

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Petitioner,

Supreme Court Case No.
SC20-1693
No. SC20-1693
The Florida Bar File
No. 2021-00,002(4B)

vs.

JEFFREY CHARLES REGAN,

Respondent

RESPONDENT'S REPLY BRIEF TO BAR'S CROSS-ANSWER BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	i
ARGUMENT.....	1,2
I. Diversion is not an authorized sanction under a recommendation of not guilty.....	1
II. Costs should not be awarded to the Bar when a Respondent is found not guilty.....	1,2
CONCLUSION.....	2
CERTIFICATE OF SERVICE	3
CERTIFICATE OF TYPE SIZE & STYLE	3

TABLE OF CONTENTS

I. Diversion is not an authorized sanction under a recommendation of not guilty.	
II. Costs should not be awarded to the Bar when a Respondent is found not guilty.	

TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIESiii

PRELIMINARY STATEMENT..... 1

NATURE OF THE CASE2

STATEMENT OF THE CASE AND FACTS 3

A. The Underlying Litigation and Emails 3

B. The Disciplinary Process and Proceedings.....
10

SUMMARY OF THE ARGUMENT.....15

STANDARD OF REVIEW.....16

ARGUMENT.....17

I. The Oath of Admission Is not a Proper Basis For a Rule Violation in this
Case..... 17

II. The Referee’s Findings and Recommendation of Not Guilty are
Supported by the Record and Should be Accepted.....
23

A. The Emails Are Not Prejudicial to the Administration of
Justice.....
23.....

B. The Emails in Themselves are Not Cause for Discipline Under
Rule 3-4.2..... 32

III. Diversion is Not Applicable Based Upon the Recommendation
of Not Guilty.....
34

IV. Had the Referee Withheld a Finding of Guilt, Diversion for
Minor Misconduct Would be
Appropriate..... 37

CONCLUSION.....46

CERTIFICATE OF SERVICE.....47

CERTIFICATE OF TYPE SIZE & STYLE.....48

TABLE OF AUTHORITIES

Florida Bar Rules

Rule 3-5.3(h)(2).....	1...
..Rule 3-7.6(g)(3).....	1
Rule 3-7.6(q)(2).....	1

CROSS-REPLY ARGUMENT

- I. Diversion is not an authorized sanction under a recommendation of not guilty

The recommended finding of not guilty does not support diversion. While the Bar agrees that diversion is not applicable, it argues that diversion should not apply because it asserts the Referee should have recommended a guilty finding. That issue has been addressed in Respondent's Answer Brief and is not further addressed in this Cross Answer Brief. However, based upon the finding of not guilty, diversion is still not appropriate if the recommendation is affirmed. Here diversion has been recommended after trial and a recommendation of not guilty. Based upon Rule 3-5.3(h)(2) a recommendation of diversion is appropriate "before

a finding of guilt.” An express finding of not guilty would render diversion inappropriate.

- II. Costs should not be awarded to the Bar when a Respondent is found not guilty.

Pursuant to Rule 3-7.6 (q)(2) costs are normally within the discretion of the Referee. However, Rule 3-7.6 (q) (3) provides:

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.

Should the Court affirm the Referee’s recommendation of not guilty and find diversion therefore inapplicable, the Bar would not be successful even in part. Under those circumstances, the Court should reject the recommendation of costs to the Bar.

CONCLUSION

This Court should accept the Referee’s recommendation of not guilty and reject the recommendation of diversion to a practice and professionalism enhancement program because diversion is not applicable. If the Court affirms the Referee’s recommendation of not guilty

and finds diversion therefore inapplicable, the Bar would not be successful even in part and the Court should reject the recommendation of costs payable to the Bar.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that RESPONDENT'S REPLY BRIEF TO CROSS ANSWER BRIEF has been e-filed with the Supreme Court of Florida, and a true and correct copy of same has been furnished to Chris W. Altenbernd, Bar Counsel, at his designated email address of caltenbernd@bankerlopez.com, James Keith Fisher, Bar Counsel, The Florida Bar, at his designated e-mail address of jfisher@floridabar.org, and Patricia Savitz, Staff Counsel, at her designated e-mail address of aquintel@floridabar.org this 6th day of January, 2022..

/s/

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CERTIFICATE OF TYPE SIZE & STYLE

I hereby certify that this document complies with the applicable font and word count limit requirements of Florida Rule of Appellate Procedure 9.045 and 9.210(a)(2)(B). The font is 14-point Arial. The word count is 9,632. It has been calculated by the word-processing system, and it

excludes the content authorized to be excluded under the rule, but it includes any footnote.

A _____, Corsmeier ^{___/s/} Joseph
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