

IN THE SUPREME COURT OF FLORIDA

The Florida Bar
In re: Petition to Amend
Rules Regulating The Florida Bar

Supreme Court
Case No.: SC03-705

COMMENTS IN OPPOSITION TO
THE FLORIDA BAR'S PETITION TO AMEND
THE RULES REGULATING THE FLORIDA BAR

The undersigned member of The Florida Bar, pursuant to the notice of Annual Bar rules proposals published in The Florida Bar News, files these comments in opposition to The Florida Bar's Petition to Amend the Rules Regulating The Florida Bar, specifically relating to Rule 3-7.11.

The issue before this court is whether the proposed increase in "administrative fees" is actually a penalty for seeking due process.

It is respectfully submitted that the escalating scale of "administrative fees" penalizes a respondent in a disciplinary proceeding for having the temerity to seek due process.

The unfortunate recent trend to discourage or eliminate open hearings at the grievance committee level has destroyed an important procedural safeguard. Most grievance committee decisions are reached through what is referred to a "paper hearing", based solely on written documents. There is no opportunity to confront and cross examine witnesses. There is no opportunity to answer questions raised by the grievance committee and there is no opportunity to present in-person testimony.

Assuming a grievance committee finding of probable cause based on such a "paper hearing", a respondent's first opportunity for due process will come before a judicial referee. Before a respondent can avail himself of a report of referee, such respondent must consider the possibility of a predetermined "fine" of \$2,500 in the event of an unfavorable ruling. This is no less than 333% of the current "administrative fee", an increase of over 142%.

Surely The Florida Bar does not intend to radically escalate "administrative fees" to coerce respondents to accept unjustified discipline but it would certainly have that unintended effect.

While it has been said that The Florida Bar's disciplinary system is not one of criminal sanctions, it clearly shares many characteristics with criminal law. Disciplinary sanctions can and should have a devastating impact on the lives of culpable respondents but even lawyers should be afforded the protections of due process.

Imagine a criminal law that provided for a one year sentence if the accused defendant admitted guilt before a trial was scheduled, a sentence of 1½ years if a trial was scheduled, two years if the defendant pleaded guilty after trial but before a judgment was entered, 2½ years if a judgment was entered after trial and a sentence of five years if the defendant filed an appeal. There would be no sentence whatsoever if the Defendant were totally exonerated but if the defendant were found guilty of something, even if it were not the violation of which the trial court had found the defendant guilty, the sentence would be five years.

The proposed escalating scale of "administrative fees" imposes an analogous punishment. This Court should not permit an exaction for access to due process. To rule otherwise would be to declare that lawyers are not entitled to due process.

CONCLUSION

Based upon the foregoing comments, it is respectfully requested that this Court reject proposed Rules 3-7.6(p)(1)(I), 3-7.10(m)(1)(I) and 3-7.11(j).

In the alternative, this Court should direct The Florida Bar to revamp its procedures to afford a respondent attorney with due process protections at the grievance committee level prior to the imposition of punitive "administrative fees".

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original Comments in Opposition to The Florida Bar's Petition to Amend Rules Regulating The Florida Bar were delivered to Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, FL 32399 and that a copy was delivered to John F. Harkness, Jr., Executive Director, The Florida Bar, 651 E. Jefferson St., Tallahassee, FL 32399-2300 this 13th day of May, 2003.

John Hume