IN THE SUPREME COURT OF FLORIDA

MICHAEL C. NORVELL,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.
_____/

FILED
SID J. WHITE
JUN 8 1984
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

CASE NO. 65,149
(CRS84003)

RESPONSE IN OPPOSITION TO
PETITION FOR LEAVE TO RESIGN

COMES NOW, the respondent, The Florida Bar, and files this response in opposition to the petition for leave to resign pursuant to Fla. Bar Integr. Rule, art. XI, Rule 11.08, and says:

1. The petitioner has filed a petition for leave to resign for a minimum of four years which was received by the court on April 9, 1984. The petition stems from petitioner's felony conviction after a jury trial in federal court of knowingly and willfully conspiring with others to possess unlawfully with intent to distribute marijuana. He was found guilty on January 23, 1983, and thereafter sentenced to five years confinement in a federal penal institution.

2. Petitioner was suspended pursuant to Fla. Bar Integr. Rule, art. XI, Rule 11.07 on March 23, 1983 as the result of the conviction. The petitioner is currently confined in Lexington, Kentucky.

3. The Board of Governors of The Florida Bar considered the petition at their May, 1984 meeting. The Board voted to oppose the petition and seek disbarment as the appropriate discipline given petitioner's conviction. Permanent resignation is apparently not acceptable to petitioner.

4. As alleged in the indictment, petitioner became involved in a criminal conspiracy to possess and distribute marijuana for profit which conspiracy was infiltrated by undercover drug

enforcement agents. After conspirators discussed trading an aircraft for marijuana with the agents, petitioner was approached on April 9, 1982 and discussed the marijuana transaction with the agents. Petitioner agreed to prepare the documents and to handle the legal matters incident to the trade of the marijuana for the aircraft. On April 15, 1982, the undercover agents met with other members of the conspiracy not including the respondent and discussed obtaining marijuana. On the same day, D.E.A. agents met with petitioner and other members of the conspiracy to discuss and complete arrangements for the transaction. Finally, other members, not including the petitioner, met with the agents to discuss and receive the marijuana. Copies of the indictment, jury verdict and judgment in United States of America v. Loren George Uridel, Michael C. Norvell and five other named individuals, Case 82-45 Orl-Cr-EK, United States District Court, Middle District of Florida, Orlando Division, are attached in the appendix.

5. Petitioner engaged in two overt acts in futherance of the conspiracy. He agreed to handle preparation of the legal documents attendant to the trade of the aircraft for marijuana. Six days later, he again met with other conspirators and the agents to discuss and complete arrangements for the illegal transaction. When a lawyer knowingly agrees to use his legal talents in furtherance of an illegal conspiracy, the Board of Governors believes that mere resignation in lieu of discipline is plainly an insufficient discipline. The Board takes this position notwithstanding the fact petitioner is petitioning for leave to resign for a minimum of four years whereas the rule only requires a three year resignation period. Overt agreement to use one's legal talents is worse than mere personal involvement by an attorney in drug trafficking. In The Florida Bar v. Wilson, 425 So.2d 2 (Fla. 1983), this Court disbarred an attorney who was convicted for solicitation to traffic in cocaine and attempted trafficking involving a client who was then incarcerated. The referee had recommended a three year

suspension but the Court determined it was insufficient. Writing for the majority, Justice Ehrlich addressed the four reasons for discipline stated in The Florida Bar v. Murrell, 74 So.2d 221 (Fla. 1954). He noted that disbarment of an attorney after he has been adjudged guilty of two felonies can hardly be interpretted as unfair or too harsh since a lawyer by reason of his professional commitment is least expected to violate the criminal laws citing The Florida Bar v. Levenson, 211 So.2d 173 (Fla. 1968). The Court found no substantial mitigating evidence and stated at Pages Three and Four,

> Second, mere suspension would not be just to the public. In the case of a conviction of two felonies, the ultimate penalty, disbarment, should be imposed to insure that an attorney convicted of engaging in illegal conduct involving moral turpitude, who has violated his oath and flagrantly breached the confidence reposed in him as an officer of the court, can no longer enjoy the privilege of being a member of the Bar. A suspension, with continued membership in the bar, albeit without the privilege of practicing, is susceptible of being viewed by the public as a slap on the wrist when the gravity of the offense calls out for a more severe discipline.
>
> Third, suspension and disbarment may very well have a similar effect toward the correction of a convicted attorney's antisocial behavior, but disbarment insures that respondent could only be admitted again upon full compliance with the rules and regulations governing admission to the Bar. Fla. Bar Integr. Rule, art. XI, Rule 11.10(5). In the case of a felony conviction, this additional requirement is significant, as it would better encourage reformation and rehabilitation.
>
> Finally, if the discipline does not measure up to the gravity of the offense, the whole disciplinary process becomes a sham to the attorneys who are regulated by it. Disbarment as a result of the conviction of felonies is a message loud and

> clear to the members of The Florida Bar that this court will not countenance or permit the conduct for which respondent was convicted. In our view, a suspension does not have the deterrent effect of disbarment.
>
> Respondent was engaged in illegal drug trafficking, a troublesome and serious crime. We have not hesitated in the past to disbar an attorney for similar acts even though a referee recommended less severe discipline. See The Florida Bar v. Beasley, 351 So.2d 959 (Fla. 1977).

6. The Board of Governors believes this rationale applies to the petition in this case. This petitioner was convicted of one felony whereas Wilson was of two. While Wilson's illegal conduct involved using an incarcerated client to arrange delivery of cocaine, this petitioner agreed to use his legal talents in furtherance of a smuggling conspiracy to trade an aircraft for marijuana. Wilson had only been a member of The Florida Bar for approximately six months prior to his arrest whereas this petitioner was admitted on November 19, 1976, close to six years prior to the acts leading to his felony conviction. Both individuals engaged in conduct involving moral turpitude. The Bar submits that the knowing use by an officer of the court of his legal training to further an illegal smuggling conspiracy is more reprehensible than personal involvement in drug trafficking especially considering the privilege of practicing law.

7. For the reasons stated in Wilson, supra, the petition for leave to resign for a minimum four year period should not be granted. If the resignation is permitted, petitioner can seek readmission via the reinstatement process pursuant to Fla. Bar Integr. Rule, art. XI, Rule 11.11 and possibly avoid the requirement of passage of all portions of the Bar examination. Even though the requisite period would go beyond three years which could require satisfactory passage of the Bar examination if deemed a suspension, no such language appears in Fla. Bar Integr. Rule, art. XI, Rule 11.08(6). Moreover, the

language in Fla. Bar Integr. Rule, art. XI, Rule 11.10(4) for suspensions continuing over three years is permissive and not mandatory.

8. Accepting this petition for leave to resign for four years would be a clearly inadequate discipline given petitioner's conviction and could be misunderstood by members of the public and the Bar. It would not be perceived nor would it be the discipline which will be urged for petitioner's misdeeds. It will not have the deterrent effect on other members of the Bar likely to engage in similar misconduct. This petition for leave to resign should be rejected considering petitioner's misconduct and felony conviction and the Bar ordered to proceed with disciplinary proceedings with a view toward disbarment absent a permanent resignation as in The Florida Bar v. Mattingly, 329 So.2d 9 (Fla. 1976). He had engaged in misuse of thousands of dollars of trust funds which resulted in his being adjudicated guilty after a jury conviction of one case and also on a previous nolo contendere plea. This Court's position in this matter should be the same.

9. The Florida Bar recognizes that this Court has recently noted disbarment was no greater in effect than a resignation in lieu of discipline in The Florida Bar v. Alfieri, 428 So.2d 662 (Fla. 1983). He had plead guilty to two federal felonies and was permitted to resign without the resignation being made permanent. The case arose out of activities apparently in his law practice. Although this petition would be for a minimum period of four years and longer than a standard disbarment by one year, the Bar submits there are significant differences between a resignation and disbarment. One is the stigma that attaches to disbarment and the disbarred attorney by the public, members of the Bench and the Bar. Another is the method by which one can return to The Florida Bar. A resigned attorney returns through the reinstatement process

possibly avoiding the necessity of prior passage of the Bar examination. A disbarred attorney must seek readmission through the Board of Bar Examiners which requires prior passage of the Bar examination. Further, in several recent cases, this Court has ordered disbarment for periods in excess of the minimal three year requirement set forth in Fla. Bar Integr. Rule, art. XI, Rule 11.10(5). See The Florida Bar v. Burns, Case No. 63,854, opinion issued May 31, 1984, ordering disbarment for 20 years; The Florida Bar v. Hunt, 441 So.2d 618 (Fla. 1983) ordering disbarment for four years; The Florida Bar v. Nagel, 440 So.2d 1287 (Fla. 1983) ordering disbarment for at least ten years; 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 20 years.

10. The Florida Bar is mindful this petitioner's conduct in agreeing to utilize his legal talents in furtherance of an illegal conspiracy is not substantially dissimilar to the conduct engaged in by Mr. Pettie in The Florida Bar v. Pettie, 424 So.2d 734 (Fla. 1982). That attorney accomplished five legal acts but for the knowledge that they were in furtherance of a large-scale conspiracy to smuggle marijuana into the United States. He turned himself into the Florida Department of Law Enforcement before he was a target and fully cooperated in their ongoing investigation. His assistance was instrumental in allowing the authorities to arrest approximately 30 individuals most of whom have been convicted. He was never prosecuted for his role in the conspiracy. Notwithstanding the substantial assistance rendered to the authorities, the referee recommended that he be disbarred which recommendation the Supreme Court rejected and ordered him suspended for a period of one year with proof of rehabilitation required. The Court noted that he had voluntarily initiated contact with the authorities, cooperated with them, suffered great economic loss, closed his law practice,

admitted his wrongdoing and risked his life to further the investigation. Given the unique facts of that particular case, the Court held a one year suspension was appropriate. Chief Justice Alderman dissented and would have imposed a three years suspension in lieu of disbarment giving respondent's voluntary contact with the authorities and continuing cooperation. Of course, there was no similar voluntary initiation of contact by this petitioner or ongoing cooperation with authorities. Instead, he was arrested as a direct result of his willingness to utilize his legal talents to further the illegal conspiracy.

11. In sum, The Florida Bar believes petitioner's misconduct which resulted in his federal conviction was completely inimical to the high standards of the legal profession and illegal conduct involving moral turpitude. As an officer of the court, his conduct is totally unexcusable. His only motivation could have been greed. This Court has often stated that discipline must serve several purposes. A) It must be fair to society, protect it from unethical conduct and not deny the public the services of a qualified lawyer as a result of an unduly harsh penalty. B) It must be fair to the respondent being sufficient to punish a breach of ethics and at the same time encouraging reformation and rehabilitation. C) It must be severe enough to deter others who might be tempted to become involved in similar situations. The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983) and the cases cited. In addition to the reasons set forth in Wilson, supra, the Bar submits the public indeed needs protection from attorneys who participate in illegal conspiracies. Finally, deterrence of others is utmost in these cases. Other members of the profession should be forewarned and the public must be continually reminded that the Supreme Court of Florida will not countenance members of the legal profession who engage in illegal conduct particularly where they are willing to utilize their legal training and talents to further illegal ends. This petitioner's petition to resign in lieu of discipline is clearly contrary to the public interest and the proper perception of Bar discipline. See e.g.

The Florida Bar v. Larkin, Case 62,976, January 12, 1984. A copy is attached in the appendix. Its acceptance will adversely reflect on the purity of the courts and hinder the administration of justice. Finally, the confidence of the Bar, Bench and public in the discipline program of the legal profession will be undermined if it is accepted.

12. The appropriate remedy is that which this Court fashioned in Mattingly, supra. This Court should order the Bar to proceed forthwith with disciplinary proceedings to determine whether disbarment for an appropriate period is the appropriate discipline absent a permanent resignation.

WHEREFORE, The Florida Bar respectfully opposes the petition for resignation for four years and urges this Court to reject same in its entirety directing that The Florida Bar proceed forthwith with disciplinary proceedings to determine whether disbarment for whatever period is the only appropriate discipline absent the resignation being made permanent by petitioner.

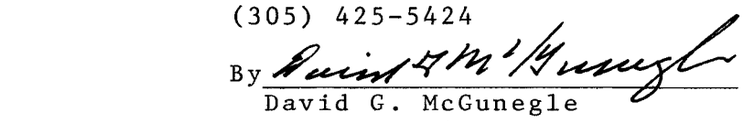
Respectfully submitted,

John F. Harkness, Jr.
Executive Director
The Florida Bar
Tallahassee, Florida 32301
(904) 222-5286

John T. Berry
Staff Counsel
The Florida Bar
Tallahasee, Florida 32301
(904) 222-5286

and

David G. McGunegle
Bar Counsel
The Florida Bar
880 North Orange Avenue
Suite 102
Orlando, Florida 32801
(305) 425-5424

By 
David G. McGunegle
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing response has been furnished, by Certified Mail No. P 407 715 267, return receipt requested, to Michael C. Norvell, Petitioner, Numen Unit, FCI, Post Office Box 2000, Lexington, Kentucky 40511 and a copy of the foregoing response, by mail, to Staff Counsel, The Florida Bar, Tallahassee, Florida 32301 on this the 7th day of June, 1984.

David G. McGunegle
Bar Counsel