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IN THE SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT

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THE FLORIDA BAR,
COMPLAINANT,

V.

Supreme Court Case No. 72,027

PAUL A. CAILLAUD,
RESPONDENT.

-----/

RRSPONDENT'S ANSWER BRIEF

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THE INTEGRATION RULE OF THE FLORIDA BAR;
THE CODE OF PROFESSIONAL RESPONSIBILITY
NOR THE RULES OF DISCIPLINE OF THE FLORIDA
BAR MANDATE OR REQUIRE A SEPARATE AND DISTINCT
HEARING OR PROCEEDING ON REINSTATEMENT
OF A DISCIPLINED ATTORNEY WHEN A REFEREE, DULY
AND LAWFULLY APPOINTED BY THE SUPREME COURT OF
FLORIDA, IN THE INTEREST OF JUSTICE, FAIRNESS
AND JUDICIAL ECONOMY, HAS TAKEN AND DULY
CONSIDERED EVIDENCE CONCERNING THE ATTORNEY'S
FITNESS TO RESUME THE PRACTICE OF LAW AS A PART
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SYMBOLS AND REFERENCES

In this Brief, The Florida Bar will be referred to as "TFB". Paul Caillaud will be referred to as "Respondent". "T.1" will refer to the transcript of the final hearing held before the Referee on July 1, 1988. "T.2" will refer to the final hearing held before the Referee on September 16, 1988. "T.3" will refer to the final hearing held before the Referee on October 21, 1988. "TFB Brief" will refer to The Florida Bar's Initial Brief served July 3, 1989. The Report of Referee filed April 4, 1989 will be referred to as "RR".

STATEMENT OF THE CASE

The Respondent does not object to the Statement of the Case as set forth in TFB Brief.

STATEMENT OF THE FACTS

On August 28, 1985, Respondent was indicted by the Grand Jury of the County of Sullivan, State of New York, for violation of the provisions of Section 6512, Education Code, New York Statutes, (engaging in the practice of a profession for which a license was required). On February 1, 1986, Respondent voluntarily ceased the active practice of law. (T.3-91,97; RR-5). As part of a plea agreement entered into March 6, 1986, Respondent pleaded guilty to violation of Section 6512, supra, and was placed on probation for the minimum period permitted under New York statutes. On February 8, 1988, TFB filed it's Complaint seeking discipline. On March 8, 1989, Respondent was discharged from probation. Shortly thereafter, on April 4, 1989, the Referee submitted his Report of Referee.

SUMMARY OF THE ARGUMENT

When a duly and lawfully appointed Referee has taken and considered evidence relating to a disciplined attorney's legal ability and ethical character, and bar counsel has been afforded full opportunity to examine any and all evidence and witnesses pertaining to the attorney's legal ability and ethical standards at trial, there is no legal requirement mandating a separate and distinct reinstatement proceeding if the disciplined attorney has clearly and convincingly demonstrated, to the satisfaction of the Referee, his rehabilitation and fitness to resume the practice of law.

ARGUMENT

THE INTEGRATION RULE OF THE FLORIDA BAR;
THE CODE OF PROFESSIONAL RESPONSIBILITY
NOR THE RULES OF DISCIPLINE OF THE FLORIDA
BAR MANDATE OR REQUIRE A SEPARATE AND DISTINCT
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OF THE FINAL HEARING, AND THE RECOMMENDED
PERIOD OF DISCIPLINE HAS EXPIRED

It is a well established principle in the body of Florida attorney disciplinary law that a suspension of more than 90 days should require the disciplined attorney to present proof of his rehabilitation such that this Court may be assured of his personal and professional integrity. Article XI, Rule 11.10(4), Florida Bar Integration Rule; Rule 3-5.1(e), Rules of Discipline; The Florida Bar v. Pavlick, 504 So.2d 1231 (Fla. 1987); The Florida Bar v. Musleh, 453 So.2d 794 (Fla. 1984). There is no requirement, however, in any common, statutory or administrative body of law in Florida that "mandates" a separate or distinct hearing on rehabilitation as it relates to attorney reinstatement.

The Report of Referee herein concerned is a carefully drafted and well reasoned document, formulated after the

critical review of over six hundred pages of documentation generated over a period of three years. It incorporates facts obtained through over fourteen hours of testimony and legal argument, and is entitled to a strictly recognized presumption of accuracy and correctness. The Florida Bar v. Price, 478 So.2d. 812 (Fla. 1985). This point is emphasized due to the very broad latitude allowed both TFB and Respondent during the course of discovery and the final hearings conducted before the referee. Evidence concerning Respondents actions predicated discipline, attitude and demeanor towards his prosecution and discipline, moral and ethical standards, psychological condition (both at the time of his actions and at present), community reputation and legal competence was taken and considered by the referee herein. In short, there is nothing TFB wanted to know or ask that was not clearly, accurately and willingly addressed by Respondent, notwithstanding the assertion of TFB. TFB Brief-9. The Florida Bar was not, to paraphrase the learned Justice Erlich, "cut off at the pass". Pavlick, supra.

Article XI Rule 11.10(4), Florida Bar Integration Rule, and Rule 3-5.1(e), Rules of Discipline, set forth a requirement designed to insure the public that an attorney who has been the object of discipline is fully capable, both technically and ethically, to resume the

active practice of law. It is anticipated that the attorney who has been disciplined be subject to further scrutiny prior to his reinstatement to insure that he has, indeed, fully complied with the disciplinary order. He has been "rehabilitated" to such a degree that the public can be assured of his integrity and the legal profession can be assured it's duty to police it's own has been satisfied.

In the usual course of disciplinary proceedings, this is a routine matter and works no additional hardship upon the disciplined attorney as he is able to petition for reinstatement prior to completion of his disability, and, thus, be reinstated, if appropriate, without undue and additional delay past the ordered disciplinary period. This is not, however, a usual disciplinary proceeding.

A Notice of Felony Conviction was filed approximately six weeks after Respondent was sentenced to a probationary period, yet almost two years elapsed before TFB filed a complaint and the matter progressed to final hearing. The Report of Referee was filed one month after the recommended period of discipline, three years, had passed, and this point was specifically addressed by the Referee in his report. (RR-7). TFB now asserts, after the recommended disciplinary period has expired, that the Report of Referee is erroneous, not because of any

substantive difficulty but because, TFB suggests, the referee failed to comply with the procedural requirements of the Rules of Discipline. It is Respondent's respectful assertion that the referee did, in fact and law, fully comply with both the letter and the spirit of the Rules of Discipline.

The final hearings conducted before the referee, as previously noted, were extensive. They incorporated over fourteen hours of testimony (RR-4) and covered a wide range of topics including but certainly not confined to those considerations set down by this Court as important to the issue of rehabilitation. These considerations derive from a long line of cases. E.g., In Re Dawson, 131 So.2d 472 (Fla. 1961); Petition of Wolf, 257 So.2d 547 (Fla. 1972); and, more recently, The Florida Bar In Re Inglis, 471 So.2d 38 (Fla. 1985); The Florida Bar In Re Sickmen, 523 So.2d 154 (Fla. 1988). This Court has noted six points to be evaluated in the assessment of an attorney seeking reinstatement:

1. Full compliance with the conditions imposed in the previous disciplinary judgement;
2. Unimpeachable character;
3. A reputation for professional ability;
4. Lack of malice towards those responsible for the previous disciplinary action;
5. A repentant attitude concerning the

earlier wrongdoing and a strong resolution to adhere to principles of correct conduct; and

6. Restitution to persons harmed by the earlier misconduct. The Florida Bar In Re Sickmen, supra.

A review of the transcripts of the final hearings before the referee reveals that each and every applicable point enumerated above was addressed and considered by the Referee prior to the formulation of his Report. The first point, compliance with the previous disciplinary order, does not apply as this Court has not yet entered a formal disciplinary order. The second point, demonstration of unimpeachable character, was thoroughly addressed at the final hearing through the testimony of three prominent attorneys who were personally acquainted with Respondent, Respondent's employer and legal secretary, and Respondent's psychologist. In total, over 670 questions were posed to these witnesses by the Referee, bar counsel, and Respondent's co-counsel, primarily addressed to Respondent's character and legal ability. (T.1-67-158); (RR-5). Point three, demonstration of professional ability, was similarly evidenced through testimony of witnesses familiar with Respondent's work, (T.1-67-98); stipulation of bar counsel, (T.3-34); and observation of the Referee. (T.3-89); (RR-6). The fourth point, demonstration of lack of malice towards those responsible for the

previous disciplinary action was addressed throughout the proceeding both in correspondence with TFB (now forming a part of the record below) and the Referee. (RR-5). The fifth point, demonstration of a repentant attitude, was extensively addressed throughout the final hearings, as the Referee so found. (RR-5-6); (T.2-174-181). The sixth and final point, restitution to persons harmed by the misconduct, does not apply as no injury, financial or physical, was worked through Respondent's actions.

This Court has held that reinstatement criteria may be summed-up in two components: good moral character, personal integrity, and special fitness for a position of trust and confidence, and professional competence and ability. The Florida Bar In Re Inglis, supra.. These criteria have been met through the presentation of evidence, a thorough consideration thereof, and a formal recommendation by the Referee. Rehabilitation has thus been demonstrated clearly and convincingly. RR-6. There are other factors to consider, however.

The first factor concerns the aim of a reinstatement proceeding and the policy therein effected. From a practical standpoint, a reinstatement proceeding simply provides a neutral arbiter to consider whether or not a disciplined attorney has fully complied with the terms of

a disciplinary order. More importantly, however, as this Court noted in The Florida Bar v. Thompson, 500 So.2d 1335 (Fla.1986), a reinstatement proceeding "...imposes upon a lawyer the responsibility of taking affirmative action during the period of suspension in order to gain readmittance at the end of the period". Id. at 1336. This policy has been satisfied because Respondent took responsibility for his rehabilitation even before TFB filed it's Complaint. His voluntary withdrawal from the active practice of law, active participation in appropriate counseling, and personal conduct throughout the pendency of these proceedings reflects this, as the Referee noted. RR-5-5. No positive purpose will be served by requiring Respondent to now petition for reinstatement, and therein submit to a revisitation of the self-same questioning as was conducted during the final hearing only two months ago simply to exemplify a procedural step TFB suggests to be requisite.

There is a second important consideration. While TFB correctly states that this Court is not bound by the referee's recommendation of discipline to be imposed, (citations omitted), (TFB Brief-71, the report of the referee is entitled to a presumption of correctness. The Florida Bar v. Price, supra., unless the party seeking review, herein TFB, can demonstrate that the

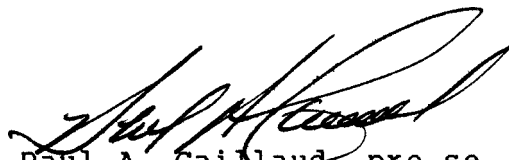
report is clearly erroneous, unlawful or unjustified. Rule 3-7.6(c)(5), Rules of Discipline. TFB and the Board of Governors thereof had the opportunity to review the Report of Referee, and determined it to be lawful and correct in all respects save one which is best characterized as an asserted procedural defect. Thus, it can be accurately stated that TFB agrees with and supports the Report of Referee in all material or substantive respects as it assigned as error only that aspect dealing with proof of rehabilitation. Under the Rules of Discipline, this Court, though clearly possessed of the authority and, indeed, the obligation to review all recommendations imposing suspension of an attorney, (Rule 3-7.6(a)(2), Rules of Discipline.), is bound to enter the conclusions contained in the Report of Referee as the disciplinary measures imposed by this Court, unless the Court otherwise directs the parties to submit briefs or oral argument directed to the suitability of the disciplinary measure recommended by the referee, or if review is sought. Rule 3-7.6(c)(6), Rules of Discipline. If review is sought, this Court may consider the arguments of the parties as they effect those points assigned as error, but the remainder of the report should be adopted as the order of this Court, again, presuming it to be correct. As the Report of Referee herein recommended a suspension for a fixed and maximum period of time commencing March 6, 1986, (RR-5), and neither

this time period nor sanction was assigned as error by TFB, it must be presumed correct and should be the Order of this Court. Since no suspension may be entered for a period in excess of three years, (Rule 3-5(e), Rules of Discipline), the suspension recommended by the referee should be given effect by this Court which suspension in fact terminated, by operation of law, March 6, 1989. As the period of suspension has been fully served, and the suspension terminated, it is not necessary for Respondent to further petition for reinstatement as he has been reinstated by natural expiration of the suspension order. The Florida Bar v. Evans, 109 So.2d 881 (Fla. 1959).

CONCLUSION

Based upon the above and foregoing law and argumentation, Respondent has demonstrated, by clear and convincing evidence, his rehabilitation and completion of the disciplinary period recommended, and should be formally reinstated to the active practice of law in the State of Florida without further proof of rehabilitation.

Respectfully Submitted,

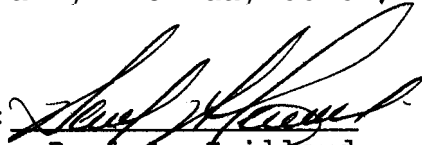


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and seven copies of the Respondent's Answer Brief was sent via Federal Express to Sid J. White, Clerk of the Supreme Court, Supreme Court Building, Tallahassee, Florida, and a copy was mailed to John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32399-2300, and a copy was mailed to Paul A. Gross, Bar Counsel, The Florida Bar, 211 Rivergate Plaza, 444 Brickell Ave. Miami, Florida, 33131, this 22 day of July, 1989.

By:


Paul A. Caillaud