

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
IN RE: PETITION FOR
RESIGNATION BY:

CASE NO.

TFB CASE NO. NRS84003

GLEN R. PETERSON,
PETITIONER.

65,148

FILED

SID J. WHITE

JUN 8 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

RESPONSE IN OPPOSITION
TO PETITION FOR LEAVE TO RESIGN

THE FLORIDA BAR, through its undersigned counsel, pursuant to Rule 11.08(3), article XI, of the Integration Rule of The Florida Bar, hereby submits its response in opposition to Petitioner's Petition For Leave To Resign from The Florida Bar, and would state as follows:

1. Petitioner has filed a petition for leave to resign, which petition stems from seven disciplinary cases presently pending against him.

2. The Board of Governors of The Florida Bar considered the petition at their May 1984 meeting and voted to oppose the petition and to seek disbarment as the appropriate discipline.

3. Probable cause has been found by the Fourteenth Judicial Circuit Grievance Committee in seven cases involving misconduct by the Petitioner. The specific facts underlying these seven cases has been set forth, in brief, by Petitioner in his petition.

4. The issue before this Court, in light of The Florida Bar In Re Richard J. Alfieri, 428 So.2d 662 (Fla. 1983), is whether the misconduct by the Petitioner is serious enough to warrant disbarment proceedings, as opposed to this Court allowing Petitioner to resign forthwith with leave to reapply.

5. In Alfieri, the Court reasoned that where an attorney whose petition for leave to resign is granted may apply for re-admission after three years and, similarly, a disbarred attorney may apply for readmission after three years, disbarment would be no greater in effect than the punishment which an attorney would agree to accept by filing his petition. 428 So.2d at 663.

6. The Bar would respectfully submit that there are significant differences between resignation with leave to reapply, and disbarment. Further, some cases are of such a serious nature that they fall outside of the requirements of Integration Rule 11.08(3) and leave disbarment as the only appropriate discipline.

7. The distinction between resignation with leave to reapply and disbarment lies primarily in the stigma attached to disbarment and the resulting public perception of disbarment as opposed to resignation. The perception of the public is that resignation is no discipline at all but a wholly administrative act, whereby an attorney accused of misconduct may exit gracefully from membership of The Florida Bar and thereby avoid prosecution and responsibility for his misconduct.

Disbarment, on the other hand, is viewed by the general public in a much different light. Disbarment is perceived to be a stringent disciplinary measure whereby the attorney is held strictly accountable for his misconduct.

8. Another difference between resignation and disbarment is in the method by which one can return to membership in good standing in The Florida Bar. A resigned attorney can return through the reinstatement process possibly avoiding the necessity of successful completion of the Bar Examination. A disbarred attorney must seek readmission through the Board of Bar Examiners, which requires successful completion of the Bar Exam. Further, in at least three recent cases, this Court has ordered disbarment for periods in excess of the minimal three-year requirement set forth in Fla. Bar Integr. Rule, Article XI, Rule 11.10(5). See The Florida Bar v. Burns, Case Number 63,854, opinion issued May 31, 1984; The Florida Bar v. Tato, 435 So.2d 807 (Fla. 1983) ordering disbarment for at least ten years; and The Florida Bar v. Cooper, 429 So.2d 1 (Fla. 1983) ordering disbarment for a minimal period of twenty years.

9. Additionally, resignation does not provide the same deterrent effect on practicing attorneys as disbarment. Because resignation does not result in the public censure of the offending attorney, no stigma attaches. Accordingly, there is no real deterrent effect on other members of the Bar when one of their colleagues resigns from the Bar and successfully avoids answering to the public and the profession for his misconduct.

10. In addition to the significant differences between resignation and disbarment, there are some cases that are of such a serious nature that they fall outside of the conditions for resignation set out in Fla. Bar Integr. Rule 11.08(3). That rule provides that the Petitioner must show in a proper and competent manner that the public interest will not be adversely affected by the granting of the petition, and that

such will not adversely affect the purity of the courts nor hinder the administration of justice nor the confidence of the public in the legal profession.

11. A review of the facts underlying the disciplinary matters involved in the instant case reveals a serious departure from the standards of the profession which resulted in the violation of several of the disciplinary rules of the Code of Professional Responsibility. There are seven disciplinary cases presently pending against the Petitioner. All of them involve serious charges. If the Petitioner is permitted to resign from The Florida Bar with leave to reapply in the face of serious charges against him, the confidence of the public in the legal profession may be adversely affected. In light of Petitioner's past disciplinary record as set forth in his petition, and in light of the cumulative nature of Petitioner's misconduct, it is apparent that the granting of the petition would hinder the confidence of the public in the legal profession and adversely affect the public interest. In The Florida Bar v. Moore, 194 So.2d 264 (Fla. 1966), this Court recognized that disbarment is an extreme measure of discipline to be resorted to only in cases where the lawyer has demonstrated an attitude or course of conduct wholly inconsistent with approved professional standards. The Petitioner's misconduct took place over several years. Additionally, petitioner's misconduct involved serious breaches of professional responsibility such as misrepresentation, failure to appear on behalf of a client and misuse of funds entrusted to the attorney for a specific purpose. Petitioner has, therefore, demonstrated a course of conduct wholly inconsistent with approved professional standards.

12. Furthermore, in The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1983), this Court reasoned that cumulative misconduct of a similar nature should warrant an even more severe discipline

than might dissimilar conduct. Much of Petitioner's misconduct was similar in nature as several cases involve misrepresentation or dishonesty on the part of the Petitioner.

13. It is clear that as a result of the cumulative nature of Petitioner's misconduct and his course of conduct over several years, the appropriate discipline would be disbarment. Accordingly, the granting of the petition would adversely affect the public interest and would therefore not be appropriate under Fla. Bar Integr. Rule 11.08(3).

14. Based upon the foregoing, it is The Florida Bar's position that the granting of the Petitioner's Petition for Resignation will adversely affect the public interest and purity of the Courts as well as hinder the administration of justice and the confidence of the public in the legal profession.

WHEREFORE, The Florida Bar respectfully requests that this Honorable Court deny Petitioner's Petition For Resignation and direct the Bar to proceed forthwith with disciplinary proceedings.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing response was forwarded to Mr. Glen R. Peterson, Petitioner, 750 North 200 West, Provo, Utah 84601, by regular U.S. Mail on this 8th day of June 1984.


Susan V. Bloemendaal