IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

CASE NO. 72-576

vs.

PAUL S. CARR,

Respondent.

_____/

RESPONDENT'S REPLY BRIEF

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ARGUMENT IN RESPONSE TO COMPLAINANT'S ANSWER BRIEF

The record, transcripts, evidence, witnesses and referee's report, clearly indicate that the Complainant completely failed to meet its burden of proof as to any aspect of this case.

Every single witness called by the Complainant and every single witness called by the Respondent testified as to Respondent's innocence.

Tony Myers, the Complainant's chief witness testified that he told me the same story initially at the first meeting which he later was prepared to tell in Court when the case was continued and when he later actually told in Court, page 92, Volume 1.

The entire Trial Transcript and testimony of Tony Myers, Albert Myers, Wayne Oney, Scott Gordon and others clearly indicates that Tony Myers and his witnesses appeared for Trial on April 7, 1988 but it was continued. However, on that day they were prepared to testify to the same false story that they had originally told me and this was at a time before I had ever met Rick Razick or Scott Gordon, see pages 102-109, Volume 1.

In short, the Referee determined in the Referee's Report, and the record is replete, with instances showing that I had no knowledge that Tony Myers and his witnesses were going to lie in Court at the DWI Trial of Tony Myers.

Albert Myers, to the Court's inquiries, answered that the first time Scott Gordon and Rick Razick ever met

me was after April 7, 1986 after they all went to Court and were prepared to lie at a time when the case was continued, see pages 327-328, Volume 11.

Defense witness Wayne Oney verified the fact that Paul Carr never knew, or hdd reason to believe, that Tony Myers, Rick Razick or Scott Gordon were committing perjury at any time, see his testimony between pages 343-393, Volume 111.

Defense witnesses Jimmy Miller and Randolph Cunningham verify that Tony Myers was planning to lie at his second DWI Trial without the knowledge of Paul Carr. Tony had attempted to recruit them as false witnesses and when they refused he asked them not to tell Paul Carr that he was attempting to obtain false witnesses or that he was going to commit perjury at his Trial, see their testimony contained in Volume III of the Trial Transcript.

The Deposition of now Circuit Judge Edward Ward, presiding Judge at the Tony Myers DWI Trial, clearly indicates that neither he nor myself had any reason to believe that Tony Myers or any of his witnesses were committing perjury (Exhibit 12).

The testimony of Scott Gordon, one of the witnesses who committed perjury at the Tony Myers DWI Trial, is located between pages 448 and 481, Volume 111. He clearly indicates that Paul Carr had nothing to do and had no reason to believe that any one was committing perjury at the subject DWI Trial.

Dr. Daniel Spray, an expert witness, clearly indicates that Rick Razick meets other criteria of a pathological liar, see the video Deposition and the printed Deposition with exhibits entered into evidence as Exhibits "3" and "4".

The record indicates that Tony Myers altered and forged his time card without the knowledge or consent of Paul Carr.

In short, the entire case presented by the Complainant consisted of two (2) witnesses, Tony and Albert Myers whose testimony actually supports the defenses of the Respondent. Both Tony and Albert Myers insist that themselves, Rick Razick, Scott Gordon and Wayne Oney appeared at the Courthouse on April 7, 1986 ready to falsely testify at a time before Respondent ever met with Rick Razick or Scott Gordon. The testimony indicates that Rick Razick and Tony Myers and Scott Gordon falsified their story on the night of April 6, 1986 without ever speaking, meeting or knowing Paul Carr. The story was again falsely prepared on the way to Court on the morning of April 7, 1986 and were prepared to testify falsely on that date. Paul Carr never met with these individuals until approximately one (1) week before the actual Trial which was held April 28, 1986. Paul Carr could not have known or suspected of any planned perjury because the false story was put together three (3) weeks before any of the witnesses ever met with Paul Carr at his office.

On the other hand each and every defense witness clearly indicates that Paul Carr had no reason to believe that Tony

Myers, Rick Razick or Scott Gordon were planning to commit perjury or did commit perjury at the DWI Trial of Tony Myers.

In the report of Referee, the Judge clearly found that "it also appears that the perjured testimony was agreed among these three (3) individuals without ~~the~~ knowledge of the Respondent".

In finding the Respondent not guilty, the Referee clearly pointed out in his report that the Complainant was unable to even meet its burden of proof as to any knowledge or allegation brought against the Respondent. In fact, the Referee, in his report, stated that he "has no choice but to find that the charges have not been proved by clear and convincing evidence."

RESPONDENT'S REBUTTAL TO ARGUMENT PRESENTED BY COMPLAINANT

The Complainant argues that the Trial Court has discretion in denying a Respondent costs when the Respondent is the prevailing party.

On the other hand, the alternative would be that if the Complainant had been the prevailing party then the Referee has no discretion in taxing costs against the Respondent but would be required to do so.

In representing himself throughout this entire proceeding, the Respondent has literally researched and reviewed hundreds

of cases dealing with attorney disciplinary proceedings. In each and every case when an attorney was found guilty, The Florida Bar was awarded costs which were taxed against the losing attorney.

"But for" the marginal case brought against Respondent, the Respondent would not have had to incur the substantial costs in successfully defending himself in this case. Further, "but for" the allegations brought by Complainant, the Respondent would not have had to expend substantial resources of time, energy and money in clearing himself of these charges.

To accept the theory of the Complainant would mean that The Florida Bar has the unbridle discretion to file a Complaint against any attorney without the risk of having to pay appropriate costs if that attorney should prevail.

In other words, under Complainant's Theory, a Respondent attorney should refrain from incurring necessary costs in thoroughly preparing himself for Trial because in the end he will have to suffer the consequences of bearing his own costs even if he prevails.

Using the arguments of the Complainant, it would seem that the taxation of costs against a losing attorney is not a true award of costs but is rather a penalty imposed on the losing attorney for his failure to prevail in attorney disciplinary proceedings. Had the Respondent been found guilty then the costs of Complainant would have surely been taxed against the Respondent in this case.

Early in the proceeding, counsel for Complainant stated that he was seeking disbarment of the Respondent. The record and Depositions indicate that the Respondent ably represented himself and was successful in all aspects.

To deny the Respondent his costs is basically and inherently wrong. The Florida Bar has ample funds to pay the costs of the Respondent, who, financially unable to even hire an attorney to represent him, has far less comparative ability to be forced to absorb his own costs. The Bar's argument that a recent amendment to Rules regulating The Florida Bar located at 542 So.2d 982, have no bearing on this case since all evidence and testimony was concluded on February 8, 1989, more than two (2) months before any such amendment.

Despite thorough and lengthy research, the Respondent has uncovered very few cases wherein an attorney was completely exonerated in a disciplinary proceeding. However, the Respondent has, come into possession of a relatively recent "confidential" case wherein the attorney was completely exonerated and Respondent's costs were taxed against The Florida Bar. This ruling was made in a "confidential" attorney disciplinary proceeding and is attached on a separate Exhibit envelope marked confidential and attached hereto as Exhibit "A". In maintaining the confidentiality of this ruling, the name of the Respondent attorney in any reference to the identity of the Respondent attorney was "whited out" and deleted prior to this Respondent

receiving this Exhibit. Therefore, the confidentiality of the proceeding identified in Exhibit "A" has always remained in tact and confidential in all respects.

Exhibit "B" are photos of files consisting of approximately fifty thousand pages of documents which were the files transported daily to and from the Referee's Chambers. Contained in these files are the numerous copies set forth in Respondent's Affidavit of Costs.

Exhibit "C" attached hereto is a letter from John Boggs, supervisor of the attorney regulation department, notifying the Court that The Florida Bar refuses to file a Petition for Review contesting this Respondent's innocence. This confirms the acceptance of The Florida Bar that the reports basically equalling directed verdicts of dismissal are acceptable to The Florida Bar.

If this Court should decide that Respondent is entitled to any costs then the Complainant argues that the matter should be referred to the Referee for further hearing. Respondent understands that the normal and usual method of taxation of costs would be by the Supreme Court without further hearing.

The Complainant argues that many of the costs alleged by the Respondent are "ridiculous", however, none of these costs would have been incurred "but for" the actions of The Florida Bar in filing a Complaint against the Respondent. The Florida Bar required the Respondent to incur these costs in successfully defending himself and Respondent is clearly the prevailing party.

The Complainant argues that the Referee did not abuse his discretion in requiring each party to bear their own costs. This argument is completely contrary to the well established principles cited in Respondent's initial Brief. This argument is also considered to be contrary to any ideas of fairness, equality and equity.

Once again, the principles of fairness, justice, equality and equity should prohibit The Florida Bar from claiming that costs should only be taxed against the losing Respondent and never be awarded to a prevailing attorney. This misinterpretation of prevailing law would only indicate that the taxation of costs is simply a discriminatory penalty to be applied to losing attorneys but denied to prevailing lawyers in the exact same position.

What is good for the goose should also be good for the gander. Utilization of the basic principles of fairness and equality should especially be applicable to proceedings involving lawyers and judicial officers to whom such valued principles are entrusted.

In summary, it would be contradictory and basically unfair for the highest Florida Court to deny a prevailing attorney his costs in a proceeding which specifically questions his basic confidence to practice law and preserve and safeguard the very same legal principles which the Complainant now disputes.

CONCLUSION AND REQUEST FOR RELIEF

In conclusion, there can be no dispute that the Respondent was the overwhelming prevailing party in this case. Per the Referee Report, the presiding Judge never even considered the relative merits of the case because it was apparent to him that the Complainant completely failed to meet its minimal burden of proof. A reading and review of the record, Exhibits, testimony and Referee Report clearly indicate that the Referee made the correct ruling in completely exonerating this Respondent.

That to require the Respondent to bear all of his own costs would amount to a penalty to the prevailing party.

The Complainant has obviously failed to cite a single case wherein The Florida Bar was the prevailing party and was also required to bear some costs. The Florida Bar has also failed to cite any authority whereby the Complainant was the losing party and the prevailing Respondent/attorney was awarded all or a portion of his costs. If such authority exists then Respondent alleges that the applicable rules require The Florida Bar to disclose such authority to Respondent.

In closing, Respondent requests the Supreme Court of Florida to enter a Judgment awarding Respondent his costs without further hearing or referal'to a Referee.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand/U.S. Mail to RICHARD GREENBERG,

and JOHN T. BERRY, Staff Counsel, The Florida Bar Ethics and Discipline Department, 650 Appalachee Parkway, Tallahassee, Florida 32399-2300 on this 27th day of September, 1989.

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