

10-3

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Complainant,

CASE NO. 71,019  
TFB NO. 86-21,271 (20A)

v.

SANDRA E. ALLEN,  
Respondent.

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THE FLORIDA BAR'S INITIAL BRIEF

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SYMBOLS AND REFERENCES

In this Brief, the Appellant, The Florida Bar, will be referred to as "The Florida Bar" or "The Bar". The Appellee, Sandra E. Allen, will be referred to as "the Respondent". "TR" will denote the transcript of the hearing on costs, held July 6, 1988. "RR" will denote the Report of Referee.

STATEMENT OF THE FACTS AND THE CASE

CASE NO. 71,019

On or about October 11, 1984, the respondent assisted Frank L. Williams with preparing an application for an alcoholic beverage license. The application form was notarized by the respondent and subsequently submitted to the Division of Alcoholic Beverages and Tobacco as part of the application process to obtain a liquor license. On the same date, for a consideration of Ten (\$10.00) Dollars, Frank L. Williams granted to respondent's husband the first right to purchase 100% of the stock in Soози of Fort Myers, Inc. The purchase was to take place during a ninety (90) day period following a date three years from the commencement and opening of the corporation's business for retail sales with Mr. Williams' new quota liquor license. The option to purchase was notarized by the respondent. The respondent acted as the attorney for Frank L. Williams in submitting the application for the liquor license and in other matters related to the initial organization of Soози's.

Respondent also participated in the financial affairs of Soози. On October 11, 1984, Frank L. Williams and respondent entered into an agreement whereby the respondent was given a power of attorney to act thereafter for Frank L. Williams in the operation and management of Soози.

Respondent assisted in the incorporation of Soози of Ft. Myers, doing so on or about October 19, 1984. (RR, p.1-2).

The liquor license of Soози's was used to purchase alcoholic beverages which were subsequently transferred to premises other than Soози for sale and consumption thereon. In addition, liquor was transported from Soози to other clubs in vehicles not having the proper liquor stickers affixed. To a minor extent, money from the Soози account was used to pay costs and expenses not related to the management, operation or expenses of Soози. The parties stipulated that respondent did not adequately monitor the operation of Soози to enable her to advise Frank L. Williams of improprieties occurring at Soози. Respondent also advised all employees of Soози not to provide any individuals with information on the operation and management of any of her businesses, including Soози. (RR, p.2).

The Florida Bar dropped its allegation that a Five Thousand (\$5,000) Dollar amount paid as option money related to Soози of Ft. Myers had been misrepresented to Frank L. Williams as a security deposit. (RR, p.2).

Following the final hearing, held May 16, 1988, the referee recommended that the Consent Judgment entered into by the parties be accepted, and that in accord with the Consent Judgment, the respondent be found guilty of the following violations of the

Code of Professional Responsibility: DR 1-102(A)(6) (conduct adversely reflecting on one's fitness to practice law); DR 5-101(A) (accepting employment without full disclosure of a conflict of interest); DR 5-104(A) (entering into a business transaction with a client without full disclosure); DR 5-105(A) (accepting employment when the exercise of independent judgment is likely to be adversely affected); Integration Rule 11.02(3)(a) (conduct contrary to honesty, justice, or good morals). (RR, p.2).

At the time of the Final Hearing, respondent reserved the right to have a hearing on costs. The hearing on costs took place on July 6, 1988. Respondent only challenged the \$1,619.75 paid as fees for investigator time spent on the instant case. (TR.p.6, L.9-11). Respondent's basis for asking the Court not to assess investigator fees against respondent was that Rule 3-7.5(k), Rules of Discipline, does not include investigator's costs as a cost that shall be included. (TR.p.5, L.17-25; p.6, L.1-2). The referee indicated that he was impressed by the wording of the Rule, which doesn't mention the word investigators at all. (TR.p.14, L.4-7). The referee indicated that he would suggest to the Supreme Court that they review the matter and clarify the Rule one way or the other. (TR.p.15, L.1-3; p.14, L.21-25). The Court further stated that it was of the opinion that the investigator's time was excessive and unreasonable. (TR.p.15, L.12-18).

SUMMARY OF ARGUMENT

The referee's finding that investigator fees cannot be assessed against the respondent is erroneous. The absence of investigator's fees as a delineated cost under Rule 3-7.5(k), Rules of Discipline, does not preclude taxing them against a respondent.

When a respondent's misconduct causes a complaint to be filed against her, and her initial denial of allegations which are later admitted necessitates investigation, it would be unreasonable not to tax the costs of investigation. When the choice is between imposing costs of discipline on the one who misbehaved or on the members of The Bar, the costs should be born by the respondent.

The investigator's costs should not be denied based on the referee's opinion that the costs were unreasonable and excessive. Since the denial of investigator's fees was based on the text of Rule 3-7.5(k), Rules of Discipline, testimony was not offered to demonstrate to the Court how the investigator's time was utilized.



## ARGUMENT

ISSUE: WHETHER INVESTIGATOR FEES  
ARE AN ALLOWABLE COST WHICH MAY BE  
TAXED AGAINST A RESPONDENT IN A  
FLORIDA BAR DISCIPLINARY ACTION.

The referee denied the assessment of investigator fees against the respondent because investigator fees are not listed under Rule 3-7.5(k)(5), Rules of Discipline, as a cost which shall be included in the referee's report. The Rule indicates that costs shall include court reporter's fees, copy costs, witness fees, and reasonable traveling and out of pocket expenses of the Referee and Bar counsel, if any. The Rule further indicates that costs shall also include a \$150.00 charge for administrative costs at the grievance committee level and a \$150.00 charge for administrative costs at the referee level. While the Rule fails to include investigator fees as a cost which shall be included in the Report of Referee, it does not prohibit taxing of costs of investigation against the respondent.

In The Florida Bar v. Gold, SUP. CT. NO. 70,449 (June 2, 1988), the Court considered an allegation by the respondent therein that The Florida Bar incurred excessive costs in investigating and prosecuting the complaint. The Court taxed the costs of the proceedings, including the costs of investigation, against the respondent. The Supreme Court noted that "in these cases, the choice is between imposing the costs of discipline on those who misbehave and on the members of the Bar who have not misbehaved. We see no reason to excuse respondent."

In the instant case the respondent entered into a Consent Judgment which included findings that she had violated Disciplinary Rule 1-102(A)(6) (conduct adversely reflecting on fitness to practice law); DR 5-101(A) (accepting employment without full disclosure of a conflict of interest); DR 5-104(A) (entering a business transaction with a client without full disclosure); DR 5-105(A) (accepting employment when the exercise of independent judgment is likely to be adversely affected); Integration Rule 11.02(3)(a) (conduct contrary to honesty, justice, or good morals).

In light of the respondent's misconduct, she should be required to pay the costs of investigation necessitated thereby. To require The Florida Bar to bare the costs of investigation in the instant case is unjust. Extensive investigation was necessitated by the complexity of the allegations and the respondent's denial of virtually all allegations, many of which she later admitted in negotiating the Consent Judgment.

Based on the foregoing, The Florida Bar respectfully requests that this Court find that investigator fees may be taxed against respondent, and order that the case be remanded for a determination of reasonable costs.

CONCLUSION

The issue before this Court is whether or not investigator costs may be assessed against an attorney who is found guilty of misconduct in a Bar proceeding.

It is the Bar's position that investigator fees may be assessed against the respondent to the extent they are reasonable, and that they are not excluded as allowable costs simply because they are not specifically listed within Rule 3-7.5(k), Rules of Discipline, as a cost that shall be assessed.

WHEREFORE, The Florida Bar respectfully requests that this Honorable Court reject the referee's denial of investigator costs and remand the matter for a hearing to determine reasonable investigator fees.



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