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JUL 23 1989

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By _____ Deputy Clerk

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. 72,027

v.

PAUL A. CAILLAUD,
Respondent.

REPLY BRIEF OF THE FLORIDA BAR

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SYMBOLS AND REFERENCES

In this Brief, the Complainant, will be referred to as "The Florida Bar". The Respondent will be referred to as "Paul A. Caillaud" or "Caillaud." The Report of Referee will be referred to as "RR," followed by the page number.

SUMMARY OF ARGUMENT

The Referee recommended that Caillaud be reinstated without proof of rehabilitation. The Florida Bar contends that Rule 3-5.1(e), Rules of Discipline, the rule in effect at this time, requires proof of rehabilitation when an attorney is suspended for more than ninety days.

ARGUMENT

I. REINSTATEMENT PROCEEDINGS ARE GOVERNED BY THE RULES IN EFFECT AT TIME APPLICATION FOR REINSTATEMENT IS MADE.

Paul A. Caillaud, the respondent, on page 16 of his Answer Brief, contends that his suspension terminated on March 6, 1989. He further states that it is not necessary for him to further Petition for Reinstatement, as he has been reinstated by natural expiration of the suspension order. As authority for his position, he cites The Florida Bar v. Evans, 109 So.2d 881 (Fla. 1959).

The Florida Bar submits that the Evans case, supra, states:

"Reinstatement proceedings are governed by the rule in effect at the time application for reinstatement is made."

The Florida Bar v. Evans, 109 So.2d 881, 882 (Fla. 1959).

Although Caillaud has not petitioned for reinstatement, as this Court has not yet promulgated an order in the disciplinary case, the Report of Referee was signed on April 4, 1989. Accordingly, the rules in effect are the Rules of Discipline, also known as Chapter 3 of the Rules Regulating The Florida Bar.

Rule 3-5.1(e), of these rules state in part: "A suspension of more than ninety (90) days shall require proof of rehabilitation.. ." (The referee recommended a three year suspension, nunc pro tunc to March 6, 1986) RR, Pg. 5.

The Rules in effect when The Florida Bar v. Evans, supra, was published, is different than the rules in effect today, to wit: The Rules of Discipline. According to the rules governing the case at hand there is no authority for Caillaud to be reinstated as a member of The Florida Bar in good standing, without first showing proof of rehabilitation. Rule 3-7.9(n) Rules of Discipline; The Florida Bar v. Musleh, 453 So.2d 794 (Fla. 1984) and The Florida Bar v. Pavlick, 504 So.2d 1231 (Fla. 1987).

CONCLUSION

Based upon the foregoing, The Florida Bar contends that the Report of Referee should be approved, except for the portion of the report which recommends that proof of rehabilitation not be required. The Florida Bar requests that Paul A. Caillaud be required to show Proof of Rehabilitation, prior to being reinstated as a member of The Florida Bar in good standing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of The Florida Bar's Reply Brief was mailed to Sid J. White, Clerk of the Supreme Court, Supreme Court Building, Tallahassee, Florida, and copies of said brief were mailed to Paul A. Caillaud, 12208 S.W. 194th Terrace, Miami, Florida 33177, and a copy was mailed to John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32399-2300 this 26 day of JULY, 1989.


PAUL A. GROVES BAR COUNSEL

The Florida Bar