IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

KOKO HEAD,

Respondent.

Supreme Court Case No.SC10-1175

TFB File Nos. 2009-31,193 (4C)
2010-30,043 (4C)
2010-30,467 (4C)

RESPONDENT'S REPLY BRIEF
TO TFB'S REPLY/ANSWER BRIEF

LAW OFFICE OF KOKO HEAD, P.A.

Koko Head, Esq., *Pro Se*
Florida Bar No. 475701
100 State Road 13 N., Suite D
St. Johns, Florida 32259
Telephone: (904) 535-0642
Facsimile: (904) 814-8725

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

PRELIMINARY STATEMENT

After receiving TFB's Reply Brief in response to Respondent's Answer Brief and Initial Brief on Cross-Petition for Review, Respondent inquired of Bar Counsel whether it would be filing a separate Answer Brief in this matter. TFB's Bar Counsel responded that "TFB will not be filing anything more in this matter. We will stand on our initial brief and our reply brief." Respondent therefore deems TFB's Reply Brief to be its Reply/Answer Brief to which Respondent's Reply Brief is addressed.

SUMMARY OF ARGUMENT

TFB concedes the issue raised in Section III of Respondent's Answer/Initial Brief because – as stated in its Reply/Answer Brief – "there is nothing new to reply to and the Bar will rest on its arguments as presented in the Initial Brief." [TFB Reply/Answer Brief, p. 1] TFB, in providing its own take on how Rule 4-1.8(h) should be interpreted and applied, demonstrates the problem with the Rule's language – it isn't clear whether the inclusion of the "independent representation is appropriate" language is mandatory in *all disputes* with a client or former client such as a fee dispute or merely in cases where it is clear that the parties are trying to settle a prospective or actual malpractice claim.

ARGUMENT

TFB states in its Reply/Answer Brief that Respondent's Answer Brief and Initial Brief on Cross Petition as to Count I "merely attempts to negate all of the issues raised in the Bar' Initial Brief." [TFB Reply/Answer Brief, p. 1] However, TFB never raised nor addressed the issue of whether the Report of Referee contained findings to support his Recommendations as to Guilt that Respondent be found guilty of violating Rule 4-8.4(c). Respondent raised this issue for the first time in his Answer/Initial Brief pointing out that while the Referee stated that the "most serious allegation against the Respondent is that he violated Rule 4-3.3(a) dealing with candor toward the tribunal and 4-8.4(c) dealing with dishonesty, fraud, deceit or misconduct." [ROR, p. 8,9], the Referee never made any findings that Respondent's conduct violated Rule 4-8.4(c). The Referee only concluded that "Respondent violated Rule 4-3.3 by filing an inaccurate and untruthful Affidavit with the court." [ROR, p. 11]. In essence TFB concedes this argument because it has chosen to "rest on its arguments as presented in the Initial Brief" – which does not argue for or support the position that the Report of Referee contains necessary findings to support his recommendation of guilt on Rule 4-8.4(c).

In *The Florida Bar v. Shoureas*, 913 So.2d 554 (Fl, 2005), this Honorable Court found that "the referee made no specific findings with regard to a violation of this provision [4-1.5(a)] . . . [however] the written report contains a recommendation that Shoureas be found guilty of violating rule 4-1.5(a). Our review of the record reveals no competent, substantial evidence to support this recommendation and we therefore decline to approve this specific portion of the report and recommendation." *Id.* at 558. Similarly the Report of Referee in this matter contains no specific findings that Respondent's conduct violated Rule 4-8.4(c), yet the written Report of Referee recommends a finding of guilt for violation of said Rule. As it did in *Shoureas*, this Honorable Court should decline to approve that specific recommendation of guilt.

TFB also concedes regarding Count II that it closed Mr. Tastan's bar complaint as a "fee dispute" [Mr. Head's Appendix Tab 15] and that Mr. Tastan believed it was a fee dispute by requesting fee arbitration [Mr. Head's Appendix Tab 16] and received Respondent's settlement letter attempting to resolve their fee dispute which included a Statement of Claim regarding their fee dispute [Mr. Head's Appendix Tab 17 and TFB's Reply/Answer Brief, p.2]. Then in an *Evil Knievel* like leap of logic TFB attempts to jump from a fee dispute (that it already admits existed) to a possible malpractice claim based on Mr. Tastan's testimony

that he "felt threatened" by the fee dispute settlement letter and that Mr. Tastan *may have* "believed (though he may never have used the actual word "malpractice") that Respondent had committed malpractice." [TFB's Reply/Answer Brief, pp. 2,4.] The fact is that there has never been a malpractice claim and the fee dispute settlement letter only sought to resolve the fee dispute acknowledged by everyone – TFB, Mr. Tastan and Respondent.

The question for this Honorable Court to decide is how Rule 4-1.8(h) is to be interpreted and applied. The Referee concurred with TFB's interpretation and application of the Rule finding that "Respondent has a duty to advise Mr. Tastan in writing that independent representation by counsel was appropriate when considering the mutual release and settlement." [ROR p. 22]. Therefore , their interpretation and application of Rule 4-1.8(h) is correct if this Honorable Court intends for it to be a *per se* violation of the Rule to fail to include the "independent representation is appropriate" language in all disputes and regardless of whether any malpractice exits. However, if this Honorable Court does not intend for the failure to include the "independent representation is appropriate" language to be a *per se* violation of the Rule in cases where the attorney and client are attempting to resolve a fee dispute, then Respondent's failure to include said language in his fee dispute settlement letter does not constitute a violation of the Rule. Regardless of

which way this Honorable Court chooses to go, Rule 4-1.8(h) should be amended to clearly state how the Rule is to be interpreted and applied.

CONCLUSION

For the reasons set forth above, Respondent Koko Head requests that this Honorable Court disapprove the Referee's recommendation that Respondent be found guilty of a violation of Rule 4-8.(c) because the Referee never made any specific findings in the Report of Referee that Respondent's conduct violated said Rule. Likewise, this Honorable Court should determine if Rule 4-1.8(h) requires Respondent (as well as other practitioners) to always include the "independent representation is appropriate" language in all disputes with a client or former client, including fee disputes or merely in cases where it is clear that the parties are trying to settle prospective or actual malpractice claims.

Dated: August 5, 2011

LAW OFFICE OF KOKO HEAD, P. A.

By:_____

Koko Head, Esq., *Pro Se*
Florida Bar No. 475701
100 State Road 13N., Suite D
St. Johns, Florida 32259
Telephone: (904) 535-0642
Facsimile: (904) 814-8725

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of Respondent Koko Head, Esq.'s Answer Brief regarding Supreme Court Case No. SC10-175, TFB File No. 2009-31,193(4C), et al., was hand delivered to The Honorable Thomas D. Hall, Clerk of the Supreme Court of Florida, Supreme Court Building, 500 Duval Street, Tallahassee, FL 32399 and that a true and correct copy thereof was hand delivered to Carlos A. Leon, Esq. and Kenneth L. Marvin, Esq., The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 on August 5, 2011.

Koko Head, Esq., *Pro Se*

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

I HEREBY CERTIFY that this Answer Brief has been submitted in 14 point proportionately spaced Times New Roman font, and that said Answer Brief has been filed by e-mail in accord with the Court's Order dated October 1, 2004 and that the electronically filed version of this brief has been scanned and found to be free of viruses by Microsoft Windows anti-virus for Windows 7.

_____