

**ORIGINAL**

CLERK SUPREME COURT  
By [Signature]  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

FLORIDA BOARD OF BAR EXAMINERS

Case No. 93,712

RE: JOSEPH J. HIGGINS

CONFIDENTIAL

REPLY TO RESPONSE

Petitioner made application for readmission to The Florida Bar and the FBOBE said Petitioner is not eligible to apply for admission to The Florida Bar as long as he remains permanently disbarred in the State of New Jersey.

The Florida Supreme Court disbarred Petitioner for three years effective January 19, 1987. Exhibit "C". Thereafter Petitioner was disbarred as an attorney at law of the State of New Jersey based on the identical misconduct as the Florida suspension, not further or separate misconduct. (If this Honorable Court directs Applicant Higgins will provide proof of this fact to the FBOBE as suggested in the Board's response.)

The FBOBE cited, in its letter to Petitioner's attorney dated June 18, 1998 which is marked Exhibit "B" in the Petition, the case of FBOBE re R.L.V.H., 587 So.2d 462, (Fla. 1991) stating, "The court in R.L.V.H. held that it would not allow an applicant to practice law in Florida as long as he was permanently disbarred in a foreign jurisdiction." The FBOBE went on to state, "Pursuant to Rule 2-13.1 of the Rules of the Supreme Court Relating to Admissions to the Bar, your client (the Petitioner herein) is not eligible to apply for admission to the Florida Bar as long as he remains permanently disbarred in the State of New Jersey."

Applicant respectfully suggests the FBOBE's position is contrary to the controlling applicable case law of this Honorable Court, and may be clearly distinguished from the facts and circumstances underlying Petitioner's application.

MEMORANDUM OF LAW IN REPLY

The FBOBE relies upon In re: R.L.V.H. in denying Petitioner's eligibility to reapply for admission to The Florida Bar and/or The Florida Bar examination. In that case Petitioner was permanently disbarred from practicing law in the State of Ohio. Because the Petitioner was prohibited from ever being readmitted to practice law in Ohio, the FBOBE ruled that he was not eligible to apply for admission to The Florida Bar. The Florida Supreme Court concluded that Re: R.L.V.H. was controlled by their decision in The Florida Bar Re: Sanders 580 So.2d 594 (Fla. 1991).

The Board argues, "The court was influenced by the fact that Sanders had committed his misconduct in New York. However, Petitioner submits to this Honorable Court that Sanders was first disbarred by his home state, New York, and subsequently disbarred by the State of Florida. In denying Sanders' request for reinstatement, the Court held: 'We should not allow the practice of law in Florida of one disbarred in his home state'. id at 463".

Petitioner respectfully points out to the Court that had the Board delved deeper into Sanders, supra, that the following is of paramount importance in its consideration of Higgins' petition.

Sanders was a member of The Florida Bar residing in New York. He was convicted of a felony in his home state of New York, for which he was disbarred. As a consequence of his New York disbarment, he was thereafter suspended from The Florida Bar. However, R.L.V.H., supra, and Sanders, supra, can be clearly distinguished from Mr. Higgins' petition by this Honorable Court's holdings in The Florida Bar re Sickmen, 523 So2d 154 (Fla. 1988), and The Florida Bar re Gary Eric Susser, 639 So2d 30 (1994). In Sanders, supra, this Court cited Justice Ehrlich's special concurring opinion in Sickman, supra:

"If New York had instituted its disciplinary proceedings first and had disbarred Mr. Sickmen, there is no doubt in my mind that this Court would have imposed the same discipline, and would not readmit him to The Florida Bar unless and until the State of New York had done likewise. It just so happens in this case that Florida went first in its disciplinary proceedings and its discipline was less than that of the State of New York."

In Sickmen the per curium opinion of the court held that:

"The Florida Bar argues that because petitioner was disbarred in New York subsequent to this suspension in Florida, a finding of rehabilitation is precluded. However, the New York disbarment was based on the same misconduct as the Florida suspension, not further or separate misconduct. Our previous judgment of suspension was a final adjudication of discipline regarding the misconduct in question, and the fact that another jurisdiction imposed a more severe sanction for the same misconduct does not justify our placing any greater burdens on the petitioner than those already imposed."

In *The Florida Bar re Gary Eric Susser*, 639 So.2d 30, 31 (Fla. 1994) Susser was convicted of felony drug abuse in Ohio and placed on probation. Therefore he was suspended from the practice of law by the Florida Supreme Court for one year. Subsequently the Ohio Supreme Court disbarred Susser in his home state of Ohio because of the same felony convictions. Although the FBOBE cites Susser in part in its response, it is interesting to note the entire finding of the Court in Susser. Emphasis added. In Florida the referee concluded that the Ohio ruling was harsh and recommended that Susser be reinstated. The court held:

"The Bar argues that because of our ruling in *The Florida Bar re Sanders*, 580 So.2d 594 (Fla. 1991), Susser should not be allowed to practice law in Florida. Specifically, this Court stated in *Sanders* that '[w]e should not allow the practice of law in Florida of one disbarred in his home state.' *Id.* See also *Florida Bd. of Bar Examiners re R.L.V.H.*, 587 So.2d 462 (Fla. 1991). However, in *Sanders*, the petitioner was disbarred in his home state of New York before any final disciplinary action was taken in Florida. The instant case may be distinguished from *Sanders* in that Susser had been subjected to a final disciplinary proceeding in Florida prior to being disbarred in his home state. This case is similar to *The Florida Bar re Sickmen*, 523 So.2d 154 (Fla. 1988), in which the petitioner had already been subjected to a disciplinary proceeding in Florida when he was subsequently disbarred in his home state for the same conduct. We held that 'the fact that another jurisdiction imposed a more severe sanction for the same misconduct does not justify our placing any greater burdens on the petitioner than those already imposed. *Id.* at 155.

Because the previous ruling in the case at bar was a final adjudication of discipline regarding the misconduct in question, it would be unfair now to impose discipline to a higher degree based solely on a disbarment by Susser's home state that was premised upon the same conduct. Susser complied fully with the requirements previously imposed by the referee, and the record supports his current recommendation. Therefore, we approve the referee's report and hereby reinstate Gary E. Susser to the practice of law in Florida. It is so ordered."

The Board argues that there is a distinction between Susser and Petitioner in that Susser was suspended in Florida prior to being disbarred in his home state, whereas Petitioner was disbarred in Florida prior to being disbarred in his home state. However, there is nothing in the language of Susser, supra, or Sickmen, supra, that makes such a distinction. This Honorable Court, in disbarring Higgins, set forth a period of disbarment saying: "we hereby disbar respondent, Joseph J. Higgins, from the practice of law in the State of Florida for a period of three (3) years." Exhibit "C". It is clear Higgins is eligible to be considered by this Honorable Court for his reapplication to The Florida Bar and/or The Florida Bar examination, particularly in view of this Court's holdings in Sickmen and Susser.

Clearly the position of Petitioner Higgins, that he was disbarred by the State of Florida and was subsequently disbarred by the State of New Jersey is identical with the holdings in Sickmen, supra and Susser, supra. The cases relied upon by the FBOBE are, therefore, inapplicable because both R.L.V.H. and Sanders were disbarred by their respective home states and thereafter disbarred by the State of Florida.

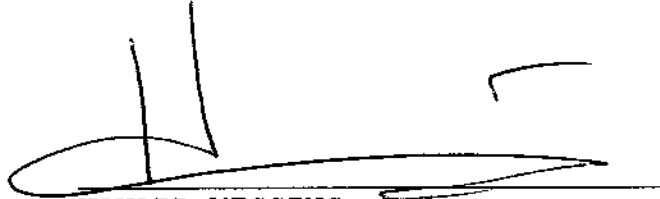
Petitioner was disbarred in New Jersey subsequent to his disbarment in Florida. The New Jersey disbarment was based on the same misconduct as the Florida disbarment, not further or separate misconduct.

Petitioner realizes he made a serious mistake which was the cause of his disbarment by this Honorable Court. It was his responsibility and he paid for his mistake via the full measure exacted by this Court's severe punishment.

This Court's previous judgment of disbarment of Petitioner for a period of three (3) years effective January 19, 1987, was a final adjudication of discipline regarding the misconduct in question, and the fact that another jurisdiction, the State of New Jersey, imposed a more severe sanction for the same misconduct does not justify, it is respectfully submitted, this Court placing any greater burdens on the Petitioner than those already imposed, as stated by this Honorable Court in *Sickmen*, supra.

Accordingly, the prospective applicant, Joseph J. Higgins, respectfully requests an Order of this Honorable Court permitting his reapplication to The Florida Bar and/or The Florida Bar examination.

Respectfully submitted,

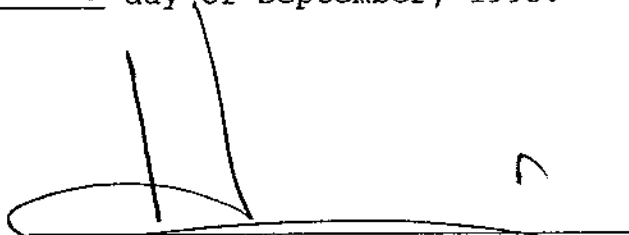


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent via regular U. S. Mail to Ms. Kathryn Ressel, Executive Director, Florida Board of Bar Examiners, 1891 Eider Court, Tallahassee, Florida 32399-1750, on this 23<sup>rd</sup> day of September, 1998.



HOWARD MESSING, ESQ.