

IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. SC 03-1408
LOWER TRIBUNAL NO. 4D 02-4553

DONALD A. TOBKIN
APPELLEE/PETITIONER,

V.

MARILYN TOBKIN,
APPELLANT/RESPONDENT

**APPELLEE'S BRIEF IN SUPPORT OF MOTION TO INVOKE
DISCRETIONARY JURISDICTION PURSUANT TO FLORIDA
RULES OF APPELLATE PROCEDURE 9.030 (a)(2)(A)(vi) AND
RULES REGULATING THE FLORIDA BAR 3-1.2 & 3-3.1**

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PRELIMINARY STATEMENT

In this brief, Donald Alan Tobkin, will also be called “DONALD”, or “Appellee or Petitioner”; Marilyn Byrd Tobkin, RN, Esquire will also be called “MARILYN”, or “Appellant or Respondent”; the Braverman law firm will also be called “BRAVERMAN”; and Circuit Court Judge Vitale will also be called “JUDGE VITALE”. The Record Appendix is designated as (A-1) through (A-8) and is filed separate in this appellate cause.

**STATEMENT OF THE CASE AND FACTS RELATED TO THE
JURISDICTIONAL ISSUE**

The Florida Supreme Court has two alternative bases to accept discretionary jurisdiction here as follows:

One: Express and direct conflict on a holding, dicta, or public policy basis with this Court's own rules regulating lawyer and the Florida Bar self regulation process or another Florida District Court opinion with (A-4) the 3 panel member Florida 4th D.C.A. 4/16/03 opinion, which reversed Broward trial Judge Linda Vitale's disqualification of Braverman as an adversary in divorce litigation and where Braverman earlier had access to Donald Tobkin's confidential / privileged data while Braverman's Florida Bar Committee investigated Donald Tobkin; thus giving the appearance that Braverman had obtained an unfair tactical litigation advantageous over Donald Tobkin by virtue of Braverman's indisputable grievance committee membership (Article V. §3 (b)(3), Florida Constitution and Florida Appellate Rule 9.030 (a)(2)(A)(iv))

Two: This Court has the exclusive jurisdiction over matters related to regulation of both "displinees" and "displiners" vis-à-vis at the Florida Bar grievance committee level and network.

SUMMARY OF ARGUMENT

The decision of the 4th District Court of Appeal granting the writ of certiorari and quashing the lower court's order of disqualification should be reviewed by this court as (1) expressly and directly in conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law, pursuant to the Florida Rules of Appellate Procedure 9.030(a)(2)(A)(vi) and/or (2) as the court of exclusive jurisdiction with regard to matters relating to the discipline of persons admitted to the practice of law, pursuant to the Rules Regulating the Florida Bar 3-1.2 & 3-3.1.

Despite Braverman's claimed lack of memory of obtaining secret, confidential, privileged data on Donald Tobkin while Braverman sat as grievance committee member regarding, Donald Tobkin, the Fourth District Court of Appeal should have "imputed" said obtainable sensitive information to the entire grievance committee, including Braverman.

To deviate otherwise as the 4/16/03 4th D.C.A. opinion, did, further eroded the public's confidence in lawyer self regulation. Certainly, if Braverman's grievance committee were called a grievance committee "law firm", then the public would be reassured the imputed knowledge and disqualification of the entire committee membership would have occurred.

ARGUMENT

The decision of the Fourth District Court of Appeal quashing the lower tribunal's disqualification of the Appellee's attorney is in express and direct conflict with rulings from both the Fifth District Court of Appeal, *DeBartolo Corp. v. Petrin*, 516 So.2d 6 (Fla. 5th DCA 1987) and the Florida Supreme Court in *Richardson v. State* 141 Fla. 218 (Fla. 1940).

The holding in the Fourth District Court of Appeal concluded that, “An order involving the disqualification of counsel must be tested against the standards imposed by the Rules of Professional Conduct,” citing to *City of Lauderdale Lakes v. Enterprise Leasing Co.*, 654 So.2d 645, 646 (Fla. 4th DCA 1995). The Court went on to state, “We find nothing in the rules that would require the disqualification of Mr. Braverman's firm given the facts of this case...”

However in *DeBartolo*, the Fifth District Court of Appeal, reached a contrary result, citing to Rule 4-1.10(b), Rules Regulating the Florida Bar (1987) which states:

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had

acquired information protected by [rules 4-1.6](#) and [4-1.9\(b\)](#) that is material to the matter.

While the facts of the case at bar do not specifically involve the leaving of one firm's employ for that of another, the holding is no less applicable to the situation before the court. The "firm" with which the attorney was employed and, thereby exposed to confidential information, was none other than the Florida Bar. To be entrusted with, by virtue of participation in the grievance committee on behalf of the Florida Bar, certain confidential information relating to one of its members and, subsequently be allowed to profit by the abuse of that trust and knowledge, would be substantially in contradiction of the purpose of that "firm," namely the Grievance Committee of the Florida Bar. Indeed, it is difficult to fathom how the appearance of impropriety could not be evident in such a result and how the members of the Bar and the public would benefit by such a holding.

On the other hand, the *DeBartolo* holding results instead in upholding the integrity of the judicial system and its court officers by stating the proposition that "[T]his rule makes the disqualification turn solely on possession of information concerning the former client."

In support of this policy decision, this court in *Richardson* stated the following with regard to comparable circumstances:

An attorney, wherever he may be employed, must faithfully, honestly, and consistently represent the interests and rights of those by whom he is engaged. He must discharge his duties with the strictest fidelity and observe the highest and utmost good faith. He cannot use any information garnered from his position for his own or others' benefit, nor may he divulge any such information to others; nor may he represent conflicting interests. Canons of Professional Ethics, Nos. 6, 9 and 10, [125 Fla. 501](#). *Id* at 221-222.

CONCLUSION

This Court has the exclusive jurisdiction over matters relating to the discipline and regulation of the members of the Florida Bar, the integrity of which has been placed in jeopardy by the holding of the Fourth District Court of Appeal. Additionally, this Court may assert jurisdiction over the matter as a result of the conflict between the holding in the Fourth District Court of Appeal and the conflicting holdings in *Richardson v. State* 141 Fla. 218 (Fla. 1940) and *DeBartolo Corp. v. Petrin*, 516 So.2d 6 (Fla. 5th DCA 1987).

**CERTIFICATE OF COMPLIANCE WITH
FL RAP 9.100 (I) AND 9.210**

I HEREBY CERTIFY that the Appellate papers comply with the requirements of FL. R. App. P. 9.100 (R) and 9.210.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct of the Jurisdiction Brief Index and Appendix was furnished via mail / fax / hand delivery on this 11th day of July, 2003 to: **MARILYN BYRD TOBKIN, RN, Esquire**, 1247 Lincoln Street, Hollywood, Florida 33019, **ALAN BRAVERMAN, Esquire**, 625 N.E. 3rd Avenue, Fort Lauderdale, Florida 33302, **TRACY NEWMARK, Esquire**, 3850 Hollywood Boulevard, Suite 300, Hollywood, Florida 33021, and **CIRCUIT JUDGE LINDA VITALE**, Broward County Courthouse, 201 S.E. Sixth Street, Fort Lauderdale, Florida 33301.

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