

047

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Supreme Court Case
No. 89,879

Complainant,

The Florida Bar File
No. 95-70,829 (11N)

v.

JULIETTE ARTHUR.

Respondent.

_____ \

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THE FLORIDA BAR'S ANSWER BRIEF

By CLENK, SUPREME COURT
Chief Deputy Clerk

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PREFACE

For purposes of this brief, the Complainant, The Florida Bar, will be referred to as "The Florida Bar" and Juliette Arthur, will be referred to as "Respondent". The following abbreviations will be utilized:

RR - refers to Report of Referee

TR - refers to the transcript

TABLE OF AUTHORITIES

<i>CASES</i>	PAGE
<u>The Florida Bar v. Hughes,</u> 504 So. 2d 751 (Fla. 1987)	10
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 Rules Regulating The Florida Bar:	
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STATEMENT OF THE CASE AND FACTS

The Petitioner/Respondent has submitted many alleged facts in her Statement of the Case and Facts which are not supported by the record, and/or are inaccurate, argumentative, immaterial or irrelevant. Due to the large number of such statements, the Bar will not attempt to discuss each one. Rather, the Bar will attempt to set forth succinctly below, the pertinent facts and procedural history of this case.

The Bar petitioned this Court to place the Respondent on the inactive list of Florida Bar attorneys. The fundamental basis of the Petition was the allegation that the Respondent had been involuntarily hospitalized pursuant to the Baker Act.

The complaint included attached reports (Composite C) which included a diagnosis of "paranoid ideation". The Bar also alleged that Respondent failed to respond to a January 31, 1995 letter from the Bar asking for her response to that allegation; and that Respondent also failed to respond to the Bar's subsequent request that the Respondent be evaluated by Florida Lawyers Assistance, Inc. The above described complaint was filed after a full hearing on May 3, 1995, at which time the Respondent testified for more than two hours.

The Bar submitted an affidavit of the committee chairman

regarding Respondent's testimony at the hearing. The Respondent had testified under oath that local attorneys won't represent her because they are under a gag order of some kind (TR. 51), that Judge Taylor who testified at the hearing did not tell the truth (TR. 58), and that a Bar investigator who investigated the matter of an alleged sexual assault upon her by a police officer was also not telling the truth.¹

Respondent testified that she had been injected with drugs at the time that she was hospitalized. (TR. 49-50) She added that someone she knew who she met on the scene told her not to eat the food or take the medicine which was provided. (TR. 50)

Respondent testified regarding the circumstances which led her mother to file the Baker Act petition. She added that "they" let the air out of her tires everyday and added that it was either "them" (her relatives) or Mr. Padilla who had filed the Bar complaint. (TR. 84-85). She added that:

"Well, because, well, see, I'm saying it's either them or the person, Mr. Padilla, who was the person that filed the complaint with the Bar. This individual I purchased the car from him and the car is currently in litigation, so you know, one time the hose was cut. Whenever I call him up and I tell him

¹ She also claimed that Bar counsel harassed the cab driver who brought her to the meeting at the Bar's expense because he was Haitian. (Reiterated in her brief as a footnote on page 8).

look, here, the car will not start, the hose has been cut, and I'm going to charge you for each day I'm unable to use this car because I did not buy a car to sit in the house, then, miraculously within a couple of hours or the following day the car is working fine, you know.

Now, who is doing it? Whether he is talking to the people in the house to do it because they were trying to match me up with him. This was a matchmaking, so hopefully I'll go out with him and get married and live with him and get out of their house, so it didn't work out that way.

So, there is communication between the two of them, so I imagine whatever is going on either he's assisting them or they're assisting him. All I know is the car won't start and I made a complaint to his attorney, you know, the following day the car will crank up.

You know, there will be things like they'll hide the keys from me on Valentine's Day, so I can call him and get a spare key from him and let him think I'm calling him up because it's Valentine's Day.

The Respondent also testified that her relatives with whom she lived, spied upon her twenty four hours a day with a multi-media security system which possibly extended to the bathrooms (TR. 65-66).

The Chairman of the Grievance Committee's affidavit to the Referee stated that the "Respondent was evasive forgetful or untruthful, at times incoherent and she rambled." He further stated that she appeared to the Committee to be delusional and

paranoid. The Committee had concluded based upon all of the evidence, that Respondent was incapable of practicing law due to mental incompetence. The evidence included the testimony of a Judge before whom she appeared. The Committee found that there was probable cause of a violation of Rule 3-7.13 of the Rules of Regulating The Florida Bar.

Respondent repeated to the Referee her position before the Grievance Committee that she was not willing to comply with the Bar's request that she receive an evaluation from Florida Lawyer's Assistance, Inc., (Telephone hearing 11/1/95 Tr. 16-17). She maintained that there was no evidence that she was unfit to practice law. (Hearing 11/1/95 Tr. 16-17). At that time the following exchange took place:

THE REFEREE: Ms. Arthur, I need you to let me make a few statements to you, because you won't allow me to speak.

I need to be able to speak to you and you need to give me an opportunity to speak to you.

MS. ARTHUR: Actually, I don't even think this is the proper way of conducting a hearing. Like I said, I did not receive notice of it.

THE REFEREE: Ms. Arthur, I have the Bar telling me that you received a certified notice.

MS. ARTHUR: So you believe what the Bar said. You also said that you think they have

the authority to do this. Now you tell me you say you believe what they say.

Do I have anyone to believe me here? Am I just a peon? Are you supposed to be a neutral person?

I did not receive it.

I understand that at this type of hearing I am allowed to bring an attorney.

We are conducting this hearing over the phone. Technically, this is not even valid.

THE REFEREE: Ms. Arthur, we are conducting the hearing on the phone because you haven't shown up.

There were a number of hearings before where you didn't show up.

The Court was trying to be courteous and accommodate you.

MS. ARTHUR: I don't agree with that.

THE REFEREE: Ms. Arthur, I want you to give me an opportunity to speak. Do you understand that?

MS. ARTHUR: I am here.

THE REFEREE: If you do not give me an opportunity to **speak**, the Court is going to make the finding just based on that alone, that you are not capable of getting through this hearing because of your mental health.

MS. ARTHUR: Sir, I do not consider this a hearing.

(Hearing 11/1/95, TR. Line 5, pg. 17 through pg. 18, line 25)

At the same hearing, Respondent accused the two judges

involved with her case of being corrupt. (TR.26). She also advised the Referee that she was recording the hearing (TR.28), although she had been told it was illegal to do so. (TR.28)

After the November 1, 1995 hearing Judge Gerstein recused himself as Referee. Judge David Tobin, the successor Referee, was provided with a copy of the hearing transcript which included Judge Gerstein's oral entry of an order requiring evaluation of the Respondent by Florida Lawyers Assistance, Inc. Attempts to obtain compliance were thwarted by the Respondent. Respondent did not appear for a status conference on December 7, 1995, nor a re-scheduled conference on January 22, 1996. **An** order was entered dated June 28, 1996, requiring Respondent to submit to a mental examination. If not, she was to be placed on the inactive list. Respondent failed to comply and the Referee entered an Order dated August 5, 1996 to the effect that Respondent should be placed on the inactive list. This Court entered an Order on November 21, 1996 (amending a prior Order) approving Respondent's placement on the inactive list.

Respondent submitted a Petition to the Board of Governors dated January 3, 1997 to remove her from the inactive list. The Board of Governors denied her request on January 10, 1997. Respondent is appealing that denial.

SUMMARY OF ARGUMENT

Respondent petitioned the Board of Governors to remove her from the inactive list by an Order of this Court dated November 21, 1996. That Order was entered pursuant to the Bar's Petition to place the Respondent on the inactive list.

This Court's Order to place Respondent on the inactive list followed the Successor Referee's Order to the same effect, dated August 5, 1996. That Order was not appealed and was, therefore, final upon approval of this Court. Although this Court "may" review the Board's denial pursuant to Rule of Discipline 3-7.13, such review would appear to be redundant under these circumstances.

If review is deemed to be appropriate, no error is apparent in regard to the Board of Governors' denial of Respondent's petition. Rule 3-7.13 requires placement of an attorney on inactive list status following an involuntary hospitalization for mental health reasons.

Respondent has provided no viable reason for removing her from that list. Respondent declined to avail herself of the Bar's request to receive a mental health evaluation from Lawyer's Assistance, Inc. She also refused to comply with the Referee's Order, approved by this Court, to obtain a mental health evaluation.

Respondent raises a variety of arguments, including a

constitutional right to practice her profession, a good faith belief that the disobeyed Order is invalid, the absence of good cause pursuant to Florida Rule of Civil Procedure 1.360. Respondent's arguments are irrelevant in view of the clear language of Rule 3-7.13 of the Rules of Discipline and Respondent's failure to obey the Order to obtain a mental examination. Furthermore, if there is any reason for this Court to re-examine the issue of good cause for the Order to obtain a mental examination, ample supporting evidence is provided in this brief, including the Respondent's own words.

ARGUMENT

THE RESPONDENT **HAS** NOT ESTABLISHED THAT THE BOARD OF GOVERNORS ERRED BY DENYING HER PETITION FOR REMOVAL FROM THE INACTIVE LIST.

An Order was entered by the Referee on June 28, 1996 recommending that Respondent be required to submit to a mental examination. Respondent did not attempt to obtain review of that Order. When the Respondent failed to comply, the Referee entered an Order dated August 5, 1996 recommending that Respondent be placed on the inactive list. Again, Respondent did not attempt to obtain review of that Order. This Court entered an Order on November 21, 1996, (amending a **prior** Order) approving Respondent's placement on the inactive list. Since this Court's Order

constitutes a final Order, it does not appear that the Board of Governors would have had the authority to act as a superior court and reverse this Court's ruling, and therefore, further review by this Court would appear to be unwarranted.²

Even if the Board had such authority, Respondent has established no basis for doing so. Rule 3-7.13 of the Rules Regulating The Florida Bar states, in part:

A lawyer who has been adjudicated insane or mentally incompetent or hospitalized under the Florida Mental Health Act shall be placed on the inactive list and shall refrain from the practice of law.

(Emphasis supplied)

Obviously, the Respondent was properly placed on the inactive list. Should Respondent have been removed from the inactive list by the Board of Governors in view of the fact that Respondent refused to comply with the Order to obtain a mental examination? **Asked** another way, was there any basis for removing Respondent from the inactive list, without the benefit of a professional examination of her mental condition?

A mental examination would clearly have been a valuable asset

² Furthermore, this Court's power to review a denial by the Board of Governors of removal from the Inactive List pursuant to Rule 3-7.13 would not appear to pertain to a situation where this Court has ordered the placement on the inactive list.

to the Board of Governors and/or this Court to determine whether Respondent should be removed from the Inactive List. By failing to comply with the Order, the Respondent assured that she would remain on the inactive list, due to the absence of a meaningful evidentiary basis for removal.

The Order should have been viewed by the Respondent as an opportunity to change her status. Furthermore, failure to follow an Order which was final, does not establish a basis for removing the Respondent from the inactive list. On the contrary, in The Florida Bar v. Hughes, 504 So.2d 751 (Fla. 1987) this Court held that failure to appear for a mental examination, as ordered by the Referee would result in placement on the inactive list.

Florida Rule of Civil Procedure 1.360 provide for examination of persons. The Bar clearly demonstrated good cause as Referee Gersten had concluded. (TR, 11/1195, **pps.** 14, 27). Referee Tobin had the benefit of the hearing transcript before Referee Gersten, the affidavit of Howard Pohl, and the documents related to Respondent's involuntary hospitalization. The sworn petition stated that Respondent had been violent, depressed and paranoid. (Exhibit A to Bar's Complaint). Respondent's condition was clearly in controversy based upon the foregoing materials, and her placement on the inactive list by virtue of Rule 3-7.13, of the Rules of Discipline.

Respondent has also raised, for the first time, some 'Constitutional' issues. She argues that Rule 1-3.2 of the Rules Regulating The Florida Bar is unconstitutional because it provides an automatic grant of authority to call for a mental exam. That Rule, however, pertains to conditionally admitted membership and has no bearing upon this set of facts.

Respondent also argues that the Fourth Amendment, due process and private rights are available in Bar proceedings. However, in addition to the fact that those matters were not raised before, Respondent provides no authority to support the general claim that those rights have been violated at any stage of these proceedings, and certainly not by the Board of Governors.

Respondent has raised, in addition, a wide variety of arguments which are irrelevant and incorrect. The Bar does not believe that each statement of that nature must be addressed. Two additional arguments of Respondent call for a response. First, she claims a constitutional right to practice her profession. (Conclusion, Respondent's brief). However, this Court stated that there is no constitutional right to practice law. Fuller v. Watts, 74 So. 2d 676 (Fla. 1954). Second, Respondent claims that she cannot be punished for her sincere belief that the Order is incorrect. Here also, this Court has quite clearly ruled against that position. The Florida Bar v. Rubin, 549 So. 2d 1000 (Fla.

1989).

CONCLUSION

Respondent has failed to establish any basis for reversing the Board of Governors' denial of her petition to be removed from the inactive list.

Respectfully submitted,




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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the above and foregoing Reply Brief of The Florida Bar was sent via **Airborne** Express, **airbill** number 3369987025 to Sid J. White, Clerk, Supreme Court of **Florida**, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927, and a true and correct copy was sent via certified mail, return receipt requested (**P 092 779 431**) to Julietta Arthur, 4411 N.W. 168th Terrace, Miami, Florida 33055, **and** via regular mail to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399, on this 13th day of June 1997.



BILLY J. HENDRIX, Bar Counsel