IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

CASE NO: 69-589

RE: Petition for Reinstatement of

LEWIS M. WILLIAMS.

PETITIONER'S INITIAL BRIEF

JOHN A. WEISS
P.O. Box 1167
Tallahassee, FL 32302
(904) 681-9010
COUNSEL FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

INTRODUCTION

The Petitioner in these proceedings, Lewis M. Williams, will be referred to as "Petitioner" or "Mr. Williams." The Florida Bar shall be referred to as such or as "the Bar."

References to the transcript of the final hearing will be by the designation TR-I for references to volume I of the transcript (July 6, 1987), and TR-II for references to volume II (July 7, 1987).

STATEMENT OF THE CASE AND FACTS

On November 6, 1986, Petitioner filed his Petition for Reinstatement in this Court. Final hearing on the petition was held on July 6 and 7, 1987.

Petitioner was suspended from membership in good standing in The Florida Bar on February 13, 1979, upon his conviction of four counts of felonious conduct. Those counts installed conspiracy, possession, and sale of cocaine and possession of two concealed firearms.

The Florida Bar never brought proceedings against Petitioner seeking disbarment.

At the time of his conviction, Petitioner had been practicing law in Miami for over 20 years with no prior criminal convictions. Petitioner's disciplinary history consisted of a private reprimand in the early 1960s.

In February 1980, Petitioner began his 10-year sentence. In March 1982 he was assigned to a work release program in Lantana, Florida. From November 1982 until April 1985, Petitioner was on parole (TR-I, 75-77).

Petitioner's civil rights were restored in May 1985 (TR-I, 78).

Petitioner acknowledges that he is guilty of the crimes for which he was convicted and accepts responsibility for his conduct (TR-I, 79). From late 1982 until present, Petitioner has worked as a free-lance law clerk and paralegal for numerous Miami lawyers. His duties include research, drafting pleadings,

running errands, drafting discovery, and drafting civil and criminal appeals (TR-I, 102-107).

There was no evidence submitted during final hearing to indicate that Petitioner has engaged in the unauthorized practice of law or that he did not abide by The Florida Bar's reporting requirements for suspended lawyers working as a law clerk.

Petitioner passed the ethics portion of The Florida Bar examination on March 13, 1987.

At final hearing, Petitioner presented 15 witnesses on his behalf, nine of whom were lawyers. Of the non-lawyers, four were former clients, one was a well-respected bondsman, and the sixth was the president of the Latin Division of the United Cerebral Palsy Fund in Miami.

All of Petitioner's witnesses were aware that he was a convicted felon and was not a member in good standing of The Florida Bar. All attested to his good character and recommended his reinstatement.

One of the lawyers testifying in Petitioner's behalf, Louis Casuso, was the lead prosecutor in the case that led to Petitioner's conviction.

The Bar's witnesses were limited to two assistant state attorneys, neither of whom had any information whatsoever about Petitioner's actions since 1980, one private practitioner (Douglas Williams) who testified about Petitioner's general reputation but who freely admitted that he did not know anything at all about the steps Petitioner had taken to rehabilitate

himself (TR-II, 20), and Gary J. McDaniel, a private investigator that Petitioner hired in 1979 and with whom Petitioner had a dispute over McDaniel's bill.

None of the Bar's witnesses had any information whatsoever to counter Petitioner's witnesses' testimony that Petitioner has rehabilitated himself over the last nine years.

SUMMARY OF ARGUMENT

With the exception of Petitioner's unclear recollection about a minor incident in November 1982, the only grounds listed by the referee for her recommendation that Petitioner be denied reinstatement are events that occurred prior to or within one year of his February 1979 suspension. The referee completely ignored the rehabilitation that Petitioner has undergone since his release from prison in November 1982--almost five years before final hearing in this cause.

Despite running two ads in the Miami News soliciting information on Petitioner's reinstatement, and despite over 190 hours of investigative time, The Florida Bar was unable to obtain a single witness that could rebut any of the evidence presented to the referee that Petitioner has rehabilitated himself since his release from prison.

By focusing on Petitioner's illegal conduct before his suspension, and on minor rules violations that occurred shortly after his suspension, the referee ignored the purpose of disciplinary proceedings as set forth by Rule 3-7.9(g) of the Rules of Discipline. That rule states that the matter to be decided in reinstatement proceedings "shall be the fitness of the Petitioner to resume the practice of law."

The referee ignored Petitioner's present fitness to resume the practice of law, as demonstrated by the testimony of 15 witnesses, nine of whom were lawyers, and has focused upon conduct occurring seven to nine years ago as the basis for denying reinstatement.

Petitioner should not be assessed an hourly salary in costs paid by The Florida Bar to its investigators. Rule 3-7.5(k)(l) of the Rules of Discipline only authorizes the assessment of court reporter's fees (the transcript of the final hearing was paid by Petitioner), copy costs, witness fees and travel expenses, and the referee's and the Bar counsel's travel expenses.

ARGUMENT

I. THE REFEREE IGNORED THE OVERWHELMING EVIDENCE BEFORE HER THAT PETITIONER HAS REHABILITATED HIMSELF SINCE HIS SUSPENSION IN 1979 AND ERRONEOUSLY RECOMMENDED PETITIONER BE DENIED REINSTATEMENT

The issue to be decided in reinstatement proceedings "shall be the fitness of the Petitioner to resume the practice of law." Rule 3-7.9(g), Rules of Discipline. The proceedings are not intended to re-try the Petitioner for his past misconduct, but to determine his present fitness to practice law. Petition of Stalnaker, 9 So.2d 100 (Fla. 1942).

The Petitioner in reinstatement proceedings shows his present fitness to practice law by showing that he has rehabilitated himself, and that the likelihood of misconduct being repeated is slim. The Supreme Court has set forth the factors that should be considered in determining rehabilitation in Petition of Dawson, 131 So.2d 472 (Fla. 1961). Those factors are:

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 or professional ability;

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

5. Personal assurances, supported by corroborating 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.

Petitioner met the burden imposed on him by Dawson by the overwhelming weight of the evidence. In fact, Petitioner's evidence of rehabilitation is unrebutted.

Fifteen individuals testified on Petitioner's behalf at the final hearing. Among them were nine lawyers. All of the witnesses knew that Petitioner was a convicted felon, however, some were not aware of the particulars. All attested to Petitioner's honesty, good character, and integrity. All testified that should he be reinstated, they would refer clients to him and would have no problem entrusting him with escrow funds.

The lawyers testifying on Petitioner's behalf were all reputable members of The Florida Bar in good standing. They ranged from lawyers that had known Petitioner since law school to members who had known him a mere five years.

David Feliu, who was admitted to The Florida Bar in 1982, testified that he met Petitioner shortly after Feliu became a lawyer. At that time, Petitioner was clerking for Nat Barone. Mr. Feliu testified that "as a young lawyer, I was impressed by his level of honesty" (TR-I, 15). Petitioner impressed upon Mr. Feliu what a "valuable privilege" the practice of law is and how sorry Petitioner was to lose it (TR-I, 16). Mr. Feliu testified that Petitioner was tremendously regretful of his misconduct and evinced no bitterness towards the Bar.

John M. Thompson, a Florida lawyer since 1959, and whose wife is the former Mayor of Coral Gables, testified that Petitioner's attitude towards his misconduct was "totally remorseful" and that Petitioner did not "exhibit anger or frustration" over his conviction and suspension (TR-I, 24, 25). Petitioner showed no bitterness or hostility to The Florida Bar and is "probably more current" on recent developments in the law than Mr. Thompson.

Richard H. Reynolds, who was admitted to the Bar in 1955, testified that prior to his suspension Petitioner was an excellent lawyer and had an "absolutely first-rate" reputation for integrity and honesty. Since his suspension, Petitioner has clerked for Mr. Reynolds and his work product was "excellent." Mr. Reynolds further testified that Petitioner "absolutely" accepted responsibility for his wrong-doing, that he evinced "total regret and sorrow" for what he did, and that he showed no bitterness towards The Florida Bar.

Mr. Reynolds testified that upon reinstatement, he would hire Petitioner as an associate in his law office.

The lead prosecutor in Petitioner's trial, Louis Casuso, also testified in Petitioner's behalf. Mr. Casuso testified that, despite his role as lead prosecutor, Petitioner has always been friendly towards him and that Mr. Casuso considered him an honest person. Should Petitioner be reinstated, Mr. Casuso would refer clients to him and would consider him an asset to the Bar.

Francis P. Clarke has only known Petitioner three years. His association with Petitioner has been limited to using Petitioner as a law clerk. Mr. Clarke testified that Petitioner did "very good research" and put out an excellent work product. Mr. Clarke further testified that he thought Petitioner was honest, was a person of good moral character, and Mr. Clarke would have no hesitancy to refer clients to Petitioner or to entrust escrow funds to him should he be reinstated.

Fred W. Droese, a lawyer in Florida since 1977 (and in California since 1972), has used Petitioner as a paralegal during the past few years. Mr. Droese attested to the quality work product and excellent skills shown by Petitioner while clerking. Mr. Droese testified that he considered Petitioner an honest person who possessed good moral character. He has never heard Petitioner indicate any bitterness or animosity towards The Florida Bar. Finally, Mr. Droese would refer clients to Petitioner and would have no hesitancy to sit at counsel table with Petitioner as co-counsel.

Jose Ferrer, who was admitted in 1978 and for whom Petitioner started working as a paralegal in 1983, spoke very highly of Petitioner. Mr. Ferrer testified that when he set up his law office that:

> at the beginning, if I didn't have his advice, I would have felt very alone, because through his advice, which was always very ethical and his knowledge of the law, then I acquired knowledge and developed my career much better. (TR-I, 138)

Mr. Ferrer considers Petitioner "honest and forthright." He would have no hesitancy referring clients to Petitioner or entrusting escrow funds to him.

Nathaniel L. Barone was the next lawyer to testify on Petitioner's behalf. Mr. Barone has been admitted to The Florida Bar since 1961 and has known Petitioner since law school. Mr. Barone testified that before his suspension Petitioner was an excellent lawyer and had an excellent reputation for integrity and honesty.

When Petitioner was paroled in November 1982, Mr. Barone hired Petitioner as a law clerk. Mr. Barone stated that Petitioner accepted his clerk status "very graciously and insisted that he would do anything to stay in the practice of law" (TR-I, 183). Petitioner's work product has been "superior."

Mr. Barone testified that Petitioner "has been an extremely contrite lawyer" since his conviction and has never evinced any bitterness towards The Florida Bar.

Mr. Barone stated that he would ask Mr. Williams to associate in Mr. Barone's law office should he be reinstated.

Charles H. Snowden, a former municipal judge and member of the Florida Legislature, also testified for Petitioner. Mr. Snowden has known Petitioner for 15 to 20 years and considered his integrity as being of the "highest level." Mr. Snowden would have no hesitancy to associate Petitioner as co-counsel, to refer clients to him, or to entrust escrow funds to him.

Magna Avila, president of the Latin Division of the United Cerebral Palsy fund in Miami, testified about Petitioner's volunteer work on behalf of that organization over the last three or four years. Ms. Avila thinks Petitioner "is a good man." Petitioner is an active worker for her organization and she considers him an honest individual. She expressed no hesitancy about referring clients to him.

Similarly, Bobby Maynard, who has been a bondsman in Miami for 31 years, testified that he considered Petitioner an honest individual who would be an asset to the Bar if reinstated.

Petitioner's witnesses also included four former clients who have maintained contact with him since his suspension. They included William Ronald Bullough, the president of several businesses who has known Petitioner for 36 years; Merrill Preston Harris, who has known Petitioner 30 years and who hired Petitioner to do the legal work on a $6,000,000 project in 1972; Charles Sherman Adler, an insurance agent who over a 20-year period used Petitioner numerous times as his personal lawyer and who recommended him as a lawyer for many of Mr. Adler's insured; and Orlando Molina, a Cuban-American who operates a towing service.

All four former clients attested to the excellent work product that Petitioner had given them while he was their lawyer, all expressed no doubts about Petitioner's honesty, and all indicated their desire to hire him again as their lawyer should he be reinstated.

Finally, Petitioner testified in his behalf. He evinced an attitude of repentance, responsibility for his wrong-doing, and acceptance of his discipline, and expressed a desire to conduct himself in a forthright manner should he be reinstated.

Despite two ads in the Miami Review, 192 hours of investigator and auditor time, and a mail-out of Petitioner's Petitioner for Reinstatement to 31 Bar presidents and grievance committee chairmen, The Florida Bar itself was able to produce but one witness, Douglas Williams, to testify against Petitioner. And that witness had absolutely no information on Petitioner's rehabilitation. Mr. Williams has not spoken to Petitioner over the last eight years except for an occasional greeting in a hallway.

David Waksman and Kevin Digregory, the former of whom was listed in the Petition for Reinstatement, are a former and a present Assistant State Attorney. In essence, they stated that Petitioner should never be reinstated because he was once convicted of a felony. Neither individual has spent any time at all talking to Petitioner or any of his employers and neither has any evidence whatsoever regarding Petitioner's rehabilitation. Their opposition to Petitioner's reinstatement is based solely on policy grounds.

The Bar's only other witness was Gary McDaniel, a former investigator for Petitioner who is obviously bitter towards Petitioner. Mr. McDaniel was brought to the Bar's attention as a potential witness in Petitioner's Petition for Reinstatement.

Mr. McDaniel's testimony consisted primarily of unsubstantiated hearsay about Petitioner's alleged criminal activity before his conviction, and Petitioner's hiring of McDaniel to investigate the jurors in Petitioner's trial and in his co-defendant's trial.

Petitioner also testified before the referee. He clearly acknowledged his guilt and his responsibility for his conviction (TR-I, 79).

Petitioner testified as to his extensive work as a paralegal and a law clerk since his release from prison in 1982. From that point until now Petitioner has engaged as a full-time paralegal working for numerous Miami lawyers. All of his former employers that testified spoke highly of his knowledge and work product.

There was no evidence presented to the referee that Petitioner did not comply with The Florida Bar's law clerking notice provisions, or that Petitioner engaged in the unauthorized practice of law.

In addition to his exemplary work product as a law clerk, Petitioner described various charitable work that he has done, the most significant of which has been his work for the Latin division of the United Cerebral Palsy fund and his efforts on behalf of the Epiphany Church in fund-raising endeavors (TR-I, 200, 201). One of Petitioner's character witnesses, Magna Avila, the president of the Latin division of the United Cerebral Palsy fund, testified on his behalf (TR-I, 7-10).

Petitioner acknowledged that The Florida Bar "had no alternative" but to suspend him as a result of his felony conviction (TR-I, 206).

Petitioner also testified that he has taken and passed with a score of 88 (passing is 70) the professional ethics exam (TR-I, 115).

The referee, in denying reinstatement, chose to ignore the favorable testimony of Petitioner's 15 witnesses, and focused on a few inconsistencies among them. In essence, as was true in The Florida Bar v. Whitlock, 506 So.2d 400 (Fla. 1987), the referee chose to ignore the overwhelming weight of evidence of rehabilitation and focused on other factors that do not show a lack of rehabilitation.

The referee in her findings of fact listed six reasons for her negative recommendation. The first of these is that Petitioner did not strictly adhere to the requirements of the Integration Rule because he failed to furnish a copy of his order of suspension to his clients in early 1979. While Petitioner does not deny that he failed to comply with the rule, his testimony that he complied with the spirit of the rule was unrebutted. Specifically, Petitioner testified that he notified every client either verbally, telephonically, or by letter that he was suspended, and made arrangements to refer those who needed a lawyer to a different one (TR-I, 74).

Petitioner also testified that he was not familiar with the requirements of the Integration Rule as to winding down his practice and that neither The Florida Bar nor his lawyer advised him of the dictates of the Rule (TR-II, 23).

Petitioner urges this Court to ignore Petitioner's de minimus, violation of the Integration Rule in February 1979. First, The Florida Bar abdicated its responsibility of notifying Petitioner of the requirements of the Rule, and it doubly violated its duties by failing to follow upon Petitioner's omission. More significantly, however, is the fact that Petitioner's offense occurred in the early part of his suspension (i.e., nine years ago), and it does not now indicate a lack of rehabilitation. The Florida Bar v. Inglis, 471 So.2d 38 (Fla. 1975).

The referee's second stated reason for recommending a denial of Petitioner's reinstatement was the fact that he did not close his trust account until May 23, 1980, some four months after he was incarcerated. The Bar showed a check issued from that trust account to a physician on January 15, 1980.

At final hearing, Petitioner was unable to remember the details of the check, and the referee prohibited his speculating about its purpose. However, there was no allegation that the money disbursed from trust, $150.00, was anything but proper.

For some reason, the referee found that Petitioner did not concede that the check was issued on his escrow account. However, a fair reading of Bar counsel's cross examination of Petitioner, belies that finding (TR-II, 207, 208).

Once again, Petitioner asks this Court to disregard this minor transgression, particularly in light of the fact that there

is no evidence of any impropriety in the handling of his trust account, because his offense took place in the early stages of his suspension and does not indicate a lack of rehabilitation. Inglis, supra.

The referee's third stated reason for recommending a denial of reinstatement had to do with Petitioner's hiring of a private investigator to interview jurors in violation of Disciplinary Rule 7-108(D) of the Code of Professional Responsibility. Petitioner acknowledged his wrong-doing in this regard (TR-I, 246).

The referee considered Petitioner's violation of the code "especially significant" because numerous lawyers testifying at final hearing attested to Petitioner's knowledge of law and procedure.

Once again, Petitioner submits to this Court that the referee is focusing upon an incident that occurred shortly after Petitioner's conviction and which has no bearing on his rehabilitation. Inglis, supra. The referee's finding that Petitioner's violation of the code in 1979 was "especially significant" in light of Petitioner's character witnesses' testimony shows that she completely missed the thrust of their testimony to her. The witnesses were testifying about Petitioner's present legal ability and his rehabilitation over the years. The referee clearly missed the entire point of the character witnesses' testimony. Perhaps, that is why she brushed away their opinions.

The referee's fourth stated reason for recommending a denial of reinstatement is her perceived lapse of memory by Petitioner as to a November 4, 1982, event. McDaniel testified that he received what he considered a threatening telephone message from Petitioner taken by McDaniel's answering service stating that Petitioner had called and asked about Mcdaniel's' health. The referee states on page 3 of her report that:

> it begs reasonable credibility to believe the answering service made up the message and the number.

The referee's finding intimates that Petitioner denied the existence of the telephone message. Such is clearly not the case. When asked if Petitioner made the telephone call to Mr. McDaniel on November 4, 1982, Petitioner testified that:

> my memory escapes me, but I may have. I was invited to do so by his lawyer. (TR-II, 192)

Petitioner then reiterated that he simply could not remember making the telephone call, but that he did consider the message "odd" (TR-II, 193, 194). Petitioner also stated that the alleged threatening telephone call was five days prior to his being paroled after 30 months of incarceration, and that he was being extra careful to do anything that would keep him from being released (TR-II, 194, 195).

The referee stated that " the most disturbing" activity by Petitioner was his continued involvement after his conviction and suspension with individuals involved in his case or who were involved in other criminal activity. She based this finding on

Petitioner's admission that he helped to obtain counsel for one Esidro Rodriguez in obtaining legal counsel, and on the unsubstantiated and uncorroborated testimony of Investigator McDaniel.

Petitioner submits to this Court that it was not a violation of the Code in 1979, nor is it a lack of rehabilitation now for him to try to get a lawyer for a friend, even if the friend is accused of serious crimes.

The referee clearly gave great weight to the uncorroborated testimony of McDaniel. Such testimony is unreliable in light of McDaniel's clear animosity towards Petitioner. McDaniel blamed Petitioner for McDaniel's not getting paid for his investigation in the Rodriguez case. (Mr. McDaniel admitted that he worked for Mr. Rodriguez for three or four months prior to the Petitioner.)

The referee erred in denying Petitioner's reinstatement because of his alleged association with supposed criminals in 1979 and early 1980. No such conduct has occurred since. Petitioner's contact with Rodriguez occurred prior to his incarceration in February 1980--over eight years ago. There was not one scintilla of evidence to show improper association with any individuals since his incarceration, and certainly not since Petitioner was released from prison in November 1982.

Petitioner submits once again that the holding in Inglis, supra, is applicable to this finding by the referee, and that it should not deny reinstatement.

The referee's penultimate negative finding focused on Petitioner's alleged denial of culpability. Despite his

unequivocal testimony before her that he was guilty of the felonies of which he was convicted and that he assumed responsibility for them, the referee focused on the testimony by several witnesses, who were clearly not well-versed in the details of Petitioner's conviction, as support for her finding. The witnesses' confusion should not be a bar to Petitioner's reinstatement.

Petitioner is consistent in his story that he did not set up the drug transaction that resulted in his arrest, but that he attended it at the behest of his mistress. Petitioner acknowledged that he knew that he was getting himself into an illegality--and he acknowledged that he was guilty of a crime for walking into a transaction which he knew was probably illegal. However, Petitioner has always maintained that he did not set up the drug deal.

The last sentence in the referee's factual findings reads:

> McDaniel testified that he believed himself and had been told by Isidro that Petitioner was involved in smuggling and had set up corporations for laundering money. (McDaniel, July 7, 1987, TR at 72, 73)

The referee does not state whether she believed McDaniel's testimony, but one must assume that she did because she referred to it. Petitioner asks this Court to discount this finding.

First, there is absolutely no evidence other than that given by McDaniel that Petitioner was involved in smuggling or laundering money. If The Florida Bar wanted to bring disciplinary charges against Petitioner for offenses other than that which was involved in his conviction, it should have done

so. It is not germane to the case before the Court. Even if it was true, such offenses took place prior to Petitioner's conviction. As such, it has no bearing on his rehabilitation and should be disregarded. Inglis, supra.

The matter before this Court in this case is Petitioner's fitness to resume the practice of law. Rule 3-7.9(g), Rules of Discipline. Petitioner's track record since he was incarcerated in February 1980, and certainly since his release from prison in November 1982, should be the focus of the inquiry in this case. This is proper because the purpose of reinstatement proceedings is to show rehabilitation, not to retry the original offense. This Court has so stated on numerous occasions, most notably in The Florida Bar v. Inglis, 471 So.2d 38 (Fla. 1985) and in The Florida Bar v. Ragano, 403 So.2d 401 (Fla. 1981).

In Inglis, this Court reversed the referee's finding that the Petitioner should not be reinstated in part because, after he was suspended from practice, he was convicted of culpable negligence after being charged with felonious assault by shooting an infant child. This Court reinstated Mr. Inglis despite the conviction, noting that the shooting took place relatively early in the suspension period. Id., p. 41. Mr. Inglis' conviction had no bearing on his rehabilitation.

It is significant to note that the Court also reinstated Mr. Inglis despite his denial of his guilt of the offense. Id., p. 40.

In Ragano, the Court reinstated petitioner despite the fact that he had mishandled his checking account privileges during his suspension. In approving the referee's findings and recommendation that petitioner be reinstated, the Court quoted in its opinion the following language in the referee's report:

> Were these practices to be occurring on a continuing basis today or had they occurred without reasonable explanation in the recent past, the recommendation of the referee might well be different from that reflected herein. In finding that such matters should not prevent the petitioner's reinstatement, the referee concludes that such practices resulted from the emotional unrest of the petitioner resulting from his suspension and suddenly finding himself without the ability to earn a living and without the apparent skills to readily engage in another income generating occupation. Id., p. 406.

The same philosophy applies to the Petitioner in the instant case. Most of the referee's stated reasons for denying reinstatement involved acts by Petitioner shortly after his suspension in 1979. Clearly, Petitioner's hiring of an investigator to interview the jurors was the act of a desperate man recently convicted of four felonies, and was the result of "emotional unrest."

Petitioner urges this Court to follow its previously stated policy that the purpose of reinstatement proceedings is not to retry the Petitioner, but to determine his fitness to resume the practice of law. Stalnaker, supra. The Florida Bar's emphasis on de minimus events occurring shortly after Petitioner's suspension or on the unsubstantiated testimony of a hostile

witness regarding misconduct prior to the conviction, should not be allowed to overwhelm Petitioner's clearly excellent record over the last seven years.

In the case of In Re: Stoller, 36 So.2d 443 (Fla. 1948), at page 444, this Court stated that "punitive considerations are only incidental and do not control . . ." reinstatement proceedings. The Court then stated that:

> To rehabilitate means to restore to one's former rank, privilege or status, to clear the character or reputation of stain, to retrieve forfeited trust and confidence. Forgiveness and pardon are as much a part of our scheme of things as prosecution and punishment but the approach to it should be through democratic process. . . .
>
> Measured by the foregoing test, has Petitioner rehabilitated himself? The answer must be found in his conduct during disbarment, the reasons for which, if important at all, are only incidental at this time. Does he show penance for the acts for which he was disbarred? Does he realize that the practice of law is a highly respectable profession, the main business of which is administrating justice, or does he think of it as a trade for the practice of tricks or an avenue to short circuit those who seek his counsel? Have adequate sanctions been exacted? Is he in accord with the thesis that character is more important than money and that administration of justice should reflect democratic ideals rather than smack of totalitarianism? If his conduct since disbarment reveals an attitude pointing to these concepts and the best traditions of the profession, he should be given another chance.

Petitioner should be given another chance to practice law.

II. THE REFEREE HAD NO BASIS UNDER THE RULES OF DISCIPLINE TO ASSESS THE BAR'S INVESTIGATIVE COST TO PETITIONER

The referee granted the Bar's request that petitioner be assessed $3,399.15 in investigative costs, consisting of hourly wages and out-of-pocket costs, paid to its investigators. Rule 3-7.5(k)(1) of the Rules of Discipline does not authorize the payment of such costs. It only permits the award of court reporter fees, witness costs, copy costs, and the travel expense of the Bar counsel and the referee.

Absent a specific authorization in the Rules of Discipline for the assessment of costs, such expenses should not be awarded to The Florida Bar.

It should be pointed out to this Court that the 192 hours expended by the Bar's investigators turned up no witnesses to testify against Petitioner. Not one. The Bar's only witness not listed in the Petition for Reinstatement filed in this cause was Douglas Williams, who testified after being called up by Bar counsel to determine if he knew anything about Petitioner.

The Florida Bar clearly went on a fishing expedition in its investigation of the Petition for Reinstatement. It should not be allowed to squander its assets in futile searches for negative evidence and then have these expenses charged to the Petitioner. There is no authorization in the rule for such an assessment.

CONCLUSION

Petitioner has proved his rehabilitation by the overwhelming weight of the evidence. He has been suspended from the practice of law for over nine years and, with the exception of a few transgressions during the first year after his suspension, has led an exemplary life. He should be reinstated to the practice of law.

The referee's award to The Florida Bar of its costs in conducting the investigation are not authorized by the Rules of Discipline and, therefore, should be reversed.

Respectfully submitted,

JOHN A. WEISS
P.O. Box 1167
Tallahassee, FL 32302
(904) 681-9010
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing brief was mailed to Patricia A. Etkin, Bar Counsel, The Florida Bar, 444 Brickell Avenue, Suite 211, Miami, FL 33131, by U.S. Mail, this 19th day of February, 1988.

JOHN A. WEISS