

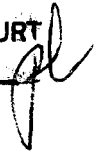
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SID J. WHITE

SEP 1 1989

CLERK, SUPREME COURT

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Deputy Clerk



IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Complainant,

Supreme Court Case  
No. 72,424

v.

LEO B. WEST,  
Respondent.

\_\_\_\_\_ /

REPLY BRIEF OF COMPLAINANT

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## SYMBOLS AND REFERENCES

In this Brief, The Florida Bar, will be referred to as "TFB". Leo B. West will be referred to as "Respondent." "T.1" will refer to the transcript of the final hearing held October 14, 1988. "T.2" will refer to the transcript of the final hearing held before the Referee on January 30, 1989. "RR" will refer to the Report of Referee filed March 20, 1989.

**STATEMENT OF THE CASE AND FACTS**

Complainant readopts and realleges the Statement of the Case and Statement of the Facts as contained in its Initial Brief as filed.

The Florida Bar would like to clarify Respondent's Statement of the Case wherein it is stated, "'TFB' interposed no specific objections to this pronouncement." (see Respondent's Answer Brief, page 2) and Respondent's Statement of Facts wherein it is stated, "'TFB' further acknowledged that the Referee's directive was to follow the reinstatement rule." (see Respondent's Answer Brief, page 3).

Both of these statements are taken out of context and are not as represented by Respondent.

SUMMARY OF ARGUMENT

Pursuant to Rule 3-5.1(e), "A suspension of more than ninety (90) days shall require proof of rehabilitation...". Respondent's suspension was for 18 months and therefore falls within the purview of this rule.

Respondent has failed to comply with this rule and is attempting to circumvent the rules by arguing to this Court that because The Florida Bar did not object during the proceedings as to Respondent's reinstatement, that they should be precluded from raising it on appeal. This is misdirection.

The purpose of reinstatement proceedings is to provide the Bar with evidence of rehabilitation and to afford the Bar the opportunity to review this evidence and either agree to the reinstatement or present evidence in opposition.

As such, the Referee erred in failing to require proof of rehabilitation through reinstatement proceedings as required by Rule 3-5.1(e), Rules of Discipline.

## ARGUMENT

The Respondent cites with authority the proposition that the Referee's Findings and Recommendations are presumed to be correct and will not be reversed unless it is shown that there exists no basis in law or fact when considering the record as a whole. The Florida Bar v. Vannier, 498 So.2d 896 (Fla. 1986). This, of course, presumes that the Referee was empowered with the authority to render such Findings and Recommendations to begin with.

The record is clear. Pursuant to Order of the Supreme Court dated September 2, 1988, "The referee designated to consider the petition shall hold a hearing, receive such evidence and hear such argument as is deemed appropriate, and make a report and recommendations to the Court on the question of whether the three-year suspension provided for by Rule 3-7.2 of the Rules Regulating The Florida Bar should be terminated or modified." The Referee was not empowered to hear reinstatement proceedings.

Pursuant to Rule 3-5.1(e), "A suspension of more than ninety (90) days shall require proof of rehabilitation...". Respondent's suspension was for 18 months and therefore falls within the purview of this rule.

Respondent attempts to assert the proposition that because The Florida Bar never requested a continuance or clarification of the proceedings that any objection to reinstatement should be waived. This is misdirection.

It should be noted that the only time during the pendency and hearing of these proceedings that the issue of or mention of reinstatement arose are the last statements made by counsel for Respondent wherein he inquired of the Court as to whether his Honor was treating the proceedings as a reinstatement hearing (T2-11-12). At no time prior was the issue of treatment of the proceedings for the purpose of reinstatement ever mentioned. This is supported by Respondent wherein he states in his Answer Brief at page 6, "A careful examination of the Petition for Modification or Termination of Suspension will disclose that Respondent was requesting, although inartfully drawn, reinstatement." It is not the obligation of this Court nor Petitioner to speculate as to the underlying meaning or intent (if any) of Respondent's inartfully drawn pleadings. Under Rule 11.14 (8) of the Integration Rules of The Florida Bar, all petitions for reinstatement, whether the proceeding originates in the circuit court or appellate court or Florida Bar, must be processed in accordance with Integration Rules on reinstatement by the filing of a petition with the Board of Governors of The Florida Bar. The circuit court has no jurisdiction to order reinstatement. The Florida Bar v. Tannenbaum, 240 So.2d 302 (Fla. 1970).

Respondent has failed to comply with this rule and is attempting to circumvent the rules by arguing to this Court that because The Florida Bar did not object during the proceedings as to Respondent's reinstatement, that they should be precluded from raising it on appeal. This is misdirection.



A review of the record will reveal that such an objection could not have been made because at no time was The Florida Bar aware that reinstatement was ever being considered. What Respondent would have this Court believe is that Petitioner should have objected at the completion of the hearing, and that such objection would have had the effect of sweeping retroactively over the entire course, scope and content of all pleadings and proceedings in this cause. Such is not the case.

Attorney reinstatement proceedings are governed by rules in effect at the time of the application for reinstatement, unless the original discipline opinion or rules provides otherwise. The Florida Bar in re. Petition of Harris L. Kimball, 425 So.2d 531 (Fla. 1982).

"A license to practice law confers no vested right on the holder thereof, but is a conditional privilege which is revocable for cause." Rule 3-1.1 (Privilege to practice.) Rules Regulating the Florida Bar. Reinstatement is not a right, **it** is a privilege. As such, with most privileges, proof is required to be established that the person seeking the privilege is worthy of **it**.

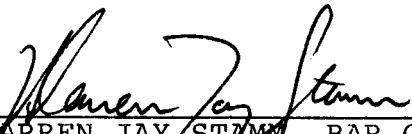
The purpose of reinstatement proceedings is to provide the Bar with evidence of rehabilitation and to afford the Bar the opportunity to review this evidence and either agree to the reinstatement or present evidence in opposition. In the case sub judice, The Florida Bar was deprived of this right, and to allow these proceedings to be considered in lieu of reinstatement is in direct contravention to the purpose and intent of the Rules Regulating The Florida Bar.

As such, the Referee erred in failing to require proof of rehabilitation through reinstatement proceedings as required by Rule 3-5.1(e), Rules of Discipline.

CONCLUSION

Based upon the foregoing citations of authority and case law, the Referee's recommendation that proof of rehabilitation not be made a condition of Respondent's discipline must be rejected and Respondent should be required to offer clear and convincing proof of rehabilitation pursuant to Rule 3-5.1(e) and Rule 3-7.9(n)(2), Rules of Discipline.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of The Florida Bar's Initial Brief was sent to Sid J. White, Clerk of the Supreme Court, Supreme Court Building, Tallahassee, Florida, and a copy was mailed to James M. Stark, 524 S. Andrews Avenue, Suite 201N, Fort Lauderdale, Florida 33301, Certified Mail Return Receipt Requested (#P 110 986 1861, to Leo B. West, 803 Biscayne Building, 19 West Flagler Street, Miami, Florida 33130, Certified Mail Return Receipt Requested (#P 110 986 1871, and a copy was mailed to John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32399-2300 this 31 day of August, 1989.

  
WARREN JAY STAMM, BAR COUNSEL