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IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

THE FLORIDA BAR

Case No. 84,978
[TFB Case No. 95-31,050 (07C)]

IN RE: PETITION FOR REINSTATEMENT

OF JOHN D. RUE

THE FLORIDA BAR'S INITIAL BRIEF

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SYMBOLS AND REFERENCES

In this brief, the respondent, The Florida Bar, shall be referred to as "The Florida Bar" or "the bar."

The transcript of the final hearing held on May 2, 1995, shall be referred to as "T," followed by the cited page number.

The Report of Referee dated May 12, 1995, will be referred to as "ROR," followed by the referenced page number(s) of the Appendix, attached, (ROR-A-____).

The bar's exhibits will be referred to as Bar Ex.____, followed by the exhibit number.

The petitioner's exhibits will be referred to as Petitioner Ex. _____, followed by the exhibit number.

The petitioner was office manager for Allen A. Ziffra, P.A., during his suspension period. Prior to his suspension, this firm was Rue and Ziffra, P.A. This entity is referred to, throughout the brief, as "the firm."

STATEMENT OF THE CASE

This Petition For Reinstatement regards John D. Rue, who was suspended by Order of the Supreme Court of Florida on October 20, 1994, as a result of this Court's finding that he was guilty of violating rules 4-1.5(a); 4-1.5(f)(4)(B), 4-1.8(a), 4-1.8(e), and 4-5.4(a) of the Rules Regulating The Florida Bar. The suspension was for a period of ninety-one (91) days, requiring proof of rehabilitation. In addition to the 91 day suspension, this Court further ordered that Mr. Rue take and pass the professional responsibility portion of the bar exam and be placed upon two years probation following the suspension. The Court's order further stated:

If Rue notifies this Court in writing that he is no longer practicing and does not need the thirty days to protect existing clients, this Court will enter an order making the suspension effective immediately. Rue shall accept no new business from the date this opinion is filed, The Florida Bar v. Rue, 643 So. 2d 1080, 1083 (Fla. 1994).

On October 26, 1994, counsel for Mr. Rue wrote to the Supreme Court of Florida and requested that the Court consider his letter as written notice that Mr. Rue was no longer practicing and would like the suspension to be effective

immediately. Accordingly, this Court allowed the petitioner to begin his suspension effective immediately. Prior to receiving notice that the Court had already granted Mr. Rue's request to be placed upon immediate suspension, The Florida Bar filed a Notice of the Bar's Objections to Petitioner's Suspension being Effective Immediately. The bar noted that its investigation indicated the petitioner continued to advertise for new clients subsequent to October 20, 1994, and argued that the petitioner had an active practice of law and even continued to seek new business after October 20, 1994. Thereafter, Mr. Rue filed a Motion To Strike Bar's Notice Of Objection, Motion For Sanctions, and Response To Objection. The Florida Bar filed a response to the petitioner's previous motions and the Court, on December 7, 1994, denied Mr. Rue's Motion For Sanctions.

On January 12, 1995, this Court granted Mr. Rue's Petition For Leave To File Early Petition For Reinstatement and noted the Petition For Reinstatement was filed on January 10, 1995. On January 23, 1995, the referee was appointed. On January 26, 1995, Mr. Rue, the petitioner, filed a Motion To Set Expedited Final Hearing. On January 30, 1995, The Florida Bar responded to the Motion To Set Expedited Final Hearing, objected to this

request and sought sufficient time to properly investigate the petition. On February 2, 1995, the petitioner replied to the bar's response and the matter was heard by telephone hearing before the referee who scheduled the matter for final hearing on Wednesday, March 8, 1995.

On March 3, 1995, The Florida Bar filed a Motion For A Continuance, its first and only in this case, requesting further time to adequately investigate the petitioner's fitness to practice law as issues needing further investigation had come to the attention of bar counsel during late February and early March, 1995. The referee had a telephone hearing on the bar's Motion For Continuance, granted it, and rescheduled the final hearing for May 2, 1995. The final hearing was held accordingly on May 2, 1995. It is noted that the final hearing on the Petition For Reinstatement was held within fourteen (14) weeks and one (1) day of the appointment of the referee. The order appointing the referee had directed that his report be filed within 180 days or approximately 28 weeks.

The Report Of Referee was signed May 12, 1995, and the referee recommended that the petitioner be reinstated to the practice of law. No mention was made of any probation period as

required by the previous disciplinary suspension order.

The board of governors considered the Report Of Referee at its May, 1995, meeting and directed bar counsel to seek review of the referee's recommendation of reinstatement in view of the petitioner's apparent misconduct while suspended. The Florida Bar filed a Petition For Review accordingly on June 6, 1995. On June 9, 1995, the petitioner filed a Motion To Expedite Briefing Schedule. The bar objected and the Court denied the motion on June 21, 1995.

STATEMENT OF THE FACTS

On October 20, 1994, the Supreme Court of Florida suspended Mr. Rue for 91 days for engaging in violations of Rules Regulating Fla. Bar 4-5.4(a) for improperly sharing fees with a nonlawyer, 4-1.8(a) for improperly entering into a business transaction with a client or knowingly acquiring another pecuniary interest adverse to a client without meeting the proper requirements, 4-1.8(e) for improperly providing financial assistance to a client in connection with pending or contemplated litigation, 4-1.5(a) for entering into an agreement for, charging or collecting an illegal, prohibited, and/or clearly excessive fee, and 4-1.5(f)(4)(B) for having a written contingency fee contract providing for a legal fee in excess of 33 1/3 percent of the recovery with respect to the PIP recovery fee. In suspending Mr. Rue, the Court required that he petition and prove rehabilitation prior to reinstatement and, as a condition of rehabilitation, he take and pass the ethics portion of The Florida Bar exam, pay all costs associated with the exam and be placed on probation for two (2) years following the suspension. Prior to the final hearing in the reinstatement matter, Mr. Rue

demonstrated proof that he had taken and passed the ethics portion of The Florida Bar exam and paid his costs as applicable.

In his petition for reinstatement, Mr. Rue set forth factual information regarding his status during his suspension. During his suspension, Mr. Rue worked as office manager for his previous firm, Allan A. Ziffra, P.A., formerly known as Rue and Ziffra, P.A., ("the firm"). No adverse information relating to Mr. Rue's petition for reinstatement was evidenced other than as indicated below.

The Florida Bar's routine investigation indicated that the petitioner had continued to seek new clients after the date of his suspension by means of substantial advertising.

The Florida Bar argued that the petitioner had misrepresented his "not practicing" status to the Supreme Court of Florida in his counsel's letter of October 26, 1994. By Mr. Rue's own admission, he had over ninety (90) pending cases as of October 26, 1994, Petitioner Ex. 5. On October 26, 1995, his office was engaged in a media blitz of advertising known as "Biketoberfest," T-19.

Mr. Rue's firm, with his knowledge, placed full page advertisements in telephone "yellow pages" directories

proclaiming the petitioner's availability as an attorney after being informed of Mr. Rue's suspension, T-37, 72. Further, neither the firm nor the petitioner attempted to delete an advertisement that was purchased, prior to his suspension, for publication in the January, 1995, Flagler County Shopping Directory, T-111-112.

The petitioner was the spokesman, unidentified by name, for his previous firm in a television ad while he was suspended. In the ad, Mr. Rue's statements included, "Attorneys for bikers. We represent motorcycle riders who have been injured by the carelessness of others," Bar Ex. 4, p.2.

Additionally, Mr. Rue's name was not deleted from his firm's office and trust bank accounts until shortly before the reinstatement final hearing, T-23. Further, the entity of Rue and Ziffra, P.A., remained on file with the Secretary of the State of Florida at the time of the final hearing on the Petition For Review, indicating Mr. Rue was a member of the board of directors. No amendments were ever filed, T-115, Petitioner Ex. 11. Rule 4-8.6(c) of the Rules Regulating The Florida Bar states, "No person shall serve as a director or executive officer of a professional service corporation engaged in the practice of

law in Florida unless such person is legally qualified to render legal services in this state."

Additionally, on March 11, 1995, a newspaper story was run regarding the firm's participation in a "Bike Week" charity event, Bar Ex.3. The reporter was never advised of Mr. Rue's suspension and her article referred to Mr. Rue as the "founding partner" of the firm. The petitioner stated during the final hearing that he believed he had been treated differently than other lawyers by The Florida Bar, T-75. No evidence that The Florida Bar had singled out Mr. Rue for special investigation or prosecution was presented.

SUMMARY OF THE ARGUMENT

The petitioner has failed to present the requisite evidence that he is a rehabilitated attorney.

During his suspension period, the petitioner obtained an immediate suspension by misstating his status to the court. The petitioner insinuated that his temporary vacation equated to the nonpracticing status required by this Court to grant an immediate suspension.

Further, the petitioner engaged in extensive advertising, holding himself out to the public as a practicing member in good standing, subsequent to his suspension. By such conduct, the petitioner effectively "thumbed his nose" at this Court and this Court's requirements imposed upon suspended attorneys.

Further, the petitioner remained a member of the board of directors of his law firm pursuant to the records on file with Florida's Secretary of State. This conduct violates R. Regulating Fla. Bar 4-8.6(c). The petitioner's name also remained on the title of his firm's bank accounts until shortly before the final hearing. The petitioner's firm failed to identify Mr. Rue as a suspended attorney when a newspaper article

was run describing Mr. Rue as a "founding partner" of the law firm. The petitioner evidenced ill feelings toward The Florida Bar, by expressing his feelings that the bar had treated him differently, without any evidence of such discrimination.

Such conduct warrants denial of the Petition For Reinstatement. He should not be reinstated until such time as the petitioner can demonstrate that he has fully complied with the rules and refrained from advertising his availability to the public for at least a period of ninety-one (91) days.

The Report of Referee erred in omitting at least acknowledging that adverse evidence had been presented against the petitioner. It further erred in failing to recommend the two year period of probation required by the previous Court order. Denial of the reinstatement is required at this time, with the condition that no further petition for reinstatement be tendered until the petitioner can demonstrate that a period of ninety-one (91) days have passed when his name has not been advertised as a legal services provider.

ARGUMENT

THE REFEREE ERRED IN RECOMMENDING THAT THE PETITIONER BE REINSTATED TO THE PRACTICE OF LAW WHERE THE PETITIONER HAD ENGAGED IN SIGNIFICANT MISCONDUCT WHILE SUSPENDED, INCLUDING CONTINUING TO ADVERTISE HIMSELF AS AN AVAILABLE ATTORNEY.

It is well settled that in proceedings concerning a petitioner's fitness to be reinstated to the practice of law, several factors are relevant. The Supreme Court of Florida has defined six elements of proof necessary for a petitioner to demonstrate his fitness for reinstatement to the practice of law:

1. Evidence of strict compliance with the specific conditions of the disciplinary order, such as payment of costs.
2. Evidence of unimpeachable character and moral standing in the community.
3. Clear evidence of a good reputation for professional ability.
4. Evidence of a lack of malice and ill feeling by the petitioner toward those who, by duty, were compelled to bring about the disciplinary proceeding.
5. Personal assurances, supported by corroborating

evidence, revealing a sense of repentance, as well as a desire and intention of the petitioner to conduct himself in an exemplary fashion in the future.

6. In cases involving misappropriation of funds, restitution is important, Petition of Wolf, 257 So. 2d 547 (Fla. 1972).

In the Wolf case, above, an attorney was denied reinstatement, despite the lapse of the time required for his suspension period, where he failed to demonstrate his fitness for reinstatement to the practice of law. In denying reinstatement, the Court noted that the greatest obligation in these proceedings is owed to protecting the public as well as the image and integrity of The Florida Bar. The Court further noted, "The license to practice law is a privilege, not a right, and the lawyer who has been disbarred must sustain a heavy burden proving his fitness in terms of integrity as well as professional competency. It is not enough merely to show that he has showed a sufficient term of punishment," Wolf, supra at p. 548.

At the final hearing on John D. Rue's petition for reinstatement to The Florida Bar, the bar presented the following un rebutted evidence:

Mr. Rue misrepresented his status in his counsel's letter to the Supreme Court of Florida dated October 26, 1994, requesting that Mr. Rue's suspension be effective immediately as Mr. Rue was no longer practicing law due to a vacation. The fact was that Mr. Rue was indeed practicing law and had over ninety (90) current client matters pending on October 20, 1994. This information was made known to the bar in Mr. Rue's notice filed with it pursuant to R. Regulating Fla. Bar 3-5.1(g), Petitioner Ex. 6. Further, at the time the petitioner requested his suspension begin early, his firm was in the midst of conducting an advertising blitz known as "Biketoberfest," T-19. By order dated October 26, 1994, the Supreme Court of Florida allowed Mr. Rue's suspension to take effect immediately based upon the representations made to it by him through counsel. Thereafter, the firm continued to use stationery bearing the name "Rue & Ziffra, P.A.," through approximately October 30, 1994, T-18. Rue & Ziffra had a sign in front of its law office. The sign was not covered up, correcting the advertisement that Mr. Rue was an attorney available to provide services, until November 2, 1994, T-19. In addition to television and newspaper advertisements, billboards were also extensively used to advertise Mr. Rue's

continuing availability as an attorney as of October 20, 1994, and these billboards continued to proclaim Mr. Rue's availability until approximately the middle of November, 1994, T-36. The television ads that included Mr. Rue's name continued to air for approximately two weeks after his suspension, T-20. Rue and Ziffra had advertisements in the 1994 "yellow pages" telephone directories. These remained in force and, in fact, new advertisements were contracted for with the telephone directory publisher subsequent to and with knowledge of Mr. Rue's suspension. Further, Mr. Rue's name remained on all office accounts, including the office expense account and trust account, as Rue and Ziffra, P.A., T-40-41. The petitioner countered these allegations with these assertions describing the efforts made and the time needed to curtail his ongoing practice. Obviously, these problems were caused by his misstatement to the Court to the effect that he was no longer practicing law and did not need thirty (30) days to wind up his practice. Of course, an immediate suspension also allowed Mr. Rue to petition for an earlier reinstatement than he would have been afforded otherwise.

Further, Mr. Rue did a voice over for a television ad on behalf of the firm during his suspension, Bar Ex. 4. His

identity was not stated during the television ad, but Mr. Rue was well known in the "biker" community, to whom the ads were directed. In the ad, Mr. Rue's distinctive voice, T-114, stated, "Attorneys for bikers. We represent motorcycle riders who have been injured by the carelessness of others, 1.Bar Ex. 4, p.2.

Further, a newspaper interview was conducted with Mr. Ziffra during Mr. Rue's suspension regarding a charity sponsored by the firm. The newspaper article referenced Mr. Rue as the "founding partner" of the firm, Bar Ex. 3. No one from the law firm ever advised the reporter that Mr. Rue was suspended from the practice of law.

Rule 4-8.6(e) of the Rules Regulating The Florida Bar requires attorneys to forfeit ownership in their law firms upon suspensions greater than ninety-one (91) days. Mr. Rue transferred his stock certificates upon his suspension. Under oath, Mr. Rue's former partner testified that Mr. Rue transferred the shares to him, Allan L. Ziffra, T-13-14, Petitioner's Ex. 2. Mr. Ziffra also testified that Mr. Rue did not transfer the shares to him, but rather had signed them back over to the corporation and no consideration was paid, T-34. The Florida Secretary of State received no notice from either the

petitioner or anyone in his law firm directing the removal of Mr. Rue's name as a principal from the incorporation documents. He remained a principal throughout his suspension period and the reinstatement proceedings, including the date of final hearing. This evidence makes it questionable as to whether or not an actual transfer of Mr. Rue's ownership interest took place.

Additionally, evidence was presented to the effect that the petitioner currently believes he has been improperly targeted by The Florida Bar, T-75. No evidence was presented that there is any reasonable basis for this belief. This indicates that the petitioner continues to feel malice toward those who were required, by duty, to act in the discipline case.

The referee neither acknowledged nor commented on any of the above evidence in his report of referee recommending that the petitioner be reinstated to the practice of law.

The Florida Bar is well aware that this Court gives great weight to a referee's findings of facts, The Florida Bar v. Stafford, 542 So. 2d 1321 (Fla. 1989). Nevertheless, this Court has acknowledged that its scope of review is broader with respect to the legal conclusions and recommendations of the referee, as it is ultimately this Court's obligation to judge the case

appropriately, The Florida Bar in re Inglis, 471 So. 2d 38 (Fla. 1985). In Inglis, this Court reviewed a report of referee regarding a petition for reinstatement and determined that the referee had erred in arriving at the findings of fact, conclusions, and recommendation. The Court, in reviewing a business transaction involving the attorney, found that an arm's-length transaction had taken place and no legal duties were violated, despite the referee's findings to the contrary. Further, the Court concluded that a previous criminal incident was erroneously used by the referee as a factor. The criminal incident had taken place a lengthy period of time prior to the reinstatement hearing.

The referee erred similarly in the case at hand. The referee failed to even mention the misconduct brought to his attention by the bar. The report simply made a broad conclusion without reference to the particular circumstances of this case. Further, the Report of Referee erred in its failure to provide for the two year period of probation mandated by this Court's order of October 20, 1994.

It is apparent that the referee misapprehended or overlooked the above evidence in evaluating Mr. Rue's fitness for

reinstatement as a member of The Florida Bar. Upon review, this Court should deny the petition for reinstatement because the above evidence indicates a lack of fitness for reinstatement at the present time.

In the case at hand, the petitioner has effectively thumbed his nose upon the requirements imposed upon him by the Supreme Court of Florida as a suspended attorney. Within a matter of days after his October, 1994, suspension from the practice of law, the petitioner's firm placed a full page ad in the telephone directory "yellow pages" proclaiming to the public Mr. Rue's availability as an attorney. This was done with the petitioner's knowledge, T-82, and with knowledge of the fact that the telephone book ad would be released to the public on or about January 1, 1995. It was done with the knowledge that it was a matter for this Court to determine whether or not Mr. Rue was allowed to practice law again and with knowledge of the fact that his petition for reinstatement had not even been filed much less accomplished at the time the ad was place. The reason for placing the ads with Mr. Rue's name was that they were more effective that way, T-42-43. Such conduct certainly does not indicate the integrity and fitness of character required for Mr. Rue's

petition for reinstatement to be appropriate. As this Court stated in the case of In re Stoller, 36 So. 2d 443, 444 (Fla. 1948), "Reinstatement is more a matter of grace than of right and is dependent upon rehabilitation and whether or not the disciplinary sanctions have been adequate." It is noted that Mr. Rue was well aware of the placing of these improper advertisements. When asked by bar counsel why he had not done something to stop the ads from being placed, he failed to take responsibility for the violations, T-82-83. This failure to take responsibility for the actions of his firm is all too similar to Mr. Rue's previous failure to adequately insure that the Rules Regulating The Florida Bar were adhered to by himself as well as every member of his firm, the misconduct which led to his previous suspension.

In the case of In re: Cohen, 560 So. 2d 785 (Fla. 1990), the Court disapproved the reinstatement of an attorney where, among other violations, he had failed to remove his name from his office building during his suspension period of ninety-one (91) days. The attorney blamed this upon an oversight, much as Mr. Rue claims that he did his best to stop his advertising which was ongoing at the time of his suspension. The bar submits that in a

case such as this where protection of the public is foremost, it is insufficient for an attorney to blame his failure to comply with the rules on the basis that he has "done his best" or "didn't know." When the petitioner can demonstrate that he has embraced a responsibility for his adherence to the Rules Regulating The Florida Bar and can demonstrate such an adherence, his reinstatement will then be appropriate.

This Court has not hesitated to deny reinstatement where a question of integrity exists. This Court, in the case of The Florida Bar re Janssen, 643 So. 2d 1065 (Fla. 1994), overturned a referee's recommendation of reinstatement where the referee had found that the attorney's conduct in making incorrect and misleading statements did not prohibit his reinstatement because the statements were not made for financial gain, did not involve the practice of law, and were not intended to defraud anyone. In rejecting this recommendation of reinstatement, this Court noted the petitioning attorney shoulders the heavy burden of demonstrating his fitness character. This Court similarly rejected a referee's recommendation of reinstatement in the case of The Florida Bar re Jahn, 559 So. 2d 1089 (Fla. 1990), where the attorney's conduct, during his suspension, of obtaining

employment by lying about his disciplinary record on an employment application and during a polygraph examination, which he passed, warranted denial of his reinstatement despite the referee's recommendation. Similarly, in the case of The Florida Bar re Lopez, 545 So. 2d 835 (Fla. 1989), this Court rejected the referee's recommendation of reinstatement where there was evidence of improper presuspension conduct, failure to file income tax returns, and writing bad personal checks.

It should be noted that at the final hearing in the underlying disciplinary case, it was acknowledged that telephone directory "yellow pages" advertising generated between eighty and eighty-five percent of the firm's business, T-45. It is clear that greed was the petitioner's motivation in continuing to advertise after his suspension, in violation of the Rules Regulating The Florida Bar. It is further clear that the petitioner has failed to take the strong ethical stance needed to ensure ethical conduct. In order to live up to the trust placed in this Court by the people of the State of Florida, it is essential that the petition for reinstatement be denied at this time and that no further petition for reinstatement be allowed until a period of ninety-one (91) days have passed when the

petitioner can demonstrate that his name has not been advertised
as a legal services provider.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's findings of fact and recommendations, and deny the petitioner's Petition For Reinstatement at this time. The Florida Bar further prays that the petitioner's cost deposit of \$750.00 be applied toward the bar's costs in this matter, which currently total \$1,125.20, and that petitioner be assessed the remaining costs.

Respectfully submitted,

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By:

Jan Wichrowski
JAN WICHROWSKI
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing Initial Brief and Appendix have been furnished by regular U. S. mail to the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927; a copy of the foregoing has been furnished by regular U.S. mail to Mr. John A. Weiss, counsel for respondent, at 2937 Kerry Forest Parkway, Suite B-2, Tallahassee, Florida, 32308; and a copy of the foregoing has been furnished by regular U. S. mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 6th day of July, 1995.

Jan Wichrowski

JAN WICHROWSKI
Bar Counsel

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Case No. 84,978

[TFB Case No. 95-31,050 (07C)]

IN RE: PETITION FOR REINSTATEMENT

OF JOHN D. RUE

APPENDIX TO COMPLAINANT'S INITIAL BRIEF

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR

Case No. 84,978

IN RE: Petition for Reinstatement of

JOHN D. RUE,
_____ /

RECEIVED

MAY 15 1995

THE FLORIDA BAR
ORLANDO

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to an order of the Supreme Court of Florida dated January 19, 1995 the undersigned presided over these reinstatement proceedings. Final hearing was held on May 2, 1995 in the Duval County Courthouse, Jacksonville, Florida. All pleadings, notices, motions, orders, transcripts, and exhibits relating to this case are forwarded to the Supreme Court of Florida with this report.

The following attorneys appeared as counsel for the parties:

Counsel for The Florida Bar: Jan Wichrowski

Counsel for Petitioner: John A. Weiss

Petitioner filed his Petition for Reinstatement to The Florida Bar in the Supreme Court of Florida on January 10, 1995.

II. FINDINGS OF FACT:

Petitioner was suspended for 91 days by the Supreme Court of Florida effective October 20, 1994. The Florida Bar v Rue, Case No. 79,522 and 80,207, as reported at 643 So.2d 1080 (Fla.

1991). He was also required to pass the ethics examination before reinstatement. Passage of the examination was accomplished on November 18, 1994.

Petitioner's disciplinary sanction was for various offenses including advancing living expenses to some clients, business transactions with clients without proper disclosure, sharing fees with his paralegals in the form of improper bonuses, and improper clauses in his contract.

At final hearing before the Referee, Petitioner testified and presented evidence through live testimony and through affidavits relating to his reputation and standing in the community.

In determining Petitioner's rehabilitation, I have been guided by the Supreme Court of Florida's decision in Petition of Dawson, 131 So.2d 472 (Fla. 1961). On page 474 of that decision, the Supreme Court listed six elements to consider in determining rehabilitation. The Court listed those factors as:

- (1) strict compliance with the specific conditions of the disciplinary order, such as payment of costs;
- (2) evidence of unimpeachable character and moral standing in the community;
- (3) clear evidence of a good reputation for professional ability;
- (4) evidence of a lack of malice and ill feeling by the Petitioner towards those who by duty were compelled to bring about the disciplinary proceedings;

(5) personal assurances, supported by corroborating evidence, revealing a sense of repentance, as well as a desire and intention of the Petitioner, to conduct himself in an exemplary fashion in the future;

(6) in cases involving misappropriation, restitution is important.

With the exception of point (6), which is inapplicable to the case at bar, I find that Petitioner has proven by clear and convincing evidence that he has met all of the criteria listed in Dawson. Petitioner has complied with the Supreme Court's regulations governing the closing of his practice and his employment while suspended. The evidence shows Petitioner is held in high esteem by the community in which he practices and that he has an excellent reputation for professional ability. Petitioner bears no malice or ill will towards the Supreme Court, the grievance committee or The Florida Bar. He sincerely regrets his misconduct and he has corrected the deficiencies that led to his suspension.

Based upon my observation of Petitioner, I find his testimony to be credible. I believe his assurances that the misconduct that occurred in the past will never be repeated.

III. RECOMMENDATION AS TO REINSTATEMENT:

I find that Petitioner has met the burden imposed upon him of proving his rehabilitation. Therefore, I recommend that he be immediately reinstated to the practice of law.


In light of the fact that Petitioner's 91 day suspension has now exceeded 191 days, I order the Bar to advise the Supreme Court of its position on the instant petition no later than May

30, 1995.

IV. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:

I recommend that all costs reasonably incurred by The Florida Bar be assessed against Petitioner. Petitioner's cost deposit of \$750.00 will be applied towards those costs and all costs in excess of that amount will be paid within 30 days of the Supreme Court's final order in this cause unless such time for payment is extended by the Board of Governors of The Florida Bar.

Dated this 12th day of May, 1995.

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MORTON A. KESLER
REFEREE

Copies furnished to:

John A. Weiss, Esquire
Jan Wichrowski, Esquire
John T. Berry, Esq.