

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR RE:

MICHAEL JOSEPH JAHN
PETITION FOR REINSTATEMENT

Case No. 72,182

REPORT OF REFEREE

Pursuant to the undersigned being duly appointed as Referee to conduct reinstatement proceedings herein according to the Rules of Discipline, final hearing was held on February 20, 1989. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to the Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as Counsel for the parties:

John A. Weiss, Esquire, Counsel for the Petitioner

Jan K. Wichrowski, Esquire, Bar Counsel

I. BACKGROUND

This is a difficult, troublesome case involving a recovering drug-impaired attorney whose addiction to cocaine resulted in two felony convictions, incarceration, and suspension from the practice of law in June 1985. Michael J. Jahn, 37, now petitions for reinstatement, to which the Bar objects. The petition for reinstatement was filed on March 31, 1988, however, a Referee was not appointed until October 21, 1988 because of a delay in paying the costs assessed in the original disciplinary proceeding.

Petitioner was automatically suspended from the practice of law, effective June 12, 1985, upon his felony convictions of possession of cocaine and delivery of cocaine to a minor. For each of these crimes petitioner was sentenced to two 4 1/2 year concurrent prison terms, the maximum allowable under the sentencing guidelines. I presided over the original disciplinary proceedings and recommended that petitioner be suspended for three years, nunc pro tunc to June 12, 1985. The Bar sought disbarment. The suspension recommendation was narrowly adopted by the Court on June 25, 1987 in The Florida Bar v. Jahn, 509 So. 2d 285 (Fla.1987). The suspension was predicated on the two felony drug convictions.

11. THE REINSTATEMENT HEARING

In addition to the petitioner, three witnesses personally testified in support of the petition: a prison official; an attorney; and, petitioner's father (who is also an attorney). Deposition testimony of another attorney was considered in addition to the testimony of Doyle Preston Smith, M. D., presented at the original disciplinary proceeding. The testimony of Dr. Smith is important because it relates to: (1) the extent of petitioner's former dependency on cocaine; (2) his treatment and therapy program in Dr. Smith's institution for five months in 1985; (3) petitioner's rehabilitation from his cocaine dependency; and, (4) his prognosis for living a drug-free life in the future.

The Bar presented only one witness, one of its investigators. Without objection, certain petitions signed by 28 members of the Bar were received. The petitioners did not object to the reinstatement, per se, but rather, urged me to "...closely scrutinize the facts in this case...to assure...that Mr. Jahn is no longer capable of participating in the type of behavior which brought on his suspension." This I will try to do.

A. Evidence of Rehabilitation

The evidence clearly establishes that petitioner has lived a drug-free life since the spring of 1984, a period of almost five years. This lengthy period of sobriety is extremely important because the misconduct which lead to the suspension was entirely attributable to chemical dependency, a problem which petitioner acknowledged at both the original disciplinary proceeding and at this reinstatement proceeding. He has maintained frequent, enthusiastic and continuing participation in ~~A24~~ and other similar chemical dependency organizations. He actively participates in religious and community organizations, including a prison ministry and a Little League team.

His attitude toward his own problem and his efforts to help others with similar problems was corroborated from a very unusual source - the testimony of Roger Smith, a seventeen year employee

of the Department of Corrections, who knew petitioner during his incarceration at Lake Correctional Institution. Mr. Smith also has maintained substantial contact with petitioner since his release and Mr. Smith was aware of the NCNB employment incident discussed later in this report. To summarize Mr. Smith's very compelling testimony (Transcript pages 10-21):

1. This is the first time he has ever testified for a former inmate;
2. It is unlikely that petitioner would become a recedivist;
3. Petitioner has a "handle" on his substance abuse problem;
4. Petitioner has learned from his mistakes and has turned his life around; and
5. Mr. Smith would not hesitate to retain petitioner as an attorney should he be reinstated.

Rehabilitation can be demonstrated in a variety of other ways including an analysis of a person's attitude toward life and toward those external and internal factors and pressures which triggered the original misconduct. Petitioner freely acknowledges his prior chemical dependency and recognizes the catastrophic effect of his misconduct on himself, his family and friends, and, of course, on his profession. He blames only himself for the effects of his wrongdoing.

Petitioner's offenses and subsequent suspension were in no way related to a lack of competency or knowledge of the law. Petitioner has continued a system of updating himself on the law and has maintained an active interest in the legal profession. While incarcerated, he was a law clerk in the prison library. Since his release from confinement, he has maintained a regimen of keeping abreast with legal developments by reading The Florida Bar News and The Bar Journal and by attending continuing legal education courses. He is currently registered for the Bridge-The-Gap-Seminar, a three-day refresher course for new admittees and those returning to practice.

Finally, at the conclusion of the final hearing, without any warning, I ordered petitioner to submit to a urinalysis within 48 hours, which he did, with negative results.

I am satisfied that petitioner has rehabilitated himself and has conquered his chemical dependency problem to the extent that any recovering addict can conquer it, however, having made this determination, I now must consider the troublesome questions raised by the undisputed evidence that petitioner obtained employment in 1987 with NCNB National Bank by initially falsifying his employment application by failing to disclose his arrests and convictions. (See Bar Exhibit #1, with exhibits attached)

The issue is whether the NCNB incident described below represents a basic character defect which would forever militate against petitioner's reinstatement efforts, or whether it is an aberration in an otherwise exemplary journey toward rehabilitation and recovery from the devastating effects of cocaine dependency.

(1) The NCNB Incident

Following his release from custody, petitioner was unsuccessful in obtaining substantive employment. Despite his law degree and his otherwise excellent employment history, when he disclosed the nature of his criminal convictions he was repeatedly denied the positions for which he applied. At one interview he was asked if he could begin employment the following Monday, only to have the interview abruptly terminated when he disclosed his convictions.

Petitioner became extremely frustrated and was almost obsessed with a desire to leave the Orlando area, with its unpleasant memories, and to return to his native Miami. In October 1987, it appeared that an employment opportunity with NCNB National Bank could be the vehicle to: (1) leave Orlando; (2) return home to Miami; (3) obtain meaningful employment in a law-related field; and, (4) lend support to his anticipated petition for reinstatement. Because of his prior experiences, petitioner made the conscious decision not to initially reveal his felony convictions on the NCNB employment application, nor did he reveal them during subsequent pre-employment interviews. To maintain the fabrication it was also

necessary for petitioner to falsify his resume to show employment with Florida Ranchlands, Inc., during which time he was, in fact, incarcerated. Petitioner also denied the convictions under oath in a pre-employment polygraph examination. Interestingly, the polygraph examiner detected no deception in petitioner's responses even though specific questions focused on prior criminal conduct.

NCNB offered employment to petitioner as a Trust Administrator, in Miami, effective October 15, 1987, with an annual salary of \$38,000. He was to become a Trust Officer on January 1, 1988. Four days later, his employment was terminated when NCNB verified an anonymous "tip" that petitioner was a convicted felon.

Petitioner testified that once he had established himself as a good NCNB employee he intended to disclose his prior record and "hope" that his employment history would then overcome the methods he utilized to obtain employment. The deception would have come to light in any event once petitioner filed for reinstatement listing his NCNB employment.

Petitioner's lack of candor with NCNB cannot, of course, be condoned but I feel that the negative effects of this one transgression are now mitigated by the passage of time (1 1/2 years) and by his efforts to live a life free from a dependency on chemicals (4 1/2 years). Thus, the critical question is: "Which one is the real Michael Jahn -- the one who kicked cocaine or the one who lied to NCNB?" In view of the totality of the evidence, I opt for the one who kicked cocaine.

111. CONCLUSION AND RECOMMENDATIONS REGARDING REINSTATEMENT

Based on the evidence before me, and applying the criteria established in In re: Petition of Dawson, 131 So. 2d 472,474 (Fla. 1961), I recommend that petitioner be reinstated immediately, without the requirement of taking and passing The Florida Bar Examination, with the following conditions:

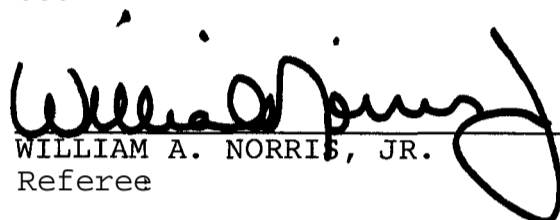
1. that petitioner be placed on probation for three years under the supervision of Florida Lawyer's Assistance, Inc., during which time he shall submit to not less than

four random poly-substance drug screens per year as
and when determined by that organization;

2. that he participate in any programs, rehabilitative
or otherwise, as determined by Florida Lawyer's Assistance,
Inc.

I recommend that The Bar's costs incurred in these proceedings,
less the investigator's time and expenses (see The Florida Bar v. Allen
537 So. 2d 105 (Fla. 1989) be assessed against petitioner.

Dated this 4th day of May, 1989.


WILLIAM A. NORRIS, JR.
Referee

Copies without exhibits to:

Jan Wichrowski, Esquire, Bar Counsel
John A. Weiss, Esquire, Counsel for Respondent
John T. Berry, Esquire