

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 RENEWED 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 renewed motion to dismiss Respondent's Notice of Intent to Seek Review of Report of Referee.

Background

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.)

4. On October 29, 2021, Respondent filed a motion seeking a third extension of time in which to file the initial brief, for the reason that he was still awaiting receipt of some transcripts and that "[a]fter receipt of the transcripts, Respondent needs time to review the transcripts and prepare the initial brief." (Oct. 29 Motion at 1.)

5. On November 1, 2021, the Court denied Respondent's request.

6. On November 5, 2021, Respondent filed his initial brief. Respondent appears to challenge both his guilt and the Referee's recommended sanction with respect to both disciplinary cases. 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. Notably, Respondent did not take the position in this brief that he is entitled to file essentially two initial briefs.

7. Respondent also did not file any transcripts on the Court's docket by November 4, 2021, as this Court ordered. 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.

8. On November 16, 2021, TFB filed a motion to dismiss on the grounds that Respondent had failed to file and serve all hearing transcripts and the initial brief by the deadline set by this Court in the October 19 order.

9. Later that same day, Respondent filed a "Notice of Filing" certain transcripts, including one received on November 16, 2021, and "inform[ed] the Court that Respondent is still waiting for additional transcripts from the Court Reporter and will file upon receipt. Finally, Respondent will file a corrected Initial Brief upon receipt of such transcripts and will also provide a table of citations,

certificate of compliance, and ensure that the Initial Brief complies with the Florida Appellate Rules.” (Nov. 16 Notice of Filing at 1.)

10. Respondent then filed on the docket four transcripts, corresponding to what appear to be portions of the proceedings held on November 16, November 17, November 18, and December 7, 2020.

11. On November 16, 2021, Respondent also filed a response to TFB’s motion to dismiss, arguing that he is “in substantial compliance” with the rules, and stating that he would “provide a corrected Initial Brief upon receipt of the paid for and requested transcripts.” (Nov. 16 Response to Motion to Dismiss at 2.)

12. On November 30, 2021, Respondent filed his apparently “corrected” initial brief with the Court, totaling more than 90 pages and 22,712 words, suggesting for the first time his view that he is entitled to two initial briefs. (See Nov. 30 Initial Brief at 98.) Respondent did not seek leave of this Court to file the out-of-time brief or to file a brief not in compliance with the page and/or word limits of the Florida Rules of Appellate Procedure.

13. On December 3, 2021, Respondent filed another “Notice of Filing” with his apparent filing of a transcript for a portion of the proceedings held on December 8, 2020. Again in his notice

Respondent stated that he “will file a corrected Initial Brief upon review of this transcript and will also amend the table of citations, certificate of compliance” at some undisclosed later date. (Dec. 3 Notice of Filing at 1.)

14. As of the date of this renewed motion, Respondent has not filed or served complete transcripts of the proceedings held on November 16, 17, and 18 and December 7 and 8, 2020. Respondent also has not filed or served any transcript associated with the proceeding held on March 22, 2021.

Argument

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. Respondent missed that deadline. Respondent has also not sought leave of Court to either file his out-of-time brief or to file a brief not in compliance with the

Florida Rules of Appellate Procedure, including applicable word count and/or page limits. *See, e.g.*, Fla. R. App. P. 9.210(a)(2)(b) (providing that, other than for exceptions inapplicable here, the initial brief “shall not exceed 13,000 words or 50 pages,” and only providing for additional length if “a cross-appeal is filed”).

Because Respondent failed to file and serve all hearing transcripts and the initial brief by November 4 and has continued to file out of compliance documents without first seeking leave from this Court, the TFB renews its request that the Court 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 disbaring 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 December 7, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 7, 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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