

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 RESPONSE TO RESPONDENT'S THIRD
MOTION FOR EXTENSION OF TIME TO FILE INITIAL BRIEF**

Pursuant to Rule 9.300(a), Florida Rules of Appellate Procedure, Complainant The Florida Bar ("TFB") opposes Respondent Phillip Timothy Howard's ("Respondent") Third Motion for Extension of Time to File Initial Brief (the "Motion"), and states as follows:

1. This review proceeding concerns two consolidated disciplinary cases, SC19-488 and SC19-1570. The appointed 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.

2. Respondent filed his notice of intent to seek review of the Referee's report on August 19, 2021, requesting review of the "entire

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Report of Referee.” (Notice at 1.) Pursuant to Rule 3-7.7(c)(3) of the Rules Regulating The Florida Bar (“RRTFB”), Respondent’s initial brief was due September 20, 2021.

3. Respondent has thus far obtained two extensions of the deadline to file his initial brief and the required transcripts. On September 14, 2021, Respondent requested an extension because the court reporter preparing the transcripts was “booked for September and w[ould] not be able to provide the transcripts until October” or “late September.” (Sept. 14 Motion at 1.) The Court granted Respondent an extension until October 20, 2021, to file the initial brief on the merits and transcripts.

4. On October 15, 2021, Respondent sought a second extension, stating that he had “paid for the transcripts of this action over one month ago” but had not yet “received the transcripts and d[id] not know when they w[ould] be provided.” (Oct. 15 Motion at 1.) The Court granted Respondent another extension, to November 4, 2021, to serve the initial brief and transcripts.

5. On October 29, 2021, Respondent filed his third extension request, again stating that he had “paid for the transcripts of this action over one month ago,” but had not yet received all of the

transcripts. (Oct. 29 Motion at 1.) Specifically, Respondent represented that he had received only “Volumes 1-3” of the transcripts, and “[a]ccording to the Court Reporter, Volume 4 will not be available until mid to late November.” (*Id.*)

6. Respondent’s representations are inconsistent with information obtained from the court reporter concerning the reasons for the delays in preparation of the transcripts, and for that reason TFB opposes his requested extension. According to the court reporter that reported the final hearings and sanctions hearing, Respondent has not paid for all the transcripts he has ordered, and further, he has ordered only portions of the transcripts in a staggered fashion. A statement from the court reporter, Laura Mountain, is attached to this response as Exhibit 1.

7. After previously obtaining an estimate to transcribe the five days of the final hearings and one-day sanction hearing, Respondent asked the court reporter on September 13, 2021, to transcribe the testimony of only six witnesses heard at the final hearing in SC19-488 during November 16-18, 2020. (*See Ex. 1.*) Respondent paid for that transcription on September 14, 2021. (*See id.*) Thus, the “Volumes 1-3” Respondent states that he has obtained

include only witness testimony and are not full transcripts of the proceedings on those days.

8. On October 27, 2021, two days before Respondent filed his Motion, Respondent asked the court reporter to transcribe the testimony of five additional witnesses, heard at the final hearing in SC19-1570 during December 7-8, 2020. (*See id.*) Ms. Mountain had not received payment for Respondent's October 27th order as of October 28, 2021. (*See id.*) Furthermore, it appears that Respondent still has not ordered a transcript of the March 22, 2021 hearing on sanctions. (*See id.*)

9. Thus, as of the date of this filing, it appears that Respondent has not paid for all transcripts in this matter, nor has he ordered full transcripts of the proceedings before the Referee.

10. Under Rule 3-7.7(c)(2) of the RRTFB, “[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.**” *Id.* (emphasis added). The RRTFB do not contemplate the submission of only selected excerpts of the hearing transcripts, nor do they contemplate

the piecemeal process that Respondent has chosen to use in ordering the transcripts.

11. Given these inconsistencies, TFB is concerned that Respondent's Motion is intended for the purpose of delaying these proceedings. A respondent facing this Court's disciplinary authority should not be permitted to slow this Court's review by requesting extensions of time due to delays for which the respondent appears to be responsible.

12. Accordingly, TFB opposes the Motion and asks that the Court dismiss Respondent's petition for review of the Report of Referee under RRTFB 3-7.7(c)(2) for "[f]ailure to timely file and serve all of such transcripts." Alternatively, if the Court extends Respondent's deadline to December 4, 2021, the Court should specify that December 4 is the deadline by which Respondent must file his initial brief and the full transcripts of all proceedings held before the Referee on November 16, 17, and 18, 2020; December 7 and 8, 2020; and March 22, 2021.

Respectfully submitted on October 29, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 29, 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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/s/Tiffany A. Roddenberry
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EXHIBIT 1

AFFIDAVIT OF COURT REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, LAURA MOUNTAIN, Court Reporter, DBA Wilkinson & Associates, do hereby certify that I reported the final hearing in The Florida Bar v. Phillip Timothy Howard on the following dates: November 16, 2020, November 17, 2020, November 18, 2020 and December 7, 2020 and December 8, 2020, as well as a sanction hearing on March 22, 2021. On 5-27-21 I received my first email from Mr. Tim Howard asking for a cost estimate for all of the above dates. I replied with an estimated cost on 6-2-21. On 6-2-21 Mr. Howard narrowed his request for an estimate to a list of witnesses that had testified in the three November hearing dates. I emailed Mr. Howard on 6-3-21 with the requested estimate. Mr. Howard replied on 6-3-21 stating he was investigating how to control costs.

I further certify that the next email I received from Mr. Howard was on 8-30-21 stating he was appealing his case and asking to order the entire transcript and that he would like to use a credit card. I replied on 8-31-21 with a cost estimate broken out by date for the five days of final hearing and one day of the sanction hearing, which came to 1,250 pages. I told Mr. Howard on that date that I would need more than 30 days to prepare a transcript with that many pages and that I do not accept credit cards and would need a check for the estimated cost before I began the transcript. On 8-31-21 Mr. Howard sent a reply email asking if any transcripts had been ordered by the Florida Bar, stating he wanted to narrow the number of pages so costs were manageable. On the same date I replied to his email and informed him no transcripts had been ordered by the Bar in his case. The next email I received from Mr. Howard was 9-13-21 when he sent me a list of six witnesses he wanted transcribed, all from the 11-16-20, 11-17-20 and 11-18-20 dates. I replied on 9-13-21 with the estimated cost for that transcription and Mr. Howard delivered a Cashier's Check to my office on 9-14-21.

I further certify that I delivered the 11-16-20 transcript to both Mr. Howard and the Bar on 10-20-21, the 11-17-20 transcript on 10-25-21, and the 11-18-20 transcript on 10-27-21. On the same date, 10-27-21, I received an email from Mr. Howard stating he also needed a transcript of five witnesses who testified at the 12-7-20 and 12-8-20 hearing. I have given him my estimate and am waiting for a check at this time. This affidavit was prepared at the request of The Florida Bar.

Dated this 28th day of October, 2021.



LAURA MOUNTAIN,
Court Reporter and Notary Public
in and for the State of Florida at Large