

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. SC17-782

vs.

DENNIS L. HORTON,

Respondent.

OBJECTION TO MOTION TO TAX COSTS

Respondent, DENNIS L. HORTON, through undersigned counsel, hereby objects to the paper titled, “Second Motion to Assess Costs,” filed by Appellant, THE FLORIDA BAR, on March 20, 2019, and he states:

1. The subject motion states that it is made pursuant to Rule 3-7.6(q), R. Regulating Fla. Bar; however, that rule governs procedures before a referee. The referee concluded his work in this case in 2017; thus the motion is untimely.
2. The referee recommended that costs be assessed in the amount the Bar requested. On October 20, 2017, The Florida Bar filed with the referee a Motion to Assess Costs, seeking an order to tax costs in the amount of \$20,678.93. The respondent has assigned no error to the timing or substance of that motion.
3. In the Report dated November 29, 2017, the referee recommended that costs be assessed in the amount the Bar requested, \$20,678.93.

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4. Mr. Horton had no intention of appealing this case until the Bar determined to appeal; it was only then that he felt obliged to call to the Court's attention the lack of candor and the failures of due process extant in this file, plus some evidentiary issues relating to certain of the referee's findings—all of which exceeded the scope of the Bar's filed Notice of the issues it wanted to appeal.

5. As of the date of filing the subject motion this Court has not entered judgment upon either the Bar's appeal or the respondent's cross-appeal.

6. The subject motion is untimely and impertinent under Rule 3-7.6(q) and Rule 3-7.7(c)(7). As such, the subject motion should be stricken.

7. The subject motion offers no explanation for costs incurred beyond those set forth in the Bar's original Motion to Assess Costs filed in October 2017, nor does it explain the dates such alleged additional costs were incurred. If such were incurred prior to the filing of the initial motion, then the respondent would argue that such additional costs have been waived.

8. Rule 3-7.7 does permit a motion to assess appellate costs; however, the subject motion is filed prematurely under that rule, and no allowance has been made for the reality of the intermixed issues inherent in a contested appeal and a contested cross-appeal.

9. It is not possible to discern from the subject motion when the cost items alleged in the subject motion were incurred, or even if they are proper under

the rules. In the age of e-filing, Mr. Horton cannot discern any reasonable basis for appellate costs in additional thousands of dollars being reasonably incurred in this appeal, as distinct from fees.

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, mcasco@floridabar.org, aquintel@floridabar.org, avanstru@floridabar.org, at The Florida Bar, 561 E. Jefferson Street, Tallahassee, Florida 32399 on April 1, 2019.

Respectfully submitted,

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