

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,)
)
Complaintant,)
)
vs.)
)
JOHN B. BATMAN,)
)
Respondent.)
_____)

CONFIDENTIAL

~~Case No. 69,544~~

By _____
Referee

REPORT OF REFEREE

I. Summary of Proceedings. Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to the Rules of Discipline, hearings were held on February 9, 1987. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits all of which are forwarded to The Supreme Court of Florida with this report, constitutes the record in this case.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: David G. McGunegle

For the Respondent: Carol B. Haber

The issue before the Court is did Respondent, JOHN B. BATMAN, practice law between October 1, 1983 and July 24, 1984 while suspended for non-payment of bar dues and knowingly misrepresent that material fact before Judge Rutter sitting as a Referee in Case No. 65,189, The Florida Bar vs. John B. Batman.

II. Findings of Fact. Respondent was suspended for non-payment of bar dues on October 1, 1983 (Exhibit "1") and

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The issue before the Court is did Respondent, JOHN B. BATMAN, practice law between October 1, 1983 and July 24, 1984 while suspended for non-payment of bar dues and knowingly misrepresent that material fact before Judge Rutter sitting as a Referee in Case No. 65,189, The Florida Bar vs. John B. Batman.

II. Findings of Fact. Respondent was suspended for non-payment of bar dues on October 1, 1983 (Exhibit "1") and

reinstated on July 24, 1984 (Exhibit "2"). On February 14, 1985 Respondent testified under oath in front of Circuit Judge R. William Rutter, acting as a Referee pursuant to the Rules in Supreme Court Case No. 65,189, that during the time he was suspended he only practiced in one case, wherein Circuit Judge Philip G. Nourse ordered him to stay on the case and continue to represent his client with knowledge of his administrative suspension (Exhibit "2"). Judge Rutter accepted the testimony, made findings of fact based upon it (Exhibit "3") and recommended the Respondent be found not guilty of practicing law while suspended for non-payment of bar dues which was later approved by the Supreme Court (Exhibit "4"). In fact, Respondent appeared for Plaintiff at the deposition of the Defendant, David Waldie, on November 16, 1983. Respondent took the deposition on behalf of his client, in Jill Ciccone Corey vs. David Waldie, Case No. 82-1401, in the Nineteenth Judicial Circuit Court, Martin County, Florida (Exhibit "5").

This Referee finds Respondent's appearance and participation in deposing David Waldie was practicing law. Had Judge Rutter been aware of this the outcome of Case No. 65,189 might have been different. Respondent admits he gave no indication before Judge Rutter on February 14, 1985 (Exhibit "2") that he had taken the Waldie deposition (Transcript pg. 10). At the hearing Respondent hinted he had a serious car accident requiring hospitalization in October, 1983 (Transcript pgs. 15-16) and that may have caused his "oversight". This Referee noted Respondent had been on notice at the time of Judge Rutter's hearing that his legal actions during

the time of the Waldie deposition were in question (Transcript pg. 31).

Article XI, Rule 11.02(3)(a) of the Integration Rule of the Florida Bar states:

The commission by a lawyer of any act contrary to honesty, justice or good morals, whether the act is committed in the course of his relations as an attorney or otherwise, whether committed within or outside the State of Florida, and whether or not the act is a felony or a misdemeanor, constitute a cause for discipline.

Disciplinary Rule 1-102(A)(3) prohibits a lawyer from engaging in illegal conduct involving moral turpitude; 1-102(A)(4) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 1-102(A)(5) prohibits an attorney from conduct that is prejudicial to the administration of justice; and 1-102(A)(6) prohibits a lawyer from engaging in any other conduct that adversely reflects on his fitness to practice law. The Disciplinary Rules of the Florida Bar are mandatory in nature. They state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action.

The Court finds Respondent's present testimony concerning the deposition of Defendant David Waldie is contradictory to his testimony before Judge Rutter and is in violation of the aforementioned Integration Rule and Disciplinary Rules. Respondent either knowingly or should have known he misrepresented the truth as to a material matter to Judge Rutter under oath. The evidence is clear and convincing.

III. Recommendations. Based on the above findings of fact, I make the following recommendations to the Supreme Court of Florida:

1. Respondent, JOHN B. BATMAN, be found guilty of violating Article XI, Rule 11.02(3)(a) of the Integration Rule of the Florida Bar for conduct contrary to honesty, justice or good morals, and the following Disciplinary Rules of the Florida Bar's Code of Professional Responsibility: 1-102(A)(3) for involving himself in illegal conduct involving moral turpitude; 1-102(A)(4) for conduct involving dishonesty, fraud, deceit or misrepresentation; 1-102(A)(5) for conduct that is prejudicial to the administration of justice; and 1-102(A)(6) for other such conduct reflecting adversely on the conduct of an attorney.

2. Respondent, JOHN B. BATMAN, be publicly reprimanded by the Board of Governors as provided in Rule 11.10(3).

3. Respondent pay the reasonable costs incurred as a result of this disciplinary proceeding.

IV. Personal History and Past Disciplinary Record. I considered the following personal history and prior disciplinary record of the Respondent, to-wit:

Age: 40

Date admitted to Bar: 1974

Prior disciplinary convictions and disciplinary measures imposed therein:

1. Case No. 65,591 - unauthorized practice of law after suspension for non-payment of dues. Respondent found not guilty.

2. Case No. 65,189 Count I - Respondent charged with negligence in representing a client. Respondent found guilty of violating Disciplinary Rule 6-101(a)(3) of the Code of Professional Responsibility. Count II - Charges Respondent with

practicing law while under suspension for non-payment of Florida Bar dues. Respondent found not guilty.

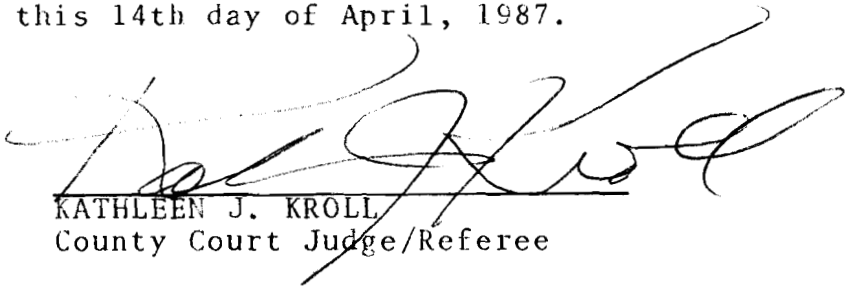
Other personal data:

1. Respondent has obtained and continues to receive help for alcohol abuse (transcript pg. 20).

2. Respondent is a Veteran of the United States Air Force, Intelligence Unit, and served in Viet Nam (Transcript Pg. 21).

V. Cases Relied Upon. The Florida Bar vs. Lund, 410 So.2d 922 (S.Ct. 1982); The Florida Bar vs. Brooks, 336 So.2d 359 (S.Ct. 1976).

Respectfully submitted this 14th day of April, 1987.

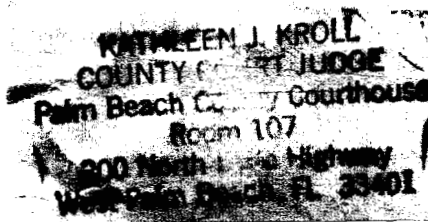


KATHLEEN J. KROLL
County Court Judge/Referee

Copies furnished:

DAVID G. MCGUNEGLE, ESQ., The Florida Bar, 605 E. Robinson Street, Suite 610, Orlando, FL 32801

CAROL B. HABER, ESQ., Attorney for Respondent, 1492 South Miami Avenue, Miami, FL 33130



IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.
JOHN B. BATMAN,
Respondent.

Case No. 69,544
(TFB No. 1986C83)

FILED
SID J. WHITE

APR 30 1987

CLERK, SUPREME COURT

By _____
Deputy Clerk

**AMENDMENT TO REFEREE REPORT
RELATIVE TO TAXATION OF COSTS**

The Florida Bar has filed a motion for the referee to amend her report relative to and including a statement of costs and a recommendation as to how those costs should be taxed. Having considered the motion and the appropriate rules as well as my recommendation of discipline, I hereby file this amendment to the report of referee relative to a statement of costs and the manner in which they should be taxed.

STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

I find the following costs were reasonably incurred by The Florida Bar:

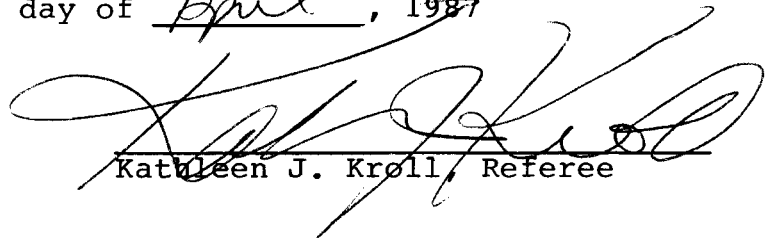
A. Grievance Committee Level Costs	
1. Administrative Costs	\$150.00
2. Transcript Costs	226.43
3. Bar Counsel/Branch Staff Counsel Travel Costs	12.64
B. Referee Level Costs	
1. Administrative Costs	150.00
2. Transcript Costs	154.50
3. Bar Counsel/Branch Staff Counsel Travel Costs	95.50
C. Miscellaneous Costs	
1. Telephone Charges	6.67

TOTAL ITEMIZED COSTS \$903.74

It is apparent that other costs have or may have been incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the

respondent and that interest at the statutory rate shall accrue and be payable beginning thirty days after the judgment in this case becomes final unless a waiver is granted by The Board of Governors of The Florida Bar.

Dated this 27 day of April, 1987



Kathleen J. Kroll, Referee

Copies furnished to:

David G. McGunegle
Bar Counsel
The Florida Bar
605 East Robinson Street
Suite 610
Orlando, Florida 32801

John T. Berry
Staff Counsel
The Florida Bar
Tallahassee, Florida 32301

Carol Haber
Welsh and Telander
1492 South Miami Avenue
Miami, Florida 33130

APR 24 1987

JUDGE KEVIN J. KROLL

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

JOHN B. BATMAN,

Respondent.

Case No. 69,544
(TFB No. 1986002)

FILED
SID J. WHITE
APR 30 1987

CLERK, SUPREME COURT
Deputy Clerk

AFFIDAVIT OF COSTS

STATE OF FLORIDA)
COUNTY OF ORANGE)

BEFORE ME, personally appeared David G. McGunegle, who, first being duly sworn and under oath states the following:

Below is an itemized list of the expenses incurred in the above-styled cause.

A. Grievance Committee Level Costs:

- | | |
|---|----------|
| 1. Administrative Costs | \$150.00 |
| 2. Transcript Costs | 226.43 |
| 3. Bar Counsel/Branch Staff
Counsel Travel Costs | 12.64 |
| 4. Investigator's Expenses | 108.00 |

B. Referee Level Costs

- | | |
|---|----------|
| 1. Administrative Costs | \$150.00 |
| 2. Transcript Costs | 154.50 |
| 3. Bar Counsel/Branch Staff
Counsel Travel Costs | 95.50 |

C. Miscellaneous Costs

- | | |
|----------------------|------|
| 1. Telephone charges | 6.67 |
|----------------------|------|

TOTAL ITEMIZED COSTS: \$903.74

David G. McGunegle

David G. McGunegle
Bar Counsel
The Florida Bar
605 East Robinson Street
Suite 610
Orlando, Florida 32801
(305) 425-5424

Sworn to and subscribed before me this 23rd day of April, 1987.

Tracy L. Litwinczuk
Tracy L. Litwinczuk, Notary Public
State of Florida at Large

My Commission Expires:

Notary Public, State of Florida at Large
My Commission Expires February 16, 1991
Bonded thru Nuckleberry & Associates

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Affidavit of Costs was furnished by ordinary U.S. mail to the Honorable Kathleen Kroll, Referee, Palm Beach County Courthouse, 300 North Dixie Highway, West Palm Beach, Florida 33401; a copy has been furnished by regular mail, to Carol Haber Attorney for respondent, Welsh and Telander, 1492 South Miami Avenue, Miami, Florida 33130; and a copy has been furnished by ordinary U.S. mail to Staff Counsel, The Florida Bar, Tallahassee, Florida, 32301, on this 23rd day of April, 1987.



David G. McGunegle
Bar Counsel

COURT HOUSE
RECEIVED

APR 24 1987

JUDGE KATHLEEN J. KROLL

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.
JOHN B. BATMAN,
Respondent.

Case No. 69,544
(TFB No. 1986C83)

FILED

SID J. WHITE

APR 30 1987

CLERK SUPREME COURT
BY
Deputy Clerk

MOTION RE; COSTS RECOMMENDATION

COMES NOW The Florida Bar and files this motion relative to a costs recommendation and says:

1. The referee's report dated April 14, 1987, was received by the Bar on April 16, 1987. In that report, the referee made no recommendation relative to costs of these proceedings and how they should be taxed as is required by Rule 3-7.5(B)(5) of the Rules of Discipline effective January 1, 1987. The predecessor rule was 11.0(6)(9)(a)(5) and was identical.

2. Ordinarily where the referee rules in favor of The Bar and against the respondent, the recommendation as to costs is that they be taxed against the respondent. See, The Florida Bar v. Davis, 419 So.2d 325, 328 (Fla. 1982), copy attached. It appears that only when the respondent is exonerated in whole or in part that the full measure of the costs incurred should not be taxed against him.

3. The report was filed without a recommendation as to the taxation of costs albeit the affidavit of costs had not been provided. The affidavit is enclosed along with a proposed amendment to the report.

4. If a hearing on this motion is needed, the Bar respectfully suggests it be done by telephone as soon as practical.


Wherefore, The Florida Bar prays this honorable referee will file an amendment to the report of referee indicating in that amendment the statement of costs as set forth in the affidavit and the manner in which they should be taxed or set a telephone hearing on the issue. Specifically the Bar prays the entire amount be taxed against the respondent.

Respectfully Submitted,

Bar Counsel
The Florida Bar
605 East Robinson Street
Suite 610
Orlando, Florida 32801
(305) 425-5424

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served the original of the foregoing Motion Re: Costs Recommendation to the Honorable Kathleen J. Kroll, County Judge, Palm Beach County Courthouse, 300 North Dixie Highway, West Palm Beach, Florida 33401; a copy of the foregoing Motion Re: Costs Recommendation, by regular mail, to Ms. Carol Haber, attorney for respondent, Welsh and Telander, 1492 South Miami Avenue, Miami, Florida 33130, and a copy by ordinary mail to Bar Counsel, The Florida Bar, Tallahassee, Florida, 32301, on this 23rd day of April, 1987.



David G. McGunegle
Staff Counsel