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IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT  
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Chief Deputy Clerk

THE FLORIDA BAR,  
  
Complainant,

Supreme Court Case  
No. ~~84,616~~ 83,720

vs.

The Florida Bar File  
No. 94-70,133 (11L)

NANCY MARGARET LECHTNER,

Respondent.  
\_\_\_\_\_ /

INITIAL BRIEF OF THE FLORIDA BAR

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## SYMBOLS AND REFERENCES

For the purposes of this Initial Brief on Appeal, The Florida Bar will be referred to as either The Florida Bar or the Bar. Respondent will be referred to as Nancy Margaret Lechtner or Respondent. References to the Report of Referee will be denoted as RR and page number.

## STATEMENT OF THE CASE AND FACTS

The Respondent, Nancy Margaret Lechtner, was a defendant in the federal criminal case commonly referred to as "Operation Courtbroom". This case involved allegations of bribery via kickbacks to judges in the Eleventh Judicial Circuit in exchange for court appointments. A jury of her peers convicted Respondent of six (6) counts of criminal activity including one (1) count of racketeering, one (1) count of bribery, and four (4) counts of mail fraud. She was sentenced to a prison term of thirty (30) months and is currently free on bond pending the outcome of an appeal of her conviction. As a result of her federal conviction, this court ordered Respondent felony suspended on March 24, 1994.

On December 5, 1994, the Referee rendered her Report in this matter. (See Appendix "A"). The Referee took note that Respondent had been adjudicated guilty of federal criminal charges arising from her participation in the conspiracy. Specifically, the Referee found that the Respondent's participation in the criminal activity violated Rule 4-8.4(a) (A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); Rule 4-8.4(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or

fitness as a lawyer in other respects); Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); Rule 4-8.4(d) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice); Rule 4-8.4(f) (A lawyer shall not knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law); and Rule 4-3.5(a) (A lawyer shall not seek to influence a judge, juror, prospective juror, or other decision maker except as permitted by law or the rules of court) of the Rules of Professional Conduct and Rule 3-4.3 (... The commission by a lawyer of any act that is unlawful or contrary to honesty or justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the State of Florida, and whether or not the act is a felony or a misdemeanor may constitute a cause for discipline) of the Rules of Discipline. (RR 4). The Referee recommended that Respondent be disbarred for a period of ten years.

On November 23, 1994, The Florida Bar filed its Affidavit of Costs requesting that costs in the amount of \$1086.48 be taxed to Respondent. (See Appendix "B"). The costs incurred by the Bar included court reporter fees, investigative costs, and an administrative fee authorized by the Rules of Discipline. The

Referee found that the Bar's costs were reasonable, but declined imposition for payment of same on Respondent due to Respondent's apparent inability to pay same. The Florida Bar filed a Motion For Reconsideration as to the Referee's recommendations regarding costs. (Appendix "C").

On January 5, 1995, a hearing was held on the Bar's Motion For Reconsideration. (See Appendix "D"). It was and is the Bar's position that costs should be taxed to Respondent based on the Referee's determination that same were reasonably incurred. The Bar also argued that all of the costs incurred were necessary to its case against the Respondent. The Referee denied the motion on the grounds that the Respondent had been declared indigent for the purposes of her criminal appeal and therefore, would be unable to pay costs.

### SUMMARY OF ARGUMENT

This Honorable Court has ruled on numerous occasions that the Bar may recover costs associated with the disciplinary process when it prevails in its case against a Respondent. In the matter sub judice, the Respondent's federal criminal conviction of charges connected with her participation in a scheme involving corruption in the judicial system resulted in the Referee finding that the Respondent violated the most basic disciplinary rules relating to honesty and integrity in the legal system. A recommendation of disbarment ensued. Additionally, the Rules of Discipline provide that the Bar may recover its costs when it prevails in a disciplinary action unless there is a showing of unnecessary, excessive, or improper authentication of those costs. In the instant matter, the Referee specifically found that the Bar's costs were reasonable. Therefore, the Referee abused her discretion by failing to tax the Bar's costs to the Respondent in this proceeding.

The Referee's failure to tax costs to the Respondent after having found same to have been reasonably incurred by the Bar was an abuse of the Referee's discretion. There is no precedent for denying the Bar's costs based on a Respondent's professed hardship in paying same. A Respondent may petition the Bar for a payment

plan upon a showing of extreme financial hardship. This court has indicated that a payment plan is the preferred alternative to having the Bar membership absorb the costs associated with the disciplinary process. Accordingly, financial difficulties should not serve as a basis for the denial of costs in a disciplinary proceeding.

## ARGUMENT

WHETHER THE REFEREE ABUSED HER DISCRETION IN FAILING TO TAX THE FLORIDA BAR'S COSTS TO THE RESPONDENT IN LIGHT OF HER FINDING THAT THE COSTS WERE REASONABLY INCURRED AND HER RECOMMENDATION OF DISBARMENT.

This Court has previously stated the general rule that "An attorney found guilty of charges brought by the Bar will have the costs assessed against him". The Florida Bar v. Lehrman, 485 So. 2d 1276 (Fla. 1986). The Referee's guilty finding as to the charges lodged against Respondent by the Bar in the instant matter are not in dispute. The Respondent was found guilty in federal court of participating in a conspiracy to bribe judges in the Eleventh Judicial Circuit in exchange for appointments as a special public defender. At the conclusion of a jury trial in federal court, Respondent was found guilty of one (1) count of racketeering, one (1) count of bribery, and four (4) counts of mail fraud. This federal conviction serves as conclusive proof of the crimes charged. See Rule 3-7.2(i)(3) of the Rules of Discipline. The Referee concluded that the Respondent's criminal conduct constituted a violation of assorted and various rules governing attorney conduct as they pertain to honesty and integrity of the judicial system. In light of the fact that all of the allegations were either proven and/or stipulated to, The Florida Bar is

entitled to recover all costs of the disciplinary proceedings brought against the Respondent. As this Court previously stated in The Florida Bar v. Davis, 419 So. 2d 325 (Fla. 1982), "(g)enerally where there is a finding that the an attorney has been found guilty of violating a provision of the Code of Professional Responsibility, the Bar should be awarded costs" . Davis at 328. Accordingly, the Referee erred in denying the Bar's request to assess its costs against Respondent.

Rule 3-7.6(o)(3) of the Rules of Discipline provides as follows:

When the bar is successful, in whole or in part, the referee may assess the bar's costs against the respondent unless it is shown that the costs of the bar were unnecessary, excessive, or improperly authenticated.

In the instant case, the Bar requested recovery of its costs incurred in investigator time and court reporter fees, as well as the administrative fee provided for in the rules. (See Appendix "B"). Not only was there no finding by the Referee that the costs were in any way unnecessary, excessive, or improperly authenticated, but such a position was never even raised by the Respondent or the court. In fact, the Referee specifically found that all of the Bar's costs were reasonably incurred. (RR 5).

Rule 3-7.6(o)(2) of the Rules of Discipline provides that:

**Discretion of Referee.** The Referee shall have discretion to award costs and absent an abuse of discretion the Referee's award shall not be reversed.

Although the Referee does have discretion in making a recommendation regarding the award of costs, the final decision rests with this Court. The Florida Bar v. Bosse, 609 So. 2d 1322 (Fla. 1992). In the instant case, the Referee's decision not to require Respondent to pay the costs of these proceedings is contrary to the general rule that the Bar should be awarded the costs of the proceedings where they prevail. The Respondent's financial circumstances should not serve as a reason to waive costs otherwise properly taxed when a Respondent has been found guilty and a Referee has determined the Bar's costs to be reasonable. Under the relevant case law and the applicable rules, the Referee abused her discretion by failing to assess the Bar's costs in this matter against the Respondent when all of the allegations of the Complaint were proven and the Bar's costs were reasonably incurred.

The Courts have noted that one of the primary purposes of lawyer discipline is to demonstrate to all members of the profession the seriousness of their ethical violations as well as to deter others who might be tempted to become involved in like violations. The Florida Bar v. McShirley, 573 So. 2d 807 (Fla.

1991). The imposition of costs upon an attorney found guilty of ethical violations serves to hold errant members of the Bar financially accountable for the costs associated with disciplining them as opposed to having the Bar membership as a whole bear the associated costs. The costs incurred in connection with disciplining lawyers who violate their ethical obligations should properly be imposed upon the guilty party.

Rule 3-7.6(o)(1) of the Rules of Discipline provides a list of all taxable costs associated with the disciplinary process. Included among the costs that may be recovered by the Bar are court reporter costs, investigative costs, and administrative fees. All of the costs incurred in the instant case fall within the parameters of the rule.

This Court has consistently held that it is more appropriate that the costs of a disciplinary proceeding be taxed to the guilty party than be borne by the balance of the membership. The Florida Bar v. Miele, 605 So. 2d 866 (Fla. 1992). The Court in Miele reasoned that in the absence of the misconduct on the part of the Respondent, the Bar's actions would not be necessary. As the Referee found, the Bar's costs in this case were reasonable and necessary in the prosecution of this matter. But for the conduct of the Respondent, the costs would not have been incurred. The

Respondent should be required to pay these costs as a part of the discipline imposed in this case. The Referee found as an aggravating factor that Respondent engaged in actions tending to undermine the public's confidence in the judicial system. In fact, one would be hard pressed to think of a course of conduct more poisonous to our justice system than corruption within its very heart. The imposition of costs is an important part of the sanction to be imposed against Respondent for her abhorrent behavior.

The costs of these disciplinary proceedings should be taxed to the Respondent. They should not be borne by the members of the Bar who honor the ethical requirements of their profession. As the Court held in The Florida Bar v. Gold, 526 So. 2d 51 (Fla. 1988), when the choice is between imposing the costs of discipline on those who misbehave or on those who have not misbehaved, the cost is properly borne by the Respondent. Gold at 52. Accordingly, the Respondent should be required to pay the full costs of these disciplinary proceedings.

Financial condition should not serve as a deterrent to the Bar's recovery of costs in this matter. This Court has previously held that the establishment of a payment plan is the preferred alternative to the waiver of costs in cases of extreme financial

hardship. The Florida Bar v. Glant, Supreme Court Case No 81,234 (February 20, 1995). The establishment of a payment plan is the proper alternative available to a Respondent whose financial circumstances prevent him or her from paying the costs of disciplinary proceedings in a lump sum. Therefore, the Referee erred when she recommended that costs be waived in these proceedings because of the Respondent's financial circumstances.

In Glant, as in the instant case, the respondent had been declared indigent in other proceedings. The respondent in Glant had suffered severe financial problems as a result of the loss of her job and a divorce. As in the present case, the respondent's house payments were in arrears and she had difficulty providing for her basic needs. However, this Court determined that the proper solution was the establishment of a payment plan as opposed to waiving the taxable costs of the disciplinary proceedings. A similar approach is appropriate in this case. The Respondent in the instant case should be required to apply to the Bar for a payment plan if her financial condition prevents her from being able to pay the cost of these proceedings in a lump sum. The remedy of a payment plan will protect the Respondent from the undue burden of a cost judgment which is beyond her reach while protecting the other members of the Bar from having to absorb the

costs of investigating and prosecuting the Respondent's misconduct. In the alternative, The Florida Bar can proceed to obtain a judgment against Respondent for the amount of its costs. The appropriate remedy is not to waive costs in this matter thereby passing those costs on to the Bar's membership as a whole.

Research has failed to disclose any instance in which a Respondent's financial condition has been used as justification for denial of the imposition of costs in a disciplinary proceeding. Generally, costs are only denied where the Bar has failed to prove the allegations in the complaint or where the costs are found to be unreasonable. See The Florida Bar v. Horvath, 609 So. 2d 1318 (Fla. 1992); The Florida Bar v. Chilton, 616 So. 2d 448 (Fla. 1993). A respondent's needy financial circumstances are not an appropriate basis for the denial of costs to the Bar in a disciplinary proceeding. Accordingly, the Referee erred in failing to tax costs to the Respondent on the grounds that she would be unable to pay same.

A respondent should be required to bear the cost of his or her misconduct regardless of his or her financial circumstances. In the event that the Respondent is unable to pay the costs of these proceedings due to financial hardship, the appropriate remedy is not to deny the Bar the costs of the proceeding ,but rather to

require the Respondent to enter into a payment plan or to be subject to a judgment for same.

CONCLUSION

In accordance with the authority set forth herein, The Florida Bar respectfully requests that this Honorable Court reject the Referee's recommendation as to the waiving of costs otherwise properly taxed to the Respondent and instead impose all costs incurred by The Florida Bar in these disciplinary proceedings on the Respondent.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the above and foregoing Initial Brief of The Florida Bar was sent via Airborne Express, airbill number 3369996022, to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927, and a true and correct copy was sent via regular and certified mail, return receipt requested (Z 044 345 150) to Nancy Margaret Lechtner, Respondent, 2101 N. E. 179th Street, North Miami Beach, Florida 33162, and via certified mail, return receipt requested (Z 044 345 151) Stephen Mechanic, Esquire, Attorney for Respondent, 1562 N. E. Quay Terrace, Miami, Florida 33138, and via regular mail to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399, on this 2<sup>RD</sup> day of April, 1995.

*Arlene K. Sankel*

ARLENE K. SANKEL, Bar Counsel

**APPENDIX**

- A. Findings and Recommendations of Referee dated December 5, 1994.
- B. The Florida Bar's Affidavit of Costs dated November 23, 1994.
- C. The Florida Bar's Motion for Reconsideration dated December 13, 1994.
- D. Transcript of proceedings of January 5, 1995.