IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JEFFREY L. MELDON,

Respondent.
_____/

Supreme Court Case No. 65,443

TFB File No. NFC84002

REPLY TO THE FLORIDA BAR'S RESPONSE TO PETITION TO DENY, MODIFY OR TERMINATE SUSPENSION

Jeffrey L. Meldon, respondent, for his reply to the Florida Bar's response to his petition to modify, deny or terminate suspension says as follows:

"Information for Felony Clients" Form

The "Information for Felony Clients" Form is without legitimate relevance for present purposes. Attached hereto is an affidavit by Jeffrey L. Meldon in which he explains the circumstances under which the form was signed. He has reviewed the contents of the affidavit with his probation officer. As stated in Mr. Meldon's affidavit, he explicitly asserted at the time he was asked to sign the form that he had been convicted only of a misdemeanor and should not be expected to sign the form. He ultimately signed it as an accommodation to his probation officer because the probation officer was uncertain whether Meldon's offense was a felony or misdemeanor and wanted the form in order to have an administratively complete file. Mr. Meldon did not, and does not, concede that he was convicted of a felony. He signed the form with an expectation that it would be inoperative unless and until there was an independent determination that he had been convicted of a felony. He would not have signed the form if he had supposed that the form itself could be used in making the felony versus misdemeanor determination. The form accordingly is not entitled to any

cognizance for present purposes.

Acknowledgment of Exposure to Five Year Sentence:

Meldon did acknowledge both in his plea agreement and in tendering his plea that he "might" be exposing himself to five years imprisonment. But his acknowledgment was premised on the possibility that a court might conclude that his offense is a felony and that felony punishment might then ensue. He made his acknowledgment with an express reservation of his contention that his offense is a misdemeanor only.

Significance of Sentence Imposed:

The Bar states "The United States District Court clearly construed Respondent's offense as a felony under the United States Code and imposed an actual term of imprisonment suitable only for a felony offense,". (Florida Bar Response Page 2). This is not true. As pointed out in Meldon's Memorandum in support of his petition, the sentence imposed upon him was within that which could have been imposed for a misdemeanor and does not negate a misdemeanor. (See Meldon's Memorandum Page 6).

Significance of Misdemeanor Provisions of 18 USC 371:

The Bar says that the portion of 18 USC 371 limiting the punishment for conspiracies to commit misdemeanors to the maximum punishment for the misdemeanors "goes only to punishment and not the nature of the offense" and "does not specifically modify the nature of conspiracy as being a felony." (Florida Bar Response Page 2).

This contention completely misperceives the import of the misdemeanor provisions of §371. Nothing in §371 says that a conspiracy is "a felony in its own right" or "that the nature of conspiracy" is felonious. A §371 conspiracy is a felony by operation of 18 USC 1 if it is punishable by imprisonment for a term exceeding one year. Otherwise it is a misdemeanor. An offense which carries only misdemeanor punishment is therefore necessarily a misdemeanor.

In other words, under the Federal Criminal Code, the punishment imposable for an offense determines the grade or nature of the offense and is not a separate matter. The Bar's contention that §371's punishment provisions go only to punishment asserts a conceptual impossibility under federal law.

The Bar concedes in its response that §371 "modifies the maximum punishment for a conspiracy to commit an offense, in the event only misdemeanors are contemplated,". (Florida Bar Response Page 2). This is tantamount to a concession that a conspiracy to commit misdemeanors is a misdemeanor. As pointed out in Meldon's Memorandum, it would be anomalous and unfair for the law to be otherwise. (Meldon's Memorandum Page 4).

Existence of Good Cause for Modification or Termination of Suspension:

The Florida Bar does not dispute or refute any of the matters cited by Meldon as good cause for modification or termination of any suspension which might be imposed if he is determined to have been convicted of a felony.

Rather the Bar apparently takes the position that a felony conviction in and of itself should require a suspension, regardless of the nature of the felony or of the conduct constituting it, and regardless also of the character and background of the felon.

The Bar's position is so encompassing that it swallows itself. The Bar cites only the fact of a felony conviction as grounds for denial of Meldon's request for modification or termination. Felony conviction is prerequisite, however, to suspension in the first place and is of no consequence in deciding whether to modify or terminate any conviction triggered suspension. The plain purpose of the modification and termination provisions of Rule 11.07 of the Integration Rule was to provide for modification or termination of suspensions despite a felony conviction. On the second phase question of modification or termination the issue is whether

the circumstances of the felony or the record of the felon call for modification or termination. The Bar has not spoken to this, presumably because the grounds for modification or termination urged by Meldon are so well founded, and perhaps even indisputable.

Need to Practice for Maximum Community Service:

Meldon has been trained to be a lawyer and can perform services performable only by a lawyer. The need he is meeting in the Public Defender's Office can be met only by a lawyer. While it is true that he could provide community service in a nonlawyer capacity, perhaps as a paralegal, interviewer, or investigator, his highest and best public service will be as a lawyer. Less than service as a lawyer will be a waste of a public resource.

It is noteworthy that although he is not required to do so and is not being compensated for his public defender work, Meldon has been desisting almost entirely from his private practice while performing his public service and is performing more hours of public service per week than is required of him. He does not intend to resume his private practice during his period of public service, which is expected to extend until June, 1985. His practice during that time will be devoted to public service, and it will be the public's loss if he is prohibited from practicing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed to John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida 32301 and to John L. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301 on this 26th day of July, 1984.

Samuel D. Jacobson
Attorney