IN THE SUPREME COURT OF FLORIDA

CASE NO. 67,622
CONFIDENTIAL

THE FLORIDA BAR,

Complainant,

vs.

GEORGE L. ONETT,

Respondent.
_____/

ON PETITION FOR REVIEW OF REFEREE'S REPORT

# MAIN BRIEF OF RESPONDENT

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TABLE OF CONTENTS

# TABLE OF CITATIONS

## STATEMENT OF THE CASE

This cause comes to this Court on the Petition of George L. Onett for review of Referee's Report in a disciplinary proceeding. The Referee recommended disbarment. The record before this Court is not indexed and is not paginated. Accordingly, appropriate portions of the record have been included in an Appendix to this Brief and references in this Brief to the Appendix will be made by use of the symbol "A" with appropriate page number. References to the Transcript of the Hearing before the Referee will be made by use of the symbol "T" with appropriate page number. The parties will be referred to by status here or below or by proper name as is appropriate.

## STATEMENT OF FACTS

Your Petitioner, George L. Onett, was admitted to The Florida Bar on November 4, 1966. He has no history of prior discipline.

The Florida Bar, Complainant below and Respondent here, filed a Complaint against him (A8 et. seq.) asserting that Petitioner: a. sought to extort $15,000.00 from a local Jacksonville restauranteur in his efforts to obtain a liquor license for his restaurant; and b. sought to defraud the citizens of the State of Florida, The Department of Business Regulation and the Division of Alchoholic Beverages and Tobacco with regard to their review and approval of the restauranteur's Liquor License Application by concealing relevant information; and c. purjured himself before a Federal Grand Jury; and d. as a result of the foregoing was convicted of six felony counts by The United States District Court for the Middle District of Florida.

The matter came on for hearing before the Referee.

The Bar produced no live witnesses in its main case. It introduced three exhibits and rested. Exhibit number 1 was a copy of the indictment against the Respondent in The United States District Court for the Middle District of Florida which was objected to on the ground that the indictment is simply a charging document and has no probative value and can acquire no probative value (T4). Exhibit number 2 was a certified copy of the Judgment and Commitment Order in The United States

District Court in and for the Middle District of Florida evidencing Mr.Onett's conviction on several criminal charges.

The third exhibit is a copy of the initial Appeal in the criminal case, United States of America vs. George L. Onett, 725 Fed. 2nd 1561, wherein the Eleventh Circuit confirmed the conviction.

Mr. Onett called as his witness Charles L. Nuzum (T8 et. seq.), who testified that immediately prior to his retirement he was Director of the Division of Alchoholic Beverages and Tobacco of the State of Florida. Prior to that time, he was Special Agent for the Federal Bureau of Investigation for 22 years and at the time that he retired from the Bureau he was Deputy Chief of the White Collar Crimes Section of the General Investigative Division at FBI headquarters in Washington. He, in fact, was the Bureau Supervisor in charge of the Watergate investigation throughout the world. In the Beverage Department the only person he reported to was Richard Burroughs, the head of the Department of Business Regulation. It was Mr. Nuzum's duty to pass on applications for liquor licenses where there was a problem (T11). Mr. Nuzum's approval or disapproval was final administrative action, subject only to appeal to the courts. Mr. Nuzum, when he took his post with the State of Florida, took an oath of office and was an officer of the State of Florida (T11 et. seq.).

Mr. Nuzum, in 1979 or 1980, was made aware of a liquor license application for a place called Abbott's Restaurant in Jacksonville, Florida. It was brought to his attention by his

Chief of Licensing (T12). The problem was that an application had been made for Abbott's Restaurant by Mrs. Peter Abbott, and the problem which they envisioned was that Mr. Peter Abbott should be on the application too (T13).

Mr. Nuzum then had a visit with Michael Collins, an Agent with the Federal Bureau of Investigation, and they discussed Abbott's Restaurant. Collins told Nuzum that the Bureau was conducting a sting operation at Abbott's Restaurant, that the investigation then dealt with alleged corruption in public life and among public officials in the Jacksonville area. That there was electronic surveillance and other technical surveillance at the Abbott's Restaurant, and the information had been obtained that there would be an effort made to obtain a liquor license, a special restaurant license for Abbott's Restaurant, through influence of some nature with The Department of Business Regulation (T14 et. seq.). Mr. Nuzum became aware or was aware that Mr. Abbott was a convicted felon and that Abbott was not actually his correct name but a name given to him under the witness protection program.

Mr. Nuzum was then visited by Mr. Onett. Mr. Nuzum told Mr. Onett that Mr. Abbott would have to be on the application (T18). While there was some discussion as to whether Abbott should be on the application, by the end of the meeting Onett told Nuzum that Abbott would be disclosed (T20).

The application was then amended at Mr. Onett's instance to include Peter Abbott as an accommodation endorser and Mr. Nuzum

with his memory refreshed, testified that after the amendment the man was obviously an applicant within every sense of the word. Mr. Watson [Mr. Nuzum's legal counsel-ed.], reviewed the amended application for him and told him that he believed, no matter what the legal fine words said, Abbott was an applicant and an interested party (T27).

Abbott was then fingerprinted and his fingerprint card was processed through the FBI. When Abbott's fingerprint card was returned to the Bureau, there was no record because Abbott was under the witness protection program (T28). Nuzum had seen a copy of Abbott's rap sheet in his conversation with the FBI before Onett ever approached him (T28&29). Nuzum never told Onett that he knew that Abbott was a convicted felon (T36). Nuzum was in a position from the time he spoke to Collins and from the time Onett put Abbott on the application to deny the liquor license on the basis that Abbott was a convicted felon which he knew (T36).

Nuzum did not do this because he was accommodating the FBI.

Onett had asked, in writing, that subpoenaes be issued by the Referee, one to the Honorable John Rawls and the other to the Honorable John Moore, the Federal District Judge who presided over Respondent's Non-Jury Trial (A18 et. seq.). The Court refused to issue this process (T48) and renewed his ruling at hearing.

Respondent proffered that if subpoenaed and required to testify and to produce the records of the Judicial Qualifications Commission( of which he is counsel), Judge Rawl's testimony and

those records would reflect that Judge Moore, while the Chairman of The Florida Judicial Qualifications Commission, had pre-trial contact with the FBI investigation which produced Mr.Onett's indictment. This contact would have been sufficient under the present Federal Recusal Statute to make it appear to a reasonable man that Judge Moore could not have been impartial in Onett's trial, even if the case were tried with a jury and was not tried non-jury.

Furthermore, your Petitioner here proferred that Judge Moore in a chambers conference held in his chambers on July 12, 1983 (T21 et. seq.), indicated that he had had some peripheral contact with the investigation and he also indicated that he had totally forgotten about it, and at the time of trial did not have time to think about the past because of the pressure of his cases. Respondent further proffered that Judge Moore, if he had the opportunity to review Judge Rawl's evidence and the documents of the JQC, would concede candidly that he did not meet the standard of the recusal statute (T37 et. seq.).

Mr. Onett then took the stand and testified that he had not offered anyone anything improper in connection with the Abbott license application (T49 et. seq.) and further, there was never any evidence adduced at trial before Judge Moore that he had made such an offer (T50). He received a $7,500 fee for his participation in the license application

and that fee was reported on his Federal Income Tax Return and income tax was paid on that fee and it was not divided with anyone for any reason in any way, shape or form (T50,51). Mr. Onett did not know that Peter Abbott was a convicted felon at the time the amended application, which Onett had procured after talking with Nuzum, was filed. This is the amendment which placed Peter Abbott on the application as an applicant in Mr. Nuzum's judgment.

Mr. Onett testified that Mr. Nuzum and Kenneth Ball both alluded to the fact that it was possible that Abbott may have been convicted of a vehicular homicide or manslaughter in Massachusetts revolving around an automobile accident. This was after the application amendment had been filed (T51,52).

At the time the amended application was filed, Mr. Onett had never met Peter Abbott or Mrs. Abott, his client (T54). In fact, he never met Peter Abbott until three months after the amended application was filed, never had any financial interest in Abbott's Restaurant or the liquor license, except as a lawyer, and never met Jean Abbott, Peter's wife. The Referee has filed his report which is essentially a bare bones report which tracks the Complaint virtually word for word and recommends disbarment.

## SUMMARY OF ARGUMENT

I. IT IS A DENIAL OF FUNDAMENTAL DUE PROCESS TO REFUSE PETITIONER'S APPLICATION FOR SUBPOENAES AND TO DENY HIM THE RIGHT TO COMPULSORY PROCESS AND THE PRESENTATION OF WITNESSES.

II. WHERE THE RECORD CLEARLY DISCLOSES, BASED UPON PROFFERS, THAT THE WITNESSES WHO PETITIONER WOULD HAVE SUBPOENAED WOULD HAVE PRESENTED EVIDENCE REQUIRING THE VITIATION OF HIS CONVICTION WHICH WAS THE ONLY REAL EVIDENCE AGAINST HIM, IT WAS HARMFUL ERROR TO DENY HIM THE RIGHT TO PRESENT THOSE WITNESSES.

III. IT WAS HARMFUL ERROR TO INTRODUCE IN EVIDENCE AGAINST THE PETITIONER OVER HIS OBJECTION AN INDICTMENT LARGED AGAINST HIM, WHEN THAT INDICTMENT CAN ONLY BE A CHARGING DOCUMENT AND CANNOT BE PROOF OF THE MATTERS ALLEGED THEREIN.

IV. ON THE RECORD IT AFFIRMATIVELY APPEARS THAT THE PETITIONER WAS GUILTY OF NO WRONGDOING, BUT THAT HE ACTED IN CONFORMITY WITH HIS DUTIES AS A LAWYER AND, IN FACT, WAS THE VICTIM OF A HOAX COMMITTED BY AN OFFICIAL OF THE STATE IN CONJUNCTION WITH THE FBI.

## ARGUMENT

I. IT WAS A DENIAL OF FUNDAMENTAL DUE PROCESS TO REFUSE YOUR PETITIONER'S APPLICATION FOR SUBPOENAES AND TO DENY HIM THE RIGHT TO COMPULSORY PROCESS AND THE PRESENTATION OF WITNESSES.

We take it that it is beyond question that a disciplinary proceeding by The Florida Bar is a penal (although not criminal) proceeding and that due process requirements must be observed. See Florida Bar vs. Quick, 279 So.2d 4 (Fla. 1973).

In Drogais vs. Martine's Incorporated, 118 So.2d 95 (1 DCA Fla. 1960), the First District Court of Appeal in a well reasoned opinion considered compulsory process in the setting of a quasi judicial proceeding. The Court held that the compulsory attendance of witnesses is a vital part of the American concept of due process and a fair hearing. It reversed where a hearing examiner had denied the right of compulsory process and the right to present witnesses. We would respectfully suggest that the First District was eminently correct and that the right to compulsory process and to present witnesses is a fundamental right, the denial of which necessitates reversal in and of itself.

II. BASED UPON THE PROFFER AND THE STATE OF THE RECORD IT WAS HARMFUL ERROR FOR THE COURT TO REFUSE YOUR PETITIONER THE RIGHT TO COMPULSORY PROCESS.

It is unquestionably fundamental constitutional error as discussed in point I to deny your Petitioner the right to compulsory process. However, it is also harmful error in the State of this record. As the record and the proffers made by

Petitioner clearly show, the Petitioner was convicted in the United States District Court in a judge trial by Judge John Moore, who had been Chairman of the Florida Judicial Qualifications Commission. Judge Moore has admitted in the chambers conference, the transcript of which is made a part of this record and appears at Appendix 21 et. seq., that he had pre-trial contact with the investigation which produced the indictment against your Petitioner. Judge Moore himself admits in that chambers conference that at the time of trial he was not thinking about that pre-trial contact. The question remaining is the extent of pre-trial contact. The test for recusal under the Federal Statute is not whether the trial court was, in fact, prejudiced against the Defendant, but whether it would appear to a reasonable man that he was prejudiced. In short, the test is objective and not subjective. Under these circumstances, the question is how much pre-trial contact did Judge Moore have. As the proffers demonstrate, a review of the Florida JQC's records and Judge Rawl's testimony, if he were permitted to testify, would demonstrate that Judge Moore's pre-trial contact was such as to require his recusal and further, as the proffers show, Judge Moore if confronted with these materials and evidence would have disqualified himself and, of course, would disqualify himself and vacate the conviction once it was made to appear of record. Under these circumstances, if this happens, this Respondent cannot be guilty of anything on this record, since the only thing introduced in evidence against him was the record of his conviction. If the conviction goes,

his wrongdoing goes. We suggest to this Court that it is certainly harmful error under these circumstances.

III. IT WAS ERROR TO INTRODUCE THE INDICTMENT OVER OBJECTION.

Under the model charges in criminal cases approved by this Court (1.01 Preliminary Instruction), the trial court is supposed to and does instruct every jury in every criminal case, at the beginning of his charge, that the indictment is not evidence and is not to be considered by you as any proof of guilt. The most fundamental principal is that the indictment is simply a charge, it is not proof of anything. It does not become proof of anything. If someone is convicted, his judgment of conviction may be proof of something but the indictment is not. That is particulary true in this case where the indictment, as introduced, is a speaking indictment some 50 pages long, replete with facts which are highly prejudicial to this Defendant and which are not necessary to be proved, even in order to sustain his conviction on any of the counts, and which also includes counts against other defendants in which he was not charged, and, in fact, includes one count on which he was acquitted. You are now being asked to give evidentiary weight of some kind to this mishmash. We suggest that fundamental due process and The Supreme Court of Florida's attitude towards the indictment, as expressed in its jury instructions, require that this document not be admitted and given evidentiary weight against your Petitioner, particulary when it is being used to try and bolster a judgment of conviction riddled with constitutional infirmity.

IV. THE RECORD AFFIRMATIVELY SHOWS THAT THE PETITIONER WAS GUILTY OF NO WRONG DOING.

The testimony of Mr. Nuzum, who was the State's officer in charge of liquor licenses, and through whom all liquor license applications had to pass, clearly illustrates that Mr. Nuzum, a former FBI agent and the head of the Watergate investigation for the FBI, had been placed in a position of authority in the Florida State Beverage Department and had taken his oath of office to the State of Florida.

What happened in this case is plain as a pikestaff. An application was made for a liquor license for Abbott's Restaurant. Mr. Nuzum knew that Abbott was a convicted felon. He knew that he was required under his duty to the State of Florida to deny that application. He was in a position to do so from the time that he had his conversations with Mr. Collins, the FBI agent who visited him about the case.

Instead of carrying out his duty to the people of the State of Florida, and denying the Abbott's application, he went along with Mr. Collins' request and allowed Abbott to continue to operate. When Mr. Onett came to see him about the liquor license application, he lied to Mr. Onett about the true state of facts in order to further the FBI's investigation. Mr. Onett not only did nothing to hinder Mr. Nuzum in his performance of his duties with the Beverage Department, but to the contrary, placed Mr. Abbott in a position (at Mr. Nuzum's request) where Mr. Abbott was an applicant and Mr. Nuzum had the unqualified right to treat him as an applicant and to deny the application.

Mr. Nuzum continued to string Mr. Onett along for the purpose of furthering the FBI's investigation.

What happened in this case was the direct result not of Mr. Onett's actions but of Mr. Nuzum's actions in placing his duty to his old company above his oath to the people of the State of Florida. That is the unrebutted record in this case. Those are the facts as testified to by Mr. Nuzum and by Mr. Onett.

## CONCLUSION

Based upon the foregoing, Petitioner respectfully suggests that the recommendations of the Referee ought not be and cannot be adopted by this Court. The denial of witnesses and compulsory process to him is fundamental error. In the state of the proffers it is harmful error. Furthermore, the attempt to make his indictment evidence against him is contrary to fundamental principle announced by The Supreme Court of Florida as the rule governing in this state. Finally, the record clearly shows that Mr. Onett was guilty of no breach of ethics but that to the contrary he was the victim of a breach by an official of the State of Florida of his duty to the State. We respectfully suggest that the Referee's report ought be quashed and that no discipline can be administerd to Mr. Onett based upon this record and that at the least a new proceeding must be had where Mr. Onett has an opportunity to present his witnesses and his defenses.

Respectfully submitted,

By: _____

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Brief and the Appendix thereto was mailed this 9th day of October, 1986, to JAMES N. WATSON, JR., Bar Counsel of The Florida Bar, The Florida Bar, Tallahassee, Florida 32301.

SHALLE STEPHEN FINE