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IN THE

SUPREME COURT OF FLORIDA

No. 68,451

Case no. 75,749
The Florida Bar Case No.
90-51,218 (17A FRE)

PETITION FOR REINSTATEMENT
OF J. CHARLES SHORES, JR.,

Petitioner/Appellant,

vs.

THE FLORIDA BAR,

Respondent/Appellee

_____/

R E P L Y B R I E F

Respectfully submitted,

J. CHARLES SHORES, JR.
in Pro Per

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PRELIMINARY STATEMENT

Appellee Florida Bar's Answer brief arouses little anew beyond recapping the arguments raised at the hearing before the Referee, after abandoning any question of Petitioner's successful recovery from alcohol abuse, and is no more than a reiteration echoing the base complaints raised earlier, with the singular exceptions of (1) the glib reference that Petitioner "forgot" a prior marriage 34 years ago (two 18 year olds in high school - circa 1956, eloped for one night until her father ran us down and took her back home and told Petitioner to "forget" it ever happened), which advice this Petitioner chose to follow since that date;(TR2 p36,37)from that "one-night-stand" instance, Bar counsel flippantly suggests and forecasts that Petitioner is foredoomed to "forget" matters of substance in the future and is unfit.

Secondly, case law submitted by Appellee is without any revelation of assistance in this cause, being far too remote factually and containing the all too familiar advice about matters outside the record, that they don't like to hear, being raised for the first time on appeal, and finally, the assertion that Petitioner's appellate pleadings <u>in form</u> cast doubt as to his fitness. Again, the Bar seeks to elevate form over substance in this proceeding. This case arriving here with a "presumption" of correctness below means <u>less in a disciplinary matter because</u>:

> "Disciplinary Proceedings are neither civil nor criminal but are quasi-judicial." Fla. Bar Integr. Rules, Art. 11, Rule 11.-06(3)(a).

Hence the wider latitude afforded this Court beyond the strict and formal technical rules of evidence and procedure.

I. PETITIONER DID NOT KNOWINGLY FAIL TO DISCLOSE THE ALLEGED I.R.S. CIVIL LIEN IN HIS FINANCIAL STATEMENT OFFERED TOWARD REINSTATEMENT.

The record clearly indicates Petitioner had no knowledge of the alleged tax lien from '84 or '85. When presented with it at the Dec. 90 hearing asd asked to identify it, Petitioner responded

> "I can only tell you I had no notice of that in '88." (TR2 p.21).

Indeed, Petitioner had no notice of it whatsoever until being advised by Bar counsel at the Oct. 90 hearing, when Bar counsel asked for a contuinuance because they had just recently uncovered it in Broward County court records by routine background check.

> "Another point came up, no fault of the Bar, no fault of Mr. Shores. As I spoke last week with your secretary when I submitted the subpoena, approximately three weeks ago I received a call from the IRS . . . ." (TR1 pp.9,10).

This was the first knowledge even to the Bar of an alleged tax lien, which information was first visited upon the Petitioner when he showed up in the hall for hearing Oct. 19, '90. Furthermore, Petitioner testified repeatedly that he had no knowledge of the matter until that Oct. 19th hearing date, having never been pursued or even contacted by the IRS toward any collection effort. Accordingly, it is specious for Bar counsel to now hawk deceit in a failure to disclose it as a potential liability when Petitioner filed his Reinstatement petition in March of '90, and to urge the same as evidence of present unfitness. Bar counsel was correct at that hearing when she stated it was ". . .no fault of Mr. Shores". Any ommission of the alleged tax lien, in a financial statement or otherwise, prior to Petitioner being alerted to it by Bar counsel, was unknowingly so at best, and surely not evidence of unfitness.

II. APPELLEE'S PROFUSE PROTESTATIONS OVER PETITIONER'S AMICABLE DIVORCE, AS EVIDENCE OF OVERALL PRESENT UNFITNESS IS UNFOUNDED MUCKRAKING, SUPPORTED ON THE RECORD.

(Petitioner continues to address Appellee's catch-all objections to his present fitness, in the order of descending absurdity.)

In discussing Petitioner's divorce decree offered by the Bar, as a predicate to argue some years old temporary arrearage in child support as evidence of present unfitness, the Referee stated with skepticism:

> "What bothers me is this (indicating). You know, if you take a guy's job away and you put him out in society and give him all these obligations and everything that he is supposed to be doing, and you don't let him earn a living ..." Final Judgment of Dissolution. Well, there is a Judge involved here, a Circuit Court judge in Broward County. If he hasn't paid, there is supposed to be a petition filed in front of that Judge and that will be taken up there. I don't know. I haven't heard enough to convince me whether he's in arrears or not." (TR2 p. 59)

Again, when Bar counsel urged:

> "As an officer of the Court, that is a judgment and that is also a personal obligation for him to support his child. $300 is not a lot of money, your Honor."
>
> Referee: "That is true, if you're working." (TR2 p. 62)

Again, Petitioner has paid less when he didn't have it, and more when he did, especially since he has been current and moreso since he got sober in November of 1988, with no complaints from his ex-wife. This should be the concern of this Court now two and a half years later, when considering Petitioner's present fitness. Whether Bar counsel likes it or not, Petitioner's sworn testimony abounds on the record of accord and domestic peace. (TR2 pp.17-20)

There is no reasonable or logical route where Petitioner's amicable relationship with his ex-wife and their contented private treatment of a years old temporary child support arrearage can be converted into the status of present unfitness to resume practice. It is unimaginable that a lawyer might be called before a grievance committee for discipline over such. Surely here the boundaries of professional conduct should be able to co-exist with the boundaries of an amicable good faith divorce relationship.

The case of The Florida Bar. Petition of Samuel Rubin For Reinstatement, 323 So.2d 257 (Fla. 1975) deserves distinction. There a Petitioner failed to disclose prior judicial directives specifically, and the case further involved prior jail time for civil contempt, prior disciplinary actions, and is otherwise totally foreign to the facts of your Petitioner here. It should be further noted that Rubin has not been followed as law in a reinstatement case in 15 years.

III. APPELLEE WRONGFULLY CHARACTERIZES PETITIONER'S ISOLATED INSTANCE OF ASSISTING A FAMILY MEMBER AS UNRECOGNIZED AND HIS ACKNOWLEDGEMENT AS UNREPENTIVE.

Petitioner does not claim exemption from either the mandatory or aspirational provisions of the Code of Professional Responsibility here, but does point out that it is not uncommon for lawyers to offer limited services in assisting close family members, i.e., drafting papers, etc., while stopping short of actively representing them formally. The critical question here is whether the petitioner's mistake has been openly acknowledged since day one, which it has. Petitioner points out that no real

attorney-client relationship ever existed, that he was not out "acepting business", that he did not delay any trial, impede, obstruct or prevent the administration of justice, defraud or induce anyone to their detriment or prejudice, as the record shows (TR1 pp. 8,9). It is submitted that Petitioner's regret and remorse is amply set forth humbly in the record (TR1 p. 9), and that this apology should serve in mitigation of this sole, isolated indisgression, under all the circumstances.

IV. APPELLEE BAR WRONGFULLY ASSERTS AN ILL MOTIVE TO PETITIONER'S SOLE RESTITUTION MATTER, AND UNLAWFULLY ACCORDS IT AS EVIDENCE OF PRESENT UNFITNESS.

Petitioner first submits that restitution to the client was duly listed in his Petition for Reinstatement as owing when it was filed, and that immediately after it was requested, it was promptly paid in full, which occurred shortly after the Petition was filed, and some seven months before the final reinstatement hearing. Petitioner further shows that by law, the Rules only require that debts to clients be "listed" in the Petition upon filing, and further, while the Court has the power to order restitution, it's even been deemed an inappropriate remedy under certain circumstances. Florida Bar v. Winn, 208 So.2d 809 (Fla.), cert den 393 US 914,21 L Ed 2d 199, 89 S Ct 236.

In all events, Petitioner's prompt attention to this restitution matter should abide in his favor on the issue of present fitness, rather than militate to the contrary, as the Bar seeks to urge under some devious avoidance notion. Petitioner paid as soon as his meager finances would bear.

V. APPELLEE ERRONEOUSLY AND WRONGFULLY URGES A PATENTLY ABSURD CONSTRUCTION UPON PETITIONER'S GRADUATE SCHOOL ADMISSION APLICATION BEFORE THE REFEREE AND NOW UPON THIS COURT.

The only new assertion here is that the Bar feels that in answering questions on a form graduate school admission form, that Petitioner is duty bound to volunteer that he was suspended from practice for alcohol abuse whenever he tells anyone what he has done in his entire life, even though the Bar now stipulates that Petitioner no longer suffers from that disability after his long term proven sobriety. This position is no more than spiteful, vindictive cruelty and an effort to punish Petitioner for his past which he has successfully overcome and buried, and to call upon him to risk corruption of endeavors totally alien to the practice of law, but strictly extra-curricular in nature, in an arena where having been a practicing lawyer in the past is obviously of no merit or gain, and especially financially.

The Bar continues to rely on the Jahn case, (initial brief) where reinstatement was denied on account of, among other things, a petitioner having held himself out as a present practicing attorney in order to gain employment and financial advantage as a trust officer at a bank. To the contrary, this Petitioner's response to a simple question: "List any professional certificates 'attained'." To which Petitioner responded historically "Admission Fla. Bar; admitted to practice in Fla. State and Fed Courts, and state and federal courts of Appeal, and U.S. Supreme Court".

They asks of professional certificares "attained". Webster's Seventh New Collegiate Dictionary, (G. & C. Merriam Co:Riverside Press,Cambridge, Mass:1964), defines "attained" as past tense of "achieve, accomplish". The Oxford American Dictionary, (New York: Oxford Univ. Press, 1980), defines "attained" as past tense of "to succeed in doing or getting". Clearly, the question concerns what you, as a prospective graduate student, have accomplished in your life of note, and that is the spirit in which your Pertitioner responded. Nowhere is there an inquiry of whether you were ever suspended, revoked, etc.. Petitioner's application, and subsequent enrollment was no no way misleading as to what he had done and accomplished in his past, and much like no more than answering other questions calling for a list of employment history, where Petitioner answered honestly in response to "Employer"(law firms),"Position"(attorney), "location", "Inclusive dates". Neither did these questions inquire of any suspensions, etc., or inquire why you left. There was no "misleading" for any purpose, financial gain or otherwise.

This is a graduate school of Architecture, and if they are interested in anything about this Petitioner, it is his "non-legal" side for sure. Petitioner never engaged in self-laudation as lawyer status in anticipation of any return of any kind - never mentioned his availability as a lawyer and indeed never so much as "donated" any advice. Petitioner's history of practice in the past was never a relevant consideration in pursuing the graduate courses while he waited out his suspension. It obviously brought nothing to bear on any decision-making process or affected any viewpoint of the school or staff.

Petitioner's application, acceptance, and attendance was not intended to, nor was it ever likely to, create any unjustified expectations. The Bar wrongly overworks it's ego here assuming a graduate school of Architecture treats lawyers beneficially different. Any difference there might be is often derogatory, in fact. Petitioner has observed that if anything, technical professionals ofter view lawyers in general with contempt.

In any event. Petitioner dropped out of this graduate school last December, in order to avoid any further suggestion by the Bar that he might be perceived, or give an appearance of having been a lawyer in the past. Petitioner further agrees to never tell anyone else that he ever practiced law, perchance they might think he still practices.

VI. THE RECORD REFLECTS CLEARLY THAT PETITIONER'S I.R.S. MATTER WAS BEING PROMPTLY ADDRESSED AS PROMPTLY AS POSSIBLE, AND IT FURTHER REFLECTS THAT PETITIONER NEEDED MORE TIME.

Per agreement with Bar counsel when Petitioner gave them authorization to obtain IRS records, the Bar was to forward copies of whatever they obtained from IRS. Petitioner received the certain documents on November 10th, allowing a mere six weeks before the Dec. 20th hearing. During that time, Petitioner finally was able to make contact with IRS Collections for some explanation, which resulted in their earliest personal interview on Dec. 14th, six days before the hearing. The record bears out at least the suggestion of these ongoing efforts, although at the time of the Dec. 20th hearing, Petitioner had not had sufficient

time to get positive response from the IRS to assist the Court and all the more reason to have additional modest time afforded:

Witness Egan: "Can you get that satisfied?" (the IRS)

Petitioner: "Yes. I talked to the lady last Friday. She left me and said . . ."

Referee: "If you can do it in two weeks, I'll entertain it in two weeks." (TR2 p.69)

- -

Referee: "I said if he got it straightened out by the end of the year or if he got it sooner, I would entertain his petition again if I can." (TR2 p. 69)

- -

Petitioner: "But I don't want to have to refile and wait a year."

Bar counsel: "No, what I'm saying . . ."

Referee: "You have your business with the IRS first."

Witness Egan: "That is going to take you awhile, believe me."

Petitioner: "Oh, no, they are on top of it." (TR2 p. 70)

From these passages, obviously Petitioner was proceeding with all deliberate speed on the tax matter, contrary to the Bar's now contention that Petitioner had done nothing since Nov. 10th. It is further patently clear that additional time, a more reasonable time might be needed. HOWEVER, Petitioner did not need an entire year before he might refile, suffer costs consequences of a whole new action, suffer a needless full background investigation and the many additional months <u>beyond a year</u> to get this same remaining issue back before the Referee. However, the whole matter became moot when, contrary to the time frame the Referee assured Petitioner, he hastily entered his Report denying

reinstatement a mere 7 days later (Dec. 27,'90), which period included a 4 day Christmas weekend, leaving Petitioner virtually no time at all within which to resolve his alleged IRS problem.

For the Bar to complain that Petitioner's efforts leading up to his final hearing, and indeed very shortly thereafter, are not "of record" is incorrect. Most certainly Petitioner's 1985 bankruptcy vis-a-vis any tax lien for penalties was of record:

> The Court: "Supposing this IRS thing turns out to be nothing?"
>
> Bar Counsel: "What do you mean by nothing? I don't consider a $44,000 tax lien nothing."
>
> The Court: "It may not be and it may not be criminal. I don't know. Just as likely it may not be. Supposing it turns out not to be valid through some bankruptcy law or something or whatever? I never did understand that."
>
> (TR1 pp. 48,49)

Furthermore, Petitioner's Initial Brief merely supports this theory, together with clear legal authority on the well-settled principle that the accumulation of civil penalties and interest is suspended against a taxpayer on the date of the petition in bankruptcy was filed (Feb. '85). This agrument in therefore not outside the facts and issues in this cause, the position being clearly shown in the record.

The same "record" contains clearly the statute of limitations defense. Indeed, it is stated boldly on the face of the very document the Bar offered into evidence over Petitioner's protest of the figures contained therein. The most cursory reading of their own exhibit contains the "Important Release information", following the IRC section 6325 (a) clearly informing that the very

notice of lien document itself operates as a certificate of release after the lapse of six years without being refiled. The Bar's own document precludes them from now complaining that Petitioner challenges the matter on appeal. Petitioner fails to see how the Bar can avoid the operation of their own Notice of Lien document. Petitioner's argument that the lien has become extinguished is indeed "of record" and not raised for the first time on appeal.

Accordingly, ANY tax liability on behalf of this Petitioner is barred by the bankruptcy defense and/or the statute of limitations defense, and furthermore, Petitioner's failure to file personal tax returns during years when his income fell well below the mandatory filing amounts, was neither a "crime", nor even a civil obligation by law. (See Initial Brief). Any additional argument and law in support of this position not proffered at the trial level was occassioned by the failure of the Referee to grant Petitioner reasonable time to more fully satisfy the Court on this well-settled law, whereas instead the Referee's Report was hastily entered, to the prejudice and injustice of the Petitioner.

Petitioner should not be coerced into paying a discharged or unenforceable debt. This differs from a Court mandating restitution to a client before reinstatement, or even ordering payment to creditors as a condition. Rather, this Court should adopt the philosophy and purpose of the bankruptcy law which is to give debtors a new opportunity in life unhampered by the pressure and discouragement of pre-existing debt. To do otherwise here would be contrary to settled law. Re Batali, 657 P.2d 775 (Wash. 1983) (otherwise proper candidate for admission could not have his

reinstatement conditioned upon reaffirmation of a debt which had been declared discharged in bankruptcy) - following Perez v. Campbell, 402 US 637, 29 L Ed 2d 233, 91 S Ct 1704.

reinstatement conditioned upon reaffirmation of a debt which had been declared discharged in bankruptcy) - following Perez v. Campbell, 402 US 637, 29 L Ed 2d 233, 91 S Ct 1704.

While the practice if law is indeed a privilege, it is not a mere matter of grace or favor revocable at pleasure. An attorney should be entitled to hold office in this Court during good behavior and only be deprived upon a showing of good cause shown in a judicial proceeding conducted in a legal manner. Ex parte Garland, 71 US 333, 18 L Ed 366; Re Day, 54 NE 646; Randall v. Brigham, 74 US 523, 19 L Ed 285.

VII. COSTS

Petitioner concedes and stands partially corrected with Appellee's construction of the most current Rule change concerning accessment of investigative costs by the Bar. This change became effective simultaneously with the Petition filing herein in March of last year, and upon review, was to address the Allen, supra, decision upon which Petitioner relied. However, Allen is still viable law, being followed by this Court subsequent to the Rule change in The Florida Bar v. Fischer, 549 So.2d 1368 (Fla. 89). In that following, this Court expressly noted that a Petitioner had been found "not guilty" of part of the disciplinary allegations against him, and a cost accessment was accordingly reduced from $2979.41 to $1266.16. Your Petitioner has been exonerated by the Bar's stipulation from the sole matter that he was suspended for - alcohol abuse. Accordingly, Petitioner urges this Court to address and compromise his cost accessment with that finding in mind.

C O N C L U S I O N

It was entirely inappropriate and unjust for the Referee to sign the Bar's proposed "rush to judgment" report a mere 7 days after the hearing Dec. 20, '90, after acknowledgements were made and agreements on the record to allow Petitioner the right to conclude the alleged IRS matter, to follow through with his ongoing progress in raising his defenses to tax liability and securing release from it all to the satisfaction of the Referee in this present case. Petitioner's Briefs, plus the record, clearly show his sound positions on failure to file, on uncollectibilty, unenforceability, and erroneous accessments for all civil penalties and interest in Petitioner's case. It was, and is, only a matter of walking through the mechanics of the IRS release procurement process based on the defenses raised, and obviously Petitioner needed more time, and no prejudice will result to the Bar by returning the cause to the Referee with directions to allow the Petitioner the 90 days requested herein, in this same case. To the contrary, to now deny the Petition will reguire Petitioner to wait, under the disciplinary rules, the passage of one year before he can even re-petition, and then be required not only to pay all costs (nearly $5000 alleged) before re-filing a year later, and further, to await another Bar investigation (this present one took them 9 months more before the final hearing!), which could likely result in a total suspension of over 5 years, which amounts to total disbarment over a matter that can readily be resolved.

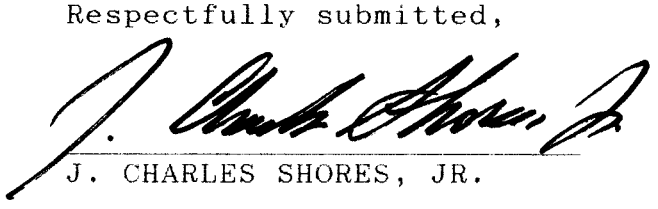
Accordingly, Petitioner prays that the case be returned to the Referee with instructions to allow the time requested.

The cases cited by the Bar, at hearing and on appeal, are all clearly distinguished from the facts of this Petitioner's case, since they all involve numerous, diverse, severe and serious repetitive misconduct wholly apart from this Petitioner's struggle over financial hardship, a divorce and emotional scaring. etc., all of which nowadays should be looked upon by this Court, under precedent of law, as perhaps mitigating circumstances leading to, or contributing to, his past drinking problem, over which he was solely suspended, and from which he has trimphumphantly recovered.

The overwhelming evidence, from all witnesses including Bar investigators, shows Petitioner's long-time good reputation still precedes him. There is nothing in Petitioner's past to date that might generate even a suspusion of any pattern of overall dishonesty that might suggest present unfitness, the sole issue, given his rehabilitation. This is the business of good lawyering that this Court should be concerned with. Sustaining that present fitness is easily monitorable therough the Bar's apparatus to where the Bar can be kept closely and currently advised.

The evidence of present fitness is clear and convincing. The Bar"s argument that "more time is needed" (i.e., another year PLUS) is exaggerated and maladaptive to simply resolving the civil tax allegation, in the manner requested aforesaid. Accordingly, the Bar persuaded the Referee into error.

Respectfully submitted,



J. CHARLES SHORES, JR.

C I T A T I O N S

1. Re Batali, 627 P.2d 775 (Wash 1983).

2. Re Day, 54 NE 646

3. The Florida Bar v. Fischer, 549 So.2d 1368 (Fla '89).

4. Ex parte Garland, 71 US 333, 18 L Ed 366.

5. Perez v. Campbell, 402 US 637, 29 L Ed 233.

6. Randall v. Brigham, 74 US 523, 19 L Ed 285.

7. The Florida Bar v. Rubin, 326 So.2d 257 (Fla 1975).

8. The Florida Bar v. Winn, 208 So.2d (Fla), cert den 393 US 914, 21 L Ed 2d 199, 89 S Ct 236.

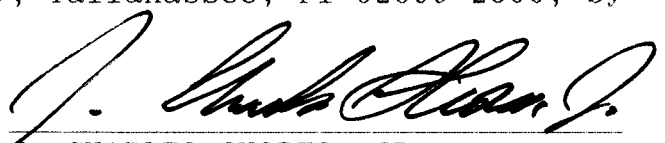
9. Oxford American Dictionary, (New York: Oxford Univ. Press, 1980).

10. Webster's Seventh New Colleigate Dictionary, (G. & C. Merrian Co: Riverside Press, Cambridge, Mass., 1964).

11. Florida Bar Integr. Rules, Art. 11, Rule 11.06(3)(A).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Original and seven (7) copies of the REPLY Brief of Petitioner/Appellant were forwarded by U.S. Mail this 8th day of May, 1991, to Clerk, Supreme Court of Florida, Talla., Florida 32301-8167 and copies mailed to LUAIN T. HENSEL, Bar Counsel, The Florida Bar, 5900 No. Andrews Av., Fort lauderdale, Fl. 33309, and JOHN T. BERRY, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Fl 32399-2300, by U.S. Mail.



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