

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

1986
THE COURT
By _____
Deputy Clerk

IN RE:

Petition for Reinstatement of William E. Whitlock, III

Case No. 68,246
(TFB CRE86003)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as Referee to conduct proceedings on the Petition for Reinstatement for William E. Whitlock, III, under Rule 11.11 of the Integration Rule in this case: The undersigned conducted a hearing in this cause on May 22, 1986.

The pleadings, notices, orders, transcript and exhibits, all of which are forwarded to the Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For the Petitioner: John A. Weiss

For The Florida Bar: David G. McGunegle and
Jan K. Wichrowski

The four and one half hour hearing was conducted on May 22, 1986, at the Orange County Courthouse in Orlando, Florida. Testimony was received on behalf of the Petitioner from the Honorable Edward Threadgill, Mr. Raymond Gross, Mr. Robert Crittenden, Mr. Salvadore Barranco, Mr. Ronald Bell, Mr. Jack Wise, Mr. Joseph Rayl, The Honorable William Gary, Elsa Whitlock, as well as the Petitioner himself. The Florida Bar presented the testimony of Mr. Donald Kykendall, the complainant in Petitioner's most recent suspension, *The Florida Bar v. Whitlock*, 484 So.2d 1244 (Fla. 1986).

The issue to be decided is the Petitioner's fitness to resume the practice of law, Rule 11.11(5) Integration Rule. The standard to determine that is succinctly set out in the case of In Re: Robert Duncan Timson, 301 So.2d 448, 449 (Fla. 1979):

1. Strict compliance with the disciplinary order.
2. Evidence of an unimpeachable character.
3. Clear evidence of good reputation for professional ability.
4. Evidence of lack of malice and ill feeling toward those involved in bringing the disciplinary proceedings.
5. Personal assurances of a sense of repentance and desire to conduct practice in exemplary fashion in the future.
6. Restitution of funds.

It is well-settled that the burden is on the Petitioner to demonstrate his fitness to resume the practice of law.

FINDINGS OF FACT

Upon consideration of the Petition for Reinstatement, and the exhibits and testimony of the witnesses, the undersigned finds as follows:

1. The Petitioner was admitted to The Florida Bar in April of 1972.
2. The Petitioner was suspended from the practice of law for three years with the proper proof of rehabilitation required on May 27, 1982 by order of the Supreme Court of Florida reported in The Florida Bar v. William E. Whitlock, III, 426 So.2d 955 (Fla. 1982) as a result of violating certain

disciplinary rules including trust funds violations. Petitioner left the country and moved to South America during the pendency of those proceedings and failed to appear at any hearings.

3. The undersigned further finds that the Petitioner was the subject of further disciplinary proceedings more recently in The Florida Bar v. Whitlock, 484 So.2d 1244 (Fla. 1986). Petitioner was found guilty in accordance with his conditional plea and given a one year suspension to run concurrently with his prior suspension as well as ordered to successfully complete the ethics portion of the bar examination prior to reinstatement into The Florida Bar.

4. The undersigned is unable to find evidence of unimpeachable character of the Petitioner. Petitioner's large number of unsatisfied judgments indicate him to be financially irresponsible. Petitioner has admitted that his credit rating is poor and that he has made no attempt to even contact the creditors regarding the amounts that he owes them and had made no attempts to provide any payments to show any intention of good faith, R-142-143. Petitioner listed the following unsatisfied judgments in his Petition for Reinstatement:

- (1) Madeira Beach Boat Works (judgment)
\$4,258.90
- (2) Bank of Holiday (judgment) \$28,059.51
- (3) Maas Brothers, Inc. (judgment) \$551.63
- (4) Community Bank of Pinellas (judgment)
\$11,239.39
- (5) PICO Development Corporation (judgment)
\$2,146.53

(6) Gloria Whitlock Witt (judgment)

\$138,497.81

(7) Donald G. Kykendall (judgment)

\$35,887.50

It appears that no payments towards restitution have been tendered to Mr. Donald Kykendall, who testified at the Referee hearing concerning the circumstances which led to the judgment for \$35,887.50, which was the basis for the Petitioner's most recent discipline, R-155-163. An additional judgment was brought forth during the hearing concerning the fact that Petitioner was held in contempt in early 1986 for failure to make \$8,000.00 payments which the court found him able to pay regarding child support previously ordered by the court, R-121-123. Other debts are evident. In 1981, Mr. Daniel McCullen, President of Dixie Forty Inc., was compensated \$1602.73 by the Client Security Fund of The Florida Bar resulting from the Petitioner accepting a sum into his trust account for payment of Mr. McCullen's property taxes and failing to pay same, R-139-140.

Petitioner also admits there was a loan made to him from Mr. Robert McCain which Mr. McCain alleges amounts to \$33,000.00 although Petitioner disputes the amount, stating he does not recall it, R-133-136. Yet another debt is admitted by Petitioner to be owed to Mr. Patrick Tittle in repayment of a loan for approximately \$32,000.00 which Mr. Tittle became liable for after agreeing to cosign a loan to Petitioner, R-141-142.

Although the Petitioner claims that his only income between 1982 and 1984 was \$11,650.00, testimony was presented that the lawn maintenance company for which he works, WEW Companies, Inc., is owned by his wife, Elsa Whitlock and was previously

owned by Petitioner's father, R-119. Further, Petitioner testified that he has obtained both a real estate license as well as a securities license, R-144. It appears to this Referee that if the Petitioner had any real desire to show financial responsibility, he could have obtained employment in these fields in an effort to repay these many judgments against him, which include support for his own children and restitution to Mr. Kykendall. 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 particularly important since the Petitioner was originally suspended for trust fund violations.

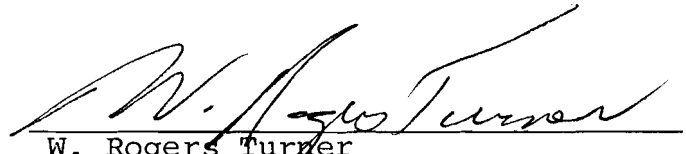
5. The orders of the Supreme Court of Florida mandated that the Petitioner not practice law in any manner for three years and that he pay costs in the sum of \$2,421.50, and pass the ethics portion of the bar exam. It appears that Petitioner has complied with the above, although Petitioner contends that the interest of \$774.36 is not a legal obligation because of the wording of the court's order.

6. Evidence was also presented by one former client and several friends and acquaintances that Petitioner is held in good regard. There was no evidence that Petitioner holds any malice or ill-will towards those involved in bringing the previous disciplinary proceedings against him. It appears that Petitioner has made efforts to keep his legal knowledge up to date. Petitioner further expressed a repentance and a desire to refrain from the type of conduct which was contrary to professional responsibility. However, this Referee does not believe that these expressions of remorse and intent are sufficient to demonstrate rehabilitation adequate to justify the public's

trust in view of Petitioner's outstanding financial irresponsibility.

Based on the foregoing findings of fact, it is the recommendation of the undersigned that the Petition for Reinstatement should be denied with leave to petition again at a future date and that the Petitioner be required to pay costs of \$643.20 to The Florida Bar.

Dated at Orlando, Orange County, Florida, this 27th day of June, 1986.


W. Rogers Turner
Referee

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