

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
  
Petitioner,

Supreme Court Case  
No. SC17-782

v.

The Florida Bar File  
No. 2017-30,371 (7B) (CES)

DENNIS L. HORTON,  
  
Respondent.

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**RESPONSE TO RESPONDENT'S MOTION FOR LEAVE TO FILE  
CROSS-REPLY BRIEF, MOTION FOR ENLARGEMENT OF PAGE  
LIMIT, AND MOTION FOR CLARIFICATION**

Comes now The Florida Bar in response to respondent's Motion for Leave to [sic] Cross Reply Brief; Motion for Enlargement of Page Limit; and Motion for Clarification and says:

1. On June 9, 2018, respondent filed a Motion for Extension of Time to File Reply Brief. This Court granted respondent's motion by order dated June 20, 2018, granting respondent to and including August 9, 2018 to file his cross-reply brief. Respondent could have, but did not, seek this Court's permission either at that time or at any time prior to filing his Cross-Reply Brief to exceed the permissible page length.

2. Respondent did not file his motion, titled as Motion to Permit Reply Brief as Filed, seeking leave to exceed the permissible page limit for a cross-reply

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brief until August 14, 2018, after the bar advised it would be filing a motion seeking to strike respondent's cross-reply brief for failing to comply with the Florida Rules of Appellate Procedure.

3. Further, respondent's argument that R. Regulating Fla. Bar 3-5.2 is unconstitutional and violated his due process rights has been made consistently from the inception of this case. See Respondent's Emergency Motion for Relief and Clarification Regarding Order of Suspension dated May 8, 2017.

4. Respondent's cross-reply brief is replete with violations of the Florida Rules of Appellate Procedure. His brief contains matters that are immaterial and impertinent to the case at hand. His argument as to the unconstitutionality of rule 3-5.2 is based on non-authoritative cases from other jurisdictions where the practice of law has been held to be a property right. In Florida, however, it is well settled that the practice of law is a privilege, not a right, and that it is revocable for cause. R. Regulating Fla. Bar 3-1.1; Petition of Wolf, 257 So. 2d 547, 548 (Fla. 1972).

5. Throughout the brief, respondent seeks to re-argue the facts of the case outside of the factual findings of the Referee. This Court has stated that its review of the findings of fact by the referee is not "in the nature of a trial de novo." The Florida Bar v. Niles, 644 So. 2d 504, 506 (Fla. 1994).

6. Striking a brief for failing to comply with the rules of appellate procedure is permissible. Greenfield v. Westmoreland, 156 So. 3d 1 (Fla. 3d DCA 2007). While in most instances the party is provided with an opportunity to file a proper brief, particularly egregious derelictions demand harsher action. White v. White, 627 So. 2d 1237 (Fla. 1<sup>st</sup> DCA 1993).

7. Here respondent's cross-reply brief failed to comply with the Florida Rules of Appellate Procedure as to length and content, contained citations to non-authoritative case law in support of the legal arguments made therein, and contained impermissible attempts to re-litigate the referee's factual findings.

WHEREFORE, the petitioner requests this Honorable Court deny respondent's Motion for Leave to [sic] Cross Reply Brief; Motion for Enlargement of Page Limit; and Motion for Clarification.

Respectfully submitted,



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## **CERTIFICATE OF SERVICE**

I certify that this document has been e-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida with a copy provided via email to Brett Alan Geer, The Geer Law Firm, 3030 North Rocky Point Drive West, Suite 150, Tampa, Florida 33607-7200 and via E-Mail to brettgeer@geerlawfirm.com; and to Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323 via E-mail at aquintel@floridabar.org, on this 18th day of September, 2018.

A handwritten signature in cursive script that reads "Carrie C. Lee".

Carrie Constance Lee, Bar Counsel