

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

CASE NO. 72,643
TFB NO. 88-10,001 (20B)

v.

BRUCE D. FRANKE,
Respondent.

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TAMPA, FLORIDA
C
[Signature]

COMPLAINANT'S REPLY BRIEF

THOMAS E. DEBERG
Assistant Staff Counsel
The Florida Bar, Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607
(813) 875-9821
Attorney No. 521515

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CASES

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The Florida Bar v. Holtsinger,
505 So.2d 1329 (Fla. 1987)

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SYMBOLS AND REFERENCES

In this Brief, the appellant, The Florida Bar, will be referred to as "The Florida Bar" or "The Bar". The appellee, Bruce D. Franke, will be referred to as "the respondent". "C" will denote the complaint. "RC" will denote the response to the complaint. "TR" will denote the transcript of the final hearing on October 31, 1988. "RA" will denote the Request for Admissions. "RR" will denote the Amended Report of Referee.

STATEMENT OF THE FACTS AND OF THE CASE

Respondent indicates in his Answer Brief that there was no evidence that the Respondent had a significant problem with the use of cocaine nor that his drug problems had been extensive. However during the proceedings before the Honorable Robert M. Deehl, Referee, Respondent testified that he had a significant drug problem that developed during the year prior to his entering the Charter Glades treatment program and that it accelerated or reached its peak in the five (5) months prior. (TR 17, line 12-21).

ARGUMENT

Respondent indicates in his Answer Brief that he has been punished sufficiently for his transgressions, embarrassed by having to withdraw from practice, close his accounts, and turn away his clients. It is suggested that he has suffered great economic hardship and has been punished for his transgressions. Respondent misperceives the basis for requiring proof of rehabilitation prior to resuming the practice of law. The hardships undergone by the Respondent during his period of suspension are indeed unfortunate. Nevertheless, the public has a right to be assured that an individual who has had a significant drug problem is rehabilitated prior to undertaking the responsibilities of representing clients. Proof of rehabilitation is necessary for the protection of the public and is not being sought in order to punish or burden the Respondent.

Respondent suggests that the facts in the instant case are similar to those in The Florida Bar vs. Holtsinger, 305 So.2nd 1329 (Fla. 1987). In Holtsinger, it was stipulated that while Mr. Holtsinger was an Assistant Staff Attorney, he on more than one occasion had received amounts of marijuana for his personal use. It was further indicated that following his resignation from the State Attorney's Office, he had possessed a personal amount of cocaine. There was no indication in the stipulated

facts that Mr. Holtsinger at any point had a significant drug dependency problem. Further, in the instant case the Respondent shoplifted a knife and shortly thereafter entered a treatment program at the insistence of friends. Additionally, he failed to complete a treatment program which he had entered, and used an illegal substance even after having been in an inpatient treatment situation.

While a ninety (90) day suspension and monitoring for possible future use of drugs may have been appropriate in Holtsinger, in the instant case because of the extent of the past drug involvement and the potential for harm to the public, rehabilitation should be shown prior to the Respondent being readmitted to the practice of law.

CONCLUSION

It is The Florida Bar's position that the penalty recommended by the Referee is not sufficient for the Respondent's misconduct in this case. For the protection of the public, in light of the severity of the Respondent's past drug problems, proof of rehabilitation should be required prior to his being readmitted to the practice of law. The Referee has recommended proof of rehabilitation, and in light of that recommendation, the least allowable penalty under the Rules is a ninety-one (91) day suspension.



THOMAS E. DEBERG

Assistant Staff Counsel
The Florida Bar, Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607
(813) 875-9821
Attorney No. 521515