

IN THE SUPREME COURT OF FLORIDA

897  
5/21

THE FLORIDA BAR,  
Complainant,

Supreme Court Case  
No. 85,800

v.

SUSAN KATHLEEN GLANT,  
Respondent.

The Florida Bar Case  
No. 95-90,022

ANSWER BRIEF OF THE FLORIDA BAR

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PRELIMINARY STATEMENT

References to the official transcript of the final proceedings in this matter held on January 11, 1996 shall be by designation Trp.-\_\_\_\_\_. References to the transcription submitted by Ms. Glant shall be by designation SGTrp.-\_\_\_\_\_. References to the Report of Referee shall be by designation ROR.-\_\_\_\_\_.

STATEMENT OF THE CASE

The Florida Bar filed a Petition for Order to Show Cause against Respondent on June 1, 1995. The basis for the request was Respondent's failure to timely comply with a payment plan whereby she was to pay The Florida Bar certain costs assessed in a discipline case.

Respondent was given a public reprimand, placed on a six-month term of probation and ordered to pay costs totalling \$3,310.18 in the matter of The Florida Bar v. Glant, 645 So. 2d 962 (Fla. 1994); Supreme Court Case No. 81,757.

On or about January 3, 1995, Respondent filed a Petition for Waiver of Costs in the matter of The Florida Bar v. Glant, Supreme Court Case No. 81,757. The Court denied Respondent's request to waive costs and referred the matter to the Board of Governors of The Florida Bar to develop a payment plan.

Upon consideration of Respondent's request, the Board of Governors approved a plan requiring Respondent to make monthly payments of \$100 toward the outstanding costs in Supreme Court File No. 81,757. Respondent was notified of this plan by letter dated February 22, 1995.

After having only received a single payment of \$10 from Respondent, The Florida Bar moved that Respondent be held in contempt of court for her non-compliance.

As a result of Respondent failing to repay the outstanding

costs or to remain current with the approved payment plan, Respondent became a delinquent member pursuant to Rule 1-7.3(a), The Rules Regulating The Florida Bar.

On September 20, 1995 the Supreme Court entered an order wherein a referee was appointed to make factual findings about the financial condition of Respondent and to make recommendations in regards to what steps Respondent can take toward payment of the outstanding costs, whether her probationary period should be extended and whether the costs should be reduced.

A final hearing was held by the Referee on January 11, 1996. On February 8, 1996, the Referee filed a Report of Referee wherein it was recommended that Respondent be allowed to pay her outstanding dues of \$190 without late fees or reinstatement costs and that Respondent has the ability to begin making payments of \$100 per month toward her outstanding costs.

Respondent filed a timely Petition for Review and initial brief on February 20, 1996.

### STATEMENT OF THE FACTS

Respondent was assessed costs in Supreme Court Case No. 81,757; The Florida Bar v. Glant, of \$3,310.18. As a result of Respondent's failure to pay these costs, the present proceedings were commenced in an effort to determine whether or not Respondent could take steps toward paying these costs and what Respondent's financial condition is.

As set forth in the Report of Referee the following factual matters were found by the Referee:

1. Glant testified to her income for 1992 at \$12,000. Her 1992 income tax return indicated additional income of \$8,320 child support; \$4,511.83 inheritance; and \$10 taxable income. Additionally, Glant's return reflects a tax refund of \$3,026.94 for that year.

2. Glant testified her income for 1993 at \$4,000.

3. Glant's 1993 income tax return indicated other income at her disposal of \$9,200 child support and taxable interest income of \$32. Additionally her return reflects a tax refund of \$872.14 for that year.

4. Glant testified her income for 1994 was \$3,600. Her 1994 tax return sets forth income of \$2,543.50, Food Stamps of \$674, Dividends of \$3.67, and unemployment compensation of \$1,054.

5. Glant's 1994 tax return indicated other income or monies



she had at her disposal of \$7,875 child support, and an income tax refund of \$759.

6. Glant testified that her income for 1995 was \$7,200 from her employment as a clerk/secretary at the University of Florida, Department of Neurology, \$500 as a substitute teacher at Alachua County School System, and \$4,025 in child support for a child that did not live with her during this year.

7. Glant did not have her income tax return for 1995 to indicate a tax refund, if any.

8. Glant has not made any mortgage payments (\$815 per month) on the home since January, 1993.

9. Glant has not made any payments on real property taxes or insurance on the home since January, 1993.

10. Glant maintains three Visa charge accounts with a total balance of approximately \$15,400. She testified that she is making monthly payments of \$383 on the credit cards and that she is current in her payments on them.

11. Glant pays utilities of about \$80 per month and car insurance of \$500 per year, both of which are current.

12. Glant owns a four bedroom, two bath home with garage and carport in the Emerald Woods subdivision in Gainesville. The purchase price was \$92,000. She now lives there alone.

13. Glant owns an antique ruby ring valued at \$700; an engagement ring valued at \$1,900; an opal ring valued between \$250

and \$700; and a 1987 Oldsmobile Ciera, paid for, with 167,300 miles on it.

14. Glant testified that, since 1992, she has applied for more than 1,663 jobs of all types.

15. Glant has been certified as indigent in various lawsuits, primarily her dissolution of marriage case.

16. Glant has various judgments against her, however, there was no testimony of any efforts by her creditors to collect same.

17. Glant made one payment of \$10 towards the costs in this case. However, Glant has the ability to now make the payments set forth by the Board of Governors, and should be required to begin making them on March 1, 1996, and each month thereafter until the costs are paid in full.

18. As the Bar was willing to waive interest, late fees on Glant's dues, and costs of this proceeding, it will not prejudice the Bar if these items are waived.

19. Glant should be entitled to pay her dues, without late fees, and be reinstated, provided that she makes the \$100 per month payments required of her beginning March 1, 1996 and continuing until the prior award of costs, together with the legal rate of interest, is paid in full. Interest shall accrue from March 1, 1996 and interest prior to that time should be waived.

### SUMMARY OF ARGUMENT

In reference to the proceedings before the Referee herein, the Court appointed the Referee to make factual findings about Respondent's financial condition and to make recommendations as to what steps can be taken toward payment of costs, whether the probationary period should be extended and whether costs should be reduced.

The Referee's report recommends a payment toward the basic costs of \$100 per month, the waiver of any interest up to the time of the report, and that Respondent be allowed to pay her presently owing Bar dues without late fees or reinstatement costs.

The findings and recommendations of the Referee were based upon appropriate factors placed into evidence by both parties. The facts were established by clear and convincing evidence and the recommendations cannot be seen as clearly erroneous or lacking in evidentiary support.

The recommendations and determinations of the Referee should be affirmed and adopted by this Court.

ARGUMENT I

**THE FINDINGS OF THE REFEREE  
ARE SUPPORTED BY COMPETENT  
SUBSTANTIAL EVIDENCE**

As set forth in the Report of Referee, the findings made by the Referee were based upon the testimony and records presented at the hearing (Report of Referee, p. 2). A review of the transcript shows that in regards to the specific findings in regard to Respondent's financial condition, the only testimony and records relating to these matters were supplied by Respondent.

In Respondent's pleading titled Notice of Appeal of Report of Referee and Initial Brief, she attempts to dispute several factual findings of the Referee citing only to a roman numeral III with a title "Errors of Fact." Apparently this coincides with that section of the Report of Referee labeled "Findings of Fact."

Respondent first contradicts the Referee's finding of paragraph six (6). In paraphrasing the findings, Respondent contradicts the total income found by the Referee as being a total of \$8,018 and not the \$7,700 as set forth by the Referee (\$7,200 from the University of Florida and \$500 from the Alachua County School Board). A review of the transcript shows that Respondent's income was given as \$8,018 (Tr.-p. 22). The difference can be attributed to the fact that the \$7,200 figure given by the Referee was short one two-week paycheck (Tr.-p. 21).

Since this factual difference reflects a greater amount of income, it cannot be argued that such makes the Referee's findings and recommendations erroneous, and harmful to Respondent.

Respondent next references factual finding ten (10) of the Referee. In this finding, the Referee references that Respondent owes a balance of approximately \$15,400 on three Visa credit cards. Respondent's testimony was that she owed over \$15,000 on these cards in 1994 when the costs were assessed (Tr.-p. 23). At the time of the hearing, Respondent's testimony was that she owed in excess of \$18,000 (Tr.-p. 23).

While the total amount due on the credit cards is incorrect in regards to the current balance, the monthly payment cited by the referee as being \$383 is the current payment on the \$18,000 cited by Respondent (Tr.-p. 25).

Respondent next raises as incorrect or erroneous the Referee's finding number twelve (12) relating to a finding that Respondent owns a four bedroom, two bath house. The testimony shows that while Respondent resides at the former marital home, she and her ex-husband hold the house as tenants in common (Tr.-p. 36). Respondent apparently is attempting to differentiate between owning the home individually and being a co-tenant in common.

Under paragraph fifteen (15) of the Referee's findings, the Referee cited that Respondent has been certified as indigent in various lawsuits and only specifically named Respondent's

dissolution of marriage case. Respondent testified as to four specific certificates of indigency (Tr.-p. 26). These certificates only relate to the fact that Respondent is not charged for the services of the Court wherein her cases reside and cannot be seen as determinative of her inability to pay the instant costs.

The last finding that Respondent takes exception to in the Referee's findings is paragraph seventeen(17) wherein the Referee found that "Glant has the ability to now make the payments set forth by the Board of Governors...."

This particular finding might more appropriately be viewed as a final determination by the Referee. Respondent has raised the same issue under section two (2) of her "Error of Law" section and the Bar will fully address this area within its later argument on this point.

Except for the two findings that have been shown as erroneous, Respondent has failed to show that the remaining findings of fact by the Referee are not supported by clear and substantial evidence. Absent such a showing, these findings must be affirmed.

## ARGUMENT II

### REQUIREMENT OF PAYMENT OF COSTS BY RESPONDENT

Under the first section of Respondent's argument, "Errors of Law" in her initial brief, Respondent attempts to make an argument that the payment of costs was not a condition of probation and such payment cannot be enforced beyond the term of her probation.

Respondent initially argues the present proceedings are illegal since her costs in The Florida Bar v. Glant, 645 So. 2d 962 (Fla. 1994) were reduced to judgment and the costs were not a condition of probation.

While this Court did not specifically delineate payment of these costs as part of the probation, they were a part of the Referee's recommendation to the Court in The Florida Bar v. Glant, 645 So. 2d 962 (Fla. 1994). Since the court did not define the terms of probation, as a matter of policy, The Florida Bar looks to the Report of Referee to define those terms (Affidavit of Paul Remillard, Bar's Exh. 1) Tr.-p. 10,11. As set forth in Mr. Remillard's affidavit, at no time did Respondent dispute the costs were not a condition of her probation. Respondent's full effort was to seek a waiver of costs from the Court and to propose a payment plan to the Bar that was unacceptable.

The fact that the costs were assessed as a judgment in the final order has no bearing on their payment being made a condition

of probation. Respondent has failed to support this conclusion with citations to an appropriate rule or court decision.

A review of Respondent's arguments in The Florida Bar v. Glant, supra., shows no argument being made by Respondent regarding the payment of costs as a term of probation being improper. In her request to this Court to waive her costs, Respondent did not argue the payment was not a term of her probation or improper, but only she was not able financially to meet this payment. In her Petition for Waiver of Costs, The Florida Bar v. Glant, Supreme Court Case No. 81,757, Respondent states affirmatively that she was given a period of probation of six (6) months in which to pay assessed costs (Petition of Costs, paragraph 2).

Under Rule 3-7.12(f), Rules Regulating The Florida Bar, the appropriate vehicle for bringing Respondent's failure to pay her costs as a term of her probation was a filing of a petition for an order to show cause. In the proceedings under this rule Glant fails to show where the payment of costs were not made a condition of her probation. Glant - p. 965. The lack of such language defining terms of probation itself does not render the instant proceedings illegal.

In asking the Court to terminate these proceedings, Respondent has relied upon the case of Knapp v. State, 405 So. 2d 786 (Fla. 4th DCA, 1981). A review of this case reveals it is a criminal appeal from the trial court having adjudicated the defendant guilty



where no violations have been proven. The holding of the court was that probation orders are not subject to modification except for violations of conditions and only upon notice and hearing.

The Bar is not seeking to impose additional terms or conditions to the original probation. This is an action on Respondent's failure to meet the terms of her probation and she was clearly noticed of the proceedings.

The Fifth District Court of Appeal also holds that where there are no violations of probation, no new conditions can be imposed. Brenatelli v. State, 555 So. 2d 1315 (Fla. 5th DCA, 1990).

The Florida Bar is not attempting to impose any new conditions. The original probation was conditional upon payment of costs. The instant matter only addresses Respondent's failure to pay these costs and how such failure is to be addressed.

The directive of this Court to the Referee herein was to make factual findings about Respondent's financial condition and to make recommendations as to what steps Respondent can take toward payment of costs, whether the probationary period should be extended and whether costs should be reduced. Nowhere in the assignment to the Referee in this matter is there a question as to how the Florida Bar acted in this matter. In this light, the labeling of these proceedings by Respondent as being illegal is misplaced and incorrect.

It is abundantly clear that the probation by this Court included the payment of assessed costs as a term of probation and

that the matter was appropriately referred to a referee.

### ARGUMENT III

#### RESPONDENT DOES HAVE THE ABILITY TO PAY COSTS

Respondent asserts that The Florida Bar does not dispute the fact that Respondent lacks the ability to pay costs. As support for this statement, Respondent cites to her transcript, p. 4 wherein the Bar stated it did not dispute Respondent's inability to pay.

A further review of the official record goes on to define just what was intended by such statement. In closing, counsel for the Bar acknowledge that Respondent could not come before the Referee and write a check for the entire amount of costs plus interest (Tr.-p. 51). This same statement is contained within Respondent's transcript on page 35, but Respondent has chosen not to bring this point of clarification to the Court.

The fact that the Bar was aware of Respondent's inability to pay the entire amount of assessed cost is further spelled out in its pleadings and the affidavit of Paul Remillard (Bar's Exhibit 1).

Respondent argues she does not have the ability to pay costs and argues that the proper test should be the ability to pay and not the ability to earn. Winfield v. State, 406 So. 2d 50 (Fla. 1st DCA, 1981).

A review of the findings by the Referee in this matter shows

that it is the ability of Respondent to pay that was the object of these proceedings.

In paragraph seventeen (17) of the Report of the Referee, the Referee specifically found that "Glant (Respondent) has the ability to now make the payments set forth by the Board of Governors, and should be required to begin making them on March 1, 1996..." . Clearly this is a finding that Respondent has the ability to pay the assessed costs and not just an ability to earn.

Respondent sets forth as proof of her inability to pay the fact she makes only \$8,000 at her clerk/typist position, receives no child support, has only occasional work as a substitute teacher and has no assets to sell.

Not addressed by Respondent are the findings that Respondent is not making a mortgage payment at this time and has not done so since January, 1993. (Report of Referee, paragraph 8). She also has not made any payment for property taxes or home insurance since this same date (Report of Referee, paragraph 9).

The Referee also found that Respondent is making a \$383.00 monthly payment toward her credit card debt (Report of Referee, paragraph 10). When questioned by the Referee about the use of some of this money toward the payment of Bar costs, Respondent replied she considered the credit card debts as a debt of money and the Bar costs a taking of her license without due process. (Tr.-p. 45).

The Referee also found that Respondent is in possession of various assets with a value set by Respondent of approximately \$3,500.

Respondent also testified that she did not stand to have her ability to continue practicing law affected by not making her credit card payments. (Tr.-p. 44,45).

Respondent has failed to show where the Referee's findings herein to be clearly erroneous or lacking in evidentiary support. The Florida Bar v. Miele, 605 So. 2d 866 (Fla. 1992).

While Respondent has argued several points that she relies upon to show an inability to pay costs, she fails to address or argue the remaining factual findings as being unsupported by competent, substantial evidence. These additional fact findings clearly support the recommendation of the Referee.

ARGUMENT IV

THE PRACTICE OF LAW IS A  
CONDITIONAL PRIVILEGE

Respondent argues in section three (3) of her initial brief (3rd Error of Law) that the Florida Supreme Court has ignored constitutional rights under the guise of regulating the legal profession. Respondent argues that her interest in her Bar license is a property interest and a liberty interest and suspending her for nonpayment of costs is an unconstitutional procedure.

Rule 3-1.1, Rules of Discipline, provides that a license to practice law confers no vested right to the holder thereof, but is a conditional privilege that is revocable for cause.

Art. V, Section 15, Fla. Constitution provides as follows:

The Supreme Court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

Respondent's reliance on statutory authority of the Supreme Court to regulate attorneys in Florida and to argue a nexus between a state interest and lawyer regulation is misplaced. Florida case law states that the inherent power to regulate attorneys in Florida is vested with the Supreme Court. Petition of Florida State Bar Association, 40 So. 2d, 902, 905.

In citing Section 454.02(2), Florida Statutes, Respondent

attempts to argue that this Court regulates attorney conduct under legislative empowerment. In making this argument, Respondent completely ignores the provisions of the Florida Constitution and the attendant case law that establishes such power within the Court as being inherent. The provisions within Section 454.021, Florida Statutes are merely a legislative acknowledgement of this power and its attendant functions.

Respondent argues that her right to pursue her chosen profession of practicing law is both a liberty interest and a property interest protected by due process. In making this argument, Respondent conveniently overlooks the provisions of Rule 3-1.1, Rules Regulating The Florida Bar that state:

A license to practice law confers no vested right to the holder thereof, but is a conditional privilege that is revocable for cause.

This Court has consistently upheld this rule and its provisions in finding the practice of law is a privilege and not a right. The Florida Bar re John, 559 So. 2d 1089 (Fla. 1990); The Florida Bar v. Della-Donna, 583, So. 2d 307 (Fla. 1989).

Respondent has made several broad, sweeping legal arguments in support of her contention that her right to practice her profession - law, is a property interest and a liberty interest.

In support of this argument, Respondent has cited State v. Ives, 123 Fla. 401, 167 So. 394 (Fla. 1936). This case addresses the right to contract for business and property. While the Court

therein does address a citizen's right to have such freedom, the Court also states that such freedom is not an absolute, but a qualified right and is therefore subject to reasonable restraint in the interest of public welfare. Ives, p. 412.

The main thrust of Respondent's argument is that she cannot be suspended for nonpayment of costs, either as a condition of probation or by rule, and that such suspension is unconstitutional.

Respondent's ability to practice law has been shown to be a conditional privilege and not an absolute right. This conditional privilege to practice law is not an absolute right and is revocable for cause. Rule 3-1.1, Rules Regulating The Florida Bar.

Respondent currently is unable to practice law since she is currently a delinquent member for nonpayment of costs attendant to a prior disciplinary proceeding. Her failure to pay costs or participate in a payment plan formulated by the Board of Governors resulted in her being placed on a delinquent status under Rule 1-7.3, Rules Regulating The Florida Bar.

This Court has held that the prompt payment of costs is an integral part of the grievance process. The Florida Bar v. Jones, 403 So. 2d 1340, 1341 (Fla. 1981). Such costs attendant to disciplinary proceedings should not be borne by members who honor their ethical requirement. The Florida Bar v. Gold, 526 So. 2d 51 (Fla. 1988). This Court has also held 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 Florida Bar v. Miele, 605 So. 2d 866 (Fla. 1992).

Respondent has been previously found guilty of misconduct and has had costs attendant to those proceedings assessed against her. The assessment came only after the matter had been argued before a Referee and the Court on appeal. Respondent was afforded full due process rights at each of these stages.

Respondent next attempted to have these costs waived by petition to the Court alleging indigency and inability to pay the full amount due. Upon direction by the Court, the Board of Governors reviewed the financial position of Respondent and recommended a payment plan of \$100 per month. Respondent made one payment of \$10 to the Bar and made no effort in good faith thereafter to make any further payments.

Respondent's failure to abide by the payment plan resulted in her being a delinquent member and the instant proceedings.

These proceedings cannot be viewed as improper based upon Respondent's argument that her constitutional rights have not been observed.

## CONCLUSION

Respondent consistently has argued that in order to be in a position to earn a living she must have the ability to practice law (Tr.-p. 52). Respondent had this ability up to the point her dues were not accepted for nonpayment of costs in July, 1995.

The record of Respondent's employment and her ability to earn an income can be seen as unaffected by her ability to practice law. She had this ability for all the years she has claimed indigency and low earnings. In this light, the actions by The Florida Bar cannot in any way be attributable to the financial position of Respondent.

At the beginning of the proceedings in this matter, the Bar attempted to enter into a full and equitable agreement whereby Respondent would have been allowed to resubmit her dues without late fees or reinstatement costs with an agreement that her financial situation would be revisited in December, 1996. The agreement also allowed for the waiver of interest before and after the agreement (Tr.-p. 5-6).

Respondent rejected this offer and requested that the hearing proceed asking the Referee to just determine if she was capable of paying the judgment.

The Referee has heard the evidence and concluded that Respondent is capable of paying \$100 per month toward the costs.

The payment under the recommendations of the Referee will allow Respondent to have her license to practice law with reinstatement upon the payment of last year dues.


Respondent has failed to show where the findings of the Referee are clearly erroneous and such must be proven to have the findings overturned. The Florida Bar v. Stalnaker, 485 So. 2d 815 (Fla. 1986). The findings of the Referee were supported by competent and substantial evidence and the judgment of the Referee should not be substituted by this court. The Florida Bar v. Hooper, 509 So. 2d 289 (Fla. 1987); The Florida Bar v. Della-Donna, 583 So. 2d 307 (Fla. 1989).

Respondent has been shown to consistently make independent decisions that directly affect her ability to continue practicing law. She chooses to pay certain debts over costs to the Bar and this affects her ability to retain her license. She chooses to ignore equitable offers from the Bar and proceeds to a hearing based upon her opinion that the Bar has a hidden agenda to keep her on probation.

Respondent's situation is one of self indulgence and is a direct result of her willful conduct contrary to the rules she took an oath to abide by.


The Report of the Referee is fair to both the Bar and Respondent and has not been shown to be erroneous or an abuse of discretion by the Referee. The Report of Referee should be affirmed and Respondent ordered to comply with its terms.

Respectfully submitted,

  
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of The Florida Bar regarding Case No. 85,800; TFB File No. 95-90,002 has been forwarded by regular U.S. Mail to Susan K. Glant, Respondent, at her record Bar address of 4118 North West 69th Street, Gainesville, Florida 32606-4212 this 6th day of May, 1996.

  
\_\_\_\_\_  
JAMES N. WATSON, JR. Bar Counsel

Copies provided to:

John Boggs, Director/Lawyer Regulation