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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

Supreme Court Case  
No. 90,325

THE FLORIDA BAR,  
  
Complainant,

vs.

ANDREW MICHAEL KASSIER,  
  
Respondent.

\_\_\_\_\_ /

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**INITIAL BRIEF OF RESPONDENT, ANDREW MICHAEL KASSIER**

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JEPEWAY AND JEPEWAY, P.A.  
407 Biscayne Building  
19 West Flagler Street  
Miami, Florida 33130  
Tele.: (305)377-2356  
Fla. Bar No. 113699

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**TABLE OF AUTHORITIES**

None

## STATEMENT OF THE CASE AND OF THE FACTS

The Respondent, Andrew Kassier, accepts the statement of the case and of the facts set forth in the Report of Referee (RR, p.2-9).

The charges in the Complaint (App. A) are identical to the eight charges set forth in the Florida Bar's Petition for Emergency Suspension in *The Florida Bar v. Kassier*, Case No. 89,831(App. B). There, this Court suspended Mr. Kassier on an emergency basis effective March 13, 1997 (App. C). The Referee below recommended that Mr. Kassier be found not guilty of five of the eight charges filed by the Bar (RR, pp. 7-8). The Referee recommended that Mr. Kassier be found guilty on three charges (RR, p.7).

The Referee recommended that Mr. Kassier be suspended for six months and that he be placed on probation for three years and thereafter until he shall prove rehabilitation as provided by Rule 3-5.1(e) of the Rules of Discipline. Mr. Kassier's emergency suspension, on these charges, already has lasted approximately ten months in Case No. 89,831. He further recommended that this discipline be consecutive to the discipline imposed upon Mr. Kassier in *The Florida Bar v. Kassier*, Case No. 87,617 (RR, 9).

The Referee also recommended that all checks from Mr. Kassier's trust account or office account be countersigned by a person approved by the Bar, that Mr. Kassier attend ethic school, including the new trust account workshop prior to petitioning for reinstatement, that Mr. Kassier initiate LOMAS review within two months and comply with its recommendation, that he submit to random audits by the Bar staff auditor for the entire

probation period and that he make monthly reports to the Florida Bar in Tallahassee of any and all trust and office accounting activity by the 10<sup>th</sup> day of the previous month and that these reports must be from a certified public accountant (RR, 9-10).

The Referee recommended that costs in the amount of \$4,463.95 be assessed against Mr. Kassier (RR, pp. 10-11).

This Petition for Review followed.

**POINT ON REVIEW**

**THE REFEREE ERRED IN ASSESSING THE TOTAL AMOUNT OF COST AGAINST MR. KASSIER BECAUSE THE REFEREE RECOMMENDED THAT MR. KASSIER BE ACQUITTED ON FIVE OF THE EIGHT COUNTS; THE ISSUE OF THE COST AMOUNT SHOULD BE REMANDED TO THE REFEREE FOR AN EQUITABLE AND FAIR ACCOUNTING.**

## **SUMMARY OF THE ARGUMENT**

The Referee recommended that Mr. Kassier be found not guilty on five of the eight charges in the Complaint. Fundamental fairness requires that costs be assessed against him only for those charges for which he is guilty.

## ARGUMENT

### I

**THE REFEREE ERRED IN ASSESSING THE TOTAL AMOUNT OF COST AGAINST MR. KASSIER BECAUSE THE REFEREE RECOMMENDED THAT MR. KASSIER BE ACQUITTED ON FIVE OF THE EIGHT COUNTS; THE ISSUE OF THE COST AMOUNT SHOULD BE REMANDED TO THE REFEREE FOR AN EQUITABLE AND FAIR ACCOUNTING.**

The Bar filed an eight count Complaint against Mr. Kassier (App. A). The Referee recommended that Mr. Kassier be found not guilty of five of the eight counts (RR, pp.7-8).

Fairness, justice, and equity require that costs be taxed against Mr. Kassier *only* as to those counts for which he is found guilty.


The Court must remand this cause to the Referee with instructions to redetermine costs and to assess costs against Mr. Kassier only on those counts for which he has been found guilty.



**CONCLUSION**

This Court must remand this matter to the Referee with instructions to reassess costs and to assess costs against Mr. Kassier only on the counts for which he has been found guilty.

JEPEWAY AND JEPEWAY, P.A.  
Suite 407, Biscayne Building  
19 West Flagler Street  
Miami, Florida 33130  
Tele.: (305)377-2356

By:   
Louis M. Jepeway, Jr.  
Fla. Bar No. 113699

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing **Initial Brief of Respondent, Andrew Michael Kassier** was mailed to **RANDI LAZARUS**, Bar Counsel, The Florida Bar, Suite M-100, Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131 this 10<sup>th</sup> day of January, 1998.

By:   
Louis M. Jepeway, Jr.