

IN THE SUPREME COURT OF FLORIDA
Before a Referee

THE FLORIDA BAR,

Complainant,

Case No: SC17-782

v.

DENNIS L. HORTON,

Respondent.

_____ /

MOTION FOR LEAVE TO CROSS REPLY BRIEF;
MOTION FOR ENLARGEMENT OF PAGE LIMIT;
MOTION FOR CLARIFICATION

Respondent, DENNIS L. HORTON, through undersigned counsel, hereby moves this Honorable Court for an Order granting leave to refile his Cross Reply Brief and moves for entry of an Order deeming such refiling timely; alternately, Respondent seeks leave to enlarge the page limit for his Cross Reply Brief, and lastly seeks clarification of the Court's Orders entered September 14, 2018, and states:

1. In pursuing his cross appeal in the case, Respondent timely filed a brief titled "Reply Brief" on August 9, 2018. The Reply Brief was 29 pages in length.
2. Respondent filed a motion to permit the brief as filed (a motion to enlarge the page limit).
3. The Florida Bar then filed a motion to strike the reply brief. In the motion, no portion of the reply brief was admitted to be acceptable. By orders

RECEIVED, 09/14/2018 05:08:25 PM, Clerk, Supreme Court

entered September 14, 2018, the Court: a) denied Respondent's motion, and c) struck the entire reply brief. The orders do not state the basis of the rulings.

4. In the Bar's motion, one ground stated for striking the entire reply brief is that it was not titled correctly as a "Cross Reply Brief." If that is the basis for striking the entire brief, that is disproportionate and unjust.

5. In the Bar's motion, one ground stated for striking the entire reply brief is that it exceeded the page limit. If that is the basis for striking the entire brief, that is disproportionate and unjust.

6. In the Bar's motion, one ground stated for striking the entire reply brief is that "[t]he issues present in this matter do not require more than fifteen pages to address them adequately." While the Motion to Strike did not elaborate that issue further, the issue was specifically addressed in Respondent's motion to enlarge page limit, to accept the brief as filed. With respect, a page enlargement is needed.

7. The constitutional issue of due process is intertwined with the conduct of The Florida Bar in initiating this case, and each issue fairly requires an enlarged page limit, as argued. Respondent argues that the Bar made material omissions to the Court in initiating the case—which in fact was an *ex parte* proceeding, as the stricken reply brief proves.

8. Respondent argues that the Florida Bar improperly affected the Court's ruling in granting the petition with material omissions. The Bar's Answer Brief on

Cross Appeal argued at length why Rule 3-5.2 is constitutional and why it does not create or contemplate an ex parte proceeding. The stricken reply brief proves that it was, in fact, an ex parte proceeding.

9. Alleged misconduct by The Florida Bar in initiating any attorney disciplinary proceeding should warrant a full vetting by this Court. By its orders striking the reply brief in its entirety, the Court is acting directly contrary to that indisputable premise, and contrary to its own interest.

10. Respondent argues that Rule 3-5.2 is not only facially defective, but is also unconstitutional as applied to him (through the misconduct in initiating the case). Thus, he must argue both aspects individually and fully. With respect, this cannot be done in 15 pages.

11. The Florida Bar is not going to include its own questionable conduct in its Answer Brief. But, that conduct is what caused the Court to grant the Bar's ex parte petition for emergency suspension under Rule 3-5.2. Respondent argued the alleged misconduct separately on pages 11-17 of the stricken reply brief. (Seven pages.) The narrative is concise and pertinent.

12. The Bar's Answer Brief on Cross Appeal specifically argued that Rule 3-5.2(a) is constitutional and that it does not create or initiate an ex parte proceeding. Respondent must not be denied on technical grounds the opportunity to answer questions the Court may have after reading the Bar's Answer Brief on

Cross Appeal. The Court may need to know more about the key facts, the relevant authority, or the policy considerations that militate against the Bar's position.

13. Striking the entire brief operates to further punish the Respondent and deny his arguments while at the same time it rewards and validates the improper conduct engaged in by The Florida Bar. The Orders dated September 14, 2018 deny the Respondent substantial justice in that no portion of his brief is spared, even though the motion to strike failed to describe or identify any portion of the brief (other than the page limit and its title) that warranted striking.

14. The Motion to Strike Reply Brief stated that "Respondent's brief includes issues not raised by the bar in its Reply/Cross-Answer Brief." The said motion failed to identify any such issues that were "not raised." The Bar's brief discussed in 12 pages [pp. 12-23] why Rule 3-5.2 is constitutional and does not create an ex parte proceeding. This issue is inextricably linked with the due process and conduct issues that Respondent has presented. Respondent's Reply Brief countered the constitutionality argument on pages 4-11. (Eight more pages.) The narrative is concise and pertinent.

15. Thus, together the facial constitutionality aspect and the as-applied constitutionally aspect (abetted by misconduct) reach the rule's limit of 15 pages.

16. The Motion to Strike Reply Brief stated that "Respondent's brief includes issues not raised by the bar in its Reply/Cross-Answer Brief." The

motion failed to identify such issues that were “not raised.” The Bar’s brief took up 7 pages [pp. 4-10] arguing the evidence of guilt and of mitigation. Specifically, the Bar’s brief states on page 4:

“With respect to the referee’s finding that respondent’s conduct violated rule 4-8.4(c), the referee clearly found respondent’s various explanations for his acts of misconduct not to be credible (RR 16-19). The referee discussed at length in his report his reasons for finding respondent’s actions violated Rule 4-8.4(c) (RR 16-19).

17. The Respondent’s reply brief discussed the evidence relating to a recommended finding of guilt as to Rule 4-8.4(c) on pages 17-24 of his stricken reply brief. (Eight pages.) Also, on pages 24-29 (six pages) Respondent’s reply brief discussed the effect of the mitigating evidence in the case. Both of these issues were responsive to the Bar’s Answer Brief on Cross Appeal.

18. The discussion of evidence relating to the recommendation of guilt as to Rule 4-8.4(c) is vital and necessary to Respondent’s defense, as clear and convincing evidence in support of (or against) a fraud finding is key to justice in this case. Respondent’s brief took up the issue on pages 17-24. (Eight pages).

19. The Motion to Strike Reply Brief also stated that “Respondent’s Reply Brief also includes references to items outside the record in this case.” Any such alleged items were not identified or described in said motion. Respondent has no idea what that means or if it was the grounds on which his brief was stricken.

20. Respondent did not appeal this case until the Bar appealed it. The

Motion to Strike recites Respondent's efforts to enlarge the briefing schedule, as if pertinent to this matter, without mentioning the undersigned's reason. Counsel survived a very serious health crisis in 2018, one that is fatal 95% of the time.

21. While the briefs show that The Florida Bar misled this Court, by striking Respondent's brief the Court appears more concerned with protecting the Bar, or with disadvantaging the Respondent, than in doing justice.

22. Undersigned contacted opposing counsel before filing this motion but she was not available; it is presumed counsel will object presently.

WHEREFORE, Respondent respectfully prays this Honorable Court to rule:

A. Respondent cannot discern from the subject orders on what basis the Court struck the Respondent's entire brief. If it was the fact that the brief was titled "Reply Brief" instead of "Cross Reply Brief," Respondent requests leave to file an amended brief with a corrected title, or

B. If the entire brief was stricken because it exceeded the page limit, Respondent requests leave to file an amended brief conforming to the page limit, or

C. Respondent moves for reconsideration of the subject orders and requests entry of an order reinstating his Reply Brief, or

D. Respondent respectfully requests the Court to clarify its orders dated September 14, 2018, according to the issues raised herein, plus any and all such

further relief as the Court deems just and fair in the premises.

CERTIFICATE OF SERVICE

I CERTIFY that this paper was e-filed through the portal with the Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1925 and served per Rule 2.516 to Carrie C. Lee, Esq., at clee@floridabar.org, aquintel@floridabar.org, at The Florida Bar, 561 E. Jefferson Street, Tallahassee, Florida 32399 on September 14, 2018.

Brett Alan Geer

BRETT ALAN GEER
The Geer Law Firm, L.C.
3030 N. Rocky Point Drive W., #150
Tampa, Florida 33607-7200
(813) 961-8912
Florida Bar Number 61107
brettgeer@geerlawfirm.com
info@geerlawfirm.com