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The Florida Bar v. James Edmund Baker

MR. CHIEF JUSTICE: GOOD MORNING AND WELCOME TO THE ORAL ARGUMENT CALENDAR FOR THIS TUESDAY, OCTOBER 2, THE FLORIDA SUPREME COURT. THE FIRST CASE WE HAVE ON THE COURT'S DOCKET THIS MORNING IS THE FLORIDA BAR VERSUS BAKER. YOU MAY PROCEED. MR. WHALEN.

MAY IT PLEASE THE COURT. LADIES AND GENTLEMEN. MY NAME IS JOSEPH CORSMEIER, AND I REPRESENT THE RESPONDENT, MR. BAKER, JAMES BAKER IN THIS MATTER. INITIALLY I WOULD LIKE TO GIVE THE COURT A BRIEF SYNOPSIS OF THE FACTS AND THEN TALK ABOUT THE ISSUES IN THIS CASE. IN THIS CASE, MR. BAKER AND HIS WIFE, ELLEN, WERE MARRIED IN 1985. THEY PRODUCED FOUR CHILDREN IN THE MARRIAGE, WHO ALL ARE, CONTINUE TO BE DEPENDENTS OF MR. BAKER AND MR. AND MRS. BAKER. MR. BAKER WAS ADMITTED TO PRACTICE LAW IN THE STATE OF COMMITTEE IN 1989 AND -- IN THE STATE OF CONNECTICUT IN 1989 AND IN FLORIDA IN 1990. AT SOME POINT HE AND HIS WIFE, ELLEN, DECIDED TO MOVE TO THE STATE OF FLORIDA. THEY WERE LIVING IN NEW YORK AT THE TIME. THEY PURCHASED A HOME IN DADE COUNTY, FLORIDA, IN 1991. MR. BAKER'S PARENTS, MRS. BAKER BAKER'S IN-LAWS LIVED IN THAT HOME FROM THE TIME OF PURCHASE. MR. BAKER MOVED TO FLORIDA PRIOR TO 1997. MR. CHIEF JUSTICE: MR. CORSMEIER LET ME ASK YOU THIS.

YES, SIR. MR. CHIEF JUSTICE: THE FACTS, AS I UNDERSTAND FROM THE PAPERS, DO ESTABLISH THAT MR. BAKER SIGNED HIS FORMER SPOUSE'S NAME, HAD IT NOTARIZED, CORRECT?

YES, YOUR HONOR. MR. CHIEF JUSTICE: WITHOUT HER KNOWLEDGE OR CONSENT.

THAT WAS ONE OF THE ISSUES IN THE CASE, AND THE REFEREE FOUND THAT SHE DID NOT HAVE KNOWLEDGE, OR HAVE KNOWLEDGE AND GIVE CONSENT TO THE SIGNING. MR. CHIEF JUSTICE: WHAT WAS THE USE OF THE PROCEEDS FOR THE AMOUNT OF MONEY?

YOUR HONOR, THE RECORD SHOWS THAT MR. BAKER TESTIFIED THAT HE USED THE PROCEEDS TO PAY DOWN MARITAL DEBT. THERE WAS NO CHALLENGE TO THAT ASSERTION, AT LEAST THE CHALLENGE WAS NOT REFUTED THROUGH DOCUMENTATION. MR. BAKER DID TESTIFY -- MR. CHIEF JUSTICE: HE DEPOSITED, THOUGH, \$29,000 OF THIS MONEY IN HIS PERSONAL ACCOUNT, \$29,000 NET PROCEEDS, CORRECT?

THAT'S CORRECT, ACCORDING TO THE DOCUMENTS. MR. CHIEF JUSTICE: NOW, THERE WAS \$20,000. TELL US WHAT THE RECORD SHOWS, AS TO THE REST OF BREAKDOWN OF THE EXPENDITURE OF THAT MONEY.

MR. BAKER TESTIFIED THAT HE PAID DOWN THE MARITAL DEBT, PAID COMMON DEBT, INCLUDING CREDIT CARDS. THERE WERE SOME CHECKS, I BELIEVE, INDICATED IN THE RECORD AS TO WHERE SOME OF THE MONEY WENT. MRS. BAKER TESTIFIED SHE HAD NO KNOWLEDGE AS TO WHETHER THAT MONEY WAS USED TO PAY DOWN MARITAL DEBT. SHE DID NOT PROVIDE REBUTTAL TESTIMONY, TO MY RECOLLECTION, IN THE RECORD. MR. CHIEF JUSTICE: NOW, WAS THERE ANY EXPLANATION IN THE RECORD, AS TO WHY THE WIFE'S SIGNATURE WAS NOT OBTAINED ON THESE DOCUMENTS?

MR. BAKER'S TESTIMONY WAS THAT THE DOCUMENTS WERE REQUIRED TO BE COMPLETED IMMEDIATELY, OVERNIGHT, AND IN FACT, HIS TESTIMONY WAS THAT HIS WIFE HAD PREVIOUSLY

GIVEN HIM CONSENT TO SIGN HER NAME TO DOCUMENTS. SHE TESTIFIED THAT SHE DID NOT GIVE HIM CONSENT TO SIGN THOSE PARTICULAR DOCUMENTS, AND IN FACT, DIDN'T LEARN OF THE SALE, ACCORDING TO HER TESTIMONY, UNTIL MARCH OF 1998. THE SALE OCCURRED IN JULY OF 1997. MR. CHIEF JUSTICE: NOW, WAS THERE A CONTEST BY HER, AS TO WHETHER SHE, IN FACT, WANTED THE HOUSE TO BE SOLD?

TO MY KNOWLEDGE, YOUR HONOR, THERE WAS NO CONTESTING THE FACT THAT THIS HOUSE WAS TO BE SOLD. SHE DID GIVE SOME TESTIMONY THAT SHE DIDN'T HEAR FROM MR. BAKER, WHO THE ATTORNEY WAS THAT WAS REPRESENTING THEM IN THE TRANSACTION, AND THAT, AND HOW MUCH MONEY THE HOUSE WAS GOING TO BE SOLD FOR, SO AT THAT POINT AND I AM TRYING TO RECALL WHAT THE RECORD SAYS, BUT I BELIEVE SHE SAID THAT AT THAT POINT, SHE WAS NOT GOING TO AGREE TO THE SALE BECAUSE SHE DIDN'T KNOW WHO THE ATTORNEY WAS AND THE SALE PRICE. I DON'T BELIEVE SHE REFUTED THE FACT THAT THERE WAS AN AGREEMENT THAT THE HOUSE BE SOLD, IN ORDER TO OBTAIN THE PROCEEDS AND BE ABLE TO USE THEM TO PAY MARITAL DEBT. MR. CHIEF JUSTICE: DID SHE CONTEST WHETHER SHE RECEIVED BENEFIT FROM THE PROCEEDS?

SHE SAID SHE DIDN'T KNOW WHETHER SHE RECEIVED ANY BENEFIT FROM THE PROCEEDS, AND IN FACT, WHEN SHE LEARNED, WHEN SHE SAYS SHE LEARNED, ACCORDING TO THE RECORD, SHE CLAIMS THAT SHE LEARNED OF THE SALE IN MARCH OF 1998, AT THAT POINT SHE TOLD HER ATTORNEY, AND THE ATTORNEY, THEN IN TURN CONTACTED THE SECRETARY FOR MR. BAKER AND, ALSO, SHE CONTACTED THE, MR. BAKER'S EMPLOYER, THE LEE COUNTY SCHOOL BOARD, AND INFORMED THEM OF WHAT HAPPENED. THERE WAS NOT AN INITIAL REPORT TO THE BAR. IT WAS ESSENTIALLY INFORMING THAT INDIVIDUAL, HIS BOSS, ESSENTIALLY, THAT THIS IS WHAT HAPPENED. WITH REGARD TO THE SALE OF THE HOME, ITSELF, MR. BAKER DID OBTAIN, OR THE TESTIMONY WAS THAT THE WIFE, MRS. BAKER, GAVE CONSENT TO SELL THE HOUSE.

WE HAVE A VERY LIMITED AMOUNT OF TIME HERE, DURING THE ORAL PRESENTATION, SO I WOULD URGE YOU TO FOCUS ON A PARTICULAR ISSUE OR ISSUES, SO THAT WE --

THANK YOU. AS FAR AS THE RECORD, ITSELF, IN OUR BRIEF, WE CHALLENGED THE FACT THAT THE JULY 16, 1997 LETTER WAS ENTERED INTO EVIDENCE. APPARENTLY THAT WAS A VERY CRUCIAL PIECE OF EVIDENCE FOR THE REFEREE, BECAUSE HE REFERRED TO IT IN PARAGRAPH 7 OF HIS REPORT OF REFEREE. THAT DOCUMENT WAS NOT AUTHENTICATED AND IN FACT WAS DENIED BY MR. BAKER AS BEING A TRUE DOCUMENT. THAT WAS USED, BY THE REFEREE, TO ESSENTIALLY SHOW THAT THERE WAS A COVER-UP BY MR. BAKER, IN THE REGARD THAT HE WAS TRYING TO KEEP IT FROM HIS WIFE, EX-WIFE. THAT THE HOUSE WAS SOLD. OUR POSITION IS THAT THAT DOESN'T MAKE ANY SENSE, AND IN FACT MR. BAKER SAID HE HAD NEVER SEEN THE DOCUMENT BEFORE.

IS THERE ANY OTHER EVIDENCE OF COBB SEALMENT, AFTER THE -- OF CONCEALMENT, AFTER THE SALE AND UP UNTIL THE FOLLOWING YEAR AND EVIDENCE OF DISCLOSURE OF THE SALE? IS THERE ANY THAEVED AT ALL?

NO, YOUR HONOR. IN FACT FROM MY LOOK AT THE RECORD, IT WAS THE OPPOSITE. MR. BAKER NEVER CONCEALED IT AND IN FACT, TOLD THE BAR, WHEN HE WAS FIRST ADVISED OF THIS INITIALLY, IN HIS FIRST LETTER BACK, I DID DO THIS. THIS IS THE ONLY EVIDENCE, AT LEAST BESIDES THE TESTIMONY OF MRS. BAKER, THAT WAS THERE WAS SOME COVER-UP BY MR. BAKER WITH REGARD TO THE SALE, ITSELF.

WELL, HE DID HAVE HIS SECRETARY NOTARIZE THE DOCUMENT, DIDN'T HE?

THAT'S CORRECT.

AND SAID -- WHAT DID HE SAY ABOUT THE SIGNATURE?

HE -- THE RECORD SHOWS THAT HE SAID "WOULD YOU NOTARIZE THESE FOR ME." THAT MRS. KELLER WAS HER NAME. THE SECRETARY NEVER TESTIFIED THAT HE SOMEHOW CONCEALED WHAT HE HAD DONE. NOW, THERE WAS AN IMPLICATION THAT WAS RAISED ON THE RECORD, THAT, BY NOT TELLING HER THAT HE HAD SIGNED MRS. BAKER'S NAME, THAT SOMEHOW THAT WAS AN ATTEMPT TO CONCEAL HIS SIGNATURE.

THE REFEREE FOUND THAT HE LED KELLER TO BELIEVE THAT MRS. BAKER HAD MERELY FORGOTTEN TO HAVE HER SIGNATURE NOTARIZED.

AND WE CHALLENGED, IN OUR BRIEF, THAT REPRESENTATION BY THE REFEREE, AS NOT BEING SUPPORTED IN THE RECORD, BECAUSE IF YOU LOOK AT THE RECORD, WHAT HE DID WAS HE HANDED -- THE DOCUMENTS WERE ACTUALLY IN THE POSSESSION OF THE SECRETARY. SHE ASKED HIM WHAT TO DO, AND HE SAID COULD YOU NOTARIZE IT.

YOU SAID THERE IS NO SUBSTANTIAL COMPETENT EVIDENCE TO SUPPORT THAT FINDING. THAT IS IN ADDITION TO THE FORGERY OF THE SIGNATURE. HAVING SOMEONE NOTARIZE A SIGNATURE, SAYING THAT IT WAS, IS THEIRS, IS AN ADDITIONAL VERY SERIOUS BREACH.

THAT'S CORRECT, YOUR HONOR, AND OUR POSITION IS THAT THERE IS NOT COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THAT SPECIFIC FINDING THAT HE MISREPRESENTED DIRECTLY TO THE SECRETARY THAT SOMEHOW SHE HAD -- SHE OR HE HAD FORGOTTEN TO SIGN THE DOCUMENT THERE. IS NO NOTHING IN THE RECORD TO SUPPORT -- THERE IS NOTHING IN THE RECORD, NOTHING SPECIFIC IN THE RECORD TO SUPPORT THAT FINDING.

BUT IT SEEMS TO ME THAT THE REFEREE MADE THAT BY INFERENCE. HE DIDN'T TELL HER THAT HE, IN FACT, HAD SIGNED IT AND SHE WAS NOTARIZING HIS SIGNATURE.

AND THEN HE FOUND THAT, BECAUSE OF THAT, THAT HE, THAT SOMEHOW HE LED THE SECRETARY TO BELIEVE THAT HE HAD -- THAT SHE HAD FORGOTTEN TO SIGN IT, WHICH IS, IN MY OPINION, A LOGICAL LEAD TO GO FROM HEY, COULD YOU SIGN THIS TO "MY WIFE FORGOT TO SIGN IT." THERE WAS NEVER -- YES, YOUR HONOR.

YOU SAID THAT YOUR CLIENT DID NOTHING TO CONCEAL THE FACT THAT THIS HAD TAKEN PLACE. DID HE -- IS THERE ANY EVIDENCE THAT HE ACTUALLY SENT HIS EX-WIFE ANY INFORMATION, ONCE THE SALE HAD BEEN CONSUMMATED?

YOUR HONOR, HE TESTIFIED THAT HE DID SEND HER THE DOCUMENTS, AFTER THE FACT, AFTER THE SALE.

HOW LONG AFTER THE FACT?

I BELIEVE HE SAID -- I DON'T THINK HE HAD AN EXACT DATE, BUT IT WASN'T TOO LONG AFTER THE SALE, FROM HIS TESTIMONY. SHE TESTIFIED --

SHE TESTIFIED SHE NEVER GOT THOSE DOCUMENTS.

YES, AND AS A MATTER OF FACT SHE TESTIFIED THAT SHE RECEIVED THIS LETTER THAT IS DATED THE DAY AFTER THE SALE, AND THAT IT HAD BLANK DOCUMENTS, ASKING HER TO EXECUTE THE DOCUMENTS.

PRESUPPOSING, FOR A MOMENT, THAT WE AGREE WITH THE REFEREE'S FINDING OF FACTS. WOULD YOU FOCUS ON THE DISCIPLINE? WHY IS THE DISCIPLINE HERE DISPROPORTIONATE?

YES, YOUR HONOR, I WILL. AS A MATTER OF FACT, I WOULD POINT THE COURT TO THE FACT THAT

THIS DISBARMENT IS THE ULTIMATE SANCTION THAT THIS COURT CAN IMPOSE. IT IS EQUIVALENT, AS THIS COURT SAID IN PREVIOUS CASES, IT IS THE EQUIVALENT OF THE DEATH PENALTY IN CRIMINAL MATTERS, THE MOST SERIOUS SANCTION THAT CAN BE IMPOSED UPON A LAWYER. THAT IS THE FLORIDA BAR VERSUS HIRSCH, AND IT SHOULD BE RESERVED ONLY FOR THE MOST EGREGIOUS CIRCUMSTANCES, AND I WILL ADDRESS THE COURT WITH SOME OF THE PRIOR CASES, INCLUDING MR. KICKLITER'S CASE, THE FLORIDA BAR VERSUS KICKLITER, AND AS A MATTER OF FACT THE REFEREE, THE COURT RELIED ON THE KICKLITER CASE SPECIFICALLY TO RECOMMEND DISBARMENT IN THIS CASE, AND IT IS OUR POSITION, IT IS MR. BAKER'S POSITION THAT THAT IS INAPPROPRIATE, BECAUSE OF THE DIFFERENT CIRCUMSTANCES IN THIS CASE. THIS MATTER, MR. BAKER'S MATTER, WAS AN ENTIRELY PERSONAL, HIGHLY EMOTIONAL-CHARGED DIVORCE. MR. DICK LIGHTER WAS -- MR. KICKLITER WAS REPRESENTING A CLIENT IN A PROBATE MATTER, AND HE SPECIFICALLY WENT ABOUT THE PROCESS OF MISLEADING AND FILING PROBATE DOCUMENTS THAT FUNDAMENTALLY CHANGED THE NATURE OF THE PROBATE MATTER. WHAT HE DID IS HE, OF COURSE HE, HIS TESTIMONY WAS THAT HE HAD LEARNED OF WHAT HIS CLIENT WANTED TO DO WITH HIS, YOU KNOW, ALL THESE PROCEEDS AND ALL THIS MATTER. HE PREPARED THE WILL AS HIS CLIENT HAD INSTRUCTED HIM. THE PROBLEM WAS THE CLIENT DIED, AS YOU ALL ARE AWARE, AND MR. KICKLITER, THEN, WENT THROUGH THE PROCESS OF FALSIFYING THE SIGNATURE OF THE DECEDENT ON THE WILL, AND THIS WAS THROUGH CONSPIRACY WITH THE GRANDCHILDREN, IF YOU LOOK AT THE CASE, HE WAS CONSULTING WITH THE GRANDCHILDREN, BRINGING THEM INTO THE CONSPIRACY, AS A MATTER OF FACT. WHAT HAPPENED WAS HE, THEN, NOTARIZED THE SIGNATURE OF THE DECEDENT, HIMSELF, SO FURTHERED HIS PATTERN OF MISCONDUCT, AND THEN HE SUBMITTED IT TO THE PROBATE COURT IN AN IMPROPER FORM, WHICH SUBSTANTIALLY AND FUNDAMENTALLY CHANGED THE PROBATE PROCESS, BECAUSE WHEN YOU HAVE A WILL, OBVIOUSLY IT IS GOING TO RESULT, AND I BELIEVE IN THIS CASE IT WAS GOING TO GO TO THE GRANDCHILDREN, BUT IF THE DECEDENT DIES WITH A PREVIOUS WILL IN FORCE, I BELIEVE THE SONS OF THE DECEDENT WERE GOING TO BE COMPENSATED OR GIVEN THE MONEY OR THE PROCEEDS. AND IN THIS CASE, I WOULD GO OVER THE FLORIDA BAR VERSUS ROSE AND IN THAT CASE THE ATTORNEY SIGNED HIS EX-WIFE'S SIGNATURE TO AGREEMENT FORMS.

IN THAT CASE THERE WAS A 30-DAY --

YES, YOUR HONOR, IN THAT CASE THERE WAS A 30-DAY EXTENSION.

YOU ARE IN YOUR REBUTTAL TIME TIME.

I WILL CONCLUDE.

ON BEHALF OF THE BAR, MR. WHALEN, WE WILL GIVE AWE CHANCE NOW.

THANK YOU. AT THIS TIME, YOUR HONOR, I WILL ADDRESS THE ISSUES THAT WERE FIRST RAISED BY COUNSEL, AND THAT HAD TO DO WITH THE FACTS IN THE CASE AND THE USEFUL THE PROCEEDS. THE RECORD REFLECTS THAT, WHAT MR. BAKER DID IS HE OBTAINED THE \$29,000, DEPOSITED \$20,000 OF THAT INTO HIS OWN PERSONAL ACCOUNT. THE TESTIMONY IN THAT CASE WAS, AND THIS IS NOT REFUTED OR IN DISAGREEMENT, THAT WAS HIS OWN PERSONAL ACCOUNT. THAT WAS NOT AN ACCOUNT THAT MRS. BAKER HAD ANY ACCESS TO. MR. BAKER EVEN FORGED HER SIGNATURE, MR. BAKER FORGED MRS. BAKER'S SIGNATURE TO THE CHECK, IN ORDER TO ENDORSE IT TO MAKE THAT DEPOSIT. HE ACKNOWLEDGED THAT, AS WELL, DURING THE TRIAL. THE WHOLE CASE CENTERS ON, REALLY, AN ISSUE OF CONSENT. MR. BAKER'S POSITION WAS HE HAD HIS WIFE'S CONSENT, WHERE THE REFEREE DID NOT FIND THAT CREDIBLE. THIS COURT, IN CASE AFTER CASE, HAS FOUND THAT A REFEREE'S FINDINGS OF FACT WON'T BE DISTURBED, UNLESS THEY ARE CLEARLY ERRONEOUS. THERE IS NO SUPPORT FOR THAT IN THE RECORD.

LET ME DIRECT YOU TO SOMETHING THAT IS OF CONCERN TO ME, AND THAT IS THERE ANY EVIDENCE IN THE RECORD OF ANY PRIOR ETHICAL INVOLVEMENT BY THE FLORIDA BAR, AS TO

THIS LAWYER?

PRIOR DISCIPLINE?

RIGHT.

HE HAS A CLEAN RECORD, UP UNTIL THIS, YOUR HONOR.

NOW, THIS IS CERTAINLY A MATTER OF GREAT CONCERN, BY REASON OF THE POINT THAT JUSTICE PARIENTE'S QUESTION RAISES, AS TO THE FACT THAT HE FORGED THE DOCUMENT AND THERE WAS A NOTARY SEAL, AND HE NEGOTIATED AN INSTRUMENT. HOWEVER, WHAT DOES THE RECORD REFLECT, AS TO THE USE OF THESE PROCEEDS, OTHER THAN THE FACT THAT THEY WERE DEPOSITED IN HIS PERSONAL ACCOUNT? DOES IT, AS YOUR OPPONENT INDICATE,S, IS THE RECORD SUCH THAT THE EVIDENCE IS THAT THESE PROCEEDS WERE USED TO PAY MARITAL DEBT?

THERE IS ONE STATEMENT BY THE RESPONDENT AT THE TRIAL, WITHOUT ANY EXPLANATION, BEYOND SAYING HE HAD PAID MARITAL DEBT. THE WIFE'S TESTIMONY IS SHE DOESN'T KNOW WHAT HE USED THAT MONEY FOR. NO EVIDENCE WAS PUT FORWARD TO INDICATE THE USE OF THAT MONEY, BUT THERE WAS A STATEMENT BY THE RESPONDENT, I WILL ACKNOWLEDGE, WHERE HE SAID IT WAS USED TO PAY MARITAL DEBT. HOWEVER, WE SHOWED \$29,000 PROCEEDS COMING TO HIM, WITH \$20,000 INTO HIS PERSONAL ACCOUNT. WE DON'T KNOW HOW THOSE FUNDS WERE USED, AND HE HAS NEVER PROVIDED -- AT LEAST UP UNTIL THE TIME THERE WAS AN ACCOUNTING IN THE DIVORCE CASE -- IT IS NOT IN THE RECORD -- BUT, ACCORDING TO THE RECORD, HE NEVER PROVIDED AN ACCOUNTING TO MRS. BAKER, AS TO THE USE OF THOSE FUNDS.

IN THE DIVORCE PROCEEDING, WHERE WAS THIS? HAD THE DIVORCE ALREADY CONCLUDED? DO WE HAVE ANYTHING ABOUT THIS IN THE RECORD?

YES, YOUR HONOR. AS A MATTER OF FACT, WHEN MR. BAKER MOVED DOWN TO FORT MYERS, I BELIEVE IT WAS IN MARCH OR APRIL OF '97, HIS WIFE DID NOT MOVE DOWN WITH HIM, AND WHILE IN NEW YORK OBTAINED A RESTRAINING ORDER AGAINST MR. BAKER, AND IT INDICATED, ALSO, AT THE BAR GRIEVANCE FINAL HEARING, THAT SHE WAS IN FEAR FOR HER LIFE. I MENTION THAT, TO SHOW THAT THERE WAS A VERY BITTER SITUATION GOING ON. SHE --

WAS THIS THE -- WAS THIS A MARITAL HOME? I GUESS WHEN YOU MENTION THAT WE DON'T KNOW WHAT HAPPENED TO THE HOUSE OR THE PROCEEDS, IF THEY WERE STILL IN AN ONGOING DIVORCE AND IT WOULD SEEM THAT THERE IS, SOMEHOW THIS HOUSE WOULD HAVE BECOME AN ISSUE IN THE DIVORCE PROCEEDING.

IT WAS A MARITAL PROPERTY. IT WAS A MARITAL HOME, TENANTS BY THE ENTIRETY. IT WAS A HOME THAT WAS CURRENTLY IN FORECLOSURE. MRS. BAKER'S POSITION ISN'T THAT SHE DID NOT KNOW THE HOUSE WAS FOR SALE. SHE KNEW HE WAS SELLING THE HOUSE, BUT THEN, WHEN SHE TRIED TO GET ANY INFORMATION FROM MR. BAKER, WITH REGARD TO THE PRICE, WHO THE LAWYER WAS, WHO THE PURCHASER WAS, HE WOULD NOT PROVIDE THAT INFORMATION. THAT WAS THE TESTIMONY WITHIN THE RECORD, THAT THE JUDGE FOUND CREDIBLE.

BUT IN THE ABSENCE OF MRS. BAKER HAVING GONE BACK IN IN THE DIVORCE PROCEEDING AND SAYING THAT SHE DIDN'T GET HER FAIR SHARE OF THIS MARITAL ASSET THE FACT THAT YOU SAY, WELL, THERE IS NOTHING TO SHOW THAT HE USED IT FOR NONMARITAL PURPOSES, WOULD SEEM THAT THE OBSENSE OF ANY COMPLAINT IN THE ACTUAL DIVORCE PROCEEDING WOULD TEND TO SHOW THAT THERE WAS NOTHING IMPROPER DONE, AT LEAST WITH THE PROCEEDS.

WELL, THIS MAY NOT ANSWER YOUR POINT, YOUR QUESTION DIRECTLY, BUT THE RECORD DOES REFLECT THAT MRS. BAKER TESTIFIED, AND THIS WENT UNREBUTTED, THAT IN MARCH, I BELIEVE, OF '98, WHEN SHE LEARNED THAT THE HOUSE HAD ACTUALLY BEEN TOLD SOELED, SHE WENT TO

THE TITLE COMPANY, AND SHE TESTIFIED THAT SHE MAY HAVE TO SUE THE TITLE COMPANY, IN ORDER TO GET HER PORTION OR HER PROCEEDS THAT SHE WAS ENTITLED TO, AND SHE INDICATED THAT SHE HAD DISCUSSIONS WITH PERSONS AT THE TITLE COMPANY, AND THAT THEY MAY HAVE TO PAY HER AND PURSUE THE RESPONDENT FOR THIS, SO IT MAY NOT DIRECTLY GO TO THAT, BUT THERE APPEARS TO BE AN ONGOING ISSUE, ACCORDING TO MRS. BAKER'S UNREBUTTED TESTIMONY, THAT SHE IS PURSUING THE FUNDS THAT WERE PAID OVER TO MR. BAKER.

JUSTICE LEWIS HAD A QUESTION.

I AM CONCERNED ABOUT THE, IS THERE ANY INFERENCE HERE THAT SHE WAS NOT REPRESENTED IN THIS DOMESTIC PROCEEDING? IT SEEMS TO BE SOMEWHAT OF A NEBULOUS CONCEPT. YOU THROW IT OUT AND MAYBE IT WILL STICK ON THE WALL. DOES THE BAR HAVE ANY INFORMATION THAT THIS MONEY WAS USED, OTHER THAN TO PAY DOWN MARITAL DEBT?

WE DO NOT.

AND CERTAINLY HAD ACCESS TO SUBPOENA OR GET WHATEVER RECORDS THE BAR NEEDED TO FIND THAT OUT. IS THAT A FAIR STATEMENT?

YES, YOUR HONOR.

OKAY.

WE HAVE THE SINGLE STATEMENT THAT I HAD MENTIONED PREVIOUSLY.

AND NO EVIDENCE TO THE CONTRARY.

OTHER THAN THE STATEMENTS OF MRS. BAKER, WHICH DON'T GO DIRECTLY TO THAT BUT HINT AT THE SITUATION THAT SHE DIDN'T RECEIVE HER PROCEEDS.

WHY IS THIS SITUATION MORE EGREGIOUS THAN ROSE?

I THINK IT IS WAY MORE EGREGIOUS, AND THE REASON I SAY THAT IS, IF YOU LOOK AT THE CONDUCT, THE SCHEME THAT MR. BAKER WENT THROUGH, AND WITH MR. ROSE, AND NOT TO MINIMIZE HIS CONDUCT, HE FORGED HIS WIFE'S SIGNATURE, IN ORDER TO SELL HIS CHILDREN'S STOCK. AND HE TOOK THOSE FUNDS. WE CERTAINLY THINK THAT IS EGREGIOUS, THE BAR, BUT WHAT MR. BAKER DID IS HE FORGED HIS WIFE'S NAME ON A WARRANTY DEED, ON A BILL OF SALE, AND SOMETHING CALLED A FIRTPA AFFIDAVIT THAT IS REQUIRED BY THE I.R.S., WHICH IS MADE UNDER PENALTY OF PERJURY IN WHICH HE FORGED HIS WIFE'S SIGNATURE, AND HE, ALSO, FORGED HER SIGNATURE ON THE BILL OF SALE, IF I DIDN'T MENTION THAT PREVIOUSLY, AND IN EACH OF THESE CASES IT WASN'T JUST HIM FORGING AND WE THINK THAT IS BAD ENOUGH. HE EMBROILED HIS STAFF IN THIS. HE HAD HIS SECRETARY NOTARIZE THESE, AND I BELIEVE THE TRANSCRIPT REFLECTS, THROUGH CROSS-EXAMINATION BY MR. BAKER'S ATTORNEY, I BELIEVE -- I DON'T WANT TO MISSTATE IT, BUT I BELIEVE HE HAD MADE THE CLAIM THAT HE DID TELL HIS SECRETARY THAT HIS WIFE HAD SIGNED IT AND DIDN'T GET HER TO HAVE IT NOTARIZED. MS. KELLER, WHO WAS THE SECRETARY, ANYWAY, AS A FAVOR TO HER BOSS, NOT KNOWING WHAT WAS GOING ON, SIGNED THIS. SHE INDICATED IT WAS AT A VERY BUSY TIME. HE, THEN, INSTRUCTED HER TO HAVE THESE SIGNATURES, ONE OF THEM WITH MS. BAKER'S FORGED SIGNATURES, WITNESSED BY TWO OTHER EMPLOYEES, GLADYS ORTEGA AND, I BELIEVE, BECKY ALLISON. THESE PEOPLE WERE COMPLETELY INNOCENT. THEY WERE PULLED INTO THIS, WITHOUT KNOWING WHAT WAS GOING ON. HE, THEN, FORWARDED THESE PAPERS TO HIS ATTORNEY IN MIAMI. THE TESTIMONY WAS STIPULATED TO THAT LARRY PARKS HAD NO IDEA THAT THESE WERE FORGED SIGNATURES. MR. BAKER CAN'T SAY THAT HE DIDN'T REALIZE OR UNDERSTAND THE SERIOUSNESS OF SIGNING HIS WIFE'S NAME, BECAUSE HE DIDN'T ASK LARRY PARKS OR MAKE

ANY MENTION OF IT.

IF THE CONSENT WERE GIVEN, JUST ASSUME CONSENT GIVEN BY THE EX-WIFE HERE, THAT ONE FACT, BUT ALL OF THE REST OF THE CONDUCT, WOULD IT BE WITHIN ACCEPTABLE AND LEGAL LIMITS, OR WOULD THERE STILL BE A VIOLATION?

I BELIEVE THERE WOULD STILL BE A PROBLEM. OBVIOUSLY NOT AS SERIOUS AS FORGERY, WHICH IS A CRIMINAL OFFENSE THAT THE JUDGE SPECIFICALLY FOUND MR. BAKER COMMITTED, BUT YOU WOULD AT LEAST HAVE A SITUATION OF NOT COMMITTING FORGERY. HOWEVER, YOU STILL TRANSFERRED PROPERTY, BASED ON SIGNATURES THAT WERE IMPROPERLY NOTARIZED AND NO NOTE OTHERWISE TO THE LAWYER HANDLING THE SALE, AND AS I WAS GOING TO SAY, MORE IMPORTANTLY, THE PURCHASER. THIS PURCHASER, WHO IS IN MIAMI, IS COMPLETELY UNWITTING, HAS NO IDEA THAT SHE HAS PURCHASED THE PROPERTY THROUGH FORGED SIGNATURES. SO HE IS NOT, UNLIKE MR. ROSE, ONLY INVOLVED HIS SIGNING AND NOT INVOLVING ANYONE ELSE, AT LEAST KEEPING IT TO HIMSELF, IF THAT IS THE WAY TO TERM IT. HE HAS EMBROILED OTHER PERSONS IN THIS ACTIVITY.

MR. ROSE, IT WAS STOCK THAT WAS IN HIS WIFE HELD AS CUSTODIAN FOR HIS CHILDREN. HIS CHILD'S STOCK THAT HE FORGED A SIGNATURE AND THEN HE USED THOSE PROCEEDS FOR HIS OWN PURPOSES, A 30-DAY SUSPENSION WAS GIVEN. MAYBE IT IS, WHETHER IT IS FORM OVER SUBSTANCE, BUT HERE, IF THE TESTIMONY IS, AND, AGAIN, WITHOUT MINIMIZING THE SEVERITY AND SIGNIFICANCE OF WHAT HAPPENED, YOU WOULD, KICKLITER IS AT ONE END, AND I AM NOT SURE WHERE THIS FALLS IN, BUT ARE YOU REALLY SAY AGO THAT THIS IS IN THE SAME CATEGORY OF KICKLITER AND THAT ROSE IS ALL THAT DISTINGUISHABLE?

I THINK SO. AS I WAS PREVIOUSLY ARGUING, THE FACT THAT HE HAS BROUGHT IN AT LEAST FOUR OTHER PEOPLE, ASIDE FROM THE FRAUD ON THE WIFE, HIS EMPLOYEE, THE LAWYER, THE PURCHASER, AND, ALSO, EVEN THE TITLE COMPANY. I DO THINK IT IS CLOSER TO KICKLITER, BECAUSE EVEN IN KICKLITER, THE COURT FOUND THAT KICKLITER AT LEAST HIS MOTIVE WASN'T I AM PURE. IT WASN'T A SELFISH MOTIVE. HE WAS REALLY TRYING TO FURTHER OR ENSURE THAT HIS CLIENT'S DESIRES, WITH REGARD TO HIS WILL WERE FOLLOWED THROUGH W THAT IS WHAT THE CASE INDICATES IN THIS. BUT KICKLITER WENT AHEAD AND FORGED HIS SIGNATURE AND PASSED IT OFF TO A COURT. WHILE THIS WASN'T A COURT, THE TRANSACTION, THE SALE OF PROPERTY, PASSING THIS ON TO A LAWYER WHO IS TRYING TO DO THE CLOSING AND ON TO A PURCHASER, AND WE HAVE THE SITUATION WHERE, THEN HE SIGNS THE WIFE'S NAME TO THIS \$29,000. WE MERELY HAVE HIM SAYING "I PAID MARITAL DEBT", WITH NO ACCOUNTING WHATSOEVER, AND NOT TELLING THE WIFE OR LETTING HER KNOW WHAT KIND OF DEBT WAS PAID OFF. OUR POSITION IS THIS IS IN THE KICKLITER REALM, MORE THAN IT IS ROSE. MAYBE IF THE FACTS WERE THAT MR. BAKER HAD FORGED ONE DOCUMENT, HAD NOT EMBROILED EVERYONE ELSE, IT MAY BE SOMETHING LESS THAN DISBARMENT, BUT OUR POSITION IS, BY BRINGING ALL THESE OTHER, YOU WANT TO SAY "INNOCENT BYSTANDERS", FOR LACK OF A BETTER TERM, HAS MADE IT AFTERNOON OR SERIOUS CASE, AND THE RESPONDENT'S POSITION IS THAT THE REFEREE SHOULD NOT HAVE RELIED ON MRS. BAKER'S TESTIMONY NOR MS. KELLER'S TESTIMONY, AS I MENTIONED PREVIOUSLY, THOUGH, THE RECORD IS -- THE EVIDENCE IN THE RECORD SUPPORTS THAT WHICH THE REFEREE HAS FOUND. IT IS NOTHING THAT INDICATES SOME KIND OF CLEAR ERROR MADE BY THE REFEREE, IN DEPENDING AND RELYING ON THE EVIDENCE THAT HE CITES IN HIS FINDINGS OF FACT.

DO WE HAVE MAKE A DISTINCTION AND, AGAIN, TRYING TO MAKE SOME SENSE OUT OF THIS, THAT WHEN SOMEONE ACTS AS AN ATTORNEY, AS THE KICKLITER DID, AND IS PERPETRATING A FRAUD ON THE COURT, WE HAVE GOT ONE LEVEL OF CONDUCT, AND ALTHOUGH WE DON'T CONDONE AND WE DON DEMTHE -- WE CONDEMN THE CONDUCT OF AN ATTORNEY, BUT HERE HE IS ACTING IN HIS INDIVIDUAL CAPACITY, LIKE MR. ROSE IS, DO YOU THINK THAT WE LOOK THROUGH THE CASES THAT WE SOMEHOW DO DISTINGUISH, WHEN SOMEONE IS ACTING AS AN

ATTORNEY AND DOES SOMETHING THAT, THAT IS WARRANTS A MORE SEVERE PUNISHMENT THAN, ALL THINGS BEING EQUAL, THAN SOMEBODY ACTING PERSONALLY AND STILL DOING SOMETHING THAT IS INAPPROPRIATE?

WELL, I WOULD -- I DON'T WANT TO SOUND LIKE A BROKEN RECORD, YOUR HONORS, BUT THE WAY, AS I HAVE BEEN MENTIONING, THOUGH, IT MAY HAVE BEEN PERSONAL, EXCEPT THAT HE MADE IT SOMETHING BEYOND PERSONAL, BY INVOLVING THESE OTHER PEOPLE. THE TESTIMONY FROM MS. KELLER WAS THAT, AFTER THIS BECAME KNOWN, SHE WAS THREATENED BY MRS. BAKER'S ATTORNEY, THAT THIS MAY BE CRIMINAL MISCONDUCT ON HER PART, WHICH CAUSED HER, OF COURSE, TO PANIC. THIS WAS SOMETHING THAT HAPPENED A YEAR OR SO PREVIOUS, AND HAD THE CONTACT WITH MR. BAKER AND ULTIMATELY GOT IN TOUCH WITH MR. BAKER'S SUPERVISOR, BECAUSE HE WASN'T AVAILABLE.

SHE HAS GOT AN I COULDN'T OBLIGATION -- AN INDEPENDENT OBLIGATION NOT TO NOTARIZE SIGNATURES WHERE THE PERSON HASN'T SIGNED IN FRONT OF HER. THAT IS HER OATH AS A NOTARY, CORRECT?

YES, YOUR HONOR, ABSOLUTELY, AND IT IS NOT TO SUGGEST THAT MS. KELLER DOESN'T BEAR ANY RESPONSIBILITY FOR HER ACT OF NOTARIZING, BUT SHE DID THIS AT THE REQUEST OF THE RESPONDENT, WHO INDICATED THAT HIS WIFE HAD MERELY NOT GOTTEN THIS NOTARIZED NOTARIZED. HER TESTIMONY WAS HE MADE NO SUCH STATEMENTS TO HER. AS A MATTER OF FACT, I THINK, IN THE RECORD, THERE WAS, HAVING -- THIS GOES TO THE TWO OTHER WITNESSES. MR. BAKER WAS ASKED WHETHER OR NOT HE HAD MADE ANY MENTION ABOUT THE SIGNATURES AND WHAT MR. BAKER HAD SAID. THIS IS ON PAGE 37 OF THE TRANSCRIPT, ON-LINE 20, ACTUALLY 19, THE QUESTION "DID YOU MAKE ANY STATEMENT TO THOSE PERSONS", REFERRING TO THOSE TWO OTHER WITNESSES. NOT THAT I CAN RECALL, OTHER THAN WOULD YOU NOTARIZE THIS FOR MY WIFE AND I. HE GAVE THEM THE IMPRESSION THIS WAS FOR THE WIFE AS WELL. I MEAN, THIS SCHEME ISN'T JUST HIM IN PRIVATE DOING THIS, ALTHOUGH IT IS FOR A PERSONAL BENEFIT, OUR POSITION IS. HE IS MAKING, TELLING LIES TO OTHER PERSONS WHO ARE, WHERE HE IS IN A SUPERVISORY ROLE OR AT LEAST AT SUPERIOR POSITION, AS FAR AS RANK WHERE HE WORKED. AND SO IN CONCLUSION, THE BAR CERTAINLY THINKS THAT DISBARMENT IS THE APPROPRIATE SANCTION. I BELIEVE I AM OUT OF TIME. MR. CHIEF JUSTICE: THANK YOU. MR. WHALEN. MR. CORSMEIER, REBUTTAL.

THANK YOU, YOUR HONOR. WITH REGARD TO THE ROSE CASE, OUR POSITION IS THAT THAT CASE IS ACTUALLY MORE EGREGIOUS, FOR THE FOLLOWING REASONS. MR. ROSE, IN THAT CASE, WAS TWO YEARS AFTER THE DIVORCE. IT WAS MORE CALCULATED, MORE DELIBERATE IN THIS CASE, THERE WAS A DIVORCE THAT HADN'T EVEN BEEN STARTED YET. THE PETITION WAS FILED IN SEPTEMBER OF 1997, AND THESE, THIS SITUATION OCCURRED IN JULY OF 1997.

WAS THERE ANY EVIDENCE IN THE RECORD, ABOUT WHETHER THIS BECAME AN ISSUE IN THE DIVORCE? THIS WOULD HAVE BEEN A MARITAL HOME, AND IF THE PROCEEDS HAD NOT BEEN DIVIDED EQUALLY, DID MRS. BAKER HAVE A REMEDY, WITHIN THAT?

ABSOLUTELY, YOUR HONOR.

SO WE DON'T HAVE THE EVIDENCE ABOUT --

THERE IS NO EVIDENCE SHOWING THAT THERE WAS ANY ATTEMPT --

WHAT WE KNOW IS THAT THE DIVORCE OCCURRED SUBSEQUENTLY, AND THAT THERE IS NOTHING THAT WE HAVE IN THE RECORD TO SHOW A COMPLAINT IN THE DIVORCE PROCEEDINGS.

THAT'S CORRECT, YOUR HONOR.

WAS SHE REPRESENTED IN THE DIVORCE?

YES, YOUR HONOR, SHE WAS, AND IN FACT HER ATTORNEY HAD COMMUNICATION WITH MS. KELLER, SAYING THAT SHE WAS GOING TO BE CHARGED WITH A FELONY, MS. KELLER WAS GOING TO BE CHARGED WITH A FELONY IN THIS MATTER, AND I THINK THE RECORD SHOWS IT WAS HER DIVORCE ATTORNEY, AND THEY WERE GOING THE ROUTE OF WE ARE GOING TO THREATEN YOU WITH A FELONY, IF YOU DON'T COME CLEAN WITH US, AS OPPOSED TO TRYING TO SETTLE THIS MATTER, AND THAT IS WHAT THE RECORD IS DEVOID OF, THAT THERE WAS ANY RECORD IN THE DIVORCE PROCEEDINGS, AND WE HAVE RECORD THAT THIS MONEY WAS NOT USED TO PAY DOWN MARITAL DEBT. AS A MATTER OF FACT MR. ROSE --

WAS IT A DIVORCE, DID IT CULMINATE IN A PROPERTY SETTLEMENT?

I BELIEVE SO, YOUR HONOR. I DON'T KNOW THAT THE RECORD SHOWS THE CONCLUSION OF THAT DIVORCE. I CAN'T SAY WITHIN THE RECORD WHAT HAPPENED THERE. I BELIEVE IT WAS CONCLUDED.

DOES THE RECORD SHOW THE PURPOSE OF THE CONTACT BY THE MATRIMONIAL LAWYER FOR THE WIFE, WITH THE HUSBAND'S EMPLOYER IN LEE COUNTY?

IT SHOWS A CONTACT WITH THE EMPLOYER, THE BOSS. IT WAS EITHER BY MS. BAKER, DIRECTLY, OR BY THE ATTORNEY. I AM NOT SURE OF EXACTLY THE RECORD, YOUR HONOR.

DOES THE RECORD INDICATE THE PURPOSE OF THAT? DOES IT HAVE TO DO WITH THIS, OTHER THAN TO HAVE HIM FIRED OR SOMETHING?

THAT IS THE IMPLICATION, YOUR HONOR. YES, YOUR HONOR. WITH REGARD TO ANOTHER -- I WILL POINT OUT ANOTHER CASE TO THE COURT. IT IS THE FLORIDA BAR VERSUS KRAVITZ, A 1997 CASE IN THAT CASE THE ATTORNEY ENGAGED IN A MUCH MORE EGREGIOUS CONDUCT, AND I WOULD LIKE TO POINT OUT THAT IN THAT CASE, THE ATTORNEY POINTED OUT FALSE EVIDENCE TO THE COURT, WITH REGARD TO A COUPLE OF ISSUES THAT WERE RAISED. NUMBER ONE, THE COURT HAS CONSISTENTLY SAID THAT, WHEN THERE IS DOCUMENTS --

EXCUSE ME, MR. CORSMEIER. I DON'T THINK IT IS PROPER REBUTTAL TO ARGUE A CASE THAT DIDN'T COME UP.

I APOLOGIZE, YOUR HONOR. I WILL ADDRESS ISSUES THAT HAVE BEEN PREVIOUSLY RAISED THAT IS SUBMITTED TO THIS COURT AS BEING EXTREMELY EGREGIOUS TYPE OF CONDUCT THAT HAS NOT BEEN ALLEGED HERE. WITH REGARD TO MR. KICKLITER'S CASE --

THANK YOU, MR. CORSMEIER. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.