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APR 28 1994

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THE FLORIDA BAR,
Complainant,
vs.
GARY ERIC SUSSER,
Respondent.

_____ /

Case No. 81,402

TFB File No. 93-00723-02-NRE

REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF CITATIONS	-ii-
STATEMENT OF THE CASE AND FACTS	1 - 2
ARGUMENT	3 - 5
CONCLUSION	6
CERTIFICATE OF SERVICE	7

TABLE OF CITATIONS

<u>Cases Cited</u>	<u>Page Number</u>
<u>The Florida Bar v. Eberhart</u> 19 Fla. Law Week 588	4
<u>The Florida Bar v. Sanders</u> 580 So. 2d 594 (Fla. 1991)	3, 5
<u>The Florida Bar v. Sickman</u> 523 So. 2d 154 (1988)	3
<u>The Florida Board of Bar Examiners</u> <u>re: Amendment to the Rules of the</u> <u>Supreme Court Relating to Admission</u> <u>to the Bar</u> 578 So. 2d 704 (Fla. 1991)	4
<u>The Florida Board of Bar Examiners</u> <u>re: R.L.V.H.</u> 587 So. 2d 462 (Fla. 1991)	4
<u>Petition of Wolf</u> 257 So. 2d 547, 550	4, 5

STATEMENT OF THE CASE AND FACTS

A review of Petitioner's statement of the case and facts raises an objection to a statement of fact which is not established by the record below.

In paragraph three (3) on page one (1) of Petitioner's Brief, Petitioner asserts that there was a conspiracy between an insurance carrier and a deputy sheriff involved in Petitioner's arrest that resulted in a seven (7) count felony indictment. Petitioner cites to page 67 of the transcript of the reinstatement hearing in support.

A review of the page cited by Petitioner mentions seven felony indictments, but makes no mention of any finding supporting a claim that such charges were the result of any conspiracy. Such a claim was not presented before the Referee and should not be considered as a factual statement upon which Petitioner can claim or argue for relief from the Ohio disbarment.

Petitioner, on page 2 of his Brief, cites to his attempt to vacate the Ohio disbarment and attaches a copy of the motion and its exhibits. This material was not before the Referee below and is not proper for consideration in this proceeding. Any argument by Petitioner based upon any facts set forth in such motion should not be allowed as they are outside the record established before the Referee in these proceedings.

Petitioner states on page three (3) of his Brief that the Referee found that the ruling of the Ohio Supreme Court was

"harsh." What the referee actually said in his report, was that
"the state of Ohio has dealt harshly with the Petitioner." (RR,
page 3)

ARGUMENT

In attempting to distinguish the cases cited by the Bar in arguing against Petitioner's re-instatement, Petitioner has made several mistakes.

In The Florida Bar v. Sanders, 580 So. 2d 594 (Fla. 1991), Sanders did show his civil rights were restored at the time the Court ruled, and this was not a bar to his being reinstated. Such a fact cannot be argued as distinguishing the instant case from Sanders and Petitioner's reliance thereon is misplaced.

Petitioner argues that there is a difference between the terms of disbarment in New York and Ohio. There has been no evidence shown as to what the differences might be, if any.

Petitioner would argue that Sanders could have been reinstated in New York once his "rehabilitation" had been completed. This begs the ultimate question, which is, there must be a change of the pending status of disbarment, for whatever reason, before Florida will consider reinstatement or readmission of a disbarred lawyer.

Sanders is not distinguishable with Petitioner's case. In each case, the Referee found that the Petitioner was rehabilitated and met the underlying conditions for reinstatement.

Petitioner has failed to grasp the crux of this Court's rulings since The Florida Bar v. Sickman, 523 So. 2d 154 (1988). When anyone petitions for reinstatement, readmission or admission to The Florida Bar, if the movant has been barred from

practicing law in a state previously considered his home state, it is the status of his membership in that state which governs how this court will ultimately view his petition.

Petitioner argues that the cases of The Florida Bar v. Eberhart, 19 Fla. Law Week 588, Florida Board of Bar Examiners re: Amendment to the Rules of the Supreme Court Relating to Admission to the Bar, 578 So. 2d 704 (Fla. 1991) and The Florida Board of Bar Examiners re: R.L.V.H., 587 So. 2d 462 (Fla. 1991) do not apply herein because they deal with admissions and not reinstatements. There is no distinction made in these cases between the two procedures. The single holding of this Court that binds all these cases together is that a lawyer who stands disbarred in his home state should not be allowed to practice law in Florida.

Petitioner argues that the fact Ohio has disbarred him permanently should distinguish his case and allow the Referee's report to be affirmed. While Petitioner argues his Ohio disbarment is permanent, this was not conclusively shown to the Referee. In fact, Petitioner, on cross-examination, stated his lawyer in Ohio knows of subsequent orders allowing readmission to Ohio. (TR-98) This would appear to contradict his position that the Ohio disbarment is permanent.

As set forth in Petition of Wolf, 257 So. 2d 547, 550 (Fla. 1972), cases involving the reinstatement of suspended lawyers must be viewed in the cold light of objectivity and without regard to personal sympathy. This Court held such review is

necessary if there is to be any meaning given to the protection of the public and the image of The Florida Bar. Wolfe, p. 550.

In the instant case, Petitioner was a native of Ohio who began his law practice there in November 1979 (TR 78) and was only admitted to The Florida Bar in 1986. Petitioner never practiced law in Florida after being admitted. Petitioner only moved to Florida after being suspended from the practice of law in Ohio. In 1993, Petitioner was disbarred from practicing law in Ohio. He now seeks reinstatement to practice law in Florida.

The Referee should not be allowed to go behind the Ohio Supreme Court's disbarment order, nor should the Petitioner be allowed to re-try his Ohio case before the Referee. In the instant case, the Referee was not privy to the findings in Ohio and any attempt herein to characterize or qualify the Ohio disbarment is erroneous.

The authorities cited by the Bar are abundantly clear that where a lawyer stands disbarred in his home state, he will not be allowed to practice law in Florida, whether through reinstatement or readmission.

To allow Petitioner to merely move from Ohio to Florida and escape the sanctions attendant with the Ohio Supreme Court's order of disbarment would circumvent the Court's holding in Sanders.

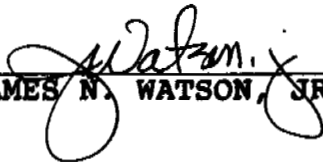
Petitioner's disbarment in Ohio stands as a bar to his being reinstated in Florida. The findings of the Referee should be reversed and Petitioner's reinstatement denied.

CONCLUSION

Petitioner has failed to show how the authorities cited by The Florida Bar are distinguishable from the instant case and therefore, the recommendation of the Referee should be reversed and the reinstatement petition denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief regarding Supreme Court Case No. 81,402, TFB File No. 93-00723-02-NRE has been mailed by certified mail # 2 751-829-116, return receipt requested, to **GARY ERIC SUSSER**, Respondent, at his record Bar address of 28 Glens Drive, East, Boynton Beach, Florida 33436-6207, on this 27th day of April, 1994.



JAMES N. WATSON, JR., Bar Counsel