

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JOHN NEWMAN BRYANT,

Respondent.

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Case Nos. SC94965 and SC00-801

TFB File Nos. 1998-00,138(4A) and  
1999-01,339(4A)

REPLY BRIEF

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CERTIFICATE OF TYPE, SIZE AND STYLE AND  
ANTI-VIRUS SCAN

Undersigned counsel does hereby certify that the Reply Brief of The Florida Bar v. John Newman Bryant is submitted in 14 point proportionately spaced Times New Roman font, and that the computer disk filed with this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.

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## ARGUMENT

Respondent has late filed his Answer Brief in this matter and incorrectly titled it a reply brief.

Respondent has basically stated he accepts the findings of the Referee and would accept the recommended discipline. The Bar would reassert its positions as contained in its Initial Brief that a review of the record in both cases shows that errors exist in the Referee's findings and also that the recommended discipline was inappropriate based upon the facts established by clear and competent evidence.

As a result of Respondent's argument as to costs, a review of the record was made. Bar Counsel executed an Affidavit of Costs on August 23, 2000, which referenced both cases before the Referee. Within this affidavit, combined costs of \$3,633.17 were presented to the Referee. The Referee's Report referenced a sum of \$1,534.90 in Case Number SC94965. This sum appears to be from an affidavit filed earlier as to costs relative to that particular case. Subsequently, a Motion to Consolidate was granted by the Referee and this resulted in a combined or consolidated cost affidavit. In this light, it would appear Respondent is correct and that the costs in this matter should be \$3,633.17.

As to the appropriateness of the costs, it should be noted that the final hearing in this matter was held on July 27, 2000. The Bar filed its Affidavit of Costs on

August 23, 2000, with a copy being served on Respondent at his record Bar address. The Referee did not enter his report until November 14, 2000.

At no time prior to the entry of the Referee's Report did Respondent request any type of hearing on the assessment of costs or their legitimacy.

This Court has held that assessment of costs is within the discretion of the Referee and the Court will not reverse such finding absent an abuse of discretion. The Florida Bar v. Carr, 574 So.2d 59 (Fla. 1990). Respondent has failed to show anything that would demonstrate an abuse of discretion by the Referee.

Respondent does argue that Bar Counsel travel expenses seem out of order and makes a query of where counsel might have stayed or eaten. Such expenses cover not only the travel and costs for the two final hearings, but also cover such expenses for the preceding grievance committee hearings attributable to the two complaints and needed trial preparation. If Respondent had requested a hearing on the costs of which he received timely notice, he would have seen that Bar Counsel stayed with his father on all occasions connected with these matters which in effect saved Respondent substantial costs.

Since Respondent failed to show anything that suggests the assessed costs were unnecessary, excessive, or improperly authenticated, no abuse of discretion by the Referee is shown. The Florida Bar v. Miele, 605 So.2d 866 (Fla. 1992).

In light of Respondent's failure to show an abuse of discretion by the Referee, the costs of \$3,633.17 should be affirmed.

## CONCLUSION

Absent Respondent's showing of an abuse of discretion by the Referee herein, the costs set forth in the Bar's Affidavit of Costs of August 23, 2000, totaling \$3,633.17 should be affirmed.

As argued in its Initial Brief, the Referee erred in not finding certain violations that were supported by the evidence. The record in the two cases against Respondent would require a greater discipline than recommended by the Referee. For the violations proven, Respondent should be suspended from the practice of law for at least one year, be required to retake and pass the Ethics portion of The Florida Bar Exam, and be placed on probation.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing regarding Supreme Court Case Nos. SC94965 and SC00-801, TFB File Nos. 1998-00,138(4A) and 1999-01,339(4A), has been mailed by certified mail #, return receipt requested, to John Newman Bryant, Respondent, at his record Bar address of 1101 Blackstone Building, Jacksonville, Florida 32202-3449, on this 28th day of March, 2001.

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