IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

CASE NO. 69,589

RE: Petition for Reinstatement of

LEWIS M. WILLIAMS.

PETITIONER'S REPLY BRIEF

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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 78, 1987).

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

On pages two through four of its brief, the Bar lists eleven reasons for denying Petitioner's reinstatement to practice. Each of those reasons shall be addressed in this reply. Petitioner shall label the Bar's reasons a through k in like manner as the Bar.

A. Petitioner's Conduct Before his Conviction (item a.)

a. The Bar would deny Petitioner reinstatement because of his alleged association with drug traffickers prior to his conviction. Petitioner has paid the price for this misconduct. He has served his sentence and he has been suspended from practice for over nine years.

The Bar chose never to bring disbarment charges against Petitioner. If his crime did not warrant even an attempt at disbarment, the Bar should not be allowed now to argue his offenses forever preclude reinstatement.

B. Petitioner's Conduct After His Conviction In 1979 But Prior to His Incarceration In May 1980 (items b. through g.)

b. Gary McDaniel provided the only testimony indicating Petitioner's association with a supposed drug smuggler named either Poppo or Poppa. He also refers to Petitioner's attempts to obtain counsel for Ysidro Rodriguez. As shown later in this

brief, none of McDaniel's testimony is credible. His lack of credibility stems primarily from his failure to extract over $13,300 in fees from Petitioner, $10,000 of which were earned by McDaniel while working for Rodriguez (Pet. Ex. 5). McDaniel thinks Petitioner tried to defraud him (TR II 136).

McDaniel began working for Rodriguez (who was accused of murder) in July 1979, four months before he met Petitioner (TR II-156). McDaniel had known Rodriguez since 1977. Mr. McDaniel, incredibly, testified that he began working for Mr. Rodriguez on the promise that Petitioner would pay Rodriguez' bill (TR II-156). Despite the fact that in July 1979 he did not know Petitioner McDaniel never telephoned or contacted Petitioner to verify that fact (TR II-156,157).

It beggars the imagination to believe that any investigator would undertake an extensive murder investigation on a promise that another individual would pay him without even verifying that fact.

On October 29, 1982, McDaniel's lawyer sent Petitioner a letter (Pet. Ex. 5) demanding that Petitioner pay to McDaniel a sum in excess of $20,000 for investigation fees. Petitioner did not pay it. Ultimately, McDaniel sued Petitioner for only $3,334.90. Why did McDaniel drop his claim for the other $16,000? Because he knew he had not one shred of evidence to prove up his claim for the other $16,000. In essence, after Rodriguez did not pay his bill to McDaniel, he decided to try to bluff the funds out of Petitioner. It did not work. In the end, McDaniel could sue only for those fees actually spent on Petitioner's case.

Petitioner, who McDaniel acknowledged had already paid him $1,000 in fees (TR II-144), defended against McDaniel's action on the basis of a lack of an itemized statement (one was never sent TR II-167) and the fact that McDaniel sued in a corporate capacity when the work was done before the business was incorporated.

Petitioner ultimately paid the $4,200 judgment McDaniel obtained against him by remitting $3,500 to McDaniel's lawyer (TR II-185). McDaniel originally testified that the $3,500 was $2,000 less than the judgment. Later, he "remembered" the judgment was only $4,200, or $700 less than the payoff (TR II-130,151). This was one of many instances where McDaniel would lie or exaggerate in an attempt to make Petitioner look bad.

McDaniel's and the Bar's allegations that Petitioner associated with drug traffickers after the conviction are unsubstantiated. If they were true, surely the Bar's investigators, in their almost 200 hours of "investigation" could have found some evidence to support them. Other than trying to get a lawyer for Rodriguez, there is no evidence before this Court that Petitioner associated with drug dealers after his arrest except for McDaniel's testimony.

Perhaps, Petitioner's problem is that he associates with a lot of hispanics, e.g., Ms. Avila, who testified on his behalf in her capacity as President of the Latin Division of UCP (TR I-7-10). Petitioner's wife is a Mexican (TR I-195) and he has strong ties to the Latin community. Surely, association with Spanish surnamed people does not equate to associating with criminals.

Petitioner's only association with "known criminals" after his arrest was his attempt to secure a lawyer for a friend, one Ysidro Rodriguez, in 1979. Such actions should not bar him from reinstatement in 1988.

c. Petitioner freely admitted hiring McDaniel in 1979 to find Gabriel Garcia, the confidential informer in Petitioner's criminal case who never testified. That informant never testified and Petitioner believes Garcia's testimony would have showed he did not set up the drug deal (TR I-242). (Petitioner has never denied he illegally participated in the transaction, he merely denies setting the deal up (TR I-79, TR II-196-198).

d. Petitioner concedes that his instructing McDaniel to try to interview jurors was improper. However, Petitioner's lapse occurred in 1979, when he was facing a jail sentence. He should not now be forever barred for this transgression.

e. McDaniel's testimony that Petitioner instructed him to try to bribe a police officer is absurd, is absolutely uncorroborated, and apparently was not even believed by the referee. She did not find that Petitioner made any such effort.

f. Petitioner's trust account definitely reflected minimal activity after his suspension. This is not unexpected. A lawyer cannot simply shut the door on his practice and have no loose ends dangling. Petitioner testified that after he was suspended he received some fees for work performed prior to that suspension. He had some doctor's bills and other obligations he had guaranteed on his client's behalf to pay out of those fees (TR II-202) and he did so.

Petitioner submits that it is not improper for a suspended lawyer to keep his trust account open for a reasonable period of time (here it was one year and three months) to insure an orderly wind-down of his practice. Such minor transgressions occurring in 1979 and early 1980 should certainly be no bar to reinstatement in 1988.

g. Petitioner failed to comply with the Bar's technical rules on winding down a practice by failing to file the required rule 11.10(7) affidavit. However, Petitioner complied with the spirit of the rule. He notified all 25 to 35 of his clients of his suspension, ceased their representation and referred them to other lawyers (TR I-74). The Bar presented no evidence rebutting Petitioner's testimony in this regard. Apparently, none of the clients, their subsequent lawyers, or adverse counsel filed any grievances about the manner in which Petitioner stopped practicing.

If Petitioner's failure to file an 11.10(7) affidavit in 1979 was so significant, why did the Bar wait until 1987 to bring the issue up? Neither the Bar nor Petitioner's lawyer advised him of the provisions of rule 11.10(7)(TR II-23).

C. Petitioner's Testimony at Trial (items h through j)

h. The Bar makes much of Petitioner's answer to the Bar's interrogatory seeking a listing of all realty owned as of January 1, 1979. The Bar argues Petitioner falsely answered the interrogatory because he failed to list some rental property he quitclaimed to his son on January 2, 1979. Petitioner was off by one day on his recollection of a real estate transaction that occurred over eight years ago. The property has belonged to his

son since 1979 and Petitioner has no interest in the property other than handling financial arrangements for his son, a Houston lawyer. There is no agreement for him to get the property and, should the son die tomorrow, the property would go to Petitioner's daughter-in-law (TR II-202).

i. Petitioner did not deny trying to obtain counsel for Ysidro Rodriguez. The Bar would try to convince this Court otherwise. A fair reading of Petitioner's testimony indicates some confusion (to be expected of events occurring eight years earlier) but no deception. Petitioner emphatically stated he was trying to find a lawyer for Rodriguez (TR II-190) and that he was given $1,000 to try to do so (TR II-190). He offered the fee to Mr. Barone, who refused, and then gave it to Carling Stedman on Mr. Rodriguez' behalf (TR II-191).

j. The Bar alleges Petitioner was deceptive relative a 1980 trust account check shown to him at final hearing. That check (Bar Ex. 3) is not labeled "Trust Account". Petitioner's confusion while looking at a check for the first time in over eight years is not deception. Petitioner did, in fact, acknowledge it as a trust account check (TR II-208). He had no reason to lie about the check. After all, Petitioner is the one who turned his records over to the Bar (TR II-209).

D. Petitioner's Threats to McDaniel (item k)

Even the referee did not accept the Bar's argument that Petitioner threatened McDaniel. She made no such finding.

Petitioner's "threats" to McDaniel were (1) McDaniel's answering service gave him a message from Petitioner on November

4, 1982 with the message "How is your health?" (TR II 140-141) and (2) McDaniel received an unsigned note at his office which he assumes is from Petitioner. That note consisted of copies of various documents sent to McDaniel's office. McDaniel considered that a threat because, he testified, his business address is not public knowledge. That statement was proven to be false.

Petitioner made no threats to McDaniel.

The telephone message was in response to a October 29, 1982 letter (Pet. Ex. 5) from McDaniel's lawyer asking Petitioner to call McDaniel. Apparently, McDaniel was not in and Petitioner left a brief message with the answer service operator to the effect of an inquiry about McDaniel's health. Is that a threat? Of course not. The referee did not find it so.

On November 4, 1982, when the call was made Petitioner was in jail and only five days from his parole date. It is absurd to think that he would leave a threatening message with a telephone operator, one that could be easily provided to corrections officials, five days before his release from jail.

The second "threat" is simply incredible.

McDaniel testified emphatically during direct examination that:

> The business address (McDaniel's office) isn't public knowledge (Tr II-133).

McDaniel said the note was an indication that "somebody" knows his office suite number, "which is very protected" (TR II-134).

On cross-examination, however, it became apparent that McDaniel was lying to the referee about his secret address (TR II-137-139).

The note that McDaniel considered threatening was addressed to Pretext Services, 1113 Old Dixie Highway, Lake Park, Florida 33043 (TR II-137). It was postmarked West Palm Beach (Petitioner lives in Miami).

The note consisted of a public State of Florida corporate document listing McDaniel's address as 1133 Old Dixie Highway, Number 4, Lake Park, Florida (TR II-138). The second document was a copy of McDaniel's occupational license and bore the 1133 Old Dixie Highway address. The third document was a county occupational license with the same 1133 Old Dixie Highway address (TR II-139).

All three documents were public documents and all three bore McDaniel's address which he earlier testified "isn't public knowledge" (TR II-133) and "which is very protected" (TR II-134).

Clearly anyone could have obtained McDaniel's address with a minimum of effort. McDaniel's address is not secret. It is in the public domain. Anyone of his prior 150 clients could have sent him his "threatening" note.

There is absolutely no evidence linking that note to Petitioner.

McDaniel will say anything to put Petitioner in a bad light. His attempt to paint an anonymous letter as a threat by Petitioner clearly indicates the degree to which McDaniel will go to make Petitioner seem unscrupulous. To bolster this fiction, McDaniel swore to the referee his address was unknown to the public. Actually, anybody could get it easily.

The referee did not find that Petitioner threatened McDaniel. She had no basis to do so. The Bar's attempts to use McDaniel's vivid imagination as a bar to Petitioner's reinstatement should be rejected.

E. Petitioner Should Be Reinstated

What more can Petitioner do to get reinstated? Since his release from jail in November 1982 he has led an exemplary life. Nine lawyers and six nonlawyers testified on his behalf. All commend his efforts toward rehabilitation. Included among those witnesses was Louis Casuso, the lawyer that prosecuted Petitioner in 1978 (TR I, 56-67).

Two of Petitioner's lawyer witnesses would hire him as an associate (Reynolds, TR I 50; Barone, TR I-188). All would either retain him or refer clients to him.

What more can Petitioner do to get reinstated? Nobody rebutted his testimony and his witnesses' testimony about rehabilitation. No unauthorized practice of law was charged (except, arguably, Petitioner's writing a trust account check in January 1980). He referred his daughter's case to Mr. Barone (TR I 110). Petitioner has obviously kept abreast of the law--his clerking is superlative.

Petitioner has now been suspended for over nine years. He was incarcerated from February 1980 until November 1982. He has paid a stiff penalty for his offense. His civil rights were restored in May 1985 (TR I 78). He has worked for charity, he has passed his ethics exam. What more can he do?

Petitioner will turn 60 on June 29, 1988 (TR I 81). He lives modestly, still residing in the house he bought 24 years ago (TR I-112). Between them, he and his wife have nine children (TR I 110). He drives a 1975 Chrysler, a gift from Orlando Molina, one of Petitioner's witnesses, and his wife drives a 1980 Oldsmobile (TR I 112). He has a 14 year old son to put through school, a wife to protect, and a retirement to think about (TR I 210).

If Petitioner is denied reinstatement, what happens then? In one year, if he applies again, will the Bar once again bring up all his alleged improprieties that occurred in 1979 and 1980? Will they once again parade McDaniel forward with his unsubstantiated stories of threats? Will the State Attorney's office send another representative forward (whose knowledge of Petitioner will consist only of a file he read a few days before final hearing) to say that Petitioner should never be reinstated because of the nature of his crime in 1978?

The purpose of these proceedings is not to retry the Petitioner for his past wrongs. The purpose of these proceedings is to allow the Petitioner to show he has rehabilitated himself. Petitioner has done so. Let him resume practice. He will never commit another crime.

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

The Bar has an interesting theory to justify their getting costs not provided for in the Rules of Discipline. In essence, they say "if the rules do not forbid it, we can get it."

This Court's rule 3-7.5(k)(l) is explicit. Assessable costs shall include various expenses as listed. There is no catch-all provision such as "and any other costs the Court might assess."

The listed reimbursable expenses do not include investigative costs.

Costs can be assessed only when there is specific authority for them. There is no such authority for investigator's fees. Petitioner should not be required to pay the Bar's exorbitant investigator's salaries.

This Court has in the past strictly construed its rules relating to sums lawyers in disciplinary proceedings must pay. For example, fees cannot be ordered refunded without specific authority. The Florida Bar v. Winn, 208 So. 2d 809 (Fla. 1968) at 810. The Court found no authority for ordering a lawyer to pay a client's losses as a result of the lawyer's neglect. The Florida Bar v. Castle, 512 So.2d 162 (Fla. 1987). Likewise, there is no authority to order the payment of investigators' salaries.

This should be particularly true where the investigators accomplished nothing. In almost 200 hours, the investigators turned up not a single witness to testify against Petitioner.

Not one. They did not turn up one scintilla of evidence to support McDaniel's allegations. In essence, they accomplished nothing.

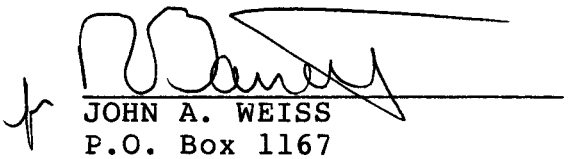
Petitioner should not have to pay the Bar's investigative costs.

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 is not authorized by the Rules of Discipline and, therefore, should be reversed.

Respectfully submitted,



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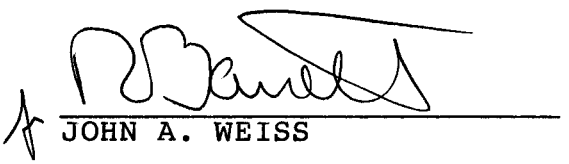
CERTIFICATE OF SERVICE

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 26th day of April, 1988.



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