

**IN THE SUPREME COURT OF FLORIDA**

**THE FLORIDA BAR,**

**Complainant,**

**v.**

**RITA STEIN,**

**Respondent.**

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**Supreme Court Case  
No. SC04-1918**

**The Florida Bar File  
No. 2004-50,040(17E)**

**THE FLORIDA BAR'S REPLY BRIEF**

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## **PRELIMINARY STATEMENT**

Throughout this Reply Brief, The Florida Bar will refer to specific parts of the record as follows: The Report of Referee will be designated as RR \_\_\_\_ (indicating the referenced page number). The transcript of the Final Hearing held on December 23, 2004, will be designated as TT \_\_\_\_, (indicating the referenced page number). The Florida Bar will be referred to as “the Bar.” Rita Stein will be referred to as “respondent”.

## **STATEMENT OF THE CASE AND FACTS**

The Florida Bar will rely upon the Statement of the Case and Facts set forth in its Initial Brief. The contents of the Statement of the Case and Facts are based upon, and corroborated by, the pleadings and the record on appeal.

## **SUMMARY OF THE ARGUMENT**

This Court should determine the discipline in the instant case based upon its past decisions with similar misconduct to the case at bar. A review of this Court's past decisions demonstrates the Referee's recommendation for probation and successful passage of the ethics portion of the examination in this case does not comply with this Court's past decisions and should not be adopted. The Bar cited to various cases in its initial brief, which contradict the Referee's recommendation. While the facts of the cases cited by the Bar are not identical to the instant case, they are similar enough to warrant this Court to adopt the same holding.

Respondent attempts to make the cases cited by the Bar inapplicable by citing the differences in prior discipline, but the differences do not make the cases inapplicable. Respondent did not cite a single case in her answer brief, which supports the Referee's recommendation.

## ARGUMENT

### **I. RESPONDENT WAS NOT IGNORANT OF FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.061 AND SHOULD BE SUSPENDED AS HER CONDUCT WAS INTENTIONAL NOT NEGLIGENT.**

This Court should determine the discipline in this case based upon its past decisions involving misconduct similar to the misconduct at bar. This Court has stated on many occasions the discipline given to an attorney must have a reasonable basis in existing case law. *See The Florida Bar v. Lecznar*, 690 So.2d 1284 (Fla. 1997). A review of this Court's past decisions shows the Referee's recommendation in this case to place respondent on probation is clearly off the mark and this Court should not adopt the recommendation.

Respondent cites *The Florida Bar v. Armas*, 518 So.2d 919 (Fla. 1988), *The Florida Bar v. Van Deventer*, 368 So.2d 48 (Fla. 1979), *The Florida Bar v. Carter*, 502 So.2d 904 (Fla.1987), *The Florida Bar v. Swidler*, 159 So.2d 865 (Fla. 1964), *The Florida Bar v. Goodrich*, 212 So.2d 764 (Fla. 1968), and *The Florida Bar v. Fields*, 520 So.2d 272 (Fla. 1988) in support of her position that the referee's recommendation should be upheld. These cases range from a private reprimand to 90 day suspension, however, two do not warrant consideration as they are the result of consent agreements.

In *The Florida Bar v. Van Deventer*, the court considered a guilty plea of the attorney for his failure to properly supervise his secretary, who stole several thousand dollars, during a period of time that the attorney was the guardian of an estate. *Van*

*Deventer* at 48. No allegation of assisting unlicensed practice of law appears in the case. Likewise in *The Florida Bar v. Fields*, no allegation of assisting unlicensed practice appears. The court considered a guilty plea of the attorney who had been convicted of driving under the influence of alcohol and charged compounded interest to his clients. *Fields* at 272, 273. The court cited to the prior discipline imposed in *The Florida Bar v. Fields*, 482 So.2d 1354 (Fla. 1986), wherein a public reprimand was imposed for charging compounded interest at the recommendation of his accountant.

Two other cases cited by respondent are concerned with employees who failed to properly handle accounting and trust records. In *The Florida Bar v. Armas*, the court reprimanded the attorney for failing to insure the office manager, who was given substantial authority over the trust account, was properly trained and supervised. *Armas* at 920. No reference is made to assisting unlicensed practice of law. Likewise in *The Florida Bar v. Carter*, a 90 day suspension was issued for an attorney who failed to supervise his office personnel who kept inadequate records in connection with an estate handled by the attorney. *Carter* at 905. The court did not consider a violation of the rule concerning assisting unlicensed practice of law.

Respondent cites two cases which concern assisting unlicensed practice, however, they are inapposite. In *The Florida Bar v. Swidler*, the court reprimanded the attorney for allowing his brother, who worked for his law firm, to solicit clients for the personal injury practice. *Swidler* at 865. In *The Florida Bar v. Goodrich*, the court issued a private reprimand for an attorney who prepared analyses of estates for prospective



purchasers of life insurance. *Goodrich* at 764. In both cases, the legal work was handled by the lawyer, as opposed to the case at bar where the respondent allowed the nonlawyer to handle the matter completely.

In the case at bar, respondent intentionally assisted someone who was not licensed in Florida to practice law through subterfuge. The record reflects the referee found the matter was not the result of inadvertence or slight mistake (TT. at 102). The questioning in this case concerned respondent's actions and her failure to follow Florida Rule of Judicial Administration 2.061 (TT. at 51, and 55). The court found it was incumbent upon respondent to be aware of the rule concerning *pro hac vice* admission given her numerous years of practice in Florida and other jurisdictions. Rule Regulating The Florida Bar 3-4.1 charges every attorney with notice of the rules and standards of professional conduct prescribed by this court. To suggest she was ignorant of the Rules Regulating The Florida Bar or The Rules of Judicial Administration strains credulity in light of her testimony before the referee.

Furthermore, respondent did not cite a single case, which suggests this Court should uphold the recommendation the referee made in her report. However, The Bar cited various cases, which are similar enough to this case to warrant the same recommendation requiring at least suspension for intentional misconduct by the respondent. The slightly different sanctions imposed in the cases cited by The Bar do not make the cases inapplicable to the case at bar.

## **CONCLUSION**

The referee's recommendation to place respondent on probation for 1 year and successfully pass the ethics portion of The Florida Bar examination should not be approved because the recommendation does not conform to the purposes of lawyer discipline and existing case law dictates a suspension is appropriate.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY true and correct copies of The Florida Bar's Reply Brief have been furnished by regular U.S. mail to Charles Wender, Counsel for Respondent, 190 West Palmetto Park Road, Boca Raton, Florida 33432, and to Staff Counsel, 651 East Jefferson Street, Tallahassee, Florida 32399-2300 on this \_\_\_\_ day of June, 2005.

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ERIC MONTEL TURNER

**CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN**

Undersigned counsel hereby certifies The Florida Bar's Reply Brief is submitted in 14 point, proportionately spaced, Times New Roman font, and the computer file has been scanned and found to be free of viruses by Norton Anti-Virus for Windows.

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ERIC MONTEL TURNER