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The Florida Bar v. Robert L. Roth

CHIEF JUSTICE: NEXT CASE ON THE ORAL ARGUMENT CALENDAR IS FLORIDA BAR VERSUS ROTH.

MAY IT PLEASE THE COURT. MY NAME IS NICK FRIEDMAN. I REPRESENT THE RESPONDENT, MR. ROBERT ROTH, IN THESE PROCEEDINGS. MR. ROTH IS WITH ME AT COUNSEL TABLE AND ALSO THE COUNSEL OPPOSING, FOR THE BAR IN THE CASE BELOW. LADIES AND GENTLEMEN, THE ACTION WE ARE HERE ON IS A PETITION FOR REVIEW FILED BY MYSELF, ON BEHALF OF THE RESPONDENT, OF CONDUCT THAT HE ALLEGELY ENGAGED IN FOUR YEARS AGO, ALMOST TO THE DAY.

MR. MARSHAL, I AM NOT SURE THAT THE SOUND IS WORKING HERE, AT THIS MICROPHONE.

MAYBE BECAUSE I AM TOO SHORT FOR IT, YOUR HONOR.

NO. IT CUT OFF.

CHIEF JUSTICE: IT CUT OFF.

YESTERDAY IT CUT ON WHEN SOMEONE CLAPPED.

CHIEF JUSTICE: WHY DON'T YOU TAP IT? IT SEEMS TO --

IS THAT BETTER?

I AM NOT SURE OF THE HEIGHT ADJUSTMENT ON IT. I AM A LITTLE SHORTER THAN PRIOR COUNSEL, I THINK.

CHIEF JUSTICE: TRY TO SPEAK UP.

ALL RIGHT. THANK YOU, YOUR . IFT E MY E IS NICK FRIEDMAN. I REPRESENT THE RESPONDENT ROBERT ROTH. MR. ROTH IS WITH ME AT COUNSEL TABLE. RANDOLPH BRAUM BACKER, THE OPPOSING COUNSEL FOR THE FLORIDA BAR, IS ALSO OPPOSING COUNSEL FOR THE BAR BELOW. WE ARE HERE FOR A PETITION FOR REVIEW FILED BY MYSELF ON BEHALF OF MR. ROTH, AND THE PETITION SEEKS A REVIEW FROM THE REFEREE'S REPORT WHICH ESSENTIALLY FINDS 100 PERCENT IN FAVOR OF THE BAR ON EVERY ALLEGATION THAT THEY MADE AND RECOMMENDED THE DISBARMENT OF MY CLIENT. THE REASON THAT WE ARE HERE BEFORE THE COURT, IS WE ARE WELL AWARE THAT THIS COURT TAKES THE FINDINGS OF A REFEREE AND IS LOATHE TO TRYO GOINTO THOSE FINDINGS AND, IN FACT, THEY COME HERE CLOTHED WITH A PRESUMPTION OF CORRECTNESS, AND THERE HAS TO BE A LACK OF COMPETENT, SUBSTANTIAL EVIDENCE, TO SUPPORT. THIS PARTICULAR REFEREE REPORT, HOWEVER, IS VERY STRANGE. IT IS ONE OF THE ODDEST REFEREE REPORTS I HAVE SEEN IN 25 YEARS OF INVOLVEMENT WITH BAR CASES. THE REFEREE, NOT ONLY FOUND THAT THE BAR'S CHIEF COMPLAINING WITNESS WAS UNWORTHY OF BELIEF AND UNTRUSTWORTHY AND UNTRUTHFUL. HE FOUND THE SAME OF MY CLIENT, AND HE MORE OR LESS OUTRIGHT DISMISSED THE TESTIMONY OF APPROXIMATELY 35 INDEPENDENT WITNESSES, INCLUDING THE CHIEF BANKRUPTCY JUDGE OF THE SOUTHERN DISTRICT OF FLORIDA, A SENIOR CIRCUIT SITTING JUDGE FROM DADE COUNTY, THREE PAST PRESIDENTS OF THE BANKRUPTCY BAR, SEVERAL SITTING TRUSTEES OF THE BANKRUPTCY COURT OF THE SOUTHERN DISTRICT OF FLORIDA, AND ESSENTIALLY HE DIDN'T BELIEVE ANYBODY IN THIS CASE. BUT FROM -

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THE ESSENTIAL ELEMENTS OF THE CHARGES, FOR EXAMPLE, 41.8, BECOMING INVOLVED IN BUSINESS OPERATIONS, WERE THE DEPENDENT E V Y OF WITNESSES? IT SEEMS TO ME THAT MOST OF THESE THINGS WERE REALLY, SOMEWHAT, UNCONTROVERTED, WITH REGARD TO THE WILL, WITH REGARD TO THE TAKING OF THE PROPERTY, WITH REGARD TO THE SALE OF THE PROPERTY, SO I AM NOT SURE THAT I UNDERSTAND WHICH, OR WOULD YOU IDENTIFY PHI, PLEASE, WHICH ONES OF THOSE YOU -- IDENTIFY, PLEASE WHICH ONES OF THOSE YOU BELIEVE ARE UNDER MIND BY THE PROBLEM YOU ARE POINTING OUT THIS MORNING.

MY PROBLEM FROM THE VERY BEGINNING, JUSTICE LEWIS, ADMITTED THAT HE WAS UNAWARE OF THE BAR PROHIBITION THAT A PERSON PREPARE DOCUMENTS FOR SOMEBODY UNLESS THEY ARE RELATED TO THEM.

DOES THAT EXCUSE THE VIOLATION THOUGH?

THAT DOES NOT EXCUSE THAT VIOLATION, AND MY CLIENT HAS NEVER SAID IT EXCUSES THAT VIOLATION. I MADE A TECHNICAL ARGUMENT, AND I WAS VERY CLEAR WITH THE COURT, THAT I WAS MAKING THAT TECHNICAL ARGUMENT ON BEHALF OF MY CLIENT, WITH RESPECT TO, WITH RESPECT TO THAT ISSUE. THE COURT, ON THAT ISSUE, ALSO MADE WHAT I THINK IS A BIZARRE AND INCONSISTENT AND CONTRADICTORY FINDING. THE COURT DID NOT ACCEPT MY CLIENT'S STATEMENT THAT HE WAS IGNORANT OF THE BAR RULE AND AT THE SAME TIME, THE COURT CRITICIZED ME AND SAID THAT, OR INDIRECTLY MY CLIENT BUT, REALLY CRITICIZED ME FOR MAKING THE ARGUMENT THAT THERE WAS A TECHNICAL DEFENSE TO THE RULE. THE TECHNICAL DEFENSE TO THAT RULE IS SIMPLY THE FACT THAT THE RULE THAT IS INVOLVED THERE IS RULE 4-1.8, AND RULE 4-1.8 OF THE RULES OF DISCIPLINE, SAYS THAT YOU SHALL NOT DRAFT DOCUMENTS FOR SOMEONE WITH WHOM YOU ARE NOT RELATED. RULE 4-1.7, WHICH IS RIGHT BEFORE THAT AND IS A RULE INVOLVING WHETHER OR NOT YOU CAN ENGAGE --

IT IS A LITTLE MORE THAN DRAFTING A DOCUMENT FOR SOMEONE YOU ARE NOT RELATED. IT IS DRAFT AGO DOCUMENT WHERE YOU ARE BENEFITTING.

ABSOLUTELY. ABSOLUTELY. THAT'S TRUE. OTHERWISE YOU COULD PREPARE DOCUMENTS FOR ANYBODY. I AM SORRY ARE, YOUR HONOR. -- I AM SORRY, R H.AT IEXACTLY TRUE. THE ISSUE WAS, AND WE HAVE TO GO BACK TO THE SUBSTANTIAL RELATIONSHIP OF THE PARTIES, AND MADE IT VERY CLEAR, WHEN I WAS PROSECUTING THE CASE ON BEHALF OF MY CLIENT AND, ALSO, MY CLIENT MADE IT CLEAR IN HIS TESTIMONY. WHAT HAPPENED HERE WAS THE WITNESS FOR WHOM ALL THE DOCUMENTS WERE PREPARED, THE BAR'S COMPLAINING WITNESS, WAS THE LOVER OF MY CLIENT'S EX-WIFE EX-WIFE'S BROTHER. THEY WERE A LONG-TERM RELATIONSHIP OF 17 YEARS, AND THE TESTIMONY ON THE STAND WAS THAT, BUT FOR THE TRAGIC AIDS DEATH OF MY CLIENT'S BROTHER-IN-LAW, THIS OTHER GENTLEMAN AND THE BROTHER-IN-LAW WOULD STILL BE TOGETHER IN A MONOGAMOUS RELATIONSHIP, AND WHAT HAS HAPPENED IS THAT I MADE THE ARGUMENT THAT EVEN THOUGH THAT IS NOT A RELATIONSHIP RECOGNIZED UNDER FLORIDA LAW, WHAT MY CLIENT DID WAS SIMPLY TREAT THIS MAN AS A DE FACTO BROTHER-IN-LAW. THAT IS HOW HE HAD TREATED HIM FOR 20 SOME-ODD YEARS, AND BECAUSE, ONLY BECAUSE OF THAT RELATIONSHIP, DID HE EVER DRAFT ANY DOCUMENTS OF THAT NATURE, FOR ANYBODY. IF YOU LOOK AT THE WILL HE DRAFTED, THE WILL IS --

SO YOU ARE, IT SEEMS TO ME, TRYING TO MAKE THIS WHOLE THING A VERY TECHNICAL VIOLATION, WHEREAS IN FACT, YOUR CLIENT IS NOT RELATED TO MR. PETRI, AND SO HE FALLS UNDER THAT PROHIBITION IN THE RULES, ABOUT DRAFTING DOUMS WHERE HE IS THE BENEFICIARY -- DOCUMENTS WHERE HE IS THE BENEFICIARY. OTHER THAN TRYING TO SAY THAT THEY FELT SOME KIND OF KINSHIP, HOW DO YOU GET AROUND THAT PART OF THE RULE?

YOUR HONOR, IT IS NOT PART THAT WE EVER TRIED. WHEN I SAY GET AROUND, I THINK IT IS MY JOB TO ADVANCE A POTENTIAL TECHNICAL ARGUMENT. I THINK IT IS A VALID TECHNICAL

ARGUMENT, AND I HAVE GONE IN DETAIL IN THE BRIEF BE ERHEE AND THE RULES, BUT THAT IS SOMETHING MY CLIENT ADMITTED TO, AND HE ADMITTED HE DID IT OUT OF IGNORANCE, AND THE ONLY REASON, THOUGH, THAT HE DID IT WAS BECAUSE OF THIS LONG-TERM FAMILIAL-TYPE RELATIONSHIP. MY CLIENT IS A BANKRUPTCY LAWYER. HE HASN'T DRAFTED WILLS FOR ANYBODY IN HIS FAMILY. HE HASN'T DRAFTED WILLS FOR ANYBODY ELSE, AND EVEN THE BAR'S COMPLAINING WITNESS TESTIFIED THAT HE TOLD MY CLIENT AND MY CLIENT KNEW THAT HE WOULD NOT HAVE GONE TO ANY OTHER PERSON TO GET THESE DOCUMENTS DRAFTED.

HOW LONG HAS YOUR CLIENT BEEN A LAWYER BEFORE THIS HAPPENED?

MY CLIENT HAS BEEN ADMITTED FOR ABOUT 25 YEARS, YOUR HONOR, AND HE WAS ADMITTED FOR ABOUT 20-PLUS YEARS WHEN THIS HAPPENED BUT WHAT HAPPENED, ALSO, AND I, THAT IS KIND OF A QUESTION THAT JUDGE ENCHARTE ASKED, ALSO, AND ASKED OF SEVERAL OF THE WITNESSES THIS THIS CASE. ALL OF THESE FOLKS --

IT IS A GERMANE QUESTION. IF HE WAS A LAWYERRS, THEN HE SHOULD HAVE KNOWN HE COULDN'T DRAFT A WILL AND BE THE RECIPIENT.

YOUR HONOR, I HAVE REPRESENTED A NUMBER OF PEOPLE ON THAT VIOLATION AND SOME ARE EVEN PROBATE LAWYERS AND DIDN'T KNOW T WHAT HAPPENS AND I HAVE CALLED THE CLERK HERE WITH STUPID QUESTIONS, AND I AM SURE A LAWYER WITH A LOT MORE APPELLATE WORK EXPERIENCE THAN I DO WOULD KNOW THE ANSWER, BUT THE TRUTH IS IN PRACTICAL LIFE AND IN THE BANKRUPTCY SYSTEM, THE LAWYERS READ AND STUDY THE ETHICAL THINGS THAT ARE APPLICABLE TO THEM. MY CLIENT SIMPLY DID NOT KNOW IT. HE CONTACTED A PROBATE LAWYER TO ASK HIM IF HE COULD USE A FORM OFF HIS SHELF. THE LAWYER TOLD HIM THAT SHOULD BE FINE. HE GRABBED A FORM OFF THE SHELF THAT HE HAD HAD, BECAUSE THE ESTATE, BASICALLY, HAD VERY LITTLE IN IT.

YOU DON'T THINK THAT YOUR CLIENT SHOULD HAVE BEEN ON ANY KIND OF NOTICE? THAT BASED ON THIS MAN'S MENTAL STATE? I MEAN, YOUR CLIENT KNEW, AS I UNDERSTAND IT, THAT THIS MAN WAS SUFFERING FROM SOME KIND OF MENTAL ILLNESS.

THE REFEREE FOUND,DE TO POINT OUT TO YOU WHY I THINK THE REFEREE MAY BE WRONG, AND WHY THE REFEREE'S FINDINGS AREN'T BACKED BY COMPETENT, SUBSTANTIAL EVIDENCE, REFEREE FOUND THAT MY CLIENT KNEW OR SHOULD HAVE KNOWN THAT. HOWEVER, WHAT THE CASE ACTUALLY SHOWS IS THAT MR. PETRY, FOR -- MR. PETRI, FOR 20 SOME-ODD YEARS HAD BEEN PROGRESSING THROUGH BUSINESS LIFE, HAD BEEN VEF I -- VERY SUCCESSFUL IN EVERY MANNER OF BUSINESS. HIS OWN TESTIMONY WAS THAT HE HAD NOT BEEN TO A PSYCHIATRIST FOR APPROXIMATELY THREE YEARS PRIOR TO THIS INCIDENT.

PRIOR TO THIS INCIDENT, DIDN'T HE TELL YOUR CLIENT THAT HE WAS GOING TO COMMIT SUICIDE, AND YOU DON'T THINK THAT THAT WOULD HAVE PUT YOUR CLIENT ON ANY KIND OF NOTICE THAT THERE WAS A PROBLEM HERE?

YOUR HONOR, THAT IS WHERE BOTH THE REFEREE AND THE BAR HAVE AN IMPROPER TIME LINE ON WHAT HAPPENED HERE. WHAT MY CLIENT DID, WHEN MY CLIENT PREPARED THESE DOCUMENTS, ALMOST EXACTLY FOUR YEARS AGO TO THE DAY, WAS SOMEWHERE BETWEEN TWO WEEKS AND TWO MONTHS BEFORE MR. PETRI EVER WENT BACK TO A PSYCHIATRIST, EVER GOT ANY PRESCRIPTION, EVER GOT ANY DIAGNOSIS, AND IT WAS ABOUT AUGUST, RATHER THAN JUNE --.

SO YOUR CLIENT HAD NO REASON TO BELIEVE, AT THE TIME HE DID THESE DOCUMENTS, THAT MR. PETRI HAD ANY KIND OF EMOTIONAL OR MENTAL PROBLEM.

HE KNEW, YOUR HONOR, THAT IN THE PAST HE HAD SUFFERED DEGREE PRESSION, BUT A LOT OF

PEOPLE SUFFER FROM DEPRESSION, AND EVEN IF YOU TAKE FOR GRANTED, EVEN IF THE PSYCHIATRIC INTERVIEWS HAD TAKEN PLACE PRIOR TO THE DOCUMENTS, THEY DIDN'T. THEY TOOK PLACE A MONTH OR TWO OR THREE MONTHS LATER.

THAT IS NOT ALL WE HAVE IN THIS CASE. WE HAVE, NOT ONLY, AND FIRST OF ALL, IT IS MORE THAN A LAST WILL AND TESTAMENT. THERE IS A QUICK CLAIM DEED THAT WAS WHERE HE RECEIVED HIS RESIDENCE, AND THERE WAS ALL, I MEAN, IT LOOKS LIKE HE WAS TAKING OVER EVERY PART OF MR. PETRI'S ASSETS, AND THEN WE HAVE GOT THE FINDINGSR MR.ETRI'S DISABILITY CHECKS AND USED IT FOR HIS OWN BENEFIT, AND THEN NEVER RETURNED IT, AND WHEN HE WAS ASKED BY ANOTHER ATTORNEY TO RETURN IT, HE WENT WITH A GUN, TO MR. PETRI'S PLACE. MY GOODNESS. WHAT --

I WOULD LIKE TO ADDRESS THE SOAP OPERA PART WITH THE GUN IN THE SECOND PART, YOUR HONOR, AND I ADMIT THAT THAT IS A TROUBLING FEATURE, IF IT WERE TRUE. LET ME GO, FIRST, TO THE OTHER ISSUE. LET'S GO BACK TO THE POSSIBILITY THAT HE KNEW ABOUT PSYCHIATRIC INFORMATION AND TRY TO FINISH JUSTICE QUINCE'S QUESTION AND ADDRESS YOUR QUESTION. WHAT HE DID WAS HE, EVEN IF ALL THE PSYCHIATRIC TESTIMONY HAD BEEN KNOWN TO HIM PRIOR, WHICH IT WAS NOT, ALL OF THE PSYCHIATRIC TESTIMONY IN THIS CASE SHOWED THAT HE ALLEGEDLY SUFFERED FROM DEPRESSION AND THE THAT HE ALLEGEDLY TOOK PROZAC. HIS OWN TESTIMONY WAS HE DIDN'T ACTUALLY TAKE THE PROZAC AND THE ONLY PRESCRIPTION THAT WAS EVER PUT INTO EVIDENCE WAS ONE FILED BY US AND WAS MONTHS LATER. BUT, FOR EXAMPLE, GOVERNOR CHILES WAS THE GOVERNOR OF THE STATE OF FLORIDA, SUFFERED FROM DEPRESSION AND TOOK PROZAC AT THE SAME TIME. AND PRESIDENT BUSH, FORMER PRESIDENT BUSH SUFFERED FROM DEPRESSION AND TOOK PROZAC WHILE HE WAS IN CHARGE OF THIS COUNTRY.

CHIEF JUSTICE: I THINK YOU BETTER MOVE TO JUSTICE PARIENTE'S QUESTION, BECAUSE YOU ARE RUNNING OUT OF TIME.

JUSTICE PARIENTE, THE OTHERISH, I AM SORRY, I HAVE LOST TRACK OF THAT OTHER ISSUE. THE OTHER ISSUE WAS --

THE SOAP OPERA.

WITH THE GUN. MY CLIENT WENT TO THE HOME OF MR MR. PETRI, TO RETURN THE PROPERTY, BECAUSE WHEN HE HAD TRIED TO CONTACT AN INTERMEDIARY WHO HAD CONTACTED MY CLIENT, THE INTERMEDIARY WOULDN'T MEET WITH HIM, AFTER SEVERAL EFFORTS.

WHAT WAS THE PROPERTY?

IT WAS VIRTUALLY EVERYTHING THAT HE OWNED. IT WAS TITLE TO A HOUSE, IT WAS A CAR, IT WAS CHECKING ACCOUNTS, BUT, YOUR HONOR, MR. PETRI HAD ALSO GIVEN \$1,000 CHECKS TO OTHER PEOPLE. HVEN HIS FURNITURE TO AFFY BRIKEL. HE HAD GIVEN PROPERTY TO A LOT OF PEOPLE, BECAUSE HE HAD TOLD EVERYBODY IN THE FAMILY THAT HE WAS DYING OF CANCER AND THAT HE INTENDED TO TAKE SOME LAST-MINUTE TRIPS AND WANTED HIS PROPERTY GIVEN TO HIS FRIENDS.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL TIME.

THANK YOU, YOUR HONOR.

MAY IT PLEASE THE COURT. RANDALL BROM BECKER ON BEHALF OF THE FLORIDA -- RANDOLPH BROMBACHER ON BEHALF OF THE FLORIDA BAR. I WOULD LIKE TO TAKE SEVERAL POINTS HERE THIS MORNING, STARTING WITH THE FACT THAT HE HAS QUESTIONED THE VARIESACITY -- THE VERACITY OF THE WITNESSES AND BROUGHT THAT FORWARD, AS FAR AS UNDERMINING THE

BAR'S POSITION.

I HAVE ONE QUESTION. THE REFEREE RECOMMENDED DISBARMENT, AND THIS IS A FINDING THAT YOU WANT US TO UPHOLD. AS COUNSEL SAID, THIS CONDUCT OCCURRED OVER FOUR YEARS AGO. THE REFEREE'S REPORT IS OCTOBER 24, 2000. THIS, HAS MR. ROTH BEEN SUSPENDED FROM THE PRACTICE OF LAW IN THE INTERIM?

MY UNDERSTANDING OF THE PROCEDURE IS THAT HE IS STILL ACTIVE.

THESE ARE SERIOUS CHARGES. I AM JUST, WHY DID THIS TAKE OVER TWO YEARS AGENTS UP HERE?

THAT IS A PROCEDURAL -- OVER TWO YEARS TO GET UP HERE?

THAT IS A PROCEDURAL MATTER AND WE CAN ONLY SUSPEND SOMEONE OVER A FELONY MATTER. THERE ARE OTHER PROCEDURAL MATTERS, BUT THIS LIES OUTSIDE MY SCOPE IN THE PRESENTATION. WHAT I WOULD LIKE TO GET TO IS THE CLIENT DISABILITY ISSUE, UNDER RULE 4-1.3017B.14 -- RULE 4-1.14., SPECIFICALLY TO THE JOINT PSYCHOTHERAPY MEETING PRESENTATION, WHEN MR. ROTH AND MR. HUGHES WERE THERE, THE RESPONDENT HAD ALREADY DRAFT ADD WILL AND A QUICK CLAIM DEED AND THE POWER OF ATTORNEY, AND HE HAD ALREADY BEEN GIVEN THE CHANGE OF BENEFICIARY FORM FOR HIS LIFE INSURANCE FOR \$300,000. ATT JOIT PSYCHOTHERAPY SESSION, DR. HUGHES DID AN EVALUATION OF MR. PETRI, AND HE OPINED AS TO CERTAIN THINGS, AND DURING HIS DEPOSITION BEFORE THIS PROCEEDING, AND AT THAT TIME, HE SAID, DR. HUGHES CHARACTERIZED PETRI'S CONDITION AS BEING CONSIDERABLY INFLUENCED BY DELUSIONS OR INFLUENCES AND SERIOUS IMPAIRMENT IN COMMUNICATION OR INABILITY AND JUDGMENT TO FUNCTION IF IN ALL -- TO FUNCTION IN ALL AREAS. HE WAS SOMETIMES GROSSLY SUICIDAL AND SUFFERED FROM A MAJOR CAREER DISORDER WITH PANIC PANICALITY AX AND AGORAPHOBIA AND WAS -- AND AGORAPHOBIA, AND HE WAS UNABLE TO FUNCTION IN A SOCIAL LEVEL, AND MOST OF THIS DEPRESSION WAS FROM THE ONSET OF JANUARY, THROUGH JULY 6 OR 7, 1998.

THE RESPONDENT IS INCORRECT THAT THIS ALL TOOK PLACE BASICALLY, AFTER ALL THE TRANSFER OF THE PROPERTY?

IT GETS WORSE. WITHIN 24 HOURS OF THE RESPONDENT OVER HEARING PART OF THIS, THE RESPONDENT ADMITS IN HIS TESTIMONY, WHICH IS FOOTNOTE 6 OF THE REPORT OF REFEREE.

YOU SAY OVER HEARING THIS. YOU WERE READING FROM A REPORT, IN ALL PROBABILITY.

I WAS READING FROM A REPORT, BUT DR. HUGHES, IN HIS TRANSCRIPT, WHICH WAS PERPETUATED FOR THIS TRIAL, STATED THAT THE RESPONDENT WAS PRESENT WHEN PETRI DISCUSSED HIS SUICIDAL TENDENCY. MOREOVER THE RESPONDENT ADMITTED THAT, AS A RESULT OF DR. HUGHES PRESCRIBING PROZAC AT THAT POINT JOINT PSYCHOTHERAPY SESSION, HE WAS AWARE THAT MR. PETRI WAS DEPRESSED. IT GETS WORSE. HE TESTIFIED AT THE TRIAL THAT HE RESPONDED TO MR. PETRI'S ATTEMPTED SUICIDE, AND THAT IS UNCONTRADICTED, TOO, THAT HE KNEW ABOUT THE SUICIDE. AND THE SISTER TESTIFIED THAT THE RESPONDENTW, PRIOR TO MR MR. PETRI'S SUICIDE THAT THE RESPONDENT KNEW THAT MR. PETRI WAS SUICIDAL, BUT THERE HIS ADMISSION OR TESTAMENT OF THIS BY THE RESPONDENT, HIMSELF, BECAUSE AFTER THIS JOINT PSYCHOTHERAPY SESSION, HE ADVANCED A MEDICAL EVALUATION TO PETRI'S THEN EMPLOYER, AND WITHIN THAT WAS DR. HUGHES'S EVALUATION, AND THAT EVALUATION STATED THAT THERE WAS A MAJOR SEVERE DISORDER BY MR. PETRI, AND THAT IS --

THAT IS IN THE REPORT AT THAT TIME? HIS EMPLOYER?

AAA.

DID HE SEND THE REPORT OF THE PSYCHIATRIST TO AAA?

YES, HE DID.

WOULD YOU ADDRESS, AND YOU HAVE GONE THROUGH THIS IN SOME DETAIL, WOULD YOU ADDRESS, AND YOUR TIME IS LIMITED HERE, THAT I HAVE SOME CONCERNS WITH THE 4-1.15, AND THAT IS THE PROPERTY IN TRUST, AND HOW WE GET IN THIS SITUATION OF YOU ARE SUPPOSED TO HOLD IT IN TRUST BUT REALLY, IT HAS BEEN A TAKING OF THE PROPERTY, AND THAT KIND OF THING.

WE BELIEVE THAT THE ACTIONS OF THE RESPONDENT ARE TANTAMOUNT TO THEFT, AND THE CASE LAW THAT WE ADVANCED TO THE REFEREE AT TRIAL ALSO INDICATED THAT. THIS TOOK PLACE ON JULY 6 AND 7 AND ON JULY -- THIS TOOK PLACE, AND HE SOLD THE HOUSE WHILE MR. PETRI WAS OUT OF THE COUNTRY. HE PUT THE FUNDS IN THE EQUITY LINE OF HIS OWN, PERSONAL ACCOUNT.

I UNDERSTAND ALL OF THOSE THINGS. I AM TRYING TO GET TO THE ISSUE OF WAS IT EVER CONTEMPLATED? IT SEEMS AS THOUGH THAT WAS DESIGNED WITH THE LAWYER OF EVERYTHING WAS GOING TO GO INTO TRUST.

CORRECT.

THIS DOESN'T FALL WITHIN THAT KIND OF CONCEPT. THIS SEEMS TO BE A DIFFERENT KIND OF PROBLEM THAT WE ARE DEALING WITH, THAN THE MAN DIDN'T GIVE IT TO HIM IN TRUST. THE WHOLE THEORY IS HE ALMOST SURREPTITIOUSLY TOOK ALL OF THE ASSETS, SO IT IS REALLY NOT A TRUST PROBLEM. IT IS SOME OTHER KIND OF PROBLEM.

WE CAN FALL BACK ON THAT POSITION THAT, IF YOU EVER RECEIVE A CLIENT'S FUNDS YOU CANNOT COMINGLY OPERATE A CLIENT'S FUNDS OPERATING IN HIS CAPACITY AS AN ATTORNEY AND HAS ADMITTED SUCH AS OF JUNE 1998, WHEN HE PROMISE YOU MEAN GAITED THE WILL -- PROMULGATED THE WILL AND THE POWER OF ATTORNEY, THAT IT WOULD FALL UNDERNEATH THE CLIENT ATTORNEY RELATIONSHIP, AND THAT IS WHAT FALLS UNDER THE RULE OF 4-1.15.

LET ME REFER TO JUSTICE PARIENTE'S QUESTION AT THE OUTSET. NOW HAD, THIS IS ALL CONDUCT INVOLVING ONE PERSON, ONE CLIENT CORRECT?

IT ORIGINATES FROM, BETWEEN THE RELATIONSHIP OF MR. PETRI AND MR. ROTH, YES.

IT OCCURRED BACK IN 1998.

CORRECT.

AND THIS DECISION OF THE REFEREE WAS IN 2000.

CORRECT.

AND HERE WE ARE IN 2002, IN JUNE OF 2002, AND THE BAR IS TAKING THE POSITION THAT THIS LAWYER SHOULD BE DISBARRED. NOW, IT SEEMS TO ME THAT THERE IS A DISCONNECT THERE, IF THE BAR IS NOT GOING TO ADVANCE THE CASE, AND I WOULD LIKE TO, I HAVE TO GO BACK AND LOOK AND SEE WHY THIS CASE HAS TAKEN SINCE 2000 TO GET TO THIS POINT OF HAVING A LAWYER WHO THE BAR IS CLAIMING IS A DANGER TO THE PUBLIC IN PRACTICING LAW, TO THE EXTENT THAT THE LAWYER SHOULD BE DISBARRED, AND YET THE LAWYER HAS BEEN OUT THERE PRACTICING, WITHOUT ANY TYPE OF ACTION, SINCE THIS DETERMINATION IN 2000.

I WOULD LOVE TO ANSWER YOUR QUESTION, BUT I REALLY CAN'T. I KNOW THAT THERE ARE

CERTAIN PROCEDURAL MECHANISMS AVAILABLE TO THE BAR, BUT I AM UNAWARE OF ANY THAT WOULD ADDRESS THIS PARTICULAR FACTS AND CIRCUMSTANCES UNDER WHICH WE ARE NOT ALREADY TRAVELING. WE GET A PROBABLE CAUSE FINDING BY THE GRIEVANCE COD WE ADVANCETO TH REF. THE REFEREE HEARD IT IN, I BELIEVE, A TIMELY MANNER. THE REPORT CAME UP --

PERHAPS IT IDENTIFIES A HOLE IN OUR PROCEDURE, THAT WE SHOULD ADDRESS.

WE MAY NOT HAVE BEEN AWARE OF THE MISCONDUCT UNTIL LATER. THE GRIEVANCE COMMITTEE HAS TIME TO DELIBERATE ON IT, TO MAKE ITS FINDINGS, THEN THERE IS A CERTAIN AMOUNT OF TIME BEFORE IT IS ADVANCED TO THE REFEREE, WHERE THE COMPLAINT IS FILED, AND THEN THERE IS A CERTAIN TIME LINE BEFORE THE REFEREE.

BUT THIS IS TWO YEARS FROM THE REFEREE'S REPORT.

CORRECT.

THAT THIS IS, NOW, WHETHER THAT IS WHAT JUSTICE WELLS, IT HAS BEEN MY CONCERN. THAT SEEMS LIKE AN INORDINATE TIME FROM THE REFEREE'S REPORT, TO BEING HEARD HERE BY THIS COURT.

WELL, I HAVE NO IDEA WHY IT TOOK SO LONG FOR THE REFEREE'S REPORT TO BE, YOU KNOW, CONSIDERED BY THIS BODY.

CAN YOU TELL US ABOUT THE FACTUAL CIRCUMSTANCES SURROUNDING THE SO-CALLED GUN INSIDE DENT. -- INCIDENT. WHAT WAS PRESENTED TO THE COURT OF RECORD?

THE GUN INCIDENT IS A FACTUAL PREDICATE FOR RULE 4-4.2, AND ALLOW ME A LITTLE LATITUDE WITH THAT. ON AUGUST 31, 1998, MR. PETRI'S THEN-ATTORNEY JOE SHOOK, ADVANCED A LETTER TO THE RESPONDENT, AND HE STATED THAT IN IT HE MADE REFERENCE TO BEING AN INTERMEDIARY, WHEN IN FACT HE WASN'T, AN INTERMEDIARY IS RULE 4-2.2, AND YOU HAVE TO REPRESENT ALL PARTIES TO BE AN INTERMEDIARY. JUDGE SHOOK NEVER MET WITH THE RESPONDENT. HE REFUSED TO EVEN SPEAK WITH HIM, SO THE INTERMEDIARY RULE DOESN'T APPLY.

I AM NOT TALKING ABOUT THE LEGALITIES. I AM ASKING ABOUT THE FACTUAL MATERIAL THAT WAS PRESENTED TO THE REFEREE ABOUT THIS.

ON THE 13th, HE ATTEMPTED TO MEET WITH JOE SHOOK IN HIS OFFICE AND JOE SHOOK REFUSEED TO MEET HIM, AND AT THAT TIME HE WENT TO THE HOME WHERE MR. PETRI WAS LIVING AND HE WAS NOT HOT THAT TIME. BEAR IN MIND THAT IT WAS AFTER THE NO-SUICIDE, AND HE KNEW THERE WAS A MENTAL DISABILITY, AND HE SCUFFLED WITH HIM AT THE DOOR. THE POLICE WERE CALLED. WHEN THE POLICE ARRIVED, THE GUN HE HAD ALREADY BEEN HANDCUFFED. PETRI RECEIVED SOME BODILY JURY. THERE WAS PHYSICAL DAMAGE -- SOME BODILY INJURY. THERE WAS PHYSICAL DAMAGE TO THE HOUSE.

WHO HANDCUFFED HIM?

THEY HAD HANDCUFFS THERE AND TOOK THE GUN AWAY FROM HIM, AND THERE WAS REFERENCE THAT THEY GOT THE GUN AWAY AND THE POLICE CAME.

I AM STILL NOT GETTING A CLEAR PICTURE. ARE WE TALKING ABOUT SOMEBODY THAT SHOWED UP AT THE DOOR WITH A DRAWN GUN, STICKING IT IN THE FACE, OR ARE WE TALKING ABOUT SOMEBODY WITH A GUN IN A POCKET HIDDEN?

MY UNDERSTANDING OF THE EVENTS IS HE HAD HIS GUN IN HIS BACK POCKET. IT WAS A SMALL, .25 CALIBER BETTER AT A. -- BERETTA. IT WAS PULLED OUT AT SOME POINT, IN SOME MEASURE, AND MR. PETRI AND HIS ROOMMATE THEN TOOK THE GUN AWAY FROM HIM.

HOW DID THESE FACTS GET DEVELOPED AT THE HEARING BEFORE THE REFEREE?

WE BROUGHT IN THE BOLO TAPE. MR. PETRI REFERRED TO IT, AND THEN THERE WAS SOME OF THE ATTACHMENTS TO JOE SHOOK'S CIVIL COMPLAINT, MADE REFERENCE TO THE ARREST. THE ARREST REPORT WAS MADE, AS PART OF THE EVIDENCE.

DID PETRI TESTIFY TO THESE IF FACTUAL HE HAVE -- TO THESE FACTUAL EVENTS?

YES, HE DID.

DETESTIFY ABOUT HIM PULLING THE GUN OUT?

YES. THAT IS NOT THE FOCAL POINT OF THE BAR'S CASE. THE FOCAL POINT OF THE BAR'S CASE IS THE FACT THAT THE RESPONDENT KNEW THAT HIS CLIENT SUFFERED FROM A MENTAL DISABILITY, AND YET THE DAY AFTER MADE HIMSELF COSIGNATURE AND CO-OWNER ON HIS BANK ACCOUNT AND APPROPRIATED THE PROCEEDS OF THAT ACCOUNT AND THEN, THREE WEEKS LATER SOLD HIS HOUSE AND APPROPRIATED THE PROCEEDS OF THAT ACCOUNT.

WHAT IMPACT ON THE REFEREE'S FINDINGS OR OUR REVIEW OF THE FINDINGS, SHOULD THE CONCLUSION, IF I UNDERSTAND IT CORRECTLY, WE HAVE GOT THIS UNUSUAL SITUATION WHERE THE REFEREE FOUND THE RESPONDENT NOT CREDIBLE, AND THE REFEREE FOUND THE COMPLAINING WITNESS TO BE INCREDIBLE AND NOT RELIABLE, SO IT IS A VERY --

I RECOGNIZED THAT WHEN I GOT THE CASE, AND IN MY OPENING ARGUMENT, I SAID I AM GOING TO MARGINLIZE BOTH PROTAGONISTS IN THIS MATTER. I DO NOT RELY ON THEM FOR DOCUMENTARY OR SUBSTANTIAL COMPETENT EVIDENCE, AND I THINK I PROVED IT THROUGH THE EVIDENTIARY CHAIN. I HAVE FOUR DOCTORS IN EVIDENCE THAT HAVE ALL OPINED AS TO PETRI'S MENTAL DISABILITY. THERE IS NO QUESTION THAT HE CONVERTED FUNDS OF PETRI DURING THIS MENTAL DISABILITY, SO THE DOCUMENTARY EVIDENCE ALONE, THE RESPONDENT'S OWN ACTS, ADMISSIONS AND TESTIMONY, ARE SUBSTANTIAL COMPETENT EVIDENCE TO SUPPORT THE REFEREE'S FINDINGS.

YOU SAID THAT THE QUICK CLAIM DEED, IF SOMEBODY ELSE HAD PREPARED THE QUITCLAIM DEED OTHER THAN MR. ROTH, THE PETRI SAID, THROUGH THE QUICK CLAIM DEED, I WANT YOU TO HAVE THE HOUSE. SO WHY WASN'T IT, MR. ROTH'S HOUSE, WAS THERE, IN OTHER WORDS WAS THERE OTHER PROPERTY, THIS GOES BACK TO THE QUESTION THAT JUSTICE LEWIS HAD, THAT WAS CONVERTED, OTHER THAN WHAT WAS THE SUBJECT OF THESE, THE DOCUMENT PREP REQUIRES A?

TWO DISABILITY CHECKS WENT INTO MR. ROTH'S, OR PETRI'S ACCOUNT THAT MR. ROTH MADE HIMSELF CO-OWNER OF.

DID IT GO INTO HIS PERSONAL ACCOUNT?

AND THAT WAS PART OF THE, WAS IT THAT WAS PART OF THE PROPERTY THAT MR. SHOOK WAS ASKING TO HAVE RETURNED?

MY UNDERSTANDING THAT WAS PART OF THE PROPERTY.

MY UNDERSTANDING. WHAT DOES THE RECORD SHOW?

THE RECORD SHOWS THAT THE RESPONDENT APPROPRIATED THOSE FUNDS OUT OF MR. PETRI'S ACCOUNT AND THE RECORD WILL SHOW THAT HE APPROPRIATED THESE FUNDS, WHEN HE KNEW THAT MR. PETRI SUFFERED FROM A MENTAL DISABILITY, AND THERE IS A CORRESPONDING RELATIONSHIP, AND IT IS IN THE FLORIDA BAR'S CASE OF HENRY W. ITT, THAT WHEN THE CLIENT'S WELL-BEING GOES DOWN, THE ATTORNEY'S STANDARD OF CONDUCT FOR THAT CLIENT RISES. IT IS INVERSELY PROPORTIONAL, SO THE BAR IS RAISED OR HIS CONDUCT THROUGHOUT THESE THINGS, AND ONCE HE WAS MADE AWARE, AND HE HAS ADMITTED THAT HE WAS AWARE OF MR. PETRI'S SUICIDAL TENDENCIES OR DEPRESSION.

WHAT ELSE, BESIDES THE DISABILITY CHECKS, WHAT ELSE DID HE NOT --

WE BELIEVE THAT HE SHOULDN'T HAVE SOLD THE HOUSE ON JULY 24 AND APPROPRIATED THE FUNDS, BECAUSE AT THAT TIME HE WAS WELL AWARE THAT MR. PETRI WAS DEPRESSED. HE HAS TESTIFIED TO THAT, AND MRS. GELMAN AND MR. ROTH TESTIFIED TO THAT. DR. HUGHES HAS TESTIFIED THAT MR. ROTH WAS PRESENT, WHEN MR. PETRI WAS DISCUSSING HIS SUICIDAL TENDENCIES.

DID HE, HAS MR. ROTH MADE RESTITUTION IN THIS MATTER?

RESTITUTION WAS MADE, ONLY AS A RESULT AFTER SETTLEMENT. THERE WAS A CIVIL SUIT THAT WAS CONTENTIOUS. THE SETTLEMENT IS -- SUIT. IT WAS CONTENTIOUS, THE SETTLEMENT IS REFERRED TO IN THE FINAL REPORT OF THE REFEREE. IT SAYS THAT IN THAT SETTLEMENT, ALL MATTERS WERE CONTESTED. THE RESPONDENT PLED 44 OFFENSES. HE PLED COMPARATIVE NEGLIGENCE. HE PLED FAILURE TO MITIGATE, AND IT WAS ONLY, THE REFUND OF PETRI'S PROPERTY WAS ONLY DONE ON THE CIVIL SETTLEMENT AND AFTER SUIT WAS FILED.

DID THAT INCLUDE RESTITUTION FOR THE SALE OF THE HOUSE?

YES, IT DID THE AMOUNT OF FUNDS -- YES, IT DID. THE AMOUNT OF FUNDS RETURNED WERE IN EXCESS OF WHAT WAS ACTUALLY TAKEN BY THE RESPONDENT.

CHIEF JUSTICE: THANK YOU, COUNSEL -- COUNSEL.

YES. I APPRECIATE THE COURT'S ATTENTION TO THIS MATTER.

CHIEF JUSTICE: REBUTTAL.

WHEN MR. ROTH WENT TO EUROPE, MR. PETRI HAD ASKED FOR HIS, ALL OF HIS PROPERTY BACK AT THAT POINT, HAD HE NOT? IS THAT CORRECT?

THAT'S CORRECT, YOUR HONOR. MR. PETRI KNEW THAT MR. ROTH'S FATHER HAD DIED AND THAT HE WAS TAKING HIS MOTHER TO EUROPE. THE EVE OF THE TRIP, HE CAME AND ASKED MR. ROTH TO RETURN THE PROPERTY. MR. ROTH --

WHY DIDN'T HE GIVE HIM THE ?

HE GAVE HIM SEVERAL THOUSAND DOLLARS. MR. BLIXEL PICK UP \$2,000 SOME-ODD IN CASH AND GAVE HIM A CHECK FOR \$5,000 AND TOLD HIM THE SECOND I GET BACK, I WILL GET THE PAPERWORK, WHATEVER NEEDS TO BE DONE TO DO THAT, AND WHILE HE WAS IN EUROPE, WHEN HE WAS CONTACTED BY THE OTHER LAWYER, HE HAD HIS OFFICE CONTACT HIM, AND HE BEAT ON THE OTHER LAWYER'S DOOR, CALLED THE OTHER LAWYER, WENT TO THE OTHER LAWYER'S OFFICE AND THE OTHER LAWYER WOULDN'T MEET WITH HIM.

THIS CLOSE FAMILY RELATIONSHIP THAT YOU MENTIONED EARLIER, WHY WOULD MR. PETRI TAKE THIS POSITION, THEN, TO GET A LAWYER AND WHY WOULDN'T HE JUST WAIT FOR HIM TO

COME BACK?

I THINK MY CLIENT EXPRESSED IT BEST DURING THE PROCEEDING. SOMEHOW MR. PETRI CHANGED AFTER THAT TIME. UNTIL THAT TIME, MR. PETRI HAD BEEN A VERY SUCCESSFUL BUSINESSMAN. HE HAD BEEN THE PRESS SECRETARY FOR THE AAA DOWN THERE. AND TO ALL INTENTS AND PURPOSES, HIS CAREER WAS ON AN UPWARD SKAEL. I WAS FUNCTIONING -- SCALE AND FUNCTIONING AND DOING TERRIFICALLY IN EVERY RESPECT AND WAS THOUGHT OF HIGHLY IN THE COMMUNITY. MY TIME IS UP. I AM SORRY.

CHIEF JUSTICE: THANK YOU, COUNSEL. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.