IN THE
SUPREME COURT OF FLORIDA

NO. 72,506

IN THE MATTER OF:

THE FLORIDA BAR,

v.

MILTON E. GRUSMARK,

A CONFIDENTIAL DISCIPLINARY MATTER CONDUCTED UNDER THE AUTHORITY OF THE INTEGRATION RULE OF THE FLORIDA BAR

ON PETITION FOR REVIEW
OF A REPORT OF THE REFEREE

REPLY BRIEF OF RESPONDENT, MILTON E. GRUSMARK

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INTRODUCTION

This Court has written:

> Our Integration Rule recognizes that a license to practice law endows the holder with a conditional privilege and not a vested right. It is nonetheless a valuable privilege which should not be regarded lightly by the lawyer who enjoys it or by those of us who are charged with the supervision of its enjoyment. It is earned and acquired only after an arduous and expensive period of education. It can be retained and employed as a productive source of livelihood only by diligence and an ethical devotion to its responsibilities. In this vein it has characteristics of property which should not be withdrawn by a governing authority save by proper application of traditional concepts of due process.
>
> The Florida Bar v. Fussell, 179 So.2d 852, 854 (Fla. 1965).

POINT I

RULE 2-106 REQUIRES THE CONSIDERATION OF THE REFEREE OF MANY SPECIFIC CRITERIA IN DETERMINING THE REASONABLENESS OF A FEE CHARGED BY AN ATTORNEY OF HIS CLIENT.

The thrust of the brief submitted by the Bar in this case is that all of the elements of Disciplinary Rule 2.106(B) were presented.

It is suggested by the Bar that since Mr. Grusmark gave a narrative statement concerning the situation, and in some part, his background (T50 - 65), all of the elements of now DR 2-106B (1) through (8) were considered.

However, that theory is refuted by the Report of the Referee and indeed the Complaint of the Bar under review here.

In the Report, it is clear that no consideration was given to any aspect of the case other than the time involved.

The Findings of Fact include the following:

> I find respondent guilty of all allegations contained in the Bar's Complaint which I hereby accept and adopt as the findings in the cause, to wit:
>
> (1) In or about February 1986 the Respondent was retained by Don Silverstein (hereinafter referred to as "Silverstein").
>
> (2) Silverstein paid Respondent five thousand dollars ($5,000.00) to handle Silverstein's case and Silverstein paid an additional five thousand dollars on O'Connor's case as O'Connor could not afford legal counsel.
>
> (3) The respondent only worked four or five hours on behalf of Silverstein and O'Connor and in fact the Respondent's only work on Silverstein's and O'Connor's behalf involved a bond hearing to get Silverstein and O'Connor out of jail.

Among the paragraphs of the Complaint which the Referee adopted word for word as his Findings, appears the following:

> The Respondent only worked four or five hours on behalf of Silverstein and O'Connor and in fact the Respondent's only work on Silverstein's and O'Connor's behalf involved a bond hearing to get Silverstein and O'Connor out of jail.

The Complaint and the Report of the Referee, therefore reject any contention that consideration was given to any of the eight elements required by the Rule other than the bare mention of some four or five hours involved.

POINT II

THE FLORIDA BAR CANNOT DELEGATE TO AN ARBITRATION COMMITTEE THE QUESTION OF ETHICAL COMPLIANCE WITH THE CRITERIA FOR REASONABLENESS CONTAINED IN DR 2-106.

The Bar cites The Florida Bar v. Bennett, 276 So.2d 481 (Fla. 1973) as authority for the proposition that the Report of the administrative Arbitration Board was properly considered by the Referee.

It appears that Bennett, supra, stands for the proposition that the results of a civil suit are not necessarily conclusive in disciplinary proceedings, which holding is totally consistent with Respondent's position on this issue.

The complaint of Respondent is that the Report of the Referee adopted the findings of the Arbitration Committee through the testimony of its Chairman as one of the bases for his ultimate findings. That procedure certainly is inconsistent with the requirements of Bennett, supra.

Respondent reiterates his reliance upon those cases cited in his opening brief.

POINT III

DR 2-106 ENCOMPASSES NO MORE THAN THE REASONABLENESS OF THE ORIGINAL FEE AGREED TO BETWEEN AN ATTORNEY AND HIS CLIENT.

Respondent suggests that the Bar does not respond to the issue raised in Point III of the initial brief. The question is not whether a rule has ex post facto effect.

The point raised by Respondent is simply that the modification of the rule is relevant in indicating the intention of this Court in promulgating both the original rule and its subsequent modification. It would appear abundantly clear that the rule now and then requires the consideration of many factors, not only those enumerated in consideration of the propriety of fees.

CONCLUSION

For the foregoing reasons, it is respectfully urged that the Report of the Referee should be reversed and the charge dismissed, or in the alternative, remanded for de novo consideration with due regard to the factors delineated in the Code of Professional Responsibility and in the Rules Regulating

the Florida Bar; alternatively, that the sanction be appropriately reduced.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this brief was mailed on March 31, 1989 to RANDI K. LAZARUS, Assistant Staff counsel, The Florida Bar, Second Floor Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131.

SHERYL J. LOWENTHAL