

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. SC00-1286

v.

TFB File No. 2000-00,955(02)

LUKE JOSEPH HOBIKA,

Respondent.

-----/

ANSWER BRIEF

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

Undersigned counsel does hereby certify that the Answer Brief of Complainant/Appellee is submitted in 14 point proportionately spaced Times New Roman font, and that the computer disk filed with this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

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PRELIMINARY STATEMENT

Appellant/**Respondent**, will be referred to as Respondent, or as Luke Joseph Hobika throughout this brief. The appellee/**The Florida Bar**, will be referred to as such, or as the Bar.

References to the Report of Referee shall be by the symbol **RR** followed by the appropriate page number.

References to the transcript of the hearing before the Referee on October 17, 2000, shall be by the symbol **TR** followed by the appropriate page number.

References to Respondent's initial brief shall be by symbol **IB** followed by the appropriate page number.

References to specific pleadings will be made by title.

STATEMENT OF THE CASE AND FACTS

Apellee adopts the statement of the case and facts set forth in the Initial Brief of Apellant/Respondent.

SUMMARY OF ARGUMENT

THE COURT IS NOT BOUND BY THE DISCIPLINE
IMPOSED BY A FOREIGN JURISDICTION

ARGUMENT

THE COURT IS NOT BOUND BY THE DISCIPLINE IMPOSED BY A FOREIGN JURISDICTION

Respondent correctly observes that, since the disbarment imposed by the New York Bar is subject to application for readmission after passage of seven years, whereas the disbarment recommended by the Referee here is permanent, the sanction to be imposed in Florida is more severe than that imposed in New York, upon which the Florida discipline is based.

Nonetheless, this Court recognized in The Florida Bar v. Abrams, 402 So 2d 1150 (Fla. 1981), that it is not bound by the discipline imposed in a foreign jurisdiction and must analyze and deal with the respondent's improprieties according to the standards of this state, not of the foreign jurisdiction. In so holding, this Court stated "We are not limited by the findings of the foreign jurisdiction, and may certainly go beyond them in our proceedings." Abrams, *supra* at p. 1153.

Thus, if permanent disbarment falls within the standards of this state, with regard to the egregiousness of the misconduct of which Respondent stands adjudicated, the fact that it may be more severe than the sanction imposed in New York is not controlling.

Respondent's misconduct consisted of the perpetration of a fraud upon the Worker's Compensation Board, subornation of perjury by the sister of Respondent's client who impersonated the client at the Worker's Compensation hearing, and fraud upon an unsuspecting colleague who was enlisted to cover the hearing at which the perjury was committed. Respondent was convicted of criminal solicitation, a Class A misdemeanor, in Syracuse, New York.

Upon reviewing the egregious nature of the misconduct, which has been admitted by Respondent, the Referee exercised his discretion in recommending permanent disbarment. As observed in The Florida Bar v. Lecznar, 690 So 2d 1284 (Fla. 1997), and The Florida Bar v. Pellegrini, 714 So 2d 448(Fla. 1998), the Court will not second guess a referee's recommended discipline as long as that discipline has a reasonable basis in existing case law. Respondent has failed to refer the Court to any case law that would suggest that the referee's recommendation is unreasonable.

Rule 3-5.1(f), Rules Regulating The Florida Bar, was amended effective October 1, 1998, adding the language "Permanent disbarment shall preclude readmission." where the rule had previously been silent concerning a permanent aspect of disbarment. Prior to the 1998 amendment, permanent disbarment was not truly permanent in nature, as evidenced by the holdings in In re. Monte K. Rassner, 265 So 2d 363 (Fla. 1972) and The Florida Bar v. Hipsh, 586 So 2d 311 (Fla. 1991), where

the Court stated

"To arbitrarily and immutably cut off the opportunity to seek reinstatement to the Bar, regardless of a subsequent demonstrated record of rehabilitation, good conduct and clean living, is too harsh and unremitting. It is out of keeping with the Biblical philosophy that no one is altogether beyond redemption." (Rassner, *supra*, at p.363; Hipsh, *supra* at p. 312).

It is logical to assume that the Court, in adopting the language of the amendment to Rule 3-5.1(f), intended that permanent disbarment should be truly permanent in nature, for why amend the rule if the intent was not to retreat from the policy announced in Rassner and Hipsh? Thus, the Court appears to have determined that there is a class of cases where the misconduct is so egregious in nature that the offending lawyer should never be readmitted, notwithstanding any degree of rehabilitation, good conduct and clean living. It does not appear that any of the cases reported since the 1998 amendment of Rule 3-5.1(f) imposed permanent disbarment, however, and thus the question, of whether or not the misconduct in the case at bar is sufficiently egregious to warrant permanent disbarment under the amended rule, does not appear to be settled.

CONCLUSION

The Referee's recommendation of permanent disbarment should be accepted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief regarding Supreme Court Case No. SC00-1286, TFB File No. 2000-00,955(02) has been mailed by first class mail to Antonio Faga, Counsel for Respondent, at 375 Twelfth Avenue South, Naples, Florida 34102, on this _____ day of January, 2001.

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