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IN THE SUPREME COURT OF FLORIDA

IN RE:  
PETITION FOR REINSTATEMENT  
of RONALD E. KAY

Supreme Court  
Case No. 72,823  
The Florida Bar Case  
No. 88-50,837 (FRE-17C)

INITIAL BRIEF OF THE FLORIDA BAR

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## PREFACE

In this brief, The Florida Bar will be referred to as "THE FLORIDA BAR". Ronald E. Kay, Petitioner will be referred to as the Petitioner.

Abbreviations utilized in this brief are as follows:

"T" refers to the Transcript of the hearings held before the Referee on October 10, 1988, October 11, 1988 and October 24, 1988, to be followed by page numbers.

STATEMENT OF THE CASE

On February 29, 1988, Petitioner filed his Petition for Reinstatement in this cause. On March 9, 1988, the Honorable J. Leonard Fleet was designated referee.

A status conference was held on April 13, 1988. The parties stipulated and Judge Fleet ordered a substance abuse evaluation of Petitioner and the release of medical and other records to The Florida Bar.

In May 1988, Lance J. Thibideau entered his appearance as attorney for Petitioner. This matter was scheduled for final hearing on October 10, 1988.

On September 20, 1989, the referee ordered that L. Dennison Reed be appointed as a third expert psychologist/psychiatrist.

The final hearings in this cause were held on October 10, 1988, October 11, 1988 and October 24, 1988. On March 17, 1989, the referee issued his Report recommending that Petitioner be reinstated to the practice of law. On June 9, 1989, The Florida Bar submitted its Petition for Review at the direction of The Board of Governors of The Florida Bar.

## STATEMENT OF THE FACTS

The Petitioner filed a Petition for Reinstatement to the practice of law. Petitioner had resigned pending disciplinary proceedings by a Supreme Court Order dated February 28, 1985 concerning his felony convictions for delivery of methaqualone and possession of cocaine. Testimony adduced by Petitioner at his sentencing hearing in the criminal case established that Petitioner was suffering from serious psychological difficulties.

The Florida Bar opposed the instant petition based upon the testimony and evidence presented. The Florida Bar presented the testimony and reports of psychologists William G. Ryan and L. Dennison Reed who both testified that Petitioner has serious psychological difficulties. (T. 94-153, 163-212, Exs. 1, 2, 3, 4). Dr. Reed believes that Petitioner would present a danger to the public if reinstated at this time because his own interests would supersede clients, with his tendency to exploit. (T. 184-186).

Petitioner openly admitted to Dr. Reed that he had had sex with female clients and had used the drug, quaaludes, to have sex with women, including clients (T. 165, 191 Ex. 4). Dr. Reed does not believe based upon his extensive testing and evaluations of Petitioner that he has undertaken any significant psychotherapy (T. 166).

Dr. Ryan additionally testified from his testing and evaluations that Petitioner does not have the sense to control

his impulses and that he does not have any judgment (T. 106). Dr. Ryan further stated that he does not believe Petitioner has sufficient impulse control and perceptive ability to function constructively with clients or others without repercussions (T. 125).

The Honorable Stephen Booher, Circuit Judge testified in opposition to Petitioner's Reinstatement. Judge Booher was the presiding judge in the criminal case that led to Petitioner's incarceration and resignation from The Florida Bar. (T. 255-309).

Petitioner presented the deposition testimony of Dr. Hugo Waldheim, psychiatrist (Petitioner's Ex. 5) which contradicted his testimony before Judge Booher. (T. 290, see sentencing testimony of Dr. Waldheim admitted into evidence).

Petitioner also introduced the report of Dr. Charles Mutter (Petitioner's Ex. 4). The Florida Bar offered to introduce into evidence the Final Judgment of Dissolution of Marriage in the cause styled In Re: The Marriage of Sharon R. Kay and Ronald E. Kay, case No. 81-10791 CV. The referee precluded the introduction of this exhibit (T. 310-314). Said June 6, 1983 Order is attached hereto as Appendix 3.

Petitioner testified at the hearing regarding his remorse for the consequences that he has suffered because of his criminal convictions and the resulting consequences of same (T. 327-362).

The Referee issued his Report recommending Petitioner's reinstatement to the practice of law (said Report of Referee is attached hereto as Appendix 4).



## SUMMARY OF THE ARGUMENT

**I. THE REFEREE ERRED IN RECOMMENDING THAT PETITIONER HAS DEMONSTRATED THAT HE HAS BEEN REHABILITATED AND IS PRESENTLY FIT TO BE REINSTATED.**

Drs. Caddy, Ryan and Reed, psychologists, all testified that Petitioner has significant or serious psychological problems (T. 82, 83, 100-110, 165-171, Exs. 1, 2, 3, 4).

The Honorable Stephen Booher testified that he felt Petitioner's misconduct was a continuing course of conduct (T. 274-275).

In Williams v. The Board of Governors of The Florida Bar, 173 So.2d 686 (Fla. 1965), the Petitioning attorney was denied reinstatement because the Supreme Court felt that he had not "cured the flaw in his character by the mere passage of time after he had been caught...." Similarly, the instant Petitioner has not established that he has cured the flaws in his character. The Florida Bar submits that Petitioner has failed to evidence that he has made gains in his psychological difficulties that may have contributed to his criminal misconduct and exploitive behavior.

The Referee erred in recommending that the Petitioner be reinstated in this cause.

**II. THE REFEREE ERRED IN PRECLUDING THE FLORIDA BAR FROM INTRODUCING INTO EVIDENCE THE JUNE 6, 1983 FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE.**

Misconduct, whether or not it resulted in discipline is relevant pursuant to Petition of Wolf, 257 So.2d 547 (Fla.

1972). The preclusion of said evidence (Appendix 3) prejudiced  
The Florida Bar in its presentation of its case. (T.310-314).

## ARGUMENT

### **I. THE REFEREE ERRED IN RECOMMENDING THAT PETITIONER HAS DEMONSTRATED THAT HE HAS BEEN REHABILITATED AND IS PRESENTLY FIT TO BE REINSTATED.**

In the case, In Re Timson, 301 So.2d 448 (Fla. 1974), the Supreme Court determined that there are six (6) basic elements which, though not inclusive, will serve as a guide to deliberations on the subject of reinstatement. They 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 for professional ability.
4. Evidence of a lack of malice and ill feeling by the Petitioner toward those who by duty were compelled to bring about the disciplinary proceeding.
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.
6. In cases involving misappropriation of funds, restitution is important.

Id., at 449.

The Florida Bar presented evidence establishing concerns regarding Respondent's moral character and sense of repentance.

In defense of his moral character, Mr. Kay has produced character witnesses. However, the testimony of Dr. Glenn Caddy, (pages 76-92), Dr. William G. Ryan (pages 94-153), and Dr. L. Dennison Reed, (pages 163-212) psychologists, all concur that Petitioner, Ronald E. Kay, has serious psychological problems.

(See reports attached hereto as an Appendix 1 and 2 of Drs. Ryan and Reed, Exhibits 1, 2, 3 and 4).

Dr. Caddy testified on behalf of the Petitioner and stated that he did not conduct any recent testing of the Petitioner (page 91), but that Petitioner was basically the same man in a personality dynamic sense that he was when he saw him back in 1983-1984 (page 90). Dr. Caddy stated that Petitioner can be reinstated with close supervisory monitoring and psychological therapy (page 87). However, Dr. Caddy testified and agreed with Dr. Reed and Ryan that Petitioner has limitations in his judgment (T. 82-83). Dr. Caddy also advised that Petitioner is capable of viewing the shortest distance between two (2) points. (T. 86).

Drs. Reed and Ryan testified and listed in their respective reports significant problems that presently exist. In a reinstatement proceeding, the burden is on the petitioning party. Rule 3-7.9(k) of the Rules of Discipline provides "If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed." The Florida Bar submits that the evidence and testimony presented demonstrates that Petitioner is presently unfit to resume the practice of law.

Dr. Reed stated in his report, at page 9, The Florida Bar's Exhibit 4, that Mr. Kay has a "strong tendency to exploit others for personal gain while disregarding ethical considerations and the law." Dr. Reed testified, "that based upon his testing and evaluation of Petitioner that, he does not believe that Mr. Kay could be relied upon to discharge his duties as an attorney in

an ethical manner or even necessarily a legal manner, and certainly not with the amount of trust that is part of the position that is part of being an attorney."

Dr. Reed based his conclusion on Petitioner's pattern of behavior. (T. 165-171). Dr. Reed testified that Petitioner has shown sociopathic tendencies, with a tendency to lie and steal. (T. 173, Ex. 4).

Dr. Ryan testified that Petitioner advised that Petitioner put women into two (2) categories, ladies as opposed to women who were addicts or had difficulties with drugs, and the whole purpose of the quaaludes were for leg openers (T. 101). Said distinction causes great concern. As an attorney, Petitioner would be called upon to represent persons having various difficulties. Further, Dr. Ryan believes that Petitioner would react poorly to situations of stress. (T. 109).

The Honorable Stephen H. Booher, Circuit Judge in the criminal case, testified regarding the seriousness of Respondent's criminal acts and the fact that he relied on Dr. Hugo Waldheim's representations that Ronald E. Kay would receive long term psychological therapy while on probation. (T.275-281). Dr. Waldheim's testimony before Judge Booher and his November 1981 letter (attached as Appendix 5) clearly contradict his testimony given in his deposition in this proceeding. (T. 290, Ex. 9 & 10 testimony of Dr. Waldheim in sentencing transcript in criminal case). Additionally the final order of the Board of Medical Examiners, dated May 12, 1984, introduced as a Florida Bar impeachment exhibit, establishes reasons for Dr. Waldheim's

suspension and probation concerning his medical license other than the reason testified to by Dr. Waldheim in his deposition. (A copy is attached hereto as Appendix 6).

Judge Booher had previously testified on Petitioner's behalf in a previous reinstatement hearing from a disbarment order concerning other misconduct on Petitioner's part. (See The Florida Bar v. Kay, 232 So.2d 378 (Fla. 1970) (T. 255). At that time, Judge Booher thought Petitioner's conduct was an isolated incident. (T. 255) Judge Booher expressed that the testimony elicited in the recent criminal case evidenced that Petitioner had used his position as an attorney to engage in misconduct involving exchanging a drug, to wit: quaaludes for sexual purposes. (T. 261). Judge Booher does not believe the Petitioner should be reinstated as he used his license to practice law to facilitate the sexual offenses he committed. (T. 280).

Judge Booher felt as, Dr. Reed did, that Petitioners' misconduct was a continuing course of conduct that had continued for a long period of time. (T. 274-275).

Most importantly, Judge Booher advised that Dr. Waldheim at the January 8, 1982 sentencing hearing in the criminal case stated that Petitioner's psychosexual difficulties and his dependent/independent conflicts put him in a situation where he was constantly flirting with problems that would result in disaster, that Petitioner flirted with them. (T. 281). Judge Booher then stated "and I think giving him a license to practice law would be like giving a killer a gun". (T. 281).

Petitioner presented character witness that certainly were not competent concerning the psychological difficulties testified to by the various experts. It is interesting to note, however, in light of Petitioners' psychological difficulties that Petitioner did not present any women to testify as character witnesses or otherwise.

Petitioner introduced as an exhibit the report of Dr. Mutter, dated April 2, 1988. Said report disagreed with Petitioner's own witness', Dr. Waldheim's November 10, 1981 letter, concerning sexual exploits and psychosexual proclivities of the Petitioner. (Ex. 9, Appendix 5).

Dr. Reed disagreed with Dr. Mutter's report and believed that Dr. Mutter had relied mainly on computer testing. (T. 179).

The Florida Bar submits that it is quite noteworthy that Ronald E. Kay in his testimony on October 24, 1988 exhibited no repentance for his misconduct. Mr. Kay expressed that he was upset about everything that had happened to him personally as a result of his misconduct but Mr. Kay did not exhibit any remorse for the victims of his actions. Mr. Kay did make a statement that he knows what he did was wrong, but the majority of his statements concerned everything that had happened to him. The Florida Bar submits that Mr. Kay's lack of repentance concerning the persons that were hurt or affected by his improper actions demonstrates that he should not be given a position of trust and the authority of being a licensed attorney in the State of Florida at this time.

The testimony of Drs. Caddy, Reed and Ryan clearly demonstrate that Petitioner needs extensive psychotherapy at this time. The Florida Bar's position is that Petitioner should have this extensive psychotherapy prior to being reinstated to The Florida Bar. The Florida Bar submits that the public should not have Ronald E. Kay in a position of authority and trust until such time as there is expert testimony supported by recent testing that Petitioner would not be a threat to the public and that Petitioner has been in therapy on a long term continuing basis and is benefiting from such treatment.

Mr. Kay admitted to Dr. Reed that while in prison on work release he pretended to attend narcotics anonymous to earn gain time. (Page 4 of The Florida Bar's Exhibit 4) This is an example of Petitioner's manipulation of others.

The testimony of Dr. Reed and his report (The Florida Bar's Exhibit 4) referred to Petitioner regretting the difficulties he personally encountered because of his criminal misconduct. (Pages 9-10, Exhibit 4).

The Florida Bar feels it is noteworthy that although Drs. Caddy, Reed and Ryan testified that Petitioner would need extensive psychotherapy, that Petitioner stated to Dr. Reed, "I think I have my situation under control and don't think I have a present need for psychological counseling." (Page 9 of Exhibit 4).

In Williams v. The Board of Governors of The Florida Bar, 173 So.2d 686 (Fla. 1965), the petitioning attorney was denied reinstatement because the Supreme Court felt that he had not



"cured the flaw in his character by the mere passage of time after he has been caught and has confessed." Similarly, Ronald E. Kay has not established that he has cured the flaws in his character. The testimony of Drs. Caddy, Reed and Ryan indicate that extensive therapy is needed to do so. In Williams, as in the instant case, the petitioner had had a number of prominent people testify on his behalf.

In In Re: Alfieri, 529 So.2d 116 (Fla. 1988), the Supreme Court denied the Petitioner's Petition for Reinstatement based on the seriousness of the petitioner's criminal misconduct which had led to his resignation, his further misconduct in not advising the New York Bar of his Florida disciplinary proceedings. Id.

In the present case, Ronald E. Kay similarly committed serious criminal misconduct and there is expert testimony that Petitioner has psychological difficulties that presently make him unfit to practice law.

The Supreme Court found the petitioner in Alfieri unfit to resume the practice of law. The Florida Bar submits that the instant Petitioner is also unfit to be reinstated at this time based upon the expert testimony of Drs. Reed and Ryan and Dr. Caddy's testimony concerning Petitioner's difficulties. The Florida Bar feels that before one petitions for reinstatement that said person should do everything possible to be ready for reinstatement. The record is abundant that Petitioner Kay has not had sufficient psychological counseling or psychotherapy or has not benefited from it to a degree to entitle him to be reinstated at this time, particularly where Petitioner Kay

advised Dr. Reed that he did not believe he had a need for counseling.

The Florida Bar submits that Petitioner has failed to demonstrate that he has made gains in his psychological difficulties that may have contributed to his criminal convictions and exploitive behavior.

In The Petition of Wolf, 257 So.2d 547 (Fla. 1972), the Supreme Court held that in a reinstatement proceeding, "the Referee may properly consider the prior disciplinary record of one seeking to be reinstated to The Florida Bar, including the number, similarity and gravity of his offenses." (citation omitted). Id., at 548.

Based upon the evidence presented, The Florida Bar submits that Petitioner's petition should be denied. The Florida Bar should not have to have the burden of closely monitoring the Petitioner while he is undergoing extensive psychotherapy. For the protection of the public, Ronald E. Kay should not be placed in a position of trust and authority at this time.

Pursuant to Rule 3-7.9(1), Petitioner can file a new petition for reinstatement after a period of one (1) year has passed from the adverse judgment.

**II. THE REFEREE ERRED IN PRECLUDING THE FLORIDA BAR FROM INTRODUCING INTO EVIDENCE THE JUNE 6, 1983 FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE.**

As previously stated in the Petition of Wolf, 257 So.2d 547 (Fla. 1972), the Supreme Court held in a reinstatement proceeding, "the referee may properly consider the prior

disciplinary record of one seeking to be reinstated to The Florida Bar . . . . (citations omitted).

Id., at 548.

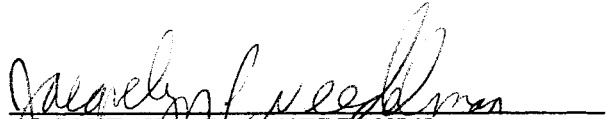
In this case, the referee improperly denied The Florida Bar from introducing into evidence a copy of his June 6, 1983 Final Judgment of Dissolution of Marriage. (T. 310-314, See Appendix 3). Misconduct, whether or not it resulted in discipline is certainly relevant pursuant to Wolf, supra, in a reinstatement proceeding. (See also In Re: Alfieri 529 So.2d 1116 (Fla. 1988)).

Said final judgment contained findings that Petitioner in this dissolution proceeding had secreted and dissipated assets, had transferred substantial assets into and out of his mothers' name with impunity. Dr. Reed testified (T. 173) that Petitioner's testing presented strong sociopathic tendencies, with the tendency to lie and steal. The Florida Bar's offered exhibit, Appendix 3 evidences said behavior and the exclusion of same from evidence in this cause prejudiced The Florida Bar in the presentation of its case. Accordingly, the referee erred in precluding The Florida Bar from presenting its tendered exhibit.

CONCLUSION

Based upon the foregoing, The Florida Bar respectfully requests this Honorable court to deny Petitioner's Petition for Reinstatement and to hold that the referee erred in precluding The Florida Bar from introducing into evidence the June 6, 1983 Final Judgment of Dissolution of Marriage, and tax the costs of this proceeding in the amount of \$5,238.74 against the Petitioner.

Respectfully submitted,



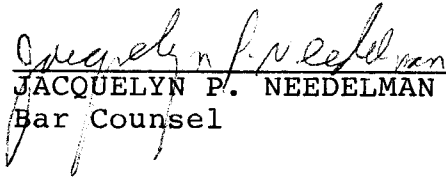
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the Initial Brief of The Florida Bar was mailed to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, 32301, and that a true and correct copy was mailed to Lance J. Thibideau, Attorney for Respondent, 901 South Federal Highway, Suite 300, Fort Lauderdale, FL 33316 this 19<sup>th</sup> day of July, 1989.

  
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