

Supreme Court of Florida

No. 83,892

COPY

THE FLORIDA BAR
RE: DENNIS I. HOLOBER

[June 22, 1995]

PER CURIAM.

This cause is before the Court on a petition by Dennis I. Holober for readmission to The Florida Bar. We have jurisdiction. Art. V, § 15, Fla. Const. We disapprove the referee's rulings.

The proceedings below, as stated in the referee's report, are as follows:

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.

Holober challenges the above rulings and argues that his readmission is governed by the former Florida Bar Integration Rule, article XI, rule 11.08(5), the rule in effect at the time of his resignation and that such rule does not require him to seek readmission through the Florida Board of Bar Examiners.¹ We agree.

¹ Article XI, rule 11.08(5) of the former Florida Bar Integration Rule provided:

(5) If resignation is accepted under this rule such resignation shall serve to dismiss all pending disciplinary cases. The resigned attorney may be again admitted to the Bar upon application to 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.

Our decision in Florida Bar re Kimball, 425 So. 2d 531 (Fla. 1982), was premised upon State ex rel. Florida Bar v. Evans, 109 So. 2d 881, 882 (Fla. 1959), in which we stated that "[r]einstatement proceedings are governed by the rule in effect at the time application for reinstatement is made." Kimball modified the Evans rule to provide 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.

425 So. 2d at 533. In 1991 this Court, in Florida Bar re Kay, 576 So. 2d 705, 705 n.* (Fla. 1991), held in a footnote that "[h]enceforth, all applications for readmission shall be filed pursuant to rule 3-7.9(a)."² The Kay footnote served to place members of the Bar on notice that readmission proceedings would henceforth be governed by rule 3-7.9(a), regardless of whether an attorney was disbarred, suspended, or resigned and regardless of when the attorney left the Bar.³ Any other reading of the Kay footnote renders the final sentence meaningless.

² The footnote says:

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).

³ Former rule 3-7.9(a) has been renumbered as rule 3-7.10(a).

Turning our attention to rule 3-7.10, the rule in effect at the time Holober filed his petition for reinstatement, it reads, in part, as follows:

A former member who has been disbarred or whose petition for disciplinary resignation has been accepted, pursuant to rule 3-7.12, may be admitted again only upon full compliance with the rules and regulations governing admission to the bar.

R. Regulating Fla. Bar 3-7.10(a) (emphasis added). Since Holober's resignation was accepted pursuant to the former Florida Bar Integration Rule, article XI, rule 11.08(5), we find that rule 3-7.10 is by reason of its very language inapplicable. See Florida Bar re Bond, 301 So. 2d 446, 448 (Fla. 1974), in which we held that:

Since petitioner did not resign pursuant to the new rule and, therefore, does not come within the language "If resignation is accepted under this rule," the rules regarding resignation and reinstatement in effect when this Court accepted petitioner's resignation on July 12, 1972, should apply sub judice.

As in Bond, Holober's petition for reinstatement is governed by the rule in effect when his petition for disciplinary resignation was accepted. In Bond the rule itself showed its inapplicability. In the instant case, rule 3-7.10 specifically excludes a lawyer who did not submit his petition for disciplinary resignation pursuant to rule 3-7.12.

Since rule 3-7.10 is inapplicable, Holober's petition for reinstatement is governed by article XI, rule 11.08(5) of the former Integration Rule, the rule in effect at the time of his resignation. As such, he need not seek readmission through the

Florida Board of Bar Examiners. We disapprove the referee's ruling and remand for proceedings on Holober's petition for reinstatement.

It is so ordered.

SHAW, KOGAN, WELLS and ANSTEAD, JJ., concur.
GRIMES, C.J., dissents with an opinion, in which OVERTON and HARDING, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

GRIMES, C.J., dissenting.

As indicated by the majority opinion, our decisions with respect to the requirements for readmission of a lawyer who has resigned pending disciplinary proceedings have not been consistent. The disputes have centered upon the question of whether the applicable rules for readmission should be those in effect at the time of the resignation or those in effect when readmission is sought. In order to set the matter at rest once and for all, we said in a footnote to Florida Bar re Kay, 576 So. 2d 705 (Fla. 1991):

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).

Id. at 705, n.*.

Rule 3-7.9(a), now renumbered as rule 3-7.10(a) of the Rules Regulating The Florida Bar, reads in part:

(a) **Readmission.** A former member who has been disbarred or whose petition for disciplinary resignation has been accepted, pursuant to rule 3-7.12, may be admitted again only upon full compliance with the rules and regulations governing admission to the bar.

Seizing upon the reference to rule 3-7.12 which describes a disciplinary resignation, the majority holds that because Holober did not resign under rule 3-7.12, the readmission rules applicable to him are those which existed at the time he resigned.

This is circuitous reasoning. The mention of rule 3-7.12 in rule 3-7.10 was simply a cross-reference to the section which provides for disciplinary resignations. The majority's interpretation renders the footnote totally meaningless. Despite Kay, those who submitted disciplinary resignations under a prior rule will continue to be entitled to seek admission under the rules existing at the time of the resignation.

I hasten to add that I would have no quarrel with the majority's decision if Holober had resigned pursuant to an agreement with the Bar that he could reapply pursuant to the rules which were then in effect. This did not occur, and there is no doubt that one who simply resigns from the Bar has no vested or constitutional right that the rules for readmission may not be changed by the time he chooses to reapply.

I respectfully dissent.

OVERTON and HARDING, JJ., concur.

Original Proceeding - The Florida Bar

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