

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

BRUCE EDWARD COMMITTE,

Respondent.

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Supreme Court Case  
No. SC11-468

The Florida Bar File  
No. 2009-00,789 (1A)

**THE FLORIDA BAR'S ANSWER BRIEF**  
**AND CROSS PETITION FOR REVIEW**

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**TABLE OF CONTENTS**

TABLE OF CONTENTS.....i

TABLE OF CITATIONS..... iii

PRELIMINARY STATEMENT..... 1

STATEMENT OF THE CASE.....3

STATEMENT OF THE FACTS.....9

SUMMARY OF ARGUMENT .....18

LEGAL ARGUMENT .....21

- I. THE COURT SHOULD APPROVE THE REFEREE’S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO RULES 4-3.4(g) AND 4-8.4(d) BECAUSE THEY ARE BASED ON COMPETENT SUBSTANTIAL EVIDENCE.
  
- II. REISINGER DID NOT ENGAGE IN “ATTEMPTED EXTORTION” BECAUSE SHE HAD A VALID FLORIDA CIRCUIT COURT JUDGMENT AFFIRMED BY THE FIRST DISTRICT COURT OF APPEAL UPON WHICH SHE BASED HER DEMAND FOR PAYMENT.
  
- III. RESPONDENT’S FEDERAL CONSTITUTIONAL CLAIMS ARE WITHOUT MERIT.
  
- IV. RESPONDENT’S CLAIMS UNDER FEDERAL STATUTES ARE WITHOUT MERIT.
  
- V. RULE 4-3.4(g) PROPERLY APPLIES TO RESPONDENT’S ACTIONS BECAUSE HE ATTEMPTED TO GAIN AN ADVANTAGE IN THE UNDERLYING CIVIL PROCEEDING OF QUINN V. REISINGER BY FILING A COMPLAINT WITH THE

ALABAMA FEDERAL AUTHORITIES FOR ALLEGED  
“ATTEMPTED EXTORTION” BY REISINGER.

VI. RULE 4-8.4(d) IS INDEPENDENTLY APPLICABLE BECAUSE RESPONDENT’S ACTIONS IN REPORTING REISINGER FOR EXTORTION TO THE FEDERAL AUTHORITIES TO GAIN AN ADVANTAGE IN THE UNDERLYING CIVIL PROCEEDING OF QUINN V. REISINGER ALSO RESULTED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.

VII. THE FLORIDA BAR, INCLUDING GRIEVANCE COMMITTEE, BAR COUNSEL, STAFF COUNSEL, AND THE REFEREE FOLLOWED THE RULES REGULATING THE FLORIDA BAR IN INITIATING AND PURSUING ITS COMPLAINT AGAINST RESPONDENT.

CROSS PETITION ARGUMENTS .....33

VIII. THE REFEREE ERRED IN CONCLUDING THAT RESPONDENT WAS NOT GUILTY OF VIOLATING RULE 4-3.1 BECAUSE THE RECORD EVIDENCE CLEARLY CONTRADICTS HIS CONCLUSIONS OF LAW.

IX. THE REFEREE ERRED WHEN HE FAILED TO FOLLOW THE PREVAILING PRECEDENT IN THE QUINN CASE.

X. THE REFEREE ERRED WHEN HE PLACED THE BURDEN OF PROOF ON THE FLORIDA BAR TO PROVE INABILITY TO PAY AND FAILED TO FIND RESPONDENT GUILTY OF VIOLATING RULE 4-3.4(c).

CONCLUSION .....44

CERTIFICATE OF SERVICE .....45

CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN .....46

## TABLE OF CITATIONS

Page No.

### Cases

<u>City of Gainesville v. State Dept. of Transportation</u> , 778 So.2d 519 (Fla. 1st DCA 2001) .....	36
<u>Duan v. State</u> , 970 So.2d 903 (1st DCA 2007) .....	28
<u>Dudley v. State</u> , 634 So.2d 1093 (2d DCA 1994).....	28
<u>Edgar v. Mite Corporation</u> , 457 U.S. 624 (1982).....	25
<u>MacDonald v. Smith</u> , 472 U.S. 479, 105 S. Ct. 2787, 86 L.Ed.2d 384(1985).....	26
<u>Pompi v. City of Jacksonville</u> , 872 So. 2d 931(Fla. 1st DCA 2004) .....	39
<u>Sobi v. Fairfield Resorts, Inc.</u> , 846 So. 2d 1204, 1206 (Fla. 5th DCA 2003) .....	36
<u>The Florida Bar v. Committe</u> , 916 So.2d 741(Fla. 2005) .....	23
<u>The Florida Bar v. Cox</u> , 718 So. 2d 788, 792 (Fla. 1998).....	21
<u>The Florida Bar v. Lecznar</u> , 690 So. 2d 1284, 1287 (Fla. 1997) .....	21
<u>The Florida Bar v. MacMillan</u> , 600 So. 2d 457, 459 (Fla. 1992).....	21
<u>The Florida Bar v. McKenzie</u> , 442 So. 2d 934 (Fla. 1983).....	21
<u>The Florida Bar v. Miele</u> , 605 So. 2d 866, 868 (Fla. 1992).....	21
<u>The Florida Bar v. Miller</u> , 863 So. 2d 231, 234 (Fla. 2003) .....	22
<u>The Florida Bar v. Rood</u> , 620 So.2d 1252 (Fla. 1993).....	40
<u>The Florida Bar v. Smith</u> , 866 So. 2d 41, 45 (Fla. 2004).....	21
<u>The Florida Bar v. Spann</u> , 682 So. 2d 1070, 1073 (Fla. 1996) .....	21
<u>The Florida Bar v. Tobkin</u> , 944 So.2d 219(Fla.2006).....	40

<u>The Florida Bar v. Trazenfeld</u> , 833 So.2d 734, 736(Fla. 2002) .....	34
<u>The Florida Bar v. Vining</u> , 761 So. 2d 1044, 1047 (Fla. 2000) .....	22
<u>Tobkin v. Jarboe</u> , 710 So.2d 975 (Fla. 1998).....	24
<u>Todd Quinn v. Eloise Reisinger</u> , Okaloosa Circuit Court Case No. 2002 CA 5207 .....	9, 23, 28, 29, 30, 32, 34, 35, 36, 37, 38, 39, 40, 42

**Rules Regulating The Florida Bar**

3-3.2(b)(1) .....	31
3-7.6(m)(1)(A) .....	21
3-7.6(q).....	32
4-3.1 .....	17, 19, 20, 26, 32, 33, 34, 44
4-3.3(c) .....	41
4-3.4(c) .....	20, 33, 40, 44
4-3.4(g).....	21, 22, 25, 29, 30, 31, 44
4-8.4(d).....	21, 22, 30, 31, 44

## **PRELIMINARY STATEMENT**

Complainant/Cross Petitioner, THE FLORIDA BAR, will be referred to as "The Florida Bar" throughout the Answer Brief and Cross Petition.

Respondent/Petitioner, BRUCE EDWARD COMMITTE, will be referred to as "Respondent."

References to the Rules Regulating The Florida Bar shall be designated as "Rule" with the appropriate number, i.e., Rule 3-7.1, or as "Rules."

References to the "Report of Referee" shall be designated as "ROR" for the report of referee dated April 18, 2012, followed by the appropriate page number, i.e., "ROR-12."

References to The Florida Bar's Exhibits at the Final Hearing on September 27, 2011, and at the Penalty Hearing on March 15, 2012, shall be designated as "TFB Exhibit" with the appropriate number, i.e., "TFB Exhibit 4."

References to Respondent's Exhibits at the Final Hearing on January 8-9, 2004, shall be designated as "R Exhibit" with the appropriate number, i.e., "R Exhibit 3."

References to Transcript for the Final Hearing on September 27, 2011, Volume I and Volume II that run consecutively, shall be designated as " T." with the appropriate number, i.e., " T-4."

References to Transcript for the Penalty Hearing on March 15, 2012, shall be designated as "TPH." with the appropriate number, i.e., "TPH-4."

"Petitioner's First Amended Initial Brief" will be referred to as "Initial Brief" with the appropriate page number, i.e., "Initial Brief at p. 4."

"The Florida Bar's Answer Brief and Cross Petition for Review" will be referred to as "Answer Brief" with the appropriate page number, i.e., "Answer Brief at p. 4."

The "First District Court of Appeal" will be referred to as "First DCA."

Martha Elouise Reisinger who filed the Bar complaint against Respondent will be referred to as "Reisinger" in the Answer Brief.

References to specific pleadings in the disciplinary record will be made by identification and reference to their title in the Supreme Court pleadings file and index, i.e., Motion to Dismiss.

## **STATEMENT OF THE CASE**

This is a Petition for Review, filed by Respondent, of a Report of Referee dated April 18, 2012. The Florida Bar files this Answer Brief in response to Respondent's Initial Brief, including a Cross Petition for Review. For the sake of clarity, the Statement of the Case is included in The Florida Bar's Answer Brief.

On March 9, 2011, The Florida Bar initiated disciplinary proceedings against Respondent by filing its Complaint with the Florida Supreme Court. On March 10, 2011, Respondent filed a Motion for More Definite Statement with the Court Clerk's Office that was referred to the Referee. On May 5, 2011, a Case Management Conference was scheduled for May 23, 2011, via telephone. On that date, Respondent filed a Motion in Liminie(sic), Motion for Change of Location, and Motion to Dismiss with the Referee. At the case management conference, the Referee scheduled June 29, 2011, to hear Respondent's motions and set a final hearing date on September 27, 2011. Respondent filed an Answer to the Complaint and a First Amended Motion to Dismiss the Complaint on June 1, 2011. On June 28, 2011, The Florida Bar emailed a Reply to each of Respondent's Motions. On June 29, 2011, the Referee denied Respondent's Motions with the exception of the Motion for Change of Location and an Ore Tenus Motion to File an Amended Answer to The Florida Bar's Complaint.

The Florida Bar served Respondent with Interrogatories and a Request for Production of Documents on July 7, 2011. Respondent filed a First Amended Answer to the Complaint on July 12, 2011, with Affirmative Defenses. One of those Affirmative Defenses alleged inability to pay the judgment for attorneys fees and costs assessed against Respondent in the underlying case. At the final hearing, however, Respondent presented no evidence, save his own testimony, that supported this Affirmative Defense. T-212-213.

On July 29, 2011, The Florida Bar filed a Motion for a Pretrial Order, set a hearing date, and the Pretrial Order was issued on August 5, 2011. Respondent filed a Motion for Rehearing on August 12, 2011, and a Motion for Leave to File Another Affirmative Defense to which The Florida Bar replied on August 22, 2011. An Amended Pretrial Order was issued on August 26, 2011. The Florida Bar filed a Motion to Compel and for Sanctions on August 31, 2011, to which Respondent replied on August 31, 2011. The parties submitted a List of Witnesses and Documents pursuant to the Pretrial Order on September 2, 2011. The Referee granted The Florida Bar's Motion to Compel and for Sanctions on September 6, 2011, that required Respondent to provide discovery responses by September 12, 2011. Respondent filed a Motion for Decision Without Hearing but did not set it for hearing. The Florida Bar filed a Motion to Amend Dates in the Pretrial Order on September 7, 2011, which was

granted on September 8, 2011. Respondent provided responses to The Florida Bar's discovery requests on September 14, 2011, the date of Respondent's deposition duces tecum.

On September 21, 2011, The Florida Bar filed a Motion in Limine to which Respondent replied on September 23, 2011. Respondent filed a Motion to Dismiss the Allegation that Plaintiff brought a Non-Meritorious Complaint in a Civil Matter which was Prejudicial to the Administration of Justice to which The Florida Bar replied on September 26, 2011. Both motions were denied by the Referee at the final hearing.

The Referee held a final hearing in Pensacola, Florida, on September 27, 2011. Pursuant to the Referee's instructions, The Florida Bar submitted a written Closing Argument on October 21, 2011, and a Notice of Supplemental Filing on November 4, 2011. Respondent failed to submit his closing argument on the due date given by the Referee. A case status conference was held on November 29, 2011, and Respondent submitted his Closing Argument on the same date. After the case status conference, the Referee issued an Order on Telephonic Case Status Conference dated December 6, 2011, in which he required the parties to submit proposed findings of fact and conclusions of law by January 6, 2012. The Florida Bar submitted its written proposed findings of fact and conclusions of law on January 6, 2012. Respondent did not file any proposed findings of fact or conclusions of law for the Referee to consider.

A final penalty hearing was scheduled on March 15, 2012, with Respondent's agreement in Pensacola, Florida. On February 9, 2012, the Referee issued his preliminary report of referee with only his findings of fact and conclusions of law, reserving jurisdiction on the penalty and taxable costs. On that same date, the Referee entered, nunc pro tunc to September 7, 2011, an Order denying The Florida Bar's Motion in Limine, an Order denying Respondent's Motion to Dismiss the Allegation that Plaintiff Brought a Non-Meritorious Complaint in a Civil Matter Which Was Prejudicial to the Administration of Justice and an Order denying Respondent's Ore Tenus Motion for Judgment in his Favor.

On February 10, 2012, Respondent filed a Motion for Rehearing on the Referee's Report to which The Florida Bar replied on March 6, 2012. On March 1, 2012, Respondent filed a Petition for Writ of Certiorari with the Florida Supreme Court, serving Bar counsel and the Referee via email on the same date. On March 3, 2012, Respondent filed an Amended Petition for Writ of Certiorari with the Court, serving the same parties. On March 5, 2012, Respondent filed two Motions for Stay of the Penalty Hearing that were denied by the Court on March 14, 2012.

On March 6, 2012, Respondent filed a Notice of Nonattendance with the Referee stating that he did not intend to appear at the penalty hearing whether it was scheduled in Pensacola, Florida, or Panama City, Florida. On March 7, 2012, the

Florida Bar filed its Reply Objecting to Respondent's Petition for Writ of Certiorari. On March 8, 2012, the Referee issued an Amended Preliminary Report of Referee, an Amended Notice of Hearing transferring the location of the penalty hearing to Panama City, Florida, and entered an Order Denying Respondent's Motion for Rehearing on Referee's Report. On the same date, Respondent filed a Motion to Strike The Florida Bar's Reply Objecting to Respondent's Petition for Writ of Certiorari to which the Florida Bar replied on March 21, 2012. The Florida Bar filed its Reply to Respondent's First Amended Petition for Writ of Certiorari on March 9, 2012. On April 2, 2012, The Florida Bar filed a proposed Report of Referee and Respondent filed a Penalty Phase Recommendation regarding an appropriate disciplinary sanction.

On April 17, 2012, the Court denied Respondent's Petition for Writ of Certiorari and Motion to Strike The Florida Bar's Reply. On April 18, 2012, the Referee issued his Report. On April 22, 2012, Respondent filed a Motion for Reconsideration to which The Florida Bar replied, and on May 17, 2012, it was denied by the Referee.

On June 2, 2012, Respondent filed a First Amended Petition for Review and an Initial Brief with the Florida Bar. The Court sua sponte struck Respondent's Initial Brief for noncompliance with the appellate rules on June 11, 2012, allowing him until July 2, 2012, to file an Amended Initial Brief. On June 12, 2012, The Florida Bar filed its Cross Petition for Review. On June 25, 2012, Respondent filed a Motion to

Disqualify and to Dismiss to which The Florida Bar replied that was denied by the Court on September 25, 2012. Respondent filed a First Amended Initial Brief on August 20, 2012, and an Appendix to Second Amended Initial Brief on August 21, 2012. The Court granted The Florida Bar until October 5, 2012, to file its Answer Brief and Cross Petition for Review.

## **STATEMENT OF THE FACTS**

Respondent's Statement of the Facts in his Initial Brief is incomplete and does not specifically address all the factual issues as set forth in the Referee's final report. For the sake of clarity and completeness, The Florida Bar has set forth its own Statement of the Facts in the Answer Brief. The following facts were found by the Referee in his report and The Florida Bar does not dispute these findings of fact or conclusions of law as to Rules 4-3.4(g) and 4-8.4(d):

1. On December 26, 2002, Respondent filed a civil lawsuit on behalf of his client, Todd Quinn, (the "Plaintiff") against Elouise Reisinger,(the "Defendant") on one count of malicious or tortious interference with a business relationship, and on a second count of slander. See Todd Quinn v. Eloise Reisinger, Okaloosa Circuit Court Case No. 2002 CA 5207.

2. On October 29, 2003, Defendant's attorney filed a Motion for Summary Judgment.

3. On January 27, 2004, Defendant's attorney filed the depositions of Todd Quinn, Elouise Reisinger, Wanda Walker, Wayne Walker, Tom Cannon, Ruby Ellen Bryant, and Carol Kelley, in support of his Motion for Summary Judgment. See TFB Exhibits 8, 17-22.

4. On April 13, 2004, the circuit court held a hearing at which the parties' argued Defendant's Motion for Summary Judgment.

5. On June 2, 2004, the circuit court entered a Final Summary Judgment in favor of the Defendant. Specifically, the circuit court found (a) there was no admissible evidence upon which a cause of action for malicious or tortious interference with a business relationship or slander could stand; (b) the conversations between the Defendant and Wanda Walker, the wife of the owner of Ace Hardware, were hearsay and inadmissible; (c) even if the conversations were admissible, there was nothing in the conversations that was false or malicious; (d) Count II, Slander, was without merit because there was no evidence to meet the burden of proof to support such a cause of action. The court reserved jurisdiction only to rule upon Defendant's Motion for Attorney's Fees and Costs pursuant to §57.105 Florida Statutes. Respondent did not appeal the Final Summary Judgment. TFB Exhibit 23.

6. On October 19, 2004, the circuit court held a hearing on Defendant's Motion for Attorney's Fees and Costs.

7. Subsequent to the motion hearing, the circuit court issued its Order on Defendant's Motion for Attorney Fees and Costs dated October 29, 2004 (the "Order"). TFB Exhibit 2.

8. In its Order the Court made the following findings:

The Plaintiff and his Attorney, Bruce Committe, PhD., knew or should have known that the claims asserted in their two count complaint:

- a. Were not supported by the materials facts necessary to establish the claims asserted, and,
- b. Would not be supported by the application of then-existing law to those material facts, and,
- c. Plaintiff's two count claim was frivolous.

See also, TFB Exhibit 25, October 19, 2004, Transcript at p. 39.

9. The Court ordered the sum of \$13,000 in fees and costs to be paid in equal shares by the Plaintiff and Respondent.

10. In that same Order, the Court determined that two orders requested by Respondent relating to Defendant's Amended Counterclaim were moot and therefore dismissed.

11. On November 22, 2004, when no monies were paid, the Defendant's attorney filed a Demand for Payment and Motion for Contempt, to enforce Order Granting Defendant's Attorney's Fees and Costs.

12. After consideration of the total record on appeal, the 1st DCA affirmed per curiam all of the lower court's decisions on February 27, 2007. TFB Exhibit 28.

13. On May 2, 2008, the Defendant wrote to Respondent requesting payment of the attorney's fees and costs as set out in the Order. TFB Exhibit 5.

14. In response, on May 6, 2008, Respondent wrote to the United States Attorney, Middle District of Alabama, accusing the Defendant of attempting to extort

money from him, and requesting that they prosecute both her and any person/attorney who assisted her in composing the letter to him. TFB Exhibit 10.

15. In a further attempt to enforce the Order, the Defendant hired attorney David Simpson.

16. Mr. Simpson wrote a letter to Respondent dated October 16, 2008, demanding payment for the attorney's fees and costs, but received no reply from Respondent. TFB Exhibit 6; T-Vol. I, p. 86.

The Referee then inserted a section called "Discussion and Ruling" in which he drew his conclusions of law as to whether Respondent was guilty of violating the Rules. The Florida Bar does not dispute the following paragraphs:

19. Respondent's conduct in contacting the federal authorities in Alabama claiming extortion by the Defendant was prejudicial to the administration of justice and also constituted an act wherein the Respondent participated in presenting charges solely to obtain an advantage in a civil matter in violation of 4-8.4(d) and 4-3.4(g) RRFB.

20. The evidence at the hearing in this cause revealed that the Respondent received a letter from the Defendant demanding payment of the attorney fees and costs awarded her by the presiding judge in her F.S. §57.105 action. In response to the letter, the Respondent sent correspondence to the United States Attorney claiming that

the Defendant was trying to extort money from him in violation 18 USC 876(d). The letter was not copied to the Defendant. The Defendant testified at the hearing in this matter that she did not remember receiving a copy of the correspondence directed to the United States Attorney. On the same date the Respondent sent correspondence to the Bar claiming that the Defendant and her attorney were attempting to extort money from him via the U.S. mails. Significantly, this correspondence included a copy of the Respondent's letter to the U.S. Attorney and was copied to the Defendant.

Given the timing of the Respondent's letters to both the U.S. Attorney and the Florida Bar in relation to the Defendant's demand for payment, this Referee concludes that the Respondent's sole purpose in writing the letters was to gain an advantage in the underlying civil proceeding by intimidating the Defendant into deciding not to pursue her rights to collect F.S. §57.105 fees and costs from him. The fact that this Referee has concluded that the Order granting the fees and costs was improvidently entered in the first place in no way ameliorates the seriousness of the Respondent's violation of 4-3.4(g) and 4-8.4(d) RRFB .

The Florida Bar does dispute the Referee's conclusions of law in the following paragraphs:

17. The Respondent testified at the hearing that he did not have the financial ability to comply with the Order. No evidence was presented by the Bar to

demonstrate by clear and convincing evidence that the Respondent had the financial ability to comply with the Order. As a consequence, the Bar has failed to prove the Respondent willfully failed to pay his share of attorney fees and costs associated with the underlying litigation. The Bar has not offered any law to support an argument that a member of the Bar who is financially unable to comply with an Order of the Court directing the payment of attorney fees and costs has knowingly disobeyed an obligation under the rules of the tribunal. As a consequence, the Referee is unable to conclude that the Bar has met its burden of proof that the Respondent violated 4-3.4 (c).

18. The Bar has also failed to prove by clear and convincing evidence that the Respondent, in filing his complaint against the Defendant, asserted an issue not supported by law or fact. This finding merits further discussion.

First and foremost, the Respondent's complaint filed in the underlying case was not frivolous and it is this Referee's conclusion that the Order should not have been entered in the case.

The Respondent alleged in a two count complaint against the Defendant, a valid cause of action for tortious interference with a business relationship and for slander. Not only did the lawsuit state a valid cause of action, it is apparent from the discovery taken during the pendency of the litigation that there were sufficient facts to support a prima facie case for each of the Plaintiff's claims.

The elements of tortious interference with a business relationship are: (1) the existence of a business relationship, not necessarily evidenced by an enforceable contract, under which the plaintiff has legal rights; (2) the defendant's knowledge of the relationship; (3) an intentional and unjustified interference with the relationship by the defendant; and (4) damage to the plaintiff as a result of the interference. See: Palm Beach County Health Care District vs. Professional Medical Education, Inc., 13 So.3d 1090 (4th DCA 2009). Note further, that the cause of action covers interference with a contract terminable at will, as existed in the underlying case. See: Nowik v. Mazda Motors of America (East), Inc., 523 So.2d 769 (Fla. 1st DCA 1988); Magre v. Charles, 729 So.2d 440 (5th DCA 1999).

In Plaintiff's claim for slander, the Respondent alleged that the Defendant maliciously communicated with the Plaintiff's employer in an effort to get him fired and that as a result, the Plaintiff was fired from his job and sustained damages.

In her deposition, the Defendant acknowledged calling the Plaintiff's employer's wife and telling her that the Plaintiff "ripped her off" regarding plumbing work that had been done by him. The complaint alleged that she made the call maliciously. It apparently was the Plaintiff's belief, that in the common vernacular, "ripped her off" meant an allegation of larcenous behavior on his part.

The fact that the Defendant was free to assert a qualified privilege in making the communication which may have resulted in a verdict in her favor in no way rendered the Plaintiff's claim frivolous.

From the record, the Referee can surmise that this was the defense the Defendant was relying upon, since it could be argued that she believed she had a moral obligation to make the phone call to the employer in an effort to get him to stop the Plaintiff from engaging in the alleged wrongful conduct. See: Magre at p. 443: 19 Fla. Jur. 2d §66 Defamation and Privacy.

From a review of the record in the underlying case, it appears that as of the time of Defendant's Motion for Summary Judgment, there may have actually existed a material issue of fact to be resolved by the fact finder. However, the judge assigned the case did not see it that way and concluded that the record did not support such a finding and granted summary judgment in favor of the Defendant. (It is interesting to note that in his Final Summary Judgment, one of the reasons given by the judge in support thereof was his belief that the Defendant's conversation with the employer's wife wherein she made the alleged slanderous comment constituted inadmissible hearsay. This would not be the case if the Plaintiff argued that the Defendant's statement was an admission by a party-opponent. See: F. S. §90.803(18)(a) ).

In any instance, it is the conclusion of this Referee that the Order was entered in error because the Plaintiff's claim was legally and factually cognizable. Nothing in the record admitted as evidence in this matter supports a conclusion that the claim made by the Plaintiff lacked legal or factual merit. For the reasons set forth herein, the Referee concludes that Respondent's claim on behalf of his client did not violate 4-3.1 RRFB.

## **SUMMARY OF ARGUMENT**

The Report of Referee found Respondent guilty of violating Rules 4-3.4(g) and 4-8.4(d). In challenging the Referee's findings of fact and conclusions of law as to these two Rules, Respondent has presented a plethora of arguments, including inapplicable federal constitutional and statutory claims to unfounded accusations of unethical conduct and improper requests for attorneys fees under §57.105, Fla. Stat.(2010).

The underlying premise to most of Respondent's arguments is that Reisinger committed "attempted extortion" when she wrote a letter dated May 2, 2008, demanding payment of a valid Florida judgment that had been affirmed by the First DCA on February 27, 2012. She claimed that Respondent had misstated the facts in his letter to her dated February 3, 2008, when he claimed that he did not owe her any money. She also stated in that same letter that she intended to contact The Florida Bar to report him for the same practice of pursuing frivolous and nonmeritorious actions that caused him to be suspended previously. Reisinger had a right to demand payment on a valid Florida judgment, and she had a right to complain to The Florida Bar. On May 6, 2008, however, Respondent reported Reisinger to the federal authorities for "attempted extortion." Respondent's underlying premise that his report to the federal

authorities was protected by federal constitutional law and statutes is erroneous, and his actions violated Rules 4-3.4(g) and 4-8.4(d) as found by the Referee.

The Referee also generally concluded that based on a review of the evidentiary record in the Quinn case, Respondent did not violate Rule 4-3.1. The Florida Bar asserts that the Referee erred in drawing this conclusion of law because the evidentiary record clearly supports the violation of Rule 4-3.1 including the Final Summary Judgment, the Order Granting §57.105 attorney fees and costs, and the Final Judgment in the trial case, as well as the per curiam affirmed decision of the First DCA. The Florida Bar contends that the Referee should have followed the First DCA's decision because the Referee was sitting in that district when he issued his report. The Florida Bar relied on the clear and convincing evidence of the trial court and appellate decisions. The Referee's holding rejecting those findings creates a burden of proof problem that would require The Florida Bar to relitigate the underlying case in all violations of Rule 4-3.1 in the disciplinary proceedings.

Even if there were facts that supported Respondent's claims in the original Quinn complaint, a review of the deposition testimony indicates that Respondent could not prove false and malicious conduct by Reisinger. Consequently, the evidentiary record at the time the trial judge entered the Order on the motion for summary judgment could not support the essential elements of the causes of action that

Respondent had pled in the Quinn complaint. Therefore, the trial judge properly entered summary judgment on behalf of Reisinger.

The Order imposing attorney fees and costs was entered after a full hearing and the trial judge questioning Respondent at length as to why he believed his claims were not frivolous or nonmeritorious.

The Referee also erred when he placed the burden of proof on The Florida Bar to provide evidence to support Respondent's Fifth Affirmative Defense of inability to pay. Rule 4-3.4(c) only requires Respondent to "knowingly" violate a court's order. It does not impose the same requirements as a contempt hearing with willful and contumacious conduct. The Florida Bar is pursuing an ethical violation in a disciplinary proceeding that is not analogous to a contempt proceeding in civil court.

For the foregoing reasons, The Florida Bar contends that the Court should uphold the Referee's Report as to Rules 4-3.4(g) and 4-8.4(d), and find Respondent guilty of violating Rules 4-3.1 and 4-3.4(c) based on the evidentiary record.

## LEGAL ARGUMENT

### **I. THE COURT SHOULD APPROVE THE REFEREE'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO RULES 4-3.4(g) AND 4-8.4(d) BECAUSE THEY ARE BASED ON COMPETENT SUBSTANTIAL EVIDENCE.**

principle, i.e., that a referee's findings of fact enjoy a presumption of correctness that will be upheld unless the challenging party can show that the facts are unsupported by the evidence in the record, or are clearly erroneous. The Florida Bar v. Cox, 718 So. 2d 788, 792 (Fla. 1998); The Florida Bar v. McKenzie, 442 So. 2d 934 (Fla. 1983); see also, Rule 3-7.6(m)(1)(A). Moreover, the Court will not reweigh the evidence and substitute its judgment for that of the referee if there is competent substantial evidence to support the referee's findings. See The Florida Bar v. Smith, 866 So. 2d 41, 45 (Fla. 2004); The Florida Bar v. MacMillan, 600 So. 2d 457, 459 (Fla. 1992), as cited in The Florida Bar v. Lecznar, 690 So. 2d 1284, 1287 (Fla. 1997). Further, "[t]he party contending that the referee's findings of fact and conclusions as to guilt are erroneous carries the burden of demonstrating that there is no evidence in the record to support those findings, or that the record evidence clearly contradicts the conclusions." The Florida Bar v. Spann, 682 So. 2d 1070, 1073 (Fla. 1996), citing to The Florida Bar v. Miele, 605 So. 2d 866, 868 (Fla. 1992). See also The Florida Bar v.

Miller, 863 So. 2d 231, 234 (Fla. 2003) citing to The Florida Bar v. Vining, 761 So. 2d 1044, 1047(Fla. 2000).

At hearing, The Florida Bar presented clear and convincing, oral and written evidence that supports a competent substantial basis for the Referee's findings of fact and conclusions of law as to Rules 4-3.4(g) and 4-8.4(d). On the other hand, Respondent has failed to meet his burden on appeal by showing that there is no evidence in the record to support the Referee's findings of fact, or that the record evidence contradicts the Referee's conclusions as to Rules 4-3.4(g) and 4-8.4(d). Therefore, the Court should approve the Referee's findings of fact and conclusions of law as to Rules 4-3.4(g) and 4-8.4(d).

**II. REISINGER DID NOT ENGAGE IN “ATTEMPTED EXTORTION” BECAUSE SHE HAD A VALID FLORIDA CIRCUIT COURT JUDGMENT AFFIRMED BY THE FIRST DISTRICT COURT OF APPEAL UPON WHICH SHE BASED HER DEMAND FOR PAYMENT.**

After the First DCA affirmed the trial court's judgment on February 27, 2007, Reisinger began to contact Respondent to demand payment of the valid Florida circuit court judgment for fees and costs of \$6,500. TFB Exhibits 3, 4. On May 2, 2008, Reisinger sent a letter again demanding payment of the civil judgment, stating that she would not give up until she recovered on the judgment. TFB Exhibit 5. Further, Reisinger stated that if Respondent did not pay her within 60 days, she would contact

The Florida Bar because he was continuing the practice, i.e., of engaging in frivolous and nonmeritorious actions, for which he had been previously disciplined. See The Florida Bar v. Committe, 916 So. 2d 741(Fla. 2005).

Most of Respondent's arguments in his Initial Brief relate to, or are based on, Respondent's erroneous underlying premise alleging that Reisinger committed "attempted extortion" by demanding that he pay a valid Florida circuit court judgment affirmed on appeal by the First DCA. A demand letter requesting payment of a proper Florida civil judgment is not extortion because Reisinger had a legal right to demand payment and to enforce the civil judgment against Respondent in the Quinn v. Reisinger case.

After Reisinger sent the May 2, 2008 letter, Respondent sent a letter dated May 6, 2008, to the U.S. Attorney for the Middle District of Alabama reporting that Reisinger had attempted "to extort money from me" by her letter dated May 2, 2008. TFB Exhibit 10. Respondent requested that she, and anyone who had helped Reisinger write the letter, be prosecuted by the federal authorities. The timing of Respondent's letter within days of receiving Reisinger's May 2, 2008, letter leads to the conclusion that his conduct was retaliatory and harassing to intimidate Reisinger from pursuing her legal right to demand payment of the court judgment.

Based on the evidence presented at the final hearing, the Referee found:

Given the timing of the Respondent's letters to both the U.S. Attorney and the Florida Bar in relation to the Defendant's demand for payment, this Referee concludes that the Respondent's sole purpose in writing the letters was to gain an advantage in the underlying civil proceeding by intimidating the Defendant into deciding not to pursue her rights to collect F.S. §57.105 fees and costs from him. ROR-14.

Reisinger also had a right to complain to The Florida Bar regarding Respondent's conduct in the civil suit. See Tobkin v. Jarboe, 710 So. 2d 975 (Fla. 1998)(individual who files complaint against attorney and makes no public announcement of complaint is afforded absolute immunity from defamation action by complained-against attorney). Reisinger complained that Respondent had filed a frivolous and nonmeritorious civil suit against her based on the trial and appellate court decisions. In her complaint, she did not ask for, nor could The Florida Bar obtain, restitution of the assessed fees and costs in the civil court action. Reisinger, who was an elderly person, testified that the civil suit by Respondent against her for \$250,000 that was served on her on December 24, 2003, and subsequently Respondent's appeal to the First DCA, caused her great emotional and physical harm. T-107. She wanted The Florida Bar to prohibit Respondent from the practice of law so that he could not do the same thing to anyone else in the future. TFB Exhibit 1.

### **III. RESPONDENT’S FEDERAL CONSTITUTIONAL CLAIMS ARE WITHOUT MERIT.**

#### **A. Supremacy Clause**

Respondent alleges that because the U. S. Constitution provides that federal law is supreme over state law, Respondent’s report of Reisinger’s attempted federal felony “extortion” under 18 U.S.C. §4 is protected by the Supremacy Clause and he, therefore, has not violated Rule 4-3.4(g).

Article VI, Clause 2 of the United States Constitution, known as the Supremacy Clause, requires state judges to follow federal law when a conflict arises between federal law, and either the state constitution or state law. See Edgar v. Mite Corporation, 457 U.S. 624 (1982) ( The Supreme Court ruled: “...[a] state statute is void to the extent that it actually conflicts with a valid Federal statute.” Id. at 631.). Here, however, there is no conflict between federal law and state law.

Rule 4-3.4(g) is part of the Rules Governing the Florida Bar promulgated by the Florida Supreme Court. The Rule is not state law. Therefore, it does not conflict with any federal statute. In addition, the Supremacy Clause only applies if the federal government is acting in pursuit of its constitutionally authorized powers. Here, it is Respondent, not the federal government, asserting a federal right under the Supremacy Clause to avoid disciplinary action under the Florida Supreme Court’s Rules governing

Florida attorneys. The Supremacy Clause is, therefore, inapplicable to Respondent's disciplinary case.

**B. Petition Clause**

Respondent raised this Petition Clause issue before the Referee at the final hearing, but in a different context. See T-11-12. Respondent filed a Motion to Dismiss the Allegation That Plaintiff Brought a Non Meritorious Complaint in a Civil Matter Which Was Prejudicial to the Administration of Justice, claiming that the Petition Clause of the First Amendment to the U.S. Constitution protected him from prosecution under the disciplinary rules, namely, Rule 4-3.1, because he had a constitutional right to file the Quinn complaint in circuit court. The Florida Bar responded by relying on MacDonald v. Smith, 472 U.S. 479, 105 S. Ct. 2787, 86 L.Ed.2d 384(1985), a libel suit in which the Supreme Court held that there was no absolute immunity from suit under the Petition Clause. Specifically, the U.S. Supreme Court stated:

Nor do the Court's decisions interpreting the Petition Clause in contexts other than defamation indicate that the right to petition is absolute. For example, filing a complaint in court is a form of petitioning activity; but "baseless litigation is not immunized by the First Amendment right to petition. (citations omitted).

MacDonald at 1271.

The Referee denied Respondent's motion on September 27, 2011. T- 19.

For the first time on review, Respondent now raises the issue that the Petition Clause entitled him to complain to the federal government that he was a victim of a violation of the federal felony attempted extortion statute via his letter dated May 6, 2008, to the United States Attorney, Middle District of Alabama. See TFB Exhibit 10.

The Petition Clause does not grant any immunity to Respondent because his claim to the federal authorities against Reisinger that she engaged in attempted extortion by demanding payment of a valid Florida court judgment is similarly frivolous and nonmeritorious. At the time he sent his letter to the federal authorities, Respondent knew, or should have known, since February 2007, that Reisinger had a valid Florida court judgment that had been upheld on appeal. Her demand for payment was not "attempted extortion" under federal law as he misrepresented in his letter to the federal attorney. As a result, Respondent is not entitled to the constitutional protection of the Petition Clause to avoid being found guilty of violations under Florida's disciplinary Rules.

#### **IV. RESPONDENT'S CLAIMS UNDER FEDERAL STATUTES ARE WITHOUT MERIT.**

The federal statutes cited by Respondent regarding extortion and the statutory requirement to report felonies to the federal authorities are inapplicable to this disciplinary case. Reisinger obtained a valid civil judgment from a Florida trial court that imposed \$57,105 fees and costs on Respondent and his client in an Order dated October 29, 2004. TFB Exhibit 2. That Order as well as all the other trial court's Orders in the Quinn case were affirmed by the First District Court of Appeal. TFB Exhibit 28. Reisinger's demand for payment of a valid Florida court judgment does not meet the federal criteria for extortion. See 18 U.S.C. §4, 18 U.S.C. §876(d). See also Dudley v. State, 634 So. 2d 1093 (2d DCA 1994)(The crime of extortion requires malice which is defined in Florida as a threat made intentionally and without any lawful justification. Id. at 1094). Duan v. State, 970 So. 2d 903 (1st DCA 2007)(To prove extortion, there must be a malicious threat of injury against a person, which was communicated for the purpose of compelling that person to commit an act or to refrain from acting against his will.). Since Reisinger did not commit any actual federal crime, Respondent had no federal statutory right to report Reisinger to the federal authorities.

With the possibility of enforcement of the civil judgment, Respondent reported Reisinger to the federal authorities alleging extortion within days of receiving her May

2, 2008, letter. The timing of Respondent's letter to the Alabama federal attorney clearly demonstrates that Respondent's actions were retaliatory, and an attempt to threaten Reisinger to forego civil enforcement of the judgment.

**V. RULE 4-3.4(g) PROPERLY APPLIES TO RESPONDENT'S ACTIONS BECAUSE HE ATTEMPTED TO GAIN AN ADVANTAGE IN THE UNDERLYING CIVIL PROCEEDING OF QUINN V. REISINGER BY FILING A COMPLAINT WITH THE ALABAMA FEDERAL AUTHORITIES FOR ALLEGED "ATTEMPTED EXTORTION" BY REISINGER.**

Respondent is mistaken in his "Statement of the Issues, Part A." See Initial Brief at p. 7. Respondent's first issue as to whether Rule 4-3.4(g) applies to attempting to gain an advantage in a Florida Bar proceeding which is neither civil nor criminal is misleading and without merit. The underlying civil proceeding is the Quinn v. Reisinger civil suit, not The Florida Bar disciplinary case. The only civil action in which Reisinger could enforce her civil judgment was in the Quinn v. Reisinger case.

Respondent's statement in the first two paragraphs of his "Summary of the Argument" is erroneous. See Initial Brief at p.8. The Referee held that "this Referee concludes that the Respondent's **sole purpose** in writing the letters was to gain an advantage in the underlying civil proceeding....." [emphasis added], which tracks the language of Rule 4-3.4(g). The matter referred to in The Florida Bar's Complaint was the underlying civil suit, not the Bar complaint. See The Florida Bar's Complaint at

paragraphs 27 and 28. The Florida Bar specifically stated in paragraph 28 of its Complaint: “In order to gain an advantage in the civil matter that might lead to enforcement of the judgment against him, Respondent threatened Ms. Reisinger with frivolous and nonmeritorious criminal charges of extortion.” Clearly, this allegation referenced 4-3.4(g) and Respondent’s argument is without merit.

Similarly, in his section entitled “ARGUMENT”, Respondent again erroneously states that “the action in which Committee allegedly was trying to gain an advantage was this very bar action...which the Bar Rules specifically state is neither a criminal nor civil proceeding...” The Florida Bar’s Complaint specifically refers to the civil action of Quinn v. Reisinger. See paragraph 28 of the Florida Bar’s Complaint.

**VI. RULE 4-8.4(d) IS INDEPENDENTLY APPLICABLE BECAUSE RESPONDENT’S ACTIONS IN REPORTING REISINGER FOR EXTORTION TO THE FEDERAL AUTHORITIES TO GAIN AN ADVANTAGE IN THE UNDERLYING CIVIL PROCEEDING OF QUINN V. REISINGER ALSO RESULTED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.**

Respondent alleges that if Rule 4-3.4(g) “goes away” so does Rule 4-8.4(d) because Rule 4-8.4(d) depends on finding a violation of Rule 4-3.4(g). Respondent’s circular reasoning is without merit. Initial Brief at p. 15. First, the facts alleged by The Florida Bar in its complaint independently apply to Rule 4-3.4(g) and Rule 4-8.4(d). The Referee held in his Report that Respondent had violated Rule 4-3.4(g) and

Rule 4-8.4(d). See ROR-13. Nowhere in the Report does it state that the Referee's finding on Rule 4-8.4(d) is dependent on a violation of Rule 4-3.4(g).

**VII. THE FLORIDA BAR, INCLUDING GRIEVANCE COMMITTEE, BAR COUNSEL, STAFF COUNSEL, AND THE REFEREE FOLLOWED THE RULES REGULATING THE FLORIDA BAR IN INITIATING AND PURSUING ITS COMPLAINT AGAINST RESPONDENT.**

Respondent's bare assertions that The Florida Bar, Bar Counsel, Staff Counsel and the Referee engaged in unethical conduct are unsupported by the record and without merit. The Florida Bar followed the procedures set down by the Supreme Court in the Rules Regulating The Florida Bar in pursuing its complaint against Respondent. The grievance committee proceedings were confidential, and Respondent was not present during the grievance committee's deliberations. After the grievance committee found probable cause, Rule 3-3.2(b)(1) requires The Florida Bar to file a Complaint based on the rule violations found by the grievance committee. Staff Counsel and Bar Counsel are required to sign the pleadings and submit them to The Florida Supreme Court.

Further, Bar Counsel is an advocate for The Florida Bar. When Respondent voluntarily chose to not appear at the final penalty hearing, Bar Counsel did not have any duty to argue his case for mitigation before the Referee. Respondent's first mitigating factor was not accurate. See Initial Brief at pp. 19-20. The Referee

concluded Rule 4-3.1 did not apply because Respondent's claims in the Quinn case did not lack legal or factual merit and that the Order granting fees and costs was "improvidently granted" by the trial judge. The Referee never mentioned the First DCA's affirmed *per curiam* decision in his findings on Rule 4-3.1. See ROR-10-13.

Respondent's second mitigating factor is also misleading. Committe had already argued his defense that he was required to report Reisinger to the federal authorities under 18 U.S.C. §4. The Referee, nor The Florida Bar, agreed with this position as evidenced by the fact that the Referee did not rely on any of Respondent's federal legal arguments in his Report. Further, although Respondent did not copy Reisinger directly with his May 8, 2008, letter to the federal authorities, the Referee did state in his Report that on that same date, Respondent sent a letter to The Florida Bar attaching the May 8, 2008 letter to the federal authorities, and copied Reisinger with both letters. TFB Exhibit-29.

Finally, §57.105, Fla. Stat.(2010) does not apply to disciplinary proceedings. There are no fees awarded in disciplinary cases. Rule 3-7.6(q) sets forth the allowable taxable costs in disciplinary cases.

## **CROSS PETITION ARGUMENTS**

For the reasons set forth below, The Florida Bar contends that the Referee's conclusions of law that Respondent is not guilty of violating Rules 4-3.1 and 4-3.4(c) were erroneous.

### **VIII. THE REFEREE ERRED IN CONCLUDING THAT RESPONDENT WAS NOT GUILTY OF VIOLATING RULE 4-3.1 BECAUSE THE RECORD EVIDENCE CLEARLY CONTRADICTS HIS CONCLUSIONS OF LAW.**

In his report, the Referee included a section entitled "Discussion and Ruling" that contained his conclusions of law as to Rules 4-3.1 and 4-3.4(c). In the Discussion referencing Rule 4-3.1, the Referee stated: "...the Respondent's complaint filed in the underlying case was not frivolous and it is this Referee's conclusion that the Order [granting attorney fees and costs] should not have been entered in this case." ROR-10. Further, the Referee stated: "In any instance, it is the conclusion of this Referee that nothing in the record admitted as evidence in this matter support a conclusion that the claim made by the Plaintiff lacked legal or factual merit. For the reasons set forth herein, the Referee concludes that Respondent's claim on behalf of his client did not violate 4-3.1RRFB." ROR-13. Again, the Referee refers to this same issue when he stated in pertinent part: "The fact that this Referee has concluded that the Order

granting fees and costs was improvidently entered against the Respondent in the first place . . . .” ROR-14.

While a Referee’s findings of fact may enjoy a presumption of correctness, a “referee’s conclusions of law are not given the same presumption of correctness afforded to a referee’s findings of fact.” The Florida Bar v. Trazenfeld, 833 So 2d 734, 736(Fla. 2002). The Florida Bar contends that the Referee’s conclusion of law that the Order on attorney fees and costs should not have been granted by the trial judge is erroneous and is not supported by the evidence in the record.

The Florida Bar presented clear and convincing evidence at the final hearing that Respondent violated Rule 4-3.1 by filing a frivolous and nonmeritorious lawsuit in the Quinn v. Reisinger case. The “Final Summary Judgment,” “Order on Attorneys Fees and Costs”, the October 19, 2004, transcript, the “Final Judgment” including all the court’s prior orders, and the *per curiam* affirmed opinion of the First DCA, support The Florida Bar’s position that Respondent violated Rule 4-3.1. See TFB Exhibits 2, 23, 25, 26, and 28. In these disciplinary proceedings, Respondent has attempted to relitigate the Quinn case claiming that the trial court judge was in error when he granted summary judgment to defendant, and when he imposed Section 57.105 sanctions on Respondent and his client. Respondent made the same arguments to the First DCA and they were rejected. The First DCA, after a review of the lower court

record, ruled against Respondent and his client, affirming *per curiam* the lower court's decisions that were enumerated in the Final Judgment dated January 24, 2005.

The trial judge, after considering the pleadings submitted by both parties, and the argument of counsel, granted Defendant's Motion for Summary Judgment on April 13, 2004, making specific findings that Respondent had filed a frivolous and nonmeritorious lawsuit. These findings were based on the depositions of the 7 witnesses filed in the lower case, and the fact that there was no proof in the record to support Respondent's allegations in his complaint for tortious interference with a business relationship or for slander.

Again, on October 19, 2011, at the hearing on Defendant's Motion for Attorney Fees and Costs, the trial judge questioned Respondent at length about the lack of legal support for the Quinn complaint, and concluded specifically that Respondent had filed a frivolous and nonmeritorious lawsuit, imposing a \$13,000 Section 57.105 fee sanction on Respondent and his client. See TFB Exhibit 25 at pp. 23-39.

In his First Amended Initial Brief on appeal to the First DCA, Respondent specifically appealed the issues that the trial judge erred in (1) granting Defendant's Motion for Summary Judgment because there were genuine issues of fact in dispute, (2) granting Defendant's Motion for 57.105 fees, and (3) denying Plaintiff's Motion for 57.105 fees. See TFB Exhibit 27 at p. 9. After consideration of the lower court

record, the 3-4 briefs submitted by Respondent in two cases, and Reisinger's *pro se* replies, the First DCA affirmed *per curiam* the lower court's decisions on February 27, 2007.

Respondent's initial complaint set forth allegations of Tortious Interference with a Business Relationship (Count I) and of Slander (Count II). At the outset of the Quinn case, Reisinger's attorney moved for dismissal of Count I, Tortious Interference with a Business Relationship. The trial court, however, denied Defendant's Motion to Dismiss. It is a well established principle of Florida law that in ruling on a motion to dismiss, "the trial court must confine its review to the four corners of the complaint, draw all inferences in favor of the pleader, and accept as true all well-pleaded allegations" of the complaint. Sobi v. Fairfield Resorts, Inc., 846 So. 2d 1204, 1206 (Fla. 5th DCA 2003), citing to City of Gainesville v. State Dept. of Transportation, 778 So. 2d 519 (Fla. 1st DCA 2001) (the court should treat as true all of a complaint's "well-pleaded allegations, including those that incorporate attachments, and to look no further than the complaint and its attachments." *Id.* at 522). Therefore, if the circuit court considered only the allegations in Count I and took them as true, in the Quinn complaint, it could reasonably decide that Plaintiff had met the minimum standard of stating a cause of action at that point in the proceedings.

The Referee apparently reviewed the original complaint filed by Respondent in the Quinn case, and concluded that the allegations stated a “valid cause of action.” ROR-10. At this point in the proceedings, however, there was no evidence in the lower court record to oppose the Quinn allegations, and the standard of review for a motion to dismiss is different from that of a motion for summary judgment.

Defendant’s Motion for Summary Judgment was filed on October 29, 2003. The depositions of 7 witnesses were filed with the court by Reisinger’s attorney on January 27, 2004. While the purpose of a Motion to Dismiss is to test the legal sufficiency of the pleading that asserts the claim for relief, the Motion for Summary Judgment tests the sufficiency of the proof the opposing party will offer in support of a claim or defense. See 5 Fla. Prac., § 13.2(2010 ed.). After the circuit court reviewed the deposition testimony in support of the Motion for Summary Judgment, and the arguments of counsel at the motion hearing, it ruled that there were no material facts to support a cause of action for tortious interference with a business relationship or for slander. The circuit court’s Final Summary Judgment clearly states that the complaint was frivolous and without merit on both counts. Therefore, on the Motion for Summary Judgment, the circuit court ruled as a matter of law in favor of the defendant.

The court appears to have considered the admissions exception when it stated in paragraph 2d of the Final Summary Judgment that, *even if the evidence of the*

*conversation between Ms. Reisinger and Mrs. Walker was “admissible over a hearsay objection, that the totality of the said undisputed evidence indicates that there was nothing contained in the conversation that was false or malicious; that even if the conversation led to the firing of Plaintiff Todd Quinn, that there is no proof or evidence at this time that any of the statements were false and/or malicious.”* [Italics added]. The Court found that as a matter of law there was no admissible evidence whether it was hearsay or an admission by a party opponent that would support a cause of action for tortious interference with a business relationship or for slander. Since Respondent had failed to show there was any evidence to support the essential elements of false and malicious conduct by Reisinger, the trial court judge properly entered summary judgment in favor of Reisinger.

Contrary to the trial court’s holding, however, the Referee, without making any specific findings, concluded that “it is apparent from the discovery taken during the pendency of the litigation that there were sufficient facts to support a prima facie case for each of Plaintiff’s allegations.” ROR-10. Even if there were facts that supported Plaintiff’s claims, Respondent could not prove false or malicious conduct, and therefore the evidentiary record in the Quinn case could not support the essential elements of the causes of action that Respondent was pleading. See The Florida Bar’s Closing Argument at pp. 24-28.

Relying on case law, The Referee stated in his report that "...the cause of action covers interference with a contract terminable at will, as existed in the underlying case." ROR-11. Mr. Quinn, however, had no contract, either oral or written, with a terminable at will provision. He had been terminated in November 2001 for "mining" the hardware store customers. He was specifically prohibited by his employer from continuing that activity. In a "right to work" state like Florida, Mr. Quinn could have been terminated at any time. While Respondent may have relied on his client's claims to commence a law suit, he should have realized, after the deposition testimony, that he could not prove the essential elements of his two causes of action. The motion for summary judgment was not granted on the grounds that there was no dispute of fact, but rather that Respondent could not prove the basic elements of the causes of action that he had filed against Reisinger.

**IX. THE REFEREE ERRED WHEN HE FAILED TO FOLLOW THE PREVAILING PRECEDENT IN THE QUINN CASE.**

The First DCA reviewed the entire record on appeal, considered Respondent's specific appeal of the issues noted above, and affirmed the trial court's decisions in February 2007 via a *per curiam* affirmed opinion. See *Pompi v. City of Jacksonville*, 872 So. 2d 931(Fla. 1st DCA 2004)("An affirmance, even if unexplained, is a decision on the merits of the case." Id. at 933.). Contrary to the First DCA's holding, the

Referee, who is located in the First District Court of Appeal district, ignored the appellate decision finding that the Order on attorney fees and costs should not have been granted. This conclusion is directly opposed to the First DCA's decision which is the law of the case in the Quinn matter.

While there are cases where this Court has approved a referee relying on findings of fact in trial and appellate decisions, The Florida Bar is not aware of any reported cases where the referee rejected the trial and appellate court decisions and his decision was upheld by this Court. See The Florida Bar v. Tobkin, 944 So. 2d 219(Fla.2006); The Florida Bar v. Rood, 620 So. 2d 1252 (Fla. 1993).

**X. THE REFEREE ERRED WHEN HE PLACED THE BURDEN OF PROOF ON THE FLORIDA BAR TO PROVE INABILITY TO PAY AND FAILED TO FIND RESPONDENT GUILTY OF VIOLATING RULE 4-3.4(c).**

In his report, the Referee concluded that Respondent was not guilty of violating Rule 4-3.4(c) because The Florida Bar failed to prove that Respondent had the financial ability to comply with the Order on Defendant's Motion for Attorney Fees and Costs. The referee also stated that The Florida Bar failed to prove that Respondent willfully failed to pay his share of the attorney's fees and costs. The Referee erred when he shifted the burden of proof for these two issues to The Florida Bar.

In the First Amended Answer to the Complaint with Affirmative Defenses dated July 7, 2011, Respondent presented as a Fifth Affirmative Defense that “he did not have the ability to pay” at the time the Order on attorney fees and costs to in favor of Reisinger was issued. It was Respondent’s burden to present evidence to support his Fifth Affirmative Defense of inability to pay, but he failed to do so. All the financial information was in the possession of Respondent.

Respondent also alleged that he did not knowingly disobey the circuit court’s order requiring him to pay attorney fees because there were no civil contempt proceedings and he was unable to pay the judgment. Respondent failed, however, to present any documentary evidence of inability to pay, except his own bare assertions at the final hearing. T-212-213. There is no requirement under the rule to have a civil contempt proceeding before The Florida Bar can charge a violation of Rule 4-3.3(c). Further, the grounds for a civil contempt action are “willfully” and “intentional” while the Bar Rule requires only “knowingly” as a basis for ethical misconduct.

It is undisputed that Respondent knew of the trial court’s Order imposing attorney fees and costs under §57.105, Fla. Stat.(2010) from October 19, 2004, forward. It is also undisputed that Respondent, to date, has failed to pay his share, \$6,500, of the attorney fees to Reisinger or her attorney as order by the circuit court. T- 194. As of February 27, 2007, when the appellate court issued its decision, the

Quinn case was final. After that date, Reisinger testified that she made attempts to try to get Respondent to pay his share of the fees, but he refused to do so.

Respondent's assertion that the Final Judgment was without specific reference to any amount and therefore is not enforceable against him is without merit. Respondent claimed initially that the Final Judgment does not recite any particular amount that needs to be paid and is therefore fatally flawed. See TFB Exhibit 4. It is interesting to note, however, that Respondent also admits that he drafted the Final Judgment and mailed it to the trial judge for his signature. T- 147. Before opposing counsel had an opportunity to object, the Final Judgment was signed, filed with the appellate court, and appealed by Respondent on January 31, 2005. See TFB Exhibit 24. If the Final Judgment was missing certain language that Respondent claims now is essential to its validity, it appears that Respondent has only himself to blame for any deficiencies in the Final Judgment that he now relies on to deny Reisinger's claims for payment.

More importantly, the standard of review in the Bar Rule is "knowingly," not "willfully" as in a civil contempt case. "Knowingly" is defined under Chapter 4 "Preamble: A Lawyer's Responsibilities" as "actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." Respondent had actual knowledge that he owed an obligation to Reisinger from October 19, 2004, that became final on February 27, 2007. Yet, despite numerous requests from Reisinger to

do so, Respondent knowingly disobeyed the trial court's order to pay her the \$6,500 in fees. See TFB Exhibits 3, 4, 5, 6 and 7.

Further, in a civil contempt hearing, the court can order payment of the fees, incarceration, or a purge amount, and make findings as to the person's ability to pay. Here, in the disciplinary proceeding, the result is an ethical violation against Respondent. There is no way for The Florida Bar or the Referee to impose any payment or restitution requirement under the Rules.

## **CONCLUSION**

For the foregoing reasons, The Florida Bar would respectfully request that the Court approve the Report of Referee as to the findings of fact and conclusions of law in reference to Rules 4-3.4(g) and 4-8.4(d), but reject the Report of Referee as to the conclusions of law in reference Rules 4-3.1 and 4-3.4(c), and find Respondent guilty of violating Rules 4-3.1 and 4-3.4(c).

Respectfully submitted,

/s/ Olivia Paiva Klein

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing The Florida Bar's Answer Brief and Cross Petition for Review, regarding Supreme Court Case No. SC11-468, TFB File No. 2009-00,789(1A) has been forwarded by email, to Respondent, Bruce Edward Committe, at becommite@hotmail.com, this 5<sup>th</sup> day of October, 2012, with a copy furnished to Staff Counsel of The Florida Bar at his designated e-mail address of kmarvin@flabar.org on this 5<sup>th</sup> day of October, 2012.

/s/ Olivia Paiva Klein

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Olivia Paiva Klein, Bar Counsel

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

The undersigned counsel hereby certifies that The Florida Bar's Answer Brief and Cross Petition for Review dated October 5, 2012, is submitted in 14 point proportionately spaced Times New Roman font, and that this brief has been scanned and found to be free of viruses by Norton AntiVirus for Windows.

/s/ Olivia Paiva Klein

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Olivia Paiva Klein, Bar Counsel