

IN THE SUPREME COURT OF FLORIDA

FILED
S/D J. WHITE
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CLERK SUPREME COURT

THE FLORIDA BAR,

In Re:

MICHAEL J. JAHN,

Petition for Reinstatement.

Case No. 73-182
[TFB Case No. 150 (CRE)]
D. S. Clerk

REPLY BRIEF OF THE FLORIDA BAR

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	<i>iii</i>
SYMBOLS AND REFERENCES	<i>iv</i>
SUMMARY OF ARGUMENT	1
ARGUMENT	2
CONCLUSION	7
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

	<u>PAGE</u>
<u>The Florida Bar v. Dawson,</u> 131 So.2d 472 (Fla. 1961)	2
<u>The Florida Bar v. Siegel and Canter,</u> 511 So.2d 995 (Fla. 1987)	2
<u>The Florida Bar In re Inglis,</u> 471 So.2d 38 (Fla. 1985)	1, 3
<u>The Florida Bar Re Whitlock,</u> 511 So.2d 524 (Fla. 1987)	3
<u>The Florida Bar v. Ragano,</u> 403 So.2d 401 (Fla. 1981)	4

SYMBOLS AND REFERENCE

The Florida Bar, respondent in lower proceedings, will be referred to as "The Florida Bar".

Michael J. Jahn, Petitioner in lower proceedings, will be referred to as "Petitioner". The Florida Bar notes that Mr. Jahn was mistakenly referenced as "Respondent" in the Initial Brief. **All** such references refer to Mr. Jahn, Petitioner.

The following symbols will be used in this Brief:

T- Transcript of Reinstatement hearing held on February 20, 1989.

RR- Report of Referee dated May 4, 1989.

SUMMARY OF ARGUMENT

Petitioner cites many cases in his Answer Brief where attorneys have been treated more leniently than urged in this case by the Bar. He uses these cases to support his argument that reinstatement is appropriate in his case despite his admitted transgressions. The Bar contends that these cases, as with many discipline cases, are readily distinguishable and have limited value as a guide here.

The facts remain that an applicant for reinstatement to The Florida Bar bears the burden of proving that he has unimpeachable moral character, personal integrity and general fitness for a position of trust and confidence as well as professional competence and ability. The Florida Bar In Re Inglis, 471 So.2d 38, 39 (Fla. 1985). Petitioner's actions in lying about his criminal record in his resumes, several job interviews, a job application, and a polygraph examination fall seriously short of these requirements and his Petition should be denied.

ARGUMENT

The Florida Bar will not reiterate the argument of the Initial Brief detailing the specific actions of misrepresentation undertaken by Petitioner in an attempt to obtain employment in the trust department of a major bank. Petitioner's misrepresentations in this regard are not in question but are in evidence as stipulated facts. Thus, Petitioner's many references to the lack of adverse Bar witnesses are inappropriate because these witnesses were unnecessary due to petitioner's stipulation to the misrepresentations.

The Florida Bar contests Petitioner's reference to The Florida Bar v. Siegel and Canter, 511 So.2d 995 (Fla. 1987) and the accompanying line of caselaw citing examples of lawyer discipline for misrepresentation. These cases have no relevance to this reinstatement proceeding since they do not involve reinstatement but rather the discipline of practicing attorneys, many of whom had no prior discipline record. It is well settled that attorneys seeking reinstatement have a stringent set of standards, widely recognized as requiring the proof that they have behaved in an exemplary manner during their period of suspension. In Re Dawson, 131 So.2d 472 (Fla. 1961). Petitioner asserts that the delay in his reinstatement process caused by this appeal is sufficient discipline and that his misrepresentations are less serious because the Bar has not sought separate discipline for them. These contentions are

without merit. Although Petitioner was suspended for felonious conduct involving the possession of cocaine and the injection of cocaine in to a minor, his capacity for truthfulness was not in question until the period of suspension when he engaged in the misrepresentations to the bank. Thus, rather than proving his personal integrity while suspended, petitioner's actions made his character even more questionable than previously.

Petitioner's efforts to explain his misrepresentations by describing his personal desires to obtain the employment do not begin to justify his lies. Various personal motives are behind each and every case of attorney ethical violations.

Petitioner's reference to The Florida Bar Re Whitlock, 511 So.2d 524 (Fla. 1987), as precedent for allowing reinstatement in the case at hand is unjustified. In Whitlock, the Court found petitioner to be in compliance with each and every requirement except for his failure to satisfy outstanding debts, noting "evidence of unimpeachable character was overwhelming and completely un rebutted." At 525. Mr. Whitlock's only failure was his inability to pay the debts, which the Court made a condition of his reinstatement.

Similarly, The Florida Bar In re Inglis, 471 So.2d 38 (Fla. 1985), is inappropriately relied upon by Petitioner because there was no issue as to his personal credibility. The Court specifically noted that Mr. Inglis, as a broker for some property

he owned jointly with other individuals, had no legal, ethical or moral duty to disclose his plans for reselling the property at a profit. At 41. The shooting incident also involved no criminal intent or moral turpitude. At 41. Similarly, although an attorney was reinstated despite checking account irregularities in The Florida Bar v. Ragano, 403 So.2d 401 (Fla. 1981), this Court noted that while this was a serious matter, it occurred early in his suspension period, he made restitution for amounts owed, ceased the practices and rehabilitated himself. This is far less serious than the case at hand, where Petitioner was only prevented from carrying out his employment obtained through deception when the bank happened to learn of his criminal background through other means.

The situation at hand involves the very crux of a lawyer's responsibility, his personal moral integrity and capacity for truthfulness.

The referee failed to pinpoint any criteria for his judgment that Petitioner's misrepresentations should not prevent his reinstatement except for his conclusion, incapable of definition, that the conduct was not the "real" Michael Jahn, RR-5.

While it is not asserted that Petitioner was required by this Court to pay restitution to the three women who sued him for his alleged conduct in forcibly injecting them with cocaine, his admitted reasoning for seeking bankruptcy was to avoid these

lawsuits. (T-95). The Bar is not seeking to continue to argue that Petitioner should be disciplined for these alleged actions but is merely pointing out the facts to the Court. It was not necessary for these three women or their lawyers to speak out against Petitioner's reinstatement since the facts of these actions were previously addressed by this Court in his suspension order. The facts regarding his bankruptcy to avoid their subsequent lawsuits are not in dispute. This situation is unusual since these women are the victims of the alleged criminal acts which caused the Petitioner's suspension and therefore deserves to be noted.

Contrary to Petitioner's assertions, The Florida Bar did in fact appeal the entire Report of Referee in this case, including his recommendations regarding reinstatement without the requirement of the Bar exam. It is The Florida Bar's position that Petitioner has failed to prove the requirement of a satisfactory moral character and his Petition must be denied.

Nevertheless, The Florida Bar must be on the record as opposing any reinstatement which fails to require passage of the Bar exam in this type of situation where Petitioner has been suspended for four years with admitted questionable legal ability prior to that time due to his cocaine addiction. (T-83). Further, there were no witnesses able to state that they had worked directly with him so as to be able to evaluate his legal competence. Substantially more legal involvement is required

than Petitioner has demonstrated in order to negate the importance of passage of the Bar exam.

CONCLUSION

Petitioner has failed to demonstrate the rehabilitation necessary to be allowed to be reinstated as a member of The Florida Bar. His misrepresentation of himself as a member of The Florida Bar in good standing without a criminal felony record in order to gain more lucrative employment casts a grave light upon his character and completely fails to show the unimpeachable character required for reinstatement. His bankruptcy, designed to avoid restitution through the lawsuits by the young females for his alleged conduct in forcibly injecting them with cocaine, is clearly reflective of the lack of integrity required in these proceedings.

Accordingly, The Florida Bar requests that the Petition for Reinstatement be denied and The Florida Bar's costs in responding to his Petition, currently totalling \$1,205.89, be assessed against the Petitioner.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the the foregoing Reply Brief of The Florida Bar has been furnished by regular U.S. mail to the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by regular U.S. mail to John A. Weiss, Counsel for Petitioner, at Post Office Box 1167, Tallahassee, Florida 32301; and a copy has been furnished by regular U.S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 4th day of August, 1989.



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