

IN THE SUPREME COURT OF FLORIDA

PAUL H. HESSLER,
Petitioner,

Supreme Court #66,884
TFB No. HRE85001

vs.

THE FLORIDA BAR,
Respondent.

FILED

JUN 21 1983

CLERK, SUPREME COURT

By _____
Chief Clerk

RESPONDENT'S BRIEF

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STATEMENT OF THE CASE

Following an audit by The Florida Bar, this Court granted a Petition for Temporary Suspension of the petitioner on February 21, 1980 (Case No. 58,575). The suspension prohibits the petitioner from practicing law in Florida and has remained in effect through this time. On April 17, 1985, after his release from prison and the restoration of his civil rights, the petitioner instituted this Petition for Reinstatement. On October 15, 1985, the Referee conducted a hearing on the matter and on November 22, 1985 rendered his opinion favoring the reinstatement of the petitioner. The Board of Governors of The Florida Bar, during its January 1986 meeting, disagreed with the Referee's findings by voting that reinstatement be conditioned upon full restitution to the victims.

STATEMENT OF THE FACTS

In late 1979, the petitioner, an attorney and a member of The Florida Bar, converted in excess of eighty thousand dollars from the estate of one of his clients. The conversion involved several transactions and took place over a short period of time. An audit by The Florida Bar revealed the shortage and resulted in an indefinite temporary suspension of the petitioner from all practice of law in the State of Florida on February 21, 1980.

On February 26, 1980, the Hillsborough County State Attorney's Office filed a lengthy information against the petitioner charging him with five counts of Grand Theft in the Second Degree. The petitioner pled guilty to one count of Grand Theft on September 30, 1980 and was sentenced to five years imprisonment. He was paroled on August 3, 1982, and had his civil rights restored on December 16, 1983.

During the period of his suspension, the petitioner has been unable to make full restitution to the injured clients.

ISSUE PRESENTED

Whether the Referee erred by recommending that an attorney who was convicted of Grand Theft, Second Degree after he stole funds from a client's estate should be reinstated to The Florida Bar without first making full restitution of the money taken.

ARGUMENT

The Referee erred by recommending that an attorney who was convicted of Grand Theft, Second Degree after he stole funds from a client's estate should be reinstated to The Florida Bar without first making full restitution of the money taken.

In The Florida Bar v. Leopold, 399 So.2d 978 (Fla. 1981), this Court stated that conversion of client funds is one of the most serious offenses a lawyer can commit. The Court also cited with approval The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1979) wherein it had declared that it would not hesitate to disbar an attorney for converting client funds, even if no one was injured.

In the instant case there were no independent disciplinary proceedings taken by The Florida Bar beyond the temporary suspension. The suspension was left in effect indefinitely, only to be removed at such time as this Court feels the petitioner is worthy of returning to the practice of law. The Florida Bar Integration Rule, article XI, 11.10(6).

According to The Florida Bar Integration Rule, article XI, 11.11(9), the Court can condition reinstatement upon complete restitution of the stolen funds. And in cases such as this, the Court usually requires full restitution before an attorney can be reinstated. In The Florida Bar v. Blalock, 325 So.2d 401 (Fla. 1976). This Court disbarred an attorney for converting a few

thousand dollars due his client from a court judgment. This Court held that Mr. Blalock should be indefinitely suspended until "after (1) he has made full restitution of client's funds, (2) he had paid all costs of this proceeding, and (3) he has demonstrated to the satisfaction of this Court that he has been rehabilitated...." Blalock, supra, at 404.

In reaching its decision on the question of restitution, this Court cited several other cases where full restitution prior to reinstatement was required. The Florida Bar v. Pahules, 233 So.2d 130 (Fla. 1970); The Florida Bar v. Hudson, 199 So.2d 474 (Fla. 1967); and In re Dawson, 131 So.2d 472 (Fla. 1961). Further, in In re Dawson, supra, at 474, this Court reiterated its position that restitution is an important indication that an attorney has in fact been rehabilitated.

A possible conflict with the Blalock decision should be noted, however. In 1942, in Petition of Stalnaker, 9 So.2d 100 (Fla. 1942), this Court held that "restitution" meant "payment to the extent of one's ability to pay, honestly, and fairly made." In Blalock, though, this Court held that reinstatement would only be predicated on "full restitution".

Finally, the purposes of imposing discipline were summarized by this Court in Blalock, supra, at 404. There, this Court said

that their duty is to "discharge our impersonal responsibilities to protect the public and generate confidence in the integrity of the legal profession."

In the case at bar, the petitioner has thus far failed to make restitution to his injured clients. Though he has not been able to practice law since 1980, he has been gainfully employed since his release from prison. And though a claim was filed with the Clients' Security Fund, it was denied, thus leaving the injured clients with nothing. Without question, this case calls for strong measures to be taken by this Court to insure that justice is served and that the public confidence is restored.


CONCLUSION

Conversion of client funds is unquestionably an extremely serious crime against the injured clients, The Florida Bar, and the public confidence in all lawyers. It should be dealt with swiftly and with enough severity to demonstrate justice to all parties involved.

In the case at bar, the petitioner stole a huge sum of money representing almost the entire estate of his clients. It was not until an audit by The Florida Bar revealed the shortage that the petitioner tried to atone for his actions. Since that time, he has still failed to make any restitution to the injured clients.

While this Court could hold that restitution need not precede reinstatement, the better decision under the facts here is to require the petitioner to make full restitution before his suspension is lifted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Respondent's Brief has been furnished to DOMINIC J. BACCARELLA, Attorney for Petitioner, Paul H. Hessler, 500 North Westshore Boulevard, Suite 50, Tampa, Florida 33609; Honorable Circuit Court Judge, THOMAS M. GALLEN, Referee, Room 327, Manatee County Courthouse, Post Office Box 1000, Bradenton, Florida 33506; and a copy to JOHN T. BERRY, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301-8226; on this 24th day of January, 1986.

David R. Ristoff
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