[1] **T = Transcript of Testimony**

served as past President of the Nassau County Bar Association (Long Island, New York); she was also very active in the New York State Women=s Bar Association (T. 66); she served as chairperson of the General Practice Committee, and co-Chair of the Judiciary Committee. RITA was the recipient of several awards for her years of work at a Bar-sponsored seniors clinic, which provided free legal assistance to the elderly. In 2003 and 2004, she received an award that acknowledged her for AOutstanding Service to the Seniors Clinic@. She has also helped set up a guardianship program for the Cerebral Palsy Association in Nassau County, New York, and continued to serve it as a volunteer (T. 67). This was the Respondent=s first and only disciplinary proceeding in her life (T. 66).

<u>SAM FIELDS</u>

RITA STEIN knew SAMUEL FIELDS from their participation on the Alegal committee@ of their local civic association in Nassau County, New York (T. 48). She knew him to be an attorney licensed in New York State, but not in the State of Florida (T. 48-49). In

April 2003, MR. FIELDS contacted MS. STEIN with regard to the LEITNER probate. FIELDS explained that a friend=s daughter-in-law=s mother had died; that he would like to probate that estate for a reduced fee, and that he and RITA would work together (T. 61-63). MS. STEIN did not expect any fee. Her understanding with SAM FIELDS was that she would be attorney of record, and that she would oversee and review the probate filings that FIELDS prepared (T. 49, 53-54). She believed that MR. FIELDS was doing the LEITNER=s a favor and, in turn, she would do a favor for SAMUEL FIELDS[2] (T. 62-63).

MR. FIELDS faxed MX. STEIN the probate papers. They appeared regular and she approved them and returned them to him via fax (T. 53-54). Due to exigent circumstances, MS. STEIN approved that SAM FIELDS sign the papers for her (T. 54). MS. STEIN felt that it was a mistake to allow FIELDS to sign, but she believed that she was assisting the client in expediting the probate (T. 54). The first time she became aware that

SAM FIELDS was not a licensed attorney in New York was after the Bar Complaints were filed and she was contacted by Bar counsel. RITA was absolutely Aflabbergasted@ when she learned of FIELD=s deceit (T.49).

_MS. STEIN=s first contact with ROBIN LEITNER was on or about May 29, 2003, when she received a telephone call from her (T-49). She described the conversation as

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[2](Which proves the old adage, ANo good deed goes unpunished@.)

being very unpleasant, focusing on a bridge table that MR. FIELDS took from her mother=s condominium.

It should not go without passing that the Referee found that RITA STEIN had admitted her negligence and was Acontrite@ (T. 90). The Referee also found that RITA was a Anice lady@; that she was Atrying to do someone [SAM FIELDS] a favor@ (T. 52). The Referee noted tat, AAs I said earlier, MR. FIELDS is the true culprit here.@ (T. 92). The Referee was also Aimpressed@ with RITA STEIN=s resumé, and the fact that she had Aobviously given a lot of time to the *pro bono* work@ (T. 92).

RESPONDENT=S SUMMARY OF ARGUMENT

A referee=s recommendation of discipline is afforded the presumption of correctness, unless the recommendation is clearly erroneous or not supported by the evidence. Here, the Referee=s recommendation of a one-year probation, with a special condition to successfully pass the ethics portions of the Bar exam, with early termination, was correct and was consistent with prior precedent of this Court, and should not be disturbed.

Respondent STEIN stood before the Referee with an unblemished disciplinary record of twenty-five years, concerning a single isolated incident in which no monetary loss was sustained, wherein the Respondent acted without a selfish motive, was contrite and apologetic, and who had years of devoted service to the legal community, the elderly and the infirm.

The Referee=s recommendation of discipline was consistent with and supported by such cases as Florida Bar v. Goodrich, 212 So.2d 764 (Fla. 1968); Florida Bar v. Fields, 520 So.2d 272 (Fla. 1988); Florida Bar v. Armas, 518 So.2d 919 (Fla. 1988); Florida Bar v. Carter, 502 So.2d 904 (Fla. 1987); Florida Bar v. Van Deventer, 368 So.2d 48 (Fla. 1979). The two cases heavily relied upon by the Bar, Florida Bar v. Beach, 675 So.2d 106 (Fla. 1996) and Florida Bar v. Lawless, 640 So.2d 1098 (Fla. 1994) are inapposite. Each of the cases had further aggravating factors, such as extensive prior disciplinary records, multiple acts of misconduct, or substantial monetary loss B that are simply not present in this proceeding. The Referee, who had the benefit of evaluating the sincerity of the Respondent herein, the gravity of the harm, recommended an appropriate sanction consistent

with prior case law. The recommended sanctions were reasonable, fair and well considered, and consistent with similar misconduct, and should be sustained.

RESPONSE TO AARGUMENT@

(pp. 12 - 17, Appellant=s Brief)

THE SANCTION IMPOSED BY THE REFEREE WAS CONSISTENT WITH PRIOR PRECEDENCE OF THIS COURT AND SHOULD NOT BE DISTURBED.

Respondent STEIN readily acknowledges that in reviewing a referee=s recommended discipline, the Ascope of review is somewhat broader than afforded to

findings of fact because, ultimately, it is [the court=s] responsibility to order an appropriate punishment@, Florida Bar v. Anderson, 538 So.2d 852, 854 (Fla. 1989); Florida Bar v. Kossow, _So.2d_ (May 2005). In accord: Florida Bar v. Wohl, 842 So.2d 811 (Fla. 2003); Florida Bar v. Rotstein, 835 So.2d 241 (Fla. 2003); Florida Bar v. Maier, 784 So.2 411, 413 (Fla. 2001). However, this Court will not Asecond-guess a referee=s recommended discipline as long as that discipline has a reasonable basis in existing law@. Florida Bar v. Lecznar, 690 So.2d 1284, 1288 (Fla. 1997); Florida Bar v. Pellegrini, 714 So.2d 448, 452 (Fla. 1998); Florida Bar v. Roberts, 789 So.2d 284, 287 (Fla. 2001), referee=s recommendation will be followed if reasonably supported by existing **case law. A referee=s recommendation for discipline is also considered Apersuasive@. However, the court has the ultimate responsibility to determine the appropriate sanctions. Florida Bar v. Reed, 644 So.2d 1355, 1357 (Fla. 1994).**

A Bar disciplinary action must serve three (3) purposes: The judgment must be fair to society; it must be fair to the attorney; it must be severe enough to deter other attorneys from similar misconduct. Florida Bar v. Lawless, supra, at 1100 (Fla. 1994). It is suggested that this Referee=s recommendation was fair to the Respondent, supported by Aa reasonable basis in existing case law@, and was severe enough to deter others. See, Florida Bar v. Temmer, 753 So.2d 555, 558 (Fla. 1999).

The sanction of probation, conditioned upon completion of the ethics

portions of Florida Bar is consonant with prior precedent, is rational, reasonable as applied to the Aparticular factual situation presented to the court@, and should be sustained. See, Florida Bar v. Buckle, 771 So.2d 1131, 1134 (Fla. 2000).

There is ample prior case law involving similar, if not more drastic, conduct which resulted in public reprimands. The Respondent cites the following cases in which an attorney permitted or contributed to the unauthorized practice of law and received public reprimands, which is an equivalent, if not a lesser sanction than that imposed herein. The Respondent would rely upon such cases as Florida Bar v. Armas, supra, public reprimand and probation imposed for assisting non-lawyer in practice of law; Florida Bar v. Van Deventer, supra, public reprimand for breach of fiduciary duty as guardian, as well as improper delegation of legal duties to non-lawyer=s secretary; Florida Bar v. Goodrich, supra, private reprimand for use of name in aid of unauthorized practice of law; Florida Bar v. Swidler, 159 So.2d 865 (Fla. 1964), public reprimand and probation for allowing his brother to solicit and practice law without being admitted to the Bar; Florida Bar v. Fields, supra, public reprimand for multiple violations, including failure to supervise non-lawyer=s personnel.

The two cases the Bar relies upon, Florida Bar v. Lawless, 640 So.2d 108 (Fla. 1994), and Florida Bar v. Beach, 675 So.2d 106 (Fla. 1996), are readily distinguishable and

are not applicable.

The Complainant Bar relies heavily on two cases, Florida Bar v. Lawless, supra, and Florida Bar v. Beach, supra, in now seeking a suspension of the Respondent. While the Bar acknowledges that both Beach and Lawless are Adifferent@ (p. 14, Appellant=s Brief), it suggests that there is only a Aslight@ difference. With all due respect to the Bar, this is a classic understatement. The circumstances in both these cases were markedly dissimilar, with each containing one or more aggravating circumstance B which does not existence in this case at bar.

THE BEACH CASE

ROY BEACH was suspended for ninety (90) days. BEACH had a prior 28-day suspension, and apparently had another unrelated Bar proceeding in the Apipeline@. See, Florida Bar v. Beach, 199 So.2d 675 (Fla. 1997). Unlike RITA STEIN, ROY BEACH had engaged in an ongoing relationship with a paralegal firm. BEACH actually collected a fee and made the complainant sue to get her money back. Unlike RITA STEIN, BEACH did not acknowledge his wrongdoing, nor could BEACH demonstrate years of good deeds and devotion to the Bar and practice of law. Significantly, the hearing officer=s recommendation of a 90-day

suspension was upheld, and the Bar=s request for a 91-day suspension was rejected.

THE LAWLESS CASE

Attorney LAWLESS, an Aimmigration lawyer@, was hired by a couple to help them obtain a permanent resident status. LAWLESS collected a $5,000.00 fee. LAWLESS pawned the couple off to a paralegal. The couple paid the paralegal $12,546.00, including the remaining $2,500.00 fee for LAWLESS. The couple then discovered that neither LAWLESS nor the paralegal ever filed the application for permanent residency. They confronted LAWLESS, who had vouched for the paralegal, and LAWLESS then filed the application. The referee recommended a 90-day suspension, based in part on LAWLESS= prior disciplinary history which included Aa private reprimand on a real estate matter and two public reprimands on immigration matters@. The two public reprimands concerned the same paralegal. The Bar argued for a 91-day suspension. LAWLESS argued for a public reprimand. This Court rejected his argument noting that this Court, in general, Adeals more severely with cumulative misconduct than with isolated misconduct@, citing Florida Bar v. Greenspahn, 386 So.2d 523, 525 (Fla. 1980).

Interestingly enough, LAWLESS cited to this Court four cases upon which this Respondent relies, wherein a public reprimand was imposed on a first time offending attorney for failing to supervise a non-lawyer. Florida Bar v.

Fields, supra; Florida Bar v. Armas, supra; Florida Bar v. Carter, supra, and Florida Bar v. Van Deventer, supra.

Respondent RITA STEIN appears before this Court with an unblemished record and years of *pro bono* service and acts of selflessness on behalf of the profession. RITA worked for years providing free legal services for senior citizens, the Cerebral Palsy Association; she was also in the forefront of promoting and protecting women attorneys. MS. STEIN was the recipient of various awards from her colleagues, acknowledging her service to others.

The Bar should acknowledge that this incident was isolated and out of character for the Respondent. The Bar should also acknowledge that the Respondent readily admitted her negligence. The Referee clearly believed that the Respondent was Acontrite@. The Referee was duly impressed with the Respondent=s resumé, and voiced her conclusion that SAMUEL FIELDS was the Atrue culprit@.

The Referee found the Respondent faulting in not knowing that MR. FIELDS could have worked on the probate matter had an application for him to appear *pro hac vice* been made.[3] This prompted the Referee to require the Respondent to take the ethics part of the Bar B thus matching the sanction Ato the

[3]This was based on the Respondent=s belief that SAMUEL FIELDS was duly licensed in New York State. No one has ever suggested that the Respondent knew otherwise.

wrong@. The Respondent, ignorant of the *pro hac vice* concept, obviously contributed to her problem, and the Referee appropriately sought to correct this. It is also obvious that the Referee was not concerned about future misconduct, and that an ethics review was all that was needed.

What this Court said of Attorney GOODRICH in Florida Bar v. Goodrich, supra, at 766, in imposing a private reprimand might well be said for Respondent RITA STEIN:

> **AThis respondent has an excellent record of public service both to his community and his profession. He has held numerous positions of responsibility in the Bar and in community life. This type of background does not excuse professional misconduct. However, it does tend to suggest that an individual so committed and so oriented professionally is not likely to do willful violence to the ethics of the profession. It further suggests that such an individual is amenable to minimal corrective measures in the event of an unintentional professional misprision.@**

The Referee=s recommendations for RITA STEIN were fair to the public, fair to the Respondent, and were a sufficient deterrent to others to Abe more careful@.

CONCLUSION

THE RECOMMENDATIONS OF THE REFEREE WERE SUPPORTED BY AMPLE EXISTING LAW, WERE FAIR AND REASONABLE AND SHOULD NOT BE DISTURBED.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Respondent=s Answer Brief was furnished by U.S. Mail and/or facsimile to ERIC MONTEL TURNER, Bar Counsel, *The Florida Bar*, 5900 N. Andrews Avenue, Suite 900, Fort Lauderdale, FL 33309; JOHN ANTHONY BOGGS, Staff Counsel, *The Florida Bar*,

651 East Jefferson Street, Tallahassee, FL 32399-2300; JOHN F. HARKNESS, JR., Executive Director, *The Florida Bar*, 651 East Jefferson Street, Tallahassee, FL 32399-2300, on this day of May, 2005.

By:

Charles Wender, Esquire

CERTIFICATE OF COMPLIANCE

I hereby certify that this Answer Brief complies with the font requirements of Rule 9.210, Florida Rules of Appellate Procedure, and has been prepared in 14-point Times New Roman.

By:
Charles Wender, Esquire

CERTIFICATE OF ANTI-VIRUS SCAN

I hereby certify that the computer file has been scanned and found to be free of viruses by McAfee Anti-Virus for Windows.

By:
Charles Wender, Esquire