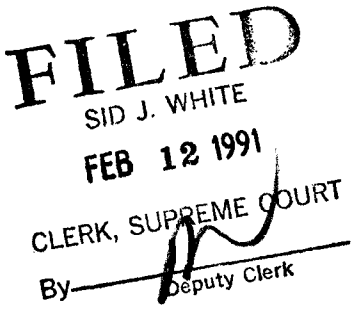
IN THE SUPREME COURT OF FLORIDA



THE FLORIDA BAR,

Complainant,

vs.

SHELDON J. SANDERS,

Respondent.

_____/

Case No. 75815

TFB File No. 90 00932-01

REPLY BRIEF

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PRELIMINARY STATEMENT

Sheldon J. Sanders, Respondent, will be referred to as "Respondent". The Florida Bar, Complainant, will be referred to as "The Florida Bar." The symbol "TR" will be used to designate the transcript of the final hearing held on June 26, 1990. The sumbol "RR" will be used to designate the Referee's report of October 12, 1990. The symbol "AB" will be used to designate the Complainant's Answer Brief.

STATEMENT OF THE CASE AND OF THE FACTS

The facts of the case as set forth in Respondents' Initial Brief and in Complainant's Answer Brief are not in dispute.

SUMMARY OF ARGUMENT

The purpose of the Reply Brief is to rebut the arguments set forth in the Complainant's Answer Brief (wrongly labeled Reply Brief).

The referee exceeded his authority.

Respondent has met all of the criteria for reinstatement.

Readmission to the New York Bar has no bearing on reinstatement to the Florida Bar.

Respondent should not retake the Florida Bar exam.

ARGUMENT

The decision of Thomas H. Bateman, III, Judge/Referee should be reversed and the Petitioner should be reinstated to membership in the Florida Bar.

ISSUE I

THE REFEREE EXCEEDED HIS AUTHORITY

The referee's recommendation that Respondent be denied reinstatement to the Florida Bar was not based upon any evidence.

In fact, the referee stated, page 8,

> I find the Petitioner has a reputation of good character and a good professional reputation. I believe he has rehabilitated himself and that he has shown a sincere intent to avoid wrongdoing.

The referee also found that Petitioner met all of the requirements for reinstatement as set forth in Sickmen and Inglis.

The referee did not state in his report that Respondent has not established that he has the general fitness to be placed in a position of trust and confidence that is necessary for reinstatement since Respondent is

still disbarred in New York. On the contrary, the referee found Respondent to have a reputation of good character and a good professional reputation.

The referee recommended that Respondent not be reinstated solely upon the fact that New York has not readmitted Respondent. This fact was well known to this Court when they suspended Respondent Nunc Pro Tunc to May 5, 1980. This Court did not require Respondent to be readmitted in New York as a condition precedent to reinstatement to the Bar of Florida.

If this was the referee's opinion at the beginning of the hearing he could have saved a lot of time by asking one question: Mr. Sanders, have you been readmitted in New York. When Respondent answered, "no," the hearing could have terminated then and there. It should be obvious to this Honorable Court that his recommendation was based solely on what this Court might or might not do in the future. His recommendation is based solely on conjecture. But more important, the referee did not link Respondent's character to Respondent's lack of readmission to the Bar of New York.

By engaging in conjecture and not relying on facts, the referee erred. He also exceeded his authority since questions of law are to be determined solely by this Honorable Court.

ISSUE II

RESPONDENT HAS MET ALL OF THE CRITERIA FOR REINSTATEMENT

The referee found that Respondent has met all of the criteria as set forth in Sickmen and Inglis. There is absolutely NOTHING in the referee's report that states Respondent has not proven he is fit to resume the practice of law until he is readmitted in New York. It should be pointed out to this Honorable Court that the Florida Bar has never opposed my reinstatement to practice law in Florida. A reading of all prior motions and a reading of the record at the hearing will categorically prove that the Florida Bar has never opposed my application for reinstatement until they did so in their "Answer Brief" (wrongfully labeled "Reply Brief").

ISSUE III

READMISSION TO THE BAR OF NEW YORK HAS NO BEARING ON REINSTATEMENT TO THE FLORIDA BAR

If one reads the "Answer" Brief of the Complainant (wrongfully labeled "Reply Brief") it would appear that the only reason for opposing my reinstatement to practice

law in the State of Florida is my lack of readmission to the Bar of the State of New York. Is the referee and the Florida Bar delegating to the State of New York the authority to determine whether or not Respondent should be reinstated to practice law in the State of Florida?

All of the other points of Sickmen have been adequately covered in Respondent's Initial Brief.

ISSUE IV

RESPONDENT SHOULD NOT RETAKE THE FLORIDA BAR EXAM

Should the attorney for the Florida Bar retake the Bar Exam because he labeled his "Answer Brief" a "Reply Brief"? Of course not.

It is submitted that my suspension began on February 17, 1990 and that is within the three year suspension period under Rule 3-7.9(k) of the Rules of Discipline and that therefore Respondent is not required to retake the Florida Bar Exam as a matter of law.

At the hearing the Florida Bar did not request that Respondent retake the Florida Bar Exam. As stated before, The Florida Bar offered no testimony to oppose my reinstatement.

In fact, the Florida Bar offered the referee an OPTION.

An option, according to Webster's Dictionary is,

> An act of choosing. The power or right to choose. Freedom of choice.

Thus, the Florida Bar offered the referee a choice that would be acceptable to the Florida Bar. A reading of the record will clearly substantiate this fact. The mere offer of a choice therefore indicates that the Florida Bar took no position at the hearing requiring Respondent to retake the Florida Bar Exam. In fact, one would assume that the Florida Bar would have been content if the referee recommended Respondent to retake the three day course available for new attorneys.

Your Honors, there is not one single word in the record wherein the Florida Bar opposed my application. I submit that in this case silence is tantamount to agreement.

Your Honors, it is respectfully submitted that

1. Respondent has met all of the criteria for reinstatement as set forth in Sickmen and Inglis.

2. There were no specific restrictions to my reinstatement in the Court's order of February 17, 1990.

3. The Florida Bar has never opposed my application

for reinstatement.

4. The State of Florida should not allow the State of New York to determine if the State of Florida should reinstate Respondent to practice law in the State of Florida.

5. Respondent has been found qualified to be reinstated by the referee.

6. A reading of all Respondent's motions, briefs, arguments, etc., should be proof of Respondent's legal competence.

CONCLUSION

The decision of Judge/Referee Bateman dated October 12, 1990 should be reversed, and that the Respondent, Sheldon J. Sanders, be permitted to resume the practice of law in the State of Florida without retaking the Florida Bar Exam.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief regarding TFB File No. 9000932-02 has been forwarded by Federal Express air bill # 8703672 20 to JAMES N. WATSON, ESQ., Bar Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399, on this 11th day of February, 1991.

Sheldon J. Sanders

SHELDON J. SANDERS
TFB No. 0232793