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IN THE SUPREME COURT OF FLORIDA

IN RE:

PETITION FOR REINSTATEMENT

of RONALD E. KAY

Supreme Court
Case No. 72,023

The Florida Bar Case
No. 88-50,837 (FRE-17C)

REPLY BRIEF OF THE FLORIDA BAR

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TABLE OF CONTENTS

	<u>Pages</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF FACTS	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. THE REFEREE ERRED IN RECOMMENDING THAT PETITIONER HAS DEMONSTRATED THAT HE HAS BEEN REHABILITATED AND IS PRESENTLY FIT TO BE REINSTATED	3
II. THE REFEREE ERRED IN PRECLUDING THE FLORIDA BAR FROM INTRODUCING INTO EVIDENCE THE JUNE 6, 1983 FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE	3
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page</u>
<u>The Florida Bar v. Inglis</u> 471 So.2d 38 (Fla. 1985)	3
<u>The Florida Bar v. Lopez</u> 545 So.2d 835 (Fla. 1989).	4
<u>The Florida Bar v. Setien</u> 530 So.2d 298 (Fla. 1988).	3
<u>The Florida Bar v. Stillman</u> 401 So.2d 1306 (Fla. 1988)	3
 <u>RULES OF DISCIPLINE</u>	
Rule 3-7.9(k)	2

STATEMENT OF THE FACTS

THE FLORIDA BAR, disagrees with Petitioner's wording on page 2 of his brief that, "[T]he appellant and appellee were both in agreement that the issue of rehabilitation was the only issue to be determined by the Referee."

The Florida Bar presented argument that the seriousness of Petitioners criminal misconduct should be considered.

The Florida Bar further disputes Petitioner's assertion on page 4 of his brief that The Florida Bar did not produce witnesses to impeach Petitioner's character or moral standing.

Dr. Reed's report and testimony very clearly reflected poor character traits of the Petitioner based on Dr. Reed's testing of the Petitioner's. (See testimony of Dr. Reed, T. 165-173, 163-211 and Dr. Reed's report, Exhibit 4).

Further, Dr. Ryan's expert testimony also reflected poorly on Petitioner's character. (See testimony of Dr. Ryan, T. 94-153).

SUMMARY OF THE ARGUMENT

I. THE REFEREE ERRED IN RECOMMENDING THAT PETITIONER HAS DEMONSTRATED THAT HE HAS BEEN REHABILITATED AND IS PRESENTLY FIT TO BE REINSTATED.

This Court has review authority concerning a Referee's recommendation and can deny a Petitioner's Petition for Reinstatement if the evidence demonstrates that the Petitioner is unfit to resume the practice of law. (Rule 3-7.9(k) of the Rules of Discipline).

II. THE REFEREE ERRED IN PRECLUDING THE FLORIDA BAR FROM INTRODUCING INTO EVIDENCE THE JUNE 6, 1983 FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE.

The evidence tendered by The Florida Bar, the June 6, 1983 Final Judgement of Dissolution of Marriage of the Petitioner, was certainly relevant regarding the Petitioner's morals and character and The Florida Bar was prejudiced by the exclusion of said evidence.

ARGUMENT

I. THE REFEREE ERRED IN RECOMMENDING THAT PETITIONER HAS DEMONSTRATED THAT HE HAS BEEN REHABILITATED AND IS PRESENTLY FIT TO BE REINSTATED.

This Court has a broader scope of review concerning legal conclusions and recommendations of a referee. The Florida Bar v. Inglis, 471 So.2d 38 (Fla. 1985). However, the testimony of Drs. Reed, Ryan and Caddy cause great concern regarding Petitioner's serious psychological problems.

Based upon the evidence presented and The Florida Bar's Initial Brief in this cause, Petitioner should not be reinstated.

II. THE REFEREE ERRED IN PRECLUDING THE FLORIDA BAR FROM INTRODUCING INTO EVIDENCE THE JUNE 6, 1983 FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE.

The Florida Bar strongly asserts that misconduct, whether or not it resulted in discipline is relevant in reinstatement proceedings regarding a Petitioner's character and moral fitness to resume the practice of law. In this case, it was of great importance as the Petitioner had a long history of difficulties. The law is clear in Florida that misconduct not charged may be considered as to discipline by the referee. The Florida Bar v. Stillman, 401 So.2d 1306 (Fla. 1981) and The Florida Bar v. Setien, 530 So.2d 298 (Fla. 1988). If uncharged misconduct can be considered in a discipline case, then misconduct wherein disciplinary charges were not brought is certainly relevant in a reinstatement proceeding.

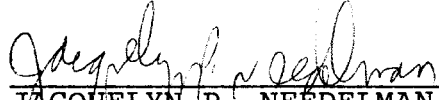
Further, this Court held in The Florida Bar Re: Lopez, 545 So.2d 835, 836 (Fla. 1989) that evidence concerning presuspension conduct is relevant and admissible in reinstatement proceedings. In Lopez, this Court held that evidence concerning events which occurred before Lopez's felony convictions and suspension was relevant. A copy of the Lopez opinion is attached hereto as Appendix I.

Based upon the above stated matters and The Florida Bar's argument on this point in its initial brief, the referee erred in precluding The Florida Bar from presenting its tendered exhibit.

CONCLUSION

Based upon the foregoing, and The Florida Bar's Initial Brief in this matter, The Florida Bar respectfully requests this Honorable court to deny Petitioner's Petition for Reinstatement and to hold that the referee erred in precluding The Florida Bar from introducing into evidence the June 6, 1983 Final Judgment of Dissolution of Marriage, and tax the costs of this proceeding in the amount of \$5,238.74 against the Petitioner.

Respectfully submitted,



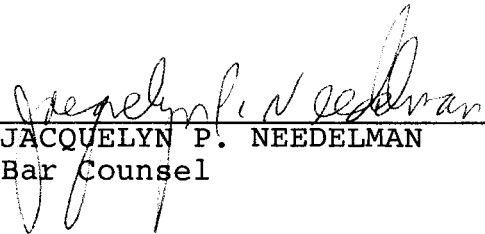
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the Initial Brief of The Florida Bar was mailed to Sid J. White, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida, 32301-8167, and that a true and correct copy was mailed to Lance J. Thibideau, Attorney for Respondent, 901 South Federal Highway, Suite 300, Fort Lauderdale, FL 33316 this 20th day of September, 1989.



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