

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case Nos. SC19-488 and
SC19-1570 (Consolidated)

v.

PHILLIP TIMOTHY HOWARD,

The Florida Bar File Nos.
2016-00, 682 (2A) and
2019-00, 088 (2A)

Respondent.

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THE FLORIDA BAR'S MOTION TO DISMISS

Pursuant to Florida Rule of Appellate Procedure 9.300 and Rule 3-7.7(c)(2) of the Rules Regulating the Florida Bar ("RRTFB"), the Florida Bar ("TFB") files this motion to dismiss Respondent's Notice of Intent to Seek Review of Report of Referee.

1. This review proceeding concerns two consolidated disciplinary cases, SC19-488 and SC19-1570. The Referee held a final hearing on the merits in SC19-488 on November 16, 17, and 18, 2020, and a final hearing in SC19-1570 on December 7 and 8, 2020. The Referee held a sanction hearing in the consolidated cases on March 22, 2021.

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2. Respondent filed his notice of intent to seek review of the Referee's report on August 19, 2021. Pursuant to Rule 3-7.7(c)(3) of the RRTFB, Respondent's initial brief was due September 20, 2021.

3. Respondent obtained two extensions of the deadline to file his initial brief and the required transcripts. In the order granting Respondent's second request, the Court expressly stated that Respondent had "to and including November 4, 2021, in which to serve the initial brief on the merits and transcripts." (Oct. 19 Order at 1.) The Court denied a third requested extension in an order dated November 12, 2021.

4. On November 5, 2021, Respondent filed his initial brief. Respondent appears to challenge both his guilt and the Referee's recommended sanction. As the docket notes state, the initial brief was filed one day late and does not comply with the Florida Rules of Appellate Procedure, as it contains no table of citations or certificate of compliance and uses a non-compliant font.

5. Respondent did not file any transcripts on the Court's docket by November 4, 2021. Respondent did serve on TFB's counsel transcripts which appear to be excerpts from the proceedings held on November 16, 17, and 18, 2020, corresponding to witness testimony.

As of this date, however, Respondent has not filed or served complete transcripts of the proceedings before the Referee, including the full proceedings held on November 16-18, 2020, as well as on December 7-8, 2020, and March 22, 2021.

6. Under RRTFB 3-7.7(c)(2), “[i]f hearings were held at which testimony was heard, . . . the party seeking review shall order preparation of all such transcripts, file the original thereof with the court, and serve copies on the opposing party, on or before the time of filing of the initial brief.” As this Court made clear in its October 19, 2021 order granting Respondent’s second requested extension, the deadline to file and serve the initial brief and all hearing transcripts was November 4, 2021.

7. Because Respondent failed to file and serve all hearing transcripts and the initial brief by November 4, the TFB asks the Court to dismiss Respondent’s notice of intent to seek review. See RRTFB 3-7.7(c)(2) (“Failure to timely file and serve **all** of such transcripts may be cause for dismissal of the party’s petition for review.” (emphasis added)); see also, e.g., *Fla. Bar v. Tilton*, 145 So. 3d 830 (Fla. 2014) (dismissing notice of intent to seek review “based on respondent's failure to file an initial brief on the merits and

transcripts in accordance with Rules Regulating the Florida Bar 3–7.7(c)(3) and 3–7.7(c)(2),” and the Court’s prior order, and disbarring respondent); *Fla. Bar v. Benito*, 64 So. 3d 1261 (Fla. 2011) (dismissing petition for review in light of, among other things, “respondent’s failure to timely file an initial brief on the merits and transcripts in accordance with Rules Regulating the Florida Bar 3–7.7(c)(3) and 3–7.7(c)(2),” and disbarring respondent).

WHEREFORE, TFB requests that the Court enter an order dismissing Respondent’s Notice of Intent to Seek Review of Report of Referee and further entering an order approving the Report of Referee and other relief the Court deems appropriate.

Respectfully submitted on November 16, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 21, 2021, a true and correct copy of the forgoing was filed through the Florida Courts E-Filing Portal and served by email to the following:

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