

097
FILED
SID J. WHITE 11/2
OCT 9 1998

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Supreme Court Case
No. 91,839

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

vs.

Florida Bar File
No. 97-70,838 (17F)

THOMASINA H. WILLIAMS,

Respondent.

_____ /

**AMENDED INITIAL BRIEF
OF RESPONDENT**

Appeal from Report of Referee

Respectfully submitted,

LAW OFFICES
WILLIAMS & ASSOCIATES, P.A.
Attorneys for Respondent
Brickell BayView Centre, Suite 1830
80 S.W. Eighth Street
Miami, Florida 33130
Telephone: (305) 379-6676
Facsimile: (305) 379-4541

PRELIMINARY STATEMENT

The Complainant The Florida Bar will be referred to as "The Bar." Respondent Thomasina H. Williams will be referred to as "Williams." The Report of Referee which is under review is included in the attached Appendix, which is referred to as "App.," followed by the appropriate page number.

CERTIFICATION AS TO FONT SIZE AND STYLE

Pursuant to this Court's Administrative Order In Re: Brief Filed in the Supreme Court of Florida, undersigned counsel for Williams hereby certifies that this Amended Initial Brief of Respondent is reproduced in a font that is 14-point proportionately spaced Times New Roman type.

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	i
CERTIFICATION AS TO FONT SIZE AND STYLE.....	i
TABLE OF CONTENTS	ii
TABLE OF CITATIONS	iii
STATEMENT OF THE ISSUE	iv
STATEMENT OF THE CASE AND OF THE FACTS	1
SUMMARY OF ARGUMENT	3
ARGUMENT.....	4
 WHETHER, IN VIEW OF THE REFEREE’S CONCLUSION THAT WILLIAMS IS NOT GUILTY OF THE VIOLATIONS WITH WHICH SHE WAS CHARGED AND, THEREFORE, SHOULD NOT BE DISCIPLINED, THE RECOMMENDATION OF THE REFEREE THAT WILLIAMS PAY ONE-HALF OF THE COST OF THE PROCEEDINGS BELOW IS ERRONEOUS, UNLAWFUL OR UNJUSTIFIED.	
CONCLUSION	6
CERTIFICATE OF SERVICE	7
APPENDIX	8
Report of Referee	Tab 1
June 25, 1998 Letter from Williams to Referee	Tab 2

TABLE OF CITATIONS

	<u>Page</u>
Rule 3-7.6, Rules Regulating The Florida Bar	<u>passim</u>

STATEMENT OF THE ISSUE

WHETHER, IN VIEW OF THE REFEREE'S CONCLUSION THAT WILLIAMS IS NOT GUILTY OF THE VIOLATIONS WITH WHICH SHE WAS CHARGED AND, THEREFORE, SHOULD NOT BE DISCIPLINED, THE RECOMMENDATION OF THE REFEREE THAT WILLIAMS PAY ONE-HALF OF THE COST OF THE PROCEEDINGS BELOW IS ERRONEOUS, UNLAWFUL AND UNJUSTIFIED.

STATEMENT OF THE CASE AND OF THE FACTS

This is a disciplinary proceeding initiated by The Bar, alleging that Williams violated certain specified Rules of Professional Conduct. After an evidentiary hearing conducted on May 22, 1998, the Referee rendered a Report dated June 30, 1998, in which he concluded as follows:

Based upon the evidence elicited, I do not find the respondent guilty of any of the rule violations charged.

App., Tab 1 at 4, ¶III.

The Referee further concluded that:

Since respondent has not been found guilty, I do not recommend any discipline.

App., Tab 1 at 5, ¶IV.

Despite his findings that Williams was not guilty of the violations charged and that she should not be disciplined, the Referee recommended that the costs which The Bar had incurred should be:

divided between the respondent and the bar, and that respondent shall pay exactly one half of these costs (\$742.40) to the bar within 30 days of the date of this Report of Referee, or the bar can seek further discipline against respondent for her noncompliance with this order.

App., Tab 1 at 5, ¶V.

By letter to the Referee dated August 29, 1998, regarding the proposed Report

of Referee which was submitted by The Bar, Williams challenged this portion of the Report has having no factual or legal basis whatsoever. Williams stated as follows:

V. The statement in the last sentence of this paragraph [V] that if I do not pay one-half of the costs, the bar can “seek **further** discipline” implies that the assessment of a portion of the costs against me is in and of itself a form of discipline, and is punitive when, in fact, your recommendation is that there be no discipline. (Emphasis added). Given Your Honor’s finding of “not guilty,” there is no basis on this record, **or in the rules**, for awarding any portion of the costs against me. The text of paragraph V should be deleted in its entirety, and the following substituted in its place: “The bar has requested that one-half of the costs be awarded against Respondent. Rule 3-7.6(n)(3) [sic], Assessment of Bar Costs, provides, in pertinent part, that “[w]hen the bar is **successful, in whole or in part**, the referee may assess the bar’s costs against the respondent” (Emphasis added). The bar was not successful in this case in any respect. Therefore, I decline the bar’s request to award one-half of the costs against Respondent, and recommend that each party should bear its own costs.”

App., Tab 2 at 3. (Emphasis in original).

The Referee overruled Williams’ objection to assessing costs against her, and recommended to this Court that Williams be required to pay one-half of The Bar’s costs. Williams filed a timely Petition for Review of this portion of the Report of Referee.

SUMMARY OF ARGUMENT

No basis exists for the assessment of costs against a respondent who prevails in a disciplinary proceeding. Rule 3-7.6(o)(3) of the Rules Regulating The Florida Bar expressly states that a referee may assess The Bar's costs against a respondent only "[w]hen the bar is successful, in whole or in part." When The Bar is not successful, in any respect, it should bear its own costs.

Since The Bar was unsuccessful in this case, it should be required to bear its own costs, and paragraph V of the Report of Referee, which awarded one-half of The Bar's costs against Williams should be **REVERSED**.

ARGUMENT

IN VIEW OF THE REFEREE'S CONCLUSION THAT WILLIAMS IS NOT GUILTY OF THE VIOLATIONS WITH WHICH SHE WAS CHARGED AND, THEREFORE, SHOULD NOT BE DISCIPLINED, THE RECOMMENDATION OF THE REFEREE THAT WILLIAMS PAY ONE-HALF OF THE COST OF THE PROCEEDINGS BELOW IS ERRONEOUS, UNLAWFUL AND UNJUSTIFIED.

Rule 3-7.6 of the Rules Regulating The Florida Bar governs the procedures to be followed in disciplinary proceedings before a referee. Rule 3-7.6 addresses the issue of costs in subparagraph (o), and provides that the award of costs is within the discretion of the referee. See Rule 3-7.6(o)(2).¹

Rule 3-7.6 further defines the scope of the referee's discretion with regard to awarding The Bar's costs against a respondent, and provides in full as follows:

Assessment of Bar Costs. **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.

Rule 3-7.6(o)(3). (Emphasis added). The rule makes no provision for the assessment of any portion of The Bar's costs when The Bar is in no way successful on the merits of its Complaint.

¹Rule 3-7.6(o)(2) provides in full as follows:

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.

The record is clear in this case that the Referee found Williams not guilty of the violations charged, and that he, therefore, recommended that Williams not be subjected to any disciplinary action. Furthermore, The Bar has chosen not to seek review of the Referee's findings. Accordingly, the Referee's findings are final and conclusive. Thus, there can be no dispute that The Bar was unsuccessful on its Complaint against Williams.

The award of costs against Williams is punitive and, in effect, constitutes a form of discipline, when no factual basis exists for any discipline. The punitive nature of the award is amplified by the Referee's statement that The Bar may "seek **further** discipline" against Williams if she does not pay one-half of The Bar's costs. The Referee's recommendation with regard to costs is contrary to his own findings on the merits.

Since The Bar failed to prevail in any respect on its Complaint against Williams, no factual or legal basis exists for an award of costs against Williams. It was clearly an abuse of discretion for the Referee to assess one-half of The Bar's costs against her.

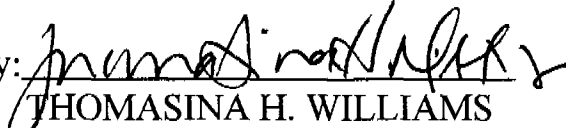
CONCLUSION

WHEREFORE, Williams respectfully requests that paragraph V of the Report of Referee be **REVERSED**, and that each party be ordered to bear its own costs.

Dated: October 6, 1998

Respectfully submitted,

LAW OFFICES
WILLIAMS & ASSOCIATES, P.A.
Attorneys for Respondent
Brickell BayView Centre, Suite 1830
P.O. Box 010432
Miami, Florida 33101-0432
Telephone: (305) 379-6676
Facsimile: (305) 379-4541

By: 
THOMASINA H. WILLIAMS
FLORIDA BAR NO. 629227