FILED SID J. WHITE

DEC 4 1992

IN THE SUPREME COURT OF FLORIDA, (Before a Referee)

CLERK, SUPREME COURT.

By
Chief Deputy Clerk

THE FLORIDA BAR,

o je _ ¶,

Complainant,

vs.

Case No. 76,119 TFB NO. 88-11,316

HAROLD S. WILSON,

Respondent.

FINAL REPORT OF REFEREE ON ASSESSMENT OF COSTS

Pursuant to the order of the Court dated February 6, 1992, the above matter was remanded back to the undersigned Referee for recalculation and reconsideration of the costs assessed to the Respondent. A hearing was held on September 25, 1992 in Clearwater, Florida in which the Referee made the following findings:

- 1. Pursuant to Rule 5-1.2 of the Rules Regulating The Florida Bar, the attorney audited is responsible for the cost of the audit when it is found that he is not in substantial compliance. The Referee found and the Supreme Court affirmed that there were numerous trust account violations.
- 2. In an October 8, 1992 case, The Florida Bar. Complainant, v. Joseph R. Meile, Respondent, Supreme Court of Florida. Case No. 78,589, the Court rejected Miele's argument that he should not be held liable for the total costs as he was found not guilty on some of the bar's charges, stating, "but for Miele's misconduct, there would have been no complainant and, thus no

v. Gold, 526 So. 2d 51 (Fla. 1988) that "Where the choice is between imposing costs on a bar member who has misbehaved and imposing them on the rest of the members who have not misbehaved, it is only fair to tax the costs against the misbehaving member."

The Courts ruling in <u>Miele and Gold</u>, appears to the Referee, to be a direct conflict with its directive in the instant case that "Wilson should not be held responsible for costs generated by charged violations that the bar failed to prove.!! The Florida Bar was successful in proving only 25% of the violations alleged against Harold Wilson.

3. The Florida Bar's costs appear reasonable with the exception of the costs assessed for the services of the Staff Investigator, Ernest J. Kirstein, Jr.

Recommendation of Referee:

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I recommend that the Respondent be **assessed** the **full** cost of the Florida Bar's audit in the amount of \$5,229.57

I recommend that the Respondent be assessed the sum of \$500.00 for the Florida Bar's costs for the services of the Staff Investigator, Ernest J. Kirstein.

I recommend that the remaining Florida Bar costs for court reporting services, expenses for the Assistant Staff Counsel, clerk's fees, and referee's expenses in the amount of \$3,987.32 be assessed against the Respondent. The total costs to be assessed against the Respondent are \$9,716.89 that shall accrue interest at the statuatory rate.

DATED this

30 th day of November, 1992.

Walter Talley

Copy:

Joseph A. Corsmier, Assistant Staff Counsel Harold S. Wilson, Esquire