

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant/Appellant/Cross Appellee,

Case Nos. SC96087
SC97020

v.

TFB File Nos. 1998-00,548 (03)
1998-00,860 (03)

JOHN L. SCOTT,

Respondent/Appellee/Cross Appellant.

REPLY BRIEF

Edward Iturralde, Bar Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5845
Florida Bar No. 886350

John Anthony Boggs, Staff Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5600
Florida Bar No. 253847

John F. Harkness, Jr., Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5600
Florida Bar No. 123390

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

Undersigned counsel does hereby certify that the Reply Brief of Complainant/Appellant/Cross 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.

ARGUMENT IN RESPONSE TO MR. SCOTT'S BRIEF

Throughout Mr. Scott's forty page brief he repeatedly states that the Referee erred in making certain findings or neglected to make other findings. His summary, found on page twenty-eight of his brief, accurately summarizes the entire brief:

"The Referee has believed, on every significant point, the testimony of Gloria Lee . . . [and] has ignored the testimony of the Respondent."

Mr. Scott's entire brief, is a re-weighing of the evidence submitted to the Referee – one that does the exact opposite of what he accuses the Referee of doing; credit his testimony as more believable than Ms. Lee's on every material point. What Mr. Scott has failed to do, however, is show that the Referee's findings were not supported by competent evidence. The Referee had every right to make this credibility determination. Indeed, it was his obligation to make such decisions. Unfortunately for Mr. Scott, he has neither the duty nor the authority to make credibility determinations about his own testimony.

What Mr. Scott needed to do was overcome the presumption of correctness that the Referee's findings enjoy, and prove that the record does not support the findings. He was unable to do so because the record is replete with evidence sufficient to support the findings. The taped conversations between Mr. Scott and his victimized client sufficiently corroborates the victim's testimony. (CX 6 and 8)

These tapes clearly demonstrate that Mr. Scott was ready, willing, and able to perform a sex act with his client in his office during a scheduled appointment.

These tapes also indicate that similar actions have occurred in his office in the past.

Mr. Scott attempts to argue to this Court, as he did to the Referee, that this woman came to his office at some time after he terminated representing her on consultation regarding her other child and an automobile accident case, but before representing her in a termination of parental rights case. Mr. Scott's argument was not accepted by the Referee and should not be accepted by this Court. His theory is not credible. He has not met the burden of showing that the findings are unsupported in the record.

And the tapes are not the only evidence that corroborates the victim's testimony. The Bar offered nine witnesses and forty-seven exhibits from which the Referee made his findings. The Referee plainly states that he heard Mr. Scott's denials and theories, resolved the conflicts in the evidence, and found that the Bar proved each and every violation by clear and convincing evidence. (RR pp 8 - 9).

Mr. Scott then has the unmitigated arrogance to suggest that the appropriate discipline would be that he accept one or two pro-bono cases per month. His misconduct, as found by the referee, warrants nothing less than disbarment.

CONCLUSION

Mr. Scott has failed to carry his burden and show this Court that the Referee erred because the findings are unsupported by the record. Quite the contrary, the Referee documented his Report with ample citations to the record. As argued in The Bar's Initial Brief, Mr. Scott's conduct warrants disbarment. This Court should approve the Referee's findings regarding facts and violations but impose disbarment as the appropriate discipline.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief regarding Supreme Court Case Nos. SC96087 and SC97020 has been mailed by certified mail # _____, return receipt requested, to John L. Scott, Respondent, at his record Bar address, on this _____ day of _____, 2001.

Edward Iturralde, Bar Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(850) 561-5845
Florida Bar No. 886350

Copy to Kathi Lee Kilpatrick