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
DISCIPLINARY MATTER

REPLY BRIEF OF PETITIONER

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In reply to the position of the the Florida Bar as taken in its Answer Brief, Mr. Onett reaffirms his positions as taken in his Main Brief.

Additionally, it appears that the Brief filed by the Florida Bar contains both the seed and the flower of the destruction of the Bar's position.

The Bar freely concedes the rule established by the Supreme Court of Florida in State ex rel Florida Bar vs. Evans, 94 So.[2] 730 (Fla. 1957) and carried forward in succeeding cases where this Court says in pertinent part:

> "As so analyzed, the first Branch case and the Snyder case are entirely harmonious. The sum of both of them is that, in a disbarment proceeding based on conviction of a crime, the proof of conviction and an adjudication of guilt are sufficient to establish a prima facie case for disciplinary action. Due process, however, requires that the accused lawyer shall be given full opportunity to explain the circumstances and otherwise offer testimony in excuse or mitigation of the penalty."

In the case at bar, the Respondent was clearly prevented from obtaining the subpoenaes which would have established that he was convicted of felony in a judge trial by a judge who was and should have been disqualified from hearing the case because of matters discovered after the conviction. This is not an application to retry the criminal case or to try it de novo. This is an attack on the very foundation of judicial credibility. To permit the Bar to impose punishment based upon a criminal conviction and not permit the Respondent to point out in mitigation, if nothing else, that

the conviction was obtained at the hands of a court disqualified to hear the case is certainly to deny an opportunity to mitigate if nothing else. This alone would require reversal. Contrary to the Bar's position in its Brief, we do not here assert that error committed by the trial court requires reversal. We assert that the trial court was not competent to try the case and that he must remove himself and would remove himself if the facts were presented to him. We are saying that we did not get the cold neutrality of an impartial judge which is required by due process both in State and Federal Courts. We are stating that the evidence supporting that has been kept from this record and kept from us. We are stating that if we were permitted to go forward with our evidence, the record would be in the posture reflected by our proffer.

We further suggest that if the record were in that posture, the Supreme Court of Florida would not be faced with the conviction because the conviction would have been overturned by the trial court who rendered it. In its third point, the Bar states that the admission of the indictment was permissible as a recorded public document and merely for informational purposes, since the convictions are conclusive proof of the underlying facts in such disciplinary matters. We point out that the indictment, which is a speaking indictment contains charges made against others

besides Onett and contains charges of which Onett was acquitted. We respectfully suggest that if the Bar wishes to convey information to the trier of fact, it cannot do so by giving evidentiary weight to the charging document.

Finally, the record clearly establishes, by the testimony of the key witness in the case, that the Respondent was not guilty of the wrongdoing with which he was charged with respect to the defrauding of the State or practicing extortion on anyone.

In conclusion, we suggest that this Referee's report cannot be sustained on the record adduced before the Referee and that if, as is shown by our proffer, Onett had the opportunity to present the witnesses and the testimony, which the right of subpoena would have given him, the record at the end of the case would have supported his contention that his convictions could not have been sustained and would have to be vacated. This is not based on anything adduced at the trial of the case, it is based on the fact that Judge Moore was not qualified to try the case, a very different matter.

In conclusion we respectfully suggest that if Onett has not demonstrated that he should not be disbarred, he has certainly demonstrated that his conviction must be mitigated by the qualification of the judge to try the case as well as by the testimony of Mr. Nuzum and himself at hearing which was

unrebutted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to James N. Watson, Jr., Esq., Branch Staff Counsel, The Florida Bar, Tallahasssee, Florida 32301, this 18 day of November, 1986.

SHALLE STEPHEN FINE