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The Florida Bar v. Bruce Edward Committe

THE NEXT CASE ON TODAY'S CALENDAR IS THE FLORIDA BAR VERSUS BRUCE EDWARD COMMITTE. WE'LL WAIT UNTIL THE COMMOTION DIES DOWN HERE. YOU MAY WANT TO -- HAVE YOU TOLD THEM, THEY ARE STILL SORT OF MAKING SOME NOISE OUT THERE?

I THINK WE CAN GO AHEAD. THE PARTIES ARE READY, AND YOU MAY PROCEED.

MAY IT PLEASE THE COURT, I'M BRUCE COMMITTE. I AM THE RESPONDENT CROSS COMPLAINANT IN THIS CASE. WE ARE HERE ON REVIEW OF THE REFEREE'S DECISION BELOW.

YOU ARE ARGUING THAT YOU SHOULDN'T EVEN GET A PRIVATE REPRIMAND FOR THIS CONDUCT, RIGHT?

THAT'S CORRECT, YOUR HONOR.

SO IN YOUR OPINION YOU DID NOTHING WRONG?

THAT'S ABSOLUTELY CORRECT. THAT'S MY OPINION, YOUR HONOR.

YOU CAN PLEASE EXPLAIN WHY.

YES. THIS CASE BEGAN WITH THE U.S. DISTRICT JUDGE GIVING ME A RULE 11 SANCTION. HIS OPINION THAT MY COMPLAINT IN HIS COURT WAS MERITLESS, AND FOR THE PURPOSE OF HARASSMENT, WAS THE BASIS FOR COMPLAINT TO THE FLORIDA BAR. THE FLORIDA BAR --

HE COMPOSED RULE 11 SANCTIONS ON YOU, RIGHT?

CORRECT.

BUT IT BEGAN BEFORE THAT. YOU HAD A \$4,000 JUDGMENT ENTERED AGAINST YOU.

THAT'S CORRECT.

HAS THAT BEEN PAID?

NO, THAT WAS DISCHARGED IN BANKRUPTCY. AS THE BAR'S COMPLAINT BASICALLY A{DROPT} -- ADOPTED THE JUDGE'S RULE 11 SANCTION OPINION AND BROUGHT CLAIMS THAT MY CLAIMS IN HIS COURT VIOLATED THE FLORIDA BAR BECAUSE IT WAS MERITLESS AND SO FORTH.

WASN'T THAT AFFIRMED BY THE 11TH CIRCUIT?

YES, IT WAS IN AN UNPUBLISHED OPINION.

JUSTICE WELLS?

YOU HAVE BEEN A MEMBER OF THE FLORIDA BAR SINCE 1989?

YES, YOUR HONOR.

AND FROM WHAT I SEE IN THE REFEREE'S REPORT HERE, THIS DID BEGIN IN THIS COUNTY COURT ACTION WHICH WAS AN ATTEMPT TO EXECUTE ON THIS JUDGMENT, CORRECT?

THAT'S CORRECT, YOUR HONOR.

AND IT THREE TIMES YOU DIDN'T APPEAR WHEN YOUR DEPOSITION WAS SET, CORRECT?

I FILED A MOTION FOR PROTECTIVE ORDER.

AND THE PROTECTIVE ORDER WAS DENIED, CORRECT?

THE FIRST TIME THE PROTECTIVE ORDER WAS DENIED, I ASKED FOR A REHEARING BECAUSE COUNSEL FOR THE OTHER SIDE FAILED TO INFORM THE COURT OF A --

ON THE DATE THAT YOU WERE UNDER SUBPOENA AND THERE HAD BEEN NO PROTECTIVE ORDER ENTERED, YOU DID NOT APPEAR, CORRECT?

THAT IS CORRECT.

AND THEN YOU WERE HELD IN CONTEMPT OF COURT?

THAT IS CORRECT. I HAD A FEDERAL RIGHT.

NOW, AS A LAWYER, YOU HAVE AN OBLIGATION UNDER THE RULES OF CONDUCT FOR LAWYERS IN FLORIDA TO NOT THWART JUDICIAL PROCESS, CORRECT? I MEAN, IS THAT YOUR UNDERSTANDING OF WHAT YOUR OBLIGATION IS?

UNLESS I HAVE A PRIVILEGE WHICH IS SPOKEN OPENLY.

BUT THE COURT HAD RULED AGAINST YOU, THE COURT HAD RULED AGAINST YOU AND HELD YOU IN CONTEMPT, CORRECT?

EVENTUALLY, YES. AFTER, YES, EVENTUALLY THAT'S CORRECT.

ISN'T THERE A SEPARATE ISSUE AS TO WHETHER OR NOT YOU CAN SHOW UP AT A DEPOSITION AND THEN SAY, WELL, I'M NOT GOING TO ANSWER THAT QUESTION UNLESS THE COURT COMPELS ME TO, OR I THINK I HAVE A PRIVILEGE ABOUT THIS, BUT YOU TELL ME WHAT BASIS YOU HAVE IN THE LAW AND YOU ARE A LAWYER, SO TELL THIS COURT WHAT BASIS YOU HAVE IN LAW FOR IGNORING A LEGAL SUBPOENA TO APPEAR AND THEN DOING IT SEVERAL TIMES WITHOUT ANY PROTECTION OF A COURT ORDER THAT GIVES YOU THE RIGHT TO DO THAT. TELL ME WHAT LEGAL AUTHORITY YOU HAVE TO DO THAT.

AT THE TIME, I BELIEVED OR -- A MOTION FOR PROTECTIVE ORDER AND THIS IS SUPPORTED BY TRAWICK, ENTITLED, BUT LET ME ANSWER YOUR QUESTION SPECIFICALLY. RULE 4-3.4 SAYS A LAWYER SHALL NOT, C, KNOWINGLY DISOBEY AN OBLIGATION UNDER THE RULES OF OUR TRIBUNAL EXCEPT FOR AN OPEN REFUSAL BASED ON AN ASSERTION THAT NO VALID OBLIGATION EXISTS. I HAD AN OPEN REFUSAL THAT NO OBLIGATION EXISTED. IT WAS GRANTED TO ME BY A FEDERAL --.

WHAT YOU DO WHEN YOU SHOW UP AND PURSUANT TO THE LEGAL COMMAND TO APPEAR AND THEN ASSERT THAT I'M HERE BECAUSE I HAVE BEEN COMMANDED TO BY THE LAW, BUT I'M NOT GOING TO ANSWER THIS OR WHATEVER UNTIL I'VE HAD AN OPPORTUNITY TO PRESENT MY POSITION TO A JUDGE AND THAT JUDGE THEN COMPELS ME TO PROVIDE INFORMATION OR TO ANSWER QUESTIONS OR SUCH AS THAT. I'M VERY, VERY DISTRESSED AND I'M ESPECIALLY DISTRESSED THAT YOU WOULD SHOW UP TODAY BY YOURSELF ON A RECORD THAT WE HAVE

HERE WHICH INCLUDES UNDER THE FORCE OF LAW A FEDERAL DECISION WHICH ALSO REALLY HAS HELD AND NOW HAS BEEN APPROVED ON APPEAL THAT YOU HAVE ENGAGED CONTINUOUSLY IN A COURSE OF {PRIF} HUSBAND ACTIVITIES IN THE FED -- FRIVOLOUS ACTIVITIES IN A FEDERAL COURTS. THAT'S REALLY WHAT THE RULING WAS IN THE RULE 11 PROCEEDINGS, WAS IT NOT? AND NOW THAT HAS BEEN FINALIZED, I ASSUME. DID YOU SEEK REVIEW IN THE U.S. SUPREME COURT?

NO, I DIDN'T, YOUR HONOR.

AND SO THAT'S FINAL. DOES THAT HAVE THE FORCE OF LAW?

ABSOLUTELY.

DO YOU ACCEPT AS A LAWYER AND AS A PERSON THAT THAT HAS THE FORCE OF LAW?

IT HAS THE FORCE OF LAW, YES.

AND SO WHAT WERE THE HOLDINGS IN THOSE PROCEEDINGS IN TERMS OF GAUGING YOUR CONDUCT IN THE FEDERAL COURT?

THE HOLDINGS WERE THAT THE STATUTE WHICH SAYS THAT WHEN A CONSUMER DEBTOR ISSUES A CEASE AND DESIST ORDER AGAINST A DEBT COLLECTOR THAT THAT --

EXCUSE ME FOR JUST A MOMENT NOW. I'M ASKING YOU WHAT THE CONCLUSION WAS IN THE RULE 11 PROCEEDINGS ABOUT YOUR CONDUCT.

IT WAS MERITLESS.

PARDON?

THE RULE OF THE U.S. DISTRICT COURT SAID THAT MY COMPLAINT FILINGS IN U.S. DISTRICT COURT WERE MERITLESS.

AND NOW WHY WOULDN'T THE RULE 11 PROCEEDINGS BY THEMSELVES BE A SUFFICIENT BASIS FOR YOU TO BE SANCTIONED BY THE FLORIDA BAR?

FOR TWO REASONS. NUMBER ONE, THE STANDARD USED IN A RULE 11 SANCTION IS NOT CLEAR AND CONVINCING EVIDENCE WHICH IS THE STANDARD USED IN THESE PROCEEDINGS. THAT'S ONE REASON. A SECOND REASON IS THE U.S. DISTRICT COURT, IN ITS OPINION, ADMITTED AND STATED WHEN HE DISCUSSED COUNT 11, THAT MY INVOCATION OF 16, APPEARS BY THE PLAIN AND CLEAR LANGUAGE OF THE STATUTE TO PROHIBIT THE DEBT COLLECTOR DOING WHAT -- WHICH I COMPLAINED. HOWEVER, THE U.S. DISTRICT COURT IN A CASE OF PHYSICAL IMPRESSION SAID I AM GOING TO CREATE A FOURTH EXCEPTION, AND THE U.S. DISTRICT COURT JUDGE DID THAT, CREATED A FOURTH EXCEPTION, AND MY ARGUMENT IS THAT BECAUSE OF THAT THE JUDGE CREATING A FOURTH EXCEPTION, WHICH HE STATED VERY CLEARLY THAT'S WHAT HE WAS DOING, THAT IN A CASE OF FIRST IMPRESSION MY COMPLAINT WHICH HE DETERMINED WAS MERITLESS UNDER A STAND ARRESTED OTHER THAN CLEAR AND CONVINCING, THAT MY COMPLAINT I ARGUE NOW IN A CASE OF FIRST IMPRESSION WAS NOT AN UNETHICAL VIOLATION OF THE FLORIDA RULES.

BUT IT SEEMS TO ME THAT IN MY READING YOUR BRIEF OF WHICH YOU HAVE SUBMITTED HERE AND NOW IN YOUR ARGUMENT, IN MY GREAT CONCERN IS THAT YOU ARE MISSING THE POINT OF WHAT JUDGE VINCENT HELD. HE HELD SPECIFICALLY, AND I'M READING FROM IT, FOR ALL OF THESE REASONS, COMMITTEE HAS ABUSED THE LEGAL PROCESS AND SANCTIONS ARE WARRANTED. NOW, THAT WAS HIS HOLDING. THAT WAS AFFIRMED BY THE 11TH CIRCUIT. THAT'S

THE LAW OF THIS -- CONCERNING YOUR CONDUCT IN HANDLING THIS LITIGATION. NOW, WE AS LAWYERS HAVE AN OBLIGATION NOT TO ABUSE LEGAL PROCESS, BECAUSE IF WE DON'T DO IT, WHO CAN WE EXPECT TO RESPECT THE PROCESS? NOW, AND WHAT MY CONCERN IS, IS THAT YOU STILL ARE APPEARING TO ME NOT TO GET IT.

WELL, YOUR HONOR, I CAN ASSURE YOU IF THIS COURT ORDER TELLS ME WITH AN OPINION THERE IS NO DOUBT IN MY MIND, OF COURSE, YOU KNOW, I RESPECT THAT AND WILL FOLLOW THAT AND SO FORTH, BUT I'M HERE JUST MAKING THE ARGUMENT THAT THIS WAS A CASE THE FIRST -- IT IS TRUE. I DON'T -- MY ARGUMENT IS THE DECISION OF THE 11TH CIRCUIT, AND THE COURT OF APPEALS AND DISTRICT COURT SHOULD NOT BE CONTROLLING ON THIS COURT IN A CASE OF ALLEGED ETHICS VIOLATION FOR THE TWO REASONS I STATED. I THINK THE MOST IMPORTANT ONE IS THE STANDARD HERE IS CLEAR AND CONVINCING AND THE STANDARD THERE IS NOT.

DID THE REFEREE BASE ITS DECISION SOLELY ON THE FEDERAL COURT ORDER OR DID THE REFEREE INDEPENDENTLY DETERMINE THAT YOU HAD VIOLATED RULES OF THE FLORIDA BAR?

WELL, IT'S NOT CLEAR TO ME, BECAUSE IN HIS ORDER HE MENTIONS THAT THE DISTRICT COURT FOUND THAT MY CASE OF FIRST IMPRESSION IN HIS COURT WAS MERITLESS. THE REFEREE MENTIONED THAT IN HIS REPORT. PART OF MY COMPLAINTS HERE WERE THAT THERE WAS NO CONNECTION BETWEEN THE ALLEGED FACTS AND THE RULE VIOLATIONS. THAT WAS THE PROBLEM THAT I HAD.

YOU ARE IN YOUR REBUTTAL. IF YOU WANT TO SAVE SOME TIME.

I WILL. I'LL SIT DOWN.

THANK YOU.

MRS. ^KLEIN?

MAY I PLEASE THE COURT, I'M HERE REPRESENTING THE FLORIDA BAR. I'D LIKE TO RESERVE FIVE MINUTES OF REBUTTAL ON OUR COUNTER PETITION. I'M HERE TODAY FIRST OF ALL TO SPEAK ABOUT MR. ^COMMITTE'S PETITION IN OPPOSITION TO IT, AND ALSO TO SUPPORT THE BAR'S COUNTER PETITION WHICH CONSISTED OF FIRST ASKING THIS COURT TO IMPOSE A 91-DAY SUSPENSION AND NOT A PRIVATE REPRIMAND, WHICH IS NO LONGER PERMISSIBLE IN THE RULES.

MY SUGGESTION WOULD BE THAT YOU CAN ARGUE BOTH TOGETHER, BECAUSE THE WAY WE HAVE THIS IS WE HAD YOU AT 15 MINUTES, SO IF YOU CAN MAKE BOTH OF THOSE ARGUMENTS.

THANK YOU, YOUR HONOR. THE SECOND ISSUE THAT WE BROUGHT UP IN OUR COUNTER PETITION WAS THAT TAXABLE COSTS SHOULD BE AWARDED TO THE FLORIDA BAR. THE REFEREE AT THE END OF HIS PETITION, AT THE END OF HIS FINDINGS OF FACT AND CONCLUSIONS OF LAW SAID THAT MR. ^COMMITTE SHOULD RECEIVE A PRIVATE REPRIMAND. WE'RE RECOMMENDING A 91-DAY SUSPENSION FOR THE FOLLOWING REASONS:.

WHO ARGUED THAT TO THE REFEREE? WERE YOU SEEKING A 91-DAY?

PARDON?

BEFORE THE REFEREE, IS THAT THE SANCTION THAT YOU SOUGHT, 91 DAYS?

NO, YOUR HONOR, UNFORTUNATELY AFTER THE REFEREE MADE HIS FINDINGS OF FACT AND CONCLUSIONS OF LAW WE DID NOT HAVE A SUBSEQUENT HEARING IN WHICH WE DISCUSSED ANY DISCIPLINE OR TAXABLE COSTS. THE REFEREE MADE THIS RECOMMENDATION ON THIS HIS OWN.

WASN'T IT THE BAR'S OBLIGATION AT THE PROCEEDINGS BEFORE THE REFEREE TO ASK FOR APPROPRIATE RELIEF BASED ON WHAT THE BAR BELIEVED IT HAD PROVEN TO THE REFEREE?

WELL, YOUR HONOR, WHEN WE HAD THE SECOND DAY OF THE REFEREE HEARINGS IN THE TRAN {SKIPT} I O-TRANSCRIPT I DID MENTION THAT WE WERE GOING TO NEED A SECOND DISCIPLINARY HEARING BECAUSE THE BAR AT THAT TIME HAD --

WE DON'T JUST MENTION TO REFEREES THAT, YOU KNOW, MAYBE WE'RE GOING TO NEED ANOTHER HEARING OR SOMETHING. WHAT WE DO IS WE EITHER HAVE A HEARING SCHEDULED AND AGREE WHAT'S GOING TO BE, YOU KNOW, INCLUDED THERE, OR ARE YOU TELLING ME THAT THE BAR NEVER SUGGESTED TO THE REFEREE WHAT THE CONSEQUENCES SHOULD BE, OF WHAT THE BAR WAS CLAIMING THAT THIS RESPONDENT WAS GUILTY OF?

NO, YOUR HONOR, NOT AT THAT TIME BECAUSE WE DIDN'T KNOW WHAT THE FINDINGS OF FACT WERE GOING TO BE.

SO WE SEE TRANSCRIPTS OF REFEREES 99 TIMES OUT OF 100 IN WHICH IT IS ALL HANDLED IN THE SINGLE SAME PROCEEDING. THE BAR SAYS WE BELIEVE A RESPONDENT HAS BEEN GUILTY OF THESE ETHICAL VIOLATIONS AND WE BELIEVE THIS SHOULD BE THE SANCTION AND THE PUNISHMENT AND WE ALSO BELIEVE, BY THE WAY, THAT THE REFEREE SHOULD RECOMMEND TO THE SUPREME COURT THAT OUR COSTS BE AWARDED TO US 6789. THIS PROCEEDING IS EXCEPTIONAL IN THE SENSE THAT IT DOES NOT HAVE EITHER A RECOMMENDATION AS THE SANCTION FROM THE BAR A DETAILED LIST OF COSTS PRESENTED TO THE REFEREE BY THE BAR. CAN YOU EXPLAIN WHY THAT HASN'T OCCURRED HERE AND WE SEE IT HAPPEN IN ALL OF THE OTHER CASES?

WELL, YOUR HONOR, NORMALLY THERE ARE TWO PHASES TO THE DISCIPLINARY HEARING. ONE PHASE IS THE FINDING OF FACT PHASE AND THE OTHER IS THE PENALTY PHASE AND THERE ARE TIMES WHEN WE GO IN ON A MOTION FOR SUMMARY JUDGMENT OR WE KNOW WHAT FINDINGS ARE GOING TO BE AND WE CAN MAKE THAT RECOMMENDATION AND WE CAN ALSO ASK FOR COSTS. IN THIS PARTICULAR CASE, THE BAR CHARGED MR.^COMMITTE WITH THREE OR FOUR RULES WHICH AT THE END OF THE HEARING I BELIEVED I NEEDED TO CON {SULT} WITH MY CLIENTS BECAUSE THEY WERE BASED ON MISREPRESENTATION, DECEIT, FRAUD AND ET CETERA.

WHO IS YOUR CLIENT?

THE FLORIDA BAR.

WHO ARE YOU TALKING ABOUT CONSULTING WITH?

WELL, CONSULTING WITH THE STAFF COUNSEL AND THE PEOPLE AT THE FLORIDA BAR.

I MEAN YOU ARE THE FLORIDA BAR IN A PROCEEDING ABOUT OF THE REFEREE, ARE YOU SAYING YOU WEREN'T GIVEN AUTHORITY TO RECOMMEND A SANCTION OR TO ASK THE REFEREE TO TAX COSTS?

NO, YOUR HONOR, I WASN'T -- I WANTED TO GO BACK AND TALK TO THEM ABOUT WITHDRAWING SOME OF THE RULES BECAUSE AT THE END OF THE REFEREE PROCEEDING, THE REFEREE SAID THERE WERE CERTAIN FACTUAL FINDINGS THAT HE WAS NOT GOING TO MAKE IN FAVOR OF THE BAR AND HE ALSO DIDN'T SEE HOW THE RULES ON MISREPRESENTATION, FRAUD AND DECEIT APPLIED TO THE CLEAR AND CONVINCING PROOF THAT THE BAR HAD PUT ON SO AT THAT POINT IN TIME I NEEDED TO SEE WHETHER OR NOT THERE WERE OTHER FINDINGS THAT HE HAD NOT FOUND IN FAVOR OF THE BAR ON THIS FRIVOLOUS ACTION.

SO DID YOU ASK THE REFEREE FOR ANOTHER HEARING?

NO, YOUR HONOR, I DIDN'T. I CALLED HIS OFFICE SEVERAL TIMES TO FIND OUT WHEN THE FINDINGS OF FACT WERE GOING TO BE ISSUED SO WE COULD SET ANOTHER HEARING.

IS THIS THE NORMAL PROCEDURE THAT YOU BIFURCATE THESE KINDS OF PROCEEDINGS? I THOUGHT WE NORMALLY HAD THE HEARING THAT INCLUDED THE FINDINGS, BASED ON THE ALLEGED RULES VIOLATIONS AND MITIGATING AND AGO {VA} -- AGGRAVATING EVIDENCE IS PRESENTED ALL IN THIS ONE PROCEEDING.

NOT USUALLY, YOUR HONOR, UNLESS IT IS SOMETHING LIKE A MOTION FOR SUMMARY JUDGMENT WHERE I KNOW IF THE REFEREE FINDS IN MY FAVOR I KNOW WHAT THE FINDINGS ARE GOING TO BE. NORMALLY WHEN THE HEARINGS ARE CONTESTED BY THE RESPONDENT AND WE HAVE TO PUT ON CLEAR AND CONVINCING PROOF I WAIT UNTIL THOSE FINDINGS OF FACT HAVE BEEN ISSUED AND, IN FACT, IN THIS CASE THE REPORT OF REFEREE WAS NOT A REPORT OF REFEREE. IT SAID AT THE TOP FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND I EXPECTED THE REFEREE TO MAIL THAT TO MYSELF AND MR.^COMMITTE WHEN HE MADE HIS DECISION AND THEN AFTER THAT POINT IN TIME WE WOULD HAVE PENALTY HEARINGS BASED ON WHAT HE DECIDED TO FIND BECAUSE THIS WAS ONE OF THOSE HEARINGS WHICH I FELT COULD GO EITHER WAY FOR THE BAR.

LET ME ASK YOU THIS:.

YES, SIR.

THE BAR IS ASKING HERE FOR 91 DAYS. IS THERE ANY PRECEDENT FROM THIS COURT THAT WOULD SUPPORT 91 DAYS?

YES, YOUR HONOR. WE BELIEVE THE CASE LAW AS WELL AS THE FLORIDA LAWYERS STANDARDS WOULD SUPPORT A 91-DAY SUSPENSION.

WHAT CASE ARE YOU REFERRING TO?

PARDON?

THE CASE THAT I WOULD REFER YOU TO IS THE FLORIDA BAR V KELLY, ALSO THAT IMPOSED A 91 DAY SUSPENSION FOR FILING OF A FRIVOLOUS MOTION.

WHAT WAS KELLY'S HISTORY?

WELL, KELLY'S HISTORY WAS THAT HE HAD FILED A FRIVOLOUS MOTION, A FRIVOLOUS LAWSUIT.

DID HE HAVE PRIOR DISCIPLINARY RECORDS?

HE FILED A FRIVOLOUS AND HARASSING LAWSUIT. HE DID HAVE, I BELIEVE, NO PRIORS BUT HE HAD LOTS OF AGGRAVATING FACTORS. THEY FOUND HIM GUILTY OF 4-3.1 AND 4-8.4D ON A 91-DAY SUSPENSION, AND THAT WAS 1813 SOUTHERN SECTION 85.

MY CONCERN ABOUT THIS, I DO NOT EXCUSE MR.^COMMITTE'S ACTIONS, IS THAT YOU JUST MADE A STATEMENT THAT THE BAR FELT THIS CASE COULD GO EITHER WAY. NOW, WHY IS THAT? I MEAN, YOU ARE BEING FRANK WITH US ABOUT WHAT'S GOING ON HERE. YOU KNOW, YOU'VE GOT WHAT JUDGE VINCENT FOUND, AND YOU'VE GOT THE ACTUAL HISTORY OF THIS. WHAT IS -- IT LOOKS LIKE IT IS ALMOST AN ISSUE OF LAW AS FAR AS WITH THIS IS THERE AN ABUSE OF THE PROCESS? SO WHAT IS -- YOU ARE ASKING FOR A SANCTION THAT WOULD REQUIRE REHABILITATION WITH NO PRIOR DISCIPLINARY HISTORY, SO TELL ME WHAT IS IT THAT WAS EQUIVOCAL ABOUT THIS THAT LED THE BAR TO THINK MAYBE WE BETTER WAIT AND SEE WHAT THE FINDINGS ARE GOING TO BE BEFORE WE DECIDE WHAT THE DISCIPLINE IS WE ARE GOING TO

ASK FOR.

AFTER THE REFEREE HEARING HE ASKED ME, HE SAID IS THIS ORDER OF JUDGE VINCENT AND THE 11TH CIRCUIT COURT OF APPEALS DECISION, IS THIS A CONCLUSIVE PROOF OF MR.^COMMITTE'S GUILT OR CAN I GO BEHIND THIS ORDER AND LOOK TO SEE WHETHER OR NOT THE FINDINGS THAT THE JUDGE MADE IN THE FEDERAL COURT AND ALSO WHETHER OR NOT HIS DECISION BASED ON THE CASE LAW AND EXAMINE THE APPLICABLE STATUTES, CAN I GO BEHIND THIS ORDER AND I SAID, YES, YOU CAN, BECAUSE IN A DISCIPLINARY PROCEEDING WE ARE NOT BOUND BY WHAT IS DECIDED IN A CRIMINAL OR A CIVIL COURT, AND THERE HAVE BEEN INSTANCES WHERE THE GRIEVANCE COMMITTEE AND THE REFEREE COULD GO BEHIND THE ORDER AND HE COULD FIND THAT, WELL, MAYBE MR.^COMMITTE HAD A GOOD BELIEF IN WHAT HE WAS DOING.

SO HOW DOES THAT -- SO AFTER LISTENING TO MR.^COMMITTE, DID THE BAR PUT ON ANY OTHER PROOF THAT UNDER THESE CIRCUMSTANCES HE COULDN'T HAVE A GOOD FAITH BELIEF THAT HE WAS DOING SOMETHING PROPER, THAT HE WASN'T FILING A FRIVOLOUS LAWSUIT, HE IS SAYING THIS IS A CASE OF FIRST IMPRESSION, WHAT IS THE BAR'S RESPONSE SO THAT?

WELL, OUR ONLY EVIDENCE WAS MR.^COMMITTE'S TESTIMONY AND MR.^GUTMAN'S WHO WAS THE ATTORNEY WHO WAS SUED AND THE ORDER THAT CAME DOWN FROM THE FEDERAL COURT, AND THE PLEADINGS THAT CAME FROM THE COUNTY COURT.

SO WHAT'S YOUR BEST ARGUMENT ABOUT HE IS SAYING, LISTEN, THIS IS A CASE OF FIRST IMPRESSION. I THOUGHT, YOU KNOW, I HAD BEEN DOING CLASS ACTIONS, I THOUGHT THIS WAS AN APPROPRIATE USE OF THIS FEDERAL STATUTE, AND I FILED IT IN GOOD FAITH. WHAT'S THE CONTRARY EVIDENCE THAT IT COULDN'T HAVE BEEN IN GOOD FAITH?

WELL, THE CONTRARY EVIDENCE --

BY CLEAR AND CONVINCING PROOF?

THE CONTRARY EVIDENCE, WHICH THE BAR PUT ON, WAS THE FACT THAT NEITHER THE 11TH CIRCUIT COURT OF APPEALS NOR THE FEDERAL COURT EVER CONSIDERED THIS A CASE OF FIRST IMPRESSION. THEY FOUND THAT IT WAS A FRIVOLOUS LAWSUIT WITH NO MERIT AND THAT IT WAS AN ABUSE OF THE LEGAL PROCESS.

SO THEN WE ARE RELYING SOLELY ON --

WE RELIED ON THE COURT ORDERS AND ON THE PROCEDURES IN THE COUNTY COURT, THE MOTIONS FOR PROTECTIVE ORDER, ET CETERA, TO MAKE OUR CASE, BUT THERE WERE OTHER FINDINGS IN OUR ALLEGATIONS THAT THE REFEREE DID NOT AGREE WITH. WE HAD SIX OR EIGHT OTHER ALLEGATIONS.

LET'S GO OVER THIS, BECAUSE REGARDLESS OF THE FEDERAL PROCEEDINGS, DID THE BAR -- DOES THE BAR TAKE THE POSITION AS JUSTICE WELLS AND JUSTICE ANSTEAD WERE QUESTIONING ON THAT WHEN YOU, YOU KNOW, YOU FILE YOUR MOTION FOR PROTECTIVE ORDER BUT UNDER THESE CIRCUMSTANCES FOR MR.^COMMITTE NOT TO SHOW UP TO KEEP ON POSTPONING THE DEPOSITION, HE WAS HELD IN CONTEMPT, THOSE ALL HAPPENED IN THE STATE COURT PROCEEDINGS SO WHY DID YOU EVEN NEED TO RELY ON THE FEDERAL PROCEEDINGS TO HAVE THE JUDGE MAKE A FINDING IN THIS CASE THAT HE WAS ABUSING HIS -- THE LEGAL PROCESS?

WELL, WE WERE TRYING TO SHOW A PATTERN OF MISCONDUCT, AND NOT ONLY DID HE ABUSE THE PROCESS IN THE COUNTY COURT, BUT JUDGE VINCENT HAD MADE SPECIFIC FINDINGS THAT IT WAS A FRIVOLOUS LAWSUIT AND HE HAD FILED IT JUST TO HARASS MR.^GUTMAN AND THAT CAME UNDER A DIFFERENT RULE VIOLATION. THE ABUSE OF LEGAL PROCESS WOULD HAVE COME UNDER RULE VIOLATION 4-8.4D AND WE PROBABLY COULD HAVE PROVEN THAT WITH A COUNTY

COURT CASE.

HE FOUND A VIOLATION OF 4.84D. WAS THAT BASED ON WHAT OCCURRED IN THE COUNTY COURT CASE?

I BELIEVE THAT WAS WHAT OCCURRED IN THE COUNTY COURT AND THE FEDERAL COURT CASES AND HE ALSO FOUND AS AN AGGRAVATING FACTOR A PATTERN OF MISCONDUCT BY MR.^COMMITTE AND BY TRYING TO BRING IN THE COUNTY AND THE FEDERAL CASES WE WERE TRYING TO SHOW THERE WAS A PATTERN HERE. WE ALSO HAD SIX OTHER ALLEGATIONS CONCERNING OTHER CASES WHERE MR.^COMMITTE HAD ENGAGED IN THE SAME PATTERN OF CONDUCT BUT THE REFEREE WOULDN'T ACCEPT THOSE ALLEGATIONS.

AND YOU ARE NOT CROSS APPEALING ON THAT BASIS?

NO, WE ARE NOT. WE JUST WANT THOSE ALLEGATIONS. WE BELIEVE THAT BASED ON THE CASE OF KELLY AND THEN RICHARDSON AND ALSO IN RESPONSE TO YOUR QUESTION ABOUT CASES THAT WOULD SUPPORT OUR 91-DAY SUSPENSION, I BELIEVE THE CASE OF THE FLORIDA BAR V BLOOM IS ALSO ANOTHER CASE WHICH IMPOSED A 91-DAY SUSPENSION FOR JUST FAILURE TO COMPLY WITH DISCOVERY BOTH BEFORE AND AFTER A JUDGMENT THAT WAS ENTERED IN A COURT, AND THAT'S ANOTHER CASE WHICH WOULD SUPPORT A 91-DAY SUSPENSION. THE CASE OF THE FLORIDA BAR V BLOOM. THAT CAN BE FOUND AT 623 SOUTHERN SECOND, 1016 AND A 91-DAY SUSPENSION WAS IMPOSED IN THERE JUST FOR VIOLATION OF RULE 4-3.4D.

I ASSUME THESE ARE CASES YOU'VE CITED IN YOUR BRIEF?

THE BLOOM CASE I DID NOT.

WELL, THEN I HOPE YOU AS BAR COUNSEL UNDERSTAND THAT WE DO NOT ALLOW IN ORAL ARGUMENT CASES THAT HAVE NOT BEEN CITED IN THE BRIEF.

I APOLOGIZE THEN.

YOU MAY FILE A NOTICE OF SUPPLEMENTAL AUTHORITY.

THANK YOU.

I THINK RICHARDSON WAS ACTUALLY A 60-DAY SUSPENSION. RICHARDSON HAD ALREADY BEEN SUSPENDED, AND IT WAS, BUT THE ACTUAL SUSPENSION IN THE CASE THAT IS CITED WAS FOR 60 DAYS.

YES, YOUR HONOR.

AND TO RUN CONCURRENTLY.

AND THE ORIGINAL RECOMMENDATION THERE WAS A 91-DAY SUSPENSION BUT THE COURT REDUCED IT TO 60 BECAUSE IN THE SAME SET OF FACTS HE ALREADY HAD A 91-DAY SUSPENSION.

THANK YOU.

BUT WE BELIEVE THE CASE LAW AND ALSO THE STANDARDS UNDER 6.22 WAS FOR A 91-DAY REHABILITATIVE SUSPENSION FOR MR.^COMMITTE BECAUSE WITH THE AGGRAVATING FACTORS OF PATTERN OF DIS CONDUCT AND MULTIPLE OFFENSES AND HE HAD SUBSTANTIAL EXPERIENCE IN THE LAW AND HE EVEN TESTIFIED THAT HE HAD SUBSTANTIAL EXPERIENCE IN THIS AREA OF THE LAW. SO WE BELIEVE THAT THE COURT, UNDER ITS OWN JURISDICTION, CAN DECIDE THE DISCIPLINE. ON THE OTHER HAND, THE TAXABLE COSTS WHENEVER DISCUSSED BEFORE THE

REFEREE AND OF COURSE THE COURT IS AWARE IT HAS THE OPTION OF REMANDING BACK ON THE TAXABLE COSTS THE FIELD -- HE FEELS THAT THE REFEREE NEEDS TO USE HIS DISCRETION. WE DID SUBMIT A LIST OF COSTS AT THE END OF THE PROCEEDINGS WHEN I FOUND THAT HE HAD FILED HIS REPORT WITH THE COURT IMMEDIATELY.

WITH OUR HELP YOU HAVE USED UP YOUR TIME. THANK YOU VERY MUCH.

THANK YOU, YOUR HONOR.

MR.^COMMITTEE, FOUR MINUTES.

WITH RESPECT TO THE U.S. DISTRICT COURT'S DECISION, WELL, LET ME ADDRESS THE ISSUE --

LET ME ASK YOU: WHY ISN'T THAT DECISION RES^JUDICATA AS TO THE FACTS IN THAT CASE AS TO YOU AND AS TO ANY FINDINGS ABOUT WHETHER THAT LAWSUIT WAS FRIVOLOUS? NOW, THE REFEREE MAY DETERMINE WHETHER A FRIVOLOUS LAWSUIT THEN VIOLATES ANY FLORIDA BAR RULES, BUT WHY ISN'T IT RES^JUDICATA TO THE FACT THAT YOU FILED A FRIVOLOUS LAWSUIT?

FOR THE SAME REASON THAT A DECISION IN A CIVIL CASE WOULD NOT BE RES^JUDICATA AS TO A CRIME, THE STANDARD OF DECISION MAKING BY THE JUDGE IN A BAR MATTER IS CLEAR AND CONVINCING EVIDENCE, AND --

THERE IS A CERTAIN STANDARD UNDER RULE 11 TO DETERMINE WHETHER A LAWSUIT WAS FRIVOLOUS.

I DON'T KNOW AND JUDGE VINCENT DIDN'T DISCLOSE IT IN HIS ORDER. THAT'S THE BEST I CAN SAY. I DON'T KNOW THAT IT IS CLEAR AND CONVINCING. I'VE HEARD NOBODY DESCRIBE WHAT THAT STANDARD IS. I WAS ASSUMING WITHOUT ANY CITATION TO AUTHORITY IT WAS BY A PREPONDERANCE OF THE EVIDENCE.

WAS THERE ANY TESTIMONY AT THE REFEREE'S HEARING?

WAS THERE TESTIMONY?

YES, AT THE HEARING BEFORE THE REFEREE?

YES, THERE WAS.

YOU TESTIFIED?

YES, I DID.

AND MR.^GUTMAN TESTIFIED?

YES, HE DID.

SO THE REFEREE COULD RELY ON THE TESTIMONY AT THAT HEARING AND NOT JUST ON THE ORDER IN FEDERAL COURT?

YES, HE COULD. IN HIS ORDER, HE REFERENCES JUSTICE VINCENT'S DECISION, HOWEVER.

DOES THE RECORD REFLECT WITH THE STATUS WITH REGARD TO THE SANCTIONS IN THE FEDERAL COURT WHETHER THOSE HAVE BEEN SATISFIED OR WHAT'S HAPPENED WITH THAT?

YES, AND I THINK, AND I THINK THAT MAY BE THE REASON THE REFEREE DID WHAT HE DID. I WAS SANCTIONED \$15,000 SOME HUNDRED DOLLARS FOR WHAT THE REFEREE CONCLUDED WAS A

VIOLATION OF THE RULE, BUT I THINK THE REFEREE PROBABLY UNDERSTOOD THAT AT THE TIME I DID NOT TRULY BELIEVE IT WAS A VIOLATION. IT WASN'T A KNOWING VIOLATION.

AND HAS THAT BEEN -- THAT SANCTION BEEN SATISFIED?

YES, IT WAS. IT WAS SATISFIED BEFORE THE REFEREE HEARING AS SOON AS I GOT THE MONEY I DID PAY IT.

OKAY. AS YOU LOOK BACK ON WHAT'S OCCURRED HERE, LET'S GO BACK TO DAY ONE, WOULD YOU DO ANYTHING DIFFERENTLY AND IF SO WHAT?

WELL, BASED -- I WOULDN'T HAVE DONE ANYTHING DIFFERENTLY UNTIL I HEARD THE QUESTIONS FROM THIS COURT. IT'S PRETTY CLEAR TO ME THAT THIS COURT DOESN'T AGREE WITH ME, WHICH IS THAT THIS WAS A CASE OF FIRST IMPRESSION AS TO THE U.S. DISTRICT COURT CASE. I'M NOT ANTICIPATING A DECISION. I'M JUST SAYING BASED ON THE QUESTIONS. AND ALSO MY VIEW THAT IN A MOTION FOR PROTECTION ORDER WITH RESPECT TO DISCOVERY, I HAD A FEDERAL LAW WHICH GAVE ME A PRIVILEGE, IN MY OPINION, THAT'S WHAT I BELIEVED, AND I STILL BELIEVE THAT BUT I'M GOING TO TAKE INTO CONSIDERATION WHAT THIS COURT DECIDES AND OF COURSE FOLLOW IT, BUT I TRULY BELIEVED THEN AND I DO BELIEVE NOW THAT ESPECIALLY WITH RESPECT TO TRAWICK, THAT WHEN YOU, IN A DISCOVERY SITUATION IF YOU HAVE A PRIVILEGE YOU ARE ENTITLED TO EXERT THE PRIVILEGE. I DIDN'T SHOW UP AT THE DEPO AND SAY THE PRIVILEGE. I DESCRIBED THE PRIVILEGE IN ADVANCE.

WELL, MAYBE THIS IS WHAT I'M HAVING, AND AGAIN HEARING WHAT YOU ARE SAYING WE'RE TALKING ABOUT NOW COULD YOU HAVE FILED THIS LAWSUIT, COULD YOU SHOW UP, BUT GOING BACK TO WHAT WAS THERE ORIGINALLY. THERE WAS A MONEY JUDGMENT. IT WAS \$4,527 THAT WAS IN 1993 AGAINST YOU, AND I AM AT NO TIME HAVE I HEARD YOU SAY THAT YOU DIDN'T ACTUALLY OWE THIS MONEY, AND WHAT YOU DID SUBSEQUENTLY WAS DO EVERYTHING IN YOUR POWER NOT TO PAY THIS AND ENDED UP NOW BEING DISCHARGED IN BANKRUPTCY, AND I JUST, THAT WITH EVERYTHING ELSE, THE FACT THAT THAT'S WHERE IT STARTED AND THIS IS WHERE IT CAME THAT YOU WOULD BE BEFORE US SAYING, YOU KNOW, IF I HAD TO DO IT OVER, WOULDN'T YOU JUST SAY PAY THE \$4,500? I MEAN, I'VE NEVER HEARD YOU SAY THAT THAT MONEY WASN'T A LAWFUL DEBT.

THE REASON I HAVEN'T SAID IT IS BECAUSE I DIDN'T CONSIDER IT RELEVANT AT ALL, BUT IN ANSWER TO YOUR QUESTION, THERE ARE A LOT OF US CONSUMERS, SOME OF US ARE LAWYERS, THERE ARE MANY CONSUMERS WHO DON'T HAVE THE ABILITY TO PAY AT THE TIME. THERE IS THE ASSUMPTION IS THAT I I HAD THE ABILITY TO PAY IS NOT IN THE RECORD AND IT'S WRONG.

BUT YOU DON'T ABUSE THE LEGAL PROCESS IF YOU CAN'T PAY. YOU CALL AN ATTORNEY AND SAY I'LL SET UP A PAYMENT PLAN. YOU DON'T GO FILE BANKRUPTCY FOR A \$4,500 DEBT.

I DIDN'T HAVE IT, YOUR HONOR.

I JUST HAVE ONE ADDITION. I KNOW YOUR TIME IS UP BUT ISN'T IT TRUE THAT THE VERY FIRST TIME YOUR DEPOSITION WAS SCHEDULED BY MR. GUTMAN, YOU CALLED AND ASKED FOR PERSONAL REASONS TO HAVE THE DEPOSITION POSTPONED?

THAT'S CORRECT. NO, INCORRECT. I CALLED AND ASKED TO HAVE THE DEPOSITION AT AN EARLIER DATE, NOT POSTPONED.

AND THEN THE NEXT TIME IT WAS SET, YOU DIDN'T COME, CORRECT?

CORRECT. I FILED THIS MOTION FOR PROTECTIVE ORDER.

WELL, YOU FILED THE THIRD MOTION FOR PROTECTIVE ORDER ON THE VERY DAY THAT MR. GUTMAN WAS THERE TO TAKE YOUR DEPOSITION, RIGHT?

THAT'S, YES, THAT'S AS SOON AS I DISCOVERED THESE PROVISIONS AND THEIR APPLICABILITY. I WILL SAY THIS: JUSTICE LEWIS, I WILL DO WHAT THIS COURT TELLS ME TO DO. THERE IS NO DOUBT ABOUT THAT. I JUST AT THE TIME I DID NOT -- I BELIEVED THAT THESE FEDERAL RIGHTS BELONGED TO ME, AND ALL CONSUMERS, I BELIEVE THAT.

THANK YOU. WE WILL BE -- THANK YOU VERY MUCH. WE WILL BE IN RECESS. WE WILL BE IN RECESS.

PLEASE RISE.