

IN THE SUPREME COURT OF FLORIDA

FILED
1993
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[Signature]

EUGENE COLLIER,
Petitioner

vs.

Case No. 71,343

The FLORIDA BAR,
Respondant,

BRIEF OF PETITIONER ON
PETITION FOR REVIEW

Eugene Collier,
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STATEMENT OF THE CASE

The current action arises out of a Complaint by David W. Dyer, Attorney at Law, dated December 7, 1984, alleging that the Petitioner had committed certain improprieties in connection with his appearance as Co-Defendant, and counsel for the defense, in Cause No. 83-6859-CA-N, Circuit Court in and for Brevard County, Florida, (E. M. Crisman, Jr. as Guardian of E. M. Crisman, Sr., incompetent, vs. Eugene Collier, et al). Said cause of action was brought against the Petitioner individually and the Petitioner's wife, Katharine Scranton Collier, individually and as trustee of the testamentary trust estate of Charlotte Scranton Crisman, deceased. Said action sought an accounting, removal of the Trustee and other relief. (see Exhibit 16 to bifurcated disciplinary proceedings 3/20/86 4/10/86, i.e. Plaintiff's 2nd amended complaint).

The aforesaid Charlotte Scranton Crisman died in 1939 leaving a testamentary trust designating her husband E. M. Crisman, Sr., as **life beneficiary of the income** thereof, with the corpus of said trust to go to her only child, Katharine Scranton Crisman Collier, if she survived her father E. M. Crisman, Sr. **Should it occur that Katharine did not survive her father, E. M. Crisman Sr., then and in that event, the corpus of the trust would pass to certain contingent remiandermen, i.e. the aunts and cousins of Katharine.** (a copy of the probated will of Charlotte Scranton Crisman is attached hereto as Composite Exhibit XXII.

In 1952 E. M. Crisman, Sr. assigned his life interest to the income in said trust to Katharine Scranton Crisman Collier. (see Exhibit XXII, supra) As a result of this assignment of interest in the trust, a complaint was brought in Brevard County in 1952 by Katharine Collier seeking to terminate the trust because of a merger in her of the life income interest and her vested remainder interest in the corpus of the trust.

In said action E. M. Crisman, Sr., by written answer, admitted the assignment (See Exhibit XXII, supra), however, the Court properly refused to terminate the trust, **not because the assignment of Mr. Crisman Sr. was invalid or ineffective but because of the aforesaid contingent remainder interests of Katharine Scranton Crisman Collier's aunts and cousins.** However, as a result of the Court disqualifying an out-of-state commercial trust company, from continuing to act as trustee, Katharine Scranton Crisman Collier was appointed Trustee.

In mid-1983 E. M. Crisman, Sr. was declared incompetent and his son, E. M. Crisman, Jr. (the half brother of Katharine Collier) was appointed guardian, (Case No. 83-2059-B, Marion County, Florida). In December, 1983 he brought action in Brevard County, Florida (Case No. 83-6859-CA-N, E. M. Crisman, Jr. as Guardian of E. M. Crisman Sr., Incompetent, vs. Eugene Collier, et al) seeking an accounting as to the trust, removal of the trustee, damages and other relief against Eugene Collier, and his wife, Katharine Scranton Crisman Collier. (See Bar Exhibit 16 to disciplinary proceeding 3/20/86-4/10/86). . In May, 1984 E. M. Crisman's attorney, David W. Dyer, attempted to blackmail the above referenced Defendants into conceding the case. (See attached Exhibit XVI). As a part of that plan Mr. Dyer, in December, 1984, filed the complaint against the Petitioner with the Florida Bar which lead to these proceedings.

When the aforesaid efforts of Mr. Dyer, to force a solution to the subject case favorable to his client E. M. Crisman, Jr., failed the matter continued and had been in litigation for about two (2) years at which time E. M. Crisman, Sr. died. Upon the death of E. M. Crisman, Sr., the Court, dismissed the Guardian's action. E. M. Crisman, Jr. now admits that he was advised by his attorneys that the dismissal of cause no. 83-6859 was "proper by law". (See Exhibit XI).

In 1986, the referenced complaint of Mr. David W. Dyer resulted in the Florida Bar bringing disciplinary proceedings against the Petitioner and the suspension of the Petitioner's license to practice law for six months. On the 28th day of January, 1988 hearing was had on the Petitioner's Petition for Reinstatement to Member in good standing in the Florida Bar, case no. 71,343,. On the 9th day of March, 1988, the Referee, in the above styled and numbered cause, filed his report with the Supreme Court of Florida (see composite **Exhibit XXVIII**, attached hereto) recommending that the Petitioner be reinstated as a member of the Bar, **but only upon the condition that he pay to one E. M. Crisman, Jr. the sum of \$13,795.00.**

The Petitioner excepts to certain of the findings and recommendations of the Referee, as contained in his report of 3/9/88, and seeks review of the same, and other appropriate relief.

SUMMARY OF ARGUMENT

It is clear, from the evidence presented in the instant case and in case #67,850, that **certain of the findings and recommendations of the Referee**, as contained in his report of 3/9/88, **are erroneous, unjustified and not supported by the evidence**, e.g. there is no evidence to suggest that the Petitioner caused a Trust to fail to pay monies to a beneficiary which were needed for his maintenance; that by the Petitioners conduct in certain litigation he caused another to (unnecessarily) pay attorney's fees; that the Petitioner, in representing a trust charged an excessive fee, which if not charged would have been made available to the trust beneficiary; that the petitioner was responsible for the improper diversion of funds from a trust fund while representing that trust

It would appear that in **Exhibit I** hereto (lines 10-12) that **Bar Counsel David G. Mc Gunegle** has succinctly expressed the philosophy of the Bench and Bar for dealing with attorney discipline matters, i.e. "In the Bar dicipline system, the Referee sits in a unique position, because you're not bound by the strict rules of law or evidence * * *." It would also appear that the Referee, in reaching his conclusions and recommendations in the instant case, and in case #67,850/TFB#18B85C12, has adhered to that philosophy by ignoring all of the evidence favorable to the Petitioner and **treating the situation as one where the Petitioner stands alone, is totally incredible and there is no independent verification of his testimony or the evidence presented on his behalf.**

The evidence shows that the Petitioner has met his burden of demonstrating his fitness to resume the practice of Law in the state of Florida and is entitled to unconditional reinstatement to member in good standing in the Florida Bar, or in the alternative to a trial de-novo of the charges brought against him in cause #67,850/TFB#18B85C12.

**POINTS FOR REVIEW
AND
ARGUMENT**

It would appear from a careful reading of Rule 3-7.9(g) of the Rules regulating the Florida Bar that the sole question to be decided by the Referee, in hearing a Petition for Reinstatement to member in good standing in the Florida Bar, is the Petitioner's fitness to resume the practice of law.

It would also appear, from the findings of the Referee, as indicated in his report to the Supreme Court of March 9, 1988, and the admissions of Bar Counsel at the hearing of January 28, 1988, that the Petitioner has met his burden of demonstrating his fitness to resume the practice of law in the State of Florida. (see **Exhibit I**, reinstatement proceedings of 1/28/88, transcript, Page 95, lines 17-18).

In his report of March 9, 1988, the Referee:

- (a) Finds that the Petitioner has faithfully complied with the terms of the Order of Suspension,
- (b) Finds that the Petitioner has been rehabilitated, and
- (c) Recommends that the Petitioner be reinstated as a member of the Florida Bar.

However, the Referee further recommends that reinstatement be conditioned upon the Petitioner paying to one E. J. Crisman, Jr. the sum of \$13,795.00. The reason for this recommendation is unclear, it is also unjustified, unlawful and not supported by the evidence. **This is particularly true, in view of the specific indication of the Bar that it was not requesting the payment of monies to anyone, as a pre-condition to reinstatement, (see Exhibit II, reinstatement proceeding of 1/28/88, transcript, page 93, lines 19-24 and Exhibit III, same volume, page 96, lines 20-24).**

The evidence adduced in the hearing on the Petition for reinstatement (1/28/88) and at the bifurcated disciplinary proceeding (3/20/86-4/10/86) shows conclusively:

- (a) That no monies were missing, unlawfully diverted, misappropriated, or embezzled from any trust fund;

- (b) That no monies are due E. M. Crisman, Jr. from the trust, or the Petitioner, whether the same be for attorney's fees or otherwise, inasmuch as he was **totally unsuccessful in any legal action pertinent to these proceedings.** Neither has he received, nor does he claim to have, any judgment, order, or decree from any Court entitling him to recover anything from the trust or the Petitioner.

It is also clear from the evidence that the attempts of Mr. David W. Dyer, the Complainant in this matter, as the attorney for E. M. Crisman, Jr., to extort from the Petitioner the sum of \$15,000.00 for attorney's fees in case no. 83-6859 (E. M. Crisman, Jr. as Guardian of E. M. Crisman, Sr., incompetent vs. Eugene Collier et al) after that case was dismissed by the Court and time for appeal had run, were equally unsuccessful. (see composite Exhibit IV , Respondants Exhibit 9 to bifurcated disciplinary proceeding, transcript of 4/10/86, pages 57-59 and, Respondants Exhibit 8 to said disciplinary proceeding. See also Exhibit XVII, infra, attached hereto).

In Paragraph 7 of the Referee's report of March 9, 1988, he finds that the Petitioner, by some unspecified and presumably improper conduct, caused E. M. Crisman, Jr. to pay attorney's fees for litigation relating to a trust. This finding of the Referee is erroneous, unjustified and not supported by the evidence. Presumably this is a reference by the Referee to cause no. 83-6859, Brevard County, (E. M. Crisman, Jr. as Guardian of E. M. Crisman, Sr., incompetent vs. Eugene Collier et.al.) an action in which the Petitioner represented himself individually, and his wife Katharine S. Collier individually and as trustee.

Mr. George Ritchie, a witness for the Petitioner, testified at the hearing on the Petition for Reinstatement that he had been a member of the Brevard County Bar Grievance Committee at various times; that in such capacity he saw the Complaint against the Petitioner regarding that case; that he was familiar with the facts of the case; that he and other members of the Grievance Committee had determined, in their review of those facts, that the Petitioner's actions in case no. 83-6859 were proper and; that it is the duty of an attorney to challenge by appeal a ruling of a judge which he feels is wrong. (see composite Exhibit V, reinstatement proceeding of 1/28/88, transcript, pages 21-25).

The evidence also clearly indicates that much of the difficulty with the aforesaid cause no 83-6859, all of which the Referee apparently attributes to the Petitioner, was created by E. M. Crisman, Jr.'s attorneys. In said action they amended their original Complaint on two separate occasions and secured leave of the Court to amend those pleadings a third time. They also noticed either the Defendants or witnesses for depositions, or to produce documents, on some 12 to 15 separate occasions. (see composite **Exhibit VI**, i.e. Bar Exhibit #16 to bifurcated disciplinary proceeding of 3/20/86-4/10/86 and, composite **Exhibit VII**, reinstatement hearing of 1/28/88, transcript, pages 58-59)

The evidence further indicates that the **Petitioner put forth viable legal arguments** through his motions or other actions in cause no. 83-6859, in that he was granted either full or partial relief in all instances except two. (see composite **Exhibit VII**, supra, reinstatement proceeding of 1/28/88 transcript, pages 58-59 and composite **Exhibit VIII**, Complete chronology of case no. 83-6859).

Further, in no case does the witness E. M. Crisman, Jr. contend that the Petitioner's actions in cause no. 83-6859 were improper. **He contends only that he incurred certain attorney's fees, without specifying which fees were incurred for the various actions in which he was involved, and says that he wants to collect those fees from someone else.**

The evidence shows that E. M. Crisman, Jr. was a party in the following actions:

- (a) **83-6859, Brevard County, E. M. Crisman, Jr., as Guardian of E. M. Crisman, Sr., incompetent vs. Eugene Collier et.al. This case was dismissed by the Court.** (see composite **Exhibit IX**, reinstatement proceeding of 1/28/88, transcript pages 81-82, and **Composite Exhibit X** Respondant's

Exhibit 2 to bifurcated disciplinary proceeding (3/20/86-4/10/86). **No attorney's fees were awarded in that action** and E. M. Crisman, Jr. makes no such contention.

E. M. Crisman, Jr. does admit that he was **advised by his attorneys that the dismissal was "proper by law"**. (see Exhibit XI, supra, reinstatement proceeding 1/28/88, transcript pages 81-82, and **Exhibit XXVI**, Petition for Reinstatement, page 5).

(b) **85-2962**, Marion County, E. M. Crisman, Jr. vs. Eugene Collier, as Personal Representative of the Estate of E. M. Crisman, Sr., deceased. This was an action for money damages which was **dismissed by the Court for lack of prosecution**. (see composite **Exhibit XI**, reinstatement proceeding of 1/28/88, transcript pages 74-75 and **Exhibit XXVI**, supra, Petition for reinstatement, page 5). **No attorney's fees were awarded in this action** and E. M. Crisman, Jr. makes no such contention and no evidence was presented to that effect. See also a copy of the order of dismissal attached hereto as **Exhibit XI-A**.

(c) **85-458-CA**, Marion County, Estate of E. M. Crisman, Sr., deceased. E. M. Crisman, Jr. testified that this case was **closed on agreement that the Personal Representative would not go after him to recover estate assets in his possession**.

(see Exhibit XII, reinstatement proceeding of 1/28/88, transcript, page 89, lines 7-13, and exhibit XXVI, supra, Petition for Reinstatement, page 5). **No attorney's fees were awarded in this action** and E. M. Crisman, Jr. makes no such contention and no evidence was presented to that effect.

- (d) **83-2059-B, Marion County, Guardianship of E. M. Crisman, Sr. incompetent. This Case was dismissed by the Court for lack of prosecution on or about January 12, 1987. A copy of said Order of Dismissal is attached hereto as Exhibit XIII. E. M. Crisman, Jr. does not contend that the Court awarded him any recovery of attorney's fees, as against the Petitioner or the trust, and presented no evidence to that effect.**

As to the desire of E. M. Crisman, Jr. to collect attorney's fees from someone else, **he presented no evidence, as to:**

- (1) Who the attorneys may have been for the four or more separate legal actions in which he was involved. (See page 5 of the Petition for reinstatement)
- (2) Whether or not there were contracts for legal services and the terms thereof.
- (3) What services, if any, were rendered by any attorneys in the individual legal actions in which he was involved.

- (4) What rates may have been charged for attorneys fees or for legal services, in any of the individual legal actions in which he was a party. As Exhibit XXVII hereto shows, he relied only upon some hand written notes to support his claim, the same purporting to be a "partial list" of expenses he was seeking to recover. (Reinstatement proceeding of 1/28/88, page 76, lines 8-13).
- (5) Whether or not, whatever fees and costs he claims are reasonable and,.
- (6) Any Judgment, Order, or Decree which would support his request that the Petitioner pay him monies for attorneys fees.

Mr. E.M. Crisman Jr. did admit however that no recent demands had been made on the petitioner for such monies. (see Exhibit XIV, reinstatement hearing of 1/28/88, transcript, page 79, lines 17-23) and; that he was advised by his attorneys to wait for the Florida Bar to act (in these proceedings) before taking up the matter again. (see Exhibit XV, reinstatement hearing of 1/28/88 Transcript, Page 87, lines 1-18).

Presumably Mr. Crisman's attorneys feel that if the Bar, as a condition for reinstatement, required the petitioner to pay him money for attorneys fees they could then receive that which they could not previously extort from the petitioner, or secure from the client reimbursement fund of the Florida Bar. (See composite Exhibit XVI, Respondants exhibits to disciplinary proceeding (3/20/86-4/10/86) i.e. letter of 11 May 84, office memo of telecom of 14 August, 85, disciplinary proceeding transcript of 3/20/86, pages 123-124 and pages 57-59 inclusive).

Once again, it has never been the contention of the Bar that E. M. Crisman, Jr. was ever awarded any attorney's fees, by any court, in any action, as against the Petitioner, or the subject trust, neither has any evidence been presented to that effect.

Further, **the Referee**, as a result of the bifurcated disciplinary proceeding (3/20/86 - 4/10/86), **made no finding, in his report of June 26, 1986, that any monies had been improperly diverted, misappropriated or embezzled from a trust fund by anyone.** (A copy of the Referee's report of 6/26/86 is attached herero as composite **Exhibit XVII**).

Neither did the Referee find, in said report, that E. M. Crisman, Jr. was entitled to recover any sum from any person or party, whether by way of attorney's fees or otherwise. In addition the Bar made no such contention and made no claim for restitution or payment by the Petitioner to anyone.(see **Exhibit II**, supra, reinstatement proceeding, transcript of 1/28/88, page 93, lines 5-10 and **Exhibit XVIII** Disciplinary proceeding, transcript of 4/10/86, page 93, lines 5-9).

With regard to the Referee's recommendation that the Petitioner pay to E. M. Crisman, Jr., as a condition for reinstatement to the Florida Bar, the sum of \$13,795.00, (Paragraph III of his report of March 9, 1988) it is curious to note that this sum precisely equals the **\$6,200.00** received by the trustee (a sum called, without evidence on the subject, "disproportionate compensation to the trustee") during the period 1979-1986 and the **\$7,595.00** which the Referee referred to as "grossly disproportionate" compensation to the Petitioner for services to the trust, notwithstanding the evidence that such services included more than two years of heavy litigation. (see **Exhibit XIX**, disciplinary proceeding (3/20/86-4/10/86) pages 57, lines 4-18)

It is also curious to note that this same \$13,795.00 again precisely equals the sum which the Referee finds (without benefit of any evidence) was improperly diverted from the "trust" while the Petitioner was attorney for said trust. The Referee then somehow concludes that this sum should now be paid to E. M. Crisman, Jr. **This is not only an unjustified conclusion not supported by the evidence, but is certainly unlawful and even the Bar admits that it has no law to support such a proposition (see Exhibit I, supra, transcript of reinstatement hearing of 1/28/88, page 95, lines 1-21).**

It is beyond question that if indeed monies were improperly diverted from any trust fund then any reimbursement of such funds would properly be paid to the trust and not to some stranger thereto. E. M. Crisman, Jr. is not, nor has he ever claimed to be, a beneficiary of the subject trust and the Bar certainly makes no such contention.

As to the conclusion of the Referee that monies were improperly diverted from the subject trust, the evidence is conclusive that such was not the case. In the bifurcated disciplinary proceeding (3/20/86 and 4/10/86) Mrs. M. L. Wages, an accountant with 34 years experience testified that she had reviewed the trust records for the period 1977 to the present (i.e. 4/10/86); that such records were complete and accurate; that she had prepared the Trust Federal Income Tax Returns for the years 1980-1981 and 1982 and; that **there was no evidence, in the trust records, of any impropriety or misappropriation of trust funds.** (see composite Exhibit XX, disciplinary proceeding of 4/10/86, transcript, pages 63-66.).

Mrs. Barbara J. Carroll, former secretary to the now Honorable Edward M. Jackson, Judge of the Circuit Court, Eighteenth Judicial Circuit, likewise testified, in the referenced disciplinary proceeding, that while so employed she was responsible for reviewing the trust records and preparing the

annual returns therefor and; that **the trust records were complete and accurate.** (see composite **Exhibit XXI**, disciplinary proceeding of 4/10/86, transcript, pages 52-55).

The Referee also finds (in Paragraph 7 of his report of March 9, 1988) that the Petitioner caused a trust to fail to pay monies needed for the trust beneficiary's support. However, **there was no evidence presented on this subject at the reinstatement hearing** of 1/18/88. Further, such finding assumes, without evidence, that E.M. Crisman Sr. was the bona fide beneficiary of the subject trust.(see composite **Exhibit XXII**, copy of will of Charlotte Scranton Crisman, E.M. Crisman Sr (1952) assignment of life interest in the income of the trust, answer of E.M. Crisman Sr.,in Cause 12324 (Brevard County), acknowledging assignment of interest in trust) **and ignores the prior testimony of E. M. Crisman, Jr. that the monthly income of E. M. Crisman, Sr. was sufficient for his needs.** (see **Exhibit XXIII**, Respondant's exhibit 9 to bifurcated disciplinary proceeding,transcript of 8/12/86, page 69, lines 9-17).

Further,the Referee **while conceding that there was insufficient evidence** on this subject (Paragraph 7 of Referee's report of March 9, 1988) nevertheless seeks to exact some unwarranted penalty from the Petitioner by requiring him to pay the sum of \$13,795.00 to E. M. Crisman, Jr., as a condition for reinstatement to member in good standing in the Florida Bar. Such a finding, and the requirement for the payment of monies to one who was a stranger to the trust and has no bona fide award of attorney's fees, whether as to the trust or the Petitioner, is unjustified, unlawful and not supported by the evidence.

In Paragraph II(8) of the Referee's report of March 9, 1988, he finds that during the period 1980-1983 that the Petitioner was the attorney for the subject trust (for which his wife Katharine S. Collier was the trustee). There was **no evidence presented on this subject at the reinstatement hearing** of January 28, 1988. Further, such a finding **ignores the testimony** of Judge Jackson's former secretary which indicated that she was employed by him from 1973-1980; that she was likewise employed by the petitioner from 1977 to 4/10/86 and; **that the Petitioner had no contact with the trust until the lawsuit of E. M. Crisman, Jr. against the trustee in December, 1983** (see **Exhibit XXI**,supra, bifurcated disciplinary proceeding transcript of 4/10/86; page 52-55).

CONCLUSION

It is apparent, from a review of the evidence adduced at the reinstatement proceeding of 1/28/88, that the petitioner has met his burden of demonstrating his fitness to resume the practice of law in the State of Florida, and the referee so finds.

It is also apparent, from a review of the transcript of the aforesaid reinstatement proceeding, and the referenced report of the Referee, that in reaching certain of his conclusions and/or in formulating certain of his recommendations, that the Referee has once again either ignored that evidence favorable to the Petitioner, mis-perceived that evidence presented by the two sides, failed to consider those circumstances where no evidence was presented as to particular subjects, or has ignored those findings contained in his report of 6/26/86, out of the Disciplinary proceeding (3/20/86-4/10/86).

In his report of 3/9/88 the Referee finds that the Petitioner is a "Trustworthy Person", while simultaneously finding that he is responsible for the improper diversion of monies from a trust fund. It appears to be inconsistent to have it both ways at the same time. In any event such a finding ignores the fact that in the Referees report of 6/26/86, there was no finding that any money had been diverted from a trust fund, or that the Petitioner was responsible, if such a thing had occurred. Further this finding disregards all of the substantial evidence that there were no monies missing from any trust. The Referee then finds that he can't determine the extent of the purported "diversion" because of a lack of evidence.

In his report of 3/9/88, the Referee also finds that the Petitioner is responsible for a trust failing to pay over monies needed for the support of the alleged beneficiary thereof. This finding disregards the evidence that the purported beneficiary of the trust had sufficient income to meet his needs. This finding also ignores the evidence that any beneficiary of the subject trust, whoever it may have been, was entitled to receive only the income thereof; that such income was only \$1200.00/\$1500.00 per year and the purported beneficiary's 1952 assignment of his interest in the Trust to another.

The Referee also find that the Petitioner, by his conduct in the defense of cause No. 83-6859, is responsible for one E.M. Crisman Jr. having to (unnecessarily) pay attorneys fees. This finding ignores the admission of the Bar that the Petitioner had the right to defend that case and the evidence that the conduct of the Petitioner in said cause was entirely proper. It also disregards the evidence that much of the difficulty in that case was created by the ineptitude of Mr. Crisman's own attorneys (i.e. the complaintant in this case). The Referee then determines (**without any evidence** being presented on the matter of a proper or reasonable amount of attorney's fees) that as a condition for reinstatement that the Petitioner should pay to E.M. Crisman Jr. the sum of \$13,795.00.

It is obvious, from a review of the Referees report of 3/9/88/, that he arrived at this figure of \$13,795.00 by adding together \$6200.00, a sum which (**without benefit of evidence**) he concludes was received by the Trustee of the subject trust as "disproportionate compensation" and the sum of \$7595.00 which (**again without evidence**) he concludes was "grossly disproportionate compensation" paid to the petitioner for legal services to the trust during two years of litigation.

This is also the exact amount which the Referee says was improperly diverted from the Trust, however, he does not suggest that such a sum be reimbursed to the trust but rather concludes that this amount should be paid to one who is a stranger to the trust.

Even the Counsel for the Bar admitted that it had no law to support such a proposition.

Premises considered, it is apparent that the Referee, in the conduct of both the disciplinary and reinstatement proceedings concernig the Petitioner, has adhered to the philisophy of the Bar, as so succinctly expresed by Bar Counsel David G. Mc Gunegle in his closing argument at the reinstatement hearing of 1/28/88, where he said:

"In the Bar dicipline system, the referee sits in a unique position, because you're not bound by the strict rules of law or evidence * * *."

(see exhibit I hereto)

How, in any conscience, can we as Lawyers say that we are not bound by the law or the evidence in deciding the merits of a case, whether it be an ethics question regarding an attorney or otherwise. The very essence of who we are, what we stand for, and what we purport to do is based upon a strict adherence to the law and the evidence. Can we substitute, for members of the Bar, a system which says " guilty until proven innocent" and allow the destruction of reputations and careers through unsupported allegations, trial by half truths, hearsay, or no evidence at all. Can we afford to say to anyone that we will decide your fate but we are not bound by the law or the evidence ?

Further, in the interest of Justice, how can the Bench and Bar fail to provide meaningful review of those cases involving allegations of wrongdoing by members of the Bar when they come forward on appeal. Isn't something more than an unqualified acceptance of the Referee's findings required where the lives and careers of the individuals affected by these matters are concerned. It would be sad indeed if, as appears to be the case, the findings and recommendations of a Referee left his hands "caste in concrete" for then the entire system fails.


If we, who take on the responsibilities of Champions of Justice, do not afford equal protection of the law to those members of the Bar who stand accused of wrongdoing, how are we to convince the public that we will protect and defend their rights when they stand before the Bar.

In the instant case it is apparent that the Referee, for whatever reasons, has failed to give all of the evidence, in both the disciplinary and reinstatement proceedings which concern the Petitioner, that objective evaluation that he is so capable of in other cases. Justice demands that this Court of review provide that objective evaluation, through the record, and **overturn the conviction of the Petitioner**, as to case no. 67,850/TBF 18B85C12 **or in the alternative unconditionally reinstate the Petitioner to member in good standing in the Florida Bar.**

WHEREFORE, the Petitioner Prays the court for a trial de novo, before a different Referee, in a different county, as to Cause No. 67,850/TBF Case No. 18B85C12 (i.e. trial of the charges against the Petitioner) or in the alternative for the unconditional reinstatement of the Petitioner to member in good standing in the Florida Bar.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Petitioner's Brief has been furnished by mail this 6th day of April, 1988 to Sid J. White, Clerk of Court, The Supreme Court, Supreme Court Building, Tallahassee, Florida 32301, David W. McGunegle, Esq., The Florida Bar, 605 E. Robinson Ave., Suite 610, Orlando, Florida 32801, and The Florida Bar, The Florida Bar Center, Tallahassee, Florida 32301.


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