IN THE SUPREME COURT OF FLORIDA

STUART L. STEIN,

Respondent/Appellant,

vs.

THE FLORIDA BAR,

Complainant/Appellee.

_____/

CASE NO.: 65,413
and 65,878

RESPONDENT'S REPLY BRIEF

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REPLY

Although it is well settled in Florida law that the purpose of disciplinary proceedings is to protect the public from incompetent and unethical practitioners and only secondarily to punish the offender and act as a deterrent to others [The Florida Bar vs. Pincus, 300 So. 2nd 16 (1974)], Respondent questions whether this is the true purpose of the Florida Bar when reading the Complainant's Answer Brief. The tone and content of the brief and the endless litany of cases cited, leaves one to conclude that the Florida Bar has truly lost sight of the purpose of disciplinary proceedings; which is to protect the public from incompetent and unethical practitioners. If such be the case then, the testimony at the hearing on discipline from the members of the bench regarding Respondent's competence and efficiency as an attorney clearly indicates that the public needs no protection from the Respondent herein.

The Florida Bar improperly relies on numerous cases in support of its various arguments. The Respondent chooses to respond only to a select few which are most aggregious.

The Florida Bar relies on the case of The Florida Bar vs. Scott, 197 So. 2nd 518 (Fla. 1967). In that case the Court determined that the degree of punishment depends entirely on the facts and situations presented by the records in that case. The

Florida Bar fails to continue the quote by showing to this Court that in that case the Respondent had "engaged in ambulance chasing" which the Court classified as a serious breach of the cannons of ethics. The Court also considered the type of activity that the Respondent was engaged in when determining an appropriate punishment; which included willful and purposeful conduct. None such activity is present in the case at bar.

The Florida Bar's reliance on the case of The Florida Bar vs. Pincus, 300 So. 2nd (Fla. 1974) is also misplaced. In relying on this case, The Florida Bar finds the factual situations in the two cases extremely similar. Nothing could be further from the truth. In Pincus, not only did the Respondent allow the statute of limitations to run, but he took on representation of the case knowing full well that he had never handled such a matter previously and was not competent to do so. Additionally, he negotiated a settlement with his client which he intended to pay out of his own pocket! In another matter, the Respondent converted certain monies of the clients' for his own use. None of this type of conduct is present in the case at bar.

Finally, the Florida Bar relies on the case of Hillsboro Board of County Commissioners vs. Public Employees Relation Commission, 424 So. 2nd 132 (1st DCA 1982). In that case, the Appellant requested the appeals Court to apply certain provisions of the Florida Evidence Code to the case on appeal. In rejecting

this plea, the Court stated that it is the function of the Appellate Court to determine whether the lower tribunal committed error based on the issues of evidence before it; and that therefore the Florida Evidence Code does not apply to appellate proceedings. This case is simply inapplicable to any of the factual situations at bar; especially in light of the fact that the issue as to the confidentiality was raised at many times, prior to this appeal, only to be rebuffed by the Florida Bar herein. See T112 to 114, wherein it is clear from the record that the Florida Bar was clearly made aware of the leaks prior to the disciplinary hearing but neglected to advise Respondent of any "investigation" until the time of the hearing. Moreover, United States Constitutional deprivations are never waived.

Although a state has broad powers to regulate the practice of law within its borders, in doing so it cannot ignore the rights of individuals secured by the Constitution of the United States. Brotherhood of Railroad Trainmen vs. Virginia, 377 U.S. 1, 84 S. Ct. 1113 (1964). In this connection it has been held that, the Federal Civil Rights Act (42 U.S.C.S. §1983, 1985) affords redress to a person whose constitutional rights have been infringed by state action with respect to proceedings to discipline an attorney. 7 Am Jur 2d Attorneys at Law, §2.

Finally, the Florida Bar objects to a one hundred and eighty (180) day extension of time in which to submit to punish-

ment should the Supreme Court uphold the ruling of the Referee. In objecting, the Florida Bar states that it sees ample opportunity for Respondent to protect his clients if a suspension occurs thirty (30) days after the Court's order.

If indeed the purpose of a disciplinary proceeding is to protect the public then what constructive purpose could be served by requiring the Respondent to submit to a suspension within thirty (30) days, which suspension would, in the context of the Respondent's busy criminal and civil trial practice, immediately and irreparably prejudice numerous clients. The Respondent invites the Florida Bar to review the Respondent's trial schedule prior to making blanket statements with regard to what is "ample opportunity" in this matter.

Alternatively, Respondent suggests that the suspension begin, not at a stated date, but at the earliest time which would not prejudice Respondent's clients, pending approval of this Court. This can be accomplished by an Order of this Court requiring that the undersigned and local Bar counsel confer as to the approprate time for the suspension, taking into consideration the trial calendar of the Respondent, but in no case would the suspension take place more than the 180 days from this Court's order, should the Court require a suspension.

CONCLUSION

As a result of the foregoing, it is respectfully requested that this Court dismiss all counts against the Respondent or alternatively consider the foregoing in mitigation of punishment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief of the Respondent/Appellant was furnished by mail to: David M. Barnovitz and Richard B. Liss, Bar Counsel, The Florida Bar, 915 Middle River Drive, Suite 602, Fort Lauderdale, Florida 33304 this 23rd day of April, 1985.

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