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SID J. WHITE
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CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

Case No. 77,082

THE FLORIDA BAR

Petitioner/Appellee

vs.

LOUIS C. CORBIN,

Respondent/Appellant

ON REVIEW OF RECOMMENDED ORDER OF REFEREE

RESPONDENT/APPELLANT'S REPLY BRIEF

Henry M. Coxe, III, Esquire
COXE & MITCHELL
Florida Bar No.: 0155193
424 E. Monroe Street
Jacksonville, FL 32202
(904) 356-2389

COUNSEL FOR RESPONDENT/APPELLANT

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Cases

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Rules

Rule 9.210(d), Fla.R.App.R. 1

SUMMARY OF ARGUMENT

Pursuant to Rule 9.210(d), Fla.R.App.R., the Respondent/Appellant submits this argument in response to the arguments of the Complainant (Petitioner/Appellee as styled in the Initial Brief) in his Initial Brief.

The Bar urges this Court to sustain the inclusion of the special condition of reinstatement, i.e., an annual psychosexual evaluation for five (5) years, solely upon the contention that because the Referee made the recommendation "as part of his responsibility" it should be given such weight that ipso facto it cannot be set aside. The Bar pointedly did not address in its Answer Brief those issues raised in the Initial Brief:

1. There exists no substantial, competent evidence to support the recommendation;
2. The Rules Regulating The Florida Bar do not authorize such a condition;
3. There is no finding of fact contained anywhere in the Report of Referee to support such a recommendation;
4. The condition does not relate to the fitness to practice law; and
5. No evidence or argument was ever raised in the proceedings below wherein the Appellant was afforded the opportunity to be heard on the issue of such a special condition.

For the reasons stated and not addressed by The Bar, the Appellant should be reinstated only upon the two conditions from which no appeal was taken.

ARGUMENT

The Appellant raised several bases in his Initial Brief as to why the third special condition of reinstatement should be stricken, and the Appellant immediately reinstated to the practice of law subject to the two conditions which are not in issue here.

The Bar/Complainant in its Answer Brief summarily addressed the arguments raised by simply asserting that the Referee, in carrying out his responsibilities and making such a recommendation, should be given great weight. (Answer, Brief, p.5). In his Initial Brief, the Appellant cited to this Court's rule of law that the scope of review of a Referee's recommendation is broader than that accorded to a finding of fact supported by substantial, competent evidence. See In Re: Inglis, 471 So.2d 38 (Fla. 1985). In the proceedings below, the Referee made no finding of fact to support the recommendation and had such a finding of fact been included in the Report of Referee, it would be immaterial since there existed no evidence whatsoever to support it.

The Bar cites The Florida Bar v. Scott, 566 So.2d 765 (Fla. 1990) for the premise that "a Referee's finding of fact will be upheld unless it is clearly erroneous or lacking evidentiary support" and the refusal of this Court to substitute its judgment for that of the trier of fact. The Appellant takes no issue with these principles, and in fact cited to several authorities in his Initial Brief which similarly hold. But here the issue is not whether the evidence is competent and substantial -- there is no evidence on the subject of sexual proclivities toward minors. (This Court

specifically pointed out in the original opinion which suspended the Appellant for three years that the "record indicates that the criminal charge arose from a single incident associated with his depression and increasingly severe drinking problem." The Florida Bar v. Corbin, 540 So.2d 105 (Fla. 1989). Both parties resolved this concern in the proceedings below with the special condition requiring Florida Lawyers Assistance participation.

If at the time of this Court's suspension of the Appellant the depression and drinking were the bases for the misconduct, and since at the time of the reinstatement proceedings the only professional evaluation of the Appellant contained no mention of "proclivity towards physical (sexual) involvement with minors" (See Report of Dr. Ernest C. Miller, Record of Reinstatement Proceedings) then rhetorically from where can the recommendation arise?

Assuming arguendo that The Bar should now be entitled to argue in support of the recommendation notwithstanding its consent to the deletion of the special condition at the Referee level, basic due process considerations would demand that the Appellant be entitled to be heard on the issue before the Referee.

The Appellant has been suspended from the practice of law since November 30, 1987 -- which is now virtually four (4) years. He proved rehabilitation according to all legal standards set by this Court and now seeks to be reinstated without a special condition that is demeaning, not based on any record evidence, and which bears no rational relationship to the fitness to practice law.

CONCLUSION

The Appellant should be immediately reinstated to the practice of law with the reinstatement being conditioned upon payment of costs and a two-year probationary period requiring compliance with the Florida Lawyers Assistance Program.

Respectfully submitted this 8th day of November, 1991.

COXE & MITCHELL



Henry M. Coxe III, Esquire
Florida Bar No.: 0155193
424 East Monroe Street
Jacksonville, FL 32202
904-356-2389

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this 2 day of November, 1991 to James Watson, Jr., Staff Counsel for The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32299.


