IN THE SUPREME COURT OF FLORIDA

PETITION FOR REINSTATEMENT OF
RICHARD J. ALFIERI.

THE FLORIDA BAR,

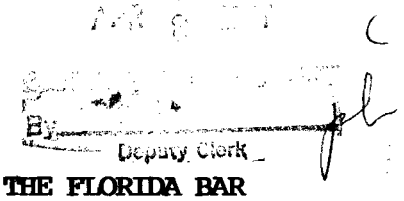
Appellant,

v.

RICHARD J. ALFIERI,

Petitioner-Appellee.
_____/

CASE NO.: 68,885



INITIAL BRIEF OF THE FLORIDA BAR

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STATEMENT OF THE CASE AND OF THE FACTS

On September 27, 1982, appellee pled guilty to two (2) counts of a ten (10) count federal indictment charging that appellee, through his bank teller daughter, laundered several hundred thousand dollars of client funds. Part of the laundering was accomplished through use by appellee of his attorney's trust account and part by appellee purchasing cashiers' checks from his bank teller daughter with client currency, without the requisite filings of currency transaction reports. Appellee also prepared and filed individual income tax returns on behalf of the subject client omitting therefrom the money laundering transactions. Appellee was sentenced to four (4) years imprisonment and fined $100,000.00 (See the indictment and judgment and conviction order attached to appellee's petition for reinstatement). The Honorable Norman C. Roettger, Jr. imposed a heavier sentence than ordinary due to his perception of the nature of the felonies and appellee's involvement of his daughter (141).*

Upon the bar's filing of a certified copy of appellee's felony conviction, this Court issued a suspension order under Fla. Bar Integr. Rule, article XI, Rule 11.07 (The Florida Bar v. Alfieri, Case No. 62,576 (Fla. September 3, 1982)). Appellee then petitioned for leave to resign. The bar opposed, regarding appellee's misconduct as so serious as to require a permanent resignation or disbarment. This Court granted appellee's petition stating:

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* All number references in this brief are to the transcript of the final hearing before the referee, a part of the record on appeal.

> An attorney whose petition for leave to resign is granted may apply for readmission after three years. Fla. Bar Integr. Rule, art. XI, rule 11.08(6). Similarly, a disbarred attorney may apply for readmission after three years. Id. at rule 11.10(5). Disbarment, therefore, would be no greater in effect than the punishment which Alfieri has agreed to accept by filing his petition. We see no reason to prolong these proceedings, and we grant Richard J. Alfieri's petition to resign, effective with the filing of this opinion. The Florida Bar v. Alfieri, 427 So.2d 662 (Fla. 1983).

Appellee served his full sentence and upon the restoration of his civil rights, instituted the instant proceeding seeking reinstatement to The Florida Bar.

Appellee's petition disclosed his status as a member in good standing of the New York Bar. Upon The Florida Bar's investigation it was discovered that the New York attorney discipline authorities had not received notice of appellee's felony conviction or appellee's resignation from The Florida Bar. As a result of such inquiry the State of New York Grievance Committee for the Second Judicial District instituted immediate proceedings culminating in the equivalent of Florida's felony conviction suspension and instituted formal disciplinary proceedings which are now pending (126, 127). Appellee's only explanation for not informing the New York Bar authorities of his felony conviction and Florida Bar discipline was that he assumed others had notified the New York authorities on his behalf; that when he received his certificate in good standing in connection with his application for reinstatement to The Florida Bar he concluded that the New York authorities had taken no action against him due to some form of

benign neglect (129 - 135). Appellee testified:

> Q. And the certificate of good standing that you received from the Appellate Division, Second Department in New York State indicated to you that notwithstanding a felony conviction and a resignation from The Florida Bar, in the eyes of the New York State Bar, this constituted no basis for any action concerning your license to practice law?
>
> A. Well, with all due respect, I did not look at it from that point of view. I viewed this in the same way that I viewed the Florida Real Estate Commission's actions, that they were going to sit back until somebody literally forced them to do something... (135).

The referee has recommended that appellee be reinstated to The Florida Bar with the reinstatement conditioned upon appellee's payment of the bar's costs and his payment of the fine imposed pursuant to the terms of the felony judgment of conviction, aforesaid.

At the March, 1987 meeting of the Board of Governors of The Florida Bar, it was determined that the bar should petition for review of the referee's recommendations.

SUMMARY OF ARGUMENT

Having committed felonies of such magnitude and impact to cause the sentencing judge to impose a stiffer punishment than ordinary, appellee was nonetheless permitted, over the bar's opposition, to voluntarily resign from The Florida Bar rather than face the ignominy and other consequences of disbarment. Notwithstanding that an attorney who has been granted permission to resign may seek reinstatement, before reinstatement is granted, the nature of the offense underlying the resignation should be scrutinized. Here, the referee appears to have predicated his recommendation of reinstatement upon considerations commencing with respondent's guilty plea and not to have analyzed or considered the nature, extent and gravity of the crimes resulting in appellee's resignation. A consideration of appellee's misconduct, especially in light of the plethora of precedent where attorneys have been disbarred for committing similar or lesser felonies, should result in the denial of the reinstatement application.

It appears unusual and perhaps, unseemly, that appellee should be reinstated to The Florida Bar while disciplinary proceedings in New York may well result in his disbarment or suspension there. Appellee's explanation for failing to look behind the certificate of good standing he received from the New York Bar constitutes that type of rationalization that renders him suspect as being rehabilitated to the extent suggested by the referee.

Should the Court determine to implement the referee's recommendations it is respectfully urged that the referee's recommendation that the reinstatement be conditioned upon appellee's payment of the fine imposed in the criminal proceeding be clarified so as to mandate the payment in full of such fine prior to the restoration of appellee's bar privileges.

The Court's equating of disbarment with voluntary resignation upon appellee's original application to resign constituted an anomaly and although such rationale has never again been applied in another resignation application, the Alfieri opinion, memorialized in the Southern Reporter and keynoted in 3 Fla. D 2d 216, signals the bar and the public that notwithstanding the most egregious misconduct, an attorney can forestall discipline by resigning from the bar, a position from which, it is most respectfully submitted, the Court should expressly recede.

ARGUMENT

I. APPELLEE'S CONDUCT LEADING TO HIS RESIGNATION FROM THE FLORIDA BAR WAS SO HEINOUS AS TO REQUIRE THAT HIS APPLICATION FOR REINSTATEMENT BE DENIED.

While Petition of Wolf, 257 So.2d 547 (Fla. 1972) cites with approval 5 Am. Jur., Attorney at Law, Section 301, which specifically enumerates and numbers six (6) criteria to be applied to reinstatement proceedings, the Court by no means suggested that there are not other, equally compelling considerations. The Court emphasized that a foremost area of concern is an examination of the misconduct underlying the original disciplinary action.

> The first aspect to be considered is the nature of the offense which resulted in the disciplinary action. Petition of Wolf, supra, at page 549.

The referee, in his findings of fact, appears not to have addressed the nature of the offense resulting in appellee's resignation.

Appellee's criminality was neither benign nor committed through ignorance. He knowingly embarked upon a willful scheme to conceal several hundred thousand dollars from the Internal Revenue Service. The felonies were not committed by a single act or omission, taking place over a period of approximately one (1) year. Appellee engaged in an ongoing, repeated series of transactions employing his attorney's trust account and laundering cash into bank checks. To compound matters,

appellee then knowingly, falsely and fraudulently prepared and filed income tax returns to make detection even more difficult.* To insure his success, appellee enlisted the aide of one whose loyalty was beyond question. He implicated his own daughter who, as a result, suffered incarceration and bears the stigma of a criminal record (81, 82).

The aggravating factors relating to appellee's felonious behavior caused the sentencing judge to impose a four (4) year term of imprisonment as well as a $100,000.00 fine; a sentence stiffer than ordinary (141). In addition, appellee was required to serve the maximum amount of time that one could serve under a four (4) year sentence (98).

When viewed in light of precedent in similar cases involving felony convictions, it is difficult to distinguish appellee's moral fitness with that of other felons who were disbarred and relegated to travel the torturous route of readmission rather than the much smoother path of reinstatement.

In The Florida Bar v. Weinsoff, 498 So.2d 942 (Fla. 1986) respondent was disbarred upon his conviction for conspiracy to commit mail fraud and mail fraud. In The Florida Bar v. Cruz, 490 So.2d 48 (Fla. 1986) the respondent was likewise disbarred upon his conviction for conspiracy to bribe a United States official and for bribery of a United States official. In The Florida Bar v. Swirsky, 484 So.2d 1248 (Fla. 1986) the court directed that the respondent be disbarred upon his conviction for second degree grand larceny. This court directed that

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* All of the facts relating to appellee's criminal conduct are based upon the indictment which is attached to appellee's petition for reinstatement.

the respondent be disbarred in The Florida Bar v. Smigell, 476 So.2d 668 (Fla. 1985) upon his conviction for tampering with evidence, a third degree felony. Disbarment was considered an appropriate discipline in The Florida Bar v. Layton, 476 So.2d 667 (Fla. 1985) where the respondent was convicted for grand theft in the first degree, a second degree felony. The same discipline was meted out in The Florida Bar v. Silverman, 468 So.2d 229 (Fla. 1985) where the respondent was convicted in federal court of the felony of obstruction of justice. The Florida Bar v. Weissel, 180 So.2d 649 (Fla. 1965) resulted in the disbarment of the respondent upon his conviction of counterfeiting and uttering a promissory note and mortgage with intent to defraud. The Florida Bar v. Scott, 165 So.2d 167 (Fla. 1964) involved the disbarment of a respondent convicted of grand larceny. A disbarment was directed for the same offense in The Florida Bar v. West, 149 So.2d 557 (Fla. 1963). The respondent in The Florida Bar v. Lewis, 145 So.2d 875 (Fla. 1962) fraudulently concealed assets of a bankrupt estate, a felony under Title 18 U.S.C. Section 152 and was disbarred. Embezzlement brought the same result for the respondent in The Florida Bar v. Boland, 123 So.2d 457 (Fla. 1960).

While the bar recognizes the sui generis aspect of every case, it is nonetheless hard pressed to characterize appellee's misconduct as deserving any less discipline than that imposed in the above referenced cases. It seems impossible to overlook the especially aggravating factor of appellee's involvement of his daughter in his criminal scheme. What type of individual knowingly involves his child in criminality?

It is respectfully submitted that the criminality underlying appellee's resignation from The Florida Bar is so heinous as to require that his application for reinstatement be denied.

II. APPELLEE, FACING IMMINENT SUSPENSION OR DISBARMENT IN THE STATE OF NEW YORK, SHOULD NOT BE REINSTATED TO THE FLORIDA BAR.

As a result of the bar's investigation, it was discovered that its attorney discipline counterparts in the State of New York, where appellee is admitted, did not know of appellee's felony conviction or Florida discipline. Upon being informed, the New York authorities immediately commenced proceedings akin to Florida's felony conviction suspension and instituted a disciplinary investigation which is currently pending.

When questioned concerning his apparent failure to inform the New York Bar of his felony conviction and Florida discipline, appellee offered a two (2) prong explanation. Firstly, he suggested that he had expressly delegated the task of informing the New York authorities to his attorney. In the same vein, he explained that because the New York Bar was contacted in connection with his pre-sentence investigation, he assumed that the information pertaining to his felony conviction and bar discipline had reached the right bureaucracy (124 through 138).

While appellee's alleged delegation of responsibility might be mitigating regarding the lack of reporting to New York in the first instance, his rationalization for not making further inquiry upon his

receipt of a certificate of good standing is difficult to comprehend. It would seem axiomatic that every attorney would appreciate that upon a felony conviction, their privilege to practice law will be curtailed. Appellee, on the contrary, found nothing remarkable in his receipt of a certificate of good standing from the New York Bar reasoning that the New York Bar counsel "were going to sit back until somebody literally forced them to do something" (135).

It is respectfully submitted that appellee's explanation concerning why he neglected to make inquiry upon his receipt of his certificate of good standing is, at best, a rationalization and indicative of a mind-set not sufficiently rehabilitated to warrant reinstatement.

With the results of the extant New York proceedings unknown, affirmance of the referee's recommendations could result in appellee's reinstatement to The Florida Bar at the same time he is suspended or disbarred in New York. It would appear inescapable that New York, in its investigation, will focus upon the issue of appellee's neglect to report his felony conviction and Florida discipline and make and impose appropriate findings and discipline. It is respectfully submitted that should this Court determine that appellee otherwise qualifies for reinstatement notwithstanding the nature and extent of his misconduct and of his rationalization concerning his failure to question his certificate of good standing, that his reinstatement at least abide a determination in the New York proceeding.

III. APPELLEE SHOULD BE REQUIRED TO PAY, IN FULL, THE FINE IMPOSED UPON HIS FELONY CONVICTION PRIOR TO BEING REINSTATED TO THE FLORIDA BAR.

Upon his felony conviction, in addition to a four (4) year term of imprisonment, appellee was fined $100,000.00 (See the Judgment of Conviction attached to appellee's Petition for Reinstatement). In July, 1985, the United States entered into an agreement with appellee offering him a reduction of the fine to payments totalling $52,800.00 to be paid within one (1) year provided such reduction was approved by the United States Attorney, in his sole discretion, or, permitting appellee to pay the $100,000.00 fine in twenty (20) separate annual installments, with interest (See the July 15, 1985 Consent Order attached to appellee's Petition for Reinstatement). As of the date of the final hearing herein, the United States Attorney's Washington office had yet to make a determination regarding its willingness to accept a reduced fine (97).

It is respectfully submitted that should this Court determine that appellee qualifies for reinstatement, it condition such reinstatement upon appellee's complete satisfaction of his fine obligation. The burden should fall to appellee to vigorously pursue and straighten out his fine status. Only full payment of the fine will place appellee in a position where his slate is clean and his debt to society fully discharged. To permit appellee to resume the practice of law with the fine issue either unresolved or subject to a multi-year installment payout, will create a situation where an individual with unfulfilled criminal sanctions has bestowed upon him a privilege otherwise reserved

for the unfettered, a result which, it is respectfully submitted, should be avoided.

IV. THIS COURT SHOULD REVISIT ITS DECISION IN THE FLORIDA BAR V. ALFIERI, 427 SO. 2D 662 (FLA. 1983) AND EXPRESSLY RECEDE FROM ITS POSITION EQUATING VOLUNTARY RESIGNATION WITH DISBARMENT.

The Florida Bar v. Alfieri, 427 So.2d 662 (Fla. 1983) is an anomaly. It's announcement seemingly portended the death knell of disbarments in Florida. Although never again applied, the Alfieri equation remains enshrined in the Southern Reporter and keynoted in 3 Fla. D. 2d 216. It is respectfully requested that the Court expressly recede from its opinion so that no mixed signals can confuse the bar membership or public at large.

There simply can be no equating of a non-permanent resignation with disbarment. The stigma of disbarment, alone, renders it an awesome discipline and the ignominy attached thereto is but a fraction of the difference between the two (2) discipline measures. Equally meaningful is the path one must travel back to the bar. On the one hand, there is the reinstatement process where repentance and contrition pave the way. On the other, lies the monumental task of surviving a Board of Bar Examiners character investigation and the taking and passing of a bar exam including the demonstration by test of an understanding of the attorney's ethical responsibilities. Disbarment is, indeed, "the worst of all calamities to most lawyers." Petition of Wolf, supra, at page 550.

CONCLUSION

Due to the nature of the criminality underlying appellee's resignation, appellee's rationalization regarding his failure to act after receiving a certificate of good standing from the New York Bar and imminent New York Bar discipline, it is respectfully requested that appellee's petition for reinstatement be denied.

Should this Court determine to adopt the referee's recommendations, it is respectfully requested that appellee's reinstatement be conditioned upon the payment, in full, of the fine imposed upon his criminal conviction.

As an adjunct to its determination herein it is respectfully requested that the Court expressly recede from its decision in The Florida Bar v. Alfieri, 427 So.2d 612 (Fla. 1983) in order to dispel any confusion in the bar membership or public that a non-permanent, voluntary petition to resign is the equivalent of a disbarment.

Finally, it is requested that appellee be directed to pay the bar's costs as found and recommended by the referee.

All of which is respectfully submitted.

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