

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.

_____ /

**THE FLORIDA BAR'S RESPONSE TO RESPONDENT'S
MOTION TO PERMIT INITIAL BRIEF OF 26,776 WORDS,
ATTACHMENTS A-E, AND NOTICE OF FILING
DISQUALIFICATION OF REFEREE**

Complainant The Florida Bar ("TFB") opposes Respondent Phillip Timothy Howard's ("Respondent") "Motion to Permit Initial Brief of 26,776 Words, Attachments A-E, and Notice of Filing Disqualification of Referee Validating that Report of Referee Was Clearly and Convincingly Wrong" (the "Motion"). Respondent's filings are improper, and the Court should deny the Motion and grant TFB's pending motion to dismiss.

Background

As this Court knows, it previously granted Respondent two extensions of the deadline to file his initial brief and the required transcripts. In the order granting Respondent's second request, the

RECEIVED, 12/16/2021 09:12:22 AM, Clerk, Supreme Court

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. On November 1, 2021, this Court denied Respondent’s motion seeking a third extension.

Respondent did not file an initial brief or the required transcripts by the November 4 deadline. Respondent has since made numerous filings on the docket without authorization, including “draft” versions of his initial brief on November 5, 2021, and November 30, 2021, which as the Court’s docket notes, were neither timely filed nor compliant with the rules. Respondent has filed in piecemeal fashion portions of the relevant transcripts comprised of witness testimony, and still has not filed any portion of the transcript of the sanctions proceeding held on March 22, 2021.

On December 10, 2021, Respondent filed another amended initial brief, this one exceeding 26,700 words and attaching new exhibits, including a TFB complaint Respondent filed against TFB counsel Shanee’ Hinson and a complaint filed with the Judicial Qualifications Commission against the Referee, both dated in early December 2021.

On December 14, 2021, Respondent filed a “Notice of Filing Disqualification of Referee Validating that Report of Referee Was Clearly and Convincingly Wrong” (the “Notice of Filing”). Respondent claims the disqualification motion and order demonstrate that “the underlying Report of Referee was and is clearly and convincingly wrong due to bias and prejudice.” Notice of Filing at 1. Respondent’s Notice of Filing attaches a motion to disqualify, dated December 13, 2021, that he filed in a separate TFB disciplinary proceeding (Consolidated Case Nos. SC19-1563 and SC20-1596), and an order by the Referee, Circuit Court Judge Paul Bryan, on that motion.

In the motion to disqualify, Respondent made numerous incendiary accusations about the Referee, TFB’s counsel, and a TFB certified public accountant and branch auditor, while pointing to no “new” evidence supporting his claims; instead, he catalogued evidence he previously provided to the Referee and others that he claimed supported his allegations of prejudice and bias. *See, e.g.*, Notice of Filing Ex. A at 3-12.

Without admitting or agreeing to the validity of any of the allegations made in the motion to disqualify, the Referee granted the motion with respect to Consolidated Case Nos. SC20-1596 and SC19-

563 and “to any additional Florida Bar proceedings against” Respondent assigned to the Referee. Notice of Filing Ex. B at 2.

Argument

The Court should reject Respondent’s request to “permit” his untimely, noncompliant brief and attachments and the Notice of Filing.

Respondent summarily asserts that because the present consolidated cases concern “two distinct bar complaints that entailed two distinct trials and records,” he is justified in filing a brief in excess of 26,000 words and 111 pages. Motion at 1. But Respondent’s brief itself confirms that the excess words and pages are not necessary for purposes of informing this Court of the issues; for example, portions of his December 10, 2021 brief simply restate verbatim documents that are already part of the record. *Compare, e.g.,* Dec. 10 Am. Initial Br. at 60-70 n.22, *with* Tab 102 of Amended Index of Record (Mar. 18, 2021 Respondent’s Submission for Appropriate Sanction at 3-7). Respondent has not demonstrated why he cannot comply with the page and word limits set by the Florida Rules of Appellate Procedure.

The Court should also reject and disregard the new exhibits Respondent filed with his December 10 amended initial brief and the Notice of Filing. “[T]his Court can only review the record which was properly before th[e] referee.” *Fla. Bar v. Horowitz*, 697 So. 2d 78, 83 (Fla. 1997); *see also* R. Regulating Fla. Bar 3-7.7(c)(2). Respondent’s new complaints filed against TFB counsel and the Referee were plainly not before the Referee when he considered and issued the Report of Referee under review here, which was filed in April 2021. Likewise, the Court should not accept and consider the Notice of Filing, as it was not before the Referee. And to the extent the Referee granted disqualification, his order makes clear that it extends only to “additional proceedings” before the same Referee and does not extend to the present case. *See* Notice of Filing Ex. B at 2.

Respondent has had numerous chances to get this right and has not done so yet. The Court should deny the Motion and grant TFB’s motion to dismiss given Respondent’s failure to timely file the transcripts and a compliant initial brief.

Respectfully submitted on December 16, 2021.

HOLLAND & KNIGHT LLP

/s/ Tiffany A. Roddenberry _____

Kevin W. Cox, Esq.

Florida Bar No. 34020

kevin.cox@hklaw.com

Tiffany A. Roddenberry, Esq.

Florida Bar No. 92524

tiffany.roddenberry@hklaw.com

315 South Calhoun Street, Suite 600

Tallahassee, Florida 32301

Telephone: (850) 224-7000

Facsimile: (850) 224-8832

Co-Counsel for The Florida Bar

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 16, 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:

Shaneé L. Hinson
Bar Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
shinson@floridabar.org

Timothy Howard, J.D., Ph.D.
1415 East Piedmont Dr., Suite 5
Tallahassee, FL 32308
tim@howardjustice.com
Respondent

and

Patricia Ann Toro Savitz
Staff Counsel
The Florida Bar
651 E. Jefferson St.
Tallahassee, FL 32399-2300
psavitz@floridabar.org

*Counsel for Complainant, The
Florida Bar*

/s/Tiffany A. Roddenberry
Attorney