

FILED

SID J. WHITE

JAN 11 1994

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

IN RE: GARY ERIC SUSSER

Case No. 81,402

Petition For Reinstatement

TFB No: 93-723-02-NRE

REPORT OF REFEREE

I. Summary of Proceedings. Pursuant to the undersigned's being duly appointed to conduct proceedings on the Petition For Reinstatement for GARY ERIC SUSSER, under Rule 3-7.7(a), Rules Regulating The Florida Bar, a hearing was held on Wednesday, September 22, 1993, in Room 365-I, Leon County Courthouse, Tallahassee, Florida. The pleadings, orders, transcripts and exhibits, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For the Petitioner: JOHN A. WEISS

For the Respondent: JAMES N. WATSON, JR.

Testimony was received from the Petitioner, GARY ERIC SUSSER, Malcom MacLeod, Terrence Seeberger, Leonard Susser, and Dwight Brannon. The Florida Bar presented no witnesses.

The issue to be decided is Petitioner's fitness to resume the practice of law, Rule 3-7.10(g), Rules Regulating The Florida Bar. The standard for determining one's fitness to resume the practice of law is set forth in the case of In Re: Robert Duncan Timson, 301 So.2d 448, 449 (Fla. 1974) and is as follows:

- (1) Strict compliance with the disciplinary order;
- (2) Evidence of unimpeachable character;

- (3) Clear evidence of a good reputation for professional ability;
- (4) Evidence of lack of malice and ill feeling toward those involved in bringing the disciplinary proceedings;
- (5) Personal assurances of sense of repentance and desire to conduct practice in exemplary fashion in the future; and
- (6) Restitution of funds.

The burden is on the Petitioner to demonstrate his fitness to resume the practice of law.

The Court should also be reminded that the undersigned served as Referee in the original disciplinary action.

II. Findings of Fact: Upon consideration of the Petition For Reinstatement, the exhibits and testimony presented, the undersigned referee finds as follows:

(1) The Petitioner was admitted to The Florida Bar in 1986.

(2) The Petitioner was suspended from the practice of law for two (2) years, nunc pro tunc November 14, 1989, and thereafter until providing proof of rehabilitation, being restored his civil rights, and successfully passing all parts of The Florida Bar Examination, prior to his reinstatement, by Order of The

Supreme Court of Florida in The Florida Bar v. Gary Susser, 598 So.2d 79 (Fla. 1992).

(3) That by Order dated April 7, 1993, The Supreme Court of Ohio disbarred the Petitioner from the practice of law in the State of Ohio.


(4) From the evidence presented, the undersigned finds that Petitioner has met his burden, complied with all the conditions required of him, and has demonstrated his fitness to resume the practice of law. The Florida Bar takes the position that Petitioner's disbarment in Ohio is a bar to his readmission to membership in The Florida Bar. While this is a valid consideration and a factor considered by the undersigned, it cannot be the sole controlling factor. In the present case, to consider the Petitioner's disbarment in Ohio to be a bar to his reinstatement in Florida would not only result in changing the discipline previously imposed by The Supreme Court of Florida, but under the facts of this case would also result in Petitioner's being denied reinstatement because he was ultimately convicted of but a fourth degree misdemeanor, the accompanying felony convictions having been overturned on appeal.

While the State of Ohio has dealt harshly with the Petitioner, I find that the Petitioner has complied with all the requirements placed upon him by The Supreme Court of Florida, and has not only

proved his rehabilitation, but has met every standard set forth in the case of In Re: Robert Duncan Timson, 301 So.2d 448, 449 (Fla. 1979).

III. Recommendation: Base on the foregoing findings of fact, it is the recommendation of the undersigned that the Petition For Reinstatement of GARY ERIC SUSSER be Granted upon payment of \$921.23 to The Florida Bar for payment of administrative costs incurred pursuant to Rule 3-7.7(k)(1), Rules Regulating The Florida Bar.

DATED this 7th day of January, A.D., 1994, at Tallahassee, Leon County, Florida.


WILLIAM L. GARY
Referee

copies furnished to:

✓ JOHN A. WEISS
✓ JAMES N. WATSON, JR.