IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,149

MICHAEL C. NORVELL,

Petitioner,

vs.

THE FLORIDA BAR,

Respondent

_____/

REPLY TO RESPONSE IN OPPOSITION TO
PETITION FOR LEAVE TO RESIGN

COMES NOW, the Petitioner, MICHAEL C. NORVELL, and files this reply to the opposition of the Florida Bar and says:

1. That Petitioner admits the allegations of fact contained in paragraphs 1 & 2 of the Response of the Florida Bar.

2. That Petitioner is without personal knowledge of the action taken at the May 1984 meeting of the Board of Governors of the Florida Bar as set forth in paragraph 3 of the Bar's Response. Petitioner is in agreement that permanent resignation is not acceptable in this case and will set forth reasons for that conclusion.

3. That the Florida Bar has made grave errors in its Response pertaining to factual matters on which disciplinary action is sought. If these facts are not properly and accurately presented and verified, it will prevent this Court from reaching an informed decision in this case.

4. That contrary to the allegations contained in paragraph 4 of the Bar's Response, the indictment, a copy of which is contained in the Bar's own composite Exhibit "A", does not mention a single word about a conspiracy for "profit", nor does it state that the conspiracy was "infiltrated" by any undercover agents.

In fact, the DEA agents set up the entire transaction using some United States Government marijuana that had been in a warehouse and there was never any marijuana in existence other than that supplied by the government. The DEA initially approached two of Petitioner's clients with the deal, attempting a "reverse-buy". It was the DEA that set up the entire transaction. Prior to the DEA proposing the transaction to Petitioner's clients, there existed no conspiracy to "infiltrate" as alleged by the Bar.

These allegations by the Bar are merely conclusions of the drafter of the Response and exhibit his lack of knowledge of the case and the grave danger of the prejudicial nature of the Bar's Response. The loss of Petitioner's license by suspension and also resignation is burden enough without the additional burden of answering charges by the Bar that are without basis in fact.

Petitioner is currently incarcerated in Federal prison and feels that the Bar has a responsibility to competently investigate this case. The Petitioner is not able to assist the Bar in this investigation, but will point out the more glaring errors in the Bar's allegations.

5. That also in paragraph 4 of the Bar's Response, the Bar alleges that Petitioner met with the DEA agents on April 9, 1982 and discussed the marijuana transaction with the agents. The facts are that the Petitioner and his clients met with the DEA agents in Petitioner's office on April 8, 1982 and discussed the legal problems surrounding the aircraft's ownership and the transferance of good title to the aircraft. Trading the aircraft to the agents was also discussed. As the tapes in the trial proved and the Pre-Sentence Investigation confirmed, Petitioner was not present in his office when the agents discussed marijuana with his clients on April 8, 1982.

At the April 8, 1982 meeting, Petitioner asked the agents the name of their attorney so that he could confer with him regarding the legal problems attendant to the aircraft title. Petitioner was at that time designated in aviation law and familiar with the problems of ownership of the aircraft. The agents said they had an attorney, but would not disclose his identity. Petitioner then gave the agents copies of the court litigation papers pertaining to the aircraft and also copies of pertinent Federal Statutes on ownership of aircraft. The agents were to take that paperwork to their "attorney". Petitioner advised the agents to have their attorney call him with any questions.

At the April 8, 1982 meeting, Petitioner also agreed to prepare and agreement that would protect the parties in the transference of the aircraft. This agreement was done on April 9, 1982. The agreement

did not refer to marijuana. The Petitioner never agreed to prepare any documents to trade the aircraft for marijuana.

The final portion of paragraph 4 of the Bar's Response admits that Petitioner was not present for marijuana discussion on April 15, 1982, nor was he present at the scene where the marijuana was stored. Petitioner never saw any marijuana until the trial. Petitioner's clients were to trade their aircraft to the agents for 200 pounds of marijuana.

6. That in paragraph 5 of the Bar's Response, it is alleged that Petitioner agreed to handle preparation of the legal documents for the trade of the aircraft for marijuana. Petitioner agreed to handle the preparation of the documents for the transfer of the aircraft on April 8, 1982, but not for marijuana.

Petitioner became aware of the marijuana on April 9, 1982, after the agreement had been done. At that meeting with the agents, Petitioner was informed by the agents that they (the agents) were trading Petitioner's clients 200 pounds of marijuana for their aircraft. The Petitioner urged the agents not to trade the marijuana, but to trade for anything else. There was no overt agreemtn to use Petitioner's legal talents for an illegal transaction as alleged by the Bar.

The Bar cites The Florida Bar v. Wilson, a drug trafficking case as support for their position. The Bar fails to differentiate the cases. This failure stems from a lack of knowledge of the facts in the instant case. To illustrate, the Bar, in the next paragraph, number 6, states that Petitioner "agreed to use his legal talents in furtherance of a smuggling conspiracy" and later "to further an illegal smuggling conspiracy".

The indictment, found in Bar's composite exhibit "A" is plain on its face what the charge was and the fact that the marijuana itself belonged to the United States Government would preclude in itself such unfounded allegations as those advanced by the Bar.

Apparently the Bar has not read the indictment as the statement that smuggling is more reprehensible than personal involvement in drug trafficking would aid Petitioner's case as there was no smuggling involved. This is just one more example of the failure of the Bar to investigate properly prior to objecting to Petitioner's request. These allegations are misleading to the Court and false.

7. That the Bar's concern about passage of the Bar Examination is unfounded. This Court, pursuant to 11.08 (3) can order the Petitioner to take and pass all portions of the Bar Examination as a condition of readmittance.

8. That the Bar in paragraph 8 of its Response speaks of the deterrent effect on others. Petitioner feels that his period of incarceration speaks loud and clear on the subject of deterrence. Petitioner is still incarcerated for his actions. Petitioner did not misuse any monies entrusted to him, nor did he harm anyone with his actions. There was no violence or fraud involved in this case. It is clear from the facts of the case that the only marijuana involved was that used by the agents themselves. Petitioner never knew if any marijuana existed.

The resignation of Petitioner for four years would be more than sufficient for deterrence purposes in this particular case. It is clear

from reading the Bar's Response that they have no idea of the facts of this case and their objections are based on an imagined "smuggling" case.

The Petitioner further objects to the Bar's characterization of his conduct as being motivated purely out of "greed" as the evidence of the case points to just the opposite. The Petitioner was not to profit from the transaction. That was admitted by the witnesses at trial. This fact is also clear in the Pre-Sentence Investigation prepared in the case by Probation Officer Hattie Sanders of Orlando, Florida.

In order to assist the Bar in discovering the facts, Petitioner has requested that the judge release to the Bar for its confidential use in this matter and in this Petition, a copy of the Pre-Sentence Investigation. Petitioner feels that the Bar having a copy of this professionally done investigation would clear up much of the confusion in the Bar's mind and help resolve the objections raised.

9. That the Petitioner disagrees with the Bar's position that the acceptance of the Resignation would undermine public confidence in the legal profession and its disciplinary program. The Public interest will not be affected by the granting of this petition, nor will the purity of the courts be affected by it. The resignation, coming during the incarceration of the Petitioner, will not hinder the administration of justice and will not erode the confidence of the public in the legal profession. The conduct of Petitioner, when viewed in the context of the actual facts, does not involve moral turpitude.

10. That the Bar wants a stigma to attach to Petitioner for his actions. The stigma is already there. Prison is a stigma that you feel

every day of your life. The Bar, with the resignation, will have their pound of flesh for what they feel Petitioner's actions were. If the Bar is so concerned, why did they not even know what happened in the case?

A four year resignation is more than sufficient punishment in this case when combined with the incarceration of Petitioner. The final decision is up to this Court.

WHEREFORE, Petitioner respectfully urges this Court to accept his Petition For Resignation for a period of four years and reject the contentions of the Bar as they are based on erroneous information as appears from the Record itself.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was mailed to the Executive Director of the Florida Bar this 19th day of June, 1984.

MICHAEL C. NORVELL