

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED

SD J. WHITE

JAN 5 1988

CLERK SUPREME COURT

By

Deputy Clerk

IN RE: WALTER BENJAMIN KYLE,
Petitioner,

Case No. 71,147
TFB File No. 88-00129

REPORT OF THE REFEREE

I. NATURE OF PROCEEDINGS

In his petition to resign without leave to reapply, Petitioner, Walter Benjamin Kyle, agreed to make restitution to former clients. Paragraph seven (7) of the Petition sets forth the nature and amounts of restitution to be paid to three (3) of his former clients. With regard to other clients, Petitioner agreed to submit the issue of their entitlement to restitution to a judicial referee appointed by the Florida Supreme Court. Petitioner also agreed to submit to a referee any dispute over the amounts of costs assessed against him. The undersigned, acting as judicial referee, and at the direction of this Court, held a hearing on December 4, 1987 in the Duval County Courthouse in Jacksonville, Florida. At this hearing, evidence in the form of testimony and exhibits was taken regarding disputed costs and restitution. Based upon evidence and argument of counsel presented at the hearing, I find the following:

II. FINDINGS OF FACT

A. Petitioner was hired by Ms. [REDACTED] (hereinafter referred to as Ms. [REDACTED]) to represent her in a replevin action for the return of her 1977 Ford Thunderbird automobile. Ms. [REDACTED] automobile had been repossessed even though she had apparently paid all payments due and owing on the

automobile. Ms. ██████ met with Petitioner on the same day that her automobile was repossessed, and retained him to represent her in regaining possession of the automobile. Petitioner filed a replevin action, but failed to prosecute the matter. As a result of Petitioner's inaction, Ms. ██████ never regained possession of her automobile and never received any reimbursement for her equity in the automobile.

At the hearing held December 4, 1987, The Florida Bar presented evidence establishing that the value of Ms. ██████' automobile at the time Petitioner was hired to represent her was \$2,700.00.

B. With regard to costs assessed against Petitioner in various disciplinary matters pending against him, Petitioner acknowledged at the hearing that he disputed only those costs assessed against him in a matter at the investigative stage and referred to in his petition for resignation as "TFB File No. NMO87002". Mr. Clark V. Pearson, Chief Auditor for The Florida Bar, testified that an examination of Petitioner's trust account records for the period from July 1, 1985 through June 30, 1987 revealed substantial deviations from trust accounting rules and procedures of The Florida Bar. This matter, had it been presented to a grievance committee for The Florida Bar, would undoubtedly have resulted in a finding of probable cause against Petitioner and ultimately would have resulted in discipline against Petitioner. The Florida Bar is therefore entitled to recoup its costs in conducting the audit of Petitioner's trust account.

It appears that Mr. Pearson's time and efforts in conducting the audit of Petitioner's trust account were both necessary and reasonable. These costs were as follows:

Auditor Time - 131 hours at \$28.34 per hour	\$3,712.55
Travel Expenses	<u>1,328.01</u>
	\$5,040.56

Copies of cost statements in all other pending cases against Petitioner, which were previously submitted to the undersigned, are attached hereto as Exhibits A - F to this report. I find that these costs were reasonable and necessary and should therefore be assessed against Petitioner.

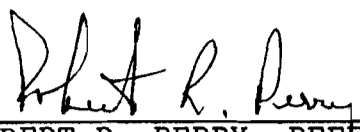
III. RECOMMENDATIONS.

A. With regard to restitution to be paid to former clients, I recommend that in addition to making restitution to clients as set forth in paragraph seven (7) of his petition to resign without leave to reapply, that Petitioner be ordered to pay to Ms. [REDACTED] the sum of \$2,700.00. Further, that Petitioner be ordered to make every reasonable effort to make restitution to all former clients.

B. I recommend that Petitioner be ordered to pay reasonable costs of all pending disciplinary matters against him as set forth in statements of costs attached to this report. Included, is a statement of costs in the above-referenced case, which includes costs incurred by The Florida Bar due to the hearing held December 4, 1987. This statement is labeled Exhibit G.

It is further recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be payable beginning 30 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 4th day of JAN., 1988.



ROBERT R. PERRY, REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to SID J. WHITE, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and that confidential copies were mailed by regular U.S. Mail to JOHN T. BERRY, Staff Counsel, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32301; SUSAN V. BLOEMENDAAL, Bar Counsel, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32301; and WALTER BENJAMIN KYLE, Petitioner, at his record Bar address of 1248 West Edgewood Avenue, Jacksonville, Florida 32208, this 4th day of JAN, 1988.



ROBERT R. PERRY, REFEREE