

**FILED**

SID J. WHITE

IN THE SUPREME COURT OF FLORIDA JUL 30 1987

THE FLORIDA BAR,  
Complainant,

CLERK, SUPREME COURT  
By: 88-938 Deputy Clerk  
CASE NO. 88-938  
(TFB Case No. 05A86C21)

v.

JOHN M. GREENE,  
Respondent.

---

REPLY BRIEF

JAN K. WICHROWSKI  
Bar Counsel  
The Florida Bar  
605 East Robinson Street  
Suite 610  
Orlando, Florida 32801  
(305) 425-5424

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
SYMBOLS AND REFERENCES	iii
SUMMARY OF ARGUMENT	1
ARGUMENT	2-4
POINT I	
<b>"WHETHER THE REFEREE'S RECOMMENDATIONS REGARDING A FINDING OF NOT GUILTY AS TO ALL BUT ONE RULE VIOLATION AND THE SUGGESTION OF A PUBLIC REPRIMAND ARE ERRONEOUS IN THE CASE AT HAND?"</b>	
CONCLUSION	5
CERTIFICATE OF SERVICE	6

**TABLE OF AUTHORITIES**

	<u>PAGE</u>
<u>The Florida Bar v. Greene,</u> 463 So.2d 213 (Fla. 1985)	3

**SUMMARY OF ARGUMENT**

In respondent's untimely Answer Brief, filed some 36 days after the Certificate of Service date of the Initial Brief, several arguments are made which are without merit. The Florida Bar stands on its previous argument contained in the Initial Brief and maintains that given the referee's basic findings of fact, respondent should have been found guilty of all of the rules charged, based upon his failure to respond to the Bar's Request for Admissions as well as the evidence presented at Final Hearing.

Further, The Florida Bar continues to request this Court to impose more serious discipline than the public reprimand and probation suggested by the referee given respondent's lengthy prior discipline record.

ARGUMENT

POINT I

**WHETHER THE REFEREE'S RECOMMENDATIONS REGARDING A FINDING OF NOT GUILTY AS TO ALL BUT ONE RULE VIOLATION AND THE SUGGESTION OF A PUBLIC REPRIMAND ARE ERRONEOUS IN THE CASE AT HAND.**

Respondent asserts that the referee was correct in finding him not guilty of Disciplinary Rule 3-104(A) for failing to adequately supervise non-lawyer personnel. The referee stated at (e), page 2 of the Referee's Report, that no evidence was proffered concerning respondent's supervision of his non-lawyer personnel. However, respondent admitted at paragraphs G and K of the Bar's Request for Admissions, as well as at Final Hearing, R-55, that his law clerk was directed to search the title and failed to do so. Further, respondent stated at final hearing that he subsequently learned that his law clerk had neglected her duties, R-55. As stated in the Bar's Initial Brief, it is clear that someone must be responsible for the actions of an attorney's non-lawyer employees. That responsibility must lie with the employing attorney. An attorney should not be able to avoid responsibility by claiming as this respondent does, that such supervision is too difficult. Respondent's errors in neglecting to note the liens against the property prejudiced his clients.

Respondent was ultimately responsible to his clients for this situation.

Respondent admits his neglect of the case as found by the referee and therefore that aspect of the case will not be further addressed here.

In paragraph one of respondent's argument, an attempt is made to explain and mitigate one of respondent's past disciplinary cases regarding failing to complete a client's request for proration of a tax bill and overcharging for his services in The Florida Bar v. Greene, 463 So.2d 213 (Fla. 1985). It is clearly improper for respondent to attempt to mitigate past cases at this time as well as irrelevant to the case at hand.

Respondent finally requests that this case be remanded yet again to the referee to establish the matter of restitution since respondent alleges that he has completed restitution to Mr. and Mrs. Nutt. The referee earlier acquiesced to respondent's request to delay filing his Report of Referee until restitution could be accomplished. Despite a two week delay to accommodate respondent, respondent advised that restitution could not be accomplished. The Florida Bar urges this Court to deny respondent's suggestion

to remand once again to the referee since the matter of restitution is peripheral at best in this case of serious neglect.

Finally, The Florida Bar reiterates its argument contained in Point II of it's Initial Brief regarding the inappropriateness of the referee's recommended discipline of a public reprimand and probation given the nature of this case as well as respondent's lengthy record and requests that respondent be suspended from The Florida Bar for a minimum of six months with proof of rehabilitation required.

**CONCLUSION**

WHEREFORE, The Florida Bar requests this Honorable Court to affirm the referee's basic findings of facts, however, including all facts admitted by the respondent in the Request for Admissions, and find him guilty of the rules as charged, and impose the visible and effective discipline of at least a six month suspension from the practice of law, and further order the respondent to pay The Florida Bar the costs in this matter now totalling \$898.94.

Respectfully submitted,

JOHN F. HARKNESS, JR.  
Executive Director  
The Florida Bar  
Tallahassee, Florida 32301  
(904) 222-5286

JOHN T. BERRY  
Staff Counsel  
The Florida Bar  
Tallahassee, Florida 32301  
(904) 222-5286

and

JAN K. WICHROWSKI  
Bar Counsel  
The Florida Bar  
605 East Robinson Street  
Suite 610  
Orlando, Florida 32801  
(305) 425-5424

By:

  
\_\_\_\_\_  
JAN K. WICHROWSKI  
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing Response Brief have been furnished by ordinary U.S. mail to the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, 32301; a copy of the foregoing Response Brief has been furnished by ordinary U.S. mail to John M. Greene, respondent, at 201 North Magnolia Avenue, Post Office Box 1777, Ocala, Florida, 32678; and a copy has been furnished by ordinary U.S. mail to Staff Counsel, The Florida Bar, Tallahassee, Florida, 32301, this 28th day of July, 1987.

*Jan Wichrowski*  
\_\_\_\_\_  
JAN K. WICHROWSKI  
Bar Counsel