

Supreme Court of Florida

THE FLORIDA BAR RE: JULIETA P. ARTHUR

No. 89,879

[September 4, 1997]

CORRECTED OPINION

PER CURIAM.

Julieta Arthur appeals the Florida Bar's denial of her petition to remove her name from the inactive list of Florida Bar attorneys. We have jurisdiction. Art. V, § 15, Fla. Const. We approve the Bar's decision to deny the petition.

The facts of this case are as follows. Arthur **was** involuntarily hospitalized pursuant to the Florida Mental Health Act, found to be expressing paranoid ideations, provided with medication, and released. Thereafter, the Bar asked her to submit to evaluation by Florida Lawyers Assistance, Inc., to determine her competency to practice law. She refused to respond to that request. A full hearing before the grievance committee was held, at which time Arthur testified for more than two hours. The committee concluded that Arthur was evasive, forgetful or untruthful, at times incoherent, rambling, delusional, and paranoid. After the hearing, the committee concluded Arthur was incapable of practicing law due to mental incompetence. The Bar then filed a complaint petitioning this Court to place Arthur on the inactive list of Florida Bar attorneys.

A referee was appointed by this Court. At the hearing before the referee, Arthur's conduct prompted the referee to orally order her to undergo an evaluation by Florida

Lawyers Assistance, Inc. A written order requiring Arthur to submit to a mental examination was entered June 28, 1996. On August 5, 1996, the referee recommended to this Court that Arthur be placed on the inactive list if she failed to comply with the order to submit to a mental examination. Arthur failed to submit to a mental examination, and on November 21, 1996, this Court entered an order placing Arthur on the inactive list until such time as she complied with the referee's order of June 28, 1996. See Florida Bar v. Arthur, 686 So. 2d 582 (Fla. 1992)(table report of unpublished order).

On January 3, 1997, Arthur petitioned the Board of Governors of the Florida Bar to remove her from the inactive list. The Board denied her request on January 10, 1997. The denial of her petition by the Board is the subject of this appeal.

Arthur argues that the order placing her on the inactive list was entered in violation of her constitutional rights and the Rules Regulating the Florida Bar. She contends that there was no just cause for bringing the disciplinary action against her; that she had just cause for not complying with the mental examination; and that rule 1-3.2(b) is unconstitutional.

We first note that rule 1-3.2(b) deals with mental examinations pertaining to conditionally admitted members and is inapplicable under the facts of this case. The appropriate rule here is rule 3-7.13. That rule provides as follows:

**Placement on inactive list for
incapacity not related to
misconduct**

Whenever an attorney who has not been adjudged incompetent is incapable of practicing law because of physical or mental illness, incapacity, or other infirmity, the attorney may be placed upon an inactive list and shall refrain from the practice of law for such reason even though no misconduct is alleged or proved. Proceedings with a view of placing an attorney on the inactive list under this rule shall be processed under the Rules of Discipline in the same manner as proceedings involving acts of misconduct. A member who has been placed on such inactive list may be readmitted upon application to and approval by the board of governors. A rejection of such petition may be reviewed by petition to the Supreme Court of Florida.

A lawyer who has been adjudicated insane or mentally incompetent or hospitalized under the Florida Mental Health Act shall be placed on an inactive list and shall refrain from the practice of law. If an order of restoration is entered by a court having jurisdiction or the lawyer is discharged from hospitalization under the Florida Mental Health Act, the lawyer may be readmitted upon application to and approval by the board of governors. A rejection of such petition may be reviewed by petition to the Supreme Court of Florida.

As noted above, the Bar filed a complaint

pursuant to this rule to have Arthur placed on the inactive list and this Court appointed a referee to hear the proceedings. The referee determined that a mental examination was warranted. We have previously determined that an attorney's failure to appear for a mental examination as ordered by a referee appointed by this Court warrants placement on the inactive list and that the attorney is to remain on the inactive list until such time as the attorney submits to a mental examination as ordered, petitions for reinstatement, and demonstrates competency to practice law. Florida Bar v. Hughes, 504 So. 2d 751 (Fla. 1987). At the time of her petition before the Board of Governors, Arthur had yet to submit to a mental examination. Accordingly, we approve the Board's rejection of her petition.

It is so ordered.

KOGAN, C.J., and OVERTON, SHAW, GRIMES, HARDING, WELLS and ANSTEAD, JJ., concur.

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

Original Proceeding - The Florida Bar

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for Complainant

Julieta Arthur, pro se, Miami, Florida,

for Respondent