

097
FILED
SID J. WHITE
JUN 22 1995
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,)
)
Complainant-Appellant,) Supreme Court Case
) No. 83,700
)
v.)
) The Florida Bar File
) No. 95-50,836(17F) (FRE)
MILTON E. GRUSMARK,)
)
Respondent-Appellee.)
_____)

THE FLORIDA BAR'S REPLY BRIEF

KEVIN P. TYNAN, #710822
Bar Counsel
The Florida Bar
5900 N. Andrews Avenue
Suite 835
Fort Lauderdale, FL 33309
(305) 772-2245

JOHN T. BERRY, #217395
Staff Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(904) 561-5839

JOHN F. HARKNESS, JR., #123390
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(904) 561-5839

TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF CASES AND CITATIONS	ii
ARGUMENT	1
POINT I - A SUSPENDED LAWYER, WHO HAS FAILED TO MAKE FULL RESTITUTION UNTIL AFTER HIS REINSTATEMENT HEARING AND HAS A DEMONSTRATED HISTORY OF FINANCIAL IRRESPONSIBILITY SHOULD BE DENIED REINSTATEMENT	1
CERTIFICATE OF SERVICE	24

TABLE OF CASES AND CITATIONS

CASES

PAGE(S)

The Florida Bar v. Nunn, 1
596 So. 2d 1053 (Fla. 1992)

ARGUMENT

I. A SUSPENDED LAWYER, WHO HAS FAILED TO MAKE FULL RESTITUTION UNTIL AFTER HIS REINSTATEMENT HEARING AND HAS A DEMONSTRATED HISTORY OF FINANCIAL IRRESPONSIBILITY SHOULD BE DENIED REINSTATEMENT.


At issue in this case is not whether a lawyer should be denied reinstatement because of his poor financial situation. Rather, the issue is whether a lawyer evidences sufficient rehabilitation by not paying full restitution until after the final hearing and only after the bar objects to such failure by initiating this appeal. The bar answers this question in the negative.

Forced or compelled restitution should not be considered restitution. In a strikingly similar circumstance this court has found that a referee did not commit error by considering, as an aggravating factor, the lack of restitution when the lawyer, who had misappropriated client funds, did not make partial restitution until a client threatened to contact the bar and did not make full restitution until after the date of the disciplinary hearing. The Florida Bar v. Nunn, 596 So. 2d 1053, 1054 (Fla. 1992). The court discussed that "the timing of the restitution . . . indicates that Nunn made full restitution with these proceedings, rather than the well being of his client, in mind." Id. Here, it is so evident that respondent's post trial maneuverings (the payment of

restitution, the payment of bar dues, the completion of the CLER requirement and the filing of a personal bankruptcy) are all done with an eye to secure reinstatement and not done because they were the right thing to do.

WHEREFORE, The Florida Bar respectfully request this court to reject the referee's recommendation that the petitioner be reinstated and enter an order denying petitioner's reinstatement to the practice of law.


Respectfully submitted,



KEVIN P. TYNAN, #710822
Bar Counsel
The Florida Bar
5900 N. Andrews Avenue, #835
Fort Lauderdale, FL 33309
(305) 772-2245

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing reply brief has been furnished via regular U.S. to C. Everett Boyd, Jr., attorney for respondent, at P.O. Drawer 1170, Tallahassee, FL 32302-1170; Frank Freeman, attorney for respondent, at 3550 Biscayne Blvd., Suite 401, Miami, FL 33137 and to John A. Boggs, Director of Lawyer Regulation, at The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 on this 20th day of June, 1995.



KEVIN P. TYNAN