

IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
JUN 19 1990
CLERK, SUPREME COURT
By [Signature]
Deputy Clerk

THE FLORIDA BAR,

Complainant,

vs.

DANIEL DWIGHT MOODY,

Respondent.

Case No. 74,820

TFB File No. 90-00421-08

COMPLAINANT'S INITIAL BRIEF

JOHN V. MCCARTHY
Bar Counsel, The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 561-5600
Attorney Number 0562350

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PRELIMINARY STATEMENT

The Florida Bar, Complainant below, files this petition for review in this case against Daniel Dwight Moody, who will hereinafter be referred to as Respondent.

Documents forming an appendix to this brief will be referred to as (Appendix - letter).

STATEMENT OF THE CASE

This is a case of original jurisdiction, pursuant to article V, section 15 of the Florida Constitution.

Because this case was filed with the Court prior to March 17, 1990 rule citations in this brief are numbered according to the rules applicable at that time.

By order of this Court dated October 17, 1989, in case no. 74,820, Respondent was suspended from the practice of law pursuant to Rule 3-7.2(e) of the Rules Regulating The Florida Bar. Respondent, through counsel, waived the filing of a formal complaint and requested the immediate appointment of a referee to preside over disciplinary proceedings pursuant to Rule 3-7.2(i).

Counsel for Respondent and the Bar stipulated to the fact that Respondent had pled nolo-contendere to the crimes of manslaughter, a second degree felony, and to a best interest plea, of leaving the scene of an accident with injuries, a third degree felony, and that he had been adjudicated guilty of same. It was further stipulated that Respondent, having been adjudicated guilty of said crimes has, in fact, violated the following Rules Regulating The Florida Bar: Rules 3-4.3 (the commission by a lawyer of any act which is unlawful or contrary to honesty and justice), 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct,

knowingly assist or induce another to do so, or do so through the acts of another), and 4-8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a a lawyer in other respects). This cause came on to be heard before the Honorable P. Kevin Davey, Referee, on February 28, 1990.

The Report of the Referee was filed with this Court on April 10, 1990 and sets forth the Referee's findings of facts, and recommendations as to guilt and discipline. The Referee recommended that Respondent be found guilty of violating Rules 3-4.3 (the commission by a lawyer of any act which is unlawful or contrary to honesty and justice), 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another), and 4-8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a a lawyer in other respects). As to discipline the Referee recommended:

A. A Suspension from the practice of law for a period of nine (9) months. The suspension to be nunc pro tunc to November 16, 1989, the date Respondent's felony conviction suspension began.

B. Payment of costs in these proceedings.

The Referee further recommended that Respondent be allowed to:

- 1) petition for reinstatement to active status with The Florida Bar 60 days prior to the end of the nine (9) month suspension;
- 2) that the fact that Respondent's civil rights may

not be restored at the time he petitions for reinstatement not prevent him from being reinstated; and

- 3) that he be allowed to make payments on the costs of these proceedings and that the fact that a balance of said costs are unpaid at the time of his petition for reinstatement not prevent him from being reinstated as long as his payments are current with The Florida Bar.

On May 16, 1990 the Board of Governors of The Florida Bar met and directed the undersigned Bar Counsel to petition for review of the following aspects of the Referee's report:

- a) The Referee's recommendation that the fact that Respondent's civil rights may not be restored at the time he petitions for reinstatement not prevent him from being reinstated.

STATEMENT OF FACTS

On September 5, 1989, Respondent was found guilty, after pleading nolo contendere to one count of manslaughter, a second degree felony, and a best interest plea (North Carolina v. Alford, 400 U.S. 25 (1970)), to leaving the scene of an accident with injuries a third degree felony.

Pursuant to these felony convictions on September 5, 1989, Respondent was sentenced to serve concurrently, 11 1/2 months imprisonment (suspended) to be followed by two years community control under the supervision of the Department of Corrections, followed by 5 years probation.

Respondent's convictions did not involve the practice of law, and there was no negative effect to any of his clients. Respondent's explanation of the circumstances surrounding his conviction of the offense of leaving the scene and The Florida Bar rebuttal witnesses testimony lead the Referee to conclude that although Respondent was away from the accident scene his reasoning at the time was impaired to such an extent due to the use of alcohol and injuries incurred as to mitigate to a great extent the effect of this conviction.

SUMMARY OF ARGUMENT

The Florida Bar is appealing the Referee's recommendation that Respondent be allowed to be reinstated to the practice of law without his civil rights being restored. It is The Florida Bar's position that based upon the Rules Regulating The Florida Bar and case law that all practicing attorneys in the State of Florida must possess their civil rights and that the Respondent not be made an exception to this requirement.

ARGUMENT

The Referee erred in recommending that the fact that Respondent's civil rights may not be restored at the time he petitions for reinstatement not prevent him from being reinstated.

The question being addressed in regard to this appeal is not answered in any way by the presence of aggravating or mitigating factors as to the discipline to be imposed. For it is not discipline which is being discussed but a prerequisite to the practice of law in the State of Florida, that being one's possession of his or her civil rights.

This Court has explained the rationale behind the felony suspension rule 3-7.2, of the Rules of Discipline of The Florida Bar, stating that:

"It is apparent that the Court's rationale for considering an individual ineligible for admission to The Florida Bar upon conviction of a felony is predicated upon the deprivation of civil rights which flows from such conviction. If one is ineligible to vote or hold public office in Florida, then he should not be eligible for admission to The Florida Bar and thereby become an officer of the courts of this state." In re Florida Board of Bar Examiners, 350 So.2d 1072, 1073 (Fla. 1977).

This Court further solidified the requirement that an individual possess his/her civil rights before practicing law

in Florida when it held in a case involving a request by a suspended attorney that he be reinstated "that restoration of civil rights following a felony conviction is a necessary prerequisite to obtaining the privilege of practicing law, whether one be a suspended attorney, a disbarred attorney, or a first time applicant for admission to the Bar." The Florida Bar v. Clark III, 359 So.2d 863, 864 (Fla. 1978). In another case, this Court agreed with a Referee who recommended that a Petitioner for reinstatement "should be required to complete his sentence of probation before being considered for reinstatement," and that in reliance on Clark, "Restoration of civil rights is a prerequisite for reinstatement of a suspended attorney who has been convicted of a felony." The Florida Bar v. Pahules, 382 So.2d 650, 651 (Fla 1980).

The Florida Bar does not argue or suggest that the Respondent is not a good individual or a good lawyer. What the Bar does suggest is that the basis for allowing an individual to practice law in the state of Florida cannot and should not rest upon the notion that a "good" person who does not have his or her civil rights can practice law while a "bad" person without their civil rights cannot. The standards of requiring an individual to have their civil rights before practicing law in Florida should be met by all.

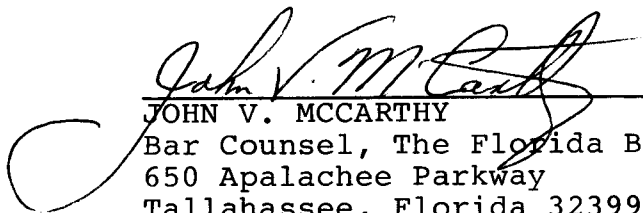
A court of law in the state of Florida adjudicated Respondent guilty of two felonies and sentenced him accordingly. Admittedly Respondent may not be allowed to

practice law for a period of time greater than the discipline imposed in this case. It is however apparent that his absence from the practice of law will not be based upon the discipline imposed in this case but rather on the fact that he does not meet a fundamental prerequisite to the practice of law in Florida, that being the possession of his civil rights.

CONCLUSION

Both Rule 3-7.2 and the cases cited by The Florida Bar in this brief show that any individual wishing to practice law in the state of Florida must possess his/her civil rights. It is The Florida Bar's position that although the term of the suspension to be imposed in this case is correct the referee did in fact err in recommending that Respondent be allowed to be reinstated to the practice of law even if he does not have his civil rights at the time. The Florida Bar believes that the recommendation of the Referee as it pertains to Respondent's reinstatement without his civil rights should be set aside and that Respondent be required as are all members of The Florida Bar to have his civil rights before being reinstated to the practice of law.

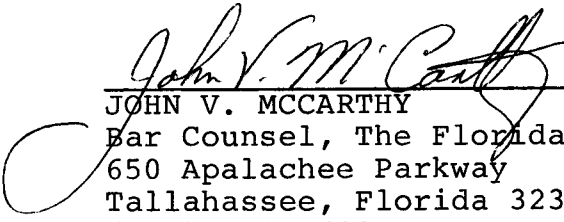
Respectfully submitted,



JOHN V. MCCARTHY
Bar Counsel, The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 561-5600
Attorney Number 0562350

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Complainant's Initial Brief has been hand delivered to SID J. WHITE, Clerk of the Supreme Court, Supreme Court Building, Tallahassee, Florida 32301, and JOHN A. WEISS, Counsel for Respondent, at his record Bar address of Post Office Box 1167, Tallahassee, Florida 32302-1167, on this 19th day of June, 1990.



JOHN V. MCCARTHY
Bar Counsel, The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 561-5600
Attorney Number 0562350