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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar
Re: WILLIAM E. WHITLOCK III
Petition for Reinstatement

Case No. 68,246

FILED
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AUG 4 1986
CLERK, SUPREME COURT
By ______
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PETITIONER'S INITIAL BRIEF

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STATEMENT OF THE CASE

Petitioner appeals the Referee's recommendation that Petitioner be denied reinstatement to The Florida Bar.

On January 30, 1986, Petitioner filed his Petition for Reinstatement to membership in good standing having been originally suspended from the practice of law for three years effective June 28, 1982, for offenses that occurred from May 1977 to July 1978. Subsequently, on March 20, 1986, he received an additional one year's suspension, which was to run concurrent with the previous discipline for misconduct occurring during the same period. Respondent's Petition for Reinstatement also encompassed the second disciplinary action.

On June 27, 1986, the Honorable W. Rogers Turner, issued his Referee Report recommending the Petitioner's Petition for Reinstatement be denied due to financial irresponsibility.

Because this is a case of original jurisdiction, Respondent appeals directly to this court.

STATEMENT OF FACTS

Petitioner was suspended for three years and thereafter until he proved rehabilitation for mishandling trust funds. The Florida Bar v. Whitlock, 426 So.2d 955 (Fla. 1982). His misconduct occurred during the period May 1977 through July, 1978. Although the Referee in the proceedings that led to Petitioner's suspension had recommended disbarment, this court reduced the discipline after noting various mitigating circumstances, including Petitioner's

prompt reimbursal of shortages, the fact that his misconduct caused no economic loss to anyone other than Petitioner and his wholehearted cooperation with the Florida Bar.

Petitioner was subsequently disciplined by this court in The Florida Bar v. Whitlock, 484 So.2d 1244 (Fla. 1986) by a one (1) year suspension to run concurrent with the previous suspension. In the second case, Petitioner and The Florida Bar stipulated that he violated Disciplinary Rule 6-101(A)(2) and (3) in his handling of a real estate transaction for a business associate, Larry Morris. It is important to note that in the 1986 case the Grievance Committee only found probable cause for the above two Disciplinary Rules (failure to adequately prepare for a matter and neglect of a legal matter) and for nothing involving trust funds. Petitioner was disciplined for failing to reveal to the buyer, Donald Kykendall, that Morris had a second mortgage on the property being sold. Apparently, Morris never told Kykendall about the second mortgage and Kykendall ultimately had to pay it off. Morris and Petitioner were the recipients of the funds from the second mortgage. This transaction occurred during the same period as the offenses in the 1982 case.

Ultimately, Petitioner and Morris signed a note in favor of the Kykendalls and, when they defaulted on the note, Petitioner allowed a default judgment to be entered against him.

Petitioner filed his Petition for Reinstatement with this court on January 30, 1986. Final hearing on his Petition was held

before the Honorable W. Rogers Turner on May 22, 1986, in the Orange County Courthouse.

At final hearing, Petitioner presented nine witnesses on his behalf, including his wife, Elsa Whitlock, and he testified himself. The Florida Bar presented one witness, Donald G. Kykendall. Included among Petitioner's witnesses were two practicing lawyers (Raymond Gross and Robert Crittenden), a former client (Joseph Rayl), a physician (Salvadore Barranco), a C.P.A.-Executive (John Wise), and two circuit judges who appeared pursuant to subpoena (Edward Threadgill and William Gary).

Petitioner testified on his behalf at final hearing (TR 94-154). He testified that he was 47 years old, was married and had three children, one a five year old daughter living with him and his current wife, and two others living with his former wife and for whom he pays $400 a month support. He testified that he owes approximately $8,000 for past due support, but that the judge has deferred any payments towards arrearages until April, 1987 (TR-95, 96, 122, 123).

Petitioner testified that after three years service in the U.S. Army, he obtained his Bachelor's Degree and his J.D. from Florida State University. He was admitted to The Florida Bar in April, 1972 and worked for the Florida Attorney General's office for three years before entering private practice. In January, 1977, he became a sole practicioner.

Petitioner currently works as general manager and a

laborer for Lawn Man, Inc., a lawn maintenance service in Winter Haven, Florida, owned jointly by his wife and her brother. Petitioner's salary is approximately $175 per week (TR-97). As reflected on page two of Petitioner's Petition for Reinstatement, his earnings in 1982, 1983 and 1984 totaled approximately $11,650. In addition to Petitioner's salary at Lawn Man, in 1985 he earned approximately $1,300 in real estate sales commissions for an income that year totaling $10,000 (TR-97).

Petitioner testified that he received his real estate sales license in approximately June or July, 1983, and that he went to work for a company in Middleburg, Florida (near Jacksonville) to work in that field during the period April through August, 1983. When the company for whom he went to work dissolved, he returned to the Winter Haven area and worked briefly as a real estate appraiser. Ultimately, he returned full-time to Lawn Man in January, 1984, where he has worked full-time until the present date.

Lawn Man is wholly owned by Petitioner's wife and her brother as equal shareholders. Its assets consist of two or three trucks and a warehouse worth approximately $25,000 to $30,000. Petitioner's wife testified that she has paid off about $4,500 of her share ($20,000) of the sales price on the business.

Petitioner testified extensively as to his current financial situation. He acknowledged that his financial picture was "terrible", that he owned no realty or other assets, and that

he had numerous judgments entered against him (TR-98). Included among the latter were the seven judgments listed in his Petition for Reinstatement, plus an eighth judgment to a Mr. Patrick Tittle for $30,000 that was inadvertently omitted.

During cross, Petitioner also acknowledged that a Mr. McCain has lent him money in an undetermined amount (TR-133). However, Petitioner also stated that Mr. McCain has never made any demand upon Petitioner for repayment.

Petitioner testified that he has been unable to retire any of the indebtedness against him due to his paucity of earnings over the last four years. Petitioner also testified that he has been advised by both counsel and his C.P.A. to file for bankruptcy, but that he has deliberately disregarded that advice because he acknowledges the validity of his debts and because he hopes to pay them off someday (TR-102).

Approximately two months prior to final hearing in this cause, Petitioner learned that there had been two client's security fund (CSF) claims filed against him--one of which was paid in the amount of $1,600. Both claims arose from Petitioner's acts prior to 1979. Petitioner first learned of these claims shortly before final hearing in this cause. The Florida Bar did not contact either Petitioner or his lawyer, Dick Earle, before handling the claims.

The largest judgment against Petitioner ($138,497) was on a note that Petitioner owes to his sister-in-law for a business

venture that failed . Although Petitioner was deposed in aid of execution approximately one year previously, there is no evidence of any attempt by Ms. Witt (or any other creditor) to collect on her judgment (TR-142).

Contrary to the Referee's findings, Petitioner testified that he attempted to enter into an agreement with one of his judgment creditors, the Kykendalls, for payment of the judgment that they have against him (TR-101-102). In July 1985, Petitioner proposed a payment plan consisting of a $3,000 payment immediately, montly payments based on a 15-year amortization schedule, and payoff after five years. Petitioner testified that he had made arrangements to borrow the $3,000 and that he was not asking that any of the indebtedness be discounted. Mr. Kykendall rejected the offer unless it included a $10,000 lump sum payment (TR-161-162).

Shortly before petitioning for reinstatement, Petitioner paid the costs assessed against him in the first disciplinary case in the amount of $2,421.50. He also remitted to The Florida Bar the requisite $500 cost deposit. Petitioner has not paid the interest that the Bar claims has accrued on the costs assessed in the first case because he believes that the language of his order of suspension does not require the payment of interest. He has asked the Referee or this Court to make a ruling on his position.

Petitioner has acknowledged the validity of his debt to The Florida Bar for the amount of the Client's Security Fund claim that it paid despite the fact that the Bar neither contacted

him or his lawyer prior to making the payment.

During the time that Petitioner has been suspended from The Florida Bar, he has been involved in post dissolution of marriage proceedings with his first wife relative arrearages in child support. Because of his financial situation, Petitioner asked the court to reduce his child support. His ex-wife opposed his motion and filed a motion to find him in contempt for failure to pay arrearages. After hearing, the court found Petitioner in contempt for failure to pay three months back support, allowed him to purge with a $400 payment and refused to reduce payments but allowed Petitioner to cease making $200 per month arrearage payments until April, 1987 (TR-122). The court ordered the ex-wife to pay her own attorney's fees. Contrary to the Referee's specific finding to the contrary, Petitioner was not held in contempt for failing to make $8,000 in child support payments and no judgment to that effect was entered.

Petitioner also testified extensively about the conduct that led to his suspension from the practice of law and his attitude towards his discipline. Petitioner testified that in the summer of 1976 he was separated from his wife, his four year old daughter, Paige, and his infant son, Will, Jr. (TR-104). He testified that his divorce affected his entire lifestyle and that he started living a life different than he had ever lived before. Specifically, he began to drink alcohol to excess, stayed out late at night and allowed his social life to become more important that

his practice (TR-105). Concomitant with his divorce, Petitioner opened up his own law office and practiced as a sole practicioner (TR-106). He allowed his office manager to run his practice and to handle all of his financial matters. Petitioner acknowledged that he was responsible for his trust account and that he did not exercise oversight as he should have.

When the Bar began grievance proceedings, Petitioner met with a member of the committee and then retained Dick Earle as his lawyer and paid for a C.P.A. to audit his books. Despite the Referee's contrary finding, Petitioner and Mr. Earle attended at least one hearing. This Court's 1982 order of suspension specifically noted Petitioner's cooperation with the Bar.

On the advice of Mr. Earle, in April 1979, Petitioner closed his office and delivered his files personally to a successor lawyer, Grable Stoutamire (TR-111, 112). In June of that year, he went to Quito, Ecuador, to work for an overseas construction company.

As required by the 1986 order of discipline, Petitioner took and passed the ethics portion of The Florida Bar Exam (TR-125).

Petitioner also testified that he has not been able to make any payments on the judgments outstanding against him because, after payment his child support, there is no money left over (TR-126).

When asked why he was suspended from The Florida Bar,

Petitioner replied:

> For specifically, misuse of clients' funds in my trust account, allowing a nonlawyer to perform duties I was responsible to perform.
>
> Generally, being irresponsible in not abiding by the rules I agreed to do so when I was sworn into the Bar (TR-127).
>
> Petitioner stated that he now knows:
>
> that a trust account and the business operating of your office is equally as important as the knowledge of the law,...(TR-116).

In addition to testifying himself, Petitioner presented nine witnesses on his behalf. The first of these witnesses was the Honorable Edward F. Threadgill, Jr., a circuit judge in Petitioner's hometown. Judge Threadgill, testifying pursuant to subpoena, testified that he was admitted to The Florida Bar in 1962 and has been a circuit judge for more than ten years. He further testified that he has known Petitioner for two and one-half to three years and that they are "close personal friends, social friends." (TR-13.) Judge Threadgill testified that Petitioner's reputation in the community for truth and veracity is good, that he appears to have a stable and happy marriage and that Petitioner has never evinced any bitterness or hostility towards The Florida Bar for bringing disciplinary proceedings against him (TR-14-15). Judge Threadgill further testified that should Petitioner be reinstated, he would have no reluctance to refer clients to Petitioner, to entrust him with escrow funds and that Petitioner would be an

asset to the profession.

Clearwater attorney Raymond Gross next testified on Petitioner's behalf. Mr. Gross has been a member of The Florida Bar since 1972, is past President of the Clearwater Bar Association, and served on a grievance committee for three years. He is currently Chairman of the Sixth Circuit Judicial Nominating Committee. Mr. Gross has known the Petitioner since 1969 (TR-19).

Mr. Gross testified that Petitioner's reputation in the Clearwater area prior to April 1979 was that of "a very qualified lawyer, specializing in real estate matters" and that he was looked upon as being "extremely expert" in condominium and real estate law (TR-19). He also had a good reputation in domestic law and similar matters of that nature.

Mr. Gross testified that Petitioner's professionalism appeared to deteriorate in 1978 and 1979 due to Petitioner's divorce and which led to Petitioner's beginning to drink to excess (TR-21). Mr. Gross also noted that Petitioner "put much too much faith in his support staff" and did not give them proper direction in his practice (TR-21).

When Petitioner closed his practice, which occurred during Mr. Gross' term as President of the Clearwater Bar, Petitioner told Mr. Gross that he was closing his office and was turning his files over to Mr. Stoutamire. Mr. Gross also knew that Mr. Whitlock was being represented by Dick Earle in his disciplinary proceedings. Mr. Gross testified that he could locate Petitioner, or in the

alternative, refer clients to him, if the need arose (TR-22-24).

Mr. Gross testified that he had never heard Petitioner indicate any bitterness or hostility toward The Florida Bar (TR-25), that Mr. Whitlock accepted responsibility for his misconduct and understood the necessity of disciplinary proceedings being brought against him (TR-25-26).

Mr. Gross indicated that he would have no reservations about referring clients to Petitioner, that his confidence in his areas of expertise were well above average and that he would have no problem in entrusting escrow funds to Petitioner should he be reinstated (TR-27-28).

Winter Haven lawyer Robert Crittenden also testified on Petitioner's behalf. Mr. Crittenden, who was admitted in 1965 (not 1985 as the transcript erroneously reflects) and who has previously served on a grievance committee, has known Petitioner for four or five years on both a social and professional basis. Mr. Crittendon incorporated Lawn Man, Inc., and has represented Petitioner's wife and her brother, a Peruvian national. Mr. Crittenden testified that he has done most of the legal work for the Whitlock family over the last three or four years (TR-34).

Mr. Crittenden testified that Petitioner is a good businessman and appears to have a good grasp of the legal problems of Lawn Man. He further testified that he has made his library available to Mr. Whitlock and has seen him there over the past year.

When questioned about Petitioner's status with The Florida Bar and his attitude toward the Bar for prosecuting him, Mr. Crittenden testified that Petitioner has always referred to himself as being suspended from practice and that Petitioner acknowledges that he deserved to be suspended (TR-37). Despite his suspension, however, Mr. Crittenden testified that Petitioner has on occasion defended his profession from the verbal attacks of other professionals (TR-38).

Mr. Crittenden stated that Petitioner's reputation in the community for truth and veracity was good, that he was a person of good moral character, and that Mr. Crittenden would have no reluctance to hire him as an associate or refer clients to Petitioner (TR-39). Despite Petitioner's prior suspension, Mr. Crittenden has no reservations about entrusting escrow funds to Petitioner and is not worried about a repeat of the conduct that led to Petitioner's suspension.

Petitioner's fourth witness was Salvador Barranco, a physician practicing in Winter Haven. Dr. Barranco has known Mr. Whitlock since 1972 and currently has a relationship with Petitioner that is approximately 75% business and 25% social. Dr. Barranco testified that Petitioner was honest and forthright in his business dealings and was hard-working and dependable (TR-44). When asked about Petitioner's reputation for truth and veracity, Dr. Barranco stated the following:

> Well, I think most people admire Mr. Whitlock. I think most people know the problems he has had and the fact that he's picked up the pieces and has made a new life for himself, and he demonstrated a great deal of character and responsibility and reliability and is generally very well liked. (TR-45).

Dr. Barranco further testified that Petitioner has never indicated any bitterness or hostility toward the Bar, that he has acknowledged his wrongdoing and that Dr. Barranco would not be reluctant to enter into a financial joint venture with Petitioner. Should Petitioner be reinstated, Dr. Barranco testified that he would refer his patients to Petitioner for advice on their legal problems and that he would have no reluctance about entrusting trust funds to Petitioner (TR-47).

Winter Haven real estate developer and financier, Ronald P. Bell, also testified on Petitioner's behalf. Mr. Bell, who has known Petitioner approximately two years and who currently engages Lawn Man on his commercial properties, testified that he found Petitioner to be dependable and forthright, honest and hard-working, and that he had a "very good" reputation for truth and veracity (TR-54). Mr. Bell also stated that Petitioner frankly revealed his status as a suspended lawyer shortly after they met, but has never evinced any attitude of bitterness or hostility toward the Bar (TR-55).

Mr. Bell also acknowledged that Petitioner accepts responsibility for his discipline (TR-55).

As was true with Petitioner's other witnesses, Mr. Bell testified that he would have no reluctance entrusting Petitioner

with his legal affairs or with escrow funds. He further testified that he did not think that Petitioner's past transgressions would be repeated (TR-56).

Petitioner also called as a witness his nextdoor neighbor, John Wise, the Executive Vice-President and General Manager of the Winter Haven office of a national company. Mr. Wise, a C.P.A., has known Petitioner for one year and has daily contact with him.

Mr. Wise testified that shortly after he met Petitioner, he learned that he was a suspended lawyer and that his discipline was predicated upon irregularities with his trust account. Mr. Wise testified that Petitioner "absolutely" accepted responsibility for his misconduct and that Petitioner has learned to secure the best professional advice possible in running his business practice. Mr. Wise also testified that Petitioner's attitude toward the Bar was neither bitter nor hostile and that people in the Winter Haven area "speak very highly" of him (TR-60-61).

Mr. Wise stated that he was undergoing a dissolution of marriage and that although he had a lawyer, Petitioner was helpful in explaining the legal proceedings to him. Finally, Mr. Wise testified that he thought Petitioner would be an asset to The Florida Bar if reinstated and that Mr. Wise would have no reluctance entrusting escrow funds into Petitioner's care (TR-63).

Petitioner also called a former client, Joseph Rayl, as a character witness. Mr. Rayl is President of Unique Construction Co., a Tampa corporation. He first engaged Petitioner's services

as an attorney approximately twelve years ago. Their attorney-client relationship continued until Petitioner closed his practice in 1979. Mr. Rayl entrusted Petitioner with domestic, collection and other corporate matters. He testified that he was "100% " satisfied with Petitioner's services and that Petitioner represented him in a competent and professional manner. Mr. Rayl also related that he referred clients to Petitioner and that none of them indicated any unhappiness with him (TR-66-68).

Mr. Rayl stated that when Petitioner closed his practice in 1979, he personally contacted Mr. Rayl and delivered all files to him. Mr. Rayl knows of another client of Petitioner's that was also personally contacted and had files returned to him (TR-68-69).

While discussing his relationship with Petitioner, Mr. Rayl indicated that he entrusted both funds and documents to Petitioner many times and that there were no problems with their return (TR-69). Mr. Rayl also testified to Petitioner's high caliber of professionalism when he related that Petitioner represented him for more than one year without payment (TR-70). Upon being asked if he would retain Petitioner upon reinstatement, Mr. Rayl stated "I would hope to be his first client." (TR-71.)

A second circuit judge, William Gary, also testified on Petitioner's behalf. As was true with Judge Threadgill, Judge Gary appeared pursuant to subpoena.

Judge Gary testified that he has known Petitioner since 1968 and except for the period covering 1979 through early 1985,

they were in close contact. Judge Gary testified that while practicing in Tallahassee (1972 through 1975), Petitioner's reputation among his fellow lawyers for ability and competency was "excellent" and that his reputation for integrity and moral character was "beyond reproach." (TR-75.)

Judge Gary also testified that he noted a point in time when Petitioner's professionalism and his attention to his practice diminished. Judge Gary opined that this deterioration occurred during Petitioner's dissolution of marriage proceedings with his first wife, Jean. Judge Gary noted that Petitioner was drinking too much and was traveling with a "fast crowd." (TR-76.) Judge Gary also noted that Petitioner's dissolution of marriage was traumatic in large part because of the loss of the companionship of his oldest daughter (TR-77).

Judge Gary testified that he has had extensive conversations with Petitioner since their friendship was resuscitated in early 1985 and that Mr. Whitlock has never denied responsibility for his misconduct, that he is remorseful and sorrowful for his actions and that he acknowledges that drinking was part of his problem (TR-80).

Judge Gary did not fear any recurrence of the misconduct that occurred in 1978 and 1979 and which led to Petitioner's suspension (TR-82).

Petitioner's final witness was his wife, Elsa Whitlock. She testified that she married Petitioner in July, 1980, and that

they had a five year old daughter. Mrs. Whitlock characterized Petitioner's lifestyle when they met in 1979 as "much like a party boy", but that currently "his lifestyle has changed drastically." (TR-85.) She further testified that after they were married, the Supreme Court's suspension depressed Petitioner deeply (TR-85-86). She said that he was able to snap out of his depression by hard work.

Mrs. Whitlock testified that Petitioner owns no stock in Lawn Man and that she and her brother have a 50% ownership each in the corporation (TR-86). She has paid off approximately $4,500 of her $20,000 share of the purchase price. She further testified that Petitioner was the manager of the company, that he works as a laborer and that the two of them live in an apartment that they rent (TR-88).

Mrs. Whitlock further discussed in depth about her husband's attitude towards his suspension and the years following that order. She indicated that he was very sorry for his conduct, that he has never violated his suspension order, and that he very much looks forward to becoming an attorney again.

The Florida Bar presented as its sole witness, Donald G. Kykendall, who testified briefly about the events in 1979 that led to Petitioner's second disciplinary sanction. Mr. Kykendall testified that he bought a condominium from Larry Morris, from whom Kykendall had purchased condominiums on three earlier occasions. Apparently, there was a second mortgage securing a note signed by

Morris and Petitioner on the last condominium and it was not disclosed to Mr. Kykendall by Mr. Morris. Mr. Kykendall acknowledged that when he testified before the Grievance Committee on March 13, 1984, he said that he knew Petitioner was representing Mr. Morris and that Kykendall was not relying upon Petitioner to prepare the closing documents for Kykendall's benefit (TR-160).

Mr. Kykendall had to pay off the second mortgage to avoid foreclosure. Mr. Kykendall then obtained a promissory note from Morris and Petitioner for the balance of the mortgage and ultimately sued and secured a default judgment on that note. Mr. Kykendall acknowledged that Petitioner offered to pay $3,000 cash on the judgment and to make monthly payments based on a 15 year amortization schedule with a balloon after five years. Mr. Kykendall stated that he rejected the offer and demanded $10,000 cash (TR-161,162).

At the conclusion of the presentation of evidence, Petitioner, through his counsel, asked the court to reinstate him. The Florida Bar, however, never recommended a denial of reinstatement.

SUMMARY OF ARGUMENT

THE REFEREE'S FINDING THAT PETITIONER IS FINANCIALLY IRRESPONSIBLE IS CLEARLY ERRONEOUS OR LACKING IN EVIDENTIARY SUPPORT.

The Referee's findings of fact are either predicated upon assumptions not supported by the facts or are completely contrary to unrebutted evidence in the record. The Referee recommended denial of reinstatement because he was "unable to find evidence of unimpeachable character" due to the large number of unsatisfied judgments pending. The Referee apparently failed to consider the fact that Petitioner's total income during the period beginning January, 1982 through December, 1985, was less than $23,000 and that Petitioner simply did not have the ability to pay off his debts

The Referee's decision was predicated on erroneous factual findings. For example, on page three of his report he found that Petitioner made no attempt to contact his creditors--a statement directly rebutted by the Bar's own witness, Donald Kykendall.

The Referee also erroneously concluded that an $8,000 judgment was entered against Petitioner for past due support payments and that he was held in contempt for failure to pay that amount. In fact, Petitioner was found in contempt for failure to make only three monthly payments and he purged himself by paying $400.

The Referee also considered as a negative factor

Petitioner's failure to pay to the Bar a client's security fund payment made in 1981 for $1,602 despite the fact that Petitioner first learned of that payment in March, 1986. The claim was paid without contacting Petitioner's lawyer, Dick Earle, who was representing Petitioner in Bar proceedings when the payments was made.

The Referee also stated that "it appears" to him that Petitioner could have obtained a better job as either a real estate salesman or a securities agent. There is absolutely no evidence in the record to show that any such positions were available to Petitioner, or that he could increase his earnings in those fields. This finding is also contrary to the evidence. Petitioner testified that he had worked as a real estate agent in the Jacksonville area, but that the company for whom he was working folded.

The Referee also mistakenly characterizes Petitioner's obligation to Mr. Kykendall as "restitution." Petitioner owes Kykendall no restitution. Restitution means repayment of funds wrongfully taken. Petitioner never received funds from Kykendall. Petitioner only owes Kykendall money on a note. The grievance committee only found probable cause against Petitioner in the Kykendall matter for neglect and failure to prepare, not for anything to do with funds.

Petitioner contends that his limited earnings have deprived him of the ability to satisfy the judgments against him.

He has no assets, lives in a rented apartment and works as a laborer for $175 per week. After caring for his wife and resident child, and after paying $400 a month for support for his nonresident children, Petitioner has no funds to use to satisfy the judgments against him. Petitioner would show his good faith and responsibility by pointing out that: (1) he rejected advice that he declare bankruptcy, (2) he made a tender to Mr. Kykendall that was rejected, (3) the judge in the contempt proceedings suspended Petitioner's arrearage payments until April 1987, and (4) Petitioner had to pay over $2,900 to The Florida Bar to pay the costs assessed in his suspension order and to make the cost deposit in these proceedings.

PETITIONER HAS MET THE BURDEN OF PROVING HIS FITNESS TO RESUME THE PRACTICE OF LAW.

The Referee disregarded the unrebutted evidence presented by Petitioner's impressive array of witnesses that Petitioner is rehabilitated pursuant to The Florida Bar v. Dawson, 131 So. 2d 472 (Fla. 1961). Petitioner's witnesses included two judges, two respected lawyers, a physician, a C.P.A., a real estate developer and a former client that is president of a construction company. Those witnesses knew Petitioner for periods ranging from one to eighteen years. Some were purely social acquaintances, and others were purely business. All of the witnesses testified that Petitioner met the criteria set forth in Dawson.

Finally, the Bar produced but one witness who testified that he rejected Petitioner's plan to make payments on a judgment

owed to that witness.

Except for the Referee's unsubstantiated opinion that Respondent was financially irresponsible, there was absolutely no basis upon which reinstatement could be denied.

Even The Florida Bar did not recommend denial of Petitioner's reinstatement.

Petitioner has presented unrebutted evidence of his rehabilitation and should be reinstated.

ARGUMENT

THE REFEREE'S FINDING THAT PETITIONER IS FINANCIALLY IRRESPONSIBLE IS CLEARLY ERRONEOUS OR LACKING IN EVIDENTIARY SUPPORT.

The Referee in proceedings below recommended denial of the Petition filed in this cause because he was:

> unable to find evidence of unimpeachable character of the Petitioner. Petitioner's large number of unsatisfied judgments indicate him to be financially irresponsible.

In addition to the outstanding judgments against Petitioner, the Referee listed as other aggravating factors, the fact that no payments were tendered to Kykendall (a clearly erroneous finding), that an additional judgment was entered against Petitioner after being held in contempt in early 1986 for failure to make $8,000 in child support payments (a clearly erroneous finding), failure to pay a client's security fund claim of $1,602.73, of which Petitioner learned for the first time approximately two months prior to final hearing, and, apparently, because Petitioner did not obtain employment utilizing his real estate license (a clearly erroneous finding), or utilizing his securities license. The Referree then opined that reinstating Petitioner would not automatically insure him sufficient income to become financially responsible.

Petitioner asked this court to reverse the Referee's

findings because they are "clearly erroneous or lacking in evidentiary support." The Florida Bar v. Wagner, 212 So. 2d 70 (Fla. 1968) at 72. Petitioner further asks this court to find that Petitioner has done the best that he could towards reducing the debts against him in light of his income of less than $23,000 during the period of 1982 through 1985 inclusive.

Petitioner cannot deny and acknowledges to this court that his indebtedness is substantial and that he has been unable to make any dent in his obligations. In addition to the seven judgments listed in his petition, Petitioner acknowledges that he neglected to include an obligation to one Patrick Tittle for approximately $32,000, and that he owes an undetermined sum to Robert McCain.

Petitioner's failure to reduce his obligations, however, is not a sign of financial irresponsibility. Rather, it is due to the fact that, suspended from his profession, Petitioner has been unable to generate sufficient income to do anything other than to support his wife and children. Petitioner has acted in good faith towards all his creditors. He has not contested the obligations against him and has allowed default judgments to be entered. Far more significant, however, is Petitioner's adamant refusal to avail himself of the remedy of bankruptcy despite being advised to do so by both counsel and his C.P.A. (TR-102). When asked why he hadn't filed bankruptcy, Petitioner answered as follows:

> Well, I feel that the problems that I've had, that I've brought upon myself. I worked hard to try to make a comeback. I worked hard physically and

mentally.

> I feel that if I'm reinstated in the Bar, that I will be able to work sufficient monies to work out a payment schedule with the people that I owe money to and repay them over a period of time.
>
> I realize by filing bankruptcy I could erase these debts and start over again, but that's not in my way of resolving the problem. (TR-102)

What better indication is there of Petitioner's attitude towards his financial obligations than this refusal to avail himself of an absolute right in an attempt to someday repay his obligations.

With the exception of the Kykendalls, Petitioner acknowledges that he has made no attempt to retire any of the judgments against him (the Referee below erroneously stated that Petitioner's child support arrearages were reduced to judgment in the amount of $8,000; there is no evidence to support that finding). Petitioner has been unable to retire any of the obligations against him because he has had to devote all of his efforts to support his family. Petitioner's income consists of approximately $175 per week take home pay as a manager and laborer in a business jointly owned by his wife and brother-in-law. Petitioner testified that his total income over the last four years was less than $23,000--a sum that does not give him a lot of leeway in retiring outstanding obligations. Petitioner owns no assets. He and his wife and child live in an apartment rented for $425 per month and they own no real estate. Petitioner has no assets to liquidate to

pay off the judgments entered against him.

Apparently, although there was absolutely no evidence before him to support any such conclusion, the Referee assumed that because the company for which Petitioner works is owned by his wife and brother-in-law and was previously owned by his father, there should be funds available for Petitioner to pay off his debts. Obviously, this family owned business, consisting of three trucks and several tractors and an old warehouse, whose books are kept by Petitioner's wife and a substantial part of the work force is Petitioner, is not of material financial benefit to Petitioner. This is not a million dollar corporation. It is a lawn mowing business. The Referee made his assumption without receiving any evidence to support his conclusion that Petitioner was receiving any financial benefit from Lawn Man other than his salary.

Shortly afterwards, the Referee states that it "appears" to him that if Petitioner had any real desire to show financial responsibility, he would have obtained work utilizing his real estate or securities license. Apparently, the Referee did not bother to read the Petition submitted by Petitioner in which he stated that he worked as a consultant and a real estate salesman in Middleburg from April, 1983, to August, 1983. Upon dissolution of the company, Petitioner lost his job (TR-118). Obviously, Petitioner tried to utilize his real estate license to make a living, and could not do so. Furthermore, the Florida Bar presented absolutely no evidence indicating that there were any

jobs available in the Winter Haven area (or Florida for that matter) in which Petitioner could have made any better living selling real estate or securities than he has working for Lawn Man. (Petitioner did, in fact, earn a $1,300 commission during 1985 as a result of his real estate license (TR-97)).

The Referee has, in part, based his finding of financial irresponsibility upon the Referee's assumption, supported by no evidence, that Petitioner could have made more money in a different occupation than his current one. Such unwarranted assumptions, predicated upon no evidence, should not be allowed to constitute a basis for denying reinstatement.

Even more significant are the Referee's clearly erroneous factual findings relating to the Kykendall judgment and Petitioner's child support arrearages.

The Referee states on the fourth page of his report that:

> It appears that no payments towards restitution have been tendered toward Mr. Donald Kykendall, {e.s.}

In fact, payment towards restitution were tendered to Mr. Kykendall as stated by Petitioner (TR-101) and acknowledged by Mr. Kykendall (TR-161, 162). In July, 1985, Petitioner offered to make a $3,000 cash payment to Mr. Kykendall and to amortize the note for 15 years, with monthly payments for five years. At the end of that period of time, the amount due would balloon and total payment would be made. Kykendall rejected that offer and demanded a $10,000 cash payment.

In making his tender to the Kykendalls, Petitioner was not drawing upon cash reserves in his possession. In fact, he had made arrangements to borrow the $3,000 initial payment (TR-101).

Clearly, the Referee's finding that no payments toward restitution were tendered to Kykendall was erroneous and lacking in evidentiary support.

No less significant is the Referee's erroneous finding that an additional judgment existed that resulted from Petitioner's supposedly being held in contempt in early 1986 for failure to make $8,000 in child support payments. In fact, the only evidence before the Referee in this matter is that found on pages 122 and 123 of the transcript. There, the following dialogue took place:

> Question: In a nutshell, what was the end result of the case (Petitioner's reduction of support action and his ex-wife's motion for contempt)?
>
> Answer: The judge refused to reduce the amount.
>
> Question: The amount of the arrearages?
>
> Answer: No. The arrearages, he allowed one year for me not to have to pay. I had been paying $200 on the arrearage, $600 a month.
>
> So, he suspended payments on the arrearage for a year. He ordered her to pay her own attorney's fee because he didn't feel that I could pay any more than she could.
>
> He held me in contempt for failure to pay for the <u>three months</u>, in which I purged myself with the payment of $400.

The judge gave Petitioner until April, 1987, to begin making payments on the arrearages (TR-95, 96). Petitioner also testified that there is a dispute over the amount of arrearages and the exact amount owed is yet to be determined (TR-95).

Clearly, the Referee's factual finding that there is a judgment against Petitioner for $8,000 and that he was held in contempt for failure to make $8,000 in child support payments is erroneous and unsupported by the evidence.

Although the Referee does not specifically refer to it as a negative factor, his citation to The Florida Bar's payment of $1,602.73 to one Daniel McCullen (sic) after he filed a claim with the Client Security Fund (CSF) indicates he considered it another factor in his decision. The Referee, however, completely ignores the fact that Petitioner first learned about this CSF claim a mere two months prior to final hearing (TR-131). Apparently, in 1981, while Petitioner's first disciplinary case was pending, The Florida Bar paid out $1,600 through the Client's Security Fund without contacting Petitioner for his version of the events surrounding the claim or to see if he would pay it, or without contacting Dick Earle, the lawyer that was representing Petitioner in disciplinary proceedings at the time the claim was paid. While The Florida Bar might be able to convince this Court that they could not contact Petitioner during this time period (which was not true), they, under no circumstances, can claim that they did not know how to contact Dick Earle while he was representing Petitioner in a case

pending before this court.

Petitioner's failure to pay a CSF claim that he first learned of two months prior to final hearing, should not be considered a negative factor towards his petition for reinstatement.

Petitioner has acknowledged before the Referee, and once again acknowledges to this court, that he considers payment of that client's security fund claim to The Florida Bar a moral obligation that will be paid.

One last factor concerning the CSF claim should be brought to this court's attention, the money paid to Mr. McCullen (sic) was for a real estate transaction that occurred during the same period of time encompassed by Petitioner's two disciplinary actions. The court should further note that the CSF claim was paid prior to this court's entry of its 1982 order of discipline. In other words, the claim was part and parcel of Petitioner's three year suspension.

Although Petitioner has not specifically contacted judgment creditor Pat Tittle, he did testify that he discussed his indebtedness to Mr. Tittle with a mutual friend. Petitioner related that he asked the friend to tell Mr. Tittle that Petitioner had intentions to repay the loan and the mutual friend responded that Mr. Tittle was not concerned about payment at the present (TR-151).

It is also significant to note that Petitioner was deposed in aid of execution by this sister-in-law's lawyer, and that there

is no evidence indicating any attempts to execute on the judgment by Miss Witt (TR-142).

Petitioner succintly and plausibly explained to the Referee why he has not contacted his creditors other than the instances mentioned above. In response to a question on redirect, Petitioner testified that he had not contacted his judgment creditors:

> Because it seems ridiculous to me to contact someone when I can't--I don't have any plan to offer them to pay them (TR-151).

In fact, Petitioner's testimony that he does not have the ability to pay anything on his debts now (TR-152) is absolutely unrebutted by The Florida Bar.

On the third page of his report, the Referee stated that he was "unable to find evidence of unimpeachable character" of Petitioner. Apparently, the Referee completely disregarded the evidence of Petitioner's nine witnesses.

The evidence of Petitioner's financial responsibility in his community is overwhelming and was not rebutted by The Florida Bar. For the Referee to say that he is unable to find any evidence of unimpeachable character, he would have to ignore the testimony of Judge Threadgill that Petitioner's reputation in the community is good, of Winter Haven lawyer, Robert Crittendon, who testified that Petitioner's reputation in the community was good and that he would have no reservations about entrusting escrow funds to

Petitioner, and Dr. Barranco, a Winter Haven physician, who testified that he has had both business and social dealings with Petitioner, and that he found Petitioner to be honest, forthright, dependable and admirable. Dr. Barranco further testified that he would have no reluctance to enter into a financial joint venture with Petitioner and that he would not be reluctant to entrust escrow funds with him. Winter Haven financer, Ronald Bell, and business executive, John Wise, both indicated complete confidence in Petitioner's integrity, and neither would have reluctance in entrusting escrow funds into his care.

Finally, the Referee disregarded the evidence presented by Judge Gary, former client and company president, Joseph Rayl, and Clearwater attorney, Ray Gross, that Petitioner was a man of sound integrity and was one in whom trust funds could be entrusted.

The Referee's finding that there was no evidence of unimpeachable character is clearly erreoneous. In fact, the evidence to the contrary was overwhelming and completely unrebutted.

There is one other opinion expressed by the Referee that must be addressed by Petitioner. On the penultimate page of his report, the Referee made the following statement:

> Nor is there evidence that allowing the Petitioner to resume the practice of law would automatically insure him sufficient income to become financially responsible. I find this to be particular importnant since Petitioner was originally suspended for trust fund violation.

Petitioner must concede that allowing him to resume the practice of law will not automatically insure him sufficient income to reduce his financial obligations. However, Petitioner assures this court that his chances of securing better employment will be greatly enhanced if he is to secure employment as an attorney. Forcing him to remain in his present stature will avail none of his creditors any benefit.

Petitioner also avers to the court that there is absolutely no nexus between his being suspended for trust fund violations and his ability to secure sufficient income upon reinstatement to pay back his debts. Petitioner would emphasize to this court that upon the shortages in his trust account being discovered, they were promptly made up and that, as noted by this court in its original order of suspension, no client suffered any financial harm.

Finally, the Referee completely disregards the financial burden that it placed upon Petitioner and his family to pay to The Florida Bar the $2,421.50 in costs assessed against him and to remit a $500 cost deposit to The Florida Bar upon bringing these proceedings. On a $175 per week salary, the payment of $3,000 to The Florida Bar in a short period of time is an admirable accomplishment.

The Referee's findings of fact are flawed. They are in part based upon assumptions unsupported by the evidence, and, in several instances, are simply contrary to the evidence presented.

This court should reject the Referee's finding that Petitioner is financially irresponsible.

PETITIONER HAS MET THE BURDEN OF PROVING HIS FITNESS TO RESUME THE PRACTICE OF LAW.

The purpose of reinstatement proceedings is not to retry Petitioner for his past misconduct, but to determine his fitness to resume the practice of law. Florida Bar Integration Rule Article XI, Rule 11.11 (5), Petition of Stalnaker, 9 So. 2d 100 (Fla. 1942). The factors to be considered in determining rehabilitation were set forth by this court in Petition of Dawson, 131 So. 2d 472 (Fla. 1961). These factors, listed on page 474, offer a guide to the court to use while considering a petition for reinstatement. Those factors include:

1. Strict compliance with the specific conditions of the disciplinary order;

2. Evidence of unimpeachable character and moral standing in the community;

3. Clear evidence of a good reputation for professional ability;

4. Evidence of a lack of malice and ill feeling towards the Bar;

5. Personal assurances, supported by corrobarating evidence, revealing a sense of repentance, as well as a desire and intention of the Petitioner to conduct himself in an exemplary fashion in the future; and

6. In cases involving misappropriation of funds, restitution.

Dawson requires the Petitioner to meet the burden of proving his rehabilitation.

In the case at hand, Petitioner has presented unrebutted evidence that he has met all of the criteria set forth in the preceding paragraph. In fact, even The Florida Bar did not recommend denial of Petitioner's petition. The Bar's only witness, Donald Kykendall, did not rebut any evidence presented during Petitioner's case, rather his testimony was limited to stating that Petitioner has not repaid him the judgment that Kykendall holds and that Kykendall rejected a repayment plan. Other than his citation to Petitioner's failure to retire any of the judgments against him, the Referee pointed to no evidence indicating a failure by Petitioner to prove all of the Dawson criteria.

The first of the factors to be considered in reinstatement proceedings is strict compliance with the disciplinary orders handed down. Petitioner, and all of his witnesses, presented unrebutted testimony that Petitioner has always made his status in The Florida Bar clear, and that he has not practiced law. All of Petitioner's family's legal matters are handled by Mr. Crittenden (TR-34). Petitioner has also paid the costs assessed against him in the 1982 order. (Petitioner submits that the language of that disciplinary order does not require him to pay interest. He asked the Referee to make a ruling on his position, however, no such ruling was made.) Petitioner also took the ethics exam as required in his second disciplinary order.

Petitioner presented five residents of Winter Haven to testify as to his unimpeachable character and moral standing in his community and he further presented the testimony of four other witnesses (including his wife) who testified as to his character in general. All of his witnesses testified that Petitioner's reputation for truth and veracity, for dependability, for initiative and for honesty was beyond reproach. All of Petitioner's witnesses, including judges, lawyers, fellow professionals and friends testified that they would have no reluctance to entrust their legal affairs and their escrow funds to Petitioner should he be reinstated.

As to his professional ability, Petitioner presented three witnesses that were familiar with his legal ability prior to his suspension: Judge William Gary, Lawyer Raymond Gross, and former client Joseph Rayl. All attested to Petitioner's superior ability as a lawyer. Mr. Gross testified that Petitioner's reputation for competency and professionalism prior to his suspension was that of "a very qualified lawyer" in real estate law, as "extremely expert" in condominium law and as having a good reputation in civil trial practice (TR-19). Mr. Gross testified that he would call upon Petitioner for advice in various matters (TR-20).

Former client, Joseph Rayl, testified favorably as to Petitioner's representation of Mr. Rayl and his general ability (TR-65-68). Mr. Rayl further testified that should Petitioner be reinstated Mr. Rayl "would hope to be his first client." (TR-71)

Mr. Rayl also testified as to Petitioner's professionalism by pointing out that when Petitioner closed his office, he delivered Mr. Rayl's files to him promptly. He also noted that Petitioner also represented Mr. Rayl through economic hard times for over a year without charging any fees (TR-70).

Judge Gary testified that while Petitioner was an attorney practicing in Tallahassee during the 1972 through 1974 period, his reputation amongst his peers as to ability and competency was "excellent." (TR-75) He further testified that Petitioner's reputation for integrity and moral character amongst his fellow lawyers was "beyond reproach." (TR-75)

All of Petitioner's witnesses, and the tone of Petitioner's own testimony, indicates that he holds no ill feeling towards The Florida Bar for bringing disciplinary proceedings against him. In fact, he has stated this experience has "made me a better person." (TR-147)

Obviously, in proving rehabilitation, the most important Dawson factor is Petitioner's personal assurances indicating his repentance and his desire to conduct himself in an exemplary manner in the future. While corrobaration of Petitioner's assurances is required, the single most important place to look for such an attitude is the Petitioner's own testimony. However, in the instant case, evidence of remorse and repentance can be gleaned from a review of Petitioner's first disciplinary order.

In recommending a three year suspension for Petitioner in

1982, the Referee considered as mitigating factors Petitioner's immediate reimbursal of shortages in his trust account upon discovery, and, more importantly, Petitioner's full cooperation with The Florida Bar in its investigation and his production of all accounts, books and records. The Florida Bar v. Whitlock, 426 So. 2d 955 (Fla. 1982) at 957.

Obviously, in 1979, Petitioner recognized his wrongdoing and took steps to alleviate the consequences of it. He closed his office and cooperated with the Bar. Seven years later, when testifying before a Referee in reinstatement proceedings, Petitioner still evinces the same attitude. When asked what went wrong in his professional life, he replied: "I was definitely irresponsible." (TR-115) When asked what is the difference between Petitioner in 1986 and back in 1979, he replied:

> I have realized what brought them [disciplinary sanctions] about, and I understand that whenever you have a problem, it doesn't go away unless you attend to the problem.
>
> I understand now how trust accounts are handled. I understand that, the seriousness of--in other words, I understand now and firmly believe that a trust account and the business operation of your office is equally important as the knowledge of the law, which I think I was confused about, or apparently I was. (TR-115, 116)

When asked later to summarize the reason for his suspension, he stated:

> For, specifically, misuse of client's funds in my trust account, allowing a nonlawyer to perform duties that I was responsible to perform.

> Generally, being irresponsible in not abiding by the rules that I agreed to do so when I was sworn into The Bar. (TR-126)

Later, during cross-examination, Bar Counsel David McGunegle, the most experienced lawyer in disciplinary proceedings in this state, asked a question that goes to the very nub of these proceedings. He asked Petitioner on page 146, the following question:

> What assurances can you give this Referee, the representatives of The Florida Bar, your own counsel, as another member of The Bar, that if you encounter personal problems in the future, you will not be caused to do the same thing?

Petitioner's answer is telling. He acknowledges his wrongdoing, noted that he had a serious drinking problem at one time, and acknowledges that, with the help of his wife and his parents, that he was able to get over his problem (TR-147). More significantly, however, is the following statement:

> I want my three children and my family, as well as other members of The Bar and my friends, to hold me in the highest esteem and be proud of me.
>
> I want to be able to--I'll never be able to erase this experience; and I wouldn't want to, because I think its made me a better person.
>
> I feel that thats--I want the opportunity to return to my profession that I'm trained to do. I feel that I can help a lot of people.
>
> I'll bring honor to The Bar. I will not bring dishonor to The Bar.

Petitioner's problems arose, as do so many in our profession, from an unhappy domestic situation and in turning to a fast social life and irresponsible alcohol consumption for solice. Petitioner's wife testified that when she first met him that he was a "party boy" (TR-85), and both Lawyer Gross and Judge Gary testified that they noted that the divorce and Petitioner's subsequent lifestyle was a change from his prior conduct (TR-21, 76).

Petitioner has settled down now. He is a hard working, dependable and a respected businessman with a stable and happy marriage. If there is any statement that describes Petitioner's current lifestyle and his current responsibility it is that of Dr. Barranco, who stated the following about Petitioner's reputation in his community:

> Well, I think most people admire Mr. Whitlock. I think most people know the problems that he had and the fact that he has picked up the pieces and has made a new life for himself, and he demonstrated a great deal of character and responsibility and reliability and is generally very well liked. (TR-45)

Despite five months of investigation, and the placement of ads in The Florida Bar News seeking comments on Petitioner's petition, The Florida Bar was able to present no evidence rebutting anything that Petitioner or his witnesses said.

The Referee's stated reason for recommending denial of Petitioner's reinstatement is the Referee's perceived financial irresponsibility. As argued earlier in this brief, Petitioner

adamantly disagrees with the Referee's characterization of him as being financially irresponsible and asked the court to overturn that finding.

The primary flaw in the Referee's reasoning is his failure to consider the fact that a lawyer suspended from The Florida Bar loses the ability to earn a living in the only profession that he is trained in. The suspended lawyer does not have a wide world of business opportunities available to him. Petitioner attempted to secure employment as a real estate agent and the company failed. Petitioner's wife and her brother then bought a modest family owned lawn maintenance business (Petitioner's wife's share of the business was $20,000 and she has paid $4,500 towards it) and Petitioner engaged in honest labor in an attempt to provide food, clothing and shelter for his wife and his child. Petitioner stated that during 1985, he earned $10,000 and his petition reflected total income of $11,650 during the preceding two years. Petitioner has had to struggle to make ends meet. When asked why he did not make any payments towards the judgments entered against him, he stated that he simply does not have the ability to make any payments at present (TR-152) and that the money simply did not exist to make the payments.

This court has never demanded the financially impossible from suspended lawyers. A similar case to that at hand is the Petition of Ragano, 403 So. 2d 401 (Fla. 1981). In that case, as here, Petitioner had judgments outstanding against him at the time

of his Petition. In Ragano, there was also a problem early in his suspension with his personal checking accounts. Notwithstanding these problems, this court reinstated Petitioner, and cited portions of the Referee's report recommending said reinstatement. Significantly, the following language was quoted:

> In regard to the outstanding judgments, it appears that the Petitioner, during his lifetime, had demonstrated no ability to generate income in any endeavor other than the practice of law, and currently lacks the financial ability to satisfy such obligations. For such reason, the Referee concludes that the non-payment of such obligations does not constitute grounds for denial of the petition (P-406).

As was true with Mr. Ragano, Petitioner has no ability to earn significant income in anything other than the practice of law. Obviously, he currently lacks the financial ability to satisfy his financial obligations.

There is another similarity between the Ragano case and the instant proceeding. There, the Referee also noted:

> The Florida Bar in its active opposition to the petition has been unable to produce any witnesses to testify contrary to the conclusions of the petitioner's witnesses. (P-406)

The Bar's sole witness was Mr. Kykendall whose testimony did not rebut any evidence presented by Petitioner or his witnesses.

Other cases where Petitioners have been reinstated despite outstanding financial obligations include Petition of Stalnaker (supra), Petition of Silverstein, 484 So. 2d 5 (Fla. 1986) (wherein

the court conditioned reinstatement on Petitioner's forfeiture of his right to attack any of the judgments or liens that formed the basis of The Bar's concern--a condition that Petitioner is willing to accept); and The Florida Bar v. Stewart, 396 So. 2d 170 (Fla. 1981).

Petitioner asks this court to view the Referee's conclusion that he is financially irresponsible in the same light that it reviewed the Referee's conclusions in Petition of Inglis, 471 So. 2d 38 (Fla. 1985). There, this court reversed the Referee's conclusions and recommendations and reinstated Petitioner after notice that a Referee's conclusions of law are subject to broader review by this court than are his ultimate findings of fact. In the case at hand, as argued in Point I of this brief, the Referee's findings of fact are erroneous and not supported by the evidence. Drawing upon such facts, the Referee made the legal conclusion that Petitioner did not possess unimpeachable character due to financial irresponsibility. Petitioner asks this court to overturn such an unwarranted conclusion as being contrary to the manifest weight of the evidence.

Petitioner also asks this court to reinstate him without the necessity of his taking the Bar exam.

Petitioner's transgressions did not involve his competency or his knowledge of the law. The testimony of his witnesses indicate his legal ability was that of "a very qualified lawyer" and "extremely expert" (TR-19), that he had an "excellent

reputation" (TR-75) and that his clients were "one hundred percent" satisfied with his legal services (TR-67). The Bar presented no evidence to the contrary.

While Petitioner has not clerked during his suspension, he has kept abreast of current developments by reading the Bar _News_ and _Journal_, by reading four newspapers daily, including the _Wall Street Journal_ (TR-124) and by availing himself of the use of Robert Crittenden's law library.

Petitioner, since his 1986 suspension order, has also taken and passed the ethics portion of the Bar examination.

During his suspension, Petitioner has done all he can realistically do to rehabilitate himself. His witnesses corroborate his testimony that he realizes the error of his ways and that he knows what he did wrong. There can be no doubt of his remorse. But for his inability to retire the judgments against him, there is nothing in the record to indicate Petitioner is not fit to return to the practice of law.

To deny Petitioner reinstatement for the reasons given by the Referee, i.e., failure to make more money while suspended, is basically denying him, and all other suspended lawyers with judgments outstanding, reinstatement forever.

Petitioner asks this Court to examine the record with one primary question in mind. Will Petitioner's misconduct ever be repeated? The answer to that question can only be no. Petitioner asks for a second chance. As he stated to the referee,

I want the opportunity to return to my profession that I'm trained to do. I feel that I can help a lot of people.

I'll bring honor to the Bar. I will not bring dishonor to the Bar (TR-147).

CONCLUSION

The Referee's finding that Petitioner is financially irresponsible and therefore is not possessed of unimpeachable character is not based upon the evidence. His findings as to this point should be reversed.

Petitioner has met his burden of proving his fitness to resume practice. He has rehabilitated his reputation in the Winter Haven area through hard work and honest dealings. His failure to reduce his financial obligations is the obvious result of a lack of income, not any intent to deny his creditors their due.

Petitioner asks this Court to order him reinstated to The Florida Bar immediately.

Respectfully submitted,

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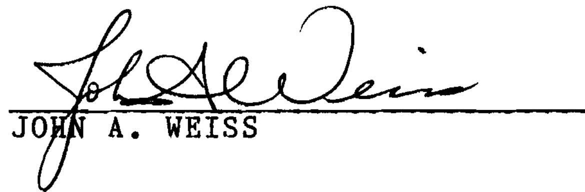
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief has been mailed to Jan Wichrowski, Esquire, Bar Counsel, 605 E. Robinson Street, Suite 610, Orlando, FL 32801, on this 4th day of August, 1986.



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