

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

In Re:

Supreme Court Case
No. 73,754

HERMAN COHEN, Petitioner

The Florida Bar Case
NO. 89-71,161(11H-MRE)

(Petition for Reinstatement)

FILED

210

JAN 21 1990

LEWIS J. ...
Deputy Clerk

pb

PETITIONER HERMAN COHEN'S

REPLY BRIEF

MARTIN COHEN, ESQ.
Attorney for Petitioner
622 S. W. 1st. Street
Miami, Fl. 33130.
(305) 545-0567

TABLE OF CONTENTS

	<u>PAGES</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
SYMBOLS AND REFERENCES	iii
ARGUMENT	1-3
I	
DOES PETITIONER APPEARANCE AT THE TAKING OF A DEPOSITION DURING THE PENDENCY OF HIS SUSPENSION CONSTITUTES THE PRACTICE OF LAW?.....	1-3
CONCLUSION	4
CERTIFICATE OF SERVICE	5

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Cohen v.) New Sunrise Investment Corp.</u> 76-16246 (Fla. 11th Cir.Ct. April 9, 1986)	3
<u>Garcia v. Munne and Cohen</u> 78-7743 (Fla. 11th Cir.Ct. March 25, 1984)	3
<u>The Florida Bar v. Cohen</u> 534 So.2d 392 (Fla. 1988)	1

SYMBOLS AND REFERENCES

In this Brief, The Florida Bar will be referred to as the "Bar". Herman Cohen, the Petitioner, will be referred to as "Cohen" or "Petitioner."

Abbreviations utilized in this Brief are as follows:
"T" refers to the transcript of the hearing held on July 19, 1989, before the Honorable Joseph E. Price, the Referee. The "T" will be followed by page numbers, i.e." "T.6" refers to page 6 of the transcript.

ARGUMENT

I

DOES PETITIONER APPEARANCE AT THE TAKING
OF A DEPOSITION DURING THE PENDENCY OF HIS
SUSPENSION CONSTITUTE THE PRACTICE OF LAW?

The Petitioner as of November 21, 1988, for a period of 91 days was not authorized to practice law, The Florida Bar v. Herman Cohen, 534 So.2d 392 (Florida 1988). Subsequent to this time he did attend a deposition but merely had gone there as an observer, (T.73). During the entire deposition Petitioner did not ask any questions or object to any of the questions asked. The Petitioner had gone merely to listen to the proceedings and did not believe he was practicing law by being an observer.

The law firm the Petitioner was formerly associated with had stated to the attorney who was taking the deposition, Judith K. Lamet, Esq., that from now on "My Dad is not involved", I guess she maybe was surprised when I showed up and sat on the deposition, (T. 75).

That no negotiation by Petitioner was done after his suspension and that Petitioner strictly complied with the conditions of his suspension regarding the practicing of law.

That Petitioner had never entered his appearance at the taking of the deposition, he was there merely as an observer, not as an attorney, (T.73).

At the time of the deposition no negotiations with attorney Judith K. Lamet took place, the negotiation had been done prior to the time Petitioner was suspended from the practice of law, contrary to the statement of the facts presented by The Florida Bar; attorney Lamet through no statements made by Petitioner to her, was under the impression that Cohen was a member of The Florida Bar in good standing, that attorney Lamet was a member of the committee for the unauthorized practice of law and could have easily brought up at the deposition by what authorization did Petitioner attend said deposition; where Petitioner has been silent as a mummy during the deposition, does this constitute the practice of law?

The Florida Bar has further adopted an erroneous statement that there was a sign on the building in which Petitioner used to practice law "HERMAN COHEN, ATTORNEY AT LAW", that from the beginning of time to the present there was never such a sign on said building, the sign on the building had the name of COHEN & COHEN and prior to this suspension there were three Cohens practicing law at this location, and the name Herman was removed immediately after hearing, but there was still the name of Cohen

& Cohen on the building (Page 8, The Florida Bar Answer Brief).

The Petitioner's position is opposite that of the Florida Bar which states that a reversal of the Circuit Judge findings regarding Cohen's fraudulent behavior is insufficient to change the view of the Circuit Court, the suit sought money damages from Petitioner and others when the lower Court was reversed, the case did not continue against Petitioner which is the case of Garcia v. Munne and Cohen, Case No. 78-7743 (Fla. 11th. Circ. Ct., March 25, 1984).

The case of Cohen v. New Sunrise Investment Corp., No. 76-16246 (Fla. 11th. Circ. Ct., April 9, 1986), is still pending and is being actively litigated fourteen years later with the former wife of Petitioner's brother.

The Florida Bar has referred to Petitioner's prior behavior by setting forth on page 6 of The Florida Bar Answer Brief that a Circuit Judge found Cohen in contempt of court and referred to his lack of candor. This was a situation where Petitioner did not completely know the street addresses of over twenty five legal descriptions and subsequently obtained same and purged himself of contempt.

CONCLUSION

The Petitioner believes that he had complied with the conditions of his suspension and that by attending a deposition as a spectator did not constitute the practice of law. That imposing severe sanctions by the Referee should be considered unjustified and completely disregarding Petitioner's former peers and a Circuit Judge's testimony which could have been tempered by a probationary period for a period of time or have been more equitable since Petitioner had been deprived of the ability to practice law for over fourteen months.

Respectfully submitted,



MARTIN COHEN, ESQ.
Counsel for Petitioner
622 SW 1 Street
Miami, Fl. 33130
(305) 545-0567

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing Petitioner's Reply Brief were mailed by U.S. Mail to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927, and that true and correct copies were mailed to Paul A. Gross, Bar Counsel, The Florida Bar, 211 Rivergate Plaza, 444 Brickell Avenue, Miami, Fl. 33131 and John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, on this 22nd. day of January, 1990.



MARTIN COHEN, ESQ.
Counsel for Petitioner
622 SW 1 Street
Miami, Fl. 33130
(305) 545-0567