

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

DENNIS L. HORTON,

Respondent.

Supreme Court Case

No. SC17-782

The Florida Bar File

No. 2017-30,371 (7B) (CES)

**RESPONSE TO RESPONDENT'S OBJECTION TO MOTION TO TAX
COSTS**

Comes now, The Florida Bar, in response to respondent's Objection to Motion to Tax Costs and says:

1. Rule 3-7.7(c)(1) of the Rules Regulating The Florida Bar requires the party seeking review to file with this Court the transcripts of the proceedings before the referee.

2. In its Initial Brief, the bar sought, in its Conclusion, payment of costs totaling \$24,881.07. This amount included the costs of the transcripts of the hearings before the referee that were required to be filed with the bar's Initial Brief. Naturally, bar counsel travel costs associated with oral argument could not be included.

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3. The bar filed its Second Motion to Assess Costs in order to document the appellate costs incurred by the bar and update the total amount of costs.

4. Rule 3-7.6(q) of the Rules Regulating The Florida Bar sets forth the taxable costs in a bar disciplinary proceeding. These costs include court reporters' fees and travel and out of pocket costs for counsel. Because transcript and travel costs could be determined only after the bar filed its appeal and oral argument was held, these costs could not be included in the bar's initial motion to tax costs.

5. Rule 3-7.7(c)(6)(b)(i) of the Rules Regulating The Florida Bar provides that this Court's final judgment set forth the party to whom costs are awarded. In order for those costs to be an accurate reflection of the total costs incurred by the bar, in the event respondent is found guilty by the Court and sanctioned, it is necessary to include the court reporter fees for producing the required transcripts and, because oral argument was held in this case, bar counsel's travel and out-of-pocket costs.

6. Rule 3-7.7(c)(7) of the Rules Regulating The Florida Bar provides:

The court may consider a motion to assess costs if the motion is filed within 10 days of the entry of the court's order or opinion where the referee finds the respondent not guilty at trial and the supreme court, upon review, finds the respondent guilty of at least 1 rule violation and does not remand the case to the referee for further proceedings or where the respondent was found guilty at trial and the supreme court, upon review, finds the respondent not guilty of any rule violation. The party from whom costs are sought shall have 10 days from the date the motion was filed in which to serve an objection. Failure to timely

file a petition for costs or to timely serve an objection, without good cause, shall be considered a waiver of request or objection to the costs and the court may enter an order without further proceedings. If an objection is timely filed, or the court otherwise directs, the motion shall be remanded to the referee. Upon remand, the referee shall file a supplemental report that shall include a statement of costs incurred and the manner in which the costs should be assessed. Any party may seek review of the supplemental report of referee in the same manner as provided for in this rule for other reports of the referee.

7. Clearly rule 3-7.7(c)(7) does not apply in this particular case where the referee found respondent guilty.

8. This Court has the final discretionary authority to award costs and it may consider whether an expense is reasonable and award or refuse to award a particular cost as sound discretion dictates. The Florida Bar v. Martinez-Genova, 959 So. 2d 241, 249 (Fla. 2007); The Florida Bar v. Bosse, 609 So. 2d 1320, 1322 (Fla. 1992); The Florida Bar v. Davis, 419 So. 2d 325, 328 (Fla. 1982).

9. This Court has long held that ethical members of The Florida Bar who have not engaged in professional misconduct should not unnecessarily bear the cost of prosecuting the misdeeds of unethical members of the bar. The Florida Bar v. Dove, 985 So. 2d 1001, 1011 (Fla. 2008); The Florida Bar v. Gold, 526 So. 2d 51, 52 (Fla. 1988).

10. As respondent violated the rules and brought the expense of this disciplinary proceeding upon himself, the membership of the bar should not bear any portion of the costs incurred in this disciplinary proceeding.

WHEREFORE, the complainant requests this Honorable Court deny respondent's Objection to Motion to Tax Costs and assess disciplinary costs totaling \$25,034.96 against respondent.

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 copy provided via email using the E-filing portal to Brett Alan Geer, Counsel for Respondent, The Geer Law Firm, 3030 N. Rocky Point Drive W., Suite 150, Tampa, Florida 33607-7200, at brettgeer@geerlawfirm.com; and to Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323 at aquintel@floridabar.org, on this 1st day of April, 2019.



Carrie Constance Lee, Bar Counsel