

IN THE SUPREME COURT OF FLORIDA

Case No. 73,754

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THE FLORIDA BAR:

In re: Petition for
Reinstatement of
HERMAN COHEN

INITIAL BRIEF

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Initial Brief

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FACTS

The letter T shall refer to the transcript of record taken in hearing before the Honorable Joseph E. Price, Referee.

In the case of The Florida Bar vs. Herman Cohen, 534 So.2d 392 (Fla. 1989), the Supreme Court of Florida suspended Herman Cohen from the practice of law for 91 days with reinstatement upon proof of rehabilitation. The suspension commenced on November 21, 1988. The conditions imposed in said disciplinary judgment was that Herman Cohen would not accept any new business from the date of this opinion, to-wit: October 20, 1988 and also to pay the costs associated with said proceedings.

Herman Cohen has not accepted any new business from the date of the Supreme Court's opinion and immediately paid the cost judgment.

POINTS INVOLVED

- I. WHAT IS THE CRITERIA FOR REINSTATEMENT AS APPLIED TO PETITIONER?

- II. PETITIONER'S PRIOR CONDUCT AND DISCIPLINARY RECORD

POINT I

WHAT IS THE CRITERIA FOR REINSTATE-
MENT AS APPLIED FOR PETITIONER?

ARGUMENT

In the case of The Florida Bar vs. Charles K. Inglis, 471 So.2d 38 (Fla. 1985), the criteria for reinstatement to active membership in the bar after a disciplinary suspension include: strict compliance with previous disciplinary order; good moral character; demonstrable professional ability, lack of malice toward those involved in bringing about previous disciplinary proceedings; a strong sense of repentance for prior misconduct and intention of proper conduct in the future; and compliance with any conditions imposed such as restitution.

Going through the enumerated conditions as set forth in the Inglis case, supra, the Petitioner, would show that Petitioner has complied with the previous disciplinary order. As recited above, petitioner ceased the practice of law from October 20, 1988 to the present and the costs assessed were paid (T 72).

Petitioner has shown good moral character and demonstrable professional ability as reflected by testimony of four local attorneys and a Circuit Judge testified that Petitioner was a man of integrity and has competence (T 14); who has suffered remorse,

has a good reputation in the community and has no malice toward anyone; if Petitioner is reinstated would be a good member in standing with Florida Bar (T 15) that he has known Petitioner professionally, since 1951 (T 13), that Petitioner enjoys a good reputation in the community (T 15) after cross examination by Bar Counsel setting forth completely Petitioner background the Judge was asked that based upon everything you just heard, your opinion about Mr. Cohen being a member of the Bar has not waived at all, has it?

The witness: No, it hasn't (T 22).

The next witness, attorney P. Conniglio testified that Petitioner was an expert in Real Estate and foreclosure (T 25), he knows that Petitioner has no malice or resentment, is of good moral character and has integrity (T26), that Petitioner be allowed to come back into the Bar and be a member in good standing (T 30, 31), that he has known Petitioner since law school days (T 24).

Thereafter attorney B. Berman testified that he has had business dealings with Herman Cohen for close to 40 years and that he is honest, moral, thoroughly reliable and an expert in the field of real estate and mortgages (T 35, 36). That Petitioner was trustworthy, he was remorseful and evidenced no malice (T 37).

He believe that Petitioner has been rehabilitated and should be reinstated to The Florida Bar (T 37, 38, 43).

Petitioner's fourth witness, attorney R. Hayes, also testified that he believed Petitioner was an expert in real estate and mortgages, that Petitioner has exhibited remorse and was contrite (T 44), that Petitioner is a good asset to the B ar and suggest that he be readmitted (T47). The last witness, G. Milner testified that Petitioner is trustworthy and a man of integrity (T 52, 53) that Petitioner indicated remorse and no resentment or malice were present toward people who brought charges against him (T 54).

Petitioner testified that he does not hold malice against Spike Von Zamft (T 65) that he has remorse (T 70) he did not practice during suspension (T 73), the deposition he attended was merely as an observer, he did not enter an appearance, did not ask any questions or object to any of the questions asked, that Ed Barnes was a poor electrician that did not have money to have the transcript written up and his new attorney Martin Cohen, Esq. said go over there and sit and listen (T 73). In retrospect, that was stupid but Petitioner was not practicing law by being an observer.

The Referee in his report disregarded the fact that Petitioner on a one time only basis attended a deposition merely as an observer and did not make any objections to any of the questions posed nor ask any questions. Petitioner went to the deposition of Edd Barnes, for humanitarian reasons. Webster's dictionary on the definition of observer is: 1) to keep in view; 2) to take notice of.

There was no intention of Petitioner practicing law when he went to hear the testimony of the family's electrician. Petitioner sincerely regrets his failure to make an announcement prior to the deposition being taken that he would not ask any questions or interpose any objection, but was merely there as an observer.

In the clarity of 20/20 hindsight Petitioner acknowledges that it would have been far wiser not to have attended the deposition, in any capacity, since it might be construed adversely.

Petitioner on October 20, 1988 was on a semi-retired basis and did not have any clients on a retainer basis nor were other matters handling exclusively by Petitioner. After Petitioner withdrew from the practice of law his firm informed everyone who asked that he had been suspended and was no longer practicing law.

The Referee in part based his recommendation that Herman

Cohen's petition for reinstatement be denied on the grounds of his failure to remove his name from the building. This removal was an honest oversight, and said sign was removed immediately after the hearing, that in addition to Petitioner's name there was several other attorney's names on the same wall and Petitioner simply overlooked his removal.

POINT II

PETITIONER'S PRIOR CONDUCT AND DISCIPLINARY RECORD

ARGUMENT

The Referee recited the case of The Florida Bar, In re: Herman Cohen, 331 So.2d 306 (Fla. 1976).

Petitioner admits that he suffered a public reprimand for conflict of interest, however, nowhere in said report was there a neglect of a legal matter as recited by the Referee.

In reference to Cohen vs. New Sunrise Investment Corp., Case No. 76-16246 (Fla. 11th. Cir. Ct., Apr. 9, 1986) this is a divorce case involving Petitioner's brother which has been in litigation for 13 years and still pending, and Petitioner and members of his family were never named as parties, although ruling were made against Petitioner and individuals members of his family.

In the case of Garcia vs. Munne and Cohen, Case No. 78-7743 (Fla. 11th. Cir. Ct. March 25, 1984), the final judgment against Cohen was reversed and remanded for new trial because there was an error to disqualify him from representing himself. The findings of the District Court of Appeal, Third District (1982) was in keeping with the case of Ellis vs. State, 86 Fla. 257, 97 So. 520 (Fla. 1923). New trial awarded for errors of procedure when substantial justice demands it.

CONCLUSION

The four attorneys and a Circuit Judge testified that Petitioner was held in high regard by the Court and fellow attorneys. On numerous occasions Petitioner's advice was sought in the real estate field, that he has a good reputation in the community and is trustworthy, has good moral character; was and is remorseful, evidenced no malice toward anyone, all believed he had been rehabilitated and be allowed back into the Bar and be a good member in good standing, that Petitioner who has practiced law continuously for 38 years, who has never been charged with a misdemeanor or felony, who has no judgments and who has two sons who are practicing attorneys be given another opportunity to prove himself.

The temporary suspension of 91 days having continued for over a year is sufficient punishment and Petitioner should be returned to the practice of law or in the alternative be placed on probationary status for a period of time.

In the event that this Honorable Court does not see fit to grant Petitioner either of the above, that this Court not require Petitioner, a senior citizen, to wait an additional year pursuant to Rule 11.11 Integration Rule (10), to reapply for admission.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief was mailed to Paul A. Gross, Esq., Bar Counsel, The Florida Bar, 211 Rivergate Plaza, 444 Brickell Avenue, Miami, Fl. 33131, this 14th. day of December, 1989.



MARTIN COHEN, ESQ.