

IN THE MATTER OF LEONARD C. JAQUES,
A Member of the State Bar of Michigan,
Nos. 30844-A, 31899-A

Decided: May 21, 1980

OPINION OF THE BOARD

Respondent was charged in 1975 with the solicitation of clients. A hearing panel found that misconduct had been committed, and assessed costs against Respondent. Respondent appealed to the State Bar Grievance Board, and subsequently to the Michigan Supreme Court, both of which affirmed the finding of misconduct. State Bar Grievance Board v Jaques, 401 Mich 516, 258 NW2d 443 (1977). On appeal to the United States Supreme Court, the opinion of the Michigan Court was vacated and the case remanded for further consideration in light of Ohralik v Ohio State Bar Association, 436 US 447, 98 S Ct 1912, 56 L Ed 2d 444 (1978). On remand, the Michigan Supreme Court reversed and vacated the order of discipline. 407 Mich 26, 281 NW2d 469 (1979). Respondent, through a letter of the Clerk of the Supreme Court, was allowed \$19,934.47 in taxable costs before that body; Supreme Court review of that administrative decision is now pending. As to the Grievance Board, however, the letter provided that "Costs attributable to proceedings before the State Bar Grievance Board and before the U.S. Supreme Court must, to the extent taxable, be taxed by those bodies." Respondent now moves for taxable costs in the amount of \$4,657.91 from the Grievance Administrator. The Board directs the State Bar to refund \$262.20 which Respondent paid under the original order of discipline entered by the hearing panel and vacated by the Michigan Supreme Court. The remaining costs, however, cannot be taxed.

I. AUTHORITY OF THE BOARD TO TAX COSTS

The Board has no authorization, under the court rules or statutes, to tax costs against the Grievance Administrator. GCR 1963, 977 provides that an "itemized statement of the expenses allocable to a hearing must be made a part of the report in all matters of discipline and reinstatement. The hearing panel and the board in the order for discipline . . . shall direct the attorney to reimburse the State Bar for the expenses of that hearing, review, and appeal, if any." No provision is made for taxation of costs against the Grievance Administrator. Necessarily, the Grievance Administrator bears the costs of proceedings in which the Respondent prevails before the hearing panel; therefore, there is logical absence of a provision in the court rules for assessment of costs against the Grievance Administrator in cases where the Formal Complaint is dismissed. Where the Administrator prevails, however, the costs are taxed against respondent, as the rule directs. The Supreme Court has seen fit to distinguish disciplinary proceedings from general circuit court cases in this regard.