IN THE SUPREME COURT OF FLORIDA

IN RE: PETITION FOR REINSTATEMENT OF
DENNIS MICHAEL JANSSEN,

CASE NO. 81,774

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

REPORT OF REFEREE

SUMMARY OF PROCEEDINGS

This matter came on to be heard on October 11, 1993, upon Dennis Michael Janssen's Petition For Reinstatement as a member of The Florida Bar. The Florida Bar filed no response to said Petition For Reinstatement. Petitioner was present and represented by his attorney, Richard T. Earle, Jr. David R. Ristoff and Joseph A. Corsmeier, Branch Staff Counsel of The Florida Bar, were present. Testimony was taken before the Court and based upon the evidence, the undersigned Referee makes this her report.

FINDINGS OF FACT

The Petition For Reinstatement, Paragraph 8, avers that all financial obligations of Petitioner are shown on Exhibit 2, which is a financial statement attached to the Petition. On cross-examination, the Petitioner admitted that he was indebted to his ex-wife in a substantial amount for unpaid child support, which was not shown on Exhibit 2. He explained that he thought it referred to commercial obligations only and he did not believe that this type of financial obligation had to be reflected in the Petition For Reinstatement. The Referee finds that the Petitioner

did not intend to mislead The Florida Bar by omitting this indebtedness. It was at all times evident to the Petitioner that the Bar would interview his ex-wife relative to his reinstatement and would undoubtedly learn about the delinquent child support payments.

The Bar did not directly question any of the other allegations in the Petition For Reinstatement but instead attempted to demonstrate that the Petitioner was lacking the character and fitness to warrant his reinstatement by offering evidence relative to various events and the Court makes the following Findings of Fact relative thereto.

1. Shortly after midnight on May 27, 1993, Petitioner was arrested by Officer Vaughan of the St. Petersburg Beach Police Department, and after investigation, was charged with driving under the influence of alcohol. This case has not been tried. During the course of the police investigation, Petitioner told Officer Vaughan and Officer Bellin that he had had knee and ankle surgery and had hurt his back while running and these injuries were the result of football at Florida State University (TR 10, 13). Petitioner was, prior to his suspension, associated in the practice of law with Larry Beltz, in St. Petersburg. On one occasion, Petitioner and Beltz were discussing the injuries to Petitioner's ankles and Petitioner told Beltz that he had injured them playing basketball for Florida State University. Petitioner offered certain medical reports in evidence reflecting that he had had problems with his knees and ankle and had told some of the doctors

that they were the result of his playing basketball at FSU as well as in high school. The Court finds that Petitioner suffered from knee, ankle and back problems but they were in no way connected with his playing basketball or football on the varsity teams of FSU because he did not play on said varsity teams. The Court further finds that the Petitioner attempted to mislead the police officers, Larry Beltz and the various doctors into believing that he played on the FSU varsity basketball and/or football teams, but that these efforts were solely for his self-aggrandizement and were not for the purpose of financial gain or the perpetration of any fraud. Further, the statements made to Larry Beltz and the doctors were made prior to Petitioner's suspension and had no materiality on the Hearing for Reinstatement.

2. After the arrest of the Petitioner by Officer Vaughan, he was taken to the St. Petersburg Beach Police Station where he was confined. During the course of the investigation and his confinement, Petitioner made Officer Vaughan aware of the fact that he was a lawyer. During the course of his confinement at the St. Petersburg Police Department, he inquired as to when he would be released. Officer Vaughan testified that Petitioner told him, "I have a meeting in the morning with a woman victim of a domestic violence thing...I have to be with her in court tomorrow morning...Petitioner said that he had to be released and had this meeting, you know, the following morning." (TR 136, 137). Officer King testified that Petitioner told him that, "He needed to be in court in the morning to represent a woman...I have got to be in

court in the morning, I really have to be there." (TR 147, 148). "...he needed to be released. He said something to the effect of court in the morning and he didn't elaborate on that." (TR 151). Officer Bellin testified that he wasn't sure whether Petitioner said he had to be at a "hearing" or if it was "court". (TR 153). The Court finds as a fact that he did tell Officers Vaughan, King and Bellin that he had to be somewhere in the morning but does not find that he said he had to be in Court; it could have been a "hearing" or a "meeting". In that connection, the Court finds that the Petitioner did have an appointment that morning at 10:00 a.m. with his attorney, Richard T. Earle, Jr. and Martin Egan, the investigator for The Florida Bar, for the purpose of discussing the Petition For Reinstatement. The Referee can well understand the reluctance of Petitioner to discuss the true nature of the hearing or meeting with the police officers and finds that whatever Petitioner told them was not told for the purpose of misleading them or defrauding them in any way but was told for the purpose of avoiding unnecessary embarrassment to the Petitioner.

3. In January, 1992, Petitioner was obligated by Court Order to pay his ex-wife, Gail Stauffer $300.00 every two weeks for the maintenance and support of their minor daughter. At said time, Petitioner was in arrears $1,000.00 in said support payments. He told his ex-wife that he was about to be suspended for one year from The Florida Bar and that after his reinstatement, "His income would be low when he got started back." In response, his ex-wife told him that she "would work through this time knowing it would

be a difficult time." (TR 94). The child support was payable $300.00 twice a month, on the 1st and 15th day of each month. (TR 85, 86). Petitioner made no child support payments from January, 1992 to the date of the hearing, and as of the payment due on October 1, 1993, Petitioner was in arrears in the amount of $14,200.00. Although occasionally Mrs. Stauffer requested that Petitioner make some payments on said support, said requests were ignored, but she took no legal action to collect them, believing that he was earning a minimal salary. (TR 88). This belief was not based upon any misrepresentations by the Petitioner but was a mere surmise on her part. (TR 89). The Referee finds that although Petitioner's ex-wife agreed to work with him and took no legal action to enforce the provisions of the Court Order, under the circumstances of Petitioner's income flow, his failure to meet his child support obligations was not reasonable.

4. On May 27th, shortly before 10:00 a.m., Martin Egan, the Florida Bar investigator, met with Mr. Earle, Petitioner's attorney, for a conference with the Petitioner. The Petitioner was late for said meeting, having been detained in jail and did not appear until approximately 10:10 a.m.. This was an informal meeting, the purpose of which was to assist The Florida Bar in investigating the allegations in the Petition For Reinstatement. It was on an informal conversational basis in which the Petitioner, his attorney and Mr. Egan participated. Mr. Egan explained to the Petitioner that what he was looking for was sources of information and when he got the sources, he would check the information. After

explaining to Petitioner that he would check all information given to him relative to judgments against, the lawsuits pending for and against, and arrests of the Petitioner, he would check the same out. (TR 131). Mr. Egan asked a question, "Are there any judgments or arrests or cases pending where you are the Plaintiff or Defendant?" (TR 131). Mr. Earle stated, "There are no judgments and no arrests...Mr. Janssen is clean." (TR 131). At the time Mr. Earle made the above statement to Mr. Egan, he did not know of the arrest of the Petitioner that morning because Petitioner had had no opportunity to discuss it with him. The Referee recognizes that the Petitioner, being well aware of his arrest, could have promptly corrected Mr. Earle's statement but he did not do so because he wanted to confer with his attorney before discussing this with the investigator, which the Referee finds to be understandable.

5. The Referee further finds that except as specifically set out above, the Petitioner proved the allegations in the Petition For Reinstatement. None of the conduct specifically set out above was in the course of the practice of law and none of it was for the purpose of financial gain to Petitioner or to defraud anyone.

6. As a result of the Petitioner's arrest for driving under the influence of alcohol, The Florida Bar requested that he voluntarily consult with Florida Lawyers Assistance, Inc., to determine whether or not he was suffering from alcoholic dependency. Petitioner was examined by Dr. Myers, who evaluated his condition, and reported his findings to the Bar and to Florida

Lawyers Assistance, Inc.

7. Dr. Myers' opinion was that Petitioner was not suffering from an alcoholic dependency problem but that he could use outpatient education regarding alcoholism and its effects, as well as involvement in Florida Lawyers Assistance program. Florida Lawyers Assistance, Inc. concurred in this view. Referee finds as facts the views of Dr. Myers and Florida Lawyers Assistance, Inc., as reflected in the letter of Florida Lawyers Assistance, Inc., dated October 18, 1993.

8. Subsequent to the hearing before me, the Petitioner has filed an Affidavit, signed by his ex-wife, Gail Stauffer, reflecting that Petitioner has paid to her the sum of FOURTEEN THOUSAND FOUR HUNDRED ($14,400.00) DOLLARS, being the child support money that was in default as of October 1, 1993, in the amount of FOURTEEN THOUSAND TWO HUNDRED ($14,200.00) plus TWO HUNDRED ($200.00) DOLLARS more.

CONCLUSIONS OF LAW

The conduct of the Petitioner as found by the Referee in Paragraphs 1, 2, 3 and 4, were not within the context of the practice of law and were not for the purpose of financial gain or to defraud anyone. This conduct was somewhat less than sterling but it does not demonstrate such a lack of character or fitness as to preclude him from reinstatement. The Petitioner has demonstrated that he is entitled to be reinstated subject, however, to several conditions.

The Court further finds that the Bar has incurred costs in

this matter in the total amount of $3,313.98, all as reflected in the Affidavit of Costs attached hereto and made a part hereof.

RECOMMENDATIONS

Referee recommends that the Petitioner be reinstated as a member of The Florida Bar subject, however, to being on probation for a period of ONE AND ONE-HALF (1 1/2) years, which probation shall be conditioned as follows:

1. If Petitioner is found guilty of the presently existing charge of DUI and is placed on probation, he shall completely fulfill all of the probationary conditions of said sentence.

2. He comply with all of the conditions and recommendations of Florida Lawyers Assistance, Inc. relative to education regarding alcohol and its effects.

3. He keep current the child support payments as provided by Court Order.

4. Petitioner's reinstatement should also be conditioned upon payment of all costs in this proceeding.

Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing REPORT OF REFEREE has been sent by U.S. Mail, this 14 day of ~~November~~ December, 1993, to Richard T. Earle, Jr., Esq., 150 Second Avenue North, Suite 910, St. Petersburg, Florida 33701, and David R. Ristoff, Esq., Branch Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport Marriott Hotel, Tampa, Florida 33607

Referee