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FILED
SID J. WHITE

APR 20 1992

IN THE SUPREME COURT
OF FLORIDA

By _____
Chief Deputy Ckrk

CASE NO. 78,752

RAUL R. SOTOLONGO,
Petitioner,

v.

ROBERT M. BRAKE,
Respondent.

~~**FILED**
SID J. WHITE
APR 17 1992
CLERK SUPREME COURT.
By _____
Chief Deputy Clerk~~

PETITIONER'S REPLY BRIEF

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BY: Jorge F. Gaviria
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FLORIDA BAR NO.

Respondent proposes that by virtue of the fact that the lower court taxed attorney's fees against the husband; it is presumed that the wife negotiated attorney's fees from such an inferior financial position, that it merits judicial alteration of the contractual fee agreement between the attorney-client. However, this position is inherently flawed since the lower court merely focused on financial disparity between the parties without specifically focusing on the degree of financial disparity. Petitioner submits to this Honorable Court that it is imperative that the lower court ascertain the relative degree of financial disparity so that the award of attorney's fees in domestic cases is consistent with the intent of SEC 61.16, namely to equalize the financial ability of the respective spouses to retain counsel. Faust v. Faust, 553 So. 2d 1275 (Fla. 1st DCA 1989), citing Nichols v. Nichols, 519 So. 2d 620 (Fla. 1988).

As to Respondent's position that the Petitioner's issue as stated in the Brief is not a proper matter to be adjudicated by this Court; Petitioner submits that the issue remains the same as that reviewed by the lower Courts; namely, whether Sec. 61.16 court awarded fees apply to the case at bar. Petitioner, in the initial Brief stated the aforementioned issue with the benefit of stating additional relevant facts. Respondent, in his reply brief, attempts to impose form over substance in an effort to disqualify the issue at bar. However, the issue continues to be the same as stated in Winterbotham and in Levy, in which the 3rd DCA certified

conflict.

Finally, Respondent argues that "there should be a presumption of disparity in domestic relation cases and that the burden of alleging and proving the lack of disparity of economic status ought to be upon the husband or father." However, Petitioner suggest that as a matter of public policy, and pursuant to the dictates enunciated in Florida Patient's Compensation Fund v. Rowe, 472, So. 2d 1145 (Fla. 1985), a contract between an attorney and a client limiting attorney's fees shall not be judicially disturbed. Since in Sec. 61.16 awards the contractual fee arrangement may be altered; it is imperative that the spouse seeking modification of the fee arrangement bear the **burden** of proving that there is a need to alter said contract in order to comply with the spirit of Sec. 61.16. The spouse that negotiated the contract should have the burden of proving why the benefit of the bargain should be disregarded. **As** a matter of public policy and general principles of contract law, a contract should be binding among the parties. Judicial alteration of the contractual fee agreement in Sec. 61.16 cases should **only** be exercised when there is a showing by the spouse that negotiated the contract with the attorney (in **this case** the wife) , that she did so from such an inferior financial position vis a vis the husband that the fee contracted **for** should be disregarded.

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed April 16, 1992 to Robert M. Brake, Esq., 1830 Ponce de Leon Boulevard, Coral Gables, Florida 33134; and Michael Lechtman, Esq. 17001 N.E. 6th Ave. North Miami, Florida 33162.

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