

097

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant/Appellee

Case No(s) 84,214
85,007

v.

TFB File NO(s) 93-00710-04D
94-00540-04D

JOSEPH V. CANTO,
Respondent/Appellee
_____ /

FILED

SID J. WHITE

OCT 19 1995

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

MODIFIED REPLY TO ANSWER BRIEF OF THE FLORIDA BAR

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PRELIMINARY STATEMENT

Joseph V. Canto, the appellant (herein "Canto") respectfully requests the Court's indulgence, if he is late with this submittal. His justification is predicated on medical grounds. As this Court is aware, Canto has had prostrate cancer for the last two years for which he has been taking extensive treatments. Recently he was advised that the cancer had been arrested but not cured. In the past, this condition did not seem to prevent Canto from performing his obligations in this cause. However, just before starting his reply to the Answer Brief of the Florida Bar (herein the "Bar") he discovered that he could not sit down to his computer, without experiencing great discomfort, try as he might. In this connection, because he is semi-retired from the practice of law; he has not had the benefit of clerks, secretaries nor partners to assist him. Therefore, he finds it may not be possible to submit his brief timely, which he sincerely prays this Court will overlook, if that were to occur.

In respect to the issues that are before this Court, Canto is acutely aware of the fact, that they have been numerous. However, in respect to the matters currently before this court, Canto believes that they can be reduced to one basic issue, as the other issues have already been raised collaterally in previous submittals and considered by this Court. Therefore the issue that will be addressed here, will principally deal with the

manner in which the Florida Bar, as the exclusive agent of this Court, conducted itself.

Additionally Canto also hopes to induce this Court to address the Writ of Mandamus that is before this Court, as it will bring this cause, which should have been brought to an end several years ago, but for the intentional misconduct of the lower tribunals; It will also bring to an end, the criminal misconduct of defendant James D. Salter, an attorney at law, who has systematically been stealing the funds of the plaintiffs while under the jurisdiction of the courts; and most importantly it will remove from the risk of extinction the cause of justice and the preservation of same, as well as the American way of life.

ARGUMENT

ISSUE I

HAS CANTO EVER BEEN LEGALLY DISQUALIFIED FROM PRACTICING LAW SO AS TO CHARACTERIZE HIS PARTICIPATION ON BEHALF OF HIS CLIENTS, ACTS OF PROFESSIONAL MISCONDUCT IN A COURT OF LAW, JUSTIFYING DISCIPLINARY PROCEEDINGS TO BE CONDUCTED AGAINST HIM?

The answer to that question is a resounding NO! This can be verified by examining the records on file with the Supreme Court, which has the constitutionally vested exclusive jurisdiction to discipline attorneys pursuant to Art.V., Sec. 15, Fla. Const. It is intended to establish here that Canto is, and always has been a member in good standing of the Florida Bar with the constitutional right to practice his legal profession, and thus, represent the Plaintiffs against a member of the legal profession who had been stealing money from them, even while under the jurisdiction of the courts of the Eight Judicial Circuit. Significantly, the extent of this criminal activity, with interest added on a year to year basis, since 1980, exceeds Three Million Six Hundred Thousand Dollars, and is still continuing.

During this cause, the lower tribunals had issued two orders which had disqualified Canto from representing the plaintiffs in this cause. Said orders were predicated on the grounds that Canto had to call himself as a witness, in order to prove his case. The above fact notwithstanding, it is submitted that on the issue of "standing to practice law" the official records of the Supreme Court would conclusively establish the legal standing of Canto to practice law. In this regard, Canto had requested the Clerk of

the Supreme Court to examine his records, and to send Canto notice of his findings. The Clerk was kind enough to do so, and on October 24, 1944 sent him a certificate styled: Supreme Court of Florida Certificate of Good Standing, which provided that:

Joseph Vincent Canto was admitted as an Attorney and Counsellor entitled to practice law in all Courts of the State of Florida on June 12, 1964; he is presently in good standing, and that the private and professional character of the attorney appear to be good. (See App. "1").

The Bar, however, had negligently alleged that Canto had been delinquent in his dues, and in meeting the continuing educational requirements of the Florida Bar justifying delinquency proceedings to still be conducted against Canto. On these issues it should be noted that Canto was first noticed by the Bar on 11 October 1993. He, thereupon, immediately called the Bar by phone and ordered the appropriate CLER tapes in which he enclosed his check in the amount of \$217.30. Thereupon, on October 21, 1993 he submitted a memorandum to the Bar, in substantiation of his phone conversation, (App. "2") which the Bar received on October 28, 1993. On January 11, 1994 he received a letter from the Bar informing Canto that he was a member in good standing entitled to practice law.

In connection with this last issue, the Court is apprised of the fact that pursuant to Rule 6-10.5, Legal Specialization and Education Programs, there is provided that:

If a member fails to complete the minimum required continuing legal education hours by the end of the applicable responding period, the report of noncompliance shall be accomplished by a specific plan for completing the necessary

hours within one hundred twenty (120) days of the reporting due date ...any specific plan shall be deemed approved....

Therefore, if a proper computation is made, from the facts presented above, it will establish that the Bar's position in respect to the matter of Canto practicing law during the period of October 1, 1993 to January 11, 1994, was not only not carefully researched, but it also appears to have been motivated by bias and prejudice in order to achieve a personal objective inconsistent with the Bar's legal responsibilities to operate as the right arm of the Supreme Court. Thus, the Bar's position which is manifested in its Answer, here before this Court, was submitted in support of its position to deny Canto the right to represent the Plaintiffs in this cause, which was and is, untenable.

It, therefore, merits an analyses of the Bar's conduct, in this cause, to determine if the Bar was motivated by reasons which are totally outside the sphere of controlling influences that have little regard for the propriety of "ethics" and "professionalism", and its Answer, here in issue, supports this view. Significantly, however, there are other assertions that the Bar made unrelated to the issue of discipline, but dealt with other matters which, even though they had little relevancy to the issue of discipline, they do impact on the merits, standing and legal efficacy of the cause of action; but have some materiality to the issue of discipline. The most important of which is the assertion by the Bar that this Court had no jurisdiction over what the Bar characterized "as a long ago dismissed civil case."

The above presentation is not to suggest, however, that even though, the two orders of disqualification were illegal orders outside of the tribunals' jurisdiction, that Canto could arbitrarily ignore them, as that would be a sign of disrespect to the dignity and standing of circuit court judges. This Court, in its infinite wisdom, provided the means for attorneys to disobey the orders of a tribunal which they considered illegal, by being permitted to invoke the provisions of Rule 4-3.4(c), R.Pro.Cond. which provides:

A lawyer shall not ... (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no obligation exists.

Canto, therefore, when he considered that it was essential to preserve a legal point, or otherwise establish a record, invoked the provision of Rule 4-3.4(c), supra; and the record is replete with evidence in support thereof. However, the bar, and the referee, who presided over the disciplinary matters, seemed to willfully and intentionally ignore the above stated principals of law and procedure. Typical examples of this fact appear in the Bar's Answer which depicts the tribunals' legal orders, and Canto's open refusal as reprehensible conduct instead of being characterized as conduct under the color of law.

Here it is also significant to note that the Bar's formal complaint is replete with nothing more than false assertions of law and facts which are characterized as acts of professional misconduct premised on the grounds that Canto was in direct vio-

lation of the two orders of disqualification, which no longer had prospective application pursuant to Rule 1.540(b)(5).

In respect to the conduct of the Bar, it is important to point out the ambiguity that pervaded the Bar's "Request for Admissions" dated 17 August 1994, a typical example of which, is question "L" on page 18, therein. It states:

"L. Notwithstanding the February 10, 1993 order entered by Judge Fagan, you, purporting to act as counsel for the Plaintiffs you had been ruled ineligible to represent, filed a motion for Reconsideration of the February 10, 1993 order with an Exhibit entitled 'Motion to Vacate Emergency Motions.'" (Emphasis mine.).

It is evident, that the underlined portion of the above question is a conclusion of law, the exclusion of which would justify Canto to admit said assertion. However, as presented, Canto could not admit same, to the end that it would justify the Bar to establish Canto's lack of credibility by presenting of record the order of February 10th. This kind of deception by the Bar, as the exclusive agent of this Court, constitutes an affront to the dignity and standing of this Honorable Court.

Canto, at this point, cannot help but consider that by presenting the above example, as a point of illustration, the Court may form the view that Canto is grasping at straws. However when it is considered that said example represents a pattern of misconduct on the part of the Bar which is the exclusive agent of this Court, then such conduct has to be considered as a direct affront to the dignity and standing of this Honorable Court. Furthermore, when there is also considered

the fact that in February 1988., Canto submitted a complaint to the Bar against defendant Salter which alleged acts of criminal misconduct; and that the Bar simply ignored said complaint until October 25, 1993; and then made a determination of "no probable cause", premised on the grounds that there was no record to sustain a probable cause determination. Said facts, significantly, establish that said conduct by the Bar is in clear violation of Rule 3-3.2(a), Rules of Discipline, which merits consideration, it provides:

(a) Authority to File a Formal Complaint. No formal complaint shall be filed by the Florida Bar in disciplinary proceedings against a member of the bar, unless there shall first be a finding under these rules that probable cause exists to believe that the respondent has been determined to be guilty ... of the commission of a felony.

In connection with the above, doesn't the fact that Salter is in a posture of default constitute a legal admission by operation of law, which justifies a determination that Salter is guilty of the commission of a felony? Also, isn't said rule worded in such a manner so as to require the Bar to have made a determination of probable cause?

When the above is considered in pari materia with the Bar's conduct in which the Bar tried desparately to falsify facts and law in order to justify Canto to be denied his constitutional right to represent the Plaintiffs in this cause, then it should be easily concluded that the Bar, was inordinately biased and prejudiced in support of attorney Salter, and extremely biased against Canto and the Plaintiffs. This then merits the serious

consideration of the Board of Governors of the Florida Bar, as well as the consideration of this Court, of which the Bar serves as its exclusive agent.

This then brings to the surface the position of the Florida Bar in which it stated that:

"... Canto continued to file pleadings on behalf of the very Plaintiffs he had been disqualified from representing both prior and subsequent to the settlement and order of dismissal of the case with prejudice by court order dated June 15, 1993.

This statement also constitutes an insult to the dignity, standing and wisdom of the Supreme Court justices, for the Bar to actually believe that said justices could be easily convinced to accept a fraudulent statement of facts and law, after being given a complete record to review, which would clearly rebut the said false assertions of the Bar. Does the Bar actually believe that our Supreme Court justices live in a vacuum?

This, then is the proper time to address the truth or falsity of the statement made by the Bar, who obviously acted as the spokespersons for defendant Salter and the tribunal who was involved in the above quoted order of dismissal with prejudice, which had been issued by judge Giunta on June 15, 1993.

This incident had its start at a status conference held on June 15, 1993 which was being conducted by judge Giunta, at which time Canto made an appearance, without the plaintiffs being present. The proceedings began with Salter's attorney Roscow making a request for the tribunal to approve a "Settlement Agreement and Stipulation for Dismissal of This Cause". Significantly the said

Agreement was not produced before the court, nor had there been any copy presented to Canto, who was totally ignorant of its existence, as well as its contents, as it had been executed by three of the plaintiffs, who had been first fraudulently induced to believe that Canto was no longer their Attorney.

Significantly these negotiations were made by Roscow, who contacted the PLaintiffs by phone in New York without the knowledge or consent of Canto, in violation of Rule 4-4.2, Fla.R.Pro. Cond., which states:

In representing a client, a lawyer shall not communicate the subject of the representation with a person the lawyer knows to be represented by another lawyer, in the matter, unless the lawyer has the consent of the other lawyer (No consent was given).

Accordingly, after Roscow made the request for the tribunal to accept the Agreement, Canto made a request to be heard, which the tribunal approved. Thereupon Canto asserted that said agreement was void as it was made without his knowledge or consent. The reaction of the tribunal to Canto's assertion was somewhat surprising, and to say the least was not very judicial. The tribunal turned to Roscow and pointing a finger at him said:

I want you to call a sheriff in New York and have the Plaintiffs jailed. I also want them to be fined \$30,000. He also indicated that Canto was to be jailed.

At that point Salter interceded and informed the judge that he did not want either the Plaintiffs or their attorney to go to jail, and that all he wanted was for the Court to approve the Agreement, which still was not before the court.

Although the above presentation constitutes having brought the cart before the horse, it is important to establish that at the time the tribunal issued the order of dismissal, said tribunal had been disqualified from any further participation in this cause, by a motion for disqualification submitted to the tribunal with a copy to the chief judge on May 22, 1993, and filed of record on May 25, 1993. Therefore, aside from the fact that the status of the cause of action should not be of any concern to the Bar, there was no basis in fact or law to support the statement that it had made, to wit: "It is apparent that Canto believes this Court has assumed jurisdiction of the long ago dismissed civil case..." (BR, pp 10&11). To begin with, in regard to the right of Canto to believe that this Court had jurisdiction of this cause, the Bar obviously ignored the provisions of Rule 9.040, R.App.P, which provides:

(a) Complete Determination In all proceedings a court should have as much jurisdiction as may be necessary for a complete determination of the cause.

In regard to this cause having been dismissed by order of court: The order of dismissal which ostensibly brought this cause to an end, had no legal efficacy as said order was issued after said tribunal had been disqualified from any further proceedings in this cause and, therefore, said tribunal had no legal standing to further participate in this cause by virtue of Canto's motion for disqualification filed of record on May 25, 1993, supra. Please see Canon 3C(1) which provides:

C. Disqualification

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has personal bias and prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning a proceeding;...

Thus there is here established clear and convincing proof of the fact that the Bar, was either biased and prejudiced against Canto or else it was extremely careless in the assertions that it presented to this Court, respecting the alleged dismissal of this cause. Particularly in view of the fact that there was evidence of record easily available which established judge Giunta's disqualification from further proceedings in this cause. Furthermore, when it is also considered that said order of dismissal was not even properly filed of record, as it was contained in the Settlement Agreement itself, as a part thereof, on page 7, therein, which did not even provide constructive notice of its existence, then the bar's assertion is totally without justification, respecting dismissal of this cause.

In connection with matters relating to judge Giunta, the Bar also presented the following facts, it said:

....On September 9, 1993, the Honorable Maurice V. Giunta adjudicated Repondent in willful contempt of court and imposed the following sanctions against respondent: a monetary fine in the sum of \$10,000 to be paid within 45 days of September 9, 1993; an injunction to prevent the filing of any further pleadings, documents, or papers; confinement to the Alachua County Adult Detention Center for a period of 30 days, suspended for a period of 45 days to permit respondent an opportunity to purge himself of contempt within the 45 day period, he was to report to the detention center on the 46th day; and Respondent was permitted to purge himself of contempt by paying the monetary fine and refrain from filing further papers or pleadings. (From Bar's Response p.9 & 10).

Canto finds it difficult to believe that the Bar itself would present strong and convincing evidence of the outrageous manner in which judge Giunta treated Canto, two and a half months after he knew or should have known, that he no longer had standing to preside over this cause. Considering the fact that said evidence clearly establishes the obvious bias and prejudice of said tribunal; with knowledge of the fact that he knew or should have known, that he had been formally disqualified by operation of law, it distresses Canto considerably to realize that in the courts of Florida, tribunals can totally abandon their judicial responsibilities to the detriment of placing at risk the survival of the cause of justice and the American way of life.

This then brings to the surface the objectionable conduct of judge W.O. Beachamp, Jr. who had eventually replaced judge Giunta. In respect to his conduct, Canto truly believes that said tribunal was not personally biased or prejudiced against either Canto nor the plaintiffs, as was judge Giunta. His principal problem stems from the fact that he was a recently appointed circuit court judge, with no prior experience. Nevertheless, he seemed to be putty in the hands of Salter's attorney Roscow, who had no qualms about taking advantage of said tribunal's inexperience.

As to said tribunal, however, it turns out that he caused Canto and the plaintiffs more harm than the combined misconduct of the Bar and attorney Roscow. This is predicated on the grounds that Canto, on or about January 6, 1994, had made a determination

that this cause was going to continue to drag out indefinitely; therefore, he conceived of a plan to bring Salter's criminal misconduct to an end by sending a notice to Landmark Investors, the obligees of the note and mortgagors to which the Plaintiffs d/b/a Landmark Associates were the beneficiaries, and to stop sending to Salter anymore of the funds of the plaintiffs, which Salter was collecting, but to send said funds to Canto instead, as the agent of the plaintiffs unrelated to the cause of action. This would have had the beneficial affect, of bringing to an end the criminal misconduct of Salter continuing to steal the funds of the Plaintiffs while under the jurisdiction of the courts.

It turns out, however, that after Canto drafted the notice, he decided not to file it with either the Clerk of court nor judge Beauchamp. He did, however, sent a copy to attorney Roscow as it constituted a matter which affected the right of Salter to continue to operate as a trustee on behalf of the plaintiffs. This turned out to be a mistake, as Roscow acted true to form and, therefore, submitted a motion to judge Beauchamp to strike said notice, to which the tribunal complied, thus continuing to grant to Salter a judicial licence to steal the funds of the Plaintiffs, unabated. Thus there is imposed on this Court the awesome responsibility and obligation of restoring to the courts of the State of Florida the right for party litigants to pursue the cause of justice and the American way of life.

CONCLUSION

Pursuant to the above, it is submitted that Canto's conduct throughout the proceedings in this cause merits no consideration for disciplinary proceedings to be conducted as against him. Particularly as this could result in this cause to be favorably adjudicated in favor of defendant Salter. This, as a practical matter, could operate to affectively give Salter, a member of the legal profession, a judicial licence to continue to steal the funds of the plaintiffs unabated, which will impact unfavorably on the perception that the public has of our judicial system and our legal profession; and which can bring about an end to the effectiveness that our legal system has to govern the conduct of our citizens.

Canto would like to leave this Court with one final thought, and that is his total dissapointment at the direction the legal system is heading. This is not necessarily the result of the fact that to date he has not been able to achieve his objective of achieving a recovery for redress for injuries sustained by his clients; for one thing he is realistic enough to suspect that Salter is clever enough to conceal his assets, or otherwise make recovery of damages unreachable. However, at the expense of being boring, Canto would like to repeat his true objectives.

This Court has been made aware of the fact that Canto is a retired naval aviator whereby he devoted twenty years of his life during the years 1941 to 1961, with his life at stake, fighting

for the pursuit of justice and the American way of life. During that time he became sensitized to the fact that throughout the course of American history thousands upon thousands of American lives had been sacrificed fighting for the same causes, many of whom he saw going to a watery grave right before his very eyes. Therefore, the preservation of the American way of life and the pursuit of justice, to Canto, had become concepts which must be preserved at all costs; and it became a primary objective for Canto to leave as his legacy to his children and grandchildren the right to forever enjoy these principles, in this great country of ours.

This Court then, as the court of last resort, has the awesome responsibility as well as obligation, to stem the erosion of our legal system that seems to be taking place nationwide. And to therefore, issue appropriate orders that will achieve the primary objective of Canto, to leave as his legacy to his children and grandchildren, the right to enjoy the American way of life where the pursuit of justice is a realistic objective.

WHEREFORE, Joseph V. Canto, the plaintiffs' attorney, respectfully prays for this Court to address the issues presented here, and to also issue an order which:

1. Denies the Florida Bar the right to conduct disciplinary proceedings against Canto, on the grounds that there is no evidence of record which can justify professional misconduct on the part of Canto;

2. Directs the judges of the Eighth Circuit to address one of the several Applications for Default that is before said tribunals for adjudication; and to issue an order which holds the defendants in default; (In this respect it should be noted, that there has been several formal applications

for default pending before four (4) circuit court tribunals since May 25, 1993, none of which have ever been addressed).

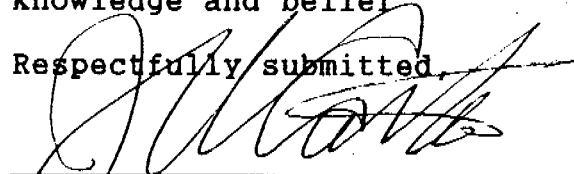
3. Directs the circuit judges to leave to the discretion of the Plaintiffs the right to select an agent of choice to deal with the contract rights of the Plaintiffs, which in this cause, such right was denied by one of the circuit court tribunals, affectively outside of his jurisdiction;

4. Directs the Florida Bar to complete a proper investigation into the conduct of defendant James D. Salter, and as a consequence, have him remove himself as the trustee of a trust to which the plaintiffs are beneficiaries, from which Salter stole the funds of the plaintiffs; and,

5. For such other and proper relief, as is just and proper in the premises.

VERIFICATION: I, Joseph V Canto, under the penalty of perjury, do hereby swear and affirm that the foregoing facts are true and correct to the best of my knowledge and belief

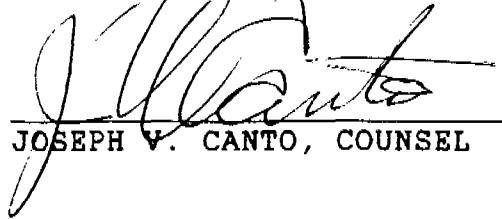
Respectfully submitted,



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CERTIFICAT OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply to the Florida Bar at their Tallahassee address by U.S. Mail and also a copy to the Chief Judge at the Alachua County Courthouse, by hand delivery, on this 18th day of October, 1995.



JOSEPH V. CANTO, COUNSEL