

FILED

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MAY 4 1994

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THE FLORIDA BAR,

CASE NO. 81,774

Complainant,

TFB NO. 93-11,493(6D)(HRE)

v.

DENNIS MICHAEL JANSSEN,

Respondent.

_____ /

REPLY BRIEF

OF

THE FLORIDA BAR

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TABLE OF AUTHORITIES

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<u>In re: Dawson</u> 131 So.2d 472 (Fla. 1961).....	1

SYMBOLS AND REFERENCES

In this Brief, the Petitioner, Dennis Michael Janssen, will be referred to as the "Petitioner". The Florida Bar will be referred to as "The Florida Bar" or "The Bar". "RR" will refer to the Report of Referee. "TR." will refer to the transcript of the Final Hearing held on October 11, 1993.

ARGUMENT

Petitioner failed to establish by clear evidence his "unimpeachable character" and "good reputation for professional ability." In re: Timson, 301 So.2d 448 (Fla. 1974) and In re: Dawson, 131 So.2d 472 (Fla. 1961).

At the reinstatement final hearing, Petitioner called no witnesses other than himself in support of his reinstatement. The Florida Bar presented several witnesses in opposition to the reinstatement showing Petitioner's lack of unimpeachable character.

In his Answer Brief, Petitioner argues that he was not required to call supporting witnesses because bar counsel had no objection to Petitioner's method of proceeding at the final reinstatement proceeding. In his opening statement, Petitioner's counsel stated that he would have Petitioner, "testify with a broad brush" on direct examination and then, "turn him over to the Bar for cross-examination," Petitioner's counsel further stated that "they (the Bar) will raise the issues that they want to raise and we can then address them on rebuttal, and I can take my shot at the issues." (TR. p. 7, l. 10-21)

The fact that Bar counsel had no objection Petitioner's counsel's method of proceeding does not show that the Bar agreed that it would not hold Petitioner to his standard of proof in this matter. In fact, bar counsel made it abundantly clear that Petitioner carried the burden of proof of both unimpeachable character and good reputation for professional ability. Further, Petitioner's counsel asserted that he would address any issues

raised by the Bar on rebuttal. Bar counsel reasonably believed that this would include character and reputation witnesses and evidence as required by case law.

The Florida Bar presented witnesses showing that Petitioner had made misrepresentations to several St. Petersburg Beach police officers after his arrest in May 1993, and had made misrepresentations to his former legal employer, his ex-wife and his physicians. Further, during the pendency of the instant reinstatement matter, Petitioner allowed his counsel to misrepresent the fact of his arrest to an investigator for The Florida Bar and allowed his criminal defense counsel to misrepresent facts to a driver's license hearing officer. The referee found quite generously, that Petitioner's conduct "was less than sterling...". (RR P. 7 Conclusions of Law)

Notwithstanding the above evidence presented by The Florida Bar showing Petitioner's lack of "unimpeachable character", Petitioner presented no rebuttal evidence as was asserted by Petitioner's counsel. Petitioner failed to present independent evidence of his good reputation for professional ability and unimpeachable character and further failed to rebut the evidence presented by the Bar impeaching his character. Therefore, Petitioner has failed to meet his burden of proof for reputation and character as required by case law.

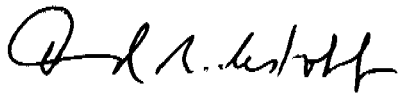
Petitioner further argues, in his Answer Brief, that nothing in the original disciplinary suspension matter reflected adversely on Petitioner's character. However, in addition to the trust

accounting rule violations, Petitioner pled guilty to violating Rule 4-3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal) (See Appendix to Initial Brief of The Florida Bar - Conditional Plea for Consent Judgment p. 10 and R. Bar Exhibit #7.) In the underlying suspension case, Petitioner borrowed approximately \$24,000.00 which he held in trust for settlement of a matter involving a minor. Petitioner disbursed the loaned funds to himself contrary to a court order which stated that the funds were "frozen and not subject to withdrawal for any reason or purpose without prior approval of this Court..." (See Appendix to Initial Brief of The Florida Bar and R. Bar Exhibit #7.) Petitioner's disbursement of trust funds to himself contrary to the court order clearly reflects adversely on Petitioner's character, contrary to Petitioner's assertions.

CONCLUSION

Petitioner failed to present independent evidence of a good reputation for professional ability and unimpeachable character. Further, Petitioner failed to rebut evidence presented by The Florida Bar impeaching his character.

Petitioner failed to meet his burden of proving, by clear evidence, his fitness to regain his privilege of practicing law in the State of Florida. Therefore, the Petition for Reinstatement should be denied.



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Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by Airborne Express to Sid J. White, Clerk, The Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1927; a copy of the foregoing has been furnished by U.S. Mail to Richard T. Earle, Jr., 150 Second Avenue N., Suite 910, St. Petersburg, Florida 33701,; and a copy of the foregoing has been furnished by U.S. Mail to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 3rd day of May, 1994.



DAVID R. RISTOFF
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