IN THE SUPREME COURT OF FLORIDA

The Florida Bar
Complainant

Case No. SC07-661
[TFB No.s. 2005 – 30,980 (07B);
2005 – 30,684 (07B)]

Vs.

Charles Behm
Respondent
_____/

REPLY BRIEF

Charles Behm
POB 10 Pomona Park, FL 32181
(386) 546-2275
FL. Bar # 0171972

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PENDING BEFORE THE COURT ARE QUESTIONS OF LAW AND A DE NOVO REVIEW IS APPROPRIATE

A Recurrent theme throughout the Answer Brief is that the Florida Bar has presented "clear and convincing evidence" and that the Referee was in the best position to evaluate the evidence and the witness testimony. However, what is being disputed is that the Referee made his decision and recommendations without the benefit of any law to support those decision and recommendations. Thus, convicting the Respondent without there being any applicable law for the Respondent to have violated, or proof that he violated any law, hence no ethics violation.

The legal findings of the Referee cannot be on evidence, clear and convincing or otherwise, because a legal duty, as suggested by the Bar, is a legal conclusion. There must be law and all elements of a violation of that law proven. Where questions are raised as a matter of law the Respondent is entitled to a de novo review and the questions before the Court arising in Count II of the Complaint are basically questions of law, which are subject to de novo review. Borden v. East-European Ins. Co., 921 So.2d 587,591 (Fla. 2006).

The Bar Counsel seeks to convict the Respondent based upon the opinion of a Certified Public Accountant that works for the Bar, though he could not support his opinion with correct and properly applied legal authorities. There was no substantial support through the presentation of any statute, applicable section of the Internal Revenue Code, or Supreme Court cases to rebut the positions taken by the Respondent.

Boiled down the "evidence" that has been presented by the Bar includes:

- The opinion of a Certified Public Accountant that is unsupported by either law, Internal Revenue Code, or case findings by the Supreme Court.

- Proffer of a statement by a North Carolina Judge that is patently unsupported when the transcript of the hearing is examined.

THERE IS NO SHOWING IN THE EXISTING RECORD ANY ADVERSE AUTHORITY TO CONTRADICT ARGUMENTS RELATIVE TO THE MERITS OF THE RESPONDENT'S POSITION THEREFORE, THE BAR CAN NOT SUPPORT IT'S POSITION.

Despite rhetoric from the Bar to the contrary, no competent legal authority consisting of a statute, U.S. Code, U.S. Supreme Court cases, or other competent authority imposing a duty to file or pay federal income taxes has been presented by the Bar to dispute the U.S. Supreme Court cases and authorities presented by the Respondent in support of the Respondent's position.

Specifically, the Bar has not shown any authoritative response to the blatant and obvious lack of any law that clearly and plainly imposes a liability on the Respondent for the payment of a federal income tax or if so, that he has sufficient taxable income prompting a legal obligation to file . (Section 1 of the Internal Revenue Code imposes a tax on the "taxable income of every individual", not a tax on individuals, and without defining who is liable (IRC § 1 page 53). ALL other taxes outlined in the Internal Revenue Code EXCEPT the sections dealing with federal income tax clearly spell out who is liable, what is being taxed, and how much the tax is to be. (The only exception to this is I.R.C. section 1441 which refers to "Withholding Of Tax On Non-resident Aliens And Foreign Corporations" – See IRC § 1441, P 3211).

The Bar also has cited no competent judicial authority giving credence to the IRS determination that that a man's labor is worthless or that a zero basis that a man's labor belongs to the government. Bar Counsel's own witness Mr. Pearson, admitted that the position of the Respondent opposing a zero basis for his personal earnings has not been deemed frivolous by the IRS on its web site (T- 24 February 2009 p.61, L. 18).

The U.S. Supreme Court deemed through Eisner v. Macomber, 252 U.S. 189 (1920), the Respondent does not have taxable income unless he has gain. Assigning a zero basis is an improper attempt to show income as gain. The Respondent has no gain if a realistic and fair market value are given to his time. Otherwise, why do we jail those convicted of crimes rather than allow them to buy their way out or pay another to do the time ?

The Bar has not competently challenged the fact that the Respondent's time and labor must have value because the Supreme Court has also cited one's labor as a property right, finding that "[T]**he right to labor, the right to one's self physically and intellectually, and to the product of one's own faculties, is past doubt property, and property of a sacred kind.** William Fagan Broderick Seibel Lannes Gitzinger Aycock Verges, The dealers and Butchers Association of New Orleans, and Charles Cavaroc v. the State of Louisiana Belden, the Butchers Benevolent Association of New Orleans v. the Crescent Citylanding and Company, 83 U.S. 36, 21 L.Ed. 394, 16 Wall. 36 (1872) (emphasis added). Ownership of that property is a **fundamental right** and an individual possession. Yick Wo v. Hopkins, *118 U.S. 356* (1886). Redress of grievances regarding that property in the form of letters inquiring of the IRS is also a fundamental right. William (supra).

The word "liberty" contained in [the First] amendment embraces not only the right of a person to be free from physical restraint, but the right to be free in the enjoyment of all his faculties as well. Grosjean v. American Press Co., *297 U.S. 233* (1936) citing Allgeyer v. Louisiana, 165 U.S. 578, 589. The federal government and the states are both precluded from abridging natural rights of the individual by the First and Fourteenth Amendments respectively. Grosjean v. American Press Co, *297 U.S. 233* (1936).

The actions of the Respondent have been to make inquiry of the agents of the federal government through letters, and if necessary to seek redress. and, these fundamental rights granted by the First Amendment may not be abridged by the Florida Bar through quasi-judicial disciplinary proceedings.

THE BAR'S PROFFER OF A NORTH CAROLINA JUDGE'S MISSTATEMENT OF THE RECORD RELATED TO THAT CASE IS IMPROPER AND UNSUPPORTED BY THE FACTS

Bar Counsel has continued to present the patently unsupported opinion of a North Carolina Judge rendering an opinion in an unrelated North Carolina Case, as definitive that the Respondent had "taxable income" though Bar Counsel is fully aware of the transcript and is with full knowledge that no such statement or admission was ever made by the Respondent.(A.B. p.7).

The Bar's continued proffer is – at best - a misrepresentation before this Court and at worst the presentation of an unrelated court finding that Bar Counsel knows to be unsupported by the actual transcript of the hearing in North Carolina. (See Bar Exhibit # 22 – transcript of hearing before Judge Spainhour, October 17, 2005, Pages 17 –20. convened long before any tax issue was raised by the Florida Bar and therefore there were no grounds for the Respondent to challenge the N.C. judge's err)). The Bar's position that the Referee can consider such "evidence because Bar disciplinary proceedings are quasi-judicial and the Referee is not bound by the technical rules of evidence" (A.B. p.8) does not equate to the Referee having the latitude to make a legal conclusion from "evidence" that is patently false and proffered by the Bar with the knowledge that it is false.

THE ANSWER BRIEF IS REPLETE WITH MISSTATEMENTS, MISDIRECTION, AND MISREPRESENTATIONS OF THE FACTS

The basic argument of the Respondent is based upon the following facts:

- The Bar has not and can not show any statute, code or case clearly and plainly laying a liability on the Respondent for filing a federal income tax return or paying a federal income tax.

- The Bar has not and can not show that the Respondent has income from a source that is subject to federal income tax based upon the US supreme Court findings in McCulloch v. Maryland, *17 U.S. 316* (1819), and Farrington v. Tennessee, *95 U.S. 679* (1877).

- The Bar has not and can not show that the Respondent has had any income that is both from a taxable source and in sufficient quantity to

> reach the threshold requiring that the Respondent would be required to file a federal income tax return as all income to the Respondent is derived from a source created and controlled by the State of Florida and is not subject to a federal income tax per McCullough and Farrington. (discussed supra).

The Bar claims that the Respondent's admissions preclude a successful appeal (A. B. p.8). However, the admissions by the Respondent that he had income and that he had made money in his law office do not constitute that such income was from a source that can be taxed by the federal government. Id.

The Bar considers the application of law arising from findings in U.S. Supreme Court cases is, misconstruing and distorting case law (AB p.9). However, Bar Counsel does not say how the arguments raised by the Respondent based on U.S. Supreme Court cases has been "misconstrued" or "distorted".

The Bar Counsel cites cases that are unrelated to the Respondent's position. Such cases as United States v. Gerards, 999 F. 2n 1255, 1256 (holding "any assertion that the payment of income tax is voluntary") (AB p.9). Yet the only reference to that issue is in the Respondent's 2001 letter of inquiry to the I.R.S. and the Respondent raised no such an argument as part of his case.

Likewise, Bar Counsel improperly cites the finding in United States v. Bressler, 772 F.2d 287,291 (7th Cir. 1985) and tries to make an issue where there is none. (A.B. at p.9) The Bar quoted from the Court finding in Bressler:

"he has refused to file income tax returns and pay the amounts due not because he misunderstands the law, but because he disagrees with it… [O]ne who refuses to file income tax returns and pay the tax owing is subject to prosecution, even though the tax protestor believes the law requiring the filing of income tax returns and the payment of income tax are unconstitutional.".

The Bars cite of Bressler is improper because the constitutionality of the federal income tax was not at issue. Also, the very quote the Bar Counsel uses from Bressler distinguishes it from the Instant Case. (A.B. p.10). There has been no showing whatsoever nor any proof offered by the Bar that the Respondent has a "tax owing" and there has been no part of the Respondent's defense challenging the federal tax laws as unconstitutional

Further, The findings by the referee are conflicting in that there was not criminal violation on the part of the Respondent, (RR at p.7) which makes Bressler irrelevant because the Instant Case no longer involves a criminal issue. In fact, the referee made findings that the Respondent was an honest attorney who had made bad judgment decisions. (RR at p.8). This clamors

for clarification because it belies any intent on the part of the Respondent to commit any act that is unethical or in violation of the Rules of Conduct – a fact that is conspicuously ignored by the Bar.

Finally, there is no indication in the Bressler case that the Defendant in that case, raised the Respondent's contention of there being no law clearly and plainly laying liability upon him. There is also no indication that Mr. Bressler raised the defense that his income was from a non taxable source or that if he did have income from a taxable source, it was sufficient amount to require the filing of a federal income tax return. Absent the Defendant raising these issues as affirmative defenses, he waived the defenses and the existence of such a law and such responsibilities was presumed.

Respondent Charles Behm in the instant case has openly and continually challenged the non-existence of any law clearly and plainly placing liability for a federal income tax on the Respondent or even placing a responsibility on him to file an income tax return. It's existence can not be presumed and the absence of such a law guts the Bars case against the Respondent, and leaves a gaping hole in the elements that the Referee must use to support a conviction.

The Bar continually offers case law citing lawyers that have been convicted of a crime or pled guilty, or admitted some guilt, when the Respondent has yet to be charged with any crime. The Florida Bar v. Pearce, 631 So.2d 1092 (Fla. 1994), The Florida Bar v. Blankner, 457 So.2d. 476 (Fla. 1984). In The Florida Bar v. Cimbler cases nos. SC04 – 2050 and SC05 – 948 (Fla. 2008). (A.B.at 13). Cimbler was granted immunity from prosecution but presumably, only after telling all and admitting guilt, in exchange for that immunity.

This is despite the fact that the Respondent has not been charged, indicted, or convicted of any crime. Nor has he pled guilty or made admissions to committing any criminal act.

THE BAR IMPROPERLY STATES THAT THE RESPONDENT MAINTAINS THAT THE CURRENT FORM OF FEDERAL TAXATION IN THE UNITED STATES IS UNCONSTITUTIONAL

The Bar Counsel incorrectly states that the "respondent maintains that the current form of federal taxation in the United States is unconstitutional despite established law to the contrary." (A.B. 15). This is a gross and inflammatory misrepresentation of the beliefs of the Respondent.

No issues challenging Constitutionality of the tax laws were raised by the Respondent at trial. The last time a question of Constitutionality was at issue was a letter of inquiry written by the Respondent (then green and unschooled regarding tax issues,) requested information from the I.R.S. (See Bar Exhibit #16). For the Bar to suggest this is still the position of the Respondent, is a flagrant misrepresentation and shamelessly ignores the testimony by the Respondent. A review of his testimony reveals that the Respondent does not challenge the federal income tax regarding Constitutional grounds, but rather was with regard to its applicability and attempted enforcement against the Respondent and those like him who derive their income from the license granted by the state.

Testimony by the Respondent as to the basis of his beliefs included extensive rendition of the findings in McCullough v. Maryland ,17 U.S. 316. Constitutionality was never at issue as the Respondent testified that "[u]nder McCullough the sovereign has the ability to tax what it has the ability to create or destroy, and the [U.S. Supreme] Court said anything outside the sovereignty is exempt" (T – February 24, 2009 at P. 111, L. 2) regarding constitutional limitations on the taxing powers of the federal government as determined by the U. S. Supreme Court. (T – February 24, 2009 at P. 110, L.

21) There is no doubt as to the Respondent acting on the presumption that the federal tax scheme is constitutional given his acknowledgment of the findings in McCullough that the sovereign can tax whatever exists by the sovereign's authority or is introduced by its permission. (T – February 24, 2009 at P. 110, L. 21).

Wherefore, the findings of the Referee should be reversed in Count II and all costs associated with Count II should be reversed and costs incurred by the Respondent, related to Count II should be charged against the Bar.

Charles Behm, Esq.
POB 10 Pomona Park, FL 32181
(386) 546-2275
FL. Bar # 0171972

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing REPLY BRIEF regarding Supreme Court Case No. SC07-661, TFB File No. 2005-30980 (07B); 2006-30,684 (07B), has been mailed by certified mail #_____ return receipt requested, to, Francis Brown-Lewis, Esq., Counsel for the Florida Bar, at 1200 Edgewater Drive in Orlando, FL 32804 Complainant, this 27th day of July, 2009.

_____

Charles Behm, Esq.
POB 10 Pomona Park, FL 32181
(386) 546-2275
FL. Bar # 0171972

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

Undersigned counsel does hereby certify that the REPLY BRIEF is submitted in 14 point proportionately spaced Times New Roman font, and that the brief has been filed by e-mail in accord with the Court's order of October 1, 2004. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and to the best of his knowledge found to be free of viruses.

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Charles Behm, Esq.
POB 10 Pomona Park, FL 32181
(386) 546-2275
FL. Bar # 0171972