

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

LINDA C. SWEETING,

Respondent.

**Supreme Court Case
No. SC09-1117**

**The Florida Bar File
No. 2007-50,471(17D)**

THE FLORIDA BAR'S REPLY BRIEF
ON APPEAL FROM A REPORT OF REFEREE

LORRAINE CHRISTINE HOFFMANN, #612669
Bar Counsel
The Florida Bar
Lake Shore Plaza II
1300 Concord Terrace, Suite 130
Sunrise, Florida 33323
(954) 835-0233

KENNETH LAWRENCE MARVIN, #200999
Staff Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600

JOHN F. HARKNESS, JR., #123390
Executive Director
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600

THE FLORIDA BAR’S REPLY BRIEF

The Florida Bar’s appeal is predicated upon the referee’s failure to consider record evidence of rule violations discovered after, and therefore not specifically pled in, The Florida Bar’s complaint of minor misconduct.¹ Because respondent had specific notice of the scope of The Florida Bar’s investigation and ultimate findings regarding her misconduct (as demonstrated by the vehement defense that respondent advanced prior to, during, and after trial), The Florida Bar was entitled and obligated to advance its prosecution of the serious rule violations discovered — without the delay of renoticing the matter for probable cause hearing and refiling a new complaint — under the clear authority provided by this Court. *See The Florida Bar v. Fredericks*, 731 So. 2d 1249 (Fla. 1999), *The Florida Bar v. Batista*, 846 So. 2d 479 (Fla. 2003).

The referee misapprehended his authority and failed to consider the record evidence before him. This evidence demonstrated that respondent distributed the proceeds of a contingency fee case without a signed closing statement; that she violated her own written fee agreement with her elderly and now-deceased client, *or* failed to prepare and execute an amended written contingency fee agreement

¹ In the instant case, respondent rejected a grievance committee finding of minor misconduct, under R. Regulating Fla. Bar 3-7.4(m). Under the mandate of R. Regulating Fla. Bar 3-7.4(n), after a respondent rejects a grievance committee finding of minor misconduct, The Florida Bar’s only recourse is to file a “complaint of minor misconduct.” The referenced rule does not permit The Florida Bar to file a standard bar complaint.

with her; that she kept the whole settlement award of \$35,000 for herself and her co-counsel (claiming it as legal fees and costs for that and another case — for which fees were separately paid to successor counsel); that she refused to account for the settlement proceeds when her deceased client's daughter and personal representative demanded an accounting; and that she refused to comply with a probate court order *compelling her* to marshal the assets of the estate (specifically, the settlement proceeds) and deposit them in the probating attorney's trust account.

In her answer brief, respondent attempts to explain some of this misconduct, but is silent as to much of it. She dedicated the thrust and force of her argument to procedural and other errors she ascribed to The Florida Bar, to the personal representative, to the personal representative's attorneys, to her own former defense counsel, and to others.

The thrust and force of The Florida Bar's argument is this: respondent represented an elderly client with dementia who later had a stroke and became incapable of speech. This client was estranged from the daughter who held her power of attorney and later became her personal representative — due to a series of unfortunate family events. During this estrangement, the elderly client entrusted her power of attorney to a paid, commercial elderly care provider service. The owner of this service hired respondent to advance two lawsuits, via the elderly client's power of attorney. After the first case settled but before the \$35,000

settlement award was distributed, the elderly client died. From that point forward, no one (save the decedent's daughter/personal representative) could sign a closing statement or an amended contingency fee agreement. No one did. For a long time, the daughter/personal representative was unaware of the lawsuit and its settlement. Once she learned of it, however, the daughter/personal representative suffered a series of health challenges of her own. During the intervening time period, respondent took all of the settlement proceeds for herself and her co-counsel — violating the clear language of her original written contingency fee agreement with the client (providing for 40% fees).

Even if this Court were to find procedural errors of *any* kind, such errors cannot overcome the Bar's duty to prosecute grave misconduct of this kind and the referee's duty to consider it. As the referee did not, this matter should be remanded to the referee, for factual findings consistent with the evidence presented at trial, and for a recommendation as to discipline and costs.

Respectfully submitted,

LORRAINE CHRISTINE HOFFMANN
Attorney Bar No. 612669
Bar Counsel
The Florida Bar
1300 Concord Terrace, Suite 130
Sunrise, Florida 33323
(954) 835-0233

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Florida Bar's Reply Brief regarding Supreme Court Case No. SC09-1117, The Florida Bar File No. 2007-50,471(17D) was e-filed and furnished by regular U.S. mail to The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 S. Duval Street, Tallahassee, FL 32399-1927 and true and correct copies have been mailed by regular U.S. mail to Linda C. Sweeting, respondent, 3445 NE 30th Avenue, Pompano Beach, FL 33064-8528, and to Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300, on this _____ day of November, 2010.

LORRAINE CHRISTINE HOFFMANN
Bar Counsel

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

Undersigned counsel does hereby certify that the Reply Brief is submitted in 14 point proportionately spaced Times New Roman font, and that the brief has been filed by e-mail in accord with the Court's order of October 1, 2004. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

LORRAINE CHRISTINE HOFFMANN
Bar Counsel