

097

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,)
)
 Complainant,)
)
 vs.)
)
 MILTON GRUSMARK,)
)
 Respondent.)
 _____)

Supreme Court Case
No. 83,700

The Florida Bar File
NO. 95-50,836 (17F) (FRE)

FILED

SID J. WHITE

JUN 21 1995

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

7/3

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Respondent has no quarrel with the history of the case and facts as stated by Petitioner.

SUMMARY OF ARGUMENT

Petitioner's arguments are twofold. First, it is contended that reinstatement should not be allowed while the Client Security Fund remains unpaid. However, that argument fails since the Client Security Fund has been paid in full before reinstatement.

Second, it is suggested that the morass of debts could lead to client problems. But, there is no longer a huge indebtedness. Respondent has accomplished the situation where the debts he must meet are a \$50.00 a month payment to the IRS, in accordance with a written agreement with the IRS.

Respondent has changed his lifestyle to ensure that the past problems cannot reoccur. He has met all of the Referee's conditions far ahead of the suggested schedule, notwithstanding the fact that at the hearing, the Bar did not object to the schedule.

Respondent has proven his rehabilitation by his actions.

ARGUMENT

POINT I - A SUSPENDED LAWYER, WHO HAS MADE RESTITUTION AND HAS DEMONSTRATED A CHANGE OF LIFESTYLE LEADING TO FINANCIAL RESPONSIBILITY SHOULD BE GRANTED REINSTATEMENT.

The referee in this case personally heard the testimony and considered the evidence in this case.

His recommendation and ruling are entitled to great weight and

"The burden is on the party seeking review to demonstrate that a report of a referee sought to be reviewed is erroneous, unjustified or erroneous.... A referee's finding of fact shall enjoy the same presumption of correctness as the judgment of the trier affect in a civil proceeding." Fl. Bar v. Inglis, 471 So.3d 38 (Fla. 1985)

An analysis of the Bar's brief reveals the following:

The Bar contends, basically, that the referee's recommendation should be reversed because the Client Security Fund indebtedness should be paid before reinstatement.

That thrust of the Bar's position has been rendered moot since the fund has been paid in full. See Stipulation attached hereto.

Taking the referee's orders seriatim it appears:

The referee found Respondent has rehabilitated himself. (Tr. 53, 55)

The referee found that CLER requirements had to be met by September, 1996.

The Respondent has already completed 35 hours of CLER rather than the required 30 hours.

2. The referee recommended that Respondent solve his

financial problems by seeking bankruptcy relief. No objection was made by the bar.

Respondent almost immediately filed for bankruptcy. His huge financial indebtedness has been reduced to \$50 a month pursuant to a written agreement with the IRS to satisfy the remaining IRS balance of \$28,000.00.

The referee next recommended that Respondent pay \$200 a month to liquidate the Client Security Fund obligation. No objection was made at the hearing by the Bar.

However, realizing the importance of the obligation, Respondent has already paid it in full. That would seem to answer the only real objection raised by the Bar in its brief.

The second question raised by the Bar is whether Appellee's financial woes would lead to new problems.

That question would seem to be answered by the unrebutted testimony.

Grusmark has displayed his change of life style, leading to his ability to meet his costs of living even without an attorney's income.

During the suspension he has:

1. Given up travel. (Tr. 16)
2. Given up going to Broadway shows. (Tr. 17)
3. Given up \$2,500 a month apartments. (Tr. 15)
4. Given up dining at expensive restaurants almost nightly.
(Tr. 16)
5. Given up staying frequently at first-class hotels.

His professional skills are as sharp as ever. (Tr. 10)

He has never had problems with drugs. (Tr. 19)

He has never had problems with alcohol. (Tr. 19)

He has kept up his skills, going to seminars not for Bar records, but his continued desire to be a proficient lawyer. (Tr. 23)

He has suffered personal tragedies which resulted in his ignoring many problems. (Tr. 26)

He is now, and has been for 12 years, happily married. (Tr. 19)

He was enough of a responsible lawyer not to defend cases where he knew he was wrong. (Tr. 26)

He testified, essentially, in response to the Bar's brief that he now has no financial crisis. (Tr. 26)

Insofar as his attitude toward what happened, Grusmark testified:

"Q. What is your attitude toward the persons who brought the disciplinary proceedings against you?

A. I made a phone call to Randi Lazarus, (Miami Bar Counsel) I don't remember when, probably about six months ago before Mr. Tynan took over the proceedings and explained to her that I appreciated that she had done what she had to do. And as far as I was concerned that was it. There were no hard feelings or whatever, maintained by me. She was doing her job as a lawyer and Mr. Tynan, I feel the same way about.

Q. How about the individual clients who might have been involved?

A. I have no hard feelings against anybody who was involved. As a matter of fact, I pled guilty in the Bar proceedings.

- Q. How do you feel about your prior misconduct?
- A. There can be nobody ever more upset about what they did than I am at what happened to me. I live with it day and night of my life. I don't think I sleep more than two hours a night because I am concerned about what I did.
- Q. It's about what you did, not what they did?
- A. I'm not concerned about what anybody did, just the things I did wrong.
- Q. And how about your intentions as far as the future?
- A. There is no way in the world that I will ever do anything wrong as far as relationships with clients." (Tr. 19, 20)

The entire theory of the brief of The Florida Bar is that he might be subject to pressure to do wrong because of financial morass.

He has shown rehabilitation in a manner not addressed by any of the cases cited by the Bar. He and his wife have a totally changed lifestyle. He has grown up. His former lifestyle does not now exist. (Tr. 27)

He has not, therefore, waited for reinstatement to rehabilitate himself. He has done it, with his wife's help, before reinstatement. Obviously, added legal income would be wonderful and help secure happiness, not create problems.

Appellee has fulfilled CLER requirements in full, and more, a year ahead of time.

He has paid, in full, accrued costs.

He has paid, in full, past dues.

He has paid, in full, Clients Security Fund obligations. Long before the referee's recommendations.

CONCLUSION

Appellee can do no more. It would even be an unfair miscarriage of justice to further delay his reinstatement.

As stated in Exhibit 1, a letter from a respected attorney in Dade County, Vincent Flynn:

"I think I understand the reason why Milton Grusmark wants to be readmitted to the Bar. It has less to do with money than with love of the law and being a lawyer. Milton's love has always been the law. He has always reminded me of a law school professor. He would come up with novel, scholarly arguments that most practitioners would never even think of. Whereas other lawyers would talk about how much money they make or how great they were, Milton Grusmark would speak about statutory construction and obscure clauses of the Florida Constitution. Put simply, he loves being a lawyer."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via U.S. Mail to Kevin P. Tynan, Esq., The Florida Bar, 5900 North Andrews Avenue, Ft. Lauderdale, Florida 33309, this 16th day of June, 1995.

Respectfully submitted,

By: 
Frank Freeman, Esq.
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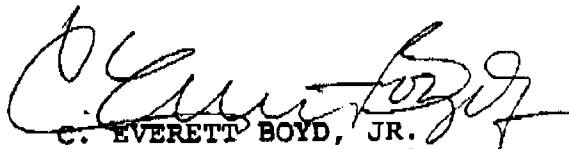
SECOND JOINT POST TRIAL STIPULATION

Respondent, The Florida Bar, and Petitioner, Milton Grusmark, file this second joint post trial stipulation and state that since the filing of the parties' Joint Post Trial Stipulation on May 8, 1995, a significant event has occurred, which the interests of justice warrant the inclusion of same into the record, as follows:

The Petitioner, Milton E. Grusmark, has paid in full all amounts owed to The Florida Bar Clients' Security Fund, as reflected by the attached letter of receipt of Ms. Theresa Bartlett, Client Security Fund Coordinator of The Florida Bar.

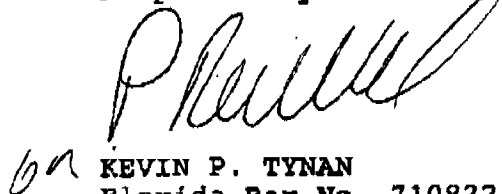
Respectfully submitted,

Respectfully submitted,



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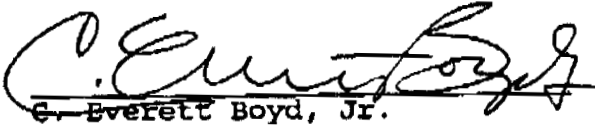


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Attorney for Respondent

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been furnished to John A. Boggs, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, by U.S. mail, on this 16th day of June, 1995.


C. Everett Boyd, Jr.