

Supreme Court of Florida

No. 70,047

THE FLORIDA BAR
In Re RUSSELL T. SICKMEN

[April 7, 1988]

PER CURIAM

This proceeding is before the Court on the petition of Russell T. Sickmen for reinstatement to the practice of law in Florida. Pursuant to rule 3-7.9 of the Rules Regulating The Florida Bar, a referee was appointed to conduct proceedings on the petition. The referee recommends that the petition for reinstatement be granted. The Florida Bar has filed a petition for review and opposes reinstatement.

The petitioner was suspended for a term of three years, effective December 13, 1983. The Florida Bar v. Sickmen, 491 So.2d 274 (Fla. 1986). As provided by article XI, rule 11.10(4) of the then-existing Integration Rule of The Florida Bar, proof of rehabilitation was to be required prior to reinstatement. As a further condition, the order of the Court provided "that respondent be required to pass the ethics portion of The Florida Bar examination prior to his reinstatement."

In reinstatement proceedings, the responsibility of the referee is to hold a hearing, "at the conclusion of which the referee shall make and file with the Supreme Court of Florida a

report which shall include the findings of fact and a recommendation as to whether or not the petitioner is qualified to resume the practice of law." Rule 3-7.9(i), Rules Regulating The Florida Bar. The criteria by which a suspended lawyer's fitness to resume the practice of law is to be evaluated have been discussed in numerous opinions of this Court. E.g., The Florida Bar In Re Inglis, 471 So.2d 38 (Fla. 1985); The Florida Bar In re Timson, 301 So.2d 448 (Fla. 1974); In re Dawson, 131 So.2d 472 (Fla. 1961). The petitioner must show: (1) full compliance with conditions imposed in the previous disciplinary judgment; (2) unimpeachable character; (3) a reputation for professional ability; (4) lack of malice toward those responsible for the previous disciplinary action; (5) a repentant attitude concerning the earlier wrongdoing and a strong resolution to adhere to principles of correct conduct; and (6) restitution to persons harmed by the earlier misconduct.

The referee found that petitioner had established his rehabilitation, met the criteria set forth in past cases, and had demonstrated his fitness to resume the practice of law. The record supports the referee's findings. The Florida Bar argues that because petitioner was disbarred in New York subsequent to this suspension in Florida, a finding of rehabilitation is precluded. However, the New York disbarment was based on the same misconduct as the Florida suspension, not further or separate misconduct. Our previous judgment of suspension was a final adjudication of discipline regarding the misconduct in question, and the fact that another jurisdiction imposed a more severe sanction for the same misconduct does not justify our placing any greater burdens on the petitioner than those already imposed.

The Bar also argues that petitioner should be required to retake the Florida bar examination. Our suspension order imposed the requirement that petitioner pass the ethics portion of the exam and this condition has been fulfilled. We find that this case is distinguishable from those cases in which suspended attorneys have been required to retake the entire bar examination due to long absence from the practice.

We therefore approve the referee's report. Russell T. Sickmen is hereby reinstated to the practice of law in Florida.

It is so ordered.

MCDONALD, C.J., and OVERTON, SHAW, BARKETT, GRIMES and KOGAN, JJ.,
Concur
EHRlich, J., Concur specially with an opinion

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF
FILED, DETERMINED.

EHRlich, J., concurring specially.

While I concur with the Court's opinion, I write separately because of the anomalous situation that the Court finds itself in at this time in connection with the reinstatement of Mr. Sickmen.

Mr. Sickmen was charged with conspiracy to commit mail fraud in the United States District Court for the Southern District of New York and entered a guilty plea and was convicted of that felony in November 1983. Because of his conviction, he was suspended from practice in this state. Thereafter, The Florida Bar filed a formal complaint in this Court growing out of Mr. Sickmen's conviction. The referee therein recommended that he be suspended for a period of three years from the date of his original suspension on December 13, 1983 and that he be required to pass the ethics portion of the Florida Bar examination before being eligible for a readmission to the practice of law, and on July 17, 1986, this Court approved the findings and recommendations of the referee. I dissented from the Court's opinion and judgment with a written opinion. I was of the view that the proper discipline for that very serious offense was disbarment. I was also of the view that Mr. Sickmen should be required to pass all parts of The Florida Bar examination before being permitted to return to the practice, because of the length of time he would have been out of the practice of the profession. At some point in time after the Florida disciplinary proceedings, the State of New York instituted disciplinary proceedings against Mr. Sickmen on account of the selfsame felony conviction and imposed the discipline of disbarment.

Mr. Sickmen has now done all that our order of suspension required of him as a prerequisite to his reinstatement to the practice of law in this state, and I do not believe we have any alternative except to approve the referee's recommendation that he be reinstated, for the reasons set forth in the Court's opinion, and thus we find ourselves in the position of

permitting someone to practice law in Florida while he is disbarred from practice in a sister state.

In the usual course of events, this would not be permitted. Rule 3-4.6 of the Rules Regulating The Florida Bar provides that "A final adjudication in a disciplinary proceeding by a court or other authorized disciplinary agency of another jurisdiction, state or federal, that an attorney licensed to practice in that jurisdiction is guilty of misconduct justifying disciplinary action shall be considered as conclusive proof of such misconduct in a disciplinary proceeding under this rule." If New York had instituted its disciplinary proceedings first and had disbarred Mr. Sickmen, there is no doubt in my mind that this Court would have imposed the same discipline, and would not readmit him to The Florida Bar unless and until the State of New York had done likewise. It just so happens in this case that Florida went first in its disciplinary proceedings and its discipline was less than that of the State of New York.

Original Proceeding - The Florida Bar

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for Petitioner

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