

IN THE SUPREME COURT OF FLORIDA

**FILED**

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JAN 25 1985

CLERK SUPREME COURT

The Supreme Court Case No. 63,270

By Chief Deputy Clerk

The Florida Bar Case No. 11L81M85

THE FLORIDA BAR, )

Complainant, )

v. )

JEFFREY E. LEHRMAN, )

Respondent. )

COMPLAINANT'S BRIEF

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## INTRODUCTION

The Florida Bar, Complainant, will be referred to as either "The Florida Bar", "the Bar", or "Complainant".

Jeffrey E. Lehrman, Respondent, will be referred to as either "Respondent", "Jeffrey E. Lehrman", or "Mr. Lehrman".

The Honorable J. Leonard Fleet will be referred to as the "Referee" or "Judge Fleet".

The following symbols will be used in this Brief:

"T.1984" - Transcript of proceedings concerning costs on December 6, 1984.

"RR" - Report of Referee, also identified as Finding of Fact, Conclusions of Law and Recommendation of Discipline.

POINT ON APPEAL

WHETHER THE REFEREE ERRED WHEN HE CHARGED  
THE FLORIDA BAR WITH COSTS FOR  
TRANSCRIBING A GRIEVANCE COMMITTEE  
HEARING, WHICH RESULTED IN FINDINGS OF  
PROBABLE CAUSE AND FINDINGS OF GUILTY BY  
REFEREE.

STATEMENT OF THE CASE AND OF THE FACTS

A. Nature of the case:

This is an attorney discipline case tried before the Honorable J. Leonard Fleet, Referee, pursuant to Rule 11.06 of Article XI, Integration Rule of The Florida Bar. The Florida Bar petitions for review because it believes the Referee erred when he charged The Florida Bar eight hundred sixty-one (\$861.00) dollars for court reporter fees for having the record of a grievance committee transcribed. The Bar believes the Respondent should pay the costs of transcribing the grievance committee proceedings.

B. Course of the Proceedings and Facts:

On August 10, 1982, Grievance Committee "L" of the Eleventh Judicial Circuit made findings of probable cause against Jeffrey E. Lehrman, the Respondent. The court reporter's attendance fee for this hearing was eighty (\$80.00) dollars and the fee for transcribing the proceedings was eight hundred sixty-one (\$861.00) dollars. Appendix Exhibit 1.

On February 16, 1983 the formal complaint was filed pursuant to the findings of probable cause entered by the Eleventh Judicial Grievance Committee "L" on August 10, 1982.

On February 24, 1983 Chief Justice James E. Alderman designated Circuit Judge J. Leonard Fleet as referee

On July 21, 1983 Judge Fleet tried the case and on September 21, 1984 he signed and submitted his Findings of Fact, Conclusions of Law and Recommendation as to Discipline, in which he found Respondent guilty of misconduct and recommended, inter alia, that

Respondent be suspended for six months and, upon motion and hearing, be assessed the costs of the proceedings. RR at 8. On October 17, 1984, the Referee granted The Florida Bar's Motion to Tax Costs and recommended that the Respondent pay costs in the amount of \$2,398.85. The Respondent filed a Motion for Rehearing concerning the costs and a hearing was held on December 6, 1984.

On December 14, 1984, the Referee signed the ORDER ON RESPONDENT'S MOTION FOR REHEARING OF THE REFEREE'S ORDER TAXING COSTS. Appendix Exhibit 2. This order directed The Florida Bar to pay costs for transcribing the proceedings at the grievance committee hearing of August 10, 1982 in the amount of eight hundred sixty-one (\$861.00) dollars and directed the Respondent to pay the eighty (\$80.00) dollar fee for court reporter attendance.

On January 12, 1984, the Board of Governors of The Florida Bar approved the report of the Referee. However, the Board voted to petition for review of that portion of the order taxing the Bar with the cost, in the amount of eight hundred and sixty-one (\$861.00) dollars, for the transcript of the grievance committee hearing held on August 10, 1984. This brief is in support of Complainant's Petition for Review.

## ARGUMENT

THE REFEREE ERRED WHEN HE CHARGED THE  
FLORIDA BAR WITH COSTS FOR TRANSCRIBING A  
GRIEVANCE COMMITTEE HEARING WHICH  
RESULTED IN FINDINGS OF PROBABLE CAUSE  
AND FINDINGS OF GUILTY BY THE REFEREE.

In this case, The Florida Bar was taxed with costs of \$861.00 for the court reporter's fee for transcribing the records of the grievance committee hearing of August 10, 1982. Since the grievance committee found probable cause and the Referee found the Respondent guilty (RR at 6 & 7), The Florida Bar contends the Referee erred, when he directed the Bar to pay \$861.00 in costs for having a record of the proceedings transcribed by the court reporter. Appendix Exhibit 2. It is the Bar's position that these costs should be paid by the Respondent.

In civil actions the general rule in regard to costs is that they follow the result of a suit, section 57.041, Florida Statutes (1981), Dragstrem v. Butts, 370 So.2d 416 (Fla. 1st DCA 1979), and in equity the allowance of costs rests in the discretion of the court. National Rating Bureau v. Florida Power Corp., 94 So.2d 809 (Fla. 1956). The Florida Bar v. Davis, 419 So.2d 325, 328 (Fla. 1982).

The Supreme Court of Florida held that the discretionary approach should be used in disciplinary actions. The Florida Bar v. Davis, 419 So.2d 325, 328 (Fla. 1982). The Bar respectfully submits that the Referee did not exercise his discretion properly, when he assessed the cost for transcribing the grievance committee hearing to The Florida Bar.

In the Davis case, this court stated:

Generally, when there is a finding that an attorney has been found guilty of violating a provision of the Code of Professional Responsibility, the Bar should be awarded costs. Id at 328.



There are exceptions to the general rule, where the costs incurred are unreasonable, or, as in the Davis case, Id., where the Respondent was charged in a complaint with three counts, but was found guilty of only one count. In that case, the court approved the respondent being charged with one-third of certain costs.

At the hearing before the Referee on December 6, 1984, Respondent argued that the cost of the transcripts of the grievance committee hearing could not be assessed to him because:

- (1) Under the Supreme Court's guidelines, the transcript was not used at the trial and should not be his (Respondent's) responsibility. T. 1984 at 5.
- (2) The Integration Rule permits only the court reporter appearance fee to be assessed to Respondent, T.1984. at 4.
- (3) To assess the transcript cost to him would be requiring him to pay "twice" since he may be charged a fee for his copy of the transcript, T.1984. at 4 and 13.

With all due respect to the Respondent's counsel, Complainant is convinced he is in error concerning his arguments, as stated above. The Integration Rule does not require that the grievance committee transcript be introduced into the record at the referee trial in order for the Respondent to be charged for the costs of said transcripts. Also there is nothing in the Florida Bar Integration Rule that says only the court reporter's appearance fee is to be assessed to the Respondent. Furthermore, the Respondent is not being charged "twice" if he orders a copy of the record for his own use. The Florida Bar Integration Rule, Article XI, Rule 11.04(6)(b), states in part, when there is a finding of probable

cause...."a copy of the record shall be made available to the Respondent at his expense." This means the Respondent may order a copy of the record at his own expense. However, if he should be found guilty, the referee may charge him for the Bar's copy of the record. See Florida Bar Integrastion Rule, Article XI, Rule 11.03(9), where it states,

Reasonable costs for court reporter  
service may be taxed to a respondent  
or accused for payment to The Florida Bar.

See Florida Bar Integration Rule, Article, XI, Rule 11.06(9)(a)(5), where it states that the Referee's Report shall include:

a statement of the costs of the proceedings and recommendations as to the manner in which costs should be taxed. The costs shall include court reporter's fee, copy costs, witness fees and traveling expenses and reasonable traveling and out-of-pocket expenses of the referee and Bar Counsel, if any. Costs shall also include a \$150 charge for administrative costs at the grievance committee level and a \$150 charge for administrative costs at the referee level. Costs taxed shall be payable to The Florida Bar.

Based upon the remarks of the referee at the hearing of December 6, 1984, it is apparent the referee believed it was not necessary for the Bar to order a verbatim transcript of the grievance committee hearing. (T-1984, page 16-19) The Florida Bar respectfully disagrees, in that it contends that a verbatim record is essential in cases where probable cause is found. Florida Bar Integration Rule, Article XI, Rule 11.04(6)(b) states, in part:

Findings of Probable Cause. If a grievance committee finds probable cause, the branch staff counsel assigned to the committee shall promptly prepare a record of its investigation and a formal complaint and file the same with the executive director, the proceedings being filed in duplicate.

While the above rule doesn't require a verbatim record, in order for the Bar counsel to properly prepare a complaint and prepare for trial, a verbatim record is necessary. The transcript of the grievance committee hearing is important, as it can be used for impeachment purposes, as prior testimony, and may save the Bar costs for depositions. Furthermore, many cases are very complex, as is the case at hand, and the Bar Counsel needs the grievance committee transcript in order to have a good knowledge of the case and to properly present the case at the trial by referee.

Although The Florida Bar Integration Rule doesn't specifically state that the grievance committee record must be verbatim, the Discipline Handbook, under the heading Grievance Committee Cases, paragraph XII, states as follows:

In all cases resulting in a finding of probable cause or guilt of minor misconduct, the record of the grievance committee's investigation shall be immediately prepared. (The record should include, as a minimum, a transcript of the hearing and the exhibits introduced.) Preparation of the record is necessary in order to prepare a formal complaint and grievance committee report, and to answer allegations of impropriety, procedural deviations or illegality in the grievance committee's investigation, hearing or actions. See Appendix Exhibit 3

While the Discipline Handbook doesn't have the authority of The Florida Bar Integration Rule, it does show that it is the policy of The Florida Bar to order a transcript of the grievance committee hearing in all cases resulting in findings of probable cause.

If the Respondent should be not guilty, the Bar agrees he should not be charged with the costs of the proceedings. However, in those cases where the Respondent is found guilty, the Respondent should bear the burden of paying for the costs of proceedings. In this case, the Respondent was found guilty, and he should pay the costs. Otherwise, the dues paying members of The Florida Bar will have to bear this burden and it would be unfair to require them to pay for expenses caused by the Respondent's own misconduct.

CONCLUSION

When there is a finding that an attorney has been found guilty of violating a provision of the Code of Professional Responsibility, the general rule is that the Bar should be awarded the costs. The Florida Bar v. Davis, 419 S.2d 325 at 328 (Fla. 1982). There is nothing in the record of the hearing concerning the costs, dated December 6, 1984, which indicates that this case is an exception to the general rule.

Accordingly, it is the view of The Florida Bar that the Honorable Referee erred when he taxed costs against the Complainant in the amount of \$861.00 for costs of the grievance committee hearing transcript of August 10, 1982.

Therefore, that portion of the Referee's order concerning costs, dated December 14, 1984, wherein The Florida Bar is taxed costs in the amount of \$861.00 for the cost of a transcript at grievance committee level, on August 10, 1982, should be disapproved and said costs of \$861.00 should be taxed against Respondent.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HERBEY CERTIFY that true and correct copies of the foregoing Complainant's Brief and Appendix have been furnished by mail to Thomas E. Krause, Counsel for Respondent, 2699 South Bayshore Drive, Coconut Grove, Florida 33133 and Robert P. Smith, Jr., Appellate Counsel for Respondent, of Hopping, Boyd, Green and Sams, P.O. Box 6526, Tallahassee, Florida 32314 on this 24<sup>th</sup> day of January 1985.

  
\_\_\_\_\_  
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