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SID J. WHITE
SEP 19 1994
CLERK, SUPREME COURT
By ______________
Chief Deputy Clerk

10/14

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR RE:

DENNIS I. HOLOBER

CASE NO.: 83,892

______________________________________/

PETITIONER'S INITIAL BRIEF

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STATEMENT OF THE CASE AND OF THE FACTS

Petitioner appeals the Referee's August 10, 1994 order dismissing the petition for reinstatement assigned to the referee by this Court on July 1, 1994. The petition for reinstatement initiating these proceedings was filed in this Court on June 22, 1994. Subsequently, The Florida Bar filed a motion to dismiss the petition. Hearing on the motion was held on August 8, 1994. Petitioner timely filed his petition for review and files this his Brief in support of that petition.

The petition for reinstatement filed on June 22, 1994 was filed by Petitioner for reinstatement to membership in good standing to The Florida Bar. On August 6, 1979, Petitioner had submitted a Petition for Leave to Resign Pending Disciplinary Proceedings (Conditional) in this Court. That petition sought an end to disciplinary proceedings brought against Petitioner, who had no past history of discipline, and was filed pursuant to Article XI of the Integration Rule of The Florida Bar, Rule 11.08. Petitioner specifically referred in paragraph 7 of that petition to the requirements of Article XI, Integration Rule 11.08(6) regarding his return to practice.

The Florida Bar did not object to the petition for leave to resign (conditional) filed by the Petitioner.

On November 28, 1979, this Court granted the petition for leave to resign filed by Petitioner.

At the time that Petitioner filed his petition to resign, only disbarred lawyers were required to seek readmission through the

Florida Board of Bar Examiners. Rule 11.08(5) allowed resigned lawyers to be admitted to the Bar upon application to and approval by the Board of Governors of The Florida Bar. Rule 11.10(5) required disbarred lawyers to apply to the Florida Board of Bar Examiners.

At the time that Petitioner submitted his resignation to the Bar, the Board of Governors of The Florida Bar had submitted recommendations to the Supreme Court to amend disciplinary procedures. The additions to the Integration Rule did not alter the return of resigned lawyers to practice at all. It merely codified the past practice of allowing them to petition to the Board. The most significant amendment to the Rules was that to Rule 11.11, captioned Reinstatement. Rule 11.11 was changed to read:

> An attorney who has been suspended or has resigned for cause may be reinstated to membership in The Florida Bar pursuant to this rule. The Proceedings under this Rule are not applicable to suspension for non-payment of dues. (Emphasis in original as added language)

At the hearing on the Bar's motion to dismiss the instant proceedings, the referee refused to allow Petitioner to testify concerning the specific terms of the agreement that he made with The Florida Bar upon his resignation. Specifically, it was represented by the Bar that the rules in effect at the time of Petitioner's resignation did not require an application to the Florida Board of Bar Examiners for readmission. Petitioner would have testified that all parties specifically agreed that Petitioner, pursuant to Rule 11.08(5) could return to practice by

filing a petition for reinstatement in the Supreme Court of Florida in the same manner as a suspended lawyer.

SUMMARY OF ARGUMENT

Petitioner filed his conditional resignation from The Florida Bar in 1979 pursuant to Article XI of the Integration Rule of The Florida Bar, Rule 11.08. His resignation was conditional upon it being accepted by the Supreme Court and upon various conditions contained in the petition being met. On November 28, 1979, this Court granted the petition to resign.

In The Florida Bar. In Re Kimball, 425 So.2d 531 (Fla. 1983) in a petition for reinstatement filed by a lawyer disbarred in 1957, this Court held that:

> reinstatement proceedings are governed by the rules in effect at the time of application for reinstatement, unless the original discipline opinion otherwise provides or unless the rules at the time of disbarment otherwise provide.

Petitioner argues that the rules in effect at the time of his resignation, as specifically cited in his resignation and approved by this Court, prohibited requiring him to seek readmission through the Florida Board of Bar Examiners. While Petitioner has voluntarily agreed to take all parts of The Florida Bar exam as a showing of his current legal competency, requiring him to apply to the Florida Board of Bar Examiners is in direct contravention of Kimball and of the Rules in effect in 1979.

The Florida Bar argues that a footnote in The Florida Bar. Re Kay, 576 So.2d 705 (Fla. 1991) materially changes the Kimball holding, nullifies all agreements made by lawyers who resigned

prior to January 1, 1987, and requires Petitioner to seek readmission only through the Florida Board of Bar Examiners. That footnote reads in pertinent part as follows:

> Because Kay resigned prior to the adoption of Rule 3-7.9(a) of the Rules Regulating The Florida Bar, we permitted him to file for readmission with this Court and appointed a referee to make recommendations. Henceforth, all applications for readmission shall be filed pursuant to Rule 3-7.9(a).

Mr. Kay had resigned from The Florida Bar in 1985 pending disciplinary proceedings. He was allowed to petition for reinstatement. Petitioner argues that the same philosophy that allowed Mr. Kay to seek reinstatement in 1991 equally applies to him in 1994.

The aforementioned footnote, Petitioner argues, is applicable to Mr. Kay's future attempts at readmission because the Court denied his 1991 petition for reinstatement. To hold that the Kay footnote applies to any lawyer who resigned prior to the adoption of Rule 3-7.9 on January 1, 1987, completely nullifies Kimball and results in this Court abrogating prior agreements made between resigned lawyers and The Florida Bar as approved by this Court.

POINT ON APPEAL

> THE REFEREE IGNORED THIS COURT'S HOLDING IN THE FLORIDA BAR. IN RE KIMBALL, 425 So.2d 531, 533 (Fla. 1982) THAT REINSTATEMENT PROCEEDINGS ARE GOVERNED BY THE RULES IN EFFECT AT THE TIME OF APPLICATION UNLESS THE ORIGINAL DISCIPLINARY ORDER OR THE RULES IN EFFECT AT THE TIME OF THAT ORDER OTHERWISE PROVIDE AND, THEREFORE, IMPROPERLY DISMISSED PETITIONER'S PETITION FOR REINSTATEMENT.

ARGUMENT

In The Florida Bar. In Re Kimball, 425 So.2d 531, 533 (Fla. 1982) this Court attempted to resolve forever controversies involving previously disciplined lawyers seeking a return to membership in good standing in The Florida Bar. This Court announced a very clear rule in that case. Specifically:

> [R]einstatement proceedings are governed by the rules in effect at the time of application for reinstatement, unless the original discipline opinion otherwise provides or unless the rules at the time of disbarment otherwise provide.

Petitioner submits that the word disbarment should be interpreted to mean any order of discipline.

Petitioner resigned from The Florida Bar in 1979. At that time the rule governing Petitioner's return to practice, Article XI of the Integration Rule, Rule 11.08(5) stated:

> The resigned attorney may be again admitted to the Bar upon application and approval by the Board of Governors and upon full compliance with any conditions required by the judgment which granted the leave to resign. A rejection of such application may be reviewed by petition to the Supreme Court.

Inherent within that paragraph was the specific understanding that, unlike disbarments, resigned lawyers filed a petition through the

Board of Governors of The Florida Bar to be readmitted and did not have to apply to the Florida Board of Bar Examiners. Contrast this language with that of Article XI, Rule 11.10(4), later renumbered 11.10(5) pertaining to disbarred lawyers. That rule required application to the Board of Bar Examiners by the following language:

> DISBARMENT. A judgment of disbarment terminates the respondent's status as a member of the Bar. A former member who has been disbarred may only be admitted again upon full compliance with the rules and regulations governing admission to the Bar. Except as might be otherwise provided in these rules, no application for admission may be tendered within three years after the date of disbarment or such longer period as the Court might determine in the disbarment order.

At the time that Petitioner submitted his Petition for Leave to Resign Pending Disciplinary Proceedings (Conditional) (a copy of which is included in the appendix to this brief as Exhibit A), on August 6, 1979, this Court had approved the Karl Committee's recommendations for a complete overhaul of the disciplinary system. Petition of Supreme Court Special Committee, 373 So.2d 1 (Fla. 1979). The recommendations were approved on May 24, 1979, as modified on rehearing on June 28, 1979, and the new rules were to be effective on October 1, 1979 for all cases not referred to a referee prior to that date.

On November 28, 1979, the Court granted Petitioner's resignation. (Exhibit B). The rule in effect on August 6, 1979, specifically required a petition for membership in good standing to be submitted to the Board of Governors. They were then required

to refer the petition to a referee for hearing. Rule 11.11(3).

Effective October 31, 1979, new rule 11.11, specifically stated that:

> At attorney who has been suspended <u>or has resigned for cause</u> may be reinstated to The Florida Bar pursuant to this rule. (Emphasis in the original).

It is unclear today whether the Court's November 28, 1979 order granting the petition for resignation meant to incorporate the old or the new rules in its order. Either set of rules, however, precluded requiring Petitioner in 1994 to apply to the Florida Board of Bar Examiners for membership in good standing. Rule 11.08(5) was unmodified. That language said that:

> The resigned attorney may be again admitted to the Bar upon application to and approval by the Board of Governors....

Rule 11.11(3) of the old rule required a reference of the petition to a referee for a hearing. That language was deleted on the rules effective October 1, 1979. The new language, as quoted above for Rule 11.11, specifically included resigned lawyers within the parameters of Rule 11.11 reinstatement proceedings.

Rule 11.10, pertaining to disbarred lawyers, was unmodified.

Petitioner submits that the Bar specifically encouraged lawyers to submit resignations for cause in lieu of disciplinary proceedings with the "selling point" that resigned lawyers could petition through Article 11.11 rather than having to apply to the Florida Board of Bar Examiners before they could be restored to membership in good standing. Petitioner sought to testify as to these discussions at the hearing on the Bar's motion to dismiss in

the instant proceedings but was disallowed by the referee to do so. Respondent submits that the referee's ruling was erroneous.

Ironically, the Court's holding in Kimball, supra, did not pertain to the distinction between petitioning for reinstatement as opposed to filing an application for readmission with the Board of Bar Examiners. The "sole issue" in Kimball was whether he would have to take the entire Florida Bar examination. In the case at Bar, the Petitioner has already taken the entire Florida Bar examination and acknowledges that he cannot become a member in good standing until he has successfully passed all parts of that exam. He does this, however, as an indication of his present competency to practice law, not as a part of the Board of Bar Examiners rigorous, expensive and long-lasting application process. (Present competency in the law is an element of rehabilitation. In re Dawson, 131 So.2d 472, 474 [Fla. 1961]).

In Kimball, the Court ruled that because the 1957 disciplinary rules did not preclude the requirement that Mr. Kimball take the Bar exam, that the referee in 1982 could, in fact, require that as a prerequisite to readmission.

In discussing Kimball, the Court acknowledged some confusion in prior disciplinary proceedings and specifically referred to three reinstatement cases: The Florida Bar. In Re Turk, 307 So.2d 162 (Fla. 1975); The Florida Bar. In Re Rassner, 301 So.2d 451 (Fla. 1974); and The Florida Bar. In Re Bond, 301 So.2d 446 (Fla. 1974). Prior to discussing those cases, the Court noted that the general rule, that reinstatement proceedings are governed by the

rule in effect at the time of application, was still good law. See State ex rel. The Florida Bar v Evans, 109 So.2d 881, 882 (Fla. 1959). The Court upheld the Evans rule with the modification that it held true only if the original disciplinary proceedings did not contradict the new requirements.

The first case the Court discussed in Kimball was that involving John T. Bond's readmission proceedings. Mr. Bond had resigned from the Bar in 1971. On December 1, 1972, the rules regarding readmission changed. The Court was asked to decide if Mr. Bond's readmission proceedings were governed by the new or the old rules. The Court held that the 1972 rules did not apply because his resignation was specifically accepted under the rule in effect in 1969. The 1972 rules that apply only to a resignation accepted under that [the 1972] rule.

Similarly, the present rule (which The Florida Bar argues is applicable to the instant proceedings) adopted effective January 1, 1987, requires that only lawyers who resigned subject to new rule 3-7.10 (formerly 3-7.9) can be required to apply to the Florida Board of Bar Examiners. Petitioner did not resign under new rules 3-7.9 or 3-7.10. Hence, the requirement that he can only seek readmission through the Florida Board of Bar Examiners is not applicable to him.

More importantly, however, is the fact that the old Integration rules 11.08 specifically limited the admission process after resignation to an application through the Board of Governors of The Florida Bar, not the Florida Board of Bar Examiners.

The second case discussed at length in Kimball was the Court's 1974 ruling in the Rassner case. Rassner had been permanently disbarred in 1965. In 1972 he petitioned for readmittance. The Court ordered that his petition be processed by the current "governing rules". In 1974, The Florida Bar supported the referee's recommendation that Mr. Rassner be admitted conditioned upon passage of the entire Bar examination. However, between the 1972 Supreme Court opinion and the 1974 recommendation by the referee, the disciplinary rules had changed. Rather than a period of ten years being the requisite time for the Bar examination, the 1974 rules shortened the period to three years. In rejecting the Bar's position, the Court held that:

> It would be unfair and contrary to due process in the general operation of recognized limitations to shorten the time from ten years to three years and make it apply to petitions for reinstatement which are pending. 301 So.2d at 453-54.

The Court held that the 1972 rules, not the 1974 rules, apply.

The Petitioner in the instant case submits that it would be "unfair and contrary to due process" to, after the fact, alter the specific terms of an agreement that he made with The Florida Bar in 1979.

The third case discussed in Kimball was the Turk decision. Mr. Turk had been temporarily disbarred in 1967 for three years. At the time of his disbarment, the rules provided that a lawyer who had been disbarred other than by permanent disbarment could be reinstated pursuant to "this rule". The Court held that Mr. Turk's

reinstatement proceedings were governed by the rules that he went out under by its very own language.

Similarly, in the case at Bar, the language of Mr. Holober's petition for leave to resign specifically stated that it was governed by the requirements of Rule 11.08. This Court accepted his conditional petition for leave to resign pursuant to those terms.

Petitioner submits that the language of Rules 11.08 and 11.11 in effect in 1979, regardless of whether his resignation was governed by the rules in effect before or after the October 1, 1979 amendments, specifically precluded his being required to apply for readmission through the Florida Board of Bar Examiners. The rules clearly and unequivocally stated that any petition would be submitted through the Board of Governors of The Florida Bar via petition for reinstatement.

Paragraph four of the referee's order of dismissal completely misses the point in the Kimball case. The referee found that

> 4. Dennis I. Holober's reinstatement proceedings are governed by the Rules Regulating The Florida Bar in effect at the time of his application for reinstatement, (citation omitted).

The referee completely missed this Court's language in Kimball that said:

> Unless the original discipline opinion otherwise provides or unless the rules at the time of disbarment otherwise provide.

Mr. Holober's petition for resignation and the disciplinary rules in effect at the time did "otherwise provide...." Those rules

precluded requiring readmission proceedings through the Florida Board of Bar Examiners.

Petitioner would also point out to this Court that the requirement of Rules 3-7.9 and 3-7.10 that resigned lawyers seek readmission through the Florida Board of Bar Examiners applies only to resignations accepted under that rule.

The Bar takes the position that it can abrogate its 1979 agreement with Petitioner because of a footnote in this Court's decision in The Florida Bar. In Re Kay, 576 So.2d 705 (Fla. 1991).

Mr. Kay had resigned from The Florida Bar in 1985 under the old Integration Rule. He petitioned for readmission subsequent to the adoption of the new Rules Regulating The Florida Bar. His petition was processed under the old rules (as Petitioner is seeking in the instant case) and, accordingly, he was not required to apply to the Florida Board of Bar Examiners. After hearing, a referee found that Mr. Kay had demonstrated rehabilitation and recommended reinstatement to this Court. The Florida Bar petitioned for review.

The sole issue before the Court in the Kay case was whether

> The record establishes that [Mr. Kay] has significant psychological problems and that his readmission would be a danger to the public.

The Court agreed with The Florida Bar that his readmission would be a danger to the public and, therefore, decided that his readmission would not be granted.

In its decision, the Court made the following observation in a footnote to its opinion:

> Because Kay resigned prior to the adoption of Rule 3-7.9(a) of the Rules Regulating The Florida Bar, we permitted him to file for readmission with the Court and appointed a referee to make recommendations. Henceforth, all applications for readmission shall be filed pursuant to Rule 3-7.9(a).

Petitioner in the instant case submits that the above-quoted language can only apply to Mr. Kay in his future petitions for reinstatement. Any other holding would be that the Court severed other lawyers' rights as set forth in specific agreements, i.e., petitions for resignations under Rule 11.08, when they were not parties to the action and on a topic that was not germane to the issue before the Court.

Under the Bar's reasoning, should a lawyer be suspended for 90 days, and therefore entitled to automatic reinstatement, appear in subsequent proceedings, and should a Court hold that due to subsequent misconduct, reinstatement proceedings would be required of him, the Bar could argue that all lawyers suspended for 90 days would be required to go through reinstatement proceedings. That statement is simply ludicrous. Yet, that is exactly what the Bar argues with the Court's footnote in Kay.

The Kay ruling was limited to the fact that he did not prove rehabilitation and, therefore, his petition for readmission should be denied. The Court then held that his future petitions for readmission must be through the Florida Board of Bar Examiners.

The Bar argues that the innocuous footnote in Kay has global consequences and applies to every lawyer who, pursuant to the Bar's encouragement and specific advice that they would not have to go

through the Board of Bar Examiners, submitted a petition for resignation in lieu of discipline.

By analogy, the Bar's argument is that a plea agreement entered into by a criminal defendant can be altered even if it changes the terms of the plea. Of course, such an argument in criminal proceedings would get short shrift. See, for example, Freeman v State, 376 So.2d 294 (Fla. 2nd DCA 1979). A plea bargain cannot be modified upward without the defendant's consent. Similarly, Mr. Holober's resignation, specifically premised on the right to seek reinstatement through the Bar, not the Board of Bar Examiners, cannot be materially altered.

Another analogy, although admittedly in a different forum, could be made as to agreements made between the state and unions representing public employees. In Chiles v United Faculty of Florida, 615 So.2d 671 (Fla. 1993), this Court upheld the trial court's decision that the Florida Legislature's unilateral modification and abrogation of an agreement between unions representing public employees and the state, which had been funded, violated employees right to collectively bargain and, further, constituted an impermissible impairment of contract.

In Chiles, the legislature resolved an impasse between unions representing public employees and the state by authorizing a three-percent pay raise to be effective January 1, 1992. The unions then ratified the raise. Subsequently, due to a budget shortfall, the legislature first postponed, and then eliminated the pay raises

altogether. This Court held that the legislature's conduct was improper. In essence, this Court said a deal is a deal.

The instant Petitioner argues to this Court that, in fact, a deal is a deal with The Florida Bar. The Bar encouraged him to resign in lieu of disciplinary proceedings with the specific provision that he would not have to seek readmission through the Florida Board of Bar Examiners. Rule 11.08 and 11.11, as in effect in 1979, specifically precluded a requirement that readmission be through the Board of Bar Examiners. Hence, Petitioner submitted his resignation.

In Kimball, Bond, Turk, and Rassner, the lawyers were objecting to being required to take The Florida Bar exam. Petitioner, Dennis Holober, is willing to pass all parts of the Bar exam as one of the elements of proof of rehabilitation in reinstatement proceedings. He objects, however, to having to go through the entire Board of Bar Examiners application process. He must still prove rehabilitation before he can be reinstated. He does not object to this provided it is a petition for reinstatement as opposed to an application to the Board of Bar Examiners. He recognizes that the burden will be on him to prove to a referee and ultimately to this Court, that he is a fit and proper person to resume the practice of law.

Kimball is still good law. Petitioner acknowledges that the procedures for reinstatement set up on January 1, 1987 are applicable to him except to the extent they are contradicted by his original disciplinary order. Those rules contradict, and nullify,

any attempt by The Florida Bar to require Petitioner to be readmitted only through the Florida Board of Bar Examiners.

CONCLUSION

The referee erred when he granted the Bar's motion to dismiss Petitioner's reinstatement proceedings. His original resignation was specifically premised on his being able to seek reinstatement through the Bar, not the Board of Bar Examiners. This Court's footnote in the Kay decision cannot be read to abrogate all petitions for resignation entered into prior to January 1, 1987. To hold otherwise would be a retreat from the Kimball decision and would open the door to the confusion that Kimball eliminated. The referee's decision below should be reversed and this matter should be remanded to a referee for a hearing on Petitioner's petition for reinstatement.

Respectfully submitted,

WEISS & ETKIN

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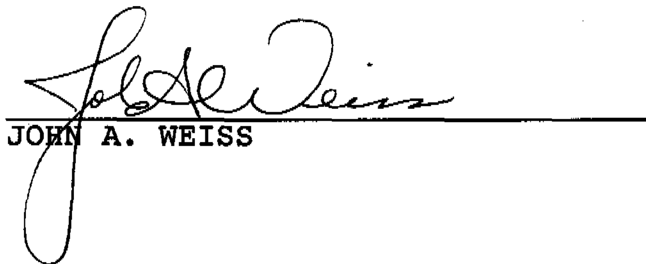
(904) 681-9010
COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Initial Brief were mailed to Elena Evans, Esquire, The Florida Bar, Suite M-100 Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131 and to John T. Berry, Esquire, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 this 19th day of September, 1994.



JOHN A. WEISS

APPENDIX

Exhibit A -- Petition for Leave to Resign Pending Disciplinary Proceedings (Conditional)

Exhibit B -- The Florida Bar v Holober, Case Number 57,461 (November 28, 79)

Exhibit C -- Order of Dismissal

Exhibit A

IN THE SUPREME COURT OF FLORIDA

CONFIDENTIAL

THE FLORIDA BAR,

Complainant,

vs.

DENNIS HOLOBER,

Respondent.

Case Numbers:
11C78M26 11C79M30
11C79M31 11C79M42
11179M29 11C80M08
11C79M60

PETITION FOR LEAVE TO RESIGN
PENDING DISCIPLINARY PROCEEDINGS
(CONDITIONAL)

COMES NOW the Petitioner, DENNIS HOLOBER, pursuant to Article XI of the Integration Rule of the Florida Bar, Rule 11.08, and files this Petition for Leave to Resign, conditionally upon the recommendation of approval by the Board of Governors to the Supreme Court of the following terms and conditions, and says:

1. The Petitioner has no past history of findings of probable cause by any Grievance Committee.

2. The Florida Bar has filed a Complaint against Petitioner concerning Case 11179M29 and has sent Petitioner reports of the Eleventh Judicial Grievance Committee "C" concerning cases 11C79M26, 11C79M30, 11C79M31, 11C79M42 and 11C79M60 for which probable cause was found. The Complaints allege violation of Integration Rule 11.02(4) requiring attorneys to hold property entrusted to them by a client in trust, violation of Disciplinary Rule 9.102 requiring attorneys to preserve the identity of funds and property of a client, violation of Disciplinary Rule 1-102 preventing a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation or other conduct that adversely reflects his fitness to practice law, violation of Disciplinary Rule 2-110 requiring a lawyer to withdraw from employment if his mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively and violation of Disciplinary Rule 6-101 precluding a lawyer from handling a legal matter which he is not competent to handle and requiring that a lawyer shall not neglect a legal matter entrusted to him.

COMPOSITE EXHIBIT 1

3. Petitioner acknowledges he violated the Code of Professional Responsibility as alleged in the Complaints and pleads guilty to the Complaints in Cases 11I79M29 (Complaint of Harris), 11C79M26 (Complaint of Lowenthal), 11C79M30 (Complaint of Jones), 11C79M31 (Complaint of Newman), 11C79M42 (Complaint of Olson), and 11C79M60 (Complaint of Barnstein).

4. To the best of Petitioner's knowledge and belief, no other cases or complaints are currently under investigation except for case 11C80M08 (Complaint of Edelstein), of which he was just informed.

5. Petitioner acknowledges he violated the Code of Professional Responsibility with regard to case 11C80M08 and waives probable cause proceedings in that matter.

6. Petitioner agrees to make restitution in all the aforementioned cases.

7. Petitioner understands that under Article XI, Integration Rule 11.08(6), no application for readmission may be filed until three years after the date of the Supreme Court Order accepting resignation.

8. Petitioner also understands that no application for readmission may be filed until all costs of these proceedings have been paid, restitution has been made to his clients, and rehabilitation can be shown.

9. Petitioner agrees to cooperate with any Client Security Fund investigation made by the Bar.

10. Completion of the terms of this Petition will ensure that no harm will come to the public nor the administration of justice by allowing Petitioner to resign in lieu of disciplinary proceedings.

11. If this conditional Petition is not finally approved by the Board of Governors and by the Supreme Court, then it shall be of no effect and may not be used against the Petitioner in any way.

12. Petitioner fully and voluntarily submits this Petition.

WHEREFORE, Petitioner respectfully requests that this Court grant the Petitioner's Leave to Resign.

Respectfully submitted,

HALL AND HAUSER, P.A.
Attorneys for Petitioner
Suite 200 - The Brickell Concours
1401 Brickell Avenue
Miami, Florida 33131
(305) 374-5030

By: ______________________
ANDREW C. HALL

Approved:

By: ______________________
DENNIS HOLCHER, Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Leave to Resign Pending Disciplinary Proceedings (Conditional) was mailed to (1) Wallace N. Maer, Assistant Staff Counsel, The Florida Bar, Suite M-123, Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131 and (2) William L. Rogers, Bar Counsel, Barrett and Rogers, 100 North Biscayne Blvd. Seventh Floor North, Miami, Florida 33132, this 6th day of ~~July~~ August, 1979.

By: ______________________
ANDREW C. HALL

Exhibit B

IN THE SUPREME COURT OF FLORIDA

WEDNESDAY, NOVEMBER 28, 1979

RECEIVED
DEC 3 1979
THE FLORIDA BAR
MIAMI OFFICE

THE FLORIDA BAR, **

Complainant, **

vs. ** CASE NO. 57,461

DENNIS HOLOBER, **

Respondent. **

This matter is before the Court on Petition for Conditional Leave to Resign Pending Disciplinary Proceedings.

The respondent, Dennis Holober, has acknowledged he violated The Code of Professional Responsibility as alleged in the Complaint, and he has plead guilty to the Complaint in Cases 11I79M2? (complaint of Harris), 11C79M26 (complaint of Lowenthal), 11C79M30 (complaint of Jones), 11C79M31 (complaint of Newman), 11C79M42 (complaint of Olsen), and 11C79M60 (complaint of Bernstein).

No other cases or complaints are currently under investigation except for case 11C80M08 (complaint of Edelstein). Respondent acknowledged in his Petition that he violated the Code of Professional Responsibility with regard to Case 11C80M08 and waived probable cause proceedings in same.

The Florida Bar filed its response supporting Respondent's Petition for Leave to Resign on the conditions stated in his petition.

The Petition for Leave to Resign Pending Disciplinary Proceedings is hereby granted on the following conditions:

1. Respondent agrees to make restitution in all aforementioned cases;

2. Respondent may not make application for readmission to the bar of Florida until three (3) years from this date;

3. Respondent must cooperate with any Clients' Security Fund investigation made by The Florida Bar; and

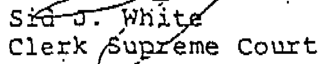
4. Confidentiality of all disciplinary cases mentioned above is waived pursuant to The Florida Bar Integration Rule, article XI, Rule 11.12(1)(a).

ADKINS, ACTING C.J., BOYD, OVERTON, SUNDBERG and ALDERMAN, JJ., Concur

COMPOSITE EXHIBIT 2

A True Copy

TEST:



Sid J. White
Clerk Supreme Court

C
cc: Andrew C. Hall, Esquire
of Hall & Hauser
Wallace N. Maer, Esquire
William L. Rogers, Esquire
of Barrett & Rogers
Mr. Dennis Holober

Exhibit C

IN THE SUPREME COURT OF FLORIDA

Supreme Court Case
No. 83,892

IN RE: PETITION FOR REINSTATEMENT OF
DENNIS I. HOLOBER.

_______________________________________/

ORDER OF DISMISSAL

THIS MATTER came before the undersigned Referee on the Florida Bar's Motion to Dismiss the Petition for Reinstatement of Dennis I. Holober filed with the Supreme Court of Florida June 22, 1994. The Petitioner appeared with counsel, and the Florida Bar was represented by counsel. Upon reviewing the memoranda submitted by the parties, considering the arguments made at hearing, and reviewing the case law cited, the Court finds and

ORDERS AND ADJUDGES that:

1. Dennis I. Holober resigned his membership in the Florida Bar on or about November 28, 1979.

2. Dennis I. Holober filed a Petition for Reinstatement to The Florida Bar on or about June 22, 1994.

3. The Florida Bar filed a Petition to Dismiss the Petition for Reinstatement on or about June 28, 1994.

4. Dennis I. Holober's reinstatement proceedings are governed by the Rules Regulating The Florida Bar in effect at

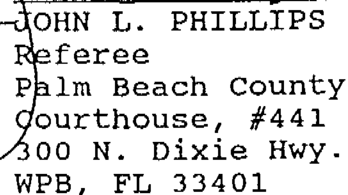
the time of his application for reinstatement, The Florida Bar re Kimball, 425 So.2d 531 (Fla. 1983). More specifically, Dennis I. Holober's application for readmission must be filed in compliance with Rule 3-7.9(a) of the Rules Regulating The Florida Bar, The Florida Bar re Kay, 576 So.2d 705 (Fla. 1991), which Rule was renumbered as Rule 3-7.10 in 1990.

5. Per Rule 3-7.10(a), Dennis I. Holober must comply with the rules and regulations governing admission to the Bar in seeking reinstatement. Thus, readmission to The Florida Bar must be sought through the Florida Board of Bar Examiners.

6. The Florida Bar's Motion to Dismiss Petition for Reinstatement is GRANTED.

7. Dennis I. Holober's Petition for Reinstatement is DISMISSED.

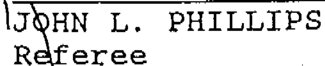
DONE AND ORDERED this 10 day of August, 1994, in Chambers at West Palm Beach, Palm Beach County, Florida.



JOHN L. PHILLIPS
Referee
Palm Beach County
Courthouse, #441
300 N. Dixie Hwy.
WPB, FL 33401

Supreme Court Case
No. 83,892
In Re: Petition for Reinstatement
of Dennis I. Holober
Order of Dismissal

I CERTIFY that a copy of the foregoing Order was mailed on this 10th day of August, 1994, to the following addressees.



JOHN L. PHILLIPS
Referee

Original to:

Clerk, Supreme Court of Florida, 500 So. Duval St., Tallahassee, FL 32399-1927

Copies to:

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