

FILED

SID J. WHITE

JAN 21 1994

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

IN RE: Reinstatement Petition of
DAVID BALDWIN WEBSTER

Case No. 79,979
TFB No. 92011,771(13E)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

The undersigned was appointed as referee by the Supreme Court of Florida to conduct proceedings upon the petition of David B. Webster for reinstatement to membership in The Florida Bar. Hearings were held on April 29, 1993 and April 30, 1993. On October 1, 1993 Respondent's Motion to Admit Further Evidence was granted.

The proceedings before the referee relate to those matters set forth in Rules 3-7.9 and 3-7.10 of the Rules Regulating the Florida Bar and those matters relevant to Petition's rehabilitation and fitness to resume the practice of law.

The record in this case consists of the transcript from the hearings dated April 29, 1993 and April 30, 1993, tangible evidence admitted during those hearings and all pleadings filed in the matter.

The attorneys of record are as follows:

For the Florida Bar: David Ristoff, Esq.
Joseph Corsmeier, Esq.

For the Petitioner: William R. Webb, Esq.
Paul Meissner, Esq.
Kevin Hayslett, Esq.

Petitioner called as witnesses the following:

Lisa Webster (Petitioner's daughter)
Bret Webster (Petitioner's son)
Bob Shatanoff
William Williams, Esq.
Dennis Brightwell, M.D. (psychiatry)
Marshall Garcia
Chip Merlin, Esq.
Dottie Webster (Petitioner's wife)
Honorable Claire Luten (Circuit Judge, 6th Judicial
Circuit)
Fred Farzanegan, Ph.D. (psychologist)
George Cappy, Esq.
Charles Funk, Esq.
Don Delbeato, Ph.D. (psychologist)
Drew Hudgins, Esq.
David McLain, Esq.
David B. Webster (Petitioner)

Petitioner submitted the following exhibits:

1. Curriculum vitae - Dennis Brightwell, M.D.;
2. Curriculum vitae - Fred Farzanegan, Ph.D.;
3. Letter dated 2-8-90 to Bar Counsel from Fred Farzanegan, Ph.D.;
4. Evaluation from Don Delbeato, Ph.D.;
5. Petition of the Florida Bar for temporary suspension
6. Consent Judgment - Case No. 74,503;
7. Report of Referee - Case No. 74,503 & 74,049;
8. Order of Suspension, Florida Supreme Court dated May 24, 1990;
9. Rule 3.5, Rules Regulating the Florida Bar;
10. Composite exhibit of documents regarding Petitioner's admission to the Federated States of Micronesia Bar;
11. Affidavits from William Stinnett, J. Victor Hobson, Jr. and Stella Guerra;

12. Letters of commendation and other information regarding Petitioner's employment as a special prosecutor in the Republic of Palau;
13. Order to Show Cause, Supreme Court of the Republic of Palau, and documents relating to the admission to practice law in the Republic of Palau;
14. Order of Disbarment, Supreme Court of Republic of Palau, and Petitioner's Writ of Certiorari;
15. Letters of recommendation on behalf of Petitioner;
16. Various letters from Petitioner relating to payment of alimony;
17. Rules of Admission to practice law in the Republic of Palau;
18. Order for Continuing Writ of Garnishment;
19. Letter from Petitioner regarding attempt to settle debt with NCNB;
20. Letter verifying payment of delinquent Bar dues.

The Florida Bar called the following witnesses:

Fred Martin (Petitioner's former father-in-law)
Charles Hagan (former Executive Director, Florida
Lawyer's Assistance, Inc.)
Steven Shea (Program Director, Florida Lawyer's
Assistance, Inc.)
Roger A. Goetz, M.D. (Director, Florida Medical
Association's Physician's
Resource Network)

The Florida Bar introduced the following exhibits:

1. Application of Petitioner for temporary admission to the Federated States of Micronesia Bar;
2. Composite of letters from Florida Lawyer's Assistance, Inc.;
3. Curriculum Vitae - Charles Hagan;
4. Proposed contract from Florida Lawyer's Assistance, Inc.;
5. Report of Steven Shae, Florida Lawyer's Assistance,

Inc.;

6. Letters between Petitioner and Steven Shea;
7. Curriculum Vitae - Roger A. Goetz, M.D.;
8. Final Judgment of Dissolution of Marriage between David and Roseann Webster;
9. Documents relating to Bankruptcy of Petitioner;
10. Statement from Hillsborough Governmental Depository regarding alimony delinquency;
11. Order of Suspension, Florida Supreme Court; report of Referee and Consent Judgment;
12. Affidavit of Dawna Brickell of the Florida Bar verifying Petitioner's suspension for failure to comply with Continuing Legal Education requirements;
13. Affidavit of Florida Bar showing Petitioner's suspension for non-payment of Florida Bar dues and subsequent payment;
14. Order dated November 16, 1992 suspending Petitioner from the Bar of the District of Columbia and subsequent Affidavit of Petitioner;
15. Various U.S. Income Tax returns of Petitioner;
16. I.R.S. lien documents;
17. Letter of Petitioner to Barrie Michelsen, Esq.;
18. Objection of NCNB National Bank of Florida to Petitioner's Bankruptcy petition;
19. Report of Martin S. Egan, Staff Investigator of the Florida Bar;
20. Report and recommendation of the Board of Professional Responsibility, District of Columbia Court of Appeals.

II. FINDINGS OF FACT

Having considered the testimony of the witnesses, documents, evidence and the pleadings, the following findings of fact are made:

Petitioner was the subject of an Order of Temporary Suspension from the Florida Bar on November 18, 1988. The Florida Bar filed several complaints against Petitioner which were heard before the Honorable Robert E. Beach on March 24, 1988, May 16, 1989 and May 30, 1989.

The case with relevance to Petitioner's request for reinstatement is case number 74,503, for which a Consent Judgment was entered into between the parties on February 14, 1990. The Consent Judgment was incorporated in the report of the Referee dated February 21, 1990 and approved by the Supreme Court in its Order dated May 24, 1990.

The Consent Judgment involved conduct of Petitioner which resulted in shortages in various trust accounts, checks returned for insufficient funds, co-mingling of trust funds with Petitioner's operating accounts, application of trust funds for purposes other for which they were entrusted to Petitioner and violation of rules relating to the record keeping of trust account information.

It is important to note that the Consent Judgment did not involve a finding that Petitioner's conduct resulted in the loss of money to any of Petitioner's clients. It affirmatively appeared from the testimony that Petitioner's clients were paid all amounts due as a result of the litigation for which Petitioner represented them.

The Consent Judgment resulted in the following discipline: Petitioner was suspended from the practice of law for eighteen

(18) months concurrent with the temporary suspension order dated December 18, 1988. Petitioner was placed on two (2) years probation from the date of the report of the Referee. The probation set forth the following conditions:

1. A semi-annual audit by the Florida Bar;
2. An evaluation by Florida Lawyer's Assistance (F.L.A.), Inc., and any treatment or aftercare recommended by F.L.A.;
3. Payment of reasonable costs of the disciplinary proceedings;
4. Completion of six (6) hours of C.L.E.R. credit from the Florida Bar in Ethics and Trust Accounting during the period of probation.

From a period of time beginning in August of 1987 through December of 1988, Petitioner voluntarily engaged in substance abuse counseling on a weekly basis (approximately 45 sessions) with Fred Farzanegan, Ph.D., who recommended that Petitioner continue with therapy on an as needed basis, including at least ten (10) A.A. or N.A. meetings. Dr. Farzanegan believed Petitioner was doing well in his recovery and did not believe the A.A. or N.A. 12-step program would be of benefit to Petitioner.

On February 8, 1993 Petitioner was evaluated by Dennis Brightwell, M.D., Professor of Psychiatry and Behavioral Medicine, University of South Florida. Dr. Brightwell recommended that Petitioner be followed with random drug screening but did not see the necessity for further drug or alcohol counseling. Dr. Brightwell does not believe there is an absolute casual connection with moderate consumption of alcohol use and the illegal use of cocaine. Dr. Brightwell did not recommend Peti-

tioner abstain from all alcohol consumption.

Petitioner was evaluated by Don Delbeato, Ph.D. on April 12, 1993. Dr. Delbeato found that Petitioner's substance abuse problems were in recovery and control. Dr. Delbeato did not believe a 12-step recovery program through A.A. or N.A. were the only ways to successfully treat Petitioner and concurred with the recommendation of Dr. Farzanegan. Dr. Delbeato believed the recommendation that Petitioner engage in the 12-step program was unreasonable, but that Petitioner should abstain from alcohol use.

Petitioner was evaluated by Charles Hagan, former Director of Florida Lawyer's Assistance, Inc. in February, 1990. Mr. Hagan has a law degree and approximately 37 credits in psychology plus other courses in psychiatry and addictive studies. Mr. Hagan recommended that Petitioner complete a 12-step program through A.A. or N.A. which included attendance of four (4) N.A. or A.A. meetings a week for three (3) years. Petitioner was to have a F.L.A. monitor keep records of A.A. or N.A. meetings and submit random urine screens and pay certain costs associated with the program.

Petitioner did not sign the proposed F.L.A. contract, and for all practical purposes, refused to follow the recommendation of F.L.A.

Petitioner met with Steven Shea, Program Director of F.L.A. in October of 1992. Petitioner related his disagreement with the initial recommendations of F.L.A. Steven Shea arranged an

evaluation of Petitioner by Dr. Krone through the Physicians Resource Network.

F.L.A. amended its proposed contract after Petitioner's evaluation by Dr. Krone. The amended contract required ninety (90) A.A. or N.A. meetings within ninety (90) days followed by three (3) meetings a week during the three (3) year period. A third amended contract also required the immediate entry into out-patient group therapy and complete abstinence from mood altering chemicals.

Roger A. Goetz, M.D., the Director of the Florida Medical Association Physician's Resource Network, agreed with the recommendations of the Florida Lawyer's Assistance, Inc.

Petitioner did not sign and return the proposed F.L.A. contract in October of 1992 apparently because he disagreed with the qualification of Dr. Krone and his opinions and recommendations.

As of the date of the evidentiary hearing, Petitioner has not complied with the recommendations of F.L.A.

Petitioner's bank accounts were frozen by order of the Florida Supreme Court in November of 1988, and his practice of law was effectively ended at that time. Petitioner's personal financial condition deteriorated as a result of his suspension from the practice of law. Petitioner was indebted to the I.R.S., became delinquent in his alimony payments and filed personal bankruptcy. The I.R.S., alimony and other debts were outstanding as of the evidentiary hearing. Though Respondent feels these

outstanding debts are relevant to Petitioner's claim of rehabilitation and fitness to practice law, I find they were a direct result of his Florida Bar suspension and inability to earn a living practicing law. It became clear that Petitioner lost the ability to pay alimony and was never found to be in contempt of his final judgment of divorce.

In May of 1990, Petitioner was afforded a job as Assistant Attorney General in the Federated States of Micronesia. Petitioner travelled to Micronesia and began employment with the Attorney General's office.

On June 21, 1990, Petitioner petitioned the Supreme Court of the Federated States of Micronesia for temporary admission to the Micronesia bar. In his application for temporary admission, Petitioner alleged the following pertinent facts:

1. Petitioner was a member of the Washington, D.C. Bar, the Florida Bar and various Federal Courts. He attached a certificate of good standing from the Washington, D.C. Bar, dated May 8, 1990.
2. Petitioner was not under an order of suspension or disbarment from any authority.

Petitioner took the Federated States of Micronesia bar exam and was admitted to that Bar on August 21, 1990.

In June of 1991, Petitioner accepted a position as the Interim Special Prosecutor for the Republic of Palau, a trust territory of the United States. On May 30, 1991, Petitioner submitted an application for admission to practice law in the courts of the Republic of Palau. As part of his application, Petitioner signed an affidavit stating he was a member in good standing of the

Washington, D.C. Bar and filed a certificate of good standing as an exhibit in support thereof. Petitioner was admitted to practice law in the courts of Palau in July of 1992 and worked as the Interim Special Prosecutor until September of 1992 when Petitioner returned to the United States. In August of 1992, the Supreme Court of Palau learned of Petitioner's suspension from the Florida Bar and began disciplinary proceedings which resulted in Petitioner's disbarment from the courts of Palau in November of 1992 for failing to disclose the disciplinary actions of the Florida Bar. Petitioner argues that he never made a material misrepresentation in either of his applications for admission to the Bar of the Federated States of Micronesia or Palau because his actual suspension period with the Florida Bar was for a specific term of eighteen (18) months which began December 18, 1988 and ended June 18, 1990. Petitioner believes his affidavit to the Micronesia Bar, dated June 21, 1990, was not a misrepresentation because his suspension period had ended and he was eligible for reinstatement to the Florida Bar. Petitioner also believes his use of the Washington, D.C. Bar to show good standing in a bar association was not a misrepresentation since he, in fact, was in good standing at that time. It should be noted that Petitioner had not notified the Washington, D.C. Bar of the Florida disciplinary action resulting in the suspension of his ability to practice law in Florida. After learning of the Florida suspension, a disciplinary board of the Washington, D.C. Bar has recommended a two-year suspension for Petitioner.

Petitioner produced numerous witnesses, including very respected members of the Bar and Judiciary, and letters attesting to his competency as a lawyer and present fitness to practice law, leaving very little doubt that Petitioner was and still would be an accomplished trial attorney.

III. RECOMMENDATION

As Referee I have found a recommendation to be extremely difficult in this case. It is clear from the facts that Petitioner was a fine trial lawyer and has the ability to continue being a fine trial lawyer. Petitioner's disciplinary problems and subsequent suspension involve co-mingling of trust monies, shortages and failure to follow proper trust accounting procedures. The violations by Petitioner appeared to be the result of negligence as opposed to the appropriation of clients' funds for his own use. It is important to note that the actions of Petitioner did not result in clients failing to receive all monies which they were due. Petitioner informed Bar counsel of his belief that his actions regarding the disarray of his law office accounting procedures were the result of substance abuse.

Petitioner entered into the Consent Judgment with the Florida Bar, served his suspension and probationary period. It appears that Petitioner has been sufficiently punished for his transgressions. He has not practiced law in Florida for approximately five years, lost his law practice, financial security and reputation.

Petitioner, as part of his Consent Judgment, was placed on

probation and agreed to follow conditions of probation. Unfortunately Petitioner chose not to abide by the conditions of probation. He failed to follow the recommendations of the F.L.A. as he agreed he would. Though Petitioner disclosed his cocaine problem and voluntarily sought treatment, he made the determination that the recommendations of F.L.A. were unreasonable and not to be adhered to. Though Petitioner may no longer have a substance abuse problem, he was the person on probation and should not have made the decision to ignore the conditions of probation approved by the Florida Supreme Court. Petitioner left the United States and did not again attempt to comply with the recommendations of F.L.A. until he returned to the United States in the fall of 1992 and filed his petition for reinstatement. Petitioner did not attempt to meet the requirements of six (6) hours of C.L.E. credit in estate and trust accounting during the probationary period as required, but waited until after his application for reinstatement was filed. Petitioner did not pay costs of the disciplinary proceedings until the eve of the evidentiary hearing and after unsuccessfully attempting to have those costs discharged in bankruptcy.

It is clear that Petitioner did not abide by the conditions of his probation in a manner consistent with a person who is attempting to gain reinstatement to the Bar.

Also troubling is Petitioner's conduct regarding his application for admission to practice before the courts of Micronesia and Palau and his failure to notify the Washington, D.C.

Bar of his Florida disciplinary proceeding. Though Petitioner may not have made an actual misrepresentation on those applications, it is clear he played fast and loose with the facts by failing to disclose the Florida Bar disciplinary proceedings and subsequent suspension. Failing to notify the Washington, D.C. Bar of the Florida suspension helped facilitate the good standing certificate received by Petitioner in 1990 and used to assist his admission to the courts of Micronesia and Palau.

Petitioner's failure to disclose these things along with his failure to abide by the Consent Judgment cast doubts on his claim of rehabilitation. It is very likely Petitioner does not have a present substance abuse problem and I do not believe he would be a danger to the public if he was allowed to practice law in this state. But, due to Petitioner's own actions since his suspension, he has not established his rehabilitation by clear and convincing evidence. Thus, it is recommended that his Petition for Reinstatement be denied without prejudice and with leave to file another Petition within the rules regulating the Florida Bar.

It is further recommended that all reasonable costs be taxed to the Petitioner.

DATED this 21 day of December, 1993.


MARC H. SALTON, Referee

I HEREBY CERTIFY that a copy of the above report of referee has been served on Joseph A. Corsemeier, Esq., The Florida Bar, Suite C-49, Tampa Airport, Marriott Hotel, Tampa, FL 33607; Paul Meissner, Esq., 250 N. Belcher Road, Clearwater, FL

34625; David Webster, 3914 Palmira Street, Tampa, FL 33629, and John Berry Esq., The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, by United States Mail, this 23 day of December, 1993.

Shirley C. [Signature]

JUDICIAL ASSISTANT