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DEC 29 1988

II THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
Deputy Clerk

THE FLORIDA BAR,

Complainant,

CASE NO. 71,846

v.

The Florida Bar Case
No. 87-27,328 (17H)

STANLEY L. FUSKIN,

Respondent.

REPLY BRIEF OF THE FLORIDA BAR

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF CASE AND FACTS.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT	
I. THE REFEREE'S RECOMMENDATION OF A PRIVATE REPRIMAND WAS ERRONEOUS.....	3
11. THE COST OF THE COPY OF LELAND STANSELL'S DEPOSITION SHOULD HAVE BEEN TAXED AGAINST THE RESPONDENT.....	4
CONCLUSION.....	5
CERTIFICATE OF SERVICE.....	5

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Debock v. State</u> 512 So.2d 164 (Fla. 1987)	3
<u>The Florida Bar v. Leopold</u> 320 So.2d 819 (Fla. 1975)	3
<u>The Florida Bar v. Massfeller</u> 170 So.2d 834 (Fla. 1964)	3
 <u>RULES OF DISCIPLINE</u>	
 Rule 3-7.5(e)	 4

STATEMENT OF THE CASE AND FACTS

The Florida Bar disputes Respondent's statement that the complaining party, Evelyn Fox, never sustained any loss or injury as a result of the conduct of Stanley L. Riskin. Ms. Fox lost her day in Court and her right to be properly represented.

The Florida Bar also disagrees with Respondent's statement that the complaining party, Evelyn Fox, was noted by the Referee to have made a number of inconsistent statements throughout her testimony "before the Referee." The Referee stated the following:

There were two (2) instances where Ms. Fox, obviously, signed her name to something that was not true. Answered Interrogatory No. 1 and the Complaint to the Bar, whether it was a statement about, as I recall a letter and telephone, after August of 1986, which she admitted on the stand, was not true. But, I also am aware that people involved in litigation don't always read, as closely as they should and they rely upon counsel to accurately write down **what** they said. (T. 360-361).

SUMMARY OF ARGUMENT

I. THE REFEREE'S RECOMMENDATION
OF A PRIVATE REPRIMAND WAS
ERRONEOUS.

The imposition of a private reprimand rather than a public reprimand was clearly erroneous under the Rules Regulating The Florida Bar. The formal complaint in this cause was filed pursuant to the Rules Regulating The Florida Bar that went into effect January 1, 1987. Disciplinary cases are not penal in nature. Additionally, considering the cumulative nature of the misconduct, a public reprimand should be imposed in this cause.

11. THE COST OF THE COPY **OF**
LELAND STANSELL'S DEPOSITION
SHOULD HAVE BEEN TAXED AGAINST
THE RESPONDENT.

The Florida Bar is entitled to be reimbursed for its costs in preparing for the final hearing in this cause. Reimbursement for the cost of the copy of **Mr.** Stansell's deposition for the pages concerning Count I for which the Respondent was found guilty, is not unreasonable.

ARGUMENT

I. THE REFEREE'S RECOMMENDATION OF A PRIVATE REPRIMAND WAS **ERRONEOUS**.

Respondent was charged with violations of the Code of Professional Responsibility as his misconduct occurred while said rules were in effect. However, the procedures followed were in accordance with the rules in effect at the time the case was filed, on January 29, 1988, that being the Rules Regulating The Florida Bar.

This Court has held that disciplinary procedures are not penal. See The Florida Bar v. Massfeller, 170 So.2d 834 (Fla. 1964) and Debock v. State, 512 So.2d 164 (Fla. 1987).

The Rules Regulating The Florida Bar changed the procedure by which an attorney can receive a private reprimand. Substantive issues are not involved.

In The Florida Bar v. Leopold, 320 So.2d 819 (Fla. 1975), the Supreme Court held that failure to diligently prosecute a client's workmen's compensation claim within the prescribed statutory period, and attempt to limit liability to the same client warrants a public reprimand. Said facts are quite similar to the instant case.

As stated in The Florida Bar's initial brief, the misconduct was cumulative in nature.

For the reasons stated in The Florida Bar's initial brief in this cause and for the above stated reasons, The Florida Bar respectfully submits that the discipline in this cause should be a public reprimand by publication in the Southern Reporter and by Respondent's personal appearance before the Board of Governors of The Florida Bar.

II. THE COSTS OF THE COPY OF
LELAND STANSELL'S DEPOSITION
SHOULD HAVE BEEN TAXED AGAINST
THE RESPONDENT.

Respondent, in his brief, cites the guidelines for taxation of costs in civil actions. Some are not applicable to the instant proceedings. "A disciplinary proceeding is neither civil nor criminal but is a quasijudicial administrative proceeding." Rule 3-7.5(e) of The Rules of Discipline.

The transcript costs charged to the Respondent by The Florida Bar only concern pages of transcript concerning the count of the complaint wherein the Respondent was found guilty. The Florida Bar did not ask for any reimbursement of costs concerning the count wherein a not guilty finding was made.


The Florida Bar's requested costs were not unreasonable and The Florida Bar was entitled to have a copy of ~~Mr.~~ Stansell's deposition to be properly prepared for the final hearing in this cause.

For the above stated reasons and the reasons stated in The Florida Bar's initial brief in this cause, The Florida Bar respectfully requests that the costs in the amount of \$113.70, for the copy of the pages of the transcript concerning Count I, of the Leland Stansell, Jr. deposition be taxed against the Respondent.

CONCLUSION

WHEREFORE, for the above stated reasons, and the reasons stated in The Florida Bar's initial brief, The Florida Bar respectfully requests that this Honorable Court uphold the Referee's findings of fact, impose a public reprimand and tax costs against the Respondent for partial costs of The Florida Bar's costs in obtaining a copy of its expert witness' deposition, that being \$113.70, in addition to the costs already taxed in the amount of \$2,006.46.

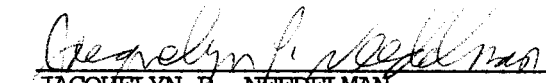
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief of The Florida Bar was furnished to David Kahn, Attorney for Respondent, 633 South Andrews Avenue, Suite 203, Fort Lauderdale, FL 33301, by certified mail, return receipt requested, #P 608 633 113, and a copy to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, on this 28th day of December, 1988.



JACQUELYN P. NEEDELMAN