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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MICHAEL A. CATALANO,

Respondent.

\_\_\_\_\_ /

Case No. 83,515  
[TFB Case No. 93-70,356(11H)]

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COMPLAINANT'S REPLY BRIEF

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### SYMBOLS AND REFERENCES

For purposes of this Reply Brief, the bar adopts the symbols and references from the bar's Initial Brief and further includes the following.

The Answer Brief of the respondent will be referred to as "AB," followed by the referenced page number(s) of such brief. Also, the respondent's Answer Brief included what was described therein as a "supplemental record." This Reply Brief will refer to such record as "SR \_\_\_\_."

ARGUMENT

POINT

RULE 3-7.4(g), RULES REGULATING THE FLORIDA BAR, DISTINGUISHES BETWEEN THE REQUIREMENTS FOR A PROPER QUORUM AND THE REQUIREMENTS FOR VOTING ON A MATTER BEFORE A GRIEVANCE COMMITTEE.

The respondent has confused the quorum and voting requirements set forth in Rule 3-7.4(g), Rules Regulating The Florida Bar. Contrary to the explanation of the rule contained in the respondent's Answer Brief, Rule 3-7.4(g) plainly states that three (3) members of a grievance committee - two(2) of whom must be lawyers - shall constitute a quorum. "Quorum" is defined in various ways, including "the number of members who must be present in a deliberative body before business may be transacted;" it is further defined as a limitation where members of a body of persons cannot act unless a certain number of them are present. See Black's Law Dictionary, 651 (5th ed. 1983). If no quorum exists, the committee cannot consider any cases. Even if a three-member quorum exists, it cannot consider cases (the committee's form of transacting business) without the consent of the designated reviewer and the committee chair. Once a quorum is present, then consideration of cases may begin; consideration may or may not include a live or paper hearing on a particular case. If there is a case hearing, then Rule 3-7.4(g) also sets forth the requirements for voting on the case.

The rule plainly states that all findings of probable cause or

minor misconduct must be made by "affirmative vote of a majority of the committee members present, which majority must number at least 2 members." The rule does not say that the voting majority must number at least 2 lawyer members. In fact, the only discrimination in the rule between the voting rights of lawyers and nonlawyers is that "[a] lawyer grievance committee member may not vote on the disposition of any matter in which that member served as the investigating member of the committee." If a nonlawyer was the investigating member in the respondent's case, that member could have voted as part of the unanimous majority that found minor misconduct against the respondent. However, merely because a lawyer, David White, was the investigating committee member and, therefore, could not vote, it does not follow from any reasonable interpretation of Rule 3-7.4(g) that the three laymembers, Gui Goavert, Julian Newbauer, and Gilda Geer, were disenfranchised; or, as the respondent has incorrectly suggested in his Answer Brief, that the matter should have been continued until another voting lawyer was present (AB 4).

Throughout the Answer Brief, the respondent describes the quorum and voting requirements as if they were synonymous. For example, the respondent concludes that because the investigating lawyer member, David White, was ineligible to vote there was not a quorum. (AB 8). The necessary corollary to such a conclusion is that the grievance committee could not have considered any cases that day, even those cases where a laymember was the investigating

member, because there was no quorum.

Such an erroneous conclusion was also probably reached, in part, because the referee relied on Webster's New Collegiate Dictionary to define the intended meaning of the word "consider" as it was expressed in Rule 3-7.4(g)(AB 7). In Webster's, the referee found several definitions for the word "consider" - definitions included "to examine," "to ponder," "to study," and "to judge" - and decided that the most applicable definition was "to judge" (SR 36). The referee's next definitional extrapolation was to equate the concept of judging to that of voting on a grievance case within the meaning of Rule 3-7.4(g). Yet the referee's dictionary exercise only serves to render the concepts of "consider" and "affirmative vote of a majority of the committee members present" to redundant phrases within the rule. If "consider" is narrowed in definition to mean "vote," then what is to be said about the great number of grievance committee meetings where no "voting" or "judging" occurs but other committee business is transacted? Such meetings would be outside the purview of Rule 3-7.4(g) and would not be subject to its strictures.

Finally, the respondent's suggested interpretation of the quorum and voting requirements of Rule 3-7.4(g) would lead to many problematic circumstances for the bar's grievance committees. Because Rule 3-3.4(c), Rules Regulating The Florida Bar, states that "[a]t least one-third of the committee members shall be

nonlawyers," it may be that a committee has more nonlawyers than lawyers comprising its members. In the respondent's case, there were more nonlawyers in attendance at the probable cause hearing than lawyers. To suggest, as does the respondent in his Answer Brief, that two lawyers must vote at a probable cause hearing ignores the guidance of Rule 3-3.4(c) to open the bar's grievance committees to lay participation. Although two lawyers must be present for a 3-member grievance committee panel to consider matters, it is internally inconsistent within Rule 3-7.3(g) and inconsistent with Rule 3-3.4(c) to state that both lawyers must also vote; particularly when, as in the respondent's case, there are more than three members present. The bar submits that if the one investigating lawyer, David White, and the committee chair (who must be a lawyer pursuant to Rule 3-3.4(e) and who does not vote unless there is a split vote) were the only lawyers present at the respondent's probable cause hearing, the remaining three laymembers could have properly voted to find minor misconduct.

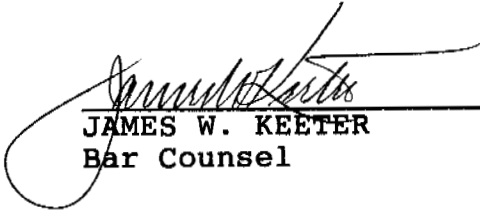


CONCLUSION

WHEREFORE, The Florida Bar requests this Court to consider the referee's report dismissing the bar's complaint and to enter an appropriate order remanding the case back to the referee for final hearing to take evidence concerning the allegations set forth in the bar's complaint of minor misconduct.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing reply brief have been furnished by regular U.S. Mail to The Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927; a copy of the foregoing has been furnished by regular U.S. mail to respondent's counsel, Mr. Scott Sakin, 1411 N.W. North River Drive, Miami, Florida, 33125; and a copy of the foregoing has been furnished by regular U.S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 9<sup>TH</sup> day of November, 1994.

  
\_\_\_\_\_  
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